

INDEX.

	Page.
Notice of Appeal	1
Complaint (Kalleberg Case)	2
Answer	6
Reply (Kalleberg Case)	7
Notice of Appeal	8
Complaint (Janderup Case)	9
Answer	12
Reply (Janderup Case)	13

TESTIMONY.

FOR PLAINTIFF:

EDWARD S. SMITH:

Direct	15
Cross	22
Re-Direct	33

NELS K. JANDERUP:

Direct	35
Cross	48
Re-Direct	53

WILLIAM L. WARREN:

Direct	53
Cross	60
Re-Direct	65
Re-Cross	66

EDWARD MILGES:

Direct	66
--------------	----

JOHN TRAILL:

Direct	75
Cross	78

	Page.
JOHN NELSON :	
Direct	80
Cross	84
JAMES M. HOFFLER :	
Direct	86
Cross	89
ANDREA KALLEBERG :	
Direct	90
Cross	94
Re-Direct	95
WILLIAM E. WEST :	
Direct	95
Cross	96
MARTIN S. MEINZER :	
Direct	102
JOHN MCDOWELL :	
Direct	104
Cross	106
Re-Direct	109
Re-Cross	110
Motion for Non-suit	112
FOR DEFENDANT :	
NORMAN H. WINNER :	
Direct	116
Cross	119
OTTO A. VAN NESS :	
Direct	121
Cross	126
WILLIAM H. MORRIS :	
Direct	126
Cross	128

	Page.
JOHN A. MAGUIRE:	
Direct	130
Cross	133
R. E. LEE MORGAN:	
Direct	134
Cross	136
FRANK M. DONOHUE:	
Direct	138
Cross	139
Re-Direct	142
WILLIAM H. SEXTON:	
Direct	145
CUSTY WISKOSKI:	
Direct	146
REBUTTAL FOR PLAINTIFF:	
NELS K. JANDERUP:	
Direct	147
Cross	149
MRS. ANDREA KALLEBERG:	
Direct	150
Cross	151
Charge	151
Grounds of Appeal	164
Exhibit D-1—Photograph of Railroad Cross- ing. Admitted in evidence at page 28; printed at	168

John A. Mather: 100
 Direct 100
 Cross 100

D. H. Lee Mather: 101
 Direct 101
 Cross 101

Frank M. Mather: 102
 Direct 102
 Cross 102

William H. Mather: 103
 Direct 103
 Cross 103

George W. Mather: 104
 Direct 104
 Cross 104

Editors and Authors: 105

Miss F. Mather: 106
 Direct 106
 Cross 106

Miss Anna Mather: 107
 Direct 107
 Cross 107

Charge 108
 Grounds of Appeal 108
 Appeal for Reversal of Federal Court 108
 How to Appeal in Federal Court 108
 printed at 108

Notice of Appeal.

10

(Filed June 4, 1917.)

New Jersey Supreme Court

MIDDLESEX COUNTY.

ANDREA KALLEBERG, Admx., with
the Will annexed, of HAROLD
KALLEBERG, deceased,

20

Plaintiff-Appellee,

vs.

RARITAN RIVER RAILROAD Co.,

Defendant-Appellant.

TO MESSRS. FORT & FORT,
Attorneys of Plaintiff.

Sirs:

30

TAKE NOTICE that the defendant appeals to the
New Jersey Court of Errors and Appeals, from
the whole of the judgment entered in this court.

Dated, May 16, 1917.

EDWARDS & SMITH,
Attorneys of Defendant-Appellant.

Service acknowledged May 25, 1917.

FORT & FORT,
Attorneys for Plaintiff-Appellee.

40

Complaint.**NEW JERSEY SUPREME COURT.**

MIDDLESEX COUNTY.

10 ANDREA KALLEBERG, Administra-
trix, with the Will annexed, of the
Estate of HAROLD KALLEBERG, de-
ceased,

*Plaintiff,**vs.*

RARITAN RIVER RAILROAD COM-
PANY,

Defendant.

20 The plaintiff, a resident of the Borough of
Brooklyn, County of Kings and State of New
York, says:

1. The defendant, on January fifth, nineteen
hundred and sixteen, was and still is a corporation
and was also a common carrier of passengers by
railroad between the Town of Parlin, New Jersey,
and the City of South Amboy, New Jersey.

30 2. On the said day, at about five P. M., at the
Town of Parlin, Harold Kalleberg, now deceased,
had purchased a railroad ticket of the defendant
company, which entitled him to transportation
from the Town of Parlin to the City of South
Amboy, Middlesex County, New Jersey. Upon
said day, at the aforesaid time, and upon numerous
days prior thereto, a large number of passengers,
including the said Harold Kalleberg, deceased,
congregated at the railroad station maintained by
the defendant company at the Town of Parlin,
for the purpose of boarding a train of cars operated
40 by the defendant company in order to travel to the

Complaint (Kalleberg Case).

City of South Amboy, which fact was known to the defendant. It then and there became the duty of the railroad company and its servants to maintain a sufficiently large station and platform so that the large number of passengers, including the said Harold Kalleberg, deceased, would have a safe place to stand while waiting for the defendant's train, and to provide proper equipment for its train so that passengers and the said Harold Kalleberg, deceased, could board and alight from its said train without fear of injury; and it further became the duty of the defendant company and its servants to maintain a sufficient number of guards at its said station so that the large number of passengers and the said Harold Kalleberg, deceased, obliged to congregate at its station at said times, would receive no injury by being jostled or crowded, or struck by defendant's train, or injured in some other way, and it further became the duty of the defendant company and its servants to keep clear from obstruction all tracks and sidings running adjacent to the main track of the defendant by its said station, so that the large crowds of passengers, and particularly the said Harold Kalleberg, deceased, congregated at its said station, would be free from any danger of injury.

3. The defendant company operated a train at or about the aforementioned hour of the day from Parlin to South Amboy, and a large crowd of passengers, including the said Harold Kalleberg, deceased, who were employees of the Du Pont Powder Company, whose plant is situated at Parlin, were accustomed to take this train to reach their homes, and upon the said day this large crowd of passengers, including the said Harold Kalleberg, deceased, had congregated at the defendant's station, and on the opposite side

Complaint (Kalleberg Case).

of its main passenger track, waiting for defendant's train, and were forced to stand upon the side of the defendant's passenger track opposite defendant's station, because the defendant company and its servants failed to perform its duties heretofore mentioned, and failed to maintain a sufficiently large railroad station at Parlin, New Jersey, and failed to provide a sufficient amount of room between its station and its main track upon which the said Harold Kalleberg, deceased, and the passengers could stand, and the defendant company was aware of this fact and permitted it to exist; and defendant company and its servants negligently failed to provide guards at said station to prevent the passengers, including said Harold Kalleberg, deceased, from receiving injury, and failed to provide proper equipment for its trains so as to prevent injury to its passengers and the said Harold Kalleberg, deceased, when they were boarding and alighting from defendant's trains; and the defendant and its servants, at said time, did negligently run a large number of freight cars upon the side track, directly adjacent to defendant's main track and directly opposite the station, and kept said freight cars in this position until its train, which the passengers, including the said Harold Kalleberg, deceased, were awaiting, arrived.

4. Because of the negligence of the defendant and its servants in failing to maintain a sufficiently large station, and in failing to provide sufficient guards at said station, and failing to provide sufficient and proper equipment for said train, and because of its negligent backing of the freight cars on said track, said Harold Kalleberg, deceased, at the time and place aforesaid, without any negligence on his part, was jostled and squeezed by the large crowd of passengers at-

Complaint (Kalleberg Case).

tempting to board defendant's train when it arrived, and was pressed against the freight cars standing upon defendant's side track and was killed, to wit, on the fifth day of January, nineteen hundred and sixteen, within twenty-four calendar months of the commencement of this action.

5. On the 18th day of September, nineteen hundred and sixteen, the Surrogate of County of Kings and State of New York, granted letters of administration, with the will annexed, upon the Estate of the said Harold Kalleberg to the plaintiff, who accepted the same. 10

6. The said decedent left surviving him, the plaintiff, who is his widow, who is his only next of kin and who was dependent upon the deceased for her support and who, by his death, has suffered great pecuniary injury. 20

Plaintiff demands \$20,000 damages.

FORT & FORT,
Attorneys for Plaintiff.

30

40

Answer.

(Filed November 28, 1916.)

NEW JERSEY SUPREME COURT.

MIDDLESEX COUNTY.

10	ANDREA KALLEBERG, Administra- trix, etc.,	}	At Law.
	<i>Plaintiff,</i>		
	<i>vs.</i>		
	RARITAN RIVER RAILROAD COM- PANY,	}	
	<i>Defendant.</i>		

Defendant, a domestic corporation, answering the complaint herein, says:

- 20 1. It admits paragraph One (1).
2. It denies paragraph Two (2), and says that its station facilities at Parlin, New Jersey, were ample and reasonably safe for use by passengers boarding or leaving cars of defendant at said place, and the equipment for its trains likewise ample and reasonably safe, and the guards employed by it at said station sufficient for the protection of its passengers, and its tracks clear and unobstructed.
- 30 As to the other matters set forth in said paragraph, defendant denies the same and leaves plaintiff to make proof thereof.
3. It admits that it operated a train from Parlin to South Amboy on or about the day and hour mentioned. It admits that certain passengers boarded said train at Parlin station. It denies the balance of said paragraph.
4. Answering paragraph Four (4) defendant says that it denies the same.

5. Answering paragraph Five (5) defendant has no knowledge of the matters set forth therein, therefore denies the same and leaves plaintiff to make proof thereof.

6. Answering paragraph Six (6) defendant says it has no knowledge as to the matters set forth therein, therefore denies the same and leaves plaintiff to make proof thereof.

BY WAY OF DEFENSE TO SAID ACTION, DEFENDANT
SAYS: 10

1. That plaintiff and the next of kin of decedent suffered no injury and sustained no loss by reason of any negligence of defendant or any of its servants.

2. That plaintiff and the next of kin of decedent did not suffer the injury or sustain the loss alleged.

3. That decedent was guilty of contributory negligence. 20

EDWARDS & SMITH,
Attorneys of Defendant.

Reply (Kalleberg Case).

(Filed December 6, 1916.)

The plaintiff, in reply to the answer of the defendant filed herein, says:

1. Plaintiff denies that her intestate was guilty of contributory negligence. 30

FORT & FORT,
Attorneys for Plaintiff.

Complaint.**NEW JERSEY SUPREME COURT.**

MIDDLESEX COUNTY.

<p style="text-align: center;">NILS K. JANDERUP,</p> <p style="text-align: right;"><i>Plaintiff,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">RARITAN RIVER RAILROAD COM- PANY,</p> <p style="text-align: right;"><i>Defendant.</i></p>	}	10
---	---	----

The plaintiff, a resident of the City of South Amboy, County of Middlesex and State of New Jersey, says:

1. The defendant, on January fifth, nineteen hundred and sixteen, was and still is a corporation and was also a common carrier of passengers by railroad between the Town of Parlin, New Jersey, and the City of South Amboy, New Jersey.

2. On the said day, at about five P. M., at the Town of Parlin, the plaintiff had purchased a railroad ticket of the defendant Company, which entitled him to transportation from the Town of Parlin to the City of South Amboy, Middlesex County, New Jersey. Upon said day, at the aforesaid time, and upon numerous days prior thereto, a large number of passengers, including the plaintiff, congregated at the railroad station maintained by the defendant Company at the Town of Parlin, for the purpose of boarding a train of cars operated by the defendant Company in order to travel to the City of South Amboy, which fact was known to the defendant. It then and there became the duty of the defendant Company and its servants to maintain a sufficiently large station and platform so that the large number of

20

30

40

Complaint (Janderup Case).

passengers, including the plaintiff, would have a safe place to stand while waiting for the defendant's train, and to provide proper equipment for its trains so that passengers of the plaintiff could board and alight from its said train without fear of injury; and it further became the duty of the defendant Company and its servants to

10 maintain a sufficient number of guards at its said station so that the large number of passengers and the plaintiff, obliged to congregate at its station at said times, would receive no injury by being jostled or crowded, or struck by defendant's train, or injured in some other way, and it further became the duty of the defendant Com-

20 pany and its servants to keep clear from obstruction all tracks and sidings running adjacent to the main track of the defendant by its said sta-

tion, so that the large crowds of passengers, and particularly the plaintiff, congregated at its said station, would be free from any danger of injury.

3. The defendant Company operated a train at or about the aforementioned hour of the day from Parlin to South Amboy, and a large crowd of passengers, including the plaintiff, who were employees of the Du Pont Powder Comapny, whose plant is situated at Parlin, were accustomed to take this train, to reach their homes, and upon

30 the said day this large crowd of passengers, including the plaintiff, had congregated at the defendant's station, and on the opposite side of its main passenger track, waiting for defendant's train, and were forced to stand upon the side of the defendant's passenger track opposite defendant's station, because the defendant Company and its servants failed to perform its duties heretofore mentioned, and failed to maintain a sufficiently large railroad station at Parlin, New Jersey, and

40 failed to provide a sufficient amount of room be-

Complaint (Janderup Case).

tween its station and its main track upon which the plaintiff and the passengers could stand, and the defendant Company was aware of this fact and permitted it to exist; and defendant Company and its servants negligently failed to provide guards at said station to prevent the passengers, including plaintiff, from receiving injury, and failed to provide proper equipment for its trains so as to prevent injury to its passengers and the plaintiff when they were boarding and alighting from defendant's trains; and the defendant and its servants, at said time, did negligently run a large number of freight cars upon the side track, directly adjacent to defendant's main track and directly opposite the station, and kept said freight cars in this position until its train, which the passengers, including the plaintiff, were awaiting, arrived. 10
20

4. Because of the negligence of the defendant and its servants in failing to maintain a sufficiently large station, and failing to provide sufficient guards at said station, and failing to provide sufficient and proper equipment for said trains, and because of its negligent backing of the freight cars on said track, plaintiff, at the time and place aforesaid, without any negligence on his part, was jostled and squeezed by the large crowd of passengers attempting to board defendant's train when it arrived, and was pressed against the freight cars standing upon defendant's side track and severely injured, to wit, plaintiff's jaw was broken, his eyesight was badly impaired and he received numerous other injuries. 30

5. The plaintiff was confined to his house and was unable to perform his duties for a long period of time and has expended large sums for medical and surgical attendance and demands Ten Thousand Dollars damages. 40

FORT & FORT,
Attorneys for Plaintiff.

Answer.

(Filed November 15, 1916.)

NEW JERSEY SUPREME COURT.

MIDDLESEX COUNTY.

10	<p style="text-align: center;">NILS K. JANDERUP, <i>Plaintiff,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">RARITAN RIVER RAILROAD COM- PANY, <i>Defendant.</i></p>	} At Law.
----	---	-----------

Defendant, a domestic corporation, answering the complaint herein, says:

20 1. It admits Paragraph One (1) of said complaint.

2. Answering Paragraph Two (2) it says that its station facilities at Parlin, New Jersey, were ample and reasonably safe for use by passengers boarding or leaving cars of defendant at said place, and the equipment for its trains likewise ample, and reasonably safe, and the guards employed by it at said station sufficient for the protection of its passengers, and its tracks clear and unobstructed.

30 As to the other matters set forth in said paragraph, defendant denies the same and leaves plaintiff to make proof thereof.

3. Answering Paragraph Three (3), it admits that on or about the date mentioned in said complaint, and about five o'clock P. M. thereof, it operated a train from Parlin to South Amboy. It admits that passengers boarded said train. It denies the balance of said paragraph.

4. Answering Paragraph Four (4), defendant denies the same.

5. Answering Paragraph Five (5), defendant says it has no knowledge or information as to the matters therein alleged, therefore denies the same and leaves plaintiff to make proof thereof.

BY WAY OF DEFENSE TO SAID ACTION, DEFENDANT SAYS:

1. That plaintiff suffered no injury and sustained no loss by reason of any negligence of defendant or any of its servants. 10

2. That plaintiff did not suffer the injury or sustain the loss alleged.

3. That plaintiff was guilty of contributory negligence.

EDWARDS & SMITH,
Attorneys of Defendant.

Reply (Janderup Case). 20

(Filed November 21, 1916.)

The plaintiff denies that he was guilty of contributory negligence.

FORT & FORT,
Attorneys for Plaintiff.

30

40

Testimony.**SUPREME COURT OF NEW JERSEY.**

MIDDLESEX COUNTY CIRCUIT.

April Term, 1917.

10	ANDREA KALLEBERG, Admtx., <i>vs.</i> RARITAN RIVER RAILROAD Co.	} Action at Law.
	NILS K. JANDERUP, <i>vs.</i> RARITAN RIVER RAILROAD Co.	

APPEARANCES :

- 20 FORT & FORT (Franklin W. Fort), for Plaintiff.
 EDWARDS & SMITH (Edwin F. Smith), JOHN A.
 COAN, for Defendant.

30 BE IT REMEMBERED, that on this fourteenth day of May, Nineteen hundred and seventeen, at a Circuit Court, holden at New Brunswick, in and for the County of Middlesex, before his Honor, FRANK T. LLOYD, Judge of the Circuit Court, to whom the issue above joined had been referred for trial, the said issue between the parties (pro ut the proceedings), came on to be tried by a jury for that purpose, duly empanelled, and thereupon the plaintiff and defendant offered evidence as hereinafter set out to maintain the issue on their respective parts as follows:

MR. FORT: The understanding between counsel is that the transcript—the complaint

Edward S. Smith—Direct.

in the Kalleberg case is to be amended to agree with the complaint in the Janderup case in all matters as relating to the nature of the accident.

MR. SMITH: That is all right.

Mr. Fort opens the case to the jury for the plaintiff.

Mr. Smith opens the case to the jury for the defendant. 10

MR. FORT: I would like to call a witness first out of my usual course in order to allow him to go as he is engaged in some Government work.

EDWARD S. SMITH, a witness produced on behalf of the plaintiff, being duly sworn on his oath, according to law, saith: 20

DIRECT EXAMINATION BY MR. FORT:

Q. Mr. Smith, in January, 1916, what was your business? A. Superintendent of Construction of the DuPont Powder Company.

Q. How long had you been superintendent of construction? A. Two years and nine months.

Q. Did you know Mr. Harold Kalleberg? A. Yes, sir.

Q. Did you know Nels K. Janderup? A. Yes, sir. 30

Q. Were they employed by you at the Du Pont works? A. Yes, sir.

Q. Were you there on the day of January fifth, 1916? A. Yes, sir.

Q. What time did you leave the works on that day? A. I left about ten minutes after four.

Q. And where did you go when you left the works? A. To the Raritan River station.

Q. At Parlin? A. At Parlin. 40

Edward S. Smith—Direct.

Q. Did you see either Mr. Kalleberg or Mr. Janderup at that station? A. Yes, sir.

Q. Where did you see them? A. Standing on the opposite side of the station right alongside of two freight cars, backed in there about four o'clock or ten minutes past four. While I stood there they were backed in.

10 Q. While you stood there they were backing in? A. Yes.

Q. How wide was the space between where those freight cars were standing and the track on which the trains to South Amboy ran? A. About two foot six.

Q. Two foot six from where? A. From car to car.

Q. Did you see both Mr. Kalleberg and Mr. Janderup standing there? A. Yes, sir.

20 Q. Were you standing there? A. No. I was standing on the opposite side.

Q. How many men were there? A. Oh, I should judge four or five hundred.

Q. You were in charge of the shift that went out just before that time? A. I was in charge of four hundred and eighty men at the time.

Q. Four hundred and eighty men went out at that time? A. Yes, sir; of my crowd alone.

30 Q. Were there other men went out at the same time? A. Oh, yes; considerable amount of men went out at the same time.

Q. How many men in all would you estimate were at that station waiting for that train? A. Oh, I should judge, about seven hundred.

Q. How big is the station platform? A. Oh, I should judge from here to that rail there.

Q. And how long? A. Well, the station wasn't completed at the time, I don't think.

40 Q. Station wasn't completed? A. At the time, no.

Edward S. Smith—Direct.

Q. Had you been in the habit of taking that train regularly? A. Yes, sir; every night.

Q. What was the condition other nights as compared to that night?

THE COURT: Do you mean as to numbers of people?

Q. As to numbers of people? A. About the same. That increased rush started about October twenty-third or twenty-fourth. 10

Q. Of 1915? A. Of 1915.

Q. And from that time on to the date of the accident it was practically the same size crowd?

A. Just the same; yes, sir.

Q. You took that train every night? A. Every night.

Q. Where had the people stood generally waiting for that train? A. Well, they would stand all over the whole place. Get on the cars fifty foot down, away from the station, hop on. 20

Q. Do you mean hop on while it was in motion? A. Hop on while it was in motion.

Q. Did they always stand on the station side of the track? A. On all sides.

Q. What? A. On both sides.

Q. Very many of them habitually stand on either side? A. Yes. I should judge about "fifty-fifty". 30

Q. About fifty-fifty? A. About fifty-fifty.

Q. How frequently had you seen men hop on? A. Well, the night previous to that I seen a man knocked down hopping on on the station side.

MR. SMITH: I ask that be stricken out.

THE COURT: Just answer the question.

Q. How frequently had you seen it? A. Well, it was done every night.

Q. Had you ever seen any trouble caused by 40

Edward S. Smith—Direct.

anybody hopping on? A. Well, the night before I seen a man knocked down.

Q. How was he knocked down? A. Man hopped on the car and another man followed up behind him, and walked alongside of him and knocked him right down, fellow swinging out from the car.

10 Q. What about the accommodations on the cars for the crowd? How many cars were there. A. Well, I don't know, but I know they would let them stand up, ride on the platforms and sit on the steps riding down to South Amboy.

Q. You say they let them. Was there room inside for them? A. No, there wasn't. I stood on the platform a good many nights myself.

Q. Did you do that from choice? A. No. Always crowded. Standing up in the aisle. Any-
20 body in seats.

Q. How long a time had that condition continued? A. Oh, I should judge from about October, at the time they put the large crowd of men on.

Q. During that time had the size of the train been increased any? Did they run any more cars in January than they did in October? A. Not that I noticed, no.

Q. Were there any guards around? A. No,
30 sir.

Q. Either this night or any night before did you ever—did anyone warn you to keep back from the track? A. No, sir.

Q. Did you ever hear them warn anybody? A. No, sir.

Q. Do you know how long Mr. Janderup or Mr. Kalleberg had worked for you there? A. Well, I don't just remember now.

Q. Do you know what you paid them? A. Yes,
40 sir.

Edward S. Smith—Direct.

Q. What was it? A. Four dollars on week days, that was the first five of the days, and five dollars and seventy-five cents on Saturdays, and eight dollars on Sunday.

Q. Did they all work all seven days? A. Yes, sir.

Q. Did you see either Mr. Kalleberg or Mr. Janderup after the train came into the station that night? A. Well, before it left the station I walked up and asked Mr. Janderup, and he couldn't talk to me. 10

Q. Where did you walk in? A. I walked in the end of the car.

Q. In the train? A. In the train.

Q. And he was sitting there? A. And he was sitting there, and he was spitting up blood, and he couldn't talk. So I walked down to Mr. Warren, another man was hurt there, and he was sitting on the end of the car, and he was hurt a little bit, too. 20

Q. Did you see Mr. Kalleberg? A. Yes, sir; he was spitting blood when I walked up to him, and he couldn't talk to me.

Q. And did you see Mr. Janderup, too? A. Mr. Janderup was right behind him.

Q. And he was spitting blood also? A. Yes.

Q. And you had seen those men just before that standing on the opposite side of the track? A. Standing on the opposite side of the track. 30

Q. And they were not spitting blood then, were they? A. No, sir.

Q. Did you notice anything as the train pulled into the station, anything out of the ordinary? A. No.

BY THE COURT:

Q. Where were you standing, sir? A. I was standing right in front of the station. 40

Edward S. Smith—Direct.

Q. On the platform itself? A. On the would-be platform.

Q. On the what? A. Would-be. It wasn't finished at the time, I don't think.

BY MR. FORT:

10 Q. Was it a platform that was being built up, a wooden platform? A. No. Just cinders there. There was no wooden platform there at the time.

THE COURT: No wooden platform at all?

A. No, sir.

Q. Were the cinders completely levelled out at the time? A. No. Bad shape.

20 Q. How big a space was levelled out clear? A. I should judge about the width of this room, and a distance out.

Q. That was clear? A. That was clear.

Q. And level? A. Well, not exactly level.

Q. This night we are speaking of, when you got on the train was the train—was everybody seated on the train? A. Oh, no. Had all you could do to squeeze into the hurt men. And I remembered two gentlemen giving up their seats for one of the fellows was hurt.

30 Q. What about—did the train make up and start at Parlin? A. No. They came down from a place called Gillespies.

Q. How about it customarily, was there anybody in the train when you got there? A. Oh, yes. They take up passengers from Gillespies.

Q. How many people were on would you say before it got to Parlin? A. Oh, I should judge one or two hundred.

Q. About two hundred? A. Yes.

40 Q. What was the kind of type of equipment on that train, Mr. Smith? A. All old-time wooden

Edward S. Smith—Direct.

cars. I have seen them with their draw-heads pull out and leave the cars behind and the engine and one car going ahead, and back up and get them back. I have often rode in box cars down from there.

Q. On this particular train? A. They backed in a box car there one night to take us down.

Q. On the night of the accident what sort of cars were they? A. The same old wooden cars. 10

Q. Were they Raritan River Railroad Company cars? A. Raritan River Railroad, yes.

Q. All of them? A. I don't remember.

Q. What about lights? A. Well, we never had any lights.

Q. Make any difference what time it was, or did you always come at four o'clock? A. I always went at four o'clock.

Q. Dark that time in January, was it? A. No, 20
it was rather a fine day. I had my overcoat on my arm. It was rather a fine day.

Q. You have said, Mr. Smith, that you saw Mr. Janderup, and Mr. Kalleberg and Mr. Warren, all three? A. Yes.

Q. Were they all in one car? A. They were all in one car.

Q. Was anybody spitting blood that you noticed beside Mr. Janderup and Mr. Kalleberg? A. No.

MR. SMITH: I object. 30

MR. FORT: That is purely for identification.

MR. SMITH: He said he knows Janderup and Kalleberg, and it is not necessary. I object.

BY THE COURT:

Q. How much of this place had been used as a waiting place for the trains? A. Well, I don't know as they ever filled in any place. Because 40

Edward S. Smith—Cross.

they got on all places. Never made any difference. Even after the train pulled out from the station fifty feet on a cross-road, they would hop on.

Q. I am speaking now with reference to these box cars. A. Box cars were backed up right directly in front of the station, and the engine pulled away.

10 Q. Were they there at other times? A. No. First time I ever seen them there.

Q. So that you don't know men ever having before stood between the box cars and the track of the oncoming train? A. No, I do not.

Q. Was the condition of the ground all the same around there? A. Well, no. Rails were above the ground.

Q. Yes, I suppose that, but I meant as distinguished between the section which was between the tracks, and the part which you have described as large as this room, where people customarily waited, what was the condition in the— A. Well, there was just ashes there. That was the only difference.

20

Q. In all parts? A. That is all.

Q. Any part of it raised? A. No. All even with the track.

Q. Was it customary or not for people to stand on that side of the train, waiting for the train to come in? A. Oh, yes, they would stand there all along. Been there as long as I can remember. As long as I worked there they have done that.

30

MR. FORT: I have finished.

CROSS EXAMINATION BY MR. SMITH:

Q. Mr. Smith, when did you first go to work in DuPonts? A. March.

Q. What year? A. 1914.

40 Q. 1914? A. Yes.

Edward S. Smith—Cross.

Q. That is when they first started to work their works? A. First started the rush.

Q. And the works are opposite the station called Parlin? A. Yes, sir.

Q. Well, now, there was an old station there first? A. There was an old station on the opposite side of the street; yes, sir.

Q. And that was really created by the DuPont people, wasn't it? A. Yes. **10**

Q. In other words, the DuPont powder people bought a large tract of land there? A. Yes.

Q. And then they put up a structure and got the railroad company to stop the train at that place, didn't they?

MR. FORT: Wait a moment. I don't know as that is material.

MR. SMITH: Perfectly. **20**

A. That was before the accident, quite some time.

MR. SMITH: I ask that be stricken out.

MR. FORT: I do not know that Mr. Smith knows what the railroad company did.

MR. SMITH: The question is there, and if the witness knows he can answer it. Unless the Court, of course, says it is not a proper question. **30**

THE COURT: Let us get on. He seems to have answered the question.

Q. Mr. Smith, there is a road that runs right alongside of the old station, isn't there? A. Yes, there is, right behind there.

Q. That is quite a wide road, isn't it? A. Behind the station, yes.

Q. And the train used to stop up at the station that you called the old station, that is nearer to South Amboy? A. Yes. **40**

Edward S. Smith—Cross.

Q. And then around October, you say, or sometime that time, they commenced the erection of a station at what you call Parlin? A. Yes.

Q. That would be further towards Gillespies toward the old station? A. On the opposite side of the road.

Q. It is on the opposite side of the road, is that
10 right? A. Yes.

Q. So if we say the road ran like this rail in front of the jury, the old station would be on that side of the road? A. Yes, sir.

Q. And the new station was erected down here on the opposite side of the road? A. Yes, sir.

Q. And quite some distance from the road, wasn't it? A. Yes.

Q. And the land from the road into the new station was practically level, wasn't it? A. Well,
20 I wouldn't say that, no.

Q. Well, now, do you remember? A. If you remember it was down in a gulley, and it was all filled in there.

Q. It was filled in when they erected the station? A. But it wasn't completed at the time.

Q. It was filled in from the road down to the station, before they started the station? A. Partly filled, yes.

Q. What do you mean by partly? A. Wasn't
30 completed.

Q. What do you mean by completed? Was it 9/10 done? A. It wasn't up to the grade level.

Q. What was the grade level? A. The grade level was the road.

Q. The grade level was the road? A. Yes.

Q. The road ran at an incline, didn't it? A. After she got about fifty foot above the station, yes.

Q. Above the station, do you mean west of the
40 station? A. As she got towards the hotel, she went on the incline.

Edward S. Smith—Cross.

Q. Then the hotel was back of the new station, wasn't it? A. Considerable distance.

Q. Quite some distance? A. Yes, sir.

Q. Now, the land is all clear from the hotel, right down to the track, isn't it? A. A road there, a fence.

Q. And also this side of the road where they put the new station is all clear? That is true, isn't it? A. About from here to the rail, yes. 10

Q. About from you to the rail? A. Yes, and in back of it there is a fence, owned by the DuPonts, around the hotel.

THE COURT: You haven't a diagram, have you?

MR. SMITH: I have a picture.

THE COURT: If we could use them, if they are available, they would be helpful, perhaps. 20

MR. FORT: When was that taken, Mr. Smith? Are you going to prove it formally later?

MR. SMITH: I can't prove it, but I know that is the condition.

THE COURT: At what time?

MR. SMITH: I don't know just what time.

A. If you had the opposite view of this thing here you will find out on this side there is a gully. You come out of DuPont's and go down this hill, and come up this hill to get on the tracks. 30

Q. Here is DuPont's over here? A. Yes, but this is DuPont's Hotel.

Q. As I understand you that picture is substantially correct except on the opposite side of the station there was a gully? A. Yes.

Q. That wasn't completed? A. Yes.

Q. This side wasn't? A. And this side wasn't completed at the time.

Q. What wasn't completed at the time? A. There was a kind of a gully right in here. 40

Edward S. Smith—Cross.

MR. FORT: For the record I think he should indicate what side of the station he is referring to.

Q. What direction is that towards Gillespies?

A. That is the opposite side.

10 Q. What direction is that, south or north or east or west from Gillespies? A. Towards Gillespies. I don't know.

BY MR. FORT:

Q. Is it towards New Brunswick? A. It is towards New Brunswick.

MR. FORT: We will call New Brunswick west and the other east.

BY MR. SMITH:

20 Q. That is towards New Brunswick? A. Around the curve of the track.

Q. And this is towards South Amboy? A. Yes.

BY THE COURT:

Q. Are those smokestacks towards New Brunswick from the station? A. Yes. Towards South River.

BY MR. SMITH:

30 Q. What is the direction, do you know? Is that towards New Brunswick, that way? A. No. Same direction the track follows there is towards New Brunswick.

Q. That track curves around? A. Yes.

Q. And the track goes towards New Brunswick after it curves? A. Yes.

Q. You don't know the distance there at all? A. No.

Q. That is what you call the hotel? A. That is the old hotel, yes.

40 Q. Was this land as it is now in the same

Edward S. Smith—Cross.

position at that time, as appears on this picture?

THE COURT: Do you mean the section immediately adjoining the road?

MR. SMITH: Yes, the section immediately adjoining the road.

