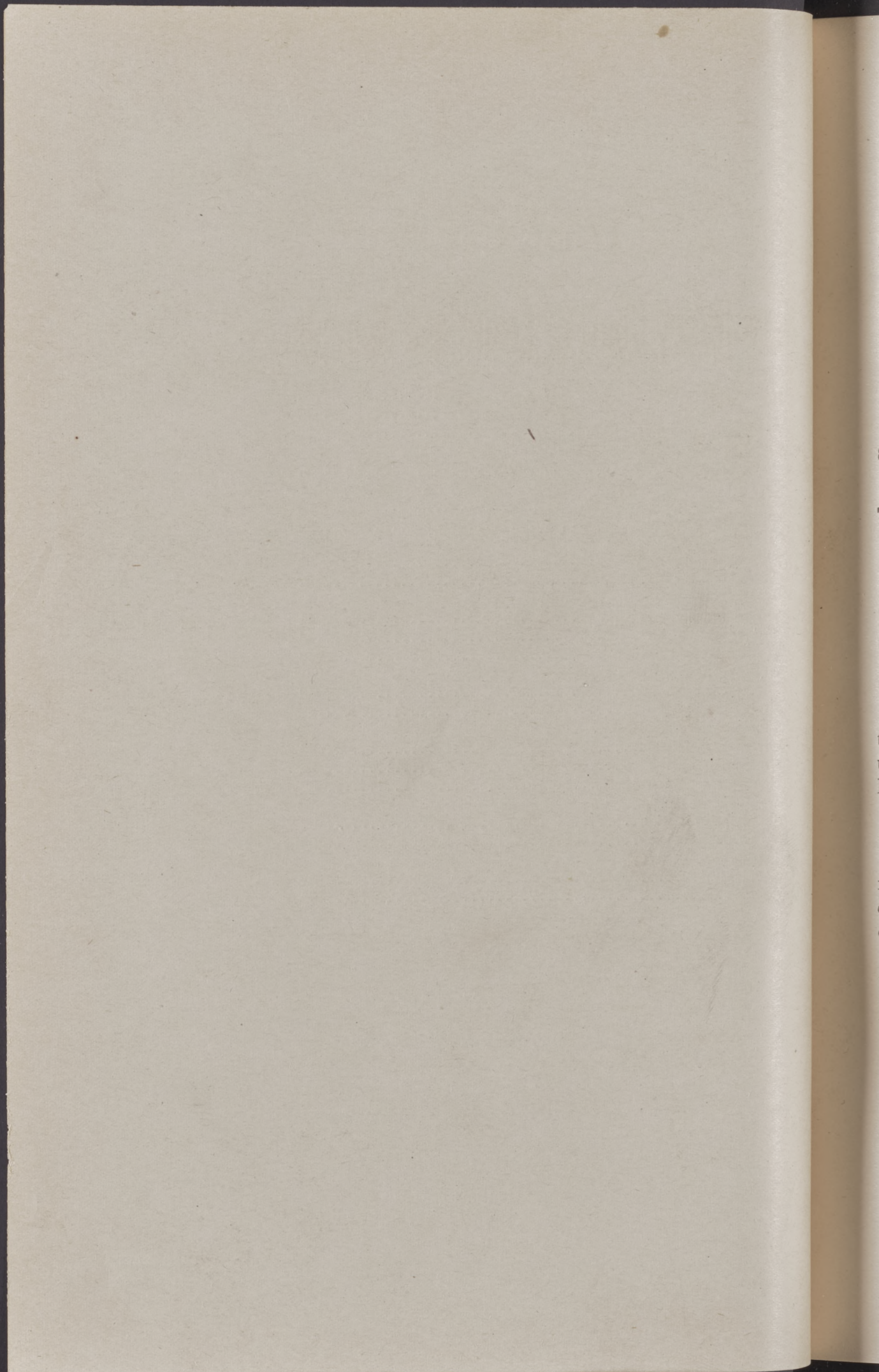


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her fare. She signaled to the conductor to stop said car at the corner of North Clinton and Perrine avenues, and was waiting to alight from the car when the motorman negligently stopped the car with a sudden jolt.

4. Because of said negligence plaintiff was thrown from said car, and through the front door thereof and upon the street, whereby her left hip was dislocated and other severe injuries were inflicted upon her.

5. Plaintiff has been obliged to spend the sum of \$300  
10 for hospital and physicians' bills in having her said injuries treated.

Plaintiff demands \$15,000 damages.

JAMES J. McGOOGAN,

*Attorney for Plaintiff.*

(Filed March 13th, 1916.)

Defendant, a corporation of the State of New Jersey, having its principal place of business in the city of Trenton, in said state, answering the complaint, says:

1. It admits paragraph one of said complaint.
- 20 2. It denies paragraph two of said complaint.
3. It denies paragraph three of said complaint.
4. It denies paragraph four of said complaint.
5. It has no knowledge of paragraph five, so neither admits or denies the same.

#### DEFENSES.

1. That neither the defendant nor its servants were guilty of any negligence in the operation of defendant's cars at the time and upon the occasion referred to in the complaint of said plaintiff.
- 30 2. That if the plaintiff suffered any injury at the time and upon the occasion set forth in her said complaint, said injury was caused by the negligence of parties other than the servants of the defendant company or of said company.

3. That if the plaintiff sustained any injury at the time and upon the occasion set forth in her complaint, said injury was caused by her own negligence.

GEO. W. MACPHERSON,  
*Attorney of Defendant.*

(Filed March 14th, 1916.)

This case was tried before Judge Frank T. Lloyd, with a jury at the Mercer Circuit, on May 10th, 1916.

The jury rendered a general verdict against the defendant and in favor of the plaintiff for six hundred 10 dollars (\$600).

	Whereupon it is adjudged	
	that the plaintiff recover of	
	the defendant the sum of six	
Damages, \$600.00	hundred dollars and her costs,	
Costs, 49.04	which are taxed at the sum of	
	forty-nine dollars and four	
	cents, making in the whole the	
\$649.04	sum of six hundred and forty-	
	nine dollars and four cents. 20	

Judgment entered May 12th, 1916.

WM. S. GUMMERE, *C. J.*

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

In testimony whereof I have set my hand and the seal of said court, at Trenton, this  
[L. S.] eighteenth day of August, A. D. nineteen 30  
hundred and sixteen.

WM. C. GEBHARDT,  
*Clerk.*

### Notice of Appeal.

To James J. McGoogan, Attorney of Plaintiff:

Take notice that the defendant appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause, upon the following grounds:

1. That the trial court refused to non-suit plaintiff at the close of plaintiff's case on the ground that no negligence had been shown by the servants of the defendant company.
- 10 2. That the trial court refused to direct a verdict in favor of the defendant at the conclusion of the taking of testimony in the cause.
3. That the verdict of the jury was contrary to and against the clear weight of the evidence.

GEO. W. MACPHERSON,  
*Attorney of Defendant.*

Service of the within notice is hereby acknowledged this 17th day of May, A. D. 1916.

20 JAMES J. MCGOOGAN,  
*Atty. of Pltff.*

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### Testimony.

Transcript of shorthand notes of testimony, &c., taken in the above-stated matter before Honorable Frank T. Lloyd, Circuit Court Judge, and a jury at the court house, Trenton, N. J., on Wednesday, May 10th, 1916.

Appearances—

*James J. McGoogan, Esq.*, for the plaintiff.

*George W. Macpherson, Esq.*, for the defendant.

(Jury called and sworn.)

(Counsel opened.)

*Sarah Carton*, the plaintiff, called:

The Court—Mr. McGoogan, you will have to go further than your opening to make out a case.

Mr. McGoogan—I said that she was preparing to alight, standing in the vestibule, and the car stopped with a jolt, gave a jolt or lurch, and threw her out, or precipitated her into the street.

The Court—That does not make a liability. 10

Mr. McGoogan—Under the *Overton Case*?

The Court—I do not want anything said that may suggest anything to the witness of course, but that alone does not make a liability. Are you prepared to go further? I know what you refer to and I suppose you have it in mind, but you did not open it; that is all. If you intend to go further and show the nature of the jolt—

Mr. McGoogan—Yes, I think so.

The Court—All right. Let her be sworn. (The witness was then sworn.) 20

Direct examination by Mr. McGoogan.

Q. Miss Carton, are you the plaintiff in this action? You brought this suit?

A. Yes, sir.

Q. Where do you live?

A. I have been working at No. 108—Dr. Dixon's, West State street, and left to go out to see my brother.

Q. On what day?

A. Friday the 10th. 30

Q. Of what?

A. December.

Q. Last year?

A. Last year, December.

Q. You say you have been working at Dr. Dixon's on West State street?

A. Yes, sir.

Q. What is Dr. Dixon, a physician or minister?

A. He is one of the trustees of the First Presbyterian Church.

Q. How long have you been working for Dr. Dixon?

A. Over five years, going on six.

Q. You say you left his home?

A. I left his home to go and see my brother at St. Francis Hospital.

10 Q. What time?

A. It was a little after two when I left Dr. Dixon's.

Q. Then what time did you go out—

A. It was five o'clock when I got to Clinton and Perrine Avenue.

Q. Were you on a trolley car then?

A. Yes, sir.

Q. Of the trolley company using the tracks out there?

A. Yes. I got a transfer from the West State street car when I got on the car from the hospital to get to  
20 Broad street, and I got off to Broad street and then I walked—

Q. What is that?

By the Court.

Q. After you got on the trolley, will you tell us what happened after that?

A. After I got up I got on the second step—

By Mr. McGoogan.

Q. Wait. When you got to the stone bridge on Clinton  
30 Perrine avenue, what did you do? Did you want to get off at  
Perrine avenue?

A. Yes, and the conductor called out Perrine avenue, and I wanted to get off at Perrine avenue and I said "Yes."

Q. What did the car do?

A. The car stopped all right and as I got to the bottom step the car gave a jerk.

Q. How is that?

A. As I got to the bottom step, about to step off, the

car gave a jerk and threw me off; I hardly knew any more then.

Q. It threw you where, Miss Carton?

A. On my side.

Q. On the street?

A. Yes.

Q. Did you get up right away?

A. Yes, sir; I screamed two or three times; I heard the door shut and I thought the car was about to go over me; I did not know how near I was to the car because 10 I was lying against the car.

Q. You were against the car?

A. I was not as near as I thought I was; that was the reason I screamed.

Q. What happened to you after you were thrown out of the car?

A. Well, he picked me up and asked me where I wanted to go, and I could not walk when I tried to walk; I could not walk without help.

Q. Were you taken to the hospital? 20

A. Yes, sir; they took me into a grocery store.

Q. Then they took you to the hospital?

A. Yes, sir.

Q. How long did you stay there?

A. Thirteen weeks.

Q. What was the nature of the injury?

A. I broke my hip bone.

Q. Which one?

A. The left one.

Q. When the conductor called out Perrine avenue did 30 you get up from your seat?

A. Yes, I got up but I did not get off until the car stopped.

Q. Did you see anybody else in the car at the time?

A. No; no one was in the car but myself from when I left Broad and Front.

Q. Did you have anything in either hand when you got off the car?

A. I had a few crackers for the children.

Q. In which hand?

A. In the left hand, because I had hold of the railing with the other, and then I took them in the other hand, in the left hand, as I was about to step off, and I got pitched off.

Q. Where were you standing on the car when you fell out, when you were thrown out?

A. On the bottom step.

Q. Had the car come to a full stop then?

10 A. Yes; they gave a jerk; it was the jerk that knocked me off, and I thought the car was about to start on me then, and as I fell I heard the door shut and I screamed, I don't know how many times.

Q. What kind of a door was it that you went out of?

A. I couldn't exactly tell about that.

Q. What kind of a car was it, a pay-as-you-enter car?

A. One of those long cars.

Q. How did you get out? Did the motorman open the door?

20 A. The motorman opened the door.

Q. Did the car stop right at the corner of Perrine and Clinton, or go any farther?

A. It went a little ways.

Q. Did it go beyond the corner before it stopped?

A. No, just a little ways.

Q. How far?

A. I couldn't exactly tell, because it stopped pretty near in front of the little grocery store there.

Q. Where was the front door of the car when it  
30 stopped, with reference to the grocery store?

A. The back door was nearer the grocery store than the front.

Q. Where was the front of the car then; in what part of Perrine avenue was the front of the car?

A. I could not tell you how far it was, but I know the back door was nearer in front, because I had a little ways to walk, and I couldn't walk, of course; of course I tried, and the conductor said he would take me wherever I wanted to go.

