Court of Errors and Appeals

JOHN T. MCCRACKEN, Plt'ff., Def't. in Error, vs. CHARLES R. MEYERS, Def't., Pltff. in Error.	IN ERROR. BRIEF OF PLAINTIFF IN ERROR.

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On the twelfth day of September, 1904, Charles R. Meyers was the owner and proprietor of the Hotel Rudolph in Atlantic City, N. J. On said 12th day of September, 1904, a room in the basement of the Hotel Rudolph (testimony p. 122, line 15) had been donated by Mr. Meyers to the Master Car and Locomotive Painters Association as and for an exhibit space.

On said 12th day of September, 1904, there was registered as a guest at the Hotel Rudolph, under the American plan, one Benson E. Brown, (p. 54, line 5). Also on said 12th day of September, 1904, John T. McCracken, the plaintiff in this suit, was a guest at Young's Hotel in Atlantic City, (p. 15, line 10), and visited the Hotel Rudolph on the invitation of Benson E. Brown, and at the invitation of said Benson E. Brown, took lunch in the American dining room at said Hotel Rudolph, (p. 6, line 10, and p. 124, line 10). This lunch was not paid for either by Benson E. Brown or by Mr. McCracken, (p. 110, line 10.)

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On the basement floor of the Hotel Rudolph is located the grotto, the European dining room and two cafes. Also on this floor was located the room set apart to the Master Car and Locomotive Painters Association for an exhibit space. On the first floor above the basement was located the office, American dining room, parlors, &c., and on the floors above these, the various sleeping rooms.

After taking lunch, McCracken, at the invitation of Brown, started to go to Brown's bed room on one of the upper floors of the hotel, for the purpose of getting a souvenir, and after entering the elevator on the office floor, it ascended about six or eight feet and then dropped to the lower floor, and in an endeavor to leave the elevator, McCracken was caught and hurt. An action was instituted by McCracken against Meyers, the owner and proprietor of the hotel, and a verdict of five thousand dollars damages rendered against him.

The first assignment of error urged for reversal of the judgment is that the Court permitted, over defendant's objection, Dr. Shortledge to answer the question found on p. 32 of the printed book, and set forth in the second assignment of error in this cause.

The plaintiff in error contends that the question was put to Dr. Shortledge for the purpose of eliciting an expert opinion, and as such, the hypothetical question should have included all of the testimony on which the question was based, and it was erroneous to state part of the facts and ask the witness for an expert opinion based upon the facts thus stated, in conjunction with the other facts previously testified to but not specifically stated in the hypothetical question. The jury and plaintiff in error were entitled to have made known to them the complete and exact facts on which the expert opinion was to be based.

Shoemaker vs. Elmer, 41 Vroom, p. 710.

The fifth and sixth assignments of error were to the refusal of the Court to direct a verdict of non suit, and at the close of the case, to the Court's refusal to direct a verdict for the defendant.

It was then argued and is now submitted that the case showed no relationship of innkeeper and guest between Meyers and McCracken which would place on Meyers any greater duty in relation to McCracken than was due from Meyers to a mere licensee on his premises. That McCracken was not a guest of the Hotel Rudolph; that as the invited

guest of Benson E. Brown who was a guest, or rather, a boarder at said hotel, McCracken was a mere licensee of Meyers, the proprietor of the hotel. As such, Meyers owed to McCracken no duty except to refrain from wilful negligence towards him, McCracken.

The North Carolina Supreme Court in the case of State vs. Steele, 8 L. R. A. 516, citing the case of Harris vs. Stevens, 31 Vt. 309, the Court said: "When persons, unobjectionable on account of character or race, enter a hotel, not as guests, but intent on pleasure or profit to be derived from intercourse with its inmates, they are there not of right; but under an implied license that the landlord may revoke at any time, because, barring the limitation imposed by holding out inducements to the public to seek accommodation at his inn, the proprietor occupies it as his dwelling house, from which he may expel all who have not acquired rights growing out of the relation of guests, and must drive out all who, by their bad conduct, create a nuisance, and prove an annoyance to his patrons."

Mere permission to pass over dangerous lands, or acquiescence in such passage for the benefit or convenience of the licensee, creates no duty on the part of the owner except to refrain from acts wilfully injurious.

Philips vs. Library Co., 26 Vroom, 307.
Devoe vs. N. Y. &c., 34 Vroom, 276.
Furey vs. N. Y. &c., 38 Vroom, 270.

The owner or occupier of land or buildings is not bound to keep them in a safe condition nor free from pitfalls for the protection of trespassers, intruders and bare licensees; but such persons coming upon the premises without invitation, express or implied, take them as they find them.

Faris vs. Hoberg, (Ind.) 33 N. E. Rep. 1028.
Gibson vs. Leonard, (143 Ill.) 32 N. E. 182.

McCracken did not become a guest of the Hotel Rudolph either because of the invitation he received from Benson E. Brown, a guest, to take dinner with him, or because Meyers had set apart a room on the ground floor of said hotel

as an exhibit space to the Master Car and Locomotive Painters Association. Except as to guests a hotel is the castle of the proprietor as much as a private house, and he is under no greater liability to a person entering therein than he would be to one entering into his private house.

The term "guest" is used to designate a traveller who stops at and is received as a traveller at a hotel. The term guest does not include a neighbor or friend who comes to an inn on the invitation of the innkeeper, nor does it include a person who comes on a special contract to sojourn at an inn.

Manning vs. Wells, 51 Am. Dec., 688.

In order to constitute one a guest of an inn, so that the innkeeper will be responsible for his goods, it is necessary that one should visit the inn for the purpose which the common law recognizes as the purpose for which inns are kept that is for the purpose of shelter and refreshment.

Carter vs. Hobbs, 12 Mich. 52-56.

Arcade Hotel Co. vs. Wyatt (Ohio) 4 N. E. 398.

A, a guest of a hotel, invited B to dine with him. B went to the hotel, and not finding A, ordered and ate his dinner alone, no special permission being given him so to do. After he had finished his dinner, A appeared, and both proceeded to another dining room of the hotel, and while there B's overcoat, which he had left on a chair in the hall, was stolen. A paid for B's dinner. Held that the landlord was not liable for the loss of the coat, A not being a guest of the house.

Gastenhofer vs. Clair, 10 Daly, 265.

C, an innkeeper, issued invitations for a Fourth of July party at his inn. He furnished music, a supper, and horse stabling for $2. In pursuance of one of these, F attended, danced and paid the $2, and paid extra for liquors drunk by him. In an action by F for an injury to his horse, held that the relation of innkeeper and guest did not exist between C and F.

Fitch vs. Casler, 17 Hun. 126.

A ball was given by a fire company at the hotel of defendant, who furnished the necessary rooms and was paid for their use by the company at a fixed rate. The arrangements were made and the ball managed exclusively by the company. The plaintiff, on going to the ball, delivered his overcoat, fur collar and gloves to the clerk at the office of the hotel, and registered his name, and remained at the ball during the greater part of the night, during which time he spent money for liquors and cigars at a saloon kept by the defendant in connection with the hotel. Held that the defendant was not liable as an innkeeper, for the loss of the property.

Carter vs. Hobbs, 12 Mich., 52.

No evidence was introduced, tending to show any actual request for lunch by McCracken, or any actual agreement to serve him lunch or to accept him as a guest. The uncontradicted testimony of Mr. Keegan, (p. 110) aforesaid, shows that neither McCracken nor Brown paid for McCracken's lunch. An effort was made to make it appear that McCracken's refreshments might have been purchased in the basement of the hotel; but this was clearly disproven by McCracken's own testimony on p. 124, where he states that he took lunch in the American dining room, and it is submitted that even though McCracken had entered the bar or cafe in the basement of the Hotel Rudolph, and there purchased refreshments, he would thereby have acquired no right to enter the upper portions of the house. The purchasing of such refreshments could only be construed as being an invitation to enter the premises for the purpose of such purchase, and in the case of Ryerson vs. Bathgate, 38 Vroom, 337, our court held that an owner's liability to a person on land by invitation, is co-extensive with the invitation; but does not extend beyond it; hence if McCracken had purchased refreshments on the first floor, the implied invitation for him to enter the first floor for the purpose of making such purchase, would not confer on him an invitation to enter the other portions of said hotel which are en-

tirely separate and distinct from the basement portion, and which are not necessary to be entered to reach such basement portion.

The decision of the question at issue, as it must at a glance appear, is of greatest importance to the hotel proprietors in Atlantic City, and that question is, are the hotel proprietors of Atlantic City in duty bound to protect from injury persons who come upon their premises at the invitation of one or each of the hotel guests, or are such persons so coming upon the hotel premises, bare licensees, to whom the hotel proprietor owes no duty except to abstain from wilful negligence towards them. It is submitted that the duty which a hotel proprietor owes to a guest to use reasonable care for his safety in and about the hotel, is founded on the contract for entertainment, express or implied, between the hotel proprietor and such guest.

It is further submitted that there is no contract, either express or implied, between a hotel proprietor and a stranger who visits a guest at the hotel for his own pleasure and convenience; that such stranger has access to such hotel only as a bare licensee, and may be refused admittance or required to leave at the request of the hotel proprietor.

Harris vs. Stevens, Ibid.

The seventh assignment of error is directed to a portion of the charge of the court:

1. It is contended that the judge erred in stating as a fact that the plaintiff was received and furnished with a meal.

The clear inference from that language is that he was knowingly received by the proprietor of the hotel, and knowingly furnished with a meal by him, whereas the evidence shows that he was neither knowingly received nor knowingly furnished with a meal, and it is insisted that so stating by the judge was injurious error.

2. It is next insisted that the court erred in charging the jury that McCracken, upon the invitation of certain guests

of the hotel, started to go to the room of one of these guests, and for that purpose was received in the elevator, which started to convey him to an upper story in that hotel. This house was an inn and tavern; a public house. It had accommodations for six hundred or more lodgers, and could feed, at one time, twice as many persons, McCracken had an implied invitation to go to this house, and that he was lawfully there.

Plaintiff in error also contends that the court erred in charging "If McCracken went there as he says he did, as a member of this association, received a meal which was paid for, and started to go with a friend in the elevator, which friend was a guest of the house, to see certain souvenirs in the room of that guest, then I say, if you believe that he was there in that capacity, he was there lawfully by the implied invitation of Meyers, the proprietor of this public house, and being there in that capacity, it was the duty of Meyers to use ordinary care to secure him safety while upon his premises."

It is contended by plaintiff in error:

1. That there is no evidence that McCracken went to the premises as a member of the association. The testimony is that he went as the guest of Brown, and it is contended that this mis-statement of fact was injurious error.

2. It is further insisted that there is no evidence to show that the association had any right to any portion of the house except on the basement floor where the exhibit was being shown, and though the convention had secured the privilege of meeting on the lower floor of the Hotel Rudolph, the members of that association did not thereby become guests of the hotel, and did not thereby secure the privilege of going to any other portion of said hotel building except that where its meeting was held, and it is insisted that the charge of the court in this respect was injurious error, and should lead to a reversal.

It is further insisted that the court erred in charging that McCracken, under the conditions mentioned by the court, was at the hotel under the implied invitation of Meyers, the proprietor.

It is also insisted that there is no implied invitation by the proprietor to the stranger to enter a hotel who does so on no other authority except upon the invitation of a guest of that hotel.

For these reasons, it is submitted that the judgment
10 should be reversed.

Respectfully,

BOURGEOIS & SOOY,
Attorneys.

NEW JERSEY COURT OF ERRORS AND APPEALS.

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BRIEF FOR DEFENDANT IN ERROR.

At and prior to the time of the injury to plaintiff, the defendant below was the owner and operator of the Hotel Rudolph, at Atlantic City, New Jersey. The hotel was a public inn capable of accommodating six hundred people, equipped with elevators and all the conveniences for accommodating guests, and was open for guests winter and summer. Mr. McCracken was a delegate to a painters' convention which was then being held at said hotel. As a delegate to said convention he called at the said hotel the day of the accident and took dinner there which was paid for by his friend. After dinner, he was invited to go to a room upstairs to get some badges. The party entered the elevator on the second floor. The

operator closed the door and started the elevator. When it reached a point about one-half way between the second and third floors the elevator fell to the basement with considerable force.

After the elevator stopped at the basement, the operator opened the door and the passengers began to alight. Mr. McCracken was in the rear, and as he reached the door of the elevator and was in the act of stepping out the elevator suddenly started upwards. The ceiling above struck him on the head and threw him to the floor of the elevator with his head extending out of the elevator door. His body formed a wedge between the floor of the elevator and the ceiling and stopped the elevator.

He was severely crushed and permanently injured. The defendant engineer (page 55) testified that the elevator fell because the defendant had not enough steam to lift the load. After the elevator fell to the basement and the passengers had all alighted but three or four, the elevator suddenly started upwards and pinned McCracken between the floor of the elevator and the ceiling above until the elevator was stopped by the engineer.

As to the first assignment of error the only objection the defendant below made to the narr. at the trial was that it did not claim damages for loss of earnings (page 4), whereupon the plaintiff by leave of Court amended the narr. The narr. however (page 134) does aver that plaintiff was "permanently injured and made incapable of following his usual vocation—to his damage $10,000."

As to the fifth, sixth and seventh assignments of error:

A common carrier is bound to carry a passenger to the end of his route safely and to protect him absolutely from injury by its servants and as far as possible from

injury by a third party. This principle is independent of the law which makes a master liable for the torts of his servants.

Haver vs. Central R. R. Co., 41 At. Rep., 917, the Court of Errors and Appeals of New Jersey (Opinion by Depue, J.) said, inter alia, "The duty of a carrier of a passenger is to safely and securely carry persons who bear to it the relation of passengers.

"The carrier is under obligation to use the utmost care and diligence in providing suitable and sufficient vehicles for the conveyance of its passengers, to carry the passenger therein to the end of his route, and to protect him against assault and other ill treatment by those employed by and under the carrier's control while on the way.

"In the application of this principle the grade of the employee by whom the injury was done, or the scope of his employment is immaterial."

Vide 53 Pa., 512, Pittsburg, Fort Wayne & Chicago R. R. vs. Hinds, where the Railroad Company was held liable for injury to a passenger by drunken men. The conductor did not stop the fight. Held—Company was liable for breach of its duty to carry a passenger safely.

A common carrier is bound to protect its passengers so far as possible from violence committed by strangers and co-passengers, and undertakes absolutely to protect them against the misconduct of its own servants engaged in executing the contract.

Steamship Co. vs. Brockett, 121 U. S., 63871, Sup. C., 1039.

Stewart vs. R. R. Co., 90 N. Y., 588.

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This same rule is applied to inn keepers.

In Rommel vs. Schambacker, 120 Pa., 579, plaintiff entered defendant's saloon and there became intoxicated. While in full view of defendant a person attached a piece of burning paper to plaintiff's clothes resulting in severe injury to plaintiff. Held—Where one enters a saloon or tavern open for the entertainment of the public the proprietor is bound to see that he is properly protected from assault or insult of a drunken or vicious man or men whom he may harbor.

In the present case the defendant was not only an inn keeper and as such bound to protect persons invited to his inn, but he used an elevator to carry his guests and to attract persons to his inn. The law as to common carriers applies to an inn keeper who undertakes for his profit to carry guests in an elevator from one floor to another.

"The proprietor of an elevator run for the use of tenants of an office building and their visitors, is a carrier of passengers for hire. The proprietor's compensation is the rental paid him by the tenant, for which he undertakes to carry him and his visitors by elevator. The same thing is true with reference to the proprietor or operator of an elevator in a hotel or apartment house."

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"Defendant kept a restaurant on the lower floor; held a liquor license on his affidavit that he kept an inn. Held—That he kept an inn and that he was liable to a person who lost property in the inn while there in the character of a guest, no matter how slight the entertainment might be, nor how temporarily the use made of it, and that the character of the party as a guest was not affected by the fact that his entertainment was paid for by a friend who invited him to go to the place."

Kopper vs. Willis, 9 Daly., N. Y., 460.

See also Korn vs. Schedler, 11 Daly., N. Y., 234.

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"One who keeps a public house extends an implied invitation to all to come on his premises and is therefore liable for injuries sustained in consequence of the bad condition of such premises."

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In Phillips vs. The Library Company, 26 Vr., 307, held: "The gist of the liability in such cases consists in the

fact that the person injured did not act on motives of his own, to which no sign of the owner or occupier contributed, but that he entered the premises because he was led by the acts or conduct of the owner or occupier to believe that the premises were intended to be used in the manner in which he used them, and that such use was not only acquiesced in but was in accord with the intention or design for which the way or place was adapted and prepared or allowed to be used."

In the case at Bar the elevator was intended to carry passengers and the character of the place, to wit, a public inn, constituted an implied invitation to all persons to enter therein.

This case was cited by the defendant.

As soon as you introduce the element of business or invitation, express or implied, the idea of a mere license vanishes.

26 Vr., 314.

Even in the case of private property, "The owner or occupier is bound to use ordinary care to keep his premises in a safe condition for access of persons coming thereon by invitation, express or implied, for the transaction of business or *any other purpose beneficial to him.*"

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In McGrell vs. The Buffalo Office Building Co., 90 Hunn., N. Y., 30, a child in the elevator of an office building was killed by having its head caught in the elevator. Held—To be a question for the jury as to whether there was negligence on the part of the elevator operator. The child was not a tenant of the building and was nine and a half years of age.

Attention is also called to Fox vs. Philadelphia, 208 Pa., 127; Tredwell vs. Whittier, 80 Cal., 574; 2 Sherman & Redfield on Negligence, 5th Edition, 1240; Harford Deposit Co. vs. Sallart Co., 127 Ill., 222; in which it was held that persons operating elevators were common carriers who must use the utmost protection which human knowledge, human skill and human foresight can provide, both as to machinery and servants, and that in case of injury to persons riding therein without fault on the part of the person injured, the presumption is that such protection had not been afforded, and that there had been negligence on the part of those operating the elevator.

See also A. & E. Ency. of Law, Volume 10, pages 945 and 946.

Respectfully submitted,

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On page 124 it appears that Mr. Brown paid for Mr. McCracken's dinner, and that Mr. McCracken went into the dining room and there got his dinner. Mr. Brown (6) was a guest at the hotel. Mr. Brown (6) invited Mr. McCracken to dine with him. The Masters Car and Locomotive Painters Association of the U. S. and C. was holding its Convention in the same hotel (6). There is no serious contradiction of these facts. Mr. Keegan's evidence (110 et seq), does not contradict these facts. Therefore, Mr. McCracken was a guest in the hotel. The argument by the plaintiff in error is that Mr. McCracken had no right to go anywhere in the hotel, except the dining room, had no right to enter the elevator. The uncontradicted evidence is that Mr. Brown, a guest in the hotel, invited Mr. McCracken to go to his room. The plaintiff's argument, therefore, denies the right of a guest to take a friend, or any other guest, anywhere in the hotel, except where that invited guest may for the

time be at the invitation of the guest. All other parts of the hotel, toilets, elevators, bars, etc., are denied a friend invited by a guest, even though that friend may be a guest. If this is to be adopted as a rule in New Jersey, then all inn keepers should placard their inns with notice that toilets, elevators, and every place in the inn is denied the guests, except the room which the guest must necessarily occupy while he is a guest.

Mr. McCracken was permitted to enter the elevator. The defendant's agent, in charge of the elevator, permitted him to go into it. It should be remembered, too, that Mr. McCracken said (23, bottom page) that he went to the hotel to attend the Association, as a member thereof.

A duty at once arose to afford Mr. Cracken ordinary care and protection while in the elevator.

None of the cases cited in the plaintiff's brief apply to the above situation.

Respectfully submitted,

JOHN W. WESCOTT,
of the Camden Bar,

SAULSBERRY, PONDER AND CURTIS,
of the Delaware Bar,

S. MORRIS WALN,
of the Philadelphia Bar.

NEW JERSEY COURT OF ERRORS AND APPEALS.

JOHN T. MCCRACKEN, Plaintiff, Defendant in Error, vs. CHARLES R. MEYERS, Defendant, Plaintiff in Error.	IN ERROR.

BOURGEOIS & SOOY,
Attorneys of Plaintiff in Error.

JOHN W. WESTCOTT,
Attorney of Defendant in Error.

INDEX

NEW JERSEY, *ss.*

The State of New Jersey to Thomas W. Trenchard Esquire, Judge of our Circuit Court [SEAL] at May's Landing, in and for the county of Atlantic, or such Justice of the Supreme Court of the State of New Jersey as shall hold such Circuit Court,

GREETING:

For as much as in the record and proceedings, and also in the giving of judgment in a certain plaint, which was in our said Atlantic County Circuit Court before you, between John T. McCracken, plaintiff, and Charles R. Meyers, defendant, in an action upon contract, manifest error hath intervened, to the great damage of the defendant, as it is said, we being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given and affirmed, then you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our judges of our Court of Errors and Appeals in the Last Resort in all causes, at Trenton, on the twentieth day of November, nineteen hundred and six, together with this writ; that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon, for correcting that error, what of right and according to the law and custom of the State of New Jersey, ought to be done.

WITNESS our Chancellor and President Judge of our said Court of Errors and Appeals at Trenton aforesaid, the third day of November, nineteen hundred and six.

S. D. DICKINSON,
Clerk.

BOURGEOIS & SOOY,
Attorneys.

The answer of Thomas W. Trenchard, Judge of the Atlantic County Circuit Court within named.

The record and proceedings whereof mention is within made, with all things touching the same, to the Court of Errors and Appeals in the Last Resort in all causes within specified, at the day and place within contained, I certify in a certain schedule to this writ annexed, as I am within commanded.

THOMAS W. TRENCHARD,
10 Judge of the At. County
Circuit Court.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

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20 JOHN T. MCCRACKEN,
Plt'ff, Def't in Error,
vs.
CHARLES R. MEYERS,
Def't, Plt'ff in Error
} WRIT OF ERROR.

Returnable Nov. 20th, 1906.

30 BOURGEOIS & SOOY,
Att'ys of Def't, Plt'ff in Error.

ATLANTIC COUNTY CIRCUIT.

JOHN T. MCCRACKEN, Plaintiff,		
vs.		IN TORT.
CHARLES R. MEYERS, Defendant.		

10

ATLANTIC CITY, N. J., June 21, 1906.

TESTIMONY

Before HON. ALLEN B. ENDICOTT, Judge, and a Jury.

Appearances: 20

For Plaintiff—MORRIS WALN, ESQ., JAMES W. PONDER, ESQ.

