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Notice of Appeal.

(Filed March 13, 1923.)

Hudson County Circuit Court.

10

HELEN OPRESKA and FRANK OP-
RESKA,

Plaintiffs,

v.

ISRAEL SHAPIRO,

Defendant.

Action at Law.

20

To

Lazarus & Brenner,

Attorneys for Plaintiffs,

Times Building, Bayonne, N. J.

Sirs:

TAKE NOTICE that the defendant herein ap-
peals from the judgment and every part thereof
rendered in the Hudson County Circuit Court, to
the Court of Errors and Appeals of the State of
New Jersey, and that he will within the time re-
quired by law file and serve upon you his grounds
of appeal in said case as provided by the rules
and statute in such case made and provided.

30

POMEREHNE & LAIBLE,
Attorneys for Defendant.

40

Grounds of Appeal.

(Filed April 4, 1923.)

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

10

HELEN OPRESKA and FRANK OP-
RESKA,
Plaintiffs-Respondents,

v.

ISRAEL SHAPIRO,
Defendant-Appellant.

Action at Law.

20

The above appellant, Israel Shapiro, herewith
sets down his ground of appeal in the above en-
titled cause:

30

1. That the Trial Court refused to grant a non-
suit in favor of the defendant and against the
plaintiffs for the reason stated to the Trial Court
and which more fully appear in the record of
said cause.

2. That the Trial Court refused to direct a ver-
dict in favor of the defendant, and against the
plaintiffs for the reasons stated to the Trial Court,
and which more fully appear in the record of said
cause.

3. That there was no evidence in the case to
support the charge under plaintiff's complaint and
sufficient to call the defendant to make his de-
fense and the motion for non-suit should have
prevailed.

40

4. That there was no evidence in the case which

Grounds of Appeal.

warranted the case going to the jury and the Trial Court should have directed a verdict in favor of the defendant.

5. That the evidence failed to show any liability on the part of the defendant.

6. Because there was no evidence in the entire case, that the proximate cause of the injury of the plaintiff was due to the fact that the fire escapes were connected with the window of the bathroom or any other violation of the statutes of this State, and did not prove any negligence on the part of the defendant. 10

7. That the evidence conclusively showed that the plaintiff Helen Opreska sustained her injuries when she put "her right foot on the window sill, and as she did a piece of the window sill tore off," and upon this evidence the Court should have directed a verdict for the defendant. 20

8. That the question of proximate cause of the injury was for the Court to decide and not for the jury, since there was no dispute as to the cause of the injury, and as no other evidence except the plaintiff's was introduced as to the cause of the accident, the Court should have directed a verdict for the defendant. 30

9. Because there was no evidence to warrant the verdict of the jury.

10. Because the verdict of the jury was contrary to law and the evidence of the case.

11. Because the verdict of the jury was erroneous in divers other respects.

POMEREHNE & LAIBLE, 40
Attorneys of Defendant-Appellant.

Judgment Record.

(Filed August 16, 1922.)

The State of New Jersey to Israel Shapiro:

10 YOU ARE SUMMONED to answer
 the annexed complaint of Helen
 (L.S.) Opreska and Frank Opreska, in an
 action at law in the Hudson Coun-
 ty Circuit Court. And take notice,
that unless you file your answer to said complaint
with the Clerk of the said Hudson County Circuit
Court at Jersey City within twenty days after ser-
vice upon you of this writ and the annexed com-
plaint, the plaintiffs may proceed in the suit of
judgment against you.

20 WITNESS, Luther A. Campbell, Judge of the
 said Hudson County Circuit Court at Jersey City,
 this 11th day of August, 1922.

 JOHN J. McGOVERN,
 Clerk.

 LAZARUS & BRENNER,
 Attorneys.

30

40

Complaint.

(Filed August 16, 1922.)

HUDSON COUNTY CIRCUIT COURT.

HELEN OPRESKA and FRANK OP-
RESKA,

Plaintiffs,

v.

ISRAEL SHAPIRO,

Defendant.

Action at Law.

10

Plaintiffs residing in the City of Bayonne, County of Hudson and State of New Jersey, say that:

FIRST COUNT.

1. On the 30th day of March, 1921, prior and subsequent thereto, defendant was the owner in fee of land and premises situate, lying, and being in the City of Bayonne, County of Hudson and State of New Jersey, known as #1048 Broadway.

20

2. That at the time defendant became such owner, as aforesaid, there was erected upon said lands, a three-story, non-fireproof tenement house, the walls of which adjoined the street and building line.

30

3. That said tenement house at all of said times was a three-story building and occupied as the home or residence of three or more families, living independently of each other and doing their cooking upon the premises.

4. That it became and was the duty of said de-

40

Complaint.

10 fendant to have fire escapes erected and constructed upon the said tenement house, according to provisions of an Act of the Legislature of the State of New Jersey, entitled, "An Act to Improve the Conditions of Tenement Houses in this State and to Establish a State Board of Tenement House Supervision," approved March 25th, 1904; and the several acts supplemental thereto, amendatory thereof.

20 5. That the said plaintiffs on the 30th day of March, 1921, were tenants and occupants of the said tenement house of the said defendant, for a reward to the defendant paid, and were entitled to all the rights and privileges as a tenant of the said defendant in the said tenement house aforesaid, and likewise were entitled to be safely and securely lodged in the said tenement house aforesaid.

6. That it then and there became and was the duty of the said defendant to use due and proper care so that the said plaintiffs could be reasonably, safely and securely lodged as tenants in the tenement house aforesaid, and to use due and proper care to have fire escapes erected and constructed on and upon said tenement house, in the manner provided by the said statutes.

30 7. That the said defendant, not regarding his duty in that behalf, did not use due and proper care that the plaintiffs should be safely and securely lodged as aforesaid, and did not use due and proper care to have the fire escapes erected and constructed upon said tenement house, according to said statute aforesaid, but permitted improper fire escapes to be placed upon said tenement house, and neglected and refused to place
40 proper fire escapes, although frequently warned

Complaint.

and ordered by the fire authorities of the said city and the Board of Tenement House Supervision.

8. That the said defendant, carelessly and negligently, neglected his duty and did not have fire escapes erected and constructed upon said tenement house, according to the provisions of the act of the Legislature of the State of New Jersey.

10

9. That by reason thereof, on the 30th day of March, 1921, while the said plaintiff, Helen Opreska, was within the said tenement house, as a tenant of the defendant, a fire started in said tenement house and the said tenement house then and there became and was full of smoke, poisonous gases and flames, and then and there was burned.

10. That by reason of the negligence of the said defendant in neglecting to have fire escapes properly erected and constructed upon said tenement house, as provided in the Statute aforesaid, the plaintiff, Helen Opreska, while attempting to escape from said building and from said smoke, gases and flames, aforesaid, was caused to suffer, and did suffer injuries because of the negligence of the defendant aforesaid, in that, while attempting to reach the fire escapes which were improperly placed on said building, she was thrown against the iron railing thereof, and the window ledge leading thereto, and her ankle was badly bruised and she was disabled and unable to perform her usual duties for a long time.

20

30

11. Because of the injuries aforesaid, the plaintiff, Helen Opreska, suffered much pain, and will in the future suffer much pain.

To her great damage, \$5,000.

40

Complaint.

SECOND COUNT.

1. Plaintiff, Frank Opreska, repeats all the obligations set out in all the paragraphs of the first count.

10 2. Because of the injuries to the said plaintiff, Helen Opreska, aforesaid, the said plaintiff, Frank Opreska, was deprived of the benefits of her company, and for a long period was deprived of the benefits of her services in maintaining and performing the usual duties of his household, and was obliged to pay large sums of money for the hire of help to perform the duties of the said plaintiff, Helen Opreska, and he was obliged to spend large sums of money and will in the future be obliged to spend large sums of money for physicians and
20 medicines to effect a cure for the said plaintiff, Helen Opreska.

To the damage of Frank Opreska, \$5,000.

LAZARUS & BRENNER,

Attorneys of Plaintiff.

Filed Clerk's Office,

Aug. 16, 1922,

Hudson County, N. J.

JOHN J. MCGOVERN,

30 Clerk.

Answer.

(Filed November 18, 1922.)

HUDSON COUNTY CIRCUIT COURT

HELEN OPRESKA and FRANK OP-
RESKA,

Plaintiffs,

v.

ISRAEL SHAPIRO,

Defendant.

} Action at Law.

10

The defendant residing in the City of Bayonne,
County of Hudson and State of New Jersey, answer-
ing the complaint of the plaintiffs, says:

1. He admits the allegations of paragraph 1 of
the first count of the complaint.

20

2. He admits the allegations of paragraph 2 of
the first count of the complaint.

3. He admits the allegations of paragraph 3 of
the first count of the complaint.

4. He admits the allegations of paragraph 4 of
the first count of the complaint.

5. He denies the allegations of paragraph 5 of
the first count of the complaint, except that he
admits that plaintiffs were tenants of this defend-
ant.

30

6. He denies the allegations of paragraph 6 of
the first count of the complaint.

7. He denies the allegations of paragraph 7 of
the first count of the complaint.

40

Answer.

8. He denies the allegations of paragraph 8 of the first count of the complaint.

9. He denies the allegations of paragraph 9 of the first count of the complaint.

10 10. He denies the allegations of paragraph 10 of the first count of the complaint.

11. He denies the allegations of paragraph 11 of the first count of the complaint.

He denies that the plaintiff Helen Opreska is entitled to damages in the sum of \$5,000.00 or in any other sum.

ANSWER TO SECOND COUNT.

20 1. He repeats each and every allegation of the answer to the first count in answer to the first paragraph of the second count.

2. He denies the allegations of paragraph 2 of the second count.

He denies that the plaintiff Frank Opreska is entitled to damages in the sum of \$5,000.00 or in any other sum.

FIRST SEPARATE AND DISTINCT DEFENSE:

30 This defendant denies each and every allegation of the complaint except as heretofore admitted or denied.

SECOND SEPARATE AND DISTINCT DEFENSE:

40 This defendant alleges that whatever injuries or damages were sustained by the plaintiffs Helen Opreska and Frank Opreska were caused and contributed by the negligence of the plaintiff Helen

Answer.

Opreska, which was the proximate and contributory cause of the said injuries.

THIRD SEPARATE AND DISTINCT DEFENSE:

Defendant will object upon the trial of the above cause of action: that the complaint discloses no cause of action; it fails to show in what manner the fire escapes were improper, unsafe or insecure. It further fails to show in what manner the defendant failed to comply with the provisions of an act of the Legislature of the State of New Jersey, entitled "An act to improve the conditions of tenement houses in this State and to establish a State Board of Tenement House Supervision", approved March 25, 1904; and the several acts supplemental thereto and amendatory thereof; and fails further to show in what manner the fire escapes were the direct and proximate cause of the injuries of the plaintiffs.

POMEREHNE & LAIBLE,
Attorneys of Defendant.

Reply.

(Filed November 29, 1922.)

HUDSON COUNTY CIRCUIT COURT.

10	HELEN OPRESKA and FRANK OP- RESKA, Plaintiffs, <i>v.</i> ISRAEL SHAPIRO, Defendant.	}	Action at Law.
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Plaintiffs deny all the allegations contained in the Second and Third Separate defenses set up in the answer of defendant.

20	LAZARUS & BRENNER. Attorneys of Plaintiffs.
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Rule for Judgment.

This action was tried before Judge Willard W. Cutler, with a jury at the Hudson Circuit Court, February 27th, 1923.

The cause having been heard, and submitted to the jury, they returned their verdict as follows:

30	They say they find for the plaintiffs and against the defendant, and they assess the damages of the plaintiff Helen Opreska in the sum of Two Thousand Five Hundred Dollars (\$2,500.00) on occasion of the premises, and they assess the damages of the plaintiff Frank Opreska in the sum of One Thousand Dollars (\$1,000.00).
----	---

40

Clerk's Certificate.

Whereupon, it is adjudged that the plaintiffs recover of the defendant the sum of Three Thousand Five Hundred Dollars (\$3,500) and their costs, amounting to Sixty Dollars, sixty-five cents, making in the whole the sum of Three Thousand Five Hundred and Sixty Dollars and sixty-five cents (\$3,560.65).

10

Judgment entered this March 12th, 1923.

WILLARD W. CUTLER,
Judge.

STATE OF NEW JERSEY.

Hudson County, ss.:

I, John J. McGovern, Clerk of the County of Hudson, aforesaid, and also Clerk of the Circuit Court, holden therein,

20

DO HEREBY CERTIFY, That the foregoing is a true and correct copy of Summons, Complaint, Answer, Reply, Rule for Judgment, and Notice of Appeal in the case of Helen Opreska and Frank Opreska, plaintiffs *v.* Israel Shapiro, defendant, as the same is taken from and compared with the original as filed and recorded in my office.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of said Courts and County, at Jersey City, this third day of April, 1923.

30

JOHN J. MCGOVERN,
Clerk.

40

Mrs. Helen Opreska, direct.

9484—7

7

CIRCUIT COURT OF HUDSON COUNTY.

Before—Hon. WILLARD W. CUTLER, J., and a jury,

10

HELEN OPRESKA and FRANK
OPRESKA

v.

ISRAEL SHAPIRO.

Docket No. 733.

On the 26th day of February, A. D. 1923.

APPEARING:

20

LAZARUS & BRENNER, by Mr. BRENNER, for
the Plaintiffs.

POMEREHNE & LAIBLE, by Mr. GEORGE LAI-
BLE, for the Defendant.

Jury empaneled and sworn at 2:10 o'clock P. M.

Mr. Brenner opens for the plaintiff.

Mr. Laible opens for the defendant.

MRS. HELEN OPRESKA, sworn.

30

Direct examination by Mr. Brenner:

Q. Mrs. Opreska, where do you live? A. 27 West
24th Street, Bayonne.

Q. In Bayonne? A. In Bayonne.

Q. How long have you been a resident of Bay-
onne? A. I guess seventeen years.

Q. I see, and did you formerly live in the prop-
erty of Israel Shapiro on Broadway? A. I did.

Q. And when did you move in that property?
A. Let's see—either it was 1914 or 1915.

40

Q. I see. And you remained there until when?
A. Until the fire broke out.

Mrs. Helen Opreska, direct.

Q. In what year? A. 1921.

Q. And what day, and what month of that year was this fire? A. 30th of March.

Q. 1921? A. Yes, sir.

Q. You were a monthly tenant of that property?
A. Yes, monthly tenant.

Q. You had no lease of any kind, did you? A. 10
No.

Q. What kind of property is that; how many families? A. Why, it is a four-family house, with the store downstairs.

Q. Five, including the— A. No, five with the store.

Q. Yes, that is what I say, including the store, there are five families? A. Yes.

Q. Back of the store? A. No, there are railroad rooms, right through, front and back. 20

Q. No, but I am talking about the store. The people that occupy the store, do they live in back of the store? A. Yes.

Q. So that there are rooms in back of the store?
A. Yes.

Q. And then there are four families above the store? A. Yes.

Q. And how many entrances were there to that house? A. One, the front way.

Q. One entrance? A. One. 30

Q. And did that entrance lead into all of the different apartments? A. All of the departments.

Q. Just one hall through there? A. One hall through.

Q. What was the number of that property? A. 1048.

Q. What was it?

(Answer read.)

Mrs. Helen Opreska, direct.

Q. And then there was one hall there that ran throughout that building, and you got into that hallway from the front? A. Yes, from the front.

Q. Are there any fire-escapes on that property?

A. There were, in the back, from the back room window.

10

Q. They were in the back? A. Yes, from the back.

Q. And was there a way to get—of getting to the fire-escape from your rooms? A. Well, either one way—there was a way to get out to the roof, up to the roof, on top of the roof.

Q. No, but I mean on the fire-escape, you said it led from the bathroom. A. Off the kitchen, we had to get into the bathroom, and get into the bathtub and reach over with our feet out to the fire escape.

20

Q. I see. So the way to get to that fire-escape through your apartment was through the bathroom window? A. Yes.

Q. Was there any other entrance to that fire-escape, except through the bathroom window? A. No, there was not.

Q. Absolutely sure of that? A. Yes, I am sure.

30

Q. And if you wanted to use the fire-escape, therefore, you had to go through this bathroom window? A. Yes, through the bathroom window.

Q. Which floor did you live on? A. I lived on the third floor, north side.

Q. Was that the top floor? A. Top floor, yes.

Q. The night of the fire—what time did that fire occur? A. Well, around two o'clock sometime.

Q. Around two o'clock? A. Around two o'clock in the morning.

40

Q. Were you in bed or not at the time that the fire broke out? A. Yes, we were all in bed.

Mrs. Helen Opreska, direct.

Q. And what was the first that attracted your attention to the fire, that there was a fire going on? A. Well, when I heard glass smash downstairs.

Q. I see. A. When I heard the glass crash twice, I got right up on my feet, and where my parlor was, was all afire, and where my bedroom was, up in the north side, coming from—on this side of the window, the fire was coming up from this side, and you see I was in the bedroom, and the fire was in the parlor, and I was—

10

Q. I see. A. And I rushed right through, and I was hollering and screaming.

Q. Were you the first one up? A. No, downstairs—

Q. I mean in your apartment. A. In my apartment, yes.

20

Q. You were the first one up? A. I was the first one up in my apartment.

Q. What did you do? A. I ran through the apartment, and I says, "Frank, fire." I was calling my husband and my children. As soon as they got up, my husband took the little girl and went out through the bathroom way, and I was helping out the other little boy, and I was still left in that place. I tried to get some things, if I could, to cover them up, because it was an awfully cold night, that it was.

30

Q. It was cold, you say? A. Very cold, it was.

Q. You say you got some things? A. I had it—I put it over the little girl. My husband took her down. I still stayed, and I could not do much because the rest of the tenants were up in my rooms, the rest of them, except Mrs. Trolan.

Q. There were other tenants came up to your rooms to get out the fire-escape? A. Through my window, yes.

40

Mrs. Helen Opreska, direct.

Q. Could you get out through the hallway? A. No, I would not—we would be burned, you see, because the hall was burning downstairs already.

Q. I see. A. Yes.

Q. Now, who was left in your rooms or your bathroom at the time you started to get out? A. Mrs. Lampkin.

Q. She was the only one? A. She was the only one.

Q. Was she trying to get out in front of you or behind you? A. Behind me, I was first.

Q. Now, what did you do to get out? A. Well, as I got up in the bathtub, and put my foot—

Q. Was the bathtub in front of this window? A. Yes.

Q. Could you get to the window in any way except by going over the bathtub? A. No, sir, I could not. I had to get over the bathtub.

Q. And you had to get in the bathtub? A. I had to get in the bathtub, yes.

Q. Well, what did you do next? A. I put my right foot on the window sill, and as I did, this collapsed.

Q. Which collapsed? A. The window sill, the piece of wood.

Q. Was there any fire going on there that time? A. No, the smoke was coming in there; the burnt part was that way (indicating).

Q. You say it collapsed; what do you mean? A. Well, it tore right off, a piece of that window sill came right off.

Q. When it broke off what happened to you?

A. Well, I slipped, and as I did slip my foot went in the back on the bathtub, and—

Q. On the bathtub? A. Yes, and then my left breast, I was knocked right onto the ledge of concrete, underneath where the window sill was—

Mrs. Helen Opreska, direct.

Q. I see. A. And I went down, and Mrs. Lampkin picked me up and helped me out. And then I got out and went as far as—about that far (indicating), and then I had to cross over to get to the ladder, and then the police officer, he helped me down the ladder.

Q. You say you had to cross over to get to the ladder? A. Yes. 10

Q. Where was the ladder? A. The ladder was on the side of Mrs. Trolan, right in the middle of the house like.

Q. What did you have to go over to get over to that? A. Why, about three feet.

Q. I see, and how wide was the space that you had to go over; what was there to cross over to where the ladder was? A. Well, just to hold on to the rail here, on that fire-escape, just about three feet over on this side, or either go this way and hold on to the house. 20

Q. And how wide a walk was that? A. About three and a half feet.

Q. Three and a half feet wide? A. Yes.

Q. Do you mean in length or in width? A. In width.

Q. Was the ladder up when you got out? A. Well, it was then—it was down—

Q. I see. A. Because the others was out before I was. 30

Q. And do you know whether or not it was up when they got out?

Mr. Laible: Well, I object to that.

Mr. Brenner: From what you saw?

A. No, I do not know.

Q. You do not know? A. I do not remember.

Q. You say an officer helped you down? A. Yes. 40

Q. Down the fire-escape? A. The fire-escape.

Mrs. Helen Opreska, direct.

Q. And where you had fallen on your breast, did you have any pain? A. Well, I did have a pain, mostly at that time. My ankle hurted me, where I hurt my ankle.

10 Q. I see, and where did you go to? A. Well, lots of people helped me down the ladder, and then when I got down, two people from across the street said, "Come down here; don't stand here." And I was crying, you know, and the people took us over across the street.

Q. I see. A. And we stayed there until the morning.

Q. Now, this fire-escape balcony on the outside, how far was that below the window? A. About three feet.

20 Q. About three feet below the window? A. About three feet, yes.

Q. And how big a window was it? A. Well, it was one of those old-fashioned, narrow windows. It was not as wide as it should be.

Q. Well, look at those windows here in the court room; was it as much as those, or larger? A. It was larger than those.

Q. Larger than those? A. Yes, sir.

30 Q. How much larger? A. About a half a foot larger.

Q. About a half a foot; do you mean in height or width? A. Width.

Q. Half a foot in width, and how about height, the same size or larger? A. No; larger.

Q. About how much larger? A. I do not exactly know how to describe it to you.

Q. Well, about how much larger than those windows that you say are in the court room? A. (After a pause.) About ten feet high.

40 Q. Well, nine or ten feet or nine or ten inches?

Mrs. Helen Opreska, direct.

A. Nine or ten inches—pardon me—I know it was shorter than what the other windows are.

Q. You mean shorter than the other windows in the house? A. Yes?

Q. Can you tell us about how much bigger than these windows you see here in this court? A. Well, a little larger than those.

