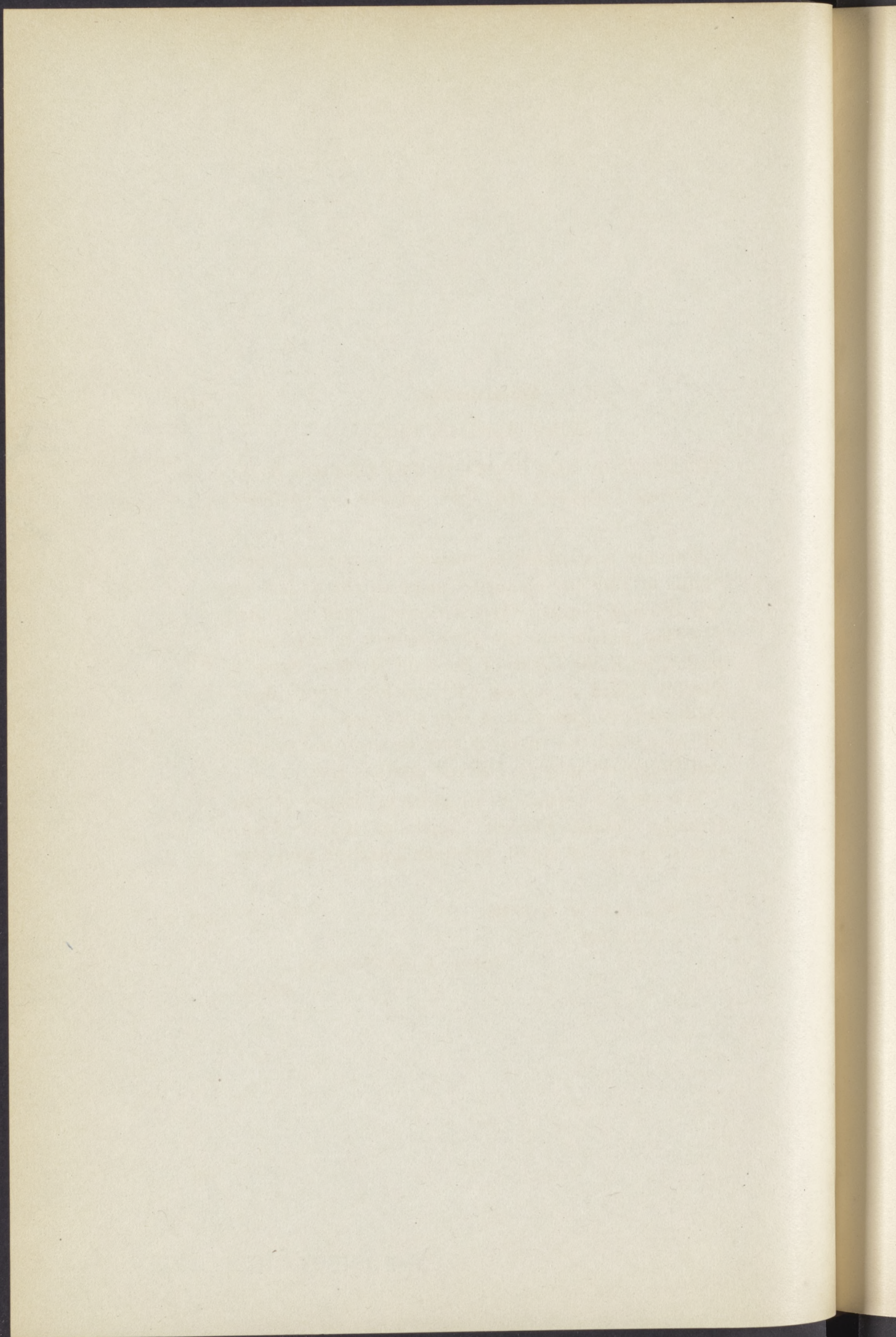


INDEX.

	PAGE.
Summons	1
Complaint	2
Answer	5
Reply	7
Notice	8
Opinion	9
Order	12
Notice of Appeal and Reasons	13



Summons.

10

(Filed April 18, 1916.)

THE STATE OF NEW JERSEY TO THE CENTRAL RAIL-
ROAD COMPANY OF NEW JERSEY, a corpora-
tion:—

You are summoned to answer the annexed com-
plaint of EDWARD GRABERT, in an action at law in
the Hudson County Circuit Court. And take no-
tice that unless you file your answer to said com-
plaint, with the Clerk of the said Hudson County
Circuit Court, at Jersey City, within twenty days
after service upon you of this writ and the annex-
ed complaint, the plaintiff may proceed in the suit
and judgment may be entered against you.

20

WITNESS, LUTHER A. CAMPBELL, Judge of the
Hudson County Circuit Court, at Jersey City,
this 17th day of April, nineteen hundred and six-
teen.

WILLIAM D. SALTER,
Attorney.

30

JOHN J. MCGOVERN,
Clerk.

40

Complaint.
(Filed May 8, 1916.)
HUDSON COUNTY CIRCUIT COURT.

	<p style="text-align: center;">EDWARD GRABERT, <i>Plaintiff,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, a corporation. <i>Defendants.</i></p>	<p style="text-align: center;">Action at Law.</p>
10		

Plaintiff, residing at No. 128 A, West 51st Street, Bayonne, New Jersey, complains of the defendant and says that:

FIRST COUNT.

- 20 1. Defendant is and on February 17th, 1910, was a corporation of New Jersey;
- 30 2. On said date, plaintiff was employed by defendant as a machinist's apprentice, at the machine shops operated by the defendant at Elizabethport, Union County, in said state, and it became and was the duty of the defendant to provide plaintiff, while so employed, at the time and place aforesaid, with a reasonably safe place for the plaintiff to work in, and to provide him with proper tools, appliances and machinery, reasonably safe, for the use of the plaintiff, in the performance of the work required of him by the defendant in the course of his said employment, and to use reasonable care to warn and protect the plaintiff against the dangers which it should have reasonably anticipated, existed, in the use of the tools, appliances and machinery with which plaintiff was required to work, in the course of his

Complaint.

said employment, and to use reasonable care to properly guard the machinery with which the plaintiff was required to work, in the course of his employment, so as to protect the plaintiff against the dangers existing therein;

3. The defendant did not, at the time and place aforesaid, provide plaintiff with a reasonably safe place for him to work in, and to provide him with proper tools, appliances and machinery, reasonably safe, for the use of the plaintiff, in the performance of the work required of him by the defendant in the course of his employment, and did not use reasonable care to warn and protect plaintiff against the dangers which it should have reasonably anticipated, existed, in the use of the tools, appliances and machinery, with which plaintiff was required to work, and did not use reasonable care to properly guard the machinery with which plaintiff was required to work, in the course of the employment, so as to protect plaintiff against the dangers existing therein, by reason whereof the left hand of plaintiff, while so employed, became caught in the gears of a lathe then and there being operated by the plaintiff, then and there being driven at great speed by steam power, which said gears were not in any manner enclosed or guarded, so that the fingers of the left hand of the plaintiff were so mangled and cut that the plaintiff suffered a permanent injury, and the loss of the first two phalanges of the first finger of the left hand, and the loss of the first phalange of the second finger of his said hand, and other severe permanent, internal and external injuries, were then and there, by reason thereof, inflicted upon him;

4. The plaintiff, at the time he sustained the injury aforesaid, was 17 years of age and became of full age on May 22nd, 1914;

Complaint.

