

Clerk Tall
on Briefs

1878

N. J. Court of Errors and Appeals.

THE PENNSYLVANIA RAIL-
ROAD COMPANY,
Plffs. in Error.

vs.

THEOPHILUS PAGE,
Def't. in Error.

In Case.

STONE & JACKSON,

Attorneys of Plaintiffs in Error.

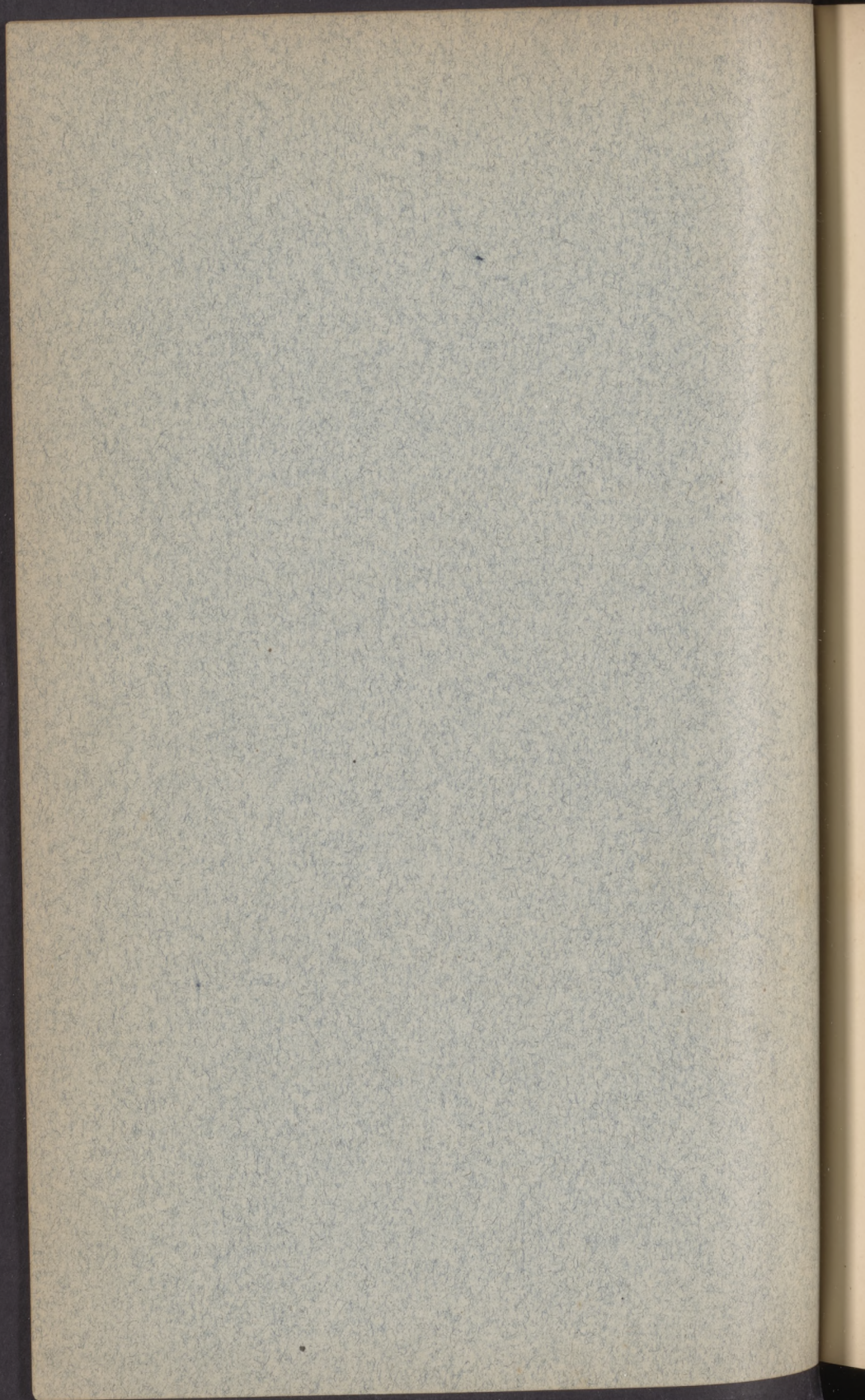
SHAFER & DURAND,

Attorneys of Defendant in Error.

NEW YORK:

HENRY SPEAR, Printer and Stationer, 82 Wall Street

1878.



New Jersey Court of Errors and Appeals.

THE PENNSYLVANIA RAILROAD COM-
PANY,

Plaintiffs in Error,

vs.

THEOPHILUS PAGE,

Deft. in Error.

} In Case.

POINTS FOR PLAINTIFFS IN ERROR.

1st.—We agree with the Court that in order to fix responsibility upon defendants, the relationship of master and servant must have existed between the defendants and the party whose conduct produced the injury.

2d.—The evidence on the part of the plaintiff fails to show that the wrong complained of was caused by the defendants or their servants, and the evidence on the part of the defendants shows that it was caused by the intervention of the independent act of a third party, whose act was the immediate cause of the injury.

Cuff adm. *vs.* Newark and New York Rail-
road Co., 6 Vr., 17.

Welfare *vs.* London and Brighton Railway
Co., 4 Q. B., 693.

R

THE PENNSYLVANIA RAILROAD COM-

PANY,

Plaintiffs in Error,

In Case

vs

THEOMILUS FARR,

Defendant in Error.

POINTS FOR PLAINTIFFS IN ERROR.

1st.—We agree with the Court that in order to fix its possibility upon defendants, the relationship of master and servant must have existed between the defendant and the party whose conduct produced the injury.

2d.—The evidence on the part of the plaintiff fails to show that the wrong complained of was caused by the defendants or their servants, and the evidence on the part of the defendants shows that it was caused by the intervention of the independent act of a third party, whose act was the immediate cause of the injury.

Callahan vs Newark and New York Railroad Co., 8 Vt. 17.
Wellers vs London and Brighton Railway Co., 4 Q. B. 882.

New Jersey Court of Errors and Appeals.

THE PENNSYLVANIA RAILROAD COM-
PANY,

Plaintiffs in Error,

vs.

THROCKMOLLEN PAGE,
Def't. in Error.

In Case

BRIEF OF PLAINTIFFS IN ERROR.

The plaintiff was injured by a mail bag thrown from a mail car. He was standing on the platform of the depot of defendants in Rahway. While standing there a train carrying the mail passed the station without stopping. While passing, a mail bag was thrown from the car carrying the mail toward the platform, which in its course struck the plaintiff and caused the injury.

The question to be decided is—Are the defendants under the evidence liable for the damages resulting from the injury?

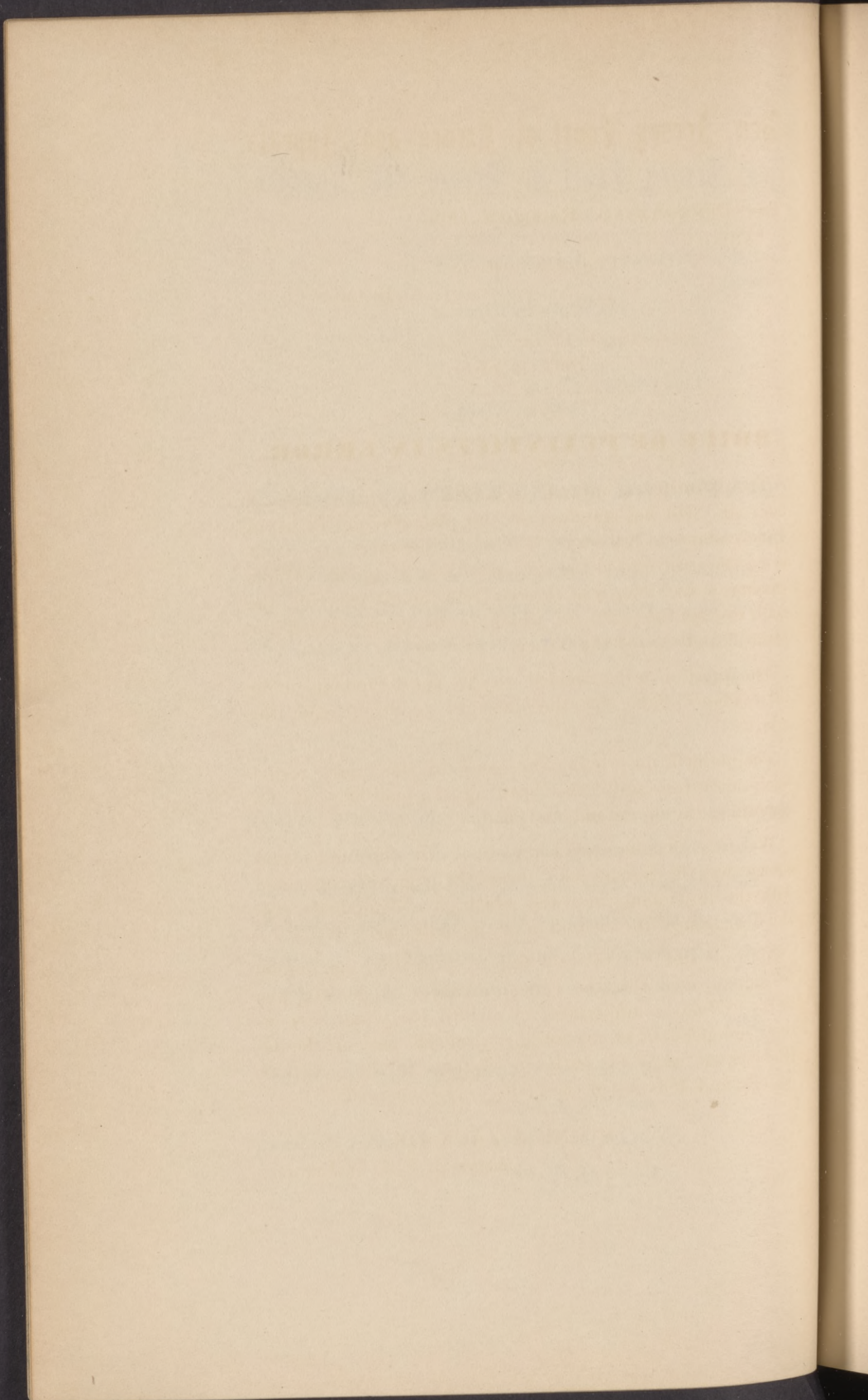
The plaintiff in proving the cause of the injury rested solely upon the fact of the throwing of a mail bag out of a car running upon defendants' road.

