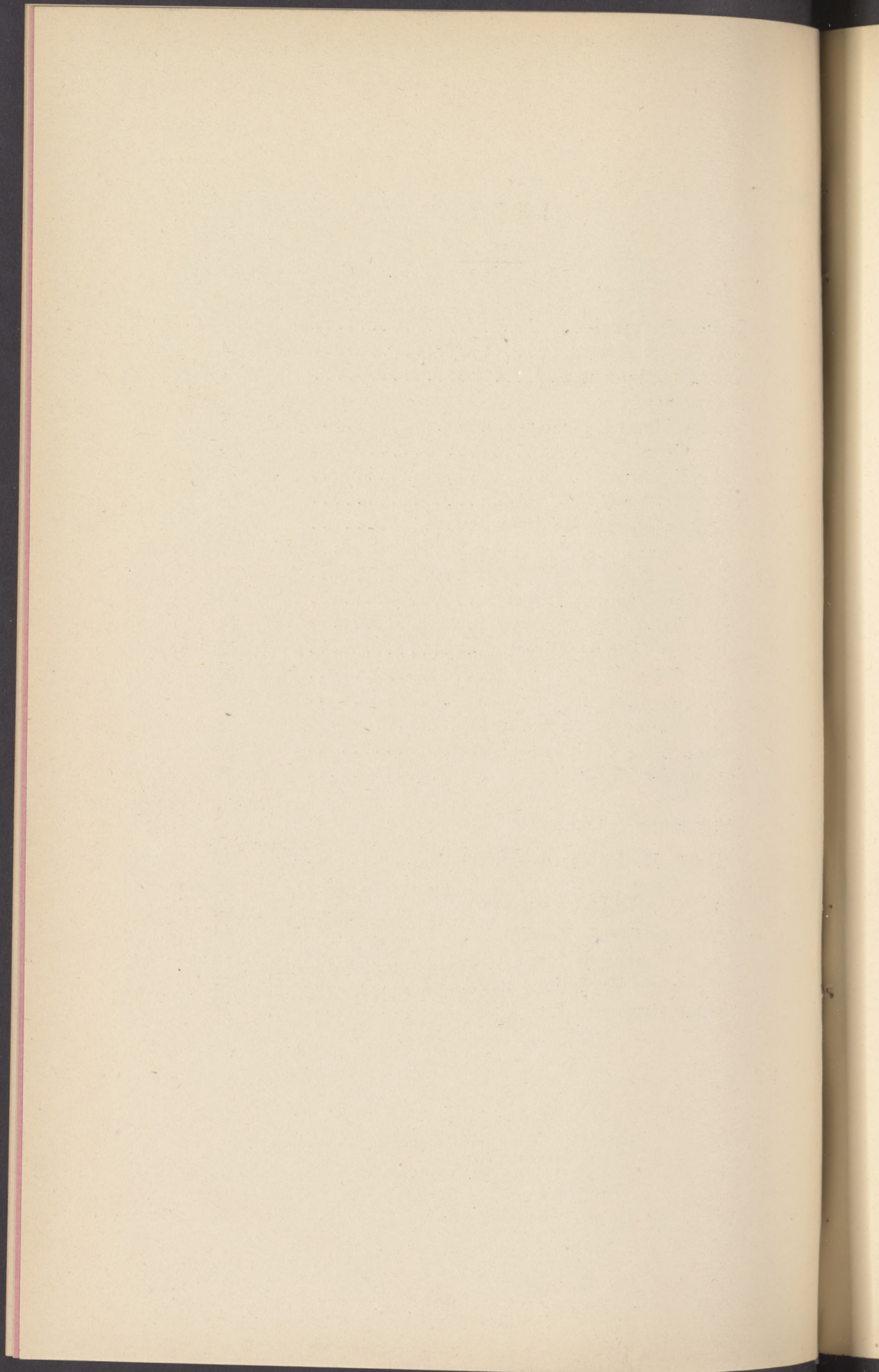


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NOTICE OF APPEAL.

(Filed June 30, 1913.)

NEW JERSEY SUPREME COURT.

10

ANNA J. CULLEN and
CHARLES CULLEN,

Plaintiffs,

vs.

WEST JERSEY AND SEASHORE
RAILROAD COMPANY,

Defendant.

ACTION AT LAW.

NOTICE OF APPEAL.

20

To Messrs. Wescott & Wescott, Attorneys of Plaintiffs.

Sirs: Take notice that the defendant appeals to the Court of Errors and Appeals from the New Jersey Supreme Court from the whole of the judgment entered in this cause. 30

BOURGEOIS & COULOMB,
*Attorneys of Defendant, West
Jersey and Seashore Rail-
road Company.*

—————
 GROUNDS OF APPEAL.

(Filed July 31, 1913.)

NEW JERSEY
 COURT OF ERRORS AND APPEALS.

10	ANNA J. CULLEN and CHARLES CULLEN, <i>Plaintiffs,</i> <i>Respondents,</i>	}	GROUNDS OF APPEAL.
	vs. WEST JERSEY AND SEASHORE RAILROAD COMPANY, <i>Defendant,</i> <i>Appellant.</i>		

20

—————
To Messrs. Wescott & Wescott, Attorneys of Respondents.

TAKE NOTICE that the defendant, appellant, hereby assigns the following grounds of appeal in the above stated cause:

1. Because the Court refused defendant's motion for a non-suit.
2. Because the Court refused to direct a verdict in favor of defendant.
3. Because the Court allowed the plaintiffs to amend their declaration after the entire case was in.

BOURGEOIS & COULOMB,
Attorneys of Appellant.

NEW JERSEY COURT OF ERRORS AND APPEALS.

ANNA J. CULLEN AND
CHARLES CULLEN,
Plaintiffs-Respondents,

VS.

WEST JERSEY & SEASHORE
RAILROAD COMPANY,
Defendant-Appellant.

ADDITIONAL
GROUNDS
FOR APPEAL.

10

To Messrs. Wescott & Wescott, Attorneys of Respondent.

PLEASE TAKE NOTICE that defendant appellant hereby assigns additional grounds of appeal in the above stated cause.

1. Because the Court erroneously charged the jury as follows:

“The contention of the plaintiffs in regard to the matter of negligence is that in the day time, on January twenty-fourth, 1910, Mrs. Anna Cullen, while in the act of alighting as a passenger from one of the defendant’s passenger coaches at Minotola station, in this county, stepped upon a slanting portion of the station platform after the conductor had said to the passengers, “step lively.”

20

2. Because the Court erroneously charged the jury as follows:

"She, without knowing the exact location of the platform where she was alighting, was expecting to alight upon the flat portion of the platform."

3. Because the Court erroneously charged the jury as follows:

10 "The contention of the plaintiffs in regard to the matter of negligence is that * * * the platform was different in construction from other platforms of the defendant and similar companies.

4. Because the Court erroneously charged the jury as follows:

20 "Therefore, you are led to the question whether or not this defendant was negligent in failing to provide a reasonably safe place for Mrs. Cullen to alight, and in the determination of that question, you are required to take into consideration the evidence of the defendant, as well as all the evidence in the case, touching the construction of the platform; and if you find, as the defendant claims, that it was approved in point of construction by long usage, and that it was not an unusually constructed platform, you will find a verdict for the defendant."

Dated October 1, 1913.

BOURGEOIS & COULOMB,

Attorneys of Appellant.

COPY OF JUDGMENT.

NEW JERSEY SUPREME COURT.

ANNA J. CULLEN and

CHARLES E. CULLEN,

vs.

WEST JERSEY AND SEASHORE

RAILROAD COMPANY.

IN TORT. 10
ON POSTEA.

WESCOTT & WESCOTT, Attorneys.

20

As yet of the fifth day of March, A. D. nineteen hundred and ten.

Witness, WILLIAM S. GUMMERE, ESQUIRE,
Chief Justice.

WILLIAM RIKER, JR.,
Clerk.

30

ATLANTIC COUNTY, ss.:

The West Jersey and Seashore Railroad Company, the defendant in this suit, was summoned to answer unto Anna J. Cullen and Charles E. Cullen, the plaintiffs therein, in a plea of an action in tort; whereupon the said

plaintiffs, by Wescott & Wescott, their attorneys, complain for that heretofore, to wit, on or about the twenty-fourth day of January, nineteen hundred and ten, at Minotola, in Atlantic County, to wit, at Mays Landing, in said county, the said plaintiff, Anna J. Cullen, for hire then and there paid to the defendant became and was a passenger of the aforesaid defendant for the purpose of being transported to Minotola; that it was the duty of the defendant to furnish the plaintiff with a reasonably
10 safe and fit place in which to alight from its train when her destination was reached; yet the defendant disregarded its duty in this behalf, and negligently and carelessly had and maintained its platform, at the aforesaid time and place, in such an unsafe and dangerous condition that the plaintiff, as she was attempting to alight from the aforesaid train, because said platform was dangerous and unsafe, was thrown violently to the platform and was seriously and permanently injured and caused and will be caused to suffer great pain of body and mind,
20 to her damage ten thousand dollars.

And the plaintiff, Charles E. Cullen, complains for that, at the time of the committing of the said grievances and injury above set forth, he was, and now is the husband of the said Anna J. Cullen, plaintiff as aforesaid, and the said Charles E. Cullen avers that, by reason of the premises above set forth, and the injuries of his said wife, Anna J. Cullen, then and there done and inflicted upon her by the carelessness and negligence of the said defendant's agents, the said Charles E. Cullen, husband
30 of the said Anna J. Cullen, suffered great loss, damage and injury, by then and there being deprived of the society, comfort, companionship and service of his said wife; and the said Charles E. Cullen avers, as such husband, by reason of the carelessness and negligence of the said defendant, he has had of necessity, and still does have to spend large sums of money in his efforts to have

his said wife relieved of her said injuries, all to his damage ten thousand dollars; and therefore they bring their suit, etc.

And now comes the defendant, by Bourgeois & Sooy, its attorneys and defends the wrong and injury when, etc., and says that it is not guilty of the said supposed grievances above laid to its charge or any or either of them, or any part thereof, in manner and form as the said plaintiff has above thereof complained against it. And of this the said defendant puts itself upon the coun- 10
try, and the plaintiff doth the like.

Therefore let a jury thereupon come before our Chief Justice or some other Justice of the Supreme Court of the State of New Jersey, at a Circuit Court to be holden at Mays Landing in and for the County of Atlantic, on the second Tuesday of May, in the year of our Lord, one thousand nine hundred and thirteen, by whom, etc., and the same day is given to the parties aforesaid there, etc.

And now at this day, to wit, the twenty-fourth day of June, A. D. nineteen hundred and thirteen, before our said Supreme Court at Trenton come the said plaintiffs, 20
by their attorneys aforesaid, and the Justice before whom, etc., having first sent hither his record had before him in these words, to wit:

Afterwards, that is to say, on the twenty-third day of May, one thousand nine hundred and thirteen, at a Circuit Court, held at Mays Landing, in and for the County of Atlantic, before his Honor Howard Carrow, one of the Circuit Judges, holding the Circuit Court in and for the County of Atlantic, to whom the foregoing cause was referred by the Honorable Samuel Kalisch, one of the Justices of the Supreme Court of the State of New Jersey, holding the Circuit Court in and for the County of Atlantic, according to the form of the statute in such case made and provided, comes as well the within named Anna J. Cullen and Charles E. Cullen, plaintiffs, as the within named West Jersey and Seashore Railroad Company, 30

defendant, by their respective attorneys, within named, and the jurors of the jury, being summoned to try the said issue, also come, who, to try the truth of the matters within contained, being chosen, tried and sworn on their oaths say that the said West Jersey and Seashore Railroad Company is guilty as in the above declaration charged against it, and they assess the damages of the said Anna J. Cullen over and above her costs and charges, at one hundred dollars, and they assess the damages of the said Charles E. Cullen, over and above his costs and charges, at seventy dollars, and for those costs and charges six cents.

Therefore it is considered that the said plaintiffs do recover against the said defendant their said damages by the jury in form aforesaid found to one hundred dollars in favor of Anna J. Cullen; and to seventy dollars in favor of Charles E. Cullen and also eighty-one dollars and twenty-seven cents for their costs and charges aforesaid, by the Court now here adjudged to the said plaintiffs and with their assent, which said damages, costs and charges in the whole amount to two hundred and fifty-one dollars and twenty-seven cents.

Judgment signed this twenty-fourth day of June, A. D. nineteen hundred and thirteen.

WILLIAM 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 judgment entered in the above stated cause as the same remains of record in my office.

