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Complaint.

(Filed July 14, 1925.)

Hudson County Court of Common Pleas 10

JOHN WILLIAMS and MARGARET WILLIAMS, Plaintiffs, v. PENNSYLVANIA RAILROAD COMPANY and HUDSON & MANHATTAN RAIL- ROAD COMPANY, corporations, Defendants.	}	Action at Law.
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Plaintiffs, residing at No. 390 Grove Street, in the City of Jersey City, in the County of Hudson and State of New Jersey say that:

1. Plaintiffs are now and were at all times hereinafter mentioned, husband and wife.
2. Defendants are now and were at all times hereinafter mentioned, corporations engaged as common carriers of passengers by railroad, at Jersey City, in the County of Hudson. 30
3. Plaintiff Margaret Williams on the 23rd day of June, 1925, was a passenger on a train of the defendants, at Grove Street station on the defendants, in the City of Jersey City.
4. Plaintiff Margaret Williams at the time and place aforesaid, was injured through the negligence of the defendants. 40

Complaint.

5. The negligence of the defendants consisted in this:

10 Defendants did not use reasonable care in the management, operation and control of the said train upon which plaintiff Margaret Williams was a passenger, but on the contrary, as she was attempting to alight from said train at the Grove Street station of the defendants, the agents and servants of the defendants, did not afford her sufficient time to alight therefrom, but negligently and carelessly, suddenly and without warning, closed the door of said train against and upon her body and injured her.

20 6. By reason of said negligence, the plaintiff Margaret Williams was injured in and about her head and body, left side injured, leg injured, sustained internal injuries, left ankle injured and suffered severe nervous shock.

7. Plaintiff Margaret Williams was at all times in the exercise of due care for her safety.

30 8. Plaintiff John Williams, by reason of the injuries of his said wife, has been deprived of her aid, comfort, society and assistance and has been compelled to expend money for medical attendance in endeavoring to obtain her cure.

Plaintiff Margaret Williams demands \$10,000.
Plaintiff John Williams demands \$5,000.

ALEX. SIMPSON,
Attorney for Plaintiffs.

Answer.

(Filed July 23, 1925.)

HUDSON COUNTY COURT OF COMMON PLEAS.

JOHN WILLIAMS and MARGARET
WILLIAMS,
Plaintiffs,

v.

PENNSYLVANIA RAILROAD COMPANY
and HUDSON & MANHATTAN RAIL-
ROAD COMPANY, corporations,
Defendants.

Action at Law.

10

The defendant corporations, for answer, say that:

20

FIRST DEFENSE.

1. They have no knowledge or information sufficient to form a belief as to the allegations of Paragraph 1.

2. They admit Paragraph 2.

3. They have no knowledge or information sufficient to form a belief as to the allegations of Paragraph 3.

30

4. They deny Paragraph 4.

5. They deny Paragraph 5.

6. They deny Paragraph 6.

7. They deny Paragraph 7.

8. They deny Paragraph 8.

Rule for Judgment for P. R. R. Co.

SECOND DEFENSE.

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

10

THIRD DEFENSE.

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

COLLINS & CORBIN,
Attorneys of Defendants.

20

[Filed Clerk's Office July 23, 1925, Hudson County, N. J.]

Rule for Judgment for Pennsylvania Railroad Company.

(Filed April 1, 1927.)

HUDSON COUNTY COURT OF COMMON PLEAS.

30

JOHN WILLIAMS and MARGARET WILLIAMS,
Plaintiffs,

v.

PENNSYLVANIA RAILROAD COMPANY and HUDSON & MANHATTAN RAILROAD COMPANY, a corporation,
Defendants.

Action at Law.

40

The above case was tried before Judge Charles M. Egan and a jury on March 30 and 31, 1926. At

Rule for Judgment for P. R. R. Co.

the conclusion of the whole case the Trial Court directed the jury to bring in a verdict in favor of the defendant, Pennsylvania Railroad Company, and against the plaintiffs, John Williams and Margaret Williams. As to the other defendant, Hudson & Manhattan Railroad Company, the Trial Court submitted the issues to the jury and they found as follows: They found a verdict in favor of the plaintiffs, John Williams and Margaret Williams, and against the defendant, Hudson & Manhattan Company, for six cents.

10

WHEREFORE, it is ordered and adjudged that judgment final be and the same hereby is entered in favor of the defendant, Pennsylvania Railroad Company, and against the plaintiffs, John Williams and Margaret Williams, with costs to be taxed, and that plaintiffs, John Williams and Margaret Williams, recover the sum of six cents, with costs to be taxed, as against the defendant, Hudson & Manhattan Railroad Company.

20

Rule actually entered this 1st day of April, 1926, on motion of Collins & Corbin, attorneys of defendants.

30

40

Rule to Show Cause.

(Filed April 1, 1927.)

HUDSON COUNTY COURT OF COMMON PLEAS.

10

JOHN WILLIAMS and MARGARET
WILLIAMS,
Plaintiffs,

v.

PENNSYLVANIA RAILROAD COMPANY
and HUDSON & MANHATTAN RAIL-
ROAD COMPANY,
Defendants.

Action at Law.

20

Application having been made within six days after the rendition of the verdict in the above entitled cause,

It is ORDERED, that the defendants show cause before this Court, on the 15th day of April, 1926, at 10:00 A. M. why the verdict of six cents in favor of the plaintiffs should not be set aside and a new trial granted on the question of damages only, because of the inadequacy of the damages.

30

It is further ORDERED, that all objections or exceptions taken by the plaintiffs during the trial of said cause be and the same hereby are reserved to the plaintiffs for appeal.

CHARLES M. EGAN,
Common Pleas Judge.

Rule actually entered this 1st day of April, 1926. On motion of Alex. Simpson, attorney for plaintiffs.

40

Rule Absolute on Damages Only.

(Filed December 17, 1926.)

HUDSON COUNTY COURT OF COMMON PLEAS.

10

JOHN WILLIAMS and MARGARET
WILLIAMS,
Plaintiffs,

v.

PENNSYLVANIA RAILROAD COMPANY
and HUDSON & MANHATTAN RAIL-
ROAD COMPANY,
Defendants.

Action at Law.
On Rule to
Show Cause.

20

A rule to show cause having been heretofore granted why a new trial should not be granted in the above entitled cause on the question of damages only, and the same having been duly argued by Alex. Simpson, Esq., attorney for plaintiff, and Collins & Corbin, Esqs., attorneys for the defendants, and the Court being of the opinion that the rule should be made absolute and a new trial granted as to damages only,

30

It is on this 24th day of November, 1926, ORDERED, that the rule to show cause be made absolute and a new trial granted as to damages only.

CHARLES M. EGAN,
Judge.

40

Rule Modifying Rule Absolute for a New Trial on Damages Only.

(Filed July 1, 1927.)

HUDSON COUNTY COURT OF COMMON PLEAS.

10	JOHN WILLIAMS and MARGARET WILLIAMS, Plaintiffs, <i>v.</i> PENNSYLVANIA RAILROAD COMPANY, a corporation and HUDSON & MANHATTAN RAILROAD COMPANY, a corporation, Defendants.	} Action at Law.
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20 WHEREAS through inadvertence the rule absolute granting the plaintiffs a new trial on damages only inadvertently granted a new trial as against the defendant Pennsylvania Railroad Company, and

30 WHEREAS on the trial of the above action the Court granted a motion for direction of verdict in favor of said defendant Pennsylvania Railroad Company and it was not the intention of the Court to set aside said direction;

It is on this 30th day of June, 1927, ORDERED that the said rule absolute granting a new trial to the plaintiffs be and the same hereby is modified so as to limit said new trial as to damages only as against the Hudson & Manhattan Railroad Company, and the direction of verdict in favor of the defendant Pennsylvania Railroad Company be in all things ratified and confirmed.

40 ARTHUR GORMAN GALLAGHER,
Judge.

Rule for Trial Judgment.

Rule actually entered this 30th day of June, 1927, on motion of

COLLINS & CORBIN, Attorneys of Defendant, Hudson & Manhattan R. R. Co.	}	10
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Rule for Final Judgment.

(Filed July 8, 1927.)

HUDSON COUNTY COURT OF COMMON PLEAS.

JOHN WILLIAMS and MARGARET WILLIAMS, Plaintiffs, <i>v.</i> HUDSON & MANHATTAN RAILROAD COMPANY, a corporation, Defendant.	}	20
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30 This cause was tried before Judge Arthur Gorman Gallagher with a jury on June 30th and July 1st, 1927, at the Hudson County Court of Common Pleas.

Both sides having submitted evidences, the jury returned a verdict in favor of the plaintiffs and against the defendant, and assessed the damages in the amount of one hundred twenty-five (\$125.00) dollars in favor of plaintiff John Williams and in the amount of five hundred fifty dollars (\$550.00) in favor of the plaintiff Margaret Williams, and against the defendant, the Hudson & Manhattan Railroad Company, a corporation.

40 It is ordered that plaintiff John Williams, have and recover from the defendant Hudson & Man-

Judgment.

hattan Railroad Co., the sum of one hundred twenty-five (\$125.00) dollars, and the plaintiff Margaret Williams, have and recover from the defendant the Hudson & Manhattan Railroad Co., the sum of five hundred fifty (\$550.00) dollars, with costs to be taxed, and it is further ordered that judgment be and hereby is entered accordingly.

ARTHUR GORMAN GALLAGHER,
Judge.

Judgment.

(Filed July 8, 1927)

HUDSON COUNTY COURT OF COMMON PLEAS.

JOHN WILLIAMS and MARGARET WILLIAMS,
Plaintiffs,
v.
HUDSON & MANHATTAN RAILROAD COMPANY, a corporation,
Defendant.

Judgment entered July 8th, 1927.
Damages \$675.00.
Alex Simpson,
Attorney.

Judgment on verdict in the above entitled cause was entered in this Court on the 8th day of July in the year of our Lord one thousand nine hundred and twenty-seven in favor of the plaintiff John Williams the sum of \$125.00 and Margaret Williams the sum of \$550.00 and against the defendant Hudson & Manhattan Railroad Company, a corporation, in a plea of action at law for the sum of six hundred and seventy-five dollars damages and costs.

Judgment entered and signed this 8th day of July, 1927.

ARTHUR G. GALLAGHER,
Judge.

Notice of Appeal.

(Filed July 9, 1927.)

HUDSON COUNTY COURT OF COMMON PLEAS.

MARGARET WILLIAMS and JOHN WILLIAMS,
Plaintiffs,

v.

HUDSON & MANHATTAN RAILROAD COMPANY,
Defendant.

Action at Law.

10

To:

ALEX. SIMPSON, Esq.,
Attorney of Plaintiffs.

20

SIR:

PLEASE TAKE NOTICE that the defendant Hudson & Manhattan Railroad Company appeals to the New Jersey Supreme Court from the whole of the judgment entered in this cause.

Dated July 6, 1927.

Respectfully yours,

30

COLLINS & CORBIN,
Attorneys of Defendant.

Service of a copy of the within notice of appeal is hereby acknowledged this 8th day of July, 1927.

ALEX. SIMPSON,
Attorney of Plaintiffs.

40

Grounds of Appeal.

(Filed Sept. 28, 1927.)

NEW JERSEY SUPREME COURT.

10

MARGARET WILLIAMS and JOHN
WILLIAMS,
Plaintiffs-Respondents,

v.

HUDSON & MANHATTAN RAILROAD
COMPANY,
Defendant-Appellant.

Action at Law.

The appellant states the following grounds of
appeal:

20

1. The trial judge erroneously instructed the
jury as follows:

"She must show by a preponderance of
the evidence, before she can recover, that
the defendant company was negligent and
that such negligence was the proximate
cause of the injury which she claims to have
sustained in this accident."

30

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

"Naturally, your next inquiry will be,
what duty did this defendant company owe
to the plaintiff, who was one of its pas-
sengers.

"Now, the defendant company was a
common carrier of passengers, and as such
it and its employees owed the plaintiff, who

40

Grounds of Appeal.

was a passenger, a high degree of care for
her safety and was bound to exercise a high
degree of care to take her safely to her
journey's end.

"Our Court of Errors and Appeals has de-
fined this duty in this manner: The rule
that common carriers of passengers are
bound to exercise the highest degree of care
and diligence that a reasonable man would
use, and that they are responsible for the
slightest negligence, has been very generally
adopted in this country and is the law of
this State."

10

3. The Trial Judge erroneously instructed the
jury as follows:

20

"Now, as a part of the rule I have already
laid down respecting the duty of the defend-
ant Company, I would say that the Company
of course owed the duty within that defini-
tion I have given you of affording a reason-
able opportunity for this plaintiff to alight
from its cars, she having been a passenger."

4. The Trial Court refused to charge the fol-
lowing request of the defendant-appellant:

30

"3. The only negligence charged against
the defendant is that it carelessly and neg-
ligently closed the center door of the coach
from which she was alighting at the Grove
Street station. If the plaintiffs have failed
to prove that the defendant negligently
closed the center door then the plaintiffs
cannot recover and your verdict must be for
the defendant."

5. The Trial Court refused to charge the follow-
ing request of the defendant-appellant:

40

Grounds of Appeal.

10 “7. The defendant had the right to construct its platform and cars in such a way that there should be three, four or five inches clearance between the side of the coach and the side of the platform and even though you find that such clearance existed and yet find that the plaintiff Mary Williams was not struck by the coach door then the plaintiffs cannot recover and your verdict must be for the defendant.”

6. The Trial Court refused to charge the following request of the defendant-appellant:

20 “12. The defendant cannot be held liable in this case because it failed to warn the plaintiff of the clearance between the side of the coach and the side of the platform.”

7. The Trial Judge sustained the following questions to the witness Dr. Wainwright:

30 “Q. This treatment that you have been rendering to her, and her injury about which she complained—the nervousness and so forth—you say, in your opinion, they were due to an accident?”

8. “Q. You can’t tell whether it comes from these two minor injuries that you found, as you called them, of less than two weeks duration, or whether it came from something else?”

9. “Q. In your opinion, you are just guessing at it, aren’t you?”

40 10. The following question to the plaintiff Margaret Williams were overruled:

Grounds of Appeal.

“Q. Isn’t it a fact that you stumbled over on your heel and fell?”

11. “Q. Isn’t it a fact that your heel came off and that is what threw you?”

12. “Q. Isn’t it a fact, Mrs. Williams, 10 that what caused you to fall down was not the door hitting you, not the door striking you on the left ankle on the outside, but that your heel came off?”

13. “Q. Your heel did come off?”

14. The Trial Judge overruled the following questions to the witness Wertheimer:

“Q. As she came out of that door of the car did the door strike her at all?” 20

15. “Q. Will you just tell us what you saw with respect to Mrs. Williams coming out of that centre door?”

16. “Q. Mr. Wertheimer, did this centre door close or begin to close as she came out?”

17. “Q. Won’t you tell me, Mr. Wertheimer, whether you observed whether or not the centre door closed at all as she was about to leave the car?” 30

18. “Q. Would you please tell the jury what you observed as to what injury the plaintiff sustained—Mrs. Williams?”

19. “Q. Did you see whether the door closed as she was coming out, from the right hand side or the left hand side?”

20. “Q. Won’t you tell us, Mr. Wert- 40

Grounds of Appeal.

heimer, whether you observed whether the door closed or not at the time?"

21. The Trial Court overruled the following questions to the witness Dickinson:

10 "Q. Did the door close at all?"

22. "Q. Was the door closed at all?"

23. "Q. Did you observe whether or not the door struck her?"

24. "Q. Do you know whether this door as it would close would close from the right side or the left side as she alighted?"

20 25. The Trial Judge refused to instruct the jury to disregard certain remarks made by counsel for the plaintiff, first, with respect to the case of a poor fellow who did not get anything, and second, with respect to a large verdict for a colored girl in a similar case which was tried shortly prior to the present case.

COLLINS & CORBIN,

Attorneys of Defendant-Appellant.

30 I consent to filing as of time.

ALEX. SIMPSON,
Attorney of Respondent.

40

Margaret Williams, direct.

HUDSON COUNTY COURT OF COMMON PLEAS.

Before—Hon. CHAS. M. EGAN, J., and a Jury.

JOHN and MARGARET WILLIAMS,
Plaintiffs,

v.

P. R. R. and H. M. R R.,
Defendants.

10

Jersey City, N. J., March 30, 1926.

APPEARANCES:

ALEXANDER SIMPSON, Esq., Counsel for the
Plaintiffs. 20

COLLINS & CORBIN, Esqs. (Mr. MARKLEY),
Counsel for the Defendants.

(A jury having been empanelled and found satisfactory, they were sworn.)

MARGARET WILLIAMS, the plaintiff, sworn.

Direct examination by Mr. Simpson:

Q. Where do you live? A. 390 Grove Street. 30

Q. Are you a married woman? A. Yes.

Q. What is your husband's name? A. John Williams.

Q. How long have you been married? A. This is my second husband. I have been married going on five years to this man.

Q. How long have you lived in Jersey City? A. Twenty-two years.

Q. On the 23rd of June last, were you a passenger in a tube train of the Hudson and Manhat- 40

Margaret Williams, direct.

tan Railroad Company coming from New York?

A. Yes.

Q. And where did you get on the train? A. At Cortlandt Street, sir.

10 Q. Was it a crowded train or not? A. Yes, it was on the rush hour, at quarter to five in the evening.

Q. Were you able to sit down or did you have to stand up? A. Well, I got a seat.

Q. Well, when you got to Grove Street did you intend to get out at Grove Street? A. Yes, sir.

Q. Where were you sitting with reference to the center door, how near to the center door? A. I do not exactly know how near I was to the door, but I went to get out.

20 Q. But you got up and went to the center door? A. Yes, to get out.

Q. You were going to get out the center door? A. Yes.

Q. As you were going to get out of the door what happened? A. The door struck me in the ankle and threw me.

Q. How far did it close when it struck you in the ankle? A. About that much (indicating).

Q. About a foot? A. Yes.

30 Q. And struck you in which ankle? A. In the left ankle.

Q. When it struck you it threw you how? A. It threw me in the hole between the platform and the train.

Q. That is when this door started to close and hit you it caused you to go in this opening? A. Yes; my foot went down.

40 Q. How much of an opening was there between the side door and the platform? A. About that

Margaret Williams, direct.

much (indicating). I had those low tan shoes on. I have the shoes home yet.

Q. You had low shoes on? A. Yes.

Q. Man's shoes? A. No, a common sense heel. I never wear a high heel.

Q. You never wear a high heel? A. No. 10

Q. And this opening between the platform and the train, how wide was it, do you say? A. It was about that much. It was on a level with the train, but the opening was about that much.

Q. There was a space between the platform and the train? A. A space, yes.

Q. When the door hit you it drove you into this space? A. Into this space.

Q. How far down did you go in this space? A. A little above the ankle, and I laid there until two men took me up. 20

Q. When you went down a little above the ankle what happened to you, were you in an upright position or did you fall over to the platform? A. No, I was thrown to my side like that.

Q. And then two men took you up? A. Two men came rushing along and took me up.

Q. Where were you taken? A. They carried me upstairs to the entrance to the tube and telephoned for the ambulance and left me sitting on a chair. 30

Q. And were you examined by a doctor? A. The doctor at the City Hospital. They took me home.

Q. Did they take you to the City Hospital? A. They wanted to take me to it, but I wanted to go home to my two little twin babies.

Q. Where were you working? A. In the Idle Hour Tearoom, No. 6 Cortlandt Street.

Q. And what did you earn there? A. I was only working there temporary; I was forelady in the 40

Margaret Williams, direct.

New York Title & Mortgage before that. I was forelady over women cleaners over there.

Q. Cleaners? A. Yes.

Q. What did you earn as forelady? A. Fourteen dollars a week as forelady; but this job I had
10 in the tearoom only paid me twelve dollars a week.

Q. After you were taken home what happened to you; how long were you laid up? A. I was from June to August, the doctor was attending me.

Q. From the 23rd of June until when? A. Until the 15th of August.

Q. That you were what—confined to your house or what? A. Not exactly confined to my house, but I could not use the foot, I could not do any work since with the foot.

20 Q. It was too sensitive? A. Yes, it pains me.

Q. Did you have any pain in it? A. Yes, always.

Q. Did you have any pain in any other part of the body? A. Above the hip here.

Q. Who was your doctor? A. Dr. Wainwright.

Q. He attended you for how long? A. From the day I got hurted until the 15th of August.

Q. Then, after the 15th of August did he attend you? A. Well, he gave me stuff to rub my foot.

30 Q. He gave you stuff to rub on yourself? A. Yes.

Q. How long were you away from work altogether? A. I did not go back since. I have not done any work since.

Q. Why haven't you done any work since? A. I threw up blood since from the fall—and I do not feel the same.

Q. You had hemorrhages? A. Yes.

Q. You have not done anything since? A. No, I have done nothing since.

40 Q. At the time of the accident was your husband

Margaret Williams, direct.

working too? A. He was working over in a paper place in Brooklyn.

Q. There has been something said by Mr. Markley that you fell because some high heel caught in the space and twisted off. Did you ever wear a high heel? A. No, I do not wear them. I have
10 those shoes home since; I saved them. The shoe they have a railroad man held on to. It had a small yellow heel.

Q. They held that? A. Yes.

Q. You say it hadn't a high heel, it was an ordinary heel? A. Yes. I never wear a high heel.

Q. They have that still? A. Yes.

Q. Where was that heel when they got hold of it? A. I don't know. The guard on the platform, that man that stands there, said to take this heel
20 over to New York; and I was so excited, I was nervous after being picked up, I was not bothering about him or the heel until they took me home. I did not bother what they done with the heel.

Q. Did your husband have any woman come in to do the housework? A. Yes. I have an old lady that comes in.

Q. How long has she been there? A. She is with me all the time ever since.

30 Q. Why do you have to have her? A. I could not watch the babies all the time. She has to watch the babies and take care of them. I have those weak spells. I will be talking with her and get those weak spells.

Q. How many hemorrhages have you had since this accident? A. I don't know, really exactly how many.

40 Q. How much is this old lady paid? A. Three dollars a week she is supposed to get, but I have not been paying her.

Margaret Williams, cross.

Q. You give her her board and three dollars a week? A. Yes.

Q. You say that up to date you have not been able to go to work? A. No.

Cross examination by Mr. Markley:

10

Q. Mrs. Williams, how old are you? A. I will be thirty-nine years old the first of July.

Q. Did you say you were married twice, did I understand you? A. Yes.

Q. This is your second husband? A. Yes.

Q. How long have you been married to him? A. Going on five years.

Q. Five years; and did I understand you to say he was working at the time of the accident? A. Yes, not much, but he was working in the paper place in Brooklyn—four dollars a day.

20

Q. You say you got a job the day before at the Idle Hour? A. No, sir; I didn't. I was working there for some time when I got hurt.

Q. How long had you been working at the Idle Hour before this accident? A. I don't know exactly—about two and a half months I was working there.

30

Q. Didn't you just get work there the day before? A. No, sir, I did not.

Q. Who owned the Idle House? A. Miss Cook.

Q. Who is she? A. The lady that hired me, that owns the tearoom.

Q. Wasn't it your sister that ran the Idle Hour? A. No, sir; nothing to me.

Q. What? A. Not my sister; I haven't got no sister in this country.

40

Q. You quit work what time on the 23rd of June? A. About half past four we left the tearoom.

Margaret Williams, cross.

Q. Did anybody leave the tearoom with you? A. Yes, Mrs. McDonald, her little girl and her little boy.

Q. Did she work there? A. No; she worked for Mrs. Cook's sister, Mrs. Foster, on Cortlandt Street.

10

Q. What did you do at the Idle Hour? A. I took care of the silver and glasses in the kitchen.

Q. That is you washed the glasses and silver? A. Yes.

Q. In this Idle Hour. What was that, a restaurant? A. A tearoom, cafeteria.

Q. Your job was dishwasher? A. Silver and glasses. There was a dishwasher there besides me.

Q. A what? A. There was a dishwasher there besides me. I took care of the silver and the glasses.

20

Q. How long had you been working there, a couple of months? A. It was pretty near a couple of months when I was there.

Q. How many children did you have at that time? A. Twin babies, a boy and a girl.

Q. Just two children? A. Yes.

Q. How old were the children at that time? A. At that time they were—they are three now—three and a half—that is nine months ago.

30

Q. A little over two years? A. A little more than two years old.

Q. What were your hours over at the Idle Hour? A. From nine until four.

Q. Who took care of these two children that were two or three years old while you worked at the Idle Hour? A. I had my niece from the old country over here.

Q. You had to pay her to take care of them? A. No, I did not. My niece works at the Waldorf

40

Margaret Williams, cross.

Astoria and she was in my house and she took care of them.

Q. You say your niece took care of these children? A. Yes.

10 Q. While you did this work over at the Idle Hour? A. Yes.

Q. And is your niece still with you? A. No, she is at the Waldorf Astoria, a maid over there.

Q. Now she is over at the Waldorf Astoria? A. Yes.

Q. Was she living with you at the time of the accident? A. Not exactly living with me, she was taking care of the babies.

Q. Where did she take care of the babies? A. In my house.

20 Q. But she did not live with you? A. Yes, she was there at the time, staying with me.

Q. She was living with you then? A. Staying with me, not exactly—she was there only helping—she is not a well girl; she is there with me now even.

Q. Did she sleep with you in the house? A. Surely.

30 Q. What did you pay her to take care of the children? A. I did not pay her anything. I took her out here from the other side.

Q. Did she stay with you after the accident? A. No, she went back to the job.

Q. When you had the accident she left you? A. Not exactly. She had to go back to the job. They give her so much time off in the Waldorf.

Q. After the accident when did she go back to work? A. I can't tell you exactly, because I had the old lady to take care of me after the accident.

40 Q. You had the old lady before the accident? A. No; I sent for her at the time of the accident.

Margaret Williams, cross.

Q. What is your niece's name? A. Margaret Sisce.

Q. How old is Margaret? A. She will be twenty years old the 24th of April.

10 Q. When did Margaret leave you? A. I don't know exactly the date.

Q. When did the old lady come with you? A. I sent for the old lady.

Q. When? A. At the time I got hurt I sent for the old lady.

Q. What is her name? A. Mrs. Yaeger.

Q. You have not paid her any money, have you? A. No, I have not paid her.

Q. Where does she live? A. She used to live with her niece on Bay Street in Jersey City.

20 Q. Where do you live? A. 390 Grove Street.

Q. Well, she lives right nearby you then, doesn't she? A. Yes.

Q. And she lives with her niece? A. Yes, sir.

Q. Does she still live with her niece? A. No, she is with me now.

Q. Instead of living with her niece she lives with you? A. She is with me now.

Q. Does she sleep in your house? A. Yes, she sleeps in our house.

30 Q. She does not go home to her niece at all? A. No, she does not.

Q. Was she with you before this accident? A. No, she was not living with me before this accident.

Q. Now, you got on the train with Mrs. McDonald? A. Yes.

Q. And Mrs. McDonald's little girl? A. And the little boy.

Q. What is the girl's name? A. Rena McDonald, we call her.

40 Q. Irish, I suppose? A. Irish.

Margaret Williams, cross.

Q. She is fourteen or fifteen years old? A. She is around fifteen now.

Q. And the boy, how old is he? A. Three years and a half I think he is.

10 Q. Where did they meet you? A. Mrs. McDonald and the two children came for me to Mrs. Cooks' tearoom, and I was not finished yet, and they waited for me, and we came home.

Q. They came to the tearoom? A. From Mrs. Foster's tearoom on Fulton Street.

Q. Then the four of you started home together, is that right? A. That is right.

Q. And you boarded a train over in the train at Cortlandt Street? A. Yes.

Q. And you got a seat in the train? A. Yes.

20 Q. How near were you seated to the center door? A. I do not know exactly.

Q. Were you two seats away or ten seats away? A. I don't know that exactly.

Q. Were you seated next to Mrs. McDonald? A. I forgot.

Q. Were you seated next to Irene? A. I don't really remember.

Q. Were you seated next to the little boy? A. I don't remember.

30 Q. Were you seated in the front of the car or the rear of the car? A. I don't remember where I was sitting at the time; I was only anxious to get home.

Q. You do not remember anything about that, then? A. Yes; I remember when I was getting off, when I got hit I remember it.

Q. You remember when the train came into Grove Street? A. Yes. I know the Grove Street station.

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Margaret Williams, cross.

Q. You had been travelling over that road to New York for months? A. Yes, for years.

Q. And you knew where Exchange Place was? A. Yes.

Q. Did the train stop there? A. Yes.

Q. And then went to Grove Street? A. Yes. 10

Q. But you do not know where you were seated? A. No, I forget it.

Q. Did Mrs. McDonald have a seat? A. Yes, she had a seat.

Q. Was she seated next to you? A. I could not tell you.

Q. Did Irene have a seat? A. I could not tell you anything about that.

Q. Well, your memory is a little bit hazy about it? A. No; I can tell up to the time it happened. 20 I was upset in my mind. I was not figuring who was seated or where. I know they were on the train with me.

Q. Now the train stopped at Grove Street, didn't it? A. Yes.

Q. It was stopped perfectly still when you were getting off, wasn't it? A. Yes, it certainly was.

Q. Did you get off before or after Mrs. McDonald? A. Before Mrs. McDonald.

Q. Did you get off before or after Irene? A. 30 After.

Q. Did you get off before or after the little boy? A. After the little boy, because when I fell I fell on the little boy.

Q. Then Mrs. McDonald and Irene and the boy all got off ahead of you, didn't they? A. Yes; that is right.

Q. And some other people got off ahead of them, didn't they? A. No, they didn't. I was right after little Tom. 40

Margaret Williams, cross.

Q. You four were at the door first then? A. What?

Q. You four were at the door? A. I don't know whether anybody got off ahead. I was not paying any attention who got off or not; I was just watching my own.

10 Q. You do not know whether anybody got off ahead of you or not? A. I do not. I don't remember who got off.

Q. Did you see anybody get off ahead of you? A. I did; Mrs. McDonald and her little boy—

Q. I mean outside of Mrs. McDonald and her children? A. No, I did not.

Q. Did you see anybody standing at the door waiting to get off ahead of you? A. No; I just went to go off myself and saw Mrs. McDonald and Irene go off.

20 Q. You don't remember whether anybody got out ahead of Mrs. McDonald or not? A. I suppose they did, naturally.

Q. Well, do you know; do you know whether anybody got off ahead of them? A. I know there was a crowd of people standing up in front of us; I know they must have got off because the train—

Q. Well, did you see them getting off? A. Naturally I saw them getting off.

30 Q. Then you did see some people get off ahead of Mrs. McDonald? A. Naturally passengers did get off.

Q. Now, you attempted to get off? A. Yes. Nobody else had gotten off the train. They couldn't get off—they were trying to get off when I got hit. I was thrown there.

Q. Did anybody get in the train before you went out? A. I don't remember.

40 Q. Did you see people standing outside waiting

Margaret Williams, cross.

to come in? A. There was a bunch of people outside, yes.

Q. Now then, you were getting off at this center door, weren't you? A. Yes.

Q. You remember that, don't you? A. Yes.

Q. Clearly? A. Postively.

Q. And you say the door closed that much (indicating)? A. Yes.

Q. That is about a foot? A. I suppose so.

Q. Do you know how many inches there are in a foot—12 inches in a foot? A. Yes.

Q. It opened about a foot, you say, is that right? A. That is right.

Q. And then stopped, did it? A. Stopped, and struck me in the ankle, and flung me.

Q. It did not go any further, did it? A. I don't know, my foot was down in the hole.

Q. Did the door go all the way closed? A. I don't remember. I know it struck me and I was thrown to my side, and I was thrown in the hole between the platform and the train, and I laid on my side until two men came rushing and took me up and I was between there and the door.