10

Q. A little larger than those? A. Yes.

Q. How much, about a half a foot larger, wider? A. Yes.

Q. Now, when you went over to the home of these other people, on the same street, on the other side of the street, how long did you stay there? A. Well, I stayed there until morning.

Q. And then where did you go? A. Well, I went—I tried to go to the house to get something.

Q. Went where? A. I went over to the house where the fire was, to get some things.

20

Q. And were you able to walk over there? A. I was able to be on my feet, yes.

Q. I see, and you went around to the house that you had left then that morning? A. Yes.

Q. Where did you go after that? A. Well, I went there—I went there in the day, and then when I straightened up little things in the kitchen, you know, had the children fix it, because I could not straighten it my self, then I went to see the doctor about my foot and breast.

30

Q. I see. Did you go to his office or did he go where you were? A. I went to his office.

Q. I see. A. Because I had to go down and notify the agent, about the insurance, about the fire.

Q. What was the condition of your foot at the time? A. It was a bruise of the ankle.

Q. I don't care what the nature of the injury

40

Mrs. Helen Opreska, direct.

was, but did it hurt you, or did it swell or anything? A. It was, yes. It did swell, it was up a good size, like an apple.

Q. Did it hurt you? A. Well, it did hurt me.

Q. Were you able to walk on it? A. Well, if I was on it too much, I could not.

10 Q. I mean, this time, the day after the accident, were you able to walk on it then? A. Yes, I was able to.

Q. Where did you go after that? A. Well, I was—I hired a place down at Eighth Street.

Q. When did you leave there? A. I stayed there a couple of days, but I was back and forth.

Q. Did this continue to pain you, your foot? A. Yes, it did.

20 Q. What about your breast? A. Well, my breast, it was aching, it kept on aching and I was under the doctor's care; I am still in the doctor's care.

Q. Were you ever laid up in the house as a result of the injury to the ankle or injury to the breast, or did you keep on your feet? A. Well, the breast I was, I did then have a pain, laid up with my breast.

30 Q. Well, did you stay in the house after that? A. No, I had to stay in the house, I had to give up working, too.

Q. When was that? A. That was on, let's see—I know in October I was taken care of by a lady named Mrs. Fulton.

Q. I am talking about right after the accident, Mrs. Opreska, did you stay in the house after that? A. Well, I was in the house, yes, after that. Well, from March, I was in until September, until the last of September.

40 Q. You did not stay in the house all the time, did you? A. No, I was out.

Mrs. Helen Opreska, direct.

Q. How long did this swelling of your foot continue? A. Well, it continued almost up to seven months, and still it swells, when I am on my feet—

Q. I see. A. Too much, it does.

Q. Did the doctor give you anything for that swelling? A. Well, he told me to use that—I had it bandaged.

10

Q. You had it bandaged? A. After I had the bandage taken off, I had to bathe it every day with hot water.

Q. And how long did you have a bandage on it? A. Well, I had it on for almost a week.

Q. Almost a week? A. About a week, yes.

Q. About a week? A. Almost a week I had it, yes.

Q. Took it off? A. Yes, took it off.

Q. And you bathed it? A. I took it off and bathed it with alcohol, rubbing to have the swelling go down.

20

Q. What did he do for the condition of the breast, anything at all? A. Well, he examined my breast and gave me medicine, and I had salve, see?

Q. Who was your doctor at that time? A. Well, let's see; I had Doctor Forman, first.

Q. How long did you have Doctor Forman? A. I did not continue keeping him, because he did not give me right treatment.

30

Q. How long did you have him? A. Well, I only went to him three times, that is all.

Q. Only three times? A. Yes.

Q. And did you get better under his treatment? A. No, I did not, no.

Q. Where did you go then? A. I went to Doctor Skladzien, 22nd Street.

Q. When did you start his treatment? A. From the same month, in April I went.

40

Mrs. Helen Opreska, direct.

Q. In April? A. In April I went to him.

Q. How long did you continue with him, how long did he continue treating you? A. Well, he kept on right along until October some time.

Q. Until October? A. And in October he told me that I would have to go to a specialist.

10 Q. Well, you can't tell us what he told you. Until October of what year? A. 1922.

Q. October of 1922? A. Yes.

Q. And was that the same year or the next year? This happened in 1921, did it not? A. Yes, that was 1921.

Q. And you went from that time to Doctor Skladzien? A. To Doctor Skladzien, yes.

Q. Besides going to Doctor Skladzien, did you go to any other doctor? A. Yes, I had gone to Doctor Adler.

20 Q. When did you start going to Doctor Adler? A. It was around before Thanksgiving.

Q. Of 1922? A. 1922.

Q. And has he treated you since that time? A. Yes, and I am still under his treatment.

Q. Do you recall how many times you have been to him? A. Well, I do not remember exactly, but I have been there a lot of times.

30 Q. I see. Did you receive any bill from Doctor Forman? A. Well, I have been paying him right along; whenever I would make a visit I would pay him.

Q. You paid him cash? A. Paid him cash, and—

Q. And you say he made three visits to you—you made three to him? A. He made visits to the house, too.

Q. Three altogether? A. Yes, three altogether.

40 Q. Well, now Doctor Skladzien. A. Well, I gave

Mrs. Helen Opreska, direct.

him some, but not all, I don't know the exact bill he had there.

Q. Do you know how much you paid Doctor Skladzien? A. I paid him about seventy-one dollars.

Q. Seventy-one dollars up to the present time?

A. Yes.

10

Q. And you say you still owe him some? A. Yes.

Q. What about Doctor Adler, did you pay him or not? A. No, I did not pay Doctor Adler.

Q. Has he rendered you any bill yet? A. No, he has not.

Q. That condition of the breast, has that gotten better or has it gotten worse? A. No, it has got worse.

Q. Since last June? A. Since last June, it is getting worse, and then since this February, I have been getting a lump under my arm, here and right in the breast.

20

Q. And that condition became worse since the commencement of this accident? A. Yes, it pains me, and—it gives me a fainting spell when it does pain me.

Q. Has that pain been severe? A. Well, it does, because it lost me time then.

Q. What? A. It caused me to be laid up in bed, when I do get that pain.

30

Q. How about the ankle, is that better? A. No, it is not. Doctor Skladzien still treats that. With electric, puts an electric lamp over it.

Q. How old are you? A. Thirty-five, going on thirty-six.

Mr. Brenner: That is all.

The Court: Cross examine.

40

Mrs. Helen Opreska, cross.

Cross examination by Mr. Laible:

10 Q. Mrs. Opreska, the reason you moved out was because Mr. Shapiro gave you notice to get out, wasn't it? A. No, sir, it was not that. We all were notified, when the building inspector inspected the house, and said the house was condemned, and we all did get notices in January 1921.

Q. In January 1921? A. 1920.

Q. 1920? A. 1921, yes, 1921.

Q. Have you got that notice here? A. Yes, I have.

Q. Let me see that notice. A. I have not got the notice that he gave me to move, no, because they notified us to move, that they had to tear down the inside of the house.

Q. That was after the fire? A. No, it was before the fire.

20 Q. Before the fire? A. Yes, sir.

Q. But you have not got the notice that Mr. Shapiro gave, have you? A. Yes, sir, because all the papers were burned, destroyed in the fire.

Q. Well, this notice that Mr. Shapiro gave you was given after the fire, wasn't it? A. No, it was the first of February. Mr. Shapiro served all his tenants with notice to move, and there was an order from the building inspector that he should improve the building inside, and we all had to move on account of him tearing the inside down.

30 Q. You are sure that that is correct? A. I am sure,

Q. Now, isn't it a fact that he gave you notice after this fire to get out, because he had to tear the building down on account of the fire? A. No, sir, we moved out ourselves on th 9th of April.

40 Q. And you didn't get a notice from Mr. Shapiro to get out— A. Not after the fire, before the fire, before there was ever a fire there.

Mrs. Helen Opreska, cross.

Q. Have you got that notice with you? A. What notice? That we were ordered to get out?

Q. Yes. A. No, this is the building inspector notice.

Q. When did you tell your lawyer that you had this injury to your breast? A. When? I told him right from the beginning, I told him all the time that I had it, that I was injured. 10

Q. But notwithstanding that, your lawyer did not put it in the complaint, did he? A. I don't know anything about that, if he did or not.

Q. No. Do you know whether or not your lawyer did not state in there that the injury you had was your ankle? A. Well, I don't know why he didn't state it, when it was in the complaint that I injured my ankle and my breast.

Q. Now, you recall the night of the fire that you came down those fire-escapes, and when you got down there you saw the captain of the Fire Department? A. Well, not when I got down-stairs, not after—I was down after the fire, I think, next morning. 20

Q. Stand up, Captain. You say you did not see this gentleman? A. Not right after I was down, no, sir. I only saw Officer Lautermilch.

Q. And didn't you ask the captain to go down-stairs and get your pocketbook? A. That was next morning. That was around six o'clock in the morning, when I got up, broke daylight. 30

Q. No, at that time, right immediately when you got down, that you did not ask this captain to go right up and find your pocketbook, because you were afraid your money would be stolen? A. No, it was not right after that, not right after I was down.

Q. All right. A. No. 40

Mrs. Helen Opreska, cross.

Q. And isn't it a fact that he went upstairs then?
A. He did, but, as I say, after six o'clock in the morning.

Q. After you went over across the street and slept all night? A. No, we didn't sleep.

Q. You did not sleep? A. No, I could not sleep.

10 Q. Well, after you stayed there, then, until six o'clock on this morning, then you came over and found the captain there, and you asked him to go upstairs and get your pocketbook? A. I did not ask him anything. And I was going to go ahead and go in there, and I said, "Would you please, kindly"—I did not recognize whether I seen that man or not—I asked him, "Would you please"—I know I asked some fireman, but I don't recall if I did see that face or not, to let me go upstairs.
20 I did not say that I was afraid money would get stole, or anything, but I went up and opened my bureau drawer, and I did take out my purse there, and I had a couple of dollars there.

Q. Do you recall that last week you saw this captain in this court house, and you said you were sorry you did not see him first; do you recall that? A. Well, if I did say I am sorry, but I did not have no remark from that he was going to do any help for me, because he could not. I
30 didn't see any fireman. It was before any fireman arrived.

Q. I am asking you a question, if you did not say to Captain Sharrott in this court house that you were sorry that you did not see him first. A. (After a pause.) Oh, I maybe did, because I wanted him to—

Q. Well, did you? A. Make a—

Q. Did you say that to him? A. Well, I don't
40 remember if I did or not.

Mrs. Helen Opreska, cross.

Q. And do you recall the captain asking you on the night of the fire whether you were injured and asking other people in that house whether they were injured or not, and you said no? A. No, sir, he never asked me that question—never.

Q. And do you recall seeing the captain the next day and you did not say anything at that time about being injured? (No audible response.) 10

Q. Read the question. (Question read.) A. No, I didn't say nothing about nobody.

Q. Do you recall that next day that Miss Shapiro, the daughter of the defendant, came up and saw you there in your apartment and asked you whether anybody was hurt, and you said no? A. No, I did not say that, I told her Mrs. Trolan fell off the fire-escapes and was taken to the hospital. I told her that. 20

Q. But you didn't say anything about being hurt, did you? A. Yes, sir, she heard me say that I was hurt.

Q. She heard you say that you were hurt? A. That I was—

Q. You told this to Miss Shapiro? A. That I was hurt.

Q. What did you say to her? A. I said not only Mrs. Trolan, but I was hurt, too.

Q. You said that at that time? A. Yes, I did. 30

Q. And after that, did you say anything more to Mr. Shapiro? A. No, I did not.

Q. Did you see Mr. Shapiro? A. I don't remember.

Q. Did you see Miss Shapiro after that? A. No, I don't remember, because I was out, more out than staying in that place, because we could not stay in on account of that smoke.

Q. And you never saw Mr. Shapiro after that 40

Mrs. Helen Opreska, cross.

about your injuries? A. Oh, I did see him and his young son.

Q. When? A. The very next day he came out to the house, and Mrs. Lampkin said to him, "We had some fire," and he says yes, and she says, "We had some job to get out of there, the window isn't open." He said, "Yes, it is." I said, "No." He says, "Anyway, why should I worry? I can collect my insurance."

Q. He said, "Why should I worry"? A. Yes, he said that.

Q. Now, isn't it a fact, Mrs. Opreska, that you were a sort of janitor in that building? A. Only for one month. He asked me to take care of the halls, that is all.

Q. You were taking care of the halls, weren't you? A. Yes, just that one month only.

Q. Only that one month? A. Yes.

Q. And the reason he gave it to you was that you were always complaining about the other people? A. No, it was not that, no, no, sir.

Q. Do you recall seeing this young man, the next day? A. I did see the man downstairs the next day, yes.

Q. And you did not say anything to him about being injured, did you? A. Why should I explain my injury to everybody. It is up to me and my family to say that.

Q. Notwithstanding you say you waited until August, 1922, eighteen months after the accident, before you filed suit. A. Yes, sir.

Q. Is that correct? A. Yes.

Q. Do you recall seeing Doctor Feury? A. Yes.

Q. You saw him? A. I saw him.

Q. On October 9, 1922, didn't you? A. Yes, sir.

Q. And do you recall at that time that you did

Mrs. Helen Opreska, cross.

not say anything about the injury to your breast, but that you did say to him that you had caught a cold that night? A. Now, Doctor—

Q. Did you or did you not say that? A. No, I did not say—

Q. You did not say to Doctor Feury that you had caught cold that night? A. If you please, let me explain. 10

Q. Did you or did you not say that to Doctor Feury? A. No, I did not say I had caught a cold, no, sir.

Q. How long have you lived in that house, Mrs. Opreska? A. In that house?

Q. Yes. A. I don't exactly remember whether it is six years or seven years I lived there.

Q. Always lived in the same apartment? A. Yes, sir. 20

Q. That was on the third floor? A. Third, on the north side.

Q. Yes, and had you ever gone out of that window before? A. What was it?

(Question read.)

A. Never, never—never used it, that window.

Q. Now, isn't it a fact that there were other exits out of that building, except that fire-escape? A. Well, there was a back porch there. We could not get out of it—you would fall down on the ground, but there was no steps to it, the porch. There was no steps on that porch. 30

Q. And you say all the people in that house except one, came up to your room, to get on the fire-escape? A. No, all except Mrs. Trolan went out of their own stairs, and excepting Mrs. Lampkin.

Q. They came up to your room? A. Yes, because they could not get out through the hall. 40

Mrs. Helen Opreska, cross.

Q. And they came upstairs to go through your room, and get out on the fire-escape? A. Yes.

Q. But the fire-escape also went past all the rooms, in back, didn't it? A. It did.

Q. The same as yours, didn't it? A. Yes, it did.

10 Q. And you said that you went to see Doctor Forman, is his name? A. Doctor Forman.

Q. And you saw him three times? A. Three times.

Q. And when was the first time you saw Doctor Forman? A. Well, I seen him in April, right after the fire, and then I seen him last June, too—the 9th of June. He was at my house when I was laid up for three days.

Q. With what?

(Answer read.)

20

A. I was in the house.

Q. Where were you those last three days you were laid up? What was the cause of your laying up for three days? A. My bruises.

Q. Your bruises? A. Yes.

Q. And those were the only three times you had seen the doctor, in between the time of the fire and last June, is that correct? A. No, I was under the care of Doctor Skladzien of 22nd Street.

30

Q. When was the last time you saw Doctor Forman? A. Why, I seen him in April.

Q. Yes, that is once. A. 1921.

Q. When did you see him next? A. No, I seen him twice, and it was the third time in June.

Q. And when did you see Doctor Skladzien? A. I went to see him in April, too.

Q. 1921? A. Yes, right after I gave up Doctor Forman.

40

Q. When did you give up Doctor Forman? A. Because I seen I was not improving.

Mrs. Helen Opreska, cross.

Q. When? I didn't say why? A. In April.

Q. What date? A. I don't remember what date.

Q. How many times did you see Doctor Skladzien? A. Oh, I have been there often.

Q. Have you always been well? A. No—I was always, I was before this accident, I always was well, yes. 10

Q. And nothing ever the matter with you? A. Well, I had—about three and a half years ago, I was touched with appendicitis.

Q. Yes. A. I was cured of that.

Q. I see. A. Had it frozen.

Q. You had Doctor Skladzien at that time? A. No, I had Doctor Adler at that time.

Q. Doctor Adler? A. Yes.

Q. And when did you see Doctor Adler for the first time? A. I saw Doctor Adler, before Thanksgiving, I think it was. 20

Q. How many times have you seen Doctor Adler since then? A. Yes—

(Question read.)

A. About six or seven times.

Q. That is Thanksgiving, 1922, is that right? A. Yes.

Q. That is all. Oh, by the way, you have none of these bills with you, have you? A. No, I have not. 30

Mr. Laible: That is all.

By Mr. Brenner:

Q. Oh, just a question, Mrs. Opreska. Did Mr. Shapiro come to the house to collect his rent? A. Why, Mr. Shapiro came, and if Mr. Shapiro did not come, the young lady came in his place. 40

Mrs. Emma Lampkin, direct.

Q. And they came every month, one after the other? A. Yes, sir.

Q. Or one or the other. And this fire-escape was never changed while you were there? A. No, never.

10

Mr. Brenner: That is all.

MRS. EMMA LAMPKIN, sworn.

Direct examination by Mr. Brenner:

Q. Mrs. Lampkin, were you living in the house owned by Mr. Shapiro? A. Yes, sir.

Q. And when did you move in that house? A. I lived there about two years.

Q. About three years? A. About two years.

20

Q. What?

(Answer read.)

Q. Two years, and were you living there up to the time of the fire? A. Yes, sir.

Q. And the fire was when? A. Two o'clock in the morning.

Q. Of what day? A. Of the 30th of March, 1921.

Q. 30th of March, 1921? A. Yes, sir.

Q. Two o'clock? A. Yes, sir.

30

Q. And which floor did you live on? A. I lived on the second floor.

Q. Was there a fire-escape on that second floor? A. Yes, sir.

Q. And on the night of the fire, did you get out from your room to the fire-escape? A. I could not. My window would not open and I could not pry them open. I had to get out the third floor, and go down.

40

Q. That was Mrs. Opreska's apartment? A. Yes, sir.

Mrs. Emma Lampkin, direct.

Q. And what room in your house led to the fire-escape? A. The bathroom.

Q. The bathroom? A. Yes, sir.

Q. And did you have to go through the bathroom to get to the fire-escape from your apartment? A. Yes, sir.

Q. Now, did you go into the bathroom for the purpose of going to the fire-escape? A. Yes, sir, I did, but we could not get out, we had to go up to the third floor.

10

Q. Now, why couldn't you get out? A. The window would not open, and you could not pry it open.

Q. Well, what did you do after you found you could not pry the window open? A. Well, we tried to get up on the roof, and we could not get up on the roof, so we went up to Mrs. Opreska's rooms to get out.

20

Q. You went up to Mrs. Opreska's rooms? A. Yes, sir.

Q. To get out that way? A. Yes, sir.

Q. Did you see her trying to get out? A. Yes, sir.

Q. Were you still in the bathroom? A. No, sir; I was in the bathroom, back of Mrs. Opreska, while she was getting out.

Q. Was there anybody besides yourself and her left in the bathroom? A. No, there wasn't no one.

30

Q. Now, what did you see happen when she started to get out of the window? A. She was—the window sill broke off, and she slipped backwards on the sill, and I helped her out.

Q. I see. A. And after she was on the fire-escape, I don't know who helped her down. I seen the cop, but there was no fireman in sight.

Q. I see. You saw the police officer help her down? A. Yes, Mr. Lautermilch was the officer.

40

Mrs. Emma Lampkin, cross.

Q. You saw Mr. Shapiro come to that property, didn't you? A. Yes, sir.

Q. And you saw the daughter come there? A. Yes, sir.

Q. For the purpose of collecting the rent? A. Yes, sir.

10 Q. Was the fire-escape ever changed while you lived there? A. Never changed.

Q. How many families in that house? A. On our side or both sides?

Q. Both sides—it was all one house, wasn't it? A. Well, it was one side, and the other the other side.

Q. Well, one hallway, or more than one? A. One hallway.

20 Q. One hallway leading to both sides? A. Yes, sir.

Q. One stairway up, or more than one? A. One stairway up, and only one entrance.

Q. Was there any way to get out beside the stairway or the fire-escape? A. No, sir.

Q. You say this is a wooden building? A. Brick building.

Q. Brick wall? A. Yes, sir.

Q. Wooden stairways? A. Yes, sir.

Q. Wooden floors? A. Yes, sir.

30 Mr. Brenner: That is all.

Cross examination by Mr. Laible:

Q. Mrs. Lampkin, the hall down on the first floor had an entrance into the yard, didn't it? A. Into the yard? No, sir; not unless you went down through the cellar.

40 Q. Not unless you went down through the cellar? A. You could not get through the cellar, be-

Mrs. Emma Lampkin, cross.

cause the floor was burned down. You could not get down through the cellar.

Q. I am asking you a question now; isn't it a fact that the hall down on the first floor had a door leading into the yard? A. No, sir.

Q. Not at all? A. No, sir.

Q. And how did you get up to Mrs. Opreska's apartment? A. I walked up. 10

Q. Yes, but how? A. Up the stairs.

Q. On the front stairs? A. There was only one stair to get out, but up on our floor, there was a fire coming up through the floor.

Q. Yes, and the fire was coming up through the hallway, burning this— A. On both sides, yes, sir.

Q. Burning the hallway up; is that right? A. Yes, sir.

Q. And you rushed through the flames, and went up to Mrs. Opreska's apartment? A. No; we didn't go through no flames. 20

Q. No. And you say this window was so tightly closed, that you could not get through to the fire-escape? A. No, sir; they did not work.

Q. Notwithstanding the house burning and the flames rushing up through the front halls, and in the front part of the house, you took the chance of rushing through these flames upstairs, instead of breaking the glass to get through. A. No, the fire was not where we passed. The stairs was on this side of the fire, just up above the second floor, and the fire was on the other side of us—you can come and see where the fire was—but they repaired it, I guess. 30

Q. I see. You mean, maybe I can see it. But you did not break the glass? A. No, I did not. I did not think to break the glass. I was glad enough to get out. 40

Mrs. Emma Lampkin, cross.

