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NEW JERSEY

Court of Errors and Appeals

NOTICE AND GROUNDS OF APPEAL

NEW JERSEY SUPREME COURT

10

Action at Law

On Appeal from Supreme Court

LYDIA M. BRADLEY,
Plaintiff-Appellant,
vs.

ERIE RAILROAD COMPANY, a Cor-
poration,
Defendant-Respondent.

20

To:

COLLINS & CORBIN, ESQS.,
Attorneys for Defendant-Respondent.

Sirs:

TAKE NOTICE, that the plaintiff-appellant, Lydia M. Bradley, appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in this cause, on the following grounds: 30

That the Supreme Court reversed the judgment of the Hudson County Court of Common Pleas, whereas said Supreme Court should have affirmed the judgment of said Hudson County Court of Common Pleas.

Dated: December 19th, 1928.

Yours, &c.,
ALEXANDER SIMPSON, 40
Attorney of Plaintiff-Appellant.

OPINION

(Filed November 30, 1928)

NEW JERSEY SUPREME COURT

10

No. 15, May Term, 1928

[Same Title]

Submitted May 12, 1928; Decided November 30
1928.

SYLLABUS

1. The duty which a railroad company owes to its
20 passengers with relation to the construction of its
station platforms and approaches is to take care
that the methods of construction adopted by it will
render the platform and approaches as safe for the
use of passengers as the exigencies of its business
will permit.

2. The degree of care which a railroad company
is required to take with relation to its station plat-
form and approaches is that which is exhibited by
30 persons of ordinary prudence under like circum-
stances, and, so, the adoption of a method of con-
struction which accords with that in general use by
well regulated railroad companies, and which is ap-
proved by experience, is a due performance of the
duty which it owes to its passengers in that regard.

3. In order to support an averment that a rail-
road company has constructed its station platforms
and approaches without due regard to the safety of
its passengers, the party who so avers must show
40 that they are of a design which a reasonably care-

Opinion

ful judgment would disapprove as being likely to cause accident to persons using them as a way to and from trains.

4. The defendant railroad company had provided two safe, ample and convenient plank walks across its tracks from its main station platform to the platform on the far side of its double tracks. The plaintiff arrived at the main station and intended to take a train which ran on the far track. In broad daylight, and with no obstruction to her vision, she failed to use either of the plank walks, but voluntarily chose to proceed across the ballast, ties and rails in front of the station door where no way or passage was provided either by the recognition, procurement or assent of the company, and at a point which could not have appeared to persons of ordinary understanding and discernment to be such a way. In so doing she stepped in a hole between the tracks, fell and was injured. There was no proof that the method of construction of the station premises and passage ways differed from that in general use by well regulated railroad companies, and no proof of want of proper repair;

Held, that the railroad company did not fail in its duty to use due care to have its station premises and passageway to trains safe for the use of the plaintiff; and there was no obligation upon the part of the defendant company to call the attention to the plaintiff to the way in which its premises and passageways were constructed.

Opinion

Before Justices Trenchard, Kalisch and Lloyd.

On appeal from a judgment of the Hudson County Court of Common Pleas.

- 10 For the appellant, Collins & Corbin (Edward A. Markley and Charles W. Broadhurst, of Counsel).
For the respondent, Alex. R. De Sevo (Alex. Simpson of Counsel).

The opinion of the Court was delivered by

TRENCHARD, J.

- 20 This is an appeal by the defendant below from a judgment entered upon the verdict of a jury in favor of the plaintiff in the Hudson County Common Pleas Court, in an action brought to recover for injuries sustained by the plaintiff when she tripped and fell while crossing the tracks of the defendant railroad in front of its railway station at Lackawaxen, Pennsylvania, on August 20, 1924.

- 30 The case was submitted to the jury upon the theory that it was legally possible for the jury to find from the evidence that the defendant failed to use reasonable care to have its station premises and passageway to the train, which she was to board, safe.

The defendant contends, among other things, that judgment must be reversed because of the denial of the trial judge of a motion to direct a verdict in its favor. This motion was rested upon the ground, among others, that there was no evidence of any negligence on the part of the defendant.

We believe that this ground was well taken.

- 40 The evidence from which the plaintiff contends

Opinion

that negligence of the defendant was to be inferred was that in substance and effect; On August 20, 1924, at 4:10 p. m., the plaintiff, a woman 28 years old, drove up to the passenger station building of the defendant railroad company and passed through the building, and out of the door opening on the platform between the station building and the double track railroad of the defendant. This platform was 16 feet wide and 240 feet long. The plaintiff wished to board a train for New York, which was due in a few minutes, on the far track, and to do so it was necessary for her to reach the platform on the other side of the far track. Leading from one platform to the other, the railroad company maintained two crossing plank walks, both 12 feet wide and flush with the top of the rails, one 54 feet to her right and one 54 feet to her left as she came out of the door of the station. Instead of using either of these, the plaintiff, following the other woman, walked straight across the main station platform, and after looking ahead and to her right and left, started across the railroad right of way, consisting of ballast, ties and rails, at a point where no crossing had been provided. She stepped into a hole between the rails of the first track, lost her balance, fell, and was injured.

10

20

30

Now the duty which a railroad company owes to its passengers with relation to the construction of its station platforms and approaches is to take care that the method of construction adopted by it will render the platform and approaches as safe for the use of passengers as the exigencies of its business will permit. The degree of care which it is required to take is that which is exhibited by persons of ordinary prudence under like circumstances, and, so, the adoption of a method of construction of its plat-

40

Opinion

forms and approaches which accords with that in general use by well regulated railroad companies, and which is approved by experience, is a due performance of the duty which it owes to its passengers in that regard. *Feil v. West Jersey & Seashore R. R. Co.*, 77 N. J. L. 502; *Holtzman v Hudson, &c. R. R.*, 101 N. J. L. 255.

In the present case there is no evidence to support the contention of the plaintiff that the defendant failed to observe the degree of care indicated in the construction of its platforms and approaches at the Lackawaxen station. There is no proof that they differ from platforms and approaches in general use by the defendant or other railroad companies, and no presumption of want of due care arises from the fact that the defendant company, presumably to meet the requirements of its traffic, had constructed two crossing plank walks across the tracks, one on either side of the station door, instead of one directly in front of the door, nor from the fact that the defendant did not extend these plank walks for the entire length of the station premises. Negligence must be proved, and in a case like the present, that can be done only by showing that the station premises, crossing plank walks or approaches are of a design which a reasonably careful judgment would disapprove as being likely to cause accident to intending passengers using them as a way to and from trains. Here the defendant had provided two safe, ample and convenient plank walks across its tracks from its main station platform to the platform on the far side of its double tracks, and the plaintiff, in broad daylight and with no obstruction to her vision, failed to use either of them, but voluntarily chose to proceed across the ballast, ties and rails in front of

Opinion

the station door, where no way of passage was provided either by the recognition, procurement or assent of the defendant, and at a point which could not have appeared to persons of ordinary understanding and discernment to be such a way. There was no proof that the method of construction of the station premises and passageways differed from that in general use by well regulated railroad companies, and no proof of want of proper repair. In such case the defendant company did not fail in its duty to use due care to have its station premises and passageways to the trains safe for the use of the plaintiff, an intending passenger; and there was no obligation upon the part of the defendant company to call the attention of the plaintiff to the way in which its station premises and passageways were constructed so long as the method of construction was that which is generally adopted by well regulated railroad companies. *Feil v. West Jersey & Seashore R. R. Co.*, 77 N. J. L. 502. It follows, therefore, that the denial of the defendant's motion for direction of a verdict was erroneous.

The judgment will be reversed.

**RULE ON REVERSAL OF JUDGMENT AND
REMITTITUR**

[Same Title]

The above entitled cause having been duly argued
10 at the May Term, 1928, of this Court by Collins &
Corbin (Edward A. Markley and Charles W. Broad-
hurst of Counsel) for the defendant-appellant, and
by Alex. R. De Sevo (Alex. Simpson of Counsel)
for the plaintiff-respondent, and the Court having
inspected the record and judgment below and con-
sidered the causes assigned for error;

It is thereupon ORDERED that the judgment of the
said Hudson County Court of Common Pleas be in
all things reversed; set aside and for nothing hol-
20 den; and that the record and proceedings herein be
remitted to the said Hudson County Court of Com-
mon Pleas to be proceeded with in accordance with
this judgment and the practice of said Court.

Rule actually entered this 10th day of Decem-
ber, 1928, on motion of

COLLINS & CORBIN,
Attorneys of defendant-appellant.

30

40

NEW JERSEY

Supreme Court

NOTICE OF APPEAL

(Filed Jan. 16, 1927)

10

HUDSON COUNTY COURT OF COMMON PLEAS

LYDIA BRADLEY,

Plaintiff,

v.

ERIE RAILROAD COMPANY, a Corporation,

Defendant.

Action at Law.

20

To:

Alex. Simpson, Esq.,
Attorney of Plaintiff.

Sir:

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

30

Respectfully,

COLLINS & CORBIN,
Attorneys of Defendant.

Dated, January 7th, 1928.

Service acknowledged January 12th, 1928.

Attorney of Plaintiff.

40

GROUNDS OF APPEAL

(*Filed Jan. 28, 1928*)

The appellant states the following grounds of appeal:

1. The trial judge erroneously refused to nonsuit the plaintiff and to direct a verdict in favor of the defendant when thereunto respectively moved, whereas said motion should have been granted on one or more of the following grounds urged in support thereof:

(a) That there was no evidence of any negligence on the part of the defendant as alleged in the complaint.

(b) That there was no evidence of any negligence on the part of the defendant as alleged in the complaint that was the proximate cause of the accident.

(c) From the undisputed evidence in the case, the plaintiff was, as a matter of law, guilty of contributory negligence.

2. The trial judge erroneously charged the jury as follows:

“Now, the burden of proof in this case is cast upon the plaintiff to establish by the preponderance or the greater weight of the evidence that the defendant was negligent and that the negligence of the defendant was the proximate cause of this accident. If the plaintiff has satisfied you by the preponderance of the evidence that the defendant was

Grounds of Appeal

negligent and that the negligence of the defendant was the proximate cause of this accident then you must go a step further and determine whether or not there was any contributory negligence on the part of the plaintiff. If you decide that there was negligence on the part of the defendant but you also decide that the plaintiff contributed to this accident by her negligence, in other words, that the plaintiff was guilty of contributory negligence; then under those circumstances your verdict must be for the defendant. If you decide that the defendant was negligent and that the defendant's negligence was the proximate cause of the accident and that the plaintiff was free from contributory negligence, then under those circumstances your verdict must be for the plaintiff and against the defendant."

3. The trial judge erroneously charged the jury as follows:

"In deciding whether or not there was any negligence on the part of the defendant you will decide and determine whether under all of the circumstances of this case the defendant operated and maintained its station at Lackawaxen with that degree of care which the ordinarily prudent person or railroad would have used in maintaining and operating that station. If you decide that that degree of care was not used which the ordinarily prudent person or railroad would use then there was negligence on the part of the defendant. If you decide that the railroad

Complaint

10 used that degree of care which the ordinarily prudent person or railroad would use in maintaining and operating a station then there was no negligence on the part of the defendant and your verdict under those circumstances would have to be for the defendant."

Respectfully,

COLLINS & CORBIN,

Attorneys of Defendant-Appellant.

Dated, January 24, 1928.

Service acknowledged Jan. 26, 1928.

ALEX. SIMPSON,

Attorney of Plaintiff-Respondent.

20

COMPLAINT

(Filed Aug. 4, 1925)

(Same Title)

30 Plaintiff who resides at No. 215 West 13th Street in the City of New York, State of New York, says that:

1. She is a citizen and resident in the State of New York.
2. The Erie Railroad Company, a corporation of the State of New York, is now and was at all times hereinafter mentioned, a common carrier of passengers by railroad, for hire.
- 40 3. While plaintiff was at a station of the defend-

Complaint

ant, at Lackawaxen, in the State of Pennsylvania, on the 20th day of August, 1924, and was an intending passenger of the said defendant, having a ticket for transportation by the said defendant company to New York, and while she was on the premises at the defendant at its depot or station, she was injured through the negligence of the defendant. 10

4. The negligence of the defendant consisted in this:

Defendant failed to use reasonable care to have the said station premises and the passageway to the train which she was to board safe, but on the contrary, caused to be maintained a certain deep hole or ditch which was directly in line of the passageway she would have to use, adjacent to the platform, to board said train; while she was moving toward said train and had stepped off the platform as she necessarily must do to cross the first track to reach the track upon which her train was approaching, her foot, without fault on her part, went into said hole and she was caused to lose her balance and fall. 20

5. Plaintiff was at all times in the exercise of due care for her safety. 30

6. By reason of the said negligence, the plaintiff's left arm was permanently injured, the radius being broken off and her arm broken in three places and is permantly deformed and disabled in a serious degree, and she was otherwise injured about her body and suffered severe nervous shock, rendering her nervous to such a degree that her condition approaches that of form of traumatic neurasthenia, disabling her and causing her to suffer great pain and she has suffered great pain by reason of the injury to her arm. 40

Answer

7. By reason of her said injuries, plaintiff lost wages of \$40 a week from date of injury to January 1, 1925, and was compelled to take a position paying a smaller amount of money than she was able to earn theretofore, and she has been and will be compelled to expend money for medical attendance about \$1500.

Plaintiff demands \$50,000.

ALEX. SIMPSON,
Attorney for Plaintiff.

ANSWER

20

(Filed, Sept. 8, 1925)

The defendant, a corporation of the State of New York, duly authorized to transact business in the State of New Jersey, with its principal office in the latter State at the foot of Pavonia Avenue, Jersey City, says that :

FIRST DEFENSE

30

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

2. It admits paragraph 2.

3. It denies paragraph 3.

4. It denies paragraph 4.

5. It denies paragraph 5.

40

6. It denies paragraph 6.

7. It denies paragraph 7.

Answer

SECOND DEFENSE

The alleged accident set forth in the complaint was due to contributory negligence on the part of the plaintiff in failing to exercise reasonable care for her own safety.

10

THIRD DEFENSE

The alleged accident set forth in the complaint was due to contributory negligence on the part of the plaintiff in failing to look or listen or otherwise inform herself of the condition of which she complains.

FOURTH DEFENSE

20

At the time of the alleged accident set forth in the complaint the plaintiff was a trespasser and as such the defendant owed her no duty except to refrain from wilful or wanton injury. There was no such injury to the plaintiff and therefore she cannot recover.

FIFTH DEFENSE

30

At the time of the alleged accident set forth in the complaint the plaintiff was a mere licensee and as such the defendant owed her no duty except to refrain from wilful or wanton injury. There was no such injury to the plaintiff and therefore she cannot recover.

COLLINS & CORBIN,
Attorneys of Defendant.

40

RULE FOR JUDGMENT*(Filed Nov. 30, 1927)*

(Same Title)

10 This case was tried before Judge Robert V. Kin-
kead, and a jury on November the 28th and 29th,
1927, at the Hudson County Court of Common
Pleas.

The evidence having been submitted to and heard
by the jury, and in the presence of counsel for the
respective parties, the jury returned a verdict in
favor of the plaintiff, Lydia Bradley, and against
the defendant, Erie Railroad Company, a corpora-
tion and assessed the damages at the sum of Fifteen
20 Thousand (\$15,000.00) Dollars.

It is therefore, ORDERED that the plaintiff Lydia
Bradley have and recover the sum of Fifteen Thou-
sand (\$15,000.00) Dollars from the defendant, Erie
Railroad Company, a corporation and it is further
ORDERED and ADJUDGED, that judgment be, and it is
hereby entered in favor of the plaintiff and against
the defendant, and that plaintiff, Lydia Bradley
have and recover from the defendant, Erie Rail-
road Company, a corporation, costs to be taxed.

30 ROBERT V. KINKEAD,
Judge.

Rule actually entered this 30th day of November,
1927, on Motion of Alexander Simpson, Attorney
of Plaintiff, Lydia Bradley.

FINAL JUDGMENT*(Entered Nov. 30, 1927)*

(Same Title)

Judgment On Verdict in the above entitled cause 10
 was entered in this Court on the 30th day of No-
 vember in the year of our Lord One Thousand Nine
 Hundred and twenty-seven in favor of the plaintiff,
 Lydia Bradley and against the defendant Erie Rail-
 road Company, a corporation in a plea of Action-
 at-Law for the sum of Fifteen Thousand (\$15,000.-
 00) Dollars damages, and costs to be taxed.

ROBERT V. KINKEAD,
 Judge.

20

RULE TO SHOW CAUSE*(Filed Dec. 5, 1927)*

(Same Title)

On due application, ORDERED that the plaintiff 30
 show cause before the Hudson County Court of
 Common Pleas on the 19th day of December, 1927,
 at 10 A. M., or as soon thereafter as counsel may
 be heard at the Court House, Jersey City, New
 Jersey, why the verdict rendered in her favor
 against the defendant on November 29, 1927, should
 not be set aside and a new trial ordered;

AND IT IS FURTHER ORDERED that all objections or
 exceptions taken by the defendant during the course
 of the trial be and the same hereby are reserved to 40
 the defendant for argument on appeal;

Reasons

AND IT IS FURTHER ORDERED that execution be and the same hereby is stayed.

Dated December 5th, 1927.

ROBERT V. KINKEAD,
Common Pleas Judge.

10 Rule actually entered this
5th day of December, 1927,
On Motion of
Collins & Corbin,
Attorneys of Defendant.

REASONS

20 (Filed Dec. 13, 1927)

(Same Title)

The defendant, Erie Railroad Company, a corporation, writes down the following reason upon which it rests its motion for a new trial in the above case:

1. The verdict is excessive.

30 COLLINS & CORBIN,
Attorneys of Defendant.

Dated, December 10, 1927.

Service acknowledged this 10th day of December, 1927.

Attorney of Plaintiff.

ORDER CONTINUING RULE*(Filed Dec. 20, 1927)*

(Same Title)

The rule to show cause in the above entitled matter dated December 5th, 1927, returnable December 19th, 1927, is hereby continued over to the 28th day of December, 1927, at 11:30 o'clock in the forenoon or as soon thereafter as counsel may be heard at the Court House, Jersey City, New Jersey.

ROBERT V. KINKEAD,
Judge.

On Motion of

Collins & Corbin,

Attorneys of Defendant.

Dated Dec. 19, 1927.

20

30

40

**ORDER DISCHARGING RULE TO SHOW
CAUSE**

(Filed Dec. 29, 1927)

(Same Title)

10

A rule to show cause having been entered in this cause on the 5th day of December, 1927, and this cause having been argued by Alexander Simpson, Counsel for the Plaintiff, and Charles W. Broadhurst, of Counsel for the Defendant, and the Court having considered the same and finding no cause for making the rule absolute,

20

It is thereupon, on this 28th day of December, 1927, on motion of Alexander Simpson, ORDERED, that the said rule to show cause be and the same is hereby dismissed with costs, and the judgment is hereby confirmed.

ROBERT V. KINKEAD,
Judge.

Rule actually entered this 28th day of December, 1927, on motion of Alexander Simpson, Attorney of Plaintiff.

30

40

TESTIMONY

HUDSON COUNTY COURT OF COMMON PLEAS

LYDIA M. BRADLEY, <div style="text-align: right; padding-right: 20px;">Plaintiff,</div> <div style="text-align: center; padding: 0 10px;">v.</div> ERIE RAILROAD COMPANY, <div style="text-align: right; padding-right: 20px;">Defendant.</div>	}	10
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Before: HON. ROBERT V. KINKEAD, J., and a jury.

Jersey City, N. J., Nov. 28, 1927.

Appearances:

Alexander Simpson, Esq., Counsel for the Plaintiff.	20
Charles Broadhurst, Esq., Counsel for the Defendant.	

LYDIA M. BRADLEY, sworn.

Direct-examination by Mr. Simpson:

Q. Where do you live? A. I live at the Convent,
at 225 West 14th Street, New York City.

Q. Where are you employed? A. I am not em- 30
ployed anywhere now. I gave up my position last
year on account of my illness.

Q. Where were you employed? A. I was em-
ployed at Gimbel Brothers.

Q. What was the date of the accident? A. Did
you mean the time of the accident where I was em-
ployed?

Q. Yes. A. I was employed by Professor Bald-
reave at 417 Riverside Drive, New York City.

Q. As what? A. As interior decorator. 40

Plaintiff's: Lydia M. Bradley—Direct

Q. What did you earn at the time of the accident?

A. Forty dollars a week.

Q. What was the date of the accident? A. August 20th, 1924.

Q. Where had you been before the accident? A.

10 I had been on my vacation at Shohola Falls, which is 12 miles from Lackawaxen, Pennsylvania.

Q. On the day of the accident where were you going? A. I was intending to board the train to return to New York.

Q. How did you get to the station? A. I was driven to the station in an automobile.

Q. Who drove you to the station? A. Mr. Travers.

Q. When you got to the station was the train you
20 were to take in or had not it come in yet? A. It had not come in yet.

Q. What time was it to leave? A. It was to leave at 4:17.

Q. When you got to the station what happened?

A. When I got to the station, why, Mr. Travers stopped the car on the opposite side of the station, the side away from the tracks. He got out and went across the street. When he returned—I remained in the automobile until he returned for my bags—

30 when he returned for my bags I got out of the automobile and came through the station.

Q. Was there a building there at the place you call the station? A. Yes, the station building.

Q. Did you have to go to the station building to get on the side that that train was on? A. As far as I knew I did.

Q. When you got through the station building where did it bring you to, the platform or what? A. It brought me on a sidewalk like made of slate.
40 As near as I can remember it was a slate material.

Plaintiff's: Lydia M. Bradley—Direct

Q. The train that you were taking or to take, it would come on the track nearest to this platform or away from the platform? A. Nearest to the platform.

Q. That you were on. You say you were standing on the slate platform? A. Yes. 10

Q. All right. Now, next to that slate platform was a track? A. Yes.

Q. Did the train that you took come on that track or the other track? A. The track furthest away from the station.

Q. How many tracks were there there? A. Two, as far as I know.

Q. As the train was approaching, what happened? A. I did not see the train when I was at the station at all. I started to cross the track to cross over, and as I crossed— 20

Q. I did not ask you that. I am asking you, when you got on the platform did you stay on the platform or did you cross? A. No, I did not stop on the platform at all. I came right out of the station door and continued across.

Q. Why did you do that? Did somebody notify you that the train was approaching, that the train was coming? A. No, there was no one in the station at all. 30

Q. Were there any other passengers? A. There were two passengers crossing ahead of me.

Q. That is what I want to know. Were there passengers going to this train as well as yourself? A. There were two passengers crossing ahead of me.

Q. How many were there? A. I remember two distinctly.

Q. How did they cross, did they step across— 40
Mr. Broadhurst: I object to that as imma-

Plaintiff's: Lydia M. Bradley—Direct

terial and irrelevant.

Q. —the same way? A. Yes, crossing the same way as I did they were. They were slightly to my right.

The Court: The objection is overruled.

10 Mr. Broadhurst: Exception.

The Witness: They were crossing the same as I did, just slightly to my right.

The Court: Particularly, Mr. Broadhurst, do I overrule your objection, because you said in the opening that they all were across the particular passageway.

The Witness: I came directly out of the station door and continued right across. I looked to my—
up and down the track, glanced, and continued
20 across.

Q. Where were you going as you started across the first track, what did you intend to do? A. To go over and get to where the rest of the people were, to board the train for New York.

Q. How many people were over there? A. That I could not say. It looked to me about 10 or 12.

Q. Did you see how they got there, how they crossed over? A. I did not see how all of them crossed there. I saw the ones that were crossing
30 ahead of me.

Q. Oh, how did they cross? A. Slightly to my right, going the same as I was.

Objected to; objection overruled and exception noted.

Q. As you started across, describe the condition there at the place where you started to cross. What was the condition. How did you cross and what was the condition? A. I came directly out of the door and started to cross and as I went across my foot
40 went into a hole that went over my ankle.

Plaintiff's: Lydia M. Bradley—Direct

Q. Where was the hole? A. It was in between the wooden portions of the track.

Q. How far down in the hole did your foot go?

A. To say directly by inches I don't know whether I could or not, but it came right over my ankle, my foot.

10

Q. What was the effect on you? A. As if you were stepping off of the steps of the stairs and into the dark and you realized there was another step.

Q. And did you go down or did you stand up or fall? A. I went way down. My foot went way down and it threw me forward.

Q. Where did it throw you? A. I made several quick steps trying to regain my balance, but my body was at an angle, where I could not regain my balance, and it threw me forward into the second track from the station.

20

Q. Then as I understand you when you put your foot in the hole you lost your balance? A. Yes.

Q. And in trying to regain it you took four or five—A. Quick steps, yes.

Q. But were not able to regain it? A. I was not able to regain my balance.

Q. Where did you fall when you fell? A. I fell in or across the second track from the station. The first rail of the second track struck me just below the knee cap, knocking my knees and made them all very, very sore for weeks after.

30

Q. Where else were you hurt? A. My body was all bruised. This arm was broken.

Q. Which arm was broken? A. The left arm was broken.

Q. Did anybody pick you up? A. No, I got off the track by myself.

Q. After you got up, what did you do? A. Some people came down the track to meet me, and I

40

Plaintiff's: Lydia M. Bradley—Direct

walked up the station a few steps toward the people that were coming to meet me, and the conductor met me. When the train stopped, why, he put me on the train.

Q. Did you see this hole at all after you had fallen into it? A. Yes, after I got on the train—first
10 the conductor sat me on the side away from the station. I immediately got up and sat in the little back seat of the coach on the nearest side to the station. I looked back across the track and across to the station and I saw the holes, many of them in the road.

Q. Then this hole that you had fallen in, can you describe what it was? A. There were several
20 holes there and the one that I stepped in I could not distinguish that from the others. At least, I was so nervous I did not distinguish it.

Q. Did you know the spot?

Mr. Broadhurst: I object.

A. The spot was almost directly in front of the door.

Q. Could you place the spot?

Mr. Broadhurst: She said she could not distinguish the spot where she fell from the other places.

30 The Court: No, she said she could not distinguish the hole. The objection is overruled.

Mr. Broadhurst: Exception.

Q. As you passed in the train did you see the spot? A. Yes.

Q. Or the locality where you fell? A. Yes, I saw the spot.

Q. Just describe without picking out the hole you fell into, what you saw. A. The whole place along
40 there was lots of holes. Some of them were deep

Plaintiff's: Lydia M. Bradley—Direct

and some were shallow and all as if they had been washed out by water and all—

Mr. Broadhurst: I object and ask that that be stricken out.

The Court: Strike it out.

Q. When you got to New York what happened? 10
A. When I got to New York the Claim Agent and a doctor—I don't know his name—for the railroad, met me at the station. So they took the coach that I was in away from the train and left it there on the siding, and they examined my arm and talked to me a lot.

Q. Then when you got home did you get medical treatment? A. I did not get any medical treatment that night, because I did not realize what I was doing. I went home. They sent me. 20

Q. When did you get your first medical treatment? A. The following day.

Q. Who was it treated you? A. First I went to Dr. Leischer and he put my arm in a cast and sent me to have x-rays made. Then I was sent to St. Vincent's Hospital, at least I went to St. Vincent's Hospital, and there Dr. King took charge of my arm.

Q. How long were you under Dr. King's treatment? A. Until the first of January of the following year, 1925. 30

Q. Were you in the hospital any length of time? A. I was in the hospital about three weeks following the accident, and then I was in the hospital again in December, when I went back to have the arm re-broken because it was ankylosed this way (illustrating) in order to get the motion.

Q. I am trying to find out were you in the hospital? A. I was in the hospital.

Q. For three weeks? A. No, not for three weeks 40

Plaintiff's: Lydia M. Bradley—Direct

at the time of the accident.

Q. For the first time it was three weeks you were in there. Then you came out. A. About three weeks, yes.

Q. Where did you go, home? A. Yes.

10 Q. Were you in bed at home or just confined to the house. A. In bed part of the time and part of the time just confined to the house.

Q. Who treated you there? A. Dr. King.

Q. When did you return to the hospital? A. I returned to the hospital the latter part of December.

Q. Of what year? A. 1924.

20 Q. What was done when you returned to the hospital? A. They put me under an anaesthetic or ether, whatever they term it, and they broke down the arm, that is the arm was ankylosed in this condition (illustrating) to get more motion here in the elbow. They broke it down. Now, what they mean by that—

Q. When you came out of the ether what condition was your arm in, in a cast again? A. No. You mean the—

Q. After they broke it down. A. After they broke it down it was in a sling but not a cast.

30 Q. How long was it in a sling? A. About a week or so after that.

Q. How long were you away from your employment? A. I was away from my employment until the first of January, 1925.

Q. Then what did you do; did you get employment? A. Then I accepted a position on part time at Gimbel Brothers.

40 Q. How much did you earn when you returned to work? A. I only earned thirty dollars a week on my return.

Plaintiff's: Lydia M. Bradley—Direct

Q. How long were you working for thirty dollars a week? A. Until last November, a year ago.

Q. Was that part time you were working on? A. Yes, I only went in at ten o'clock and I quit at four to four-thirty.

Q. Why? A. Because my nervous condition did not permit me to take a position with great responsibility. I was too nervous, and my mind was too disturbed. I could not think of it. 10

Q. Where was it you went to work on part time? A. Gimbel Brothers.

Q. Did you ever return to your first employer? A. No, I have not so far.

Q. What is the condition of your arm, your present condition? A. My present condition is, of course, it is in that position (indicating) and the hand will not turn over. The hand stays apparently straight. 20

Q. That is, you have not the use of that hand the same as you have of your right hand? A. No, I have not it in this position at all. It stays perfectly straight this way (indicating), and, of course, it is short on account of the removing of the bone.

Q. Is there any way of showing the jury the condition of your arm? A. Yes, I could show them the difference in my arms. 30

Q. This lady with you, does she want to come up and help you? A. It won't be necessary, thank you.

Q. Just go down and show the jury.

The Witness: May I go down, your Honor?

By the Court: Q. Yes, surely.

The Witness: (Exhibiting arm to the jury) This is where the bone was removed here, the scar. You see, the bone was broken in two pieces and they all had to be removed from the elbow, otherwise I would not have had any motion. It would have 40

Plaintiff's: Lydia M. Bradley—Direct

been in this condition, as Dr. King described to me. So he opened the arm here and removed the bones, which were crushed in here, to give me as much motion as I have, and of course in removing it it left naturally that condition and, of course, this is the
 10 perfect arm and this is the way this one acts. It does not go down at all, or my hand does not turn over at all, and naturally, taking the bone out the way Dr. King did, it causes the shortage in my arm.

Q. What was the general health before the accident? A. I was in very good health.

Q. Now, as a result of this accident, how do you feel now? A. I go very badly. At times my mind is entirely disturbed from my work. There are
 20 weeks that I go that I cannot complete a piece of work with any satisfaction at all.

Q. Why is that? A. Simply because ever since the accident I have never known one night's sleep without having to take things that have been prescribed to me by the doctors, by Dr. Murray and by Dr. King.

Q. Is that because your mind dwells on this accident? A. Because my mind dwells on this thing and every night I have dreamt the most hideous
 30 dreams.

Mr. Broadhurst: I object.

Mr. Simpson: We have an expert on traumatic neuresthenia and will connect this up.

Mr. Broadhurst: Oh, all right.

Q. What about nervousness, are you at all nervous since the accident? A. Yes, very, very nervous. I never get a night's sleep unless I take these things that are prescribed by the doctors.

Q. What kind of work do you do in your business?
 40 A. Interior decorating.

Plaintiff's: Lydia M. Bradley—Direct

Q. Just what do you mean by that? A. There are several branches to interior decorating. Of course, that covers many branches. There are many crafts included in that.

Q. What do you do in your work? A. Interior decorating. 10

Q. That does not mean anything to the jury. Do you have to put up curtains on the walls? A. Yes, I do not only have to put them up, but I execute the different pieces that go into the interiors also.

Q. That is, you design them? A. Design them, and if I am working on a big wall hanging, say a large tapestry done in different ways, I must execute that also. I must execute them in shapes and different things.

Q. And does this condition interfere with your work? A. It does, because in my work often I have to use chemicals and put my hand in chemicals, when I do that it affects the bone and I have terrific pain and my arm sometimes swells, and that keeps me awake at night. Many times I have to get up in the night and bake my arm with the lamp which the doctor has given me in order to get sleep. 20

Q. Mr. Broadhurst, the attorney for the railroad company, said in his opening that everybody but you walked on these two plankways. Is that the fact? A. That is not true, because there were people going right ahead of me and just to my right, which I can swear, and were not walking on any kind of a walk. 30

Q. Did you have the return ticket? A. I had my return ticket, yes.

Q. When did you give up your last employment?
A. Last November.

Q. November 1926? A. 1926.

Q. So that you have been out of employment ever 40

Plaintiff's: Lydia M. Bradley—Direct

since? A. I have been doing what I could in my own work, because I could go in when I chose and when I was not physically or mentally able to work I was not forced to do so.

10 Q. You mean your own work? A. Yes, I make draperies and art things, and paintings.

Q. What have been your earnings compared with what you have earned on part time, have you earned more or as much? A. Oh, no, my earnings, I do not think—of course, some weeks I earn more and sometimes I earn less.

Q. What has been the average a week since you gave up your employment?

The Court: Since last November?

A. I am sure the average would not go over 20 20 dollars, maybe 25 dollars, but I am sure that it would not.

Q. At the time of your injury you were earning forty dollars a week? A. I was earning forty dollars a week.

Q. What medical bills had you had to pay? A. I had \$706, I think was the amount of Dr. King's bills and the hospital bills.

30 Q. What was the amount of the hospital bill? A. I am sorry, I do not recall just the amount, but I think it was forty dollars a week for the time I was there, and nurses, medicines, operating rooms, and so forth.

The Court: What is the seven hundred dollar item that you speak of?

The Witness: That covers Dr. King's bills and also the hospital bill, but I cannot specify each one.

Q. I show you a paper, can you tell me what this is, this paper? A. This was for the nurses, for the x-rays and the operating room.

40 Q. The hospital bill, is it? A. It is a hospital

Plaintiff's: Lydia M. Bradley—Direct

bill of St. Vincent's Hospital.

Mr. Simpson: I offer the bill.

Mr. Broadhurst: I do not think the bill is evidential. If Miss Bradley says that the total of both items is seven hundred and some odd dollars, I would not raise any question 10 of how it is divided.

Q. Is that so? A. Yes.

Q. So that your total expenses for doctors, hospitals and so forth, were about seven hundred dollars, that is, up until the first of January? A. Yes, but I have been under the care of Dr. Murray ever since then.

Q. How much have you had to pay Dr. Murray?

A. I have gone to him at least once a month, and maybe more, and I have paid him three dollars for 20 each treatment.

Q. How often have you gone to him? A. About an average I think of once a month ever since the accident. I imagine that would be about thirty-five, thirty or thirty-five dollars.