For Defendant—MESSRS. BOURGEOIS & SOOY.

JOHN T. MCCRACKEN, sworn.

Direct examination. 30

By Mr. Waln:

Q. You are the plaintiff in this case?
A. Yes, sir.
Q. What was the date of this accident?
A. September 12, 1904.

Q. What was the condition of your health prior to this accident?

A. Excellent.

Q. Had you any family?

A. I had four children.

Q. What was your age at the time of this accident?

A. Forty-four years of age.

Q. What was your business?

A. I was engaged in the cafe and saloon business.

10 Q. How much were you earning prior to the accident in that business?

(Objected to.)

A. About five thousand dollars——

The Court: What is the objection?

Mr. Bourgeois: It is objected to as being irrelevant un-
20 der the pleadings.

The Court: What are the pleadings?

Mr. Bourgeois: The pleadings seem to base his damage on the injury and the loss of medical expenses, not anything with relation to the earning capacity or what he was earning.

The Court: There appears to be no claim for damages
30 for loss of earnings. (Reads declaration.)

Mr. Waln: Well, your Honor, Judge Wescott, who was the attorney in this case, is very severely injured in a trolley accident and confined to his bed, and late yesterday afternoon at his request I came here to assist in the trial of this cause, and that, of course, is a surprise to me, and I am not familiar with the practice here. If it can be amended here,

I would move your Honor to allow the plaintiff to amend by adding: "That he suffered damages and loss by reason of this accident in his earning power in his business."

The Court: Of course, if that is the substantial part of the claim I will allow the amendment. The only question is whether you are surprised now.

Mr. Bourgeois: If your Honor please, we do not think it ought to be amended, but it shall be as the Court says. 10

The Court: The Court will allow the amendment. If you are surprised and cannot safely go on with the case, you may make application for continuance.

Mr. Bourgeois: We will not make any application for a continuance.

The Court: Let the amendment be considered as made. You may write it out afterwards. 20

(Question and answer repeated.)

By the Court:

Q. Five thousand a year?
A. Six months; had only been in the business six months.

By Mr. Waln:

Q. What business were you in prior to the time that you started in the last named business? 30
A. I was superintendent of painting at the Jackson, Sharp Company's plant in Wilmington, Delaware, car works.
Q. What were your earnings in that business?

(Objected to as irrelevant. Question withdrawn.)

Q. Bringing your mind back to the time of the accident, where were you on the 12th day of September, 1904?

A. In Atlantic City.

Q. Did you visit the Hotel Rudolf that day?

A. Yes, sir.

Q. At whose request?

A. Mr. Benson E. Brown.

Q. Where was he staying at that time?

A. At the Hotel Rudolf.

10 Q. Will you go on in your own way and state what took place after you got there and all about this elevator?

A. Well, I was invited by Mr. Brown to dinner, and there was a party of three of us—Mr. Benson E. Brown, Mr. Charles Towers and myself—went in and had dinner, and after dinner Mr. Brown invited me to his room to go up to get a souvenir of the convention. I was attending the convention of the Master Car and Locomotive Painters' Association of the United States and Canada; I was a member of the organization. We got on the elevator with a number of 20 other gentlemen. I was, I think, the first or second to go in, and after the elevator was filled the operator turned a lever and it started up; got about five or six feet, probably, when all of a sudden it dropped down into the pit, into the basement. Well, the concussion was so great that the electric chandeliers, the globes, fell all over our heads, and the operator opened the door and they all rushed out; and I, being the first in, I was one of the last to get out, and just as I got there it shot up like that and struck me on the head and knocked me crosswise, this shoulder and my head being out of the door of the elevator, and it shut up on me and caught 30 me right through here and across this leg, this leg, the sheave, the iron sheave that the door runs on; the bottom of the car was imbedded in my thigh here, fully that deep. (Indicating).

Q. How deep did you indicate? Indicate that in inches. About one inch?

A. Well, about three-quarters.

Q. Three-quarters of an inch.

By a Juror:

Q. Was this on the basement floor or on the office floor?

A. We got in on the office floor and it fell into the basement, down on the floor that the grotto is—you come in off of the sidewalk. Now I don't know how long I lay there, but I was unconscious, and when I got up or when they released me and I got out I didn't feel as though I was injured. The only place that I felt sore was on my leg. They walked me out on the sidewalk and sat me down in the chair, and I didn't want everybody standing around there looking at me, so they invited me to go back up into Mr. Brown's room. I went up into Mr. Brown's room and I, going in the elevator, I said to this boy, I said, "I suppose now that you have got me in here you will get me sure." He said, "Boss, I done told them, I done told them three or four times that the thing is not fit to run, but they made me run it." Well, I got up into the room. This was on another elevator, not the one that I was hurt on—some other part of the house; I don't know exactly the place—but I got up to the room and when I went in the room I went to raise my hand to my head to take my hat off and I couldn't raise my arm at all. So there was quite a number came up and they undressed me and they put me in the bed and then I couldn't move. Then I knew that I was all mashed in here and in the side, in the right side. So I lay there until the doctors came finally in about two hours after I was hurt—took them two hours nearly to get there—and they bandaged me up and I was then unconscious from that time until Friday. Friday I came to, and the first one that I spoke to was an attorney, Mr. Wiley came in and told me that he knew that I was injured badly—

(Objected to. Objection sustained.)

A. Well, I lay there until Sunday on a bed. I sent for my son and they put me into a rolling chair with a lot of pillows to see if I could stand a journey home. I wanted to get home. And I suffered excruciating pain all the time, but I bore it simply for the fact that I wanted to get home. I didn't want them to tell me that I was in such condition that I would have to stay there any longer.

Q. Who do you mean by "they"?

A. I mean the hotel people. They promised me that I
10 would receive attention—

(Objected to, unless witness states who promised him.)

A. Why, the manager, Mr. Ott—that I would receive all attention, and of course I didn't need very much attention myself until Friday, and after Friday I didn't get the attention. I scarcely got anything to eat. But when I was leaving they presented me with a bill, which I had to pay, including, I think it was, twenty cents for a glass of lemonade
20 that somebody ran out on the sidewalk to me when I was injured and asked me to drink it, and I told them no, I couldn't drink it. They charged me for that, twenty cents.

Q. Is that the bill, $56.45, that you paid?

A. Yes, that is the bill that I paid, $56.45.

Q. To whom did you pay that bill?

A. Charles R. Myers.

Q. Who is he?

A. He was proprietor of the hotel.

Q. Is this the item, 20 cents, that you refer to? (Indicat-
30 ing.)

(Objected to as irrelevant.)

Q. Was that the lemonade?

A. That is the lemonade.

Mr. Waln: You want to see the bill?

Mr. Bourgeois: I don't know whether it is of any particular interest to me to see it.

Mr. Waln: Your Honor, I would like to offer this bill in evidence.

Mr. Bourgeois: I object on the ground that it is irrelevant.

The Court: On what theory do you offer the bill? 10

Mr. Waln: Well, it corroborates the witness' statement that Myers was the proprietor of that hotel.

The Court: Is that denied?

Mr. Bourgeois: No. We will admit that for you.

The Court: It is admitted.

Mr. Bourgeois: It is admitted that Myers is the proprietor. We do not admit the bill. 20

The Court: I do not think the bill is competent. The offer is overruled.

(Exception noted for plaintiff.)

Mr. Waln: On the ground that they admit that he was the proprietor?

The Court: Yes. 30

A. Well Mr. Ott told me—

(Objected to.)

Q. Who was the Mr. Wiley that you say called to see you?

A. Mr. Wiley was an attorney for—

Mr. Bourgeois: We object. He said who he was. We don't care any more than that. It is irrelevant.

The Court: Proceed. The question is answered. There is nothing pending.

Q. Attorney for whom?

(Objected to.)

10 The Court: I don't see that that is competent. Attorney of Mr. Myers, do you mean to say?

Mr. Waln: No.

The Court: It is overruled.

Mr. Waln: I wanted to ascertain for whom he was acting.

Mr. Bourgeois: They don't want to ascertain that. They
20 know exactly who it was, and it is irrelevant.

The Court: Unless counsel discloses to the Court something that will make it relevant, I shall overrule it.

Mr. Waln: Shall I disclose it privately?

The Court: Yes.

(Mr. Waln speaks to Court at side bar.)

30 Mr. Waln: I propose to show that Wiley was the attorney for an insurance company. Do you object to it?

Mr. Bourgeois: I object to it.

The Court: The offer is overruled.

(Exception noted for plaintiff.)

A. Well, I went home on Monday. He took me in a bus to the depot and I was then twelve weeks that I was not able to do anything. My business went down. My nerves were so shocked—I had to hobble around with a cane—that I couldn't attend to it and I had to give it up. Then I had to take the position at a nominal salary. I went to St. Louis in the interest of the Flood & Conklin Varnish Company.

Q. That was in February?

A. That was in February.

Q. What day of February? 10

A. I left in February, 1905, 22d of February.

Q. In February, 1905? What business was it? You said you went to St. Louis.

A. I went as a solicitor for trade.

Q. Salesman?

A. Salesman.

Q. What wages did you receive as such salesman?

A. A hundred and thirty-five dollars a month.

Q. You commenced what day in February?

A. The 22d of February. 20

Q. Under contract for how long?

A. A year.

Q. Did you fulfil your contract?

A. I could not. I was only there until June.

Q. Why?

A. Well, I couldn't get around. My back bothered me, and the walking around soliciting; my nerves was gone and I had to give it up.

Q. What are you doing at the present time?

A. I am in the employ of the Interborough Rapid Transit Company in New York. 30

Q. What capacity?

A. Supervisor of painting their cars.

Q. What are your duties there?

A. Well, my duties are superficial. I look after the painting. I do not have to perform any manual labor.

Q. How much do you receive a month?

A. A hundred and ten dollars a month.

Q. Now bringing your mind back to your injuries, how did this accident affect you? Where did it injure you, I mean. What was the result?

A. Well, it has injured my urinary organs. I have no control of my water at times, and also affected my bowels. On one occasion I involuntarily dirtied myself; had no control of them at all.

Q. What effect did it have on your nervous system?

10 A. Well, I can't sleep, and I—it is a great effort for me to concentrate my thoughts on a thing, on any matter.

Q. Now you stated that the elevator pressed across you where?

A. Right across my right side here (indicating) right through here.

Q. What was the effect on your side?

A. My two ribs were broken. My spine was injured.

Q. What did the attending physician do for your ribs if anything when he called at the Rudolf?

20 A. Why, he got four or five men to get hold of me, stand me up and get my arms over my head, and then he strapped me and put plasters all around me, and he told me if it had caught me a quarter of an inch—

(Objected to.)

Q. You can't state what he told you. Who was that physician?

A. Dr. Miller.

30 Q. Know where he is?

A. No, sir.

Q. Did he attend you on his own account or for some other person?

A. I believe there was Conway and Miller.

Q. Did Conway attend you any?

A. Dr. Conway came to see me only once to my recollection.

Q. Did Conway give you any physical examination?

A. No, sir.

Q. After you reached your home in Wilmington were you attended by physicians?

A. Yes, immediately.

Q. Who was your physician at Wilmington?

A. Drs. Wales and Shortledge.

Q. Did you have them both at the same time, do you mean?

A. No, sir; I sent for Dr. Shortledge. He was my family physician, and he was away and Dr. Wales came and attended me until Dr. Shortledge arrived home, and then Dr. Shortledge took up the case and attended me until I left Wilmington. 10

Q. When was that?

A. That was in February.

Q. How many visits did Dr. Miller and Dr. Conway make to you whilst you were in the Hotel Rudolph from the time of the receipt of this accident until the following Monday when you say you left? 20

A. Well, I couldn't tell how often he came to see me after he got me bandaged until Friday, because I was unconscious.

Q. See if you can refresh your memory by using your papers. I am going to show him the doctor's receipt. (Paper shown witness.)

A. Eleven visits.

Q. You paid that bill, did you?

A. I certainly did.

Q. What is the amount of the bill?

A. Thirty-three dollars.

Q. How many visits? 30

A. Eleven visits.

(Paper offered in evidence and marked Exhibit P 1.)

Q. State whether or not, as the result of this injury, you suffer inconvenience or pain at the present time?

A. I certainly do. I do across my spine, across my back. When I go to get up it catches me right across the back here. My spine is still weak and I can't walk any distance. I get tired and have to sit down. I can't lay on my back during the night. Through the night I wake up and can't sleep.

Q. Prior to this accident did you have any trouble of that kind before, at any time?

A. Never did.

10 Q. You say you were strong and healthful in every way prior to the accident?

A. Yes.

Q. Do you continue to have any trouble with your water?

(Objected to as leading. Question allowed.)

A. Yes, sir.

Q. In what way?

A. Well, I can't hold it. If I had to go I would have to

20 go on a run.

Q. How frequently during the day?

A. Oh, probably a dozen times some days.

Cross-examination.

By Mr. Bourgeois:

Q. That condition of the bladder, that is, the inability to hold your urine, would result from inflammation of the bladder, would it not?

30 A. Well, I am not a physician. I couldn't answer that.

Q. Did you ever have inflammation of the bladder?

A. I never did.

Q. You know what it is, I suppose?

A. Well, I should suppose it was an inflamed condition of the bladder.

Q. How long have you suffered with this trouble with your urine?

A. Ever since the accident.

Q. How long before the accident?

A. Never.

Q. You were in ill health at the time of the accident, were you not?

A. I was not.

Q. Weren't you down here for your health at that time?

A. I was not. 10

Q. You were stopping at Young's Hotel at the time, were you not?

A. Yes, I was at Young's.

Q. You had a woman nurse with you at the time, had you not?

A. I did not.

Q. Did not?

A. No, sir.

Q. After you were taken to the Hotel Rudolf did not a woman nurse come and nurse you for the time you were 20 there?

A. I believe so.

Q. And hadn't she been with you at Young's Hotel?

A. No, sir.

Q. Had you not previous to that time gone through a steamboat accident?

A. No.

Q. Ever go through a steamboat accident?

A. Never did.

Q. Ever go through any accident prior to September 12, 1904? 30

A. Yes.

Q. When?

A. Let me see; I think about a year before that.

Q. What?

A. I fell across a guyrope that was pulling cars at our shop.

Q. What shop was that?

A. The Jackson Sharp Company's plant.

Q. And received an injury from that, did you?

A. On my shin, yes, sir.

Q. And you had not yet recovered from that injury at the time of the accident on September 12th, 1904?

A. Oh, yes.

Q. What other accident did you ever go through beside the one that you received a year previous to September 12, 1904?

A. Let's see. I don't just remember.

Q. Don't remember? What effort have you made to get Dr. Miller here to-day?

A. I consulted the directory last night and I made inquiries and they told me that he was not in Atlantic City.

Q. Then you made no effort to get him here until last night?

A. No, sir.

Q. What effort did you make to get Dr. Conway?

A. I didn't make any.

Q. Did you ever inquire of Dr. Conway where Dr. Miller might be found?

A. I did not.

Q. Have you your physicians from Wilmington with you to-day?

A. Yes, sir.

Q. Now will you explain to the jury how it is that you considered the physicians who attended you in Wilmington of more importance than the men who first attended you after this accident?

(Objected to as a conclusion and not a fact he is asking the witness to testify to. Question withdrawn.)

Q. To whose room did you start to go at the time you entered the elevator on September 12, 1904?

A. Benson E. Brown's.

Q. Do you remember of having made an affidavit in this cause in August, 1905?

A. Of having made an affidavit?

Q. Yes.

Q. Where?

A. I think in Camden County, in Judge Wescott's office presumably.

A. I think I did.

Q. And do you remember that in that affidavit you testified or swore that you were going to visit the room of V. V. Graves? 10

A. V. F. Graves?

Q. V. V. Graves.

A. Mr. Graves had invited me to go to his room.

Q. No; I say do you remember that you made an affidavit that that is where you were going?

A. No, sir; I do not.

Q. Don't remember. Let me refresh your memory.

Mr. Waln: Finish your answer. I think that the witness ought to finish his answer. 20

The Court: He has said no.

Mr. Waln: He said Mr. Graves invited him.

The Court: You may ask him and let him explain.

Q. I show you an interrogatory marked No. 8, which reads: "What occasion did you have on the said day for entering the elevator at said hotel?" You seem to have answered: "To visit the room of V. V. Graves." 30

A. That is right.

Q. That is your signature?

A. Yes. I was with Benson E. Brown—

Q. You have answered it. You need not bother about explaining now. You were not a guest at the Hotel Rudolf, were you? You were stopping at Young's?

A. I was at Young's.

Q. How long had you been at Young's Hotel, do you know?

A. Since Monday night.

Q. And this occurred when, do you say?

A. On Wednesday.

Q. What do you state your business was?

A. At the present time or at the time of the accident?

Q. At the time of the accident.

10 A. I was in the cafe and saloon business.

Q. Now do you remember in the answers to these interrogatories you were asked that question and you answered you were in the saloon business? Do you recall that?

A. Do not.

Q. I call your attention to answer 32. The question was: "What is your business?" You seem to have answered: "At the time of the accident I was in the saloon business, and at the present time I am working for the Interborough Transit Company."

20 A. Yes.

Q. When did you discover you were in the cafe business?

A. Well, it is a cafe and saloon.

Q. What sort of cafe was it, one of these cafes where you have a free lunch?

A. Yes.

Q. Then the principal part of your remuneration came from the sale of liquors?

A. Yes.

Q. Now you sold that business out?

30 A. Yes.

Q. And you got for it how much?

A. $3,500.

Q. And it yielded a profit of $5,000 for each six months?

A. Yes.

Q. Since that time you have been working for $135 and $110 a month?

A. Yes.

Q. How much of the time since the 12th of September, 1904, did you spend quarantined in New Orleans?

A. Not a minute.

Q. Weren't you down there at the time of the quarantine?

A. Never was in New Orleans in my life.

Q. Now, Mr. McCracken, how long did you work for the concern that paid you $135 a month, how many months?

A. I worked from the 22d of February until the first day of June.

Q. How soon after the first of June was it that you commenced working for the Transit Company? 10

A. The 19th of June.

Q. Then you were out of work for nineteen days at that time?

A. Yes, sir. Well, no, I wasn't out of work for nineteen days.

Q. What were you doing?

A. My salary went on until I reached New York, which was the 6th of June.

Q. Then you were out of work for thirteen days? 20

A. Yes, sir.

Q. And what are your duties with the Transit Company; state them particularly?

A. I have general supervision of the painting of the subway cars and the elevated.

Q. Now what does that require you to do? Does it require you to go over their track?

A. Over their track?

Q. Yes; over the road?

A. It requires me to go to the terminus of the roads to make inspections of the conditions that the cars are in and order them in for painting or for cleaning. 30

Q. Then you are obliged to go actually in the car yard and inspect those cars to ascertain their condition?

A. I go on the train and ride to the terminus, yes, and I have to go around to look at them.

Q. What hours of the day do you make?

A. I make from nine o'clock in the morning until half past five.

Q. What portion of that time are you required to be on your feet?

A. Well, I am required to be on my feet as long as I can remain on my feet, but I can't remain very long at a time. I have to sit down; I am not able to.

Q. How long was it after you sold out your saloon business in Wilmington before you accepted an engagement with
10 Flood & Conklin?

A. One month.

Q. What were your duties with Flood & Conklin Co.?

A. Soliciting trade, selling varnish.

Q. That meant that you had to go around to the different business places?

A. Yes, sir.

Q. I understood you to say that you sold out your saloon business where you were making five thousand dollars in six months because it was too hard for you?

20 A. Yes, sir.

Q. And accepted first, a solicitor's position and afterwards an inspector's position; is that correct?

A. Yes, sir.

Q. Now this saloon business that you had in Wilmington, of that you were the proprietor, were you?

A. Yes, sir.

Q. And the people who conducted it, that is, the employees, were under your supervision?

A. Yes, sir.

30 Q. You say you were unconscious from Wednesday until Friday?

A. Yes, sir.

Q. Who was with you, attending you during that period?

A. Attending me?

Q. Yes.

A. When I came to on Friday I saw a lady sitting in a chair, a nurse.

Q. A nurse?

A. A lady. She was there in that capacity, I presume. She told me she was.

Q. You had seen her before, had you not?

A. In the room?

Q. No; you had seen her before that time?

A. Yes, sir.

Q. You had seen her in Young's Hotel?

A. I had seen her at the Rudolf.

Q. Had you not also seen her at Young's Hotel? 10

A. Yes; I met her at Young's Hotel.

Q. And she was there with you, was she not?

A. No, sir; she was not.

Q. Sure?

A. Sure.

Q. You didn't pay her expenses?

A. No, sir.

Q. And you still insist that you were in good health and that she was not nursing you at Young's Hotel, do you?

A. I certainly do. 20

Q. Did you ever state to Dr. Miller or did you state to Dr. Miller during the time he was attending you that you had just previously gone through an accident, I think a steamboat accident, and that you were fearful that this accident might bring back your trouble or might make you worse again?

A. I never did.

Q. Didn't state that to him?

A. No, sir.

Q. Did you state to Dr. Miller that you had recently gone through two accidents, just recently before the 12th of September, 1904? 30

A. I had no conversation with Dr. Miller.

Q. Then you say you didn't say that?

A. Yes, sir.

Q. How many times did Dr. Miller visit you, if you remember, between Wednesday and Friday?

A. I haven't the least recollection. I couldn't remember, because I was unconscious.

Q. All the time?

A. All the time.

Q. Did you state after you got out of the elevator that you were all right, that you were not hurt?

A. I did.

Q. At the time you got out you were entirely conscious, were you not?

10 A. I was.

Q. And when the elevator came down and she stopped you say that the elevator boy opened the door and told them to get out?

A. Yes, sir.

Q. And that there were two remaining in the elevator, weren't there?

A. Yes, sir.

Q. You and another man?

A. Yes, sir.

20 Q. And then he closed the door and started up, didn't he?

A. No; he didn't close the door.

Q. And you opened the door and attempted to get out?

A. No, sir.

Q. Didn't?

A. No, sir.

Q. Sure that is correct?

A. Yes, sir.

Q. This bill of $56.45 of which you have spoken was the bill for the entertainment of the woman nurse that you had there and not for your entertainment?

30

(Objected to. Question allowed.)

A. That bill was rendered me when I was leaving the Rudolf. I paid it. I think you will find on there that that bill is charged to my entertainment or to my care. If you

will read the bill you will find even the glass of lemonade, "wine, 20 cents."

