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Transcript of Pleadings.

NEW JERSEY SUPREME COURT,

UNION COUNTY.

Transcript of Pleadings for Trial.

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EMMA PLOESER, Executrix of the Last Will and Testament of JOSEPH PLOESER, Deceased, Plaintiff, against CENTRAL RAILROAD COMPANY OF NEW JERSEY, a Corporation, Defendant.	

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ABE J. DAVID, Attorney for Plaintiff.
CHARLES E. MILLER, Attorney for Defendant.

(Summons issued July 31, 1916.)

The plaintiff, residing at No. 313 Bayway North, in the City of Elizabeth, in the County of Union and State of New Jersey, says that:

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1. That the defendant on June 2, 1916, was and still is a corporation and was also a common carrier of passengers by railroad between Jersey City and Bound Brook in the State of New Jersey.

2. That on the said 2d day of June, 1916, Joseph Ploeser, deceased, had purchased and had in his

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possession a ticket of the defendant company entitling him to transportation from the City of Newark, in the County of Essex and State of New Jersey, to the City of Elizabeth, in the County of Union and State of New Jersey, and had boarded a train at the City of Newark and did come as far as Elizabethport where he alighted for the purpose of changing cars to continue his journey to Elizabeth.

3. That on the said day and year aforesaid, a train of cars of and operated by the said defendant, did stop at the station of the said company known as Elizabethport, aforesaid.

4. That it became and was the duty of the said defendant company to so control and propel its train of cars, and to come to a stop at the said station at Elizabethport, for a sufficient length of time to allow passengers and the said Joseph Ploeser to safely board the said train.

5. That on the day and year aforesaid, at the said station known as Elizabethport, said Joseph Ploeser was waiting at about 7.15 o'clock in the evening to board a train of cars of the said defendant company due at the station at about 7.20 o'clock.

6. That the said train which the said Joseph Ploeser intended to board came into the said station known as Elizabethport, at about 7.30 o'clock in the evening, about 10 minutes late, and then and there came to a stop. That while the said train of cars was at such stop at the said station, said Joseph Ploeser did carefully and lawfully at-

tempt to board the first car of the said train. That when the said Joseph Ploeser had gotten on the first step of the first car on the rear platform, and before he was safely and securely on the train, and while he was in the act of going up the remaining steps and into the said car, the said train suddenly started; which said sudden starting then and there threw the said Joseph Ploeser off the step on which he was standing and swung him around between the first and second cars, and the wheels of the second car passed over his body and instantly killed him.

7. The said Joseph Ploeser left a will which was duly probated by George T. Parrot, Surrogate of the County of Union, on June 16, 1916, under which will the plaintiff was appointed Executrix of the Estate of Joseph Ploeser, deceased, and the plaintiff has duly qualified as such Executrix and letters testamentary have been issued to her.

8. The said Joseph Ploeser left him surviving the plaintiff, who is his widow, and one child over the age of 21 years, who is married, as his only heirs and next of kin.

This plaintiff was dependent upon the decedent for her support and has by his death suffered great pecuniary injury and damage.

Plaintiff demands $50,000.00 damages.

ABE J. DAVID,
Attorney of Plaintiff.

(Filed August 15, 1916.)

The answer of the Central Railroad Company of New Jersey, a corporation of the State of New Jersey, having its principal office for the transaction of business in the City of Jersey City, in the County of Hudson and State of New Jersey, says that:

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I. It admits the allegations contained in paragraphs 1, 3 and 5 of the complaint.

II. It has no knowledge of the matters and things alleged in paragraphs 2, 7 and 8 of the complaint.

III. It denies each and every allegation contained in paragraphs 4 and 6 of the complaint.

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As a separate defence, defendant alleges that plaintiff's testator sustained the injuries resulting in his death as the result of attempting to board a moving train contrary to the statute in such cases made and provided, and alleges, therefore, that he was guilty of contributory negligence barring a recovery in this action.

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CHARLES E. MILLER,
Attorney of Defendant.

(Filed August 24, 1916.)

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NEW JERSEY SUPREME COURT,

UNION COUNTY.

Action at Law—Postea.

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EMMA PLOESER, Executrix of the Last Will and Testament of JOSEPH PLOESER, Deceased, Plaintiff, against CENTRAL RAILROAD COMPANY OF NEW JERSEY, Defendant.	

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This case was tried before Judge George Silzer, with a jury, at the Union Circuit, on January 31st and February 1st, 1917.

The jury rendered a general verdict against the plaintiff and in favor of the defendant.

GEO. S. SILZER,
Judge.

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Filed Feby. 7, 1917.

A true copy.

WM. C. GEBHARDT,
Clerk.

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Judgment.

NEW JERSEY SUPREME COURT,

Action at Law—On Postea.

EMMA PLOESER, Executrix, etc., of JOSEPH PLOESER, Deceased,

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vs.

CENTRAL RAILROAD COMPANY OF NEW JERSEY.

CHARLES E. MILLER, Attorney.
(Judgment for Defendant.)

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Judgment entered this seventh day of February, A. D. nineteen hundred and seventeen, without costs, in favor of the defendant and against the plaintiff.

WM. S. GUMMERE,
C. J.

I, WILLIAM C. GEBHARDT, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in above stated cause, which said judgment is recorded in this office in Vol. 10 of judgments, page 103.

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In testimony whereof I have hereunto set my hand and the seal of said Court at Trenton, this fifteenth day of June, A. D. one thousand nine hundred and seventeen.

(Seal) WM. C. GEBHARDT,
Clerk.

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Notice of Appeal.

NEW JERSEY SUPREME COURT,

UNION CIRCUIT.

Action at Law.

10

EMMA PLOESER, Executrix, &c.,
Plaintiff-Appellant,

vs.

CENTRAL RAILROAD COMPANY
OF NEW JERSEY,
Defendant-Appellee.

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To CHARLES E. MILLER, ESQ., Attorney for Defendant-Appellee:

TAKE NOTICE that the plaintiff appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause on the following grounds:

1. That the Court below illegally admitted testimony upon the direct examination of the witness, Charles E. Miller, produced on behalf of the defendant over the objection of the plaintiff in manner following:

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By Mr. Miller:

"Q. Why did you not put Mr. Dennis on the stand yesterday and ask him about the conversation he had with Mr. Crammes?

Mr. David: I object to it.

The Court: Why?

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Mr. David: On the ground it is a self-serving explanation, and the reason why counsel puts on or keeps off a witness is a matter for the jury to infer, and it is not competent for counsel to tell why he puts a witness on or keeps him off.

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The Court: Except you asked the last witness that. I will allow it.

Mr. David: An exception.

Exception allowed, sealed accordingly.

Judge.

A. The reason I did that was I never heard of Mr. Crammes until after Court adjourned yesterday afternoon. When Court adjourned Mr. Dennis, the conductor, sent word to me he wanted to talk to me. As soon as I saw him after Court adjourned, I think it was at the Court House, going downstairs, he told me about the——

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The Court: Not what he told you. As a result of what he told you.

A. As a result of what he told me I put him on the stand this morning to explain what Crammes said to him."

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

a. "Even if plaintiff's testator had actually gained a foothold on the train before it moved plaintiff cannot recover unless she also has proved by the greater weight of the evidence that her testator was prevented from getting to a place of safety on the train by defendant's failure to afford him a reasonable opportunity to do so."

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b. "A passenger is entitled to a reasonable time in which to get on board a train after he is given an opportunity to do so, but he must use reasonable care to avail of the opportunity offered him, and if he fails to do so and delays so that the train starts while he is attempting to board it he cannot recover." 10

c. "Trainmen are only required to exercise reasonable care to give persons who present themselves with reasonable diligence an opportunity to board the train."

d. "Because the action is based upon the idea and theory of negligence and carelessness and wrongful act; so that if the employees of the railroad company were careful, reasonably careful, then there can be no recovery." 20

e. "The plaintiff could not recover if he attempted to board the train while in motion."

3. Because the Court refused to charge the plaintiff's request as follows:

"The time to be allowed a passenger for getting on board a train or for alighting therefrom may depend on the special circumstances of the passenger as to his physical ability; his encumbrance with luggage; the existence of a crowd on the car or platform, and the like." 30

Dated, July 3rd, 1917.

ABE J. DAVID,
Attorney for Plaintiff-Appellant. 40

Testimony.

NEW JERSEY SUPREME COURT,

UNION COUNTY CIRCUIT.

January Term, 1917.

Action at Law. No. 6 in the List.

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EMMA PLOESER,
Executrix,

vs.

CENTRAL RAILROAD COMPANY
OF NEW JERSEY.

20 Transcript of stenographer's notes of evidence, taken in the above entitled matter, before HON. GEORGE S. SILZER, Circuit Court Judge, and a jury, in the Union County Court House, in the City of Elizabeth, New Jersey, on the thirty-first day of January, A. D. 1917.

Appearances:

ABE J. DAVID, ESQ., for the Plaintiff.
CHARLES E. MILLER, ESQ., for the Defendant.

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A jury being empanelled and found satisfactory, they were sworn.

Mr. David opens for the Plaintiff.

Mr. Miller opens for the Defendant.

ONE-THIRTY P. M. SESSION.

Mr. David: If Your Honor please, it is admitted between counsel in the case that Mr. Ploeser as a salesman and the Collector for Feigenspan's Brewery received an annual

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salary of thirty-two hundrel dollars, and in addition to that, for several years prior to his death, he received a gratuity from the company of two hundred and fifty dollars, and it made $3450.00 which he got per year as Collector and Salesman and Agent of the Feigenspan Brewery. 10

It is admitted also in the year 1915, the year before he died, he attended fifty-seven meetings of the Consumer's Ice and Cold Storage Company, for which he received at the rate of two dollars a meeting, which was at the rate of $114.00 in the year 1914, and he was to be paid at the same rate per meeting in the year 1916.

It was also admitted that the Paintiff was duly appointed Executrix of the Estate of Joseph Ploeser, and letters Testamentary issued on the twenty-sixth of June, 1916. 20

The Court: Any agreement as to his age?

Mr. Miller: Oh yes, he was fifty-nine years old. I conceded that.

Mr. David: It is conceded Mr. Ploeser is fifty-nine years of age.

Mr. Miller: We will admit Mr. Ploeser's age.

Mr. David: And that Mrs. Ploeser—how old are you, Mrs. Ploeser? 30

Mrs. Ploeser: I will be sixty in June.

MRS. EMMA PLOESER, produced as a witness on her own behalf, being duly sworn on her oath, according to law, saith:

Direct Examination by Mr. David:

Q. Mrs. Ploeser, at the time of Mr. Ploeser's death you had one child? A. Yes. 40

Q. And she is married? A. Yes.

Q. And her name is? A. Elizabeth Schaefer.

Q. Elizabeth Schaefer and she is over the age of twenty-one years? A. Yes.

Q. And she lives in Irvington? A. Yes, sir.

10 Q. And was living in Irvington at that time? A. At the time of the death.

Q. Is this a picture of Mr. Ploeser? A. Yes, sir.

Mr. David: I offer it in evidence, Your Honor. (Photograph of Mr. Joseph Ploeser, entered in evidence and marked Exhibit P #1).

Mr. Miller. I have no objection to putting it on the record the description of Mr. Ploeser you gave in the opening to the Jury.

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Q. Mr. Ploeser was a man about five foot eight or nine inches in height? A. I guess so.

Q. And he weighed something over two hundred and fifty pounds? A. About two hundred and forty-five.

Q. About two hundred and forty-five pounds? A. Yes, sir.

Q. Mrs. Ploeser, how much of Mr. Ploeser's earnings did he give you each week? A. Why, I got

30 about fifteen dollars; sometimes twenty dollars. Just as—

Q. Sometimes twenty dollars? A. Yes, sir; sometimes twenty.

Q. And do you know what he did with the balance of the money? A. I do not.

Q. Do you know whether he deposited any of his monies in the Building Loan? A. Well, he did. You know that. He had several Building Loans.

40 The Court: Speak a little louder.

Q. I know it, Mrs. Ploeser, but we want the gentlemen of the Jury to know it. A. He had six Building Loans, and then some in the bank.

Q. Did he also invest some of his money in real estate? A. I don't think so; not as I remember.

Q. Did he buy any lots? A. No.

Q. Didn't he own some lots on Linden avenue? A. Oh, yes. Those two.

Q. Didn't he also own the property in which you live? A. Yes, sir.

Q. On Bayway? A. On Bayway.

Mr. David: Cross-examine.

Cross Examination by Mr. Miller:

Q. As I understand it, your daughter, Mrs. Schaefer, is married and lives in Irvington? A. Yes.

Q. Of course Mr. Ploeser did not support her? A. No, no.

Q. Her husband did that. How long had she been married? A. It was five years in November, going on six.

Mr. Miller: That is all, Mrs. Ploeser.

Mr. David: That is all, Mrs. Ploeser.

By Mr. Miller:

Q. Mrs. Ploeser, the fifteen or twenty dollars Mr. Ploeser gave you, you used to take care of the household expenses with? A. Yes.

PAUL MANCZAK, produced as a witness, on behalf of the Plaintiff, being duly sworn on his oath, according to law, saith:

Direct examination by Mr. David:

10 Q. Mr. Manczak, how old are you? A. Twenty-nine.

Q. And where do you live? A. No. 390 Franklin Street.

Q. 309? A. Franklin street.

Q. Elizabeth, New Jersey? A. Yes.

Q. How long have you lived in Elizabeth? A. All the time when I came to this country.

Q. Did you know Mr. Joseph Ploeser in his lifetime? A. I know him about four or five years.

20 Q. Do you remember seeing him in the early evening of June second, last? A. I remember that.

Q. Where were you? A. I was in the station at that time.

Q. Which station? A. Elizabethport.

Q. Elizabethport station of the Central Railroad? A. Yes, sir; of New Jersey.

Q. Just a little louder.

(Answer repeated by the stenographer.)

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Q. At what time of the day were you there? A. It was about after seven; ten or fifteen minutes.

The Court: It is necessary these men hear what you say. They are trying this case and they want to hear what you say.

(Question and answer repeated by the stenographer.)

The Court: In the evening?

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A. Evening.

Q. What were you doing there? A. I was waiting for the train.

Q. To go where? A. To Newark.

Q. Where did you see Mr. Ploeser? A. I was seen him in this train, near the station.

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(Answer repeated by the stenographer.)

Q. Was he in the train or on the platform or station? A. He was on the platform.

Q. On the platform of the station? A. Yes.

Q. And how far from the nearest track was he? A. He was about twenty-five or thirty feet.

Q. How long did you see him at the station? A. Not long. About three or four minutes.

Q. And then what did you see him do? A. He was walking from the—to the train. On the station.

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Q. Was there a train at the station when you came there? A. No, there was come that time I was come.

Q. After you were there did a train draw in, and pull into the station? A. Yes. They were come into the station.

Q. Which way was that train going? A. It was coming from Singer Factory, from New York.

Q. From New York toward Elizabeth? A. Yes.

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Q. Did you see anybody get off that train? A. I saw people get off and go in.

Q. Many people? A. Not so many. But there was lot people; I can't tell you how many.

Q. Can you give me any idea of about how many? A. I can't say. Ten, eleven or eight, or something like that.

Q. Did you see anybody else at the platform at the station there? A. I seen a lot people there.

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Q. What were they doing? A. One walk this side and one walk the other way. I walk around and some stay there.

Q. Did you see any other people there than Mr. Ploeser walking toward that train that came in? A. No, I don't see. I saw some people there that was walking between Mr. Ploeser.

Q. How near to the train did you see Mr. Ploeser walk? A. It was about twenty-eight feet, that train.

Q. How close to the train did he get? A. Not so close. He was far from the train.

Q. What is that? A. He was far from the train, about twenty-five feet.

Q. When you stopped looking at him he was walking toward the train? A. To the train.

Q. And other people were walking toward the train? A. To the train.

Q. Did you see him step on the train? A. No.

Q. What did you do? A. I was stand.

Q. Then what did you do? A. I went the other side to the ticket office.

Q. You went to the ticket office?

Mr. David: Cross-examine.

Cross-examination by Mr. Miller:

Q. Where was Mr. Ploeser when you first saw him, Mr. Manczak? A. Where I was?

Q. Where was Mr. Ploeser? A. Where was Mr. Ploeser? He was staying there in the station between the station and baggage room.

Q. Let me show you a little picture. Maybe you can point it out on that. You have seen this, Judge?

Mr. David: Yes.

Q. See if you can point out on this picture where it was you saw him. A. That is the track to New York.

Q. And that is the Newark Track. A. And that is the Newark Track.

Q. There is the baggage room there. A. There is the baggage room there on this station. 10

Q. Here is the station down here. A. Here is the station down here.

Q. Here is a weighing machine in front of the station. A. I saw the man here. Like this way, in this place (indicating).

Mr. David: Better indicate.

A. See——

Q. Well, now, somewheres—you take that pencil and mark where you saw him. A. Right there. 20

Q. Was he on the track? A. No, on the ground.

Q. On the ground. Here are all tracks here. That mark is wrong then. Was he between the tracks and the station. A. Give me a piece of paper, and I will show you.

Q. All right. We will get that. A. Here is a track to the New York.

Q. Tracks to New York you say? A. Yes. Here is baggage room. 30

Q. Yes. A. And here is station.

Q. Yes? A. Something like that. And I seen him there, see?

Q. I see. Here the man says that is the track to New York, that is the baggage room, and that is the station, and he saw him in there (indicating to the Jury).

Mr. David: Before he reached the track and between the station and the baggage room. 40

Q. News stand is over here. And he is in here somewhere. That is about right, wasn't it? He saw him somewhere between the station and the baggage room, and the station and the track; in there somewheres?

10 Mr. David: That is what he said.

Q. And you saw the train come in? A. Yes, sir.

Q. And you saw the people go toward the train? A. Go out from the train.

Q. Go out from the train? A. And go into the train.

Q. And go into the train, and you saw Mr. Ploeser walk with those people? A. I say I saw Mr. Ploeser go walk to the train.

20 Q. Walk to that train? A. I don't know—

Q. And you saw Mr. Ploeser start walking toward that train? A. Yes, sir.

Q. Was that after the train had come in and stopped? A. Yes, sir; at that time the train was come to a stop.

Q. After you had seen the other people come off the train? A. Yes, I seen some people.

Q. You saw Mr. Ploeser walk— A. Yes, walk to the train.

30 Q. Do not answer too quickly. You say Mr. Ploeser start to walk toward the train after you saw the people get off the train? A. Yes, that is what I seen.

Q. The last you saw of Mr. Ploeser you said he was about twenty-eight feet from the train? A. Twenty-five—twenty-eight, something like that. I can't tell right.

Q. He was walking toward it? A. To the train.

Q. Toward the train? A. Yes, sir.

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Q. And he was twenty-five or twenty-eight feet away from it then? A. Yes; something like that.

Q. And then you went into the station? A. Yes, sir.

Q. And that is all you know about it? A. That is all I know about it. 10

JULIUS EBERT, produced as a witness, on behalf of the Plaintiff, being duly sworn on his oath, according to law, saith:

Direct examination by Mr. David:

Q. How old are you, Mr. Ebert? A. Twenty-five.

Q. Where do you live? A. 258 Morris avenue. 20

Q. Where do you work? A. American Express Company.

Q. At what point do you work for them? A. At the time of the accident?

Q. Well, now. A. Messenger.

Q. And the time of the accident, on June second, 1916, where were you working for the American Express Company? A. Driver at Elizabethport.

Q. Where was the station from which you took baggage? A. Elizabethport.

Q. Of the Central Railroad Company? A. Yes, sir. 30

Q. On the early evening of June second, where were you working? A. Elizabethport.

Q. At around seven o'clock? A. At the station, loading trains.

(Answer repeated by the stenographer.)

Q. Did you have anything with you? A. Well, we were down at the East end of the station wait- 40

ing for 130 to come in. We had a truckload of freight.

Q. Who had a truckload of freight? A. Mr. Brady, another expressman, and myself.

Q. What did you have with you? What did you have the truckload of freight on? Your back? A. On a station truck.

Q. On a station truck which you pushed by hand? A. Yes, sir.

Q. Where did you bring it from? A. Baggage room.

Q. This baggage room shown on the sketch? A. Yes, sir.

Q. Will you show where you took that and where you stopped with it? A. Why, we started here and went down here and stopped about down here.

The Court: Put a cross where he stopped.

Q. You came from the word marked "baggage"? A. Yes, sir.

Q. On the sketch, and you walked along the south side of the platform and in back to here, south of the station, and then turned and went North? A. Yes, sir.

Q. Where did you stop after you came from behind the station? A. About one hundred feet below the station.

Q. About one hundred feet east of the station? A. Yes.

The Court: Where you have put a cross on the map?

Q. Where you have put a cross? A. Yes.

Q. How far were you from the——

Mr. Miller: Will you pardon an interruption? I am wondering if it would not be a

good thing to put upon the record what the map shows. I think if you put on the record what the map shows at this time it would help matters.

Mr. David: The sketch shows Trumbull street, and the four tracks known as Long Branch Division. 10

Mr. Miller: Two tracks; four rails.

Mr. David: Four rails. And directly north of the north rail, a space labelled: "Covered waiting space." And northwesterly of that a newsstand. And northeast of that, "Baggage," meaning the baggage room. And then it shows the outline of the passenger station and the ground surrounding it. The passenger station is shown in yellow, marked on the west side "Men," and on the east side 20 "Women," and between the two a bay window. Almost directly north of that are the eight rails or four tracks; the nearest rail being the east bound rail, marked "Track three." The next marked "Track one," also eastbound. And the next marked "Track two," westbound; and the next marked "Track four," westbound. Almost directly west of the baggage room is a track marked 30 "North Branch."

Mr. Miller: Which crosses the main tracks.

Mr. David: Which crosses the main tracks, which are, in turn, marked "Main Line, Central Railroad of New Jersey."

Mr. Miller: At approximately right angles.

Mr. David: Crossing not quite at right angles. And immediately north of track number four is "Signal Tower." Scale of the 40

sketch is one inch—twenty feet. Made January, 1917, and is labelled "Elizabethport Station, Central R.R. New Jersey."

Mr. Miller: And it is offered in evidence and it is admitted as P. one.

Mr. David: P. No. 2.

10 (Map entered into evidence and marked Exhibit P. No. 2.)