In testimony whereof I have set my hand and the seal of said Court at Trenton this
[SEAL] fourth day of August, A. D. nineteen hundred and thirteen.

WM. C. GEBHARDT,
Clerk.

NEW JERSEY SUPREME COURT.

ANNA J. CULLEN and
CHARLES CULLEN,

vs.

WEST JERSEY & SEASHORE
RAILROAD COMPANY.

IN TORT. 10

Mays Landing, N. J., May twenty-second, 1913. 20

TESTIMONY.

Before HONORABLE HOWARD CARROW, Judge, and Jury.

30

APPEARANCES:

For Plaintiffs, MESSRS. WESCOTT & WESCOTT.

For Defendant, MESSRS. BOURGEOIS & COULOMB.

DR WILLIAM J. DUBLER, SWORN.

Direct examination.

By Mr. Wescott:

Q. You practice medicine, do you?

A. Yes, sir.

Q. How long have you been engaged in that business?

10 A. About fifteen years.

Q. Do you know Mrs. Cullen?

A. Yes, sir.

Q. Where were you practicing medicine in January of 1910?

A. Minotola.

Q. How long had you lived at Minotola?

A. I lived at Minotola for—up to that time?

Q. Yes, and ever since.

A. Well, I was there in all about nine years.

20 Q. And where do you practice medicine now?

A. Atlantic City.

Q. How long have you been practicing there?

A. Why, I have just been there about three months.

Q. Were you called upon professionally to see Mrs. Cullen?

A. Yes, sir.

Q. What did you find to be her trouble?

A. Well, I found a contusion of the ankle joint.

Q. Which ankle was it, do you remember?

30 A. Why, I think it was the right ankle.

Q. Go on.

A. With an acute synovitis. That would be an inflammation of the ankle joint, and contusion surrounding the joint.

Q. How did her ankle look when you first saw it?

A. Why, it was swelled and the characteristic black and blue.

Q. How much was it swollen?

A. Well, it was considerably swelled. It would cover up all the bony marks of the ankle.

Q. How long has she been under your charge?

A. Well, practically she was under my care for possibly three or four months, but for two months, anyhow, I was looking after her very well; that is, the first week I called, I expect, once a day, and after that from twice a week down to once a week.

Q. Where was she?

A. At her home.

Q. I thought she was taken to Atlantic City. She was not taken there?

A. No, sir.

Q. This was at her home?

A. At her home.

Q. In Minotola?

A. In Minotola.

Q. How long was she laid up?

A. Why, she was practically in the house—she was laid up for at least, if I can remember right, for three or four weeks.

Q. Three or four what?

A. Three or four weeks.

Q. And when she got about, got out of bed, how did she get around?

A. Well, she was on crutches for some time after that.

Q. Was this injury one that would cause much or little pain?

A. It would cause considerable pain while the swelling was there.

Q. After the swelling had gone?

A. After the swelling it would be as a result of the injury, the inflamed parts would still be in a state of congestion but wouldn't attack the surrounding parts.

Q. Well, would it cause pain?

10

20

30

A. Oh, yes; yes, indeed.

Q. Was the injury a severe one or not?

A. I would consider it was a severe injury at the time, yes.

Q. Will her ankle ever get well, get normal again?

A. In those cases of practically sprains, where the ligaments are stretched or possibly some of them broken, they would never heal.

Q. How is it in her case?

10 A. In her case I would consider that in all changes of weather she would feel it, and possibly feel it to such an extent that she couldn't use her ankle at times. These conditions are, of course, worse at times than they are at others, and it renders the ankle weak as a result of having once had those ligaments stretched, and the accident, of course, is liable to recur at frequent times when she gets in the same kind of a position.

Q. What I want to know is whether that ankle will ever get normal again.

20 A. I doubt very much whether an ankle in that shape does.

Q. Do you know whether her ankle still troubles her? Have you professional knowledge on that point?

A. Not in any professional knowledge.

Cross-examination.

By Mr. Coulomb:

30 Q. Is this just a sprained ankle that she is suffering from, Doctor?

A. It would be a contusion or a bruise.

Q. And what is a contusion?

A. A contusion is a condition where the skin is not broken but where the subcutaneous tissues are extremely in a destructive state, extremely destroyed.

Q. Can such a contusion be cured?
A. The contusion in itself becomes cured, yes.
Q. Do you know whether the contusion is cured in Mrs. Cullen's case?

A. The contusion has reference to the subcutaneous tissues, understand, and as soon as this black and blue or the extravasation of blood which occurs under the skin has gone, that is practically cured, yes.

Q. And the black and blue marks are the sign of a contusion?

10

A. Yes.

Q. Then a contusion is really nothing more or less than a bruise?

A. Yes.

By Mr. Wescott:

Q. What is it? You say the contusion is cured and the black and blue is cured. What is it that is the trouble with the ankle now?

20

A. The trouble with the ankle is this: In the formation of the ankle joint, it is a hinge joint; it isn't supposed to have any lateral movements; if any, it is slight. The ankle is covered by a sort of sheath and at parts this sheath is thickened, which forms ligaments. The ligaments, if they are injured in any way, won't heal up.

Q. Is that the matter with her now?

A. That is the condition with her.

Q. What is the amount of your bill, Doctor?

A. What say?

30

Q. The amount of your bill.

A. What was the amount of my bill?

Q. What is the amount of your bill, your doctor's bill?

A. For today, for my services?

Q. For all time.

A. I really couldn't remember that. I haven't looked it up.

Q. Have you any idea what it was?

A. I expect it was somewhere around seventy dollars; I think it was.

Q. Have you ever seen this platform?

A. Yes, sir.

Q. Will you describe its appearance, its condition, as it was in 1910?

A. Well, the appearance of the platform was a depression cut out to the extent of about seven or eight inches,
 10 I expect, deep at the deepest part, and then it gradually slopes up. I suppose the whole thing measures in length at its widest part, about six or seven feet. That is as I see it in my mind's eye.

Q. I guess that is about right. Have you seen many platforms at railroad stations in your time?

A. Yes.

Q. Did you ever see one like this before?

A. I don't believe I have. I wouldn't say that positively, though.

20

By Mr. Coulomb:

Q. Doctor, how much did you say your bill was?

A. About seventy dollars.

Q. Seventeen or seventy?

A. Seventy.

Q. How much did you charge per visit to Mrs. Cullen?

A. Well, at first, for the examination, I would charge
 30 five dollars, and then from that, for the first week, two dollars a visit.

Q. How many visits did you make the first week? Every day?

A. Every day, I think.

Q. And after that how much did you charge a visit?

A. After that a dollar a visit.

Q. And how many visits did you make, did you say, a week?

A. Well, at first I made two. Possibly every other day or every third day.

Q. Doctor, did I understand you to say that a sprained ankle a person never recovers from?

A. If the ligaments are broken, no.

Q. Were the ligaments broken in Mrs. Cullen's case?

A. In my estimation, they were. Not entirely through. There may have been some of the fibers broken, understand, or you wouldn't have had that swelling in front of the joint.

10

Q. Don't you always have a swelling when there is a sprained ankle? Isn't that one of the outer indications?

A. Yes; that is what produces the swelling. The bruise in itself is due to possibly falling on the part.

Q. Then unless the ligaments are broken, actually separated, there is a chance of complete recovery?

A. Oh, yes.

Q. Have you ever seen the station platform at Pleasantville?

A. I don't remember seeing it except going past on the cars. 20

Q. Have you ever seen the station platform at Newfield?

A. Yes.

Q. Did you see a depression of the character that you see at Minotola, for the purpose of letting baggage be carried from the platform on one side of the tracks to the platform on the other side of the tracks?

A. No, I have not, only on the crossing there.

Q. Wasn't the depression you have spoken of at Minotola used for the purpose of permitting baggage to be rolled across from one platform to the other? 30

A. Yes, sir.

Q. Have you ever observed stations at double track roads?

A. Well, I have never observed them in any particular way.

Q. Did you ever see one where there was not a cross-over of this character, that is, an incline, permitting baggage to be wheeled from one platform to the other across the double tracks?

A. Why, I don't believe I have ever seen a depression in a platform as this one is.

Q. You have seen depressions in platforms?

A. I have seen where the whole platform has been depressed, yes, at places.

10 Q. Then the only place you have ever seen a depression for the purpose of permitting baggage to be taken across is where the whole platform has been depressed?

A. As far as I can remember, yes.

Q. What do you mean by the whole platform; the whole length of it?

A. No. Say for instance this is the platform, where possibly for eight or ten feet in the middle, the whole platform crossways was depressed, lowered with the tracks.

20 Q. That would leave a distinct step from one part of the platform down to where the lowest part of the depression was?

A. I never saw a step. I saw an incline.

Q. That is what there is here, isn't it?

A. Yes, but this incline is cut right out from the platform. This incline doesn't extend clear across the platform only for about three or four feet into the platform.

Q. And there is no distinct step down into it?

A. No, sir.

30 Q. It is a gradual slope from whichever way you approach it?

A. Yes, sir.

By the Court:

Q. Is this incline in that portion of the platform where passengers alight from trains?

A. Yes, sir. Of course, it would depend on whether the ends of the car stopped right on this depression or not.

Q. Yes, I see. Then it runs down to a depth of how many inches?

A. Well, I should judge about seven or eight inches; I won't be sure.

Q. From a level with the general platform?

A. With the general platform, yes, sir.

Q. How near is it to the Philadelphia end of the platform? 10

A. Why, it is directly in front of the station.

Q. It is directly in front of the station?

A. Yes, sir.

By Mr. Coulomb:

Q. Doctor, I show you a photograph and ask you if that represents the depression in the platform at Minotola that you have described? 20

A. Yes, the picture is there, but it don't give a very clear idea of it.

Q. Does that show the picture of the whole depression?

A. It shows the picture of the whole depression, yes, sir.

(Picture marked D1 for identification.)

30

WALTER MURPHY, sworn.

Direct examination.

By Mr. Wescott:

Q. Where do you live, Mr. Murphy?

A. Minotola.

- Q. How long have you lived there?
A. About four years.
- Q. Did you live there in 1910?
A. Yes, sir.
- Q. Did you know Mrs. Cullen?
A. Yes, sir.
- Q. Do you know this platform there?
A. Yes, sir.
- Q. Have you seen many platforms in your time?
10 A. Seen quite a few.
- Q. Ever see one with a hole in it like this one?
A. No, sir.
- Q. What is it shaped like?
A. Well, as near as I can tell, like a dish or like a saucer cut in two, comes down this way.
- Q. Just as you are holding your hands, that way?
A. Yes, sir.
- Q. Does it come out even with the car?
A. Comes out even with the car.
- 20 Q. How far does it extend inward towards the station?
A. Well, I couldn't hardly tell you about how far, but about where the truck stands.
- Q. Do you know about how long the whole platform is?
A. No, sir, I don't.
- Q. This place in the platform is about where? Where is it located, taking the platform from one end to the other?
- 30 A. Well, just below the window where the ticket agent sets.
- Q. I mean as to length. Is it half way between the two ends of the platform?
A. I couldn't hardly say that.
- Q. Were you there at the time this accident happened?

A. No, sir, I wasn't right there. I was on the west side of the station, in back.

Q. What did you see about it?

A. I just seen the crowd of people run up towards her and seen her husband and the conductor pick her up and put her on the steps. That is all I seen.

Q. Didn't see her fall?

A. No, sir.

Q. And don't know how she fell?

A. No, sir.

Q. Did you see her when she got about from her house after the injury?

A. No, sir, I didn't see her for quite a while.

10

Cross-examination.

By Mr. Bourgeois:

Q. What do you do, Mr. Murphy.

A. Glassworker.

20

Q. What do you do in glass working?

A. Press.

Q. You said that you had seen a good many stations?

A. Yes, sir.

Q. You have seen many stations of double track roads, haven't you?

A. Yes, sir.

Q. At all double track roads the baggage is partly unloaded on one side of the road and partly on the other side, is it not?

30

A. Yes, sir.

Q. Because of the trains running in opposite directions? In those double track roads they all have a means of getting their freight from one side to the other, don't they, that is, their baggage?

A. Yes.

Q. And they move that baggage on a wheel truck, don't they, two-wheel truck?

A. Well, according to the train time, yes, sir.

Q. All roads have some device by which they get that truck down from the level of the platform down to the level of the rails, so they can go across, don't they?

A. Yes, sir.

10 Q. Down here, for instance, at Mays Landing, the incline or the depression is at the end of the track, is it not?

A. I couldn't tell you; never took notice.

Q. At the end of the track, and then they go across the street here and then up; but they don't always have streets, do they, at double track stations?