We insist that he should have gone one step further and shown that the person who threw the bag was connected with the defendants in a way which gave defendants control over him as the custodian of the mail bag.

Not only did the plaintiff fail to show this, but the de-fendants proved that the person in charge of the bag was in the exclusive employment of a third party and was en-tirely independent of any authority on the part of the de-fendants so far as his duties in reference to the reception, custody and delivery of the mails were concerned.

STONE & JACKSON,

Attys. of Plf's in Error.



New Jersey Court of Errors and Appeals.

THE PENNSYLVANIA RAILROAD COM-
PANY,

Plaintiffs in Error,

vs.

THEOPHILUS PAGE,
Def't. in Error.

In Case.

BRIEF OF PLAINTIFFS IN ERROR.

The plaintiff was injured by a mail bag thrown from a mail car. He was standing on the platform of the depot of defendants in Rahway. While standing there a train carrying the mail passed the station without stopping. While passing, a mail bag was thrown from the car carrying the mail, toward the platform, which in its course struck the plaintiff and caused the injury.

The question to be decided is—Are the defendants under the evidence liable for the damages resulting from the injury?

The plaintiff in proving the cause of the injury rested solely upon the fact of the throwing of a mail bag out of a car running upon defendants' road.

We insist that he should have gone one step further and shown that the person who threw the bag was connected with the defendants in a way which gave defendants control over him as the custodian of the mail bag.

Not only did the plaintiff fail to show this, but the defendants proved that the person in charge of the bag was in the exclusive employment of a third party and was entirely independent of any authority on the part of the defendants so far as his duties in reference to the reception, custody and delivery of the mails were concerned.

STONE & JACKSON,
Attys. of Plff's in Error.

THE PENNSYLVANIA RAILROAD COMPANY,
Plaintiffs in Error,
vs.
THOMAS PAGE,
Def. in Error.

In Case.

BRIEF OF PLAINTIFFS IN ERROR.

The plaintiff was injured by a mail bag thrown from a mail car. He was standing on the platform of the depot of defendants in Rahway. While standing there a train carrying the mail passed the station without stopping. While passing a mail bag was thrown from the car carrying the mail toward the platform, which in its course struck the plaintiff and caused the injury.

The question to be decided is—Are the defendants under the evidence liable for the damages resulting from the injury?

The plaintiff in proving the cause of the injury rested solely upon the fact of the throwing of a mail bag out of a car running upon defendants' road.

We insist that he should have gone one step further and shown that the person who threw the bag was connected with the defendants in a way which gave defendants control over him as the custodian of the mail bag.

Not only did the plaintiff fail to show this, but the defendants proved that the person in charge of the bag was an independent employment of a third party and was entirely independent of any authority on the part of the defendants so far as his duties in reference to the reception, custody and delivery of the mails were concerned.

STONE & JACKSON,
Attys. of Plff's in Error.

New Jersey Errors and Appeals.

THEOPHILUS PAGE

vs.

THE PENNSYLVANIA RAIL-
ROAD.

Writ of Error.

10

New Jersey, ss.:

[L. 8.] The State of New Jersey to our Justices
of our Supreme Court of Judicature
of the State of New Jersey.

GRANTING:

For as much as in the record and proceedings, and 20
also in the giving of judgment of a plea, which was in
our Court before you, between Theophilus Page, plain-
tiff and the Pennsylvania Railroad Company, defend-
ant, of a plea of trespass on the case, as it is said,
manifest error hath intervened to the great damage of
the said The Pennsylvania Railroad Company, as we
are by their complaint informed.

We being willing that the error, if any there be,
should in due manner be corrected, and full and speedy 30
justice be done to the party aforesaid in this behalf,
do command you that without delay you distinctly and

New Jersey Errors and Appeals.

THEOPHILUS PAGE
vs.
THE PENNSYLVANIA RAIL-
ROAD.

} *Writ of Error.*

10

New Jersey, ss.:

[L. s.] The State of New Jersey to our Justices
of our Supreme Court of Judicature
of the State of New Jersey.

GREETING :

For as much as in the record and proceedings, and
also in the giving of judgment of a plea, which was in
our Court before you, between Theophilus Page, plain-
tiff, and the Pennsylvania Railroad Company, defend-
ants, of a plea of trespass on the case, as it is said,
manifest error hath intervened to the great damage of
the said The Pennsylvania Railroad Company, as we
are by their complaint informed. 20

We being willing that the error, if any there be,
should in due manner be corrected, and full and speedy
justice be done to the party aforesaid in this behalf, 30
do command you that without delay you distinctly and

openly send under your seal, the record and proceedings aforesaid, with all things concerning the same, to our Court of Appeals in the last resort, on the sixteenth day of July next, wheresoever they shall be in the said State, together with this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon, what of right, and according to law ought to be done.

10

Witness, Theodore Runyon, Esq., Chancellor at Trenton, this twenty-ninth day of June, A. D., eighteen hundred and seventy-eight.

HENRY C. KELSEY,
Clerk.

J. HENRY STONE,
Attorney.

20

The following is the return to the above writ :

NEW JERSEY SUPREME COURT.

THEOPHILUS PAGE

vs.

30 THE PENNSYLVANIA RAIL-
ROAD COMPANY.

In Case.

As yet of the eighth day of November,
A. D., eighteen hundred and seventy-
seven.

Witness—MERCER BEASLEY, Esq.,
Chief Justice.

40 BENJ. F. LEE,
Clerk.

Union County, ss.:

The Pennsylvania Railroad Company, the defendants in this suit, were summoned to answer Theophilus Page, the plaintiff therein of a plea of trespass on the case. And thereupon the plaintiff, by Shafer and Durand, his attorneys, complains:

For that, whereas, the said defendants before and at the time of the committing of the grievances herein-after mentioned, were possessed of a certain railroad, constructed and running from Jersey City, in the County of Hudson, to New Brunswick in the County of Middlesex, and State of New Jersey, and into and through divers intermediate places and stations, and among other places and stations, a certain place and station called Rahway, in the County of Union aforesaid, and were also possessed of a large number of rail cars and carriages drawn by steam carriages and locomotive engines, propelled and driven by steam, to wit: ten cars, ten carriages, ten steam carriages and ten locomotive engines upon the said railroad constructed and running from Jersey City aforesaid to New Brunswick aforesaid, and into and through divers intermediate places and stations, and into and through the place and station called Rahway as aforesaid. And the said defendants, on the fifth day of May, in the year one thousand eight hundred and seventy-six, at Rahway aforesaid, to wit: at Trenton, in the County of Mercer, being so possessed of the said railroad and of said rail cars and carriages, and of said steam carriages and locomotive engines, then and there propelled and driven by steam as aforesaid, and then and there drawing upon said railroad the said rail cars and carriages along and across the same from Jersey City aforesaid to New Brunswick aforesaid, and from New Brunswick aforesaid to Jersey City aforesaid, and into and through the said place and station called Rahway aforesaid then and there by their certain servants had the care, conduct and management of said

10 rail cars and carriages, and of the said steam carriages and locomotive engines so then and there propelled and driven by steam, and drawing said rail cars and carriages upon, along and across said railroad from Jersey City aforesaid to New Brunswick aforesaid, and from New Brunswick aforesaid to Jersey City aforesaid, and into and through the said place and station called Rahway aforesaid, and also then and there by their
 10 said servants had the care, conduct and management of the delivering from the said rail cars and carriages at the several stations of said railroad and at the station called Rahway aforesaid of freight by the defendants carried in the said rail cars and carriages.

20 Yet the said defendants on the day and year last aforesaid at Rahway, to wit, at Trenton aforesaid, not minding or regarding their duty, in that behalf, by their said servants, then and there, so negligently, unskillfully, carelessly and improperly managed, and behaved
 20 themselves in the premises, and then and there so negligently, badly, ignorantly, unskillfully, carelessly and improperly, and at such a high and dangerous rate of speed, drove, propelled, managed, guided and governed a certain train of said rail cars and carriages, and a certain locomotive engine of the said defendants attached thereto, so driven and propelled by steam, and so then and there drawing said rail cars and carriages upon, along and across said railroad from New Brunswick aforesaid to Jersey City aforesaid, and into
 30 and through the place or station called Rahway aforesaid, and by and past and in front of a certain open and public platform annexed to and adjoining the depot or station of said railroad, then and there situated and located between a certain street called Cherry Street, and a certain avenue called Milton Avenue, in the City of Rahway in said County of Union, and used and intended for the use and accommodation of the public and those persons transacting and having business with the defendants and their servants, and also then and there so negligently, badly, ignorantly, unskillfully, carelessly, unsafely and improperly delivered at said station

called Rahway certain freight, to wit: a certain package, bag or pouch, and the contents thereof, which was then and there in the care and custody of said defendants to be carried in said train of rail cars and carriages from New Brunswick aforesaid, upon, along and across said railroad to and to be delivered at Rahway aforesaid, while the said train of rail cars and carriages and said locomotive engine of said defendants were driven, propelled, managed, guided and governed so negligently, badly, ignorantly, unskillfully, carelessly and improperly as aforesaid, and while the same were so driven, propelled at such a high and dangerous rate of speed as aforesaid, and without the stoppage of the said train of rail cars and carriages and said locomotive engine, that by and through the gross negligence, ignorance, carelessness, unskillfulness, unsafe and improper conduct of the said defendants and their servants, the said freight, to wit: the package, bag or pouch and its contents as aforesaid, being so negligently, badly, ignorantly, unskillfully, carelessly, unsafely and improperly delivered as aforesaid, and thrown out from said train of rail cars and carriages by the servants of the defendants at Rahway aforesaid, upon the open and public platform aforesaid, annexed to and adjoining the depot or station of the said railroad at Rahway aforesaid, situated and located between said Cherry Street and Milton Avenue in said City of Rahway as aforesaid, and used and intended for the use and accommodation of the public and those persons transacting and having business with the defendants and their servants as aforesaid, then and there forcibly and violently struck the said plaintiff, who was then and there standing, and in the transaction of his proper and lawful business with the said defendants and their said servants, upon the open and public platform aforesaid, whereby the said plaintiff was then and there thrown down, and divers of the bones of the said plaintiff were then and there fractured and broken, and he was then and there greatly torn, bruised, crushed, injured, wounded, cut, mutilated and hurt; and also by

means of the premises the said plaintiff became and was sick, sore, lame and disordered, and so remained and continued for a long space of time, to wit : hitherto during all which said time the said plaintiff suffered and underwent great pain, and was hindered and prevented from transacting and attending to his necessary and lawful affairs by him during all that time to be performed and transacted and lost, and was deprived of
 10 divers great gains, profits and advantages which he might and otherwise would have derived and acquired thereby ; also the said plaintiff was forced and obliged to and did then and there pay, lay out and expend divers large sums of money amounting in the whole to the sum of one thousand dollars in and about the endeavoring to be cured of the said fractures, bruises, injuries, wounds, cuts, mutilations and hurts so received as aforesaid, and of said sickness, soreness, lameness, and disorders resulting therefrom.