Q. Is there a grade there at all, or a hill leading from the stone bridge down to Perrine avenue?

A. Yes.

Q. How much of a hill, do you know?

A. I could not exactly say.

Q. How many houses are there on the hill there on the block from the stone bridge down to Perrine avenue; do you know how many there are?

A. I couldn't say exactly; three or four.

Q. What did you pay to the hospital, Miss Carton, 10 while you were out there thirteen weeks?

A. Seven dollars a week.

Q. Seven dollars a week?

A. Yes, sir; I did not pay it all yet.

Q. How much do you owe?

A. I owe about forty dollars yet; I paid fifty dollars and I owe about forty dollars yet.

Q. How about doctors' bills or medicines. Have you any bills for that?

A. I didn't ask about that yet.

20

Q. You didn't ask the doctor yet for what?

A. About the bill I have to pay.

Q. Who attended you in St. Francis Hospital?

A. Dr. Sommers.

Q. Where are you living now?

A. I am living with my brother on Assanpink street.

Q. You have been there since you left the hospital?

A. Yes, sir; and paying them.

Q. How much are you paying your brother?

A. Five dollars a week.

30

Q. Five dollars a week?

A. Yes, sir; because I have not been able to go up or down stairs; she has been waiting on me.

Q. Have you worked any since then at all?

A. No, sir.

Q. Did you say you have not been able to go up or down stairs since the accident?

A. No, sir; I said I have to be helped up, one on each side.

Q. Have you any pain now?

A. Yes, sir.

Q. In your hip?

A. Well, not so much to-day, but I do have pain; I suffer a great deal of pain right along.

Mr. Macpherson—I object to this testimony as it is not embraced within the action for which suit was brought.

The Court—Well, Mr. McGoogan, what have you to  
10 say? I have not seen the complaint.

Mr. McGoogan—If necessary I ask leave to amend so as to include damages for pain and suffering.

The Court—Her pain and suffering would be entirely incident to her, but that they would be permanent would be another matter.

Mr. McGoogan—As to whether or not the injury was——

The Court—I say the pain incident to it. I think that would be included in any general averment, but this  
20 is five months afterward, which would indicate some degree of permanency.

Mr. McGoogan—Then I ask leave to amend by inserting a paragraph that the suit is brought for a permanent injury.

Mr. Macpherson—I object to this. I have not anticipated there is any permanent injury, and have made no preparation along that line, and I have not had the plaintiff examined for any such purpose.

The Court—How much do you contend for in that  
30 direction, Mr. McGoogan? Generally these things heal up and that is the end of them except for a shortened leg.

Mr. McGoogan—Except on the decreased efficiency, amounting to twenty per cent., on the ability to work.

The Court—I think the other side was entitled to be apprised of that if you intend to rely upon it.

Mr. McGoogan—I certainly would like to put in there that her efficiency has been decreased to that extent. Of course, the pleadings aver that her hip was dislocated and she suffered other injuries.

The Court—They do aver that the hip was dislocated?

Mr. McGoogan—Oh, yes.

The Court—Let me see the complaint.

(Papers handed to the court.)

The Court (after examining papers)—This lady got wages too, did she?

Mr. McGoogan—Oh, yes; five dollars a week.

The Court—You see you have not alleged that either. You have not alleged any loss there either.

Mr. McGoogan—Well, I should like to have that in. 10

The Court—I think it is very meagre. You merely say “And other severe injuries” without indicating what they are.

Mr. McGoogan—It puts the defendant on notice that when the hip was dislocated that it might be permanent.

Mr. Macpherson—Oh, no. We cannot meet anything that is not in there. We cannot anticipate what you might anticipate, or imagine. We are called upon to meet a particular thing.

The Court—Well, judge, can't you get ready to meet 20 it even if I allow the amendment?

Mr. Macpherson—I don't know as I can.

The Court—Oh, I think one who is as astute as you are can meet anything like that.

Mr. Macpherson—I should want a physician of our own choice to examine her.

The Court—I will give you all the opportunity to examine her you want.

Mr. McGoogan—She can be examined during recess.

Mr. Macpherson—I don't know whether she can be 30 examined during recess.

The Court—I will give you all the chance you want after recess. It is only a question of a physician's examination, I suppose.

Mr. Macpherson—It may mean more. It may mean I should take up some other lines, which I have not been notified, or at least the suggestion has not been made that I should.

The Court—Well, I know, but the future is purely a

matter of opinion, and I do not see how there could be any other lines except to have medical men to say whether or not she is going to suffer in the future, and I will give you every chance you need to get that.

Mr. Macpherson—I don't know whether we can get a physician or not. I doubt it very much at this time.

The Court—You can finish the examination, and, if necessary, I will hold the case in the list.

10 Mr. McGoogan—I do not want the court to understand we are going to claim that she will suffer after she recovers, in six or eight months.

The Court—You have left out other things, Mr. McGoogan.

Mr. McGoogan—We want damages for her decreased efficiency.

The Court—That is not in here, nor is the loss of her ability to earn money. You have not put that in at all. I will allow the amendments and you can go on with the examination until half-past twelve, and you will find  
20 out in the meantime, judge, whether you can get ready this afternoon.

Mr. Macpherson—I am in the next case.

The Court—You have very able assistants, too.

Mr. Macpherson—I have no assistants.

The Court—You have not?

Mr. Macpherson—No, sir. I have no legal assistants, I mean.

The Court—Whatever time you need—you can go on with the next case until this can be properly prepared.

30 Mr. Macpherson—I ask for an exception to your Honor's ruling.

The Court—Note an exception.

You want these amendments made and the court allows them and they can be drawn later on, but, in substance, I understand they allege permanent disability and consequent loss of earning capacity.

Mr. McGoogan—Yes, and that she was earning at the time five dollars a week as a servant.

Mr. Macpherson—Permanent disability in what?

Mr. McGoogan—In the use of the limb in walking about—in working—to the extent of fifteen or twenty per cent.

(Previous testimony read as follows: “Q. Have you any pain now? A. Yes, sir. Q. In your hip? A. Well, not so much to-day, but I do have pain. I suffer a great deal of pain right along.”)

Q. Well, at any particular time, did you suffer pain?

A. In wet weather I suffer more than when it is cold.

Q. When you were taken to the hospital who went with you, do you remember? Who went with you in the ambulance to the hospital?

A. The policeman on the back.

Q. The policeman on the back?

A. Yes; there were two of them; I thought they were both policemen, but I didn't know.

Q. When they took you to the hospital where did they put you?

A. On the table.

Q. On the table?

The Court—I suppose the doctor can tell us very much more of what happened there.

Q. There was no operation, was there?

A. No, sir.

Mr. Macpherson—Now, what do I understand will be the—

The Court—What do you want? I have allowed the amendments and I have noted an exception to it.

Mr. Macpherson—I want time to secure a physician and an examination to this woman with reference to the permanency of her injury.

The Court—How long will that take?

Mr. Macpherson—I don't know. I haven't any idea. I don't know where our physician is and I don't know whether I can reach him.

The Court—You can tell when you come back at half-past one what the situation is in that regard.

Mr. Macpherson—I can tell when I come back what position I am in.

The Court—Mr. McGoogan, I think this case ought to be tried next fall.

Mr. McGoogan—On account of the amendment, do you mean?

The Court—No; on account of the recent injury. It is so recent that our hindsight would be a whole lot better than anticipating it now. This lady is not otherwise afflicted, is she?

Q. You are well otherwise, except for your knee?

10 The Witness—Yes, sir.

The Court—You have no other illness. Your lungs are all right?

The Witness—Yes. I worried a good deal since I got there, because I had to keep still and could not work.

The Court—Well, it is desirable to have it over with as soon as you can get it, but you are laying claim to more or less permanent disability, and if it goes beyond the mere physical defects of a shortened leg, and you intend to show she will have pain and all that sort of  
20 thing for the future, we will know a good deal better next fall. On the other hand, if you are going to limit it to the actual impairment of her occupation to such a degree as the shortened leg will imply, I see no reason for postponing it.

Mr. McGoogan—My physician tells me that after six or nine months' period of mending there will be no pain, except the decreased deficiency.

The Court—All right then, judge, can you go on without the doctor this afternoon?

30 Mr. Macpherson—Well, I don't know.

The Court—All right. If you don't go on with this we will go on with the next case.

(At this point a recess was taken until 1:30 o'clock in the afternoon.)

Mr. Macpherson—We have a physician who will be here at half-past one, and, of course, he did not know whether there was any means here to examine this woman, and he said it would be much better if she could

come to his office, which is not very far from here. So I have done the best I could.

Mr. McGoogan—Shall we go on with the plaintiff?

The Court—Yes, you can get through with her and then she can be examined either here or—is there a car here that she can be taken to his residence in? Is he here in a car?

Mr. Macpherson—I don't know. I presume he will be here at half-past one. That is the information he gave me.

10

*Sarah Carton*, the plaintiff, resumes the stand.

The Court—Did she testify as to what wages she was making?

Mr. McGoogan—Yes, \$5 a week with Doctor Dixon.

Direct examination continued by Mr. McGoogan.

Q. Did I ask you what you were making at Dr. Dixon's home—the wages?

A. Yes, sir.

Q. How much were you making there?

A. Five dollars.

20

Q. A week?

A. Yes, sir.

Q. And what were your duties?

A. Cooking, and washing and ironing and cleaning up.

The Court—Doing housework, were you?

The Witness—Yes, my sister and I was together.

Cross-examination by Mr. Macpherson.

Q. Were you the only servant in Dr. Dixon's house?

A. No, sir; my sister was with me.

Q. And did you help her or did she help you?

30

A. Well, we worked together when we were doing the washing and ironing; it is a basement kitchen, and, of course, she did her work and I did mine after the washing and ironing was done.

Q. Then you were employed down in the basement?

A. Yes, sir.

Q. And you didn't have any need to go up on the second floor?

A. Well, excepting to care for my own room; on Wednesday when I would be idle I would go up there.

Q. You lived there at Dr. Dixon's home?

A. Yes; I have not been there in five months.

Q. You got on this car at South Broad and Front streets?

A. Yes, sir.

10 Q. Had you been to any stores before you had taken this car?

A. Yes, sir; I stopped in the shoe store on Broad and Front streets to buy a pair of shoes.

Q. Did you buy any articles there?

A. Yes, I bought a pair of shoes and had them sent up.

Q. You did not take them with you?

A. No, sir.

Q. Did you make any other purchases?

A. Yes, I stopped in the ten cent store and got some  
20 cakes to take to my brother's children, and that is all the stops I made.

Q. At that time were you lame?

A. Well, I had rheumatics, but I didn't feel it much for a year; sometimes I would walk a little lame from rheumatics.

Q. Even before this accident you were lame?

A. Well, I walked a little lame from the rheumatics, but I hadn't any lameness at all excepting from the rheumatics.

30 Q. When you got on the car, or started to get on the car, did you get any help from the conductor?

A. No, sir.

Q. Did he help you on the car?

A. No, sir; I was on back.

Q. Then you got on the rear of the car, but didn't the conductor help you to get on?

A. No, sir.

Q. You got on yourself?

A. Yes, sir.

Q. Was anybody else with you?

A. No, sir.

Q. Were you the only passenger on the car then?

A. The only passenger on the car, yes.

Q. And there were no other passengers got in the car from the time you got on at Front and Broad until you got out at Perrine avenue?

A. No, sir.

Q. That is right, is it?

A. I am almost sure it is right.

10

Mr. Macpherson—Will you stand up, please?

Q. Did you observe that lady on the car? (Indicating.)

A. No, sir; I did not notice her on the car.

Q. What part of the car did you occupy when you got on?

A. To the right hand side pretty near on the front, because I always try when I get on them cars to be as well front as possible so as to get off.

Q. What was your object to be well in front?

20

A. To get off the car.

Q. Do you have difficulty in getting on and off of the car?

A. Well, sometimes getting on; sometimes the steps is high.

Q. That would not apply to your getting off then, would it?

A. No, I didn't have any trouble in getting off.

Q. And you say you always went up far into the car so as to be near the front?

30

A. Yes, if I could get a seat, and it was easy getting a seat, because there wasn't anybody else on when I got on anyhow.