A. No.

Q. In Minotola they had this what you call a dish-like arrangement?

A. Yes, sir.

20 Q. So that from whatever point you approach this crossing, that is, where you cross over the track, you go down this incline?

A. Yes, to go across.

Q. And then there is a piece of planking right across the track so as to go right across?

A. Yes, sir.

Q. And another of these things on the other side?

A. No boards or anything. That is crushed stone.

Q. Have you ever noticed the platform at Pleasantville?

30 A. No, sir.

Q. You have been down there, haven't you?

A. I have been down there but I never took notice of any platforms.

Q. Don't you remember the brick platform on the northbound track?

A. No, sir.

Q. That is on this side of it?

A. No, sir.

Q. Don't remember exactly the same kind of a depression in that?

A. No, sir; I never hardly take notice.

Q. The depression you have been accustomed to see has been a straight depression?

A. Like this here in Minotola is all I have took notice of.

Q. All have been like that one? 10

A. I have never taken notice of any other.

Q. Have you never seen them where they move the baggage from one side to the other?

A. Only when they go down straight where they go over across a railroad like a street goes across.

Q. If they go straight down, they have that decline just the same?

A. Not very much.

Q. Do they have it very much here?

A. I have an idea they do. 20

Q. How much do you think they have it here; about twenty inches?

A. About seven or eight inches.

Q. Suppose it is only five and one-quarter inches; would you say that is about right?

A. I couldn't hardly say.

Q. It may be only five and one-quarter inches, may it not?

A. I couldn't say.

Q. You didn't measure it? 30

A. No, sir.

Q. What other stations have you noticed besides this one to find out what arrangement they have for going across on their tracks?

A. Never took notice of any.

Q. Then when you answered Judge Wescott that you

were familiar with stations, you meant you were familiar with all other parts except this part?

A. Just getting off and on.

Q. But you don't know anything about the construction of stations, so far as moving the baggage from one station to the other is concerned?

A. No.

10 Q. I show you a picture—it isn't very bright but I think you can see it all right, a picture of the station, and ask you if you can notice the depression in the planks there.

The Court: Point out in the photograph the depression.

A. That is the only depression I see, right here.

Q. That is it, isn't it?

A. That is where it is located.

20 The Court: That is the depression there, is it?

A. Right there, yes.

By Mr. Wescott:

Q. You know, don't you, that where there is a station on each side of double tracks and baggage is taken and has to be taken across the tracks, it has to go across the tracks; you know that, don't you?

30 A. Yes, sir.

Q. Did you ever see at any station, on any platform, this kind of a scoop out of the platform?

A. No, sir, I have not.

Q. But you have seen declines that go down level and clean across over to the other platform?

A. Yes, sir.

WILLIAM SHEATZ, SWORN.

Direct examination.

By Mr. Wescott:

Q. Where do you live, Mr. Sheatz?

A. Millville.

Q. Did you ever live at Minotola?

A. I work there.

10

Q. How many years did you work there?

A. Going on eleven.

Q. Do you know Mr. and Mrs. Cullen?

A. Yes, sir.

Q. Were you at the depot when Mrs. Cullen fell on the
twenty-fourth of January, 1910?

A. Yes, sir.

Q. Was it the West Jersey depot?

A. Yes, sir.

Q. How close to her were you?

20

A. About three yards, I guess.

Q. Did you see her get off the car?

A. Yes, sir.

Q. How did she happen to fall?

A. Why, she stepped—when she stepped down, she
stepped on this slope and she fell right towards the car.

Q. Anybody help her get off?

A. Why, not that I seen.

Q. Describe to these gentlemen here what this slope
that you speak of is like. Let us get your description
of it. 30

A. Well, it runs a good bit like a saucer, I should
judge. It comes off funny. It comes back funny and
it ain't very deep, deep back, you know.

Q. From the track back towards the station?

A. From the track back towards the station.

Q. Doesn't extend all the way across the platform?

A. Not quite.

Q. And about how wide is it lengthwise with the platform?

A. About eight feet, somewheres along there, seven or eight feet, I should judge. I never measured it.

Q. Have you seen many other platforms in your time?

A. Quite a few.

Q. Did you ever see a hole like this?

10 A. Never before.

Q. Arrangement like this before?

A. No, sir.

Cross-examination.

By Mr. Coulomb:

Q. What do they use it for, Mr. Sheatz?

A. What do they use this for?

20 Q. Yes.

A. The only thing I know is go across with the truck.

Q. Baggage truck?

A. That is the only thing I know.

Q. How long have you lived at Millville?

A. About eighteen year.

Q. Familiar with the station there at Millville?

A. Yes, sir.

Q. Did you ever notice a depression for the purpose of permitting baggage to cross over there?

30 A. Not anything like this one.

Q. I say have you ever noticed any depression for the purpose of allowing baggage to be taken across?

A. No, I never did there.

Q. Never noticed any there?

A. No, sir.

Q. Know whether there is one there or not?

- A. There ain't now.
Q. There is none there now?
A. Baggage don't go across now.
Q. They don't take it across there now?
A. No, sir.
Q. What other station have you ever seen a place for the taking of baggage across?
A. Never seen any to take baggage across.
Q. Never seen any at all, anywhere?
A. Not as I know of. 10
Q. When Mrs. Cullen stepped off on to this slope, her ankle turned, didn't it?
A. Yes, sir.
Q. Do you know how deep the slope is at its deepest point?
A. I thought about seven or eight inches.
Q. Did you ever measure it?
A. No, sir.
Q. Do you think it could be as little as five inches or five and one-quarter inches? 20
A. I don't think it would myself.
Q. How wide is it?
A. About eight foot, seven or eight foot. Long, you mean, the length of the station?
Q. It is a gradual slope from all parts of the platform?
A. No; it runs down more steeper on the end.
Q. I say it is a gradual slope. There is no cutting off of the platform anywhere?
A. No; it comes right around.

30

CHARLES CULLEN, sworn.

Direct examination.

By Mr. Wescott:

Q. Where do you live, Mr. Cullen?

- A. Minotola.
- Q. How long have you lived there?
- A. Lived there this last time since —
- Q. All told.
- A. All told about seven year, altogether.
- Q. Are you familiar with the station there?
- A. Yes, sir.
- Q. How long is the platform in front of the station on the west side of the tracks?
- 10 A. That is towards Newfield? I think there is a gravel platform —
- Q. Didn't you measure it?
- A. About fifty some feet, I believe, and thirty-eight foot of wooden platform.
- Q. Did you measure the length of the platform?
- A. Yes, rough measurement.
- Q. How much is it?
- A. Fifty-two, I think, and thirty-eight.
- Q. Which is it, fifty-two feet long or thirty-eight feet
- 20 long?
- A. That is the two measurements.
- Q. I want the length of the whole platform.
- A. I measured about two hundred and sixteen.
- Q. Two hundred and sixteen feet?
- A. Inches. Feet.
- Q. Two hundred and sixteen feet?
- A. Yes.
- Q. What is there peculiar about that platform, in any portion of it?
- 30 A. Well, it has a depression in somewheres about one-third of the way from the west side.
- Q. From the Philadelphia end?
- A. From the Philadelphia end; the west end, I should call it.
- Q. How wide is this depression?
- A. This depression runs about nine or ten foot long, about five foot wide.

- Q. Five feet from the track in towards the station?
A. Five feet from the level of the platform, outside of the level of the platform, back towards the ticket agent.
Q. From the front of the platform back towards the station?

A. Yes, sir.

Q. It is five feet, you say?

A. About five foot.

Q. How much is it lengthwise of the platform?

A. Lengthwise of the platform? 10

Q. Yes. Didn't you measure it?

A. Yes, sir.

Q. Well, tell me then.

A. About thirteen foot.

Q. Thirteen feet from edge to edge?

A. Yes, sir, from end to end; that is, running the same way as the platform.

Q. How deep is it, about?

A. Why, it is about eight to nine inches deep.

Q. What is its shape? What is it shaped like? 20

A. Why, it is a sort of, in the front of it, it is a sort of a shape like that, comes off in more of a concave, and from the back end it comes off straighter than what it does on the two front ends.

Q. Resemble a saucer in shape?

A. Yes, sir.

Q. Do you know what that is used for?

A. Why, I think it is used for moving baggage and for also passenger transportation from one side to the other. 30

Q. Passenger transportation?

A. Yes; if you bought a ticket in the station, you cross over the tracks to the other side if it is a down train.

Q. That hole is made there for passengers to walk through?

A. Well, I don't know just exactly whether it is made for that or not.

Q. What do they use the platform for, passengers to walk on or keep off of?

A. Walk on.

Q. Well now, which is the platform used for? The flat parts of the platform are used for what?

A. For walking and running baggage trucks over.

Q. Trucks are run on all parts of the platform, are they?

A. Yes, sir.

10 Q. And passengers walk on all parts of the platform, don't they?

A. Yes, sir.

Q. This excavation which is shaped like a saucer, do you know what that is for?

A. Why, that is for to run the truck down off the platform, and they have a gradual incline down to the track to get to the other side.

Q. So as to make it level with the tracks and the planking between the tracks?

20 A. Make it level with the tracks; that is the idea.

Q. Had you been with your wife the day she got hurt?

A. Yes, sir.

Q. Where had you been?

A. We had been to Vineland.

Q. Did you buy a ticket?

A. Oh, yes.

Q. Pay your fare?

A. Oh, yes.

30 Q. And when you got to Minotola, did you get off first or last?

A. I got off first.

Q. Ahead of your wife?

A. Yes, sir.

Q. Then what happened?

A. Well, as I was leaving—I was coming down the steps, my wife followed me out, and the conductor said,

"Step lively, please," and I stepped out on the platform and was just about to turn around to assist my wife, and by that time she had fallen. She had stepped, apparently got excited.

Q. She got excited?

A. Yes.

Q. Where did she step?

A. She stepped in the depression in this platform.

Q. In the bottom of it or on the side of it?

A. No; on the side of it a little down from the top, as 10
near as I can —

Q. Is that the steepest part of it?

A. Yes, it is.

Q. When she stepped on that, what happened?

A. Her right ankle turned over and she fell in a heap.

Fell more to the right.

Q. Did you have any trouble getting her home?

A. Well, we took her in the station and took her home
in a wagon from the station.

Q. Couldn't walk home? 20

A. Oh, no, no, sir.

Q. How long was she laid up?

A. Why, she was laid up about five months altogether,
that is, including the time that she was recuperating after
she left the crutches.

Q. How long did she use the crutches?

A. Why, about four months and a half.

Q. Did she complain much of pain or little?

A. Why, yes, she complained; of course, more at some
times than others. 30

Q. When she first got hurt did she complain any?

A. Oh, yes; there was five days that she didn't get off
of the couch to get upstairs.

Q. Does she complain any yet, foot trouble her any
yet?

A. Oh, yes, at different times, if she walks, takes an

ordinary stroll, and any excitement or fast walking causes it to hurt her.

Q. Have you seen many other platforms at stations?

A. Well, yes, I have seen considerable.

Q. Did you ever see an arrangement like this before?

A. No, sir.

Q. The one at Minotola where your wife fell?

A. No, have not.

10 Cross-examination.

By Mr. Coulomb:

Q. How many stations have you seen where there have been depressions for the purpose of letting baggage and passengers walk from one platform to the other?

A. Oh, I couldn't tell how many. I have seen quite a number with just a slope on the ends to carry baggage from one end to the other, working off the end of the

20 platform.

Q. Have a slope there?

A. Yes.

Q. What is the difference between that slope and the slope in the Minotola platform?

A. Well, the slope in the Minotola platform, you see, it is all located in the platform at Minotola.

Q. What is the difference in the construction of it?

A. Well, that is, I should say three slopes.

Q. Where are they?

30 A. There is two in the front and one from the back.

Q. So there is no sudden decline as you walk along the walk? It is a gradual slope from any part of the platform down to the track?

A. No; in front it is worse than what it is—it is more of a bow in front of the platform than what it is in the back, that is, straight back.

Q. Isn't it so arranged, Mr. Cullen, that as you walk along the platform you don't come to any sudden step like an ordinary step, but it goes down gradually?

A. No, it is quite a deep depression.

Q. Is there an actual step there anywheres?

A. I don't understand just what you mean.

Q. You know what a step is?

A. Yes, sir.

Q. Is there a step in that slope anywhere?

A. No, sir.

Q. It is a gradual slope from any part of the platform?

A. Yes, sir, it is a slope.

By the Court:

Q. With reference to the deepest part of that slope, where did your wife step?

A. She stepped off about a foot from the top in the depression.

Q. She did not step down into the deepest part of it?

A. No, not in the deepest part.

By Mr. Coulomb:

Q. You say this was used for the purpose of passengers to go across when they had bought tickets for the other train, and also for the taking of baggage across in the trucks?