Q. How far did this door go? A. I told you about a foot, and maybe more.

Q. Well, I am asking you. I was not there. How far closed did it go? A. I don't know, I was just getting out and it struck me. That is all I remember; it struck me and flung me in more between the platform and the train.

Q. Did it strike when it was a foot out? A. It struck me—I don't know. When I was struck with the force, I don't know any more, I was not watching the door.

Q. It stopped within about a foot? A. I don't know.

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Margaret Williams, cross.

Q. Did it close the rest of the way? A. I don't know. I was hit and thrown and I was not paying any heed after that.

Q. Don't you know the door did not open at all? A. Yes, the door did.

10 Q. Don't you know that door, Mrs. Williams, did not open at all? A. That door caught me in the ankle and threw me.

Q. Which ankle did it catch? A. The left ankle.

Q. Which side were you struck on? A. On the left side.

Q. On the left-hand side going out? A. The left-hand side going out.

Q. Did it strike your right side? A. It struck me right in the ankle and threw me.

20 Q. Or did it strike your left side? A. It struck me on the left ankle.

Q. Where else did it strike you besides the left ankle? A. When my foot went down in the hole I got close down against the platform.

Q. Which side does the door come from? A. The left-hand side.

Q. Don't you know that door comes from the right side as you go out? A. Some does and some doesn't.

30 Q. Don't you know that all those doors open from the right; as you go out of the train the door comes from your right side and goes to the left, it never comes from the left side? A. That door mustn't have—it came from the left and struck me in the left side, I am sure.

Q. You say this door came from your left side, as you were going out that center door? A. Yes, I say it and say it yet.

40 Q. You say that positively? A. Positively, yes. It struck me from the left side.

Margaret Williams, cross.

Q. Did you see it come from the left side? With your own eyes? A. Yes, with my own eyes.

Q. And struck you on the left ankle? A. Yes.

Q. On the outside of the ankle? A. On the outside of the ankle, surely.

Q. Now, Mrs. Williams, don't you know those doors close from the right side? A. I can't help that— 10

Mr. Simpson: I object to that. You have gone over that five times and she says it does not. I object that it is a needless repetition and improper cross examination.

The Court: We will let it go this time.

Q. Nothing else of your body was struck except your left ankle on the outside? A. Left ankle, and I felt the right side above the hip here go down. 20

Q. Then two men rushed over to you? A. The guard came and hollered "Did anybody see her get struck"?

Q. I am not asking you that. Did two men rush over to you? A. Not until the guard said "Did anybody see her getting struck"? and then they pulled me up.

Q. Who pulled you up? A. I don't know who they were. 30

Q. Would you know the two men if you saw them? A. I don't know; I saw a priest standing there, but my mind went blank, everything went blank in front of me. I don't know until I got home and was carried upstairs.

Q. But you remember two men picked you up? A. Yes. I don't remember—I saw a priest standing in front of me.

Q. You do not know who picked you up? A. I know two men picked me up out of the car, and 40

Margaret Williams, cross.

the guard said, "Can you put your foot under you"? and I went to put my foot and it went right under me.

Q. You remember that? A. Yes.

10 Q. What do you remember after that? A. He said, "What happened to the heel of the shoe; did this heel fall off the New York side"? I didn't even know the heel was off.

Q. Would you know the heel if you saw it? A. I certainly would.

Q. Suppose you look at that heel. Is that the heel? A. That is the heel, that is right.

Q. That is the heel that came off? A. That is the heel.

20 Q. That is part of your shoe? A. That is part of my shoe.

Q. Which shoe was that? A. The left shoe.

Q. That is the left foot? A. The left foot.

Q. And that is the foot you say was struck? A. That is the foot that was struck.

(Heel marked D-1 for Identification.)

30 Q. Isn't it a fact you stumbled over your heel and your heel came off and you fell? A. No, sir. A man was to my house and seen my heel, and he said there was five good nails in the heel—and I have the shoe yet home.

Q. All I am asking you is, didn't you fall when your heel came off? A. When the door struck me I fell, not before. When the door struck me I fell.

Q. Where was the heel caught, do you know, when you fell? A. The heel was not caught; it was the ankle got caught with the door; the ankle got caught with the door.

40 Q. But this door only traveled a foot, you say, when you were struck? A. I say probably more;

Margaret Williams, cross.

but when it struck me it was open about that much. I don't know whether it was a foot, but about that much.

Q. You said a foot before, didn't you? A. I don't know what a foot is. I hadn't a tape-measure there. 10

Q. What was the space between the side of the platform as you showed us before, and the side of the car—how much space? A. A space about that (indicating).

Q. Hold it up so that the jury can see how much space was between the side of the car and the side of the platform; how many inches is that? A. About three or four inches.

20 Q. Your heel did not catch in there, did it? A. No; the heel did not get caught at all until I got thrown to the platform. When I went down it pulled the heel off.

Q. What happened to you after you were picked up from the platform; you were taken upstairs, you say? A. Two men carried me upstairs—two of the guards.

Q. Up to the ladies' room? A. They wanted me to go in the ladies' room but I would not go in there.

30 Q. Where did you go? A. They put me sitting on the seat the ticket chopper used—the ticket man. I stayed there until the ambulance came—until they phoned for the ambulance.

Q. Well, the ambulance doctor came and he examined your foot? A. He wanted me to go to the hospital.

Q. Did he examine your foot? A. In my house.

40 Q. Did he examine your foot in the tube station at Grove Street? A. Yes.

Margaret Williams, cross.

Q. Did he do anything for you? A. Not until he got me in my house.

Q. He did not do anything for you at Grove Street? A. No, sir.

10 Q. Did he put you in the ambulance? A. Yes, he put me on a stretcher and took me in the ambulance.

Q. Then you were taken to the house on Grove Street? A. Yes.

Q. How far is that from the tube? A. About six blocks.

Q. Then you were taken upstairs and he examined your foot? A. Yes.

Q. Who was that, do you know? A. A doctor from the City Hospital.

20 Q. Do you know his name? A. Two policemen was with him; they carried me up the stairs. They could not use the stretcher on the stairs.

Q. You do not know his name? A. No, I do not know his name.

Q. What did he do for you? A. Gave me some kind of white stuff in a glass to drink, and he said it was a bad sprain.

Q. What did he do for your foot? A. He gave me stuff for my foot, to rub the foot.

30 Q. Did he have the stuff with him? A. He had something in his case.

Q. Was it in a case or a bottle, or a bag? A. He gave me some white stuff out of a bottle for to drink.

Q. I want to know what he did for your sprained ankle? A. He said I was to keep off my foot, it was sprained, and I said I would send for my own doctor.

40 Q. He did not put any bandage on? A. No.

Q. He did not put any salve on? A. Yes, he

Margaret Williams, cross.

bandaged my foot. He did not put any salve on my foot.

Q. Do you know his name? A. No, he was a tall, dark doctor.

Q. What else did he do for your ankle? A. That is all. Said I had to keep off my foot and get my own doctor. 10

Q. Now, you got your own doctor? A. Yes.

Q. When did you get him? A. The next day.

Q. Who was he? A. Dr. Wainwright.

Q. He came the next day, and what did he do? A. He gave me stuff. He said there was pus underneath the bruise.

Q. What did he give you, some medicine? A. He gave me some stuff to rub on my foot.

Q. Did he give you any medicine to take in through your mouth—any internal medicine. 20

Q. What? A. He always gives me medicine.

Q. What? A. Yes, he gave me some medicine to quiet me.

Q. To quiet you? A. To quiet my nerves.

Q. When did he come after that? A. He came after that until the 15th of August.

Q. Did he come the next day? A. Oh, yes.

Q. Did he come every day? A. I wouldn't say every day, but he came regularly. 30

Q. How often did he come? This accident happened on the 23rd. Did he come every day after the 23rd? A. Not every day he didn't come.

Q. As a matter of fact he only made two or three visits, didn't he? A. No; he came from the 23rd to the 15th of August.

Q. How many visits did you make to his office? A. I didn't make any visits to his office.

Q. How many visits did he make to your house? 40

Margaret Williams, cross.

A. I don't know the number of times. I guess he has a record of them.

Q. Don't you know how many times he came to your house? A. I don't know how many times he came to my house.

10 Q. Haven't you any idea how many times he came to your house? A. I guess if I got his bill I would know what I owed him.

Q. Did you get his bill? A. Not yet.

Q. Have you paid him anything? A. Nothing.

Q. Haven't you any recollection at all of how many times he came to your house? A. I know when I had him for my baby I asked him how much I owed him.

20 Q. I don't care anything about when you had your baby. All I am asking you is how many times did he come to you for your ankle after this accident? A. He came regularly up to the 15th of August.

Q. Well, how many times? A. I don't know exactly.

Q. Was it five times? A. I don't know.

Q. Was it twenty times? A. More than that.

Q. Was it more than twenty times? A. It must have been more than that.

30 Q. Was it forty times? A. It was over forty altogether, I know that, because when I had my baby I asked him how much was my bill and he said around forty dollars.

Q. I want to know how many times he came to your house after this accident for your ankle? A. I don't know how many times.

Q. You say it is over twenty altogether? A. He must have—

40 Q. Was it over twenty times? A. I don't know exactly how many times.

Margaret Williams, cross.

Q. Was it over ten times? A. It must be, I say, when the bill is over forty dollars.

Q. I don't ask you that. You know he came to see you? A. I know he was there, but I was not counting the times he came.

Q. You ought to have some idea. 10

Mr. Simpson: I object to that. It is asking the witness' opinion, and also arguing with the witness, which will waste a lot of time. I object on the ground the question is argumentative.

The Court: I think that is so. I will sustain the objection.

Q. You do not know how many times the doctor came there, is that the idea? A. That is what I want to explain—I said to him— 20

Q. I don't want to know what you said to him. Do you know how many times he came? A. It must be twenty times.

Q. Is Dr. Wainwright here? A. I don't know; he should be here. He is supposed to be here.

Q. Have you had any other doctor for your ankle? A. No, no other doctor.

Q. How much do you weigh, may I ask? A. I weigh about 167 pounds. At the time of the accident I weighed 178, and then I weighed myself then and I weighed 165 or something. 30

Q. You were not confined to your bed, were you? A. I was confined to bed for about three or four weeks. I could not get out of bed at all.

Q. You did not get out of bed for three or four weeks, but you were dressed, weren't you, every day? A. I was not dressed every day.

Q. What,—you were sitting up? A. Not till I started to go on the street. 40

Elizabeth McDonald, direct.

Q. That was three or four weeks afterward then, wasn't it—is that right? A. That is right.

ELIZABETH McDONALD, sworn.

Direct examination by Mr. Simpson:

10

Q. Where do you live? A. 210 Second Street, Jersey City.

Q. How long have you lived in Jersey City? A. I have lived in Jersey City 22 years the 16th of this August coming.

Q. Were you with Mrs. Williams on the tube train coming from New York on the 23rd of June last? A. Yes.

20

Q. Where did you get on the train with her? A. I got on the train with her at Cortlandt Street.

Q. Where were you going? A. We were going to the Idle Hour Tea Room, 6 Cortlandt Street to meet Mrs. Williams.

Q. You were coming from the Idle Hour? A. I was coming from 122 Fulton Street.

Q. When you got on the tube train and were on your way to Jersey, where were you going? A. We were on the way to Grove Street.

30

Q. Who was in your party; who was with Mrs. Williams? A. My daughter Irene and my little boy.

Q. How old was your little boy? A. He was three years the 23rd of last July.

Q. Had you come home with her every afternoon? A. Yes, every afternoon we used to go to meet her.

Q. And then you would all come back together? A. Come back together.

40

Q. When the train got to Grove Street and you got up to go out was it a crowded train or not—

Elizabeth McDonald, direct.

the car you were in? It was the rush hour, wasn't it? A. Yes, rush hour, about quarter to five.

Q. Quarter to five? A. Yes.

Q. And pretty well crowded? A. Yes.

Q. Now, when the centre door opened to get off on Grove Street did you come out first? A. No, sir—yes, I came out first and the little boy next and then Irene after and Mrs. Williams last. 10

Q. Now what attracted your attention when you stepped out on the platform? A. Mrs. Williams screaming.

Q. When she screamed what did you do? A. I turned right around to see who was screaming and I saw her laying—her foot caught in between the platform and the car.

Q. And where was this door, the moving door, where was that when you turned around? A. I believe on the left-hand side. 20

Q. No, I mean where was it, opened or closed or was it closing? A. No, sir; when I turned around I saw Mrs. Williams lay on the floor and the door was about that much of being closed.

Q. And was it up against her foot? Where was the edge of the door, against her foot? A. Well, just about closing.

Q. You mean, by closing, part of the door was against her foot? A. I cannot really tell you that, because her foot was down in the— 30

Q. You said the door was about that much out? A. Yes.

Q. When it was that much out where was it with reference to her foot? A. Well, right alongside of her foot.

Q. What did you do then? A. Well, I just waited until the two men took her up.

Q. And did she seem to be jammed in that place? A. Yes, they had to pull her. 40

Elizabeth McDonald, direct.

Q. When they pulled her how did they get her out? A. When they pulled her up she was minus the heel of her shoe. When they got her up she could not walk; the two men had to carry her.

10 Q. What happened to the door; did you see whether they closed it altogether or pushed it back and left it open so that people could get off? A. I could not tell you that. I believe there was people outside waiting to get on, but after she was picked up I just came along with her and I didn't wait to see nothing.

Q. How far was this door out; how far was it out of its place when you turned around? A. About that much.

20 Q. That does not mean anything. Was it a foot or how far was it out? A. What do you mean, her foot or the door?

Q. No; you say you turned around, as I understand you? A. Yes.

Q. You saw this woman down in the position. A. Yes.

Q. And you say that the door was not closed, but was out about a foot, you say? A. Yes.

Q. What do you mean by about a foot? A. Just about caught her.

30 Q. How far was the door out from the side where it came open? Do you understand what I mean? A. No, I do not.

Q. When you open the door to let people out the door is completely open? A. Yes.

Q. Everybody knows that? A. Yes.

Q. It is way back and completely open. A. Yes.

Q. You say when you turned around and the woman was caught the door was about a foot out, that is what you say. A. Yes.

40 Q. Is that right? A. Yes, that is right.

Elizabeth McDonald, direct.

Q. How far would it have to go if it was completely closed—not completely closed, but completely closed so that nobody could get in? How much further would it have to go? A. Well, not quite a quarter.

Q. About a quarter more before it would be closed? A. Yes, a quarter more before it would be closed. 10

Q. When these men pulled her out of the hole did you see what happened to this door? A. No, sir, I did not.

Q. You just went away with her? A. I just went away with the girl and Mrs. Williams.

Q. Did she seem to be in pain? A. Yes, she could not move.

Q. Did any crowd come around? A. A guard came running down the stairs and some other man that is all I saw. 20

Q. Did he say anything about this shoe? A. No, he kept the heel.

Q. Did he say why he was going to keep the heel? A. No, sir, he did not.

Q. Did you notice how wide that space was between the train and the platform? A. Yes, about that width (indicating).

Q. About five inches? A. Yes. 30

Q. What do you say, four inches, or five inches, or how far? A. When I turned around when they pulled her up it was about that width.

Q. I am not talking about the door; I am talking about the space, as you step off out of the train onto the platform. A. I understand you.

Q. Unless you are careful you will go down a hole? A. Yes.

Q. How wide was that hole? A. It was down in that space. 40

Elizabeth McDonald, cross.

Q. About four inches? A. Yes, it was down that space.

Q. Was there any guard there when you stepped off, hollering, "Watch your step," or anything like that? A. No, sir, only about four or five people until this man ran down the stairs.

Q. Did any people come around after she was hurt? A. I cannot tell you that. I came right along.

Cross examination by Mr. Markley:

Q. You are a friend of Mrs. Williams? A. I am not a friend; I am a neighbor.

Q. How long have you known her? A. I have known her the last ten years.

Q. She lives right by you? A. Yes; she lived there before I ever came there.

Q. You know this old lady that she has in there? A. Yes.

Q. What is her name? A. Mrs. Jaeger.

Q. Where does she live, do you know? A. She lived in Bay Street before Mrs. Williams got her.

Q. You live in Second Street? A. I live in 210 Second.

Q. And Mrs. Williams lives on Grove Street right near by you? A. Yes, right near by.

Q. Did you get a seat in this train? A. Yes, I did.

Q. Were you seated near Mrs. Williams? A. No, sir, I was seated by myself, and the little boy.

Q. How far were you from her? A. I was like five seats on the opposite side.

Q. Where was your little girl? A. She was standing up by the white pole. She could not get any seat.

40

Elizabeth McDonald, cross.

Q. You were on one side of the car and Mrs. Williams on the opposite side? A. Yes.

Q. Your little girl was standing and your little boy with you? A. Yes.

Q. How near were you to the front of the car? A. Three or four feet towards the front.

Q. You were three or four feet towards the front? A. Yes, towards the door.

Q. Were you in the rear part of the car or the head part of the car? A. I was in like two or three feet before you go off.

Q. From the center door? A. Yes.

Q. Where was Mrs. Williams? A. Mrs. Williams was on the opposite side about three feet from the white pole where the little one was standing.

Q. When the train came into Grove Street you all got up? A. Yes.

Q. Did you go to the center door? A. Yes.

Q. Were you right at the door? A. No, sir, I was three feet away from the door.

Q. When you were standing up waiting to get off? A. No; there was about two or three people ahead of me.

Q. Did they get off ahead of you? A. Yes.

Q. You saw them get off? A. Yes.

Q. Two or three people? A. Yes, two or three people.

Q. Then you got off next? A. Yes.

Q. And then your little boy got off? A. The boy, then the little girl, and then Mrs. Williams last.

Q. Now, this door was wide open when you got off? A. Certainly.

Q. It was not a bit closed when you got off? A. No, not until I turned around.

40

Elizabeth McDonald, cross.

Q. Was it still wide open when your little girl got off? A. Yes, it was.

Q. Was it still wide open when your little boy got off? A. Yes.

10 Q. How old is your little boy? A. He will be four years the 23rd of July.

Q. What is his name? A. Edgar Aloysius.

Q. And the little girl? A. Irene. She was 15 the 14th of December past.

Q. Was there anybody between your little boy and Mrs. Williams? A. No, sir, that is all.

Q. She was right next to the little boy? A. She was right next to the little girl. I was first and the little boy next; then the little girl and then Mrs. Williams.

20 Q. Was the door wide open when the little girl got off? A. I think so.

Q. Did you see it? A. I turned around and saw it. When she got off I don't know because I kept going until I heard her scream.

Q. How wide is this doorway with the door wide open, do you know? A. I cannot really tell you that. I never paid so much attention to it.

Q. Was it five feet, four feet, three feet? A. I can't tell you that either.

30 Q. Haven't you any idea how wide that space is? A. No, sir, I never took any notice to it.

Q. How long have you been riding on the tube train? A. Twelve or thirteen years.

Q. You could tell how wide the door came out; you said that was about a foot. A. Sometimes it does come out the place altogether and sometimes it does not.

Q. How wide is the doorway? A. I cannot really tell you that.

40

Elizabeth McDonald, cross.

Q. Is it more than two feet wide? A. I don't know really how much two feet is.

Q. You said it came out a foot, and it had a quarter of a foot to go and close; is that what you said? A. No, I did not say that.

10 Mr. Simpson: She said it had a quarter of the way to go before it closed.

A. A quarter of the way to go before it closed. I could not tell you exactly how much, but it was about a quarter of the part before it closed.

Q. You said it was open about a foot. A. I said it was about a quarter before it was closed.

Q. How much was it out of the groove; how much had it to come out from its groove? A. When it was closing, do you mean? 20

Q. When you saw it. A. When I saw it—when I came out it was wide open, as I told you.

Q. I am not talking about that. When you turned around how far out of the slot or the groove was the door? A. About that much (indicating).

Q. That is about a foot, isn't it? A. Well, I suppose so.

Q. You know what a foot is, don't you—12 inches? A. Yes, I do. 30

Q. How much further did it have to go to close? A. Well, while she was laying there it would not close and when she got up it was only about a quarter before it could close; a good quarter; that is about all; just enough that she lay in the space.

Q. Lay in what space? A. Well, in the space. When I turned around I saw her laying down.

Q. In what space? A. In the space between the car and the platform, that is where she lay when I turned around. 40

Elizabeth McDonald, cross.

Q. She was not in any space between the door and the side of the car, was she? A. No, sir, she was not.

Q. Her foot was caught in the door, was it? A. Her foot was caught between the space.

10 Q. What space? A. Between the platform and the train.

Q. Was the foot caught by the door at all? A. I am telling you the foot was down in the space.

Q. It could not be caught by the door then,— was it? A. It was her left foot.

Q. It was not caught by the door, was it? A. Yes, it was almost closing on her.

Q. Did the door closing catch her foot? A. I cannot tell you that. I am telling you when I turned around the door was almost closed.

20 Q. All I am asking you is what you saw. A. I am telling you.

Q. Did you see her left foot caught by that door? A. I seen the door almost closed on her. I did not take notice whether on her foot or where, but it was getting closed.

Q. You could not tell whether it closed on her foot or not? A. I cannot tell. She was laying on her left side.

30 Q. When you saw her she had already screamed? A. Yes, when I turned around.

Q. When you turned around how far were you from her? A. I wasn't two steps away from the hole, just about enough to let them off.

Q. About two steps away? A. Just enough to let them off, the little fellow and my little girl.

Q. Then you were about two or three feet away? A. No, sir. I was not two or three feet away.

40 Q. How much were you away from Mrs. Williams? A. I just got off and let the little ones

Elizabeth McDonald, cross.

off, and the way I stood I heard a scream and turned right around and she was laying down in the space on her left side then.

Q. Where was her left side? A. This side. That is how she threw herself when she fell.

Q. Where was she, on the car or the platform? 10

A. On the platform, and the foot between the space between the platform and the car.

Q. Then she was out of the car altogether? A. No; her foot was down up to the ankle in the space.

Q. Certainly, her foot was not in the door, was it?

Mr. Simpson: I object as argumentative.

A. Certainly it was not in the door; it cannot be in the door when it is lying in the space. 20

The Court: Never mind answering that.

Q. When you turned around she had already fallen? A. Yes.

Q. And her foot was in the space between the side of the car and the platform? A. Yes.

Q. That is what you saw when you turned around? A. Yes, up to the ankle her foot was in.

Q. Where was the door then? A. I told you, within that much of being closed when I turned around. 30

Q. The door was within a foot of being closed? A. Whatever you say. I did not pay that much attention. I know it was very near closed on her.

Q. You know the door was wide open, don't you? A. When we came out.

Q. You know the door did not touch Mrs. Williams at all, don't you? A. I am telling you how I found Mrs. Williams with that much of the door being closed. That is all I can tell you. 40

Elizabeth McDonald, cross.

Q. You did not see the door touch her at all, did you? A. I am just telling you what I saw, lying on her left side there, and she had a lot of bundles and a heavy coat with her.

10 Q. Suppose you look at this statement. A. Never mind the statement. There was lots of things put down there I did not say at all. I was made sign it—plenty of them.

Q. Suppose you look at it and tell me whether that name, Mrs. Elizabeth McDonald, at the bottom— A. I understand that.

Q. —is that your signature? A. Where is the signature?

Q. Mrs. Elizabeth McDonald. A. Yes, that is my signature.

20 Q. And is that writing yours under the signature? A. Yes, but my goodness; the way they came on top of me I did not know whether the door closed or did not until I had time enough to recall things what happened.

Q. Did you write what is on there under your signature? A. I did, yes.

Q. Did you say, "The car door did not touch any of us." A. I did not say anything of the kind.

30 Q. Is that your writing? A. I suppose it was; but the way the man came up to me and got me so excited I was almost sick there a week after it.

Q. I am asking you a very simple question. All I am asking you is, "The car door did not touch any"— A. I told you the car door did not touch her—I did not say "did not touch her," but I said the door was closed on her that much. That is all I can tell you.

Q. Is that your writing there? A. That is my writing there, yes.

40 Q. "The car door did not touch any of us." A.

Elizabeth McDonald, cross.

I did not say the door did not touch us. I said the door was on her just as I told you.

Q. That is your writing? A. That is my writing, yes.

Mr. Simpson: I object. He should put the whole statement in and have her admit it or deny it. 10

Mr. Markley: I will put the question.

Q. I turn over the page on the other side and on the bottom it says, "Mrs. Elizabeth McDonald." Is that your writing? A. Yes, that is my writing.

Q. And the part right after the signature which says, "Carefully read. Mrs. Elizabeth McDonald." A. No, that is not my writing.

Q. Isn't that "Elizabeth McDonald" yours? A. 20 Yes. That is not my writing (indicating).

Q. Didn't you write that? A. Not that. That (indicating) is my writing.

Q. Your writing on one side? A. Yes, one side.

Mr. Markley: I ask that that be marked for identification.

(Marked D-2 for Identification.)

Q. That is your signature, isn't it? A. Yes.

Q. And the words, "Car door did not touch any of us," that is your writing, isn't it? A. I did not say, "Did not touch any of us." 30

Q. Is that your writing? A. I said it was my writing. I said the door got closed all but that much space on her.

Q. Turn over the page and look at "Mrs. Elizabeth McDonald" on the other side. Is that your writing? A. No, that is not my writing.

Q. Are you sure about that? A. Positive.

Q. And the words, "Carefully read and found 40

Elizabeth McDonald, cross.

correct," is that your writing? A. No, I did not write that. It is a different writing altogether.

Mr. Markley: I ask that that be marked for identification.

(Marked D-3 for Identification.)

10

Q. Suppose you read this statement as suggested by Senator Simpson and tell me whether you said the things that are in there.

Mr. Simpson: I object to that. She can either admit or deny the statement and he can offer it.

A. I cannot read that writing.

20

Mr. Simpson: Under Fide against The Pennsylvania Railroad it is presumed she signed it knowing the contents. She cannot be asked on cross examination to go through a long paper and say it is true or is not true.

The Court: I think that is so.

A. I cannot understand that writing.

30

Q. I will ask you whether you said these things: "Statement of Mrs. Elizabeth McDonald, 209 Second Street, Jersey City, June 23, 1925. We came home from work, Mrs. Williams, myself, Irene, 13, and the other child, three." Did you say that? A. Yes, I said that.

Q. "The children met us in New York." Did you say that? A. I did say that.

Q. "We caught a train and rode to Grove Street." Did you say that? A. Yes.

Q. "Irene and the baby got off first at Grove Street." Did you say that? A. Well, I got off myself first at Grove Street.

40

Q. I am only asking you, did you say that? A. I do not remember that.

Elizabeth McDonald, cross.

Q. "I was first and Margaret Williams last." A. I remember that.

Q. Is that right? A. That is right.

Q. We all got off at the centre door, although we were not all sitting together. Did you say that? A. That is right, I said that. 10

Q. "She sat near this door," is that right? A. She sat opposite the door.

Q. That is right then, isn't it? A. That is near it, yes.

Q. "I was near to the rear of the car." A. Well, that is right too.

Q. "After I got off I heard a scream behind me." Did you say that? A. Yes, I did.

Q. Is that right? A. That is right.

Q. "Turned and saw Mrs. Williams lying on her left side." Is that right? A. Yes, that is right. 20

Q. "With her coat, hat and bundle under her." A. That is right.

Q. You said that, did you? A. I said that.

Q. "The heel of the left shoe was caught between the car and the platform." A. That is right.

Q. "That is what threw her." Is that what you said? A. That is right, yes.

Q. And that is the truth? A. That is the truth.

Q. "She was clear of the doorway." Yes. 30

Q. You said that? A. No, I did not ever say she was clear of the doorway at all, because she could not be clear of the doorway because she was lying in the space when I turned around and found her there.

Q. You did not say then she was clear of the doorway? A. No, I did not say she was clear of the doorway. That I did not say.

Q. "The door did not close until they had moved her away from there." Did you say that? A. No, 40

Elizabeth McDonald, cross.

I do not remember that either. I am telling you as soon as she was picked up we walked away. We did not see where the door closed.

Q. You did not say the door did not close until they had moved her away from there. A. No, I did not. 10

Q. "There were people got out ahead of the children." A. Yes, there was two or three.

Q. "And some behind Margaret." A. Yes, there was one or two behind.

Q. You said that, did you? A. Because they were waiting while they alighted down to get out.

Q. Who were waiting? A. The people in the car.

Q. Waiting to get out behind her? A. Yes. 20

Q. They did get out behind her? A. I don't know whether they came or not, because we went right away when she was taken up and I did not know.

Q. "They were all perfectly orderly." Did you say that? A. Yes.

Q. "I saw no pushing or anything like that." A. I saw no pushing.

Q. That is right then? A. Yes.

Q. And you said it, did you? A. I said that because there was no pushing. 30

Q. "She was not touched by the door"? A. No, I do not remember saying that.

Q. What? A. I do not remember saying it.

Q. You do not remember saying she was not touched by the door? A. I said the door closed but that much. The door could not close on her when she was lying down.

Q. As I understand you say you did not say she was struck by the door? A. No, I said the 40

Elizabeth McDonald, cross.

door caught her while she was lied down in the vacant part of it, in the space.

Q. You say the door caught her while she lay down in the vacant space? A. While she lied down.

Q. What part of her was caught when the door closed on her while she was lying in the vacant space? A. Her foot was in the space, she was lying there, thrown on her left side. 10

Q. Then the door did not close on her, did it? A. I cannot tell you that, but I am telling you how far the door was of being closed.

Q. "She was not touched by the door." You did not say that? A. I said there was so much of the door being closed.

Q. "There were people waiting to get on." A. There was children—yes, a couple of people. 20

Q. "There was no pushing"? A. No, I did not say, "No pushing."

Q. They had to keep that door open until these people were all on? A. That I do not know, because I came away when Mrs. Williams got picked up.

Q. "The door did not close when she was getting off?" A. That I do not know.

Q. Did you say that? A. I turned around when I heard Mrs. Williams scream and she was lying down in the space. That is all I know. 30

Q. All I am asking you is did you say the door did not close when she was getting off? A. I told you there was that much of the door being closed while she lied there. How could the door close and the woman lying down?

Q. She was not in the pathway of the door, was she? A. It was her foot was in the space and she lied there. How could they close the door? 40

Elizabeth McDonald, cross.

Q. Did her foot lie in this space between the side of the door and the platform? A. How could the door close and the woman lie there? The door was within that much of being closed while she lied there.

10 Q. The door was closed about a foot you say? A. About a foot.

Q. If it went all the way closed it would not touch her foot, would it? A. Why wouldn't it, when her foot was down in the space of the car.

Q. Her foot was in the space between the side of the car and the side of the platform? A. The rest of her body was there.

Q. You said her body was out on the platform? A. No; when her foot went in the space it threw her on her left side and she lay there and how could the door close?

Q. How did she lie on the platform? A. Half ways.

Q. Her body was on the platform? A. As far as it could go, yes.

Q. Her body was not in the car, was it? A. Not at all, it could not be.

Q. Then the door could close if she was not in the doorway at all? A. No, sir, it could not close.

30 Q. "Two men and the guard picked her up." A. Yes.

Q. "Her left heel came off." A. That is right.

Q. You said, "The usual lights were lit in the car and on the platform?" A. Yes.

Q. "The space between the car and the platform was about three or four inches." Did you say that? A. I could not really qualify to that, but it was about that much of a space (indicating).

40 Q. That is three or four inches, isn't it? A. Well. Q. You said that? A. Yes.

Elizabeth McDonald, cross.

