

Record in Palsgraf v. Long Island Railroad  
Co., 248 N.Y. 339.

COURT OF APPEALS, NEW YORK, 1928<sup>1</sup>

COURT OF APPEALS  
OF THE STATE OF NEW YORK.

—  
CASE ON APPEAL.  
—

SUPREME COURT,  
APPELLATE DIVISION — SECOND DEPARTMENT.

HELEN PALSGRAF, Plaintiff-Respondent, AGAINST THE LONG ISLAND RAILROAD COMPANY, Defendant-Appellant.
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STATEMENT UNDER RULE 234.<sup>2</sup>

This action was commenced by the service of a summons on the 2d day of October, 1924. The complaint was served on the 14th day of November 1924. The answer was served on the 3rd day of December, 1924.

<sup>1</sup> The following is the complete "Case on Appeal" as filed with the Court of Appeals in printed form. It indicates the course of a litigated tort case in which a trial was had, under the procedure now followed in New York. The title of the case and the names and addresses of counsel appearing on the title page of the record are omitted, as is the Index (table of contents) which follows the title page. — Ed.

<sup>2</sup> See N.Y. Rules of Civil Practice (1921), Rule 234, as amended and in effect February 26, 1926. — Ed.

Matthew W. Wood appeared as attorney for the plaintiff and Joseph F. Keany appeared as attorney for the defendant. The names of the parties are given in full above. There has been no change or substitution of parties or attorneys.

NOTICE OF APPEAL.

SUPREME COURT — KINGS COUNTY.

<p>HELEN PALSGRAF, Plaintiff-Respondent,  AGAINST  THE LONG ISLAND RAILROAD COMPANY, Defendant-Appellant.</p>	} Notice of Appeal.
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SIRS:

PLEASE TAKE NOTICE that the defendant, The Long Island Railroad Company, hereby appeals to the Appellate Division of the Supreme Court, in and for the Second Judicial Department, from the judgment in favor of the plaintiff entered in this action on the 31st day of May 1927, in the office of the Clerk of Kings County, for the sum of Six thousand, one hundred forty two and forty five one hundredths Dollars (\$6,142.45), and the defendant appeals from each and every part of this judgment.

That the defendant, The Long Island Railroad Company also hereby appeals to the said Appellate Division of this Court from the order made denying said defendant's motion for a new trial and entered in said Clerk's office on the 27th day of May 1927, and that the defendant appeals from each and every part of said order.

Dated, June 14th, 1927.

JOSEPH F. KEANY  
Attorney for Defendant-Appellant,  
Pennsylvania Station,  
New York City.

To:

WILLIAM E. KELLY, Esq.,  
Clerk of Kings County.  
MATTHEW W. WOOD, Esq.,  
Attorney for Plaintiff-Respondent.

SUMMONS.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

<p>HELEN PAISGRAF, Plaintiff,  AGAINST  THE LONG ISLAND RAILROAD COMPANY, Defendant.</p>	} Summons.
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TO THE ABOVE NAMED DEFENDANT

YOU ARE HEREBY SUMMONED to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated, September 27th, 1924.

MATTHEW W. WOOD,  
Plaintiff's Attorney,  
Office and Post Office Address,  
233 Broadway,  
Borough of Manhattan,  
New York City.

COMPLAINT.

SUPREME COURT, KINGS COUNTY.

\_\_\_\_\_  
[SAME TITLE.]  
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Plaintiff complaining of the defendant through MATTHEW W. WOOD, her attorney, alleges:

FIRST: Upon information and belief, that at all of the times herein-after mentioned the above named defendant was and still is a railway

corporation duly organized and existing under and by virtue of the laws of the State of New York.

SECOND: Upon information and belief, that at all of the times hereinafter mentioned the above named defendant owned or leased and operated and managed or controlled a railroad with the attendant tracks, crossings, locomotives, cars and stations all used by it as a common carrier for hire in and about Long Island, State of New York, and particularly in and through the Borough of Brooklyn, City and State of New York.

THIRD: That at or near the tracks of the defendant's railroad in or near a locality known as East New York, City of New York, the defendant maintained a passenger station and a platform for the use of passengers in entering or leaving its trains at said place, which said station is commonly known as the "East New York" station.

FOURTH: That it was the duty of the above named defendant at all of the times hereinafter mentioned to operate its trains so that the plaintiff and other persons, who might be similarly situated, could use the said platform or station at the said East New York station without danger of being injured by the passing of defendant's trains through said station, and it was the further duty of the defendant to provide a suitable and sufficient number of employees or agents at said station at a time or times when, to the knowledge of the defendant, there was habitually accustomed to be a large number of passengers congregated on said station for the purpose of boarding defendant's said cars at said station, and when at said time and place it was known to the defendant as a habitual custom that passengers at said station congregated in such large numbers that they were accustomed to be jostled and pushed about in boarding defendant's cars in such a manner as to endanger the life and limb of such passengers, and it was further the duty of the defendant to make and enforce proper rules and regulations for the guidance and control of its employees and particularly its guards and platform men at said station at said time, so that while defendant's trains were stopped at or were passing through said station the persons on the platform thereof might be reasonably free from injury. It was further the duty of the defendant to prevent the bringing upon its passenger stations or platforms and the transportation upon its passenger trains or cars of fireworks or other inflammable and combustible substances, and to exercise such care, caution and prudence in the premises that passengers or other persons would not be allowed to bring upon and into its said stations or cars or trains any fireworks or other combustible or explosive substances.

FIFTH: That the defendant was negligent and remiss in the performance of one or more of its several duties in that on Sunday, the 24th day of August, 1924, between the hours of ten and eleven o'clock in the forenoon of said day, it failed and neglected to provide a suitable and sufficient number of employees and agents at said station at a time when, to the knowledge of the defendant, the said station was ac-

customed to be and was used by a large number of passengers for the purpose of boarding its said cars at said station, and when at said time and place it was known to the defendant as a habitual custom of passengers at said station to congregate in such large numbers that they were accustomed to be jostled and pushed about in boarding defendant's cars in such a manner as to endanger the life and limb of such passengers, and particularly this plaintiff, and further that it failed and neglected to make, promulgate and enforce proper rules and regulations for the guidance and control of its employees at said station so that the plaintiff and other persons on said station might be reasonably free from injury, and in that it failed to prevent the bringing in or upon the said passenger station or the carrying into its said passenger cars at said station or at some other station or place of fireworks or other explosive or combustible substances, and that by reason of the neglect of the defendant, its agents or servants, in the manner aforesaid, and in other particulars, which the plaintiff will prove upon the trial of this action, the plaintiff herein, through the negligence and carelessness of the defendant, was negligently and carelessly invited, directed, permitted and allowed to enter upon the said platform then and there crowded with people, and in close proximity to a dangerous and unexploded blast of gunpowder or some other explosive at said time and place, and that while plaintiff was lawfully upon the platform provided by the defendant at said station for the ingress and egress of passengers to or from defendant's trains at the time aforesaid, and while plaintiff was or was about to become a passenger for hire upon one of the defendant's trains at said station, an explosion of gunpowder or some other explosive substance suddenly and violently took place, by reason of which and as a direct result thereof the plaintiff was violently jostled, shoved, crowded or pushed by the force of said explosion or by the crowd of other passengers, which the defendant had negligently allowed to congregate and remain on said station at said time, or by both said explosion and jostling, so that plaintiff was knocked down or against certain of the platform stairs, inflicting upon plaintiff grievous, serious and painful injuries in and about her person and causing plaintiff to be and become sick, sore and disabled, whereby plaintiff was caused to and did suffer great pain and anguish, both of body and mind as a result of said injuries, and plaintiff moreover was made nervous and caused to and did suffer severe, grievous and lasting shock to her nervous system, including among other things, loss of control of the organs of speech, which plaintiff alleges upon information and belief, will be permanent, and plaintiff still continues to suffer pain in various parts of her body. Plaintiff was and still is unable to pursue her usual occupation and has thereby lost and will continue to lose moneys she would otherwise have earned, and, as plaintiff is informed and believes, said disabilities in whole or in part will continue for a long time to come and perhaps permanently. That plaintiff has been put to great expense for medicines, medical and surgical treat-

ment and attendance and nursing and plaintiff is informed and verily believes that she will in the future be put to great expense and necessarily have to expend or incur various and divers sums of money for medical and surgical treatment, medicines and nursing in an endeavor to be cured of her said injuries.

SIXTH: That the said injuries to the plaintiff were caused solely through the carelessness and negligence of the defendant, its agents or servants, and through no fault on the part of the plaintiff in any way contributing thereto.

SEVENTH: That by reason of the premises plaintiff has been damaged in the sum of Fifty thousand dollars (\$50,000.).

WHEREFORE plaintiff demands judgment against the defendant in the sum of Fifty thousand dollars (\$50,000.) together with the costs and disbursements of this action.

MATTHEW W. WOOD,  
Attorney for Plaintiff,  
Office & P. O. Address,  
#233 Broadway,  
Borough of Manhattan,  
City of New York.

(Unverified.)

ANSWER.

SUPREME COURT, KINGS COUNTY.

[SAME TITLE.]

The defendant answering the complaint herein alleges:

I. It admits that at all times mentioned in the complaint, it was and still is a domestic railroad corporation, duly organized and existing under and by virtue of the laws of the State of New York, and that at all of said times, it owned, operated and controlled a railroad together with its appurtenances in and through the Borough of Brooklyn, City and State of New York, and that in connection with its said railroad, it maintained a passenger station and platform known as the East New York Station in the said Borough of Brooklyn, City of New York.

II. On information and belief it denies each and every other allegation contained in the complaint.

WHEREFORE, the defendant asks that the complaint herein be dismissed with costs.

JOSEPH F. KEANY,  
Attorney for Defendant,  
Pennsylvania Station,  
New York City.

(Verified December 3rd, 1924.)

EXTRACT FROM CLERK'S MINUTES

At a Trial Term of the Supreme Court of the State of New York held in and for Kings County, at the Court House in the Borough of Brooklyn, on the 26th day of May 1927.

Present: Hon. BURT JAY HUMPHREY,

*Justice.*

Part 7.<sup>1</sup>

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[SAME TITLE.]