5. By reason of the loss of the said phalanges of the fingers of the left hand of the plaintiff, he was prevented from learning the machinist's trade or any other trade, requiring the full use of both of his hands, and ever since the loss thereof, as aforesaid, he has been compelled to accept employment at greatly reduced wages and at all
10 times hereafter will be compelled to accept employment at wages much less than he could have earned had he not sustained said injuries, and that he did then and has since suffered great pain and agony, by reason of his said injuries, and will hereafter suffer pain by reason thereof, and lost his earnings for a long time after said occurrence.

SECOND COUNT.

20 1. The plaintiff herein repeats all the allegations of the first count;

2. At the time aforesaid, defendant operated a work shop at Elizabethport in the state aforesaid, and under and by virtue of the statute relating thereto (Sec. 28, p. 3026, Compiled Statutes) it became and was the duty of the defendant, whenever practicable, to properly guard the machinery therein contained and used; that it was practicable to guard the gearing and machinery upon
30 which plaintiff was then and there employed; yet, notwithstanding its duty, defendant failed to guard the same, by reason whereof the plaintiff sustained the injuries aforesaid.

Plaintiff claims damages on each count, \$10,000.00.

WILLIAM D. SALTER,
 Attorney of Plaintiff.

Answer.

(Filed May 16, 1916.)

HUDSON COUNTY CIRCUIT COURT.

EDWARD GRABERT,	}	Action at Law.	10
<i>Plaintiff,</i>			
<i>vs.</i>			
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, a corporation,	}		
<i>Defendant.</i>			

The answer of the Central Railroad Company of New Jersey, a corporation of the State of New Jersey, having its principal office for the transaction of business in the City of Jersey City, County of Hudson and State of New Jersey, says:

1. It denies each and every allegation contained in the first and second counts of the Complaint. 20

2. It admits that on February 17, 1911 (not February 17, 1910, as alleged in the complaint) plaintiff was employed by it, but it alleges that the injuries sustained by plaintiff were the result of the dangers of his employment, the risk of injury from which was obvious to plaintiff, which he assumed. 30

3. Defendant further alleges that at the time that plaintiff was injured, defendant was a common carrier by railroad and that at such time it was engaging in commerce between the States of New York, New Jersey, Pennsylvania and other States and Territories of the United States and that it was engaging in interstate commerce, and that at the time said accident occurred, plaintiff was employed by defendant in such commerce, 40

Answer

in that he was employed in the repair shops repairing cars used by defendant in interstate commerce, and defendant alleges that this action was not commenced within two years from the date that plaintiff's cause of action accrued, wherefore, it says that plaintiff cannot maintain this action.

10 4. Defendant further alleges that at the time plaintiff was injured, it was a railroad company owning and operating a railroad within the State of New Jersey and that the injuries sustained by plaintiff were personal injuries caused by the wrongful act, neglect or default of a railroad company owning or operating a railroad within the State of New Jersey, and that this action was not commenced and sued within two years next after the cause of action accrued, wherefore, it says that plaintiff cannot maintain this action.

20 5. Defendant further alleges that the place where plaintiff was employed was not a factory, workshop, mill or place where the manufacture of goods of any kind was carried on, and, therefore, it alleges that it owed plaintiff no duty under the statute mentioned in the Second Paragraph of the Second Count of the Complaint.

30 As a separate defense, defendant says that at the time of his injury, plaintiff was guilty of contributory negligence barring recovery in that he carelessly and negligently attempted to oil the machine on which he was working while the same was moving.

By way of answer, this defendant alleges that the complaint herein does not set out a cause of action against it.

CHARLES F. MILLER,
Attorney of Defendant.

Reply.

(Filed May 16, 1916.)

HUDSON COUNTY CIRCUIT COURT.

<p style="text-align: center;">EDWARD GRABERT, <i>Plaintiff,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, A CORPORATION, <i>Defendant.</i></p>	}	<p style="text-align: center;">Action at Law. 10</p>
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(1) The plaintiff denies each and every allegation of the answer.

(2) The plaintiff admits that defendant was a common carrier and engaged in interstate commerce but defendant also engaged in intrastate commerce, and plaintiff denies that at the time of his injury he was employed in interstate commerce; and plaintiff denies that he cannot maintain this action for the reason alleged in paragraph three of the Answer, because plaintiff did not attain his majority until May 22nd, 1914. 20

(3) Plaintiff denies that he cannot maintain his action against the defendant for the reason set forth in paragraph four of the Answer because plaintiff did not attain his majority until May 22nd, 1914. 30

(4) Plaintiff denies the fifth paragraph of the Answer.

(5) Plaintiff denies the allegation of the separate defense set up in the Answer.

(6) Plaintiff objects and will object to the third, fourth and fifth paragraphs of the Answer on the ground that the same do not constitute or disclose any defense to the action.

WM. D. SALTER, 40
Attorney of Plaintiff.

Notice.**HUDSON COUNTY CIRCUIT COURT.**

EDWARD GRABERT,
Plaintiff,
vs.
10 THE CENTRAL RAILROAD COMPANY
 OF NEW JERSEY,
Defendant.

Action
 at Law.
 Notice.

To
 WILLIAM D. SALTER, ESQ.,
 Attorney for Plaintiff.

SIR:

20 PLEASE TAKE NOTICE that I shall apply to the Hon. Luther A. Campbell, Judge of the Hudson County Circuit Court, at the Court House, in Jersey City, New Jersey, at 10:30 A. M. Tuesday, September 19th, 1916, or as soon thereafter as counsel may be heard, for judgment in favor of the defendant upon the pleadings in the above entitled case, upon the ground that it appears therefrom that the cause of action set out in the plaintiff's complaint is barred by the Statute of Limitations.

30 AND TAKE FURTHER NOTICE that in the event that the above mentioned motion is denied, I shall bring on for argument the matters of law raised by the fourth paragraph of defendant's answer and by the third and sixth paragraphs of plaintiff's reply thereto.

Dated, August 31st, 1916.

Yours, &c.,

CHARLES E. MILLER,
 Attorney of Defendant.

Opinion.

(Filed Nov. 10 1916.)

HUDSON COUNTY CIRCUIT COURT.

<p style="text-align: center;">EDWARD GRABERT, <i>Plaintiff,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, <i>Defendant.</i></p>	}	<p>Action at Law. 10</p>
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W. D. SALTER, ESQ., (A. A. Melniker, Esq., on the
brief) attorney for plaintiff.

