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TESTIMONY FOR PLAINTIFF.

Anna Adams:

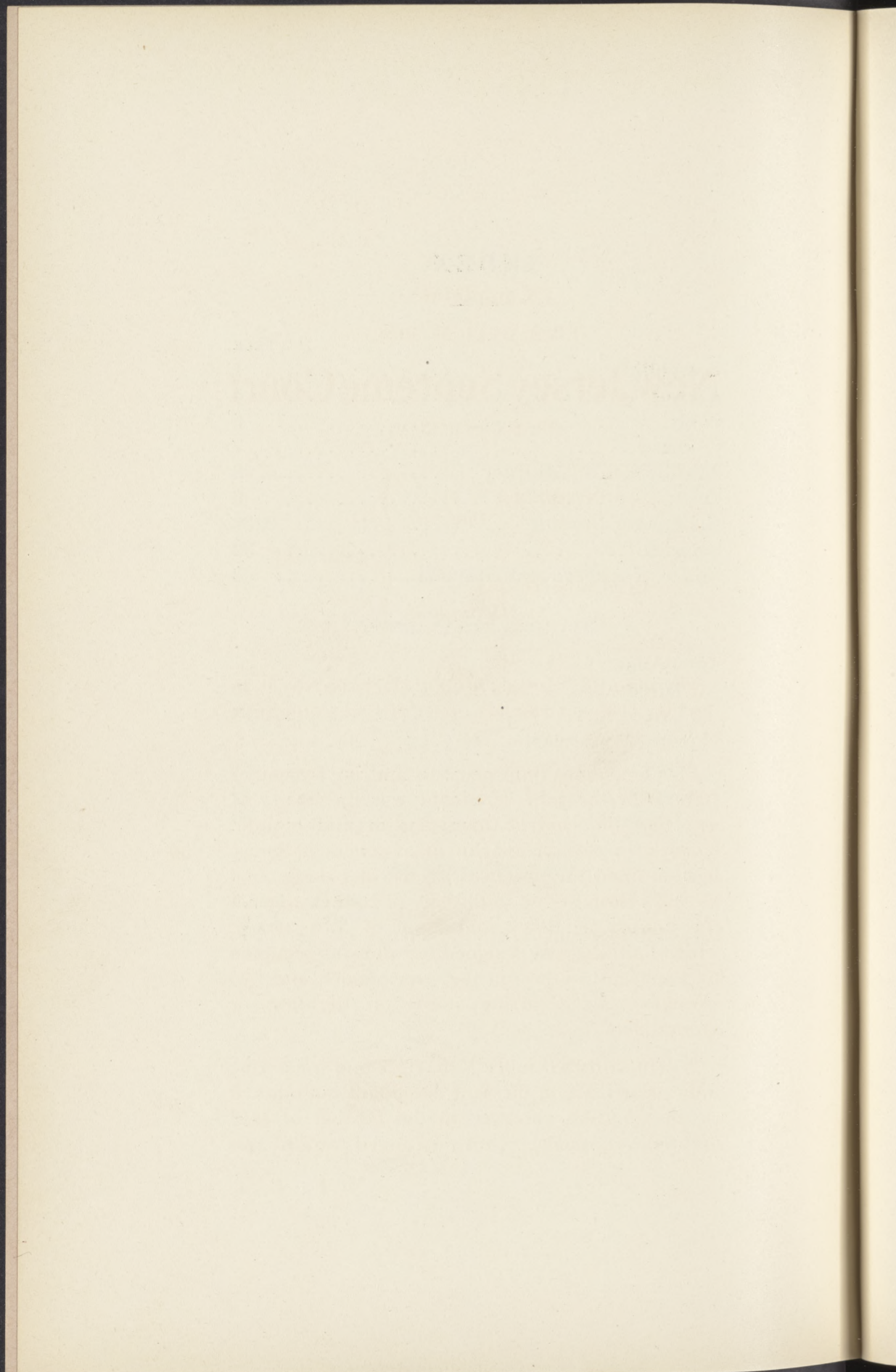
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PLAINTIFF'S EXHIBIT.

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Complaint.

(Filed March 27, 1928.)

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New Jersey Supreme Court

ESSEX COUNTY.

ANNA ADAMS,
Plaintiff,

v.

ELIZABETH OLSEN,
Defendant.

Action at Law.

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The plaintiff, residing at #72 Harrison Street, in the City of East Orange, County of Essex and State of New Jersey, says:

1. For a long time prior to and on December 10th, 1926, the said defendant was the owner of and had the control, management and maintenance of a certain apartment or tenement house located upon the premises known and designated as #393 Main Street, in the City of East Orange, in the County of Essex and State of New Jersey, which building was designed for and was occupied by fourteen families on the upper floors, and two storekeepers, occupying stores on the first or ground floor.

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2. On said December 10th, 1926, and for a long time prior thereto, the said defendant maintained as an apparent entrance to the portion of said building occupied by said mentioned families, an

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Complaint.

entrance on the easterly end of said building, which entrance was of an attractive nature, having a door leading thereto, which contained a stained glass window of elaborate design, and was so constructed and adorned, as to cause the said mentioned plaintiff and others, who had the right of entrance to said building, to believe that the same was the regular entrance provided by the said defendant, to the private apartments of the tenants of the said defendant.

3. On said day, the said plaintiff, who was on lawful business with one of the tenants and occupants of said building, and who was invited by the said tenant to enter said building, opened the said mentioned door by means of turning the knob thereon, in the usual manner, under the belief, based upon the construction and appearance of said building, as hereinabove stated, that it was the regular public entrance to the apartments in said building, and immediately fell and was precipitated a great distance to the cellar, below.

4. The accident to the said plaintiff was caused by the negligence of the said defendant in so building and maintaining the said door and entrance, as hereinabove stated, as to cause the said plaintiff and others, who had lawful occasion to enter said building, to believe that the same was the regular and proper door and entrance to the apartments of the tenants of the said defendant, who were then occupying his said building; in failing to provide some floor space or platform between the said door and certain steps leading into said cellar, so as to protect persons entering through said door; in failing to keep said mentioned door locked, and in otherwise permitting said hidden danger to be

Complaint.

maintained without giving the said plaintiff due notice thereof.

5. By reason of the premises, the said plaintiff, in falling to the cellar as herein mentioned, received and sustained a compound fracture of the skull, a punctured ear-drum, and numerous bruises, wounds and contusions in and about her head, face and body, and her nervous system was then and there seriously and permanently shocked and injured.

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6. 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, from thence hitherto, during all of which time, the said plaintiff suffered and underwent great pain, and in the future will suffer and undergo great pain of body and anguish of mind. And she also lost and was deprived of and in the future will lose and be deprived of, divers great gains, profits and advantages, which she otherwise would have derived and acquired, but for her said injuries. And she was also obliged to lay out and expend, and in the future will be obliged to lay out and expend, divers large sums of money endeavoring to be cured of her wounds, bruises and injuries, so received by her, as aforesaid.

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Plaintiff demands as damages the sum of Twenty-five Thousand (\$25,000.00) Dollars.

NORMAN L. BRUNDAGE,
Attorney of Plaintiff.

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Answer.

(Filed April 2nd, 1928.)

NEW JERSEY SUPREME COURT,
ESSEX COUNTY.

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ANNA ADAMS,
*Plaintiff,**v.*ELIZABETH OLSEN,
Defendant.

} Action at Law.

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The defendant, Elizabeth Olsen, residing at 97 Sanford Street, in the City of East Orange, County of Essex, and State of New Jersey, says that:

1. She denies each and every allegation of paragraphs one, two, three, four, five and six of the complaint.

FIRST AND SEPARATE DEFENSE.

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That at the time of the accident alleged in the complaint, the plaintiff was a trespasser on the private property of the defendant and she, therefore, cannot recover against the defendant because no unlawful, wanton or active injury is alleged.

SECOND AND SEPARATE DEFENSE.

At the time the accident referred in the complaint happened the plaintiff was a licensee on the private property of the defendant, and she, therefore, cannot recover against the defendant because no unlawful, wanton or active injury is alleged.

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Answer.

THIRD AND SEPARATE DEFENSE.

The plaintiff was guilty of contributory negligence at the time and place of the alleged accident charged in the complaint in that she failed to exercise due care for her own safety and voluntarily placed herself in the position of danger. 10

FOURTH AND SEPARATE DEFENSE.

At the time the accident mentioned in the complaint happened, the plaintiff failed to exercise reasonable care for her own safety in that she failed to observe that the entrance that she used was a private entrance and was not intended as an entrance for the plaintiff or other persons of the public and the defendant alleges, therefore, that the plaintiff was guilty of contributory negligence barring recovery because of her use of the said entrance. 20

M. HAROLD HIGGINS,
Attorney for the Defendant.

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Reply.

(Filed April 3, 1928.)

NEW JERSEY SUPREME COURT,
ESSEX COUNTY.

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<p>ANNA ADAMS, <i>Plaintiff,</i></p> <p><i>v.</i></p> <p>ELIZABETH OLSEN, <i>Defendant.</i></p>

} Action at Law.

Plaintiff, replying to the answer filed herein,
says:

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Plaintiff denies every allegation in the answer.

GROSSO, BRUNDAGE & ANDERSON,
Attorneys for Plaintiff.

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New Jersey State Library

Postea.

(Filed November 12, 1929.)

NEW JERSEY SUPREME COURT,
ESSEX COUNTY.

<p style="text-align: center;">ANNA ADAMS, <i>Plaintiff,</i></p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">ELIZABETH OLSEN, <i>Defendant.</i></p>	}	Action at Law.	10
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This cause having duly come on before Hon. William A. Smith, Circuit Court Judge, and a jury, to whom the trial had been duly referred, on the Sixth day of November, Nineteen Hundred and Twenty-nine, at Newark, New Jersey, in the presence of the respective parties and their attorneys; and the Court having heard the evidence in behalf of the plaintiff; at the close of the plaintiff's case the defendant moved for a judgment of nonsuit.