Q. He charges you three dollars a visit? A. Yes, that is as near as I can remember.

Q. Is this condition of your arm accompanied by any pain? A. Yes, it is. You see, my work, sometimes I am compelled in my work to put my hands 30 in gasoline or benzine and things like that, and when I do, of course, that causes—I don't know how to term it—more like rheumatism in my arm, in my shoulder, and all through my side.

Q. Mr. Broadhurst in his opening said that you were running or hurrying. Will you describe to the jury what your movements were? A. That was a mistake. I was not hurrying. I came through the station, I looked at the clock, a little clock sitting 40 in the back, you know, the window of the station

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and on a desk. It said ten minutes past four. My train was not due until 4:17, and from that minute I did not stop, I went right out, because Mr. Travers had gone across with my bags, and I wished to go across with him. So I went right out of the station. I did not stop on the sidewalk. I merely hesitated to look up and down, and continued to cross.

10 Q. When you came to Lackawaxen, is this the same station you stopped at? A. Yes, I arrived there, but I did not see the station because the train stopped way, way down, the coach I was in. I had to go down an incline.

CROSS-EXAMINATION by Mr. Broadhurst:

Q. How old are you? A. 28.

20 Q. Are you single or married? A. I am single.

Q. How long previous to the date of the accident was it that you went to Lackawaxen? A. It was about ten days.

Q. You were there to spend your vacation period? A. Yes.

Q. And this place where you stopped at, you say, was about some ten or twelve miles from Lackawaxen? A. Yes.

30 Q. Had you ever been to Lackawaxen before this occasion? A. No, I had never been to the station before.

Q. Had you ever been to the station after arriving at Lackawaxen and up to this occasion? A. No, I did not go to the station at all.

Q. You say that on this day you came to the station with Mr. Travers, driving the automobile? A. Yes.

A. And you were accompanied by a man named Mr. Grady? A. Yes.

40 Q. Is Mr. Grady a friend of yours? A. The

Plaintiff's: Lydia M. Bradley—Cross

Gradys are friends of mine.

Q. That is, you had been acquainted with Mr. Grady before this vacation period? A. I had been acquainted with the Grady family.

Q. When the automobile arrived at the station, you say, it stopped on the side of the station furthest away from the tracks? A. Yes. 10

Q. That would be the north side of the station, wouldn't it? A. I don't know the directions up there, I am sorry.

Q. The first thing that occurred was Mr. Travers got out of the automobile and went across the street? A. Yes.

Q. How long was he gone, do you know? A. I imagine it was about probably five or six minutes, because it was just about four o'clock when we arrived at the station. 20

Q. Then when he came back after being absent for four or five minutes, when he came back to the automobile you and Mr. Grady were still in the automobile? A. Yes, we got out of the automobile then when he took my bags.

Q. Mr. Travers took your bags? A. Mr. Travers took my bags.

Q. Did you have two bags? A. Yes, two bags.

Q. Did you get out before he took the bags or after he took the bags? A. Just as he was taking them out. 30

Q. Where were the bags, in the back seat? A. I am sorry, I do not remember that; I could not say whether they were or not.

Q. Then Mr. Travers before you and Mr. Grady left the automobile, went away with the bags, didn't he? A. No, I left the automobile, Mr. Grady and I left the automobile to go to the station as Mr. Travers left. We all left together. 40

Plaintiff's: Lydia M. Bradley—Cross

Q. Did he go to the station? A. That I could not answer. Mr. Travers went to my right. If there is any door down there he might have gone through it.

10 Q. Do you recollect whether he went through the station with you? A. He did not go to the station with me, no.

Q. Did he leave the automobile with the bags before you and Mr. Grady left the automobile to go to the station? A. No, we all left together.

Q. And you do not recollect just which way he went to get to the platform? A. He went to my right. That I remember, but—

20 Q. But you are positive he did not go through the station building itself? A. He did not go through the part of the station that I went through. There may be other parts he went through.

Q. How far did you have to walk from the automobile to get to the waiting room of the station? A. Only a short distance.

Q. Would it be three or four feet? A. It is very hard for me to determine exact measurements.

Q. Could you show us in this court room? A. But I imagine it would be from here to that bar there.

30 Q. This rail (indicating)? A. Yes.

Q. Probably about three or four feet then? A. Something about that, as near as I can recollect.

Q. Then to get into the station, what did you have to go up, a flight of steps? A. No, you had to step one little step up.

Q. Then you went through that door with Mr. Grady? A. Yes.

40 Q. How wide was the station itself from that door to the door which you were to go out of on the other side? A. It was a very small station.

Plaintiff's: Lydia M. Bradley—Cross

Q. Can you give us some idea, whether 10 or 12 feet or 15 feet? A. It was more than that.

Q. 20 feet? A. I could not give you the direct feet. It was perhaps as far as from here to that marble pillar there, but that is only guessing.

Q. That is 30 feet? A. No, I could not say any 10 feet.

Q. That was the waiting room of the station, was it not? A. Yes.

Q. Did you stop in there at all or did you walk right through? A. I stopped just for a minute to look in the window. I expected to ask the man who I thought would be in the station, would the train be on time. There was no one in there. I looked at the little clock as I was there and it said ten minutes past four. I immediately continued 20 right out of the station.

Q. And I take it you walked from the door that you first entered over towards the window? A. Yes..

Q. Where the tickets are sold. You looked at this clock and then after looking at it you went directly to the other door, which leads out of the platform? A. I went directly to the other door that leads out of the platform.

Q. And to get out of the station onto the platform 30 on the other side, did you have to go down any steps, or was that on a level? A. No, that was not on a level. I remember stepping down one little step.

Q. When you stepped down from that step that let you out onto a paved platform, which you say looked like it was paved with slate? A. As far as I can remember it looked like a blue looking slate.

Q. It was a flag walk, wasn't it? A. That I could not swear. It was something to that effect. 40

Plaintiff's: Lydia M. Bradley—Cross

Q. Did Mr. Grady accompany you to the station and out the door? A. Mr. Grady accompanied me, yes.

Q. Was he ahead of you or behind you or at your side? A. He was behind me.

10 Q. When you got out on the platform after going through the station, how did you then walk? A. I continued to walk right across.

Q. Straight toward the edge of the platform? A. Yes.

Q. Where was Mr. Grady at this time, was he at your side? A. No, he was just back of me, as near as I know.

Q. At least he was not by your side or in front of you? A. No.

20 Q. Did you hear it announced in the station previous to this that the train was approaching? A. I heard no announcement.

Q. Did you hear the whistle, the signal of the train as it approached the station up to this time? A. I heard no whistles.

Q. You heard no whistles at any time? A. No, not that I recall.

30 Q. When you got out onto the platform, do I understand you to say that you did not stop at all from the time you left the station door until the time the accident happened? A. Well, I do not think you could call it stop, because I merely hesitated as one would before crossing a street.

Q. Did you stop and speak to Mr. Grady before starting to cross the track? A. No, I did not speak to Mr. Grady on the sidewalk at all.

40 Q. Let me see, you walked out of the station onto the platform and started to cross the platform in a direct line with the door, and you say that you sort of hesitated. What do you mean by that? A.

Plaintiff's: Lydia M. Bradley—Cross

Well, as one would before they cross a street along anything that they know that something might come, you see.

Q. You hesitated so as to make an observation?

A. I hesitated to look up and down the tracks to see that I was safe. 10

Q. About how far from the station door had you gone across this platform when you hesitated, as you say? A. That I could not recall to the definite feet.

Q. Would it be half way or quarter way? A. It might have been half way, or it might have been a little more than half way.

Q. Can you give us some idea as to how wide that station platform was? A. It might be probably about 12 feet, 10 or 12 feet, as near as I can remember. 20

Q. When you looked, when you hesitated and made observation, as you say, which way did you look? A. I looked up and down.

Q. To your right and to your left? A. To my right and to my left.

Q. And to your right would be opposite New York? And your left would be toward New York? A. I imagine so.

Q. In other words, the train would come from your right? A. Yes. 30

Q. Is that right? A. Well, the train that I came in to Lackawaxen had come in from my left, so evidently it would be opposite.

Q. In fact, the train you later boarded did come in from your right? A. Yes.

Q. When you looked, do you recollect which way you looked first, whether you looked to your right first or to your left first? A. That I do not remember. 40

Plaintiff's: Lydia M. Bradley—Cross

Q. But you are sure you looked both ways? A. I am sure that I looked both ways, but I do not remember which one of the ways I looked first.

Q. How long do you think that you hesitated there, in making that observation, before you started across? A. It could not have been more than
10 a second or two.

Q. Where was Mr. Grady at that time, do you know? Was he at your side? A. No, he was some place back of me, but I was not paying any attention to him.

Q. When you looked to your right, how far up the tracks could you see? A. I don't know. I saw up to that big mountain that is there.

Q. Could you see along the tracks there for per-
20 haps a thousand or two thousand feet? A. But I am sorry, I could not tell you that, because, you see, there is a great big mountain there by the side of the station.

Q. There is a big mountain there on the side of the station. The train comes around a curve, does it? A. Yes.

Q. Could you see up the track as far as that curve? A. I could see a curve.

Q. On this day, I am trying to find out, did you
30 see up the track as far as this curve? A. I don't know how far I could tell you.

Q. Well, you made an observation? A. I made an observation, well, you see. You see, in a case of that kind it is awfully difficult for me to tell.

Q. No, if you could give it in blocks or anything else, it would assist. A. I could not say in blocks. I remember seeing as far as a little house that sits there.

Q. Can't you give us an idea—well, let me ask
40 you this: Could you see up the track up to your

Plaintiff's: Lydia M. Bradley—Cross

right for a great distance or just a short distance?

A. Well, you can see, I do not know whether you would consider it great or far.

Q. You cannot give me any idea in feet? A. If you know how far that house is, you will know how far I can see. 10

Q. Unfortunately I do not, I am sorry. I am trying to find out how far you could see this day when you looked. A. I am trying to tell you. I could see only to that little house on that—that is, on a bend there. Perhaps you have it in the picture.

Q. I show you a photograph.

Admitted and marked for identification
D-1 of this date.

Q. And I show you another photograph.

Admitted and marked for identification 20
D-2 of this date.

Q. (Continuing) And ask you whether that has on it the house which you referred to as being able to see at the time you made your observation to the right? A. Well, you see, railroad stations, those small stations, look so much alike that it would be difficult for me to swear that this is the station.

Q. I am asking you now whether or not looking at that, does it indicate the house that you referred to as being able to see when you looked to your right? A. Oh, this little house down here. Yes, there were some little houses like that down there. 30

Q. You could see down as far as that? A. I could see down to those.

Q. That little house that you refer to is somewhat in line with the two posts that are there? A. Naturally, you see, if this track went around a corner there, naturally from where I was standing I could see. I could not see around the corner.

Q. I am not trying to say you could. I am try- 40

Plaintiff's: Lydia M. Bradley—Cross

ing to find out what you did see on this curve. Did you observe down as far as those houses? A. That is as far as I could see.

Q. On this occasion did you observe down as far as the end of the curve? A. I looked as far as I
10 could see down.

Q. Did you observe on this occasion? A. Well, I should think one would consider it observing. I glanced.

Q. When you looked to your left could you see down beyond the curve in that direction on this day, referring to D-1? A. I do not recall the curve on the left. I glanced down the track, but—

Q. Can you tell us how far down to the left you were able to see? A. No, I am sorry I cannot tell
20 you how far.

Q. You cannot give us any idea at all as to how far you could see? A. I am sorry I cannot.

Q. When you looked, did you observe any train coming? A. I saw no train.

Q. Did you observe any smoke from a train approaching? A. No.

Q. Did you hear any noise of a train approaching? A. No.

Q. I think you said before you heard no whistle
30 or signals of any kind? A. No.

Q. When you came out of the waiting room you say that all of the passengers except two had crossed and were on the eastbound track? A. No, I did not say all of the passengers. I said there might have been others, but two I remember distinctly.

Q. Let me ask you this way: When you came out of the station building and onto the platform, did you observe whether there were any passengers
40 standing on the eastbound platform? A. There were some passengers.

Plaintiff's: Lydia M. Bradley—Cross

Q. And about how many passengers were there on the eastbound platform at that time? A. I only have a mental picture of a group of people standing there. It would be hard for me to say.

Q. You saw you say two people crossing the track before you went over? A. To my right. They were going over slightly to my right. 10

Q. Do you know whether they were passengers or employees? A. I have no idea. They were ladies. I do not think they would be employees.

Q. Perhaps not. You say there were two ladies that crossed over the track to your left. How far to your left? A. To my right, sir.

Q. How far to your right then? A. They were only slightly to my right. They appeared to be going— 20

Q. Can't you give me any idea in feet? A. I could not say how many.

Q. As far as from where you are to me. A. You see when one is walking, it is very difficult, especially when you are not thinking of it.

Q. You cannot give me any idea then how far to your right they were? A. No, I can only say they were passing slightly to my right.

Q. When you looked to your right and to your left did you observe the crosswalks that were constructed at the station? A. I saw no walks, sir. 30

Q. Of course, you do not deny but what they were there?

Mr. Simpson: I object to that as not proper cross-examination.

(Question repeated.)

The Court: I suppose her answer to that question is that she does not know whether they were there or not. Do you know whether they were there or not? 40

Plaintiff's: Lydia M. Bradley—Cross

The Witness: I could not swear whether there were any there or not. I did not see them.

Q. Did you before you started up, after making this glance to your left and to your right, did you look ahead of you at the place where you would
10 have to cross? A. As one would going across the street.

Q. Did you look that is what I am trying to find out? A. Yes, as one would look going across the street, you see.

Q. I do not know how one would look. That might differ. I might look one way and you might look another. What I want to know is what you did on this occasion. Did you look ahead of you, beyond the edge of the platform where you later
20 walked off and went across the track? A. I did not stop to observe each detail. I only glanced and started across.

Q. I am asking you whether you looked. A. I would consider it looking.

Q. Did you look, that is what I am trying to find out. A. I did not stop to observe it.

Q. Did you look? A. I might have glanced. I glanced.

Q. Do you remember whether you did look or
30 not. A. Oh yes, I would look where I was walking.

Q. Did you look, not what you would do. What I want to get is, do you remember now whether you looked before you stepped off or went off the platform onto the tracks. A. I naturally looked ahead of me, yes.

Q. Of course you naturally looked ahead of you, but did you look down at the ground that you were to cross over to go over the tracks? A. Well, I
40 glanced at it.

Plaintiff's: Lydia M. Bradley—Cross

Q. Then I take it you did look? A. I glanced at it.

Q. And by a glance you mean you looked at it quickly? A. Well, yes as anyone would look going across.

Q. I do not know what anyone would do. Did 10
you look down at the tracks? A. I glanced at the tracks.

Q. When you looked down at the tracks and before you started across, what did you see? A. I have such a vague idea of it, I could not tell you what I saw, because I did not see the holes. If I had, I would not have walked in them.

Q. What did you see, did you see a paved roadway? A. I saw dirt and gravel and rocks and all those things. 20

Q. I show you a picture, D-1 for identification and ask you whether the character of the ground you saw was as is illustrated in this picture between the crosswalk? A. Well, you see this picture—

Q. I am asking you whether or not that refreshes your recollection and shows the character of what you saw? A. Of the ground alone?

Q. Of the ground—I am not talking about any holes now, but the ground itself. A. You see, this 30
is taken at such a perspective that it eliminates any condition that I might have seen there or did see.

Q. Do you remember whether you saw anything or not when you looked? A. Yes, I remember I saw dirt and gravel and rocks, whatever it consists of.

Q. Did you see tracks? A. Yes, I saw iron tracks, yes.

Q. Did you see the wooden ties or beams on which the tracks rested? A. Yes. 40

Plaintiff's: Lydia M. Bradley—Cross

Q. How high was the edge of this station platform that you had to step off to go across the tracks from this dirt and gravel and rock, that you saw?

A. It was not high. As near as I can recall it was not high. I did not step down off of a sidewalk or a platform down into the tracks.

10 Q. Was the platform above the dirt and gravel or was it on a level with the dirt and gravel and rocks that you saw? A. That would be hard to swear it was on a level.

Q. I am trying to find out what you saw on that occasion? A. But I did not step down off of anything into the track. It was more on an even, the whole thing.

20 Q. When you saw the tracks, as you looked down on this occasion, they were resting on top of wooden ties, were they? A. That is the iron part?

Q. Yes, the rail was resting on top of wooden ties. A. Yes.

Q. And you could see the wooden tie itself too? A. Yes, I could see wooden ties.

Q. And the wooden ties were spaced some distance from each other? A. Yes.

30 Q. And in between the wooden ties and beneath the iron part of the track was this rock, dirt and gravel that you speak of? A. Yes.

Q. Was the track, that is the iron part of the track, above the dirt and gravel and rock? A. I am sorry, I do not remember.

Q. They were above it, were they not? A. I am sorry, I could not swear whether they were or not.

Q. Do you remember as you went across the tracks whether you had to step over the rails to get across? A. Oh, I naturally had to step over the rails.

40 Q. Do you remember whether you had to step up

Plaintiff's: Lydia M. Bradley—Cross

over them; in other words, were they flush with the ground or were they higher than the ground? A. No, I think they were a little higher than the ground.

Q. As you looked at it on this occasion and before you started across, it appeared quite even, did it? 10

A. Not to my knowledge, not to my refreshed knowledge.

Q. Did it appear even to you? A. It did not appear absolutely even, but it did not appear there were the dangers there that I found.

Q. Did it appear to you like a place to walk across? A. It appeared like a place to walk.

Q. And you would have to step over the rails to get over it? A. Yes.

Q. Then after making that observation and 20
glancing at that roadbed, you say you then went across to the edge of the platform and started across? A. Started across.

Q. Did you make any other observation either to your right or to your left or down at the ground? From that time up to the time that you tripped?

A. No, I made these two or three steps and then my foot went into the hole, and after that I had no control.

Q. The observation you made was when you were 30
on the platform, when you looked to your right and to your left, when you glanced down. A. When I glanced where I was to go.

Q. You glanced down at the ground too, I understand? A. No.

Q. I am trying to find out whether you looked at the ground. Did you look at the ground? A. Yes.

Q. After making that observation to the right and left and down at the ground then you started 40

Plaintiff's: Lydia M. Bradley—Cross

across the track? A. Yes.

Q. Then I understand that from that time, after making those observations, from that time up to the time that your foot went into this hole you described, you did not look either to your right or
10 left or at the ground? A. No, I continued to walk across.

Q. Am I right in my understanding, that you did not look? A. I don't remember if I looked.

Q. Will you say you did look? A. I won't say that I did look, because I don't remember having looked.

Q. About how much of a space was it from the edge of the platform to the first rail of the first track, as you went across? A. That I am sorry I
20 do not remember.

Q. About how much of a space was it between the first rail and the second rail, as you went across? A. I imagine it is about four or five feet anyway.

Q. Where was the place that you say your foot went into the hole, was it between the rails of that first track? A. It was between the rails of the first track and between the wooden portions, going across.

Q. In other words, it was between the rails of
30 the first track? A. Yes.

Q. And it was between two of these wooden ties that support the iron track? A. Yes.

Q. Which foot was it that you say went into this hole? A. My left foot.

Q. What kind of shoes were you wearing at the time, pumps? A. No, the same kind I have on now.

Q. Have you got shoes on now, can you describe them to us. A. I had this kind (exhibiting shoe.)

Q. I see, ties, and what type of heels do you call
40 that? A. It is a low heel, flat heel.

Plaintiff's: Lydia M. Bradley—Cross

Q. So that when your left foot went into that hole you felt it go into a hole, you then lost your balance and went forward? A. Yes.

Q. How close to the second rail, as you went over, was your left foot when it went into this hole? A. I imagine it was about two thirds over the distance 10 between the iron tracks.

Q. In other words, the hole as you describe it was about two-thirds of the space between the two tracks? A. Of the space between the iron tracks.

Q. You say you went forward three or four or five hurried steps before you fell? A. Yes, trying to regain my balance before I fell.

Q. And you cleared, before you fell, the space between that track and the track on which your train was coming? A. Yes. 20

Q. How much of a space was that, have you any idea? A. I have no idea. It was just enough for me to take three or four quick steps.

Q. And when you fell you say that your knees struck against the first rail of the second track? A. The first rail of the second track struck me just below the knee cap.

Q. Where did your arm land, on the outer rail? A. No, it landed some place in there. I could not swear just where. 30

Q. On the inside of the second track? A. On the inside of the second track.

Q. When you fell did you then notice the train? A. When I fell, you see, I fell on my left side, this way (indicating); my face this way and I was lying on the tracks. I looked up and I saw this huge train coming around a corner.

Q. Was the train then coming around that bend? A. The face of the engine was just coming around the bend, as I fell. 40

Plaintiff's: Lydia M. Bradley—Cross

Q. About how far do you think that engine was when you saw it at that time? A. I am sorry, the impression is so horrible that I have, that I could not give any distance.

Q. Then you got up, as I understand it, right
10 away? A. I got up. I do not know how soon.

Q. And went over onto the eastbound platform?
A. Yes.

Q. As I understand then you did not see at any time the hole that your foot went into before you fell? A. No, no, I did not see the hole before I stepped in them.

Q. And as I understand you, you did not look down at the ground, as you went over the tracks, other than that first observation that you made from
20 the platform? A. My first observation was just to look across that way (indicating).

Q. That was the only observation you made? A. I did not stop to pick out—

Q. I am trying to ask you, that was the only observation you made? A. Yes, as far as I can remember.

Q. Your recollection on that is the only observation you made outside of the one you made on the platform? A. I looked to my left and I looked to
30 my right and then I looked across.

Q. When you were on the platform. A. As I hesitated before I started across.

Q. On the platform. A. On the sidewalk or platform.

Q. After you got into the train, you say you went over to the right side of the coach. By the way, do you remember what coach you boarded? A. I do not.

Q. The conductor of the train assisted you on,
40 did he? A. Yes, when the train stopped the con-

Plaintiff's: Lydia M. Bradley—Cross

ductor came to me and he took me in the train.

Q. He sat you in a seat on the right-hand side of the coach? A. Well, he sat me on the side away from the—in the seat on the side away from the—

Q. That would be the right-hand side as you went toward New York, wouldn't it? A. Yes. 10

Q. That would be the side of the coach farthest away from the station? A. Yes.

Q. You say that you changed your position from that seat? A. Yes, the conductor turned to leave the train, or leave the coach, or leave me. I do not know what happened to him, but as he did I got up, realized where I was, and I went over and sat on the little back seat in the back of the coach nearest to the station, and I looked over towards the station. 20

Q. You looked over toward the station and at the ground over which you had come? A. Yes, I did.

Q. And you say when you looked at the ground over which you had come you observed that it was full of holes? A. I had time then.

Q. I am asking you, did you observe then that it was full of holes? A. It was full of holes.

Q. And by that you mean there were depressions, some places the rock and gravel was higher than it was in others. A. Yes. 30

Q. As I understand, you were unable to determine from the observation from the window which of the depressions your foot may have gone into? A. Well, you see there were many.

Q. You could not determine which of the depressions your foot may have gone into? A. I could not pick out the individual hole, but I could pick out the spot.

Q. You mean the general place? A. The general place that I walked across. 40

Plaintiff's: Lydia M. Bradley—Cross

Q. But you could not pick out the particular hole that you say your foot went into? A. Well, I could, had I gone back across I could have picked out the individual hole.

10 Q. I am not asking what you could have done, but what you did do. A. I could not pick out the individual hole, but I could the spot where I fell and what caused me to fall.

Q. And all of that general territory where you had fallen or where you had your foot go into this hole, was full of depressions and holes from the ballast being higher in one spot than it was in other spots? A. Yes.

20 Q. When you looked at it at that time out of the car window, did you then observe that the iron part of the track was considerably higher than the ties and that the ties were higher than the rocks and gravel that formed the ballast? A. In some places they were higher and in other places they were not.

Q. You mean the iron part? A. No, the wooden part.

Q. But the track was higher than any of it, wasn't it, the iron part of the track? A. Yes, I think the iron part was higher.

30 Q. And that rested on wooden ties? A. On wooden ties, yes.

Q. And in between these ties was there this rock and gravel and dirt that you referred to? A. Yes.

Q. And in places that was high and in other places it was low, is that what you mean? A. Some places were holes and some were not.

Q. When you refer to holes you mean it was lower or further down? A. I do not mean it was further down, I mean it was really holes there. It was down.

40 Q. And that general territory was full of that?

Plaintiff's: Lydia M. Bradley—Re-direct

A. It was very bad.

Q. You had no trouble seeing that from the car window? A. No.

Q. Without any trouble? A. Without any trouble, because I was looking for it.

Q. And previous to that you had not been looking for it? A. Well, I did not know it was there. Why should I look for it. 10

Q. Well, you did not look, that is the fact, isn't it? A. I looked as anyone else would look, I am sure.

Q. But you did not see it when you looked before you got your foot caught? A. I saw the gravel and dirt and rocks and everything.

Q. I am talking about the holes, Miss Bradley, the holes. You did not see them before? A. I do not remember having seen them. 20

Q. All right. Mr. Grady, crossed the tracks with you or did he remain on the platform? A. No, Mr. Grady remained on the platform.

RE-DIRECT-EXAMINATION by Mr. Simpson:

Q. The station platform you stood on, was that even with the rail of the track that was nearest to it? A. The rail might have been a slight bit higher, but my impression was that it was about on a level. 30

Q. When you stepped off the station platform, if you stepped on the rail itself, it would have been even with the station platform, would it? A. I do not know that it would have been exactly even; it might have been a little higher.

Q. Then when you stepped off the station platform first did you step between the big platform and that rail with your first step? A. No, I stepped over the first iron rail. 40

Plaintiff's: Lydia M. Bradley—Re-direct

Q. How many steps did you take before this accident happened? A. Two or three, I cannot say just exactly which. It was two or three.

Q. You spoke of one of these photographs Mr. Broadhurst tells you as having a bad perspective, 10 which one do you mean? A. Well, you see—

Q. Not "Well, you see." Which picture did you mean when you said one of them had a bad perspective? A. Well, they are both bad, you see.

Q. Well, what did you mean by "that the perspective was bad." A. Because they do not tell these holes down between these ties. You see they are taken like that with the camera low, like the human eye would be if you bend down like this. If you bend down like this this could be very full 20 of holes, but if you went down here (indicating), you would not see them, but if you went over them you would see where the holes were and the condition.

Q. You say the perspective of that is taken so that it does not show anything between the rails? A. It does not show anything between the rails. If there were holes there in taking it this way it would eliminate them.

Q. As a general view, the view of the station and 30 the tracks as you remember it, do they recall the station to you and the tracks and the train? A. They recall a station and the train.

Q. Not a station. Do they recall the station that the accident happened at? A. They recall the station, but I could not swear if it is the same station.

Q. Does it recall these stations? A. It recalls these stations.

Q. That is the general view looks like it? A. The general view looks like the station.

40 Mr. Simpson: I offer those photographs in

Plaintiff's: Lydia M. Bradley—Re-cross

evidence.

Admitted and marked Plaintiff's Exhibits No. 1 and No. 2 in evidence of this date.

By the Court: Q. Showing you Plaintiff's Exhibit 1, will you show me what it was you came out of when you came out of the station? A. I came out of this door as far as I know. I am not swearing in this picture, but there was a door here about this part of the station. I came out of and I came directly across here. 10

By the Court: Q. Can you show us on this picture?

The Witness: I think it was about here, the door was about here. You see, in taking a perspective this way, as I studied perspectives, I realize the fore-shortening is so great it fore-shortens everything into such a way that it is difficult for me to swear. You see, if you take a picture here like if this be so here it would not show the true distance between anything. It fore-shortens everything so that it pushes them together and you can not tell the difference between them. 20

RE-CROSS-EXAMINATION by Mr. Broadhurst:

Q. The perspective would not prevent your determining whether the door on P-1 was the door out of which you came, would it? A. Well, you see— 30

Q. Would it prevent you from telling whether that was the door? A. I cannot recollect that that was the door I came out of.

Q. Is the perspective of this picture such that you cannot even tell whether that is the station building that was there? A. Well, it reminds me of the station, yes.

Q. I am talking about the perspective that you 40

Plaintiff's: Christopher Beling—Direct

have spoken about. A. You see, this is not the perspective I got of the thing at all.

Q. In other words the difficulty then is that the perspective that you got was different from the one you see here? A. Not only that, but you see here
10 this was taken right on the ground, right flat this way (illustrating) so that it does not give me the details.

Q. Does that prevent you from determining whether that was the door you came out of? A. I cannot swear that that is the door because the pictures are so different from anything that I got.

20 CHRISTOPHER BELING, sworn.

Direct-examination by Mr. Simpson:

Q. You are a practicing physician and surgeon?

Mr. Broadhurst: I will admit the doctor's qualifications.

Q. Do you make any specialty, Doctor? A. Of nervous and mental diseases.

Q. How long have you made that study?

Mr. Broadhurst: I admit the doctor's
30 qualifications on that.

Mr. Simpson: Yes, but the jury might like to know how long he has been doing it.

Q. How long have you been doing it? A. Over
25 years.

Q. Did you examine Miss Bradley at your office?
A. I did.

Q. When? A. On the 26th of November.

Q. Of this year? A. Yes.

Q. What did you find her condition to be? A.
40 I found that she was very nervous, had a tremor of

Plaintiff's: Christopher Beling—Cross

her tongue, and she had an inability to turn her left arm at the elbow. She had a defect in the arm which I found was due to injury that she had had and an operation. She was unable to supinate the arm like this (illustrating). Then she had a group of symptoms that she complained of, such as insomnia and nightmares and general nervousness, inability to sleep and the loss of weight. 10

Q. Wouldn't you have any term for that condition, which you designate as nervousness, is there any medical term for it? A. Well, call it a neurosis.

Q. What degree does that affect the normal function of the body; I mean, a woman suffering like she is with neurosis, in your opinion can you give the jury any idea of what affect that has on her. A. 20 You see, that is a hard question to answer, because lots of people are neurotic, but it all depends upon what causes the neurosis.

Q. Would a violence sufficient to produce the injury which you saw be an explanatory cause of that neurosis? A. It would.

Q. And what in your opinion is the duration of this condition of nervousness? A. I could not say. I do not know.

Q. This condition of the arm is permanent, is it? 30
A. Yes, I think it is permanent.

CROSS-EXAMINATION by Mr. Broadhurst:

Q. The loss of supination, that is, turning the arm inward with the palm like this (illustrating).
A. Yes.

Q. You say she has an impairment of that motion? A. Yes.

Q. The pronation, is that all right? A. Yes.

Q. And flexation and extension? A. They are 40

Plaintiff's: Martin Grady—Direct

pretty good.

Q. Is it the experience of your science that the tendency or else the litigations increases or has any bearing on the nervousness or neurosis which you find the girl to be suffering from? A. Yes, litigation is always a very important factor, because it keeps the matter in mind.

Q. And at the time of the determination of the litigation, Doctor, is it not the experience of men in your profession that that has a very good effect on curing up the neurotic condition and getting the patient back to normal so far as the nerves are concerned? A. Yes, sometimes and sometimes not.

Q. That is recognized, isn't it, Doctor, as one of the elements of a cure, to get rid of the worrying that is recurring the thing to the patient's mind all the time? A. Yes, I think that when the thing that the mind is on is taken off, why, naturally the mind is better off.

Mr. Broadhurst: That is all, Doctor.

MARTIN GRADY, sworn.

30 Direct-examination by Mr. Simpson:

Q. Where do you live? A. 100 East 80th Street, New York City.

Q. Were you with Miss Bradley on the day she was hurt? A. I was, yes.

Q. Where had you come to the station from? A. From Tanzey's Cottage, Haller's Falls, about 12 miles from the station.

Q. How did you get to the station? A. Joe Travers picked me up at the house accidentally and asked me to ride to the station with him and Miss

40

Plaintiff's: Martin Grady—Direct

Bradley. I accepted the invitation and rode with them to the station.

Q. How did he pick you up, in what? A. In a Ford car.

Q. When you got to the station, did you all three sit in the car for a little while? A. Joe Travers 10
drove the car around to the north side of the station and parked it near the station door: He then got out of the car and went over in the direction of the hotel or post office. He returned in a short time.

Q. What did you do in the meantime? A. Miss Bradley and I remained in the car until Joe Travers returned.

Q. How long was he away? A. About four or five minutes.

Q. When he came back what did you do? A. He 20
picked up Miss Bradley's bags and took them around to the south side of the station. Then we got out of the car, Miss Bradley and I got out of the car and proceeded to walk through the station.

Q. Did he go through the station? A. Joe Travers did not go through the station. He went out to the right on the west side of the station.

Q. Did he go to the station or around the station on the platform? A. Joe Travers went around to the right of the station. There isn't any platform 30
at the end of the station, at the west end of the station.

Q. Did you observe him after you saw him go around to the right, did you observe him? A. I observed him until he got to the west end of the station; then he disappeared from sight.

Q. Then you did not see him any more? A. No.

Q. What did you do, you and Miss Bradley? A. We had to step up a slight step on the north side 40
of the station and we entered into the body of the

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station and Miss Bradley was preceding me. She walked over in the direction of the ticket office and looked at the small clock that was on the desk there. I also looked at that clock. The clock registered 4:10. Miss Bradley proceeded towards the door
10 facing the steel rails. I was following about three paces behind.

Q. Did you know or did you ascertain in any way when this train from New York arrived? A. Yes, Joe Travers—

Q. Before you went to get the train, at least Miss Bradley did? A. I understand she wanted to catch the 4:17.

Q. Did you ascertain that that was the time the train would arrive? A. Yes, Joe Travers, the driver
20 that took her in, told us.

Q. What time did you find out it would arrive? A. 4:17 the train was due to arrive.

Q. When you went through the station what was the next thing that happened? A. I stepped out on the platform and Miss Bradley continued to cross the little platform or sidewalk. She continued on over the steel rails. When she got between the steel rails of the first track her foot went into a hole. She gave a couple of quick steps forward, trying to re-
30 gain her balance. She failed. She tried desperately to stay on her feet, but she failed, her body resting on the first rail of the second tracks.

Q. When she fell across the rails of the second tracks was there any train coming? A. The train was just emerging from behind this mountain, coming around the curve.

Q. How far was it? A. That was to the right; that could be a distance of about 100 yards or 110
40 yards.

Q. You say emerging from behind the mountain.

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Would you say it was coming around the curve there? A. Coming around the curve, yes.

Q. Then what did Miss Bradley do, if anything, after she fell? A. After she fell she got up and struggled to the platform.

Q. Who picked her up? A. Nobody. She had 10
no assistance.

Q. How near was the train to her when she got up? A. When she got up the train was about 50 or 75 yards of her.

Q. Was there anybody else around there besides you? A. Joe Travers was there and some passengers and two other passengers were crossing slightly to her right.

Q. When? A. Just as she was crossing the tracks. 20

Q. That would be west of her? A. Yes, slightly to the west of her, maybe three or four feet to the west of her.

Q. Were the passengers that you speak of waiting when you came out? I do not mean the ones that walked across with her. I mean the ones on the other side, did you notice that? A. Yes, apparently they were waiting for the incoming train.