A. If I understand it right, yes, sir.

Q. You have seen it used for that?

A. Oh, yes.

Q. Seen it used by passengers crossing over? Did you ever use it yourself?

A. Oh, yes.

Q. How long have you used it?

10

20

30

A. Oh, I have used it quite a number of times after buying my ticket, going over to the other track, the up track.

Q. Would your wife use it, too, whenever she had occasion to go on the up track?

A. Oh, yes.

Q. Use it in the morning before the accident in going to Vineland?

A. We was there over night.

10 Q. Use it the day before?

A. Used it the Saturday before.

Q. So both you and your wife knew of the existence of that depression?

A. Well, we had seen it, yes; never took particular notice of it at that time.

Q. When you measured the depth of this depression, where did you measure it from?

A. Well, I measured it from the bottom, in the centre, to the top, along the line.

20 Q. How high did you find it?

A. I found it about between eight and nine inches.

Q. Who helped you measure it?

A. I measured it myself.

Q. How did you get the height from one side of the depression to the other?

A. I measured on the side.

Q. You measured it on the side?

A. Yes.

30 Q. Where did you measure to? Down to the sand that forms the roadbed?

A. Yes.

Q. And that was about eight inches deep?

A. Uh-huh.

Q. Didn't measure it in the middle, did you, where the planking starts in?

A. I measured it there once, but I threw that measurement away.

Q. Do you remember what that measurement was?

A. No, I don't just remember what it was.

Q. Can't you tell me about how much it was, approximately?

A. It was very nigh the same, I think; somewhere about seven or eight inches.

Q. What did you throw it away for?

A. Well, I didn't think that was as good a measurement as I could get on the end.

Q. It wasn't as much of a measurement; it wasn't as high? 10

A. It wasn't as good.

Q. It was equally as high, though, wasn't it?

A. I couldn't—there wasn't very much difference.

Q. How much difference was there; two inches?

A. No, sir.

Q. You don't know how much difference there was, and you threw it away?

A. Uh-huh.

Q. Have it on the same paper that you had these other measurements on? 20

A. No, sir.

Q. Separate paper?

A. Yes.

Q. Did you make it first or last, that measurement?

A. That measurement? I made it first.

Q. Then you threw that paper away and made the rest of the measurements?

A. Uh-huh.

Q. Did you measure it at any time after that, the depth of this depression, in its middle, where the planking crossed to the other side? 30

A. No, I didn't.

Q. You got off first?

A. I got off first.

By Mr. Wescott:

Q. Is there any such arrangement on the other side of the railroad there at Minotola?

A. Yes, sir, but that is a gravel platform.

Q. Is there any such arrangement, I asked you, on the other side at the Minotola depot as this saucer shaped scoop in the platform?

A. Yes, sir.

10 Q. One just like it on the other side?

A. One just like it on the other side, only instead of being board, like it is on the station side, it is ground stone or crushed rock.

Q. Saucer shaped?

A. Yes.

Q. You said you measured to the sand; what do you mean by that?

A. Well, take the level with the planking in the centre.

20 Q. Well, when you got down to the sand, you got below the platform, didn't you?

A. No; I gauged that the best I could in measuring it myself.

Q. The bottom of this excavation is near the sand, isn't it?

A. Yes, sir.

Q. You made a peculiar statement here. Suppose there are five hundred people on that platform there at Minotola, do they all rush to get through this little excavation, this little saucer shaped place in the platform?

30 A. Well, no, they can step off from the main platform, from the level platform, get through there anywhere, just so they get on that runway across the tracks.

Q. Did you realize what you said when you said that passengers used that little saucer shaped arrangement there to get off of that platform?

A. Well, it is used as a passageway for passengers.

Q. Passengers use that in preference to the platform?

A. They go from one train to the other. If they want to take the up train, they have to go on the opposite side from the ticket office.

Q. Can they get off the ends of the platform?

A. Oh, yes, they can get off the ends.

Q. Without breaking their necks?

A. Of the station platform, they can, station platform proper.

Q. Isn't that the way people go from that station and come to the station, by way of that platform?

10

A. Yes, sir.

Q. And not that hole in the platform?

A. Yes, sir.

Q. You have stated that they go and come to the station through that hole in the platform. They can come the other way, can they? When a person wants to get to that station, does he walk down the tracks and then walk through that little excavation there in the platform?

A. No.

Q. How does he get to the station?

20

A. He comes in on the end of the platform.

By Mr. Coulomb:

Q. Mr. Cullen, when a person buys a ticket at the station platform and wants to get a train on the opposite side, they go over this depression and over the plankway across the tracks, don't they?

A. After they buy a ticket?

Q. Yes.

30

A. On an upbound train or downbound?

Q. If they buy a ticket on the station side and want to go over to the other side, they cross over this depression, over the plankway from one platform to the other?

A. Yes.

Q. And they go through this opening in the fence

which you saw in the exhibit which has been marked for identification, D1?

A. This is looking from the west side.

Q. If they wanted to go the other way, how far would they have to walk? If they didn't want to use this crossway which you have described, how far would they have to walk to get around to the station on the opposite side of the railroad?

10 A. Well, they would have to walk up to the crossing and come down by the glass company's plant.

Q. And across the freight tracks there, wouldn't they?

A. Small siding there.

Q. Have to cross over that siding?

A. Uh-huh.

Q. How far is that; about two hundred and fifty feet?

A. What, the siding?

Q. No; the amount of walking they would have to do.

A. Something around that, a little more.

20 Q. More than that? Then they would have to retrace their steps about two hundred and fifty feet back to the platform on the opposite side if they walked that way?

A. Yes, sir.

By Mr. Wescott:

Q. Is there planking between the platforms at either station, planking between the tracks?

A. No; there is cribbing.

Q. What?

30 A. What I would term cribbing in between the tracks this way, and crushed rock put in there.

Q. You don't think that people could go right across the tracks from one platform to another, but they would have to go away up to the end of the platform and around and come down that way, would they? Well, I guess that is enough for you.

By Mr. Coulomb :

Q. There is a fence, isn't there, running between the tracks?

A. Yes, sir.

By Mr. Wescott :

Q. Well, if that is so, why do people go down that little excavation in the platform to run into that fence? 10

A. I don't understand you, Judge.

By Mr. Coulomb :

Q. There is an opening in the fence there, isn't there, Mr. Cullen, where the planking goes through, so that you can get from one side of the tracks to the other?

A. There is an opening across the tracks where they run their trucks.

Q. And that opening is right opposite where this depression is? 20

A. Uh-huh.

MRS. ANNA J. CULLEN, SWORN.

Direct examination.

By Mr. Wescott :

30

Q. Mrs. Cullen, are you the lady that got hurt down there at Minotola?

A. Yes.

Q. How much did you weigh at the time?

A. About a hundred and ninety.

Q. Do you recollect coming to Minotola?

A. Yes, sir.

Q. And when you got there what happened?

A. Why, just as I stepped off the platform, I fell in that impression in the platform.

Q. What did the conductor say to you?

A. He said—just before I had stepped, he says, “Step lively there;” I heard him say it.

Q. What effect did that have on you?

A. Well, of course, I tried to hurry, as the passengers
10 was waiting to get on the train.

Q. And when you stepped down, what were you anticipating stepping on?

A. I thought I was going to step on a level platform.

Q. But you didn't step on a level platform?

A. No; I stepped on that incline.

Q. How did you happen to fall?

A. Just as I stepped down, I went down.

Q. What made you fall?

A. Just by turning my ankle. As I put my foot down,
20 my ankle turned.

Q. Was the conductor near there?

A. He was standing on the left-hand side.

By the Court:

Q. What caused your ankle to turn?

A. My foot wasn't level when I stepped down and I had to have my other foot on the platform to hold me up.

30 By Mr. Wescott:

Q. You say the conductor was there?

A. Yes, he was standing on the left-hand side of me.

Q. Do you know whether or not there was room along the platform to let passengers out without stopping opposite that hole?

A. Oh, there was room, yes, if they wanted to stop, but it happened to stop right there where that impression was.

Q. Did it hurt you much?

A. Yes, considerable. I couldn't walk for quite a while.

Q. What do you mean by considerable?

A. Why, it pained me.

Q. Much or little?

A. Very much.

Q. How long were you laid up?

10

A. Well, I was using crutches about four or four and a half months.

Q. How long were you laid up before you used crutches?

A. It was over a week—about a week; five or six days, somewhere along there, before I could get up off the couch.

Q. Were you confined to your bed or room?

A. I was on a couch downstairs.

Q. For how long?

20

A. For about five days, without getting up only when I had to get up, with help.

Q. How long did you use crutches?

A. Well, that happened in January, and I used crutches until—well, it was about the middle of June when I commenced gradually to leave them off. Sometimes I had to go back.

Q. Does your ankle trouble you yet?

A. Yes, considerable at times.

Q. Can you use it freely the way you did before you got hurt?

30

A. Oh, no, not like I did. I used to walk or run or anything, but now if I am on my feet very much, it bothers me.

Q. Bothers you how?

A. By paining like the toothache. Lots of times I have to sit down and rest.

Q. And has that been the case ever since you got hurt?

A. Yes, off and on. Doesn't pain me regular but just off and on at times.

Q. By regularly you mean steadily?

A. Well, maybe for two or three days straight, and maybe it will skip a few days, and then hurt, maybe. It just seems to be more on account of the weather. Especially in damp weather it aches me more.

Q. Are you able to do your work as you did before?

10 A. No. I can do my work, but lots of times I have to leave things go until my ankle feels better.

Q. Did you know anything about this depression in the platform where you fell before you got hurt?

A. Well, I might have seen it, but I never took particular notice of it before.

Q. Your husband said you uniformly went through this place when you went to get on a train.

A. Yes; that was the only system unless you went clear around. It was the only system to get across the
20 track to go up on a train up, unless you go way around.

Q. Couldn't you cross the tracks?

A. Yes.

Q. Without stepping in that hole?

A. No; you had to go down that impression to get across the tracks.

Q. Any planking in between the platforms, tracks?

A. Well, there is sort of cinders and part planking, I think; I don't know; I don't just recall now.

30 Q. Did you ever go through that place, do you think, before?

A. Yes, I have often been through there.

Q. Through that depression?

A. Yes. I have been through there across to the other side. Whenever we went up the road on the train we had to go that way.

PLAINTIFFS REST.

MOTION FOR NON-SUIT.

Mr. Coulomb: If your Honor please, we have a motion for a non-suit. There has been no negligence shown of the character alleged in the declaration which would permit this case to be sent to the jury. The testimony is that this depression was placed there for the purpose of allowing baggage trucks and passengers to cross from one side to the other, that it was a slope from all quarters of the platform, that is to say, there was no sudden depression anywhere. It was made, evidently, I think I may properly argue, so that a passenger walking along that platform would not be met with any sudden step. 10

The Court: Have we not the fact that the conductor was in a hurry to get these passengers off and he said "Hurry up"?

Mr. Coulomb: There is no allegation in this declaration that any of this injury was contributed to by any negligence on the part of the conductor and therefore I am unprepared to point out to your Honor at this moment the cases, but the cases in this State hold that there is no negligence simply because a conductor says to a passenger, "Hurry up and alight." 20

(Motion denied.)

(Whereupon the defendant, by its counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.) 30

[SEAL]

DEFENDANT'S TESTIMONY.

RALPH H. PINKHAM, sworn.

Direct examination.

By Mr. Bourgeois:

10

Q. You live where?

A. I live in Derry, Pennsylvania, at present.

Q. And you are employed by whom?

A. Pennsylvania Railroad.

Q. How long have you been employed by the Pennsylvania Railroad?

A. Well, by the Pennsylvania Railroad and its branches I have been employed about fourteen years.

Q. Ever work for the West Jersey?

20

A. Yes, sir.

Q. When did you cease your work for the West Jersey and Seashore Railroad?

A. November first last.

Q. What position did you hold with the West Jersey and Seashore Railroad?

A. Supervisor.

Q. Of what district?

A. The district extended from Iona to Cape May and from Iona to Atlantic City Drawbridge, and all branches.

30

Q. Then the Minotola station was within your district?

A. Yes, sir.

Q. As supervisor did you have to do with the construction of the platforms and things of that sort?

A. Yes, sir.

Q. And keeping them in repair?

A. Yes, sir.

Q. Will you tell me what device railroad companies

have for moving baggage from one platform across the tracks to another platform?