Q. And you did take a position in this car up near the front?

A. Yes, sir.

Q. About how many seats from the front door?

A. There was one of those long seats on each side, that is all it was, all in one seat.

Q. Yes, that is these cars that you speak of; near the front door they have sort of a side seat; is that what you mean?

A. Yes, one on each side.

Q. And then the other seats run in a different direction, they run with an aisle in the center?

A. Yes, but this car didn't.

Q. But the seats, excepting right near the front, those seats near the front were back against the side of the car?

10 A. There wasn't any seat——

Q. (Illustrating.) Here, like this. If this was the car, the seats you speak of on the side run that way (indicating), while the other seats run this way?

The Court—Did some seats run crosswise of the car, and some lengthwise, or did all of them run crossways?

The Witness—No, they all ran along each side.

Q. There were no seats in front of you like there is in a steam car, anything like that?

A. No.

20 Q. You are sure about that?

A. I am sure about that.

Q. You gave a signal. What did you do, push a button on the side of you or how did you give the signal to the conductor?

A. Why, the conductor called out, "Do you want to get off at Perrine avenue?" And I got up and the car stopped.

Q. Did you tell him when you got on that you wanted to get off at Perrine avenue?

30 A. Yes, and he called out Perrine avenue.

Q. Then you did not give any signal at all to him?

A. No, sir.

Q. Did he call Perrine avenue?

A. Yes.

Q. Did you hear him give any bell for the motorman to stop?

A. No, sir.

Q. You don't remember now whether he gave any signal to the man ahead to stop the car?

A. No, sir; I don't remember, sir; but I know the car was stopped.

Q. As soon as he said "Perrine avenue," you stood up?

A. Yes, sir.

Q. And then the car came to a stop?

A. Yes, sir.

Q. And after the car had come to a stop, did you then start to walk out?

A. Yes, sir.

Q. Then the car was at a full stop before you left 10 your seat?

A. Yes, sir.

Q. Then when you got to the front door did you observe whether the door leading down to the steps was closed? Was the front part of the car closed so the people could not get off or on unless somebody opened the door for them?

A. It was opened when I got out there; he opened the door before I got out there.

Q. You saw him open the door did you? 20

A. I heard him opening the door.

Q. You were facing him?

A. Yes.

Q. And there was nobody else there to obstruct your view?

A. No, sir.

Q. And you not only heard him but you saw him open the door for you?

A. I heard him opening the door.

Q. Didn't you see him open the door? 30

A. No, sir.

Q. You just heard him open the door?

A. I heard him open the door.

Q. Were you were looking?

A. I was looking——

Q. Looking ahead?

A. Yes, sir; I was not in the vestibule when he opened the door, but I heard the door open and I got out when the car gave a——

Q. All right. We will come to that in a minute. From the vestibule into the main car was there a door or was it all open?

A. It was open; when I went in back the door was open.

Q. I am speaking now of this car.

A. Yes.

Q. You have traveled on a number of the cars here in Trenton, haven't you?

10 A. Yes, sir.

Q. And some of the cars where the motorman stands and where the conductors stand it is open all the way through without any doors leading from the main body of the car into the vestibule?

A. Yes.

Q. It was all open?

A. Yes.

Q. That was the kind of a car it was?

A. Yes.

20 Q. Then you stepped down—you got down from the first step all right?

A. Yes, sir.

Q. And then what happened? Did you step down on the pavement?

A. No; I went to step on the pavement; I had hold of the rail and went to step down onto the pavement and the car gave a jerk and I got a pitch off the car.

[By request of counsel last answer read.]

Q. Is that what you say?

30 A. Yes.

Q. You got a pitch?

A. Yes, sir.

Q. You remember that very well, now?

A. Yes, sir.

Q. And you fell on the pavement?

A. Yes.

Q. Which way did you fall?

A. I fell the way the car was going and my back was to the car; I couldn't say.

Q. Are you sure about that?

A. I am perfectly certain.

Q. You fell the way the car was going?

A. Yes, sir; and I got——

Q. Wait a minute. I want to know whether you are sure you fell the way the car was going?

A. Yes, sir.

Q. Now, you said something on your direct examination about hearing the motorman close the door. Is that right?

10

A. Yes, sir.

The Court—Open it, she said, as I understood her.

Mr. Macpherson—No, closing it, after she had fallen.

By the Court.

Q. After you fell?

A. Yes, sir.

By Mr. Macpherson.

Q. Do you mean to say after you fell the motorman closed the door?

A. Yes, sir; and I got nervous because I thought the 20 car was going to go over me.

Q. And who picked you up?

A. I took it to be the conductor; he was alongside of me and he asked me my name, and I didn't think I was hurt——

Q. All right. Did anybody else pick you up beside the conductor?

A. Yes; there was quite a crowd in a few minutes around and I could not tell because I don't know.

Q. Did the motorman help pick you up?

30

A. I didn't know the motorman; they said he was there, but I didn't know.

Q. You had not lost consciousness at that time, had you?

A. No, sir.

Q. And you knew everything that went on then, did you not?

A. Yes, but I didn't know who was around me.

Q. You fell at once from the step?

A. Yes, sir.

Q. By, you say, a jerk of the car?

A. Yes, sir.

Q. Did the motorman see you fall?

A. I don't know.

Q. And notwithstanding that you fell, the motorman shut the door?

A. Yes, after I fell down.

Q. After you fell down he shut the door?

10 A. Yes, sir.

Q. Now, did the car move before he shut the door?

A. I don't think so; I couldn't tell you about that.

Q. Now, are you sure about that?

A. Yes, sir; I think so.

Q. The car did not move before he shut the door?

A. I did not hear it.

Q. I thought you said the car moved and threw you to the pavement?

A. Well, it gave a jerk.

20 Q. I asked you whether you were sure whether the car moved before he shut the door and you said no, the car did not move before he shut the door. Now, if the car did not move before he shut the door then you were already lying upon the pavement. Did the car move then?

A. I did not hear it; I know it gave a jerk and knocked me off the step; that is all I know.

Q. Then you were taken into the store?

A. Yes, sir; they carried me into the store.

30 Q. A grocery store was it?

A. Yes.

Q. And you sat down?

A. Yes, they laid me down in the store.

Q. Did the conductor ask you where you wanted to be taken or say anything to you about what he should do?

A. Yes, he asked me where I was going to go and I told him I didn't know hardly what to do, because he said he would take me wherever I wanted, and I knew I wasn't fit to walk to the foot of Perrine avenue; I

wanted to go to my brother's and some one said to have the ambulance and I said no, I thought I would feel better and then he came in and phoned for the ambulance—

Q. They did send for the ambulance?

A. Yes, sir.

Q. And you went in the ambulance to St. Francis Hospital?

A. Yes, sir.

Q. Who went in the ambulance with you? 10

A. Well, I thought it was two policemen that sat in the back of the ambulance; they carried me out; they looked like policemen.

Q. While you were there in the store and before the ambulance came did any one of the company's employes see you or speak to you?

A. No, sir.

Q. Did any one of the company's employes that you knew come to you before the ambulance had come?

A. No, sir; not that I know of. 20

Q. Would you know, would you recognize the person that went with you?

A. Yes, I think so.

Q. You think you would?

A. Yes, I think so.

Mr. Macpherson—Mr. West, stand up.

Q. Did that man go with you to the hospital?

A. I don't remember seeing him.

Q. I am just asking your best recollection. Do you recall whether that man went with you to the hospital? 30

A. I do not remember seeing him.

Q. Do you remember whether you spoke to him or not about the accident?

A. No, sir.

Q. Did you tell him how the accident happened?

A. No, sir.

Q. Did you say to him, "I don't know how I fell. I either must have slipped or caught my foot in my dress?"

A. No, sir.

Q. Did you say that?

A. No, sir.

Q. Did you say any words to that effect?

A. No, sir; because I never remember them asking me that.

Q. All right. You say you did not say so?

A. No, sir.

Q. Do you recognize this officer (indicating)?

10 A. Yes, sir; I saw him.

Q. Was he an officer that went in the ambulance with you to the hospital?

A. Well, he looks very much like him; there was one smooth-face man sitting there.

Q. Did you say anything to Mr. West, the man that I had stand up, who had a suit on, or an officer of the company—did you say anything to him in the presence of this police officer as to how you happened to fall?

A. I did not say anything, for they did not ask me  
20 anything about it.

Q. Whether they asked you anything or not, did you say anything to them?

A. I don't remember.

Q. You don't remember?

A. No, sir.

Q. Will you say that you did not say in the presence of this officer that you don't know just how you fell; that you either must have slipped or that your foot got caught in your dress?

30 A. No, sir.

Q. You did not say that?

A. No, sir; I did not say that.

Re-direct examination by Mr. McGoogan.

Q. Miss Carton, when you told Judge Macpherson that the car did not move before the motorman closed the door, did you mean that it did not jerk or move or jolt?

A. Is that before he opened the door?

Q. Before he closed the door?

A. Oh, I did not mean——

Mr. Macpherson—I do not think counsel should lead the witness.

Q. What do you mean by saying that the car did not move before the motorman closed the door?

A. I thought he meant did the car start on ahead, you know.

Q. Yes.

A. Yes.

Q. What did the car do before he closed the door? 10

A. The car gave me a jerk and knocked me right off.

Mr. Macpherson—Now, our physician is here and it just occurred to me that the better practice would be to have their physician—our physician would have the benefit of the history of the case before he made the examination, and I would suggest that they have their physician, if they are going to have one, testify, so that our physician can have the history of the case from his evidence.

Mr. McGoogan—Dr. Sommers is on his way now. 20  
We can call another witness before he gets here, I think.

*Anna Carton*, sworn for the plaintiff.

Direct examination by Mr. McGoogan.

Q. Mrs. Carton, where do you live?

A. Number 9 Assanpink avenue.

Q. Are you the sister-in-law of the plaintiff, Miss Sarah Carton?

A. Yes, sir.

Q. You live there with whom?

A. With my husband. 30

Q. Is Miss Carton, the plaintiff, living with you now?

A. Yes.

Q. How long has she been there?

A. She has been there nine weeks to-morrow.

Q. Where does she live—in what part of the house?

A. She lives in the parlor and she sleeps in the room off the parlor, or what we call the little sitting-room.

Q. Is she able to go up and downstairs, now?

A. No, sir; and I ain't able to take her up and down; it takes myself and her sister to take her to the porch.

Q. Has she been that way since she came from the hospital?

A. Yes, sir.

Q. Do you know how long she was in the hospital?

A. Thirteen weeks, all but one day.

Q. You knew her before the accident?

10 A. Yes, sir.

Q. How long?

A. For nine years.

Q. Do you know anything about her limping before that?

A. No; she had a little bit of a halt.

Q. What was the reason?

A. It came from rheumatism, I guess, but nothing to keep her back in her work; she worked for the Rev. Dr. Dixon's wife.

20 Q. Do you know what the nature of her work was out there?

A. Cooking.

Q. Anything else?

A. She done the kitchen work besides.

Q. How old is Miss Carton, do you know?

A. I guess about forty-five.

The Court—You better have that accurately. (To the plaintiff)—How old are you, madam?

The Plaintiff—Forty-nine.

30 Mr. McGoogan—Forty-nine. Cross-examine.

Mr. Macpherson—No questions.

Mr. McGoogan—Now, I have only the physician who said he was on his way here at one-thirty—Dr. Sommers.

The Court—He ought to be here. Is that all you have?

Mr. McGoogan—That is all.

The Court—Can you go on with some witness to the accident, judge.

Mr. Macpherson—If I do not waive my right to make my motion.

The Court—Yes, surely.

Mr. Macpherson—I do not want to waive that.

The Court—That is all right.

*Abner R. Braun*, sworn for the defendant.

Direct examination by Mr. Macpherson.

Q. Mr. Braun, you are a police officer of Trenton?

A. Yes, sir.

Q. And were you such an officer on December 10th 10 last?

A. Yes, sir.

Q. Do you recall the day of going to the hospital with the plaintiff in this case?

A. I took her to the hospital; yes, sir; I don't know exactly what date it was, but I remember the evening it was.

Q. Do you know Mr. West?

A. Yes, sir.

Q. The gentleman that I had stand up a while ago? 20

A. Yes, sir.

Q. Did Miss Carton say anything to him in your presence, or to you, as to how she had received the accident that she had received?

A. Mr. West asked her as she was lying on the table there how it happened.

Q. And what did she say?

A. She said she didn't know exactly if she slipped or her dress caught.

Q. Was there anything further said? 30

A. Not as I know of.

Cross-examination by Mr. McGoogan.

Q. She said she did not know exactly?

A. No, sir; that is what she said.

Q. What kind of a table was she lying on when she said that?

A. Why, they have a table there, when accidents come

in, there is a basement there and they put everybody on it that comes in that is hurt.