Q. The point you stopped at is how many feet southerly from track number three, the nearest track? A. About five feet.

Q. Did you see Mr. Ploeser there at that time? A. Yes, sir.

Q. Where was he? A. Standing at the bay window of the waiting room.

20 Q. Will you point it out? A. (Witness does so.)

Q. Was he inside of the station or outside? A. Outside on the platform.

Q. And of what is the platform built? A. Wood.

Q. At the time you first saw Mr. Ploeser was there a train at the station? A. No, sir.

Q. And how long did Mr. Ploeser remain there before a train drew in? A. About ten minutes.

Q. And from which direction did that train come? A. Jersey City.

30 Q. Were you familiar with that train? A. No, sir.

Q. Do you know whether it was on time or not? A. It was not on time.

Mr. Miller: I conceded that. Read the part of the interrogatories you want.

Mr. David: I would like to read into the record interrogatories—

The Court: These are questions which the

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Plaintiff asked of the Railroad Company, and the answers made by the Railroad Company under oath to the questions asked.

Mr. David: I will read the first question.

Mr. Miller: Why don't you just state the facts and I will concede the facts.

Mr. David: It is so short.

"Q. What time was the train that the decedent, Joseph Ploeser, attempted to board due at the Elizabethport station on the day of the accident?" The answer is: "7.20 p. m."

"Q. What time did that train reach the Elizabethport Station on that day?" The answer is: "7.26 p. m."

Q. Did you see that train draw into the station? A. Yes, sir.

Q. Did any passengers get off? A. Yes, sir.

Q. Can you tell me how many? A. Why between twenty and thirty I believe.

Q. And were there other passengers on the platform waiting to get on any trains? A. Yes, sir.

Q. Can you tell me how many? A. That I couldn't say.

Q. Can you give me any idea? A. Well, it must have been about ten or fifteen people.

Q. Did you see any people board the train after it drew in? A. Well, I seen some get on.

Q. Now, will you tell what you saw Mr. Ploeser do? A. Well, it is hard to say what I seen Mr. Ploeser do. I was down the lower end of the station and he was up West end as soon as I seen him walk out between the crowd.

Q. Did you see him attempt to get on the train? A. Yes, sir.

Q. What was the train doing at the time? A. Standing still.

Q. What did you see him do? A. Take hold of the handle with his right hand, and put his left foot on the step and he was just about had the fore part of his toes, and the fore part of his foot on the step when the train started.

Q. Of which foot? A. With his right foot.

Q. As I understand it you say he put his left foot on? A. First.

Q. And you say he put the fore part of his right foot on? A. Second.

Q. Then what happened? A. Train started out with a jerk.

Q. And next? A. Mr. Ploeser had hold of the handle rail.

Q. Which hand? A. With his right hand.

Q. What did he do with the other? A. He had a package in his left hand.

Q. Then what happened? A. Why, the train started with a jerk, and he lost control and went to regain his hold on the handle, and as he did so he lost his balance altogether and fell in between the cars.

Q. Did the car run over him? A. Yes, sir.

Q. And he was killed? A. He was killed.

Mr. David: Cross-examine.

Cross-examination by Mr. Miller:

Q. You were doing what, Mr. Ebert? A. I was driving for the American Express Company.

Q. A driver? A. Yes, sir.

Q. At that time? A. Yes, sir.

Q. What were you doing at the station that night? A. Why, we bill our own stuff down at the

Port Station and load it on the 130 going into Jersey City.

Q. You were working there at the station that night for the American Express Company? A. Yes, sir.

Q. And in the course of your duties you had gotten down to the East end of this station? A. Yes, sir. 10

Q. You stood about one hundred feet from the station; about five feet from the rail of track three? A. Yes, sir.

Q. What were you doing there? A. Waiting for one thirty to come in.

Q. What were you doing? A. Sitting on the truck.

Q. Sitting on the truck. Anybody else there? A. The other man. The agent at the Port. Mr. Brady. 20

Q. Mr. Brady was there with you? A. Yes, sir.

Q. What were you and Brady doing? A. Waiting for 130 to put the freight on the train.

Q. Doing anything beside waiting? A. Talking and looking around.

Q. Talking and looking around? A. Yes, sir.

Q. And simply waiting for the train? A. (Witness nods head affirmatively).

Q. How long have you known Mr. Ploeser? A. Three or four years. 30

Q. Known him very well? A. No, sir; just personally.

Q. You did know him personally? A. That is all.

Q. Speak to him that night? A. Yes, sir.

Q. What attracted your attention to Mr. Ploeser that night? A. Why, I was just looking at the passengers getting on the train while waiting for the 130. 40

Q. How did you happen to focus your attention on Mr. Ploeser out of all the people getting out of the train that night before you actually saw him get on the train? A. He was the last man to get on the train.

10 Q. He was the last man to get on the train; all the other people had gotten on the train?

(Question repeated by the stenographer.)

A. Yes, sir.

Q. You say you saw this train come in? A. Sir?

Q. You say you saw this train come in? A. Yes, sir.

Q. Do you remember how many cars it had? A. No, I don't.

20 Q. Were they closed cars with vestibules or cars with open vestibules? A. Open platform.

Q. Open platform, but don't remember how many cars. Do you remember where the rear of that train stood? A. Rear end?

Q. Yes? A. Probably at the crossing to the Central shops; lower end of the station.

Q. About how far from the Newark crossing on the Map is that? Newark Track crossing? Put it this way: Was it East or West of where you were

30 standing? The end of the train? A. East.

Q. Still further East? A. Yes, sir.

Q. Where was the front end of that train? A. At the end of the Newark tracks.

Q. You mean the front end of the locomotive was at the end of the Newark tracks? A. Yes, sir.

Q. Do you remember what kind of cars they were? A. First car was a combination.

Q. By that you mean part passenger and part baggage? A. Yes, sir.

40 Q. Do you remember which part the baggage part

was? Toward the engine or toward the rear of the train? A. That I don't remember.

Q. Now, did you notice, Mr. Ebert, did you notice what the crew did? The crew of this train, when it came into the station. A. I didn't notice the crew when the train came into the station.

Q. You don't know what they did? A. No, sir.

Q. Do you remember seeing them at any time? A. Not at the time the train came in, no.

Q. After the train came in, did you see them? A. When the train started to pull out I seen the trainman at the rear end stand in between the cars.

Q. The platform of the station or cars? A. Cars.

Q. After the train started you saw someone toward the rear end of the station? A. Yes, sir.

Q. Do you remember which car that was? A. About between four and five.

Q. There was no particular thing, was there, that called your attention to this particular train this night? A. No, sir.

Q. You were not waiting to put baggage on this train? A. No, sir.

Q. There was some other train going toward Jersey City? A. Yes, sir.

Q. Did you notice the train start? A. I did.

Q. May I ask what was it attracted your attention to Mr. Ploeser standing or attempting to board the train? A. Nothing in particular.

Q. He was a long ways from where you were? A. Yes, sir.

Q. Light or dark was it? A. Light.

Q. Light so you could see? A. Just about getting dusk.

Q. Getting dusk? A. Just about.

Q. How far would you say it was in feet from where Mr. Ploeser was to where you were? A. About two hundred feet.

Q. About two hundred feet. And were you sitting down facing which direction? A. Facing the main line tracks.

Q. Facing the main line tracks, and was Mr. Brady on your right or on your left? A. Left.

10 Q. On your left. So Brady was between you and Ploeser? A. No, sir. Mr. Brady was on the other end. Mr. Brady was at my left side same as I am sitting here now. He was on my left side—or rather my right side.

Q. He was on your right? A. Yes, sir.

Q. You were between Mr. Brady and Mr. Ploeser? A. Yes, sir.

Q. You say you did happen to see Mr. Ploeser attempting to get on the train and he had hold of it with his right hand? A. Yes, sir.

20 Q. On which car was that? A. Combination.

Q Combination car? A. Yes, sir.

Q. Which end of that car? A. East end.

Q. East end, that is the rear end as the train came in? A. Yes, sir.

Q. You say when you first saw him he had hold with his right hand? A. Yes, sir.

Q. And had his left foot on the step? A. Yes, sir.

30 Q. And the other foot—right foot, when you first saw him, was on the platform? A. Yes, sir.

Q. And he had a package in one hand? A. Yes, sir.

Q. How large a package? A. Contained a lobster.

Q. How large? Was it a big lobster? Show us with your hands the size of the package? A. About that large (indicating about six inches).

Q. Did he have anything else? A. I don't notice.

40

Q. Then you saw him get his toes of his right foot up toward the step and then the train started? A. He had the toes on the step.

Q. He had the toes actually on the step? A. Yes, sir.

Q. How long a time elapsed between the time you first saw Mr. Ploeser in that position and the time the train started? A. About thirty seconds. 10

Q. About thirty seconds? A. Yes, sir.

Q. You think it is as long as that? A. Yes sir.

Q. You have been there very often? A. Yes sir.

Q. How long did that train stop on that night, do you know? A. I don't remember.

Q. Can you approximate it? A. Sir?

Q. Can you approximate it? A. About three or four minutes.

Q. About three or four minutes, you think. So that from the time when you first saw him having hold with his right hand and one foot already on the step— A. Yes, sir. 20

Q. (continued)——Until the train started was thirty seconds? A. Yes, sir.

Q. And you are sure of that? A. Yes, sir.

Q. Now, did you say the train started with a jerk? A. (Witness nods head affirmatively).

Q. What do you mean by that? A. Started out all of a sudden. 30

Q. Just what do you mean by that? A. Gave a quick jerk when it started out.

Q. How did the train act? We want to know all about that? A. Acted like a balky horse.

Q. The train acted like a balky horse; just how did it act like a balky horse? You are giving us lots of phrases, but you are not telling us what the train did. And that is what we want. A. It started out all of a sudden.

40

Q. It started suddenly? A. Yes, sir.

Q. Did the train rattle? A. Yes, sir.

Q. Did it go backwards? A. No, sir.

Q. Trains usually start with somewhat of a jerk, don't they? A. Yes, sir.

10 Q. And this train did? A. Yes, sir.

Mr. Miller: That is all.

Mr. David: That is all.

By the Court:

Q. You say Mr. Ploeser was the last one aboard? A. Yes, sir.

Q. How near was he to the passengers who boarded ahead of him? A. Right in back.

20 Q. Right behind him? A. Right behind them.

Mr. David: That is all.

By Mr. Miller:

Q. Sorry to bring you back. You said Mr. Ploeser was the last one to get aboard that train that night? A. Yes, sir.

Q. Had you seen people get aboard all of the various platforms of the train that night? A. Yes,

30 sir.

Q. All the people on all the other platforms had gotten aboard the train before Mr. Ploeser did? A. Yes, sir.

Q. And all the people on his platform had gotten aboard? A. Yes, sir.

Q. And there was no trainmen on the station platform when you saw Mr. Ploeser get on the train? A. No, sir.

Q. And the only trainman you saw at any time

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was the one on the platform after the train started? A. That is the only one I seen.

Q. How long before you saw Mr. Ploeser get aboard the train was it that the last man had got on at the platform that he had got on? A. Right before him. Right before Mr. Ploeser.

10

Q. In time how long would it take? A. About a minute.

Q. Do you mean that? You do not mean it took a minute? Sixty seconds? A. Well, not exactly. Mr. Ploeser followed him right in back.

(Answer repeated by the stenographer.)

Q. How far behind the man was Mr. Ploeser? A. A couple of feet.

20

Q. How many? A. A few feet.

Q. You are sure of that? A. Yes, sir.

Q. And you saw this other man get on? A. Yes, sir.

Q. Well, if you saw this other man get on, how was it you didn't see Mr. Ploeser until he actually was up and had hold of the platform with one foot on it, then? A. He was waiting for the other passengers to get on.

Q. How is it you didn't see him?

30

Mr. Miller: I move that be stricken out.

(Question and answer repeated by the stenographer.)

The Court: It is not responsive.

Mr. David: It may be that the other passengers he was waiting to get on were between Mr. Ploeser and this witness.

The Court: It is not responsive.

40

Q. I want to know if you were looking at this platform all the time? A. Sir?

Q. Were you looking at the platform where Mr. Ploeser got on all the time? A. I was looking at the train.

10 Q. No. This particular platform. Was your attention focused on this particular platform? A. Yes, sir.

Q. What focused it there? A. Looking for 130 to come in.

Q. You didn't expect 130 to come in from this platform, did you? A. 130 comes in the opposite direction this train was going.

Q. I want to know what made you look at this particular platform? And I want to know and the 20 Jury wants to know. A. I was looking toward the west and that is the direction the 130 comes from.

Q. What you mean is the 130 comes from the direction of Plainfield? A. Yes, sir.

Q. And you were looking in that direction? A. Yes, sir.

Q. When you first saw Ploeser he had one foot on the step, and one hand on the rail? A. Yes, sir.

Mr. David: Witness said when he first saw 30 Ploeser he was at the bay window near the ladies' waiting room.

Q. Yes, yes, I will stand by the record. I mean when you first saw Ploeser at the train, after you saw him go toward the train from the bay window. When you first saw him at the train he had one foot on the step and one hand on the rail, is that so? A. He had two feet on the step.

Q. He had both feet on the step when you saw 40 him? A. He had his left foot on, and his right foot was partly on the step.

Q. Did you see him bring the right foot up from the ground? A. I did.

Q. When you first saw him his right foot wasn't on the step? Was it? A. No, sir.

Q. When you first saw him his left foot was on the step? A. Yes. 10

Mr. Miller: That is all.

Re-direct examination by Mr. David:

Q. Was there any trainman on the ground between the first car, the combination car, and the second car? A. I didn't see any.

Q. Would you have seen one if there was one there? 20

Mr. Miller: I object to that. That is a conclusion.

Mr. David: All right; you didn't see any. That is all.

HARTMAN CRAMMES, produced as a witness, on behalf of the Plaintiff, being duly sworn on his oath, according to law, saith:

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Direct examination by Mr. David:

Q. How old are you, Mr. Crammes? A. Thirty-five.

Q. Where do you live? A. 472 Adams avenue, Elizabeth.

Q. How long have you lived here? A. In Elizabeth?

Q. Yes? A. Oh, since, about 1890.

40

Q. Where do you work? A. John N. Robins Dry Dock Company, Brooklyn.

Q. Where? A. John N. Robins Dry Dock Company, Brooklyn, Erie Basin.

Q. How long have you worked there? A. About seven years.

10

Q. Were you working there on the second of June last? A. I was.

Q. Did you come out from Jersey City on the New York Central? A. Yes, sir.

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

Q. Did you know Mr. Joseph Ploeser in his lifetime? A. I did by sight, very well. Not personally.

Q. Did you see him on the evening of June second? A. I did see him; yes, sir.

20

Q. Where were you? A. I was sitting in the first car, one behind the baggage car,—second car, in the train. One behind the baggage car.

Q. Which side were you sitting in? A. I was sitting on the fore and aft—I guess that would be nautical—I was sitting on the seat running lengthwise in the front, right near the front door.

Q. Were you facing Elizabethport or Newark? A. Facing Elizabethport.

30

Q. As I understand it you were sitting on the very first seat running lengthwise of the train? A. Yes, sir.

Q. And your back was toward Newark and your face was toward Elizabethport? A. Toward the station; yes, sir.

Q. So you were facing the station at Elizabethport? A. Yes, sir.

Q. Did you see anybody get off the train? A. I did; yes, sir.

40

Q. About what time did that train come in? A.

That train—I don't remember. It was due at Spring street 7:23, and it was late. We were delayed at West Eighth street, waiting for an express train or two to get by. I remember it was late, because I was in a hurry myself that night.

Q. It was some little time after seven you pulled in Elizabethport station? A. I should judge it was 7:25 or 7:26, or something like that. 10

Q. I want to make sure that is the train he was on. And did you see anybody get off that train? A. Well, I saw quite a number of people get off. There is no one I took any notice of, I knew.

Q. About how many did you see get off? A. I should judge I saw about seven or eight from where I was.

Q. From that one platform? A. Yes, sir; coming from both cars; baggage car and the coach I was in. 20

Q. Did you see people get on? A. I did.

Q. Did you see Mr. Ploeser that night? A. Yes, sir.

Q. Tell us where you saw Mr. Ploeser and what he was doing? A. I didn't see Mr. Ploeser until he got just about out to the train.

Q. Yes. Then tell what happened. A. I saw Mr. Ploeser come out and he had a package in one hand; in his left hand. And he caught hold of the rear—there is two handles, one running on the inside of the car, and one at the end of the car, and he caught hold of one handle with his right hand, and I don't know whether it was his left or right foot he put up first; I seen him put both feet up. As he put his other foot up I saw him lose his balance. I knew he would fall then and probably get hurt, and I went up to go out and give him a hand, on, and just as I did he swung under the cars. 30

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Q. And as he put his hand on, what was the train doing? A. Standing still.

Q. Then what happened? A. Train started with a jerk, same as trolley cars, you put on the controller and will throw it on too full with a start (indicating).

10

Mr. Miller: I move to strike that out; the last part.

The Court: Yes. That will be stricken out.

Q. After the train started what happened? A. Sudden starting of the train threw him in between the two cars and he went under the wheels.

20 *Cross-examination by Mr. Miller*:

Q. Was there anybody got on the platform where you were after Mr. Ploeser did? A. After? No, sir.

Q. He was the last one? A. He was the last one; yes, sir.

Q. Did you notice how many people had gotten on the platform? That is, the rear platform of the first car before Mr. Ploeser? A. How many?

30 Q. Yes? A. Well, that I didn't pay any particular notice to. In fact, I wouldn't have taken any notice to Mr. Ploeser only knowing him.

Q. There was no people between you and Mr. Ploeser in the doorway of that car? A. None at all.

Q. Had all the people come into your car? A. Into my car?

Q. Yes? A. Yes, sir. I think one or two.

Q. So the people who had boarded the car you

40 were in had come up the steps, over the platform

and gone on inside the car? A. Gone inside. Yes, sir.

Q. Were there any people on the rear platform of the first car at the time this occurred? A. When I first saw Mr. Ploeser get hold of the handle, there was a man just going in.

Q. Going in where? A. In the baggage car. 10

Q. What part? You mean going in the door? A. Yes, sir; going in the door.

Q. That is when you first saw Mr. Ploeser? A. That is when I first saw Mr. Ploeser get hold of the handle; yes, sir.

Q. He caught hold of the handle just as the other man went in the door? A. Yes, sir; he caught hold of the handle just as the other man went in the door.

Q. Did he have a package in one hand? A. Yes, sir. 20

Q. Did he have more than one package? A. No, sir.

Q. Are you sure? A. I am sure, he had something, and I thought it was one package.

Q. You were looking very closely? A. Yes, sir.

Q. You didn't happen to notice whether he had more than one package or not? A. No. According to my observation he only had one package.

Q. Which hand did he have that in? A. Left. 30

Q. Did he have anything in his right? A. No.

Q. You are sure of that? A. Positive.

Q. You say he got both feet on it? A. Yes, sir.

Q. Then he slipped? A. I don't know as he slipped. What I attributed it to is a starting of the train. It started and threw him.

Q. Just when was it that the train started?

(Question repeated by the stenographer.)

A. Almost immediately after he had his foot on the step. 40

Q. Was it immediately after, or just about as he got his feet on the steps? A. I should imagine there was a ten second interval.

Q. Do you think it is as long as ten seconds? A. Yes, sir.

10 Q. How long do you think it would take a man to go up a flight of steps? A. How long would it take a man?

Mr. David: I object to the question. That is not founded on the evidence.

The Court: Witness said it took ten seconds.

Mr. David: But counsel said a flight of steps.

The Court: Yes.

20 A. Ten seconds is the time elapsed from the time he got on the step.

Q. So you think he was on the step, with both feet on the step ten seconds before the train started? A. Yes, sir.

Q. All right. You were very much excited when you saw Mr. Ploeser thrown off and killed under the train? A. Not necessarily. I am so used to seeing fellows hurt it didn't rile me very much. It is a regular occurrence in my business.

30 Q. Did you try to help him? A. I made an attempt to. I got up out of my seat to go outside.

Q. Did you get off the train? A. No, sir.

Q. You saw Mr. Ploeser and knew he had been killed? A. Yes, sir, but I didn't know him personally.

Q. You are so used to having people killed it didn't impress you? A. No, sir.

Mr. Miller: That is all.

40 Mr. David: That is all. We rest.

PLAINTIFF RESTS

Mr. Miller: I am going to offer in evidence, with my friend's permission, these two photographs.

Mr. David: All right.

(Two photographs entered in evidence and marked D1, and D2, respectively.) 10

Mr. Miller: You gentlemen may look at the photographs before I put a witness on.

(Exhibits photographs to the Jury.)

DEFENDANT'S CASE.

WILLIAM R. HUNT, produced as a witness, on behalf of the Defendant, being duly sworn on his oath, according to law, saith: 20

Direct Examination by Mr. Miller:

Mr. Miller: I have just scaled up on that map and I would like to have these two facts appear on the record: That from the North side of the Wooden Platform, enclosed platform, of the station building; from this point to the Easterly rail of Track number two is forty-five feet, and that the station building is ten feet, approximately, further South. That is, about fifty-five feet from the station building to the track, Southerly rail of track two. And that from the North crossing, the Easterly rail of the Newark track to the point opposite the most Westerly end of the station is approximately 145 feet, and you can verify those measurements. 30

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Mr. David: No. I think your measurements are all right.

Mr. Miller: I thank you for the compliment.

Q. Mr. Hunt, what is your business? A. Locomotive engineer.

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Q. Will you speak so the jurymen can understand you and hear you? Perhaps if I stand over here I can be sure of that. By whom were you employed on the second of June, 1916? A. Central Railroad Company of New Jersey.

Q. How long have you been a locomotive engineer? A. Fourteen years and ten months.

Q. How long have you been working for the Central Railroad Company of New Jersey? A. Twenty-five years.

20

Q. You have been a fireman before you were an engineer? A. Yes, sir.

Q. Do you remember the number of the train that you operated along about seven o'clock on the evening of June second? A. Yes, sir.

Q. What was it? A. Train 269.

Q. 269? A. Yes, sir.

Q. What time did that train start, did that train arrive at Elizabethport Station on the night in question? A. 7.26.

30

Q. Is that the train that ran over Mr. Ploeser? A. Yes, sir.

Q. Where did that train start from? A. Jersey City.

Q. Where was it going to? A. Cranford.

Q. Cranford, that is a station a short distance west of Elizabethport? A. West of Roselle.

Q. It is West of Elizabethport also? A. Yes, sir.

40

Q. Cranford was the end of your run? A. On that run; yes, sir.

Q. Do you remember how many cars you had that night? A. Four.

Q. Do you remember what they were? A. Combine; combination car, and three coaches.

Q. And the engine was at the head end of the train? A. Yes, sir. 10

Q. Do you remember which track you were on as you stopped at Elizabethport station? A. Track two.

Q. Track two? That is the third track Northerly from this station? A. Yes, sir.

Q. Do you remember stopping there? A. Yes, sir.

Q. At that station. What happened after you stopped? A. We laid there the usual time and unloaded our passengers I suppose. 20

Q. Just tell what you saw. Let me ask you a question. Which side of the engine were you on? A. Right hand side of the engine.

