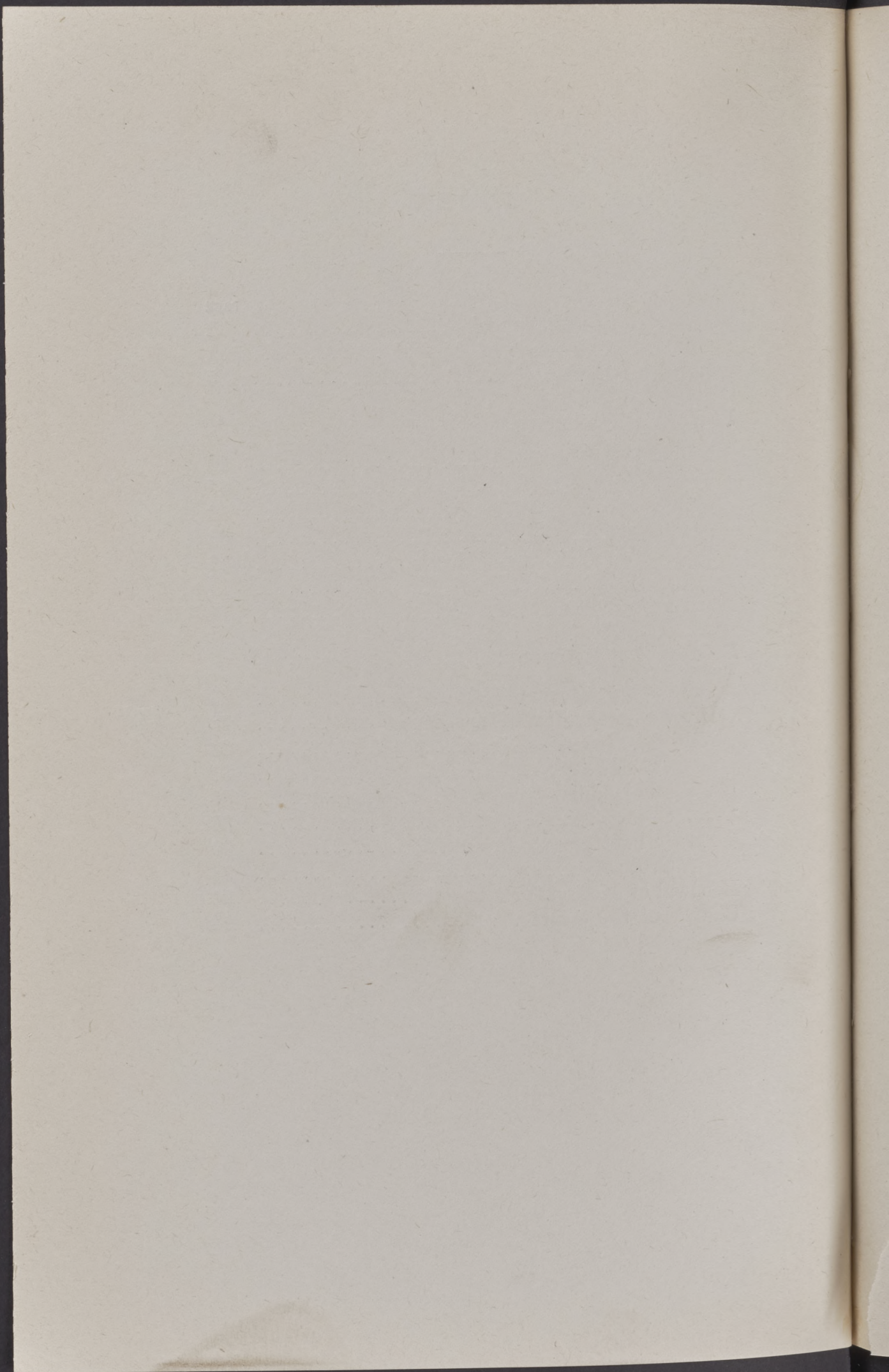


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COPY OF JUDGMENT AND NOTICE OF
APPEAL.

Notice and Grounds of Appeal.

NEW JERSEY SUPREME COURT.

RALPH FEDELE,
Plaintiff and Respondent,

vs.

WEST JERSEY AND SEA-
SHORE RAILROAD COM-
PANY,
Defendant and Appellant.

10

NOTICE AND GROUNDS
OF APPEAL.

To Wescott and Weaver, Esqs., Attorneys of Plain- 20
tiff and Respondent:

Take notice that the defendant, West Jersey and Seashore Railroad Company, appeals to the Court of Errors and Appeals from the whole of the judgment entered in this case on the following grounds:

1. That the trial Judge improperly and unlawfully refused motion for non-suit made by the defendant, viz.:

30

Mr. Gaskill: If the Court please, I move for a non-suit in this case on the ground that the mere use of this path by either the permission or acquiescence of the company is not an invitation and involves no liability. Also, because the mere existence of a worn

path across or along the railroad tracks to a station cannot be relied on as an invitation to an intending passenger to take such path; and furthermore, because the plaintiff by his own statement intentionally deviated from the path and stepped out of it, and even though he only stepped a couple of feet, still he exceeded the invitation and fell over this object.

10

Mr. Gaskill: If your Honor please, this man knew that the use of that path was made dangerous by approaching trains, and he knew this train was coming, and he left that path in order to avoid danger from that train. Now, I was just going to call your Honor's attention to this; it seems to me it is like that famous case the Chief Justice decided some years ago where a woman took her cat to a store and the storekeeper was willing to take it and told her to put it in a certain place, pointing to a door —

The Court: And did not tell her to go in herself.

Mr. Gaskill: She took it for granted it was a closet and stepped in, it happened to be a stairway and she fell down the stairs, and the Court said she had exceeded her invitation.

30 The Court: I am afraid I cannot agree that it is not a jury question. Note an exception.

2. Because the trial Judge improperly and unlawfully refused the defendant's motion to direct a verdict for the defendant on the grounds that there has been no negligence proven on the part of the de-

fendant and that there was contributory negligence on the part of the plaintiff; and that he exceeded his invitation, if there was any invitation, at the time he fell over those plates.

The Court: The motion will be overruled and exception noted.

3. Because the trial Judge improperly charged the jury as follows: 10

Gentlemen: You will perceive that the very first question presented to your minds in this case is whether the railroad company gave to this intending passenger—and he was an intending passenger, no dispute about that,—an invitation to use this space here, which has been described variously as a pathway and as a ditch.

4. Because the trial Judge improperly charged the jury as follows: 20

So that I think you would be justified if you accept that statement, and I see no reason why you should not, in assuming that the company had led the public to believe that that was a passageway which it was intended for them to use; and if you did so find, you naturally would conclude that that was an invitation. It would be an invitation at least by estoppel, that is to say, the company would be denied the right to assert the contrary; if it had led people to think it was a pathway, a passageway, they would be precluded from the right to say it was not when any person's rights were predicated upon it. 30

5. Because the trial Judge improperly charges the jury as follows:

Now, if there was this right accorded to the plain-

tiff, you will consider whether there was negligence by the defendant in placing these plates, as they have been described and called, on this grass plot near the passageway under the circumstances.

6. Because the trial Judge improperly charged the jury as follows:

10 And that becomes the next question for you to pass upon in this case. Was the defendant company negligent in placing these plates there and having them there that morning under the circumstances of the case as they have been proven and established to your satisfaction?

7. Because the trial Judge improperly refused the defendant's fourth request to charge as follows:

20 The proof shows that the company had provided a platform for the use of passengers and that there were roadways leading to the same but that the plaintiff took a short cut along the tracks and while avoiding a train stepped over and onto a slightly elevated grass plot, and while walking along the same, tripped over a pile of material and fell. Under the circumstances, there can be no recovery on the part of the plaintiff.

GASKILL & GASKILL,
Attorneys of Appellant.

[ENDORSED]

30

Service acknowledged 6/9/17
Wescott & Weaver,
Atty. of Pltff. & Respt.
(Filed Jun. 12, 1917)
Wm. C. Gebhardt,
Clerk.

JUDGMENT RECORD.

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY.

RALPH FEDELE,

VS.

WEST JERSEY & SEASHORE
RAILROAD COMPANY.

JUDGMENT RECORD.
ACTION AT LAW.
ON POSTEA.

10

West Jersey & Seashore Railroad Company, the defendant in this cause, was summoned to answer unto Ralph Fedele, the plaintiff therein, in an action at law upon the following complaint:

(Summons issued June 1, 1916.)

20

The plaintiff, Ralph Fedele, of West Berlin, in the county of Camden and state of New Jersey, says:

1. That on the 14th day of January, 1916, at West Berlin, in Camden County, New Jersey, he was a passenger of the defendant.

2. That at the time and place aforesaid, plaintiff was proceeding over the property of the defendant adjoining its railroad station.

30

3. That at the place where plaintiff was walking was used by defendant's passengers in approaching and leaving its trains.

4. That the defendant negligently and carelessly placed a pile of iron plates on its property over which plaintiff was proceeding.

5. That the plaintiff, while it was yet dark, without any fault on his part, stumbled over said pile of iron plates and was precipitated violently to the ground.

6. That because of the circumstances above set forth plaintiff was seriously and permanently injured in and about his left leg and right arm and was caused to forego his usual employment and to suffer pain of body and mind and caused to expend money in an effort to be relieved of his injuries received as aforesaid, all of which conditions are permanent.

Plaintiff claims damages in the sum of ten thousand dollars.

WESCOTT & WEAVER,
Attorneys of Plaintiff.

20

(Filed Jul. 11, 1916)

The defendant, a corporation of New Jersey with offices in the city of Camden, answering says:

1. It denies the matter stated in the first paragraph.

2. It admits the matter stated in the second paragraph.

3. It denies the matter stated in the third paragraph.

4. It denies the matter stated in the fourth paragraph.

5. It denies the matter stated in the fifth paragraph.

6. It is not informed as to the matter stated in the sixth paragraph and leaves the plaintiff to his proof.

FIRST GROUND OF DEFENSE:

That there was no negligence on the part of the defendant, its servants, agents or employees in the premises. 10

SECOND GROUND OF DEFENSE:

That there was contributory negligence on the part of the plaintiff by walking on the railroad premises where material had been piled, and without using due care.

THIRD GROUND OF DEFENSE:

20

That the plaintiff was a licensee and the company owed him no duty in the premises.

FOURTH GROUND OF DEFENSE:

That the plaintiff was a trespasser and the company owed him no duty in the premises.

GASKILL & GASKILL,
Attorneys of Defendant.

30

(Filed Jun. 21, 1916)

This case was tried before Judge Frank T. Lloyd with a jury, at the Camden Circuit, on April 5th and 9th, 1917.

The jury rendered a general verdict against the defendant and in favor of the plaintiff for three hundred dollars (\$300).

Whereupon it is adjudged that the plaintiff recover of the defendant the sum of three hundred dollars damages, and his costs, which are taxes at the sum of fifty-four dollars and seventy-two cents, making in the whole the sum of three hundred fifty-four dollars and seventy-two cents.

10	Damages	\$300.00
	Costs	54.72
		\$354.72

(Judgment entered April 11, 1917)

I, William C. Gebhardt, clerk of the Supreme Court of the state of New Jersey, do certify that the foregoing is a true copy of the notice of appeal and also
 20 a copy of the judgment entered in the above-stated cause as the same remains on file and of record in my office.

In testimony whereof I have set my hand and the seal of said Court at Trenton, this
 (Seal) fifteenth day of June, A. D. nineteen hundred and seventeen.

WM. C. GEBHARDT,
Clerk.

(Filed Jul. 24, 1917)

TESTIMONY.

NEW JERSEY SUPREME COURT.

RALPH FEDELE,
Plaintiff and Respondent,

vs.

WEST JERSEY AND SEA -
SHORE RAILROAD COM-
PANY,
Defendant and Appellant.

ACTION AT LAW. 10
APRIL 5, 1917.

April Term, 1917.

APPEARANCES:

For the plaintiff, WESCOTT & WEAVER, ESQS.
For the defendant, GASKILL & GASKILL, ESQS.

20

Before LLOYD, J., and a jury.

THE CASE FOR THE PLAINTIFF.

30

(Mr. Ethan Wescott opens the case for the plain-
tiff to the jury.)

(Mr. Gaskill opens the case for the defendant to
the jury.)

RALPH FEDELE, SWORN.

By Mr. Wescott:

Q. Mr. Fedele, you are the plaintiff in this case, are you?

A. Yes.

Q. How long have you been in this country?

A. Fourteen years.

10 Q. Where were you born?

A. In Italy.

Q. What part of Italy?

A. Naples.

Q. How long have you lived in New Jersey?

A. Nine years.

Q. Where?

A. West Berlin.

Q. Got a home down there?

A. Yes.

20 Q. Have you a family?

A. Yes.

Q. What is your business?

A. Hat maker.

Q. Is that a profession?

A. No.

Q. A trade?

A. A trade, yes.

Q. Did you work at that in the old country?

A. No.

30 Q. Learned it here?

A. Learned it here.

By the Court:

Q. How old are you?

A. Twenty-eight.

By Mr. Wescott:

Q. Whereabouts in Berlin do you live?

A. West Berlin, on Haddon Avenue.

Q. Are you familiar with the West Berlin Station?

A. Yes, sir.

Q. How many years have you lived there near that station?

A. Nine years.

10

Q. Have you traveled back and forth to Philadelphia every day?

A. Yes, sir.

Q. By what kind of ticket?

A. Monthly ticket.

Q. How many tracks are there at West Berlin Station?

A. Two tracks.

Q. The station is on which side of the tracks?

A. On the right side coming down.

20

Q. On the right side coming down?

A. Yes, they have two stations there now, lately.

Q. How do the tracks run, north and south?

A. North and south.

Q. And the station is—there is one on each side now?

A. Yes.

Q. Well, at the time this accident happened to you was there one on each side?

A. No.

30

Q. Well, which side was the station on then?

A. On the right side.

Q. Going —

A. Coming from home.

Q. What?

A. Coming up from home it is on the right side.

By the Court:

Q. Is it on the pike side or the other side, on the road side or the other side?

A. On the road side.

By Mr. Wescott:

Q. East or west?

10 A. West.

Q. Are you sure about that?

Mr. Joseph Gaskill: I am willing for you to state, Judge,—you know.

Q. Well, it is on the east side, isn't it?

A. Well, it has puzzled me, because going from my place it is on the right side, going home it is on the left side, see—I don't know how you figure that

20 out.

Q. Certainly, that is right; that would make it on the east if the tracks run north and south, wouldn't it?

A. Yes.

Q. When was it you met with this accident?

A. January 14, 1916.

Q. What time in the day?

A. Half-past five in the morning.

Q. Was it dark?

30 A. Yes, sir.

Q. Now, how did you usually—you lived on the west side of the tracks, as I understand you?

A. Yes.

Q. Now, how far from the tracks did you live about?

A. About four minutes.

Q. Four minutes' walk?

A. Yes.

Q. Now, how do you usually go to the station from your house when you are going to Philadelphia?

A. Through a path we made; we got our own path we made from my place to the station.

Q. Did you get into a road, a wagon road or something?

A. Yes.

10

Q. And that wagon road is called what?

A. I don't know what they call it, Haddon Avenue, I guess; I don't know exactly the name of it.

Q. And you traveled that road until you got where?

A. To the West Berlin Station.

Q. You traveled that road until you got to the tracks, didn't you?

A. Yes, to the tracks, yes.

Q. Well, what kind of crossing was there?

20

A. Regular crossing they got there now.

Q. Well, what kind of crossing was there when this accident happened?

A. Well, they had a narrow path, but now it is quite a big —

Q. No, going across the tracks.

A. A regular path.

Q. What do you mean by a regular path?

A. Well, the wagon could go through.

30

By the Court:

Q. There were planks, were there, in the track?

A. Yes.

Q. And the wagons drove over them across the tracks?

A. Yes.

By Mr. Wescott:

Q. Now, did you go by that road?

A. Yes.

Q. The morning you got hurt?

A. Yes.

Q. And when you got across the tracks, which way did you go?

A. On the right side between this path.

10

By the Court:

Q. Which side of the railroad did you live on, the station side or the other side?

A. On the station side.

By Mr. Wescott:

Q. Oh, then you lived on the station side of the
20 road?

A. Yes.

Q. Was there anybody with you?

A. There was right back of me, two.

Q. Who were they?

A. Lou Archer and George Duncan.

Q. Are they here?

A. One of them will be here; another one sells for a firm in Philadelphia.

Q. Is the other one here?

30

A. He will be here shortly; he will be here one o'clock; the Pennsylvania Railroad sent for him.

Q. Did you subpoena him?

A. Yes, but I couldn't subpoena the other one, because he is a traveling salesman for a firm in Philadelphia; he is away.