Q. How long did you live there? A. About two years.

Q. And in all that time this window had never been opened? A. No, it was not opened.

Q. Had never been opened in two years' time? A. I had never opened that window, no, sir.

10 Q. Did you ever attempt to open it? A. Yes, sir, I did.

Q. When? A. Several times.

Q. Did you ever tell Mr. Shapiro it did not open? A. He knew it did not open.

Q. Did you ever tell him? A. Yes, I did. I told him—

Q. When? A. And had a boy there by the name of Andy, and the windows would not work.

20 Q. What? A. When a fellow by the name of Andy was there, the windows would not work.

Q. Who is Mr. Andy? A. I don't know, a fellow who was there.

Q. When was he there? A. The time that he fixed the place up there.

Q. Now, Mrs. Lampkin, you have sued against Shapiro also, didn't you? A. Yes, sir, I did.

Q. From falling on the ice? A. I fell on the steps in the cellar, yes, sir.

30 Q. Yes, and you are rather vindictive against Mr. Shapiro, aren't you? A. No, I am not.

Q. No? A. No, I am not.

Q. And you are not anxious to see Mr. Shapiro win this suit, are you? A. No, I would like to see people get justice, that is all.

Q. Yes, justice. Did you hear Mrs. Opreska testify today that she remained there to get some clothes, to cover her—I believe her children or somebody? A. No, I did not.

40 Q. And that she was there, and the last one out? A. No, she was not the last one out.

Mrs. Emma Lampkin, cross.

Mr. Brenner: I object to that if the Court please; that is not the testimony.

The Court: No, I do not think it is.

Mr. Laible: If I am mistaken, maybe I am—

Mr. Brenner: She got the clothing for her children, to put over the children.

10

Mr. Laible: But you were the last one out according to your testimony.

A. I was the last one out. I helped this crippled lady out on the next floor.

Q. Did she go out through Mrs. Opreska's apartment? A. No, she was on her side. I helped her out. She was a cripple. My husband threw his overcoat over her back, and I went down after a coat.

20

Q. You went down after a coat? A. I went down after a coat but there was too much smoke, and I had to come back again. But there was a fireman in there. I saw he was there in my apartment—the cop broke the window with his club.

Q. What windows did he break? A. My windows.

Q. Broke your windows? A. Yes, sir.

Q. Why did he break your windows? A. To get in there.

30

Q. And why did he want to get in? You were out. A. That don't make any difference. Maybe he wanted to see if anybody else was in there.

Q. You knew who was in there, didn't you? A. How did I know? A. There might have been people left that I didn't see.

Q. There was only two people living in your house. A. Two? How is that?

Q. In your apartment, I mean. A. There was one up above me—

40

Mrs. Emma Lampkin, cross.

Q. I mean, I am not talking about above you. I am talking about your apartment. A. Well, I don't know—yes, two live in my apartment.

Q. Where were you when he was breaking this window? A. Going down the fire-escapes.

Q. You were going down the fire-escapes? A. Yes, sir.

Q. And you saw him breaking the window, and you did not see any firemen there whatsoever? A. I did not see any firemen.

Q. Did you see any fire-engines? A. I heard them. I did not see them. I did not go out the front way.

Q. And whether the firemen were out in front or back you don't know, do you? A. They were in the front, yes, sir. They were in the front.

20 *By the Court:*

Q. How did this lady get out that you say your husband took this overcoat and threw over her?

A. Why, there was a cop helped her down.

Q. Took her down what way? A. Down the fire-escape.

Q. The same fire-escape that you went down?

A. Yes, the same ones that we went down.

By Mr. Laible:

30 Q. Mrs. Lampkin, do you recall that night seeing a captain of the fire department? A. No, sir, I never seen that man before.

Q. Do you recall when he asked you to get out—

A. No, sir, I don't recall—

Q. We can't both of us talk, Mrs. Lampkin. Do you recall that the time that he came up the fire escape to help the people out, that you were in your apartment, and that you asked him to wait

40

Dr. Joseph Adler, direct.

until you got some clothes on? A. No, sir; I never seen no fireman, up in my apartment. No fireman helped us out. I didn't need no help.

Q. Do you remember seeing this young man—
A. I didn't see that young man at the fire, no, sir, but I heard tell of it the next morning.

Q. You heard tell of it? A. Yes, sir, my husband seen him, but I did not. 10

Q. Isn't it a fact that this young man helped to take you and your family, your children, down there? A. He might have helped my children, but he did not help me. No one helped me.

Q. I see. Well, that is all.

By Mr. Brenner:

Q. Just one question, Mrs. Lampkin. Counsel on the other side has mentioned a suit that you started against this same man; what was the result of that suit? 20

Mr. Laible: I object.

The Court: Immaterial.

Mr. Brenner: I thought it might be material if the court please, as to whether or not this woman would be prejudiced. However, I will not press it. That is all.

DOCTOR JOSEPH ADLER, sworn on behalf of the plaintiff. 30

Direct examination by Mr. Brenner:

Q. Doctor, you are a practicing physician of this state? A. I am.

Q. Have been for how many years? A. Twenty-five.

Q. And you know Mrs. Opreska? A. I do.

Q. Your office, Doctor, is located in Bayonne, is it not? A. It is. 40

Dr. Joseph Adler, direct.

Q. Have you been treating Mrs. Opreska? A. I have.

Q. When did you start treating her, Doctor? A. Well, originally about fourteen years ago.

Q. I see, and when after this accident? A. November 1922—November 23rd, to be exact.

10 Q. And what did Mrs. Opreska complain of when she came to see you? A. Complained of a swelling in the breast.

Q. Did you examine that swelling? A. I did.

Q. Did she tell you the history of the case? A. She did.

Q. And did she tell you of having been injured in an accident? A. Yes, sir.

Q. And told you also about this breast condition? A. Yes, sir.

20 Q. Did you examine her breast, Doctor? A. I did.

Q. What condition did you find upon that examination? A. I found a growth, about the size of a walnut, in the upper lobe in the breast with metastases or with an extension of that growth; that is my diagnosis of it, but there is an extension in under the axilla, that is, the tumor, or enlargement of—the growth in the breast is there, and there is also, I find a growth in the axilla, and when we find that condition, we figure that that is a direct result of the—or as we call it a metastases, an extension, a metastatic process in the lymph channels, in the axillary glands.

30

Q. You say that there is a growth there, Doctor? A. That was a traumatic tumor, I believe.

Q. Is that a tumorous growth? A. It is.

Q. Is that condition, Doctor, progressive or not? A. I believe it is progressive in this case.

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Dr. Joseph Adler, direct.

Q. And by progressive of course, you mean it will get worse? A. It is.

Q. Can you tell, Doctor, whether or not that is a malignant growth? A. To be positive, to make a positive diagnosis I can not, but all points—all signs point at this time to a malignancy.

Q. What do you mean by malignancy? A. That is a growth in the arm of the axilla. 10

Q. What treatment have you given this woman since November for that condition? A. At the present time, I have been building her up. I expect to operate on her within the next month or six weeks.

Q. You mean you have been giving her tonics then to build her up? A. Build her up—her condition was such that I would not operate on her.

Q. And is there any certainty about that operation, Doctor; that is, that it will absolutely effect any cure? A. There is not. 20

Q. What would an operation of that kind cost? A. Well, I expect to charge the lady about two hundred dollars.

Q. Is that a fair and reasonable charge for that operation, considering this woman's circumstances? A. I think it is.

Q. You say, Doctor, that the operation will not effect a cure with certainty? A. Yes, sir. 30

Q. What are the reasonable probabilities? A. Well, in the last congress of physicians, held to discuss just this question, it has been shown that there are recurrences of—in approximately twenty per cent. of the cases.

Q. What do you mean by recurrence? A. That is, the growth comes back.

Q. I see. A. Or the opposite breast becomes involved. 40

Q. So that it is reasonably probable, then, Doc-

Dr. Joseph Adler, direct.

tor, that the operation will not effect a permanent cure? A. There is that probability.

Q. If it does not effect a cure, Doctor, is this woman going to suffer from pain as a result of that condition? A. Well, she will suffer more than pain.

10 Q. Will she suffer pain? A. Yes.

Q. You say she will suffer more than pain; what do you mean by that? A. If there is no cure, and a recurrence, the probabilities are that it will cause death in time, if it is a malignant condition.

Q. You mean that it will cause death before she ordinarily would die? A. Yes, the average duration of life after an operation of this kind in the malignant condition, where there is no successful result, is about thirty-two months.

20 Q. She would die, then, in thirty-two months, if the operation is not a complete success? A. That has been the average. There are some cases take longer and some take less, but the average has been thirty-two months.

Q. Doctor, you say that at the time this woman came to you, she gave you the history of the case. Did she give you as a part of that history that she had fallen on her breast at the time that a fire was going on in her apartment—

30 Mr. Laible: I object to that if your Honor please. I think it very leading and improper.

Mr. Brenner: I will withdraw it.

Q. Doctor, assuming that this woman, while getting out of the bathroom window in her apartment, that the window sill in which she was—that she was attempting to get out on, suddenly broke, causing her to fall on her breast, particularly the

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Dr. Joseph Adler, direct.

breast that you found injured, the breast on which you found this tumor, would you say from that history that it is reasonably probable that the condition which you find was due to that fall? A. I do.

Q. Can tumor come from a fall of that kind?

A. At this same congress that I mentioned before, it was said statistics have shown—

10

Mr. Laible: Now, your Honor, I object to that—

The Court: He should answer it directly.

Mr. Laible: I ask for a direct answer.

The Witness: What was the question?

(Question read.)

A. It can.

20

By Mr. Brenner:

Q. Now, Doctor, you said that you had treated this woman before; you had been her doctor some fourteen years ago. Did you ever examine this woman shortly before this fire occurred in March, 1921? A. I did.

Q. When was the last time? A. I examined her—about—some time in 1920.

Q. Do you know about what time in 1920? A. In the fall.

30

Q. Fall of 1920, and what was she suffering from at that time that required your attention?

A. Bronchitis.

Q. In treating her for bronchitis, Doctor, was it necessary for you to examine her chest or breast?

A. I did.

Q. At that time, or at the time that you made that examination, did you find then any evidence of tumorous growth or any growth in the breast?

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A. I did not.

Dr. Joseph Adler, cross.

Q. Was any such growth present at that time?

A. There was not.

Q. Positive of that? A. I am.

Q. So that this has developed since the fall of 1920? A. It has.

10

Mr. Brenner: Take the witness.

Cross examination by Mr. Laible:

Q. Doctor, in examining for bronchitis, you strip the patient to the waist line, and make an examination of each individual part of the breast, such as you would when you are searching, as you would in this case, for a cancerous or tumorous growth?

A. I strip the patient—

Q. Do you do that in a bronchitis examination, yes or no? A. I strip my patient—

20

Q. Answer my question, yes or no.

The Court: He may answer what he did in this particular case.

Mr. Laible: No, I am talking generally, whether he does that. I am coming back to that part then.

A. It is impossible to answer your question. You have two questions in one. If you will put one question at a time, I will answer both of them.

30

(Question read.)

A. Your question is complicated. It could not be answered without a full explanation. I can explain what examination is made—you have to understand what examination is made, and in that way, your question can be answered.

Q. I agree with you, Doctor, it is complicated, for the reason that you want to go into a full description, is that correct? A. No, I will give you

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Dr. Joseph Adler, cross.

my answer very, very short. It will be this. My patient is stripped, in an examination for bronchitis—in making that examination, the chest is not palpated as carefully as it would be if I were looking for a tumor or cancer, but at the same time there is a palpation of the breast, and I would be able to know whether or not that person had tumor.

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Q. Isn't bronchitis located in the bronchial tubes, and not in the breast, Doctor? A. Bronchitis is located in the bronchial tubes, but in order to make an examination in bronchitis, it is necessary to go over the entire breast, and examine by percussion, by palpation, and auscultation. If it is done differently, the physician is negligent in his examination.

Q. Now, Doctor, you examined this woman in November, 1922? A. Yes.

20

Q. Correct? A. Yes, sir.

Q. And in that examination at that time, what did you discover? A. I discovered that she had a growth in the breast, with a smaller growth, or cancer.

Q. Yes, and what treatment did you prescribe at that time, Doctor? A. None, but washing, careful washing, and tonic to build her up.

Q. And, Doctor, what were the signs that pointed to malignancy in this case? A. The only sign that points to malignancy is the extension of the process up in the axilla, and that is the reason I have not operated up to the present time.

30

Q. Isn't it a fact that in a malignant case, Doctor, that it is best to operate immediately, to arrest its further progress? A. Sometimes it is and sometimes it is not.

Q. Now, Doctor, you said it was problematical

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Dr. Joseph Adler, cross.

whether this woman would not die within thirty-two months? A. No, I did not. You misunderstood me.

10 Q. All right, Doctor, what was it you said about thirty-two months? A. I said that in human cases, the statistics have shown that the average duration of life is thirty-two months after operation.

Q. It is also likely that she might die from any one of a number of things, isn't it? A. Yes.

Q. And isn't it also likely, Doctor, that she got this condition from any one of a number of things, isn't it? A. No, sir, I do not think so.

Q. What can you get a tumor from, Doctor? A. Well, sixty per cent. of cases are due to acute or chronic trauma. That disposes of sixty per cent.—

20 Q. What is chronic trauma, Doctor? A. That is trauma applied to the breast over a long period of time plus one or more—one blow or another irritation of any kind to the bruise. An acute trauma would be as we have in this case, the history in this case, given a blow at a certain time, no other blow, and twenty per cent. of the cases—twenty per cent. of the cases of growths in the breast, give a history of—give a family history. Whether or not they are hereditary, is a question. No one has been able to determine the positiveness of that fact.
30 And it has only been of recent years that we have come to the conclusion that heredity plays a very small proportion, a very small per cent., in the transmission of growths of this kind, of cancer, or of any malignant growth. It has only been found that heredity—the cases present a certain medical phase or condition a great deal sooner than if there was no heredity, that is, if there was no hereditary taint or hereditary tendency. Now, that
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Dr. Joseph Adler, cross.

gives you twenty per cent. more; that is eighty per cent. Now, the other twenty per cent., we have never been able to determine what the real producing factor is in that case. We sometimes get a condition wherein there is a condition of lactation, followed by a breast tumor. That is, when a child is born, the milk in the breast may cake up, and develop a tumor. There is no positive way of determining, but we do know that sixty per cent. of cases are due to trauma.

10

Q. Now, whether this came from a milk condition or from trauma, you can not tell? A. Well, I would only—

Q. Can you, Doctor—can you? A. I have to figure by exclusion, and come to my diagnosis by excluding the conditions that I may be unable to place or find in this woman.

20

Q. Yes. A. I have accepted the facts that I think are consistent with a condition of trauma.

Q. Yes, but she had children, didn't she, Doctor? A. Yes, sir.

Q. And she also nursed those children? A. She did. I treated them.

Q. All these conditions might have affected this cancer, might it not, Doctor? A. Yes, it might have affected it, but—

30

Mr. Laible: That is all.

Mr. Brenner: Answer the question, Doctor.

Mr. Laible: That is all.

The Court: Stop when you answer the question.

Mr. Brenner: Are you through?

Mr. Laible: Yes.

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Dr. Joseph Adler, redirect.

The Court: Let Judge Brenner get what he wants.

Mr. Brenner: I will.

Q. Doctor, you said that you have eliminated other propositions, and you were going on to answer Mr. Laible's question when he stopped you?

10

A. That is right.

Q. What were you going to say? A. I was going to say that, in making my diagnosis, and coming to the conclusion that this is a condition due to trauma, I must put aside—

Q. Now, Doctor, before going any further, so that we might all understand what trauma means, what is it? A. Trauma means a blow, a bruise, an injury. And, as I was saying, I must put aside the facts that we do know—I must first take into consideration that in the year 1920, in the Fall of 1920, I examined this woman and found no growths in her breast. I received a history of a trauma. I have been unable to get from her a family history—she does not give any history of having any trouble with her breast prior to the time of this happening. So in making my deduction I have to go back to the fact that there is only one cause, and that would be the blow she received, a trauma.

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Q. Doctor, you were talking about a milk-caking condition of the breast. Taking into consideration that this woman's youngest child was seven years of age, and she has not had any since, would you say that it could come from a condition of that kind, realizing that it had not developed up to the Fall of 1920, when you made your examination?

A. I would say that there was nothing in the breast previous to this happening that she complained of.

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Dr. Joseph Adler, recross.

Q. So that it could not come from nursing a baby? A. No, sir, because—I know that to be so, from an examination of that breast before this happening.

Mr. Brenner: I see. That is all, Doctor.

Recross examination by Mr. Laible:

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Q. Would you swear absolutely, Doctor, that there was absolutely nothing the matter with this woman's breast— A. Will you talk a little louder. I can't hear you.

Q. Would you swear that there was absolutely nothing the matter with this woman's breast in 1920? A. There was nothing the matter with this woman's breast in 1920 when we examined her for bronchitis, yes, sir.

Q. Your examination just went down the central part of the breast. A. My examination what?

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(Question read.)

A. Well, no, I told you that before, but you stopped me. You would not let me finish it.

Q. Well, what is it? A. I told you that the examination for bronchitis consists of palpation, that is, a placing of the fingers, a feeling; percussion, which means percussion or a striking, and auscultation means the hearing, listening to, either with a stethoscope or with the bare ear. When you are doing those three things, you not only follow down the center of the sternum, but you have to move the breast, and put your ear first one way and then the other, and in moving your ears you certainly palpate it and you certainly feel it, and if there was any growth you would feel it, because the contents, so to speak—of course, the lobule in the breast will give you a similarity to the

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Dr. Joseph Adler, recross.

10 growth, but if you lay the breast, allow the breast to lay flat on the chest, and run your fingers across it, you may get a feeling the same as a marble under a tablecloth. That would be an easy way. That would be the way for me to feel something now, even if this woman did not know that she had it. I am positive that there was no such condition at that time.

Q. Of course, Doctor, since 1920, you have examined hundreds of cases? A. I have examined quite a few.

Q. Yes, and you have examined and had under your care probably hundreds of cases in that time? A. Yes, quite a number.

20 Q. Why is it that you remember so distinctly this individual case, Doctor? A. Well, if you are treating a person for some time, that is, you are treating them off and on, treating the family and then they came back to you later on with a condition of this kind, a great deal of that patient's former history will come back to you, if you are paying any attention to your patient.

30 Q. Yes. You just remembered, then, Doctor, that this woman, in 1920, that you made an examination and absolutely found no condition of this kind existing in 1920, simply because she came back to you in Thanksgiving of 1922? A. No, that would not be the entire reason. If I had found any condition of the breast in 1920, I would have called her attention to it, or I would have suggested her coming back to me for that condition, to watch it and follow it out. Not having found it, I could not suggest anything.

40 Q. You evidently misunderstood my question. My question was that the fact that she came back to you in Thanksgiving of 1922, made you remem-

Dr. Peter W. Skladzien, direct.

ber that there was absolutely nothing the matter with her in 1920. A. Nothing the matter with her? Why, yes, there was something the matter with her. She had bronchitis.

Q. Well, I mean outside of that. A. Outside of that? You mean the breast?

Q. Yes. A. I am positive that there was nothing, because, if there was, I would have followed it up, I would have cleared it up. 10

Q. Doctor, I have forgotten to ask you what your charges are. A. This woman is to pay me five dollars for each treatment up to the present time. She has been to me exactly six times.

Q. So there is thirty dollars coming to you? A. To this day.

Q. And up to the time that you are going to perform this operation, how many visits will be necessary? 20

Mr. Laible: I object to that, because that would be rather problematical.

The Court: You object to that?

Mr. Laible: I object to that on the ground it is rather problematical.

Mr. Brenner: Oh, well, if he objects to it, I am going to withdraw the question. Only fifteen dollars. That is all, Doctor. 30

DR. PETER W. SKLADZIEN, sworn.

Direct examination by Mr. Brenner:

Q. Doctor, you are a practicing physician in this state? A. Yes, sir.

Q. And have been for how many years? A. Three years.

Q. And you have treated Mrs. Opreska? A. Yes, sir. 40

Dr. Peter W. Skladzien, direct.

Q. When did you start your treatments, do you remember, Doctor? A. Well, I can't give you any exact dates.

Q. Well, approximately. A. Over a year ago.

Q. Over a year ago? A. Yes, sir.

10 Q. And how long have you been treating her—how long did you treat her? A. Well, she has been under my care now quite some time, I don't know any dates, because I have not kept any in regard to her case.

Q. I see, and what were you treating her for, Doctor? A. Well, I treated her at the time I recall the case, was that she had a severe swollen ankle at that time, and she had complained of various indefinite pains at that time.

20 Q. What about the breast, Doctor? A. Well, that is what I am referring to, as far as indefinite pains are concerned. She did complain of the breast there for a quite a while, and then at first I thought it would be nothing, and I told her to just overlook it for a while. I thought it probably just a mere confusion of the breast.

30 Q. I see, and did she keep on complaining of that condition? A. Well, she has been always complaining of that. For a while she forgot about it, and here she came back and complained about it again.

Q. Have you examined the breast, Doctor? A. Yes, I have.

Q. And have you found this growth that she complains of? A. Yes.

Q. That Doctor Adler complained of? A. Yes, sir.

40 Q. And what is your diagnosis as to that growth? A. Well, as far as the growth is concerned, I can't give any definite diagnosis, but there is a tumor there. What the tumor is, I do not know.

Dr. Peter W. Skladzien, cross.

Q. There is a tumor in there? A. Yes.

Q. Do you remember, Doctor, what your bill is for services? A. Well, it was close to two hundred dollars. She paid half of it, I think. I did not look at it.

Q. Close to two hundred dollars? A. Yes, sir.

Q. Well, what is the lowest amount you say it is, up to the present time? A. The lowest amount? 10

Q. Yes. A. Well, it would not be less than a hundred and fifty.

Q. Would not be less than a hundred and fifty? A. No.

Mr. Brenner: Take the witness.

