

INDEX

Summons and Complaint	1
Complaint	2
Answer	4
Plaintiff's Denial	6
Testimony	7
Clara Dondero, direct	7
cross	11
Mary Berry, direct	16
cross	17
Emma Costner, direct	20
cross	22
re-direct	25
Caroline Brown, direct	25
cross	28
Virginia Dondero, direct	29
cross	30
Dr. Enos B. Allen, direct	31
cross	34
Mrs. Mabel Manners, direct	37
cross	42
re-direct	43
re-cross	44
Lewis Edwards, direct	45
cross	51
recalled, direct	66
cross	66
re-direct	66
sur-rebuttal, direct	73
cross	74
Harvey R. Manners, direct	54
cross	61
re-direct	65
William J. McDermott, Jr., direct	67
cross	68
re-direct	69
Adele Vasta, direct	70
cross	70
Charge	76
Postae and Judgment	79
Notice of Appeal	80
Grounds for Appeal	81

New Jersey Court of Errors and Appeals

CLARA DONDERO,	}	On Appeal from the Supreme Court. 10
<i>Plaintiff-Respondent,</i>		
vs.		
TENANT MOTION PICTURE COMPANY,		
<i>Defendant-Appellant.</i>		

SUMMONS AND COMPLAINT.

(Filed October 25, 1919.)

20

The State of New Jersey, to the Tenant Motion Picture Company:

You are summoned to answer the annexed complaint of Clara Dondero in an action at [L. s.] law in the Supreme Court. And take notice, that unless you file your answer to said complaint with the Clerk of the Supreme Court, at Trenton, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in this suit and judgment may be entered against you. 30

Witness, William S. Gummere, Chief Justice of the Supreme Court, at Trenton, this ninth day of October, nineteen hundred and nineteen.

GERAGHTY & WEELANS,	ENOCH L. JOHNSON,
<i>Attorneys.</i>	<i>Clerk.</i>

NEW JERSEY SUPREME COURT.
MERCER COUNTY.

	CLARA DONDERO,	}	Action at Law.
	<i>Plaintiff,</i>		
	vs.		
10	TENANT MOTION PICTURE COM- PANY, A CORPORATION, ETC.,	}	
	<i>Defendant.</i>		

COMPLAINT.

Plaintiff, Clara Dondero, of 145 Academy Street, Trenton, N. J., says that:

20 1. Defendant on August 19, 1918, was, and still is, a corporation organized under the laws of the State of Pennsylvania, and duly authorized to do business in the State of New Jersey, engaged in exhibiting moving pictures at Nos. 142 and 144 East State Street, Trenton, N. J., to those who apply and pay a certain fee therefor.

2. On said day, at Trenton aforesaid, plaintiff, Clara Dondero, bought from the defendant a ticket which entitled her to view the pictures exhibited by the said defendant at 142 and 144 East State Street, Trenton, N. J., and then and there entered the defendant's said moving picture theatre.

30 3. While she was approaching her seat in the balcony of said theatre at 142 and 144 East State Street, Trenton, N. J., on said day, plaintiff, Clara Dondero, fell down the steps and was violently thrown against one of the seats in said balcony, whereby the said plaintiff, Clara Dondero, was bruised, her breast bone broken, her shoulder bruised and dislocated, her leg cut and bruised,

her nerves shattered, her right and left eye affected, and she was otherwise seriously injured, suffering great pain. The said balcony was in total darkness, there being no light in it, thus obscuring the view of surrounding objects, and due to this condition, caused by the negligence of the defendant in having the said balcony unlighted, plaintiff, Clara Dondero, was unable to see the said steps upon which she fell.

The plaintiff, Clara Dondero, claims \$2,500 damages.

GERAGHTY & WEELANS, 10
Attorneys for Plaintiff.

20

30

NEW JERSEY SUPREME COURT.
MERCER COUNTY.

CLARA DONDERO,

Plaintiff,

vs.

10 TENANT MOTION PICTURE COM-
PANY, A CORPORATION, ETC.,
Defendant.

} Action at Law.

ANSWER.

(Filed November 10, 1919.)

20 The defendant, Tenant Motion Picture Company, a corporation of the State of Delaware, says that:

1. It admits paragraph 1 of the complaint.

2. It has no knowledge, sufficient to form a belief, as to the allegations of paragraph 2.

3. It denies the following allegation of paragraph 3:
"The said balcony was in total darkness, there being no light in it, thus obscuring the view of surrounding objects, and due to this condition, caused by the negligence of the defendant in having the said balcony unlighted, plain-
30 tiff, Clara Dondero, was unable to see the said steps upon which she fell," and has no knowledge, sufficient to form a belief, as to the other allegations of said paragraph.

FIRST DEFENSE

1. If said accident occurred, it occurred without any fault or negligence on the part of this defendant.

SECOND DEFENSE.

1. Plaintiff contributed to said accident by her own

negligence, in attempting to reach a seat in said balcony while said balcony was in total darkness.

THIRD DEFENSE.

1. Said balcony was at all times properly and sufficiently lighted, and plaintiff's injury was caused by her own negligence, and not by any negligence of this defendant.

SCAMMELL, BODINE & BESORE,
Attorneys of Defendant.

10

20

30

NEW JERSEY SUPREME COURT.
MERCER COUNTY.

	CLARA DONDERO,	} Action at Law.
	<i>Plaintiff,</i>	
	vs.	
10	TENANT MOTION PICTURE COM- PANY, A CORPORATION, ETC.,	}
	<i>Defendant.</i>	

PLAINTIFF'S DENIAL.

(Filed November 11, 1919.

Plaintiff, Clara Dondero, denies every affirmative al-
legation in the answer.

20	GERAGHTY & WEELANS,
	<i>Attorneys of Plaintiff.</i>

NEW JERSEY SUPREME COURT.

No. 62, MERCER CIRCUIT, OCTOBER TERM, 1919.

CLARA DONDERO,

Plaintiff,

vs.

TENANT MOTION PICTURE COM-
PANY, A CORPORATION, ETC.,*Defendant.*

} Action at Law.

10

TESTIMONY.

Transcript of shorthand notes of testimony, etc., taken in the above stated matter on the trial thereof, before Honorable Frank T. Lloyd, Circuit Court Judge, and a 20 jury, at the Court House, Trenton, New Jersey, on Monday, December 1, 1919.

Appearances—CHARLES H. WEELANS, ESQ., (Geraghty & Weelans), for the Plaintiff.

CHARLES DEF. BESORE, ESQ. (Scammell, Bodine & Besore), for the Defendant.

(Jury called and sworn.)

(Counsel opened.)

CLARA DONDERO, the plaintiff, sworn:

30

DIRECT EXAMINATION by MR. WEELANS:

Q. Mrs. Dondero, you are the plaintiff in this case?

A. Yes, sir.

Q. Where do you reside?

A. 145 Academy Street.

Q. How long have you resided there?

A. About fourteen years.

Q. Are you married?

A. Yes, sir.

Q. Is your husband alive?

A. No, sir.

Q. Have you any children?

A. Five.

Q. How old are they?

A. The oldest one is twenty-three, and twenty and thirteen—

10

Mr. Besore—I object to that.

The Court—I suppose it has some slight bearing on the question of damages.

Q. How old are they?

A. One is twenty-three, one is twenty, one is thirteen, and ten and eight.

Q. Do you remember the nineteenth day of August, 1918?

A. Yes, sir.

Q. What did you do on that day and what happened?

20 A. I visited the St. Regis Theatre, and fell and broke my breast-bone.

Q. What time of the day was it?

A. Between half-past two and three o'clock.

Q. Who went with you, if anybody?

A. I had three of the children with me.

Q. Three of the younger children?

A. Yes. Two was too young to bring, and I got one of them with me here—the oldest one.

Q. You went to the theatre, and then what did you do?

30 A. When we went into the theatre they had got the tickets—

Q. Before you went into the theatre you had bought something?

A. We got tickets for upstairs, and when I got to the head of the stairs I couldn't see a thing in front of me, and I went to move and I did not know where I was at until I fell, and I fell right over the chair and struck my

breast-bone and broke it, and I did not know anything from that until they got me out of the place.

Q. Was there any light there?

A. No light whatever.

Q. Did you see any usher there?

A. No usher there at all.

Q. Was the picture on when you went in?

A. There was no picture on when I got up there. I did not see the picture, and I did not see anything.

Q. Were you ever up there before?

10

A. I never was up there before.

Q. Do you know whether there was a place for a light there?

Mr. Besore—I object. She said she could not see a thing.

Mr. Weelans—She found out afterward.

A. I couldn't even tell that.

Q. You say you struck your breast-bone?

A. Struck it against the back of the chair and fell, and laid there about twenty minutes or more, I guess.

20

Q. Then what happened?

A. Some gentleman got out of his seat and tried to get me up, and couldn't, and he hollered for a light, and he said, "Ain't there no lights in this place?" And he said, "Please turn them on," and he had to holler for water three times, before he got it, before they turned the lights on, and nobody came near me, and the three children had to get me out the best way they could—outside of that gentleman. There was two friends of mine came up to talk to me, but I could not talk to them, and the three children and the others had to help me out of the place. When I came downstairs by the window to go out, the girl in the ticket office put a newspaper up to her face so she wouldn't see me, and the man who took the tickets, where the stairs was, he couldn't see me when I came out. There wasn't one man came in the place.

30

Q. Who is the man who helped you? Do you know?

A. I don't know, and I didn't find out who he was. He was an elderly gentleman.

Q. Was he connected with the theatre?

A. No; I do not think so. I think he was just in the audience. He got up and came to help me.

Q. How long were you sick from these injuries?

A. Eight weeks that I was not able to move. I could neither lie down or move back. I had to sit in a chair
10 eight weeks, all bandaged up.

Q. Then were you all right after that?

A. No, sir. I ain't all right yet. I cannot move my arms to get them this way, or up; and in doing that I kind of forget it, and in doing housework I fell and went to catch myself, and fell off a ladder and broke my arm, through this accident. I cannot raise my hand up any more than that (illustrating). I broke the arm up to here.

Q. How about the other arm?

20 A. I can raise that, but I cannot get this one up.

Q. Can you put it out this way (illustrating)?

Mr. Besore—I object to this. She said this happened through fallin'g off a ladder.

The Court—Well, Mr. Weelans, I do not see how the broken arm can be charged to the defendant.

Mr. Weelans—Well—

The Court—She is complaining now of the effect subsequent to her fall from the ladder.

30 Mr. Besore—I think it ought to be stricken out.

Witness—It is from the effect of the breast-bone that I broke my arm.

Q. What I am asking you now is, how soon did you get over the effects of what happened to you when you fell in the theatre?

A. I was eight weeks before I was able to get out of

the chair. I was bandaged up for eight weeks.

Q. Then were you all right, after that?

A. No; I just partly got around. I am not able to do my work yet.

Q. Do you mean because—

A. Of the breast-bone.

Q. Do you mean, when you raise your arm it hurts you?

A. I cannot sweep and I cannot do my washing. I have never done a bit of washing, and I haven't done my own work since that time, and I am not able to do it. I have to give the washing out, and have somebody to do the work. I am not able to do it. 10

CROSS-EXAMINATION, by MR. BESORE:

Q. Mrs. Dondero, this was what time of the day, do you say?

A. That I got hurt?

Q. Yes.

A. Between half-past two and three o'clock. 20

Q. There was no picture running when you got up there?

A. I didn't see a thing, only darkness.

Q. You said there was no picture running. Do you mean you do not know whether there was a picture running, or that you did not see one? Can you say positively there was no picture running?

A. There was no picture running.

Q. You know there was no picture running?

A. Well, I know that. 30

Q. Were there other persons in the balcony?

A. Yes, sir.

Q. And where were they?

A. Oh, they were sitting all around.

Q. When did you see them? You saw them there?

A. No; I could not see a thing.

Q. How do you know they were there?

A. I knew they were there after the light was turned up, when I was sitting in the seat. People came up to speak to me, and I know persons was there by that.

Q. But the only people you saw in the balcony were those that came up to speak to you?

A. Yes.

Q. You had never been in that balcony before?

A. I never was in there before.

Q. Have you ever been in there since?

10 A. No, sir.

Q. Now, when you came up the stairs and came out into the balcony, did you walk straight ahead or did you turn, or what did you do?

A. Well, you walk up the stairs and you got to turn.

Q. In the stairs?

A. Yes, but that was in the light. When I got to, as I thought the head of the stairs, there was no light at all, and you could not see a thing.

Q. Then, which way did you go?

20 A. All I know, I fell.

Q. Immediately?

A. Immediately, as soon as I got up there. I don't remember ever walking or anything. All I know, I fell.

Q. As soon as you got up there, you fell?

A. I do remember making the remark—

Q. Never mind about the remark. As soon as you got up to the head of the stairs, you fell?

A. Yes.

30 Q. Now, then, you laid there, you say, about twenty minutes?

A. Well, it seemed that long to me.

Q. Oh, you laid there some time, then?

A. Yes.

Q. What children were with you?

A. My three youngest—one eight and the other one ten, and the other thirteen.

Q. Thirteen and ten and eight.

A. Yes.

Q. What did they do when you fell, do you know, while you were lying there?

A. Why, they came running to me as soon as I fell.

Q. Where were they?

A. They had gone ahead of me. They had been there before and was used to the place.

Q. They had gone ahead of you?

A. Yes.

Q. Then they came to you?

10

A. Yes.

Q. And tried to get you up?

A. They tried to get me up, the three children.

Q. You did not send them for any help?

A. I could not talk.

Q. When the lights were turned on, as you say, you were helped to a seat?

A. That is when this gentleman tried to get me up; he couldn't see to get me up, and he hollered for the lights; then there was a little light turned on, and he got me to the seat and left me with the children. 20

Q. Where was the seat that you found yourself sitting in when you came too? Was it in the middle of the theatre or on the side?

A. The first seat on the aisle, as you went down, I think—not the very first; I guess we were down two or three seats, because I fell a good distance. I fell between the benches, like, and they picked me up and sat me there.

Q. Did you see this gentleman sitting here (indicating)? 30

A. No; he was not there.

Q. You did not see him?

A. No, sir.

Q. Did you see the lady, who is sitting there, in the second row between the two gentlemen, with a black hat—

A. I cannot see that far.

Mr. Besore—Will you stand up, please.

Q. Did you see her? Did you see this lady?

A. No.

Q. You did not see her?

A. No, sir.

BY THE COURT:

Q. Madam, what did you fall on, or over?

10 A. I fell down the steps. I did not fall over anything.

Q. Did you fall over any obstruction or anything on the steps or—

A. No; not that I know of. I must have lost my footing. You could not see a thing.

Q. You were going down?

A. Yes.

Q. You were just coming into the theatre?

A. Just coming in.

20 Q. Had you come in directly from the outside light?

A. Right from the outside and up the stairs.

Q. And as you get to the passageway, that is more or less darkened?

A. All the way going upstairs, it is bright enough, but up to the top floor where the balconies were, just as soon as you strike the top floor, you could not see a thing before you.

BY MR. BESORE:

30 Q. Now, when you got up there, Mrs. Dondero, to the top of the stairs, the very first step that you took, when you stepped off the stairs, caused you to fall. Is that the idea?

A. That is how it seemed to me. That I fell the minute I got up there.

Q. You saw it was dark, didn't you, when you got to the top of the stairs?

A. Yes, sir; I knew that it was dark.

Q. And you knew it was the balcony, didn't you?

A. I bought the tickets for the balcony.

Q. And you knew that sloped, didn't you?

A. No.

Q. You thought it might be flat?

A. I didn't know what it was up there, because I was never up there before.

BY THE COURT:

10

Q. You didn't know the steps were there before?

A. I didn't know anything until I fell. I never was in the place before. I didn't know whether it was slanting, or steps, or what it was.

BY MR. BESORE:

Q. You knew that some balconies did slant?

A. Yes. Some have steps. I didn't know what that had.

20

BY THE COURT:

Q. Did you see the steps at all?

A. No, sir.

Q. You fell on the first step, did you?

A. Yes, sir.

BY MR. BESORE:

Q. And that was the first step that you took when you stepped off the stairs?

A. I just lost my balance and fell the moment I got up there. I got right there at the top and fell. 30

BY THE COURT:

Q. Did you know that you were going downstairs at all, or did you think you were on the level? Did you know that you were going downstairs at all?

A. No, sir, I did not.

BY MR. BESORE:

Q. Now, your children had gone on, you say?

A. They had not gone alone. They had gone with me, but they were in the place before and understood it, and they went ahead of me. They rushed in ahead of me, and I was there and when I fell they all came to me. They knew, I guess, that it was me that fell, and they knew I was in the back of them, and they knew the place because they had been there before.