Mr. Logan Gaskill: Judge, here is a pencil diagram that was made that I believe to be correct; I am willing that you should use that if it will help you any.

Q. Look at that drawing there on that piece of paper and see if you understand it. (Showing witness another drawing.)

A. Yes, this is the street here.

10

Mr. Wescott: May we have him step up to the jury —

Mr. Gaskill: That is not proven, Judge, as being correct; I would object to that being presented to the jury.

The Court: It is only for illustration, isn't it?

Mr. Gaskill: I don't think it can be used for that purpose unless it is shown to be accurate; it does not illustrate unless it is right. 20

The Court: That is true; but what I mean is, it gives the jury an idea of where the station is and where the tracks are, and the road is.

Mr. Gaskill: Here is a more elaborate pencil sketch.

30

Mr. Wescott: Neither of them are accurate.

Mr. Gaskill: Then neither of them can be used.

Mr. Wescott: Well, you agreed I could use this; I will use this.

Mr. Gaskill: All right.

Q. See if you can understand that.

A. Yes.

Q. Then step up here; you don't object to his using that?

A. No.

Q. Step up here and see if you can explain it.

A. This is the West Berlin Station; this is the
10 grass plot; there is no ditch here.

Q. No, leave the ditch out; explain the situation.

A. There is the road here. (Indicating.)

Q. Where is the station you were going to?

A. Here. (Indicating.)

Q. That is the station you were going to, is it?

A. Yes, this is the public road; there is a cut
that was taken.

By the Court:

20

Q. Now, you were coming from this way, were you?

A. No, coming from this way (indicating); that
is where I live.

By Mr. Wescott:

Q. This is the east side of the track, isn't it?

A. Yes.

30

Q. Here is the station down here; you were coming down this way?

A. Yes.

The Court: Yes, here is the same road, I see,
down at the bottom.

The Witness: Then when I got up to the crossing here, when I got up here, I followed this path here to West Berlin Station, and the plates was along, all scattered all around, not only on the grass plot, but all around this ditch; over here they had a few plates, but a pile of plates was right over here, see, on this line. Up here there was some kind of—I can't explain very well myself.

The Court: Well, that is all you want of the map, 10 isn't it?

Mr. Gaskill: Yes.

The Witness: They have a box made here with a bell that is ringing, which sticks up.

The Court: Go on and show us there where you fell.

The Witness: Right here the train stops. 20

The Court: Now, what did you fall over?

The Witness: Iron plates.

By Mr. Gaskill:

Q. I couldn't see; where did you say it was you fell? 30

A. Over here. (Indicating.)

Q. Whereabouts, exactly?

A. Well, right about here.

Q. That red there, doesn't that mark a pile of tie plates that you fell over right by the box?

A. Yes.

By Mr. Wescott:

Q. Now, I will have to repeat this a little to make it clear. You with these other gentlemen came down the road?

A. Yes.

Q. And up the wagon road?

A. Yes.

Q. On the east side of the tracks?

10 A. Yes.

Q. And how near to the tracks did you get before you left the road, about, do you think?

A. How near?

Q. How near to the tracks were you before you left the wagon road to go to the station?

A. Well, it is of course right near there.

Q. And was there a path there?

A. Yes.

Q. What kind of path was that?

20 A. Where the passengers get on the train.

Q. The path that you went to get on the train?

A. Yes, where the passengers get on the train; I don't get on it now on that path, because they got a platform made —

Q. Wait a minute, please, get it right; I want to get it correct. How did this path that you went on lead—where did it go to?

A. To the train.

Q. Was there a platform in front of this station?

30 A. In front of the station there was a little space, but not where I got on every morning, no, where I got on every morning there is a path made.

Q. You did not get on every morning from the platform, the wooden platform?

A. No.

Q. You got on from the ground?

A. Yes.

Q. Did that path or not curve toward the road, toward the tracks?

A. No, straight; it is made wider now.

Q. Now, how long had you been accustomed with the other people to travel that path?

A. All the time.

Q. All the time?

A. Yes.

Q. Ever since you lived there?

A. Yes.

Q. Was there any light there, lamps, or anything of that sort?

10

A. There is on the street but not right there, too far away from the light.

Q. How far from the light were you when you were on this path just before you fell?

A. I don't know exactly how far it was, but not very far.

Q. How?

A. Exactly I couldn't tell you, about fifty or sixty feet.

20

Q. Very well, how near the tracks were you when you fell?

A. Right near.

Q. Right near them? Where was the train at that time?

A. Right back.

Q. Right back?

A. Right back of me, yes.

Q. You mean the train was behind you?

30

A. Yes.

Q. How many cars were there in the train?

A. Four.

Q. Well, didn't any part of the train extend toward Philadelphia?

A. Yes.

Q. And was the locomotive back of you too?

A. Yes, that is the reason I went over on these plates, because there is a pile toward the box.

Q. Let the plates alone. You were going toward the platform when you fell, weren't you, the platform?

A. Yes.

Q. Where was this train standing? Was it not standing at the station?

10 A. Yes, part of it stands near the station and some of the back cars stand right in this path.

Q. Well, the train was up to the station, wasn't it?

Mr. Gaskill: I object to that as leading and suggestive and contrary to what the witness has said. It is very important, I think, to have this right.

20 Q. Where was your train—you can't chain this boy down to having that train behind him; he will tell the truth—where was that train when you started from the road to get on it—where was the train standing?

Mr. Gaskill: I object to that, because he hasn't said the train was standing.

Q. Well, was there a train there?

A. Yes, there was a train, sure.

30 Q. Was it on the tracks or out in the field?

A. On the tracks.

Q. And where were the tracks, in front of the station or behind the station?

A. In front of the station.

Q. Now, where was the train?

A. On the track, of course.

Q. Well, I am glad we have got it on the tracks.

By the Court:

Q. Where was it as regards the station—where was the front, in front of the station or north of it or south of it or how?

A. Right near the station.

Q. And where was it when you went up this path that you speak of to take your train—was it there then?

A. Yes. 10

Q. Did the upper end—which way were you going, toward Camden?

A. Yes, Camden.

Q. Did the front of the train extend to this road or not?

A. Yes.

Q. Did the front of the train, the engine extend to the road?

A. Yes.

Q. And where were the cars—did they reach back 20 of the station?

A. Not all of them.

Q. Not all of them?

A. No.

Q. There were some cars that were between the station and the road?

A. Yes.

Q. Other cars that were beyond the station and in front of it?

A. Yes. 30

By Mr. Wescott:

Q. Now, which end of the train was the engine hitched to?

A. The front.

The Court: He has got it right; he said it was coming to Camden and the engine was nearer the road.

Q. Was the train longer than the platform or shorter than the platform?

A. Longer than the platform.

Q. Was the engine at the south end of the station or beyond the north end of the station?

10 A. The north end of the station? I don't know.

Q. And there were four cars hitched to that engine?

A. Yes.

Q. Well, do you remember whether there was a flower bed there or not?

A. There was no flower bed there.

Q. There was none whatever?

A. No.

Q. Is there one there now?

20

(Objected to as immaterial.)

The Court: Yes, it is of no significance about it now.

Q. Very well. Now, when you left that road and started from the train you were on the path, as I understand you?

A. Yes.

30 Q. Was that the path you took every morning?

A. Yes.

Q. Now, what happened to you as you were walking along that path?

A. I fell over, tripped over some iron plates.

Q. Where were those iron plates?

A. Right on the edge of the grass plot.

Q. Then there was a grass plot there, eh?

A. Yes.

Q. Where was that grass plot with relation to the tracks?

A. Near it.

Q. No, where?

A. Right close to this road I took every morning, right near. If I could make you understand—I can't speak very well English, your Honor.

Q. Well, you are getting along all right, we are 10 understanding you. How big was this grass plot, about?

A. Oh, that big. (Indicating.)

Q. How?

A. I can't tell you how big it is, but it is very big.

Q. Well, as big as this room?

A. Yes.

Q. Now, how far was that grass plot from the railroad tracks? 20

A. A couple of yards.

Q. Were you walking between the grass plot and the railroad tracks when you fell?

A. Not on the grass plot, no.

Q. No, but were you walking between the grass plot and the railroad tracks when you fell?

A. Yes.

Q. Is that where the path was?

A. Yes, that is where the path was.

Q. And did that path lead to the platform? 30

A. Yes.

Q. Along which the train was standing?

A. Yes.

Q. Were those plates there the morning before when you walked there?

A. Well, I couldn't remember because it was dark,

you see; it is dark when I leave home every morning, generally; in the winter time it is dark.

Q. Well, didn't you see the plates in the daytime?

A. No, I work in the daytime, and when I go home it is dark too, see?

Q. Dark when you leave and dark when you get home?

A. Yes.

Q. Well, how many of those plates were there?

10 A. Oh, quite a few different piles; some were scattered.

Q. Well, if you walked along that path every morning, why didn't you get into the plates before, if the plates were there?

A. I don't know if the plates were there before.

Q. You never saw them there before?

A. No.

Q. Did you ever feel any there before?

A. No.

20 Q. Well, now, how did you happen to fall?

A. I tripped and fell.

Q. What tripped you?

A. The iron plates.

Q. Well, how did they trip you—hit you in the head?

A. No, hurt my knee.

Q. No, what part of your body came in contact with those plates?

A. My knee.

30 Q. Were you walking on your knees?

A. I couldn't catch that.

By the Court:

Q. Listen to me a minute; as you walked along the ground and you struck these plates, what did

you strike them with? What did you hit the plates with, your foot or your knee?

A. With my foot, yes.

By Mr. Wescott:

Q. Which one?

A. I tripped.

Q. You tripped?

A. Yes.

10

Q. Your foot struck against these plates, which one of them?

A. Yes.

Q. Then when you fell what did you hit?

A. I hit the iron plates, of course.

Q. What part of you hit the iron plates?

A. My knee and my elbow.

Q. Who helped you?

A. Lou Archer and George Duncan.

Q. What did they help you do?

20

A. Lifted me up and carried me on the train.

Q. Did your clothes get hurt, injured any, cut or torn?

A. Yes.

Q. What part of your clothes?

A. My underwear.

Q. Didn't your outside clothes get torn?

A. Well, not really torn, but I can see the mark of it.

Q. What kind of mark was it?

30

A. A cut like.

Q. Now, where was that cut, in your trousers?

A. Right up here. (Indicating.)

Q. About on your knee?

A. Yes.

Q. Which knee was it?

A. The left knee.

Q. Now, did your knee cause you any trouble on the way to Philadelphia?

A. Yes.

Q. Well, what?

A. It started to hurt me then, but I thought it was nothing, but when I got up the station at Camden I couldn't get up.

Q. Why couldn't you get up?

A. Because I was hurt.

10 Q. Well, what did you do when you got to the station at Camden?

A. I got off and walked to the boat and I got off the other side and took a jitney up to Stetson's.

Q. Took a jitney up to Stetson's?

A. Yes.

Q. Who went with you up to Stetson's?

A. Nobody.

Q. Did those men go with you—did they work there?

20 A. No.

Q. When you got up to Stetson's, what trouble did you have?

A. I told the boss to let somebody else finish up my work because I was hurt. He said, "You better go right down to the hospital," so I went down to the hospital.

Q. Connected with the ——

A. With the Stetson factory, yes.

Q. Well, what happened at the hospital?

30 A. They bandaged it up and asked me did I want to stay there. I said no, I wanted to go home.

Mr. Gaskill: I object to the conversation.

Q. The doctors or somebody bandaged your knee up there in the hospital?

A. Yes, my knee and my elbow.

- Q. Did they bandage your elbow too?
A. Yes.
Q. Then what did you do after that?
A. I went home.
Q. To Berlin?
A. To West Berlin, yes.
Q. Did anybody help you?
A. Yes.
Q. Who?
A. Well, they helped me off the train, somebody 10
helped me off the train, then I walked home.
Q. When you got to Berlin you walked from the
station home?
A. Yes.
Q. Did you have any trouble walking?
A. Oh, yes, I was lame.
Q. Well, how long were you laid up at home?
A. I laid in bed for quite a few days home, then
I got Dr. Ewing.
Q. Dr. who? 20
A. Ewing.
Q. He is here, isn't he?
A. Yes.
Q. Now, when did you get back to your work?
A. Some time in March.
Q. What time in March?
A. The 11th, 10th or 11th, I am not sure what date.
Q. The 10th or 11th of March? Did you say any-
thing to the railroad people about your falling over
these things? 30
A. Yes.
Q. When did you first mention it?
A. The next day.
Q. Whom did you speak to about it?
A. Mr. Barrett.
Q. Where did you see him?
A. He came over to my house.

Q. What is his business, Mr. Barrett?

A. He works in John Wanamaker's store, and he wrote to the superintendent of the railroad, Mr. Buckalew, he wrote a letter for me.

Q. Buckalew wrote a letter?

A. This man wrote a letter to this superintendent of the railroad, Buckalew.

Q. Well, did any of the railroad people come to see you?

10 A. Yes.

Q. When, how soon after you got hurt?

A. A few days after, sometime.

Q. Well, did you tell them how it happened?

A. Yes.

Q. When you were laid up there down to the 10th or 11th of March, were you having any trouble with your leg?

A. Yes.

Q. What kind of trouble was it?

20 A. The bruise was still there.

Q. Did you have any pain?

A. Yes.

Q. Much or little?

A. Much then; now, of course, I only feel it now in the damp weather.

Q. It is all well except when the weather is damp, is it now?

A. Yes, I feel it now.

30 Q. You can walk just as well as you ever could, can you?

A. Yes.

Q. Has your elbow got all right?

A. Yes.

Q. Now, how much wages were you making at the time?

A. The average is \$20 a week, but we get a percentage on top of that.

Q. \$20 a week, is that right—was that what you always made, \$20 a week?

A. Yes.

Q. You said you got a percentage on top of that—what was that?

A. Every Christmas we get a percentage, we get twenty per cent.

By the Court:

Q. They pay dividends to their employees, don't they? 10

A. Yes.

By Mr. Wescott:

Q. Twenty per cent.?

A. Yes.

By the Court:

20

Q. Twenty per cent. of what, your wages?

A. Yes.

By Mr. Wescott:

Q. How long had you been working for Stetson?

A. Thirteen years.

By the Court:

30

Q. Well, did you lose this twenty per cent. or did you just lose your time?

A. I lost time, of course, and I lost the percentage both.

Q. Oh, on that time?

A. Yes.

By Mr. Wescott:

Q. How much would that be, twenty per cent.?

Mr. Gaskill: I submit that that is a matter of calculation for the jury as to what the twenty per cent. upon the number of weeks was at \$20 per week.

The Court: I suppose it is not necessary for him
10 to tell us. (To the witness) \$4 a week, isn't it, your percentage?

The Witness: Yes, sometimes I make more than that.

The Court: More than the \$24 a week?

The Witness: Yes.

20 By Mr. Wescott:

Q. Now, did you lose anything else there?

A. Well, if I worked steady, the company would have appreciated my work and would have give me some shares.

Q. What is that?

A. They give out shares every Christmas over there, give out common stock shares every Christmas to employees.

30 Q. To all the employees?

A. Not all of them, no.

Q. Well, to which one?

A. To good workers.

Q. To good workers?

A. Yes.

Q. Well, what kind of a worker were you?

A. Making hats.

By the Court:

Q. Well, were you a good worker or not?

A. Why, certainly.

Q. Well, did you get your stock for that year?

A. No.

By Mr. Wescott:

Q. Let me understand; how many good workers
get shares? 10

A. Quite a few in my department; we got three.

Q. How many?

A. Three, I think in my department.

Q. Now, what was your department?

A. Sizing.

Q. How much experience have you had at that?

A. Thirteen years.

Q. Now, how do they tell over there who gets the
shares? 20

A. According to the work we do.

Q. Very well; now, how did your work compare
with the others?

Mr. Gaskill: I submit that is a self-serving declaration and is not relevant.