CHARLES E. MILLER, ESQ., attorney for defendant.

CONCLUSIONS.

CAMPBELL, J. 20

This is a motion for judgment on the pleadings.
Such part of the pleadings as are essential may be
stated as follows:

The summons was tested April 17, 1916. The
complaint alleged that on February 17, 1910,
plaintiff was employed by defendant in its machine
shops and met with an accident, alleged to have
resulted from negligence imputable to defendant.
Paragraph 4, of the answer alleges "Defendant
further alleges that at the time plaintiff was
injured it was a railroad company owning and
operating a railroad within the State of New
Jersey, and that the injuries sustained by the
plaintiff were personal injuries cause by the
wrongful act, neglect or default of a railroad
company owning and operating a railroad with-
in the State of New Jersey, and that this action
was not commenced and sued within two years

30

40

Opinion.

next after the cause of action accrued, wherefore it says that plaintiff cannot maintain this action." Paragraph 3 of the reply avers: "Plaintiff denies that he cannot maintain his action against the defendant for the reason set forth in paragraph 4 of the answer because plaintiff did not attain his majority until May 22, 1914."

- 10 The plaintiff commenced his action within two years after attaining his majority, and for the right so to do relies upon Section 4 of the General Statute of Limitations (Comp. Stats. 3164) which is as follows: "That if any person or persons who is, are or shall be entitled to any of the actions specified in the three preceding sections of this act is, are or shall be at the time of any such cause of action within the age of twenty-one years, or insane, that then such
- 20 person or persons shall be at liberty to bring the said action so as he, she or they institute or take the same within such time as is before limited after his, her or their coming to or being of full age, or of sane memory, as by other person or persons having no such impediment might have been done."

- Defendant insists that the limitation is as contained in Sec. 58 of the Revised Railroad Act of 1903, as amended by Chap. 175 Laws 1912, (P. L. 1912, p. 265) which as far as pertinent is
- 30 as follows: "All actions accruing from injuries to persons caused by the wrongful act, neglect or default of any railroad company owning or operating any railroad within this state, shall be commenced and sued within two years next after the cause of action accrued and not after
- * * * *".

- The identical question was raised and decided,
- 40 in favor of the contention of the defendant, by Judge Adams in the Essex Circuit, January 16,

Opinion.

1908, in *Pike vs. D. L. & W. R. R. Co.*, reported in 31 N. J. L. J., p. 81; at this time the limitation under Section 58 was one year. In 1912, by amendment of Sec. 58, P. L. 1912, Chap. 175, p. 265, the period within which to sue was made two years.

In *Eldridge vs. Philadelphia & Reading Rwy. Co.*, 80 N. J. L., 478, decided April 7, 1911, the Supreme Court in passing upon that portion of Section 58 of the Railroad Act of 1903, relating to the bringing of actions for death against railroad companies within one year next after the death, held that the amendment of the death act in 1907, fixing the period of bringing such actions at two years did not repeal the one year period of Section 58. The Court of Errors and Appeals in the same case, 83 N. J. L., decided Nov. 18, 1913, held to the contrary. I do not find anything in such opinion, however, that would be pertinent to the matter under consideration or that would in any manner make unsound the reasoning and conclusion of Judge Adams in *Pike vs. D. L. & W. R. R. Co.*, supra., with which reasoning I agree with Judge Adams and in whose conclusion I concur. With respect to that portion of Section 58 of the Railroad Act, bearing upon the question before me, the undoubted purpose of the legislature was to fix a period of limitation, free of all exceptions in favor of minors or others under disability, in all actions brought against railroad companies "owning or operating a railroad within the State of New Jersey."

All the facts necessary being shown and admitted by the pleadings, defendant is entitled and may enter judgment thereon and thereunder.

Dated, November 8, 1916.

LUTHER A. CAMPBELL,
Judge.

Order.

(Filed Nov. 15, 1916.)

HUDSON COUNTY CIRCUIT COURT.

10	<p style="text-align: center;">EDWARD GRABERT, <i>Plaintiff,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">CENTRAL RAILROAD OF NEW JER- SEY, <i>Defendant.</i></p>	} Action at Law.
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20 The defendant having moved for judgment in its favor on the pleadings in the above entitled action, upon the ground that it appears therefrom that the cause of action set out in the complaint is barred by the Statute of Limitations and both sides being heard, and the Court having considered the matter and determined that the defendant should have judgment.

It is, on this 14th day of November, 1916.

ORDERED, that judgment final be entered in favor of the defendant and against the plaintiff, and that the defendant recover its taxed costs.

Let the rule be entered in its minutes.

30 LUTHER A. CAMPBELL,
Circuit Court Judge.

On motion of Charles E. Miller, attorney of defendant.

Rule actually entered in the minutes November 15th, 1916.

Notice of Appeal and Reasons.

(Filed Dec. 4th, 1916.)

HUDSON COUNTY CIRCUIT COURT.

<p style="text-align: center;">WILLIAM GRABERT, <i>Plaintiff-Appellant,</i> <i>vs.</i> CENTRAL RAILROAD COMPANY OF NEW JERSEY, <i>Defendant Respondent.</i></p>	<p>Action at Law. 10</p>
---	--

TO THE ABOVE-NAMED DEFENDANT:

PLEASE TAKE NOTICE, that the plaintiff hereby
appeals from the judgment of the above entitled
court, in favor of the defendant and against the
plaintiff, entered on November 15th, 1916, on the
pleadings, to the Court of Errors and Appeals
of New Jersey, for the reasons that: **20**

1. The Court erred in giving judgment for the defendant on the pleadings.
2. The judgment was contrary to law.

Dated, December 1st, 1916.

