



Minnesota District Court (Carver County)  
Civil and criminal case files

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No. 3113.

DISTRICT COURT,  
CARVER COUNTY, MINN.

*Emma Patzke*  
Plaintiff.

vs.  
*Minneapolis & St. Louis  
R.R. Company*  
Defendant.

*Thos. J. Cravens & H. C. Odell*  
Plaintiff's Attorney.

*John J. Dille & H. J. Burke*  
Defendant's Attorney.

Date of Entry *Feb. 24* 1908

Register of Actions *D* Page *531*

Term Tried *Mar. 1* 1910

Judgment for *Plaintiff*

Amount of Judgment \$ *1605.28*

Date of Judgment *Feb. 2nd* 1911

Judgment Book *D* Page *400*

Default Judgment Book Page

Date of Docketing *Feb 2* 1911

*B 116*



STATE OF MINNESOTA,  
SUPREME COURT.

MANDATE.

The State of Minnesota,

To the Hon. Judge and Officers of the district Court of the Eighth Judicial District,  
sitting within and for the County of Carver Greeting:

Whereas, Lately in your court, in an action therein pending, wherein

Emma Patzke was

Plaintiff, and

The Minneapolis and St. Louis Railroad Company was

Defendant

a certain order ~~was~~ entered therein Feb. 5th 1909  
from which order ~~said Plaintiff~~ Defendant

appealed to this Court

And Whereas, The same was duly argued, heard and submitted at the General  
~~term~~ October Term, A. D. 1909, of our Supreme Court. After mature deliberation thereupon had, our  
Supreme Court did adjudge, determine, decree and ORDER "That the order ~~of~~ of the Court below  
herein appealed from, be, and the same hereby is, in all things reversed and a new trial  
granted

and that the Appellant Defendant above named have judgment accordingly."  
A copy of the entry of Judgment thereupon in this Court is herewith transmitted, and made part of this  
Remittitur.

Now, Therefore, This MANDATE is to you directed and certified, to inform you of these pro-  
ceedings had in our Supreme Court, in said hereinbefore mentioned cause, and the same is hereby and  
herewith REMANDED to your Court for such other or further record and proceedings therein as may be by  
law necessary, just and proper, under and by virtue of the said order herein made.

Witness, The Hon. CHARLES M. START, Chief Justice of the  
Supreme Court aforesaid, and the seal of said Court  
at St. Paul, this 6th day of January 1909  
J. J. Cowley  
Clerk of the Supreme Court.

By Deputy.

**SUPREME COURT,**

STATE OF MINNESOTA.

**MANDATE  
TO THE DISTRICT COURT OF**

Carver County.

Emma Patzke,

Respondent,

**AGAINST**

M. and St. L. Ry. Company,

Appellant.

CARVER COUNTY,

FILED

FEB 24 1910,

*H. O. Muehlberg*

Attorney for

(531)



STATE OF MINNESOTA,  
SUPREME COURT.

MANDATE.

The State of Minnesota,

To the Hon. Judge and Officers of the District Court of the Eighth Judicial District,  
sitting within and for the County of Carnes Greeting:

Whereas, Lately in your court, in an action therein pending, wherein

Emma Patzke was

Plaintiff and

The Minneapolis & St. Louis Railroad  
Company was

Defendant

a certain order ~~judgment~~ was entered therein

June 3

1910

from which order ~~judgment~~ said Plaintiff Defendant

appealed to this court

And Whereas, The same was duly argued, heard and submitted at the General  
~~April~~ October Term, A. D. 1910 of our Supreme Court. After mature deliberation thereupon had, our  
Supreme Court did adjudge, determine, decree and ORDER "That the order ~~judgment~~ of the Court below  
herein appealed from, be, and the same hereby is, in all things affirmed

and that judgment be entered accordingly. A copy of the entry of Judgment thereupon in this Court is here  
with transmitted and made part of this Remittitur.

Now, Therefore, This MANDATE is to you directed and certified, to inform you of these pro-  
ceedings had in our Supreme Court, in said hereinbefore mentioned cause, and the same is hereby and here-  
with REMANDED to your Court for such other or further record and proceedings therein as may be by law  
necessary, just and proper, under and by virtue of the said order herein made.

Witness, The Hon. CHARLES M. START, Chief Justice of the  
Supreme Court aforesaid, and the seal of said Court  
at St. Paul, this 19th day of January 1911

St. Paul

Clerk of the Supreme Court.

By

Deputy.

**SUPREME COURT,**  
STATE OF MINNESOTA.

**MANDATE**  
TO THE DISTRICT COURT OF  
*Carver* County.

*Emma Patzke*  
Respondent

**AGAINST**  
*Mpls & St L Ry Co.*  
Appellant.

CARVER COUNTY;  
FILED

JAN 28 1911

*A. L. Lundeberg, Clerk.*

Attorney for .....

*Jud* (531)



State of Minnesota.  
County of Carver.

District Court.  
Eighth Judicial District.

Emma Patzke,	:	
Plaintiff,	:	
vs	:	ORDER
The Minneapolis & St. Louis	:	
Railroad Company,	:	
Defendant.	:	

TO H. O. Muehlbert, Clerk of said District Court:

You are hereby directed to withdraw and  
give to defendant in the above entitled action the original  
files in said cause.

Dated at LeSueur Center, Minnesota, this 23rd  
day of February, 1909.

R. D. Morrison  
Judge

CARVER COUNTY,  
FILED  
FEB 25 1909.  
H. O. Muehlberg, Clerk.  
(531)



No. \_\_\_\_\_

DISTRICT COURT,

8th Judicial District,

County of Carver

Emma Valzke

Plaintiff

AGAINST

The Municipal & St. Louis  
Railroad Company, Defendant

NOTE OF ISSUE

Last Pleading Served,

Feb 17th 1908

Fact

Case.

Thos. Brown & W. C. Odell

Attorneys for Plaintiff.

John Delle & H. J. Peck

Attorneys for Defendant.

Will the Clerk please file this Note  
of Issue, and enter the cause on the  
Calendar for the March  
A. D. 1908 Term of this Court.

Yours, etc.,

Thos. Brown & W. C. Odell

Attorneys for Plaintiff

Filed Feb 24th 1908

H. O. Muehlberg

Clerk.

By \_\_\_\_\_

Deputy.

The \$3.00 deposit required by Sec. 2, Chap. 48,  
General Laws of 1886, must be paid before any action  
will be entered in Clerk's Office.

STATE OF MINNESOTA,  
COUNTY OF CARVER.

DISTRICT COURT,  
EIGHTH JUDICIAL DISTRICT.

Emma Patzke,

Plaintiff,

-vs-

The Minneapolis & St. Louis Railroad  
Company,

Defendant.

STIPULATION.

IT IS HEREBY STIPULATED by and between the parties hereto that  
no bond need be given by the defendant on its appeal to the Supreme Court from  
an order of the district court denying defendant's motion for judgment notwith-  
standing the verdict or for a new trial in said cause, and from said order deny-  
ing the defendant's motion for a new trial, notice of appeal in said cause hav-  
ing been served upon the attorney for the plaintiff, and the clerk of said dis-  
trict court this 1st day of July, A. D. 1910.

*Thos J. Braunn* *W.C. Odell*  
Attorney for plaintiff.

*W.H. Braunn*  
Attorney for defendant.



STATE OF *Minnesota*  
County of *Carver*  
District COURT.

*Emma Fitzke*  
Plaintiff  
vs  
*The Wm & M  
Lamb R R Co*  
Defendant

*Stipulation*

Due service of the within by copy is hereby  
admitted at \_\_\_\_\_

this \_\_\_\_\_  
day of \_\_\_\_\_, A. D. 19\_\_\_\_

Attorney for *W H Bremer*

Attorney for *D. F. T.*  
1104 Guaranty Loan Building,  
Minneapolis, Minn.

GEORGE W. SKRUMBY,  
CARVER COUNTY,  
General Counsel

FILED

*July 1 1910*  
*W M Muehlberg* Clerk  
*(531)*

State of Minnesota, }  
County of Carver. } ss.

## DISTRICT COURT.

Eighth Judicial District.

Emma Patzke,

Plaintiff.

vs.

The Minneapolis &amp; St. Louis

Railroad Company, Defendant.

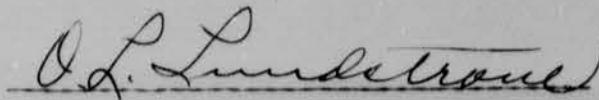
## JUDGMENT.

The above entitled action came duly <sup>on</sup> for trial before said Court at the March General Term 1910, and a jury having duly been empanelled and sworn to try said action on the 15th day of March A. D. 1910, and a verdict duly rendered by said jury on the 19th day of March A. D. 1910, in favor of the Plaintiff and against the Defendant for the sum of \$15,000.00.

Now, on motion of Thos. F. Craven and W. C. Odell Esqs., Attorneys for said Plaintiff, it is hereby adjudged and determined and the judgment of this Court is that the Plaintiff have and recover from the said Defendant, The Minneapolis & St. Louis Railroad Company, the sum of Fifteen thousand Dollars as per verdict, together with the sum of Ten hundred fifty-nine and 28/100 Dollars, Interest, Costs and Disbursements taxed in said action, the whole amounting to the sum of Sixteen thousand fifty-nine and 28/100 Dollars and that the Plaintiff have execution therefor.

Dated February 2nd, 1911.

By the Court,



Clerk.



DISTRICT COURT,

County of Carver

Emma Patzke  
plff.

AGAINST

meafols & St. Louis  
Railroad Company  
Def.

JUDGMENT ROLL.

Filed February 2nd A. D. 1901

O. S. Lindstrom  
Clerk of the District Court.

No. 1071.

7a 531

State of Minnesota,  
County of Carver } ss.

In District Court of said County,

8th Judicial District.

September Term, 1908

In the Matter of

Emma Patzke Plaintiff  
vs.  
The Minneapolis & St. Louis Railroad Company Defendant

We, The Jury impaneled and sworn in the above entitled action, find for the plaintiff...and  
assess her damages in the sum of \$ 12,000<sup>00</sup>

Twelve Thousand DOLLARS,  
100

Levin G. Nelson Foreman.

Dated at Shaska this 10th day of October A. D. 1908



DISTRICT COURT

*8th* Judicial District  
*September* Term, 190*8*

State of Minnesota, } ss.  
County of *Carver*

Verdict for Plaintiff

In the Matter of

*Emma Patzke*  
vs. Plaintiff

*The Minneapolis  
St. Louis Railroad  
Company*  
Defendant

Filed in open Court the *12<sup>th</sup>*  
day of *October* 190*8*

*H.O. Muehlberg*  
(531) Clerk

Patzke - vs - M. & St. L. Ry. Co.

originals sent Feb 25/09. as per order of Court

Reply ✓

~~Notice of Trial~~

~~Note of Issue~~

Summons & Complaint ✓

Answer ✓

~~Verdict for Plff for \$7500.<sup>00</sup>~~

~~Plar~~

~~Notice of Motion~~

~~Order granting new trial.~~

~~Note of Issue~~

~~Plar~~

~~Plar~~

Verdict for Plff for \$12000.<sup>00</sup> ✓

Notice of Motion & Affidavits ✓

Affidavits in opposition. ✓

Settled case ✓

Order denying motion for new trial ✓

Files returned Mar. 30/09



State of Minnesota,  
County of Carver

ss.

In District Court of said County,

v. Eda Judicial District.March Term, 1908

In the Matter of

Emma Latzke  
vs.

Plaintiff

The Minneapolis and  
St. Louis Railroad Company  
Defendant

We, The Jury impaneled and sworn in the above entitled action, find for the plaintiff and  
assess her damages in the sum of \$ 7 500<sup>00</sup> Seven Thousand  
Five Hundred DOLLARS.

100

John Emich

Foreman.

Dated at Chaska this 24 day of March A. D. 1908

DISTRICT COURT

*8th* Judicial District  
*March* Term, 190*8*

State of Minnesota,  
County of *Rice* } ss.

Verdict for Plaintiff

In the Matter of

*Emma Patzke*  
vs. Plaintiff

*The Minneapolis  
and St. Louis  
Railroad Company*  
Defendant

Filed in open Court the *7th*  
day of *March* 190*8*

*H. O. Muehlberg*  
(531) Clerk.



State of Minnesota, )  
County of Carver. )

( IN DISTRICT COURT,  
( 8th Judicial District.  
(

Emma Patzke, Plaintiff, )  
-vs- )  
The Minneapolis and St. Louis )  
Railroad Company, )  
Defendant. )

" ORDER GRANTING MOTION FOR NEW TRIAL.

At a General Term of the District Court, duly held in and for McLeod County, at the Court House, in the Village of Glencoe, on the 18th day of May, A.D., 1908, the defendant, in the above entitled action, pursuant to notice duly given, upon the records and files and settled case in said cause, moved the Court for an order for judgment notwithstanding the verdict and in case that is denied, for a new trial of said action upon the following grounds:

1. For errors of law occurring at the trial, and excepted to by the defendant.

2. That the verdict is not justified by the evidence and is contrary to law.

H.J. Peck, Esq., appeared as counsel for the defendant in support of said motion.

W.C. Odell, Esq., and Thos. Craven, Esq., appeared as counsel for the plaintiff in opposition to said motion.

After hearing the arguments of Counsel for the respective parties, reading portions of the evidence adduced at the trial and giving all things involved in said cause, due consideration,

IT IS ORDERED—

1. That the part of said motion asking for judgment notwithstanding the verdict be, and the same hereby is denied, for the reason that in the event of another trial, the plaintiff may be able to produce additional testimony to support the claim made by her in her complaint.

2. That the part of said motion praying for a new trial of said action be, and the same hereby is granted, for the reason that the verdict is not justified by the evidence, and is contrary to law, and therefore a new trial of said cause is hereby granted.

Dated at Norwood, Minn., this 9th day of July, A.D., 1908.

R. W. Morrison  
Judge, 8th Judicial District.

State of Minnesota  
County of Carver.  
Indies Burr

Emund Patzke  
— vs — Patzke

The Minneapolis  
and St. Louis Rail-  
road Company.  
Defendant

Order granting  
New Trial

CARVER COUNTY,  
FILED

JUL 10 1908

H. Q. Muehlberg, Clerk.

(531)



State of Minnesota,  
County of Carver.

(IN DISTRICT COURT.  
(  
(8th Judicial District.  
(

Emma Patzka,

Plaintiff.

-vs-

The Minneapolis & St. Louis Railroad Company,

Defendant.

%%%%

At an adjourned Term of the District Court duly held in and for the County of Carver, in the State of Minnesota, at the Court House, in the City of Chaska, the above named defendant upon all the records and files in said cause, the settled case therein and upon affidavits attached to the notice of motion, moved the court for an order setting aside the verdict in said action, and for judgment notwithstanding the verdict, or in case that is denied for a new trial of said action upon the following grounds and for the following causes, to-wit:

1. Newly discovered material evidence which by reasonable diligence could not have been found and produced at the trial.

2. For errors of law occurring on the trial and either excepted to or assigned in the notice of motion.

3. That the <sup>verdict</sup> evidence is not justified by the evidence and is contrary to law.

4. At the close of the evidence in said case the defendant asked the court to instruct the jury to return a verdict for the defendant because it appeared from the whole evidence that the plaintiff was not entitled to recover which motion was denied by the court and is now assigned as error.

Messrs. John I. Dille and H. J. Peck appeared as Counsel for the defendant in support of said motion.

Messrs. Thos. F. Craven and W. C. O'dell appeared as Counsel for the plaintiff in opposition to said motion.