Cross examination by Mr. Laible:

Q. Doctor, have you got any records showing— A. I have got a record in regard to the money she owes me. 20

Q. I mean, have you got any records showing how many times she called on you? A. Yes, sir, I have.

Q. Have you got them in court? A. I just called my office to-day and they told me I was wanted in court. I did not know it.

Q. Well, how many calls did she make? A. She came quite a good many times, I can't recall. I have no clear idea. 30

Q. Well, it was at your office? A. I think she was at the house in the beginning, I was at her house in the beginning.

Q. Now, did you go to the house? A. I did.

Q. How many times did you go to the house? A. I don't recall that either.

Q. You don't recall the month? A. What was that?

Q. You don't recall the month or the year? A. 40

Dr. Peter W. Skladzien, cross.

I think that was at the beginning, about a year ago.

Q. When was that—a year ago would be February, 1922, Doctor; would it be in February, 1922?

A. No, it was 1921.

10 Q. Well, what month? A. Well, all I know it was a nice day, must be in the spring or summer, early part of the summer.

Q. That would be two years ago, wouldn't it, Doctor? A. No, not two years ago. It would be 1921 it was.

Q. Well, this is 1923. Next week is March the first, and in about two weeks' time we will have spring. That would be almost two years ago, won't it? A. Well, now, I could not be exact.

20 Q. Well, which was it, a year ago or two years ago? A. Well, it was either in April or May, 1921, that I first saw her.

Q. And how many times did you call at her home? A. Once or twice. I am not definite on that. I can't tell definitely on that.

Q. How many times did she come to your office? A. She came quite a number of times to my office.

Q. Well, how many would you say? How many times would you say? A. Well, I know she has been coming there for a month every day.

30 Q. Every day? A. Every other day or every day.

Q. And your office is where? A. Bayonne.

Q. What street? A. 22nd Street.

Q. 22nd Street; East or West 22nd? A. East.

Q. What number East 22nd Street? A. What?

Q. What number East 22nd Street? A. 38 East 22nd.

40 Q. Is 38 East 22nd over the dividing line, or the street that—I think the Boulevard is the street.

A. It is between Broadway and Avenue E.

Dr. Peter W. Skladzien, cross.

Q. And where do the numbers start? A. Numbers—I think they start in Broadway.

Q. And they spread both ways there, don't they, Doctor? A. Yes, sir.

Q. One goes to one section and the other goes to the other section? A. Yes, sir.

Q. She always walked in there, Doctor? A. 10
What is that?

Q. She always came in there—walked into your office? A. Yes, sir.

Q. And you can't tell how many times she called there, can you, Doctor? A. What was that?

Q. You can't tell how many times she called there, can you? A. Well, I can't say exactly definite, because I—

Q. What do you charge a visit, Doctor, at your office? A. I charge two dollars at the office. 20

Q. And how much outside? A. Three dollars outside.

Q. Had she paid any part of this? A. Yes, sir, she has.

Q. When did you render her a bill to? A. I rendered her a bill several times and she paid no attention to it.

Q. I suppose they are like lawyer's bills, too. A. I suppose so.

Q. And Doctor, when did you see her last, do you recall? A. Well— 30

Q. I don't mean to examine her—I mean to treat her— A. I think it was in—some time in October, the last part of October, I think.

Q. 1922 or 1921? A. 1922.

Q. 1922? A. Yes.

Q. Then, according to that, Doctor, you must have been treating her for about a year and a half; 40

Motion for Non-Suit.

is that correct? A. Oh, yes, well, about a year, I can't be exact on the date.

Q. You could not, not having your records, say; is that right, Doctor? A. Yes, I didn't remember I was going to be called in this case.

10 Q. And at the time you rendered the bill, you were there treating her, weren't you, Doctor? What is that? A. Yes, sir.

Q. You were there treating her? A. Yes.

Mr. Laible: That is all, Doctor.

The Court: Call your next.

20 Mr. Laible: Well, if your Honor please, while the Doctor is here—I just came to the conclusion—Mr. Brenner, I don't want to surprise you. My doctor is here, and we want to have an examination.

The Court: I think that will be all right.

Mr. Brenner: I think your are entitled to it. Either tonight or tomorrow morning.

The Court: All right, that is perfectly fair.

Mr. Brenner: I have no objection to it.

The Court: Is that your case?

Mr. Brenner: That is our case.

The Court: Now, you may proceed.

30 Mr. Laible: Now, if your Honor please. I move for a non-suit on the ground that the negligence alleged in the complaint is as follows: that the said defendant, carelessly, negligently, neglected his duty, and did not have fire-escapes erected or constructed upon the said tenement house, according to the provisions of the act of the Legislature of the State of New Jersey—and then he goes on and says that by reason thereof, the plain-

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Motion for Non-Suit.

tiff was injured, by being thrown against the iron rail thereof and the window ledge leading thereto, and her ankle was badly bruised. I submit, if your Honor please, there has been no negligence shown here, in violation of the statute, and no such evidence, and I submit there should be a non-suit allowed.

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The Court: What do you say under those circumstances, Judge Brenner?

Mr. Brenner: I presume counsel on the other side is not familiar with the statute of 1919.

(Discussion.)

(Brief discussion concerning distance of the fire-escape from the window.)

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The Court: I don't think that has anything to do with this case, because that is not the cause of the injury.

Mr. Brenner: That is, the fire-escape being three feet below, she might be hurt in getting out of the window.

The Court: But she slipped before she got out. I do not see that it has anything to do with it. I think there is a question to leave to the jury, whether or not it was negligence on his part, in placing the fire-escape in the position he did, and whether or not that was the proximate cause of the accident. The mere fact that he put it where he says—or where the law says it should not be would not make him liable for the accident unless it proximately was the cause of the accident.

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Mr. Brenner: Oh, no question about that.

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Captain Hess Sharrott, direct.

That is a matter entirely for the jury, the way I figure it.

The Court: I refuse your application.

Mr. Laible: I ask an exception.

The Court: You may take your exception.

10 CAPTAIN HESS SHARROTT, sworn.

Direct examination by Mr. Laible:

Q. Captain, what is your position? A. Captain of the Bayonne Fire Department.

The Court: Wait a moment, please.

(Brief interruption.)

The Court: Now, you may proceed.

By Mr. Laible:

20 Q. Captain, what is your position? A. Captain of the fire department.

Q. Of Bayonne, New Jersey? A. Yes, sir.

Q. And were you a captain—of what? A. 6th Engine, Battalion two.

Q. And were you the captain who was detailed at the fire at 1048 Broadway, Bayonne, New Jersey? A. 1048 Broadway? Yes, I was.

Q. And that was on March what? A. 30th.

30 Q. What year? A. Two twelve in the morning. Wednesday morning.

Q. What year? A. 1921.

Q. And what time did you arrive there? A. About a minute and a half after. I went over, two fourteen, two fifteen.

40 Q. And what did you do when you got there? A. The first thing I done—the policeman was hollering out that people had got out in the back—wanted to get out in the back, and the first thing I went in back, and I directed my men to go with

Captain Hess Sharrott, direct.

lines of hose in front, and I went up the ladder, before anybody was out—the first man there—and—which the lady here told you she went upstairs and got out is wrong—

Mr. Brenner: Oh, I object to all this if the Court please. I have no objection to what occurred whatsoever—

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The Witness: Well, that is nothing but the truth, your Honor.

By Mr. Brenner:

Q. Captain, you have no interest in this case, have you? A. Not a bit of it.

Q. What makes you so excited? A. I am not so excited. I am all right.

Mr. Brenner: All right, then, you can wait until I make an objection, if I have one.

20

The Court: Well, proceed.

By Mr. Laible:

Q. Captain, when you got there, did you see Mrs. Opreska? A. Did I see her?

Q. Yes. A. I seen lots of them there, yes, I did.

Q. And did you see Mrs. Lampkin? A. Yes, sir, I did.

Q. Where did you see Mrs. Lampkin? A. Down on the fifth floor.

30

Q. Where was she at that time? A. Right in the dining room—kitchen, rear.

Q. And did you go in the window? A. Yes, sir.

Q. Was the window blocked up? A. No, the window—no trouble at all getting the window up—same way the third floor. She is on the second floor and Mrs. Opreska is on the third floor.

Q. And when you got inside, did Mrs. Lampkin say anything to you? A. She says, "Hold on until

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Captain Hess Sharrott, direct.

I put my dress on and get dressed," that is the things that she said.

Q. Did she dress then? A. In her parlor, yes, sir.

Q. Where did she go then? A. She went down the fire escape.

10 Q. Did she go by Mrs. Opreska's apartment? A. No, she went out—I went upstairs the same way and helped to get the others out. The last one I helped out was the crippled lady that was on the top floor.

Q. You saw Mrs. Opreska get out of the window? A. Yes, sir.

Q. Did she fall out? A. No, she did not in my presence, no. There wasn't a soul out before I got there.

20 Q. Did you notice whether the casing of the window had broken? A. No, sir, it was not broken when I was there. I don't remember it.

Q. Then, after you got up, and all the people got out, did you see Mrs. Opreska downstairs? A. Yes.

Q. And did she say anything to you? A. She said to me—asked me, "Can I go upstairs to get her pocketbook for her. I am the one went up with her, about—after—that was about around
30 four o'clock, just breaking day it was. I had a lantern in my hand. I went upstairs and she directed me where to go, behind the dishes in the closet, for a pocketbook that was there. The pocketbook was there. I opened the pocketbook and handed it to her and says, "Open it, and satisfy yourself whether everything was there." She says, "There was twenty-seven dollars and a few cents—

40 Q. And did she say there was anything missing?

Captain Hess Sharrott, direct.

A. She says—no—they got—everything is all right—them is just the words she used to me.

Q. Did you inquire around there whether there was any other people hurt?

Mr. Brenner: If the court please, I object to that.

10

The Court: Oh, I don't think that makes any difference whether there were any people hurt, any other people hurt.

Q. Captain, in taking care of a fire, is it your duty to take notice as to who was there? A. No, it is not; only as to my men.

Q. Your duties only apply to your men? A. Apply to my men, and our duty is to get people out; that is the first thing.

Q. Now, Captain, the next day, did you see Mrs. Opreska? A. I did.

20

Q. Where did you see her? A. Right in front of the building.

Q. And what time of day? A. Well, I judge, around about nine o'clock, I guess.

Q. And was she fully dressed? A. She was.

Q. And did you have anything to say to her? A. No, only just spoke to her, that is all.

Q. Did she say anything at that time whether she was hurt or anything? A. Nothing at all, no, sir.

30

Q. And did she walk around as if she was injured? A. No, no effect at all, whatsoever.

Q. You noticed her walking around? A. Yes, sir, I did, several times, yes—practically dozens of times since.

Q. Now Captain, prior to this fire, did you have occasion to inspect those premises? A. I did.

Q. When did you inspect them, Captain? A.

40

Captain Hess Sharrott, direct.

On Friday—October the 1st, A. M., in the morning, ten thirty, ten forty-eight Broadway all of that district.

Q. You inspected that entire district? A. I sure did, yes.

10 Q. And did you go into this entire house? A. I did, all of them, anything over two stories.

Q. Did you inspect the fire-escapes? A. I did.

Q. And what was the manner of your inspection? A. Looked to see if there was anything blocking them, the same way in all those buildings, any violations; I found that they had not, and I can prove it to you now, that I inspected them.

20 Q. Well, Captain, in the course of that inspection, did that take into consideration whether windows are nailed up? A. Well, it does. If windows is nailed, we order them to loosen them, a notice is given them.

Q. Well, on this occasion, did you go over them to see if the windows were nailed up? A. I did, back on the fire-escape, yes, sir, there.

Q. Were they nailed up? A. No, they was not.

Mr. Brenner: I object to that.

The Witness: No, they was not.

30 Mr. Brenner: Just a minute, please, won't you, Captain?

The Witness: Huh?

Mr. Brenner: I know you have been in court before.

The Court: Well, what is your objection, Mr. Brenner?

40 Mr. Brenner: My objection, sir, is that there is no evidence, sir, on our part, nor have we made a contention, that any of those windows were nailed. Mrs. Lampkin testified that the window was broken, and—

Captain Hess Sharrott, direct.

of course, we are not concerned with that. She could not pry the window open. She does not say it was nailed. It may have been stuck as a result of dampness or something else.

Mr. Laible: All right; I will withdraw that.

10

Q. Did you test the windows of Mrs. Lampkin's apartments? A. I did, sir.

Q. And what was their condition? A. The condition was O. K.

Mr. Brenner: I object to that.

The Witness: It was perfectly all right.

Mr. Brenner: One minute.

The Court: Wait a minute.

The Witness: Judge, excuse me; he asked me, and I have to answer.

20

Mr. Brenner: My objection is that the Captain says his examination was made in October of 1920.

Mr. Laible: In December of 1921, if I understood him correctly.

The Witness: October 1st, on Friday, October 1st, I said.

By Mr. Laible:

30

Q. What year? A. 1920.

Q. 1920? A. 1920, yes, sir.

By the Court:

Q. The fire was 1921? A. Yes, sir.

By Mr. Laible:

Q. Did you inspect it afterwards, Captain? A. No; only that morning after the fire; that is all.

40

Captain Hess Sharrott, direct.

10 Mr. Laible: Well, I think it is proper. I might ask him that, if your Honor please. I think it would be perfectly proper, because Mrs. Lampkin testified that, during the entire two years that she was there, that this window was closed, and she could not open it.

Mr. Brenner: I do not think it is proper.

The Court: I will permit the answer to stand.

By Mr. Laible:

Q. Now, the day of the fire, did you inspect the fire-escapes up there? A. Yes, sir; I went through the building several times. By the way, I went with this lady, also.

20 Q. What was the condition of the fire-escape? A. All right. It proves it when I went up and down and seen that everybody got out and all got out.

Q. Now, can you tell me how far the fire-escape was—from the building to the fire-escape? A. No; I didn't attend to it at all scarcely. Well, I don't look for feet or inches as long as it covers the law.

30 Mr. Brenner: Well, I object to that, if the Court please.

The Court: He says he does not know.

Mr. Brenner: Well, I object to this constant repetition that it covers the law.

The Court: I will strike out that latter part.

Mr. Brenner: Yes, it calls for a conclusion.

40 Mr. Laible: I consent to have that part stricken.

Mr. Brenner: Stricken out.

Captain Hess Sharrott, cross.

By Mr. Laible:

Q. Now, Captain, you live right in that neighborhood, don't you, Captain? A. Yes, sir.

Q. Did you see Mrs. Opreska after that? A. Several times, dozens of times, but never to speak to her—several times.

Q. Was there anything said by her to you about that she had an injury anywhere? A. No, sir, never, never discussed.

Q. Did you see her walking around afterwards? A. Yes, sir, time and again.

10

Mr. Laible: Cross examine.

Cross examination by Mr. Brenner:

Q. You know, don't you now, Captain, that this fire-escape violates the law? A. No, sir, I do not.

20

Q. You don't know that? A. No, sir.

Q. And you say you have absolutely no interest in this case? A. Sir?

Q. You say you have no interest in this case?

A. I have interest, in my business, and that is an inspector.

Q. Your business? A. Inspecting—that is what I mean, inspecting fire doors.

Q. Did you ever have any talk about it? A. No.

Q. With anybody? A. Beside the lawyer, no, sir, nobody else.

30

Q. Never talked to anybody outside of the lawyer? A. No.

Q. Well, you were subpoenaed here by him? A. Yes, sir.

Q. And as soon as you were subpoenaed here, you told him about taking down these people, and all about the fire? A. No, I told him only about the lady there, saying that she never knowed me, and so forth.

40

James Falconer, direct.

Q. I see, and that was the first person that you ever spoke to, about this case, about this occurrence? A. The first person, the lawyer?

Q. Yes, this case, yes. A. Well, he only asked me about this case—I never knowed the gentleman.

10 Q. That is the first time? A. I seen him—never seen him until last Monday.

Q. He never knew before that, that by speaking to you here, he could get you to testify as to this conversation? A. That is more than I could say for myself.

Q. You have never told anybody? A. No, sir.

Q. He just got this out of the air, as far as you know? A. Well, I could not tell you anything about that.

20 Mr. Brenner: That is all.

Mr. Laible: That is all, Captain.

JAMES FALCONER, sworn.

Direct examination by Mr. Laible:

Q. Mr. Falconer, where do you live? A. What?

Q. Where do you live? A. 14 West 51st Street.

Q. Bayonne? A. Yes, sir.

Q. And what is your business? A. Milkman.

30 Q. And do you recall seeing a fire on March 30th, 1921? A. I do.

Q. Where were you that morning? A. Going up 52nd.

Q. What were you doing? A. Delivering milk.

Q. And what did you do after you saw the fire?
A. I broke the alarm box, and rang up, and went and woke all the people up.

40 Q. And did you remain around there then? A
I did.

James Falconer, direct.

Q. And did you see—do you know Mrs. Opreska?

A. No, sir.

Q. Speak up; I can't hear you. A. I do.

Q. How long have you known her? A. It is about—ever since the fire—I didn't know her before.

Q. You did not know her before? A. No, sir.

10

Q. Did you see her there that night? A. Yes, sir.

Q. And how did you come to know her that night—did you see her there that night? A. Seen her coming down the fire-escape. I knew who lived in the building.

Q. You knew the people who lived in the building? A. I did, yes, sir.

Q. And when she came down, did you see her on the fire-escape? A. I saw her coming down.

Q. What fire-escape did you see her coming down? A. This—

20

Q. This apartment building? A. Yes, sir.

Q. And when she came down, did you see her and talk to her? A. Didn't talk to her, no, sir.

Q. Did she walk around as if she was injured? A. No, sir.

Q. Did she say anything to you? A. No, sir.

Q. Did she say anything about being injured? A. No, sir.

Q. And did you see her the next day? A. Yes, sir.

30

Q. Where? A. In Rosenberg's store, 1046 Broadway.

Q. That is next door to this apartment? A. Yes, sir.

Q. Did she say anything to you at that time? A. She complimented me on waking them all up that night, and didn't say nothing about being hurt.

40

James Falconer, cross.

Q. Did she act as if she was injured?

Mr. Brenner: If the Court please, I object to that as calling for a conclusion. The witness can say what he saw, not how she acted.

10

The Court: Objection sustained.

Mr. Laible: I will withdraw it.

Q. Did she say anything to you at all about the fire, outside of thanking you for waking them up?

A. Talked to the other lady, Mrs. Trolan, I think was her name, about her being hurt or something.

Q. Did she say anything about being hurt at all? A. Not to me.

Q. And did you see her at any time after that?

A. Yes, sir, I saw her off and on.

20

Q. Did she say anything after that about being hurt? A. No, sir.

Mr. Laible: Cross examine.

Cross examination by Mr. Brenner:

Q. Did you see her after that? A. I did, but never to speak.

Q. You didn't see her to speak to. Did you see the police officer there? A. Yes, sir, there was two of them.

30

Q. And did you see him at the fire-escape, about the same time— A. One was on top and the other one was in the back yard.

Q. One was at the top of the fire-escape? A. Yes, sir.

Q. At her apartment, I take it? A. Yes, sir.

Q. And there was another officer at the bottom of the fire-escape? A. Yes, sir.

40

Q. I see, and they were helping the people out, weren't they? A. One—the other one wasn't.

James Falconer, cross.

Q. The one at the top was helping her out? A. Yes, sir, that was before the fireman got there.

Q. Before the fireman got there? A. Yes, sir.

Q. The police officers were there first? A. No, sir, I was there first.

Q. Well, I mean after you got there, then the police officers came? A. Yes, sir. 10

Q. And they immediately started getting people out of the building? A. Yes, sir.

Q. And when Mrs. Opreska came down, the firemen had not yet arrived, had they? A. Not to my knowledge.

Mr. Brenner: That is all.

Mr. Laible: That is all.

The Court: Well, we will take a recess—

Mr. Brenner: Just one question, if you please. 20

The Court: Yes.

By Mr. Brenner:

Q. This Mrs. Trolan that you spoke about, she was pretty severely injured, wasn't she? A. I don't know.

Q. But everybody around there was talking about her injuries more than their own? A. I heard she was; yes, sir. 30

Q. I mean, people around there were talking about her injuries, paying more attention to her than they were to Mrs. Opreska? A. Yes, sir.

Mr. Brenner: That is all.

The Court: Well, all right, we will take a recess now. What was that chapter?

Mr. Brenner: 228, Laws of 1919, section 38, as to the bathroom proposition, and section 42 as to the depth of the fire-escape below windows. 40

Nicholas F. Feurey, direct.

The Court: We will take a recess until ten o'clock tomorrow morning.

February 27, 1923.

NICHOLAS F. FEUREY, sworn.

10 *Direct examination by Mr. Laible:*

Mr. Brenner: I will admit his qualifications.

Q. Doctor, you are a practising physician? A. I am.

Q. Of where? A. Jersey City.

Q. How long have you been practising? A. Twenty-five years.

20 Q. Are you connected with any hospital? A. I have been connected with a number. I am now at the present time.

Q. What hospital are you connected with?

Mr. Brenner: I will admit his qualifications.

Q. What hospital are you connected with? A. I am visiting now at the Jersey City Hospital, and I am called in consultation to the Hoboken hospital—St. Mary's.

30 Q. Where is your office? A. 803 Montgomery Street, Jersey City.

Q. Doctor, did you examine Mrs. Opreska? A. I did.

Q. When? A. I examined her last October, the exact date I don't remember.

40 Q. What did you find at that time? A. She complained of an injury to her right ankle. I examined the ankle. I was unable to find any evidences of injury. She had full function, full motion of the ankle. She complained at that time of having

Nicholas F. Feurey, direct.

a pain in the left breast. I examined her breast; I found nothing abnormal with the breast. She also complained of having a bronchitis as a result of the accident. I examined her and I found no evidence of bronchitis at that time. I again examined her yesterday; I examined yesterday simply for the condition of her breast. I found that she had what we call lactocele—meaning a milk swelling. About ninety per cent. of the women who have nursed babies have what we call lactocele or swelling in the breast. That is due to the lacteal ducts or canals being swollen out with milk at the time of nursing, and it never does return fully to normal. She has the same condition in both breasts. I examined her because I heard the doctor testify that she had a swelling in the axillary glands—that is the glands here, under the arm. I examined carefully and I was unable to find any axillary involvement—that is there is no swelling there in the glands.