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This cause having been called for trial in its order on the Calendar, and twelve trial Jurors having been duly drawn, empanelled and sworn to try the same, the Jury come into Court and say that they find a verdict for the plaintiff in the sum of six thousand (\$6000,—) dollars.

Counsel for defendant moves to set aside the verdict on all the grounds stated in Section 549 of the Civil Practice Act.

Motion denied.

Thirty days stay of execution after service of notice of entry of judgment and sixty days in which to make and serve case on appeal granted to defendant.

May 27 — 1927 — Order signed denying motion to set verdict aside.

A true extract from the minutes.

WILLIAM E. KELLY,  
Clerk.

JUDGMENT.

SUPREME COURT: KINGS COUNTY.

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[SAME TITLE.]

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The issues in the above entitled action having duly come on for trial before HON. BURT J. HUMPHREY, one of the Justices of this Court and a Jury at Trial Term, Part VII of this Court, on the 25th and 26th days of May, 1927, and the Jury having returned a verdict in favor of the

<sup>1</sup> This refers to the particular sitting of the court at which the trial was had. Humphrey, J., was presiding over Part 7 of the Trial Term, other judges were at the same time presiding over trials in other "Parts" in other court-rooms in the Brooklyn Court House. — Ed.

plaintiff and against the defendant in the sum of Six thousand (\$6,000.00) Dollars, and the costs of the plaintiff having been duly taxed at the sum of \$142 45/100 Dollars,

Now, on motion of MATTHEW W. WOOD, Esq., attorney for the plaintiff, it is hereby

ADJUDGED that the plaintiff, HELEN PAISGRAF, do recover of the defendant, LONG ISLAND RAILROAD COMPANY, the sum of Six thousand (\$6,000.00) Dollars, together with the sum of \$142 45/100 Dollars, costs as taxed, making in all the sum of \$6142 45/100 Dollars, and that the plaintiff have execution therefor.

Dated, Brooklyn, New York, May 31, 1927.

WILLIAM E. KELLY,  
Clerk.

#### ORDER DENYING MOTION FOR NEW TRIAL.

At a Trial Term, Part VII of the Supreme Court of the State of New York, held in and for the County of Kings, at the County Court House, in the Borough of Brooklyn, City of New York, on the 27th day of May, 1927.

Present: Hon. BURT J. HUMPHREY,

*Justice.*

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[SAME TITLE.]

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The issues in this action having regularly come on for trial before Hon. Burt J. Humphrey, one of the Justices of this Court and a Jury, at Trial Term, Part VII of this Court, on the 25th and 26th days of May, 1927, and the same having been duly tried, and the Jury having returned a verdict in favor of the plaintiff and against the defendant, Long Island Railroad Company, for the sum of Six thousand dollars (\$6,000.00), and the defendant having moved to set aside the verdict and have a new trial on all the grounds contained in Section 549 of the Civil Practice Act, except inadequacy.

Now, after hearing WILLIAM McNAMARA, Esq., of Counsel for the defendant, in support of said motion, and MATTHEW W. WOOD, Esq., attorney for the plaintiff, in opposition thereto, and due deliberation having been had,

Now, on motion of MATTHEW W. WOOD, Esq., attorney for the plaintiff it is hereby

ORDERED that said motion be and the same hereby is in all respects denied.

Enter

BURT JAY HUMPHREY,  
Justice of Supreme Court.

Granted May 27, 1927  
WILLIAM E. KELLY  
Clerk

CASE.

SUPREME COURT, KINGS COUNTY.

Trial Term. Part VII.

\_\_\_\_\_  
[SAME TITLE.]  
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Before:

Hon. BURT JAY HUMPHREY, Justice, and a Jury.  
BROOKLYN, N.Y., May, 25, 1927.

Appearances:

MATTHEW W. WOOD, Esq., Attorney for Plaintiff.  
JOSEPH F. KEANY, Esq., Attorney for Defendant.  
WILLIAM McNAMARA, Esq., of Counsel.

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(A jury was duly impaneled and sworn.)  
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(Mr. Wood opened the case to the jury on behalf of the plaintiff.)

(Mr. McNamara opened the case to the jury on behalf of the defendant.)

HELEN PALSGRAF, the plaintiff, residing at 10233 Jamaica Avenue, Brooklyn, N.Y., called as a witness in her own behalf, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WOOD:

Q. Now, Mrs. Palsgraf, speak up so that this man away back here can hear you. Are you the plaintiff in this action? A. I am.

Q. How old a lady are you? A. 43.

Q. And are you married? A. Yes.

Q. How many children have you? A. Three.

Q. What are their ages? A. 21, 18 and 15.

Q. Years. And prior to the 24th day of August, 1924, when this explosion took place, was your health good or bad? A. Good.

Q. Had you ever suffered from any nervousness or stuttering or stammering up to that time? A. Never.

Q. Had you done your work before that time? A. Always did.

Q. By your work, I mean your regular house work? A. Yes.

Q. And besides your regular house work did you do any other work outside of the house? A. I did.

Q. What kind of work did you do outside of your house work? A. I was the janitor, and went out to day work.

Q. That is, you were janitor of the little place where you lived, and you did work outside of that? A. Did day work.

Q. How much were you allowed for your janitor work? A. I was allowed \$10 a month.

Q. How much rent did you pay in addition to that? A. At that time I had to pay \$14.

Q. Now, outside of that did you do some work that you got some money for? A. Once in awhile — before the accident.

Q. I mean before the accident? A. I did two or three days a week.

Q. What kind of work was this? A. House work.

Q. How much did you get a day for that? A. I charged two — three.

Q. Dollars. How much on the average would you earn per week in that manner? A. About \$8.

Q. Now, Mrs. Palsgraf, on the 24th of August, 1924, the day that you were hurt, where did you live? A. 238 Irving Avenue.

Q. Is that Jamaica or Ridgewood? A. Ridgewood.

Q. And that day did you start to go somewhere by the train? A. To Rockaway Beach.

Q. And what time of day did you leave home? A. We left about half past nine from the house.

Q. Who was with you? A. My two daughters, Elizabeth and Lillian.

Q. How old was Elizabeth at that time? A. 15, Elizabeth; Lillian was about 12.

Q. And where were you going? A. To Rockaway Beach.

Q. Now, to get to Rockaway Beach did you come down to the East New York station of the Long Island Railroad Company? A. I did.

Q. When you got there, did you pay your fare? A. I bought my ticket.

Q. With your two daughters? A. My two daughters and I bought tickets at East New York station, across the street.

Q. And having bought your tickets, did you go on through to the platform? A. Walked across the street and went up to the station.

Q. When you got to the platform were there any people there? A. A big crowd of people.

Q. And what day of the week was this? A. On Sunday morning.

Q. And was it hot or warm? A. Quite a hot day.

Q. Now, at that station do you know whether trains for various destinations go through? A. There was one train passed before mine came.

Q. That was not your train? A. No, sir.

Q. Now, did an explosion take place there? A. When that train that was in went out, the explosion occurred.

Q. Took place? A. Yes.

Q. Now, as you saw this train pulling out from the station (which you did), before that did you go over to some other part of the platform? A. Just walked up and went to where I stood at the scale, around a small place.

Q. At a corner of the platform? A. At a corner like that (indicating corner of court room).

Q. Were those scales high or low? A. Well, not very high and not so very low either.

Q. Well, were they as high as your head? A. About as high.

Q. Did you stand near the scales? A. I was next to it.

Q. Did you have a valise with you? A. I had.

Q. Now, this little daughter, Elizabeth, was with you then, wasn't she? A. Yes, sir.

Q. Did Lillian go away for any purpose? A. Coming up the stairway she asked if she could have the paper — for change — and I handed it to her to get the Sunday paper, and she walked one way and we walked the other.

Q. And this platform — about how wide was it, if you can recollect, from about the place the car is to where the partition was? A. From twelve to fifteen feet.

Q. And how long, do you recollect, it was? A. Well, that I didn't really — I know quite a few cars can stop on it.

Q. Now, as you were standing there and this train started to pull out, you say an explosion occurred. Did you hear any noise? A. Fire-crackers shooting.

Q. Was the noise loud? A. The noise was so that the flying of glass and the fireworks was all in my ears.

Q. Well, what happened, if anything, to the glass or mirror of the scales? A. Flying glass — a ball of fire came, and we were choked in smoke, and I says, "Elizabeth, turn your back," and with that the scale blew and hit me on the side.

Q. Which side? The left side? A. Yes, sir, the left side.

Q. What part of your body was hit? A. My arm and the thigh.

Q. And your hip or thigh? A. Yes.

Q. Was that black and blue after the accident? A. It was blue the next day.

Q. And then was there smoke that filled the station? A. I was in a mass of smoke; I couldn't see nobody.

Q. Did you hear voices in that smoke — cries? A. Well, all I can

remember is, I had my mind on my daughter, and I could hear her holler, "I want my mama," — the little one.

Q. That was Lillian? A. Lillian, yes.

Q. What did you do to protect Elizabeth who was with you? A. I had her by the wrist holding her, and we got jammed in the corner by the crowd running away from us.

Q. And then what is the next thing you recollect, Mrs. Palsgraf?

A. The next — all I could hear was Lillian hollering for "My mama." With that an officer come and led Elizabeth and I to the bench by the news stand and left us sitting there, and give me a drink of something, and then he took me down the stairs and led me across down and into the —

Q. Waiting room? A. And the ambulance doctor took me over.

Q. Now, wait. This officer you speak of — was that a police officer? A. Yes.

Q. And as you say, he led you. Did he assist you? A. He led me by the arm down.

Q. Could you walk unassisted? A. Well, I just about could walk alone. I shook and trembled from head to foot.

Q. What part of your body was trembling? A. My legs — my whole body.

Q. Now, after he led you over to this seat and you got the drink of water and it revived you somewhat, then you were taken out to another room and sat down? A. Downstairs.

Q. Then the ambulance came? A. Yes, sir.

Q. Did the ambulance man treat you? A. The ambulance doctor took me to the waiting room where we bought the tickets, and he give me something to drink and told me to sit there for a while and finish the rest of it, as he had went to some other patients on the platform.