MR. FORT: Between the hotel and the station, is that it? **10**

THE COURT: No. His question is directed between the station and the road.

Q. Between the road and the station was the land in substantially the same condition as depicted on this photograph? A. No.

Q. What was the difference? A. The small hollow that was in here between this gate and the station.

Q. How big a hollow? A. Oh, I should judge **20** two or three feet.

Q. Two or three feet deep? A. Exactly.

Q. And how close to the track? A. Oh, I should judge about ten feet to the track.

Q. About ten feet from the track, is that right? A. Yes.

Q. And then how wide was this depression, as you call it? A. Went almost to Dupont's fence.

Q. Almost to the DuPont's fence, is that right? A. Yes, sir. **30**

Q. Then, in other words, you mean the track sloped—the ground sloped about ten feet away from the track? A. Yes, sir.

Q. Sloped down? A. Yes, sir.

Q. And then went to the DuPont's? A. Yes. DuPont's used to use it for sewerage.

Q. Aside from the slope was it level? A. Fairly good shape.

Edward S. Smith—Cross.

BY THE COURT:

Q. Where are the tracks on which the freight cars were? A. Right here (indicating).

Q. The witness indicates a point opposite the station, is it? A. Right opposite the station.

Q. And on the second track from the station?
A. Yes, sir.

10

MR. SMITH: I will ask to have this marked.

Photograph marked D-1 for identification.

BY MR. SMITH:

Q. How long had Mr. Kalleberg and Mr. Janderup been working there? A. I don't remember how long they had been working for me.

20 Q. Janderup had only been working there about seven days, hadn't he? A. Well, I don't remember.

Q. Can't you approximate? A. No, I couldn't. I have quite a large pay roll, but I remember the men being on the pay roll.

Q. You don't remember when Mr. Kalleberg first came there, do you? A. No, I don't.

Q. You don't know how many days prior to the time of this accident? A. No.

30 Q. You knew Mr. Kalleberg and Mr. Janderup, did you? A. Yes, sir.

Q. On this night or this day what time was it that you got over to the station? A. About ten minutes after four.

Q. About ten minutes after four? A. Yes.

Q. On this day you came out and went over to the station? A. Yes, sir.

Q. Stayed on the station side? A. Yes, sir.

Q. Then you saw these box cars come in there?
A. Yes, sir.

40 Q. And the box cars went on the second track away from the station? A. Yes, sir.

Edward S. Smith—Cross.

Q. And they stood still, is that right? A. Yes, sir.

Q. Then you saw some of the men coming over from the plant, did you? A. Yes, sir.

Q. They didn't come along the road, did they? A. Well, some did come along the road, and some didn't.

Q. And some walked right across the field, and over the tracks? A. Yes, sir. **10**

Q. You didn't see Mr. Janderup arrive there, did you? A. No, I didn't.

Q. The first that called your attention to him was when you happened to look across from the station side? A. Yes.

Q. You saw Mr. Janderup and Mr. Kalleberg standing alongside of the freight cars, weren't they? A. Yes, sir.

Q. And with their backs to the freight cars? A. Yes, sir. **20**

Q. So that if this rail was the freight car, they were standing up against the freight car? A. Yes, sir.

Q. And the other track you say is about seven feet away? A. About two foot six between car and car.

Q. There was about two feet six between car and car, is that right? A. Yes.

Q. Did you see this train coming in? A. Yes, sir. **30**

Q. And it came in from what you call Gillespies? A. Yes, sir.

Q. And Gillespies is one, a couple of minutes from Parlin? A. Yes.

Q. And Parlin is only about twelve minutes from South Amboy, isn't it? A. Yes.

Q. So that the total ride you would have from Parlin to South Amboy, would be about twelve minutes? A. Yes, about that. About fifteen minutes. **40**

Edward S. Smith—Cross.

Q. As this train came along from Gillespies you could see it quite some distance, couldn't you, before it approached the station? A. Yes, quite a good distance.

Q. And Mr. Janderup and Mr. Kalleberg standing along the freight cars? A. Yes, sir.

Q. The other car came up from Gillespies? A. 10 Yes, sir.

Q. And you could see it coming along? A. Yes, sir.

Q. You could see the men standing there? A. Yes, sir.

Q. There were other men in between the cars, were there? A. Yes, Mr. West and Mr. Hopper, and Mr. Warren, there was quite a few.

Q. They were standing between the cars, and the other track? A. Yes.

20 Q. There were only about three of those freight cars, weren't there? A. Yes, three.

Q. And there was room on the right side of the freight cars, wasn't there? A. Yes.

Q. Plenty of room there? A. That was a considerable distance before the station, though.

Q. It was up? A. Yes, it was up.

Q. It was up towards the old station? A. Yes, It was across the road.

Q. The train habitually stopped with the engine 30 beyond the old station, didn't it? A. No.

Q. It does to this day, doesn't it? A. I suppose they would if they had quite a number of cars on, yes.

Q. They had six cars? A. Yes.

Q. And they always had about six cars for that train, didn't they? A. Well, sometimes, yes.

Q. And the engine itself was across the road beyond the old station? A. Well, it was about on the crossing, I should judge.

40 Q. And then the six cars went down past, and only one car really passed the new station, isn't that so? A. Yes, sir.

Edward S. Smith—Cross.

BY THE COURT:

Q. When you speak of an old road, where was that? A. Right here. That is a crossing (indicating.) Washington Road.

Q. Did the train come from the direction away from the station? A. Yes. Come where those cars are. Comes around the station.

10

BY MR. SMITH:

Q. As the train came along and went on up, you say there were people to the Gillespie side of the freight cars, standing there, were there? A. Yes.

Q. That was all open? A. Yes.

Q. And above that, above the freight cars toward the road was all open? A. Some people standing there; yes, sir.

Q. But you say Mr. Janderup, Mr. Kalleberg, and some others that you spoke, took their position alongside of these freight cars? A. Yes.

20

Q. And the oncoming train coming from Gillespies? A. Yes.

Q. Part of it got by? The engine got by, did you say that? A. Well, I don't know how it got by before the accident.

Q. You don't know anything about that, do you? A. No.

Q. You don't know how the accident occurred there? A. I don't know which first car hit them.

30

Q. You don't know anything about that, is that right? A. That is right.

Q. Now, of course, Mr. Smith, if they had stayed over where you were they would not have been hit on that side of the train, is that so? A. That is a question. A man got hit there the night before.

Q. You weren't hit there, were you? A. I was the last man on the train every night.

40

Q. You were the last man on the train? A. Every night.

Edward S. Smith—Cross.

Q. Every night, is that right? A. Yes, sir.

Q. And you were on the station platform, as they call it? A. Yes.

Q. That is over at the station side? A. I stood alongside.

Q. These men that got on there were all workmen of the DuPont Powder Company, were they?

10 A. Yes.

Q. You didn't see Kalleberg hit or Janderup hit, did you? A. No, I didn't see either one of them hit.

Q. Didn't see any of that? A. No.

Q. You don't know how many men got on the train coming towards South Amboy, do you? A. No.

Q. On this night? A. No, I couldn't say.

20 Q. Some of the men went on toward the other direction? A. Yes.

Q. Took trains for the other direction? A. Very few.

Q. Well, some of them? A. Yes.

Q. You don't know how many? A. No.

Q. And some of them got on at Parlin, and some of them lived at Parlin, didn't they? A. Not any of my men; no, sir.

Q. None of your men? A. None of my men lived in Parlin.

30

MR. SMITH: That is all.

MR. FORT: There are certain questions that I would like to ask this witness, which are not—well, I suppose, are re-direct.

THE COURT: What is it you want to ask?

MR. FORT: I want to ask some questions about this photograph which wasn't in evidence at the time.

THE COURT: Go on.

Edward S. Smith—Re-Direct.

RE-DIRECT EXAMINATION BY MR. FORT:

Q. Mr. Smith, will you indicate as nearly as you can on this picture, the exact length and width of what you have referred to, as the cleared space around the station, on the night of this accident? A. Well, that is what I mean, the clear distance is about from here to where that man is sitting to that rail there. 10

Q. To the rail or about the side? A. To about the rail, yes. And on this side there is about two foot six between the two cars. Just as though that was the side of the car sticking over the rail, and there is about two foot six between. 20

Q. You said on your direct evidence that the station platform was being covered with cinders? A. Yes, this was all newly filled in cinders. 20

Q. What I mean is, how far did that newly filled in cinders run? All the way to the gate shown in the picture? A. Well, no. There was a hollow in here.

Q. Where was that hollow? A. Out between the gate and the station there.

Q. About how far? Half way? A. About half way, I should judge. This is all filled in here. This was a deep ditch in here.

Q. And it was filled in, half way from the gate to the station was filled in to the station building? A. Yes. 30

Q. I mean from the station to a point half way between that and the gate was all filled in? A. Yes.

Q. How far on the opposite side of the station was it filled in? A. No filling in there at all. Just as the picture shows it there.

Q. I mean beyond the station building towards New Brunswick? A. I should judge about ten 40

Edward S. Smith—Re-Direct.

feet, but it comes right up to the side of the building, and that was all ditch. You could come out of the DuPont yard there and down in the gully here, on the gully—on the hill. There was a hill about ten or fifteen feet.

Q. So that the cleared station platform on the night of this accident didn't run at all to the New Brunswick side of the station, except a few feet?
 10 A. A few feet.

Q. How far is it approximately, if you know, from the gate to the station? A. I don't know.

Q. About what? I mean is it fifty feet, or one hundred feet, or two hundred feet? A. I should judge about one hundred feet.

Q. So that then the cleared space from the station to this gully that you say was between the station and the gate was about fifty feet long, is that right? A. Yes.
 20

Q. What was the next train after this to leave the station for South Amboy? A. I don't know.

THE COURT: Is that of any concern here?

MR. FORT: In some of the cases I think so, sir. Question of the sufficiency of the accommodations is raised in the pleadings.

THE COURT: Yes, I know, but it is the accommodation at this time. Not some other time subsequent to it.
 30

MR. FORT: That is all.

THE COURT: That is all, Mr. Smith?

MR. SMITH: That is all.

ADJOURNED TO TWO P. M.

Nels K. Janderup—Direct.

AFTERNOON SESSION, TWO P. M.

NELS K. JANDERUP, one of the plaintiffs, being duly sworn on his oath, according to law, saith:

DIRECT EXAMINATION BY MR. FORT:

Q. Mr. Janderup, where do you live? A. Perth Amboy. 10

Q. How long have you lived there? A. Thirty-six years.

Q. How old are you? A. About fifty-four, going on fifty-five.

Q. In January, 1916, by whom were you employed? A. By the DuPont Powder Works.

Q. What were you doing there? A. Carpenter work.

Q. And who was your boss? Who was over you? A. I forget the name of the foreman. I don't remember the name of the foreman. Is that what you mean? 20

Q. Yes.

THE COURT: I suppose that is not very particular?

MR. FORT: No, it is not.

Q. How long had you been employed at the DuPont works as a carpenter? A. Six days. 30

Q. When did you begin? What date did you begin to work there? On what day of the week?

THE COURT: He said he had been there six days.

Q. Had you been working every day there for the six days? A. Except one day Sunday I didn't work.

Q. What time was your work through at the DuPont Works? A. Four o'clock. 40

Nels K. Janderup—Direct.

Q. And after your work was through what were you in the habit of doing, during the six days that you did work there? A. Why, sometime I took the automobile home, and I got tired of that and then I came down and took the train.

Q. How many times had you taken the train before the day of this accident? A. Three days I think.

Q. On the day of the accident what train did you try to take or plan to take? A. Due there 4.15 I believe.

Q. Now, did you leave your work and go down to take that train? A. Yes, sir.

Q. How did you go? A. Why, I went out of the gate and because there was no fence around there or nothing I went across, like a good many others does, across the field, and I come over and I saw the big crowd on the other side of the track, so I stood on this side, and just as I come over there—

Q. Wait a minute. You say you saw a big crowd on the other side of the track. Now, what side, the station— A. The station side, yes.

Q. There was a big crowd? A. There was a big crowd there.

Q. Which side had you taken the train from the night before? A. From the station side.

Q. Why did you take the other side this time? A. Why, because on account of the crowd, and the night before I pretty near got knocked down, so I thought there was a little more room on the other side, and I had my ticket so I didn't need to go over there.

Q. You had your ticket to South Amboy? A. Yes, sir.

Q. On the Raritan River Railroad? A. Yes, sir.

Q. Was there anybody else on the side where you stood? A. Yes. There was quite a bunch.

Q. What do you mean by that? How many

Nels K. Janderup—Direct.

would you say? A. Well, I didn't count them. I should think there would have been one hundred anyhow.

Q. How many were there on the other side by the station? A. Why, there must have been six hundred, I think, five or six. I couldn't tell exactly.

BY THE COURT:

10

Q. When you say on your side— A. One hundred or more anyway.

Q. (continued)—do you mean alongside of the freight cars? A. Yes, sir.

MR. FORT: This witness has not yet testified about the freight cars at all yet.

THE COURT: I know he has not, but I am trying to get a little ahead as fast as I can.

20

BY MR. FORT:

Q. Mr. Janderup, when you came to the station, or came to the place where you were standing waiting for the train, were there any freight cars there? A. No. Just when I get across they run them in there. About five minutes before train time.

Q. Were you there when they ran in? A. Just come across.

Q. You were just coming across? A. Yes, left them there when I was coming across.

30

BY THE COURT:

Q. Which is it, were the cars there before you got there or did you get there first? A. No. The cars was there when I got over there.

BY MR. FORT:

Q. You saw them coming into the position? A. Yes, sir.

Q. Where did they stand? A. Was just about 40

Nels K. Janderup—Direct.

fifty feet on the easterly end of the station, from the station.

Q. Do you mean fifty feet east of the station?

A. Yes, sir.

Q. Station building? Fifty feet east of the station building? A. From the station.

10 THE COURT: Station building, the building that is on there?

A. Yes, sir.

MR. FORT: Is east the direction toward the road where the old station was? Was the old station east of the new station?

THE COURT: Where is that photograph?

20 Q. Showing the witness, D. No. 1 for Identification, looking at this photograph, Mr. Janderup, where, in reference to the station shown on the picture were the freight cars? A. I can't see very good, but the freight cars—

BY THE COURT:

Q. Were they toward the road from the station or the other way? Here is the road, and here are the stacks, see those smokestacks up there? A. Yes.

30 Q. Now, where was it, nearer those from the station, or nearer those?

THE COURT: You had better not use the map if he does not understand.

Q. Were the freight cars that came there, were they nearer the road, or were they the other side of the station? A. They were near from the road, not towards the station.

BY MR. FORT:

40 Q. Between the station and the road? A. Yes, sir.

Nels K. Janderup—Direct.

THE COURT: Is the East on the picture this side?

MR. SMITH: The East is toward this side.

MR. FORT: Towards the road.

BY MR. FORT:

Q. How many cars were there, Mr. Janderup?

A. I ain't positive. I am sure there were three. 10

Q. Where did you stand—when you got to the station the cars then were standing on that track. Now, where did you go? A. Why, I went in around there and stood between the track and the box cars, about the first one.

Q. The first one which way, the nearest one, to the DuPont works or the nearest one to the road?

A. First one nearest to the DuPont works.

Q. Where did you stand, in front or back of that car? Toward the front or towards the back of that car? A. Towards the back. 20

Q. Was there anybody else standing there? A. Yes, sir.

Q. Before you got there? A. Yes, sir.

Q. How many people? A. Why, I didn't count them. I couldn't tell you how many.

BY THE COURT:

Q. Well, about how many? A. Oh, I should think about ten, either ten or fifteen. Something like it. 30

BY MR. FORT:

Q. Standing along by the car? A. By the car.

Q. Were the other men standing away from the car? A. Yes, sir. They was standing up the other way, there was a crowd there.

Q. By the other way you mean toward the DuPont works? A. Yes, sir.

Q. How near the car did you stand? A. Why, 40

Nels K. Janderup—Direct.

I stood just between the track and the car. I didn't touch the box car.

Q. You didn't? A. No.

Q. Did you stand there until the train came in?

A. Yes, sir.

Q. Did you see the train coming? A. Yes, sir.

Q. When you saw—from the time you first saw
10 the train coming up until the time you got on the train tell us what happened.

Q. Why, I was standing there waiting for the train to stop, and it keep on moving slowly, and I see some confusion, and I had to look back and somebody I guess started to jump on, and of course so long as they didn't come to the box cars there was plenty of room, they could come back, you know, and when they got up to the box car there wasn't room enough, and they shoved them right
20 in, and when they got up to the box cars they got too many there and they just whirled them right around, whirled them right in there, and I was in one of them. And when the train stopped as soon as I got muddled in there I got total blank. Couldn't say anything more. And when the train stopped and I got loose I dropped down.

Q. You say somebody tried to jump on and that made this crowd whirl? How did that affect the rest of the crowd? A. Well, suppose there was
30 never no room in the cars to get inside—

Q. You don't understand my question. You say this man tried to jump on. Did he get on or didn't he?

THE COURT: Did he get on the train?

A. I couldn't say.

Q. How did his getting on the train affect the rest of the people in the crowd? A. Why, as far as I know his foot slipped and his feet swung out
40 and struck against the others that was nearby.

Nels K. Janderup—Direct.

Q. Did his feet hit you? A. No, because there was others before he got to me. I was in the bunch in the crowd there, you know. I don't know. It came so quick that I didn't know really how.

Q. Was there anybody between you and the train—and the passenger train? Anyone standing in front of you before the passenger train came along? A. Yes. **10**

Q. Someone standing between you and the passenger train track? A. Well, no. They were standing alongside, you know, but when it come up, and the crowd shoved up so quick, when that train kept on moving, you know.

Q. Were they just standing along there in front of the freight car, one deep? A. Yes.

Q. There was one man standing in front of the other? A. No.

Q. Just one man alongside of the other? Well, **20** now, you say you went blind, Mr. Janderup. How did you get on the train? A. Why, somebody picked me up and carried me in.

Q. And then what did you do? A. Why, they set me in the car in the seat, until we got down to South Amboy, and took me out of there and put me in the station. And they had doctors there I believe to examine me, and found I had my ribs, three ribs broke and other injuries, and jaw broke, and teeth knocked out, and three or four teeth are **30** sitting on one side now.

Q. Three or four teeth did what, Mr. Janderup? A. Kind of out of shape now.

Q. Any bruises? A. No.

Q. What about your eyes? A. I was blind, and as far as they told me my head was all squeezed up.

MR. SMITH: I object to what they told you.

A. And my eyes all black in the face and **40** squeezed.

Nels K. Janderup—Direct.

Q. You say you were blind. How long were you blind? A. On the way going home I begin to see a little with one eye.

Q. What about the other? A. With the left eye. I couldn't see, not until after I got home, or a day or so after, then at first I begun to see a little daylight with the other one.

10 Q. What did you do? What doctor did you go to? A. Dr. McDowell.

Q. What is he, an oculist? A. An eye doctor.

Q. How often did you go to Dr. McDowell? A. Why, every week after. Ten days after, I think about fourteen they took me down several times in a taxicab on account he could examine me down there with an instrument better than he could up at my home, and they put me in a taxicab and took me down.

20 Q. When did you first go to him? A. Ten days after the accident.

Q. And how often did you go to him? A. Every week.

Q. For how long? A. It must have been over six months, I think. I can't remember exactly that.

Q. Do you know how much you paid him, or haven't you paid him? A. Yes, sir; I paid him about eighty-five dollars.

30 Q. Did you have any other doctor? A. Yes, sir; Dr. Meinzer.

Q. What did he do for you? A. Why, he fixed my jaw and my ribs and done all he could for me for other injuries.

Q. How many times did he see you? A. I forget that.

Q. Do you know how much you paid him? A. About sixty-five dollars.

40 Q. Did you buy any drugs? A. Yes, sir.

Nels K. Janderup—Direct.

Q. How much? A. Fifty.

Q. Fifty dollars? A. Yes, sir.

Q. Do you still have to have any treatment? A. I go down to the eye doctor yet once in a while because he says it will take quite some time before I can get my regular sight. I can't see to work at my trade, because I can't wear glasses. I can only wear glasses to read with, or I could do like that (indicating). And that is pretty hard too. If I use glasses to look out, I can't see nothing. Everything is crooked and bent. He says that comes from the nerves. And I am pretty nervous yet, if anything happens, if anything drop, it makes me shiver, and things like that. **10**

Q. What have you been doing? How long was it after the accident, before you were able to do any work at all? A. Ten months.

Q. And since that what have you been able to do? A. I have part of the time tending gate. I attended gate for about four months. **20**

Q. Who for, a railroad? A. No, County, and since that I have attended both—well, make about six months I believe, but I ain't working steady.

BY THE COURT:

Q. How much time did you lose altogether? A. I lost ten months altogether.

BY MR. FORT: **30**

Q. Well, you started work ten months after the accident? A. Yes, sir.

Q. What pay did you get before the accident?

THE COURT: Is there any dispute about that?

A. Four dollars a day.

MR. SMITH: Four dollars a day is right.

Q. What did you get for Saturdays and Sun- **40**

Nels K. Janderup—Direct.

days? A. Double time. So for Saturday afternoon we got double time for the afternoon.

Q. What about Sunday? A. Double time.

Q. Had you worked any Sundays up to the time of the accident? A. No, but I worked a Saturday, New Year's Day, that made double time, the whole day.

10 Q. What about Sundays, were you planning to work Sundays or not? A. No, not that Sunday.

Q. I mean generally were you planning to work on Sunday?

MR. SMITH: I object.

THE COURT: He had only been there six days.

MR. FORT: I am asking the point on the lines of income.

20 THE COURT: Yes, but he said he did not work Sunday, but if he did work he would get double pay.

MR. FORT: I am trying to find out what his purposes were. Whether he would work Sunday or not.

BY THE COURT:

Q. Well, the opportunity was there to work Sunday? A. Oh, yes.

30 Q. You expected to work Sunday? A. Yes, sir.

BY MR. FORT:

Q. Now, Mr. Janderup, how much pay did you get when you attended gate? A. Two dollars a day.

Q. And how long did that employment last? How long did you work tending gate? A. Eight hours.

Q. No, I mean how many days or months? A. Thirty days.

40 Q. Thirty days? A. Well, depend on how long a month is.

Nels K. Janderup—Direct.

Q. No, I say how many months did you tend gate? A. Well, I been there since the eighteenth of October.

Q. Right up to now? A. Right up to now, except one month—two months I only worked half time.

Q. Two months you only worked half time? A. Yes. **10**

Q. Why was that? A. Why, I took the man's place that was sick, and when he come back, why, I was put on extra, and that is the reason I only made thirteen days a month then.

BY THE COURT:

Q. You got paid for half time, did you? A. Yes.

BY MR. FORT:

Q. And you are still there working tending gate? A. Yes, sir. **20**

BY THE COURT:

Q. That was one month, was it? A. Two months.

Q. Two months you worked at half time? A. Yes, sir.

BY MR. FORT:

Q. Are you now employed regularly or are you working extra now? A. Extra. **30**

Q. You are working extra now? A. Yes, sir.

Q. Are the two months you have been working half-time, the last two months? A. Yes, sir.

Q. And you are still working half-time or are you working full time now? A. Half time.

Q. Why haven't you gone back to the carpenter business? A. Why, because I can't see. If I could see I would go back, I could get a job any time.

Q. How many years had you been a carpenter? A. Been a carpenter for over thirty years. **40**

Nels K. Janderup—Direct.

Q. Now, Mr. Janderup, were these injuries of yours painful at all? A. Oh, yes.

Q. How long were they painful? A. For several months I couldn't sleep, or I couldn't lay. I couldn't lay a half an hour at a time on one spot, either the back or side.

10 Q. What was the reason for that? A. Why there was pain up in my neck. I couldn't lay on my back, and on account of my ribs I couldn't lay on the side.

Q. How long was it before that was cured? A. About three months.

Q. Can you sleep all right now? A. Yes. Pretty fair now.

20 Q. Do you have any pain? A. No, the only trouble is I am so nervous. Now any little thing happen I got up just—go through me like electricity.

Q. Were you nervous before the accident? A. No, sir; never.

Q. Did you have any trouble with your eyes before the accident? A. No, sir.

Q. Any trouble with your ribs or your neck? A. No, sir.

30 Q. You said a few moments ago that you had four teeth, I didn't understand what you said had happened to four of your teeth? A. One tooth was out.

Q. What about the others? A. And the other three is standing like that, pretty near crossways.

Q. What do you mean, they don't stand up straight? A. No.

Q. They are twisted? A. Yes.

Q. Does that affect your eating or anything? A. Well, it does some, yes.

40 Q. Does it bother you at all? A. Yes, I can't chew so good as I could before.

Q. Does it hurt any? A. No, it don't hurt. Not now.

Nels K. Janderup—Direct.

Q. Did it? A. It did; yes.

Q. How long did it hurt you? A. Oh, that hurt for two or three months anyhow.

Q. Have you been to a dentist about that for your teeth? A. No, Dr. Meinzer he fixed the jaw, you know.

Q. Which side was your jaw broken on? A. On this side (indicating right side). 10

Q. Is that healed all right? A. Yes, it is healed now.

Q. Feel perfectly natural? A. Yes.

Q. How long was it before that felt natural? A. Well, that was three months before I could do any chewing with it anyhow.

Q. What did you eat during those three months? A. Oh, anything cut up, you know, fine, that way. Swallow milk and things.

Q. Mr. Janderup, prior to the night on which you were injured had you ever stood on that side of the track on which you were that night, before? 20
A. No, sir.

Q. Where had you stood before? A. On the other side.

Q. You said earlier that the night before you were almost knocked down? A. Yes, sir.

Q. What caused that? A. Why, the crowd pushing account of want to get in and get a seat, and there was never enough room, you know, for people to get a seat, you know. That was only once I had a seat and I had to sit on an iron box in a baggage car. That is the only seat I got once the three days I rode there. 30

Q. Why did you stand on the far side this night when you were hurt?

THE COURT: He said that. He said he did so because on the night before he was standing on the other side and was nearly hurt. 40

MR. FORT: That is all.

Nels K. Janderup—Cross.

THE COURT: Does he know anything about the other man?

MR. FORT: I don't think he does.

THE COURT: Proceed, Mr. Smith.

CROSS EXAMINATION BY MR. SMITH:

10 Q. Mr. Janderup when you came out of the works you left there about four o'clock, did you? You left the powder works about four o'clock? A. Yes, sir.

Q. Did you go out to the road? A. No, I went out of the gate and across the field.

Q. And up on the railroad embankment, didn't you? A. And over across the railroad, yes.

Q. You didn't go across to the station at all, did you? A. No, sir.

20 Q. As I understand you, you came across from the powder works over the railroad tracks and then took up your position alongside of these freight cars, didn't you? A. Yes, sir.

Q. Now, there were only three of the freight cars and they extended from the easterly end of the station up toward the road? A. Yes, sir.

Q. And they were on the second track from the station? A. Yes, sir.

30 Q. And there was men standing to the east, toward the road, of the freight cars, weren't there? On the same side you were on? A. I don't understand.

Q. Take the freight cars extending to here. Up that way is the road. From this end of the freight cars to the road you say there were men standing there, weren't there? A. I didn't say that.

Q. You didn't say that? A. Up towards the powder works.

Q. No, not towards the powder works. Toward

Nels K. Janderup—Cross.

the road were there any men up there? A. I didn't see any there.

Q. Take the end of the freight cars towards the powder works, were there men standing down that way? A. Yes, sir.

Q. They were away from the freight cars, were they? A. Yes, sir.

Q. And standing alongside of these freight cars, there were about ten of you men? A. Something like that. **10**

Q. And you got in alongside of the freight car, didn't you, with your back up against the freight car? A. I didn't stand, my back wasn't against the freight car.

Q. You didn't lean against it, but your back was towards the freight car, is that right? A. Yes, sir.

Q. And some other men alongside extending up the length of the freight cars? A. Yes, sir. **20**

Q. You were here towards the first freight car, weren't you? A. Yes, sir.

Q. There were other men down below you, not up against the freight cars, is that right? A. Yes, sir.

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

Q. Why did you go over there and get up against the freight cars? A. Why, I didn't get up against the freight car, but I thought it was more safe to stop there than it was to go on the other side. **30**

Q. Then the only reason you went in between the tracks by the freight cars is because you wanted to take that position, wasn't it? Nobody drove you in there, did they? A. No, sir. Nobody stopped me from going there.

Q. You took it of your own accord, didn't you, isn't that right? A. Yes.

Q. And then standing there you could see the **40**

Nels K. Janderup—Cross.

train coming up from Gillespies, couldn't you? A. Yes, sir.

Q. You saw that train coming along? A. Yes, sir.

Q. And you saw these other men down there, is that right? A. Yes, sir.

10 Q. How near were you to the end of the freight car nearest the train? A. About middle from the end—from the end to the middle of the car.

Q. About midway the car you were standing up there? A. Yes, sir.

Q. Do you know how far that freight car extended over towards the other track? A. No.

Q. You don't know what space there was in between the freight car and the other track do you, didn't you notice that? A. Why, no, I should think there would be about two foot six.

20 Q. About two foot six. Then you knew, didn't you, when you were standing between those two tracks, that the train had to pass right in front of you, and you would be in between the two trains, didn't you? A. Yes, sir.

Q. Isn't that right? A. Yes.

Q. You knew that? A. Yes.

Q. Then you say you saw some of these men, or somebody jump on the train, did you? A. Yes.

30 Q. The train was still moving, wasn't it? A. Yes, sir.

Q. And that somebody jumped on that train, did you see them jump on? A. I didn't see them jump on because he hanging on there, you know.

Q. Did you see him hanging on there? A. I saw somebody. I couldn't tell who it was.

Q. Did you see anybody hanging on there? A. Yes, sir.

Q. Were they hanging from the step? A. Had hold of the handle.

40 Q. And the train was then moving? A. Yes, sir.

Nels K. Janderup—Cross.

Q. And that person bumped into somebody? A. Yes, sir.

Q. And that fellow bumped into another fellow, and they bumped into you, is that right? A. Yes, sir.

Q. As the train went past these freight cars that you were standing against, that is right, isn't it? A. Yes, sir. 10

Q. Where there weren't any freight cars, as the train came along, there was room for a fellow standing there to step back, wasn't there? A. There was plenty of room to stand between.

Q. I didn't ask you that.

MR. SMITH: I ask it be stricken out.

THE COURT: Strike it out.

Q. I am saying where there were no freight cars, as the train came along there was plenty of room for those men who were not against the freight cars, to step back, wasn't there? A. Yes, sir. 20

Q. And they got out of the way easily? A. Yes, sir.

Q. But you couldn't because you were plumb up against the freight cars, isn't that so? A. Yes, sir.

Q. You didn't see Mr. Kalleberg there at all, did you? A. No, sir.

Q. You didn't know him, did you? A. No, sir.

Q. That night you hadn't been over to the station platform, at all, had you? A. No, sir. 30

Q. And the reason you didn't go over there was because you say—well, was it more convenient for you to get on at that side than it was at the station side? A. I thought so because I seen the big crowd over there, was crowded, and I had my ticket and I thought it would be more convenient to get on this side, it wasn't so crowded.

Q. You saw a crowd there, and you thought you could get on quicker from the side you were on? A. Not quicker, but get on without getting hurt. 40

Nels K. Janderup—Cross.

Q. Get on without getting hurt on the side you were on? A. Yes.

Q. Weren't you getting on so you could rush to get a seat? A. I don't know about that. I didn't try to rush, for I waited.

Q. You waited, is that right? A. I waited until I thought the train was coming up.

10 Q. You saw the train coming? A. I couldn't see nothing.

Q. Of course you couldn't just then, but you stayed on that side of the track because you could get on quicker than you could on the other side, isn't that so? A. I thought so, yes.

Q. Mr. Janderup, the doctor you first went to see, was that Dr. McDowell or Dr. Meinzer? A. Dr. Meinzer.

20 Q. And he was the physician that attended you for your injury? A. Yes, sir.

Q. And then after you—after a while you went down to see Dr. McDowell? A. Yes, sir.

Q. And he is the man you went to see about your eyes, is that right? A. Yes, sir.

Q. Since this time have you tried to go back to carpenter work? A. Sir?

30 Q. Since the accident have you tried to do carpentering work? A. Well, I have tried but I couldn't do it. I have tried home in my house, but I couldn't do it.

Q. Just in your own house? A. Yes. But I couldn't do it on account I get the glasses up everything was crooked, so that wouldn't do.

Q. Have you gone to any doctor to give you glasses? A. Yes, sir.

Q. Which doctor? A. McDowell.

MR. SMITH: I think that is all.

Nels K. Janderup--Re-Direct.
William L. Warren—Direct.