The Court: I don't know how important this is.

By the Court:

30

Q. Did you buy your shares?

A. No.

Q. Or did they give them to you outright?

A. Yes, outright; if you be a good worker during
the year they give out shares.

Q. How many were there in your department?

A. Three.

Q. No, you say three got it, but three out of how many got it, the shares?

A. Out of 100, 110, something like that, but others got it, see, from my department, others got it in previous years.

Q. Who got it in previous years?

A. Most of them has got shares in that department, understand; three gets it every year, but a lot of them got the shares.

Q. Now, how many were there left that had not got shares yet, do you know?

A. No, I can't tell.

Q. When this accident happened to you?

A. I don't know exactly; we have in the room about sixty or seventy, something like that.

Q. Well, did your being away have anything to do with anybody's getting the shares or not? Did that count—did the fact that a man was not there at work all the time, did that count in preventing his getting the shares?

A. Oh, yes; no, I beg pardon.

Q. That did not count?

A. No.

Q. It all depended on how good a workman he was?

A. Yes, and upon how much work he made during the year, too. If you make so many dozen during the year, it all comes out.

By Mr. Wescott:

Q. Now, who made the most work in that department?

A. By the time I was hurt I was making stiff hats; I was the highest man.

Q. You were the highest man?

A. Yes, and I was hurt and I am yet.

Q. You are yet?

A. Yes.

Q. Now, what had your laying off to do with your getting these shares?

A. Well, I was hurt.

Q. No, but why didn't you get the shares?

A. Because I lost so much time.

Q. Because what?

10

A. Because I lost so much time.

By the Court:

Q. How much time did you lose?

A. Twenty-one weeks; then I used to go to work, but couldn't put in a full day.

Q. Well, you will get them some other year, won't you—you will get your shares?

A. Yes, if I be a good worker, sure, but I lost them 20 then.

Q. You lost them that year?

A. Yes.

By Mr. Wescott:

Q. Well, do they give shares every year?

A. Yes.

The Court: He says, Judge, that they give shares 30 every year to some of their employees; that about fifty out of 110 have already received them, there are about sixty left, and he is one of the sixty.

Q. Now, what do those shares amount to?

A. \$500.

Q. Apiece or both of them?

A. Apiece; I have got envelopes here to show how much I made all the year around.

Mr. Gaskill: I ask that that be stricken out; there is no question pending.

Q. Well, when you did go back to work, have you any way of showing how much you lost from your
10 regular wages because of this injury?

A. Yes, according to my wages I could figure it out, because I got all the envelopes. I used to make \$5, sometimes \$7 a week after I was hurt.

Q. I don't quite catch that?

A. During the time I went back to work, I made about \$7 or \$8, \$5, \$11, \$16 a week.

Q. For how long a time?

A. Oh, it has been for quite a while.

Q. Have you any way of telling how much you
20 lost in your wages that way?

A. No.

Q. Haven't you got that figured out?

A. No.

By the Court:

Q. Well, you lost twenty-one weeks, you say?

A. Yes.

Q. Now, how much a week did you lose on an aver-
30 age?

A. \$20, but you see, I got some small envelopes.

Q. Well, the small envelopes were extra, were they—were they extra outside of that \$20?

A. Yes.

Q. Do you understand what I mean? You got your \$20 in one envelope, did you?

A. Yes.

Q. And did you get other money in other envelopes?

A. No.

Q. Well, what do you mean by small envelopes?

A. Small pay during the week.

Q. Oh, you mean you didn't work a full week?

A. Yes.

Q. Then, listen to me a minute—you did not lose the full \$20? Did you lose any one week completely?

A. Yes.

10

Q. How many?

A. Twenty-one.

Q. You lost twenty-one weeks altogether?

A. Yes.

Q. Now, did you lose any weeks additional to that, parts of weeks?

A. Yes.

Q. Did you lose any parts of weeks after the twenty-one weeks?

A. Yes.

20

Q. How many?

A. Well, according to the envelopes I got, I couldn't tell you.

The Court: Well, you figure that up at noon.

By Mr. Wescott:

Q. Where are those envelopes?

The Court: He says he has got them with him. 30

Q. Oh, you have got those envelopes, have you?

A. Yes.

At this point a recess was taken until 1.45 o'clock P. M.

Trial of the cause resumed at 1.45 o'clock P. M., pursuant to adjournment, in the presence of counsel for the respective parties.

RALPH FEDELE, resumed.

10 Mr. Joseph Gaskill: Judge Wescott, this noon-time I went down to the office and got the official railroad map of the location, the survey and everything out of their files and brought it up here. It is at your service.

By Mr. Wescott:

Q. Now, let me get this clear. In the first place, how many weeks did you lose in their entirety, altogether?

20 A. Twenty-one.

By the Court:

Q. You mean by that that you were away from the place entirely for twenty-one weeks?

A. Yes.

Q. All the week?

A. Yes.

30 Q. Can you tell how much you lost in wages after you got back to work?

A. Yes.

Q. You had a lot of envelopes here, and I told you to take them and study it out?

A. Yes.

Q. Well, what do they show?

A. In thirteen weeks I made \$117, something like that. Lawyer Wescott has got them.

Q. I know, but you will have to tell it; he can't testify.

By Mr. Wescott:

Q. In thirteen weeks after you got back, in thirteen weeks you made how much?

The Court: \$117, he says.

10

A. \$117.

Q. You mean that was all you made?

A. No, I made more than that, but thirteen weeks it was small wages, see, and previous to that in eleven weeks I made \$275, in eleven weeks.

By the Court:

Q. Listen here a moment; I understood you to say that after you were hurt you lost twenty-one weeks straight? 20

A. Yes, entirely, yes.

Q. Then in the next thirteen weeks, do you mean to say you made \$117?

A. Yes.

Q. The next thirteen weeks?

A. Yes.

Q. Well, you would have gotten at \$20 a week \$260—do you mean to say that you lost \$143 in those thirteen weeks? 30

A. Yes.

Q. Now, did you lose any after that?

A. Yes.

Q. What?

A. Well, I didn't get the full amount of money.

Q. Well, how much did you lose after that—after

the thirty-four weeks were over, what did you lose, if anything?

A. I couldn't tell you how much I lost on that.

Mr. Wescott: What is that?

The Court: He said he can't tell what he lost after those thirty-four weeks were up.

10 By Mr. Wescott:

Q. Now, let me see if I understand accurately what you mean about these shares of stock. Do those shares of stock go to the man who does the most and best work?

A. Yes.

Q. That is correct, is it?

A. And good conduct.

Q. A man of the best conduct who makes the best
20 work and turns out the most work gets a share of stock?

A. Yes.

Q. Now, how many did such a man get?

A. This year for the first time there was given two out; in previous years they were given three.

Q. Three?

A. Yes.

Q. Now, with respect to conduct and quantity of work and quality of work, how did you stand in your
30 shop?

Mr. Gaskill: I object to that as a self-serving declaration.

The Court: The objection is not sustained.

(Exception noted for the defendant.)

Q. Can you answer that question?

A. Yes.

Q. Well, how did you stand?

A. Fine.

Q. Well, that don't tell us; who was the leader in your shop?

A. I was when I got hurt.

Q. You were ahead of the rest?

A. Yes, on my line of trade.

Q. Now, if it had not been for this injury which laid you off, can you tell whether or not you would have gotten the three shares of stock? 10

(Objected to.)

The Court: I don't think he can answer that, Judge; he will have to tell us the facts and we will have to judge whether or not the chances —

Q. How near was your year out when you got hurt? 20

A. Did you say how much I made during that year?

Q. No, how much of your year was gone?

A. Six months—no, four months, October, November, December and January—three months and a half.

Q. You had to serve two months and a half on that year yet?

A. No, I had served all the year around. You see, I got hurt in January, that is the time I got hurt, in January. 30

Q. And when did the year begin?

A. October.

Q. October?

A. Yes.

Q. And then you had been working three months on that year?

A. Yes.

Q. Well, would the sort of work that you were doing and the way you were doing it and the quantity of work that you were turning out have entitled you to the three shares if it had been continued?

10 Mr. Gaskill: I object to that as incompetent, irrelevant and immaterial.

The Court: Judge, I understand from his previous testimony that that is a matter that does not rest in his control at all, but that it appears to come from the management—that is right:

The Witness: The management decides who is entitled to it, yes.

20 The Court: I think all he can do is to tell us the rules that govern them and then his own circumstances and practices.

Q. And those shares were worth how much apiece?

Mr. Gaskill: I object to that as incompetent, irrelevant and immaterial. No foundation has been laid for it.

30 By the Court:

Q. Do you know what they were worth?

A. \$500, yes.

Q. I know, you said they were \$500 shares, but are they worth that much money?

A. Yes.

Q. Do you know anything about whether they are or not?

A. Yes, I see them in the papers every once in a while.

Mr. Wescott: Your Honor put that question while my question was pending. Will your Honor grant me an exception?

The Court: Well, I will strike out the answer; 10 let's start afresh.

Q. How do you know the value of those shares?

A. Because we talk about it around the shop, you know; everybody knows about how much it is worth.

The Court: Gentlemen, you really ought not to have much trouble about this; the Stetson Company's shares, I think, are quoted every day.

20

Mr. Gaskill: As far as that is concerned, my contention is that there has been no foundation yet to introduce in evidence the value of the stock.

The Court: Oh, yes, there has been some testimony from which —

Mr. Gaskill: I know, but over my objection, and I still maintain the same point—

30

The Court: No, what I mean is this, that there has been evidence introduced tending to show that he was within a class that might have received a share or shares of stock.

Mr. Gaskill: Yes, that part of it is true.

The Court: Now, if he did, and lost it by reason of not being able to attend to his duties, then quite obviously that is a proper element.

Mr. Gaskill: True, but the foundation has not been shown yet; it has not been shown that his inability to attend his duties during this period —

The Court: Well, that is for the jury to say,
10 whether or not his loss of twenty-one whole weeks and thirteen weeks partially —

Mr. Gaskill: Yes, but my contention is that all the testimony he has given with respect to his position there is self-serving and that it has no evidential value in this case; there is no foundation laid.

The Court: You see, Mr. Gaskill, that self-serving
20 applies to a declaration; it does not apply to testimony. Witnesses are competent, even though they are interested.

By Mr. Wescott:

Q. Do you know whether or not the grass plot that you have spoken about has been made larger or smaller since this accident?

Mr. Gaskill: I object to that as incompetent, im-
30 material and irrelevant.

(Objection sustained.)

Mr. Wescott: Does your map show the grass plot?

Mr. Gaskill: Yes.

Mr. Wescott: Where was that map taken from?

Mr. Gaskill: I don't know, it was taken from the files of the office, Judge. It was not made for the purposes of this case.

Q. Do you recollect whether the path you traveled along near the track, if that was between the grass plot and the tracks?

A. Yes.

10

Q. It was between them?

A. Yes.

The Court: He told us that, Judge; he said it was six feet wide.

Q. Before you met with this accident did you have a severe sickness?

A. Yes, I was ten days home in August.

Q. August of what year?

20

A. 1915.

Q. What kind of sickness did you have?

A. I can't tell you, the doctor knows it, I don't know; I was sick.

Q. How long were you sick?

A. About a couple of weeks.

Q. Who was the doctor who attended you?

A. Dr. Ewing.

Q. And did you get over that sickness?

A. Yes, I could go back to work, because we got 30 our own doctor there.

Q. Did you get over it entirely or not?

A. Yes, I couldn't go back to work; I wasn't well enough to go to work again.

Q. When you went back to work, what did they do to you before they took you to work?

A. Examined me.

Q. Who examined you?

A. The doctor for Stetson.

Q. What kind of examination did they put you through there?

A. A regular examination,

Q. And as a result of that you went back to work?

A. Yes.

Q. Then how was your health before you went back to work?

10 A. All right.

Q. Did you do your work?

A. Yes.

Q. Did you do a full day's work?

A. A full day's work.

Q. And every day up to the time you were hurt?

A. Yes.

Q. Are you a drinking man?

A. No.

20 Q. Well, after you got hurt, can you tell us whether or not this sickness came back that you had?

A. Yes.

Q. It did come back?

A. Yes.

Q. And how long did it last?

A. Well, I couldn't make it out how long it lasted, but it lasted until I went back to work again.

By the Court:

30 Q. Mr. Fedele, if you were walking along the path that led along this track, how did you happen to stumble over the plates, metal plates?

A. Because the train was right back of me.

Q. No, where were the plates that you fell over?

A. Right on the edge of the grass plot.

Q. Well, on the edge of the grass plot?

A. Yes.

Q. You were walking on the path?

A. Yes.

Q. Well, how did you fall on them on the grass plot?

A. Well, the train was right back, and I got on top of the edge of the grass plot.

By Mr. Gaskill:

Q. I think I can bring that out in a question: When the train got close to you to pass by you, you stepped up on to the grass in order to avoid being struck by the train, didn't you? 10

A. Yes.

Q. You were walking in the same direction to the station that the train was going?

A. Yes.

The Court: Had you finished, Judge Wescott?

Mr. Wescott: Well, not quite, no. 20

By Mr. Wescott:

Q. How high was this grass plot?

A. I can't tell you how high it is, because I don't follow those things, lawyer.

Q. Was the grass plot higher than the path?

A. Oh, yes.

Q. Well, you mean to say that you were not in this path when you fell? 30

A. No, I wasn't in the path.

Q. Well, where were you?

A. On the edge of this grass plot.

Q. How far from the path?

A. Right near, close together.

Q. What?

A. Right close.

Q. And did these things that tripped you come down to the edge of the path?

(Objected to as leading and suggestive.)

The Court: Yes, it is leading.

10 Q. Well, were these plates over which you fell out to the edge of the path or not?

A. They were scattered all over.

Q. Well, were some of them in the path?

A. I couldn't say, because it was dark, see; maybe they were.

By the Court:

20 Q. Well, where were you when you fell—were you in the path or on the grass?

A. Right on the edge of the grass plot.

Q. Well, what do you mean by the edge of the grass plot?

A. You see, I stepped over not to be struck by the train —

Q. I know, but what did you step on?

A. Stepped on these iron plates.

Q. Yes, but what was there—was that the grass plot or the path?

30 A. It was the grass plot.

Q. Then you got out of the path on to the grass plot, did you?

A. Yes.

Q. Then fell over the fish plates?

A. Yes.

Q. Or the plates that were on the grass plot?

A. Yes.

Q. Well, that wasn't the place you had been walking, had it been, for reaching the train? You had not been walking on the grass plot?

A. No.

Q. Your course was down this path?

A. Yes, but the train was right close back of me, right back of me, so as to avoid any accident I just stepped on this grass plot, right on the edge of the grass plot.

10

By Mr. Wescott:

Q. How far was the grass plot from the tracks or the train?

A. Oh, about four or five feet, something like that or six, I can't tell exactly.

Cross-examination.

By Mr. Gaskill:

20

Q. Now, Fedele, you weren't making as much money at the time of this accident as you have been making this past year—that is so, isn't it?

A. Yes.

Q. The company is paying higher wages now than it did then?

A. No, we make the —

Q. No, wait a minute—isn't the company paying higher wages now than it did then?

30

A. Not in our line.

Q. And do you say now that you are or are not making more money today than you were at the time of the accident?

A. The same.

Q. Making the same?

A. Yes.

Q. All right. Now, you returned to work after the accident on the 9th of March and not the 10th or 11th, didn't you?

A. Yes.

Q. The doctor told you that you were able to return to work on the 4th of February, didn't he?

A. Which doctor?

Q. At the hospital at Stetson's?

A. No.

10 Q. You are sure about that?

A. Yes.

Q. Now, after returning to work on the 9th of March, you worked for two weeks and then stopped and did not go back to Stetson's to work until the 9th of June following, isn't that so?

A. Yes.

Q. That is so?

A. Yes. I beg your pardon —

Q. Pardon me a minute; you have answered.

20 A. I didn't understand the 4th of February.

Q. Wait a minute; I will give you a chance to answer it again. This is important, about the matter of the first time he stopped and all that sort of thing.

(Question and answer repeated.)

Q. Now, that is true, that after working two weeks after the 9th of March you left and did not go back to Stetson's until the 9th of June?