Q. "The regular space." That is the space that is usually there? A. It is a little bit more than the usual one.

Q. "I do not think the car was higher than that platform." A. No, I do not say it was higher.

Q. It was on the same level? A. On the same level. 10

Q. "I saw nothing to make her trip or slip"? A. That is right, only her heel got caught in it.

Q. Her heel got caught? A. When I turned around her heel was in that space up to the ankle.

Q. When you turned around her heel was in the space between the car and the platform? A. Yes, down between it.

Q. "I have no idea what caused her to go in there." A. I could not tell you that. 20

Q. "Only her shoe heel went in there." A. That is right.

Q. "I suppose they picked the heel off the platform." A. I did not see where they picked it, but I have an idea that they picked it up—no, they did not pick the heel off the platform. Just as soon as Mrs. Williams was pulled up the heel stuck in the platform and the guard took it out.

Q. The guard took it out from that space? A. Yes, when she was lifted the heel came off. 30

Q. Did you say, "I do not know how it happened because if the heel came off while she was in the space I should think it would fall down to the track." A. It would not go to the track. It caught in the space and stayed in it tight.

Q. You saw it there? A. I saw it there. When they lifted her up the heel stood there and she just had the shoe with the nails in the heel.

Q. The next part of the statement it says, "I 40

Elizabeth McDonald, redirect.

saw her in the house about eight fifteen in the evening." You went over to the house? A. Yes.

Q. "She only had the ambulance doctor at that time." A. No, I went right up to the house after I sent the little girl home with the coat and the bundles.

Q. You got there at 8:15 that night? A. I went up that evening.

Q. Did she only have the ambulance doctor then? A. No, sir, she had Wainwright.

Q. She did not get Wainwright until the next day, did she? Don't you know she did not get Wainwright until the next day? A. Well, I did not see anything about that, but I am sure she had the doctor between the morning and the afternoon anyway. I won't swear to that, but I know Dr. Wainwright—

Q. You won't swear she had Dr. Wainwright that day, will you? A. She had Dr. Wainwright between the morning and the evening.

Q. Don't you know she did not have Dr. Wainwright until the next day? A. That I cannot say.

Redirect examination by Dr. Simpson:

Q. All you know is when you walked out of the door it was wide open? A. Yes.

Q. And when you turned around it had almost closed, within a quarter, is that all you know? A. Yes, that is all.

Q. What caused her heel to be caught in there—whether it was the door that hit her ankle and drove it in or not you do not know? A. I do not know, no, sir, I do not.

Q. All you know is what you saw? A. What I saw.

Q. And what you saw was, as I understand it,

Elizabeth McDonald, redirect.

when you walked out the door was wide open? A. Yes.

Q. And when you heard the scream and turned around it was almost closed? A. Yes.

Q. And the woman was down in the hole? A. Yes.

Q. Whether the door drove her in the hole or not you do not know? A. I do not know, I could not tell you.

Q. Who was it that got this statement from you; who came up and had so much interest in the case that they came in and got a written statement? A. I could not really tell you. I think the papers was for Mr. Kay.

Q. Who came up to see you? A. Some gentleman, I cannot tell you.

Q. A claim agent? A. I cannot say.

Q. Some man came up to your house? A. Yes, he did.

Q. How soon after the accident? A. I believe next morning.

Q. And did he tell you he wanted to be sure that you would say the door did not touch her; is that what he talked about, whether the door touched her or not? A. Yes, that is right.

Q. And you told him you could not tell because all you could tell was when you turned around she was in this jam with the door almost closed, that is all you could tell? A. Yes, that is all.

Q. When somebody says in this statement that her heel caught and caused her to fall, what do you mean by that? A. Well, her foot was—when her foot caught in up to her ankle she was thrown, she could not go no further.

Q. But this statement says, as I understand it, her heel was caught. A. Yes.

Elizabeth McDonald, redirect.

Q. And that is what caused her to fall. A. Yes.

Q. What do you mean by that? A. I mean her foot was caught in the space.

Q. You do not know what caught it there, whether the door hit it and caught it, do you? A. No; all I know, when I turned around—

Q. Oh, don't turn around. You do not know what caused her heel to get caught? A. No, sir, I do not.

Q. When you say it was her heel that caused her to fall you judge from her position? A. Yes, the way she was lying.

Q. You do not say the door was wide open when she fell? A. No, sir, I do not.

Q. You do not say the door did not go within a quarter at the time you turned around? You turned around and saw this door almost closed, didn't you? A. Yes.

Q. And at that time she was lying in this position? A. Lying in the space, yes.

Q. How could she get in this position without the door in that position having hit her?

Mr. Markley: I object to that.

Mr. Simpson: I want to ask her how the heel could have been caught with the door in the position she saw it unless it was knocked off in that position.

The Court: If she can state how it got there she can do it.

Q. You saw the door in this position? A. Yes.

Q. How was her body with reference to the door at that time? A. With reference to the door, we will say here was the door.

Q. No, we won't say anything of the kind, because we will get all confused. You have got this

Elizabeth McDonald, recross.

woman now lying between the car and the platform. A. Yes.

Q. That is where you put her? A. Yes.

Q. You have the door closing but not closed, according to you? A. Yes.

Q. Where is she with reference to the door; is she in the space that the door has not closed? A. Yes.

Q. Or is she against the door? A. No, sir, she is in the space.

Q. She is in the space the door has not closed so the door is up against her? A. Yes, her foot cannot get out of the space.

Q. Leave the foot out. She is in the space the door has not closed so the door is up against her? A. Yes, her body was up against the door.

Q. And her body was up against the door when you turned around? A. Yes.

Recross examination by Mr. Markley:

Q. Didn't you say she fell on her left side on the station platform? A. No, sir, I said she caught her foot in the space and it threw her and she stayed there.

Q. Didn't you say in your examination by me a few minutes ago that she fell with her foot in the space and her heel caught and she fell with her body on the station platform, didn't you say that? A. I said when I turned around her body was laying down, her foot up to the ankle was in the space.

Q. Wasn't her body on the station platform? A. It was not all, just her arms and coat and bundles.

Q. All on the station platform? A. Just a few parts from the door.

Q. She was not on the car when she fell, was

Elizabeth McDonald, recross.

she? A. No, sir, her foot was in the space when she fell.

Q. No part of her body was on the car, was it, it was on the station platform, wasn't it, when she fell? A. Her foot was in up to her ankle and the door was up against her body.

Q. Wasn't her body on the station platform? A. No, sir; where her foot fell her body lay, and the door up against it.

Q. Wasn't she lying on the car? A. Where the door closed up to where the door was on her body, that is how far her body was there.

Q. Then she was not on the station platform, was she?

Mr. Simpson: I object to continually arguing with this witness, which only confuses the whole thing.

The Court: She said part of the door was against her body.

Mr. Markley: She said that just now on her re-direct.

Mr. Simpson: She said her body was up against the door.

Q. Where were her bundles? A. In her arm and her coat, and just as soon as she fell they went out of her arms but they were right under her.

Q. Were they on the station platform? A. Just as far as where her arm was from where her body was. When she fell they fell under her.

Q. Were the bundles on the station platform or on the car? A. When she fell out of the car her left side just as far as her arm went the bundles went and she lay on the bundles and her coat.

Q. Were the bundles on the station platform? A. Just as far as she fell, and her arm—

Irene McDonald, direct.

Q. I am not asking you that. A. As far as her arm—

Q. I am not asking you about her arm. Were the bundles on the station platform? A. Yes, sir, outside the car door where her arm went.

Q. Was she sitting on the bundles? A. No, sir, she was lying on the bundles on her left side where she fell.

Q. Where was her right foot? A. That I could not tell you.

Q. Where was her left foot? A. Her left foot was down in the space where the door closed on her.

Q. That is what you saw when you turned around? A. Yes, yes, she was laying in the same position.

Q. Where was this statement taken that I have shown you? A. At 209 Second Street.

Q. Who was present when you made it? A. My Irene and myself.

Q. And it was the day after the accident? A. I believe the next morning.

IRENE McDONALD, sworn for the Plaintiff.

Direct examination by Mr. Simpson:

Q. That is your mother who was just on the stand? A. Yes.

Q. Were you with your mother and Mrs. Williams on the 23rd of June coming from New York? A. Yes.

Q. And did you get off the train at Grove Street? A. Yes.

Q. Was the door wide open when you got out? A. Yes.

Irene McDonald, cross.

Q. After you got out did you hear anything? A. We started when we got out and we heard the screaming. My mother and I and my brother turned around.

10 Q. Did you hear anything; did you hear a scream? A. Yes.

Q. Did you turn around? A. Yes.

Q. When you turned around what did you see, did you see Mrs. Williams? A. Yes.

Q. Where was she? A. She was laying on the platform.

Q. How was this door that was wide open when you came out, was it still wide open or how was it? A. No, sir, it was about that much of being closed.

20 Q. Within about half a foot of being closed? A. Yes.

Q. Was any of it up against her body? A. Yes.

Cross examination by Mr. Markley:

Q. How old are you, Irene? A. 15 years of age.

Q. Who got off this car first? A. There was a couple of people ahead of us.

Q. You mean two people ahead of you? A. Yes.

30 Q. Then you got off next? A. No, sir, my mother got off.

Q. Well, your mother was the first to get off? A. Yes.

Q. Who got off next? A. My mother and brother and I and then Mrs. Williams.

Q. And Mrs. Williams got off, you say, and then you started walking? A. Yes.

Q. How far had you walked? A. I cannot say.

Q. How many steps had you taken? A. I do not know.

40 Q. You heard a scream? A. Yes.

Irene McDonald, cross.

Q. Then what did you do? A. I turned around.

Q. Then what did you see? A. I saw Mrs. Williams lying on the platform.

Q. When you turned around was Mrs. Williams already lying down? A. Yes.

Q. Was she lying down or sitting down? A. She 10 was lying down.

Q. Was her head down on the platform? A. Well, just—

Q. Was she down on her back? A. She held her head up.

Q. Was she sitting or was she lying? A. She was halfway on her side.

Q. Which side was she resting on, do you know? A. Let me see—

Q. Was it her right side? A. Left. 20

Q. It was her left side she was lying on? A. Yes.

Q. When you turned that was what you saw, was it? A. Yes.

Q. You saw Mrs. Williams lying or reclining on her left side? A. Yes.

Q. Now what else did you see? A. That is all I saw—the door about that much from being closed.

Q. That is about how much? A. About half a 30 foot.

Q. You saw it was about half a foot of being closed? A. Yes.

Q. Did it stay in that position? A. No, sir, it opened when she started to scream.

Q. It opened when she started to scream? A. Yes.

Q. Did it open all the way then? A. Yes.

Q. So it was wide open then, was it? A. Yes.

Q. And you saw that? A. Yes. 40

Irene McDonald, cross.

Q. So when you turned around when you heard a scream she was on her left side, was she? A. Yes.

Q. On the station platform? A. Yes.

Q. And where were her bundles? A. Her bundles were on the platform. 10

Q. Right on the platform; were they under her? A. Yes.

Q. And you say the door was about half a foot from being closed.

Q. When you looked around? A. Yes.

Q. And when she screamed the door opened wide open? A. Yes.

Q. And it stayed wide open? A. Yes.

Q. Did you see the other people get off? A. I did not notice that. 20

Q. Did you see the other people get on? A. I did not notice that.

Q. But you know it was wide open, do you? A. Yes.

Q. And that was as soon as she screamed? A. Yes, and the guards picked her up.

Q. How many men picked her up, do you know? A. Two men.

Q. You also made a statement, didn't you, after this accident, of what you knew? A. No, sir. 30

Q. Didn't you sign a statement that you gave to a man who came up and asked you what you knew of the accident? A. Yes, he told me to sign.

Q. Yes, he told you to sign. Is that your signature there—Irene McDonald? A. Yes.

Q. And is that your writing there—"I know the door did not strike Mrs. Williams"? A. No, sir, I did not say that.

Q. That is your handwriting, is that right? A. No, sir, that is not my handwriting. 40

Irene McDonald, cross.

Q. Isn't the part, "I have carefully read this and everything is true and correct," in your handwriting? A. No, sir, that is not my handwriting.

Q. Isn't that your handwriting too—"I have carefully read this and everything is true and correct"? A. No, sir. 10

Q. That is not your handwriting? A. No, sir.

Q. The only thing that is in your handwriting is "Irene McDonald"? A. Yes.

Q. And the part, "I know the door did not strike Mrs. Williams"—isn't that yours? A. No, sir.

Q. When was this statement taken, do you know? A. A couple of days after the accident.

Q. It was not taken at the same time as your mother's? A. No, sir. 20

Q. It was taken several days later? A. Yes.

Q. Where was it taken, do you know? A. In my house.

Q. You were not there when your mother made her statement, were you? A. Yes.

Q. You were there then? A. Yes.

Q. You gave your name as Irene McDonald? A. Yes.

Q. 209 Second Street, Jersey City? A. Yes.

Q. Did you say, "All I know about Mrs. Williams' accident is this: We got on at Cortlandt Street." A. Yes. 30

Q. "When we got to Grove Street I got off first." A. No, sir.

Q. Didn't you say that? A. No, sir.

Q. Who got off first? A. My mother got off first.

Q. "Mrs. Williams was getting off next." Did you say that? A. No, sir. 40

Irene McDonald, cross.

Q. "I got off and then I heard a scream"? A. No, sir.

Q. Did you say that? A. No, sir. I heard a scream, but I got off second and Mrs. Williams last.

10 Q. "I looked around and saw Mrs. Williams lying on the platform." Did you say that? A. Yes.

Q. Was she lying on the station platform? A. Yes.

Q. You saw her there? A. Yes.

Q. "Her foot was caught between the car and the platform"? A. Yes.

Q. "Two conductors lifted her up"? A. Yes.

Q. "But they could not get it out"? A. No, sir.

20 Q. "So one man first pulled her foot out of tie and then pulled the shoe out"? A. Yes.

Q. Is that right? A. Yes.

Q. Did you say that? A. Yes.

Q. In other words first they pulled her foot out of the shoe and then pulled the shoe out of the space? A. The heel.

Q. It was caught at the heel? A. Yes.

Q. You said that, didn't you? A. Yes.

30 Q. "We were getting out at the center door"? A. Yes.

Q. "The door did not close"? A. No, sir, I did not say that.

Q. Didn't you say that? A. No, sir.

Q. Didn't you say the door did not close? A. No, sir.

Q. "I saw the door; it was wide open"? A. Yes.

Q. "It did not close until after her foot was taken out"? A. No, sir.

40 Q. Didn't you say that? A. No, sir.

Irene McDonald, cross.

Q. "The train did not move until it was out"? A. Yes.

Q. The train did not move at all, did it? A. No, sir.

Q. "Passengers were also waiting to get off"? A. Yes. 10

Q. You saw that there, didn't you? A. Yes.

Q. "A lady or two got out ahead of me"? A. Yes.

Q. "I am sure the door did not close or strike Mrs. Williams." Didn't you say that? A. No, sir.

Q. "I am thirteen years old"? A. Yes.

Q. "I am in grade seven"? A. Yes.

Q. "The people were all orderly before her foot caught"? A. Yes.

Q. "The space was about three or four inches"? A. Yes. 20

Q. You said those things? A. Yes.

Q. "Everything was all right as far as I could see"? A. Yes.

Q. "My mother works at 122 Fulton Street"? A. Yes.

Q. Have you talked to anybody about this case since you made that statement? A. No, sir.

Q. Have you talked with Mrs. Williams about the case? A. No, sir. 30

Q. Have you talked to your mother about the case? A. No, sir.

Q. You have not talked with anybody in Mr. Simpson's office about the case? A. No, sir.

Q. Haven't you talked with Mr. Simpson? A. No, sir.

Q. You have not spoken to anybody about this case at all? A. No, sir.

Q. What? A. No, sir. 40

Irene McDonald, redirect.

Redirect examination by Mr. Simpson:

Q. Mr. Markley sat you down beside him today and tried to talk to you about the case, didn't he?
A. Yes.

10 Q. And you started to talk to him until I told you that he had no right to talk to you unless you wanted to talk to him? A. Yes.

Q. And up to that time you thought you ought to talk to him, didn't you? A. Yes.

Q. And he had you very comfortably sitting on the front bench trying to talk to you? A. Yes.

Q. Now, Irene, what does "orderly" mean, do you know? A. Well, no rushing or pushing.

20 Q. That is what they asked you about—rushing and pushing? A. Yes.

Mr. Markley: She said that is what orderly means.

Q. Orderly? A. Oh! Orderly means no one pushing.

Q. Who used the word "orderly"—this claim agent? A. Yes.

Q. And where was it he got you to sign this paper? A. In my house.

30 Q. Who was there, anybody? A. There was another girl beside me.

Q. What? A. There was another girl with me.

Q. A little girl with you? A. Yes.

Q. This claim agent came up to your house and wrote something down and told you to sign it, is that right? A. Yes.

Q. And that is all that happened, isn't it? A. Yes.

40 Q. What you tell these men is true, that you walked out of the door, when you turned around

John Williams, direct.

after the scream this woman was caught by the door; isn't that it? A. Yes.

Mr. Markley: I object as leading and ask that the answer be stricken out.

Mr. Simpson: Withdraw it. 10

Q. Isn't it a fact, as you have told these men already, that you got off the car with your mother through a perfectly wide open door? A. Yes.

Q. That you heard a scream and turned around and found this woman lying down with the door up against her body, and that when she screamed the door was then wide open again? Is or is not that a fact? A. Yes.

Recross examination by Mr. Markley: 20

Q. I did ask you to come here at two o'clock, and your mother too? A. Yes.

Q. And Mr. Simpson came along and said you did not have to speak to me? A. Yes.

Q. And your mother would not speak to me? A. No, sir.

Redirect examination by Mr. Simpson:

Q. Didn't your mother say "your claim agents were up and they tricked me into signing a paper" and she did not want to talk to anybody any more? A. Yes. 30

Mr. Markley: I object. There was no such conversation.

JOHN WILLIAMS, sworn for the plaintiff.

Direct examination by Mr. Simpson:

Q. Where do you live? A. 390 Grove Street, Jersey City. 40

Charles L. Wertheimer, direct.

Q. How long have you lived in Jersey City? A. Four years and a half.

Q. This Mrs. Williams is your wife? A. Yes.

Q. Since this accident has she been able to take care of the house as she did before? A. No, not quite. She has to have an old lady there.

Q. These hemorrhages she speaks of having, have you seen any of these hemorrhages? A. I have seen several hemorrhages.

Q. Did she ever have any hemorrhages before the accident? A. No, sir.

(No Cross Examination.)

(Plaintiff rests, reserving the right to call a doctor as a witness.)

20

CHARLES L. WERTHEIMER, sworn for the defendant.

Direct examination by Mr. Markley:

Q. Where do you reside? A. 92 Fairmount Avenue Terrace, East Orange.

Q. What is your business? A. Manufacturer.

Q. Manufacturer of what? A. Lamps.

Q. Are you in anyway connected with the Hudson and Manhattan Railroad Company? A. No, sir.

Q. Were you ever connected with that company? A. No, sir.

Q. Now on June 23, 1925 were you at the Grove Street station of the Hudson & Manhattan Railroad Company? A. Yes.

Q. As a passenger? A. As a passenger.

Q. And were you present when this accident happened to Mrs. Williams? A. Yes.

40

Q. Were you on the train or on the platform

Charles L. Wertheimer, direct.

of the station? A. I was on the platform of the station.

Q. Where were you with respect to this center door that she was alighting from? A. Standing alongside of the door.

Q. On the station platform? A. On the station platform. 10

Q. Were you waiting to board? A. Waiting to board the train, yes.

Q. Were there some other intending passengers there waiting to board that train? A. There were, sir.

Q. What was your position with respect to the centerdoor entrance, were you right at the door or was someone in front of you? A. I was directly at the door, sir, to one side, a space large enough to allow passengers to alight. 20

Q. Did you see Mrs. Williams get out of that car? A. I did, sir.

Q. Will you tell the jury just what you saw with your own eyes there? A. Yes.

Mr. Simpson: I object to that. I don't know how he could see it with anybody else's eyes. If the fact is that he had someone else's eyes we ought to have that other person identified. It seems to me the question is misleading. 30

Q. Please tell us. A. I was waiting to board the train. Several passengers had alighted. A lady coming out—I do not know who she was—started to fall immediately in front of me. I made an effort to catch her before she went down but was unsuccessful, and stooping over then I assisted her to arise with others there, I noticed that her leg was in between the car and the platform. We 40

Charles L. Wertheimer, cross.

got her out of her predicament there, or assisted her to arise and turned her over to the guard and someone else who took her away.

Q. Had the center door struck her at all as she came out? A. No, sir.

10 Q. Was it open or closed? A. The door was open.

Q. Did it close at any time as she came out? A. Not that I know of.

Q. Were you looking right at it? A. I was standing right there, sir.

Cross examination by Mr. Simpson:

Q. The woman was what attracted your attention—the falling woman—you tried to save her? A. Yes.

20 Q. Your thought was on this woman you saw falling? A. Yes.

Q. You did not know anything about it except you saw her falling? A. Yes.

Q. Were you watching the woman or watching that door? A. I was watching the door also.

Q. Why were you watching the door, if you were endeavoring to save a falling woman? A. To board the train before the door closed.

30 Q. But you had stepped right off of the train. When you saw a woman in trouble you were trying to save her from falling? A. Yes.

Q. And you tell this jury you could try to save her from falling and also cock your eye on the door at the same time? A. I could not help seeing it.

Q. Did you? Were you watching the door and the woman at the same time? A. I could not answer that, sir.

40

Charles L. Wertheimer, redirect.

Q. You were trying to save the woman, weren't you? A. Yes.

Q. And that is all you were trying to do—and when you say to Mr. Markley the door did not close you say it not from knowledge, don't you? A. Yes.

10

Q. And that is true, it is not to your knowledge? A. It is not to my knowledge.

Q. But your attention was fixed on the falling woman. That is all.

Redirect examination by Mr. Markley:

Q. You were facing the door? A. Yes.

Q. Did you see the heel of the shoe? A. I saw it after it was picked up.

Q. Where did you see the heel? A. In the hands of some gentleman standing alongside of them.

20

Q. Is this the heel you saw? A. Yes.

Mr. Markley: I offer that in evidence.

Mr. Simpson: No objection.

(Admitted and marked Exhibit D-1.)

Q. When she fell will you tell us where she fell, on what she fell? A. As to her position?

Q. Yes, what was her position? A. As she fell she fell on her left side.

30

Q. Did she fall on the car or did she fall on the platform? A. She seemed to be falling as she came out of the car.

Q. When she fell where was she? A. After she fell she was laying on the platform.

Q. Was she lying on the car at all? A. No, sir.

Q. Was she in the pathway of the center door of the car? A. She was in the pathway to the door.

40

William J. Dickinson, direct.

Q. As she fell and was down was she on the car at all? A. No, sir.

Recross examination by Mr. Simpson:

10 Q. You say she seemed to be falling as she came out of the car. What do you mean by that? A. She was falling as she came out.

Q. That is she was in the act of falling before she cleared the car? A. Yes.

Redirect examination by Mr. Markley:

Q. You were subpoenaed here today, were you not? A. Yes.

20 WILLIAM J. DICKINSON sworn for the defendant.

Direct examination by Mr. Markley:

Q. Where do you live? A. 179 Halsted Street, East Orange, New Jersey.

Q. What is your business? A. Salesman.

Q. Are you connected with the Hudson and Manhattan Railroad Company? A. No, sir.

Q. On June 23, 1925, were you at the Grove Street station at the Hudson tube? A. Yes.

30 Q. Were you employed by the company? A. No, sir.

Q. You are not connected with the Hudson & Manhattan Railroad in any way? A. No, sir.

Q. Have you ever been? A. No, sir.

Q. What were you doing down in the Grove Street station of the tube? A. Changing trains.

Q. Waiting for a train? A. Yes.

40 Q. Where were you when Mrs. Williams came out of the center door of the coach? A. Standing next to the—one of the first to board the train I would have been.

William J. Dickinson, direct.

Q. You were about to board that train? A. Yes.

Q. At that center door? A. Yes.

Q. Were you there when the train came in? A. I was.

Q. And stopped? A. Yes.

Q. Did you see her get out of the car? A. Yes. 10

Q. Where were you standing when she got out of the car? A. Next to her.

Q. On the platform? A. On the platform.

Q. That is the station platform? A. Yes.

Q. Now tell the jury what you saw, will you? A. I noticed her fall. I was not watching her feet of course, but I watched her fall—fall forward, and I believe on one side, and I immediately took hold of her arm and assisted in picking her up.

Q. When you saw her fall did that center door strike her at all? A. No, sir, not to the best of my knowledge. 20

Q. Were you looking right at her? A. Yes.

Q. Looking right at where the door would be? A. I presume so. I was figuring on getting on the train.

Q. You were facing the entrance? A. Correct.

Q. You say so far as you observed the door did not touch her? A. No, sir.

Q. When she fell where did she fall as you saw her? A. On the platform. 30

Q. Did she fall on the floor of the coach out of which she was alighting? A. No, sir.

Q. When she fell on the platform in what position did she fall on the platform? A. I believe on her side, I am not positive about that.

Q. Can you tell me how her foot was caught, did you see that? A. No, sir.

Q. You did not see that? A. No, sir—between 40

William J. Dickinson, cross.

the platform and the car. I did not know how it went in there.

Q. You did not know how it went in? A. No, sir.

10 Q. But as I understand you she was on the platform with her foot caught there? A. Her body was on the platform, yes.

Q. Was any part of her body on the car or the entrance to the car? A. Not as I remember, no. I do not see how it could be.

Cross examination by Mr. Simpson:

20 Q. A minute before you said she was falling as she came out of the car. Do you say she was falling as she came out of the car or she got out of the car before she fell? A. I could not be exact, I do not know.

Q. You are not exact as to that? A. No, sir.

Q. When you saw her fall your attention was directed to her, wasn't it? A. Surely.

Q. I mean you were watching her more than you were the door? A. Absolutely.

30 Q. And you understand the door did not hit her, but whether it hit her or not would depend upon the accuracy of your observation? You have already sworn you saw the woman falling, that your attention was on the woman falling, you were watching her more than you were the door? A. Absolutely.

Q. Now, when the door struck her, according to you, would depend upon the accuracy of your observation, wouldn't it? A. Yes.

Q. How accurately you observed? A. Yes.

40 Q. As far as you are conscious of it the door did not hit her, but you do admit you were watching

William J. Dickinson, cross.

the woman more than you were the door, don't you—a falling woman? A. I was facing the car.

Q. I do not care what you were facing; your mind was directed to some object. Now, was it the falling woman or was it the structure of the car? A. The falling woman, naturally. 10

Q. When you say the door did not hit her you are qualifying it by saying, "not to my observation," which is true, isn't it? The door did not hit her, to your observation; that is true, isn't it? A. Absolutely correct.

Q. The accuracy of that statement by you depends upon how intently you were watching the woman, doesn't it? (No answer.)

20 Q. You could not watch the whole platform, could you? A. I was not looking at the platform at all.

Q. You were looking at the woman, weren't you? A. I was looking at the car.

Q. Not the woman at all? A. Not until she fell.

Q. When you saw her in the act of falling were you watching her to try to save her? A. After she started to fall I watched her.

30 Q. You have already sworn you could not tell whether she fell from the car or outside the car—can you? A. She fell from the car.

Q. And she was in the car when she started falling? A. That is right.

Q. What made her fall if she was in the car when she started falling, do you know? A. The fact that her foot went down between the car and the platform.

40 Q. She could not go between the car and the platform if she was inside the car, so she started to fall, as you have sworn? A. I said partially inside the car.

Fitzgerald A. Pollard, direct.

Q. No, you have sworn she was in the car when she started to fall. Now, if she was in the car when she started to fall did you see what made her fall? A. I did not.

10 *Redirect examination by Mr. Markley:*

Q. Was the line of the door and the woman right in your direct line of vision? A. It was.

FITZGERALD A. POLLARD, sworn for the defendant.

Direct examination by Mr. Markley:

Q. Where do you live? A. Ninth Avenue, 684, New York.

20 Q. By whom are you employed? A. Hudson and Manhattan Railroad.

Q. Were you at the Grove Street station on June 23, 1925? A. Yes.

Q. When Mrs. Williams had an accident? A. Yes.

Q. What was your position there? A. Well, I was doing platform duty at the time.

30 Q. You were platform man on the Grove Street station? I was at the time employed as conductor at the Hudson & Manhattan Railroad Company, but I was doing platform duty at the time, two hours.

Q. Then for two hours you were platform man on the Grove Street platform? A. Yes.

Q. Were you a platform man at the time she had her accident? A. Yes I was, yes.

Q. Can't you speak a little louder than that? A. I was, yes.

40 Q. Speak up. These men want to hear it. What

Fitzgerald A. Pollard, direct.

was your first knowledge with respect to Mrs. Williams? A. When I heard her yell.

Q. You heard her scream? A. Yes.

Q. How far were you away from her at that time? A. I was right at the door, as the door opened up I was right there. 10

Q. Right at the center door? A. Right at that center door.

Q. Now, tell the jury, and speak up loud, Mr. Pollard, just what you saw. A. When the train came into the station I was right at the door. When the door opened, there was passengers waiting right where I was standing. Of course the door opened this way. I was right here to close it when they got in. All of a sudden I heard this woman yell. Of course I did not see her because people were staying here and she came out this way. I could not happen to see what it was. Of course I seen her in the position on the platform with one foot up and one foot on the platform. I asked her what was the trouble. 20

Q. Well, was she lifted up? A. What?

Q. Did you help to lift her up? A. She was not on the platform when I seen her.

Q. Where was she when you saw her? A. She had one foot on the platform and one foot up. I said, "What is the matter?" 30

Q. What do you mean, one foot up? A. Raised off the platform. She was in a stooped position.

Q. When she screamed what was her position as you remember? A. When I went to her she was in a stooped position.

Q. When she screamed you turned around, and did you see the center door of the coach? A. The door was wide open.

Q. And what did you see with respect to her 40

Fitzgerald A. Pollard, cross.

foot? A. Well, her foot—her injured foot, which was the left one I think, was off the platform, and of course she had the other one on. And she said, "I can't put my foot on the platform. It is hurt."

10 Q. Was it on at that time when you saw her?
A. No. She was clear of the door, maybe eighteen inches, when I seen her.

Q. Those center doors, how do they open, from what side of the passenger coming out from the coach, which way do they open, from his right or from his left—from which way do they close, rather? A. In her position—I was standing this way—naturally they closed to the right.

Q. Naturally as she comes out of the center door— A. The door closes this way to her right.

20 Q. Did all the center doors close that way? A. Yes, to her right.

Q. What did you do after that? A. In the meantime the special officer came down the platform and another one of the platform men, and they took her upstairs, and I tried to get a few witnesses. I think those two gentlemen here were the ones I got.

30 Q. When she went upstairs did you go with her?
A. I don't think I did follow her up.

Q. Did you go at any time upstairs? A. I guess I did go up. I saw her seated up there somewhere in the station.

Q. Were you there when the ambulance came for her? A. No.

Q. You went down again? A. Yes.

Cross examination by Mr. Simpson:

40 Q. Were you there when she was pulled out of this hole? A. I did not see her pulled out of any hole.

Fitzgerald A. Pollard, cross.

Q. You did not see two men lift her up? A. No.

Q. Do you mean to say you were there from the time she fell until you went over and talked to her? A. I was there at that door.

Q. And you did not see anybody pull her out?
A. I did not. 10

Q. You did not know how she got out? A. I do not.

Q. You did not see her in the position when she was caught? A. I did not see her caught at all.

Q. You did not see her at any time when her foot was caught? A. She was not caught—

Q. When these two last witnesses talk about lifting her up, you did not see that at all? A. No, I did not see her caught at all. 20

Q. And the first thing that attracted your attention was her scream? A. Her yell.

Q. You could not see what happened because of the people between you and her, so you walked around? A. Yes.

Q. When you walked around she was in a stooping position and she said, "I can't get my foot on the platform, it is hurt"; is that what she said?
A. That is what she said.