20 Wherefore, the said plaintiff saith that he is injured and hath sustained damages to the amount of twenty thousand dollars. And therefore the said plaintiff brings his suit, &c.

And the said defendants, by J. Henry Stone, their attorney, come and defend the wrong and injury, when, &c., and say that they are not guilty of the supposed grievances above laid to their charge, or any or either
 30 of them, or any part thereof in manner and form as the said plaintiff hath above thereof complained against them. And of this they, the said defendants, put themselves upon the country, &c.

Afterwards, to wit : on the 21st day of May, A. D., 1878, the above cause came on to be tried, before the Hon. B. Van Syckel, one of the Associate Justices of the said Court, at the Circuit Court, held at Elizabeth, in and for the said County of Union, upon the pleadings—whereupon a jury was empanelled for the trial
 40 thereof ; the said plaintiff having opened his case to the jury, offered in evidence the following testimony :

FREDERICK BLACKWELL, sworn for plaintiff.

Q. (MR. SHAFER). Mr. Blackwell, where do you reside ?

A. Rahway.

Q. And have lived there how long ?

A. Two years ago last March.

Q. What is your business, sir ?

A. Flour and feed. 10

Q. Are you acquainted with Mr. Page the plaintiff, in this case ?

A. Not personally acquainted with him ; I know him by sight.

Q. On or about the 5th of May, 1876, in the morning of that day, did you see him, and if so where ?

A. On the depot of the Pennsylvania Railroad Company at Rahway.

Q. What part of the depot, sir ?

A. He stood a little above the tank house of the old 20. depot.

Q. On the platform ?

A. Yes, sir.

Q. What hour in the morning ?

A. I couldn't say exactly ; I think it was somewhere from half-past five to six o'clock in the morning.

Q. Where were you, sir, at that time ?

A. I was going down town to attend to my business ; going down by the depot ; was crossing over the depot.

Q. Just state what occurred and what you saw that 30 morning in connection with Mr. Page ?

A. As I was coming down the depot Page was coming up ; there were some of the boys after their papers besides Mr. Page, and the paper train was coming in at the time, and the train always threw their papers off there in a bundle, never stopped, and he got off one side, and if I remember right, he turned his back to the other train, not seeing it, and, as he turned, the other train came through and threw a mail bag off and hit him.

Q. Not the paper train ? 40

A. No, sir; the mail bag off of—I don't know whether it was the Washington or Western train.

Q. Was the train coming from Philadelphia that threw the mail bag off?

A. The train was coming from Philadelphia.

Q. Was he on the east or west side of the platform?

A. He was on what they call the east bound track; the train was on the east bound track that the mail bag struck him off of, going toward New York.

Q. Did you see what struck him and where?

A. A mail bag struck him, I should say about the shoulder, I couldn't say positive; I wasn't paying much attention to it. At the time I was coming down and I happened to get there just as the train was going through.

Q. Did the trains ordinarily pass each other there, sir?

A. I have seen such things before.

20 Q. Did the two trains pass each other at that time?

A. I have seen it there; yes, sir.

Q. Did either train stop there, or was it their practice to pass directly through?

A. Well, these trains never stop.

Q. (THE COURT). That morning neither of them stopped?

A. No, sir.

30 Q. (MR. SHAFER). At what rate of speed were they running?

A. I don't know what rate they were running; very fast.

Q. What was the result of the bag striking Mr. Page?

A. Well, it turned him round and he fell over.

Q. Upon the platform?

A. Yes, sir.

Q. Who picked him up?

40 A. There was a colored woman there attempted to pick him up first, and she got hold of his feet, and I

told her to let him alone, and I got hold of his shoulders, and just then some men came out of the depot and picked him up and carried him in. I was in a great hurry and left him.

Q. You didn't go into the depot ?

A. I did not ; no, sir.

Q. You spoke of a colored woman ; did you know who she was ?

A. I did. 10

Q. Any other persons there that you knew at the time ?

A. No, sir ; we were the only two on the platform, that I saw.

Q. Who came out from the depot to carry him in ; who were they ?

A. I think Joseph Brown the night baggage master, came out, and who else I can't say.

Q. You left then, you say ?

A. I left right away ; I didn't stay at all. 20

Q. Do you recollect or not, Mr. Blackwell, whether there was a cloud of dust raised, or anything of that kind, by the passage of the cars at the time ?

A. I don't remember now whether there was or not.

Q. Both trains running fast ?

A. Yes, sir.

Cross-examined :

Q. (MR. STONE). Where did you stand, Mr. Blackwell, 30
at the time the two trains passed ?

A. A few feet above the tank house of the old depot. I wasn't standing there ; I was walking along.

Q. You mean between the tracks ?

A. I was between the tracks.

Q. Up above the tank you mean ?

A. Towards Philadelphia.

Q. And where was Page when the two trains passed through ?

A. Well, it was a few feet from the east bound track. 40

Q. With reference to the tank, where was he ?

A. It was what they call the east bound track ; it is the one the trains run on to New York ; I should say he stood about eight or ten feet from the south track.

Q. (THE COURT). And the mail train was on the north track ?

A. Yes, sir ; the one going towards Philadelphia, the paper train ; that was on the north, and the mail train coming from Philadelphia was on the south.

Q. (MR. STONE). As I understand it the mail train that was going to New York was——

A. On the right hand track ; that is the same as they run now ; the paper train was coming out on this track from New York, and the mail was going in on the right hand.

Q. Did the trains run on the same track that they do now ?

20 A. Yes, sir ; they changed their way of running a short time before that.

Q. The tank was not between you and Page, was it ?

A. No, sir.

Q. He must have been then, I take it, to the right of the tank ?

A. He was to the right of the track coming towards New York ; that is he was a little above the track towards Philadelphia on the right of the tank.

Q. Between the tank and the track ?

30 A. He wasn't between the tank and the track ; he was above the tank west ; it was on the open space there.

Q. He was between the line of the tank and the track, wasn't he ?

A. Yes, sir.

Q. Were you about on the same line ?

A. I stood very near behind the tank, between the tank and the track on the right hand side.

Q. And, therefore, the tank was not on your line of view ?

40 A. No, sir ; it was not behind there, because I saw

the paper train coming and did not see the other one. I was in the habit of meeting the paper train there myself.

Q. You did not see the mail train coming ?

A. I did not.

Q. Was there any obstruction in the way to prevent your seeing it ?

A. There was not ; I was not thinking about it, and I had my back towards it, and heard the other train rattling in ; I could have seen it if I had turned round. 10

Q. (MR. SHAFER). The platform was at that time raised above the level of the ground ?

A. Yes, sir.

Q. And the trains, you say, at that time ran as they do now ?

A. Yes, sir.

20

W. E. CLARK, sworn for plaintiff :

Q. (MR. SHAFER). Mr. Clark, where do you live ?

A. Rahway, N. J.

Q. What is your business ?

A. Civil Engineer.

Q. How long have you lived there at Rahway ?

A. Thirty years. 30

Q. Do you know the old depot ?

A. Very well.

Q. Have you got a drawing or map of it there ?

A. I have.

Q. Is that it (showing) ?

A. Yes, sir.

Q. What was the length of the depot itself ?

A. 160 feet.

Q. Just explain it now, if you please ; this represents the depot ? 40

A. The colored portion represents the depot proper ;

this was what was called the water tank, ten feet square.

Q. What was the distance between the depot and water tank ?

A. Twelve feet.

Q. And this represents what ?

A. That was the telegraph office.

Q. And these the relative positions of the buildings to each other and to the tracks ?

A. Yes, sir.

Q. Do you know what was the width of the building ?

A. Fifteen and a half feet.

Q. The width of the platform ?

A. Six feet on each side.

Q. That would make the platforms between the tracks, what width ?

A. Twenty-seven and a half.

Q. This is the east track, that the west ? (Indicating).

A. Yes, sir.

Witness explained the map to the jury.

FERNANDO VAN PELT, sworn for plaintiff :

Q. (MR. SHAFER). Where do you live ?

30 A. About 250 feet from the old depot in Rahway.

Q. Did you live there in the month of May, 1876 ?

A. Yes, sir.

Q. Acquainted with Mr. Page ?

A. Yes, sir.

Q. Were you at that time acquainted with him ?

A. Yes, sir.

Q. On the morning of May 5th, did you see him ?

A. After he was struck I saw him ; yes, sir.

Q. Where was he ?

40 A. On the depot.

Q. What part of the depot ?

A. Well, it was betwixt what they used to call the old freight house and the baggage room; they were taking him in; Mr. Woodhouse and Mr. Brown were about getting him in the depot when I came there.

Q. Did you see the cars pass that morning?

A. Yes, sir.

Q. Were the two trains in the habit of passing at that place?

Q. Not as a usual thing, sir; I think one was a little 10
behind, if I mistake not.

Q. Which one, sir?

A. That is the one bound north.

Q. How soon, can you tell us, after Mr. Page was struck did you see him?

A. Well, it might have been ten or fifteen minutes.

Q. What did you do after seeing him?

A. There was one of the men employed by the company that had to leave, and I assisted Brown in getting him in the depot, and went after the doctor. 20

Q. What physician did you go after?

A. Dr. James.

Q. What hour in the morning was this?

A. I should judge it was in the neighborhood of half-past five. I think the man had to go on the half-past train.

Q. What man do you speak of?

A. Mr. Woodhouse I speak of.

Q. He was an employee?

A. He was one of the employees of the company; 30
yes, sir.

Q. Do you recollect of any other person that was there that morning at the time you got there?

A. I can't say that I do, Mr. Shafer.

Q. You don't recollect any other person being there. Do you recollect a colored woman being there?

A. No; the colored woman had gone when I got there.

FRANCES JOHNSON, sworn for plaintiff :

Q. (MR. SHAFER). Frances, where do you reside ?

A. In Rahway.

Q. Where did you live in the month of May, 1876, two years ago ?

10 Mrs. A. Well, I don't know exactly, but I lived with one year ; I don't know what year it was.

Q. You lived in Rahway ?

A. Yes, sir ; on Hazelwood Avenue.

Q. Are you acquainted with Mr. Page ?

A. I am not really acquainted with him more than I have seen him carrying around papers.

Q. Where were you on the morning of the 5th May, two years ago, when Mr. Page was hurt ?

20 A. I was coming from East Rahway going up to my service place.

Q. You were coming from East Rahway going over to your service place ?

A. Yes, sir.

Q. And you passed the depot in going up ?

A. I crossed the depot in going up to Hazelwood Avenue.

Q. Hazelwood Avenue is on the south of the depot ?

A. I don't know about the south ; I was going right round by the Mansion House.

30 Q. You went on the platform ?

A. Yes, sir.

Q. And passed on this way ?

A. Yes, sir.

Q. Did you see Page ?

A. Yes, sir ; Mr. Page was standing up above the tank.

Q. What do you mean above the tank ?

40 A. It must be this end on this side in that direction, the way the tracks was then ; there was a car from New York going to Philadelphia, and there was one coming from Philadelphia going to New York on the

left hand track, and this (indicating) was the right hand track.