10 Q. You could not see them or tell where they had gone?

A. No, sir; I did not know where they were.

Q. The place was in absolute darkness?

A. Yes.

Q. There was not a light in it?

A. There was not a light in the place.

Q. Now, you are sure you did not take two or three steps, after you got there?

20 A. I do not remember taking any steps. All I remember is falling. I don't remember anything.

MARY BERRY, sworn for the plaintiff.

DIRECT EXAMINATION, BY MR. WEELANS:

Q. Where do you live?

A. 129 Washington Street.

Q. How long have you lived in Trenton?

A. All my lifetime, since an infant.

Q. Do you know Mrs. Dondero, the plaintiff?

30 A. No, I am not acquainted with her. I never seen her until the day of the accident.

Q. Now, you were in the balcony of the St. Regis Theatre on the 19th of August, 1918?

A. Yes, sir.

Q. What happened?

A. When we went in, it was very dark, and I had to get somebody to show me to a seat. It was in total darkness. I could not see. We had sat there about five

minutes when Mrs. Dondero came in, and she fell. She came down the landing toward the right, and fell.

Q. Did you see any usher up in the balcony?

A. No, sir.

Q. Was there any light there?

A. No, sir; there were no lights.

CROSS-EXAMINATION, BY MR. BESORE:

Q. There were no lights at all?

A. There was no light that I could see at all. It was 10
so dark I could not see even the steps.

Q. And you got someone, did you, to take you down?

A. Yes, sir; Mrs. Costner helped me to a seat.

Q. Who is she?

A. She is a witness. She is the lady that lives on
Commerce Street.

Q. She was there?

A. Yes; she and I went together. She had got to her
seat, and it was so dark I could not find my way, and she
came back and heled me to a seat. 20

Q. You went up the stairs and came out on the balcony?

A. Yes.

Q. What did you do then?

A. I did not do anything.

Q. You stopped, did you?

A. Yes.

Q. Did you walk at all after you left the balcony
entrance?

A. Yes; I went a small distance, and I had to stop. 30
I did not dare venture any further. It was too dark.

Q. But you did take a step or two in the door?

A. Yes.

Q. And then you discovered it was so dark that you
could not safely go down the stairs?

A. Yes, sir.

Q. So you called someone and were helped down?

A. Yes.

Q. And there were people to call in there?

Mr. Weelans—I object.

A. I did not call anybody but Mrs. Costner.

Q. And she had got to her seat?

A. She had gone to a seat just below, but I could not get there in the darkness.

Q. But there were other people in the balcony?

A. Yes.

10 Q. The place was not empty entirely?

A. Oh, no.

Q. A considerable number of people?

A. Yes, when the lights were on, a considerable number of people were there.

Q. And the lights were turned on after Mrs. Dondero fell?

A. No. After the picture was through, the lights were turned on. Then it was full of people. But when Mrs. Costner and myself went in, it was in total darkness.

20 Q. You could not see at all?

A. No, sir.

Q. Yet that was before the picture was on?

A. Yes, sir, before there was any picture on.

Q. You saw Mrs. Dondero fall, did you?

A. No, for my back was to her, but I heard her fall, and I turned around, after she had fell. I did not see the woman fall, but I heard her fall, and I turned, but I could not see her myself. It was too dark at the time she fell.

30 Q. You heard her fall?

A. Yes.

Q. Did you look to see if she had gotten up?

A. Yes.

Q. Did she get up?

A. I don't know how she got up, because I was below her. She was up there, and when we were going

out I saw the woman was sitting in her seat and looked pretty well hurt.

Q. You did not know whether it was the same woman?

A. Yes, because my friend was acquainted with her, knew her, and she went up to her and asked whether she was hurt.

A. As soon as she fell?

A. No; as she was going up. She was sitting in the seat, and Mrs. Costner asked if she fell.

Q. Did you see anyone go to Mrs. Dondero's assistance? 10

A. No, sir.

Q. And you didn't go?

A. No, sir.

Q. Was it a bright day, that day, or a dull one?

A. Really, I don't remember; it has been so long, I could not really tell.

Q. What time did you get there?

A. I should think when we got in it was about half-past two. 20

Q. And what time did you go out?

A. Well, I cannot tell just what time I went out. We went out after the pictures were all over.

Q. How long were you there after the picture was turned on?

A. It seemed like we were there a couple of hours. I do not remember what it was. We were there a long time.

Q. Do you remember anyone saying anything about "Aren't there any lights in this place?" 30

A. No, sir; I do not.

Q. And the lights were not turned on?

A. Not when we went in; no, sir. It was very dark.

Q. When the picture started the lights were turned on?

A. What do you say?

Q. I say, the lights were not turned on, you say, until the picture started?

A. No, sir.

Q. They were not turned on until then?

A. No, sir.

Q. And then they were turned on?

A. Yes, just turned on so we could see the pictures, but it was not really light until then.

Q. And they were turned on then?

A. Yes.

10 BY THE COURT:

Q. You mean the outside light or the light that made the picture was turned on?

A. I mean the light that made the picture.

BY MR. BESORE:

Q. But no lights were turned on in the balcony at all?

A. No, sir. The balcony was dark.

EMMA COSTNER, sworn for the complainant.

20 DIRECT EXAMINATION, BY MR. WEELANS:

Q. Mrs. Costner, where do you live?

A. 48 Commerce Street.

Q. How long have you lived there?

A. Going on six years.

Q. Do you know Mrs. Dondero, the plaintiff in this case?

A. Yes, sir, I do.

Q. How long have you known her?

A. About five years, I should judge.

30 Q. Do you remember the nineteenth day of August, 1918?

A. I do.

Q. Where were you on that afternoon?

A. Up in the St. Regis Theatre.

Q. Whereabouts in the theatre?

A. Up in the balcony.

Q. What happened?

A. Well, Mrs. Dondero fell. That is all I can say. The place was in tetotal darkness, and why I didn't go to see her was because not ten minutes before that there was a lady fell—

Mr. Besore—I object to this. I think some of that ought to be stricken out. Something about somebody else or something.

The Court—Is that competent?

Witness—That is the reason we did not go to Mrs. Dondero. We thought maybe her fall 10 wasn't anything either.

Mr. Besore—There is no question pending.

The Court—Do not answer until there is a question.

Q. When you went up in the balcony, was there a light there?

A. No, there was not.

Q. Who was with you?

A. Mrs. Berry.

Q. And Mrs. Dondero came in shortly afterward? 20

A. Yes, sir; but she was in the back and we did not know it was Mrs. Dondero. We did not know she was there. We did not know it was her that got hurt until we were going out. Then we saw Mrs. Dondero, and Mrs. Berry went to her and asked if she was hurt.

Q. Was the light turned on in the alcony after a while, after Mrs. Dondero fell?

A. I could not say positively, because I do not quite remember. I know we saw the picture, but I do not remember about the lights being turned on afterwards. 30

Q. Was there any commotion around when—

A. Oh, yes; quite a little excitement when Mrs. Dondero fell, but like lots of other times, we heard people fall and didn't think it was anything except a mis-step.

Mr. Besore—Now, I object to this witness continuing to answer after finishing an answer to the question.

The Court—Yes.

Q. How long were you in the balcony?

A. I could not say positively, because—

Q. And when you went out—

A. We stopped to see Mrs. Dondero, and Mrs. Berry did not know Mrs. Dondero then—

Mr. Besore—The question is answered.

Q. You stopped to see her?

A. Yes. We were talking to her.

10

CROSS-EXAMINATION by MR. BESORE:

Q. What time did you go in the theatre?

A. I could not say positive. I know it was right away after dinner, but I could not tell what hour it was.

Q. What time did you have your dinner?

A. Between twelve and one. It was something after two, I should judge. I could not judge exactly what hour it was, but that is about as near as I can—

Q. Between two and three?

20 A. Yes.

Q. When you got there, was there a picture running?

A. Now, I won't say positive to that, but I do not think there was one on when we went in.

Q. Was there a picture running when Mrs. Dondero came in?

A. That is something that I could not say positive, either, but I know the place was in total darkness.

Q. That may be, but I asked you something else, you know. Now, you say the place was in total darkness?

30 A. Yes, sir. I suppose the light from the picture—

Q. Now, you have answered the question. Where were you sitting?

A. Quite a little distance from Mrs. Dondero down.

Q. Further down the balcony?

A. Yes, sir.

Q. Half-way down?

A. I should judge about half-way down.

Q. When you came in, there was no light?

A. No, sir.

Q. And you went down to your seat, didn't you?

A. Yes, sir; started on down to my seat.

Q. And then Mrs. Berry—it was so dark she could not get down?

A. No. I asked to assist her, but she would not let me. She thought she could see herself, and she asked for my assistance later. She was not as used to the place as I was, because I go quite often. 10

Q. When you go in that balcony, Mrs. Costner—you have been in there a number of times?

A. Yes.

Q. You have been in there when it is light?

A. Yes, sir.

Q. When it is light, as well as when it is dark?

A. Yes.

Q. You come up these stairs and there is a little platform, isn't there?

A. Yes. There is more than that platform. 20

Q. Right at the top of the stairs there is a platform several feet wide, two or three feet wide, before you come to the stairway?

A. Yes, sir.

Q. And then you come to the stairway and the stairway goes down?

A. Yes.

Q. And it jogs off a little bit, doesn't it, from the stairway?

A. Slightly. 30

Q. The stairway comes up, and then there is a slight jog to the left?

A. Yes, sir.

Q. And then the stairway goes down?

A. Yes.

Q. And then there is a little landing there?

A. Yes.

Q. You saw Mrs. Dondero afterward?

A. What say?

Q. You did not see Mrs. Dondero fall?

A. No, sir. We were sitting in front of her, and we couldn't.

Q. So you don't know how she fell. You heard her fall?

A. Yes.

Q. And you saw her afterwards?

10 A. We saw her afterwards.

Q. And the only way you knew she had fallen was because she told you that it was she who fell?

A. Yes.

Q. You don't remember whether the lights were turned on or not?

A. Not when we came in, and when Mrs. Dondero fell, they were not on. I do not know whether they were turned on afterward or not. I know when we saw the picture, the picture lights were on.

20 Q. But no other lights that you remember?

A. No, sir.

Q. And it was after the picture was over that you saw Mrs. Dondero?

A. Yes, sir; when we were going out.

Q. Do I understand you to say that Mrs. Berry stopped and asked Mrs. Dondero if she was hurt?

A. Yes, sir.

Q. You did not talk to her?

30 A. I did not know it was Mrs. Dondero at first, at all, until Mrs. Berry stepped to her and said, "Are you hurt much?" And she said, "Yes, my breast-bone." And I said, "Why, is that Mrs. Dondero?" And she said, "Yes." And I said I was so sorry—

Q. You have answered the question. Then you went on out?

A. I went on out.

Q. You didn't attempt to go to her assistance when she fell, did you?

A. I didn't know.

Q. That is right. You didn't know.

A. We didn't know.

RE-DIRECT EXAMINATION BY MR. WEELANS:

Q. You recognized her as Mrs. Dondero, as you walked out?

A. Yes, sir, at the present time, yes, sir; I certainly 10
did.

The Court—How many witnesses have you, Mr. Weelans?

Mr. Weelans—Two more.

The Court—Is it all to the same purport?

Mr. Weelans—Except for the physician. There is one of the little girls and a physician.

The Court—Is there a dispute, Mr. Besore, as to the actual conditions there?

Mr. Besore—There has been no testimony as 20
to the actual conditions.

The Court—I mean as to the condition of light and darkness?

Mr. Besore—Yes.

The Court—All right. Proceed.

CAROLINE BROWN, sworn for the plaintiff.

DIRECT EXAMINATION by MR. WEELANS:

Q. Mrs. Brown, where do you live?

A. 143 Academy Street.

Q. How long have you lived in Trenton?

A. Thirty-one years.

Q. Do you know Mrs. Dondero, the plaintiff in this case?

A. Why, yes; she is my neighbor.

Q. How long have you known her?

A. For twenty-two months.

Q. Do you remember the nineteenth day of August, 1918?

A. I do.

Q. Where were you in the afternoon of that day?

A. To the St. Regis Theatre?

Q. Whereabouts in the theatre?

A. The balcony.

Q. Did anything unusual happen?

A. Why, yes. I was in there quite a little while, when
 10 I heard an awful racket, but I couldn't see anything, for I couldn't see my way down there, either, where I wanted to go. I wanted to go toward the corner, and when I came half-way I fell on the flat of my back, where I missed the step, and it was so dark I could not find out how those steps were made—

Mr. Besore—I object to this—

Witness—And then—

Mr. Besore—Will you wait a minute, please?
 I do not think it is competent, for she is half-way
 20 down the stairs.

The Court—Is it not illustrative of the condition of light of the balconies?

Mr. Besore—It may be, but when she gets half-way down the stairs—she is testifying as to her falling half-way down the stairs, which I think is quite a different state of facts. She says it was totally dark, so she could not see her way downstairs, and that is something else she is telling about, and entirely unconnected with the
 30 accident.

The Court—Yes. It is only admissible, for it is illustrative in some form of the conditions there prevailing. The plaintiff's case rests upon the theory she did not know the stairs were there at all, and she fell as she approached them. This witness knew that she was on the stairs, and was going down them, and fell when part-way down.

Mr. Weelans—It is the same afternoon.

The Court—Oh, that does not make any difference.

Mr. Weelans—It was the same place.

Mr. Besore—It was a different place.

Mr. Weelans—The same place, and same time, and the same conditions.

Mr. Besore—It was entirely different.

The Court—Let her tell what she knows of this accident. 10

The Witness—And so when I fell on my back—

Mr. Besore—I object.

Witness—I was—

The Court—Will you please stop when there is an objection.

Q. What was this commotion, you spoke about, that took place in the balcony?

A. I heard something falling.

Q. What happened after that? 20

A. I heard someone crying—that must have been her children—and I heard someone asking for water and light. They asked, “Is there no water or light here?” And I was afraid to move. I—

Mr. Besore—I object.

Q. What happened after that?

A. After that I heard someone ask for water and light, and then quite a little while afterward—well, I didn’t time anything—I couldn’t say the time—I seen the light go on, and then I saw Mrs. Dondero, my neighbor, and then they dragged her out or carried her, or whatever they done, I don’t know what, but somebody took her out, and afterward, when I saw her, she was deadly sick, she couldn’t move— 30

Mr. Besore—I object.

Q. She went out of the theatre?

A. She went out of the theatre.

Q. Was there any usher up in the balcony of the theatre at the time?

A. Not a soul to tell you or lead you anywhere, and those steps—

Mr. Besore—I object.

CROSS-EXAMINATION, BY MR. BESORE:

Q. It was dark when you got in there?

A. Yes, sir.

10 Q. You say there was no usher there?

A. No, sir.

Q. No one anywhere in the place?

A. No, sir.

Q. You could not see one?

A. I couldn't see nothing.

Q. You have been there a good many times?

A. Only that one time.

Q. That was the only time you ever were there?

A. That is the only time I was ever there, or ever
20 will be.

Q. You heard this commotion?

A. I did.

Q. And you afterwards saw Mrs. Dondero?

A. I did.

Q. Did any lights come on when she cried for light and water?

A. Afterward. I heard that quite a little while before the lights were turned on.

Q. What lights were turned on?

30 A. Little bits of lights around the place, enough to see your way out. After they asked for light, and after someone got hurt, they turned the lights on; not before.

Q. Then did you see anyone bring Mrs. Dondero a glass of water?

A. No, I did not see that.

Q. Well, did you stay for the whole picture.

A. Yes, I stayed my time out.

Q. Was Mrs. Dondero there when you left?

A. No.

Q. She had gone before you?

A. She had gone before me.

Q. When did you see her, after they turned the lights on?

A. Yes, that was all; and then they took her out.

Q. Where was she sitting?

A. She was on the floor—they were lifting her up when I saw her, when I could see her.

10

Q. How far down the stairs was she?

A. Well, now, I cannot hardly very well say that. She was somewhere in the middle, I believe. I did not count the seats, but I think somewhere around the middle.

Q. And they lifted her into a seat right there, did they?

A. They lifted her up and took her out.

Q. Oh, they took her out? They did not put her in a seat? They picked her up off the floor and took her right out?

20

A. Yes; they went home with her.

VIRGINIA DONDERO, sworn for the plaintiff, testified as follows:

DIRECT EXAMINATION, BY MR. WEELANS:

Q. You are Mrs. Dondero's daughter, aren't you?

A. Yes, sir.

Q. Were you with her on this nineteenth day of August, 1918, when she was at the St. Regis Theatre?

A. Yes, sir.

30

Q. Will you just tell the jury what happened?

A. Why, I went up and bought the tickets, and we went in the theatre, and when we were upstairs—we had just ascended the last step—when mother went to walk down to her seat and she fell on the first step, and we had all taken our seats when I heard somebody fall, and I went back and it was mother; and this gentleman,

that was sitting ahead of her, got up and tried to pick her up, and then he asked if there wasn't any water or light in the place, and they were fifteen minutes bringing her water and putting the lights on.