30 Q. You spoke about these doors closing. Doesn't that depend on the way the car is pointing; if you pull a car up to the Summit Avenue station and head it one way the door will open to the left and the other way to the right? A. I can't tell you that.

Q. You do not know it as to a car when you turn it around—you think after you turn it around the left is still the left and the right the right? A. It probably goes in the opposite direction.

40 Q. So it makes no difference on these cars—when you turn them around the left is always the

Fitzgerald A. Pollard, cross.

left and the right always the right. Now, what did you say to this woman when you found her in this position? A. I asked her what was the trouble, what was the matter with her.

10 Q. Did you have her taken upstairs? A. I did not personally have her taken up.

Q. When you talked to her was she still in this stooping position? A. She was still in that stooping position.

Q. Are you the man who got this heel? A. The heel was given to me.

Q. Did you get the heel, yes or no? A. I did not find the heel.

Q. Did you ever get this heel? A. I had that heel in my hand, yes.

20 Q. Who gave it to you? A. One of the witnesses that I got, I think.

Q. You got some witnesses? A. Yes, I did.

Q. Some witness gave you the heel? A. Yes.

Q. You were not there when the heel came off at all? A. I did not see the heel off. It was given to me.

Q. How long after the woman was taken upstairs did the passenger give you the heel? A. I guess it was almost immediately.

30 Q. Gave you the heel? A. Yes.

Q. And you turned it over to the Hudson and Manhattan Railroad Company? A. Yes.

Q. How many people were between you and this woman when you heard her yell? A. I cannot say exactly. There might have been a dozen.

Q. Are you the man that stands on the platform and says, "Watch your step"? A. Sometimes, sure. If there is danger I signal it.

40 Q. I mean on this platform, do you ever stand

Fitzgerald A. Pollard, cross.

there and says, "Watch your step; watch your step; watch your step"? A. Certainly.

Q. And you were not telling anybody there to watch their step this day? A. If I am on the platform I do tell them to watch their step.

Q. I mean this time. A. This is what I generally say: "Let them off first, please, so that others can get on." 10

Q. But with this crowd—you say there was such a crowd there you could not see this woman—when you stood there with this crowd did you say, as you stood there, "Watch your step; watch your step"? A. I don't know if I said it that time, but I generally do say so.

Q. Why do you say it? Is that space dangerous there between the car and the platform? 20

Mr. Markley: I object as not cross examination and not within the pleadings.

The Court: Objection sustained.

Mr. Simpson: Exception.

Q. What were your duties as platform man on this day? A. Platform man generally, guard doors, and prevent people from getting hit with them and so forth.

Q. How do you prevent them from getting hit with them? A. In case the door might probably happen to close or not open sufficiently. 30

Q. What does the platform man do? A. He holds the door or closes it.

Q. So it will not hit them? A. I will close the door at times.

Q. Now let us talk about holding the door first. You say the doors are apt to hit a man when they close and the platform man's business is to hold the door—that is what you say. A. This is what 40

Fitzgerald A. Pollard, cross.

they are for; in case people are getting on or getting off, when they do get on naturally there might be a big crowd, he closes the door from the outside to protect passengers getting on or off.

10 Q. What do you hold the door for? A. Well, to avoid, in case anyone else is running into the door, to prevent it from hitting them, naturally, because at times when the door is half way closing people will run and get into the door, and without a man there it might happen to catch them.

Q. You have never seen a man— A. That is in case people run to get in the door when it is closing.

20 Q. Suppose he is not running, suppose he is stepping in, what do you do, hold the door?

Mr. Markley: I object.

Mr. Simpson: Withdraw it.

Q. Do you hold the door to prevent people getting hit by a moving door? A. In case they happen to be going in while it is closing.

Q. How many doors does the guard have to watch? A. Three.

30 Q. He has to watch three with people getting in and out? A. Yes.

Q. And you are on the platform so that if by mistake he shuts the door too soon you protect the passenger? A. Surely, if it did happen.

Q. How many platform men were there on duty this day?

Mr. Markley: I object as not cross examination and not within the pleadings, and immaterial and incompetent.

40 The Court: I will allow it.

Mr. Markley: Exception.

Robert B. Kay, direct.

Q. How many platform men were there on this platform during the rush hour? A. I can't say the number because I don't keep track of the number. There were quite a few.

10 Q. You do not know whether you were the only man on duty? A. No, there were quite a few besides myself. There always is in rush hours.

Q. A number on the platform? A. Yes, maybe six or eight.

ROBERT B. KAY, sworn for the defendant.

Direct examination by Mr. Markley:

20 Q. I show you a statement which has been marked D-4 for identification, purporting to be the statement of Irene McDonald, and ask you, did you take that statement? A. I did.

Q. And were you present when it was taken? A. Yes.

Q. And did you take down what she told you? A. Yes.

Q. Whose handwriting is the statement in? A. Both her handwriting and mine.

30 Q. Which part of it was written by her? A. The part in which she states, "I know the door did not strike Mrs. Williams. I have carefully read this and everything is true and correct—Irene McDonald."

Q. That is her handwriting? A. Absolutely.

Q. Made in your presence? A. Made in my presence.

Q. Did she give you all of the facts that are in this statement? A. Yes.

Q. And did you reduce them to writing? A. I did.

40 Mr. Markley: I offer the statement in evidence.

Robert B. Kay, cross.

Mr. Simpson: No objection.

(Admitted and marked Exhibit D-4 of this date.)

10 Q. Are you familiar with the centre doors of the Hudson & Manhattan Railroad Company? A. Yes.

Q. Do you know from which direction the centre doors go as they come out of the slide or groove on your trains? A. Yes, they always close to one's left boarding and always to one's right when alighting.

Q. By alighting you mean as a person is leaving the coach? A. Leaving the train it would always go toward one's right.

20 Q. It would come from the right of the person? A. If it were hitting them it would always come toward their right.

Q. It would close toward the right of the person alighting from the train? A. It closes from right to left.

Q. Is that always so? A. Always.

Q. With all the centre doors? A. Absolutely every car on the road.

Cross examination by Mr. Simpson:

30 Q. How many cars are there on the road? A. 301.

Q. Have you examined all of them? A. No. I know the plans of all of them.

Q. But you have not examined all of them? A. I may have seen every one—

Q. Have you examined all of them? A. I cannot say one way or the other, Senator. I probably have seen every car on the road, yes.

40 Q. Have you examined them all? A. In what respect?

Robert B. Kay, cross.

Q. In respect to these centre doors? A. Yes.

Q. When was the last time you examined them?

A. I see them every day.

Q. Do you examine 301 every day? A. No.

Q. Are these cars which are turned around? A. Yes, either way. 10

Q. Does that have any effect on left or right?

A. No, it does not make any difference what position they are in.

Q. If it is going north and it is left and you turn it around and make it go north in another direction it still opens from the left? A. No.

Q. Those are magic cars, are they not? A. No, it depends on the motorman's position.

Q. I am not talking about the motorman's position; I am talking about a door that goes in or comes out of one side of the car; it always comes in and goes out the same side? A. Absolutely. 20

Q. Now, according to you if it is going towards Summit Avenue and comes out of the left side, when you turn it around and make the front the rear it comes out of the left side still? A. Absolutely.

Q. How is that; can you explain that to us? A. When you are going to Summit Avenue your motorman is on your right side. 30

Q. The motorman has nothing to do with the position of your car. A. Yes, he has. The motors are on the right side of your car.

Q. But it has nothing to do with your door. If this door according to you comes in structurally there it is in the left now—structurally, that way. You turn it completely around and put it over here and according to you it is still left. A. How do you mean, turn it around?

Q. Turn the whole car around. A. If you turn 40

Robert B. Kay, cross.

the whole car around the motorman goes to the other end.

Q. I am not talking about your motorman. A. That is the only way we operate.

10 Q. I am trying to get you to show us how you overcome physical laws. If your car is going this way and it is left, you turn it completely around and according to you it still comes out of the left. A. Absolutely, if you are making a complete circle.

Q. Those are cars made by an alchemist, are they; they are magic cars? A. No, there is nothing improper about that. There is nothing peculiar.

20 Q. I am not talking about peculiar; I am trying to get you to explain how you reverse physical laws. A. There is no reversal of physical laws. I can show you down there any day.

Q. Show me here how when this is left when I have turned around it still is left. A. That is because the motorman being on that side—

Q. Leave the motorman out of it. A. We cannot operate trains without motormen.

Q. You can leave it out of this demonstration, because you do not have a motorman on every car. A. Two motors on every car.

30 Q. A motorman on every car. A. Not a motorman on every car.

Q. A motorman on the head? A. Yes, absolutely.

Q. According to you when you turn the car around left is still left and right is right? A. Yes.

Q. Although structurally the thing does not change? A. Structurally it does not change. It cannot change.

40 Q. These statements you got you got from this little 13 year old girl all alone? A. Yes.

Q. Are you in the habit of taking statements

Robert B. Kay, cross.

from children when the parents are not around or anyone to advise them? A. I will take the truth any time.

Q. You will take a six months old child's statement if she is alone? A. No.

10 Q. Did you tell this little girl her mother ought to be there when she told what happened? A. No, we already had a statement from her mother.

Q. I don't care about your having had a statement. You interviewed this child alone? A. If the mother had been there we would have been glad to have her.

20 Q. You interviewed her alone where the case you knew might be important and a working woman who was a passenger was suing your company for damages? A. Yes.

Q. And you interviewed this child all alone? A. Yes, because there was not anybody there.

Q. Was there anyone there? A. A young child, yes.

Q. Two young children? A. There was no one else there.

Q. Did you ask for her mother? A. She said her mother was working.

30 Q. Did you ask for her mother? A. Yes. She said she was working over in the restaurant.

Q. Did you say, "All right, little girl, I will wait until your mother comes home and I will come back and take your statement when your mother is here"? A. No.

Q. You did not say that? A. I really went around there for the mother.

40 Q. You were talking about whether the door hit her or not. How did you know anything about the door hitting her? A. We try to cover every phase of it.

Robert B. Kay, redirect.

Q. You did not cover every phase here. A. What phase did we leave out?

10 Q. What you asked about in these statements was to be sure the door did not hit her. Why did you emphasize about the door? Had you learned that the plaintiffs claimed the door hit her? A. The plaintiff made all kinds of statements. One time she would claim one thing and another time another.

Q. Have you a written statement from the plaintiff? A. No.

Q. How comes it you have not a written statement from the plaintiff? A. Because she would not sign any.

20 Q. She would not sign the one you wanted her to sign? A. No. She would tell the story one way one minute and another way another time.

Q. Did you write down any of her stories? A. Yes.

Q. Did you ask her to sign it? A. Yes.

Q. And she refused? A. Yes.

Q. Why did she refuse? A. I don't know; probably because she was not telling the truth.

30 Q. You did not write any statement in which you said the door hit her, did you? A. I don't recall just exactly what she did say, she said so many different things.

By Mr. Markley:

Q. As I understand it the motors in these coaches are all on the same side of the coach? A. The motorman is always on the right side of the coach.

40 Q. There is a motor at each end? A. In operating in that direction the motorman is always on the right side. If he is coming in the opposite direction he is on the right side, which always makes him on the right side.

George F. Hamill, Jr., direct.

Q. And these doors—does it make any difference whether you are going toward Newark or toward New York as to which way that center door opens?

A. No, because it would be operating from the same side.

10 Q. So that the door would come from your right whether you were going to Newark or to New York? A. Yes, always from your right in alighting; always toward your left in boarding.

By Mr. Simpson:

Q. Is there a motor on each end of each car? A. Yes.

Q. The motorman can stand either end of the car? A. Yes.

20 GEORGE F. HAMILL, Jr., sworn for the defendant.

Direct examination by Mr. Markley:

Q. I show you a statement that has been marked D-2 for identification, purporting to be the statement of Mrs. Elizabeth McDonald. Was that statement taken by you? A. It was.

30 Q. Whose handwriting is that statement in? A. Mrs. McDonald's handwriting and my own.

Q. What part is in Mrs. McDonald's handwriting? A. "Mrs. Elizabeth McDonald"—one line. Below that: "Car door did not touch any of us," and the reverse side.

Q. Marked D-3 for identification. A. Yes.

Q. What writing on that page is in Mrs. McDonald's handwriting? A. First line—"Mrs. Elizabeth McDonald." Second line: "Carefully read and found correct."

40 Q. What appears in this statement, was that

George F. Hamill, Jr., direct.

given to you by Mrs. Elizabeth McDonald? A. It was.

Q. And did you write down what she told you?

A. I did, just as she told me.

Q. When was that statement taken from Mrs. Elizabeth McDonald? A. On the 24th of June, 1925.

Mr. Markley: I offer the statement in evidence.

Mr. Simpson. No objection.

(Admitted and marked Exhibits D-2 and D-3 of this date.)

Q. Are you familiar with the manner in which the center doors of the Hudson & Manhattan Railroad Company operate? A. Yes.

Q. A person leaving the center door of the train, from which side does the door close? A. As you leave the train it would close from your right side.

Q. Come from your right? A. Yes.

Q. You are in the Claim Department of the Hudson & Manhattan Railroad Company? A. I am.

Q. That is your sole business? A. It is.

Q. Going around and interviewing witnesses and getting statements and getting evidence? A. Investigating cases.

Q. Preparing for trial? A. Yes.

Q. How long have you been with them? A. Since the 22nd of June, 1920.

Q. What company were you with before? A. I was in school before that.

Q. That was the first employment you had? A. Yes, the first steady.

Mr. Simpson: I have a telephone from my doctor. He is engaged in an operation and cannot get here. I have a statement from him here.

Nicholas Feury, direct.

NICHOLAS FEURY sworn for the defendant.

Direct examination by Mr. Markley:

Q. How long have you been a practicing physician? A. Twenty-nine years.

Q. In Jersey City? A. In Jersey City. 10

Mr. Simpson: Qualifications admitted.

Q. Did you make an examination of Mrs. Williams for us? A. I did.

Q. When did you make that examination? A. That examination was made in August—August 21st, 1925.

Q. Where did you make it? A. The examination was made at her home at about eleven o'clock in the morning. 20

Q. Did you examine her ankle? A. I did.

Q. The left ankle? A. I did.

Q. And what did you find, if anything? A. She claimed injury to her left ankle. There were no objective evidences, that is evidences which I could myself appreciate, such as discoloration or swelling or deformity. There were no objective evidences of there having been any injury. She claimed she had an injury to her left leg, the lower third, outer side. There were no objective evidences which would indicate that there had been any injury. 30

Q. Where was that part of the leg which you have described? A. Below the knee. We call the "leg" from the knee down. The thigh is from the knee up.

Q. You could not find any evidence of injury there? A. There were no objective evidences of any injury there.

Q. Were there any evidences of pain there? A. She did not give any evidence of pain. 40

Nicholas Feury, cross.

Q. Did you press on the part she claimed was hurt? A. I did. I made a thorough examination.

Q. Was there any pain expressed by her when you did that? A. No, sir.

10 Q. Did she claim any pain at that time? A. No, I do not think she did.

Q. What else did you find? A. She complained of having pain in the portion of the body here (indicating), between the hip bone and the ribs. She claimed that that made her vomit blood and gave her a chill, and the symptoms were of such a character as to be absolutely impossible for her to vomit blood from an injury to any organ in the loin—I mean by that this portion of the body here
20 between the hip bone and the ribs. She claimed that that made her vomit blood and gave her a chill, and the symptoms were of such a character as to be impossible for her to vomit blood. As I said in my statement the symptoms are such that no connection between them can be made; they are ridiculous, and in my opinion not real or honest. And she claimed she has menstruated three times within as many weeks as the result of the accident. After the examination I was unable to find any evidence of a pathological condition, that is a diseased condition which would
30 cause this alleged phenomenon, and I am a bit skeptical as to the honesty of her statement.

Q. Then so far as your examination is concerned you could find nothing the matter with her? A. Nothing.

Cross examination by Mr. Simpson:

Q. Did you get a history of her case? A. I did.

40 Q. Did you get a history that she was injured on the 23rd of June in the Hudson & Manhattan

Nicholas Feury, cross.

tube, and suffered severe contusion of the left side just above the hip; she also had a badly sprained left ankle, which was caught between the door and the platform, throwing her down heavily—did you get any such history as that? A. The history which I got from her—her name was Margaret Williams,
10 lived at 390 Grove Street, Jersey City; name of her husband, John; she was married; she had two children; age 38; weight, 162; height, five feet six inches; color of hair, dark; complexion, dark; she was born in Ireland; in the United States twenty-one years; she was a housewife. She told me it happened July 21, 1925, at the Grove Street station at 4:45 P. M. Dr. Wainwright was her attending physician. I asked her if she had any
20 former physician for any complaint—said none. I asked her if she was an inmate of any hospital and date of entry. None. I asked her if she had had any prior accidents, when, where and how? None. Her previous history was negative. She said she was not pregnant at the time of the accident. At the time of examination she was up and around. The account of the accident as given by claimant; getting off a train by the center door.

Q. Doctor, if she did tell the truth about having hemorrhages, are hemorrhages ever caused by violence? A. They are, but not by violence to that
30 portion of her body.

Q. If she had fallen, had been hit in the loins, if she had been struck and knocked down so that she had been hit in the chest, would that produce a hemorrhage? A. It might.

Court's Charge.

The Court thereupon charged the jury as follows:

10 The Court: Gentlemen of the Jury: This is an action brought by John Williams and Margaret Williams, plaintiffs, against the Pennsylvania Railroad Company and the Hudson & Manhattan Railroad Company, corporations.

20 The plaintiffs allege that on the 23rd day of June, the plaintiff Margaret Williams was a passenger on one of the trains of the defendant company operating between New York and New Jersey; that she with some friends boarded a car of the defendant company at the Cortlandt Street station to alight from the car at Grove Street; that she was a passenger of the company; that while she was in the act of alighting the door was moved, or an attempt was made to move it—you will recall the testimony on that point—and that she was struck on the left ankle, as a result of which she was thrown down and her foot was caught between the platform of the car and consequently she was injured.

30 The contention of the defendant company is that the door was not closed as is alleged by the plaintiff, but that the woman plaintiff caught her heel in the space that existed between the platform and the car and that caused the accident which is alleged to have happened.

40 Of course, gentlemen of the jury, you are the judges of the facts in this case and you are to determine where the truth is lodged from the evidence which has been produced here. You cannot go beyond the evidence or beyond the testimony and draw your own inferences. You can only de-

Court's Charge.

termine this case from the testimony that has been submitted here by the different witnesses produced by the plaintiff and the defendant, and it is for you to judge the credibility of the witnesses who testified here. I will present the law to you and you will apply the law to the facts as they have been adduced here in court. 10

Now, gentlemen of the jury, the mere fact that there was an accident, and that this woman met with an injury, does not entitle her to recover. The law lays down certain principles and the obligation rests upon the plaintiff in this case to show by a preponderance of the evidence that the defendant was negligent and that such negligence was the proximate cause of the injury. She must show by a preponderance of the evidence, before she can recover, that the defendant company was negligent and that such negligence was the proximate cause of the injury which she claims to have sustained in this accident. 20

Now, gentlemen, you will want to know what is meant by negligence. Negligence is the violation of a duty on the part of the person who is charged with the performance of it. Naturally, your next inquiry will be, what duty did this defendant company owe to the plaintiff, who was one of its passengers. 30

Now, the defendant company was a common carrier of passengers, and as such it and its employees owed the plaintiff, who was a passenger, a high degree of care for her safety and was bound to exercise a high degree of care to take her safely to her journey's end.

Our Court of Errors and Appeals has defined this duty in this manner: The rule that common carriers of passengers are bound to exercise the high- 40

Court's Charge.

est degree of care and diligence that a reasonable man would use, and that they are responsible for the slightest negligence, has been very generally adopted in this country and is the law of this State.

10 Now, then you will say, gentlemen of the jury, What is meant by reasonable care? The Courts have defined reasonable care to be such care as an ordinary prudent person would exercise under the conditions which existed at the time when that person was called upon to act.

Now, what do we mean by a prudent person? A prudent person is not the careless individual who has no regard for the rights of others or no due regard for his own rights. You cannot say that
20 a person who is careless or who is reckless is a prudent person, nor can you say that a person who is overcautious is a prudent person, but you might say that it fits the common everyday average individual who has a reasonable regard for the rights of others and who acts in a reasonable manner to safeguard those rights and his own rights. That is what the law has in mind as a prudent person: A person who has a due regard for the rights of others as well as a regard for his own rights.

30 Now, gentlemen of the jury, I stated that the burden rests upon the plaintiff to show that the defendant was negligent and that such negligence was the proximate cause of the injury.

What do you mean by proximate cause? Proximate cause is nothing more than the cause which is responsible for putting into operation those things that produced the injury.

Now, I have said that the plaintiff must show
40 by a preponderance of the evidence that the defendant was negligent and that such negligence

Court's Charge.

was the proximate cause of the injury. By a preponderance of the evidence we do not mean the greater number of witnesses on one side than on the other necessarily, but it means the greater weight of the evidence, and that can possibly be expressed a better way by saying that it means
10 quality rather than quantity of evidence which is produced and of course it is required that you should weigh every bit of this evidence in order to apply this measure.

Now, as a part of the rule I have already laid down respecting the duty of the defendant company, I would say that the company of course owed the duty within that definition I have given you of affording a reasonable opportunity for this
20 plaintiff to alight from its cars, she having been a passenger. Of course if a door was shut by an employee of the defendant company upon her, it is for you to say, if you find that fact, whether or not the defendant company exercised this high degree of care which I have already defined.

Now, it is for you to say whether or not under all the circumstances in this case, under all the circumstances that have been submitted to you under the evidence here, this company exercised
30 the degree of care which the law imposes upon a common carrier.

Did the defendant company cause that door to be moved or close it upon her as has been stated in this case? You, of course, must regard the testimony produced by the defendant as well as the testimony that has been produced by the plaintiff in arriving at that decision. You are to determine whether it was done or whether it was not done, and nobody but you can say whether it was or
40

Court's Charge.

was not done. Your decision upon that, gentlemen, in this case is absolute and final.

10 The defendant company alleges in its pleadings that the plaintiff was herself negligent and that her negligence contributed to this accident. Of course the burden rests upon the defendant to show that by the greater weight of the evidence, by the preponderance of the evidence as I have defined it to you, that this woman was guilty of contributory negligence.

20 If she was contributorily negligent, then you need not pursue your inquiry any further and you will find a verdict in favor of the defendant company, a verdict of no cause of action, because if she contributed by her negligence, no matter in how slight a degree, she cannot recover. So that, gentlemen of the jury, if you reach the conclusion that the woman herself was negligent, she cannot recover.

So that, if you find from the greater weight of the testimony that the defendant company was negligent and that their negligence was the proximate cause of this injury and you do not find that the plaintiff herself was negligent, then you of course approach the question of damages.

30 Now, gentlemen of the jury, when the law speaks of damages, the law says that compensation is the measure of damages, by which is meant that the plaintiff is entitled to recover payment in money, so far as money can be said to pay for the damages which proximately resulted to her from the accident.

40 Now, entering into the item of compensation would be first of all, payment for the pain and suffering, both mental and physical, which she has undergone in the past and for such as she will

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probably undergo in the future, for so long in the future as she will probably undergo them. The question of earnings has arisen, and you will determine from the evidence that has been submitted here whether this plaintiff earned any money at the time, whether she was employed at the time, 10 and if she lost any wages or whether or not her earning capacity was impaired as a result of the injuries which resulted to her proximately from this accident. She would be entitled to recover such earnings as she lost, or if her earning capacity was impaired, to the extent to which she has been affected.

20 You will determine whether or not there has been any testimony submitted here as to expenditures made by the plaintiff as a result of this accident. I do not recall whether there were any expenditures—

Mr. Markley: They did not prove any bill.

The Court: Well, you will recall, gentlemen, because you are charged with the recollection of the testimony. You will determine if there has been any testimony submitted here as to expenditures. Of course, if expenditures have resulted to the plaintiff in this case, they would be entitled to recover for them, but the husband would be the one, of course, who would be entitled to recover for such expenditures. 30

The husband has made a claim in this case that as a result of this accident he has been deprived of the aid, comfort and society of his wife and that he has been compelled to expend money for medical expenses in endeavoring to cure her. If that is so, then gentlemen of the jury, if you find that the defendant company, as I said, was negligent and that the plaintiff was free from contributory neg- 40

Court's Charge.

10 ligence, and that her injuries were the proximate result of the negligence of the defendant company, why the husband would be entitled to recover for the aid, and for the comfort and society of which he was deprived and for such moneys as he was obliged to spend in bringing about or affecting a cure of his wife.

20 Now, gentlemen of the jury, in the situation that confronts you, you are the judges of the credibility of the witnesses produced. If, in any of my remarks I have stated something to be a fact which is not in accordance with your recollection of the facts and the testimony in this case, disregard what I say because the burden is imposed upon you under the law to determine this case upon your own recollection of the facts, and of course that is what you are going to do. The same will apply to what counsel may have said as to the facts. If they stated something in their summation which is not in accordance with your recollection of the facts, disregard what they said and allow your own recollection of the facts to prevail.

30 Now, gentlemen of the jury, there have been some requests submitted to me by the defendant, and I will read those that I feel you should have.

The first request is as follows:

1. The mere fact that the plaintiff Margaret Williams fell does not entitle her to a judgment in this case.

I so charge you.

2. Before she can recover she must prove that her fall was caused proximately by the negligence of the defendant.

I so charge you.

40 The third request I will not charge because I

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think it is rather narrow and slightly different from the testimony.

The fourth request I will charge.

4. The plaintiff must prove her case by the greater weight of the evidence. If she has failed to do so then the plaintiffs cannot recover and your verdict must be for the defendant. 10

That is so, gentlemen, and I so charge you.

5. If the evidence is evenly balanced as to whether the door was closed upon the plaintiff negligently then the plaintiffs cannot recover and your verdict must be for the defendant because the plaintiffs will then have failed to bear the burden cast upon them by the law of proving their case by the greater weight of the evidence. 20

I so charge you, gentlemen of the jury.

6. You cannot find the defendant negligent because there was a clearance of three, four, or five inches between the side of the coach and the side of the platform.

I so charge you.

The seventh request I will not charge you.

8. In short, a verdict cannot be rendered against the defendant in this case because of the clearance between the side of the platform and the side of the coach. 30

I so charge you.

9. If the plaintiff Margaret Williams was in the slightest degree guilty of contributory negligence, then the plaintiffs cannot recover and your verdict must be for the defendant.

I so charge you and I think I have also covered that in my charge to you. 40

Court's Charge.

10 10. If both parties, that is the plaintiff Margaret Williams and the defendant, were negligent and both thereby contributed to the accident then the plaintiffs cannot recover and your verdict must be for the defendant because when the law finds that both contributed to the accident by their negligence it does not attempt to measure how much each contributed but refuses to allow either party to recover against the other.

I so charge you.

11. In short, if you find that Margaret Williams was negligent and that the defendant was negligent, that is, both were negligent, then your verdict must be for the defendant.

20 I so charge you.

The twelfth request I will not charge as requested.

13. There is no evidence that the Pennsylvania Railroad Company operated the railroad, the platform or the coach from which the plaintiff fell and therefore in any event your verdict must be for the Pennsylvania Railroad Company.

30 In other words, gentlemen of the jury, there is nothing to show that the Pennsylvania Railroad Company is liable in any way under the testimony that has been submitted here, so that your duty will be directed then to determine under the evidence in this case under the law I have laid down, whether the defendant company, the Hudson & Manhattan Railroad Company is liable.

40 14. You cannot allow anything in this case for doctor's bills or medicine because no such bills were proven. This question will only arise in the event that you find that the defendant by its negligence approximately caused the accident and

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that the plaintiff Mary Williams was not guilty of contributory negligence.

10 If there is no testimony, gentlemen, and there is no proof that there were any doctor's bills or medical bills, you will not allow for them, but if there is any evidence in this case, you will allow for them, therefore, I will charge you the 14th request subject to what I have stated. If there is any evidence in this case showing expenditures on the part of either the plaintiff Margaret Williams or on the part of her husband for medicines, of course they would be entitled to recover. If there is any evidence to show that he paid any doctor's bills, he would be entitled to be compensated in that amount.

20 There will be two verdicts, if you decide in favor of the plaintiffs in this case, one for the wife and one for the husband. So, gentlemen of the jury, under these rules that I have given you you will take the case.

Mr. De Sevo (representing Mr. Simpson): Exception to that part of the charge wherein the Court charged request number thirteen.

30 Mr. Markley: Exception to the refusal of the Court to charge each of the following requests submitted by the defendant: Request number three, request number seven, request number twelve, and request number fourteen as modified. I would like an individual exception to the refusal to charge each of those requests.

40 Exception to that part of your Honor's charge wherein your Honor said the plaintiffs could recover if she proved that the accident was caused by the negligence of the defendant if the negligence of the defendant was the proximate cause of the accident, without limiting that by the fur-

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ther condition providing she was not guilty of contributory negligence.

10 Exception to that part of your Honor's charge wherein your Honor instructed the jury that under the circumstances of this case the defendant owed the plaintiff a high degree of care.

Exception to that part of your Honor's charge wherein your Honor said that the defendant was under the duty of exercising the highest degree of care and that it was liable for the slightest degree of negligence.

20 Exception to that part of your Honor's charge wherein your Honor instructed the jury that the defendant in the exercise of a high degree of care for the plaintiff's safety was bound to afford her reasonable opportunity to alight—whatever your Honor's wording was.

Exception to that part of your Honor's charge wherein your Honor left the jury to determine whether the earning capacity of the plaintiff had been impaired.

Exception to that part of your Honor's charge wherein your Honor left it to the jury to say whether or not there were any expenditures on the part of the husband.

30 Exception to that part of your Honor's charge wherein your Honor's left it to the jury to find whether the plaintiff John Williams was entitled to recover for medical items or medicine, or entitled to recover for expenses met in endeavoring to effect a cure, on the ground that there is no proof of the bills, the amount thereof or the reasonableness of the charges for medicines or medical attention.

40

Defendant's Requests to Charge.

DEFENDANT'S REQUESTS TO CHARGE.

1. The mere fact that the plaintiff, Mary Williams, fell does not entitle her to a judgment in this case.

2. Before she can recover she must prove that 10 her fall was caused proximately by the negligence of the defendant.

3. The only negligence charged against the defendant is that it carelessly and negligently closed the center door of the coach from which she was alighting at the Grove Street station. If the plaintiffs have failed to prove that the defendant negligently closed the center door then the plaintiffs cannot recover and your verdict must be for the 20 defendant.

4. The plaintiff must prove her case by the greater weight of the evidence. If she has failed to do so then the plaintiffs cannot recover and your verdict must be for the defendant.

5. If the evidence is evenly balanced as to whether the door was closed upon the plaintiff negligently then the plaintiffs cannot recover and your verdict must be for the defendant because 30 the plaintiffs will then have failed to bear the burden cast upon them by the law of proving their case by the greater weight of the evidence.

6. You cannot find the defendant negligent because there was a clearance of three, four, or five inches between the side of the coach and the side of the platform.

7. The defendant had the right to construct its platform and cars in such a way that there 40 should be three, four or five inches clearance be-

Defendant's Requests to Charge.

tween the side of the coach and the side of the platform and even though you find that such clearance existed and yet find that the plaintiff Mary Williams was not struck by the coach door then the plaintiffs cannot recover and your verdict must be for the defendant.

