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TESTIMONY FOR DEFENDANT.

DEFENDANT'S EXHIBITS.

Complaint.

(Filed Dec. 18, 1928.)

Hudson County Court of Common Pleas

MILDRED SANDLER, an infant, who sues by Morris Sandler, her next friend, and MORRIS SANDLER, individually,
Plaintiffs,

v.

HUDSON & MANHATTAN RAILROAD COMPANY, a corporation,
Defendant.

Action at Law.

Plaintiffs, residing in the City of Jersey City, County of Hudson, and State of New Jersey, say that:

FIRST COUNT.

The plaintiff, Mildred Sandler, an infant, by her next friend, Morris Sandler, demands from the defendant the sum of Twenty-five Thousand ($25,000.00) Dollars, for that:

1. She is informed and believes that at all times hereinafter mentioned, the defendant, Hudson & Manhattan Railroad Company, was a corporation engaged as a common carrier of passengers by railroad, between the City of Jersey City, New Jersey, and New York City, New York, and that such corporation is licensed to and does transact business in the State of New Jersey.

2. Defendant, Hudson & Manhattan Railroad Company, in connection with its operation of said railroad maintained a certain station, known as Journal Square, Jersey City, New Jersey, for receiving and discharging passengers from its trains. Said station and its platforms were operated under the sole control of said defendant.

3. On September 28th, 1928, plaintiff, Mildred Sandler, entered the defendant's said station at Journal Square, Jersey City, and after paying her fare, entered upon one of the platforms in said station, leading to defendant's trains, intending to board train going to defendant's station known as Thirty-third Street Station, New York City.

4. At said time and place, defendant, through its agents, servants and employees, carelessly, negligently and unskillfully maintained said platform upon which plaintiff was standing, while waiting to board its said train to Thirty-third Street, New York City, and as a result thereof, plaintiff, Mildred Sandler's foot was caught and wedged in between one of the defendant's trains and its said platform, seriously injuring said plaintiff.

5. The defendant's negligence consisted in the following:

(a) Defendant at the time and place aforesaid, through its servants, agents or employees failed to exercise due care and vigilance to ascertain the presence of the said Mildred Sandler on the platform of said railroad station;

(b) Defendant failed to furnish said Mildred Sandler adequate and reasonable

opportunity to enter said train of defendant in safety;

(c) Defendant failed to maintain said platform in a safe and secure condition, in order that the same might be operated without inflicting injury upon said Mildred Sandler;

(d) Defendant failed to have and employ skillful and competent servants in charge of said platform, for the safe maintenance and operation of said platform, and failed to properly and sufficiently instruct the employees in charge thereof, in the process of safely operating said platform;

(e) Said platform was constructed in a careless, negligent and dangerous manner without regard for the safety of passengers using same.

6. As a result of one or more of the foregoing acts of negligence of said defendant, the plaintiff Mildred Sandler was knocked unconscious and severely cut, bruised and injured in and about her head, body and limbs, and suffered grave bodily injuries, both internally and externally. Plaintiff suffered painful injuries to her knee, and dislocated same, and her side and back were severely wrenched; all of which have caused the plaintiff great pain and suffering and mental anguish; her nervous system has been greatly shocked necessitating her confinement in bed for a long period of time. Plaintiff is permanently injured and has been and will for a long period of time in the future be deprived and hampered of the normal uses of her body and its members.

7. As a result of the negligent acts of the defendant and the injuries sustained as aforesaid, plaintiff was for a long period of time, and is still confined to her bed, and was totally disabled from following her usual occupation, and will in the future be unable to continue her usual occupation to her great damage.

8. As a result of said negligent acts of the defendant, the plaintiff's dress, coat and stockings were ruined.

Plaintiff, Mildren Sandler, by her next friend, Morris Sandler, demands the sum of Twenty-five Thousand ($25,000.00) Dollars damages on the First Count.

SECOND COUNT.

Plaintiff, Morris Sandler, individually, says that:

1. He repeats the allegations of the first count.

2. He is the father of the plaintiff, Mildred Sandler, and was and is entitled to her services, she being an unemancipated minor at the time of said occurrence and still is unemancipated.

3. As a result of the injuries to the said Mildred Sandler, he was compelled to expend large sums of money for medicines and medical aid and hospitals, and will for a long time in the future be compelled to expend large sums of money for medicines and medical aid in an effort to cure plaintiff, Mildred Sandler, of her said injuries, and has been and will be for a long period of time deprived of her services to his great damage.

Plaintiff, Morris Sandler, demands the sum of Ten Thousand ($10,000.00) Dollars damages on the second count.

FREDMAN & FREDMAN,
Attorneys for Plaintiffs.

(Seal)

Answer.

(Filed Dec. 22, 1928.)

[Same Title]

The defendant, Hudson & Manhattan Railroad Company, a corporation of the State of New Jersey, with its principal place of business at One Exchange Place, Jersey City, for answer to the within complaint says that:

First Defense to First Count.

1. It admits paragraph one.

2. It admits paragraph two.

3. It has no knowledge or information sufficient to form a belief as to the allegations of paragraph three.

4. It denies paragraph four.

5. It denies paragraph five.

6. It denies paragraph six.

7. It denies paragraph seven.

8. It denies paragraph eight.

First Defense to Second Count.

1. It reiterates its answer to the first defense to first count.

2. It has no knowledge or information sufficient to form a belief as to the allegations of paragraph two.

3. It denies paragraph three.

Second Defense to Both Counts.

The alleged accident set forth in the complaint was due to contributory negligence on the part of

the plaintiff, Mildred Sandler, in failing to exercise reasonable care for her own safety, and the plaintiff therefore cannot recover.

COLLINS & CORBIN,
Attorneys of Defendant.

Reply.

(Filed December 26, 1928.)

[SAME TITLE]

Plaintiffs, by way of reply to the defendant's answer, say that:

1. They join issue with the defendant on its answer to the first and second counts.

REPLY TO SEPARATE DEFENSE.

1. Plaintiffs deny each and every allegation contained in defendant's separate defense to both counts, and further deny that plaintiff, Mildred Sandler, was guilty of any contributory negligence.

FREDMAN & FREDMAN,
Attorneys for Plaintiffs.

Amendment of Complaint.

(Filed December 3, 1929.)

[SAME TITLE]

It is hereby consented and agreed by and between the attorneys for the respective parties hereto, that the complaint in the above entitled matter, be and the same is hereby amended so as to include the following:

Amendment of Complaint.

1. The defendant was negligent in that it failed to furnish safe and sufficient means of ingress to and egress from its trains and to exercise necessary and reasonable vigilance in protecting intending passengers assembling at the station from liability to injury.

2. In that defendant having knowledge that large crowds are likely to assemble at certain hours of the day, in the said station, particularly at the hour, time and place that Plaintiff was injured, failed to take proper care in protecting said plaintiff from injuries such as crowding and sudden rushing on the part of crowds assembled in such station, to obtain entrance to cars immediately upon arrival of trains at the station.

3. In that defendant knowing that such crowds were accustomed to assemble at certain hours of the day, and particularly at the time plaintiff was injured, failed to employ a sufficient number of guards or employees to properly handle the crowds collecting in such station, so as to insure the safety of persons, including Plaintiff.

4. In that defendant failed to furnish proper rails, gates, guards or other mechanical contrivances separating the station platform from the space wherein trains pass through such station.

5. In that defendant failed to take any and all necessary and reasonable means to insure the safety of persons who as passengers intended to enter such trains.

Dated November 23, 1929.

FREDMAN & FREDMAN,
Attorneys for Plaintiffs.

COLLINS & CORBIN,
Attorneys for Defendant.

Answer to Amendment.

(Filed December 7, 1929.)

[Same Title]

The defendant files the following answer to the amendment dated November 23, 1929, to the complaint:

First Defense.

1. It denies the allegations of paragraphs 1 to 5, inclusive.

Second Defense.

The alleged accident set forth in the amendment to the complaint was due to contributory negligence on the part of the plaintiff, Mildred Sandler, and therefore the plaintiffs cannot recover.

Third Defense.

The alleged accident set forth in the amendment to the complaint was due to contributory negligence on the part of the plaintiff, Mildred Sandler, in failing to exercise reasonable care for her own safety, and therefore the plaintiffs cannot recover.

Collins & Corbin,
Attorneys of Defendant.

Case.

HUDSON COUNTY COURT OF COMMON PLEAS.

MILDRED SANDLER, an individual, who sues by Morris Sandler, her next friend, and MORRIS SANDLER, individually,
Plaintiffs,

v.

HUDSON AND MANHATTAN RAILROAD COMPANY, a corporation,
Defendant.

Before: Hon. ROBERT V. KINKEAD, Judge, and a Jury.

Action at Law.

Jersey City, N. J., December 3, 1929.

APPEARANCES:

FREDMAN & FREDMAN, Esqs. (By MORRIS G. FREDMAN), Attorneys for Plaintiffs.
COLLINS & CORBIN, Esqs. (By EDWARD J. MARKLEY), Attorneys for Defendant.

(The jury was empanelled and sworn.)

Mr. Fredman: If your Honor please, the infant has since reached the age of twenty-one years; and, if the Court has no objection, I would like to have the complaint amended so as to substitute the name of Mildred Sandler, plaintiff, alone, in place of by her next friend.

The Court: Were there any expenses?

Mr. Fredman: Your Honor, they were paid by the girl herself.

The Court: Paid by the girl herself?

Mr. Fredman: Yes.

Mr. Markley: You are going to drop the father out entirely?

Mr. Fredman: Yes.

Mr. Markley: I should think that during her minority you could not wipe out whatever cause of action he may have.

The Court: That is what I was thinking.

Mr. Markley: In other words, she may have the right at the time she arrives at the age of twenty-one to represent herself, and from that time on; but during the preceding years she would not have.

Mr. Fredman: She is now the plaintiff.

The Court: Suppose we cross the bridge when we get to it. If it is disclosed that she paid all the bills, out of her own pocket, that is different.

Mr. Markley: The plaintiff on November 23rd, drew an amendment to the complaint. We have not yet filed a formal answer; but I would like permission of the Court to state that we deny the allegations of the amendment of November 23rd, 1929, and that we set up affirmatively again the second defense, which was originally set up as contributory negligence. I will draw the answer and file it with your Honor.

The Court: The amendment is not filed?

Mr. Fredman: No. It was left here. We have not filed it yet.

The Court: What?

Mr. Fredman: We have not filed it yet.

The Court: You better mark it "Filed." You may proceed.

Mr. Markley: Please take the opening, Mr. Stenographer.

(Plaintiff's counsel thereupon opened to the jury as follows:)

Gentlemen of the jury; prior to November 23rd, the infant plaintiff was not twenty-one years of age, and on that account was obliged to sue by a

relative, Morris Sandler. Morris Sandler, as next friend of the infant, and the plaintiff, is suing the Hudson and Manhattan Railroad Corporation for damages, because of the fact that this girl while a paid passenger, or a person who paid for entrance on the Hudson and Manhattan Railroad station platforms in Journal Square, was injured. A complaint has been filed with the court setting forth the circumstances and character of her injuries, and if I may read off briefly from the bill of complaint, it alleges on September 28, 1928, Mildred Sandler entered the station at Journal Square, and after paying her fare entered on one of the platforms leading to the railroad train which goes through the cut. At the time and place she was injured by being shoved and pushed by a large and vast crowd that had gathered about the platform at what is commonly known as the "Rush hour" period, that is, between seven and nine thirty in the morning, when a large and extraordinary crowd gathers on that platform every morning for the purpose of going to their various places of business in New York.

We will show you that there were no platform men on that station at the time she was injured; that the Hudson & Manhattan Railroad Company took no precautionary means or methods to protect its passengers who had lawfully paid for entrance on to that platform; that she was injured by being pushed and mauled around in this large crowd that had gathered that morning; and there is a small opening between the platform and the cut, you might say, or the gully in which the train passes by, and which was waiting, and she was pushed into this place. Her foot was injured, and she has been injured so that she has required medical attention.

We will show you that she has not even until this date recovered the full and complete possession of her leg. There have been various expenses for medicines and so forth, medical treatment. We allege that it was the duty of this defendant, which is a common carrier, to provide precautionary means for the protection and safety of its passengers who have occasion to enter upon a platform such as the one at the Journal Square station. You gentlemen, if you have been down there, will know that it is a station where large crowds gather frequently, particularly during certain rush hours. We will show you that there were no platform men on the station to regulate the crowds. No guards at this particular place to protect the passengers against being shoved into the gutter. And we say and allege the company was negligent, and if we can establish this negligence to your satisfaction, and establish the amount of damages that this girl has suffered, we will ask for a verdict in her behalf.

Mr. Markley: Now, as to the original complaint, your Honor, I wish to move at this time for a nonsuit, because there is no claim in the opening that any of those allegations, as originally pleaded, are urged here. The opening relies entirely on the amendment to the complaint, which has just been filed with your Honor. Therefore, as to the original complaint, I move for a nonsuit.

The Court: I will deny your motion.

Mr. Markley: Your Honor will grant me an exception?

The Court: Yes.

(The defendant's attorney thereupon opened to the jury.)

MILDRED SANDLER, the plaintiff, sworn.

Direct examination by Mr. Fredman:

Q. Miss Sandler, where do you live? A. 583 West Side Avenue.

Q. Are you now over twenty-one? A. No.

Q. What is your age now? A. Now, I was just twenty, April 11th, but when the accident happened, I don't know it.

Q. How old are you now? A. Twenty.

Q. You are not twenty-one? A. No.

The Court: It is just as well that I did not grant your motion.

Mr. Fredman: Yes; that is right.

Q. Where were you working in the month of September, 1928? A. At the Patrician Hat Company.

Q. What is the name? A. Patrician Hat Company.

The Court: Now, young lady, you will have to speak up. That jury over there is going to decide your case, and they have got to hear your testimony.

Q. You say you were employed in the month of September, 1928, by the Patrician Hat Company? A. Yes, sir.

Q. And where were they located? A. On 37 West 37th Street.

Q. What were you doing for that company? A. Milliner.

Q. And what was your occupation? A. Millinery.

Q. Millinery, and how long had you been working for the Patrician Hat Company before September, 1928? A. I worked in the Clochette department.

Q. How long were you working for the Patrician Hat Company? A. About a year.

Q. Do you remember on September 28, 1928, going to work? A. Yes.

Q. What was your manner of going to work? How did you go from your home to the Patrician Hat Company? A. Yes.

Q. How? A. I was taking the train at Journal Square.

Q. Before you got to Journal Square, how did you get to Journal Square, by the cars? A. I took the car. I took the Newark Avenue car.

Q. And got off the car? A. At Journal Square.

Q. And what did you do? A. I was going down the stairs to take the train as usual, and it was so crowded—

Q. You paid your fare? A. Yes.

Q. And did you go to the downtown or the uptown? A. The uptown.

Q. You went down the stairs? A. Yes.

Q. Were there many people on the stairs? A. Very crowded.

Q. And you finally got down to the lower platform? A. Right to the side of the stairs. As soon as you go down—I went down and they pushed.

Q. Was the train in the station when you got to the platform? A. Yes.

Q. Was it there already or were you waiting for it? A. I should say it just got in.

Q. Had the train already stopped there? A. Stopped, yes.

Q. And what happened? A. Then the crowd pushed me right in between the train and the platform.

Q. What was it, pushed into what? A. Between the train and the platform.

Q. What was there? What was between the train and the platform? A. It was like two chains.

Q. Was there any space between the train and the platform? A. Yes, there was.

Q. And is that where you were pushed into it? A. Yes, I was pushed in, and I was pulled down.

Q. Did you see many people on the platform at the time? A. Yes. It was very crowded.

Q. What time of the morning was it? A. Ten after eight.

Q. Had you previously gone to New York by the same method? A. Yes.

Q. Had you seen the crowds there on previous occasions? A. I did not go then after.

Q. I mean, were there crowds, on other mornings the same as on this morning? A. Yes, but not as crowded. It was always crowded there.

Q. Did you get pushed into this space, or did you walk into this space? A. No. I was pushed into that thing.

Q. Just where was this space that you were pushed into? Was it right in front of the door or near the door, or where was it? A. No, it was sideways.

Q. Where? A. It was like two trains there. There is a great big space, and one foot went right in there (indicating).

Q. In other words, you had not got to the train door itself? A. No, the crowds just pushed me, I did not have to go.

Q. You could not get to it? A. I could not go.

Q. You were pushed, am I to understand, in the space leading between two connecting trains, is that right? A. Two connecting trains, yes.

Q. Where did you, your foot, get caught? A. It got caught here.

Q. Was it caught in the chain, or— A. No. In

between the two irons, where the lights are in. Those big heavy irons.

Q. That is the two? A. Between the two trains sideways, I was just thrown in there.

Q. You were thrown in there? A. Yes.

Q. How much of you went in, all of you, or part of you? A. Right to this part of my body (indicating).

Q. You went right down until you touched your thigh bone? A. Yes. If I did not get hold of that iron I would have gone in altogether there.

Q. In other words you fell all in? A. Yes.

Q. And your body went in right up to your thigh? A. Yes, up to this part of my body (indicating).

Q. All right, Miss, stand up. How far did you fall in there? A. Right to this part here (indicating).

Q. Up to there (indicating). Yes.

Q. When you were pushed in what did you do to save yourself from falling further? A. Because I got a hold; there is an iron which I got a hold there, and some one what I grabbed.

Q. What did you grab? A. I held on it.

Q. What did you catch on to and grab? A. There is like an iron handle between the trains, like—and I got some kind of a hold on to that iron and held on to it.

Q. And held on to it? A. Yes.

Q. And that stopped you from going down? A. From going down, yes.

Q. Who took you out of there? A. There was a woman who took me out.

Q. Did she help you out of there? A. Yes.

Q. Was there any guard or platform people around there? A. No.

Q. Did you see any? A. No. There was only one who opened the door, and he seen everything.

Q. Did he help you out? A. No, he did not.

Q. He never went near you, did he? A. No.

Q. You say that a woman helped you out? A. Yes.

Q. Is that woman here in court? A. Yes.

Q. After you were helped out what did you do then, where did you go, and with whom did you go? A. We were just pushed right in the train.

Q. You were then pushed in the train after she helped you out, is that it? A. Yes.

Q. What did you do? A. That was—

Q. What did you do? Never mind that. What did you do? A. I sat down on the seater in the front side, where a man was standing there.

Q. Did you see an employee of the railroad or any guard on the train? A. No. I did not see nobody.

Q. Did you go to Thirty-third Street? A. Yes. I went to Thirty-third Street.

Q. What did you do there? A. I could not get out from the train.

Q. What did you do, what did you say to anybody? A. I could not say to anybody anything, my pain was so I could not even speak to anybody.

Q. Did you see the guard there in the train, the man who was in the train? A. Yes.

Q. Did you say anything to him? A. No, I went out and then the people started, and some one said, "Oh, you are lame, why don't you go and get the number of that man who was so fresh?"

Mr. Markley: I object to what people said.

The Court: Objection sustained.

Mr. Fredman: I will consent that it be stricken out.

Q. What did you say to anybody there connected with the railroad, or anybody on the train? A. No, there was nobody on the train.

Q. Did you tell anybody on the train that you were hurt? A. Yes,—

Mr. Markley: I object.

A. (Continuing.) There was a man on the train.

Q. When you got to 33rd Street did you again, or had you seen this woman who had helped you out of the hole? A. Yes, she went up with me up to 33rd Street.

Q. She remained with you? A. Yes.

Q. What happened at that time at 33rd Street? A. Went over to brakeman.

Q. Who went over to the brakeman? A. The woman.

Q. Is the woman in court? A. Yes.

Q. Will you point her out? A. Yes (pointing to woman in audience).

Q. That is the woman that helped you? A. Yes.

Q. In the train? A. Yes.

Q. And remained with you until you got to 33rd Street, is that right? A. Yes.

Q. What happened at 33rd Street? A. They took me up there on the stairs.

Q. Who took you up? A. There is a guard on the 33rd Street station, and he took me up in the little booth.

Q. What did they do to you in the booth? A. They put on their iodine, and they wanted to bandage me up and call an ambulance.

Q. A little louder and a little slower, and what did they do to you? A. They put iodine on me.

Q. Who did? A. The man.

Q. Was he a guard or doctor? A. Yes, a guard.

Q. What happened after that? A. After that they called Jersey City to get me back there.

Q. They took you back to Jersey City? A. Yes, he took me down the stairs.

Q. And took you to Jersey City? A. Yes.

Q. And where did you go after that? A. After that downstairs they took me up, they were there waiting already for me.

Q. What? Who was waiting there for you? A. The guard, and there was another one, a policeman. I don't know who it was.

Q. Where did he take you? A. Upstairs, to Journal Square, in the train.

Q. Where did they take you after you got back to Journal Square? A. They took me into a little place like, into a room.

Q. What happened there? A. I was crying there about an hour and a half in there with all the pain.

Q. What happened there? A. There they tried to look, and asked me a lot of different questions.

Q. What else did they try to do to you there? A. Then they got an ambulance.

Q. What did they try to get you to do while you were in there? A. They did not try to have me do anything there. They asked me all the different questions, though.

Q. Who? A. There was a man, a policeman, and some one else. I don't know who.

Q. Where were you taken after you got through? A. St. Francis Hospital.

Q. Were you in the St. Francis Hospital? A. Yes.

Q. How long did you stay in the St. Francis Hospital? A. I did not stay there long. I stayed for about three hours.

Q. Where were you taken after that? A. After that I was taken home.

Q. How were you taken home? A. My brother came down.

Q. How were you taken home? A. He took me in a taxi.

Q. In a taxi? A. Yes.

Q. Did you go to work the next day? A. No, I did not go to work.

Q. Did you do any work the next day? A. No. I could not get out of bed. How could I go to work?

Q. How long were you in bed? A. I was in bed for three weeks.

Q. Did you have a doctor attend you? A. Yes.

Q. What was the doctor's name? A. Doctor Linden.

Q. How long was it before you went back to work? A. Three months.

Q. And during that time you did nothing at all? A. No.

Q. And had no income? A. I could not go to work.

Q. What were you earning a week there? A. Thirty dollars a week.

Q. And you lost three months wages? A. Yes.

Q. How long did the doctor treat you, do you know? A. Well, he treated me the time I was in bed. He used to come every single day.

Q. Are you able to walk now the same as you did before the accident? A. No.

Q. What is the matter with you now; anything the matter with you? A. Well, now my foot hurts me. I cannot walk as good.

Q. Can you walk without favoring the injured foot? A. No.

Q. Or leg? A. No.

Q. And have you been able to walk since the date you were hurt without favoring the injured leg? A. No, I cannot.

Q. Did Dr. Linden treat you? A. Yes.

Q. That is, he has been treating you since the first day you were hurt? A. Yes.

Q. Did you see any guards on the platform of the Hudson and Manhattan Railroad station? A. No. I have not seen one.

Q. You would know a guard if you saw one? A. Yes, sir; there was only one on the train.

Q. There was only one on the train? A. That is all.

Q. There was not a one on the platform at all? A. No.

Q. And there was none, that you saw there, trying to regulate the crowd? A. No.

Q. Were there any guards, or any platform men trying to keep—

The Court: Miss Sandler, do you mean that there positively was not a guard on the platform, or that you did not see any?

The Witness: Well, I have not seen any.

Q. Well, there was none regulating that particular crowd in which you were shoved? A. No.

Mr. Markley: I object to that; that calls for a conclusion, and it is leading. Putting the words right in the witness' mouth, and what is meant by regulating?

The Court: Was there any guard near where you were?

The Witness: No, sir, there was not.

Mr. Fredman: That is all. Cross examine.

Mr. Markley: Anything more?

Mr. Fredman: That is all.

Cross examination by Mr. Markley:

Q. How old are you now? A. I am going to be twenty.

Q. When? A. April the 11th.

Q. This year? A. Yes.

Q. When were you born, do you know? A. I was born in 1908.

Q. You were born on April 11th, 1908, weren't you? A. (No answer.)

Q. What; is that right? A. I don't know the year.

Q. Well, you just said 1908, didn't you?

Mr. Markley: Just read her answer back there.

(The last previous answer was read by the stenographer.)

A. No, in 1910, I was born.

Q. Well, you said a minute ago that you were born in 1908, did you not? A. No, in 19—

Q. Didn't you just say that? A. Well, I just thought of something. That is why I said it.

Q. Now, where were you born? A. In Europe.

Q. Where, in Europe? A. In Lithuania.

Q. When did you come to this country? A. In 1921.

Q. Did you go to school in this country? A. Well, I did not go to public school.

Q. Did you, yes or no, go to school? A. Yes, I went to school.

Q. What school did you go to? A. To No. 11.

Q. Jersey City? A. Yes.

Q. How long did you go there? A. I did not go there steady.

Q. Well, how long a time in years, did you go to No. 11? A. I went two seasons.

Q. Can you read English? A. Well, not good.

Q. Can you write English? A. No, sir.

Q. Can you write your name? A. Sure, I can write my name.

Q. On this particular day you were all alone, were you? A. Yes.

Q. Nobody was with you? A. Well, there was me —

Q. Was there somebody with you? A. Yes, sir, there was.

Q. Who was with you? A. There was a cousin of mine.

Q. With you at the time when this thing happened? A. No, sir, nobody was there at the time it happened.

Q. You went down the stairway, didn't you? A. Yes.

Q. And down to the train platform, is that right? A. Yes.

Q. And when you got down there the train was in the station, was it not? A. Yes, it was.

Q. And the train was stopped in the station, was it not? A. Yes.

Q. And when you did get in the train you got a seat, didn't you? A. No, I did not go into the train. I was pushed into the train.

Q. You finally went into the train? A. I was pushed into the train.

Q. Well, you were pushed into the train, and when you were pushed into the train you got a seat? A. Yes, I did.

Q. And you sat down inside? A. Yes, I did.

Q. And that was the same train which was in the station when you came down the stairs, you went in the same train, didn't you? A. Yes, I did.

Q. And you stayed there until you got to 33rd Street, didn't you? A. Yes.

Q. And then when you got to 33rd Street you spoke to somebody, and you were taken upstairs, and then sent back to Journal Square again, weren't you? A. Yes.

Q. And when you got back to Journal Square the ambulance came for you? A. No, I was late, they kept me about an hour and a half there in the booth.

Q. All right, they kept you about an hour and a half in the booth. What did they do to you? Did they hurt you there? A. They did not hurt me there.

Q. Then you were taken to the hospital, weren't you? A. Yes.

Q. Do you remember the doctor who saw you in the hospital? A. No, sir.

Q. Do you remember his name? A. No.

Q. And you would not stay there, would you? A. No, sir.

Q. You went home? A. Yes.

Q. You only stayed there a few minutes? A. Yes. I was not there all the time, about an hour or so.

Q. Did you sign your name in the hospital? A. No, I did not sign my name.

Q. In the hospital? A. No, I did not.

Q. Are you sure that you did not sign your name? A. Yes, I signed my name by going out from the hospital.

Q. What? A. Yes, I signed my name by going out myself by the hospital.

Q. Then you did sign your name in the hospital? A. Yes, on my going out again.

The Court: The St. Francis Hospital, Mr. Markley?

Mr. Markley: Yes.
The Witness: Yes.

Q. Is that the signature that you made in the hospital (showing paper to witness)? A. Yes.

Q. Now, do you know what time the hospital ambulance came for you that morning? A. I don't know.

Q. At Journal Square? A. I don't remember.

Q. Do you know it was there for you at 9:35 A. M.? A. 9:35 A. M., no, it was not there. It was later than that.

Q. It was later than that? A. Yes, it must have been about eleven, because from 33rd to—

Q. All right. Is that your signature on that there (showing paper to witness)? A. No. I did not sign so many papers.

Q. Look and see whether you wrote that. That is the hospital record? A. I did not write that.

Q. You did not write it? A. Yes.

Q. Did you write on there, "583 West Side Avenue?" A. That is not my handwriting.

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

Mr. Markley: I will mark this first paper D-1 for Identification.

(Paper marked Exhibit D-1 for Identification.)

Mr. Markley: Then we will mark the next one for identification.

(Paper marked Exhibit D-2 for Identification.)

Q. Now, when you got to the hospital—do you know this doctor?

Mr. Markley: Stand up, Doctor.

(A man stands in the audience.)

Q. You did not see him down at the St. Francis Hospital? A. I do not remember the doctor.

Q. What? A. I do not remember him.

Q. You don't remember him at all? Do you remember telling him how the accident happened when he asked you down in the St. Francis Hospital? A. Yes. I did tell him.

Q. Now, didn't you tell him that you fell between the car and the platform? A. The train and the platform.

Q. Yes. You did not tell him anybody pushed you, did you? A. Yes, I did.

Q. You did tell him? A. Yes. I did.

Mr. Markley: All right. Sit down, Doctor.

Q. Now, you say it was three hours before the ambulance came for you, do you, up at Journal Square? A. Yes. I was laying there a long time on the couch.

Q. Well, what time of the day would you say that the ambulance came for you at the Journal Square station? A. I could not look at the time. I was too sick to look at anything.

Q. You were not too sick to know it was three hours? A. Well, I don't know. It was late for me.

Q. Was it twelve o'clock or one o'clock? A. It must have been.

Q. What time do you say it was? What time do you say that the ambulance came for you at Journal Square? A. I could not remember.

Mr. Fredman: Just a minute. She may have been in pain from the injury. I don't know. If she knows what time—

Mr. Markley: Do you object to the question?

Mr. Fredman: I object to part of it. Excuse me.

Mr. Markley: I have a perfect right to ask it.

Mr. Fredman: I noted an objection to the question.

Mr. Markley: Read the question.

(Last question read.)

Mr. Fredman: I withdraw the objection. I did not understand the answer.

Q. You don't know what time the ambulance came for you? A. No, sir, I do not remember.

Q. You say it was over three hours, do you? A. I don't know. I was lying there on the couch, in pain. I felt like it was a year, to me.

Q. That evening a man came from the railroad company to your home, didn't he? A. Yes, sir.

Mr. Markley: Mr. Coleman, will you stand up, please.

(Man stands in the audience.)

Q. This gentleman came to your home that evening, didn't he? A. Yes.

Q. And you were home, weren't you? A. I was in bed, yes.

Q. And your sister or somebody else was in bed with you? A. No. It was a cousin of mine.

Q. Your cousin was in bed too? A. Yes.

Q. And you were both in bed? A. Yes.

The Court: Wasn't she hurt in the accident too?

The Witness: No. She just felt sick and laid down too.