After hearing the arguments of Counsel for the respective parties and giving all matters and things involved in said cause due consideration IT IS ORDERED:

That said motion of the defendant be, and the same hereby is, in all respects denied.

Dated at Norwood, Minnesota, this 5th day of February, a.d. 1909.

*W. C. O'dell*  
Judge of said Court.

State of Minnesota  
County of Carver  
Emma Palzka  
— vs —  
Cup

The Minneapolis &  
St. Louis Railroad  
Company

Order Dampening  
System for Heat  
Trial

CARVER COUNTY,  
FILED

FEB 5 1909

H. O. Muhlberg, Clerk

(531)



WM. B. JOYCE & CO.  
Northwestern Managers.  
NATIONAL SURETY CO.  
204 Andrus Building.  
MINNEAPOLIS, MINN.

State of Minnesota.

District Court.

County of Carver.

Eighth Judicial District.

Emma Patzke,

:

Plaintiff,

:

vs

:

BOND ON APPEAL

The Minneapolis & St. Louis

:

Railroad Company,

:

Defendant.

:

KNOW ALL MEN BY THESE PRESENTS, That we, The Minneapolis & St. Louis Railroad Company, as principal, and the National Surety Company, as surety, are held and firmly bound unto Emma Patzke in the sum of Five Hundred (\$500.00) Dollars, lawful money of the United States, to be paid unto the ~~XXXX~~ said plaintiff, for which payment well and truly to be made we jointly and severally bind ourselves, and each of our successors, assigns and personal representatives, firmly by these presents.

Sealed with our seals and dated this 18th day of February A.D. 1909.

The conditions of this obligation is such that whereas the said defendant The Minneapolis & St. Louis Railroad Company has appealed to the Supreme Court of the State of Minnesota, from an order of said District Court entered on the 5th day of February A. D. 1909 denying defendant's motion for judgment notwithstanding the verdict or for a new trial in said cause.

Now, therefore, if the appellant shall pay all costs and charges which may be awarded against it on such appeal, and the damages sustained by the respondent in consequence thereof, if said order or any part thereof shall be affirmed, or the appeal dismissed, and to abide and satisfy the judgment or order which the appellate court may give therein, not exceeding the sum of Five Hundred (\$500.00) Dollars, then this obligation, which is given in pursuance of Section 4367 of the Revised Laws of 1905, shall be void; otherwise to remain in full force and effect.

In testimony whereof, we have hereunto set our hands and seals this 18th day of February A. D. 1909.

THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY"

By M. B. Cutter

National Surety Company

By H. E. Ruman

Witness

W. P. Phelps  
J. C. Ruman

State of Minnesota.

ss

County of Hennepin

On this 18th day of February 1909, before me a Notary Public appeared M. B. Cutter to me personally known, who, being by me first duly sworn, did say that he is the General Manager of The Minneapolis & St. Louis Railroad Company; that said instrument was executed in behalf of said corporation by authority of its board of directors; and said M. B. Cutter acknowledged said instrument to be the free act and deed of said corporation.

W. P. Phelps  
Notary Public

My commission expires Oct. 1, 1913



State of Minnesota.  
ss  
County of Hennepin.

H. E. Berreau being first duly sworn, deposes and says that he is the attorney in fact of the National Surety Company and has active charge of its business in the City of Minneapolis, State of Minnesota; that said National Surety Company is a corporation organized and existing under and by virtue of the Laws of the State of New York and is and for some months has been authorized to do business and to execute surety bonds in the State of Minnesota, and has and now holds the certificate of the Insurance Commissioner of the State of Minnesota showing that it is authorized to contract as such surety, and resides at No 209 Metropolitan Life Insurance Building, said city and State; that said National Surety Company is worth Twenty-five Thousand (\$25,000.00) Dollars above its debts and liabilities and exclusive of its property exempt from execution.

This affidavit is made as justification in the execution of a bond in the above entitled cause dated February 18th, 1909, and is attached hereto and made a part hereof.

*H. E. Berreau*

Subscribed and sworn to before  
me this 18th day of February, 1909.

*L. L. Boulton*  
Notary Public  
My commission expires Feb. 23, 1911

R. W. Morrison  
Judge of  
Sup. Court

**204 Andrus Building,  
MINNEAPOLIS, MINN.**



STATE OF MINNESOTA,

DISTRICT COURT,

County of Carver

Judicial District.

Emma Patzke

No. 3

Plaintiff

Against

List of Jurors.

The Minneapolis & St. Louis  
Railroad Company

Defendant

Attorneys Mark Here	NAMES	REMARKS
1	<del>Frank Stabel</del>	
2	<del>Frank Weismueller</del>	
3	<del>J. Flusmann</del>	P1
4	Levin Nelson	P2
5	Dennis Kerber	
6	Theodore Kowalke	
7	Frank Kerber	
8	<del>Max Buschkovsky</del>	
9	Milton Nyström	
10	Joseph Fick	
11	E. W. Johnson	
12	Joseph Knott	
13	Wm. Lundström	
14	Jos. Jeurissen	
15	<del>Edmund Popples</del>	
16	Walter Smith	
17	A. G. W. Anderson	
18	<del>John S. Anderson</del>	P3,
19	Henry J. Eiden	
20		
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No.

STATE OF MINNESOTA,

County of *Carver*

DISTRICT COURT.

*Emma Patzke*

Plaintiff

Against

*Minneapolis & St. Louis  
Railroad Company*  
Defendant

JURY LIST.

CARVER COUNTY,  
FILED

OCT 12 1908

*H. O. Muehlberg* Clerk.

PIONEER PRESS CO. ST. PAUL, MINN.

(531)



No. 8

## DISTRICT COURT,

*Carver* County.*Emma Patzke*

against

*The Minneapolis & St. Louis Rail-  
road Company*

## NOTE OF ISSUE.

LAST PLEADING SERVED,

*Feb 1st* 190*8**Fact, Jury* Case.*Thos. F. Brown & W. C. Odell*

Attorney for Plaintiff.

*John D. Delley & H. J. Peck*

Attorney for Defendant.

Will the Clerk please file this Note of  
Issue, and enter the cause on the Calen-  
dar for the *September* A. D. 190*8**Second* Term of this Court.

Yours, etc.,

*Thos. F. Brown & W. C. Odell*

Attorneys for Plaintiff.

Filed *Sept 19th* 190*8**H. O. Muehlberg* Clerk.The \$3.00 deposit required by Sec. 2, Chap. 48, General Laws  
of 1883, must be paid before any action will be entered in  
Clerk's Office.

No. 83.—Pioneer Press Co., St. Paul, Minn.

(531)

STATE OF MINNESOTA,

County of Carver

DISTRICT COURT,

Eighth

Judicial District.

Emma Patzke

No.

Against

Plaintiff

List of Jurors.

Minneapolis & St. Louis  
Railroad Company

Defendant

Attorneys Mark Here

NAMES

REMARKS

1	Fred Bents	P 2
2	George Dimler	P 1
3	John Melchers	
4	Carl Sievers	A 1
5	Christ Harms	
6	George Bohner	
7	J. M. Neutgens	D 2
8	Harman Schabers	P 2
9	Peter Halgren	
10	Adam Schaefer	
11	Fred Abel	
12	C. J. Smith	
13	C. M. Peterson	
14	William Stahlke	
15	Edward Nord	
16	John Emich	
17	George Knott	
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No. ....

STATE OF MINNESOTA,

County of *Carver*

DISTRICT COURT.

*Emma Patzke*

Plaintiff

Against

*Minneapolis & St. Louis  
Railroad Company*  
Defendant

JURY LIST.

CARVER COUNTY,  
FILED

MAR 7 1908

*H.O. Muehlberg* Clerk

PIONEER PRESS CO., ST. PAUL, MINN.

(531)

1. Verdict.

McGill-Warner Co., Legal Blanks, St. Paul, Minn.

State of Minnesota, } DISTRICT COURT,  
COUNTY OF Carver } 8th Judicial District.

Emma Patzke Plaintiff,

against

The Minneapolis & St. Louis Railroad Company Defendant.

We, the Jury in the above entitled action, find a verdict in favor of the

Plaintiff and assess her damages at the sum of  
Fifteen Hundred Thousand (\$150000.00) Dollars,

R. C. John Foreman.

Dated at Chaska this 18th day of

March 1910



*original*  
State of Minnesota,  
County of *Carver*  
DISTRICT COURT,  
*8th* Judicial District.

*Emma Patzke*  
Plaintiff,

against

*The Minneapolis &  
St. Paul Railroad Company*  
Defendant.

VERDICT.

Filed *March 19<sup>th</sup>* 19*10*

*W. O. Muehlberg*  
Clerk.

By \_\_\_\_\_ Deputy.

(531)

State of Minnesota.  
County of Carver.

District Court  
Eighth Judicial District.

Emma Patzke, :  
Plaintiff, :  
vs :  
The Minneapolis & St. Louis :  
Railroad Company, :  
Defendant. :

NOTICE OF PRESENTATION  
OF BOND FOR APPROVAL

To Messrs. Thomas F. Craven and W. C. Odell, attorneys for  
the above named Plaintiff:

PLEASE TAKE NOTICE, That the above named de-  
fendant will, on the 24<sup>th</sup> day of February, 1909, at 9.30  
o'clock in the morning of said day, at the Court House in the  
Town of Le Sueur Center, Minnesota, present its bond on  
appeal from the order of of said District Court entered on  
the 5th day of February A. D. 1909, denying defendant's motion  
for judgment notwithstanding the verdict or for a new trial  
in said cause, and from said order denying the defendant's  
motion for a new trial, copy of which bond is attached hereto,  
to the Honorable P. W. Morrison, Judge, for approval.

Dated this 19th day of February, 1909.

Geo W. Morrison  
General Counsel

John L. Diller  
H. J. Park  
Attorneys for Defendant



State of Minnesota.

District Court.

County of Carver.

Eighth Judicial District.

Emma Patzke,

:

Plaintiff,

:

vs

:

The Minneapolis & St. Louis

:

Railroad Company,

:

Defendant.

:

BOND ON APPEAL

KNOW ALL MEN BY THESE PRESENTS, That we, The Minneapolis & St. Louis Railroad Company, as principal, and the National Surety Company, as surety, are held and firmly bound unto Emma Patzke in the sum of Five Hundred (\$500.00) Dollars, lawful money of the United States, to be paid unto the ~~XXXX~~ said plaintiff, for which payment well and truly to be made we jointly and severally bind ourselves, and each of our successors, assigns and personal representatives, firmly by these presents.

Sealed with our seals and dated this 18th day of February A.D. 1909.

The conditions of this obligation is such that whereas the said defendant The Minneapolis & St. Louis Railroad Company has appealed to the Supreme Court of the State of Minnesota, from an order of said District Court entered on the 5th day of February A. D. 1909 denying defendant's motion for judgment notwithstanding the verdict or for a new trial in said cause. ^

Now, therefore, if the appellant shall pay all costs and charges which may be awarded against it on such appeal, and the damages sustained by the respondent in consequence thereof, if said order or any part thereof shall be affirmed, or the appeal dismissed, and to abide and satisfy the judgment or order which the appellate court may give therein, not exceeding the sum of Five Hundred (\$500.00) Dollars, then this obligation, which is given in pursuance of Section 4367 of the Revised Laws of 1905, shall be void; otherwise to remain in full force and effect.

In testimony whereof, we have hereunto set our hands and seals this 18th day of February A. D. 1909.

THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY"

Witness

J. H. Phelps  
J. L. Burlew

By M. B. Cutter  
General Manager  
National Surety Company  
By H. E. Burlew

State of Minnesota.  
ss  
County of Hennepin

On this 18th day of February 1909, before me a Notary Public appeared M. B. Cutter to me personally known, who, being by me first duly sworn, did say that he is the General Manager of The Minneapolis & St. Louis Railroad Company; that said instrument was executed in behalf of said corporation by authority of its board of directors; and said M. B. Cutter acknowledged said instrument to be the free act and deed of said corporation.

J. H. Phelps  
Notary Public  
My commission expires Oct. 1, 1913



State of Minnesota.  
ss  
County of Hennepin.

H. R. Berreau being first duly sworn, deposes and says that he is the attorney in fact of the National Surety Company and has active charge of its business in the City of Minneapolis, State of Minnesota; that said National Surety Company is a corporation organized and existing under and by virtue of the Laws of the State of New York and is and for some months has been authorized to do business and to execute surety bonds in the State of Minnesota, and has and now holds the certificate of the Insurance Commissioner of the State of Minnesota showing that it is authorized to contract as such surety, and resides at No 209 Metropolitan Life Insurance Building, said city and State; that said National Surety company is worth Twenty-five Thousand (\$25,000.00) Dollars above its debts and liabilities and exclusive of its property exempt from execution.

This affidavit is made as justification in the execution of a bond in the above entitled cause dated February 18th, 1909, and is attached hereto and made a part hereof.

H. R. Berreau

Subscribed and sworn to before  
me this 18th day of February, 1909.

L. L. Bunker  
Notary Public  
My commission expires Feb 23, 1911

*229*

STATE OF Minnesota  
County of Carver  
Trust COURT

Emma Patyk Plaintiff  
vs.  
The N. P. & L. Co.  
R.R. Co. Defendant

Notice

Due service of the within by copy is hereby  
submitted at Chaska

this  
day of February, A. D. 1907  
John F. Dille Edward  
Attorney for Plaintiff

JOHN F. DILLE  
Attorney for Defendant  
1104 Guaranty Loan Building,  
Minneapolis, Minn.  
GEORGE W. SEEVERS,  
General Counsel.

CARVER COUNTY,  
FILED

MAR 1 1907

H. O. Muehlberg Clerk.

(531)



STATE OF MINNESOTA

County of Carver.

DISTRICT COURT,

Eighth Judicial District.

Emma Patzke,

Plaintiff.

- Vs. -

The Minneapolis & St. Louis  
Railroad Company,

Defendant.

Said plaintiff for her reply to the answer of said defendant  
in said above entitled action respectfully alleges:

That she denies said answer and each and every allegation matter  
and thing in said answer contained.

WHEREFORE, Plaintiff demands judgment as prayed for in and by her  
complaint herein.

*Thos. L. Cravens & W. C. Odell,*

Attorneys for said plaintiff,

Chaska, Minn.

(Original)

STATE OF MINNESOTA,

County of

Carver

District COURT.

Emma Patzke

Plaintiff.

vs.

St. Louis  
and Company

Defendant.

Reply

Due and personal service of the within

Reply

is hereby admitted

this

17th

day of

February

A. D. 1908

Attorney for

John J. Dill

Attorney for

Plaintiff

Chaska, Minn.

O. F. GREENWOOD, MANKATO, MINN

(531)

CARVER COUNTY,

FILED

FEB 24 1908

H. O. Muehlberg, Clerk.

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age and discretion, then resident therein, a true and correct copy of said

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ss.

State of Minnesota,

County of

first duly sworn upon oath, deposes and says, that at the

in said County and State, on the

within

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County of Carver, ss.

I hereby certify and return, that at the Minneapolis and St. Louis Depot in the City of Chaska County and State aforesaid on the 20th day of January A.D. 1908. I served the Summons and Complaint hereto attached upon the within named Minneapolis and St. Louis Railroad Company, Defendant by then and there personally handing to and leaving with one C.D. Cotey then and there the acting ticket agent for the within named Defendant Company, a true and correct copy of said Summons and Complaint.

Dated this 20th day of January 1908.

Sheriff's fee Service.....\$1.00  
" Milage......20  
Total.....\$1.20

*G.A. Gatz*  
Sheriff of Carver County.