10

20

Q. Doctor, did you examine the tops of her breasts? A. Yes.

Q. Did you find anything wrong there? A. On a palpation—that is placing the hand on the breast so (indicating) nothing can be elicited at all. They feel perfectly normal. You get the whole breast up in your hands as a whole; then you can feel this lactocele; it feels like a bunch of worms. That is present, I say, in both breasts, and you will find that present in 90 per cent of women who have nursed babies.

30

Q. Doctor, in your opinion, has she a tumor or tumorous condition, or a condition of cancer at the present time in her breast? A. She has not.

Q. Doctor, taking the history of a pretended injury and her present condition, would you say that

40

Nicholas F. Feurey, cross.

her condition that she described is due to this injury? A. That is not due to an injury. It is due as I said before, to the breast being filled with milk, causing a swelling of the lacteal ducts; the milk ducts, or canals in the breast.

10 Q. When you examined her in October, 1921—I believe that was the date you said? A. Yes.

Q. What was her general physical condition? A. She is an exceptionally healthy woman; she is above the average woman in health. She is well nourished; she is not flabby; she has hard, firm tissues; she is rather above the average type of woman.

Q. What that her condition in October, 1922, when you examined her? A. Yes.

20 Q. Doctor, when you examined her for the foot condition in October, what did you do to determine whether she had any condition there? A. I examined her foot as to the function and motion of the foot. She had perfectly normal motion, perfectly normal function; there was no deformity there, no swelling; there is absolutely nothing abnormal with that foot which I could elicit by examination.

30 Q. What period of time did your examination take, Doctor? A. Oh, I could not tell that. I do not know. I never timed myself. Some take longer time than others—none of them very long.

Q. Doctor, did you have her walk on this foot for you? A. Yes; she was walking on the foot when I entered the room.

Mr. Laible: Cross examine.

Cross examination by Mr. Brenner:

40 Q. Doctor, a lactocele condition is produced usually after they stop nursing? A. Starts form-

Nicholas F. Feurey, cross.

ing during the period of nursing and the swelling goes on, rather increasing until the breast is fully emptied of milk, and then it continues on the same size.

Q. Does it continue on for the rest of her life?

A. Yes.

Q. So that this lump would have been apparent shortly after this woman stopped nursing her baby? A. I have no doubt it was—in both breasts—like it is now. 10

Q. You did not find any lump when you examined in October, did you, Doctor? A. I did not find any lump. I found, however, a lactocele, which she has now.

Q. A tumor is a lump; is it not? A. The meaning of the word tumor—

Q. I do not care about the meaning; but the examination for a tumor will indicate a lump where the tumorous condition is formed? A. I will have to ask your definition of tumor before I can answer that question. 20

Q. I am asking you, Doctor, if it is not a lump. A. A tumor is a swelling. Any swelling is a tumor. To the lay mind, it sounds harrowing—a tumor. Any abnormal swelling is a tumor.

Q. So that this lump you find in her breast at the present time is a tumor? A. It is a tumor, but I would not term it a lump. 30

Q. You examined for the defendant, did you not? A. Yes. I examine for you very often, too.

Q. You examine for a lot of people? A. Any number. That is the way I make my living. I supply my family with bread and butter doing that.

Q. I did not ask you, Doctor, whether you examine for me. A. No; but I am very glad to examine for you—as I do. 40

Nicholas F. Feurey, redirect—recross.

Q. So that you simply volunteered that for effect? A. If it has a good effect, yes; if it has a poor effect, I wish I had not said it.

Q. You did volunteer it for effect? A. Yes; if it has a good effect.

10 Q. How long have you known the defendant, Doctor? A. I do not know the defendant; never met the defendant.

Redirect examination by Mr. Laible:

Q. Doctor, did you find the same condition you found yesterday at the time of your examination in October, 1922, in the breasts? A. There is no difference.

Q. I mean, did you find the same condition? A. Yes.

20 Q. That is all.

Recross examination by Mr. Brenner:

Q. I understood you to say you did not find any lump there in October, 1922? A. There is no lump there now, I said.

30 Q. Did you find any lump there in October, 1922? A. There was the same condition which I find now. I would hardly call it a lump; I would not call it a swelling. It is more or less of a natural condition following a nursing mother.

Q. And what you found there in October, 1922, would probably have been there a year before that; would it not? A. I have no doubt it has been there since the last time she nursed her child—possibly from the first time she nursed her child.

Q. That is all.

40 The Court: Would this condition require any surgical operation?

The Witness: Not at all, sir. It is more

Nicholas F. Feurey, redirect.

or less of a natural condition. Ninety per cent. of women who have nursed babies have that wormy feeling in the breast. It is not a lump; it is not an organized tumor. It simply follows the course of the lacteal canal.

The Court: Would it be noticeable without palpation, or feeling? 10

The Witness: It is not noticeable on flat palpation. You have to get the whole breast up in your hand before you see it, and it follows the natural course in all cases; from the nipple it diverges out like a fan.

Redirect examination by Mr. Laible:

Q. If this woman had a cancer, as Dr. Adler yesterday testified to, after your examination in October, do you think it would have been necessary to build her up to the present time for an operation? A. I do not know what you would build that woman up for. She is a perfectly healthy woman. She was a perfectly healthy woman when I saw her in October. I do not think you could build her up to any healthier condition than I found her in October, or the condition in which she is in now. 20

Q. Doctor, if it was a malignant case of cancer, what would be the proper course of procedure, if you discovered it, say, after Thanksgiving, in 1922? 30

Mr. Brenner: I object to that.

The Court: Objection sustained.

Mr. Laible: Withdraw it.

Q. Doctor, is this condition which this woman has at the present time, which you say is due to the result of nursing, a serious proposition? A. 40

Nicholas F. Feurey, recross.

Not at all. Ninety per cent. of nursing mothers have it.

10 Q. Doctor, what is the percentage of women who have traumatic condition of the breast? A. I venture to say that ninety-nine per cent. of all women have had at some time in her life a trauma of the breast. A trauma simply means a knocking or hitting, or striking. Possibly all of us, a great percentage of us, way over ninety per cent., have had at some time a blow on the breast; but when a woman gets something following that, of course, naturally she harks back to the time she was hit on that breast. I have no doubt she may have been hit on this breast just as many times as the other.

20 Q. Doctor, can you tell us whether a cancerous condition is due to heredity or not? A. According to the international statistics, sixty per cent. of cancer is due to hereditary predisposition to cancer. I do not say they are born with cancer. They have the predisposition to it. Their soil is fertile for the propagation and growth of cancer, and that is hereditary in sixty per cent.

30 Q. Doctor, if the history shows that a person's family in years gone by has had cancer, is it questionable whether they might get cancer afterwards?

Mr. Brenner: I object to that.

Mr. Laible: I will withdraw it.

Recross examination by Mr. Brenner:

Q. It is a known fact, however, that cancer does develop from a blow, is it not? A. Yes; it does.

Michael Rosenberg, direct,

MICHAEL ROSENBERG, sworn.

Direct examination by Mr. Laible:

Q. Where do you live? A. 1046 Broadway, Bayonne.

Q. Is that next door to the building which had a fire on March 30th, 1921? A. Yes.

10

Q. Did you live there at that time? A. I live there.

Q. Were you present at the time of the fire? A. I was.

Q. Did you know Mrs. Opreska? A. Yes.

Q. You maintain what there? A. Stationery and cigar store.

Q. You were in that business at 1046 Broadway, on March 30, 1921? A. Yes.

Q. For what length of time were you there prior thereto? A. Since October, 1907.

20

Q. Did you see Mrs. Opreska the night of the fire? A. No, I did not.

Q. Did you see her the next day? A. I did.

Q. Where did you see her? A. In the store and in front of the store.

Q. Whose store? A. My store.

Q. At that time was there anything said in relation to the fire by her? A. There was a lot of talking done by the woman; I did not hear it all, you know.

30

Q. Just speak up? A. There was a party hurt at the fire, and we were all thankful that we was not hurt, that we escaped as luckily as we did.

Q. Did Mrs. Opreska have anything to say with reference to any injuries she sustained? A. No.

Q. Did she say anything about being hurt? A. No.

Q. Did you notice any condition which she had at that time? A. No.

40

Michael Rosenberg, cross.

Q. Did you notice whether she was normal or not in relation to walking? A. She was normal.

Q. Did you see her afterwards? A. Yes; I saw her after she moved away.

10 Q. How long afterwards? A. I cannot say. It was a few days after that they moved away; the whole place was cleared.

Q. Where did you see her? A. In the store, in front of the store, or in the store; I cannot be positive about it.

Q. Did you talk with her at that time? A. Yes.

Q. Did you talk with her at that time about any injury to her ankle? A. No; there was nothing said about any injuries.

Cross examination by Mr. Brenner:

20 Q. Where were you when you were talking? A. In the store or in front of the store; I cannot say exactly now.

Q. You do not know whether it was in the store or in front of the store? A. It may have been either place.

Q. This is very strongly fixed in your mind, what this conversation was, is it? A. I know there was nothing said about injury.

30 Q. There was nothing said about injury? A. Yes.

Q. But you do not know whether it was inside your store or outside your store? A. It may have been either place.

Q. Just answer the question. You cannot remember? A. No.

Q. Everybody there was talking about this Mrs. Trolan that was hurt? A. Yes.

Q. Mrs. Trolan was badly hurt? A. Yes.

40 Q. That was why everybody's attention was directed to her? A. Yes.

Adele Shapiro, direct.

Q. And nobody was talking about their own injuries? A. No one was injured there that I know of.

Q. Did you ask Mrs. Opreska whether she was hurt? A. No.

Q. You were not interested in that? A. No, not to that extent. 10

Q. You know Mr. Shapiro for some years? A. I only know him since he purchased the house.

Q. That was in 1920? A. Yes.

Q. And you have known him since 1920? A. Yes.

ADELE SHAPIRO, sworn.

Direct examination by Mr. Laible:

Q. You are the daughter of Mr. Israel Shapiro, the defendant? A. I am. 20

Q. Where do you reside now? A. 553 Broadway, Bayonne, New Jersey.

Q. How long have you lived there? A. For the last five years.

Q. In 1921, or 1920, did you have charge of your father's business of taking care of houses and like that? A. I did.

Q. And did you have also under your charge the premises at 1048 Broadway, Bayonne, New Jersey? A. I had. 30

Q. Do you recall when your father purchased that property? A. Some time in 1920.

Q. Do you recall the fire that was there on March 30, 1921? A. I do.

Q. When did you first learn of the fire? A. I first learned of the fire about half past nine, or near ten o'clock, when Mr. Rose called, and I had to go to the 'phone and answer him, and he said, 40

Adele Shapiro, direct.

"Do you know you have a fire at 1048?" I said, "What, are you fooling?" He said, "No, that is true." He says, "It is clear up, a pretty big fire." I said, "I haven't heard anything."

10 Mr. Brenner: I object to the conversation.

Q. That was, you say, about half past nine or ten o'clock? A. About half past nine or ten o'clock.

Q. In the evening or the morning following the fire? A. In the morning following the fire.

Q. And then did you go to the place? A. Yes, I went to the place with my father.

Q. And did you see Mrs. Opreska there? A. Yes, I did.

20 Q. Where did you see her? A. At her home, in her rooms.

Q. That was on what floor? A. On the third floor.

Q. Did this fire destroy the apartments at all? A. Well, it did not destroy so much the apartments, except that in her apartment, on the north end the casing was burned.

Q. The north end is what part of the apartment, the rear or the front?

30 Q. Was any part of her furniture or any other part of the inside of her apartment destroyed outside of this casing? A. No, no.

Q. Did you see Mrs. Opreska that day? A. I personally talked to her; I took great care to ask whether anybody was hurt, and she told me Mrs. Trolan was hurt, and I actually directed the question to her, "Was there any member of your family hurt?" and she said, "No, thank God!" That
40 was her exact words to me.

Adele Shapiro, direct.

Q. Did you see her after that? A. I stayed there for quite some while. She walked into the front room with me and showed me the burned part of the house, and then I did not see her after that.

Q. Until when? You did see her after that, didn't you? A. I have not seen her from the time of the fire until about three weeks ago.

10

Q. What was the first notice you had of Mrs. Opreska's claiming injuries as the result of that fire? A. When we received notice from her lawyer, about eighteen months afterwards.

Q. Is this the paper you mean when you say "notice"? A. Let me see it.

(Paper shown to witness.)

A. Yes; that was the paper I read.

20

Q. Is that the summons and complaint? A. That was the summons and complaint that I received.

Q. In January, 1921, just prior to this fire, do you know whether your father had received—answer this yes or no—do you know whether your father had received any notification from either the Building Department, Tenement House Department or Fire Department of the violations of any part of that building, whereby they were required to send out or to give notice to their tenants to move—in January, 1921—do you know whether any notice like that did come? A. None whatsoever.

30

Q. Do you know? A. I do not know.

Q. You do not know, or do you know, if such a notice had come? A. No, I do not know if such a notice had come.

Q. And you prepared all notices and everything for your father, did you not? A. I did so.

40

Adele Shapiro, cross.

Q. Now, in January, 1921, or February, 1921, did you serve a notice on Mrs. Opreska, or any of the tenants, that they were required to remove from their premises, that they had to get out by reason of complaints of the Tenement House or Building Department? A. No; I did not.

10 Q. But subsequent to the fire, did you give notice to the tenants to move out so that you could repair the building? A. After the fire we did.

Q. You went there several months, did you not, before the fire to collect rent? A. Yes, sir; certainly.

Q. Did you know Mrs. Lampkin? A. Yes.

Q. Did she ever make complaint that the window leading to the fire-escape in her apartment would not open? A. Never.

20 Q. Did you ever receive any complaint from anybody in the house that the windows leading to the fire-escapes would not open? A. No, none whatsoever.

Q. Has there been any change made in that fire-escape since the fire? A. Not that I know; I do not know; I am not interested.

Cross examination by Mr. Brenner:

30 Q. Didn't you get a notice January 19th from the official building inspector of the City of Bayonne, or didn't you ever get such notice to the effect that the premises were in very bad condition and ought to be repaired? A. I did not see any such notice.

Q. Do you know that your father did not get such notice? A. I know that my father did not get such notice.

40 Q. You are positive of that? A. I am positive,

Adele Shapiro, redirect.

because I read all papers that we get. I read all mail.

Q. Was such a notice sent to you or sent to your father on January 19th, 1921? A. Not that I know of, or not that anybody else knows of.

Q. Now, you say the day after the fire you went up there and saw Mrs. Opreska? A. Yes, I did.

10

Q. How many tenants were there in that building? A. Four upstairs and the store tenant.

Q. Did you ask every tenant in that building whether they were hurt? A. I asked every tenant in that building whether they were hurt.

Q. And you say you particularly asked Mrs. Opreska? A. I particularly asked Mrs. Opreska.

Q. Did you have any special reason for being particular as to the asking of her? A. I asked all the tenants.

20

Q. Did you; did you have any reason for particularly asking her? A. What reason should I have?

Q. You did not have any? A. I asked every tenant, and I asked her the same as I asked every tenant.

Q. But you did not have any reason to be any more particular about your request of Mrs. Opreska than you did of any other tenant, did you? A. What interest did I have?

30

Q. Don't ask me questions; I am asking you. A. I did not.

Redirect examination by Mr. Laible:

Q. Mrs. Opreska was sort of a janitor there? A. She was. She was janitor for the house.

Q. Taking care of the house? A. Yes.

40

Adele Shapiro, recross.

Recross examination by Mr. Brenner:

Q. She was a janitor at that time? A. She was a janitor at that time.

Q. How much were you paying her? A. I do not remember what we were paying her.

10 Q. You took charge of this house? A. I did, but I do not remember.

Q. And you remember every detail of a conversation with her that took place two years ago? A. It was so much down from her rent. I do not remember exactly; we did not make any specified amount.

Q. Do you remember what her rent was? A. I do not. I would have to look that up.

20 Q. Don't you know her rent was the same as the other tenants? Don't you know Mrs. Opreska was paying twenty-five dollars a month, just the same as every other tenant in that house? A. I do not remember what her rental was.

Q. Don't you know that was true? A. I do not know whether that was her rental.

30 Q. And don't you know you gave her ten dollars for acting as janitor one month in 1920, and not after that? A. One month in 1920? No; in 1920 she was not janitor. Mrs. Fedor was janitor, living in the next house, and I can prove it by Mr. Rosenberg.

Q. You are going to start to prove things by Mr. Rosenberg? A. He was at that time living in the house.

Q. Mr. Rosenberg is a pretty good friend of your family? A. No; he was living in the house at the time.

40 Q. How do you know you can prove it by him? A. He was living in the house, and he can prove it.

Adele Shapiro, recross.

Q. How do you know he knows who the janitor was in 1920? A. He knows who the janitor was.

Q. Did you ever talk to him about it before? A. They all know who took care of it.

Q. Did you ever talk to him and know that he knows who the janitor was in 1920? A. I did not talk with him, but he knows it.

10

Q. But you are positive you can prove it by Mr. Rosenberg? A. Everybody knows.

Q. But you said you can prove it by Mr. Rosenberg; so that you are not almost positive, but you are positive if Mr. Rosenberg was called back to the stand that he would swear under oath that she was not the janitor in 1920, but somebody else was? A. Because at that time, when we—

Q. Just answer it, please? A. 1920, when he was—

20

Q. Just answer that question, yes or no, please? A. Well, I am almost positive.

Q. You did not say before you were almost positive, did you? A. No.

Q. Your answer was you could prove it by Mr. Rosenberg, wasn't it? A. Well, I am almost sure one will remember who the janitor of their home was. I know I would.

Q. But there were lots of other people who lived in that house, weren't there? A. There were not so many.

30

Q. There were four tenants? A. There were.

Q. And it did not impress itself on your mind that you could prove it by Mrs. Lampkin, did it? A. Well, I might prove it by Mrs. Lampkin.

Q. You now say that? A. I am sure I can prove it by Mrs. Lampkin if she will tell the truth.

Q. You are sure Rosenberg will tell the truth,

40

Israel Shapiro, direct.

but you are not sure of the other tenants telling the truth? A. When we received the house—

Q. Just answer that, please. A. I do not know.

ISRAEL SHAPIRO, sworn.

Direct examination by Mr. Laible:

10

Q. You are the defendant in this case? A. Yes.

Q. You were the owner of the premises 1048 Broadway, Bayonne, New Jersey? A. Yes.

Q. When did you purchase this house? A. When I get hold of the property?

Q. Yes. A. In 1919.

Q. In 1919? A. Yes.

Q. Mrs. Opreska was a tenant of yours? A. Yes.

Q. On what floor? A. On the top floor.

20

Q. How long did she live there? A. I find her in the house, and she live there until the fire was.

Q. You found her in the house when you bought the house? A. When I bought the house.

Q. Did you at any time in January, 1921, receive notice that there was a complaint against the house by the Building Department? A. The time the woman was the janitor she called me up at one time that the sewerage was blocked up.

30

Q. When was that? A. I cannot remember the exact date.

Q. Was it in January, 1921, that you received a complaint in regard to a tenement house violation? A. No, no violation; only there was the sewer blocked up; she was calling me up, the sewer was blocked up.

Q. Did you receive any notice you had to put your tenants out by reason of the fact that the house was not tenantable? A. No, sir.

40

Q. In January, 1921? A. No, sir.

Israel Shapiro, direct.

Q. Did you give Mrs. Opreska in January or February, 1921, notice that she had to get out by reason of such a violation? A. I give notice—

Q. Listen to the question.

(Question repeated.)

A. I give them notice one time, but not of violation. She was a bad tenant in this house and make me always trouble in this house, and I wanted her to get out. 10

Q. Did you give her notice in January or February, 1921, that she had to get out by reason of a violation? A. No notice.

Q. Did you see Mrs. Opreska after the fire? A. Yes. The fire was in the night and I was in the morning with my daughter about ten o'clock.

Q. And did you see Mrs. Opreska? A. I see her in the house. 20

Q. Did she tell you at that time that she was injured at the fire? A. No, sir. I go up in the house and inquire of somebody what is there, and she told the whole story about the fire, and then I was in the house; every one of the pillows was torn in pieces there, all rags; she took me in all the rooms, and I was half an hour in these rooms, and she told me all this story.

Q. Did Mrs. Opreska at any time after March 30, 1921, inform you personally that she had been injured in this fire? A. Never. 30

Q. When was the first notice that you had that she claimed she was injured in the fire? A. The first notice I received from a man, he handed to me the notice there, very late, I think about eighteen months afterwards.

Q. And is this the paper you mean? A. Yes, this is the paper that I received. 40

Israel Shapiro, direct.

Q. Has any part of that fire escape been changed since the time you bought it? A. Not in my time.

Q. Did you have it changed? A. No.

Q. Did you make a measurement from the window sill to the fire escape erected in that building? A. Yes.

10 Q. And what was the result of that measurement? A. Fifteen inches from this window to the flooring of the fire escape.

Q. And what was the size of the window there, do you know? A. I am not measuring exactly the measurement, but same sized windows all around—standard windows.

Q. Is the window sill, and was it on the night of March 30th—was that stone or wood—the window sill? A. The window sill is stone.

20 Q. About how wide is that window sill, do you know? A. This is I think—I am not measuring it, but it is a wide sill.

Q. If you don't know, say so. A. It is a wide sill.

Q. I show you some photographs and ask you whether the fire escape shown on this building are the fire escapes on 1048 Broadway, Bayonne, New Jersey? A. Yes; this is the fire escape.

30 Q. Are those the same fire escapes without change since the fire on March 30, 1921? If there has been any change, say so? A. Yes. This is changed (indicating).

Q. What was changed? A. You see over there is—

Q. Just show what was changed. A. It is changed the whole. The opening was put a wire around; there is a wire around the hole, over the opening of the fire escape.

40 Q. That is on the second and third floor? A. All the floor.

Israel Shapiro, cross.