Q. Was that the side toward the station at Elizabethport or away from the station? A. Away from the station.

Q. You stopped and laid there awhile, and then what happened? A. I got a whistle to proceed. Signal whistle. 30

Q. What do you mean by whistle to proceed, a signal whistle? A. Two blasts of the signal whistle in the cab.

Q. What did you do? A. I started to pull.

Q. What do you mean, you started to pull? A. Started the train. Started the engine, and the train from Elizabethport station.

Q. Then what happened? A. I had gotten about a carlength, perhaps a little more, perhaps not so 40

much, and I got two blasts of the signal whistle to stop.

Q. What did you do? A. I stopped.

Q. Then what happened? A. Laid there awhile and then I got two blasts of the whistle to proceed again.

10 Q. And you did proceed? A. I did proceed.

Q. You didn't see anything of the accident at all? A. Nothing at all.

Q. When did you first know there was an accident? A. Cranford.

Q. When you got to Cranford? A. Yes, sir.

Q. Where had you stopped on this night prior to that stop in Elizabethport.? A. West Eighth street.

Q. And did you make any other stops beside West
20 Eighth street? And Jersey City? A. Commenced at Van Nostrand place.

Q. Well, tell us each stop. A. East Forty-ninth street, Bayonne, East thirty-third street, East twenty-second street, East Eighth street, Bayonne,—

Q. And you stopped at all those stations? A. Yes, sir.

Q. Did you have any trouble with any of your brakes? A. None at all.

30 Q. Any trouble with your engine? A. None at all.

Q. Let me ask you when you stopped where did your engine lie at Elizabethport? A. At Elizabethport?

Q. Yes, sir? A. Right on the Newark crossing.

Q. What part of your engine was on the Newark crossing? A. The cab of the engine.

Q. The cab of the engine? A. The cab of the engine stopped directly over the Newark tracks.

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Mr. Miller: Cross-examine.

William R. Hunt—For Defendant—Cross—Redirect—Recross

Cross-examination by Mr. David:

Q. The signal you got to go ahead—the first time when you started from the Elizabethport station, you say was a signal? A. Yes, sir.

Q. And whoever gave that signal must have been on the train? A. Yes, sir. 10

Q. And you don't know whether at that time or not there was anybody on the ground in connection with the train? A. No, sir.

Mr. David: That is all.

Redirect examination by Mr. Miller:

Q. They were all on the opposite side from you? A. Yes, sir. 20

Recross examination by Mr. David:

Q. How do you mean they were all on the opposite side?

The Court: He means he was sitting on the right hand side.

Q. Who was on the north side? 30

The Court: What you mean is you were on the right hand side of the cab and couldn't see what was going on on the left side?

A. No.

Q. You don't mean to say there was no one on that train was on the ground when you got that whistle? A. I don't know anything about it.

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Roy Eick, produced as a witness, on behalf of the Defendant, being duly sworn on his oath, according to law, saith:

Direct examination by Mr. Miller:

10 Q. Mr. Eick, keep your voice well up. You were employed as fireman on train 269 on June second, 1916, were you? A. Yes, sir.

Q. You were employed by the Central Railroad Company of New Jersey? A. Yes, sir.

Q. And Mr. Hunt the last witness was the engineer on that train? A. Yes, sir.

Q. How long have you been working for the Railroad Company? A. Since July twentieth, 1911.

Q. 1911? Do you remember coming into Eliza-
20 bethport station that night? A. Yes, sir.

Q. What were you doing while you were at the Elizabethport station? A. Shoveling coal in the fire box.

Q. Where were you doing that, performing that operation? A. In the tank.

Q. What do you mean by "tank"? Remember we are not railroad men.

The Court: What we call the tender?

30

A. Tender.

Q. Were you concerned in any way with people getting on or off this train? A. No, sir.

Q. Did you see whether any persons got on or off this train? A. No, sir.

Q. Do you remember stopping there, do you? A. Yes, sir.

Q. And after you had stopped awhile, what happened if anything? A. Train started.

40

Q. Then what happened? A. We went probably a car length and stopped.

Q. And you were in the tank all this time? A. Shoveling coal. I hadn't stopped yet.

Q. You hadn't seen anything of the accident? A. No, sir.

Q. You were fireman on the train so we brought you here? A. Yes.

Mr. Miller: That is all.
Mr. David: No questions.

SOLOMON N. DENNIS, produced as a witness, on behalf of the Defendant, being duly sworn on his oath, according to law, saith:

Direct examination by Mr. Miller:

Q. Mr. Dennis, were you conductor of train 269 on June second, 1916? A. Yes, sir.

Q. How long had you been employed by the railroad? A. Thirty-seven years.

Q. Who were the various other members of your crew aside from the fireman and engineer? A. Who were they?

Q. Yes, sir. On that night? A. William H. Smith, Peter Durr.

Q. Peter Durr was the baggage man? A. He was the forward man.

Q. William Smith was the rear brakeman? A. He was rear brakeman.

Q. How many cars did that train consist of on this night? A. Four.

Q. How were they arranged? A. Combination

car next to the engine, and three coaches to the rear of that.

Q. Open platform coaches? A. Open platform.

Q. Was the combination car open platform car? A. Open platform.

10 Q. On which end of the car on this particular night was the baggage compartment? A. Rear end of the combination.

Q. So that the passenger part of the combination car was next to the engine? A. Next to the engine.

Q. Do you remember coming into the Elizabethport Station on this night? A. Yes, sir.

Q. When you arrived at the station and stopped, what did you do? A. I got off on the ground between the second and third cars, on the station

20 platform.

Q. Did you notice the other members of your crew at that station? A. The rear man was down on the station platform, but the forward man was in the baggage car taking in a trunk.

Q. Any people get on or off at your platform? A. There was, well, some got on there and some got off.

(Answer repeated by the stenographer.)

30 A. But I think there was only one got on. I think there was Mr. Dowdel; that was the only one got on, I think.

Q. Who is Mr. Dowdel? A. Station master Elizabethport.

Q. He is here in Court? A. Yes, sir.

Q. You remember seeing him get on? A. He got on. I think Mr. Bradshaw, too.

Q. Another man? A. Transfer foreman.

Q. You knew those two men, and you can remember them? A. I knew those two.

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Q. After those people had gotten on or off at your platform what did you do? A. Well, they were all off and on from the rear one, and the trainman he gave me a signal all right. I glanced up forward and the other man was looking out of the baggage car door and had taken the trunk in; no one near the train at all; I called to him all right. He reached up and gave the engine two whistles to proceed. 10

Q. Did you hear the whistles? A. Not where I was, no.

Q. How do you know he gave two whistles? A. You can hear the exhaust of the air valve. You can hear that. And very often you can hear the whistles on the rear of the train if everything is quiet enough.

Q. You did hear that that particular night? A. Yes, sir. 20

Q. And the train started? A. Yes, sir.

Q. What did you do? A. I got back up on the platform, and had turned to step into the coach.

Q. What happened? A. Well, as I did so, I glanced quarterly diagonally out of the window, I saw three or four people running and hollering "stop the train." Ran toward the forward end of the car—

Q. Forward end of the car you were in? A. I was going in. 30

Q. Forward end of the second car? A. Forward end of the second car.

Q. Then what happened? A. They were starting to run toward the end; I ran up and pulled two whistles to stop.

Q. Did the train stop? A. He stopped as soon as he could.

Q. No. How far had you gone? A. From the

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time we started first it was just about a car length.

Q. Just about a car length? A. Just about a car length.

Q. And then you stopped the second time? A. And then we stopped the second time.

Q. Did you get off the train? A. I got off the train.

Q. And you found this man? A. This man was laying right there between the two platforms. The car had passed over him, and it was just a car length. He was lying right cross way on the platform as I got down.

Q. You said, Mr. Dennis, that you looked down toward the rear man, Smith? A. Yes, sir.

Q. And you say he was clear? A. He was clear.

Q. And that he gave you a signal? And then you said you looked where? A. Looked toward the foreward end. I saw everybody else was on and off and no one moving.

Q. When you looked toward the forward end was there anybody approaching your train? A. Not that I saw. I don't think there was anybody was nearer than South of Track three, anyway. It seems to me it was all cleared all through there. No one near the train.

Q. Is it your duty to look and see it is all clear? A. I always do.

Q. Is it your duty to look and see it is all clear? A. Yes, sir.

Q. Did you do it that night? A. I always do.

Q. Did you do it that night? A. I did it that night. Because I know there is no one—

Q. We do not want to hear anything about what you always did, we want to know what you can definitely remember about this particular night. I want to know if you have a definite recollection about this particular night? A. I did look.

Q. Do you remember it? A. I do.

Q. Was there anybody approaching this car? A. Not that I saw.

Q. Was there anybody attempting to get on the rear platform of the first car, at the time you gave Mr. Durr, the baggage man, the signal to start the train? A. No, sir. 10

Q. Was there anybody attempting to get on that first car between the time you had actually given Mr. Durr the signal to start the train and the time the train started? A. There didn't.

Q. Then you got on the train yourself? A. Yes, sir; I was the last one to get on.

(Answer repeated by the stenographer.)

Mr. Miller: Cross-examine.

20

Cross-examination by Mr. David:

Q. Your eyesight is good, is it, Mr. Dennis? A. Yes, sir.

Q. Without your glasses is it good? A. I could see who anyone was away a train length or more. I can read some without them, of course, I usually do. I usually wear them all the time.

Q. Was this your regular train? A. Yes, sir.

Q. Kind of a busy station about that hour, isn't it, Mr. Dennis? A. Well, sometimes. 30

Q. It was that night, wasn't it? A. In what way do you mean?

Q. A number of people got off your train? A. Well, eight or ten.

Q. Weren't there at least twenty-five people got off that train? A. No, sir.

Q. How many got on it? A. Well, probably about the same number.

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Q. Just as many got on as got off? A. Just about.

Q. Quite a number of employees from the Singer Factory board that train as a rule? A. No, sir.

Q. Don't they, at that station? A. Very few, very few.

10

Q. As I understand it the train came to a stop, and you got off? A. Yes.

Q. And you were between the second and third cars? A. Yes, sir.

Q. And the man Smith was at the rear platform of the rear car? A. Yes, sir.

Q. And there was no one on the ground between the baggage car or combination car, as it is called, and the next passenger car? A. Nobody there.

20

Q. And the baggageman was in the baggage car taking care of the baggage? A. Yes, sir.

Q. You say after everybody had gotten on you got a signal from Smith? A. Yes, sir.

Q. And yo uthen put up your right or left hand? A. Left. Facing the engine.

Q. And that was a signal to the baggage man? A. That was a signal to the baggge man, and I shouted at the same time.

(Answer repeated by the stenographer.)

30

A. I put out my hand and shouted at the same time in case he didn't see me he could hear me.

Q. What did you shout? A. All right.

Q. How long after you shouted did he give the signal to the engineer? A. Almost immediately.

Q. How soon after he gave the signal did the train start? A. Well, probably ten or fifteen seconds.

Q. Did you get on the train before or after it

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started? A. Just as it started.

Q. As it started you got on? A. I stood still until the train had started.

Q. When you got on there was nobody at or near the rear platform of the combination car on the ground? A. No, sir.

Q. Nor within how many feet of it? A. Within twenty feet, anyway.

Q. So at the time the train started Mr. Ploeser could not have been within twenty feet of the platform that it has been testified he attempted to board, is that right? A. That is what I contend; yes, sir.

Mr. David: That is all.

Re-direct examination by Mr. Miller:

Q. Singer employees get on at the Singer Station? A. Yes; we don't stop there.

Q. You don't stop there? A. Yes, sir.

Q. There is a station between Elizabethport and Elizabeth? A. Yes, sir; Singer trains stop there.

Re-cross examination by Mr. David:

Q. That is a signal stop, is it not? A. No, sir; not for that.

Q. It only stops there specially to take on Singer employees? A. On the schedule, on the table, to accommodate Singer's employees.

Q. At special hours? A. Yes, sir.

The Court: Gentlemen, that does not throw much light on the subject.

WILLIAM H. SMITH, produced as a witness, on behalf of the Defendant, being duly sworn on his oath, according to law, saith:

Direct examination by Mr. Miller:

10 Q. Mr. Smith, where do you live? A. Newark, New Jersey.

Q. And what was your occupation on the second of last June? A. Passenger brakeman, Central Railroad of New Jersey.

Q. What train were you working on? A. Train 269.

Q. Conductor Dennis' train? A. Conductor Dennis' train; yes, sir.

Q. And that was the train involved in this acci-
20 dent? A. Yes, sir.

Q. Do you remember coming into Elizabethport on this particular night? A. I do.

Q. As the train stopped, where were you? A. I was on that platform between the third and fourth car.

Q. After the train stopped, what did you do? A. I got down on the platform.

Q. Which platform? A. Station platform.

Q. Did you unload any people at that platform?
30 A. About three or four.

Q. Anybody get on? A. Nobody got on.

Q. After your platform was clear; that is, after the people had gotten off and you found there was no one to get on, what did you do, if anything? A. I stuck out my left hand and just stood that way (indicating).

Q. In which direction were you facing? A. West.

Q. Is that toward the front or rear of the train?
40 A. Front of the train.

Q. Did you see Conductor Dennis? A. I did.

Q. Where was he? A. Standing on the station platform.

Q. Where? A. Between the second and third car.

Q. What, if anything, did you see Conductor Dennis do? A. Well, I—— 10

Q. That is, after you had put your hand out to show all was clear? A. Conductor standing between the second and third car, and as soon as this station master got on, who was the last man I seen on the platform, conductor stuck his hand out and I didn't just hear what he said, but he went with his hand this way (indicating).

Q. Did he say something you didn't hear? A. He said, "all right." Or said something; I don't know just exactly what he said. 20

Q. You heard him say something? A. Yes.

Q. What happened then? A. Baggage man was looking out the door.

Q. Did the train start? A. Not until after the baggage man went in the door and then after that the train started.

Q. What did you do then? A. The train was starting when I got hold of the hand rail on the rear end of the third car and I stood on the third step, and I looked toward the end of the train, and I looked toward where there was three or four loads of express matter, and just at that time somebody hollered "Whoa," and I looked up and seen the man's feet sticking out from under the train, about in the middle of the car that run over him. 30

Q. At the time you saw Conductor Dennis make a motion with his hand, and heard him call something was anybody attempting to board the rear platform of the first car? A. No, sir. 40

Q. Was there anyone in the vicinity of the rear platform of the first car moving toward the train? A. There was nobody on the platform whatever I could see.

By the Court:

10 Q. Do I understand, Mr. Smith, you were looking toward the front end of the car, of the train, during all the time from when you gave the signal until the train was stopped? A. Until the train was stopped or started?

Q. Stopped? From the time you gave the signal it was all clear, had your hand out, until the time the train came to a stop again? A. Oh, no. I looked at the rear end of the train, and then I looked over at the express matter on the south side
20 of the station.

Q. Were you looking ahead up to the time the train started? A. Occasionally I would turn my head, just glance at the rear end, which I would have to.

By Mr. Miller:

Q. After the train stopped, after the accident, what did you do? A. I seen what happened, I seen the man run over.

30 Q. Just tell us what you did? A. I went up the steps of the car, walked through the fourth car, got a red and white light and went back and protected the rear end of the train.

Q. In other words, you were flagman and went back to flag the train? A. I was flagman and went back to flag the train.

Cross-examination by Mr. David:

Q. Your train came a little late that night? A.
40 Yes, sir; a little late.

Q. As soon as you got in did you jump off? A. After I announced both cars "Elizabethport" I got on the platform.

Q. You made your announcement before the train stopped? A. Yes, sir.

Q. As soon as the train comes in you jumped off? A. I walked down and got on the platform. 10

Q. Were you the first one off the fourth car, on the front end? A. Yes, sir.

Q. And then your business was to watch the front platform of the fourth car and the rear platform of the fourth car, wasn't it? A. It was to watch the rear platform of the third car, and the front platform of the fourth car, and rear platform of the fourth car.

Q. Those were the three platforms you watched in the usual course of your duties? A. Yes, sir. 20

Q. And as soon as you saw those platforms were clear from passengers getting off and on, you gave the signal "all right"? A. I just held my hand out, my part is ready to go at any time.

Q. Then what did you do? A. That is all.

Q. What did you next do? A. What do you mean what I next done?

Q. You didn't spend the evening at Elizabethport? A. No.

Q. As soon as you gave the signal, your left hand, that the rear platform of car three and front platform of car four, and rear platform of car four were all right, what did you do? A. I put my hand out; I put my left hand. 30

Q. What did you do? A. I looked around back; as soon as the train started, I got on the rear platform of the third car.

Q. When was it your attention was directed to the express trucks? A. When I was up on the rear 40

end of the train, so nobody would go to run off when we were just starting, as sometimes they do.

Q. That is when you noticed the trucks? A. That is when I noticed the trucks.

Q. How many did you notice? A. I would say for sure there were three.

10

Q. Three trucks? A. Yes, sir.

Q. Anybody in charge of them? A. Not that I seen. I seen nobody around.

Mr. David: Stand up, Mr. Ebert.

Q. Did you see that man there? A. I don't remember.

Q. Where were those trucks? A. They were on the south side of the station. One truck was about three feet from the east bound signal pole, east of the station.

20

Q. With reference to the station marked "Women," where were the trucks? A. Just lined right along, where the cross is.

Q. On the map? A. There. Right along down there, more to the east end.

Q. And you say nobody was at or near the trucks? A. No, I didn't say nobody was at or near the trucks, I said I didn't see anybody.

30

Q. What time of the day was it? A. About 7:25 or more I guess.

Q. Was it light or dark? A. Just getting dusk.

Q. Was there anything between you and the trucks? A. No, sir.

Q. You could see the trucks and you could have seen if anybody was at or near the trucks? A. Yes, if I seen them.

Q. You say nobody? A. No, sir.

40

Mr. David: That is all.

Re-direct examination by Mr. Miller:

Q. You were not particularly interested in looking for the guardians of this fleet of trucks, were you?

Mr. David: I object as leading. 10

A. No, sir.

The Court: I will allow the question.

Q. You had no interest in those trucks? A. No, sir.

Q. Or whether there was anybody there with them or not? A. No, sir.

Q. And you simply say you don't know whether there was anybody there or not? A. No. 20

Recross examination by Mr. David:

Q. I want to make sure I understand your testimony. You were facing in what direction immediately prior to the time the train started? A. West.

Q. And with reference to the direction in which you were facing, where were the trucks? A. South.

Q. At your left? A. At my left, facing West; yes, sir. 30

Q. Were you looking toward the trucks? A. Well, I don't know if occasionally I did turn my head and look toward the trucks.

Q. You say that the trucks were located at about the point the cross is indicated on this map? A. Yes, sir.

Q. And you say you didn't see anybody at or near those trucks? A. I didn't say I didn't see anybody, I don't remember seeing anybody. 40

Q. Let us see.

Mr. Miller: I submit he said that three times, four times; once for me, and three times for the Judge.

Q. Will you say you did not see anybody? A. Well, no, I won't say I didn't see anybody.

Q. Didn't you say in your previous testimony, "I didn't see anybody"? A. I don't remember seeing anybody.

Q. That is not an answer to my question. Didn't you say in your previous testimony "I didn't see anybody?" A. No, I didn't.

Q. You didn't say that? A. No, I don't remember saying it.

Q. You didn't say it? A. No, I don't remember saying it.

Mr. David: That is all.
Mr. Miller: That is all.

PETER DURR, produced as a witness, on behalf of the Defendant, being duly sworn on his oath, according to law, saith:

Direct Examination by Mr. Miller:

Q. Mr. Durr, you were the baggage master on this train? A. Yes, sir.

Q. Where do you live? A. Bound Brook.

Q. I cannot hear a word you say. A. Bound Brook.

Q. Bound Brook, New Jersey? A. New Jersey, yes, sir.

Q. How long had you been working for the Rail-

road Company that night? A. I couldn't say now whether it was 1912 or '13 I started. It is either four or five years. (Answer repeated by the stenographer.)

Q. You were in the baggage compartment of the combination car this night? A. Yes, sir.

Q. And do you remember stopping at Elizabethport? A. Yes, sir. 10

Q. What did you do after you stopped at Elizabethport? A. I stayed right in the car. I had papers to put off there. And I stayed in there putting them off, and when I looked out the door I seen the baggage man coming with the trunk.

Q. Who did you see coming? A. Baggage agent at the Port.

Q. Baggage Agent, where? A. At Elizabethport. 20

Q. After you had put the papers off you saw the baggage agent of Elizabethport coming with a trunk on a truck? A. Yes, sir.

Q. What did you do? A. I stayed in there to take the trunk.

Q. What did you do? A. I stayed in there until I got the signal off the Conductor to go, and I pulled the whistle twice.

Q. Where was the conductor when you got the signal? A. On the ground, between the second and third cars. 30

Q. What kind of a signal did you get? A. He gave me a signal with his hand, and he also hollered "all right."

Q. And where were you when you got the signal? A. In the baggage door, looking out the side.

Q. The side door of the baggage car? A. Yes, sir.

Q. Was the rear platform of the first car between 40

you and Conductor Dennis at the time he gave the signal?

(Question repeated by the stenographer.)

A. Yes, the rear platform of the first car.

Q. Was between you and the conductor? A.

10 A. Yes, sir.

Q. At the time the conductor gave you the signal was there anybody attempting to board the train by the rear platform of the first car? A. No, sir.

Q. What did you do—strike that out. Was there anyone in the vicinity of the rear platform of the first car approaching the train? A. I didn't notice anybody.

Q. Did you look to see if there was anyone? A. I just looked down the line of the train. I didn't

20 look all over the station.

Q. Did you see anybody on the ground in the vicinity of the platform or near the steps? A. There wasn't nobody there. I didn't notice anybody.

Q. There wasn't anybody there; you didn't notice anybody. Did you give the signal to start then? A. Yes, sir.

Q. How did you give that? A. Two whistles.

Q. How did you give them? A. Just pulled the cord twice in the baggage car.

30 Q. And what did you do after you gave the signal in the bagage car? A. We started.

Q. What happened then? A. I heard Mr. Danglo, the conductor on the other train, holler.

Q. Where was Mr. Danglo? A. He was standing in front of the station when I seen him.

Q. You heard him holler? A. Yes, sir, and he gave me the stop signal, and I jumped up and pulled the whistle twice which gave the engineer the signal to stop, and he stopped.