Plaintiff

-VS-

Summons.

The Minneapolis & St. Louis Railroad Company,

Defendant.

*aut*

State of Minnesota to the above named Defendant:

You are hereby summoned and required to answer the complaint of the plaintiff in the above entitled action which is hereto annexed and herewith served upon you, and to serve a copy of your answer to the said complaint on the subscribers at the office of Thomas F. Craven, Esquire in the City of Chaska in said County of Carver within twenty days after service of this summons upon you, exclusive of the day of such service, and if you fail to answer the said complaint within the time aforesaid the plaintiff in this action will have the amount she is entitled to recover ascertained by the Court or under its direction, and take judgment against you for the amount so ascertained together with her costs and disbursements herein.

January 1908.

*Thos F Craven & W S Odell*

Plaintiff's Attorneys.

Chaska, Minn.

State of Minnesota.

District Court.

County of Carver.

Eighth Judicial District.

-----  
Emma Patzke,

Plaintiff,

-vs-

The Minneapolis & St. Louis Railroad Company,

Defendant.  
-----

Said plaintiff for her complaint in the above entitled action respectfully  
shows to the Court:

(1) That plaintiff is an unmarried woman twenty-one years of age and during  
the year last past has resided and now resides with her parents on a farm situated  
in the County of Scott in said State.

(2) That said defendant is a railroad corporation duly organized and in-  
corporated under and by virtue of the laws of the State of Minnesota and for a  
period of more than ten years last past and at the time plaintiff was injured as  
hereinafter stated owned and operated and now owns and operates a line of rail-  
road for the transportation of passenger and freight for hire, extending from the  
City of St. Paul in said State to the City of Minneapolis and from thence west-  
wardly and southerly through the Counties of Hennepin, Carver, Scott, Le Sueur,  
Brown and Freeborn to the City of Albert Lea in said last mentioned county and  
hence to the City of Des Moines in the State of Iowa.

(3) That the City of Chaska in said County of Carver is a station upon  
defendant's said line of railroad at which all trains carrying passengers are  
compelled to stop, having a depot and ticket office for the sale of tickets for  
passage over said line of railroad upon all trains operated by defendant and  
scheduled and advertised to carry passengers, and, at the time hereinafter men-  
tioned as the day on which plaintiff was injured as hereinafter stated, defendant  
had in its employ in said City of Chaska an agent in charge of its said station



who was then and there duly authorized and empowered by said defendant to sell passage tickets over its said line of railroad from said City of Chaska to all stations on said line of railroad at which trains carrying passengers were scheduled and advertised to stop.

(4) That Verriar Junction is a station on defendant's said line of railroad situated in said County of Scott, and at said station defendant's said line of railroad crosses the tracks of the Chicago, St. Paul, Minneapolis and Omaha Railroad Company, and said last mentioned railroad company and said defendant have and for several years last past have had at said station a joint passenger station facing the platforms of both tracks, and said defendant maintains at said station a ticket office for the sale of tickets for passage over its said line of railroad and receives at its said station passengers for transportation over its said railroad and maintains at said station a station platform for the convenience of persons alighting from its trains or seeking to take passage thereon.

(5) That on the 11th day of October 1907 plaintiff purchased from the agent of said defendant at the City of Chaska aforesaid a ticket entitling her to ride to said Verriar Junction station, upon any train operated by said defendant for the carrying of passengers, scheduled and advertised to stop at said station; that the agent from whom plaintiff so purchased said ticket was then and there duly authorized and empowered by said defendant to sell the same, and plaintiff paid therefor the amount then and there charged by said defendant for carrying a passenger from said City of Chaska to said Verriar Junction.

(6) That with the said ticket in her possession plaintiff on said 11th day of October 1907, at said City of Chaska, boarded the south bound passenger train operated by said defendant and known as No. 2, as a passenger from said City of Chaska to Verriar Junction aforesaid; that said train upon which plaintiff so took passage was a regularly scheduled and advertised passenger train commonly known as a "local", running from the City of St. Paul aforesaid to said City of Albert Lea, and from thence on to said City of Des Moines, and was scheduled and advertised by said defendant to stop at all stations upon defendant's said line

and to permit passengers to alight therefrom, and was so scheduled and advertised to stop at said Merriam Junction station for the purposes aforesaid.

(7) That when said train reached and stopped at said Merriam Junction station, and immediately upon said station stop being called by the brakeman upon said train, plaintiff started to leave the car in which she had been seated and to alight from said train: that said train did not stop at said station a sufficient time to safely discharge its passengers for said station and did not stop at said station for one minute or for a sufficient length of time to enable plaintiff to safely alight therefrom, and when plaintiff was in the act of stepping from the platform of the car in which she had been seated to the station platform, and before said train had been stopped for one minute or for a sufficient time to enable plaintiff to safely alight therefrom, defendant, by its servants and employees in charge of said train, carelessly, negligently and unlawfully started said train without warning to plaintiff and thereby without fault of plaintiff caused plaintiff to lose her footing and fall to the station platform and dragged and rolled plaintiff along said platform for a distance of several feet whereby and in consequence whereof plaintiff, without fault on her part, received and sustained grievous bodily injury, to-wit, an injury to her back, spinal cord and nerve centers causing and resulting in partial paralysis of the left side, the loss of the use of the left leg, an irregularity and weakening of the heart action, a fracture of several ribs and divers wounds and other injuries.

(8) That because of said injuries so received plaintiff was rendered sick, sore and lame, and was caused to suffer great pain both of body and mind, and was wounded and disabled to such an extent as to confine plaintiff to her bed ever since the receiving of said injuries, and plaintiff has in consequence of said injuries permanently lost the use of her left leg and has been crippled for life and will be compelled to suffer and endure pain during the remainder of her life. That plaintiff has ever since so receiving said injuries required constant nursing, care and attention in consequence of said injuries and her helpless condition resulting therefrom, and has necessarily incurred liability



therefor in to-wit, the sum of five hundred <sup>dollars</sup> in consequence of all which  
and by means whereof plaintiff has suffered and sustained damages in the  
sum of fifteen thousand five hundred dollars.

Wherefore plaintiff demands judgment against said defendant for the sum  
of fifteen thousand five hundred dollars, together with her costs and dis-  
bursements herein.

*Thos L. Cavanaugh & W. C. Odell*

Attorneys for Plaintiff.

Chaska, Minn.

District Court  
County of Carver.

Emma Patzke  
Plaintiff

-vs-

The Minneapolis & St. Louis  
Railroad Company.  
Defendant.

Summons & Complaint.

CARVER COUNTY,  
FILED

MAR 2 1908.

H.O. Muehlberg, Clerk.  
(531)

Thos. J. Brown, 206 1/2 S. 2nd St.  
Attorneys for Plaintiff  
Chaska, Minn.



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STATE OF MINNESOTA,  
COUNTY OF CARVER.

DISTRICT COURT,  
EIGHTH JUDICIAL DISTRICT.

Emma Patske,

Plaintiff,

-vs-

The Minneapolis & St. Louis  
Railroad Company,

Defendant.

NOTICE OF MOTION.

TO THOMAS F. CRAVER, Attorney for plaintiff:

Take notice that on the annexed affidavits, and the record heretofore made in this case, the defendant will move the court, at the opening of court, in the courthouse, in the city of Chaska, on March 14, 1910, or as soon thereafter as counsel can be heard, for an order changing the place of trial of this action from Carver County to Hennepin County, Minnesota.

*W. H. Brummer*  
Attorney for defendant,  
1104 Metropolitan Life Bldg.,  
Minneapolis, Minnesota.

*W. H. Brummer*

CORRELL OR CVHAKY\*  
SEVEN OR WIMMERBY\*

HIGHWAY JUDICIAL DISTRICT\*  
DISTRICT COURT\*

STATE OF MINNESOTA,  
COUNTY OF CARVER.

DISTRICT COURT.  
EIGHT JUDICIAL DISTRICT.

Emma Patzke,

Plaintiff,

-vs-

AFFIDAVIT.

The Minneapolis & St. Louis  
Railroad Company,

Defendant.

STATE OF MINNESOTA)  
COUNTY OF HENNEPIN)ss

I, W. H. Bremner, being duly sworn, depose and say that I am the General Attorney of The Minneapolis & St. Louis Railroad Company, the defendant in the above entitled cause; that I have been such General Attorney since the first day of July, 1909; that as such, I have had general charge of the above entitled cause and am familiar with the facts and matters involved therein, and with the record heretofore made in said cause; that said cause has been twice tried in the District Court of Carver County, and that the first trial resulted in a verdict, for the plaintiff, in the sum of \$7,500.00, which verdict was, by this court, upon motion of the defendant, set aside, and a new trial granted for the reason, as this affiant is informed and believes, that the verdict <sup>was</sup> against the weight of the evidence; that upon the second trial of said case, a verdict was returned by the jury in favor of the plaintiff in the sum of \$12,000.00 upon which verdict judgment was rendered, which judgment was, by the Supreme Court of the state of Minnesota, reversed and the cause remanded for a new trial upon the ground that the verdict was against the weight of the evidence; that in such opinion the Supreme Court of this State characterized the story of the plaintiff as improbable and indicated that in its opinion the testimony largely preponderated in favor of the defendant; that the opinion in said case is reported in the Northwestern Reporter, volume 123, at page 57; that affiant believes that an impartial trial in this ~~same~~ case cannot be had in this county.

W. H. Bremner



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Subscribed in my presence and sworn to before me by the said W. H. Bremner,  
this 11<sup>th</sup> day of March, 1910.

W. H. Bremner  
Notary Public,  
Hennepin County, Minn.

My commission expires Oct 1, 1915

The Minneapolis & St. Louis  
Railroad Company,

Plaintiff in Error,

I, C. C. Selig, being duly sworn, depose and say that I am  
the agent of the Minneapolis & St. Louis Railroad Company, defendant in the  
above entitled cause, in the City of Seattle, Washington, and that I  
reside in said city, and have resided therein for the term of 25 years;  
that I depose that an agreement was made between the plaintiff and myself  
in the County of Snohomish, because of the proposed transfer of the plaintiff and agent of  
the defendant therein residing.

Subscribed in my presence and  
sworn to before me by the said  
C. C. Selig, this 11<sup>th</sup> day  
of March, 1910.

W. H. Bremner  
Notary Public, Hennepin County, Minn.  
My commission expires Oct 1, 1915

THIS is a copy of a document  
subscribed in my presence and sworn to before me on the 22<sup>nd</sup> day of March, 1910.

STATE OF MINNESOTA,  
COUNTY OF CARVER.

DISTRICT COURT,  
EIGHT JUDICIAL DISTRICT.

Emma Patzke,

Plaintiff,

-vs-

The Minneapolis & St. Louis  
Railroad Company,

Defendant.

+ + -

AFFIDAVIT.

STATE OF MINNESOTA)  
COUNTY OF CARVER ) ss.

I, C. E. Cotey, being duly sworn, depose and say that I am  
the agent of The Minneapolis & St. Louis Railroad Company, defendant in the a-  
bove entitled cause, in the city of Chaska, Carver County, Minnesota; that I  
reside in said city, and have resided therein for the period of 4 years;  
that I believe that an impartial trial in said cause cannot be had in said  
county of Carver, because of the prejudice in favor of the plaintiff and against  
the defendant therein existing.

C. E. Cotey

Subscribed in my presence and )  
sworn to before me by the said )  
C. E. Cotey, this 22<sup>nd</sup> day )  
of March, 1910. )

H. C. Muehlberg  
Notary Public, Eighth Dist. Court,  
Carver County, Minnesota.

My commission expires \_\_\_\_\_.



EMMA PATZKE

CORRECTIONAL

STATE OF MINNESOTA

SIXTH JUDICIAL DISTRICT

DISTRICT COURT

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STATE OF MINNESOTA,  
COUNTY OF CARVER.

DISTRICT COURT,  
EIGHT JUDICIAL DISTRICT.

Emma Patzke,

Plaintiff,

-vs-

AFFIDAVIT

The Minneapolis & St. Louis  
Railroad Company,

Defendant.

---

STATE OF MINNESOTA)  
COUNTY OF HENNEPIN)ss

I, S. J. Beardslee, being duly sworn, depose and say that  
I am the Claims Agent of The Minneapolis & St. Louis Railroad Company, de-  
fendant in the above entitled cause; that as such Claims Agent, I have general  
charge of investigating and preparing cases for trial; that I am familiar with  
the record which has heretofore been made in this case, and believe that an  
impartial trial cannot be had in this case in the county of Carver.

S. J. Beardslee

Subscribed in my presence and )  
sworn to before me by the said )  
S. J. Beardslee, this 12 day )  
of March, 1910. )

W. H. Phelps

Notary Public,  
Hennepin County, Minnesota.  
My commission expires Oct 1, 1913.

Original

STATE OF Minnesota  
County of Carver  
District COURT

Emma Patzke  
Plaintiff

The Minneapolis & St. Louis  
Railroad Company  
Defendant

Notice of Motion

service of the within by copy is hereby  
admitted at Leaska

Wm this 12th

day of March, A. D. 1910

Thos F. Craven & W. C. Cade

Attorney for Plaintiff  
W. H. Bremner

Attorney for Defendant

1104 Guaranty Loan Building,

Minneapolis, Minn.

GEORGE W. SEEVERS,

CARVER COUNTY,

FILED

MAR 14 1910

H. O. Mueller ... Clerk.



STATE OF MINNESOTA  
County of Carver

DISTRICT COURT  
Eighth Judicial District

Emma Patzke,                      Plaintiff

-VS.-

The Minneapolis and St. Louis  
Railroad Company,                      Defendant.

STATE OF MINNESOTA                      ss.  
County of Carver.

Thomas F. Crauen and W.C. Odell being first duly sworn say, and each for himself says, that he is the attorney of the plaintiff in the above entitled action, and has appeared and acted as such at all times since the commencement thereof, that he has read the affidavits on behalf of defendant upon which this motion is made, and admits that this action has been twice tried in this Court, and that each of the verdicts recovered by plaintiff has been set aside as against the weight of evidence; that upon each of said former trials plaintiff testified that she did not start to leave the car in which she had been seated until after the brakeman had announced the station stop nor until the train had come to a full stop, and that she received her injuries while alighting from the train on the station platform thereof, while the witnesses on the part of the Defendant testified that plaintiff either walked or fell off the train before it made the station stop and at a distance of several hundred feet north of the station platform, and when the train was running at a speed of from fifteen to twenty miles an hour; that upon each of said trials the testimony of plaintiff <sup>was</sup> uncorroborated by the <sup>direct</sup> testimony of any witness. And the Supreme Court, in granting a new trial of said action, used this language, "but the Court is of opinion that the evidence so greatly preponderates against her account that it was an abuse of discretion to deny appellant's motion for a new trial".

Affiant further says, that upon each of said former trials plaintiff testified that a man and woman, whom she identified, preceded her immediately out of the car, and that she followed them down the



platform steps of the car, that neither of said persons was produced as a witness to support plaintiff's story, and it was shown upon the last trial, by the testimony of Witness Strobach, that the man and woman referred to by plaintiff in her testimony was the brother and sister of said witness' deceased wife, and that the man lived in Washington and the woman in Pennsylvania; that affiant, before said second trial, made diligent search and inquiry for evidence which would support and corroborate said plaintiff in her version of the manner in which she received her injuries, but was unable to learn of any person having knowledge thereof other than the man and woman referred to by said plaintiff, and owing to the poverty of said plaintiff affiant were unable to produce the testimony of either of said persons for use upon said trial.