RE-DIRECT EXAMINATION BY MR. FORT:

Q. Mr. Janderup do you know the exact date when you went to work for the County tending gate? A. Eighteenth of October.

Q. Eighteenth of October? A. Yes, sir.

Q. And do you know the exact date when the man whose place you had been taking came back to work? A. No, sir; I don't know. 10

Q. How long ago, do you know?

THE COURT: He said about two months.

A. About two months.

Q. Mr. Janderup had you ever seen anyone else on the side of the track that you got on from that night? A. Yes, sir; every night there was people there. 20

THE COURT: He testified to that before, Mr. Fort.

MR. FORT: That is all.

THE COURT: That is all, sir.

WILLIAM L. WARREN, produced as a witness, on behalf of the plaintiff, being duly sworn on his oath, according to law, saith:

DIRECT EXAMINATION BY MR. FORT: 30

Q. What is your business, Mr. Warren? A. Carpenter.

Q. Where were you employed in January, 1916? A. DuPont Powder Works.

Q. Where? A. Parlin, New Jersey.

Q. Do you know Mr. Janderup, the gentleman who has just been on the witness stand? A. I do.

Q. Where do you live, here in this County? A. In this County. 40

Q. Where? A. Perth Amboy.

Q. How long have you known him? A. I have known him this last fifteen or eighteen years.

William L. Warren—Direct.

Q. Was he working there with you at the DuPonts in January, 1916? A. He worked in there, but he was in a different department. We were under—we were in the old plant and he was on construction in the new plant.

Q. On the night of the accident did you see him? A. Yes, sir.

10 Q. Where did you see him, and when? A. I saw him standing up by that box car, between the depot and the box car.

Q. Where were you standing? A. Alongside of him.

Q. Why were you standing there? A. Well, because I wasn't going to get my neck broke on the other side, shoving them to get seats, to get in to get seats.

Q. Had you taken that train before? A. Yes.

20 Q. How often? A. Every night.

Q. For how long? A. When I was working there. Well, I was in there then only two weeks, that time, but I was in there in the summer about four months. My second time there.

Q. During the condition in the summer was the condition the same as it was these two weeks here? A. Practically.

30 Q. What was that condition as to crowd at the station? A. Well, there wasn't sufficient cars to carry the passengers.

MR. SMITH: I ask that be stricken out.

THE COURT: No. He is not asking about the cars. The condition of the crowd.

Q. The crowd at the station? A. Well, there was a large crowd there every night.

Q. Well, how many people about? A. Well, I should judge around the neighborhood of five hundred people.

40

William L. Warren—Direct.

Q. Was there room for them all on the station platform? A. There was if they went—not at that time. There is room for that many now since they put that cinder grade in, and filled it up.

Q. How much was completed? A. There is about one-third of what there is now completed at that time, or grading it off.

Q. Was there room in that third for the number of people there every night? A. No. 10

Q. What was the custom? Where did the other people stand? A. Stood on the opposite side of the track.

Q. Was that a regular practice? A. Every night.

Q. Very many men or just a few? A. Oh, I should judge one hundred and fifty or probably two hundred men some nights, more or less. Some nights there would be more than others.

Q. On this particular night how was it? A. On this particular night I should judge there was about one hundred and fifty men there. 20

Q. You say you were standing—

THE COURT: On the side you were on?

A. On the side we were on, yes. The side the box cars were on.

Q. And how many were there on the other side?

A. On the other side I should judge probably three hundred and fifty. 30

Q. On the night of this accident you say you were standing next to Mr. Janderup up against the box car? A. Alongside of the box car.

Q. Which way were you next to him, towards the rear of the box car, or towards the front? A. Well, about the rear of the box car. Well, between the end of the box car and the door of the car.

Q. Were you nearer the end or nearer the door?

A. I was nearer the door.

Q. So you were a little further in than Mr. Janderup? A. Yes. 40

William L. Warren—Direct.

BY THE COURT:

Q. Were you nearer the approaching train, or the other way? A. He was nearer the approaching train than me.

BY MR. FORT:

Q. How many other men were there up against that car? A. There was three cars. I would say there was ten alongside of that particular car, and then there was some more along the other cars. There was three cars in there.

Q. Were there any other men standing on that side of the track? A. Yes. One hundred and fifty.

Q. Where were they, in behind you or in front of you? A. They was both ends of the box cars, and back of them, and we were in along the box cars.

Q. The place where you were standing along the box cars, was that the place the train usually stopped or not? A. The train stopped there. When they started to build that new depot they stopped the train there. Used to stop up at the old depot before. Sometimes she would run by and pretty near take you down to the next powder works before they would get her stopped.

Q. How big a train was it? How many cars? A. I couldn't positively tell you, but I believe six cars.

THE COURT: I suppose there are certain things in this case there won't be any dispute about, and that is certainly one of them.

Q. Did you see the train coming? A. Yes, sir.

Q. Did you notice anything peculiar as it approached you? A. No. I seen the big gang that was on the depot side push, forced back a few foot, this bigger crowd back of them began to force

William L. Warren—Direct.

back to give the train room. They would be very close to the track some nights.

Q. Were they this night close to the track, this particular night? A. Oh, they were up just about clearance for the train to come there.

Q. On the other side? A. On the depot side.

Q. How about on your side? A. Well, it was practically the same thing, but there wasn't as many people on the side we were. **10**

Q. Did you notice, as the train came along and got near you what happened? A. Why, nothing happened. The engine came on by us and I believe the first car and the platform of the second car that is next to the engine.

Q. Do you mean between the first and second cars, or between the second and third car? A. Between the first and second cars.

Q. That got by you or got up to you? A. Yes. **20** That is where this man grabbed and hit the next man, and started us off.

Q. Tell us what he did. A. Well, he grabbed the rail, of that step, or the handle in other words, and he was right close to the next man, shoulder to shoulder you might say, standing there, and when he grabbed, he hit the next man to him, the next man hit the next man. And it kept on until there was five or six of us all wound up; we had overcoats and one overcoat would get jammed in and we were all wound in between the two cars, and that wound us past the door of the box car and just to the rear of the front trucks of the passenger car, where she had went by, and rolled us along the box car. **30**

Q. You say rolled us, do you mean rolled you, and rolled Mr. Janderup? A. And others.

Q. Did it hurt you? A. Hurt me bad enough to go to the doctor.

Q. What about Mr. Janderup? A. I guess he **40**

William L. Warren—Direct.

was hurt bad enough to go to the doctor too, the appearance I seen him when he got on—that is, when they put him on that train.

Q. You saw him afterward? A. Yes, sir; afterward. We were down about Bergen Hill when I seen Mr. Janderup on the car.

10 Q. Where was he, on the train? A. On the train.

Q. What condition was he in when you saw him? A. He was stooping condition with his arm on the window like that. Couldn't speak. Spitting blood.

THE COURT: I suppose there is no doubt Mr. Janderup was hurt?

Q. Had you ever seen anybody jump on those trains before? A. Every night and every morning.

20 Q. Did you ever hear—was there anybody there who warned you not to? A. Never. Nobody ever warned me, or I never seen anybody else being warned.

Q. Did you ever hear anybody ordered to keep back from the track? A. Never. Not at that particular time. That is in that months 1916, '15 and '16.

Q. What do you mean? A. But there is now.

30 Q. What kind of cars were there on the train? A. Passenger cars. Some of the Delaware, Lackawanna and Western old cars. I think there was one of the Pennsylvania's in there. A couple of other old cars. Raritan River old cars.

BY THE COURT:

Q. How fast was this train going, do you know? A. She wasn't going very fast.

40 Q. When this man jumped on? A. Oh, she wasn't going very fast. She was just going gradually, you know, about like that, when he jumped,

William L. Warren—Direct.

and of course,—don't come in there very fast. they daren't sometimes.

Q. What was it doing on this occasion, was it going quite slowly or how? A. It wasn't going very fast. It couldn't go very fast, because it only went about ten or twelve foot probably after it hit us.

Q. Going as fast as a man would walk? A. **10**
Well, about as fast as a man would walk, I should judge.

BY MR. FORT:

Q. You say it only ran about ten or twelve feet after you were all crushed in there? A. I should judge about that much, yes.

Q. Were all of these cars vestibule, or were they plain wooden cars? Have any vestibules to protect the steps? A. No. Just a plain old ordinary pas- **20**
senger car.

Q. Have any gates of any kind on them? A. No.

Q. Were there brakeman on the platforms between them? A. Not on every platform.

Q. Were there on this particular platform? A. Not that I seen. He wouldn't stay there long if he was. He would be shoved into the car the way they get on to them trains over there.

Q. Did you see Mr. Kalleberg there? A. Yes, **30**
sir.

Q. Where was he? A. He stood alongside of me. No, I believe he stood next to Mr. Janderup. I was the furthest towards the way the engine was going towards, Mr. Janderup next to me, and Mr. Kalleberg, I believe, was next to Mr. Janderup. I wouldn't say positively to that, but I seen him there.

Q. Do you know whether he was hurt? A. I **40**
do.

William L. Warren—Cross.

Q. How do you know? A. He was right between me and Mr. Janderup when the car stopped.

THE COURT: Gentlemen, is there any dispute about that, that he was killed here?

MR. SMITH: Absolutely none.

THE COURT: Then do not multiply it.

10 MR. FORT: If it is conceded on the record that Mr. Kalleberg was killed in this accident.

THE COURT: That seems to be conceded. Both openings seemed to contemplate that.

MR. FORT: That is all.

CROSS EXAMINATION BY MR. SMITH:

Q. Mr. Warren, how long had you been working there at the time of this accident or prior to the time of the accident? A. About three weeks I believe. Two and one-half or three weeks. I went in there sometime in December.

20

Q. And this proposition right there at the station, the railroad was all new, wasn't it? They were building this new station at that time? A. It wasn't completed.

Q. And the platforms hadn't all been completed? A. No.

Q. And the old station was up above across the road? A. Up above across the road to the east side of the road.

30

Q. And the train would go up, and the engine would stop above the old station, wouldn't it? A. Well, practically—above the road away I should judge along there by the water tank.

Q. Now, the track was at grade with the road, wasn't it? The railroad track is at grade with the road? A. Yes.

Q. It was level? The road is pretty wide there, isn't it? A. Yes.

40 Q. And then between the road and the station

William L. Warren—Cross.

there is quite a broad space there, wasn't there at that time? A. Yes, there was.

Q. And there was a space between the station and the first track? The distance you know between the station and the first track is twenty feet, and the station side had cinders on it out to the first track, didn't it? A. Yes.

Q. Beyond the first track there was no cinders? **10**
A. Beyond the first track?

Q. Yes. Over to the second track, toward the DuPonts? A. Well, the cinders is graded in there to the height of the ties.

Q. Just to the top of the ties? A. Yes.

Q. And the rails were up above that? A. Yes.

Q. And the rails on the other side were above that? A. Yes.

Q. And over at the switch track the top of the ties is right level with the ground? A. Yes. **20**

Q. How did you get over there this night, did you come along the road? A. No, I come—

Q. Right across the tracks? A. Same as every man in the plant practically done.

Q. Every man? A. Practically. That got that train, I mean.

Q. And you came over the tracks, and did you go over to the station side? A. No, sir.

Q. You stayed over by these freight cars? A. Yes, sir. **30**

Q. What made you place yourself alongside of the freight cars? A. Well, to get a chance to get a seat. There was three cars.

Q. Why, did you get in between the freight cars and the other track? A. For to get out of the crowd.

Q. What did you get in between the freight cars and the other track for? A. For to wait for that train.

Q. There was room on either side of those **40**

William L. Warren—Cross.

freight cars for you to stand, wasn't there? A. Certainly.

Q. And you went in between the freight cars, and that track to wait for train so that you could get on first, wasn't that it? A. Well, practically, yes, to get a seat, yes.

10 Q. In other words, so that you could get on the train, as quickly as possible, you got as near the track as possible, wasn't that it? A. Yes.

Q. And the nearer—you thought you could get nearer the track by getting in between the freight cars, isn't that right? A. Yes.

Q. You knew that nobody could get in front of you, wasn't that it? A. Practically.

20 Q. So as the train came along you knew that nobody could get between you and the train and you thought you would grab the handle as it came along and grab on? A. Not until she stopped.

Q. Well, when she stopped, isn't that right? A. Sure.

Q. And you could just as well have stayed up the other side of the cars and not got in between the cars and the track, couldn't you? A. Could have, yes. Sure, but there was nobody there to warn the men whatever.

Q. I didn't ask you that, did I? A. Excuse me. Beg your pardon.

30 Q. You didn't need any warning not to get between that freight car and that other track, did you? A. No, I don't suppose I did.

Q. It was a perfectly obvious thing, wasn't it, to get between that freight car and that railroad train, if anything should disturb your position you are liable to get bumped by the train as it came along, isn't that so? That is true, isn't it? A. That is true enough, yes. Standing there.

40 Q. And you knew that at the time you took that position, didn't you? You knew that at the time

William L. Warren—Cross.

you took the position? A. I never once thought of anything like that, no. I just thought of getting a seat for myself.

Q. At the time you took that position you knew about it, didn't you? (No answer.)

Q. Now, Mr. Warren, you say that Mr. Janderup was nearer the tail end of the freight car than you? A. Yes. 10

Q. And then came Kalleberg, you think? A. I believe Mr. Kalleberg was towards the engine coming in there because I was on the other side of Mr. Janderup.

Q. You were on the other side of Janderup, is that right? A. Yes.

Q. You think Kalleberg was on one side of Janderup, and you were on the other? A. Yes.

Q. Then you think Kalleberg was nearer the tail end than Janderup? A. Yes, I believe so. 20

Q. And you say there were about ten of you strung along that freight car? A. I should judge. I didn't count them, but I reckon there would be about ten there. More or less.

Q. Now, all these men practically that got on that train, or ever did get on that train at Parlin were employees of the DuPonts, weren't they? A. Yes.

Q. That station, as a matter of fact, was put there for the convenience of you men from DuPonts, wasn't it? A. I suppose it was. 30

Q. You say that you had seen men jump on before, had you? A. Oh, yes.

Q. On there? A. Yes.

Q. You knew when you took up that position that men were liable to jump on from that side, didn't you? A. No, I did not.

Q. Why, you had seen them, you said. A. I seen them, but not between freight cars, jumping on before. 40

William L. Warren—Cross.

Q. Yet you were going to get on between the freight cars? A. When the train stopped.

Q. You didn't see anybody jump on between the freight car, and the other car, did you? A. No.

Q. You didn't see it this night? A. I seen this fellow this night jump for the car.

Q. Yes, but he wasn't between the freight car and the other car when he jumped? A. He was at
10 the end of it.

Q. He was beyond it toward the DuPont works.

MR. FORT: Is that a statement or a question, Mr. Smith?

MR. SMITH: That is both.

Q. Isn't that true? A. Well, I couldn't judge whether he was in there now, or whether he was just on the end of the car, but he must have been
20 right there on the car when he hit us and rolled us up.

Q. That is an entirely different proposition.

BY THE COURT:

Q. The question is when he jumped on where was he with respect to the cars you were standing close to? A. Well, he was about the end of the car.

Q. Your car, do you mean, or the end of the three? A. About the end of the car that we were
30 at.

BY MR. SMITH:

Q. You didn't see him standing in between those two cars before, did you? A. No, I came around the other end of the car, and stood alongside of Mr. Janderup.

Q. Wasn't it perfectly obvious to you, Mr. Warren, that if a man jumped for the train while she was in motion, and missed, and didn't get on the
40 step, and then did hang on, that he would push

William L. Warren—Re-Direct.

you, if you stood between that particular car and the side of the track? A. Well, now, it was done.

Q. It was perfectly obvious to you that that was true, wasn't it, that he couldn't help hit you? A. As far as the train went. If the train had stopped sooner than she did she wouldn't have got to where I was. The train moved just far enough for him to knock enough men to roll us up in that. **10**

Q. And the reason he knocked you was because there wasn't room between the side of the train that he was hanging on, and you to pass? A. Certainly not.

Q. Isn't that true? A. Certainly not.

RE-DIRECT EXAMINATION BY MR. FORT:

Q. Mr. Warren, Mr. Smith has asked you whether you didn't get in there between the freight cars because you knew nobody could get in front of you? You also knew nobody could get behind you, didn't you? A. Yes. **20**

Q. Did that have anything to do with your getting in there in that position? A. Well, I don't know as it did.

Q. Why did you get in there in front of the freight cars? A. I went in there so when the train stopped I could practically, stand to reason there would be one of those steps stop in along through the box car some place. When they stopped then the men just went both ways. Then they always went in between the ends of the cars and came running in to get in the seats then. Others standing around the end. I stood in there to be handy. **30**

BY THE COURT:

Q. Why didn't you get in on the other side? A. Well, I suppose I could have got in there. There is always room for one more, but there is always a **40**

William L. Warren-Re-Cross.
Edward Milges—Direct.

big crowd there and there is more or less pushing and shoving for a seat, and the jamb. My father was knocked down there one night and skinned his whole shin, knocked in between the cars in that pushing there for to get in for a seat.

10 BY MR. FORT:

Q. Did you think there would be that pushing over where you were in front of the freight cars?

A. No, there would not be there, not on that side, no.

RE-CROSS EXAMINATION BY MR. SMITH:

Q. That is the reason you took that position because you didn't think anybody could get near you over by the freight cars? A. Yes.

20 Q. That, and your desire to get in first? A. For to shove me.

Q. That and your desire to get in first is what made you take that position, isn't it? A. Yes.

MR. SMITH: That is all.

THE COURT: That is all, sir.

30 EDWARD MILGES, produced as a witness, being duly sworn on his oath, according to law, on behalf of the plaintiff, saith:

DIRECT EXAMINATION BY MR. FORT:

Q. Mr. Milges were you employed by the Duponts in January 1916? A. Yes, sir.

Q. As a carpenter? A. Yes, sir.

Q. Were you there on the night of January the fifth? A. January fifth; yes, sir.

40 Q. What happened there—where were you standing when the train—were you at the Raritan River station when the four ten or four fifteen

Edward Milges—Direct.

train came in? A. I was right near the station. I wasn't on the station side on account of the crowd.

Q. Which side were you on? A. I was on the side of the freight train, on the opposite side of the track.

Q. How many other men were there? A. I should judge about ten or eleven, that is, right by that car, but there was about one hundred and fifty men altogether. **10**

Q. Where were you by the car? A. I was right by the car. Last freight car.

Q. Who else was there, if you know? A. Well, I know—

Q. Was Mr. Janderup there? A. Mr. Janderup was there.

Q. Mr. Kalleberg? Or didn't you know him? A. Yes, sir. **20**

Q. Tell us what happened. A. As we came out from the DuPont plant and tried to get over on the station side to get tickets. Well, we didn't try to get tickets, because we had tickets. Such a crowd there that we couldn't get on that side for fear of getting throwed under the car, so we stood on that side of the freight train to protect ourselves. Of course the train come along there, and this here fellow that was on the end of the car jumped on, grabbed hold of the handle, lost his foot hold, and jammed us in between those cars, and I was one of them that was hurt. **30**

Q. Did you see Mr. Janderup afterward? A. Yes, sir; I seen Mr. Janderup.

Q. Was he hurt? A. He was hurt very badly.

Q. How long did you work there? A. I should judge about five months.

Q. Before and after the accident? A. Yes, sir. **40**

Edward Milges—Direct.

Q. Prior to the accident how many men were accustomed to take that train at night? A. I should judge between five and six hundred men.

Q. Every night? A. Every night.

Q. By the way, was the train on time this night, do you know? A. Well, I can't state whether it was on time or not, because I don't know
10 what the schedule really was. It was after four o'clock anyway.

Q. Of the men who were there night after night did they all stand on the station platform as a rule?

MR. SMITH: I object.

THE COURT: It is leading.

A. All those that could get on—

20 THE COURT: It is leading.

Q. Where did the men stand nights while they were waiting for the train? A. They stood wherever they could get a chance to stand to get on the train.

Q. Where was that? A. The station side was always crowded, couldn't get two men there. Half of the time you couldn't get in the station on account didn't want the station dirty, I suppose. A few of them had to stand on the other side of
30 the tracks to get in the train without getting hurt.

BY THE COURT:

Q. Was that a usual thing that men were crowded on both sides of the track? A. Yes, sir.

BY MR. FORT:

Q. How did you come down to the station from the works? A. Why, we got out of the gate,
40 walked right down to the bank.

Edward Milges—Direct.

THE COURT: I do not see the importance of that, Mr. Fort. If this man was in a proper place it does not matter how he got there. I mean, if your client was.

MR. FORT: I simply want to show this was a customary way for the men to come.

THE COURT: I do not think that makes any difference. The question is whether they were in this place by invitation of the company. 10

MR. FORT: Well, I—I want to get the question in the record.

THE COURT: Answer the question.

Q. Customarily how did you and the other employees come down to the train? A. Why, I come out of the DuPont gates and come down to the bank. If we don't walk down to the bank we have to walk two or three hundred feet up to the road and then come down to the station. There was always a big crowd there, and there was a gutter and it wasn't filled in there from the road out to the station, and practically we stood on the other side. 20

Q. So you came down across the railroad property? A. Yes, sir.

Q. How long had you been doing that? A. Well, I had been doing that ever since I got there. No, not ever since I got there. We used to go up to the old station. Old station was just about completed, I guess. 30

Q. Ever since this station was completed had you been doing it? A. Yes, sir.

Q. How many months was that? A. I couldn't judge how long it was the station was completed.

Q. Were other men doing it, or were you the only man? A. Other men. There was hundreds of men doing it. 40

MR. FORT: Cross examine.

Edward Milges—Cross.

CROSS EXAMINATION BY MR. SMITH:

Q. There was a way that you could get right from the road to the station without crossing the railroad? A. Practically.

Q. You could have gone right out from the Du-Pont works into the public road and then to the station? A. Yes, sir.

10

Q. You went over and stood between these freight cars and the track, did you? A. Yes, sir.

Q. There was room on either side of the freight cars, wasn't there, without standing between the freight cars? A. It was clear of the cars, but it of the freight cars?

Q. Yes, one end of the freight cars, or the other end, Mr. Milges? A. Well, if you went up the other end you would have to go in the engine.

20

Q. You would not have to go in the engine, would you? A. You couldn't get in the car up at that end.

Q. Why not? A. The engine was right at the end of the freight car.

Q. Was the engine at the end of the freight car? A. At the other end. On the northerly end.

Q. How about the southerly end? A. On the southerly end there is a chance we had to get on the car.

30

Q. Southerly end was clear, wasn't it, of the freight car? A. It was clear of the cars, but it wasn't clear of men.

Q. It was clear of cars, wasn't it? A. Yes, sir.

Q. So the only reason that you stood between the freight cars and the tracks was your desire to get on without anybody else being between you, wasn't it? A. No, sir.

40

Q. What was your other reason? A. My idea

Edward Milges—Cross.

was to get on there so we wouldn't get jammed under the wheels.

Q. From what? A. From the rush of men.

Q. From the rush behind you? A. Behind me and alongside of me.

Q. Suppose you had stayed out on the outskirts of the crowd would you be rushed from the men then? You would be one of the rushers, wouldn't you, and not the rushed? A. No, I wouldn't be one of the rushers. 10

Q. You didn't rush, did you? A. No, I did not.

Q. Not at all? A. No, I did not.

Q. Were there any of the men that worked there at all that were rushers instead of rushed? A. I didn't call them rushers. They all wanted to get on the car to get home.

Q. So did you, didn't you? A. Certainly did. 20

Q. And you had the same desire—wasn't it that same desire of getting on the car that made you get in between the freight car and the track? A. Without getting hurt; yes, sir.

Q. And you knew, didn't you, that that train, the passenger train, had to pass right in front of you? A. Yes, sir.

Q. And you knew that there wasn't room for two people in there, didn't you? A. Two people could stand there all right.

Q. Two people could stand there? A. Yes, sir. 30

Q. Between the two trains, is that it? A. They could get in there but they would have to crowd a little.

Q. They would have to crowd each other? A. Yes.

Q. And you knew, didn't you, that anything that hung from the step, or any projection from the train was liable to hit you there? A. Yes, sir.

Q. Then you knew, didn't you, between that 40

Edward Milges—Cross.

train—between those freight cars and that train was a very dangerous place to stand? A. That is a chance we were taking.

Q. That is the chance you were all taking?

A. Just as well get hit there as get hit outside.

Q. Just as well get hit there as hit anywhere, is that it? (No answer.)

10 Q. You had seen men jump on before, had you?

A. Not necessary to jump on.

Q. Had you seen any jump on before? A. After the train was stopped I seen some.

Q. Had you seen any jump on before the train had been stopped prior to the time of this accident? A. I see them jump on. They would grab and get on that way.

20 Q. Then you have seen them jump on while the train was in motion, didn't you? A. Train was going very slowly at the time.

Q. I didn't ask you how fast or slow. I asked you while it was in motion? A. Yes.

Q. You saw this man make a jump, you say, did you? A. No, I did not.

Q. What did he do, just grab the handle? A. I don't know. I was in back.

BY THE COURT:

30 Q. I understood you to say that you saw him grab the handle and miss his foothold and that he swung against the men and they against you. Did you say that? A. I couldn't see him, but I know there was a man did that, that is what caused the rush.

BY MR. SMITH:

Q. As a matter of fact, you have been testifying to things that you don't know anything about, haven't you? A. I was in the rush.

40 Q. You testified a little while ago that you

Edward Milges—Cross.

saw a man jump and grab the handle and miss his foothold. You didn't see anything of the kind, did you?

MR. FORT: That is not a correct statement of the witness's evidence. He didn't say he saw him at all. I asked him what happened, and he testified. That is a different proposition. 10

Q. Then you don't know what happened, except what somebody told you, is that it? A. No. I knew what happened.

BY THE COURT:

Q. Did you see this occur, or didn't you? A. I was in it. I seen it occur.

Q. No. But did you see this man when he grabbed for the rail and miss his foothold? A. 20
I saw the man before he grabbed the rail.

Q. What did you see then? A. Well, I practically couldn't see anything because we was all jammed in, and didn't have time. I was throwed under the box car with Mr. Warren.

Q. Did you see him strike anybody? A. The man?

Q. Yes. A. Well, I don't know whether he struck them, but I know everybody come my way. I didn't have a chance to see it. 30

Q. How do you know then that it happened by reason of any act of his? A. The act of the man that jumped on?

Q. Yes. How do you know it didn't happen by somebody crowding or pushing? A. It couldn't have happened any other way, because we all was standing there flat against the car and the car would easy pass us, if nothing had happened.

Edward Milges—Cross.

BY MR. SMITH:

Q. As a matter of fact, Mr. Milges, you didn't see anybody jump on the car at all, did you? A. Really didn't see anybody jump on.

Q. What you testified to when Mr. Fort asked you what happened is what somebody has been telling you? A. No, not necessarily.

10 Q. How did you learn it then, if you didn't see it and nobody told you, how did you learn it? A. That was the only chance of getting hurt, by somebody jumping on.

Q. And that is all you know about it, isn't it? A. Well, I know I was caught in it.

Q. And that is all you know? A. I know two men took me home.

20 Q. But as far as the man jumping on and grabbing the handle, you don't know anything about it, because you didn't see it, and nobody told you about it, and yet you are testifying to it?

MR. FORT: He has not said that. He has not said anybody told him.

Q. Nobody told you, did they? A. No, because I knew it.

30 Q. Because you knew it, although you didn't see it? A. I couldn't have got hurt if anybody didn't jump on there.

Q. Then the reason for your saying somebody jumped on and grabbed the handle and missed his foothold is because you couldn't have been hurt otherwise? A. I could have been hurt otherwise if there was a projection of the train sticking out there.

Q. You didn't see any projection of the train, did you? A. I didn't have time to see it.

40 Q. Are you sure Mr. Fort didn't tell you about

John Traill—Direct.

that man jumping on? A. Mr. Fort, I never saw the gentleman before.

Q. Never saw him before? A. No, sir.

MR. SMITH: That is all.

MR. FORT: That is all.

JOHN TRAILL, a witness produced on behalf of the plaintiff, being duly sworn according to law on his oath, saith: 10

DIRECT EXAMINATION BY MR. FORT:

Q. Mr. Traill, were you a carpenter working at the DuPont works in January, 1916? A. Millwright.

Q. Did you see this accident at the Parlin station a little after four o'clock that afternoon? A. I saw a man grab the train and swing out, and his feet passed me and just barely touched me, when he caused a jamb in at the corner. 20

Q. How did they cause the jamb in? A. Why, by this man hanging out on the side and hit the first man and that caused the jamb in right by the cars where there wasn't room to all get in.

BY THE COURT:

Q. Do you mean his body hit the bodies of other people? A. Yes, his body and legs. 30

BY MR. FORT:

Q. How fast was the train going? A. Well, approximately, by being a railroad man and automobile runner, I should say about twelve miles an hour when she was coming in there.

Q. At the time he hit you was she going that fast? A. No. He was slowed down to about eight, as near as I could tell then. He was stopping. 40

John Traill—Direct.

Q. How far did the train run after that man hit you, do you know? A. Why, I got on the vestibule of the second car. Between the second and third car.

Q. And where was he? A. Which do you mean, the car—

Q. Where was the man that jumped? A. Why, 10 he passed me and he was right in between the first box car. I was about fifteen feet from the end of it.

Q. And then he was—the train stopped with the second car just one car length—the man went one car length after he hit you, is that it? A. Yes.

BY THE COURT:

Q. Was he in front of the freight cars when he 20 jumped on, or beyond them? A. He was beyond them the way the engine was coming from Gillespie.

Q. How far beyond the nearest freight car to him? A. Well, he passed in about the center, I suppose, where the commotion was, but he was about fifteen feet from me, and I was about fifteen feet, approximately, from the end of the box car when he made the grab.

Q. From the end of the last box car? A. Yes. 30 I seen him make the grab and got back out of his way.

BY MR. FORT:

Q. How many men were there there waiting? A. Well, I would judge there was one hundred and fifty or two hundred on the side I was on, and I was in the station and bought my ticket and come out and was standing on the track when the train was coming in, and I looked that side, 40 and I seen the bunch there, and I went over to the other side.

John Traill—Direct.

Q. Because it was less crowded? A. Because it was less crowded on the other side.

MR. SMITH: Don't you think you had better let him tell that?

MR. FORT: Oh, I think so.

Q. How frequently did you take the train, or how long a period of time? A. Why, I went to work there on the 15th of December, and this was on the 15th of January when it happened. 10

Q. And how long afterward did you work there? A. I worked there until the 6th of April, until the construction work was done.

Q. In the period from the time you first went there to work until this accident happened, what had been the condition on those station platforms nights as to crowds at this station? A. Why, it was always crowded at that time of night. 20

Q. How did the crowd compare with the crowd there the night this accident happened? A. Well, about approximately the same.

Q. How was the size of that train? How many cars were there on the passenger train usually? A. Well, I didn't count them, but I thought there was about five.

Q. Always the same, was there? A. No. There was several nights there was only four. And one night I know especially there was only three, before that. 30

Q. And this night there may have been a few more or a few less? A. Yes.

Q. Were there ever more than six? Did you ever see more than six? A. Never took notice to more than six.

Q. What kind of cars were they? Did they have vestibules? A. They was open cars. Just the iron guards along. There was no vestibule to them at all. 40

John Traill—Cross.

Q. Any iron gates, or anything at the steps?

A. No gates on them. They had steps, but no iron gates for to cover the steps or protect them.

Q. Was there any kind of covering on the steps? A. No.

Q. How much of a crew did the train carry, do you know? A. Well, I saw in the train crew
10 there was a conductor and a flagman and a brakeman I used to see on.

Q. Did they guard the platforms as the train came into the station? A. No, sir.

Q. Were there any employees of the railroad on the grounds to control the crowd? A. There had always been, but at this particular time I didn't take notice to any.

Q. On both sides of the track? A. Yes.

Q. There had usually been on both sides of
20 the track, do you mean? A. No. Usually be employees on the grounds, but they were mostly in the station.

Q. They were mostly in the station? A. Yes.

Q. What about this particular night? A. Well, this particular night I don't know where they were.

Q. Were you ever warned by anybody as to keeping away from the track? A. No.

30 MR. FORT: That is all.

CROSS EXAMINATION BY MR. SMITH:

Q. Mr. Traill, did you need a warning not to stand too close to a track while a railroad train is running on it? A. No, sir. For my part I put six years in, and I ought to know.

Q. You would naturally assume if you got bumped by a railroad train it might hurt you?

A. Oh, I know it.

40 Q. Mr. Traill, on this night you stood over on

John Traill—Cross.

the side opposite the platform, didn't you? A. Opposite the station.