Q. You saw the place Miss Bradley fell in, the hole that her foot went in? A. I did. 30

Q. Did you go and examine it then? A. I did after Joe Travers, the driver, had told me that Miss Bradley had injured her arm. The train had moved out by that time.

Q. When did you examine that, after the train moved out? A. Yes.

Q. What did you find when you looked at the place? A. I found the roadbed, that is, track number one, dotted with holes. Some of those holes were eight or ten inches in depth, and the wooden 40

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crossties were exposed so that I could put my heavy shoe right under the lower side.

Q. Was there anything else that you noticed? A. Well, that was the general condition of the bed, facing the railroad station.

10 Q. You say that you could put your shoe under the tie? A. Under the wooden tie.

Q. Did you do it? A. I did.

Q. Would you say that the depression was a new or old one?

Objected to as a conclusion.

A. The depressions were old.

Q. Would you say that the depression was a new or old one?

Mr. Broadhurst: I object.

20 The Court: I will let him describe the condition there, but the witness cannot give his conclusions as to whether the depressions were recent or not.

A. The wooden ties were of a very dark color and the sides looks as though they were exposed to the sun and elements for years.

Mr. Broadhurst: I object to that as a conclusion.

30 The Court: I will let him describe it and then let the jury draw their conclusions.

A. They had an old appearance.

Mr. Broadhurst: I object to that and ask that it be stricken out.

The Court: I will allow that to stand.

Mr. Broadhurst: Exception.

CROSS-EXAMINATION by Mr. Broadhurst:

40 Q. I show you two photographs which have been marked P-1 and P-2 in evidence and ask you whether or not they show the general situation of the

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patient and the tracks at Lackawaxen in August, 1924, the general situation now I am talking about.

A. What do you mean by the general situation.

Q. I am talking about the station, the way the tracks were there, the platform that went across the tracks, the rails and the ties. A. Well, this picture does not show the holes in the roadbed nor the new crosswalk you have put there since, opposite the door. 10

Mr. Broadhurst: I object to that on the ground that it is absolutely immaterial and ask that it be stricken out.

stricken out.

The Court: The objection will be sustained and the latter part of the answer will be stricken out. 20

Mr. Broadhurst: I will ask your Honor to charge the jury in due course that whether the company has put a new platform there or not is entirely immaterial to the issue here.

Q. Now, Mr. Grady, if you will look at that picture again. Can you tell me whether or not that is the appearance of the station as it existed in August of 1924? A. Well, you see you have—

Q. Is it or is it not—A. Not the general appearance, because it does not show the holes in the roadbed. 30

Q. Outside of the holes in the roadbed does it show the general situation? A. Well, yes.

Q. And the only difference then in this picture and the way the conditions were in August 1924 is that you say this picture does not show the holes in the roadbed, is that right? A. It does not show the holes in the roadbed.

Q. Referring to P-2, is that another picture of the conditions as they existed except for the holes in 40

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the roadbed? A. Yes, but you could not see these crossings as clearly. They were covered over with sand and gravel.

Q. Does it show the conditions as they existed in August of that year? A. It shows them as in the
10 picture, but not as in August 1924.

Q. Does that picture show the condition of the station with reference to the location of the platform, the location of the tracks and the location of the building, as they existed in August of 1924? A. Well, your Honor Judge—

Q. Does it, yes or no? A. It does not.

Q. You have used this station yourself before, have you not? A. Yes.

Q. And there were in August of 1924 two plat-
20 forms constructed of wood that crossed the two tracks, were there not? A. Yes.

Q. And those tracks were located one on each side of the waiting room doorway, isn't that so? A. About 18 yards to the right and 18 yards to the left.

Q. Right. And those wooden platforms went from the station platform in front of the buildings across both sets of tracks to the eastbound platform? A. As I remember.

30 Q. Well, you saw them, didn't you? A. I saw them, yes.

Q. And had used them? A. For many years.

Q. Is the doorway marked "X" on P-1, the doorway out of which you and Miss Bradley came on this occasion? A. It appears to be the doorway.

Q. Don't you know whether that is the doorway or not? A. It appears to be the doorway.

Q. Can't you positively say whether it is the doorway or not? A. Well, there is only one doorway,
40 so if this is the Lackawaxen station, this is the door-

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way from which we came.

Q. How many years have you used this station?

A. For quite a number of years.

Q. And you mean to tell me you cannot identify this station, on this picture, with the background of the picture, as being Lackawaxen? A. It appears 10
to be the Lackawaxen station.

Q. Can't you identify it without any question?

A. It looks very much like it.

Mr. Simpson: I object. He already has answered that it appears to be the Lackawaxen station. What more can he say.

The Witness: There isn't any sign here to show that it is the Lackawaxen station.

Q. So that you cannot tell the station building then even without the sign? A. I appears to be the 20
station building of Lackawaxen.

Q. But you won't say positively it is? A. Absolutely not.

Q. Was the doorway out of which you and Miss Bradley came located between the two platforms that went across the tracks? A. It was, yes.

Q. And the point where she crossed over from the station building to the eastbound platform, was over the rails and the ties and the ballast? A. Yes, 30
at the point opposite the door.

Q. And not over either of the wooden platforms?

A. Not over either one of the wooden platforms.

Q. You say that you were behind Miss Bradley as she came out of the station? A. Pacing about three paces behind.

Q. Were you accompanying her to the train? A. They just picked me up and invited me to ride with them, accidentally on that afternoon.

Q. So as to see her off on the train? A. Not 40
necessarily. I had no intention of going to the

Plaintiff's: Martin Grady—Cross

train.

Q. What was your purpose in going to the station? A. Just for a ride. I was invited by the driver and Miss Bradley.

Q. Were you accompanying Miss Bradley to the
10 train? A. I naturally was when I was in the car with her.

Q. You said you trailed behind her three paces from the car outside of the station building on the north—A. I didn't say anything about from the car. From the end of the station.

Q. Where were you walking with Miss Bradley as you came out of the station? A. I went through the station building with reference to her, Judge,
20 ing. about three paces behind her in the station building.

Q. And when you went through the station building three paces behind her, Miss Bradley—A. Miss Bradley preceded me.

Q. Three paces ahead of you? A. Yes.

Q. And you went out on the platform still with her three paces ahead of you? A. She went ahead.

Q. She continued three paces ahead of you? A. I held up my pacing but she continued on across the tracks.

30 Q. She did not stop to speak to you again after going through the station building? A. Not after she left the station.

Q. Were you walking slow? A. Yes.

Q. Was she? A. Yes.

Q. And you knew that she had plenty of time to get this train, according to the clock? A. It was ten minutes after four.

40 Q. Can you give us any reason at all for your accompanying her on the automobile to the station, three paces behind her? A. I did not want to ac

Plaintiff's: Martin Graay—Cross

company her.

Q. Why? A. Because I had a rifle in the car and I did not want to go too far away from it.

Q. The rifle in the car did not keep you three paces behind her? A. That was the natural course of events.

10

Q. What was your reason; were you afraid the rifle would be stolen? A. Perhaps, or somebody injured by using it.

Q. It was just as safe with you walking alongside of her as you walking three paces behind her? A. That was the course she took. I had no control over her.

Q. Well, what was the reason you did not walk alongside of her? A. It just happened that way.

Q. But you accompanied her there to the station and onto the platform? A. If you call walking three paces behind her accompanying her. I was with her.

20

Q. Well now, can you give us any explanation as to why you were walking three paces behind her? A. Miss Bradley was going to catch a train and I did not want to cross a track, so there was no reason for my being by her side.

Q. It was not because she was in a hurry and had to get over the tracks before the train got there.

30

A. She was not in a hurry.

Q. Then I understand when you got onto the platform she went right on across the tracks without stopping to talk to you at all? A. Yes, without stopping to talk to me at all.

Q. Did you go over the tracks? A. I did not.

Q. You had plenty of time? A. Lots of time.

Q. You accompanied her to the station. Do you mean to say you did not go across the tracks? A. It was accidental on my part that I went to the sta-

40

Plaintiff's: Martin Grady—Cross

tion with Miss Bradley. I was invited there by Joe Travers and Miss Bradley just to take a ride.

Q. Whether it was accidental or not, you did not accompany her over the tracks? A. I did not, no, sir.

10 Q. And that was because you were afraid of this rifle that was back in the car? A. Simply because I was unshaved. I had old clothes on. I had a three days' growth of beard.

Q. This is a country station. A. Never mind, but there were lots of passengers there.

Q. Up in Lackawaxen? A. Yes.

Q. And you were on your vacation? A. I was, yes.

20 Q. And there were only ten or twelve passengers on the platform waiting for the train? A. Well, that is just the reason. I did not want to go too far.

Q. Don't you know that up at Lackawaxen most of the people have a couple of days' growth of their beard? A. I did not want to get too far away from my rifle.

Q. Oh, you get back to the rifle again now. A. I had a three days' growth of beard on and old clothes on.

30 Q. You think that is exception up at Lackawaxen? A. I did not want to meet any New York people on the other side.

Q. Did you expect any? A. Well, it is possible they might be there.

Q. That was the only reason for not going over? A. That was the natural reason.

Q. You went out onto the platform where the station building was. They could not see your beard there, I suppose? A. They were 20 or 30 feet away.

40 Q. They could not see your old clothes 20 or 30

Plaintiff's: Martin Grady—Cross

feet away? A. Not as closely as if I came across the tracks.

Q. Did you look either to your right or to your left when you came out on the platform? A. I casually looked, yes.

Q. Did you see the train before Miss Bradley 10
fell? A. Before she fell?

Q. Yes. A. No.

Q. Did you hear the engine whistle before Miss Bradley went across the tracks? A. I heard the engine whistle, yes.

Q. You heard it whistle for the station? A. Well, I don't know; I heard a whistle.

Q. And that sounded like a locomotive whistle, did it? A. Yes.

Q. And then very shortly after hearing the whistle you saw the train come around this curve? A. 20
A short time after.

Q. Where was Miss Bradley when the train was coming around the curve? A. Her body was on the track.

Q. She had just fallen onto the track. A. Well, her body was on the track.

Q. How long did she stay on that track? A. About seven seconds.

Q. During those seven seconds, sometime during 30
those seven seconds you saw this train coming around the curve? A. Yes.

Q. 110 yards away? A. About 100.

Q. 330 feet away? A. I will confine myself to yards.

Q. Well, there are three feet in a yard. A. Yes, I understand.

Q. How close was the train to Miss Bradley when she got up and got off the track? A. About 50 or 40
75 yards.

Plaintiff's: Martin Grady—Cross

Q. She was on the ground seven seconds and when she got up the train was 50 or 75 yards from her?
A. About 50 or 75.

Q. Were you watching Miss Bradley as she got across the tracks? A. Yes, I watched her.

10 Q. You watched her go across? A. Yes, naturally.

Q. And did she turn to speak to you at all? A. No.

Q. Did you say anything to her? A. I did not.

Q. You say that you saw two other women crossing the tracks? Were they ahead of Miss Bradley or behind her? A. They were slightly to her right, maybe four feet.

Q. Were they behind her or ahead of her? A.
20 They were slightly ahead of her.

Q. They got over on the eastbound platform before the train came in? A. Just about a second ahead of Miss Bradley.

Q. About how far to her right were they? A. Perhaps three or four feet.

Q. Were they women or men? A. Women, two ladies.

Q. Do you know them? A. No.

Q. Do you know their names? A. I do not.

30 Q. Now, did you see the hole or the place where Miss Bradley put her foot in? A. I did.

Q. Did you see it when she put her foot in it? A. Not until I examined it, after Joe Travers had told me.

Q. Did you see Miss Bradley put her foot in a hole? A. I saw her put her foot in a hole.

Q. Did you later examine the identical hole that she put her foot in? A. I did, absolutely.

40 Q. You remembered it in the meantime? A. I remembered it.

Plaintiff's: Martin Grady—Cross

Q. How long was it after the train pulled out of the station? A. Perhaps a minute and a half.

Q. What were you doing during that time? A. I was on the sidewalk, close to the building.

Q. And at that time you did not know that Miss Bradley was hurt? A. I did not know it. 10

Q. When the train pulled out Travers came back over the tracks? A. Yes.

Q. When Miss Bradley was crossing over, Travers was on the eastbound platform? A. He might have been there at the time. He was just crossing over to the right.

Q. Was he on the eastbound platform? A. He was at the edge of the eastbound platform. He had just got off the crosswalk.

Q. Was he still walking? A. Yes, he was in motion. 20

Q. He had just got off the crosswalk, you say? A. Yes.

Q. How long was it after the train left that he came over and told you that Miss Bradley had been hurt? A. Oh, perhaps a minute.

Q. And up to that time you did not think Miss Bradley had been hurt at all? A. I did not know she was hurt.

Q. You saw her fall into the roadbed? A. A 30 person could fall and not be injured.

Q. When you saw Miss Bradley fall and the train come along, did you run over to assist her? A. No, because I saw that she had sufficient time to get up. I did not want to disturb her and create a scene.

Q. The train was then 50 or 75 yards from her. A. And she was on her feet.

Q. That is the reason you did not go over? A. 40 There was no occasion. She was getting along very

Plaintiff's: Martin Grady—Cross

nicely.

Q. How long after the train left did Travers come over and tell you she had been hurt? A. About a minute.

10 Q. Was it after or before that you went to look for this hole? A. After.

Q. So you looked around then and found this hole you have described? A. I did not have to look. I knew where she had put her foot in.

Q. Was there more than one hole there? A. Yes, quite a number of holes and depressions.

Q. Describing this condition that existed there, the steel rails rested on ties, didn't they? A. Yes.

Q. About how many inches above the ties were they? A. Above the wooden ties?

20 Q. Yes, above the wooden ties. A. About five or six inches.

Q. And the tie itself was partly exposed, wasn't it? A. That is, the wooden ties.

Q. I am talking about the wooden ties now. A. Yes, mostly exposed.

30 Q. In other words the rail—there is a steel rail fully exposed and most of the wooden ties were fully exposed. A. That is between the steel rails, about midway between, that is, at that point the greatest exposure was.

Q. The rails rested on the ties, didn't they? A. On the cross ties.

Q. What I want to know is was the ballast or gravel level with the ties or was it down below the level of the ties? A. Where Miss Bradley put her foot there was no ballast or gravel.

Q. The general condition, I am talking about. A. That is a vague question.

40 Q. Was the ballast level with the top of the ties or below? A. Absolutely not. It was full of holes.

Plaintiff's: Martin Grady—Re-direct

Q. This ballast was made up of crushed rock like you see on an ordinary roadbed? A. Crushed rock and gravel and sand.

Q. Does either one of these pictures show so far as the rails and the general appearance of the ties are concerned, forgetting for a minute about the holes, does it show the condition as it existed at that time? A. Well, you see, I cannot see the condition between these two sidewalks. 10

Q. You cannot tell. Look at that one. Does that give it any better? A. No, I cannot see the holes in the roadbed.

Q. Were there a great many holes there? A. Quite a number.

Q. That was the general condition there of the roadbed at any place in front of the station? A. 20 I observed more closely opposite the door.

Q. Between the two plank walks, the general condition was full of holes and depressions and what not? A. It was in the first track where Miss Bradley put her foot in.

Q. That is the westbound track you are talking about? A. Yes, track number one.

Q. So the general condition in the westbound track was that it was full of holes and depressions?

A. Quite a number of holes and depressions. 30

RE-DIRECT-EXAMINATION by Mr. Simpson:

Q. Mr. Broadhurst mentioned the platforms that were, as you describe, 18 or 28 yards from the center door. A. About 18 yards from the center door, to the left and to the right.

Q. That is in all about 72 feet? A. About 50 or 47 feet.

Q. You say 18 yards, that is 54 feet. A. About 40

Plaintiff's: Martin Grady—Re-direct

54 feet.

Q. The space between the two of them is about 108 feet? A. About 35 yards between the two cross-walks.

10 Q. From where you were standing at the time Miss Bradley walked across, did you look either way could you see them from where you were standing? A. If you observed very closely, because they were mostly covered with dirt and gravel.

Mr. Broadhurst: I object to that as immaterial.

The Witness: They were covered with dirt and gravel.

20 Mr. Broadhurst: I think that ought to be limited to what the conditions were on this occasion.

Q. Did you have to walk to them to see them or could you see them from where you were standing.

A. You had to walk quite a distance to the right or to the left before you could see them.

Q. What did they appear to you from where you were standing? A. As a part of the roadbed.

Q. Both walks? A. Both walks.

30 Q. You said that the hole into which Miss Bradley put her foot had no ballast. What did you mean by that? A. The ballast had been washed out by years of snow and rain.

Mr. Broadhurst: I object to that and ask that it be stricken out.

Q. What did it appear to you as? A. A hole in the roadbed.

Q. Can you by looking at it see what the cause of the hole was? A. Well, I can just draw conclusions. Neglect of repairs.

40 Mr. Broadhurst: I object to that and ask that it be stricken out.

Plaintiff's: Martin Grady—Re-cross

The Court: Yes, that will be stricken out.

Mr. Simpson: I withdraw it.

RE-CROSS-EXAMINATION by Mr. Broadhurst:

Q. Did you see either one of these wooden platforms on this day that Miss Bradley went across, this day of the accident did you see either one of the wooden platforms? A. I must have seen them. 10

Q. Did you see them? A. Yes.

Q. Do you say that either one of the platforms on this day had sand on it? A. It had sand and gravel on it.

Q. On this day you saw sand and gravel on either one of the platforms? A. Yes, that was the general condition for years. 20

Mr. Broadhurst: I ask that that be stricken out.

The Court: Yes, strike it out.

Q. Did you see either one of these wooden platforms on this day? A. Yes.

Q. And do you say that on this day that Miss Bradley was injured that either one of them had sand on it? A. Both were sandy looking. They had the appearance of the roadbed.

Q. Did they have sand on them? A. Yes. 30

Q. Did you see that? A. I did.

Q. Did they have gravel on them? A. Gravel and dirt.

Q. Did you see that? A. Yes.

Q. But you knew there were two platforms there, didn't you? A. I knew they were there, yes.

Q. And you did not suggest to Miss Bradley to use either one of them, did you? A. I had no control over Miss Bradley. 40

Recess.

Plaintiff's: Anthony Favalli—Direct

ANTHONY FAVALLI, sworn.

Direct-examination by Mr. Mehlman:

Q. Where do you live? A. 320 West 29th Street, New York City.

10 Q. Were you at Lackawaxen at any time? A. Yes.

Q. Did you live up there, stay up there, or how did you come to be there? A. I spend my vacation there every year.

Q. At Lackawaxen? A. At Shohola Falls, about 12 miles from Lackawaxen.

Q. When you have to get off at Lackawaxen? A. I have to get off at Lackawaxen. Lackawaxen is the nearest railroad station.

20 Q. In August, on the 20th of August, 1924, were you familiar with the Erie station there? A. I was.

Q. Were you familiar with the track lines which led out from the station to the train right over to the New York track? A. I did not get that question.

Q. Were you familiar with the track lines which led out from the station to the train? A. Yes.

30 Q. Which went right over to the New York track? A. Yes.

Q. Did you at or near the 20th of August examine the condition of the first track that you have to cross to go to the New York track? A. I did, about 12 days after the accident.

Q. You examined it 12 days after the accident? A. Yes.

Q. The accident to Miss Bradley, you mean? A. I observed it after Labor Day.

40 Q. When you speak of the accident, you mean the accident we have referred to in this case? A. Yes.

Plaintiff's: Anthony Favalli—Direct

Q. Who did you go with? A. Mr. Grady.

Q. Mr. Grady is the man who testified before you?

A. Yes.

Q. As a result of going there with him did you look at the condition of this track? A. I did.

Q. What was the condition of it? 10

Mr. Broadhurst: I object to that as immaterial and irrelevant, what the condition was 12 days after the accident.

The Court: The objection is sustained.

Q. What did you see up there?

Mr. Broadhurst: I object to that.

Q. At the time you examined it.

Mr. Broadhurst: I object to that.

The Court: The objection is sustained.

Q. Now, at or about the 20th of August, 1924, 20 were you in the vicinity of the station or at the station? A. I was about, the last week in August.

Q. Now, did you at that time examine or have occasion to see or observe the condition of the station, of the tracks and the ground between the tracks and the rails?

Mr. Broadhurst: Please answer the question yes or no.

A. I did not.

Q. You did not examine the things that I mentioned? A. I did not. 30

Q. Did you know at that time what the condition was? A. I did not know anything at that time about the hole matter.

Q. Did you know anything about the condition of the station, the tracks, and the ground between the tracks about that time or around that time, the 20th of August, 1924? A. I did not know anything about it at that time.

Q. When was the first time you knew of it? A. 40

Plaintiff's: Dr. Robert Mackay—Direct

The day after Labor Day of the same year.

Mr. Broadhurst: I will consent to an exception being noted for the other side.

The Court: Yes.

10 Mr. Simpson: If your Honor please, we have medical testimony in this case which we took last time.

Mr. Broadhurst: It is by consent, Senator Simpson and I both consent to it being read if we cannot get the witness here on this trial.

The Court: Very well.

Mr. Simpson: I want to first introduce the x-ray plates.

20 Mr. Broadhurst: There is no objection to them if you read the doctor's testimony about them.

(Testimony of Dr. Robert Mackay taken at the previous trial was thereupon read to the jury.)

Mr. Simpson: I offer the x-rays in evidence.

Admitted and marked "Plaintiff's Exhibit No. 2 and No. 3" of this date.

30

DR. ROBERT MACKAY, sworn.

Direct-examination by Mr. Simpson:

Q. You are a radiographer? A. Yes, sir.

Q. What is that? A. I make the x-ray examinations at St. Vincent's Hospital, New York City.

Q. You are familiar with taking x-rays? A. Yes, sir.

40 Q. And have been how long? A. Over eleven

Plaintiff's: Dr. Robert Mackay—Direct

years.

Q. You know the machines that are used? A. Yes, sir.

Q. And you are familiar with whether they are in good condition or not? A. Yes, sir.

Q. You say you have had eleven years' experience of reading these things? A. Yes, sir. 10

Q. Have you there any x-rays made of the arm of this plaintiff? A. Yes, sir.

Q. When did you make them? A. The 22d of August 1924.

Q. Were they made with a machine of standard character? A. Latest type x-ray machine.

Q. What is the name of it? A. Kuhne type machine with a transformer.

Q. Have you these x-rays there? A. Yes, sir. 20

Mr. Simpson: I offer them in evidence.

Accepted and marked as Plaintiff's Exhibits P-1 and P-2 of this date.

Q. Will you read them and tell us what they show? A. The picture I have in my hand here, this is the lateral view of the elbow joint and the upper arm or humerus, with a transverse fracture through the radius, almost to the joint: this is the fracture here (indicating).

Q. P-1 that is you refer to? A. This picture 30 there.

Q. And this, is that the same? A. This is the same arm, but is the posterior anterior section, and this shows the fracture through there (indicating). These marks are the marks of the cast; this is the upper arm and the lower arm down here (indicating).

Q. Is that all there is of them? A. That is all I took there. 40

Mr. Markley: No questions.

Plaintiff's: Dr. Edward King—Direct

(The testimony of Dr. Edward A. King taken at the previous trial was thereupon read to the jury.)

Mr. Simpson: The plaintiff rests.

10

DR. EDWARD A. KING, sworn.

Direct-examination by Mr. Simpson:

Q. Dr. King, you are a practicing physician and surgeon? A. I am.

Q. Where? A. New York City.

Q. Did you treat Miss Bradley about the 21st of August 1924, or 22d? A. Somewhere after the 20th
20 of August 1924.

Q. Where did you first see her? A. St. Vincent's Hospital.

Q. What did you treat her for? A. A fracture about the left elbow joint.

Q. What did you do for it? A. On August 27th, I opened up the joint and removed the head of the radius.

Q. What is the head of the radius? A. One of
30 the bones that comprise the joint.

Q. Took it out altogether? A. Yes, took the head out altogether.

Q. So that she had no head on the radius? A. Has no head on the radius now.

Q. How long did that operation take? A. About twenty minutes I guess.

Q. After you had opened and done that, what was the purpose of doing that? A. Why, only the head was taken out, and naturally when the head is taken out, the functional result would be very poor.

40 The head was broken into three pieces which if they

Plaintiff's: Dr. Edward King—Direct

were left there, there would be the formation of a large amount of callus and in the end, she would be unable to bend the elbow joint.

Q. Having done that for the purpose of getting function, you treated her right along up to December, didn't you? A. Up until December, on the 20th or 29th, when I took her into the hospital and gave her an anaesthetic and bent the elbow while she could not feel the manipulations, so as to get more function. 10

Q. What she calls breaking it; is that what she calls breaking the elbow? A. No.

Q. What was it you did? A. Just manipulate under the anaesthesia.

Q. So that you could get more function than she had? A. Get more function. 20

Q. What was in the way? A. What we call fibrous tissue, soft tissue, scar tissue I suppose is the best nomenclature.

Q. It was necessary to manipulate it in order to loosen up that tissue? A. Yes, sir.

Q. At the time did you ease the elbow any? A. Much more than it was, before the manipulation.

Q. After the manipulation, she got rid of the loss of function? A. Yes, sir.

Q. What is the condition now; has she all of the use, with the exception of losing the head of the radius; what is her condition now? A. She has a moderately good result; in injuries of that nature that she received. She still has some limitation of the extension motion which means straightening the elbow joint. 30

Q. Can you tell us what percentage of limitation?

A. I should judge about 20 percent.

Q. And that is permanent? A. That is permanent. 40

Plaintiff's: Dr. Edward King—Direct

Q. And when you say a good result, you mean a good result taking into consideration everything that was present, don't you. She could have had it much worse? A. She has a remarkable result for the kind of injury that she has, namely a fracture
10 of the head of the radius.

Q. What would be the ordinary condition that would follow, instead of this remarkable one? A. Stiff joint.

Mr. Markley: I object to what might have followed.

The Court: I will allow it.

Mr. Markley: Exception.

Q. The elbow would be stiff all the time? The ordinary condition would be a stiff elbow? A. Stiff
20 absolutely stiff, with limitation of motion.

Q. To what extent of limitation? A. That would be a question of degree.

Q. She only has 20 percent limitation? A. Twenty percent.

Q. How does that affect the use of her left arm. Can she turn it this way, or turn the hand around? A. She has some limitation of the rotation in this motion, and some limitation—instead of being able to straighten her arm absolutely, she can straight-
30 en it to about there (indicating).

Q. You say in her case the result was remarkably good? A. Remarkably.

Q. What was your bill, Doctor, do you remember? A. About \$300, I guess.

Q. Was that a reasonable charge for the services? A. I considered it reasonable.

Q. Look at these x-rays; were these the x-rays you used in her treatment? A. I don't know whether I have ever seen this or not (indicating).
40 Q. You did use some x-rays, didn't you? A. Yes,

Plaintiff's: Dr. Edward King—Direct

sir.

Q. Miss Bradley did give you some x-rays? A. Well, we had x-rays taken when she was in the hospital.

Q. If these are the ones she gave you, then these are the ones you used? A. Yes, sir. 10

Q. Can you read them? A. Yes, sir.

Q. Will you read what they indicate?

Mr. Markley: Can you identify them as pictures of the plaintiff.

Mr. Simpson: He says he cannot.

Mr. Markley: I object to him reading the x-rays.

Mr. Simpson: This is the situation. I would like to offer them, with the concession that you strike them out if I don't connect them up. 20

The Court: I will allow it.

Q. Will you read what they show? A. This picture here shows the elbow joint, in which the head of the radius is missing.

Q. And the other; does that show the same thing? A. The other two are not so clear. I will stand on that one, but on these two, they were taken at such an angle they don't show clearly. This one shows very clearly. 30

Q. Was that injury a painful injury at all? A. Very painful.

Q. Would you say it would be still accompanied with pain? A. The injury you mean? It is a very painful injury.

Q. With this twenty per cent of loss, would that occasion any pain when she tried to use it. You say she has got this 20 percent loss. If she tried to do these things you say she cannot do? A. It will be painful if she overdoes it. 40

Plaintiff's: Dr. Edward King—Cross

Q. Did you treat her for any nervousness in attending this injury, or was your treatment largely surgical? A. My treatment was surgical.

CROSS-EXAMINATION by Mr. Markley:

10 Q. What was your bill? A. Somewhere around \$300. I don't remember the exact figure.

Q. You said she had a remarkably good result, but there is some limitation of motion and extension. Did I understand that correctly? A. Yes; I added also that there was some limitation of rotation.

Q. When did you examine her last? A. About two months ago.

20 Q. Is this 20 percent merely limitation of the extension and rotation of the arm? A. Yes, sir.

Q. How about flexion? A. It does flex.

Q. How about pronation? A. That is rotation.

Q. And the motion of flexion? A. That is this (indicating).

Q. That is perfect? A. Yes, sir.

Q. And the ability to move the shoulder? A. Yes, normal, the motion in bending the elbow joint, bending the forearm towards the trunk.

30 Q. That is called flexion of the joint? A. Yes, sir.

Q. Where you find the limitation of motion is in the extension and rotation or pronation? A. The rotation is a term that is used to describe pronation and supination is the rotation by twisting.

Q. Just describe them again? A. That is rotation (indicating). That is supination (indicating).

Q. Turning her hand in this direction, she has a limitation of 20 percent from perfect motion? A. Of complete perfect motion.

40 Q. And extension, what do you mean by that? A.

Plaintiff's: Dr. Edward King—Re-direct

Plaintiff's: Dr. Edward King—Re-cross

Straighten the arm out.

Q. All the way? A. Yes, sir.

Q. From the elbow joint? A. Yes, sir.

Q. That is the opposite of flexion? A. The opposite of flexion. 10

Q. There she has lost 20 percent of perfect extension? A. Yes, that is right.

RE-DIRECT-EXAMINATION by Mr. Simpson:

Q. What is the office of the head of the radius that she has lost; the head of the radius that you took away, what is the function of that? A. It is of it? A. Use, it is part of the joint.

Q. In what way does it function, what is the use of it? A. Use, it is part of the joint. . . 20

Q. That she has lost permanently; you took that out? A. Yes, sir.

Q. Is that what causes this 20 percent loss? A. I believe so.

RE-CROSS-EXAMINATION by Mr. Markley:

Q. The head of the radius, what is that? A. That is the main bone of the forearm.

Q. It is the head of the bone? A. Yes, the head of the bone. 30

Q. How large a bone is that, Doctor? A. It runs from the elbow to the wrist.

Q. I mean the head that you took out? A. It measures about anywhere from $\frac{3}{4}$ inch to an inch or an inch and a quarter in diameter.

Q. It is just the head that you took out? A. Yes, sir.

Q. Which you just gave the dimensions of? A. Yes, sir.

Mr. Broadhurst: I would like to make a 40

Motion for Non-suit

10 motion for a nonsuit. I respectfully move
for a nonsuit in favor of the defendant on
the following grounds, first, that there was
no evidence of any negligence on the part of
the defendant as alleged in the complaint.
20 Secondly, there is no evidence of any negli-
gence on the part of the defendant as alleged
in the complaint that was the proximate
cause of this accident. Thirdly, from the
undisputed evidence in the case the plaintiff
as a matter of law was guilty of contributory
negligence, and in support of that motion
I gave your Honor the citation of various
cases which you relied upon, and I presume
you have read them, and unless there is some
particular part your Honor would like to
hear argued upon I presume you have the
law that I have in mind.

The Court: The motion is denied.

Mr. Broadhurst: Exception.

30

40

Defendant's: Joseph Travis—Direct

Defendant's Testimony.

(The testimony of Joseph Travers taken at the previous trial was thereupon read to the jury.)

(The testimony of Benjamin R. Sheck taken at the previous trial was thereupon read to the jury.) 10

Mr. Broadhurst: I have the civil engineer's testimony here.

Mr. Simpson: We will admit it.

Mr. Broadhurst: I will read his testimony as to the measurements. That will save much time tomorrow.

(Testimony of Lester H. Robinson taken at the previous trial was thereupon read to the jury.) 20

Mr. Broadhurst: I offer the map in evidence.

Admitted and marked Defendant's Exhibit No. 3 of this date.

JOSEPH TRAVIS, sworn.

30

Direct-examination by Mr. Simpson:

Q. Where do you live, Mr. Travis? A. I am living about three miles out of Norwood at present.

Q. On the 20th of August 1924, were you employed as general hotel man at Spring Brook, where Miss Bradley was? A. Yes, sir.

Q. Was the plaintiff boarding at the house at that time? A. Yes, sir.

Q. On August 20th, 1924, did you drive her to the station? A. Yes, sir. 40

Defendant's: Joseph Travis—Direct

Q. Who was with her? A. Mr. Grady.

Q. How far is it to the station from the boarding house? A. Thirteen miles.

Q. About what time did you leave to get there?

A. What time did I leave home?

10 Q. Yes? A. Well, I would think about a quarter of three. I always figure a little extra time in case of a blow-out or anything.

Q. What time did you get to the station? A. Must have been about 4 o'clock.

Q. Do you know what train she was going on to New York? A. 4:17.

Q. You made many trips to the station during the time you were the general hotel man there? A. Quite a few trips.

20 Q. Taking people to these trains and to the station? A. Yes, sir.

Q. When you got to the station, what happened? A. Well, I stopped there and I went across the street for mail; letters or bought some groceries, or something like that.

Q. Then what did you do? A. Then I came back and I took Miss Bradley's bag over across the track.

30 Q. How did you come to go through the station, or did you go around the station? A. I think I went around the station; I am almost certain.

Q. You took the bag over to the eastbound track? A. Yes, sir.

Q. When you got over to the eastbound track, did you see Miss Bradley? A. When I got there?

Q. Yes? A. No.

Q. When you took the bags over? A. No, not just then.

40 Q. Well, what was the very next thing you saw? A. Well, after, don't know, maybe three or four

Defendant's: Joseph Travis—Direct

minutes, or something like that, I saw her coming across.

Q. Which way did she come across from the station; did you see her walking across? A. I should say it was about, not exactly straight out, but a little diagonal. 10

Q. She came out of the door of the station? A. Well, I think she did.

Q. Not what you think. Did you see her come out of the door of the station, or didn't you see her until she was crossing the tracks? A. I seen her when she was on the platform in front, but I cannot swear whether she came out straight or around that corner.

Q. When you saw her on the platform, did you see her start across over the eastbound track? A. 20
Yes, I seen her start across over.

Q. She had to cross the westbound track first, didn't she? A. Yes, sir.

Q. Did you see anything happen to her when she stepped in the westbound track? A. Why, I seen her trip on something. I can't say whether she stepped in a hole or caught her foot on the rail. I seen her flop across this track. It was done pretty quick.

Q. When she fell, what track did she fall on? A. 30
Well, I would call it the third track from the depot.

Q. That is the New York track? A. That is on the New York track.

Q. When you say you could not tell whether it was her foot that caught in a hole or she tripped over a tie or whatever it was; where was it she started to do that, on the eastbound track? A. Just about between the two.