30 A. Yes.

Q. Now, after going back on the 9th of June, you worked three weeks and then lost two weeks, that is so, isn't it?

A. Yes.

Q. Then you worked one week and lost a week; that is so, isn't it?

A. Yes.

Q. And since that time you have worked steadily; that is so, isn't it?

A. Yes.

Q. Now, that is losing a good deal of time, isn't it?

A. Yes, but ——

Q. Now, was this loss of time due to ill health on your part?

A. Not my health, no.

Q. Now, isn't it a fact that you went to Dr. Ewing 10 before this accident about your health and he told you that you would have to stop working at your trade in the room you were working there at Stetson's?

A. Yes.

Q. You were working in a steam or vapor filled room where you had to wear a rubber suit, weren't you?

A. Yes.

Q. And he told you you would have to stop that 20 on account of your health?

A. Yes.

Q. Now, you were learning the barber business Saturday nights?

A. Not the barbering business, no.

Q. What was it?

A. I kept on going, I had to keep my family.

Q. In order to keep your family and because you could not continue your work at Stetson's you were trying to learn to be a barber, weren't you? 30

A. No, not to learn; I was just helping all I could.

Q. All right, you were helping then?

A. On Saturday only.

Q. On Saturday nights?

A. Yes.

Q. Now, on the day that you fell you were going to take the 5.39 train from West Berlin?

A. Yes.

Q. And you were a little late in getting to the station, weren't you?

A. Well, the same time I leave now.

Q. Yes, but even at that you were cutting it pretty close, weren't you?

A. Yes.

Q. And were you going to get on one of the rear cars of this train from the path?

10 A. I always do.

Q. And that is what you were going to do that morning?

A. Yes.

Q. You were not going to go the station platform to get on, but you were going to get on from the path?

A. That is the way I get on every morning.

Q. That is so? Now, you live on Union Avenue, do you?

20 A. I live on Haddon Avenue.

Q. On this map this is marked Union Avenue and this is marked Dayton Avenue. Do you know Dayton Avenue?

A. Yes.

Q. You did not live on that, did you?

A. No.

Q. You lived on the street that intersected Dayton Avenue at the railroad, did you not?

A. No, I lived on the one that intersects Union
30 Avenue.

Q. You live on Union Avenue?

A. Not Union Avenue; I live on Haddon Avenue.

Q. The street you lived on caused you to come down Union Avenue to get to the train, did it not?

A. Yes.

Q. And on this morning of this accident you were coming down Union Avenue?

A. Yes.

Q. And you came down all the way to the railroad tracks?

A. Yes.

Q. There at the crossing, didn't you?

A. Yes.

Q. And then you started down between the grass plot and the railroad track toward the station?

A. Yes.

Q. And while you were going down there the train 10 passed you?

A. Yes.

Q. And you stepped back on to the grass plot?

A. Yes.

Q. To avoid being struck?

A. Yes.

Q. Now, this pile of fish plates or tie plates was back some eight or ten feet from the edge of the grass plot, wasn't it?

A. No, it was scattered all around. 20

Q. Now, wait a minute; you say no; it was very near that box there in the ground, wasn't it?

A. Yes.

Q. That battery well? You said that the tie plates you fell over were indicated by this red mark, weren't they?

A. Yes.

Q. And near that was this battery well, wasn't it?

A. Yes.

Q. And the tie plates were as far back from the 30 railroad track as the battery well, weren't they?

A. No, it was right on the edge.

Q. All right, the tie plates, you say, were on the edge?

A. Yes.

Q. They were not as far back from the edge as the battery box?

A. Yes.

The Court: What is the fact about the depth of that; is there any difference between the level of the grass and ——

Mr. Gaskill: Oh, yes, there is a great deal.

10

Q. Isn't it a fact that this path is in the ditch that runs between the railroad track and the grass plot?

A. Ain't no ditch there.

Q. You don't call that a ditch?

A. No, I get on there every morning; I don't call it a ditch.

Q. All right; you have seen water running down there, haven't you?

A. No.

20

Q. Now, the grass plot is some two or three feet higher than this foot path, isn't it?

A. No.

Q. You are sure about that?

A. Yes.

Q. How much higher is it?

A. I don't know how much higher it is, but it isn't two or three feet.

Q. But it is between a foot and two feet, isn't it?

30

A. Before it was made like this; now it is straight.

Q. No, we want to know what it was then.

A. Then it was slanting.

Q. You say it was slanting from the grass down to the path?

A. Yes.

Q. And now you say it is cut straight down to the path?

A. Yes.

Q. What is the depth that it is cut straight down from the grass to the path?

A. I don't know.

Q. Well, it is a couple of feet, isn't it?

A. I could not tell you.

Q. Well, you know it is as high as from this rail down to the floor, isn't it?

10

A. No.

Q. Well, is it as high as from your knees down to the floor?

A. No.

Q. Is it as high as the top of that desk down to the floor?

A. No, a little bit lower.

Q. A little bit lower than that?

A. Yes.

Q. Now, when this train came along you stepped 20 back on to the grass plot?

A. Yes.

Q. And you were on the grass plot at the time you fell on the fish plates or tie plates?

A. Yes.

Q. How many steps had you taken on the grass plot when you fell?

A. I don't remember how many.

Q. Well, you had taken eight or ten, hadn't you?

A. What do you mean, from the —

30

Q. I just asked you how many steps on the grass you had taken at the time you fell?

A. I don't remember.

Q. You don't remember? Well, it was quite some, wasn't it?

A. Because I got on the edge of this path and I fell —

Q. Wait a minute; you had taken quite some steps down on the grass?

A. I don't remember.

Q. Well, now, when you fell you were walking in the direction that the train was going, weren't you?

A. Yes.

Q. Well, now, did you try to get to the station before the train left?

A. I can't understand that.

10 Q. You say you were on the grass walking toward the station?

A. Yes.

Q. Did you intend to go to the station and take the train from the station?

A. No, I generally got on it where I do now.

Q. You intended then to walk along the grass plot until the train stopped and then get on the nearest steps?

A. Yes.

20 Q. I show you a picture; you recognize that as showing the conditions down there at West Berlin Station at that time, don't you?

A. Not exactly like that, no.

Q. Pretty near like it?

A. Yes, pretty near like it.

Q. Here is another one that shows the railroad off in the distance and shows the conditions down there, don't it?

A. What is this?

30 Q. Here is your grass plot here and there is the signal box down at the highway crossing?

A. Yes, there is no plates there.

Q. Well, here are plates over here, see? See there, plates over at the railroad; now, that shows conditions down there, don't it?

A. Yes.

Q. And here is still another one that shows conditions down there, don't it?

A. Yes.

Mr. Gaskill: I would ask that these three be marked for identification, Exhibits D1, D2 and D3.

(Said photographs are so marked.)

Q. Now, you were examined by Dr. Mecray for 10 the railroad company on February 10, 1916, weren't you?

A. Yes.

Q. And you were examined by Dr. Mecray again on April 2nd?

A. Yes.

Q. And when the doctor examined you a couple of days ago you told him you were all right now, didn't you?

A. Yes, but I feel it in damp weather. 20

Q. Oh, you are all right except you feel it in damp weather?

A. Yes. Judge, your Honor, he just say awhile ago that the doctor from the hospital says go back to work on February 4th, which I went down to see Dr. Mecray February 10th, and I had still the bandage on my leg. See if he remembers that.

Mr. Gaskill: All right.

30

By Mr. Wescott:

Q. Now, you got me all mixed up on this thing. You came down that road to get on the train, didn't you?

A. Yes.

Mr. Gaskill: I submit, if your Honor please, that this subject has been thoroughly covered in both direct and cross-examination and it is not susceptible of alteration or explanation at this time.

The Court: Well, I suppose counsel has a right to re-examine him on any matter which was touched upon by the defense. He must do it, of course, without leading.

10

Q. Was there any point after you left the road where you stopped walking before you fell?

A. I kept on walking.

Q. You were walking all the time?

A. Yes.

Q. This grass plot that you speak of, can you tell whether or not that slanted off?

A. It wasn't then.

Q. It didn't slant off?

20 A. It was not; it was not slanted off then, now it is straight.

The Court: He means it was; since it has been cut down straight but then it slanted.

Q. And was this train coming into the depot while you were walking along that path next to the grass plot?

A. Yes.

30 Q. Coming in behind you?

A. Yes.

Q. Is that the reason you stepped out a little?

A. Yes.

Q. Did you step up when you stepped out, or were you on the level all the time?

A. Not quite on the level, it was slanted before then.

Q. And were these fish plates on that slanting place?

(Objected to as leading and suggestive.)

Q. Or not?

Mr. Gaskill: I again object to that as leading and suggestive and improper at this time.

10

The Court: I think that the witness should be re-examined with great care to avoid any suggestion to him.

Mr. Wescott: I do not understand you.

The Court: I say, I think that under the circumstances the witness should be examined with great care to avoid any suggestion to him.

20

Mr. Wescott: All right.

Q. Now, how did you happen to fall? Let me understand it; you haven't explained that yet.

Mr. Gaskill: I object to that as being unnecessary repetition of a matter that was thoroughly covered both in direct and cross-examination.

The Court: Well, I can't say that counsel at a vitally important part of the case — Perhaps it may be, I am not so sure about it either, but it is competent to get all the facts as clearly as possible, indeed, it is highly desirable.

30

(Question repeated.)

Q. Were you walking backward, going ahead or walking sideways?

A. No.

Q. Or what were you doing—can't you explain that?

A. I was walking front ways, not sideways. What would I be walking sideways for?

Q. You were walking front ways?

A. Yes. Judge, I would like to ask you a question
10 if I can.

Mr. Gaskill: I object to any volunteer statements, if the Court please.

The Court: I don't know what it is.

Mr. Gaskill: I don't know either.

20

GEORGE DUNCAN, SWORN.

By Mr. Wescott:

Q. Where do you live, Mr. Duncan?

A. West Berlin.

Q. How long have you lived there?

A. About five years.

Q. Do you know Fedele, this plaintiff, this young
30 man?

A. Yes.

Q. Were you with him on the morning of January 14, 1916?

A. I was in back of him.

Q. How far back of him?

A. I couldn't say; I don't remember.

Q. Well, were you a mile?

A. No.

Q. A half a mile?

A. No, sir.

Q. Can't you give us some judgment?

A. I judge around—well, I can judge about twenty-five or thirty feet.

Q. Very well, twenty-five or thirty feet. Was it dark?

A. It was very dark.

10

Q. And what were you doing there?

A. I was going to catch a train.

By the Court:

Q. You were back of him, I understand?

A. Yes.

By Mr. Wescott:

Q. Did you come down the same road that he did?

20

A. No, sir.

Q. Well, did you see him fall?

A. No, sir.

Q. How do you know he did fall?

A. I heard the tie plates falling and heard Mr. Fedele holler, and the only way I could find him was from the light of the steel coaches; that is how we located him and picked him up and helped him on the train.

30

Q. Now, where was he when you found him?

A. Why, I think he was on the end of the grass plot, if I am not mistaken; I don't just remember where he was.

Q. Well, that grass plot at that time, did it level off down, slant off down to the path that was there?

A. Well, I couldn't say then, because I traveled up and down in the dark and I came home in the dark; I couldn't tell you what it was.

Q. Well, haven't you ever noticed it in the day-time? You live down there, don't you?

A. Yes, but I —

Q. You mean to tell us you lived there in the day-
10 time and went back and forth?

A. And I never noticed it, yes, sir.

Q. You don't know whether that flower bed or grass plot is twenty feet high or a foot high or what?

A. Oh, it isn't twenty feet high; it is only about a foot high if it is that.

Q. How was it then when this accident happened?

A. I don't remember, I couldn't tell you.

Q. Well, about how far did you find him from
20 the grass?

A. Well, he was sitting down when we picked him up.

Q. Well, that don't answer the question.

A. I just don't remember, I couldn't tell you.

By the Court:

Q. How near was he to the path or was he on it—where was he?

30 A. His one foot was on the path, I remember that. He was sitting up holding his knee like that (indicating).

Q. Where were these plates?

A. Near the edge of the grass plot, as far as I remember.

Q. How near?

A. I judge around two feet, something like that.

Q. How big a pile of them?

A. I couldn't tell you, because they were knocked over when I seen them.

By Mr. Wescott:

Q. You can't tell whether he would have to get up a foot or two to the west to go where these fish plates were?

A. I don't understand you on that question. 10

Q. Well, there is the floor there, you see; here is the top of the table. If I was on that floor and wanted to get up on top of the table, I would be two or three feet from the floor, wouldn't I?

A. No, of course —

Q. Well, I would still be on the floor. What I want to get out of you, young man, is what was the difference between the height of this path and the edge of that grass plot there?

A. Well, it is not quite a foot from the bottom of the path to the top of the plot. 20

Q. I don't care about what it was, I am talking about the edge now or the edge as it was then.

A. I don't understand you on that question at all.

Q. Well, do you recollect whether when you were walking on that path if you wanted to get on that grass you would have to lift your foot up?

A. Oh, yes, you would have to lift your foot up.

Q. When you were within two or three inches of the path? 30

A. Yes.

Q. How high did you have to lift your foot?

A. About a foot.

Q. Then it didn't slant off?

A. Well, it slants off a trifle, yes.

Q. Well, did it then?

A. I don't remember.

Q. Well, you are speaking now, your testimony now relates to the condition that the plot is in now, does it?

A. Yes, it is chopped off, now; it is chopped down straight.

Q. Well, do you know whether it was chopped down straight when this accident happened?

10 A. I don't remember, don't remember thoroughly whether it was or not.

Q. You have been subpoenaed by the railroad, haven't you?

A. By the railroad?

Q. Yes.

A. By both, or not by the railroad, no, by Mr. Blaisdell to court.

Q. Weren't you subpoenaed by the railroad people?

20 A. I don't know, I think I have the two subpoenas here in my pocket.

Q. Have you been talked to by the railroad people?

A. Yes.

Q. What did you tell them about this grass plot?

Mr. Gaskill: I object, unless he fixes the time, place and individual, then I don't object. We haven't anything to conceal at all.

30

The Court: Well, Judge, they seem to want you to fix the place and time.

Mr. Gaskill: And the individual.

Mr. Wescott: I don't know.

The Court: Ask him.

Q. When were you subpoenaed?

A. Last night.

Q. Who subpoenaed you?

A. Mr. Sharp, of Berlin, was the one that gave me the report.

Q. He works for the railroad, does he?

A. The railroad agent at Berlin or freight agent, I don't know which. 10

Q. Did you ever talk to him about it?

A. No, sir.

Q. Or any other railroad man?

A. Yes.

Q. Who?

A. The agent sitting right here with the glasses on.

Q. Now, when did you talk to him about it?

A. Directly after the accident I got a letter from the railroad company to report to Mr. Blaisdell's office; I called them up and told them I couldn't report to them, they would have to come around at my lunch hour and see me then; I didn't know what it was about. 20

Q. Did you talk to them then about the height of this grass plot?

A. I don't know whether I did or not; it has been so long ago, it has been over a year ago.

Cross-examination.

30

By Mr. Gaskill:

Q. Mr. Duncan, have you talked with any of the railroad people about this matter since your first interview with Mr. Woodward?

A. No, sir.

Q. Now, you talked with the other side, too, about it, haven't you?

A. No, sir.

Q. No one at all?

A. No, sir, no one at all.

Q. And you haven't talked with any of the railroad people since the first interview?

A. No, sir.

Q. At that time you were employed by Fleck
10 Brothers in Philadelphia?

A. 44 North Fifth.

Q. Are you still with them?

A. In Camden.

Q. Now, you were late getting to the station on the morning of this accident, weren't you?

A. Yes.

Q. And you were running to catch the train?

A. Yes.

Q. You said you were back of Fedele?

20 A. Yes.

Q. Was he running also?

A. I couldn't see.

Q. You couldn't say?

A. I couldn't see.

By the Court:

Q. Was this a pathway or not that had been used
by passengers?

30 A. It is used every day, yes, sir.

Q. And had been at that time?

A. Yes, I used it every day of my life.

Q. Well, did other passengers generally use it?

A. Yes, they go up that way.

By Mr. Gaskill:

Q. Were you in that path on this morning of the accident?

A. Why, yes.

Q. And you refer to that open space between the grass plot and the ballast here from this crossing down to the station, don't you?