Q. Did you pick her up from the grocery store?

A. Yes, sir; she was on the floor in the grocery store and we put her on the stretcher, three or four of us.

Q. What was her condition then? Could you handle her very readily?

A. No; every time we touched her she would holler or move around.

10 Q. And it took three or four to get her in the ambulance?

A. There were several of us there putting her in the ambulance.

Q. Did she moan and groan on the way to the hospital?

A. I could not say that.

Q. You were on the front seat with the driver?

A. Yes.

Q. When you got her to the hospital did she moan and  
20 groan?

A. When we moved her she would groan and holler.

Q. When you were moving her around what did you ask her, if anything?

A. The nurse out there was taking her clothes off—getting her coat off and different things.

Q. Moving her around naturally in the process of taking her clothes off?

A. Yes.

Q. And did she groan or moan?

30 A. Every once in a while, yes.

Q. And that was when the inspector asked her how it happened?

A. Yes, right after that.

Q. And you are sure she said she did not know exactly?

A. She said she did not know exactly whether she slipped or caught her dress.

Q. Did she say anything else at all about being thrown cut?

A. No, sir; not while I was there.

Q. Did you hear the whole story from her?

A. That was when Mr. West was there, and after that we went out together—Hoffman and I and the others.

Q. What was her condition then, nervous or excited?

A. Well, I guess she was, after being hurt.

Q. Was she unconscious at any time after being moved from the store to the hospital?

A. Not as far as I know.

Q. She remained conscious on the table in the hospital?

A. Yes, sir.

Q. She did not faint at all?

A. Not as I know of.

Q. How did the inspector come to get there so quickly?

A. He went over in the ambulance with us; he was there at Perrine avenue and Clinton street when we was and he went over in the ambulance with us.

Q. He was there at Perrine and Clinton avenue when you got there with the ambulance? 20

A. Yes.

Q. You did not take him over in the machine?

A. Yes, sir; he went over in the machine.

Mr. Macpherson—Do you mean he came from the station in the ambulance?

Witness—He came from Perrine avenue to the hospital on the trip with us.

Q. Was he there before you got there with the ambulance?

A. I could not tell you that exactly if he was or not. 30

Q. He did not ride in the machine from the station to the scene of the accident, did he, with you?

A. No, sir.

Q. Are you sure that he got there before you did?

A. I could not tell you that; I seen him there; he got in the ambulance.

Q. Did you get there very soon after the accident happened?

A. As quickly as we could after the telephone rang.

Q. She had not been lying there very long before the ambulance got there?

A. I could not tell you that.

By Mr. Macpherson.

Q. Is officer John Hoffman in court.

A. I believe he is sick; he hurt his back or something.

Mr. Macpherson—He was subpoenaed. This is the first intimation I had that he was sick.

Witness—I believe he is.

10 The Court—Is his testimony important?

Mr. Macpherson—He was one of the officers that heard the same statement. This is the first intimation I have that he is not here. I would like to produce him or have his testimony taken. Probably, if we do not finish this afternoon, I will find out about him and have the court direct that his testimony be taken in his home.

The Court—We can arrange that. Let someone phone and find out what his condition is.

*Chester Metzstein*, sworn for the defendant.

20 Direct examination by Mr. Macpherson.

Q. You live in Trenton?

A. I room in Trenton.

Q. And you are employed by the defendant company?

A. Yes, sir.

Q. And were you employed by them on December 10th, 1915?

A. Yes, sir.

Q. In what capacity?

A. Conductor.

30 Q. Were you the conductor on the car on which this plaintiff, Miss Carton, was a passenger?

A. Yes, sir.

Q. Do you recollect her getting on the car?

A. I do.

Q. Do you know where she got on?

A. Front and Broad.

The Court—Now, just a moment, judge. The doctors

are here. Let them go on and make the examination—  
can they?

Mr. Macpherson—I am content.

The Court—They can make the examination while you  
go on and examine the witness.

[Last question and answer repeated.]

Q. What is there, or what was there at that time, that  
now refreshes your memory as to her getting on?

A. Why, she was lame and needed assistance to get  
on the car. 10

Q. You assisted her?

A. Yes, sir.

Q. Who was the motorman?

A. Joe Bramley.

Q. Is he living?

A. No, sir.

Q. When did he die, as near as you can tell?

A. About two months ago.

Q. Were there any other passengers on the car besides  
Miss Carton? 20

A. There was.

Q. Were there any other passengers on the car at the  
time that you reached Perrine avenue?

A. There was.

Q. This young lady that stood up a little while ago,  
was she a passenger on the car?

A. Yes, sir.

Q. When you reached Perrine avenue—

(At this point it was reported that the witness Hoff-  
man was confined to his home and unable to walk.) 30

The Court—I suppose you can get his statement.

Mr. Macpherson—I have his statement, if counsel will  
accept that.

Mr. McGoogan—Oh, no. I want to have an opportu-  
nity to cross-examine.

The Court—If he has been subpoenaed, and through  
no fault of the other parties he is not here, you are en-  
titled to have his testimony in some form.

Q. Before you had reached Perrine avenue did you

receive any signal from anyone to stop at Perrine avenue?

A. She told me—a lady that got off before Perrine avenue—she was to get off at Perrine avenue.

Q. She told you she wanted to?

A. Yes, sir.

Q. When the car approached that point did you inform her to that effect?

A. I did not have to inform her; she knew it.

10 Q. Did you signal the car to stop?

A. I did.

Q. Did the car come to a stop?

A. It did.

Q. A full stop?

A. It did.

Q. Did she get up from her seat to move from the car before the car came to a stop?

A. She got up before the car came to a stop.

Q. Did she walk toward the front of the car?

20 A. She was standing at the side of her seat while the car was coming to a stop.

Q. Did she remain standing there until the car came to a stop?

A. She stood there until the car stopped.

Q. Then what did she do?

A. Started for the front.

Q. What kind of a car is this car?

A. A pay-as-you-enter car.

Q. How is it equipped—what kind of brakes?

30 A. Air brakes.

Q. Is the front of the car, so far as the doors that lead down the steps, is that open, or have they doors there?

A. There is doors there.

Q. Who opens the door?

A. The motorman.

Q. What contrivance has he for opening the door?

A. There is a lever there to open them with.

Q. How does he use that lever?

A. Why, I think it is on this car that you pull to your right (illustrates).

Q. Does he use his hand?

A. Yes, sir.

Q. Do you know whether he did open the doors for this woman to get off?

A. Yes; he opened the doors.

Q. Now, before the car came to a stop, and as it was coming to a stop, was there any jar or jolt or any unusual motion of the car?

10

A. I did not notice any.

Q. And, as the woman was getting off of the car, was there any jolting motion or any unusual lurch of the car?

A. No, sir.

Q. Did you see the plaintiff fall?

A. I did not.

Q. You were in the back of the car?

A. Yes, sir.

Q. When did you first learn that she had fallen?

20

A. When she hollered.

Q. You could hear her?

A. Yes, sir.

Q. What did you do?

A. Went up to the front end and helped pick her up.

Q. Did you go through the car to the front end or out the rear and around?

A. Through the car.

Q. As you went through the car was the door open or shut?

30

A. It was open.

Q. Had the door been shut before you came to the front of the car?

A. Not as I know of.

Q. Were there many passengers in the car to obstruct your view?

A. No, sir; only one.

Q. As you were going toward the front of the car did you have full view of the motorman?

- A. He was getting off.
- Q. You had full view of him?
- A. Yes, sir.
- Q. But had he closed that door, or, as you were going toward him, did he again open it? Did anything of that sort happen?
- A. The door was open as I was going up.
- Q. And had it been closed as she was getting off or before she got off?
- 10 A. I did not see it closed.
- Q. Did you hear it closed?
- A. No, sir.
- Q. When you got up there it was open?
- A. Yes, sir.
- Q. Did you see the motorman make any motion toward the opening of the door after she had started to leave?
- A. No, sir.
- Q. Who helped pick the woman up?
- 20 A. The motorman and myself; and after we had her stood up another gentleman came over.
- Q. What did you do?
- A. I asked her where she wanted to go and asked her if she was able to walk, and she said she thought she was able to walk, and we let her try, but she could not.
- Q. Then what did you do?
- A. I went in and telephoned for the ambulance and told them we had a lady fall off the car and wanted them to come out and get her and take her to her home; she
- 30 wanted to go down to her sister's, I believe she said.
- Q. Did she say anything to you about the car jolting or throwing her off?
- A. No, sir.
- Q. Did she make any statement as to the car throwing her off?
- A. No, sir.
- Q. Did she make any complaint or criticise either you or the motorman about the car starting and throwing her off?

A. No, sir.

Cross-examination by Mr. McGoogan.

Q. Did you tell her to hurry up and make up her mind, that you couldn't wait all day?

A. No, sir.

Q. Who did?

A. Nobody.

Q. The motorman?

A. No, sir.

Q. You told Judge Mepherston that you did not notice 10 any jolting or lurching of the car before it stopped? You did not notice any? Is that right?

A. No.

Q. And you said there was positively no jolt after it stopped?

A. Not after it stopped, no.

Q. Why are you so positive about the jolt not happening before it stopped?

A. I didn't say I noticed any.

Q. But when he asked you whether there was a jolt 20 after the stopping you said no, you were positive about it?

A. Yes.

Q. Why are you positive in one case and not in the other?

A. Because I got off the car after she had fallen.

Q. It took you the length of time to go from the back of the car to the front before you reached her?

A. The car was already stopped then.

Q. And you did not move from the back of the car— 30 it is one of those long suburban cars, isn't it?

A. Yes.

Q. —until you heard her scream?

A. No.

Q. And it took you at least the time necessary to get from the rear to the front?

A. Yes.

Q. Did you say you did not notice any jolt in that time?

A. No, sir.

Q. After you got off did you notice any jolt?

A. No, sir.

Q. Would you remember it if you did?

A. I don't know whether I would or not, but I did not feel any; if there was any I most generally felt it.

Q. Is there quite a steep grade from the stone bridge  
10 to Perrine avenue?

A. There is a good grade there, yes.

Q. And frequently your car, when it is going down the hill there, when the motorman puts on the air brakes, there is difficulty in stopping it, isn't there?

A. If it is broke properly there isn't any.

Q. Doesn't it frequently happen when you put the brakes on it slides along a little and there is another sudden stop when he puts the brakes on again?

A. Not unless there is a bad rail.

20 Q. Doesn't the grade have any effect on those heavy cars there?

A. No, sir.

Q. Isn't there a jolt at the foot of the hill when you stop the car there?

A. Not if the air is released properly.

Q. So, there might have been a jolt there caused by the air not working properly which you did not know anything about?

A. There might have been, yes.

30 Q. You say the lady was lame when she got on?

A. Yes.

Q. Did she limp?

A. She had difficulty in lifting one of her limbs up on the step.

Q. It was one of those high steps?

A. Yes.

Q. Do ladies have difficulty sometimes in getting on?

A. Yes.

Q. And sometimes you have to help perfectly sound ladies on?

A. Yes, sir.

Q. So, that did not impress you any more than anyone else?

A. Well, sometimes it is lower than others.

Q. You frequently have to help ladies on who are not lame?

A. Yes.

Q. On account of the height of the step? 10

A. Yes, sir.

Q. You did not see her fall at all, did you?

A. No, sir.

Q. When did the motorman first open the door?

A. I don't know; I was not watching.

Q. Where was Miss Carton lying when you got to her?

A. Just in front of the car step.

Q. Where did the car stop with reference to the grocery store—the corner? 20

A. Just about in the middle of Perrine avenue.

Q. And your rules call for stopping before you pass the corner, don't they?

Mr. Macpherson—I object here; it makes no difference.

The Court—I think it is competent. Mr. McGoogan, there is this about the situation which makes it quite narrow: both sides agree that the car had stopped before she started to get off, and the only question is whether or not there was an impetus given to the car at that time 30 which threw her.

Mr. McGoogan—I might show the fact that it went farther than the corner.

The Court—Yes, you have the right to show the entire circumstances, of course.

Q. Then you say when you got off the car the front step was in the middle of Perrine avenue?

A. Yes, sir.

Q. So, in this case, you passed at least half the width of Perrine avenue beyond the corner?

A. Yes, we did.

Q. And on other occasions your rules call for the stopping at the corner?

A. The near side, yes.

Q. And you never stop your car beyond the corner unless there is a failure of the brakes or some other reason to prevent it? Is that right?