10

8. In short, a verdict cannot be rendered against the defendant in this case because of the clearance between the side of the platform and the side of the coach.

9. If the plaintiff Mary Williams was in the slightest degree guilty of contributory negligence then the plaintiffs cannot recover and your verdict must be for the defendant.

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10. If both parties, that is the plaintiff Mary Williams and the defendant, were negligent and both thereby contributed to the accident then the plaintiffs cannot recover and your verdict must be for the defendant because when the law finds that both contributed to the accident by their negligence it does not attempt to measure how much each contributed but refuses to allow either party to recover against the other.

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11. In short, if you find that Mary Williams was negligent and that the defendant was negligent that is, both were negligent, then your verdict must be for the defendant.

12. The defendant cannot be held liable in this case because it failed to warn the plaintiff of the clearance between the side of the coach and the side of the platform.

13. There is no evidence that the Pennsylvania Railroad Company operated the railroad, the plat-

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John Wainwright, direct.

form or the coach from which the plaintiff fell and therefore in any event your verdict must be for the Pennsylvania Railroad Company.

14. You cannot allow anything in this case for doctor bills or medicines because no such bills were proven. This question will only arise in the event that you find that the defendant by its negligence approximately caused the accident and that the plaintiff Mary Williams was not guilty of contributory negligence.

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HUDSON COUNTY COURT OF COMMON PLEAS.

Before—Hon. ARTHUR G. GALLAGHER, J., and a Jury.

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JOHN WILLIAMS, <i>et al</i> , Plaintiffs, <i>v.</i> PENNSYLVANIA RAILROAD Co., <i>et al.</i> , Defendants.	}
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Jersey City, N. J., June 30, 1927.

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APPEARANCES:

ALEXANDER SIMPSON, Esq. (by ARCHIE ELKIN, Esq.), for the Plaintiff.

COLLINS & CORBIN, Esq., (by C. MARKLEY, Esq.), for the Defendant.

(A jury was duly empanelled.)

WAINWRIGHT, JOHN, sworn for the Plaintiff.

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Direct examination by Mr. Elkin:

Q. Are you a practicing physician in this State?

A. Yes, sir.

John Wainwright, direct.

Q. How long have you practiced this profession?

A. Since 1904.

Q. What school are you a graduate of? A. P & S, Columbia University, New York.

10 Q. Have you any connection with any institutions in this city? A. Yes.

Q. What? A. St. Francis.

Q. How long have you been connected there? A. Actively until about two years ago.

Q. From 1904 to 1924? A. 1924.

Q. Actively engaged in the practice in this city? A. Yes.

Q. Where is your office? A. 256 Montgomery.

20 Q. Will you tell us whether or not you had occasion to treat Mrs. Williams on or about June 23rd, 1925? A. Yes, I did.

Q. Where did you treat her; where was the first time that you saw her, at her home or elsewhere? A. At her home.

Q. Will you tell us whether or not she was in bed at the time you saw her? A. She was, yes.

Q. Did you make an examination of her, Doctor? A. I did.

30 Q. Will you kindly tell us in detail what your diagnosis was? A. She had contusions of the left hip and back and the left side, also a sprain of the left ankle.

Q. Those are the only objective symptoms that you could find? A. Yes.

Q. Was she suffering from nervousness at all? A. She was nervous, yes.

Q. Those injuries which you found, Doctor, will you tell us whether or not, in your opinion, they were due to trauma, some accident of some kind?

40 A. They certainly looked so.

John Wainwright, direct.

Q. Did you treat her subsequently to that day, Doctor? A. Yes, I treated her since then.

Q. What for? A. I treated her since that time, mostly for nervousness.

10 Q. Can you tell us, if you know, at this time, how long she was in her house in bed before she was able to get about? A. I couldn't say for a certainty; I haven't any record of that. I should think it was a couple of weeks at least.

Q. Mrs. Williams is a heavy set woman—a pretty heavy woman—is that right, Doctor? A. Yes.

Q. Isn't it a fact that a woman like that falling—the blow would be more serious injury than to a thinner person? 20

Mr. Markley: I object.

Mr. Elkin: Withdrawn.

Q. You say you treated her on and off you say for nervousness and the leg—the complaint she made to you after the bruises had gone away, was nervousness? A. Yes.

Q. Did she ever complain of lack of sleep and headaches? A. Yes, she has them—pain in the back.

30 Q. Pain in the back. Was that the region in which you found the injury? A. About, yes.

Q. So that, probably, a woman suffering these injuries about which you state, would suffer nervousness and pain in the back? A. Probably this condition would appear.

Q. Assuming that there was nothing else wrong? A. Very likely, yes.

40 Q. Can you tell us what is your bill for services rendered to Mrs. Williams, approximately? A. I couldn't tell you exactly.

John Wainwright, direct.

Q. About how much? A. I should say for two years, seventy or eighty dollars.

Q. That is a reasonable bill for your services?

A. I think so.

10 Q. You are the family physician of Mrs. Williams. Is that right? A. Yes.

Q. Will you tell us just prior to June 23rd, 1925, whether or not you had occasion to examine her?

A. Why, I don't remember any time—very nearly that time.

Q. You examined her some time before the day of this accident. Is that correct? A. Yes, I had examined her and delivered a couple of children.

Q. At that time she was suffering from bruises which you treated later? A. No.

20 Q. Do you know of your own knowledge that she was treated by any other physician in your absence? A. Yes, I think Dr. Hill attended her last September while I was away.

Q. A substitute in your absence? A. Yes.

Q. Your representative who treated her? A. At that time, yes.

Q. How recently was she at your office, Doctor? A. About three or four weeks ago I think she was in.

30 Q. For treatment? A. Yes, the latter part of May.

Q. Can you tell us at this time the length of time which may expire, say which will expire, until she is entirely cured of this condition which she complains?

Mr. Markley: I object.

Mr. Elkin: I withdraw the question.

The Court: Sustained.

40 Q. This treatment that you have been render-

John Wainwright, cross.

ing to her, and her injury about which she complained—the nervousness and so forth—you say, in your opinion, they were due to an accident?

Mr. Markley: I object to that because the Doctor did not say any such thing, second, because it is leading, third because it calls 10 for a conclusion, and fourth, the facts upon which an opinion is asked are left indefinite and the injuries assumed are not stated.

The Court: I will allow you an exception.

The Witness: In my opinion it was due to the accident.

Mr. Elkin: That is all.

Cross examination by Mr. Markley:

20

Q. What was due to an accident? A. Her nervous condition and the pain in the back.

Q. What else was due to the accident? A. As far as the complaint, objectively; that is all.

Q. Didn't you find any broken bones? A. No.

Q. You say you found a couple of contusions, you say? A. Yes.

Q. Where were they? A. Her left hip and thigh.

Q. That is all you could see? A. Yes, yes, sir, all the ankle.

30

Q. Which ankle? A. The left ankle.

Q. You said that this swelling left the ankle black and blue. Which hip did you refer to? A. The left hip.

Q. This side and these two black and blue hips—the left hip and the swollen ankle. Could you find anything else when you examined her the first time? A. No.

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John Wainwright, cross.

Q. They cleared up in about a week? A. I would say possibly a couple of weeks.

Q. In other words the ankle swelling receded—went down to normal again? A. Yes.

10 Q. The black and blue mark on the hip, despite the discoloration ended—you couldn't see anything in two weeks time? A. Yes, I think so.

Q. Did you bring your records? A. No, I couldn't bring the records.

Q. We asked you to bring them? A. I couldn't find them.

Q. You are testifying from recollection? A. I made testimony for Mr. Simpson—that I looked over.

Q. You were not here at the last trial? A. No.

20 Q. I believe that during the first two weeks you made two visits? A. I think more than that.

Q. Have you any recollection? A. As I remember I was in there four or five times.

Q. Not three? A. I should think four or five times.

Q. Not over that? A. I can't remember. I think four or five times, besides—

Q. Had you been paid anything? A. Nothing.

Q. Not a cent? A. Yes.

30 Q. You delivered this woman of two children—twins? A. Yes.

Q. How long was that before the accident? A. I couldn't say.

Q. When was the accident? A. June 23rd, 1925, I believe—two years ago.

Q. You refreshed your memory from Mr. Simpson's papers? A. Yes.

40 Q. Outside of that you would not remember when it happened? A. Possibly I would not.

John Wainwright, cross.

Q. You are quite hazy, as a matter of fact? A. I remember the case.

Q. A nervous condition comes from a great many things, does it not? A. Surely.

10 “Q. You can't tell whether it comes from these two minor injuries that you found, as you called them, of less than two weeks duration, or whether it came from something else?”

Mr. Elkin: I object.

The Court: Yes, as to form.

Mr. Markley: Exception.

Q. You can't say that these injuries that you have described disappeared in two weeks and that the present nervousness was due to that or something else? 20

Mr. Elkin: I object to that as an unwarranted assumption of facts and not proper cross examination.

The Court: Answer the question.

The Witness: Possibly; in my opinion they were.

“Q. In your opinion. You are just guessing at it, aren't you?” 30

Mr. Elkin: I object.

The Court: Sustained.

Mr. Markley: Exception.

Q. These physical injuries were, as I understand you, to the left of the thigh and the ankle? A. Yes.

Q. They, as I understand you further, cleared up in two weeks. Is that right? A. Yes.

Q. Having cleared up in two weeks how do you reach the opinion two years later that this was 40

John Wainwright, redirect.

due to the injury which you say cleared up in two weeks? A. Simply from the fact that I had been the family physician and had always known the woman to be a healthy woman as far as I could find out.

10 Q. How long had you been the family physician prior to the accident? A. Oh, a number of years.

Q. What other things had you treated her for besides giving birth to two children? A. I don't remember any child-birth before the twins—yes, there was another child before that. As far as I remember I never attended her except for child-birth.

Q. The child-birth of the two twins and before that some other child? A. Yes.

20 Q. Can you tell us when the twins were born? A. No, I could not.

Q. Your records were subpoenaed here this morning?

Mr. Elkin: No, they were not. I remember that.

The Witness: I could find no records of the case.

30 Q. I subpoenaed these records. Did you get the subpoena? A. Yes.

Q. Did you look for the records? A. Yes.

Q. Do you keep one? A. Sometimes.

Q. Usually in a case of this kind, yes—sometimes on a slip of paper.

Q. Did you look for this record? A. Yes.

Q. Couldn't you find it? A. No.

Redirect examination by Mr. Elkin:

40 Q. Have you got the subpoena? A. Yes.

William F. Hill, direct.

Q. There is no question but that you treated this woman? A. Oh, surely.

Recross examination by Mr. Markley:

Q. You say you saw her for two or three weeks? A. Three or four weeks—the last of May, I think it was. 10

Q. What did you see her for at that time—nervousness? A. Nervousness.

Q. That is all? A. Yes.

Q. When before that did you see her—how long before that? A. I couldn't say, possibly a couple of months before that.

Q. Haven't you a record of these calls? A. No, I have not.

Q. Did you keep a record of these calls? A. I didn't after the first six or eight weeks; I didn't keep a record of the case because she came into the office. I didn't bother to keep a record. 20

Q. After the first two weeks she came to your office, didn't she? A. I think so.

Q. How many calls were made altogether? A. I should say possibly in the neighborhood of eighteen or twenty altogether.

Q. How do you know that without your record? A. I can't tell you, surely. 30

Q. This is a remarkable case? A. Yes, it is as nearly as I can remember.

Q. You haven't any record of these calls? A. I can't find any record.

Q. You never received a penny? A. No.

WILLIAM F. HILL sworn for the plaintiff.

Direct examination by Mr. Elkin:

Q. Are you a practicing physician in this state? A. I am. 40

William F. Hill, direct.

Q. Where is your office? A. 108 Grand Street, Jersey City.

Q. How long have you been practicing a profession? A. Since January, 1920.

10 Q. You have been practicing ever since that time in Jersey City? A. Yes.

Q. And are you connected with any institutions? A. On the surgical staff of the St. Francis Hospital.

Q. For how long? A. Four and a half or five years now.

Q. Did you have occasion to examine Mrs. Williams, the plaintiff in this suit? A. Yes, I saw her the first two weeks of September, 1926.

20 Q. What was the occasion for you going there, —were you called there? A. At that time she complained of severe headaches and nervousness and pain in the back.

Q. Were you the substitute doctor for Dr. Wainwright? A. Yes, Dr. Wainwright was away and I was looking after his business. That is how I did it.

Q. Did she come to your office? A. No, I saw her at her house.

Q. You received a call and came there? A. Yes, she called for me to come.

30 Q. Did you see her in bed? A. When I saw her she was in bed, yes.

Q. She complained of pains in the back and headaches? A. She complained of pains in the back and headaches and nervousness.

Q. Did you treat her? A. Yes, I gave her some medicine.

Q. For how long a time was she treated by you? A. I saw her about six times for the first two weeks in September, 1926.

40 Q. You know nothing of the history of the case? A. I know nothing of the history of the case.

William F. Hill, cross.

Q. You just saw her on these occasions? A. Last September.

Q. After the second week did you stop your treatment—when Dr. Wainwright came back? A. I left word if she was not better to call me up. Dr. Wainwright came back then. 10

Q. You have not seen her since? A. No, I was in the house because of an accident to another party of her family, but not for her at all.

Q. After the accident? A. Oh, yes, probably January or February of this year, 1927.

Q. Some other member of the family was injured? A. I think a brother.

Q. Not her family? A. I don't think so.

Q. What is a reasonable amount for the services you rendered? A. I made six calls—three dollars a call—that would be \$18. 20

Cross examination by Mr. Markley:

Q. You saw her only during this period, the first two weeks of September, 1926? A. 1926, yes, sir.

Q. This accident for which this suit is brought happened June 23rd, 1925. You didn't see her during that period at all? A. No, I didn't see her at all.

Q. That is, prior to September, 1926, you didn't see her at all? A. No. 30

Q. Did you know anything about this prior to that time? A. No.

Q. She complained to you of pains in the back and headaches? A. She complained of pains in the back and headaches and she appeared to be very nervous—said she was very nervous.

Q. Frequently you have found women in that condition who have had no accident at all?

Mr. Elkin: I object to that as irrelevant and incompetent. 40

William F. Hill, redirect.

The Court: Answer the question.

Mr. Elkin: Exception.

The Witness: Yes, we do.

10 Q. A great many women have pain in the back who have never had an accident? A. Why, yes.

Q. A great many women have headaches? A. Yes.

Q. That comes from various things, does it not? A. Possibly, yes.

Q. As I understand it, did you on that occasion give her some medicine internally? A. Yes, I gave her medicine by mouth and told her to stay in bed and to be careful.

20 Q. And if she wanted you to send for you? A. Yes, I saw her five or six times and I told her that if she was not better to send for Dr. Wainwright or me.

Q. She did not send? A. No.

Q. Who was the member of the family that had the accident?

Mr. Elkin: I object to that; she had a brother, not a member of the family.

The Court: Sustained.

30 Q. Do you know the name of the brother?

Mr. Elkin: Objection.

The Court: Overruled.

Mr. Elkin: Exception.

Redirect examination by Mr. Elkin:

Q. You say you find a lot of women with a condition of nervousness and pains in the back. That is so? A. Yes.

40 Q. You find a lot of women with that condition who have had accidents? A. Absolutely.

William F. Hill, recross.

Q. The condition which you found could have been brought about by an accident?

Mr. Markley: I object to that as not re-direct examination, and also as to what might have happened as being a mere possibility. 10

Mr. Elkin: I withdraw the possible.

Q. Is it probable that the condition in which she was in could be due to an accident?

Mr. Markley: I object to that. The Doctor has already said that he could not say that it was due to that but it might be due to a number of things and that a great many women had pains in the back and headaches. Not having seen that— 20

Mr. Elkin: I have a right—

The Court: You can reframe the question.

Q. Is it probable that an accident and injury could bring about this condition?

Mr. Markley: I want my objection noted as already given on the ground that it is improper in form and calls for a conclusion and that there is nothing here for the doctor to base his conclusion on. 30

The Court: Yes.

Mr. Elkin: Exception.

The Court: Yes, I sustain the objection.

The Witness: Yes.

Recross examination by Mr. Markley:

Q. You can't tell, Doctor, whether this was due to an accident or not—these headaches and pains 40

William F. Hill, recross.

in the back that you say she claimed she had? A. No, not definitely, no.

Q. Pain is a subjective symptom, is it not?

10 Mr. Elkin: I object to that, I haven't asked an opinion as to whether the condition was due to this accident; I merely connected it up as a part of a chain of conditions and events.

The Court: Answer the question.

A. Pain is a subjective symptom and to a certain extent objective—it has objective parts about it.

Q. You are to take a patient's word for it? A. To a certain extent.

20 Q. Headaches are objective elements, are they not? A. Sometimes you can tell by looking at them, sometimes you have to use your own judgment.

Q. Ordinarily in a headache or a backache you have to take the patient's word for it? A. Ordinarily.

Q. Can you tell whether I have a headache or not?

30 Mr. Elkin: I object to that as improper.

The Court: Sustained.

Mr. Markley: Exception.

Q. Do you know headaches as an objective symptom? A. No, there is no true objective symptom of headaches except as a rule a person is very nervous and the pupils are dilated.

Q. Headaches might cause pain? A. Yes.

40 Q. All she complained of to you was the headache and the pain in the back. Is that so? A. Yes, she complained of severe headache and backache

Margaret Williams, direct.

and appeared to me to be very nervous, a twitching and the pupils were dilated.

Q. That showed? A. She complained of that.

Q. Having nothing else to go on you couldn't say what she had from a number of cases? A. As a rule I do get a history. 10

Q. And not having that what do you do? A. Not having that we use our own judgment.

Redirect examination by Mr. Elkin:

Q. Did you get a previous history? A. I don't think I did.

Q. You were only concerned with treating her for Dr. Wainwright—during his absence? A. That is all, only treating her. 20

MARGARET WILLIAMS, one of the plaintiffs, sworn.

Direct examination by Mr. Elkin:

Q. Mrs. Williams, where do you live? A. 390 Grove Street, Jersey City.

Q. You are the person who was injured on June 23rd, 1925? A. Yes, sir.

Q. How long have you lived in Jersey City? A. 24 years next October 8th—next October. 30

Q. You are married? A. Yes.

Q. On June 23rd, 1925, were you in the Grove Street station of the Hudson & Manhattan Railroad? A. Yes.

Q. What caused your injury? Tell us the facts and circumstances of what caused you to fall. A. I got off the train and the door hit me as I got off the train.

Q. Where? A. It caught me in the ankle and threw me. 40

Margaret Williams, direct.

Q. When thrown what part of your body struck the platform? A. First I went down the hole between the platform and the train. I fell on my side.

Q. The left leg. Is that correct? A. Yes.

10 Q. You went down through the opening between the train and the platform? A. Yes.

Q. That caused you to fall over on your side? A. Yes.

Q. In falling over on your side what side did you strike? A. The left side.

Q. At the time you received this fall you were as stout as you are now? A. I weighed 178 pounds.

Q. How much do you now weigh? A. I don't know, I haven't weighed.

20 Q. After you had fallen were you injured? A. Yes.

Q. What parts of your body were injured? A. My ankle and my side here (indicating).

Q. Any other part? A. That is all, my ankle and my side.

Q. After the happening of this were you taken home? A. Two men pulled my leg out of the hole.

Q. How far did the leg go into the hole? A. Down to the calf.

30 Q. Just above the ankle? A. Above the calf of the leg.

Q. The ankle was sprained? A. Bruised. The ambulance doctor said it was sprained and took me home in an ambulance.

Q. Were you put in bed when you got home? A. Yes.

Q. And you sent for a doctor? A. Yes, the doctor came the next day—Wainwright came the next day. That happened a quarter to five in the even-

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Margaret Williams, direct.

ing and he came the next day. The ambulance doctor bandaged my leg.

Q. Dr. Wainwright came and treated you? A. Yes.

Q. And continued to treat you up until now? A. Yes, and I occasionally get a nervous spell.

Q. How long were you laid up? A. Three or four weeks.

Q. How long were you in bed after the accident? A. Two or three weeks.

Q. During that time did you suffer any pain? A. Pain in the side of my leg and I threw up plenty and I had an inward hemorrhage. I threw blood from the mouth.

Q. After the two or three weeks were you able to do anything around the house? A. I was able to go around the house but I didn't go out.

Q. After you were able to get out on your feet and go to Dr. Wainwright, you went for a further treatment? A. Yes.

Q. For what? What were you suffering from? A. Pain in the side and the leg.

Q. Pain in the back? A. My back, here (indicating).

Mr. Markley: I object to that. When you say side do you mean side or pelvis?

The Court: He asked her what she means by that. I will let her explain it. Don't be suggesting; let her tell where the pains are.

Mr. Elkin: I apologize.

Q. Mrs. Williams, you say your side. Tell us what you mean by side—whether it is the leg, the body, or the back or what part do you mean when you say side? A. When I have a pain there I have

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Margaret Williams, direct.

a pain here (indicating the pelvis) and a pain in my back here (indicating).

Q. Have you stated that to the doctor? A. Yes.

10 Q. Was there any other condition that he treated you for? A. I had to telephone for an ambulance. The woman had to telephone for an ambulance and they had to inject a needle in my arm to quiet my nerves; that was at ten o'clock at night.

Q. Will you tell us from the date of the accident up to the present time if you were suffering from any other condition except the pain in the back? A. The pain in the back, in the side and the ankle. That is where it bothers me.

20 Q. And you are nervous? A. I am nervous since I fell that time.

Q. Do you suffer headaches?

Mr. Markley: I object to that.

Mr. Elkin: Withdrawn.

Q. Do you suffer from anything else now? A. Just pain in the side and back and the nervousness.

Q. You were treated by Dr. Hill? A. In September.

30 Q. What were you treated for? A. A nervous breakdown I had.

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

The Court: Sustained. Strike it out.

Q. Was it because of this accident—the condition?

Mr. Markley: I object to that.

40 The Court: Describe whether you were sick or well. You don't have to determine

Margaret Williams, direct.

where it came from. That is the doctor's province. Strike it out.

Q. At the time of the accident were you working? A. I was working at the Idle Hour Tea Room. 6 Cortlandt Street.

10 Q. What were you doing? A. Taking care of the silver and glasses there.

Q. On your way home that day it happened? A. Yes, I was coming home from work.

Q. How was it that you were working? Just why were you going to work?

Mr. Markley: I object to that as immaterial.

Mr. Elkin: Withdrawn.

20 Q. You were married at the time? A. Yes.

Q. You had how many children? A. Two children.

Q. Who was attending the children? A. My niece was with the baby before I got hurt.

Q. Why work? A. My husband was only making \$4 a day in Brooklyn in a sandpaper place and I couldn't get along on that.

Q. Your circumstances—

30 Mr. Markley: I object to that as immaterial whether she was working or not. We don't care whether he was earning four dollars a day or twenty-eight dollars a week. We are not concerned with that.

The Court: Sustained.

Q. You were working? A. Yes.

Q. You were working before the accident? A. I always worked.

40 Q. What did you usually work at? A. I used

Margaret Williams, cross.

to do the office cleaning before I took the job in the tea room.

Q. Have you worked since the accident? A. No, I tried to.

10 Q. Where? A. 299 Broadway. I was taken home sick, and the Doctor treated me.

Q. You couldn't work? A. I went to work and I had to lay in the office on the lounge and they had to come from Jersey to be with me. I was laid up three weeks.

Q. How much did you earn before the accident? A. \$12 a week.

Q. Before this accident were you nervous? A. No, I never was nervous.

Q. Did you ever have headaches? A. No.

20 Q. Pains in the back? A. No.

Q. This condition you say came on after the accident? A. Since that time.

Q. Are you suffering from this condition now? A. Yes.

Q. Dr. Wainwright is treating you? A. Yes.

Q. Dr. Wainwright is the family physician? A. Yes.

Mr. Elkin: That is all.

Cross examination by Mr. Markley:

30 Q. Where were you working, Mrs. Williams, at the time of the accident? A. The Idle Hour Tea Room.

Q. How long before the accident had you worked there? A. About three months, I would say.

Q. Did you work there after the accident? A. No.

40 Q. That is the beginning of July? A. No, I didn't say it was July.

Margaret Williams, cross.

Q. Did you work there in July? A. No.

Q. Did you go back in July for any reason? A. No.

Q. You say you were working for twelve dollars a week? A. Yes.

10 Q. Isn't it a fact that you went back on July 14th and worked for at least three weeks? A. No, I did not.

Q. Isn't it a fact you didn't work before the accident? A. No, I worked before the accident.

Q. Do you know when the accident happened? A. I had some stuff from the Tea Room with me.

Q. When did the accident happen? A. The 23rd day of June, 1925.

20 Q. What time did you leave the Idle Hour Tea Room that day? A. 20 minutes to five that day. I had a block to walk to the tube.

Q. When did you quit? A. Half-past four.

Q. You say you were married at the time of the accident? A. Yes.

Q. How long were you married? A. Six years to this man.

Q. Are you a married woman six years, altogether? A. No, eighteen years, altogether.

30 Q. How many children have you? A. Ten altogether.

Q. At the time of the accident? A. Only two babies; two twins.

Q. How old are you? A. 40 the first of July.

Q. You have had ten children altogether? A. Yes.

Q. Altogether you have been married how long? A. 18 years.

40 Q. How many children were living with you at the time of the accident? A. Just the two twins, the others died when babies.

Margaret Williams, cross.

Q. This train that you said you were getting off of at Grove Street you say that the door hit you as you got off and that it threw you? A. Yes.

Q. Where did it hit you? A. Right in the ankle.

Q. Which ankle? A. The left.

10 Q. The outside part of the left ankle? A. Yes, sir.

Q. That is, looking at my left ankle, as I understand it, the door hit you right there (indicating)? A. Yes, sir.

Q. It struck you there (indicating), is that right? A. Yes.

Q. You were going out of the car at this time? A. Yes.

Q. Walking out the centre door? A. Yes.

20 Q. You claim that this door came from your left and as you stood there the door started to close? A. Yes.

Q. Now, as you were getting off the car the door came from your left and hit you on the outside of your left ankle at the Grove Street station? A. Yes.

Q. That is the only place it struck you? A. That is all, the ankle.

30 Q. The door only opened up about a foot? A. I don't know exactly how far it opened. I know I didn't notice it until it struck me in the ankle and threw me.

Q. When the door came out to close how far out did it come before it stopped?

Mr. Elkin: I object to that. That was after the accident.

Q. Did you see the door come from your left? A. Yes.

40 Q. As you were going out of the coach? A. Yes.

Margaret Williams, cross.

Q. Did you see it with your own eyes? A. I didn't see it until it struck me.

Q. Didn't you see it closing? A. Not until it struck me in the ankle.

Q. You were with somebody? A. Mrs. McDonald and her two children. 10

Q. Mrs. McDonald got off before you did? A. Yes, sir.

Q. Then you got off? A. The two children got off.

Q. Did you get off? A. After them I got off.

Q. You got off after the children? A. They got off and I was getting off after that.

Q. There were people waiting to get on? A. Yes.

Q. Nobody had gotten on when you got off? A. Nobody but Mrs. McDonald got off and the children. 20

Cross examination by Mr. Markley:

Q. Mrs. Williams, I asked you whether you saw this door closed from your left side. Did you? A. I didn't see it.

Mr. Elkin: I object to that. She says she did not see it until it hit her. 30

Q. Do you remember testifying here at the last trial? A. Yes.

Q. I just want to recall to your mind what you said at the trial on March 30th, 1926. "You say this door was coming from your left side as you were going out the center door? A. Yes.

"Q. You saw that positively? A. Positively, yes, on my left side.

"Q. Did you see it come from the left side with your own eyes? A. Yes." 40

Margaret Williams, cross.

The Witness: Yes, with my own eyes. I didn't see the door until it struck me.

Q. It struck you on the left ankle? A. Yes.

Q. On the outside of the left ankle? A. On the outside of the left ankle, surely.

10 Q. You say now that you did not see the door?
A. I didn't see the door coming until it struck me in the ankle and threw me.

Q. You saw it coming from the left side? A. Yes.

Q. Didn't you know that these doors, going out the centre door to the tube, do not come from the left but from the right? A. I never noticed it.

20 Q. You would not say it did not come from the left side? A. When it struck me on the left side, that is how I knew it came from the left side.

By the Court:

Q. Even if the car was in reverse?

Mr. Markley: It don't make any difference. It always closes from your right to your left, not from your left.

Q. Even though the car is in reverse?

30 Mr. Markley: Yes.

By Mr. Markley:

Q. Both side entrances? A. Yes.

Q. You still live, as I understand it, at 390 Grove Street? A. Yes.

Q. You are the janitor there? A. Yes.

Q. Janitor there from the first of 1926? A. About a year.

40 Q. You did the janitor work? A. My husband does that.

Margaret Williams, cross.

Q. And you, too? A. No, positively my cousin was staying with me.

Q. Who is your cousin? A. Gladys Welsh.

Q. At the time of the accident you say you had only two children? A. Yes.

Q. Twins? A. Yes.

Q. Born since the accident? A. Five years next September.

Q. Two years? A. Two years—five years this September—three years and a half.

Q. Do you remember when they were born? A. The fourth of September, 1921.

Q. You had only two children at the time of the accident? A. Yes.

Q. You have a woman to take care of these children while you were at work? A. Yes.

Q. Who? A. Margaret Sites, in the tearoom.

Q. You say in the tearoom? A. Yes.

Q. Where did you work before that? A. The Farmers' Loan & Trust Company Building.

Q. You worked two or three months before the accident in June, 1926? A. In number six Cortlandt Street, the Idle Hour Tea Room.

Q. Before that you were a clean-up woman in the Farmers' Loan & Trust Company Building? A. Yes, at the A. & P. Company.

Q. You had her take care of the children before the accident? A. Yes.

Q. What is her name? A. Mrs. Bullard.

Q. Did you ever have a Mrs. Decker? A. Yes, I have her name; after I got hurt I had her.

Q. You had her before you were hurt? A. No.

Q. Who? A. My niece from December to March.

Q. She worked for you three years before the accident? A. All the time.

Margaret Williams, cross.

Q. Who took care of the children for three years? A. Mrs. Bullard.

Q. Where did she live? A. 167 Third—her former name was Cline, over Woolen & Henders at Third.

10 Q. Dr. Wainwright stopped treating you on August 15th, 1925, didn't he? A. He treated me the day after the accident?

Q. He stopped on August 15th? A. Yes, August 15th.

Q. Up to the time of this trial in March, 1926, you didn't have any doctor? A. I used to go to his house.

20 Q. Did you testify on the last trial; didn't you say after August 15th? A. I don't remember; I told the truth. I went to his office.

Q. Who was your doctor? A. Dr. Wainwright.

Q. He attended you how long? A. From the time I got hurt until the 15th of August.

Q. You said that at the last trial it was March 30th, 1926? A. That is the truth.

Q. Is it a fact that he stopped treating you on the 15th of August? A. I continued going to Dr. Wainwright until three or four weeks ago.

30 Q. What did you mean when you said here, "How long did he treat you"? Didn't you say the 15th of August? A. That is in the house; in my house.

Q. You were asked in here what was the amount of the bill and you said twenty dollars. A. Medicine.

Q. The doctor's bill? A. No, I said for medicine.

Q. What medicine? A. For my leg and other medicine.

40 Q. The leg wasn't bandaged? A. I beg your pardon, the doctor from the hospital bandaged my leg.

Margaret Williams, cross.

Q. Referring to page 30 where you were asked that very question: "Who was that, do you know? A. The doctor from the City Hospital."

"Q. Do you know his name? A. I don't remember.

10 "Q. You don't know his name. Did he put a bandage on? A. No."