40

Q. What happened then? A. I looked, looked out the door and I seen two legs sticking out, and I said to someone in the baggage car: "We must have got someone."

The Court: Repeat that.

10

A. And I looked out and I said "We must have got someone," and we got right off to see what we could do.

Q. And found Mr. Ploeser was on the track? A. Yes, sir.

Q. And then the train was started again? A. Not until after we took him out.

Q. After you had taken him out? A. After we had taken him out.

Q. You left him in charge— A. Of Mr. Drudell, the Station Master.

20

Q. Do you know the name of the baggage agent at Elizabethport who brought the trunk here? A. No, sir.

Q. Is he here in Court? A. Yes, sir.

Mr. Miller: Mr. Walters, stand up.

Q. Is that the gentleman? A. Yes, sir.

30

Mr. Miller: That is all. Cross-examine.

Cross-examination by Mr. David:

Q. How long were you at the station from the time your train started until it stopped? A. How long was I at the station from the time the train started until it stopped?

Q. How long were you at the station from the time your train stopped at the Elizabethport Sta-

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tion until it again started? A. I could not say exactly, just how long we were there. We were there long enough to give everybody a chance to get off and on and I got the trunk on.

10 Mr. David: I move that portion of the answer be stricken out.

(Answer repeated by the stenographer.)

The Court: Yes, strike out that part; that is not responsive; from "long enough," on.

Q. How long were you there, one hour, one minute, five minutes? A. I can't say. I can't judge. Sometimes we are there longer than others.

Q. How long were you there this time? A. I don't know how long. There is no use a man saying
20 what he don't know. I was busy in the baggage car.

Q. Do you know how long you were at that station? A. No.

Q. From the time you got there until you left? A. No, sir.

Q. Have you any idea? A. No, sir.

Q. Have you any idea whether it was fifteen minutes? A. No, sir.

Q. Twenty minutes? A. No, sir.

30 Q. Thirty minutes? A. No, sir.

Q. One-half a minute? A. I don't know. I told you. I don't know how long we were there. I was busy in the car. I didn't time it; I didn't look at the watch. I don't know.

(Answer repeated by the stenographer.)

Q. When you first got in the station what did you do? A. I stayed in the baggage car to put the
40 papers off.

Q. What did you do? A. I waited until the train stopped and I most generally throw the papers off.

Q. I don't want what you generally do; what did you do this night? A. What I did this night?

Q. Do you remember the train drawing into the Elizabethport station? A. I certainly do. 10

Q. What did you do after the train stopped? A. I stood in the door and put the papers off.

Q. Did you put the papers off? A. I certainly did.

Q. How many papers did you put off? A. I don't know whether it is one or two bundles.

Q. What did you do? A. I stood there and seen that gentleman come with the trunk; I stood there and took that.

Q. Did you take that in? A. Yes, sir. 20

Q. Where did you put it when you had it in? A. In the baggage car.

Q. How far in the baggage car? A. Just put it in the door, if I only had one piece and looked on the outside to wait for the signal. And when I got the signal I place it wherever I want to go. If it is going to a certain station I place it on the right hand side.

Q. What did you do that night with the trunk? A. Put it in the baggage car. 30

Q. How far in the baggage car? A. Just inside the door.

Q. How many inches was the end of the trunk from the end of the door? A. I don't know. I didn't measure.

Q. Was it more than a foot? A. I don't know. May have been laying down for all I know. I know it was in there. I had it in there.

Q. Then what did you do? A. What did I do when? 40

Q. After you got the trunk inside of the baggage car? A. I looked outside, waited for a signal, because I knew the engineer was on the other side—

Q. No. You answered it. You looked outside and waited for a signal.

10

Mr. Miller: I think he should be allowed to answer.

The Court: Not beyond the point where it is responsive.

(Answer repeated by stenographer.)

Mr. Miller: I think that is bad.

The Court: After the word "because" he.

Q. How long did you look outside for the signal? A. Until I got the signal.

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Q. Ten minutes? A. No, it wasn't ten minutes.

Q. Ten seconds? A. I don't know.

Q. Haven't any idea? A. No idea whatever.

Q. Who gave you the signal? A. The Conductor, Mr. Dennis.

Q. Immediately after you got the signal what did you do? A. I gave the signal to the engineer by pulling the whistle cord twice, which is the signal to go.

Q. How near were you to the edge of the door

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of the baggage car when you got the signal? A. I don't know how near I was standing to it. I was standing near enough to look out. I don't know how near.

Q. You must have been pretty close to the edge of it? A. I was pretty close to the edge of it, close enough to look out.

Q. You had to lean out a ways, didn't you? A. Most generally always do.

40

Q. Not generally. But on this night you had to

lean out a ways in order to see the conductor, didn't you? A. I don't know whether I did or not. I may have been leaning out.

Q. You say you don't know whether you did or not. Your door was in the center of the first car, wasn't it? A. Center? No; it is on the end. 10

Q. Which end? A. I don't know which end it is. I don't know which way the combination was situated that night.

Q. You don't know that night whether the door of the baggage car was in the front end of the first car or rear end? Is that right? A. You mean side door?

Q. Side door of the car through which you got the trunk? A. Yes.

Q. Do you know? A. I don't know whether it was next to the engine or coach, that night; because they run that both ways. 20

Q. Where was the conductor? A. When?

Q. At the time he gave you the signal? A. Between the second and third coach on the ground; on the station platform.

Q. So he was at least one entire car length east of where you were? A. Yes, sir.

Q. And so didn't you have to lean out of the door of the baggage car in order to see him? A. Not necessarily; if I stand out there far enough I wouldn't. I can stand and look out the corner of the door without leaning out. 30

Q. Did you that night? A. I don't know that night.

Q. You don't know that night? A. I know I leaned out; I couldn't see the signal if I didn't.

Q. As soon as he gave you the signal what did you do? A. Pulled it and gave the engineer the signal to go ahead. 40

Q. Could you pull the rope from where you stood? A. I had to move in a little. According to the way it is. Some are lower than others.

Q. How far in did you move? A. I don't know.

Q. Haven't you any idea? A. No, sir.

10 Q. When did you take the trunk away from the position it was, close to the door of the baggage car? A. I don't remember now whether—I was pulling it in when I heard Mr. Danglo hollering. And that drawed my attention across.

Mr. David: No, I move that be stricken out.

Mr. Miller: I submit with all deference that was a proper answer. And he fixed

20 the time this way.

The Court: But he gives his reasons, Mr. Miller.

Mr. David: I withdraw my objection. If you haven't finished the answer, go ahead and finish.

(Question and answer repeated by the stenographer.)

Q. Just pay attention to me, won't you? What

30 was the next thing that you did after the conductor gave you the signal? A. I gave the engineer the signal to go ahead.

Q. You first moved from the position you were in at the time you got the signal, didn't you? A. I first what?

(Question repeated by the stenographer.)

A. I don't know what you mean by that.

40 Q. I will explain it to you. You were standing

right close to the side door of the baggage car with your head stuck out when the conductor gave you the signal? A. Yes, sir.

Q. Didn't you move from that before you gave the engineer the signal? A. I certainly must have. I couldn't give the signal, if I didn't.

Q. Where was the trunk at that time? A. Standing inside I think.

Q. Was it between you and the rope? A. I don't remember; it may have been.

Q. If it were in between you and the bell rope, you moved it out of your way, didn't you? A. No, I wouldn't have to.

Q. No—— A. I don't know whether I did or not.

Q. As a matter of fact didn't you move that trunk before you gave the signal to go ahead? A. What do you mean, after I took it in? When I got it in there——

The Court: He means between the time you got the signal and the time the train started, didn't you move the trunk?

A. No. I gave the signal first. That is what I was going to explain, you wouldn't let me explain.

Q. When did you move the trunk after it was first placed in the baggage car? A. I don't remember.

Q. Have you any idea? A. No, sir.

Mr. David: That is all.

Mr. Miller: That is all, thank you.

JACOB WALTERS, produced as a witness, on behalf of the Defendant, being duly sworn on his oath, according to law, saith:

Direct examination by Mr. Miller:

10 Q. Mr. Walters, where do you live? A. 539 East Jersey.

Q. I will have to pay you the same compliment, I cannot hear you. A. I can't hear you.

Q. Where do you live? A. 539 East Jersey Street, Elizabeth.

Q. What was your business in June, last year? A. June, last year?

Q. Yes, 1916? A. Assistant baggage master, Elizabethport station.

20 Q. Do you remember the accident to Mr. Ploeser? A. Yes, sir.

Q. Did you go out to meet this train, 269, on that night? A. I did.

Q. What did you have with you? A. A trunk on a truck.

Q. What were you doing with the trunk? A. Sir?

Q. What were you doing with the trunk? A. I put this trunk on the train due at Elizabethport 7:20.

30 Q. What is the number of that train? A. 269.

Q. Is that the train ran over Mr. Ploeser? A. Yes, sir.

Q. And where did you put the trunk on that train? A. In the baggage car.

Q. Is that up the first car? A. First car; next to the engine.

Q. First car, next to the engine? A. Yes, sir.

Q. Which end of the car was the baggage compartment in? A. Rear of the car.

40

Q. Rear of the car? A. Of the first car.

Q. After you got the trunk into the train what did you do? A. After I had the trunk in the train I had shoved my trunk toward the east; shoved it over the driveway toward the baggage car.

Q. Will you look at this map. The train was on track two, was it? A. Yes, sir; track two. 10

Q. And the car was somewhere between this driveway and the Newark track? A. Yes, sir.

Q. You stood there putting in your trunk, with your truck alongside that train? A. Yes, sir.

Q. And then you started to move the truck—— A. Eastward.

Q. (continued)—Eastward, and got down to this driveway to push it over on the wood of the station platform? A. Yes, sir. 20

Q. While you were doing that, while you were pushing your truck down toward the driveway did the train do anything? A. Why, as I was pushing my truck across the driveway I had looked westward.

Q. Just listen to me. What did the train do, if anything? What did you see the train do, if anything? While you were pushing your truck down to the driveway? A. What?

Q. (Question repeated by the stenographer.) Did you notice what the train did? A. While I was pushing my truck toward the driveway the train had just about started. 30

Q. I see. When the train had started, did the rear platform of the first car pass you? A. Yes, sir.

Q. Was there anybody on that platform trying to get on the car at that time? A. Not when the platform had passed me; I seen nobody.

Q. Did you see somebody on that platform after- 40

wards? A. Why, after the train was in slight motion I seen a person trying to get on the train.

Q. And was that after the platform had passed you? A. After it had passed me.

Q. Just describe to the Jury just what you saw.
10 A. May I stand up?

The Court: Yes, sir.

A. As I was pushing my truck across the driveway, I looked slightly over my shoulder to see if there was a train coming from the west to go east. Eastbound. As I did so, I had seen this man with his right hand grab the rear rail of the first car. He had in his left hand a blue package and a grip, and
20 as the train was in motion the man had his hand on the rear rail of it, trying to get up with his foot. He had his foot on the step, going along like that (indicating). He tried to swing with his left hand, and he lost his grip and in he went through the two cars.

Mr. Miller: Cross-examine.

Cross-examination by Mr. David:

Q. You brought your baggage truck over to the
30 baggage car, which was the first car on this train? A. Sir?

Q. (Question repeated by the stenographer.) A. Yes, sir.

Q. And immediately did you put the trunk on the baggage car? A. As soon as—I had waited until the train stopped, and the door was opened for me to put this trunk in the car.

Q. Did you at once put the trunk in the car? A. Immediately.

40

Q. Did you wait there any length of time after you put the trunk in the car? A. No, sir.

Q. So you at once started to walk east toward the driveway? A. Toward the driveway.

Q. How far did you have to walk before you got to the driveway? A. Before I got——

Q. How far did you have to walk from the door of the baggage car until you got to the driveway? A. Fifteen feet.

Q. When you got to the driveway what did you do? A. I had to look around to see whether there was a train coming from the west, over my shoulder; and as I did so I seen this man trying to get on the train while the train was in motion.

Q. At the time that you were walking toward the driveway you were looking toward the Singer's factory? In an easterly direction, weren't you? A. Until I came to the driveway.

Q. And at that time was the train standing still? A. When I had left the train the train was standing still.

Q. When you got to the driveway was the train standing still? A. No, sir; it had started.

Q. It had already started? A. Yes, sir.

Q. And when you got to the driveway did you pass the rear platform of car number one? A. I did.

Q. And where was the man who was finally hurt at that time? A. That I couldn't tell you where he came from.

Q. You didn't see where he came from? A. No, sir.

Q. Now, after he got his foot on the first step, did the train give a jerk? A. No, sir.

Q. You are sure of that? A. Positive.

Q. You didn't see the train start? A. Well, I can judge it started; yes, sir.

Q. Did you see the train start? A. I did.

Q. You saw it start? A. I saw it start.

Q. And at the time it started where was Mr. Ploeser? A. At the time it was about to start Mr. Ploeser was attempting to board the train.

Q. At the time it was about to start Mr. Ploeser was attempting to board the train? A. When the train had started.

Q. Well, now— A. He was within five feet when the train started.

Q. Will you kindly read the answer; read the last one.

(Question and answer repeated by the stenographer.)

Q. Do you recall having said a few seconds ago that at the time he was attempting to board the train the train started? Do you remember saying that? A. I remember saying that.

Q. Is that right? A. Right.

Q. That is right, isn't it? A. Well, I—

Q. Do you know this gentleman here, Mr. Robb, Henry Robb? Do you know that gentleman? A. No, sir.

Q. Did you ever see him in your life before? A. I can't recall.

Q. Do you remember the morning after this accident, the morning of the third of June? Talking with that gentleman, at the station platform; Elizabethport? A. I can't quite recall.

Q. Do you remember talking to a reporter of a paper? A. Elizabeth Journal.

Q. Is that the man? A. I can't recall whether it is him or not.

Q. Don't you remember having said to that man— A. I don't remember.

Q. Don't you remember having said to that man in substance, that as Mr. Ploeser had his foot on the step, trying to get on, the train started with a jerk? A. No, sir; he had not.

10

Q. Did you say it? A. No, sir.

Q. You are sure of it? A. Positive.

Q. Don't you remember Mr. Ploeser standing at the weighing machine. A. No, sir; I do not.

Q. Didn't you tell Mr. Robb that? A. No, sir; I did not.

Mr. David: That is all.

Mr. Miller: That is all.

20

WILLIAM B. DOWDELL, produced as a witness, on behalf of the Defendant, being duly sworn on his oath, according to law, saith:

Direct examination by Mr. Miller:

Q. In other words, you are giving us fair warning we will not have to tell you to talk louder? A. I will do the best I can under prevailing conditions.

Q. Your business is what? A. Station Master, Elizabethport Station, C. R. R. of N. J.

30

Q. How long have you been Station Master there? A. I have held this position going on six years.

Q. How long have you been connected with us? A. Forty-one years; a trifle over.

Q. Did you know Mr. Ploeser? A. I knew Mr. Ploeser very very well.

Q. You lived near him? A. You might say a neighbor of mine.

40

Q. How long had you known him? A. I have known Mr. Ploeser, I will venture to say, more than ten years.

Q. Did you see him on the night he was killed before the accident? A. I did; I saw Mr. Ploeser on the evening that the accident happened.

10

Q. Where was he? A. He was reclining, or resting against the weighing machine East of the bay window in front of the Ladies' Waiting Room. And I had a few words with Mr. Ploeser.

Q. See if you can identify this weighing machine on this picture which is marked D2. A. There is your station; there is the waiting room; there is the weighing machine.

Q. One of those penny-in-the-slot weighing machines? A. Yes, sir; correct weight for a cent.

20

Q. You say you spoke to Mr. Ploeser? A. Mr. Ploeser I noticed leaning against the weighing machine at 7.16, evidently waiting for the 7.20.

Q. Just answer my question.

(Question repeated by stenographer.)

A. I had spoken to Mr. Ploeser.

Q. During that time he was standing at the weighing machine? A. During the time he was standing at the weighing machine; if you want to know what I said I will let you have it.

30

Q. No, you cannot tell that. Was there anyone with you? A. I was in the office.

(Question repeated by stenographer.)

A. I was alone.

Q. Was Mr. Bradshaw with you? A. Mr. Bradshaw was in the office.

40

Q. Mr. Bradshaw was in the office? A. We were both in the office at the time.

Q. Mr. Bradshaw is very ill now? A. He is.

Q. You know that of your personal knowledge? A. Yes, sir.

Q. Too ill to come to Court? A. No one is allowed to see him. He has had ten or twelve hemorrhages. 10

Q. His days are numbered as I understand it. Whereabouts is your office in the Elizabethport station? Will you kindly mark your office? A. Here is the Women's Waiting Room. Here is the main line; here is the Women's Waiting Room. Here is the Bay window; here is the weighing machine right there.

Q. Just mark "weighing machine," with "W." A. (Witness does so.) 20

Q. Where is the window of your office? A. Here is the main line.

Q. Just mark with a circle, where your office is. A. (Witness does so.)

Mr. David: It runs all the way across from the North side of the station?

A. Yes, sir; that is the Long Branch side, and here is the main line side. 30

Q. That is your office. This part here? A. Yes, sir.

Q. And that is where you were when you saw Mr. Ploeser? A. When I saw Mr. Ploeser?

Q. Yes? A. Leaning against the scale.

Q. You were inside of the office? A. I was inside of the office; yes, sir.

Q. Did you see Mr. Ploeser do anything? A. Mr. Ploeser was leaning against the weighing machine, smoking a cigar. 40

Q. After that did you see him do anything? A. Not until the train was about at the route signal, which is a distance of about three hundred feet from where they make the station stop.

Q. Do you mean East or West? A. Train coming West.

10

Q. Not the route signal? A. It is East of the station, about three hundred feet, from the Newark crossing.

Q. By that you mean the signal indicates where the train was to go over the main line? A. Leave the main line, down the Branch road.

Q. When the train got about to this route signal, coming into the station, what did Mr. Ploeser do? A. Mr. Ploeser evidently saw the train, picked up his package, containing a lobster and also his black hand bag, which was a little larger than my hat.

20

Q. Yes, sir? A. And passed the bay window before I left the office.

Q. In which direction? A. Passing in a Westerly direction, as though—

Q. Going toward the West? A. Yes, sir.

Q. Is that the direction of the baggage room? A. That is the direction of the baggage room; yes, sir.

30

Q. Did you see Mr. Ploeser again until after he had been hurt? A. Saw nothing further of him after that.

Q. Did you see the train come in? A. I saw the train come in.

Q. Did you subsequently board this train? A. What is that?

(Question repeated by the stenographer.)

A. I subsequently boarded this train; yes, sir.

40

Q. You were going to your own home? A. I started to go on that train.

Q. At what time, with reference to the stopping of the train, did you leave your office? A. I left the office about ten seconds after the train came to a stop; I was the last one to go out. And as I passed out of the Gents' Waiting Room——

Q. No. You left your office about fifty-five feet from the track this train was on, about ten seconds after the train had stopped? A. Yes, sir. 10

Q. And what did you do? A. I went to the waiting room in an easterly direction, and got on the rear end of the second coach; or coach in the rear of the combination car.

Q. Which was the second car? A. Passed up the steps, preceded by Mr. Bradshaw, went in the car, took my seat on the right-hand side, which I usually do, in riding home. 20

Q. Not what you usually do. What did you do on this occasion? A. Took my seat on the right-hand side, I was sitting when the train started without a jerk or jar; a smooth pull.

Q. I see. Then what happened?

Mr. Miller: Strike that out.

A. As the train——

Q. When you got on the rear platform of the second car, did you notice any of the crew of the train? A. Rear brakeman was between the third and fourth car; he was on the ground at the third and fourth car. Conductor Dennis—— 30

Q. Was there anybody on the platform where you were? A. Conductor Dennis was on the ground, ready to board the platform. Bradshaw preceded me; I followed Bradshaw. And nothing further to do, the conductor gave the signal, the baggage master pulled—— 40

Q. You didn't see this? A. I heard the conductor give the signal and saw all right.

Q. You didn't see the baggage master pull the signal? A. I was going up the steps at that time.

Q. As you got up on this train you actually did see the conductor give the signal to start? A. Yes, sir.

Q. Did you know if there was anyone on the rear platform of the first train at that time? A. As I was about up the steps on the rear platform, the back, I grabbed the iron with my right hand, and I glanced toward the west, and there was no one struggling or trying to get on that step or crossing the track; track number one, or three.

Mr. Miller: Cross-examine.

Cross-examination by Mr. David:

Q. Just a question or two. How far up in the car did you get before you sat down? A. I took a seat in the third seat from the rear. The first seat is oblong, and the other two are cross; second cross seat.

Q. In which car? A. Second car from the engine.

Q. So you got on the platform, went up the steps on that car? A. Yes, sir.

Q. Got on the platform? A. Yes, sir.

Q. Walked inside? A. Yes, sir.

Q. And sat down before the train started? A. Yes, sir; before the train started.

Mr. David: That is all.

Mr. Miller: That is all.

EDWARD T. LAVELLE, produced as a witness, being duly sworn on his oath, according to law, saith:

Direct examination by Mr. Miller:

Q. What was your occupation on the night of this accident? A. Towerman. 10

Q. Will you look at that map and see if you can point out to the jury where you were? A. (Witness does so.) Right here.

Q. Place marked "Signal Tower" on the map. What is that tower used for? A. That is used for throwing the switches at the Elizabethport plant to divert trains from the main line to the different branches.

Q. Is the floor of the room of that tower you were on on the level with the ground? A. No, sir. 20

Q. How high above the ground was the floor you were on, approximately? A. About the height of the roof of a passenger car.

Q. And did you see Train 269 come in this night? A. I did.

Q. Was your attention particularly directed to that train for any reason? A. It was.

Q. What was that, Mr. Lavelle? A. Number 454, that is a Newark train, was waiting for 269. 30

Q. Point out on the map where that Newark train was standing? A. Where the Newark train was standing?

Q. Yes. A. Is this meant for the Newark Road?

Q. Yes. A. Well, it was standing here (indicating).

Q. On the tracks shown on the map as Newark Branch; south or southwest of the main line tracks; is that so? A. There should be a signal here. 40

Q. Never mind about the signal. Just generally speaking. It was south of the main line tracks? A. Yes, sir.

Q. It was on that branch, marked "Branch to Newark"? A. Yes, sir.

10 Q. What were you going to do with that train? A. After 269 departed my orders were to let 454 go.

Q. What do you mean by that? A. As a rule—

Q. No, not the rule. What do you mean by letting 454 go? What would you do? A. Give them the signal.

Q. Which direction was it going in? A. To Newark.

Q. Wouldn't that involve crossing these main 20 tracks? A. Beg pardon? (Question repeated by the stenographer.) A. Certainly.