Q. The two tracks? A. Just about between the 40
two tracks, when she lunged across that third rail.

Defendant's: Joseph Travis—Direct

Q. When you say the third rail, do you mean the first rail of the westbound track; you know the westbound track? A. No, I mean the track going east; the third rail on the track going east.

Q. There are not three rails on the eastbound track? A. I mean on the second track.

Q. You mean the third rail—A. The first rail of the second track across.

Q. Is that the eastbound track of the westbound track? A. That is the eastbound, yes, sir.

Q. So you simply say you don't know whether her foot caught in a hole or she went against a tie—where was she standing then, between the two rails of the first track or where was she standing? A. Well, just about between the two tracks.

20 Q. When you say a track, do you mean tracks or rails? A. Between the two tracks.

Q. What do you mean tracks or rails? A. Well, there is two different sections.

Q. There are four rails there? A. I mean between the second and third one.

Q. That is according to your observation, she had gotten over the eastbound track when she stumbled this way? A. That is the way it looked to me.

30 Q. What did you do then? A. Then I started to run down there to her and she just got off the track herself.

Q. Where did she fall; did she fall on the rail of the eastbound track? A. On the rail of the eastbound.

Q. Did she fall on her elbow or arm? A. She fell on her elbow.

Q. Then what did you do? A. I started to go down there to get her out.

40 Q. At the time you saw her make the first movement, which you could not tell what made her stum-

Defendant's: Joseph Travis—Direct

ble or fall, did you see this train for New York or hadn't it come in sight yet? A. No, it was just about, I should say 140 yards up the line.

Q. The first curve up the line? A. Well, there is a little curve.

Q. Was she around the curve, or coming around the curve? A. About, just about coming around. 10

Q. When you saw Miss Bradley make the first motion? A. When she fell I guess she laid there for a second.

Q. I am not talking about her lying there. I am trying to get you to tell us where this train was when you saw her stumble for the first time? A. Well, I should say it was up the line 150 yards.

Q. Then what did you do? A. Then I started to get down to haul her off the track. 20

Q. What did you do? A. Then I picked up, I helped her, I led her up the tracks, took hold of her arm and led her all the way till she gets on the car.

Q. This train you saw coming was the New York train? A. New York train.

Q. Was this the train she was going to board? A. Yes, sir.

Q. How far away from her were you when she fell? A. I should say about 50 feet.

Q. Did you pick her up? A. Well I helped her get up from there, after she got off the track. 30

Q. You know the place where you saw her when you say she stumbled; you know that place? A. Yes, I know the place.

Q. I mean you have examined it; you are familiar with it; you know whether there were holes or not? A. I have crossed there several times.

Q. What do you say about whether there were holes at the place where you stated that she fell? A. I never noticed holes there myself. 40

Defendant's: Joseph Travis—Cross

Q. Did you examine the place? A. I didn't go back there and look.

Q. You mean to say you never examined that place? A. Not to my recollection.

10 Q. Did you see any holes there? A. Not to my recollection there.

Q. You made about 50 trips to the station, didn't you? A. Yes, I should judge about that.

Q. Do you state that you never observed the condition of the roadbed, that the rails were 6 to 10 inches above the roadbed in between the rails, the roadbed and the intervening rock and gravel, and filled with stone; do you say that is not a fact? A. I would say that the ground might be a little uneven, yes, sir.

20 Q. Not what it might be; we want to know whether you, under oath, will describe the condition at the point where you say this woman started to fall? A. I have crossed them tracks several times.

Q. Are you still employed up there? A. No, I haven't been up there only a couple of times since.

Q. Did you make any statement to the Erie Railroad Company about this case? A. Yes, they came around to see me.

30 Q. After this woman fell, and after you picked her up, did you go to see what made her fall? A. No, I didn't go to see.

CROSS-EXAMINATION by Mr. Markley:

Q. As I understand it, Mr. Travis, you drove this Ford automobile? A. Yes, sir.

Q. Were you hired by Miss Bradley? A. Yes, sir.

Q. You drove her down to the station? A. Yes, sir.

40 Q. Where did you park the automobile? A. I

Defendant's: Joseph Travis—Cross

parked it right on the corner as you go up the line.

Q. Was it on the street side? A. On the street side.

Q. On the street side of the station building or on the track side? A. On the street side.

Q. Then in order to reach the sidewalk on the train side of the station building, you had come through the building or around it? A. You could go either way. I think when I took her to the station on this occasion, I went around it.

Q. When you first arrived at the parking place on the street side of the building, you say you had first to perform an errand around there? A. Yes, I went across on a little errand, to mail some letters and buy groceries.

Q. You say you arrived about four o'clock? A. 20
Yes, sir.

Q. Then you came to the automobile to get Miss Bradley's bags? A. Yes, sir.

Q. You got the bags? A. Yes, sir.

Q. Where was Miss Bradley when you got the bags? A. She was in the automobile.

Q. Anybody else in the automobile at that time? A. Mr. Grady.

Q. How many bags did she have, do you remember? A. I think there was two. 30

Q. What did you do with the bags? A. I took them across the tracks.

Q. Where did you take them; on the far side, on the eastbound track? A. On the far side, yes, sir.

Q. Did Miss Bradley accompany you when you went over to the eastbound side of the track? A. No, she didn't go with me.

Q. How long was it before you saw her on the station platform? A. Probably about three or four 40
minutes.

Defendant's: Joseph Travis—Cross

Q. When she came down the platform, did you notice whether she was accompanied by anybody?
 A. Why, Mr. Grady came as far as the platform; he didn't cross. He didn't leave the platform.

10 Q. Do you know whether the train was approaching at that time or not? A. I could hear the whistle, yes, sir.

Q. Can you tell us anything as to how Miss Bradley came across; did she walk, walk fast or run. Can you give us any idea how she left the station platform? A. Well, when she got started across, the train was so near to her, she had to run or it would run over her.

20 Q. Did she run? A. When she tripped on there, she took about two or three jumps, that is landed right on the track.

Q. Well, when she left the station platform, the station platform is about 15 or 18 feet wide, isn't it? A. The platform?

Q. The station platform? A. I would not say it is quite as wide as that.

Q. How wide would you say it is? A. I should say ten or twelve feet.

30 Q. When did you first see Miss Bradley after you got over on the far side of the track? A. When did I first see her?

Q. Yes? A. Well, she had already come out of the depot.

Q. You didn't see her come out of the depot? A. No, I didn't see her.

Q. Was she walking or standing still? A. She was walking across.

Q. Walking fast or running or walking slow? A. She wasn't doing either. She was going quite lively.

40 Q. What do you mean by quite lively? A. She

Defendant's: Joseph Travis—Cross

was coming across.

Q. Did you see her run at any time? A. She wasn't running, no.

Q. Was she walking fast? A. Walking pretty fast, yes, sir.

Q. You say she got over the first track all right? 10
A. All right.

Q. Both rails, is that right? A. Yes, sir.

Q. And then she stumbled? A. Fell over something. If she stepped in a hole, I could not tell you what it was; when she stopped, she just lunged across that track.

Q. Where was it you saw her fall or catch her foot; where was she then? A. Between the two tracks.

Q. That is between the third—A. The third and 20
fourth.

Q. The second and third rails, is that right? A. Yes, sir.

Q. That is where she fell? A. Yes, sir.

Q. And then, where did she fall from that position? A. Well, she fell across the third track.

Q. What was she doing at the time she fell? A. She was walking, or running then, when I saw her. That is, she wasn't running when she caught her foot, well, naturally, it would make anybody take 30
a few steps quick.

Q. Before she seemed to fall, was she walking or running? A. She was walking a pretty good gait.

Q. Was this train ahead of time that day? A. I could not tell you; I didn't need a watch. I didn't even look at the depot.

Q. I show you a picture that has been marked D-1 for identification. Will you look at that please, and tell me whether or not you recognize that as 40
Lackawaxen Station? A. Yes, it looks like it to

Defendant's: Joseph Travis—Cross

me.

Q. Suppose you look at this D-2 for identification and say whether you recognize that? A. Well, they are both like the station, but they are taken different.

10 Q. One taken looking one way? A. Yes, sir.

Q. That is D-2. In which direction is that looking, if you know? A. Which direction?

Q. Is that looking east or west? A. That is looking west.

Q. Look at D-1? A. That is looking east, down.

Q. Were these two planked crossings there at the time of the accident? A. Yes, they were there.

Q. Was she on either one of these planked crossings when she fell? A. No.

20 Q. Could you tell the jury where she was with respect to this crossing when she fell; was she on one or the other, or outside of them or where? A. Just about between them.

Q. Will you give the jury your idea of how far apart these crossings are; what the distance is between them approximately? A. Well, I would say they were over thirty feet.

30 Q. About thirty feet apart? A. I have traveled over them different times, I never even noticed to take notice how far they were apart.

Q. What is your best judgment from traveling over them, how far apart would you say these two plank crossings are? A. I would say over thirty feet.

Q. Can you tell about how wide these plank crossings were on August 20th, 1924? A. I should judge about eight feet; 8 or 10.

40 Q. If I understand you correctly, when Miss Bradley fell, she was on the gravel or stone or dirt, whatever it is was there between the second rail and

Defendant's: Joseph Travis—Re-direct

the third rail? A. Between these tracks, right in here (indicating).

Q. You say she was midway between the two rails the second and the third rail, when she fell? A. I would say somewhere about that, yes, sir.

10

RE-DIRECT-EXAMINATION by Mr. Simpson:

Q. Where were you standing when you saw her stumble, or put her foot in a hole as you described it; where were you standing? A. I was standing over across the two tracks.

Q. How far away from her? A. How far away from her or the tracks, you mean?

Q. How far away from her? A. I should think about fifty feet. Thirty to fifty.

Q. Were you straight across or were you diagonally across? A. Diagonally. 20

Q. Were you standing where the train would come in? A. Where the train generally travels, where he comes in.

Q. How far from the other platform? A. From the Erie platform?

Q. From the plank ways? A. I think I was right opposite.

Q. Opposite which one? A. The upper one.

Q. That is the one towards New York? A. The one west; I might even have traveled above that. 30

Q. What did this lady do that makes you say that she put her foot in a hole; did you see her foot go down, or what did you see? A. I seen her catch herself on something; whether she stepped in a hole or caught her foot on the earth, or what it was, she fell across that track.

Q. I am not asking you anything about her falling across the track. I am asking you to direct your attention to when she walked across. You say you 40

Defendant's: Joseph Travis—Re-direct

saw her catch her foot, or put her foot in a hole or stumble. What was she doing with her body that makes you say one of these three things: putting her foot in the hole, or catching her foot, or stumbling. Did her body go down? A. Fell across the

10 tracks.

Q. Before she fell, did she seem to go down into something; how did she go? A. I could not tell you that.

Q. After that, when you say she took three jumps I mean, when she was trying to get her balance? A. Trying to get her balance.

Q. What did she do after she stumbled and tried to get her balance; what happened to get her body to come across the rail? A. You mean across the
20 rail?

Q. What rail did her body fall across? A. The third rail of the second line.

Q. The first rail of the eastbound track? A. Yes, sir.

Q. She fell on the eastbound track, the first rail of the eastbound track? A. Yes, sir.

Q. How far is it between the second rail of the westbound track and the first rail of the eastbound track? A. Well, I should judge about eight or ten
30 feet.

Q. And that is the space in which she was trying to recover her balance, is it? A. Yes, sir.

Recess to 1:50 P. M.

Defendant's: Benjamin Sheok—Direct

BENJAMIN R. SHEOK, sworn.

Direct-examination by Mr. Markley:

Q. By whom are you employed? A. Erie Railroad.

Q. In what capacity? A. Clerk, station clerk. 10

Q. Were you station clerk at Lackawaxen on August 20th, 1924? A. Yes, sir.

Q. Were you there at Lackawaxen on August 20th, 1924, at 4:17 in the afternoon? A. Yes, sir.

Q. What kind of day was it? A. It was a bright, clear day.

Q. Do you know whether the train was on time? A. Yes, it was on time.

Q. Did you do anything at all before the train arrived? A. I announced the train to the people in the waiting room. 20

Q. About how long before the train arrived? A. We always leave about five minutes.

Q. What was the nature of your announcing? A. Calling out the eastbound train for New York.

Q. Did you do that on this particular day? A. Yes, sir.

Q. Then what did you do after you announced the train? A. After the passengers left, I went outside to assist them with their baggage on and off the train. 30

Q. The train arrived after that, shortly after your announcing, did the train arrive? A. Probably about four minutes or so.

Q. Did you see this plaintiff, Miss Bradley, at all at any time before the arrival of the train? A. No, sir.

Q. When did you first see her? A. The first I seen her was when I saw her on the platform. She stopped for a moment and then I realized that she— 40

Defendant's: Benjamin Sheok—Direct

Q. No, what you saw or did. You saw her stop for a moment? A. Stop for a moment.

Q. Where did she stop? A. Out on the platform.

Q. Which platform? A. On the south side of the station.

10 Q. That is the station platform? A. The station platform.

Q. Did you see her on the station platform? A. Yes, sir.

Q. Where were you when you saw her on the station platform? A. I saw her over on the other side of the eastbound, standing alongside a man.

Q. You saw her on the far side of the eastbound track or the station? A. The far side.

20 Q. That would be the south side? A. Of the eastbound.

Q. On the platform of the station? A. Yes, sir.

Q. That is between the station building and the first rail of the first track? A. Yes, sir.

Q. Where was she when you saw her on this platform? A. Well, I should judge about the middle.

Q. Midway between what? A. Between the station and the first rail of the westbound track.

Q. About how wide would you say that platform was? A. About fifteen feet.

30 Q. Where was she with respect to the plank walks do you know? A. She was about midway.

Q. Between the two plank walks? A. Yes, sir.

Q. When you saw her there, where was the train? A. The train wasn't in sight at the time I seen her.

Q. Tell us what you saw her do? A. The time I saw her on the platform there, she stood for a moment, and I thought she was going east.

40 Q. Not what you thought. You can only testify to what you saw or did? A. Well, when I seen her on the platform, why she stopped as though she was

Defendant's: Benjamin Sheok—Direct

standing still at the time. So then I turned, and I was looking eastward; then when I turned around again, I seen her starting over the tracks.

Q. Did you see her start from the station platform? A. No, I didn't see.

Q. Did you see her go over the rails of the first track? A. Yes, sir. 10

Q. How did she go, did she walk? A. She wasn't exactly, well, walking, she was going, stepping right along.

Q. What do you mean? A. Walks a little bit fast.

Q. Did you see her go over the first two rails? A. Yes, sir.

Q. Did she fall there at all? A. No, sir; she didn't fall on the first track, 20

Q. Did you see her get to the space between the inside rails of the two tracks? A. Yes, sir.

Q. Tell the jury just what you saw. I don't want to lead you. Just tell the jury what you saw when she was in there? A. After she crossed over the first two tracks, she was going a little, walking a little fast, then, after she passed over the second rail of the first track of the westbound track, why, she started to stumble and by the time she stumbled over to the first rail of the eastbound track, why 30 it occurred to me she tripped herself somewhere, from what I can see I would say she tripped herself. By the time of that, she fell between the two rails of the eastbound track.

Q. That is the second track? A. The second track.

Q. Had she tripped before that, while she was on the rails, or between the rails? A. It appeared to me she tripped first before she got to the first rail of the eastbound track. 40

Defendant's: Benjamin Sheok—Direct

Q. The first rail of the second track? A. Yes, sir.

Q. Was there any hole at the place where she was? A. Not, as I know of, no.

Q. How far were you away? A. I was about 50 feet away.

Q. Looking at this Exhibit D-1, was the place where she fell made of gravel as appears in the picture? A. Yes, sir.

Q. Between the two inside rails of the two tracks? A. Yes, sir.

Q. Did you see a hole in the gravel? A. No, sir, not to my knowledge.

Q. Go right ahead from when you saw her fall? A. She fell between the rails of the second track.

20 Q. The eastbound track? A. Yes, sir.

Q. Where was the train then? A. The train I judge was coming about 100 yards or more away.

Q. Where? A. Away from her.

Q. What did she do? A. Finally, she picked herself up, got off the track when the train was about thirty feet or forty feet away from her.

Q. Did anybody assist her to her feet? A. Nobody at that time assisted her, because she got up.

30 Q. What did she do, did she get over on the south side of the eastbound track? A. She got over to the south side of the eastbound track.

Q. Did you see where she boarded the train? A. No, sir, I didn't.

Q. These other passengers; how did they get from the station over the sidewalk or station platform over to the eastbound track, or the eastbound platform of the eastbound track? A. They used the cross walk.

40 Q. What was the condition of the crossings; that is, these plank crossings? A. They were all right.

Defendant's: Benjamin Sheok—Cross

Q. She wasn't on either one of them as I understand it? A. No, sir.

Q. She was midway between then as I understood you to say? A. About midway.

Q. What kind of day was it? A. It was a bright clear day.

10

CROSS-EXAMINATION by Mr. Simpson :

Q. Were you in charge of the station? A. Yes, sir.

Q. The only man there in charge? A. Well, I am assistant agent there.

Q. The agent was away, and you were the assistant agent? A. Yes, sir.

Q. Then you left the station alone and you went over on the other side of the track? A. Yes, sir.

20

Q. There was nobody in the station? A. No.

Q. Nobody to direct passengers what they should do, how to go across. You were on the other side and when the train came, it would cut you off from the station, wouldn't it? A. Yes, sir.

Q. When you found yourself in this position you saw all persons on the platform, didn't you, you saw this woman on the platform? A. Yes, sir.

Q. And she was directly in line with this door, wasn't she, that led out of the station? A. Yes, sir.

30

Q. There was no planking from that door? A. No, sir.

Q. Now, the next time you saw her, where was she? A. She was stumbling over the second track, the second rail of the second track.

Q. That is, up to the second time, when you turned around, she had already got off the platform and had cleared the first two rails, is that right? A. Yes, sir.

40

Plaintiff's: Edward A. King—Direct

Plaintiff's: Edward A. King—Cross

Q. She stumbled when you saw her? A. Yes, sir.

Q. What caused her to stumble you don't know?
A. No.

10 Q. But when you looked at her again, she was stumbling? A. Yes, sir.

Q. She finally landed down on this rail of the eastbound track? A. Yes, sir.

Q. When she got up, she was on the other side of the train? A. Yes, sir.

EDWARD A. KING, sworn.

20

Direct-examination by Mr. Simpson:

Q. Dr. King, you are practicing medicine in New York City? A. I am.

Q. You are the Dr. King who attended Miss Bradley? A. That is right.

Q. Did you examine her about two months ago?
A. I saw her last about two months ago.

30 Q. Was her condition then the same as when you testified before or has it improved, or what is the condition? A. As far as I could judge it is practically the same as when I last testified.

Q. Is it in your opinion permanent? A. In my opinion it will remain permanent.

CROSS-EXAMINATION by Mr. Broadhurst:

Q. She has about a 20 percent loss of supination, hasn't she? A. Supination and extension.

Q. That is, that movement out. A. The flexion is all right.

40 Q. The extension is out, and the pronation is all

Plaintiff's: Edward A. King—Re-direct
Defendant's: Lester H. Robinson—Direct

right, but there is a 20 percent loss of supernation?

A. Yes.

RE-DIRECT-EXAMINATION by Mr. Simpson :

Q. Did you prescribe any narcotics for her to sleep? A. When? 10

Q. At any time during her treatment? A. Plenty. When she was acutely ill and operated on, it was a very painful injury and required plenty of narcotics, morphine. I do not know how much exactly she took.

After Recess.

20

LESTER H. ROBINSON, sworn.

Direct-examination by Mr. Markley :

Q. What is your business? A. Engineer and surveyor.

Q. Did you make for the Erie Railroad Company two photographs of the tracks and the station building at Lackawaxen? A. Yes, sir.

Q. I show you two photographs which have been marked D-1 for identification and D-2 for identification, and ask you are these your photographs? A. Yes, sir. 30

Q. Do they fairly represent the station building and the tracks, that part of which they show in the pictures? A. Yes, sir.

Q. Can you tell us when they were taken? A. In October 1924.

Q. Were you familiar with the station building and tracks in August 1924? A. Yes, sir. 40

Defendant's: Lester H. Robinson—Direct

Q. Were the physical conditions substantially the same in October 1924? A. Yes, sir.

Mr. Markley: I now offer these photographs in evidence.

Mr. Simpson: No objection.

10 Photographs D-1 and D-2 for identification now marked Exhibits D-1 and D-2 in evidence.

Q. Look at Exhibit D-1; can you tell us in which direction that is looking? A. That is looking east on the eastbound track.

Q. And the eastbound track is which track from the station building? A. It is the further track.

Q. The second track? A. Yes, sir.

20 Q. Your camera was placed where when you took that picture? A. Over on the north rail of the eastbound track.

Q. Is that the rail nearer the station? A. Yes, sir.

Q. It was taken at the west side of the station building? A. Yes, sir.

Q. It was taken over the north rail of the second track? A. The first rail of the second track.

Q. The first rail of the second track from the building? A. Yes, sir.

30 Q. You said that one was looking east. D-2, in which direction is that looking? A. That is looking west on the eastbound track.

Q. Where was your camera placed with respect to the rails when you took that picture? A. On the north rail of the eastbound track.

Q. That is the same rail? A. Yes, sir.

Q. The rail of the second track nearer to the station building? A. Yes, sir.

40 Q. At which end of your station building was the camera when you took that picture? A. East end.

Defendant's: Lester H. Robinson—Direct

Q. Did you also make a blue print of the lay-out there? A. Yes, sir.

Q. I show you a blue print and ask you whether that is a sketch made by you? A. Yes, sir.

Q. Was it made according to scale? A. Yes, sir.

Q. What is the scale of the blue print? A. One 10
inch equals ten feet.

Q. One inch on this map represents ten feet on the ground? A. Yes, sir.

Q. Does that show the station building itself? A. Yes, sir.

Q. Does it show the station platform in front of the station building, between the building and the first rail? A. Yes, sir.

Q. Does it show the platform on the north side or street side of the station building? A. Yes, sir. 20

Q. Do you give the points of the compass on it? A. Yes, sir.

Q. Suppose you put the points of the compass on it at the top; just put an arrow pointing to the north?

(Witness marks print.)

Q. In front the station building is north of the tracks, isn't it? A. Yes, sir.

Q. And to New York is east and to Binghamton is west? A. Yes, sir. 30

Mr. Markley: I offer the sketch in evidence.

Mr. Simpson: No objection.

Accepted and marked as Defendant's Exhibit D-3 of this date.

Q. Now, looking at D-3, can you tell me the width of the sidewalk or the station platform from the side of the station building, over to this edge near the rail of the first track? A. It is 16 feet. 40

Q. 16 feet in width? A. Yes, sir.

Defendant's: Lester H. Robinson—Direct

Q. Does it run for the entire length of the station building? A. Yes, sir.

Q. Now, the first platform on the north side of the station; is that made of the same material? A. Yes, sir.

10 Q. Can you give me the width of that north side of the station building? A. Eight feet.

Q. Now, are there any plank walks leading from the station platform on the south of the station building across the two first tracks? A. Yes, sir.

Q. How many such plank walks are there? A. Two.

Q. Were they there in August of 1924? A. Yes, sir.

Q. Have you shown these on your sketch? A. Yes, sir.

Q. You have marked them "planking" on there? A. Yes, sir.

Q. They run, according to your sketch, if I understand it correctly, from the station platform, which is immediately contiguous with the south side of the station building, across the first track, across the space between the first and second track and across the second track? A. Yes, sir.

30 Q. Will you tell me about the first planked walk, that is the plank walk, west plank walk we will call it, what the width of it is? A. Twelve feet.

Q. 12 feet wide? A. Yes, sir.

Q. Now give me the length of the west plank walk? A. Twenty feet.

Q. And the length of the other one? A. The same.

Q. And the width? A. The east, 14 feet.

40 Q. Can you give me the width of the station building proper, from the waiting room to the exit on the train side? A. 21 feet.

Defendant's: Lester H. Robinson—Cross

Q. The building is 21 feet wide? A. Yes, sir.

Q. Now, will you please tell the jury, by first measuring, the distance from the nearest plank walk to the door leading into the station building from the sidewalk or station platform? A. 37 feet from the center of the door to the east end of the plank- 10
ing.

Q. That would be to the west planking? A. Yes, sir.

Q. How many feet? A. 37.

Q. How far is it to the east planking? A. 47 feet.

CROSS-EXAMINATION by Mr. Simpson:

Q. What is your position with the Company? A. I am not employed by the Company. 20

Q. What is your occupation? A. City Engineer of Middletown, New York.

Q. You have nothing to do with the maintenance of way here have you? A. No, sir.

Q. You took these photographs? A. Yes, sir.

Q. Do they show the door coming out of the station, out of which the plaintiff walked? A. I think they do.

Q. Where does that door lead from from the waiting room? A. Yes, right through to the other side 30
of the building.

Q. Now, this planking way is composed of what, small boards? A. What?

Q. Boards compose the plank way? A. Plank-
ing.

Q. Small or large? A. They are about 4 inches thick.

Q. The surface, what is the surface measurement of them? A. They are eight inches.

Q. How long have they been there? A. I could 40

Defendant's: Lester H. Robinson—Cross

not tell you.

Q. Who put them down there? A. I don't know that.

Q. Do you know anything about how often they were inspected? A. No, sir.

10 Q. Now, this station you say is to the north of the track? A. Yes, sir.

Q. And to the north of the station, there is still another sidewalk, is there? A. Well, it is part of the station platform.

Q. As I understand it, you talking about something that was north of the station itself and described a sidewalk north of the north side of the station? A. I intended to say the platform. It is sidewalk or platform.

20 Q. What is it made of, stone or wood? A. Stone.

Q. And this platform on the south side of the station, is that flush with the tracks? A. No, sir.

Q. How is it built, below or above the tracks? A. It is above the tracks.

Q. How much above the tracks? A. I didn't measure it.

Q. You don't know how much above the tracks? A. No, sir.

30 Q. Now, you say that the west platform is 37 feet from the doorway? A. Above the center line of the doorway, yes, sir.

Q. How do you make that, as a direct line from the doorway, or do you take your line right out to the railroad and up to the platform? A. Out to the railroad, opposite the center of the door and up the distance as it comes through opposite the center, up the track to the door.

40 Q. What I am trying to find out; if a man walks out of the center of this door, and gets to the edge of the platform, of the station platform, how far

Defendant's: Lester H. Robinson—Re-direct

is he from the plank? A. 37 feet.

Q. He has to walk 37 feet one way or 47 feet the other, to get to the planking? A. Yes, sir.

Q. How long has that condition been in existence do you know? A. Well, I can say for four or five years at least. 10

Q. How long is the station? A. The station is 90 feet.

Q. The platform? A. No, the station itself, the station proper.

Q. How long is the platform? A. Don't show all that here; it goes some distance beyond.

Q. How much does show? A. About 160 feet.

Q. Of platform? A. Shows.

Q. And you say the width of these wooden plankings is 12 feet? A. One of them; one, the west is 12 and the east 14. 20

Q. What is the total length of the platform, the station platform shown on there? A. 120 or 140 feet.

Q. How much more is it; do you know how much more? A. I would say that much more altogether.

Q. About 240 feet? A. Yes, the whole thing.

RE-DIRECT-EXAMINATION by Mr. Markley:

Q. When you said the length of the station was 90 feet, what did you mean? A. That is the station itself. 30

Q. That is the building? A. Yes, sir.

Defendant's: Lester H. Robinson—Direct

Tuesday, November 29th, 1927.

LESTER H. ROBINSON, sworn.

Direct-examination by Mr. Broadhurst:

10 Q. You are a civil engineer? A. Yes.

Q. And I read your testimony into evidence yesterday that you gave in a previous trial due to your absence, and I have one or two questions I want to ask you. In the first place, I want to ask you whether or not the first rail of the westbound track was against the station platform, that stone station platform, or whether there was any space between the edge of the stone station platform and that first rail? A. There are two feet from the gauge of the
20 rail to the edge of the platform.

Q. That is from the edge of the platform to the gauge of the first rail there are two feet of space? A. Yes.

Q. And at the place where the plank crosswalks are marked I observe that in the space you have marked, indicating that there are planks there. A. Yes.

Q. Now, referring to the photographs which have been marked in evidence, particularly to the one
30 which shows the view to the west, I want to ask you whether or not you can give an estimate of the distance that a person would have of a view to the west, standing on the station platform, the stone station platform opposite the waiting room door, which is marked "X" on this photograph P-1, looking to the west.

Mr. Simpson: I object to that. I do not object to how far he could see, however.

40 Q. How far would your view be standing on the station platform immediately in front of the waiting

Defendant's: Lester H. Robinson—Cross

room door and looking to the west? A. About 500 feet.

Q. You did not measure that, of course? A. No, sir.

Q. But you are familiar with that territory? A. Yes, sir. 10

Q. And have been for how long? A. 15 years.

Q. Are you familiar with the height of the steel rail from its base to the top or ball of the rail? A. It varies from five to six inches.

Q. And what is the height of the tie upon which the rail rests? A. It is about eight inches, the ordinary tie.

CROSS-EXAMINATION by Mr. Simpson:

Q. How far do you say it is from the station door to the plankway? 20

Mr. Broadhurst: Which plankway?

Q. Either of them. A. Measured along the rail.

Q. I mean the waiting room door of the station. A. Opposite the door along the rail or from—

Q. I mean, when a person walks out from the door to the platform how far up is this plankway?

A. It is about 37 feet, measures along the rail from the point opposite the door.

Q. Was there any plankway opposite this door from the waiting room across the tracks, on the 20th of August, the day of this accident? A. No. 30

Q. Are you in the employ of the Erie Railroad on the staff, or just did you do this work as part of your professional work. A. Just as part of my professional work.

Q. Do you work for other people? A. Yes.

Q. Where is your office? A. With the City Engineer, City Hall, Middletown, New York.

Q. This map shows the distances, does it, it has 40

Defendant's: George Hazleton—Direct

the plankways clearly marked? A. Yes.

Q. Has it also the station building on it? A. Yes, sir.

Q. And the doorway? A. Yes.

10 Q. Will you point out to me where the doorway is on the map—will you mark "D" there, please, on that map. (Witness complies.)

Mr. Simpson: I think that is all.

Mr. Broadhurst: All right, Mr. Robinson, that is all.

GEORGE HAZLETON, sworn.

20 Direct-examination by Mr. Broadhurst:

Q. What is your business? A. Locomotive engineer.

Q. By whom are you employed? A. The Erie Railroad.

Q. Are you now employed by the Erie Railroad? A. Yes.

Q. Were you employed by the Erie Railroad on August 20th, 1924? A. Yes.

30 Q. On that day were you operating an engine? A. Yes.

Q. What train was it, do you know? A. Train one thousand.

Q. Where did it run from? A. My run is from Susquehanna to Port Jervis.

Q. Port Jervis would be about four or five station stops east of Lackawaxen? A. The first stop that we make.

Q. Was that a regular train at that time? A. Yes.

40 Q. Do you remember approaching Lackawaxen

Defendant's: George Hazleton—Direct

on August 20th, 1924, when this young lady was injured? A. Yes.

Q. Was that a regular stop for your train? A. Yes.

Q. Were you late or ahead of time on that day? A. Just on time.

10

Q. What is your leaving time at that station? A. 4:17.

Q. Have you any particular arriving time? A. No particular arriving time.

Q. But you leave at 4:17? A. Yes.

Q. As you approached the station on this day, will you tell us whether or not any signals were sounded by your train before you got toward the station? A. The station whistle was blown.

Q. What is the station whistle? A. One long 20 whistle.

Q. What kind of a whistle is that? A. Well, that is the regular locomotive whistle.

Q. A steam whistle? A. Yes.

Q. Located on the locomotive? A. Yes.

Q. Can you tell us how far from the station that whistle was blown? A. About half a mile.

Q. Near this station, that is, to the west of it, is there any grade crossing? A. Just a little private crossing.

30

Q. How far west of the station is that? A. I should think four or five hundred feet.

Q. Did you blow any whistle for that crossing on that day? A. Yes.

Q. What whistle did you blow for that crossing? A. Two long and two short ones.

Q. That is two long blasts and two short blasts? A. Yes.

Q. Did you blow that before or after you blew the station whistle? A. After.

40

Defendant's: George Hazleton—Direct

Q. You are familiar with the curve that exists just west of Lackawaxen station? A. Yes.

Q. And I show you a picture, marked P-1 in evidence, and ask you if that fairly represents the view of the track as you were coming around towards
10 Lackawaxen station? A. Yes, it does.

Q. About what speed was your train traveling as you came around that curve, approaching Lackawaxen station? A. Probably going around the curve from 25 to 30 miles an hour.

Q. Did you reduce your speed any? A. Yes.

Q. About how far from the station was it that you reduce your speed from 25 to 30 miles an hour? A. I commenced to reduce it right after blowing the whistle for the crossing, probably a quarter of a
20 mile west of the station.

Q. Oh, you had been traveling faster than 25 or 30 miles an hour previous to that? A. Yes.

Q. As you came around the curve was your power on or was it off? A. It was off.

Q. You were applying your brakes? A. Yes.

Q. Where did you bring your train to a stop on this day, that is, your locomotive? A. The locomotive was about by the water crane.

Q. There is a water crane there? A. The crane
30 is here some place (indicating on photograph). About that water crane.

Q. That is marked with a "W" there? A. Yes.

Q. That is east of the station building, isn't it? A. Yes.

Q. Did you have any other signaling device on your engine at all in addition to the whistle? A. A bell.

Q. Can you tell us whether or not your bell was ringing as you approached the station? A. Yes.

40 Q. What kind of a bell is that? A. A regular

Defendant's: George Hazleton—Direct

locomotive bell, automatically run by air.

Q. That is, it is run by air, automatically. A. Yes.

Q. How is it controlled? A. By a little valve.

Q. Where? A. Right by our fingers in the cab.

Q. As you came into the station you would be on which side of your locomotive, the left or the right side? A. The right side.

Q. So you would be on the side of the locomotive farthest from the station building? A. Yes.

Q. Did you see this young lady at any time before you brought your train to a stop? A. Yes.

Q. Where did you see her for the first time? A. I saw her step off the track just ahead of the engine.

Q. And where was your engine, which track do you refer to? A. The track that we were on.

Q. The eastbound track? A. Yes.

Q. And when you say she stepped off the track, on which side of your locomotive do you mean she stepped off? A. On the side that I was on.

Q. That is the right side? A. Yes.

Q. That would be onto the eastbound platform? A. Yes.

Q. How close was the front of your locomotive from her when you observed her step onto that eastbound platform from the track? A. I think it was about 10 or 12 feet, as near as I can figure.

Q. At that time how fast was your train moving? A. About ten or twelve miles an hour.

Q. What kind of a day was this? A. It was a nice clear day.

Q. Was it storming in any way? A. No, sir.

Q. Was it a bright day? A. A bright day.

Q. Daylight? A. Yes.

Q. How long have you been a locomotive engin- 40

Defendant's: George Hazleton—Cross

eer? A. 35 years.