Q. You didn't stand between the box cars, did you? A. No.

Q. You stood away from them? A. Yes.

Q. And you say you saw this man make a grab? A. Yes. About fifteen feet from me.

Q. And you were fifteen feet away from the tail end of the box cars? A. Yes. 10

Q. And he made a grab and missed his footing, did he? A. He missed his footing. He had the handhold.

Q. And that is what began bumping against you people? A. Yes.

Q. And you backed out of the way? A. Yes, sir; I got back out of the way.

Q. You could back because you weren't up against the freight car, is that right? A. That is it. 20

Q. Then the thing that caused the jamming of these men was this man grabbing the handle and hanging on and bumping one after the other? A. Picking—

Q. Making contact with the other men? A. When he hit the men, what I seen of the accident caused a jamming, he hit about one or two men before he got to the car and knocked them against the end of the car, and that is when the jamming started. He caught some of them that wasn't looking like I was. 30

Q. In other words, there were some other men standing close to the track that were not looking, and caught them? A. He caught them before he got to the car.

BY THE COURT:

Q. Had you ever seen this condition before, people jumping on in advance of the stopping of 40

John Nelson—Direct.

the train? A. Yes, sir; before and after, even up to within a week ago.

BY MR. SMITH:

Q. Have you ever seen any box cars there before? A. Yes, sir.

10 Q. See people standing close against them? A. Yes. When the old station was there I took notice several times when the engine—shifting engine would be getting water up there at that plug, I would see men standing in there.

Q. This same number of men came out of Duponts taking the train every night, didn't they? A. Approximately, yes.

MR. SMITH: I think that is all.

MR. FORT: That is all, Mr. Traill.

20

JOHN NELSON, a witness produced on behalf of the plaintiff, being duly sworn according to law on his oath, saith:

DIRECT EXAMINATION BY MR. FORT:

THE COURT: Mr. Smith, is there any denial of these conditions as alleged by these witnesses, anterior to this accident?

30 MR. SMITH: What does your Honor just mean?

THE COURT: I mean as to the crowding, and as to the use of both sides of the train?

MR. SMITH: I will say this: That there is no denial of the fact that there were crowds there, I do not believe there is any denial of that. I do not believe there is any denial of the fact that those men did jump on from each side of the train.

40

THE COURT: And that it was a common practice to do that, before the accident?

John Nelson—Direct.

MR. SMITH: I do not know as it was a common practice to do it. I know they did it. I do not know whether they did it commonly, or not.

THE COURT: Of course, one occasion would not be notice, perhaps, but I am trying to find out whether or not it was a course of conduct—

10

MR. SMITH: The station at that time wasn't completed.

THE COURT: Oh, I understand that.

MR. SMITH: As to the physical conditions there I just don't know. I will have to find that out.

THE COURT: I mean as to these people jumping on trains and as to crowding around both sides of it.

MR. SMITH: I think that is true.

20

THE COURT: All right, Mr. Fort, then do not multiply on it any more than necessary. There is a limit to cumulative proofs.

MR. FORT: That was the purpose of calling Mr. Nelson. If Mr. Smith is prepared to admit that crowds were customarily of the size that has been testified to, and trains customarily of the length that has been testified to, and the equipment—one of our allegations in the complaint is insufficient equipment and lack of cars. Those two points I would want to have conceded, or else proceed to prove it.

30

MR. SMITH: I do not find any proof of lack of equipment. I understand there were six cars on that train customarily, six cars. We do not admit anything of the kind, that there was any lack of equipment at all.

MR. FORT: Do you admit that there were customarily six cars on the train, and custo-

40

John Nelson—Direct.

marily a crowd of approximately as has been testified to?

MR. SMITH: No, I do not admit that.

THE COURT: Then examine the witness.

Q. Mr. Nelson, you worked at the DuPont works? A. Yes, sir.

10 Q. From when to when? A. Started to work the ninth day of August, 1915.

Q. How long did you work there? A. Until the sixth day of October, 1916. Fourteen months.

Q. From the time you went there to work in August, 1915, up to the time of this accident in January, 1916, how many people—did you customarily take the 4.20, or the train approximately at 4.20 to South Amboy? A. The one before, when the shift come out. I was working shifts all the

20 Q. And you took this train regularly? A. Yes. Well, sometimes I didn't get out in time; I worked what we call the—

BY THE COURT:

Q. Sometimes you missed it? A. Yes, the first train, and I took the one Mr. Janderup was on.

BY MR. FORT:

30 Q. Nights when you took this train what was the condition as to the crowd at the station? A. Well, when we board the train at South Amboy—

THE COURT: At this point.

Q. Do you mean—

Q. What crowds were on this station and what would you do when this train came in? A. Oh, I should judge between four and five hundred on that shift, maybe six hundred on that shift. On our shift.

40

John Nelson—Direct.

Q. Where did those people stand while they were waiting for the train? A. Always a big crowd on the station side, and I know myself most of the time I stood on the side towards the powder works, because there wasn't quite as many men there.

Q. What kind of—were there any guards there? A. I never seen any guards there, only once since I started out there, and that was after this accident, that was last summer, there was a train drilling up and down and I noticed the yard master come up and he stopped the train; I know we were all talking about it on account the first time he ever stopped a train. 10

Q. At the time of the accident had there ever been a guard there to warn you back from the track? A. There had never been a guard there as long as I was there, never. 20

Q. Did you ever see anybody jump on the train before the night of this accident? A. Yes, sir. Pretty near every day. I know one time myself I was like the rest of them, trying to jump on, and had my lunch box, and when I got on the train I didn't have nothing but the handle. Nights going up from South Amboy in the winter time—

Q. Never mind that. What about the brakemen, did they stand on the platform to warn you back? A. I never seen any brakemen standing anywheres. Never a chance for a brakeman on the platform. I know once going home from Parlin I was on the very last car and there was such a crowd on the back platform the brakeman couldn't get a chance to collect the tickets. Fellows standing on the step and on the back. Fellow couldn't even get a chance to collect the tickets. 30

Q. Were there any gates or vestibules, or any- 40

John Nelson—Cross.

thing of that sort on any of the cars? A. No, sir; just ordinary common platforms.

Q. What about lights on the train? A. Why, I noticed nights going up from South Amboy there in the winter time no heat, no lights in the cars. Might be four, five—

10 THE COURT: This was day-time.
MR. FORT: 4.20.

A. We left South Amboy at—

Q. No. We are talking about going in. A. Only once or twice—

MR. SMITH: I object to the conditions of lights.

THE COURT: I do not see any value of this at all.

20 Q. Were there seats enough for the passengers customarily? A. No, sir; never.

BY THE COURT:

Q. Were the cars crowded? A. Yes, sir; they always crowded; always stand in the aisle. Even in the box cars, they always stood around there in baggage cars, any old way they could.

CROSS EXAMINATION BY MR. SMITH:

30 Q. What time did you leave South Amboy to go to work? A. What time? Well, when I was on the day shift I left South Amboy around seven o'clock. And when I was on the middle shift I left at half-past three. And when I was on the last shift I left at eleven o'clock.

Q. Did you take this train from Parlin in? A. Yes, sir.

Q. When? A. When I was on the last shift.

40 Q. The last shift? A. Well, I took it in when

John Nelson—Cross.

I went to work at half-past three in the afternoon. I took it back from Parlin, left Parlin about quarter to twelve.

Q. At what time? A. Quarter to twelve at night.

Q. Well, I am talking about the 4.15, or 4, what do you call it, 4.20 going from Parlin into South Amboy? A. Well, I took that too; yes, sir. 10

Q. And when? A. When I was on the day shift and I was working away up that end around the magazines, and lots of times I missed that. Couldn't get out there in time, and had little things to do.

Q. Then you would take that train from Parlin in to South Amboy is that it? A. Yes, sir. Took all the trains. I was on all shifts.

Q. As the shifts come off work some of them, take the train in from Parlin to South Amboy, don't they? A. Yes, sir. 20

Q. And some of them go to Sayreville and down towards South River? A. Yes.

Q. And some of them stay there at Parlin, don't they? A. I suppose they do; yes, sir.

Q. You don't know how many passengers? A. I know the car is always crowded. Never a seat enough.

Q. I didn't ask you that. I say, you don't know how many passengers take the train from Parlin in to South Amboy? A. Well, I counted people, I know there is over one hundred people in that car, and there is five or six cars as a rule. 30

Q. Over one hundred people in each car? A. Yes, sir.

Q. Did you count them? A. Yes, I count them.

Q. How many times did you count them? A. I counted the seats. I know I did.

Q. How many seats were there? A. Well, there is—I think there is room for eighty-four. 40

James M. Hoppler—Direct.

Q. To sit in? A. Yes, something like that. I wouldn't say, around that. Sixty some odd.

MR. SMITH: I think that is all.

MR. FORT: That is all.

JAMES M. HOPPLER, a witness produced on behalf of the plaintiff, being duly sworn according to law on his oath, saith:

DIRECT EXAMINATION BY MR. FORT:

Q. Mr. Hoppler, in 1916 were you employed at the DuPont works? A. Yes, sir.

Q. In what capacity? A. Foreman carpenter.

Q. Were you acquainted with Mr. Janderup and Mr. Kalleberg? A. Not with Mr. Janderup, but I was with Mr. Kalleberg.

Q. On the night of January 5th, 1916, did you see Mr. Kalleberg? A. I did.

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

Q. Where was he and where were you? A. Well, we came over from the plant practically together, about ten minutes after four, and just when we came there these freights were backing into the station, and he went across to get a ticket, and then he came back there, and when he came back these freights had backed in while he was at the station.

Q. Go ahead. Then where did you and he go? A. Well, when the freights came in we stood in between the bumpers of the second or third car. The second car, I think it was. I was standing in back. He and Mr. West and I were together, and he stood in front of me.

Q. Do you mean between the bumpers of the second and third freight cars, is that what you mean? A. Yes.

James M. Hoppler—Direct.

Q. And you and Mr. West and Mr. Kalleberg stood there? A. Stood there together, yes.

Q. As the result of that, was Mr. Kalleberg standing outside of the line of the freight cars?

A. He was in front of Mr. West.

BY THE COURT:

Q. Was he standing outside of the line of the freight cars? That is to say, was he standing between a line of the freight car side and the other track? A. Well, he stood with his back— **10**

Q. You don't mean to say he was standing between the cars? A. No. Mr. West and I stood between the cars, and he stood in front of Mr. West.

Q. Outside? A. Yes.

BY MR. FORT:

Q. How far outside was he? A. Well, he was leaning against the car. **20**

Q. Leaning against the car? A. Yes.

Q. At the corner, or at the outside? A. Right at the corner, between the cars.

Q. Partly in and partly out? A. Partly in and partly out.

Q. What happened after he was standing there? A. Well, as the train was coming in, someone below us on the end of the freight started to get on. There were several below us and several above. And as this fellow jumped on he knocked someone down and the result was that there were others in there and rolled them along, and Mr. Kalleberg was caught in that jamb. Mr. Kalleberg and the other people on the east side of us. There was two or three that started on the other side of us, to the southwest, and they swept Mr. Kalleberg right along with them. **30**

James M. Hoppler—Direct.

Q. What did it do with him? Swept him along and what did it do with him? A. Swept him along and threw him down.

BY THE COURT:

Q. He was killed, was he? A. He was killed.

BY MR. FORT:

10 Q. Thrown down on the ground? A. Thrown down on the ground. I went over and picked him up and helped carry him in the car.

Q. He wasn't killed instantly? A. No.

Q. He died later? A. Yes.

Q. Was he carried on towards the front of the train? A. He was carried the full length of a freight car.

20 Q. He was carried the full length of a freight car? A. Yes.

Q. How long did you work there, Mr. Hopler, as foreman? A. I went in there on the twenty-fourth day of November.

Q. 1915? A. 1915.

30 Q. And during the period that you were there what was the customary condition of the crowd and the station platform at the time this train came in? A. Well, the customary conditions were this: I should judge forty per cent. stayed on the opposite side of the station, forty per cent. of the men got on the opposite side all the time I was there.

Q. You mean by the opposite side which side? A. On the side where the freight cars were.

Q. And what about the other sixty on the station side? A. Yes.

Q. And how many men were there there customarily? A. I should judge six hundred.

Q. Any guards? A. I never seen any.

40 Q. Was the crowd orderly always? A. Well,

James M. Hoppler—Cross.

while they were standing there, until they started to get on.

Q. And then what? A. And then there was a rampage.

Q. Always? A. Yes.

Q. Did you ever see the men jump on before? A. Yes, sir.

Q. How often? A. Eevery time the trains came in. 10

Q. Were there seats enough for the crowd on the train customarily? A. Well, I think I had a seat once in about eighty rides, and then I was one of those that jumped on.

Q. Were the brakemen out on the platform? A. I never seen any brakemen on the platform. He wouldn't have any chance if he was.

Q. Were there any gates or vestibules on the cars? A. No, not to my knowledge. I never seen any. 20

MR. FORT: That is all.

CROSS EXAMINATION BY MR. SMITH:

Q. Mr. Hopler, what do you mean by brakemen not having a chance? A. Well, they would push him off on the other side, or out through the roof.

Q. If there was a guard there they would shove him out, either out the other side, or through the roof, is that it? A. That is the idea. 30

Q. In other words, a guard would not be any use, would he? A. Not on the platform.

Q. You didn't jump on, you weren't— A. I did occasionally, yes. I got a seat once and then I didn't take any more chances.

Q. You did join the rush once in a while and jumped on? A. Yes, I tried it a few times.

Q. Was that the only time that you got the seat out of the eighty trips? A. I think once in about 40

Andrea Kalleberg—Direct.

eighty times I made a seat. And then I give it up to no avail.

Q. You say Kalleberg stood with you? A. Yes, sir.

Q. West was between you and the bumpers of the freight cars? A. Yes, sir.

Q. Kalleberg was outside of him? A. Stood
10 right in front of Mr. West, half way in.

Q. And between the side of the freight car and the other track? A. Yes.

Q. You have seen him go over to the station to get a ticket haven't you? A. Yes, he came down with us. Came from the plant with us.

Q. Went in to get a ticket and then he came across to where you were? A. That is our usual custom, to get on on that side.

Q. And then he stayed there, did he? A. Yes,
20 sir.

MR. SMITH: I think that is all.

MR. FORT: That is all.

ANDREA KALLEBERG, one of the plaintiffs, being duly sworn according to law on her oath, saith:

DIRECT EXAMINATION BY MR. FORT:

THE COURT: I suppose there is no dispute
30 about leters of administration in the case?

MR. SMITH: Oh, no. I have not denied that at all.

Q. Mrs Kalleberg, you are the widow of Harold Kalleberg? A. Yes, sir.

Q. How long were you married to him? A. Well, it was nearly twenty-two years. If he had lived until May it would have been twenty-two
40 years.

Q. Your husband was employed at the DuPont

Andrea Kalleberg—Direct.

works in Parlin in January, 1915, wasn't he? A. Yes, sir.

Q. And how long had he been working there?

A. He started, I don't remember the date, but it was day after Thanksgiving, Friday.

Q. And during that time you lived where? A. In Brooklyn.

Q. And he lived with you there? A. Yes, sir; **10**
but he didn't come home at night.

Q. While he was working at the DuPonts? A. Yes, because it was too far.

Q. Did he come over Sundays? A. No, he come Monday evening, because then I think they was paid on—I don't know how, I don't remember, but he come home every Monday.

BY THE COURT:

Q. Came home once a week? A. Came home **20**
once a week. Because he was tired out to come home oftener.

BY MR. FORT:

Q. Did he work every day in the week, do you know, work Sunday and Saturday? A. He used to work Sunday and Saturday. That is the reason he didn't come home Sunday, because he was working.

Q. Now, Mrs. Kalleberg, have you any children? **30**
A. No, sir.

Q. Had you ever had any children? A. No, sir.

Q. During the twenty-two years that you and your husband lived together, what did he do—how much money did he give you? A. He gave me his salary.

Q. He gave you what? A. He gave me what money he was making. Gave me his pay.

Q. Gave you his pay? A. Yes.

Q. All of it? A. Well, he brought the envelope **40**
and gave it to me before he come home.

Andrea Kalleberg—Direct.

BY THE COURT:

Q. And you gave him enough to live on, I suppose? A. Well, we had a right together, in a way, because what he needed he had to take out of his salary, because he have enough to say, but he didn't like money together so much, but he just handed to me.

10

BY MR. FORT:

Q. What did you do with it? A. Well, I used it to keep the house, what we needed, and the rest we was saving, put in the saving bank, if there was any to be saved.

Q. Did you pay rent? A. Most of the time we had our own house.

Q. You had your own house? A. Most of the time.

20

Q. And was that true at the time of Mr. Kalleberg's death? A. Yes.

Q. You had your own house then? A. Had my own house, but, of course, got a mortgage on it.

Q. Did you have to pay the interest on that mortgage? A. Sir?

Q. You paid the interest on that mortgage? A. Yes, sir.

30

Q. Did you pay that out of what he brought home to you? A. Out of the rent.

Q. You lived in part of the house and rented part of it? A. Yes, we had one floor and rented out the rest.

Q. So that you had your rent free? A. Yes. Well, then—

THE COURT: The interest free. She said she paid the interest out of it.

40

A. Figured on the time he was living, because

Andrea Kalleberg—Direct.

he could do so much fixing himself, you know, but I don't think so now.

BY THE COURT:

Q. Did the rent pay the interest and the charges on the house, like water rent and taxes? A. Yes. It usually covered it.

BY MR. FORT:

10

Q. You also owned the house adjoining your house? A. Yes.

Q. And the rent of the two paid the taxes and interest, is that right? A. Yes, both two together.

Q. And Mr. Kalleberg did the repairs himself? A. Yes. Otherwise it would not have paid, but he was a very handy man.

BY THE COURT:

20

Q. He was a carpenter by trade? A. He was a carpenter, and he was a very handy man.

Q. What was his age, madam? A. He was fifty-two when he died.

BY MR. FORT:

Q. And you are? A. Fifty-one now.

Q. When were you born? A. 19th of September.

Q. When was his birthday? A. It was the 6th of October.

30

Q. And he was fifty-two the 6th of October before he died? A. Yes, he was just a few months over fifty-two.

Q. It was your husband who was killed in the accident at Parlin, was it?

Q. The first you knew of it was when you were told it in Brooklyn, is that right? A. I didn't know it before the following day and I got the telegram from the undertaker.

40

MR. FORT: That is all.

Andrea Kalleberg—Cross.

CROSS EXAMINATION BY MR. SMITH:

Q. Mrs. Kalleberg, you say your husband gave you his envelope, as you call it? A. Yes.

10 Q. Unopened, and you used the money in the house, didn't you? A. Well, we have to use it, because that was only we had, but you know, I could take all the money I needed. Of course, he had to have some for his own use, because he had nothing to live.

Q. Did you use most of it in the house to take care of you? A. Sir?

Q. The most of it went to take care of the two of you? A. Well, part of it.

BY THE COURT:

20 Q. Did you save anything, madam? A. Yes. Of course, we saved because he used it for business. Money he was saving of course he used it for business.

Q. Well, he was working for other people, wasn't he? A. He was working for other people, but he had built five houses himself. He built the house we had, he built himself. Of course, this saving he used for the house.

BY MR. SMITH:

30 Q. He saved some of his money and built houses for himself, is that it? A. Well, he was going to leave to me, but, of course, he didn't want it in my name, he said, because he didn't want anybody to think he was a skin, he said. Because he was a very handy man and a great many put it over in the wife's name, and he didn't want that.

MR. SMITH: That is all.

Andrea Kalleberg—Re-Direct.

William E. West—Direct.

RE-DIRECT EXAMINATION BY MR. FORT:

Q. He left all his property to you, didn't he, Mrs. Kalleberg? A. Yes, sir.

MR. FORT: That is all.

THE COURT: That is all.

10

WILLIAM E. WEST, a witness produced on behalf of the plaintiff, being duly sworn according to law on his oath, saith:

DIRECT EXAMINATION BY MR. FORT:

Q. Mr. West, on the fifth of January, 1916, you were with Mr. Hopler and Mr. Kalleberg, were you not? A. I was.

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

20

Q. Standing between the freight cars and the main track of the railroad? A. We was.

Q. Well, now, where in relation to the freight car, if you know, was Mr. Kalleberg standing, and where were you and Mr. Hopler standing? A. Well, we were standing right between two freight cars. I think Hr. Hopler was behind me, if I remember rightly, and Mr. Kalleberg was in front. I think that was it.

Q. Was he standing any distance out from the front of the freight car? A. Well, I couldn't tell you. Possibly might have been partly out and partly in. There was three of us right between the two cars. I should think perhaps partly out and partly in.

30

Q. When you say between the two cars, do you mean that you were simply opposite the place where the two cars joined, or that you were actually in back a ways? A. We was in back

William E. West—Cross.

where the two cars come together, back in towards the draw-bar, as we call it, and Mr. Hopler was in back, and I think I was next, and I think Mr. Kalleberg was in front of us.

Q. You heard Mr. Hopler's testimony here? A. I did.

Q. The accident happened substantially as he testified, to your recollection of it? A. Yes, sir.

Q. How long had you been travelling up and down on those trains? A. I came there in November before that time.

Q. Had you taken that train regularly every night? A. Most every night; yes, sir.

Q. Was the condition usually the same as it has been described here to-day? A. Practically the same, sir.

Q. Did you ever see any guards there? A. Well, there was always a brakeman and conductor. There was always a big crew.

Q. Were there any guards on the station platform? A. There was no platform there.

Q. Well, on the place around the station? A. No guard at all. Only the trainmen.

BY THE COURT:

Q. Do you mean the train crew? A. The train crew.

BY MR. FORT:

Q. Anybody ever warn you to keep away from that side of the track? A. No, sir. Because I most always got on that side.

CROSS EXAMINATION BY MR. SMITH:

Q. Mr. West, you didn't need anybody to warn you to keep away from that side of the track, did you? A. I didn't need anybody to warn me at all. I thought I knew enough to take care

Colloquy.

of myself, but I missed it once.

Q. It was perfectly obvious that the station side was the proper side, wasn't it? A. Yes, sir.

Q. And you went on that side because you could get on the train quicker? A. Get on a little easier. A little handier; yes, sir. Not so big a crowd there usually.

Q. And that is the only reason, isn't it? A. 10
Only reason; yes, sir.

MR. SMITH: I think that is all.

MR. FORT: That is all.

MR. FORT: I have other witnesses to the same effect, but it seems to be unnecessary. I have two doctors who are on their way from Perth Amboy, who were to have been here. 20

THE COURT: They can be called after the defense opens, can't they, Mr. Smith?

MR. SMITH: I presume so. The majority of the facts are practically admitted, and the only fact I want to prove would be the fact of the construction of the station, and the amount of space there was on the platform. Now, that is about all, because the rest, I think, is a pure question of law.

MR. FORT: These doctors have left Perth Amboy over fifteen minutes ago. 30

THE COURT: Can the doctor do very much to supplement the testimony of the plaintiff Janderup? He seems to have given a very good account of his condition, and he is the one who knows.

MR. FORT: Only perhaps on the question of the permanency of his eyesight.

THE COURT: He told us what the doctor told him of that. 40

Colloquy.

MR. FORT: If that is the record.

THE COURT: Hearsay is good, if it is not objected to.

MR. FORT: I am satisfied with the evidence before this jury, but we all know appeals do happen, and I want my record in shape, that is all.

10 THE COURT: You may call him if he comes in.

MR. FORT: I have some interrogatories and answers.

THE COURT: Read them.

MR. FORT: Both sets of interrogatories in the two cases are identical.

THE COURT: Read the question and answer both, Mr. Fort.

20 MR. FORT: May I explain to the jury what the interrogatories are, I mean, the nature of an interrogatory, and what it is?

THE COURT: Yes, I think so.

30 MR. FORT: These interrogatories are questions asked in writing of the defendant company, the Raritan River Railroad Company, in advance of trial, and answered in behalf of the defendant. The answers are sworn to by Mr. Filskov, chief engineer and superintendent of the Raritan River Railroad Company, so that they are the statement of that company as to the facts in answer to our questions.

First Interrogatory: Give the number of passenger cars composing the train operated by defendant from Parlin to South Amboy at about five o'clock on January 5th, 1916?

Answer: Six cars.

40 Second Interrogatory: Were the passenger cars which composed the train mentioned in

Colloquy.

the first interrogatory made of wood or steel?

Answer: Wood.

Third Interrogatory: Were the platforms at the end of the passenger cars composing the train mentioned in the first interrogatory protected by vestibules or in any other way?

Answer: No.

Fourth Interrogatory: What year were the passenger cars composing the train mentioned in the first interrogatory built? **10**

Answer: Unknown.

Fifth Interrogatory: What was the seating capacity of each passenger car composing the train mentioned in the first interrogatory?

Answer: Car number eleven seated forty, with twenty-five foot baggage space. 1092 seated 62. 1090 seated 62. 1093 seated 66. 3582 seated 64. 3849 seated 64. **20**

Sixth Interrogatory: State the number of passengers who travelled from Parlin to South Amboy each day on the train mentioned in the first interrogatory during the months of December, 1915, and January, 1916?

Answer: On the day in question three hundred and eighty-seven.

Seventh Interrogatory: State the number of employes composing the crew of the train mentioned in the first interrogatory and the duties of each such employe immediately before and at the moment the said train stopped at Parlin station? **30**

Answer: Six.

MR. FORT: There is no answer as to the question as to duty.

Eighth Interrogatory: Give the number of men who were employed by you at the station **40**

Colloquy.

at Parlin on or about January 5th, 1916? Give the dimensions of your railroad station at Parlin, New Jersey, on or about the last aforesaid date?

Answer: Agent and four others. The station building is thirty-seven feet six inches by twenty-four feet, and has a ten foot canopy.

10 Ninth Interrogatory: Give the distance between the nearest rail of your main passenger track running through Parlin, New Jersey, and your railroad station at Parlin, New Jersey, at the aforesaid time?

Answer: At the southerly end of station building eighteen and one-tenth feet. At the northerly end of station building twenty-two and eight-tenths feet.

20 Tenth Interrogatory: Give the dimensions of the platform adjoining the railroad station at Parlin, New Jersey, at the aforesaid time, if there was such platform?

Answer: About eighty-six hundred square feet. Dimensions irregular.

Eleventh Interrogatory: Give the location of the side tracks immediately in front of your railroad station at Parlin, New Jersey, on the aforesaid date?

30 Answer: East of station.

Twelfth Interrogatory: How many railroad tracks ran immediately in front of your railroad station at Parlin, New Jersey?

Answer: Two.

40 Thirteenth Interrogatory: Were any freight or passenger cars standing on any of your side tracks near your railroad station at Parlin, New Jersey, at the time the train mentioned in the first interrogatory arrived at such station? If so, state the side tracks

Colloquy.

upon which said cars were standing and state the distance from the said cars to the train mentioned in the first interrogatory?

Answer: Three freight cars on the second track from the station. The distance between said cars and the train mentioned in the first interrogatory was about two and one-half or three feet.

10

Fourteenth Interrogatory: State the number of cars on the side tracks mentioned in the last interrogatory?

Answer: Three.

Fifteenth Interrogatory: State the width of the property owned by the defendants on the opposite side of the main passenger track from the station at Parlin?

Answer: Sixty-two feet from the center of the track east.

20

Sixteenth Interrogatory: Give the number of accidents which have happened at the station of the defendant at Parlin, New Jersey, previous to the accident resulting in the death of Harold Kalleberg?

Answer: None.

MR. FORT: I desire to offer both sets of interrogatories.

THE COURT: Are they to the same effect?

30

MR. FORT: I believe they are identical, sir.

THE COURT: You need not read them twice.

40

Martin S. Meinzer—Direct.

MARTIN S. MEINZER, a witness produced on behalf of the plaintiff, being duly sworn according to law on his oath, saith:

DIRECT EXAMINATION BY MR. FORT:

10 Q. Dr. Meinzer, you are a practicing physician and surgeon in the City of Perth Amboy? A. I am.

Q. And how many years have you been? A. Eleven years past in Perth Amboy.

Q. Were you acquainted with Nels K. Janderup? A. I am.

Q. When have you treated him for any illness, do you know? A. Why, I have not looked up the date when that was.

20 THE COURT: The plaintiff said ten days after the accident.

A. The accident they refer to I can't give you the date. I haven't looked it up at all.

BY THE COURT:

Q. How soon after the accident, do you know? A. I saw him at his home I should judge about half-past six or seven o'clock.

30 Q. The same day? A. The same day. It was in the evening.

BY MR. FORT:

Q. What was the matter with him? A. Well, he was pretty well done up. His jaw was broken and he had several ribs broken, and there seemed to be hemorrhages into his eyes, and the man was generally shocked.

40 Q. For how long a time did he continue under your care, if you know? A. Well, I treated Janderup a number of weeks. It takes at least four

Martin S. Meinzer—Direct.

to six weeks for ribs to get united, and he had a jaw which was rather troublesome. I don't remember just how long, but he came to my office a long time after he was out and around, and I treated him at home about ten weeks, I should say.

Q. Did he improve? A. Yes. The bones united. He also had some teeth out, and several teeth which were loose at the time. He improved, yes, slowly. **10**

Q. When is the last time you saw him? A. Do you mean to treat him?

Q. Yes. See him professionally at all for examination or for treatment? A. Oh, I haven't seen Janderup in a long while. I haven't any dates. I know after the bones became united and he seemed to be in pretty fair condition he kept complaining to me that he couldn't see, that he had trouble with his eyes, so I referred him to Doctor McDowell. So he went from my place to Doctor McDowell. **20**

Q. Did you regard him, the last time you saw him, as thoroughly cured? A. Well, now, just what do you mean by thoroughly cured? Of course, his eyes—

Q. Outside of his eyes, which you didn't treat? A. Well, yes. He had good union in the jaw bone, and his ribs were firmly united. I should say that the man was— **30**

Q. Were you acquainted with him before the accident? A. Yes, I have known Mr. Janderup for a number of years.

Q. What is his general physical condition the last time you saw him, as compared to his condition before the accident? Is he as strong a man? A. Well, his appearance is good.

Q. What about nervousness? A. Well, ner- **40**

John McDowell—Direct.

vousness is a rather hard thing to get at. It is a very hard thing to say much about nervousness.

Q. You mean you have to take it on what your patient tells you, is that it? A. Yes, that is the idea. It is a personal matter, I think, to a very large extent.

10 Q. No objective symptoms? A. Well, not with all forms of nervousness. Of course, there are some forms of nervousness, but Mr. Janderup hasn't that type.

MR. FORT: That is all.

MR. SMITH: No questions.

JOHN McDOWELL, a witness produced on behalf of the plaintiff, being duly sworn according to law on his oath, saith:

20

DIRECT EXAMINATION BY MR. FORT:

Q. Doctor McDowell, what is your business, sir? A. I practice diseases of the eye, ear, nose and throat.

BY THE COURT:

Q. That is your specialty, doctor? A. Yes, sir.

BY MR. FORT:

30 Q. How long have you been in that business?

A. About twelve years.

Q. Did you ever treat Mr. Nels K. Janderup?

A. Yes, sir.

Q. For what did you treat him? A. On account of defective eyesight.

Q. When did you begin to treat him? A. Ten days after he had met with an accident.

40 Q. Do you know about when that was? A. I think I have a record of it here. Fourteenth of July I treated him.

John McDowell—Direct.

Q. What did you find to be the condition of his eyes then? A. Why, he had a hemorrhage in each eye under the outer coat of the eyeball, and the optic nerves were affected. The nerves showed poor circulation through them, and to be in an atrophic condition, especially the right eye. At that time he could only count your fingers at a distance of four feet with the right eye, and about the same with the left. I estimated his amount of vision at that time in that way. **10**

Q. What happened thereafter? A. Well, I have had him under treatment practically ever since. I think he was taking medicine up to a short time ago. The vision in his left eye became normal, but the vision in his right eye only improved until the last time I took it, which was, well, I think within a couple of weeks, he had about one-tenth of his normal vision in the right eye. **20**

Q. What is the prospect of an improvement in that vision from now on? A. He will never have any improvement over that.

Q. Doctor, what was the cause of the hemorrhage? A. Why, in my opinion it was due to some severe blow in the head.

Q. Back of the head? A. Well, any place in the head severe enough to cause a brain hemorrhage, part of the blood came right through the optic tract and showed in the front of the eyeball, and part of it shut off the circulation into the nerves. **30**

Q. The other effects, except the effect upon the eye—A. Except the effect upon the nerves in the eye. He complained of a ringing noise here on the right side, as I recall, which could also be possible from the same cause of a hemorrhage in the optic tract. It is a common cause of a noise coming in the ear. **40**

John McDowell—Cross.