Q. What time was that? A. About seven o'clock.

Q. When he was there somebody else came too. A. The boys, two boys, my cousins.

Q. Two boys came in afterwards? A. Yes.

Q. Who were they? A. I don't know. They were friends of my cousins.

Q. You were in bed and your cousin was in bed? A. Yes.

Q. And these two boys who were friends of your cousin's— A. Yes.

Q. And you did not know them at all? A. Of course I knew them, but I did not know them until they came up there.

Q. You knew them when they came up and your cousin was in bed? A. Yes, sir.

Q. How old is she? A. She is the same age.

Q. As you? A. Yes.

Q. And those two boys came in? A. Yes.

Q. Are they cousins too? A. No. They are relatives of hers.

Q. How old are they? A. I don't know.

Q. You were all up in the bedroom together? A. No. They were not. There were people in the house.

Q. What? A. There were people in the house.

Q. You made a statement to Mr. Coleman? A. Yes. He asked me all the different questions. I was too sick—

Q. Oh, he asked you a lot of questions and you answered them, didn't you? A. Yes. I did answer them.

Q. And then he asked you to write your name afterwards, didn't he? A. He did.

Q. Did you write your name afterwards? A. I was too sick.

Q. Did you write your name? A. Yes, sir.

Q. And the boys were there with you, weren't they? A. Yes.

Q. And the girl friend was there too? A. Yes.

Q. And isn't that the paper that you signed? Look at it and see (handing paper to the witness). A. Yes, that is the paper that I signed, but I don't know what is in the paper.

Q. You don't know what is in the paper? A. No.

Q. I will show it to you and see if you can tell me what is in the paper. It says, "Twenty years, single, April 11th, 1908," did you tell them that? A. Well, no, I did not.

Q. Wasn't your birthday April 11th, 1908? A. No. It is 10.

Q. You say it is 10 now? A. Yes.

Q. But the first thing this morning you said— A. I did not know what I was saying.

Q. You did not know what you were talking about this morning either when you first said your birthday was 1908? A. No.

Q. You made a mistake? A. Yes.

Q. Have you now—That is a mistake you made? A. Yes.

Q. Nor then the place, 585 West Side Avenue, is that where you live? A. Yes.

Q. "On Friday morning, September 28th, 1928, I had an accident at Journal Square." Didn't you state that? A. No, I did not.

Q. You did have an accident? A. Well, I said I had an accident, and I did not say anything else.

Q. Didn't you say you had an accident that morning? A. Yes.

Q. Did you say it was about 8:10 a. m.? A. Yes.

Q. Did you say, "I was alone?" A. Yes.

Q. Did you say, "I was going to work?" A. Yes.

Q. Did you say you were working at the Patrician Hat Company, 37 West 37th Street? A. Yes.

Q. Seventh floor? A. Yes.

Q. "Mr. Slope is my boss?" A. Yes.

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

Q. Did you say, "I am a copyist on hats?" A. Yes.

Q. "I average about thirty dollars weekly?" A. Yes.

Q. "It is season work?" A. Yes.

Q. "I have worked steady for the last four or five months?" A. Yes.

Q. Did you say that? A. Yes.

Q. "It is now getting slow" did you say that? A. No, I did not say that.

Q. You did not say, "It is now getting slow?" A. No.

Q. All right. Did you say "Even in the slow season I always have work to do"? A. Yes. Always work.

Q. You said that then? A. Yes.

Q. "Even thought it was slow"? A. Yes.

The Court: When is the slow season?

The Witness: Well, right after Christmas.

Q. Well, this is in September, September the 28th. That is not the slow season? A. No.

Q. What, in the hat business— A. Well, I am working.

Q. Well, even though it is slow you are working? A. I am always working.

Q. Even though the business is slow you are always working? A. Yes.

Mr. Fredman: It is like good lawyers, always working.

Mr. Markley: Well, sometimes.

Q. "Even in the slow season" you always have work to do. You said that? A. Yes.

Q. "I went down stairs by the new stairway and turned to the left side and walked up the platform about ten feet or so." A. I did not say that.

Q. You did not say that? A. No.

Q. Did you walk down the stairs? A. Yes.

Q. Down the new stairway? A. Yes.

Q. Did you turn to the left side? A. Yes.

Q. Did you walk up the stairway about ten feet? A. No. I was pushed by the crowd.

Q. Did you walk up the platform about ten feet before you were pushed? A. No.

Q. Didn't you say that? A. No, sir; I could not say that because it was all crowded.

Q. You walked down the stairs and when you got down the stairs you were hurt. That is what you said now. A. I said that all the time.

Q. You told that to your lawyer when you got hurt in the first place? Did you tell your lawyer when you got hurt in the first place that you were pushed? A. Yes. I was pushed.

Q. You told him that? A. I told everybody I was pushed.

Q. When did you first go to your lawyer? A. I did not go to my lawyer at all.

Q. You did not go to your lawyer at all? A. No.

Q. How did you get a lawyer then? A. My brother took it.

Q. Your brother took it? A. Yes.

Q. When did you first know you had a lawyer? A. About a week or two weeks after.

Q. That was back in December, wasn't it, 1928? A. Yes.

Q. Then did you tell the lawyer how this thing happened? A. Yes.

Q. Did you tell him at that time in December, 1928, that you were pushed by a tremendous crowd? A. Yes.

Q. You told him that at that time? A. Yes.

Q. Did he show you the complaint that he drew at that time, the paper that he filed for you, did you read that over? A. I cannot read it very good.

Mr. Fredman: You know that is not a proper question.

Mr. Markley: You did not put it in English if she told you.

Q. Now then, we will go on with this statement. "The train was there and the doors were open." Is that right, when you got down on the platform? A. Yes.

Q. "And I went toward an end door"? A. Yes.

Q. "This door was open and passengers were getting on"? A. Yes, sir.

Q. "Just as I went to step on the car I suddenly fell down"? A. No, I did not say that.

Q. You did not say that? A. No.

Q. "Just as I went to step on the car I suddenly fell down, my left leg going in the space between the door and the platform." Did you say that? A. No, I did not.

Q. All right. "No one pushed me down." Did you tell the man that? A. No, I did not.

Q. You are sure that you did not say that? A. No.

Q. "The train did not move." Did you say that? A. No.

Q. You did not say that? A. No.

Q. The train did not move though, did it? A. No. How could it move when the train was stopped on Journal Square? It could not move.

Q. It could not move at all. It did not move at all after you got on it? A. Sure it moved after we got on.

Q. "The door did not strike me"? A. No, it did not.

Q. "The heel came off my left shoe"? A. Yes, sir. It broke my whole shoe.

Q. Your heel came off. A. It broke the shoe. Yes.

Q. When you fell? A. I fell. I was pushed between the train.

Q. Was the heel pushed off your shoe? A. The shoe went right in and got caught in the irons. How could it get pushed off?

Q. The shoe got caught in the irons? A. Yes, the shoe got caught in the irons and my whole foot went in.

Q. That is what pushed your heel off the shoe, your heel came off the shoe? A. Yes.

Q. You don't know what made the heel get caught? A. I did not see.

Q. You did not say that? A. Oh, no.

Q. The space was big enough for your foot to go in sideways? Did you say that? A. No.

Q. Did you say "The shoes I wear were very narrow"? Did you say that? A. Yes.

Q. "The size is number three" did you say that? A. Number three and a half.

Q. "I never had any other accident." A. No, I did not.

Q. Did you say that? A. Yes, I did. I never had any other accident.

Q. What? A. Yes.

Q. You did say yes? A. Yes.

Q. And you traveled this way for five years? A. Yes.

Q. Did you say that? A. Yes, I did.

Q. And always got on at this same place? A. Yes.

Q. You said that? A. Yes.

Q. And that was true? A. Yes, that is true.

Q. "I was getting on as usual." A. Yes.

Q. "When my left foot went in the small place." Did you say that? A. I did not say it.

Q. You did not say it? A. No.

Q. So you were getting on at the same place where you always got on? A. Yes.

Q. As you did for five years before this accident? A. Yes.

Q. You were never pushed before, were you? A. Well no. It is usually a crowd, but it was not as big as that crowd.

Q. What is that? A. I was never pushed as that crowd.

Q. You never saw a crowd like that before? A. No.

Q. It was a very unusual crowd, was it? A. Yes.

Q. The first time you ever saw a crowd like that? A. It was very crowded all the time.

Q. Is that right? A. Yes.

Q. Is that the first time you ever saw a crowd like that? A. No.

Q. Well, you had seen a crowd like that on other occasions? A. Oh, yes.

Q. But you never were pushed before that? A. No.

Q. And this was about 8:10 in the morning? A. Yes, sir.

Q. Is your father here? A. No. My father ain't here.

Q. Who told you to say you were pushed? A. Nobody.

Q. What? A. Nobody.

Q. When did you first tell anybody you were pushed? A. I first told since the accident happened—since the—

Q. Since the accident happened? A. Yes.

Q. You said you were pushed? A. Yes.

Q. When you came back from 33rd Street was anybody with you? A. No. They put me in the train.

Q. Well now, you got back alone then, didn't you? A. Yes.

Q. You got on the train at 33rd Street? A. No. They took me down.

Q. You got on the train at 33rd Street? A. Yes.

Q. And you came back to Journal Square, didn't you? A. Yes.

Q. When you came back to Journal Square, you were all alone, weren't you? A. Yes.

Q. Nobody was with you? A. No.

Q. When you got back to Journal Square, you met a man who was waiting for you there, didn't you? A. Yes. There was a couple of them waiting.

Mr. Markley: Mr. Dennis Kavanaugh, please stand up?

(A man stands in the court room.)

Q. Do you remember being there? A. I couldn't remember now what happened, with my pain. How could I remember at all?

Q. You don't remember him at all? A. No.

Q. Do you remember him asking you how your accident happened? A. Well, I don't remember that.

Q. You don't remember? A. Yes.

Q. Remember him, remember telling him that

you were going on the train and the train was stopped and that you were not looking and you put your foot between— A. I did not say that.

Q. Wait until I finish. You put your foot between the side of the car and the side of the platform and you fell down? A. No.

Q. What? A. No I did not.

Q. Well all this crowd pushed you into this space, that you say was between the two cars— A. Yes, sir.

Q. This unusual crowd, the biggest crowd you ever saw. You were able to get up out of that space again, weren't you? A. No. I did not go up myself. A woman helped me up.

Q. A woman helped you up? A. Yes.

Q. And you and she went in the car? A. She helped me on her arm.

Q. She helped you on her arm and you walked together in the car. A. Yes.

Q. You got a seat? A. Of course people got up.

Q. And you sat down, didn't you? A. Yes.

Q. When you fell over between the two cars, as I understand it, you fell down?

Mr. Fredman: I object. Do not answer. Your honor, I want to object.

Q. You fell, you fell down right up to your hip, didn't you? A. Yes.

Mr. Fredman: Will you wait please until I have a chance to note an objection?

Mr. Markley: You want to tell what is to be said.

Mr. Fredman: No. I didn't. You want to put into her mouth what you want her to say.

Mr. Markley: Oh, no.

The Court: After that very interesting repartee, what is the situation? Are you objecting?

Mr. Fredman: I object to the question on the ground that he said she fell in.

The Court: Your objection is that Mr. Markley's question is based on a false assumption?

Mr. Markley: This is cross examination, your Honor.

Mr. Fredman: I won't pursue that.

The Court: I suppose, Mr. Markley, instead of your question assuming that, you should preface with "Isn't it so" or "Isn't this the way it happened."

Q. Now then when you fell, whether you were pushed or not, we will assume you were pushed, and you fell as a result of being pushed or shoved, you went down to your hip with one of your feet, and one of your legs was over the platform, wasn't it? A. Yes, up to my thigh.

Q. You were down up to your hip? A. Yes.

Q. And your other leg was up on the platform? A. Yes.

Q. And you say you hung down there holding onto an iron? A. Yes, sir.

Q. That is what you mean? A. Yes.

Q. You did not put your foot in between the side of the car and the side of the platform, and there was just a little space there just enough to let your little foot go in? A. No. My little foot is not so small it would fit into the space.

Q. You were all the way over between the two cars? A. Yes.

Mr. Markley: That is all.

Redirect examination by Mr. Fredman:

Q. Miss Sandler, when you walked into the train was this lady that was with you helping you? A. Where?

Q. This woman that helped you out of the hole? A. Yes.

Q. Out of this place that you fell in. Was she with you? A. Yes, sir.

Q. Were you walking in of your own volition or were you leaning on her? A. No. I was—we were just pushed in.

Q. Did somebody get up and give you a seat when they saw your condition, is that so? A. Yes. There was an old man, he got up.

Q. There was an old man sitting on a seat and he gave it to you? A. Yes.

Q. And you rode in the seat all the way over to 33rd Street? A. Yes, all the ways over.

Q. Was the rest of the train empty or crowded? A. Very crowded.

Q. People were standing in the aisle?

Mr. Markley: Let the witness say it.

The Court: I sustain the objection.

Q. What was the nature of the train with reference to the crowds of people? Was it empty? A. No.

Q. Were the seats all occupied? A. Every one.

Q. Were there people standing in the aisle? A. Yes.

Q. Many of them? A. Yes, sir.

Q. And when you got to 33rd Street who helped you out of that train? A. A woman.

Q. And who helped you upstairs? A. There was the brakeman. He took me up.

Q. He took you up? A. Yes, sir.

Q. Did you get his number? A. No.

Q. Did this woman get his number? A. Yes.

Q. And when you were brought back to Journal Square was there a doctor there at that time? A. I don't know.

Q. And after they gave you some assistance what did they do? A. They took off my stocking.

Mr. Markley: I submit your Honor this has all been gone over before on direct.

The Court: I think you should confine yourself to straightening out something.

Mr. Fredman: That is what I am leading up to, your Honor. I may have to ask one or two superfluous questions.

Q. When you got to the station at Journal Square what did the people do with reference to— A. (Interposing.) They carried me up.

Q. And what after that? A. After that they got me in the room.

Q. What after that? A. After they called for an ambulance.

Q. And you were taken home? A. No. I was not taken home.

Q. How long were you in the hospital? A. I cannot remember.

Q. You left the hospital the same day? A. Yes.

Q. And were taken home in a taxi? A. Yes.

Q. And that night this adjuster for the company came to see you? A. Yes.

Q. And you were in bed? A. Yes, sir.

Q. And he asked you for a statement, did he? A. Yes. He asked different questions.

Q. Well, did he tell you he wanted you to sign a statement? A. No. He did not say anything at all. He got all the questions off me and asked me—

Q. Are the questions and are the statements as in that paper you have seen before, the true statements? A. Yes.

Q. Were they the statements that you gave him? A. No. It was a printed statement.

Mr. Markley: That was what?
The Witness: Printed.
Mr. Fredman: Where is it?

Q. Were you feeling pretty good that night when Mr. Coleman came around? A. No. I was very sick.

Q. But did you receive him with a smile and tell him everything was all right? A. No, I did not.

Q. Had the doctor attended you that day before Mr. Coleman came around? A. No. The doctor came after that.

Q. After that? A. Yes.

Q. Mr. Coleman told you who he was? A. I don't know whether he did.

Q. Were you in bed at the time? A. Yes, I was.

Q. And did you tell Mr. Coleman that you fell down? A. No, I did not.

Q. And your left leg entered the space between the platform and the door? A. No.

Q. Did you tell him that? A. No.

Q. Did you say, "No one pushed me down"? A. Yes. They pushed me down.

Q. Did you say to him, "No one pushed me down"? A. No, I did not.

Q. The space was big enough for my foot to go in sideways? A. No, I did not.

Q. Did you say "The size of the shoes I wear is very narrow, size three"? A. No, three and a half.

Q. Did you tell him size three? A. Well I did not. How could I tell him that is three and when I wear three and a half?

Q. This happened the same day that you were hurt? A. Yes.

The Court: Anything further?
Mr. Fredman: That is all.

(Witness Excused.)

Mr. Markley: I would like to have that marked for identification.

(Paper marked Defendant's Exhibit D-3 for Identification.)

CATHERINE COONEY, sworn for the plaintiff.

Direct examination by Mr. Fredman:

Q. What is your name? A. Catherine Cooney.
Q. Where do you live? A. 571 West Side Avenue.
Q. Are you employed? A. Yes.
Q. Where? A. At that time at Kanrich's at 65 West 39th Street, New York.
Q. Will you talk a little louder? A. Yes.
Q. Where do you work now? A. Oh, at the present time?
Q. Yes, are you employed? A. Yes, 23 West 23rd Street.
Q. New York City? A. Yes.
Q. Have you been employed in New York for a number of years? A. Yes.
Q. Were you employed in the month of September, 1928? A. Yes.
Q. In New York City? A. Yes.
Q. Do you remember September 28th, 1928? A. Of course I do.
Q. What particular reason have you for remem-

bering that date? A. Well, I went to the Journal Square station as usual.

Q. What happened on that date that was—

The Court: She certainly could tell you if you leave her alone. What time did you get to the station?

The Witness: Between eight o'clock and 8:10.

The Court: In the morning?

The Witness: In the morning.

The Court: On your way to your work?

The Witness: On my way to my work.

The Court: Tell us what happened?

The Witness: There was an unusual crowd and we were being pushed around. I saw a girl being pushed between the car and the platform. In fact she went down. I pulled her up by the waist, put my hand around her waist and pulled her up.

Q. What did you do after that? A. Well after that we were all pushed on—at least I was pushed on—at least I was pushed on and the girl was pushed on, pushed right sideways in the car.

Q. When she fell in this gap or opening between the two cars did she scream? A. She gave a scream.

Q. And that directed your attention to her? A. And she pulled on my skirt.

Q. She pulled your skirt as she went down? A. Yes.

Q. How did you grab her, Mrs. Cooney? A. I put my hands under her shoulders, like that (indicating) and pulled her up.

Q. With one arm? A. No. I put my arm right around her shoulder and drew her up and with this hand helped her up.

Q. Under the shoulder? A. Under the shoulder, under the arm.

Q. After you pulled her up, did you let go of her or did you direct her anywhere? A. No. I was still being pushed myself. We were all pushed on the train that morning.

Q. In other words, as you held onto her under the shoulder you were both pushed? A. Pushed, yes.

Q. Where were you pushed to? A. Pushed sideways in the car.

Q. Into the door of the car? A. Into the door of the car, into the car itself.

Q. The doors were open at the time. A. Yes, sir, they were open, yes, sir.

Q. And you tried to get in sideways? A. We were pushed sideways in the car and I was pushed sideways in the car seat. A man moved up and made room for the girl.

Q. Did she complain to you at any time of pain? A. I managed to sit beside her. She felt her knee after we got to 33rd Street and I got up to walk out of the train.

Mr. Markley: I object to the conversation.

Q. Where did you finally go to with her? Where did you go to with her? How far did you ride with her? A. I rode to 33rd Street station.

Q. What then? A. Well, when we were getting off she sat there and started to say something to the brakeman and he closed—I waited with her to see what would become of her—He closed both doors and said, "I had trouble enough with you already." He closed both doors, and then I knocked on the door and said, "Let that girl off, I saw her fall."

Mr. Markley: I object to any conversation and move it be stricken out.

The Court: Objection sustained. Strike it out. Now what happened? Did the brakeman help her or anybody?

The Witness: No.

The Court: Did she stay on the train?

The Witness: A middle aged man getting off the car said—

Mr. Markley: I object to the conversation.

The Court: What did he do?

The Witness: I will have to tell you what he said first.

The Court: You cannot tell us. You can tell us what he did. Was the girl helped out of the train or what happened?

The Witness: This man pulled her back and said, "Wait a minute," and he talked to the girl.

Q. Some man pulled her back? A. A middle aged man in the train.

Q. Were you with the girl when she got to 33rd Street? A. Yes. All the way in.

Q. And you were sitting with her? A. I sat beside her.

Q. And was she complaining of any pain? A. Yes, sir. She was rubbing her knee all the time.

Q. Did she complain of any pain? A. Yes.

Q. When you got to 33rd Street did you have her by the arm to take her up the stairs? A. Yes.

Q. And then what happened? Never mind what was said. What happened with reference to the girl or any employees at that particular place? A. The employees did not bother with her.

Q. What is that? A. The employees did not bother with her.

Q. Did not bother with her? A. No, not one.

Q. Did the guard come over to her? A. I did not see the guard.

Q. Well, anyway, she was finally helped off the train? A. Yes.

Q. By whom? A. By me.

Q. You helped her off? A. I helped her off.

Q. And you left her? A. I left her and a man took her by the arm and said, "Wait a minute."

Q. Took who? A. This girl.

Q. Not you? A. No. And he kept her there. They were still talking when I went upstairs and went to my work.

Q. Was she kept there against her will? A. Well, yes.

Q. Did she want to go with you or did you want to take her with you? A. I wanted to take her with me.

Q. I see. A. I wanted to see her get special attention.

Q. Where were you going to take her? A. I was going to take her to the special officer.

Q. And somebody detained you there? A. Yes.

Q. Did the man have a uniform on? A. No. He was just plain. The man was dressed in citizen's clothes.

Q. Did he say who he was? A. No, not to me. I went right on to my work.

Q. And he kept her there? A. Yes.

Q. Did she object to being kept there? A. The girl said nothing.

Q. She said nothing? A. No.

Q. Was she crying? A. She was still crying.

Q. Had she been crying on the train? A. Tears were rolling down her checks all the time.

Q. You were right by her side, weren't you? A. I sat beside her all the way over.

Q. Were there many people there at that place? I mean, was a crowd congregated? A. Yes.

Q. And were they struggling to get in? Was it an immense crowd? A. A very large crowd.

Q. And they were shoving or pushing up against the train? A. Yes.

Mr. Markley: I object to that. Let the witness testify.

The Court: Objection sustained.

Q. Did you, at the time that this girl was shoved into the gap or opening, see any platform man or any guards on the station? A. Not one guard.

Q. Did you see any within ten or fifteen feet of where this girl was pushed? A. No. There was no guards.

Q. Would you have seen them if they were within ten or fifteen feet? A. I certainly would.

Mr. Markley: I object to that. She has answered before I could object.

Mr. Fredman: I think it is a proper question.

The Court: I think that is reasonable. Within ten or fifteen feet.

Mr. Markley: Asking her to say whether she would or would not have seen.

The Court: Suppose, Mr. Fredman, that you asked her first if she could see within a radius of ten or fifteen feet around her, and if she says she could, then ask her if within ten or fifteen feet there was any guard, that she saw.

Q. Did you see any guards in the station, within ten or fifteen feet of from where you were, at the time the girl was pushed into the gap? A. The crowd was very dense, but there was no guard in sight.

Q. There were no guards in sight? A. If they were there I did not see them.

Q. You did not see them? A. No.

Q. Were there any guards or rails around the platform station where the girl was pushed into the gap? A. No.

Q. Were you pushed? A. I was pushed too.

Q. Easily, nicely, quietly? A. Quietly.

Q. How much were you pushed? A. Very rough. I was pushed in the car sideways.

Q. Could you resist them at all? A. I tried my best.

Q. What success did you have? Were you able to stem the tide in this pushing? A. I helped myself a little.

Q. But you were finally pushed in? A. I was pushed in sideways, pushed in against—

Q. That happens very frequently when you go to work?

Mr. Markley: I object to that.

The Court: Sustained.

Q. Does it happen when you go to work? A. It does happen. I never saw such a crowd as that morning.

The Court: When there is an objection you want to wait until the Court rules on the objection.

The Witness: All right.

Q. Did you frequent that station or have you frequented that station since? A. Never.

Q. Since the date of the accident? A. Never. I get on now at Grove Street station.

Q. You get on now at the Grove Street station? A. Yes.

Q. Is it to avoid crowds?

Mr. Markley: I object.

The Court: Sustained.

Q. Why do you go to Grove Street instead of to Journal Square?

Mr. Markley: The objection is it is immaterial.

The Court: I sustain the objection.

Q. How long have you been using the Journal Square station before the date of this accident on September 28, 1928? A. Since the first of May that year.

Q. Since the first of May that year? A. That year, yes.

Q. What time did you frequently go there? What time did you go to the station to get that train there? A. Around about a quarter past eight I tried to get there.

Mr. Fredman: That is all.

Cross examination by Mr. Markley:

Q. Where did you say you live? A. At 571 West Side Avenue.

Q. Miss Sandler lives at 585 West Side Avenue? A. Yes. I did not know it.

Q. Well, she lived right near you, didn't she? A. Well, she must have; but I never saw the girl until that morning.

Q. Did you know her father? A. I did not. I did not know anybody.

Q. Do you know the store that they keep on West Side Avenue? A. No, I do not.

Q. Do you frequent their store? A. I do not.

Q. At that time you say you lived at that address that you have given us, 571 West Side Avenue? A. Yes.

Q. You still live there? A. Yes.

Q. By yourself? A. No, sir.

Q. With whom? A. My niece, her husband and child.

Mr. Fredman: Are you gentlemen hearing this lady testify?

Mr. Markley: Can you hear, gentlemen?

Several Jurors: We can hear.

Mr. Markley: I will go over here, so that there will be no question.

Q. You were working at that time? A. Yes.

Q. Where were you working? A. For Kanrich, at 65 West 39th Street.

Q. Who? A. Samuel Kanrich.

Q. How do you spell it? A. K-a-n-r-i-c-h.

Q. Samuel? A. Yes.

Q. What do you do for Samuel Kanrich? A. I am a millinery copyist.

Q. What? A. A millinery copyist.

Q. You were a millinery copyist? A. Yes.

Q. The same as this girl? A. Yes.

Q. You are both millinery copyists? A. Yes.

Q. Where is his place of business? A. 65 West 39th Street.

Q. Did she work there too? A. I never met the girl until that morning.

Q. Did she work there too? A. No, not that I know of.

Q. Hadn't you seen her working there? A. I never did. I never saw the girl until that morning.

Q. But you were a millinery copyist and she was a millinery copyist? A. Yes.

Q. And you say this was at 65 West 39th Street? A. Yes.

Q. How long had you been working there prior to that date? A. Well, I don't know the month I went there.

Q. How long before September, 1928, had you worked there? A. About two or three months.

Q. Two or three months? A. Yes.

Q. Have you ever talked over this accident with anybody? A. Never.

Q. Never? A. I did not know the girl.

Q. Did you talk it over with anybody since the accident? A. No.

Q. Up to the present time? A. No.

Q. How long had you been a millinery copyist? A. About twenty years.

Q. Had you ever worked any place where she had worked as a millinery copyist? A. Never.

Q. Did you go to where this plaintiff worked that morning? A. I did not. I never saw her.

Q. I am asking you, did you? A. No, sir, I did not.

Q. When did you first see her that morning? A. When I pulled her up between the platform and the car.

Q. That is the first time you ever saw her? A. That is the first time I ever saw her.

Q. So when you first saw her, she was already over the platform and between the two cars? A. All over the platform. I do not understand.

Q. You say you first saw her when you pulled her up? A. Yes. She was screaming.

Q. When you pulled her up she was between the two cars? A. She was between the platform and the car.

Q. She was not between the two cars then? A. Yes. She was between the platform and the car.

Q. I am asking you whether she was between the two cars. A. She was under the chain. All I know, she was under a chain, where the ends of the car meets. She struck the chain.

Q. Do you know where the ends of the two cars were? A. Of course I do.

Q. She was between the two cars? A. No. She was between the platform and the car.

Q. She was between the two cars and the chain? A. No.

Q. She was only between the platform and the car, as you remember it? A. Yes.

Q. And when she was between the platform and the car, how close was she to the door? A. Well, there was a little, quite a space there. She caught onto me.

Q. You know where the entrance door is? A. Of course I do.

Q. Where you went in? A. I did not go in.

Q. You did go in finally? A. I was pushed in.

Q. You were pushed in too? A. Yes.

Q. But before you were pushed in, wasn't it at that door where she was between the platform and the car, was it that door? A. I pulled her up and pulled on her towards me.

Q. No. The door— I am asking you, when she had fallen or when she was pushed or after—

Mr. Markley: Strike it out.

Q. After she had fallen as a result of being pushed— A. She did not fall. That girl did not fall.

Q. She did not fall? A. No.

Q. She was pushed? A. I know, positively.

Q. You are sure of that? A. I am positive.

Q. After she was pushed, she must have fallen. A. She was sliding right down to the tracks.

Q. Where was she with respect to the door that you finally went into? A. I did not measure.

Q. Can you give us any idea? A. Well, the end of the car came to about here (indicating). She slipped down into this space.

Q. The end of the car came to where? A. Her knee struck the chain. See, this is the end of the car.

Q. Yes. A. Then she went down in the space.

Q. Right at the end of the car? A. Yes.

Q. You pulled her up alone? A. Yes.

Q. Unassisted? A. Unassisted.

Q. Was her hand down on the track when you pulled her up? A. I did not see her hand. It could not be on the track when I had hold of it.

Q. It was not on the track? A. No, it was not on the track. She was sliding onto the track.

Q. You say you never saw such a crowd? A. No, I never saw such a crowd going in.

Q. Very unusual? A. Very unusual, because I was a little late that morning. I usually start a little earlier.

Q. It was between eight and eight thirty in the morning? A. Yes.

Q. You had been using that platform daily? A. No, I have not.

Q. Prior to the accident? A. Yes.

Q. From May 1st, 1928? A. Yes.

Q. You both rode up to 33rd Street? A. Yes.

Q. And tears were rolling down her cheeks all the way up to there? A. Yes.

Q. You saw them? A. Yes.

Q. And they continued rolling down while she was up at 33rd Street? A. Yes.

Q. And they were still rolling down when you left her, on her cheeks, is that right? A. Yes.

Q. And was she crying, was she? A. Yes.

Q. Out loud? A. Well, no, not out loud.

Q. When you left her she was with a man who was in citizen's clothes, who was detaining her, is that right? A. Yes.

Q. He was not in uniform? A. No.

Q. He was not a policeman? A. No.

Q. He had no railroad uniform on? A. Yes. He was a passenger.

Q. And he was detaining her? A. Yes.

Q. And you left her with him? A. Yes.

Q. And that was the last you saw her? A. Yes. That was the last I saw her.

Q. Have you met her since? A. I met her in August of this year.

Q. You met her in August of this year? A. Yes. I am not sure.

Q. That is, August, 1929? A. Yes.

Q. That is the last time you saw her? A. Yes.

Q. Where did you see her in August? A. I met her on the train going from New York.

Q. From where? A. From New York.

Q. From New York? A. Yes.

Q. A tube train? A. Yes.

Q. You two happened to meet accidentally again, is that right? A. Yes.

Q. That is the second time you saw her? A. Exactly. The second time I saw her.

Q. You have not seen her in between at all? A. No.

Q. And you talked the thing over? A. Well, no.

Q. Did you talk anything about the accident? A. Of course not. It did not interest me.

Q. Did you say good-bye to her? A. I did not.

Q. What did you say? A. Nothing.

Q. You left her finally? A. I did not.

Q. Did you say good-bye to her? A. I did not.

Q. When did you see her after that again, after August, 1929?

Mr. Fredman: Object. I do not see how it is material.

A. I met her on the bus.

The Court: I think counsel has a right to examine on this point, to see whether there is any ground for bias or prejudice or not.

Q. Did you see her after August, 1929? A. Yes. One night I met her on the bus going down to—

Q. One night you met her on the bus? A. Yes. She said she had moved to Ocean Avenue.

Q. And was not living at West Side any more? A. No.

Q. And when was that? A. I cannot remember the date. I don't know the date.

Q. Did you give her your name? A. I did not.

Q. Did you give her your address? A. No. I avoided her.

Q. Did you see her after that again? A. Yes.

Q. When? A. About a month.

Q. A month ago? A. Yes.

Q. What? A. Yes.

Q. Where did you see her at that time? A. I met her again on the bus.

Q. Accidentally? A. Yes.

Q. All these meetings are accidental? A. All accidental. I avoided the girl every way that I could.

Q. How many times did you see her accidentally up to the present time? A. About three times.

Q. Altogether? A. Yes.

Mr. Markley: That is all.