Affiant<sup>s</sup> further say that since the granting of a new trial by the Supreme Court affiants have seen and conversed with the woman referred to by said plaintiff, and have had correspondence with the man so referred to by her, and are assured by each of said persons that if called as a witness upon the trial of said action they, and each of them, will testify that plaintiff did not start to leave the car in which she was seated until the train had made its station stop and that said plaintiff followed them out of the car and that she received her injuries upon the station platform side of the train, and will support and corroborate plaintiff in many other and essential particulars; that affiants have procured the attendance of said persons as witnesses at the present term of this Court, and each of said persons will be sworn and will give evidence upon the trial of this action in support and corroboration of said plaintiff in the particulars aforesaid, as affiants are informed by each of said persons and verily believe; that plaintiff's friends have assisted in procuring the attendance of said witnesses, at a cost of about \$150, and owing to the great distance which one of said witnesses is required to travel to reach the State of Minnesota from his place of residence in the State of Washington it will be impossible for plaintiff to procure the attendance of said person at any future term, and plaintiff will be deprived of the testimony of said witness unless the trial is proceeded with at the present term of this Court.



5.  
Affiant further says, that said defendant neglected to have this case remanded to this Court after the decision by the Supreme Court, and affiants caused the same to be remanded and duly noticed for trial at this term; that since the service of the notice of trial the following correspondence have passed between affiant Craven and Mr. Bremner attorney for defendant

Minneapolis, Minn., March 5, 1910

Mr. Thomas F. Craven,  
Attorney at law,  
Chaska, Minn.

Dear Sir:

I, yesterday, returned from a trip in Iowa and find your letter of the 28th ult. awaiting me. I herewith return trial notice with service accepted thereon as per your request.

I have a case specially assigned for trial at Des Moines on March 14th. This case will probably take two days, and I would like to arrange with you to have the Patzke case wait until the morning of the 16th. I can be on hand at that time as I can return from Des Moines on our No. 3, reaching Chaska early in the morning. This will only be one day later than the date you desire to take the case up and I believe that you ought to accommodate me to this extent. The Court will undoubtedly be able to find other matters to occupy its attention on the 15th. Please advise me at once if this will be satisfactory.

Your Very truly,

W. H. Bremner,  
General Attorney."

Chaska, Minn., March 6th, 1910.

W. H. Bremner, Esq.,  
Minneapolis, Minn.

Dear Sir:

Your letter of the 5th inst. received. The Patzke case is first case on calendar, and there are but few other jury cases thereon.

So far as I am concerned I should like to accommodate you and take the case up on the morning of the 16th as you suggest. Now, at the last trial of this case Defendant asked and we consented to the jury viewing the grounds; if you could have some one here on the morning of the 15th we could select the jury and have the jury view the grounds on Tuesday and we could begin taking evidence Wednesday morning. By so doing we could hold our place on calendar, have a full panel to select the jury from, and at the same time permit you to attend to your case in Iowa.

I suggest this method as a way out, but understand I am not refusing to have the Patzke case wait until Wednesday morning if the Court will permit us to do so. However if jury takes a view I am satisfied we then can arrange so as no evidence will be taken until Wednesday morning.

Very truly, Thos. F. Craven."



Minneapolis, Minn., March 8, 1910.

Mr. Thomas F. Craven,  
Attorney at Law,  
Chaska, Minn.

Dear Sir:

I am in receipt of your favor of the 6th inst., in regard to the Patzke case, and in reply I beg leave to say that I do not feel inclined to entrust the empaneling of the jury in this case to some one else, nor do I see the necessity for permitting the jury to examine the premises at the time suggested. If the jury is ever permitted to examine the premises, it should be at the conclusion of the testimony in order that they may be able to apply it understandingly, but in a case of this character, I see little necessity for an examination of the premises by the jury at any time.

It is apparent that I will have to arrange matters so as to be at Chaska on the 15th, and I will try to do so. It does seem to me, however, that I was asking but a very small favor at your hands, and I have no doubt but that the court, under the circumstances, would readily have consented to letting this case go over until the 16th. I will try to arrange with the attorneys at Des Moines to pass my case there until after I have finished the case at Chaska, and I have no doubt of my ability to make this arrangement, although the setting of the case at Des Moines was made some two months ago by agreement of the parties as an accommodation to me. I have no doubt but that they will be willing to accommodate me even further in view of the situation.

Very truly, W.H. Bremner, General Attorney

Chaska, Minn., March 9, 1910.

W.H. Bremner, Esq.,  
Minneapolis, Minn.

Dear Sir:

Your letter of yesterday received. I am surprised at its tone; my suggestion to you to select jury on Tuesday and send them out to view the ground on that day and then begin taking evidence on Wednesday, was made in the best of faith, and was not made to deprive you of selecting jury or because we desired to send the jury out to view. We care nothing about who selects jury or whether jury view the grounds at all.

Because of special reasons, which we deem sufficient, we do not want the trial of this case to go to foot of calendar. If we agree to waive taking up case in its order, it then goes to foot unless we arrange with Court to the contra. We are satisfied to let the case go over until Wednesday but can not consent to have the case go to foot of calendar.

I feel as you do that the Judge will consent to your demands and we ask that you simply phone him and so arrange; or if you prefer we will set the case for Wednesday on the first day of term and you need not be here at all until Wednesday. The only reason we suggested selecting and sending jury out on Tuesday was because we did not think you cared particularly who selected this jury, and that the defense would ask for view on this trial as on the last.

We never took advantage of a lawyer, and, though you may not think so, you will find some of us Minnesota lawyers just as anxious to accommodate you as your brother lawyers in Iowa.

Kindly let us know if the case is to be tried on Tuesday or



" Wednesday?

Mours,

Thos.F.Craven."

And affiants never had any information or intimation the defendant would not be prepared to proceed with the trial of this case at the present term until handed a notice of motion for change of venue on Saturday, March 12th, last.

Affiants, each for himself, further say, that he is informed by Dr. N. H. Marshall the physician who has examined plaintiff and is familiar with her condition, and believes that plaintiff is almost, if not entirely, helpless, and that it would be impossible to take said plaintiff to the city of Minneapolis, or to any other point to reach which it would be necessary to travel by rail, without causing said plaintiff great suffering and hardship, and affiant believes that the change of venue asked for by defendant would practically amount to a denial of justice owing to the physical and mental condition of plaintiff and her inability to procure the attendance of her witnesses at any future time.

Affiants, each for himself, further say, that he resides in the city of Chaska and has resided in said city for many years past; that the said plaintiff is an obscure humble member of society, and has no influential friends or acquaintances; that owing largely to the fact that plaintiff is but little known in the community the said case has never been commented upon or discussed to any extent by the people of the said County, nor in the newspapers of the county or otherwise; and in the opinion of affiants a jury can be secured from the present panel composed of men who have never heard the facts of the case discussed at all, and who are entirely free from prejudice or bias, and who will try the cause fairly and impartially; and affiant says that a fair and impartial trial of this action can be had in this county and at the present term of this Court.

Subscribed and sworn to before me  
this 14th day of March, 1910.

H. O. Muehlberg  
Clerk of District Court,  
Carver County, Minn.

Thos F Craven  
W. C. Adell

*State of Minnesota  
District Court  
Carver County  
Emma Patzke*

*- vs -  
Minneapolis & St.  
Louis Railroad Company  
The affiant, J. H. ...  
...  
(originals)*

*CARVER COUNTY,  
FILED  
MAR 14 1910  
M. H. ... Clerk*

STATE OF MINNESOTA  
County of Carver.

DISTRICT COURT  
Eighth Judicial District.

EMMA PATZKE,  
- VS. -  
THE MINNEAPOLIS and ST. LOUIS  
RAILROAD COMPANY,  
Plaintiff.  
Defendant.

STATE OF MINNESOTA  
County of Carver.  
ss.

The undersigned being first duly sworn say, and each of the persons whose name is subscribed hereto, on oath says; that he is a citizen and resident of said County of Carver, and has resided in said county for many years last past; that he is well acquainted with the people residing in said county, and that he has never heard any expression indicating any hostility to or prejudice against The Minneapolis & St. Louis Railroad Company in said county; that he has never heard the facts of the above entitled action discussed, and believes that there has been no extended discussion of this case in this county; and that he has never heard any thing said indicating any prejudice in favor of the plaintiff in said above entitled action, or that a fair and impartial trial of said action cannot be had in said county, and affiant says that he believes that a fair and impartial trial of said action can be had in said county of Carver.

Further affiant saith not except that he has no interest whatever in the event of this action.

*J. H. Patzke  
J. H. ...  
J. H. ...  
J. H. ...  
J. H. ...  
J. H. ...  
J. H. ...*



J. J. Meller

Barney Keeler

Wm. Brier

Thos. Noterman

C. H. Hemming

E. E. Oestreich

Harbort Rief

P. H. Simons

John Simons

Anton Vogel

Henry Hammers

Alfred Vogel

Chas. Degen

Ed. C. J. J. J.

E. Resemann

W. T. J. J.

Alf. J. J.

Frank White

Wm. J. J.

Henry Simons

Peter M. Briers

J. G. J. J.

Hugo Heklein

A. M. J. J.

John L. J. J.

Geo. Burkhardt

F. E. J. J.

Fredric J. J.

*J. M. Aretz*  
*Fred Heller*  
*John Glaeser*  
*H. O. Muehlberg*  
*Albert Meyer*  
*John Hoehn*  
*H. Heimkes*

Subscribed and sworn to, <sup>by</sup> ~~by~~ A. Gatz, Joseph Ess, M. H. Muires, Chas.  
A. Gehl, Geo. A. DuToit, Henry Zimmermann, Al. Livermann, William F. Elke  
L. J. Weller, Barney Kesler, Wm Dier, Theo. Noterman, O. J. Henning, E. E.  
Oesterreich, Hubert Rief, P. H. Simons, John Simons, Anton Vogel, Henry  
Hammers, Alfred Nord, Chas. Degen, Fred DuToit, Jr., E. Besemann, Alb. Teske  
A. F. Young, Frank White, Wm. Zamjohn, Henry Simons, Peter M. Bruers, Jo A.  
Glatzel, Hugo Hecklin, H. M. Guenser, John Suthelmer, Jos. Burkhart, F. E.  
DuToit, Fredric Iltis, J. B. Connolly, J. M. Aretz, Fred Heller, John Gla-  
eser, H. O. Muehlberg, Albert Meyer, John Hoehn and H. Heimkes, and by  
each of them, before me this 14th day of March A. D. 1910.

*H. F. Cramer*

Notary Public in and for said  
Carver County Minn.

(My commission expires Aug. 16, 1910)



State of Minnesota  
District Court  
Carver County  
Emma Patzke,  
- vs -  
Minneapolis & St.  
Louis Railroad Co.  
inter Affiant  
action for change of venue.

CARVER COUNTY,  
FILED

MAR 14 1910

M. H. Mullberg  
Clerk

STATE OF MINNESOTA  
County of Carver.

DISTRICT COURT  
Eighth Judicial District.

EMMA PATZKE,

Plaintiff.

- VS. -

THE MINNEAPOLIS and ST. LOUIS  
RAILROAD COMPANY,

Defendant.

State of Minnesota

ss.

County of Carver.

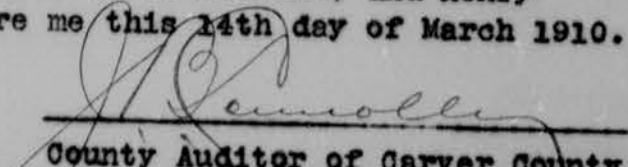
The undersigned being first duly sworn say,  
and each of the persons whose name is subscribed hereto on oath  
says; that he is a citizen and resident of said county of Carver,  
and has been a citizen and resident of said county for more than  
ten years last past; that he is well acquainted with the people  
residing in said county, and that he has never heard any expression  
indicating any hostility to or prejudice against The Minneapolis  
and St. Louis Railroad Company; that <sup>he has</sup> never heard the above entitled  
action discussed and does not know the said Plaintiff; that he has  
never at any time heard any thing said indicating any prejudice in  
favor of said plaintiff in said above entitled action, or that a  
fair and impartial trial of said action can not be had in said  
County; and he has never heard the facts, or what was purported to  
be the facts, of the above entitled action discussed or talked  
about; and affiant further says that he believes that a fair and  
impartial trial of said action can be had in said county of Carver.

Further affiant saith not except that he has no interest what-  
ever in the event of this said action.

John H. Soper, J. D.  
Peter Effertz.  
Chas. A. Piel.  
Thos. Burfield  
Gust. Selby  
R. R. Curran  
Fred. George

Patrick Conlin  
 Levi Lundgren  
 Math Welter  
 C. W. Holt  
 Math Bleichner  
 John F. Schrupp  
 Hellmuth Will  
 Julius G. Westermann  
 Henry Tanke

Subscribed and sworn to, by John Elford Soper, Peter Effertz,  
 Chas. A. Reil, Thos. J. Burfield, Gust Selz, P. R. Curran, Fred Gloege,  
 Patrick Conlin, Levi Lundgren, Math Welter, C. W. Holt, Math Bleichner,  
 John F. Schrupp, Hellmuth Will, Julius G. Westermann, and Henry  
 Tanke, and by each of them, before me this 14th day of March 1910.

  
 County Auditor of Carver County  
 Minnesota.



Judith Court  
Lower County  
Emma Patzke

VS  
Minneapolis and  
St. Louis Railroad Co.

inter Affidavits for  
non return  
(original)

CARVER COUNTY,  
FILED  
MAY 14 1910  
Muehlberg

STATE OF MINNESOTA,  
COUNTY OF CARVER.

DISTRICT COURT,  
EIGHTH JUDICIAL DISTRICT.

Emma Patzke,  
Plaintiff,  
-vs-  
The Minneapolis & St. Louis  
Railroad Company,  
Defendant.

NOTICE OF APPEAL.

TO MESSRS. THOMAS F. CRAVEN AND W. C. ODELL, Attorneys for above named plaintiff,  
and to H. O. Muehlberg, Clerk of said District Court:

Please take notice that the above named defendant appeals to the  
Supreme Court of the state of Minnesota from an order of said District Court  
entered herein on the 3d day of June, 1910, denying defendant's motion for judg-  
ment notwithstanding the verdict or for a new trial in said cause, and from said  
order denying the defendant's motion for a new trial.

Dated this 29<sup>th</sup> day of June, 1910.

W. H. Brenner  
Attorney for defendant

Geo. W. Lewis  
General Counsel.

Due service of the within by copy is hereby admitted at Chaska, Minnesota,  
this 1st day of July, 1910.

Thomas F. Craven

W. C. Odell  
Attorneys for plaintiff.

STATE OF MINNESOTA,  
County of CARVER

DISTRICT COURT,

Eighth Judicial District.

Emma Patzke,

Plaintiff

- VS. -

The Minneapolis &amp; St. Louis Railroad Company, Defendant.

Sir: You will please to take notice, That the issue of  
in the above entitled action will be brought on for  
General Term of the District Court to be held in and for the County of Carver  
at the Court House in the City of Chaska in said County on the Second  
day of March, A. D. 1908, at the opening of said Court on that day, or as soon there-  
after as counsel can be heard

Dated

February

1908

Yours respectfully,

Chas. F. Brown &amp; W. C. Odell,

Attorney for Plaintiff  
Chaska, Minn.

To John I. Dille, H. J. Peck, Esqrs.,

Attorneys for Defendant  
Geo. W. Seevers, General Counsel.

FILED

JUL 1 1908

GEORGE W. SEEVERS,  
CHASKA, MINN.

Minneapolis, Minn.