Q. Now, then, how near the depot was Mr. Page?

A. Well, I couldn't tell exactly, for I was in a hurry and wasn't paying any attention at all about it.

Q. Where were you when you saw him?

A. I was right about the tank, the watering place, up above that, a little ways above.

Q. Now, was Mr. Page below or above that? 10

A. He was down below it on the same side.

Q. Did the trains come along while you were on the depot platform?

A. Yes, sir; they both came along while I was on the depot.

Q. Well, what did you see there?

A. Well, all I saw I seen two cars pass, one from Philadelphia going to New York, and one from New York going to Philadelphia, and the one that was going to Philadelphia I seen the mail bag; it was a bag, and it came with such force—both trains was running with such force that it blowed my hat off—and I see the bag throwed, and it struck Mr. Page, and when he fell he fell with his head towards New York and his feet towards New Brunswick; I went up to him and said, "Mr. Page, is you hurt," and he never said anything but groaned, and there was a little boy come from the other side of the depot, and Mr. Page had a leather and his spectacles, and the boy picked them up, and I tried to raise him up but couldn't, and there was a gentleman come out of the depot and lifted him up, and I came on to my service place; and who they were I couldn't tell, because I was in a hurry. 20 30

Q. You tried to lift him up and couldn't do it?

A. Yes, sir; I got hold of both sides of his shoulders and tried to lift him up, and asked him if he was hurt, and he didn't say anything to me at all, only groaned.

Q. Did you see whether he tried to get up and stand or not?

A. As I was going I turned round to see how far they had got him, and he kind of give way that way 40

(indicating); I don't know what part was broke, but I had an idea that some of his limbs was broke.

Q. That was all that you saw, was it. How were the cars running, slow or fast?

A. They were running very fast at the time.

Q. Did either one of them stop?

A. No, sir; neither one didn't stop; they was running very fast; raised such a dust it took my hat off.
 10 The one from Philadelphia was on the right hand side, and it was about five o'clock, and they slung the bag from the right hand side and it struck him; where it struck him I don't know.

Q. About what time was this in the morning, according to your recollection?

A. Five o'clock.

Q. How do you know; how do you fix it at that hour?

A. Because I stayed with a friend that night, and I
 20 got up half-past four, and was to be at my service place at five o'clock, and just as I got on the depot, I think, the clock struck five. That was the paper train came at that time, five o'clock; due in Rahway at five o'clock. I never paid no attention at all to it.

BENJ. B. MILLER, sworn for plaintiff:

30 Q. (MR. SHAFER). Mr. Miller, you reside at Rahway?

A. Yes, sir.

Q. Did you see Mr. Page on the morning of May 5 when he was hurt?

A. I saw him the morning he was hurt by the cars; I can't tell the day of the month.

Q. What time in the morning?

A. It was about eight o'clock when I saw him.

Q. Where did you see him?

40 A. In the office; not in the ticket agent's office but the baggage agent's.

Q. You saw him there in the baggage room, did you?

A. Yes, sir.

Q. That you say was eight o'clock in the morning?

A. It was after eight, I guess.

Q. What position was he there in?

A. He was sitting in a chair.

Q. How long did he remain there?

A. No longer than I could get a wagon and take 10
him to his home.

Q. You got a wagon?

A. I got a wagon, and with the assistance of two men, lifted him in a wagon. In the first place when I saw him I asked him how he was hurt and so on, and he didn't appear to know exactly how. He thought if he had a pair of crutches he could walk home. I went down home and got him a pair of crutches and brought them up, and he tried to get up, and somebody assisted me and got him on his feet, and he tried to walk on 20
the crutches and found he couldn't walk; couldn't handle them at all, and he sat down in the chair, and some man that had a wagon at the depot was going to bring up his depot wagon, and I told him to go and get an open spring wagon, and we lifted him from the chair he was sitting in and took him to his home.

Q. You took him to his room?

A. Took him up stairs and put him on his bed.

Q. Did you see him again that day?

A. Yes, sir; I remained there with him an hour or 30
so, I guess; and Dr. James came there and undertook to examine him, but it hurt him so he couldn't move his limb, and the doctor told him, and me both, that he should have to put him under the influence of chloroform before he could examine him, and "I will see Hough and examine him this afternoon." I asked him about what time and he said about three o'clock. I said I want to be there; I went up there, and the two doctors came and put him under the influence of 40
chloroform, and went through with a regular examination, and after he came to they told me what was the

matter with him. He didn't appear to know anything about it, and they told him they had examined it; he said he didn't feel it, and they told him he was under the influence of chloroform.

Q. You saw how the limb was affected?

A. Oh, yes, sir; they moved it up nearly to his shoulder, and he didn't appear to know it at all.

Q. You say they lifted the leg?

10 A. Yes, sir; they lifted it up and put it almost on to his shoulder. I supposed it was broken or they couldn't lift it up in that way.

H. H. JAMES, sworn for plaintiff:

Q. (MR. SHAFER). Doctor, where did you live?

A. Rahway.

20 Q. What is your business?

A. Physician.

Q. How long have you been there?

A. Been there about thirteen years.

Q. Are you acquainted with Mr. Page?

A. Yes, sir.

Q. How long have you known him?

A. Ever since I have been there.

Q. Did you go to see him on the morning of May 5?

A. About that time; yes, sir.

30 Q. What time in the morning?

A. It was very early; I was called before I was up, I remember.

Q. Where did you see him?

A. I saw him at the depot.

Q. Did you examine him there?

A. Yes, sir.

Q. Did you discover what the injury was, if any at all?

40 A. I thought I did. Later in the day, however, we put him under the influence of an anesthetic. Dr. Hough was with me.

Q. He then had been moved ?

A. Yes, sir ; he had been moved.

Q. Just tell us what the result of that examination was ?

A. We were satisfied that there was a fracture of the neck of the thigh bone, the femor ; it was within the capsular ligament.

Q. What was the character or nature of an injury of that kind as to the probability of its healing ? 10

A. Well, they very seldom heal.

Q. In this particular case ?

A. I don't think there was any prospect of its healing.

Q. Do I understand you to say that is your opinion, as a physician or surgeon, that the limb never will be so that he can use it again ?

A. I don't believe it ever will be.

Q. Doctor, what part of the hip was it that was broken ; was it the joint, socket or what ? 20

A. It is the bone just out of the socket, but it is within the capsular ligament.

Q. You have seen him since that time, have you ?

A. Yes, sir.

Q. Will you tell us, if you recollect, how long he was confined to his room and bed ?

A. I saw him several times up too often, he had been in bed for two or three months.

Q. (COURT). You say he was in bed two or three 30 months ?

A. I should think so ; yes, sir. He may have been up some during that time, but he was more comfortable on a double inclined plane, a sort of hospital lounge ; fracture bed.

Cross-Examined :

Q. (MR. STONE). Doctor, what do you mean when 40 you say you don't think that he can ever use his leg

again. Do you mean to say it is of no more use to him than if he had no leg at all ?

A. Well, you might say that it was worse than no leg at all, because he has to carry it with him, and yet it isn't of very much advantage to him. He can't bear much weight on it, or use it much.

Q. Can he use it at all ?

A. I suppose he can move it.

10 Q. Well, isn't the advantage of having what little assistance he can get from it, small as it is, really better than not to have a leg ?

A. Well, I am not sure about it, sir. That would be a question.

DE WITT C. HOUGH, sworn for plaintiff :

Q. (MR. SHAFER). Doctor, where do you live ?

A. In Rahway.

20 Q. You have lived there how long ?

A. Between twenty-one and twenty-two years.

Q. Your business ?

A. Physician.

Q. Acquainted with Mr. Page ?

A. Yes, sir.

Q. Did you see him on the 5th of May, two years ago, when he was hurt ?

A. Yes, sir.

Q. Where ?

30 A. In his room in Main Street in Rahway.

Q. Who was with you ?

A. Dr. James.

Q. Were you or not making an examination at that time ?

A. Yes, sir.

Q. What did you discover to be the character and nature of the injury ?

A. Fracture of the thigh within the capsular ligament.

40 Q. What are the chances of its healing ?

A. They are very rare cases known where the bone

united by bone within the capsular ligament, on account of their being insufficient circulation there to form a union.

Q. In this particular case what is your opinion of the probabilities?

A. I think he is as well now as he will ever be.

Q. Have you seen him since?

A. Only in the street I think.

Q. You haven't attended him as a physician? 10

A. Yes, sir.

THEOPHILUS PAGE, plaintiff, sworn:

Q. (MR. SHAFER). You are the plaintiff in this suit?

A. Yes, sir.

Q. Where do you live?

A. In Rahway, N. J. 20

Q. And what is your business?

A. I have been a newspaper carrier. That is the only business I ever had there.

Q. Where and at what place did you receive your papers?

A. Well, on the depot platform.

Q. Who carried your papers for you?

A. No one then; I carried them myself.

Q. In the month of May, 1876; at what hour in the morning did you receive your papers then? 30

A. A little past five o'clock in the forenoon.

Q. Did you receive them at the depot?

A. Yes, sir; at one spot.

Q. How were the papers delivered to you; in what way?

A. Thrown off.

Q. Other paper carriers receive them at the same time and in the same way?

A. There were four bundles of mine and three other bundles belonging to other parties. 40

Q. All thrown off?

A. Yes, sir.

Q. And the different owners were there to take them?

A. They were accustomed to roll very extensively, because of the cars running at a high rate of speed ; they were accustomed to roll, and I was under the necessity of keeping out of the way of being hit by them.