Q. Is this your regular run? A. Yes.

CROSS-EXAMINATION by Mr. Simpson:

10 Q. As you came up the eastbound track was the eastbound platform on the same side that you were on? A. Yes.

Q. You never saw this lady until she stepped off that track? A. No.

Q. You did not see her when she was on the westbound track? A. No, I could not see the westbound track.

Q. And you do not know whether she tripped in the westbound track or got her foot in a hole or not? A. I could not say.

20 Q. All that you know is that you came up to the eastbound platform; you saw her get off your track onto the eastbound platform? A. That is all I know, yes.

Q. Did you see whether she got up from the ground or whether she stepped off? A. She was in a stooping position, that is all I could tell.

Q. As you came up to the eastbound platform were there any passengers on the eastbound platform? A. Yes.

30 Q. About how many? A. I did not pay any attention to how many.

Q. Would you say there were 20 or would you say there were five? A. Probably 15 or 20.

Q. How were they, all in one spot or were they up and down the platform? A. Up and down, along the platform.

Q. About how far or how much space would they cover up and down? Would you say a car's length?

A. Oh yes, it might be two.

40 Q. How many cars did you have on your train?

Defendant's: Andrew P. Smith—Direct

A. I am not sure, but I think about eight cars.

Q. When you stopped your engine, how near to the place where you saw this young lady come from your track in a stooped position did you stop the engine? A. About the length of the engine and one car. 10

Q. That is, you passed the point where you saw her the length of an engine and one car? A. I should think about that, yes.

Q. This eastbound platform where the people get on your train, or got on for New York, what is it composed of? Is it planks or dirt or what? A. Why it looks to me like shale of some kind, stone packed in.

Q. Is it higher than the rail or about level with the rail? A. I think it is a little bit higher than the rail. 20

Q. You mean the shale? A. I could not say. I did not pay no attention to that.

Q. How long is it? Does it extend the whole length of the eight cars of your train? A. Nearly the whole length of them, yes.

ANDREW P. SMITH, sworn.

30

Direct-examination by Mr. Broadhurst:

Q. What is your occupation? A. Engineer, locomotive engineer.

Q. In August of 1924 what were you? A. A fireman.

Q. You have been promoted since then? A. I was promoted before, but we get set back due to depression of business.

Q. Were you the fireman on the engine that Mr. 40

Defendant's: Andrew P. Smith—Direct

Hazleton was engineer of? A. Yes, sir.

Q. In August of 1924? A. Yes.

Q. That was train one thousand, I understand, running from Susquehanna to Port Jervis? A. Yes.

10 Q. Do you remember your engine on the day that this young lady got hurt, approaching Lackawaxen station? A. Yes, sir.

Q. Can you tell us what signals if any were given by the engineer as you approached Lackawaxen?

A. The regular station whistle, one long blast, about a half a mile above the station.

Q. That would be west of the station? A. Yes.

Q. Was that a loud blast? A. A good long blast of the whistle.

20 Q. Is there a grade crossing located to the west of Lackawaxen station? A. Yes.

Q. About how far west of Lackawaxen station is that crossing? A. Oh, around a couple of hundred feet, 250 feet, somewhere along there.

Q. Can you tell us whether any whistle signals were given for that crossing on this day? A. The regular crossing whistle.

Q. What did that consist of? A. Two long whistles and two short whistles.

30 Q. What were you doing as the train came along? A. When Mr. Hazleton whistles for his station, as they always do right after the whistle he shuts off.

Q. What do you mean by that? A. He shuts off the power off the locomotive, shuts the throttle off. We turned the blower on so that it won't smoke the train, and those engines run through that way to Jersey City, and we inspect our fire so that it is all right for the New York Division man.

40 Q. What were you doing then as you came along? A. Looking in the fire box to see that the fire is

Defendant's: Andrew P. Smith—Direct

all right. After doing that I step up and sit down on the seat to come into the station, the far side, on the left side of the cab.

Q. Which whistle signal was given first, do you know, the station whistle signal or the crossing whistle signal? A. The station whistle signal. 10

Q. Did you see this young lady at any time previous to the accident? Did you see this young lady at any time? A. No, sir.

Q. Can you tell us approximately what the speed of your train was as you came around this curve just west of Lackawaxen station? A. Well, when you shut off you are going probably 45 mile an hour.

Q. That would be how far back? A. Oh, almost a mile back. As you near the station you apply the brakes and slow down gradually to 25 to 30 mile an hour, going over this here road crossing just west of the station. 20

Q. Where did your train come to a stop on this day? A. Just west of the crossing of the east of the station, at the water crane there.

Q. The water crane is marked with "X" on Exhibit P-2? A. Yes, right there.

Q. Did you put water in the locomotive or not? A. No. It was just up with the cab, just about along there. 30

Q. Do you remember whether any other signal was given by the locomotive in addition to the whistle signals? A. The bell was rung.

Q. How heavy a bell is that? A. Well, it is a large bell, almost as big as they have on the school buildings. It was a regular locomotive bell, a brass bell.

Q. Have you any idea as to its weight? Did you ever clean it? A. Yes, years ago when I first went firing. Oh, the bell weighs around 75 to 100 40

Defendant's: Andrew P. Smith—Cross

pounds.

Q. It is made of metal, I suppose? A. It is made of brass.

Q. How does it work, by hand or does it work automatically? A. Well, there is a bell rope on it, so that if the air from the cab won't turn it, we have to pull it to start it, and the bell rings automatically by air.

Q. What kind of a day was this? A. A nice shiny, clear day.

Q. What is your time at Lackawaxen? A. 4:17 leaving time.

Q. Have you any arriving time? A. No.

Q. That is, you have to leave at 4:17? A. Yes.

20 CROSS-EXAMINATION by Mr. Simpson:

Q. You never saw this lady, did you? A. Not until I came here to court.

Q. I say, before or after the accident you never saw her up to now? A. No.

Q. You don't know what happened to her on the westbound track, if anything happened to her? A. No.

Q. As you came along in the cab did you see any people waiting on the eastbound platform? A. About 100 feet above the station were two women.

Q. Other passengers? The engineer says there might have been 20. A. Well, they are on the right-hand side. They were not on my side.

Q. Then the eastbound platform would be where these people are standing here now (indicating pictures)? You see here are two tracks. A. Yes, but this is the westbound track.

Q. And this is the eastbound track, isn't it, this one here?

Mr. Broadhurst: Indicating to the left of the picture.

Mr. Simpson: Yes.

Q. This is the eastbound track, isn't it? A. We were coming down this track (indicating).

Q. Where is this platform? A. Along here. 10

Q. That is you would be on the other side? A. I would be over here (indicating). You see, here is the corner of your station. You see, there is the westbound water crane and along here is where there were two women. All as I know is that they threw their hands up.

Q. That is to say there were two women standing on the westbound side, on the station platform, right next to the station? A. Well, you see the platform runs up to that water crane, and they were along about there. 20

Q. You saw two women throw their hands up?
A. Yes.

Q. As I understand it, you did not see the people on the eastbound platform at all? A. No.

Q. That platform, the eastbound platform, do you know whether it is made of any material or is it just the dirt pounded down? A. Why, it is this here ground up stone. When they make the stone ballast they use the real fine of that and that is pounded down so that it is as hard as it can be made. 30

Q. Do you know how far up and down that platform extended, the eastbound platform? A. Well, it is supposed to be the length of about eight or nine cars. That is, passenger coaches, not regular freight cars, I mean.

Q. About the accident itself you know nothing? I mean you do not know whether the woman caught her foot in a hole or anything about that? A. No, 40
sir.

Defendant's: John W. Hawkins—Direct

JOHN W. HAWKINS, sworn.

Direct-examination by Mr. Broadhurst:

Q. You were the conductor on this train, were you? A. Yes.

10 Q. It was known as number one thousand running from Susquehanna to Port Jervis? A. Well, I run to Jersey City.

Q. You go on to Jersey City? A. Susquehanna to Jersey City.

Q. Do you remember seeing this young lady, Miss Bradley, in August 1924? A. Yes.

Q. Was Lackawaxen a regular stop for your train? A. It was a regular stop.

20 Q. What was your time at Lackawaxen? A. Departure time was 4:17.

Q. Did you have any special arriving time? A. No, sir.

Q. And where did you first see Miss Bradley on this day? A. I saw her coming up to this platform, on the eastbound side, probably a car and a half from me.

Q. Did your train come to a stop then? A. Yes.

Q. You had gotten out, had you? A. I was out on the platform.

30 Q. Which car of the train did you get out of? A. The fourth car, the west end of the fourth car.

Q. That would be the rear end of the fourth car of the train? A. Yes.

Q. The first car was a baggage car, the next was a mail car, then one coach, this coach, and then three coaches? A. Yes.

Q. How many cars did your train have on? A. Eight cars.

40 Q. When you got out of the train you say you saw Miss Bradley walking towards you? A. Yes.

Defendant's: John W. Hawkins—Direct

Q. Was she nearer the locomotive or nearer the rear of the train? A. Well, she was nearer to me.

Q. That is, she was walking from the locomotive toward you? A. Toward me.

Q. Walking west in other words? A. Yes, walking west. 10

Q. About how far was she when you first saw her away from you? A. 45 feet.

Q. Where had your engine come to a stop, do you know? A. Yes.

Q. Where? A. West, well, it is all the same.

Q. I show you this picture, P-2, which indicates the east—A. When we have mail and baggage, we run east of this water crane.

Q. Is that the water crane you refer to, marked with a "w"? A. Yes. 20

Q. So your locomotive was in the vicinity of that water crane? A. Yes, west of the crossing.

Q. There is another crossing west of the station? A. Yes, and one east of the station.

Q. In other words, you stopped so as not to block this crossing? A. No, not particularly for that, but for the loading of baggage and mail.

Q. Did you assist her in getting on the train? A. Yes, I did.

Q. Which car did she board? A. She boarded the fourth car, the west end of the second coach. 30

Q. About how long is the locomotive, do you know? A. Probably 80 feet.

Q. And each one of the cars would be how long? A. 33 feet.

Q. Did you go into the car with her? A. Yes, I carried her suit case for her and assisted her in the seat.

Q. Can you tell us whether she was one of the first or one of the last passengers to board? A. She 40

Defendant's: John W. Hawkins—Direct

was the last, waiting. The rest had boarded.

Q. How long did the train remain at the station after she boarded, that is, after you helped her on?

A. Well, her departure time, 4:17.

10 Q. I mean, what interval of time after you assisted her up into the car? A. We left right away, immediately.

Q. Who gave the leaving signal, do you know?
A. I did.

Q. Was that leaving signal given before you assisted her to seat or after you had assisted her to her seat? A. As soon as she was—we both went into the train together and I put her in her seat.

20 Q. I take it then you helped her up the steps of the coach and onto the platform and you gave your leaving signal then? A. Yes, I do not pull the whistle.

Q. You wave with your hand? A. Our trainman pulls the whistle.

Q. What signal do you give? A. I just give a signal "All aboard."

Q. On the side of your train? A. Yes.

Q. Then you went up the steps? A. Yes.

Q. Then you assisted them from the platform to the seat? A. Yes.

30 Q. Did the train start in motion while you were talking to her? A. No.

Q. Did she get seated before the train started?
A. Yes, well, I will say that the train started as soon as I put her in her seat, immediately, yes.

Q. On which side of the car did you give her her seat? A. About here on the south side of the car, on the rear seat.

Q. And that seat would be on the right-hand side of the car? A. Yes.

40 Q. The side farthest away from this station

Defendant's: John W. Hawkins—Direct

building? A. Yes.

Q. What part of the car did you give her her seat? A. The rear seat in the fourth car was the only seat that there was.

Q. Did you sit down on the seat then? A. Yes.

Q. Did you stay with her for any reason after you gave her the seat? A. Yes. 10

Q. About how long an interval of time did you stay with her? A. I stayed with her until I had the data and the party that she told me to notify in Jersey City.

Q. What data did you ask her for? A. Her name and address and she hesitated then.

Q. You asked her for her name and address? A. Yes.

Q. Did you write that down? A. Yes. 20

Q. And whether she was injured? A. Yes.

Q. Did you write that down? A. Yes.

Q. You say you asked her for the name of the party to notify? A. I did.

Q. And did you write that down? A. I did.

Q. How much time do you think it was from the time you got her into her seat up to the time that you got this data? A. We were passing Shohola, that is, three miles east from there.

Q. Did Miss Bradley change her seat or go to the left-hand side of the coach? A. No, sir. 30

Q. At any time up to that time? A. She never went and after we left she did not.

Q. Did you do anything for her after that? A. Yes, I did. We had a lady passenger, now at the present time he is the assistant head dispatcher, his wife was aboard the train, riding from Susquehanna to Jersey City, and I had her assist Miss Bradley back in the rear of the car, to the ladies room, in this observation car. Then I went to the dining 40

Defendant's: John W. Hawkins—Cross

car and secured a pitcher of hot water and had this lady assist her and to help her.

Q. What kind of a day was it? A. A bright, clear day.

10 CROSS-EXAMINATION by Mr. Simpson:

Q. As you came up the station were there any people waiting on the eastbound platform? A. Yes.

Q. About how many? A. Say approximately 10 or 12.

Q. Did they all get on the same car? A. No.

Q. They were scattered up and down? A. They were scattered up and down. We have two parlor cars and a dining car.

20 Q. And access to your train is from this platform which is called the eastbound platform and which extends practically the length of the train? A. Yes.

Q. The lady, you say you assisted her and she assisted her. What was the matter with her? A. I could see that something was the matter with her coming up the platform.

30 Q. Could you see what was the matter with her, where she was hurt? A. No, I saw that she was holding one hand and that she was injured.

Q. And you tried to help her and got a pitcher of hot water and handed it over to some lady, didn't you? A. After I had this data I did. I had to get the data first, personal injuries and who I should notify. I notified Jersey City to have an ambulance waiting for her and a doctor, and the doctor she sent for I cannot recall his name.

Q. You did not see her when she was on the west-bound track? A. Oh, no.

40 Q. The only time you saw her was as she ap-

Defendant's: Leon L. Rixton—Direct

proached you on the eastbound track? A. Yes.

Q. From the direction of the locomotive? A. Yes.

Q. What car did you say you put her on? A. The fourth car.

Mr. Simpson: That is all. 10

Mr. Broadhurst: That is all.

LEON L. RIXTON, sworn.

Direct-examination by Mr. Broadhurst:

Q. What was your employment in August 1924?

A. Station agent.

Q. What place? A. Lackawaxen station. 20

Q. How long have you been station agent there?

A. Up until that time, about four years.

Q. Are you still working for the Erie Railroad Company? A. Yes.

Q. As what? A. Station agent at that place.

Q. Were you at the station any time during August 20th, 1924? A. Yes, I was until about 3:20.

Q. What time did you return after 3:20? A. I returned at near five o'clock, around five o'clock.

Q. You were not there around 4:17 when this train left? A. No. 30

Q. Are you familiar with the crosswalk that existed in front of the station leading from the station platform to the eastbound platform, in August 1924? A. Yes.

Q. Now then I show you these photographs, marked P-1 and P-2, and ask you whether or not they represent the conditions as to the platforms and the tracks and the cars, and so forth, and the station building platforms as they existed in Au- 40

Defendant's: Leon L. Rixton—Cross

gust 1924? A. Yes, they do.

Q. Were those two wooden platforms there in August 1924? A. Yes.

Q. Had you seen them previous to your leaving at 3:20 on that day? A. Yes.

10 Q. Were they covered with sand or anything of that character? A. No, sir.

Q. Did you see them after you came back after five o'clock? A. Yes.

Q. Were they covered with sand or anything of that kind then? A. No.

Q. What was the condition of those crosswalks on that day? A. Good, fair condition.

Q. About how wide were they approximately? A. About 12 feet.

20 Q. Previous to August 20th, 1924, would you have occasion to use them to cross over to the eastbound platform? A. Daily.

Q. How frequently during the day? A. Oh many times, maybe 15 or 20 times a day.

Q. As you came out of the waiting room and on to the station platform was there anything to obstruct your view of seeing those plankings on either side? A. No.

30 CROSS-EXAMINATION by Mr. Simpson:

Q. What is your business now? A. Station agent.

Q. At the same station? A. Yes.

Q. On the day of the accident how many doors were there leading out of the station onto the westbound platform? A. One door.

Q. Is that from the waiting room? A. Yes.

40 Q. Was there any plankway from that door leading over to the eastbound track on the day of the accident? A. No.

Defendant's: Leon L. Rixton—Re-direct

Q. That is, if a man came out of the station door and walked straight across to the eastbound platform he would not have any plank walk to walk on? A. Not straight in front of the door, no, sir.

Q. If the planks were as they have been described, about the distance from the door on each side, is that right, two platforms? A. Yes. 10

Q. And you say they were 12 feet wide, these plankings? A. About 12 feet wide, yes.

Q. How long had they been there on the day of the accident, do you know? A. The platforms were there as long as I can remember the planks.

Q. Are they still there? A. Yes.

Mr. Broadhurst: I object to that as immaterial.

The Court: The objection is sustained. 20

Q. You did not see this accident and of your own personal knowledge you know nothing about it? A. I did not see the accident, no, sir.

Q. And what is called the eastbound platform is composed, as has been testified, of shale, is it not? A. Yes.

Q. And that is where people regularly take the train for the east? A. Yes.

Q. All along that platform? A. Yes. 30

RE-DIRECT-EXAMINATION by Mr. Broadhurst:

Q. In August of 1924 was there any space between the edge of the station platform, that is, the westbound platform and the first rail of the westbound track? A. (Witness points at picture.)

Q. You mean, in between the stone platform in front of the station and the first rail of the eastbound track? A. There is a narrow space there, yes. 40

Defendant's: Leon L. Rixton—Re-cross

RE-CROSS-EXAMINATION by Mr. Simpson:

Q. How much space was there? A. Why, probably four or five inches.

Q. I mean, suppose anybody came out of the door,
 10 this one door that you say was there, to go to the eastbound platform, could he step right off the rail or would he have to step in between the rail and the platform and then over the rail, walking over to the eastbound platform? A. No, there is a space in between there that is planked—I misunderstood the question.

Q. I don't mean here. I mean up here. Where is your door? A. Here is the door, here.

Mr. Broadhurst: This picture shows it better, I think.
 20

Q. This picture looks as if there was a plank-way right from the door. That is not so? A. That leads from this door.

Q. Here is your door, I guess, is it? A. Yes.

Q. And then—a man comes out of that door and he walks over to the right here. He wants to go over to the eastbound platform. Instead of walking down here and over the planks, he walks straight across. Could he step from that platform
 30 right over this first rail or must he step down between the platform and the rail first? A. He could step over, although there is a narrow opening here.

Q. You say about how wide? A. Four or five inches.

Defendant's: Arthur H. Hupp—Direct

ARTHUR H. HUPP, sworn.

Direct-examination by Mr. Broadhurst:

Q. Were you employed by the Erie Railroad in August 1924? A. No, sir.

Q. By whom were you employed? A. I was 10 working for my mother in a store.

Q. Are you employed by the Erie Railroad now? A. Yes.

Q. As what? A. As a laborer.

Q. Were you anywhere near Lackawaxen station in August 1924, when this accident happened?

A. Yes.

Q. What were you doing at the station? A. I was assisting the boys loading the mail and express and baggage, as I usually do on occasions. 20

Q. You mean you were working for the Company or as a favor to them? A. No, sir, just as a favor, good fellowship.

Q. Were you there when this train one thousand arrived? A. Yes.

Q. Were you there before that? A. Yes.

Q. How long before that were you there about?

A. Oh, about twenty or thirty minutes.

Q. Did you see Miss Bradley, the plaintiff in this case at any time before that train arrived? A. 30

Yes.

Q. I did not hear you. A. Before the train arrived, yes.

Q. Where did you see her then? A. Standing right at the edge of the platform.

Q. Was she alone? A. Yes.

By the Court: Q. Which platform?

The Witness: The westbound platform.

Q. Where were you standing? A. Oh, about 150 feet or so down the track, that is, east of the depot. 40

Defendant's: Arthur H. Hupp—Direct

Q. On which platform were you, on the same platform that she was on, that is, the westbound or the eastbound? A. On the eastbound platform.

Q. What were you doing over the eastbound platform? A. Waiting for the train to come.

10) Q. How long before the train arrived was this that you saw her there if you can tell us? A. About a minute. No more.

Q. Did you see Miss Bradley after that at any time? A. Yes.

Q. What was the next you saw her? A. She was lying across the north rail of the eastbound track.

Q. That would be the first rail of the eastbound track as you would go towards the eastbound platform? A. Yes.

20) Q. What were you doing or how were you looking between the time that you saw her and that time? A. When I first saw her she was standing right at the edge of the platform.

Q. And how was she facing? A. She was looking up and down the track.

Q. What did you do after that that you lost sight of her, up to the next time. A. I turned around to look at the mail bags and arranged to get the things ready to load.

30) Q. When you saw her on the north rail of the eastbound track what was her position, standing up or what? A. She was lying on her left side.

Q. Where was the train then? A. Oh, I should judge about—

Q. How far from her, that is what I am trying to get. A. About three or four hundred feet.

Q. Had you heard any signal of any kind of the approach of the train previous to that? A. I heard the whistle of the train, but I don't know what signal it was. I was not paying any attention to sig-

40

Defendant's: Arthur H. Hupp—Direct

nals.

Q. You heard the whistle blow? A. Yes.

Q. When was that in reference to your seeing Miss Bradley, was it before you saw her the first time or after you saw her the first time? A. When he blew, well, about the last blast for the crossing, that is, the private crossing west of the depot, about the last of the last crossing: She was standing on the edge of the platform. 10

Q. Did you see her get up, or let me ask you this: What did you do when you saw her lying on the track and the locomotive there? A. I ran up the track a few steps.

Q. That is, you ran along the eastbound platform you mean? A. I ran up with the intentions of assisting her off, but it was too close for any attempt to get after her to take her off the track. 20

Q. Then you started from where you were 150 feet away and ran up the eastbound platform parallel with the track? A. Yes.

Q. How far did you get before she changed her position? A. Oh, I should judge about maybe 15 feet. I did not exactly run. I took a few hurried, nervous steps.

Q. And then what did she do? A. She picked herself up. 30

Q. How close was the train to her when she picked herself up from the track? A. About 15 feet.

Q. Did you actually see her fall or the first time you looked at her was she on the track? A. I did not see her fall; I saw her lying there.

Q. How long an interval of time was it between the time you saw her lying there and the time she picked herself up and got off the track? A. That I could not say. 40

Defendant's: Arthur H. Hupp—Cross

Q. How close was the engine from her, do you think, when you saw her pick herself up and get off the track? A. About 15 feet.

Q. You did not see then where she actually fell, that is, the place where she may have fallen? A.

10 No, sir.

CROSS-EXAMINATION by Mr. Simpson:

Q. You were a witness at the last trial? A. Yes.

Q. At that time you were not employed by the Erie Railroad? A. No.

Q. You are now employed by them? A. Yes.

Q. But at the time of the accident you were helping the men around the station, were you? A. I was working for my mother in the store, but I occasionally went over to help the boys off.

20 Q. Yes, that is quite all right, but I am trying to find out what you were doing there. You were helping the boys at the station, is that right? A. I was helping the boys.

Q. That is, you were doing part of the railroad work, getting the mail ready, you said, or something of that kind? A. I was doing that, just for good fellowship.

30 Q. The station master was away, is that it? Were you helping out in his place? A. No, sir, I do not remember seeing him.

Q. Whatever you were doing, you were doing without pay, not working for the Erie Railroad, but for good fellowship? A. Yes.

Q. Now, you are in the employ of the Erie Railroad, is that right? A. At the present time I am.

40 Q. All that you saw as I understand you, was the lady come out of the station doorway to the edge of the platform. Did you see that? A. No, I saw her standing on the edge.

Defendant's: Arthur H. Hupp—Re-direct

Defendant's: Henry Hoffman—Direct

Q. You did not see her come out of the door? A. No.

Q. Where was she standing on the platform with reference to the doorway, in a straight line from the door or where? A. Directly opposite the door, very close to the edge of the platform. 10

Q. And looking up and down the westbound track? A. Yes.

Q. Then you turned to do something else and the next time you saw her she was across the first rail of the eastbound track? A. She was lying on it.

Q. How she got there you do not know? A. No.

Q. You did not see what caused her to fall? A. No.

20

Mr. Simpson: That is all.

RE-DIRECT-EXAMINATION by Mr. Broadhurst:

Q. How long a time do you say it was between the time you first saw her and the second time you saw her? A. From the time she was standing on the edge of the platform until I seen her on the rail?

Q. Yes. A. About a minute.

30

HENRY HOFFMAN, sworn.

Direct-examination by Mr. Broadhurst:

Q. You work for the Erie Railroad? A. Yes.

Q. How long have you worked for them? A. Why, about 53 years.

Q. Did you work for them in August, 1924? A. Yes.

40

Defendant's: Henry Hoffman—Direct

Q. As what? A. As a fireman.

Q. As a fireman. What was your job, what kind of work did you do as a fireman? A. Section work.

Q. Does your section include the Lackawaxen station? A. Yes.

10 Q. During August 1924, would you be very often at the Lackawaxen station? A. Nights and mornings.

Q. I show you two pictures of the Lackawaxen station, P-1 and P-2, and ask you whether or not you recognize those as being pictures of the Lackawaxen station? A. Yes.

Q. In August 1924 were there two plank walks? A. Yes.

20 Q. From the westbound platform to the eastbound platform? A. Yes.

Q. Are they shown on that picture? A. Yes.

Q. What was the condition of the planking? Did you use those walks, by the way? A. Yes.

Q. What was the condition of the planking across the tracks in August 1924? A. Good.

Q. In front of the station, at the places where the walks do not cover, you mean? A. Yes.

Q. Were the tracks just as they appeared in that picture? A. Yes.

30 Q. About how high are those tracks, the rails, I mean? A. Six inches.

Q. About how thick are the ties on which they rest? A. Seven inches and eight inches.

Q. What is underneath the ties, or between the ties? A. Stone ballast.

40 Q. Was there any change in the tracks or the ties or the ballast in front of the Lackawaxen station between August 1924, August 20th, when this young lady was hurt, and October 1924? That would be a period of about a month or a little longer. Was

Defendant's: Henry Hoffman—Cross.

there any change made in it or any repairs made in it between August 1924 and October 1924 when these pictures were taken, that you know of? A. No.

Q. And if there were any changes or repairs made in that time you or your gang would have had to have made them? A. We would be there. 10

Q. What are those planks made of? A. Oak.

Q. Do you know the dimensions of the planks? A. Four inches thick, 12 inches wide.

Q. And how long are they? A. Fourteen feet.

Q. Did you inspect the ballast and ties, and so forth, along in front of this station in August 1924; in other words, would you see it and examine it? A. Yes.

Q. And do you know of any holes that were there in the ballast down so your foot would go underneath the ties? A. There were no holes whatever. 20

CROSS-EXAMINATION by Mr. Simpson:

Q. What is your position, sir, what is your job, sir? What do you do on the railroad? A. I am track foreman, section foreman.

Q. Are you in charge of the tracks at this station; are you the man who has supervision of the planking and of the ballast and all that? Are you the man who has the supervision of the planking and the ballast? A. No. 30

Q. Who is that; who is that man that has charge of that? A. That was put in the year before; that was replaced the year before that.

The Court: I do not think he understood your question.

Q. On the day of the accident were you the man in charge of this ballasting and maintenance of planking and all that of the station? A. No. 40

Defendant's: Alvis H. Wahl—Direct

Q. Who was in charge of that? A. The carpenters most generally put in the crossings.

Q. Were you the man who would say whether there was to be a planking from a door of the station or whether there was not. A. No.

10 Q. Who was that man? A. I would have to get orders.

Q. Who would you get your orders from? A. From the supervisor.

Q. As I understand, this track, the eastbound track and the westbound track were ballasted with the ordinary railroad ballast, weren't they? A. The ballast was the ordinary railroad ballast, stone ballast.

20 Q. In other words, in front of the station the ballast was no different than any place on the line, was it? A. No, it is all the same ballast, stone ballast.

Q. That is, the ballast in the tracks was just the same in front of the station as it was when you got a mile away from the station. A. Yes.

Mr. Simpson: That is all.

Mr. Broadhurst: That is all.

30 ALVIS W. WAHL, sworn.

Direct-examination by Mr. Broadhurst:

Q. Were you employed by the Erie Railroad in August, 1924? A. Yes.

Q. What was your job in August 1924? A. Track supervisor.

Q. Did your territory include Lackawaxen station? A. Yes.

40 Q. How often would you have occasion to inspect the ballast, ties, crosswalks, etcetra, at Lackawax-

Defendant's: Alvis H. Wahl—Direct

en station way back in August 1924? A. Several times a week; sometimes every day.

Q. Can you say exactly what day you inspected it prior to August 1924, August 20th? A. No.

Q. Would you say it would be several times a week, any way? A. It would be several times a 10 week.

Q. Were there any crosswalks from the westbound platform to the eastbound platform there in August 1924? A. Yes.

Q. Were they wooden crosswalks? A. Yes.

Q. What was the character of those crosswalks; in other words, what kind of wood were they made of and what were the dimensions? A. The east crosswalk was 14 feet in length.

Q. What would be the thickness of the planks? 20
A. Four inches in width, eight or ten inches, oak.

Q. How about the westbound walk? A. That was the same thing, only it was 12 feet in length.

Q. Was that wooden platform built flush with the top of the rails? A. Yes.

Q. Did it extend from the westbound platform over to the eastbound platform? A. Yes.

Q. Was there any space between the edge of the westbound platform and the first rail of the westbound track not at the crosswalk, at places other 30 than the crosswalk? A. Yes, there was a space.

Q. At the crosswalk did you have any planks inserted in there? A. Yes.

Q. What was the condition of the crosswalk in August 1924? A. They were in good condition.

Q. The rest of the trackage and roadbed in front of the station other than those two crosswalks, was that the ordinary roadbed with stone ballast and ties? A. Yes.

Q. And do you know the condition of the ballast 40

Defendant's: Alvis H. Wahl—Cross

in front of the station on August 1924, that is, how high up did it come? A. About an inch from the top of the tie.

Q. An inch below the top of the ties, about? A. That is it.

10 Q. And then on top of the ties the rails rested?
A. Yes.

Q. Those rails were about how high? A. Six inches.

Mr. Broadhurst: That is all.

CROSS-EXAMINATION by Mr. Simpson:

Q. In front of the door of this station was the ordinary railroad ballast that ran all along the road, wasn't it? A. Yes.

20 Q. I mean, just loose stone ballast? A. Yes.

Q. If the rain washed away the dirt under it, was there anything to hold the ballast up? A. Why, the rain could not wash the dirt away from it.

Q. Why not? A. It is right in between the two platforms.

Q. What? A. It is right in between the two platforms. There is no place for it to wash away.

Q. Why not? There was dirt under the ballast, wasn't there? A. Well—

30 Q. Wasn't there dirt under this ballast? A. Yes.

Q. All right, if there came a heavy rainstorm you say it would not wash that dirt away. Now, why wouldn't it wash the dirt away. A. Why, there is no place for the dirt to go. The water just drains over the top and runs out through the sluiceways.

Q. Where would the dirt go? Wouldn't the dirt go with the water into the sluiceway? A. There are eight inches of ballast over the dirt.

40 Q. You say there is some peculiar kind of dirt in front of this station and if a heavy rainstorm hit

Defendant's: Alvis H. Wahl—Re-direct

Defendant's: J. Raymond Heffberger—Direct

it it would not wash away, is that what you say?

A. The dirt is not peculiar at all; it is just the same as any other dirt.

Q. You said at the last trial, didn't you, that the height of the stone ballast with respect to the ties 10 was within an inch from the top of the ties, is that right? A. Yes.

Q. Had you looked at this ballast before the accident? A. Why, as I go over the railroad inspecting I look at everything as I go along.

Q. I know, can you fix a date when you looked at the ballast right in front of this doorway? A. No, I could not.

Q. You are not the man who would say whether or not there should be a plankway in front of this 20 doorway? A. No, sir.

Q. You are supervisor? A. I am supervisor, yes.

Q. Who is the man who would say whether or not there should be a plankway over these tracks from the doorway of the station right to the east-bound track? A. The division engineer.

RE-DIRECT-EXAMINATION by Mr. Broadhurst:

Q. How deep did you say the ballast is—you men- 30 tioned the depth of the ballast. A. The ballast is eight inches under the tie.

J. RAYMOND HEFFBERGER, sworn:

Direct-examination by Mr. Broadhurst:

Q. You are employed by the Erie Railroad? A. 40 Yes.

Defendant's: J. Raymond Heffberger—Direct

Q. As what? A. As clerk and general station work.

Q. Where? A. Lackawaxen station.

Q. Were you so employed in August 1924? A. Yes.

10 Q. How long previous to that had you been so employed? A. Oh, probably eight years.

Q. Were you at the Lackawaxen station on August 20th, 1924, the day that Miss Bradley was injured? A. Yes.

Q. Were you there when train one thousand arrived? A. Yes.

Q. Will you tell us what you were doing at the station just previous to the train arriving? A. Yes, I got the mail bag and put it on the mail truck, and
20 got the mail in readiness to put on the train.

Q. Where did you do that? On the westbound platform? A. Yes, I took it from the westbound platform to the eastbound.

Q. How, over one of these plank walks? A. Yes.

Q. Tell us what you did? A. I put the mail on the truck and had the truck down to the east end of the platform, the lower end of the platform, waiting for the train to come.

Q. That is, you took it over and down to the east-
30 bound track? A. Yes, and after I got it down there I heard the train whistle. I went back and announced the train also.

Q. When you say you went back and announced the train, where did you go? A. I went back to the station waiting room.

Q. What did you say when you got there? A. I announced the train. I told them that for the New York train they should cross over on the middle platform.

40 Q. Were there any passengers at the station then?

Defendant's: J. Raymond Heffberger—Direct

A. There were, and they all went over.

Q. About how many passengers were at the station that you saw? A. Oh, I did not count them, but I should judge there would be a dozen or fifteen, something like that.

Q. You say that after you announced the station 10 they went over? A. Yes.

Q. Had you seen Miss Bradley at any time up to this accident? A. No, sir.

Q. Then what did you do? A. I went back down for my mail truck again.

Q. You say you heard the locomotive whistle? A. Yes.

Q. Could you see the locomotive at that time when you first heard it whistle? A. No, I could not.

Q. And you went back over to your mail truck? 20 A. Yes.

Q. Did you see Miss Bradley then? A. No, I did not, not then, not right away.

Q. When was the first that you saw Miss Bradley? A. While the train was in sight right up above the station was when I saw Miss Bradley.

Q. Where was she then? A. Standing on the platform.

Q. Had you seen her come out the door or not? 30 A. I saw her come out through the door.

Q. Was she alone or with somebody? A. She was alone.

Q. What did you see her do? A. She stopped on the edge of the platform, that is, on the edge of the west platform.

Q. Where on the west platform with reference to the waiting room door? A. Right opposite the waiting room door.

Q. Right in front of it, you mean? A. Yes.

Q. What did you see her do? A. She stopped 40

Defendant's: J. Raymond Heffberger—Direct

there for a minute as if to see if the train was coming.