The Witness: Yes, he did. I don't remember saying that. I can't say when but he put a bandage on my leg.

Q. You were asked— A. If I said that it is a mistake.

Q. You were asked if he put a bandage on and your answer was no.

20 The Witness: Yes, on my leg until Wainwright came the next day.

Q. As a matter of fact Mrs. Williams you had a seat in this car, didn't you? A. Yes.

Q. Mrs. McDonald had a seat? A. Yes.

Q. The train came to a stop at Grove Street and you got up from your seat and immediately after the train stopped there you started to get off? A. Yes.

30 "Q. Isn't it a fact that you stumbled over on your heel and fell?"

Mr. Elkin: I object to that.

The Court: Strike it out. That has nothing to do with the question of injury.

Mr. Markley: Exception.

Q. Isn't it a fact that the door did not strike you at all? A. Yes, sir, the door struck me and threw me.

40 "Q. Isn't it a fact that your heel came off and that is what threw you?"

Margaret Williams, cross.

Mr. Elkin: I object and ask the Court that he be not allowed to go into the negligence.

The Court: Sustained—

Mr. Markley: Exception.

10 "Q. Isn't it a fact, Mrs. Williams, that what caused you to fall down was not the door hitting you, not the door striking you on the left ankle, on the outside, but that your heel came off?"

Mr. Elkin: I object. I think Mr. Markley knows better than that.

The Court: Don't make any speeches.

Mr. Elkin: I object to counsel going into the question of liability that has been established and I ask that you instruct counsel not to go into the liability but only the damages and injury.

The Court: Sustained.

Mr. Markley: Exception.

20 "Q. Your heel did come off?"

Mr. Elkin: I object as incompetent, irrelevant and immaterial.

The Court: Sustained.

Mr. Markley : Exception.

30 Q. Is your heel here? A. Yes, that is my heel.

Mr. Markley: I offer that in evidence.

(The Article referred to was received in evidence and marked D-1 of this date.)

Q. When your heel came off that is what made you fall?

Mr. Elkin: I object.

The Court : Sustained.

40 Q. As a matter of fact when you fell you were

Margaret Williams, cross.

picked right up and went home? A. Two men, I don't know them, picked me up, pulled my foot out of the hole. The heel came off when they pulled me up.

Q. When you stepped into the hole you went into it to the ankle? A. A little above the ankle, 10 to the calf of the leg.

Q. You didn't go above the ankle? A. No.

Q. Weren't you asked this question and didn't you make this answer at the last trial, "How far did you go in the space? A. A little above the ankle."

Q. Now you say a little above the ankle? A. To the calf of the leg.

Q. You think back, Mrs. Williams. Isn't it a fact that when you fell you came along out of this train and it was standing still? Isn't that a fact? 20 A. Yes.

Q. The door was open? A. Yes.

Q. Wide open? A. Yes.

Q. You went a step forward when your heel came off and your foot went down to the ankle in a one inch space between— A. No, it wasn't open until it was opened and the man pulled me out. The man picked the heel up.

Q. Don't you know that the heel was picked up on or in the platform? A. They carried me up to the ambulance. 30

Q. Where were you picked up? A. Out of the hole, I guess.

Q. When you fell down didn't you go away down this hole? A. Yes, sir, because I was on this side (indicating).

Q. Didn't you go down a little bit above your ankle? A. Right here (indicating).

Q. Show the jury how far. A. Right here (indicating). 40

Margaret Williams, cross.

Q. Here is your ankle? A. Yes.

Q. Three or four inches above the ankle? A. Yes.

Q. This space is only three or four inches wide?

A. I don't know how wide it is.

10 Q. Didn't you say so last time? A. I didn't; I couldn't say. I don't know.

Q. Wasn't this question asked you, "What was the space between the side of the platform and the side of the car?"

"The Witness: A space like that (indicating).

20 "Q. Hold it so the jury can see how much space there was between the side of the car and the side of the platform. How many inches? A. About three or four inches."

The Witness: I couldn't answer that answer because I didn't know the exact amount of space.

Q. Didn't you say last time, didn't you say the amount of space? A. No, sir, a man picked me up and took me home to my baby.

30 Q. You have been there many times? A. Yes, sir, for months.

Q. From Grove Street for years before? A. Yes.

Q. You never got a bill from Dr. Wainwright, did you? A. No.

Q. You never paid Dr. Wainwright anything? A. No.

Q. Your weight is 178 pounds? A. At the time of the accident.

Q. But you weigh more than that now? A. I don't know how much I weigh now.

40

Margaret Williams, cross.

Q. When were you last weighed? A. When I applied for a position in the telephone company.

Q. How much was it then? A. She said I reduced—the girl in the telephone building.

Q. Don't you know how much you weigh now? A. No, I do not.

10

Q. Isn't it a fact that you did not work in this Idle Hour Tea Room? A. I worked in the Idle Hour Tea Room for three months before the accident.

Q. This accident happened June 23rd, 1925. Isn't it a fact that you didn't work there until after this accident? A. No, sir, I worked there. I had stuff from the tea room that I was taking to the baby.

Q. And Mrs. McDonald— A. She worked on Fulton Street and I worked on Cortlandt. She called for me at Cortlandt.

20

Q. You had the children along? A. The boy was on vacation.

Q. Two children? A. Not mine; Mrs. McDonald had a boy. She worked in 122 Fulton Street.

Q. Didn't she have a boy? A. Yes.

Q. You had a seat and Mrs. McDonald had a seat next to you? A. No, not next.

30

Q. When the train stopped you got up and went out together? A. They got off ahead.

Q. Together? A. No, she heard me and said, "What is the matter?" and turned back.

Q. Weren't you shopping? A. No, working.

Q. You had bundles? A. No, a cake and some stuff that Miss Cook gave me to take to my baby.

Q. Miss Cook is in the Idle Hour Tea Room? A. Yes.

40

Marie Baldwin, direct.

MARIE BALDWIN, sworn for the plaintiff.

Direct examination by Mr. Elkin:

Q. What is your name? A. Marie Baldwin.

Q. Where do you live? A. 191 Railroad Avenue.

10 Q. Jersey City? A. Yes, sir.

Q. How long have you lived in Jersey City? A. All my lifetime.

Q. Do you know Mrs. Williams? A. Yes, sir.

Q. Were you working at a place known as 299 Broadway some time in December, 1926, I believe?

A. Yes, I was working there at that time.

Q. Do you recall an instance when you brought Mrs. Williams home owing to the fact that she was sick? A. Yes, she fainted dead away at work.

20 Q. She was working as a wash lady? A. Yes.

Q. She fainted away? A. Yes.

Q. Did you take her home? A. I did.

Q. Why did you take her home? A. Because she was sick.

Q. She could not go home alone? A. Yes, sir, she fell on the floor and the boss sent for me and asked if I would take her home.

Q. That was the only time you know of that she fainted? A. Yes.

30

Mr. Elkin: That is all.

Mr. Markley: No questions.

Mr. Elkin: That is the plaintiff's case.

40

Nicholas N. Feury, direct.

NICHOLAS N. FEURY, sworn for the defendant.

Mr. Elkin: I will admit the Doctor's qualifications.

Direct examination by Mr. Markley:

Q. Doctor, what college are you a graduate of? 10
A. Vanderbilt University.

Q. How long have you been practising? A. 30 years.

Q. Here in Jersey City? A. In Jersey City.

Q. Have you had any special experience in traumatic injuries? A. Yes.

Q. Will you briefly state what your experience has been with traumatic injuries—I mean those due to accidents? A. I have been doing that work 20
for the past 15 years. I have been connected with many hospitals—the City Hospital, Christ Hospital, charge of the County Hospital for ten years and I had charge of a hospital in France during the war.

Q. A Base Hospital? A. Yes.

Q. Where thousands of cases were brought in? A. Yes, thousands of cases.

Q. Did you have occasion, at my request, to call upon Margaret Williams, the plaintiff in this case? 30
A. I did.

Q. How many calls did you make? A. I made two calls; I called first on the 26th day of June, I think it was, of 1925.

Q. Three days after the accident? A. Two or three days after the accident. At that time Mrs. Williams refused to permit me to make an examination.

Q. Where was she when you saw her? A. In her home. 40

Nicholas N. Feury, direct.

Q. Was she in bed or up? A. She was up and about.

Q. Was she dressed in her regular clothes or not? A. Yes, dressed.

10 Q. Did you see her walk at that time? A. I did.

Q. Tell the jury what is the matter with her walk, if anything? A. Nothing; I noticed the record of her gait; she didn't limp and she was not assisted by crutches or a cane.

Q. She was fully clothed? A. Yes.

Q. That was three days after the accident? A. The 26th day of June, 1926.

Q. Did you go back again later? A. I did.

Q. When? A. That day in August.

20 Q. What year? A. 1925.

Q. Do you remember the day of the week? A. I don't remember the date, but it was around the 21st of August, 1925.

Q. Did you make an examination of her left ankle at that time? A. Yes, she complained of having had an injury to her left ankle. At that time I found no objective evidence, that is evidence that I could see myself, that I could appreciate, such as a swelling, discoloration or deformity.

30 Q. Is it done by applying the fingers, pressing? A. Yes. I made an examination of the ankle; there was full motion, full function of the ankle.

Q. She walked? A. She walked; she was up and about at that time.

Q. When you pressed on the ankle and the surrounding tissue was there any exclamation of pain, or any remark of that kind made by her? A. I don't recall at this time whether there was or not.

40

Nicholas N. Feury, cross.

Q. As far as you could observe— A. As far as I recall at this time of my examination I found no objective evidence of injury, no loss of function or disability.

Q. What else did you find? A. She also complained of an injury to her left loin, that is the space between the pelvis and the lower rib. I could find no objective evidence of any pathological or diseased condition there. There was no evidence of any trauma.

Q. Did she complain of any back injury? A. No, she did not.

Q. Did she complain of any nervousness at that time? A. She did not.

Q. So far as you could observe from looking at her and observing her walk there wasn't any injury at all? A. No.

Q. What was her condition when you saw her on August the 21st, 1925,—from your examination? A. As far as my examination is concerned I found no evidences of any after results or aftermath—no injury whatsoever.

Q. Suppose she did have a swollen ankle, somewhat swollen, three days before you saw her and that you then saw her walk three days later, if the ankle was the result of a hurt, would it affect her walk? A. I should say it would.

Q. It would be evidenced from her walk three days later? A. Yes.

Cross examination by Mr. Elkin:

Q. You were there for the railroad company. That is so? A. I don't know who sent for me; either the railroad company or Mr. Markley's office.

Q. You know now that it was the railroad com-

40

Nicholas N. Feury, cross.

pany? A. I say I don't know whether it came from the railroad company or from Mr. Markley's office—either one or the other.

Q. The railroad company is going to pay you? They pay? A. There are very prompt.

10 Q. They are very good? A. Yes, very good; better than some others I know.

Q. They asked you to go down there and you did so on June 26, 1925? A. Yes.

Q. When you went in there did you state what you were there for? A. Yes.

Q. What did you tell? Who sent you? A. My usual statement is when I go into a home to give my name—Dr. Feury, and that I come to represent the people I do represent.

20 Q. What did you say to her? A. Pardon me?

Q. What did you say to her? A. "I represent the defendant company; I came to examine you in regard to the accident that you had." That is my usual introduction to a house.

Q. You told her that you represented the Hudson and Manhattan Company? A. No, sir.

Q. She was alone? A. Yes.

Q. Her doctor was not present? A. No.

30 Q. She refused to allow you to examine her, that is what you said? A. I didn't say that; I didn't see her doctor.

Q. How long after that did you stay around watching her before going out? A. How long around watching her? Me?

Q. Sure. A. Not at all.

Q. Did you go right out? A. As fast as I could go.

Q. What did she think of that? A. I don't know what was in her mind; it was in my mind.

40 Q. Did she come up to the door and stand or

Nicholas N. Feury, cross.

walk around the house? A. I can't give you those details.

Q. You said she walked around fully clothed; nothing was the matter? You observed her movements? A. I did.

10 Q. Who opened the door for you? A. She did.

Q. Did she stand, at the time, at the door? A. I can't give you the details; I really don't remember. I am doing a number of cases every day in the week and I shall have to refer to the report, and the report does not make any note of whether she opened the door with her right hand or whether she put her foot against the door.

20 Q. You want this jury of 12 men to believe that so far as this accident is concerned—as far as you can tell—by standing there you couldn't tell whether she walked toward the door with absolutely nothing wrong as far as her walk is concerned; that is so? A. Yes.

Q. You don't know how long she walked—how much she walked? You can't tell that? A. No.

Q. You can't tell us anything about that other than what you saw her do while you remained there. In August, 1925, you went there again? A. Yes.

30 Q. Was her doctor present? A. No.

Q. She was alone? A. Yes.

Q. Then she allowed you to make this examination? A. She did.

Q. How long did the examination take? A. I couldn't answer that.

Q. Five minutes? A. I couldn't answer that.

40 Q. Ten minutes? A. It takes long enough to ask numerous questions and put them down on the form, which I have—my own form. I get the history of the case to get a real understanding of

Nicholas N. Feury, cross.

the case as to the past and present conditions. I don't go into how the accident occurred; that is the legal evidence, and I do not enter into that. Whatever minutes it takes to put that down on paper and how long it takes me to make my physical examination, that is how long it takes me. Of course, every case is different. To give you the exact time I would not be able to tell you.

Q. She did make complaint about the pains she was suffering? A. In her ankle.

Q. And her side? A. And her side—in the loin.

Q. You could not find any objective symptoms at all? A. No, I could not.

Q. It is probable, Doctor, is it not, that one receiving an injury to the ankle and the injury accruing within a week, there might be pain emanating from the region where the injury was? That is so? A. You say probable?

Q. Isn't it probable that it showed in the sprained ankle? You can't see any objective symptoms? A. Oh, absolutely, yes.

Q. Assuming it to be a sprained ankle with objective symptoms given, is it probable that pain would come from that region? A. I don't know. You would have to tell how serious the injury was. There are some sprains—what are called sprains—but really are not sprains. These sprains are simply a pulling on the ligaments. They clear up in a week or ten days.

Q. Is there any pain after that? A. No, they cure up.

Q. How about a strain? A. That is a matter of degree. I would have to know what degree. It might be simply the ligaments, a tearing of the ligaments.

Nicholas N. Feury, redirect.

Q. Objective symptoms may go away and yet you find pain. That is so? A. Yes.

Q. This injury to the back and side— A. She complained of no injury to the back.

Q. As to the side, did she indicate where it was? A. Naturally if I described the loin, she indicated the loin.

Q. It is probable that the objective symptom, that is, the outward appearance of the injury, may have gone away, and yet it is probable that pain would yet come? A. I would not say probably, no. I think that if an injury is severe enough to cause pain over that length of time that it would give objective evidences of trauma.

Q. In case of a fall on the thigh or the back with no objective symptoms, that is no outward appearances, yet the patient could suffer pain. That is so? A. Yes.

Q. That happens often in injuries to the back? A. Yes.

Q. Especially in falls? A. Yes.

Redirect examination by Mr. Markley:

Q. Was there any swelling? A. No.

Q. In the loin was there any swelling visible? A. None whatever.

Q. You made your examination with your hands? A. Palpated; press in between the fingers. After years of experience you appreciate what is underneath.

Q. Was there any other physical examination? A. None whatever.

Q. Is it unusual in a woman, Doctor, especially during the monthly period? A. I think so.

Q. A woman who has borne ten children would have a back ache? A. Yes.

Lillian Thaw, direct.

Recross examination by Mr. Elkin:

Q. Is it likely that she would not have a back ache? A. Couldn't be.

Q. Every woman who has had ten children has back aches? A. That is my firm belief.

10 Q. Everyone? A. Yes.

Q. Of course the attending physician would be a good judge of that—that is the man who attended her a number of years could tell pretty definitely as to what the causes of the injury were? That is your experience?

Mr. Markley: I object.

Mr. Elkin: Withdrawn.

20 Q. If you attended this woman as a family physician, knowing the history of the family, and this was the first injury, you would be in a better position to tell the direct cause? A. Yes. I know she had ten children.

Q. Assuming she had ten children and had this accident, would it be probable that the accident in any wise hurt her or would it be that it just had no effect upon her? A. I found no evidence of after effects of the injury. She did not complain of her back at all.

30 Q. You haven't seen her since? A. No, except in court—the last case and today.

Mr. Elkin: That is all.

LILLIAN THAW, sworn for the defendant.

Direct examination by Mr. Markley:

Q. Your name is Mrs Lillian Thaw? A. Yes.

Q. You are married? A. I am married.

40 Q. Living where? A. Nutley, New Jersey.

Lillian Thaw, direct.

Q. Are you the woman who kept the tea room under the name of the Idle Hour Tea Room? A. The Idle Hour.

Q. Where? A. Six Cortlandt Street.

Q. Were you the proprietor of that tea room? A. The sole owner.

10

Q. How long have you been the owner? A. Since May 18, 1925.

Q. Do you keep a record of your employees and the time during which they worked? A. I keep a record of the employees simply for my own information—for income tax or insurance.

Q. Income tax return and for insurance? A. Yes.

Q. And the name of the people who are working for you and how long they worked? A. When on my payroll, not detail information—just dates. That is all.

20

Q. Have you that record with you? A. I have.

Q. Did you have a Margaret Williams working for you as a cleaner or washer of dishes? A. As a dish washer.

Q. When did she first work for you? A. According to my record, July 14, 1925.

Q. Did she work for you before that? A. No.

Q. Had she worked for you before July 14, 1925? A. No.

30

Q. Did she work that week? A. She worked the 14th, that was a Tuesday—July 14th.

Q. That work began Tuesday? A. Yes.

Q. And Wednesday, Thursday, Friday and Saturday? A. Wednesday, Thursday, Friday and Saturday, yes.

Q. And the next week? A. Yes.

Q. Every day? A. Yes.

Q. Six days? A. Yes.

40

Lillian Thaw, cross.

Q. How much a week? A. \$12 a week.

Q. The Tuesday beginning she got how much?

A. Ten dollars.

Q. And for Saturday, July 14th, 1925? A. Yes.

10 Q. She worked only five days and therefore got only ten dollars? A. Yes.

Q. And then she worked the whole next week and got— A. Twelve dollars.

Q. She worked the week after? A. Got twelve.

Q. Did she do any work after that? A. Just one day.

Q. The following week? A. Yes.

Q. Going back to the 14th what was her hours of work? A. From nine to four.

20 Q. What did she do that required her to be there during that period of time? A. Washing dishes and drying them and helping clean up the kitchen.

Q. What do you mean by cleaning up the kitchen? A. After the work every day—mop up. Two of them had to do it and she had to do her share.

Q. She didn't work for you before July 14, 1925? A. That is right.

30 *Cross examination by Mr. Elkin:*

Q. Did you testify at the last trial? A. No, I did not.

Q. Were you subpoenaed? A. I was subpoenaed.

Q. They didn't call you? A. No, not last time.

Q. Who was it at the railroad company that got this information?

40 Mr. Markley: I object to that. It appeared at the last trial that she worked for the Idle Hour Tea Room.

Mr. Elkin: Withdrawn.

Lillian Thaw, cross.

Q. Did anybody from the railroad company come to you for this information? A. For what information?

Q. The information you are giving to us now? A. They came with a subpoena.

Q. When? A. Last Saturday afternoon. 10

Q. When before that time did they get in touch with you? A. I don't remember any other time.

Q. In other words, they subpoenaed you without knowing what you would do? A. Yes.

Q. You didn't tell him about anything? A. I didn't tell him about anything.

Q. Did you speak to anybody before getting on the stand? A. What do you mean speak to anybody before getting on the stand. 20

Q. Speak to anybody from the railroad company? A. Naturally I had to know what it was all about.

Q. To whom did you speak? A. I don't know the names of the people.

Q. Did you see this man (indicating Mr. Markley)? A. No.

Q. Is he here in court? A. No, not the lawyers.

Q. Have you got that subpoena? A. In my pocketbook; I haven't it here. 30

Q. The subpoena asked for the record? A. Yes.

Q. Is that the only record you have? A. Yes, for my own information.

Q. When did you make this record? A. I have kept it since I started.

Q. When did you make the entries in that record? A. What do you mean?

Q. When, in reference to the term of employment, do you make the record? A. I told you I didn't keep the items in detail. I keep them for my own knowledge—for income tax. 40

Lillian Thaw, cross.

Q. How long after the date of employment was this made? A. That is the 17th; she was employed the 14th.

Q. Now, have you Mrs. Margaret— A. Margaret Williams.

10 Q. Where is the Williams written in that record?

A. I keep no account of names—some of them are unpronounceable.

Q. Isn't that "Marg." A. And "W."

Q. Was this woman employed before you took the place over? A. The place was organized by me; there was no place there before.

Q. You were the first to open it? A. I was the first one.

20 Q. You have a number of employees there? A. Yes, and for your information I will say that I have never had anybody by the name of Margaret employed in my kitchen since or before. I have in the dining room, as a waitress. From the salaries I know who it was.

Q. You only put down the first names of the employees? A. Yes.

Q. You don't know whether it is Margaret Jones, Williams or Anderson? A. I know it is Margaret Williams.

30 Q. How do you know that? A. Because she told me. Williams is an easy name to remember.

Q. You remember according to your memory? A. To a great extent, yes.

Q. This record shows— A. Not in that instance; I am positive of that.

Q. Why did you put the initial—as a matter of fact you haven't any initial after the name of anybody but this Margaret "W." have you? A. May I see it? A. Yes, some of them.

40 Q. I mean in this July. A. It is so far back I

Lillian Thaw, cross.

don't remember, now. No, because there was no one else there with the name of Margaret except a waitress, and she, naturally, only gets a dollar a day.

Q. You had one by the name of Annie. That is correct? A. Yes. 10

Q. What was Annie's name? A. I don't know the name. I will tell you, in a place like mine where I keep a dish washer two days, I keep records. That is the only way I can do it.

Q. Tessie—what is that name? A. I don't know. Some of them are unpronounceable names, mostly Polish and Slavish—could be that.

Q. Wouldn't it be more probable that you would try to commit to memory, Tessie? Isn't that probable? A. No, I wouldn't know if it began with a "D" or "J"—the names are peculiar. 20

Q. Why is it that in this instance you put a "W" to indicate the last name of a person on that record? You haven't done it with any other. A. I don't remember.

Q. There was nothing peculiar about the employment that required that, was there? A. No.

Mr. Elkin: I have no objection to offering this in evidence. 30

By the Court:

Q. Did you write the "W" the same time you wrote the Mary? A. No, I did not.

Q. You did it at a later time? A. I did it at a later time.

Q. How long after you wrote the Mary did you write the "W"? A. I really couldn't tell you that.

Q. How long ago? A. I really can't remember.

Q. Two months ago? A. I really could not commit myself; I don't remember. 40

Lillian Thaw, cross.

Q. Three months ago? A. I say I don't remember; I am sorry.

Q. Why didn't you write it down there when you wrote the Margaret down? A. I do many things that way.

10

The Court: That is all.

Mr. Elkin: I offer this book in evidence.

Mr. Markley: I am trying my own case; I am putting in my own case.

The Court: I think the jury is entitled to see the book.

Mr. Markley: I haven't any objection to putting the book in but I think I should be given a chance to put it in.

20 *Recross examination by Mr. Elkin:*

Q. Have you any connection with the Hudson and Manhattan Railroad Company? A. No.

Q. Did you ever work for the Hudson and Manhattan Railroad Company? A. No.

Q. Are you interested in it in any way? A. No.

Q. Did you want to come here today? A. I certainly did not.

Q. You didn't tell them that you would not come? A. I did.

30

Q. Didn't we have a court officer sent for you? A. Yes.

Q. You didn't want to come? A. No, because I couldn't come.

Q. You were told to bring this book? A. Yes.

Q. Have you three Marys? A. Three—only one in the kitchen.

Q. Who was the Margaret in the kitchen? (Stand up!) Is that the Margaret in the kitchen?

40

A. Yes.

Lillian Thaw, cross.

Q. Is she the woman who came to work for you in July, 1925? A. Yes.

Q. Did she ever work for you before that? A. No.

Q. When did you open this place? A. On May 18, 1925. 10

Q. Did it exist before you opened it? A. No.

Q. Did you create the Idle Hour Tea Room? A. I did.

Q. When? A. May 18, 1925.

Q. It did not exist two or three months before June 23rd, 1925? A. It was May 18th, 1925.

Q. This accident happened June 23rd, 1925? A. Yes.

Q. Isn't the reason you put the "W" in there to distinguish the Margaret in the kitchen from the other Margarets not in the kitchen? A. I don't remember. 20

Q. Did you have any ulterior motive in putting the "W" in there?

Mr. Markley: I object.

The Court: Sustained.

Q. What was the rate of the Margaret in the kitchen? A. Twelve dollars.

Q. What is the rate of the waitresses? A. Eleven dollars. 30

Q. This is the rate in here (indicating)? A. Yes.

Mr. Elkin: I offer this in evidence.

(The Book referred to was received in evidence and marked P-2 of this date.)

Q. When did you make the entries in the book?

A. That is the payroll.

Q. How often did you make the payroll checks?

A. Every Friday. 40

Lillian Thaw, cross.

Q. You pay on Friday? A. Friday.

Q. Every Friday? A. Except Christmas.

Q. The payrolls are made up on Friday? A. Yes.

10 Q. Every week you make out the payroll? A. Yes.

Q. And every week you wrote in this book? A. Yes.

By the Court:

Q. Your practice was to put the names when you made up the payroll? A. Yes.

Q. In this case you did not put the W in at the time? A. No.

20 Q. Some time after? A. Yes, I don't know when.

Q. When did you do it, after she left? A. I really couldn't say; I just did it.

Q. Why didn't you do it with the others when they left? A. They leave every day.

Q. You never put in the name of anybody else? A. Some of them.

Q. In the books? A. I am not sure that I put them in the book. I make notes of it in the other books.

30 *By Mr. Elkin:*

Q. You say you were subpoenaed here. Is that right? A. I was subpoenaed, yes.

Q. Where was the subpoena served upon you? A. In New Jersey.

Q. Where? A. In my home.

Q. Where? A. Last Saturday at Nutley.

40 Q. How did they get the address? A. I don't know, I have been away two weeks; I don't know how they got it.

Lillian Thaw, cross.

Q. You certainly did not want to come here? A. I didn't want to come here.

Q. You had your shop June 23rd, 1925,—the shop was running? A. Yes.

Q. Of your own knowledge you say that you used that book, madam, but that you could not tell us who worked in your place at that time? 10

A. No, I could not.

Q. If it wasn't for this book you would not know anything about Mrs. Williams working nor anything about her? A. No.

By the Court:

Q. Did you discharge Mrs. Williams? A. No.

Q. She left of her own accord? A. She left of her own accord. 20

Q. Her work was satisfactory? A. Yes.

By Mr. Elkin:

Q. Did she work for you on June 12th, 1925? A. She came July 14th, 1925.

Q. What is that (referring to a book)? A. Margaret, waitress, one dollar a day, five days that week.

Q. Is it a fact that some of these women who worked in the kitchen took off a couple of days? 30

A. Yes, but I always put that at the top of the page; I keep the waitresses together.

Q. Is there any special reason for that? A. Just for my own information.

Q. How many waitresses have you? A. I have nine now; I don't know how many then; that was over three years ago.

Q. You have two Margarets down here? A. Yes.

Q. June 12th and 19th. Is that right? A. I don't remember. 40

Lillian Thaw, cross.

Q. How much a week do the waitresses get?

A. Eleven dollars.

Q. They work six days? A. Some five.

Q. And some two days some times?

10 Mr. Markley: I object to that.

Q. Did she work for you in August? A. She worked one day.

Q. In August? A. Yes, sir.

Q. When, August 7th? A. No.

Q. What day? A. About the third I think, I am not sure. I paid in cash that time out of the petty.

Q. What is this, "accident, Monday, paid \$2 cash, Margaret Williams"? Is that right? A. Yes.

20 Q. How do you know she had an accident? A. She told me.

Q. When did she tell you?

Mr. Markley: I object to that as immaterial and incompetent—the conversation between the witness and plaintiff.

The Court: Sustained.

Q. You say she worked for you August 7th?

A. No, I did not say that.

30 Q. When was the last time she worked for you?

A. I said about the third—it was Monday.

Q. Is that the notation? A. Yes.

Q. Was there anything peculiar about the leaving that made you put this entry, "Accident Monday?"

Mr. Markley: I object to that.

The Court: Sustained.

Q. You were not interested in the accident? A. I was not.

40

Lillian Thaw, cross.

Q. And yet you put a notation of an accident in your book. That is right?

Mr. Markley: I object to that.

The Witness: I said I didn't know about the accident except what she told me.

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

The Court: Strike it out.

Q. The record does show, Madam, "accident Monday, paid \$2 cash to Margaret."

Mr. Markley: I object to that, the record speaks for itself.

The Court: Ask her, "Did you write that?"

The Witness: Yes, it is my record.

Q. Nobody else keeps that? A. Absolutely, nobody knows where I keep it.

Mr. Markley: The record speaks for itself; I object to that.

Q. When you made this record up, Madam, it was after she was paid off; that is so? A. I made the notation, that notation, yes.

Q. These other names you put in there before you made this notation? A. Yes.

Q. You are sure that the notation wasn't put in there after August, 1925? A. I don't know.

Q. You don't know when you put it in? A. That I don't know. That was paid out of the petty; I paid in cash. That is, not in the payroll check.

Q. You were not concerned with this woman's accident? A. Absolutely not.

Q. You didn't expect to be subpoenaed? A. No.

Q. Can you give us an idea what it was—about

40

Charles J. Nungesser, direct.

this conversation that caused you to put the notation, "Accident" if you had no concern in it?

Mr. Markley: I object to that.

Mr. Elkin: Withdrawn.

10 CHARLES J. NUNGESSER, sworn for the defendant.

Direct examination by Mr. Markley:

Q. Mr. Nungesser, where do you live? A. I live at the present time at 255 Linden Avenue, Jersey City.

Q. How long have you lived in Jersey City? A. I guess about 24 years.

20 Q. What is your wife's name? A. Wilhelmina.

Q. Is she away? A. Yes.

Q. You were subpoenaed? A. Yes.

Q. Where did you live June 23rd, 1925? A. 390 Grove Street, Jersey City.

Q. That is the house Mrs. Williams lived in at that time? A. Yes.

Q. What floor did she live on? A. The second floor, right.

Q. Were you the janitor of that house? A. I was.

30 Q. How long had you been janitor prior to June 23rd, 1925? A. About a year and a half.

Q. Do you remember when she came home after the accident in June, 1925? A. I don't remember; I was away working.

Q. When you came home that night? A. My wife informed me that Mrs. Williams had had an accident.

40 Q. Did you go up to see Mrs. Williams? A. I did not.

Charles J. Nungesser, cross.

Q. When, first? A. About a week or so—to fix a light.

Q. In her apartment? A. Yes.

Q. Did you see her? A. I saw Mrs. Williams.

Q. About a week after? A. After the accident.

Q. Was she dressed or undressed at that time? 10
A. She was dressed.

Q. Fully clothed? A. Fully clothed and walking around the kitchen.

Q. Did you see her walk lame or limp? A. No, sir.

Q. Was there any injury that you could see? A. No.

Q. She was doing her household work? A. She isn't doing any housework at the present time.

Q. I mean a week after the accident. A. Not 20
while I was in there; she was talking about fixing the light.

Q. She was walking around? A. She was walking around.

Q. Do you remember seeing her on the street after that? A. Yes.

Q. How long after? A. Around the 4th of July.

Q. That would be 12 days—less than two weeks? 30
A. About 12 days or so.

Q. You saw her on the street? A. On the 4th 30
of July night.

Q. You saw her walking around? A. I saw her walking around in front of the stoop between our house and the next door. I remember talking.