10 A. That is correct, or how the car is broken.

Q. According to how it is worked?

A. Broken, by the motorman.

The Court—Stopped, you mean?

The Witness—Yes, sir.

Q. In this case when you found the car half way across Perrine avenue, at least half the width of the street across from where it should have stopped, didn't that impress itself upon your mind as being a reason for failure of the air brakes to work?

20 A. No, sir.

Q. Your rules call for stopping the car before you pass the corner?

A. I know of no rule of that kind.

Q. Don't you stop on the near side of the street?

A. Yes.

Q. You don't permit your car to stop in the middle of a cross street?

A. If often has.

Q. When it is working properly?

30 A. Yes, sir.

Q. You are not supposed to do that, are you?

A. I don't know; I am not a motorman.

Q. How long have you been on the cars?

A. About three years.

By the Court.

Q. Your rule is to stop on the near side?

A. Yes.

Q. That does not mean half way across the street?

A. No, but sometimes you misjudge your stop.

By Mr. McGoogan.

Q. And that hill continues sharply down and ends at the corner of Perrine avenue?

A. At the far corner.

Q. At the far corner?

A. Yes, sir.

Q. So, that the bottom of the hill is not at the grocery store, but it is over on the far side of Perrine avenue?

A. Yes.

Q. It is a very steep hill?

10

A. Yes.

Q. It is about the steepest hill you have on that trip from East Trenton in?

A. Yes; outside of Centre street.

Q. Outside of Centre street hill?

A. Yes.

*May Mongan*, sworn for the defendant.

Direct examination by Mr. Macpherson.

Q. Miss Mongan, do you live in Trenton?

A. Yes, sir.

20

Q. Whereabouts?

A. On Houghton avenue.

Q. What part of Trenton is Houghton avenue?

A. East Trenton.

Q. In going to East Trenton, this trolley car that you have heard spoken of this afternoon, is that the car that takes you to your home?

A. Yes.

Q. Were you on the trolley car on which Miss Carton was riding?

30

A. Yes.

Q. On the day that she says she was hurt?

A. Yes.

Q. Where did you get on the car?

A. State and Broad.

Q. Were there any other passengers got on at that point?

A. I don't remember.

Q. Do you know whether there were any other passengers on the car when you got on?

A. What is that?

Q. Do you recollect or remember whether when you got on at State and Broad there were any other passengers on the car?

A. I don't remember about that.

Q. Were you the only passenger on the car?

A. When the lady fell off I was the only one on.

10 Q. Whether there were any others on before, you don't now recall?

A. No.

Q. You do recall seeing Miss Carton on the car?

A. Yes.

Q. And do you recall the car coming to a stop at Perrine avenue?

A. Yes.

Q. What did you observe about Miss Carton? What did you see and what did you observe about her?

20 A. Why, I noticed that she had difficulty in getting to the front of the car.

Q. What difficulty? Can you explain what you mean by having difficulty in getting to the front of the car?

A. It took her quite a while and she had to take a hold of both seats on both sides of the aisle.

Q. Then there were seats along from the center to the sides of the car?

A. Yes.

30 Q. And she took hold of both of those seats as she went to the front?

A. Yes.

Q. Had the car come to a full stop?

A. Yes.

Q. Before she started to walk down the aisle?

A. It had come to a stop while she was walking down the aisle.

Q. And before she reached the front?

A. Yes.

Q. Did you see her get off the car?

A. Well, I saw her in the front of the car, but I did not see her getting off.

Q. What part of the car were you sitting?

A. About the center, on the right-hand side.

Q. And where was she sitting, in front or back of you?

A. I don't remember that; I imagine she was in back of me.

Q. And you think she passed you as she went out?

A. Yes, I think she did.

Q. Now, when the car had come to a stop, you say she had not yet reached the front?

A. No.

Q. When did you first learn that there had been any accident?

A. I saw the motorman getting off the car; I did not know she had fallen until afterward.

Q. Did you hear any scream?

A. No.

Q. After she started to go out from the car on to the platform, was there any jolt or jar of the car that you noticed?

A. Not that I remember.

Q. There was nothing affected you?

A. No.

Q. Did you talk with her?

A. No.

Q. Did the car after it had stopped move again before she was picked up?

A. No.

Q. It remained there all the time?

30

A. Yes, sir.

Q. Until she was picked up?

A. Yes, sir.

Q. How long did it remain there?

A. Do you mean until she was picked up?

Q. I mean after it came to a stop, then they picked her up and took her away somewhere?

A. Yes.

Q. And the car remained there all that time?

A. Yes.

Q. How long would you say that was?

A. I guess it was ten or fifteen minutes.

Q. Have you told us all you know about this?

A. I guess I have.

Cross-examination by Mr. McGoogan.

Q. You say the car remained there about fifteen minutes?

A. Ten or fifteen minutes.

10 Q. Did you see the ambulance come there?

A. I did not see the ambulance.

Q. Did the ambulance come before your car moved away?

A. I did not see it; it was getting dark.

Q. When did the accident happen?

A. Between five and half-past.

Q. It was not dark then, was it?

A. It was getting dark.

Q. Were the lights on in the car?

20 A. Yes, I think they were.

Q. You said you did not see Miss Carton fall?

A. No.

Q. You saw her standing in the vestibule?

A. Yes; I saw her going to the front of the car.

Q. When did you lose sight of her?

A. I was looking out in the street.

Q. To your right?

A. Yes.

30 Q. Then you did not see her step in the vestibule in the front of the car?

A. I saw her step in the vestibule but I did not see her step out of the car.

Q. Well, while you were looking out of the window, might there not have been a sudden jolt or lunge of the car?

A. I think I would have remembered it.

Q. You did not see her fall?

A. No.

Q. But you didn't pay any attention to her after she went to the front of the car?

A. No.

Q. Why wouldn't you remember it?

A. Why, afterwards I tried to remember to see if there was any and I did not remember any.

Q. Who took your name?

A. The conductor.

Q. Did you know him before that time?

A. No, I never knew him.

10

Q. Where was the car when it stopped?

A. The front of it was about in the center of Perrine avenue.

Q. Was there any difficulty, as far as you remember, in the motorman stopping it, going down the hill from the stone bridge to Perrine avenue?

A. No.

Q. Was he going fast?

A. I do not remember.

Q. You did not get out of the car at all, did you, after 20 they picked her up?

A. No.

Q. Did you see the conductor go to the front of the car?

A. Yes.

Q. You did not hear Miss Carton scream or yell?

A. No, I did not hear any cries at all.

Q. What is that?

A. I did not hear her.

Q. Did the motorman shut the door and open it 30 again?

A. No.

Q. He did not do that?

A. No.

Q. The door was open?

A. Yes.

Q. You say that Miss Carton moved with difficulty in going down the aisle?

A. Well, it seemed to take her quite a while; she had to take hold of the seats on each side of the aisle.

Q. Were there seats like in a passenger coach?

A. Yes.

Q. What did she do when she got up in the front of the car where there were no side seats?

A. I think she took hold of the part where the conductor stands.

Q. The railing?

10 A. Yes.

Q. With which hand, did you notice?

A. No.

Q. Did you notice whether she had anything in her other hand?

A. No; I did not notice whether she had anything in her other hand.

Re-direct examination by Mr. Macpherson.

Q. Miss Mongan, you said you tried to remember. Was it the fact that you found that a woman had fallen 20 that you tried to think over whether anything could have happened that would produce that result? Was that what was going through your mind?

A. Yes; I was sitting in the car about ten minutes and I had time to think of it.

Q. And after thinking it over, can you now think of anything that would have caused her to have fallen, that would have arose from the action of the car?

A. No.

Mr. McGoogan—Dr. Sommer is here now.

30 The Court—Do you want to suspend now?

Mr. Macpherson—Yes.

*Doctor George N. J. Sommer, sworn for the plaintiff.*

Direct examination by Mr. McGoogan.

Q. Doctor Sommer, you are a physician of Trenton?

A. Yes, sir.

Q. Were you on duty at St. Francis Hospital when Miss Carton was there in December last year?

A. Yes.

Q. How soon after she was brought there, did you examine her?

A. I think she was admitted during my service there December 10th, 1915, and I think I saw her there that next morning.

Q. Did you make an examination of her?

A. Yes.

Q. Did you have an X-ray picture taken?

A. Yes.

10

Q. What did that picture disclose?

A. It showed she had a fracture of the neck of the thigh bone; it was in the condition that we call impacted; that is, one of the broken ends was pushed up into the other like that (illustrating), an impacted fracture of the neck of the thigh bone.

The Court—That means an overlapping, doesn't it?

A. No; it is thrust in; it is thrust inside the ball.

Q. What operation do you go through in order to heal a wound of that kind, or a fracture of that kind? 20

A. She was put in bed for a period of seven or eight weeks, which allows for bony union to take place; in this particular instance it was not necessary to follow any particular line of treatment, such as the use of splints, and so forth, because the accident naturally reduced the bone in a measure; I mean by that, this is a form of mechanical setting it is not well to break up, and we find the patients do much better if they are left alone, in that condition.

Q. So, you permit the fracture to mend itself? 30

A. Just as it is.

Q. And the bone that is broken is mended inside the ball?

A. Inside of the head of the ball.

Q. Does that reduce the length of the limb?

A. Yes, somewhat.

Q. Have you made an examination to-day?

A. This afternoon, yes.

Q. What did you find with reference to her condition?

A. Well, I find that she has evidence of an old fracture of the hip present, and that there is about a quarter of an inch shortening in this limb.

Q. In the left limb?

A. Yes; there isn't much in the hip joint itself; she has good motion in the hip.

Q. What would you say as to the length of time required to heal permanently?

A. Well, anywheres from six to nine months, at the most a year altogether before she would be fit for the pursuing of her usual work.

Q. From your examination to-day, can you predict now within a reasonable time how soon she will be able to use it without crutches?

A. Well, I should think within two or three months she ought to be able to discard the crutches altogether.

Q. When she is able to discard the crutches altogether, what about her efficiency as to housework?

A. As I stated before, I believe in nine months' time from the time of the accident she ought to be able to do her work; I should place the longest period at a year.

Q. Would she be able after that period to do it with the same efficiency and ability as she had done it before?

A. I am inclined to think yes, in this case, because she only has a quarter of an inch shortening, and nature in a measure will compensate for that shortening, and if she has any impairment at all it will be rather slight; I would not say it will be more than five per cent. at the most, if she had any at all.

Q. Did you find any evidence at all, when she was taken to the hospital, of her having been lame before the accident?

A. Not as far as I can tell.

Cross-examination by Mr. Macpherson.

Q. Doctor, you had not seen the patient from the time she left the hospital until this afternoon?

A. No, I hadn't.

Q. To make any examination?

A. No, I hadn't.

Q. And you were speaking to counsel and myself just before the noon recess?

A. Yes, sir.

Q. And you indicated then that you thought the impairment would be about 20 per cent.?

A. Yes.

Q. Now, since you have made the examination during 10 the noon recess you conclude that the impairment at the most would be not over five per cent.?

A. Yes; you remember I was talking in general terms.

Q. Yes, and you had made no examination. But now, after making an examination, your conclusion is that the impairment would not exceed over five per cent.?

A. That is true.

The Court—Is that all, Mr. McGoogan?

Mr. McGoogan—That is all.

20

*Doctor Charles H. Mitchell*, sworn for the defendant.

Mr. Macpherson—It is admitted that the witness is competent to testify as an expert physician.

The Court—Yes.

Direct examination by Mr. Macpherson.

Q. Did you not make examination of the plaintiff in this case, Miss Carton?

A. I did.

Q. When did you make that?

A. Fifteen or twenty minutes ago.

30

Q. Who was present, if anyone, when you made it?

A. Doctor Sommer and this lady down in the audience; I don't know her name; she testified here a little while ago.

Q. Now, what did you find as the result of the examination?

A. On measuring the injured leg and the good leg, I

find that the shortage is approximately a quarter of an inch; and I also find that she has rubber heels on her shoes and one of them is better than the other, and apparently makes a slight difference in favor of not quite a quarter of an inch in shortening; in addition to that, the action of the joint that was broken or impacted at the time of the injury at the present time is practically normal; there seems to be no impairment of action, but some pain upon action and movement of the joint, but, 10 so far as rotation, and so forth, with that joint is concerned, there seemed to be a very free and easy motion with no impairment practically, and, if any, very slight.

Q. Now, you used a term there that is possibly not understood by all of us, about it being flexible, or the motion of the joint——

A. The rotation, forward, backward and sidewise of the joint, showed practically no impairment of motion, but some distress at the time of doing it, and a little resistance on the part of the patient.