A. Well, here is the road that I come up, come up here, and I had to run across those two tracks, and when I got across those two tracks the train shot past me. I heard Mr. Fedele holler and I ran and picked him up about here. 10

Q. Picked him up about where this pencil mark is?

A. Well, around there, yes, and this here part was not covered up; that was sticking up out of the ground at the time.

Q. That is a signal box, a little box there?

A. And this is the path running up here to the station. 20

Q. How close was he to that battery box when you picked him up?

A. I don't remember; I couldn't tell exactly.

Q. Well, he was pretty close to it, wasn't he?

A. Yes.

Q. And he was as far back from the railroad practically as the battery box was, wasn't he?

A. Well, his one foot was like he was sitting on the grass plot and one foot was down in the path. 30

Q. Now, the foot that you say was down in the path, his foot actually was down in this road, wasn't it?

A. No, not in that road, next to the railroad.

Q. It was down in the path next to the railroad track?

A. Yes, toward the tracks.

Q. There was only one pile of tie plates there, wasn't there?

A. That is all I know of.

Q. And that pile of plates had been there for two or three weeks, had it?

A. I don't remember that.

Q. It had been there some days before the accident?

10 A. I couldn't even tell you that.

Q. Now, that pile of plates was some ten or twelve feet from the track, wasn't it?

A. Oh, no, they weren't.

Q. I say from the track, not from the path.

A. No, not ten or twelve feet from the track.

Q. Now, the station lights were burning and the light at the crossing was burning?

20 The Court: Mr. Gaskill, is it admitted that these plates had been in the position they were for several days?

Mr. Gaskill: Yes, sir.

Q. And the crossing bell was ringing at the time he fell?

A. I don't remember; well, the lights were burning, they are always burning, but the bell I don't remember, because half of the time that is out of
30 order.

Q. Mr. Duncan, when you talked with Mr. Woodward on the first of February, 1916, you told him that this pile of plates was about ten or twelve feet from the track, didn't you?

A. Not as I remember, no.

Q. Well, now, if he made a note of it and says that you did —

Mr. Wescott: I object to that; don't answer that question.

Q. Does that affect your statement?

(Objected to.)

Mr. Gaskill: All right, I will withdraw it.

Q. Well, didn't you tell Woodward on the first of 10 February, 1916, that that pile of plates was ten or twelve feet from the track?

A. I don't remember whether I did or not; I couldn't say.

Q. Well, at any rate, whatever you told him at that time was the truth, wasn't it?

Mr. Wescott: I object to that.

The Court: All this is competent. 20

A. I supposed it was the truth at that time, yes.

Q. You haven't any object in telling any untruth for either side, have you?

A. No, sir, none whatever.

Q. I say, if you told him that at that time when your recollection —

Mr. Wescott: This I object to.

30

The Court: Let the question be put.

Q. When your recollection of the matter was fresh, that is so, isn't it?

(Objected to; objection sustained.)

By Mr. Wescott:

Q. Well, now, Mr. Duncan, do you know whether or not when you had the interview with Mr. Woodward, if that is his name, that he took down exactly what you told him?

A. He wrote something down on a paper.

Q. No, that ain't the question; do you know whether or not he took down with literal truthfulness what you said to him?

A. I didn't read it over, I couldn't say.

Q. So that if he has something down there that you didn't tell him, would it be true?

A. No, it would not be true.

Q. Was there any guard or fence around this grass?

A. No, sir.

20 DR. LESLIE H. EWING, SWORN.

By Mr. Wescott:

Q. Doctor, you practice medicine, do you?

A. I do.

Q. You know Fedele, the plaintiff in this case?

A. I do.

Q. Did you attend him sometime before the 14th day of January, 1916, for some illness?

30 A. I did, in July and August of 1915.

Q. 1915?

A. That was the year before, 1915, yes.

Q. What year did you attend him?

A. You said did I attend him before 1916, the time of the accident? I did; I attended him in July and August, 1915.

Q. Now, what was the trouble with him then, Doctor?

A. Purpura hemorrhagica.

By the Court:

Q. Tell us in English.

A. It is a breaking out on the body of little purple spots and bleeding from the gums, the teeth, also from the mucous membranes of his nose. 10

Q. Caused by what?

A. Why, it is often accompanied by rheumatism of a severe kind. It is not very common.

By Mr. Wescott:

Q. Is it a rare or common affliction?

A. It is a rare affliction, I should say.

Q. How long did he have that trouble?

A. Why, I think it was around the 4th of July of 20 that year or the Italian Fourth of July that he had it so bad that he could not attend the celebration, somewhere along there.

Q. I know, but how long was the end of your charge?

A. At that time?

Q. Yes.

A. Why, two or three months, I think, at that time off and on; steady for the first —

Q. Well, did he recover? 30

A. He did.

Q. Completely?

A. Yes.

Q. And did he go back to work?

A. Yes.

Q. Do you remember hearing of his fall over some plates?

A. I was called to attend him about two o'clock in the afternoon on the 14th of January.

Q. You were called?

A. Around that time, yes.

Q. Where did you see him?

A. In bed at his home.

Q. What was the matter with him then—what did
10 you find?

A. He had quite a lot of trouble with his knee, synovitis, and some bruises and some contusions—that was his left knee, and his right elbow also showed some contusions.

Q. How did his knee look, Doctor?

A. It was swollen quite considerably; I advised him to go back to the Stetson Hospital and have an X-ray picture taken to see if there was anything the matter with his bone, because it was so swollen it
20 would be difficult to tell at that time.

Q. Was he suffering at that time?

A. Quite intensely, yes.

Q. What was the matter with his elbow?

A. Contusions and bruises.

Q. Well, he has recovered from those troubles, the trouble with his knee and his elbow, has he?

A. As far as I know he has; I haven't examined him since that time.

Q. Well, he says he has except in damp weather
30 he has a little discomfort in his knee; would that be probable?

A. Yes.

Cross-examination.

By Mr. Gaskill:

Q. Doctor, he came to you last year in a very run-down condition and you asked him about his work and so forth, and advised him to quit working for the Stetson Company, didn't you?

A. I did.

10

PLAINTIFF RESTS.

Mr. Gaskill: If the Court please, I move for a non-suit in this case on the ground that the mere use of this path by either the permission or acquiescence of the company is not an invitation and involves no liability. Also, because the mere existence of a worn path across or along the railroad tracks to a station cannot be relied on as an invitation to an intending passenger to take such path; and furthermore, because the plaintiff by his own statement intentionally deviated from the path and stepped out of it, and even though he only stepped a couple of feet, still he exceeded the invitation and fell over this object.

20

30

The Court: Mr. Gaskill, is that true where the company countenances a use as a passenger?

Mr. Gaskill: Yes, sir; I won't make the admission that the company by its acquiescence in the use of such path countenances that.

The Court: No, but where there are two passageways, as appear to be present here, one around by apparently an approach to the west, and the other an approach along the track, which has been described as a path where passengers habitually use that path, is it not inferable or permissible for the jury to infer that it is a path provided by the company for the purpose?

10 Mr. Gaskill: I think not. A very able attorney has agreed with me that under the various cases, for example, the Furey case and the Devoe case and some of the others, that there is no liability here in cases of this sort.

The Court: Undoubtedly, that may be on other grounds, but the mere presence of a path of itself may not be sufficient.

20 Mr. Gaskill: No, sir, that is clearly so.

The Court: But I think there is an abundance of authority in this state that where a path leading to a station is used habitually by intended passengers or those who are passengers —

Mr. Gaskill: I think not.

The Court: We have had that very question in
30 the ferry down here, haven't we?

Mr. Gaskill: No, sir, not that question; no, not that question at all. Your Honor will remember the Corson case; that is a very recent case. There a passenger was using a path and claimed that that use was because the regular roadway was blocked off by cars standing there.

The Court: Yes, but that was his own means; that means was not in any way either provided or countenanced by the company.

Mr. Gaskill: Just as much so as this.

The Court: Now, remember this was on railroad property, and this path, the end of it, leads to the station and platform and it leads from a highway, and this testimony indicates that it was habitually used by passengers for such purpose. 10

Mr. Gaskill: They did so at their own risk.

The Court: I cannot quite consent to that as a rule of law. Now, on the other features of it, I am inclined to think that the whole testimony raises a question for the jury, the approach of this train, the dark night, the absence of light, the comparatively narrow width of the pathway, were all conditions that cannot be, of course, ignored. Now, whether in that situation the company had violated its duty to a passenger or intending passenger, where it had placed obstructions so near this passageway that persons deviating from it either by accident or to avoid possible danger, under those circumstances it seems to me to be a question that I cannot withdraw from the jury. 20

Mr. Gaskill: If your Honor please, this man knew that the use of that path was made dangerous by approaching trains, and he knew this train was coming, and he left that path in order to avoid danger from that train. Now, I was just going to call your Honor's attention to this; it seems to me it is like that famous case the Chief Justice decided some 30

years ago where a woman took her cat to a store and the storekeeper was willing to take it and told her to put it in a certain place, pointing to a door

The Court: And did not tell her to go in herself.

Mr. Gaskill: She took it for granted it was a
10 closet and stepped in; it happened to be a stairway and she fell down the stairs, and the Court said she had exceeded her invitation.

The Court: Well, that is a different thing; here is the question of inadvertence in movement, combined with the conditions of extraneous danger, of avoiding a train. You know, there is a line of cases that hold that where a dangerous thing is placed
20 so near to a passage by one as to make it dangerous for persons inadvertently stepping into it, that in such case there is a possible liability.

Mr. Gaskill: But this was not inadvertence, if the Court please, this was deliberate on his part.

The Court: Yes, I appreciate that, but it was in avoidance of a danger. The divergence was just sufficient, apparently, on the part of the witness to avoid what was apparently a danger to him.
30 You must remember the night was dark. It seems to me that that materially affects the question. What one would do if the day were open and clear is one thing, and what he might do to avoid a danger in the dark is an entirely different thing.

Mr. Gaskill: Now, he admits that deliberately and habitually he used that and still uses this method and takes the risk of an accident.

The Court: Well, I guess if he goes over any more fish plates he will have to take the chances.

Mr. Gaskill: The fact that this was night-time, dark, made it all the more necessary for him to use the regular way, the roadway. It seems to me that if he took a short cut for the purpose of saving time that he took all the risks when he got at all out of that pathway.

10

The Court: I am afraid I cannot agree that it is not a jury question. Note an exception.

THE CASE FOR THE DEFENDANT.

DR. PAUL M. MECRAY, SWORN.

By Mr. Gaskill:

20

Q. Doctor, did you make an examination of the plaintiff, Ralph Fedele, for the claim department of the West Jersey & Seashore Railroad Company at your office on February 10, 1916?

A. Yes.

Q. What injuries did he complain of?

A. He complained of injury to his knee.

Q. Which knee?

A. I think it was the left; I am not sure about that; I think so. 30

Q. Did he make any complaint of injury to an elbow?

A. He said that his elbow had been hurt and that his knees had been hurt, but that they had recovered before I saw him, which was about a month after-

ward, or nearly a month, and his complaint then was of his knee.

Q. Now, what examination did you make of his knee and what condition did you find it to be in?

A. I examined the knee and found that it was—there was a mark below the knee about the size of a half dollar that showed a bruise mark of the skin, and another one lower down on the leg. The knee was sore and inflamed.

10 Q. Did it have an ichthyol dressing on it at that time?

A. It did, it had a dressing on it, yes.

Q. Was the knee swollen?

A. It showed evidence of swelling. Most of the swelling had gone when I saw it, but there was some swelling still.

Q. Now, how about his ability to bend that knee, what did you find?

A. He could bend the knee, but not entirely, and
20 the bending of it caused some pain and discomfort.

Q. Was it a severe injury?

A. I looked upon it as a rather bad bruise of the knee that had been followed by some inflammation of the synovial membrane. There wasn't any fracture about the knee.

Q. Now, did you examine him again on April 2nd, Doctor, a couple of days ago?

A. Yes.

Q. That was at my request, wasn't it?

30 A. Yes.

Q. Now, what condition did you find this left knee in?

A. The knee has quieted down and it is about the same condition as the other knee; in other words, it has made a good recovery. He said that at times it caused him some discomfort, I think he said in

damp weather or after heavy exercise, but that it was practically well at this time, and the examination seemed to bear out this statement.

Q. Is there any reason why that knee should be more—that he should feel discomfort in that knee in damp weather?

A. I think it may be that he would feel some slight discomfort from it in bad weather.

Q. What condition did you find his knees and elbow to be in?

A. They are well, he admits that they are well, or admitted that they were well.

10

No cross-examination.

DR. VICTOR K. MARSTELLER, SWORN.

By Mr. Gaskill:

20

Q. Doctor, are you connected with the Stetson Hospital in Philadelphia?

A. No, sir.

Q. Well, were you on January 14, 1916?

A. Yes, sir.

Q. Now, do you recall seeing Ralph Fedele, the plaintiff in this case, one of the company's workmen, during the morning of that day?

A. Yes, sir.

Q. Did he come to you for treatment?

A. He did.

Q. Where did he make complaint of injury?

A. Why, if you don't mind I will read the original record here which I made at the hospital at that time.

30

Q. Well, I don't object, but counsel may. If you need that to refresh your recollection —

The Court: Well, they are better than his memory now.

Mr. Wescott: Oh, read it.

Q. Just read your record slowly, Doctor.

10 A. I found a bruise of the left knee just above the edge of the patella, which is the knee cap, no fracture detected, but advised him to return this afternoon for an X-ray, and I found a bruise right over the arm above the elbow with ecchymosis, and then the other part of the accident I took down here, which is of no account.

Q. His statement?

A. Yes.

Q. Well, now, Doctor, was an X-ray taken and
20 what did it show?

A. Further down in the notes I have, "Did not return for X-ray for Friday," which was the morning of the accident, "but came in on Wednesday," which was the following Wednesday. He did not return the morning of the accident; he came in at 10.35 in the morning to be treated, and the X-ray was taken shortly after twelve o'clock, and I told him to wait for the X-ray, but he did not show up in the afternoon.

30 Q. He came to the hospital on the following Wednesday?

A. Yes.

Q. After the 14th?

A. Yes, sir.

Q. And the X-ray was taken at that time?

A. Yes, sir.

Q. How many times did you see him, Doctor, with respect to this accident and injuries to the elbow and the knee?

A. I couldn't tell you, because if the case progresses we don't take down the dates. Of course, if the case don't progress we usually take down the dates in it and changes.

Q. Well, have you any record as to what his condition was about the 4th of February?

A. Why, I remember he was there the 28th of 10
January and that is about the last time I remember seeing him. Of course, he came later on, but I didn't take down the exact dates, but on the 28th of January, why, his leg was greatly improved.

Q. Was he able to go to work at that time?

A. Well, I should judge to the best of my knowledge and ability, the kind of work he was doing, he should have been able to go back about the first week in February, at the very longest the second week in February, that is, for that condition. Of course, 20
other conditions might have turned up later on.

Q. Now, did you know at any time of his having this unusual disease of purpura hemorrhagica?

A. Why, I wasn't—He was admitted to the ward, that is, on the medical side; I had the surgical side of the house, but the beds were full on the medical side, so they put him over on the surgical side of the house, but he was really a medical case.

Q. When was that, Doctor?

A. I couldn't give you those days, because he 30
didn't belong to my side of the house, so I don't know, but this was after the accident.

Q. After the accident?

A. Yes.

Q. And did he have this disease that I have mentioned?

A. Yes.

Q. And how long, can you tell me, that he was in the hospital with that?

A. I couldn't tell you, because he didn't belong on my side of the house.

Q. What is the cause of that disease, Doctor, as far as is known?

A. As far as I can tell you, the exact cause is not known.

10 No cross-examination.

MILTON D. GEHRIS, SWORN.

By Mr. Logan Gaskill:

Q. Mr. Gehris, are you connected with the Stetson Company as paymaster?

20 A. Yes.

Q. How long have you held that position?

A. Twenty-five years.

Q. Now, I wish you would tell us, beginning on January 14, 1916, what weeks Ralph Fedele was at work and what weeks he was away.

30 A. The first week that he worked after that was the week ending March 9th, he worked about half the week. The week ending March 16th, he worked the whole week, practically the whole week, and he was out again until the week ending June 15th was the next full week. He worked three weeks then; then was out two weeks, about two weeks and a half, then worked a week and a half, then out one whole week, then he has been working steady since.