Q. Were there many ambulances came? A. There was quite a few there.

Q. Did the fire engines come? A. The fire engines were there.

Q. Then did you get home eventually? A. Well, about half an hour after my two daughters and I took a taxi and rode home.

Q. And then when you got home what did you do? A. The doctor told me to lay down and rest myself, and then I did that for a few days, and along about —

Q. Just a minute. Then did you call a doctor? A. The next day the doctor come from the Long Island Railroad Company.

Q. What is the doctor's name? A. I don't know.

Q. Well, that is the railroad doctor? A. Yes.

Q. He examined you, did he? A. Well, he just asked me about the case.

Q. You never saw him after that? A. No.

Q. And don't know his name? A. No.

Q. Now, did you get a doctor of your own, Mrs. Palsgraf? A. Yes, I did.

Q. What is his name? A. Dr. Parshall.  
Q. When did he first come to see you? A. He come on Tuesday.  
Q. That is the Tuesday after the Sunday on which you were hurt?  
A. Yes.  
Q. And between Sunday when you were hurt and Tuesday, did you notice any diminution of the shaking and trembling of your body? A. Well, between Sunday and Tuesday night I didn't tremble, until about Wednesday morning. During the night it kind of stopped, but my speech was affected.  
Q. Up to that time your speech was not affected, although it was then? A. Until then.  
Q. Your muscles got better but your speech got worse? A. And I still trembled a trifle.  
Q. Now, has your speech been stuttering and stammering ever since that day, as it is now? A. Ever since the day of the accident.  
Q. Has it been any better or worse? A. Worse.  
Q. Now, how long did the doctor come, Mrs. Palsgraf, to see you, at your house? A. I should figure, about six weeks.  
Q. And then did you go to his office? A. Yes.  
Q. Of course you could walk all right? A. Just around the corner.  
Q. How long a time did you go to his office? A. Oh, I should judge, about two or three months.  
Q. Of course, during that time you didn't work, did you? A. No.  
Q. Have you worked and earned this money that you were earning from outside work since the day you were hurt? A. No, I couldn't.  
Q. Did you keep up your janitor work for a time after that? A. I did that.  
Q. You have anybody to help you do that work? A. I did.  
Q. Who helped you? A. My neighbor next to me, and my daughters, done the work; but I couldn't keep it up.  
Q. Your daughters work now, don't they? A. They work now.  
Q. All three of your children work now, don't they? A. Yes, they work now.  
Q. They didn't work then, did they? A. No.  
Q. Have you given up the janitor work since? A. Yes.  
Q. When did you give it up? A. Nearly a year this June coming.  
Q. In June, 1926, you gave it up? A. Yes.  
Q. You haven't done any janitor work since that time? A. No.  
Q. Has the doctor's bill been paid? A. No.

Mr. Wood: That is all.

CROSS-EXAMINATION BY MR. McNAMARA:

Q. Mrs. Palsgraf, when you got to the East New York station that day the platform was just a few steps agove [above] the level of the street? A. Yes.

Q. And as you approach the platform you cross the street to get to it, do you? A. Yes.

Q. And between the steps leading to the platform and the curb of Atlantic Avenue there is a roadway that cars and wagons pass through?

A. I am not acquainted about that; I really don't know.

Q. You just went up a few steps to get into the station platform?

A. Yes.

Q. And then when you got on the platform did you walk some distance away from the steps? A. Well, I should judge, we walked from this distance to about where you are — not quite (indicating).

Q. You had no difficulty in making your way to that position on the platform, had you? A. (No answer.)

By the Court:

Q. When you went down the platform he asked you if you had any difficulty in getting down? A. The station was crowded, we had to pass through a crowd waiting for the trains to come in.

By Mr. McNamara:

Q. How many trains came in while you were there? A. Just the one.

Q. Just this one train? A. The cars that you call on the railroad was generally like on the elevated station — has got four cars.

By the Court:

Q. Four cars? A. Well, I really don't know how many cars there was, but there was more than one.

By Mr. McNamara:

Q. And there was more than one car on the train? A. The cars — you call a car a train, wouldn't you?

Q. No, a train as I understand, is made up of a number of cars. A. Well, that I couldn't tell you — how many cars was with that.

Q. That is not what I asked you. How many trains came in while you were there? A. One.

Q. That was not the train going to Rockaway where you wished to go? A. No.

Q. Now, did you see any men carrying bundles on that station? A. I did not.

Q. Did you have a bundle yourself? A. My valise.

Q. You had a valise. Did you see anybody on that station with a bundle? A. There were people with valises the same as myself.

Q. So pretty near everybody on that station had a bundle or a valise or bag of some kind, hadn't they? A. That I wouldn't vouch for.

Q. Well, you saw a great number of people there with bags and valises and bundles of one kind and another? A. Yes.

Q. When this explosion took place did you see any lights of any kind? A. I just see the ball of fire, and then it was all black smoke and I couldn't see nothing no more.

Q. Well, was that ball of fire that you saw made up of different colored lights? A. I couldn't remember that because the flying of the glass, the cracking of the glass, made me tell my daughter to turn her back for fear we would get cut and I can't remember anything after that.

Q. Well, can you tell us whether or not there was more than one explosion? A. Well, it sounded like a lot of firecrackers going off, like you hear on the 4th of July.

Q. Do you know who the policeman was that assisted you at the time? A. I couldn't tell you.

Q. Was he a city policeman? A. He wore a dark blue uniform, like a city policeman.

Q. Now, prior to this day were you troubled with nervousness? A. Never in my life.

Q. Your nerves never gave you any trouble at all? A. Never.

Q. Now, did you give up this janitor work because your children had grown up and gone to business? A. No, because I couldn't do it any longer.

Q. But since the accident your children have started to business? A. Since the accident my children have started to business.

Q. And they are all living at home with you? A. Yes, sir.

Q. Now, I understand you to say that you are now living at 102 something Jamaica Avenue? A. 10233 Jamaica Avenue.

Q. What do you occupy there — an apartment? A. Just a floor. I am all alone in a house, over next door.

Q. And the rental that you pay there is greater than what you were paying in Irving Avenue? A. It is a little more; yes.

Q. Could you tell us, Mrs. Palsgraf, how many cars of that train had passed you; or was the train standing still when this accident took place? A. There was about — I should judge about three or four cars passed me just going — creeping along — when we heard the explosion; they were just starting.

Q. They were leaving the station? A. Just leaving. They wasn't off the station when the explosion happened.

Q. And how near were you to the place where the explosion took place? A. That I can't exactly tell; I don't know what train took the explosion.

Q. But you saw a ball of fire? A. The whole station seemed to be in a blaze to me at the time.

Mr. McNamara: That is all.

HERBERT GERHARDT, residing at 81 New Jersey Avenue, Borough of Brooklyn, City of New York, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WOOD:

Q. Mr. Gerhardt, what is your business, please? A. Engraving.

Q. In business for yourself? A. Yes, sir.

Q. Do you recollect the 24th day of August, 1924, being on or near the East New York station of the Long Island Railroad Company?

A. Yes, sir.

Q. Was anybody with you? A. My wife.

Q. Where did you intend to go that day? A. To Rockaway Beach.

Q. Were you up on the platform when the explosion occurred?

A. Yes, sir.

Q. Did you see the explosion? A. Yes, sir.

Q. Did you hear it? A. Yes, sir.

Q. Was the explosion loud, or not so loud? A. Very loud.

Q. Did you see any fire or fireworks? A. Yes, sir.

Q. Where did you see them? A. In between the platform and the train, when they exploded.

Q. Now, do you know what caused this explosion? A. Yes.

Q. Yes or no? A. Yes, sir.

Q. Just tell the jury in your own way what you saw from the time when you got on the platform until after the explosion. A. I was standing on the platform right as they come up from the ticket office there — you know, past the guards where they get tickets — with my wife, and two Italians came up — young fellows — and they wanted to make this here Jamaica express, I believe — or a local it was — I am not sure — and the two of them come, and one of them had a bundle under his arm, and the one fellow who had the bundle hit my wife in the stomach and I turned around and I looked at him, and just then the train was starting off and this fellow who had the bundle was last, the other fellow was already on the train and the train was in motion and the guard inside was trying to help the fellow on, and the platform man was trying to help him on from the outside, as he had the bundle in his right hand, the platform man pushed his arm and the bundle fell between the platform and the train, and I stood there for a while, and about a second later, why, everything went in a black smoke and explosion, and my wife she ran out and she fainted in the street and I had to take care of her right away and take her over to the station master, and I come back and I wanted to take an officer from the Long Island Railroad over and identify the fellow on the train.

Q. This Italian? A. Yes. But they wouldn't do it, they wouldn't hold the train, they let the train stop but the train continued right on again.

Q. You offered to the man on the platform to go up and identify the Italian man? A. Yes, the special officer on the platform there.

Q. Now, when these two Italian men started to take this train you say the train was in motion? A. Yes, sir.

Q. And there was a guard on the train? A. A guard on the train.

Q. And a platform man on the platform? A. Yes, sir.

Q. And each tried to assist this man to get on the train? A. Yes, because the other fellow was on already.

Q. And which man hit the arm that carried the bundle; the platform man or the guard? A. The platform man.

Q. He had hold of the right arm of the Italian? A. Yes, he tried to assist him on and he was trying to grab the train.

By the Court:

Q. How big a man was he? A. Well, a short fellow. His arm wasn't fully around it.

By Mr. Wood:

Q. Was it round? A. Yes, and it was wrapped in newspaper.

Q. And how big around was it? A. Well, a bundle like that (indicating).

Q. A foot or eighteen inches? A. About like that — about eighteen inches in diameter (indicating).

Q. Was it round or oblong? A. Round.

Q. Wrapped up in a newspaper, this bundle? A. Yes, sir.

Q. Now, as they helped the Italian man they hit the bundle and it fell between the train and the platform? A. Yes, and the train pulled it, like, between the train and the platform and exploded it.

Q. And then this explosion took place? A. Yes, sir.

Q. Was the station filled with smoke? A. Yes, sir.

Q. Did you see any stars or fire? A. Well, I rushed right up to my wife as soon as it went off.

Q. You don't know this plaintiff, do you? A. No, sir.

Q. Never saw her before, did you? A. No, sir.

Q. Now, did you see what happened to those scales on the platform? A. After I did; yes, sir.

Q. What was its condition? A. Well, it was blown right to pieces and knocked down, the glass was busted and blown — just simply laid down on the platform.