Q. Before it could do that was it necessary for you to give a signal? A. Yes, sir.

Q. Was your attention directed to 269 waiting for it to go? A. Yes, sir.

Q. Did you see it start? A. I did.

Q. Did you see anything of the man who was hurt? A. I saw the man who was killed.

Q. Just describe to the Jury just exactly what 30 you saw? What you can remember of the accident that night. A. After 269 started, that train 269 had to go to a given point. Before I could put a signal lever back, which I had to get back before I could permit the Newark train to leave, I was standing there with my hand on that lever, waiting for 269 to get a sufficient distance so that I could get my lever back and let the Newark train go. I wanted to do it quickly because of the B. and O. that is supposed to follow 269 close.

40 Q. Yes? A. And while standing there I saw the

figure of this man who was killed coming across the track.

Q. Which track was he coming across when you first saw him? A. Track three.

Q. That was the track next to the station building? A. Nearest the station. 10

Q. And from which direction was he coming? A. From a point between the station and the baggage room, I should judge.

Q. What did you see him do? A. I saw him either in a hurried walk, or a run.

Q. And at that time had 269 started from the station? A. Was just starting; yes, sir.

Q. What next did you see? A. I watched this man's coming because the train was starting; after he passed track one, I lost sight of him. 20

Q. What caused you to lose sight of him? A. The roof of the coach.

Q. Then you saw the train stop again? A. The train hadn't stopped yet.

Q. I say you did after that. After you lost sight of the man you saw the train stop again, did you? A. Yes, sir.

Q. Did you see him after the accident? A. Yes, sir; I saw him after the accident, from the tower window. I saw him. 30

Q. Was the man who was killed the man you had seen running across the track three? A. Yes.

Q. Or walking fast across track three, after the train started? A. Yes, sir.

Mr. Miller: Cross-examine.

Cross-examination by Mr. David:

Q. How far was he from the train at the time the train started? A. In the vicinity of track three. 40

Q. Well, how far was that from the train? A. That is the track nearest the station.

Q. And how many feet is that from the train? A. I couldn't tell you accurately.

Q. Well, you are down there all the time. About how far? A. Well, I couldn't tell you that. Intervening between track two and three is track one. It was the distance between track two and track one, and the distance between track three and track one.

Q. Can't you give some idea if it is one hundred feet, twenty feet, nine feet, or one foot? A. I will try to; those tracks—

The Court: How many feet is the distance, is the question. A. Fifteen to eighteen feet, probably twenty.

Q. I want to see how far, Mr. Lavelle, this man was away. You say then, that this man at the time the train started was twenty feet away from the train? A. I do.

Q. And in a southwest direction from it? A. Yes, sir.

Q. I call your attention to the compass points; that is South, and that is West. A. Yes, sir.

Q. And he was running, was he? A. Either runing or walking fast.

Mr. Miller: And that scale shows the distance from the near rails of tracks two to three as twenty-five feet.

Mr. David: I am satisfied that go into the record.

Q. Don't you know whether he was walking fast or running? A. I don't.

The Court; The hour of adjournment, gentlemen. Return tomorrow morning at the

usual hour. (Juror #6, Paul Leo, excused from the Jury by consent of counsel.) Adjourned until tomorrow morning, February 1st, 1917, at 9.45 A. M.

NEW JERSEY SUPREME COURT, 10

UNION COUNTY CIRCUIT.

January Term, 1917.
Action at Law. No. 6 in the List.

EMMA PLOESER, Executrix, vs. CENTRAL RAILROAD COMPANY OF NEW JERSEY.	20

Transcript of stenographer's notes of evidence, taken in the above entitled matter, before HON. GEORGE S. SILZER, Circuit Court Judge, and a jury, in the Union County Court House, in the City of Elizabeth, New Jersey, on the first day of February, A. D. 1917, at 9.45 A. M.

Appearances: 30

ABE J. DAVID, ESQ., for the Plaintiff.
CHARLES E. MILLER, ESQ., for the Defendant.

EDWARD T. LAVELLE (resumed):

Cross-examination by Mr. David (continued):

Q. Your last answer, if I recall correctly, was that the man you saw you could not tell whether 40

he was running or walking fast? A. No, I can't say.

Q. Who was with you in the Tower house? A. I and my operator.

Q. That is one other man? A. That is one other
10 man; yes, sir.

Q. How many levers have you in that tower house? A. Thirty-six.

Q. And that is a pretty busy station, isn't it? A. Quite so; yes, sir.

Q. A number of different roads that come in just at that point? A. Yes, sir.

Q. As a matter of fact there was another train due about that time coming east, wasn't there? A. Yes, sir.

20 Q. Number 130? A. Yes, sir.

Q. What is your duty there? A. I am the towerman.

(Answer repeated by the stenographer.)

Q. What is your duty as towerman? A. Well, I have to see that the trains are gotten by there promptly and see that they make their scheduled connections.

Q. Do you have to watch for the oncoming
30 trains? A. Yes, sir.

Q. In all directions? A. Every direction that is possible for a man to look.

Q. In other words, you have to look east toward New York? A. Yes, sir.

Q. You have to look north toward Newark? A. Yes, sir.

Q. You have to look west toward Elizabeth? A. Permit me to interrupt you.

Q. No, no, just answer the question. A. I would
40 like to explain something.

Q. You may do that later. First answer the question.

The Court: No, he must answer the question.

Q. What your duties are. 10

(Question repeated by the stenographer.)

A. You want to know whether I have been instructed to look? What I understand is my duty?

(Question repeated by the stenographer.)

A. The direction in which I have to look is up to myself.

Q. But in order to see all oncoming trains, which is part of your duty, is it not necessary that you direct your attention closely to trains coming from the east? From New York? A. Finish your question and I will answer it. 20

Q. That is the finish of that question. A. Well, the trains coming from New York, I get an indication light in front of me.

Q. I see. So if trains are coming from New York, you have to watch an indication in front of you, in which direction? A. Right facing the station. 30

Q. Right facing the station, looking south? A. Well, looking directly at the station.

Q. That is south of the tower, isn't it? A. Well, the station part of it is directly in front of the tower.

Q. You see the compass points here? A. Yes. A little south of the tower.

Q. How high in the air is the signal? A. Indicating Board, you mean?

40

Q. Whatever you call it. A. It is probably a foot over my head.

Q. And how high up in the air are you? A. I should judge about six feet three or four.

Q. That is, the floor you were standing on is six feet three or four from the ground? A. Floor of the tower?

Q. Yes. A. You want to know how high that is from the ground. Well, while I have never measured it I should judge it is about eleven or twelve feet.

Q. Yes. So you stand eleven or twelve feet above the level of the ground? A. Yes, sir.

Q. And how high are you? A. Six feet three or four I think.

Q. And the indicator you watch is a foot or so higher than your head? A. Yes, sir.

Q. In order to see all trains that pass the Elizabethport station it is necesary for you to either watch the track, east of the station or watch the indicator? A. Yes, sir.

Q. And that is so whether trains are going on the main line or Long Branch Division? A. Don't matter from where.

Q. In order to see trains that are coming east, where must your sight be directed? A. I have also an indicator.

Q. Where is that? A. On the same board.

Q. Is that also true with the trains coming south from Newark? A. Yes, sir.

Q. And going north from Perth Amboy? A. Yes, sir.

Q. You look at the one indicator? A. Not one indicator; the indicator board. There are many indicators on the one board.

Q. All of these signals you must watch in order

to know when the trains are coming or not? A. Quite right.

Q. What is the duty of the man who was in the tower with you? A. He times the trains as they pass, and also give me any information that he hears on the telephone or telegraph wire, relative to the trains. 10

Q. Who instructs him if anybody about which switch to touch? A. There is no instruction given to him about which switch to touch.

Q. He doesn't know which switch to touch? A. He doesn't touch the switches.

Q. Who does that? A. I do.

Q. Your business is not only to watch for the oncoming trains, and the indicator, but to throw the switches? A. Yes, sir. 20

Q. And what switches do you throw? Both the rails, and the signals? A. Yes, sir.

Q. What kind of a hat did the man have on you saw running? A. Well, that I can't tell. I didn't notice the style of hat.

Mr. David: That is all.

Re-direct examination by Mr. Miller:

Q. As I understand it, Mr. Lavelle, you have indicators when trains are approaching? Showing when trains are approaching? A. Yes, sir. 30

Q. Can those trains actually come into the station until you do something? A. No, sir.

Q. You have to give a signal? A. Yes.

Q. After you get an indicator sign a train is approaching, you have to do something with your levers that permits the train to come into the station? A. Yes, sir.

40

Q. Will you explain to us just exactly what you were doing, or waiting to do—strike that out. What you were doing at the time you saw this man? A. The Newark train——

Q. That is the one you told us was on the Newark track? A. Yes, sir. The one I told you yesterday was on the Newark track. And I was going to run him as soon as 269 got out of the block. The signal I gave——

Q. In other words as soon as 269 which was on this track? A. Yes, sir.

Q. Had gotten beyond here? A. Yes, sir.

Q. You were going to let this train go over? A. Yes, sir.

Q. What were you doing? The exact thing you yourself were doing? At the time you saw the man, what were you doing, actually doing? A. I had my hand on this signal lever to put it back which I had to do before I could close my "D" rail for the Newark train. While standing in a position something similar to this, with my hand on the lever, waiting to get the latch down I saw this man come over from the station, and seen the train was in motion. Of course, this happened very quickly. As the train was in motion I watched his progress, curious to know whether he would get on safely or not.

Q. Then you were not looking toward Elizabeth? A. I was not looking anywhere, but my eyes were glued on that man after I first saw him.

Mr. Miller: Thank you; that is all.

Re-cross examination by Mr. David:

Q. Did you get out of the towerhouse that night? A. You mean at the time of the accident?

Q. That night? A. Oh, yes; I went home that night.

Q. What time? A. Eleven o'clock.

Q. Is that the first time you left the towerhouse that night after the accident? A. No, no. I left the tower house two or three times after the accident. 10

Q. When did you first leave the towerhouse after the accident? A. I can't recall the exact time.

Q. Well, as near as you can? A. Well, now, let us see. The accident happened around 7:26, or '28. I think I left the tower before eight o'clock.

Q. Where did you go?

Mr. Miller: Is that important, Your Honor? It seems to me this is far afield. 20

The Court: It may not be important. It is testing the witness. I will allow it.

Q. It may be important. Where did you go? A. I don't recall but I have an idea it was to the newsstand.

Q. Where was the body then? A. I didn't see the body at any time.

Q. Did you see the body at any time? A. Yes.

Q. When? A. Just as the accident happened. It laid down below my tower window right directly in front. 30

Q. The train was between you and the body, wasn't it? A. Yes, sir, but the cars where he fell between, that is where he was lying after the train stopped gave me a view in a general way of the body there. Of course, I will admit I didn't have any desire to take a detail view of it.

Mr. David: That is all.

The Court: That is all. 40

FERDINAND DENCKLAU, produced as a witness, on behalf of the Defendant, being duly sworn on his oath, according to law, saith:

Direct examination by Mr. Miller:

10 Q. Mr. Dencklau, what is your business? A. Conductor Central Railroad of New Jersey.

Q. On the night of June second, 1916, you were at the Elizabethport Station? A. I was.

Q. Was your train there? A. Yes, sir; it was.

Q. You were in command of the Newark train that was lying here on the Newark track? A. Newark track; train 454.

Q. That is the train we have been talking about here, going to Newark after train 269 pulled away?
20 A. Yes, sir.

Q. Did you see train 269 come in? A. I did.

Q. Do you know if anybody got on it? A. There was people got on and people got off.

Q. What did you do? A. My train came in on time, as near as I can remember, and I had a connection with 269, and 269 wasn't in.

Q. Yes? A. So I walked over to the station called out the train to get the passengers off the 269 for my train, 450.

30 Q. Look at that map, and point, where you were standing, if you can. A. I was standing right between the baggage room and the station, on the concourse right outside of the shed.

Q. You have your finger inside the shed. A. Here is the baggage room.

Q. Yes, and that dotted line is the outline of the shed. A. I was away over in here (indicating).

Q. Just mark that in pencil with "D" for your initial.

40 (Witness does so.)

Q. And what did you do? A. Wait there and got the passengers off that train for my train for Newark.

Q. What were you doing, anything? A. No, sir; just watching that train.

Q. Did you see 269 start? A. Yes, sir; I did.

Q. Did you notice the crew of 269 before it started? A. I seen the crew before they started as they came in loading their passengers.

Q. Which members of the crew did you see? A. I seen the baggage porter and brakeman, and I seen the conductor of the train.

Q. Do you know Mr. Dennis, the conductor? A. Yes, sir; I do.

Q. Where did you see him, on the ground, or on the car? A. On the ground.

Q. Did you see anybody else? Any other member of the crew? A. That was all I seen.

Q. I see. Now, do you remember that train starting out? A. Yes, sir.

Q. Now, before that train started, or just as it started, I want to know whether you can tell us whether there was anybody attempting to get aboard 269 at the rear and of the first car or whether you saw anybody in the neighborhood, in the vicinity, of the rear platform of the first car, as it was there, going toward the train? A. I didn't see anybody.

Q. Were you looking in that direction? A. I was looking right there in front of it—between right where I was standing. I was looking right at that train.

Q. As I understand, you had been looking at the baggage porter putting the trunk on? A. I seen him put the trunk on.

Q. Now, did you see Mr. Ploeser this night? A.

I didn't; no, sir; not until I seen him hanging on the car.

Q. Well, now, just tell us about what you saw of Mr. Ploeser? A. After this train had started from the station, the passengers had just cleared the platform.

10

(Answer repeated by the stenographer.)

Q. What do you mean by that? A. Everybody had got on practically, on that. And the train started moving and I turned around to see where 130 was, that was my connection from—

Q. Which track? A. 130 was coming West going East.

Q. Coming from Elizabeth, going toward Jersey City? A. Jersey City; I turned around this way

20 to see if it was in sight; and just as I righted my head again I saw this man attempting—Mr. Ploeser attempting to get on the train.

Q. When you first saw him where was he? A. He had one hand and the right foot on the step.

Q. Yes. A. And looked to me as if he made a grab with his left hand to grab the rail and missed and started to go back, and as he did I hollered and run for him at the same time, and just as I got to him to catch him he dropped in front of my

30 hands.

Q. What did you do then? A. I still hollered and the train stopped.

Q. We want to be very sure of this, Mr. Dencklau, I want you to search your memory and see if you can tell us whether you had seen that train start, and whether you know whether Mr. Ploeser was attempting to get on that rear platform before the train started? A. Mr. Ploeser was not there; there was no one there.

40

Mr. Miller: Cross-examine.

Cross-examination by Mr. David:

Q. Now, when you got to where he was where was the platform of the car that he had attempted to board? A. Well, of course I didn't mark it, but I practically seen—when I see him—that the platform—when I saw him swinging, start swinging, and lose his balance, he was just about opposite the baggage room. The train had just about moved a half car with him. 10

Q. And you say you saw him first attempt to grab the handle with his left hand? A. No, I did no such thing. I said right hand.

Q. I understood you to say that he then made a grab at the handle with his left hand. A. That is the way it appeared to me.

Q. Did he have anything in his left hand? A. He had packages in his hand. 20

Q. In his left hand? A. I couldn't see whether it was in his hands or in his arm, had had bundles there.

Q. In which hand or arm? A. In his left.

Q. And that is the hand you say he tried to grab the handle with? A. Yes, sir.

Q. And was he on the step at that time? A. He had only one foot on the step.

Q. Well, had he raised up from the ground? A. His left foot was off the ground; yes. 30

Q. His left foot was off the ground? A. Off the ground.

Q. Was his right foot off the ground? A. His right foot was on the step.

Q. And his left foot was off the ground? A. Yes, sir; his left foot was off the ground; holding with one hand.

Q. Is that the first you saw him that night? A. That is the first I saw him that night; yes, sir. 40

Q. Where were you looking immediately prior to the time the train started? A. Before the train started?

Q. Immediately prior to the time the train started where were you looking? A. You mean just before the train started?

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Q. Just before the train started, yes. Where were you looking? A. I was looking at that train until the train started. In fact he started to pull out of the station and was on his way.

Q. And you didn't see any passenger at all on that passenger platform? A. No, sir; I didn't.

Q. You don't know where Mr. Ploeser came from? A. No, sir; I don't.

Q. What kind of a hat did he have on, do you know that? A. That I don't know.

20

Q. At the time the train started, the passengers had cleared the platform and they were all practically on or off? A. Yes.

Q. What do you mean by all practically on or off? A. I mean by that that the train was cleared and the people that came off the train were on their way to their homes or somewhere else. And the people to get on the train was on. That the train was cleared to move.

30

Q. From the position in which you stood to look, if there was anybody on the platform of the station there at the time the train started, you would have seen them, wouldn't you? A. Certainly.

Q. Did you see the brakeman Smith on the ground that night? A. I don't remember seeing him.

Q. At any time? A. I don't remember; I couldn't positively state.

Mr. David: All right.

40

JAMES J. SULLIVAN, produced as a witness for the Defendant, being duly sworn on his oath, according to law, saith:

Direct Examination by Mr. Miller:

Q. Where do you live? A. I live 1038 Flora street, Elizabeth. 10

Q. What is your occupation? A. I am flagman of the Central Railroad, B. and O. freight.

Q. May I inquire where you were on the evening of June second, 1916, if you remember? A. I was at the corner of the C. R. R. station, Elizabethport.

Q. What were you doing there? A. I was in conversation with a gentleman.

Q. Who was the gentleman? A. Mr. Cavenaugh.

Q. Mr. Cavenaugh, the gentleman back there among the witnesses? Yes, sir. 20

Q. Will you look at this picture, Mr. Sullivan, and refer you to Exhibit D No. 2, and see if you can point out on it where you were? A. Right at the little "insill" here.

Q. Just mark on that with the pencil. A. There is a window comes down here.

Q. In other words, you were about here in the station, is that it (indicating on the map)? A. Yes, sir. 30

Q. And that is your mark is shown on the photograph. Do you remember noticing 269 that night? (Question repeated by the stenographer.) A. I wasn't paying no attention to her, no.

Q. Did you see Mr. Ploeser? A. Yes, sir.

Q. Where was Mr. Ploeser when you first saw him? A. He was attempting to get on the train.

Q. How far from the train was he when you first saw him? A. Why, he was making a motion-to get in the step. 40

Q. Making a motion? When you first saw him did he have hold of any part of the car? A. He had hold of the grab irons, and the hind handle.

Q. Did he have either foot on the car? A. He had his left foot on, and then his right one, and he slipped with his right foot.

10

Q. I see. Now, do you know whether or not the train was standing or moving when you saw him? A. It was moving.

Q. Had you seen it move before you saw Mr. Ploeser? A. Yes, sir.

Q. How long before you saw Mr. Ploeser? A. It all happened in about four seconds, I guess.

Q. About four seconds. Do you know how far the train had moved from where it was when it was standing before you saw Mr. Ploeser attempting to get on? A. I should judge about three feet.

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Q. About three feet. In other words it went a very short distance? A. Yes, sir.

Q. When you saw him it was actually moving? A. Yes, sir; actually moving.

Mr. Miller: Cross-examine.

Cross-examination by Mr. David:

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Q. As I understand it, you were standing on the north side, you were standing on the west side of the station? A. Yes, sir.

Q. Right near the "Men's Room"? A. Yes, sir.

Q. And looking in which direction? A. Well, my attention was called by Mr. Cavenaugh.

Q. No. Looking in which direction? A. I was partly looking down when my attention was called.

Q. Did you see anybody running for the train that night? A. No, sir.

40

Q. Or walking fast? A. No, sir.

Q. Did you see the different people getting on and off the platform of the station? A. Paid no attention to them; no, sir.

Q. First you saw Mr. Ploeser was when he already had one foot—his left foot—on the first step of the platform? A. Yes, sir. 10

Q. And was in the act of putting his other foot on that step? A. Yes, sir.

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

Q. I want to make sure about that, Mr. Sullivan. The first time you saw Mr. Ploeser that night he had his left foot on the step? A. Yes, sir.

Q. And his right foot he was about to place on the step? A. Yes, sir.

Q. And you don't know where he came from? 20 A. I don't know where he came from.

Q. Or how long he was there? A. No, sir.

Mr. David: That is all.

JOSEPH MCGEADY, produced as a witness on behalf of the defendant, being duly sworn on his oath, according to law saith: 30

Direct examination by Mr. Miller:

Q. Mr. McGeady, where do you live? A. On that night I was——

Q. Where do you live? A. Bayonne, New Jersey.

Q. What is your occupation? A. Engineer.

Q. On the Jersey Central? A. On the Jersey Central. 40

Q. How long have you been connected with us? A. Sixteen years.

Q. Were you at the Elizabethport station on the night this accident occurred? A. Yes, sir.

Q. Where were you? A. Sitting on the baggage truck.

10 Q. Where was that? A. Why, just North of the baggage room.

Q. May I take this Exhibit D No. 2, and see if you can identify your position on that? Mark it with a pencil. A. (Does so.)

Q. Somewhere in that vicinity? A. Yes, sir; near that post there.

Q. At that point there. Did you see 269 come in? A. Yes, sir.

20 Q. What were you doing there at that station there that night? A. Waiting for train 130.

Q. To go in which direction? A. Go East.

Q. Go toward Jersey City? A. Yes, sir.

Q. Did you notice 269 start up this night? A. Yes, I noticed her in the station.

Q. Did you notice her start? A. Yes, sir.

Q. Now, did you see Mr. Ploeser that night? The man that was killed? A. The man that was killed; yes, sir.

30 Q. When you first saw him where was he? A. He was about going toward the train, a few feet away from the train.

Q. In which direction was he coming from? A. From the baggage room. That is in that direction.

Q. He was a few feet away from the train? A. Yes, sir.

Q. When you saw Mr. Ploeser a few feet away from the train, about how far—if you can give us an approximation—was he from the train? A. I

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should judge he was about five or six feet, going toward the train.

Q. Was he moving? A. What is that?

Q. Was he moving? A. Yes, sir.

Q. Do you know what the train was doing at that time? A. What the train was doing?

Q. Yes? A. It was moving.

Q. Train was moving? A. Yes, sir.

Q. Had you seen it start before that? A. Did I see it start?

Q. Yes? A. Yes, sir.

Q. As I understand it when you saw Mr. Ploeser he was coming from the general direction of the baggage room going toward the train and he was five or six feet away from the train? A. Yes.