Q. Was there any change as to the ladder downstairs? A. Yes; the ladder is fixed up.

Q. It was changed now? A. A weight to come up. It was a sort of hanging ladder when I had it.

Q. Outside of that were the platforms changed? A. Everything in the same condition.

Mr. Liabie: I offer these in evidence.

10

Cross examination by Mr. Brenner, (On the Photographs.)

Q. You say that the only difference was the hole in the floor was covered up? A. No; it is only a railing made on the hole from the fire-escape.

Q. Which railing do you mean? A railing on the hole, sir. This is a new—I have other houses—I inquired for that—put it in between. You see, when it comes from the window it is from the hole, to block it up; so if—

20

Mr. Brenner: Oh, I do not object.

Photographs marked D-1, D-2, D-3 and D-4.)

Mr. Laible: Cross examine.

Cross examination By Mr. Brenner:

Q. You say Mrs. Opreska was a bad tenant, a bad woman? A. Yes.

30

Q. When did she start in being bad? A. The whole time when I have the property.

Q. All the time? A. All the time.

Q. And she was a bad woman from the time you bought the property in 1919 until after the fire, wasn't she? A. Yes; she was always mit trouble.

Q. And you say her husband was just as bad? A. I never meet the husband.

Q. When did you make her your janitor? A. I must make her—

40

Israel Shapiro, cross.

Q. When did you make her your janitor? A. I make the janitor—before the fire started she was by me three months.

Q. You mean she was a janitor three months? A. Three to four months.

10 Q. Three to four months before the fire? A. Yes, sir.

Q. When did you give her notice to move? A. Before she was janitor.

Q. This bad woman that you wanted out of your property and had given notice to get out, you made the janitor of your apartment? A. For the reason I cannot make another one on account of this woman.

20 Q. And you had four other tenants in that property? A. Yes; and I cannot make another woman on account of this woman. I must make her the janitor.

Q. Didn't you get a notice January 1921, from the bulidng department of the City of Bayonne, teling you this property was in bad condition? A. Not from the building department.

Q. Whom did you get it from? A. Only when she called me up—

30 Q. Whom did you get it from? A. I told you only was the sewer locked up, and I got a notice from the building department.

Q. Did you ever get any notice from the City? Did you get that notice on January 19, 1921? A. Yes; I get notice that the sewer was blocked up. Nothing from the building department.

Q. That was the only notice you got? A. Yes.

By a Juror:

40 Q. Where was the entrance to this fire-escape? A. Out the bathrom window.

Martin Lautermilch, direct.

Q. Was the bathtub in front of the window? A. The bathtub was in front of the window.

Redirect examination by Mr. Laible:

Q. Were there bathrooms on every floor of this building? A. No, only this floor and the bottom; and this bathtub was not connected; she never used the bathtub. 10

The Court: What do you say? The bathtub was not connected?

The Witness: Not into the bathtub. She was not using the bathtub. It was a cold roomer—a cold bath; it was never connected.

The Court: Wasn't there water there?

The Witness: There was water in the toilet, but not in the bath. 20

By Mr. Brenner:

Q. You had a bathtub there and never had any water running in it? A. No.

Q. And you had a bathroom in the other apartments? A. Yes.

Q. Did you have a lavatory in the other apartments? A. A toilet, yes. The bathtub is standing in a toilet.

Q. And the fire-escapes from the other apartments pass from the toilets? A. Yes, all the fire-escapes from the toilets. 30

Defendant Rests.

MARTIN LAUTERMILCH, sworn.

Direct examination by Mr. Brenner:

Q. You are a police officer of the City of Bayonne? A. Yes, sir. 40

Q. Been connected with the Police Department

Martin Lautermilch, direct.

of the City of Bayonne how many years? A. Nine years.

Q. Were you at this fire at 1048 Broadway? A. Yes.

Q. Were you there the night of the fire? A. Yes—the morning of the fire.

10 Q. It has been testified that the firemen arrived there first. Did the fireman arrive first or did the police arrive there first?

Mr. Laible: I do not think that was the testimony, that they arrived there first. I think the testimony is the firemen were there.

Mr. Brenner: Withdraw it.

20 Q. Where were you during that fire? A. In the back; in the rear of the house.

Q. Was there any fireman in the back of that house? A. No, sir.

Q. You are sure of that? A. Sure.

Q. You know Captain Sheridan? A. Yes, sir.

Q. Was he in the back of that house? A. No; he was there after the fire was burned all out.

Q. Were you at all on the fire-escape? A. Yes.

30 Q. Was that before or after the people had come out of the property? A. Before the people had come out of the property.

Q. Did you see Mrs. Opreska there? A. I did.

Q. Did you see Mrs. Opreska trying to get out of that window? A. Yes.

Q. Did you see what happened to her? A. We busted the window in and pulled her—

The Court: Who do you mean by “we”?

The Witness: Me and the other officer—
Officer McDonald.

Martin Lautermilch, cross.

Q. Did you help the people out of that window?
A. All but one; one dropped down—Mrs. Trolan dropped down from the fire-escape. I was trying to save her, and she missed the ladder and fell down.

Q. She was the crippled woman? A. No; I do not think so.

10

Q. A pretty old woman? A. Yes.

Q. Did you see what happened to Mrs. Opreska when she tried to get out? A. I could not tell you now.

Q. You could not tell that? A. No.

Q. When Mrs. Opreska did get out, did she go down the fire-escape alone? A. I helped her down.

Q. Was Captain Sheridan there at that time?
A. No, sir; he was not.

20

Q. How long after that did Captain Sheridan get there? A. About ten minutes afterwards.

Cross examination by Mr. Laible:

Q. Are you sure it was ten minutes? A. About ten minutes afterwards.

Q. During that entire period there were no firemen, nobody appeared in the back to find out whether there were any people at all? A. They were working in the front of the building where the fire was. We were in the back.

30

Q. And you do not mean to tell us the firemen did not appear to find out whether there was anybody in the house or not? A. It did not seem so, no.

Q. All they were taking care of was fighting the flames? A. That is all.

Q. And whether there were people in the house they did not care?

40

Motion for Direction of Verdict.

Mr. Brenner: I object to that. The police officers were there.

A. There were four of us there.

Q. What windows did you break? A. We broke all three of them.

10 Q. The first thing you did, you went around opening windows—you took your club and smashed them in? A. No.

Redirect examination by Mr. Brenner:

Q. You tried to open them first and couldn't?
A. No.

(Testimony Closed.)

MOTION FOR DIRECTION OF VERDICT.

20 Mr. Laible: I renew my motion for a direction on the same ground as on my motion for non-suit.

The Court: I will hear counsel as to what he thinks this case hinges on.

Mr. Brenner: I think it hinges on the provision of the statute prohibiting the connection of a fire escape with a bathroom; also on the second violation of the statute, which it is admitted still exists, and that is
30 that the fire escape is not the required distance from the window sill that the law requires.

The Court: That has nothing to do with this accident, so that matter cannot affect this case—the distance of the fire escape from the window sill. The lady says she stepped on the sill of the window inside her room.

40 Mr. Brenner: No, stepped on the bath-

Motion for Direction of Verdict.

tub, she says, and was getting on the sill and the sill broke.

The Court: On the sill in her premises. She cannot hold the landlord for something that broke inside her premises, can she?

Mr. Brenner: I agree absolutely with that, except this, that that was the established entrance to the fire escape, which was used in common by all of the other tenants.

10

The Court: It was not supposed to be used by all the tenants; it was for her particular place.

Mr. Brenner: Not the fire escape. I do not get your Honor.

The Court: All of the other tenants did go through her rooms to get to the fire escape.

20

Mr. Brenner: The testimony was the other tenants came into her rooms because they could not get out to the fire escape. Mrs. Lambkin says when she tried to get to the fire escape from her apartment that they could not open or pry the window open. She started to go to the roof, and found she could not get out that way, and went through Mrs. Opreska's apartment.

The Court: I do not think that makes part of the building a part of the building that is maintained by the landlord.

30

Mr. Brenner: If there is any question about that I will recall the—

The Court: There is another proposition, and it seems to me a very serious one. If you read the act of 1919, you will see it refers to fire escapes that are "hereafter erected"; but I want to call your attention to the

40

Martin Lautermilch, direct.

fact that that same "hereafter" was contained in the original tenement house act of 1904; but there is nothing to show here when this was erected, and there was no act prohibiting the connection of a fire escape with a bathtub until the act of 1904, and that says: All fire escapes erected after that time. Now, there is nothing here to show when that fire escape was erected, and the jury cannot presume it was erected after that time. I was looking at the old original act, the first tenement house act, which contained almost identically the same words: "All fire escapes hereafter erected on any tenement house shall open directly from at least one room in each apartment at each story above the ground, not including a window on the ground floor, other than a bathroom or water closet compartment." Now, you see it is almost identically the same as to that provision, in the act of 1919—the wording is slightly changed as to that, but it is practically the same. The rest of the section is very much altered. Now, that is the difficulty I see in this case as it stands now.

Mr. Brenner: I will ask leave to open the case. I think I can show the time this building went up.

MARTIN LAUTERMILCH, recalled.

Direct examination by Mr. Brenner:

Q. Officer, you have been a resident in Bayonne for a great many years? A. Yes.

Q. Do you know this building 1048 Broadway?
A. I do.

Martin Lautermilch, cross.

Q. Do you remember the year that building was put up? A. About 1908 or 1909.

Mr. Laible: 1899?

The Witness: 1909.

Cross examination by Mr. Laible:

Q. How do you know that, Officer? A. Working up that way.

10

Q. You would not be positive whether it was 1907, 1908 or 1909, would you? A. No, I could not.

Mr. Laible: I object to the testimony and move to strike it out as indefinite.

Mr. Brenner: Counsel gives him three years and says, "Are you positive it was either year?"

The Court: I will let it stand. It is for the jury to say.

20

By the Court:

Q. Who built it, do you know, Officer? A. I could not tell you who built it.

Q. How do you fix it at that time? A. The time I was working up around here; I was working for myself then; I was in the vegetable business.

Q. When were you working up there in the vegetable business—what years? A. I worked there before I became an officer, for twenty years, in the vegetable business.

30

Q. What is there that makes that fix the time? A. I am just judging.

Q. Just guessing? A. I judged, about 1909 or 1908.

By Mr. Brenner:

Q. When were you in the vegetable business?

40

Martin Lautermilch, cross.

A. I was all my life in it until I went on the police force.

Q. When did you go on the police force, Officer?

A. In 1906—in 1916.

Q. It was before you went on the police force that this building was erected? A. Yes.

10 Q. Do you remember how many years before that? A. I cannot tell exactly.

Q. I do not mean just the year; that is not what the Court is trying to get at in asking you that question. You have testified it was either 1908 or 1909? A. Yes.

Q. Now, are you positive it was one or the other of those two years? A. One or the other of those two years.

20 Q. You mean you are guessing when you say it was either 1908 or 1909? A. Yes.

Q. You do not know whether it was one or the other year? A. No.

By Mr. Laible:

Q. How do you remember it was just 1908 or 1909, Officer? A. There is Mr. Rosenberg; I believe he can tell you.

Q. Mr. Rosenberg can tell it? A. Yes.

30 Q. You cannot tell us positively whether the building had been up then four or five years or just was erected in 1908 or 9? A. 1908 or 9.

Q. That is just what you are guessing at? A. Yes.

Q. But whether it was prior to that time, you cannot tell us? A. No.

Helen Opreska, direct.

HELEN OPRESKA, recalled.

Direct examination by Mr. Brenner:

Q. These fire-escapes, they were on the outside of the house, weren't they? A. Yes.

Q. Was that same fire-escape you were going down used by all the tenants in the house, or used only by you? A. No; by two tenants. The top floor, Mrs. Trolan, and my side we had to use it. 10

Q. The fire-escape on your portion of the building were used by two adjoining apartments? A. Yes. I had to go facing Mrs. Trolan's to get to the ladder.

Q. Did that lead to another balcony? A. Yes, downstairs.

Q. And that led to the ground on the first floor? A. Then there was a single ladder to get to the ground. 20

Q. But there were not separate fire-escapes for every tenant in that building? A. No.

Cross examination by Mr. Laible:

Q. In order for the tenant of the apartment directly opposite to you to get to the fire-escape, they could go through their window in their toilet there to get out of that bathroom; they went out of their window, didn't they? A. Mrs. Trolan did, but not the other parties. The two tenants downstairs didn't. 30

Q. But you could reach the fire-escape from the window of your apartment, couldn't you? A. You could get out, but you could not get the ladder. You would have to go to the middle of the house to get to the ladder.

Q. Each tenant went out of their own window over to where the ladder was in the center of the 40

Michael Rosenberg, direct.

house, and then went down the ladder in the center. They did not have to go through your apartment to get to the fire-escape; they could go through their own apartment to get to the fire-escape? A. Yes.

10

Mr. Brenner: I think that clears the situation, and I forgot the fact the pictures were in evidence as to the way this fire-escape is erected.

20

Mr. Laible: If your Honor is going to let the officer's testimony go to the jury for what it is worth, I would like to call Mr. Rosenberg, who, I believe, was living there in 1906 or 1907, to testify as to how long he knew of those fire-escapes being there. Of course, it is just the same kind of testimony as the officer's.

Mr. Brenner: I think it then becomes a question for the jury. I have no objection to that.

Mr. Laible: My motion is to strike out the officer's testimony as indefinite.

The Court: I cannot strike the officer's testimony out.

30

MICHAEL ROSENBERG, recalled.

By Mr. Laible:

Q. You were in the neighborhood of 1046 Broadway what year? A. October 15, 1907.

Q. Was the building 1048 erected at that time? A. It was.

Q. How long had you lived in Bayonne prior to that time? A. Two years.

40

Q. Was the building of 1048 a new building at

Michael Rosenberg, direct.

that time or an old building? A. It was not; it was about ten years old at that time.

Q. How do you know that? A. I know it from the former tenant of both stores.

Mr. Brenner: If this is to be hearsay testimony I object to it.

10

The Court: Objection sustained.

A. The tenants who lived there before.

Q. Just a moment. Did you know those tenants personally, or did you not know them personally?

A. I knew them from the time I moved there—after the time I moved there.

Q. Did you have any dealings with them? A. No, no dealings excepting as neighbors.

Q. What they told you? A. What they told me.

20

(No Cross Examination.)

The Court: Judge Brenner, I wish you would look at the act of 1919, the one you have referred to, paragraph 2, and see if you think that does not prove you out of court—"A fire escape now erected upon such house shall be deemed sufficient except as hereinafter provided." That is the only act to which you refer.

Mr. Brenner: It says, "Except as hereinafter provided."

30

The Court: Yes. "All fire escapes hereafter erected"—I think that "hereafter erected" means "after this act," and not relating to the act of 1904.

Mr. Brenner: But that is the same as the previous act of 1904.

The Court: I think that means a fire escape erected at that time is sufficient.

40

Case.

10 Mr. Brenner: Going back to the fact that in 1904 we find the same provision. Now, if we are not under the statute of 1919, we are under the statute of 1904, which provides that "Fire escapes hereafter erected shall be erected in a certain manner." That is the identical provision as in the act of 1904. Now, if this tenement house was erected in 1907, as testified by the officer—and, of course, the jury determine as to the correctness or veracity of his testimony—then it was erected subsequent to 1904, and that being so, a prohibition against the erection of those fire escapes was to erect them with the entrance leading from a bathroom.

20 The Court: I think the other proviso of the act, the amendment of 1919, makes fire escape in existence at that time on the building, good fire escapes, unless the act provides contrary.

Mr. Brenner: The purpose of the act of 1919 was this, that where this act changed the requirements for a fire escape between 1904 and 1919, that then that situation should not be disturbed except as actually required in this act.

30 That simply saves the condition that existed, and was legal between 1904 and 1919, but anything that was illegal between 1904 and 1919 is not saved by this act. Otherwise it would make legal in 1919 something that was absolutely illegal in 1904 or 1905.

40 The Court: Now, do you understand from the evidence that the lady on the other floor had access to this balcony on the outside from her window.

Case.

Mr. Brenner: That is the testimony; that is shown by the pictures; because here you have the two adjoining windows, one window in each apartment leading to this balcony, and the ladder going to the first floor, likewise connecting from the bathrooms; and we have the testimony of Mr. Shapiro—
of course we cannot doubt that testimony—to the same effect. He of course does not call it a bathroom, because there is no bathtub in there, but it remains a bathroom just the same, and he says the entrance in each apartment was from the bathroom.

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The Court: Then that window was not a portion of the building which any of the other tenants had a right to use.

Mr. Brenner: The other tenants using the apartment of Mrs. Opreska?

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The Court: Yes.

Mr. Brenner: There is no question about that, except that they had a right to use it in an emergency. It does not seem to me that enters into the case, though.

The Court: No.

Mr. Brenner: They were only using it to get to the fire-escape, because the testimony is they could not open their own windows, and the officer testifies that when he got there he broke the windows in three apartments.

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The Court: Then if this lady's fall was caused by a breaking of a portion of this window sill in her apartment she cannot recover. Now it is a mere question whether or not she was negligent in having a bathtub in front of that window.

Mr. Brenner: Not only that, but leaving

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Case.

10 out this tenement house act altogether—
just get that out of our minds altogether—
this being a portion of the building used in
common by all the tenants, not only are they
entitled to use that, but they are entitled to
have a safe entrance to that. The entrances
leading to the fire-escape, the means of get-
ting to the fire-escape must be—there must
be no negligence in the maintenance of those.
For instance, take this situation: Suppose
there was a fire-escape there that we could
say fulfilled every requirement of the law,
but suppose the landlord came along and
boarded up the entrance, or let us say he
partially boarded it up, so that the person
to get to that fire-escape would have to crawl
20 over that barricade, it would then be a jury
question to determine whether a safe en-
trance or a reasonably safe entrance had
been maintained to this fire-escape. Now,
we have the same situation here; this person
was not only entitled to the use of a fire-
escape, but she certainly was entitled to have
the landlord exercise reasonable care in
maintaining a reasonably safe way to get to
that fire-escape. Now, if he allowed this
30 building to get into that dilapidated condi-
tion that the mere getting on to this window
sill to get to the fire-escape would break it,
I say there is negligence there regardless of
the tenement house act. Of course, assuming
the tenement house act, as it alway did, re-
quired the maintenance of a fire-escape, she
was not only entitled to a fire-escape, but to
the means of getting on to it. If he main-
40 tained this house in that dilapidated condi-

Case.

tion—and he is of course chargeable with notice of that—that she could not get on it without suffering injury—of course he would be liable regardless of the requirements as to bathrooms or anything else; so that this entrance to the fire-escape was not merely part of the demised premises. These entrances in all these apartments were used as exits to the fire-escape. I think it has to go to the jury on that proposition as well as the other proposition as to the proper maintenance of these fire-escapes.

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The Court: I am going to let it go to the jury.

Mr. Laible: Your Honor will allow me an exception?

The Court: Yes.

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Mr. Laible: Upon the further ground that if your Honor allows it to go the jury that question is not within the province of the complaint. The complaint says that there were not proper fire-escapes, that he was not reasonably careful in using due care to have fire-escapes constructed on such tenement house in the manner provided by the statutes. If your Honor allows it to go to the jury or Mr. Brenner's last statement, I desire an exception to that.

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The Court: I do not think the question of the part being reserved is part of the case. I said that before. He rented the premises to this lady, and she cannot hold the landlord responsible for any defect in those premises, and if she slipped because of a break in a portion of that window sill, he is not liable for that.

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Court's Charge to the Jury.

Mr. Laible: That is the way I look upon it.

The Court: There is no question about that. If she slipped on the bathtub, that is another matter.

10 Mr. Laible: But the evidence is that she stepped on the window sill, and it broke off, causing the injury.

Mr. Brenner: Stepping on the bathtub.

Court's Charge to the Jury.

Gentlemen of the jury:

20 The defendant in this case was the owner of a tenement house in Bayonne on the 30th day of March, 1921. He purchased that building either in 1919 or 1920. There were two families on the third floor of that building, two families on the second floor, and a family living back of the store on the first floor. The plaintiffs in this case were tenants of the defendant, living on the third floor.

30 The tenement house act of this state provides, among other things that this kind of a tenement house should have outside fire-escapes, and the amendment to this act in 1919 provides as follows: "All fire-escapes hereafter erected on any tenement house shall be directly accessible through a door or window of at least one room other than a bath room or water closet compartment at each apartment on each story above the ground floor." You see, the act does not prevent or prohibit an entrance to a fire-escape through a bath-room window or door, but provides it shall be an exit through some other window or door besides the bath-room.

40 The original tenement house act became effective on March 25, 1904. The 38th section of the

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original act contained substantially the same provisions as this amendment of 1919. This section of the original act reads as follows—or that portion of it— “All fire-escapes hereafter erected on any tenement house shall be open directly from at least one room in each apartment at each story above the ground floor other than a bathroom or water closet compartment.” You see, the wording is very nearly the same. You will notice that this act and the amendment refer to fire-escapes erected after the passage of the original act, which was on March 25, 1904. If this fire-escape was erected before that date, this provision of the statute does not apply, and the plaintiff must establish to your satisfaction by a preponderance of the evidence that this fire-escape was erected after that date; otherwise the provision of the statute has no reference to it. There has been some evidence on that subject. One witness, as I understand, says the building was erected before that date. Another witness says it was erected after that date; and you are to say whether there is any evidence which warrants you in saying that the building was erected after March 25, 1904, or that this fire-escape was erected on that building after that date. The plaintiffs are bound to establish their case by a preponderance of the evidence. That is the first problem which you will have to meet in this case.