Q. Laid on the platform? A. Laid on the platform.

Q. Were there many people on the platform? A. Oh, yes, quite a crowd — on Sunday morning for Rockaway Beach.

Mr. Wood: That is all.

CROSS-EXAMINATION BY MR. McNAMARA:

Q. How long had you been on the platform before this explosion took place? A. Well, I thought it was a Rockaway Beach train coming in and my wife and I we got up to see, but it was a different train, and just right after this train come — I should judge about five minutes.

Q. This was the second train that come in, was it? A. Yes, while I was on the platform.

Q. And where were you going? A. To Rockaway Beach.

Q. Did you have a bundle or a bag with you? A. No.

Q. Did you notice the other people on the platform, as to whether they had bundles or bags? A. Well, yes, — suit cases and satchels, and so forth.

Q. The great majority of people on that platform were carrying bags or bundles of some kind, weren't they? A. I didn't see all, I just seen a few as I stood there have packages.

Q. Well, a great majority of those you saw had packages or bundles? A. Yes.

Q. Did you see Mrs. Palsgraf there that day? A. No, sir.

Q. And you don't know the lady? A. No, sir.

Q. How did she get your name as a witness, do you know? A. My wife, when she was over in the station master's — I gave it to the station master and an officer of the law — my name, see? And the officer of the law gave it, and naturally I moved since then and she only got in touch with me now. As a matter of fact I was going to put in a claim myself because my wife was in bad condition herself.

Q. Now, you say you saw these two men, was it, enter the platform? A. Yes, sir.

Q. And were they running or walking? A. Running — running for the train.

Q. Running to make the train that was about to leave? A. Yes, that was about to leave.

Q. And did both of them get aboard the train, or one of them? A. One got aboard, you know, when it was just starting to pull out, and was just getting on, and the other fellow was running, and as he ran he hit my wife on the stomach and I looked at him and he got on the train and when he got on the train the platform man tried to push him on and the guard of the train to pull him in while the train was in motion.

Q. The fellow that was carrying the bundle, then, didn't get on the train? A. Yes, he got on.

Q. He got on the train? A. Oh, yes.

Q. And did he drop the bundle after he got on or before he got on? A. While he was jumping on he dropped the bundle, but he was

afraid of losing his balance, but he got on himself any way because he went with a running start.

Q. And immediately after he dropped the bundle did an explosion take place? A. About a second after; just about a half of a car went by when the explosion went off.

Q. Did it take place just about the spot on the platform where he boarded the train? A. Yes, about five or ten feet away.

Q. You say there was a platform man there at the place where he boarded the train? A. Yes, sir.

Q. And he assisted him on? A. Yes, sir.

Q. Do you see that platform man in the court room here? A. No.

Mr. McNamara: That is all.

Mr. Wood: That is all.

(Trial adjourned to May 26, 1927, at ten o'clock A.M.)

BROOKLYN, N.Y., May 26, 1927.

#### TRIAL CONTINUED

DR. KARL A. PARSHALL, residing at 314 Bleecker Street, Borough of Brooklyn, City of New York, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

#### DIRECT EXAMINATION BY MR. WOOD:

Q. Doctor, are you a regularly licensed physician in this Borough and City? A. I am.

Q. How long have you been practicing as such? A. About 30 years.

Q. Do you know the plaintiff, Mrs. Palsgraf? A. I do.

Q. Did you ever treat her before August, 1924? A. Yes, sir.

Q. What for? A. Minor complaints.

Q. Before that date did you ever notice that she suffered from stuttering or stammering or any trouble with her vocal cords or organs? A. She did not.

Q. She had full control of her speech? A. Yes, sir.

Q. Was she suffering from nervousness before that time? A. No, sir.

Q. Did you treat her after August 24, 1924? A. Yes.

Q. When after that? A. August 25th, 1924.

Q. Did you examine her at that time? A. Yes, sir.

Q. What did you find her condition then to be? A. Why, she was

extremely nervous and very shaky, and shook up, and in a state of shock, and then she had some small bruises on her shoulder and side.

Q. The left side? A. The left side, yes, sir.

Q. Was she in bed or lying down? A. She was lying down in bed; yes, sir.

Q. And at that time when you first saw her, was she then suffering from any stuttering or stammering? A. That occurred a few days later.

Q. That came on how many days later? A. I should say, two or three days after that.

Q. And how long did you call at her house and treat her for these troubles? A. I called at her house for about two weeks, and then she got better; that is, she was able to get around and then she called at the office.

Q. How long did she call at your office? How many times? A. The whole period — about two months.

Q. During that time how many visits did she make to your office? A. About twenty times to the office, and I saw her at her house about ten times.

Q. So your attendance on her carried her over the months of August and September and something into October, I take it, 1924? A. That is right.

Q. When did you first observe this stuttering and stammering evidence itself? A. Two days afterwards — two or three days.

Q. How did it evidence itself? A. Well, she began stuttering; that is, she couldn't answer the words, and then it remained very much the same all the time.

Q. Have you ever observed any change or improvement in that condition since that first came on? A. No, sir.

Q. Did it get worse or slightly better? A. It stayed about the same.

Q. Now, doctor, assuming that this lady never was in an accident before August 24, 1924, and was in good condition physically before that date, as she testified; assuming that on that date she was at a railroad station, that an explosion took place, a violent explosion, so that she was forcibly thrown up against a part of a partition and against a metal scales, injuring her left side, her arm and her leg and side; that thick smoke that couldn't be seen through permeated the whole station; she was in a state of panic, partly dazed; assuming all those facts to be true, basing your answer upon those facts as well as your own examination of her on August 26, 1924, can you state, with a reasonable degree of certainty, whether or not an accident such as I have described would be a competent producing cause for the injury you found her suffering from? A. There is no question but what it was.

Q. Now, doctor, basing your answer upon the same assumption can you state, with reasonable certainty, how long those injuries will last?

A. There has been no improvement since the accident. I don't see why there should be later on, as far as I am able to judge.

Q. So they are likely to be permanent? A. They are likely to be permanent.

Q. Have you been paid for your doctor's bill, doctor? A. No, sir.

Q. How much is the doctor's bill to date? A. \$70.

Mr. Wood: That is all.

CROSS-EXAMINATION BY MR. McNAMARA:

Q. Have you ever treated a patient before, doctor, for a similar condition?<sup>1</sup>

Q. Just what is the cause of this stuttering and stammering? A. It is traumatic shock.

Q. Will you tell the jury just how it affects the vocal cords to cause this stuttering and stammering? A. Well, I am not a neurologist. Those things—I know that they do occur from shock of this kind. You may just as well have paralysis of any other part of the body.

Q. Do you know whether or not that condition might result from any other cause? A. Not that I know of. Any shock would do it.

Q. Well, is there any other condition other than shock, that you know of, that might bring that condition on? A. No, sir.

Q. Did you recommend that she consult some neurologist about this condition? A. Something was brought up about it at that time, but those people are very poor and they didn't take to it very much, and so I didn't do anything about it.

Q. Did you in the course of your treatment consult any neurologist? A. I did not.

Q. Just what treatment did you give her, doctor? A. Medical treatment.

Q. Well, did you prescribe medicines for her to take? A. Yes, sir.

Q. And were those medicines just for her nerves? A. For her nerves; yes, sir.

Q. Would those medicines, in your opinion, doctor, relieve her of this stammering and stuttering? A. Well, they did not. They sometimes do, but they did not in this case.

Q. You say they sometimes do? A. Yes, sir.

Q. Well, have you ever treated a case where they have? A. No, sir.

Q. Have you ever observed a similar case being treated? A. Why, there are records of similar cases.

Q. And you have never personally observed any such cases? A. No, sir.

<sup>1</sup> No answer to this question appears in the record. — Ed.

Q. Now, before treating her in August of 1924, did you ever treat her for a nervous condition before? A. No, sir.

Q. Would you say, doctor, that she wasn't nervous prior to that time? A. No, sir.

Q. She was not? A. No, sir.

Q. Did you prescribe different medicines for her on each of her visits to you, doctor? A. No, not different each time, no.

Q. But you continued the same medicines? A. Not all the time; no.

Q. What was it you prescribed? A. Well, principally bromides and nerve tonics, and things like that — alternatives, and things like that.

Q. Just medicines to quiet her nerves? A. Practically, yes.

Q. Did those medicines have the effect of quieting her nervous condition? A. Slightly.

Q. Is she still as nervous today as she was when you treated her? A. Yes, sir.

Q. I didn't hear your answer? A. I said yes, sir.

Q. Upon what experience, doctor, did you base your opinion that this condition is likely to be permanent? A. I say, I am not a neurologist. Only from what I have read and studied on the case and talked with others.

Q. So that this condition may not be permanent? A. I am not prepared to say. As far as my judgment goes, it is. It has persisted for three years nearly, so I don't see where it is going to get much better.

Q. Now, on the day that you visited her at her home, was she in bed? A. Yes, sir.

Q. Was there anything about her physical condition, doctor, to prevent her from being up and around? A. Yes; she was bruised in the beginning.

Q. Were the bruises that you found sufficient to keep her in bed for three weeks? A. Well, I wouldn't say that they were sufficient for that; still, some people would get up with bruises and others wouldn't.

Q. I beg your pardon? A. Some people would get up with the same bruises, and others wouldn't.

Q. Well, you didn't advise her to stay in bed, did you? A. Well, it is so long ago I have really forgotten just what I did advise her at that time.

Q. And how frequently did she visit your office after she got up? A. She came in twice — two or three times a week.

Q. And was your advice on each of those visits to continue taking the medicines you had prescribed? A. I stopped it several times and told her to take it up again at intervals, to see if she would be better or worse without it.

Q. And she continued to visit your office for several months after? A. The whole course ran over — a little over two months.

Mr. McNamara: That is all. At this time, if your Honor please, I move to strike out the doctor's testimony as to the permanency of this injury, on the ground that the doctor has not qualified as an expert as to this condition.