The Court being of the opinion that the motion of the defendant should be granted, it was thereupon Ordered that a judgment of nonsuit be entered in favor of the defendant and against the plaintiff.

November 12th, 1929.

WM. A. SMITH,
Circuit Court Judge.

Substitution of Attorney.

(Filed November 14, 1929.)

NEW JERSEY SUPREME COURT,
ESSEX COUNTY.

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<p>ANNA ADAMS, <i>Plaintiff,</i></p> <p><i>v.</i></p> <p>ELIZABETH OLSEN, <i>Defendant.</i></p>

Action at Law.

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I hereby agree that Frank G. Turner be substituted as attorney in the above cause in my place and stead.

M. HAROLD HIGGINS,
Attorney for Defendant.

Filed November 14, 1929.

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Case.

NEW JERSEY SUPREME COURT,

ESSEX CIRCUIT.

Wednesday, November 6, 1929.

<p style="text-align: center;">ANNA ADAMS</p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">ELIZABETH OLSEN.</p>	}	Action at Law.	10
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Before—Hon. WILLIAM A. SMITH, J., and a jury.

For Plaintiff appear GROSSO, BRUNDAGE &
ANDERSON (by BENJAMIN M. WEINBERG).

For Defendant appears M. HAROLD HIGGINS
(by FRANK G. TURNER).

(A jury is called and sworn.)

Mr. Weinberg opens for plaintiff.

Defendant's counsel moves that plaintiff be nonsuited on counsel's opening on the ground that counsel has laid his claim for damages against the premises 391 Main Street, East Orange, whereas the defendant is not the owner of 391 and if this plaintiff was going to 391, then clearly no allegation of negligence has been set forth in the opening of counsel.

Mr. Weinberg: 391 and 393 are the same building.

The Court: I cannot take judicial notice of the fact that 391 and 393 are the same building, and if you allege 393 in your complaint and 391 is the one you opened on—

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Case.

Mr. Weinberg: We will prove that the premises on which the building was erected belongs to the defendant.

The Court: You mean that you will prove that the defendant was the owner of this doorway?

10 Mr. Weinberg: Yes, sir.

The Court (after argument): I think it might be better for me to take the evidence with regard to the liability and not with regard to the damage, first, and then I will pass on the motion. I can see that it is a little hazy and I think we ought to get the facts as they are testified to. You are not surprised, are you, Mr. Turner?

Mr. Turner: No, sir.

20 The Court: As I understand it, Mr. Weinberg, you allege that the plaintiff entered the building 393 Main Street with the intention of visiting or going to some tenant in that building.

Mr. Weinberg: Yes, sir. And the further admission is that the defendant owns the building.

The Court: Yes, the defendant will admit on the record that she owns the building 393 Main Street, and it will appear more particularly in the photograph.

30 Mr. Turner: And that we do not own 391 Main Street which was mentioned by counsel in his opening; we do not want to concede that we own part of the premises. We own 393 but not 391.

Mr. Weinberg: But 393 is the building depicted in the photograph.

Mr. Turner: 393 is the building we own.

Mr. Weinberg: And it is the premises shown on the photograph.

Mr. Turner: The photograph is objectionable.

40 Mr. Weinberg: Then it is the premises com-

Case.

prised of two stores and two entrances to those two stores and the door to the extreme left.

Mr. Turner: I have a photograph here which shows the premises we own and which hasn't the same objection that the other photograph has.

Mr. Weinberg: That looks all right.

10

Mr. Turner: Shall we mark this one in evidence?

Mr. Weinberg: This is the building at the time of the accident?

Mr. Turner: Yes.

The Court: What is the difference?

Mr. Weinberg: There is something on the door. We didn't have a photograph at the time of the accident.

The Court: Mr. Turner's photograph can go in evidence as the photograph of the building which she entered and in which was a tenant she intended to see.

20

Mr. Weinberg: I now offer in evidence a photograph.

(The same is received in evidence and marked Exhibit P-1.)

Mr. Turner: The Court is not ruling on the question of liability now?

30

The Court: Mr. Weinberg, you will agree that you put in evidence on the question of liability first and then we will hear the motion for nonsuit and that will concede that you have suffered damage, of course, and then if I rule in your favor we will go on with the case?

Mr. Weinberg: That simply means that I will have to divide Miss Adams' testimony into two parts.

The Court: Yes.

40

Mr. Turner opens for defendant.

Anna Adams, direct.

ANNA ADAMS, the plaintiff, sworn in her own behalf.

Direct examination by Mr. Weinberg:

10 Q. Miss Adams, you are the plaintiff in this case? A. Yes, sir.

Q. Where do you reside? A. At present 30 Lenox Avenue, East Orange.

Q. Where did you live on December 10, 1926? A. 72 Harrison Street, East Orange.

Q. How long did you live there prior to the accident? A. From October 16 or 17, 1926.

20 Q. At that time what was your business or occupation? A. My profession is trained nurse and I was working for the Visiting Nurses Association of the Oranges as a visiting nurse.

Q. How long have you been employed there? A. From October 18 of that same year. I had just moved to East Orange.

Q. Generally, what did the work with the Visiting Nurses Association embody? A. Skilled nursing case in the home, involving usually a stay of about an hour at the patients' house.

30 Q. How did you come to be called? A. By calls from doctors, from patients' families, and by companies who employ us by contract to take care of their people; the Edison Company and people like that.

Q. You are a graduate nurse? A. Yes, sir.

Q. When did you graduate? A. 1920.

Q. From where? A. Kings County Hospital, New York.

Q. Do you know the building we have termed 393 Main Street, East Orange? A. I do.

40 Q. I show you a photograph marked Exhibit P-1

Anna Adams, direct.

and ask you if you recognize the building which is depicted on that photograph. A. Yes.

Q. Where is that located? A. That is located on Main Street right near South Walnut Street.

Q. On what side of the street is it? A. On the righthand side going toward Newark; I don't know whether it is west or what. 10

Q. That would be the south side of Main Street. How near to the corner of South Walnut Street was it? A. One building in.

The Court: Is South Walnut Street to the west or to the east of the building?

Mr. Weinberg: It is to the east. In other words, this building is west of South Walnut Street. 20

Q. Do you recall when you first went to that building? A. Yes.

Q. When? A. It was, I know, the day after Thanksgiving of 1926.

Q. Whom did you visit there? A. I went to see a patient who had returned from the Orange Memorial Hospital named Oswald; I can't remember her first name.

Q. On what floor did she live? A. On the first floor. 30

Q. Can you tell us on which side of the building? A. On the righthand side; I think the last apartment down.

By the Court:

Q. You say the first floor. It would be over the stores, wouldn't it? A. No, sir, back of the stores, and I think a step or two steps up.

Q. That was to the rear of the store? A. Yes, sir, in the rear of the stores. 40

Anna Adams, direct.

By Mr. Weinberg:

Q. You were treating a woman in there? A. Yes, sir, a woman who had just come from the hospital with a baby.

10 Q. Who assigned you to that call? A. We had been carrying her previous to the birth of the child; we were making pre-natal visits, but I had never visited her before.

Q. How did you come to the building? A. To the best of my recollection I went from South Burnett Street down Main Street.

Q. That is, to the west of this building? A. Yes, more toward Orange.

20 Q. Was it day time or night time? A. It was day time.

Q. After you saw your patient and took care of her, or whatever it was, did you have occasion after that to visit her? A. Yes, we make weekly visits to new mothers and babies; that is, just routine visits if there is no illness, and I visited her again on the 3rd of December.

Q. I take it she was then on your list for visiting. A. Yes.

30 Q. Did she receive and accept your services when you called? A. Yes.

Q. Did you tell her when you would call back again? A. Yes, sir, I told her I would see her again.

Q. On December 3rd you called again? A. Yes, sir.

Q. I assume that on that and the previous occasion you entered by means of an entrance between two stores. A. Yes.

40 Q. You saw the same patient on that occasion? A. The same patient, yes.

Anna Adams, direct.

Q. When was the third call made? A. On December 10th.

Q. From whom did you receive your instructions to go? A. From the supervisor in the office by telephone when I called up, as we routinely do.

Q. What time of the day was it when you started to go to Mrs. Oswald's on December 10th? A. I would say I left my house about quarter past two. 10

Q. How did you go there? A. I took the Main Street trolley at Harrison Street.

Q. From where did you come? A. From my home on Harrison Street.

Q. Where did you get off the trolley car? A. At Walnut Street.

Q. That is the same South Walnut Street you mentioned? A. Yes, sir, above Main is north. 20

Q. What happened after that? A. I don't know how I can say it.

Q. You don't recall anything from that time on?

By the Court:

Q. What is the next recollection you have after leaving the trolley car? A. My next recollection after leaving the trolley was sometime in the hospital. 30

By Mr. Weinberg:

Q. What day was it? A. I think it must have been Sunday because the church bells were ringing.

Q. What day was it you were hurt? A. On Friday.

Q. How do you know? A. Because the patient I had seen in the morning. I had some that I routinely saw on certain days of the week. I also know it was Friday because I hadn't had any meat for lunch. 40

Anna Adams, direct.

Q. So you think it was two days after you met with you injuries that you became conscious of your surroundings? A. That I was conscious of anything.

10 Q. I take it you didn't know what happened after you were hurt. You don't remember going into the building or anything at all? A. No, sir.

Q. You don't recall seeing the entrance that you were going to use or did use? A. I can't say that I recall anything about it.

Q. On the occasion of your previous visits did you notice any entrances from the apartment itself in which Mrs. Oswald was living? A. I had vaguely in my mind that there must be—

20 Objected to.
 Objection sustained.

Q. It must be a fairly reasonable recollection A. I saw that there was a back entrance.

 Objected to as a conclusion.
 Objection sustained.

