

appellant testified, the car had come to a stop before she attempted to alight, or, as the jury found, it was still in motion when she alighted. That was clearly pointed out by the learned Judge; and there could, we think, have been no misconception on the part of the jury as to its being the crucial question.

It was argued by Mr. Phelan that the jury may have been, and probably were, misled by what took place just before the jury retired to consider their verdict, as thus reported in the shorthand notes:—

“The Court: Was the car in motion at the time the plaintiff alighted?”

“Mr. Godfrey (counsel for the plaintiffs): I object to that question altogether, as misleading, your Honour.

“The Court: I think that is right. I suppose the time might be from the time she arose from the seat and began to move forward. It is a straight issue between the parties, and the jury can find upon it.”

In order to understand the meaning of this observation, it is necessary to refer to the form which it had been proposed the question should take. The question as at first proposed was, “Was the car in motion at the time the plaintiff attempted to get off?” And it was changed to the form in which it was eventually put, by eliminating the words “attempted to get off,” and substituting for them the word “alighted.” In suggesting this change, counsel for the respondent pointed out that “attempting to alight” means “from the time a passenger rises from the seat until she gets on the ground,” and asked if the question should not be made to read, “Was the car in motion at the time she alighted?” To this Mr. Godfrey objected, saying that he thought the question should be struck out altogether; that the female appellant’s whole case was, that, “while she was alighting, the car was in motion, because they had started the car after it stopped.” In answer to this the learned Judge is reported to have said: “Oh, no, that is not the point. The woman says the car had stopped, and she started to go down, and then it started. Now all the other witnesses say the car had never stopped.”

The concluding observation of the learned Judge, which I have quoted, in the light of all this, was plainly meant to apply to the question in the form in which it was first proposed to put it.

All this took place in the presence of the jury, and it is im-