20 Q. Did you move the limb?

A. Yes.

Q. For the purpose of discovering that?

A. For that reason, yes.

Q. Did you, from the examination and from what you saw as to the improvement or the cure, whatever had been going on at the time, form an opinion about in what time she would be in a normal condition?

A. Considering the conditions, now, from the length of time and the manner it has improved from the time it 30 happened, I see no reason why in four or five months it should not be practically in normal shape.

Q. And, in order to bring about that normal shape, is it wise for her to use the limb as much as possible, or does that make any difference?

A. Well, the condition has practically established itself, and, of course, more action might improve the trouble to some extent, but she will gradually manage to overcome that resistance and that fear of using it as time goes on, of her own accord.

Q. You find there is such fear on her part?

A. She seems to be of rather a high nervous temperament and does not care to place much confidence in this limb, although it is in perfect shape—although the union of the bone is absolutely perfect; she could not break it by using it unless she had a similar accident or trouble of that sort.

Q. And when it reaches this normal condition that you speak of, what, in your opinion, will be the impairment, if any, of her ability to work and follow her usual occupation? 10

A. I cannot see as it should prevent her from doing her—I understand her work is housework of different kinds, acting as a servant, or something of that sort; I see no reason why she should not be able to perform that sort of work without any trouble at all.

Q. Would there be any impairment of her ability to do that kind of work in the course of six or eight or nine months?

A. It should not impair her ability to do her regular 20 work; the only impairment would be the quarter of an inch shortening which will never grow out on her leg; she will have a trifle less than a quarter of an inch shortening in one leg.

Q. Is there any way, so far as her making it, that that could be helped, as far as her appearance is concerned?

A. A mechanical contrivance, do you mean?

Q. Yes.

A. Oh, yes.

Q. What? 30

A. She is already trying it; she has got an extra 30 thickness of a rubber heel on there that would practically overcome that quarter of an inch so it would not be noticeable.

Q. And she would not have any perceptible impairment in her gait?

A. Yes.

Cross-examination by Mr. McGoogan.

Q. You say she has some pain now?

A. She complained of pain when I examined her.

Q. How long do you think she will be troubled with pain?

A. Well, Mr. McGoogan, I cannot just account for the pain now, after four or five months; I think the actual trouble is fear of my hurting her, more than the actual pain; I haven't any doubt she has some slight distress,  
10 but it is clearing up rapidly.

Q. Will the distress you speak of continue during those four or five months?

A. Oh, I should not say so.

Q. How about changes in the weather, would that affect her?

A. I do not think so.

Q. As the weather gets colder, would it cause more pain around the hip?

A. I do not see why it would.

20 Re-direct examination by Mr. Macpherson.

Q. Was there any mention made in the history of her case about whether she had rheumatism before?

A. No; I inquired as to her health, and she has never been a very robust woman; she has always been rather inclined to be of the type that you see her—not a healthy individual by any means.

Q. And if she had rheumatism, would that be affected by the condition of the weather?

A. Oh, yes; people suffering from rheumatism feel  
30 the effects very readily, I think.

*Harry West*, sworn for the defendant.

Direct examination by Mr. Macpherson.

Q. Mr. West, you live in Trenton?

A. Yes, sir.

Q. How long have you lived in Trenton?

A. About eighteen years.

Q. Are you employed by the traction company?

A. Yes, sir.

Q. Did you hear of an accident last December that happened at or near Perrine avenue, in Trenton?

A. Yes, sir.

Q. What is your occupation in the company? What is your relation with the company?

A. Inspector.

Q. Were you an inspector at that time?

A. Yes, sir.

Q. And your duties as inspector are generally what? 10

A. Well, to look after the cars and maintain the schedules and the department of men in general—the welfare of the company in general.

Q. Did you receive any information about an accident happening at the corner of Perrine avenue and North Clinton avenue?

A. Yes, sir.

Q. And, in consequence of that information, what did you do?

A. I went to the place of the accident as quickly as 20 possible on a car; I was near Olden avenue on a car when I was informed of the accident.

Q. How far away is Olden avenue from Perrine avenue?

A. About six blocks—six squares—six city squares.

Q. When you got there did you see the plaintiff?

A. Yes, sir.

Q. It has been testified that an ambulance was sent for. Were you there when the ambulance arrived?

A. No, sir; the ambulance had arrived before I got 30 there.

Q. Did you then give any directions concerning the ambulance?

A. I assisted the policeman in helping the lady in the ambulance.

Q. Where was she taken to?

A. St. Francis Hospital.

Q. Did you go in the ambulance with her?

A. Yes, sir.

Q. What part of the ambulance did you sit?

A. In the rear; I sat on one side on the rear end of the ambulance; it has longitudinal seats, and the officer, Mr. Hoffman, sat on the other side.

Q. Was Mr. Braun, another officer, there?

A. Yes, sir; he was the driver of the ambulance.

Q. And he was the one who has just testified?

A. Yes, sir.

Q. And Mr. Hoffman, was he the one who rode inside  
10 of the ambulance with you?

A. Yes, sir.

Q. When you reached the hospital, where was the plaintiff taken?

A. Why, taken into a room; I suppose they would call it a reception room for injured persons on the north side of the hospital; that is, facing Hamilton avenue; taken through the doors down in the basement.

Q. How long did you remain there?

A. In the hospital?

20 Q. Yes.

A. Why, not over ten minutes, I don't think.

Q. While you were going out from Perrine avenue to the hospital, did you have any conversation with Miss Carton?

A. No, sir.

Q. Was she conscious?

A. Yes, sir; apparently.

Q. After you arrived there, did you speak to her about the accident?

30 A. After she was taken into the hospital; yes, sir.

Q. What did you say to her and what did she say to you?

A. After she was taken into the hospital and placed on the table that the nurse prepared for her, they were taking her coat off, and I asked her how she fell from the car, and she stated she did not know whether she stepped on her skirt in getting off or whether she slipped on the step; I also asked her if the car was stopped and

she said "Yes," in the presence of the two officers and one nurse was there at the time.

Q. Did she say anything about having been thrown from the car by a jolt, or a sudden starting, or anything of that sort?

A. Not in my presence; no, sir.

Q. Did she make any complaint?

A. No, sir.

Q. Did she make any complaint against any officer of the company for the way they ran the cars? 10

A. No, sir; not a word.

Q. Have you told us all that she said?

A. Yes, sir.

Cross-examination by Mr. McGoogan.

Q. Then when you examined her on the table she did not know exactly how it happened, did she?

A. She stated not.

Q. And the reason you asked her this was because you had learned from the motorman that it was his fault? Is that the reason? 20

A. Oh, no; I did not know anything about it.

Q. When you got to the scene there you saw the motorman, didn't you?

A. I saw the crew—they said she fell off the car.

Q. You saw the crew when you got to the corner of Perrine avenue and Clinton?

A. Yes.

Q. And you thought, for the protection of the trolley company, that you would get something from her?

A. No, sir. 30

Q. Why did you ask her that on the table?

A. That is customary.

Q. Why?

A. I wanted to find out the true facts.

Q. You had the facts from the motorman and the conductor?

A. We always make it a rule to ask the person who is

injured, if it is possible to get that information from them.

Q. Although, in your opinion, it was not necessary?

A. Yes, sir; that is the rule.

Q. It was not because of something that you learned from the motorman that you went to the hospital with her and cross-examined her on the table?

A. It was a rule of the company I tried to follow out.

Q. In this particular case, is that the reason you went  
10 to the hospital?

A. To find out?

Q. Yes.

A. Not particularly; no, sir.

Q. Why didn't you speak to her in the ambulance?  
Was she unconscious?

A. No, sir.

Q. Why didn't you speak to her then? You were sitting alongside of her.

A. The jar of the ambulance, and the momentum and  
20 the rattle, would have been a poor place to get information from a person who had been injured.

Q. And was an operating table in a hospital a better place, when the nurse was moving her around?

A. They were not moving her; she was laying there perfectly quiet at the time I was asking her these questions—perfectly quiet.

Q. And you stayed ten minutes after you got there?

A. Until the house physician arrived.

Q. And you did not hear her scream, or, as the officer  
30 testified, holler, when they moved her on the table?

A. That is, when they moved her.

Q. How long did you wait for a quiet interval?

A. Just as soon as they got her coat off and got her laid on the table I asked her these questions.

Q. You asked that when they were taking her clothes off, didn't you?

A. When they got her coat off.

Q. When they were taking her coat off?

A. I did not stay to see her undressed.

Q. The officer said they were undressing her when you were asking her these questions. Is that right?

A. No, sir.

Q. How did you get the message at Olden avenue that there was an accident on the car?

A. From a motorman going to East Trenton.

Q. And you immediately hurried to Perrine avenue?

A. Yes, sir.

Q. Did she say anything about "I don't know," or "don't bother me," when you asked her these questions? 10

A. No, sir.

Q. How many times did you ask her before she answered?

A. I said, "How did you come to fall from the car? Do you realize about how you fell from the car or what caused you to fall?" She says, "I don't know. I must have either stepped on my skirt or slipped on the step."

Q. What did you say—you used the word "realize." "Do you realize how you fell?"

A. I asked if she realized how she fell—how she fell 20 from the car.

Q. But there was something in her condition, then, that made you ask her first "Do you realize how you fell?"

A. Not necessarily; the woman appeared to be in a condition to answer my questions.

Q. Then why did you say "Do you realize how you fell?" if she was in a perfectly normal condition?

A. Why did I say that?

Q. Yes. Why didn't you say "How do you feel?" 30

A. Maybe I did.

Q. Wasn't she in such a condition that you yourself did not believe she knew how she fell?

A. Not at that time; I asked because I thought she was in a condition to tell me; she was in a quieter condition at that time than at any other time after I arrived at the place of the accident.

Q. How long was it after the accident you asked the questions?

A. After the time it takes to go to the hospital, I suppose about ten minutes.

Q. After the arrival there she was asked these questions?

A. She had been taken in and laid on the table.

Q. She made two guesses at it?

A. She slipped or stepped on her skirt.

Q. She did not tell you positively how it happened?

A. Just as I have described it.

10 Mr. Macpherson—Now, with the exception of Officer Hoffman, that is our case.

The Court—Well, Mr. McGoogan, do you want him brought here?

Mr. McGoogan—I do not know what he is going to testify to.

The Court—Counsel says that he will testify to substantially what these other two witnesses have stated, that she said she either slipped or fell—caught her foot or fell.

20 Mr. McGoogan—I think that the presence of the officer might be of great assistance to us in regard to her condition.

The Court—Well, these other people saw her, didn't they? Is there any dispute about what her condition was?

Mr. McGoogan—No, except that she was highly nervous.

The Court—There is plenty of testimony on that in the case.

30 Mr. McGoogan—I hardly feel safe in admitting that he would say that. I don't know that he would excepting what counsel have told me.

Mr. Macpherson—Here is his signature what he has said. [Hands paper to Mr. McGoogan.]

Mr. McGoogan—If that is the statement that you want to put in, that Officer Hoffman said, I will admit it, this last statement here.

The Court—Hoffman is the man?

Mr. McGoogan—He is the officer.

The Court—And he is not here?

Mr. McGoogan—He is not here.

The Court—It is his statement you want to put in. I understand counsel to admit if he were here he would testify to what is in this statement.

Mr. McGoogan—Yes.

The Court—Let it be read.

Mr. Macpherson [reading]—“When Inspector Harry West asked Miss Carton how she came to fall, if the car was stopped, she said: ‘The car was stopped and she missed her step in some way and could not say how she came to fall.’”

(Defendant rests.)

*Miss Sarah Carton*, the plaintiff, recalled in rebuttal. Direct examination by Mr. McGoogan.

Q. Miss Carton, do you remember lying on the table in the reception room at the hospital on the occasion about which the officer has spoken?

The Court—She was examined quite fully about this on cross-examination. She denied she made these statements.

A. I don't remember of anybody talking to me but the doctors and the two nurses when I went on the table.

Q. Do you remember seeing the inspector, Mr. West?

A. The two gentlemen stood back of me and they never said one word to me, as I remember.

(Testimony closed.)

Mr. Macpherson—I wish to ask for a direction of verdict on the ground that the testimony shows that there was no negligence on the part of the officers of the company, and that the injury was caused, if caused, not by any fault of any servant of the defendant company, but it was a pure accident.