30 Q. What did you do, without telling us what it was? A. Mrs. Oswald's apartment was over the last or the next to the last on the hallway, and I think on the second visit I saw the back door open.

Q. Which door? A. At the end of that corridor way down at the very end.

Q. Where that door led to do you or do you not know? A. I do know now.

Q. I am not referring to the outside; I am referring to the door that led off Mrs. Oswald's apartment. A. No.

Q. You don't know where that led? A. No.

40 Q. Are you able to describe the building which you visited and tell us what it consisted of at the

Anna Adams, direct.

time you recall it? A. Yes, the store on the right-hand side was a beauty parlor and the store on the left-hand side was a florist shop.

Q. And in between? A. And in between, well back of the show windows, was the entrance to the apartment.

10

Q. Were there any other doors or entrances? A. Yes, no the street level there was a door just beyond the florist.

Q. Had you taken any notice of that door at any time before December 10th? A. Why, I had seen that building numerous times before—

By the Court:

Q. The question is whether you noticed in particular this door before December 10th. Of course, you can see buildings and know they are there, but did you notice that that door was there? A. Yes, I had seen that door.

20

By Mr. Weinberg:

Q. From your recollection of it can you describe what it looked like? A. It was leaded—some wood or metal work through it—a stained glass. I can't remember the color or if there was any design. I think not. It was sort of blurry.

30

Q. Do you know whether it had a doorknob on it or not? A. It had a doornob.

Q. Have you passed there since? A. I have.

Q. Is the door in the same position as it was then?

Objected to on the ground that it is subsequent to the time of the accident.

Objection sustained.

Q. On your previous visit when you entered that building you went into that central entrance, I understand? A. Yes.

40

Anna Adams, cross.

Q. Did you go up any stairs to get there at all?

A. Not to get to the entrance; right from the street. It is a sort of rise—a slight incline.

10 Q. There was nothing like a stairway inside of the building, was there? A. I had to go on the first floor.

Q. Would you say it was on a level with the floor after you opened the entrance door in the center?

A. Either on the level or just one step up.

Cross examination by Mr. Turner:

Q. Do you remember what hour of the day it was that you left the trolley car? Was it morning or afternoon? A. Afternoon.

20 Q. About what time? A. It was sometime after half past two; very shortly after half past two.

Q. Broad daylight? A. Yes, a winter day, but daylight.

Q. This entrance where you had gone into the apartment on the day after Thanksgiving and on December 3, 1926, will you just put an A on this photograph over the entrance that you entered?

A. There (indicating) as near as I can judge.

Q. I will put an A over that point. A. Yes, it is right between those two windows.

30 Q. That's the doorknob and the letter box? A. I don't know whether it is the letter box or not.

Q. This point where I marked the A shows where you entered the building on the day after Thanksgiving and on December 3, 1926? A. Yes, sir.

Q. And you aren't sure when you went to this apartment how many steps you went up, if any?

40 A. Well, you see it is a long time since I have been in that building and I cannot definitely remember. I know there weren't any steps in the street.

Anna Adams, cross.

Q. After you opened the entrance door, I mean.

A. I think there was one.

Q. Then how far did you walk along the hall before you came to this lady's apartment? A. It is a long hall; I don't know how many apartments there are.

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Q. Would you say that it is as long as this room?

A. From the door?

Q. From the very front entrance until you get to Mrs. Oswald's apartment? A. Yes, I would say even a little longer, I think. I can't remember how many doors there were on the side; it was as long as this room.

The Court: This room is approximately forty feet long.

20

Q. When you went to this apartment on the first occasion, Thanksgiving of 1926, how did you know when you had gotten to Mrs. Oswald's apartment?

A. I rang the doorbell and she pushed the button that opens the door and then she was standing in the doorway of her apartment because she was expecting the nurse.

Q. How did you know it was her bell? A. Her name was over it; it was an apartment house.

Q. Her name was on the card, was it? A. In the letter box over the bell.

30

Q. It was light enough so that you could see her name? A. Yes, sir.

By the Court:

Q. Was there any door between the street and the bell where her name was? A. Yes, sir.

Q. You had to go through a doorway? A. Yes, sir, there is a door.

Q. And then another door? A. Yes, sir, that the

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Anna Adams, cross.

tenant opens with the button when the person calls.

10 Q. Going back to the time when you were on the trolley car, do you have an actual picture of getting off the trolley car, or do you assume you did get off because you were not still on it? A. I remember I rang the bell before we came to Walnut Street and got off the step, but after that everything is a blank.

Q. You don't remember being on the street? A. I can't honestly say that I can remember that.

Q. And you don't remember walking over to this building? A. No, sir.

Q. You were alone? A. Alone, yes, sir.

20 Q. When you got off the trolley car—I mean to carry you back to the last time that you remember, did you have any packages or a satchel? A. I had a bag. We carry a bag with all our appliances for giving services in the home.

Q. How heavy was it? A. About seven or eight pounds.

Q. Black leather? A. Yes, sir, black leather bag. It contains all the appliances.

Q. Did you have anything in the other hand that you remember? A. No, sir.

30 Q. On the occasion when you went there on December 3, 1926, did you on that day ring the bell to Mrs. Oswald's apartment the same way that you had before? A. Yes, sir.

Q. Then had you gone in the same as you did before along a long hall? A. Yes, sir.

Q. This long hall was just one long straight hall, was it? A. Yes.

Thomas A. Garrigan, direct.

THOMAS A. GARRIGAN sworn in behalf of plaintiff.

Direct examination by Mr. Weinberg:

Q. Officer, with what municipality are you connected? A. East Orange police department. 10

Q. You have been connected with that department how long. A. About eight years.

Q. In 1926 what was your territory? A. On Main Street from Arlington Avenue to Ashland Avenue.

Q. Did that take in the premises which we have been calling 393 Main Stret, East Orange? A. It did.

Q. How long have you known those premises? A. I worked there on that same territory for five years just on Main Street. 20

Q. Can you tell us what places of business were in that building on December 10, 1926? A. A beauty parlor on the right and a florist on the left.

Q. Do you know anything about the doors or entrances to that building? A. The door that goes into the apartment house sets back beside the two store doors. I know that because I try them several times each night and I have found them open and have had to put nails in the doors when I found them open. 30

Mr. Turner: I asked that the last part of the answer be stricken out.

The Court: Strike it out.

Q. Is there another door? A. There is the door that leads to the cellar on the end of that apartment.

Q. Do you recognize that photograph, Exhibit P-1? A. Yes.

Q. Where is that door? A. At the end of the 40

Thomas A. Garrigan, direct.

florist there. It leads to the basement of the apartment.

Q. When did you ever notice that doorway? A. I nearly fell down it—

10 Mr. Turner: I ask that that be stricken out.

The Court: Strike it out.

Q. When did you notice that doorway? A. By trying the door nights. It is my duty to try the store doors and if I find them open we send for the police department and have them nail them up and I had them nail that door once.

20 Mr. Turner: I ask that that be stricken out.

The Court: I will let it stand. He said he tried it and found it open.

Q. Did you ever open the door? A. Once.

Q. Did you see where that door led? A. To the cellar—it is a steep stairway to the cellar—

Objected to as a characterization.

30 Q. What kind of a stairway was it? A. It is a narrow stairs going to the cellar. I should judge the steps are about that wide (indicating) leading to the cellar.

By the Court:

Q. Tell us in inches. A. Not more than eight inches wide.

Q. Show us on this ruler. A. About that wide (indicating).

The Court: That is seven inches.

40 Mr. Weinberg: That is how deep the treads were, I suppose.

The Court: Yes.

Thomas A. Garrigan, direct.

Q. The treads were about seven inches? A. The step was about seven or eight inches wide.

Q. But in the direction from the heel to the toe is seven inches? A. Yes, sir.

By Mr. Weinberg:

10

Q. How wide would you say the stairs were? A. I should judge about ten inches apart.

By the Court:

Q. How far apart were the sides of the stairway? A. About that wide (indicating).

Q. A little over two and a half feet? A. Yes, sir.

Mr. Turner: We have the plans. They are about two and a half feet wide.

20

By Mr. Weinberg:

Q. What would you say as to their direction going down? A. They are very steep going down.

Q. Was or was there not any platform on that step as you go in the doorway on December 10th?

A. There was no platform. When you go into the door you step on the step.

Q. That is how far below the level of the sidewalk? A. Just as I told you, about that distance (indicating). The step is about eight inches down.

30

Q. And there is nothing there besides the first step? A. No, sir.

By the Court:

Q. In other words, you step down eight inches to the first step as you go in? A. Yes, your Honor.

By Mr. Weinberg:

Q. Do you recall December 10, 1926, when the

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Thomas A. Garrigan, direct.

plaintiff in this case was hurt? A. I happened to be walking down—

Q. Just answer the question yes or no. A. Yes, sir.

10 Q. Where were you at the time you first noticed Miss Adams? A. About thirty-five feet from that entrance.

Q. On what side of the street? A. The right-hand side going east on Main Street.

Q. Were you standing still or walking? A. Walking down toward South Walnut Street.

Q. Where was Miss Adams when you first saw her?

By the Court:

20 Q. Were you on the side of the street that this building was on? A. Yes, your Honor.

By Mr. Weinberg:

Q. Where was Miss Adams when you first saw her? A. She was just about to put her hand on the knob of the door.

Q. Did you see that? A. Yes.

30 Q. Then what happened? A. I didn't see her no more—the door went in. I saw a few boys that was on the corner waiting for a trolley car—the high school was out—and they ran to the entrance. I had been there for five years and I knew that probably she fell—

Mr. Turner: I ask that the last part be stricken out.

The Court: Strike it out.

Q. She had hold of the doorknob when you last saw her? A. Yes, sir.

40 Q. Then where did you go? A. I went to the cellar to pick her up with the other two men.

Thomas A. Garrigan, direct.