Q. Now, this morning of the 5th of May, 1876, how long were you on the platform before the cars came in ?

10 A. Well, fifteen or twenty minutes, maybe, waiting until the train got in sight.

Q. Did you see the train coming in that morning ?

A. I was accustomed to watch in the waiting-room, where there is a clear view for several miles.

Q. When you saw it coming what did you do ?

A. I went out of the waiting-room, where they were accustomed to throw out the papers.

Q. You were in the waiting-room and you went out of there to the spot where they were accustomed to
20 throw off the papers ?

A. Yes, sir.

Q. What happened when you went out there ; just tell the Court and jury ?

A. While I was walking towards the spot where they were accustomed to be thrown off, and as I was walking along I was very near the right hand side coming from Philadelphia, and at that very moment that the papers were being thrown off the mail train from Philadelphia, which was about an hour behind hand, I think,
30 was just passing. I first saw the mail bag apparently about nine feet from me going at great speed, and it hit me on the left shoulder ; the mail bag hit me on the left shoulder and threw me down on my right side.

Q. You say the distance which they threw it from the cars to you must have been about nine feet ?

A. When I first saw the mail bag I judged it must be about nine feet distant, being thrown off.

Q. It threw you down ; what then ?

40 A. Well, I got upon my knees, and that was as far up as I could get. I was helped up and lifted on to a wheelbarrow in the first place and then a chair, and

was carried along. I told them to be slow, slow, slow, and was carried into the baggage-room and set on to a seat.

Q. After they carried you into the baggage-room where did thy set you ?

A. There was a sofa or settee there ; on the settee.

MR. STONE :

10

It may as well be stated that we shall not contest the extent of the injury at all from what has been stated by the physicians and witnesses.

Q. How long was it you remained there before you went home ?

A. Well, they wanted me to wait sometime until there were not so many trains passing. I sent for a pair of crutches, which were brought, and I was raised up ; I believed I could stand by their helping me, but 20 couldn't walk.

Q. Now, were the two trains in the habit of passing the depot at the same hour and to meet there ?

A. Well, I never knew them to before. The train from Philadelphia was an hour behind hand that morning.

Q. The mail train ?

A. Yes, sir.

Q. Did you see it coming ?

A. I don't remember seeing it until it was right at 30 hand.

Q. Now, Mr. Page, as to the speed of the cars, whether they were running slowly or fast ?

A. Oh, the highest speed of course.

Q. Did the train ever stop at Rahway when it went through, the paper train ?

A. I never knew it to unless something was the matter.

Q. Were they in the habit of slacking up their speed when they went through ?

40

A. I think not ; never that I know of.

Q. Do you know what time that train left New York ?

A. The express train you mean ?

Q. I mean the paper train.

A. Oh, I never have inquired about that. They must have been about an hour coming from New York to Rahway, as a general thing.

10 Q. Yes, as a general thing, I know, but you don't know what time that train left New York ?

A. No, sir.

Q. Now, how long were you confined to your room and bed ?

A. I was confined to my bed on my back for three months. I could raise myself up by means of a cord suspended from the ceiling. As a relief I could raise myself up in a sitting position by means of a cord to grasp hold of.

20 Q. At the expiration of that time were you able to sit up ?

A. I worked myself into a chair with some difficulty.

Q. Since that time, or how long after you got up from your bed was it before you were able to get out ?

A. Well, it was two months.

Q. Two months before you were able to go out of the house ?

A. I think so. I took a walk in the street.

Q. Mr. Page, as to your limb ; now, what use do you have of it ?

30 A. Well, I don't know as I use it much, if any. I can bear a little weight on it.

Q. Can you walk on it ; that is take a step ?

A. Oh, no ; I can't walk without these crutches.

Q. All you can do with it is simply to bear some weight on it ?

A. Yes, sir ; the broken leg is contracted ; is shorter than the other, two or two and a half inches. I use a cork in the heel of the right shoe.

40 Q. Does it gather strength ; has it lost its soreness and pain ?

A. Well, of course, I don't know about the pain ;

there is an aching stiffness after a long walk ; the result of too much exertion makes a stiffness of the back, side and breast.

Q. As to your business ; are you in any business now ?

A. I am in none at all.

Q. Why not ?

A. I don't know what I can do ; I don't know what business I can get into ; it is hard work. 10

Q. You don't carry your papers now ?

A. No, sir.

Q. Do you still receive papers from New York ?

A. I do.

Q. How are they distributed ?

A. Well, I have hired a man.

Q. You hire a man to do that ?

A. Yes, sir.

Q. What do you pay him ?

A. I pay him six dollars a week, or have ; not quite 20
so much now ; expenses of boarding have been extra ; \$2.50 to \$2.75 a week extra on account of this ; I used to get along very cheaply ; used to rent a small room, and having been an experienced cook used to get along for half the price of boarding, and bills have been suffering to be collected.

Q. Do you know what your physicians bills are ?

A. Well, I don't earn two dollars a day.

Q. I ask you if you know what your doctors bills are ? 30

A. I don't understand you ?

Q. Do you know what your doctors bills are ?

A. The bills are \$80, to say nothing of some bedding that I had to purchase.

Q. Well, the bed which you used is one of these camp bedsteads ?

A. Yes, sir, a hospital bed.

Q. So that you can raise yourself up ?

A. Yes, sir ; and let me be raised up and down.

Q. Are there other expenses you have been put to 40
by reason of this injury ?

A. Well, that comprises about all, I think.

Cross-examined :

- Q. (MR. STONE). Mr. Page, what is your age ?
 A. Sixty-four years.
 Q. At the time of this accident what was your business ?
 10 A. Newspaper carrier.
 Q. For how long ; many years ?
 A. Well, upwards of thirty.
 Q. Did you receive papers every morning by that train ?
 A. I did ; yes, sir.
 Q. For how long had that train been running ?
 A. Well, it is pretty hard to say. They commenced in 1870 ; the early train commenced, I believe.
 Q. Then it had been running some six years, I understand ?
 20 A. In 1873 the early train, I think, commenced.
 Q. Then it was about three years the train had been running ?
 A. Well, it is more than that, ain't it ?
 Q. I mean, then, at the time of the accident, it was about three years ?
 A. Yes, sir.
 30 Q. Had you been accustomed, during those three years, every morning, to be present and await the arrival of that train to get your papers ?
 A. Yes, sir ; of course I was very prompt, and was in the waiting room.
 Q. You would generally get there before the train came in ?
 A. Of course, always.
 Q. You knew the habit of the train then, of course, of running through without stopping.
 A. Yes, sir.
 Q. You went out on that particular morning so as
 40 to be a little ahead of the train ?
 A. Of course, always.

Q. Always did ?

A. Always.

Q. The object of which was, what ?

A. Well, there was quite a number of bundles being thrown off, and newspaper carriers being in a hurry they would grab up a bundle that did not belong to them sometimes, and on that account I was always prompt. Every one wants his own. They used to take off a bundle through mistake, I suppose, now and then, being in a hurry. 10

Q. From whom did you purchase those papers ?

A. Well, from the editors, I might say ; New York editors.

Q. Wasn't it from the American News Company ?

A. One bundle was from that Company, and then there was a bundle from the *Herald*, another from the *Times*, and another from the *Sun*.

Q. And whom did you pay for the freight ?

A. The editors ; they were reckoned in. 20

Q. They paid the freight ?

A. Of course they must pay the freight.

Q. Do you know under whose charge that newspaper train was ?

A. I never inquired. I hadn't any occasion as I know of.

Q. You don't know whether it was in charge of the R. R. Co. or of a newspaper company ?

A. I do not.

Q. Why did you stand so far off from the newspaper train when it came along ? 30

A. Well, as I said before, they were accustomed to roll, the train going at a high speed, and the bundle of papers being thrown out they would roll very briskly, and the depot was very narrow.

Q. And you moved over the other side in order to get away from the papers when they were thrown out ?

A. That was it ; yes, sir.

Q. Do you know what was done with those papers in case you hadn't been there to receive them ? 40

A. I can't tell what would have been done with them.

Q. Whether they would have been taken into the baggage room ?

A. They would have been taken into the baggage room of course. I sent a substitute in my absence, and that has been mentioned, I believe. He was on hand and took a memorandum of the whole list, and took my place altogether.

10 Q. I think you mentioned to Mr. Shafer that you hired a man to take your place ?

A. Yes, sir.

Q. Did you know of this mail train that was coming about an hour before this time in the morning ?

A. I knew there was a train accustomed to come at an hour previous to the time this one came through, previous to five o'clock.

Q. Did you know whether that train had gone through or not before the accident ?

20 A. I did not. I didn't keep any account of it. It always went through before I was near the depot.

Q. Always went through when you were near the depot ?

A. No, before I went to the depot.

Q. You never saw that train go through ?

A. Well, very seldom ; I don't remember.

Q. How do you know that was an hour behind hand ; from the time table ?

A. Well, I used to hear it go through ; I heard the noise.

30 Q. You lived near enough to the depot to hear it ?

A. Yes, sir.

Q. And you would hear it go through about an hour before this time ?

A. Yes, sir.

Q. Did you know that that train threw off mail bags at Rahway ?

A. Well, I don't know that it was accustomed to.

Q. You are a single man, I believe, Mr. Page ?

A. Yes, sir.

40 Q. Never was married ?

A. No, sir.

Q. Do you recollect whether you heard the mail train at all that morning ?

A. I don't have any recollection distinctly about that only when I first saw the mail bag.

Q. Your back then must have been in the direction of the train as it was coming ?

A. I was walking in the direction towards Philadelphia. My eye was on the papers all the time.

Q. You were walking towards Philadelphia ? 10

A. Yes, sir.

Q. Then you were looking in a direction different from the direction in which you were walking ?

A. Well, about the same as, supposing here is the train coming in here, and say by the table was the mail train ready to throw off the papers. Suppose the train from Philadelphia was coming in on this side of the house, and the other train from that side. (Indicating).

Q. Now, Mr. Page, will you be kind enough to look at that diagram and see if you understand it, after looking at it, without an explanation ? 20

A. Is that the open depot ?

Q. Yes.

A. That looks like the south-west half of the depot uncovered by a roof.

Q. This is the tank house. Do you remember that ?

A. Yes.

Q. And that is the telegraph station ?

A. Yes, sir. 30

Q. Now, that open space you speak of was below that ?

A. Yes, sir ; the covered part of it.

Q. No, the covered part stops at this point. The tank was outside of the cover, wasn't it ?

A. Yes, sir.

Q. Therefore the cover must have stopped there ; but there was a space, as I understand it, along there, a little way, where passengers could cross. Now, this is the tank and that the telegraph station ? 40

A. Yes, sir.

Q. You came along here, as I understand it, on the west side of the waiting room ?

A. This is the waiting room here, and the door opens to the left, and I came out here towards Philadelphia. I opened the door here.