Redirect examination by Mr. Fredman:

Q. Miss Cooney, you were in this train the morning of this accident, and that was the first time you ever saw Miss Sandler in your life? A. The very first time.

Q. Had you ever known the girl before? A. Never. I did not know anybody in the neighborhood.

Q. Did you take her name the morning of the accident? A. No.

Q. Did you know her name the next time you saw her? A. I did not.

Q. Had you ever been to her house or any place that she had ever been to? A. No, sir.

Q. Had you ever worked at any place that she has worked at? A. No, sir. I have not.

Q. As far as this girl was concerned, she was a total stranger the morning of the accident? A. I did not know such a girl existed.

Q. Never knew she existed? A. No.

Q. And outside of the morning of the accident, had you ever seen or communicated with her in any way, shape or form until the next time you saw her, which is almost ten months later? A. I did not.

Q. What is your attitude toward this case?

Mr. Markley: I object to that.

Mr. Fredman: Mr. Markley has brought this matter out, and I want to show the actual attitude of the witness.

A. I avoided the girl in every way I could. That is why I went to the Grove Street station.

Q. You tried to avoid her because you did not want to appear in court? A. I did not want to appear in court.

Q. You did not want to appear in any court, did you? A. No.

Q. You were subpoenaed in this case weren't you? A. Yes.

Q. Subpoenaed by my office? A. Yes.

Mr. Markley: And I offer the Exhibit D-3 in evidence.

Mr. Sullivan: Is that marked?

Mr. Markley: Yes.

Mr. Fredman: All right. I object to the introduction of this Exhibit 3 in evidence on the ground that in her testimony she has denied the statements as therein contained and as given by her to the company or its representative, and on the ground that she does not read and write English fluently, and did not understand the nature of the statements as therein set forth, and on the ground that it is not in her handwriting, and is written by some other party.

The Court: I thought you withdrew that?

Mr. Markley: No, your Honor. The statement I withdrew is the statement the Doctor took at the hospital.

The Court: Yes.

Mr. Markley: This statement is a statement that the girl admitted she signed in her home.

The Court: You have not proven that yet.

Mr. Markley: She admitted she signed it, but I have the man here to prove it, if there

is any question about it. All right, I will withhold the offer until Mr. Coleman goes on the stand.

Mr. Fredman: Are you withholding the offer at this time?

Mr. Markley: Yes. It is marked for identification now. Mr. Fredman wants to read that testimony, I assume, over my objection.

Mr. Fredman: Yes.

Mr. Markley: And you want to read it now?

Mr. Fredman: Yes.

Mr. Markley: All right, go ahead.

Mr. Fredman: You have no further doctor to put on the stand, have you?

Mr. Markley: Not right away, no. I have another one that is going on.

The Court: Who is going to read the testimony? Are you going to read your own examination?

Mr. Markley: He wants to put it in.

The Court: Suppose you read your examination, so you can put exactly the modulation you want and he can do likewise.

Mr. Markley: All right. I will be glad to read it.

Mr. Fredman: I will submit to read it, or let a third party read it, so that there won't be any question about it.

(Thereupon the testimony in the deposition of the witness Van Doren was read by counsel to the jury.)

Deposition.

NEW JERSEY SUPREME COURT,

HUDSON COUNTY.

MINNIE SANDLER, an infant, by Morris Sandler, and MORRIS SANDLER, individually,
Plaintiffs,

v.

HUDSON & MANHATTAN RAILROAD COMPANY,
Defendant.

Action at Law.
Deposition.

Deposition of William F. Van Doren, a witness produced, sworn and examined on the part of the defendant in the above entitled cause, taken at his residence, 49 Mulberry Street, Newark, New Jersey, this twenty-third day of November, 1929, at eleven o'clock in the forenoon, before Herman Lipschitz, Esquire, a Master in Chancery of New Jersey, pursuant to agreement of counsel.

APPEARANCES:

Messrs. FREDMAN & FREDMAN, Attorneys of Plaintiffs.

Messrs. COLLINS & CORBIN (MR. BROADHURST), Attorneys of Defendant.

It is stipulated that the deposition be taken stenographically and the signature of the witness waived.

State of New Jersey,
County of Essex, } ss.:

WILLIAM F. VAN DOREN, being first duly sworn according to law, on his oath, deposes and says:

Direct examination by Mr. Broadhurst:

Q. Mr. Van Doren, where do you live? A. 49 Mulberry Street.

Q. Newark, New Jersey? A. Yes, sir.

Q. You have been injured in an automobile accident? A. Yes, sir.

Q. So you can not come to court for us? A. No, sir.

Q. When were you hurt; just recently? A. Why, it was a week ago Friday, the day before yesterday, well, last Friday it happened, at three o'clock.

Q. Did you work for the Hudson & Manhattan Railroad Company on September 28th, 1928, at about 7:11 in the morning? A. Yes, sir.

Q. How long had you worked for the Hudson & Manhattan Railroad Company? A. Why, it was just a year ago this month that they let me go on account of my reference; it was just before Thanksgiving that they let me go.

Q. That is, you left them about a year ago? A. It was on a Tuesday.

Q. That would be in November of 1928? A. Yes, sir.

Q. How long had you worked for them before that? A. Why, I started, I think it was, in September, I started for them.

Q. September of what year? A. I don't recall.

Q. The same year, you mean? A. Why, yes; in the same year.

Q. How long had you been working for them

before, about? A. Well, I started in in September, and November I had to go, they had to let me go on account of my reference.

Q. What kind of work did you do for them while you were working there? A. Working as guard.

Q. As guard on the trains? A. Yes, sir.

Q. In September, 1928, the day that this young lady was hurt, do you remember about how long you had been working as guard at that time? A. Why—

Q. About; that is all we want to get; was it a week or so, or ten days? A. No; it must have been more than that, because, I will tell you why, it was in September I started for them; I broke in three days.

Q. Yes. A. Then they put me on as guard, and I have been guard ever since I had been working for the company.

Q. What was your run; were you on the Newark trains, or uptown? A. Journal Square to 33rd Street.

Q. What were your hours of duty on the day this girl got hurt, do you remember? A. This happened around the rush hours, between seven and half past nine, around the rush hours; that is when it happened.

Q. What were your hours of duty; when would you go to work, and when would you quit? A. Of course I don't recall the run I had; they had so many fellows keeping out or they didn't show up on time.

Q. What were you, an extra man? A. Why, I was on the extra list; yes, sir.

Q. Do you remember on September 28th, 1928, a young Jewish girl by the name of Sandler telling

you that she had hurt her leg? A. No, sir; here is the whole thing: You see, it was, I think it was seven or a little after seven, the bells were given to go uptown—

Q. What bells are those? A. For the train to go.

Q. From the dispatcher's office? A. From the dispatcher's office.

Q. At Summit Avenue there? A. Journal Square.

Q. Where is a booth where the extra men stay? A. Yes; of course the bells were given and I shut my doors, she was on my train, she got on my train; I was standing my usual regular position as guard.

Q. Where was that? A. I think it is either the fifth or seventh car.

Q. That is, you were on the fifth or seventh car? A. Yes, sir.

Q. When you say you were standing in your regular position, where do you mean? A. Why, between the two cars where you regularly stand.

Q. That is between the boloneys? A. Yes, sir.

Q. The boloneys are the long coils between the two cars? A. Yes, sir.

Q. Go ahead. A. Between that; she gets on my train, my door was shut, the bell is passed to me and I pass the bell on to the conductor, so she walks up to me and she says, "Mister, somebody gave me a push, look at my stocking." I said, "Listen, lady—" I didn't want to be fresh—"Do you want me to buy you a pair of stockings?" She says, "No, Mister, but somebody gave me a push"; and she went down and she sat down on the seat, she sat down in the head car on that side (indicating).

Q. Which side would that be, on the right side or the left side? A. I was standing here, and she

went over and sat on that side (indicating). Nothing was said until she got to 33rd Street, I discharged my passengers when we got to 33rd Street, the passengers were discharged on that side and I closed my doors on that side and reopened them on the other side to recharge passengers, the lights went up and I had to shut my doors, the bell was given and then I shut my doors; then she asked me what my name was, what my badge was, whereabouts I lived and everything else, but I couldn't do that, could I? I was going by the company's rules and regulations.

Q. What was your badge number? A. 813, I think it was, or 812.

Q. 812? A. That is what it was.

Q. This was at 33rd Street that she asked you for your name? A. Yes, sir.

Q. And your number? A. My badge number.

Q. But you had to go right out? A. Yes, sir.

Q. You told her to get off the train? A. She got off the train, she was walking on the platform when the doors was shut, understand.

Q. Where did you get on this train before it came into Summit Avenue; had you made a run to Summit Avenue? A. I had made the run to Summit Avenue.

Q. And you had come back down to the platform? A. To the platform.

Q. When the trains come in from 33rd Street, you discharged the passengers and then go around in the yard to swing back to up uptown again? A. Yes, sir.

Q. You had made the previous run with your train? A. Yes, sir.

Q. In the first place, did you see the young lady

go in between the platform and the car? A. No, sir; I didn't.

Q. The first you knew that she had been hurt was when she told you? A. Yes, sir.

Q. At Summit Avenue? A. Yes, sir.

Q. Now, do you recollect, when you opened up your car doors on that trip, about how many were on the platform near your two end doors? A. Well, I should judge about 15 or 20.

Q. How were they divided; were they all at one door, or all at the other door, or were they divided between the two doors? A. You know the way they all rush for this train, you know, they all want to make this train, they rush for this train.

Q. I am trying to find out how the passengers were standing on the platform when you opened up your doors. A. They were in a bunch like, that is just the way they were.

Q. Did you see any pushing or shoving? A. No, sir; I didn't.

Q. How wide are those doors, about, each one of the end doors, when they are open? A. They are a little wider than this doorway here (indicating); not much wider.

Q. That doorway is about three feet wide? A. Yes, sir.

Q. Do you think it would be about a foot wider?

Mr. Fredman: Don't lead him. We will take judicial notice that they are more than three feet wide.

Q. Did you observe any of the passengers pushing or shoving to get on that morning on that trip? A. No, sir; I just stood in my regular position when they got on the train.

Q. When you were in that position you would be between the two cars? A. Yes, sir.

Q. That is by the controls for the doors? A. Yes, sir.

Q. That is on that little curved piece that comes out on the end of the cars? A. Yes, sir.

Q. Did you observe whether there were both men and women in that crowd? A. There were women and men in that crowd.

Q. When she spoke to you, had all your passengers boarded at that time, or not? A. They were all on the train and my door was shut.

Q. Was your train standing? A. It was just standing still; as she came to me the train started up.

Q. At that time the doors were closed? A. Yes, sir.

Q. How was the car so far as the number of passengers in it were concerned when you left Summit Avenue; was your car crowded, or not? A. Oh, yes, it was crowded, because between seven and half past nine the trains are pretty crowded.

Q. Did you notice her stocking; was her stocking torn, or not? A. I didn't notice; no, sir; because, you know, you have to watch those passengers, because they walk through the train; sometimes when the train is in motion they will walk through the train, especially when they hit the switch, they will go through.

Q. She didn't walk through the train? A. No, she didn't walk through the train.

Q. Was there anybody with her, do you remember? A. Why, I don't recall anybody being with her, this lady here.

Q. Did any other of the passengers speak to you about it? A. No, sir; nobody else; of course when

she was getting off the train there was some woman who was talking with her when she got off the train.

Q. When she got off the train? A. Yes, sir; some woman was talking to her.

Q. A young woman, or an elderly woman? A. I don't know; about middle-aged, I guess.

Q. Was this girl that spoke to you a small girl or a big girl? A. Why, she wasn't very tall, I should judge about like this, about as tall as this gentleman here (indicating).

Q. The place where this car was standing while the passengers were boarding it, was that on a straight-away or on a curve? A. Why, it was sort of on a curve, you know at Journal Square right by the stairway it was.

Q. Which stairway, do you know? A. I think it was the furthest one up where the dispatcher's office is.

Q. That is the most westerly stairway? A. Yes, the westerly station, the westerly platform.

Cross examination by Mr. Fredman:

Q. Mr. Van Doren, you were not a regular guard on this train, were you? A. No; I was a relief man.

Q. Sort of an extra man? A. I was a relief on that; I was taking somebody else's place that morning.

Q. Did you work regularly every day on that road? A. Oh, yes.

Q. Had you worked on any particular run, or anything like that, or were you just shifted here and there? A. No, sir; I will tell you why; some fellow quit over there and they had given me this run, it was a nine-hour run, I will tell you why, I

am a married man and have a family and they gave me this run because they figured I would make a little more money than I was making; then gave me different runs and I was copying down the fellow's run that didn't show up.

Q. On this very morning that Miss Sandler was injured, you had made how many runs on this particular train? A. I think it was just one particular trip, because I think I picked my train up at Henderson Street yard in the morning.

Q. You remember this particular girl, Miss Sandler, speaking to you first as she entered the train? A. When she spoke to me on the train the doors were shut, the bells were given to go, and she came up to me, "Mister, look, somebody gave me a push, look at my stocking"; I didn't take notice to her stocking, this was when I shut my doors, the vestibule doors, so that nobody could walk through the train, see.

Q. Was everybody in the train seated in your train? A. Oh, yes; as far as there were seats to be taken.

Q. Was there anybody standing? A. Why, there was lots of people standing.

Q. This happened when; about 7:15? A. About between seven and eight o'clock in the morning.

Q. That is what you previously said to Mr. Broadhurst is the rush hours? A. Around the rush hours, between seven and half past nine is the rush hours.

Q. Do you have any particular hours that are known as rush hours, that you call rush hours? A. Now, I used to call rush hours between seven and half past nine, and they usually start again at three-thirty until about six.

Q. Those particular hours are when the crowds

are larger? A. They come to be larger all the time.

Q. Are the crowds larger in the morning at Journal Square, or are they larger in the evening? A. Well, I think it is most in the mornings when the platform is pretty well crowded.

Q. In other words, you say from seven to nine-thirty is the busiest? A. That is the busiest hours.

Q. At Journal Square. A. Yes, sir.

Q. Of course your duty as a guard is to stand near the doors and shut them as soon as you get the signal to go? A. Yes, sir; as soon as we get the signal.

Q. You don't leave the car at any time to go out on the platform, do you? A. No, sir.

Q. Did you notice whether or not there were crowds of people standing in all the cars of your train? A. I didn't notice.

Q. Did you pay attention to them in your own train? A. I paid attention to my own train.

Q. That was crowded? A. Yes, sir.

Q. Was the vestibule or the platform crowded? A. The platform was pretty well empty; there were two gentlemen in the vestibule there when I shut these vestibule doors so that they couldn't walk through there.

Q. And there were numerous passengers standing outside when you first opened the door at Journal Square; and was there a rush of passengers from the platform? A. Yes, sir. They rushed for that train.

Q. Everybody rushed in? A. Yes, sir.

Q. They were rushing for all the doors of that train? A. Yes, sir.

Q. Was there any employee or any guard in the employ of the railroad company standing on the

outside platform near your doors? A. That is what I don't recall.

Q. Was there anybody there? A. I don't recall that.

Q. Have you seen anybody standing there on any other morning? A. No, sir; I don't recall that.

Q. So far as you know, if they were there you would have seen them? A. Yes, sir.

Q. You didn't see any on this particular morning? A. No, sir; because of this crowd, you couldn't look through; I have to take care of these doors.

Q. There was a big crowd there, was there? A. There was a big crowd there.

Q. How many people would you say were on the entire platform? A. Oh, I couldn't judge that.

Q. Were there hundreds of them? A. There must have been about a hundred.

Q. They were all crowded around the entrance doors to the various cars? A. Trying to get on the train.

Q. There were no rails or guards at the end of the platform, were there, to separate the platform from the opening or cut? A. The only place there is a railing is away up by the dispatcher's office, which is, I will tell you, there is only a little railing there, a little wooden railing, that is all.

Q. There is no railing at this particular point where your car was stationed? A. No, sir.

Q. Where Miss Sandler entered the car? A. No; that was before the station was all completed.

Mr. Broadhurst: That is, it was the old station?

The Witness: Yes, sir.

Q. When you speak about the conditions exist-

ing in September, 1928, you mean the old station and the old platform were there? A. Yes, sir.

Q. That was prior to the new platform and the new station? A. Yes, sir.

Q. You didn't pay any attention to Miss Sandler when she mentioned to you that she had been hurt, did you? A. No, sir.

Q. Did she sit down immediately after she spoke to you? A. Oh, she went in and she sat down; yes, sir.

Q. You don't recall anybody being with her? A. No, sir; I don't.

Q. The only time you recall anybody speaking to her was when she was about to get off? A. Yes, sir.

Q. Was that a middle-aged woman with eyeglasses, do you remember? A. I don't remember; no, sir.

Q. Was this crowd that you saw this morning the usual thing, or was it the usual occurrence everything morning the same way in between the same rush hours? A. Yes, sir.

Q. Has anything been done, so far as you know, to avoid the crowding down there?

Mr. Broadhurst: You mean at that time?

Q. At that time, was there anything done; did you see any platform men or any guards there trying to control the crowd or anything that you saw? A. After that happened, I guess, after that they had extra men then on the platform there to avoid the crowding.

Q. What do you mean, after? A. After this had happened.

Q. You mean on the next day? A. Yes, sir.

William F. Van Doren, redirect-recross.

Redirect examination by Mr. Broadhurst:

Q. Do you know how many platform men were on duty on the day this happened? A. No, sir; I don't know.

Q. Do you know how many platform men were on duty after it happened? A. No, sir; I don't recall that, either.

Q. What makes you think that they put on extra men after that? A. Why, I seen they done it to me after this happened; they done it to a lot of fellows that they didn't have jobs that day; they put them on the platform.

Q. Did you work on the platform after this happened? A. After this happened; it was a couple of weeks after this happened.

Q. What platform did you work on? A. Why, I was just on relief duty, you know; I was only just on around the rush hours.

Q. Which one did you work on? A. Why, it was on both sides.

Q. On what station? A. Journal Square.

Q. How many platform men did they have on then, do you know? A. No; I don't recall that.

Recross examination by Mr. Fredman:

Q. Well, you know that after this accident you were put on as platform man to control crowds and prevent their rushing; is that right? A. Yes, sir.

By Mr. Broadhurst:

Q. How long after was it that you were put on as a platform man? A. Well, I wasn't a regular platform man.

Q. Did you ever work as platform man before that? A. No; it was just to help out I took the job;

they took on a lot of fellows then that had no jobs; we were waiting to be sent on a trip; we have no place to go and they put us on the platform for rush hours, something like that, to open the doors; there is a center door, too, the rapid transits and these locals, you know, to shut them doors when the bell is given and they get the signal to go.

Q. How many passengers do you think there were on the platform that entered your two cars? A. Oh, there must have been about a hundred, I guess; a hundred or more.

Q. That entered your two doors? A. Yes, sir.

Q. In your two cars? A. Yes; because they were all in a jamb, see; they rushed down, jostling down the stairs.

Q. I know; we are trying to get at what you saw yourself. A. Yes.

Q. I am trying to find out on this particular day how many passengers boarded your train? A. When I was on that platform there?

Q. No; on the day the girl got hurt, about how many passengers boarded your two cars on that day? A. I should judge about fifty between those two doors; 25 on each door.

By Mr. Fredman:

Q. About how many people could get on your train?

Mr. Broadhurst: You mean the whole train?

Mr. Fredman: To ride in your car; what is the capacity of your car?

A. I forget now; I think it is 40 sitting and about 25 standing up, something like that.

Q. In other words, you would say that on that

day, in the car that the crowd was coming into, there were 40 people sitting and 25 standing? A. About 25 or 30 standing.

Q. That is about 70 people? A. Yes, sir.

By Mr. Broadhurst:

Q. Did you see them rushing down the stairs, or were they waiting for the train to come into the station? A. No; the whole thing is that somebody must have given her a push, see.

Q. On this particular day, did you see them running down the stairs, or were they standing on the platform? A. Standing on the platform.

Q. When your car came to a stop, the one that you were in, you naturally opened the doors? A. Yes, sir.

Q. And as you opened the doors, you say the people rushed into the car? A. Yes, sir.

By Mr. Fredman:

Q. There were approximately 65 or 70 people in the crowd assembled in front of your two doors, who rushed into the car; is that right? A. Yes, sir.

Q. How long did you wait before the train started? A. Oh, it was about five minutes; about five or ten minutes.

Q. There were very few people that came in after the first rush? A. That is right.

Q. It was practically crowded by the first rush; is that right? A. Yes; you see, they had to run on a headway, on schedule time in the rush hours.

By Mr. Broadhurst:

Q. That is, they were all standing on the platform when the train came in? A. Yes, sir.

Q. And when you opened the doors they all rushed in? A. They rushed right in.

Q. Did you see any unusual jostling or pushing at all? A. No, sir.

By Mr. Fredman:

Q. What you call unusual jostling, you mean you didn't see anybody fighting? A. No, sir.

Q. Or striking one another trying to grab a seat? A. No.

Taken and sworn to before me this 23d day of November, 1929.

HERMAN LIPSCHITZ,
Master in Chancery of New Jersey.

CATHERINE COONEY, recalled for the Plaintiff.

(Mr. Fredman draws a map upon the blackboard.)

Redirect examination by Mr. Fredman:

Q. Now, Mrs. Cooney, you just bring yourself to this board, and in order to clarify the situation somewhat of this morning, will you explain to the Court and jury just about where Miss Sandler fell at the time that she was pushed, and whereabouts, with reference to the car and platform, she was when you picked her up?

The Court: I think, Mr. Fredman, you should preface your question by stating, so that the record will get it, that you have drawn a diagram on the board, purporting to be the platform of the Hudson & Manhattan Railroad as it existed on the morning of September 28th, 1928.

Mr. Fredman: I am just drawing a rough diagram.

The Court: Ask her if she agrees with the rough diagram, and if she says "Yes" then she can testify.

Mr. Markley: I can hardly say that is an accurate diagram.

The Court: Ask her if she can assume that or let her draw it herself, because the record has got to show what was done. You cannot ask a lot of questions of this and that and just mess the testimony, and not have the upper court know just what the situation is.

(The witness drew a diagram on the board.)

Mr. Fredman: Will you let me just submit this: Miss Cooney drew a diagram on the blackboard and then indicated a space between the two platforms of adjoining trains with a chain or chains connecting them.

The Court: Are you satisfied with that?

Mr. Markley: I am satisfied.

The Court: All right.

Mr. Markley: That is, I am not satisfied, but I am not going to object.

The Court: All right.

Mr. Fredman: Now is that proper for the two Hudson & Manhattan cars?

Mr. Markley: Are you talking about something with her?

Mr. Fredman: No.

Mr. Markley: Or testifying?

Mr. Fredman: If you wish to object please do so.

Mr. Markley: I do not understand that you were testifying or stipulating something. I have not stipulated anything.

Mr. Fredman: What is that? The last part, will you read that, Mr. Stenographer.

Mr. Markley: I am willing to state that the witness has put some marks on the board, and you have a perfect right to examine her about it, but I am not willing to stipulate that they indicate anything.

The Court: Why don't you do the thing right, Mr. Fredman? Put it in the proper shape.

Q. Now, designating the blackboard, upon which I have drawn what appears to be two cars, looking at that, does that appear to you the shape or style of the car which you boarded the morning of September 28th, 1928? A. Yes.

Q. Will you now, directing your attention to the diagram on that board, indicate thereon where, with reference to the cars and platform, Miss Sandler was pushed and fell, and where from, what part or where from you helped her out?

The Court: Now I suggest that the stenographer come over there and sit down over there, so that he can hear this woman's testimony.

A. It was just about there (indicating).

Q. What does that long straight line indicate? A. The platform, right between the two cars.

Q. That is where you helped her get out? A. Yes.

Mr. Fredman: That is all.

Catherine Cooney, recross.

Recross examination by Mr. Markley:

Q. Have you spoken to anybody during lunch hour about this case? A. I saw no one.

Q. During the lunch hour? A. I saw my niece, only.

Q. You testified this morning, if I remember you correctly, that the girl was between the car and the platform and not between the two cars, did you not? A. I don't remember saying that.

Q. These cars—

The Court: If you did say that, was that correct?

The Witness: No, sir.

The Court: I think that is what you said.

The Witness: No, sir. I pulled her up from between the two cars, because the chain had touched her knee going down.

The Court: I know you mentioned the chain, and then Mr. Markley asked you was it between the two cars, and you said no, it was between the car and the platform. Now of course, I am human enough to know that witnesses on the stand sometimes make an error, and I understand. Where was it?

The Witness: It was between the two cars where the two chains are.

Q. It was not between the platform and the car? A. No.

Q. You have not spoken to anybody about it during lunch hour? A. No. I am not interested in this case.

Q. You have answered my question. Which side of the platform were these cars on, the left or the right side, as they faced towards New York? A. The left side.

Q. Had the train come in on the right side of the platform too? A. Yes, the downtown train.

Mr. Markley: That is all.

Mr. Fredman: Just a minute.

(Short discussion between counsel off the record.)

Mr. Markley: Mr. Fredman wants me to admit, and I am willing to do so, that the father is bringing this suit as next friend for the minor, for the collection of the medical bill only.

The Court: How about the loss of services?

Mr. Fredman: Well, she was emancipated at that time.

The Court: You better get Mr. Markley to admit that, because under the law I have to instruct this jury that the father is entitled to be compensated for the earnings of the child until she was twenty-one, unless she was emancipated.

Mr. Fredman: I don't know anything about it.

The Court: That is why I say, unless you concede it, I am going to cold-bloodedly charge the jury on that proposition, unless there is some proof to the contrary. If counsel wants to concede it, admitting that, if the jury found for the plaintiff and found there was any loss of earnings, I would have to instruct them that they should go to the father, unless counsel agree that any such award should go to the girl herself.

Mr. Markley: I would be willing to stipulate anything for Mr. Fredman, but if I did

I don't know but maybe later I would be confronted with another suit by the father claiming that. I don't know.

FRED J. COLEMAN, sworn for the defendant.

Direct examination by Mr. Markley:

Q. What is your name? A. Fred J. Coleman.

Q. Where do you live, Mr. Coleman? A. 65 Danforth Avenue, Jersey City.

Q. Are you employed by the Hudson & Manhattan Railroad Company? A. By the Hudson & Manhattan Railroad Company.

Q. Did you, on the day of this occurrence that Miss Sandler, the plaintiff, claims she was injured, go to her home? A. I went to her home that evening about seven or seven-fifteen.

Q. And where did you go to her home, where was it? A. It was the corner of West Side and Communipaw.

Q. When you got there was she home? A. Yes.

Q. Where was she? A. She was upstairs in bed.

Q. With whom? A. Why she was in a small little room at the head of the stairs, room number two, ten by ten, the bed was close up against the wall. And close against the wall was a girl there.

Q. Were the two girls in bed? A. Yes. They were in bed.

Q. They were in bed and one of them was Miss Sandler? A. Yes.

Q. How did you come to go up to their room? A. The lady of the house told me where I could find them, and she took me upstairs.

Q. You went up to the room? A. Yes, sir, I went up to the room.

Q. And went in? A. Yes.

Q. While you were there did anybody else come in? A. Why, about fifteen minutes later two men came in.

Q. About fifteen minutes later two men came in? A. Yes.

Q. While these four people were there, did you take this statement from the young lady? A. I did.

Q. Did you write it down? A. I wrote it down just as I asked her the question.

Q. After you wrote it down, did you ask her to sign it? A. I first of all had her read it.

Q. Did you read it? A. She and her girl friend both read it and then it was passed over to the two men and they read it.

Q. And then? A. And then she wrote her name and I had her write in in her own spelling and of her own free will, "Carefully read and is correct."

Q. That is in her own handwriting, too, at the bottom? A. Yes, sir.

Q. In showing this statement to the young lady this morning, she admitted a considerable part of it, but she denied that she said this, "It is now getting slow," meaning the business, that her business was getting slow—you have it in here as "It is getting slow." Did she say that? A. That was her answer to my question when I asked her how business was.

Q. She admitted saying, "I went downstairs by the new stairway and turned to the left side," but she denied that she walked up the platform. She denied that she said to you that she walked up the platform about ten feet or so. Did she say that to you at the time? A. She specified, by a certain distance that she walked up all the stairs, a number of feet.

Q. She denied that she said to you, "No-one pushed me down." A. Those are the words she told me, absolutely, when she was in bed.

Q. She denied that she said to you this part in the statement, "The space was big enough for my foot to go in sideways." Did she say that to you? A. That is how she told me, that the foot went in the side of the car or platform. She then showed me the slipper she had been wearing, which I noted was very narrow.

Q. Do I understand you to say that everything you have in this statement is a statement made by her? A. Made by her and read by her, and this is the name of the girl, on the end, that was in bed with her and read the statement.

Q. Torpey? A. Torpey.

Q. Up at the right-hand corner you have "Twenty years, single, April 11, 1928." A. Yes.

Q. Did you get that from her? A. That is when I asked her, and she told me to put that down.

Q. April 11, 1928? A. Yes, that is correct, there is no question about it at all.

Q. Do you have occasion to use the Journal Square station of the Hudson & Manhattan Railroad going from your home here in Jersey City? A. Yes, that very morning. I go through Journal Square probably three, four or five or six times a day.

Q. That was so back in September 28, 1928? A. Yes, and it has been for the last ten or twelve years.

Q. Where do you say you live in Jersey City? A. 65 Danforth Avenue.

Q. Where is your headquarters with the railroad? A. 30 Church Street in New York.

Q. On September 28, 1928, do you know whether there were platform men on the platform, the

New York platform, at Journal Square? A. Yes, I know. The record shows it too.

Q. How many? A. At least five.

Q. Is that the New York platform where the trains go to Cortlandt Street? A. That is the downtown platform.

Q. 33rd Street? A. Yes.

Q. You say there were at least five platform men there? A. There were at least five platform men there, always are at least five platform men there.

Q. And at the point where you come down upon the platform, is there a platform man stationed there? A. There always has been for years, the same man, seven days a week he is there.

Q. Is there also a man upstairs in the mezzanine where you get tickets?

Mr. Fredman: Are you testifying to the ordinary usual condition or as to the day of this accident? I object to any other testimony except the day of this accident.

Q. Were you there on the day of this accident? A. I was there.

Q. Were there five platform men there that morning? A. Yes, sir.

The Court: What time were you there?

The Witness: I was there about twenty minutes of nine, eight-forty.

The Court: You don't know what the conditions were ten minutes after the accident?

The Witness: No. I could not say that, Judge.

Mr. Fredman: I move that all the testimony be stricken out.

The Court: Strike it out.

Mr. Markley: Will your Honor hear me first?