Q. There was no light up there when you went up?

A. No, sir.

Q. Did you see any usher there?

A. No, sir.

10 BY THE COURT:

Q. Had you been there before?

A. Yes, sir.

Q. Had your mother?

A. No, sir.

Q. How dark was it when you came in? Could you see the steps?

A. No. I knew how to get down, because I had been there before.

Q. You went ahead of your mother?

20 A. Yes, sir.

Q. Did you get your seats before you heard her fall?

A. Yes, sir.

CROSS-EXAMINATION, BY MR. BESORE:

Q. You say it was fifteen minutes before—what?

A. Before they brought her a drink of water or put on the lights.

Q. You do not know whether it was fifteen or ten, do you? It was some little time, you mean?

30 A. Yes, it certainly was.

Q. Virginia, you have been in that theatre a good many times, haven't you?

A. Well, I had only been there about two or three times.

Q. You had been there when it was light?

A. Yes, sir.

Q. As you go out of that stairway, upstairs, there is quite a little platform?

A. No; it is very small.

Q. It is two or three feet.

A. Yes, sir.

Q. You have to take two or three steps to get across it?

A. Yes, sir.

Q. Before you get to the head of the stairs?

A. Yes, sir.

Q. You went in and went on down?

10

A. Yes, sir.

Q. Your mother was behind you?

A. Yes, sir.

Q. And you got to your seat?

A. Yes, sir.

Q. And she came after you?

A. Yes, sir.

Q. And fell down?

A. Yes, sir.

DR. ENOS B. ALLEN, sworn for the plaintiff. 20

DIRECT EXAMINATION, BY MR. WEELANS:

Q. Dr. Allen, do you know Mrs. Dondero, the plaintiff in this case?

A. I do.

Q. Have you ever attended her?

A. I have.

Q. Did you attend her around the nineteenth of August, 1918?

A. I did.

Q. Will you just explain what was her condition at that time? 30

A. Why, the breast-bone—I made no record other than the visit, but as near as my memory serves me, the breast-bone, about the central portion, was fractured, which I dressed.

Q. Was there anything else the matter with her?

A. She was nervous. I don't recall that there was anything more.

Q. Has she recovered from that yet?

A. Why, yes.

Q. Did she have any other bruises about her, do you know?

A. I don't recall that she had.

Q. What did you do for her at that time?

A. Why, I used—I applied straps for fixation. It is
10 a very difficult bone to fix, naturally there is considerable pain from it. By using fixation straps we overcome motion as much as possible.

Mr. Weelans—Do you admit the doctor is an expert physician?

Mr. Besore—Yes, I will admit him as an expert physician.

The Court—All doctors are expert physicians.

Mr. Besore—Yes, sir.

Q. From this condition, which you found her in at
20 that time, would that interfere with using the arms?

A. Yes. Every motion of the arm would cause a rubbing of the adjacent fractured bones, and makes it painful, due to the fact that it is hard to fix the breast-bone when it is fractured. It is necessary for the patient to remain as quiet as possible.

Q. And for how long, after the breast-bone is broken, do you suppose that condition will last ordinarily?

A. I think she was about two or three weeks before she could use her arms very much. Of course, after that
30 there was some pain.

Q. How long do you suppose that pain would last, when she uses her arm?

A. She was about seven weeks before she could do very much on account of it.

Q. Do you mean that after the seven weeks, she would be just as good as ever?

A. Well, that is a pretty hard question to answer. That would depend on the individual.

Mr. Besore—I think we might have direct testimony as to this, what her condition is, not what it would be.

The Court—That does not preclude the right to produce expert testimony.

Mr. Besore—I appreciate that, but my thought is this: The question is what the woman's condition is after seven weeks.

10

The Court—She has testified, herself, that she could not move for eight weeks. Now, the doctor is asked, expertly, what the condition would be as the result of such an injury.

Mr. Besore—He is the doctor who attended her.

The Court—He can be asked as to the probable results of a given state of facts.

(Last question and answer read.)

Q. Suppose a person has a breast-bone broken, as Mrs. 20
Dondero had her breast-bone broken, how long do you suppose it would pain such a person afterward?

Mr. Besore—Objected to.

The Court—Objection overruled and exception allowed. Answer the question, Doctor.

A. It would depend on the individual. You are asking the question as a general question?

Q. Yes.

A. It would depend on the individual. Some individuals' fractures will unite sooner than others, and as soon as you get a perfect union of the fracture, naturally you get an abating of pain. As long as the ends of the fracture are allowed to move, you would naturally get pain from it. 30

Q. In the case of Mrs. Dondero, did it unite all right?

A. Yes, but due to the fact that she was nervous, it was a little slower, I recall, in uniting, because there were

certain motions that she made that she should not have made if she had not been nervous.

CROSS-EXAMINATION, BY MR. BESORE:

Q. After seven or eight weeks, what was the condition with regard to Mrs. Dondero? What was her condition?

A. She was nervous.

Q. What was the condition of the breast-bone?

10 A. And there was some pain. I would not trust myself to say just how long. There were seven or eight, or more, weeks that she had more or less pain, but not the acute pain that she had up to about the seventh week, as I recall.

Q. But more or less dull pain?

A. Yes.

Q. And that would cause you to think that she had to some extent at least—that was due to the motions she made?

20 A. Whenever she made a motion it pained her.

Q. And the less motion she made the quicker the thing would end?

A. Yes, sir.

Q. In other words, you cannot set a breast-bone in a splint, but you have to tie it there, and it pulls apart when you make a motion?

A. By the use of adhesive strips we fix them as firmly as possible.

Q. And rely on the patient to give it a chance to unite?

30 A. Yes, sir.

Q. Were her eyes hurt?

The Court—Is there any claim for injury to the arm? There is no testimony about the eye.

Mr. Weelans—Not yet.

The Court—Unless there is testimony or complaint, it does not establish anything. Is there any claim about injury to the eye?

Mr. Weelans—Yes.

The Court—Is there any proof of that? The plaintiff has not said anything about it, and the doctor has not.

Mr. Weelans—No, sir; except from the nerves.

Q. By the way, Doctor, did she say anything about what was the cause of this thing?

A. She told me she fell at the St. Regis Theatre.

The Court—Do you want to ask the doctor about his bill, Mr. Weelans?

10

Mr. Weelans—No, sir. We rest.

Mr. Besore—I move for a non-suit on the ground of contributory negligence, and it is founded thus: The claim is that we operated this motion-picture theatre negligently, neglecting to light the balcony. There is no claim made that we had an improperly constructed balcony, neither in the complaint, nor is there any testimony—

The Court—I do not understand there is any claim made that you had. The story here is that you had a dark place, that you invited people to come to it, and there was a stairway she fell down.

20

Mr. Besore—Exactly. Now, the point is this: The testimony by those who have testified is—and those who have seen the place and know it—that at the top of these stairs is a platform two or three feet wide, which requires two or three steps forward in order for anyone to get on to the stairs, and also that there was a jog, so that it would not only be necessary to go straight forward, but to go sidewise and down, in order to get on to that stairway. The testimony is that the place was in total darkness, and Mrs. Dondero says she could not see a thing—absolutely nothing—and still she went on, and notwithstand-

30

ing the fact she says she fell the moment she got at the top of the stairs, the description of the *locus in quo*, as undisputed, shows that could not have happened. She must have taken several steps. Now, the hall was lighted. There was a place of safety to which she could go and get someone, or she could retrace her steps, or stand perfectly still.

10 The Court—People do not usually do that when they go into a moving-picture place.

Mr. Besore—And there is another thing to be taken into consideration, and that is that we have a motion-picture theatre which we cannot light brilliantly, and if we were negligent in not lighting that theatre so that it was apparent it was dangerous to anyone coming there, the person should call on—

20 The Court—Does it not seem perfectly clear this is a question for the jury, whether this lady used reasonable care? She is invited into a theatre, where pictures are shown, and knows it is necessarily darkened for the purpose of showing pictures, and she goes into the building and enters this room or aisle at the head of the stairs, and it is dark—even dark to those inside, and it must have been more so to those outside. Now, under those circumstances, can I say, as a matter of law, that she ought to have stood stock still or gone back out of the place again at the risk of losing any claim for injury she might have by reason of the absence of light?

30

Mr. Besore—I think so—not go out of the building.

The Court—That is what it meant; it meant she should go away from a place she had been invited to come to. I do not think I can hold that as a matter of law. Note an exception.

MRS. MABEL MANNERS, sworn for the defendant.

DIRECT EXAMINATION, BY MR. BESORE:

Q. Mrs. Manners, where do you live?

A. I live 137 West End Avenue.

Q. In Trenton?

A. Yes.

Q. Your husband is the picture operator at the St. Regis Theatre?

A. He is.

10

Q. Where were you on the afternoon of August 19th, 1918? Do you know?

A. I was in the theatre at the time, at two o'clock. I came in there at two o'clock.

Q. You went into the theatre at two o'clock.

A. Yes, sir.

Q. Where were you?

A. I hadn't been anywhere, only right there by the booth, a back seat by the booth.

Q. You were in what portion of the theatre?

20

A. Upstairs in the balcony.

Q. And you say you were near the booth?

A. Yes, sir.

Q. What booth do you mean by that?

A. Where he works, where the picture machine is.

Q. Where is it?

A. On the right-hand side of the building as you go in.

Q. Forward or back in the building?

A. Back in the building, at the rear of the balcony.

Q. You were sitting where?

30

A. At the last seat in the back, alongside the door of the booth.

Q. From that position, are you in a position to see the whole balcony?

A. I could see from the time people entered the theatre, I could see it all.

Q. Did you see Mrs. Dondero come in?

A. I saw her come in, and I saw her fall.

Q. About what time did she come in?

A. Well, I do not know exactly, just the time she came in.

Q. How long after you got there?

A. It must have been fully a half-hour at least.

Q. About half-past two?

A. Yes.

Q. Was the picture on?

10 A. The picture was on at the time she came in.

Q. Were there any lights in the balcony?

A. The only lights that were there were the exit lights, the little lights around the theatre and at the top of the stairs; no other lights excepting the little lights at the top of the stairs and the little lights that set in the cups, they were all lit.

Q. There was a light at the top of the stairs, you say?

A. Yes.

Q. And what other lights?

20 A. The little lights that light around the side of the wall, that set in the cups.

Q. How many?

A. I guess about three on each side, as far as I know.

Q. And they were all lighted?

A. They were all lit.

Q. Could you see in the balcony?

A. I could. I came at two o'clock, and I could see my way in.

Q. Was the balcony lighted?

30 A. With those lights; that is all.

Q. Was it lighted so you could see where you were going?

A. Yes, perfectly.

Q. And you saw her fall?

A. Yes.

Q. Where did she fall?

A. Well, she got to the top of the stairs, went to the right or left of the theatre, and her foot slipped, and she fell.

Q. Where was she when she fell—at the top of the stairs, or where?

A. As you come up to the top of the stairs, it was right at the first landing.

Q. She came up the stairway from downstairs?

A. Yes.

10

BY THE COURT:

Q. That was from the outside?

A. Yes.

Q. It is not from the main theatre-room?

A. No; that goes to the balcony.

BY MR. BESORE:

Q. She came up those stairs?

A. Yes.

Q. Then what comes next?

A. There is a little landing-like.

Q. How wide, two or three feet?

A. Well, somewhere around that.

20

BY THE COURT:

Q. Are there seats then all around this landing?

A. Only toward your left, and there were seats in front of her.

Q. This stairway is how far from the entrance where she came in?

A. What do you mean?

Q. The stairway, where she fell, from the steps?

A. I could not tell you how far. It was just the same as you come up the stairs, and there was a landing and the door.

30

Q. (Illustrating)—Is it the same as this? Do you come up here and down here?

A. Yes, sir, there is one step there (indicating), that is where she fell.

Q. Did she fall just as she reached the edge of the step?

A. Yes.

BY MR. BESORE:

Q. When you come up the stairway—

10 The Court—Is it necessary to repeat that all over?

 Mr. Besore—Yes; because I have seen it myself, and the description is not perfect.

Q. As you come up the steps from downstairs.

A. Yes.

Q. The stairs that go down to the seats, are they immediately in front of these stairs?

A. No.

Q. They are in what direction from them?

A. That goes toward the left.

20 Q. You come up the stairs from the street?

A. Yes.

Q. And turn to your left to go down the stairs between the seats?

A. Yes.

Q. She came up those, you say?

A. She came up.

Q. And did what?

A. Then she turned to her left, and there are steps to go down, and she slipped right there, for I saw her fall from there.

30 Q. On the steps that went down into the balcony?

A. Yes.

Q. Now, that landing we have been speaking of there at the head of the stairs from outside, that is an aisle that runs clear across the balcony, isn't it?

A. Yes.

Q. Did anyone go to her assistance?

A. Well, there were several asked her if she was hurt, after she fell, and she said, "Not so bad." When they asked for water, I got a cup out of the booth and went to the men's basement and got the water and brought it to her. I handed the water to my son-in-law, and he gave her the water.

Q. Did you talk to her about the accident?

A. No, sir; I never asked her a question at all.

Q. Was she picked up?

A. She was sitting in a seat when the water was handed to her, and her children alongside of her. 10

Q. Who picked her up? Do you know?

A. I could not tell you. I did not see her picked up even.

BY THE COURT:

Q. How far were you from her?

A. I could not tell you how far back.

Q. Give me an idea, in the room here.

A. Well, that gentleman, where he is sitting in that chair, from where I am now, is about the distance I was from her. 20

Q. You mean to the opposite counsel?

A. Yes, sir; this gentleman right here—(indicating).

BY MR. BESORE:

Q. When she fell, did someone go to her assistance immediately?

A. Well, I could not tell you that. She was sitting there when they asked for water. 30

Q. You saw her fall?

A. Yes, but I did not see who picked her up, or anything about it.

Q. You saw her picked up?

A. I did not notice anybody—I was sitting there—

BY THE COURT:

Q. Do you mean to say you saw her fall, but did not observe anything else?

A. I went to get the water as soon as someone mentioned water. I saw the woman fall, but I did not see how far she fell down.

BY MR. BESORE:

Q. How soon after she fell did you go for water?

10 A. As soon as it was called for.

Q. Did she lie there any particular time? Did she lie there fifteen or twenty minutes?

A. I didn't notice that. She was sitting in a chair when I came back with the water. That is all I know.

Q. And then how long did she stay?

A. I don't even remember seeing her going out, and I stayed until four o'clock myself that afternoon.

CROSS-EXAMINATION, BY MR. WEELANS:

20 Q. Where did you go to sit when you went up in the balcony? Were you sitting in the last chair in the last row?

A. The last seat up toward the booth door.

Q. Is that near to the seats where the general public sit?

A. Yes, as a rule.

Q. Or is that an extra seat that is put in there?

A. No; it is an ordinary seat.

30 BY THE COURT:

Q. You say you were sitting there?

A. Yes, sir.

BY MR. WEELANS:

Q. You had been up there before?

A. Oh, yes; quite a good deal.

BY THE COURT:

Q. What was your duty there?

A. My duty?

Q. Yes.

A. I just came in to see the pictures; that is all.

Q. You did not have any connection with the theatre at all?

A. No, not at all.

BY MR. WEELANS:

10

Q. Did you know Mrs. Dondero?

A. No, sir; only just what I seen over there.

Q. How did you know it was Mrs. Dondero who fell?

A. I did not know what her name was until they mentioned it here; that is all. I did not know the woman at all, who it was.

Q. Did you recognize her?

A. No; I don't recognize her now.

Q. Then you are not sure whether it was Mrs. Dondero who fell that day?

20

A. No; I didn't recognize the woman at all.

Q. It may have been someone else?

A. Yes.

RE-DIRECT EXAMINATION, BY MR. BESORE:

Q. Do you mean you don't recognize her now?

A. Oh, I remember her. It is the one I saw who was hurt. I did not have a good look at her when I saw her at the time.

BY THE COURT:

30

Q. Do you mean to say you cannot say whether she was the woman who fell?

A. She was the one I took the water to.

BY MR. BESORE:

Q. You recognize her as the woman to whom you handed the water?

A. Yes.

Q. But you did not know her before?

A. No.

RE-CROSS EXAMINATION, BY MR. WEELANS:

Q. But you recognize her now?

A. Yes, sir.

Q. So you are sure of it now?

A. Yes, she is the woman.

10 Q. Now, you say when you went up there, there was no light in the balcony, yourself, was there?

A. There was just those little lights around, as they are always when the picture is going on, the exit lights.

Q. Was the picture going on at the time?

A. Yes.

Q. Was it going on when you went in there?

A. Yes, sir, it was going on when I went in there at two o'clock.

Q. And it was still going on at half-past two?

20 A. Yes, sir.

Q. Now, there are lights on the staircase leading up to this balcony?

A. There are.

Q. When she called for water, and someone lifted her up, were there any other lights turned on?

A. Not that I know of; just the same lights, as the picture was still going on.

Q. Didn't they turn on some more lights so they could see what they were doing?

30 A. I did not notice about that. It was still about the same lights as it was when I came in.

Q. You do not know how long she stayed there?

A. No.

Q. And she slipped right on the top, you say?

A. The top step.

BY MR. BESORE:

Q. You say the lights were on that are ordinarily on when the picture is going?

A. Yes.

Q. What are the lights that are put on when the picture is not going?

A. Well, the house lights, downstairs.

Q. Well, upstairs?

A. Just the same lights at all times.

Q. You say all the lights were on that were up there? 10

A. All the lights were on that were up there.

Q. They were all on at that time?

A. Yes.

Q. And those are the lights you described to me?

A. Yes.

LEWIS EDWARDS, sworn for defendant.