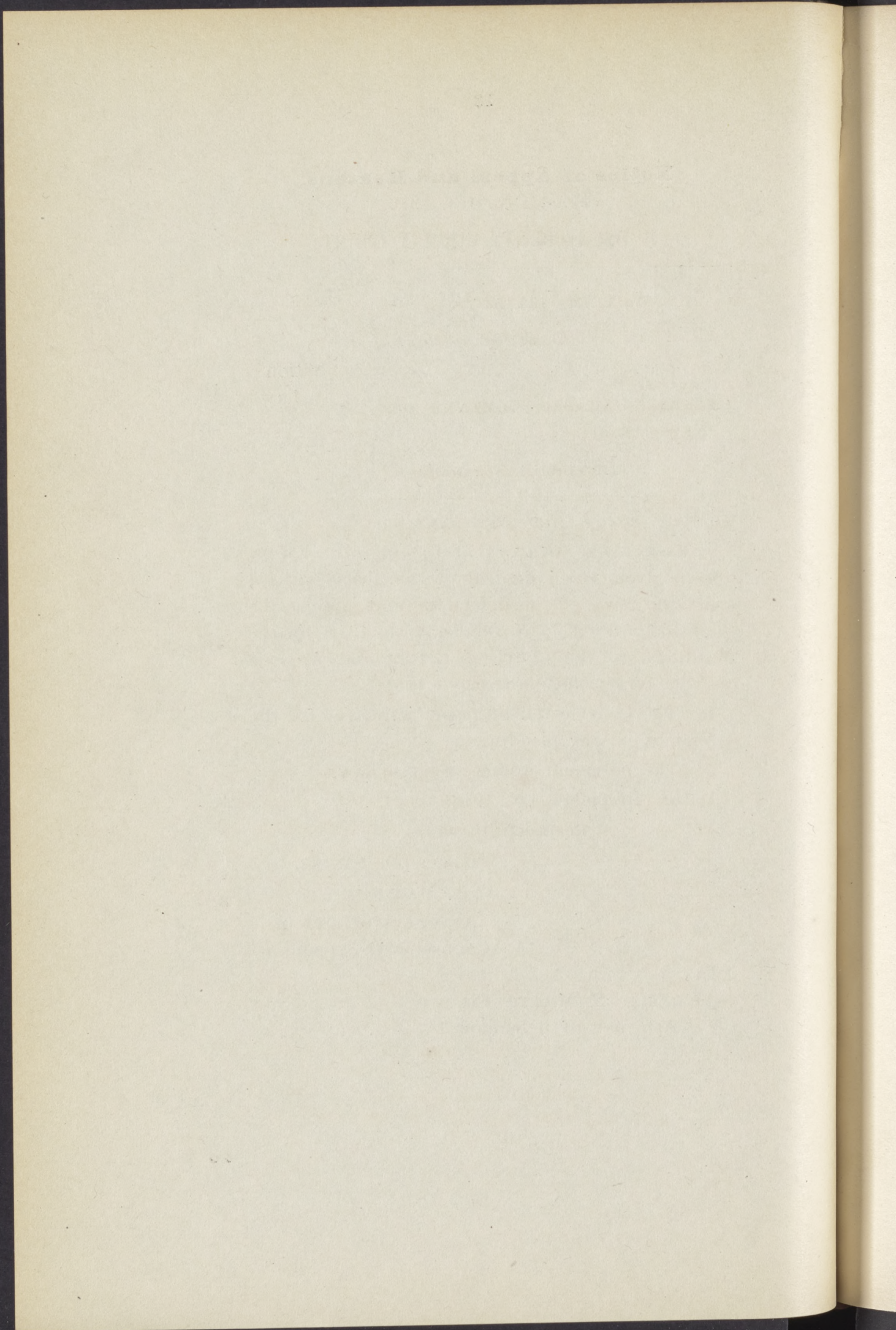
Respectfully yours,

WILLIAM D. SALTER,

A. A. MELNIKER, **30**Attorneys of and of
Counsel with Appellant.

To

CHARLES E. MILLER, Esquire,
Attorney of defendant.



New Jersey Court of Errors and Appeals.

EDWARD GRABERT,
Plaintiff-Appellant,
vs.
CENTRAL RAILROAD COMPANY OF
NEW JERSEY,
Defendant-Respondent.

10

BRIEF FOR APPELLANT.

I.

Statement of the Case.

20

Edward Grabert, the plaintiff, commenced suit against the Central Railroad Company of New Jersey, the defendant, on April 17th, 1916, in the Hudson County Circuit Court, for damages, for personal injuries, alleging that on February 17th, 1910, while employed by the defendant in its machine shops, he suffered an injury which resulted from the negligence of the defendant, in its failure to provide him a reasonably safe place to work in, and proper appliances, tools and machinery, and to properly guard such machinery as required by law, and to warn plaintiff against the dangers thereof (case p. 2).

30

The defendant's answer, among other defenses, alleged (case p. 6) :

"That at the time plaintiff was injured, it was a railroad company, owning and operating a railroad within the State of New Jersey, and that the injuries sustained by the

40

plaintiff were personal injuries caused by a wrongful act, neglect or default of a railroad company, owning and operating a railroad within the State of New Jersey, and that this action was not commenced and sued within two years next after the cause of action accrued."

10 The plaintiff replied that he did not attain his majority until May 22nd, 1914, which was within two years of the commencement of the suit, and that he was, therefore, not barred by the statute (p. 7).

The Circuit Court granted a motion for judgment on the pleadings and judgment was accordingly entered for the defendant (p. 12).

II.

Grounds of Appeal.

20 Plaintiff appeals from the judgment for the defendant on the ground that it was contrary to law (p. 13) and that the court erred in giving judgment for the defendant on the pleadings.

III.

Argument.

30 The appellant contends that this case is controlled by Section 4 of the Statute of Limitations (Comp. Stat. p. 3164) which provides:

40 "That if any person or persons, who is, are or shall be entitled to any of the actions specified in the three preceding sections of this act, is, are or shall be at the time of any such cause of action accruing, within the age of twenty-one years or insane, that then such person or persons shall be at liberty to bring the said action so as he or she or they institute or take the same within such time as is before limited, after his, her or their coming to or being of full age, or of sound memory, as by other person or persons having no such impediment, might be done."

The pleadings set forth that appellant attained his majority on May 22nd, 1914, and that suit was commenced on April 17th, 1916, within two years after the appellant had attained his majority.

The respondent's contention is that the case is controlled by the 58th Section of the Railroad Act (Comp. Stat. p. 4246) which provides:

"All actions accruing from injuries to persons caused by the wrongful act, neglect or default of any railroad company, owning or operating any railroad in this state, shall be commenced and sued within two years after the cause of action accrued, and not after; actions by an executor or administrator, for injuries causing the death of the testator or intestate shall be commenced and sued within one year next after the death and not after; all actions for injuries done to any property by fire, communicated by an engine of any railroad company on any railroad within this state, shall be commenced within one year after the cause of action accrued and not after."

The question involved is whether Section 58 of the Railroad Act does away with the disabilities provided by Section 4 of the Statute of Limitations, insofar as actions against railroad companies are concerned.

The case of *Pike vs. D. L. & W. R. R. Co.*, 31 N. J. L. J., 81, decided in the Essex Circuit, is squarely opposed to the appellant's contention. Neither this case nor the question involved seem to have ever been passed upon by this Court.

The appellant contends that:

a. Section 58 of the Railroad Act and Section 4 of the Statute of Limitations should be read together.

It is true the railroad act contains a general repealer of inconsistent legislation, but Section

58 of that Act and Section 4 of the Statute of Limitations are not necessarily inconsistent or repugnant. Section 58 of the Railroad Act can more properly be said to repeal Section 3 of the Statute of Limitations, or rather to amend it, insofar as Section 3 affects actions against railroad companies, as Section 3 is a general statute of limitations, governing all actions for negligence. Insofar as Section 58 differs from Section 3, which it does in two particulars, to wit, actions for deaths and actions for damage by fire, to that extent, Section 58 became superimposed upon Section 3, or repealed, if that term may be used, Section 3, to that extent. But this repealer does not extend to Section 4, which does not fix a period of limitations for any specific actions at all, but merely, or rather, only, suspends the operation of all statutes of limitation during infancy and lunacy. This Section and Section 58 of the Railroad Act can fairly and reasonably be read together, and are not inconsistent with or repugnant to each other.