104 Guaranty Loan Building,

for Geo. W. Seevers

J. D. 19

this

service of the within by copy is hereby

this 3rd of April

Defendant

vs. The Minneapolis &amp; St. Louis Railroad Co.

Plaintiff

OF MINNESOTA  
County of Carver  
District Court



State of Minnesota,  
County of CARVER

DISTRICT COURT,

EIGHTH Judicial District

Emma Patzke,

Plaintiff

-VS.-

The Minneapolis and St. Louis Railroad  
Company,

Defendant

*Notice of Trial*

Sir: YOU WILL PLEASE TO TAKE NOTICE that the issue of fact  
in the above entitled action, will be brought on for trial  
at the next General Term of the District Court aforesaid,  
appointed to be held in and for the County of CARVER at the  
Court House in the City of Chaska in said  
County, on the fourteenth day of March A.D. 1910 at the  
opening of said Court on that day, or as soon thereafter as Counsel can be heard.

Dated February 28th, 1910

Yours respectfully,

*Thos F. Craven & W. S. Odell,*

Attorney for Plaintiff

Chaska, Minn

To W.H. Brenner, John H. Dille and H.J. Peck,

Attorney for Defendant.

DISTRICT COURT.

Emma Patzke  
- vs -

The Minneapolis & St.  
Louis Railroad Company,

NOTICE OF TRIAL.

<sup>and personal</sup>  
Due service of within Notice is hereby

admitted, this 1st day of  
March A. D. 1910

O. H. Brenner

Attorney for Defendant

Thos F. Crocker & W. S. Odell

Attorney for

Plaintiff

No. 41.

CARVER COUNTY,  
FILED

MAR 7 1910

H. O. Muehlberg Clerk.



State of Minnesota.  
County of Carver.

District Court.  
Eighth Judicial District.

Emma Patzke, :  
Plaintiff, :  
vs :  
The Minneapolis & St. Louis :  
Railroad Company, :  
Defendant. :

ANSWER

Comes now the defendant and for answer to plaintiff's complaint denies each and every allegation therein contained.

For a second and additional answer to plaintiffs complaint, this defendant says that the accident mentioned in the complaint and all of the injuries, if any, sustained by plaintiff, were caused by and resulted from her failure to exercise due, proper and ordinary care for her own safety, and that the negligence of plaintiff, and her failure to exercise due, proper and ordinary care for her own safety, contributed to and caused the accident and injuries alleged in the complaint.

WHEREFORE, Defendant asks judgment for its costs.

*Grove Seever*  
General Counsel

*John Hille*  
*H. J. Peck*  
Attorneys for Defendant.

2-41  
Original

OF Minnesota  
of Carver

Dist COURT

Emma Patzke  
Plaintiff

vs  
St. Louis  
Lee  
Defendant

Answer

ice of the within by copy is hereby  
this 8th

A. D. 1908

James W. Odell  
Clerk

JOHN I. DILLE,  
Attorney

Guaranty Loan Building,  
Minneapolis, Minn.

GEORGE W. SEEVERS,  
General Counsel.

CARVER COUNTY,  
FILED

MAR 2 1908

H. O. Marshall, Clerk

(531)

County of Carver

Eighth

Judicial District.

Emma Patzke

No. 1

Against

Plaintiff

List of Jurors.

Minneapolis & St. Louis  
Railroad Company  
Defendant

Mark Here

NAMES

REMARKS

- |    |                    |         |
|----|--------------------|---------|
| 1  | John O. Bratt      |         |
| 2  | Fred Thurtell      | excused |
| 3  | Irwin Abbott       |         |
| 4  | C. P. Kleins       | excused |
| 5  | Selden Johnson     |         |
| 6  | Fred Fischer       |         |
| 7  | Lucas Dols         |         |
| 8  | Mike Dietrich      |         |
| 9  | Patience Evans     | excused |
| 10 | H. H. Mielke       |         |
| 11 | Aug. F. Klauke     |         |
| 12 | Math Eder          |         |
| 13 | Geo Goodridge      |         |
| 14 | James Murphy       | excused |
| 15 | John Lundberg      |         |
| 16 | M. J. Johnson      |         |
| 17 | Emil Bretschneider |         |
| 18 | Chris Richter      | excused |
| 19 | John Drewe         |         |
| 20 | J. W. Spickel      | excused |
| 21 | B. C. St John      |         |
| 22 | Henry Schwartzkopf |         |
| 23 | John Bongard       |         |
| 24 |                    |         |
| 25 |                    |         |

Sept 3



No.                       
 STATE OF MINNESOTA,  
*of Carver*  
 DISTRICT COURT.  
*ma Patzke*  
 Plaintiff  
 Against  
*Minneapolis & St. Louis*  
*Road Company*  
 Defendant  
 JURY LIST.  
 CARVER COUNTY,  
 FILED  
 MAR 19 1910  
*Welling* Clerk.  
 PIONEER PRESS CO., ST. PAUL, MINN.  
 (531)

State of Minnesota,  
 County of Carver.

District Court,  
 Eighth Judicial District.

Emma Patzke,  
 against

The Minneapolis & St. Louis  
 Railroad Company,

Plaintiff )  
 )  
 Defendant )

ORDER DENYING NEW TRIAL

The defendant in the above entitled cause moved the Court for an order for judgement in its behalf notwithstanding the verdict, on the ground that the Court erred in denying its motion for a directed verdict at the close of the testimony herein, and, if this is denied, for an order setting aside the verdict in said cause and granting a new trial therein on the following grounds:

1. Excessive damages appearing to have been given under the influence of passion and prejudice;
2. The verdict is not justified by the evidence and is contrary to law;
3. That the Court erred in denying defendant's motion for a directed verdict at the close of all the testimony;
4. Errors of law occurring at the trial and duly excepted to;
5. That the plaintiff under the testimony offered is seeking to recover upon a ground of negligence other and different than that set out in the complaint.

W. H. Bremner, Esquire, appeared as counsel for the defendant in support of such motions;

Thomas F. Craven, Esquire, and W. C. Odell, Esquire, appeared as counsel for the plaintiff, in opposition thereto.

On the argument for a new trial counsel for the defendant in said cause conceded that there were no errors of law, and if such there were, they were abandoned by the defendant, who contended that the verdict was not ~~supported~~ justified by the evidence.

RECEIVED COURT CLERK  
JUL 1 1910

RECEIVED

RECEIVED

RECEIVED

CHIEF DEPARTMENT NEW YORK

RECEIVED

COURT OF CHANCERY

STATE OF MINNESOTA

RECEIVED DEPARTMENT

RECEIVED COURT

After giving all matters and things involved due consideration, the Court is of the opinion that under the evidence the negligence of the plaintiff and of the defendant were questions of fact to be determined by the jury, and this Court ought not to interfere with such verdict. It is therefore

ORDERED:

1. That the motion for judgement notwithstanding the verdict be and the same hereby is denied;
2. That the motion for a new trial of said cause be and the same hereby is, also, denied.

ed at Chaska, Minnesota, this 3d day of June, 1910.

W. W. Morrison  
Judge of said Court.



NOTARIAL PUBLIC AND DEPUTY NOTARY PUBLIC  
STATE OF MINNESOTA  
IN THE SUPREME COURT

16805 copy

STATE OF MINNESOTA

SUPREME COURT

The Minneapolis & St. Louis  
Railroad Company, Appellant.

Emma Patske, Respondent,  
Lynn S. Halgren, being first duly sworn, deposes and says:

1. That he is the attorney for the appellant in the above en-

The Minneapolis & St. Louis  
Railroad Company, Appellant.  
2. That on the first day of July, 1910, a written stipulation to waive

a bond on appeal was entered into by both plaintiff and defendant in this

entitled action and that said stipulation, together with the notice  
of appeal, was filed in the office of the clerk of the District Court of  
the County of Carver, Minnesota, on the said first day of July, 1910.

IT IS ORDERED That the time for filing the return herein be and  
it is hereby extended to September 19, 1910, and that the Clerk of the  
District Court of the County of Carver, upon being paid or tendered his  
fees therefore, make return on this appeal to this Court on or before

day named. Let this order be served on such Clerk and a copy thereof  
with a copy of the affidavit on which the order is based be mailed to the  
attorneys of the respondent without unnecessary delay.

Dated September 7, 1910.

Chas. H. Stern, Vice.  
Chief Justice.

That this affidavit was made and sworn to by the said clerk of the  
District Court of the County of Carver, Minnesota, on the said first day of  
September, 1910, and said clerk returned said return to the said Court  
on the said first day of September, 1910, and

That this affidavit was made and sworn to by the said clerk of the  
District Court of the County of Carver, Minnesota, on the said first day of  
September, 1910, and said clerk returned said return to the said Court  
on the said first day of September, 1910, and

That there has been no prior extension of time to complete the return  
in this case requested or granted.

Subscribed and sworn to this  
7th day of Sep. 1910.

Notary Public, Hennepin  
County, Minnesota.  
My Commission expires \_\_\_\_\_

*Lynn S. Halgren*  
Attorney for Appellant

No.

# DISTRICT COURT,

*Carver* County.

*Emma Palyka*  
against  
*The Minneapolis & St. Louis*  
*Railroad Company*

## NOTE OF ISSUE.

LAST PLEADING SERVED,

*June* 190*8*

*Fact* Case.

*Thos. F. Craven & W. S. Odell*  
Attorney for Plaintiff.

*W. H. Bremer*  
Attorney for Defendant.

Will the Clerk please file this Note of  
Issue, and enter the cause on the Calen-  
dar for the *March* A. D. 190*0*

*General* Term of this Court.

Yours, etc.,

*Thos. F. Craven & W. S. Odell*  
Attorney for Plaintiff.

Filed *Mar. 7<sup>th</sup>* 190*0*

*H. O. Muehlberg* Clerk.

The \$3.00 deposit required by Sec. 2, Chap. 48, General Laws  
of 1883, must be paid before any action will be entered in  
Clerk's Office.

No. 83.—Pioneer Press Co., St. Paul, Minn.

(531)



STATE OF MINNESOTA  
IN THE SUPREME COURT.

Emma Patzke, -----Respondent

vs-

The Minneapolis & St. Louis  
Railroad Company, -----Appellant.

AFFIDAVIT.

Lynn S. Helgerson, being first duly sworn, deposes and says-

1. That he is one of the attorneys for the appellant in the above entitled action.
2. That on the first day of July, 1910, a written stipulation to waive a bond on appeal was entered into by both plaintiff and defendant in the above entitled action and that said stipulation, together with the notice of appeal was filed in the office of the Clerk of the District Court of Carver County, Minnesota, on the said first day of July, 1910.
3. That on the thirtieth day of August, 1910, this affiant served the return book, which consists of a true and accurate copy of all the records of the District Court, upon the respondent and filed the same in the office of the Clerk of the District Court of Carver County, Minnesota, the same being left with H. O. Muehlberg, Clerk, at about the hour of ten o'clock the morning of said day.
4. That this affiant personally informed the aforesaid Clerk of the District Court that the return must be made on the thirty-first day of August, 1910, and said clerk assured affiant that said return would be made ample time.
5. That, contrary to his assurance to this affiant, the aforesaid clerk did not make the return on the thirty-first day of August, 1910, and has not done so up to this time.

That this affiant relied upon the assurance of the said clerk to make said return as he had promised and has been prejudiced thereby.

7. That there has been no prior extension of time to complete the return in this case requested or granted.

Subscribed and sworn to this  
7th day of Sep. 1910.

*Lynn S. Helgerson*  
Attorney for Appellant.

Notary Public, Hennepin  
County, Minnesota.  
My Commission expires \_\_\_\_\_

I. That he is one of the persons who are entitled to the same rights as the other persons who are entitled to the same rights.

That the same person is entitled to the same rights as the other persons who are entitled to the same rights.

That the same person is entitled to the same rights as the other persons who are entitled to the same rights.

VERIFIED.

That the same person is entitled to the same rights as the other persons who are entitled to the same rights.

IN THE SUPREME COURT.

STATE OF MINNESOTA  
IN THE SUPREME COURT

Emma Patzke,-----Respondent,

vs-

MOTION.

The Minneapolis & St. Louis  
Railroad Company,-----Appellant.

TO THE HONORABLE SUPREME COURT OF THE STATE OF MINNESOTA:

Now comes The Minneapolis & St. Louis Railroad Company, appellant in the above entitled action and moves the Honorable Supreme Court of the State of Minnesota that it relax the rules of procedure laid down by that honorable body to such an extent that it grant to the Clerk of the District Court of Carver County, Minnesota, twelve days additional in which to return in the aforesaid case, which was appealed to the Supreme Court on the first day of July, 1910.

*Lynn S. Helgeson*  
Attorney for Appellant.



CARVER COUNTY.

FILED

SEP 9 1910

*W. M. H. Long*

State of Minnesota

County of Carver/ District Court.

Emma Patzke / Plaintiff.

vs.

The Minneapolis and St. Louis

Railroad Company/ Defendant.

Take notice that upon the records and files and settled case, in said action on file with the clerk of said court, a motion will be made before said court, at The Court House in Glenwood, Minn. at One O'clock in the afternoon May 18<sup>th</sup> 1908 for an order for judgment notwithstanding the verdict and in case that is denied for a new trial of said action, upon the grounds and for the reason-

- 1- For errors of law occurring at the trial, and excepted to by the defendant.
- 2- That the verdict is not justified by the evidence, and is contrary to law.

That upon the argument of said motion the defendant will read so much of the files and records and settled case in said action as it shall be advised.

Dated May 15<sup>th</sup> 1908.

*H. J. Peck*

Attorney for Defendant.

Dated May --- 1908.

advised.

of the files and records and settled case in said section as it shall be  
that upon the argument of said motion the defendant will read so much  
so law.

5- That the verdict is not justified by the evidence, and is contrary  
evidence.

1- For errors of law occurring at the trial, and extended to by the de-  
fendant the grounds and for the de-  
the verdict and in case that is caused for new trial  
of ----- for an order of judgment  
said court, of -----  
-tion on file with the clerk of said court, motion will be made before  
take notice that upon the record and settled case, in said as

Settled case, in said as  
The Minnesota

as.

James Barker / b  
County of Carver

Attorney for Defendant.

CARVER COUNTY,  
FILED

JUL 19 1908

H. O. Muehlberg, Clerk.

(531)



Buttler Company / Defendant.

The Minneapolis and St. Louis

RR.

Emma Patzka / Plaintiff.

County of Carver / District Court.

State of Minnesota

State of Minnesota

County of Carver / District Court.

Emma Patzka / Plaintiff.

vs

The Minneapolis and St. Louis

Railroad Company / Defendant.

Take notice that on the <sup>6th</sup> day of January 1909 at 11 o'clock in the  
~~the~~ <sup>or as soon after the trial as counsel can be heard</sup> noon upon the records and files in said cause, and upon the set-  
tled case, all on file in the office of the clerk of said court, and upon

the affidavits of Joseph A. Zettel and Sophia Zettel his wife, and the  
affidavits of H. J. Peck and John I. Dille, a copy of which affidavits are

rewith served upon you, a motion will be made before said court, at the  
Court House in Chaska in said county, for an order setting aside the

verdict in said action, and for judgment notwithstanding the verdict, or  
in case that is denied for a new trial of said action, upon the follow-  
196

g grounds and for the following causes to wit:  
newly

~~newly~~ discovered material evidence, which by reasonable diligence  
could not have been found and produced at the trial

For errors of law occurring on the trial and either excepted to or  
assigned in the notice of motion.

3-That the verdict is not justified by the evidence, and is contrary to  
law.