The Court: Motion denied.

Mr. McNamara: Exception.

GRACE GERHARDT, residing at 81 New Jersey Avenue, Borough of Brooklyn, City of New York, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WOOD:

Q. Mrs. Gerhardt, on August 24, 1924, were you on the East New York station of the Long Island Railroad Company? A. Yes, sir.

Q. Who was with you? A. My husband.

Q. That is the witness who testified yesterday? A. Yes, sir.

Q. And where were you going? A. To Rockaway Beach.

Q. And were you on the platform at the time this explosion took place? A. Yes, sir.

Q. Now, you can state, if you will, in your own way, what you saw and heard on that day at that place. A. I was standing on the New York station, and it was a Jamaica train that was pulling out, and there was two young Italian fellows running for the train, and one fellow caught it, and the guard on the platform pushed the other little Italian fellow, and by grabbing his right arm, he knocked the package which he had in his arm between the platform and the train, and as the train kept moving the bundle started to explode.

Q. Now, also, before that, had the same Italian man with the bundle struck you? A. Yes, as he ran past he hit me with his right arm, right in the stomach.

Q. That is the man who had the bundle? A. Yes, sir.

Q. And you were jostled and pushed by this same Italian? A. Yes.

Q. Now, how big a bundle was it, Mrs. Gerhardt? A. Well, I guess it was about this big (indicating about 15 inches) — a round bundle, sort of — well, yes, fifteen or twenty inches; it was quite a large bundle.

Q. Was it round or cylindrical in shape? A. Well, the way he had it rolled I would say it was like oval; it wasn't a square package.

Q. And was it wrapped in something? A. Yes, a newspaper.

Q. Tied? A. Tied? Well, I guess it had cord on, but I noticed there was a newspaper around it.

Q. Now, the man who was ahead of the man with the bundle, he got on the train all right? A. Yes.

Q. The train was moving? A. Yes, the train was in motion.

Q. And then the man with the bundle was being assisted by the

guard on the train as well as the platform man on the platform? A. Yes, sir.

Q. At the time the accident occurred? A. Yes, sir.

Q. Now, lady, was the explosion loud or violent, or what character was it? A. Well, I will tell you, the first explosion was very loud and after that when I heard it and saw the screaming and all, I run to the street, and, of course, then when I got out there, on account of the excitement and being hit in the stomach, I fainted. So I really didn't see any more after that.

Q. And was there smoke permeating the station at that time? A. Well, from the first explosion it was like all black smoke, you know — covered all the station.

Q. There were several explosions, then, were there? A. Yes — at least more than one — yes, there were a number of them at that time.

Q. Were there many people on the station at that time? A. Yes, there was quite a crowd.

Q. And how wide was this station where the people were standing, about, if you recollect? A. I guess it was about from the desk (indicating) over to where that man is sitting (indicating).

Q. About, say, twelve feet? A. Yes.

Mr. McNamara: Right.

Q. And how long was this platform where the people were standing, if you recollect? A. Well, it was quite long. I really couldn't say, but it is a long station.

Q. Was it as long or longer than this room? A. Yes.

Q. Judging by the length of cars in the train, how long do you think it was? A. Well, I guess there was probably four or five trains in it and I guess it was almost as long as that.

Q. By "trains" you mean cars? A. Yes, the cars.

Q. Did you see a scales on the platform at that place? A. No, I didn't see any of that.

Q. You don't know the plaintiff, do you? You don't know Mrs. Palsgraf? A. No.

Q. You never saw her before yesterday? A. No.

Q. You never saw me until yesterday, did you? A. No, sir.

Q. You are subpoenaed, aren't you? A. Yes, sir.

Mr. Wood: That is all.

CROSS-EXAMINATION BY MR. McNAMARA:

Q. How long had you been on the station platform before this explosion took place? A. Well, I would say about five — maybe ten minutes; it wasn't long.

Q. Five or ten minutes. Where were you going? A. To Rockaway Beach.

Q. Did you have a package of some kind? A. No, sir.

Q. No valise? A. No — we had nothing at all.

Q. Most of the passengers on that station had a package or valise of some kind; had they not? A. Well, some people had bathing bags and some had valises; and, of course, mostly everybody carries a package.

Q. Yes, it was a regular crowd going to the beach for the day? A. Yes, sir.

Q. With lunches, bathing suits and things? A. Yes.

Q. Now, you say you saw these two men that you describe as Italian men enter the station? A. Yes, they came running up the stairs.

Q. And was the train at the platform as they got on the station? A. Yes, but the train was in motion; it was going.

Q. The train just started to leave? A. Yes.

Q. And that wasn't a Rockaway train, was it? A. No, I believe it was a Jamaica train.

Q. And these two men ran towards the train? A. Yes, sir.

Q. In doing so, they bumped into you? A. Yes, sir.

Q. Then, I understand you to say, that one of the two men got on this train? A. Yes.

Q. And the second man was about to get on when he dropped the bundle; is that right? A. Well, yes, but he got on with the help of the guard on the station.

Q. And you say there was some man there who assisted him on? A. Yes, one of these specials they have, with a gray uniform.

Q. When you say "guard" that is what we call a man on the train who operates the doors; is that the man you mean? A. Well, he held the door open and the other man on the platform pushed him in.

Q. The man standing on the platform with the uniform on, you say, pushed this man in? A. Yes, sir.

Q. Assisted him to get on the train? A. Yes, sir.

Q. And when that was taking place the man with the bundle dropped the bundle? A. Well, yes, when the man on the station took his arm to assist him in, in grabbing the arm he knocked the bundle out.

Q. Well, did you see the platform man's hand strike the bundle? A. Yes.

Q. How near were you to this occurrence? A. Well, we were standing about here (indicating) and it might have been right there (indicating), where that railing is (indicating).

Mr. Wood: That is six or seven feet?

Mr. McNamara: About seven feet.

Q. Were you east or west of where this occurred, if you know? Were

you further to Jamaica from where this accident took place, or in the other direction? A. Oh, I would be this side (indicating) this way (indicating) — nearer to downtown — Flatbush.

Q. You were nearer the rear end of the train? A. Yes.

Q. And was the passenger's back turned to you — the man that had the bundle? A. Well, yes, in getting on the train.

Q. And was the platform man's back turned to you? A. Yes.

Q. But you had no difficulty seeing just what was done at this point? A. No, no; it was right in front of me.

Q. Then the bundle fell, did it? A. Yes.

Q. Did it fall on the train or on the station platform, or where did it fall? A. Well, it fell between the platform and the train and it like stuck there, and as the train kept right on moving why, it caused it to explode.

Q. It was the bundle, was it, that exploded? A. Yes.

Q. And did you see any lights come from that explosion? A. Well, no; I just heard the one explosion and then I run.

Q. You have seen fireworks displays, have you not? A. I don't get you.

Q. You have seen fireworks displays, have you? A. Yes.

Q. Did this explosion explode like fireworks? A. Well, there wasn't much fire to it; there was mostly more smoke and noise.

Q. This bundle the man carried under his arm, did he? The man getting on the train, did he have the bundle under his arm? A. Yes, under his right arm.

Mr. McNamara: That is all.

Mr. Wood: That is all.

ELIZABETH PALSGRAF, residing at 10233 Jamaica Avenue, Borough of Brooklyn, City of New York, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WOOD:

Q. Now, Miss Palsgraf, were you with your mother on August 24, 1924, when the explosion took place? A. Yes, sir.

Q. Where were you going that day? A. To Rockaway.

Q. Who was with you outside of your mother? A. And my sister.

Q. What is her name? A. Lillian.

Q. And what time of day did you get up on the station platform? A. About ten o'clock.

Q. And when you got up on the platform, after having paid your fare and passed through this turnstile, did you see a train come in?

A. A train was approaching the other end of the station.

Q. Now, speak up so that this man away back here can hear you.

And which way did you and your mother go after you got on the platform? A. We turned to the right.

Q. And how far did you go before you stopped; a short distance or long distance? A. Well, a short distance from where we started.

Q. And then where did your sister Lillian go? A. She went down the other end to a news stand.

Q. Speak up? A. She went to a news stand down at the other end of the station.

Q. And then did you and your mother — did you go anywhere near a scales? A. Yes, sir.

Q. Do you remember that? A. Yes, sir.

Q. Did you stop by the scales? A. Right beside it.

Q. Now, you tell the jury in your own way — and keep your voice up — what you saw and heard from that time on? From the time you got over to the scales and stopped, what is the next thing you saw or heard? A. Well, the train pulled in —

Q. Excuse me interrupting you. Was that the train you wanted to take? A. No, sir.

Q. You were waiting for another train? A. Yes, sir.

Q. All right, the train pulled in, and then what happened? A. And the guard stepped off and called out some names, and the crowd got on the train, and the guard motioned to someone for the train to pull out.

Q. Excuse me for interrupting you again. Did the train start? A. Well, after the guard gave the signal.

Q. After the guard gave the signal did the train start? A. Yes, sir.

Q. And then what did you see? Anybody try to get on the train? A. No, sir.

Q. Well, what did you see or hear after that? A. Well, after that we saw a ball of smoke, or fire, and thick smoke, and mother told me to turn my back so I wouldn't get hit with any glass; there was flying glass around us.

Q. Was there glass flying there? A. It sounded like glass flying.

Q. Did you see what happened to the scales at which you were standing? A. It flew apart.

Q. Did the glass of the scales break? A. Yes, sir.

Q. What happened to your mother, that you saw? A. Mother was pushed into the wall and her left side was all bruised.

Q. Now, at that time, was there a crowd of people on that platform? A. Yes, sir.

Q. Much of a crowd, or a small crowd? A. Well, quite a large crowd.

Q. And when the smoke came down could you see where you were? A. No, sir.

Q. Was it a big smoke, did you see? A. Yes, sir.

Q. Now, did you hear your mother call for your little sister Lillian;

or did you hear your sister call for your mother? A. We heard our sister call for mother.

Q. Go on and tell what happened after that. A. Well, after that we were pushed into the corner.

Q. Pushed by what? A. By the crowd, into the corner, and then later all I remember is a policeman coming and taking us down to the other end of the station and sitting mother on a bench and gave her a glass of water, and then we were led downstairs where an ambulance surgeon treated mother and took her across the street.