Q. Now, are you sure that at that time the train was moving? A. When I saw him first the train was moving.

Q. What did you see happen then? A. Well, I noticed this man. He was a stout man; very stout. And as a railroad man, I pretty near knew what was coming. I saw him go up there and grab hold of these rails; he had something in one hand and the other hand was clear. And he tried to board the train. He had one foot on one step, and I don't believe he got the second foot up, the right foot, and he went along on that foot, and I could see him gradually his hand was slipping down off the rail, turned his body around, and throwed him under the car.

Q. Then what? A. The crowd around there all gave a moan, and they said "Oh," and I run out toward the train and I gave a signal like this way to the conductor, "pull your emergency." The conductor stood in between the second and third car,

and I don't know whether it was my signal he saw or whose.

Q. The train then stopped? A. The train then stopped.

Q. And this man was under the train? A. The second—first car had run directly over the body.

10

Q. Which car? A. He was caught with the first trucks of the second car, and that car passed right over his body. He laid in between when he was picked up, between the second and third car.

Mr. Miller: Cross-examine.

Cross-examination by Mr. David:

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Q. Will you indicate again how he was holding on the time he was trying to hold his foot hold? A. It seemed to me he had hold with the left hand, on the rear end of the first coach; that is the way it appeared to me. I could see the white sleeve go up like that, and his hand slide down.

Q. That was the left hand? A. Yes, sir; it seemed to be the left hand.

Q. Are you sure of that? A. Yes, sir.

Q. Did you shout at him at all? A. At the man? No, sir.

30

Q. Didn't you realize that a very heavy man was attempting to board a moving train? A. I was sitting over here at the truck.

Q. How far away is that? A. Well, that truck would lay about eight feet or ten feet from the first rail on track three.

Q. Yes. Couldn't he hear your voice if you shouted? A. I guess he could if I shouted loud enough.

40

Q. You say you knew as a railroad man what was coming? A. Yes, sir.

Q. Why didn't you shout? A. Too late.

Q. When you saw him five or six feet south of the train? A. Yes, he was going toward the train.

Q. And you say it was too late to shout then? A. Too late, yes. 10

Q. Why did you hesitate before you made your answer when you were asked was the train moving when he attempted to board it? Why did you hesitate before you said the train was moving? Were you in doubt about it? A. No, sir.

Q. You did hesitate? A. I knew this train was moving.

Q. You did hesitate, didn't you? A. Did I hesitate? I didn't notice it if I did. 20

Mr. David: That is all.

JAMES HENRY BROWN, produced as a witness, on behalf of the Defendant, being duly sworn on his oath, according to law, saith:

Direct examination by Mr. Miller: 30

Q. Mr. Brown, where do you live? A. 225 Lembeck avenue, Greenville.

Q. Jersey City? A. Jersey City.

Q. What was your occupation? A. Seal Clerk on the Central Railway.

Q. Were you at the Elizabethport Station on the night Mr. Ploeser was hurt? A. I was, sir.

Q. Where were you, Mr. Brown? A. I was sitting on one of the baggage trucks, waiting. 40

Q. Near where Mr. McGeady was, or don't you know Mr. McGeady? A. I don't know Mr. McGeady.

Q. Will you look at this photograph, D. 2, and tell me if you can point out where you were sitting? A. Somewhere, just here, sir.

Q. Mark it with your pencil. A. Yes, I put "B."

Q. "B," if you please. A. (Witness does so.)

Q. Somewhere in that vicinity? A. Yes, sir.

Q. What were you doing there, Mr. Brown? A. I was waiting for the 7.23 to take me to Greenville.

Q. I see. Which way were you looking that night? A. Well, I was simply sitting down idly on the truck waiting for the train coming, and my eyes were looking up and down.

Q. Did you take notice of the train going in the other direction? A. Which?

Q. Cranford train? A. I saw it come in. I saw people get off.

Q. Did you see them get on? A. I saw people get on.

Q. I suppose you were not particularly interested in that train at that time? A. No, sir.

Q. Did you see that train start? A. I did, sir.

Q. Did you see Mr. Ploeser that night, the man who was hurt? A. Certainly I did, sir.

Q. Where was he when you first saw him? A. When I first saw him he just came from behind me, you see.

Q. Yes? A. And he was in a kind of a hurry to get on the train; he was going in a slanting direction from the baggage room.

Q. From the baggage room. And how far away was he from the train at that time? A. Well, I

suppose it would be about ten or fifteen feet. Up to just this side of the first track and second track.

Q. I see. You mean by that he had not gotten to the first track yet? A. No, no.

Q. Did you see the train start? A. I did, sir.

Q. Did you see Mr. Ploeser, the man who was hurt, get on the train? A. I saw him get to the train. 10

Q. Now, had the train started before, or did it start after he got to the train? A. The train was in motion when he reached it.

Q. And you saw him from the time—— A. From the time he passed me. I was sitting like this (indicating). I suppose a carriage was over there. He came from behind; I don't know where he came from. He came in kind of a hurried way, and he was kind of smoking a cigar, and looking over his shoulder, as if saying good-bye to somebody. And he went to catch the train, in that slanting direction, and he was hurrying, and I can't call it a run; call it a fast walk. 20

Q. You say the train moved? A. Train was moving.

Q. When he got to the train what did he do? A. He was with his back to me, so I couldn't say.

Q. You didn't notice that particularly. What did you see happen? A. Well, as a matter of fact, I was looking down the train, and I heard a shout and I saw a body fall in between the first and second carriage. Well, it fell between the first and second carriage, and I stood up stupefied or petrified for a moment like that (indicating). 30

Q. Was that the man you saw fall, you saw go hurrying toward the train? A. Certainly, sir. There was nobody else in sight.

40

Q. The train stopped again after that? A. Directly the shouting started, of course, there was commotion and the train stopped.

Mr. Miller: Cross-examine.

10 *Cross-examination by Mr. David:*

Q. Just where were you standing? A. I was sitting on the baggage truck, sir.

Q. Where was the baggage truck? A. Just here, sir, where I have marked ("B").

Q. And that is somewheres east of the baggage room? East and north of the baggage room, a little advanced? A. I can't quite get the direction.

20 Q. Here is the Long Branch Division? A. Yes.

Q. There is the Newark branch? A. Yes.

Q. Here is the main line? A. I see, sir.

Q. Here is the station? A. Yes.

Q. And then "Men's" side, and "Women's" side? A. Yes.

Q. Platform of the station? A. Yes.

Q. Here is the baggage room? A. Yes, sir.

Q. Where were you standing? A. I was sit-
30 ting on the truck somewhere around about here (indicating).

Q. Right there? A. Somewhere around about that.

Q. So that is north and east of the baggage room? A. Yes, sir.

Q. Now, do you say that the gentleman that you saw came from behind you? A. Well, I don't know where he came; he must have come from behind me.

40

Q. You say he came from behind me? A. Sure he did.

Q. He came from south of you? A. Sure.

Q. You were facing toward Newark? A. I was facing the train; square faced.

Q. Then you were sitting facing the train and the gentleman you saw came from in back of you? A. Sure; he must have done it. 10

Q. He could not have come from in front of you? A. No.

Q. That was impossible? A. Absolutely.

Mr. David: That is all.

Mr. Miller: That is all.

20

EDWARD J. CAVANAUGH, produced as a witness, on behalf of the defendant, being duly sworn on his oath, according to law, saith:

Direct examination by Mr. Miller:

Q. Mr. Cavanaugh, your position is what, sir? A. Foreman of the "E. port," Freight Department.

Q. Jersey Central Railroad? A. Jersey Central Railroad. 30

Q. Were you on this platform on this night? A. I was.

Q. Did you see Mr. Ploeser? A. I did.

Q. You knew Mr. Ploeser by sight? A. Well, I do remember seeing Mr. Ploeser in some place before.

Q. I see. A. But only about once.

Q. Will you describe where you were? A. I

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was standing at the northwest corner of the station.

Q. Northwest. Station building you mean? A. Station building; main building.

Q. Mr. Sullivan was alongside of you there?
10 A. He was.

Q. Did you see this train come in? A. I did.

Q. Did you see it start? A. I did.

Q. Now, where did you see Mr. Ploeser? A. At the time of the train starting?

Q. At any time? I want to know everything you saw that night. A. I didn't see Mr. Ploeser until the train had started.

Q. Then what did you see? A. I saw him at a distance of, well, I should say he was on track
20 one.

Q. Track one? A. Yes, going in a northwesterly direction toward the rear platform of the combination train.

Q. First car of the train? A. First car of the train; baggage end.

Q. When you saw him on track one, going toward the train, was the train standing or moving? A. Moving.

Q. What did you see happen? A. Well, looking
30 at him, I was looking at his back, and he was in a hurry to make that train.

Q. I see. A. I called Mr. Sullivan's attention to it at about the time he was boarding the train, trying to board the train, and the next thing I saw was him turn completely around, and drop between the rear truck of the combination car and the first truck of the second coach.

Q. What fixed in your mind, Mr. Cavanaugh,
40 that this train was moving when you saw Mr. Ploeser on track one? A. Why, the fact that I

was about ready to go over the main line toward the shop, and I had started at the time the train was moving.. Mr. Sullivan was with me.

Q. You mean when the train got by you were going to walk over? A. I was going over the main line to go into the shops.

Q. Were you sitting down before that? A. No, sir; I was standing up.

Q. Did you start as the train started? A. Yes, sir; as the accident occurred, I hollered just as loud as I could, trying to attract the attention of the people in the train, and the train came to a standstill. A matter of seconds, and I didn't watch any more of the accident at that time. I turned around and walked away. I saw enough of it.

Mr. Miller: Cross-examine.

Cross-examination by Mr. David:

Q. How far had you walked before the train started? A. I didn't walk at all before the train started.

Q. How far had you walked before the accident took place? A. I walked from the train that was standing on the Newark tracks to the northwest corner of the station; main station building.

Q. Then you stood there, didn't you, with Mr. Sullivan? A. I did.

Q. When did you start to walk? A. I started to walk as 269 was leaving the station.

Q. How far did you walk? A. I didn't walk the length of the wood platform in front of the station.

Q. How far is that? A. Well, I should judge about it might be six feet.

Q. Did Mr. Sullivan walk with you? A. He was going with me, yes.

Q. You first saw Ploeser after the train had started, you say? A. I did.

10 Q. And how long had you been at the northwest corner of the station? A. I was there from the moment 269 came into the station, until a few seconds after it pulled out.

Q. You were there before 269 came in? A. I was there.

Q. And you were there until it pulled out? A. Yes, sir.

Q. And did you have a full view of the entire platform in front of the station? A. I certainly

20 did; yes, sir.

Q. You could see everybody that was there? A. Yes, sir.

Q. And you didn't see Mr. Ploeser? A. I didn't see Mr. Ploeser.

Mr. David: That is all.

Redirect examination by Mr. Miller:

Q. Was there a crowd of people there? A. No, there was nobody there. As the train 269 moved,

30 there was nobody there outside of Sullivan and myself.

George P. Renninger, produced as a witness, on behalf of the defendant, being duly sworn on his oath, according to law, saith:

Direct examination by Mr. Miller:

Q. Mr. Renninger, where do you live? A. Woodlyn, Camden County, New Jersey.

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Q. You are employed by whom? A. Prudential Insurance Company.

Q. Have you ever been employed by the Central Railroad Company? A. No, sir.

Q. Ever had any connection with the Central Railroad Company of New Jersey? A. No, sir. 10

Q. Were you a passenger on this train? A. Yes, sir.

Q. Which car were you on? A. Third car.

Q. Which side of the car? A. Side toward the tower; or away from the station.

Q. Did you see Mr. Ploeser? A. Yes, sir; I did.

Q. Did you know Mr. Ploeser? A. I can't say that I did. I saw him before, but I didn't know him.

Q. You have lived in this community before, did you? A. I lived then in Roselle Park. 20

Q. Where did you see Mr. Ploeser, Mr. Renninger? A. I saw him what I judged between the depot and the newsstand or freight shed, whatever that might be.

Q. Look at this photograph, here, number two, and see if you can point out thereon, where he was? A. I should say I was beyond this.

Q. You mean you were further east? A. I was further east. 30

Q. Look at the map. Maybe you could point out the map. Here is the station here; here is the covered platform; here is the baggage room; here is the newsstand, and here is the main line track. A. We were coming from here.

Q. You were coming from the right of the map? A. Yes, sir.

Q. On track two? A. We were down about here, I should judge.

40

Q. That is the car you were on? A. Yes, sir; this is the car I was on.

Q. Suppose you mark that "R". A. Go ahead. That is about where I was.

Q. Where was he? A. I think I was further
10 down than that.

Q. You mark it yourself. A. About here, looking this way (indicating).

Q. Yes. A. I sat in the corner of my seat, reading a Saturday Evening Post, before the train pulled in, looking out toward the outside, and when the train came to Elizabethport—as most persons would do, I dropped my paper and looked out of the windows and saw a gentleman there with a Panama hat on, a hat mostly worn by German
20 folks. Not caught in the centre, and turned up all around. And that attracted my attention to him because I have a peculiarity of always seeing those people are Germans, and I watched this man.

Q. Go ahead. A. He also had a bundle in his hand.

Q. Yes. A. I believe that was in blue paper with a white string.

Q. Did you see that bundle after the accident? A. I saw that bundle after the accident.

30 Q. Go ahead. A. As the train started this man started for the train.

Q. Yes. A. In a fast motion.

Q. Go ahead. A. And then I lost view of him.

Q. Did you see him after the accident? A. Yes, sir; after the——

Q. The man you saw after the accident, where did you see him? A. Under the car.

Q. Was the man you saw after the accident under the car, the man that you had seen standing
40 over there on the station? A. Yes, sir.

Q. Who started for the train as the train was starting? A. Yes, sir.

Q. You have no connection with the Central Railroad? A. No, sir; none whatever.

Q. You are here under subpoena? A. Yes, sir.

Q. You gave your name to the conductor that night? A. Yes, sir; I did; I gave him my card. 10

Mr. Miller: Cross-examine.

Cross-examination by Mr. David:

Q. Where was the man when you first saw him? A. I should judge in here, somewhere. Right in here (indicating). Of course the view you get would not permit me to say——

Q. Indicate on the map where he was. A. In here. Somewhere in here (indicating). 20

Q. Point with the pencil. A. In here somewhere. I couldn't tell you whether he was standing here or there. He was right in here somewhere.

Q. You say he was standing? A. He was standing; yes, sir.

Q. And you cannot tell whether he was standing at the point I indicate just in front of the bay window, or office? A. No, I can't, because the focus of my eye would not permit me to see that. 30

Q. Or you could not tell whether he was standing at a point opposite the west end of the station? A. No, he was closer to the building than where you are pointing now.

Q. He was closer to the building, but you cannot say whether he was at the office, or at the extreme end of the platform? A. No, I can't tell that.

Q. Did you see Mr. Dowdell get on the train? A. Mr. Dowdell? 40

Q. Yes. A. No, I didn't.

Q. Do you know Mr. Dowdell? A. I certainly do.

Q. What car were you in? A. Third car.

Q. You didn't see Mr. Dowdell get on at all? A. No, I didn't.

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Q. Did you see the conductor get on? A. I didn't.

Q. Did you see anybody get on? A. Well, there was a number of people got off my car and got on. Two or three I should say got on.

Q. And at the time you first saw this man the train was moving? A. No, he was standing there when the train pulled in.

Q. Oh, you saw him when the train pulled in? A. Yes, I did.

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Q. Where was he standing then? A. Where I told you.

Q. And you don't know whether it was in front of the office or at the extreme end of the station? A. No, I can't tell that.

Q. How long did you see him standing there? A. While the train stood in the depot.

Q. He stood there all the time the train stood in the depot? A. He did.

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Q. After the train pulled out—— A. Then he moved.

Q. (continued) ——he started to walk toward it? A. He moved.

Mr. David: That is all.

Mr. Miller: Defendant rests.

DEFENDANT RESTS.

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Hartman Crammes—Recalled in Rebuttal—For Plaintiff—Direct—Cross

PLAINTIFF'S REBUTTAL TESTIMONY.

HARTMAN CRAMMES, recalled.

Direct examination by Mr. David:

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Q. Mr. Crammes, did you see the conductor at the time the train started? A. At the time the train started?

Q. Yes? A. Yes, sir.

Q. Where was he? A. In the forward end of the coach behind the combination.

Q. Inside? A. Yes, sir.

Q. How far from you? A. Just a few feet.

Q. And you are sure that was at the time the train started? A. The time the train started; yes, sir.

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Cross-examination by Mr. Miller:

Q. You mean he had just gotten in the door? (Question repeated by the stenographer.) A. No. I saw him get in the door long before the train started.

Q. How long before, a minute? A. No. Not a minute. I should judge about fifteen seconds, probably twenty.

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Q. Fifteen or twenty seconds? A. About that.

Q. After the accident you and the conductor had a conversation, didn't you? A. No, sir; I didn't speak a word to the conductor.

Q. Don't you know the conductor asked you if you had seen the accident; if you saw it to give him your name? A. I beg pardon; the conductor didn't address me any way, shape or form.

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Q. You deny that? A. Yes, sir.

Hartman Crammes—Recalled in Rebuttal—For Plaintiff—Redirect—Recross

Q. Didn't you say to the conductor, right there, there was no use giving him your name because you didn't know anything about the case? A. I positively did not.

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Mr. Miller: That is all.

Redirect examination by Mr. David:

Q. You were in the second car? A. Yes, sir; the one behind the smoker.

Q. And on the first seat? A. Seat running lengthwise.

Q. Which end of that car did the conductor board? A. Which end of that car did the conductor board?

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Q. Yes? A. Rear end.

Q. And he had come all the way through the car and got opposite you?

Mr. Miller: I object to that.
The Court: Why?
Mr. Miller: It is leading.
The Court: Allowed.
Mr. Miller: Exception.

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A. He did.

Mr. David: That is all.

Recross-examination by Mr. Miller:

Q. How did you happen to be here yesterday and today? A. I was subpoenaed.

Q. Who subpoenaed you? A. Mr. David, I be-

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lieve. I haven't any knowledge.

Q. Did you send any word to Mr. David? A. No, sir.

Q. That you knew about this case? A. No, sir.

Q. Did you tell anybody connected with Mr. David, or connected with the Ploesers you knew about this case? A. No, sir; I don't know anybody connected with the Ploesers. 10

Q. You don't know anybody? A. Only one I really do know is Mr. David. I know him ever since I was a boy.

Q. You say you didn't tell him about it? A. No, sir; I did not.

Q. Haven't you talked with him about it before you went on the witness stand? A. I have; yes, sir. 20

Q. Did you tell him what you know? A. Not all I know; no, sir. Just facts he asked me.

Q. Just the facts he asked you? A. Yes, sir.

Q. How did Judge David come to talk to you about the case? A. He made an appointment with me.

Q. He made an appointment with you? A. Yes, sir.

Q. Had you sent word to him in the meantime? A. No, sir. 30

Q. He made an appointment with you, and you hadn't told anybody you had seen the accident? A. Yes, sir; I had.

Q. But nobody connected with Judge David, or the Ploesers? A. Not as far as I know.

Q. Do you know Mr. Carey, the constable here? A. Yes, sir. I know Mr. Carey, the constable here.

Q. He is an old friend of yours? A. I have known him quite a number of years.

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Q. How many years have you known Mr. Carey? A. I knew him, but not to speak to him, when I was working on the trolley cars.

Q. You have known Judge David ever since you were a little boy? A. I should judge ever since I was fourteen or fifteen years old.

Q. Did you know Mr. Carey prepared this case and investigated it? A. I have no knowledge of it.

Q. Did Mr. Carey talk to you about the case? A. Yes, sir.

Q. He came to you first? A. He came to my house.

Q. He came to your house, and he told you? Didn't he tell you he represented Judge David? A. Sir?

Q. (Question repeated by the stenographer.) A. Well, no; I can't say that he did.

Mr. Miller: That is all.

Reredirect examination by Mr. David:

Q. The man you told your story to was Mr. Carey? A. Yes, sir.

Q. And did you tell him the same story you have told on the stand?

Mr. Miller: Wait a moment, it is leading,

A. I———

The Court: Overrule the question.

Mr. David: They opened the door.

The Court: It did not lead to anything.

Q. The only man you told your story to was Carey, is that right?

Mr. Miller: I object——

The Court: Allow the question.

Mr. Miller: Exception; on the ground it is leading.

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Q. (Question repeated by the stenographer.) A. Yes, sir; the only man I told the story to was Carey.

Q. And the next you knew you got a message from me to call and see me? A. Yes, sir.

Q. Did you come? A. Yes, sir.

Q. Did you tell me the same story you have told yesterday and today, on the witness stand?

Mr. David: I object.

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The Court: Question overruled.

Mr. David: I ask an exception.

The Court: Exception allowed.

Exception allowed, sealed accordingly.

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Judge.

Mr. David: We rest.

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DEFENDANT'S SUR-REBUTTAL TESTIMONY.

SOLOMON N. DENNIS, recalled.

Direct examination by Mr. Miller:

Q. Mr. Dennis, you swore yesterday you were the conductor? A. Yes, sir.

Q. Of this train 269? A. Yes, sir.

Q. Have you ever seen this man, who was on the stand last, before yesterday? A. Yes, sir.

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Q. Did you see him on the train that night? A. I did.

Q. Did you have any conversation with him? A. Yes, sir.

10 Q. What did you ask him? A. I asked him for his name and address.

(Answer repeated by the stenographer.)

Q. What did he say to you? A. He said: it is no use giving it, because I didn't see the accident.

Mr. Miller: Cross-examine.

20 *Cross-examination by Mr. David:*

Q. Why didn't you say that on the stand yesterday? A. I wasn't asked the question.

Q. You didn't know he was going on the stand this morning, did you? A. I didn't suppose——

Mr. Miller: I object to that.

The Court: I will allow it.

A. No, sir.

30 Q. You didn't know he was going on the stand this morning? A. No, sir.

Q. You didn't know he was going on the stand and saw you were in the second car at the time the train was started? A. No, sir.

Q. You don't know why your lawyer didn't ask you these questions yesterday? He is the lawyer for the railroad company? A. Yes, sir.

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CHARLES E. MILLER, counsel in the case, being duly sworn on his oath, according to law, saith:

(*By Himself*):

Q. If your Honor please, the reason I didn't put Mr. Dennis on the stand and ask him that question yesterday was this: immediately after court adjourned yesterday afternoon—— 10

Mr. David: I object to an explanation. I would rather he used the orderly course of questions and answers.