Q. Did you go to the cellar? A. The other men were there; I met them half way down.

Q. Where was she? A. They were picking her off the floor in the cellar and bringing her up to the street.

Q. Where did the stairway lead to? A. Leads 10
down to the cellar by a boiler room.

Q. Were you ever down there? A. No, sir.

Q. Could you see from the stairway? A. I know that the janitor brings out ashes and different things.

Q. Was this entrance light or dark? A. It was light.

Q. Inside the stairway, I mean. A. No, I think there is no light in the stairway. 20

Mr. Turner: I ask that that be stricken out.

The Court: Strike it out.

By the Court:

Q. The question is whether it was light or dark on the stairway when you were there. A. It was dark; there is no light in the stairway.

Q. You assisted the lady in getting out of there? A. Yes, sir. 30

Q. She was taken away in the ambulance? A. I called the police ambulance. I helped carry her in to the florist.

Q. The stairs are still there just as they were? A. The entrances are back from the sidewalk, I should judge about eight or ten feet.

Q. And the doorway you have referred to, I think you have said, is the one on the picture? A. Yes, sir.

Q. And that is the same florist that was there 40
and still is there? A. Yes, sir; it's another—a different name, though.

Thomas A. Garrigan, cross.

Cross examination by Mr. Turner:

10 Q. Did you make a report of this accident to your superiors? A. I called them up and told them and they sent two detectives of the reserves over, if I am not mistaken. They gave me assistance.

Q. Did you make a written report? A. We do now; I think it is a law now; I don't think it was in effect then. Now we have to make written reports of all accidents.

Q. There was no report on file, was there? A. I don't know. It was reported to my superior officer. They put it on the blotter and turned it in.

20 Q. When you came to the premises on the day of the accident what time of the day was it? A. About two-thirty.

Q. This cellar door we are talking about, when that was open that afternoon how far down could you see into that cellar? A. You could see all the way down.

Q. But how far into the cellar could you see? A. Just to the landing.

30 Q. To the bottom step? A. There is a light from the bottom step there. You can see back of the stairs.

Q. Could you see out into the cellar itself? A. When you opened the door?

Q. Yes. A. Just a little ways, about in the rear a quarter of the way.

Q. You mean a quarter way past the side of the cellar? A. A quarter way in.

Q. You could see the boxes standing on the cellar floor? A. No.

40 Q. What could you see on the cellar floor? A. I don't know.

Q. What did you see on the cellar floor that

Thomas A. Garrigan, cross.

day? A. I saw the man carrying her up as I went to the stairs; I was only down about four steps.

Q. You said you could see a quarter of the way across the cellar. A. No, a quarter of the way down; that's how far I went.

Q. This door was open then, wasn't it? A. No, the door closes. I had to open the door to go down. The men went down and I had to open it to go down to help her up. 10

Q. Didn't you have the door open that afternoon? A. The door closes with a spring.

Q. So you could see a quarter of the way down with the door closed? A. No, sir, I had the door open.

Q. But it closed? A. Yes.

Q. How far could you see with the door open? A. I don't know; it is dark. 20

Q. With daylight coming in you could see clear across the cellar. A. No, you could probably see about half way down with the door open, and if it is clear.

Q. How wide is the cellar? A. I don't know; I wasn't down there.

Q. You were down there and you could look across the cellar. A. I say I wasn't down there; I was only a few steps down and helped them carry her up. 30

Q. But when you were down there with the door closed you could see how far across the cellar? A. I don't know; I wasn't there. I don't know anything about it. If I was down there I could probably answer the question.

Q. Were you ever on this beat in daylight? A. No.

Q. Always after dark? A. Always after dark. 40

The Court: I understand that this happened in daylight.

Mr. Turner: Yes, sir.

Thomas A. Garrigan, cross.

Q. Were you on duty that afternoon? A. No, sir, I was out on police business collecting ads for the P. B. A.

Q. You are on your beat at night? A. Yes, sir.

10 Q. How many steps did you walk down after you shut the cellar door that afternoon? A. I should judge half a dozen—probably four or five.

Q. With the door shut after you had gone down where did the light come from so that you could see? A. The crowd opened the door; there was others there.

Q. When you had the door shut you were on the stairs with the door shut. How far could you see with the door shut? A. Not quite the distance from where I am away to you.

20

By the Court:

Q. About sixteen feet? A. About twelve, your Honor.

The Court: That distance is sixteen feet six inches.

Q. That is with the door shut? A. Yes, sir.

By Mr. Turner:

30 Q. When you were in that position with the door shut, how many steps were you down? A. From four to six—about four.

Q. This trolley car that Miss Adams got off from, does that trolley car run on Main Street? A. Yes.

Q. Did you see her get off the trolley car? A. No, I didn't; there was a crowd on the corner. You couldn't see anybody getting off; it was crowded with school children waiting for cars and buses.

40 Q. This door that leads to the apartment you have told us about, did you try that apartment house door, the one marked with an A on Exhibit

Thomas A. Garrigan, cross.

P-1? Did you try that every night? A. Every night I try the doors.

Q. About what hour? A. From ten-thirty to eleven-thirty; sometimes twelve-thirty to one-thirty. I don't try them the same time every night. We worked them different so nobody can tell what we are doing. One night I worked the lower end and one night the upper end first. I may start at Arlington Avenue one night and at Ashland Avenue a different night. That gives me different hours. 10

Q. Had you tried the doors after they were closed? A. Yes, sir.

Q. Where did you get the light? A. We carry a flashlight; we have to show it to our superior officer every night. 20

Q. How close to a light was the entrance to the apartment? A. There is a light in the hall.

Q. That light is kept on after these stairs are closed? A. After the stairs are closed.

Q. You never were up in the apartment hall itself? A. No, sir, I only try the doors, I don't go into the apartment. I know that the people live in there—Mr. Oswald—because there is two doors to the stores and this apartment is in the middle and that sets about ten feet back from the sidewalk. 30

Q. And the entrance to the apartment which is marked A, is that a glass front door? A. A fancy glass door.

Q. Is it plate glass? A. It is fancy glass; it isn't like an ordinary door.

By the Court:

Q. Can you see through it? A. No, sir.

By Mr. Turner: 40

Q. I am talking about the door to the apartment

Thomas A. Garrigan, redirect.

between the two stores. A. Yes, you can see through that glass.

Q. You can look through that and see the letter boxes and the hall and things like that? A. Yes.

10 Q. That is the one marked A on the photograph, Exhibit P-1? A. Yes, sir.

By the Court:

Q. As I understand it, you can't see through the other door to the cellar? A. No; there is three doors: an entrance to the beauty parlor, an entrance to the apartment and an entrance to the florist shop.

Redirect examination by Mr. Weinberg:

20 Q. Did you ever try the end door? A. I did.

Q. In the day time? A. Yes, sir.

Q. How did you find that?

Objected to on the ground that it doesn't make any difference whether he found it locked or unlocked at a different time.

Objection sustained.

30 Mr. Weinberg: At this time I announce that I believe that all the rest of my evidence is corroborative of this occurrence.

The Court: The other evidence will be cumulative and corroborative and will not enlarge the scope of the testimony.

Mr. Weinberg: Yes, sir.

The Court: Then you offer to prove by other witnesses that you will corroborate these two witnesses.

40 Mr. Weinberg: Yes, sir. There may be some new matter, of course there always is, but I am trying to see whether substantially

Motion for Nonsuit.

anything will be added to it, but I don't think there is.

The Court: And you also offer to prove the damage.

Mr. Weinberg: Yes.

The Court: Mr. Turner, is it satisfactory to you to allow Mr. Weinberg to rest with that understanding so that you may move for a nonsuit? 10

Mr. Turner: Yes, sir.

Mr. Weinberg: I also offer to prove that this plaintiff did not carry a key to the place. I ask your Honor that in the event that some point is made not connected with some point in the case that you will give me the opportunity to put that evidence in. 20

The Court: Yes.

Defendant's counsel moves that plaintiff be nonsuited on the following grounds:

1. That no negligence has been shown on the part of the defendant;
2. That the plaintiff was guilty of contributory negligence;
3. That there was no invitation either express or implied to the plaintiff to enter the door leading to the cellar; 30
4. That the defendant has not violated any duty that was owing to the plaintiff, if there was any duty owing to the plaintiff.

The Court (after argument): It seems to me that the question that disposes of this case is that of the extent of the invitation. There is an implied invitation. That implication is based upon the purpose for which 40

Decision.

10 it is extended. It is extended for the purpose of going to the Oswald apartment. The invitation cannot be any greater where it is implied than for the purpose for which it was made. Her purpose was to go to the Oswald apartment and this door was not there for that purpose. It seems to me that if she went in there and it was open she went in there as a trespasser or as a licensee, but no duty existed upon the defendant to guard this particular entranceway for her protection in going to the Oswald apartment, because there is no testimony that this doorway led to the Oswald apartment.

20 The cases which you have referred to where there is an open way I do not think would apply where there is a closed door. In other words, the closed door leads to the question of contributory negligence, and that is where persons open a door not knowing what is behind it, it seems to me that there is a duty on them to look where they are going, where they can see and if they can see. The evidence here is that they could see.

30 I say this without considering the other questions involved; whether a door can be on the street and is an invitation in itself to go in where it isn't a place where the public is invited; but on that ground I will grant the nonsuit; that is, the question that the invitation was not extended to this particular entranceway.