The Court—No. She says, point blank, that this accident happened by reason of her being thrown by the

car making a movement after it had stopped and as she was getting off, and, in rebuttal of that, there is the testimony of the conductor and the testimony of the other passenger and these alleged statements that she is said to have made outside. The whole of it, makes a question for the jury which I cannot deal with on this motion.

I will note an exception.

(Counsel summed up.)

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### Charge.

- 10 The Court (Lloyd, J.)—Gentlemen of the Jury: If the plaintiff is entitled to recover in this action, it is because of the negligence of the defendant company, and that alone. The whole theory upon which the action is brought is that the motorman of this car did a thing which a prudent man would not do under the circumstances, and, if the plaintiff is entitled to recover, the jury will award her compensation for the injury which she sustained, making it neither less nor more than in good conscience it ought to be. In determining the question of compensation you will take into consideration the pain she has suffered, and yet may suffer; you would also take into consideration the expense she has incurred and the loss of her earnings both in the past and in the future.

- 20 It is agreed, I think, that the permanency of her impairment is very slight, one doctor saying that he thinks it is practically none, or will be when her health is fully restored, and the other saying that it is not impaired, if anything, beyond five per cent. of her capacity. Her wages were five dollars a week; she was working in domestic service and she lost thirteen weeks in the hospital. She has been out of employment since that time, and may be out of employment some little time yet.

Those are the elements which you would be justified, and, indeed, required to consider if you reach the conclusion that the defendant is liable for her injury. Now, is the defendant liable? As I said to you before, it must rest upon the failure to do something that ought to have been done by the motorman or in the doing of something which he ought not to have done. Negligence may be either negative or affirmative. I may omit to do something which, as a reasonable careful man I ought to do, and that would be negative; or I may do something 10 affirmatively that I ought not to do as a reasonably prudent man, and that would be negligence.

Perhaps, you will have little difficulty in deciding that if the facts are as contended for by the plaintiff, that the motorman was negligent. A motorman who stops a car and while a person is in the act of stepping off of it permits it to be started, or gives it an impact or jerk that will throw that person to the ground, is one whom you probably and properly would say was not using reasonable care under the circumstances. 20

I may say to you, in addition to that, that the law requires of a carrier of passengers that it exercise a high degree of care for their safety, and this action, if it occurred, you would say was neither reasonable care nor high care, and the important question for you to determine, it seems to the court, is whether you believe how this thing happened. The plaintiff says as she was stepping from the car she had gotten to the first step and the car gave a jerk and threw her. The defendant says, in substance, that that did not occur at all; that whatever 30 the cause for her falling, there was no movement of the car that caused it that they know of or recollect. The conductor, who was on the rear of the car, said that the plaintiff got up and was going to the front of the car as the car stopped; that she then passed on out, and the first he knew of any accident was when she screamed. He said that there was no jerking movement of the car after it came to a stop, and that it did come to a stop before she reached the front platform. A passenger, who

was in the car farther forward than the plaintiff, said that she saw the plaintiff go by her a little uncertain in her walk; that it appeared to her that she was catching on to the ends of the seats as she went forward, and that before she reached the front platform the car had stopped, and that she passed on beyond the reach of her observation. In that situation there would certainly be the testimony of the plaintiff herself, the testimony of the passenger and the conductor as to the actual occur-

10 rence. But there is more in this case than that. The defendant company has called three witnesses, two of whom you saw, and the third one's testimony was read to you by agreement of the parties. These statements are alleged to be answers made by the plaintiff to the inspector in the hospital, and as evidence they bear upon two phases of the plaintiff's case. They bear upon the credibility to be attached to the plaintiff's testimony, and they also bear upon the truthfulness of the facts, the

20 verity of the facts, in that, if they are an admission or statement made by the plaintiff, they become primary evidence as to what the accident was caused by and how it was caused. Now, these statements, gentlemen, are slightly different. Two of them, the inspector and the officer, Braun, say, in substance, that when asked how it happened, she said that she either slipped on the step or caught her foot in her dress. Hoffman says that she said that she missed her step in some way and could not say how she fell. Irrespective of just exactly the language that she may have used, if those are substantially accu-

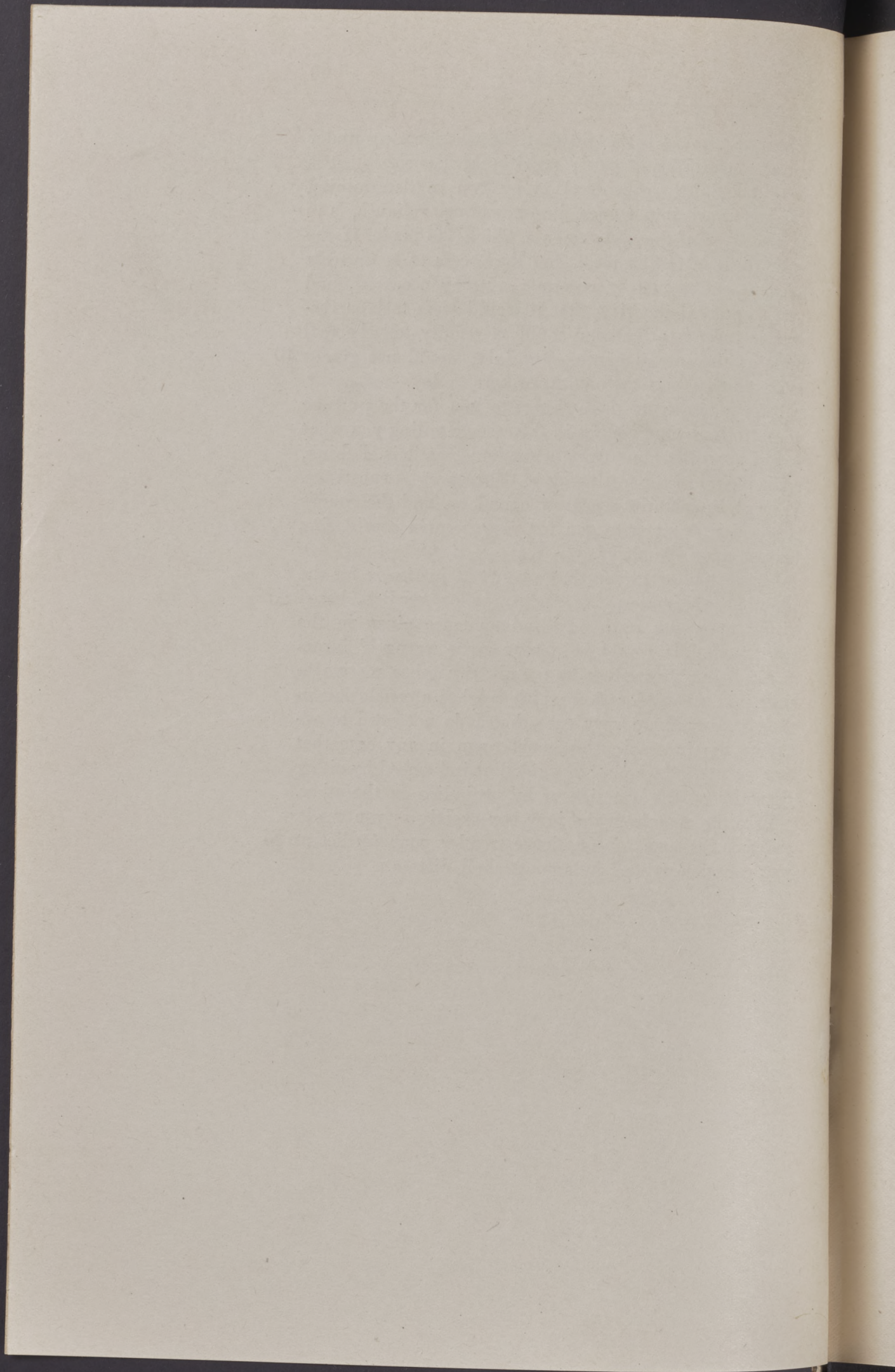
30 rate, they present to your mind a different account of this accident from the one that the plaintiff has given, and they do not, any of them, refer to any act of the motor-man in running the car, which would account for the injury which she sustained, and you may ask yourselves the question with entire propriety, that if she remembers now how this accident happened, and remembers that it happened by reason of the jerk throwing her to the ground, why would she not have made some mention about that then when the matter was fresh in her

memory? It has been said that she was laboring under extreme conditions of pain; possibly, that is so. That is to be taken into consideration by you in determining just how much importance, just how much reliance, is to be placed upon these statements which she made, if she made them in the hospital, and they seem to be entirely coherent statements or accounts, if they occurred, and tend to present the view that it would seem to be a reasonable inference that one could as readily tell the real cause as the unreal cause—certainly, would not give a 10 cause which is not the one given here to-day.

I am not reciting these things to you for the purpose of controlling your verdict in the case or telling you what sort of a verdict you ought to render; but it is, I think, a fair recital of the testimony in the case in its substance. The case lies within a narrow boundary, and the court's recollection is given to you for your help in considering the case upon its merits.

I need not say to you that a court of justice is for the rendition of justice. It is to render verdicts based 20 wholly upon the testimony and evidence given in the court room. It would be a very great wrong if jurors should bring themselves to permit any other motive to enter into a consideration which reaches a conclusion in the case, and I am very sure that I do not need to admonish the jurors in this court room in any case that they are not to be bound or guided or influenced by either sympathy on the one side or by prejudice on the other.

Take the case from the jury box exactly as you get it, and then, as men of conscience, render your verdict as 30 your consciences and judgments shall dictate.





type known as a pay-as-you-enter car, upon which the doors, both front and back, are kept closed until the car stops either to receive or discharge passengers. When the car came to a stop for the plaintiff to get off, she walked from her seat to the front of the car. It took her quite awhile to do so as she seemed to have some difficulty in walking, and had to take hold of both seats on each side of the aisle. (Case, page 42.) When she reached the front of the car, the motorman opened the  
10 doors for her to get off. As she was in the act of stepping off the car, she either stepped on her dress or slipped on the step and fell to the street. (Case, pages 29, 54 and 59.) She was taken to the hospital. During all this time and until the police officers and Mr. West (who had accompanied her to the hospital) had left the hospital, she was fully conscious. While at the hospital she stated to Mr. West, an employe of the defendant company, in the presence of the two policemen, she didn't know how she fell, but that she either "stepped on  
20 her skirt or slipped on the step." (Case, pages 29, 54 and 59.)

The injury she received was an impacted fracture of the neck of the thigh bone. She remained in the hospital about thirteen weeks; her expenses there were seven dollars a week. After leaving the hospital she went to live with her brother, and was still with him at the time of the trial, and she was paying him five dollars a week for board and service. At the time of the accident she was employed as a domestic in a private family,  
30 receiving as wages five dollars a week.

The motorman at the time of the trial was deceased.

The jury returned a verdict in favor of the plaintiff for six hundred dollars.

## THE LEGAL QUESTIONS.

## I.

IT WAS THE DUTY OF THE TRIAL JUDGE, AT THE CONCLUSION OF THE TESTIMONY ON BOTH SIDES, WHEN REQUESTED BY COUNSEL OF THE DEFENDANT, TO HAVE DIRECTED A VERDICT FOR THE DEFENDANT.

## II.

THE VERDICT OF THE JURY WAS AGAINST THE CLEAR WEIGHT OF THE EVIDENCE.

These two questions of law will be considered together, 10 as they are practically the same; for if the verdict of the jury was against the clear weight of the evidence, then the duty of the trial judge was to have directed the verdict in favor of the defendant.

The true test of the correctness of the ruling of the trial court in directing a verdict is this: Could the verdict of the jury be set aside as being unsupported by the evidence, or as against the weight of it.

*Hartman v. Alden*, 34 *N. J. Law* 518; *Crue v. Caldwell*, 52 *N. J. Law* 215; *Elizabeth v. Central R. R. Co.* 20 of *N. J.*, 82 *N. J. Law* 94.

In the case at issue, it was the duty of the plaintiff, before a recovery could be had in her favor, to have shown by the greater weight of evidence that the servant of the defendant company was guilty of negligence, and must also show the existence of such circumstances as *justify* the inference of fault on the part of the defendant or its servants, and *exclude* the inference that the damage she received was due to a cause for which the defendant was not responsible.

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*Austin v. Penn. R. R. Co.*, 82 *N. J. Law* 416.

Mr. Justice Swayze, in that case, went on to say that "the plaintiff must prove circumstances which render it probable and not merely possible that the defendant is at fault."

In considering this case, we think that if the tests above suggested are followed, the verdict of the jury must be set aside and a judgment given for the defendant.