DIRECT EXAMINATION, BY MR. BESORE:

Q. Where do you live, Mr. Edwards?

A. 237 North Broad Street.

20

Q. Trenton?

A. Trenton.

Q. What is your business?

A. House Manager of the St. Regis Theatre.

Q. Did you occupy that position on August 19th, 1918?

A. I did.

Q. What time did that theatre open?

A. One o'clock.

Q. Did it open on that time on that day, or did it not? 30

A. It did.

Q. Who opened it?

A. I did.

Q. What did you do when you opened it?

The Court—Are we interested in that?

Mr. Besore—We are.

The Court—I do not think so.

Mr. Besore—I want to show that it was his duty to turn on the lights.

The Court—The main thing is what was done on this occasion.

Mr. Besore—Well, I am asking about that.

Q. What did you do on this occasion? How did you open the theatre, or what did you do?

A. Unlocked the door.

Q. Then what?

10 A. Went in; turned the lights on.

Q. Where?

A. Right at the entrance doors.

Q. What lights?

A. All the house lights.

BY THE COURT:

Q. Well, what are they?

A. They consist of—

Q. Do they light the whole building, when the lights
20 are all on?

A. All the lights are put on that we have—

Q. Do they light the whole thing inside, balcony and
all?

A. They light the entire balcony, downstairs, exits
and the boxes.

Q. You lighted those when you went in?

A. Yes.

BY MR. BESORE:

30 Q. Then what did you do?

A. Closed the exit doors downstairs, that were open for
fresh air.

Q. Then what?

A. Went back and went upstairs to a private room
we have, and got the change necessary to start selling
tickets, and took it down stairs and gave it to our cashier,
who had arrived in the meantime.

Q. And then, did she start selling tickets?

A. She started selling tickets.

Q. What did you do then?

A. Went in and sat on the stool alongside of the ticket chopper and took the tickets as they came in.

Q. All during the performance?

A. All during the performance.

Q. Now, did you learn that Mrs. Dondero had fallen that day?

A. It was somewhere in the neighborhood of— 10

Q. Did you learn it?

A. I did.

BY THE COURT:

Q. Before that happened, did you do anything more to your lights?

A. There was nothing more to be done with them. We have our full capacity of lights on all the time.

Q. Well, you could not see pictures, could you, with the lights showing fully in the house? 20

A. We do. That is the most lighted picture theatre I have ever been in.

Q. You don't turn them down at all?

A. No, sir.

Q. And it is not dark in any part of the building?

A. There isn't a part of the building that is dark, when the lights are on.

BY MR. BESORE:

Q. You learned she had fallen? 30

A. Yes.

Q. How did you learn it?

A. The operator signaled to me.

BY THE COURT:

Q. Is that what you call one of the daylight theatres?

A. It is not quite daylight.

Q. Is that the method of showing the pictures?

A. There are pictures of that type, but we haven't those. We are supposed to show them in semi-darkness.

BY MR. BESORE:

Q. All your lighting in that balcony is indirect light?

A. All indirect.

Q. None of it is direct?

A. None of it is direct.

10 Q. You were signalled by the operator?

A. Yes, and I went upstairs immediately. He gave me the signal that I recognized, as all of the time, as something the trouble in the booth; and, being an operator myself, I assist whenever there is trouble in the booth; I immediately go up.

Q. Did you here?

A. I hurried up. I always do.

Q. What did you find when you got up there?

20 A. Mrs. Manners was just starting down the steps with a glass in her hand. Mrs. Dondero was half lying and half leaning against the side of the seat, the second row from the landing.

BY THE COURT:

Q. From the top, do you mean?

A. No; from the landing where she entered, the entrance landing is not at the top.

BY MR. BESORE:

30 Q. The stairway from the outside comes up half-way of the balcony, does it?

A. About two-thirds of the way up.

Q. And there is a transverse aisle that runs across the balcony?

A. Yes.

Q. And there are seats in front and in back of it?

A. Yes.

Q. Where was she lying?

A. On the second step down, on the steps in the balcony from that aisle.

Q. Go on.

A. An old gray-haired gentleman was assisting her, and I helped put her in a seat, the second row down from this landing. At that point Mrs. Manners came up with the water. We gave her some water, and asked her if she was all right. I asked her, personally, whether I should call a doctor, and she said, "No; I guess I'm all right; just a little shocked; I cannot get my breath quite right; just a little shocked." She sat there, and I insisted, "Are you all right?" And she said, "Yes, I think I am all right." And she said, "Where are the children?" The children were sitting directly in front of her, I think, and I said, "The children are here, all right." She apparently was all right, and I went downstairs again.

Q. Now, what lights do you have up there?

A. There are three bowl lights on either side of the balcony.

20

Q. What do you mean by that?

A. They are cup-shaped depressions, with a light in it, which throws a light on to a white ceiling, and it is reflected back again into the theatre. They are pieces that are attached to the wall, and they keep the light from diffusing straight into the peoples' eyes; it goes to the ceiling and is reflected back.

Q. And they are on either side?

A. Three on either side.

Q. Are they on this aisle, all of them?

30

A. They are up about eight feet from the floor.

Q. How many of them are there between the aisle and the front of the balcony, between this cross aisle and the front of the balcony?

A. All three; one right at the head of the aisle, and two below it.

Q. What size lights do you have in there?

A. In the one alongside of the stairway, we use a seventy-five watt, which is rather bright; in the middle one, a twenty-five watt, and in the front one a fifteen watt.

Q. Was there another light at the top of the stairs?

A. There was a white light at the top of the steps. First the vamp comes up and ends in the top of the balcony. Right at the top of the vamp there was a white light. As you come up the steps there was a fifteen watt white light.

10 Q. That was right over the door, like?

A. Yes.

Q. Could you see up there in that balcony that day?

A. Perfectly.

Q. Was there any difficulty at all about seeing where you were going?

A. There was no difficulty whatever.

Q. There were some people in the balcony?

A. There was quite a number of people in the balcony, between forty and sixty or more.

20 Q. Now, do you happen to know the width of the platform at the top of the stairway?

A. Four feet; four feet square.

Q. What is the width of the stairway downstairs?

A. Four feet.

Q. And then, when you come up out of that stairway, there is four feet distance forward until the balcony drops off, is it—the aisleway, there?

A. Yes.

Q. Then, how far is it over to the stairway that goes
30 down?

A. The stairway leading up comes along the edge of the wall; directly in front of this platform are three seats.

Q. Those seats are four feet from the end of the stairway?

A. Four feet from the end of the stairway. They also extend just exactly the distance of the width of the stairs; which means that, coming up the steps, if you

continue on straight up the steps, you would bump into one of those seats. You must turn to the left, and the aisle runs down along the edge of those three seats.

Q. That is how wide?

A. Four feet.

Q. That is four feet wide?

A. Yes.

Q. Now, the place you saw Mrs. Dondero lying was on which side of that aisle?

A. It was in the balcony aisle.

10

Q. And on which side of the aisle?

A. On the left-hand side of it, furthest away from the stairway.

Q. And the balcony stairway goes down, and the right-hand edge of the balcony stairway is about even with the left-hand edge of the stairway from downstairs. Is that it?

A. Yes.

Q. Did anyone see you turn on the lights that day?

A. Our organist.

20

Q. What is his name?

A. Mr. McDermott.

Q. Have you been in that booth?

A. Yes, sir.

Q. Can you see over the house from that?

A. Yes.

Q. Can you see the place where this accident occurred from that?

A. Perfectly; yes, sir.

30

CROSS-EXAMINATION, BY MR. WEELANS:

Q. How many glasses of water did Mrs. Manners bring Mrs. Dondero? Do you know?

A. One glass.

Q. Now, you said that when you first came up the stairs there, Mrs. Manners was bringing the water—

A. Was going down to get the water.

Q. And she brought it up afterwards?

A. Yes.

Q. Now, is there only one kind of light up there in the balcony?

A. As I explained, there are three different sized lights used in the balcony, graded down from the back toward the front in the three bowls.

Q. And each works on a different switch?

A. No; every one is controlled on the same switch.

10 Q. But there is a different switch for the balcony and the house downstairs?

A. The switchboard is composed of a number of switches. The balcony switch is separate from the downstairs switches, but the balcony switch is a unit for the entire balcony.

Q. But that is separate from the lights downstairs?

A. It is on the same switchboard, but separate wires.

Q. When you light the house up, do you always light all those lights?

20 A. All the lights.

Q. Pull them all on?

A. Put them all on.

Q. Do you do that every time?

A. Yes.

Q. How long have you been manager there?

A. About two years and three months.

Q. How many times a day do you do that?

A. Once, in the beginning of the day, at one o'clock.

Q. Did you ever miss any?

30 A. Never, since I have been there, have I left off any of the house light switches.

Q. You were downstairs when this thing took place, weren't you?

A. Yes.

Q. So you did not see it?

A. I did not see her fall, no.

Q. Do these lights shine while the picture is showing?

A. Always. The lights are never turned off from the time we put them on, at one o'clock, until we darken the house at night.

Q. And Mrs. Dondero was on the floor when you got there?

A. She was on the floor when I arrived.

Q. And this old gentleman was helping her?

A. Yes.

Q. The picture went on all through this, did it?

A. The picture was continuing on through it, yes. 10

Q. How did Mrs. Dondero get out? Do you know?

A. I do not know. She left after four o'clock. My supper time was between four and six, and I was off, and she left sometime after four o'clock, because I was downstairs on the ticket chopper until four o'clock.

Q. Had you known Mrs. Dondero before?

A. I did not know her name, but from living close by and seeing her pass, and going up Montgomery Street, I knew her by her face.

Q. You recognized her as Mrs. Dondero? 20

A. I did not recognize the name, but I recognized the face. There are hundreds of people that come in that I recognize the faces, and I do not recognize the name. I recognize her now as the same one.

Q. Who was this man that assisted her?

A. I do not know.

Q. He was not connected with the theatre?

A. No, sir.

Q. There is no usher up there, is there?

A. During the daytime, no.

Q. During the night, there is an usher there? 30

A. Yes. That is to prevent us from crowding up. The fire rules—

Q. Then the only reason you say the lights are lighted up there all the time is because every day you always light all the lights?

A. That is not the only reason I know they were lighted. When I arrived up there to help Mrs. Dondero, they were on.

Q. Does anybody else have anything to do with the lights there except you?

A. Nobody.

Q. How long after you got this signal was it you went up?

10 A. Immediately. I was not ten seconds getting from the bottom floor to the top.

Q. You don't know how long after the accident it was that the signal was given to you, however, do you?

A. No.

(Recess until 1:30 o'clock in the afternoon.)

HARVEY R. MANNERS, sworn for the defendant.

DIRECT EXAMINATION, BY MR. BESORE:

Q. Where do you live, Mr. Manners?

20 A. 137 West End Avenue.

Q. Trenton?

A. Yes.

Q. And you are employed as the operator at the St. Regis Theatre?

A. Yes, sir.

Q. And were so employed at the time of this accident, were you not?

A. I was.

30 Q. Were you in the theatre when the accident occurred?

A. Most certainly.

Q. Where were you?

A. In the booth, running the show.

Q. The booth is in the rear of the balcony?

A. The extreme rear of the balcony.

Q. Now, is there any method by which you can see from the booth into the balcony?

A. Oh, yes.

Q. What?

A. A large port, about a foot and a half high by ten or twelve inches wide.

Q. That is just an opening?

A. An opening.

Q. Did you see Mrs. Dondero fall?

A. I did.

Q. Where did she fall?

A. She fell just opposite the entrance from the top of 10 the stairs as she turned to go down the steps.

Q. Just opposite the entrance of what stairs?

A. The balcony stairs.

Q. Going down in the balcony?

A. Going down in the balcony. She came down the stairs and turned into the balcony aisle. There is a landing runs all the way across, and as she went to go down-stairs she fell.

Q. She came up the stairs from down below?

A. I presume so.

Q. When you first saw her, she was on this aisle? 20

A. She was on the landing when I first saw her.

Q. That is the aisle?

A. No, the landing at the top of the stairs. I saw her come off the landing.

Q. Is that the landing that is at the top of the stairs from below?

A. Inside the balcony proper, at the top of the stairs, there is a landing, I imagine, about four feet across. You have to turn in to your left to get into the balcony aisle, 30 and it extends all the way over to the seats proper.

Q. By the "balcony aisle", you mean the stairs that run down into the balcony proper?

A. Yes.

Q. That is what you call the balcony aisle?

A. Yes, sir.

Q. And the landing is what you call the place you come up on to when you come from downstairs, and along which you walk until you come to the balcony aisle?

A. That is the idea, exactly.

Q. And you saw her on this landing first, you say?

A. Yes.

BY THE COURT:

Q. How large is the landing?

10 A. The landing is about four feet, I imagine, at the top of the stairs.

Q. About four feet square, you mean?

A. Yes.

BY MR. BESORE:

Q. The stairs, down into the balcony, are not immediately opposite the stairs that come up from below, are they?

A. Certainly not; no.

20

BY THE COURT:

Q. How wide is the stairway that comes up from below?

A. I should imagine it would be four feet or four and a half feet.

Q. Does that come directly to the landing?

A. Yes, sir.

Q. If the landing is only four feet wide, how is it the other steps do not come up?

30 A. Because the stairs leading to the balcony is not an aisle of the balcony. The landing at the top of the stairs leads into the aisle of the balcony, and a part of the landing is a part of the aisle of the balcony.

BY MR. BESORE:

Q. When you come up the stairs from down below, from the street, you are facing how?

- A. You are facing the screen.
- Q. And what is immediately in front of you?
- A. When you get to the top?
- Q. Yes.
- A. Three seats.
- Q. And they are how far from the top of that stairway that you come up?
- A. Four feet from the edge; I imagine about that.
- Q. About four feet; there are three seats, and the backs of those seats are toward you? 10
- A. Are facing me.
- Q. What do you do when you want to go down the balcony aisle or stairway?
- A. When you get to that landing, you cannot go any further ahead, forward. You turn to your left.
- Q. And you walk about how far to get to the aisle?
- A. I should judge about a foot and a half or two feet from the side wall of the stairs.
- Q. From which side wall?
- A. The left. 20
- Q. About a foot and a half?
- A. Yes.
- Q. If you came up the middle of the stairway or the other side, you would go further?
- A. Oh, yes; four or five feet.
- Q. Then the stairway going on down the balcony runs toward the screen?
- A. Both ways, for that matter.
- Q. The one she fell—
- A. Toward the screen. 30
- Q. The other one goes up?
- A. Goes up, the same aisle.
- Q. Then she must have turned to the left?
- A. Sure.
- Q. You saw her as she was walking?
- A. I saw her as she reached the top of the stairs and

was walking to go down the aisle. She was on the landing then.

Q. Then what did she do?

A. It seemed to me that she endeavored to take a step down, and some way or other fell. My idea is—

Q. Never mind. I want to know what you saw.

A. Well, I saw her take a step forward and fall.

Q. Where did she fall?

A. She fell to the left-hand side on the seat. She
10 struck the back of a seat.

Q. That is the side furthest away from the stairs, coming up from below?

A. Yes.

Q. How could you see her? Was the place dark or light?

A. Why, light, of course.

Q. How many lights were in it?

A. There are three lights on either side, and there is
20 a light immediately at the entrance to the balcony; that is, as you come up the balcony steps, right in the back, similar to a place like this—(illustrating)—there is a small light there that denotes an exit.

Q. That is at the head of the stairs, coming up from the street?

A. Yes, but it is in the balcony proper.

Q. It shines into the balcony?

A. Yes, so much so that it is absolutely a detriment to the picture.

Q. Now, those lights that you described, are they on
30 during the picture?

A. All the time.

Q. And when the picture goes off, do you leave them on?

A. They are on all the time. I have no control of the lights whatever.

Q. When you came there that day, what time did you get there?

A. I always get there about one o'clock.

Q. Were the lights on?

A. They were.

Q. In the balcony?

A. I cannot get up there without the lights on.

Q. They were on in the balcony?

A. Yes.

Q. You have to go through the balcony to get into the booth?

A. Oh, yes. I have to walk over the same ground 10 she walked over, to get to the booth.

Q. Have you ever been up there when there were not any lights on?

A. I will say so.

Q. How is it?

A. It is so dark that although I am accustomed to it, and have been there on numerous occasions, I stumble; and if I am going to the booth, I almost always run into the rear wall. You cannot see a thing.

