

kind mentioned in the agreement, and recognised and acknowledged the value of the services rendered. That being so, there seems to be no good ground for saying that they are not liable to pay for them.

The agreement being under the seal of the defendants the railway company, and the services having been rendered in fact by the plaintiffs and accepted in fact by the defendants the railway company, there is ample consideration to support the claim against them for the sum mentioned in the agreement: see *Lawford v. Billericay Rural District Council*, [1903] 1 K. B. 772, and *Township of East Gwillimbury v. Township of King*, 20 O. L. R. 510, where the authorities dealing with this principle are discussed in regard to agreements, whether under seal—as the one in question here is—or otherwise.

Their appeal should, therefore, be dismissed with costs. It follows that the plaintiffs' appeal should also be dismissed, and the plaintiffs must pay to the defendants Newman and Nelles their costs; but, inasmuch as the appeal was the direct result of the appeal of the defendants the railway company, the latter should, in addition to the costs of their own appeal, pay to the plaintiffs the costs they are directed to pay to the defendants Newman and Nelles.

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NOVEMBER 7TH, 1910.

HOSKIN v. MICHIGAN CENTRAL R. R. CO.

*Railway—Injury to Passenger Alighting—Defective Step—Negligence—Findings of Jury—Finding of Negligence on Ground not Alleged—Absence of Evidence to Support—Dismissal of Action.*

Appeal by the defendants from the judgment of a Divisional Court, 1 O. W. N. 503, dismissing the defendants' appeal from the judgment of MAGEE, J., at the trial, upon the findings of a jury, in favour of the plaintiff for the recovery of \$1,250 damages for personal injuries sustained by the plaintiff in alighting from a car of a train of the defendants at Amherstburg.

The negligence charged in the statement of claim was: (1) permitting the train to be equipped with defective and improper steps; (2) not providing a platform sufficiently high to permit passengers to alight in safety from the coach; and (3) the conductor carelessly and improperly placing a loose step or box on the platform, intended to overcome the difficulty of the distance