The Court: I will leave it in, but the jury will be instructed now that any testimony given by Mr. Coleman as to what the condition of the platform was on that morning, they will keep in mind, existed as of twenty minutes of nine, whereas the accident happened half an hour earlier, at ten minutes after eight.

Mr. Markley: Of course they might infer those men were there all that morning.

The Court: Of course, Mr. Markley, that would be a wrong inference, because the men themselves will have to testify to that.

Q. Is the man here, do you know, who was there that morning at the foot of that stairway? A. Yes, sir.

Q. What is his name? A. Platform man Dennis Kavanaugh.

Mr. Markley: I offer this statement in evidence.

Mr. Fredman: I object to that being introduced in evidence on the ground that that is not in the writing of the girl, she has denied that the statements therein contained were her statements. I think the Court has gathered from her general attitude and knowledge on the stand that she is not fluently versed in the English language. She has denied various parts of this statement, and even though some are true, her testimony on the stand is that other parts are not true.

The Court: You see, Mr. Fredman, what you are asking me to do is to decide an issue of veracity between Mr. Coleman and this girl. Now, in admitting it, I am not deciding that what the girl said was true, and neither am I deciding what Mr. Coleman said was true. I am admitting it so that the jury will decide that. If I rule it out, I am deciding that the girl did not say it, and, therefore, I am accepting her word as against Mr. Coleman's, and making myself the jury in this case. Now, the jurors are the sole judges in this case. They can believe the girl or they can believe Mr. Coleman, whichever they choose. I will admit the statement.

(The statement was admitted and marked D-3 in evidence.)

Mr. Fredman: May I ask for an exception on that, your Honor?

The Court: Yes. Now the interpreter is here. Do you want to cross examine this witness first? If you don't want to call the father back tomorrow you better put the father on the stand.

Mr. Markley: Step down, Mr. Coleman.

(Witness Excused.)

MORRIS SANDLER, sworn for the plaintiff.

Direct examination by Mr. Fredman:

Q. What is your name? A. Morris Sandler.

Q. Mr. Sandler, where do you live? A. 24 Belvidere Avenue.

Q. Are you the father of Mildred Sandler, the plaintiff in this case? A. Yes, I am the father.

Morris Sandler, cross.

Q. How old is your daughter now? A. Twenty years old.

Q. Who does she live with now? A. By my son. With my son she lives.

Q. And she does not live in your house or with you, does she? A. No, not now.

Q. And she did not live with you when she was hurt on the Hudson & Manhattan Railroad, did she? A. No, she did not.

Q. Do you support her? A. I did not support her. She supported me.

Q. Does she give you the money that she earns or what does she do with it, do you know? A. Yes. She gave me the money she earns.

Q. Did she turn over the whole salary that she earned? A. No. She did not. I did not get the whole when things she gets for herself.

Q. Do you know how much she earned a week? A. Practically twenty-five to thirty dollars a week.

Q. How much of that did she give you? A. Ten or fifteen dollars.

Mr. Fredman: That is all.

Cross examination by Mr. Markley:

Q. Who did you live with? A. I lived with my son Sandler, Joe Sandler.

Q. Did you live with your other son too? A. Yes.

Q. How many sons did you have? A. Three.

Q. Did you live part of the time with each one? A. I was by one the whole time.

Mr. Markley: That is all.

The Court: That is all.

(Witness Excused.)

The Court: Well now, perhaps it might be just as well not to interrupt Mr. Coleman's cross examination by the recess at four o'clock. Have you anything else to finish up before we recess?

Mr. Markley: No. Not we.

The Court: Gentlemen of the jury, we will now take a recess until tomorrow morning at ten o'clock. Now, gentlemen, remember, in leaving the courtroom, that this case is not finished. You are twelve judges who still have your duty before you. Now, if I were you, I would not discuss this case with anyone, meaning no harm; but discuss it with no one, if anyone tries to influence you. But the nicest way is to refrain from discussing this case until you finish with it. Just try to conduct yourselves as jurors properly should in a case, under the circumstances. I will excuse you until tomorrow morning at ten o'clock.

December 4, 1929.
Ten o'clock A. M.

(Case continued pursuant to adjournment.)

FRED J. COLEMAN, resumes the stand.

Cross examination by Mr. Fredman (continued):

Q. You are connected with the Hudson and Manhattan Railroad Company? A. I am.

Q. What do you do there? A. My title is investigator and adjuster. I check up compensation cases.

Q. That I presume means you investigate accident or injury cases on the railroad? A. Yes.

Q. That is the only railroad that you are employed by at this time? A. That is the only one, yes.

Q. How long have you been an adjuster and investigator for the Hudson and Manhattan Railroad Company? A. Close to twelve years.

Q. When did you get a report of this accident? A. Why, I first had the matter telephoned from 33rd Street to me, when I reached my office that morning.

Q. What time did you get to your office that morning? A. About five minutes to nine, and some time later the telephone message came.

Q. Do you recollect how much later than that? A. Well, it would be about probably nine or ten, or something like that.

Q. Very shortly after you got to your office the telephone call came in to you, advising that the girl had been injured at the Journal Square station? A. Yes, but I got the telephone from 33rd Street.

Q. You did not see the girl in the station? A. That morning—no.

Q. The first time you saw her that day was at her house? A. At her house.

Q. She was in bed when you called there? A. Yes, sir.

Q. Do you recollect what part of the day it was? A. I reached her house about seven P. M.

Q. That is when you found her in bed with her girl friend? A. Yes.

Q. This statement you have here is in your handwriting? A. My handwriting.

Q. You say you copied whatever she told you to copy? A. Whatever she told me I put down.

Q. Did you advise her that a statement of this character coulde be used against her at this time? A. Did I advise her?

Q. Yes. A. No.

Q. You were rather in a hurry to get this statement, weren't you? A. Not particularly.

Q. Well, you got it the same day that she was hurt? A. Well, it was twelve hours later.

Q. Within twelve hours? A. Twelve hours.

Q. Did you make any effort to find out whether or not the girl required medical attention? A. Why, yes, no more than I got the telephone call I went to Journal Square and notified the station master and the station people. That was the first work I did.

Q. You did not give this girl any money? A. No.

Q. You did not offer her any settlement of any kind? A. No.

Q. You just got the statement from her? A. Yes.

Q. And that, of course, is within your duties? A. Yes, sir.

Q. Before giving this statement you asked the girl if she could read and write English? A. I did.

Q. What did she say to that? A. She told me she had been to school, and I noticed, of course, the different things she told me before making up this statement. In fact, I have got my working card with those memos in my pocket, if you want to see it.

Q. You asked her for her story or did you put questions to her and she answered you? A. If I can tell you in a few minutes I will tell you how I approached the girl.

Q. Answer the question now, and probably you

can answer the way you want later. Did you ask her questions and did she answer you, or did you ask her to tell her story? A. I asked her to tell her story.

Q. And that is the way she gave it out? A. That is the way it was told.

Q. And you copied it down word for word? A. Yes, sir.

Q. You are sure of that? A. (No answer.)

Q. Now, she said then to you, "this door was opened and passengers were getting on. Just as I went to step on the car I suddenly fell down,"—is that right—"my left foot going in the space between the door and the platform"; she told you that? A. That is what she told me.

Q. Then you did not ask her any question after that? A. Yes, from time to time I would ask her a question and she would answer accordingly.

Q. And you asked her a question, didn't you, whether or not someone pushed her down? A. Exactly.

Q. Then the answer here is, "No one pushed me down." A. "No one pushed me down."

Q. You thought it was an important question to ask her, did you? A. I said to her, "Did anyone push you?"

Q. And she said, "No one pushed me down"? A. "No one pushed me down."

Q. Then you asked her the question, "Was the train moving?" And she said, "The train did not move." A. "The train did not move."

Q. Then you asked her, "Did the door strike you?" And she said, "The door did not strike me," isn't that so? A. Yes.

Q. Then she did not tell her story; you were asking her questions and she was answering them?

A. Well, we had been talking probably for fifteen or twenty minutes, getting the whole story before we started to write it out.

Q. Then when you got all through you asked her to write something on the bottom of the statement, is that so? A. No, I first of all—

Q. Didn't you? A. Well, I tell you, she—

Q. No, you are being interrogated now.

Mr. Markley: He did not do that right away.

A. I did not do that right away.

Q. When you got through or before you left the house you asked her to kindly sign something on the bottom? A. No, I gave her the statement, I handed the incomplete statement to her, in bed with a girl friend alongside of her. I said, "You have been to school; you can read it," and she did.

Q. And she told you that she cannot write English? A. She told me she was not very clever at writing English.

Q. She was not clever at writing English? A. At writing English.

Q. She used that word "clever"? A. She was not very good at writing English.

Q. Is that what she said? A. Well, I would not know the exact words—good, I presume.

Q. In spite of that you said, "Well, write something on the bottom anyway," didn't you? A. I told her to write—after she had read the statement I said, "Well, you had better write in there, 'Carefully read by me and is correct,'" that being the regular rule in such cases.

Q. In other words, to write on the bottom "Carefully read and this is correct"? A. "Carefully read by me and is correct."

Q. And she finally put down in the statement in her English what you had instructed her to do, is that right? A. Yes, sir, exactly.

Q. And this is what you saw her put down (indicating)? A. That is what I saw her put down.

Q. Did she say to you that she could not write English and did you say to her that you would hold her hand while she was writing? A. No.

Q. Did you hold her hand? A. I did not.

Q. Did you trace the words for her? A. No, I did not.

Q. You are sure of that? A. Positively, yes, I did not touch the paper at all when she was writing.

Q. And you did not hold her hand when she made these various corrections, and so forth? A. No, I was at least ten feet away from her.

Q. And the next morning you had your Dr. Feury there? A. I told her I would arrange for a medical man.

Q. Was there anything you left out on the paper that she told you about? A. I would not know unless I referred to my working card.

Q. Have you got it there? A. Yes. On the back of this working card you will find it covers different dates, with each one ruled off. All of that part, of course, covers the 9:28. That was the girl's name she told me about, Torpey, in bed with her. Will I read it?

Q. No, let me look at it. This is a synopsis? A. A synopsis of what she was telling me. You see, I did not have a statement blank in front of me when I was questioning the girl. I had my working card in my bag and was noting the various things.

Q. You mean you had this at the same you had this? A. No.

Q. Where did you get this? A. I had it in my bag.

Q. When did you get it; when did you make that entry? A. When was this made up?

Q. Yes. A. My stenographer made that up when I went out to Journal Square to interview our people, at half-past nine that morning, or nine-fifteen, because this shows the date and the time when the working card is made out by the typist.

Q. This is the report you got before you went to see her, is that right? A. Yes. Rather than have me write it, the typist makes it up on the machine.

Q. Is this the report you got originally when you went to investigate? A. To go to her house, you mean?

Q. No, before you went to her house, is this the report you got originally? A. Well, we get reports.

Q. Who gave you this report? A. My typist.

Q. And that was the report that was sent you immediately after? A. No, no.

Q. That was the report that was telephoned to you, taken down by your typist and submitted to you? A. No.

Q. How was it received by you? A. A telephone comes to me personally and I write it on my blank, then the men or women involved in the matter forward written reports through the mail and we have a mail carrier who picks up three times a day the reports from the different stations. Now, this was laid out at my dictation to the typist from my memo taken over the telephone at 9:10 A. M.

Q. And who was that memo or telephone submitted to you by; in other words, was it an employee of your company or who? A. The man she went to at 33rd Street.

Q. Was it submitted to you by the guard on the train? A. No, the guard cannot. It is made to the special officer on duty. He reports to the special officer or dispatcher. The guard cannot leave his train.

Q. And this is the statement you had before you went to see Miss Sandler? A. Yes.

Q. Will you read that to the jury?

Mr. Markley: I object to that.

Mr. Fredman: I ask to have it marked for identification.

Mr. Markley: I object to that. Do you want to prove by that how this accident happened?

Mr. Fredman: No, this gentleman said he would have to refer to his working card or memo in order to refresh his memory as to what was needed on that statement.

The Witness: The back is where my notes are. There are no notes on the front.

Mr. Markley: The card is a résumé, I imagine—I have not even seen it—of the entire history of the case as it came through from various sources which he worked in going around and making his investigation. It is clearly hearsay and I object to it on that ground.

Mr. Fredman: Will you read the report which you obtained in your office?

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

The Court: Why don't you read it to him and ask him if it is accurate, if that is what the report shows, if that is the report that he got? Why make him testify?

Q. Is this the report that you received the morning of the accident? A. This was the working card.

Q. That is the working card you worked under and made your investigation under? A. Exactly.

Q. File number twenty, name, Mildred Sandler? A. That does not mean file number twenty. That is my own memo of her age.

Mr. Markley: Which side is being read? Are you reading what came in over the wire? Apparently this is a record made at different times of different occurrences and of different reports.

The Witness: Those are occurrences up to date. Even they include the last week and last month.

Q. At the time you went to make the investigation the report as given you was as follows:

Mr. Markley: May I have the witness identify what part of the record he is referring to?

Mr. Fredman: Referring to the record which he says is part of his working plan.

Mr. Markley: I would like to have the witness refer to the card so that we can identify it.

Mr. Fredman: This is the synopsis.

Mr. Markley: What part is that?

Mr. Fredman: This is the front part of this file. I do not know which is which.

Mr. Markley: Are you referring to the typewritten record?

Mr. Fredman: Yes.

Mr. Markley: This is the record you got over the telephone from 33rd Street?

The Witness: Yes, that is a copy of it, a synopsis of it.

Mr. Markley: I would like to have your Honor look at that, if I may, and your Honor can see that the only purpose of using that is for an improper purpose: It is an attempt to prove an injury to this girl by a mere hearsay statement taken over the telephone. If that is material, why, all right, but it seems to me it is a very improper way to attempt to prove anything.

The Court: I suppose you would be within your rights in asking Mr. Coleman if he got a report from anybody as to the manner in which this girl was injured and then find out whom he got that report from and if he made any report of it, but I think Mr. Markley is within his rights in objecting to you using the sentence.

Q. Did you receive a report in reference to the accident to Mildred Sandler on this date? A. Yes.

Q. Were you in the office when the report came in? A. Yes.

Q. Who did the report come from? A. The special officer on duty. I do not know his name offhand.

Q. You know the man though? A. Yes.

Q. And you know what his number designates, I mean, you know he is an employee of the Company? A. Yes.

Q. You have had previous reports from him in reference to accidents?

Mr. Markley: I object.

The Court: I will allow it.

Mr. Markley: Exception.

Q. Do you know the man is in the employ of the Hudson & Manhattan Company? A. Yes.

Q. When you got this report you verified it, didn't you, by subsequent communication with him? A. Not with him.

Q. Did you see him afterwards? A. No.

Q. Did this report come in the usual course and the usual manner? A. In the usual way.

Q. And was the report recognized by you as authentic?

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

The Court: The objection is sustained.

Q. In answer to this report or following this report you made a notation in your books, a memo? A. On a pad.

Q. And it was subsequently reduced to writing? A. Yes.

Q. Following this report what is your version of the manner in which this girl was injured?

Mr. Markley: I object.

The Court: The objection is sustained.

Q. In this report that you got from this special officer, did he say the manner in which this girl was injured?

Mr. Markley: I object to that as immaterial.

The Court: I will allow it. Answer yes or no.

Mr. Markley: I object further to it on the ground that it is not cross examination.

The Court: I will allow it.

Mr. Markley: Exception.

The Witness: He was quoting what she told him.

Q. Was there anything in the report that she was pushed from the platform?

Mr. Markley: I object to that as immaterial.

The Court: The objection is sustained.

Q. In other words, Mr. Coleman, as I understand it now, what you have in that report was given to you from some employee under you and his report in turn was based on what this plaintiff herself told him.

Mr. Markley: At the 33rd Street station.

The Court: All right then. I think it is objectionable, Mr. Fredman, and I will bar any further questions in regard to that. We have at last got the true situation. I had an idea that it might be a report made up by one of their employees on his own initiative and submitted to Mr. Coleman, but if it is based on what this plaintiff herself said, well, it is objectionable.

Q. You received this report at 9:10 this morning, did you? A. Yes, sir.

Q. You are sure of that? A. Yes.

Q. And this entry was made at 9:10? A. Which entry?

Q. This entry. A. There are forty entries there of different dates, covering a year and a half.

Q. The synopsis, when was that made?

Mr. Markley: I object to that as immaterial and hearsay.

The Court: What difference does it make? I have now ruled that the synopsis is based on the statement of the girl herself, and therefore objectionable.

Q. Are all the statements in here based on what the girl told herself, do you know, with reference to the balance of what it says in the synopsis? Is all of that what was stated by the girl herself?

Mr. Markley: I object to that.
The Court: How is that material?

AUGUST ITSCHNER, sworn.

Direct examination by Mr. Markley:

Q. Where do you live? A. 29 Egbert Place, Fort Wadsworth, Staten Island.

Q. Are you employed by the Hudson & Manhattan Company? A. Yes.

Q. Were you employed by that company on September 28, 1928? A. Yes.

Q. Are you the man who received the plaintiff, Miss Sandler, when she came back to the Journal Square station after she had gone up to 33rd Street? A. Yes.

Q. When she came then, was there anybody with her? A. No, sir.

Q. Was she all alone? A. She was all alone.

Q. Was she walking, or was she being carried, or how was she coming along? A. She was walking.

Q. She walked upstairs from the train platform? A. Yes.

Q. Was she carried upstairs? A. No.

Q. And when she went upstairs did you have any talk with her? A. Yes.

Q. What was said about the accident? A. I asked her what the trouble was, and she said she put her foot between the platform and one of the cars. She went in the emergency room and I

called up an ambulance from the St. Francis Hospital.

Q. How long was it before the ambulance came? A. About ten minutes.

Q. Then did she go in the ambulance and leave there? A. Yes.

Q. Was that the last you saw of her? A. Yes, that was the last I saw of her.

The Court: What time was this?

The Witness: About 9:30.

The Court: She evidently had gone to 33rd Street and come back to Journal Square, is that the idea? A. Yes.

Q. Did she say anything about being pushed by any passengers? A. No.

Mr. Fredman: I object to that as leading.

The Court: I will allow it.

Q. I show you two photographs and ask you whether you recognize those as the New York platform of the Journal Square station? A. Yes.

Mr. Fredman: I object unless they are designated as being photographs taken on that particular day.

Q. Well, as of that particular day.

The Court: He can identify them.

Q. Does that show the New York platform as it was on September 28th, 1928? A. That is the Journal Square platform going to New York.

The Court: Mr. Markley does not mean that it represents the conditions that existed at the time of this accident, but he means that it is a picture of the platform without showing the actual conditions.

Mr. Fredman: Do you merely want to use it for the purpose of indentification and not for evidence?

Mr. Markley: I am using it for evidence, to show the New York platform on that day, to show the physical conditions. It is not to show the number of passengers that were on there on the day she was pushed off. We did not have a photographer there.

The Court: I think that is proper, because the manner in which the company maintains its platform there is an issue in this case, and this jury can be helped to a great extent in determining that by actually seeing the photograph of the scene. You are perfectly within your rights in arguing to the jury that the picture that is submitted does not show the conditions that existed at the time this accident occurred, at 8:10 this morning. In other words, it is your contention that there was such a mob pushing around this train, that this girl was pushed between the car and the platform.

Mr. Fredman: I want to enter my objection anyway to the introduction of the photograph.

The Court: Objection overruled.

Mr. Fredman: Exception.

Q. On this particular day, September 28th, 1928, how long had you been working there? A. Since seven o'clock in the morning.

Q. How long before that had you been employed at that station? A. Five years.

Q. What were your duties there on September 28th, 1928? A. Oh, patrolling around downstairs and upstairs.

Q. How often would you go down on the New York platform in the morning—you say you went to work at eight o'clock. A. Seven o'clock.

Q. Seven o'clock in the morning? A. Yes.

Q. Is that daylight saving time or eastern standard time? A. Daylight saving time.

Q. Seven o'clock? A. Six o'clock eastern standard time.

Q. How often would you go down on the New York platform and up and down? A. Every ten or fifteen minutes.

Q. Do you know whether there were platform men down there that morning on the New York platform? A. Yes.

Q. Do you know how many platform men there were down on the New York platform, approximately? A. About four or five.

Q. Are some of those men in the court room here? A. Yes.

Q. Can you name them? A. Mr. Kavanagh, Mr. Clayton, Mr. Devine, Mr. Cuinine and Mr. Walz.

Q. They were there on September 28th? A. Yes.

Q. You say your duties would take you down on the platform every so often, every ten minutes or so? A. Every ten or fifteen minutes.

Q. On that morning around eight o'clock or eight-ten, daylight saving time, did you see any trouble there, anybody in an accident? A. No.

Q. Do you know where the seventh carman's position is on the train with respect to your platform? A. Yes.

Q. Where is that with respect to the stairway? A. That is right near the stairway going down.

Q. The easterly or westerly? A. The easterly.

Q. That would be the stairway nearer New York? A. Yes.

Q. Was there any platform man stationed there that morning? A. Yes.

Q. Who was he? A. Mr. Kavanagh.

Q. The first you saw this girl and knew she had an accident you say was when she came back from 33rd Street? A. Yes.

Q. How long a run is it to 33rd Street, approximately? A. Twenty-one or twenty-two minutes.

Cross examination by Mr. Fredman:

Q. How long have you been employed by the Hudson & Manhattan Company, do you say? A. Over twelve years.

Q. Always in the same capacity—patrolman—what is your capacity? A. Patrolman, special officer.

Q. How many special officers are there at that station? A. There is one.

Mr. Markley: You mean at that time?

Q. Were there at that time? A. One.

Q. How many special officers are there now in the station? A. One.

Q. Still the one? A. There is three, but different tours.

Q. How many platform men are at the station now? A. About five.

Q. How many were there on September 28th, 1928, in other words, they have not increased the amount of platform men from that day to this? A. Well, we sometimes have extra men there.

Q. Were there any extra men on that morning? A. No, just the five.

Q. Between seven and nine-thirty is what is commonly known as the rush hours, isn't that so? A. What time?

Q. Seven to nine-thirty in the morning, are they what are properly known as the rush hours? A. The very busy time is from about 8:20 to 8:45.

Q. Will you say between eight and nine is the busiest hour of the day, and if this girl was injured at 8:10 she was injured during the busiest hour of the day? A. No, she was not; it was not the busiest time of the day.

Q. I say, on the average eight to nine o'clock is the busiest hour of the day?

Mr. Markley: I object, because the witness says the busy time begins later than eight o'clock in the morning and to incorporate a period of time prior or subsequent to the busiest time it seems to me is improper.

The Court: He subsequently stated in answer to a question of Mr. Fredman's that the busiest hour of the day was from eight to nine o'clock.

Mr. Markley: The busiest hour is not the busiest time.

The Court: Then Mr. Fredman followed up that question by saying if this girl got there at 8:10 in the morning she got there during the busiest hour of the day.

Mr. Markley: Exception.

Q. Is that so?

The Court: The situation is simply this now, from eight o'clock to nine o'clock in the morning probably the volume of traffic is the heaviest, but this witness says the heaviest part of that hour is from 8:20 to 8:45.

Mr. Markley: That is the reason for my objection.

The Court: I know, technically Mr. Fredman is perfectly within his rights in saying that one hour is the busiest hour, and you have the right on redirect to show that while technically eight to nine is the busiest hour just the same that the part of that hour that is the busiest is from 8:20 to 8:45.

Mr. Markley: I withdraw the objection.

(Question repeated.)

A. Yes.

Q. You know this girl was injured at 8:10?

Mr. Markley: I object.

Q. Do you know whether or not this girl was injured at 8:10? A. I do not.

Q. Do you know what time she returned to the Journal Square station that morning? A. About 9:25, something around that time.

Q. How long is the run from 33rd Street to Journal Square? A. Twenty-one minutes.

Q. Was the station under construction at that time, or reconstruction?

Mr. Markley: I object to that as immaterial.

The Court: I will allow it.

Mr. Markley: Exception.

Q. Were there being repairs made at that time in the station?

Mr. Markley: There is no allegation of any negligence connected with any reconstruction of the station.

Mr. Fredman: We do not allege that.

The Court: I suppose you are just trying to show what the conditions were.

Mr. Fredman: I do not intend to make any claim on that ground.

Q. Was there the railroad and the platform under reconstruction at that time?

Mr. Markley: I object to the form of the question. The railroad was not under reconstruction.

The Court: Do you know whether or not they had started to work on the new station?

The Witness: Yes.

The Court: They had not progressed very far with the work, had they?

The Witness: No.

Q. And these temporary supports had been put up at that time?

Mr. Markley: I do not see the materiality of that. I do not want to be objecting all the time.

The Court: If you know, Mr. Witness.

The Witness: Yes.

Q. During eight and nine o'clock you are kept pretty busy yourself? A. Between eight and nine o'clock?

Q. Yes. A. Yes.

Q. You have the upper part of the station or the lower part of the station to patrol? A. All around. I keep walking all around.

Q. You did not know at the time you were upstairs in the station what particular positions the guards or platform men downstairs were occupying, did you? A. Not at that moment.

Q. You went up and downstairs and at intervals

of about fifteen minutes. How long did it take you to patrol upstairs? How long did you remain up there? A. Oh, about ten minutes. I keep going all around.

Q. Generally the time you spend upstairs is about ten minutes? A. Yes.

Q. What were your duties downstairs? A. I keep travelling around, keep walking around.

Q. What fixes this morning so vividly in your memory that you can remember the minute this girl came to you and the time you were upstairs and downstairs? A. Because I was told she was coming back from Thirty-third Street, and I went down to wait for her, and then I took her up to the emergency room.

Q. Are not there other accidents or injuries on that road?

Mr. Markley: I object.

The Court: The objection is sustained.

Q. Did you know definitely how many platform men were on that platform that morning? A. Yes.

Q. When did you find out? A. When I was on there. I know every morning how many is on there.

Q. How many were on? A. Five.

Q. What time were they put on, do you know? A. Seven o'clock.

Q. What time do they remain on duty? A. Well, some goes away about ten o'clock.

Q. You are positive you saw five platform men there that morning? A. Yes.

Q. On your direct examination you said about five, didn't you? A. Five platform men.

Q. Did you say about five when you were examined before? A. Five platform men.

Q. Well, did you say about five? A. Yes, four or five.

Q. Eh? A. Five platform men.

Q. Did you say before when you were questioned on the number of platform men, about five? A. Yes.

Q. Did you say that? A. Yes.

Q. Well, you were not sure at that time? A. I am positive, sure.

Q. You were not told to say there were five platform men there? A. Certainly not.

Q. Did you keep any records of the number of platform men on duty there? A. I do not, but I see them as I make my rounds.

Q. How long is the station there, the platform there? A. How long is the platform?

Q. Yes, the length of it.

Mr. Markley: You mean the train platform?

Q. The train platform. A. I really don't know how long that is. It varies all the way back.

Q. Is it three or four hundred feet? A. That I could not say.

Q. Three or four hundred feet would you say? A. I do not know.

Q. Do you know on what platform this girl was injured? A. Yes, on the platform going to New York, on the New York side, or she told me that when she came back.

Q. She told you that? A. Yes.

Q. She pointed out where she was injured? A. No, she did not. She only told me that she went with her foot between the platform and her car. She told me that. That is how I knew it.

Q. Did you make a note of it anywhere, in writing? A. I made my report.

Q. Who did you make it to? A. To the company.

Q. To Mr. Coleman? A. No, to the Hudson & Manhattan Railroad.

Q. Are you the man that telephoned to Coleman? A. From where?

Q. From wherever you were. A. I telephoned to the company, not to Mr. Coleman.

Q. Well, at 30 Church Street? A. Yes.

Q. You telephoned the Investigating Department, didn't you? A. Yes.

Q. Is that your report that was telephoned in (indicating)?

Mr. Markley: I object to that as immaterial. How could he know whether it was or not?

The Court: Did you make a report to Mr. Coleman?

The Witness: No, I made it to the company.

The Court: That morning?

The Witness: That morning.

The Court: Did you make it from your own knowledge or from what somebody told you?

The Witness: About the accident—from what she told me.

The Court: You did not see the accident yourself?

The Witness: No.

The Court: So far as you know did any of the platform men see the accident?

The Witness: No; if they did they would have come up and reported it.

Dennis Kavanaugh, direct.

DENNIS KAVANAUGH, sworn.

Direct examination by Mr. Markley:

Q. Where do you reside? A. 717 Kelly Street, Bronx.

Q. Are you employed by the Hudson & Manhattan Company? A. Yes.

Q. How long have you been employed by that company? A. Over nine years.

Q. Were you employed by it on September 28th, 1928? A. Yes.

Q. Where were you employed, Mr. Kavanaugh? A. Journal Square.

Q. What was your job at Journal Square? A. Platform man.

Q. On what platform? A. Eastbound side, New York platform.

Q. Were you there on duty that morning around 8:10? A. Yes.

Q. Daylight saving time? A. Yes.

Q. What was your position on that platform; where were you stationed? A. About on the stairs.

Q. Which stairs? A. The easterly stairway.

Q. The easterly stairway. That would be the stairway nearer to New York, would it? A. Yes.

Q. And does that stairway show in this photograph, D-7, that is the stairway shown in the picture there? A. Yes.

Q. Suppose I just mark an X here beside the stairway; was that your position at the foot of those stairs? A. Yes.

Q. How does that position at the foot of the easterly stairway, the stairway near New York, how does that position relate itself to the seventh carman's position on the train? A. Just about where the seventh carman stopped.

Q. Van Doren, do you know Van Doren who was on that train? A. Yes.

Q. Was he the seventh carman? A. At that time, yes.

Q. On that train. As you were stationed there, what were your duties? A. To announce the destination of trains, give all the information necessary, and protect the doors—passengers loading and unloading.

Q. On that morning, September 28th, 1928, were you at your position? A. Yes.

Q. Around eight o'clock in the morning, is that the busiest time? A. No, sir.

Q. What is the busiest time? A. Well, say from 8:20 up to 8:45.

Q. That morning around eight or eight ten did you see any accident happen at that point? A. No, sir.

Q. Did you see any pushing or shoving at eight or eight ten o'clock A. M.? A. No.

Q. Of course—did you know that anybody had been injured there that morning? A. No.

Q. When did you first hear that day that anybody claimed to have been hurt there? A. Oh, about ten o'clock the officers came around investigating to know if anybody got hurt down there that morning. Also the Claim Department came around to see me.

Q. And although you were stationed right there you heard nothing about anybody having been hurt? A. Nothing about it.

Q. You closed the doors of Van Doren's two cars where he was stationed, after the passengers had boarded? A. Yes, that was my duty.

Q. And you did not see anybody hurt there that morning? A. No.

Dennis Kavanaugh, cross.

Q. Did you see this young woman, Miss Sandler, there that morning when she boarded the train? A. No.

Q. You had no particular occasion to observe her? A. No.

Q. Were there other platform men on that platform that morning besides you? A. Yes.

Q. Can you name any of them? A. There was Clayton, Devine—I forget his name now—there were five there anyway.

Q. There were five men there that morning? A. Yes.

Q. How long did you remain there on that platform that morning, on September 28th, 1928, after eight o'clock up to ten o'clock? A. Up to ten o'clock.