A. Well, there are several devices, but the usual device is a crossing across the tracks and then the approaches to that crossing in the platform, that is, the incline approaches to the crossing proper.

Q. Just decline?

A. Yes, sir.

Mr. Wescott: Incline, he said.

10

A. No, I said decline to the crossing proper.

Q. Declines from the platform to the crossing proper?

A. Crossing proper, yes, sir.

Q. This crossing is on the level?

A. The crossing is at the level of the top of the rails.

Q. Was there such a device at Minotola in 1910?

A. Yes, sir.

Q. How long had that device been there prior to 1910?

A. Well, it was constructed shortly after 1906, possibly in 1907, something like that.

Q. Precisely what method did you pursue to have the passengers and the baggage trucks get to the level of the crossing from the top of this platform?

A. You mean what method did we use to construct this approach?

Q. Yes.

A. Why, the platform on the station side is composed of joists and planks like an ordinary floor, and the planks were taken up and the tops of the joists hewn off into a sort of depression, and then the planks put back over there, making a sort of saucer shaped approach to this crossing.

Q. In what does that device differ from the earlier devices for this same purpose?

A. Well, it has always been something very similar

30

to that used for getting baggage across a double track road. I don't know how it differs very much.

Q. In the older ones did you have this saucer shape, or did this decline run straight down?

A. The older ones, the slope used to be right straight back from the track. There was no provision made for anybody stepping off a sharp slope, but in the later ones we made the slope all the way around in order to avoid anybody tripping their toes.

10 Q. And the older ones had a step going crosswise of the platform to step down into this level?

A. Yes, sir.

Q. If you came lengthwise, you went right straight down, the same as the other one?

A. They were constructed both ways. The sharp step was there one way or the other.

Q. The only difference between this method and the older one is that you do away with the step and have an incline from every direction; is that correct?

20 A. That is it.

Q. I show you a photograph of the platform at Minotola, and ask you what is it?

A. Well, that is a photograph taken of the south-bound platform, I should say, from a point just north of this depression, looking towards Atlantic City.

Q. Does that show the depression in the track?

A. It don't show any depression in the track; in the platform.

Q. Is it a correct representation of the platform?

30 A. I should say it was.

(Photograph offered in evidence and marked Exhibit D2.)

Q. What motive power is used by passenger trains of the West Jersey and Seashore Railroad Company at Minotola?

A. Electricity.

Q. What method is used to prevent people from passing over from one track to the other at Minotola excepting where this crossing is?

A. Why, there is an inter-track fence extends several hundred feet up and down between the two main tracks so as to prevent people running across indiscriminately.

Q. Why don't they want them to run across indiscriminately? How do they apply that motive power, in other words?

10

A. Why, there is a third rail there and it wouldn't hardly do to be running across the third rail.

Q. Then for the purpose of preventing people from coming in contact with the third rail, they have built a fence between the two tracks, have they, excepting where this crossing is?

A. Yes, sir.

Q. What with regard to the crossing; is there any third rail where the crossing is?

A. No, sir; the crossing is taken out. There is a gap 20 in the third rail there.

Q. What is the width of the opening in the fence?

A. Why, the width of the crossing is ten feet, and the fence sets just a few feet back. I suppose eleven feet, altogether, between fence posts.

Q. What construction is that crossing?

A. It consists of planks laid up against the rails and broken stone screenings placed in between the planks.

Q. How high with relation to the tracks, the top of the rails?

30

A. Even with the top of the rails.

Q. What is the depth of this depression at the deepest point, Mr. Pinkham, of the southbound platform?

A. The deepest point in the depression of the planking is five and one-quarter inches below the level planks.

Q. And what depth of step would that make from the last car step down?

A. Ordinary car steps are between eight and nine inches, and that would be fourteen inches as a maximum; couldn't be over fourteen inches.

Q. Do you know what the height of a step in an automobile is?

A. Well, I measured some and they run from sixteen to eighteen inches from the ground.

10 Q. When you say that the height of the step from the bottom of the car to the bottom of the depression is between thirteen and fourteen inches, do you mean at this particular crossing?

A. Yes, sir; I mean in the middle of this particular crossing, at the lowest point.

Q. Suppose a person had stepped off about one foot from the end of the decline, would the step have been so great or less?

20 A. Why, there would have been very much less. The distance of one foot from the end, the slope was so slight that the person who stepped off there would step off practically on the level platform.

Q. What was the distance from the top of the level platform to the lowest step on the train?

A. I didn't measure the step this woman stepped off, but the ordinary steps are between eight and nine inches. They vary slightly with the springs of the cars.

Q. Have you ever seen these decline devices at any other stations excepting Minotola?

30 A. Why, we have identical decline devices at several stations, and we have similar decline devices at practically all stations on double track road.

Q. On which road?

A. Double track road, anywhere on the Pennsylvania system or any other system.

Q. That includes the West Jersey and Baltimore and Washington and all those?

A. All of them.

Cross-examination.

By Mr. Wescott :

Q. Tell me a single station where you have this saucer shaped device.

A. Pleasantville.

Q. Tell me another one.

A. We have one out on the main line of the Pennsylvania Railroad at the station where I am working now. 10
It is an important station there.

Q. Did you have this saucer shaped device there?

A. Yes, sir.

Q. Any others?

A. Well, I am not personally acquainted with any others that have a saucer shape device. A lot of them have half a saucer.

Q. I am talking about this saucer device. You know of three?

A. Yes, sir. 20

Q. The usual device is a pitch, isn't it, decline platform?

A. Slope, yes, sir.

Q. And it is almost invariably the width of the platform?

A. No, that doesn't make any difference.

Q. Well, I am asking you whether it is not.

A. No, it is not.

Q. Not?

A. No, sir. It is the width of a baggage truck. It 30
has nothing to do with the width of the platform.

Q. How do you have the rest of the arrangement if you don't have a slope down there? Just square?

A. Some of them are square, yes.

Q. All of them, pretty near?

A. No.

Q. When they are not as wide as the platform?

A. No, I wouldn't say that.

Q. You have this decline, Mr. Pinkham, for the purpose of walking up to the platform or walking down from the platform or wheeling up on the platform or wheeling down from the platform, don't you?

A. Yes, sir.

10 Q. Where you have got a saucer shape device such as this is, then the walking and wheeling are not as simple and easy as when they are on a regular platform?

A. They are very much easier when you have a saucer shape device.

Q. Aren't you apt to get your load tip?

A. No, sir.

Q. You are not?

A. In the saucer shape device you have all the characteristics of the old style slope and an improvement on it.

Q. Why isn't it universally adopted?

20 A. Why, simply because the saucer shape device is used where the baggage crossing is nearer the middle of the platform, and the other device is used near the end of the platform.

Q. You say this is simpler. Suppose you are on this platform here at Minotola and you have a load of stuff on your truck. If you don't go right down the middle of that saucer shape device, then your load will upset and stuff fall off your truck?

A. Have to have a pretty large load to do that.

30 Q. Your truck would be slanting?

A. The slope of this thing is so slight there is very little —

Q. I am not asking you that. It would tip according to the slope unless you were right in the centre of it?

A. It would tip a little bit, yes.

Q. It would tip according to the slope?

A. Yes.

Q. You say the depth of that saucer shape device is how much?

A. Five and one-quarter inches.

Q. And you say, as I understood, that when you get nearer the top, the less the slope is?

A. The less the depression.

Q. Less the decline?

A. The slope is somewheres near uniform. It isn't immediate.

Q. Isn't it the truth that right at the bottom and in the middle of that saucer shape device the boards are level? 10

A. It is level for a short distance in the middle.

Q. Then from that level short distance up to either end, there is a decline?

A. Yes, sir.

Q. Is that decline gradual?

A. Yes, sir; about one inch to a foot or less.

Q. Then why do you say it is less within a foot of the top than it is anywhere else?

A. I said the depression was less. 20

Q. Not the decline?

A. I have said that three times now.

Q. You will have to forgive me. I don't want to injure your patience. At this special place at Minotola was there a station on each side of the two tracks?

A. There is no station for selling tickets, no, sir.

Q. Is there a station?

A. There is a platform on each side.

Q. The station at which tickets are sold is on the side where this depression is, isn't it? 30

A. There is a depression on both sides. One is in wood and the other is in broken stone.

Q. The station where tickets are sold is on the side where this accident happened, isn't it? See if you will admit that.

A. I only know this accident from hearsay. I suppose it is on the same side.

Q. The station where tickets are sold is on the side where the wooden saucer shape depression is?

A. Yes, sir, that is true.

Q. Does this picture show the station or any part of it?

A. I think it does, yes; if you will let me see the picture, I will tell you.

(Photograph handed witness.)

10

A. The picture shows the end of the freight platform. Does not show the passenger station.

Q. Is the ticket office opposite this saucer shape depression?

A. Why, nearly, yes.

Q. Is that the proper place, a saucer shaped depression like that, to let passengers off from a train?

20 (Objected to as calling for a conclusion; and because the question whether it is a proper place or not is not a question for the witness but for the Court or the jury.)

(Objection sustained.)

By Mr. Bourgeois:

30 Q. Just one question. Along the edge of the platform where a person would alight from a car is there any difference between this present what they call the saucer shape depression and the old-fashioned depression?

A. Won't you repeat that?

(Question repeated.)

A. None whatever.

By Mr. Wescott:

Q. One question. Do you know of any place where

passengers are required to alight on one of these decline platforms of the old-fashioned type?

A. Why, right down here at Mays Landing Court House. Practically every station along the West Jersey Railroad.

Q. Where they are required to alight on a decline platform?

A. Yes, sir.

By Mr. Bourgeois :

10

Q. Is there any difference between the depression in this platform and the ordinary decline at the end of the various stations along your line?

A. No, sir.

Q. And you have these declines at Mays Landing and every other station, do you not?

A. Yes, sir.

20

H. B. MATTHEWS, sworn.

Direct examination.

By Mr. Coulomb :

Q. Mr. Matthews, where do you live?

A. Camden, New Jersey.

Q. By whom are you employed?

30

A. West Jersey and Seashore Railroad.

Q. Were you employed by the West Jersey and Seashore Railroad Company on January twenty-fourth, 1910?

A. Yes, sir.

Q. In what capacity were you employed?

- A. Passenger conductor.
Q. On what line were you a conductor?
A. On the West Jersey Electric line.
Q. Do you remember Mrs. Cullen?
A. Yes.
Q. Did your train stop at Minotola that day?
A. Yes, sir.
Q. Which way was your train going?
A. South.
10 Q. Bound for Atlantic City?
A. Bound for Atlantic City.
Q. Did you see Mrs. Cullen get off of the train?
A. Yes, sir.
Q. See anybody get off in front of her?
A. Yes, sir.
Q. How many got off in front of her?
A. Her husband.
Q. What happened when she got off the train?
20 A. She stepped on the side of the depression and went
down on one knee and said she had sprained her ankle.
I assisted her off of the train.

No cross-examination.

DEFENDANT RESTS.

30

BOTH SIDES REST.

MOTION TO DIRECT VERDICT.

Mr. Bourgeois: If your Honor please, we make a motion for a direction. This case is precisely the same as the Feil case in Millville. The question there was the woman came from the opposite side of the depression, and that was a case where the depression was cut right out of the side of the station platform, and as she came along she did not see this step down into this depression, and she fell on the side of the incline, precisely the same as this woman stepped down from the step on the side of the incline here and the Court held that that was an ordinary construction of platform, there was no evidence shown that it was out of repair, and that she was not entitled to recover damages. The only difference between that case and this case is that in the present case there is a different kind of depression. Instead of having the step down, as that woman had, from her approach, this case had a saucer shape depression, but the step down in this case was not from the saucer shaped part, but from the car. 10 20

The Court: Let me call your attention to this matter: There was no disputed question of fact about the construction of the platform at Millville. The undisputed fact was that that was the kind of a platform that was in general use by the railroad company that was then in court and by other railroad companies. Is not there proof here that this was an unusual condition, and did not your own witness say that this saucer shape depression was not in general use, for he pointed out only Pleasantville and Minotola and a place out in Pennsylvania. They are the only three places, and would not that tend to conform to the plaintiff's contention that this was an unusual condition in a platform? If you do not 30

think that the declaration is sufficient, I will allow it to be amended to conform to the facts.

Mr. Bourgeois: We object to the amendments.

Mr. Wescott: Yes, if it is necessary. I thought that was one of the instances of negligence, the conductor's part of it. There is an allegation that on account of the dangerous construction of the platform this accident happened. I will amend it.

The Court: Does it say unusual construction?