Q. And did an ambulance come? A. There were quite a number of ambulances around.

Q. Were there a number of people hurt then? Did you see them around there? A. Yes, there was a lot of people hurt.

Q. Did the fire engines come? A. Yes, sir.

Q. Then did your mother go home after that? A. Yes, sir.

Q. How did she get home? A. We took her home in a taxi.

Q. You were working at that time? A. No; I was at school.

Mr. Wood: That is all.

CROSS-EXAMINATION BY MR. McNAMARA:

Q. You stood by your mother all the time that you were on the station platform, didn't you? A. Yes, sir.

Q. When this explosion took place, you say you saw some fire? A. A ball of fire and thick smoke.

Q. And was that fire of different colors? A. Well, I can't remember.

Q. The smoke was very thick? A. Yes, thick, black smoke.

Q. And in spite of the thickness of the smoke you could see this scale blow apart? A. Well, we heard it blow apart, as we were standing right alongside of it.

Q. I didn't hear you? A. We were standing right alongside of it and we heard it blow apart.

Q. You were not struck by any part of it, were you? A. No, sir.

Mr. McNamara: That is all.

LILLIAN PALSGRAF, residing at 10233 Jamaica Avenue, Borough of Brooklyn, City of New York, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WOOD:

Q. Were you with your mother and your sister Elizabeth on the day this accident happened? A. Yes, sir.

Q. After you got on the platform of the East New York station which way did you go? A. I went to my left.

Q. For what purpose? A. To get a newspaper.

Q. And had the accident occurred at the time you bought the paper, or had you not yet got the paper? A. I didn't have the paper yet.

Q. You hadn't had time to get it? A. No.

Q. Now, Lillian, you tell the jury in your own way what you saw and heard as you were trying to get this newspaper? A. Well, I walked down the station to my left, and a train was in, and I didn't know which train it was, so, I looked back to see where my mother was, and as I looked back, I saw two men running, and one got on the train and one was helped on the train and then I noticed the bundle fell.

Q. Did the bundle fall from the man's arm? A. Yes, sir.

Q. Where did it fall, if you saw? A. Between the platform and the train.

Q. Then when it fell what happened, if anything? A. The train started to go, and as the train went along the bundle rubbed alongside the station and the train and it exploded.

Q. An [And] did you see any smoke? A. Yes.

Q. Was the smoke thick or thin? A. Very thick.

Q. Were there many people on the train at that time? A. Yes; it was crowded.

Q. Did you make any call or cry for your mother? A. Yes, everyone was running and hollering, and so I called for my mother.

Q. Everybody was running and hollering, you say? A. Yes, sir.

Q. Did you see your mother then? A. Well, no, I couldn't get to her because the smoke was very thick and people were running towards the stairs and I couldn't go that way, so I called for her and after a while a policeman brought her back to the news stand where the benches are, with my sister.

Q. And they gave her something to drink? A. Yes, sir.

Q. And after that you went home with your mother in a taxicab? A. We went downstairs and an ambulance doctor treated her and after a while we went home in a taxi.

Mr. Wood: That is all.

CROSS-EXAMINATION BY MR. McNAMARA:

Q. How far was the news stand, Lillian, from where your mother was? A. Oh, it was quite a distance; it was at the other end of the platform.

Q. Was it at the end of the platform? You said quite a distance. From where? A. Quite a distance from where my mother was.

Q. And how far had you gone after you left your mother before

the accident took place? A. Well, just as I got towards the news stand and I looked back because the train was in, and I wanted to see where my mother was, and I saw the two men running to get on the train.

Q. And you had gotten right up to the news stand before you noticed these two men, hadn't you? A. Well, just about to it.

Q. And how far is that news stand — can you point out in the room here — from where your mother was standing? A. The news stand must be about here (indicating), at this here corner (indicating), and my mother was over here (indicating).

Q. About the width of the room? A. From about here over to the other side—to that wall (indicating).

The Clerk: It is 29 feet.

Mr. Wood: Thirty feet, I should say.

Q. Could you see your mother from the news stand before the accident took place? A. Yes — just about noticed her, because the station was crowded.

Q. Then I understand this train came in and was about leaving the station, and you say two men came running to get on it? A. Yes, sir.

Q. And one of the men had a bundle? A. Yes.

Q. And the first man got on the train, did he? A. Yes, sir.

Q. And as the second one was getting on he dropped the bundle? A. Yes, sir.

Q. And the bundle exploded? A. When the train started to go and he was on the train.

Q. What? A. He was on the train, and he dropped the bundle getting on, and it exploded.

Q. And it was the bundle that exploded, was it? A. Yes, sir.

Q. And then after that, there was considerable confusion amongst the people? A. Yes, sir.

Mr. McNamara: That is all.

Mr. Wood: That is all.

Now, I have an expert neurologist, your Honor, who was to be here at half past ten. He is expected any minute.

The Court: It is more than half past ten.

Mr. Wood: Well, he said 11 o'clock, as he had many patients to see, but I accelerated the time from 11 to 10:30.

The Court: If he comes in, I will let you put him on.

Mr. Wood: Now, with that exception, your Honor, the plaintiff rests.

Mr. McNamara: If your Honor please, I move to dismiss the complaint, on the ground that the plaintiff has wholly failed to make out a case against the railroad company here. There is no evidence at all of negligence on our part. It surely can not be anticipated, when people are carrying fireworks in a package, and we can't have everybody open their bundles when they come on the station platform.

The Court: Motion denied.

Mr. McNamara: Exception. I rest, if your Honor pleases, and I renew my motion to dismiss at this time, on the ground that no negligence has been established against the railroad company.

The Court: Motion denied.

Mr. McNamara: Exception.

Mr. Wood: If your Honor will indulge us for a few moments, I know that my witness will be here.

The Court: I don't want to deprive you of the benefit of his testimony. I will wait a few minutes.

(At this point the Court declared a short recess.)

#### AFTER RECESS.

DR. GRAEME M. HAMMOND, residing at 40 West 55th Street, Borough of Manhattan, City of New York, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WOOD:

Q. Dr. Hammond, are you a regularly licensed physician in this City of New York? A. Yes, sir.

Q. How long have you been practicing as a physician? A. Since 1881.

Q. Continuously? A. Yes.

Q. And during your practice have you specialized in any particular branch of medicine? A. Yes.

Q. What are your specialties? A. Nervous and mental diseases.

Q. Just tell this jury, please, a few of the hospitals that you have been connected with or are connected with, in that capacity? A. I am connected with the Nervous Department of Bellevue for some time; professor of nervous and mental diseases in the Post Graduate for thirty years; chief of clinic at the Post Graduate for the same length of time; neurologist of St. Marks Hospital, the Skin & Cancer Hospital; the Fifth Avenue Hospital, and the City Hospital on Riker's Island.

Q. And during the world war were you connected with the United States Army? A. Yes, I served from the time we went in until three months after we came out.

Q. In what capacity? A. I was alienist and neurologist. I examined the troops before they went in, to weed out those who were nervously and mentally unfit; examined all the militia in New York City, 27th Division, at Camp Mills; 77th Division at Camp Upton, and the troops at Camp Mead before they went out; and then I had command of the hospital at Camp Upton for nervous and mental diseases,

and command of the General Hospital No. 1 for the returned officers from the other side who had nervous and mental troubles.

Q. During that time how many examinations do you think you made of soldiers? A. I examined 68,000 troops.

Q. Now, doctor, have you examined this lady, Mrs. Palsgraf, the plaintiff in this action? A. Yes, sir.

Q. When and where did you examine her? A. At my office, two days ago.

Q. Tell the jury, please, in your own way, what you found her condition then to be? A. Yes. I noticed, first, that she stammered quite a good deal, and it was with difficulty that she could talk at all. If she persisted she would get the words out. She had insomnia, depression of spirits and crying spells — headaches.

Mr. McNamara: Now, if the Court please, I object to the insomnia. There is no evidence here that that is connected in any way with this accident.

The Court: Well, I don't know that there is any direct testimony by her about her lack of sleep.

Mr. Wood: Possibly not about the insomnia, your Honor.

The Court: It may be stricken out and eliminated from your hypothesis.

Q. Proceed, doctor. A. Early mental fatigue on reading; early physical fatigue on trying to do any work; loss of energy and trembling of the body. The trembling I could see. Her blood pressure was 190. When I touched the ball of the eye she gave no sign that it hurt her. I could touch the ball of each eye with my finger without eliciting any sign of pain from her. When I placed her on her feet — feet together and eyes closed — she fell over. There was a tremor in her hands and a twitching of the muscles of her arms and of her legs at times — not always. I think that is about the sum of what I found.

Q. What did you diagnose or call, in your medical terms, her condition to be? A. She was suffering from traumatic hysteria.

Q. And by "traumatic" what do you mean? A. It means — traumatic neurasthenia with more symptoms added to it. It is a nervous disorder which is due to shock and fright, more than to physical injury. It leaves them with a very unstable mind and this collection of symptoms which I have just described.

Q. What does the word "traumatic" mean in plain English? A. It means from injury — due to injury.

Q. Doctor, assuming this lady, 42 years of age, prior to August, 1924, was in good health; on that day she was in a station of this defendant company and suffered from the effects of an explosion nearby so violent that it threw her up against a scale on the platform and hurt her left arm and left leg and rendered her dazed, the whole station being permeated with smoke, dense smoke; she was led by a

policeman to a nearby seat, placed there and given water to drink, and then treated by an ambulance surgeon, and then taken to her home in a taxicab, where she was confined to her bed for about ten days and her home for about two months, and treated by her family physician; assuming all those facts to be true, — based on the assumption that they are true, as well as your own examination of her, can you state, with a reasonable degree of certainty, whether or not the condition you found her in was due to the accident that she says she sustained August 24, 1924? A. Such an accident as you describe is a competent producing cause for the symptoms she shows.

Q. Doctor, can you say, with a reasonable degree of certainty in your opinion, whether or not there will be a continuation of these symptoms and this trouble? A. Yes.