Implied repealers are not favored and much more compelling evidence should be required of the legislative intent to withdraw railroads from the operation of Section 4 than can be found in a mere general repealer of inconsistent legislation. Infants and lunatics should not be deprived of the protection afforded by Section 4 unless legislative action and intent are so clear that no escape therefrom is possible.

With all due respect and deference to the learned jurist who decided *Pike vs. D. L. & W. R. R. Co. supra*, we cannot agree with the statement therein made that:

“Since a minor can sue to any time by next friend, it cannot be said that the omission of this exception in the Railroad Act closes the courts to a minor.”

This is just what it does. To say that a minor can always sue by next friend is to assume that under all circumstances a minor either has intelligence enough to institute a suit by next friend or that someone interested in or friendly to the minor would do so. It is, however, not difficult to conceive of cases where an infant of tender years, may have no one sufficiently concerned in its welfare to properly protect its interests. It is not difficult to conceive of a case where an infant of tender years, having no parents living, and in the care of strangers, has a cause of action against a railroad company, and that such persons might, for a consideration, neglect for two years, to bring an action and thus bar the infant from recovery. The contention that this is not likely to happen, is no conclusive or satisfactory answer. That it may happen at all is sufficient reason for the claim that the legislature never intended to do away with disabilities as applied to actions against railroads. The intention undoubtedly was that Section 4 and Section 58 should be read together.

We venture to express the belief that it never occurred to any legislator who participated in the enactment of Section 58 of the Railroad Act that infants who might be injured through the negligence of a railroad company, were to be bound by the same statute of limitations as persons who are sui juris. The law-makers quite naturally and reasonably assumed that Section 58 fixed a period of limitations for actions against railroad companies, but that it did not in any way interfere with the operation of Section 4 of the Statute of Limitations, which created a period of disability for infants and lunatics.

b. An action does not accrue in favor of an infant until it has attained its majority.

Section 58 of the Railroad Act provides that:

"All actions accruing from injuries to persons caused by the wrongful act, neglect or default of any railroad company * * * shall be commenced and sued *within two years after the cause of action accrues.* * * *

In the case before the Court the action was commenced within two years after the appellant attained his majority. It is appellant's contention that his action did not accrue until he attained his majority and that the action was brought within two years thereafter, or, to use the words of the statute: "Within two years next after the cause of action accrued." The appellant attained his majority on May 22nd, 1914. The action was commenced on April 17th, 1916.

A cause of action does not accrue until there is some one capable of suing, somebody subject to suit and a tribunal open for such suits. To quote from Woods on Limitations, p. 615:

"To start the running of the Statute of Limitations, there must be someone capable of suing, someone subject to the suit and a tribunal open for such suit. Limitations cannot be started when there is no one who can sue or be sued. Before limitations can begin to run, there must be some one in existence by whom and a different person against whom, the claim may be enforced. The general rule is that the Statute of Limitations does not begin to run until there is a demand capable of present enforcement, and a sueable party against whom it can be enforced and a party competent to sue."

See likewise "Words and Phrases" on accrual of actions.

This lays down quite conclusively that an action does not accrue until there is someone who is competent to institute a suit. It is quite well established that an infant cannot institute an action in the courts of this state, and should

such an action be instituted, it would be dismissed. An infant can only sue by a next friend, and unless suit is instituted by a next friend on behalf of an infant, it cannot be maintained. And under those circumstances, it cannot be said that in the case of an infant there is a person capable and competent to institute the suit, and until there is such a person, the statute does not begin to run.

“When an action cannot be brought until leave to sue is granted by a Court, especially when this preliminary is imposed by statute, the Statute of Limitations does not begin to run upon the cause of action until such leave has been granted.”

10

Wood on Limitations, p. 792.

Also

Wood vs. Myrick, 16 Minn., 494.

20

In the case before the Court, there was no person competent to bring suit against the defendant until the plaintiff had attained his majority on May 22nd, 1914. Consequently, the Statute of Limitations did not commence to run until that date, nor did the cause of action accrue until that date, and the plaintiff had until two years thereafter in which to bring suit.

c. If Section 58 of the Railroad Act repeals Section 4 of the Statute of Limitations, it violates Paragraph 4 of Section 7 of Article 4 of the Constitution.

30

The section of the Constitution referred to reads as follows:

“To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object and that shall be expressed in the title.”

40

The title of the act of which Section 58 is a part is "An Act concerning railroads" (P. L., 1903, p. 645). This act provides for the formation and powers of railroad companies, their rights of way, construction and equipment, protection and construction of road crossings, carriage of passengers and freight, regulations, remedies and penalties, consolidation and leasing, sale and re-organization, besides various miscellaneous subjects concerning railroads, together 89 sections, covering over 45 pages. Sandwiched about half-way through this Act is this provision, which, it is claimed, has the effect of repealing Section 4 of the Statute of Limitations, insofar as actions against railroads are concerned.

The section of the Constitution referred to requires:

FIRST: That every law shall embrace but one object, and

SECONDLY: That that object be expressed in the title. Both requirements of this constitutional provision are violated by this legislation. It is true and it is quite reasonable and proper, that an act providing for the organization of railroad companies should also contain in it provisions for the regulation of such companies, and the means of carrying on their corporate functions and powers, and all matters properly relating to the organization and operation of such companies could be enacted in one act. But the establishment of a period of limitation for the commencement of actions against the railroad is not necessarily connected with either its organization or regulation or operation. We would expect to find, in any act concerning railroads, provisions for internal regulation of the operation of the company, and also regulations for its dealings with the public. But it would require a stretch

of the imagination to say that in that category, it would also be proper to include regulations of the time of bringing an action against such company. This is particularly true when it is considered that there is in this state a special act fixing periods of limitations, entitled: "An act for the limitation of actions." It is here that one would naturally look for any legislation affecting that subject, and it is to avoid the very situation here presented that the constitutional inhibition was promulgated. Not only is there an intermixing in the same act of things that have no proper relation to each other, but the secondary aspect of the constitutional inhibition is violated in that the title fails to express the dual character of this act. 10

The following by Mr. Justice Depue in the case of *Grover vs. Trustees of Ocean Grove*, 45 N. J. L., p. 402, is illuminative. 20

"By the provision in question the framers of the constitution had two purposes in view, the first of which is expressed in the recital—'to avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other'—the combination of diverse subjects in a single act, whereby to secure the votes of members of the legislature, some of whom favor the one part, and others other parts, of the legislative scheme. The other purpose was to prevent the passage by the legislature of bills containing provisions of which the title prefixed to the bill gave no intimation, and which, therefore, might be overlooked and carelessly and unintentionally adopted, and also to apprise the people, through such publications of legislative proceedings as is usually made, of the subjects of legislation that are being considered (Cooley on Constitutional Lim. [143], 173). To secure the end first mentioned the 30 40

constitution positively interdicts the union in one act of subjects that have no proper relation to each other; to secure the other end, it requires the legislature to express in the title of every act the subject to which it relates.