Mr. Wescott: I do not remember.

The Court: I think the declaration should conform to the facts. I am disposed to allow the declaration to be amended.

20 Mr. Bourgeois: And allow us an exception?

The Court: How can you take an exception to that?

Mr. Bourgeois: Because our case is all in.

The Court: If you are entitled to an exception, all right. It is a matter that appeals to the discretion of the Court. I am not going to allow this matter of justice to fail because of any infirmities in the pleadings.

30 Mr. Bourgeois: If you allow us an exception, it is all right.

The Court: The only question is whether you are entitled to an exception.

Mr. Bourgeois: I think I am where the amendment

has been made after the case has been concluded, against the objection of the defendant.

Recess until 10 A. M. Friday, May 23, 1913.

Mays Landing, N. J., Friday, May 23, 1913. 10
Trial of the cause resumed at 10 A. M.

(Argument on the motion to direct continued.)

(Motion denied.)

(Whereupon the defendant, by its counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.) 20

[SEAL]

Mr. Coulomb: I want to know whether we will have an exception to the permission to amend the declaration after both sides had closed their case.

The Court: Do you intend, in the light of the cases, to make an amendment?

Mr. Wescott: Yes, sir.

The Court: Is it a necessary part of the case?

Mr. Wescott: I do not think so, but in the matter of caution I am going to ask for an amendment. Under our new Practice Act and under the whole policy of our

Courts, amendments are allowed at any stage of the case where there is no obvious injury to be visited upon either party by the amendment.

The Court: Was this case brought since the Practice Act?

Mr. Wescott: No, but nevertheless that policy applies.

10

Mr. Coulomb: My reason for asking for an exception is this: The declaration was framed upon the theory that this was a dangerous condition in the platform. We were here to meet that. There was no motion made to amend the declaration at any stage of the trial until it came right to the argument on a motion for a direction at the close of yesterday's session. If it had to do with where this train might have been stopped, which Judge Wescott has argued, I respectfully submit we were not in a position to meet that.

20

The Court: Do you think it is a matter about which you would be entitled to an exception?

Mr. Coulomb: I think it is.

The Court: Is it not addressed to the sound discretion of the Court?

Mr. Coulomb: Not after the case is all in.

30

The Court: If you are entitled to an exception, take it.

(Whereupon the defendant, by its counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

[SEAL]

COURT'S CHARGE TO JURY.

Gentlemen: There are two plaintiffs in this case, Anna J. Cullen and her husband, Charles E. Cullen. No matter which way the case goes, two verdicts will have to be rendered. The contention of the plaintiffs in regard to the matter of negligence is that in the day time, on January twenty-fourth, 1910, Mrs. Anna Cullen, while in the act of alighting as a passenger from one of the defendant's passenger coaches at Minotola station, in this county, stepped upon a slanting portion of the station platform after the conductor had said to the passengers, "Step lively," and the plaintiff, Mrs. Anna Cullen, sustained an injury to her ankle by reason of the foot turning over on this slanting platform; that she, without knowing the exact location of the platform where she was alighting, was expecting to alight upon the flat portion of the platform; that the platform was different in construction from other railroad platforms of the defendant and similar companies. It is said that there was a saucer-shaped depression at that portion of the platform where Mrs. Cullen was required to alight, which was gradual in descent from a point in the platform where the decline was almost imperceptible, until it reached a depth of exactly five and one-quarter inches.

The first question which you are required to determine from the evidence, and from the evidence alone, is whether Mrs. Cullen's own conduct was free from contributory negligence, for she knew about the depression in the platform, and in the light of that knowledge, did she act with due and reasonable care? If she did not, you should not hesitate to find a verdict for the defendant. Moreover, if Mrs. Cullen came by her injury through the joint negligence of herself and the defendant, she cannot recover. You will observe, therefore, that her only ground of recovery is that her injury is the result of the defendant's negligence alone.

Therefore, you are led to the question whether or not this defendant was negligent in failing to provide a reasonably safe place for Mrs. Cullen to alight, and in the determination of that question, you are required to take into consideration the evidence of the defendant, as well as all the evidence in the case, touching the construction of the platform, and if you find, as the defendant claims, that it was approved in point of construction by long usage, and that it was not an unusually constructed platform, you will find a verdict for the defendant.

10 Negligence must be proved, and in a case like the present, that can be done only by showing that the platform was of a design which a reasonably careful judgment would disapprove as being likely to cause accidents to persons using it as a way to alight upon. You see, it is primarily all a question of negligence. That means a failure to perform a duty which one person, either a natural or artificial person, owes to another. If you resolve the question of negligence against the railroad company, then you will proceed to the matter of damages.

20 It has been said in this case that Mrs. Cullen sustained a sprained ankle. She would be entitled to recover damages, such fair and reasonable compensation for all the pain and suffering that she has endured and is likely to endure, as well as damages for such disability as she has sustained or as you may find from the evidence that she is likely to sustain. Her husband is entitled to damages for the medical expenses to which he has been put in consequence of his wife's injury, and damages for the deprivation of the society of an otherwise uninjured wife.

30

DEFENDANT'S EXCEPTIONS.

Mr. Coulomb: We except to that portion of the Court's charge to the jury wherein the Court said: "The contention of the plaintiffs in regard to the matter of negligence is that in the day time, on January twenty-fourth, 1910, Mrs. Anna Cullen, while in the act of alighting as a passenger from one of the defendant's passenger coaches at Minotola station, in this county, stepped upon a slanting portion of the station platform after the conductor had said to the passengers, 'Step lively.'" 10

(Which exception is hereby allowed and sealed accordingly.)

[SEAL]

We except to that portion of the Court's charge to the jury wherein the Court said: "She, without knowing the exact location of the platform where she was alighting, was expecting to alight upon the flat portion of the platform." 20

(Which exception is hereby allowed and sealed accordingly.)

[SEAL]

We except to that portion of the Court's charge to the jury wherein the Court said: "The contention of the plaintiffs in regard to the matter of negligence is that * * * * the platform was different in construction from other platforms of the defendant and similar companies." 30

(Which exception is hereby allowed and sealed accordingly.)

[SEAL]

We except to that portion of the Court's charge to the jury wherein the Court said: "Therefore, you are led to the question whether or not this defendant was negligent in failing to provide a reasonably safe place for Mrs. Cullen to alight, and in the determination of that question, you are required to take into consideration the evidence of the defendant, as well as all the evidence in the case, touching the construction of the platform; and if you find, as the defendant claims, that it was approved in
10 point of construction by long usage, and that it was not an unusually constructed platform, you will find a verdict for the defendant."

(Which exception is hereby allowed and sealed accordingly.)

[SEAL]

20

FURTHER CHARGE TO JURY.

The Court: Gentlemen, if the verdict should go against the defendant, there will be two verdicts; but if it goes in favor of the defendant, only one verdict and not two verdicts. I merely called you back to correct that error in my charge.

30

NEW JERSEY
Court of Errors and Appeals

ANNIE J. CULLEN AND CHARLES CULLEN, <i>Plaintiffs-Respondents,</i> vs. WEST JERSEY & SEASHORE RAILROAD COMPANY, <i>Defendant-Appellant.</i>	} in Tort. On Appeal.
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**Brief of Bourgeois & Coulomb, Attorneys
of Defendant-Appellant.**

This is an appeal from a judgment in a suit brought by husband and wife to recover for injuries sustained by the wife in alighting from defendant's train at Minotolo, in Atlantic county, alleged to have been caused by the "dangerous or unsafe" condition of the station platform. The suit was begun before the passage of the Practice Act of 1912, but was tried thereafter.

QUESTIONS INVOLVED.

1. Was the inclined portion of the station platform on which the plaintiff alighted of such a character as to permit the jury to infer negligence in maintaining it?
2. Was not the injury due to stepping upon an inclined surface, such as would exist in any gradual approach from the track level to the platform level?
3. Was not the plaintiff charged with knowledge of the construction of the platform, and therefore guilty of contributory negligence?
4. Could the plaintiffs amend their declaration so as to charge a new and additional allegation of negligence after both sides had closed their respective cases?
5. Could the trial judge submit the case to the jury upon the theory of such additional negligence?
6. Was it negligence to say to the plaintiff, "Step lively, please"?

GROUNDS OF APPEAL.

1. Because the Court refused defendant's motion for a non-suit. (Involves points 1, 2, 3 and 6.)
2. Because the Court refused to direct a verdict in favor of defendant. (Involves points 1, 2, 3, 4, 5 and 6.)
3. Because the Court allowed the plaintiffs to amend their declaration after the entire case was in. (Involves points 4, 5 and 6.)
4. Because the Court erroneously charged the jury as follows:

"The contention of the plaintiffs in regard to the matter of negligence is that in the daytime, on January twenty-fourth, 1910, Mrs. Anna Cullen, while in the act of alighting as a pas-

senger from one of the defendant's passenger coaches at Minotola station, in this county, stepped upon a slanting portion of the station platform after the conductor had said to the passengers, 'step lively.'"

(Involves points 5 and 6.)

5. Because the Court erroneously charged the jury as follows:

"She, without knowing the exact location of the platform where she was alighting, was expecting to alight upon the flat portion of the platform."

(Involves point 3.)

6. Because the Court erroneously charged the jury as follows:

"The contention of the plaintiffs in regard to the matter of negligence is that * * * the platform was different in construction from other platforms of the defendant and similar companies."

(Involves points 1 and 2.)

7. Because the Court erroneously charged the jury as follows:

"Therefore, you are led to the question whether or not this defendant was negligent in failing to provide a reasonably safe place for Mrs. Cullen to alight, and in the determination of that question, you are required to take into consideration the evidence of the defendant, as well as all the evidence in the case, touching the construction of the platform; and, if you find, as the defendant claims, that it was approved in point of construction by long usage, and that it was not an unusually constructed platform, you will find a verdict for the defendant."

(Involves points 1 and 2.)

POINT I.

This point is raised under grounds of appeal numbers 1, 2, 3 and 4.

The defect complained of was a "saucer-shaped" depression in the platform (page 12, lines 8-14; page 16, lines 14-30; page 25, lines 20-27; page 41, line 10, to page 42, line 30); photograph, *Exhibit D 2* (admitted, page 42, line 31; attached to last page of this brief).

The depression is about five and a quarter inches below the level of the platform (page 43, line 34). Some of the witnesses guessed it to be seven or eight inches, but none of them measured it excepting Charles Cullen, and he did not measure to the level of the cross-over, but to the roadbed (page 30, lines 29-40). The depression comes down to the level of the top of the rail and joins with the cross-walk, which is also even with the top of the rail, which cross-walk is built of cribbing, filled with crushed stone or gravel (page 43, lines 30 to 34; page 26, line 14; page 34, line 30). The depression forms a gradual approach or decline from the platform level to the cross-walk level, to admit of the passage of baggage trucks as well as passengers from the station platform on one side of the tracks to the station platform on the other side (page 25, line 28; page 29, line 27, to page 30, line 12; page 33, lines 27-34; page 38, lines 16-24; page 18, line 20, and page 22, line 21).

It appears from the testimony that the platforms at all railroad stations have a gradual approach or decline from the platform level to the track level to permit baggage trucks to be hauled from one side of the tracks to the other side (page 14, line 10; page 18, line 4; page 19, lines 10-20; page 28, line 15; page 41, line 33, to page 42, line 10; page 49, line 3).

The proof further shows that some of these approaches are so constructed as to have an abrupt step

cut into the platform itself, with the result that passengers using the platform might trip over the step or step into the decline and thus be thrown. It was to remedy this defect that the saucer-shaped depression was adopted (page 42, line 5). In some cases the approach consisted of two incline plains, approaching from opposite directions and running parallel with the railroad tracks. This would leave an abrupt step in the platform parallel with the tracks and the width of the incline from the tracks. In other cases the incline was at right angles with the tracks. This would leave two abrupt steps running at right angles to the tracks the length of the incline (page 42, lines 10-20).

From the above narration of the testimony it will be seen that the Railroad Company, in order to make this incline as near absolutely safe as possible, constructed it so that there would be no abrupt step or declivity in any part of the platform, but that passengers using the platform, no matter in which direction, would gradually step down this incline to its lowest point and up again to the level of the platform. It will be seen, further, that the declivity was necessary and essential for the passage of baggage trucks and passengers from one side of the tracks to the other. In the Minotola station, where this accident occurred, the depression was immediately opposite the ticket office, and about one-third of the distance from the Philadelphia or western end of the platform (page 16, line 30; page 24, line 30), and in order to cross from one side of the tracks to the other it was necessary to use this depression and the cross-over going through the opening in the fence between the two tracks, or else walk around by the end of the platform, a distance of 250 feet each way (page 34, lines 4-22).