Cross examination by Mr. Fredman:

Q. Do you know Mr. Van Doren, the guard of the train that this girl was a passenger on? A. Casually.

Q. Did you see him on the train this morning? A. That morning?

Q. Yes. A. Yes, I seen him on the train.

Q. Did you see him on the train leaving Summit Avenue station, about 8:10? A. Yes, sir.

Q. How close were you to him? A. As close as I could get after the passengers got in, to close the doors.

Q. You saw him? A. He was operating.

Q. You saw him that morning on that 8:10 train? A. If he was operating I must have seen him.

Q. Well, did you see him that morning? A. I could not help but see him if he was operating the doors.

Q. I ask you now, did you recollect having seen Mr. Van Doren on the train at 8:10 that day? A. Yes.

Q. Did you see him? A. Yes.

Q. Do you know whether or not he saw you or said something to you?

Mr. Markley: I object to that.

Q. Did he say anything to you?

(Question repeated.)

Mr. Markley: How can he tell?

The Court: I think he can ascertain whether or not Van Doren spoke to him that morning, but what he said might be objectionable.

Mr. Fredman: Van Doren has testified to a certain state of facts. I want to bring them as close as possible together so as to determine whether or not Van Doren's statement of the facts or his statement of the facts are so.

The Court: All right, do you want to corroborate what Van Doren said?

Mr. Fredman: Yes.

The Court: (After argument.) Mr. Kavanaugh can say whether Van Doren saw Kavanaugh and spoke to Kavanaugh, but, of course, he cannot say what Van Doren saw or did not see. Did he say "Hello" or speak to you that morning?

The Witness: I don't remember.

Q. How far away were you from where he was standing on the seventh car? A. Only a couple of feet away.

Q. You saw him all right? A. Oh yes.

Q. At the time you saw him at 8:10 was the platform,—loading the station I presume you call it,—fairly well crowded? A. No.

Q. There were not many people there; was the station crowded at 8:10? A. Well, there were more there at 8:20 than at 8:10.

Q. There was no pushing or no mobbing or no crowding? A. No.

Q. It was a nice orderly crowd, everybody was walking down the stairs nice and quietly? A. I won't say that.

Q. I mean, there was nobody chasing one another or running to get the trains, or making any effort to get in first; that was not so? A. No.

Q. People were going along in a nice easy manner to get on the train and sit down? A. Yes, the people were making for the train all right.

Q. They were making for the train quietly, easily, walking down the steps quietly and easily, or— A. Well, it all depends. If they are in a hurry they are running.

Q. As a matter of fact, don't they all run when they get there? A. Not all; some had got patience to wait for the next train.

Q. You cannot recollect this girl boarding the train; you cannot recollect anything in connection with this accident? A. No.

Q. And all you are testifying to now is to a certain condition that existed that morning, to the best of your memory? A. Yes.

Q. Can you pick out this morning any way definitely as being September 28th, 1928?

Mr. Markley: I object; what do you mean by definitely?

Q. I mean, can you remember any occurrence

on October 28th, 1928? A. No, I would not have occasion to, unless—

Q. Before coming to court in this case, did you talk over this case with anybody? A. Did I talk it over with anybody?

Q. Did you talk to Mr. Coleman about the case? A. Certainly, I told him what I was going to court for.

Q. You wanted to know what you were going to be called for, and when did you speak to him about it? A. He called my attention to it.

Q. How long ago? A. A couple of days ago.

Q. Where did you go to see him about the case? A. Mr. Coleman called for me.

Q. Mr. Coleman called at the station? A. Yes.

Q. And you talked over the case, what you were going to testify to, is that right, what you wanted to know? A. No, I did not have to know what to say. He just asked me if I knew anything about the case and I said no.

Q. You never knew anything about the case; you never knew anything about a Sandler girl? A. No.

Q. You did not see her hurt, did you? A. I heard it that morning, about ten o'clock, when I was asked.

Q. But you did not see the girl and you did not know she was hurt until you saw her in court yesterday morning? A. Yes.

Q. And as far as you were concerned in this case, this girl did not exist at all until you were called here as a witness?

Mr. Markley: I object to that; he said he heard about it that morning at ten o'clock, the morning of the accident.

Q. When you spoke to Mr. Coleman, it was about a week ago, was it? A. No, a few days ago.

Q. You never spoke to Mr. Coleman from the date of this accident until a few days ago, is that right? A. No.

Q. About this case? A. No.

Q. And you had no occasion to talk about this case with anybody else from the day of the accident until a few days ago? A. No.

Q. And you kept on performing your duties for the Hudson & Manhattan Railroad Company for the past year and two or three months, is that right? A. Yes.

Q. When did you find out that it was necessary for you to say there were five platform men on the platform that day?

Mr. Markley: I object. He said he saw them there.

Q. Did you tell Mr. Coleman two or three days ago when you spoke to him that there were five platform men on there on that day? A. Not necessarily. There are always five platform men, from seven o'clock in the morning to ten o'clock in the morning.

Q. Oh, was it because there are always five platform men there that you assume that there were five platform men there the day that this girl was hurt? A. I don't assume at all; I know they were there.

Q. You know there were five? A. Yes.

Q. You know there were five there yesterday, don't you? A. Yes.

Q. Were there five platform men there yesterday?

Mr. Markley: I object to that. He was here yesterday. He does not know.

Mr. Fredman: He knows about every day.

Q. Do you work Sundays too? A. Occasionally.

Q. Do you work there every day of the week? A. Yes.

Q. And you work Sundays too? A. Yes.

Mr. Markley: Sometimes.

Q. And you know there are five men there all the time, is that so? A. All the time.

Q. And you know they are there whether you are there to be one of the five or not, is that so?

Mr. Markley: Between those hours. He did not say all the time.

Mr. Fredman: I am assuming those hours.

Q. You know that between eight and ten o'clock of each morning—that they are the rush hours—there are five platform men there always, whether you are one of them or not, is that right? A. I cannot answer that, for I am not there myself.

Q. Did Mr. Coleman show you the record that there were five men there that morning that the girl was hurt? A. No.

Q. There have never been any days that you have been on that platform that there have been less than five platform men doing duty between eight and ten, is that right? A. To the best of my knowledge that is right.

Q. And Mr. Van Doren and you had nothing to say the morning of the accident, did you? A. Not that I know of.

Q. And you knew he was operating on that morning? A. Yes.

JOSEPH MATTHEW CLAYTON, sworn.

Direct examination by Mr. Markley:

Q. Where do you reside? A. 615 Bergen Street, Newark, New Jersey.

Q. Are you employed by the Hudson & Manhattan Railroad Company? A. Yes.

Q. How long have you been employed by that company? A. About three years.

Q. Were you employed by it on September 28th, 1928? A. Yes.

Q. In what capacity? A. Station Department.

Q. Station platform? A. Yes.

Q. New York platform? A. Yes.

Q. Did you have charge of the supervision of the records there of the station as to employees? A. Yes.

Q. On that morning what time did you go to work? A. I went to work at twelve midnight.

Q. How long did you work? A. Until nine o'clock A. M. the next morning.

Q. Were you there around eight o'clock in the morning? A. Yes.

Q. And what was your position on the platform? A. West end of the eastbound platform.

Q. Where would that be, the west end of the eastbound platform; how far would you be from Kavanaugh's? A. About 100 feet.

Q. Would you be 100 feet nearer to New York on the platform? A. Further away from New York.

Q. In other words, you were 100 feet nearer Newark? A. Yes.

Q. How many stairways go down to the New York platform from the level up above, the station level? A. Two.

Q. Were you near either platform? A. Sir?

Q. Were you near either stairway? A. I was near the west end.

Q. That is, the westerly stairway? A. Yes.

Q. Between you and Kavanaugh were there any station platform men—you two were about 100 feet apart, as I understand; you were at the foot of the stairway that was nearer Newark? A. Yes.

Q. Kavanaugh was at the foot of the stairway nearer New York? A. Yes.

Q. In between you two men were there any other platform men? A. Three.

Q. Who were they? A. Cuinine, Devine, and I cannot recall the other fellow's name.

Q. How many platform men were there altogether? A. Five.

Q. In addition to that was there a man at the easterly end of the platform, the New York end, known as the train starter?

Mr. Fredman: I object to that as leading.

The Court: Suppose you reframe the question.

Q. Was there a platform man known as the train starter on the platform?

Mr. Fredman: I object to the question. A man with ordinary intelligence can certainly draw conclusions.

The Court: The question is allowed.

A. Yes.

Q. What was the man's name? A. Traudt.

Q. On that morning, September 28th, 1928, did you see any disorder, any pushing or shoving? A. No, sir.

Q. When did you first know of any claim being made by this Miss Sandler; when did you first hear that? A. When did I first know about it?

Q. Yes, when did you first hear that such a claim was being made that she had an accident there? A. About ten o'clock that morning.

Q. And prior to that did you know that there had been any accident at the station? A. No.

Q. How often do the trains pull out of there, of the New York platform, in the morning around eight o'clock? A. About one to three minutes apart.

Q. You mean a headway of one to three minutes? A. One to three minutes apart.

Q. On one side of the platform you have trains going where? A. Downtown.

Q. On the other side of the platform? A. Uptown.

Q. And Cuinine was here? A. He is out of the employ.

Q. How about Mr. Walz, did you know Mr. Walz? A. He is out of the service.

Q. Were they there that morning? A. Yes, sir.

Q. I have a record here; do you know what this record is?

The Court: You may answer that yes or no.

The Witness: Yes.

Q. You say yes? A. Yes.

Q. What is this record? Do not say what is on it until Mr. Freeman can see it, but tell me what it is.

The Court: Is it a record made by you, or what is it?

Joseph Matthew Clayton, cross.

The Witness: It is a record made by the agent, under the supervision of me.

Q. That is, the agent makes it under your supervision? A. Yes.

Q. And does this record indicate the employees, including the platform men and special officers, employed at the Journal Square station on September 28th, 1928?

The Court: After all, this witness has testified as to the number of men there. The other side is not admitting it, but they cannot dispute it. There is nobody here to deny that; there is no issue on that.

Mr. Markley: I do not care to press it.

Cross examination by Mr. Fredman:

Q. What do you say is the rush hour down on the station there? A. Between 8:20 and 8:45.

Q. Why do you say between 8:20 and 8:45—because the other witnesses say so? A. Because I say so.

Q. How do you know? A. Because I am there.

Q. Do you count the passengers? A. I do not count them.

Q. How do you know it does not start at 8:15 instead of 8:20?

The Court: I suppose he is giving you the best average he can. After all these men on duty a number of years there, they get to know what part of the day they can ordinarily look for the crowd to be the heaviest.

Q. Have you discussed with Mr. Kavanaugh or any of these previous witnesses what are the busi-

est minutes of the day, before coming to trial this morning? A. No.

Q. And you came to the conclusion they did, that between 8:20 and 8:45, a period of twenty-five minutes, is the busiest period of the day at that station, is that right—I mean you yourself came to that conclusion? A. That is the time I am there, yes.

Q. That is it, and the fact that the other gentlemen preceding you have said 8:20 to 8:45 and not 8:15 to 8:45?

The Court: Why do not you argue that to the jury.

Q. Does not in any way influence your statement, does it? A. I am just merely answering your question.

Q. I say, that statement is your own statement? A. Yes.

Q. How many trains come into that station within an hour, do you know, loading and unloading passengers? A. They leave every one or two minutes.

Mr. Markley: They do not unload there, except from Newark.

Q. Every one or every two minutes? A. One, two and three minutes; sometimes they leave a minute and a half apart.

Q. And the average trains leaving for uptown between eight and nine o'clock in the morning are how many? A. They run the same length of time as the downtown.

Q. How many trains leave that station, from the downtown platform, between the hours of eight and nine o'clock? A. I never counted them.

The Court: What do they leave on, a three minute headway?

The witness: One to three minutes.

Mr. Markley: Some leave a minute and a half time.

Q. And the same number leave from the downtown station? A. Yes.

Q. For the downtown station? A. Yes.

Q. How many cars in the trains are there during the morning hours? A. Eight.

Q. And you would say then that the number leaving for downtown and the number leaving for uptown would be 60 trains of eight cars leaving that station every morning?

Mr. Markley: I object to that. It is a mere matter of arithmetic.

The Court: Is that about your best average. We all realize you cannot be pinned down to anything too definitely; is that your best average, about sixty trains?

The Witness: Yes.

Q. All those trains are partly crowded with passengers in the morning, between those hours? A. Well, they start to come down pretty heavy around 8:20 to 8:45. They are full. They are not crushed in.

Q. They are not uncomfortably crowded, are they? A. No.

Q. Have you ever seen any of the trains during that hour uncomfortably crowded? A. No, I cannot say that I have.

Q. You very seldom see anybody standing in those trains?

The Court: You never have had a ride on them yourself, have you?

Q. Nobody is uncomfortable in those trains dur-

ing the morning, during those hours? A. I could not tell you; I am not inside.

Q. You are not on the platform at any time during that hour, are you; you are not down there at any time during that hour? A. Why, certainly I am down there.

Q. Oh, you are down there? A. Yes.

Q. And you have never seen anybody uncomfortable in those trains, is that right? A. No.

THEODORE TRAUDT, sworn.

Direct examination by Mr. Markley:

Q. Where do you reside? A. 12,305 103rd Avenue, Richmond Hill.

Q. Are you employed by the Hudson and Manhattan Railroad Company? A. Yes.

Q. Were you employed by them on September 28th, 1928? A. I was.

Q. Where was your employment? A. At Journal Square station.

Q. What was your position there? A. Train starter.

Q. Where were you located? A. On the platform.

Q. Which platform? A. On the east platform, downtown platform, going towards New York.

Q. Is that the same platform on which the trains for uptown New York go out from? A. Yes.

Q. The downtown trains go out on one side and the uptown trains on the other, is that correct? A. That is correct.

Q. Does your employment bring you on that platform in the morning, around eight o'clock? A. He keeps me on there from six a. m. to two in the afternoon.

Q. Were you there on September 28th, 1928? A. I was.

Q. And you have occasion to traverse the platform? A. Yes.

Q. Where would you be when you are not walking up and down the platform? A. I would be up at the train starter's booth at the east end of the platform, on the New York end of the platform.

Q. How often do the trains go out of there in the morning, around eight o'clock on the uptown line— A. On the uptown line every three minutes up to 8:45; on the downtown it splits, a minute and a half interval.

Q. You say on the uptown it is what? A. They leave every three minutes on the uptown side.

Q. On the downtown side how often would they leave? A. The same amount, splitting the time to a minute and a half interval at the Journal Square station.

Q. At that morning around eight o'clock or 8:10, where were you on that platform? A. Up at the train starter's booth on the platform.

Q. How far would that be from the stairway leading to the train platform—that would be nearer New York? A. That would be about thirty feet.

Q. Were you there around eight or 8:10 in the morning? A. Yes.

Q. Did you see any accident there? A. No.

Q. Did anybody fall? A. No.

Q. Did you see any pushing or pulling. A. No, sir, I did not.

Q. Did you see the platform man, Mr. Kavanaugh there? A. Kavanaugh was there.

Q. How many platform men were there altogether? A. There were five of them.

Theodore Traudt, cross.

Cross examination by Mr. Fredman:

Q. Your duties are what? A. Train starter.

Q. How long have you been employed by the Hudson & Manhattan Railroad Company? A. Eight years.

Q. Are you still employed by them? A. I am.

Q. And you are still a train starter? A. Yes.

Q. You have more or less difficulty, now that the station is there—

Mr. Markley: I object.

The Court: The objection is sustained.

Mr. Fredman: Exception.

Q. You did not see this girl, did you? A. No, sir, I did not.

Q. You did not know the date she was injured? A. Yes, I did.

Q. You received a report— A. A request was made by Mr. Coleman to check up and see what was known about the accident.

Q. When was that? A. Around ten o'clock in the morning.

Q. In other words, Mr. Coleman communicated with you? A. Why, through the Claim Department Office. It came to my dispatcher.

Q. Who communicated with you? A. Not with me, to the dispatcher.

Q. In other words, you received— A. My orders from the dispatcher.

Q. —a request from the dispatcher's office to find out about the accident? A. Yes.

Q. You did not know anything about it? A. Not a thing.

Q. You were not present at the place where the girl alleges she was injured? A. I was thirty feet from where—

Q. I say, you were not present at that place? A. Thirty feet from it, not where she claims she was hurt.

Q. Do you know where she claims she was hurt? A. Yes.

Q. How do you know that? A. Why, on checking up on the platform men and going from one place to another.

Q. Has this girl ever pointed out to you the place she was hurt? A. No, sir, she has not.

Q. Do you know whether or not she has notified or checked up the place to anybody employed by your company, as to the exact spot where she was hurt?

Mr. Markley: I insist that that is immaterial.

The Court: Do you know the spot where the girl was hurt?

The Witness: No, sir, I do not.

Q. You do not? A. No, sir, I do not.

Q. How do you know you were standing thirty feet from the spot, if you do not know where it is?

The Court: He did not say that. He said he was standing thirty feet from the platform men.

Q. All you know about this accident is what was told you by somebody else connected with the railroad, is that right?

The Court: Of his own knowledge he does not know anything about it.

Q. Do you know how many men were employed there on September 29th, 1929, as platform men? A. On the platform was five men.

Q. There have been five men employed there every day since when? A. Why, since the new platform went into effect.

Q. Since the new platform went into effect? A. Yes.

Q. When was that new platform put into effect? A. Offhand I do not remember.

Q. About when? A. Possibly two years ago, I imagine.

Q. How long? A. About two years or so ago.

Q. That was when the new platform was put in effect? A. Yes.

Q. Wasn't the old platform there at the time the girl was injured, last year, September, 1928? A. That was while it was under reconstruction.

Q. Well, there is a photograph of the platform the day the girl was hurt, is that the old or new platform? A. That is the new one.

Q. With these pillars and supports here, that is the new platform; and that is the time it was under reconstruction? A. That is the time it was under reconstruction.

The Court: In other words, the platform was built and then the company set about building a new station, isn't that the idea?

The Witness: Yes.

Q. What time do you say the busiest minutes are there? A. From eight thirty to eight forty-seven.

Q. In other words, that is seventeen minutes of the day when the busiest or the biggest crowd congregates on that platform? A. Yes.

Q. What would you say is the busiest hour of the day? A. Of the whole day, I only know of one hour that would be the busiest during my tour of duty, that is from eight to nine.

Frank Devine, direct.

FRANK DEVINE, sworn.

Direct examination by Mr. Markley:

Q. Where do you reside? A. 15 Jefferson Avenue, Brooklyn.

Q. Whom are you employed by? A. The Hudson & Manhattan Railroad Company.

Q. Were you employed by the Hudson & Manhattan Railroad Company on September 28th, 1928? A. Yes.

Q. Where? A. On the platform.

Q. Where? A. On the New York side, going uptown and downtown.

Q. Were you there at eight o'clock in the morning? A. Yes.

Q. What time did you start to work in the morning? A. Twelve to nine.

Q. Twelve to midnight? A. Yes.

Q. Were you there on the morning of September 28th? A. Yes.

Q. Where were you stationed on the platform? A. Between the two staircases.

Q. Were you between Kavanaugh? A. Kavanaugh and Clayton.

Q. Did you see any accident there that morning at eight o'clock? A. No.

Q. Did you see any pushing or shoving around eight or eight ten in the morning? A. No.

Q. How many platform men were there altogether? A. Five.

Q. When did you first hear that there was a claim that an accident had happened at Journal Square? A. I did not hear it until after ten o'clock.

Cross examination by Mr. Fredman:

Q. How many platforms are there on this station, Mr. Devine? A. What, on the eastbound?

Q. On the entire station, where passengers can enter and get off the trains? A. There are two platforms.

Q. What are they; where do they discharge passengers to and from? A. They discharge the passengers on the—

The Court: Eastbound and westbound, I suppose.

Q. There is this large station with tracks on both sides, is that right? A. Yes.

Q. Now, there is this other station on the other side? A. Yes.

Q. If I am correct, you have trains running downtown and uptown? A. Yes.

Q. And you also have trains that run through to the Manhattan Transfer and to Park Place, am I right? A. Yes.

Q. In other words, you have three sets of trains running continually through that station, discharging and accepting passengers on three platforms, is that right—you might say two platforms, one having two sides. A. Yes.

Q. On the morning of Septemebr 28th, 1928, this platform and this station as it is here depicted to you, was being used, is that right? A. Yes.

Q. In other words, it is the new platform? A. I do not know about the new one, no.

Q. How long have you been working there? A. Since August, 1928.

Q. Well, was the new platform there at that time? A. I do not know whether it was a new platform or an old one.

Q. Were there any repairs being made on the platform at that time? A. They were constructing a building.

Q. Were there any repairs being made to the platform on which you were employed at that time? A. I don't know.

Q. What was the first employment you got there, as a platform man, as a guard on the train, or what other job? A. As a ticket examiner, not a platform man.

Q. How long did you work there as a ticket examiner? A. About three weeks.

Q. Do you remember the day that you were changed from ticket examiner to the other job? A. No, sir.

Q. Do you remember the day that you first took up your duties as platform man? A. Three weeks after I started there.

Q. Do you remember that day? A. Not the day.

Q. Was there any change in your salary? A. Not much.

Q. Was there? A. Yes, sir.

Q. What was the difference in the salary you received?

The Court: What difference does that make? He says three weeks after he started to work there, in August, 1928, he got advanced to platform man.

Q. You did not see this accident? A. No.

Q. You do not know anything about it, do you? A. No.

Q. You did not even know the exact date you started to work? A. I do.

Q. When did you leave the job as platform man? A. August 22nd, 1929.

Q. And you are working with the Hudson & Manhattan Company? A. I am still there.

Q. What are you doing there now? A. Agent.

Q. Back to agent?

Mr. Markley: Not back to agent, up to agent.

Q. Well, you were ticket taker before? A. Ticket examiner.

Q. They promoted you to platform man? A. Yes.

Q. Now, you are promoted to agent? A. Yes.

Q. What is the length of this platform, have you any idea? A. I do not know.

Q. Is it long enough for eight cars to remain in the platform proper and to accept and discharge passengers? A. Yes.

Q. Now, the morning that this girl was hurt, do you remember it, do you remember that morning? A. I was asked about it.

Q. By whom? A. By special officers working on it.

Q. What special officer asked you? A. Well, Clayton over there. I was working under Clayton.

Q. Which one is Clayton? A. The second one from the end (indicating).

Q. What did he ask you? A. He asked me did I see any accident, and I told him no.

Q. Where were you placed about, the morning of the accident? A. Between the two stairways.

Q. Where is that about, can you indicate it here? A. Right there, providing that thing there is a staircase (indicating).

Q. That is the one staircase and this is the other, right about here (indicating)? A. Yes, fifty feet from the staircase.

Q. What time did you go to work that morning? A. Twelve o'clock midnight.

Q. What time did you get off? A. Nine o'clock midnight.

Q. You know what the busiest hours of the day are, don't you? A. There was only one busy hour.

Q. When was that? A. Between eight and nine.

Q. You are not going to tie yourself down as to any particular minutes as to which are the busiest, are you, that is the busiest hour, is that right? A. In my time.

Q. Do you remember working there September 29, 1928? A. Yes.

Q. Do you know how many men were employed that day?

Mr. Markley: As platform men, you mean?

Q. As platform men. A. September 29, 1928—five.

Q. Do you know how many were employed October 28, 1928? A. Five.

Q. How many were employed December 28th, 1928?

The Court: Well, there are still five men employed.

The Witness: There are five men there all the time.

The Court: You are not employed there now as platform man?

The Witness: Not as platform man.

Q. How many men are employed there now as platform men? A. I do not know.

Mr. Markley: I object.

The Court: The objection is sustained.

Q. How many men employed by the Hudson & Manhattan Railroad Company as platform men were employed between the hours of eight and

nine the date of this accident on this large platform, and if there were any, did you see them?

Mr. Markley: I object.

The Court: The objection is sustained. He said there were five platform men working on that day, to start with. Now, you can ask him does he know where they were at 8:10 that morning.

Q. Did you see those five platform men on the platform or any part of the station that morning at 8:10? A. Yes.

Q. Did you see them? A. Yes.

Q. You were stationed where? A. Between the two stair cases.

Q. Who else was stationed at this large platform that you saw? A. Cuinine, Walz, Clayton.

The Court: Did you see Kavanaugh?

The Witness: Kavanaugh, yes, I saw him. I was fifty feet from him, about.

Q. Where were they stationed, Kavanaugh, yourself, Cuinine and Clayton—are those the four men you saw on this platform? A. Yes.

The Court: Did you see Itschner?

The Witness: Itschner, he comes down and inspects.

The Court: Did you see him that day?

The Witness: Yes.

Q. There was nobody stationed then that you saw on the other platform? A. I do not know nothing about the other platform.

Q. So all four men were stationed on the one platform and you saw them on it, did you? A. Yes.

Q. Did you talk this case over with anybody before you came here today? A. No.

Q. Did you talk to Mr. Coleman about it? A. No.

Q. You have not mentioned the case or talked to him at all about it, have you, since the day he asked you to report? A. No.

Q. Were the trains pretty well crowded the morning of September 28th, 1928? A. Not until after 8:20.

Q. Do you remember at 8:10 whether or not there were any crowds on the station? A. No crowds were on the station then.

Q. Were there any crowds on the station at eight o'clock? A. No.

Q. Were there any crowds on the station at seven o'clock? A. No.

Q. Did you see anybody rushing down the stairways for the trains at any time between eight and nine? A. No.

Q. Did you help close the doors or put the passengers in the various cars? A. I helped close the doors and to see that no one was hurt.

Q. Was there any large crowd on the trains that morning between eight and nine? A. Not that I remember.

Q. Was the station crowded at that time? A. No.

Q. Were there people lined up along the opening here, between eight and nine at any time while you were on duty? A. No.

Q. There were no crowds up along here waiting for trains to come in? A. No.

Q. There were no rushes for the trains? A. Coming down the stairs.

Q. Coming down the stairs, when they got down

here everybody was quiet and orderly and everybody walked in the train doors quietly and you saw them get their seats, is that right? A. I did not see them get their seats.

Q. Well, you saw them walk in? A. Yes.

Q. There was no rushing? A. No.

Q. There was no crowding? A. No.

Q. There was no pushing? A. No.

Q. And it was eight to nine o'clock in the morning? A. Yes.

Mr. Markley: That is our case. I respectfully move for a direction of verdict in favor of the defendant on the following grounds:

(1) There is no evidence of negligence on the part of the defendant.

(2) There is no evidence that any negligence on the part of the defendant was the proximate cause of this accident and

(3) That the plaintiff, Miss Sandler, as a matter of law was guilty of contributory negligence.

The Court: The motion is denied.

Mr. Markley: Exception.

The Court: Before I start to charge, what is the situation in regard to the father in this case? Have you abandoned any claim for damages on his part?

Mr. Fredman: Excepting wages. She testified that she had turned over the money to him.

The Court: In other words you are satisfied to have the matter go to the jury under the ordinary situation?

Mr. Fredman: Yes.

The Court's Charge.

Gentlemen of the Jury:

This is a suit for damages which you are going to decide wherein Mildred Sandler, an infant, who sues by Morris Sandler, her father, as next friend, and Morris Sandler, individually, as plaintiffs, are bringing suit against the Hudson and Manhattan Railroad Company, as defendant. The basis for this suit and the grounds on which damages are asked is an accident which is alleged to have occurred at the Hudson and Manhattan station at Journal Square, Jersey City, on the 28th day of September, 1928.

The plaintiffs filed an original complaint in this matter in which various grounds of negligence on the part of the defendant were urged. Those grounds of negligence are as follows:

(a) Defendant at the time and place aforesaid, through its servants, agents or employees, failed to exercise due care and vigilance to ascertain the presence of the said Mildred Sandler on the platform of said railroad station.

(b) Defendant failed to furnish said Mildred Sandler adequate and reasonable opportunity to enter said train of defendant in safety.

(c) Defendant failed to maintain said platform in a safe and secure condition in order that the same might be operated without inflicting injury upon said Mildred Sandler.

(d) Defendant failed to have and employ skillful and competent servants in charge of said platform for the safe maintenance and operation of said platform, and failed to properly and sufficiently instruct the employees in charge thereof in the process of safety operating said platform.

(e) Said platform was operated in a careless, negligent and dangerous manner without regard for the safety of passengers using the same.

Now, then, by consent of counsel it was stipulated as follows:

IT IS HEREBY CONSENTED AND AGREED by and between the attorneys for the respective parties hereto, that the complaint in the above entitled matter be, and the same hereby is amended so as to include the following:

(1) The defendant was negligent in that it failed to furnish safe and sufficient means of ingress to and egress from its trains and to exercise necessary and reasonable vigilance in protecting intending passengers assembling at the station from liability to injury.

(2) In that defendant having knowledge that large crowds are likely to assemble at certain hours of the day in the said station, particularly at hour and time and place that plaintiff was injured, failed to take proper care in protecting said plaintiff from injury such as crowding and sudden rushing on the part of crowds assembled in such station to obtain entrance to the cars immediately upon arrival of train at the station.

(3) In that defendant knowing that such crowds were accustomed to assemble at certain hours of the day, and particularly at the time plaintiff was injured, failed to employ a sufficient number of guards or employees to properly handle the crowds collecting in such stations so as to insure the safety of persons, including the plaintiff.

(4) In that defendant failed to furnish proper rails, gates, guards, or other mechanical contrivances separating the station platform from the space wherein the trains pass through such station.

(5) In that defendant failed to take any and all necessary and reasonable means to insure the safety of persons who as passengers intend to enter such trains.

Now, gentlemen, as the situation stands the plaintiff in this case has the right to rely upon the grounds, and to urge the grounds of negligence stated by the plaintiff in her original complaint, and by consent of counsel that complaint has been amended so as to include the five grounds of negligence which I have just read to you. So that the amendment does not abandon the original claims of negligence, but simply adds the five further claims of negligence to the original complaint. I make that statement to you in order to clarify any situation or any doubt that may be in your minds as to the original complaint and any amended complaint.

As the Court before stated the basis of this lawsuit is an accident alleged to have happened at the Hudson & Manhattan Railroad Company's station at Journal Square, Jersey City, on the 28th day of September, 1928, when this girl, Mildred Sandler, went down on the platform of that station, attempting to alight upon a train, to go upon a train going up to 33rd Street, New York.

On that day the plaintiff was employed in a hat shop or hat concern in New York City, and in order to get to her place of employment it was necessary for her to take a 33rd Street train. She claims that when she went down the stairs there was a large, and I believe her own testimony was,

an unusual crowd, and that the train came in practically at the same time that she got on the platform, and when she went to get over on the train that she was carried along with this crowd and pushed in such position that her leg went down between the edge of the platform and the side of the train. Now, whether that is so, or whether her foot went between the edge of the platform and the middle of two cars, is for you and for you alone to decide, because I am not the judge of the facts, gentlemen; that is solely your province, and therefore at this particular point let me instruct you that if in the course of my charge I comment on the facts and I state anything to be testimony which differs from your recollection of the testimony, you disregard what the Court says the evidence was and be guided solely by your own recollection of the testimony, because you are not bound to accept counsel for the plaintiffs' version or counsel for the defendant's version, nor the Court's version of the testimony. You are bound solely by your own recollection of what the evidence in this case is.