Q. What did you do when you saw her fall?

20

A. I immediately signalled downstairs. I have a signalling device in the booth.

Q. Then what happened?

A. Someone hollered for water, and my wife ran down there, and she came back and got a glass I have in the booth for drinking purposes, and went for water.

Q. Where was she when it happened?

A. Sitting right alongside of the booth, I believe, in one of the seats.

Q. You saw her go?

30

A. Oh, yes.

Q. Did you see Edwards?

A. When he came upstairs, yes.

Q. When did he get up there?

A. Shortly after.

Q. Well, how shortly?

A. Oh, I imagine not over two minutes—about a minute—right away.

Q. What did he do?

A. He endeavored to give them some assistance there. I could not say what he done, with the exception that I think—

Q. What did you see him do?

A. He went over to the woman to find out what the trouble was, I believe. They sat her down in a seat.

10 Q. How long was it from the time she fell until the time she got into the seat?

A. Oh, there was a gentleman that got right up and went to her assistance, and while he was trying to get her into the seat, Mr. Edwards came up, and they put her in a seat.

The Court—Mr. Besore, there is no claim of anything after the occurrence.

Mr. Besore—I understood Mrs. Dondero to say she laid there twenty minutes before anyone helped her up.

20

The Court—Well, how can that be the basis of any claim in this case.

Mr. Besore—I think we have a right to controvert it?

The Court—Yes.

Q. How long have you been in that theatre?

A. Ever since that place was opened; I imagine five years; just about five years.

Q. Have those lights ever been off during a performance?

30

A. No, sir.

The Court—What was the question?

Mr. Besore—Have the lights ever been off during the performance?

Witness—Yes, they have.

Q. They have?

A. Yes, during a severe thunderstorm, when the entire circuit throughout the city was cut off, the lights have been out all over the house.

BY THE COURT:

Q. You did not have any performance then, did you?

A. Oh, yes. We have an electric generator unit in the cellar.

BY MR. BESORE:

10

Q. Is that generator connected up with the lights?

A. Oh, no.

Q. About when did this accident happen?

A. About two o'clock or half-past two; I could not say just which; my show had not been running a very long time.

Q. Your show was running?

A. Oh, yes.

Q. The picture was going on?

A. Oh, yes.

20

CROSS-EXAMINATION, BY MR. WEELANS:

Q. You were in the booth working the reel at the time this accident took place—working the pictures?

A. I was seeing that they were properly screened, yes.

Q. That takes all your attention, generally, doesn't it?

A. My business is to keep my eyes on the screen as near all the time as possible.

Q. But this time you did not have your eyes on the screen. You were looking through the porthole?

30

A. I was looking through the porthole. That is my business.

Q. Is it your business to look over that part of the balcony?

A. I can see the entire balcony when I look to the screen.

Q. You look at the screen, and at the same time you see the entire balcony?

A. I can see anyone that comes up the steps.

Q. How about downstairs? Can you see downstairs?

A. Why, no.

Q. Why not?

A. I cannot see through the floor. The balcony extends so far over I cannot see the front row of seats on the main floor. The only thing I can see there is the top of
10 the organ.

Q. Then, while looking at this picture you had on there, you saw Mrs. Dondero come in the door?

A. Yes. Now, I don't mean to say that I must every instant of my time have my eyes on the screen. They are off the screen and on the screen, watching the mechanism and one thing and another to see everything goes on—goes on for the protection of the lives of the public.

Q. Is the mechanism enclosed in anything?

A. Well, yes; the projecting machine itself is inside
20 the booth.

Q. How big is this place you look out?

A. I should judge a foot and a half high by ten or twelve inches wide.

Q. That is in the front, is it?

A. Yes, sir. The machine is right at the front of the booth, and the hole is right alongside the machine.

Q. There is no hole in the side?

A. Oh, no.

Q. Then, by looking through this hole, looking to-
30 wards the screen, you mean to say you can see all over the balcony?

A. I certainly do.

Q. How about right along the side of the booth?

A. I cannot see in back of the booth, no.

Q. Then you cannot see all over the balcony, can you?

A. I can, probably with the exception of three or four rows on each side of the booth.

Q. Oh, then there are places you cannot see?

A. Yes.

Q. You say, you saw Mrs. Dondero when she got to the head of the steps?

A. I do.

Q. And you watched her until she fell down?

A. I did not pay any particular attention to her until she fell.

Q. But you saw her before?

A. I saw her come up there, yes.

Q. What attracted your attention to her particularly?

A. Why, she fell.

Q. It was the fall that attracted your attention to her?

A. In particular, yes. I did not pay any particular attention to her, outside of any ordinary person coming in to see the show. I saw her walk in and fall.

Q. In other words, it was the fall that attracted your attention to her?

A. Yes, sir.

Q. As you looked through this hole in the booth, did you turn your head around and look that way?

A. The minute she fell I walked to the rear of the booth and pulled the switch that controls the signalling device.

Q. Was there any noise or commotion around there?

A. She made a little noise when she fell, when she hit the seat.

Q. You heard that?

A. Oh, yes.

Q. As a matter of fact, wasn't it because you heard this commotion you pulled this bell, and not because you actually saw her?

A. Oh, no. I saw her fall, or I would not have pulled it.

Q. You heard the commotion, didn't you?

A. Yes, but I have heard commotions before in theatres.

Q. Up in your balcony, too?

A. Oh, yes. If I was to pull that thing every time there was a commotion up there, the manager would be upstairs all the time.

Q. Do people cry out up there right along?

A. Oh, well, there is a little disorder, as there is in all theatres at times.

Q. You don't have anything to do with the lights of this balcony?

10 A. Nothing at all. There is absolutely no control over the lights in the balcony.

Q. You have been in there when the lights are not on?

A. Yes.

Q. What was there to call your attention to the lights on this particular day?

A. My show never goes on without the lights are on for this reason: There must be lights in the balcony for people to get into the balcony, and I am ordered not to start the show until people enter the balcony in the
20 afternoon.

Q. You are supposed to wait until people get seated before you start?

A. No. I am supposed to wait until they start to come into the balcony; otherwise, I would not know whether there was a soul in the building or not, because I cannot see the lower floor. People cannot enter the balcony unless there is light, and I cannot start the show until there are people in the balcony.

Q. They could come up there, couldn't they?

30 A. They could not possibly get up there without falling, unless they went feeling along the wall and felt the angles of the turns in the stairway, because I, myself, have walked into the wall at the first turn.

Q. It is a dangerous place, up there, isn't it?

A. Well, it is dangerous in the dark, yes.

RE-DIRECT EXAMINATION, BY MR. BESORE:

Q. While you are watching your pictures, you do not look at it fixedly all the time?

A. No, I simply watch my picture to see that my light is in the best possible shape, and see my picture is properly screened, and my eyes are taken off the screen at times, and at other times they rove around the balcony.

Q. Now, this hole, through which you looked, on which side of the machine is it?

A. On the right-hand side of each machine there is 10
a port.

Q. Is the machine in the center?

A. There are two machines. They set side by side, with room enough for a man to work between them. There is a port on the right side of the front wall, and when you look out of the port—it is big enough to rest your arm in this way—(illustrating)—and look out.

Q. On which side of the machine was this port you were looking through that day?

A. It can only be on the right-hand side of the ma- 20
chine running.

Q. Which machine was running?

A. The right-hand side, close to the door.

Q. Then that port was on the right of that?

A. Yes.

Q. Then, in other words—

A. My port was about a foot away from the edge of the booth, toward the stairway the lady came up.

Q. And about how far from the place she fell?

A. In what direction?

Q. How far was it down there from the port? 30

A. I should say just about seven rows.

Q. And how far to the side of the place where she fell, from your port?

A. From my range of vision?

Q. From the port?

A. From the port it was not over two feet to the side.

Q. If you looked straight out?

A. Yes.

LEWIS EDWARDS, recalled for the defendant.

The Court—He has been examined, Mr. Besore.

Mr. Besore—I want to ask one question.

The Court—Is it something that has been overlooked?

10 Mr. Besore—I want to ask if he has been in the balcony when there were no lights there.

The Court—All right.

Mr. Weelans—He has been asked that question.

DIRECT EXAMINATION, BY MR. BESORE:

Q. Have you been up there when there were no lights?

A. Yes.

Q. Is it dark?

A. Very dark.

20 Q. How dark?

A. So dark that I cannot with safety myself, although I am perfectly familiar with it, go up or down those steps. It would be impossible to see anybody in the balcony without the lights.

CROSS-EXAMINATION, BY MR. WEELANS:

Q. Have you been up there during the show when there were no lights up there?

A. No—yes. I will correct myself.

30 Q. When was that?

A. When the Public Service juice went off.

Q. And the picture was going on at the time?

A. The picture was going on.

RE-DIRECT EXAMINATION BY MR. BESORE:

Q. Was the juice on on the day this accident occurred?

A. Yes, perfect; there was no hitch at all in the juice.

Q. If those lights go off by reason of the failure of the current of the Public Service, what happens to the lights on the stairway?

A. They all go off.

Q. There is no way of lighting the building?

A. No, sir; all the lights in the building go off except the screen.

WILLIAM J. McDERMOTT, JR., sworn for the defendant.

10

DIRECT EXAMINATION, BY MR. BESORE:

Q. Mr. McDermott, where are you employed?

A. St. Regis Theatre.

Q. What is your position there?

A. Organist.

Q. Were you in the theatre on the nineteenth of August, 1918?

A. I had been practicing there from about ten o'clock in the morning up until the opening time.

Q. That is about what time?

20

A. It opens at one o'clock.

Q. Do you know whether or not lights were turned on?

A. I know positively, because as soon as those lights go on, it is time for me to stop—the people come in—so that I won't interfere with the operation of the show. I do not begin the show. They have an assistant to open. I go on later.

Q. Do you remember lights going on that day?

A. I remember positively lights being on. That is the reason I stopped practicing. When I saw the upper lights go on, I turned around and saw Mr. Edwards at the switchboard, and, as I went up the aisle, he continued throwing on other switches for the remainder of the house.

30

Q. What upper lights do you mean?

A. Why, downstairs. They do not all go on at once. He has various switches he throws on, but I saw the balcony lights. Those are the only ones I can see from the

organ pit. I can tell by the reflection on the ceiling above me that the lights in the house are being lit, and I saw those lights, and that is why I stopped practicing.

Q. You went out?

A. I went out and spoke to Mr. Edwards on the way out.

Q. Where was he?

A. At the switchboard, putting on the rest of the lights. I saw the balcony lights as I came up the aisle. I could
10 see every part of the balcony from the lower part of the house.

CROSS-EXAMINATION, BY MR. WEELANS:

Q. Were you up in the balcony?

A. No.

Q. How do you remember this day so well?

A. Because I came back at two-thirty, or thereabouts, to play, and Mr. Edwards spoke to me about a lady having fallen upstairs, and I came back to go to work at
20 two-thirty o'clock. My assistant plays from one o'clock on, and I came back at two-thirty.

Q. Now, you say the lights in the whole house do not go on at once?

A. I presume not. They have different switches for different sets of lights. But the lights in the balcony I saw first, because they reflect on the seiling above the organ, and that is why I stopped practicing.

Q. Isn't the ceiling lighted above where the organ is?

A. No; the lights reflect up from the bowls alongside
30 the wall. It is a perfectly white ceiling, and has quite some reflection. There are lights which reflect on the ceiling which are not on the balcony, aren't on the wall, but they could reflect that high up; but the ones that make the most impression are way up higher, half-way up to the top of the building, in the balcony.

Q. The same ceiling that goes over the balcony goes over the rest of the house?

A. Yes, but there is no light near me to reflect on the ceiling, where I am. It would have to be a balcony light to do that, because the balcony intervenes between the lower floor lights and the lights that reflect on the balcony, on the ceiling. There are no lights on the ceiling; they all reflect from the walls. All the lights reflecting on that portion of the ceiling I see reflects from the balcony. Under that balcony they have the lower lights for the lower floor, but they could not possibly reflect upstairs, because the balcony itself intervenes. The roof of the balcony is the thing they reflect on. The lights in the balcony continue reflecting on up to the ceiling of the main portion of the theatre. 10

Q. There are no lights except the balcony?

A. Yes.

Q. How do they light?

A. They are in a little bowl or receptacle, but the power of the light would not be strong enough to go all the way up to that ceiling. It is higher than this room, I should think, from the floor of the main room to the top of the ceiling, where I sit. 20

RE-DIRECT EXAMINATION, BY MR. BESORE:

Q. There are lighting fixtures downstairs?

A. Oh, plenty of them, but they are so situated they could not shine on the ceiling. What I saw was reflected by the balcony lights, which were positively on, for I saw them.

Mr. Besore—That is all we have, except that by consent of counsel we should like to show the Court and Jury the theatre. 30

The Court—I do not think I can permit it in this case. It is impracticable in the first place, and in the second place it is not wise. It is a very rare exception that justifies it.

Mr. Besore—I realize it is in your Honor's discretion.

The Court—Yes, and apart from that, there are two many features attached to it.

ADELE VASTA, sworn for the plaintiff in rebuttal.

DIRECT EXAMINATION, BY MR. WEELANS:

Q. What is your business?

A. Attendance Officer of the Public Schools.

Q. You live in Trenton?

A. Yes, sir.

10 Q. Have you ever been in the balcony of the St. Regis Theatre when the lights were not on during the show?

A. Once.

Mr. Weelans—Cross-examine.

CROSS-EXAMINATION, BY MR. BESORE:

Q. When was that?

A. About three Saturdays ago.

Q. Were they on when you went in there?

A. No.

20 Q. They were off?

A. They were on downstairs, but not upstairs.

Q. They were not on in the balcony?

A. No. The show had not begun yet.

Q. The show had not begun?

A. No.

BY THE COURT:

Q. Were people being admitted into the balcony?

A. Yes. It was around two o'clock.

30

BY MR. BESORE:

Q. Did you get into the balcony?

A. I did.

Q. And there were no lights at all?

A. No.

Q. Were there lights on the stairway?

A. From downstairs you could see.

Q. Clear to the top of the stairway?

A. No.

Q. You could not see up the stairway at all?

A. Well, the first stairs up.

Q. The second flight was totally dark?

A. The last stairs.

Q. Were totally dark?

A. They were dark.

Q. How about that hallway on the second floor?

A. That was on.

Q. The last stairs were totally dark, and the balcony 10
was dark?

A. The balcony was dark, yes.

Q. It was entirely dark?

A. Yes.

Q. Did you go on in?

A. It was not entirely dark, on account of the reflection from downstairs. You could see a little bit.

Q. Could you see at all?

A. No; we had to take hold of the wall or seats, 20
you know.

Q. You stayed in there?

A. Yes.

Q. Then you got to a seat safely?

A. I took the first seat that we came to.

Q. You could see that?

A. No; we just felt the first seat, and waited there until the lights were up.

Q. When was that?

A. About three Saturdays ago.

Q. Did you tell anyone that there wasn't any lights 30
there? Did you notify anyone? When did the lights come on?

A. Well, I don't know. They came on when the picture was going on, when the picture started, or a little while before the picture started. But there was nobody

upstairs, not even the operators were upstairs, because we looked back, and it was all dark.

Q. Did you get a ticket?

A. Yes, bought the ticket, and there were many of us—

Q. Did somebody take them?

A. There was somebody in the office taking them.

Q. They took the money?

A. Yes.

10 Q. Do you know who it was, whether it was this gentleman here—(indicating)—who took the tickets?

A. I do not know who it was. I did not look.

BY THE COURT:

Q. Were there other people going in?

A. Yes, your Honor.

BY MR. BESORE:

Q. Now, you go into the main theatre, don't you?

20 A. Yes, sir.

Q. Was that lighted—

The Court—This is not cross-examination, Mr. Besore.

Mr. Besore—I think it is, your Honor.

The Court—No, it is not. She has simply been asked about the lights.

Mr. Besore—I want to find out how she could possibly get up there.

The Court—She said said felt her way?

30 Mr. Besore—She said she felt her way on the balcony by the seats.

The Court—And she said the outside stairway was lighted.

Q. Didn't I understand you to say the second stairway was not lighted at all?

A. The first part where you go in was lighted and

at the office upstairs it was lighted, that hallway, but not after that.

Q. And there were no lights upstairs?

A. No, sir.

Mr. Weelans—We rest.

Mr. Besore—I think I am entitled, on that examination, to put a witness on to rebut that testimony.

The Court—Oh, yes, certainly. If you have anything further in the way of testimony. 10

LEWIS EDWARDS, recalled for the defendant in sur-rebuttal.