Q. Doctor, how far does that effect upon his eyes, or will it interfere with work of a mechanical kind like carpentering? A. Well, it is pretty hard to estimate the effect in that way. A man with one eye only will get on better really than a man with normal vision in one eye and very bad vision in the other eye. Often the difference
 10 in the focusing bothers them at close work. I don't think that at any rough sort of labor, ordinary rough mechanical work, it would interfere very much with it. But when it came down to fine work, as looking at a fine rule, for instance, then I think that it would interfere.

Q. Is this a matter that can be rectified at all by glasses, the right eye? A. No.

Q. Not sufficient sight there to utilize? A.
 20 No. I tried glasses. In fact, he is wearing glasses now, but they don't bring his vision up. There is practically no improvement.

Q. Doctor McDowell, what about the effect of impaired vision in one eye on the ability of a man to balance, and things of that sort, and height? A. Well, I don't think it will affect him any in that way.

Q. Uniformity of vision is not essential in it? A. Well, a man with one eye can judge better
 30 than a man looking with both eyes open. But I think the only place that would bother him would be at close application.

MR. FORT: That is all.

CROSS EXAMINATION BY MR. SMITH:

Q. By close examination, doctor, you mean the examination of a fine rule? A. Yes.

Q. But for ordinary carpenter work it would
 40 not interfere with him at all? A. For rough

John McDowell—Cross.

work I don't think it would make so much difference.

Q. What do you mean by rough work? A. Well, where the eyes weren't called upon to do much focusing. Reading, writing, or looking at saw teeth closely. That sort of thing at a close range, the eyes are focusing then.

Q. His focus of the one eye, the left eye, which is good, as you say, may enable him to read and write just as well, wouldn't it? A. Not as well, I think, as it was before. No eyes that have an optic atrophy can do the work that a normal nerve will do. **10**

Q. The left eye is normal? A. His vision is normal for a distance, yes.

Q. That eye that is normal will enable him to read with the other eye shut, wouldn't it? A. It will for a certain length of time. That time I couldn't estimate, but they never can do close work for the same length of time that a normal eye will. **20**

Q. They tire out? A. They tire out, yes, and the nerve will not—it loses its acuteness.

Q. How much do you know of fine work is there in the ordinary carpenter work? A. I beg your pardon?

Q. How much of fine work is there in the ordinary carpenter work, if you know? A. Well, I am not an expert carpenter, I don't know. **30**

Q. Then you don't know whether this would interfere with his doing carpenter work at all, do you? A. Well, I think it would depend on the type of carpentering. There is a big difference in carpenter work.

Q. Do you mean cabinet work? A. Yes, cabinet work.

Q. You don't have cabinet work in the ordinary carpenter work, do you? A. I don't know. **40**

John McDowell—Cross.

Q. Take the ordinary carpenter who works on a building? A. For that rough work I do not think it would interfere with him very much, no.

Q. You mean that it might have some effect on his eye for fine application? A. Yes.

Q. In other words, if I had to examine a very fine rule? A. Yes.

10 Q. The strain would be on the one eye instead of my having two normal eyes, and I would tire with this eye, that is what you mean, isn't it?

A. In a case of the nerve condition that I have been describing, you mean?

Q. Yes. A. Yes.

Q. Optic atrophy? A. If the condition was the same in both eyes they would both tire just the same.

20 Q. In other words, what you mean is that one vision—the vision of one eye is not as good as the vision in the other eye, and, therefore, they don't work harmoniously, that is what you mean, isn't it? A. No, not entirely. A blurring of that type

30 of the vision might not make the eyes tired, but an eye which has an atrophy of the nerves, whether it is in one eye—if it is in both eyes, the vision of that patient might be very good at a distance, where the eye is not called upon to focus, and at any distance over twenty feet on the eye is not called upon to do any focusing. But the minute you become closer than that, the closer you get, the more focusing power is required, and the more effort on the part of the eye to keep a clear point of vision. No person with optic atrophy, no matter how it is caused, can do the close work that a person with a normal eye can do. They are fatigued very easily.

40 Q. That is, eye fatigued? A. Yes.

John McDowell—Re-Direct.

Q. In other words, the eye strain is greater?

A. Is greater, and the objects they are looking at gradually become more or less blurred.

MR. SMITH: I think that is all.

RE-DIRECT EXAMINATION BY MR. FORT:

Q. Doctor McDowell, what is the effect on the good eye of an attempt to use it for—use the good eye all the time for reading and writing and things of that kind? A. Well, in this case I don't think that there is any effect really. They can only use them a very short time and they have to stop of their own accord. **10**

Q. If they endeavor to keep on—A. It would make it worse.

Q. Make the good eye worse? A. Yes. **20**

Q. So that the use of the good eye has to be, for any kind of close work at all, anything that requires focusing, you said, would have to be very limited? A. Very limited.

Q. And the eye begins to have to focus at twenty feet? A. Yes.

Q. Would the eye have to focus to examine spirit levels and things of that sort? A. Yes.

Q. Or ordinary foot rules? A. Yes.

Q. Or any measurement work or planing, or leveling work, the eye would have to be focused, wouldn't it? A. Doing any work at all within reach of arm's length your eye is focused on it, and is at focus. **30**

Q. On any work of that sort the good eye could only be used in moderation? A. Yes.

John McDowell—Re-Cross.

RE-CROSS EXAMINATION BY MR. SMITH:

Q. Doctor, what then did you mean by rough carpenter work? A. Well, I don't know as I can explain rough carpenter work. Using a hammer and nails and sawing beams and that sort of thing.

10 Q. That is what you term rough carpenter work, is it? A. Yes.

Q. You noticed Mr. Janderup today did not wear glasses, didn't you, doctor? A. I didn't see him today.

Q. You didn't see him here on the stand without his glasses? A. No, I didn't see him. I just came in. His vision without glasses, at a distance, is very good in one eye, as I told you.

20 Q. Take the distance from you to me? A. Yes, his vision in the one eye would be very good at that distance.

Q. And from you to the judge? A. Well, it would not be as good.

Q. Would not be as good as it would be far, is that it? A. No. Your vision would not be as good from myself to the judge, as from you to me, without glasses.

30 Q. Without glasses. As a matter of fact, doctor, I have different glasses here. A. Yes. Anybody—

Q. As a matter of fact, doctor, isn't it true that very frequently people have a different glass in one eye than they have in the other eye? A. Yes, very common.

THE COURT: I asked him about it and he said it was impractical to use a glass on the poor eye.

John McDowell—Re-Cross.

Q. Do you mean by that it would not give any addition to the sight? A. No.

Q. Isn't that frequent? A. Yes.

Q. So that frequently people do have, although they wear glasses, sometimes they don't see out of one eye and do see out of the other? A. Yes, but it is due to some accident or diseased condition of the eye. 10

Q. Oh, yes, but I am simply speaking as to the use of the glasses and so forth? A. Oh, anybody with normal eyes has to put on glasses to see at three or four feet from them.

Q. You do? A. I do not think you could read a paper without glasses, or anybody over—

Q. At three or four feet? A. Yes. At that you might, but the—the older you get, a normal eye put on focusing glasses to bring that point nearer to you. 20

Q. You take Mr. Janderup, he is about fifty-four, isn't he? A. Yes.

Q. It is about time for him to begin to wear glasses for focusing? A. Oh, yes. A normal eye would have to wear glasses for reading at that age.

Q. You could put glasses on his good eye for the purpose of focusing, couldn't you? A. Yes, I think his vision is better with glasses in his good eye. Oh, yes, very much better. 30

Q. With the glasses on the good eye would it be then all right for him to examine rules, as you call it? A. He could see a rule with his glasses on very well, I think, but only for a minute. I do not believe that at close work he could—for instance, I do not think he could read for a half hour.

Q. With the glass on? A. With the glasses, yes. 40

Motions for Non-Suit.

MR. SMITH: I think that is all.

MR. FORT: That is all, doctor.

MR. FORT: We rest, your Honor.

PLAINTIFF RESTS.

10

MOTION FOR NON-SUIT.

MR. SMITH: I move for a non-suit, first, that there has been no negligence shown on the part of the defendant company.

Second, that if there was any negligence shown on the part of the defendant company, such negligence was not the proximate cause of the injury to Mr. Janderup or to Mr. Kalleberg.

20

Third, that both Janderup and Kalleberg assumed the risk of the position they took being injured therein.

Fourth, that they were both guilty of contributory negligence in assuming the position they did between the freight car and the track on which the on-coming train was on.

30

I desire to call your Honor's attention to several cases, particularly the case of *Cunningham vs. the C. M. & St. P. Railroad Company*, in 17 Federal Reporter, 882, where it is held that if a man voluntarily takes a dangerous position, that he is guilty of contributory negligence and cannot recover.

40

THE COURT: Mr. Smith, is not that all predicated upon normal operation? Can it be said that it applies to a case of conditions which are not the usual normal operations of the train service? Undoubtedly if these men had been struck solely by reason of the passage of that train by them, in the position

Motions for Non-Suit.

that they were, your argument and your position would be perfectly sound. But when it is claimed that it was due to the presence of an unusual condition, which the company was obliged to anticipate, and that condition was the proximate cause of the injury, can it be said as a matter of law that there was either no negligence, or that the parties themselves were guilty of contributory negligence as a matter of law?

10

MR. SMITH: I would agree with your Honor if it was such a case that there were such conditions that the company was bound to anticipate, which undoubtedly caused the injury to this man, of course, I would agree with your Honor. That is a matter of law. But here is the proposition: How could the company be supposed to anticipate that these men would stand between the freight car and the oncoming train? There is not any evidence in this case, so far as I know, that anybody knew they were there, anybody belonging to the railroad company, and that they deliberately assumed that position, between the freight cars and the other track.

20

THE COURT: Is not that only an argument in degree? If a man is jumping on a train in a crowd, it may be that passengers waiting will not be jammed against another object, unless another object is there, but injury may be done them just the same. Suppose this had been a post instead of a standing freight car standing there, would anybody say that that was necessarily a defeat to recovery?

30

MR. SMITH: I should think so. I can refer your Honor to case after case which holds

40

Motions for Non-Suit.

where a person stands between two tracks, where trains come on different tracks, if that person assumes that position between the two tracks—

10 THE COURT: Certainly you can, abundance of evidence for that. But everybody knows that trains pass on different tracks. But they do not know that trains pass with other people's legs out.

MR. SMITH: But they do know this: They do know that to assume the position between those two tracks they are liable to get hurt.

20 THE COURT: Yes, but that is not the condition here. The claim is that this man was permitted to get on this car in a position to endanger the safety of those who were along the tracks, and that these people had gotten along the tracks there by an implied invitation of the Company, or certainly by their acquiescence.

MR. SMITH: All the cases in this state hold that mere acquiescence does not—

THE COURT: A passenger is a different thing.

30 MR. SMITH: No. With passenger trains. May I cite also this: That there is not any allegation that this man was permitted to jump on this train, with his leg hanging out, by any permission of the railroad company.

THE COURT: That is true, but there is evidence in the case that it was not an unusual thing for people to be jumping on the trains.

MR. SMITH: Right.

40 THE COURT: Of course, they were obliged to anticipate whatever would be the natural and probable thing to happen. I cannot say, as a matter of law, that it would not be a

Motions for Non-Suit.

natural thing for a man once in a while jumping on a moving train to miss his hold. And as a matter of fact, if a man is injured, you know the rule of law on that, it is so strictly regarded as dangerous that he is without remedy.

MR. SMITH: It is already settled by statute that a man jumping on a railroad train could not recover, and it is an unlawful act to do. 10

THE COURT: That only emphasizes the fact that the law and railroading, I suppose, recognize it as a dangerous thing to do. If it is dangerous to the individual, it may be equally dangerous to somebody else who is standing alongside of the track.

MR. SMITH: That is exactly so, and I say that a man who stands alongside of a track in that position, he knew that people jumped on and off those trains, is guilty of contributory negligence. 20

THE COURT: It is a very potent argument to make to the jury, perhaps, but I do not think it is a legal one.

MR. SMITH: Of course, I press the motion, and your Honor, of course, will deny it, I assume, in that attitude? 30

THE COURT: Yes.

MR. SMITH: Your Honor will grant me an exception?

THE COURT: Yes. Note an exception.

Exception allowed—sealed accordingly.

Judge.

Norman H. Winner—Direct.

NORMAN H. WINNER, a witness produced on behalf of the defendant, being duly sworn according to law on his oath, saith:

DIRECT EXAMINATION BY MR. SMITH:

10 Q. Mr. Winner, where are you employed? A. Raritan River Railroad.

Q. How long have you been employed with that company? A. Thirteenth of December, 1915.

Q. And were you working down at Parlin in January, 1915? A. Yes, sir.

Q. 1916 were you working there too? A. I came there on December 13th, 1915.

Q. Were you working there in January, 1916? A. Yes, sir.

20 Q. What was your position there? A. Yard master.

Q. What was the condition as to physical surroundings at the station at Parlin in January, 1916? A. The station had only been opened up about the first of that year, January.

Q. About the first of the year? A. Yes.

Q. And how was the ground between the road and the station? A. The ground was not perfectly even.

30 Q. Was it in such condition that people could stand and walk there? A. Yes, sir.

Q. What is the width, do you know, from the station to the road? A. From the station to the road.

Q. To the road, what is the distance? A. I am not positive, but I would say one hundred feet.

Q. And do you know how wide the space was at that side of the station nearest the road from the tracks back? A. From the tracks—

40 Q. Back to the end of the line?

Norman H. Winner—Direct.

THE COURT: Isn't that set out in those interrogatories? I thought it was.

MR. FORT: It does not give the dimensions.

A. I would say at least thirty feet.

MR. SMITH: All that is set out there is the distance from the station to the track itself. And then the number of square feet, 8,600 square feet, it said. **10**

Q. Now, Mr. Winner, do you remember the day of this accident, were you there at Parlin? A. I was at Parlin; yes, sir.

Q. Do you remember these freight cars, did you send them down in on the track? A. Yes.

Q. What track were they on? A. Track called track A.

Q. Is that the first or second track from the station? A. Second track from the station. **20**

Q. Do trains run on that track, passenger trains on track A, as you call it? A. That was a freight track.

Q. And the track nearest the station is a track upon which passenger trains run? A. Yes, sir.

Q. Were you there at the time of the accident? A. I was about fifteen car lengths away.

Q. How many freight cars were there there? A. I think there were three. **30**

THE COURT: Mr. Smith, I do not want to interrupt you, but really this has been all so conclusively established, that aren't we only wasting time?

MR. SMITH: I thought I would find out from this gentleman. It is part of my defense.

THE COURT: If there is no dispute about it, there is no use emphasizing the plaintiff's story. **40**

Norman H. Winner—Direct.

Q. How near was the forward end of the freight cars to the road? A. Well, as near as I could remember it I would say about thirty feet.

Q. Have you seen people getting on and off at Parlin from the DuPont works? A. Yes, sir.

Q. Mr. Winner, have you seen where they stand? A. To get on or off?

10 Q. To get off, I suppose they get off at the station? A. Yes. Not always. They get off both sides.

Q. Getting on where do they stand? A. Both sides of the track.

Q. Have you ever taken any measures to have them stand on the one side, the station side? A. I have been through that several times. Whenever I am around the station I always take a look that way as an extra precaution.

20 Q. What have you done? A. Asked them to stand back.

Q. Would they stand back? A. Pretty hard matter to get some of them back.

Q. Did you see this accident this day? A. No, sir.

Q. Not at all? A. No, sir.

Q. About how many people come at that station to take that 4.15 train to South Amboy usually

30 A. At that time?

Q. Yes. A. Well, it would be hard to say exactly how many would be there, as I think a train left there for South River at about that same time.

Q. Left where, for South River? A. Yes. Nearly the same time.

Q. How many would take that train? A. I couldn't say exactly.

40 Q. Mr. Winner, was there room on the station side to accommodate the people desiring to board the train at that time? A. Yes, sir.

Norman H. Winner—Cross.

MR. SMITH: You may cross examine.

CROSS EXAMINATION BY MR. FORT:

Q. When you say there was room on the station side, Mr. Winner, do you mean cleared level cindered room? A. The station had just been completed and it was not perfectly level, sir. **10**

Q. There was a gully or depression somewhere between the station and the gates at the road, wasn't there? A. The gates at the road?

Q. Yes. A. No.

Q. Are you sure about that? A. No. Do you mean the railroad gates?

Q. Yes. A. There was a slight gully back we will say from the corner of the station where it run out to the main highway, what do you call it, Washington Road? **20**

Q. Yes. A. There was a slight gully there.

Q. And how far was that slight gully from the railroad tracks? A. From the railroad tracks?

Q. From the nearest rail? A. I would say fifty feet.

Q. Fifty feet the gully was. You said it ran from the corner of the station to the road? A. Not all the way, sir. Right at the corner of the station the gully was. Out near the road there was no gully. **30**

Q. It ran fifty feet out from the station toward the road? A. We are speaking from the first railroad track back toward the station?

Q. Yes. A. Is where this gully was. It was at least fifty feet.

Q. How far was the station from the railroad? A. The station from the railroad?

Q. Yes. A. Station probably is twenty feet, twenty-five feet. **40**

Q. What corner of the station was this gully? A. At the east corner.

Norman H. Winner—Cross.

Q. Front or back? A. Back.

Q. And it ran in what direction? A. Towards the Washington Road.

Q. Wasn't there another gully running in the opposite direction, is the one I am asking you about, from the track back toward the—parallel to the Washington Road? A. Well, what do you
10 mean by gully? How deep?

Q. Was there a depression there of any sort? A. There might have been a slight depression of three or four inches. Not over five inches.

Q. It hadn't all been filled and leveled out to the road? A. Not completed.

Q. Had it been filled and leveled on the other side of the station, towards South River? A. Partly filled, but not completed.

Q. Were you there on the day of the accident?
20 A. I was below the station when it occurred; yes, sir.

Q. How far below? A. Twelve or fifteen car lengths below.

Q. How long had you been there? A. We were doing work there. Getting numbers and doing my work down there where we were handling freight cars.

Q. You had been there for fifteen or twenty
30 minutes? A. Yes. Easily that, I should say.

Q. And you had been there all the time during these fifteen or twenty minutes, so you did not see the accident? A. I did not see the accident.

Q. Then on that day you hadn't been up in front of the station warning people to get back, had you? A. I had not.

BY THE COURT:

Q. Why were they warned to get back? A. It
40 was a very dangerous thing for them to do to stand in on that track when there were cars there

Otto A. Van Ness—Direct.

and whenever I would be at the station I would walk down at them and ask them to stand back.

Q. Why was it dangerous? A. Too close. When there was cars on the first track, and that passenger train pulling in, it made it dangerous for them to stand that close.

Q. Why dangerous? In what way? A. The least projection that was hanging out would catch those people standing there. **10**

Q. And were there occasions when there were projections from the train? A. Only the same as occurred that day.

MR. FORT: That is all.

MR. SMITH: That is all.

OTTO A. VAN NESS, a witness produced on behalf of the defendant, being duly sworn according to law on his oath, saith: **20**

DIRECT EXAMINATION BY MR. SMITH:

Q. Mr. Van Ness, what is your business? A. Civil engineer.

Q. How long have you been such? A. Twenty years.

Q. Are you familiar with railroad construction? A. Yes. **30**

Q. Stations? A. Yes.

Q. Where did you graduate? A. Graduated in 1896.

Q. Where? A. Rutgers.

Q. Where are you employed now? A. Central Railroad of New Jersey.

Q. You examined the station at Parlin? A. I did; yes, sir.

Q. Have you seen the size of the space between **40**

Otto A. Van Ness—Direct.

the station and the road at Parlin? A. I have; yes, sir.

Q. Will you tell me whether or not there is sufficient room on the station side there for the accommodation of the ordinary travel at railroad stations of similar character?

10 MR. FORT: I object.

THE COURT: I suppose it is competent. It is not incompetent, but it is not controlling.

MR. FORT: Don't we have to have the facts before we can get an expert opinion on the facts? Nobody has given us those dimensions.

THE COURT: He is testifying from observation, I suppose.

20 MR. FORT: I still press the objection, if I may.

THE COURT: I think the question cannot be excluded. I think it is not controlling in the case of extreme conditions, or crowds that are capable of being anticipated, but I think that the defendant is entitled to show what the normal and ordinary provision is, and whether it has been complied with.

MR. FORT: Prays exception.

30 THE COURT: Note an exception.

Exception allowed—sealed accordingly.

Judge.

THE COURT: Answer.

A. I think it is.

THE COURT: I am not passing upon this gentleman's qualifications. Do not misunderstand me. I am only ruling on the objection that is made.

40 Q. Mr. Van Ness, you are familiar with station construction, are you? A. Yes, sir.

Otto A. Van Ness—Direct.

Q. Build them yourself? A. Yes, sir.

Q. Taking the construction at Parlin, what have you to say as to whether or not that is an ordinary railroad construction of railroads of that character in such a place?

MR. FORT: I do not know whether the witness is familiar with a railroad of that character anywhere else. 10

MR. SMITH: He has been in railroading for twenty years. What more do you want?

THE COURT: Well, Mr. Smith, perhaps he had better tell us that.

MR. FORT: I think he had better tell us what kind of a railroad he has been with.

Q. Tell us, Mr. Van Ness, what kind of railroads you have been with? A. Well, I have been with the Central Railroad for seventeen years. 20

BY THE COURT:

Q. In what capacity, as engineer? A. As engineer. I am now construction engineer.

Q. And you are familiar with the construction of railroad stations generally? A. Yes.

THE COURT: Then I think you may go on.

A. I have had direct charge of at least fifteen railroad stations on the Central Railroad, among others the present station at Newark, now building, I might say, I think will answer the question. 30

THE COURT: You had better not "might say" until you get a question.

Question repeated by stenographer.

A. Usually a railroad station is placed at a minimum distance of fifteen feet from the near rail. That is standard practice throughout the country, as I know it. 40

Otto A. Van Ness—Direct.

THE COURT: Gentlemen, I really do not see that there is anything in this case that reflects upon the construction of this station. It seems to me that the whole question turns upon whether or not provision is made for conditions otherwise.

10 MR. SMITH: That is what I am trying to show.

THE COURT: Yes, but I do not understand that complaint is made as to the structure of this station, except it was in an uncompleted state. This man did not fall over an obstruction.

20 MR. SMITH: I am simply trying to show that there were ample station facilities at that place. If the platform was sufficient to accommodate a number of passengers that would get on a train at that time, that is all we are bound to do, so far as the station is concerned. That is what I am trying to do by this man, whom I assume is an expert.

THE COURT: Yes. You see he was not doing that at all. He was testifying as to whether this station was the ordinary construction of station.

30 MR. SMITH: I do not mean the station building, I mean the station facilities there.

Q. I am speaking now, Mr. Van Ness, as to the platform, the size thereof, the accommodation thereof, whether cinder or wood, and whether or not that platform and the condition thereof is ordinarily—is the ordinary construction of railroad facilities? A. Well; yes, sir.

ADJOURNED until tomorrow, Tuesday, May 15th, 1917, at 10.45 A. M.

Otto A. Van Ness—Direct.

OTTO A. VAN NESS, resumed,

DIRECT EXAMINATION (CONTINUED) BY MR. SMITH:

Q. Mr. Van Ness, yesterday you said you examined the platform at the station at Parlin. Will you tell me what is the size of the platform east of the station, that is, between the station and the road? 10

MR. FORT: The question of what is is not material, is it? It is a question of what was.

THE COURT: I understand there has been some change here, Mr. Smith.

Q. What space is there between the station and the road?

MR. FORT: Do you mean what is the distance? 20

A. One hundred feet along the railroad track, and sixty feet deep.

Q. Could you tell me, from your experience, how many passengers awaiting trains that would accommodate? A. That would easily accommodate six hundred in that one space. Sixty feet by one hundred feet is six thousand square feet and allowing ten feet for a passenger would mean a space for six hundred. And ten feet is ample space for one person. 30

Q. Was there any space in front of the station? A. Yes, sir.

Q. Between the station and the track? A. There is a space of twenty feet between the new station and the track.

Q. Could you tell me approximately how many passengers that would accommodate? A. Of course, that is about one hundred feet long, in addition 40

Otto A. Van Ness—Cross.
William H. Morris—Direct.

to that, that would be two thousand square feet, and that again would accommodate two hundred people.

MR. SMITH: Cross examine.

10 CROSS EXAMINATION BY MR. FORT:

Q. When did you examine the station, Mr. Van Ness? A. January, 1917. This year.

Q. In figuring that a space one hundred feet long by sixty deep will accommodate six hundred people, in figuring ten square feet to the person, how many front feet do you allow to each passenger? A. Well, of course, a person takes a space of two dimensions.

20 Q. I understand. A. Well, say three feet by three feet would be nine square feet and that is ample; in fact, you can easily figure less.

Q. So that a space one hundred feet long would allow for somewhere around thirty-three people standing along in the front row. A. Amply so.

MR. FORT: That is all.

MR. SMITH: That is all, Mr. Van Ness.

30 WILLIAM H. MORRIS, a witness produced on behalf of the defendant, being duly sworn according to law on his oath, saith:

DIRECT EXAMINATION BY MR. SMITH:

Q. Mr. Morris, you are employed by the Raritan River Railroad, and were in January, 1916? A. Yes, sir.

Q. Where are you employed now? A. The Baltimore & Ohio Railroad.

40 Q. What is your profession? A. Surveyor.

Q. Did you, in January, 1916, visit Parlin station? A. Yes, sir.

William H. Morris—Direct.

Q. Will you tell us what you found as to the condition of the ground east of the station and between the station and the road? A. Well, the station was in the course of construction, or just about finished, and the ground from the station to the road was practically level, I would call practically level. There is a little dirt here and there, and a little contour of the ground. But nothing to interfere with people standing or walking. 10

Q. Was the ground in such condition at that time as to be in condition for passengers to board trains at that place? A. Why, yes, it would be, but, of course, it is not like a platform.

Q. You mean it hadn't been all leveled off? A. No, it hadn't been all leveled off. It was possible.

Q. They were still working there? A. Oh, yes. 20

Q. Do you know, Mr. Morris, the space between the east side of the station and the road? A. Between the east side of the station and the road? 20

Q. That is the side nearest? A. If my memory is right I think it is one hundred and eight feet to the center of the road by actual measurement.

Q. And what is the distance from the track back to the end of the station? A. Twenty feet.

Q. And from the front of the station to the back of the station, what is the distance? A. The station proper itself? 30

Q. Yes. Back to the back end of the station? A. I am not positive, but I think that is twenty feet.

Q. What was the condition of the land at the road? Was that level, or was that— A. At the road?

Q. Yes. A. That was level.

MR. SMITH: Cross examine. 40

William H. Morris—Cross.

CROSS EXAMINATION BY MR. FORT:

Q. When did you say you made this examination, Mr. Morris? A. The first Saturday after the accident. I don't know just about the date. Around the tenth or eleventh.

10 Q. You say it was one hundred and eight feet from the station to the center of the road? A. Yes, sir.

Q. How wide is the road? A. Well, what you can get there, it is a fifty foot road.

Q. So that there is eighty-three feet then to the end of the company's property, to the gate at the side of the road? A. Yes. According to that.

Q. At the time you were there did you see this gully that the other witnesses have spoken about? A. Well, I would not term it as a gully myself.

20 Q. What would you term it as? A. Nothing more than where the fill of the railroad meets the original surface of the ground, with nothing more than just a little hollow.

Q. Well, was it filled beyond and in back of it? A. It wasn't at that time. It was in the course of being filled.

Q. Well, the witnesses have said that was used for the sewage from the DuPont Hotel. A. Below the station, south of the station is right.

30 Q. South of the station? A. Yes.

Q. Which side of the station was the hollow on? A. The hollow was in the back of the station.

Q. Is that south or north or east or west? A. No. I would term that as west. Wait a minute. Yes, I would term that as west.

Q. The gully ran from west to east, didn't it? A. Easterly.

Q. From west to east? A. Southeasterly direction.

William H. Morris—Cross.

Q. Where is it in relation to the station that this was used for sewage? A. I think that was from the station south.

Q. From the building? A. Yes. South.

Q. So that the part where this gully intercepted the station platform was the part that was being used for sewage? A. What was that question?

Q. The part, or where it intersected the station platform then, was the part that was being used for sewage, intersected the station platform, I mean? A. No. The station platform there was about ten feet between the track and the top of this slope to this sewage outlet. 10

Q. It was ten feet from the track to the slope of this sewer? A. Yes.

Q. And then there came this sewer? A. Yes.

Q. And then there was some more space back of that, is that it? A. Well, there was no space in back of that for people. 20

Q. Then there was only the space of ten feet from the track back to this sewer that was cleared for people, is that it? A. South of the station; yes, sir.

Q. How long a distance did this gully run? Went down pretty near to the road, didn't it?

A. It run the opposite direction, to my recollection.

Q. The other witnesses have said it went down to the road. A. Not to my recollection. That may have been another one they have reference to. 30

Q. You say at the time you examined it, it wasn't a platform, but it was a place where people could get on trains? A. Yes. For convenience.

Q. It was like any other spot on the ground, you could get on the train, couldn't you? A. Yes. 40

MR. FORT: That is all.

John A. Maguire—Direct.

JOHN A. MAGUIRE, a witness produced on behalf of the defendant, being duly sworn according to law on his oath, saith:

DIRECT EXAMINATION BY MR. COAN:

10 Q. Mr. Maguire, where are you employed? A. Raritan River Railroad.

Q. In what capacity? A. Locomotive engineer.

Q. And were you such in January, 1916? A. Yes, sir.

Q. State whether or not you were the engineer who was driving the engine of the train that left Parlin station at 4.20 on that date? A. I was.

Q. And as the train came into that station you were on the right hand side? A. Yes, sir.

20 Q. Now, as you came around the curve coming into the station, what did you observe? A. Why, three cars, or four, standing on the second track, and men standing along the same side.

Q. What did you do? A. Went up to my usual stopping point.

Q. Where is the usual stopping point? A. Up above the crossing, about the engine length, or a little more.

30 Q. When you say the crossing do you mean the road known as the Washington Road? A. Washington Road.

BY THE COURT:

Q. Do you mean you went an engine length over the crossing, over the road? A. About that. I have a mark there I always stop at.

Q. Where did that bring your cars that passengers were to take? A. Well, about at the crossing, the head car.

John A. Maguire—Direct.

BY MR. COAN:

Q. What car was at the crossing? A. About the west side of the crossing.

Q. What car was at the crossing? A. First car, I think, as near as I can remember.

Q. And which end of the first car was at the west side of the crossing, the east end or the west end? 10

BY THE COURT:

Q. Front or back end? A. I think the back end was closest to the crossing.

BY MR. COAN:

Q. What was the first car behind the engine? A. Passenger coach.

Q. And how many coaches did you have? A. Five or six. 20

Q. Now, as you came into that station and saw the people standing there between the tracks, and along the freight cars, what, if anything, did you do? A. Went up to my regular stopping mark.

Q. Well, did you do anything with your engine? A. What do you mean by anything with the engine?

Q. Did you make any observations as to your clearance? A. Why, certainly.

Q. What did you do? A. Watched ahead to see that the men cleared. 30

Q. With what result? A. They all cleared.

Q. Just what were you physically doing at the time you came in there, with your hands? A. My hand on the air brake, and the other hand on the whistle cord.

Q. What were the conditions that night as compared with other nights coming in there, Mr. Maguire? A. The same, only those cars were standing on the second track. 40

John A. Maguire—Direct.

Q. Well, what was customary for you to do, if anything, as you came in there, with the people standing between the tracks? A. Customary?

Q. Yes.

10 MR. FORT: I do not see that this has any bearing. The question is not what this man did. It is what the company is alleged to have failed to have done.

MR. COAN: The point I desire to bring out is the warnings given by this man.

THE COURT: Let us have it.

Q. What warning, if any, did you give to the men standing between the tracks? A. The regular crossing blow, and the bell was ringing all the time while we were in motion.

20 Q. Did you give any vocal warning, by word of mouth?

MR. FORT: Isn't that a little leading.

MR. COAN: I am following the Court's suggestion to bring it to the point.

A. I don't remember that.

30 THE COURT: I do not see the importance of all this. Of course, everybody knew the train was coming. That is what they were there for. That is not the question in this case. Did not have to have a bell or a signal.

BY THE COURT:

Q. Were these cars that were stationed there, was that a usual or unusual thing? A. Unusual.

Q. How unusual? A. I don't remember them stationed there very often. They have them there sometimes previous.

40 Q. And on other occasions when the cars were stationed there what about the people, where did they stand? A. They stood in the same place in

John A. Maguire—Cross.

between the cars and the main track, sometimes. And in between the cars, that is, the end of the cars, stood on the side of them. On the side standing between the men and the cars. Not up on the cars on the second track.

Q. You mean they were not standing on the cars? A. Oh, no.

Q. They were standing alongside of them? A. **10**
Yes, sir.

Q. In between them? A. Yes, sir.

BY MR. COAN:

Q. When was this they were standing in that way? A. What date?

Q. Yes. A. I couldn't say. Any time the cars stood on that track, previous to this time.

MR. COAN: Cross examine.