Now, the plaintiff has produced a witness here, Miss Cooney, who testified as to the happening on the day in question. She testified about the manner in which this girl, Mildred Sandler, was injured; and it is for you to examine into all the facts and circumstances in this case, keeping in mind the testimony offered by the plaintiffs and the testimony offered by the defendant, and decide whether or not there is any negligence on the part of the defendant.

Now, then, so far as the liability of the defendant is concerned, the burden of proof is cast upon the plaintiffs to establish to your satisfaction by

a preponderance or the greater weight of the evidence that the defendant in this case was negligent, and that the negligence of the defendant was the proximate cause of this accident.

Now, let me again define that for you: The burden of proof in this case is cast upon the plaintiff to establish to your satisfaction by the preponderance or the greater weight of the evidence that the defendant was negligent, and that the negligence of the defendant was the proximate cause of this accident.

Now, was the defendant negligent? That is for you as the judges of the facts in this case to decide and determine. If you find that the defendant was negligent, and that the negligence of the defendant was the proximate cause of this accident, and you further find that the girl herself was free from any contributory negligence, then under those circumstances your verdict must be for the plaintiffs.

If, on the other hand, you find that the defendant was not negligent, then your verdict must be for the defendant. If you find that the defendant was negligent, and that the negligence of the defendant was not the proximate cause of this accident, your verdict must be for the defendant. If you find that the defendant was negligent but you also find that the plaintiff was guilty of contributory negligence, your verdict must be for the defendant.

Now, in deciding and determining whether or not the defendant in this case was negligent, you will keep in mind that if the defendant in operating this station on the morning of the 28th of September, 1928, was using that degree of care in operating and maintaining that station that the ordinarily prudent person would have used under

the same circumstances, then the defendant was not negligent and your verdict under those circumstances must be in favor of the defendant.

Now, as to whether or not the plaintiff, Mildred Sandler, was guilty of contributory negligence, I do not know that there is any ground in this case which counsel for the defendant is strongly urging, which points to any contributory negligence on the part of the girl Mildred Sandler. I do not know that there is any testimony which should be pointed out and be urged to you to prove that she was guilty of contributory negligence. Nevertheless, gentlemen, that is for you, and for you to decide. You know what the testimony is; you know what the girl herself testified to; you know what her witnesses testified to; you know what the only witness for the defendant who actually saw the happening testified to, and therefore it is for you to say under all the circumstances whether or not the plaintiff, Mildred Sandler, was guilty of contributory negligence, and as I have before told you if she was guilty of contributory negligence she has no cause of action, and your verdict must be for the defendant.

Now, the burden of proving contributory negligence is cast upon the defendant, and the defendant must show you by the preponderance or the greater weight of the evidence that Mildred Sandler was guilty of contributory negligence. That is the burden of the defendant. In other words, the defendant has the burden of proving contributory negligence to your satisfaction by the greater weight of the evidence.

Now, in deciding whether or not she was guilty of contributory negligence, you will decide whether or not on that morning she was using the degree

of care in getting on that train, which the ordinarily prudent person would have used under the same circumstances. If she was using that degree of care she was not negligent; if she was not using it, she was negligent, and if she was negligent she cannot recover. Now, if you decide in this case that the defendant was negligent, that the defendant's negligence was the proximate cause of this accident, and you further decide and determine that the plaintiff Mildred Sandler was free from contributory negligence, then under those circumstances your verdict must be for the plaintiffs, and if your verdict is going to be for the plaintiffs you will then come to the question of damages.

Now, in this case the girl is suing through her father as next friend, and that is done because at the time the suit was filed she was under the age of twenty-one years. The girl herself is entitled, if your verdict is in favor of the plaintiff, to be compensated for any pain and suffering that you find that she has endured as the result of this accident. She is entitled to be compensated for any pain and suffering that you may find that she is enduring now as the result of this accident. If you find that the limp which she manifests in walking is the result of this accident, she is entitled to be compensated for that. If you believe the doctors' testimony that her present condition cannot be cured without a surgical operation, you are entitled to take that fact into consideration in awarding damages to this young woman.

Now, then, so far as the father is concerned, he is entitled to be compensated for any doctor bills which he has paid or for which he may be liable as the result of medical attention given to this girl as the result of the accident. He is also entitled

to be compensated for any damages which may have been proven. The Court does not remember any, but if there were any proven for medical supplies, druggists' supplies, or anything like that, nurses' supplies, I do not remember any, but if there was any the father is entitled to be compensated for them.

The father is also entitled under the law to the earnings of his child until the child reaches the age of twenty-one, unless the father has emancipated or freed the child from that rule of law. In this case there does not appear to be any emancipation, and therefore the father under the strict application of that rule is entitled to the earnings of his daughter until his daughter reaches the age of twenty-one. Now, then, the father is also entitled to be compensated for any future sums which you feel that this girl might after she was twenty-one years of age have voluntarily contributed to the support of her father. You may take that element into consideration in deciding and determining what your verdict, if it is for the plaintiffs, should be, so far as the father is concerned.

I have been handed certain requests to be charged by counsel for the defendant:

Request No. 1 is as follows:

> "1. The mere fact that an accident happened and the plaintiff, Mildred Sandler, received some injury, does not entitle her to any recovery of damages against the defendant."

The Court so charges.

Request No. 2:

> "2. The plaintiff must prove in addition

to an accident, that it was caused by the negligence or carelessness of the defendant."

The Court so charges.

Request No. 3, the Court refuses to charge, except as otherwise charged.

Request No. 4 is as follows:

"4. The only claim of negligence made by the plaintiff against the defendant is that the defendant negligently permitted the plaintiff to be pushed or shoved by a crowd of passengers into the space between two of the passenger cars in the train which she was about to board."

The Court so charges.

Well, gentlemen, in respect to that request, I have read to you the various allegations of negligence made by the plaintiff in her original complaint, and the various allegations made by the plaintiff in her amended complaint, and so far as the allegations are concerned the plaintiff has urged particularly the pushing or shoving of this crowd such as is mentioned in this request.

Request No. 5: The Court refuses to charge this request except as otherwise charged.

Request No. 6 is as follows:

"6. The defendant in this case cannot be held for the acts of fellow passengers of the plaintiff in pushing and shoving her, unless at the time of the occurrence it had reasonable ground to anticipate that the occurrence would take place."

The Court so charges.

Request No. 7 the Court refuses to charge.

Request No. 8 the Court refuses to charge.
Request No. 9 is as follows:

> "9. The fact that the plaintiff may have a cause of action against the person or persons who pushed or shoved her does not give her any cause of action against this defendant."

Now, that merely means this, gentlemen, that if you decide she has a cause of action against some of her fellow passengers, that of necessity does not mean that she therefore has a cause of action against this defendant.

Request No. 10 is as follows:

> "10. As to the acts of strangers such as passengers, a railroad carrier of passengers is responsible only for those acts of passengers which might have been reasonably anticipated, or as some of the cases put it, naturally expected."

The Court so charges.
Request No. 11 the Court refuses to charge.
Request No. 12 the Court refuses to charge.
Request No. 13 is as follows:

> "13. The plaintiff was bound to exercise reasonable care for her own safety."

The Court so charges.
Request No. 14 is as follows:

> "14. If the plaintiff was guilty of contributory negligence, that is, such negligence without which this accident could not have happened, then the plaintiff cannot recover even though the defendant was negligent, because where the law finds that both parties

to an accident were negligent, neither can recover as against the other."

The Court so charges.

Request No. 15 is as follows:

"15. If the plaintiff was guilty in the slightest degree of contributory negligence, she cannot recover, no matter how negligent the defendant might be, because the law does not attempt to measure how much negligence each contributed. If both are negligent, no matter in what degree, then the plaintiff cannot recover and your verdict must be for the defendant."

The Court so charges.

Request No. 16 is as follows:

"16. If the evidence is evenly balanced on whether or not the defendant was negligent, your verdict must be for the defendant, for then the plaintiff has failed to bear the burden of proof by establishing her case by the greater weight of the evidence."

The Court so charges.

Requests Nos. 17, 18, 19 and 20, the Court refuses to charge except as otherwise charged.

Requests Nos. 21 and 22 the Court refuses to charge except as otherwise charged.

Request No. 23 the Court refuses to charge.

Requests Nos. 24 and 25 the Court refuses to charge except as otherwise charged.

Request No. 26 is as follows:

"26. There has been a motion made by counsel for the defendant to me to direct a verdict in favor of the defendant. That motion and the ruling on it by me is not to be

considered by you in arriving at your verdict or as even indicative of my view of the facts. My ruling on that motion was merely a ruling of the law. It did not decide the facts and has nothing to do with the facts. You have the right to find in favor of the defendant even though I denied that motion, and my decision of that motion does not express my view of the facts. You are the sole judges of the facts and a denial of that motion merely means that there are disputed questions of fact which you have to pass upon."

The Court so charges.

I have been handed a request by the plaintiff to charge, gentlemen, which is as follows:

"If you find that the defendant company made no effort to control the pushing and surging of a crowd attempting to board the cars at the platform and station wherein the plaintiff was injured, then the defendant is liable for an injury or injuries sustained by the plaintiff in being pushed and crowded between the car and station platform between connecting cars which this plaintiff attempted to enter."

With regard to that request let me say this: It is your duty in this case to see whether under the circumstances of this case, keeping in mind the testimony of the defendant's employees as to the most crowded time that they have during the day with regard to traffic going through that station, whether or not the defendant used that degree of care in maintaining its platform there which the ordinarily prudent persons would have used un-

der the same circumstances. If you find that they took those precautions, then your verdict must be for the defendant. If you find that they did not, if you find that they were negligent, then under the Court's charge, keeping in mind all the other conditions the Court laid down for you, your verdict must be for the plaintiffs.

Mr. Markley: With respect to the main charge, I want to except to your Honor leaving to the jury allegation (a) of paragraph five of the complaint, on the ground that there is no testimony in this case of any negligence in that respect.

I also except to your Honor leaving to the jury the question of whether or not allegation (b) had any evidence to support it.

Also I take an exception to your Honor leaving to the jury whether allegation (c) of paragraph 5 had any evidence to support it.

The Court: If you want to abandon all those allegations and rely on your amended complaint, I am perfectly satisfied; but I did not want this jury confused as to an original complaint and an amended complaint. As soon as I saw that you included the five allegations specified in the amended complaint, I foresaw that something had to be explained to the jury, because they would not know whether to rely on the original complaint, or to rely solely and exclusively on the amended complaint. Now, then, my thought was that the plaintiff had the right to urge the grounds of negligence specified in the original complaint, and the grounds of negligence urged in the amended complaint.

Now, then, I quite agree with Mr. Markley that as to certain of the grounds mentioned by you in the original complaint, there is absolutely no evidence to sustain those allegations.

Mr. Fredman: I appreciate that.

The Court: Well, all right, do you merely want the case to go to the jury on the allegations of negligence specified by you in the amended complaint?

Mr. Fredman: I will leave it stand as it is and let Mr. Markley have his exceptions, as he is bound to have exceptions somehow or other, so he might as well have them on all of them.

Mr. Markley: I do not disagree with your Honor that there is an original complaint with these specific allegations, and in addition there is also an amended complaint, with separate and distinct allegations. I do not deny that that is so. I do not say that one is a substitution for the other at all.

The Court: I will instruct the jury, Mr. Markley, on that point. I think there is something to that point.

Gentlemen of the Jury: Just on this point let me instruct you that the mere allegation of a particular kind of negligence urged by the plaintiffs in their original complaint, or the amended complaint, does not mean that such allegation of negligence has been proven. The plaintiff has the right to urge every conceivable ground of negligence, but has only the right to urge to the jury and argue to the jury whatever particular kind of negligence has been proven. So that in this case if you examine these papers you will disregard entirely any allegation of negligence which you as the jury feel was not proven in this case, and you will consider only such allegations of negligence as you feel there has been some proof offered upon, and then when you consider it you will decide and determine under the charge I have given you whether the plaintiff has sustained the burden, and has proven it by the preponderance or the greater weight of the

evidence, and whether or not under all the circumstances of the case, even on that point, the defendant was negligent.

Mr. Markley: Subject to all that, your Honor, may I note this, since Mr. Fredman has not withdrawn it, an exception to leaving to the jury allegation (d) of paragraph 5, and also an exception to leaving to the jury allegation (e) of paragraph 5, of the original complaint. My exception to that is that it does not correctly state the duty of the defendant; secondly, there is no evidence to support the allegations actually proven in the case.

I also except to your Honor leaving to the jury paragraph 4 of the stipulation amending the complaint on the ground that there is no evidence to support that allegation of negligence; and also to leaving to the jury paragraph 5 of the amended complaint on the ground that that is too broad, and does not correctly state the duty of the defendant, and furthermore there is no evidence to support it.

The Court: So far as the duty of the defendant is concerned, gentlemen, you will be guided solely by what the Court has instructed you is the duty of the defendant. You will not regard anything as being the law, which may be mentioned either in the papers of the plaintiffs or the papers of the defendant. The Court is the only one to lay down the law to you, not the complaint, and not the answer. You will take the law from the Court, and if the Court is wrong there is a higher court that will take care of the situation. You will be guided solely on questions of law by what the Court in its charge laid down for you.

Mr. Markley: May I ask your Honor to instruct the jury that we in our answer deny the allega-

tions? Your Honor has stated that they allege them, but—

The Court: There is not any importance in these pleadings, gentlemen, so far as you are concerned. You are not concerned with the pleadings or the way they are drawn. What you are concerned with is the facts in this case. It is true, as Mr. Markley says, they deny each and every allegation of the complaint in this case, so far as negligence is concerned, and therefore that is why it is going into your hands, because it is an issue. The complaint is that the defendant was negligent, and the defendant says, "We were not negligent," and they further say that the plaintiff in this case was guilty of contributory negligence. That is the issue you will have to decide and determine. So do not become confused.

Mr. Markley: Then, your Honor, just one other thing. I take an exception to each and every request that your Honor did not charge, in the words requested or substantially. In other words, such requests as your Honor refused to charge I would like to note individual exceptions to such refusals.

The Court: Very well. Is there anything further, gentlemen?

Mr. Markley: No, sir.

Mr. Fredman: No, sir.

Defendant's Requests to Charge.

(Filed December 4, 1929.)

[Same Title]

1. The mere fact that an accident happened and the plaintiff, Mildred Sandler, received some injury, does not entitle her to any recovery of damages against the defendant.

Defendant's Requests to Charge.

2. The plaintiff must prove in addition to an accident, that it was caused by the negligence or carelessness of the defendant.

3. The plaintiff has the burden of proving by the greater weight of the evidence, first, that the defendant was negligent, and second, that the defendant's negligence was the proximate or efficient cause of her injury.

4. The only claim of negligence made by the plaintiff against the defendant is that the defendant negligently permitted the plaintiff to be pushed or shoved by a crowd of passengers into the space between two of the passenger cars in the train which she was about to board.

5. You will note that she does not claim that the defendant or any agent or servant of the defendant negligently or carelessly did anything to her, but her claim is limited to the contention that the defendant negligently and carelessly permitted other passengers to push and shove her so that she was forced between the two cars of the train where she fell or partially fell before she was able to recover her balance.

6. The defendant in this case cannot be held for the acts of fellow passengers of the plaintiff in pushing and shoving her, unless at the time of the occurrence it had reasonable ground to anticipate that the occurrence would take place.

7. Our Supreme Court in Miller *v.* W. Jersey, etc., R. Co., 71 N. J. L. 363, 365, said:

> "Although a carrier may naturally expect that sometimes during the course of its business passengers may be injured by the care-

less or wanton acts of fellow passengers or of strangers, it is not on this account chargeable with responsibility for any specific act so done, but that to incur such responsibility reasonable ground to anticipate the occurrence must have existed.

"While it may reasonably be anticipated that the employes engaged about a railroad station will sometimes be careless, third persons, using the station, cannot possibly foresee the doing of any specific careless act by one of such employees unless such act is preceded by something which suggests the likelihood or at least the possibility of its taking place. In the present case there was nothing to suggest to the defendant company any more than there was to the plaintiff the possibility of danger to the latter until the actual happening of the accident. Having no reason to expect its occurrence, the company was under no obligation to take steps to protect the plaintiff against it.

"The facts of this case, as developed by the proofs, presented a situation which called for the direction of a verdict in favor of the defendant.

"The rule to show cause should be made absolute."

8. In the present case the evidence of the plaintiff herself shows that she used this particular platform of the Hudson and Manhattan Railroad for five years daily immediately preceding this accident and that she boarded the train each morning about the same time at the same place and that at no previous occasion had she ever been

pushed or shoved by any passenger or passengers. You must therefore consider whether under the circumstances the defendant can be held to any responsibility to the plaintiff, and that depends on whether the defendant had any reasonable ground to anticipate that the occurrence in question would happen. If the defendant did not have any reasonable ground to anticipate the occurrence of which the plaintiff complains, then the plaintiff cannot recover and your verdict must be for the defendant.

9. The fact that the plaintiff may have a cause of action against the person or persons who pushed or shoved her does not give her any cause of action against this defendant.

10. As to the acts of strangers, such as passengers, a railroad carrier of passengers is responsible only for those acts of passengers which might have been reasonably anticipated, or as some of the cases put it, naturally expected.

11. There is no evidence in this case that any passenger on any previous occasion was pushed or shoved from the platform to a position between the cars and in the absence of any evidence that the defendant might have reasonably anticipated this occurrence, there is no liability on the part of the defendant and your verdict must be for the defendant.

12. The proof in this case is even on the part of the plaintiff and her witness, Mrs. Cooney, that this was an unusual occurrence, an unusual crowd, an immense crowd, something that had never happened before, so far as they knew. For such unusual occurrence this defendant is not liable. It

is only liable for what might have been reasonably anticipated.

13. The plaintiff was bound to exercise reasonable care for her own safety.

14. If the plaintiff was guilty of contributory negligence, that is, such negligence without which this accident could not have happened, then the plaintiff cannot recover even though the defendant was negligent, because where the law finds that both parties to an accident were negligent, neither can recover as against the other.

15. If the plaintiff was guilty in the slightest degree of contributory negligence, she cannot recover, no matter how negligent the defendant might be, because the law does not attempt to measure how much negligence each contributed. If both are negligent, no matter in what degree, then the plaintiff cannot recover and your verdict must be for the defendant.

16. If the evidence is evenly balanced on whether or not the defendant was negligent, your verdict must be for the defendant, for then the plaintiff has failed to bear the burden of proof by establishing her case by the greater weight of the evidence.

17. The credibility of the witnesses is for you. You do not have to believe any witness whose credibility has not been established by the greater weight of the evidence. The mere fact that a witness testified to a fact is no evidence of the fact unless you are satisfied that the witness is entitled to credit, and where a witness has testified falsely in a material particular, you have a right to disbelieve his entire testimony.

18. It is therefore your duty to weigh all of the testimony, weigh the credibility of the witnesses and find out where the truth lies and if you find that the plaintiff has failed to establish her case by the greater weight of the evidence, than your verdict must be for the defendant and against the plaintiff.

19. The amount that was sued for in this case is no criterion as to what amount, if any, the plaintiff is entitled to. The amount stated in the complaint is merely the lawyer's idea as to what he would like to have. The complaint is not sworn to. You should give no damages in this case unless you first determine that there is liability on the part of the defendant.

20. In this case, you, gentlemen, are judges of the fact. You are just as much judges as I am a judge. I give you the law, but you must decide the facts. If I make a mistake, I can be reviewed by an appellate court, but if you should happen to make a mistake, or go wrong on the testimony, you will be doing an injustice which cannot be remedied.

21. There should be no sympathy for the plaintiff in determining the facts and in rendering justice. You should not let sympathy enter into your deliberations. You have no right to render a verdict or give money of one man to another merely because you sympathize with one man because of his injury. The moment you let sympathy enter in, you are not rendering justice. Likewise, there should be no prejudice against the defendant because it happens to be a corporation. All persons, whether individuals or corporations, are entitled to even-handed justice at your hands. You have

no right to decide the case on anything but the testimony given in court under oath before you. You cannot decide it on something you have heard outside of the court room or read in the newspapers. Unless you are convinced by the testimony that the defendant was negligent and convinced by the greater weight of the evidence, the plaintiff must fail and your verdict must be for the defendant.

22. The proof in this case is undisputed, for it is given by the plaintiff that she was familiar with this platform; that she used it daily; that she knew the conditions existing there and that there were a number of passengers who frequented the station in the morning and that she always boarded the train at about the same point. You have a right to consider her familiarity with the station, her daily trips to it and her daily use of it in determining whether she exercised reasonable care. If she did not exercise reasonable care for her own safety, then she cannot recover and your verdict must be for the defendant.

23. You cannot find any negligence on the part of the defendant simply because there was a small space between the side of the car and the side of the station platform. There is no evidence in this case that that construction was improper and in the absence of such evidence, you cannot find the defendant negligent in that respect. It is self-evident that there must be some space between the side of the platform and the side of the cars otherwise the train could not be run into the station and out again. Because of such space the defendant cannot be held liable in this case.

Defendant's Requests to Charge.

24. If you find that this accident happened simply by the plaintiff putting her foot in between the side of the car and the side of the platform, then the plaintiff cannot recover and your verdict must be for the defendant.

25. If you find that this was merely an accident which could not be avoided by the exercise of reasonable care by the defendant, then your verdict must be against the plaintiff and in favor of the defendant.

26. There has been a motion made by counsel for the defendant to me to direct a verdict in favor of the defendant. That motion and the ruling on it by me is not to be considered by you in arriving at your verdict or as even indicative of my view of the facts. My ruling on that motion was merely a ruling of law. It did not decide the facts and has nothing to do with the facts. You have the right to find in favor of the defendant even though I denied that motion and my decision of that motion does not express my view of the facts. You are the sole judges of the facts and a denial of that motion merely means that there are disputed questions of fact which you have to pass upon.

COLLINS & CORBIN,
Attorneys of Defendant.

Exhibit D-3.

In re

20 years Single
Apr 11—1908

STATEMENT OF Miss Mildred Sandler
585 West Side Ave
Cor Communipaw Ave
J. C.

c/o Torfield
2 up

On Friday morning Sept 28th 1928 I had an accident at Journal Square Station. It was about 8.10 A. M. I was alone. I was going to work—Patrician Hat Co 37 W 37 St. 7 floor. Mr. Slope is my boss.

I am a Copyist on Hats. I average about $30.00 weekly. It is season work. I have worked steady for the last 4 or 5 months. It is now getting slow. Even in the slow season I always have work to do. I went downstairs by the new stairway and turned to the left side and walked up the platform about 10 feet or so. The train was there and the doors were open and I went towards an end door. This door was open and passengers were getting on. Just as I went to step on the car I suddenly fell down my left leg going in the space between the door & platform. No one pushed me down. Train did not move. Door did not strike me. The heel came off my left shoe. I don't know what made the heel come off. The space was big enough for my foot to go in sideways. The shoes I wear are very narrow. The size is #3. I never had any other accidents. When I fell some lady helped me up and she got the guard's number which is 812.

He did not ask my name. He saw me fall as he was in his position between the cars. I have travelled this way for 5 years and always get on at this same place. I was getting on as usual when my left foot went in the small space.

MILDRED SANDLER.

Carfully rede is correctt.

Witness Fred J. Coleman 9, 28/28

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Exhibit D-7.

New Down Town Station. (See photograph opposite.)

Exhibit D-8.

Platform looking East on West End. (See photo-
20 graph opposite.)

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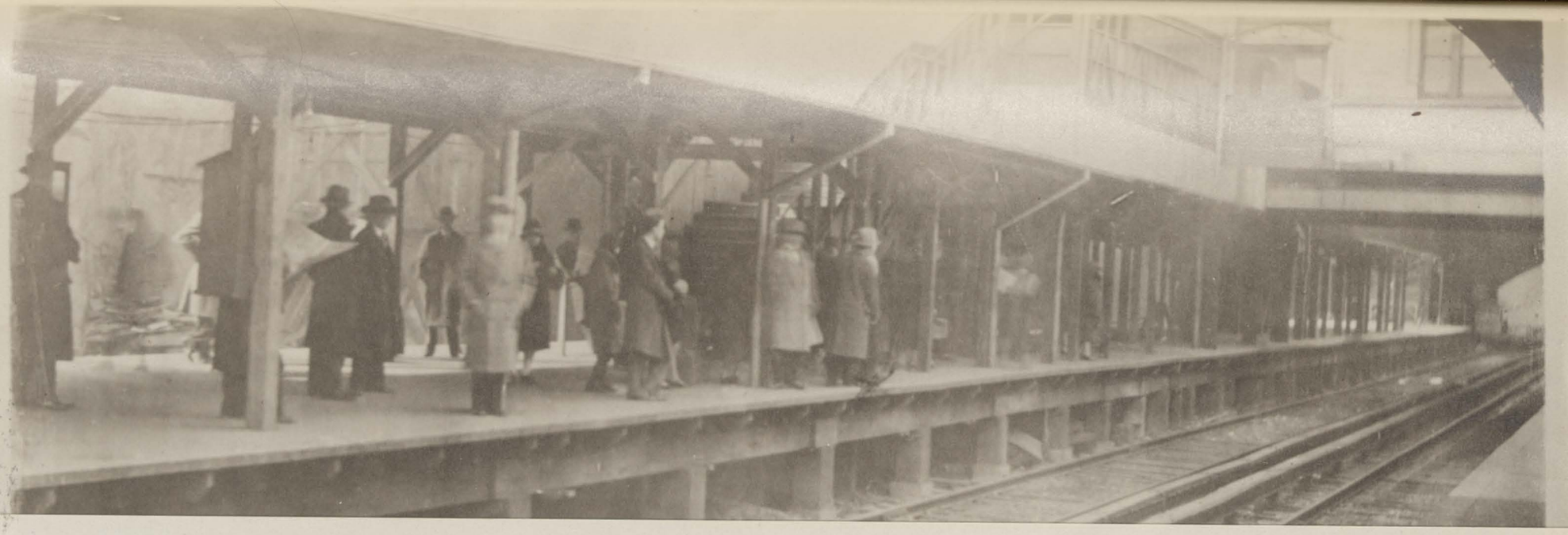

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Exhibit D-7.

New Down Town Station. (See photograph opposite.)

Exhibit D-8.

Platform looking East on West End. (See photo-
20 graph opposite.)

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Exhibit D-7.

Exhibit D-8.

Rule for Judgment.

(Filed December 6, 1929.)

HUDSON COUNTY COURT OF COMMON PLEAS.

MILDRED SANDLER, an infant, who sues by Morris Sandler, her next friend, and MORRIS SANDLER, individually,

Plaintiffs,

v.

HUDSON & MANHATTAN RAILROAD COMPANY, a corporation,

Defendant.

Action at Law.

The above entitled cause having been tried before Honorable Robert V. Kinkead, Judge of the Hudson County Court of Common Pleas, with a jury in said Court, on December 3rd and 4th, 1929, and the cause having been heard and submitted to the jury, they returned their verdict in favor of the Plaintiff, Mildred Sandler, an infant, who sues by Morris Sandler, her next friend, for the sum of $1,300.00; and in favor of the Plaintiff Morris Sandler, individually, for the sum of $50.00, both against the defendant Hudson & Manhattan Railroad Company, a corporation.

It is on this 4th day of December, 1929, ORDERED that judgment final be entered in the above entitle matter in favor of the plaintiff Mildred Sandler, an infant, who sues by Morris Sandler, her next friend, for the sum of $1,300.00 and in favor of the plaintiff Morris Sandler, individually, for the sum of $50.00 against the defendant Hudson

& Manhattan Railroad Company, a corporation, with costs to be taxed.

ROBERT V. KINKEAD,
Judge.

On Motion of

FREDMAN & FREDMAN,
Attorneys for Plaintiffs.

Judgment.

(Entered December 6, 1929.)

HUDSON COUNTY COURT OF COMMON PLEAS.

MILDRED SANDLER, an infant, who sues by Morris Sandler, her next friend, and MORRIS SANDLER, individually,

Plaintiffs,

v.

HUDSON & MANHATTAN RAILROAD COMPANY, a corporation,

Defendant.

Judgment entered December 6, 1929.

Damages	
Mildred Sandler	$1,300.00
Morris Sandler	50.00
Costs	71.36
Total	$1,421.36

FREDMAN & FREDMAN,
Attorneys of Plaintiffs.

Judgment on Verdict in the above entitled cause was entered in this Court on the 6th day of December in the year of our Lord One Thousand Nine Hundred and Twenty-nine, in favor of the Plaintiff Mildred Sandler, an infant, who sues by Morris Sandler, her next friend, and Morris Sandler individually, and against the Defendant Hudson & Manhattan Railroad Company, a corporation, in a plea of Action at Law for the sum of Thirteen Hundred Dollars for Mildred Sandler, an

infant, who sues by Morris Sandler, her next friend, and for the sum of Fifty Dollars for Morris Sandler, individually, damages, and Seventy-one Dollars Thirty-six Cents, costs of suit.

Judgment entered and signed this 6th day of December, 1929.

ROBERT V. KINKEAD,
Judge.

Notice of Appeal.

(Filed December 12, 1929.)

HUDSON COUNTY COURT OF COMMON PLEAS.

MILDRED SANDLER, an infant, by Morris Sandler, her next friend, and MORRIS SANDLER, individually, *Plaintiffs,* *v.* HUDSON & MANHATTAN RAILROAD COMPANY, a corporation, *Defendant.*	Action at Law.

To—Messrs. FREDMAN & FREDMAN,
Attorneys of Plaintiffs.

SIRS:

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

Dated December 7, 1929.

COLLINS & CORBIN,
Attorneys of Defendant.

Grounds of Appeal.

(Filed January 10, 1930.)

NEW JERSEY SUPREME COURT.

MILDRED SANDLER, an infant, by her next friend, Morris Sandler, and MORRIS SANDLER, individually, *Plaintiffs-Respondents,* *v.* HUDSON & MANHATTAN RAILROAD COMPANY, a corporation, *Defendant-Appellant.*	Action at Law.

The appellant states the following grounds of appeal:

1. The trial court refused to grant a nonsuit on the opening of the plaintiffs as to the original complaint, whereas said motion should have been granted because no claim was made in the plaintiffs' opening under the original complaint.

2. The trial court should have directed a verdict in favor of the defendant when thereunto moved, on one or more of the following grounds urged in support of said motion:

(a) There is no evidence of negligence on the part of the defendant;

(b) There is no evidence that any negligence on the part of the defendant was the proximate cause of the accident;

(c) The plaintiff, Miss Sandler, as a mat-

ter of law was guilty of contributory negligence.