10 "An act of the legislature which contains two or more subjects, having no relation to each other, will, for that reason, be within the constitutional prohibition, although its title be comprehensive enough to embrace all the subjects contained in it. So, on the other hand, an act which contains in it only such objects as might properly be embraced in one act may be invalid as not being in compliance with the constitutional requirement with respect to its title. Judge Cooley says: 'The legislature may make the title of an act as restrictive as they please, and they may sometimes so frame it as to preclude many matters being included in the act which might, with entire propriety, have been embraced in one enactment with the matters indicated by the title, but which must now be excluded because the title has been made unnecessarily restrictive. * * * The constitution had made the title the conclusive index to the legislative intent; and it is no answer to say that the title might have been made more comprehensive, if the legislature had not seen fit to make it so' (Cooley on Const. Lim. [149], 179). The precedents in this state are in accordance with this view (*Rader vs. Township of Union*, 10 Vroom, 509-512; *Evernhan vs. Hulit*, Ante, p. 53). In each of these cases an act of the legislature, which contained subjects the legislature might have embraced in one act, was held to be unconstitutional as to one subject, because the title of the act was so framed as not to embrace it.

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40 "No particular form has been framed for the expression of the legislative purpose in the title of an act. As was said by Mr. Justice Miller: 'The constitutional provision referred to does not require that the title should be exact and precise in all respects; it is a

sufficient compliance with its terms if this is done fairly and in such a manner as to convey to the mind an indication of the subject to which it relates' (Matter of App. of Dept. of Public Parks, 86 N. Y., 437-440; In re Ferdinand Mayer, 50 Id., 504; Cooley on Const. Lim. [144], 174). But the Court must see that the language used in the title, on a fair construction, indicates the purpose of the legislature to legislate on the subjects contained in the body of the act, so that making every reasonable intendment in favor of the legislative act, it may reasonably be said that the object of the law is expressed in its title. Thus, in *Town of Fishkill vs. Fishkill, etc., Co.*, 22 Barb., 634, an act of the legislature was entitled: 'An act to release the Fishkill Beekman Plank Road Company from the construction of part of their road, and *for other purposes.*' It contained 8 sections, the first of which released the company from the obligation to build and maintain a plank road any further than the portion of the road which had been inspected and certified. The other sections conferred upon the corporation additional powers with respect to the road already constructed, and discharged it from past acts and engagements. The Court held that, although all these provisions might have been included in one law, as they related to one general subject, the act, was nevertheless, unconstitutional with respect to the last seven sections, for the reason that, so far as they were concerned, the object of the act was not expressed in the title. In *Coutieri vs. Mayor of New Brunswick*, 15 Vroom, 58, the title of the act was: 'An act to fix and regulate salaries of city officers in cities of this state.' The body of the act related only to salaries of officers of the City of New Brunswick. In a general sense, the subject of the act was indicated in its title. But this Court held the act to be unconstitutional, the Chief Justice, in delivering the opinion of the Court, saying: 'The title is both false and deceptive—false, as it imports a regula-

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tion of a class of cities, when, in truth, it is applicable to a single city—deceptive, because no one, on reading the act, could reasonably understand that the body of the act was to have so limited an effect.’ The standard uniformly adopted for determining whether the legislature has complied with the constitutional requirements is whether the title of the act is such that by it members of the legislature are informed of the subject to which the act relates, and the public notified of the kind of legislation that is being considered.”

And in the case of *Sawter vs. Schoenthal*, 83 N. J. L., 501, Mr. Justice Swayze, speaking for the Court of Errors and Appeals, said:

“It would, however, be going too far to say that in every case, it suffices to express the immediate object, although the alternate object be left unexpressed. That would open the door to the abuse so forcibly suggested by the Supreme Court; and although we cannot logically argue from any abuse of power to a negative of it (*Fritz vs. Kuhl*, 22 Id., 191 [at page 205]; *Pangborn vs. Young*, Id., 29, 40), yet we ought not to adopt a lax construction of an important constitutional limitation. The true rule is that the object expressed in the title must give notice of the effect of the legislation to one conversant with the existing state of the law.”

So here, a person would naturally look for and expect to find all matters relating to the periods of limitation in which actions must be instituted, in the statutes relating to that subject. One would hardly expect to look for or find in an act concerning railroads a provision not only limiting the time for instituting actions against railroads, in certain cases, but also repealing a part of an independent statute which covers the whole subject of limitations of actions; nor does the title of this act furnish any intimation of the legislative purpose. There is nothing in the title to

even suggest that not only does the act in question fix a period of limitation for the commencement of actions against railroads, but also contains a virtual repealer of legislation already existing.

If this section (58) should be construed to deprive infants and lunatics of the protection afforded by Section 4 of the Statute of Limitations, it would be in contravention of the Constitution, and, to that extent, void.

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In *Schmalz vs. Wooley*, 57 L., 303, the Court said:

“The standard uniformly adopted for determining whether the legislature has complied with the constitutional requirement is, whether the title of the act is such that by it the members of the legislature are informed of the subject to which the act relates, and the public notified of the kind of legislation that is being considered.”

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Can it be fairly said that the members of the legislature were informed by the title of this act that the statute relating to disabilities of infants was to be repealed? Can it be fairly said that the public was notified by the title of this act that such action was in the legislative contemplation? We venture to say that it would be somewhat difficult for any one to answer those questions in the affirmative.

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It may fairly be questioned, also, whether the railroad act does, either expressly or by implication, repeal Section 4 of the Statute of Limitations. Section 3 fixes the period for the bringing of action for personal injuries. Section 58 of the Railroad Act changes that period insofar as it applies to railroads. It may be that Section 3 would be affected by a general repealer of inconsistent legislation, but it does not follow that the

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general repealer would also affect Section 4, which does not fix the period of limitations, but deals exclusively with disabilities. And this distinction is pointed out for the purpose of making more clear, if possible, the constitutional objection to the title and the dual character of the Railroad Act. Not only does this act govern the organization and operation of railroads; not only does it regulate the time for the commencement of ac-
10 tions against railroads, but it ventures in a third direction, to-wit, the elimination of the disabilities created by the 4th Section of the Statute of Limitations. The title does not indicate either that the 3rd Section is modified or amended, nor that the 4th Section is entirely repealed, insofar as railroads are concerned.

The judgment for the defendant should be reversed.

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Respectfully submitted,

W. D. SALTER,
 Attorney of Plaintiff.

A. A. MELNIKER,
 Of Counsel.

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New Jersey Court of Errors and Appeals.

EDWARD GRABERT,
Plaintiff-Appellant,

VS.