Q. What is your best opinion on that? A. Well, while her mind is disturbed by litigation she will not recover, but after litigation ceases — I don't mean by that her getting any verdict but as soon as the worry of the trial is over and she knows she doesn't have to go here on the witness stand and undergo cross-examination she should make a fairly good recovery in about three years.

Q. Of course that is problematical, is it, doctor? A. Yes, sir.

Q. That is, she may recover or she may not? A. Well, she might be dead. If she lives, she may recover in about three years.

Q. Well, doctor, this condition having now persisted for nearly three years already, the symptoms not having diminished in that time, would you say that that would bar her recovery three years from now?

A. Yes, her symptoms never would get any better as long as the litigation was pending. She hasn't a chance to get well until this trial is over.

Q. But that might take two or three years from now? A. Yes, all of that.

Q. What are your fees for your examination and testifying here in court? A. \$125.

Q. Is that the reasonable value, in your opinion? A. Yes, sir.

Q. You never saw the lady before the day before yesterday? A. No, sir.

Mr. Wood: That is all.

CROSS-EXAMINATION BY MR. McNAMARA:

Q. Are there likely to be other producing causes of this lady's condition, than those of shock? A. Yes.

Q. And a lady of her age in life is more or less subject to nervous disturbances, is she not? A. She might be more liable to get a nervous disease at her time of life, than at a younger time or older time.

Q. Doctor, in your opinion, might this condition have been corrected before this time by medical treatment? A. Not while litigation

is pending. It has been my experience that it never is benefitted or relieved or cured until the source of worry disappears by the conclusion of the trial.

Q. You assume, then, doctor, that she is under a nervous strain due to this litigation being pending? A. Yes.

Q. What is the usual treatment for such a condition? A. I beg your pardon?

Q. What is the usual treatment for such a condition? A. Oh, freedom of the mind from worry and care; suitable physical exercise; suitable mental exercise; and medicinal treatment which is aimed at allaying the irritability of the brain cells.

Q. Would that medicinal treatment be limited, doctor, to bromides, and medicines of that character? A. Bromides would be useful if carefully used.

Q. Are there other things, doctor, that are useful in such cases? A. Oh, yes; there are quite a number of things.

Mr. McNamara: That is all.

Mr. Wood: That is all.

[PLAINTIFF RESTS.]

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The Court: Have you anything to rebut this, Mr. McNamara?

Mr. McNamara: No, I rest, your Honor, and renew my motion.

The Court: I will let it go to the jury.

Mr. McNamara: Exception.

(Mr. McNamara summed up the case to the jury on behalf of the defendant.)

(Mr. Wood summed up the case to the jury on behalf of the plaintiff.)

(The Court thereupon charged the jury as follows:)

#### COURT'S CHARGE.

(HUMPHREY, J.)

Gentlemen, in this case there is no dispute of fact. Everybody says that on the day in question the plaintiff was on the platform of this railroad company, the defendant, and while she was thus upon the platform some fireworks fell from the hand of a passenger who was entering a car, which was then in motion, to the platform or the track, an explosion occurred, and that subsequently the plaintiff developed a nervousness which still persists and which, according to her claim, will persist for some time in the future.

There was no duty upon the part of the defendant to examine each passenger as he entered the platform to see what was in any package he might be carrying. The plaintiff herself carried a package, and she might just as well complain if a uniformed man had come up to her and insisted upon her opening her package and showing him what she had in it. No such duty devolves upon the railroad company in this case, and no negligence can be predicated upon the failure of the defendant to stop a passenger while moving across its platform and examining what he might have with him. If every passenger was examined who was entering a railway or trolley car or subway train, and searched for what he might have upon him, none of us would be able to get anywhere. The purpose of railroad travel is that we can get some place. That is not what the plaintiff claims was the negligence of the defendant that caused her injury. She claims that the guard upon the platform, the station platform, and the guard upon the train platform, were careless and negligent in the way they handled this particular passenger after he came upon the platform and while he was boarding the train, and that is the question that is submitted to you for your consideration. Did those men omit to do something which ordinarily prudent and careful train men should not omit to do? Or did they do something which an ordinarily prudent and careful officer in charge of a railway train in the station platform should not have done? If they did, and the plaintiff met with her injuries through the careless act upon the part of the trainmen of the defendant, then she would be entitled to recover. If they were not at fault, if they did nothing which ordinarily prudent and careful train employees should do in regard to passengers moving upon their trains, then there can be no liability. If they omitted to do the things which prudent and careful trainmen do for the safety of those who are boarding their trains, as well as the safety of those who are standing upon the platform waiting for other trains, and that the failure resulted in the plaintiff's injury, then the defendant would be liable.

You should first discuss the question of the liability of the defendant, under the rules that I have given you, and if you should find the defendant guilty of no negligence, then your verdict would be for the defendant and you would not be concerned with the question of the amount of the plaintiff's injury.

If you should find, under the rules that I have given you, that the defendant is liable, then you would pass to the question of the amount that the plaintiff is entitled to recover.

If you reach that point in your discussion, you will give her a sum which will fully and fairly compensate her for the pain and suffering which came to her as a result of any physical injuries — bodily injuries — she may have sustained, and which she has endured from that time down to the present time; and if you find from the evidence that she will suffer in the future, then such sum as you shall say will compensate

her for that future suffering, and in addition to that such sum as she lost in earnings during the time that she was incapacitated, and such reasonable sum as she was required to pay for medicines and medical attendance. Those are the elements or items which go to make up her claim for damages, but first settle the question of liability before you discuss the question of damages at all.

The burden of proof is upon the plaintiff. She must satisfy you by a fair preponderance or greater weight of the testimony that the accident happened solely through the fault of the defendant, through its trainmen or platform-men in the control of passengers going upon its trains.

The plaintiff and defendant are both interested. The plaintiff is seeking money and the defendant is seeking to avoid paying money, and each has that interest, which is apparent.

Have you any requests?

Mr. Wood: No requests, your Honor.

Mr. McNamara: I ask your Honor to charge the jury, that under the testimony in this case no negligence can be found on the part of the defendant unless it knew, or should have known, that the bundle carried by the passenger contained fireworks or explosives.

The Court: I decline to so charge.

Mr. McNamara: Exception. I ask your Honor to charge the jury that they may draw no inference from the defendant's failure to put witnesses on the stand.

The Court: I so charge.

Mr. McNamara: I ask your Honor to charge the jury that if they find that the defendant's servants were assisting the passenger upon the train and in so doing knocked the bundle from his hand, that that act of the servants is not the proximate cause of the plaintiff's injuries.

The Court: I decline.

Mr. McNamara: Exception.

Juror No. 1: Your Honor, may I ask a question? There was no evidence to show whether the door was shut at the time the train left, or the door was closed before the train went in motion. There has been nothing shown in the case. Am I permitted to ask that question?

The Court: Well, what have you to say about it?

Mr. Wood: I don't see that it makes any difference.

Mr. McNamara: In view of the question of the juror, I ask your Honor to charge the jury that the fact that the door of the train —

The Court: There is no evidence that the door of the train was closed, or the gate of the door was closed — the gate of the platform was closed. There is no evidence that it was closed. You may retire, gentlemen.

(The jury retired at 11:55 A.M. and returned at 2:30 P.M., finding a verdict in favor of the plaintiff in the sum of \$6,000.)

Mr. McNamara: If your Honor please, I move to set the verdict

aside upon all the grounds specified in Section 549 of the Civil Practice Act.

The Court: Well, I think not. Of course, it is a close question in my mind, but, at the same time, I will let the verdict stand.

Mr. McNamara: Exception. May I have thirty and sixty days?

The Court: Yes.

(The foregoing contains all the evidence given upon the trial.)

#### AFFIDAVIT OF NO OPINION.

State and County of New York, ss:

JOSEPH F. KEANY, being duly sworn, says: that he is the attorney for the defendant-appellant herein. That no opinion was handed down by Mr. Justice Humphrey upon his denial of the defendant-appellant's motion for a new trial.

JOSEPH F. KEANY

Sworn to before me this 20th }  
day of July, 1927.

HARRY K. HOWLAND  
Notary Public,  
Suffolk County

Certificate filed New York County Clerk No. 296

Certificate filed New York County Register No. 8255

Commission expires March 30, 1928

#### STIPULATION SETTLING CASE.

It is hereby stipulated that the foregoing case contains all the evidence given upon the trial of this action and that the same be settled and ordered on file and annexed to the Judgment Roll herein, filed in the office of the Clerk of Kings County.

Dated July 21st, 1927.

MATTHEW W. WOOD,  
Attorney for Plaintiff-Respondent.

JOSEPH F. KEANY,  
Attorney for Defendant-Appellant.

ORDER SETTLING CASE.

Upon the above stipulation the foregoing case and exceptions on Appeal are hereby settled and ordered on file and annexed to the Judgment Roll filed in the office of the Clerk of Kings County.

Dated July 21st, 1927.

BURT JAY HUMPHREY,  
Justice, Supreme Court.

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STIPULATION WAIVING CERTIFICATION.

Pursuant to Section 170 of the Civil Practice Act, it is hereby stipulated that the foregoing are true and correct copies of the Case on Appeal herein, the Judgment Roll, the Case and Exceptions, as settled, and the whole thereof, all of which are now on file in the office of the Clerk of Kings County and certification thereof by the Clerk is hereby waived.

Dated July 21st, 1927.

MATTHEW W. WOOD,  
Attorney for Plaintiff-Respondent.

JOSEPH F. KEANY,  
Attorney for Defendant-Appellant.

ORDER FILING RECORD IN APPELLATE DIVISION.

Pursuant to Section 616 of the Civil Practice Act, it is ordered that the foregoing Printed Record be filed in the office of the Clerk of the Appellate Division of the Supreme Court of the Second Department.

Dated July 21st, 1927.

BURT JAY HUMPHREY,  
Justice, Supreme Court.

NOTICE OF APPEAL TO COURT OF APPEALS.

COURT OF APPEALS

OF THE STATE OF NEW YORK.