Cross examination by Mr. Elkin:

Q. You did find out that an accident had occurred June 23rd, 1925? A. Oh, yes, I knew that as soon as I came home; my wife told me right 40
away.

Wilhelmina Nungesser, direct.

Q. How long did you know Mrs. Williams at that time? A. I knew her close to, I guess, two years—about two years and a half prior to that.

Q. During that time you knew she was a working woman? A. Oh, yes.

10 Q. She went to work to help support the family?

A. Yes, in New York, went over as a scrub lady, cleaning offices in New York.

Q. She always minded her own business? A. Yes.

Redirect examination by Mr. Markley:

Q. Did she have some old lady with her prior to the accident? A. Yes, an old lady who took care of the place.

20 Q. How long did she live with her? A. A year or so.

WILHELMINA NUNGESSER, sworn for the defendant.

Direct examination by Mr. Markley:

Q. Mrs. Nungesser, are you the wife of the man who was just on the stand? A. Yes.

Q. You have been subpoenaed here? A. Yes.

30 Q. He was the janitor of this house in which Mrs. Williams lived in June, 1925? A. Yes.

Q. You remember seeing her walk after the accident? A. Yes.

Q. Where did you see her? A. Down on the street.

Q. Was she dressed? A. Yes.

Q. And walking? A. Yes.

Q. Did she have any limp? A. No.

40 Q. She walked just as she always did before the accident? A. Yes.

Q. She walked after the accident? A. Yes.

Wilhelmina Nungesser, cross—redirect.

Cross examination by Mr. Elkin:

Q. You had some dispute with Mrs. Williams some time after the accident about your sister or your husband's sister-in-law, some words passed between you and Mrs. Williams? A. No words between Mrs. Williams and I. 10

Q. Some dispute? A. No, I never spoke to that woman; never bothered her.

Q. Did you speak to her while she was in this house? A. Only once when I asked her what had happened to her.

Q. When? A. I can't remember exactly.

Q. Two men helped her—carried her out? A. Yes.

Q. You know that Mrs. Williams went to New York to help support the family? A. That I couldn't tell you. 20

Q. You knew she went to work in New York? A. Yes.

Redirect examination by Mr. Markley:

Q. You never had a desire to know? A. No.

By the Court:

Q. Were you the janitress in the building? A. Yes.

Q. How many people were in that building? A. I think eight tenants. 30

Q. Did you ever talk to any of the tenants? A. I did once.

Recross examination by Mr. Elkin:

Q. Did you testify at the last trial? A. No.

Q. They subpoenaed you? A. No.

Q. Who was it that got you this time?

Mr. Markley: I object as incompetent, irrelevant and immaterial. 40

Mr. Elkin: Withdrawn.

Wilhelmina Nungesser, recross.

Q. Did you volunteer your name—give it to the railroad company? A. No, I did not.

Q. You don't know how they got you? A. No.

Q. Did they speak to you before you came up here? A. No.

10 Q. Not a word? A. No, I was out that time.

Q. You were out. Did they question you later? A. No.

Q. They haven't said a word to you? A. No.

Q. You are positive? A. Positive.

Q. You didn't make a statement? A. No.

Q. The lawyer didn't speak to you? A. No.

Q. Positive? A. Yes.

Q. They subpoenaed you but you don't know where they got your name? A. I don't know.

20 Q. The first words you uttered now were the first words regarding Mrs. Williams that you have uttered since June, 1925. You are sure of that? A. Yes.

Q. Did you ever make a statement? A. I never made any statement.

Q. Did your husband speak to you about the accident? A. No.

Q. When you saw Mrs. Williams walking after the accident where was she, down in the street?

30 A. I was just coming from my mother's.

Q. What day of the week was it? A. I really couldn't tell you.

Q. The early part of the week or the last part of the week? A. That I couldn't tell you, I couldn't remember.

Q. Was it in the afternoon or— A. In the evening.

Q. What time? A. Late at night, about ten or half-past.

40 Q. At night? A. Yes, sir.

Dolph L. Wertheimer, direct.

Q. Did you meet her as you were walking home?

A. No, she was down by the door.

Q. Sitting there? A. Sitting inside.

Q. You didn't see her walk? A. No.

Q. You were just sitting there? A. Yes.

Q. You don't know how she walked at all? A. 10
No.

Mr. Elkin: That is all.

DOLPH L. WERTHEIMER, sworn for the defendant.

Direct examination by Mr. Markley:

Q. Where do you reside? A. In Newark, New Jersey.

Q. What is your business? A. Manufacturer. 20

Q. Any connection with the Hudson and Manhattan Railroad? A. None whatever.

Q. Did you ever have any connection with the Hudson and Manhattan Railroad Company? A. No.

Q. You were subpoenaed here today? A. I was.

Q. You were subpoenaed at the last trial? A. I was.

Q. On June 23rd, 1925, were you at Grove Street station of the Hudson and Manhattan Railroad Company in the afternoon, the day that Mrs. Williams had an accident? A. Yes. 30

Q. On the train or waiting? A. Waiting.

Q. Where were you with respect to the centre door? A. Almost in the middle, in front of it.

Q. Did you see the door open? A. I did.

Q. You saw the people coming out? A. I did.

Q. Did you see Mrs. Williams come out? A. I did. 40

Dolph L. Wertheimer, direct.

“Q. As she came out of that door of the car did the door strike her at all?”

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

The Court: Sustained.

Mr. Markley: Exception.

“Q. Will you just tell us what you saw with respect to Mrs. Williams coming out of that centre door?”

Mr. Elkin: I object as incompetent, irrelevant and immaterial.

Mr. Markley: I want to bring out that counsel claims that it struck the outside of the left ankle. For the purpose of the record I want to show that the left ankle was not injured.

The Court: Sustained. The jury has already decided that the left ankle was it. It is a question of liability to this woman, injured in the left ankle.

Mr. Elkin: Received in this accident.

Mr. Markley: Was she injured in the ankle or struck?

The Court: In the court's opinion she proved the injury mentioned in the complaint.

Mr. Markley: That is for the jury to decide.

The Court: The amount of damages is placed upon this jury to decide how much she is to get for what the other jury has sustained. It was a question of liability and they came in with a verdict against the defendant.

Mr. Markley: On the question of liability

Dolph L. Wertheimer, direct.

let us assume under your Honor's ruling that it does not dispose of the injury—what the injuries were. That is for the jury.

The Court: This jury is concerned with damages in terms of money, as to what the injury she alleges were worth to her. That is what they are going to determine. It is not for me to determine if hit in the ankle is worth \$50, the back, nothing, and the sides for another \$50. That is their problem.

Mr. Markley: How can they determine what it is unless we know where she was struck; what the injuries were that she received. That is my point.

The Court: Her complaint has been sustained.

Mr. Markley: You will not let me prove that the door did not strike her?

The Court: Then she would not be here on the question of damages only. I am not arguing about the door; I was not there myself. Here we have had the advantage of testimony and the only question before the jury is the amount of damages.

Mr. Markley: As I understand it, your Honor refuses my proof by this witness that the door of the car did not strike her ankle or her leg?

The Court: I do.

Mr. Markley: Exception.

The Court: I will allow you that.

By Mr. Markley:

Q. Mr. Wertheimer, did this centre door close or begin to close as she came out?”

Dolph L. Wertheimer, direct.

Mr. Elkin: I object.

The Court: Sustained.

Mr. Markley: Exception.

10 Q. Won't you tell me, Mr. Wertheimer, whether you observed whether or not the centre door closed at all as she was about to leave the car?

Mr. Elkin: I object.

The Court: Sustained.

Mr. Markley: Exception.

By Mr. Markley: Would you please tell the jury what you observed as to what injury the plaintiff sustained—Mrs. Williams?"

20 Mr. Elkin: I object, that is not competent whatsoever as to injury?

The Court: Sustained and an exception allowed.

Mr. Markley: Exception.

"Q. Did you see whether the door closed as she was coming out, from the right-hand side or the left-hand side?"

Mr. Elkin: Same objection.

The Court: Sustained.

30 Mr. Markley: Exception.

"Q. Won't you tell us, Mr. Wertheimer, whether you observed whether the door closed or not at the time?"

Mr. Elkin: Objected to.

The Court: Sustained.

Mr. Markley: Exception.

40 Q. Was the door opened or closed when she came out?

William J. Dickinson, direct.

Mr. Elkin: Objected to.

The Court: Sustained and exception allowed.

WILLIAM J. DICKINSON, sworn for the defendant. 10

Direct examination by Mr. Markley:

Q. Mr. Dickinson, where do you live? A. 321 Park Avenue, East Orange.

Q. What is your occupation? A. Sales manager.

Q. Have you any connection with the Hudson and Manhattan Railroad Company? A. No, sir.

Q. Have you anything to do with them except that you ride on their trains? A. No, sir. 20

Q. On June 23rd, 1925, were you in the Grove Street station when Mrs. Margaret Williams was about to alight from the centre door? A. Yes, on June 23rd.

Q. Where were you with respect to the door? A. A little to the right.

Q. About to enter? A. Yes.

Q. Was the door open? A. Yes.

Q. The train was at a standstill? A. It was. 30

Mr. Elkin: I object.

Q. After the door opened did you see Mrs. Williams come out? A. I did.

"Q. Did the door close at all?"

Mr. Elkin: I object.

The Court: The same ruling.

Mr. Markley: Exception.

Q. As you stood there waiting to enter as Mrs. Williams came out, as you testified, what did you 40

William J. Dickinson, direct.

observe? A. I observed her fall forward on the platform.

"Q. Was the door closed at all?"

Mr. Elkin: I object to that and ask that the answer be stricken out?

The Court: Sustained.

Mr. Markley: Exception.

Q. What did you do? A. I picked her up off the platform.

Q. The station platform? A. Yes.

Q. Right near the door? A. Right close to it.

"Q. Did you observe whether or not the door struck her?"

Mr. Elkin: Wait a minute. I object.

The Court: Sustained.

Mr. Markley: Exception.

"Q. Do you know whether this door as it would close would close from the right side or the left side as she alighted?"

Mr. Elkin: I object.

The Court: Sustained and an exception allowed.

Q. Didn't Mrs. Williams foot go down? Did you observe whether Mrs. Williams' foot went down between the side of the car and the side of the platform? A. Yes.

Q. How far down? A. I didn't notice in inches, I couldn't tell.

Q. About. A. I didn't notice. I helped pick her up. Her leg was between the car and the platform.

Q. You picked her right up? A. Yes.

Summation.

July 1, 1927.

Mr. Markley summed up the case on behalf of the defendant.

Mr. Elkin in his summation to the jury said in part:

Mr. Elkin: If you have had the experience that I have had with the Hudson and Manhattan Railroad Company you would know that you can't get a settlement.

Mr. Markley: Mr. Elkin has said something unfair. He has said that "if you had had the experience that I have had with the Hudson and Manhattan Railroad Company you would know that you can't get a settlement." That is not his experience and it is not the testimony in this case. I ask that the jury be instructed to disregard it.

The Court: The jury is so instructed.

Mr. Elkin: Disregard that. I apologize. (Continuing summation.) I know a case where a poor fellow couldn't get anything, and he (indicating Mr. Markley) knows it himself.

Mr. Markley: I object to that and ask that the jury be instructed to disregard it.

The Court: I will take care of that in my charge.

Mr. Elkin (continuing): I had a case of a colored girl in March. I know what they gave her. Give us a large verdict. It is the same case, the same injuries, but the men on that jury disregarded the distinctions between white and black. Be guided by the elements of justice and righteousness.

Mr. Markley: I object to that and ask that the jury be instructed to disregard it and I note our exceptions to the Court's refusal to so instruct the jury.

Court's Charge.

The Court thereupon charged the jury as follows:

The Court: Gentlemen of the Jury, at the outset I will state that which you already understand: This is a case that has been tried before.
10 In accordance with an order which was entered by another Justice of this Court, the only question to be decided now is the amount of damages.

The question of liability on the part of the defendant was established by the previous verdict. You gentlemen are called upon to establish the true amount of damages and you will establish that by the evidence submitted to you, which you deem credible and from the papers in the case in regard to the claim of damages. The burden
20 involved in the previous trial was to prove the liability of the plaintiff and that, of course, you will determine from the testimony on that point, which you deem to be credible.

The arguments between counsel and counsel and counsel and the Court, form no part of your consideration of this case whatsoever.

You are the sole judges of the facts. It rests upon you to decide the case upon the testimony which you deem credible, as you recall it. It is
30 not the testimony as I recall it, or as the attorney for the defendant or the testimony as recalled by the plaintiff's attorney that shall be your guide; it is what you recall of the testimony, and I might say in that regard that even though your recollection might be at variance with the stenographic record, that is the basis of your judgment.

If you find that the defendant is responsible in money damages for the injuries incurred, then
40

Court's Charge.

you will have to decide what the preponderance of evidence establishes to be the amount of damages sustained by her and that will be your judgment.

In conclusion, let me warn you not to hurry through this case in your deliberation because it
10 is the last day of jury service and that means sometimes rush. I caution you not to do that. Give the case fair consideration both to the defendant and to the plaintiff, from the testimony adduced before you.

Mr. Elkin: May I suggest this which I think the jury should decide. In a verdict of damages only there must be two verdicts. I want the jury to know that they should find one for the husband
20 and one for the wife and for separate amounts. Will your Honor charge that?

The Court: Yes; as requested, it is true, gentlemen, that this case has double damages. The husband claims that he was injured because of the loss of his wife's comfort, society and money laid out to the extent of the medical attention in endeavoring to cure his wife of her injury. In that regard you would not find \$5,000 because he,
30 in his complaint, has stated that the damage is \$5,000. That is not necessarily true, unless you find it so. But in no event can you find more than \$5,000 for him. We have here an injury, which to her has a value of \$10,000; that is for her to establish and for you to believe from the testimony adduced. In no event, in that case, can you bring in a verdict for more than \$10,000, but when you render a verdict, render a verdict in two instances as to the plaintiff John Williams against the Hudson-Manhattan Railroad Company,
40 and as to Margaret Williams, in regard to her

Court's Charge.

claim against the Hudson-Manhattan Railroad Company.

10 Mr. Markley: I would like to ask your Honor to instruct the jury that the amount sued for has no bearing on the amount they should allow, that being dependent upon the evidence.

The Court: With this change I will say of the request that the amount claimed in the pleadings has no bearing except so far as you will find from the evidence that it is proved. It is simply a limitation which the plaintiff has placed upon himself, but what the damages shall be is for you to decide from the evidence alone.

20 Mr. Markley: I also ask you to charge the jury that the whole verdict depends entirely upon the sworn testimony in the case.

The Court: I so instruct you—what you are able to find in damages from the credible testimony submitted.

Mr. Markley: May I ask your Honor to instruct the jury that the wife, herself, should be allowed nothing for expense or doctor bills. Those are not proper, as I understand it.

30 Mr. Elkin: Thirteen hundred dollars, I think, under the Married Women's Act. She is entitled to these earnings as her own; then under the Common Law, the husband is entitled to his claim. I think under the Married Women's Act \$1,340 would be her own.

Mr. Markley: I think counsel is unfair in saying \$1,300. Counsel is assuming that she lost that amount.

40 The Court: It is for you to determine how much the wife lost in the capacity of a working woman as a result of this accident. Under the law, as I see it, if there is anything coming to her in a

Court's Charge.

private manner, under the circumstances, this should not be included in the wife's findings—for her, but in the findings for the husband.

10 Mr. Markley: If the Court please, I want to note an exception to that part of the Court's charge which dealt with the burden of proof; I want to note an exception to the failure of your Honor to instruct the jury with respect to negligence being the proximate cause, or with respect to negligence. Your Honor has in mind that this trial is one for damages only?

The Court: Yes, sir.

20 Mr. Markley: As to the claim of the wife's loss of earnings, I except to your Honor's charge stating that should be part of her husband's verdict. The ground of my objection is that it appeared that she was engaged in a business separate and apart from her husband and that she retains those earnings herself. There is no evidence that the husband spent anything for medical expenses, at least there is no evidence of the reasonableness of the amount. I realize that there is testimony of the doctor as to the amount of his bill and testimony of the wife as to the amount, but I do not believe there is any testimony as to the reasonableness of these amounts.

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Notice and Grounds of Appeal.

(Filed April 14, 1928.)

To ALEXANDER SIMPSON, Esq.,
Attorney of Plaintiffs-Respondents.

SIR:

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TAKE NOTICE that the defendant-appellant, Hudson & Manhattan Railroad Company, appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in this cause, on the following grounds:

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The Supreme Court of New Jersey erred in giving judgment for the plaintiffs-respondents instead of for the defendant-appellant, Hudson & Manhattan Railroad Company, for one or more of the grounds of appeal urged in said court.

Dated April 9, 1928.

Respectfully yours,

COLLINS & CORBIN,
Attorneys of Defendant-Appellant.

Service acknowledged
April 10, 1928,

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ALEX. SIMPSON.

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Opinion of Supreme Court.

(Filed March 28, 1928.)

NEW JERSEY SUPREME COURT,

No. 62 OCTOBER TERM 1927.

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MARGARET WILLIAMS and JOHN WILLIAMS,
Plaintiffs-Respondents,

v.

HUDSON & MANHATTAN RAILROAD COMPANY,
Defendant-Appellant.

Submitted October Term 1927 Decided March 20
, 1928.

On Appeal from Hudson County Common Pleas Court.

For Appellant: COLLINS & CORBIN, EDWARD A. MARKLEY, of counsel.

For the Respondent: ALEXANDER SIMPSON.

Before—GUMMERE, Chief Justice and Justices BLACK and LLOYD.

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PER CURIAM:

This is the defendant's appeal from a judgment against it in the Hudson Common Pleas. Mrs. Williams was a passenger on a car of the defendant Hudson & Manhattan Railroad Company. When she got off at Grove Street, Jersey City, her leg was caught by the premature closing of the car door and went through the space between the car and

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Opinion of Supreme Court.

the platform and was injured. For the damages consequent upon the injuries suit was instituted by her and her husband.

10 There had been a previous trial and on a rule a new trial granted as to damages only. On the re-trial a verdict was awarded to Mrs. Williams for \$500 and to the husband for \$125.

20 The first, second and third points argued in appellant's brief are that the trial judge refused to limit the negligence of the defendant to the premature closing of the door and in excluding as an element of negligence the spacing between the car and the platform. The relation of the car and platform was not in issue. The only element of negligence alleged in the complaint was that the defendant failed to afford to the plaintiff sufficient time to alight from the car, but negligently and without warning closed the door against her, thereby causing the injuries complained of. And this issue the trial judge submitted to the jury in language which left no doubt that that was the sole basis upon which the plaintiff could recover.

30 The fourth point is that the court erred in instructing the jury that the defendant was "under the duty of affording a reasonable opportunity for this plaintiff to alight," and it is urged that under the cases of *Foley v. Brunswick Traction Co.*, 66 N. J. L. 637; *Mason v. Erie R. R. Co.*, 75 N. J. L. 521, and *Olsofrom v. North Jersey St. Ry. Co.*, 81 N. J. L. 321, this was error because the court omitted to say that the defendant was under a duty only to use "reasonable care" to afford the plaintiff an opportunity to alight.

40 As applied to the facts of this case we think the omission was not error. The cases cited deal with passive conditions for which the defendant might

Opinion of Supreme Court.

or might not be responsible. In the present case the negligence of the defendant if it existed consisted wholly in the affirmative act of the defendant's servant in causing the plaintiff to fall by reason of the premature closing of the door, and the charge in effect meant that it was the duty of the servant to avoid such improper closing. In view of these facts the ground of complaint under this head is hypercritical and does not justify reversal. Particularly is this so when in the charge it was immediately added that if the jury found that the door was shut upon the plaintiff it was for it to say whether or nor the defendant company exercised the degree of care already defined. 10

It is next contended that the trial court erroneously applied the rule that the defendant being a common carrier of passengers was obliged to use the highest degree of care and that the defendant was liable for the slightest negligence. Appellant's brief does not correctly quote the charge in this respect in that it left out the words, "that a reasonable man would use," immediately following the word "care." The ground of complaint seems to be that inasmuch as the train was not moving at the time the accident happened, and the negligence, if such there was, consisting of the premature closing of the car door, the rule of ordinary and reasonable care was applicable. It was the conduct of the defendant's servant in the course of transportation that gave rise to the plaintiff's cause of action and the higher standard was applicable. 20 30

It is next contended that on the second trial the court refused to permit counsel to examine the plaintiff on the incidents happening at the time of the accident, contending that these were admissible as bearing upon the plaintiff's injuries. We fail 40

Opinion of Supreme Court.

to see that the defendant has suffered any injury by any ruling complained of under this head.

10 It is finally urged that the court erred in failing to instruct the jury to disregard certain remarks made by counsel for the plaintiff in his argument to the jury. At the request of counsel the learned judge promised to take care of these remarks in his charge. This we think the court did in substance when it told the jury they must take the evidence solely as their guide and that the arguments of counsel formed no part of their consideration of the case. At all events defendant's counsel, apparently taking the same view, took no exception to the court's failure to admonish the jury further and the question is not before us.

20 The judgment is affirmed.

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Judgment of Supreme Court.

(RULE OF AFFIRMANCE AND REMITTITUR.)

(Filed April 7, 1928.)

The above entitled cause having been submitted to the Court at the October Term 1927 and the Court having heard the argument of the respective counsel and duly considered the same, filed their opinion at the January Term 1928, affirming the judgment of the Hudson County Court of Common Pleas brought up by said appeal. 10

It is therefore Ordered that the judgment of the said Hudson County Common Pleas Court be and the same is hereby affirmed and the record remitted to the court below to be proceeded with in accordance with this judgment and the practice of said court. 20

Entered April 7, 1928.

On motion of
ALEXANDER SIMPSON,
Attorney for Appellee.

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New Jersey Court of Errors and Appeals

MARGARET WILLIAMS and JOHN WILLIAMS,
Plaintiffs-Respondents,

v.

HUDSON & MANHATTAN RAILROAD COMPANY,
Defendant-Appellant.

Action at Law.
On Appeal from
Supreme Court.

BRIEF IN BEHALF OF DEFENDANT-APPELLANT.

1.

Statement of the Case.

This appeal brings before this Court for review a judgment of the Supreme Court affirming judgments of the Hudson County Court of Common Pleas, in favor of the plaintiffs and against the defendant, in an action wherein the plaintiff Margaret Williams, sued to recover damages for personal injuries sustained as she alleged by reason of negligence on the part of the defendant-appellant, in closing the center door of one of its coaches upon her as she was in the act of alighting from a train at the Grove Street Station, Jersey City. Her husband sued to recover for moneys expended and loss of services by reason of his wife's injuries.

The case was tried twice, first, before Judge EGAN, who after the jury brought in a verdict of six cents in favor of the plaintiffs, granted a new trial on damages only (pp. 1-8). The second time it was tried before Judge GALLAGHER on damages only and the jury brought in a verdict in favor of the plaintiff Margaret Williams for \$550 and in favor of her husband for \$125 (p. 9).

The former defendant Pennsylvania Railroad Company had a verdict directed in its favor by the Trial Judge and is not therefore concerned in the appeal (pp. 4 and 5). We shall hereinafter refer to the appellant as defendant and to the respondents as plaintiff.

2.

Grounds of Appeal.

The grounds of appeal are directed to errors in the charge of Judge EGAN on the question of liability as well as to his refusal to charge a number of requests of the defendant on the same question (p. 12, line 1, p. 14, line 20). The grounds of appeal are also directed to errors alleged to have been committed on the trial on damages only first, with respect to the admission and exclusion of testimony and secondly, with respect to the refusal of the Trial Judge to instruct the jury to disregard certain remarks made by counsel for the plaintiff (p. 14, line 20 to p. 16, line 20).

3.

Brief of the Argument.**POINTS**

I.

The Trial Judge erred in refusing to limit the jury to the negligence charged in the complaint and proven on the trial and in refusing to charge the defendant's third request which limited the jury's consideration to the alleged negligence charged in the complaint and proven on the trial.

The only negligence charged against the defendant is contained in Paragraph 5 of the complaint which is as follows (p. 2, lines 1-20):

"5. The negligence of the defendants consisted in this:

"Defendants did not use reasonable care in the management, operation and control of the said train upon which plaintiff Margaret Williams was a passenger, but on the contrary, as she was attempting to alight from said train at the Grove Street station of the defendants, the agents and servants of the defendants, did not afford her sufficient time to alight therefrom, but negligently and carelessly, suddenly and without warning, closed the door of said train against and upon her body and injured her."

On the trial the only negligence which the plaintiff attempted to prove against the defendant was that it negligently closed one of the center doors of the coach from which she was alighting. Her testimony in that respect was as follows (p. 18, line 10 to p. 19, line 5):

"Q. Were you able to sit down or did you have to stand up? A. Well, I got a seat.

"Q. Well, when you got to Grove Street did you intend to get out at Grove Street? A. Yes, sir.

"Q. Where were you sitting with reference to the center door, how near to the center door? A. I do not exactly know how near I was to the door, but I went to get out.

"Q. But you got up and went to the center door? A. Yes, to get out.

"Q. You were going to get out the center door? A. Yes.

"Q. As you were going to get out of the door what happened? A. The door struck me in the ankle and threw me.

"Q. How far did it close when it struck you in the ankle? A. About that much (indicating).

"Q. About a foot? A. Yes.

"Q. And struck you in which ankle? A. In the left ankle.

"Q. When it struck you it threw you how? A. It threw me in the hole between the platform and the train.

"Q. That is when this door started to close and hit you it caused you to go in this opening? A. Yes; my foot went down.

"Q. How much of an opening was there between the side door and the platform? A. About that much (indicating). I had those low tan shoes on. I have the shoes home yet."

With respect to the space between the side of the coach and the station platform, she testified that it was not more than three or four inches, as follows (p. 33, lines 10-20):

"Q. What was the space between the side of the platform as you showed us before, and the side of the car—how much space? A. A space about that (indicating).

"Q. Hold it up so that the jury can see how much space was between the side of the car and the side of the platform; how many inches is that? A. About three or four inches."

It is clear that the only negligence charged as well as the only negligence proven was the alleged careless act of the defendant in closing the door upon the plaintiff as she was in the act of alighting. It also appeared, as the quoted testimony indicates, that there was a clearance between the side of the coach and the side of the station platform of three or four inches and as the plaintiff fell her foot went into this space although it was not caught in the space in question. It was necessary as a practical matter to have a clearance between the platform and the train and there was no evidence that a three or four-inch clearance was a negligent clearance or that the construction of the platform was a negligent construction because of that clearance. The defendant was therefore entitled to have the issue which was submitted to the jury with respect to its negligence limited to the allegations of the complaint and the testimony in support thereof and contra thereto. With that thought in mind, the defendant submitted its third request which is as follows (p. 107, lines 10-20):

"3. The only negligence charged against the defendant is that it carelessly and negligently closed the center door of the coach from which she was alighting at the Grove Street station. If the plaintiffs have failed to prove that the defendant negligently closed the center door then the plaintiffs cannot recover and your verdict must be for the defendant."

The Trial Judge refused to so instruct the jury (p. 102, line 40). Exception was duly noted to the Trial Court's refusal to charge this request (p. 105, line 30) and this exception is preserved in the fourth ground of appeal (p. 13, lines 30-40). The Trial Judge although he thus sharply had the issue drawn to his attention, merely left generally to the jury the question of whether or not the defendant

was negligent in any respect within or without the pleadings or proof (p. 97, lines 10-20). The Trial Judge instructed the jury that the plaintiff could recover if the defendant was negligent and its negligence was the proximate cause of her injuries (*id.*).

When we keep in mind the fact that the jury had before it evidence of a clearance between the side of the platform and the side of the coach, it is not difficult to understand that the jury might very well fall into the belief that the defendant could be held liable because of that clearance, even though it was not a negligent clearance and even though the door did not close upon her. Under the circumstances the defendant was entitled to have a specific instruction limiting the jury's consideration to the charge of negligence contained in the complaint with respect to which some testimony was offered for the purpose of showing that the defendant was negligent. The defendant on the other hand had a great deal of testimony for the purpose of showing that the door did not close at all while the plaintiff was in the act of alighting but that on the contrary, it remained open, and plaintiff fell by reason of stumbling over her own feet which in turn was caused by the heel coming off one of her shoes (p. 70, *et seq.*, p. 74, *et seq.*, p. 78, *et seq.*). In Point II we discuss the refusal of the Trial Judge to charge the defendant's seventh request, which took from the jury the question of whether or not the defendant was negligent by reason of the clearance between the side of the station platform and the coach. That was also refused (p. 14, lines 1-15). We therefore are confronted with a situation where the Trial Judge instructed the jury that they could find the defendant negligent on any theory, including the theory that the defendant was negligent by reason

of the clearance between the car and the platform, although the Trial Judge had called sharply to his attention the only issue with respect to negligence in the case and was requested to charge specifically on that issue which he declined to do. It is fundamental that the defendant can be held responsible only on the ground alleged in the complaint and proven on the trial and that it is error to permit the jury to consider as grounds of liability a theory or theories of negligence which are neither pleaded nor proven.

Excelsior Electric Co. v. Sweet, 59 N. J. L. 441;
Partridge v. Woodland Steamboat Co., 66 N. J. L. 290;
Murphy v. North Jersey Street Ry. Co., 71 N. J. L. 5.
Merklinger v. Lambert, 76 N. J. L. 806;
Jordan v. Reed, 77 N. J. L. 584;
Bierman v. Stiefel, 82 N. J. L. 658;
Duel v. Mansfield Plumbing Co., 86 N. J. L. 582;
Gilliard v. Public Service Ry. Co., 94 N. J. L. 288;
Oaklyn v. Rulofson, 98 N. J. L. 304;
Garibaldi v. Rubenstein, 99 N. J. L. 223;
Lambert v. Trenton & Mercer Corp., 127 Atl. 674.

We, therefore, respectfully submit that the Trial Judge erred in refusing to charge the defendant's third request.

II.

The Trial Judge erred in refusing to charge the defendant's seventh request which withdraw from the jury's consideration any question as to whether the defendant could be negligent by reason of the clearance between the side of the coach and the side of the platform.

The defendant's seventh request was as follows (p. 107, line 40 to p. 108, line 10):

"7. The defendant had the right to construct its platform and cars in such a way that there should be three, four or five inches clearance between the side of the coach and the side of the platform and even though you find that such clearance existed and yet find that the plaintiff Mary Williams was not struck by the coach door then the plaintiff's cannot recover and your verdict must be for the defendant."

Exception was duly noted to the refusal of the Trial Judge to charge this request (p. 105, line 30) and this exception is preserved in the fifth ground of appeal (p. 14, lines 1-15).

The plaintiff testified that the door closed as she was in the act of alighting. Defendant's witnesses testified that the door did not close at all as she was in the act of alighting but that she stumbled over her own feet as the result of the heel coming off of one of her shoes (p. 70, *et seq.*, p. 74, *et seq.*, p. 78, *et seq.*). There was, therefore, a question of fact as to whether or not the defendant was negligent in permitting the door of the coach to close upon her as she was in the act of alighting. However, there was no dispute that the clearance between the side of the coach and the side of the platform was not more than three to five inches.

Plaintiff's own testimony was to the effect that there was only three or four inches clearance (p. 33, lines 10-20). The members of the Court are familiar with the Grove Street station of the defendant. The platforms of the coaches are on a level with the platform of the station and the doors of the coaches are sliding doors which open into the side of the coach. There has to be some clearance between the side of the coach and the side of the platform and it is self-evident that three or four inches is not excessive. Therefore request number seven quoted *supra*.