At the close of the evidence in said case, the defendant asked the cou  
to instruct the jury to return a verdict for the defendant, because  
it appeared from the whole evidence that the plaintiff was not entitled  
to recover, which motion was denied by the court and is now assigned as  
error.

John I. Dille

H. J. Peck

Atty Gen Dist.

State of Minnesota  
County of Carver / District Court.  
Emma Patzka /Plaintiff.  
vs.  
The Minneapolis and  
StLouis Railroad /Defendant.

State of Minnesota

County of Scott t/ss

H.J.Peck being duly sworn says that he is attorney for the above defendant, and has been such attorney all the time since said action was commenced, that said cause has been tried twice, at Chaska in the District court at Chaska, in said county of carver, or his wife That at neither of said trials was Joseph A. Zettel, a witness for either party, and at no time prior to the 12th. day of October 1908 did this affiant have any knowledge that said Zettel or his wife knew any fact in regard to said matter. That before each trial this and the said defendant its agents and attorneys affiant used every effort within his knowledge for the purpose of ascertaining who if any one was upon the platform at Merriam at the time the train carrying Emma Patzka arrived at said station, and was unable to find any one except the witness Salter who was sworn at former trial of said action.

That in the evening of the 12th. of October 1908, while affiant was waiting for a train at Merriam he overheard said Joseph A. Zettel in the depot at Merriam telling some one that he was on the platform with his wife at the time of the accident to Emma Patzka, and that was the first information affiant had of the knowledge of said Zettles in regard to the said injury of said plaintiff, or that either of them knew any thing in regard thereto.

Subscribed and sworn to this 24-day  
of ~~December~~ 1908, before me,

H. J. Peck

Chas. J. Hendricks

Notary Public

Scott Co., Minn.

My commission expires Sept. 24 1915.



defendant's and has been duly sworn with the time since said action  
H. J. Peck, being this sworn says that he is attorney for the above  
County of Carver

State of Minnesota

County of Carver / Defendant  
The Minneapolis and  
St. Louis

vs  
The Minneapolis & St. Louis

County of Carver / District Court  
State of Minnesota

State of Minnesota.

District Court.

County of Carver.

Eighth Judicial District.

Emma Patzke,

:

Plaintiff,

:

vs

:

AFFIDAVIT

The Minneapolis & St. Louis

:

Railroad Company,

:

Defendant.

:

State of Minnesota.

ss

County of Hennepin.

John I. Dille being first duly sworn, deposes  
and says that he is General Attorney of the defendant in the  
above entitled action; that as such General Attorney he had  
general  
charge of the preparation of all of the evidence for defend-  
ant in said action; that on or about November 1st, 1908, he  
was informed by Mr. H. J. Peck of Shakopee, Minnesota, local  
attorney of defendant who has represented defendant in the two  
former trials of said action, that one Joseph Zettel and one  
Sophia Zettel, were on the platform at Merriam Junction, Minn-  
esota at the time plaintiff in the above entitled action was  
injured at said station on October 11th, 1907, and were eye  
witnesses to the injury of said plaintiff; that the first  
information he had that said Joseph I. Zettel and Sophia  
Zettel or either of them knew anything about said injury to  
plaintiff was when informed as to such fact by said H. J. Peck  
on or about November 1st, 1908; that in the investigation

of the facts bearing upon the injury of plaintiff the Claims Agent of defendant, under affiant's directions, interviewed every person they were able to find ~~out~~ who knew the facts about said accident and secured them as witnesses, and that diligence was used to secure the presence at the trial of every person who knew any of the facts in controversy, but defendant and its agents had ~~xx~~ no knowledge of the presence of said Joseph Zettel and said Sophia Zettel at the place of said accident until after the last trial of said cause.

*John Diller*

Subscribed and sworn to before  
me this 22nd day of December,  
1908

*W. H. Phelps*  
Notary Public.

My commission expires Oct. 1, 1913.

5



State of Minnesota  
County of Le Sueur  
District Court

Emma Patzka  
Plaintiff

vs.  
Joseph A. Zettel  
Defendant

Filed

of the within by copy is hereby

this  
A. D. 19

JOHN I. DILLE,  
Defendant

Guaranty Loan Building,  
Minneapolis, Minn.

GEORGE W. SEEVERS,  
General Counsel.

County of carver/ District Court.

Emma Patzka /Plaintiff.

vs.

The Minneapolis and St.

Louis Railroad Company/Defendant.

State of Minnesota

County of Scott/ss/ Joseph A. Zettel and Sophia Zettel, his wife

being each duly sworn say, that they are residents of the city of  
Shakopee, in said state, and have been such residents for more than  
twenty years last past, in said state, and are now engaged in  
operating a hotel, in said city of Shakopee.

That on the eleventh of October 1907, the affiants left Shakopee  
to ~~Monticello~~ in Le Sueur County, and ~~was~~ were at Merriam Junction

on the platform at the depot when the Minneapolis and St. L.  
and

Louis train from Minneapolis came in to said station, being the  
same train upon which Emma Patzka came from Chaska to Merriam Junction,  
on said day.

The affiants further say, that said Emma Patzka did not get on the  
said train upon the platform at said depot, and that said train  
did not start after it arrived at said depot until it pulled  
out for Jordan the next station south of said Merriam Junction.

While said train remained at Merriam affiants saw some railroad  
men carrying said Emma Patzka from some point north of the  
said platform, to the waiting room of the depot, and when the said  
train pulled out said Emma Patzka was carried on to Jordan, on  
the train.

*That as they walked down toward the depot and  
nor either Emma Patzka or Joseph A. Zettel  
Affiants further say, that they saw neither of them, ever spoke to*

attorney H. J. Peck in regard to the fact of their being at Merriam,  
at the time said Emma Patzka was injured, and said H. J. Peck  
as affiants verily believe did not know the fact until the 12  
day of October 1908, and then he accidentally overheard Joseph  
A. Zettel talking to some parties at Merriam Junction, while waiting  
there for a train.

Subscribed and sworn to this

--- day of December 1908,



I, the undersigned, do hereby certify that the foregoing is a true and correct copy of the original as the same appears in the records of the County of St. Louis, Missouri.  
 In testimony whereof, I have hereunto set my hand and the seal of said County at St. Louis, Missouri, this 12th day of December, 1908.  
 J. H. [Signature]  
 County Clerk

in said cause, that they will each testify to the facts set forth in the foregoing affidavit. That affiants boarded said train, at Merriam Junction and from there proceeded to *Montgomery*.  
 Affiants further say, that they were upon the platform of the station when the St. Louis train came up to the Depot, and remained there until the girl Emma Patzka was brought to the waiting room of the depot. That immediately after said train reached the platform at Merriam they saw some person, who appeared to be one of the train men running north down the track, on the east side of the pass train and in a short time they saw two men bringing the Emma Patzka from the north end of the platform up towards the depot, and saw them take her to the waiting room in the depot. That she was carried on to Jordan upon the same train the affiants went to *Montgomery*.

Subscribed and sworn to this  
 12th day of December 1908,  
 before me, *H. D. [Signature]*  
 Notary Public in and for  
 the State of Missouri.  
 My Comm. Expires June 22, 1913.

s/ *for a Gittel*  
 s/ *Mrs Sophia Gittel*



State of Minnesota.  
County of Carver.

District Court.  
Eighth Judicial District.

Emma Patzke, :  
Plaintiff, :  
vs :  
The Minneapolis & St. Louis :  
Railroad Company, :  
Defendant. :

NOTICE OF APPEAL

To Messrs. Thomas F. Craven and W. C. Odell, attorneys for  
the above named plaintiff, and to H. O. Muehlberg, Clerk of  
said District Court.

PLEASE TAKE NOTICE, That the above named  
defendant appeals to the Supreme Court of the State of Minn-  
esota from an order of said District Court entered herein on  
the 5th day of February A. D. 1909, denying defendant's motion  
for judgment notwithstanding the verdict or for a new trial  
in said cause, and from said order denying the defendant's  
motion for a new trial.

Dated this 17th day of February, 1909.

*George W. Seavers*  
General Counsel

*John A. Odell*  
*W. J. Rock*  
Attorneys for Defendant



Original  
STATE OF Minnesota  
County of Dever  
District COURT

Emma Patyle  
Plaintiff

vs.  
The Nyls & Louis  
P. Rles  
Defendant

Notice of Appeal  
~~Dismissed~~

Due service of the within by copy is hereby  
limited at Chaska, Minn.

this 17th  
day of February, A. D. 1909

Thos. Braun, Willard  
Attorneys for Plaintiff

JOHN I. DILLE,  
Attorney for Defendant  
1102 Guaranty Loan Building,  
Minneapolis, Minn.

GEORGE W. SEEVERS,  
General Counsel.



STATE OF MINNESOTA,  
COUNTY OF CARVER.

DISTRICT COURT.  
EIGHTH JUDICIAL DISTRICT.

Emma Patzke,  
Plaintiff,  
-vs-  
The Minneapolis and St. Louis  
Railroad Company,  
Defendant.

STATE OF MINNESOTA.  
COUNTY OF CARVER.

SS.

W. C. Odell being first duly sworn says that I am an Attorney of said court residing in the City of Chaska in said County and State and am one of the Attorneys for the Plaintiff in the above entitled action; that Thomas F. Craven, Esquire, also an Attorney of said court and residing in said City of Chaska, is and ever since the commencement of said action has been associated with me as Attorney for said Plaintiff in said action; that said action has been twice tried in this court and both trials thereof have been conducted on the part of said plaintiff by Mr. Craven and myself. That I have read the affidavits attached to and served with the Notice of Motion for a new trial of this action and am personally acquainted with Joseph A. Zettel the person who makes one of said affidavits. That before commencing said action both Mr. Craven and myself used the utmost endeavor to locate and secure some person who witnessed the accident to plaintiff and could testify as to the manner in which she received her injuries; that we were wholly unable to get any trace of any person having any knowledge whatsoever of the manner in which said plaintiff so received her injuries prior to the first trial of said action; that shortly before the convening of the term of court at which the second trial of said action was had we were informed that one Mrs. Spandel resided at Merriam Junction at the time plaintiff was injured and had some knowledge as to the manner in which plaintiff received her injuries, and immediately upon receiving such information we drove to Merriam Junction for the purpose of seeing and interviewing said Mrs. Spandel with a view of securing her testimony upon the trial in case we learned that she had any information which could be used as evidence upon the trial of said case; that we did not succeed in finding



Mrs. Spandel at home and accordingly caused a subpoena to be issued and served upon her requiring her appearance at said term of court on the first day thereof; that said Mrs. Spandel appeared in Chaska in obedience to said subpoena and we then interviewed her in regard to the matter and were informed by her that she did not see the accident and had no knowledge respecting the same other than that the plaintiff was injured in some way on the day on which plaintiff claims to have been injured; that she further stated to us that at the time the accident happened both she and Mrs. Zettel, the wife of said Joseph A. Zettel, were in the house of one Spaetgens which said house is situated on the opposite side of the tracks of the Omaha Railway Company from the platform of the Minneapolis and St. Louis Railroad Company, and that neither she nor Mrs. Zettel saw anything until the plaintiff was being carried to the station house; that said Mrs. Spandel then informed us that said Joseph A. Zettel and his wife came to Merriam Junction on the morning of the day of the accident upon the Omaha train and that Mrs. Zettel called upon her and that she and Mrs. Zettel together called upon Mrs. Spaetgens where they remained until the arrival of the train upon the Minneapolis and St. Louis Railroad, and she also then informed us that she understood that Mr. Zettel had witnessed the accident. That upon being so informed by said Mrs. Spandel that said Joseph A. Zettel had, as she understood it, witnessed the accident to plaintiff and on the evening of the first day of the term of court at which this action was last tried Mr. Traven and myself drove to Shakopee for the purpose of seeing Mr. Zettel and his wife and of ascertaining what, if any, knowledge they, or either of them, had as to the manner in which said plaintiff received her injuries with a view of calling said Zettel and his wife as witnesses upon the trial of this action in case we learned that they or either of them possessed any knowledge which would throw light upon the issues for trial; that I examined said Zettel at great length and as closely and persistently as I am capable of and was unable to secure from said Zettel any direct or unequivocal statement as to the manner in which plaintiff received her injuries; that in the course of such examination said Zettel at first stated to us that it was his impression that the train upon which plaintiff rode to Merriam Junction stopped just before reaching the platform because of some obstruction on



the track, and upon being asked by me if it were not true that the freight engine was out upon the main track necessitating the stopping of the passenger train until such freight engine could run in upon the siding said Zettel stated to us that he had no recollection in relation to the matter and was entirely unable to say whether the passenger train stopped before it made the station stop or whether it did not and that he could not say whether the passenger train stopped, started and stopped again before it finally left the station or not; he further stated to us that he did not see the plaintiff or any other passenger get off from the train or have any knowledge as to the manner in which plaintiff got off from said train and did not see her at all until after she had got off from the train; that when he first saw her she was down on the ground and near the east rail of the main track and north of the north end of the platform but as to whether she was but a few feet north of the platform or some distance up the track he was entirely unable to state, and that he saw the men pick her up from the ground; said Zettel also then repeatedly informed us that he had no knowledge as to how plaintiff received her injuries nor as to the movements of the train upon which she reached Merriam Junction and that he was entirely unable to give us any information in regard thereto; that we requested Mr. Zettel to permit us to talk with Mrs. Zettel in relation to the matter and he at first said that he would permit us to do so and that he would go in and prepare Mrs. Zettel for a visit from us, that he went into the residence portion of his place of business and remained there some little time when he returned to where Mr. Craven and I were and informed us that his wife had no knowledge whatever of the matter except that the girl was hurt on the day she was at Merriam Junction and that his wife claimed she did not see anything because she was in the house with Mrs. Speatgens and Mrs. Spandel at the time the train pulled in to the station; said Zettel further stated to Mr. Craven and myself at the time to which I have above referred that he did not hear anybody claim while he was at the station that the plaintiff had jumped or fallen from the train or say anything as to the manner in which plaintiff was injured. That feeling that Mr. Zettel had not been entirely frank and free with us Mr. Craven and I concluded that we would procure some other person to call

upon him and endeavor to learn just what, if anything, he knew in relation to the matter under consideration and we accordingly procured Mr. J. M. Aretz to go to Shakopee and endeavor to learn all that either Mr. Zettel or his wife knew in regard to the manner in which plaintiff received her injuries and said Aretz visited said Zettel before the trial of said action and the result of his interview is set forth in an affidavit made by him and herewith presented to the court.

Affiant further says that upon the first trial of this action one C. J. Fielder was called by and as a witness upon the part of said defendant and gave testimony upon the trial of said action; that said Fielder testified upon such trial that he was the station agent of the defendant company at Merriam Junction on the day that plaintiff received her injuries, and that he was at said station on said day in the discharge of his usual duties as such station agent; that the testimony which said Fielder gave upon said trial was incorporated in and became part of a Settled Case which is now on file in this action, and as so contained in said settled case such testimony is as follows:

C. J. F I E L D E R , recalled, testified as follows:

Direct Examination.

Mr. Peck:

Q. Mr. Fielder, where do you live?

A. Merriam Junction.

Q. You are station agent there?

A. Yes, sir.

Q. And were you station agent there on the 11th of last October?

A. I was.

Q. Did you have any assistance in the operation of that station?

A. Yes, sir, I had a helper.

Q. A helper, what is his name?

A. A. P. Helleniak.

Q. How long--?

A. He was at that time, he is not now.

Q. Oh, he was at that time the helper; now, when that train arrived on that day--I don't know whether you were asked before in regard to it,



I think not---did that train stop more than once?