THE CENTRAL RAILROAD COM-
PANY OF NEW JERSEY,
Defendant-Respondent.

On Appeal from
Hudson Circuit
Court.

**BRIEF FOR DEFENDANT-
RESPONDENT.**

The plaintiff below instituted this action by summons tested April 17, 1916 (Rec., p. 1), to recover for personal injuries sustained by him on February 17, 1910 (Rec., p. 2), which he alleged were the result of actionable negligence on the part of the defendant. In its answer the defendant, among other defenses, set up the following:

"4. Defendant further alleges that at the "time plaintiff was injured it was a railroad "company owning and operating a railroad "within the State of New Jersey and that the "injuries sustained by plaintiff were personal "injuries caused by the wrongful act, neglect "or default of a railroad company owning or "operating a railroad within the State of New "Jersey, and that this action was not com- "menced and sued within two years next after "the cause of action accrued, wherefore, it says "that plaintiff cannot maintain this action" (Rec., p. 6).

Plaintiff replied to this defence as follows:

“3. Plaintiff denies that he cannot maintain
“his action against the defendant for the reason
“set forth in paragraph four of the Answer be-
“cause plaintiff did not attain his majority
“until May 22nd, 1914” (Rec., p. 7).

Defendant thereupon moved for judgment in its favor on the pleadings (Rec., p. 8), in accordance with Rule 40 of the Supreme Court. The Court below granted this motion (Rec., p. 12). Its opinion is contained in the Record at pages 9-11. The grounds of appeal allege that this was error.

Argument.

The time within which actions accruing from injuries to persons caused by the wrongful act, neglect or default of any railroad company owning or operating any railroad within this State may be brought is provided by Chapter 175 of the Laws of New Jersey for 1912 (P. L. 1912, p. 265), as follows:

“58. All actions accruing from injuries to
“persons caused by the wrongful act, neglect
“or default of any railroad company owning
“or operating any railroad within this State,
“shall be commenced and sued within two years
“next after the cause of action accrued, and
“not after; actions by an executor or adminis-
“trator for injuries causing the death of the
“testator or intestate shall be commenced and
“sued within two years next after the death,
“and not after; all actions for injury done to
“any property by fire communicated by an
“engine of any railroad company or any rail-
“road within this State shall be commenced
“and sued within two years after the cause of
“action accrued, and not after.”

The facts admitted by the pleadings bring this case squarely within the purview of this statute.

The statute itself makes no exception in favor of minors and therefore unless a minor has some common law right of exemption from the operation of statutes of limitation, or such an exemption is given by some other act, it operates to bar this action.

That a minor has no common law right of exemption from the operation of statutes of limitation is settled by the authorities.

In *Demarest vs. Wynkoop*, 3 Johnson's Chancery 129, Chancellor Kent said (p. 142) :

“The doctrine of any inherent equity creating
“an exception as to any disability, where the
“statute of limitations creates none, has been
“long, and I believe uniformly, exploded.”

In *Vance vs. Vance*, 108 U. S. 514, Mr. Justice Miller, speaking for the United States Supreme Court, said (p. 521) :

“It is urged that because the plaintiff in error
“was a minor when this law went into opera-
“tion, it cannot affect her rights. But the Con-
“stitution of the United States, to which appeal
“is made in this case, gives to minors no special
“rights beyond others, and it was within the
“legislative competency of the State of Louis-
“iana to make exceptions in their favor or not.
“The exemptions from the operation of statutes
“of limitation usually accorded to infants and
“married women do not rest upon any general
“doctrine of the law that they cannot be sub-
“jected to their action, but in every instance
“upon express language in those statutes giving
“them time after majority, or after cessation
“of coverture, to assert their rights.”

The rule is laid down in *Cyc.* as follows (25 *Cyc.* 1226) :

“The saving of the operation of limitations
“by reason of disabilities depends on the
“statute; in the absence of such a saving clause,
“the statute runs against all persons, whether

“under disability or not; and when exceptions
 “in favor of persons under disability are made
 “they should be strictly construed and never
 “extended beyond their plain import or to dis-
 “abilities not enumerated in the saving clause.
 “Mere doubt as to a right, or difficulty in the
 “way of its assertion, will not operate as an
 “exception.”

The appellant contends, however, that minors are specifically exempted by Section 4 of the general Statute of Limitations (C. S. N. J., p. 3164) providing:

“That if any person or persons who is, are or
 “shall be entitled to any of the actions specified
 “in the three preceding sections of this act is,
 “are or shall be at the time of any such cause
 “of action accruing within the age of twenty-
 “one years or insane, that then such person or
 “persons shall be at liberty to bring the said
 “action so as he, she or they institute or take
 “the same within such time as is before limited
 “after his, her or their coming to or being of
 “full age, or of sane memory, as by other per-
 “son or persons having no such impediment
 “might be done.”

This section was enacted in its present form by the Revision of 1874 (Rev. Stat. 1874, p. 441). What is now Section 58 of the General Railroad Act was first enacted in 1881 (P. L. 1881, p. 257). The Act of 1881 applied only to actions accruing from injuries to persons and damages to property caused by fire. It was re-enacted at the time of the revision of the Railroad Act in 1903, and at that time was extended to cover actions by an executor or administrator for injuries causing death (P. L. 1903, at p. 674) (see *Eldridge vs. Phila. & Reading Ry. Co.*, 80 N. J. L. 478, at p. 479). The Revision of 1903 (Sec. 89) specifically repealed “all acts and parts of acts, general and special, inconsistent” with it (P. L. 1903, at p. 691). Section 58 was

amended in 1912, at which time the period for bringing actions for injuries resulting in death and for damages resulting from fire was extended from one year to two years (P. L. 1912, p. 265).

This history clearly shows a legislative intent to take actions against railroad companies out of the operation of the general Statute of Limitations and to treat them as a separate class, subject to a separate rule. This being so, we think it is clear that if the Legislature had intended to exempt minors from the operation of the rule applicable to railroad companies it would have done so expressly in the statutes establishing the rule applicable to railroad companies. Since it failed to provide such an exemption expressly in the acts dealing with railroad companies, it follows that such an exemption cannot be imported from the general Statute of Limitations. And this conclusion has the support of the authorities.

In *Pike vs. D., L. & W. R. R. Co.* and *Meloney vs. Erie R. R. Co.*, 31 N. J. Law Journal, 81, Judge Adams had before him the question here involved. In dealing with it he said:

“From this analysis of the pleadings it appears that the two railroad companies who are defendants in these cases agree in claiming that an action accruing to any person for the wrongful act, neglect or default of a railroad company owning or operating any railroad must in all cases be commenced and sued within two years next after the cause of action accrued. It appears, also, that the two plaintiffs, while admitting that two years is the general statutory period of limitation in such cases, insist that this rule is subject to a statutory exception in favor of infants, who are at liberty to bring their actions within two years after coming to full age. It is not denied that an infant may sue by next friend. The claim is that it is at the option of the infant either to sue by next friend during

“minority or to wait until majority and then
“sue like any person who is *sui juris*.