40 Plaintiff's counsel prays an exception to this ruling of the Court.

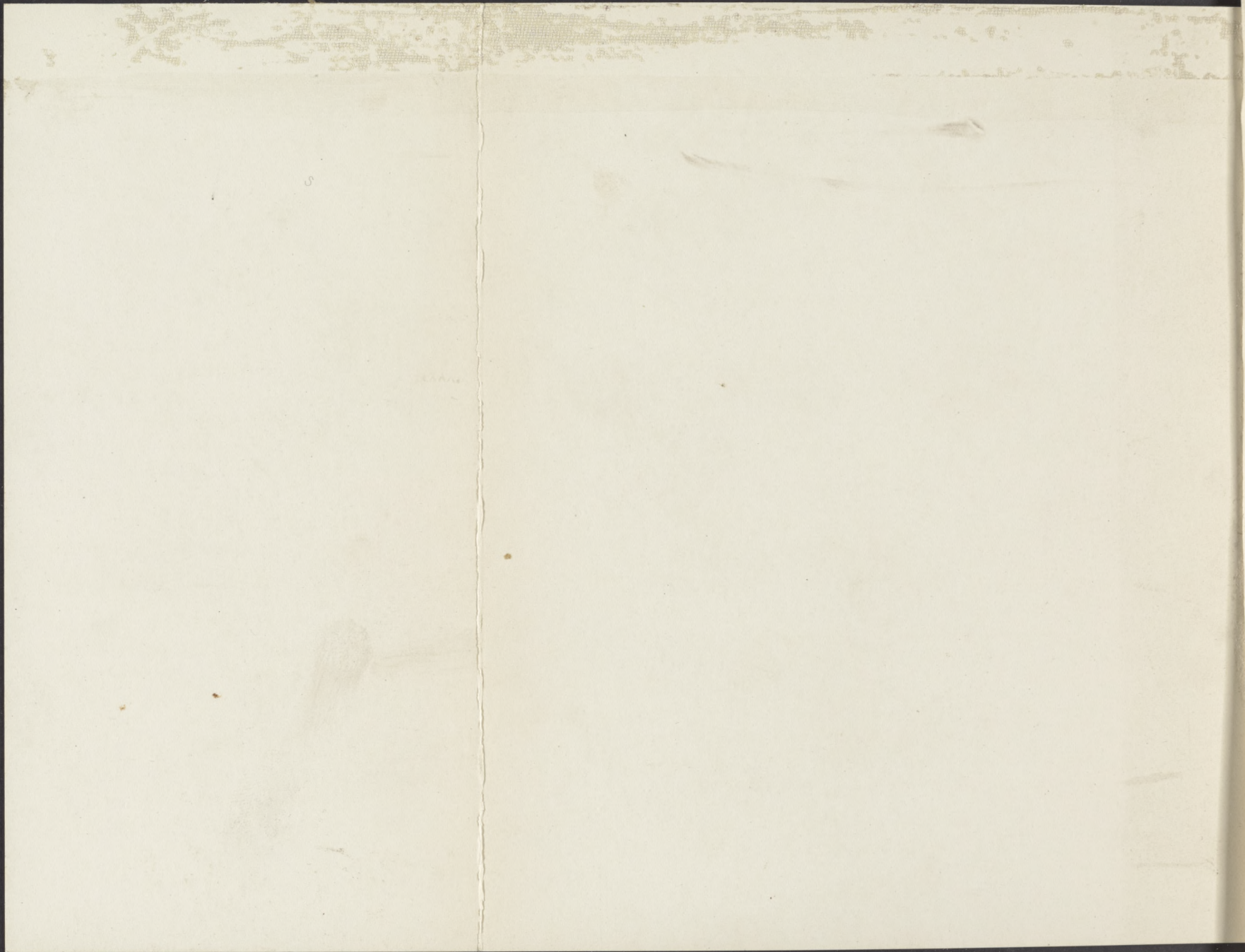
Exception noted as ground of appeal.



393 REICHEY & LAKE 393

SALON DE BEAUTE

1900 BEAUTY CULTURE 1900



Notice of Appeal and Grounds.

(Filed December 12, 1929.)

NEW JERSEY SUPREME COURT,

ESSEX COUNTY.

<p style="text-align: center;">ANNA ADAMS, <i>Plaintiff-Appellant,</i></p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">ELIZABETH OLSEN, <i>Defendant-Appellee.</i></p>	}	Action at Law.	10
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To

TURNER & STALTER, Esqs., Attorneys of Defendant-Appellee, or	20
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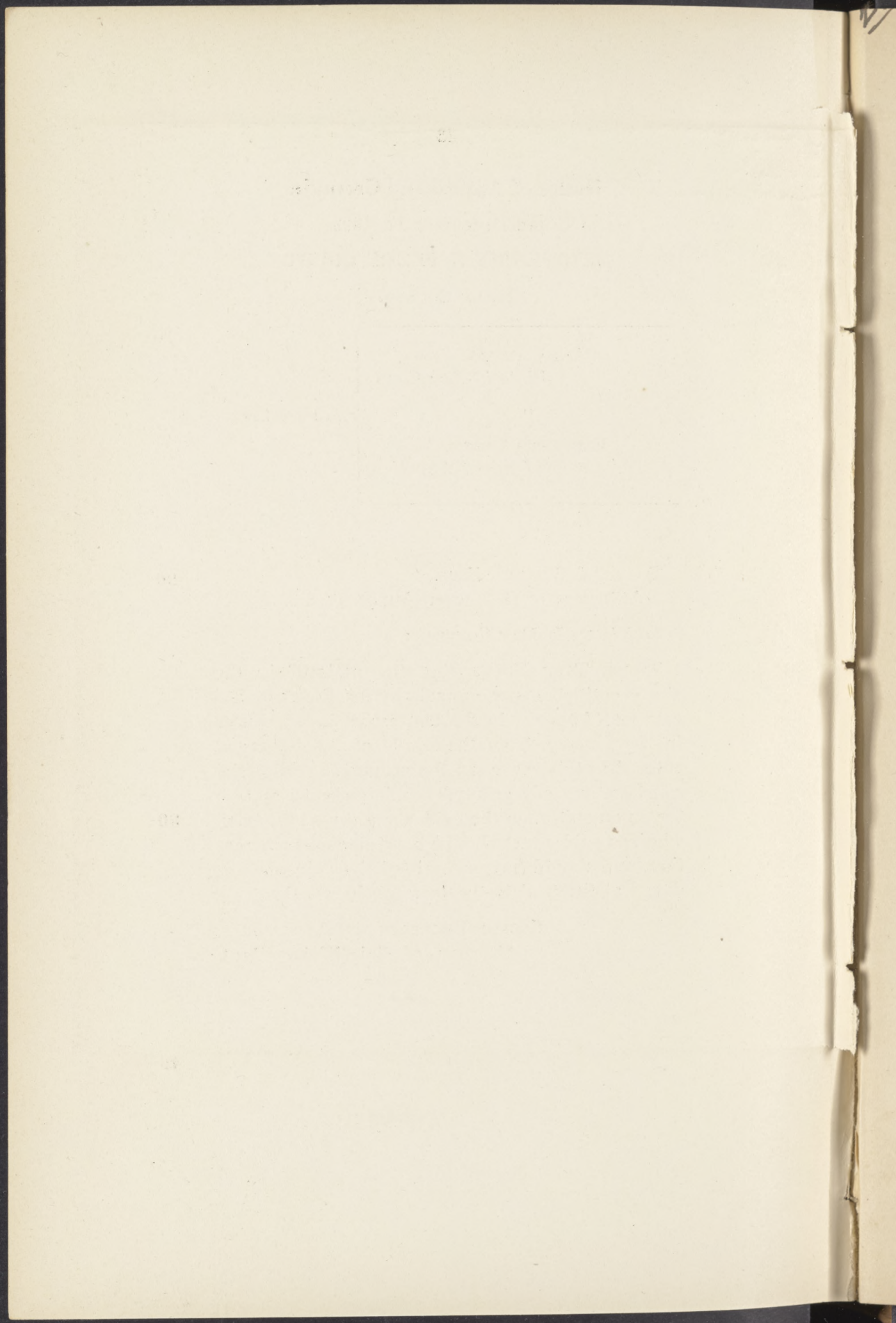
To WHOM IT MAY CONCERN:

PLEASE TAKE NOTICE that the plaintiff in the above entitled cause appeals to the Court of Errors and Appeals, in the last resort in all causes in New Jersey, from the whole of the judgment entered in this cause, on the ground that the trial court erroneously granted the defendant's motion for a non-suit upon the evidence given at the trial, whereas said court should have denied said motion, and should have submitted the evidence ad-

30

duced at the trial to the jury for its verdict.

GROSSO, BRUNDAGE AND ANDERSON,
Attorneys of Plaintiff-Appellant.



New Jersey Court of Errors and Appeals.

ANNA ADAMS,
Plaintiff,

vs.

ELIZABETH OLSEN,
Defendant.

BRIEF OF DEFENDANT-APPELLEE.

The Facts.

On December 10, 1926, the plaintiff, while walking along Main Street in the City of East Orange, when she reached Number 393 Main Street, which is an apartment house with stores on the first floor and an entrance to the apartment between the stores shown on Page 1, marked with the letter "A" in ink over the entrance. For some unknown reason the plaintiff, instead of entering the apartment through the entrance and hallway provided for that purpose, undertook to reach the apartment by what she says she thought was another route, through a door which did not in fact lead to the apartments at all but, on the contrary, to the cellar of the stores which were on the ground floor. The stairway leading to this cellar is about two and one-half feet wide (Page 323). The door leading to this stairway is the one shown on the extreme left of the photograph Exhibit, P.

1, opposite Page 33. Of course, this door to the stairway stands out quite prominently in the photograph because it is even with the face of the building. The entrance however, between the stores, which appears to be dark on the photograph, is actually light enough so that names may be read on the cards in the apartment house. And the plaintiff herself had read such names in that vestibule (Case, p. 19). This door leading to the cellar way was closed at the time of the happening of the accident and the last time that the plaintiff was seen, she had her hand on the door knob of this narrow door leading to the cellar (Case, p. 24). The door was then closed and apparently the plaintiff after she opened the door fell down the stairs. There is no particular reason for her having fallen down stairs and she cannot explain. The plaintiff does not recall anything that happened after she got off the trolley car—some distance from 393 Main Street. She does not know why or how she fell down stairs, nor, indeed, has she any recollection of having fallen down stairs at all. She does not remember going into the building at all, nor does she remember seeing any entrance in the building (Case, p. 16). The plaintiff had entered that part of the building over which the letter "A" is marked on the day after Thanksgiving and on December 3, 1926 (Case, p. 18). It will be observed that the entire building is marked as No. 393, and the number appears on the awning of Salon Debeaute, which is on one side of the entrance marked "A".