The Court: What was the total he lost?

Q. Can you give us the total amount of time he was away?

A. About twenty-three weeks altogether, twenty weeks practically together and a stretch of three odd weeks.

By the Court:

Q. Were there parts of any other weeks?

A. There were parts of two weeks. 10

Q. No, I mean beside the twenty-three weeks?

A. Yes, there were parts of three other weeks.

Q. After the twenty-three?

A. Yes.

By Mr. Logan Gaskill:

Q. Do you know how much of the time he was away on account of the accident and how much on account of this peculiar disease? 20

A. I couldn't tell you.

Q. Now, Doctor, what wages was Fedele making on January 14, 1916?

A. Well, the week ending January 13, 1916, he earned \$20.52.

Q. Did that include any premium or bonus?

A. No, it did not.

Q. Was there any premium or bonus system in force?

A. Twenty per cent. bonus paid him at Christmas 30 time on that amount, which amounts to \$24 and some cents.

Q. Did he lose any bonus by reason of the time that he was away on account of the accident and on account of sickness?

A. Not on the amounts that he had earned, only on the amounts that he didn't earn.

Q. Now, Mr. Gehris, I wish you would explain to us and tell us whether in your system Fedele was in line for any stock dividends, and also whether he lost stock dividends by reason of his absence, because of absence purely of these few weeks succeeding the accident?

10 A. That is a very hard question to answer. The policy has been that every year at Christmas time the management picks out two or three men from every department and allots to those men shares of stock. Of course, it doesn't go to show that his loss of time has eliminated him from that at all; he has been there long enough that he might be considered; he has been there since 1904.

By the Court:

Q. Does a loss of time affect it?

A. It does not.

20 Q. Then what do you mean by saying that it is hard to tell?

A. Well, you can't tell who is being picked out. The men most worthy, the men doing the most work, would naturally be the ones who will be allotted the stock.

Q. Oh, well, then the question of the quantity of work does count?

A. It does count, certainly, to a certain extent.

Q. And does absence count against quantity?

30 A. Oh, yes, most assuredly.

By Mr. Gaskill:

Q. In other words, if the man were sick more or less constantly and were away on that account, he would not be likely to be one of those chosen for stock dividend?

A. Not very likely, no, sir.

Q. Does the matter of conduct and punctuality and all that sort of thing count?

A. That counts very strongly. If a man is always on the job, why, he is more likely to be considered.

Q. In other words, exemplary men are picked out for the stock dividends as an inducement to others to do likewise?

A. Most assuredly.

Q. Now, how many shares are distributed to those 10 men who are chosen for stock dividends and are allotted to each one?

A. Two, three and five. Last year only two were given, because we were near the end of the allotment that we have available at the present time. Heretofore it had been three.

Q. For the year 1916 the allotment was two shares per man?

A. Two shares.

Q. And what is the value of those shares of stock? 20

A. The par value is \$100, the market value about \$375.

Cross-examination.

By Mr. Wescott:

Q. Can you recall how many years Fedele had worked for you?

A. He has been working for us since 1904. 30

Q. A steady man?

A. Steady, he lost some time occasionally, but we considered him a steady employee.

Q. A man of sober habits?

A. Entirely so.

Q. A skillful mechanic, is he?

A. Yes, sir.

- Q. And does good work?
 A. Very good work.
 Q. The fact is, he was the leader in his department, wasn't he?
 A. I would not say that.
 Q. He came pretty near it?
 A. But he does good work.
 Q. Well, in respect to quantity of work and quality of work and conduct, he was A No. 1?
 10 A. Yes.

WILLIAM BODDIS, SWORN.

By Mr. Gaskill:

- Q. Mr. Boddis, you are in the employ of John Wanamaker of Philadelphia, I think?
 20 A. I am.
 Q. You are the gentleman that Mr. Fedele asked to write to the railroad company, Mr. Buckalew, about the accident, aren't you?
 A. Yes.
 Q. At the time he asked you to write to the railroad company, did he tell you how the accident happened?
 A. He did.
 Q. And what did he say?
 30 A. He said that he fell over a pile of plates on the grass plot at the station.
 Q. Did he say what he was doing when he fell over them?
 A. Stepping out of the way of the train, he said.
 Q. Do you live at West Berlin?
 A. I did, not now.

Q. At that time?

A. Yes.

Q. Are you familiar with the fact that there were a pile of tie plates on that grass plot?

A. Yes.

Q. In January, 1916?

A. Yes, sir.

Q. How long had they been there before January 14th?

A. Well, to my recollection, as near as I can tell, 10 they were put there somewhere around Christmas time.

Q. Did you have any discussion with Fedele about his knowledge that the plates were there?

A. I asked him how he came to fall over them. He said, "I was hurrying for the train and thought the train was going to hit me and I stepped away and fell over the plates."

Q. Well, did you say anything to him with respect to the subject of how long the plates had been there or he to you? 20

A. Not how long, I said, "You knew they were there."

Q. What did he say to that?

A. He said, "Yes, but I couldn't see them in the dark."

Q. Now, do you know where the plates were at that time,—can you locate them on this blue print? This white square indicates the battery box.

A. Yes, well, is this the path of the railroad track? 30

Q. That is the railroad track.

A. This is the path here?

Q. Yes.

A. Well, the grass plot slants, I should judge about—well, it is a pretty high step to step up unless you take two steps; it slants this way, and the plates

were strewed there; there were several piles of the plates and they were over, I should judge, about six or eight inches on the top of the grass plots.

Q. Six or eight inches?

A. Just about even with this box, and this box sets back from the path about six or eight inches, as near as I can tell; I can't tell just exactly.

Q. But you fix the pile of plates, as I understand, as six or eight inches beyond the crest of the rise
10 from the path?

A. To the grass plot, yes.

Q. How far would that be from the beaten path?

A. Why, you mean from the slope?

Q. Yes, from the ground.

A. Why, I should judge about two feet.

By the Court:

Q. Is that meant from the bottom of the depres-
20 sion?

A. From the gravel path, sir.

Q. Oh, there is a gravel path there, is there?

A. A cinder path, rather.

Q. Cinders?

A. Yes, for passengers to get off the train.

By Mr. Gaskill:

Q. There are cinders there and use has made it
30 hard?

A. Yes.

Q. And it shows the marks of travel?

A. Yes.

Q. I show you three photographs that were marked before; do they show conditions at that time down there?

A. Yes, this is the grass plot here, this is the path leading to the station.

Q. And they show about four piles of plates, don't they?

A. Yes, sir.

Q. Do you remember whether those plates were moved, or whether during the time they stayed there from Christmas up until this accident?

A. I don't remember; I was not to the accident for quite awhile after that.

10

By the Court:

Q. I understand this path or whatever it might be called has a scoop shape like that?

A. No, sir, there is the station platform —

Q. I don't mean now, but at that time?

A. At that time it is the station platform, then it tapers down; after you leave the platform, this wooden platform, it tapers down probably to some four or five feet, then you are on a level, and that goes to the railroad crossing at Dayton Avenue.

20

Q. Now, is that level all the way from the grass plot over to the track?

A. Except a box that crosses the track with some kind of wiring in it, electric or signal wiring.

Q. There is no slant or slope of any kind?

A. No, sir, not on the straight path, no, sir, but there is on the grass plot coming down to this path.

Q. The grass plot—what is the material of the grass plot?

30

A. It slopes that way.

Q. From the grass plot. Now, what is that material?

A. Grass it was.

Q. Well, I mean from the grass plot down to the side.

A. Why, the grass was sloped, it was growing there until you come to the cinder path.

By Mr. Gaskill:

Q. Now, in May of 1916, did you see anything about Fedele that indicated whether he was in good or bad health?

A. Yes, I should judge he was in good health.

10 Q. What did you see him do in May that you particularly noticed?

A. Well, one Sunday morning in May, some boys were playing a game of baseball on the lot and he was taking part in the game.

Q. Was he active or not?

A. Well, I couldn't say whether he was active; he was catching —

Q. Was he batting the ball and running around?

A. No, I didn't see him bat the ball, saw him run
20 once. I didn't see him bat the ball at all.

Cross-examination.

By Mr. Wescott:

Q. Bossing the game, umpiring the game?

A. He was umpiring, too, part of the time, yes.

Q. Well, it don't take much strength to umpire a game unless you are umpiring a professional game,
30 then it sometimes does.

The Court: Judge Wescott is an expert on that; you will have to take his word for it.

Mr. Wescott: Yes, I have been through all that, know all about it.

Q. Now, if I understand you, Mr. Boddis, there was this road that led down to a crossing where it goes across there?

A. Yes, sir.

Q. Then there is a path runs up toward the station?

A. Yes.

Q. Next to the tracks?

A. Yes.

Q. About how wide was that path at the time of 10 this accident?

A. I should judge about four feet from the edge of the railroad ties to the starting of the grass plot.

Q. You said that is a path that people get off the train onto or into?

A. Yes.

Q. Well, is it a path that people use to get into the train?

A. Lots of them use it, yes.

Q. Always have, haven't they?

20

A. As long as I can remember in the eleven years I was there.

Q. And this grass plot, has that been changed any in formation, as far as you know?

A. I couldn't say that. I think they were starting alterations when I left West Berlin last November.

Q. And the grass plot—I think you took the paper like that —

A. Sloped, yes.

30

Q. Sloped off into this foot path?

A. Sloped off into this foot path, yes.

Q. And these plates were within the —

A. They set right on top of the grass plot.

Q. Within a foot or two?

A. Of the top of the slope.

Q. Within a foot or two of the path?

A. Yes; well, I should judge about between a foot or two, taking the slope, yes.

Q. How far were they from the actual ground?

A. Why, from what I could judge, about two feet from the actual ground.

Q. And this young man told you that he was going backward to escape the train and fell over these plates?

10 A. No, he didn't say he was going backward; he said he stepped out of the way.

Q. Oh, I understood you to say he was going backward.

A. No.

The Court: He said the train was coming back of him, the way I understood the witness.

Mr. Wescott: That is the way I got the impression, the train was coming back of him.

20 The Court: Yes, and he stepped to one side, afraid the train would hit him.

Mr. Gaskill: I would like to offer this pencil sketch that was identified and ask that that be marked D4. I offer this blue print and ask that it be marked D5.

(Said papers so marked.)

30 EDWIN PRETTYMAN, SWORN.

By Mr. Gaskill:

Q. Mr. Prettyman, you are the section foreman in charge of this section of track down there at West Berlin, aren't you?

A. Yes.

Q. Now, how does this path, as it has been called here, along the track between the station and the crossing differ from the same condition all along the road?

A. It don't none.

Q. None?

A. No, it is only practically a ditch line.

Q. Is there any grade whatever from the grass plot toward the tracks or from the tracks down toward the grass plot for the purpose of carrying off water? 10

A. A little grade, yes.

Q. Is there any grade in the line of that path itself so as to run the water off any where?

A. Yes, it runs around the corner into the grass bed, right at the end of the grass bed.

Q. Now, with respect to this pile or these piles of fish plates that were on this grass plot on January 14th, 1916, when were they put there? 20

A. Why, put there in December, I don't know exactly what; we are laying rail there.

Q. And how long did they stay there?

A. Well, I should judge they were there for a month or a little over.

Q. And how far back were they from the path or ditch line?

A. Well, from the rail to the grass plot where the plates laid was thirteen feet. 30

Q. From the rail of the track to the plates was thirteen feet?

A. Yes.

Q. Can you tell me how wide this ditch or path was from the rail out to the edge of the grass?

A. About nine feet.

By the Court:

Q. You mean by that the path was nine feet wide?

A. Well, the path from the rail out to the grass plot is nine feet.

By Mr. Gaskill:

Q. We have called this a path and it has been
10 called a path here, but what did you technically call that cleared place from your ballast out?

A. The ditch line, to drain the water off from the track.

Cross-examination.

By Mr. Wescott:

Q. Where does that ditch line begin?

20 A. Why, it is all along the road from one end of the road to the other, from Camden and Atlantic City.

Q. It is an endless ditch line?

A. It is an endless ditch line.

Q. Begins at the Delaware River and empties into the Atlantic Ocean. Well, they don't run boats on it, do they?

A. Oh, no, only to drain away the water from the track.

30 Q. I understood you to say awhile ago that the water ran down that ditch there up on the grass plot?

A. No, it runs around the end of the grass bed.

Q. Then when it gets around the end, where does it go then?

A. It soaks away in the ground.

Q. It don't run up hill?

A. No.

By the Court:

Q. Well, if this is part of the ditch line running all along, why is the water turned off there into this grass?

A. Because there is a wagon road there, you know, goes across—and that there cuts it off a little. 10

Q. Is there a trunk under the road?

A. No.

DEFENDANT RESTS.

BOTH SIDES REST.

20

Mr. Gaskill: I would like to renew my motion and ask for a direction of a verdict for the defendant on the ground that there has been no negligence on the part of the defendant, that there was contributory negligence on the part of the plaintiff and he had exceeded his invitation, if there was any invitation, at the time he fell over these plates, and the defendant is not liable.

The Court: The motion will be overruled and an exception noted. 30

(At this point a recess was taken until Monday, April 9, 1917, at ten o'clock A. M.)

Camden, New Jersey, April 9, 1917.

Trial of the matter resumed at ten o'clock on the above date, pursuant to adjournment, in the presence of counsel for the respective parties.

CHARGE OF THE COURT.

10

LLOYD, J.:

3[Gentlemen: You will perceive that the very first question presented to your minds in this case is whether the railroad company gave to this intending passenger—and he was an intending passenger, no dispute about that—an invitation to use this space here, which has been described variously as a pathway and as a ditch.]³ Obviously, if the
20 plaintiff went on this ground without the railroad inviting him to do so, it assumed no responsibility to him as to anything that might happen to him in his passage. There is proof, however, in the case that it was a pathway in appearance; that it ran from the main highway up to the steps of a platform, a passenger platform, and that it had been used generally by passengers that way in conjunction with the other way around this grass plot, that this
30 plaintiff himself had used it many times before, and the witnesses who followed him said that he had and that other passengers had used it, ⁴[so that I think you would be justified if you accept that statement, and I see no reason why you should not, in assuming that the company had led the public to believe that that was a passageway which it was intended for them to use; and if you did so find, you

naturally would conclude that that was an invitation. It would be an invitation at least by estoppel, that is to say, the company would be denied the right to assert the contrary; if it had led people to think it was a pathway, a passageway, they would be precluded from the right to say it was not when any person's rights were predicated upon it.]⁴

5[Now, if there was this right accorded to the plaintiff, you will consider whether there was negligence by the defendant in placing these plates, as they have been described and called, on this grass plot near the passageway under the circumstances.]⁵ 10
The plaintiff has called witnesses to prove that this was very early in the morning, before day, that it was dark, quite dark, that the path was perhaps six feet wide, that these plates were placed near the edge of the grass plot, that there was a train coming from behind him along the railroad track, that as the train came up he stepped aside to avoid being struck by the train, to get clear of it, and that he 20 tripped and stumbled over these plates and was injured in the knee. There has been some proof in the case, gentlemen, improperly, perhaps, in the case, that the railroad company made some changes in the structure of this path, or whatever it might be found to be by you, by cutting it down at the edge of the grass plot, but that has nothing, of course, to do with this case; what one may do afterward does not throw any light upon the question as to whether he ought to have done it before, because hind sight 30 is very much better than foresight, as we all know.

Now, in that situation, the plaintiff asks you to say that there was negligence in the defendant under all those circumstances, if they are circumstances in the case, in placing these plates where they were, so that one using the path under the circumstances

might fall over them, 6[and that becomes the next question for you to pass upon in this case. Was the defendant company negligent in placing these plates there and having them there that morning under the circumstances of the case as they have been proven and established to your satisfaction?]6 Still another question is presented: It has been argued to you that the plaintiff himself was negligent, that he was a user of this method of getting to the train and
10 that he knew or in the exercise of reasonable care ought to have known of the presence of these plates there, and that he ought to have either gone around or that he ought to have guarded himself more carefully in the steps that he took in the way that he did. That also becomes a question for your consideration and determination.