3. The trial court refused to charge the jury the defendant's seventh request, which is as follows:

"7. Our Supreme Court in *Miller* v. *W. Jersey, etc., R. Co.*, 71 N. J. L. 363, 365, said:

" 'Although a carrier may naturally expect that sometimes during the course of its business passengers may be injured by the careless or wanton acts of fellow-passengers or of strangers, it is not on this account chargeable with responsibility for any specific act so done, but that to incur such responsibility reasonable ground to anticipate the occurrence must have existed.

" 'While it may reasonably be anticipated that the employes engaged about a railroad station will sometimes be careless, third persons, using the station, cannot possibly foresee the doing of any specific careless act by one of such employes unless such act is preceded by something which suggests the likelihood or at least the possibility of its taking place. In the present case there was nothing to suggest to the defendant company any more than there was to the plaintiff the possibility of danger to the latter until the actual happening of the accident. Having no reason to expect its occurrence, the company was under no obligation to take steps to protect the plaintiff against it.

" 'The facts of this case, as developed by the proofs presented a situation which called

for the direction of a verdict in favor of the defendant.

" 'The rule to show cause should be made absolute.' "

4. The trial court refused to charge the jury the defendant's eighth request, which is as follows:

"8. In the present case the evidence of the plaintiff herself shows that she used this particular platform of the Hudson and Manhattan Railroad for five years daily immediately preceding this accident and that she boarded the train each morning about the same time at the same place and that at no previous occasion had she ever been pushed or shoved by any passenger or passengers. You must therefore consider whether under the circumstances the defendant can be held to any responsibility to the plaintiff, and that depends on whether the defendant had any reasonable ground to anticipate that the occurrence in question would happen. If the defendant did not have any reasonable ground to anticipate the occurrence of which the plaintiff complains, then the plaintiff cannot recover and your verdict must be for the defendant."

5. The trial court refused to charge the jury the defendant's eleventh request, which is as follows:

"11. There is no evidence in this case that any passenger on any previous occasion was pushed or shoved from the platform to a position between the cars and in the absence of any evidence that the defendant might

have reasonably anticipated this occurrence, there is no liability on the part of the defendant and your verdict must be for the defendant."

6. The trial court refused to charge the jury the defendant's twelfth request, which is as follows:

"12. The proof in this case is even on the part of the plaintiff and her witness, Mrs. Cooney, that this was an unusual occurrence, an unusual crowd, an immense crowd, something that had never happened before, so far as they knew. For such unusual occurrences this defendant is not liable. It is only liable for what might have been reasonably anticipated."

7. The trial court refused to charge the jury the defendant's seventeenth request, which is as follows:

"17. The credibility of the witnesses is for you. You do not have to believe any witness whose credibility has not been established by the greater weight of the evidence. The mere fact that a witness testified to a fact is no evidence of the fact unless you are satisfied that the witness is entitled to credit, and where a witness has testified falsely in a material particular, you have a right to disbelieve his entire testimony."

8. The trial court refused to charge the jury the defendant's eighteenth request, which is as follows:

"18. It is therefore your duty to weigh all

of the testimony, weigh the credibility of the witnesses and find out where the truth lies and if you find that the plaintiff has failed to establish her case by the greater weight of the evidence, then your verdict must be for the defendant and against the plaintiff."

9. The trial court refused to charge the jury the defendant's nineteenth request, which is as follows:

"19. The amount that was sued for in this case is no criterion as to what amount, if any, the plaintiff is entitled to. The amount stated in the complaint is merely the lawyer's idea as to what he would like to have. The complaint is not sworn to. You should give no damages in this case unless you first determine that there is liability on the part of the defendant."

10. The trial court refused to charge the jury the defendant's twentieth request, which is as follows:

"20. In this case, you, gentlemen, are judges of the fact. You are just as much judges as I am a judge. I give you the law, but you must decide the facts. If I make a mistake, I can be reviewed by an appellate court, but if you should happen to make a mistake, or go wrong on the testimony, you will be doing an injustice which cannot be remedied."

11. The trial court refused to charge the jury the defendant's twenty-first request, which is as follows:

"21. There should be no sympathy for the plaintiff in determining the facts and in rendering justice. You should not let sympathy enter into your deliberations. You have no right to render a verdict or give money of one man to another merely because of his injury. The moment you let sympathy enter in, you are not rendering justice. Likewise, there should be no prejudice against the defendant because it happens to be a corporation. All persons, whether individuals or corporations, are entitled to even-handed justice at your hands. You have no right to decide the case on anything but the testimony given in court under oath before you. You cannot decide it on something you have heard outside of the court room or read in the newspapers. Unless you are convinced by the testimony that the defendant was negligent and convinced by the greater weight of the evidence, the plaintiff must fail and your verdict must be for the defendant."

12. The trial court refused to charge the jury the defendant's twenty-second request, which is as follows:

"22. The proof in this case is undisputed, for it is given by the plaintiff that she was familiar with this platform; that she used it daily; that she knew the conditions existing there and that there were a number of passengers who frequented the station in the morning and that she always boarded the train at about the same point. You have a right to consider her familiarity with the

station, her daily trips to it and her daily use of it in determining whether she exercised reasonable care. If she did not exercise reasonable care for her own safety, then she cannot recover and your verdict must be for the defendant."

13. The trial court refused to charge the jury the defendant's twenty-third request, which is as follows:

"23. You cannot find any negligence on the part of the defendant simply because there was a small space between the side of the car and the side of the station platform. There is no evidence in this case that the construction was improper and in the absence of such evidence, you cannot find the defendant negligent in that respect. It is self-evident that there must be some space between the side of the platform and the side of the cars otherwise the train could not be run into the station and out again. Because of such space the defendant cannot be held liable in this case."

14. The trial court refused to charge the jury the defendant's twenty-fourth request, which is as follows:

"24. If you find that this accident happened simply by the plaintiff putting her foot in between the side of the car and the side of the platform, then the plaintiff cannot recover and your verdict must be for the defendant."

15. The trial court refused to charge the jury

the defendant's twenty-fifth request, which is as follows:

> "25. If you find that this was merely an accident which could not be avoided by the exercise of reasonable care by the defendant, then your verdict must be against the plaintiff and in favor of the defendant."

Dated January 9, 1930.

COLLINS & CORBIN,
Attorneys for Defendant-Appellant.

[Service made January 9, 1930.]

Opinion of Supreme Court.

(Filed July 1, 1930.)

NEW JERSEY SUPREME COURT.

No. 63, January Term, 1930.

MILDRED SANDLER, by next friend, *et al.*,
Plaintiffs-Appellees,

v.

HUDSON & MANHATTAN RAILROAD COMPANY,
Defendant-Appellant.

Submitted January Term, 1930; decided June , 1930.

Appeal from Hudson County Common Pleas.

Before—Chief Justice GUMMERE and Justice CAMPBELL.

For appellant, EDWARD A. MARKLEY.
For appellees, FREDMAN and FREDMAN.

PER CURIAM:

The plaintiff below, Mildred Sandler, a young woman of twenty years of age, was injured at the Journal Square Station, Jersey City, of the defendant-appellant as she was about to board an uptown New York train on September 28, 1928 at about 8:10 A. M. She has a judgment for $1,300 and her father, the other plaintiff below for $50, as a result of verdicts of a jury in the trial of an action for damages resulting from the alleged negligence of the appellant.

The defendant below appeals and seeks a reversal of such judgments upon fifteen grounds argued under eleven heads or points.

1. The first ground is that the trial court erred in refusing to direct a verdict in favor of the appellant.

This is urged upon authority of Miller *v.* West Jersey and Seashore R. R. Co., 71 N. J. L. 363; Aff'd. 79 *Id.* 499; Lehberger *v.* Public Service, 79 *Id.* 134; Hoff *v.* Public Service, 91 *Id.* 641; Kalleberg *v.* Raritan &c., R. R. Co., 91 *Id.* 222; Lerner *v.* Public Service, 83 *Id.* 64 and Exton *v.* Central R. R. Co., 62 *Id.* 7.

The principle running through all of these cases is that a common carrier of passengers must use reasonable care to protect passengers from dangers known or which ought to be known or anticipated by reasonable foresight. Such rule is firmly established.

But the situation in the present case is not one where some unexpected and unforeseen happening or act of a fellow passenger was, necessarily,

the proximate cause of the injury to the plaintiff, below. The proofs here were that from 8:00 A. M. to 8:45 A. M. or thereabouts, was the so-called "rush" period at this station; that large crowds of passengers were usually and regularly to be found there during that time, and, as trains came in the crowds of passengers would rush to the cars to gain entrance. This the proofs would tend to show was the condition on the morning in question. It further appears that, ordinarily, the appellant at that time in the day and on that platform, had four or five guards to control the crowd. Although appellant sought to establish that guards to this number were on duty on this platform on the morning in question there is also proof, if believed, that there were none there at the time of the happening complained of and that the crowd of passengers, uncontrolled, pushed and shoved each other in an effort to board the train and that the plaintiff was pushed and carried along to the edge of the platform and off of it and into a space between two cars of a train then in the station.

Not only was there proof upon the part of the appellant that the usual number of guards were on duty at the time but that one of these, whose station was at the point where plaintiff claimed to have been injured, testified that he was on duty, at his post, and that he saw no rushing, pushing or disorder and saw no one injured.

Under such condition of proofs a jury question was undoubtedly presented and it was open to the jury to find that the appellant was or was not negligent, in not using reasonable care to provide guards or platform men of a reasonably sufficient number and that if such men and to such number

were actually on duty then whether or not they exercised due care for the safety of the passengers.

We think, therefore, that there was no error in refusing to direct a verdict upon this ground.

2. It was error to refuse to direct a verdict in favor of appellant because no negligence, if any was established, was the proximate cause of the happening complained of.

This is urged upon the idea or theory that the happening was a sudden, unexpected and extraordinary one, which the defendant company in the exercise of reasonable care was not called upon to anticipate and which no amount of precaution or foresight could have protected the plaintiff against.

This might have been spelled out of the proofs but there were also proofs from which an opposite conclusion could be reached and it was for the jury to find thereon. This question was, therefore, properly referred to the jury by the trial court.

3. That it was error to have refused to nonsuit the plaintiff upon the allegations of negligence contained in the original complaint.

We are quite unable to see how such action of the trial court prejudiced the appellant.

From the proofs there is, at least, a strong suspicion that the happening did not take place as the plaintiff urged at the trial but happened by her stepping into a narrow space between the edge of the platform and the side of the car where she proposed and sought to enter.

Again we are constrained to say that from the proofs this was very properly a jury question.

4. That it was error to refuse to charge appellant's requests numbered 23 and 24.

These were—

> "23. You cannot find any negligence on the part of the defendant simply because there was a small space between the side of the car and the side of the station platform. There is no evidence in this case that that construction was improper and in the absence of such evidence you cannot find the defendant negligent in that respect. It is self evident that there must be some space between the side of the platform and the side of the cars otherwise the train could not run into the station and out again. Because of such space the defendant cannot be held liable in this case."
>
> "24. If you find that this accident happened simply by the plaintiff putting her foot in between the side of the car and the side of the platform then the plaintiff cannot recover, and your verdict must be for the defendant."

While, in the abstract, these requests present established principles of law, they were not proper requests under the theory upon which the case was tried and submitted to the jury.

It is true that one of the grounds of negligence asserted in the original complaint was that the "platform was constructed in a careless, negligent and dangerous manner without regard for the safety of passengers using the same," and it is also true that there was no proof that such platform was not of the customary and standard construction, and it further appears that appellant endeavored to establish that the injury to the plaintiff was caused by her stepping into a space

between the platform edge and the car she was attempting to enter and the trial court referred the jury to all the charges of negligence including the one above stated, nevertheless the court instructed the jury that the plaintiff claimed "that when she went down the stairs there was a large * * * and unusual crowd, and that the train came in practically at the same time that she got on the platform and when she went to get over on the train that she was carried along with this crowd and pushed in such a position that her leg went down between the edge of the platform and the side of the train. Now, whether that is so, or whether her foot went between the edge of the platform and the middle of two cars, is for you, and you alone to decide * * *."

It seems to us that this instruction was more favorable to the appellant than anything it was entitled to. Of course, if without anything else appearing the fact was that plaintiff being upon the platform and attempting to board this train and stepped into a space between the platform and the train, not shown to have been an unusual space according to standard construction she would not have been entitled to recover and the requests under consideration would have been proper and it would have been error to refuse to charge them. The proofs here, however, presented a situation from which it could be found that the appellant was negligent in not providing any or sufficient guards and if this were not so that such guards as were provided were negligent in their efforts to control the prospective passengers upon the platform so that plaintiff against her will was physically forced to the edge of the platform and between it and the train then standing in the sta-

tion. If this was the true situation then it would seem to us to be entirely immaterial whether her leg went down between two cars or between a standard opening or space between the platform and the entrance to the car which she entered.

The requests in question by their language made no provision for nor did they set up such a situation.

We conclude, therefore, that it was not error to refuse to charge as requested.

(5) Refusal to charge appellant's request number 7. This was an excerpt from Miller *v.* West Jersey R. Co., 71 N. J. L. 363, 365, and as worded did not fit the facts in the present case and it was not error to refuse to charge it.

(6) Refusal to charge request No. 8 of appellant, which was:

> "In the present case the evidence of the plaintiff herself shows that she used this particular platform of the Hudson and Manhattan Railroad for five years, daily; immediately preceding this accident and that she boarded the train each morning about the same time at the same place and that at no previous occasion had she ever been pushed or shoved by any passenger or passengers. You must therefore consider whether, under the circumstances, the defendant can be held to any responsibility to the plaintiff and that depends on whether the defendant had any reasonable ground to anticipate that the occurrence in question would happen. If the defendant did not have any reasonable ground to anticipate the occurrence of which the plaintiff com-

plains, then the plaintiff cannot recover and your verdict must be for the defendant."

This request was patently improper. The fact, if such it was, that the plaintiff had made use of this particular station for some period of time prior to the happening complained of, and had never before been pushed or shoved by a crowd of passengers was not the measure of the defendant's liability nor the guide for its care of its passengers.

(7) Refusal to charge request No. 11 of appellant, as follows:

"There is no evidence in this case that any passenger on any previous occasion was pushed or shoved from the platform to a position between the cars and in the absence of any evidence that the defendant might have reasonably anticipated this occurrence, there is no liability on the part of the defendant and your verdict must be for the defendant."

While we are entirely unable to subscribe to the contention contained in this request that there was a burden upon the plaintiff to show that other passengers at previous times had met up with and been subjected to a happening like unto that visited upon her, in order to make the defendant liable in her case, nevertheless the instruction of the trial court upon this point seems to us to have been amply sufficient.

(8) Refusal to charge appellant's request No. 17.

This was simply a rule for measuring the credibility of witnesses and the charging of it was entirely a matter within the sound discretion of the

trial judge. It presented no rule or principle of law and it was not error to refuse to charge it.

(9) Refusal to charge appellant's request No. 21.

This was a caution to the jury not to be swayed by sympathy, etc. Here again the sound discretion of the court was called into action and no principle of law was involved.

(10) Refusal to charge appellant's request No. 22.

This was directed to the question of contributory negligence of the plaintiff.

The trial court fully and correctly charged upon this question and therefore it was not error to refuse to charge the request in question.

(11) Refusal to charge appellant's request No. 25, which was:

> "If you find that this was merely an accident which could not be avoided by the exercise of reasonable care by the defendant then your verdict must be against the plaintiff and in favor of the defendant."

We think this was sufficiently and completely covered by appellant's request No. 1 which was charged and the trial court's general charge.

The judgments below should be affirmed, with costs.

Order of Affirmance of Judgment.

(Filed July 14, 1930.)

NEW JERSEY SUPREME COURT.

MILDRED SANDLER, an infant, who sues by MORRIS SANDLER, next friend and MORRIS SANDLER, individually,
Plaintiffs,

v.

HUDSON & MANHATTAN RAILROAD COMPANY, a corporation,
Defendant.

On Appeal from Hudson County Court of Common Pleas.

Rule on Affirmance.

This cause having been duly argued (on brief) at the January Term of this Court by Messrs. Fredman & Fredman, Attorneys for plaintiffs-appellees, and Messrs. Collins and Corbin (Edward A. Markley), attorneys for defendant-appellant, and the court having considered the same and finding no error in the record or proceedings in the Hudson County Court of Common Pleas,

It is thereupon ORDERED and ADJUDGED that the judgment of the Hudson County Court of Common Pleas removed by appeal in this cause, be affirmed with costs; and that the record be remitted to the said Hudson County Court of Common Pleas to be proceeded with in accordance with this judgment and the practice of said court.

Entered July 14, 1930.

On Motion of:

FREDMAN & FREDMAN,
Attorneys for Plaintiffs-Appellees.

Notice and Grounds of Appeal.

(Filed July 30, 1930.)

NEW JERSEY SUPREME COURT.

MILDRED SANDLER, an infant by MORRIS SANDLER, her next friend and MORRIS SANDLER, individually,

Plaintiffs-Respondents,

v.

HUDSON & MANHATTAN RAILROAD COMPANY, a corporation,

Defendant-Appellant.

Action at Law.

Notice and Grounds of Appeal.

To

FREDMAN & FREDMAN, Esqs.,
Attorneys of Plaintiffs-Respondents:

SIRS:

TAKE NOTICE that the defendant-appellant appeals to the Court of Errors & Appeals from the whole of the judgment entered in the above entitled cause on the following ground:

The Supreme Court erred in affirming the judgment of the Hudson County Court of Common Pleas, whereas said Supreme Court should have reversed the judgment of the Hudson County Court of Common Pleas for one or more of the reasons urged before the Supreme Court.

Dated July 25, 1930.

Respectfully,

COLLINS & CORBIN,
Attorneys of Defendant-Appellant.

Service acknowledged July 28, 1930.

FREDMAN & FREDMAN,
Attorneys of Plaintiffs-Respondents.

New Jersey Court of Errors and Appeals

MILDRED SANDLER, an infant, by MORRIS SANDLER, her next friend, and MORRIS SANDLER, individually, *Plaintiffs-Respondents,* VS. HUDSON & MANHATTAN RAILROAD COMPANY, a corporation, *Defendant-Appellant.*	Action at Law. On Appeal From New Jersey Supreme Court.

BRIEF OF PLAINTIFFS-RESPONDENTS.

This appeal brings before this Court for review the judgment of the Supreme Court affirming the judgments of the Hudson County Court of Common Pleas whereby the plaintiffs recovered a total of $1,350.00; $1,300 00 for the infant plaintiff and $50.00 for the father.

The defendant-appellant's brief is a verbatim duplicate of the brief submitted when this cause was argued before the Supreme Court with the exception of the comments on the opinion filed by the Supreme Court.

Although there are twelve grounds of appeal raised, in reality there are only three in number.

The three grounds urged and argued are, first, that there should have been a direction of a verdict in favor of the defendant; second, that a motion for non-suit should have been granted on the plaintiff's opening; and third, that the trial Court committed error in refusing to charge certain requests of the appellant.

POINT I.

The trial Court should not have directed a verdict in favor of the defendant because there was ample evidence of negligence on the part of the defendant to be submitted to the jury.

The testimony adduced at the trial showed that the infant plaintiff was twenty years of age on the day of the accident, which occurred on September 28th, 1928 (S. C., p. 14), and had been in this country only seven years, and had gone to school in this country only two terms (S. C., p. 22). She could not write English, but could read a little (S. C., p. 23), and that accounted for her inability to grasp the meaning of the questions that were propounded to her.

On the day of the accident she was proceeding down the stairs of the Journal Square Station, of the defendant company in Jersey City, on her way to work in New York City and was intending to board an uptown or 33rd Street train (S. C., p. 14). There were many people on the stairs, and the train was coming in as she was coming down the stairs (S. C., p. 14). The train platform was crowded with people (S. C., p. 15). As a matter of fact the plaintiff testified that it was always crowded at the place and time she boarded this train (S. C., p. 15), and witnesses for both par-

ties testified that it was during the so-called "rush hour." In this respect she is corroborated by the only disinterested witness who testified at the trial, one Mrs. Cooney (S. C., p. 47).

As she was attempting to get into the train, she was pushed by the crowd into the space between the cars, to the side of the door of the car she was to enter into (S. C., p. 15). Her body fell down until it reached her thigh bone, when she grabbed hold of an iron, otherwise she would have fallen onto the tracks below. She was helped out by Mrs. Cooney (S. C., p. 16). She and this disinterested witness were both pushed and shoved sideways into the car by the crowd, and the girl obtained a seat through the courtesy of an old man who got up and gave her his seat (S. C., pp. 17-36-38-43). She went to 33rd Street and there they put some iodine on her leg, etc., and because of the pain she was in, she was returned to Jersey City (S. C., p. 19).

On cross examination the plaintiff testified that she had been pushed and shoved before and that it was always crowded at about this time, which was about 8:10 or 8:20 in the morning (S. C., p. 34, lines 21-22). The only disinterested witness corroborated the plaintiff, for she also testified that this pushing and shoving had taken place on numerous occasions before the accident at the same time when the plaintiff was injured (S. C., p. 47).

Both the plaintiff and Mrs. Cooney testified that there were no guards or platform men present regulating the crowd and they could have seen them if they were present (S. C., pp. 16-21-46). The only employee of the company they saw was the man on the car who opened the door, one Mr. Van Doren (S. C., pp. 17-47).

There was no motion made for a non-suit at the end of the plaintiffs' case.

The first witness for the defendant was one Van Doren, whose testimony was taken by depositions. He was the trainman, or the man who opened the door where the accident occurred. He testified that the accident took place during the so-called rush hour (S. C., p. 60), and that the trains are pretty well crowded during this period (S. C., p. 64). He also testified that his train was crowded at the time of the accident and that there were lots of people standing in his car (S. C., pp. 38-66). The platform was well crowded and as a matter of fact the platform is "pretty well crowded" every morning at or about the time the plaintiff was injured (S. C., p. 67), and this happens all the time (S. C., p. 69). On page 69, Van Doren testified as follows:

> "Q. Was this crowd that you saw this morning the usual thing, or was it the usual occurrence every (thing) morning the same way in between the same rush hours? A. Yes, sir."

He could not recall whether there were any guards or platform men on the platform at the time of the accident, nor could he recall seeing any on previous mornings (S. C., p. 68), although if they were there "he (you) would have seen them" (S. C., p. 167, line 39 to p. 68, line 12).

Without any objection on the part of the defendant this defendant's witness testified that after the accident they had put men on the platform "to avoid the crowd" (S. C., p. 69, lines 34-40).

The defendant's witness, the special policeman, testified that there were five platform men and that one was near the door where Van Doren was stationed, although Van Doren said there was no one (S. C., p. 101). The defendant's witness, Dennis Kavanaugh, testified he saw the platform man near Van Doren and that he saw no pushing and shoving during the rush hour, that is, at or about the time the plaintiff was injured (S. C., pp. 109-112). As a matter of fact he testified that there were five platform men on the day of the accident and five men on the day when the case was tried, although he was not present as he was in court, and counsel for the defendant had to come to his rescue (S. C., p. 114). The other two witnesses, defendant's employes, testified they saw no pushing or shoving (S. C., pp. 123-127-132-133-134).

The above were the facts which the jury could have found and defendant contends that a verdict should have been directed by the trial Court on the grounds that there was no evidence of negligence on the part of the defendant on the theory that this was an unusal happening, extraordinary and extreme, and that there was no reasonable ground to have anticipated the occurrence.

At the outset of the argument I wish to state that defendant argues as if the verdict is against the weight of the evidence, but this can only be argued on a rule to show cause and not on an appeal.

Loveland vs. McKeever Bros., 90 N. J. L., 704.

From all of the foregoing evidence, the jury would be justified in finding the following facts:

That because the train platform was crowded with people and this condition existed practically every morning during the rush hour or during on or about the time that the plaintiff was injured, and that these crowds rushed for the train and pushed and shoved each other, and that on the day of the accident there were no guards or insufficient guards, or if there were any guards they did nothing to regulate the crowd, that the defendant, as a common carrier, did not exercise reasonable care for safety of its passengers. The jury could have found, and it was a question of fact for the jury and not one of law for the Court, that a passenger would be injured through the pushing and shoving of the crowd which assembled on the train platform and that the defendant, as a common carrier, might have reasonably anticipated that a passenger would receive injuries from the crowd under the circumstances and should take precautions or measures to protect the passenger.

This was not a case of an unexpected act of rudeness or improper conduct on the part of one or more of the passengers, as in the case of Hoff vs. Public Service Railway, 91 N. J. L., 652, where a passenger was struck by a drunken fellow-passenger. In that case there was nothing that the company could have done to have prevented the act. Justice Minturn, speaking for the Court of Errors and Appeals, there said:

> "Where there was no testimony in the case, from which an inference could be drawn that the defendant had failed to use due care for the protection of the plaintiff, and that in the absence of such proof the defendant was entitled to a direction in its favor."

But in our case it was a common occurrence at or about the time the plaintiff was injured, during the so-called "rush hour," this platform crowded with pushing and shoving people. The plaintiff and Mrs. Cooney, the only disinterested witness, both testified that this crowded condition existed every morning and that they were always pushed and shoved around by other passengers; they were corroborated by the trainman who testified for the defendant as to these conditions. The jury could have found, and it surely was a factual question for the jury and not for the Court, that this crowded condition was open and notorious at or about the time when the plaintiff boarded the train during the so-called rush hour, and that this crowd pushed and shoved in endeavoring to get into the cars, and that it was reasonable to anticipate that injury would result to one of the passengers from the pushing and shoving of the crowd unless steps were taken to protect the passengers.

It was a question of fact for the jury even if we take only the testimony given by the defendant's witnesses as to the guards on the platform, for the trainman, Mr. Van Doren, testified that he saw no guards on the morning of the accident, but that guards were put on after the accident, while the other witnesses of the defendant testified that there were guards.

The jury could have found that on the morning in question there were no guards at all, as the plaintiff and Mrs. Cooney did not see any, and the trainman, Mr. Van Doren, the defendant's witness, who was in a position to see, did not recall seeing any. The trainman, Mr. Van Doren, however, claimed that there were guards after the accident, but not before (S. C., p. 69, lines 34-40),

but still this made it a question of fact for the jury. The jury could have found that even if the guards were present, they did not use reasonable care to protect the plaintiff or did nothing whatsoever to regulate the crowd or to prevent the pushing and shoving.

In the case of Phoenix Mutual Insurance Co. vs. Doster, 106 U. S., 31, the United States Supreme Court said:

> "Where a case fairly depends upon effect or weight of testimony, it is for the consideration and determination of the jury, and it should not be withdrawn from them unless the testimony be of such conclusive character as to compel the court in the exercise of a sound judicial discretion to set aside a verdict returned in opposition to it."

To the same effect is the case of McLaughlin vs. Horne Co., 206 Federal, where Circuit Court Judge McPherson, speaking for the Third Circuit, on page 249, said:

> "Where a conflict may exist among the witnesses, not only where facts are directly disputed but also where it is uncertain what inferences should be drawn from the facts after these have been established. Inferences of facts are themselves facts and ordinarily the jury must draw them and not the judge. Especially is this true when the inquiry has to do with the standard of ordinary care, care according to the circumstances, where no previously defined standard exists and where our system of jurisprudence commits to the judgment of a jury the duty of

determining the shifting rule for the particular case."

In the case sub judice the facts undoubtedly were controverted, if there ever was such a case, for the plaintiff and Mrs. Cooney, together with the trainman, testified as to the crowded condition and the pushing and shoving and the lack of guards, while the employees of the defendant denied any crowding or pushing and shoving, and that there were guards.

It is a significant fact that notwithstanding that everyone admits that at or about the time that the plaintiff was injured, during the so-called rush hour, that it is crowded, that none of the defendant's witnesses, except the trainman, who gave his testimony by depositions, saw any pushing or shoving at any time. Under such a state of facts it was for the jury to decide and not the Court.

In the case of Montecalvo vs. Wahl, 97 N. J. Law, Judge Williams, speaking for the Court of Errors and Appeals, on page 559, said:

> "Where fair-minded men honestly differ as to the conclusions to be drawn from the facts, whether controverted or uncontroverted, the question and issue should go to the jury. It is well settled that the credibility of witnesses is in all cases a question for the jury, and a verdict will not be directed for the defendant if the evidence is conflicting and leaves the mind in a state of some doubt."

To the same effect is the case of McCarthy vs. Metropolitan Insurance Co., 75 N. J. Law, 887; Bennett vs. Busch, 75 N. J. Law, 240.

No evidence was adduced by the defendant which showed that the plaintiff was guilty of contributory negligence, but if there was it became a question of fact for the jury.

In the case of Weston vs. P. R. R., 74 N. J. Law, 484, the Court of Errors and Appeals held:

> "If, under the evidence, reasonable minds may differ as to whether the defendant was negligent or the plaintiff guilty of contributory negligence, the court cannot take the case from the jury and direct a verdict."

It was reasonable to anticipate that such an occurrence as happened to the plaintiff would take place due to the crowded condition and the pushing and shoving of the passengers unless the carrier used reasonable care to protect its passengers.

In the case of Coyle vs. Philadelphia Railway Co., a Pennsylvania case, reported in 100 Atl., page 1006, the Court there held:

> "Although the carrier is not liable for mere rudeness and bad manners on the part of their passengers or intending passengers, and therefore, not bound to anticipate and guard against such conduct, yet when it invites the public to use its facilities * * * it has notice that large crowds are likely to assemble and that proper care must be used in protecting them from injuries arising from such conduct as may reasonably be expected to occur, such as sudden rush on the part of the crowd to enter the cars immediately upon the arrival of the trains at the station. Such acts on the part of a large assemblage of

people congregated for the common purpose of securing passage on a public conveyance are not within the reasoning of the line of cases which hold the carrier is relieved from liability for damages resulting from unexpected acts of rudeness or improper conduct on the part of other passengers, or intending passengers, but are such as occur so frequently that they may be properly considered as such a natural and probable result that the carrier must recognize and guard against them."

The general rule is that a carrier is not liable for an injury caused by the rude or inconsiderate jostling of one passenger by another. But if the carrier has reason to anticipate the gathering of a large crowd at a station or platform, it is bound to take such reasonable precaution as the condition to be anticipated may dictate to avert injury to a passenger by the rushing or crowding of the persons thus assembled, the necessity and sufficiency of the precautions being ordinarily for the jury. So in the case sub-judice. Here we have the crowded platform on the day of the accident and previous thereto, and we have the rushing and pushing of the passengers on practically every morning on or about the time that the plaintiff was injured and the lack of guards or precaution on the part of the defendant to prevent injury from existing conditions.

In Kelly vs. Boston Elev. R. Co., 210 Mass., 454, 96 N. E., 1031, wherein it appeared that a passenger was injured by being pushed off the platform on the upper level, the Court said:

"The congestion of passengers, resulting from their number and eagerness to board the car waiting for them, was not an extraordinary circumstance, but rather a condition which should have been foreseen from the nature of the business and provided for by the adoption of reasonable expedience. It follows that physical harm suffered by the plaintiff arose through the defendant's negligence in permitting a combination of passengers to press violently upon her, and, while not an assault, the wrong finally inflicted was nevertheless a violation of its duty, for which compensation in damages may be recovered."