Q. But the bill itself was for the entertainment of another person, the person who was with you, was it not?

A. For myself and I suppose the nurse that was there.

Q. Well, now, don't you know that it was for the nurse that was there?

A. That is what it says on the bill there.

Mr. Waln: What do you mean by entertainment? 10

Q. I mean the use of the room. That nurse occupied a room, did she not? Didn't she occupy the same room with you?

A. She sat in the chair. She never went to bed. There was a room, a communicating room, that she went in, I believe, in the afternoons and laid down, an adjoining room.

Q. She had that room? It was set apart for her?

A. Yes, sir.

Q. She had her board there? 20

A. Her board?

Q. Her meals?

A. Yes, sir.

Re-direct examination.

By Mr. Waln:

Q. You were asked on cross-examination if you were here for your health. What was your purpose in coming to Atlantic City at that time? 30

A. To attend the session of the Master Car and Locomotive Painters' Association, which were in convention at the Hotel Rudolf; that was primarily my motive in coming, and incidentally to collect a check that I had cashed for a man—

(Objected to as irrelevant.)

Q. Who employed Dr. Miller to attend you, if you know?

A. I don't know, sir. I presume the hotel people. He said he was the hotel physician.

Q. Did you employ him?

A. I did not.

Q. Who employed Conway?

A. The hotel people.

Q. In your answer on cross-examination as to who invited you to the room in the Rudolf you started to say Mr. Graves
10 and were interrupted. What did you intend to say in reference to that?

Mr. Bourgeois: I object. He can't be asked a general question. He may be asked any question that will call for the expression of a fact, but he can't be asked for just a rambling statement.

Mr. Waln: The witness was endeavoring to answer the question propounded by defendant's counsel when he was in-
20 terrupted and stopped. Now I want him to finish the answer.

The Court: There was an apparent effort at that time to show an apparent discrepancy between his affidavit and his present testimony. I will allow him to answer.

A. I had taken dinner with Mr. Benson E. Brown. Benson E. Brown invited me to go to his room as did also Mr. V. V. Graves. As I was going in the elevator Mr. Graves said, "Come on up—" he had some souvenirs.
30 Q. They both had rooms there and were guests of the hotel?

A. Yes, sir.

Q. And they both invited you, and Mr. Graves was the one you say that was about to give you a souvenir of the occasion?

A. Yes, sir.

Q. Now who sent for this nurse; who employed this nurse to come to the hotel to attend you, if you know?

A. This nurse was a lady that I knew in Wilmington, Delaware.

Q. Where you live?

A. Where I live.

Q. Do you know who sent her to the hotel, who employed her to attend to you?

A. Yes.

Q. Of your own knowledge, I mean? 10

A. I know now. I didn't know at the time.

Q. Is it what somebody told you or do you know of your own knowledge?

A. Yes, it is what I was told.

Q. Never mind what somebody told you.

Mr. Bourgeois: I won't object to it.

Q. Did you send for the nurse to come there?

A. I did not. 20

Q. And the first that you knew she was there, you say, was when you regained consciousness on Friday and saw her?

A. Friday I saw her sitting in the room.

Q. Did she assist you in getting home?

A. She did.

Q. Who else assisted?

A. My son.

Q. Anybody at the hotel render assistance?

A. The colored employes helped me down on the elevator.

Q. Now how much did you make in your business from 30 the 12th of September, 1904, the date of this accident, until the time that you gave it up?

A. Well, I didn't make barely expenses. The thing had gone down.

Q. Now why had the business gone down, if you know?

(Objected to as calling for a conclusion. Question withdrawn.)

Q. Were you in condition or did you give the business your personal attention after the injury?

A. Tried to, but I couldn't.

Q. Counsel asked you whether you did not pay the bill for the entertainment of the nurse at the hotel after the injury. What do you mean by entertainment, or what did you
10 understand him to mean?

A. Well, I didn't know what he meant.

Q. What did you pay for?

A. Her board.

Q. Did the bill include your board?

A. Yes, sir.

Q. Your board and the nurse's board?

A. Yes, sir.

Q. And the twenty cents for the lemonade?

A. And the twenty cents for the lemonade.

20 Q. And there was a doctor's bill of thirty-three dollars, or thereabouts?

A. Yes, sir.

Re-cross examination.

By Mr. Bourgeois:

Q. You say you had been in the saloon business about six months on the 12th of September, 1904?

30 A. Yes, sir.

Q. And that on that day you were visiting Atlantic City with the Painting and Master Car Builders' Association?

A. Car Painters' Association.

Q. Will you explain to the jury just in what respect you as a saloon keeper were interested in the Car Painters' Association?

A. I was a member. Have been a member of the Master Car Painters' Association for eighteen years; I have never failed to attend but one session of those conventions in that time. I hadn't up to that time failed in but one. It was close to my home and I had lost my active membership, not being actively engaged in painting, yet I was an associate member; I was still a member of the association and came to visit my friends here.

Q. And, Mr. McCracken, after you sold out your saloon business you went back in the painting business? 10

A. Yes, sir.

Q. Then this saloon business was a sort of venture on your part, was it not?

(Objected to as calling for a conclusion.)

Q. Had you ever been in the saloon business before the six months, that is, before you went into the business at Wilmington, six months prior to September 12, 1904?

A. No, sir; never had. 20

Q. Have you ever been in it since?

A. Never have.

Q. You say that you did not engage the two physicians. You knew they were going to attend you, didn't you?

A. Who, the doctors, Conway and Miller?

Q. Yes.

A. No, sir.

Q. Didn't know that?

A. No, sir.

Q. How did you come to find out it was Dr. Miller that first attended you? 30

A. Because I asked him his name.

Q. You knew when he came there—you knew afterwards?

A. I knew when I came to.

Q. How many visits do you recall his coming to you?

A. Three.

Q. How many by Dr. Conway?

A. One.

Q. Did you object to them coming to attend you?

A. No.

Q. You were willing to receive their services?

A. I wanted attention.

Q. How do you know that the bill of $56 includes your board?

A. It is on the bill.

Q. Tell you so?

10 A. I thought so.

Q. Well, you may refresh your memory from it, if it does.

A. "Board, five days, $15; self, five days, $7.50."

Q. That is for yourself?

A. This is for myself.

Q. What is the rest of it?

A. "Telegram, 25 cents; barber, 50 cents; and wine, 20 cents."

Q. What makes the rest of it?

A. That is $23.45, and Dr. Conway, $33, making $56.45.

20 Q. Now, Mr. McCracken, then instead of having to pay $56 for five days' board you paid for yourself $7.50, didn't you?

A. Yes. That is the item there.

Q. I suppose you were not getting your board any cheaper than that down to Young's, were you?

(Objected to. Question withdrawn.)

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30 DR. EVAN SHORTLEDGE, affirmed.

Direct examination.

By Mr. Waln:

Q. Doctor, where do you reside?

A. Wilmington, Delaware, sir.

Q. I believe you were Mayor of that city at one time. When was that?

A. I think it was in 1893 to 1895 or 6.

Q. And you are a practising physician?

A. I am, sir.

Q. And you have been practising your profession how many years?

A. About thirty-five years in Wilmington, Delaware.

Q. Graduate of what college?

A. Pennsylvania University. 10

Q. Connected with any hospitals?

A. Have been in the Delaware Hospital about six years.

Q. In what capacity?

A. Partly as—mostly as surgeon; served on the surgeon staff.

Q. Are you connected with the Board of Education in Wilmington?

A. Yes, sir.

Q. In what capacity?

A. President of the Board. 20

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

A. I am.

Q. Where did he live?

A. He resided in Wilmington, Delaware, until February, last.

Q. How many years have you known him?

A. I think about ten years, perhaps longer—all of that.

Q. Did you attend his family?

A. I was his family physician.

Q. Prior to this accident? 30

A. Yes, sir.

Q. Do you know the condition of his health prior to this accident?

A. Yes, sir.

Q. State what it was, please?

A. Good.

Q. Were you home in Wilmington the 12th of September, 1904, Doctor?

A. No; I was in Atlantic City.

Q. And about when did you return?

A. I returned on the last day of September, I think, late at night.

Q. Did you see, after you returned to Wilmington, the plaintiff in this case?

A. I saw him the next day, the first day of October.

10 Q. And you attended him professionally until when?

A. Until he left Wilmington.

Q. About when was that?

A. I think some time in February.

Q. Of what year?

A. 1906.

Q. Then you attended him for a period of a year?

A. Since October, 1905, I would say. I was mistaken in the year.

Q. Now when you first saw the plaintiff did you carefully examine him?

20 A. I did.

Q. Now please state what you found his condition to be?

A. I saw him on the morning of the first of October, 1904; found him in bed, examined him. The first thing I attended to was to look at the ribs. He was complaining a good deal of the dressing hurting him. I thought that that was wrinkled and I found it wrinkled and I took it off. I found some little discoloration over two ribs, I think about the eighth and ninth back, towards the spine. I removed the dressing and dressed and washed it and redressed it with adhesive plaster.

30

Q. Had the plaintiff's ribs been broken or fractured?

(Objected to as leading. Question withdrawn.)

Q. What was the condition of the ribs?

A. They evidently were fractured.

Q. Give a transcript of his entire condition, please?

A. And over the hip, back of that same location, just near the spine I found some discoloration, although, of course, it was not marked as much as it had been just after the accident, and there was a good deal of tenderness over what is called the lumbar region of the spine, two or three of the vertebrae, and very sensitive, giving pain, excruciating pain to press on his spine in that location. I found on his left thigh a bruise, indentation there of some four or five inches long, I think, my recollection is, something pressed in there; the skin did not seem to be abraised at that time; there was just an indentation like a groove run in. The man was in a nervous condition, very nervous and excitable; didn't seem to be able to sleep well at nights; seemed to be worried a good deal about his business, not being able to attend to it, and he wasn't able, of course, to be out. He could sit up a little, I think, at that time and that was more comfortable, in an easy position with pillows.

Q. How long was he confined to bed, if you know?

A. Well, he was confined to his bed off and on for some weeks afterwards, I think about during the month—not all the time—the month of October, part of November. I think I got him out a little earlier than I would have done if his nervous condition had not been as it was. I was anxious to get him out in the air, but I attended him off and on—

Q. What was his nervous condition?

A. Well, seemed to be more of a nervous shock, and this spinal irritation there that he had, that was sufficient to cause his nervous condition.

Q. What have you to say about his water, if anything?

A. He was complaining at that time of some incontinence of urine; that is, not able to retain his urine very well; complained of that.

Q. What does that indicate to your mind, the inability to retain the urine?

(Objected to as being too indefinite.)

The Court: I think he can inquire if that condition might be produced by such an accident as has been described here.

Q. Would this condition that you found this man in be caused by such an injury as you heard here described that this man received by being pinched up in the elevator between the floor of the elevator and the top?

(Objected to as irrelevant, incompetent and inadmissible
10 and not a hypothetical question.)

(Question overruled.)

Q. Doctor, did you hear the testimony here to-day?

The Court: I think you must state a question covering the facts proven in the case.

Q. Suppose a person on the twelfth day of September,
20 1904, should be in an elevator which fell suddenly some feet to the pit below, and after it had so fallen and whilst he was in the act of stepping out of the elevator, the elevator should suddenly start upwards, so that the top of the ceiling or door above struck him in the head and knocked him down crosswise of the floor of that elevator while running, so that his body served as a wedge to stop the elevator, and he was pressed between the floor of the elevator and the door of the cage or ceiling above, being bruised and injured on the thigh and in the back, hips, struck on the head; suppose about the first of October following, that person should be in the con-
30 dition now described by you: will you state whether or not that condition could have been caused by such injuries?

(Objected to as not a proper hypothetical question, as it does not fully state the testimony that has been given in the case. Question permitted.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, [SEAL]
C. C. J.

A. I would say it would.

Q. When did you last examine the plaintiff in this case?

A. Last evening.

Q. What did you find his condition then to be?

A. I found some irritation of the spine in the same location I found when I attended him at home, in the lumbar region, two or three of the vertabrae are very irritable; nervous condition. 10

Q. Is he able to perform hard labor?

A. No, sir.

Q. Are his injuries permanent or otherwise?

A. I should say they were permanent.

Cross-examination.

20

By Mr. Bourgeois:

Q. Doctor, might not a fall upon the end of the spine cause a spinal irritation similar to that which you found in Mr. McCracken?

A. Hardly.

Q. Why not?

A. Well, there is localized—that tenderness was more localized. There would be more of a general debility of the nervous condition. The spine is pretty hard to locate a localized condition of that kind. 30

Q. Then a sudden fall upon the end of the spine might cause a spinal irritation that would produce the trouble with one's urine that has been spoken of, might it not?

A. Yes.

Q. Might not the fall of some heavy body across Mr. McCracken's back after the twelfth of September, 1904, have

produced the same local irritation that you found there in October, 1904?

A. Might have done.

Q. Might not the inability to retain the urine be a result or flow as a result from gonorrhoea or other diseases of that nature?

A. Not in his case.

Q. Might they not?

A. No.

10 Q. Could not?

A. Not very well, no.

Q. I want to know whether it is not possible?

A. Give me the question again?

Question repeated as follows by stenographer: "Might not the inability to retain the urine be a result or flow as a result from gonorrhoea or other diseases of that nature?")

A. At that length of time, supposing that he had con-
20 tracted gonorrhoea—

Q. No; I am just asking a general question. I want to know the general question, whether the inability to retain the urine does not sometimes result from gonorrhoea?

A. Yes, sir.

Q. Doesn't the inability to retain the urine sometimes result from inflammation of the bladder?

A. Yes, sir.

Q. Now, what other causes are there besides these that we have mentioned that sometimes produce inability to retain
30 the urine?

A. Well, zymosis with babies will do it sometimes, a necessity for circumscission.

Q. What else?

A. Large prostrate gland sometimes will do it.

Q. What else?

A. I don't think of any other.

Q. Now with relation to the bowels, losing control of the bowels, doesn't the loss of control of the bowels sometimes follow diarrhoea?

A. Sure.

Q. And also follows constipation?

A. Yes.

Q. And what other causes are there for loss of control of the bowels?

A. Oh, I don't know. Many of them.

Q. A great many of them? 10

A. Some.

Q. And they don't flow from accidents, do they, all of them?

A. Not all of them, no.

Q. You say that Mr. McCracken—

A. I think, if I am allowed in this connection, I think I should be allowed to say in Mr. McCracken's defense, if I am in position, that in this case—

Q. No; I don't want you to explain now. You are here for Mr. McCracken. His attorney will see that you have a 20 chance. I am willing you should say it, but I don't want to interrupt my examination. Now you say that Mr. McCracken spoke of some trouble with his urine. What treatment did you prescribe for Mr. McCracken in that regard?

A. Make an examination of his urine to see whether there was any pus there.

Q. What did you find?

A. Found nothing.

Q. Why did you examine the urine for that purpose? Why did you look for pus?

A. Because I thought perhaps he might have cystitis. 30

Q. What would be the effect if he had some tuberculosis or tubercular trouble?

A. God only knows.

Q. It might have affected his urine?

A. Hardly.

Q. Did you make any examination, any physical examination to ascertain the cause of the trouble of the urine?

A. I said I did, yes, sir.

Q. What examination did you make?

A. I examined the urine to see if there was any pus there.

Q. That was only an examination of the urine, but you didn't make any examination of his body?

A. That was sufficient to satisfy yourself that there was no pus there.

Q. Then you didn't consider that it amounted to much when you found no pus there?

10 A. That that was not the cause of it. I was satisfied there was no pus there and therefore he had no cystitis.

Q. What is cystitis?

A. Inflammation of the bladder.

Q. And after you satisfied yourself that he had no inflammation of the bladder you made no further examination?

A. I was satisfied that it was from irritation of the spine.

Q. You made no further examination to find out?

A. That was sufficient.

Q. In your mind?

20 A. Of course—any doctor's mind that had ordinary sense or reason would be sufficient.

Q. And do you think that would be the only thing that a doctor would look for, would be just that one thing, to find out if he had inflammation of the bladder, and then if he had no inflammation of the bladder to conclude it came from the spine?

A. That is what I did in his case. I wouldn't in all cases.

Q. And what was the particular thing in his case that led you to make that sort of examination?

30 A. Led what?

Q. Led you to make.

A. What sort of examination?

Q. The sort you have just spoken of, examine his urine for inflammation of the bladder, and after you found there was no pus there to conclude that it came from the spine?

A. I stated that already twice.

Q. Won't you tell me again?

A. Yes. I wanted to satisfy myself whether this trouble of the bladder not being able to retain his urine was caused from this nervous irritability of the spine or inflammation of the bladder. My only way to find out whether it was inflammation of the bladder or not was to examine the urine and see if there was any puss there.

Q. You concluded that the only two sources which would cause or might cause inability to retain the urine in Mr. McCracken's case was either an affection of the spine or else inflammation of the bladder, did you? 10

A. Yes.

Q. How frequently did you attend him between October of 1904 and February of 1905?

A. My books show I attended him every day after the first part until about the latter part of October, and after that they got less frequent, maybe every other day or every two or three days, and I think in the latter part of November or perhaps the first of December he came out to my office.

Q. Now after February, of 1905, until last evening how frequently did you attend him? 20

A. I attended him, I think, since perhaps more than once a month.

Q. When you attended him last evening what condition did you find that you think was present when you attended him in 1905?

A. Well, he still had that irritation of the spine.

Q. How did you discover that?

A. By pressure.

Q. Pressing with your hand?

A. Pressing on the spine.

Q. What manifestations were there that the spine was still irritated? 30

A. Well, it evidently gave him excruciating pain, pressing there.

By the Court:

Q. Where did you press?

A. All the way down the spine clear from the neck clean down to the end of the spine.

By Mr. Bourgeois:

Q. The symptoms that a man evinces when you are pressing along the spine is a condition that may be assimulated, is it not?

A. I claim that a man that has had the experience that I have had can't be deceived very much in that matter.

Q. You think a man could not deceive you by expression?

10 A. No; I don't think he could in that particular section; I don't think he could, sir.

Q. How much experience have you had in damage cases?

A. Well, I have had quite a good deal. I suppose I can't tell now, but I have been in a great many.

Q. Examined many damage cases?

A. Yes, sir.

Q. And you have examined a great many people for pains and sore spots?

A. I have, indeed.

20 Q. And you think that you can't be deceived by a person who attempted to assimulate?

A. Can't be deceived in his case. I am not deceived in his case.

Q. Have you ever examined a person who was suffering or claimed to be suffering from injury when you felt they were attempting to impose on you?

A. We always look for that a little.

Q. What do you do to look for it?

A. Well, I could tell with you whether you were suffering or not if examining you.

30 Q. How would you tell? Tell me how you would tell.

A. By your mental and physical condition, whether you would have pain.

Q. How would you tell from my mental condition whether or not I was suffering with pain?

A. I would like to say that I do not consider myself an expert by any means, so don't go into too much expert testimony. I don't pretend myself as that.

Q. I simply want to know, Doctor, how you would arrive at a conclusion that a man was not assimulating, is all.

A. Why, whether I could tell by pressing—for instance, you take a sore spot anywhere on the body of a person; it is an easy matter for a body to tell whether there is pain or not.

Q. Taking the case at hand, if Mr. McCracken had so desired, he would have known, would he not, the time for him to evince symptoms of pain would be when you pressed over the lumbar region?

A. We can tell about that, whether he is feigning or not. 10

Q. I want you to tell what it is you can ascertain.

A. If you will just strip Mr. McCracken I can show to this jury in two minutes just what exactly I mean. That is the only way, by an ocular demonstration.

Q. I want you to tell me how you do that thing?

A. That is the way I do, by pressing.

Q. Just pressing?

A. Yes, sir.

Re-direct examination. 20

By Mr. Waln:

Q. Doctor, you said that you testified a great deal in damage cases. For whom?

A. Well, I have been railroad physician there, street railroad physician for a number of years; testified in a number of cases, railroad accidents.

Q. And you have examined these cases, accident cases for a number of years for the trolley companies? 30

A. Yes, sir.

Q. And you had the hospital cases?

A. Been there for thirty-five years.

Q. What is your bill for services rendered to the plaintiff; how much is it?

A. What was it?

Q. Yes.

A. Really, I have forgotten.

Q. Can you tell us about?

A. Well, we do not charge as much as they do in Atlantic City, sorry to say; our prices have not advanced like other things are.

Q. How much a visit did you charge?

A. The first visit we charge—surgery, of course, dressing and attention—two dollars. The first visit was two dollars, first regular medical visits, and I am ashamed to say it, one dollar the next, and so on. I think my bill was in the neighborhood of forty-five or fifty dollars, I am not positive.

Q. This man have any gonorrhoea or evidence of it at that time?

A. No.

DR. JOSEPH F. WALES, sworn.

Direct examination.

By Mr. Ponder:

Q. Doctor Wales, where do you live?

A. Wilmington, Delaware.

Q. What is your business?

A. Physician.

Q. How long have you been practicing as a physician?

A. Oh, between eight and nine years.

Q. Are you a regular graduate physician?

A. I am.

Q. From what college?

A. Graduate of two.

Q. What two colleges?

A. Lehigh University and University of Pennsylvania.

Q. Do you know the plaintiff in this case, Mr. John T. McCracken?

A. Yes, sir.

Q. Do you remember being called in to attend him in September, 1904?

A. I do.

Q. Just state the time and the circumstances?

A. I saw Mr. McCracken, or I was sent for by him Monday after the accident in September, I forget the exact date in September, I imagine it was about the 17th, and he stated to me that he had received or had been in an accident in Atlantic City, and I was called in in the absence of his family physician, Dr. Shortledge, to attend him, and he was then, when I arrived at his house, he was in bed, was suffering quite a little pain and that time he was complaining particularly of his back and side which were strapped with adhesive plaster which had become a little wrinkled and not comfortable, which I removed and restrapped again. I think I furnished him some little quieting medicine. He was rather nervous and suffering. And I visited him from that day up until the last of the month.

Q. When Dr. Shortledge returned?

A. When I turned him over to his family physician.

Q. What was the condition of his ribs?

A. I just forget which ones—I did not make a note in the book at the time—but posteriorly one if not two were fractured.

Q. Did you notice anything else in regard to his condition?

A. There were some contusions over the right shoulder, if I remember rightly, and back across the spine and there was a sort of groove running posteriorly across his left leg, I think it was, if I remember rightly.