Well, gentlemen, the burden is upon the plaintiff to show in this case as in most others, that when he sustains injury and alleges it to be due to the
20 negligence of another, that he must prove it by a preponderance of the proofs in the case. The same rule holds good with respect to a defendant when it alleges negligence in a person claiming, as this plaintiff does; it also has the burden of establishing that negligence by a preponderance of the proofs. Now, if in this case you take this question up and you decide first that there was no invitation to this plaintiff to use the method he did to take the train that morning, then that is the end of any liability
30 on the part of the defendant company. Or even if there was an invitation and you do not find that there was negligence on the part of the defendant in placing those plates where it did,—I say, if you do not find negligence, that also precludes a recovery by the plaintiff. The third situation would be if the plaintiff himself by his own negligence was a

party to the injury which befell him, that is to say, if he in part or in whole was responsible for his own injury by reason of a negligent act on his part, then the law says in that event he has no remedy against the other party.

In the event that you find all of these questions, all three of them against the defendant, then you reach the question of how much compensation the plaintiff should receive. Now, there are two features, two elements of damage which have been claimed in this case. The first is for pain, which it is claimed followed the injury to the knee. There were minor injuries to the elbow and to the knees, but they seem to have speedily disappeared and not much has been made of them in this case. The knee, however, the plaintiff claims was a matter of pain to him and that it also prevented his working for a period of twenty-three weeks, I think he said, twenty weeks in the first instance and three weeks thereafter. On that point there is a disparity in the testimony as to whether there was need for this loss, that is to say, whether he lost the time necessarily by reason of the injury, or whether he simply took the time off. The doctor says that he could have gone back to work the second week in February following the accident, the accident happening on the 14th of January preceding; that would leave about three weeks, so you will have to determine how long he was actually incapacitated for his work, and how much time he really lost as a consequence of that in capacity.

The wages that he was receiving was twenty dollars a week, and he was to receive a bonus of twenty per cent. upon his wages at the end of the year, under the practice of the company by whom he was employed, so that you see that feature of it, gentlemen,

after you have determined the number of weeks that he actually lost is a mere matter of calculation, and you will find no difficulty in dealing with it.

With regard to the pain one may suffer it is far more difficult of solution. In the first place, it is difficult to know the intensity and severity of it, and after you have found out how much pain there really is and how much discomfort it creates, you have got to convert that into money in some way so that the
10 money shall represent the pain. The law has afforded no specific method by which a jury or a Judge can reach a conclusion upon such a question. Indeed, I do not see how it could, but the very necessities of justice require that where there has been pain caused by the negligent act of another and that alone, that the injured party should receive compensation for it.

Now, gentlemen, I have already said to you in this case and in other cases that your duty is one of
20 literally following the evidence; wherever that shall lead you, you go, both on questions of liability and questions of damages, disregarding, of course, the parties in the case or their station or their character. Did I cover these requests, Mr. Gaskill?

Mr. Gaskill: All but the fourth. I ask an exception of the Court's refusal to charge my fourth request to charge.

I also ask an exception to the Court's charging,
30 "The first question is as to the invitation to use this space variously called a pathway or ditch; if no invitation, no liability, &c.; but there was proof it was a pathway in appearance and ran from the road to the platform and was used generally."

Also an exception to the Court's charge following that wherein the Court said something about the

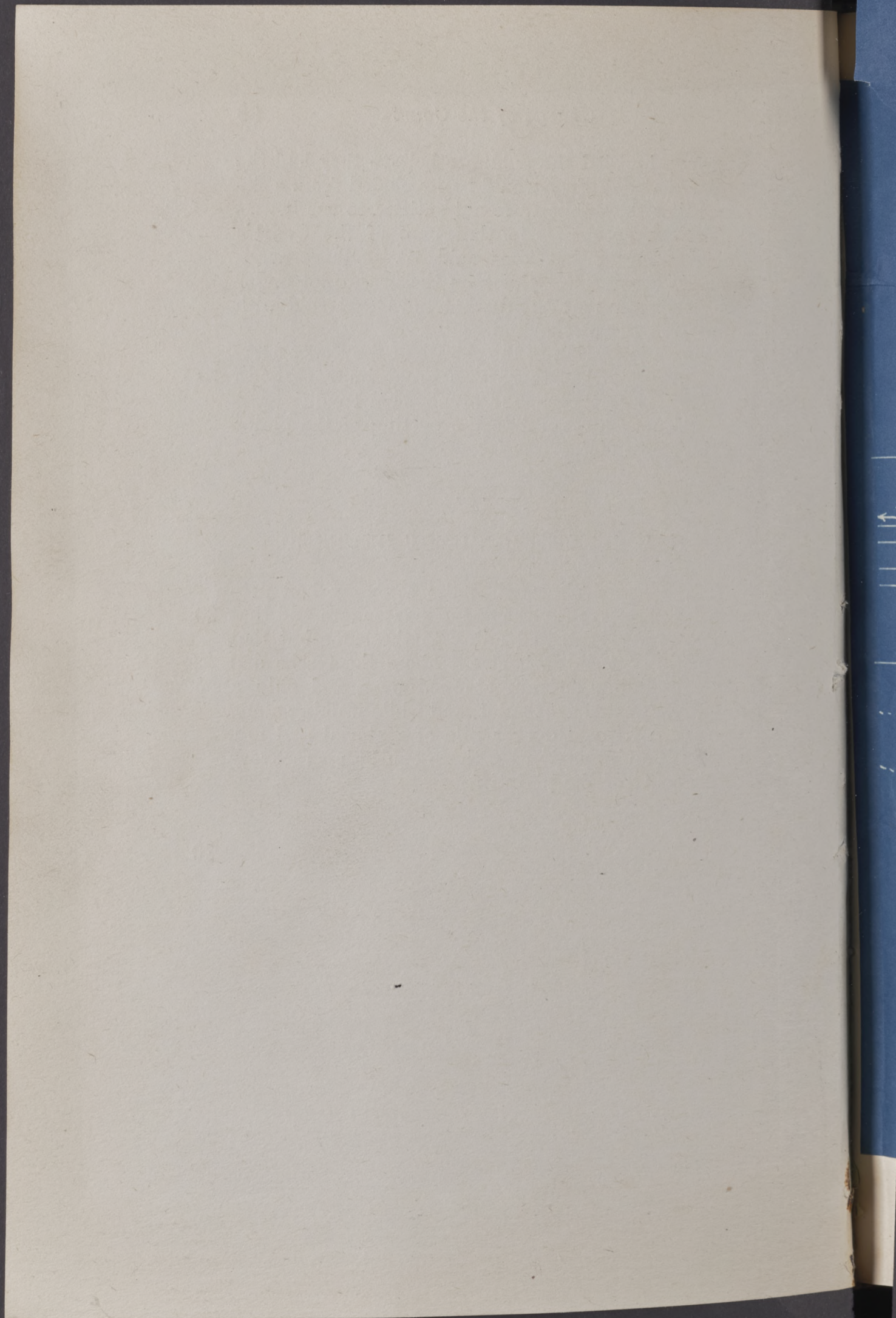
company had led the public to believe they had the use of that and they would be precluded from a defence that the public were not entitled to use it.

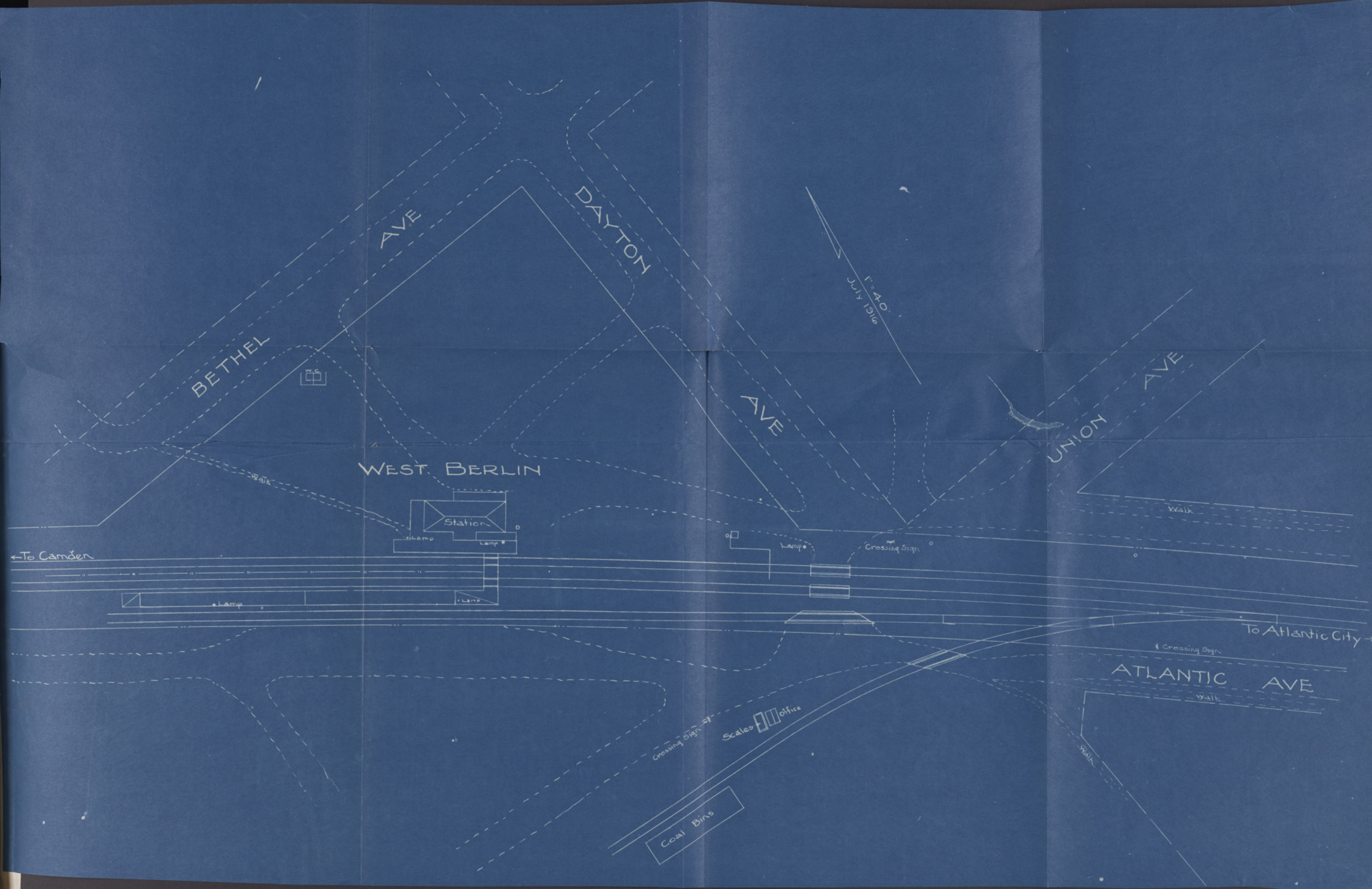
Also an exception to that part of the Court's charge wherein the Court said, "Was there negligence in placing the plates on the grass plot under the circumstances?" and what the Court said with respect to the circumstances.

Also an exception to the charge of the Court after the statement that there was proof improperly in the case as to the change of physical conditions, a repetition with respect to the putting of the plates on the grass plot. 10

DEFENDANT'S REQUEST REFUSED.

4. The proof shows that the company had provided a platform for the use of passengers and that there were roadways leading to the same but that the plaintiff took a short cut along the tracks and while avoiding a train stepped over and onto a slightly elevated grass plot, and while walking along the same, tripped over a pile of material and fell. Under the circumstances, there can be no recovery on the part of the plaintiff. 20





BETHEL
AVE

DAYTON
AVE

AVE

UNION
AVE

WEST BERLIN

← To Camden

Station

Lamp

Lamp

Lamp

Lamp

Lamp

Crossing Sign

Walk

To Atlantic City →

Crossing Sign

ATLANTIC
AVE

Walk

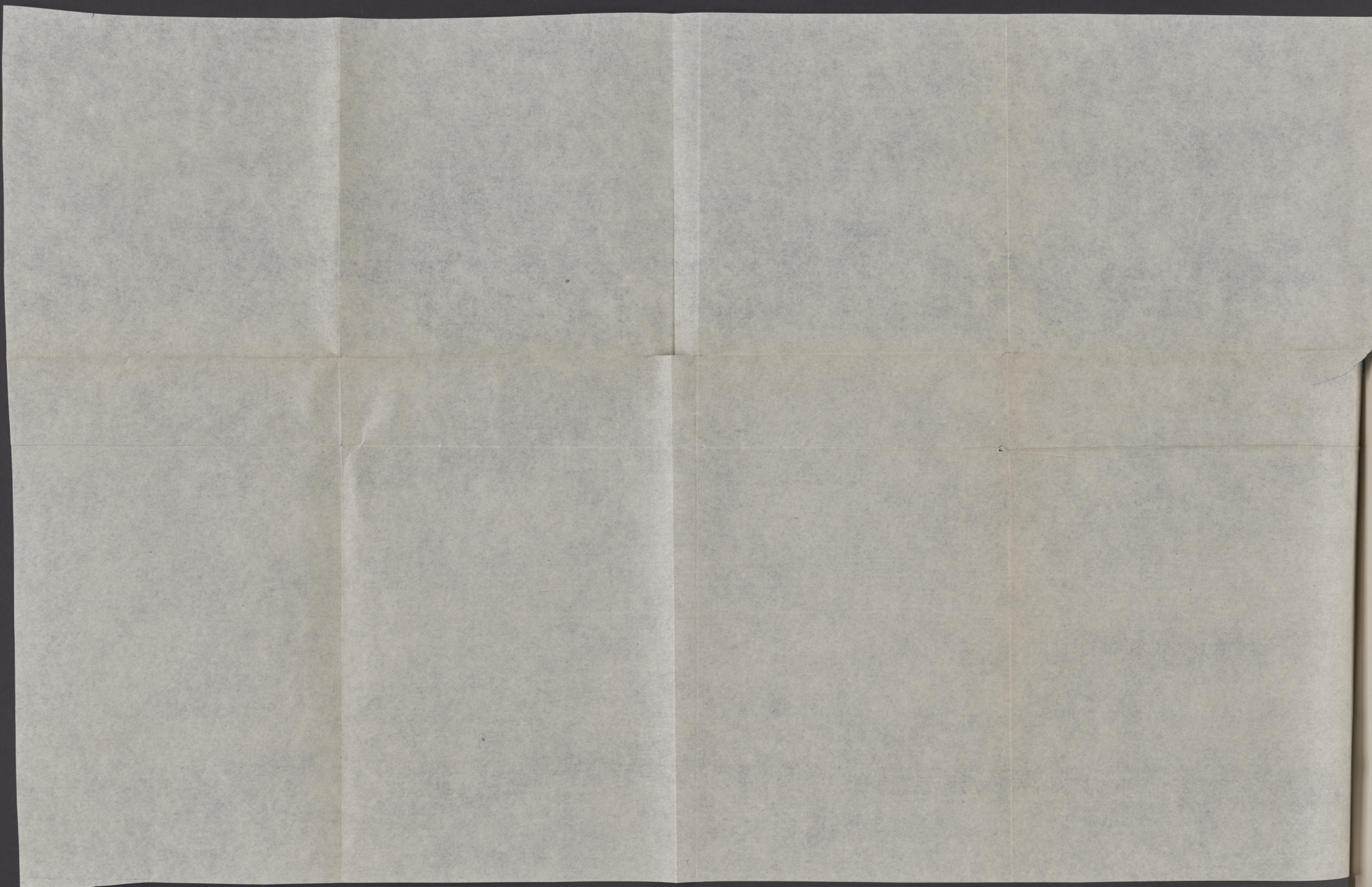
Walk

Crossing Sign

Scales office

Coal Bins

1" = 40'
July 1916



New Jersey Court of Errors and Appeals

Ralph Fedele,
Plaintiff-Respondent,)
vs.)
West Jersey & Seashore)
Railroad Company,)
Defendant-Appellant.)

BRIEF FOR APPELLANT

This appeal brings before the Court a judgment for the plaintiff for damages.

The complaint states that on Jan. 14th, 1916, the plaintiff was a resident at West Berlin, New Jersey, and while it was early in the morning and dark he was walking from his home to the station and over the property of the defendant when he stumbled over a pile of iron plates which the defendant had negligently placed on its property.