The plaintiff had never before entered the cellar way, nor used the narrow door leading to the cellar. She had no knowledge as to where the door led. There was no expressed or implied invitation to the plaintiff to enter this narrow, little door leading to the cellar stairs. No defect was

proven in the cellar stairs, even if the plaintiff had been invited to enter there, which she was not. The plaintiff claims that she had a right to believe that the door two and one-half feet wide was the entrance to a four-story apartment house in which numerous families were tenants. That one who was accustomed to going about in apartment houses had such a belief, is incredible. The plaintiff had a lapse of memory at the time she left the trolley car, or at least, she remembers nothing after that time, so there is no evidence before the Court that she mistook the door in question for the entrance to the apartment house. There is no proof of any mistake on her part. The proof merely is that she entered this door to the cellar way without any reason therefor. She recalled what she did on other days prior to the accident, and on those days she entered the apartment house through the regular entrance and went to the apartment where she intended to go. It is unfortunate that the photograph opposite Page 33 shows the entrance to the apartment in a shadow. This is probably due to the awnings that were in place at the time the photograph was taken, and these shut out the sun's rays so that the large entrance door, which is clearly visible to one on the sidewalk, does not actually show in the photograph. It clearly appears, however, from the plaintiff's own testimony, that it was very light at the entrance door of the apartment and in the vestibule, leading from the door to the hallway. There is no doubt but that the plaintiff was a trespasser when she opened the door leading to this cellar. Upon an examination of the photograph annexed to the State of the Case, it will be apparent that the little door through which the plaintiff walked after opening it, is not as wide as one of the windows in the building. The

very narrowness of the door shows that it is not such a door as is ordinarily the entrance to an apartment house. The plaintiff, however, had been through the entrance to the apartment house on previous occasions and was familiar with the entrance, and knew or should have known that this little door was not the entrance.

The Law.

In *Guse v. Martin*, 96 N. J. L., 262, at page 266, this Court says:

“The leaving of the elevator door part way open was not a failure to provide for plaintiff’s safety, for the defendant had no reason to expect the course of conduct testified to by the plaintiff. The latter had no business to go to the elevator, much less to attempt to go into the entrance. His invitation was, if invitation there existed, to use the room as a passageway to the stairs. He had never been invited, expressly or impliedly, to enter the elevator enclosure or use the elevator, and when he entered the doorway of the elevator shaft, he had departed from the place to which he had been invited, and entered a place which he had not been invited to use.

In *Bonfield v. Blackmore*, 90 N. J. L. 252, it is held that it is well settled that the liability of an inviter is circumscribed by the invitation, and does not extend to persons invited whose injuries are received while using the premises not within the limits of the invitation. See also *Ryerson v. Bathgate*, 67 Id. 337.

But if we had found that there was a duty on the part of the defendant, and that duty had not properly been performed, the judgment should still be affirmed, for according to plaintiff’s own story, which is the only evidence we have before us, it was gross negligence on his part to undertake to go through

a partly open door beyond which he could not see at all and which was an entrance to he knew not what. If he had supposed that the door led to the stairway, common prudence required that he should be certain about that before undertaking to step inside the door.”

In the case of *Bonfield v. Blackmore*, 90 N. J. L. 254, this Court says:

“It is well settled that the liability of an inviter is circumscribed by the invitation and does not extend to persons invited whose injuries are received while using the premises not within the limits of the invitation. *Ryerson v. Bathgate*, 67 N. J. L. 337. Evidently, to meet this legal situation, it is further urged by counsel for respondent that since there was proof that the appellant had knowledge that the elevator was being used by the tenant Bergman in carrying visitors and customers to the studio and made no objection, that that was tantamount to an acquiescence by the respondent in the use of the elevator by the tenant for that purpose, and hence, persons who came through the appellant’s store to take the elevator to go to Bergman’s studio were impliedly invited to do so by the appellant.

But this court, in *Saunders v. Smith Realty Co.*, 84 N. J. L. 276, held that a mere passive acquiescence by the owner of a building, or his representative in a certain use of his property, imposes no obligation upon him to keep it in a safe condition for the benefit of the user.”

In the case before the Court, the plaintiff bases her claim, apparently, upon her state of mind. If she had expected to open a cellar door, then she would not have fallen. But because she expected to open a door leading somewhere else, therefore, because she fell down stairs, she claims that the owner of the property is negligent.

The law does not permit the state of mind of a plaintiff to determine the serious question as to whether the defendant owes a duty to a plaintiff, and also as to whether the defendant has violated such a duty. In this case there was a perfectly proper cellar door that was closed, entering upon a stairway leading to a cellar. The plaintiff was not invited to enter the cellar, and she had no business there. The theory of the plaintiff is that if she had known she was entering a cellar, first of all, she would not have entered there, but secondly, if she had known she was there entering, she would not have fallen because she would have been prepared for the stairs that led to the cellar.

In *Gillespie v. J. W. Ferguson Co.*, 78 N. J. L. at 472, this Court recites the facts of the accident where the plaintiff fell into a pit in the darkness, and says:

“Instead of returning from the office, where he had been to see the foreman, by the safe and well-lighted way through the machine shop which he had taken to reach the office, he opened and went out a door which, to his knowledge, led into a part of the open space that was totally unlighted and in which the building operations were being carried on in the daytime. According to his own testimony it was so dark there that he could see absolutely nothing of where he was going. It was neither necessary nor reasonable in returning to his furnace or in leaving the works for him to go out the door which he did or to go anywhere near where the building operations were being conducted. Certainly, under these circumstances, in going into this strange place in the dark without using ordinary care to discover danger the plaintiff was guilty of contributory negligence. 29 Cyc. 514, and cases there cited. The fact that the non-suit was directed upon the ground that the evidence disclosed no failure upon the part of

the defendants in the performance of any duty owing to the plaintiff, instead of upon the ground of the plaintiff's negligence is, of course, immaterial. A judgment entered upon a nonsuit directed by the trial judge and brought up for review will be affirmed if correct on any legal ground, although the reason advanced by the court below is erroneous. 2 Encycl. Pl. & Pr. 372; 3 Cyc. 221."

In the present case it should be borne in mind that the plaintiff intended to visit one of the tenants, and that this tenant did not live in the part of the building connected with the store to the cellar. The tenant had nothing to do with the cellar. The entrance to the tenant's apartment was through a door in the center of the building between the two stores, through which there was a wide entrance door such as is usually at the entrance to apartment houses.

In *Saunders v. Smith Realty Co.*, 84 N. J. L. 276, this Court says:

"The fact that the janitor of the building took the plaintiff into the back cellar and showed him where to put the rubbish will not support the inference that either he or his employer was invited to use the cellar for that purpose; for the case discloses no authority conferred upon the janitor by the defendant company to act as its representative in that regard, and the nature of his employment was not shown to be of such a character as to make him, by reason thereof, the representative of the defendant for that purpose.

It further appeared in the case that one Smith, who was the manager of the defendant in charge of the building, knew of the fact that the textile institute was using the back cellar for the disposing of its rubbish, but there is no suggestion that this was done by his authority or with his consent except that he made no objection to such use, and so may

be said to have acquiesced in it. But a mere passive acquiescence by an owner, or his representative, in a certain use of his property by others involves no liability. *Devoe v. N. Y., O. & W. Railway Co.*, 34 Vroom 276; *Dieckman, Administratrix v. Delaware, Lackawanna and Western Railroad Co.*, 52 Id. 463. It may relieve such users from liability as trespassers, but the most that can be said in their favor is that their use is permissive; and when that is the case the owner is under no obligation to them except to abstain from acts which are willfully injurious."

In the case of *Ryerson v. Bathgate*, 67 N. J. L. 338, before this Court, the facts were much stronger in favor of the plaintiff because there the manager of the defendant partially opened the door so that the plaintiff could put her cat in what was supposed to be a closet. The plaintiff says that she did not look in, but took it for granted that the opening led to a closet, when in fact, the door opened upon a flight of stairs leading down to the cellar and she stepped inside without looking, fell downstairs and sustained injuries. The Court says, at Page 340:

"The case shows that Silvernail formed a correct judgment of the exigencies of the problem, and that the plaintiff did not. He opened the cellar door barely wide enough to enable her to inject the cat according to the approved method, at the same time saying, 'Put her in here.' That was the extent of the invitation. The plaintiff exceeded the bounds of the invitation, and in doing so became a mere licensee. She was injured because she inferred, without warrant, that she might safely enter through the door, and because she thereupon did enter without taking observations herself or making further inquiries of Silvernail."

In the case before the Court, the plaintiff herself opened the door without anyone inviting her to enter, or inviting her to use the door in any way whatsoever. In the case of *Ryerson v. Bathgate*, there was a limited invitation. In the case before the Court there was no invitation at all.

In addition to the foregoing grounds, there was clearly no evidence of negligence on the part of the defendant.

The evidence shows that the plaintiff, herself, was guilty of contributory negligence.

It is respectfully submitted that the judgment of nonsuit herein should be affirmed.

Turner and Stalter
TURNER AND STALTER,

Attorneys and of Counsel with Defendant.

v4.

24

New Jersey Court of Errors and Appeals

ANNA ADAMS,

Plaintiff-Appellant,

vs.

ELIZABETH OLSEN,

Defendant-Respondent.

Action at Law

On Appeal
from Supreme
Court, Essex
County.

BRIEF ON BEHALF OF PLAINTIFF- APPELLANT.