A. No, sir, that train did not.

Q. It made what is called the station stop?

A. Made the station stop, which included also the station stop.

Q. Were there any passengers got off of that train?

A. To my best recollection, there were two or three.

Q. Was you out by the side of the train?

A. No, sir, I was in the bay-window of the telegraph office.

Q. Did you see the train when it came in and the passengers when they got off?

A. Yes, sir.

Q. And where did the passengers go?

A. I think as near as I can tell there was two went to Belle Plaine and one went to Le Sueur; I wouldn't swear to it.

Q. Well, where did they go when they got off the train?

A. Into the waiting room.

Q. Is that the same room this girl was afterward carried to?

A. Yes, sir, the same room.

Q. Who was out assisting, if anybody from your office, assisting around the train?

A. The helper was supposed to make the train, put on the mail and the baggage and take off what was to be taken off.

Q. Did he do it that morning?

A. Yes, sir.

Q. Was there any trouble upon that platform that morning, or anyone hurt there or dragged on that platform?

A. None whatever.

Q. There was no one fell off the train on the platform or was dragged by the train on the platform?

A. No, sir.

Q. Do you know how long that train remained there?

A. It remained there just nine minutes.

Q. Just nine minutes. What is the usual time that they generally stopped there, or does that depend on conditions?

Q. Did you see this young lady being carried by anybody there that morning?

A. I did.

Q. When did you first notice that?

A. I noticed that about 10 or 12, possibly 15 feet east of the first switch, east or northeast, of the platform.

Q. Down beyond the north end of the platform?

A. Yes, sir.

Q. That runs down beside the main track?

A. Yes, sir.

Q. The length of that platform you say is how much?

A. 290 feet.

Q. But from the depot down it is 180 feet?

A. 180 feet from the north end of the depot.

Q. And the first you noticed this girl being carried was north of the north end of the platform?

A. North of the north end of the platform about 20 feet.

Q. Which way was she being carried?

A. She was being carried south toward the depot.

Q. Who was carrying her?

A. Engineer Saul and Brakeman Madden.

Q. Where did they carry her?

A. They carried her on up to the waiting room and took her into the waiting room.

Q. Did she remain in the waiting room until the train left for the south?

A. Well, she remained there possibly four or five minutes, until it was decided to take her to Jordan where she could receive medical attention and then she was taken out and put into the baggage car.

Q. You have never seen her since that until you saw her here in Court?

A. No, sir.

Q. She was complaining of being injured at that time?

A. Yes, she was crying considerable.

Q. How long have you been station agent there?



A. Why, since the 4th day of October.

Q. And you are still station agent there?

A. Yes, sir.

Q. Those passengers you say that got off, did they get off on the south side of the train, on the platform?

A. Yes, sir.

Q. And came up on the south side of the train into the depot?

A. Yes, sir.

Q. You didn't see this girl alight from that train on the platform?

A. No, sir.

Cross Examination.

By Mr. Odell:

Q. What are your duties there as station agent?

A. My duties are, to look after the station of both roads; of course now my hours are telegraphing from 9 to 3 o'clock; I do the telegraph work with an assistant and do the work on both wires; at this time they were from 7 a.m. to 7 p.m., telegraphing.

Q. On the 11th of October what were your duties?

A. My duties were to look after the wires from 7 to 7, and also to see that my assistant did the outside work.

Q. What outside work was to be done?

A. transferring mail, baggage, freight, from one road to the other and to tend to the other work.

Q. Now, during the early part of the month of October you say that the train operator was the man who transferred the mail?

A. I never said so.

Q. Well, was he?

A. No, sir.

Q. What?

A. No, sir, I was the operator myself, and agent.

By Mr. Peck: The helper?

A. Yes, sir.

Q. Where is that helper now?

A. He is right here in Court.

Q. How old a man is he?

A. I couldn't say.

Q. Did he transfer the mail on the morning of the 11th of October?

A. He did.

Q. You didn't go out from the building, as I understand you?

A. No, sir.

Q. You were at the operator's table all the time while this train number 2 was lying there?

A. I was in the bay window looking out.

Q. What?

A. I was in what we call the telegraph window looking out on the platform. And the operator's table is in the window?

A. Yes, sir.

Q. And you were there seated at the table, or standing?

A. I was seated.

Q. As the operator it was your duty to report the arrival and departure of that train?

A. Yes, sir.

Q. And you were seated there for that purpose, were you not?

A. Yes, sir.

Q. Now, you saw some passengers get off from the train, did you not?

A. I did.

Q. You didn't see anything in the manner of their getting off of that train different from the ordinary way of leaving trains, did you?

A. I saw nothing unusual, no, sir.

Q. How many people got off on the station side of the train?

A. Well, I couldn't say as to that; at the first glance I saw there were about three, that is, when the train stopped there were about three getting off the train, but later on when they began to carry this girl there was more got out of the cars for curiosity; about how many I couldn't say.

Q. I saw the woman jump just before they came to a stop and run to the



Q. But of the passengers who left the train at that point, you think there were three?

A. There were about three, yes, sir.

Q. Was there a man and woman?

A. There was two men and one woman.

Q. Did any of those passengers buy a ticket at your ticket office for any point on the Omaha line?

A. They did.

Q. Did the man and woman buy tickets for Mankato?

A. Yes, sir, they did.

Q. And the man who bought a ticket for Mankato had only one eye?

A. I couldn't say; I didn't look at his eye.

Q. You don't remember?

A. No, sir.

Q. But you do recollect that one of the men and the woman who got off from the train number two that morning, bought tickets for Mankato?

A. Yes, sir, they bought tickets for Mankato.

Q. Where did the other man go to?

A. I think Belle Plaine; I wouldn't say positively.

Q. Now, you didn't see anything of this little girl, this Emma Patzke, until after the train had come to a full stop there, did you?

A. No, sir, I did not.

Q. You were seated in the observation window during all of the time the train was approaching the station, were you not?

A. Yes, sir.

Q. You saw the train as it was coming in from the north?

A. Yes, sir, I saw it within three quarters of a mile.

Q. Within three quarters of a mile; did you see anything unusual about it?

A. No, nothing at all.

Q. Didn't see anybody jump off of it while it was coming?

A. Well, no, I can't say as I did.

Q. You didn't see the brakeman jump off your side of the train?

A. I saw the brakeman jump just before they came to a stop and run to the

rear end of the train.

Q. Well, that was just before they stopped?

A. Well, I think it was before his coach he was on came to the platform.

Q. You think so?

A. Yes, sir, I am pretty positive.

Q. Did you see anybody else get off from the train?

A. No, sir, not until after they stopped.

Q. Did you know who the little girl was whom they brought into the station?

A. I did not.

Q. Did you learn while she was there what her name was?

A. Why, I learned from her.

Q. You asked her what her name was?

A. Yes, sir.

Q. She told you her name was Patzke?

A. Yes, sir.

Q. Did she tell you where she lived?

A. Not exactly; we couldn't find out where she lived.

Q. Did she tell you who her father was?

A. She told me.

Q. Now, when she told you who her father was, you recognized it was a man who had been bringing wood there?

A. No, sir.

Q. Hadn't that man been bringing wood there for shipment?

A. Well, I had learned since he had to the former agent, but not to me.

Q. Do you know Mr. Simmons, Mr. Henry Simmons?

A. No, sir.

Q. Never saw him?

A. Never saw him; I might have seen him and not known him.

Q. Did you have any talk at your station there on the 11th day of October about the injuries which this Emma Patzke had received there?

A. Not to my knowledge.

Q. What?

A. Not to my knowledge.

A. No, sir, I did not.



Q. Did you see Henry Simmons there on the 11th of October?

A. I don't know as I did, because I don't know the man.

Q. Did you bill a car of wood on the 11th of October to Henry Simmons at Chaska?

Q. Well, I couldn't say as to that; I billed a car along in that time somewhere, sometime, but I don't know whether it was on the 11th or 12th or when it was.

Q. About that time you did bill a car to Henry Simmons?

A. Well, I wouldn't say who it was; I billed a car of wood to Chaska.

Q. Now, did you see the man to whom you billed that car of wood?

A. No, sir.

Q. On the day it was billed?

A. No, sir, I did not.

Did you see him at any time?

A. No, sir, he got the bill from the helper.

Q. What?

A. He got the bill from the helper while I was gone to supper.

You had no talk with him at all?

A. Not at all.

Q. You say you don't know Henry Simmons?

A. I don't know him at all, no, sir.

Now, didn't you on the day that Emma Patzke received her injuries, tell Henry Simmons there in your station that Emma Patzke had got hurt in getting off from the train?

A. I did not.

Didn't you tell him that Emma Patzke got off from the train and was ragged by the train along the platform?

A. I did not.

Q. Didn't you request Simmons to go to old man Patzke's and tell him that his daughter had gotten hurt while getting off from the train?

A. I did not.

Q. Didn't you request Mr. Simmons to go to Patzke's and tell him that his daughter had been dragged along the platform by the train?

A. No, sir, I did not.

Q. Did you have any conversation such as that in substance?

A. None whatever.

Q. On the 11th of October?

A. No, sir.

Q. Or at any other time?

A. No, sir.

Q. Didn't you tell Henry Simmons that as the Patzke girl was getting off from the train, she got caught and was dragged along the platform, or words to that effect?

A. I did not.

Q. What?

A. I did not.

Q. Didn't you tell him that in substance?

A. I didn't tell him anything.

Q. You never had any conversation with him about the girl or her injuries?

A. None whatever.

Q. On the 11th of October or any other time?

A. No, sir, none whatever.

Q. Mr. Simmons, step up here; Mr. Fielder, this is Mr. Simmons; do you recognize him?

A. No, sir, I do not.

That one A. P. Helleniak was also a witness upon said trial for and on behalf of said defendant, and upon such trial said witness testified that he was an assistant to the station agent at Merriam Junction station on the day that plaintiff was injured and was in the discharge of his usual duties as such assistant to said station agent at the time plaintiff received her injuries; that the testimony of said Helleniak was also incorporated in and is a part of said Settled Case so on file in this action as aforesaid, and as contained in said settled case the testimony of said witness is as follows:

A. P. H E L L E N I A K, a witness called on the part of the defendant, being first duly sworn, testified as follows:

Direct Examination.

Q. Speak plainly, so that we can all understand. Do you remember train



By Mr. Peck:

Q. Where do you live?

A. I live in Luverne, Minnesota, now.

Q. Where?

A. Luverne, Minnesota.

Q. How old are you?

A. 22.

Q. Did you ever live at Merriam Junction?

A. No, I worked there.

Q. Where did you live?

A. I stayed at Jordan.

Q. Stayed at Jordan and worked at Merriam Junction?

A. Yes, sir.

Q. When?

A. Well-.

Q. During what time?

A. From the 7th of August till some time this last January, this year.

Q. What were you doing there?

A. I was employed as station helper.

Q. What?

A. I was employed as station helper.

Q. You was helper of the station agent at Merriam?

A. Yes, sir.

Q. As the helper to the station agent what were your duties?

A. Transferring of mail, and taking care of baggage and taking care of station lights.

Q. Taking care of the station lights?

A. Yes, and other things similar.

Q. When you speak of the station lights, you mean lights at the depot, or do you mean lights up and down where the switches are?

A. Well, the switches and the lights in the depot.

Q. Were you there on the 11th of October?

A. Yes, sir.

Q. Speak up plainly, so that we can all understand. Do you remember train

Q. Did you have time to see the train?  
A. No.  
Q. How did you know?  
A. I saw it in the distance.  
Q. I saw it in the distance?  
A. Yes.  
Q. Did you see the train?  
A. Yes.

number 2 coming in there about 10:30?

A. About 10:37.

Q. 10:36; yes, that is the time when they are on time?

A. Yes, sir.

Q. You remember that train?

A. Yes, sir.

Q. On the 11th of October, on the day this girl Emma Patzke was injured?

A. Yes, sir.

Q. Were you on duty that day?

A. Yes, sir.

Q. Where were you when the train came in the station?

was awaiting the arrival to put on the baggage and mail, standing right at the train.

Q. Well, in the performance of your duty does it require you to be along the platform, along the east side of that train there?  
A. Yes.

Q. You put on the mail and took mail off?

A. Yes, sir.

Q. And did you notice passengers getting off that morning?

A. Well, no, not particularly, I didn't.

It is a common thing for passengers to get off and get on there?

A. Yes, sir.

Q. And can you remember that morning who got on or who got off?

A. No, sir.

Well, was there any trouble along that platform, or did any woman be dragged along the side of that platform, or--?

A. I didn't see anybody, no, sir.

Nor you didn't hear anything of the kind?

A. No, not until some time after I put on the mail.

Q. Well, I am speaking of the platform on the east side of that train; was there anybody fell off of the cars that you saw or heard of?

A. Well, I have heard of this Miss Patzke.

Q. I asked you if you heard of somebody falling off on the east side of that platform?



Q. Now you say that you saw her at the depot?  
A. Yes, sir.  
Q. On the north end of the depot?  
A. Yes, sir.  
Q. And you saw her at the depot?  
A. Yes, sir.  
Q. 10:20: And you saw her at the depot?  
A. Yes, sir.  
Q. Now you say that you saw her at the depot?  
A. Yes, sir.

A. At the time?  
Q. At the time?  
A. No, I didn't.  
Q. Well, understand what I say and remember it; you did hear afterward that Miss Patzke was injured there?  
A. Yes.  
Q. When did you first see her that morning?  
A. Well, while they were carrying her in the depot.  
Q. Where were they when you first saw her?  
A. Just on the north end of the north platform, just right on the platform, they weren't on the platform.  
Q. On the north end of the platform?  
A. Yes.  
Q. And about how far from the depot; do you know the length of the platform?  
A. No, I don't.  
Q. But they were at the north end of that platform?  
A. Yes, sir.  
Q. The evidence is here, 150 feet north of the north end of the depot. Who was carrying her?  
A. Why the engineer, and brakeman of the passenger.  
Q. Mr. Saul and Mr. Madden?  
A. Yes, sir.  
Q. You didn't know the girl before that?  
A. No, sir.  
Q. Never had seen her?  
A. No, sir.  
Q. Never have seen her since?  
A. Why, I have seen her in the Court room.  
Q. Until you saw her in the Court room?  
A. Yes.  
Q. Which way were they going when you first saw them?  
A. Why, they were coming toward the depot.  
Q. Yes, from the north?

A. Yes.

Q. Well, where did they carry her?

A. They carried her in the depot, in the waiting room.

Q. Did you see her in the waiting room?

A. No, sir, I didn't.

Q. Where did you go?

A. I was--stepped in the office.

Q. You was in the office?

A. Yes.

Q. Was the station agent there on duty that day?

A. Yes, sir.

Q. Who was the operator there at that time?

A. Why, Mr. Fielder, the agent.

Q. Fielder, the station agent?

A. Yes, sir.

Q. You didn't do any operating?

A. No, sir.

Q. You were simply there as the helper around the depot in the work that was in connection with it that you have described?

A. Yes, sir.

Q. When that train came into the depot, did it stop at the usual place of stopping at the station?

A. Yes, sir.

Q. Did that train after it stopped start up ahead and then back up again?

A. Yes, sir.

Q. When the train did start, where did it go?

A. Why, it went to Jordan.

Q. Went south toward Jordan?

A. Yes.

Q. Did you see the girl when she was put into the car to be carried on?

A. No, sir.

Q. Were there quite a number of people around the depot in the waiting room?

A. Yes, there was quite a few.



Q. Now, you say you don't remember whether passengers got off that morning, or not?  
A. No, sir, I don't.  
Q. It isn't any part of your duty to look after passengers?  
A. No, sir.  
Q. Now, you received mail from the Omaha road there?  
A. Yes, sir.  
Q. And took mail from the Minneapolis & St. Louis and delivered it to the Omaha on the other side of the platform?  
A. Yes, sir.  
Q. What are you doing in Luverne now?  
I am helper.  
Q. At the station there?  
A. Yes, sir.  
Q. On the Omaha road?  
Yes, sir.