It also appears in the case that Mr. Cullen, one of the plaintiffs, alighted safely on the platform in question, just ahead of his wife (page 27, line 1).

The rule by which the defendant's conduct as to negligence must be measured has been stated as follows:

A person cannot be held liable for negligence unless he owed some duty to the plaintiff and that duty was neglected. A violation of this duty, which is called "negligence" cannot be presumed, but must be proved. The liability for the omission to do something depends entirely on the extent to which a duty is imposed to cause that thing to be done, and so it cannot be predicated of any particular act that it is, *per se*, negligence. It is only so because it is a breach of some duty which must appear as a substantive factor in the case.

If there was any duty imposed upon defendant in this case other than it had performed in the carriage and care of the plaintiff, the testimony does not present it excepting upon the theory that this gradual approach presented an obvious danger, which the defendant should have guarded against in some manner. That the existence of the depression in the present case did not impress itself as a place of danger upon the plaintiff's husband who preceded her in alighting, is manifest, for he did not warn her of its existence; he alighted without comment or a precaution regarding a possible danger to his wife in its use; nor is any testimony produced that any other accident took place at that or any other times in an attempt to alight from a train upon this depression in the platform. The argument for negligence by the defendant, therefore, must proceed upon *ad hominem* lines, and not upon notice to the defendant from the happening of a previous accident or from the clear obviousness of danger incident to the maintenance of a dangerous condition.

A carrier is not bound to have a carriage made in the best of all possible ways or a platform constructed in the best of all possible ways, but fulfills its duty by providing a carriage such as was found in practical use to be sufficient, or a platform such as was found in

practical use to be sufficient. *In other words, the obligation is to furnish not a perfect vehicle nor a perfect platform, but one reasonably sufficient.*

A plaintiff was injured while alighting from the passenger coach of the defendant by her heel catching on the step. The negligence alleged was the height of the step from the ground. The car did not differ from other cars of the defendant, and there was no evidence that the height was unusual.

Held: There was no evidence of negligence for the jury.

Traphagen v. Erie R. R. Co., 73 N. J. L. 759.

Justice Swayze, in writing the opinion in this case, said:

“The only point that merits serious consideration is a suggestion of a structural defect in the steps of the car. The only defect alleged is the height of the step from the ground. There is no proof that this height was unusual, for the proof is that the car was not different from other cars of the defendant, and there is an entire absence of proof as to the height of steps of cars of other railroads. If we may be presumed to know that the steps of some cars are lower, we may also be presumed to know that the height differs with various railroads with different cars upon the same road, and even with different cars on the same train. No standard of height is shown to have been adopted, and the manager of each railroad apparently use their own judgment. That judgment varies, doubtless, on account of the different problems with which each road has to contend. Whether the height of the step be higher or lower, accidents will happen, which might be avoided in each particular case if the height was different. For instance, in *Laflin v. Buffalo & S. W. R. R. Co.*, 106 N. Y. 136, the complaint was that the step was too low, and

that a space was left between the second step and the edge of the platform. We do not know, and there is no evidence to enlighten us, whether it is practical to have all platforms so constructed that the steps of the cars may be of standard height."

In the present case it was shown that there are inclined approaches at practically all railroad stations. Some of these approached the lowest level by an incline parallel with the tracks; others were constructed with the incline at right angles to the tracks. There is no proof in the case of any standard construction, nor is there any proof in the case that so far as the happening of the accident is concerned, the saucer-shaped depression is any more dangerous than the other two forms of construction.

Where a plaintiff, in attempting to alight from a railroad passenger coach, from which others had alighted before and after her, missed her footing and fell between the car step and platform of the station and was injured, the mere proof that other railroads constructed car steps and platforms of a different type, without any proof of the existence of a recognized standard type, will not charge the defendant with negligence. The mere happening of an accident, without some proof of facts from which the violation of the duty due to the plaintiff from the defendant may be legitimately inferred, will not constitute negligence.

Kingsley v. D., L. & W. R. R. Co., 81 N. J. L. 536.

In this case Justice Minturn, writing the opinion for the Court of Errors and Appeals, said:

"In a final analysis, the testimony in the case at bar demonstrates simply a difference of construction between the defendant's car and platform and some of the cars and platforms of other companies, but upon legal principle, until that difference can be presumed into a legal generalization, indicating a violation from the existence

of a standard type, a departure from which by the defendant might be construed as imprudent and negligent, and by which a criterion of duty may be established, the damage incurred under circumstances such as are presented in the case at bar must be held to be *damnum sine injuria*, and can impose no liability upon the defendant."

It was not shown in the present case that there was any standard of construction for approaches, nor that the "saucer-shaped" depression was so different from the other modes of construction that it could be said to be a radical departure therefrom, or that the difference in construction was the cause of the accident, or that one form of approach was safer than another.

The duty which a railroad company owes to its passengers with relation to the construction of its station platforms is to take care that the method of construction adopted by it will render the platform as safe for the use of its passengers as the exigency of its business will permit. In order to support the allegation that a railroad company has constructed its station platform without due regard to the safety of its passengers, the parties so alleging must show that the platform is of a design which a reasonably careful judgment would disapprove as being likely to cause accidents by persons using it as a way to and from trains.

Feil v. W. J. & S. R. R. Co., 77 N. J. L. 502.

In this case the construction was one of the older methods of construction, namely, a truckway with an abrupt step from the level of the platform, which was used, as has been testified in the present case, for the transfer of baggage from one road to the other.

It will be seen that the construction in the present case obviates the abrupt, sudden step down to the lower level of the incline, and would tend to prevent the happening of such accidents as the one complained of in the Feil case. The Railroad Company, having been met with such an accident, sought to obviate the cause

thereof by doing away with the sudden step; in other words, it so constructed the incline or approach as to obviate accidents.

Assuming, for the purpose of argument, that the standard construction was an incline either at right angles to the tracks or parallel with the tracks, thus leaving an abrupt step from the platform to the lower level of the incline, can the Railroad Company be said to be negligent, either as a matter of law or as a matter of fact, by so constructing the platform as to do away with the step? To permit a jury to infer negligence from such a circumstance is to depart from the principle laid down by the Court of Errors in the Feil case, wherein Justice Gummere, at page 504, said:

“Negligence must be proved, and, in a case like the present, that can be done only by showing that the platform is of a design which a reasonably careful judgment would disapprove as being likely to cause accidents by persons using it as a way to and from trains. To hold otherwise would be to leave railroad companies to the mere caprice of juries and subject them to the tendency of being found guilty of negligence, no matter what plan of construction they might adopt.”

It is to be borne in mind that there was no contention that the injury was due to the height of the step from the ground. The testimony shows that at its greatest depth the depression was five and a quarter inches below the level planks, and that an ordinary car step is between eight and nine inches, which would make a difference of fourteen inches between the lowest part of the depression and the car step (page 43, line 33, to page 44, line 5). It is also shown that the step on an ordinary automobile is from sixteen to eighteen inches (page 44, line 6).

It is submitted that there was error in refusing to non-suit, upon the ground that no negligence had been shown in the construction of the platform in question.

POINT II.

This point is raised under grounds of appeal numbers 1, 2, 6 and 7.

The plaintiffs' theory of the case was that the injury was caused by the plaintiff, Mrs. Cullen, having stepped from the car upon the slope of the platform (page 21, line 25; page 27, lines 10-20; page 36, lines 16 and 27).

As has been above shown, nearly all stations, if not all stations, have this incline means of transporting baggage trucks from one side of the tracks to the other. These inclines run either parallel or at right angles to the tracks. At the point where Mrs. Cullen stepped onto the platform the incline was parallel with the tracks. Assuming that there had been at the point in question a construction of the type above referred to, namely, an incline running parallel with the tracks, the effect of Mrs. Cullen's stepping thereon would have been the same as in the present case. In other words, the accident was caused not by stepping on the saucer-shaped depression, but on the incline. Assuming that it could be contended that the saucer-shaped depression was not a standard form of construction, and that the other modes of construction were standard, the accident would have happened just the same. The case in this respect bears a very close resemblance to the cases cited in *Traphagen v. Erie R. R. Co.* and *Kingsley v. D., L. & W. R. R. Co.*, above cited. In the *Traphagen* case it was said that the step was too high; in the case of *Laflin v. Buffalo and S. W. R. R. Co.*, therein cited, it was said that the step was too low. In the *Kingsley* case the space between the station platform and the step which was complained of as being dangerous, was seven and a half to nine and a half inches. In *Faulkin v. Boston Elevated Ry Co.*, 188 *Mass.* 153, the width between platform and car step was from seven to ten and a half inches; and in

Willworth v. Boston Elevated Ry. Co., 188 Mass. 220, and in *Field v. Boston Elevated Ry. Co.*, 188 Mass. 222, the space was between three and four inches; in *Ryan v. Manhattan R. R. Co.*, 121 N. Y. 126, the estimate was fourteen or fifteen inches; in *Fox v. N. Y. R. R. Co.*, 70 Hun. 181, the width was twenty inches; in *Rothschild v. Central Ry. Co.*, 163 Pa. St. 49, the estimate was six to eighteen inches. In ALL of these cases it was held that the existence of the space offered no evidence of negligence.

In the Feil case the complaint was that there was a sudden step down. In this case the complaint is that there was a gradual approach. Had the plaintiff stepped from the car upon the edge of an abrupt step, such as might have occurred under the circumstances in the Feil case, would the courts have said that the construction was negligent or not? In other words, the use of the standard construction, supposing it to be a standard construction, would undoubtedly be more dangerous to an alighting passenger than the use of the construction complained of.

It is submitted that the accident was caused by the plaintiff's stepping on the incline; that approaches built on an incline are standard methods of construction in railroad platforms; that it has not been shown in this case that the accident was due to the saucer-shaped depression, but only that it was due to stepping on the incline; that therefore the case falls squarely within the Feil case, and there should have been a non-suit.

The analogy between the present case and the Traphagen case upon this point is significant. The plaintiff says she fell because she stepped upon the incline. The Court charged the jury that the plaintiff sustained an injury to her ankle by reason of her foot turning over on this slanting platform (page 55, line 14). It is obvious, therefore, as has been heretofore suggested, that the injury, according to the plaintiff's theory, was caused by stepping on a slanting or inclined surface.

A similar question arose in the Traphagen case, where it was in doubt whether the accident was caused because of the condition of the ground or the height of the step from the ground. The Court said: "The plaintiff's evidence makes it clear that her injury is not to be attributed to the condition of the ground where she undertook to alight, but to her heel catching on the step before she touched the ground. As she herself testified, the cause of her fall was that she could not touch the ground with her foot. It is unnecessary, therefore, to determine whether or not the landing place that the company provided was inadequate."

In the present case the plaintiffs' theory of the cause of the accident was because of stepping on an inclining or slanting surface. It is, therefore, unnecessary to determine whether or not the company was negligent in maintaining a slanting surface of the character in question rather than a slanting surface such as some of the witnesses testified existed at other stations.

POINT III.

This point is raised under grounds of appeal numbers 1, 2 and 5.

The testimony shows that the construction complained of had been used a number of times by the two plaintiffs in taking trains (page 30, lines 1-16; page 38, lines 10-37). The plaintiff was thoroughly familiar with the situation and, therefore, it cannot be said that she was met with an unusual or unknown situation.

In the case of *Kingsley v. D., L. & W. R. R. Co.*, 81 N. J. L. 536, the Court said, at page 541:

"If there was a duty imposed upon the defendant other than it had performed in the carriage and care of the plaintiff, the testimony does not present it except upon the theory that

this intervening space between the platform and the car step presented an obvious danger which the defendant should have guarded against in some manner. *It may be said in passing that if these steps presented a condition of danger which was obvious to the defendant to a degree requiring the exercise of care in its use and to superinduce a duty of care and foresight, it was equally obvious to the plaintiff, and under such conditions it has been held by this Court that exits for common use for foot passengers are places of obvious danger, and that passing over them requires a prudent watchfulness by the user against the danger attendant upon their use.*" Citing *Hoboken v. Feiszt*, 58 N. J. L. 198.