Q. What did you do, look either way? A. Yes, she seemed to be looking and I kept watching her.

Q. How long did you stop there? A. Oh, probably a minute, something like that.

Q. Was the train in sight then? A. Oh, yes.

Q. Then what did you see her do? A. Then she started to cross the tracks?

Q. Where, on the plank walk? A. No, between the plank walks.

Q. That is, the space between the two plank walks? A. Yes.

Q. Where with reference to the waiting room door? A. Right straight across from the waiting room door.

Q. How did you see her cross, how did she go, what gait? A. Well, fast, you know.

Q. What would you call it, a run? A. Well, no, not just exactly a run.

Q. How would you describe it, that is what we are trying to get. A. She seemed to be in a hurry to get across.

Q. Then what did you see her do? A. I saw her stumble on the south rail, it seemed to me on the southerly westbound track, and she fell down in the east track.

Q. You say you saw her stumble? A. Yes.

Q. About how far do you think your baggage truck was east from the point where she was crossing the tracks? A. Probably 200 feet; anyway it was all of 200 feet.

Q. The point you saw her stumble you say was where? A. That was on the westbound track, the southerly rail of the westbound track.

Q. That would be the second rail of the west-

Defendant's: J. Raymond Heffberger—Direct

bound track? A. Yes.

Q. That happened to her after you saw her stumble there? A. Why, she was kind of over-balanced, and she kept her balance until she got to the east-bound track.

Q. That is, she continued forward in sort of an 10
over-balanced position? A. Yes.

Q. And fell where? A. In the eastbound track.

Q. Between the rails of the eastbound track? A.
No, she could not fall in between the rails. There
is not enough space there. She fell over the rail,
you know, or her body fell over the rail.

Q. Over which rail, the first rail of the eastbound
track? A. The first rail of the eastbound track.

Q. Where were the other passengers at this time
when the train was approaching and before she 20
started over? A. They were on the south platform.

Q. That would be on the eastbound platform?
A. Yes.

Q. Did you see any other crossing at that time
that you saw her crossing? A. No, sir.

Q. What did you do when you saw her stumble
and start to fall? A. I started to run up that
way—well, not when she first stumbled, but when
I saw she fell down I started to assist her.

Q. How far was the train from her when you saw 30
her stumble and start to fall and fall? A. Well,
not very far, and when she fell, or when she got up
the train was not over, I don't believe, 20 feet from
her.

Q. How quickly did she get up after she fell? A.
She did not lay there long. She got right up.

Q. When she got up which way did she go, back
towards the platform she came from or the other
way? A. No, sir, she went up the platform, across 40
the eastbound track.

Defendant's: J. Raymond Heffberger—Cross

Q. I show you two pictures, marked P-1 and P-2 and ask you whether or not they fairly represent the conditions that existed at the station there on August 20th, 1924, the date of this accident? A. Yes.

10 Q. Were the plank walks across the tracks in good condition or not? A. Yes.

Q. They were? A. They were.

CROSS-EXAMINATION by Mr. Simpson:

Q. You were employed by the Erie Railroad? A. Yes.

Q. You are employed by the Erie Railroad? A. Yes.

Q. And were at the time of the accident? A. 20 Yes.

Q. And you were 200 feet from this woman when you made this observation, weren't you? A. Well—

Q. Did you so swear at the last trial that you were 200 feet from this woman when you made this observation? A. Yes.

Q. Did you also swear at the last trial, "Q. Did she walk fast or run? A. She did not seem to be in a hurry going to there and then she stopped."—

30 I have to read the preceding question to make you understand that.

"Q. Did you see her walk from the station building across the station platform? A. Yes.

"Q. Did she walk fast or run? A. She did not seem to be in a hurry going to there and then she stopped."

Q. Did you so testify? A. Yes.

Q. Then you could not tell what she stumbled over on the westbound track, could you? A. Why, 40 I imagine the south, I believe it was the south rail.

Defendant's: J. Raymond Heffberger—Cross

Q. No, if you will leave the imagination out. I am asking you, did you testify at the last trial that you saw what she stumbled on? A. Yes, the rail.

Q. You say now she stumbled over the rail? A. I believe she did.

Q. But you were 200 feet away from her? Why 10
do you believe it? A. Why, I could look right up
the track.

Q. Why do you keep using the words "imagine"
and "believe"? Did you see where her foot went,
whether it went in a hole, whether it went in the
ballast or whether she was on the south side of the
rail when she stumbled? Did you see that? Did
you see where her foot went, whether it went in a
hole in the ballast or whether it was on the south
side of the rail? A. No, I could not say whether 20
it went in a hole or not, but she was on the north
side of the rail, her foot was on the north side of the
rail. She stumbled on that side.

Q. Didn't you swear this, on page 146, "Where
was she when she first stumbled"? "A. On the
south side of the second rail of the westbound
track." Didn't you so swear at the last trial? A.
On the south rail, wasn't it?

Q. Did you swear what I have read to you,
"Where was she when she first stumbled? A. On 30
the south side of the second rail of the westbound
track." A. I don't remember.

Q. If you did swear it, was it the truth? A. It
was if I swore to it, yes.

Q. All right. When you saw her stumble did
she lose her balance or did she keep on going? A.
She was kind of overbalanced. Then she fell.

Q. Did you also swear at the same trial, on the
same page, "You say she seemed to keep her bal-
ance until she reached the second track", and you 40

Plaintiff's: Leon L. Rixton—Direct

answered, "Yes." A. Yes.

Q. Is that a fact? A. That is the fact.

Q. So that, as I understand you, from 200 feet away you saw her walk from the station door to the end of the platform without hurrying? A. Yes.

10 Q. Then you saw her look up and down the tracks and start to cross? A. Yes.

Q. She did not run but she seemed to be in a hurry, is that right? A. Yes.

Q. And somewhere between the rails of the west-bound track she stumbled, is that right? A. Yes.

Q. But she kept her balance until she fell in the eastbound track? A. Yes.

Mr. Simpson: That is all.

20 Mr. Broadhurst: That is all, sir. That is the defendant's case.

LEON L. RIXTON, recalled:

Direct-examination by Mr. Simpson:

Q. These plankings, is it customary to sweep them off, does any dirt get on them?

30 Mr. Broadhurst: I object to that as immaterial. There is no allegation made in this complaint that the plankings were defective in any way.

(Question repeated.)

Q. Previous to the day of the accident or on the day of the accident was it your custom to sweep the dirt off these platforms?

40 Mr. Broadhurst: I object to that on the ground that whatever the custom was in reference to sweeping the dirt from these plankings previous to the accident would be entire-

Defendant's: Henry Hoffman—Direct

ly immaterial and irrelevant.

The Court: Suppose you reframe the question.

Q. Did you sweep the platforms or have them swept on the day of the accident or prior thereto?

A. No, sir.

10

Q. You never swept them? A. No.

Mr. Simpson: That is all.

Mr. Broadhurst: That is all.

Mr. Simpson: Will you admit that this transcript from which I read parts to the last witness is all right?

Mr. Broadhurst: Oh yes, I will admit that that question that you read to him, that you read it accurately.

Mr. Simpson: "Where was she when she first stumbled. A. On the south side of the second rail of the westbound track." 20

HENRY HOFFMAN, recalled:

Direct-examination by Mr. Simpson:

Q. You have testified that the ballast was in good condition. Is it a fact that shortly after the accident that you filled a hole with dirt and graded it, right in front of the station door—don't answer that until it is objected to. 30

Mr. Broadhurst: I will not object to it?

Q. Isn't that a fact? A. No, sir.

Mr. Simpson: That is all, that is the rebuttal.

Mr. Broadhurst: May I move for a direction of verdict on the same grounds that I moved for a nonsuit?

The Court: The motion is denied.

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Charge

Mr. Broadhurst: I take an exception to your Honor's ruling.

CHARGE

10 The Court thereupon charged the jury as follows:
The Court: Gentlemen of the Jury: This is an action for damages instituted by Lydia M. Bradley as plaintiff against the Erie Railroad as defendant. The case is based upon an accident which happened on the 20th day of August, 1924 at the Lackawaxen station of the Erie Railroad in the State of Pennsylvania. On that day the plaintiff, who had spent a vacation somewhere in the neighborhood of Lackawaxen, was at the Lackawaxen station intending
20 to take a train back to Jersey City with the idea of returning to her home in New York. She arrived at the station according to the testimony some time before the train came and then started across the tracks. As the court recalls the testimony of the plaintiff she says that the train which she was to take was to leave the Lackawaxen station around 4:17; that she went to the ticket office, looked in through the window at the clock, saw that it was 4:10 and walked out through the station door; that
30 there were other people going across the tracks. How many she does not definitely state, although she says positively that there were at least two or three and that they were just ahead of her or perhaps a little to her right. And that she thereupon stepped from the platform onto the tracks and started across, after first having looked up and down to see whether or not any train or anything else was approaching.

40 The plaintiff says that after she had left the west-bound platform while she was crossing the track

Charge

she stepped into a hole. She does not identify the particular hole herself but she says she knows the locality or the spot where she did fall, that she stepped into a hole at that spot and fell across the tracks and that in that fall she sustained the injuries for which she is now asking damages.

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Her story is corroborated to a certain extent by other witnesses whom she has produced, one of these witnesses being one of the men who came down to the station with her in the automobile and who says that he did not cross with her because he had not shaved for several days and had old clothes on and did not care to meet any of his friends from New York who might be at the station while he was so attired.

It is the contention of the railroad that this accident happened because this plaintiff in crossing the tracks did not use either one of two wooden platforms which the railroad had built across the tracks from one platform to the other. The testimony indicates that neither one of these platforms were directly in front of the door. As the court recalls the testimony each one of the platforms was at least 30 feet from the door or perhaps one of the platforms was more than that, but the court is giving you the best of its version, not saying that it was at least 30 feet from either side of the door that each of these platforms was located. The railroad says and contends that this plaintiff could have used either one of those platforms and crossed the westbound track to the eastbound track in perfect safety. The railroad contends further that this young woman waited too long before crossing and that she delayed until the train was so near the Lackawaxen station that when she started to cross she hurried and because she was in a hurry she did

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Charge

not use reasonable care in the manner in which she attempted to cross the tracks and therefore because of her failure to use reasonable care this accident happened and therefore the railroad is not liable.

Now, the burden of proof in this case is cast upon
10 the plaintiff to establish by the preponderance or the greater weight of the evidence that the defendant was negligent and that the negligence of the defendant was the proximate cause of this accident. If the plaintiff has satisfied you by the preponderance of the evidence that the defendant was negligent and that the negligence of the defendant was the proximate cause of this accident then you must go a step further and determine whether or
20 not there was any contributory negligence on the part of the plaintiff. If you decide that there was negligence on the part of the defendant but you also decide that the plaintiff contributed to this accident by her negligence, in other words, that the plaintiff was guilty of contributory negligence, then under those circumstances your verdict must be for the defendant. If you decide that the defendant was negligent and that the defendant's negligence was the proximate cause of the accident and that the plaintiff was free from contributory negligence,
30 then under those circumstances your verdict must be for the plaintiff and against the defendant.

"In deciding whether or not there was any negligence on the part of the defendant you will decide and determine whether under all of the circumstances of this case the defendant operated and maintained its station at Lackawaxen with that degree of care which the ordinarily prudent person or railroad would have used in maintaining and operating that station. If you decide that that degree of care was not used which the ordinarily pru-
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Defendant's Requests to Charge

dent person or railroad would use then there was negligence on the part of the defendant. If you decide that the railroad used that degree of care which the ordinarily prudent person or railroad would use in maintaining and operating a station then there was no negligence on the part of the defendant and your verdict under those circumstances would have to be for the defendant." 10

In deciding whether or not there was any negligence on the part of this plaintiff it will be your duty to decide and determine whether in crossing the tracks as she did she was using that degree of care which the ordinarily prudent person would use under the same circumstances. If you decide that she used that degree of care then she was not guilty of contributory negligence. If you decide that she was not using that degree of care which the ordinarily prudent person would use under the same circumstances then she is guilty of contributory negligence and under that set of circumstances your verdict would be for the defendant. 20

In deciding the point about contributory negligence the burden is cast upon the defendant to establish to your satisfaction by the preponderance or the greater weight of the evidence that the plaintiff was guilty of contributory negligence. That is the burden of the defendant—to establish contributory negligence on the part of the plaintiff by the greater weight or the preponderance of the evidence. 30

I have been handed certain requests to charge by counsel for the defendant which are as follows:

Request number one. The mere fact that an accident happened and the plaintiff, Miss Bradley, sustained personal injuries does not entitle her to 40

Defendant's Requests to Charge

recover any judgment in this case against the defendant, Erie Railroad Company.

The Court so charges you.

10 Request number two is as follows: The mere happening of an accident is no evidence of negligence. The Court so charges you.

Request number three. The failure of the defendant, acting through its agents, and servants, to warn the plaintiff of the existence of the rails and ties and the ballast at the point where she attempted to cross the tracks from the station platform is no evidence of negligence upon the part of the defendant.

The Court so charges you.

20 Request number four. There was no duty imposed upon the defendant in this case to give warning to the plaintiff of the space between the rails of the two tracks and of the existence of ballast and ties and the rails thereon at the point where she attempted to cross.

The Court so charges you.

30 Request number five. The defendant was under no duty to post a sign warning the plaintiff not to cross over the rails, ties and ballast at a point other than where the two planked crossings were located, and the failure to post such a sign is not negligence.

The Court so charges you.

40 Request number six. In this case it appears without dispute that on the day of the accident and at the time thereof, there were two planked walks leading from the sidewalk or stone walk in front of the station building over the westbound track, which was nearer to the station building, over the

Defendant's Requests to Charge

intervening space between the westbound track and the eastbound track and thence across the eastbound track. It appears that these two planked walks were from twelve to fourteen feet in width and that they were in good condition and could have been used by the plaintiff for the purpose of reaching the eastbound platform in order to board the eastbound train. The defendant was not obliged to plank its entire right of way in front of the station building and in the absence of any evidence that the construction of the planked walks was negligent, the defendant cannot be held liable in this case for failure to provide planking of the entire right of way in front of the station. 10

The Court so charges you.

Request number seven is as follows: 20

A railroad company is under a duty to exercise only ordinary or reasonable care to so construct and maintain its station platforms and approaches that they be reasonably safe for the use of passengers.

The Court so charges you.

Request number eight. The burden of proof is upon the plaintiff to show that the defendant was negligent and that the defendant's negligence was the proximate cause of the accident. 30

The Court so charges you.

Request number nine. Negligence must be proved and in a case like the present that can be done only by showing that the platform is of a design which a reasonably careful judgment would disapprove as being likely to cause accident to persons using it as a way to and from trains.

The Court so charges you. 40

Defendant's Requests to Charge

Request number ten. The duty of a railroad company to take care for the safety of its passengers so far as the furnishing of appliances is concerned is fully performed when those appliances are of a standard character and in proper repair. A
 10 railroad company is under no obligation to call the attention of its passengers to the way in which its platforms, its stations or any other of its appliances furnished for the use and transportation of its passengers are constructed, provided the method of construction is that which is generally adopted by other well regulated railroad companies.

The Court so charges you.

Request number eleven. There is no evidence in
 20 this case that the method of construction of the platforms of the defendant at the place of accident was different from similar station platforms of the defendant company or other railroad companies, and there is no evidence that any difference that may exist between the station platforms of defendant at the place of the accident and other stations or upon other railroads was such a variation from the existence of a standard type of platform construction that the departure from such standard by the de-
 30 fendant could be construed as imprudent and negligent. The Court charges you.

12. The plaintiff was bound to exercise reasonable care for her own safety. The Court so charges you.

13. If the plaintiff was in the slightest degree guilty of contributory negligence, then she cannot recover and your verdict must be for the defendant.

The Court so charges you.

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Defendant's Requests to Charge

14. The burden is on the plaintiff to establish her case by the greater weight of the evidence. If she has failed to do so, then she cannot recover and your verdict must be for the defendant.

The Court so charges you.

15. Even if you find that the defendant was negligent and that its negligence was the proximate cause of the accident, still, the plaintiff cannot recover if she was also negligent and her negligence contributed to the accident.

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The Court so charges you.

16. If you find that both the plaintiff and the defendant were negligent, that is, that each contributed by their negligence to the accident, then the plaintiff cannot recover because the law does not attempt to measure how much each was negligent, but leaves the parties where it finds them. In that event your verdict must be for the defendant.

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The Court so charges you.

Request number seventeen has been withdrawn.

Request number eighteen is as follows: The denial of the defendant's motion for a direction of verdict in its favor does not indicate that the court thinks the plaintiff is entitled to your verdict. You have a right to find in favor of the defendant even though that motion of the defendant was denied. That motion was directed solely to the law of the case and not to the facts, and a denial of that motion merely indicates that the court has concluded that there are disputed questions of fact for you to pass upon.

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The Court so charges you.

19. It may be said that if the condition of the tracks of the defendant at the station, including the

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Defendant's Requests to Charge

ties and ballast upon which the tracks rested, presented a condition of danger, that was obvious to the defendant to a degree requiring the exercise of care in their use and to superinduce that duty of care and foresight, that condition was equally ob-
10 vious to the plaintiff and under such circumstances it has been held by the Court of Errors and Appeals of this State that exits or entrances for common foot passengers are places of obvious danger and that passing over them suggests and requires a prudent watchfulness by the user or passenger against the danger attendant upon their use.

The Court so charges you.

20 20. It was the duty of the plaintiff to use reasonable care to use her eyes to see where she was walking and to use reasonable care and caution in crossing the tracks where she attempted to cross. If she did not look, she was guilty of contributory negligence which would bar her recovery. If she did look, she should have used reasonable care in looking. If by the exercise of reasonable care and looking she could have seen the condition of the tracks, the roadbed, the ballast and the ties, it would be presumed in case of accident that she did not look
30 or, looking did not heed what she saw.

The Court so charges you.

Now, gentlemen of the jury, if after weighing and considering all the facts in this case it is your verdict that the defendant was negligent and that the negligence of the defendant was the proximate cause of this accident and that the plaintiff was free from contributory negligence, then under those circumstances you will come to the question of dam-
40 ages. If your verdict is for the plaintiff, she is entitled to be compensated for all of the injuries and

Charge

damages which have been suffered and sustained by her as a natural consequence of this accident, she is entitled to be compensated by you for her pain and suffering, she is entitled to be compensated by you for any permanent injury that you may find she has sustained as a result of this accident. 10

She is entitled to be compensated for any doctors' bills that she has had to pay or which she has been obligated to pay, and she is also entitled to be compensated for any of these bills which you feel in the future under the circumstances of this case she will be obliged to assume. In that connection you will keep in mind that she said her hospital expenses came to somewhere around \$700; that since the time that she left the hospital she has made so far about 35 visits to another doctor, at 20 three dollars a visit; that her earning power at the time of this accident was \$40 a week; that after the accident this was reduced to \$30 a week; that she took a position in Gimbel Brothers, and after holding this position for some length of time she was obliged to abandon it, and that she now carries on her own work and her earning power has been reduced to \$20 a week. You will keep in mind her testimony as to what she says her nervous condition is. She has testified that she rarely gets a full 30 night's sleep, that it is necessary for her to use some potions of some kind in order to induce sleep; that in her work she uses chemicals and that when she has to use those chemicals her arm gives her great pain. You saw her arm. You saw how she contends that her arm has been shortened as a result of this accident. She demonstrated to you how she can manipulate her arm and to what extent her arm has been incapacitated by this accident. And yet, 40 of course, in connection with her testimony you

Exceptions to Charge

will consider the testimony of her doctors and also whatever medical testimony was brought out on behalf of the defendant.

Now, gentlemen of the jury, this is an important case. It is hardly necessary the Court feels for the
 10 Court to make that comment to you, but the Court does so comment to you and the Court hopes and trusts that you are going to give this case the care and conscientious consideration in its determination that it deserves.

If in the course of the Court's comments the Court has stated anything to be evidence which was not evidence you will correct the Court and be guided alone by what your recollection of the testimony is, because the evidence is not what the
 20 Court said it was. The evidence in this case has been taken and you are bound only by your recollection of what the testimony was and not by what the Court says it was.

Now, gentlemen, take this case and try to come back to this court room with the feeling that you are rendering an honest and a just verdict. If you do that you will be doing your full duty as jurors.

Mr. Simpson: I take an exception to your Honor's charging the requests of the defendant and I
 30 take a single exception to each request.

Mr. Broadhurst: I take an exception to that part of your Honor's charge in which you charged the jury that if the plaintiff had satisfied them that the defendant was negligent, that the negligence of the defendant was the proximate cause of the accident, and that the plaintiff was free from contributory negligence, that then and in that event they could find a verdict for the plaintiff. My point is that that permits the jury to determine whether the
 40 defendant is negligent on an issue or issues that

Exceptions to Charge

are not alleged in the pleadings or not proven in the testimony.

I also take an exception to that part of your Honor's charge, in which you left it to the jury to decide whether the defendant, referring to the degree of care or duty involved, operated and maintained its station with that degree of care that an ordinarily prudent person or railroad company would exercise or use, and if they did not, then there was negligence. My point is that that is outside of the scope of the pleadings, and secondly that it is outside of the scope of the testimony, as there is no evidence that it was maintained or operated other than with the proper degree of care. 10

The Court: Is there anything further?

Mr. Broadhurst: No, sir. 20

Mr. Simpson: No, sir.

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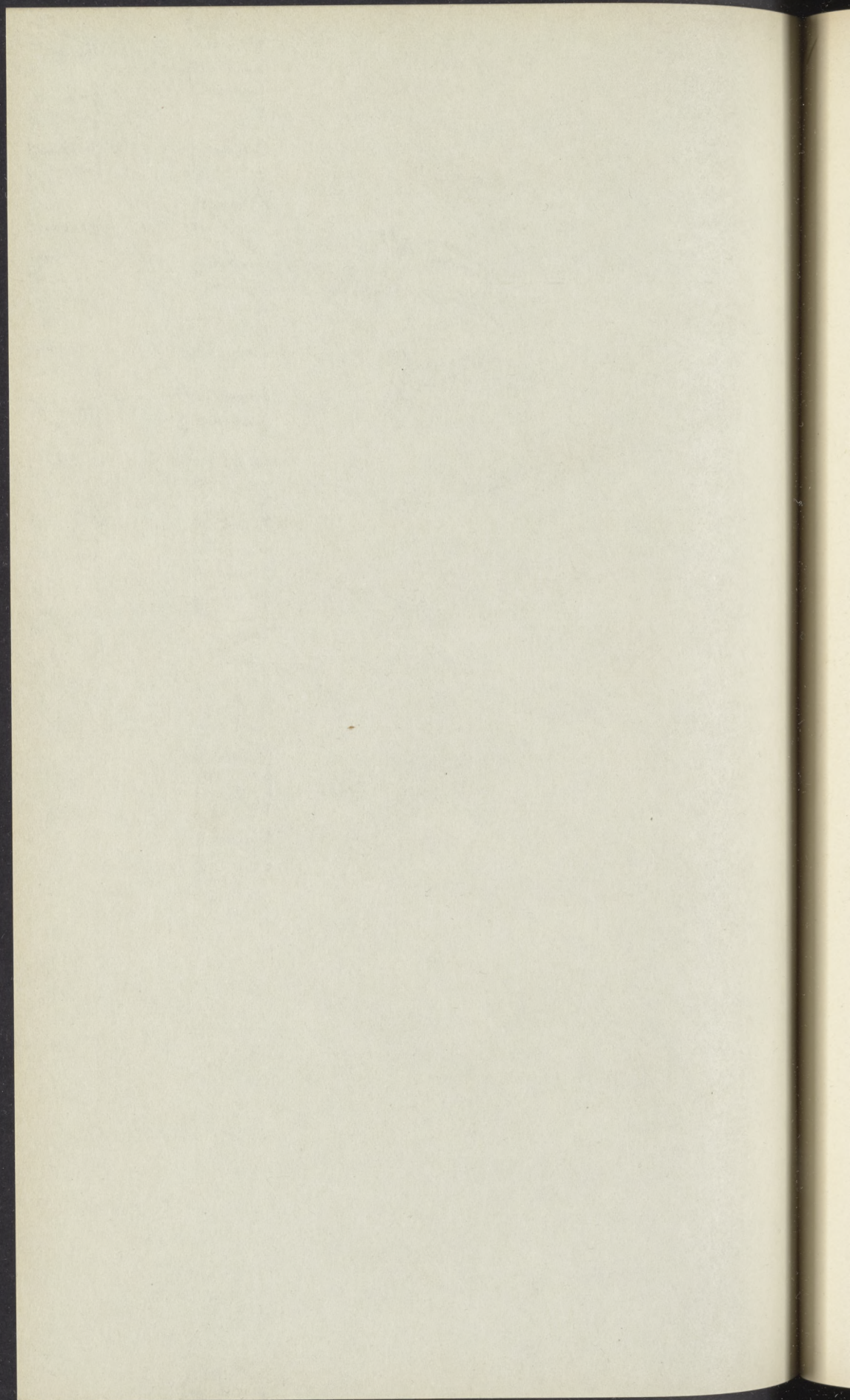
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New Jersey Court of Errors & Appeals

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<p>LYDIA M. BRADLEY, <i>Plaintiff-Appellant,</i> vs. ERIE RAILROAD COMPANY, a corporation, <i>Defendant-Appellee.</i></p>	}	<p><i>Action at Law On Appeal from New Jersey Supreme Court.</i></p>
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BRIEF FOR PLAINTIFF-APPELLANT.

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This appeal brings before this Court for review a judgment of the Supreme Court (Justices Trenchard, Kalisch and Lloyd sitting below) reversing the judgment in the Hudson County Court of Common Pleas wherein the appellant (hereinafter referred to as plaintiff) was awarded \$15,000 against the railroad appellee (hereinafter referred to as defendant). The action was brought to recover damages for injuries sustained by the plaintiff while crossing the tracks of the defendant at the defendant's railroad station at Lackawaxen, Pa., on the 20th day of August, 1924. A rule to show cause was obtained by the defendant to set aside the verdict on the grounds that it was excessive, but the rule was dismissed and the judgment allowed to stand. 30

Thereupon an appeal was taken to the Supreme Court and the Supreme Court reversed the judgment, as per opinion on page 2-A, State of 40

Case. If the facts were as stated by the Supreme Court, the rule of law is not questioned. The argument hereinafter made is to demonstrate that the facts in the case did not permit the application of the rule of law stated by the lower court.

Statement of Facts.

The plaintiff, an unmarried woman of 28, had a return ticket of the defendant company, and on the 20th day of August, 1924, she was at the Lackawaxen Station of the defendant, at Lackawaxen, Pa., intending to take a train to Jersey City, with the idea of returning to her home in New York City. She was to take the 4:17 train, and she arrived at the station, in a hired car, about 4:10. She went through the station (State of Case, p. 56) on to the station platform. This station platform is about 240 feet long. (State of Case, p. 103.)

As she got on the platform, it was necessary for her to pass over to the east bound tracks which were the tracks pointing towards New York, they being on the other side of the station away from the station building platform. The west bound tracks, or those pointing away from New York, were nearer to the station. As the plaintiff came out of the single door, she walked in a direct line to the edge of the platform and looked to her right and her left (State of Case, p. 39), and crossing in front of her were two passengers (State of Case, pages 15, 53), crossing in a direct line to the east bound platform crossing with other people in the same way that they were doing

in full view of the employees of the defendant where there were other people waiting, up and down the entire platform, for the train to come in, which was to take them to New York. As the plaintiff walked in a straight line, after glancing at the ground and saw dirt and gravel and tracks (State of Case, p. 37), and had taken two or three steps, her foot went into a hole between the two rails of the west bound tracks. She lost her balance and in endeavoring to recover it, stumbled across and fell in front of the east bound tracks but was able to get up and get out of the way of the train without being struck by it. The road bed where the plaintiff fell was full of holes and depressions, some being 8 or 10 inches deep (State of Case, pages 53, 64 and 65), although the photographs introduced by the defendant as to the general condition of the station, which were taken two months after the accident, did not show these holes (State of the Case, p. 55). These holes and depressions were not discernible when you look at them because all you could see was dirt, gravel and rocks (State of Case, p. 37).

A very important fact in the case to be considered is that there were two plankways running from the station to the east bound platform. These planks were covered with dirt and were never swept and they were not visible to the plaintiff. The photographs used in this case were taken after the planks had been swept on a clear day and do not show the condition at the time of the accident.

On these facts, the judge left it to the jury to say whether or not the defendant had exercised

reasonable care to her as a passenger on its premises.

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Argument.

The Supreme Court decided, it is respectfully submitted, as a matter of law, what was a matter of fact for the jury,—whether the station and its adjuncts, that is, the ways, platforms, etc., were safe and if not, whether the defendant had used reasonable care to make them safe. The question as to whether the station and its adjuncts were of standard pattern had nothing to do with the case; the question was whether there was a hole or depression in the way which the plaintiff had been invited to walk upon to get to the train she intended to take. It was not like the case of *Conover v. D., L. & W. R. R.*, 92 Law 602, where a woman's shoe caught in the platform and the Court held that as the platform was of the standard in use by all railroads, there was no negligence.

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There was no litigated question as to whether the platform was standard in construction. It was. This being admitted, the question was whether negligence was used in the maintenance of it.

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The Supreme Court, in its opinion, said:

“Leading from one platform to the other, the railroad company maintained two crossing plank walks, both 12 feet wide and flush with the top of the rails, one 54 feet to her right and one 54 feet to her left as she came out of the station.”

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It is respectfully submitted that this is a begging of the question. It was for the jury to say what these plank walks were for, because there was no proof that the planking way was provided for passengers to use, nor was there any notice to the plaintiff that it existed, especially since the plaintiff had never been to the station before. (State of Case, p. 26.) And the evidence was that the planks were never swept and, therefore, by cursory view, indistinguishable (State of Case, p. 66, ll 9 to 28). The jury could have found that she was unaware of this plank way; that persons crossed in her full view in a direct line from the station door way to the east bound platform, and that the employees of the defendant, who were there, neither directed persons how to cross nor warned them against crossing in the way that they did (State of Case, p. 95). The plank ways were for use of the baggage trucks in pulling from the station over to the east bound platform as it was impossible to pull the baggage trucks over the rail and ties without this planking. The planking was never swept (State of Case, p. 143), and it could not be seen or discovered except upon looking very closely, because it was covered with sand and gravel (State of Case, pp. 56-66). You would have to walk quite a distance from the station door to the planking before you could see it (State of Case, p. 66). As a matter of fact, this planking or platform looked like part of the road bed (State of Case, p. 66), and not a platform for use of passengers. There was no testimony at all that any passengers used this planking, but there was testimony by the defendant that its employees used it for pulling baggage trucks across, and the jury

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could have found that they were maintained solely for the purpose of pulling baggage trucks from
10 one side to the other.

The Court below, however, in its opinion, said:

“There is no proof that they differ from platforms and approaches in general use by the defendant or other railroad companies, and no presumption of want of due care arises from the fact that the defendant company, *presumably* (italics ours) to meet the requirements of its traffic had constructed two crossing plank walks across the tracks, one on either side of the station door, instead of one directly in front of the door.”

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The case was not built on the theory that there should have been a crossing directly in front of the door or that the defendant had failed to use a standard platform in use by other railroads. The right of the defendant to construct its platforms as it pleases may be admitted, but there was proof that if these were standard platforms, there was a hole in the track path to the train and if this was so, it was not a question of standard design, it was a question of lack of reasonable
30 care to keep the premises safe, which the defendant was not maintaining if there was a hole directly in front of the exit to the station building. It was solely a question of fact for the jury as to whether reasonable care was used in the maintenance of the premises. It cannot be said that the defendant provided a safe way for the plaintiff, for it clearly appears that because of existing conditions at the time of the accident she could not know that this way was so provided. These
40 planks which she was supposed to use, according

to the Court below, were never swept (State of Case, p. 143) and were indistinguishable from the road bed looking from the door exit of the station building out of which she came (State of Case, pp. 56-66). 10

The Supreme Court, in its opinion, also said:

“The defendant had provided two safe, ample and convenient plank walks across its tracks from its main station platform to the platform on the far side of its double tracks, and the plaintiff, in broad daylight, and with no obstruction to her vision failed to use either of them, but voluntarily chose to proceed across the ballast, ties and rails in front of the station door where no way or passage was provided either by the recognition, procurement or assent of the defendant, and at a point which could not have appeared to persons of ordinary understanding and discernment to be such a way.” 20

This begs the question because the jury could have found, as the defendant's own witnesses testified, that the plaintiff came out of the station door onto the platform and looked up and down the track (State of Case, p. 129), apparently to see if there was any trains coming, or if there was any passenger planking, and seeing passengers walking in front of her, it would be for the jury to say whether or not she was negligent in not observing the planking which were not easily discernible because it was so far away and covered with sand and gravel and because they were never swept; the plaintiff did not know they were there because there was no sign, nor did the employees present direct her where to go, especially since this was the first time that she had been at this station. 30 40

In the case of Thompson v. Central R. R. Co., found in 140 Atl. 330, the plaintiff was injured while passing from the waiting room of the station through an open door way down one step to the passenger platform by walking into a 2" thick board of a painter's scaffold, which crossed in front of such door way and rested on inverted V ladders, one at each side of door way, the board presenting only its 2" edge towards the plaintiff and being about the same height as his forehead, which scaffold defendant's employees, who were painting this station, had left unguarded for a few moments when they were not at work. Judge White speaking for the Court of Errors and Appeals in this case said:

"The trial judge thought that the position of the scaffold as established by the evidence was such that the plaintiff would have been sure to see if he had been looking where he was going. We think this would be so if the question of the board had, beyond question, been established as in plaintiff's proper line of observation instead of (as a jury might have found) above it, as he walked down this step and out on the platform, and also if the full 12" width, instead of the 2" thickness of the board, had been presented towards the plaintiff's general field of vision, so that he must have observed anything so located and so large and conspicuous if he had been making such observation as a reasonably careful pedestrian would have made in order to guard his own safety. The question here involved is not what such a pedestrian *could* have seen but what he *should* have seen. We think under the circumstances here involved it was for a jury to find just what the facts were, and whether as so found, they do or do not establish that the defendant's servants were negligent, to plaintiff's injury * * *."

And such were the facts in the case at bar.

Now, it is respectfully submitted, if the jury 10
 did find, which they could have found, that by
 reason of the way in which the plank walks were
 kept by the railroad, she did not see them and
 proceeded in a direct line to the train over the
 tracks, as other persons were doing then, the
 premises were not, at least the jury could find,
 safe.