DIRECT EXAMINATION, BY MR. BESORE:

Q. Mr. Edwards, do you remember the day to which the lady just preceding you testified?

A. I remember the Saturday, yes.

Q. Can you say whether or not that balcony and those stairs were lighted?

A. If anyone was given admission to the theatre, the lights were on. The entire lights are put on at once. 20

The Court—We won't go all over that again.

The only question that is involved here is as to that immediate time.

Q. On what switch are the lights on the upper stairs?

The Court—We went all over that before, Mr. Besore. He told us all about the switches in the theatre.

Mr. Besore—I do not think he told this.

The Court—Well, he did. I am not going over that again. 30

Mr. Besore—I am trying to show that the hallway or stairway, which the lady says was unlighted, and the stairway which she says was lighted are on one switch and all controlled by one switch.

The Court—Well, you may ask him that.

Q. On what switch are the lights on the upper stairway?

A. The lights on the upper stairway are controlled on the switchboard which controls the lights on the stairway, from top to bottom, and the hallway on the second floor also. The one switch controls all of the lights from top to bottom on the steps.

CROSS-EXAMINATION, BY MR. WEELANS:

10 Q. How about the balcony?

A. The balcony bowl lights are separate.

BY THE COURT:

Q. What are these different switches you have, or what are they for?

A. We have two switchboards, one on each side of the entrance.

Q. And how many circuits are there on that switchboard?

20 A. There are about eight on one and about fourteen on the other.

Q. And they all control lights?

A. Yes, sir.

Q. How many lights have you altogether in the building?

A. About forty lights.

Q. And you have something over twenty switches?

A. Yes.

Q. That is an average of about two lights to a switch?

30 A. Yes.

Q. Is that about what they run?

A. No; they run more than that. We have some other lights outside.

Q. On the inside?

A. On the inside they control about two or three per switch.

Q. How many lights are there on the stairs going up to the balcony from the outside?

A. Four.

Q. And how many on the inside in the balcony and on the platform?

A. The one on the platform is on the stair circuit.

Q. And what about the others?

A. And there are six others in the balcony that are not on that circuit.

Q. So if you turn the lights on on the outside, they 10
would not turn the lights on in the balcony, except one light, and that is the fifteen candle-power light?

A. Yes.

Q. Then what do you mean by saying you turn all the lights on in the balcony if you turn them on on the stairway? You said you could not turn them on unless you turned them on at once.

A. No; I said all the white bowl lights in the balcony are controlled from the one switch. The stairway lights are all controlled from the other switch.

20

Q. You were asked whether or not you could turn the lights on from the outside without also turning them on in the balcony?

A. Yes.

Q. And you answered "No".

A. I did not understand the question thoroughly then.
(Testimony closed).

Mr. Besore—I move for a direction of the verdict for the defendant on the same ground as for the motion to non-suit.

The Court—The motion will be denied, and an ex- 30
ception allowed.

(Counsel summed up.)

CHARGE.

The Court (Lloyd, J.) Gentlemen of the Jury—
 This plaintiff, according to the Doctor's testimony, had
 a broken breast-bone, which she says was very painful
 and kept her in a chair for eight weeks, and that it was
 considerable time before she could do her ordinary work;
 that she suffers from it at times; that she has to have
 somebody do her washing. If she is entitled to recover,
 10 you will also take into consideration the pain and the
 impairment of her own ability to do her work, insofar as
 they shall be represented by money, and assess damages
 accordingly.

The first question presented is whether she is entitled to
 recover. The defendants are the proprietors of a moving-
 picture place, to which people are invited to come and
 look at the pictures presented. In August, 1918, the
 plaintiff, by some means, slipped on a stairway in the
 defendants' theatre and the injuries that I just mentioned
 20 occurred. She is bringing this action upon the theory
 that the defendant failed in its duty to her.

The proprietor of a moving-picture company is ob-
 liged to use reasonable care to provide reasonable safety
 for those who come in and go out of the theatre. It is
 quite obvious that a moving-picture, other than those,
 perhaps, known as the daylight pictures, requires a degree
 of darkness, and, therefore, it is probable that the full
 broad daylight cannot be permitted to enter, nor can bril-
 liant lights be used in the building. If they were used,
 30 they would probably defeat the very object of those which
 are given. But the law, nevertheless, does exact of these
 places that they shall use reasonable care in the matter
 of lights, as the circumstances reasonably permit of.

The complaint in this case by the plaintiff is that she
 was invited to this theatre, paid her money to get in, and
 that when she got to the balcony it was so dark that she
 could not see her way at all, and fell into a stair area

when she reached the edge of it. There is testimony on both sides as to whether the lights were turned on at all in this section of the theatre. It seems there are some fixtures for lights in the balcony which reflect on the ceiling and make an indirect radiation of light, perhaps, to the floor, and the other parts of the balcony. There is another light at the head of the entrance, a white light, as it has been described. The plaintiff's contention is that these were not lighted; that the lights which were there were not lighted and that in consequence the place 10 was dark. She said she had never been there before; that her little children went in ahead of her; that they had been there before, and that she, in an endeavor to get to a seat, fell down these stairs.

Two questions are involved. One is whether there was a failure to supply a reasonable light, which under the circumstances the law requires. The second is whether the plaintiff was guilty of any negligence in doing what she did. The outside admittedly was lighted. She could not tell that the inside was not lighted, if it 20 was not, until she got there. It is for you to say whether she was obliged to turn around or to stand still until somebody should come and put her into a seat—whether that is the thing that reasonable prudence requires of people when they go into a place of entertainment. I am not sure that my experience is that they do that. Yours may be different. The object of the thing is to get in and get to a seat. They have a right to assume that the company that invites them there has complied with the requirements of law for their safety. Whether the plaintiff should 30 have done something she did not do, or whether she was negligent in attempting to move when she saw it was dark, is a question for you.

If the defendants' negligence, and that alone, was the cause of her fall, then you should give a verdict to her for such sum of money as shall be fairly compensatory for the injuries which she has received. If there was no

negligence on the part of the defendant, or if there was negligence on the part of the defendant and there was combined negligence on the part of the plaintiff, contributing to her own injury, then the law does absolve the defendant from liability.

- It is for you to say, under all circumstances, whether this place was as adequately lighted as reasonably could be done under all the circumstances, and whether the defendant was negligent of its duty in that regard. And,
 10 secondly, whether the plaintiff was guilty of any negligence in any act of commission or omission on her part.
 (The Jury retired.)

Mr. Besore—I want to take an exception to that portion of your Honor's charge in which you charged that the plaintiff had a right to assume, when she arrived at the balcony, that the defendant company had done everything that ought to be done in the way of lighting the theatre, on the ground that it was—

- 20 The Court—I said that the law required it to do.

Mr. Besore—Yes, what the law required it to do. On the ground that it was obviously dark.

I desire to except also to that portion of the charge in which the Court charged that it was a question for the Jury to determine whether the theatre was adequately lighted.

The Court—Note the exceptions.

POSTEA AND JUDGMENT.

(Filed December 2, 1919.)

This case was tried before Judge Frank T. Lloyd with a jury at the Mercer Circuit, on December 1, 1919.

The jury rendered a general verdict against the defendant and in favor of the plaintiff for five hundred dollars (\$500.00).

Whereupon it is adjudged that the plaintiff recover of the defendant the sum of five hundred dollars damages, and her costs, which have been taxed at the sum of fifty dollars and seventy-three cents, making in the whole the sum of five hundred and fifty dollars and seventy-three cents. 10

Judgment entered December 2, 1919.

W. S. GUMMERE, C. J.

Damages	\$500.00	
Costs	50.73	20
	\$550.73	

NEW JERSEY SUPREME COURT.

CLARA DONDERO,

Plaintiff,

vs.

TENANT MOTION PICTURE COM-
PANY,*Defendant.*

} Action at Law.

10

NOTICE OF APPEAL.

(Served Dec. 5, 1919.—Filed Dec. 9, 1919.)

20 Take notice, that the defendant hereby appeals from
the whole of the judgment entered in this cause.
Dated December 4, 1919.

SCAMMELL, BODINE & BESORE,

Attorneys of Defendant.

To GERAGHTY & WEELANS, ESQS.,

Attorneys of Plaintiff.

Trenton, N. J.

30

NEW JERSEY COURT OF ERRORS AND APPEALS.

CLARA DONDERO,

Plaintiff-Respondent,

vs.

TENANT MOTION PICTURE COM-
PANY,*Defendant-Appellant.*

} On Appeal.

10

 GROUNDS FOR APPEAL.

(Served Jan. 5, 1920.—Filed Jan. 5, 1920.)

To Geraghty & Weelans, Esq., Attorneys of the Plain- 20
tiff:Take notice, that the following are the grounds of the
appeal taken in the above-named cause:

1. The Court refused to non-suit the plaintiff, notwithstanding that the evidence showed that she contributed to the accident complained of by her negligence in attempting to find a seat in the balcony of the theatre while the same was in total darkness.

2. The Court refused to direct a verdict for the defendant notwithstanding that the evidence showed that the 30
plaintiff contributed to the accident complained of by her negligence in attempting to find a seat in the balcony of the theatre while the same was in total darkness.

3. The Court permitted the witness Allen to answer the question "Suppose a person has a breast-bone broken as Mrs. Dondero had her breast-bone broken, how long

do you suppose it would pain a person afterwards?"', over the defendant's objection.

4. The Court charged the jury that the plaintiff had a right to assume, when she arrived at the balcony, that the defendant, which had invited her there, had complied with the requirements of law for her safety, whereas the plaintiff's evidence showed that it was so dark that she must have been guilty of contributory negligence in attempting to find a seat.

10

Yours respectfully,

SCAMMELL, BODINE & BESORE,

Attorneys of Defendant-Appellant.

Dated January 5, 1920.

20

30

New Jersey Court of Errors and Appeals.

CLARA DONDERO, Plaintiff-Respondent, <i>vs.</i> TENANT MOTION PICTURE COM- PANY, Defendant-Appellant.	}	On Appeal from Supreme Court.
--	---	----------------------------------

Brief for Clara Dondero, Plaintiff-Respondent.

The defendant-appellant, at 142-144 East State Street, Trenton, New Jersey, maintains a moving picture theatre. Within the theatre is a balcony which is open for the use of patrons. About 2 P. M., August 19th, 1918, the plaintiff-respondent, who is a widow with five children, purchased tickets for the balcony of the theatre, and entered with three of her children. The plaintiff-respondent had never been in the balcony of the theatre before. She entered the balcony and found it in total darkness, there being no light there. There was no usher in the balcony. As she entered the balcony she fell at a point where there were stairs downward. She did not know the stairs were there, and fell on the first step, her body striking the back of a seat. As a result, her breast bone was broken and she was in bed for seven or eight weeks, and still feels pain from the effects of the fall. A gentleman, who was not employed by the theatre, came to her assistance and called for water and light. The lights in the

balcony were then turned on. The picture continued. The plaintiff-respondent was then assisted to her home by friends. She is not yet able to wash or to do housework because of the pain in her breast, and has to pay someone to do this work for her. The jury returned a verdict of \$500 for the plaintiff-respondent.

The reasons assigned by defendant-appellant for reversal are:

1. Refusal to non-suit because of contributory negligence.
- 10 2. Refusal to direct a verdict for defendant because of contributory negligence.
3. Because the court permitted Doctor Allen, an expert witness, to answer the question: "Suppose a person has a breast bone broken, as Mrs. Dondero had her breast bone broken, how long do you suppose it would pain a person afterward?"
4. Because the court charged the jury that plaintiff had a right to assume when she entered the balcony that the defendant, which had invited her there, had complied with the
- 20 requirement of law for her safety.

These reasons do not raise the question of defendant's negligence, which seems to be admitted.

ARGUMENT.

First Reason—The court's refusal to non-suit on grounds of contributory negligence was proper.

A motion for non-suit admits the truth of the plaintiff's evidence and of every inference of fact that can be legitimately drawn therefrom.

30 Fox *vs.* Great Atlantic and Pacific Tea Co., 84 N. J. L. 726.

On the testimony offered by the plaintiff-respondent, the jury might have found the following facts: That Mrs. Dondero purchased tickets from the defendant for seats in the balcony of the defendant's theatre (State of the Case, pages 8, 15, 29) at about 2 P. M., on August 19th, 1918 (case, page 8); that she went up the stairs from the outside light (case,

page 14) to the balcony (case, page 8). The balcony was in total darkness, there being no light of any kind (case, pages 9, 16, 17, 30). There was no usher in the balcony (case, pages 9, 17, 28, 30). She had never been there before (case, pages 9, 12, 30). After she reached the balcony she fell on the first step, inside the balcony (case, page 12). Her children had preceded her (case, page 13), and in the dark she did not know where they were (case, page 16). She did not know there were steps in the balcony (case, page 15), or whether it sloped (case, page 15). She saw no steps, and 10 fell on the first step inside the balcony (case, page 15). The balcony slopes, indicating an incline, but not indicating steps which were there (case, page 23). After she fell the lights in the balcony were turned on (case, pages 12, 13, 27, 30). The picture continued (case, page 28). The fall broke her breast bone (case, pages 8, 31). For eight weeks she was not able to move, and still has pain from it (case, page 10). She cannot yet do her own housework (case, page 11). She is a widow with five children (case, page 8). These facts were testified to by four disinterested witnesses besides the plaintiff 20 herself.

She had purchased tickets and was an invitee (*Seback vs. Plattdeutsche Volkfest Verein*, 64 N. J. L. 624). As such she could assume that defendant had carried out its duty of making the premises reasonably safe.

Cooper vs. Reinhardt, 91 N. J. L. 402; *Sefler vs. Vanderbeck & Sons*, 88 N. J. L. 636; *Deronet vs. Woolworth Co.*, 89 N. J. L. 669.

She came from the outside light into the dark balcony. The balcony sloped, so that she may have thought that there 30 were no steps and that it was a sloping aisle. There was no usher in the balcony, who she could expect would lead her; her children had gone on ahead of her; furthermore, she fell as soon as she got in the balcony, and before she could call for assistance. She could not go back because she fell as soon as she got in the balcony. In other words, before she realized she was in a dangerous place she fell; and, therefore, she could do nothing to avoid the danger.

Under these facts, plaintiff maintains that she was not guilty of contributory negligence, and, at least, it was a debatable question; and where there is doubt whether a person is guilty of negligence which contributed to his injury, the question is for the jury.

McLean vs. Erie R. R. Co., 40 Vroom 57; *Schram vs. Parker*, 72 N. J. L. 243.

In *Mahnken vs. Freeholders of Monmouth*, 62 N. J. L. 404, the plaintiff dismounted from her bicycle on a bridge in the daytime, and her foot went in a hole; and this court upheld the trial judge when he said on application for a non-suit: "Now, can the court say there is but one conclusion or opinion from the facts as to her want of care in alighting, and that it was clearly manifest that her carelessness directly contributed to the injury? I think, taking the evidence most favorable to the defendant's contention, the question is a debatable one, and if so, it must be submitted to the jury."

The same doctrine was followed in *Andre vs. Mertens*, 88 N. J. L. 626, where a woman, going down the unlighted steps from the balcony of a moving picture theatre, fell and was injured. Justice Trenchard, speaking for the court, says: "Of course, in passing upon motions to non-suit and for the direction of a verdict, the court cannot weigh the evidence, but must take as true all evidence which supports the view of the party against whom the motions are made, and must give her the benefit of all legitimate inferences which are to be drawn therefrom in her favor."

SECOND REASON.

The court's refusal to direct a verdict on the grounds of contributory negligence was proper.

The argument under the first reason above, namely, application for non-suit on grounds of contributory negligence, also applies to this reason. The jury could find at this time the same facts as stated on page 2 of this brief. The defendant endeavored to prove that the balcony was lighted, but the plaintiff showed that at other times the balcony had

been in total darkness (case, pages 70, 71), and that on the day in question the man whose duty it was to pull the switches to turn on the light must have failed to turn on the switch for the balcony. The balcony was on a different switch from the lower floor and the stairs (case, page 74). Defendant admitted that there was no usher in the balcony that afternoon (case, page 53), although they had an usher at night (case, page 53). No testimony was offered by the defendant as to any actions of Mrs. Dondero, the plaintiff, except that she fell.

10

In *Pesin vs. Jugovich*, 85 N. J. L. 256, where the plaintiff fell on the unlighted steps of a tenement-house, this court held that where fair-minded men might honestly differ as to whether conduct of the plaintiff was such as an ordinary prudent person would have pursued under the conditions existing at the time he was called upon to act, it cannot be said as a matter of law that he was guilty of contributory negligence:

Andre vs. Mertens, 88 N. J. L. 626.

Even where a person could see, but does not look, it is a 20 question for the jury.

Kelly vs. Lembeck & Betz Eagle Brewing Co., 86 N. J. L. 471 (affirmed, 87 N. J. L. 696); *Durant vs. Palmer*, 29 N. J. L. 544; *Houston vs. Traphagen*, 47 N. J. L. 23.