The defendant pleaded that there was no negligence on its part and that there was contributory negligence on the part of the plaintiff. That the plaintiff was a licensee or a trespasser and the company owed him no duty in the premises. The jury rendered a verdict of \$300.00 for the plaintiff.

The following questions are raised: 1. The refusal to non-suit. 2. The refusal to direct a verdict for the

defendant. 3. Erroneous statements of the Judge in his charge to the jury upon the subject of invitation. 4. An erroneous statement in the charge to the jury upon the subject of negligence, as well as the improper refusal of the Judge to charge the defendant's request to charge on the subject of negligence and contributory negligence.

The plaintiff said that he lived at West Berlin and traveled back and forth to Philadelphia daily (page 11). That he met with the accident on Jan. 14th, 1916, at half-past five in the morning while it was dark. That he lived on the same side of the railroad that the station was on and about four minutes walk therefrom. That there is a light on the street corner about 50 or 60 feet from where he fell (page 19). His introductory testimony as to what he was doing and how the accident happened is very vague. This part of the testimony would indicate that the train was standing at the station and the plaintiff was hurrying toward it when he fell. Such, however, he declares is not the fact.

That he went from his home down the street to the railroad, and at the crossing turned along the tracks and followed the path up the tracks toward the station, and stepped up on to the edge of the grass plot where he fell (page 22) to avoid the train as it passed him. (P. 45.) That the grass plot was a couple of yards from the tracks.

(pp. 44-45):

“By the Court:

Q. Mr. Fedele, if you were waiting along the path that led along this track, how did you happen to stumble over the plates, metal plates?

A. Because the train was right back of me.

Q. No, where were the plates that you fell over?

A. Right on the edge of the grass plot.

Q. Well, on the edge of the grass plot?

A. Yes.

Q. You were walking on the path?

A. Yes.

Q. Well, how did you fall on them on the grass plot?

A. Well, the train was right back, and I got on on top of the edge of the grass plot.

By Mr. Gaskill:

Q. *I think I can bring that out in a question: When the train got close to you to pass by you, you stepped up on to the grass in order to avoid being struck by the train, didn't you?*

A. Yes.

Q. *You were walking in the same direction to the station that the train was going?*

A. Yes.

The Court: Had you finished, Judge Wescott?

Mr. Wescott: Well, not quite, no.

By Mr. Wescott:

Q. How high was this grass plot?

A. I can't tell you how high it is, because I don't follow those things, Lawyer.

Q. Was the grass plot higher than the path?

A. Oh, yes.

Q. Well, you mean to say that you were not in this path when you fell?

A. No, I wasn't in the path.

Q. Well, where were you?

A. On the edge of this grass plot.

Q. How far from the path?

A. Right near, close together."

(P. 46, l. 18):

“By the Court:

Q. Well, where were you when you fell—were you in the path or on the grass?

A. Right on the edge of the grass plot.

Q. Well, what do you mean by the edge of the grass plot?

A. You see, I stepped over not to be struck by the train.

Q. I know, but what did you step on?

A. Stepped on these iron plates.

Q. Yes, but what was there—was that the grass plot or the path?

A. It was the grass plot.

Q. *Then you got out of the path on to the grass plot, did you?*

A. *Yes.*

Q. *Then fell over the fish plates?*

A. *Yes.*

Q. *Or the plates that were on the grass plot?*

A. *Yes.*

Q. *Well, that wasn't the place you had been walking, had it been, for reaching the train? You had not been walking on the grass plot?*

A. *No.*

Q. Your course was down this path?

A. Yes, but the train was right close back of me, right back of me, so as to avoid any accident I just stepped on this grass plot, right on the edge of the grass plot.

By Mr. Wescott:

Q. *How far was the grass plot from the tracks or the train?*

A. *Oh, about four or five feet, something like that or six, I can't tell exactly.”*

This was repeated on cross-examination (pages 50-51, etc.). He admitted again (page 52) that the grass plot was considerably higher than the pathway. This was thoroughly proven later in the case. It was shown there was a slope from the edge of the grass plot for two or three feet to the crest of the grass plot, which was quite some feet in width. That at a later period conditions were altered so as to make a sharp pitch from the crest of the grass plot to the open ground along the tracks—making a drop of a foot or a foot and a half. The plaintiff admitted further (page 53) that when this train came along he stepped back on to the grass plot and was on the grass plot at the time he fell on the fish plates or tie plates; also (page 54) that when he fell he was still walking in the direction in which the train was going, and *that he was not going to the station to take the train there, but that he intended to walk along the grass plot until the train stopped and then get on at the nearest steps* (page 54).

George Duncan was called as a witness for the plaintiff. He was behind the plaintiff at the time of the accident but did not see him fall. That he found him (page 60) sitting on the grass with one foot on the path. *That the pile of plates was around two feet from the edge of the grass plot* (page 60); that the grass plot at its border line with the path was not quite a foot above the path, and to go from the path to the grass plot one had to lift his foot about a foot.

The plaintiff having rested his testimony the defendant moved for a non-suit on the ground that the mere use of the path by either permission or acquiescence of the company is not an invitation and involves no liability. Also because the mere existence of a worn path crossing along the railroad tracks to

a station cannot be relied on as an invitation to an intending passenger to take such path; and furthermore, because the plaintiff by his own statement intentionally deviated from the path and stepped out of it, and even tho he only stepped a couple of feet from the path still he exceeded the invitation when he fell over this object.

The defendant called two witnesses, William Boddis, a friend of the plaintiff, and Edwin Prettyman, the section foreman.

Boddis testified without contradiction on rebuttal that the plaintiff had asked him to write to the railroad company, and told him how the accident happened. That he told him that when he fell over the plates he was stepping out of the way of the train. We quote his testimony:

“Q. Did you have any discussion with Fedele about his knowledge that the plates were there?

A. *I asked him how he came to fall over them. He said, ‘I was hurrying for the train and thought the train was going to hit me and I stepped away and fell over the plates.’*

Q. Well, did you say anything to him with respect to the subject of how long the plates had been there or he to you?

A. Not how long, I said, ‘You knew they were there.’

Q. What did he say to that?

A. He said, ‘Yes, but I couldn’t see them in the dark.’

Q. Now, do you know where the plates were at that time, can you locate them on this blue print? This white square indicates the battery box.

A. Yes, well, is this the path of the railroad track?

Q. That is the railroad track.

A. This is the path here?

Q. Yes.

A. Well, the grass plot slants, I should judge about—well, it is a pretty high step to step up unless you take two steps; it slants this way, and the plates were strewed there; there were several piles of the plates and they were over, I should judge, about six or eight inches on the top of the grass plots.

Q. Six or eight inches?

A. Just about even with this box, and this box sets back from the path about six or eight inches, as near as I can tell; I can't tell just exactly.

Q. But you fix the pile of plates, as I understand, as six or eight inches beyond the crest of the rise from the path?

A. To the grass plot, yes.

Q. How far would that be from the beaten path?

A. Why, you mean from the slope?

Q. Yes, from the ground.

A. Why, I should judge about two feet."

Prettyman, the section foreman, testified that the path is not a path but is practically a ditch. That this is a short section of the constant series of grades that stretches along the tracks from Camden to Atlantic City. That it is an endless ditch line. That at this point the grade carries the water around the corner at the end of the grass plot. That the pile or piles of plates were put on the grass plot in the preceding December when the company was laying rails. That there was a distance of 13 feet from the near rail of the track to the point on the grass plot where the plates were laid.

That this is substantially correct is beyond doubt, for all the witnesses admitted (altho they did not fix a precise distance) that the pathway or ditchway was several feet in width from the edge of the grass to the rails of the track, and Duncan said the pile of plates was two feet from the edge of the grass plot. This is important in showing how far the plaintiff deviated from the path along which he claims he was going to get the train.

At the conclusion of the case the defendant asked for a direction of a verdict for the defendant on the ground that there has been no negligence proven on the part of the defendant, and that there was contributory negligence on the part of the plaintiff; that he had exceeded his invitation if there was any, at the time he fell over the plates and the defendant is not liable.

The testimony shows that the case tried is at great variance from that charged in the complaint. Plaintiff was not walking from his home to the station when he fell. Actually, he was making an effort to reach the train at one of the rear cars where there was no platform. It is clear that the width of the path or ditchway was such that he was in no danger of being struck by the train as he walked along this path. Also, that the change in grade from the ditchway to the crest of the grass plot, where the plates were piled, was such that he was bound to notice even in the dark, that he had gotten out of the ditchway on to the grass, and at a considerable distance from the train. There can be little doubt that, as he told Boddis, he was hurrying for the train and forgot about the pile of plates on the grass. Evidently he was taking a short cut across the grass to the rear car of the train which had passed him as he hurried for it. We submit that the trial Court was in

error in conducting the case and disposing of the legal questions upon the doctrine of invitation. Clearly the plaintiff was a licensee at best, or a trespasser. Clearly there was contributory negligence on his part in his manner of going to the company's premises in the effort to get on the train at some other point than the platform. Clearly there was no negligence on the part of the company in any duty which it owed the plaintiff.

It is absolutely impossible to prevent the existence of such physical conditions at many passenger stations. A railroad company cannot control the plotting of streets in the towns and villages through which it passes. It cannot block off or fence off its right of way in the neighborhood of its passenger stations so as to compel passengers to approach the same by public streets. It cannot prevent people from taking short cuts to the stations. It cannot erect barriers at and along its tracks without great danger to life and limb in the operation of trains. If passengers will take advantage of the fact that the railroad company dresses, trims and keeps clean the margin of ground alongside its tracks, they do so at their own risk.

We submit this case is controlled by numerous precedents. It has been held that the mere use of a path by the permission or acquiescence of the owner of the premises is not an invitation and involves no liability. See *Furey vs. N. Y. C., etc., R. R. Co.*, 38 Vroom, 270, 274, 275, *Devoe vs. N. Y. O. & W. R. R. Co.*, 34 Vroom, 276. The mere existence of a worn path across railroad tracks to a station cannot be relied on as an invitation to an intending passenger to use that path. See *Corson vs. Atlantic City R. R. Co.*, 54 Vroom, 517; *Dieckman vs. D. L. & W. R. R. Co.*, 52 Vroom, 461.

Aside from the question of invitation, the plaintiff according to his own statement intentionally deviated from the way. The invitation, if any, did not extend to the grass plot, nor did it give any right to deviate from the path in order to avoid the approach of trains even if the use of the path was rendered unsafe thereby. Clearly the plaintiff was in no danger from the passing train while walking along that path-way. The proof is undisputed that the plaintiff was out of the path at the time he fell and that must end his case. Even if he had wandered from the path without knowing or intending to do so, there would have been no liability under the case of *Daneck vs. P. R. R. Co.*, 30 Vroom, 415. The sworn testimony is that the pile of plates was thirteen feet from the rail of the track. It is admitted that the distance was a substantial one. It is admitted that the pile of plates was at least two feet from the edge of the grass plot and was at the crest of the grass plot. This disposes of the plaintiff's claim under the law laid down in the *Daneck* case.

We, therefore, submit that the trial Judge should have non-suited the plaintiff at the close of his case on the ground stated, viz.:

“Mr. Gaskill: If the Court please, I move for a non-suit in this case on the ground that the mere use of this path by either the permission or acquiescence of the company is not an invitation and involves no liability. Also, because the mere existence of a worn path across or along the railroad tracks to a station cannot be relied on as an invitation to an intending passenger to take such path; and furthermore, because the plaintiff by his own statement intentionally deviated from the path and stepped out of it, and even though he only stepped a couple of

feet, still he exceeded the invitation and fell over this object.”

The trial Judge improperly and unlawfully refused the defendant's motion to direct a verdict for the defendant on the grounds that there has been no negligence, and that there was contributory negligence on the part of the plaintiff; and that he exceeded his invitation, if there was any invitation, at the time he fell over the plates.

The trial Judge improperly charged the jury as follows:

“Gentlemen: You will perceive that the very first question presented to your minds in this case is whether the railroad company gave to this intending passenger—and he was an intending passenger, no dispute about that,—an invitation to use this space here, which has been described variously as a pathway and as a ditch.”

Because the trial Judge improperly charged the jury as follows:

“So that I think you would be justified if you accept that statement, and I see no reason why you should not, in assuming that the company had led the public to believe that that was a passageway which it was intended for them to use; and if you did so find, you naturally would conclude that that was an invitation. It would be an invitation at least by estoppel, that is to say, the company would be denied the right to assert the contrary; if it had led people to think it was a pathway, a passageway, they would be precluded from the right to say it was not when any person's rights were predicated upon it.”

Because the trial Judge improperly charged the jury as follows:

“Now, if there was this right accorded to the plaintiff, you will consider whether there was negligence by the defendant in placing these plates, as they have been described and called, on this grass plot near the passageway under the circumstances.”

Because the trial Judge improperly charged the jury as follows:

“And that becomes the next question for you to pass upon in this case. Was the defendant company negligent in placing these plates there and having them there that morning under the circumstances of the case as they have been proven and established to your satisfaction?”

Because the trial Judge improperly refused the defendant's fourth request to charge as follows:

“The proof shows that the company had provided a platform for the use of passengers and that there were roadways leading to the same but that the plaintiff took a short cut along the tracks and while avoiding a train stepped over and onto a slightly elevated grass plot, and while walking along the same, tripped over a pile of material and fell. Under the circumstances, there can be no recovery on the part of the plaintiff.”

We, therefore, submit that judgment in the trial Court for the plaintiff must be refused.

GASKILL & GASKILL,
*Attorneys of Defendant-
Appellant.*

New Jersey Court of Errors and Appeals

Ralph Fedele,
Plaintiff-Respondent,

vs.

West Jersey & Seashore
Railroad Company,
Defendant-Appellant.

On Appeal.

BRIEF FOR FEDELE

The railroad company maintains a depot at West Berlin, Camden County, New Jersey. The plaintiff below lives at the same place. The platform in front of the depot is of such small proportions that the rear cars of a train stopping at the depot extend below, south of the platform. About two hundred feet south of the depot a public road crosses the railroad tracks. Connecting the station platform and the public road is a gravel path which immediately adjoins the tracks. This path is constantly used by passengers in entering and leaving trains and has been so used for years. It is the only means available to passengers who board the rear cars of a train since the platform is only large enough for the use of passengers who board the front cars of a train. About four or five feet from the tracks the

railroad company maintained a grass plot. This grass plot was somewhat elevated and between it and the tracks runs the above-mentioned path parallel with the tracks. On the morning of January 14th, 1916, at five-thirty the plaintiff below was proceeding along this path. It was dark. As the plaintiff below was walking along this path toward the station platform the train he was about to board came along. The train was coming back of the plaintiff below. As the train reached a point just about opposite the plaintiff below he stepped upon the edge of the grass plot. In this connection it should be borne in mind that the tracks upon which the train was approaching were immediately next to the path and that the path was about four feet wide. The railroad had placed a pile of iron tie plates upon the edge of the grass plot which the plaintiff below could not see because of the darkness. As the plaintiff below stepped on the edge of the grass plot, which he did to avoid the train, he fell over the iron tie plates and was injured. There is no dispute as to the facts and we have, therefore, made no reference to the testimony.

The case below was tried before Judge Lloyd and we wish to quote from his remarks made at the time of the motion to non-suit. "I cannot quite consent to that as a rule of law. Now, on the other features of it, I am inclined to think that the whole testimony raises a question for the jury, the approach of the train, the dark night, the absence of light, the comparatively narrow width of the pathway, were all conditions that cannot be, of course, ignored. Now, whether in that situation the company had violated its duty to a passenger or intending passenger, where it had placed obstructions so near this passageway that persons deviating from it either by accident or to avoid possible danger, under those

circumstances it seems to me to be a question that I cannot withdraw from the jury."

That the plaintiff below was using the pathway with the consent of the railroad company cannot be disputed since witnesses for both plaintiff and defendant say that the pathway is used constantly by passengers for the purpose of entering and leaving trains and has been so used for years.

The railroad company knew that its passengers used the pathway, and when it placed a pile of iron tie plates so near said pathway that a passenger might fall over them if he deviated slightly therefrom, it is bound to anticipate just what happened to the plaintiff below.

The plaintiff did nothing that any reasonably prudent man would not do and we believe the whole situation was a proper one for the jury.

The judgment below should be affirmed.

Respectfully submitted,

WESCOTT & WEAVER,
Attys. for Respondent.