Perhaps the Court below was confused by the
 "fine" photographs that were introduced at the 20
 trial by the defendant, which were taken two
 months after the accident (State of Case, p. 97),
 and in the perspective in which they were taken
 (State of Case, pp. 46-47), they did not give a true
 representation of the conditions existing at the
 time of the accident, as they did not show the
 holes, etc., in the road bed (State of Case, p. 55).
 As a matter of fact, by looking at these photo-
 graphs, one would believe that the cross walks
 were practically next to the entrance of the sta-
 tion and that they were so clean that you could not 30
 even see a speck of dust, whereas the proof
 showed that they were covered with sand and
 gravel as to make them indistinguishable.

In the case of Feil v. West Jersey & Seashore
 Company, 77 Law 502, cited in the opinion of the
 Court below, there was no hole or depression. The
 platform was regularly constructed with a slope,
 and there was no question of it not being in repair.
 The rule of the Court, laid down in the instant 40
 case, is the duty to observe ordinary standards.

10 That was not the question in the case *sub judice*, and, it is respectfully submitted, that the argument resting non-liability on the fact that the company had fulfilled its duty by maintaining a standard platform should be left out of the argument entirely because liability is urged because of a defect in the premises, and not failure to use a standard platform.

20 It is not as in the case of *D., L. & W. R. R. v. Trautwein*, reported in 52 New Jersey Law 169, a matter of plaintiff selecting an unsafe way. It is rather that she took her passage over a part of the station grounds which was not unsafe if ordinary care was used to keep them in a proper state. She crossed at a place that the ordinary prudent person would have crossed under the same circumstances. In this case there was ample evidence to show that there was a hole in the ballast directly in front of the station door.

30 The opinion of the Court below adopted the language of the Feil case, *supra*. The Court was speaking of the design of the platform, or, in other words, a structure. However, in this case there was no question of design at all. The action was based on a hole in the premises, another part of which could be used by the plaintiff, and there was testimony that passengers used all portions of the premises.

40 It was the duty of the defendant to exercise ordinary or reasonable care to maintain the station building and its adjuncts reasonably safe for the use of the passengers, and that applied to that

portion of the premises before the station building proper.

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In the case of *Holtzman v. H. & M. R. R.*, 101 New Jersey Law 255, point 1 of the syllabus holds:

“A railroad company is under a duty to exercise only ordinary or reasonable care to so construct and maintain station buildings, platforms and approaches that they may be reasonably safe for the use of passengers.”

It was for the jury to say whether or not the defendant had used reasonable care in the maintenance of the approach to the station platform.

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The plaintiff insists that under the case of the *D., L. & W. R. R. v. Trautwein*, reported in 52 New Jersey Law p. 169, where the language is as follows, it was a jury question as to the negligence of the defendant:

“Did the plaintiff do right in taking that way out? That depends upon the question, whether this way of passage was there by recognition, procurement or assent of the company as a means for the entrance and exit of passengers. Proof of such approval by the company, or of its recognition, need not be made by any resolution or declaration of the company, or of its agents. If, to persons of ordinary understanding and discernment, it appeared to be such a way, and by the company it was allowed to remain and be in use by passengers going to or from trains, any one going to and from a train as a passenger was authorized to make use of it. If the company permitted it to be done openly, so that persons of reasonable judgment and discernment would conclude it to be a means of entrance and exit, then any passenger was authorized to take it and use it. It is submitted

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10 to you as a question of fact, whether, to an ordinary observer, this was held out as one of the passageways from the depot to the public street. If so, any passenger, so unwarned, might use it as such. * * * * * The duty of a railroad company as a carrier of passengers does not end when the passenger is safely carried to the place of his destination. The company must also provide safe means for access to and from its station for the use of passengers, and passengers have a right to assume that the means of access provided are reasonably safe. If there be two ways, one of which is faulty in construction or repair, a passenger using it and injured by its faulty condition will not be debarred of his action, although the other which he might have used was safer.”

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In the case of *Crowley v. Public Service Rwy. Co.*, reported in 2 Misc. Rep., which was a case of an intending passenger of a trolley car who had to walk from the curb to the car to board same, and in so doing had to walk over the cobble-stones which were either wholly or partially so covered by sand, and so disarranged, that when the plaintiff stepped on one of the stones at the place he was to take the car, the stone caused him to fall, the Supreme Court, on page 203, said:

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“Whether the plaintiff was guilty of contributory negligence in not observing the condition of the roadway at this point, particularly in view of the fact that traffic conditions at that corner were such as to require the presence of a traffic officer, thus indicating a volume of travel which made it unsafe for one to continually keep his eyes on the ground when attempting to board the car, manifestly presented a jury question.”

40 So it was in the case *sub judice*. It was not necessary for the plaintiff to continually keep her

eyes on the ground or to make a minute or microscopical examination of the road bed to see if it had these holes and depressions, which were covered with dirt and gravel, and which were not apparent by just looking at the ground, as the plaintiff did, before she attempted to cross over to the east bound tracks to board the train to New York. 10

In the case of *Spofford v. Central R. R.*, reported in 89 N. J. Law, which was a case where the decedent was a passenger on a train of the defendant running from Jersey City to Bayonne. He alighted at the latter station and was killed by a passenger train running in the opposite direction. Justice Trenchard, speaking for the Court of Errors and Appeals, on page 276, said: 20

“Now, we do not say that it was the positive duty of the company to have provided a fence between the tracks; nor do we say that it was its positive duty to have provided gates upon the local trains to prevent passengers from alighting upon the side along which the express would pass. But we do say that it was open to the jury to find that there was a want of reasonable care in its failure to take any precaution whatever. The jury may well have found that ordinary prudence upon the part of the railroad company, under such circumstances, required it to inform its passengers which of the two ways of alighting was intended to be used upon that occasion, or to in some way obstruct the one not so intended in such manner as to give notice of the fact.” 30

Further in this opinion Justice Trenchard, on page 277, said:

“Whether a person who has alighted from a standing train at a station, and who is cross- 40

10 ing the railway tracks by a planked way provided by the company for that purpose, after the train from which he has alighted has moved out, is still a passenger entitled to so cross without looking or listening, is a question of fact for the jury, where, under the proof, reasonable men may differ as to whether he was proceeding from his place of alighting to a place of safety within a reasonable time after he had alighted from the train (*Atlantic City Railroad Co. v. Kiefer*, 75 N. J. L. 54)."

In the case of *Fagan v. Central Railroad Co.*, 94 N. J. L. page 454, point 1 of syllabus holds:

20 "On appeal, in passing upon a motion for the direction of a verdict, the court cannot weigh the evidence, but must take as true all evidence which supports the view of the party against whom the motion is made, and must give him the benefit of all legitimate inferences which may be drawn therefrom."

Point 2 of the same syllabus holds:

30 "Where the existence of negligence depends upon the conclusion to be drawn from a variety and combination of circumstances considered in their relation to and their reaction upon each other, the jury, and not the Court, is normally the tribunal to draw such conclusion."

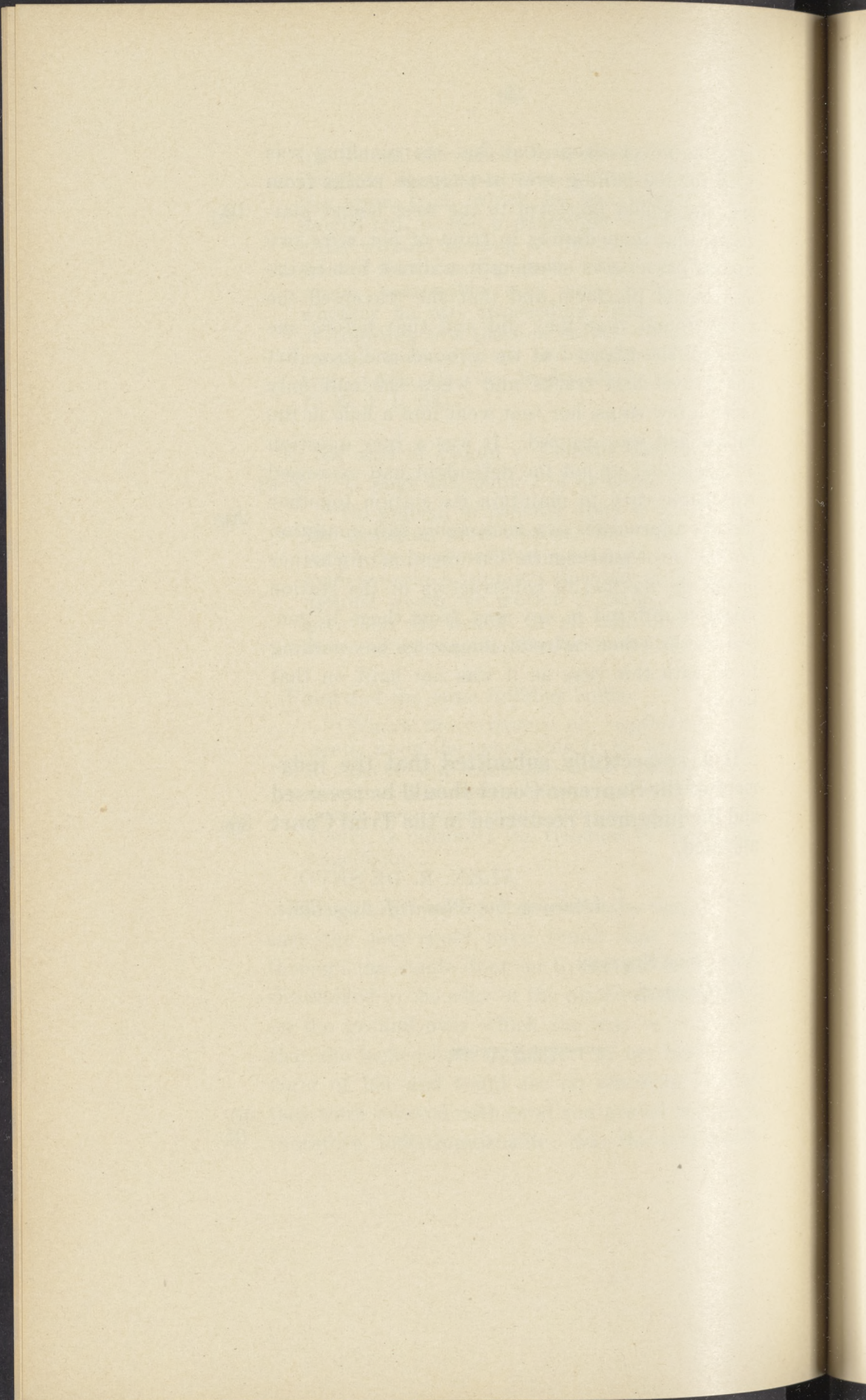
40 The plaintiff insists that under the facts in this case the jury could have found that she came through the single door on to the platform; that she walked to the edge of the platform and looked on the ground over which she was to cross and that she looked both to the left of her and to the right of her and could see no planking because they were covered with sand and gravel and were, therefore, indistinguishable; that the said plank-

ing was never swept and that the planking was used for the pulling over of baggage trucks from the east bound platform to the west bound platform; that immediately in front of her were two women passengers crossing in a direct line to the east bound platform and that she traversed the very ground that they did and that before she crossed, she glanced at the ground and saw dirt and gravel and tracks and when she had only taken a few steps, her foot went into a hole in the ballast and was injured. It was a jury question as to whether or not the defendant had exercised reasonable care to maintain its station together with its approaches in a reasonably safe condition for the use of passengers. The question of whether or not the method of construction of the station premises differed in any way from those in general use by other railroad companies has nothing to do with this case as it was not built on that theory.

It is respectfully submitted that the judgment of the Supreme Court should be reversed and the judgment recovered in the Trial Court affirmed.

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ALEXANDER SIMPSON,
Of Counsel.



New Jersey Court of Errors and Appeals

LYDIA M. BRADLEY,
Plaintiff-Appellant,

v.

ERIE RAILROAD COMPANY, a cor-
poration,
Defendant-Respondent.

Action at Law.

On Appeal from
Supreme Court.

BRIEF IN BEHALF OF RESPONDENT.

(1)

Statement of the Case.

This appeal brings before this Court for review, a judgment of the Supreme Court reversing a judgment of the Hudson County Court of Common Pleas, in an action wherein the appellant (hereinafter referred to as the plaintiff), brought suit to recover damages from the respondent (hereinafter referred to as the defendant), for personal injuries sustained on August 20, 1924, at the defendant's railroad station, Lackawaxen, Pennsylvania. The plaintiff intending to board a train of the defendant destined for New York, while crossing from the platform adjacent to the station building to the platform where the New York train would be boarded, fell and received the injuries sued for (pp. 4 to 6). At the close of the plaintiff's case, counsel for the defendant moved

for a nonsuit, and at the conclusion of the entire case, for direction of a verdict in favor of the defendant, both of which motions were denied by Judge ROBERT V. KINKEAD, presiding at the trial and exceptions noted (p. 78, lines 1-20; p. 143, line 30 to p. 144, line 10). The jury returned a verdict in favor of the plaintiff and against the defendant, assessing the damage at \$15,000, upon which judgment was entered. Subsequent to the rendition of the verdict, the defendant obtained a rule to show cause, reserving however, all objections or exceptions taken during the course of the trial, for argument on appeal (p. 9, lines 30 to 40). The only reason argued on the rule to show cause was that the verdict was excessive (p. 10, lines 20 to 30). The rule to show cause was dismissed and the judgment for \$15,000 permitted to stand (p. 12, lines 20 to 30). The defendant appealed to the Supreme Court from this judgment and the Supreme Court reversed the judgment of the Hudson County Court of Common Pleas on the ground, as indicated by the opinion, that the Court should have granted the defendant's motion for a direction of a verdict in its favor because there was no evidence of any negligence on the part of the defendant. It is from the judgment of the Supreme Court that the plaintiff appeals to this Court.

(2)

Grounds of Appeal.

The only ground of appeal urged by the plaintiff is that the Supreme Court reversed the judgment of the Hudson County Court of Common Pleas, whereas said Supreme Court should have affirmed said judgment.

(3)

Prefatory Statement.

We think the ground upon which the Supreme Court based its judgment of reversal is unassailable. However, out of an abundance of caution, we shall also argue in this brief all the grounds of appeal urged in the Supreme Court because if the judgment of that Court is sustainable on any ground it should be affirmed.

Kleinert v. Hutchinson, 98 N. J. L. 831,
835;

Sullivan v. P. S. Ry. Co., 87 N. J. L. 284,
286.

In the Supreme Court, the following grounds of appeal were urged:

1. The Trial Judge erroneously refused to nonsuit the plaintiff and to direct a verdict in favor of the defendant when thereunto respectively moved, whereas said motions should have been granted on one or more of the following grounds urged in support thereof:

(a) That there was no evidence of any negligence on the part of the defendant as alleged in the complaint.

(b) That there was no evidence of any negligence on the part of the defendant as alleged in the complaint that was the proximate cause of the accident.

(c) From the undisputed evidence in the case, the plaintiff was, as a matter of law, guilty of contributory negligence.

(4)

BRIEF OF THE ARGUMENT.

I.

There was no evidence of any negligence on the part of the defendant, as alleged in the complaint that was the proximate cause of the accident.

In order to better understand the testimony of the witnesses, we refer the Court to Exhibit (annexed to state of case) D-3, a map of the defendant's station and station grounds, and Exhibits P-1 and P-2, which are photographs of the same place. These exhibits were made in October, 1924, two months after the accident and show the situation as it existed at the time of the accident (p. 97, line 20; p. 98, line 10). The map is made to scale (one inch on the map equalling ten feet on the ground). Examining the location by reference to the map, we find that on the north there is a public highway running parallel with the defendant's station and tracks. To the south of this highway and immediately adjacent to it, is the defendant's station building. This building is ninety feet in length (p. 103), and according to the scale, about twenty feet wide. To the south of the station building and between it and the track, there is a stone platform sixteen feet wide, and about two hundred and forty feet long (p. 99, lines 30-40; p. 103, lines 20-30). To the south of this stone platform, first comes the westbound track on which trains run from New York to Binghamton. The stone platform is higher than the top of the rails of the track, and the nearest rail is two feet from the edge of the platform

(p. 102, lines 20-30; p. 104, lines 15-20). The rails of the first track are four feet nine inches apart. To the south of the westbound track is the eastbound track eight and one-half feet distant. To the south of the eastbound track is a fine stone and cinder platform from which trains to New York are boarded. Photograph P-1 is looking east or toward New York, and when it was taken the camera was placed over the north rail of the eastbound track (p. 98, lines 10-40). The tracks are of the ordinary steel rail six inches high, resting upon wooden ties eight inches high (p. 105, lines 10-20). The ties rest upon stone ballast on the ground. To permit passengers to go from the platform on the station side to the platform where the eastbound trains are boarded, the defendant provided two plank walks, which can be seen in the pictures and are delineated on the map as planking. The westerly plank walk is twelve feet wide and twenty feet long. The easterly plank walk is the same length and fourteen feet wide (p. 100, lines 10-40). The westerly plank walk is thirty-seven feet and the easterly plank walk is forty-seven feet from the door of the waiting room of the station, out of which the plaintiff came prior to the accident (p. 101, lines 1-10). The planking of these walks is four inches thick, eight inches wide and flush with the top of the rails and the station platform and eastbound platform. A person standing on the platform adjacent to the station building has a view of an approaching eastbound train of about five hundred feet (p. 104, lines 30-40).

Miss Bradley testified that on the day of the accident, she was brought to the station in an automobile driven by one Travers and accompanied by the witness Grady. The automobile stopped on the north side of the station building and Travers took her bags from the automobile. She

got out of the automobile and walked into the station building from the north side and through it on to the stone platform in front of the station building on the south side (p. 14, lines 1-40; p. 27, lines 20-40). She walked straight across the stone platform and continued across the tracks towards the eastbound platform, where some ten or twelve passengers were standing waiting for the train (p. 15, lines 10-30; p. 16, lines 20-30; p. 30, lines 10-20). When about half-way across the stone platform in front of the station, she hesitated and looked up and down the tracks a second or two (p. 31, lines 1-20). The train which she would board approached the station from her right (p. 31, lines 30-40). She did not hear any signal of the approaching train or observe its approach (p. 34, lines 20-30). She did not see, in making this observation, the plank platforms which were there constructed to permit passengers to go from the station platform to the eastbound platform (p. 35, lines 20-30). She looked ahead of her at the ground where she was going to walk, that is, she glanced at it (p. 36, lines 20-40). This observation disclosed that in the path she was about to take across the tracks, there were iron tracks resting on wooden ties spaced some distance apart from each other, and the ties resting upon rock, dirt and gravel (p. 37, line 30, to p. 38, line 30). In order to cross at the place where she looked, it was necessary to step over the steel rails, and it appeared uneven (p. 38, line 30, to p. 39, line 10). Without making any further observation than the one made when she was half-way across the station platform, she proceeded across the tracks over the rails and ties and ballast (p. 39, line 30 to p. 40, line 20). In doing this, her foot went into a hole to her ankle (p. 16, lines 30-40), in the ballast between the wooden ties and between the rails of

the first track (p. 40, lines 30-40). This caused her to lose her balance and she made several quick steps in an effort to regain it, but fell between the rails of the second or eastbound track (p. 17, lines 10-30; p. 41, lines 10-20). She was unable to describe the particular place that her foot went into before she fell, as she did not see it, but after getting on the train, she looked out of the window on that side of the car and observed that the roadbed over which she had walked, had places in it where the rock or ballast was higher than it was in others (p. 43, line 20, to p. 44, line 40).

Grady, who accompanied Miss Bradley in the automobile to the station, testified that he followed her through the station building and on to the station platform. He was only a few steps behind her as she proceeded across the station platform. He observed the wooden walks provided by the defendant for passengers to go from the station platform to the eastbound platform, and in fact, had used them himself for a number of years (p. 56, lines 20-40). The point where Miss Bradley attempted to cross the tracks was between the two platforms, over the rails and ties and ballast (p. 57, lines 20-40). As Miss Bradley got between the rails of the first track, she gave a couple of quick steps forward and fell on the second track (p. 52, lines 30-40). When she fell, the train was about one hundred yards away coming into the station. She picked herself up at once, and the train was within fifty or seventy-five yards of her at the time (p. 53, lines 1-15). After the train moved away, he examined the place where Miss Bradley tripped, and the roadbed between the tracks in that vicinity was dotted with holes (p. 53, lines 30-40). The cross ties were exposed above the ballast (p. 54, lines 1-10), and the condition in general was as is disclosed by the photograph

exhibits attached to the state of case (p. 55, lines 30-40). He heard the engine blow its whistle for the station, before Miss Bradley started across the tracks (p. 61, lines 1-20). Travers had just got over on to the eastbound platform on one of the crosswalks, as Miss Bradley started across the track (p. 63, lines 10-20). The steel rails between the plank crosswalks were five or six inches above the top of the ties, and most of the wooden ties were exposed (p. 64, lines 10-30). Between the ties and under them, was crushed rock, gravel and sand (p. 55, lines 1-20). Travers, after arriving at the station, took Miss Bradley's bags over to the eastbound platform and was on that platform for about three or four minutes before Miss Bradley came out of the station building and started across the tracks (p. 80, line 20, to p. 81, line 20). He saw her trip on something as she was crossing the westbound or first track, but he could not say whether she tripped over the rail or from a depression in the ballast (p. 81, lines 20-40). When she stumbled, the train was about one hundred and forty yards away (p. 83, lines 1-10). He never noticed any holes near the place where he saw her stumble (p. 83, lines 30-40). He heard the whistle blow for the approaching train while Miss Bradley was on the station platform (p. 86, lines 1-10). As she walked across the platform and tracks, she was moving quite lively (p. 86, lines 30-40). The place where she crossed was between the two plank walks. He was standing on the eastbound platform opposite the westerly plank walk (p. 89, lines 20-30).

Sheok, station clerk, about five minutes before the train arrived, announced it in the waiting room (p. 91, lines 1-20). He was on the eastbound platform when he saw the plaintiff walk on to the station platform and stop a moment (p. 91, line 30

to p. 92, line 10). The place where she stopped was midway between the station building and the westbound track, and midway between the two plank walks (p. 92, lines 20-40). He looked away temporarily, and when he glanced back, she had started over the rails at a fast walk. She tripped and fell between the rails (p. 93, lines 20-40); fell on the eastbound track when the train was about one hundred yards away, got up at once, and the train was within thirty or forty feet from her. The cross walks at the station, constructed by the defendant to permit passengers to go from the station platform to the eastbound platform, were in good condition (p. 94, lines 30-40).

Heffberger, who was at the station, heard the train whistle its approach to the station (p. 136, lines 30-40); and as it came into sight, he saw Miss Bradley on the station platform (p. 137, lines 20-30). She started across over the rails, ties and ballast between the plank walks (p. 138), at a fast walk, and stumbled between the south rail of the westbound track following on to the eastbound track (p. 138, lines 20-40). When she got up, the train was within twenty feet of her.

The engineer of the approaching train, Hazleton, the fireman, Smith, and a witness named Hupp, testified to the fact that the approaching train blew an engine whistle signal for the station, consisting of a long loud blast, when it was a half mile away, and after that, blew a loud crossing whistle signal of two long and two short blasts, for a highway grade crossing that was located just west of the station building (p. 107, lines 1-40; p. 112, lines 1-40; p. 127, lines 1-10). The engineer and fireman also testified that the engine bell was ringing continuously (p. 108, lines 30-40; p. 113, lines 30-40).

The above is a complete résumé of all of the testimony in the case. At the conclusion of the

plaintiff's case and again of the entire case, counsel for the defendant moved for a nonsuit and a direction of a verdict respectively, on the ground that there was no evidence of any negligence on the part of the defendant as alleged in the complaint, that was the proximate cause of the accident. These motions were denied and exceptions noted to the Court's ruling (p. 78, lines 1-20; p. 143, line 30 to p. 144, line 10). The action of the Trial Court in refusing the motions was the ground on which the Supreme Court reversed the judgment.

The allegation of negligence in the complaint reads as follows:

"4. The negligence of the defendant consisted in this:

"Defendant failed to use reasonable care to have the said station premises and the passageway to the train which she was to board safe, but on the contrary, caused to be maintained a certain deep hole or ditch which was directly in line of the passageway she would have to use, adjacent to the platform, to board said train; while she was moving toward said train and had stepped off the platform as she necessarily must do to cross the first track to reach the track upon which her train was approaching, her foot without fault on her part, went into said hole and she was caused to lose her balance and fall" (p. 5, lines 10-30).

The contention of the defendant in the case, is as set out in the fourth and fifth defenses of its answer, that at the place where the plaintiff was injured, she was merely a licensee, and the defendant having provided an adequate place for her to cross the tracks, was under no duty to maintain the entire road bed in front of its station in such a condition that passengers could walk across it at any point. The plaintiff argued, and we presume will contend here, that the defendant was

negligent because it did not place the plank walks directly in front of the door of the waiting room, out of which the plaintiff came on to the station platform, but there was absolutely no evidence in the case to prove any standard of construction which would require the defendant to place its cross walk at that place, and we respectfully contend that no liability could be predicated on that fact in the absence of a proof of standard and a variance from the standard by the defendant's station construction. It will be observed that the station platform, some two hundred and forty feet in length, is three times as long as the station building itself and borders on a public highway from which passengers can get to it without going through the station building. If the contention of the plaintiff is correct, that the platform should have been in front of the waiting room door, what is to prevent the next plaintiff who comes on to the platform from the highway at the end of the station building, contending that the platform should be at that point? The result would be, that the defendant in order to protect itself, would have to plank the entire length of the station, and it seems to us that such a contention not only is not sustained in law, but lacks even common sense.

In the case of *Feil v. West Jersey & Seashore R. R. Co.*, 77 N. J. L. 502, the plaintiff, a school teacher, became a passenger of the defendant company, from Vineland to Cape May. From Vineland to Millville, the company's road was operated by electricity; from Millville to Cape May it was operated by steam. The tracks of the electric road at Millville station were on the west side of the platform, and those of the steam road were on the east side. The plaintiff was required, when she reached Millville, to alight from the electric train and walk across the station platform to board

the Cape May train. A certain portion of the platform was depressed so as to form a part of a truckway from the electric road, to and across the tracks of the steam road, in order, apparently, that baggage might be conveniently and rapidly transferred from the one road to the other. The depression in the platform was gradual, its lowest point being on a level with the top of the rails, and about ten inches below the ordinary level of the platform. Plaintiff got off the electric train with about fifty other passengers, and started to walk across the platform with them to the Cape May train, in response to the invitation of the conductor of that train, who called out to plaintiff and her fellow-passengers "All aboard." As she was proceeding across the platform she came to the truckway without observing it, or being aware of its existence, and in unconsciously stepping down some eight or ten inches from the higher to the lower level, lost her balance, fell, and was seriously injured. The Trial Court directed a nonsuit and the plaintiff assigned error on this ruling. This Court in an opinion of Chief Justice GUMMERE, in affirming the judgment, said (p. 503):

"It is elementary law that in actions for the recovery of damages charged to the negligence of a common carrier, it must appear that there has been a breach of duty on his part, or on the part of those toward whom he stands in the position of master, which has produced the injury. The duty which a railroad company owes to its passengers, with relation to its station platforms, is to take care that the method of construction adopted by it will render the platform as safe for the use of its passengers as the exigencies of its business will permit. The degree of care which it is required to take is that which is exhibited by persons of ordinary prudence under like circumstances, and, so, the adoption of a method

of platform construction which accords with that in general use by well regulated railroad companies, and which is approved by experience, is a due performance of the duty which it owes to its passengers in that regard. This is the principle of decision in * * * (citing cases).

“There is nothing in the present case to support the conclusion that the defendant company failed to observe the degree of care indicated in the construction of its platform at the Millville station. There is no proof that it differs in its character from platforms in general use by the defendant and other railroad companies, and no presumption of want of due care arises from the fact that a railroad company, presumably to meet the requirements of its traffic, has constructed its platform in such a way that one portion of it is lower than another, when the difference of level is not greater than the height of an ordinary step. Negligence must be proved, and, in a case like the present, that can be done only by showing that the platform is of a design which a reasonably careful judgment would disapprove as being likely to cause accident to persons using it as a way to and from trains. To hold otherwise would be to leave railroad companies to the mere caprice of juries, and subject them to the danger of being found guilty of negligence no matter what plan of construction they might adopt.

“It is argued that even if it be held that the defendant company has not been shown to have failed in its duty to provide a proper platform for the use of the plaintiff, still it was charged with the duty of warning her of the depression in it, and that its failure in this respect rendered it liable to answer to the plaintiff for the injury received by her. We think no such burden rests upon these corporations. The duty of a railroad company to take care for the safety of its passengers, so far as the furnishing of appliances is concerned, is fully performed when those appli-

ances are of a standard character and in proper repair. It is under no obligation to call the attention of its passengers to the way in which its platforms, its stations, its cars or any other of its appliances furnished for the use and transportation of its passengers are constructed, providing the method of construction is that which is generally adopted by other well regulated railroad companies."

The distinction between the liability of a railroad company to its passengers using a way provided by the company, and their using one which was not provided or intended to be used, is amply pointed out in the case of *Delaware, Lackawanna and Western Railroad Company v. Trautwein*, 52 N. J. L. 169. It there appeared that the plaintiff, a passenger on the defendant's train from New York to Lyndhurst, alighted at Lyndhurst, and in leaving the station to reach the street, fell and was injured. The station where the accident happened, was located upon an embankment elevated above the public road, which crossed the railroad under a bridge carrying the railroad over the public road. The depot building for the reception of passengers, was on a level with a track on the north side of this. At the west end of this building there were steps for the accommodation of passengers, leading down to the public road. On the south side of the embankment, there was a stairway leading also on to the public road, built by private persons for their own convenience, and used by passengers as means of access to and from the station. Although the railroad did not construct or keep this stairway in repair, it had constructed from the top of it, a gravel walk, and it kept the passageway free and open and unobstructed. It was apparently a way provided as a means of access to and from the company's depot

grounds. The plaintiff arrived in the night time and there was no light or anyone to direct her as to the way to leave the grounds. While on her way to use the stairway on the south side of the embankment, she fell over some timber and received her injuries.

The Trial Judge, in submitting the question of the defendant's negligence to the jury, charged that

“Did the plaintiff do right in taking this way out? That depends upon the question, whether this way of passage was there by recognition, procurement or assent of the company as a means for the entrance and exit of the passengers. Proof of such approval by the company, or of its recognition, need not be made by any resolution or declaration of the company, or of its agents. If, to persons of ordinary understanding and discernment, it appeared to be such a way, and by the company it was allowed to remain and be in use by passengers going to or from trains, anyone going to and from a train as a passenger was authorized to make use of it. If the company permitted it to be done openly, so that persons of reasonable judgment and discernment would conclude it to be a means of entrance and exit, then any passenger was authorized to take it and use it. It is submitted to you as a question of fact, whether, to an ordinary observer, this was held out as one of the passageways from the depot to the public street.”

This Court in opinion by DEPUE, J., in affirming the duty as charged by the Trial Court, said (p. 175):

“A company having provided one safe and convenient way of ingress and egress to and from its station, may, as contended for by the company's counsel, suffer private persons for their own convenience to have and use an-

other way of access across its depot grounds, and it may be that those who use such a way will do so at their peril if they have notice of the private character of the way."

In the case at bar, the defendant company had provided two safe and convenient ways of ingress and egress to and from its station platform to the eastbound platform, and the plaintiff failed to use either of them, but chose a way for her own convenience, and clearly used it at her peril. To paraphrase the language of the Trial Judge in the *Trautwein* case, *supra*, this way of passage was not there by the recognition, procurement or assent of the company as a means of going from the station platform to the eastbound platform. To persons of ordinary understanding and discernment, it did not appear to be such a way, and the company did not allow it to be used by passengers for going to and from platforms. An ordinary observer would not consider it as a passageway, and a passenger even though unwarned, would not consider it as a passage to be used.

Another leading case in this state, which although not similar in facts, nevertheless illustrates the principle of law contended for by the defendant, is *Exton v. Central R. R. Co.*, 62 N. J. L. 7. The plaintiff in that case, on her way from Brooklyn to High Bridge, entered the Central Railroad depot on West Street, New York City. She entered the waiting room in which the ticket office is located and purchased her ticket. The main waiting room and entrance to the ferry was farther inside the station. Her trunk was in the baggage room, and after she purchased her ticket, she went out of one of the doors of this waiting room upon the passageway to the baggage room in order to have her baggage checked. While proceeding along this passageway, and as she neared the win-

dow of the baggage room, two men who were scuffling on or near the passageway, bumped against her, knocking her down and causing her injuries. The passageway on which she was walking, was one usually used and provided for passengers to go to the baggage room, and it appeared that the walk was maintained by the defendant as part of its station. The Supreme Court in affirming a judgment for the plaintiff, speaking through LIP-PINCOTT, J., said (p. 12) :

“In this case it was conceded that the plank walk in question was a part of the railroad station and provided for the use of the passengers of the company. It was constructed for this purpose and was under the exclusive control of the railroad company. No contention otherwise is made by the defendant. Every person who came upon it for the purpose of entering into the ferryhouse or to check his or her baggage before entering the waiting room to the ferryboats of the defendant to continue his or her journey, became a passenger and entitled as such to be protected from any danger of injury, so far as the defendant company could render protection by the exercise of that care required of them in the relation of common carrier and passenger. The plaintiff there on the boardwalk was as much a passenger as if she had been seated in the ferryboat or cars of the defendant company.”

This case is illustrative of the point we make, that on the walks or ways provided by the defendant, it is under a duty to exercise reasonable care in the protection of those using the said walks or ways, but it is not under that obligation when they of their own volition choose a way other than the one provided by the company or held out by the company for use.

The law in this state is well settled, that before a defendant can be held liable for negligence in

the construction of his premises, some standard must be proved, to which it was incumbent upon the defendant to conform. It cannot be asserted that in a case like this, each jury may say what they deem to be the proper construction or placing of the planked walks, and thus arbitrarily direct that the said planked walks be constructed in any particular place, according to their individual notion of the proper method to so construct or place them. This has been settled definitely since the case of *Dotson v. Erie R. R. Co.*, 68 N. J. L. 679. In that case, the plaintiff was walking along the platform, which was on a level with the top of the rails, toward the station in order to purchase a ticket. She suddenly diverged in her course toward the rail, so that she was struck from behind by the bumper of a slowly-moving train, just pulling into the station, on which she was to take passage, and was injured. The platform was constructed of crushed stone which extended to the line of planking eighteen inches wide along the nearest rail. The evidence showed that the bumper projected slightly over the edge of the platform and it was left to the jury to say, in case they should find that the plaintiff was walking within the line of the platform when she was struck, whether it was negligence in the company to have constructed its platform in such close proximity to the rail. In reversing the case, this Court, speaking through HENDRICKSON, J., said (p. 683):

“In order to sustain a claim of liability against the owner or occupier for the injury sustained in the use of his premises, where there is no express invitation, it must appear that there was an implied invitation—that is, that the person injured ‘entered the premises because he was led by the acts or conduct of the owner or occupier to believe that the premises were intended to be used in the manner

in which he used them, and that such use was not only acquiesced in, but was in accordance with the intention or design for which the way or place was adapted and prepared or allowed to be used' * * * (citing cases).