If a landlord refuses or neglects to obey the provisions of this tenement house act or the amendment thereto, he becomes liable for a penalty mentioned in that act, and which can be enforced by an action. This suit is not brought to recover such a penalty. The mere fact that this fire-escape did not comply with this statute as to the place of

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Court's Charge to the Jury.

access to it, if you find that the statute did apply to this particular case, does not give these plaintiffs a cause of action against this defendant. This defendant had a fire-escape on this building. He did not put it there; it was there when he bought the building. So far as it appears, the authorities of Bayonne never found any fault with it. So far as it appears, this defendant was never notified by any of the departments, the fire department or any other department having authority over such matters in the city of Bayonne, that it did not comply with the law. But this fire-escape was only accessible to the plaintiffs through their bathroom window. There was no other access to it except through the bathroom window. If this fire-escape, as I said before, was erected prior to March 24, 1904, the provision of this tenement house act had not been violated. If you find that the fire-escape was erected after that date, that fact alone will not entitle the plaintiffs to recover, for this action is not based on the violation of this tenement house act or this amendment, but is based on negligence of this defendant.

It appears that about two o'clock on the night of March 30, 1921, a fire started in this house, and gained such headway that the plaintiffs could not use the hallway to reach the building, and were forced to use the fire-escape. The lady, Mrs. Opreska, says that the only way to reach this fire-escape from her apartment was through a window in the bathroom. That the bathtub was in front of this window. Her husband and the other tenants of that building, or, if not all, a number of the other tenants, went through this window onto this fire-escape, and so far as appears were not injured. There was one person injured. How she

Court's Charge to the Jury.

was injured, whether she went through this window, or fell off the fire-escape, or how, does not appear, but so far as appears the persons who went through this window on this fire-escape, except this particular lady, the plaintiff in this case, were not injured. She was the last person but one to leave her apartment. She says that she stepped into the bathtub, then on the window sill, and it broke and she slipped and was injured.

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Now, it is a rule of law that governs all cases of landlord and tenant and their liability that unless there is some provision to the contrary the landlord is not responsible to the tenant for repairs while the tenant is in possession of those premises. So, if the part of that window which broke was part of her apartment, which she rented, the landlord is not responsible for that defect, and if it was caused by that defect in her own apartment she cannot hold the landlord liable. If this lady's fall was caused by a bad condition of the sill of the window on the outside of her apartment, she cannot recover unless the landlord knew of its bad condition, or had reason to know of it, or unless it had existed for such a length of time that he should have known of it and had the opportunity to repair it. There is no evidence in this case that any one knew of this bad condition, or whether there was a bad condition prior to that night, or whether the bad condition of that window was caused by people who smashed in that window frame from the outside. You see, the landlord cannot be held except for neglect, and if he had no notice of any bad condition what neglect was there on his part?

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Before the plaintiffs can recover they must establish by a preponderance of the evidence that this

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Court's Charge to the Jury.

lady was injured while leaving this building at the time of this fire, and that the proximate cause of her injury was the negligence of this defendant.

10 Now, the defendant claims, first, that she was not injured, and, second, that if she was injured it was not through his neglect. This defendant was required to maintain a fire-escape as required by this tenement house act, but if this lady's injury was not caused by his failure to obey this act, then of course there can be no recovery.

20 Now, I do not understand from the evidence that there was any defect in this fire-escape itself. The police say they went up this fire-escape, broke in the window, and the officers of the fire department say the same thing. So far as appears, there was nothing the matter with the fire-escape itself. This defendant, however, cannot say that it was not his duty to obey the statute, but may show what had been done in the effort to obey it, leaving it to you from all the circumstances to say what his effort was and whether it was what a reasonable and prudent man would have done in view of this statute which has been referred to.

30 If you find that the accident was caused by the negligence of this defendant, the plaintiff can recover, unless you find that Mrs. Opreska was guilty of contributory negligence; that is negligence on her part which contributed to this accident. She knew the situation when she started to go out of that window, and you are to say whether she used the care and caution that a reasonably prudent person would have used under like circumstances as they then existed. If she did, if she used that care and caution that a reasonably prudent person would have done, why, she is not guilty of contributory negligence. If she did not and the acci-

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Court's Charge to the Jury.

dent was due to negligence on her part that contributed to the accident, then she cannot recover, even if you find that the defendant was guilty of negligence; but you see you must take into consideration all the circumstances. The house was on fire; smoke was coming in her room, and she would only be expected to act as a reasonably prudent person would have done under the circumstances as they then existed.

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Now, then, if you find that the plaintiffs can recover, that is that this lady was injured on the night in question, and that her injury was caused by the negligence of this defendant, and that she was not guilty of contributory negligence, both her husband and herself are entitled to a verdict. But you cannot find a joint verdict, for their damages are to be paid in a different manner. The husband, if entitled to recover, is entitled to such sum as will compensate him for the injury which his wife suffered from as the result of the negligence of this defendant, if you find there was such negligence. That includes the money which he laid out and expended for doctor's bills, the money which he laid out and expended for medicine, and if you find that he has been obliged to pay any other moneys for assistance to his wife in doing her house work, he ought to be compensated for that. In other words he is to be made good for any loss which he suffered by reason of this injury to his wife. And if you find that there would necessarily be other expenses, such as an operation in the future, that would oblige him to lay out and expend other moneys, he would be entitled to be compensated for that. But in that matter, gentlemen of the jury, you must deal not with possibilities, but with probabilities. And you have another question

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Court's Charge to the Jury.

10 to consider there, and that would be whether or not the condition of the wife's breast was due to the accident which occurred, if it occurred, on that night. Mrs. Opreska is entitled to recover a sum which will compensate her for the injury, if she can recover at all. That includes in the first place pain and suffering. She is entitled to be compensated for the pain and suffering which she underwent as a result of the injuries sustained at this time, if she did sustain such injuries, and if you find that she will suffer pain in the future, she is entitled to be compensated for the pain which she will suffer in the future from these injuries.

20 Now, that, members of the jury, is not an arbitrary sum; it is not for you to go into your jury room and say "We will give her so much." That is not what the law expects you to do. It expects you to get at it in a reasonable, sensible manner.

30 You should consider the pain and suffering that she has undergone, the length of time that she suffered and the severity of the pain, and then if you find from the evidence that there will be pain and suffering in the future you consider that as well, and then allow her a sum which will compensate her for the pain and suffering that she has undergone and will probably undergo in the future. Now, in arriving at that you have to consider the question of what injuries, if any, she has sustained. She says that she sustained a sprained ankle, and that she had a doctor attend her for that sprained ankle. She has been examined by a doctor recently, and I do not understand that there is any permanent injury to that ankle. She says it pains her some times, it is swollen; but as far as I understand the medical testimony—you are the sole judges, however—that trouble with the ankle, if

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Court's Charge to the Jury.

that existed, is practically cured at the present time; but if she did have a sprained ankle she is entitled to be compensated for the pain and suffering which she suffered from the sprained ankle. She claims that when she fell she struck her breast against the edge of the window, the sash, and as a result of that she now has what Dr. Adler says is a tumor.

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It does not appear that any complaint was made of a tumor immediately, although she did, she says, complain of pain in her breast, and I think one of the doctors testified to that same effect. Now, the question for you to determine, gentlemen, is, was the condition which exists in her breast at the present time due to any injury which she sustained at the time of this fire? There you heard the medical testimony, and you have got to determine, gentlemen, from that medical testimony whether or not the plaintiff has satisfied you by a preponderance of the evidence that this lady has a tumor as a result of that accident.

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Dr. Feurey, who has testified this morning, says that there is no tumor. He disagrees with Dr. Adler. He says the condition he finds is the same in both breasts, that there is no lump in the right breast, but that she has a condition which is common to ninety per cent of women who have borne children and nursed their children, and that it is not the result of accident but a natural condition and it does not require any operation. Now that is a direct contradiction of Dr. Adler, who says that in his opinion it is a tumor and will require an operation costing two hundred dollars. Now, I do not understand that Dr. Adler says it is a cancer, but he says it might be a cancer. Now, we do not deal with possibilities. You are to say from the

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Court's Charge to the Jury.

10 evidence of the doctors whether or not it is a tumor or cancer, or whatever it is, and then whether or not it was the result of this particular accident. If it was not the result of this accident it is immaterial whether it is a cancer or a tumor, or whether it is only a condition of the breast incident to the nursing of children; so you see you have to determine that, and you have to determine that in order to arrive at the question of damages, for if you find that there can be a recovery this lady is only entitled to recover a sum which will compensate her for the injury which was the direct, proximate result of this accident. If the condition of the breast is the result of this accident then you determine what the condition is and what would be a fair sum to allow her in addition to the pain and suffering which she underwent from her accident.

20 If you find, however, that the defendant is not liable, then it is immaterial how much money the husband has expended or what he may have to expend in the future, or how much this lady has suffered or what her condition is in the future.

30 You see it resolves itself into a question first, was this defendant negligent? Second, if he was negligent, was this lady injured by reason of such negligence? Because if the negligence of the defendant was not the proximate cause of this lady's injury the defendant cannot be liable. If the defendant was liable and this lady was not guilty of contributory negligence, then the husband can recover a sum which will compensate him and this lady may recover a sum which will compensate her; but if the defendant is not liable then of course there can be no recovery by either of these plaintiffs.

40 If the defendant was guilty of negligence but

Court's Charge to the Jury.

the lady was guilty of contributory negligence, then neither of the plaintiffs can recover.

So, members of the jury, as I said in refusing the motion to nonsuit and in refusing the motion to direct a verdict, it is not a question for the court, it is a question for you to decide, and the decision of the court in refusing the nonsuit and the refusal of the court to direct a verdict is not the slightest indication as to how you should decide this case, It is simply a decision of the court that under the rules of law this case must be decided by a jury, because it is a jury question, that is a question of fact which you must decide; and then after deciding the facts and applying the law which I have laid down to you, whatever verdict you arrive at in that way and manner will be a proper verdict.

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Exhibits.

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[9484]

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New Jersey Court of Errors and Appeals

HELEN OPRESKA and FRANK
OPRESKA,
Plaintiffs-Appellees,

v.

ISRAEL SHAPIRO,
Defendant-Appellant.

Action at
Law.

On Appeal.

BRIEF OF APPELLEES.

Statement.

The defendant, on March 30, 1921, and previous thereto, was the owner of property known as 1048 Broadway, in the City of Bayonne, in this State. The plaintiffs were tenants, occupying one of the apartments in this property, and had been tenants previous to the time when the same had been purchased by the defendant, in 1919.

On March 30, 1921, during the late hours of the night, or early hours of the morning, after the plaintiffs had retired for the night, a fire occurred in the premises and, while the plaintiff Helen Opreska was in the act of attempting to leave her apartment by means of a fire escape that led from a bath room window, she fell and suffered injury for which she and her husband by this action sought to recover and both she and her husband have recovered a verdict at the trial in the Hudson Circuit Court.

ARGUMENT.**POINT I.**

Appellant's grounds for reversal are not covered by exceptions taken or objections noted at the trial.

The grounds of appeal which have been filed assign numerous reasons—ten in all—why the verdict rendered should be set aside. We respectfully submit that an examination of the state of case will show that the grounds now urged for a reversal are not covered by exception taken or objections noted to the ruling of the Court during the course of the trial. The only exceptions taken are to the ruling of the Court on refusal to grant a motion for non-suit (Case, p. 60, line 4), and to the refusal of the Court to direct a verdict (Case, p. 107, line 18).

The motion for non-suit was based upon the ground that no negligence had been shown, counsel stating:

“I move for a non-suit on the ground that the negligence alleged in the complaint is as follows: (then follows a short reading from the complaint). I submit, if your Honor please, there has been no negligence shown here in violation of the Statute, and no such evidence, and I submit there should be a non-suit allowed” (Case, p. 58, lines 30-40; Case, p. 59, lines 1-10).

The motion for direction of verdict was based upon the same ground, which is failure to prove negligence. Counsel said, “I renew my motion for a direction on the same ground as on motion for non-suit.”

The appellant, in his brief, seems to abandon the contention that no negligence had been established, but seeks to reverse the judgment on the ground that the negligence complained of was not the proximate cause of the happening of this accident. Neither the motion for non-suit nor direction of verdict was predicated upon the ground that the negligence of the defendant-appellant was not the proximate cause of the happening of the accident, and, therefore, the argument under the recognized decisions of this Court cannot be considered.

The authorities on this point are so numerous and so familiar that we have not cited the same.

The only question of proximate cause appears in the colloquy between the Court and ourselves, but is not made a part of either the motion for non-suit or motion to direct verdict, and no exception is taken to the Court's ruling thereon. We most earnestly insist that this should dispose of this appeal, but desire, however, to argue the grounds urged in the appellant's brief. Although the grounds for reversal are numerous, the whole question resolves itself into practically one question of law, and that is as to whether the Court erred in leaving to the jury the determination of whether defendant's negligence was the proximate cause of the happening of the accident and the resultant injuries.

POINT II.

The negligence of the defendant-appellant was established.

The property owned by the appellant, as averred in the complaint (Case, p. 5, Par. 2), and admitted in the answer (Case, p. 9, Par. 2), is a three-story

non-fire-proof tenement house and as such, is governed by the provisions of what has commonly been called the Tenement House Act.

This act contains provisions as to the regulation of fire escapes on this type of property, the sections pertaining thereto being as follows:

“Every non-fireproof tenement house hereafter erected, more than three stories high, unless provided with outside fireproof stairways directly accessible to each apartment, shall have fire escapes located and constructed as hereafter described. (P. S. 1904, p. 101, Article II, Section 1, Subdivision 34; Compiled Statutes, Vol. 4, 5325.)

“All fire escapes hereafter erected on any tenement house shall open directly from at least one room in each apartment at each story above the ground floor other than a bath room or water closet compartment. * * * (Subdivision 38, same Article.) They (referring to the fire escape balconies) shall be below, and not more than one foot below the window sills. * * * (Subdivision 42, same Section and Article.)”

There was some dispute as to whether this tenement house was erected prior or subsequent to the passage of this statute. There is testimony to the effect that it was subsequently erected, but whether it was erected before or after could have no material effect because the statute further provides that every tenement house shall be made to comply with the provisions of the Act not later than January 1, 1905, which is the year following the passage of the statute; the statute using this language:

“Every now existing tenement house shall be made to comply with all the provisions of this Act on or before the 1st day of January,

One thousand nine hundred five." (C. S., Vol. 4, p. 5355, Subdivision 208, P. L. 1904, p. 149.)

The Statute of 1904 was amended in 1919 (P. L. 1919, p. 526): The only effect of the amendment was to make more drastic the requirements as to fire escapes.

There was some discussion at the trial, however, as to the effect of Paragraph 2 of the Act of 1919, amending Paragraph 35 of the Act of 1904, which states:

"but a fire escape now erected upon such house shall be deemed sufficient except as hereinafter provided."

Taking into consideration the fact that the provisions of the Act of 1919 are considerably more severe than those of the previous act, it certainly cannot be said that under the Statute of 1919 a fire escape would be considered as legal and sufficient which under the previous act was absolutely illegal and insufficient. The only sensible construction, we submit, would be that it was the intention of the Legislature to protect the owners of property who had complied with the previous enactment, and not to protect a deliberate violator of the law.

It is an admitted fact that the entrance to the fire escape led from a bath room window and that the window was obstructed by a bath tub; this having been testified to not only by the plaintiff but also by the defendant (p. 92, line 40; p. 93, line 2).

It was likewise admitted that the balcony of the fire escape leading from the apartment of the plaintiff was more than a foot below the window sill, this having also been testified to by the defendant (p. 90, lines 10-15).

The violation of the Tenement House Act having been established, the plaintiff has a right of action founded upon negligence against the defendant, the violation of the Statute operating as a basis of the defendant's liability.

Krebs v. Rubsam, et al., 91 N. J. L., 426,
104 A., 83;

Kargman v. Carlo, 85 N. J. L., 632, 90 Atl.,
292;

Cittadino v. Shackter, 83 N. J. L., 593;

Pesin v. Jugovitch, 85 N. J. L., 256.

The Trial Court took from the jury the question as to whether a recovery could be based on the violation of the provision of the Statute regulating the distance below the window that the balcony should be erected, which the Statute fixes at not more than one foot, upon the ground that this would not be considered as the proximate cause of the accident inasmuch as the plaintiff, Mrs. Opreska, fell and was injured before she had reached the balcony of the fire escape. But we contended at the trial, and still contend, that the jury had the right to consider this question. If the floor of the balcony had been nearer to the window sill, it would have been more accessible to the plaintiff, Mrs. Opreska, and could have been more easily reached by her, and it would probably have made it unnecessary for her to step upon the window sill leading from the bath room. We believe that this proposition should be given some consideration, although withheld from the consideration of the jury.

POINT III.

The violation of the statute was the proximate cause of the happening of the accident and the resultant injuries.

The appellant contends, and we dispute his right so to do, as previously stated in the argument under Point I, that the violation of the provisions of the Tenement House Act were not the proximate cause of the happening of the accident in question, and for the purpose of bearing out that contention places a strained construction on the testimony of the plaintiff, Mrs. Opreska, stating that this testimony conclusively shows that she was injured solely because of the fact that the window sill broke, and not because of the fact that the window leading to the fire escape was obstructed by the bathtub. An examination will show, however, that she slipped, not only because of the fact that the window sill broke, but also because of the fact that when the window sill did break she could not secure a firm position on the bathtub itself. This appears from the testimony of Helen Opreska (Case, pp. 18, 19), where she testified as follows:

“Q. Could you get to the window in any way except by going over the bathtub? A. No, sir, I could not. I had to get over the bathtub.

“Q. And you had to get in the bathtub? A. I had to get in the bathtub, yes.

“Q. Well, what did you do next? A. I put my right foot on the window sill, and as I did, this collapsed.

“Q. Which collapsed? A. The window sill, the piece of wood.

"Q. Was there any fire going on there that time? A. No, the smoke was coming in there; the burnt part was that way (indicating).

"Q. You say it collapsed; what do you mean? A. Well, it tore right off, a piece of that window sill came right off.

"Q. When it broke off, what happened to you? A. Well, I slipped, and as I did slip my foot went in the back of the bathtub, and—

"Q. On the bathtub? A. Yes, and then my left breast—I was knocked right onto the ledge of concrete, underneath where the window sill was."

Assuming, however, that the cause of the fall was the breaking of the window sill, the Trial Court would have no right to take from the jury the question as to whether the breaking of the window sill was the proximate cause or whether that was only a concurring cause, and the proximate cause the obstruction of this bathroom window.

Numerous examples might be given for the purpose of establishing the fact that the violation of the statutory provision caused this accident. Two reasons, by way of illustration, will probably suffice. Had the window been absolutely unobstructed, the plaintiff, Mrs. Opreska, might have stepped, and probably could have stepped, direct from the floor to the balcony of the fire escape without being obliged, as she was, to step on the well-known slippery surface of the bathtub to get down upon the balcony of the fire escape, and, even though it were necessary to step with one foot upon the window casing, she would have had a firm footing on the floor, so that if the casing broke she could easily have maintained her balance, and probably have escaped injury. Likewise, if there were no obstruction, she could easily

have placed in front of the window, for the purpose of gaining access to the fire escape, a chair or other convenient article of furniture, and could have stepped from the same to the fire escape balcony, without trusting to the insecure footing afforded by the window sill, evidently so decayed and rotted that it could not bear her weight.

Numerous cases are cited by the appellant in support of his contention and argument. Except for one case, however, which, we insist, bears out our contention, and not his, these cases are not in point, and have absolutely no application.

In the case of *McGuire v. C. R. R.*, 68 N. J. L., 608, there is no statement of facts, and the well-known rule is laid down that the mere occurrence of an accident, without proof of negligence, does not entitle a recovery.

In the case of *Kelly & McAlinden v. C. R. R.*, 70 N. J. L., 190, the facts were that goods were shipped by railroad to the depot at Perth Amboy, and from there carried by truck to their final destination. Upon opening the box, an examination revealed the fact that glass was broken. There was no proof as to whether this breakage occurred while the case was in the hands of the railroad or whether it had occurred, as it might have, while it was in the hands of the expressmen, and because of this absence of proof, the plaintiff was unable to recover.

The case of *Garrett v. Driver Harris Co.*, 70 N. J. L., 382, was an application for a new trial on rule to show cause, and the Court simply deals with the proposition as to whether the verdict was contrary to the weight of evidence.

C. R. R. Co. v. Moore, 24 N. J. L., 824, states the province of the Court and that of the jury, and holds that the existence or non-existence of neg-

ligence should be determined by the jury not only when the facts are disputed, but when the inference that may be drawn from the facts undisputed is questioned.

The case of *Hammill v. Pa. R. R. Co.*, 56 N. J. L., 370, is very much in point, but bears out our contention rather than that of the appellant. In that case, plaintiff was standing upon a foot path adjacent to the railroad right of way. One Barry was walking along this foot path carrying upon his shoulder a box of tools. The claim made was that the statutory signals were not given by those in charge of the locomotive, and that as a result thereof, Barry was struck, the box of tools knocked from his shoulder, some of the tools striking plaintiff. Argument was made that the proximate cause of the happening of this accident was negligence of Barry in placing himself in a position of danger where he might be struck by the locomotive. The motion for non-suit and direction of verdict was refused and on appeal, the rulings of the Trial Court, in a lengthy and comprehensive opinion, were affirmed, the Court holding that this question was rightly left to the jury for determination.

The case of *Mullen v. Rainear*, 45 N. J. L., 523, deals only with the question of a landlord's obligation to make repairs to portions of the demised premises.

The case of *Bauman v. Hamburg-American Packet Co.*, 67 N. J. L., 250, outlines the province of court and jury and in the decision says, in this apt language:

"Where the evidence is doubtful and the inference to be drawn from the facts uncertain, it is the province of the jury to decide."

and again

"If the evidence is open to fair debate and leaves the mind in a state of some doubt on

the subject, the case should not be withdrawn from the jury."

The decision of the lower Court was reversed because a verdict was directed, the Appellate Court holding that the case should have gone to the jury.

The case of *Smith v. Public Service Railway Co.*, 78 N. J. L., 479, was decided in favor of the defendant because no negligence had been established, which under any theory could have been claimed to have caused the accident.