Q. You opened the door then on the east side of the waiting room ?

A. I think so ; east or south-east.

10 Q. And walked down towards Philadelphia ?

A. Yes, sir.

Q. Now, then, how far had you got when the mail bag struck you ?

A. Very near the tank here ; I can't say how near.

Q. Had you gone by the tank, or not quite reached it ?

A. I can't say that.

Q. And you were walking towards Philadelphia, in the direction of the train coming from New York ?

20 A. Yes, sir.

Q. Now, why didn't you see that train if you were walking toward it ?

A. My eye was on the papers.

Q. Had the papers already been thrown out ?

A. They had just been thrown out ; they were in sight.

Q. Didn't you have to watch for fear those papers would strike you ?

A. Yes, sir.

30 Q. And then the other train came along and the mail bag struck you ?

A. Yes, sir.

Q. Well, you always had to watch out to prevent the paper from striking you, didn't you ?

A. Of course.

Q. They would roll sometimes farther, and sometimes not so far ?

40 A. They would always roll about the same distance if they were running about the same speed.

Re-direct Examination :

Q. (MR. SHAFER). As the New York train was coming in on this side, you came over on this ?

A. Yes, sir.

Q. For the purpose of being out of the way, and then you were nearer the track coming from Philadelphia than the other ?

A. Yes, sir.

10

Q. And the train coming from Philadelphia towards New York was the one out of which the mail bag was thrown by which you were hurt ?

A. Yes, sir.

Q. I understood you that you didn't notice the cars coming, that your eyes were on the papers ?

A. My eyes were on the paper train.

Re-cross Examined.

20

Q. (MR. STONE). How far can you see down the track there towards Philadelphia ?

A. Well, not so far as you can in the other direction ; I can't say how far.

Q. Can you see a quarter of a mile ?

A. I think like enough all of that. The railroad is straight there.

Q. (MR. SHAFER). When the cars were coming 30 along there, did it raise a great dust ?

A. Well, I don't remember now.

Q. How about a breeze and blowing of the wind created by the train ?

A. Not that I know of.

Q. That was the first time that you met the two cars coming together that you recollect of ?

A. Yes, sir.

Plaintiff rests.

40

Defendants moved for a non-suit on the grounds :

1. Of contributory negligence on the part of plaintiff.
2. No proof of such a relation existing between the party causing the plaintiff's injuries and the defendants, as to fix responsibility upon the defendants.

10

In passing upon the motion the Court said :

The question of contributory negligence is one that must be left to the jury. If shown to the satisfaction of the jury it is a defence.

20

As to the second ground the relation of master and servant must undoubtedly exist to sustain this suit. The master is liable for the negligence of the servant. From the facts in the case the jury may infer that that relation didn't exist. That question I also leave to the jury, and refuse the non-suit on either ground.

30

The defendants, by their Counsel, excepted to the ruling of the Court as above recited, in refusing to non-suit the plaintiff, and prayed that this their bill of exception might be sealed, and it is sealed accordingly.

B. VAN SYCKEL,

Justice Supreme Court of N. J.

DEFENDANT'S TESTIMONY.

JOHN B. WHITTINGHAM.

Q. (MR. STONE). Mr. Whittingham what is your business ?

A. I am road agent, sir, of the Government. 10

Q. What kind of a road agent ?

A. Road agent from Philadelphia to Baltimore.

Q. I mean, we want to know what kind of a road agent ; whether a railroad agent, mail agent, or what ?

A. Road mail agent.

Q. Now running from where to where ?

A. Philadelphia to Baltimore, sir.

Q. How long have you been in the mail service, sir ?

A. About three years ; probably longer.

Q. Who employed you ? 20

A. Employed by the Post-Master-General.

Q. What are your duties ?

A. My duties are to supply the offices on the road which is from Philadelphia to Baltimore with all mail matter—that is, papers and letters ; that comes under my charge.

Q. (THE COURT). Supply the offices ?

A. I supply the offices on that road.

Q. (MR. STONE). The Post offices you mean ? 30

A. Yes, sir.

Q. That is, you distribute the mail ?

A. Yes, sir ; distribute the mail and make up pouches for the different offices.

Q. In 1866 did you have the same route ?

A. No, sir.

Q. What route did you have ?

A. I was on what we call the N. Y. & Washington R. P. O.—New York and Washington Railway Post Office. 40

Q. Running between New York and Washington ?

A. New York and Washington.

Q. What were your duties then ; the same ?

A. Well, yes ; it was the same, but as a Post Office Clerk, not as a road agent.

Q. What were your duties then ?

A. My duties were in making up pouches and assisting in distributing the mail ; that is, matter that we received from the different offices from New York to
10 Washington. That is, taking the three principal offices, New York, Philadelphia and Washington post-offices, make up for Southern connections and Eastern connections for other R. P. O. routes.

Q. That, I suppose, was running both ways—New York to Washington and returning ?

A. Running both ways.

Q. What connection have you with the Railroad Company ?

A. None at all, sir.

20 Q. From whom do the orders to you come in relation to your duties ?

A. The general orders are received from the General Superintendent through our Superintendent of the Second Division. That is, a division we call the second division railway mail service.

30 Q. (THE COURT). Do you mean from the Railway Company ?

A. The P. O. department. We receive orders from the General Superintendent of the railway mail service.

Q. (MR. STONE). He is connected with what ?

A. He is connected with the P. O. department. He acts under the Post-Master General.

Q. (THE COURT). Is this General Superintendent of the Railway Mail Service an officer of the Railway Company ?

40 A. No, sir ; not connected with the railway affairs in any way whatever.

Q. (MR. STONE). Is there any connection whatever between the Railway Mail Service and the Railway Company ?

A. None whatever, sir.

Q. How do they get the road to run the mails in the cars do you know ; the mail department ?

A. Well, that is given out through the P. O. department through contracts, I suppose ; I don't know.

10

Q. (MR. SHAFER). You don't know anything about it then ?

A. No, sir ; I don't know anything at all about that.

Q. (MR. STONE). Well, how do you get your right to ride on the cars ?

A. We have our right as a postal clerk going on the postal car by having a mail key, or something to designate what we are, and have mail matter in our possession.

20

Q. How many of you could ride on a car ?

A. Four constituting a crew ; had a head clerk and three assistants, being subject to the orders of the head clerk.

Q. (THE COURT). That was on the mail car ?

A. Yes, sir.

Q. (MR. STONE). I understand you then, four of you had a right to ride on that car by virtue of your being connected with the mail department, and being seen with mail matter about you ?

30

A. Yes, sir.

Q. Could any one else ride on that car ?

A. Nobody but those connected with the Post Office Department.

Q. Could any passengers ride on that car ?

A. No, sir ; nobody allowed in the car whatever.

Q. Could the employees of the R. R. Co. ride in that car ?

40

A. Not unless they had a bell rope to fix, or some-

thing of that kind, or coupling to do that they were obliged to pass through, but not to remain there.

Q. You have, I suppose, instructions, do you not, as mail agent or road agent ?

A. I have instructions.

Q. In your department ?

A. Yes, sir.

Q. What is that book ? (Showing.)

10 A. That is our instructions from the post office department from the superintendent.

Q. When did you get that ?

A. We got that some three months ago ; and we have had the others the same ever since the railway mail service has been in operation. This is a new one ; they are sent to us every now and then ; we have to look over that and keep posted, subject to examination by our superintendent, on that book.

Q. Look at section eighteen and tell me whether
20 that was in force, as an instruction, in May, 1876 ?

A. That has been in force ever since the railway mail service has been in operation to my knowledge.

Q. Have you ever received any instructions from any officer of the railway company ?

A. No, sir.

Q. If you should receive them what recognition, if any, would you give them ?

A. I should not notice them.

30 Defendant offers to read the eighteenth section of the instructions shown witness in evidence.

(Objected to ; objection overruled.)

Defendant read the first and eighteenth sections.

Q. Now, what duties would be required to be performed by the conductor ?

40 A. To look in and see if there is more than four in the cars, or see if everything is all right, nothing more.

Cross-examined :

Q. (MR. SHAFER). Mr. Whittington, do you know, of your own knowledge, as to the facts which you have testified to here, or only from what has been told you ?

A. Just from what I know myself. The questions given to me I have answered from what I know myself. That is, I answer from what I am under instructions from the P. O. department. 10

Q. Then you answer here as to what your duty is in the matter—for instance, you have stated your duty was to supply the P. O. department or the different offices with what was requisite to have in 1876. Now, you got those instructions from the P. O. department ?

A. Yes, sir ; I was designated, as I have said, as a Postal Clerk. I did the distribution on the car ; that is, I assisted in the distribution, making up pouches and supplying offices along the route.

Q. But you know of your own knowledge nothing at all of the relationship existing between the P. O. department and the Railroad Company, do you ? 20

A. I don't know of any at all, sir.

Q. And the instructions which you have detailed to us here which you have received are such as are given by the P. O. department to their employees for their guidance and instruction ?

A. Subject to their orders, sir.

Q. And they have sole reference to the distribution of the mail and mail matter ? 30

A. Yes, sir ; subject to the orders of the Superintendent.

WM. WILSON, sworn for defendants :

Q. (MR. STONE). Mr. Wilson, what is your business ?

A. Railway P. O. Clerk, sir.

Q. How long have you been such ?

A. Since February, 1875, sir. 40

Q. On what route ?

A. Between New York and Washington.

Q. During the whole time ?

A. Yes, sir.

Q. How often do you make your trips ?

A. Well, we make a trip—round trip—every two days.

Q. One way each day ?

10 A. Yes, sir.

Q. What are your duties ?

A. To distribute the mails, open the pouches, and distribute the mails, and put the mails off at the proper places.

Q. Is that all along the route between New York and Washington and then returning ?

A. Yes, sir.

Q. Where are those pouches made up which you receive ?

20 A. They are made up in the offices from which we get them.

Q. In the post offices ?

A. Yes, sir.

Q. And those mails are carried from the post offices to the trains by whom ?

A. By some person designated for that duty by the post office, I suppose.

Q. The post office department ?

A. Yes, sir ; some government agent, I suppose.

30 Q. Does the railroad company have anything to do with the delivery to you of the mails ?

A. No, sir ; I think not.

Q. What are the arrangements between the railroad company and your department with reference to the control of the car in which the mails is carried ?

A. They have got nothing to do with the car at all, sir ; nothing to do with the mail car.

Q. How does the railroad company get its compensation, do you know, for the transportation of the mails ?

40

(Objected to ; objection overruled.)