"Applying this test to the circumstances here involved, we must find that the plaintiff was using the extreme edge of the platform near the rail for a purpose entirely foreign to the intention and purpose of the company as to its use, and that there was no evidence to show that such a use was ever permitted or acquiesced in by the company.

"It is undoubtedly a settled rule that a railroad company is under a duty to exercise ordinary and reasonable care to so construct and maintain station buildings, platforms and approaches that they shall be safe for use by passengers. *Ill. R. R.* 1590. But this use is to be exercised in conformity to the manifest purpose for which the structure in question is adapted.

"And so a railroad company is only required to build platforms of sufficient dimensions to accommodate passengers getting on and off at their stations * * * (citing cases). It is manifest that this duty requires the railroad company to construct its platforms sufficiently near to the rails that it will afford to passengers, including the aged and infirm, a safe exit to and from the trains. And it is a matter of common knowledge that in performing this duty the platforms along the best regulated railroads are built so near the rails that the projections from the engines and the cars will overlap to some extent the edge of the platform. While the extreme edge of the platform is perfectly safe for passengers when occupying it for the purpose to which it is manifestly adapted, it is a matter of common knowledge that it is a place of danger when occupied while trains are passing or are likely to pass. It is the plain duty of the passenger when not getting on or off a train, but while he may be waiting upon the platform or en-

gaged in walking upon it, to keep such a distance from the edge of it next to the rail that he would be beyond the reach of the projections of ordinary trains. And the company is not liable for injury to a passenger who suffers himself to go beyond such a limit and is injured by a passing train."

Again at page 686:

"There is another reason why we think the question of negligent construction should not have been left to the jury, and that is the entire absence of proof that the construction was faulty as not being in conformity to the usual mode of construction adopted by well-regulated railroads or otherwise. Negligence must be proved."

The same rule has been enunciated in the cases of:

Halm v. Freeholders of Hudson, 78 N. J. L. 712, 715;

Mason v. Erie Railroad Co., 75 N. J. L. 521, 523;

Kingsley v. Delaware, Lackawanna & Western R. R. Co., 81 N. J. L. 536, 543;

Zebrowski v. Warner Sugar Refining Co., 83 N. J. L. 558, 563;

Raub v. Lehigh Valley R. R. Co., 87 N. J. L. 603, 606.

In *Halm v. Freeholders of Hudson*, *supra*, the plaintiff was riding in an automobile being operated by his son, which came in contact with a guard rail of a bridge over a body of water that crossed the highway. The guard rail did not extend across the entire road. The plaintiff claimed a right to recover because the guard rail should have extended across the entire road. Justice VOORHEES, speaking for this Court, refuting this contention said (p. 715):

"The ordinary rule must be applied to boards of freeholders regarding the building of bridges, that is, a breach of duty must be demonstrated by proof.

"No proof has been offered that the construction was different from ordinary construction, or that it was not sufficient for the purpose for which it was intended."

In *Kingsley v. Delaware, Lackawanna & Western R. R. Co.*, *supra*, the plaintiff endeavored to hold the defendant responsible for injuries she received while alighting from one of its trains at the Hoboken station, due to her stepping into the space between the step of the car from which she was alighting as a passenger, and the platform of the station. In this case the plaintiff's attorneys realizing that a standard must be proved, attempted to prove the same by construction experts, but failed. Justice MINTURN writing the opinion for this Court said (p. 545):

"In the final analysis, the testimony in the case at bar demonstrated simply a difference of construction between the defendant's car and platform and some of the cars and platforms of other companies; but, upon legal principle, until that difference can be transmuted into a legal generalization indicating a variation from the existence of a standard type, the departure from which by the defendant might be construed as imprudent and negligent, and by which a criterion of duty may be established, the damage incurred under circumstances such as are presented in the case at bar must be held to be *damnum sine injuria* and can impose no liability upon the defendant."

In *Zebrowski v. Warner Sugar Refining Co.*, *supra*, the plaintiff sought to recover for personal injuries while in the employ of the defendant, on the ground that it was the duty of the defendant

to adopt rules and a safe system of operation. The point was made that there was an entire absence of a system governing the work. There was proof in the case that other defendants operated their elevators by the use of a different system, but this Court, in sustaining judgment for the defendant, said (p. 562):

“Whether a particular rule should be enacted should not be left to the jury arbitrarily to find, but there should be proof that the practice of promulgating such rules in similar manufactories under similar conditions is general. In the absence of proof that it is a general usage of other employers, engaged in similar lines of business, to adopt rules, claimed to be necessary, and that they would be practicable and useful, a master will not be charged with negligence for failure to make them.

“What standard was proved by way of system to which it was incumbent upon the defendant to conform? It cannot be asserted that in a case like this, each jury may say what they deem to be a proper rule, and thus arbitrarily direct the conduct of each manufacturing plant under regulations not general, but special, in their application.”

In *Raub v. Lehigh Valley Railroad Co.*, *supra*, the plaintiff attempted to hold the defendant negligent because a low bridge over the defendant's tracks with which the plaintiff's intestate came in contact, failed to have any illumination upon it. Justice PARKER, writing the opinion for this Court, sustaining a directed verdict for the defendant said (p. 606):

“It may be that under the circumstances of the particular case the life of deceased might have been saved by the extra precaution of lighting the bridge from without; but the test in cases of this class is not whether a particu-

lar safeguard would have been better, but whether similar safeguards were practicable and useful and according to the ordinary usage of railroads. (Cites case.) There was, consequently, no question of negligence to be submitted to the jury."

The case of *Phillips v. Library Co.*, 55 N. J. L. 307, is perhaps the leading case in this state on the question of the duty owed by a defendant to one upon the lands of the defendant. After discussing the cases, DEPUE, J., in writing the opinion for this Court, states the Court's conclusions in the following language (p. 314):

"The utmost that can be done is to state in general terms the controlling principle that the liability of an owner or occupier for the condition of his premises arises where the plaintiff was induced to make the use of the premises, in the course of which he sustained the injury sued for, by express invitation, or by invitation to be implied from acts and conduct of the defendants. The gist of the liability consists in the fact that the person injured did not act merely on motives of his own, to which no act or sign of the owner or occupier contributed, but that he entered the premises because he was led by the acts or conduct of the owner or occupier to believe that the premises were intended to be used in the manner in which he used them, and that such use was not only acquiesced in, but was in accordance with the intention or design for which the way or place was adapted and prepared or allowed to be used. * * *

"Granting that it appears that a plaintiff's entry upon premises was by the invitation of the owner, a question may also arise, whether, at the time the injury was received, the plaintiff was in that part of the premises into which he was invited to enter. The owner's liability for the condition of the premises is only co-extensive with his invitation. A person on

private grounds by invitation of the owner, going of his own volition into other parts of the premises, exceeds the bounds of his invitation, and if he does not thereby become a trespasser, goes out of the way to create a risk for himself."

(P. 318) :

"The case turns upon the question whether the path taken by the plaintiff had, by its accustomed use, with the knowledge of the defendants, become a way which, by its use and appearance, indicated a way that persons passing from the front gate to the water closet were 'invited' to use."

In *Furey v. N. Y. C. & H. R. R. Co.*, 67 N. J. L. 270, the plaintiff, a painter, was on the defendant's pier by virtue of a contract between his employer and the defendant. The pier was enclosed by a shed, and on the pier, the defendant had railroad tracks. The plaintiff while attempting to pass between two cars on the tracks, was injured by being squeezed between them. His errand in the interior of the shed was to exchange his working clothes for street dress, and his purpose in passing between the cars was to reach the place where his street clothes were left. It was contended that the defendant owed him a duty of warning before the cars were moved. The case was submitted to the jury who returned a verdict in favor of the plaintiff. This Court, in reversing the judgment, pointed out that the case turned upon the question of invitation in its legal acceptance, and said (p. 274) :

"The general definition of invitation originally given by Chief Justice BIGELOW, in *Sweeny v. Old Colony and Newport Railroad Co.*, 10 Allen 368, and adopted by this court in the opinion delivered in *Phillips v. Library Co.*, *ubi supra*, is in these words :

“The gist of the liability consists in the fact that the person injured did not act merely for his own convenience and pleasure and from motives to which no act or sign of the owner or occupant contributed, but that he entered the premises because he was led to believe that they were intended to be used by visitors or passengers, and that such use was not only acquiesced in by the owner or person in possession and control of the premises, but that it was in accordance with the intention and design with which the way or place was adapted and prepared or allowed to be used.’ To which was added in original opinion the following:

“A mere passive acquiescence by an owner or occupier in a certain use of his land by others involves no liability; but if he directly or by implication induces persons to enter on and pass over his premises he thereby assumes an obligation that they are in a safe condition, suitable to such use, and for a breach of this obligation he is liable in damages to a person injured thereby.’

“The above definition is quoted with approval by Mr. Justice MAGIE in his opinion in *Turess v. Susquehanna and Western Railroad Co.*, 32 Vroom 314, with the additional remark that such liability ‘is imposed upon the owner or occupier of land only when he has done something which justifies one who enters upon the land and makes use of it, or something upon it, in believing that he intended such use to be made; and he who makes such use can claim the relation only when he is justified by the acts or conduct of the owner or occupier in believing that such use was intended.’ Implied invitation, therefore, is part of the law of negligence by which an obligation to use reasonable care arises from the conduct of the parties; its essence is that the defendant knew, or ought to have known, that something that he was doing or permitting to be done might give rise in an ordinarily discerning

mind to a natural belief that he intended that to be done which his conduct had led the plaintiff to believe that he intended. It is not enough that the user believed that the use was intended; he must bring his belief home to the owner by pointing to some act or conduct of his that afforded a reasonable basis for such a belief."

The case of *Dieckman, Adm'x v. D., L. & W. R. R. Co.*, 81 N. J. L. 460, was in writ of error by the plaintiff, from a judgment of nonsuit. The plaintiff's intestate, while crossing the defendant's tracks at Lyndhurst station, was killed. There were two tracks running upon an embankment and crossing Stuyvesant Avenue above grade. The station near Stuyvesant Avenue, is upon the north side of the two tracks. From Stuyvesant Avenue, a stairway led up to the railway station and platform on the top of the embankment. The platform extended from the station building out to the northbound railway track, and between the northbound track and the southbound track the space was filled with crushed stone so that persons could reach either track from the station. On the westerly side of the track there is no station building, no platform, and no facility for a person to reach a train on either track. On that side there was a fence along the top of the embankment, from the Stuyvesant Avenue bridge, a distance of one hundred feet, to where a mail catcher was placed. At the bottom of the embankment on the west of the railroad, there was a coal yard, through which a path ran diagonally up the embankment to the mail crane. Persons living to the west of the railroad often, instead of crossing under the railroad on Stuyvesant Avenue and climbing the stairway to the station, used this beaten path up the bank to the end of the fence and thence crossed

the railroad to the station. The decedent, on the day of his death, followed this course. It was contended for the plaintiff on the writ of error, that the jury might have drawn the conclusion that the deceased was crossing the tracks by the invitation of the defendant and while so doing was negligently struck by defendant's train. Justice REED, in writing the opinion for this Court, said (p. 462):

“There was no physical indication that the public was invited to cross the dangerous interval between the mail crane and the station.
* * * In the present case, we think there was nothing to indicate an invitation to the deceased to cross the tracks of the defendant.”

In *Devoe v. N. Y., O. & W. Ry. Co.*, 63 N. J. L. 276, the plaintiff intestate was killed while crossing the tracks of the company. The passenger station was on the south side of the railroad. On the northerly side was a road which adjoined the property of the railroad company. A fence divided the road from the railroad grounds, but for several years a stile built by private persons existed by which persons could get over the fence into the depot grounds and so reach the station. The stile was built without the consent of the railroad, but people crossed there all the time to go to the station to take trains and to pass to and from another road. The deceased was going to school and crossed the stile, and on her way across the defendant's tracks just before she reached the platform of the passenger station, she was struck by a train and killed. There was no visible or beaten track across the company's grounds. It was held that there was no invitation to use the company's grounds.

One of the most recent cases involving the legal questions herein discussed was decided by the Su-

preme Court of Pennsylvania in *Tiers v. Pennsylvania R. R. Co.*, 141 Atl. 487; 292 Pa. 522.

The defendant had provided a platform 550 feet in length, on each side of its double track roadbed. There were three crosswalks, one at each end and one north of the center. The tracks ran north and south. The station building, 100 feet in length, was on the west side, a shelter shed south of it for 47 feet. Steps led from the street to the east platform, about opposite the men's waiting room. South of the shelter shed was a taxi cab station. Plaintiff, a passenger, alighted from a coach, went to the rear of the train about 100 feet south of the steps leading from the street and attempted to cross over the tracks to the taxi station and was injured by falling, where the ballast had been removed from the track. Except at the three places where crosswalks were provided, the tracks in front of the station were only built in with ballast up to the top of the ties. There was testimony for the plaintiff that passengers at different times walked across the tracks at places other than those designated by the crosswalks, but there was no evidence of any defined path or way except at the designated crosswalks. The Trial Court submitted the question of the defendant's negligence to the jury, which rendered a verdict in favor of the plaintiff. On appeal the judgment was reversed, the Court holding that while a railroad company was bound to exercise reasonable care to provide a safe means for passengers to leave the station, a passenger was bound to use the way provided; and evidence of a general crossing at any place in the 550 feet was insufficient, as a path must have fixed, designated limits and a license could not be had to cross at will over any portion of the right of way.

Examining the facts in the case at bar in the light of the authorities cited, *supra*, it is plain that the physical situation existing at the defendant's station was such that anyone who entered there could not be misled as to the way to be used in crossing from the westbound station platform to the eastbound platform. That way was clearly two wooden pathways or platforms provided for that purpose, as appears from the photographs and the map to be found at the back of the state of case. These planked walks were substantial in every respect and ample to take care of the requirements of this station in the country.

The defendant did nothing which would justify any reasonable person in assuming that there was any implied invitation to cross the tracks by climbing over the steel rails, the ties supporting the rails or the ballast between the ties, consisting of uneven broken stone. The plaintiff, by walking a few feet in either direction to her left or to her right, could have with ease reached either of these planked walks and crossed in safety. This accident happened in broad daylight with no obstruction to the view. Certainly no reasonable person could conclude from the physical conditions that he or she was intended to walk or step between the rails upon the ties and uneven broken stone, or that the railroad consisting of ties, rails and ballast was a pathway. The plaintiff, instead of going by either one of the two walks, voluntarily proceeded between the two walks over the rails, ties and ballast and even then proceeded a distance of fifteen to twenty feet to a point between the rails of the second track before she fell. Assuming at first that she did not notice where she was walking, she had ample time to retrace her steps and go by one of the paths.

No invitation of the defendant, either express or implied, can be drawn from the facts of this case and when the plaintiff proceeded to walk over the railroad, she became at most a mere licensee there, and probably was a trespasser, for she had gone entirely beyond any invitation that could be said to have been extended to her to use the station premises. It would be just the same as though she had started to walk up the track longitudinally along the railroad.

It is also demonstrated by the cases referred to *supra*, that the contention made by counsel for the plaintiff before the Court below that the defendant was liable because it had failed to extend these two planked walks for the entire length of the station premises, cannot be sustained, for there was no proof offered by the plaintiff of any standard of construction requiring such construction, and in the absence of such proof, the defendant cannot be held on the theory of improper construction. Neither can the defendant be held on this theory because it failed to have three or four planked crossings instead of two. The degree of care which the defendant was required to take is that which is exhibited by other persons of ordinary prudence under like circumstances and so the adoption of a method of platform construction which agrees with that in general use by other well regulated railroad companies and which is approved by experience is a due performance of the duty which it owes to its passengers. There is nothing in the present case to support the conclusion that the defendant failed to observe that degree of care. There was no proof that it differed in its character from platforms in general use by the defendant and other railroad companies and no presumption of want of due care arises from the fact that the defendant

had only two platforms instead of three or four. No proof was offered that the construction was different from ordinary construction or that it was not sufficient for the purpose for which it was intended. No proof was offered that the planked walks provided were in any way defective or inadequate and of course the plaintiff, not having used either planked walk, could not contend that such a failure, if it did exist, was the proximate cause of her accident. In the absence of proof that these planked passageways were not sufficient or not in accordance with the ordinary standard under the circumstances of this case, it was error for the Trial Judge to permit the jury to substitute its judgment as to the proper method of construction for that in actual use. If in every case the whim of the jury as to proper construction is to override that of actual usage, then there would be no standard by which railroad companies could determine when they are exercising ordinary care and when they are not and the standards to be imposed would be as widely variant as the imagination of any twelve men sitting on a jury will permit. Negligence cannot be presumed; it must be proven. In the absence of evidence as to faulty construction or in the absence of evidence that the platforms were not in conformity with the usual mode of construction adopted by other well regulated railroads, there is no evidence of negligence.

For these reasons we respectfully submit that the Supreme Court did not err in reversing the judgment of the Hudson County Court of Common Pleas.

II.

The plaintiff, as a matter of law, was guilty of contributory negligence.

At the conclusion of the plaintiff's case (p. 78), and at the conclusion of the entire case (p. 143), counsel for the defendant moved for a nonsuit and a direction of a verdict, respectively, on the ground that the plaintiff was guilty of contributory negligence, which motion was denied and an exception noted to the Trial Court's ruling. Ground of appeal one, subdivision (c), preserves this exception for argument on this appeal (p. 2).

Without reiterating the facts in the case as to the conduct of the plaintiff before arriving on the station platform of the defendant, for these facts have been set out in detail in Point I of this brief, we will examine her conduct, starting at that point.

All of the witnesses in the case except Miss Bradley, heard the whistle signal of the approaching train, and Miss Bradley does not say it was not given, but is merely negative in that she did not recall having heard it (p. 30, lines 20-30). While standing about midway between the station building and the edge of the platform, which would be within eight or ten feet of the ground over which she walked, Miss Bradley testified she hesitated a second or two (p. 32, lines 1-10). She looked up and down the track (p. 31, lines 1-10), and looked down at the ground beyond the edge of the platform over which she later walked (p. 36, lines 20-40). She observed that in her path, the iron rails of the tracks were exposed, the ties on which they rested were exposed and spaced some distance apart. Under and between the ties, there was rock and gravel and dirt. She observed that it

was necessary for her to step over the iron rails and walk between the ties on the rock and dirt (p. 37, line 30, to p. 38, line 40). It did not appear to be even (p. 39, lines 10-20). She made no other observation of the ground over which she had to walk, from that time until the time she fell (p. 40, lines 1-20). After she boarded the train, she observed from the window of the car in which she was seated, that there were places where the broken stone and gravel were higher in some places than in others (p. 43, lines 20-40; p. 44, lines 10-20; p. 45, lines 1-10).

As Justice MINTURN, in speaking for this Court, in the case of *Kingsley v. D. L. & W. R. R. Co.*, 81 N. J. L. 536, 541, said:

“It may be said in passing that if this space presented a condition of danger which was obvious to the defendant to a degree requiring the exercise of care in its use and to superinduce a duty of care and foresight, it was equally obvious to the plaintiff, and, under such conditions, it has been held by this court that exits for common use for foot passengers are places of obvious danger, and that passing over them suggests and requires a prudent watchfulness by the user against the danger attendant upon their use.”

A case directly in point is *Rooney v. Siletti*, 96 N. J. L. 312. Action was there brought to recover for personal injuries sustained through the plaintiff falling down the cellar steps of a building in which she occupied an apartment rented from the defendant. The cellar was subject to the common use of the occupants of the apartment for the purpose of storing coal and was the only means of access that the plaintiff had to her coal storage. On the occasion in question, she had to go to the cellar to get coal. A snow-storm had occurred and the steps were covered with frozen snow and ice.

This condition was observed by her before she undertook her descent. Chief Justice GUMMERE, in writing the opinion for the Supreme Court, after pointing out that there was evidence of negligence on the part of the landlord, held that a nonsuit should have been granted on the ground of contributory negligence in the following (p. 313):

“But, assuming the negligence of the landlord, still no right of recovery against her was established, for Mrs. Rooney, having full knowledge of the danger which she would incur in attempting to go down these stairs, assumed the risk of an accident which might result from their use. This is the doctrine declared by this court in the case of *Vorrath v. Burke*, 63 N. J. L. 188, where the circumstances were quite similar to those in the case now before us. There the plaintiff attempted to go down a cellar stairway, the top of which was covered by a door. This door had attached to it a counter-balancing weight so as to make its raising and lowering easy, but the weight had become detached from the door. The plaintiff was fully aware of these facts, but, nevertheless, attempted to go down the stairs, holding the door up while she did so. Her strength was not equal to the burden she put upon it; the door fell and she was injured. It was considered that, as she was fully aware of the condition of the door—that is, that the weight was detached from it—and, notwithstanding, attempted to go down the stairs, she deliberately assumed what risk there was in descending, and that consequently there could be no recovery against the landlord. This case is cited with approval by the Court of Errors and Appeals in *Saunders v. Smith Realty Co.*, 84 *id.* 276.

“The refusal of the motion to nonsuit on the ground of assumption of risk by the female plaintiff was in disregard of these decisions. The judgment appealed from, therefore, must be reversed and the case sent back to the Common Pleas to be retried.”

In *Saunders v. Smith Realty Co.*, 84 N. J. L. 278, this Court held that a verdict should have been directed where the plaintiff was proceeding through the defendant's cellar where lights had been provided, but which he did not use. The Court said (p. 280):

"He admitted that he was perfectly familiar with the conditions of the cellar having learned them while the lights were burning, this being the case on many of his trips to the cellar. Accepting as proved the fact that the passageway from the front to the rear cellar was dangerous to one passing through it in the dark, the danger was as obvious to the plaintiff as to the defendant. He was *sui juris*, and when he undertook to use the passageway with full knowledge of the danger he ran in doing so, he assumed the risk of such injury as might result to him from such use, and cannot now charge it upon the defendant. In addition, it may be said that his conduct in attempting to pass along this dangerous way in total darkness, was culpably negligent. The evidence discloses no necessity for his doing so. If he was unable to turn on the lights himself, he could either have had this done for him by the janitor or someone else, or in the event of his being unable to do this, could have left the emptying of his rubbish until a more seasonable time."

Again in the case of *Mullen v. Rainear*, 45 N. J. L. 520, it appeared that the plaintiff and his wife were carrying a stove along a balcony which he had a right to use, when the balcony broke, resulting in injuries to himself. The evidence showed that the plaintiff and his wife knew of the weak condition of the balcony, but they thought it was sufficiently safe for them to carry the stove over it. The Supreme Court said (p. 522):

"The facts here are such that if they make out negligence on the part of the plaintiff and

his wife, that negligence was, without doubt, contributory to the injury and its proximate cause. If they crossed the balcony, knowing its weak condition, in bearing a weight likely to break it down, they could not hold the defendant responsible for the hurts so sustained, under any case which has been cited."

There is no disputed fact in the case at bar as to the condition of the railroad right of way over which the plaintiff proceeded to walk and indeed, her testimony as to its condition is precisely that which is shown by the photographs annexed to the state of case. The danger of falling or tripping over the rails, ties or stone ballast was just as obvious to her when she looked at it from the westbound station platform on the north side of the railroad as it was when she looked at it from the window of the coach after the accident happened. She cannot be heard to say that she observed the condition and yet did not see it, for she described in detail her observation of the rails, ties and stone ballast before she started to cross, and she further testified to the unevenness of the stone ballast which of course is one of its characteristics. It is not intended to be level or smooth. It is the ordinary railroad right of way to be observed on any railroad. There was no necessity for haste according to her own testimony. On her right hand as well as on her left hand within a few feet of her was a planked walk twelve to fourteen feet wide in perfectly good condition, level, smooth and intended for use by passengers to cross to the eastbound platform, which she could have used in perfect safety, but which she made no attempt to use, although in plain sight and within a few feet of her. The only observation she made was from the station platform on the north side and that disclosed the very condition which she

complains caused her to fall, namely, the uneven ballast between the rails. It seems clear that her failure, first, to take the planked walk, and second, to entirely omit to look down on the uneven ballast as she was passing over it, to safeguard her steps, is contributory negligence as a matter of law. To observe before starting to cross over the railroad that the direction she intended to take would lead her over exposed rails, ties and uneven stone ballast, such observation being made in broad daylight by a person who had no reason for haste and who was not hurrying, and then to entirely fail to make any further observation while in the act of crossing in order to safeguard her steps, is clearly contributory negligence. To proceed in that direction when within a few feet there are two perfectly safe planked walks either of which could be taken without a moment's delay and both are plainly visible, is not only contributory negligence, but absolute foolhardiness. To attempt to collect damages for such an accident is nothing less than sheer nerve, and we respectfully submit that the reversal by the Supreme Court of the judgment of the Court of Common Pleas is sustainable on this ground as well as on the ground upon which it rested.

(5)

Comments on Appellant's Brief.

In the brief of the appellant it is stated that the photographs offered in evidence were deceptive and did not show the true condition that existed. Counsel apparently overlooks the fact that these photographs are his exhibits offered in evidence and marked P-1 and P-2 (p. 46, line 40; p. 47, line 10). We concede that the witness Grady

called by the plaintiff, did say the photographs did not show the unevenness or holes in the ballast which form the roadbed on which the ties and rails rested, but there could be no question about the fact that the photographs, with the exception of this, indicated the physical conditions that existed including the location of the various platforms, buildings and crosswalks (p. 55, lines 30-40). In the appellant's brief it is stated as a fact that the evidence showed the planked walks were not visible. This is a misstatement of fact because the undisputed evidence in the case and the photographs indicate that the one planked walk was 12 feet wide and the other 14 feet wide. They were both 20 feet long, extending from the stone platform adjacent to the station building, across the westbound track, the intervening space between the westbound and the eastbound track, and across the eastbound track to the eastbound platform (p. 100, line 20, to p. 101, line 15). The planking was four inches thick and eight inches wide (p. 101, lines 30-40). These platforms were level with the top of the rails (p. 121, lines 30-40). This made the platforms higher than the rest of the roadbed in front of the station, because the evidence showed that the tracks were the ordinary steel rail about six inches high, which rested upon wooden ties some eight inches high and the ties rested upon stone ballast (p. 105, lines 10-20). The wooden platforms were, therefore, at least eight or ten inches higher than the stone ballast over which the plaintiff proceeded to walk. While it is true the witness Grady did testify that the planking of the walks had some sand and gravel upon them, that condition had nothing to do with the accident and was therefore immaterial because the plaintiff was not attempting to use the walk at the time of the accident. It is stated in the

appellant's brief that the plaintiff fell and was unable to get up and get out of the way of the train without being struck by it. This is not an accurate statement of the facts, because the plaintiff herself testified that she arose after falling and got off the tracks, no part of the train having come in contact with her.

Counsel for the plaintiff attempts to persuade this Court that in the trial below liability was not predicated upon the failure of the defendant to have a platform located in front of its station doorway. An examination of the testimony given by the plaintiff's witnesses on direct and of the cross examination of the defendant's witnesses, will indicate clearly that the line pursued by counsel throughout the case was to show that there was no platform in front of the door of the waiting room of the station. The witness Robinson was asked:

"Q. What I am trying to find out; if a man walks out of a center door, and gets to the edge of the platform of the station, how far is he from the planking? A. 37 feet.

"Q. He has to walk 37 feet one way or 47 feet to the other, to get to the planking? A. Yes, sir.

"Q. How long has that condition been in existence, do you know? A. Well, I can say for 4 or 5 years at least" (p. 102, line 40, to p. 103, line 10).

The witness Grady was asked:

"Q. Mr. Broadhurst mentioned the platforms that were, as you describe, 18 or 28 yards from the center door? A. About 18 yards from the center door, to the left and to the right.

"Q. That is in all about 72 feet? A. About 50 or 47 feet" (p. 65, lines 30-40).

The Trial Judge in his charge to the jury, said:

“The testimony indicates that neither one of these platforms was directly in front of the door. As the Court recalls the testimony, each one of the platforms was at least 30 feet from the door or perhaps one of the platforms was more than that, but the Court is giving you the best of its version, not saying that it was at least 30 feet from the side of the door that each of these platforms was located (p. 145, lines 20 to 30). * * * In deciding whether or not there was any negligence on the part of the defendant you will decide and determine whether under all of the circumstances of this case the defendant operated and maintained its station at Lackawaxen with that degree of care which the ordinarily prudent person or railroad would have used in maintaining and operating that station” (p. 146, lines 30-40).

There are only two cases cited in the brief of the appellant which are not covered in detail in the respondent's brief, namely, *Crowley v. Public Service Ry. Co.*, 2 N. J. Misc. Rep. 201, and *Spofford v. Central R. R. Co.*, 89 N. J. L. 273.

In the first of the two cited cases, it appeared that the defendant's servants or agents were repairing the pavement of a street adjacent to its trolley track. In performing this work the defendant's servants left a number of loose cobble stones which were either wholly or partly covered with sand. The plaintiff signalled defendant's car to stop and the motorman brought it to a stop at such a point that the plaintiff had to walk over these loose cobble stones. While so engaged the plaintiff stepped on one of the stones which turned and caused him to fall. The Supreme Court in its *per curiam* opinion pointed out:

“Both of these actions (motion to nonsuit and direct a verdict) were properly refused,

since there was evidence that the presence of the loose cobble stones covered with sand was the work of the defendant's employees, who were repairing the track at that point and who thus created the danger which caused the injury (p. 202). * * * There was also evidence that the plaintiff signalled the car to stop at the corner, and that the car stopped there apparently for the purpose of taking the plaintiff on at that point, which was an implied invitation to him to board the car; and there was no proof afforded by the defendant that it did not stop for that purpose" (p. 203).

In the second of the above cited cases, the plaintiff's intestate, a passenger on the defendant's railroad, was permitted to alight from one of its trains at a station in Bayonne at about 11 o'clock at night. The defendant's train crew allowed him to alight on the wrong side of the train and before he could get to the station platform, an express train which passed at the time or very shortly after his train left, struck him, causing his death. At the time of the accident he was on the crosswalk provided by the defendant for the purpose of going from one side of the tracks to the other. It appeared that the station was not well lighted and that the night was very dark. The plaintiff's intestate was a stranger at the place. The servants or agents of the defendant's train knew that the express train was due to pass there within a very few minutes. Justice TRENCHARD who wrote the opinion for this Court in that case (and who also wrote the opinion for the Supreme Court in the case at bar), said (p. 276):

"It was a permissible assumption that the defendant company knew or ought to have known, that a passenger upon the local was likely to get off on the eastside of the train in the absence of notice to the contrary. The

company knew that the express train was due to pass on the adjacent parallel track on the eastside at the time or shortly after the local discharged its passenger."

We cannot see how either of these cases can be considered controlling in the case at bar. In the one there was active negligence on the part of the servants of the defendant who laid the cobble stones and who operated the trolley car. In the other there was active negligence on the part of the servants in permitting the plaintiff's intestate to alight on the side where they knew an express train was due to pass them at that station. In the case at bar, however, there was absolutely no active negligence on the part of the defendant or its servants. The defendant had provided two safe, ample and convenient planked walks across its tracks from its main station platform to the platform on the far side of its tracks, and the plaintiff in broad daylight and with no obstruction to her vision, failed to use either of them, but voluntarily proceeded across the ballast, ties and rails in front of the station door, where no passage way was provided either by recognition, procurement or assent of the defendant, and at a point which could not have appeared to persons of ordinary understanding and discernment to be such a way.

III.

CONCLUSION.

For these reasons we respectfully submit that the judgment of the Supreme Court should be affirmed.

March Term, 1929.

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Of Counsel.

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- Map of -

LACKAWAXEN STATION

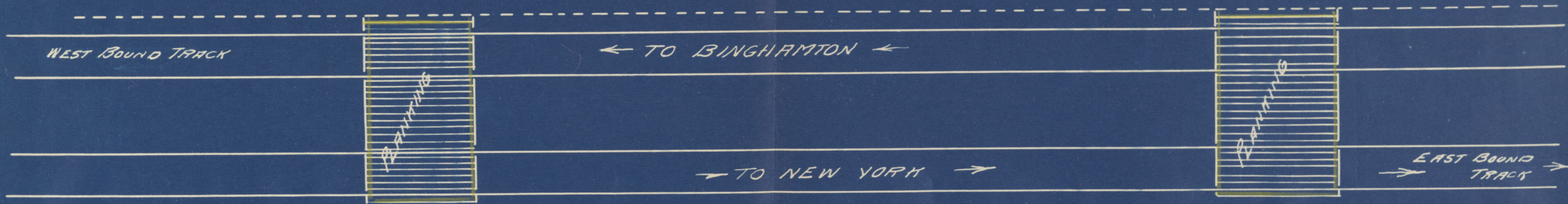
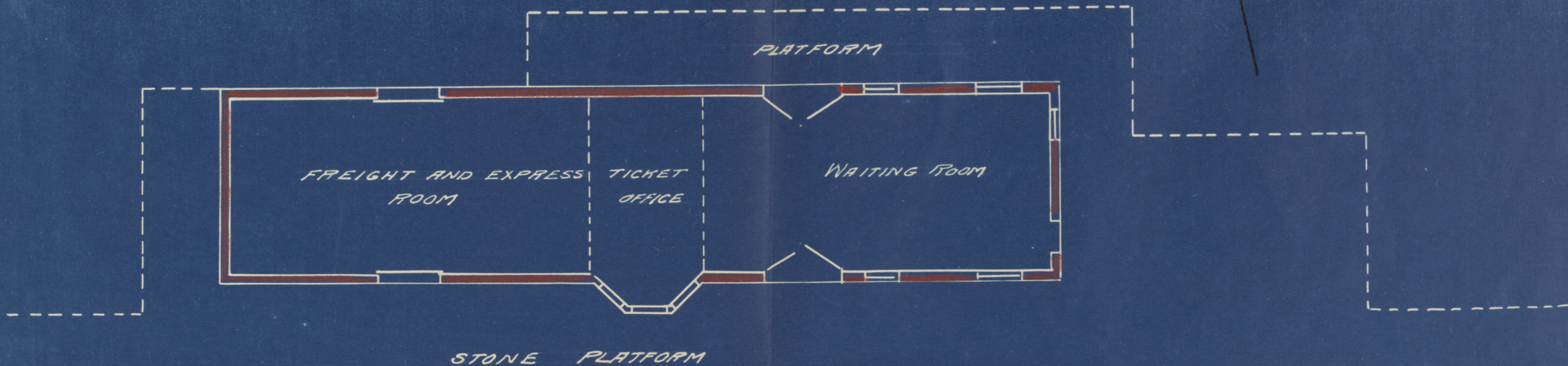
- Erie RR -

Sept. 18. 25

1" = 10'

L. H. Robinson, C.E.
Middletown, N.Y.

HIGHWAY



FINE STONE AND
CINDER PLATFORM

← TO SCRANTON ←



Camera located between rails of eastbound main track
opposite west end of station, looking east.



VOL 1110

Camera located at east end of station, between east
and westbound main tracks, looking west.

Vol. 1111

Lydia M Bradley

&

Erie Railroad Co.