Q. Did you hear any complaint at that time in regard to his urine?

A. Not at that time much, no.

Q. During any of the time that you attended him did you hear him complain?

A. Just before I turned him over to his family physician he did mention that he was a little troubled with his urine.

Adjourned till 1:45 P. M.

Afternoon Session, 1:45 P. M.

DR. WALES, resumed.

By Mr. Ponder:

Q. Doctor, did he suffer any during the time you were attending him?

A. He did.

Q. Suffer much pain?

A. Quite a little pain the first part of my time.

Q. Dr. Wales, did you examine Mr. McCracken last night at my request?

A. I did.

Q. What was his condition when you made the examination last night?

A. Well, subjectively he has a good deal of trouble with his bladder and bowels; he has a good deal of tenderness over the lumbar region of the spine and complains at times about when he tries to get up suddenly, some loss of coordination.

Q. Did you notice any injury now existing in relation to his spine?

A. There was tenderness over the lumbar region of the spine.

Q. Doctor, I will ask you if in your opinion as a physician Mr. McCracken's injuries are of a permanent character?

(Objected to as irrelevant and on the ground that the witness has not been qualified as an expert. Question allowed.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, [SEAL],
C. C. J.

A. I do.

Cross-examination.

By Mr. Bourgeois:

Q. Doctor, in your early examination you spoke of contusions. Won't you tell the jury what you mean by contusions?

A. Well, best explained as black and blue marks.

Q. In other words, the evidence of a bruise?

A. A bruise, in other words, yes. A contusion is practically the same. 10

Q. What do you mean by loss of co-ordination?

A. His movements when he first arises are not as good as they might be. He is not as quick; there is a little uncertainty.

Q. I suppose that same result might follow an attack of rheumatism, might it not?

A. Not likely.

Q. It might follow any stiffness of the joints, might it not?

A. Hardly — of this character, that is; hardly of this character. 20

Q. You haven't explained what this character is. I want to know generally if the same manifestation would not follow rheumatism as you have described as loss of co-ordination?

A. Well, following rheumatism it would be more in the joints. This is not.

Q. But there would be the same slowness in raising? There might be, might there not?

A. Possibly if a man has had rheumatism he would be slow in rising. 30

Q. And then the other disease that has stiffened his joints and stiffened his muscles—

A. If there is any stiffness there which I have not found.

Q. I understand, but that would follow, at least it might follow. Now you say that subjectively you ascertained he

was suffering from urinary trouble last night? What do you mean by that?

A. He has trouble in controlling his water.

Q. How could you tell that except from what he said?

A. That is a subjective symptom.

Q. Not from anything that you discovered yourself, except what he told you?

A. No; I didn't examine him in the act of passing water.

Q. He also told you about the trouble with his bowels?

10 A. Yes.

Q. Did he tell you that he had lost control of his bowels once during two years?

A. I don't know how many times he told me. He said he had loss of control at times. How many or when I don't know.

Q. And a loss of control of the bowels might result from a severe attack of either constipation or diarrhoea, might it not?

A. Possibly.

20

Re-direct examination.

By Mr. Ponder:

Q. If it resulted from constipation or diarrhoea would it be likely to be a chronic case?

A. Not as likely as if it resulted from spinal trouble, no.

Re-cross examination.

30

By Mr. Bourgeois:

Q. What do you mean, "from spinal trouble?" Nervousness arising from spinal trouble would result from the injury to the spinal cord, would it not?

A. From some form of injury to the spinal cord.

Q. Won't you explain to the jury what the spine is? What is the spine?

A. Well, by the spine is meant the series of vertabrae, series of bones enclosed in which is the spinal cord, through which the nerve impulses are carried.

DR. WILLIAM WESCOTT, sworn.

Direct examination.

10

By Mr. Ponder:

Q. Doctor, where do you live?
A. I live in Berlin, Camden County, this State.
Q. You are a practicing physician, are you not?
A. Yes, sir.
Q. How long have you been such?
A. Graduated in 1883.
Q. That is about twenty-three years?
A. Yes, sir.

20

Q. Have you been practicing medicine since that time?
A. All the while.
Q. Where did you graduate?
A. Jefferson, Philadelphia.
Q. That is a regularly recognized medical institution?
A. One of the oldest in the country.
Q. Doctor, do you know John T. McCracken, the plaintiff in this action?
A. The first time I ever saw him was the 18th of this month.

30

Q. Where was that?
A. In Camden, in a private office of John Wescott's.
Q. Did you make an examination of Mr. McCracken at that time?
A. Yes, sir.
Q. Have you made an examination of Mr. McCracken subsequent to that time?

A. I saw him in company with the two physicians who have been on the stand last night at Atlantic City.

Q. Did you make an examination of him?

A. Yes.

Q. Doctor, will you tell the jury what you found his condition to be when you first made the examination in Camden?

A. I got the history——

Q. You stripped him, did you not?

10 A. Yes.

Q. Both times?

A. Yes. I got the history of the accident. This man told me that he had his right shoulder——

Mr. Bourgeois: I object to his relating what the history of the accident was as given by the plaintiff.

The Court: Where a patient tells a physician his symptoms for the purpose of qualifying the physician to testify
20 in court it is not allowed in this State. Declarations made by way of an ordinary call for the purpose of treatment would be allowed.

Q. Doctor, you say you got the history of the case from him?

A. Yes.

Q. Then go on.

A. Well, am I cut out from saying anything this man said to me under the circumstances?

30

The Court: Yes.

Q. Just tell the jury the condition you found him in.

A. I put this man through a number of tests which indicated to me that he had an abnormal condition of the spine, an abnormal condition of the nervous system in its control of the muscles of the different organs of his body, in other words, what he told me of his bowels and stomach.

Mr. Bourgeois: I object. He can't tell that.

A. Now the relationship betwixt this man's nervous system and the organs of his body is so disarranged that there are a number of things he can't do as well as you gentlemen, probably, or a normal man can do. It indicates a low form of inflammation and a change in the spinal matter or its coverings. It is a serious disease. I do not believe this man will be normal again.

Q. Doctor, what did you find in relation to his spine or back when you examined him last night? 10

A. You want me to detail?

Q. The tests you put him through.

A. In blindfolding this man and getting him to bend over and pick up an object off of the floor he would probably fall on his head before he got through, that is to say, he would lose his power to co-ordinate himself and go over like a tee-total. That is one thing. In testing the reflexes, was one of the tests, I found that there was an irritability which showed too much susceptibility to normal stimulus, what would be in a normal man stimulus to the muscles and nerves. 20

Q. Did you notice anything in relation to his walk?

A. Yes.

Q. What test did you subject him to?

A. The man in taking a line across the room diverges to the right and strikes his heels very much as an ataxic man, a man who has inflammation of the spinal cord.

Q. Was there any indication on his leg?

A. There is a hardened condition and somewhat discolored. I believe there has been an injury in the middle third of his thigh. 30

Q. Doctor, did you notice any tenderness of the spine last night when you made the examination?

A. On the lower part of the man's back, the right side and almost at the end of his backbone there is an especially tender spot. He is tender throughout the spine and any

little percussion on the top of that man's head will throw a jerking condition clear through his body, showing that the whole spine is tender, the lower part especially.

Q. Doctor, could you tell in any way whether he was simulating pain or tenderness or whether it was bona fide?

A. No; I don't think he was deceiving us in any way.

Q. What is your reason for making that statement?

A. In the first place, anything that will cause positive pain will increase the heart rate, and there are certain involuntary actions of the muscles that he would not be aware of.

Q. In a case of an injury to the spine would a man have to know anything about anatomy to successfully simulate an injury?

A. Yes, I think he would and of pathology.

Q. Doctor, in your opinion as a physician, is Mr. McCracken's injury of a permanent character or not?

(Objected to as irrelevant, immaterial and inadmissible. Question allowed.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, [SEAL],
C. C. J.

A. Yes; he has got a permanent hurt.

Q. He has got a permanent hurt?

A. Yes.

Cross-examination.

By Mr. Bourgeois:

Q. Doctor, it is possible, is it not, for a witness to simulate a physical condition?

A. Certainly.

Q. And it is possible for them to so simulate as to deceive a physician, is it not?

A. Oh, yes, sometimes I think so.

Q. And it is possible for them to even deceive you, is it not?

A. I believe I could be beaten, yes.

Q. When you say that the person is permanently injured you mean that is simply your opinion?

A. Well, of course, it comes from reading and experience.

Q. There is no way that a physician can tell to any degree of certainty, is there? 10

A. I think so, yes, sir.

Q. You testified in the case of Alice Blackman vs. The West Jersey & Seashore Railroad Company, did you not?

A. I think I did.

Q. And in that case you testified that she was permanently injured, did you not?

A. I don't remember my phraseology, but that is my impression.

Q. And she recovered within about three months after the case was decided, didn't she? 20

A. I don't know anything about it. I never seen the woman since.

Q. You also testified at that time that she was incapable of child-bearing because of the injury, did you not?

A. I don't think I did.

Q. Don't think you did?

A. I don't think so. You are asking pretty hard questions and of course I am in a good many cases and I can't remember.

Q. She did have a child about a year after?

A. That might have been. 30

Q. So if she recovered shortly after that case was decided, then it simply means that your opinion was incorrect in that accident?

(Objected to.)

A. You are putting a hypothesis that I said such things.

Mr. Ponder: I don't think this is material. I don't think it is pertinent to the issue. We have asked the doctor certain questions in relation to this case. What he may have testified in other cases certainly has no bearing in this case.

Mr. Bourgeois: It has bearing to show the value of his
10 opinion; but I will withdraw the question.

The Court: Question withdrawn.

Q. Doctor, you say that you met this man in John Wescott's office. That is Lawyer John W. Wescott's office?

A. My brother, yes, sir.

Q. And you practice where?

A. Berlin, Camden county, New Jersey.

Q. You say the injury to the spine was near the end of it.
20 That would be below the hip joint, wouldn't it?

A. Now I will have to take you back. I think I indicated to you that the lower part of the back showed the most tenderness, and the chances are this man's spine is abnormal to a certain extent throughout.

Q. But you find the evidence of soreness, as I understood, near the end of the spine?

A. There is soreness there, locally.

Q. But that would be below the line of the hips, wouldn't it?

30 A. Yes, sir.

Q. And the lumbar region, they are above the line of the hip?

A. Yes, above.

JOHN T. MCCRACKEN, recalled.

Direct examination.

By Mr. Waln:

Q. In answer to a question on cross-examination you stated that you tripped at some time prior to this accident over a rope. What was the extent of that injury?

A. Very slight. Bruised and abrasion of the skin on the right limb, right on the shin. 10

Q. Anything serious?

A. No, sir.

Q. Didn't interfere with your business in any way?

A. No, sir.

Q. You were asked if you ever met with an accident on a steamboat and you answered no. Did you meet with any accident on a private wharf?

A. Yes, sir.

Q. State what that was. 20

A. I was in an electric launch at a boat club that I belonged to up on the Delaware at Finaled, and one evening we were going in and the tide had fallen and we had an incline that we could get in the boat; I got out, the tide had gone down and the mud was on the walk, which made it slippery, and I went to get hold of the bow of the launch to keep it from bumping into the slip, and on this mud my feet slipped and I hit my hip, my left hip and my leg against the edge of the electric launch.

Q. Was anything serious about that injury?

A. No, sir. 30

Q. Weren't laid up from it?

A. I had an accident policy and I got two weeks on partial disability for that, I think; that is my recollection, that I got two weeks' disability.

Q. You had fully recovered, had you, from that?

A. Oh, yes, sir.

Cross-examination.

By Mr. Bourgeois:

Q. The accident was sufficiently serious to induce you to collect the insurance?

A. That is what I was paying for.

Q. And you collected it. Now when you tripped over the rope did you fall?

10 A. Yes, sir.

Q. Didn't receive any shock because of the fall or anything like that, did you?

A. No.

Q. And the time that you had the trouble with the launch you did not receive any shock or anything of that sort to your system?

A. No; I only received these bruises on the hip.

Q. That didn't hurt you any, did it? Didn't do you any harm, any injury?

20 A. No.

Q. When was that?

A. I received two weeks, I think, partial disability.

Q. When was that?

A. I think that was in July.

Q. What year?

A. Of 1904.

Q. Now did you tell Dr. Miller that that had injured you and you was afraid that this might bring back the injury?

A. No, sir.

Q. Didn't tell him that?

30 A. Not to my knowledge.

Q. Did you tell him anything like that?

A. I haven't any recollection of holding any conversation with Dr. Miller in regard to my condition other than he asked me if I had ever taken any athletic exercise and I told him that I had.

BENSON E. BROWN, sworn.

Direct examination.

By Mr. Ponder:

Q. Mr. Brown, where do you reside?
A. Detroit, Michigan.
Q. What is your business?
A. I am general freight and traffic manager of the Acme White Lead & Color Works. 10
Q. You are another paint man, are you?
A. Yes, sir; I am also sales manager of the railroad department of the Acme White Lead & Color Works.
Q. Do you know Mr. McCracken, the plaintiff in this case?
A. Yes, sir.
Q. How long have you known him?
A. I think about twelve years.
Q. Were you in Atlantic City September 12, 1904? 20
A. Yes, sir.
Q. Did you see Mr. McCracken here at that time?
A. Yes, sir.
Q. What were you doing here in Atlantic City at that time?
A. I was attending the convention.
Q. Same convention that Mr. McCracken referred to?
A. Yes, sir.
Q. Do you remember the accident that occurred at the Hotel Rudolf on that day?
A. Yes, sir. 30
Q. Now will you just state in your own words all that happened that day so far as relates to this accident.
A. Well, I have been ill for over a year and my memory was almost entirely destroyed by inflammatory and sciatic rheumatism, and the little details I don't know much about. I am just getting around now. I remember of inviting Mr.

McCracken and a couple of other gentlemen to my room to get some souvenirs.

Q. Where were you stopping?

A. At the Rudolf.

Q. You were the guest at the Hotel Rudolf?

A. Yes, sir.

Q. Well, just go on.

A. And we started for the elevator and Mr. McCracken and I went in the elevator first and it filled up and the elevator got up to about seven or eight feet——

Q. Just turn your head toward the jury.

A. ——above the parlor floor and it dropped and we all fell in a heap and the electric lights broke and the fire sputtered all over us and we were frightened, and when it dropped I don't remember just about it, but I was next to Mr. McCracken and I fell out and struck myself and hurt myself on the hands, and I looked around and I saw a man hanging up there with his face black and his eyes bulging out, and I didn't know who it was, and finally when he was gotten out of there, I was so excited I don't remember about it. I know he got on his feet and I saw it was Jack

Q. Mr. McCracken?

A. Yes, sir.

Q. Now, Mr. Brown, did you get on this elevator on the office floor?

A. Yes, sir.

Q. And you went up a few feet and the elevator suddenly dropped to the basement or pit?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. And then you say that there was a rush made to get out and that you had gotten out when the elevator started up; is that right?

A. I was the next to the last getting out and the elevator caught me too.

Q. But you got clear?

A. Yes, I did, but hurt me quite a little. I got out. I don't know how it happened, and I rolled down on the floor and got my hand skinned and my nose bloody.

Q. Where was Mr. McCracken when you saw him after the accident?

A. After the accident?

Q. Yes. After you got out of the elevator and you saw him, where was he?

A. Why, somebody stopped the machine and took hold of him and helped him out. 10

Q. Where was he caught?

A. His head was just sticking out of the top of the elevator.

Q. Out into the hallway?

A. Into the hallway.

Q. Where was his body?

A. The body was in the elevator twisted up, twisted in a peculiar position. The elevator struck him across the chest and the limbs.

Q. And he was fast there? 20

A. Yes, sir; they were some little time.

Q. You saw this body released?

A. Well, I don't remember. I was hurt myself and very much excited and it was all over before I come to myself.

Q. Do you remember anything about the stopping of the machinery?

A. I don't remember anything about the detail.

Q. When this elevator fell to the pit did the elevator operator, the boy, say anything?

A. Why, he said that the elevator had been out of order—— 30

Mr. Bourgeois: I object to the statement, that the boy can't bind Mr. Myers. But I am willing. I will withdraw the objection.

Q. Go on.

A. And that he had reported it.

Q. He said the elevator had been out of order and he had reported it?

A. Yes, sir.

Q. When these men left the elevator after it had fallen to the pit did the elevator boy open the door so that they could get out?

A. I don't remember that.

Q. Do you remember where the elevator boy was when the elevator shot up?

A. No, sir.

Q. You don't remember?

10 A. No.

Q. When was it that you heard the boy, the elevator boy, state that he had reported that it was out of order and they told him to go ahead?

A. Why, he told me several times.

Q. Was that while Mr. McCracken was there?

A. I think it is when we went up in the elevator, but I am not sure, but he told me several times afterwards when I came down to see Mr. Myers in regard to a physician. I was up and down a great many times.

20 Q. Did he make that statement immediately after the accident to you?

A. I don't remember just when it was.

Cross-examination.

By Mr. Bourgeois:

Q. Mr. Brown, how many people got in the elevator that day at that time?

A. Why, there must have been seven or eight in it.

30 Q. And when it went to the basement floor and stopped how did the people get out ?

A. Well, I don't know. I was down on the floor on my hands and knees. I was frightened by the fire striking me.

Q. What fire?

A. The sparks from the electric lights. The whole thing was dropping around there as if there was a shower of sparks or fire and I was frightened and I fell down.

Q. In the elevator?

A. Yes, sir.

Q. Did you see who opened the door?

A. No, sir; I was away back.

Q. Do you know who opened the door?

A. No, sir.

Q. Do you know who closed the door?

A. No, sir.

Q. Do you know whether or not the current was turned off after the elevator got to the bottom? 10

A. No, sir.

Q. Do you know whether it was turned on again before Mr. McCracken was caught as you say?

A. No, sir.

Q. Do you know whether or not the elevator boy made any statement or any exclamation at the time of the accident?

A. I think that he did.

Q. You think that he did? What did you say you did, send down to Mr. Myers for a physician?

A. I came down to Mr. Myers and explained it. I took 20 Mr. McCracken to my room and asked him to get a doctor and the doctor was away and they tried to get him and it took a couple of hours. I was very anxious, thinking this man was going to die on my hand.

Q. You are a close friend of Mr. McCracken?

A. I know Mr. McCracken as I know hundreds of other men.

Q. Close enough to address him by his first name?

A. Yes.

Q. Did you attend to having the nurse come to Mr. McCracken? 30

A. Yes.

Q. How long was it before she came there?

A. Well, I don't remember.

Q. Was she there at the time?

A. Oh, no; it must have been a couple of hours.

Q. She was taken up in the elevator with Mr. McCracken after he was caught, when he was taken up in the elevator? Was she taken up with him?

A. No, sir; that elevator was out of commission and they took the back elevator.

Q. They just went to the back elevator and went right on up, that is, as soon as Mr. McCracken had gotten on his feet again; isn't that correct?

A. Yes.

10 Q. Now was the woman who acted as nurse with him at that time?

A. Oh, no, no.

Q. Did I understand you to say that you did invite Mr. McCracken for lunch with you?

A. I don't remember whether I did or not.

VIRGINIUS F. GRAVES, sworn.

20

Direct examination.

By Mr. Ponder:

Q. Mr. Graves, where do you live?

A. Philadelphia.

Q. What is your business?

A. Makers of varnish, japan and colors.

Q. You knew the plaintiff, Mr. McCracken, did you not,
30 Mr. Graves?

A. Yes, sir.

Q. How long have you known him?

A. Well, I think I have known him between twelve and fifteen years.

Q. Were you in Atlantic City in September, on September 12, 1904?

A. Yes, sir.

Q. You saw Mr. McCracken here at that time?

A. Yes, sir.

Q. Were you at the Hotel Rudolf when this accident, this elevator accident occurred?

A. Yes.

Q. Will you go on and state to the court and jury just your recollection of that accident?

A. Well, we had all collected there to go up to some of the rooms for souvenirs.

Q. By the way—let me interrupt you—were you a guest at that hotel? 10

A. Yes, sir. And we got into the elevator and it went up, I should judge, from five to six feet, somewhere along there, as near as I can remember, and suddenly it dropped right down into the hole and when it dropped the elevator boy said that we would have to get out, that she wouldn't go either up or down, and he opened the door and let us out.

Q. He opened the door?

A. Yes, sir; he opened the door. 20

Q. Then what happened?

A. Then after that we were all getting out and just as I was getting out the thing began to go up and I gave a leap and got out and when I turned around, why, I saw that Mr. McCracken was hanging above there.

Q. Wedged in?

A. Wedged in between the floor of the elevator and the top of the cage or on the wall, whatever it was.

Q. His body had stopped the elevator, had it?

A. Yes, sir.

Q. Do you know whether the machinery was still running or not? 30

A. No, sir; I do not.

Q. Do you know where the elevator boy was then when you saw Mr. McCracken fast up there?

A. He was on the inside of the car.

Q. How did they release Mr. McCracken's body from that position?

A. I don't know exactly how they did that, because I went out on the street. I couldn't stand there and see him suffering, so I went out on the pavement, and when I came back he had been released. I don't know how he was released.

Q. Did you see him before he was taken up to a room?

A. Yes, I saw him sitting in the chair on the pavement.

10 Q. Was he suffering then?

A. He seemed to be, yes, sir.

Q. Did you go up to the room with him?

A. No, sir.

Q. Did you hear the elevator boy make any statements regarding the condition of the elevator?

A. No, sir.

Q. You did not?

A. No, sir.

20 Cross-examination.

By Mr. Bourgeois:

Q. Mr. Graves, did I understand you to say that when you next saw Mr. McCracken he was sitting on the chair on the pavement?

A. Yes, sir.

Q. What part of the pavement?

A. Well, it was,—I think it was the pavement; it was right on the outside there.

30 Q. Outside of the building?

A. Yes; so he could get a little fresh air.

Q. Now you say he was suffering there. How long was he fastened in the position you saw him?

A. Well, that is pretty hard question to answer.

Q. Only a question of a few seconds, wasn't it?

A. Oh, seemed an eternity to me.

Q. And yet you don't know how he was released or when he was released?

A. No; I don't know how he was released.

Q. Now how many of you got out when the elevator came to the basement floor?

A. Well, I thought that all of us had gotten out excepting Mr. Carpenter, but afterwards I learned that there were —there was another party left in there with him and the elevator boy.