A. The railroad company is paid by the government for carrying the mail.

Q. On what principle ?

A. Well, so much 1000 lbs. for so many miles.

Q. They are carried by weight then ?

A. Yes, sir.

Q. Who supplies the employees who have charge of the mail matter ; who employs and controls the employees having charge of the mail matter ? 10

A. They are controlled by their head clerks.

Q. Whose head clerks ?

A. The head clerks in charge. For instance, the head clerk in charge of the car.

Q. Who employs the head clerk of the car ?

A. They are employed by the post office department.

Q. Who composes the party having charge of the mail matter in the cars ; the head clerk and who else ?

A. The head clerk, clerk and two assistants.

Q. Four in each car ? 20

A. Yes, sir.

Q. What connection have they with the railroad company ?

A. None whatever.

Q. What control, if any, does the railroad company have over the manner of receiving or distributing the mails in the car ?

A. Nothing at all ; have nothing at all to do with it, sir.

Q. Are you acquainted with the rules connected with the management of the car in which the mails are carried ? 30

A. I should be.

Q. Just look at that book. Will you tell me what that is ?

A. Yes, sir. That is the instructions issued to us when we get our commission from the department. They come with the other papers ?

Q. Is anything else carried in these cars except the mail ?

A. No, sir. 40

Q. What kind of a car do you call it. Does it go by any name?

A. We call it a postal car.

Q. And the object of that car is what—the purpose of it?

A. To carry the mail and nothing else?

Q. And those mails, I understand, are superintended by the four persons in the car?

10 A. In charge; yes, sir.

Q. And who employs them?

A. The P. O. department.

Q. What rights, if any, do the Railroad Company's officers in charge of the train have with reference to the management of the mail matter in that car?

A. Nothing at all with reference to the management of the mail matter. They have access to the car in their official capacity passing through.

Q. For the purpose of passing through?

20 A. Yes, sir.

Q. How about remaining in the car or giving any directions to any one?

A. They have no business to give any directions to anybody. The conductor comes in the cars to see that there is nobody there but what has business to be—nobody riding in the car but what has business there; brakemen go through to adjust the bell rope whenever necessary.

30 Q. Do you ever receive any instructions from the R. conductor or R. R. employees?

A. No, sir; would not listen to any of their instructions.

Q. Do you remember of hearing in May, 1876, of an accident occurring by reason of a mail bag striking Mr. Page at Rahway?

A. I did; yes, sir, hear something of the kind.

Q. Do you know what train it was in which the mail bag was which was thrown off and caused the accident?

40 A. The train called the night R. P. O., from Washington to New York.

- Q. Were you on that train ?
 A. Yes, sir.
 Q. In your official capacity.
 A. I was ; yes, sir.
 Q. Do you recollect whether there was any mail matter thrown out at Rahway that morning ?
 A. There was, sir.
- Q. (THE COURT). Out of your car ? 10
 A. Yes, sir.

- Q. (MR. STONE). Who threw it out ?
 A. Mr. Whittington and myself threw out the mail that morning.
 Q. What was it that was thrown out ?
 A. It was a pouch, a sack of mail matter, or there may have been two pouches and a sack ; I can't tell now. I haven't charged my memory with it and can't tell how many pieces there were. 20

Q. Have you anything from which you can recall the fact that a man was struck at Rahway that morning ?

A. Well, I heard something about a man being struck that morning, two or three days afterward.

Cross-Examined :

- Q. (MR. SHAFER). Where did you throw the mail that morning ? 30
 A. Threw it off at the regular place of throwing the mail off ; platform.
 Q. Did you look to see if there was anybody on the platform ?
 A. I didn't see anybody when we passed through.
 Q. Did you see any person ?
 A. I didn't take notice of anyone there.
 Q. What did Mr. Whittington throw off ?
 A. He threw off the pouches, I believe.
 Q. And what did you throw off ? 40
 A. Sack.

Q. And you were in the mail car ?

A. Yes, sir ; I was in the mail car that morning.

Q. You didn't look to see whether there was any person on the platform near where the pouches would strike ?

A. Well, we generally have a land-mark or place designated to throw them off.

10 Q. Answer my question whether you looked to see if there was any one there ?

A. There is always a certain amount of care exercised in doing those things ; we have to throw them off in the regular place.

Q. I ask you whether you looked, before you threw off that bag that morning, to see whether there was any person on the platform that the bag would be likely to strike ?

A. We have no chance to look, sir ; the car goes through at such a rate we have no chance to look or
20 halloo to anybody.

Q. The train runs very fast ?

A. It is a fast train ; yes, sir.

Q. How fast ?

A. I don't know exactly how many, may be twenty-five or thirty miles an hour.

Q. Not more than that ?

A. I don't think so.

30 Q. Mr. Wilson, where do you throw off the mails now, in the same way as you did then ?

A. I am on a different run altogether now, sir ; I have got nothing to do with throwing off the mail.

Q. Are you on a mail route in this State ?

A. I am on the same route, only I am on the day line.

Q. You carry mails ?

A. Yes, sir.

Q. Where do you drop or throw your mails now ; do you throw them out on the platform as you did then ?

A. I have nothing to do with throwing out the mails
40 now.

Q. Do you know how they are thrown out now ?

A. I have never paid any attention to it.

Q. Don't you know that the mails are thrown out on the opposite side of the platform ?

A. What station ?

Q. Any of them.

A. I have nothing to do with throwing out the mails.

Q. You don't know the fact that they are thrown out on the opposite side from the platform ?

A. I don't know which side. We have a man that does that business now running from New York to Philadelphia. I am busy at the tables distributing the mails. 10

Q. And you don't know where he throws the mail bags ?

A. No, sir ?

Q. And you don't know what the instructions are of the department in regard to that ?

A. I don't know what his instructions are. I have nothing to do with that. 20

Q. You yourself don't know anything about it ?

A. I don't know what instructions he has about throwing out mail.

Q. Then I take your answer that you don't know what his instructions are in regard to throwing the mail out ?

A. I don't know what his instructions are ; no, sir ; he has charge of that matter.

Q. You say this is called a postal car ; is that painted upon the car ? 30

A. Yes, sir ; I think it is ; something of that kind.

Q. Do you know whether or not the word " Pennsylvania " is not also painted on the car ?

A. I think it is ; yes, the word Pennsylvania.

Q. You have stated that the railroad company had nothing at all to do with the mails on the cars ; how do you know that fact ?

A. Why, from the very fact that we wouldn't listen to any of their instructions what we should do with the mail. 40

Q. You have sworn that the railroad company have

nothing to do with the mails or car, and I ask you how you know that fact ?

A. They have nothing to do with the distributing of the mails in the car.

Q. You said they had nothing to do with the mails or car.

A. Nothing to do with the mails ; no, sir.

Q. Have they with the car ?

10 A. Nothing to do with the distributing of the mails in the car ; the car belongs to the railroad company.

Q. Do you know anything at all about any contract between the railroad company and postal department ?

A. I know, from hearsay, that they carry the mails.

Q. The question is whether you know what the contract is ?

A. No, sir ; I am not supposed to be up in that thing, sir.

20 Q. You have stated also what your business was ; to open pouches and distribute the mails and put them off, etc., the mails made up at different offices, you suppose that. Do you know anything about it of your own knowledge, or do you only speak from what you have heard ?

A. The mail is made up and delivered from the car.

Q. You said that the matter was received from the post office ?

A. Certainly ; brought down from the post office, I suppose, to the car by somebody designated.

30 Q. You suppose ; do you know ?

A. I ain't supposed to know who brings the mail down to the cars, only I judge it is some agent designated to do the business.

Q. Then everything you know about it is from what you have been informed by others, your superiors or those with whom you mingle in conversation ?

A. That is all.

Q. You have never seen any contract between the railroad and the department ?

40 A. No, sir.

Q. Then, in reference to this matter you have testi-

fied to, you have testified from hearsay, excepting as to your own immediate duties ?

A. I only know the government carries the mail by contract.

Q. How do you know that ?

A. From hearsay.

Q. (COURT). You don't know whether the company 10 undertakes to carry the mails and deliver them at the different stations by the contract ?

A. The R. R. Co. is supposed to carry the mails, and we are supposed to deliver them.

Q. Not what you suppose, but do you know anything about the contract ?

A. I don't know what the contract is.

Q. (MR. STONE). Do you know what the custom 20 was in 1876 as to what employees delivered the mail to you, whether it was persons in the employ of the railroad company, or persons in the employ of the post office department ?

A. The mail was delivered to us from the New York Post Office by the company having the contract to haul the mail in wagons at that time. They hauled them by contract. The Union Transfer Company I think it was called. -

Q. That was not the railroad company ?

A. No, sir. 30

Q. Well, along the line of the road who delivered them there ?

A. Well, I don't know ; I suppose the man——

Q. What do you know about it ?

A. All I know is there was somebody in charge of the mail matter there. We threw off and somebody took them up and carried them to the post office.

Q. You don't know who employed them ?

A. No, sir. 40

Q. (MR. SHAFER). Did you ever know of any freight

agent or baggage man delivering any mail matter from the post office to the depot ?

A. No, sir ; I did not.

Q. (MR. STONE). At that time were the railroad employees uniformed ?

A. No, sir, they were not.

10 Q. They have been since ?

A. They have been since uniformed.

Q. Have you ever received from or delivered to railroad employees these mail pouches ?

A. No, sir ; I never did.

Q. (MR. SHAFER). In relation to this Union Transfer Company delivering the mails to you, do you know whether it has any connection with the railroad company or not ?

20 A. I don't know, indeed, sir ; I supposed it was a private company.

Q. And with regard to the contract by which they delivered them you know nothing about it ?

A. No, sir.

Q. I don't suppose you are acquainted with one man in fifty along the route that takes the mails ?

A. No, sir ; I don't see much of them now.

Q. Are they in uniform now, the men that receive the mail ?

30 A. No, sir.

Q. So that you can't tell whether they are employees of the company or not ?

A. No, sir ; only the local agents as they are called ; they are in the uniform of the government ; they don't have them in the small places, but in large places they have them.

40 Q. The post office department of which you speak, doesn't have the carrying and delivery of all the mails that go from the post office in New York and other important places to the towns along the line of the railroad, do they, their employees ?

A. I suppose they have or some of their agents ; I don't know, sir, anything about it.

Q. For instance there is a mail running from Rahway to Perth Amboy. There is no mail agent on that train like yourself, is there ?