THE COURT: Any questions, Mr. Fort? **20**

CROSS EXAMINATION BY MR. FORT:

Q. When is it that you give the whistle that you say you give before you come up there? A. The usual spot where I blow the whistle each time.

Q. Well, where is the usual spot? A. Well, that is down about something around two hundred yards from the depot, I should judge.

THE COURT: Mr. Fort, isn't that really as **30**
unimportant for the plaintiff, as it is for the defendant?

MR. FORT: I suppose so.

Q. What speed were you going when you came into the station? A. Between six and ten miles an hour, as near as I can remember.

Q. That is when your engine got to the southerly end of the station is it? A. About six, probably around there.

MR. FORT: That is all. **40**

R. E. Lee Morgan—Direct.

R. E. LEE MORGAN, a witness produced on behalf of the defendant, being duly sworn according to law on his oath, saith:

DIRECT EXAMINATION BY MR. SMITH:

10 Q. Mr. Morgan, you were employed by the Raritan River Railroad, were you? A. Yes, sir.

Q. And you were conductor of this train? A. Yes, sir.

Q. How long have you been working for the company? A. Thirteen years.

Q. Were you on the train the day of this accident? A. Yes, sir.

Q. What part of the train? A. Head end, next to the tank of the engine.

20 Q. The station is on the left hand side as you come up to South Amboy? A. Left hand side.

Q. What side of the car were you on? A. Left hand side.

Q. That is the station side? A. Station side.

Q. As you came into the station did you see people there? A. Yes, sir.

Q. Were there habitually crowds of people there? A. No. No more than the usual crowd that we have.

30 BY THE COURT:

Q. The question is whether habitually there was a crowd there? A. There was a crowd; yes, sir.

BY MR. SMITH:

Q. About how many people were there, do you know, that day, if you know? A. At Parlin station?

Q. At Parlin. A. Well, I couldn't estimate, only by my report.

40 Q. Do you know how many passengers you carried that day on that trip? A. Not exactly. We took two tickets up at the time from Gillespie.

R. E. Lee Morgan—Direct.

THE COURT: Isn't that set out in the answers to the interrogatories?

MR. FORT: Only from those who travelled from Parlin to South Amboy; not as to those who may have been on the train earlier.

A. We took two tickets up from Gillespie from Parlin to South Amboy, and we generally took the two up between those stations, between Gillespie and Parlin. How many I had on I can't tell. We marked them all what we call zone tickets. 10

Q. In other words, you take a ticket for such and such a distance? A. With twenty-five people on, there would be equal to fifty tickets. And the other would be just one ticket from South Amboy, so I couldn't tell exactly how many was on.

Q. How many cars did you have on? A. Six, to the best of my knowledge. 20

Q. As you came into the station and you say you saw these people there, what did you do, if anything? What kind of a warning, or signal, or sound? A. Well, I am generally on the head car and I generally block them from getting on that car.

BY THE COURT:

Q. The question is, what signal was given on that occasion, if any? A. I don't know whether I hollered on that occasion or not, but when I go by I generally holler in keeping back. But on that one certain day I couldn't say. 30

BY MR. SMITH:

Q. What position were you in as you came into the station? A. Riding on the lower step of the platform.

Q. Had you seen people jump on there before? A. Yes, sir.

Q. You tried to stop them? A. Yes, sir. 40

R. E. Lee Morgan—Cross.

Q. How? A. By speaking to them as I went by.

Q. You have seen people on the other side of the track too, have you? A. Yes, sir.

Q. What have you done to them, if anything?

A. I didn't bother with that side whatever.

Q. You didn't touch that side? A. No, sir.

Q. Did people get on from that side? A. Yes.

10 Q. Jump on from that side? A. Yes.

MR. SMITH: Cross examine.

CROSS EXAMINATION BY MR. FORT:

Q. You say you took up two tickets from Gillespie? A. Yes, two tickets.

Q. Do you mean you only had two passengers from Gillespie? A. No, no. It was a fare of two tickets. It was five cents between the stations, and that means two tickets between South Amboy—between Gillespie and South Amboy.

20 Q. But you don't know how many you took up between Gillespie and Parlin? A. No.

Q. Did people who gave you the tickets first from Gillespie to Parlin and then Parlin to South Amboy? A. No.

Q. You had more than two Gillespie passengers on? A. Oh, yes. I had a good deal more than that.

30 Q. Well, what did you usually run? Ran pretty steady, that traffic, didn't it? A. From Gillespie to Amboy? Well, I might have had altogether perhaps seventy-five to eighty. I wouldn't say just how many.

Q. And that was—your traffic on that train was about the same one day as it was another, wasn't it? A. About the same thing; yes, sir.

Q. That traffic was pretty heavy, wasn't it? A. Yes, it was pretty heavy.

R. F. Lee Morgan—Cross.

Q. Did you have seats for your passengers usually? A. Usually not all.

Q. Have seats for as many as you had standing room for? A. Oh, yes.

Q. Did you? A. Yes, sir.

Q. You say you were on the front car. Were you on the front platform of the front car, or the platform between the first and second cars? **10**

A. I was on the head end.

Q. Away up? A. Away up next to the tank on the lower step of the head train.

Q. Who else was in the crew? A. There was Custy Wiskoski was flagging. Sexton was breaking. James French was baggage master, and myself.

Q. That is what, four? A. Yes.

Q. Besides yourself? A. Besides myself.

Q. Where were they, do you know? A. No, I don't know where they were. Of course, they were in their usual places, I suppose, on the train. I couldn't say where they were. **20**

Q. Was the baggage master on the platform, or was he in the car? A. I couldn't say that.

Q. What was his practice? A. Well, he generally come out between the cars.

Q. But you don't know what he did on this occasion? A. I don't know what he did; no, sir.

Q. You were in charge of this train for how long a time, Mr. Morgan? A. Well, I couldn't say that particular train. We run different trains, but I have been conducting three years. **30**

Q. On this particular train, how long do you think you were in charge of it? A. I couldn't tell. The time table will tell you that.

Q. Were you in charge of that one day, and another in charge of another? A. No, sir.

Q. But you were on there for two or three months anyway, weren't you? A. Oh, yes. **40**

Q. Before this accident? A. Yes, sir.

Frank M. Donohue—Direct.

Q. During that time were your brakemen instructed by you, you gave them their orders where to be, your brakeman, flagman and baggage master? A. No. They know their place.

Q. You say you personally never got on the side of the train away from the station? No, sir.

Q. Did any of your brakemen ever do that under
10 your orders? A. Protect that side?

Q. Yes. A. No, sir.

MR. FORT: That is all.

MR. SMITH: That is all, Mr. Morgan.

FRANK M. DONOHUE, a witness produced on behalf of the defendant, being duly sworn according to law on his oath, saith:

20 DIRECT EXAMINATION BY MR. SMITH:

Q. Doctor, you are a practising physician and surgeon of this State? A. Yes, sir.

Q. How long have you been practising?

MR. FORT: I will admit Doctor Donohue's qualifications. I guess everybody knows him.

Q. Doctor, did you examine the plaintiff, Mr. Janderup, in this matter? A. I did on January
5th of this year.

30 Q. Did you make an examination of his eyes?
A. I did.

Q. Will you tell us please what you found the condition of his eyes to be in? A. I found the left eye perfectly normal. The right eye he had vision of 20/200ths. The back of the eye, by examination with the ophthalmoscope, showed the back of the eye congested and reddened, and accounted for his diminution of vision in that eye. The left eye
40 showed nothing.

Frank M. Donohue—Cross.

Q. You say the vision in the left eye was normal? A. He had a vision of 20/200ths in the left eye. Yes.

Q. Doctor, assuming Mr. Janderup to be a carpenter, did you see anything in the condition of the left eye which would prevent him from resuming carpentering work? A. There was no condition in the left eye which would prevent him from pursuing his regular occupation. **10**

Q. Did you find anything in his condition at all which would prevent his pursuit of carpenter work? A. I didn't see anything then, except his right eye had a vision of only 20/200ths.

Q. Could he, with his left eye, have sustained vision, as I will call it, or concentration of vision? A. Concentration?

Q. Could he read for any length of time with the left eye? A. Why, there is no reason why he shouldn't read as long as any other man should read with a normal eye. He had a normal eye and normal vision on that day, on January 5th, 1917. His right eye was not normal. **20**

MR. SMITH: You may cross examine.

CROSS EXAMINATION BY MR. FORT:

Q. Doctor, you say there was no reason why he shouldn't read normally with the left eye. Do you mean that with the left eye in the condition it was, and the right eye in the condition it was, there was no reason why he shouldn't read perfectly normal? A. No reason why he shouldn't read perfectly normal with the left eye. **30**

Q. I understand, but with one eye defective, and the other eye good, can a man read and use his eyesight generally? A. We frequently see it, sir.

Q. Sir? A. Frequently see it.

Q. Let me finish the question. (Continued)— **40**

Frank M. Donohue—Cross.

use his vision normally to the same extent and for the same protracted periods that a man can use when he has normal vision in both eyes? A. There is no reason why a man who has a defective one eye shouldn't read, and read for a long time, if he has the other eye normal. You frequently—

Q. Do you mean as long as he could if he had
 10 both eyes? A. There is no reason why he shouldn't.

Q. What would be the effect on the good eye?
 A. No effect whatever.

Q. An attempt to use it as continuously as a man with normal vision uses both eyes? A. There is no effect whatever, if the eye is normal.

Q. No additional strain? A. No. You frequently see that in squint eyes, you know. A person with a squint eye will have the squint eye turned
 20 out, and have one perfectly normal eye, and they will read and do normal work just the same as anybody else can do, all the time using the one eye, and the other eye is turned out of vision.

Q. Isn't there any strain resulting? A. None whatever.

Q. Then we would get along just as well with one eye, except from the standpoint of beauty? A. Yes, sir. Not from the standpoint of beauty. You can take and remove one eye entirely.

Q. And a man is just as well off, as far as the
 30 usefulness of his sight goes, as though he had the two? A. He is just as well off as far as the usefulness of the other eye is concerned.

Q. No. Sight usefulness, I said? A. Yes.

Q. Get just as much use out of one as he could out of two? A. If the other eye remains good.

Q. Will the other eye remain good under those conditions indefinitely? A. No reason why it
 shouldn't. We see many instances of it.

Q. Isn't it a fact, doctor, that very frequently
 40

Frank M. Donohue—Cross.

injury to one eye, when the other is originally absolutely undisturbed, results in a serious disturbance of the vision in the good eye? A. You are talking of sympathetic ophthalmia.

Q. I do not know what I am talking about, if that is it. A. You are talking of sympathetic inflammation of the eyes. Yes, that is true, if you get a wound of the eye in the region of the iris, in the region of the colored part of the eye, the good eye is very apt to take on what we call sympathetic ophthalmia, sympathetic disturbing or sight from the other eye, from the optic nerve over to the other eye. **10**

Q. Isn't that sometimes, doctor, also caused by a mere strain if using one eye continuously? A. Oh, no.

BY THE COURT: **20**

Q. How long does it take for that danger to disappear? A. The danger of sympathetic inflammation?

Q. Yes. A. Why, a week or ten days. We watch it very carefully, and if there is any sign of ophthalmia in the good eye, we remove the injured eye immediately, and that stops it.

BY MR. FORT: **30**

Q. You mean a week or ten days after you discover? A. Oh, no. As soon as a man is injured—an eye is injured in that region where the danger of sympathetic ophthalmia is great, we watch our patient very carefully, and the moment any signs of dimness of sight, or redness, occur in the good eye, then the diseased eye or the injured eye is removed immediately, and that stops it.

Q. I understand, doctor, that you think that the single eye, as long as its vision is normal, is as useful for all purposes of vision as the two good **40**

Frank M. Donohue—Re-Direct.

eyes? A. There is no reason why it shouldn't be, if it is a normal eye.

BY THE COURT:

Q. Doctor, there is one serious physical drawback, is there not? You close your right eye and you won't be able to see this side of the room? A.

10 Oh, yes.

Q. It does not appear as a vision to you? A. Oh, yes.

Q. Does not your nose interfere? A. No.

Q. Can you see me? A. No.

Q. That limitation of vision is apparent? A. That is the object of the Lord giving us double vision. Two eyes.

Q. Then two eyes are really better than one? A. Oh, yes. No doubt about that.

20 Q. I did not want your testimony to go to the jury that way.

MR. FORT: That is all, doctor.

RE-DIRECT EXAMINATION BY MR. SMITH:

Q. Doctor, do you know whether or not Mr. Janderup's right eye was affected before this accident?

A. Mr. Janderup stated in doctor McDowell's office, at the time of my examination, that before
30 the injury his right eye was not normal.

Q. Now, doctor, from practical purposes, laboring purposes, is there anything in Mr. Janderup's condition, as you found it, that would prevent him from resuming his normal occupation as a carpenter? A. I don't see anything in the condition of his left eye which would prevent him from pursuing his occupation.

BY THE COURT:

40 Q. Doctor, it has been suggested here that there is an atrophy of the nerve of the right eye, and

Frank M. Donohue—Re-Direct.

that that in itself created an impairment which, when the attempt was made to put the strain on the other eye, it was not able to bear. What do you say as to that thought? A. Atrophy of the nerve in the right eye.

Q. Yes. A. That didn't show in my examination.

Q. It did not? A. No, sir. **10**

Q. If that were present, what would you say then as to the use of the left eye? A. The atrophy in the nerve of one eye does not cause strain of the other eye. Eye strain is caused by an excessive action of the ciliary muscle, the muscle of accommodation. Now, the back of the eye, the retina, is the seat of vision, and it has no relation whatever to eye strain; when the ciliary muscle contracts it regulates the lens and allows the rays of light from an object to come into the back of your eye. Then the back of your eye takes that image and transfers the image by means of the optic nerve to the brain, and the brain interprets an image as an image that you have been taught to call a certain thing. For instance, that chandelier. Well, I would not know that was a chandelier unless I had been taught that it was a chandelier. The rays of light come from that chandelier into my eye. My ciliary muscle contracts, my lens becomes more convex, so as to allow those rays of light to go in the back of my eye. That image is implanted on my retina and is transferred, that image is transferred by means of the optic nerve to the brain, and my brain interprets that as an image of a chandelier. That is the facility of sight. Now, the atrophy of the optic nerve has no relation to eye strain. Eye strain is an affection or a disorder of the front part of the eye. And it has no relation whatever with the function of the back part of the eye. The function of the back **20**
30
40

Frank M. Donohue—Re-Direct.

part of the eye, the function of the retina.

Q. It is your judgment that such a condition would not create any additional impairment to the left eye? A. No, not any eye strain, if the eye was normal.

BY MR. FORT:

10 Q. Doctor, what about the ability of the eyes to focus when one eye is good and the other is bad?

A. Well, the focusing is all done by the action of the ciliary muscle, Mr. Fort.

Q. What about ability? A. Just as I was explaining to Judge Lloyd. Rays of light coming from a distance are divergent. Rays of light are almost parallel. Rays of light coming from a near object are divergent. It requires a greater convexity of the lens to refract rays of light coming from a near object and get them to a focus on your retina, than it does to refract rays of light coming from a distance. Hence our ciliary muscle is so arranged on our lens that when we focus our eyes on a near object, the ciliary muscle contracts and the lens becomes more convex, so as to refract those rays of light coming into the back of our eye, and brings them properly to a focus on the retina. Then you have the image transferred on the retina, which is carried back to the brain by means of the optic nerve, and there our brain interprets that image as one we have been told is such an image.

20

30

Q. Yes, I understand that, doctor. The point is, one eye being good and the other eye being bad, is the ability to focus on near objects as good as it is with two good eyes? A. I think so, because each eye focuses independently.

BY THE COURT:

Q. Doctor, it has been suggested here that this man's vision would be all right for a distance of

40

William H. Sexton—Direct.

several feet, but as the distance was contracted, or lessened, impairment would begin. A. I, of course, can't make any reply to that. I don't understand just what that is.

BY MR. SMITH:

Q. Do you know of anything that would cause such a condition, doctor? A. No, I do not. **10**

Q. Did you ever hear of such a condition in your experience? A. No.

MR. SMITH: That is all.

WILLIAM H. SEXTON, a witness produced on behalf of the defendant, being duly sworn according to law on his oath, saith:

DIRECT EXAMINATION BY MR. SMITH: **20**

Q. Mr. Sexton, you are in the employ of the Raritan River Railroad Company, are you? A. Yes, sir.

Q. Were you in their employ in January, 1916? A. Yes, sir.

Q. What was your position? A. Trainman.

Q. Were you trainman on this train of which Mr. Morgan was conductor? A. I was.

Q. Were you on the train as it came into Parlin at the time of this accident? A. Yes, sir. **30**

Q. What position were you in? A. On the lower platform, lower step of the cars, between the fourth and—

Q. On which side? A. On the left hand side. Station side.

Q. On the station side? A. Yes, sir.

Q. Just holding your position there, were you? A. Yes, sir.

MR. SMITH: That is all. **40**

MR. FORT: No question.

Custy Wiskoski—Direct.

CUSTY WISKOSKI, a witness produced on behalf of the defendant, being duly sworn according to law on his oath, saith:

DIRECT EXAMINATION BY MR. SMITH:

10 Q. Were you employed by the Raritan River Railroad in January, 1916? A. Yes, sir.

Q. What position? A. Flagman.

Q. Were you on the train? A. Yes, sir

Q. You were one of the trainmen, were you? A. Yes, sir.

Q. That kept the flag on the rear end? A. Well, I had it handy.

Q. You were one of the crew of Mr. Morgan, were you? A. Yes, sir.

20 Q. Were you working on the train the day of this accident, and on this trip? A. Yes, sir.

Q. What position were you in as the train came into the station? A. On the rear car, the head end of it.

Q. Head end of the rear car in what position? A. Standing on the lower platform step.

BY THE COURT:

Q. Station or other side? A. Station side.

BY MR. SMITH:

30 Q. Station side? A. Yes, sir.

MR. SMITH: Cross examine.

MR. FORT: No questions.

MR. SMITH: That is all. We rest.

—•—
DEFENDANT RESTS.
—•—

Nels K. Janderup—Direct.

PLAINTIFF'S REBUTTAL TESTIMONY.

NELS K. JANDERUP, the plaintiff, re-called.

DIRECT EXAMINATION BY MR. FORT:

Q. Mr. Janderup, doctor Donohue has told us that you told him that prior to the accident your right eye wasn't as good as your left. What was the fact as to that situation? A. Why, it never hindered me to do any work before. The only thing it was, when I first examined, it seems that eye couldn't see quite as good. The only way I could do it was like put the one eye in, and then look at a steady thing and close that one, and I could see there was a little difference. But not enough to hinder me to do any work without glasses before. 10
20

Q. Or to read? A. Or to read neither.

Q. Did you ever have to wear glasses? A. Well, I did sometimes to fine work, very fine, file a saw, or anything like that. In other ways I didn't.

Q. Did you ever miss any work on account of your eyes? A. Not before; no, sir.

Q. Did you ever have to go to an eye doctor in your life until after the accident? A. No, sir.

Q. How much fine work was there in your business? How much work requiring you to do fine work, like filing a saw? A. Why, in trimming, what they call fine work, I done every kind of work. 30

Q. How much of your time was spent on that fine kind of work? Very much? A. Why, quite some. Not all the time, you know.

MR. FORT: There is one question that was part of my original case that I am not sure I made clear. I make this statement before I ask the question, Mr. Smith. 40

Nels K. Janderup—Direct.

Q. Mr. Janderup, you told us for the last two months you had been working thirteen days, is that right, a month? A. Yes, sir.

THE COURT: He said he had been working half time.

A. Thirteen days.

10 Q. Was it thirteen days? A. Thirteen days.

Q. Do you work Sundays now? A. Yes, sometimes.

Q. Well, did you, when you were working in the five months that you worked full time as a gate tender, did you work every day, or how many days a month did you work? A. Yes. Worked every day.

Q. Sundays and all? A. Sundays and all.

20 Q. And you got two dollars a day for it? A. Yes, sir.

30 Q. Since the accident have you made any effort to do carpentering work? A. Well, yes, I have. That is to say, I tried it at home in my house, to do a little work one day to try it, and found I couldn't see any pencil mark or nothing, and I took my glasses on to look at it, why, I had a little piece of board and it looked to me it was straight, and next morning I come down and wanted to plane it off a little, and it was like that, and I looked at it, and I had my glasses on, why, it was all just like this, it was all bent crooked. And I got certainly scared, you know, and didn't know what was up, and I tried again, and I looked again and just the same thing, but I couldn't see it.

Q. You have tried then to do carpenter work, have you? A. I have tried, but I couldn't do it.

MR. FORT: That is all.

Nels K. Janderup—Cross.

CROSS EXAMINATION BY MR. SMITH:

Q. That trying was just what you told us there? That is all you have done? That is all the trying you have done was just what you told us there?

A. That is enough.

Q. That is all you have done, I say? A. That is all I have done.

Q. What glasses did you use? **10**

BY THE COURT:

Q. When did you do that? A. Why, that is about four months ago, I think.

Q. Have you tried anything lately? A. Oh, about the same vision since.

BY MR. SMITH:

Q. What glasses did you use? Did you have any glasses made by any doctor? A. Yes. **20**

Q. Who? A. Doctor McDowell.

Q. And you can't see with them? A. He says yet I have got to wait—

Q. I didn't ask you what he said. I asked you if you can use them? A. I can see to read, yes, but I can't see to work with them. I can see to read when I get them up that close (indicating). I can read for fifteen minutes at a time. And then everything is a blur to my eyes, and then everything goes out. Even then I have got hard to do. **30**

MR. SMITH: That is all.

MR. FORT: That is all.

Mrs. Andrea Kalleberg—Direct.

MRS. ANDREA KALLEBERG, re-called.

DIRECT EXAMINATION BY MR. FORT:

MR. FORT: This is an omitted question. I will tell what it is, Mr. Smith.

Q. Mrs. Kalleberg, you testified yesterday that
10 you lived in a part of a house that your husband owned free of rent? A. Yes, sir.

Q. What did the other half of that—you lived in half of the house and rented the other, is that right? A. Yes, sir.

Q. What was the rent of the other half of the house per month?

MR. SMITH: I object as irrelevant and immaterial.

20 THE COURT: How does that effect it, Mr. Fort?

MR. FORT: It seems to me in the measure of damages, in considering the value of the husband's contribution to the home.

THE COURT: I suppose it might have a slight bearing on his accumulations.

MR. FORT: No, sir; I don't ask it in that sense.

30 THE COURT: I am trying to put it on some ground it would be admissible.

MR. FORT: May I state what my theory is? I think it is sound.

THE COURT: If it is admissible on any theory, and you have it on one and I have it on another, what is the trouble?

MR. FORT: All right, sir, if Your Honor has it on one theory.

40 THE COURT: I will admit it on the theory the Court has put it. Tell us what it rented for, madam.

Mrs. Andrea Kalleberg—Cross.

A. Nineteen dollars.

Q. Nineteen dollars a month? A. Yes. For the top floor.

CROSS EXAMINATION BY MR. SMITH:

Q. On the theory of accumulation, you got everything your husband left, didn't you? A. Yes, sir. 10

Q. Everything he had saved up? A. Yes, sir.

Q. All you had saved up you got at the time of his death, isn't that so? A. Yes, sir.

MR. SMITH: That is all.

MR. FORT: That is all.

MR. SMITH: That is all.

Mr. Fort opens as to the claims on the part of the plaintiff. 20

Mr. Smith sums up the case for the defendant.

Mr. Fort sums up the case for the plaintiff.

Charge.

Gentlemen of the Jury:

There are two actions being heard together; one is by the administratrix of the deceased man Kalleberg, and the other is by the plaintiff Janderup himself. You have already learned from the arguments in the case, and the testimony, that while there are two widely different lines of compensation, if you reach that point in your deliberations, both actions are based upon the same alleged act of negligence. 30

The defendant company is a carrier of passengers, and as such it invites the public, as is its right, and as is their right to accept, to travel 40

Charge.

upon their trains. The law exacts of a carrier of passengers, with respect to its equipment, that it shall be reasonably careful, exercise reasonable care for the protection of its passengers when they are waiting for trains. The undisputed facts in this case show that on the afternoon in question, which was the fifth of January, 1916, there were

10 three freight cars on a track removed from the station and the platform, and separated by a main track upon which the train, which afterward came into the station, ran. It has been disclosed by the evidence that those cars, as they stood upon the track, were a distance of two feet and a half from the outside edge of the passenger train which these men were intending to take. It is also undisputed in the case that both the deceased man Kalleberg, and the plaintiff Janderup, were along

20 one of these freight cars. The testimony is that one of them was partly in and partly out of the opening between two freight cars. The other was standing alongside of the freight car. That while in that position, the train came up to the station and was coming to a stop; that as it did so, another person, an intending passenger, jumped upon one of the steps of one of the passenger cars, and for some reason a portion of his body, or limbs, extended out beyond the car and struck one or

30 more of those who were standing alongside of the train; that as he did so there was a series of contacts either between him or between other persons, causing a sort of roll-up of these people who were stationed there along the freight train, until there was a jamb, resulting in the death of Kalleberg and the injury of Janderup. About those facts there is no sort of dispute.

The controversy in the case arises over the responsibility for the acts and the conditions which

40 resulted in the death of one and the injury to the

Charge.

other. The plaintiff's claim is that this condition around this station was measurably a repetition of conditions which had been going on some time before. That the station was in process of completion. That people, large crowds, gathered at the station to take the train, and that they lined up upon both sides of the train as it came into the station, more upon the station side, but still a large number upon the opposite side, and that this had been going on for a considerable period of time, so that the plaintiff claims it had the acquiescence and confirmance of the railroad company. The plaintiff also claims that for the accident which happened upon this occasion, an exercise of the reasonable care which I have already called to your attention, on the part of the railroad company, would have probably prevented the accident.

10

20

There is a rule of law which is pertinent and should be charged to you in this case, and that is, that in order that negligence may be actionable, the injury which occurs must have come as a natural and direct consequence of the negligence which is charged. This accident was perhaps somewhat peculiar. Was it a thing which the railroad company,—remembering the standard of duty which I have just given you as to anticipation,—was it an accident that the company was bound to anticipate as likely to happen? If it was not, then, of course, there would be no connection between the negligent act, if there was one, and the injury and death which followed. In addition you will perceive that it must be a direct consequence of such negligence.

30

The duty of establishing this proposition, namely, that the one man was killed and the other was injured as a direct and natural consequence of the negligence of the defendant, is on the plaintiff.

40

Charge.

That burden is not the burden which you may have heard given to you in criminal cases. You have no doubt heard the expression of a thing being proven to exist beyond a reasonable doubt, in the other Court. That rule does not apply in the case of civil actions. The rule in civil actions is that the entire sum of the evidence in the cause
 10 must preponderate, weigh down, in favor of the plaintiff, before he can recover. You can see the reason of such a rule. It is that when one who alleges a thing, our instinct is to say, well, you must prove it. Just so here. It need not be proven beyond a reasonable doubt, but it must be proven beyond a preponderance of all the proofs in the case.

It is claimed before you that if the company had exercised reasonable care under the circum-
 20 stances, that the accident probably would not have happened. It is claimed that it ought either to have controlled the public by guards, or in some other way within the pleadings, which was within its control, and that a failure to do that constituted negligence resulting directly and proximately and naturally in the injuries and death which followed.

I need not say to you that the defendant's claim to you is that they did all that they could
 30 under these circumstances, all that reasonable care on the part of a carrier would require, and that becomes a question for your determination.

There is another phase of the case that has a most important bearing upon both of these cases. Just as the plaintiff claims negligence on the part of the defendant, so the defendant claims that there was negligence upon the part of both of these men, which in like manner was a direct cause
 40 of the misfortunes which befell them, and which

Charge.

resulted naturally from such negligence. The rule of law is perfectly well settled in this State that where the combined negligence of one who complains and one who is complained against brings about an injury or a death, that neither can complain of the other. The law does not measure the degrees of negligence in a case of this kind, but it deprives either party of the right of action against the other. If that be so in this case, that deprives both of these men, or anyone claiming under them, or by reason of any act of negligence resulting in death or injury, from recovering. The specific negligence claimed against the plaintiffs is that here was a place of obvious danger, that in the nature of things the cars were separated by a narrow space only, that they were aware, as well as the railroad company, of the crowding and jostling to get aboard these cars, and the defendant says that if the railroad company ought to have anticipated such an accident by guarding against it, so ought these men, one of whom lost his life and the other was injured, to have appreciated the danger and also been on guard against it by keeping away from that place. I cannot say to you as a matter of law that this defendant was guilty of negligence in this case, nor can I say that it was not. So in like manner I cannot say that the deceased or the other party in the case was guilty of negligence; nor can I say that either or both of them were not. They are questions for you, and you alone, to determine. You are men who come from the walks of life associated with the every day affairs of men, and to you the law reposes the duty of conscientiously determining the conduct of these parties. Both are required to exercise the care which a reasonably prudent man under like circumstances would do. That is the test. The solution of these questions is in your hands.

Charge.

It is quite obvious from what I have already said to you that if there was no negligence proven against the defendant company which was the direct cause of the death and the injury, and a result which naturally resulted from such negligence, no recovery can be had against the railroad company. It must also be clear to you that if it

10 was negligent for these men in the same way to be where they were, that no right of action exists, either on behalf of the injured man, or by the administratrix of the deceased man. But if you shall find, after you have given full consideration to this case in all its bearings upon the question of liability, you determine that the negligence of this defendant was the sole cause and the direct cause of the injury of one and the death of the other, and that both these conditions resulted as

20 a natural consequence of such negligence, then you do pass to the question of what sum of money should be awarded in each case. I do not think you could set up a standard of care differing in either case one from the other. It seems to me in that respect both cases stand upon a par, both as to the negligence of the defendant, and the negligence of the deceased and the injured man.

If you reach the question of damages in these cases, I have already said to you that they rest

30 upon very different rules. In the case of Janderup, he is living, and he is claiming for his own loss. In the determination of what compensation should be awarded, you take into consideration a number of items. First you take into consideration the question of the pain resulting. You take into consideration the expense of getting himself cured. You take into consideration the impairment, past and present and future, if there be any, of his capacity to earn money. It seems that he

40 is a carpenter by trade and he was working at

Charge.

the DuPont place as a carpenter. The wages seem to have varied somewhat between weekdays and Saturday and Sunday. One would gather from the testimony upon that subject that there was a press of work, and that sometimes the men may have worked Saturday afternoon and Sunday, in which case a higher compensation was given. The expenses that he has been to are a matter of easy solution. The question of pain and suffering is a very difficult thing to solve. It is a pretty hard matter, I should say, to convert one's pain and suffering into dollars and cents, but the law says the jury must take it into consideration. It is certainly not easy to determine how much impairment, if any, Janderup has sustained by the impaired eye which he claims to have as the result of the accident. On his own statement there was some impairment of the eye prior to the accident. He says it was nothing compared to the impairment resulting now. He says he has difficulty in seeing for the finer work that would be required in the trade in which he is skilled. He says that his sight is impaired, and that it is a strain to use the unimpaired eye. Doctor McDowell confirms some of his statements. The other man, Doctor Donohue, says that there is no impairment that he can discover in the ability to use the left eye. He recognizes that there is some impairment of the right eye from some cause. Those are the elements that are proper for consideration in the Janderup claim.