Cross Examination.

By Mr. Odell:

Q. Did you have mail to put on this passenger train number 2?  
A. I believe I did.  
Where did you get it from?  
A. From the St. Louis train number 2, the mail car.  
Q. You got some mail from number 2?  
A. Yes, sir.  
Well, that was mail to be put upon the Omaha going west, was it not?  
Yes, sir.  
Q. Did you have any mail to put on number 2?  
A. No, I didn't.  
Q. Now, when the train was approaching the station, where were you, out on the platform?  
A. Yes, sir.  
Q. Waiting for it to come in?  
A. Yes, sir.  
Q. So that you could get the mail sack from the mail car?

Q. How long were you out there before the train reached the station?

A. Well, I should judge half a minute.

Q. Half a minute?

A. Yes, sir.

Q. Then the train had nearly reached the station before you went out onto the platform?

A. Yes, sir.

Q. You got out there before the train came to a full stop?

A. Yes.

Q. Before it had reached the station?

Yes, sir.

Q. Before it had reached the north end of the platform?

A. Why, I don't know just where it was.

Q. Not quite sure about that?

No.

Q. Now, when the train came to a full stop, you stepped up to the mail car, I suppose, to get your sack of mail?

A. Yes, sir.

Q. How many different persons did you see get off from number 2 that morning?

Why, I don't remember how many.

Q. You didn't see anybody get off, did you?

A. I wouldn't say that.

Q. What?

There may have been somebody.

Q. Well, I am not asking you whether somebody might have got off, I asked you how many persons you saw get off?

I don't know.

Q. Do you remember seeing anybody?

A. I don't remember.

Q. Don't remember seeing anybody get off?

A. No, sir.

Q. As the train was coming up to the station, you saw nothing unusual happening about there, did you?



A. No, sir.

Q. What was the first thing out of the ordinary that you saw there that morning?

A. Well, I put on the mail, and carried the sack around to the Omaha side, and when I came back I saw them carrying this young lady to the depot.

Q. Oh, you had taken the mail from the mail car on number 2?

A. Yes.

Q. And had gone around the depot to the other side?

A. Yes.

Q. To the Omaha tracks?

The Omaha platform.

What?

A. The Omaha platform.

Q. The Omaha platform; well, the platform is right alongside of the track; and you had deposited your mail sack there, ready to put on the Omaha train when it came in?

A. Yes, sir.

Q. And then you came back to the Minneapolis & St. Louis side of the depot?

A. Yes, sir.

And there for the first time you saw something out of the ordinary?

Q. Now, the train had been standing there at the station then some little time?

A. Well, yes, about a quarter of a minute or so.

A quarter of a minute?

Or half a minute.

What?

A. Well, I judge a minute.

Q. Did you run?

A. Well, I hurried some.

Q. You hurried some; did you run?

A. No.

Q. What did you hurry for?

A. Well, I usually do that, because I have to take care of baggage.

Q. Did you have any baggage that morning to take care of?  
A. No, sir.  
Q. All you did that morning was to take the mail sack from the St. Louis train number 2, and put it on the depot platform ready to be loaded on the Omaha train?  
A. Yes, sir.  
Q. In carrying it over to load it onto the Omaha train, in what direction did you carry it; did you carry it up thru the house to the Omaha track or around the station?  
A. Around the south side of the station.  
Q. Put it up on a truck there, did you?  
No, put it on the platform.  
Q. How many sacks did you carry?  
A. I don't remember.  
Q. More than one?  
Yes, there was more than one.  
Q. Two?  
A. I don't remember.  
Q. More than two?  
I don't remember.  
Q. Did you make more than one trip?  
A. Only one trip.  
Q. You carried all the mail there was to be transferred at one time?  
Yes, sir.  
Q. Well, now, you don't know exactly how long that took you, do you?  
Well, I should judge about half a minute.  
Q. Half a minute you should judge?  
Um, hum.  
Q. Then you came back, you say, and where did you go when you came back?  
A. Well, I went to the baggage car to take off the mail, the railroad mail.  
Q. Took off some mail from the baggage car?  
A. Yes.  
Q. Well, what did you do with that?



Q. Now, after you had taken that mail into the station, what did you do then?

A. Why, I sorted, I looked up some mail for the Omaha, to see what I had for the Omaha train.

Q. What did you do then?

A. Well, I went then and sat down.

Q. Where?

A. I went and sat down to wait for the arrival of the Omaha train.

Q. Well, when was it you saw the people carrying the girl down the platform; that was after you had got the mail out of the baggage car, wasn't it?

A. Yes.

That was after you had taken the mail out of the baggage car into the depot, wasn't it?

A. Yes, sir.

Q. That was after you had been sitting in the depot some time?

That was after I seen them coming up to the platform, at the time I went out to the baggage car.

Q. At the time you were out to the baggage car?

A. When I took out the mail.

Q. But you took the mail out and carried it right into the office, did you?

The railroad mail?

Q. The railroad mail?

A. Yes.

Q. Carried it right into the office?

Yes.

And then you went to work getting the mail for the Omaha train, did you?

A. Yes, sir.

Q. And then you stayed out there until the Omaha train came?

A. Yes.

Q. Now, the train had been standing there on the track then some little time before you saw anybody carrying that girl, had it not?

A. Why, yes, sir.

Q. What?

A. Yes, sir.

Q. Which train pulled out of Merriam Junction first that morning, the St. Louis or the Omaha?

A. I don't remember.

Q. At that time what was the difference between the arrival time of the St. Louis train and the arrival of the Omaha train?

A. Well, about 7 minutes.

Q. About 7 minutes?

A. Um, hum.

Q. And you don't know whether the St. Louis train cleared, got away before the Omaha got in or not?

I don't remember.

Nor, you don't remember anything particularly about the stops the St. Louis train made that morning, do you?

A. No, I don't remember; all I remember is the stop they made at the station. They made a stop at the station?

Yes.

Q. Well, now, didn't they make a stop after they got on the other side of the Omaha road?

A. No,--

You don't know whether they stopped at the coal chute or not, do you?

No, I don't know.

Q. You don't know whether they stopped at the station south of the Omaha tracks?

No, I don't.

Affiant further says I was informed during the progress of the second trial of this action that said C. J. Fielder was in Chaska under the order and direction of said defendant to testify as a witness upon the trial and I expected that said Fielder would be sworn as such witness and would give testimony upon such trial; that said Fielder was not called as a witness upon such trial nor was said A. P. Helleniak called to give testimony thereon.

Affiant further says that one L. K. Eaton was in attendance during the entire time of the first trial of this action; that said L. K. Eaton was



at that time the claim agent of the defendant company and marshalled the witnesses for said company for use upon such trial; that I was informed by Mr. Peck, one of the Attorneys for the defendant, and also by said L. K. Eaton that he, said L. K. Eaton was the claim agent of said defendant company to whom was referred and who had charge of the matter of procuring witnesses to testify on behalf of said defendant upon the trial of said action, and of interviewing all persons suspected of having any knowledge in regard to the manner in which plaintiff received her injuries and securing the testimony of such persons as might be found to have any knowledge in respect thereto; that during the past summer and a few weeks before the convening of the term of court at which this action was tried said L. K. Eaton

led upon me and informed me that he was located in the City of Minneapolis engaged in the practice of law, and I believe that said L. K. Eaton is now and at all times since the first trial of this action has been a resident of said City of Minneapolis and where his affidavit could be procured by said defendant at any time for use upon this Motion.

Subscribed and sworn to before me

*W. C. Bull*

this *6th* day of January A. D. 1909.

*H. O. Muehlberg*  
*Chas. Dist. Court*

STATE OF MINNESOTA,  
COUNTY OF CARVER.

DISTRICT COURT.

EIGHTH JUDICIAL DISTRICT.

Emma Patzke,

Plaintiff,

-vs-

The Minneapolis and St. Louis  
Railroad Company,

Defendant.

STATE OF MINNESOTA.  
COUNTY OF CARVER.

SS.

Thomas F. Craven being first duly sworn says I am an Attorney of said Court residing in the City of Chaska in said County and State and am have been at all times since the commencement of this action associated with W. C. Odell, Esquire as one of the Attorneys for the Plaintiff in said action; that I have heard read the affidavit of W. C. Odell herewith presented and know the contents thereof and that said affidavit is true; that I present and participated in the interview with both Mrs. Spandel and Zettel referred to in said affidavit and know that the results of such interviews were as set forth therein; that we were entirely unable to secure from either said Mrs. Spandel or said Zettel any information whatever which could be used upon the trial of this action to throw any light whatever upon the issues therein, and because of our inability to ascertain that either of said persons had any knowledge which would be of any value upon such trial we neglected to call such persons as witnesses to testify upon such trial; that both Mr. Odell and myself were desirous of making use of any testimony either said Mrs. Spandel or said Zettel might be able to give upon the trial of said case and in good faith endeavored to procure such testimony if such testimony was procurable by anybody, and we refrained from calling said Mrs. Spandel and said Mr. Zettel as witnesses upon said trial for the sole and only reason that we were unable to learn that either of said persons were possessed of any knowledge respecting the manner in which plaintiff received her injuries or as to any fact pertinent to the issues to be tried. That I talked with Mr. Aretz immediately upon his return from Shakopee where he went at the request of Mr. Odell and myself to interview said Zettel and was



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NICHOLSON INDICATIVE DISTRICT

DISTRICT COURT

informed by Mr. Aretz that he had been as unsuccessful in his endeavors to learn what said Zettel knew, if he knew anything, in regard to the manner in which plaintiff received her injuries as we had been, and said Aretz then gave me substantially the same information that is now set out in his affidavit herewith presented.

Affiant further says that the term of court at which this action was last tried convened on the 28th day of September 1908 and on the 3d day of October such term was adjourned until October 7th; that pending such adjournment of the term and on the 5th day of October he saw C. J. Fielder a witness who testified for and on behalf of the defendant company on the first trial of this action and talked with him in the Court House in the City of Chaska;

said Fielder then informed me that he was looking for the claim agent of the defendant company or Mr. Peck and was here at the request of and under the direction of said defendant to testify on the trial of this action, and told me that he had been instructed to be in court on the morning of October

and showed me a letter and transportation furnished to him by the defendant company; that the trial of said action commenced on the 7th of October and was concluded on the 10th and during the progress thereof affiant was informed that said Fielder was in attendance upon the court ready to be called as a witness whenever defendant's counsel saw fit to put him on the stand; that said Fielder is the same person who testified upon the former trial of this action and the testimony given by him upon such trial is as set out in the affidavit of W. C. Odell herewith presented.

and sworn to before me

day of January A. D. 1909.

*Thos. F. Craven*  
*Judge of Probate*

*Thos. F. Craven*

into the court that he did not see plaintiff get off the train or hear anybody say that she jumped off or fell off; said Zettel further told me that it was his impression that the passenger train stopped before reaching the platform to allow the freight engine to come past and then the train started

STATE OF MINNESOTA.

DISTRICT COURT.

COUNTY OF CARVER.

EIGHTH JUDICIAL DISTRICT.

Emma Patzke,

Plaintiff,

-vs-

The Minneapolis and St. Louis  
Railroad Company,

Defendant.

STATE OF MINNESOTA.

ss.

COUNTY OF CARVER.

J. M. Aretz being first duly sworn says I reside in the City of Shakopee in said County and State and am the Deputy County Auditor of said County of Carver; I am acquainted with Joseph A. Zettel of the City of Shakopee and saw and talked with him in relation to the above entitled action on the 30th day of September 1908; that on said 30th day of September 1908 I was requested by the Attorneys for the Plaintiff in said above entitled action to go to Shakopee and ascertain what, if anything, said Joseph A. Zettel knew in regard to the manner in which plaintiff received the injuries for which she seeks compensation in said action and as to what, if anything, said Joseph A. Zettel or his wife saw on the morning of the day that plaintiff was injured which could be shown upon the trial of said action; that I spent several hours in conversation with said Joseph A. Zettel in relation to said matter and used my best endeavors to elicit from said Zettel all of the information which he had in relation to the accident to plaintiff; that said Zettel then told me that he and his wife were at Merriam Junction on the day that said plaintiff was injured, waiting to take the train on the Minneapolis and St. Louis Railroad for Jordan; that the first he saw of plaintiff was while he and his wife were standing on the platform waiting to take the train, and that plaintiff was then sitting on the east rail of the main track some distance north of the platform and some men picked her up and carried her into the depot; that he did not see plaintiff get off the train or hear anybody say that she jumped off or fell off; said Zettel further told me that it was his impression that the passenger train stopped before arriving at the platform to allow the freight engine in coming back from the coal chute to



WITNESS STATEMENT  
AND RETURN TO THE COURT  
-35-  
JURY ROOM  
BY JURY

CORRECTIONAL OFFICE  
STATE OF WISCONSIN

STATE ATTORNEY GENERAL  
DISTRICT CORRECTIONAL

take the siding, but that his recollection as to that was not clear and that he had no positive recollection in regard thereto; that during the course of such conversation I informed said Zettel as to the statements made by the trainmen as to the manner in which the plaintiff was injured and that it was claimed by such trainmen that plaintiff got off from the train on the west side thereof and said Zettel said to me in answer thereto that that could not possibly be so; that said Zettel did not say to affiant during the course of such conversation that he saw some person running north down the track on the east side of the passenger train or that he saw said plaintiff when she got off from the train or that he knew how she got off but stated repeatedly that he had no positive or distinct recollection as to any of the circumstances under which plaintiff was injured or as to the

circumstances at the station when the train pulled in, and that he could give no clear or definite information in regard thereto; that I requested said Zettel to permit me to talk with Mrs. Zettel in reference to said matter and was informed by said Zettel that his wife had no knowledge whatever of the accident and that it would do no good to talk with her about it as she would be unable to give me any information; that said Zettel told me that while he and his wife were standing on the platform the freight engine backed down toward the siding but that he couldn't recollect positively whether or not the passenger train stopped to permit such freight engine to take the siding.

Affiant further says that I have herein set forth all of the information that I was able to get from said Joseph A. Zettel in regard to the manner in which plaintiff received her injuries and in regard to the movements of the train upon which she was a passenger and in regard to the movements of the freight engine, and said Zettel repeatedly stated to me that he could give me no further or other information in regard thereto.

Affiant further says I know C. J. Fielder who was at one time station agent of the defendant company at Merriam Junction; that I saw said Fielder in conversation with Mr. Craven at the Court House on the 5th day of October and heard said Fielder then inform Mr. Craven that he was in Chaska under the order and direction of the defendant company for the purpose of appearing as a witness upon the trial of this case and while said trial was in progress

I was informed by a citizen of Chaska that said Fielder was here to be called as a witness in case defendant's counsel saw fit to put him on the stand.

Subscribed and sworn to before me  
this <sup>6<sup>th</sup></sup> day of January A. D. 1909.

*John Glauer*  
Judge of Probate

*J. M. Arty*



District Court  
County of Carver,  
Emma Patzke  
Plaintiff

The Minneapolis  
St. Louis Railroad Co  
Defendant

Applicants in opposition  
to Motion.

CARVER COUNTY,  
FILED

JAN 7 1909

H. O. Muehlberg, Clerk

(531)

W. H. O'Leary  
Thos. J. Brown  
Opp. to Motion