Q. The other party didn't get hurt did he? 10

A. No; not that I know of.

Q. And after you got out did you see the elevator boy close the door?

A. No; I don't think I did.

Q. Don't think you did. Did you see Mr. McCracken open the door?

A. No; I didn't see Mr. McCracken.

Q. Did you hear the elevator boy say to Mr. McCracken not to open the door?

A. No. 20

Q. Didn't hear him calling to him to not open the door?

A. No, sir.

Q. Did you see the elevator boy trying to push Mr. McCracken away from the door?

A. No, sir.

Q. Were you watching?

A. I wasn't watching for anything, but I say I didn't see it, but the elevator boy opened the door for us to go out. Now whether he closed it or not I don't know.

Q. How long was it after the elevator boy opened the door for you to get out before the elevator started up again; do you know? 30

A. I don't know the time it was, but very few minutes anyway. There was only six or seven of us, I think, and it doesn't take long for four or five to get out, you know, and we got out pretty lively.

Re-direct examination.

By Mr. Ponder:

Q. The whole party was in the act of getting out, were they not?

A. Yes, sir.

(Question objected to as leading. Question and answer
10 ordered stricken out.)

Q. Mr. Graves, Mr. McCracken was there taking lunch with you, was he not, or dinner?

A. Not with me, no, sir.

Q. He didn't lunch with you?

A. No, sir; he lunched with Mr. Brown.

By the Court:

Q. Did the elevator start up before the door closed, if it closed at all?

20 A. That I don't know, your Honor.

Q. Was the elevator moving when you got out?

A. Yes, sir; it just began to move as I was getting out.

Q. Was the door fully open then?

A. Yes, sir; it was fully open then.

Q. Do you know what made the elevator start, whether it was the act of the boy or some situation of the machinery?

A. That I don't know.

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30 DANIEL V. VAIL, sworn.

Direct examination.

By Mr. Ponder:

Q. Mr. Vail, where do you reside?

A. In Buffalo, New York.

Q. Do you know the plaintiff, Mr. McCracken?

A. I do.

Q. How long have you known him?

A. Ten or twelve years.

Q. Were you in Atlantic City on September 12, 1904?

A. I was.

Q. Were you at the Hotel Rudolf when there was an elevator accident on that day?

A. Yes, sir. 10

Q. Were you with Mr. McCracken at that time?

A. I was in the car with him.

Q. Will you state to the court and jury now just what happened there?

A. There was a part of us boarded the car to go upstairs for souvenirs. Mr. Graves and the rest of us.

Q. Just a little bit louder.

A. And we had just fairly got started—I don't know just how far up we were, when all of a sudden it started to go down and it came down with a crash. I was about the 20 middle of the car. The globe of the chandelier, the round globe that is in there, came down on top of my hat and dented it, bent it down, and as we struck the bottom we were confused and we rushed out as quickly as we could, and I had my back turned to the elevator when I heard somebody exclaim, "My God, there is a man caught." I turned and saw this man hanging there. Didn't know who it was. And my first impulse was to relieve that man. I started up the winding stairs to the office floor above. I took hold of the top of the elevator that was up a little over the floor, I don't 30 remember how high any more, and called to the other men who were members of the association to come and assist me, but by the time they got there it had started down again, and I went downstairs and saw them leading Mr. McCracken to the door. He was very white, and there was two men had hold of him. I don't know who they were. And I went upstairs again.

Q. Did you hear what the elevator boy said in regard to the elevator?

A. I heard him make the remark that he had notified somebody, I don't know who, that the elevator had been out of order that morning and it was not fit to run. That was the expression, that it was not fit to run.

Q. It was not fit to run. You are sure of those words?

A. Yes, sir.

Q. When this elevator fell to the pit or the basement
10 there did the elevator boy open the door for you to get out?

A. I don't know.

Q. You don't know?

A. No, sir.

Cross-examination.

By Mr. Bourgeois:

Q. Where were you when you heard the elevator boy say
20 that he had notified him that the elevator was not fit to run?

A. After I came down from the office floor above.

Q. This was after the accident had happened some time?

A. Yes, directly after.

Q. Who did he tell it to?

A. Made the remark generally; didn't tell it to anybody in particular.

Q. You are sure it was the elevator boy, are you?

A. Yes, sir.

Q. Would you know the elevator boy if you saw him?

A. No, sir. He was a colored boy.

30 Q. Dark or light?

A. That I couldn't say. He was light at the time.

Q. I suppose he was not one of the kind that would be changing since then?

A. I don't know that, couldn't say.

Q. Now how many of you were there that got in the elevator?

A. That I couldn't say.

Q. How many of you got out of the elevator?

A. I couldn't say that.

Q. Was the souvenir that you were going to the room to get a bottle of whiskey?

A. No, sir; it was not in my case, I assure you, because it is out of my line.

Mr. Ponder: I think that is unfair.

10

Mr. Bourgeois: It is cross-examination; I have a right to ask him.

The Court: The testimony is in now without objection. It is too late.

HENRY C. CARPENTER, sworn.

Direct examination.

20

By Mr. Ponder:

Q. Mr. Carpenter, where do you live?

A. Chicago.

Q. What is your business?

A. Paint and varnish business.

Q. Do you know the plaintiff, Mr. McCracken?

A. Yes, sir.

Q. How long have you known him?

A. Sometime over ten years.

30

Q. Were you in Atlantic City on September 12, 1904?

A. I was.

Q. See Mr. McCracken there?

A. Yes, sir.

Q. Do you remember an elevator accident that occurred at the Hotel Rudolf on that day?

A. Yes, sir.

Q. Will you tell the court and jury just what happened there in relation to that accident?

A. I was among the party of seven or eight gentlemen standing in the hallway, the one in which Mr. McCracken was a party of and I suggested to him to go upstairs with Mr. Graves and myself to get one of these souvenirs that were distributed.

Q. Were you a guest of the Hotel Rudolf at that time?

10 A. Yes, all during the convention.

Q. You invited Mr. McCracken up to your room?

A. Yes. And he said he was just going up with another gentleman, Mr. Brown, so we decided all to go up together to Mr. Brown's room and then go to ours, and we all got in the elevator and the door was closed to go up, and as we started to go up all of a sudden we all came down in the basement.

Q. You mean by that that the elevator dropped?

A. The elevator dropped, and of course in dropping it

20 broke all the lighting bulbs in it, and the boy opened the elevator for us to get out in the basement or on the ground floor, and several of them were able to get out. Mr. Graves he passed out and I was very much afraid he was caught, because just then it started to go up and Mr. McCracken started out right back of him and he was knocked in some way or other and he was pinioned between the elevator and the top of the first floor ceiling.

Q. You mean the floor of the elevator and the top of the ceiling of the cage, of the shaft?

30 A. Exactly.

Q. You were in the elevator then?

A. I was in the elevator right by his feet.

Q. The others had gotten out and everybody had gotten out and Mr. McCracken was in the act of getting out when this happened?

A. Yes.

Q. When the elevator started up?

A. Yes, sir.

Q. Had the elevator boy shut the door after Mr. Graves and these other gentlemen had gotten out?

A. Shut the door?

Q. Of the elevator?

A. Couldn't shut the door; couldn't get out to shut it.

Q. Did you see him make any effort to shut the door?

A. No, sir.

Q. Did he make any attempt to keep the people who were in the elevator from getting out? 10

A. None whatever.

Q. Did you hear any statement that he made in relation to the elevator, the elevator boy I am speaking of?

A. He made the remark after we got out that the elevator was in bad order. I asked him myself. I said, "What is the matter with the crank." It didn't seem to work. He pushed it one way and it seemed to go the other.

Q. Did you hear him state that he had reported the condition of the elevator?

A. Yes, I heard him make that remark in reference to it. 20

Q. What did he say, as near as you can remember; what were his words?

A. He said the thing was out of order didn't work right or didn't respond, or something of that kind.

Q. And he had so reported it?

A. Yes. I was standing back of him all the time. He had his hand on the crank.

Q. And you are positive he didn't make any effort to shut the door?

A. Positive. 30

Q. To keep the men from getting out?

A. None at all.

Q. Nor did he tell the people not to get out?

A. Not a thing.

Q. Did you hear him state that there was nothing that he could do up there, that he couldn't get the machine up or get it down?

A. Yes. I said, "Don't fool with it. Let it alone." I made that remark to him.

Q. Did you assist in releasing Mr. McCracken's body?

A. No; I wasn't where I could.

Q. You stood inside of the elevator when that was being done?

A. While he was pinioned in the elevator I was inside of the elevator.

Q. You saw his body released?

10 A. I don't know how they succeeded in getting it down. I was in the cage and I couldn't see anything. Naturally I was very much unnerved.

Q. How long do you suppose Mr. McCracken's body was pinioned there?

A. That is pretty hard time to gauge time under. I suppose fifteen or twenty seconds would be long enough time. I never expected to see him alive again.

Q. Can you form any estimate of the time he was pinioned there?

20 A. Well, I think—say twenty or thirty seconds.

Q. Did you see him after the accident?

A. I did.

Q. What was his condition then?

A. Well, he looked as near like a dead man as I ever saw to be alive.

Q. Was he suffering?

A. I think he was, excruciatingly.

By the Court:

30 Q. Was it apparent to you what made the elevator start up after he had gone to the basement? Was it by any act of any one in the elevator?

A. Well, I couldn't say whether the boy had shifted the handle or not. I think he did give it a push and it didn't respond and then he seemed to put it back again and then it went up and this gentleman got caught and it seemed to

stop there, and I said, "Don't move it." I was afraid he would move it the wrong way. It seemed if he moved another inch McCracken would be sent to his death.

By a Juror:

Q. Did the boy run the elevator down when McCracken was released? Did the boy turn the wheel and run the elevator down to relieve Mr. McCracken?

A. I would say the elevator went down of its own accord, sir, because I told him not to touch that elevator and I think it went down gradually. 10

By Mr. Ponder:

Q. You don't know anything respecting the power of the engine?

A. Not a thing, no, sir.

Mr. Ponder: May it please your Honor, I desire to offer this bill in evidence. 20

(Bill admitted and marked Exhibit P2.)

Plaintiff Rests.

30

MOTION TO NONSUIT.

(Mr. Bourgeois moved that the Court nonsuit the plaintiff, on the grounds that nothing has developed in this case that places any liability on Mr. Myers; that an inn keeper is not an insurer of the safety of his guests, being only re-
10 quired to exercise reasonable care; that the testimony shows that the plaintiff was not a guest of the hotel; that the defendant as owner of the hotel owed plaintiff no duty whatever except such as he owed to a mere licensee, which duty was that the defendant would not voluntarily do something after plaintiff got there by which the plaintiff might be injured; that when the plaintiff came on the premises as a mere licensee he was bound to take the situation as he found it, he was bound to assume the dangers, whatever they were, that were there; that the proprietor of a hotel is not obliged
20 to keep his premises in any certain condition for the benefit or convenience or pleasure of people who go there as mere licensees; plaintiff was not a guest of the hotel, and the fact that he was invited there by a guest does not change his relation toward the defendant.)

The Court: The motion is denied and you may note an exception. This question I will consider further at the conclusion of the testimony possibly.

30 (Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, [SEAL],
C. C. J.

DEFENDANT'S TESTIMONY.

DR. WALTER M. MILLER, sworn.

Direct examination.

By Mr. Bourgeois:

10

Q. Doctor, where do you reside?
A. Philadelphia.
Q. And where were you residing in 1904, September?
A. At Dr. Conway's, Pacific avenue.
Q. You were assisting Dr. Conway?
A. Yes, sir.
Q. What is your profession?
A. Medical.
Q. How long have you been practising?
A. Since 1903.

20

Q. About the 12th of September were you called to the Hotel Rudolf?
A. Yes, I was.
Q. To attend Mr. McCracken?
A. Yes, sir.
Q. You met him there?
A. Yes, sir.
Q. Did you make an examination to ascertain what his trouble was?
A. I did.

30

Q. What was it, what did you find?
A. Well, when I first arrived there I found him greatly excited, found him upstairs in the room and I made a thorough examination of him and I discovered a mark on his left leg across here, that is, an indentation of the flesh, not an open wound, and also it showed that he had been in a position of this kind (illustrating); he had also a mark

across his back in the region of his ribs somewhere about the seventh or eighth, I should judge, and that was more of a scar, showing where there was some sharp instrument had been pressing. Examined him fully. I believe no distinct fracture.

Q. Not of the ribs?

A. No. I found tenderness there, great deal of tenderness, general muscular tenderness all through the side.

Q. Did you find any internal trouble?

10 A. I found none at that time.

Q. How long did you attend Mr. McCracken?

A. Well, I attended to him from the time of the injury until the following Monday, except one day, when Dr. Conway went there.

Q. During that time did you have any conversation with Mr. McCracken?

A. Oh, yes, right along.

Q. Did you ever talk with him about the extent of this injury?

20 A. Oh, yes.

Q. Did you ever talk to him about any other injury that he had?

A. Yes.

Q. What did he say to you?

A. Well, as regard to drugs, if I recall it right, in giving certain drugs, he said he had taken certain drugs before for an injury he had, and that he was stepping out of a boat and he stepped on a plank and he fell and injured himself in some manner. I can't recall the manner.

Q. Did he say anything about having any other accident?

30 A. He said he had a couple of slight accidents before.

Q. Was anything said about his fear of recovery at this time, of an injury it might do him with relation to his other injuries?

A. No, I don't recall any exactly.

Q. When did you make your first visit?

A. On the Wednesday he was hurt, that afternoon

Q. Who did you find there when you went?

A. I found, about, I should judge, four or five men. That is about all at that time.

Q. No woman at that time? No nurse?

A. No.

Q. After that time did you find a woman nurse there with him?

A. Yes; I remember she was there that night or the following morning. There was a woman there; she was not a nurse though. 10

Q. She is not a nurse?

A. No, sir.

Q. Now, doctor, Mr. McCracken testified this morning that he was struck in the head and fell. When you examined him did you find any place where he had been struck in the head?

A. None whatever.

Q. Did he make any statement to you that he had been struck in the head?

A. No. 20

Q. Did you ever hear tell of his being struck in the head at that accident before this morning?

A. No, I did not.

Q. And it was testified here to-day that something about nervous shock, nervousness. I suppose you have had some experience with people who are nervous?

A. Yes.

Q. You have seen Mr. McCracken here to-day?

A. Yes.

Q. How does his size, that is his physical physique to-day compare with what it was when you saw him? 30

A. Well, it don't seem to be very little different, about the same size that he was at that time.

Q. What is the usual effect of nervous shock on a person's physical strength and health, that is, their physique?

A. Well, it is general throughout the body, that is, a person becomes nervous in many ways, and they generally lose weight by the process, many different ways.

Q. Loss of sleep, loss of appetite cause loss of weight?

A. Yes.

Q. Now, doctor, could you tell by feeling down a man's back, that is, down his spine, whether or not he was suffering from spinal nervousness?

A. No, I couldn't say you could.

Q. Spinal nervousness comes from what?

A. Well, it is generally injury to the cord.

Q. And the cord is imbedded where?

10 A. In the spinal column, and the spinal column has a bone and the nerves are in the cord and they control the organs. The bones do not control the organs at all.

Q. They support the body?

A. Yes.

Q. Doctor, would a fall, or, rather, being caught in between two heavy bodies, cause inability to retain the urine where there was no evidence of inflammation of the bladder?

(Objected to as not being a proper hypothetical question.
20 Question allowed. Exception noted for plaintiff.)

A. Yes, it would.

Q. Would a fall or being caught between two heavy bodies produce inability—could it produce inability to retain the urine a period of fifteen days after the accident where there was no evidence of inflammation of the bladder in the meantime?

A. Well, it would cause the condition inside of a day following the accident and would cause the condition right
30 away.

Q. Now in your examination of Mr. McCracken did you discover any condition there that would lead to a condition where he would be unable to retain his urine?

A. No.

Q. Doctor, what might cause inability to control the bowels?

A. Well, inability to control the bowels is generally caused by action of the nervous system through, that is, through an injury to the spinal cord.

Q. Could it be said with any degree of certainty that an inability that occurred once in two years to retain or control the bowels was caused by an injury happening to a man at any particular time? Let me change that. Can it be said by a physician with any degree of certainty of a person who has suffered two or three accidents that his inability to control the bowels a year or two years after the last accident was traceable to any one of those accidents rather than to the others?

A. Yes, it might be.

Q. Could a physician say that it was? Could he tell which one it was?

A. Oh, he couldn't state—he couldn't put his finger on just which one caused it.

Q. And he couldn't put his finger on which accident caused it?

A. No.

Q. He might say it came from an accident?

A. Yes.

Cross-examination.

By Mr. Waln:

Q. Doctor, how old are you?

A. Twenty-eight.

Q. And you first practised medicine in 1903?

A. 1903, yes.

Q. What time?

A. Well, I should judge about July, judge I did.

Q. Where?

A. Pennsylvania.

Q. Where in Pennsylvania?

A. Boyertown.

Q. What college are you a graduate of?

A. Jefferson.

Q. And you came down to Atlantic City about November 15th, 1903, I should judge?

A. November 15, 1903.

Q. And then you stayed here until September following?

A. I did.

Q. With Dr. Conway?

A. No.

10 Q. Weren't you connected with Dr. Conway?

A. Well, I was after residing possibly——

Q. Well, in September, 1904, were you connected with Dr. Conway?

A. Yes.

Q. You were a partner?

A. No; I was under salary paid by him.

Q. And he was the physician of the Rudolf Hotel, wasn't he?

A. No; I can't say he was.

20 Q. Well, he was sent for, I understand; is that correct?

A. He was.

Q. And you went in his place?

A. Yes; he was out and I went.

Q. Now, doctor, you strapped this man, did you not?

A. I did.

Q. Where did you strap him?

A. Well, I strapped him from the center of the body to the spine on the right side, strapped from about the axillary space down covering the ribs.

30 Q. How long were the straps?

A. About four inches on the left of the sternum clear around the body to four inches on the left of the spine.

Q. And they extended how far up and down, how far?

A. Well, that covered about a foot generally, about, from the axilla way down to the lower margin of the ribs.

Q. From the lower margin of his ribs below the belt of his trousers some distance above that?

A. About here. (Indicating.)

Q. In the space under his arms?

A. Yes, about a foot.

Q. What was the purpose in doing that?

A. Well, he had a great deal of pain with his breathing. When he would take a long breath it would catch him, and principally a muscular pain it seems, and there was a great deal of tenderness over the heart, and in cases like that we keep the party still as possible to cut down the breathing to relieve that trouble. So therefore he was strapped.

Q. Was his breathing short?

A. Pretty short.

Q. Showed the man was in pain?

A. He was in pain.

Q. And you said that there was a mark as if some sharp instrument had pressed him heavily across the back?

A. Yes.

Q. Whereabouts was that?

A. Well, just about the sixth or seventh rib, I should judge.

Q. Seventh or eighth, you said before. In the ribs, was it? Where is the sixth or seventh and where is the seventh or eighth?

A. There is the mark, about that region, as far as I can judge. (Illustrating.)

Q. Where is the seventh and eighth rib?

A. Well, if I had a specimen here I could count down for you.

Q. About?

A. I should judge the seventh or eighth rib comes about here and extends around here. The ribs curve down in a semi-circle.

Q. They curve down?

A. Downwards and in a semi-circle.

Q. How many times did you attend him?

A. Well, I should judge ten times I was there.

Q. And where was Dr. Conway at this time?

A. Dr. Conway, he was looking after other work.

Q. He was here in Atlantic City?

A. No; he was away when the case was first called and he had had another case and I took this case.

Q. Conway attend him at all to your knowledge?

A. Yes, he was there once. I was called out of town.

Q. What time of the 12th did you get there?

A. Well, I can't say. It was at least, I should judge, about three-quarters of an hour or an hour after the first
10 call was made.

Q. Don't know the time of it?

A. No, sir.

Q. You went again that same night?

A. Yes.

Q. And when did you call there again, the next day?

A. Next day.

Q. Did you call more than once the next day?

A. Yes.

Q. Twice, eh?

20 A. Twice, possibly three times.

Q. Now the next day how many times?

A. Well, I should judge about twice.

Q. The day after that how many times?

A. Possibly twice.

Q. Now how many times the 16th?

A. Well, I think about once the following two days.

Q. Then you saw him Monday, the day he left?

A. I saw him Monday, the day he left.

Q. What time did you see him that day?

30 A. I saw him before he left; I don't know exactly what time.

Q. When did Conway see him? Was it on Monday, the 17th, or before?

A. He saw him on Friday, I think.

By Mr. Ponder:

Q. Doctor, when a physician visits a patient three times a day, isn't that looked upon by a physician as being a serious case?

A. No; not in all cases. For instance, some people want a physician every time they turn over.

Mr. Waln: Three dollars a visit three times a day wouldn't be bad. 10

Q. Ordinarily you visit a person once a day if he is not a very sick person?

A. No. We generally visit a person when he wants us. We had patients here that would call us up five times a day.

Q. This day when you went three times, did he want you?

A. No; he called us once, and as I understand—of course, this is a little vague; I can't exactly recall it— but as I understand that was the second day.

Q. When you went to see him twice a day and three times 20 a day you went there because you thought he ought to see you—it was your duty to go?

A. Go and find his condition.

Q. You thought two or three visits a day were necessary on the part of the attending physician?

A. Well, in accident cases we do, because there are conditions that crop up when we have no nurse in charge to look after a case themselves, and the only way to find out is to go.

Q. And you do not mean to say that in all accident cases you go to see a patient three times a day? 30

A. Not in all accidents, no.

Re-direct examination.

By Mr. Bourgeois:

Q. Was Mr. McCracken conscious when you went there?

A. He was.

Q. During all the time?

A. Well, he was conscious most of the time. The only time he wasn't when I gave him a little dope to make him sleep and that was principally on the day I called three times, on Thursday, and I left so many capsules there and he took one more than he should and he slept all day Thursday and half of Friday.

Q. And then this unconsciousness was the result of a
10 drug that you gave him to ease his pain?

A. The result of a drug I gave him to make him sleep.

By Mr. Waln:

Q. What was the drug?

A. Sulphonal.

Q. Did you give it to him the first day?

A. No, sir; trional.

Q. The effect is the same?

A. The effect is the same.

20 Q. What are the drugs?

A. Sedatives.

Q. Coal tar drugs?

A. Yes, coal tar drugs.

CHARLES B. WILSON, sworn.

Direct examination.