A. No, sir ; I suppose there is a road agent on it ; somebody in charge of the mails.

Q. Are not the mails on such routes, Woodbridge and Perth Amboy, delivered by the railroad company and not by any agent of the post office department ? 10

A. I don't know anything about that ; that is off the line of the road.

Q. (A JUROR). Do you know who receives the mail here at Elizabeth and delivers it to the post office ?

A. No, sir ; I don't. Our place is to throw it off, and after that we are not supposed to know anything about what becomes of it then ?

Q. Does the post office department supply these catchers along the railroad or the railroad company ? 20

A. The cranes, do you mean ?

Q. Yes, sir.

A. I suppose the railroad company furnishes that ; I don't know about that. The catchers attached to the car are furnished by the government, but the cranes, I suppose the railroad company sees to having them arranged.

Q. (MR. STONE). What does "R. P. O. Clerks" 30 mean in your rule ?

A. Railway Post Office Clerks.

Q. And they are in whose employ ?

A. The employ of the post office department.

Defendant offers in evidence the post office rules identified.

DEFENDANT'S EXHIBIT.

POST OFFICE DEPARTMENT RULES.

*Post Office Department, Washington, D. C., }
August 8, 1877. }*

10 ORDERED: That the general supervision of the distribution and dispatch of mails at post offices, and of the service and employees of this department on railroad and steamboat routes, be vested in officers acting under instructions from this department, designated and assigned as follows:

* * * * *

20 Second division comprising New York, New Jersey, Pennsylvania, Delaware and the eastern shore of Maryland.

R. C. JACKSON,
Superintendent, New York, N. Y.

* * * * *

D. M. KEY,
Postmaster General.

INSTRUCTIONS.

30 *Section 1.* In these instructions the word "employees" will be used to designate all railway post office clerks, route agents and mail route messengers; and all railway post offices or departments in cars or steamboats will be designated as "office."

* * * * *

Sec. 9. They (employees) will in all cases regularly return pouches, locks and labels, with or without mail, to route agents, R. P. O. clerks and offices sending
40 pouches to them.

* * * * *

Sec. 18. The office is for the exclusive accommodation of mails and the persons specially appointed to take charge of the same. It is strictly private, not to be entered by any person, except regular special agents of the post office department and persons who may be authorized by the general superintendent and superintendents of the railway mail service. The conductor of 10 the train, however, will have access to the office in the performance of his duties; and, in case of necessity, other railway employees may pass through, but none of them shall be allowed to remain therein.

* * * * *

Sec. 25. The rules and regulations of the railway companies, not in conflict with these instructions, must be respected and obeyed. 20

* * * * *

THEO. N. VAIL,
Gen. Supt. Railway Mail Service.

Approved.

THOS. J. BRADY,
Second Asst. Postmaster General. 30

NEW JERSEY SUPREME COURT.

10

PAGE,
<i>vs.</i>
THE PENNSYLVANIA RAIL- ROAD COMPANY.

20

JUDGE'S CHARGE.

GENTLEMEN OF THE JURY :

The plaintiff complains that on the 5th of May, 1876, he was injured in his person by the negligence of the defendants, and he has brought this suit to recover damages.

30 The undisputed facts in the case as they appear in evidence are these :—The plaintiff, Page, was a newspaper carrier. He procured papers from New York and distributed them among his customers in Rahway. He was accustomed to receive these papers by the Pennsylvania Railroad trains which arrived at Rahway at about half-past five o'clock in the morning. On the morning of May 5th, 1876, he went to the passenger depot at Rahway shortly before half-past five o'clock to receive his papers. When he saw the train coming from New York he walked out of the waiting-room upon the platform to pick up his bundle when they were thrown off. While he was standing on the plat-

40

form a mail train coming from the other direction and moving toward New York came by him, and from that train a mail bag was thrown which struck the plaintiff and broke his thigh bone.

Upon this evidence the plaintiff rests his charge of negligence against the company. Whether this constituted negligence on the part of the person who threw the mail bag is a question for the jury. The plaintiff was on the platform of the passengers' depot in Rahway, where persons who come to take the cars, or to meet their friends, or to pass from the trains, would be very frequently congregated, and where it was probable that one or more persons might be at almost any hour of the day. Under such circumstances you must say whether the person who threw that mail bag on that morning acted with reasonable care; with the care which a prudent man should have used in view of the fact that it was not at all improbable that some one might be there and receive a serious injury. If you find that there was negligence in throwing out the mail bag you must then consider whether the plaintiff also acted negligently. If he did, if he contributed to his own injury, he cannot recover in this case. The law will not permit a man, who himself has been negligent, to make another pay damages for negligence which has resulted in his injury. The question is not which is the more to blame, the party injured or the party injuring; but if you find that the plaintiff was negligent in any degree, and that such negligence contributed to his injury, you have no right to give him any damages. Whether Page was negligent is a question for you and not for the Court to settle. The defendant says he was negligent because he came out upon the platform where he admits there was danger to be apprehended from the bundles of papers which were thrown from the newspaper train, and that the plaintiff, having voluntarily put himself in a position of danger, failed to exercise the care which he otherwise would have used in watching the other train; but you must keep in mind that the injury was not received from the newspaper

10

20

30

40

train, and that the mail train was behind time that morning; that the plaintiff was acquainted with the time of passage of the mail train; that he knew it passed, when on time, an hour earlier than the newspaper line, and that he was not aware that it had not passed that morning. You must say, therefore, whether he was guilty of any negligence in not watching more carefully for the mail train. If these two trains had

10 usually passed the depot about the same time the case would be much stronger for the defendant. If you find that the plaintiff himself did not use the care which he was bound to exercise, that he was negligent, you must find for the defendant; but if you think that he was not negligent then the question remains which is the principal one in the case, whether the Pennsylvania Railroad Company is responsible for this injury to the plaintiff. The liability of the company must

20 rest, if it exists, upon the relation of master and servant between the company and the person who immediately caused the injury, or upon the failure of the company to discharge its duty as a superior. If you employ a servant and in the execution of your work he injures another by his negligence, you must pay the damage done. If, then, this injury to the plaintiff was the result of the carelessness of any one or more of the agents or servants of the Railroad Company, or of one over whom they were bound to exercise the control of a superior, the plaintiff is entitled to

30 recover in this case. From the fact that the train of cars from which the mail bag was thrown were the cars of the defendant, and that the defendant was carrying the mails on this train, you will have the right to infer that the mail bag was thrown by their servant, and to charge the Company with the negligence of such servant; but this is only *prima facie* evidence against the Company. It may be rebutted or overcome by showing in fact that some one whose actions they could not control and who did not occupy the relation of inferior

40 to them, did the wrongful act. If a mere passenger on that train, who was in no way connected with the Rail-

road Company, had, without any right, thrown off that mail bag and produced the injury to the plaintiff, that passenger alone and not the Company would have been liable for the injury. The testimony on the part of the defendant is that the persons in charge of the mail car from which the bag was thrown threw the mail bag off on this occasion. If these persons were in the employ exclusively of the Post Office department, if they were the servants of the Government and not in any way under the control of the Railroad Company, nor in any way rendering any service for them, the Company will not be liable for their negligence, provided the Company has discharged its full duty in the premises. The fact that these men were in the postal car, and were in the pay and employ of the P. O. department is not incompatible with the fact that they might also be in the service of the Railroad Company. If the Company made a contract with the Government to carry the mails and to deliver them at the different stations along the route, and availed itself of the services of these men in the postal car to have the mails thrown off, then these men were the servants, to that extent, of the Railroad Company, and the Company would be liable for their negligence in putting off these mail bags. They might have been in the service both of the Government and of the Railroad Company; so, gentlemen, if the Railroad Company contracted with the Government to carry the mails to various points on the route and put the Government employees in exclusive possession of one of their cars for the purpose, the Company owed a duty to the public to see that the car was used in a proper way, and that no negligent practices were permitted by which the safety of persons on the route was endangered. The Company cannot escape the liability which by law falls upon them in the exercise of the franchises which they enjoy by public grant by putting somebody else in exclusive control of their cars. It was a part of the business of the Company to carry the mails to different points along the route, and it would be idle to carry the mails unless they were put

off at the different stations, one of which was at Rahway. The Company was therefore bound to see that reasonable care was used in putting these mail bags off; and if you find that they were neglectful of this duty you should find for the plaintiff. In this respect they not only had a right to exercise but were bound to

10 exercise the right of a superior, and are responsible for any neglect in so doing. If you find that, under the rule I have given, the act complained of was caused by the negligence of the Company, your duty will be to assess the damages. The measure of damages will be compensation, taking into account the pain the plaintiff has suffered, the expense of his sickness, the loss of time and the extent to which the injury will impair his ability to gain a livelihood in the future. If you

20 find for the plaintiff at all you should act with fairness and moderation under all the circumstances of the case.

N. J. COURT OF ERRORS AND APPEALS.

JUNE TERM, 1878.

10

THE PENNSYLVANIA RAIL-
ROAD COMPANY,

Plffs. in Error.

vs.

THEOPHILUS PAGE,

Def. in Error.

*In Error from
Supreme Court.*

20

ASSIGNMENT OF ERRORS.

Afterwards, that is to say on the fourth Tuesday of June, A. D., 1878, before the Court of Errors and Appeals of New Jersey, at Trenton, came the said The Pennsylvania Railroad Company, by Stone and Jackson, their attorneys, and say that in the record and proceedings aforesaid, and in giving the judgment aforesaid, 30 there is manifest error in this, to wit:

1. Because the Justice of the Supreme Court Circuit in and for the County of Union, at which the issue joined in the Court below was tried, after the plaintiff had offered his evidence to the Court and Jury, and rested his case, refused to grant the motion made by the defendant to non-suit the plaintiff.

2. Because the said judgment is in other respects 40 erroneous and contrary to law.

3. Because, by the record aforesaid, it appears that the judgment aforesaid was given against the said The Pennsylvania Railroad Company; whereas it ought to have been given in favor of the said The Pennsylvania Railroad Company.

10 And the said The Pennsylvania Railroad Company pray that the judgment aforesaid for errors aforesaid, and for other errors in the said record and proceedings may be reversed, annulled and altogether holden for nought, and that they may be restored to all things which they have lost by occasion of said judgment, &c.

STONE & JACKSON,
Attorneys of Plaintiffs in Error.

20

JOINDER IN ERROR.

And the said Theophilus Page, by Shafer & Durand, his attorneys, comes here into Court and says: That there is no error either in the proceedings aforesaid or in giving the judgment aforesaid. And he prays that the said Court of Errors and Appeals now here, may proceed to examine as well the record and proceedings aforesaid, as the matter aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed.

30

SHAFER & DURAND,
Attorneys of Defendant in Error.