The Court: Ask the question.

A. Ask myself questions?

The Court: Yes. 20

By Mr. Miller:

Q. Why did you not put Mr. Dennis on the stand yesterday and ask him about the conversation he had with Mr. Crammes?

Mr. David: I object to it.

The Court: Why?

Mr. David: On the ground it is a self-serving explanation, and the reason why counsel puts on or keeps off a witness is a 30 matter for the jury to infer, and it is not competent for counsel to tell why he puts a witness on or keeps him off.

The Court: Except you asked the last witness that. I will allow it.

Mr. David: An exception.

Exception allowed, sealed accordingly.

G. S. SILZER,
Judge.

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A. The reason I did that was I never heard of Mr. Crammes until after Court adjourned yesterday afternoon. When Court adjourned Mr. Dennis, the conductor, sent word to me he wanted to talk to me. As soon as I saw him after Court adjourned, I think it was at the court house, going downstairs, he told me about the—

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The Court: Not what he told you. As a result of what he told you.

A. As a result of what he told me I put him on the stand this morning to explain what Crammes said to him.

Mr. Miller: Cross-examine.

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Cross-examination by Mr. David:

Q. When you came into Court this morning, and until the time you rested your case you had no knowledge that Mr. Crammes was going on the stand in rebuttal, did you? A. No, sir.

Q. And then if Crammes had not gone on the stand in rebuttal, Dennis, after you had closed your case, could never have told what he has just told on the witness stand?

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Mr. Miller: I object.
The Court: Question allowed.

A. I think he could have told it.

Q. Did you not close your case on defense before you asked the question? A. That is true. I had forgot it.

Q. Your explanation is you had forgotten what

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you were told yesterday, therefore you didn't ask it? A. No; that is not my explanation.

Q. What is your explanation? A. My explanation is I didn't ask him about it yesterday because I didn't ask him about it yesterday. 10

Q. Why did you not put Dennis on the stand this morning before you closed your case, to swear to what he has just sworn to on sur-rebuttal? A. I think that in the first place the actual reason why I didn't put him on was it had slipped my mind. And I had a further reason. It seems to me that in a case of this character it was for a jury to decide whether Mr. Crammes was telling the truth, and I didn't want to get into a mess like that.

Mr. David: All right. 20

A. But when Mr. Crammes got on the stand, it seems to me Mr. Crammes did not impress me as being altogether accurate and I thought it thus became my duty to put Mr. Dennis on the stand and let the jury have all the light they could about Mr. Crammes, because I was not favorably impressed about Mr. Crammes. And that is why I put him on the stand.

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SOLOMON N. DENNIS, re-called.

Further cross-examination by Mr. David:

Q. I notice, Mr. Dennis, you appear to be lame; how long have you been lame?

Mr. Miller: I object.

The Court: Allow the question.

A. I will explain.

The Court: How long have you been lame? 40

A. Not at all. It is an attack of rheumatism; about three days. I have rheumatism.

Q. First time you have had it? A. I have had it in my other leg years ago. At the present time I have it here.

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Mr. David: You have my sympathy.

The Court: Both sides rest?

Mr. David: We rest.

Mr. Miller sums up the case for the Defense.

Mr. David sums up the case for the Plaintiff.

Court's Charge to the Jury.

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NEW JERSEY SUPREME COURT,

UNION COUNTY COURT.

January Term, 1917.

EMMA PLOESER, Executrix, vs. CENTRAL RAILROAD COMPANY OF NEW JERSEY, a Corporation.	Action at Law. No. 6 in the List.

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Transcript of Court's Charge to the jury, by HON. GEORGE S. SILZER, Circuit Court Judge, on February 1st, A. D. 1917, at 12.05 P. M., in the Union County Court House, City of Elizabeth, New Jersey, in the above entitled matter.

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Gentlemen of the Jury: On the second of June, 1916, about seven-thirty at night, Mr. Ploeser, the deceased, while boarding a train at the Elizabethport Station, was thrown from the train and received injuries which resulted in his death; and the widow now sues under the statute for damages. 10

This action is based upon our so-called "Death Act," which reads as follows:

> "That whenever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who, or the corporation which, would have been liable if death had not ensued, shall be liable to an action for damages." 20

So, you see, the action is based upon a wrongful act or neglect of the defendant, and the allegation in the plaintiff's state of case or complaint is substantially this:

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> "That while the said train of cars was at such stop at the station, Joseph Ploeser did carefully and lawfully attempt to board the first car of the train. That when the said Joseph Ploeser had gotten on the first step of the first car, on the rear platform, and before he was safely and securely on the train, and while he was in the act of going up the remaining steps and into the said car, the train suddenly started; which 40

> sudden starting then and there threw Ploeser off the step and caused his injuries and death."

And that is the wrongful act or neglect which the plaintiff charges in this case against the defendant. The burden of proof is upon the plaintiff; the plaintiff must satisfy you by a fair preponderance of the evidence that there was some wrongful act or neglect on the part of the employees of the railroad company.

When a train comes into the station it is the duty of the railroad company to afford the passengers a reasonable length of time to board the train. Or, to put it in another way, to use reasonable care to give them a sufficient opportunity to board the train. And if that has been done, then, of course, they have performed the duty in that particular. They must also exercise due care to ascertain whether all the persons who are waiting to take the train have safely boarded the car once they have started to get aboard the car. And our Courts have stated that rule in this way:

> "A passenger is entitled to a reasonable time in which to get aboard the train after he has been given an opportunity to do so. And if, without allowing such reasonable time, the train is started, and the passenger is injured, the railroad company is liable."

Now, you see, gentlemen, in this case the issue has been set out rather clearly in the evidence. The plaintiff claims that Mr. Ploeser came along the platform, followed closely behind other passengers who were about to board the train—I think

one witness said within a few feet—and that while he, with other passengers, were boarding the train the crew of the train negligently and carelessly started the train, set it in motion, and that that negligent and careless act threw him to the ground and caused his death.

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The railroad company, on the other hand, contends that a reasonable opportunity had been afforded all passengers to board the train; that all who wanted to board it apparently were aboard; that the signal was given to start, and that after all that was done, and after they had exercised all reasonable care for the safety of the passengers, that then, after the train had started, Mr. Ploeser boarded, or attempted to board, the train and was injured. So you see, gentlemen, you have a very definite issue here of fact and the result must depend on what you find to be the truth of the situation after you have retired to your room and considered all the testimony, and determined from that consideration what you think the truth of the situation to be.

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You must take up first, gentlemen, the question of whether the railroad company performed its duty. If the railroad company exercised reasonable care in the circumstances that existed there then there can be no recovery. Because the action is based upon the idea and theory of negligence and carelessness and wrongful act. So that if the employees of the railroad company were careful, reasonably careful, then there can be no recovery.

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You may then take up the second question as to whether Mr. Ploeser was guilty of negligence or not. If he, by his own carelessness, contributed to this injury he could not recover even if the

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railroad company was careless, because no man can recover for his own negligence.

It is also part of the law of our State, as fixed by the statute, "If a man attempts to board a train while it is in motion that he is guilty of contributory negligence and cannot recover in any action that he brings." That is the law our legislature has set down, which we are all bound by. So that if you find Mr. Ploeser jumped aboard a moving train then there can be no recovery.

If, on the other hand, gentlemen, you find the railroad company was negligent and there was no carelessness on the part of Mr. Ploeser, and he did not jump on the moving train, then, of course, you come to the question of damages.

Damages, in a case of this kind, are regulated by our statute, which reads as follows:

> "In every such action the jury may give such damages as they shall deem fair and just with reference to the pecuniary injury resulting from such death to the wife and next of kin of the deceased."

You will notice, gentlemen, that it says: "Pecuniary injury," which means simply money loss. In a case of this kind there can be no allowance made for sentiment, or sympathy, or affection or loss of the association and comfort of the husband. That is the way that the legislature has laid it down to you and me and it is what we are bound to recognize. Such amount as you deem just and fair with reference to the money loss that the widow has suffered. Now in connection with that, gentlemen, you must also bear in mind this: That the amount of money loss depends largely on first the man's in-

come, his age, ages of those dependent upon him and all things of that kind. Depends on how long a man is going to live. For instance, if a man were thirty and the wife were thirty and the man were killed, the prospects would be very much larger for a loss than it would if a man were seventy-five and his wife seventy-five. So that must be taken into consideration. This man, I understand, was sixty.

Mr. David: Fifty-nine.

The Court: Fifty-nine. And his widow was—.

Mr. Miller: Sixty.

The Court: Sixty. Our Courts have dealt with that in this language, which may be illuminating to you:

> "The Intestate might have died by the course of nature shortly after the accident. He might, had he lived, have suffered financial reverses. The wife, had he lived, might have died long before he did. So might his next of kin."

So you see, those are all circumstances for you to consider. The man might have lived for a long time, and the widow might have lived for a long time. On the other hand life is so uncertain you never can tell how long persons are going to live.

So, gentlemen, you next take up the question of damages. Mr. Miller has already mentioned to you the proposition of a "Capital Fund." Our Courts have expressed that in this way:

> "The Plaintiff, when entitled to recover, is entitled to recover a 'Capital Fund' (so to speak) which shall represent the present value of all the pecuniary loss which will fall upon the widow and next of kin by the premature taking off of the intestate."

It means simply this: If you decide the man was going to live a certain number of years and that his wife would benefit to a certain extent each year, you could not multiply one by the other and say that is the sum, because you are giving, whatever you are giving, now, while, if the man had lived it would have extended during the whole period of his life. And that is the reason our Courts have said "present value." In other words, it is sort of discounting the future.

So take the case, gentlemen, and give it very careful consideration. It is important to both sides; and you are disinterested. And take up, first, the question of whether the Railroad Company was negligent. If you find they were not, that is the end of the case. If you find Mr. Ploeser was guilty of contributory negligence, or jumped aboard a moving train, that is the end of the case. If you find, on the other hand, the Railroad Company was negligent and Mr. Ploeser was not, and did not jump aboard the moving train, then you take up the question of damages in the way I have outlined to you.

Gentlemen, on the question of what is reasonable care with reference to giving passengers an opportunity, starting the train, and boarding of the train depends entirely on all the surrounding circumstances and that is the reason it is left to you gentlemen as a matter of fact to determine what is reasonable care in the circumstances which existed in that place at that time.

Judge David also calls my attention to the fact I have charged you with reference to the burden of proof and weight of the evidence, and asked me to charge you that that does not necessarily mean the number of witnesses each side has, but the weight that you give to the witnesses when you have taken

the whole case. The weight, strength, and force you give to the testimony as it appears before you. The burden is upon him to satisfy you by the weight of the evidence; not by the number of witnesses, but by the weight of the evidence itself that there was negligence. 10

The defendant has asked me to charge you:

"FIRST: Even if the Plaintiff's testator had actually gained a foothold on the train before it moved, the Plaintiff cannot recover unless she has proved by the greater weight of the evidence that her testator was prevented from getting to a place of safety on the train by Defendant's failure to afford him a reasonable opportunity to do so." I so charge.

"SIXTH: A passenger is entitled to a reasonable 20 time in which to get on board a train after he is given an opportunity to do so. But he must use reasonable care to avail of the opportunity offered him, and if he fails to do so and delays so that the train starts while he is attempting to board it, he cannot recover." I so charge.

"SEVENTH: Trainmen are only required to exercise reasonable care to give persons who present themselves with reasonable diligence an opportunity to board the train." I so charge. 30

"EIGHTH: The Plaintiff cannot recover unless she has proved her case by the greater weight of the evidence. If she has failed to do this (unless the evidence in her behalf outweighs that given in behalf of the defendant)—even if the evidence balances—that is, is of equal weight, there must be a verdict for the defendant." I so charge you.

(The following took place at the Court's bench:)

Mr. David: I pray an exception to that part of 40

Your Honor's charge wherein you charge the defendant's requests, where Your Honor charged with reference "To the decedent availing himself of the opportunity, etc."

The Court: You mean to the defendant's request?

10 Mr. David: Yes, requests number one, six and seven. I also want to get an exception on my requests; I would like to get them down as they are.

The Court: The Judge makes the request that I charge the following: "The time to be allowed a passenger for getting on board a train or for alighting therefrom may depend on the special circumstances of the passenger as to his physical ability; his encumbrance with luggage; the existence of a crowd on the car or platform, and the like." And

20 I refuse the request and give the Judge an exception.

Mr. David: I think Your Honor said something, if the railroad employees were reasonably careful there can be no recovery.

The Court: I do not think I said that.

Mr. David: I take exception to part of the charge which was as follows: "Because the action is based upon the idea and theory of negligence and carelessness and wrongful act; so that if the em-

30 ployees of the Railroad Company were careful, reaonably careful then there can be no recovery." (As read by the stenographer:)

The Court: Exception allowed.

Exception allowed, signed accordingly.

G. S. SILZER,
Judge.

Mr. David: I also ask an exception to so much

40 of Your Honor's charge wherein you stated that

"The plaintiff could not recover if he attempted to board the train while in motion."

The Court: Exception allowed.

Exception allowed, signed accordingly.

G. S. SILZER,
Judge.

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Defendant's Requests to Charge.

(3)

"Even if Plaintiff's testator had actually gained a foothold on the train before it moved Plaintiff cannot recover unless she also has proved by the greater weight of the evidence that her testator was prevented from getting to a place of safety on the train by defendant failure to afford him a reasonable opportunity to do so."

(6)

"A passenger is entitled to a reasonable time in which to get on board a train after he is given an opportunity to do so, but he must use reasonable care to avail of the opportunity offered him, and if he fails to do so and delays so that the train starts while he is attempting to board it he cannot recover."

(7)

"Trainmen are only required to exercise reasonable care to give persons who present themselves with reasonable diligence an opportunity to board the train."

(8)

"Plaintiff cannot recover unless she has proved her case by the greater weight of the evidence. If she has failed to do this—unless the evidence in her behalf outweighs that given in behalf of the defendant, even if the evidence balances, that is, is of equal weight,—there must be a verdict for the Defendant."

New Jersey Court of Errors and Appeals

EMMA PLOESER, EXECUTRIX, &c., Plaintiff-Appellant, vs. CENTRAL RAILROAD COMPANY OF NEW JERSEY, A CORPORATION, Defendant-Appellee.	On Appeal.

BRIEF FOR APPELLANT.

This appeal brings up for review, a judgment on the verdict of the jury in favor of the defendant, in the Union County Circuit.

The suit was brought by Emma Ploeser, the executrix of the last Will and Testament of Joseph Ploeser, deceased, for the benefit of the next of kin of the said Joseph Ploeser, deceased, against the Central Railroad Company of New Jersey, to recover damages in pursuance to "An Act to Provide for the Recovery of Damages in cases where the death of a person is caused by a wrongful act, neglect or default. (P. L. 1848, pg. 151).

The Undisputed Testimony in the Case Discloses the Following Facts:

That on June 2nd, 1916, Joseph Ploeser the decedent had purchased and had in his possession a ticket of the defendant company entitling him to

transportation from the City of Newark to the City of Elizabeth.

That the decedent arrived and safely alighted at the Elizabethport Station for the purpose of changing cars to continue his journey to Elizabeth. The train from Newark arrived at Elizabethport at 7.15 p. m. Ploeser was waiting for a train due at Elizabethport Station to carry him to Elizabeth. The train was scheduled to leave Elizabethport Station for Elizabeth at 7.20 p. m. The train was late and drew into the station at about 7.26 p. m. After the train drew into the Elizabethport Station it came to a stop and various persons alighted from and boarded the train.

The Following are the Disputed Facts in the Case:

A. Plaintiff's Case.

The plaintiff's witnesses testified that the train which was to carry the decedent Joseph Ploeser from Elizabethport to Elizabeth drew into the station late (pg. 23) and came to a stop and that various passengers alighted from and boarded the train (pg. 23, l. 20-32); that before the train drew into the station, the decedent remained at the station waiting for the train for about 10 minutes (pg. 22, l. 27). That after all of the passengers alighted, a number of passengers boarded the train and decedent also attempted to board the train taking hold of the handle of the car with his right hand and placed his left foot on the step and after he had the fore part of his foot on the step of the car, the train started with a jerk and the decedent lost control, he tried to regain his hold on the handle and as he did so, lost his balance and fell in between the cars, was run over and killed (pg. 24).

That the decedent had a package in his left hand at the time he was boarding the train (pg. 28, l. 32 and pg. 35, l. 30).

B. Defendant's Case.

The case was defended on the theory that the decedent attempted to board a moving train at the Elizabethport Station.

The witness James J. Sullivan on the part of the defendant testified as follows:

Q. Did you see Mr. Ploeser? A. Yes, sir.

Q. Where was Mr. Ploeser when you first saw him? A. He was attempting to get on the train.

Q. How far from the train was he when you first saw him? A. Why, he was making a motion to get in the step.

Q. Making a motion? When you first saw him did he have hold of any part of the car? A. He had hold of the grab irons, and the hind handle.

Q. Did he have either foot on the car? A. He had his left foot on, and then his right one, and he slipped with his right foot.

Q. I see. Now, do you know whether or not the train was standing or moving when you saw him? A. It was moving.

Q. Had you seen it move before you saw Mr. Ploeser? A. Yes, sir.

Q. How long before you saw Mr. Ploeser. A. It all happened in about four seconds, I guess.

Q. About four seconds. Do you know how far the train had moved from where it was when it was standing before you saw Mr. Ploeser attempting to get on? A. I should judge about three feet.

Q. About three feet. In other words it went a very short distance? A. Yes, sir.

Joseph McGready, a witness on behalf of the defendant testified as follows:

Q. Now, did you see Mr. Ploeser that night? The man that was killed? A. The man that was killed; yes, sir.

Q. When you first saw him where was he? A. He was about going toward the train, a few feet away from the train.

Q. In which direction was he coming from? A. From the baggage room. That is in that direction.

Q. He was a few feet away from the train? A. Yes, sir.

Q. When you saw Mr. Ploeser a few feet away from the train, about how far—if you can give us an approximation—was he from the train? A. I should judge he was about five or six feet, going toward the train.

Q. Was he moving? A. What is that?

Q. Was he moving? A. Yes, sir.

Q. Do you know what the train was doing at that time? A. A. What the train was doing?

Q. Yes? A. It was moving.

Q. Train was moving? A. Yes, sir.

Q. Had you seen it start before that? A. Did I see it start?

Q. Yes? A. Yes, sir.

Q. As I understand it when you saw Mr. Ploeser he was coming from the general direction of the baggage room going toward the train and he was five or six feet away from the train? A. Yes.

Q. Now, are you sure that at that time the train was moving? A. When I saw him first the train was moving.

Q. What did you see happen then? A. Well, I noticed this man. He was a stout man; very stout. And as a railroad man, I pretty near knew what was coming. I saw him go up there and grab hold of these rails; he had something in one hand and

the other hand was clear. And he tried to board the train. He had one foot on one step, and I don't believe he got the second foot up, the right foot, and he went along on that foot, and I could see him gradually his hand was slipping down off the rail, turned his body around and throwed him under the car.

The Appellant Challenges the Rulings of the Trial Court Below.

1. To the charge of the Court (pg. 129, l. 39-40, p. 130 and 131).

2. The refusal of the Court below to charge as requested (pg. 130, l. 14-21).

3. To the admission of evidence (pg. 119).

I-A.

The Court below laid down the following principle of the law to the Jury, at page 126, l. 4: *"If a man attempts to board a train while it is in motion that he is guilty of contributory negligence and cannot recover in any action that he brings." "That is the law our Legislature has set down, which we are all bound by. So that if you find Mr. Ploeser jumped aboard a moving train then there can be no recovery."*

In charging the jury as above, the Court below, no doubt, had in mind Section 55 of Chapter 257 of the laws of 1903, at page 573, being an act commonly known "An Act concerning railroads" which reads as follows:

Trespassing on Tracks—Proviso.

55. "It shall not be lawful for any person other than those connected with or em-

> ployed upon the railroad to walk along the tracks of any railroad except when the same shall be laid upon a public highway; if any person shall be injured by an engine or car while walking, standing or playing on any railroad, or by jumping on or off a car while in motion, such person shall be deemed to have contributed to the injury sustained, and shall not recover therefor any damages from the company owning or operating said railroad; provided, that this section shall not apply to the crossing of a railroad by any person at any lawful public or private crossing."

The Court also had in mind, the case of Powell v. The Erie Railroad Company, 70 N. J. Law pg. 290. *In that case the decedent was a trespasser.*

In the case at issue it is undisputed that the decedent was a passenger of the defendant company, and we respectfully submit that the portion of the charge to the jury above referred to is not applicable and is erroneous.

This Court has repeatedly held that it is not negligence per se for a person to board a trolley car while it is in motion.

> Schmidt v. N. J. Street Railway Co., 66 N. J. L. 424.
>
> Murphy v. N. J. Street Railway Co., 71 N. J. L. 65.
>
> Solomon v. Public Service Railway Co., 87 N. J. L. 284.

The statute above referred to has nothing to do with this case. In this case the relation of passenger and carrier is admitted. The testimony most favorable to the defendant shows that at the time

the decedent attempted to board a moving train which had moved three feet (pg. 96, l. 21).

The Courts will not declare, as a matter of law, a person guilty of contributory negligence, who attempts to get on a train while it is moving slowly.

Falks v. St. Louis, 179 Southwestern 818.
Creech v. Charleston, 45 Southeastern 86.

On the point above raised, we respectfully submit that the Court erred in withdrawing from the jury the question as to whether or not the decedent, under the testimony in the case, was guilty of contributory negligence when he attempted to board the train which had then moved about three feet, and whether or not under the circumstances of the case, a prudent person exercising reasonable care would have boarded the moving train.

Staines v. Central R. R. Co. of N. J., 72 N. J. Law, pg. 268.

In the Staines case, this Court through the opinion of Mr. Justice Swayze distinguishes the case of Powell v. Erie Railroad Company, and said: "*This Court has refused to sustain an action by a trespasser under such circumstances, but the case of a passenger stands on a different ground.*

We therefore submit that the Court below erroneously applied the principle of law relating to contributory negligence and should have left the question of contributory negligence to the jury, for the reason that there is no law on our statute books which prohibits a passenger to board a slowly moving train at a regular station provided by a common carrier to its passengers, and where the train actually came to a stop for the purpose of discharging and receiving passengers.

Section 55 of the Railroad Act relates to trespassers, or persons walking along the tracks of any railroad and not to passengers who have a lawful right at the station of the common carrier.

I-B.