<p>HELEN PALSGRAF, Plaintiff-Respondent,  AGAINST  THE LONG ISLAND RAILROAD COMPANY, Defendant-Appellant.</p>	} Notice of Appeal
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SIRS:

PLEASE TAKE NOTICE that the defendant, The Long Island Railroad Company, hereby appeals to the Court of Appeals of the State of New York from an order made by the Supreme Court, Appellate Division, Second Judicial Department, on December 9th, 1927 and entered in the office of the Clerk of the said Appellate Division on the same date which order affirmed a judgment entered herein in the office of the Clerk of the County of Kings on the 31st day of May 1927, in favor of the plaintiff and against the defendant in the sum of Six Thousand, One Hundred forty two and forty five one hundredths Dollars (\$6,142.45), and also affirmed an order denying the motion of the said defendant to have the verdict set aside and to have a new trial, entered in the office of the Clerk of the County of Kings on the 27th day of May 1927.

AND YOU WILL FURTHER TAKE NOTICE, that the defendant, The Long Island Railroad Company also appeals to the said Court of Appeals from a judgment of affirmance entered upon the said order of the Appellate Division, Second Department, in the office of the Clerk of the County of Kings on the 16th day of December 1927 for the sum of One Hundred and twenty eight one hundredths Dollars (\$100.28).

AND YOU WILL FURTHER TAKE NOTICE, that the defendant, The Long Island Railroad Company appeals from each and every part of the said Order of Affirmance of the said Appellate Division and from each and every part of the Judgment of Affirmance entered thereon, as well as from the whole thereof.

Dated, New York, December 27th, 1927.

JOSEPH F. KEANY,  
Attorney for Defendant-Appellant,  
Office & P. O. Address:  
Pennsylvania Station,  
New York City.

To:  
MATTHEW W. WOOD, Esq.,  
Attorney for Plaintiff-Respondent,  
233 Broadway,  
Borough of Manhattan,  
New York City.  
  
WILLIAM E. KELLY, Esq.,  
County Clerk of the County of Kings,  
Brooklyn, New York

ORDER OF AFFIRMANCE.

At a Term of the Appellate Division of the Supreme Court of the State of New York held in and for the Second Judicial Department at the Borough of Brooklyn on the 9th day of December, 1927.

Present —

Hon. EDWARD LAZANSKY, *Presiding Justice*

J. ADDISON YOUNG  
WILLIAM F. HAGARTY  
ALBERT H. F. SEEGER  
WILLIAM B. CARSWELL } *Justices*

HELEN PALSGRAF, Respondent,  AGAINST THE LONG ISLAND RAILROAD COMPANY, Appellant.
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Order of Affirmance  
on Appeal from  
Judgment.

The above named LONG ISLAND RAILROAD COMPANY, the defendant in this action, having appealed to the Appellate Division of the Supreme Court from a judgment of the Supreme Court entered in the office of the Clerk of the County of Kings on the 31st day of May, 1927, and from an order made by said Court denying a motion for a

new trial herein, and the said appeal having been argued by Mr. William McNamara, of Counsel for the appellant, and argued by Mr. Matthew W. Wood, of Counsel for the respondent, and due deliberation having been had thereon,

IT IS ORDERED AND ADJUDGED that the judgment and order so appealed from be and the same are hereby affirmed, and that the respondent recover of the appellant the costs of this appeal. Opinion by Seeger, J. Hagarty and Carswell, JJ. concur. Lazansky, P.J. and Young, J. dissent.

Enter,

J. ADDISON YOUNG,  
Associate Justice.

JUDGMENT OF AFFIRMANCE.

SUPREME COURT — KINGS COUNTY.

HELEN PALSGRAE,  
Plaintiff,

AGAINST

LONG ISLAND RAILROAD COMPANY,  
Defendant.

JUDGMENT of the 16th day of December, 1927.

The appeal taken by the defendant in the above entitled action having been heard at an Appellate Division of the Supreme Court, held in and for the Second Judicial Department, on the 21st day of October, 1927, and an order having been made and entered affirming the judgment of the Supreme Court, Kings County, entered in said action on the 31st day of May, 1927, in the office of the Clerk of the County of Kings, with costs of said appeal to the respondent.

Now, on motion of MATTHEW W. WOOD, Esq., Attorney for the plaintiff-respondent, it is hereby

ADJUDGED that the said judgment appealed from be and the same is hereby wholly affirmed, and that the respondent recover from and against the appellant, LONG ISLAND RAILROAD COMPANY, the sum of One hundred and 28/100 dollars (\$100.28) costs of said appeal.

WILLIAM E. KELLY,  
Clerk.

MEMORANDUM HANDED DOWN BY APPELLATE  
DIVISION, SECOND DEPARTMENT.

Helen Palsgraf, respondent, v. The Long Island Railroad Company,  
appellant.

Judgment and order affirmed, with costs. Opinion by Seeger, J.,  
Hagarty and Carswell, JJ., concur. Lazansky, P.J., with whom Young,  
J., concurs, dissents and reads for reversal.

OPINIONS.<sup>1</sup>

SECOND JUDICIAL DEPARTMENT.

LAZANSKY, P.J., YOUNG, HAGARTY, SEEGER AND CARSWELL, JJ.

HELEN PALSGRAF, Respondent,  AGAINST  THE LONG ISLAND RAILROAD COMPANY, Appellant.
--

APPEAL by the defendant from a judgment of the Supreme Court in  
favor of the plaintiff, entered in the office of the Clerk of the County  
of Kings on the 31st day of May, 1927, upon a verdict rendered by a  
jury; and from an order, entered in said clerk's office on the 27th day  
of May, 1927, denying defendant's motion for a new trial.

WILLIAM McNAMARA, for the appellant.  
MATTHEW W. WOOD, for the respondent.

SEEGER, J.:

The action was brought to recover damages resulting from negli-  
gence. The plaintiff was a passenger intending to take a train of the  
defendant at the defendant's East New York passenger station, on the  
24th day of August, 1924. While plaintiff was at the station waiting for  
her train, another train came into the station. After this train had  
started from the station, two young men came up and undertook to  
board it while the train was in motion. One of these men had a bundle

<sup>1</sup> Reported in 222 App. Div. 166, 225 N.Y.S. 412 (N.Y. 1927).—Ed.

under his arm. Two of the defendant's employees undertook to help him on the train while it was in motion, one of them the trainman and the other the man on the platform. During their efforts to assist the man on to the moving train these men knocked the bundle out from under the passenger's arm and it fell under the train. The bundle contained explosive fireworks which exploded and caused a large scale, near which the plaintiff was standing, to be thrown against the plaintiff, severely injuring her. There was no evidence to show that the passenger carrying the bundle had any authority or permit under the Greater New York Charter to carry or transport fireworks, or of the value of the fireworks, and it does not appear that the provisions of the Charter were violated. (§92 of Article 6, subd. 6, Greater New York Charter.)

The defendant contends that the accident was not caused by the negligence of the defendant.

The sole question of defendant's negligence submitted to the jury was whether the defendant's employees were "careless and negligent in the way they handled this particular passenger after he came upon the platform and while he was boarding the train." This question of negligence was submitted to the jury by a fair and impartial charge and the verdict was supported by the evidence. The jury might well find that the act of the passenger in undertaking to board a moving train was negligent, and that the acts of the defendant's employees in assisting him while engaged in that negligent act were also negligent. Instead of aiding or assisting the passenger engaged in such an act, they might better have discouraged and warned him not to board the moving train. It is quite probable that without their assistance the passenger might have succeeded in boarding the train and no accident would have happened, or without the assistance of these employees the passenger might have desisted in his efforts to board the train. In any event, the acts of defendant's employees, which the jury found to be negligent, caused the bundle to be thrown under the train and to explode. It is no answer or defense to these negligent acts to say that the defendant's employees were not chargeable with notice that the passenger's bundle contained an explosive. While there seems to be no precedent for this case, every case must stand upon its own facts. In principle the case is similar to the squib case (*Scott v. Shepherd*, 2 Wm. Bl. 892), where a lighted squib was thrown in or near a crowd of people, and it was successively thrown by two or more persons until it landed upon and burned the plaintiff; or the negro boy case (*Vanderburgh v. Truax*, 4 Denio, 464), where a boy in escaping a threatened attack of the party pursuing him ran against and knocked out the faucet of a cask of valuable wine, destroying it. The pursuing party was held liable for the loss. Also the balloon case (*Guille v. Swan*, 19 John. 381), where the defendant, while in a balloon, descended in a garden under circumstances which tended to invite people to go to his assistance and in doing so the vegetables in plaintiff's garden were

trampled upon and destroyed, for which the defendant was held liable.

It must be remembered that the plaintiff was a passenger of the defendant and entitled to have the defendant exercise the highest degree of care required of common carriers.

The judgment and order appealed from should be affirmed, with costs.

LAZANSKY, P.J. (dissenting):

The facts may have warranted the jury in finding the defendant's agents were negligent in assisting a passenger in boarding a moving train in view of the fact that a door of the train should have been closed before the train started, which would have prevented the passenger making the attempt. There was also warrant for a finding by the jury that as a result of the negligence of the defendant a package thrown between the platform and train exploded, causing injury to plaintiff, who was on the station platform. In my opinion, the negligence of defendant was not a proximate cause of the injuries to plaintiff. Between the negligence of defendant and the injuries, there intervened the negligence of the passenger carrying the package containing an explosive. This was an independent, and not a concurring act of negligence. The explosion was not reasonably probable as a result of defendant's act of negligence. The negligence of defendant was not a likely or natural cause of the explosion, since the latter was such an unusual occurrence. Defendant's negligence was a cause of plaintiff's injury, but too remote.

The judgment should be reversed, with costs to the appellant, and complaint dismissed, with costs.

#### STIPULATION WAIVING CERTIFICATION.

Pursuant to Section 170 of the Civil Practice Act, it is hereby stipulated that the foregoing case contains true copies of the notice of appeal to the Court of Appeals, the judgment and order of affirmance, the opinion of the Appellate Division of the Supreme Court, Second Department, and remittitur or record upon which the court below acted in making said judgment and order of affirmance, and the whole thereof, now on file in the office of the Clerk of Kings County, and certification thereof pursuant to Section 616 of the Civil Practice Act or otherwise is hereby waived.

Dated, January 24, 1928.

MATTHEW W. WOOD,

Attorney for Plaintiff-Respondent.

JOSEPH F. KEANY,

Attorney for Defendant-Appellant.