The facts and circumstances justify such a course.

The only witness offered for the plaintiff that touched  
10 upon the cause of the injury was the plaintiff herself.

Five witnesses were offered by the defendant in support of its claim that it was free from fault.

The motorman was dead.

While it is true that mere numbers may not weigh in turning the scale as to the truth to be reached, yet when that number gives such corroborative testimony as to the probable circumstance which caused the injury, then such numbers become important if not controlling factors in establishing the truth.

20 The plaintiff's right to recover must rest upon this one question, "Did the car after she had gotten to the first step give a jerk and throw her?" being determined in the affirmative.

She said it did, and that as she fell she thought the car was about to start on her, and as she fell she heard the door shut. (Case, page 10.) The witnesses of the defendant company and the statement of the plaintiff herself, hereinafter referred to, overwhelm this testimony of the plaintiff as to being thrown from the car.

30 The conductor testified that he heard a scream and went through the car to the front, that when he reached the front the door was open and that he had not seen or heard the door closed, and that the motorman made no motion to open it (which he would have to do if he had previously closed it), and that as he was going through the car the motorman was getting off. (Case, page 36.)

He further testified that there was no movement or jerking of the car after it came to a stop to let the plaintiff off. (Case, page 35.)

May Morgan, who was the only passenger beside the plaintiff, also testified that she observed no moving or jolting of the car after it had once come to a stop. (Case, page 43.) This witness further testified that the plaintiff appeared to have some difficulty in walking and this condition of the plaintiff gives color and corroboration to the statement which the plaintiff made while at the hospital that she "either must have slipped or caught her dress."

The fact that the plaintiff was well along in years, 49 10 years old (Case, p. 28), was either lame or had difficulty in walking, that it took her longer in reaching the front of the car than other persons, would be matters that would be observed by the motorman, and it is a fair inference that he would not start his car until she had safely left it.

Again, the plaintiff had given at the hospital, immediately after the accident, a suggestion as to the cause of the injury entirely different from the one given by her at the trial. The cause she then assigned would be 20 a complete confirmation both of the testimony of the conductor and May Morgan, to wit, that there was no movement of the car that threw her to the street, nor any fault chargeable to the motorman, but that she must have caught her foot in her dress or that she slipped on the step, and as was said by the learned trial judge in his charge to the jury, if she so clearly remembered at the time of the trial that the jerk of the car threw her, why did she not mention about that when the event was so fresh in her memory. 30

And, I ask, if she had been thrown by the jerk of the car, why would she immediately after the accident have assigned as a cause for the injury something entirely inconsistent with the jerking of the car. I think the answer is that at the time she gave the answers to Mr. West's question she told the truth, and is consistent with the testimony that there was no such movement of the car as would have thrown her to the street, and justifies the inference that there was no fault on the part of the

defendant or its servants. The amount of the verdict indicates that in the jurors' minds there existed the belief that the plaintiff contributed to the injuries she received, for the amount they awarded her did not equal her money loss, without reference to the pain and suffering she endured.

We respectfully insist that the verdict of the jury is against the clear weight of the evidence, and therefore the verdict should be set aside and judgment awarded to  
10 the defendant.

GEORGE W. MACPHERSON,  
*Of Counsel with the Defendant.*





## NEW JERSEY COURT OF ERRORS AND APPEALS

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SARAH CARTON,

*Respondent,*

v.

TRENTON AND MERCER

COUNTY TRACTION

CORPORATION,

*Appellant.*

ACTION AT LAW.

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### BRIEF FOR RESPONDENT.

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The first ground of appeal can be disposed of by asserting that the State of the Case contains no record of a motion for a non-suit. The refusal of the trial court to grant a motion that was not made, cannot be urged as error. *Garretson v. Appleton*, 58 L., at p. 393.

The second and third grounds of appeal are based upon the refusal to direct a verdict for the appellant and the weight of the evidence.

The respondent testified that she was injured by being thrown to the ground by a sudden jolt of a trolley car

of the appellant, while she was in the act of alighting therefrom. The conductor of the car and a passenger testified that there was no perceptible jolt at the time of the accident, although it was admitted by the conductor that the car had stopped at the foot of a steep grade and had traveled beyond the usual stopping place, at least half the width of a city street. (State of Case, p. 40, lines 1 to 20.) He also testified (p. 38, lines 23 to 29) that the car would give a jolt if the brakes were not released properly.

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In addition to these two witnesses, the inspector of the trolley company testified that while respondent was being disrobed and while suffering great pain in the hospital to which she was immediately taken in an ambulance, made a statement that she did not know whether she stepped on her skirt in getting off or whether she slipped on the step. This statement was corroborated by the witness Braun, a policeman, who testified that the respondent said in the hospital that she did not know exactly if she slipped or her dress caught (p. 29, line 28). Yet when this statement was made, the injured woman was "apparently conscious" as the trolley company inspector testified (p. 54, lines 26-27) and the inspector was quizzing her while she was moaning and "hollering," helpless on a table in the hospital (p. 30, lines 20 to 39). The inspector stayed only 10 minutes in the hospital (p. 54, lines 18 to 21).

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Another witness for the defendant, who was ill and whose statement was read to the jury (p. 59, lines 8 to 12), said that respondent, on the hospital table, said: "The car was stopped and she missed her step in some way and could not say how she came to fall." The testimony last quoted differs from that of the inspector and the other policeman, and it was within the jury's province to find that, if while suffering great pain on the hospital table, she did not remember how she fell, her sub-

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sequent recollection that she was thrown by a jolt of the car described correctly the direct cause of the injury.

The respondent denied making the statement to the inspector and the policeman and said (p. 59, lines 16 to 35), that she did not "remember of anybody talking to me but the doctor and the two nurses when I went on the table."

"Although the testimony of the plaintiffs was contradicted, all disputed facts must be resolved in their favor on a motion for the direction of a verdict. \* \* \* A trial court cannot direct a verdict where there is a substantial dispute as to the facts or the inferences to be drawn therefrom." *Browne v. N. J. Conference*, 83 L., at p. 622. 10

"If there be any evidence which raises a debatable question upon the issue involved, a case is presented for the consideration of the jury." *Boswell v. Public Service Corp.*, 77 L. 231. 20

In an action for personal injuries, it will be presumed in support of a verdict for plaintiff approved by the trial court, that the jury accepted the testimony of the plaintiff as to how the accident happened. *Cannon v. Del., etc., R. Co.*, 82 L. 730.

"While the weight of evidence may appear to show a certain state of facts, yet, where there is evidence tending to show the contrary, a jury question arises, and, there being evidence to support it, the court, on error, is not at liberty to disturb the jury's verdict." *Spargo v. Central R. Co.*, 84 L. 251. 30

"Nor should it (the trial court) at the close of the defendant's case direct a verdict for the de-

fendant on the ground of contributory negligence, where it is a question of fact, such a question being solely for the jury to determine. *Id.*, p. 251.

“In a conflict of testimony, when the facts found by the jury will sustain the verdict the court will not set it aside, although in their opinion the jury might, upon the evidence, have found otherwise.” *Bennet v. Busch*, 75 L. 240.

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“To justify a court in setting aside a verdict of a jury, on the ground that it is against the weight of the evidence, it must be so palpable as to give rise to the inference that it is the result of mistake, passion, prejudice or partiality.” *Floersch v. Donnell*, 82 L. 357; *Goldman v. Central R. Co.*, 79 L. 205.

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The case at bar is controlled by the case of *Oakerson v. Atlantic Coast Ry. Co.*, 77 L. 769, where a similar state of facts existed, including, even, admissions made by the plaintiff against her interest, concerning the accident, and this court held that it was a case for the jury.

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In *Consolidated Traction Co. v. Thalheimer*, 59 L. 474, this court held that the occurrence of a lurch or jolt of a street car such as was described by the respondent in the case at bar, justified an inference that there was some breach of a duty owed to the passenger by the company; and that *res ipsa loquitur*. Mrs. Thalheimer, the plaintiff, was the only witness who described the accident in her case, and the traction company submitted evidence that showed that she fell on the street after alighting safely from the car. On this phase of the case, this court held, on page 475:

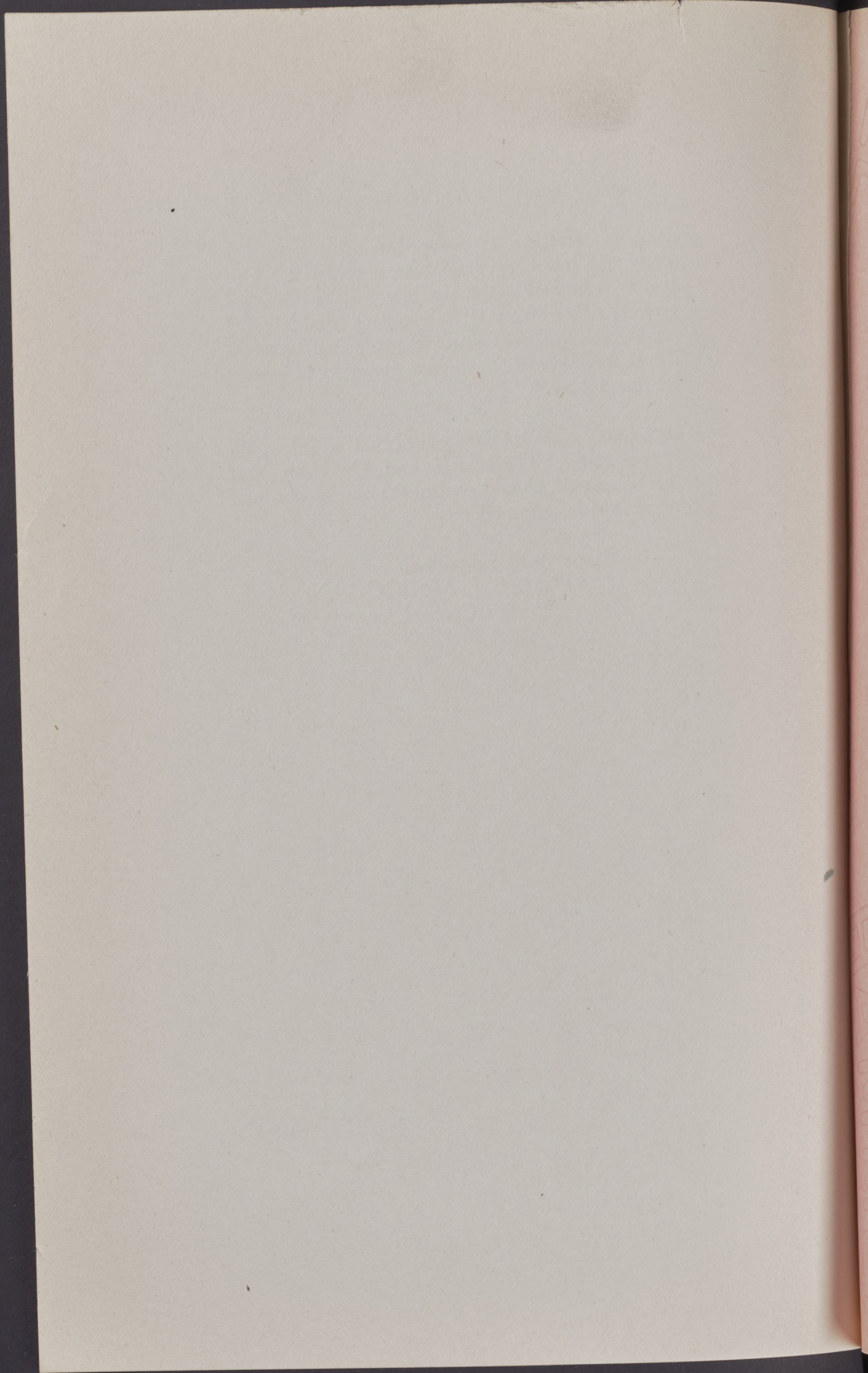
“Upon an application for a new trial, a serious question would be presented as to the weight

of this conflicting testimony, but upon error, the weight of testimony cannot be considered. Our review is limited to the consideration of the question whether Mrs. Thalheimer's evidence, if credence were given to it, was sufficient to establish the liability of the traction company to answer for her injury."

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See, also, *Fenig v. North Jersey St. Ry. Co.*, 60 L. 60. These two cases, Thalheimer and Oakerson, just quoted, it is submitted, should control the case at bar, and the verdict should be affirmed.

Respectfully submitted,  
JAMES J. McGOOGAN,  
*Counsel for respondent.*



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