In the case of *Dwyer v. N. Y. R. R. Co.*, 47 N. J. L. 9, affirmed, 48 N. J. L. 373, a passenger leaving a ferry boat had his foot crushed between the ferry boat and the slip, due, as he alleged, to the dense crowd of people that he was in. It appeared, page 10, that had he looked he could have seen the space, but that he attempted to look and couldn't; the crowd was pushing, and if he stopped to look he would be pushed forward. Chief Justice Beasley, writing the opinion for the Supreme Court, said:

"In the case of *New Jersey Railroad Company v. Palmer*, 4 Vr. 94, I expressed the opinion that a passenger in leaving one of these boats could not, without being legally culpable put himself in such a position that for all useful purposes he is, for the time being, deprived of the use of his eyesight, and time and subsequent reflection have had the effect to confirm me strongly in the conviction of the correctness of that view. I can, looking at the reason of things, see no difference between a man who, with his eyes closed, crosses a railroad track, trusting his safety to the fact that the flagman is at his post

of duty, and he who, waiving the use of his eyes, attempts to pass from one of these boats, concluding that all is safe, because the gates have been opened. A man's eyes are the sentinels that usually warn him of the approach of danger, and if he choose to abandon them, it is the rule of law that he does so at his own cost. In the present case there is no pretence that if the plaintiff had not put himself in the thick of the crowd of persons who were rushing and pushing their way off the boat, that he would not have been easily able to avoid the accident in question."

It was held in this case that there should have been a non-suit. This case was afterwards affirmed in the Court of Errors and Appeals upon the opinion of Chief Justice Beasley.

In the case of *Traphagen v. Erie R. R. Co.*, 73 N. J. L. 759, it was held that the failure to provide a footstool and to assist the plaintiff in alighting was obvious to the plaintiff, and if she desired such assistance, she should at least have made her desire known to the conductor, who was close at hand.

The testimony clearly shows that the plaintiff knew of the condition of the platform, and did not attempt to use her eyes in seeing where she was stepping. She was clearly guilty of contributory negligence; therefore, and upon that ground there should have been either a non-suit or the direction of a verdict in favor of the defendant.

POINT IV.

This point is raised under the second and third grounds of appeal.

The declaration in this case was framed upon the theory that it was "the duty of the defendant to furnish the plaintiff with a reasonably safe and fit place in which

to alight from its train, yet the defendant disregarded its duty and negligently and carelessly had and maintained its platform in such an unsafe and dangerous condition that the plaintiff fell," etc. (page 4, lines 10-20).

The case was tried upon this theory. The evidence in the case was directed solely to the point as to whether or not the station platform was dangerous and unsafe as a matter of legal inference.

At the close of the whole case a motion was made to direct a verdict (page 51), and it was at this stage of the proceedings that the Court permitted counsel for the plaintiffs to amend their declaration by urging as a new ground of negligence the act of the conductor in saying to the plaintiff, "step lively, please." The declaration was not, in fact, amended by counsel, and, therefore, the record does not disclose the amendment.

Admitting, however, for the purpose of argument, that this Court would permit the amendment to be filed, assuming that it was proper to allow the amendment in the first instance, we will discuss the proposition as though the amended declaration had actually been filed.

Suit was filed on the fifth day of March, nineteen hundred and ten (page 3, line 22); it was at issue more than three years before trial, it having been tried on the twenty-fourth day of June, nineteen hundred and thirteen (page 5, line 20). No effort was made to amend the declaration during the trial, nor, as has been said, until after both sides had closed their case and a motion for a direction had been made upon the ground that the plaintiff had not established a cause of action.

It is fundamental, of course, that the plaintiff can recover only upon proof of facts supporting his declaration.

Murphy v. North Jersey St. Ry. Co., 71 N. J. L. 5-7.

Excelsior Electric Co. v. Sweet, 59 N. J. L. 441.

In the latter case the Court held (page 443) :

"It is a cardinal rule in the control of a trial court that questions submitted to the jury should be within the issue raised by the pleadings. It clearly appears that the pleadings in this case presented no issue as to the state or position of the cleat, the sole complaint being as to the rotten walk, insufficient and defective condition of the rope and pulleys. It was, therefore, erroneous for the Judge to submit such a question to the jury under the pleadings as they stood, and the next question is whether we should now exert the power of the amendment so as to embody that controversy in the declaration. All the testimony taken at the trial and all the instructions of the judge to the jury seem to be set forth in the bill of exceptions. So far as we can discover from this bill, neither party had in mind at the trial any suggestion of negligence on the part of the defendant with respect to the cleat until it was broached by the Judge near the close of his charge. The real controversy was over the question whether the rope had broken because of its inherent weakness, * * * the condition of the cleat being dealt with only for the purpose of accounting for the fall of the lamp without the defendant's fault. If, therefore, we should now introduce this issue into the pleadings, it would not be done in order to maintain a determination of the question which was really in issue between the parties, but it would support a verdict that may have been rendered upon a matter which the parties have not litigated. For such an end the power of amendment ought not to be exercised."

It is submitted that this is the precise situation raised in the present case. True it is that there was evidence in the case that the defendant's conductor told the

plaintiff to "step lively." This, however, had no reference to its being an act of negligence, but was merely for the purpose of showing its relation to the plaintiff's act in alighting from the train. It was not urged nor considered nor pleaded as being an act of negligence until after the motion was made to direct a verdict. It, therefore, was not really in controversy between the parties, and the verdict which depended upon it as a proposition of law was rendered upon a matter which the parties did not fairly litigate. It matters not when the amendment was made, if at the time it was made the result was to allow the suit to be determined upon a matter not in litigation.

It is respectfully urged that neither the pleadings nor the arguments in support of the motion for a nonsuit or motion for a direction disclose that the question of negligence with respect to the conductor's conduct was at any time in litigation or considered by the parties in the trial of the cause, and that, therefore, the making of an amendment was not in the discretion of the Court, and was harmful error.

POINT V.

This point is raised by grounds of appeal numbers 2, 3 and 4.

The Court charged the jury as follows (page 55, lines 5-10):

"The contention of the plaintiffs in regard to the matter of negligence is that in the day time, on January twenty-fourth, 1910, Mrs. Anna Cullen, while in the act of alighting as a passenger from one of the defendant's passenger coaches, at Minotola station, in this county, stepped upon a slanting portion of the station platform there after the conductor had said to the passengers, 'step lively,' " etc.

The Court thus brought to the jury's attention the words of the conductor as an element of negligence in the case. This was duly excepted to (page 57, line 2).

The case could not be submitted to the jury upon a theory of negligence not put in issue by the pleadings and not litigated at the trial.

Murphy v. North Jersey St. Ry. Co., 75 N. J. L. 57; *Sweet v. Excelsior Electric Co.*, 59 N. J. L. 441; *Holmes v. Pa. R. R. Co.*, 74 N. J. L. 469.

It is not a ground of negligence to invite a passenger to alight from a car quickly.

Where a conductor called out "Jersey City last stop" and proceeded to open the vestibule doors to the platform of the train, this cannot be said to be an invitation to a passenger to alight before the train comes to a stop.

Mearns v. Central R. R. Co., 139 Fed Rep. 573.

In the case of *Seitzick v. W. J. & S. R. R. Co.*, in an unreported opinion, a verdict for the plaintiff was set aside where it appeared that the conductor had said to the plaintiff, "Hurry up, get off; why are you standing here;" although in that case there was doubt as to whether or not the language had been used, yet it appeared affirmatively as a part of the plaintiff's case that she was influenced in her conduct by the invitation of the conductor.

In the case of *Haus v. Boston Elevated Ry. Co.*, 78 N. E. 480, wherein a railroad company was charged with negligence by reason of the space between the platforms of two of its cars and also by reason of the direction of the guard or conductor to a person crossing over from one car to another to move quickly, the Court held that the defendant was not bound to warn the plaintiff of the space between the cars or to assist her in crossing from one car to another, and that the brakeman's request to move quickly was not, in the nature of the defendant's business, an unreasonable one.

In the case of *Willworth v. Boston Elevated Ry. Co.*, 74 N. E., p. 333, which case was cited with approval by our courts in *Kingsley v. D., L. & W. R. R. Co.*, 81 N. J. L. 536-544, it was held, not negligence to ask passengers leaving the elevated railway cars to move quickly. In this case it was alleged that the plaintiff was injured by stepping through a space between the car and the station platform. The Court said it was not negligence for the guard on the platform to ask the passengers to move quickly. "The nature of the business in which the defendant is engaged and the convenience of its passengers who cannot afford an unnecessary loss of time justifies the efforts to make the transfers at stations quickly."

POINT VI.

This point is raised under grounds of appeal 2, 3 and 4, and is discussed above under points 4 and 5. It is useless to add anything upon this point, except as has been discussed under these heads.

It is respectfully submitted that the Court erred in the particulars above enumerated and discussed, and that the judgment should be reversed.

BOURGEOIS & COULOMB,
Attorneys of Defendant-Appellant.

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New Jersey Court of Errors and Appeals

ANNA J. CULLEN and
CHARLES CULLEN,
Plaintiffs-Respondents,

vs.

WEST JERSEY & SEASHORE
RAILROAD COMPANY,
Defendant-Appellant.

ON APPEAL.

ARGUMENT FOR MR. AND MRS. CULLEN.

I.

The declaration (4) declares that the failure of duty consisted in an unfit and dangerous platform on which the plaintiff was obliged to alight from the train. The plaintiff was injured, not by walking along the platform, but by alighting from a train onto the platform. She had crossed over the same platform on other occasions (38) "but never took particular notice of it before." The circumstance that the conductor, who stood nearby, called out, "Step lively there," is important in connection with the contributory negligence of Mrs. Cullen. This caused her to hurry (36) and "she got excited." (27.) Even if she had gone over this unusual for-

mation in the platform and, for that reason, might be said to know about it, her hurry to alight and the excitement consequent upon the conductor's command would make the question of her negligence purely a jury matter.

Also causing the plaintiff to alight in the saucer-shaped declivity, when she thought that she was stepping on a level platform (36), is another fact entering into the problem of her negligence. A passenger would not be expected ordinarily to step from a train into such an arrangement as the defendant maintained. On the contrary, ordinary prudence would indicate that passengers would not be required to alight in such an unusual place.

II.

A carrier of passengers is obliged to use a high degree of care and vigilance in the protection of its passengers. Whether such care was used, under these circumstances, became a jury question. Dr. Dubler (12, 14, 15) says he never saw such an arrangement, although he had seen many platforms. He further says that this saucer-shaped depression was for the use of baggage (13). He also says (15) that the picture does not give a very clear idea of the actual situation. Mr. Murphy (16, 19, 20) says that he has seen many platforms but never saw one with a hole in it like this one; that it was used for baggage and that the declivity was seven or eight inches in depth (19, 20); that he never saw "this kind of a scoop out of the platform." Mr. Sheatz (21, 22) says that the plaintiff stepped on the slope, that it was shaped like a saucer; that "it comes off funny;" that he never saw anything like

it before; further that it was used for baggage, that it was seven or eight inches deep (23) and that "it runs down more steeper on the end." Mr. Cullen says (25) that the declivity was eight or nine inches deep and that "from the back end it comes off straighter than what it does on the two front ends." He further said that he had seen other platforms (28), but never one like this. He says (28) "it is more of a bow in front of the platform than what it is in the back, that is, straight back." Getting off a train is a very different thing from walking along a platform. Walking along a platform offers the opportunity to observe the condition of things. The saucer-shaped basin (30, 31) was eight or nine inches deep or from seven to eight inches. Mrs. Cullen (35) weighed one hundred and ninety pounds. She thought she was going to step on a level platform. To require her, under the circumstances stated, to step, not on a level platform, but on a sloping concave surface was to require her to do a dangerous thing. Mr. Pinkham (45) was able to specify only two instances of a similar construction. On page 46, he admits that, because of the concavity of the saucer-shaped portion of the platform, trucks loaded with baggage might slant and tip. This admission, more than anything else, proves that the construction was unusual; not standard and general. Therefore, it seems to be very plain that the structure of the platform, where the defendant required the plaintiff to alight, was of such an unusual character as, under the circumstances, to be likely to injure the plaintiff. At any rate, it became a question for the jury. If the carrier was obliged to use a high degree of care, did it exercise such care in this instance?

III.

The learned trial Judge put the case to the jury solely on this ground. There was not only a decline which increased the distance that the plaintiff had to step from the carstep to the average level of the platform, but there was a curvature, a gradual concavity, more pronounced where the plaintiff was obliged to step than at any other part of the saucer-shaped contrivance. Everybody knows that such an arrangement, for the alighting of passengers, is not only unusual, but, under the circumstances proven in this case, would necessarily involve an unusual measure of risk to a heavy woman like Mrs. Cullen. From such circumstances the jury could justifiably infer negligence on the part of the defendant. This case differs essentially from every other reported case, especially the cases cited in the brief for the other side.

Respectfully submitted,

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