In this case the plaintiff was injured by a horse which had become unmanageable. The only allegations of negligence were that the trolley car at which the horse had shied, was going at an excessive rate of speed, which allegation was not proved, and that a gong had not been sounded. It was held that it was unnecessary to sound a gong, inasmuch as the driver of the horse had seen the car; and that it could not be said that the failure to sound the gong caused the horse to shy, the probability being that the sounding thereof would have had a contrary effect. The rule of law, however, governing a question of proximate cause favors our contention, the Court using this language:

"Whether an act or omission, alleged to be negligence, naturally and proximately caused an injury *is as a rule a question for the jury*, but if there is no negligence connecting the alleged negligence with the injury or if it is *OBVIOUS* that the act or omission was not the natural and proximate cause thereof, the question is for the Court."

The case of *Hummer v. Lehigh Valley R. R. Co.*, 75 N. J. L., 703, holds that a non-suit should have been granted because the only negligent act claimed was that a railroad train had not been brought to a stop as soon as it might have been.

There was no evidence, however, to sustain this averment; the evidence being to the contrary, that the train was brought to a stand still just as soon as it possibly could have been under the circumstances.

Appellant also cites the case of *Miller v. West Jersey & Seashore Railroad Co.*, 78 N. J. L., 499.

The case appearing in this book and page is that of *Farese v. North Jersey Street Railway Co.* and deals with the question of contributory negligence, which has absolutely no bearing on the question now in issue. An examination by us reveals the fact that the case of *Miller v. West Jersey & Seashore Railroad Co.* is a Pennsylvania case appearing in 101 Atl. at page 766, and appears to have absolutely no application to this controversy.

There are numerous cases in this State, none of which are cited by the appellant, dealing with the question of proximate, concurring and intervening cause, all of which hold that under the facts as proven therein, the questions were properly left to the jury, or in cases reversing the Trial Court, should have been left to the jury.

It is only fair to say that in none of these cases are the facts identical with those in the present case, and an exhaustive examination by us of the authorities has not revealed a case on all fours with the present one, but each of these cases bears a similarity to the present case.

In *Wikander v. Uvalde Asphalt Co.*, 83 N. J. L., 290, plaintiff was injured by a horse which had become unmanageable because it became frightened by dense volumes of black smoke emanating from a smoke stack of a steam boiler. On appeal it was held that the question of proximate cause was properly left to the jury.

In *Collins v. West Jersey Express Co.*, 72 N. J. L., 231, a wagon was being loaded in the public street

and was struck by a wagon of the defendant. The horse attached to the wagon being loaded became frightened. Plaintiff, seeing the runaway horse coming toward him, jumped aside to avoid injury and was injured by falling over a lumber pile. On this state of facts, the Supreme Court granted a non-suit. This Court, in reversing the decision, held that the striking of the standing wagon by defendant's wagon was the initial force that set in motion the train of circumstances which caused the injury to the plaintiff, and that the case should have gone to the jury.

In *Brauer v. N. Y. Central & H. R. R. Co.*, 103 Atl., 166, plaintiff's truck was struck by one of the defendant's engines. A portion of the goods which were in the wagon of the plaintiff were, subsequent to the accident, taken by outsiders. Defendants contended that the act of thieves in taking these goods was an intervening act, relieving it from responsibility for this portion of the loss. The Court, however, held that this was a matter for the jury to determine and not the Court.

In *Davenport v. McClellan*, 88 N. J. L., 653, 96 Atl., 921, a fire was built by the defendant in the public street. Plaintiff, an infant, seeing the fire which had been left burning, attempted to place some dry leaves thereon and was burned. A non-suit was granted on the ground that the act of the child in placing the leaves upon the fire was an intervening cause. This Court, however, after stating the rule as to proximate cause and intervening agency, reversed the Trial Court, holding that this question was one for the determination of the jury.

In *Clark v. Public Service Electric Co.*, 86 N. J. L., 144, 91 Atl., 83, plaintiff's intestate met his death by coming in contact with a live wire which had

fallen. Defendant contended that the wire was thrown down by reason of the severity of a storm and that the accident was, therefore, caused by act of God. The Trial Court granted a non-suit. This Court, in reversing the decision, held that it was for the jury to determine whether the falling of the wire was due to its defective condition or whether it had fallen because of the intervening storm.

In *Ferguson v. C. R. R.*, 71 N. J. L., 647, plaintiff's intestate was a locomotive fireman. Sand and gravel had become closely packed around the railroad tracks over which the engine in which he was riding was traveling. This caused the engine to leave the track, and the fireman suffered injuries from which he died. On the contention of the railroad that the gravel and sand had been carried to the track by surface water over which it had no control, a non-suit was granted. In reversing the decision, this Court stated the legal rule to be as follows:

"If different minds might honestly draw from the testimony (from which the negligence of the defendant could reasonably be inferred) different conclusions as to the cause of the accident, the settled legal rule is that such material question remaining in substantial dispute, belongs to the province of the jury."

In *Wiley v. West Jersey Railroad Company*, 44 N. J. L., 247, a fire was caused by a spark coming from defendant's engine to adjacent property, and from there the fire was communicated to the property of plaintiff. The defendant contended that the fire had evidently gone out before reaching plaintiff's property, that there was a fresh outburst on adjoining property, which could have been extinguished by the tenant in occupancy

thereof, and that his failure to extinguish the fire broke the casual connection and relieved the defendant from responding in damage. The Supreme Court, however, in stating the general rule covering this situation, held that the defendant was responsible.

In *Sutphen v. Hedden & Sons*, 67 N. J. L., 324, plaintiff sued to recover for injuries sustained by his being struck by a fence which had been knocked down by the force of wind, this fence having been erected around an excavation which the defendant was then making, and also for injuries sustained by reason of his being thrown into such excavation. The defendant claimed that the fence having been knocked down because of the force of the wind there was no liability. This Court, however, in disposing of this contention, stated the rule covering the question of proximate and concurring cause, and refused to disturb the verdict.

In *Delaware & Lackawanna Railroad Co. v. Salmon*, 39 N. J. L., 299, one of the earliest cases in this State which deals with the question of proximate and intervening cause, damages were claimed for injury to plaintiff's property caused by a spark coming from defendant's engine. Defendant contended that the spark coming from the engine was not the proximate cause and that there were one or more intervening causes. The Court, however, in a lengthy opinion, in which are quoted all of the earlier cases in this and foreign jurisdictions, held that the question was one properly left to the determination of the jury.

In *Tuttle v. Atlantic City R. R. Co.*, 66 N. J. L., 327, the undisputed testimony showed that a car of the defendant became derailed. The plaintiff

became frightened, ran away, stumbled, fell and was injured. The motion for a non-suit being denied by the Trial Court, appeal was taken to this Court, where it was held that the question of the derailing of the car being the proximate cause of the injuries sustained by the plaintiff was properly left to the jury.

In *Cittadina v. Shackter*, 83 N. J. L., 593, the nearest case in point, plaintiff was an occupant in the tenement house of the defendant. Action was brought for failure to provide fire escapes, as required by the Tenement House Act of 1904. There were no fire escapes on the building. Plaintiff, in attempting to leave the building by hanging to a rope lowered from the roof, fell to the roof of an extension to the premises and was injured. Motions were made for non-suit and direction of verdict. These motions seem to have been predicated upon the existence of contributory negligence. This Court stated as follows:

“It was the defendant’s plain disregard of his duty under the Statute in failing to provide fire escapes that resulted in the plaintiff’s injury. The jury was permitted by the trial court to find that their absence was the proximate cause of the plaintiff’s injury. There was no error in this.”

This statement appears to be *dicta* but is cited only because of its strong application to the present controversy; and we respectfully submit, should be followed.

There are other cases, the facts of which are not pertinent to this issue, which define the meaning of proximate, concurring and intervening cause, at length, and holding that as a rule, these questions should be submitted to the jury.

Fagan v. C. R. R., 111 Atl., 32;
Comer v. Meyer, 78 N. J. L., 464;
Kelson v. Public Service Railway Co., 110
Atl., 919;
Batton v. Public Service Corp., 75 N. J. L.,
857;
Marshall v. Suburban Dairy, 119 Atl., 750;
Suburban R. R. v. Nugent, 56 N. J. L., 658.

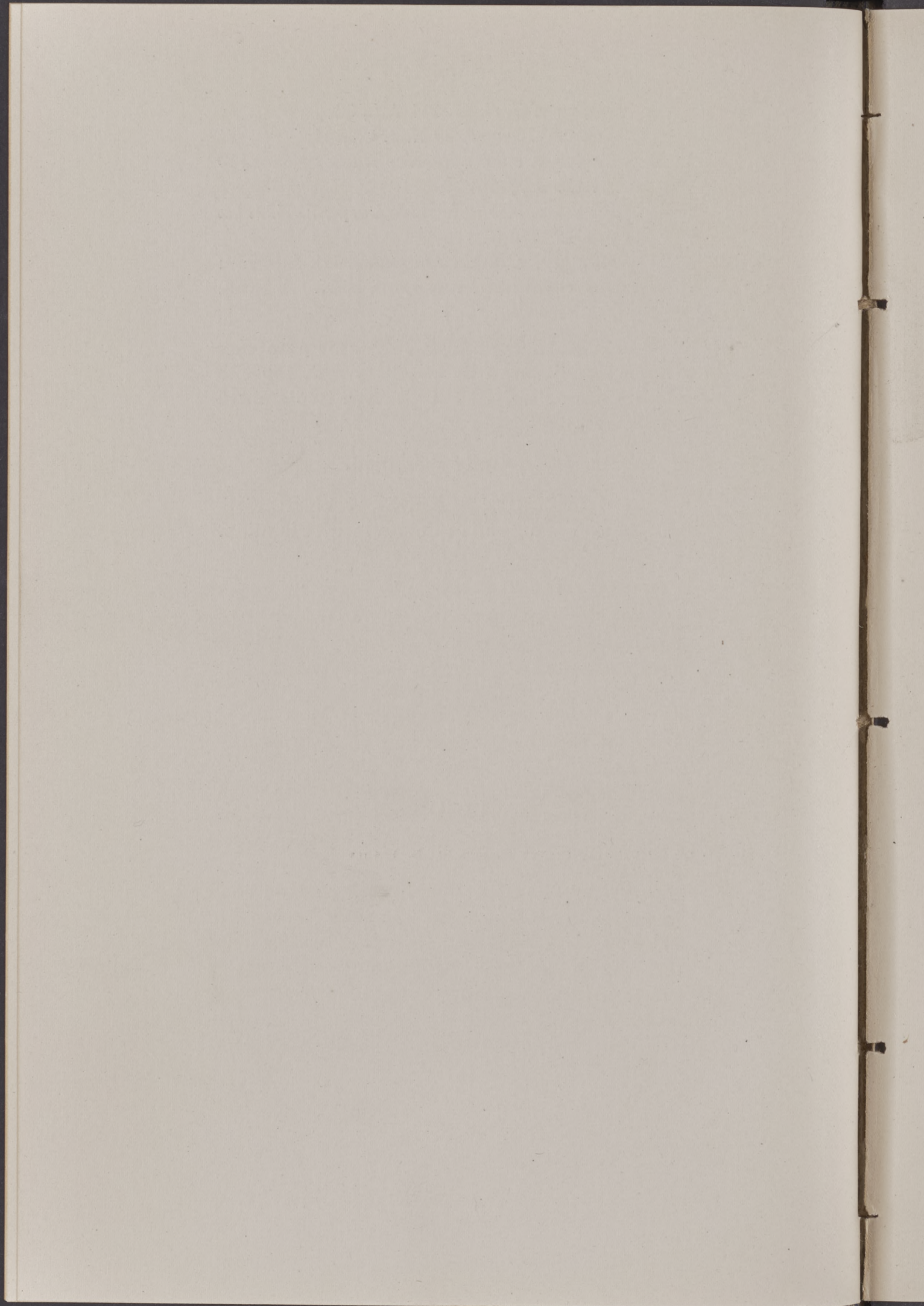
We respectfully submit that this case was properly submitted to the jury and for the reasons above urge that the verdict should be affirmed.

Respectfully submitted,

LAZARUS, BRENNER & VICKERS,
Attorneys for and of Counsel with Plaintiffs.

[9921]

Appeal Printing Co., 22 Thames St., N. Y. City



New Jersey Court of Errors and Appeals

HELEN OPRESKA and FRANK
OPRESKA,
Plaintiffs-Respondents,

v.

ISRAEL SHAPIRO,
Defendant-Appellant.

Action At Law
On Appeal.

BRIEF OF APPELLANT.

Statement.

This appeal brings up for review a judgment rendered in the Hudson County Circuit Court, entered upon a verdict of a jury in an action for personal injuries.

The circumstances surrounding and giving rise to the action were as follows:

On the 30th day of March, 1921, the plaintiffs-respondents were tenants of and occupied as a dwelling part of the third floor of the premises known as 1048 Broadway, in the City of Bayonne, County of Hudson, State of New Jersey, owned by the defendant-appellant.

Defendant-appellant became seized of said premises in the year 1919, and at the time he became the owner thereof, there was erected upon the rear of said building certain fire escapes, as shown in the photographs appended to the State of the Case.

On March 30th, 1921, a fire occurred in said premises and the plaintiff-respondent, Helen Opreska, while attempting to leave her apartment via said fire escape stepped on the window ledge, within her apartment, leading to said fire escape.

The window sill broke off, and she slipped and fell against the ledge, injuring her ankle and left breast.

The complaint charges (p. 7, Paragraph 8) that the defendant, carelessly and negligently, neglected his duty and did not have fire escapes erected and constructed upon said tenement house according to the provisions of the act of the Legislature of the State of New Jersey.

ARGUMENT.

POINT I.

Grounds of Appeal Nos. 1, 3.

The Trial Court refused to grant a non-suit. The negligence charged was not the proximate cause of the accident.

The Court's attention is first directed to the complaint (p. 6, Paragraph 7):

"That the said defendant, not regarding his duty in that behalf, did not use due and proper care that the plaintiffs should be safely and securely lodged, and did not use due and proper care to have the fire escapes erected and constructed upon said tenement house, according to said statute aforesaid, but permitted improper fire escapes to be placed upon said tenement house and neglected and refused to place proper fire escapes, although frequently warned and ordered by the fire authorities of the said City and the Board of Tenement House Supervision.

The Court in its charge (p. 110, lines 9-15) said:

"So far as it appears the authorities of Bayonne never found any fault with it. So far as it appears, this defendant was never notified by any of the departments, the fire department or any other department having authority over such matters in the City of Bayonne, that it did not comply with the law."

Again, page 111, lines 13 to 40:

"Now it is a rule of law that governs all cases of landlord and tenant and their liability that unless there is some provision to the contrary, the landlord is not responsible to the tenant for repairs while the tenant is in possession of those premises. So, if the part of that window which broke was part of her apartment which she rented, the landlord is not responsible for that defect, and if it was caused by that defect in her own apartment she cannot hold the landlord liable. If this lady's fall was caused by a bad condition of the sill of the window on the outside of her apartment she cannot recover unless the landlord knew of its bad condition, or had reason to know of it, or unless it had existed for such a length of time that he should have known of it and had the opportunity to repair it. There is no evidence in this case that anyone knew of this bad condition, or whether there was a bad condition prior to that night, or whether the bad condition of that window was caused by people who smashed in that window frame from the outside. Before the plaintiffs can recover they must establish by a preponderance of the evidence that this lady was injured while leaving this building at the time of this fire, and that the proximate cause of her injury was the negligence of the defendant."

The testimony of the plaintiff-respondent, Helen Opreska, is (p. 18, line 24) :

"I put my foot on the window sill and as I did this collapsed.

"Q. Which collapsed? A. The window sill, the piece of wood."

The corroborating witness, Mrs. Lampkin, page 35, line 32:

"Q. Now, what did you see happen when she started to get out of the window? A. She was—the window sill broke off, and she slipped backwards on the sill."

The only witnesses produced in the entire case who witnessed the breaking of the sill were Mrs. Opreska, the plaintiff-respondent, and Mrs. Lampkin.

The facts as testified to by the plaintiffs-respondents' witnesses did not show any negligence on the part of the defendant. The broken sill was within the apartment of the respondents. The proximate cause of her injuries was not due to improper or lack of construction of the fire escape, but was, as the testimony shows, due to the breaking of the window sill within the apartment of the plaintiff.

Under the proof, when the plaintiff rested, the Court should have granted the motion of the defendant to non-suit (p. 58, line 30).

The testimony at close of plaintiffs-respondents' case did not support the charges alleged in the complaint, and the motion for non-suit (p. 58, line 30; p. 59, line 1, *et seq.*) should have been granted.

It was clear that the plaintiff had not proven that the defendant had done any negligent act, or negligently omitted to do any act which was the proximate cause of the injuries sustained by Mrs. Opreska, plaintiff.

McGuire *v.* Central R. R. Co., 68 N. J. L., 608.

When the plaintiffs rested, the evidence then in the case showed that Mrs. Opreska was injured by reason of the breaking of the window sill, upon which she had put her right foot (p. 18, lines 24, 28), and there was no evidence from which the jury could reasonably infer that the defendant's negligence had caused the injury (Kelly & McAlinden *v.* Central R. R., 70 N. J. L., 190).

There was no conflict in the evidence to bring this case within the scope of the rule laid down in Garrett *v.* Driver Harris Wire Company, 70 N. J. L., 382, to the effect that where the evidence is conflicting it is the peculiar province of the jury to determine the credibility of witnesses and settle the facts.

POINT II.

Grounds of Appeal Nos. 2, 4, 5, 6, 7, 8.

The Trial Court refused to direct a verdict in favor of the defendant. The question of proximate cause of the injury was for the Court to decide and not for the jury.

The Trial Court (p. 59, line 30, *et seq.*) said:

"I think there is a question to leave to the jury, whether or not it was negligence on his part, in placing the fire escape in the position he did, and whether or not that was the proximate cause of the accident."

Where the facts are not controverted, the question of negligence is one of law for the Court. Central Railroad Company *v.* Moore, 24 N. J. L., 824.

Hammell *v.* Penn. R. R. Co., 56 N. J. L., 370.

The Court (Case, p. 107, line 34) said:

"He rented the premises to this lady and she cannot hold the landlord responsible for any defect in those premises, and if she slipped because of a break in a portion of that window sill he is not responsible for that."

The case in suit is one of tenant against landlord where the injuries occurred due to a defective condition within the demised premises which the landlord had not contracted to repair, nor had knowledge or notice of such defective condition.

As the learned Trial Court said (Case, p. 109, line 33 to line 3, p. 110):

"If the landlord refuses and neglects to obey the provisions of this tenement house act or the amendment thereto, he becomes liable for a penalty mentioned in that act, and which can be enforced by an action. This suit is not brought to recover such a penalty. The mere fact that this fire escape did not comply with this statute as to the place of access to it, if you find that the statute did apply to this particular case, does not give these plaintiffs a cause of action against this defendant."

Mullen *v.* Rinear, 45 N. J. L., 523.

There was a manifest fact, that the plaintiff, Mrs. Opreska, sustained her injuries through the breaking of the window sill. This fact was not disputed by the defendant, and there should have been a direction of a verdict.

Baumann *v.* Hamburg-American Packet Co., 67 N. J. L., 250.

Whether an act or omission alleged to be negligence naturally and proximately caused an injury, is, as a rule, a question for the jury, but if there is no evidence connecting the alleged negligence with the injury, or if it is obvious that the act or omission was not the natural and proximate cause thereof, the question is for the Court.

Smith *v.* Public Service Corporation, 78 N. J. L., 481.

Assuming that under the circumstances of the present case, the failure to have erected on said premises a fire escape strictly in compliance with the tenement house act and supplements thereto and amendments thereof (Laws 1904, p. 101, Section 38; Amended Laws, p. 526, 1919), was negligence from which the negligence of the defendant might be inferred, we respectfully submit that the injury of the plaintiff, caused by the breaking of a window sill leading to the fire escape, in this cause, was not the natural and proximate effect of such negligence.

In the case of Smith *v.* Public Service (cited above), it is stated on page 480:

"The rule of law requires that the damages chargeable to a wrong-doer must be shown to be the natural and proximate effects of his delinquency. The term 'natural' imports that they are such as might reasonably have been foreseen; such as occur in an ordinary state of things; the term 'proximate' indicates that there must be no other intervening between the defendant's dereliction and the loss." Smith *v.* Public Service Corporation, 78 N. J. L., 480.

The plaintiffs proved that an accident occurred, but failed to prove that it was through any fault

of the defendant, either by act or omission. The accident did not occur through any defect in the fire escapes. There was a defect in the window sill, which became apparent after it broke. The landlord had no notice of any defect. The window sill was within the apartment of the plaintiff.

The plaintiff's case derived no additional strength either from the defense or the evidence in rebuttal. This Court, in the case of *Hummer v. Lehigh Valley R. R. Company*, 75 N. J. L., page 706, quotes as follows:

"Where the evidence is equally consistent with either view, with the existence or non-existence of negligence, it is not competent to the Judge to leave the matter to the jury. The party who affirms negligence had altogether failed to establish it. That is a rule which ought never to be lost sight of."

At page 715, *ibid.*:

"The judge has to say whether any facts have been established by evidence from which negligence may be reasonably inferred, the jurors have to say whether from those facts when submitted to them, negligence ought to be inferred.

"It would place in the hands of the jurors a power which might be exercised in the most arbitrary manner, if they were at liberty to hold that negligence might be inferred from any state of facts whatever." *Hummer v. Lehigh Valley R. R. Co.*, 75 Law, 715.

POINT III.**Grounds of Appeal Nos. 9, 10, 11.**

It is respectfully submitted that there was no evidence on the part of the plaintiffs to support the allegations of the complaint and that the verdict was contrary to law and the evidence.

That if the plaintiff in an action of negligence fails to prove the facts alleged in his declaration as giving rise to the duty owed to him by the defendant, for the breach of which damages are claimed, a non-suit should be granted, or a verdict directed in favor of the defendant. *Miller v. West Jersey and Seashore R. R. Co.*, 78 N. J. L., 499.

It is, therefore, respectfully submitted that the evidence submitted by the plaintiffs did not support the allegations of the complaint; that no negligence was shown in the defendant, and for the reasons herein stated, it is respectfully urged that the judgment be reversed.

Respectfully submitted,

POMEREHNE & LAIBLE,
Attorneys for Defendant-Appellant.

[9743]