30 By Mr. Bourgeois:

Q. Mr. Wilson, you reside in Atlantic City?

A. Yes, sir.

Q. How long have you lived here?

A. Well, this is not my residence. I have been coming here for the last five or six years.

Q. Where were you working in September, 1904.

A. Well, part of the time I was in the Rudolf.

Q. September 12th?

A. Yes, sir.

Q. Do you remember an elevator accident that happened there on that day?

A. Yes, sir.

Q. Will you state to the jury just how that happened?

A. I guess, probably, about eight or nine men came in the elevator and they wanted to go upstairs. The elevator went up probably two or three feet and all at once it just went down, so of course this elevator went down it caused a jar and the chandelier of the elevator fell on the floor, and when these chandeliers fell on the floor it created great excitement among the people in it, and of course, they asked what was the trouble and I told them it wasn't anything; that the elevator was going up and the elevator gradually started up and there were two men—lots of them had testified that all got out, but that is not so; two men got out of this elevator, the first man pushed the door open and got out and I continued to try to get it back and I couldn't close the door—two men jumped out. Mr. McCracken had a hold to that edge to jump out, but at the same time I had hold of the elevator door trying to push it to, because those other two men had put the door back and before I could get it back Mr. McCracken jumped, and the elevator caught him right here, kept this part of his body up and made his head go right down. Then lots of people came in over the top of the elevator, those from upstairs, and when they came over the top of the elevator they insisted upon my turning the crank to go down. Well, when they insisted for me to turn the crank to go down I told them I had revolved the crank and it wouldn't go down, and lots of them were trying to get in the door, only he was between the door and the bottom of the elevator, the top part, and the result was of course they couldn't get in there, and lots of them did come over the top, and at the same time the en-

gineer came around and some one asked him to pull the bolt out—I don't know anything about the bolt, what it is, but at any rate he replied to me to turn the wheel, and I turned the wheel and the elevator went down. Whether it went down under movement of the bolt or the turning of the wheel I am not able to say.

Q. You saw Mr. McCracken when he was trying to get out?

A. Certainly.

10 Q. Did you say anything to him?

A. I told him not to go out. I told all of them not to go out. The first man threw the door open and got out of it when the door was open to its fullest extent.

Q. When you told McCracken not to go out what did he do?

A. He went on and jumped through it.

Q. How high was it above the floor when McCracken tried to jump out?

A. Probably the elevator was about half way, probably 20 a little more, because the space was about that distance—one-half way or two-thirds, about.

Q. It has been testified here that you said to some of the men that that elevator was out of order and that you had so reported to the office that day. Did you make such a statement as that?

A. I never reported to the office that it was out of order. I may have said to some of the boys that it was out of order and they may have heard it.

Q. Did you say it to these people?

30 A. I never said it to these people that I can remember, but I probably have said it to some of the other boys, that is, leading from what I heard them say, but I haven't paid any attention at all to it.

Q. Did you have any personal knowledge of that elevator being out of order?

A. Personal knowledge, I have not.

Q. You are an expert——

A. Do I understand you to say personal knowledge? You mean personal experience?

Q. Yes.

A. No, I have not.

Q. You were an expert on the elevators?

A. Yes.

Q. How long have you run an elevator?

A. I have been running an elevator ever since I was sixteen years old.

Q. Do you know what kind of an elevator that was? 10

A. Well, no; I am not capable of saying.

Cross-examination.

By Mr. Waln:

Q. How old are you?

A. I am now twenty-six.

Q. Eh?

A. Twenty-six years old. 20

Q. Where did you say you lived?

A. What, my birthplace?

Q. Yes.

A. Eastern shore of Maryland.

Q. When did you leave there?

A. When did I leave? What, the last time?

Q. The first.

A. When I first left home?

Q. Yes.

A. For here, do you mean? Or you mean when I first went away from home? The first time I was ever away from home? I am not able to say. 30

Q. The first time you were away from home?

A. I am not able to say.

Q. You don't know?

A. I do not.

Q. The first time you remember anything about?

A. Do you want to know the first place I ever went in my life away? I don't understand the question. The first time I left?

Q. When did you first go to work?

A. The first time I ever went to work?

Q. Yes.

A. Why, the first place I ever went to work was in Florida.

Q. What did you do?

10 A. Worked in a hotel.

Q. How long did you work there?

A. The season.

Q. What did you do there?

A. Attended to the gents' lavatory.

Q. When was that?

A. What year? Well, I don't remember what year it was. I couldn't say.

Q. Where did you work the next summer?

A. The next summer, the following season, I think at—

20 the following season, I think I worked in Saratoga Springs in New York.

Q. Where did you work in Saratoga, for whom?

A. I worked for George A. Farmer.

Q. Hotel?

A. Yes.

Q. What hotel?

A. American Adelphi.

Q. What year was that?

A. I don't remember the year or the time.

Q. Now the summer after that where did you work?

30 A. The summer after that?

Q. What did you do at Saratoga?

A. I worked on the front.

Q. Where did you work the summer after that?

A. The summer after that? I couldn't say where I worked the summer after that, but I can say the next city that I came to is Atlantic City.

Q. Well, when did you come to Atlantic City, then?
A. I couldn't say the time or the year.
Q. What did you do when you got there?
A. I came here and went to work.
Q. How long did you work?
A. How long did I work?
Q. For whom?
A. For D. S. White, the Traymore.
Q. What did you do there?
A. Worked on the front. 10
Q. How long did you work there?
A. The season.
Q. Now what year was that?
A. I don't remember the year.
Q. Well, where did you work the year after that?
A. The year after that?
Q. Yes.
A. Why, the year before that I worked for the American Adelphi.
Q. After you worked for White, the year following? 20
A. I worked there.
Q. How many years did you work there?
A. I worked there two.
Q. How many years ago has that been?
A. That has been probably two or three years ago—two, probably two.
Q. Two years ago?
A. Yes; it has been two years ago this coming, I think, September.
Q. When did you leave White?
A. I left Mr. White in—it was some time in the summer near the fall, I don't remember when. 30
Q. 1904 through the close of the fall you left White and went to the Rudolf?
A. In 1904?
Q. Yes.
A. Yes, sir.

Q. Now what time did you reach the Rudolf?

A. About what time did I go to work there?

Q. Yes.

A. Somewhere near the closing of the summer or the end of the fall, I don't know just which.

Q. Was it September?

A. I don't know whether it was August or September; it must have been I was there in September to have been there.

10 Q. How long had you been there prior to this accident?

A. Prior to the accident?

Q. Yes.

A. Probably two or three, about three weeks.

Q. What were your duties there?

A. On the elevator, passengers.

Q. Who told you to run the elevator?

A. I was hired by the head bellman to do that.

Q. Who was it hired you?

A. Charlie Thomas.

20 Q. And what was his authority there?

A. His authority was head bellman.

Q. And you never worked an elevator before you went to the Rudolf?

A. Never worked in one?

Q. Yes.

A. Yes.

Q. But you told us that you did.

A. I told you that I had? Never told you. Have you ever asked me?

30 Q. I have asked you particularly, and you said you were on the front at Mr. White's.

A. I don't remember you asking me, but if you did ask me where I run some I will tell you. You asked me where I worked and I told you, but if you do ask me I will tell you.

Q. Just answer the questions.

A. No sir; I haven't told you that I didn't, no. If you will ask me I will tell you.

Q. I did ask you where you ever worked in the elevator before you came to the Hotel Rudolf.

A. Yes, I run them, but I never had full charge of them.

Q. Never had charge of one?

A. Never had full charge.

Q. Ran one how many minutes?

A. Rode for days and hours.

Q. Where?

A. At the Raleigh Hotel, at the Rudolf Hotel, and the Traymore Hotel, the Royal Ponciana Hotel and the Breakers Hotel, Ponce de Leon Hotel. I ran them all since that. 10

Q. That is all since this?

A. Previous to the Rudolf occupation.

Q. But you told me that White's was the first place that you worked at Atlantic City?

A. White's? I haven't worked at White's.

Q. You were on the front there and you worked there a couple of summers and the summer of 1904 after the season was over, along the last of August or first of September you went to the Rudolf; that is right, isn't it? 20

A. Before I left White's in the closing of the summer—I began in the fall and went to the Rudolf.

Q. Now you don't know what caused the elevator to fall?

A. No, sir.

Q. You say you never knew it was out of order, never heard of such a thing?

A. No, sir, I did not.

Q. Wasn't out of order when it fell, was it?

A. Well, it must have been, else it would have gone up.

Q. Must have been? Well, you wanted it to go up and tried to make it go up and all of a sudden it went down instead of going up, eh? 30

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Now where was the elevator when it fell?

A. At the bottom of the basement. It was about three feet above the office floor when it fell.

Q. Went how many feet?

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

Q. Nobody was frightened?

A. They seemed to be.

Q. Eh?

A. They seemed to be.

Q. Were you frightened?

10 A. No, sir.

Q. Just the same color as you are now?

A. Just the same.

Q. And the glass flew all over everything from the electric globes?

A. The globes bursted and all scattered.

Q. Came down mildly? It was very gentle, so easy, a small shower?

A. No, sir.

Q. The people were agitated and excited, weren't they?

20 A. Yes.

Q. And you opened the door and they commenced to go out as soon as they could?

A. I didn't.

Q. Didn't, eh?

A. No, sir.

Q. You told them, you say, that this elevator was all right, it was just as good as new and if they kept their heads on them would take them up to the top of the building?

A. I told them to keep quiet and the elevator would go up.

Q. Didn't you know it was out of order?

30 A. I didn't know that it was out of order.

Q. Didn't know when it fell a story and a half that it was out of order?

A. It was only a half a story.

Q. What?

A. It was only a story.

Q. They got in on the office floor?

A. Yes.

Q. And this elevator went up several feet after you started before it fell?

A. Yes, sir.

Q. Still when it did fall it fell clear to the cellar, basement. You call that a story, don't you?

A. Yes, sir.

Q. And you knew it fell with these people although you were trying to take it up. Now why did you say you didn't know there was nothing the matter with that elevator? 10

A. Why do I say that I knew there was nothing the matter with it?

Q. Yes.

A. Why, I don't remember trying to take the people up after it had fallen.

Q. You didn't?

A. No, sir; wanted the people to stay in to see what the trouble was.

Q. You wanted them to stay there until you found out whether it was going to explode? I think you said you 20 would take them a ride so they could fall again, you were going to see if you could get higher up the next time and stay in there and fall through?

A. No, sir; it wasn't for that.

Q. Don't you know that? Do you mean to tell the jury that that is not so? Who told you to say that?

A. Not any one.

Q. After having fallen a story and a half, do you mean to say these people in that excited condition you told them to stay in and not open the door, you would take them up a 30 couple of stories and see if that would fall again?

A. Didn't tell them that.

Q. That is what you came here and told in chief. Now you say you didn't want to take them up at all.

A. I didn't say to take them up.

Q. Did you want to examine the elevator? How are you going to examine it if you don't open that door? How are you going to examine it?

A. It is not my place to examine it. I was going to proceed.

Q. How were you going to proceed if you couldn't get out and get hold of the engineer?

A. There were plenty of boys around there.

Q. It isn't a matter for boys. Wasn't there an engineer there?

A. The engineer came there at the time and was right there at the time that Mr. McCracken was hurt.

10 Q. The engineer ran the engine that furnished the power to move this elevator, didn't he?

A. Yes.

Q. Did you go see him at once?

A. No, sir.

Q. What did you do?

A. What did I do?

Q. Yes.

A. I stayed right at my wheel, never came out; stayed right there.

20 Q. How many people got out?

A. Didn't but two get out that I could count.

Q. But two?

A. That is all, sir.

Q. Were you here in court all day?

A. Yes, sir; and I heard everybody else say different!

Q. Then everybody that said different are not telling the truth?

A. I am not contradicting the other parties. I don't think any more got out; that is all I counted.

30 Q. When did you count them?

A. Counted them when they were going out.

Q. You were very deliberate on that occasion?

A. I had my right mind, wasn't at all excited.

Q. Did you count the plaintiff when he was wedged in there and stopped the elevator?

A. I didn't have to count him.

Q. How many were there altogether that got on the elevator?

A. Probably eight or nine.

Q. And then only two got out; and then you had six or seven left in the elevator; that is right, isn't it?

A. Yes, sir.

Q. Then when Mr. McCracken—

A. I say probably.

Q. You had then in the elevator six or seven people beside yourself when McCracken was caught, if only two got out?

A. If there was as many in there as I think there were, I did. 10

Q. You know they all got out but McCracken and another man?

A. No, sir; I don't.

Q. You know they didn't?

A. I know that they didn't.

Q. What took the elevator up?

A. You will have to ask some mechanic that question.

Q. You don't know, eh? Did it start of its own motion?

A. Yes, sir. 20

Q. Did it?

A. Yes, sir; it was in good working order.

Q. In good working order?

A. Yes, sir.

Q. When it started?

A. I presume it must have been or else it would not have started.

Q. You mean it was doing business on its own hook; you didn't start it?

A. No, sir. 30

Q. How can you explain, if this was in such good working order, that of its own motion it took a notion to go down at a particular time when you wanted to go up with eight or nine people a full story and a half, and then of its own motion it took a notion to go up to see what was going on on the upper floor?

A. I will have to refer you to a mechanic again when you ask me why it goes down. I am not a mechanic.

Q. You don't know anything about an elevator?

A. I know how to run them safely, but I can't say why one should fall.

Q. You know how to pull a lever?

A. I know how to run it safely.

Q. You know how to run it safely?

A. Yes.

10 Q. The way you ran this?

A. The way I had always been running it safely, yes, sir.

Q. Now you say you told McCracken he must be very careful not to open that door?

A. I didn't tell him personally. I said that "you must not open the door, you all must stay in. The elevator is all right." I didn't tell him personally.

Q. And you just told us that you didn't want to go up again, but you wanted to unfasten the elevator, and still you told everybody to not open the door. Was there any way 20 for it to fall any farther than it had fallen? It couldn't go down?

A. I don't think it could.

Q. And then you were standing there telling these people not to open the door and wanted the elevator to stay there so you could unfasten it and it suddenly shot up?

A. It was running gradually. If it had shot up Mr. McCracken would have been killed.

Q. You know they had an engine to run it?

A. I think so.

30 Q. What is your first name?

A. C. B. Wilson—Charles.

Re-direct examination.

By Mr. Bourgeois:

Q. Now let's see if we can get this straightened out. If those people had remained in the elevator as you told them to would they have gotten hurt?

(Objected to. Question overruled.)

Q. Did any of the people who remained in the elevator as you told them to get hurt?

A. No, sir. I didn't.

Q. Was there anything the trouble with that elevator on that day excepting there was too little pressure to make it go up?

(Objected to on the ground that the witness has proved himself incompetent to answer the question. Question overruled.) 10

Q. At the time that elevator started to descend did anything about it break?

(Objected to unless witness knows of his own knowledge. Question allowed. Objection withdrawn.)

A. Anything about the elevator? You mean anything that might be attached to the elevator? 20

Q. Anything you saw?

A. Why, certainly. The chandeliers bursted.

Q. Anything about the machinery?

A. Oh, I couldn't say; I am not able to say.

Q. But was there anything about the machinery on the elevator that you were handling that broke?

A. Well, the wheel—I couldn't see anything that was broken, but I knew one thing, that it wouldn't work, but whether it was broken or not I don't know.

Q. You don't know why the elevator didn't go up? 30

A. No, sir; I don't know.

Re-cross examination.

By Mr. Waln:

Q. Where do you live at the present time, Mr. Wilson?

A. In Atlantic City.

Q. What is the name of the street and the house?

A. I live in Rosemont avenue, 222. You mean where I am working?

Q. Do you live there?

A. Yes, sir.

Q. What place is that?

A. In Atlantic City.

Q. Who occupies it?

10 A. Mr. Stouts and Thompson. That is where I am residing.

By the Court:

Q. Where are you working?

A. At the Windsor Hotel on Illinois avenue.

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20 HARRY PENNYPACKER, sworn.

Direct examination.

By Mr. Bourgeois:

Q. Mr. Pennypacker, you live in Atlantic City?

A. Yes, sir.

Q. How long have you lived here?

A. About fourteen years.

30 Q. What is your trade?

A. Engineer.

Q. How long have you been an engineer?

A. All my life.

Q. Where were you working in September, 1904?

A. Hotel Rudolf, chief engineer.

Q. Where were you about half-past two or three o'clock on the afternoon of September 12, 1904?

A. Well, I don't know exactly what time it was. Do you mean when the elevator dropped?

Q. Yes.

A. Well, I was passing through the grotto when I heard it breaking, heard the noise.

Q. State to the jury what caused that elevator to drop.

A. Well, there was one cause, that there was not pressure enough.

Q. Had too little steam, that is?

A. In the morning we cleaned our fires, in the morning, and at that time—or rather, in the afternoon, get ready for night, for the heavy running, get ready for night and at that time the steam was down and we hadn't pressure enough. If he had taken about five or six it would have been all right, but he started up without pressure enough, and then it dropped, but it couldn't drop hard enough to hurt anything.

Q. Explain to this jury what kind of elevator this is and how it is propelled and how it is worked up and down?

A. They have a pump and a tank, storage tank, and the water is pumped into there under pressure of 125 to 150 pounds pressure, and the plunger of the elevator has one pipe in another, two pipes, one is the return and one is the feed, and there is two valves, one valve leaves the pressure in and turns the wheels around and they reverse it and it leaves the water out; just reverse for one up and one down. A plunger elevator it is called, supposed to be the safest elevator in existence.

Q. Can it be forced up any faster than you can pump water into that pipe?

A. No, sir.

Q. And can it fall any faster than the water will flow out of the end of the pipe?

A. No; it has got a relief valve there and it can't go down any faster, but, of course, if you put a little more pressure on it it forces out a little faster.

Q. You were there at the time of the accident, I think?

A. Yes.

Q. Will you describe to the jury what you saw of the accident? Which floor were you on?

A. I was in the grotto, that is right back of the elevator and I heard the knock.

Q. That is the basement floor?

A. Basement floor. I heard the knock and I thought the elevator had dropped down, come down with a load too heavy and come down too fast, because it is a very short
10 distance between the floors; it has only got about three inches before the bottom of the cage will hit the lower part. It can't go any farther, only about three or four inches, can't go. It couldn't hurt anything. And often the boys go down with a load on and they don't shut her off quick enough and they slide that three inches and it hits. So I thought the same thing had happened, and I heard the globe break and I went out there, and when I was out there I saw some people coming out of the elevator, and the elevator was going up then and the door was partly closed, and I should judge it
20 was about half way up, and I didn't recognize Mr. McCracken and I saw him stoop down and try to get out and he stooped down and tried to get out while the car was moving and it caught him and jammed him up there. I hollowed to the boy to reverse it, and he could very well have done it and brought it right down again.

Q. What did you do?

A. Mr. Keegan or Mr. Times, I don't know which one stood there and said, "Can't you do something," and so I rushed in the back of the elevator—I thought the boy would reverse it all the time—and I rushed in the back of the ele-
30 vator and I just reversed the machine and it came down.

Q. Did you hear the elevator boy make any statement to Mr. McCracken or the people about coming in or staying out or getting out and staying in?

A. Not at all. When the elevator came down all I saw was Mr. McCracken get out and everybody got around and asked was he hurt, and he said, "No, I am not hurt much." I thought he was a wonder from the way he moved.

Q. It has been testified here that the elevator boy said at that time that the elevator was out of order and he had reported it to the office that day. Did you hear any such statement?

A. No, sir; there was nothing the matter with the elevator whatever. The elevator had only been inspected a few days before that, passed by an inspector.

Q. What inspector?

A. The Casualty Company.

Q. That is a regular inspector of elevators? 10

A. They are regular inspectors, yes sir. I say a few days; it was a short time before, but I can't recollect, but I know it was in order, because you don't know what day he comes around there and it had to be kept in order, and if it wasn't there was trouble about it.

Q. Now, Mr. Pennypacker, if the people had remained in the elevator would there have been any danger of their being hurt?

(Objected to on the ground the witness cannot express an opinion as to that. Question withdrawn.) 20

Cross-examination.

By Mr. Waln:

Q. Mr. Pennypacker, how long were you employed as engineer at this place before the accident?

A. About nine years.

Q. Still there?

A. No, sir.

Q. When did you leave there? 30

A. The 1st day of last August.

Q. What horsepower were your boilers or engines?

A. Well, we had three—125 and two 100's.

Q. Three, 125 each?

A. No; one 125, two 100 each—well, one 115 and 100. There is three boilers.

Q. You had about 350 horsepower then?

A. About that.

Q. What work did they have to do with that 350 horsepower?

A. They ran the elevator pump.

Q. Is that all?

A. Oh, no, indeed. Wait till I get through. We had three engines to run the ice machine and several pumps, ice-making machines and laundry; had to supply the kitchen
10 with steam.

Q. Could you tell us how many horsepower it would take to run that elevator?

A. It would take, I should judge, about twenty horse.

Q. About twenty horse?

A. Yes. That is about the size boiler put in to run it.

Q. What is the weight of the cage?

A. It is balanced.

Q. Twenty horsepower is not very much.

A. It is a good bit when it is put in that way out of a
20 hundred horsepower boiler.

Q. Some of these autos have more than that?

A. Yes, but they are always out of order.

Q. Didn't you have twenty horsepower on at that time?

A. Yes.

Q. What was the pressure of steam you had on at that time?

A. I suppose we have steam then about forty pounds or forty-five pounds pressure when we were cleaning the fires, and that only lasted an hour, and then we got it up to 90
30 and 100.

Q. You said it took 20 to run the elevator and you had a capacity of 350 running the elevator all along. You didn't go away and leave that engine without having enough steam there to run the elevator safely?

A. I didn't go around and leave it. It had forty-five pounds pressure and that would bring it up to about 90 on the elevator, the plunger, and this was a new man they put on there.

Q. It only required 20 and you had 45?

A. No; that is pounds—one pound and one horsepower.

Q. Is that what you say, one pound is one horse power?

A. No; I say you are talking about one thing and I am about another.

Q. You are the expert, you know?

A. No; I don't claim to be an expert. I didn't come here as an expert.

Q. Didn't you?

A. Any more than I know my business to make my living. 10

Q. You say they had a new man and you didn't go away and leave it without enough power. You had 350 horsepower and it only took 20 to run the elevator?