In its brief defendant-appellant gives at length what he terms the description of the locus in quo, which, he says, is given in part by defendant's witnesses, arguing that Mrs. Dondero had to take about two steps in the balcony before she fell. In this argument, however, defendant overlooks the 30 fact that the plaintiff testified that she fell as soon as she got in the dark balcony, which evidence contradicts that of the defendant, and which evidence the jury had a right to believe; this certainly made it a question of fact for the jury. In other words, she did not fall while groping in the dark for a seat; she fell as soon as she got in the dark balcony, and before she could do anything to prevent it. Defendant in its brief cites *Gillespie vs. Ferguson*, 78 N. J. L. 470, and

Dwyer *vs.* N. Y., L. E. & W. R. R. Co., 47 N. J. L. 9, cases where plaintiff went into known danger and compares them with the case at bar. We submit that an invitee in the balcony of a theatre cannot be said to be approaching a known danger, and therefore these cases are not in point here. Defendant also cites Saunders *vs.* The Smith Realty Co., 84 N. J. L. 206, where the court held that plaintiff could have taken two courses and chose the dangerous one. In the case at bar there was only one balcony and plaintiff was invited into it
 10 by defendant: there is no question of choice of ways. The only choice exercised by the plaintiff was when she decided to enter the theatre, and when entering a theatre one does not ordinarily regard it as entering a place of danger.

Defendant in its brief endeavors to distinguish the case of Andre *vs.* Mertens, 88 N. J. L. 626, from the case at bar, saying that in the Andre case the plaintiff had gone up the stairs and presumed she could go down. However, in the Andre case the plaintiff was mistaken: the way she thought safe, was dangerous; otherwise, she would not have fallen.
 20 So, in the case at bar, the plaintiff thought it was safe to go into the balcony where she was invited. Defendant explains Kargman *vs.* Carlo, 85 N. J. L. 632, by saying that there a friend preceded plaintiff and that, the court held, showed sufficient care. Defendant overlooked the fact that in the case at bar plaintiff's children preceded her, making it parallel and exactly in point with the Kargman case. Defendant attempts to distinguish Pesin *vs.* Jagovich, 85 N. J. L. 256, by quoting the court where it says that plaintiff might have been well on his way up the stairs before he noticed lack
 30 of light. Defendant in his brief overlooks the fact that as soon as plaintiff in the case at bar realized the lack of light she fell, making the case exactly like Pesin *vs.* Jagovich.

And in Sefler *vs.* Vanderbeck & Sons, 88 N. J. L. 636, on page 637, this court says: "Of course, in passing upon a motion for a directed verdict, the court cannot weigh the evidence, but is bound to concede to be true all evidence which supports the view of the party against whom the motion is made, and must give him the benefit of all legitimate inferences which are to be drawn in his favor."

Certainly, in view of the fact that the plaintiff produced disinterested witnesses on all the questions involved, while the defendant produced only interested witnesses, it would appear that there was a question of fact, and that it was properly left to the jury:

McLean vs. Erie R. R. Co., 40 Vroom 57; *Schramm vs. Parker*, 72 N. J. L. 243.

THIRD REASON.

The question asked Dr. Allen, "Suppose a person has a breast bone broken, as Mrs. Dondero had her breast bone broken, how long do you suppose it would pain a person afterward?" was proper.

This question is not argued in defendant-appellant's brief; we therefore presume that it is abandoned.

It was admitted that Dr. Allen was a physician and an expert witness (page 32). Therefore, a hypothetical question could be asked.

Daggett vs. North Jersey St. Ry. Co., 75 N. J. L. 630.

Dr. Allen had already testified that Mrs. Dondero's breast bone was broken (page 31 of the State of the Case). Therefore, the question merely assumes facts which the testimony had proved, and which facts were not denied by defendant.

Cottrell vs. Fontain, 80 N. J. L. 1 (page 3).

Expert witnesses are allowed to give opinions based on their personal knowledge. Dr. Allen had treated Mrs. Dondero when she was injured (page 32). "This is seen every day in our trial courts in actions for damages for physical injuries, where the physician who has attended upon the plaintiff is allowed to give his opinion as to the duration and probable extent of the injuries complained of."

Thompson on Trials, Vol. 1, page 565, para. 589;
Consolidated Traction Co. vs. Lamberton, 59 N. J. L. 297.

The question was hypothetically stated or stated and so proved as to resemble as near as may be the case under consideration.

Woodbury *vs.* Obear, 7 Gray (Mass.) 467; U. S. *vs.* McGlue, 1 Curt. (U. S.) 1; Guiterman *vs.* Liverpool Steamship Co., 83 N. Y. 358.

Whether the facts are all proved upon which the hypothetical question is based is a question not for the court, but for the jury.

- 10 Commonwealth *vs.* Tucker, 189 Mass. 457; Navi
 vs. Tucker, 70 Ind. 15, 18; Filer *vs.* N. Y. R. R.
 Co., 49 N. Y. 42, 46; Re Boiker's Estate, 63 Conn.
 393.

Furthermore, the doctor's answer to the question was:

"It would depend on the individual. Some individuals' fractures will unite sooner than others, and as soon as you get a perfect union of the fracture, naturally you get an abating of pain. As long as the ends of the fracture are allowed to move, you would naturally get pain from it."

- 20 The admission of this question in no way prejudiced the
 defendant's cause; therefore, the question of its competency
 for any purpose is unimportant.

Price *vs.* The Inhabitants of Plainfield, 40 N. J.
 L. 608 (612); Gottlieb *vs.* N. Jersey St. R. R. Co.,
 72 N. J. L. 480 (page 485).

FOURTH REASON.

The judge charged the jury that the plaintiff had a right to assume when she arrived at the balcony that the defendant, which had invited her there, had complied with the
 30 requirements of law for her safety.

There was no error in this statement. Earlier in the charge, the judge had explained what was meant by "the requirements of law for her safety." When he said (page 76, State of the Case, line 22): "The proprietor of a moving picture company is obliged to use reasonable care

to provide reasonable safety for those who come and go out of the theatre."

The judge also charged (case, page 77): "Two questions are involved. The second is whether the plaintiff was guilty of any negligence in doing what she did. The outside was admittedly lighted. She could not tell that the inside was not lighted, if it was not, until she got there. It is for you to say whether she was obliged to turn around or to stand still until somebody should come and put her into a seat; whether that is the thing that reasonable prudence requires of people when they go into a place of entertainment." "Whether the plaintiff should have done something she did not do, or whether she was negligent in attempting to move when she saw it was dark, is a question for you." "It is for you to say secondly whether the plaintiff was guilty of any negligence in any act of commission or omission on her part."

On his argument that the judge's charge is wrong, defendant in its brief says, "Had she fallen, as she said she did, immediately on reaching the top of the stairs, the court's charge might have been correct, for there the danger would have presented itself without warning, but the evidence (defendant's) shows, etc." Here appears the fallacy of the defendant's whole argument, which is namely this: The judge and jury should have believed the defendant's testimony and disbelieved the plaintiff's. It is submitted that this is the province of the jury, and the judge in his charge cannot decide for the jury whose testimony is to be believed. The judge's charge is based on all the evidence, not on the evidence of one party alone.

The judge also charged, "The complaint in this case by the plaintiff is that she was invited to the theatre, paid money to get in." That she paid money to get in the theatre, is not denied. On pages 15 and 18 of the State of the Case, plaintiff testifies that she bought tickets. This makes her an invitee.

Sebeck vs. Plattdeutsch Volkfest Verein, 64 N. J. L. 624.

The rule applicable is that the owner or occupier of lands, who by invitation, express or implied, induces persons to come upon his premises for a given purpose is under a duty to exercise ordinary care to render the premises reasonably safe.

McCracken vs. Meyers, 75 N. J. L. 935; *Sefler vs. Vanderbeck & Sons*, 88 N. J. L. 636; *Phillips vs. Library Co.*, 55 N. J. L. 307; *Nolan vs. Bridgeton & Millville Traction Co.*, 74 N. J. L. 559.

10 In *Durant vs. Palmer*, 29 N. J. L. 544, on page 546, this court held that ordinary care was that degree of care which may be reasonably expected from a person in the plaintiff's situation, and which is synonymous with reasonable care.

These rules were correctly stated by the court in the case at bar. Certainly that the plaintiff had a right to presume that defendant had carried out its duty toward her, there can be no doubt. Otherwise, the defendant might with impunity maintain a death-trap if he saw fit and no one could recover from him. In the defendant's reason for
20 reversal, he says that he excepts to the charge that plaintiff had a right to assume that defendant had complied with the law for her safety, and defendant's objection to this is that the balcony was so dark that it was negligence for the plaintiff to enter it. In other words, that defendant maintained a theatre for profit and invited the public into the balcony, but if anyone went into the balcony he was guilty of contributory negligence ipso facto. In other words, the defendant would have a sort of blanket defense against actions by anybody who went into the balcony. By this
30 method the defendant would benefit by his own wrong, which is contrary to all law.

The defendant's duty to the plaintiff, and plaintiff's responsibility to use care for her own protection, are two separate matters. There was conflicting evidence on both points, so they were for the jury.

Mahnken vs. Freeholders of Monmouth, 62 N. J. L. 404.

The owner of a place of entertainment is charged with an affirmative positive obligation to know that the premises are safe for the public use (*Lusk vs. Peck*, 116 N. Y. Supp. 1051; *Aff.* 199 N. Y. 546), and he impliedly warrants the premises to be reasonably safe for the purpose for which they are designed (*Thompson vs. Lowell R. R.*, 170 Mass. 577).

Deronet vs. Woolworth Co., 89 N. J. L. 669;
Spicer vs. Boice, 66 N. J. L. 434; *Klapproth vs. Baltice Pier & Pavilion Co.*, 43 Atl. 981 (N. J.); 10
Cooper vs. Reinhardt, 91 N. J. L. 402.

In *Andre vs. Mertens*, 88 N. J. L. 626 (page 628), Justice Trenchard speaking for this court says, on this point: "The proprietor of a theatre conducted for reward or profit, to which the general public are invited to attend performances, must use ordinary care to make the premises as reasonably safe as is consistent with the practical operation of the theatre, and if he fails in this duty, he may be held liable for personal injuries occasioned thereby; and this rule applies to the proprietor of a moving picture show." 20

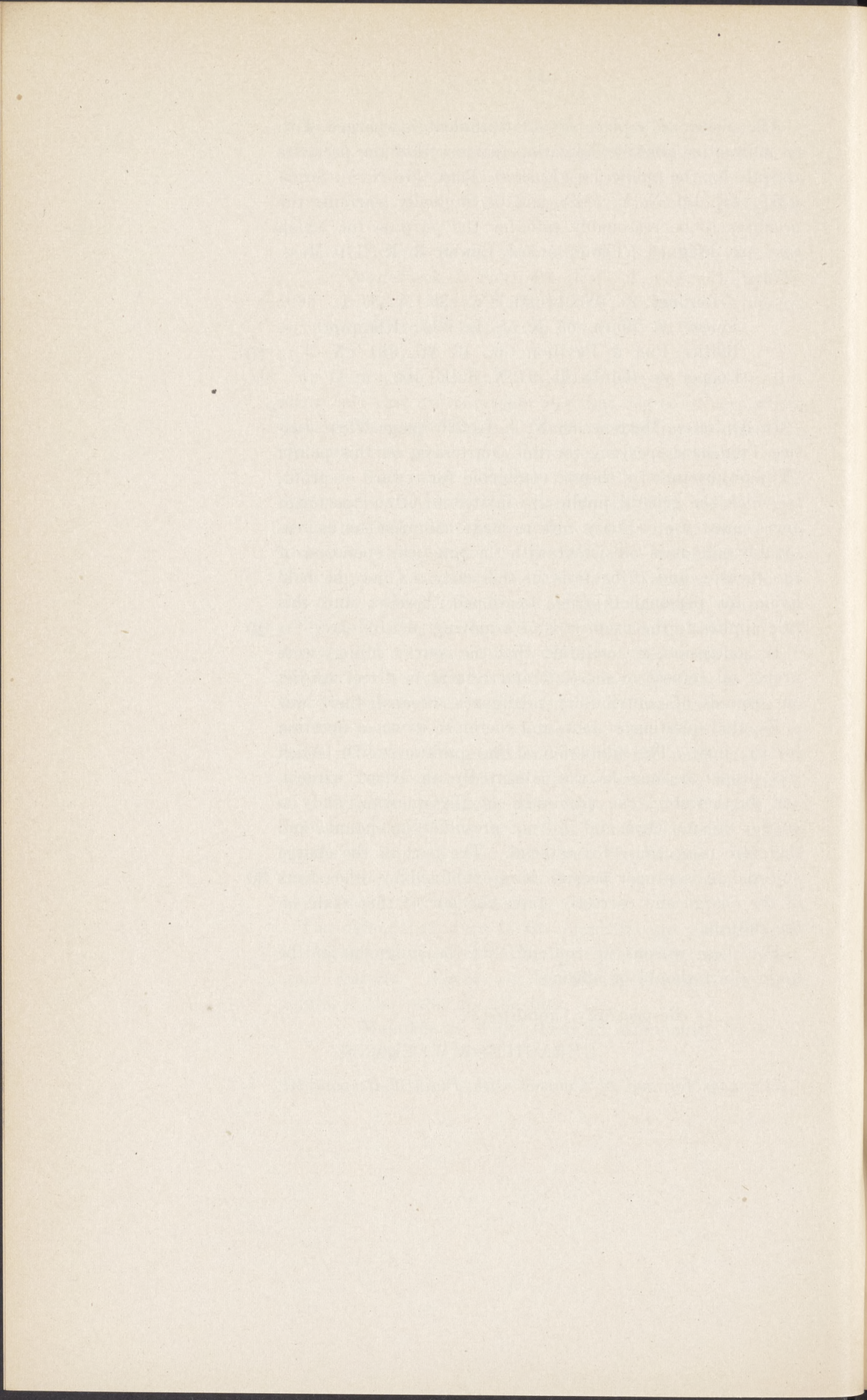
In conclusion, we maintain that the court's rulings were proper on refusal to non-suit and refusal to direct verdict on grounds of contributory negligence, because there was a disputed question of fact, and therefore it was a question for the jury. The admission of the question to Dr. Allen was proper because he was admittedly an expert witness, and furthermore, the admission of the question and its answer did no harm and did not prejudice defendant; and therefore is no cause for reversal. The part of the charge objected to is proper because it is explained by other facts 30 of the charge and correctly states the law of this State on the subject.

For these reasons we contend that the judgment of the lower court should be affirmed.

Respectfully submitted,

GERAGHTY & WEELANS,

Attorneys for and of Counsel with Plaintiff-Respondent.



New Jersey Court of Errors and Appeals

CLARA DONDERO,

Plaintiff-Respondent,

VS.

TENANT MOTION PICTURE
COMPANY,

Defendant-Appellant.

On Appeal From
the Supreme Court.

BRIEF OF TENANT MOTION PICTURE COMPANY, DEFENDANT-APPELLANT.

This is a suit brought by Clara Dondero, the plaintiff below, to recover damages for personal injuries received from a fall alleged to have occurred in balcony of the St. Regis Theatre, a motion picture theatre operated by the defendant below, in the City of Trenton. The negligence alleged was the failure of the defendant to light its balcony and the plaintiff was alleged to have fallen while attempting to find a seat.

The defenses set up were: (1) denial of the negligence alleged (to wit: that the balcony was in darkness); and (2) that the plaintiff was guilty of contributory negligence in attempting to find a seat in a balcony totally dark.

The case was tried before Judge Lloyd and a jury at the Mercer Circuit. At the conclusion of the plaintiff's case, motion was made for a nonsuit on the ground that the testimony showed contributory negligence on the part of the plaintiff and the motion was denied. A motion for a verdict for the defendant was made at the conclusion of the defendant's case on the same grounds, which

was also denied and a verdict for \$500.00 in favor of the plaintiff was rendered by the jury.

Reversal of the judgment is urged upon two grounds:

1. Because the Court refused to nonsuit or direct a verdict for the defendant, notwithstanding that the evidence showed that the plaintiff contributed to the accident complained of by her negligence in attempting to find a seat in the balcony of the theatre while the same was in total darkness.

2. Because the Court charged the jury that the plaintiff had a right to assume when she arrived at the balcony that the defendant, which had invited her there, had complied with the requirements of law for her safety, whereas, plaintiff's evidence showed that it was so dark that she must have been guilty of contributory negligence in attempting to find a seat.

Of both of these grounds the gist is the same, namely, that under the testimony a reasonable and prudent person would not have attempted to find a seat in the balcony in the state of darkness alleged to have existed there at the time of the accident and that the plaintiff's negligence in so doing was so clear that reasonable men could not differ as to whether or not her conduct was negligent.

STATEMENT OF FACTS.