In the case of Bacon vs. Hudson & Manhattan R. R., 154 N. Y. App. Div., 742, 139 N. Y. Supp., 740, the Court defined the duty of the carrier to prevent jostling in the following terms:

"What degree of care the occasion requires is for the jury to decide, but it is the care that a good prudent business man would exercise at the time and place. The degree of care may constantly be changing with the number of the crowds."

In the case of Miller vs. West Jersey R. R. Co., 71 New Jersey Law, the present Chief Justice, speaking for the Supreme Court, on page 364, said:

"As to the acts of its servants, the rule that the master must respond applies; but as to acts of strangers the carriers is responsible only for those which might have been reason-

ably anticipated, or, as some of the cases put it, naturally expected.'' Citing numerous cases.

And continuing on page 365, the Chief Justice said:

> ''* * * although a carrier may naturally expect that sometimes during the course of its business passengers may be injured by the careless or wanton acts of fellow passengers or of strangers, it is not on this account chargeable with responsibility for any specific act so done, but that to incur such responsibility reasonable ground to anticipate the occurrence must have existed.''

See also the case of Maryland Dredging Co. vs. Hines, 269 Fed., 781, point 2 of the syllabus.

See other cases collected in the note in Volume 32 of A. L. R Annotated, beginning on page 1316.

At the termination of the case there were enough conflicting facts to allow the case to be submitted to the jury and the trial Court was justified in refusing to direct a verdict. This is elementary law and it would be superfluous to cite any cases in support of this proposition. In an application for a direction of a verdict, all of the facts adduced must be resolved in favor of the plaintiff, and there were sufficient facts, controverted and otherwise, to raise a question for the jury and not for the Court.

POINT II.

A non-suit should not have been granted upon the opening of the plaintiff's counsel.

The defendant argues that a non-suit should have been granted on the plaintiffs' opening because counsel did not say anything to substantiate the allegations in the original complaint. However, there was a stipulation entered into almost two weeks before the trial whereby plaintiff amended her complaint setting forth additional allegations of negligence (S. C., p. 6), and defendant filed its amended answer (S. C., p. 8), and the opening covered these allegations. It was, therefore, not error to non-suit on that score. The case proceeded to trial solely on the allegations set forth in the amendment and opening, and the trial Court covered this in its charge to the jury. The cases cited by the defendant deal with defective condition of the platform and the plaintiff's case was not tried on this theory.

POINT III.

There was no error in refusing to charge the requests of the defendant.

Request to Charge #23.

Relative to this requested charge, the case was not tried on the theory as covered by this request, and for that reason the Court was justified in refusing to charge this request.

Request to Charge #24.

In regard to this request to charge, the case was not tried on the theory advanced by this request, and moreover the Court had substantially covered this when it charged the defendant's request to charge number one.

Request to Charge #7, #8 and #11.

The trial Court was justified in not charging these requests because the facts in the case sub judice were not like those in the requests to charge. As a matter of fact the Court substantially charged these requests and that is all that it was obliged to do. It would have been a harmful error to the plaintiff to have charged request number eleven, because it was not necessary for the plaintiff to prove that on a previous occasion someone was pushed or shoved "from the platform to a position between the cars," for all that the plaintiff had to show and did show, in order to show knowledge and notice on the part of the defendant, was that there was pushing and shoving by the passengers, and not necessarily pushing and shoving a person in the identical manner that the plaintiff was pushed and shoved between the cars. The instruction by the Court on these points was sufficient.

Request to Charge #17.

There was no error in refusing to charge this request, for there was no evidence that the plaintiff deliberately attempted to mislead the jury in some material respect, and the defendant does not point out to the Court one instance of same.

At any rate, this was a matter within the sound discretion of the Court.

Request to Charge #21.

There was no error in refusing to charge this request because the latter part of it was substantially covered by the trial Court, and the other part would take away from the jury the right to take notice of ordinary affairs of life as well as deductions manifested by human experience, as set forth in the case of State vs. Elliott, 94 N. J. Law, beginning at bottom of page 80. This also was within the sound discretion of the Court.

Request to Charge #22 and #25.

There was no error in refusing to charge these requests, because they were substantially covered by the trial Court in its charge.

It is significant that the defendant does not point to anything in its requests to charge wherein it suffered manifest harm as a result of the trial Court's refusal to charge, but seems satisfied to just say that it was error without pointing out the error so as to aid this Court. The trial Judge fully covered the case in his charge to the jury submitting to them the controverted questions of fact. As a matter of fact all of the requests were charged in effect.

It has been repeatedly held that where a Court has fully charged, the Court will not be bound to charge in the language of the requests, and thus take the jury upon a little trip through power factories, etc. Once the Court has fully covered the subject it has done all that it is required to

do. It is not necessary to adopt the language, illustrations, etc., requested by the defendant.

In the case of Grybowski vs. Erie R. R., 88 N. J. Law, page 1, Point 5, holds:

> "Where a request to charge the jury is made, all that the trial Judge is required to do in dealing with such request, when the legal propositions embodied therein are sound and are applicable to the matter under discussion, is to charge the substance thereof."

In conclusion we wish to state that the opinion of the Supreme Court covers fully and exhaustively all of the points argued in this Court, and we could not say anything further than to beg leave of this Court to refer to the opinion of the Supreme Court found on page 172 of the State of Case.

There is no dispute as to the law applicable to this case and the Supreme Court's opinion did not state a new proposition of law. It was a factual question pure and simple, and not a legal one as the appellant contends throughout its brief. Since there was a conflict as to the facts together with the conclusions to be drawn from the facts, those that were controverted and those that were not controverted, it was a question to be decided by the jury.

It is respectfully submitted that the judgment of the Supreme Court should be affirmed.

FREDMAN & FREDMAN,
Attorneys of Plaintiffs-Respondents.

New Jersey Court of Errors and Appeals

MILDRED SANDLER, an infant, by MORRIS SANDLER, her next friend, and MORRIS SANDLER, individually, *Plaintiffs-Respondents,* *v.* HUDSON & MANHATTAN RAILROAD COMPANY, a corporation, *Defendant-Appellant.*	Action at Law. On Appeal from New Jersey Supreme Court.

BRIEF IN BEHALF OF THE APPELLANT.

1.

Statement of the Case.

This appeal brings before this Court for review judgments of the Supreme Court affirming the judgments of the Hudson County Court of Common Pleas in favor of the plaintiffs. The plaintiffs brought suit to recover damages for personal injuries alleged to have been sustained by Mildred Sandler as a result of having been partly pushed from the station platform of the defendant at Journal Square by some other passengers. The occurrence was a sudden and unusual one and not anticipated by either the plaintiff, Mildred Sandler, or the defendant. On the trial of the case, the foregoing facts appeared from the testimony for

the plaintiff as well as from the testimony of the defendant, and a motion for a directed verdict was made by the defendant at the close of the whole case, which was denied. The case was submitted to the jury and resulted in verdicts for both plaintiffs (pp. 161, 162).

The defendant thereupon appealed to the Supreme Court and that court affirmed the judgment of the court below. It is from that affirmance that the present appeal has been taken.

2.

Grounds of Appeal.

The Supreme Court erred in affirming the judgments of the Hudson County Court of Common Pleas, whereas the Supreme Court should have reversed said judgments for one or more of the reasons urged before the Supreme Court, as follows:

1. The trial court should have directed a verdict in favor of the defendant because there was no evidence of negligence on the part of the defendant.

2. The trial court erred in refusing to direct a verdict in favor of the defendant because there was no evidence that any alleged negligence of the defendant was the proximate cause of this accident.

3. The plaintiff should have been nonsuited as to the original complaint on the opening of her counsel.

4. The refusal of the trial court to charge certain requests of the defendant numbered 7, 8, 11, 17, 21, 22, 23, 24 and 25.

3.

BRIEF OF THE ARGUMENT.

I.

The trial court should have directed a verdict in favor of the defendant because there was no evidence of negligence on the part of the defendant.

The trial court denied the motion; exception was duly noted (p. 134, line 30) and this exception is preserved in the grounds of appeal (p. 164).

(a)

The Facts.

The plaintiff, Mildred Sandler, was the main witness in her own behalf. She testified she was twenty years of age. The accident happened September 28, 1928, while she was on her way to work in New York from Jersey City. She proceeded to the Journal Square station of the defendant and to the train platform. As she proceeded down the stairs to the train platform the steps were very crowded (p. 14, line 25). As soon as she reached the train platform the crowd pushed her right into the train at a point between the cars where the chains connecting the two cars are located (p. 14, line 30, to p. 15, line 40). The platform was very crowded (p. 15, lines 10-15). The time was 8:10 A. M. Plaintiff had used this station on previous occasions but on those occasions it was not as crowded as at the time of the accident (p. 15, line 20). At the time the train was already in the station and at a standstill (p. 14, lines 30-35). She got hold of some part of the car

and prevented herself from falling to the roadbed; also, another woman helped her (p. 16). Thereafter she boarded the train in question and proceeded to her destination at Thirty-third Street (p. 17, lines 10-30). She saw no guard or employee of the defendant at the time, other than the one on the train (p. 17, lines 20-30; p. 21, lines 10-20). Upon boarding the train she was able to obtain a seat (p. 23, lines 20-40). She admitted that she had daily used the Journal Square station for five years immediately preceding the accident and that she had always boarded the train at exactly the same place and never had any other accident (p. 33, line 30, to p. 34, line 10). She had never been pushed before and there never had been a crowd as large as the one at the time of the accident. It was a very unusual crowd. In view of the fact that this testimony is vital on the point raised as to the defendant's negligence, we quote *verbatim* from the plaintiff's own testimony (p. 33, line 35, to p. 34, line 30):

"Q. Did you say that? A. Yes, I did. I never had any other accident.

"Q. What? A. Yes.

"Q. You did say yes? A. Yes.

"Q. And you traveled this way for five years? A. Yes.

"Q. Did you say that? A. Yes, I did.

"Q. And always got on at this same place? A. Yes.

"Q. You said that? A. Yes.

"Q. And that was true? A. Yes, that is true.

"Q. 'I was getting on as usual.' A. Yes.

"Q. So you were getting on at the same place where you always got on? A. Yes.

"Q. As you did for five years before this accident? A. Yes.

"Q. You were never pushed before, were you? A. Well, no. It is usually a crowd, but it was not as big as that crowd.

"Q. What is that? A. I was never pushed as that crowd.

"Q. You never saw a crowd like that before? A. No.

"Q. It was a very unusual crowd, was it? A. Yes."

The only other witness called by the plaintiff was Catherine Cooney, also a passenger, who assisted the plaintiff at the time she fell. She said (p. 47, line 35): "I never saw such a crowd as that morning." In answer to the question, Was it an immense crowd? she answered, "A very large crowd" (p. 46, line 10). She also said (p. 52, line 25): "No, I never saw such a crowd going in—very unusual."

The question presented is whether for this unusual happening, extraordinary and extreme according to the plaintiff and her only witness, the defendant is responsible on the theory that it was negligent because it failed to prevent the happening which it did not cause, but which was brought about by other passengers momentarily congregating into an unusual crowd at the moment that the plaintiff attempted to board the car. The best proof that it was unusual and extraordinary is the fact that the plaintiff herself admits that although for five years daily she boarded this train at the same time and at the same place, she never before was pushed or shoved or had an accident.

Counsel for plaintiff had the plaintiff testify that she saw no guard on the platform at the moment that she attempted to board. However, the fact that she saw none does not prove that there was none. As a matter of fact, the proof was undisputed that the defendant had five guards on this platform (see the testimony of Coleman, Itschner, Kavanaugh, Clayton, Traudt and Devine). There were five guards on the New York platform, which

was the platform that the plaintiff was on at the time (p. 81, lines 1-10; p. 100, line 20). The names of the guards were Kavanaugh, Clayton, Devine, Cuinine and Walz (p. 100, lines 20-30). The very doors through which the plaintiff entered the train had a guard in front of them who testified that he was there at the time, notwithstanding that the plaintiff did not see him (p. 109, lines 1-30).

Clayton was another guard on this platform who testified that he was stationed but a hundred feet from Kavanaugh, the guard who was stationed at the point where plaintiff boarded (p. 116). This platform is shown in the photographs, Exhibits D-7 and D-8, copies of which are annexed to the state of case (p. 160).

While we must accept the plaintiff's testimony as true, there is a serious question raised as to whether she had any accident at all (pp. 109-110). The plaintiff's voluntary statement made after the accident stated unequivocally that she accidentally fell and was not pushed (p. 158).

(b)

The Law.

The rule to be applied in a case of this kind is settled by the case of *Miller* v. *W. Jersey & Seashore R. R. Co.*, 71 N. J. L. 363; 79 N. J. L. 499. That case came before the Supreme Court on rule to show cause after the plaintiff had a verdict. The rule was made absolute because the plaintiff had failed to prove negligence. The facts were that the plaintiff was standing on the train platform waiting for his train when an employee of another company who was hauling a truck load of baggage, carelessly ran him down. GUMMERE, C. J., in the opinion, points out, first, that the doctrine of *re-*

spondeat superior has no application; that liability, if it existed at all, must have resulted from the failure to exercise care for the plaintiff, which was the defendant's duty as a common carrier. The Chief Justice then points out that the rule to be applied is that, "As to the acts of strangers, the carrier is responsible only for those which might have been reasonably anticipated, or as some of the decided cases put it, naturally expected." The Chief Justice then proceeds to review a number of the authorities and concludes as follows (p. 365):

> "Although a carrier may naturally expect that sometimes during the course of its business passengers may be injured by the careless or wanton acts of fellow passengers or of strangers, it is not on this account chargeable with responsibility for any specific act so done, but that to incur such responsibility reasonable ground to anticipate the occurrence must have existed.
>
> "While it may reasonably be anticipated that the employees engaged about a railroad station will sometimes be careless, third persons, using the station, cannot possibly foresee the doing of any specific careless act by one of such employees unless such act is preceded by something which suggests the likelihood or at least the possibility of its taking place. In the present case there was nothing to suggest to the defendant company any more than there was to the plaintiff the possibility of danger to the latter until the actual happening of the accident. Having no reason to expect its occurrence, the company was under no obligation to take steps to protect the plaintiff against it.
>
> "The facts of this case, as developed by the proofs, presented a situation which called for the direction of a verdict in favor of the defendant.
>
> "The rule to show cause should be made absolute."

The plaintiff, Miller, then proceeded to a new trial and amended his complaint so as to allege that it was "the duty of the defendant and its agents to protect the plaintiff and prevent the agents of the Pennsylvania Railroad Company from running one of its trucks over plaintiff's foot," and "the defendant knew or had reasonable cause to know that the agents of the Pennsylvania Railroad Company were using or were about to use or were likely to use the said platform where the plaintiff was standing, by moving one or more of its freight trucks against, upon and over the plaintiff's foot." On the trial the plaintiff was nonsuited for failure to prove the facts contained in the foregoing amendments and he then appealed to this Court and in an opinion by GARRISON, J., it unanimously affirmed the judgment of nonsuit (79 N. J. L. 499). At page 500, this Court held:

> "The material fact alleged in the second count, viz., that the defendant knew or had reasonable cause to know of the likelihood of the injury to the plaintiff, was rested at the trial and on the argument here, upon the inherent dangers incident to the place to which the plaintiff had been invited by the defendant, viz., the passenger terminal of the Pennsylvania Railroad Company at Camden. The gravamen of the plaintiff's action, however, was negligence, not alone that of an agent of the Pennsylvania Railroad Company, but also the negligence of the defendant; which it is needless to say must be proved as a fact, or at least must be inferable from facts in proof. If there were facts in existence tending to show that the conduct of the agents of the Pennsylvania Railroad Company in and about its Camden terminal was of such a character that it was *prima facie* negligence for the defendant to have exposed the plaintiff to the risks thence arising, such facts, together with the

> relevant connecting circumstances, should have been offered in evidence. The rejection of such testimony might raise a question not now presented. No such testimony was, however, offered and there is no general presumption that the Pennsylvania Railroad was negligent. Indeed, the plaintiff himself testified in the most comprehensive way to his personal knowledge of the workings of this terminal station, based upon an almost daily observance extending over a period of eighteen years, without referring to a single act of negligence of the sort that in his declaration he alleges that the defendant had reasonable cause to know about and to guard the plaintiff against. The material allegation therefore on which the second count depends was not attempted to be proved as a fact and it certainly is not to be assumed as a presumption of law. The case of *Exton* v. *Central Railroad Co.*, 33 Vroom 7, which is the only case cited by plaintiff-in-error, clearly exhibits the materiality of such proof. The cases cited by Chief Justice GUMMERE in his opinion in 42 Vroom are to the same effect."

This case is a direct precedent in the case at bar. Here, likewise, the plaintiff testified in the most comprehensive way, to her personal knowledge of the workings of the station at Journal Square, based upon daily observation extending over a period of five years, without reference to a single act of negligence of the sort that in her complaint she alleged the defendant had reasonable cause to know about and to guard the plaintiff against. On the contrary, she testified that although for five years daily she used this station, she never was pushed before and never had an accident, although she boarded the same train at the same place each day. She went further than the plaintiff in the *Miller* case, for she testified, as

did her only witness, that this was an *unusual* and *extraordinary* occurrence, as hereinbefore pointed out. *The only way in which this defendant could have prevented this happening to the plaintiff, would have been by providing an individual guard for each passenger.* The very statement of that proposition indicates the absurdity of it. The plaintiff was at the Journal Square station prior to the morning rush hour of commuters which begins about 8:20 A. M.—her accident happened at 8:10 (p. 102, lines 1-10; p. 109, lines 10-20; p. 119, lines 20-30; p. 126, lines 30-40; p. 133, lines 1-20).

In *Lehberger* v. *P. S. Ry. Co.*, 79 N. J. L. 134, the defendant's car was overcrowded so that the plaintiff, while desiring to alight, had to push his way through the crowd; while on the platform preparing to alight and before the car stopped, he was so violently jostled by the crowd that he was pushed off and injured. The Supreme Court held that he had no cause of action, as follows:

> "The plaintiff, as will be observed, lays considerable stress on the failure of defendant's agents to use a bar with which the car was equipped, to prevent the overcrowding of the car; but this in effect is no more than saying that defendant permitted the car to become overcrowded; and in fact, the pleader comes to rest on the proposition that the accident was due to defendant's 'overcrowding its car to such an extent that the ordinary result therefrom was the injury of one or more of its passengers.' The language of the declaration does not inform us whether the overcrowding took place before or after the plaintiff boarded the car; but in either aspect we think plaintiff fails to state a case that puts defendant to its plea. If the car was overcrowded at the time plaintiff entered it, that condition was as obvious to him as to the defendant's agents that permitted it, and we in-

cline to think that the plaintiff assumed the risk of any danger naturally to be expected from such overcrowding. If, on the other hand, the car became overcrowded after plaintiff entered it, by his act in pushing through the crowd to the back platform before the car stopped, he passed from a position of safety inside the car to the very place where the overcrowding was likely to be dangerous to him. Under these circumstances, he cannot complain as against the defendant on account of the acts of members of the crowd."

Other cases having a bearing on the point are:

Hoff v. *P. S. Ry. Co.*, 91 N. J. L. 641;
Kalleberg v. *Raritan River R. R. Co.*, 91 N. J. L. 222;
Lerner v. *P. S. Ry. Co.*, 83 N. J. L. 64.

Other cases in point which have carefully considered the question involved are:

Ritchie v. *Boston Elevated Ry. Co.*, 131 N. E. (Sup. Judicial Ct. of Mass.) 67;
Boyd v. *Boston Elevated Ry. Co.*, 162 N. E. (Sup. Judicial Ct. of Mass.) 735;
Dullea v. *Boston Elevated Ry. Co.*, 146 N. E. (Sup. Judicial Ct. of Mass.) 237.

These cases stand for the rule that knowledge by a street railway that a crowd would be present at a certain time and place would not render it liable for injuries to intending passengers when crowd attempted to board the car, unless there was a showing of previous misconduct by the crowd in attempting to board under the same circumstances.

We respectfully submit that in the case at bar the trial court should have directed a verdict in favor of the defendant.

II.

The trial court erred in refusing to direct a verdict in favor of the defendant because there was no evidence that any negligence of the defendant was the proximate cause of this accident.

The facts have been fully narrated in Point I. Not only was there no evidence of negligence on the part of the defendant, but assuming for the moment that there was evidence of negligence, which we deny, the proof is demonstrative of the fact that if there was any negligence in failing to have more than five guards on this platform, that that was not the proximate cause of the accident. If the defendant had had twenty guards on the platform, the accident would have happened just the same, for all that appears in the testimony. The occurrence was a sudden, unexpected, extraordinary one. Had there been three guards stationed around the plaintiff to protect her from violence, the sudden crowd which pushed her, according to her testimony, which have swept the guards as well as the plaintiff before them.

We therefore respectfully submit that the proof fails to show that any negligence of the defendant was the proximate cause of the happening to the plaintiff and therefore a verdict should have been directed for the defendant.

See also Point XII of this brief.

III.

The plaintiff should have been nonsuited as to the original complaint on the opening of her counsel.

The original complaint (p. 1) charged the defendant with negligence in having a defective platform, particularly with respect to the clearance between the side of the car and the side of the platform. It was claimed in the original complaint that the plaintiff's foot was caught and wedged in between this small clearance between the side of the car and the side of the platform (p. 2, lines 20-30). After the case reached trial, the plaintiffs filed an amendment to the complaint which set up the alleged cause of action which was tried, namely, that the plaintiff was pushed between two cars; and the other theory that she caught her foot and wedged it between the side of the car and the side of the platform was abandoned (p. 6). In the opening of counsel (p. 12) for the plaintiff, he limited the claim of negligence to the alleged pushing of the plaintiff by the crowd and abandoned entirely any claim that the platform was improperly constructed or that the clearance between the side of the car and the side of the platform was contrary to the proper standards or the result of negligent construction. Therefore, counsel for the defendant moved for a nonsuit as to the original complaint. This motion was denied (p. 12, lines 30-40). It is clear that the motion should have been granted.

Feil v. *West Jersey & Seashore R. R. Co.*, 77 N. J. L. 502, 504;

Halm v. *Freeholders of Hudson*, 78 N. J. L. 712, 715;

Kingsley v. *D. L. & W. R. R. Co.*, 81 N. J. L. 536, 543;
Zebrowski v. *Warner Sugar Co.*, 83 N. J. L. 558, 563;
Raub v. *Lehigh Valley R. R. Co.*, 87 N. J. L. 603, 606.

We respectfully submit that the denial of this motion was error. This point should be considered in connection with the next point argued.

IV.

The trial court refused to charge the twenty-third and twenty-fourth requests of the defendant.

These requests are printed at page 170. They deal with the alleged negligence of the defendant charged in the original complaint which were not urged in the opening of counsel and which were not proved on the trial. Exception was duly noted to the failure of the trial court to give these instructions to the jury (p. 145, lines 30-40, for the refusal; for the exception, p. 150, lines 20-30). It is clear that these requests should have been charged, first, in view of the abandonment of the claim that the defendant was negligent because of a small clearance between the side of the car and the side of the platform, and second, because there was no proof to sustain any negligence on that theory. Indeed, the proof was not that the plaintiff caught her foot, but that she was pushed between two cars and upon the chains connecting those cars.

Instead of withdrawing the allegations of the original complaint from the jury the trial court permitted the jury to base a finding thereon (p.

135, line 20, to p. 137, line 25, particularly p. 137, lines 15-30). We do not know whether the jury's verdict is based on the original complaint or the amendment. The trial court's action was error, first, because the requests were not charged and second, because the original theory of negligence should not have been left to the jury. *Gilmore* v. *Kane,* 72 N. J. L. 167.

V.

The trial court erred in refusing to charge the defendant's seventh request.

This request is printed at page 151, line 40. The trial court's refusal to charge will be found at page 143, line 40. An examination of the request shows that it was a mere reiteration of the correct rule as laid down by this Court and the Supreme Court in *Miller* v. *West Jersey & Seashore Railroad Co.,* 71 N. J. L. 363, 365; 79 N. J. L. 449. In fact, the entire request is *verbatim* the language of the Supreme Court in that case.

We submit that the trial court erred in refusing to give the jury this rule of law, which was directly applicable. (Refusal to charge is at p. 143, line 40; exception at p. 150, lines 20-30.)

VI.

The trial court erred in refusing to give the jury the eighth request of the defendant.

This request likewise was refused (p. 144, line 1). Exception was duly noted to such refusal (p. 150, lines 20-30). This request likewise sets forth the proper rule as taken from the *Miller* case. Nevertheless, the trial court refused to give it to the jury. We urge that that refusal was error.

VII.

The trial court erred in refusing to charge the jury the defendant's eleventh request.

The refusal will be found at page 144; the exception, page 150. This request (p. 166, lines 35-40) properly stated the rule of law applicable to the case in line with the *Miller* decision. We submit that the trial court erred in refusing to give the jury this instruction.

VIII.

The trial court erred in refusing to give the jury the defendant's seventeenth request.

This request was as follows (p. 154, lines 30-40):

> "17. The credibility of the witnesses is for you. You do not have to believe any witness whose credibility has not been established by the greater weight of the evidence. The mere fact that a witness testified to a fact is no evidence of the fact unless you are satisfied that the witness is entitled to credit, and where a witness has testified falsely in a material particular, you have a right to disbelieve his entire testimony."

The refusal to charge will be found at page 145, line 30; the exception, page 150, lines 20-30. The request deals with the credibility of the witnesses and sets forth the rule which is well settled in this state. *Addis* v. *Rushmore,* 74 N. J. L. 649; *State* v. *Martin,* 77 N. J. L. 652, 658. The trial court failed to give the jury any instruction dealing with the credibility of the witnesses or the rule to be applied in determining what credit should be given to the witnesses.

We submit this request, since it contained the law on that subject, should have been given.

IX.

The trial court refused to charge the defendant's twenty-first request.

This request dealt with the point that no sympathy was to enter into the jury's deliberations in considering whether or not the plaintiff should be entitled to a verdict, and that they should disregard information with respect to the case obtained outside of the courtroom (p. 155, lines 30-40). The refusal to charge will be found at page 145, lines 30-40; the exception, page 150, lines 20-30. No substitute was given to the jury and this request was not substantially charged in any form.

We submit that the trial court erred in refusing to give it to the jury.

X.

The trial court refused to charge the defendant's twenty-second request.

It is as follows (p. 156, lines 15-25) :

> "22. The proof in this case is undisputed, for it is given by the plaintiff that she was familiar with this platform; that she used it daily; that she knew the conditions existing there and that there were a number of passengers who frequented the station in the morning and that she always boarded the train at about the same point. You have a right to consider her familiarity with the station, her daily trips to it and her daily use of it in determining whether she exercised reasonable care. If she did not exercise reasonable care

for her own safety, then she cannot recover and your verdict must be for the defendant."

The refusal is found at page 145, lines 30-40; the exception, page 150, lines 20-30. This request deals with the contributory negligence feature of the case. It was not charged in substance and we submit it was a proper request in this case for the jury to have and that it was error not to so instruct the jury.

XI.

The trial court refused to charge the defendant's twenty-fifth request.

It is as follows (p. 157, lines 10-15):

"25. If you find that this was merely an accident which could not be avoided by the exercise of reasonable care by the defendant, then your verdict must be against the plaintiff and in favor of the defendant."

The refusal to charge will be found at page 145, line 35; the exception to the charge, page 150, lines 20-30. This request was not substantially charged, or in any form given to the jury. We respectfully submit that the failure to instruct the jury as requested is error.

XII.

Comments on the opinion of the Supreme Court.

The Supreme Court (p. 174) held that while the evidence in the case justified the conclusion that this happening was a sudden, unexpected and extraordinary one, which the defendant in the exercise of reasonable care was not called upon to

anticipate and which no amount of precaution or foresight could have protected the plaintiff against, nevertheless concluded that there was some evidence from which an opposite conclusion might be reached by the jury.

We respectfully submit that this latter conclusion of the Supreme Court was erroneous. Conceding that every morning at this commuting station of the defendant, crowds congregated for the purpose of boarding the trains for New York, and conceding further, that there was a dispute in the testimony as to whether or not the defendant had in fact five guards on the New York platform at the moment of this happening, although the evidence with respect to this latter point in favor of the defendant is almost conclusive, for the five guards who were on the platform were actually in Court and testified (the plaintiff merely said that she did not see them) still, the important question remains whether there was any way in the exercise of reasonable care that the defendant could have anticipated what happened and thus actually taken means to avoid it. Taking the testimony of the plaintiff and of her only witness, it is clear that she had no opportunity to anticipate it any more than the defendant did. While the crowd, according to the undisputed testimony of the plaintiff and her witness, was larger than usual, there was no more reason for her to expect that she would suffer injury at its hands on this particular morning than there was for the defendant to expect it. Until the moment when the crowd rushed to this particular car, according to the plaintiff, everything was orderly and the passengers were, as usual, boarding the train which was at a standstill at the station.

She had boarded a train at this station every morning at about the same time and never before

had there been any unforeseen happening either to her or any other passenger. The defendant is not a guarantor of the plaintiff's safety. Its liability must rest on the doctrine of reasonable care. To say that the defendant could have anticipated and avoided this particular occurrence to the plaintiff in the exercise of reasonable care, is to make an assertion which cannot be sustained in actual practice. If the defendant is to be held liable in this case then every railroad common carrier of passengers which has crowds frequenting its terminals, must in every instance pay for every sudden, unexpected occurrence, not of its employees, but of strangers, which may result in injury to a passenger.

The plaintiff, at page 3 of her brief in the Supreme Court, referred to page 24 of the record for evidence by the plaintiff that she had been pushed and shoved on other occasions. However, there is no evidence on page 24 sustaining that contention. On page 34 the plaintiff testified that she was never in fact pushed before (p. 34, ll. 15-20). It is impossible to provide a guard for each individual passenger. A railroad as a practical matter could not be run, yet nothing short of individual guards for individual passengers would protect a common carrier of passengers from liability in a suit of this kind.

The plaintiff testified that as she went down the stairway to the train level platform, she saw the crowd on the station platform, yet she proceeded down the stairway to the platform for the purpose of boarding the train. She had just as much knowledge as the defendant of the conditions prevailing and she could have turned back and gone to New York by some other route. She was one of the passengers who helped to make up the crowd of passengers that was on the station platform. There

is nothing unusual in crowds on a station platform. They exist on every station platform of almost every railroad station having commuter service. The point involved is an important one, and we therefore reiterate that in the absence of a showing by the evidence that the crowds at the Summit Avenue station were unruly and had on previous occasions caused accidents similar to that which occurred in this case, no basis was laid for submitting this case to the jury. We have already referred to the authorities in Points I and II.

This Court in *Hoff* v. *Public Service Ry. Co.*, 91 N. J. L. 41, reversed the Supreme Court in a similar case where a passenger on a street car was assaulted by a fellow passenger after a considerable altercation and lapse of a considerable period of time on the ground that there was no failure of performance of any "obvious or definable duty by the defendant."

XIII.

For these reasons we respectfully submit that the judgments below should be reversed and a *venire de novo* ordered.

Submitted October Term, 1930.

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