The plaintiff offered no proof showing that the clearance in question was such as to charge the defendant with negligence. The authorities are uniform that in the absence of such testimony there can be no liability upon the part of a railroad company.

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

Feil v. West Jersey & S. R. R. Co., 77 N. J. L. 502;

Halm v. Freeholders of Hudson, 78 N. J. L. 712;

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

Raub v. L. V. R. R. Co., 87 N. J. L. 606.

In the *Kingsley* case, *supra*, the Court of last resort held that the intervening space between the platform and a car step although sufficiently large to permit the plaintiff to fall into it, was not evidence of negligence in the absence of testimony showing a recognized standard clearance and that the mere happening of an accident without some proof of facts from which the violation of a duty might be inferred will not constitute negligence.

In the *Traphagen* case, *supra*, the plaintiff al-

leged that the negligence of the defendant was that the car step which caused the plaintiff to fall was excessively high in that it was 24 to 26 inches from the ground. Again the Court of last resort held that there could be no recovery in the absence of testimony that such a step was unusual and not to be found ordinarily in the construction of street cars. At page 761, the Court said (73 N. J. L. 761):

"No standard height is shown to have been adopted and the managers 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 high or low, accidents will happen that might be avoided in each particular case if the height were different. For instance, in *Lafin v. Buffalo and Southwestern Railroad 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 practicable to have all platforms so constructed that the steps of the cars may be of a standard height. The existing differences in the usage of different railroads would indicate that such a standard is not practicable. The fact that the use of a footstool is so common, as the evidence here shows it is, is another indication that it has been found impracticable or undesirable to have the car steps lower."

It is, therefore, clear that the existence merely of three or four or five inches between the side of the car and the side of the platform was no evidence of negligence in the absence of proof of a standard clearance or a uniform construction by similar railroads, contrary thereto.

We, therefore, respectfully submit that the Trial Court erred in refusing to charge the defendant's seventh request.

III.

The Trial Court erred in refusing to charge the defendant's twelfth request.

This request was as follows (p. 108, lines 35-40):

"12. The defendant cannot be held liable in this case because it failed to warn the plaintiff of the clearance between the side of the coach and the side of the platform."

The purpose of this request was to remove from the jury's consideration any idea that the defendant could be held liable because of its failure to warn the plaintiff of the clearance between the side of the coach and the side of the platform. We have shown in Point II that the mere existence of the clearance of 3, 4 or 5 inches was no evidence of negligence. The Trial Judge refused to charge this request (p. 104, line 20) and this refusal was duly excepted to (p. 105, line 30) and this exception is preserved in the sixth ground of appeal (p. 14, line 20).

We have shown in Point II that the defendant had not failed in its duty to provide a proper platform for the use of the plaintiff in alighting from the coach, even though there was 3 to 5 inches clearance. The Trial Judge instructed the jury that the defendant owed the plaintiff a high degree of care and was bound to exercise a high degree of care to take her safely to her journey's end (p. 97, lines 30-40) and that the defendant was "responsible for the slightest negligence" and bound to exercise "the highest degree of care and diligence" (p. 97, line 40, to p. 98, line 10). The jury could very easily misunderstand this charge in the absence of specific instructions as to what the defendant in the exercise of a high degree of care was supposed to do. It is clear from the authori-

ties that the defendant was under no duty to warn the plaintiff of the clearance in question, there being no proof that there was negligence in the construction of the platform or its distance from the coach. That it is not negligence not to warn the plaintiff under circumstances such as those presented in this case, is clear from the authorities.

Feil v. W. Jersey & Seashore R. R. Co.,
77 N. J. L. 502, 504;

Kingsley v. D. L. & W. R. R. Co., 81 N. J.
L. 536, 651.

In *Feil v. W. Jersey & Seashore R. R. Co.*, 77 N. J. L. 502, *supra*, the Court of last resort, speaking through GUMMERE, C. J., at page 504, held:

"It is argued that even if it be held that the defendant company has not been shown to have failed in its duty to provide a proper platform for the use of the plaintiff, still it was charged with the duty of warning her of the depression in it, and that its failure in this respect rendered it liable to answer to the plaintiff for the injury received by her. We think no such burden rests upon these corporations. The duty of a railroad company to take care for the safety of its passengers, so far as the furnishing of appliances is concerned, is fully performed when those appliances are of a standard character and in proper repair. It is under no obligation to call the attention of its passengers to the way in which its platforms, its stations, its cars or any other of its appliances furnished for the use and transportation of its passengers are constructed, providing the method of construction is that which is generally adopted by other well regulated railroad companies."

We, therefore, respectfully submit that the Trial Judge erred in refusing to charge the twelfth request.

IV.

The Trial Court erred in instructing the jury that the defendant was under the duty "of affording a reasonable opportunity for this plaintiff to alight."

The instruction in question was as follows (p. 99, lines 15-20):

"Now, as a part of the rule I have already laid down respecting the duty of the defendant company, I would say that the company of course owed the duty within that definition I have given you of affording a reasonable opportunity for this plaintiff to alight from its cars, she having been a passenger."

Exception was duly noted to this part of the charge (p. 106, line 20); and this exception was preserved in the third ground of appeal (p. 13, line 20). This instruction is erroneous in that it makes the defendant liable for the result of its conduct, whether the defendant exercised reasonable care or not. In short, it makes the defendant an insurer of the plaintiff's safety, for under it the defendant was bound to afford the plaintiff a reasonable opportunity to alight, irrespective of whether it exercised reasonable care to do so or not. The cases are unanimous that this instruction is erroneous.

Foley v. Brunswick Traction Co., 66 N. J.
L. 637;

Dotson v. Erie R. R. Co., 68 N. J. L. 679;

Mason v. Erie R. R. Co., 75 N. J. L. 521;

Olsofrom v. North Jersey St. Ry. Co., 81
N. J. L. 321.

The rule is admirably stated in *Mason v. Erie R. R. Co.*, 75 N. J. L. 521 (*supra*), by GARRISON, J.,

speaking for the Court of Errors and Appeals, wherein, at page 523, he said (*italics ours*):

"The instruction exhibited by the first of the foregoing exceptions was erroneous in that it incorrectly stated that the duty of the plaintiff in error was to provide a reasonably safe place for its passengers to alight from its trains, whereby the jury was permitted to determine whether reasonable care had been exercised by the plaintiff in error not from the qualities of the conduct in that respect, but solely by the jury's opinion as to the results of that conduct. *The duty of the railroad company was, it is perhaps needless to say, merely to exercise reasonable care to provide a safe place for its passengers to alight.* *Dotson v. Erie Railroad Co.*, 39 Vr. 679.

"This distinction is fundamental,' as was said in the opinion of this court in *Foley v. Brunswick Traction Co.*, 37 Vroom 637, 'since it marks the difference between a carrier's liability for negligence and its guaranty of safe carriage. The former inheres in the implied duty owed by the defendant to the plaintiff. The latter does not so arise, and was not within the undertaking of the defendant.' In the same opinion this further language is used touching an instruction that is not distinguishable in principle from the one now before us: 'This instruction was, we think, erroneous. Its error lay in this, viz., that it gauged the liability of the defendant not by the quality of its conduct, but by the results of that conduct, thereby covering indiscriminately injuries resulting to the plaintiff from causes preventable by the exercise of due care on the part of the defendant, and injuries that might have happened notwithstanding the exercise by the defendant of the degree of care legally imposed upon it as a carrier of passengers. * * *

The gravamen of the plaintiff's action was the failure of defendant to use reasonable care for her safety as a passenger, hence the correct instruction would have been that the de-

fendant was liable for the plaintiff's injuries, if it failed to take reasonable precautions to see that the place provided by it for her discharge was a safe one for that purpose. * * *

It was the defendant's right to have that question submitted to the jury. The question that was submitted to the jury did not give the defendant its right in this respect, for while the occurrence of the accident demonstrated the unsafe character of the place at which the plaintiff was invited to alight, it could not lawfully be permitted to establish also the negligence of the defendant, which, upon this writ of error, was the effect given to it by the verdict.' Upon the authority, therefore, of the case cited, and of the reasoning on which it rests, the charge in the respect indicated was reversible error."

We therefore respectfully submit that this instruction was erroneous, for as stated, it made the defendant liable by the result of its conduct rather than by the conduct itself, and even though the defendant did exercise reasonable care, still it would be liable.

V.

The Trial Court erred in instructing the jury that the defendant owed the plaintiff, under the circumstances of this case, the highest degree of care and diligence and that the defendant was liable for the slightest negligence.

The Trial Court so instructed the jury without qualification (p. 97, line 40 to p. 98, line 10). The instruction was excepted to (p. 106, lines 10-15). The exception is preserved in the second ground of appeal (p. 12, line 30 to p. 13, line 20). Assuming that this request might, generally speaking, be regarded as an accurate statement of law, which

is doubtful, its application to the facts in this case can hardly be urged. It was undisputed that no train operation was involved, for during the entire occurrence, for which the plaintiff sued, the train was at a perfect standstill (p. 27, lines 20-30). In short, the train was at the Grove Street station. It had come to a stop. Plaintiff proceeded to alight. While she was in the act of alighting, she claims that the center door started to close; that it did not close more than a foot; that it struck her; she fell and then she got up again and at no time did the train move.

The law is well settled as laid down in *Mason v. Erie R. R. Co.*, 75 N. J. L. 521, by the Court of last resort as follows:

"The duty of the railroad company, it is perhaps needless to say, is merely to exercise reasonable care to provide a safe place for its passengers to alight."

Again, in *Falk v. N. Y. S. & W. R. R. Co.*, 56 N. J. L. 380, this Court, at page 382, said:

"It is the duty of a railway company to provide passengers with reasonably safe and convenient means of ingress and egress from its cars and carriages, and the railway company is liable for accidents happening by reason of the neglect of such duty to its passengers in descending from a car when at rest at a station, if the circumstances are such as to induce the passenger to believe that he has reached his point of destination and that it is safe for him to get out. *Patt. Ry. L.*, Sec. 261, and cases cited; *Central Railroad Co. ads. Van Horn*, 9 Vroom 133; *Delaware, Lackawanna and Western Railroad Co. v. Trautwein*, 34 *Id.* 169.

"This was the legal measure of the duty of the defendant to the plaintiff as a passenger, and it may be asserted that this declaration does with sufficient certainty charge the defendant with this obligation."

Again, in *Foley, et ux. v. Brunswick Traction Co.*, 66 N. J. L. 637, 640, where the plaintiff was injured by stepping on a stone as he alighted from defendant's car, the Court of Errors and Appeals reversed the case because of error in the charge. In discussing the correct statement of the legal duty owing by the defendant, the Court said at page 639:

"The gravamen of the plaintiff's action was the failure of the defendant to use reasonable care for her safety as a passenger, hence the correct instruction would have been that the defendant was liable for the plaintiff's injuries if it failed to take reasonable precautions to see that the place provided by it for her discharge was a safe one for that purpose."

We therefore respectfully submit that since no train operation was involved, but merely the discharge of a passenger at the station at the end of her journey while the train was at a standstill, the only duty resting upon the defendant under those circumstances, was that stated in the authorities cited, namely, to exercise reasonable care or to take reasonable precautions to permit the plaintiff to safely alight. This is quite different from the instruction given by the Trial Judge as applicable to the facts of this case, namely, that the defendant was bound "to exercise the highest degree of care and diligence" and that the defendant was "responsible for the slightest negligence."

VI.

The Trial Judge, on the second trial as to damages only, erroneously refused to permit the defendant to prove that the plaintiff was not injured in the manner which she alleged, which proof was offered for the purpose of showing that the plaintiff did not receive the injuries which she claimed.

This point covers a number of questions put to the plaintiff, to the witness Wertheimer and the witness Dickinson. The exceptions to the Trial Judge's rulings on these questions are preserved in defendant's grounds of appeal, numbered 10 to 24, inclusive, as follows (p. 14, line 40 to p. 16, line 21):

"10. The following questions to the plaintiff Margaret Williams were overruled:

"Q. Isn't it a fact that you stumbled over on your heel and fell?"

"11. 'Q. Isn't it a fact that your heel came off and that is what threw you?"

"12. 'Q. Isn't it a fact, Mrs. Williams, that what caused you to fall down was not the door hitting you, not the door striking you on the left ankle on the outside, but that your heel came off?"

"13. 'Q. Your heel did come off?"

"14. The Trial Judge overruled the following questions to the witness Wertheimer:

"Q. As she came out of that door of the car did the door strike her at all?"

"15. 'Q. Will you just tell us what you saw with respect to Mrs. Williams coming out of that centre door?"

"16. 'Q. Mr. Wertheimer, did this centre door close or begin to close as she came out?"

"17. 'Q. Won't you tell me, Mr. Wertheimer, whether you observed whether or not the centre door closed at all as she was about to leave the car?"

"18. 'Q. Would you please tell the jury what you observed as to what injury the plaintiff sustained—Mrs. Williams?"

"19. 'Q. Did you see whether the door closed as she was coming out, from the right-hand side or the left-hand side?"

"20. 'Q. Won't you tell us, Mr. Wertheimer, whether you observed whether the door closed or not at the time?"

"21. The Trial Court overruled the following questions to the witness Dickinson:

"Q. Did the door close at all?"

"22. 'Q. Was the door closed at all?"

"23. 'Q. Did you observe whether or not the door struck her?"

"24. 'Q. Do you know whether this door as it would close would close from the right side or the left side as she alighted?"

The colloquy between Court and counsel upon the Court overruling these questions, fully explains the point involved (p. 166, line 10 to p. 167, line 35):

"Q. Will you just tell us what you saw with respect to Mrs. Williams coming out of that centre door?"

"Mr. Elkin: I object as incompetent, irrelevant and immaterial.

"Mr. Markley: I want to bring out that counsel claims that it struck the outside of the left ankle. For the purpose of the record I want to show that the left ankle was not injured.

"The Court: Sustained. The jury has already decided that the left ankle was it. It is a question of liability to this woman, injured in the left ankle.

"Mr. Elkin: Received in this accident.

"Mr. Markley: Was she injured in the ankle or struck?

"The Court: In the court's opinion she proved the injury mentioned in the complaint.

"Mr. Markley: That is for the jury to decide.

"The Court: The amount of damages is placed upon this jury to decide how much she is to get for what the other jury has sustained. It was a question of liability and they came in with a verdict against the defendant.

"Mr. Markley: On the question of liability let us assume under your Honor's ruling that it does not dispose of the injury—what the injuries were. That is for the jury.

"The Court: This jury is concerned with damages in terms of money, as to what the injury she alleges was worth to her. That is what they are going to determine. It is not for me to determine if hit in the ankle is worth \$50, the back, nothing, and the sides for another \$50. That is their problem.

"Mr. Markley: How can they determine what it is unless we know where she was struck; what the injuries were that she received. That is my point.

"The Court: Her complaint has been sustained.

"Mr. Markley: You will not let me prove that the door did not strike her?

"The Court: Then she would not be here on the question of damages only. I am not arguing about the door; I was not there myself. Here we have had the advantage of testimony and the only question before the jury is the amount of damages.

"Mr. Markley: As I understand it, your Honor refuses my proof by this witness that the door of the car did not strike her ankle or her leg?

"The Court: I do.

"Mr. Markley: Exception.

"The Court: I will allow you that."

The Court had permitted the plaintiff on her direct examination to prove how the accident happened and where she was struck by the door. She testified that as she was going out of the centre door of the coach, it suddenly started to close, with the result that the door struck her on the left ankle and left leg and threw her (p. 123, line 30 to p. 124, line 10). As a result she said the ankle was sprained and bruised and she had to go to bed for three or four weeks (p. 124, line 20 to p. 125, line 25). On cross examination she said the door struck her right in the left ankle "on the outside part" (p. 130, lines 10-20). After she was able to get on her feet she said she suffered severe pains in her leg (p. 125, line 25).

Yet, on cross examination of plaintiff the Court refused to permit counsel for the defendant to show that the door did not strike the plaintiff's ankle or leg (p. 135, line 30 to p. 136, line 40). In fact the defendant was trying to show that the door did not strike the plaintiff at all. On the defendant's case the Court refused to permit the defendant to show that the door did not strike the plaintiff's leg or ankle (p. 166, line 1 to p. 168, line 40). Even questions such as "did the door strike her at all?" were overruled (p. 166, lines 1-5; p. 169, lines 30-40). These questions were addressed to two disinterested witnesses who happened to be passengers on the train, who would have testified that the door did not close and of course that it did not strike the plaintiff on the left leg or ankle or on any other part of her body. They so testified on the first trial (p. 70, *et seq.*; p. 74, *et seq.*). All these questions were overruled. Yet, they were material, even on the question of damages only, for the purpose of proving that the plaintiff was not struck on the ankle or leg and therefore that the leg or ankle was not injured as

the plaintiff claimed, and secondly, they were material for the purpose of discrediting the plaintiff as were the questions put to her on cross examination.

We respectfully submit that the Trial Court erred in overruling all of these exceptions, or some of them.

VII.

The Trial Court erred in refusing to instruct the jury to disregard certain remarks made by counsel for the plaintiff.

We give verbatim the colloquy between counsel for the parties and the Court (p. 171):

"Mr. Elkin: If you have had the experience that I have had with the Hudson and Manhattan Railroad Company you would know that you can't get a settlement.

"Mr. Markley: Mr. Elkin has said something unfair. He has said that 'if you had had the experience that I have had with the Hudson and Manhattan Railroad Company you would know that you can't get a settlement.' That is not his testimony and it is not the testimony in this case. I ask that the jury be instructed to disregard it.

"The Court: The jury is so instructed.

"Mr. Elkin: Disregard that. I apologize. (Continuing summation.) I know a case where a poor fellow couldn't get anything, and he (indicating Mr. Markley) knows it himself.

"Mr. Markley: I object to that and ask that the jury be instructed to disregard it.

"The Court: I will take care of that in my charge.

"Mr. Elkin (continuing): I had a case of a colored girl in March. I know what they gave her. Give us a large verdict. It is the same case, the same injuries, but the men on that jury disregarded the distinctions between white and black. Be guided by the elements of justice and righteousness.

"Mr. Markley: I object to that and ask that the jury be instructed to disregard it and I note our exceptions to the Court's refusal to so instruct the jury."

It is clear that these remarks were highly prejudicial. They were duly excepted to and the Court was properly requested to instruct the jury to disregard them. The only satisfaction that counsel for the defendant received was that the Court would take care of the matter in his charge. However, the charge will be read in vain for any reference to the remarks of counsel (pp. 172 and 173).

The exception to the Court's refusal to instruct the jury to disregard these highly prejudicial remarks is preserved in the grounds of appeal (p. 16, lines 20-30).

To say to the jury that it was counsel's experience that he never could get a settlement from the defendant in any case, was not true in point of fact and of no consequence, even if it were true, and the statement was made merely to prejudice the jury. To follow that with the statement that counsel for plaintiff knew of a case where a poor fellow could not get anything and that counsel for the defendant knew it, was just as prejudicial and untrue and, of course, immaterial and not part of a proper summing up.

Finally, to urge the jury to give a large verdict because a colored woman got a large verdict in the same kind of a case with the same kind of injuries, was highly prejudicial for the same reasons. None of these remarks were proper. The jury should have been instructed immediately to disregard them. The failure of the Court to so instruct the jury, we submit, is prejudicial error.

VIII.

Comment on opinion of Supreme Court.

The Supreme Court in disposing of the first, second and third points argued in this brief, said that the Trial Court submitted the case to the jury on the single element of negligence alleged in the complaint, namely, that the defendant failed to afford to the plaintiff sufficient time to alight from the car, but negligently and without warning closed the door against her. The Trial Judge in his charge, after reciting the allegations of the plaintiff and of the defendant, instead of limiting the question of negligence to the single element squarely, included in the third request to charge of the defendant which was refused, put the case to the jury on general statements that the plaintiff must show that the defendant was negligent. That the Trial Judge did not consider that the third request contained the only element of negligence in the case, is apparent from his language in refusing to charge that request. He said (p. 102, line 40):

"The third request I will not charge because I think it is rather narrow and slightly different from the testimony."

This clearly indicates that the Supreme Court erred in holding that the Trial Judge considered that the only element of negligence was (to quote its opinion) "that the defendant failed to afford the plaintiff sufficient time to alight from the car, but negligently and without warning closed the door against her."

The fourth point argued, *supra*, is said by the Supreme Court to be hypercritical, and the cases cited in Point IV are said not to be pertinent because they dealt with passive conditions for which the defendant might or might not be responsible.

It is evident, however, from the Court's refusal to charge the third request that an element other than the act of closing the door was in the mind of the Trial Judge as he delivered his charge. That only element must have been the passive conditions that the Supreme Court speaks of in its opinion, namely, the distance between the train and the platform at the station.

The contention in Point VI of this brief that on the second trial the Court refused to permit counsel to examine the plaintiff on the incidents happening at the time of the accident, is disposed of by the Supreme Court, by the statement that the defendant has not suffered any injury by any ruling complained of under this head. It is difficult to follow this reasoning because the evidence excluded all went in diminution of damages. The result of the exclusion of the questions overruled and which are quoted *in extenso* in Point VI, *supra*, was that the jury were not permitted to hear all the evidence as to the extent of the injury or as to the nature of the injury. The questions of the witness Wertheimer (p. 15, line 18) were clearly admissible. Indeed, one question overruled was, "Q. Would you please tell the jury what you observed as to what injury the plaintiff sustained, Mrs. Williams?" It seems to us idle to say that this witness's answer to that question was not proper on the question of damages. Wertheimer was a disinterested witness in no way connected with the Hudson & Manhattan Railroad Company and was on the platform on the day of the accident as a passenger (pp. 165, 168).

The Supreme Court disposes of Point VII, *supra*, with respect to instructions to the jury to disregard certain remarks made by counsel for the plaintiff, by saying that the language in the charge which directed the jury to disregard arguments of coun-

sel were sufficient in that respect. The outrageous character of counsel's remarks appears at page 171. A case of a colored girl said by counsel to be similar was dragged in (p. 171, lines 30-40), and yet the Court refused to instruct the jury to disregard it; unless the cold comfort of the general language referred to by the Supreme Court could be considered such a construction. It seems to us that the jury should have been instructed immediately to disregard them and that the Trial Court should not have contented itself with the language it used in the charge, which at best merely glossed over counsel's conduct. The case called for and merited instant rebuke of such remarks and instructions to the jury to disregard them.

For these reasons we respectfully submit that the judgment of the Supreme Court should be reversed with direction that venire de novo be awarded.

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Attorneys of Defendant-Appellant.

New Jersey Court of Errors and Appeals

MARGARET WILLIAMS and JOHN
WILLIAMS,

Plaintiffs-Respondents,

vs.

HUDSON & MANHATTAN RAILROAD
COMPANY,

Defendant-Appellant.

Action at Law
On Appeal from
Supreme Court.

BRIEF IN BEHALF OF PLAINTIFFS- RESPONDENTS.

STATEMENT OF FACTS.

The plaintiff-respondent, Margaret Williams, on the 23rd day of June, 1925, was a passenger in a tube train of the defendant-appellant; she boarded the train at Cortlandt Street, New York City, and rode to Grove Street, Jersey City, N. J. The train stopped at Grove Street—she left her seat, walked to the center door of the train, which was opened by an employee of the defendant-appellant, and was leaving the train, when suddenly and without warning, the door closed upon her, striking her on the left ankle. The impact knocked her down so that her left leg went into the space between the train and the platform. She

lignently closed the center door of the coach from which she was alighting at the Grove Street station. If the plaintiffs have failed to prove that the defendant negligently closed the center door, then the plaintiffs cannot recover and your verdict must be for the defendant" (p. 107).

This request was too narrow and not in accord with the complaint and the testimony adduced. If it is argued that it is error, it is certainly harmless error, because the Trial Judge properly charged the jury as to the duty imposed upon the plaintiffs before they could have a verdict; the testimony was left to them to decide whether the plaintiffs did prove the negligence of the defendant—and the testimony was in accord with the allegation of the complaint (pp. 96, 20).

The counsel for the defendant-appellant argues that the jury should have been specifically instructed regarding the clearance between the platform and the train and the limitation of the jury's consideration to the charge of the negligence as contained in the complaint. This is without merit. It was merely incidently that the plaintiff, Mrs. Williams, fell into the clearance after she was struck by the door. She did not claim nor allege that the defendant was negligent in constructing the platform or having such a clearance. It had no bearing on the case as to the question of liability. The jury found for the plaintiffs on the evidence showing carelessness in closing the door of the train before Mrs. Williams had an opportunity to get out. There was no need to limit the jury's consideration because the testimony was clear as to the closing of the door. It is reasonable to suppose and it must be taken as definite

that the jury believed the plaintiff's story as to the closing of the door upon her without warning.

The case was sent to the jury under the proper theory. The cases cited by the defendant are inapplicable.

POINT II.

There was no error by the Trial Judge in refusing to charge the defendant's seventh request.

The defendant's seventh request was as follows:

"The defendant had the right to construct its platform and cars in such a way that there should be three, four or five inches clearance between the side of the coach and the side of the platform and even though you find that such clearance existed and yet find that the plaintiff Mary Williams was not struck by the coach door, then the plaintiffs cannot recover and your verdict must be for the defendant" (pp. 107, 108).

The plaintiffs did not allege nor attempt to prove that the defendant was negligent in constructing the platform; nor in permitting a clearance between the platform and the train. It formed no part of the plaintiffs' case; it was merely incidental. There was no necessity for charging this request and the Trial Judge properly refused to so charge. The case did not involve the clearance and formed no part of the case. The plaintiffs did not attempt to charge the defendant with negligence in maintaining the clearance. Therefore, the request was improper.

The cases cited by the defendant are inapplicable because they involve negligent platforms and the like.

The testimony in this case comes within the opinion of *McPherson v. Hud. & Man. R. R. Co.*, 100 N. J. L. page 262, affirmed in 101 N. J. L. page 410.

POINT III.

The refusal to charge defendant's twelfth request was correct.

Defendant's twelfth request is as follows:

"12. The defendant cannot be held liable in this case because it failed to warn the plaintiff of the clearance between the side of the coach and the side of the platform."

The plaintiff did not attempt to hold the defendant liable for its failure to warn her of the clearance; the negligence was the closing of the coach door upon her while she was in the act of getting out of the train. The clearance had nothing to do with the injuries received by the plaintiff; she fell into the clearance after she was struck. It was not for the jury to consider whether the defendant had warned the plaintiff of the clearance, and, therefore, the Trial Judge properly refused to charge the request aforesaid.

Counsel for the defendant-appellant attempts to argue the question of the clearance as the gist of the negligent act of the defendant. This is erroneous. The case comes clearly within the *McPherson v. Hudson & Manhattan R. R. Co.*, *supra*.

POINT IV.

There was no error by the Trial Judge in instructing the jury that the defendant was under the duty "of offering a reasonable opportunity for this plaintiff to alight."

The objection of the defendant is without merit. See

Blumenfeld v. Hudson, etc., R. R. Co.,
89 N. J. L. page 580.

The Trial Judge properly charged the jury as to the duty which the defendant owed to the plaintiff, Mary Williams.

POINT V.

There was no error in the Court's charge as to the duty which the defendant owed to the plaintiff.

The Trial Judge correctly stated the rules of law applicable to the instant case. That part of the charge wherein the Judge stated:

"The rule that common carriers of passengers are bound to exercise the highest degree of care and diligence that a reasonable man would use, and that they are responsible for the slightest negligence, has been very generally adopted in this country and is the law of this state."

The door which struck the plaintiff, Mary Williams, was operated and controlled by the agent and servant of the defendant.

There was a train operation because the door was controlled on the train from which the plaintiff was alighting. The defendant was under a duty to use a high degree of care.

There was no attempt to hold the defendant liable because of any improper platform nor clearance, so, therefore, the cases cited by the defendant-appellant are inapplicable.

The Court's charge was proper. If it is argumentative that "the highest degree of care and diligence and that the defendant was liable for the slightest negligence" was erroneous—the balance of the charge rectifies same; and the error is harmless at the most.

POINT VI.

There was no error by the Trial Judge overruling certain questions.

The questions referred to by the defendant-appellant were propounded at the second trial; which trial was on the question of damages only. The defendant tried to show by the questions that the plaintiff, Mary Williams, fell over her own foot or that her heel came off—that the door did not strike her left ankle. The Court nor the jury were concerned about the liability—whether the door struck her or the manner thereof. These questions had been decided by another jury—and the liability of the defendant was fixed. The only questions involved at the second trial was the nature of the plaintiff's injuries, the extent thereof, etc.

The following are a few of the questions overruled by the Trial Judge:

"Q. As she came out of that door of the car, did the door strike her at all" (p. 166)?

"Q. Will you just tell us what you saw with respect to Mrs. Williams coming out of that center door" (p. 166)?

"Q. Mr. Wertheimer, did this center door close or begin to close as she came out" (p. 167)?

These questions were properly overruled because they had been decided by the previous jury. The witness testified at the first hearing. The jury at the second trial was concerned about the extent of the injuries which she alleged.

The defendant, at the first trial, tried to show that the plaintiff, Mary Williams, was not struck by the door, but fell on her left leg. The jury believed the plaintiff's story, namely, that the door did close upon her and knocked her down so that her leg went down into the clearance between the platform and the train. The defendant again attempted to show the same situation at the second trial and the Trial Court properly overruled the questions. These questions were not material, even on the question of damages only. They in no wise minimized the injuries. The defendant put Dr. Nicholas N. Feury on the witness stand and he testified as to what he found. It was for the jury to determine whether the plaintiff was injured in the manner testified by her and her doctors or whether there was no injury at all.

The jury, at the first trial, decided that the door did strike her. That phase of the case was definite and determined at the second trial. To say that these questions were propounded to discredit the plaintiff is without merit. The same attorney tried both cases, and he was familiar with the plaintiff's testimony and the verdict of

the first trial. The extent of an injury is best determined by a physician. Both plaintiff and defendant had doctors testify at the second trial. The plaintiff's doctors testified they treated her for an injury to her left hip, back, left side, also a sprain of the left ankle (p. 110). The injuries were due to some accident of some kind (p. 110).

POINT VII.

The defendant-appellant contends that the remarks of counsel, in his summation, were highly prejudicial. This is without merit. The verdict of the jury indicates that the remarks were valueless. The jury brought in a verdict for Mrs. Williams for \$550, although she testified that she had lost some \$1,300.00 in wages and was still suffering from the effect of the injuries; her husband obtained \$125.00.

It is neither error nor ground for a new trial for plaintiff's counsel to state to the jury the amount of damages sought to be recovered.

See

Rhodehouse v. Director General of Railroads, 95 N. J. L. page 355.

The Trial Judge charged the jury to be guided by the testimony (p. 172) and the jury manifestly paid no heed to the remarks of counsel. The error, if any, was certainly harmless.

POINT VIII.

Comment on opinion of Supreme Court.

The Supreme Court properly disposed of points one, two and three argued in the brief of the appellant. The Court apparently followed the ruling laid down in *McPherson v. Hudson & Man. R. R. Co.*, 101 N. J. L. 410.

The other objections stated in the appellant's brief are untenable. The objection to the questions asked of the witness Werheimer (p. 15, l. 18) were clearly inadmissible. He was not competent to testify as to the injuries sustained by Mrs. Williams. He was not a physician; nor was any foundation laid to qualify him.

The last objection as to remarks of counsel in summation, was not excepted to by counsel at the trial. The matter cannot now be argued on appeal. Furthermore, the remarks were harmless; the amount of the verdict clearly shows this beyond any doubt.

CONCLUSION.

For these reasons, I respectfully submit that the judgment of the Supreme Court should be affirmed.

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