The Court also erroneously laid down the following proposition of law to the Jury: *"You must take up first, gentlemen, the question of whether the railroad company performed its duty. If the Railroad Company exercised reasonable care in the circumstances that existed there, then there can be no recovery. Because the action is based upon the idea and theory of negligence and carelessness and wrongful act. So that if the employees of the railroad company were careful, reasonable careful, then there can be no recovery.*

It is the established law of this State, that a common carrier of passengers must use a high degree of care to protect them from damage that a foresight can anticipate.

> Hansen v. North Jersey Railroad Co., 64 N. J. L. 686.
>
> Rivers v. Penn. Railroad Co., 83 N. J. L. 513.

It is therefore respectfully submitted that the Court below erred in that portion of the charge wherein he stated to the Jury: "So that if the employees of the railroad company were careful, reasonable careful, then there can be no recovery.

I-C.

The Court also erroneously charged as follows:

"Even if the plaintiff's testator had actually gained a foothold on the train before it moved, the plain-

tiff cannot recover unless she has proved by the greater weight of the evidence that her testator was prevented from getting to a place of safety on the train by defendant's failure to afford him a reasonable opportunity to do so."

The aforesaid abstract proposition of law took away from the Jury's consideration, the degree of care required of the defendant when the testator became the passenger of the defendant company.

It has been repeatedly held that the highest degree of care being required while the passenger is in the course of transportation on the carrier's vehicle, or boarding or alighting therefrom.

10 Corpus Juris, 862.

It is the duty of a carrier to exercise the highest degree of care for the safety of its passengers, not only in the act of alighting or boarding a train, but until after such a reasonable period of time as will permit them to get into a place of safety after alighting from or boarding its train.

10 Corpus Juris, 682 and 924.

It has been held that a carrier owes a duty to boarding passengers to stop its train at the platforms and to allow them time to get on board with reasonable care and expedition, and if without allowing such reasonable time the train is started or otherwise moved while a passenger is attempting to board it whereby he is injured, the carrier is liable.

10 Corpus Juris, 934-946.

II.

Request to Charge.

The trial Court *refused* to charge the following request of the plaintiff: *"The time to be allowed a passenger for getting on board a train or for alighting therefrom may depend on the special circumstances of the passengers as to his physical ability; his encumbrance with luggage; the existence of a crowd on the car or platform and the like."*

On this point of the case we desire to call the Court's attention to the fact, that the deceased was 59 years of age (p. 11, l. 20-20); that he was a man 5 feet 8 inches in height (p. 12, l. 20) and weighed 245 lbs. (p. 12, l. 23-25). That he had a package in his left hand (p. 28, l. 32 and p. 35, l. 30, p. 99, l. 25).

We respectfully submit that the Court erred in refusing to charge as requested, for that request would have enabled the jury to take into consideration all of the circumstances in connection with the decedent's physical ability to promptly board the train within a reasonable time.

6 Cyc. pg. 613.

III.

Error to Admission of Evidence.

On Sur-rebuttal, a witness Solomon N. Dennis was recalled by the defendant (pg. 117). After cross-examination of this witness by the plaintiff's attorney (p. 118), Mr. Charles E. Miller, counsel for the defendant, was sworn as a witness and he asked himself the following question:

Q. Why did you not put Mr. Dennis on the stand yesterday and ask him about the conversation he had with Mr. Crammes?

Mr. David: I object to it.

The Court: Why?

Mr. David: On the ground it is a self-serving explanation, and the reason why counsel puts on or keep off a witness is a matter for the jury to infer, and it is not competent for counsel to tell why he puts a witness on or keeps him off.

The Court: Except you asked the last witness that. I will allow it.

Mr. David: An exception.

The witness answered the question over the objection of plaintiff's counsel which in our opinion prejudiced the minds of the jury as to the veracity of Crammes, and for the reason that theretofore the record stood without the testimony of Mr. Miller, the Jury was only called upon to weigh the evidence of the witnesses Crammes and Dennis, and it was improper for the Trial Court to allow the Jury to consider what counsel for the defendant had in mind in keeping off or putting on a witness in determining the question of veracity.

IV.

For the reasons above set forth, it is therefore respectfully submitted that the judgment below be set aside and a trial De nova ordered.

ABE J. DAVID,
JOHN J. STAMLER,
Of Counsel with Appellant.

New Jersey Court of Errors and Appeals.

EMMA PLOESER, Executrix, etc., of Joseph Ploeser, deceased, Plaintiff-Appellant, vs. THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, Defendant-Appellee.	**On Appeal.**

BRIEF FOR DEFENDANT-APPELLEE.

Alleging that her testator met his death as the result of negligence on the part of defendant's employees in charge of a train which he was endeavoring to board, plaintiff instituted this action under the Death Act. In support of her claim she produced at the trial evidence tending to show that on the evening of June 2d, 1916, her testator was waiting for a train at the Elizabethport Station; that after the train came in and stopped, he attempted to board it immediately behind the passengers; that he had put one of his feet on the car step, and that before he could proceed further, the train started with a jerk, throwing him under the wheels.

The defendant on its part produced evidence tending to show that after the train had stopped, the crew alighted and stood on the platform, where they remained until all those presenting themselves had alighted from or boarded the train; that the crew then boarded the train and gave the signal to start, and that plaintiff did not attempt to board it until after it had commenced to move. It was

agreed by the witnesses produced on both sides that plaintiff's testator was the last person to board the train, and while there was no evidence contradicting the proof of defendant's witnesses showing that the crew had alighted from the train after it stopped, none of the plaintiff's witnesses testified that the crew were on the platform when plaintiff's testator attempted to board the train.

The case was presented to the jury under a charge which made plaintiff's right to recover depend on whether she had made out by the greater weight of the evidence, that the defendant had failed to afford her testator a reasonable opportunity to board the train. The jury resolved this question against her, returning a verdict for the defendant. This appeal seeks a reversal of the judgment entered upon the verdict of the jury, for an alleged error in the admission of evidence and for several alleged errors in the charge.

ARGUMENT.

I-A.

The Court charged the jury

> "The plaintiff could not recover if he at-
> "tempted to board the train while in motion."

This is a mere paraphrase of the 55th section of the Railroad Act of 1903. This Court said in *Powell* vs. *Erie RR. Co.*, 70 N. J. Law 290:

> "If a statute were needed as support for the
> "proposition that a person injured while jump-
> "ing on or off a train in motion is guilty of
> "contributory negligence, such an enactment
> "is to be found in *Pamph. L.* 1869, *p.* 806,
> "which was embodied in the revised act con-
> "cerning railroads and canals, approved March
> "27th, 1874. *Gen. Stat.*, *p.* 2680, § 178."

The contention of the plaintiff that this Act applies only to trespassers or persons walking along the tracks of the railroad, is entirely without foundation.

This Act finds its origin in an Act passed in 1869 (Pamphlet Laws of 1869, p. 806), entitled "An Act to prevent accidents on railroads" and containing the following language:

> "That if any person shall be injured by a "locomotive engine, car or cars, whilst walking, "standing or playing on any railroad in this "state, or by jumping on or off a car whilst in "motion, such person shall be deemed to have "contributed to the injury sustained, and shall "not recover any damages therefor from the "company owning or operating the said railroad; "*provided, however*, that this section shall not "apply to any person or persons crossing a rail-"road at any lawful public or private crossing."

The purpose and intent of the Act is clear from its title, *i. e.*, to discourage and prevent reckless and careless acts, and the probable injuries resulting therefrom, on trains and tracks of railroad companies. That this was the purpose of the Act is still further evidenced by the wording thereof, which cannot, by the most violent stretch of the imagination, be construed as applying only to trespassers.

Section 55 of the General Railroad Law of 1903 is a mere repetition of the Act of 1869, except that it has as an additional provision an express prohibition against any person other that one connected with or employed upon a railroad, to walk along the tracks thereof, except when such tracks are laid upon a public highway. Surely the mere addition of such a prohibition cannot have the effect of giving the Act a more narrow application than it had theretofore possessed. The Legislature by its action in passing these statutes recognized and intended to guard against the obvious danger likely to ensue from persons getting on or off a moving

train, *i. e.*, intended to protect persons from the consequences of their own reckless acts. That it is just as dangerous for an intending passenger to attempt to board a moving train as for a trespasser to do so, goes without question. It would be absurd, therefore, to say that the Legislature intended to protect trespassers from themselves, but not to protect passengers or intending passengers from themselves.

The plaintiff asserts that the construction of the Act contained in *Powell* vs. *Erie Railroad* (*supra*) applies only to trespassers, and in support of such contention cites the case of *Staines* vs. *Central Railroad Company of New Jersey*, 72 N. J. Law 268. The language used in the *Staines* case, however, with reference to the *Powell* case has absolutely no bearing upon the construction of the Act.

In the *Powell* case the plaintiff was endeavoring to steal a ride. A brakeman of defendant threw pieces of coal at him, none of which struck the plaintiff. The plaintiff "ducked" one of such pieces of coal, at the same time releasing his hold upon the grab-iron and falling from the train. It was not pretended by the plaintiff, however, that he accidentally let go his hold or that he lost his presence of mind. The Court of Errors held that the only rational explanation of the evidence was that the throwing of the coal gave notice to the plaintiff that his attempt to climb on the train had been discovered and would be resisted, and that thereupon he abandoned his attempt, voluntarily released his hold and fell or jumped to the ground. The Court held that upon such a state of facts a non-suit was properly granted, as the plaintiff was a tresspasser and the defendant owed him no duty beyond refraining from acts wilfully injurious to him.

In the *Staines* case, however, the plaintiff was a passenger of the defendant company and was injured by jumping from a train which was at a standstill. It appeared from the plaintiff's story

that she was in the act of alighting when some representative of the defendant company told her to hurry and said that the train was in motion and that she should jump. According to her story, she got excited, thought the train was in motion, that she would be killed, and jumped to save herself. The Court below ordered a non-suit upon the ground of the plaintiff's contributory negligence. The Court of Errors and Appeals, however, reversed such action of the lower court on the ground that a jury question was presented. The Court said that the trainman who told the plaintiff to jump might properly be supposed to have superior knowledge as to the probability of the train moving, and that the plaintiff's act in jumping under the circumstances was to a certain extent involuntary and that the partial paralysis of her will through fear was due to the conduct of the defendant's servant.

The Court then said:

> "This court has refused to sustain an action "by a trespasser under such circumstances "(*Powell* vs. *Erie Railroad Company*, 41 "Vroom 290). But the case of a passenger "stands on a different ground."

It is obvious that such statement of the Court has no bearing upon the construction of the statute under discussion. And this is further evidenced by the following language used by the Court in the same case:

> 'The fact that the plaintiff erroneously "thought the train was in motion cannot, in "our judgment, subject her to the same impu-"tation of negligence as if the train had been "really in motion."

The cases cited by plaintiff to establish the proposition that it is not negligence *per se* for a person to board a trolley-car while it is in motion are entirely inapplicable to the case at bar, as it is clear that the different modes of operating a train and a trolley-

car render necessary different rules of law in connection therewith.

This distinction is stated in 10 *Corpus Juris* at page 1118:

> "As to street-cars, the general doctrine that "it indicates negligence to attempt to get on "board a car while it is moving is not so strictly "applied."

Such distinction was also pointed out by the Court of Errors and Appeals in the case of *New Jersey Traction Company* vs. *Gardner*, 60 N. J. Law 571, in which it was said:

> "While it has been generally held that to "step from a steam railroad car going at any "rate of speed is an act of contributory negli-"gence, sufficient to defeat a suit for damages, "it is as well settled that to step from a slowly "moving street-car drawn by horses is not neg-"ligence *per se*."
>
> See also 6 *Cyc.*, page 644.

We think it clear beyond question that the statute applies to all persons, whether passengers or not, who attempt to board a moving train, and if this is so, it can make no difference whether the train was moving slowly or at a high rate of speed. We therefore urge most earnestly that the Court was correct in its charge.

Moreover, even if such charge was erroneous, the plaintiff was in no wise prejudiced thereby. The only way in which such a charge could possibly prejudice the plaintiff would be upon the theory that the plaintiff's decedent was in fact at the time of the accident attempting to board a moving train, which is precisely contrary to the plaintiff's claim and the basis of the plaintiff's suit.

The sole issue which was raised at the trial was whether or not the plaintiff's decedent attempted to board the train while it was in motion. Assuming that the plaintiff can now deviate from the position taken by her at the trial, the charge was proper because in such case it would appear that the acci-

dent resulted solely from the attempt of the decedent to board a train while in motion, as there could be no other contributing cause.

In the case of *Murphy* vs. *North Jersey Street Railway Company*, 71 N. J. Law 5, which is cited by plaintiff, it was held by the Supreme Court that although it cannot be said as a matter of law that a person who attempts to board a trolley-car while it is in motion is negligent, yet when the fact that the car is in motion is the *sole* producing cause of the injury, the risk of its occurrence is one which the person making the attempt must be held to have assumed. Therefore, if in the present case decedent was killed while attempting to board a moving train, and even assuming that the attempt to board such train while in motion was not *per se* negligence, yet the plaintiff was not entitled to recover because such attempt was the *sole* cause of the accident and there was no negligence upon the part of the defendant,

However, as before stated, the sole issue presented by the pleadings for the determination of the jury was whether the defendant had caused the accident by negligently starting the car while the decedent was in the act of getting upon it. Plaintiff's case was based solely upon the theory that the accident happened in such manner. There can now be no deviation from such theory. It is impossible to perceive, therefore, how the plaintiff could possibly have been prejudiced even if there was error in the Judge's charge. (See in this connection *Murphy* v. *North Jersey Street Railway Company, supra.*)

It is most earnestly insisted, however, that there was no such error.

I-B.

The Court further charged the jury:

> "Trainmen are only required to exercise rea-
> "sonable care to give persons who present

> " themselves with reasonable diligence an op-
> " portunity to board the train."

And again,

> " Because the action is based upon the idea
> " and theory of negligence and carelessness and
> " wrongful act; so that if the employees of the
> " railroad company were careful, reasonably
> " careful, then there can be no recovery."

It is settled by the weight of authority that the duty of a carrier of passengers is to use reasonable care to afford an opportunity for boarding its vehicles. The rule was stated by Mr. Justice Garrettson, speaking for the Supreme Court, in *Speer* v. *West Jersey & Seashore RR. Co.*, 74 N. J. Law, 282, as follows:

> " It is the duty of the conductor to give
> " every person desiring to board a standing car
> " an opportunity to do so. * * *
>
> " The duty involved in this case is not to use
> " that high degree of care which is required of
> " common carriers toward passengers, but only
> " to exercise reasonable care."

The rule is stated in 6 *Cyc.*, at page 605, as follows:

> " A passenger by railroad is entitled to pro-
> " tection against danger at the station-house or
> " waiting-room, on the platform, and in getting
> " upon or alighting from the train, but the
> " peculiar hazard of railway travel, requiring
> " high speed by the use of the dangerous agency
> " of steam, is not involved on the premises of
> " the railroad company, or while getting on or
> " off trains, and therefore in these respects the
> " care required for the protection of the passen-
> " ger is reasonable, rather than the highest, or
> " extraordinary care."

and in 10 *Corpus Juris*, page 803, as follows:

> " As to regular passenger trains, it is the
> " duty of the carrier in the exercise of *reason-*
> " *able care* to furnish the passenger opportunity
> " to get on board the train at the usual pas-
> " senger platform."

See also 10 *Corpus Juris*, page 934.

In the case of *Hansen* vs. *North Jersey Street Railway Company*, 64 N. J. Law, page 686, which is cited by plaintiff, the plaintiff was injured while alighting from a street-car which admittedly was at a standstill. The plaintiff contended that the car was greatly overcrowded, and that she was crowded off the platform onto the step and pushed so violently from such step as to fall upon the fender. As the Court in its opinion said, the alleged negligence of the defendant consisted in "having more "passengers than could safely and prudently be "carried and overcrowding the car and platform."

It is manifest, therefore, that the basic facts in the *Hansen* case are essentially different from those of the instant case. The Court, however, in the *Hansen* case, did not enunciate any principle of law essentially different from that charged by the Court.

At page 696 (64 N. J. Law), the Court said:

> "A common carrier is negligent if it fails to "take a high degree of care to protect its pas-"sengers from every danger that the exercise "of *reasonable* foresight would anticipate."

And again, at page 698, it said:

> "The conclusion is that there was evidence "to go to the jury, not merely as to whether "the plaintiff's account of her injury was "accurate, but as to whether if her account "was accurate, the accident was such that it "might have been prevented by the exercise "of *due care* on the part of the defendant. If "the jury could answer this latter question in "the affirmative, they need look no further, "for they might then infer negligence. In "such a situation, the burden shifts and the "common carrier, in order to exonerate him-"self, must show, if he can, that *due care* was "exercised."

Likewise a radically different state of facts was presented in the case of *Rivers* vs. *Pennsylvania Railroad Company*, 83 N. J. Law, page 513, which is also cited by plaintiff.

In that case, plaintiff was passing from one car to another on a moving train in an attempt to find a seat, and was injured by falling through a trap-door which had been left open in the vestibule of one of such cars. It further appeared that the vestibule was not lighted. There was, of course, in such case a higher degree of duty upon the part of the carrier than in the case of a passenger boarding a standing train at a station. In the *Rivers* case, however, the Court, at page 515, said that the test was whether "the characteristics of the accident "are such that it can be classified among the events "that, without *due care*, are likely to occur, and "that *due care* would prevent."

We think, however, that plaintiff was not prejudiced even if the Court erred in stating the degree of care required. Plaintiff's case was not that her testator had met with an injury which could not have been avoided by the exercise of reasonable care but which might have been avoided by the exercise of the highest degree of care, but on the contrary was based on the theory that he had met with an injury because the defendant had failed to exercise *any care* and started its train while plaintiff's testator was attempting to board it immediately behind other passengers.

I-C.

The Court charged the jury:

> "Even if plaintiff's testator had actually "gained a foothold on the train before it moved, "the plaintiff cannot recover unless she has "proved by the greater weight of the evidence "that her testator was prevented from getting "to a place of safety on the train by defendant's "failure to afford him a reasonable opportunity "to do so."

As we have already pointed out, there was some evidence from which the jury might have inferred that plaintiff's testator had attempted to board the

rain after the crew had boarded it and given the signal to proceed, but before the train had actually begun to move. In this portion of the charge, the trial Judge instructed the jury in effect that if defendant had afforded plaintiff's testator a reasonable opportunity to board the train, he could impose no greater obligation upon the defendant by merely gaining a foothold on the train before it actually began to move. We think that this was a correct exposition of the applicable rule.

Such rule is succinctly stated in 10 Corpus Juris, page 934, in the following language:

> "A carrier owes a duty to boarding passengers to stop its train at the platforms and to allow them time to get on board with *reasonable care and expedition*, and if without allowing such *reasonable time* the train is started or otherwise moved while the passenger is attempting to board it, whereby he is injured, the carrier is liable."

And it is very significant to note that the foregoing quotation is also cited in plaintiff's brief, at page 9, as correctly representing the law which governed the circumstances of the case at bar.

See also 10 Corpus Juris, page 937, where the following language is used:

> "Where a car or train has been stopped for a reasonable time, the carrier is required to use only ordinary care in thereafter moving it, and if it is not apparent to the carrier's employees that a passenger is either boarding or alighting from the car or train, the carrier will not ordinarily be liable for an injury resulting from its being started or otherwise moved."

In *Powell* v. *Erie RR. Co.*, (*supra*), it was contended that the fact that plaintiff had actually gained a foothold on a moving train imposed an

obligation on the part of the defendant to exercise care for his safety. This Court dismissed the contention, saying (p. 293):

> "It is, of course, absurd to say that by "merely gaining a foothold upon the moving "train he could impose a duty upon the railroad "company either to permit him to ascend or to "stop the train for his convenience."

II.

The Court refused to charge the jury as requested by the plaintiff, as follows:

> "The time to be allowed a passenger for "getting on board a train or for alighting there-"from may depend upon the special circum-"stances of the passenger as to his physical "ability; his encumbrance with luggage; the "existence of a crowd on the car or platform, "and the like."

Conceding that this was an accurate statement of the legal principle, we still think that the Court was justified in refusing to charge it, because it was not applicable to the facts proved in this case. There was no proof of any special circumstances of plaintiff's testator as to his physical ability, his encumbrance with luggage or the existence of a crowd on the car or platform. That the refusal of a request that is unsupported by the evidence is not error is the established rule of this Court. *Humphreys* vs. *Woodstown*, 19 Vr. 588; *Manchester B. & L. Assn.* vs. *Allee*, 52 Vr. 605; see also *Fath* vs. *Thompson*, 29 Vr. 180; *Consolidated Traction Co.* vs. *Haight*, 30 Vr. 577.

III.

The last error alleged relates to a question which the trial Judge permitted the attorney for the defendant to answer when sworn as a witness on behalf of the defendant on rebuttal. Among the witnesses produced by the plaintiff was one Crammes, who testified that he had actually seen the accident occur. On rebuttal this witness was recalled to contradict a statement made by the conductor of the train when sworn for the defendant. On cross-examination Crammes was asked if he had not told the conductor on the night of the accident that he did not know anything about it. Crammes having denied that he had any conversation with the conductor, the latter was recalled by the defendant to relate the alleged conversation. On cross-examination, the attorney for the plaintiff asked the conductor why he had not testified to this conversation when he was on the stand on defendant's main case, to which he replied that he had not been asked about it. He was then asked if he knew why the lawyer for the Railroad Company had not asked him about it, and he replied that he did not (118).

The attorney for the defendant offered himself as a witness to testify why he had not asked the conductor about the conversation with Crammes when the conductor was on the stand before. To this, plaintiff's attorney made the following objection:

> "Mr. David: On the ground it is a self-
> "serving explanation, and the reason why
> "counsel puts on or keeps off a witness is a
> "matter for the jury to infer, and it is not com-
> "petent for counsel to tell why he puts a wit-
> "ness on or keeps him off."

The objection being overruled, defendant's attorney explained that he had not asked the conductor about the conversation with Crammes when the conductor was on the stand before because he

had not learned of the conversation until after the conductor had left the stand (119, 120).

We think it is clear that it was proper for the trial Judge to permit this question to be answered. Plaintiff's attorney himself had attempted to impeach the conductor's veracity by seeking an explanation of his failure to testify about the alleged conversation when he was first on the stand. The conductor by his answer placed the burden of making the explanation on defendant's attorney. Defendant's attorney took the stand to make it. The matter was material to the issue and the facts were within the personal knowledge of defendant's attorney.

IV.

The judgment of the Court below should be affirmed.

Respectfully submitted,

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Attorney of Defendant-Appellee.

DE VOE TOMLINSON,
Of Counsel.