A. That is all I had. We didn't have steam enough.

Q. You didn't go away and leave it without steam enough to run that elevator?

A. I didn't go away.

Q. Then you were there and left it without steam enough; is that what you mean? Did it have steam?

A. No, sir; it didn't have enough. 20

Q. How much steam did it have?

A. About 45 pounds.

Q. How many horsepower is that?

A. It ain't no horsepower; you can't figure it that way.

Q. Can't you give us a little idea?

A. Say 20 horsepower figures out 80 pounds pressure, then you must only have 10 according to that.

Q. You know, don't you, that you go by the pounds of steam on all engines?

A. Certainly.

Q. And you look at your gauge? 30

A. Yes.

Q. When you get up to 30 pounds you commence to do work?

A. Yes.

Q. If you get 60 you have more?

A. Yes.

Q. You can run your threshers and saw your wood?

A. Yes.

Q. Did you say it was only 10 pounds?

A. I didn't say nothing of the kind.

Q. You say you didn't have enough steam to run the elevator?

A. We had enough to run it, yes, but not with that weight on it. This boy had started there, a new boy. The old boy when the steam got down that way and they come there
10 they wouldn't allow the people to get on, but he loaded it up.

Q. This fellow hadn't sense enough to know when he should not use the elevator?

A. No.

Q. How long had he been there?

A. I don't know; they all look alike to me.

Q. What became of the old operator?

A. I guess he was at dinner.

Q. Then this fellow did not run it regularly?

A. Well, they shifted; they had shifts; they had changes
20 there.

Q. Was anybody in charge of the boiler whilst you were in the grotto?

A. Yes.

Q. Who was it?

A. A fireman and an engineer out there beside myself on duty.

Q. Were you doing anything else at that time with the steam?

A. Yes, running an engine.

Q. Sir?

30 A. We run our engines day and night there.

Q. What was the engine doing?

A. Running the electric lights.

Q. What time of the day was that?

A. Day and night we run the electric lights.

Q. All the time?

A. Yes; never shut down.

Q. How many horsepower does that take?

A. Takes 60 and then we only had a few lights in the daytime.

Q. That takes 60 horsepower?

A. Yes, sir.

Q. I really don't understand this. You said you didn't have 20 horsepower but you had 60 horsepower to run the lights plus a lot of other power.

A. You are trying to get me mixed up.

Q. At the time of this accident, you know? 10

A. I told you at the time we had not steam enough, low pressure, that was all.

Q. How long did that condition exist before the accident?

A. Perhaps it just started then, because we were carrying up and down right along before that.

Q. Now you say if you had sufficient steam the elevator would not have dropped?

A. If we had no steam. It wasn't the fault of the steam it dropped; it was the fault of the boy running it. He tried 20 to go up. He opened that up and that let the water out and the minute he was going down he could have shut it off.

Q. The boy did something wrong?

A. You say it was the fault of the steam that made it drop, but it wasn't.

Q. It was the fault of the boy, you think?

A. I think so.

Q. What did the boy do to make it drop?

A. I don't know. I wasn't there. Ain't no expert and don't know what he done.

Q. You say you heard the crash. How far away were 30 you?

A. I should judge about 20 feet, right back of it, and only a thin wall there.

Q. And then you came around to the entryway where the elevator was?

A. Yes.

Q. The elevator is in the center of the building, where the stairway is, on the main street?

A. Yes.

Q. And all that time you saw how many men there?

A. Why, there was a whole crowd standing there.

Q. They all came out of the elevator?

A. No, I didn't say. I saw a couple come out while the elevator was moving, but I don't know how many come out before then.

10 Q. How many were in the elevator?

A. I couldn't see very well in there. The globe out, broke, and it was dark at the time.

Q. And you said that you stopped it yourself? You saw where this man was pinned, did you?

A. Yes.

Q. Between the floor of the elevator and the cage?

A. Yes, the man was pinned there.

Q. How long was he pinned in that position?

A. I should judge a few seconds.

20 Q. His body stopped the elevator, didn't it?

A. Well, either the body stopped it or the boy turned it off.

Q. It didn't fall, did it?

A. No.

Q. And you said you did something to bring the elevator down?

A. I went in the rear and reversed it and brought it down.

Q. Where did you go? How far from the elevator?

A. Right alongside of it. There is a door right alongside

30 of it in the rear.

Q. Just have to walk around the cage?

A. That is all.

Q. Take you about two seconds to get there? What did you take hold of there? Did you have to reach in the cage?

A. No, sir; it is around back; it is in the room back where the valves are.

Q. Take hold of the valves in the pipes there?

A. Yes; the rope that he controls with the wheel goes in there, and comes over through pulleys, and I brought it down.

Q. You brought it down?

A. I released it. Either he or I done it, because it come down.

Q. You moved these ropes and then it came down?

A. Yes.

Q. And when it came down how many people were inside? 10

A. Well, I didn't notice that. I was looking at the man, that is all I was worried about.

Q. You didn't see how many people were inside?

A. No, sir.

Q. Know whether there was more than two or not?

A. Didn't notice. I couldn't say whether there was none in there. All I saw was the man, and when he got up—I think I helped him up, got hold of him. He walked.

Q. About inspection. Myers didn't inspect these elevators? That somebody else did? 20

A. They had an inspector.

Q. They were inspected by whom?

A. The Casualty Company.

Q. Of Philadelphia?

A. I think their headquarters are in Philadelphia.

Q. Mr. Wiley connected with that business?

A. I don't know, sir.

Q. The inspectors were employed, you say, by the insurance company?

(Objected to, on the ground that witness didn't say anything of the kind.) 30

Q. Didn't you say that?

A. No, sir; I don't know who he was employed by.

Q. Know who paid for the inspection?

A. No, sir. I know I didn't.

Q. Did you say that the elevators were inspected by the Casualty Company, of Philadelphia?

A. Yes, I said that.

Q. They insure against accidents, don't they?

(Objected to.)

The Court: I don't suppose he is to make legal proof of that.

10

Q. Do you know it or don't you?

Mr. Bourgeois: We object to that as irrelevant, and for your information I will say that they didn't insure this elevator.

Mr. Waln: It seems they did.

A. No, I don't know.

20

Re-direct examination.

By Mr. Bourgeois:

Q. Mr. Pennypacker, these inspectors that you have spoken of, they inspect the elevators generally throughout the city, do they not?

A. Nearly every hotel on the island has an elevator inspector.

30

Q. And they are experienced people in this line?

A. Yes.

Q. Now with regard to this—

A. They do nothing else but that.

Q. With regard to the amount of steam you had on, you say you had too little steam to send it up. Do I understand this to be the situation, that there being too little steam to send it up, when the boy opened the valve and he found it

wouldn't go up, if he had reversed the valve it would have simply stopped?

A. Yes.

Q. It would not have gone up, but it would not have gone down?

A. Yes.

Q. But by opening the valve to send it up it allowed the water to go back?

A. It went down very fast.

Q. Allowed the weight of the elevator to force the water out? 10

A. It was only about eleven feet there of that fall, and it could have dropped and not hurt anything.

Q. This is the situation: If the boy had reversed the elevator, it would have stayed where it was, but if he had opened it up it would have gone down?

A. Of course the pressure went right down, went right against the pressure.

20

Adjourned till June 23, at 10 A. M.

Atlantic City, N. J., June 23, 1906, 10 A. M. Trial of the cause resumed.

HARRY PENNYPACKER, resumed. 30

Re-cross examination.

By Mr. Waln:

Q. Mr. Pennypacker, I understood you to say that you were employed at the Hotel Rudolf as an engineer for something like eight or nine years?

A. Yes, sir.

Q. Can you give us about the dimensions of that hotel, how many stories high?

A. Well, there is six stories high, four sleeping floors.

Q. How many sleeping rooms, about, are there?

A. I should judge in the neighborhood of three hundred to three hundred and twenty.

Q. And has a capacity to accommodate how many guests?

A. We advertise eight hundred. Hardly think they can
10 do that. I never saw more than six hundred and fifty or seven hundred there.

Q. Of course now you mean permanent guests; you don't mean in the grotto?

A. Oh, no.

Q. They have very large dining rooms, have they not?

A. Got two dining rooms, one cafe; a large dining room that would seat, I suppose, five or six hundred.

Q. Bars attached to the hotel?

A. Yes, sir.

20 Q. A cafe; get a meal any time?

A. Yes; cafe.

Q. Without registering, just go in?

A. Get what you want if you pay for it.

Q. Well, it is a public hotel or inn, isn't it?

A. Well, I don't know. Public—anybody can go there.

Q. Yes; the same as you have described?

A. That is, on the first floor. I don't know as they can go on the second, because we have signs put there "Only Guests Allowed."

30 Q. Has it been altered any since 1904?

A. No, sir; just the same.

Q. And the saloon or grotto is on the main floor?

A. On the basement floor.

Q. How many will that accommodate?

A. Might get in about six or seven hundred.

Q. And they have a dancing floor or pavilion?

A. Well, they have got an old sun parlor is the dancing floor; that is up on the second floor.

Q. That used to be open, didn't it?

A. Well, it is always open now.

Q. I mean no roof over it?

A. Yes. That was years ago.

Q. It was roofed over?

A. No; it was not roofed over then.

Q. Well, it has been since?

A. No, sir. 10

Q. It is still not roofed over?

A. No; the dancing floor, that is a part of the dining room now.

Q. Enclosed in glass, isn't it?

A. Only windows in it, that is all.

Q. They have every facility there for entertaining guests, don't they?

A. It is a hotel; I guess they have all for that.

Q. Billiard tables?

A. No, sir. 20

Q. Pool tables?

A. No, sir.

Q. None of that?

A. No, sir.

Q. Don't want their guests to spend their time playing pool; better occupied in eating and taking refreshments. I suppose they have music?

A. Yes, they have music in the grotto downstairs, not up.

Q. Did the hotel on that day in 1904 furnish food or refreshments or lodging for persons who applied there and paid for it? 30

(Objected to as not cross-examination and on the ground that the witness is not qualified to answer. Objection sustained.)

Re-direct examination.

By Mr. Bourgeois:

Q. On which floor is the bar?
A. Basement floor.
Q. On which floor is the cafe?
A. Basement floor.
Q. How long has the dancing room of which you spoke
10 been a part of the dining room?
A. Four or five years.
Q. Was there any dancing going on on the afternoon of June 12, 1904, at the Rudolf?
A. Not to my knowledge, and I am through the building all the time.

Re-cross examination.

By Mr. Waln:

20

Q. Now I will ask the question that was formerly objected to. (Question read by stenographer as follows: "Did the hotel on that day in 1904 furnish food or refreshments or lodging for persons who applied there and paid for it?")

(Objected to as not cross-examination and as irrelevant. Objection sustained.)

30 Q. How many elevators had you in this hotel in 1904, in September?
A. Two.
Q. And where were they situated in reference to one another?
A. One was in the middle of the building and the other right about, I suppose, sixty feet front.
Q. In which direction?

A. In the rear.

Q. Now isn't there an entryway from that elevator, the passenger elevator which you referred to, in the middle of the building, the one on which this accident happened?

A. The entrance comes right off of the pavement.

Q. Taking the basement, isn't there an entryway which runs toward the ocean from that elevator?

A. Yes, both of them.

Q. There are partitions each side of this entryway aren't there? 10

A. Yes; it wouldn't be an entryway if they hadn't. Yes there are partitions on each side.

Q. How long is that?

A. I judge about 175 to 200 feet.

Q. Well, then, when this accident happened how did you get back of the elevator? Did you go down that entryway?

A. There is another entryway right alongside here to go in the grotto, within a foot of it; that is the entryway that I go through. I was in the grotto back of it, 12 feet back of it. 20

Q. In order to get to the grotto don't you have to go down that big entryway until you come to the end of the bar, where they have sandwiches or a kind of a grille place?

A. No, sir; an entrance way right alongside of the elevator; for three of four entrances.

Q. Right near the elevator?

A. Yes; got one right alongside of it.

JOHN KEEGAN, sworn. 30

Direct examination.

By Mr. Bourgeois:

Q. Mr. Keegan, you reside in Atlantic City?

A. Yes, sir.

Q. What is your employment?

A. Chief clerk of the Hotel Rudolf at the present.

Q. And during 1904, September, where were you employed?

A. Hotel Rudolf.

Q. In what capacity?

A. Private bookkeeper.

Q. Can you state whether or not on the 12th of September, 1904, John McCracken registered for a meal, that is, a lunch?

(Objected to as not a fair question for the jury, unless it is contended by counsel for defendant that the plaintiff was not a guest at the hotel. Question permitted. Exception noted for plaintiff.)

A. He was not registered.

Q. Will you state whether or not any dinner, that is, any lunch, was paid for by a transient guest at the Hotel Rudolf on September 12, 1904?

A. There was not.

Q. Will you state whether or not Benson E. Brown paid for any lunch other than his own on September 12, 1904?

A. There was not.

Q. He did not, you mean?

A. Did not during his stay there.

Q. Were you present at the hotel in the afternoon of September 12, 1904, when this accident occurred?

A. I was.

Q. Where were you?

A. In the basement.

Q. Will you state just what took place at that time?

A. I was coming down the stairs leading from the office to the cafe and I saw the elevator descending down, going down with a number of passengers, I couldn't state how many were in there, but I should judge five or six, some-

thing like that. They were coming down rather fast and I heard it bump and I heard a light fall off of the ceiling and broke, and I saw the elevator boy standing there, opened the door and some of the passengers started out, and with them there was two or three of them probably in the cage, I couldn't say, and the boy, I saw him try to push the door to as the elevator ascended, and there was a space there about that high between the two floors, and I saw a gentleman——

10

The Court: Indicating about four feet?

A. About three or four, yes, sir; I should judge about half way up between the basement and the first floor, and I saw Mr. McCracken, as I believe it was, kind of crouch down and try to get out, and with that he was caught in this position right between the two floors and the elevator.

Q. Did you hear the elevator boy state anything to them while they were there?

A. I did not.

20

Q. Did you hear him say anything to them about remaining in the cage when the elevator started to go up?

A. No.

Q. Just saw him trying to keep them back?

A. Saw him trying to keep them back.

Q. Now you have your register here, have you, the book that would show if Mr. McCracken was registered?

A. Yes.

Mr. Ponder: We do not claim he was registered.

30

Q. Have you the books here that would show a meal were paid for on that day, an independent meal?

A. Yes.

Q. And also the books that show Mr. Brown's account, to show whether he paid for it?

A. Yes.

Mr. Bourgeois: I anticipate these books are not evidence except for refreshing his memory, but if they want to examine them they are here so they can look at them.

Cross-examination.

By Mr. Waln:

Q. If a man went in there to the bar and bought a drink and paid for it, would you know it?

10 A. I wouldn't know the man was there, no, sir.

Q. Would you know the money came in and how much it was and when?

A. Certainly, if the bartender was all right.

Q. When would you find it out?

A. A check—he would ring a check out for the drink, fifteen cents.

Q. If a man went in there and ordered a dinner, would you know it?

A. Where, in the cafe?

20 Q. Yes.

A. The cashier would know it downstairs.

Q. Who would be the man to take the money?

A. The cashier.

Q. Cashier downstairs?

A. The food checker.

Q. Then you wouldn't have any personal knowledge? You never came in contact with the man himself who would buy a drink or paid for his lunch?

A. No, sir.

30 Q. So all you know must depend upon somebody else?

A. Not always.

Q. Eh?

A. Not necessarily.

Q. Your testimony is all hearsay, isn't it?

A. No, sir.

Q. Now what the books show is that when checks are sent to you you enter them in a book; is that it?

A. We don't enter those in a book at all. That is an independent department from the European.

Q. What do you do?

A. What do I do?

Q. Yes.

A. Simply kept the private books at that time.

Q. What do you mean by independent department?

A. Cafe, the European, and American plan the hotel.

Q. Did you have supervision over both of them?

A. I kept the general books for them. 10

Q. What do you mean by general books?

A. The whole books combined together, the whole general bookkeeping department.

Q. You kept all the books then?

A. Yes.

Q. Every drink that was paid for and every meal that was paid for was reported to you in some way, was it?

A. No; on the European plan it was not because they paid for everything that come there, cash.

Q. A man comes in and pays for what he gets and you 20 know nothing about it?

A. Not in the European department, but I do in the American department.

Q. That is the cafe, the European?

A. Yes, in the basement.

Q. Now you say that you saw this elevator fall?

A. Yes, sir.

Q. Where were you?

A. Coming downstairs leading from the office to the basement.

Q. Sir? 30

A. Leading from the office to the basement.

Q. And then you stated after it fell you saw the elevator boy open the door?

A. Yes. I don't know whether it was the elevator boy. Somebody opened the door.

Q. You said elevator boy. I don't know only what you said. You told this jury the elevator boy opened the door.

A. I didn't say. I said somebody.

Q. No; you didn't now. Read the notes, Mr. Stenographer.

The Court: No; proceed. The jury will remember it.

Q. You say the elevator boy opened the door?

10 A. I don't know whether I did or not, because I couldn't swear to it, but the door was opened and I saw the elevator boy trying to close it.

Q. Before these people got out the door the door had to be opened?

A. Yes.

Q. Did you see the elevator boy? Didn't you testify here the elevator boy opened the door and then you saw the passengers get out?

A. If I did I didn't mean it, because there was so many

20 trying to get out the door at the same time.

Q. How many?

A. All there was in there, five or six.

Q. How many got out?

A. I couldn't say that, because I don't know how many was in the elevator at the first place.

Q. I didn't ask you absolutely, but about how many.

A. I said about five or six.

Q. You could tell that there were more than three men on that jury?

30 A. Yes.

Q. Five or six got out; how many were left in the elevator after five or six got out?

A. I couldn't say whether there was two or three.

Q. They were all trying to get out too?

A. One was.

Q. Did you see one that fell?

A. Yes.

Q. See Mr. Brown?
A. Mr. Brown?
Q. Yes.
A. I don't know Mr. Brown.
Q. Mr. Brown testified here to-day, Benson E. Brown.
A. Yes, I saw Mr. Brown.
Q. That the elevator started when he was in the doorway and threw him and he came on his nose.
A. I didn't.

10

Mr. Bourgeois: No; he didn't.

Q. His nose was bleeding, and the elevator was going up.

Mr. Bourgeois: I object to that, because that is not so.

The Court: Is there a question unanswered?

Mr. Waln: I withdraw the question.

20

Q. I want to ask you this question: Did you see a man struggling to get out of the elevator as it started to go up, who was not the plaintiff?
A. I did not.
Q. You did not?
A. Mr. McCracken is the only man I saw struggling, trying to get out of the elevator.
Q. You didn't see the body of a man in the door prior to the time you saw McCracken?
A. No, sir.
Q. I thought you said you saw five or six men come through that door?

30

A. That was when the elevator was down, when the boy was trying to close the door.
Q. You did see five or six men passing out of that elevator?
A. I don't know whether it was five or six.

Q. You saw several?

A. Yes; I saw several.

Q. And before the others had time to get out that elevator started, for some reason, didn't it?

A. Started for some reason.

Q. Now of those men that you saw getting out, did you see one of them, whether it was the last one or not of them, fall for any reason?

A. Fall?

10 Q. Yes.

A. I did not.

Q. Didn't see them?

A. No.

Q. Where were you standing?

A. Standing right at the basement.

Q. How far from this elevator?

A. About as far as from here to that door.

Q. Were you excited?

A. No; not at the time I was not. I was excited when I

20 saw Mr. McCracken caught.

Q. Did you hear the crash when the elevator fell?

A. Yes.

Q. That didn't excite you any?

A. No; not so much, because it didn't make much noise.

Q. How far did it fall do you know?

A. Oh, about—I couldn't say; it started about three feet above the office floor, I should judge.

Q. And it fell to the pit or basement and you were not excited or were not apprehensive that anybody was injured

30 or anything of that kind?

A. No.

Q. Did you hear any glass crash?

A. Yes.

Q. Made a great noise?

A. Made a noise, the same as if those globes fell off there on the floor.

Q. Was this man's body in the door when you say that the elevator boy tried to close it?

A. No; he tried to push him back, and as he couldn't get back there was a space about that high. (Indicating.)

Q. What do you mean "a space that high?" Had the door gone to that far?

A. About half way. He was trying to close the door and he pushed the boy back and he couldn't get the door closed.

Q. You say the man was trying to close the door or the elevator boy? 10

A. They was both of them there clamoring at the door.

Q. Both of them at the door?

A. Yes.

Q. Both of them at the door?

A. I should judge from what I could see that the boy was trying to keep him back in the elevator.

Q. How high is the ceiling of the basement? What is the floor, about as high as this ceiling of this room?

A. I should judge about that high.

Q. Well, how high in feet do you suppose it is? 20

A. I should judge about eight.

By Mr. Ponder:

Q. You say you were chief clerk of this hotel; I want to ask you if this hotel at that time furnished food and lodging for persons paying for the same?

A. I was not chief clerk at the time.

Q. You were there?

A. I was bookkeeper.

Q. Now just answer my question: Did this hotel at that time furnish food and lodging for persons paying for the same? 30

A. If they were registered.

Q. If they were registered?

A. They could go down in the cafe and get it, but they couldn't get it in the dining room.

Q. The business of the Hotel Rudolf was the hotel business?

A. Yes.

Q. A public hotel, was it not?

(Objected to as a question of law and a pretty intricate question. Question withdrawn.)

Q. Was it necessary for a person to register at that hotel
10 at that time in order to get food in the cafe?

A. No, sir.

Q. It was not? Was the cafe in the Hotel Rudolf at that time?

A. In the basement.

Q. In the basement of the Hotel Rudolf?

A. Yes, sir.

Q. You spoke of the bar. The hotel has a bar? That is a regularly licensed bar?

A. Yes.

20 Q. For the sale of intoxicating liquors?

A. Yes.

Q. And had in September, 1904?

A. Yes.

Q. How many guests could you accommodate at that hotel?

A. Oh, between five and six hundred, I guess.

Q. That is, you mean five or six hundred could sleep there?

A. Yes, sir.

30 Q. Had accommodations for a very large number of people, so far as meals were concerned, had you not?

A. Yes.

Q. Isn't it true, as a matter of fact, that you have entertained many more people than that in a day so far as meals were concerned?

A. Private dinner parties.

Q. Haven't you what you call a grotto cafe there?

A. Yes, sir.

Q. Don't you furnish both liquid and solid refreshment there?

A. Yes.

Q. You serve meals in that grotto cafe if anybody orders them and pays for them?

A. Yes, sir.

Q. How many people will that grotto cafe seat at one time?

A. I should judge five or six hundred. 10

Q. How many people will your other cafe seat at one time?

A. About two hundred.

Q. Is there any other place in that hotel, or was there any other place in September, 1904, where meals were served?

A. American dining room.

Q. How many people can you seat in the American dining room?

A. About six or seven hundred. 20

Q. Then, as a matter of fact, you could entertain in that hotel, so far as meals were concerned, at one time, six or seven hundred people in the American dining room, two hundred people in the cafe, and how many people in the grotto did you say, six hundred?