PRELIMINARY STATEMENT.

Plaintiff brought her action in the Supreme Court (Essex Circuit) against the defendant, for the purpose of recovering damages which she suffered as a result of falling down a stairway in the apartment house owned by the defendant, and located upon premises known and designated as No. 393 Main Street, in the City of East Orange, New Jersey (see photograph, S. C. p. 32).

The particular claim made by the plaintiff is, that she was invited to enter said premises mentioned, at the time she met with her injury, and that the defendant was guilty of negligence in maintaining the entrance to said stairway, and, as otherwise charged in her complaint.

Defendant denied this, and contended that defendant was a mere trespasser upon said premises, etc.

The learned Court, at the outset of the trial, suggested that plaintiff put in her evidence as to the liability of the defendant, after which he would entertain a motion for a non-suit, reserving to the plaintiff the right to put in her proofs as to her injuries, should the motion to non-suit be denied. The motion, however, was granted, and it is from the judgment of non-suit entered in this cause, that this appeal is taken.

STATEMENT OF FACTS.

The plaintiff, a trained nurse who was in the employ of the Visiting Nurses Association of the Oranges, was assigned to visit a patient, who lived on the first floor of the premises herein mentioned, in the rear of the stores in said building. The first time the plaintiff called upon this patient was the day after Thanksgiving, 1926. The next time plaintiff visited her was on December 3, 1926. On December 10th, 1926, following instructions from her supervisor, she started out to again see her patient, at the address mentioned.

Plaintiff took a trolley car at the corner of Main and Harrison Streets in Orange, and got off the same at the corner of Main and So. Walnut Streets, which was near to the building in question.

From the time she got off the trolley car at the corner of the streets mentioned, plaintiff re-

membered nothing until two days later when she awoke in the hospital (p. 16). Plaintiff described the building in question, which description (found on p. 17) identifies, with accuracy, the building shown on the photograph mentioned. She particularly describes a stained glass door on the front of the building which is seen appearing immediately under the number "393" on the photograph. She testified that on her previous visits to the building in question, she entered by a central entrance (p. 17).

THOMAS A. GARRIGAN, a member of the police department of the City of East Orange, testified that he was familiar with the premises in question. He also described and referred to the glass door which is shown on the photograph mentioned. He noticed that door on his rounds at night, when he would try all of the doors in the building. He testified that the door led to a stairway, the steps of which were seven or eight inches deep and about two and one-half feet wide; that they went down very steep; that there was no platform at the head of the stairs, and that "when you go into the door you step on the step" which is "about eight inches down" (pp. 22-23).

The officer further testified that he recalled December 10th, 1926, which was the day the plaintiff was hurt; that he was about 35 feet from the entrance in question on the same side of the street where the building is located, when he saw the plaintiff just as "she was about to put her hand on the knob of the door." He then says that he did not see her any more as "the door went in." After that he went to the cellar.

When he got there, two men were picking her off the floor and bringing her up to the street. This stairway led to the cellar and was dark. He called a police ambulance and helped to have her taken away (pp. 25-26).

At the conclusion of this testimony, upon announcement of plaintiff's attorney that the balance of plaintiff's proofs would be cumulative, the original suggestion made by the Court to have the plaintiff rest her case, was adopted. Defendant's attorney then moved that plaintiff be non-suited on the grounds set forth on page 31, S. C.

The Court, after hearing argument, rendered his decision granting the non-suit (see Opinion, S. C., pp. 31, top 32).

The basis for the Court's ruling, as appears in his opinion, is firstly: that there was no proof that the doorway in question led to the Oswald apartment, and that therefore, plaintiff was a trespasser in opening it, and also, that plaintiff was guilty of contributory negligence.

It will be argued in this brief, that it was for the jury to decide as to whether the ornamental stained glass door which is shown to be on the east side of the building, maintained as it was—unlocked—with a door knob thereon, was an implied invitation to persons having a right to enter said building; and also, that the question of plaintiff's contributory negligence was, necessarily, one for the jury to determine.

ARGUMENT OF THE LAW.

Before discussing the law, let us examine the photograph which supplies practically all of the evidence required to bring this matter before this Court.

We find a good-looking brick building with stores on the ground floor and, apparently, apartments above. Between the two stores there is a dark space, which has been described as being the entrance to the main hall in the building. On the left, or easterly side of the building on the ground floor, we find, directly under the only number affixed to the front of the building, a rather attractive door with knobs thereon. To a person who might be coming from the east as the plaintiff was, and who would reach the stained glass door before reaching the central entrance to the building, that stained glass door would undoubtedly attract such a one as being the entrance to the building and he or she might go no farther. The plaintiff must be considered as being such a person, for it is immaterial to this inquiry as to whether she came from one direction or another, except as the question of contributory negligence is concerned. If that door was not intended as an entrance to the building, it should either have borne a sign indicating that fact, *or else it should have been kept locked*, for it led to a steep, dangerous stairway which had no platform at its top.

The learned Court seems to have felt that even though the door was an invitation to enter the building, plaintiff had no right to use it *because it did not lead directly to the apartment occupied*

by the sick woman. At this point, we most respectfully suggest and with due deference to the learned Trial Court's ruling, that the entrance to no apartment house leads directly to any of the apartments therein, and if it be true that the entrance to a building does not invite one to enter the premises of a tenant to whose apartment the main entrance does not lead, then, everyone desiring to call upon tenants on any floor above the ground floor, or even on the ground floor, will be trespassers. We think, however, the learned Court merely intended to decide that the stained glass door was not an invitation to the interior of the building, and we therefore, direct our argument herein to showing that this question of invitation, even though it be from appearance only, was not one of law under the circumstances, but was one of fact for the jury to decide.

In citing from the decisions of the Court, it is to be understood, unless otherwise stated, that *all italics are ours.*

POINT 1.

PLAINTIFF WAS NOT A TRESPASSER.

The much-canvassed case of *Phillips v. Library Assn.*, 55 N. J. L. 307, furnishes the legal rule to be applied to the facts in the instant case. Justice Depue, who wrote the opinion for this Court, cited with approval a number of authorities, from which we cull the following:

Corby v. Hill, 4 C. B., N. S., 556, where Cockburn, C. J., said:

“The proprietors of the soil held out an allurement whereby the plaintiff was induced to come upon the place in question,” etc., (cited on p. 312;)

1 *Thomp. Neg.*, 307-317, showing that in a number of cases

“* * * the words ‘invite,’ ‘allure,’ ‘induce,’ ‘leads,’ and words of like import, are used to characterize the conduct of the owner or occupier of lands, * * *,” (cited on p. 312.)

Bonnett v. Railroad Co., 102 U. S. 577, where the Court held that the owner of land who induces or leads others to come upon it for a lawful purpose, is liable in damages to them, they using due care, for injuries occasioned by the unsafe condition of the land or its approaches, if such condition was known to him and not to them, and he negligently suffered it to exist without giving timely notice thereof to them or to the public. (cited on p. 313);

Heaven v. Pender, 11 Q. B. Div. 503, 508, 512, where Brett, M. R., commenting upon the inaccuracy of the word “invitation” in the ordinary sense, when used to express the circumstances under which the owner of land incurs a duty in favor of persons coming upon it, said that

“*whenever one person is by circumstances placed in such a position with regard to another that every one of ordinary sense, who did think, would at once recognize that if he did not use ordinary care and skill in his own conduct with regard to those circumstances, he would*

cause danger of injury to the person or property of another, a duty arises to use ordinary care and skill to avoid such danger."

and further, that

"the real value of the phrase may be said to be that invitation imports knowledge by the defendant of the probable use by the plaintiff of the article supplied, and therefore carries with it the relation between the parties which establishes the duty." (cited on p. 313.)

And on page 314, etc., Justice Depue said:

"The utmost that can be done is to state in general terms the controlling principle that the liability of an owner or occupier for the condition of his premises arises where the plaintiff was induced to make the use of the premises, in the course of which he sustained the injury sued for, by express invitation or by invitation to be implied by acts and conduct of the defendants. The gist of the liability consists in the fact that the person injured, did not act merely on motives of his own, to which no act or sign of the owner or occupier contributed, but that he entered the premises because he was led by the acts or conduct of the owner or occupier to believe that the premises were intended to be used in the manner in which he used them, and that such use was not only acquiesced in, but was in accordance with the intention or design for which the way or place was adapted and prepared or allowed to be used. Sweeney v. Old Colony R. R. Co., 10 Allen 368, 374. The proof necessary to sustain an action of this aspect must be found in the circumstances of the particular case. In such cases, if

there be evidence tending to show inducement or invitation, it becomes a question of fact for the jury whether the conditions exist under which a legal duty is imposed upon the owner of the premises to exercise care for the plaintiff's safety."

Other statements of like import are found in the opinion in the Phillips case, *supra*.

In *Turess v. N. Y. S. & W. R. R. Co.*, 61 N. J. L., 314, the rule laid down by Chief Justice Magie, was as follows:

"It will be observed that in the case of an implied invitation, the relation is imposed upon the owner or occupier of land only when he has done something which justified one who has entered upon land and makes use of it or something upon it in *believing that he intended such use to be made*, and he who makes such use can claim the relation only when he is justified by the acts or conduct of the owner or occupier in believing that such use was intended, and entry and use by such invitation, are thus distinguished from entry and use by mere permission."