In the case of Kalleberg a very different rule applies. The administratrix, the widow suing as administratrix in this case claims damages, not for suffering, not for expenses, but solely for the pecuniary loss which the next of kin, she being the next of kin, I assume, has suffered by the taking off of her husband. You will see by that

Charge.

definition that the element of pain and suffering is eliminated. You could not include that in the Kalleberg case. You will see also that any expense item, although there are no proofs of expenses in the case, you might conjure up that there would be burial expenses, but they are not a matter for your consideration. Nor is the question of earnings important, except as throwing light upon what the next of kin would suffer by reason of the premature death. In arriving at what that is, the law has fixed the standard that it must be the present money value of that loss. You will see at once that on the one side a year and some months have elapsed since this accident happened, so that the benefit which the widow would derive has run for that period of time. It has elapsed. It would mean that those payments, if he had lived, would probably have been paid, and whatever of value they were in the way of interest earning capacity, that would have to be considered by you. On the other hand, the expectation of life would probably carry this man much beyond the year and some months that have now elapsed, and as to an allowance upon that phase of the case, you are called upon to anticipate these payments. You would be giving, if you were to give a sum of money that you thought this widow would derive weekly, and you should capitalize that now, you would be giving both the money and the income from it, and that you see would be equally unjust as to deprive the widow of the loss of the year and some months that have already gone by. So that when the law says that you must give the present money value of the loss, it means that you shall take into consideration upon the one side the period that has elapsed, and upon the other side the anticipation of payments which would come only from week

Charge.

to week in the course of years. In arriving at what that money value is there are a number of necessary elements to be considered. Here are, you see, two lives. I suppose we may assume from the ages of these people, and from the duration of their married life, that no children probably would have come to them. Remote possibly it is, but always a possibility that there may be separations, there may be divorces. Death may come to one or the other to terminate the relationship. Accidents may happen. Growing years may impair the ability to work. Sickness may arise. All of these things are of important concern in determining a loss such as this. But above all, perhaps, is the fact that you must determine how much the next of kin would probably have gotten. We all know that a wage earner must live himself. That burden is now removed, but if he had lived his earnings would have been lessened, so far as she is concerned, by just whatever it cost for himself, whatever may have been the expenditures that he was required, or did make. So that you see that also becomes a most important factor. **10**

I think I have gone far enough to give you the rules of law, and a guide which the law affords to permit a jury to reach a just conclusion in both of these cases. When you retire, let me suggest to you that you take up these questions in the order that the Court has given them to you. Take them up conscientiously and candidly, disregarding the fact that these are humble people suing a railroad company, and remembering that your duty is to decide cases strictly in accordance with the evidence as it comes from the witness box. When you have done that you will have the satisfaction of a clear conscience, as well as having done your duty. **20**

30

40

Charge.

When you retire take up first the question as to whether or not the defendant's negligence was the proximate cause of the death and the injury, and whether the death and the injury resulted as a natural consequence. Secondly take up the question of whether these men themselves were guilty of like negligence, with like results. If
10 either of them are solved against the plaintiff, or both are, undoubtedly your verdict is no cause of action. If either of them is solved against the plaintiff, the verdict is no cause of action. It is in the event that both are solved in favor of the plaintiff only that you reach the other questions of compensation.

THE COURT: Are these requests covered by what I have charged, Mr. Smith?

MR. SMITH: I do not think so, sir.

20 **THE COURT:**

1. "A carrier has the right to determine the routes by which passengers shall approach and leave the station, and where a carrier has provided a safe approach and this is sufficiently indicated to the public, it is the legal duty of passengers to go to and from the station in the way provided."

2. Refused.

30 3. "A mere failure on the part of the Company to drive intended passengers away from the tracks does not make the Company liable to one who is injured while standing in a position between tracks where he has not been invited."

I affirm that. Regardless of whether they drive them away or not, if he has not been invited, or if the company has done no act which indicates that as a proper place to get on, or permit it through no cause of action, which means the same thing,
40 the company would not be liable.

Charge.

4. Refused.

5. "If a man voluntarily and unnecessarily puts himself into a dangerous position, when there are other positions that he may take, in connection with the discharge of his duty, that are safe, he cannot recover damages for that injury to which he has contributed by his own negligence."

10

6. "If plaintiff of his own free will and without necessity or reason for so doing placed himself between the two tracks in a position of manifest danger, before the arrival of the train he was awaiting, and was struck and injured by the body of a person who had unlawfully boarded or attempted to board the approaching train while it was in motion, he was guilty of contributory negligence and cannot recover."

20

That is true, if the manifest danger is the danger that he actually ran the risk of on this occasion.

7. Refused.

8. "If the jury find that to stand between the box car and the opposite track at a time when a train was approaching thereon, was a careless or negligent act and such carelessness contributed to the injury plaintiff received, there can be no recovery in these actions."

30

That is true.

The others are refused.

MR. FORT: The eighth request presumes something your Honor said earlier as to the cases standing on an identical footing, presumes that the location of Kalleberg and Janderup in reference to the freight car was identical, whereas there is some evidence in the case that Kalleberg was standing not between the freight car and the adjoining track, but between two of the freight

40

Charge.

cars, and not out between the freight car and the track, in which case I take it there would be room for the jury to differentiate between the two cases on the question of contributory negligence.

THE COURT: Yes.

Any exceptions, Mr. Smith?

10 MR. SMITH: No exceptions, except to the refusal to charge.

Exception allowed—sealed accordingly.

FRANK T. LLOYD,
Judge.

(Seal.)

MR. FORT: I would like an exception to the charging of the first and third, as well as the eighth request.

Exception allowed—sealed accordingly.

20

FRANK T. LLOYD,
Judge.

(Seal.)

DEFENDANT'S REQUESTS TO CHARGE.

1. "A carrier has the right to determine the routes by which passengers shall approach and leave its station, and where a carrier has provided a safe approach and this is sufficiently indicated to the public, it is the legal duty of passengers to go to and from the station in the way provided."

30

2. "The fact that some of the workmen had boarded the train from the side away from the platform before the day of the accident does not establish an invitation to so board the train or to stand so near the tracks as to endanger one's safety."

3. "A mere failure on the part of the Company to drive intending passengers away from the tracks does not make the Company liable to one

40

Charge.

who is injured while standing in a position between tracks where he has not been invited."

4. "If plaintiff took up his position by the box car and between it and the track upon which the approaching train was, for the purpose of increasing the probability of getting a seat, when there was a large number waiting to take the cars, and he would not have been injured had he not occupied such position, he cannot recover." **10**

5. "If a man voluntarily and unnecessarily puts himself into a dangerous position, when there are other positions that he may take, in connection with the discharge of his duty, that are safe, he cannot recover damages for that injury to which he has contributed by his own negligence."

6. "If the plaintiff of his own free will and without necessity or reason for so doing placed himself between the two tracks in a position of manifest danger, before the arrival of the train he was awaiting, and was struck and injured by the body of a person who had unlawfully boarded or attempted to board the approaching train while it was in motion, he was guilty of contributory negligence and cannot recover." **20**

7. "Plaintiff, by taking the position he did, to wit, between the box car and the track upon which the train was approaching, assumed the risk of such position." **30**

8. "If the jury find that to stand between the box car and the opposite track at a time when a train was approaching thereon, was a careless or negligent act and such carelessness contributed to the injury, plaintiff received, there can be no recovery in these actions."

9. "Unless the jury find that the defendant by some invitation, express or implied, invited plaintiff to stand in the position he did, there can be **40**

no recovery. Mere knowledge that others had so used the premises does not amount to such an invitation."

10. "Your verdict must be for the defendant in each case."

VERDICTS.

Andrea Kalleberg \$5,000.00
Nils K. Janderup \$3,000.00

10

Grounds of Appeal.

(Filed June 17, 1917.)

NEW JERSEY SUPREME COURT.

MIDDLESEX COUNTY.

ANDREA KALLEBERG, Administra-
trix,

20

Plaintiff-Appellee,

vs.

RARITAN RIVER RAILROAD COM-
PANY,

Defendant-Appellant.

The appellant states the following grounds of appeal:

1. The Court refused upon request to non-suit
30 the plaintiff upon the grounds

(a) that there was no negligence shown on the part of the defendant;

(b) that if any negligence upon the part of the defendant was shown, such negligence was not the proximate cause of the injury and death of decedent;

40

Grounds of Appeal (Kalleberg Case.)

(c) that decedent assumed the risk of being injured in the position he took;

(d) that decedent was guilty of contributory negligence in taking a position between the freight car and the track on which the on-coming train was.

2. Because the Court refused to charge the following requests offered by the defendant: **10**

(a) The fact that some of the workmen had boarded the train from the side away from the platform before the day of the accident, does not establish an invitation to so board the train or to stand so near the tracks as to endanger one's safety;

(b) If decedent took up his position by the box car and between it and the track on which the approaching train was, for the purpose of increasing the probability of getting a seat when there was a large number waiting to take the cars, and he would not have been injured had he not occupied such position, he cannot recover; **20**

(c) Decedent, by taking the position he did between the box car and the track upon which the train was approaching, assumed the risks of such position.

3. Because the Court refused upon request to direct a verdict for defendant. **30**

EDWARDS & SMITH,
Attorneys of Defendant-Appellant.

Grounds of Appeal.

(Filed June 17, 1917.)

NEW JERSEY SUPREME COURT.

MIDDLESEX COUNTY.

 NILS K. JANDERUP,
*Plaintiff-Appellee,**vs.*
 RARITAN RIVER RAILROAD COM-
 PANY,
Defendant-Appellant.

10

The appellant states the following grounds of appeal:

20

1. The Court refused upon request to non-suit the plaintiff upon the grounds

(a) that there was no negligence shown on the part of the defendant;

(b) that if any negligence upon the part of the defendant was shown, such negligence was not the proximate cause of the injury to plaintiff;

(c) that decedent assumed the risk of being injured in the position he took;

30

(d) that plaintiff was guilty of contributory negligence in taking a position between the freight car and the track on which the on-coming train was.

2. Because the Court refused to charge the following requests offered by the defendant:

(a) The fact that some of the workmen had boarded the train from the side away from the platform before the day of the accident, does

40

Grounds of Appeal (Janderup Case.)

not establish an invitation to so board the train or to stand so near the tracks as to endanger one's safety;

(b) If plaintiff took up his position by the box car and between it and the track on which the approaching train was, for the purpose of increasing the probability of getting a seat when there was a large number waiting to take the cars, and he would not have been injured had he not occupied such position, he cannot recover; **10**

(c) Plaintiff, by taking the position he did between the box car and the track upon which the train was approaching, assumed the risks of such position.

3. Because the Court refused upon request to direct a verdict for defendant. **20**

EDWARDS & SMITH,
Attorneys of Defendant-Appellant.

30**40**

(Grounds of Appeal (Lambert, Wash.))

not enabling the plaintiff to see the train or to stand so near the tracks as to endanger one's safety.

(b) It is alleged that upon his position by the box car and between it and the track on which the approaching train was for the purpose of increasing the probability of getting a seat when there was a large number waiting to take the cars, and he would not have been injured had he not occupied such position, he cannot recover.

(c) It is alleged that by taking the position he did between the box car and the track upon which the train was approaching, assumed the risk of such position.

3. Because the Court relied upon reports to direct verdict for defendant.

Attorneys of Defendant-Appellant.



Defendant's Exhibit 1.

Before the year 1700

New Jersey Court of Errors and Appeals

ANDREA KALLEBERG, Admx. with
the Will annexed of Harold
Halleberg, deceased,
Plaintiff-Respondent,

vs.

RARITAN RIVER RAILROAD COM-
PANY,
Defendant-Appellant.

*Action at
Law.*

On Appeal.

NILS K. JANDERUP,
Plaintiff-Respondent,

vs.

RARITAN RIVER RAILROAD COM-
PANY,
Defendant-Appellant.

Brief of the Plaintiff-Respondent.

Statement-

The statement of facts which appears in the appellant's brief is correct, with some slight omissions. It might be inferred that the workmen from the du Pont plant had only started to assemble at the station of the Railroad Company at Parlin since January 1, the time when the proof shows, the new station was opened. The evidence is uncontradicted that the workmen in just as large crowds had gone to what was then the old station at Parlin every afternoon for the train to South Amboy since October, 1915. These men stood on the same space each day waiting for the train all those months. In

other words, the railroad company had knowledge, for a period of several months, of the fact that this large crowd came every afternoon to board the train, and not five days' notice, which might be inferred from reading the appellant's statement.

Another very important point which is entirely omitted by the appellant is the fact that the three freight cars which were standing on the side track were backed thereon about five minutes before the time for the passenger train to enter the station and while Janderup and Kalleberg were walking from the plant over to the station. It is also uncontradicted that since October, 1915, a large crowd of workmen had stood on the side opposite the station with full knowledge of the railroad company's yardmaster (Winner, p. 118, l. 13), and these men were obliged to stand there because the railroad company did not provide sufficient room on the station side for them, nor provide guards to handle the crowd. They were afraid of being pushed under the train or otherwise injured. (Janderup, p. 36, l. 39; Smith, p. 22, l. 30; Warren, p. 55, l. 14; p. 51, l. 39; Milges, p. 67, l. 24; Traill, p. 77, l. 1).

The Motion for Non Suit Was Properly Denied.

The question before the Court at the present time is whether the motion for non suit was properly denied. This motion was based on four reasons, which are set out as grounds of appeal. The only point to be considered on this appeal is whether the trial Judge should have permitted the Jury to determine the question of defendant's negligence, the lack of contributory negligence and the question of proximate cause, or whether

there was a sufficient amount of evidence to justify him in deciding these questions as a matter of law.

The reason for this explanation is that the appellant's brief appears to argue the questions as if this Court would pass on the weight of evidence. Appellant has argued the allegations of negligence on the part of the defendant, contained in the complaint, and seeks to show that there was not sufficient evidence to support these allegations. Point one made by the defendant relates to the sufficiency of the facilities of the station; point two relates to the adequacy of transportation equipment at the time of the accident; point three that there was no invitation on the part of the defendant for the passengers to stand between the train and the box cars as they did; point four relates to the question of guards. The appellant endeavors to show that there was not sufficient evidence of negligence on the part of the defendant in any one of the above respects, and, we presume, seeks to justify the first reason urged for the non suit, that there was no evidence of defendant's negligence.

So far as the accommodations at the station are concerned, the testimony is decidedly conflicting, and it was clearly proper to submit the question of defendant's negligence on this point to the jury. Defendant's witness Van Ness testifies that the entire space on the station side of the track on which passengers might stand was about one hundred feet long by sixty feet deep; he made his measurements in January, 1917, so this evidence is of course no proof of conditions at the time of the accident; that this would accommodate about thirty-three people, standing abreast, in the front row. There was evidence that there was a deep gully running

between the station and the roadway (defendant's Exhibit 1, p. 168); that some part of the space between the station and the road was not filled with cinders, which formed the so-called station platform, and the plaintiff's witnesses all testified, and this is uncontradicted, that there was no room for all the workmen who desired to take the train to stand on the station side, and that this state of affairs had existed for several months. These witnesses were there each night and they knew whether there was room for them to stand in front of the station or not, and their testimony is of more practical importance than mathematical calculations. At any rate, there was sufficient evidence to raise a clear jury question.

Upon the question of transportation equipment, the uncontradicted evidence of the plaintiff is that there were never a sufficient number of cars so that all the workmen could have seats; there was always a large crowd standing on the car platforms and even on the steps; that it was almost impossible for the conductor to get through; the trains were badly lighted and on several occasions box cars were used.

The evidence is clear that night after night, and night after night, the train which caused this accident, had come into the Parlin station with a considerable number of passengers already on board and with five or six hundred men waiting to take it, with so scanty equipment that the platforms, steps and aisles were nightly so jammed as to make it almost impossible for the conductor to get through. Under these conditions it seems to us that the railroad company was charged with three duties. First, to provide more cars for the comfort and welfare of its passengers, and thus to prevent the terrific push-

ing and jostling which occurred nightly. Second, even with additional cars, and, certainly, failing additional cars, it was charged with the duty of providing sufficient guards to keep back from the track the pushing crowd of prospective passengers. In spite of this duty the train crew, although knowing that a large part of the crowd nightly got on the train from the side of the track opposite the station all took their positions on the platforms near the station, no one was on the side away from the station to warn the prospective passengers to keep back. Third, the evidence is clear that the custom of jumping on the train was uniform and practiced every night. One witness testifies that the only night he got a seat in eighty rides was the night he jumped on. Another witness testified that the brakemen and conductor did not stay on the platform at all and that if they had the push of the crowd jumping on would have sent them through the roof. All of this situation could have been guarded against and prevented by the placing of vestibules or iron gates on the cars to prevent intending passengers from jumping on before the train stopped.

This was not an occasional thing of which the railroad had no notice and could not be charged with the duty to anticipate. The conditions were open and notorious, and the evidence in regard thereto, from the defendant's witnesses, was almost as strong as that of the plaintiff's. Indeed, so little did the defendant's witnesses change the situation as it existed when the plaintiff rested his case that counsel for the defendant did not even move for a direction of a verdict, although he had made a motion for a non suit. Under the evidence, therefore, it would seem absolutely that the full duty of the

Court was to permit the case to go to the Jury as it did.

The most serious fault of the defendant was in failing to provide guards to properly handle the unusually large crowd which assembled each day, and of which the railroad had knowledge for several months. The railroad company permitted and acquiesced and invited passengers to board the train from the opposite side of the station. This is evident from the fact that the company failed to take measures to protect passengers who might desire to stand between the main track and the station to await the afternoon train.

The situation resolves itself into the following state of facts: An unusually large crowd of workmen congregated at the Parlin station each afternoon around four p. m. and had done so for several months' time. There was not sufficient space between the station and the main track, and between the station and the road to the north upon which this large crowd could stand, without danger of someone being injured by jostling or being pushed under the train when it arrived. This fact was known to the railroad company. and its yard master and agents were there each day and saw what occurred. Each day there was pushing and jostling when the train arrived, and each day, because of the limited space and the danger of being crushed or being pushed under the train, a considerable number of passengers considered it safer and wiser to stand upon the side opposite the track, rather than run the risk of injury by attempting to board the train from the station side. These conditions existed for months and the railroad company knew the men were standing upon the opposite side of the track,

and knew, or should have known, the reason, and took no precautions and made no effort to remedy the situation. The company did not provide a safe place for all of the workmen to stand upon the station side of the track. The men were, therefore, forced to stand upon the opposite side. In other words, the railroad company impliedly invited passengers to await the train standing upon the opposite side of the track because of the lack of space in front of and along side of the station and because of its inability or indifference to protect men standing there from injury from the unusually large crowds. Where such a crowd and jostling is permitted to exist for a considerable period of time with the knowledge of the railroad company, and no precautions in the way of guards or extra space is provided to remedy the state of affairs, the plaintiffs in these cases and other passengers who stood in the same position, were certainly led to believe that the railroad company intended them to use that space to stand upon to await the train.

This state of affairs brings this case upon the question of invitation within the ruling of *D. L. & W. R. R. v. Trautwein*, 52 N. J. L. 169.

In this case the plaintiff fell over some railroad ties at the defendant's station and was injured; a stairway, which led from the station to the ground was used as a means of access to and from the station, and was upon the company's ground, and the company had knowledge of its existence and permitted its use but did not maintain it. It was this stairway which the plaintiff was seeking when she suffered her injury. Justice Depue said (p. 175):

“Did the plaintiff do right in taking this way out? That depends upon the question,

whether this way of passage was there by the recognition, procurement or assent of the company as a means for the entrance and exit of passengers. Proof of such approval by the company, or of its recognition, need not be made by any resolution or declaration of the company, or of its agents. If, to persons of ordinary understanding and discernment, it appeared to be such a way, and by the company it was allowed to remain and be in use by passengers going to or from trains, anyone going to and from a train as a passenger was authorized to make use of it. If the company permitted it to be done openly so that persons of reasonable judgment and discernment would conclude it to be a means of entrance and exit, then any passenger was authorized to take it and use it. It is submitted to you as a question of fact, whether, to an ordinary observer this was held out as one of the passageways from the depot to the public street. If so, any passenger, unwarned, might use it as such. If you should so find, it is entirely immaterial who built the stairway or who kept it in repair."

Bard v. Connecticut R. C. Co., 48 Vt., 101.

Great Northern R. R. Co. v. Thompson, 199 Fed., 395; 47 L. R. A. (N. S.) 506.

Cross v. Lake Shore &c R. R. Co., 13 Amer. St. Rep., 399.

Cotant v. Boone Suburban Rwy Co., 69 L. R. A., 982.

Lucas v. Pennsylvania R. R. Co., 16 Amer. St. Rep., 323.

In *Corson v. Atlantic City R. R. Co.*, 83 N. J. L. 517, there was a road leading to the defendant's station which stood in an angle formed by the crossing of two tracks. A passenger coming from one direction could use the road directly to the station, but a passenger coming from the direction of the vertex of the angle was obliged to make a long detour in order to use this road. Consequently, a path, crossing one of the tracks to the station, forming a short cut, had been worn by constant use by passengers coming from the latter direction. The plaintiff was walking across this worn path and tripped over wires and was injured. The Court of Errors and Appeals held that under normal conditions the existence of a worn path to a railroad station cannot be relied upon as an invitation to use that path so as to make a company responsible for injuries due to mere negligence so long as there is a safe pathway provided. It was proven that the way around to the road available to passengers coming from the vertex of the angle, formed by the track, was very often blocked by trains and passengers were, therefore, obliged to use the short cut. The Court said (p. 520):

“There was further testimony that the train customarily took water prior to that trip and therefore customarily blocked the road so that intending passengers were forced to take the other means of reaching the station. If the jury believed this testimony they might well find that the defendant by cutting off the proper means of access at and before train time and habitually forcing its patrons to use another way to reach its trains had adopted that other way and thereby invited its patrons to use it.

In such case defendant would be under a duty to use proper care to make such means of access reasonably safe."

This case is exactly parallel with the one at bar. It is no doubt true, as was the situation in the case of *Dieckman v. D. L. & W. R. R. Co.*, 81 N. J. L. 460 cited on the appellant's brief, that a person can not recover who voluntarily uses a path or occupies a position which is dangerous, where the company has provided a place which is safe for the use of its passengers awaiting its trains or approaching its station, and where the company takes the other necessary precautions to guard against injury. In the *Dieckman* case, a stairway led from the ground to the railway station of the company which was upon the top of an embankment. On the morning of the accident this stairway was unobstructed; there was no crowd at the station and it was quite apparently the proper path for the plaintiff to have taken in order to reach the station. Instead of that, the plaintiff came up by a short cut and crossed the tracks and while doing so was injured. There was a safe method of access to the station and a safe place for the plaintiff to have stood. In the case at bar, the plaintiffs were forced to stand where they did because of the fear of injury and lack of space upon the regular ground provided by the company, and this raises a clear question for the jury just as in the *Corson* case. The jury were proper persons to decide the question of whether the company did not invite passengers to stand upon the opposite side of the track, because of its failure to properly protect them from injury from the crowd and to provide sufficient space for them to stand.

In *Legge v. N. Y. & New Haven R. R. Co.*, 197 Mass. 198, which the appellant cites in his brief, the distinction between the case at bar and the Legge case, and, in fact, all the cases cited by the appellant, upon this question of invitation, is stated. The Court says:

“The knowledge of such use *where proper arrangements have been otherwise provided* does not of itself amount to such invitation.”

The facts of that case show that a safe way had been provided for passengers to approach the defendant's station and that the plaintiff chose another means of access, although the way provided by the company was free and unobstructed. The same state of affairs existed in the case of *Boden v. Boston Elevated R. R. Co.*, 205 Mass. 504 cited upon the appellant's brief. So upon the question of implied invitation by the company, under point three in the appellant's brief, the distinction which we have pointed out raises a question of fact for the jury to decide.

Furthermore, the yard master in charge of the company's property at Parlin anticipated this very accident, he so testifies (p. 120, l. 33):

“Q Then on that day you hadn't been up in front of the station warning people to get back, had you? A I had not.

By the Court:

Q Why were they warned to get back?

A It was a very dangerous thing for them to do to stand in on that track when there were cars there and whenever I would be at the station I would walk down at them and ask them to stand back.

Q Why was it dangerous? A Too close. When there was cars on the first track, and

that passenger train pulling in, it made it dangerous for them to stand that close.

Q Why dangerous? In what way? A The least projection that was hanging out would catch those people standing there.

Q And were there occasions when there were projections from the train? A Only the same as occurred that day."

The railroad company's duty was to guard its passengers from any injury whatsoever which might result from the gathering of an unusually large crowd at its station, and not only those standing in front of its station but those who were obliged to stand where the plaintiffs stood.

The plaintiff need not prove that the company must have anticipated the very accident which happened. It is sufficient if the plaintiffs show that there was a large crowd and not sufficient precautions taken to protect the passengers from injury. At least the plaintiffs produced evidence from which a jury might draw this conclusion.

Rivers v. Pennsylvania R. R. Co., 83 N. J. L. 514.

In *Exton v. Central R. R. Co.*, 62 N. J. Law 7, the plaintiff went to the Liberty Street station of the Central railroad in New York City and while walking from the waiting room to the baggage room to check her baggage, she was knocked down by two cabmen who were scuffling. The cabmen were, of course, not employes of the railroad company and entire strangers to it, but the company was held liable. On page 15 the Court said:

"Carriers of passengers are bound to exercise the utmost care in maintaining order and guarding those they transport against violence from whatever source arising, which

might be reasonably anticipated or naturally expected to occur.”

It is further said (pp. 13-14):

“It was proper to submit to the jury the question of the dangers of this way, and whether they were habitual, customary dangers which the defendant could reasonably anticipate might exist, and whether they were such as required precautions against accident and injury to passengers therefrom, and whether the defendant had exercised the required degree of care and caution to protect its passengers from such dangers. If the defendant had notice or knowledge of what might happen in its depot, or could reasonably anticipate what might happen there dangerous to others lawfully there, it was bound to use care to avoid the injury which might be occasioned, and it would matter little whether the danger was habitually existing or might occur only at intervals. Nor can it matter but little whether the dangers arose from the acts of the servants and employes or others, so long as the dangers existing were not observable by the passenger so as to be avoided, and they were known to or ought to have been known to *the defendant*, or anticipated by the officers of the defendant company in charge of the station.

“A railroad company is a common carrier, and owes to its passengers the duty of guarding them from assaults and insults from their fellow-passengers and strangers, when by a high degree of care the same might have been prevented. *Putnam v. Broadway Railroad Co.*, 55 N. Y. 108; *Holly v. Atlantic Street Railroad Co.*, 61 Ga. 215;

Hendricks v. Sixth Avenue Co., 12 Jones & S. 8."

In *Taylor v. Pennsylvania R. R. Co.*, 50 Fed. 755, the defendant advertised extensively a low rate fare from Pittsburgh to Niles, Ohio, and a large crowd had gathered at the station in Pittsburgh to take a special train to the latter place. The plaintiff was standing near one of the exit gates and it was shown that this one gate was the only one open through which the crowd could pass, four other gates being shut. The plaintiff, in attempting to pass through this gate was pushed against the iron railing and injured. It was held that it was proper to submit to the jury the question of whether the defendant had used ordinary care in controlling the large crowd which it had invited and knew would be present and whether a sufficient number of guards were provided and whether ordinary care had been used in protecting the plaintiff when such a large crowd had been anticipated.

In *Kuhlen v. Boston & Northern Street Railway Co.*, 193 Mass. 341, 7 L. R. A., (N. S.) 729, plaintiff was standing at the defendant's station and was crushed while attempting to board the train, because of the large crowd of people which had collected at the station, and it was held, that where there was a large crowd at a station to take a particular train, and there has been on many occasions surging and struggling to get upon the cars, the jury may find the carrier negligent in failing to anticipate such occurrence and take proper precautions to protect passengers from injury, that it was a question for the jury to determine whether a carrier is bound to provide extra men to prevent injury to passengers when it knows or should know

there is apt to be a large crowd at its station. The Court said:

“It is bound to select and employ a sufficient number of competent servants to meet any exigency which, in the exercise of that high degree of vigilance and care to which it is held, it ought reasonably to have anticipated. *Treat v. Boston & Lowell Railroad*, 131 Mass. 371. * * * And its duty to use all proper means and precautions to protect its passengers against injuries caused by the misconduct of other passengers, such as under the circumstances might have been anticipated and could have been guarded against, is no less stringent than the obligation to prevent misconduct or negligence on the part of its own servants.”

Viemeister v. Brooklyn Heights R. R. Co., 87 N. Y. Supp. 162; *Dittmar v. Brooklyn Heights R. R. Co.*, 86 N. Y. Supp. 878; *Dawson v. New York & Brooklyn Bridge*, 52 N. Y. Supp. 133; and *Muhlhouse v. Monoghela Street R. R. Co.*, 50 Atlantic 937; *Glennon v. Boston Elevated R. R.*, 207 Mass. 497, 32 L. R. A. 470; *Collins v. Boston Elevated R. R. Co.*, 217 Mass. 420; 51 L. R. A. (N.S.) 1154.

A very close case to the one at bar, which happened in this State is *Pennsylvania R. R. Co. v. Stockton*, 184 Fed. 422, where it was held that the question of the negligence of the railroad was properly submitted to the jury to determine whether proper precautions had been taken to protect passengers from a crowd, where there was evidence that on the day the passenger was killed, the usual large week-end crowd had accumulated at the Market Street, Newark, station, that there were no guards to keep the

crowds back or officials to guard the crowd and that the passenger was pushed under the train when the crowd surged forward to board the train.

The fifth point which appears in the appellant's brief takes up the third and fourth reasons advanced as grounds for non-suit *i. e.* that the plaintiff was guilty of contributory negligence and that plaintiff, Janderup, and the decedent, Kalleberg, were guilty of contributory negligence and assumed the risk of being injured.

The reason given by the plaintiff himself for standing there is (p. 36, l. 29):

“Q Why did you take the other side this time? A Why, because on account of the crowd, and the night before I pretty near got knocked down, so I thought there was a little more room on the other side, and I had my ticket so I didn't need to go over there.”

He says again, on cross-examination (p. 51, l. 39):

“Q You saw a crowd there and you thought you could get on quicker from the side you were on? A Not quicker, but get on without getting hurt.”

This plaintiff had only worked at the duPont plant for a week prior to the accident and had only been at the station three times, each time, he testifies, he saw about 100 to 150 men standing upon the same side of the track which he occupied, and he is supported in his testimony by all of the other witnesses both for plaintiff and defendant. In fact, proof shows that men had stood on that side of the track to board that afternoon train for a long time before Janderup

started work; that it was a customary thing to do (Smith, p. 22, l. 30; Warren, p. 55, l. 14). This latter witness also testifies the reason why he stood upon the opposite side of the train on the night of the accident was because his father had been knocked down by the crowd one night while standing on the station side of the track. Milges, p. 67, l. 24, says, "Such a crowd there that we couldn't get on that side for fear of getting throwed under the car, so we stood on that side of the freight train to protect ourselves." Traill, p. 77, l. 1, says, "Because it was less crowded on the other side," meaning the opposite side to the station. So it is clearly established that the railroad company had knowledge of the fact that men were standing upon the opposite side of the track as well as upon the station side and that they abetted and acquiesced and allowed it. This fact makes it all the more negligent on the part of the defendant to move freight cars directly in front of the spot where it knew the passenger train must stop. It knew that passengers were standing in a position where they would be placed between the freight cars and the train. The yardmaster himself so testifies. It certainly was not contributory negligence for the plaintiff Janderup to take that position when he had seen a large number of passengers in the same place on two previous occasions and no complaint by the railroad company.

On the question of contributory negligence, then, we find the only evidence is that Janderup had taken the train twice before and there is no evidence to show whether Kalleberg had ever taken it. Janderup had nearly been knocked down the night before on the station platform, and had crossed the track because it was less

crowded. In the Kalleberg case the jury may have believed that he had taken the train regularly and had crossed the track, as the witness Milges testified he did, because it seemed to him dangerous on the station side, through the possibility of being forced under the train by the crowd, or they might have believed that never having taken the train before, he had crossed the track because he saw many others doing so without warning. There was a crowd on the side of the track where Kalleberg and Janderup stood. Under the pushing, crowded conditions which had existed nightly, it would seem that no place would have been more safe than the position assumed by these men. Certainly with their backs up against the freight cars they were apparently in no danger of being pushed by the crowd or jostled or thrown under the train. If, as the yard master testified, he had thought it necessary to warn others of the danger on previous nights, Kalleberg and Janderup, who, so far as the evidence shows, were unaware of any special danger on the side where they stood, were entitled to such warning from the company.

Contributory negligence is, roughly, the doing of something which a reasonable man would not do, or the failure to do something which a reasonable man would do. The law requires a man to be reasonably cautious but it does not exact timidity. A finer, cleaner cut, more intelligent lot of witnesses was never on the stand than the witnesses in this case, yet they testified that they selected the position in front of the freight train as the safest place to stand. Under these conditions we fail to see how either Janderup or Kalleberg can be held, as a matter of law, to have deviated from what should be expected of a reasonable man. There was no absolutely safe

place on or around the station platform—no place where the crowd might not jostle and injure. The place selected by Kalleberg and Janderup was relatively, so far as could be observed, as safe as any and safer than most.

Furthermore there was no fence or barrier of any kind between the main track and the switch to indicate to passengers that they were not to stand on that side of the main track. On ordinary occasions it might not be the duty of the company to erect a fence at this point but where such extraordinary crowds congregated each day and stood on both sides of the main track to await the train, and this fact was well known to the company, it became the duty of the company to place some barrier between these tracks, in order that there might be no question but that passengers would be prevented from standing in this position. Handling a large crowd of workmen and keeping them in order is a different proposition from the management of a few passengers. While the latter might be told that they must not stand in a certain place and would obey, a crowd such as congregated at the Parlin station could not be controlled by mere word of mouth and the duty of the railroad company was greater in this extraordinary case than if the station had only been used by an ordinary and general number of passengers.

