

5. RECORD ON APPEAL

PALSGRAF v. LONG ISLAND RY. CO.

Court of Appeals of New York, 1928
248 N.Y. 339, 162 N.E. 99

(Except for the briefs of Counsels this
is the entire record on appeal.)

SUPREME COURT

APPELLATE DIVISION--SECOND DEPARTMENT.

HELEN PALSGRAF,
Plaintiff-Respondent,

AGAINST

THE LONG ISLAND RAILROAD COMPANY
Defendant-Appellant

STATEMENT UNDER RULE 234.

This action was commenced by the service of a summons on the 2nd 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.

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.

SAME TITLE.

Notice of Appeal

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

SAME TITLE.

Summons

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.

Plaintiff complaining of the defendant through MATTHEW W. WOOD, her attorney, alleges:

FIRST: Upon information and belief, that at all the times hereinafter 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 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 accustomed 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 the 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 treatment 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

SAME TITLE.

This cause having been called for trial in its order on the Calendar, and twelve trial Jurors having been duly drawn, empaneled 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 (\$6,000.--)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.

SAME TITLE.

The issues in the above entitled action having duly come on for trial before Hon. BURT JAY 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 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 PALSGRAF, 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.

SAME TITLE.

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.

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.

(A jury was duly impaneled and sworn.)

(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 housework? 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. And 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. Housework.

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.