In *McCormick v. Anistaki*, 66 N. J. L. 211, Justice Depue, who wrote the opinion for this Court, said, at page 217:

"It is sometimes difficult to determine whether the circumstances make a case of invitation or of license only. *The proof necessary to sustain the action must be found in the circumstances of the particular case. In such cases, if there be evidence tending to show inducement or invitation, it becomes a question of fact for the jury whether the conditions exist under which a legal duty is imposed upon the owner of the premises to exercise care for the plaintiff's safety."*

In *MacDonough v. Woolworth Co.*, 91 N. J. L. 667: Plaintiff entered defendant's store with a *vague purpose* of buying something if she saw anything to which she took a fancy. She saw counters with merchandise displayed upon them. One extended down the middle of the store and one down each side, the latter in front of wall-shelves of merchandise with a space for the saleswomen to work between the wall-shelves and the counters. About one-half way down the store, the counter on one side had an opening or passageway through it. Immediately in front of, or against the end of the passageway and against the wall, was a book rack consisting of five shelves, one above the other and about four feet long. These shelves were filled with miscellaneous books with the titles displayed for selection, and, with a sign above the rack stating that any book in the rack could be bought for ten cents. There was a dim electric light about six inches above the book rack, and, in order to read the titles of the books in the rack, it was necessary to enter the passageway. Plaintiff saw the books and decided to buy a book. There was no saleswoman near the rack, and plaintiff THINKING that the passageway was for that purpose, went into it to get where, by reading the titles to the books, she could select such as struck her fancy. In doing this, she stepped a little to one side and fell down a stairway which she did not, and in the dim light was not likely to see, and which was located back of the counter and immediately adjoining the passageway. The gate to the stairway was tied open at the time with a string.

Judge White, in writing the opinion for this Court, stated that

“The fact that books were displayed for selection by their titles in front of an open passageway, which had to be entered in order to read the titles and make the selection, was some evidence of invitation. It was, therefore, for the jury to visualize the situation from the evidence and decide whether the plaintiff had reasonable ground from what she saw, for believing that she was invited or expected to go where she did go, for the purpose she had in mind.”

In *Gibeson v. Skidmore*, 99 N. J. L. 131, the facts were that the plaintiff was an employee of the tenant of certain premises. When injured, she was using part of the back room which, under the lease, the tenants had a right to use in common with the owner, for access to the rear entrance and sink in that room; that as she was in the act of taking her coat and hat from a hook in the wall, she fell through an opening in the floor, of which she had no knowledge, the trap door of which had been raised by the defendant, after she had placed her hat and coat there.

It further appeared that, at the request of the librarian (for whom the plaintiff worked) defendant at first put three nails in the wall of the back room “for the ladies of the library to hang their hats and coats on” and gave then permission to do that. About a week later, thinking that these nails looked cheap, defendant procured some clothes hooks and substituted them for the nails.

Justice Trenchard, speaking for this Court, said (at page 134):

“Now, considering the fact that the librarian and her assistants had a right to

use the back room for the purposes mentioned in the lease, we think that the evidence that the defendant voluntarily placed the hooks there in the wall for the purpose of having the helpers at the library hang their hats and coats thereon, *tended to show acts and conduct from which an invitation might be implied. It tended to show that thereby the defendant led the plaintiff to believe that the hooks were intended to be used in the manner in which she used them and that such use was not only acquiesced in, but was in accordance with the intention or design for which the place was adapted and prepared and allowed to be used.* * * * Liability turns rather upon the question whether the defendant knew or ought to have known that *what he did and permitted to be done might give rise in an ordinarily discerning mind to a natural belief that he intended that to be done which his conduct had led plaintiff to believe that he intended.*"

In the case of *D. L. & W. v. Trautwein*, 52 N. J. L. 169, the facts were that the plaintiff, who was a passenger on a train of the defendant, alighted at the station of the company. The night was dark and stormy, and there was no light in or about the depot building and no person there to direct passengers as to the way to leave the depot grounds. The plaintiff, in crossing the tracks *on her way to a stairway which was not the regular one used by passengers*, but which was built by private persons residing in the neighborhood for their own convenience, and used by passengers by means of access to and from the station, fell over some timber and received the injury for which she sued.

The language of the Trial Judge in his charge to the jury was approved by this Court. He said:

“Did the plaintiff do right in taking this way out? That depends upon the question: Whether this way of passage was there by the recognition, procurement or assent of the company as a means for the entrance and exit of passengers. Proof of such approval by the company or of its recognition, need not be made by any resolution or declaration of the company, or of its agents. *If, to persons of ordinary understanding and discernment, it appeared to be such a way, and by the company it was allowed to remain and be in use by passengers going to or from trains, any one going to and from a train as a passenger was authorized to make use of it.*”

That location and appearance is considered an inducement, is indicated by the language of Justice Depue in that case, as follows:

“The passageway taken by the plaintiff led to the public street, *and had every indication of having been provided for use by the public, as a way to and from the station.*” (bot. p. 175.)

The Court cited with approval the case of *Beard v. Connecticut and Pass. Rivers R. R. Co.*, 48 Vt. 101, S. C., Am. Ry. Rep. 375, which seems to be very much in point. There was a stairway through the company's depot building and a stairway at each end of the passenger platform. The stairway at the north end was opened at the top, *and there was nothing to indicate that it was not for the use of passengers.* In fact, that stairway was built by an express company and

was used exclusively by the express company for removing express freight, and opened into the street, over a platform for loading and unloading express wagons. The plaintiff, a passenger, in attempting to pass down the stairway in the dark, fell and was injured.

The Court, in that case, in sustaining the instructions of the Trial Judge, speaking of the likelihood of a stranger to regard that stairway as designed to furnish a safe way of getting to the street, said:

“If not so designed, and it was unsafe to a stranger for such a purpose in the darkness, *it was the duty of the defendant to forefend against injury by closing up the head of the stairs, or by notifying in some effectual way against using those stairs for getting to the street.* * * * *The open stairs on the margin of the platform led the plaintiff, without fault on her part, to the point of harm.*”

The facts in the Beard case, *supra*, are weaker than those in the instant case for the reason that the stairway from which the plaintiff fell, was built by an express company for its exclusive use, and opened into the street over a platform for loading and unloading its own express wagons, with which the defendant had nothing to do.

In our case, the entrance was in the front of the building belonging to the defendant, who invited persons having business therein to enter said building, and who took no steps to “forefend against injury by closing up” the door or locking it, or doing something else to prevent injury to a person who had every reason to believe that it was a place of entrance.

The following two cases were mentioned by defendant's attorney on his motion for a non-suit:

Bonfield v. Blackmore, 90 N. J. L. 252,
and
Guse v. Martin, 96 N. J. L. 262.

The facts in the *Bonfield* case, *supra*, bear no resemblance whatsoever to the case under discussion, nor is the same legal principle therein involved. The plaintiff was invited by a young employee (not of the defendant, but of a tenant in defendant's building) to use an elevator which was in defendant's store, in order to more easily reach the tenant's place of business on the fifth floor. The case turned entirely upon the act of the tenant's servant in inviting plaintiff upon defendant's premises to use the elevator and it was the act of the tenant's servant in creating the danger by opening the elevator door and inviting the plaintiff to step therein, that brought about plaintiff's injuries.

There was no contention in that case that *defendant* expressly or by implication, invited the plaintiff to use the elevator. The case that was presented was rather that of a tenant, who was a mere licensee in defendant's store, inviting one of his own customers to use defendant's elevator. Clearly, a licensee can not grant to another, a greater privilege than that to which he is entitled.

In our case, however, the plaintiff was about to visit, not a licensee of defendant's, but one of his invitees—a tenant—and the invitation, as we insist it was, came by implication, of course, from the defendant to the plaintiff.

Nor is the case of Guse, *supra*, opposed on principle, to the contention herein made. In that case, a former employee of a tenant in defendant's building, in attempting to reach the tenant's premises, took a way in the darkness different from the one he used on a former occasion, and thereby reached a darkened elevator entrance situated upon a portion of the premises not in line with the stairway leading to the tenant's quarters. Without using any care for his own safety he entered this darkened elevator entrance and was hurt.

In affirming the judgment of non-suit which was entered in the lower Court, Judge Williams, speaking for this Court, said:

“The leaving of the elevator door part way open was not a failure to provide for plaintiff's safety, for the defendant had no reason to expect the course of conduct testified to by plaintiff. The latter had no business to attempt to go into the entrance. His invitation was, if invitation there existed, to use the room as a passageway to the stairs. He had never been invited expressly or impliedly to enter the elevator enclosure or use the elevator and when he entered the doorway of the elevator, shaft, he had departed from the place which he had not been invited to use.”

There seems to be all the difference in the law of invitation between the Bonfield and Guse cases, *supra*, and the case *sub judice*.

In both the cases mentioned, the plaintiffs clearly exceeded the scope of their respective invitations. Plaintiffs were invited to visit the respective buildings in but one manner, while here,

the situation is that, the plaintiff did not know but what the way she attempted to use, was the only way which the public was invited by the defendant to use.

How was the plaintiff to know that *she was not invited to enter by the door through which she attempted to pass?*

Do not the circumstances of the presence, position and general appearance of the said door, in themselves, make out a case of implied invitation to the plaintiff to make such use of the door as she attempted to make?

The question, whether the plaintiff at the time of the accident was an invitee or not, was a factual one for the decision of the jury.

Doryk v. Perth Amboy Bottling Co.,
104 N. J. L. 87.

(See next page)

POINT 2.

PLAINTIFF WAS NOT GUILTY OF CONTRIBUTORY NEGLIGENCE IN LAW IN ATTEMPTING TO MAKE USE OF THE DOOR IN QUESTION.

If it be established that a jury question arose in this case, as to whether plaintiff was an invitee, then obviously, as to whether or not she attempted to enter in a reasonable manner, was for the jury to decide.

“Where the facts and circumstances are of such a character that reasonable minds may reasonably differ as to the fair inferences or conclusions to be drawn from such set of proven facts or circumstances, as to whether or not the plaintiff exercised reasonable care for his or her own safety, a question is invariably presented for decision by a jury.” (*Cady v. Trenton and Mercer County Traction Corp.*, 104 N. J. L. 572.)

IT IS, THEREFORE, RESPECTFULLY SUBMITTED THAT THE JUDGMENT OF NON-SUIT BE SET ASIDE AND A NEW TRIAL ORDERED.

Respectfully submitted,

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