So far as the deceased Kalleberg is concerned, there is no evidence as to how long he had worked at the plant, nor whether he ever before had taken this train. The only proof is that he was killed in the same manner as Janderup was hurt.

If the railroad company permits its passengers to use certain parts of its station, even though these parts may not be the regular position for

passengers to stand in awaiting a train, and does not take precautions to make it safe for them to stand at the regular station, or provide sufficient room for an unusually large number of passengers to stand, and a passenger is hurt, the company is liable.

We refer to our argument in answer to the third point urged by the appellant, that the plaintiffs were neither invited nor directed to stand upon the opposite side of the track, and therefore, cannot recover. If a person assumes a position of danger when a position of safety is open to him he is guilty of contributory negligence and has no recovery in case of injury, but where he takes up this position because of acts which amount to an implied invitation it certainly becomes a question for the jury as to whether he has been guilty of contributory negligence. The proof is uncontradicted that a large number of men stood on the opposite side of the tracks, because there was no space to stand on the station side, because they were afraid of being injured by the crowd, and that there were no guards or precautions taken by the company to provide a safe place for these men to stand upon the station side, although the company knew they were standing where they did. Appellant in his brief argues contributory negligence on the part of Janderup and Kalleberg, in standing between the freight cars and the track, on the theory that they should have known that anything projecting from the train would strike them, and that therefore their action in so standing was the cause of their injury. This theory is not sustained by the facts, however, since neither man was injured by anything projecting from the train. They were injured by the crowd which forced itself into the narrow space be-

tween the train and the freight cars, as though going into a funnel. The same accident might have happened, without the intervention of the man who jumped on, if the train had slowed down as though it were going to stop in such a position that a car platform would be alongside the freight cars and the crowd had therefore pushed and rushed in the effort to reach the steps before the train should come to a stop. The injuries suffered by Janderup and Kalleberg, therefore, are not attributable to their overlooking the possibility of being struck by a projection from the train. Under these circumstances it is perfectly obvious that the question of the contributory negligence of these plaintiffs was one for the jury to decide. See *D. L. & W. R. R. Co. v. Trautwein*, 52 N. J. L. 169, and other cases cited by respondent on pages 8 and 9 of brief.

In the case of *McGeehan v. Lehigh R. R. Co.*, 24 Atl. Rep. 205, the very language points out the marked difference between that case and the one at bar. The appellant quotes from the opinion as follows:

“But it is sufficient to say that the plaintiff of his own mere will without the slightest necessity or reason for so doing, placed himself between the two tracks in a position of manifest danger before the arrival of the train he was awaiting.”

An examination of the facts in the case will show that this statement is correct. There was no necessity for the plaintiff's standing where he did and it is very different from the case of Janderup and Kalleberg.

The case of *McGrath v. D. L. & W. R. R. Co.*, 100 Atl. 753, is not in point, for the plaintiff

there was told to walk through a moving train. No one actually told Janderup or Kalleberg to stand where they did. Conditions, owing to neglect by the defendant company, forced them to stand there.

The sixth point made in the appellant's brief is that the negligence of the defendant was not the proximate cause of the injuries. This is another reason urged for non-suit.

The proximate cause of the accident was really the permitting of such an unusually large crowd of workmen, anxious to reach their homes after a day's work, to assemble at a station with inadequate space upon which to stand and without any guards to control its actions. If guards had been distributed along the track to hold the crowd back and to prevent it from rushing forward to board the train as it approached, no one would have been able to attempt to jump on while the train was still in motion. This was a duty of the railroad company, which was not fulfilled, and is really the basis of the whole controversy. Many other circumstances linked together to cause the injury and death, but the real foundation and cause was this large uncontrolled crowd of men permitted to push and shove as they chose.

The question of proximate cause has been dealt with by our Court of Errors and Appeals, and the rule laid down is that the negligence must be the natural and proximate cause of the injury. In order to defeat recovery, there must be some independent intervening agency between the original negligent act and the resultant damage.

Delaware, Lackawanna & Western R. R.
v. Salmon, 39 N. J. L., 299-308.

Cuff v. Newark, etc. R. R. Co., 6 Vroom, 18.

Scott v. Shepard, 2 W. Bl. 892.

Thomas v. Winchester, 6 N. Y. 397.

There is no such intervening independent agency in this case. Five or six hundred workmen came to take this train every night for several months prior to the accident, to the knowledge and with the acquiescence of the railroad company. There was no attempt made to control them. On numerous occasions men attempted to board the train while it was still moving. The proof is uncontradicted that a large number of men stood upon the opposite side of the track from the station every night, and the natural result, and the very one which the railroad company anticipated, happened, and this result was furthered by the act of the defendant in moving the freight cars to the very dangerous position in which they were placed.

This question of proximate cause is almost always one for the jury to determine.

In *Sutton v. Bell*, 79 N. J. L., 507, Mr. Justice Garrison, speaking for the Court of Errors and Appeals, said, p. 508:

“The existence of negligence, whether of the plaintiff or of the defendant, depended upon the conclusion to be reached from a variety of circumstances considered not as isolated occurrences but altogether and in view of their relation to and reaction upon each other. To draw a conclusion as to the conduct of the parties under circumstances thus connected, is of the very essence of the jury function. In proportion as such circumstances multiply and intercalate, it becomes more and more a matter of deciding

between conflicting inferences, and less and less a matter of declaring that one inference alone is conclusively compelled by the testimony. The latter, viz., to decide that there exists no recognizable controversy upon the testimony, is the function of the court; but to recognize the existence of such a controversy, and to proceed to decide it, is to usurp the function of the jury, which, in the present case, the court very properly refused to do."

That there were a number of circumstances which contributed to this accident in this case is undoubtedly true and where such a variety of circumstances occurs, it is more than ever a question for the jury to decide whether the proximate cause was the negligence of the defendant or the accident occurred for some other reason.

Smith v. Public Service, 78 N. J. L., 478, where Mr. Justice Trenchard said, speaking for the Court of Errors and Appeals: "Whether an act or omission alleged to be negligence naturally and proximately caused an injury, is, as a rule, a question for the jury."

The Trial Judge Properly Refused the Defendant's Requests to Charge.

The appellant presented to the judge several requests to charge and claims that there was error in the refusal of the trial judge to charge three of these requests.

The first request (a) under point seven of the appellant's brief, we think, was quite properly refused in the form that it was presented. The cases cited by appellant under this point, and which we have analyzed in our brief, hold that

the knowledge by the railroad company of the use of its land, *where proper arrangements have been otherwise provided*, does not amount to an invitation. It would have been improper for the trial judge to have charged the jury with the request in the language in which it was presented unless the words "where proper arrangements have been otherwise provided" were added and if no proper arrangements or safe place to stand upon the station side of the track was provided by the railroad company, and the company acquiesced in the workmen standing on the side away from the station, the jury might infer, as was said in the case of *Corson v. Atlantic City R. R. Co.*, *supra*, that this state of affairs amounted to an invitation. In other words, the jury were entitled to be instructed that the fact that the workmen stood upon the side away from the platform did not amount to an invitation unless they found that the company had provided a sufficiently large and safe space for them to stand on the station side.

This request bears upon the question of the contributory negligence of the plaintiffs, and we think that the trial judge in his charge covered the points which were sought by the appellant's counsel to be brought to the attention of the jury. He said (p. 155, l. 15):

"The specific negligence claimed against the plaintiffs is that here was a place of obvious danger, that in the nature of things the cars were separated by a narrow space only, that they were aware, as well as the railroad company, of the crowding and jostling to get aboard these cars, and the defendant says that if the railroad company ought to have anticipated such an accident by guarding against it, so ought these men,

one of whom lost his life and the other was injured, to have appreciated the danger and also been on guard against it by keeping away from that place.”

He then left the question of contributory negligence to be decided by the jury. He refused the request except as charged, and we think his charge on the question of contributory negligence was in every request proper.

It would have been clearly erroneous to have charged request (b).

The evidence of the plaintiff (p. 36, l. 29; p. 51, l. 39) already quoted in this brief, is that he got on the side of the track which he did because he had been so jostled and tossed around on the opposite side the night before. This request, therefore, is pure hypothesis not based on the evidence, and the Court, of course, is not called upon to charge hypothetical questions of law. The same argument and reasoning applies to request (c) as we have already made under request (a). It would have been improper to instruct the jury that the plaintiffs assumed the risk by taking the position they did without further informing them that the railroad company had provided a safe place for them to stand on the ground immediately in front of and alongside of the station. It was for the jury to decide whether the railroad company had provided a sufficient and safe place for passengers to stand upon the station side of the track, so that a passenger who stood anywhere else was assuming the risk; or whether the plaintiffs were justified in standing where they did, because of the failure of the railroad company to provide a safe place in front of the station. The request is entirely too narrow and it would have been improper to have charged the request in the lan-

guage in which it was presented. The language of the trial judge in his charge, as quoted above, we think amply covers the law upon this phase of the case.

For the reasons heretofore given, we think the judgment should be affirmed.

Respectfully submitted,

FORT & FORT,
Attorneys for Respondents.

J.-G. SHIPMAN,
FRANKLIN W. FORT,
Of Counsel.

1870

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

New Jersey Court of Errors and Appeals.

ANDREA KALLEBERG, Admx. with
the Will annexed of HAROLD
KALLEBERG, deceased,

Plaintiff-Appellee,

vs.

RARITAN RIVER RAILROAD COM-
PANY,

Defendant-Appellant.

NILS K. JANDERUP,

Plaintiff-Appellee,

vs.

RARITAN RIVER RAILROAD COM-
PANY,

Defendant-Appellant.

10

Action at
Law.
On Appeal.

20

BRIEF OF DEFENDANT-APPELLANT.

30

These cases were tried together in the Middlesex Circuit Court before Hon. Frank T. Lloyd and jury. The trial of the Kalleberg case resulted in a verdict for the plaintiff in the sum of \$5,000, and in the Janderup case plaintiff recovered a verdict of \$3,000.

The cases now come before this Court on an appeal by the defendant.

40

Statement.

Defendant owns and operates a railroad running from South Amboy to New Brunswick, Middlesex County. It passes through several towns and villages. Within the last few years a large powder plant (owned by the DuPont Powder Co.) was erected at a place known as Parlin in said County, along the line of defendant's railroad, and in order to accommodate the workmen employed therein, defendant erected a station at said place and stopped its trains thereat.

Defendant's railroad is, in general, a single track line; at Parlin, however, it is double tracked for about a mile. The railroad runs approximately east and west; the station is to the north of the tracks. The station building is 37½ feet wide by 24 feet deep, about twenty feet away from the nearest rail of the nearest track; east of the station, and about 100 feet therefrom, is a public road known as Washington Road, crossing the railroad at right angles. The railroad property runs to the road. East of the station it is 60 feet deep. Between the station and the road and the track, and the northerly line of defendant's property, therefore, there is a space of 100 x 60 feet which was used as a platform. The track nearest the station is twenty feet therefrom and is used for passenger service; the other track is used for freight trains and is known as a "drilling track".

The space between the two tracks is seven feet.

To the south of the railroad is the property of the Powder Company where a large number of men are employed. The whole proposition was new. The powder plant newly created and erected; the station was erected for the accommodation of the employes of the Powder Company—it was not at the time of the accident completed—it was opened January 1st and the accident occurred January 5, 1916.

On the day in question plaintiff Janderup, and decedent Kalleberg, both being employes of the Powder Company, having finished work and intending to take a train for South Amboy, went from the works of the Powder Company to the property of defendant. They did not go out by the road, and thence to the station, but crossed the property of defendant. When they arrived there three freight cars had been drilled in on the "drilling track" and left standing about opposite the station. Janderup and Kalleberg took up a position between the freight cars and the passenger track. As the train for South Amboy approached, and while it was in motion, fellow employes of Janderup and Kalleberg jumped on the steps, and one of them, having missed his footing, hung on by the handle and swung out from the car; he hit against another man, who in turn hit against another, and so on until men were thrown against Janderup and Kalleberg, squeezing them between the freight cars and the passing passenger train, and injuring both Janderup and Kalleberg. Kalleberg died from his injuries.

10

20

Negligence Claimed.

1. The complaints in both cases are similar. The allegation of negligence is:

"4. Because of the negligence of the defendant and its servants in failing to maintain a sufficiently large station, and in failing to provide sufficient guards at said station, and failing to provide sufficient and proper equipment for said train, and because of its negligent backing of the freight cars on said track, said Harold Kalleberg, deceased, at the time and place aforesaid, without any negligence on his part, was jostled and squeezed by the large crowd of passengers attempting to board defendant's train when it arrived, and was pressed against the freight cars standing upon defendant's side track and was killed, to wit, on the fifth day of January, nineteen hundred

30

40

and sixteen, within twenty-four calendar months of the commencement of this action.”

In an attempt to prove the allegations of negligence, plaintiff produced various witnesses. We submit that the testimony of such witnesses failed to establish the points relied upon by plaintiff.

POINT I.

- 10 **The stational facilities supplied by defendant were ample to accommodate the number of passengers usually awaiting the train in question.**

The testimony of the witnesses as to this point was as follows:

- 20 Smith states that the station was under construction at the time of the accident; the platform was not completed (p. 16); from the tracks in toward the station and at the easterly end thereof, for a distance of ten feet and extending from the station to the road, the land was level, north of the ten feet it sloped downward for two or three feet, and continued on to the fence of the hotel property of the Powder Company; and except for the slope the ground was in fairly good shape (p. 28).

- 30 Warren states (p. 54) when asked how many people were at the station usually to take this train replied that there were about 500; that there was not sufficient room for them on the station platform, but he also states on cross examination that the engineer would stop across the road near the old station; that the track is at grade with the road; the road is wide and between the road and the station there was quite a broad space (pp. 60-61) and there was a space between the first rail and the station (p. 61).

- 40 Milges states that the station side was always crowded—couldn't get two men there (p. 68).

The answers to interrogatories propounded by plaintiff to defendant, and answered under oath, sets forth that the platform contained 8,600 square feet of space.

We submit that from such testimony insufficient stational facilities was not proven. The most that can be said of the testimony of the witnesses Warren and Milges is that they were testifying to the fact that there was a large number of men on the station platform and not to the capacity thereof. They were not engineers, nor had they ever constructed a station or platform. Their evidence was clearly the result of guess work. Plaintiffs offered no testimony of competent witnesses to establish that the platform was not sufficient to accommodate the number of passengers usually there awaiting trains. The evidence of the witness Van Ness of the defendant, who was an engineer, who had been constructing stations for at least fifteen years, clearly shows that in the space between the easterly end of the station and the road, there was sufficient room for 600 people to stand comfortably, and that if we consider the space between the station and the track at least 50 more people could stand there. While it is true that some of the witnesses testify that there were generally from 500 to 600 people at the station to take this train, such was plainly a guess, and it was clearly established by the answers to interrogatories introduced in evidence by the plaintiff, that there were only 387 passengers taken on that train at Parlin that day. The actual number of passengers taken up at Parlin on that train, demonstrates that there was sufficient room on the platform to accommodate nearly twice the number of passengers actually carried on the train. Had there been, however, 600 people at the station, there would still have been sufficient and adequate stational facilities to accommodate them (Van Ness, p. 125).

10

20

30

40

POINT II.

**Defendant, on the night in question,
furnished adequate transportation
facilities.**

Plaintiffs contend that defendant failed to furnish adequate facilities in that it failed to provide sufficient cars on the train to accomodate the awaiting passengers and thereby occasioned the rush of passengers desirous of obtaining a seat. It is true that various witnesses state there were from 500 to 600 people awaiting the arrival of this train. This is plainly a guess on their part. They have no means of knowing. The positive evidence introduced by plaintiff in the answers to interrogatories offered in evidence is that there were 387 passengers taken up from Parlin on the train in question. The train consisted of six cars seating 40, 62, 62, 66, 64 and 64 passengers respectively, making seating capacity for 358 passengers. Of course each car contained standing room and the baggage car contained a 25 foot baggage space (page 99). The run from Parlin to South Amboy was about 12 minutes. Passengers not securing seats were not required to stand longer than that time. It was no hardship upon passengers to require them to stand twelve minutes, nor would the fact that those not securing seats would have to stand for twelve minutes render the company liable to one injured by the haste of others to secure a seat.

The failure to provide adequate transportation facilities, however, if such failure had been proven, had nothing to do with the happening of the accident. There was no proof that the person jumping on the car and who hung on the handle was rushing for a seat. It may have been his desire to be first in the train or some other

purpose which actuated him. Liability of defendant for the injuries to Janderup and Kalleberg cannot be predicated upon the failure of defendant, if any, to furnish adequate transportation facilities.

POINT III.

Plaintiffs were neither invited nor directed to board the train from the side opposite the platform at the station, nor to stand between the box cars and the track upon which the train was approaching. 10

Plaintiffs do not contend that defendant by word or order directed or invited plaintiffs to stand on the tracks in order to board the train, but by showing that passengers had for some time done so without being prevented from so doing, or warned against the same, seeks to establish an acquiescence by the company in their doing so, and to spell thereout an invitation. 20

Invitation may either be expressed or implied. In order that an invitation to use lands may be implied some act or conduct of the owner must be pointed out, whereby the plaintiff was led to believe that the owner intended his lands to be used in the manner plaintiff was using them. In this case no act or conduct of the defendant indicating any such intention was established. Its station was on the northerly side of the tracks; there was no planking between the tracks or on the side away from the station. The ground was not levelled off away from the station nor was there anything there to invite passengers to get on from that side. All the physical characteristics indicated that defendant intended the station side and platform to be used for the purpose of boarding and alighting from trains 30

and no other. It is established law that a carrier has the right to determine the routes by which passengers shall approach and leave its stations, and where a carrier has provided a safe approach and this is sufficiently pointed out to the public, it is the legal duty of passengers to go to and from the station in the way provided. *Chicago D. & Q. R. R. Co. v. Harrison*, 110 Ill. App. 211. Such is also the rule relative to places to board the train. Where the Company has sufficiently

10 pointed out the place at which it intends passengers to stand awaiting the arrival of the train, it is the duty of intending passengers to use such place.

Plaintiff, however, seeks to avoid this well recognized rule by alleging that the Company had permitted passengers to board the train from the side away from the station and had not warned them against so doing, and that therefore, plaintiffs Janderup and Kalleberg had a right to assume that such method of boarding the cars was

20 intended by defendant. Such an argument cannot prevail. It is well settled that mere passive acquiescence by an owner in a certain use of his land by others involves no liability. *Deeckman v. D. L. & W. R. R. Co.*, 81 N. J. L. 463; *Corsen v. Atlantic City R. R. Co.* 83 N. J. L. 519.

In *Boden v. Boston Elevated R. R. Co.* 205 Mass. 504; 91 N. E. 879, the Court said:

30 "There was testimony that other persons like the plaintiff had sometimes gone out upon this platform and met cars with a view to increase the probability of their getting a seat when there was a large number waiting to take the cars on the covered platform. But this was contrary to the plain indications of the purpose of the railroad company. They went there, not in the exercise of their right as passengers, but as trespassers, or at least as mere licensees."

In *Legge v. N. Y., N. H. & H. R. R. Co.*, 197 Mass. 83 N. E. 367, the Court said:

“Nor does it make any difference that he goes where others with the knowledge of the railroad company have gone before him, unless there is some invitation expressed or implied upon the part of the company. Knowledge of such use where proper arrangements have been otherwise provided does not of itself amount to such invitation.”

10

Hillman v. Boston Elev. Ry., 207 Mass. 478; 93 N. E. 653;

Dodge v. Boston & Bangor Steamship Co. 148 Mass. 207; 19 N. E. 372;

And see:

Youngeman v. N. Y., N. H. & H. R. R. Co., 111 N. E. 607 (Mass.);

Hyams v. Boston Elev. Ry. 216 Mass. 560; 104 N. E. 370.

In the case at bar defendant had plainly indicated that the station platform (even though not entirely completed) was the place where passengers should wait to board its train. It was not necessary that it post up printed notices to that effect or have attendants to so notify passengers. The physical surroundings were sufficient notice. Witness West testifies that it was plainly obvious that the station side was the proper side to board the train (p. 97).

20

The very fact that defendant had placed on this track the three freight cars was notice to intending passengers that they were not to stand upon that track to await the arrival of the passenger train.

30

We cannot see how any one can argue that there was any invitation by defendant to intending passengers to take up a position between the standing box cars and the track upon which the train was approaching.

40

POINT IV.

Negligence cannot be inferred from the failure of defendant to have guards at the station in addition to the train crew.

The train carried a crew of six men. There were four men in the station. It is established
10 by the evidence that the train men stood on the steps of the cars on the station side as the train approached and either warned people from jumping on before the train stopped (Morgan p. 136) or held a position on the lower step (Sexton p. 145; Wiskoski p. 146). The crowd was generally orderly until the train came, when some of the more impatient would hurry to get on. Men would hop on the cars while the same were in motion.

20 A consideration of this aspect of the case leads us to the question of the duty of guards if it was the duty of the company to have them present.

We submit that their duty would be to warn and protect passengers when such passengers were at the station at the place provided for their accomodation, and while in such place they were entitled to protection, we do not believe that said guards would be compelled, as a part of their
30 duty, to leave the station and platform where passengers were rightfully assembled, and go to the opposite side of the track to warn those who voluntarily had taken up positions there.

It is shown that the conductor stood on the platform to warn passengers to wait until the train stopped before attempting to board it (p. 134). Two of the train crew stood between the cars, on lower platform step, to warn passengers from boarding until the train stopped (Sexton
40 p. 145; Wiskoski p. 146). These were, of course, on the station side of the train. This would

sufficiently warn passengers of the danger, and certainly the guards could not go further and seize each eager passenger and by actual physical force hold them until the train came to a full stop.

We admit this question of guards would have a more material bearing on the case had plaintiffs been injured on the station platform.

We refer here to our argument under Points VI and VII and submit that plaintiffs' injuries are traceable to their own negligence in voluntarily taking the dangerous position alongside the freight cars, and not to the absence of guards. 10

POINT V.

Plaintiff, Janderup, and decedent, Kalleberg, were guilty of contributory negligence in standing between the freight cars and the track on which the train was approaching and assumed the risk of being injured while in such a position. 20

It is admitted that the freight cars were standing on the drilling track before either Janderup or Kalleberg reached the station. It is admitted that the position taken by them was voluntarily assumed (Janderup, p. 49; Hoppler, pp. 86-90). In the Janderup case, he testified (p. 36) that he had taken the train from the station side the night before; that he had nearly been knocked down, and that on this occasion, on approaching the station, he saw the crowd and thought there was a little more room on the other side and stayed on that side (p. 36); did not go over to the station platform (p. 51); went around the end of the freight cars and stood between the track and the box cars (p. 39); that he took the position voluntarily (p.49); that the space between the box cars and the other track was "two 30 40

foot six" and that he knew when the train approached it must pass directly in front of him, and he would be between the two trains (p. 30). That other men stood in between the box cars and the track—ten or fifteen of them; that more stood at the south of the box cars and away from them. That he took such position because it was more convenient (p. 51) and he thought he could get on quicker than on the other side (p. 52).

10 That as he stood there he saw the train approach and then saw some one hanging on the side by the handle (p. 50); the train moving; the hanging man bumped into someone and he into someone else, and so on until the men between the cars were crushed together and he was injured (p. 51). That he could not step back as the train approached because he was up against the freight cars (p. 51).

20 In the *Kalleberg* case it is established that before the train arrived Kalleberg crossed the tracks to the station and went inside thereof to purchase a ticket, came out and left the station and platform and recrossed the tracks and took up a position between the box cars and the track on which the train approached (Hoppler, pp. 86-90).

It will be noticed that Janderup does not at any time give as a reason for not going to and staying on the station platform or ground that
 30 the same was so crowded that he was unable to do so, or to obtain standing room thereon, but says he "saw the big crowd on the other side of the track (station side) and stood on this side" (p. 36). He admits he had taken the train from the station side the night before (p. 36) when the crowd was equally as large (see testimony of witnesses, pp. 17, 54, 68, 77, 82, 88). That because of the crowd and the fact that he had pretty nearly
 40 been knocked down the night before *he thought there was a little more room on this side* (p. 36).

That he had never stood on this side of the track before (p. 47), but had stood on the station side (p. 47). That he thought because he "saw the big crowd there, it would be more convenient to get on this side; it wasn't so crowded" (p. 51) and he could get on the train quicker than he could on the other side (p. 52).

It is, therefore, beyond question that he stayed on the side away from the station at a place not provided by the company for passengers to board the cars, of his volition without order or direction or invitation of the company, and purely for his own convenience, and his desire to get upon the cars more quickly. Kalleberg, having been to the station just before the train arrived, of his own volition, left the station building and grounds where he was in a place of safety and took up his position between the freight cars and the track upon which the approaching train was.

That the position taken was dangerous and subjected one to risk of injury was apparent. Witness Milges states (pp. 71-72) that in taking up such a position it was apparent that if anything hung from the step or if there was any projection from the train one was liable to be hit, and that such place—between the freight cars and the train on the adjacent track—was a very dangerous place to stand (p. 72).

In *McGeehan v. Lehigh Valley Railroad Co.*, 24 Atl., 205, 149 Pa. St. 188, it was held

"Where plaintiff, while waiting to take the train of defendant railroad, of his own free will and without any necessity or reason for so doing placed himself between two tracks in a position of manifest danger, before the arrival of the train he was awaiting and stood so near an approaching train that he was struck and injured, he was guilty of contributory negligence and cannot recover."

The Court said:

10 “But it is sufficient to say that the plaintiff, of his own mere will, without the slightest necessity or reason for so doing, placed himself between the two tracks in a position of manifest danger, before the arrival of the train he was awaiting, and stood so near an approaching train that he was struck by a passing car. It is a necessary conclusion that he was guilty of contributory negligence in so doing, and cannot recover. Authority is not necessary to support so plain a proposition, but if it were, this court has explicitly so decided in the case of *Moore v. Railroad Co.*, 108 Pa. St., 349. The present chief justice there said: ‘The plaintiff was standing at a place of known peril; so clearly so that we must declare it as a matter of law. He ought not to have stepped upon the track until the passage was clear. It was negligence per se to stand between the tracks while the train passed.’ ”

20 Plaintiff may argue that while it may be that one standing between the tracks upon which trains are about to pass and who is injured thereby in their normal operation cannot recover, yet one who was injured by the body of a person hanging on to the handle of a car while in such position is not guilty of contributory negligence, nor can he be held to have assumed the risk of being so injured, and he can recover. We can see no difference between the propositions.

30

 It is obvious that to stand between the tracks upon which trains are passing is dangerous, not only because the space between the cars may be too narrow to permit them to pass without injuring one, but because the slightest movement while they are passing subjects one to the danger of injury, and any projection therefrom is liable to injure one. The position is dangerous and it can make no difference whether the projecting

40 body is that of a human being or of an inanimate object.

Janderup and Kalleberg could not rely upon invitation to excuse their negligent conduct. Nor could they rely upon a direct order to take up such dangerous position.

In *McGrath v. D. L. & W. R. R. Co.*, 100 Atl. Rep., 753, the Court said:

“It is equally well settled that where a passenger knows that compliance with such order will subject him to danger he cannot excuse himself for taking the risk by saying ‘I only did what I was told.’ A risk of this kind which is entirely obvious and which he knowingly assumed, is one the responsibility for which he cannot shift from himself to the carrier.”

10

And see

Chicago B. & O. R. Co. v. Hazzard, 26 Ill., 373;

Ginnon v. N. Y. & H. R. Co., 3 Robt., 25;

20

2 Beach Ry. Law, 987;

Railroad Co. v. Carper, 112 Ind., 26; 13 N. E. Rep., 122.

POINT VI.

The negligence of defendant, if any, was not the proximate cause of the injury to Janderup and Kalleberg.

Admitting for the purpose of argument that the defendant was negligent in failing to provide adequate station facilities, and in failing to provide an adequate number of guards at the station, we submit such negligence was not the proximate cause of the injury to Janderup and Kalleberg.

30

The cause of their injury was not the failure to have adequate station facilities or to have an adequate number of guards at the station, but the

40

negligence of the injured in voluntarily selecting such a dangerous position to await the stopping of the train.

Plaintiffs will undoubtedly argue that inasmuch as defendant had lead passengers to believe that they could board the train from the opposite track they were bound to protect them against liability from injury by persons jumping on cars while in motion, of which practice they had notice.

10

While it may be that it would, under such circumstances, be the duty of the company to exercise reasonable care to protect its passengers from injuries when they are at a place designated by the defendant for them to stand awaiting the arrival of the train, such duty presupposes the exercise of a like degree of care upon the part of the passenger to select a position not obviously dangerous; and where the passenger voluntarily places himself in a position where he cannot retreat in the presence of danger which he observes before such danger becomes actual, and is injured (as in the Janderup case) or where he assumes such position and stays there until he cannot escape a danger he was bound to anticipate, his conduct is the proximate cause of the injury he receives. Had Janderup and Kalleberg not placed themselves between the box car and the approaching train, they could have stepped back and avoided the injury to them. The negligence of defendant, if any, in not preventing the jumping on the cars of intending passengers would not have injured Janderup and Kalleberg had they not been in the position they were—the taking of which positions was negligent.

20

30

40 It can not be argued that the company was bound to anticipate that Janderup and Kalleberg would assume such position and that its failure to prevent persons from jumping on moving cars

would carry them against persons in such a position.

In *Smith v. Public Service Corp.*, 78 N. J. L., 478, the Court of Errors and Appeals (by Justice Trenchard) said:

“The failure of the motorman to sound the bell was not the natural and proximate cause of the injury. It is to be observed that it was not necessary to ring it in order to warn the driver of the wagon of the approach of the car, because he observed the car passing the street intersection before his horse had passed over the crosswalk.” 10

So in the cases at bar—the positions taken by Janderup and Kalleberg were obviously dangerous and were taken voluntarily. The hanging man would not have injured them except for the position voluntarily taken. The proximate cause of their injury was their own negligence in taking the obviously dangerous position and not the negligence of the defendant. 20

POINT VII.

The court erred in refusing to charge as requested by defendant the following:

(a) “The fact that some of the workmen had boarded the train from the side away from the platform before the day of the accident does not establish an invitation to so board the train or to stand so near the tracks as to endanger one’s safety.” 30

If the defendant had, as it contended, provided adequate station facilities, the fact that some of the workmen prior to the day of the accident for their own convenience, or with a view to increasing the probability of getting a seat, boarded the cars from the side away from the station, could not be held to establish an invitation to do 40

so. Nor would the fact that the defendant, knowing they had done so, refrained from driving them off the cars and away from the tracks amount to an invitation to so board the train. Mere acquiescence on the part of the defendant in the use of its lands involves no liability. *Dieckman v. D. L. & W. R. R. Co.*, 81 N. J. L., 463; *Corsen v. Atlantic City R. R. Co.*, 83 N. J. L., 519; *Boden v. Boston Elevated Ry. Co.*, 205 Mass., 504; 91 N. E., 879. Knowledge of such use, where proper arrangements have been otherwise provided, does not of itself amount to such invitation. *Legge v. N. Y., N. H. & H. R. R. Co.*, 197 Mass., 83.

The request embodied a clear legal principle and should have been charged.

(b) "If plaintiff took up his position by the box car and between it and the track on which the approaching train was, for the purpose of increasing the probability of getting a seat when there was a large number waiting to take the cars, and he would not have been injured had he not occupied such position, he cannot recover."

Again, if defendant, as it contended had supplied adequate station facilities, and the injured had taken up their positions as mentioned for the purpose of increasing the probability of getting a seat, and but for the position occupied he would not have been injured, it is clearly apparent that there could be no recovery. The position taken was obviously dangerous (Milges, p. 72). If then injured assumed such a dangerous position for the purpose of increasing the probability of getting a seat, he was so acting not because of necessity but for his own convenience.

In *Boden v. Boston Elevated R. R. Co.*, 205 Mass., 504, the Court said:

"There was testimony that other persons

like the plaintiff had sometimes gone out upon this platform and met cars with a view to increase the probability of their getting a seat when there was a large number waiting to take the cars on the covered platform. But this was contrary to the plain indications of the purpose of the railroad company. They went there not in the exercise of their right as passengers but as trespassers or at least as mere licensees."

The request should have been charged:

(c) "Decedent, by taking the position he did between the box car and the track upon which the train was approaching assumed the risks of such position. 10

The position assumed was obviously dangerous. One who takes up an obviously dangerous position assumes the risks of the position. No citations are necessary to sustain such well established principles of law.

POINT VIII. 20

**For the reasons hereinbefore set out,
the verdicts should be set aside.**

EDWARDS & SMITH,

Attorneys of Defendant-Appellant.

EDWIN F. SMITH,

Of Counsel.

30

40