The plaintiff in her own testimony alleged that on August 19, 1918, she went to the St. Regis Theatre between half past two and three o'clock accompanied by her three children (Case, p. 8), purchased tickets for the balcony of the theatre, ascended the stairway leading to the balcony which was lighted, and arriving at the balcony found it in entire darkness, not even a picture being shown at the time (Case, p. 9). She tes-

tified that when she reached the top of the stairs leading into the balcony she was unable to see anything (Case, p. 11), and although she afterwards discovered that there were other people in the balcony at the time, she was unable to see them then (Case, p. 11). She had never been in that balcony before (Case, p. 12). She knew that some moving picture theatre balconies had steps down the aisles. Her children went into the balcony ahead of her. They were acquainted with the balcony. She followed the children in darkness so dense that she could not see where they had gone, and in attempting to find a seat fell down the stairs of the balcony aisle and was injured (Case, p. 16).

The testimony of the other witnesses produced by the plaintiff tended to corroborate the plaintiff's story of the darkness of the balcony but from them and the defendant's witnesses a description of the *locus in quo* was adduced substantially as follows:

The front of the theatre is on the northerly side of State Street and the theatre faces the south. The pictures are shown on the northerly wall of the theatre and the balcony faces the north. It is reached by two stairways built along the westerly and easterly sides of the building respectively, and the stairway by which the plaintiff reached the balcony was the one along the easterly wall. This stairway enters the balcony from the south, that is to say, a person walking up the stairway will face the north on reaching the top of the stairs. Immediately in front of the opening of the stairway in the balcony is a platform about four feet wide and immediately in front of it are four seats, the backs of which form in effect a railing for this platform. This platform is the easterly end of a transverse aisle which runs through the balcony from the east to the west and from it run two aisles to the front of the balcony, that is in a northerly direction. On these longitudinal aisles are the stairs, the transverse aisle being on one level. The longitudinal

aisle nearest to the easterly stairway runs to the west of the four seats above mentioned and its easterly edge is about opposite the westerly edge of the stairway by which the balcony is approached. There is then at the head of the stairs by which the plaintiff approached the balcony a platform four feet wide, that is, from south to north, railed on the north with the backs of four seats and the width of four seats from east to west. The plaintiff entered the balcony by this easterly stairway and when found had fallen down the first step of the easterly longitudinal aisle which begins opposite the four seats above mentioned. She was found on the side of this aisle farthest away from the entrance stairway, the aisle being approximately four feet wide.

In order for the plaintiff to have fallen where she did, it was necessary for her to enter the balcony from the stairway and walk along the level transverse aisle four or five steps, in order to come opposite to the step on which she fell, and as she fell against the seat on the opposite side of this longitudinal aisle she cannot have fallen until she had walked at least to the middle of the aisle. She must have walked the width of the transverse aisle and approximately the distance between the middle of the stairway and the middle of the longitudinal aisle in the dark.

ARGUMENT.

Point 1. It is respectfully submitted that a nonsuit should have been ordered or a verdict for the defendant directed because of the contributory negligence of the plaintiff.

As above stated it was shown that the plaintiff after buying her ticket, approached the balcony by the easterly stairway, which brought her on to the balcony facing the north. The stairway was lighted. According to the testimony the balcony was in total darkness.

The description of the *locus in quo* is not denied. In order that she might fall at the place where she did fall, it was necessary for her to walk four or five steps into the darkness. She says that she tried to find a seat and the complaint so alleges. The gravamen of plaintiff's negligence was not faulty construction of the balcony but failure to light. No testimony was adduced showing that the balcony was constructed in a dangerous manner, nor is there any such allegation in the complaint.

Unquestionably the defendant in operating a motion picture theatre was held to a high degree of care toward those visiting its place of business, by its invitation and for hire. If, as the plaintiff alleges, the defendant failed to light the balcony on the occasion in question, it cannot be denied that this constituted negligence on the defendant's part, but the defendant was not an insurer and not obligated by law to pay the consequences of the plaintiff's walking into an obvious or highly probable danger.

She says she was unacquainted with this balcony but knew that steps were frequently to be found in balconies. It must certainly have been apparent to her when she first came into the balcony that attempting to find a seat was likely to be dangerous. She says that her children went on into the balcony and she could not see where they went. She says, "You could not see a thing." "Up to the top floor where the balconies were, just as soon as you strike the top floor you could not see a thing before you." Now it is true that she also says: "I lost my balance and fell the moment I got up there," but the description of the *locus in quo* given by the other witnesses, who had been there, is submitted to show the impossibility of the truth of this statement.

The following quotation from Cyc. quoted with approval by this Court in *Gillespie v. Ferguson Company*, 78 N. J. L. p. 470, is submitted to be dispositive of this case, namely,

"So where the injured person goes into a strange place

in the dark, without using ordinary care to discover danger, is guilty of contributory negligence." 29 Cyc. p. 514.

Can it be said that this woman who plunged into the dark to find a seat used ordinary care, when she says in answer to the question: "Q. You thought it might be flat?" "A. I didn't know what it was up there because I was never there before," and when asked, "Q. You knew that some balconies did slant?" "A. Yes, some have steps, I didn't know what that had." (Case, p. 15.)

In *Gillespie v. Ferguson Company*, 78 N. J. L. p. 470, above referred to, the plaintiff was hurt in walking out of a doorway into the dark and falling into a pit. The Court, without deciding the degree of care which the defendant owed the plaintiff, held that the plaintiff was guilty of contributory negligence, saying, "To render the defendants liable for injuries to the plaintiff, the latter must have exercised reasonable care, that is, such care as an ordinary prudent person might exercise under the same or similar circumstances," and decides the case on the quotation from Cyc. above set forth.

In *Dwyer v. N. Y., L. E. and W. Railroad Company*, 47 N. J. L. p. 9, plaintiff was injured by being caught in a dense crowd alighting from a ferry boat, and Chief Justice Beasley, speaking for the Supreme Court, held him guilty of contributory negligence in voluntarily putting himself into so dense a crowd. The following picturesque language used in that opinion is submitted to be as well applicable to the case at law. "A man's eyes are the sentinels that usually warn him of the approach of danger, and if he chooses to abandon them it is the general rule of law that he does so at his own cost."

The plaintiff here, confronted by a state of impenetrable darkness enveloping a balcony of a theatre with which she was unacquainted but having a general knowledge of the construction of balconies and knowing that

just such danger was likely to lurk in it, chose to grope blindly in the darkness to obtain a seat without any knowledge of the location of the seats, the aisles, the steps or any of the customary guides in making one's way through such a place. Certainly the degree of care required of the defendant was no greater than that required of the Railway Company in the Dwyer case and the degree of care required of the plaintiff in the case at bar should be no less than that required of the plaintiff in that case.

It is submitted that the rule applied to dangers which might be reasonably anticipated should not differ from the rule applied to known dangers.

In *Saunders v. The Smith Realty Company*, 84 N. J. Law, page 206, 86 Atl. Rep. 404, the defendant, the owner of an office building in Paterson, was sued by an employee of a tenant who was in the habit of dumping the tenant's refuse in certain portions of the cellar. It appeared that while coming through the cellar after depositing some rubbish in the rear part, he stumbled upon the steps and falling caught his hand in the elevator machinery and was injured. The testimony showed that the cellar was in total darkness and the Court held that no necessity was shown for his coming through the cellar. Being acquainted with the cellar he knew its dangers and was held culpably negligent. He was not placed in any position where he had to take this chance and consequently could not recover.

It is respectfully submitted that the case of *Andre v. Mertens*, 88 N. J. Law 626, and the cases of *Kargman v. Carlo*, 85 N. J. L. 632, and *Pesin v. Jugovich*, 85 N. J. L. 256, are distinguishable from the case at bar.

In *Andre v. Mertens*, *supra*, the plaintiff purchased a ticket for the balcony of a moving picture theatre. Upon coming to the stairway she found it unlighted but ascended in safety and the balcony being lighted, took her seat in safety. Later desiring to leave the theatre she at-

tempted to leave by the unlighted stairway and in so doing fell and was injured. In dealing with the question of contributory negligence the Court said that it was open to the jury to find from the evidence that the stairway was the only means of exit and that there was no usher there to whom she could apply to make a light, that she had used the stairway before when it was lighted, that she took hold of the handrail and proceeded carefully and slowly and on these considerations absolved her from contributory negligence.

Now in that case the plaintiff was already in the balcony, she must descend in some manner, she knew the *locus in quo*, it was not necessarily of a dangerous nature, there was a handrail and some opportunity to take unusual precautions. She cannot be said to have voluntarily walked into an evident danger for her examination evidently had convinced her that there was no danger. In the case at bar, however, the plaintiff being in a perfectly safe position with no necessity to take her seat immediately knowing that a danger might lurk in the dark and being utterly unable to distinguish any object, voluntarily walked into the darkness and made her way from a place of safety to a place of danger without any idea where she was going. She had only to stay where she was or return by the stairway to remain in perfect safety.

In *Kargman v. Carlo*, 85 N. J. L. 632, the defendant was the owner of a tenement house required by law to keep certain lights burning in the hallways. The plaintiff was a visitor of one of the tenants, who was injured in descending a stairway in the house, which was unlighted. In absolving her from contributory negligence the Court pointed out that in descending the stairs she was accompanied by a brother of the tenant who was familiar with them and preceded her in the descent and that the evidence tended to show that she proceeded carefully and that whether her conduct in using the unlighted stairway under these circumstances was such as an ordinarily pru-

dent person would have pursued, was a matter about which fair-minded men might honestly differ, and therefore a question for the jury. There again it will be noted that she was at the top of the stairs and had to go down and no other possible method of going down was shown to exist.

In *Pesin v. Jugovich*, 85 N. J. L. 256, the plaintiff was the driver of a mineral water wagon who was injured while attempting to deliver a box of soda water to a tenant on the top floor of a tenement house. The halls were unlighted and in descending the top flight of stairs he fell in the darkness and was injured. In discussing the question of contributory negligence the Court said that the plaintiff was familiar with the stairs and that there were windows at each floor and it might well be that he was well advanced upon the stairs before he noticed the absence of light; he had upon his shoulders a box weighing 80 pounds, his team was standing outside in the snow and his clothing had been wet through by the snow; he had no matches to make a light and no person was there to make one for him and concluded that the question of his negligence was one about which fair-minded men might honestly differ.

It is respectfully submitted that all of the elements which were present in each of these cases and upon which the Court rested its decision that contributory negligence as a matter of law could not be found, are missing in the case at bar.

Here the plaintiff arrives at the top of a lighted stairway and is confronted with a balcony totally dark, so dark that she cannot tell whether people are in it or not. She knows that in moving picture theatres there frequently are steps and sloping aisles. She is entirely ignorant of the lay-out of the balcony before her. Without a moment's thought apparently, she starts out to seek a seat in the total darkness and in so doing necessarily must have turned to her left and have taken three or four steps be-

fore she fell. It will be remembered that the negligence of the defendant alleged is not in the construction of its building, but in its failure to light its balcony.

It is respectfully submitted that fair-minded men cannot honestly differ as to the conduct of this woman but all must conclude that a reasonable and prudent person confronted by such a situation would either have remained where she was or gone back by the stairway for assistance.

The test is submitted to be—

Would you, upon entering the balcony of a strange theatre, so dark that no object was discernible, attempt to find a seat having no knowledge of the layout of the balcony, the location of the seats, the aisles or the stairways?

Can such an attempt then be termed reasonably prudent conduct?

Point 2. It is respectfully submitted that the charge of the Court to the jury that the plaintiff had a right to assume when she arrived at the balcony that the defendant which had invited her there, had complied with the requirements of law for her safety, was erroneous because the undisputed evidence showed, according to her case, that the balcony was so dark that she could not see anything whatever.

It is submitted that the vice of this portion of the charge is that it places on the defendant the whole duty, leaving to the plaintiff the right to assume an improbable, if not impossible, thing.

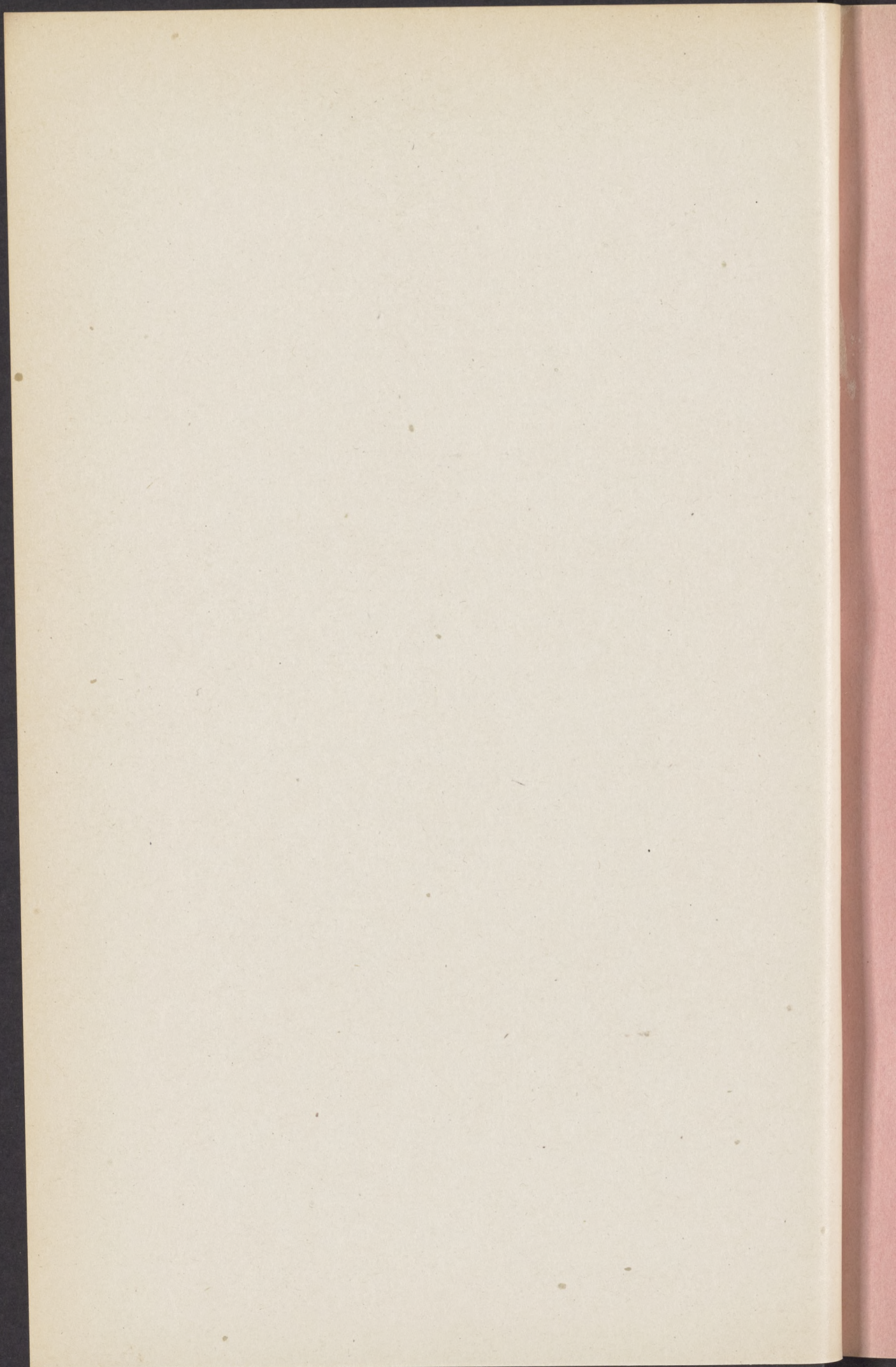
The plaintiff was confronted by a state of total darkness on entering the balcony. Granted that it was the defendant's duty to light the balcony, it was perfectly apparent to the plaintiff that it was unlighted. No picture was running and so far as she was able to see no one

was in the balcony. Can the minds of reasonable men differ as to the fact that a reasonable and prudent person would have realized at once that something was wrong, that "The defendant which had invited her there had not complied with the requirements of law for her safety," and that her own safety dictated that she should not press forward when she had no knowledge of the plan of the portion of the building in which she was? Had she fallen, as she says she did, immediately upon reaching the top of the stairs, the Court's charge might have been a correct statement of the law, for there the danger would have presented itself without warning, but the evidence as to the plan of the balcony, shows that this is manifestly impossible; she must have taken a number of steps before she fell.

It is respectfully submitted that in proceeding into the darkness in search of a seat she violated the duty imposed upon her by law, that of exercising prudence and care in a place of probable danger and was guilty of contributory negligence.

On the foregoing grounds a reversal of the judgment is respectfully urged.

Respectfully submitted,
 SCAMMELL, BODINE & BESORE,
*Attorneys for the Defendant-Appellant,
 and of Counsel.*



rd Southern Ro

On the

History of the

100