A. About five or six hundred.

Q. Then you could entertain that number of people at one time in that hotel so far as meals were concerned, could you not?

A. Not at one time in the American dining room. The European plan is run on two different plans, because people come and wait for the meal to be prepared on the European plan, but the American it is necessary to be served at a specified time. 30

Q. Now we will take lunch hour in the American dining room—what time do you serve it?

A. From 1 to 2.30.

Q. What time do you serve dinner in the American dining room in the evening?

A. 6 to 8.

Q. Then suppose the American dining room between 6 and 8 is full of people, and suppose at that same time the cafe is full of people, and suppose at that same time the grotto cafe was full of people, how many people would you be entertaining at one time?

10 (Objected to as a matter of calculation.)

The Court: He can give his judgment. It seems to me he has told it pretty thoroughly. He may answer the question.

A. At one time, I should judge, between fourteen and sixteen hundred.

Q. But you could not accommodate that number at one time so far as sleeping quarters were concerned?

A. No.

20

Re-direct examination.

By Mr. Bourgeois:

Q. Now, Mr. Keegan, where does the Hotel Rudolf serve this lunch, or where did it in September, 1904, to its guests?

A. In the American dining room.

Q. That is on what floor?

A. Office floor.

30 Q. The same floor that Mr. McCracken says he took the elevator, was it?

A. The same floor.

Q. Now the cafe was on what floor, did you say?

A. In the basement.

Q. Are you obliged to go to the office floor, from the street to the office floor in order to get to the cafes or either of them?

A. Not at all.

Q. How do you get in them?

A. Right off of the street line. Coming down the Boardwalk the incline is right on a level with it.

Q. Has a person who goes in one of the cafes of the Hotel Rudolf under its system of conduct any right to go up on the upper floor?

(Objected to.)

10

A. Has not.

Mr. Waln: That is objected to as a matter of law.

(Question repeated.)

Mr. Bourgeois: I will change it.

The Court: Question withdrawn.

20

Q. Has a person who goes to one of the cafes of the Hotel Rudolf for the purpose of securing either liquid refreshment or victuals any occasion to go to one of the upper floors?

(Objected to. Question withdrawn.)

Q. Has a person who goes to one of the cafes of the Hotel Rudolf for the purpose of securing either liquid refreshment or victuals any occasion to go to one of the upper floors for the purpose of securing or paying for the same?

30

A. Has not.

Q. Is he required to go to one of the upper floors in order to leave the cafe again to get on the street?

A. Is not.

Re-cross examination.

By Mr. Ponder:

Q. Mr. Keegan, you testified that you remember this 12th day of September, 1904. I will ask you if it is not true, as a matter of fact, that the headquarters of this convention of car painters was at that hotel?

A. I believe so, yes.

10 Q. Hadn't your hotel donated the hall for the purpose of those delegates meeting there?

A. In the basement, they had.

Q. But they had donated a hall for the purpose of the meeting of this convention; is that correct?

A. Not a hall. We give them an exhibit space in the grotto.

Q. Well, you provided for the members of that convention, did you not, some space?

A. Some space.

20

By the Court:

Q. I understand your testimony is that no extra meals were served that day to other than the guests. You referred to the American dining room?

A. The American plan. There appears to be no extra charge for another person there.

Q. No extra charge. And your testimony does not relate to what may have been served in the grotto?

30 A. Certainly not.

By Mr. Waln:

Q. You mean if an American boarder, on the American plan, had a meal sent up to his room it would appear on his bill?

A. Yes.

By Mr. Bourgeois:

Q. If a visitor had gone with a regular guest and taken a meal and reported that meal as he should have done, wouldn't you have known it?

(Objected to.)

Q. I mean anywhere except in the cafes. If a person had gone there to get a lunch, not to go in the cafe, but gone to the hotel prepared to get a lunch, would he not have been obliged to register first in the register? 10

A. In the register, he would be.

Q. And that would have been served to him on the office floor?

A. Office floor.

Q. And not in the basement floor?

A. Not in the basement.

20

Defendant Rests.

30

PLAINTIFF'S TESTIMONY IN REBUTTAL.

JAMES T. MCCRACKEN, recalled.

Direct examination.

By Mr. Ponder:

Q. You remember the occasion that you took this meal
10 there?

A. Yes.

Q. What cafe were you in, or what part of the hotel?

A. In the American dining room.

Q. How was your meal paid for?

(Objected to, on the ground he has already said he didn't pay for it.)

The Court: Does he know?

20 A. I do.

Q. You do know?

A. I do know.

Q. Who paid for that meal?

A. Benson E. Brown. Went to the office and told the clerk there that Mr. McCracken was his guest and he got a little ticket and handed it to the darkey, who took the meal ticket as I went in the dining room.

Q. Did he pay for the meal ticket?

A. Yes, at the desk.

Q. Take any drinks at that time, refreshments?

30 A. No, sir; didn't have a drink.

Q. Buy any cigars there?

A. I?

Q. Yes, anybody?

A. I bought early in the day, but not after dinner.

No cross-examination.

DEFENDANT'S TESTIMONY IN REBUTTAL.

JOHN KEEGAN, recalled.

Direct examination.

By Mr. Bourgeois:

Q. Mr. Keegan, Mr. McCracken now states that he saw a meal ticket purchased at the desk of the Hotel Rudolf by Mr. Brown on the 12th of September, 1904, on which he got his dinner. Could he have purchased a meal ticket from the desk on that day without having registered? 10

A. Not without registering, no, sir.

Q. If he had purchased a meal ticket on that day would the books have shown that purchase— would they have shown the receipt?

A. Not unless he registered it wouldn't.

Q. But he couldn't get the ticket unless he did register? 20

A. No, sir.

Cross-examination.

By Mr. Ponder:

Q. Don't you know, as a matter of fact, that people are constantly taking meals there as the guest of some of your guests without registering?

A. Constantly? When they pay for them. They go there and they show—— 30

Q. Just one minute. Just answer my question. How long have you been in that hotel?

A. Four years.

Q. Did you ever know a man to go in the dining room, the American dining room and take a meal with a guest of the hotel without registering?

A. I have known them to go in there and we have went in there and throwed them out.

Q. Oh, answer my question. You didn't throw Mr. McCracken out, did you?

A. No, sir.

Q. Do you think he did pay for his meal if he went there that day?

A. I don't know.

Q. Don't you think you would have known?

10 A. We would if Mr. Brown had brought him up to the desk and said he had an invited guest, because we would have turned to Mr. Benson Brown's account and charged his account.

Q. Has the man in the dining room any instructions as to coming in there with guests?

A. They were supposed to have a meal ticket.

Q. Aren't your instructions that they must have a meal ticket?

A. Yes.

20 Q. Then if Mr. McCracken went in there that day and ate his lunch or dinner, he must have had a meal ticket, unless the head waiter disobeyed his orders?

A. Unless he overlooked him or disobeyed.

By Mr. Waln:

Q. If a man were a guest at the hotel, registered there, and came with a friend, purchased a meal ticket for a drink or whatever it was, would it appear in the account of that registered guest?

30 A. He wouldn't pay for it if he invited a guest.

Q. It would be a charge in his account?

A. It would not be paid for until he registered.

Q. If the guest didn't pay for it wouldn't you charge it to his account?

A. We would charge it to his account.

Q. It wouldn't make any difference if he paid for it who the friend was he had?

A. No, sir.

Q. You would have the guest's name registered and he was the responsible one, and he was either going to pay for it or have it charged, so it was only a matter of charging it to the guest?

A. It would be charged to Mr. Benson E. Brown.

BOTH SIDES REST.

10

MOTION TO DIRECT VERDICT.

(Defendant's counsel asks that the Court direct a verdict in favor of the defendant on the grounds that the uncontradicted testimony is that Mr. McCracken was a guest of Mr. Brown and it is contended he was not a guest of the hotel, and not being a guest of the hotel he had no rights in the hotel other than as a mere licensee; and there being an entire lack of evidence of any wilful act done on the part of Mr. Myers, the owner, which resulted in Mr. McCracken's injury the defendant is entitled to have the verdict directed.)

20

The Court: My mind is not changed from my view of yesterday. The motion to direct is refused and exception is noted.

30

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, [SEAL],
C. C. J.

COURT'S CHARGE TO JURY.

GENTLEMEN:

That this accident occurred at the time and place mentioned and that the plaintiff received certain injuries is demonstrated in this case and is not a matter of dispute. The main question, therefore, for you to decide is whether the surroundings, the situation was such that the defendant, Charles R. Myers, the proprietor of the Hotel Rudolf, should respond in damages for these injuries; and in determining that question you may properly first consider whether the plaintiff McCracken was lawfully upon those premises, because, if he was there as a trespasser or as a mere licensee, the defendant owed him no duty to guard him from danger; he would assume the risks which he encountered. Was he upon these premises by the invitation, express or implied, of Myers? The testimony in the case shows that McCracken, the plaintiff, belonged to an association or organization then holding a convention in Atlantic City and that he was here as a member of that convention; the convention had its headquarters and its exhibits at the hotel of Mr. Myers; the plaintiff went to that hotel, was received and furnished with a meal; upon the invitation of certain guests of the hotel he started to go to the room of one of these guests; for that purpose he was received in the elevator, which started to convey him to an upper story in that hotel. This house was an inn and tavern, a public house; it had accommodations for six hundred or more lodgers, and could feed at one time twice that many persons. I charge you, therefore, as a matter of law, that under these circumstances McCracken had an implied invitation to go to this house, and that he was lawfully there, unless you believe what may have perhaps been hinted at in the testimony, that he was

there trying to beat his way to a dinner, or something of that sort; but if he went there as he says he did as a member of this association, received a meal which was paid for and started to go with a friend in the elevator, which friend was a guest of the house, to see certain souvenirs in the room of that guest, then I say, if you believe he was there in that capacity, he was there lawfully and by the implied invitation of Myers, the proprietor of this public house. And being there in that capacity it was the duty of Myers to use ordinary care to secure his safety while upon his premises. 10 Did he exercise this care? That brings you to the next question.

It does not follow that because this man met with an accident in Myers' hotel that therefore Myers as a matter of course is liable. He is not liable unless he was guilty of some negligence which was the proximate cause of this accident. Was he guilty of such negligence? The plaintiff claims that he was. They say he was negligent, either in not having that elevator properly equipped or in not having it properly operated by a competent employe. Was he negli- 20 gent in this respect? That is a question of fact which you, from the testimony in the case, must decide.

It was his duty as a matter of law to have the elevator properly equipped. It was his duty also to employ a competent person to operate it. If he failed in this respect and McCracken was injured because of such failure, he would be liable in damages for the injury sustained by McCracken, unless—and this brings us to another phase of the case—unless McCracken, by his own negligence, contributed to this injury; because, no matter if Myers himself was negligent, 30 if the plaintiff by his misconduct contributed to this injury he cannot recover. So you must consider in this connection his conduct after the elevator had fallen and before he became wedged in later on. Did he try to get out at a time when he must of necessity jeopardize himself? That you must determine, remembering all the time that under the excitement of a crash of breaking glass a man is not to be held

to the same cool determination and careful judgment that he would under other and less exciting circumstances; because a man cannot put you in a place of jeopardy and if you act unwisely under the excitement of the minute, hold you responsible for that lack of coolness of judgment and deliberation which you exercise at other times. So you must say whether under the circumstances of this case as it appears from the testimony this man was guilty of negligence which contributed to his injury. If he was, he cannot recover. If he was not and you believe that Myers had been guilty of negligence in his duty towards this man, he would be entitled to recover. If you find that Myers was not guilty of negligence in the way I have indicated, or that the plaintiff did contribute to his own injury, then your verdict must be for the defendant; but if, in your deliberation, you find the plaintiff is entitled to recover and Myers was guilty of negligence and the plaintiff did not contribute to his injury, then you should find a verdict in favor of the plaintiff. If your verdict is in favor of the plaintiff it should be for such sum as in your judgment will fairly compensate this plaintiff for the pain and the suffering which he has in the past, does now or may in the future endure, also for the financial loss which you believe from the testimony he has suffered because of this injury. This may include also moneys spent in efforts to effect his cure.

I am requested by counsel for the defense to charge you, and I do charge you:—I think I have already charged them, but that there may be no doubt I will charge them to you:—

"1. Myers is not liable unless McCracken was on the premises by the invitation express or implied of Myers or as a guest.

"2. Myers is not liable if McCracken was guilty of contributory negligence in attempting to leave the elevator while in motion."

One of the jurors wanted to ask a question, which I overlooked; he may ask it now.

Juror Faber: I wish to ask the plaintiff where his place of business was at the time he was hurt. Where was he located at the time he was hurt?

Mr. McCracken: 621 Shipley street, my place of business was, in Wilmington, Delaware.

(Jury retires.)

DEFENDANT'S EXCEPTION.

Mr. Bourgeois: Defendant desires to except to that portion of the Court's charge wherein the Court said: "The plaintiff went to that hotel, was received and furnished with a meal; upon the invitation of certain guests of the hotel he started to go to the room of one of these guests; for that purpose he was received in the elevator, which started to convey him to an upper story in that hotel. This house was an inn and tavern, a public house; it had accommodations for six hundred or more lodgers, and could feed at one time twice that many persons. I charge you, therefore, as a matter of law, that under these circumstances McCracken had an implied invitation to go to this house, and that he was lawfully there, unless you believe what may have perhaps been hinted at in the testimony, that he was there trying to beat his way to a dinner, or something of that sort; but if he went there as he says he did as a member of this association, received a meal which was paid for and started to go with a friend in the elevator, which friend was a guest of the house, to see certain souvenirs in the room of that guest, then I say, if you believe he was there in that capacity, he was there lawfully and by the implied invitation of Myers, the proprietor of this public house. And being there in that capacity it was the duty of Myers to use ordinary care to secure his safety while upon his premises."

(Which exception is hereby allowed and sealed accordingly.)

ALLEN B. ENDICOTT, [SEAL],
C. C. J.

PLAINTIFF'S EXCEPTIONS.

Mr. Ponder: I desire to note a general exception for the plaintiff.

There was a part in regard to his inability in the future, his earning power in the future, that they should consider that.

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The Court: His failure to earn in the future. Was that left out of the charge? There was no request to charge that.

Mr. Ponder: Would there be any impropriety in asking that?

The Court: I will call the jury back and instruct them on that.

20 (Jury returns to court room.)

The Court: I am requested to charge you, and I do charge you, that you have a right to allow the plaintiff, if you should find in his favor, such sum as you think he would be entitled to because of any decrease in his earning power.

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ATLANTIC CIRCUIT COURT.

JOHN T. MCCRACKEN,		IN TORT.
		ON VERDICT.
vs.		Judgment.....$5000 00
		Costs..... 70 94
CHARLES R. MEYERS,		$5070 94

As yet of the third day of March, A. D., nineteen hundred and five. Witness Allen B. Endicott, Judge, John W. Westcott, Esq., Attorney, Lewis P. Scott, Clerk. Judgment entered the second day of August, nineteen hundred and six.

ATLANTIC COUNTY, *ss.* Charles R. Myers, the defendant in this suit was summoned to answer unto John T. McCracken the plaintiff therein in a plea of an action in tort, and thereupon the said plaintiff by John W. Wescott his attorney, complains for that, on or about the twelfth day of September, nineteen hundred and four, the defendant had and maintained in Atlantic City, in said county and in the State of New Jersey a hotel known as Hotel Rudolph; that the plaintiff was there and then a guest in said hotel; that the plaintiff was, by the defendant, or his agents invited to and did enter an elevator used in said hotel for the transportation of the plaintiff and other guests therein, when and where and because thereof, it became the duty of the defendant to have said elevator in a good and safe condition and fit for use; yet the defendant disregarded his duty in this behalf and had said elevator in an unsafe and dangerous and unfit condition, whereby and because whereof, when the plaintiff entered said elevator as aforesaid the said elevator broke and

fell and became uncontrollable whereby the plaintiff, without his fault, was greatly cut, shocked, bruised and permanently injured and made incapable of following his usual vocation and was for a long time helpless and unable to get about and was caused to suffer great pain of body and mind and caused to spend large sums of money in his efforts to be cured of said injuries, to his damage ten thousand dollars; wherefore he brings his suit, &c. And the said defendant by Bourgeois and Sooy, his attorney, comes and defends the
10 wrong and injury when, &c., and says that he is not guilty of the said supposed grievances above laid to its charge, or any or either of them, or any part thereof, in manner and form as the plaintiff hath above thereof complained against him. And of this he puts himself upon the country, &c., Therefore the Sheriff is commanded that he cause to come before the Judge of our Circuit Court at May's Landing, in the county of Atlantic, on the twenty-first day of June, one thousand nine hundred and six, twelve, &c., by whom, &c., who neither, &c., to recognize, &c., because as well, &c., the
20 same day is given to the parties, &c., and the jurors of the jury whereof mention is made also come, who to speak the truth of the matter within contained, being chosen, tried and sworn, upon their oaths say that they find for the plaintiff damages at the sum of five thousand dollars, and the Court doth order judgment final in favor of the plaintiff and against the defendant for the sum of five thousand dollars besides the costs of suit to be taxed. Therefore it is considered that the said plaintiff do recover against the said defendant, his said damages, by the jurors aforesaid in form
30 aforesaid assessed, and also the sum of $70.94 for his said costs and charges, by the said Court before the Judge thereof now here adjudged of increase to the said plaintiff, and with its assent, which said damages, costs and charges in the whole amount to the sum of $5070.94. And the said defendant in mercy, &c.

Filed and Entered Aug. 2, 1906, at 10.40 A. M.

STATE OF NEW JERSEY,
ATLANTIC COUNTY, } *ss.*

I, LEWIS P. SCOTT, Clerk of the Court of Common Pleas, in and for the county of Atlantic, the same being a Court of Record, do hereby certify that the foregoing is a true, full and correct copy of a certain judgment, John T. McCracken vs. Charles R. Myers as the same is recorded in my said office in Book No. 10 Circuit Judgments, page 203.

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IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court and county at May's Landing, N. J., this third day of October, A. D., one thousand nine hundred and six.

[SEAL]

LEWIS P. SCOTT,
Clerk.

COURT OF ERRORS AND APPEALS.

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JOHN T. MCCRACKEN, Plaintiff, Defendant in Error, vs. CHARLES R. MEYERS, Defendant, Plaintiff in Error.	IN ERROR. ASSIGNMENTS OF ERROR

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Afterwards, that is to say on the twentieth day of November, 1906, in the Court of Errors and Appeals in the Last Resort in all Causes, of the State of New Jersey, comes the said Charles R. Myers, Plaintiff in Error, by Bourgeois &

Sooy, his attorneys, and says that in the record and proceedings aforesaid, and also in the matters recited and contained in the said bill of exceptions, and also in the giving the verdict and judgment aforesaid, there is manifest error, in this, to wit:

1. That the declaration aforesaid, and the matters therein contained are not sufficient in law for the said John T. McCracken, Defendant in Error, to have his said action against
10 the said Charles R. Myers, Plaintiff in Error.

2. That there is error in this, to wit: Because the trial judge before whom said case was tried, at and upon the trial of said issue between the parties aforesaid, permitted an answer to the following question: "Suppose a person on the twelfth day of September, 1904, should be in an elevator which fell suddenly some feet to the pit below, and after it had so fallen and whilst he was in the act of stepping out of the elevator, the elevator should suddenly start upwards, so that the top of the ceiling or door above struck him in the
20 head and knocked him down crosswise of the floor of that elevator while running, so that his body served as a wedge to stop the elevator, and he was pressed between the floor of the elevator and the door of the cage or ceiling above, being bruised and injured on the thigh and in the back, hips, struck on the head; suppose about the first of October following that person should be in the condition now described by you, will you state whether or not that condition could have been caused by such injuries."

30 3. That there is also error in this: That the trial judge before whom said case was tried, and upon the trial thereof, permitted an answer to the question: "Doctor I will ask you if, in your opinion as a physician, Mr. McCracken's injuries are of a permanent nature."

4. That there is also error in this: That the trial judge before whom said cause was tried, and upon the trial there-

of, permitted an answer to the following question: "Doctor, in your opinion as a physician, is Mr. McCracken's injury of a permanent character or not."

5. That there is also error in this: That the trial judge before whom said cause was tried, at the close of plaintiff's case, refused to nonsuit plaintiff.

6. That there is also error in this: That the trial judge, upon the trial of the issue between the parties aforesaid, at the close of the case, refused to direct a verdict in favor of defendant. 10

7. That there is also error in this: That the trial judge, upon the trial of the cause between the parties, erroneously charged the jury as follows: "The plaintiff went to that hotel, was received and furnished with a meal; upon the invitation of certain guests of the hotel he started to go to the room of one of these guests; for that purpose he was received in the elevator, which started to convey him to an upper story in that hotel. This house was an inn and tavern, a public house; it had accommodations for six hundred or more lodgers, and could feed at one time twice that many persons. I charge you, therefore, as a matter of law, that under these circumstances McCracken had an implied invitation to go to this house, and that he was lawfully there, unless you believe what may have perhaps been hinted at in the testimony, that he was there trying to beat his way to a dinner, or something of that sort; but if he went there as he says he did, as a member of this association, received a meal which was paid for and started to go with a friend in the elevator, which friend was a guest of the house, to see certain souvenirs in the room of that guest, then I say, if you believe he was there in that capacity, he was there lawfully and by the implied invitation of Myers, the proprietor of this public house. And being there in that capacity, it was the duty of Myers to use ordinary care to secure him safety while upon his premises." 20 30

Therefore the said Charles R. Myers, Plaintiff in Error, prays that the judgment aforesaid, by reason of the aforesaid errors and of other errors appearing in the record and proceedings aforesaid, be reversed, annulled and for nothing holden, and that the said Charles R. Myers, Plaintiff in Error, may be restored to all things he has lost on occasion of the said judgment, and that the prosecutor in said plea, in the name of the said John T. McCracken, may rejoin to the said errors, &c.

10 BOURGEOIS & SOOY,
Attorney for and of counsel
with Plaintiff in Error.

Joinder in Error in usual form.

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