“The decision of this question depends upon
“the relation that exists between an act for the
“limitation of actions, as amended, and an act
“concerning railroads.

“The act for the limitation of actions (Re-
“vision, approved March 27, 1874; G. S., pp.
“1974-1975), as amended by ‘a supplement ap-
“proved March 24, 1896 (P. L. 1896, p. 119),
“enacts, in section 3: “That all actions here-
“after accruing for injuries to persons caused
“by the wrongful act, neglect or default of any
“person or persons, firm or firms, individual
“or individuals, corporation or corporations
“within this state, shall be commenced and in-
“stituted within two years next after the cause
“of action shall have accrued, and not after.’

“The fourth section of this act, as revised in
“1874, enacts, among other things, that a per-
“son who is a minor when such cause of action
“accrues shall be at liberty to sue within such
“period of two years after coming to or being
“of full age. A similar exception is given in
“favor of lunatics until their coming to or being
“of sane memory. An act concerning railroads
“(Revision of 1903, P. L. 1903, pp. 645, 674)
“declares in section 58 that ‘All actions accru-
“ing from injuries to persons caused by the
“wrongful act, neglect or default of any rail-
“road company owning or operating any rail-
“road within this state, shall be commenced and
“sued within two years next after the cause of
“action accrued, and not after; actions by an
“executor or administrator for injuries causing
“the death of the testator or intestate shall be
“commenced and sued within one year after the
“death, and not after; all actions for injury
“done to any property by fire communicated by
“an engine of any railroad company on any
“railroad within this state shall be commenced
“and sued within one year after the cause of
“action accrued, and not after.’

“This statute contains no exception extend-
“ing the period of limitation in favor of an

“infant, or in favor of a lunatic. It has a general repealer.

“Section 58, above quoted, is a composite enactment. The provisions as to injuries to persons and injuries to property by fire are copied from Chapter CCIV of the act of 1881, which is a supplement to an act respecting railroads and canals. Revision, approved March 27, 1874 (P. L. 1881, p. 257). The provisions as to actions for causing death is taken from the second section of the Death act, approved March 3, 1848 (1 G. S. 1188). In *North Hudson County Ry. Co. v. Flanagan*, 28 Vroom, 236, the Supreme Court held that the above mentioned provision of the act of 1881 as to personal injuries does not apply to horse railroads. Mr. Justice Van Syckel, in delivering the opinion of the Supreme Court, says that the act of 1874 and the supplement of 1881 must be construed as one law, and that their effect is to make steam railroads a class by themselves. What was then said of the act concerning railroads and canals may now, with equal force, be said of the act concerning railroads (Revision of 1903). Its obvious intent is manifest in section 58. The natural impression made upon the mind by that section is that it is at least an attempt to give full and complete expression to the legislative purpose on the subject with which it deals. As the statute contains no exceptions, the court cannot import them into it. The sole remaining question is whether the Railroad act and the Limitation act are to be read together. It is familiar law that a statute and its supplements form but one enactment and are to be taken together. This rule cannot be invoked here, since neither of the acts in question is a supplement to the other. The two statutes are independent. If they are to be read together it must be by force of some other rule. What rule can be suggested? It may well be that two independent statutes may be so drawn that each requires the support of the other, so that one will be incomplete and inefficacious if it stands alone. In

“such cases the courts, in order to carry out
 “the legislative intent, will construe the acts
 “together as parts of one scheme. Especially
 “is this so if without such a construction there
 “will be a loss of a legal remedy, and so a
 “failure of justice.

“This is not such a case. The Limitation act
 “and the Railroad act are not parts of one
 “scheme, but are two independent schemes.
 “Nor are personal rights infringed nor any
 “rule of natural right violated by the passage
 “of an act that contains no exception in favor
 “of a minor. Chancellor Kent says, in *Dema-*
rest v. Wynkoop, 3 Johnson’s Chancery, 129,
 “at page 142: ‘The doctrine of any inherent
 “equity creating an exception as to any dis-
 “ability, where the statute of limitations
 “creates none, has been long, and I believe
 “uniformly, exploded.’ Since a minor can
 “sue at any time by next friend, it cannot be
 “said that the omission of this exception from
 “the Railroad act closes the courts against a
 “minor. Indeed, for practical purposes, the
 “procedure by next friend is ordinarily ad-
 “vantageous to both parties, for such issues
 “should be brought and tried promptly.”

In *Vail v. Easton and Amboy Railroad Co.*, 15
 Vr. 237, the charter of the defendant company
 provided that suits brought against it to recover
 damages by fire alleged to have been caused by its
 negligence should be commenced within a year
 after the cause of action arose. Plaintiff sued to
 recover damages so sustained, but did not bring
 his action within the year. Our statute of limita-
 tions had been revised and re-enacted subsequent
 to the date of the defendant company’s charter,
 and in its revised form contained a repealer of all
 acts and parts of acts repugnant thereto. The
 matter is thus dealt with in the opinion:

“The contention therefore is in substance
 “this: That the limitation in the supplement
 “to the defendant’s charter giving but the

“period of one year for the bringing of an
 “action on the case, is inconsistent with the
 “clause in the general act which, with respect
 “to all actions on the case, extends such period
 “to six years. But the fallacy in this reason-
 “ing consists in the assumption that these laws
 “are repugnant to each other. According to
 “the well-settled legal intendment, they do
 “not relate to the same subject matter, and
 “therefore cannot be inconsistent. They do
 “not relate to the same subject matter, because
 “the classes of cases embraced in the general
 “law do not involve the classes of cases com-
 “prehended by the special law. This has been
 “repeatedly decided by this court. * * *
 “and this rule of construction is quite decisive
 “on the point.”

A similar conclusion was reached by the Supreme Court in *Eldridge vs. Phila. & Reading Ry. Co.* (*supra*). It is true that that case was afterwards reversed by this Court (83 N. J. L. 463), but the reversal was solely upon the ground that the Legislature had, subsequent to the enactment of the special act, framed a new and general law covering the entire subject matter which required all earlier and different rules touching the same matter to be discarded in favor of such later rule.

In *Morgan vs. City of Des Moines*, 60 Fed. 208, a similar question was presented. In that case the plaintiff, a minor, sued the City of Des Moines to recover for personal injuries which she alleged she had sustained as the result of a defective sidewalk. At the time the accident occurred, a statute of the State of Iowa provided that no action for injuries from defective sidewalks should be brought after six months. The Court said (p. 209):

“The contention of the plaintiff in error is
 “that the provision of the general statute of
 “limitations of the state (section 2535, Code of
 “Iowa), which declares that minors shall have
 “one year after the termination of their dis-
 “ability within which to commence an action,

"should be imported, by construction, into the
 "statute which we have copied. To do so would
 "be judicial legislation. *Amy v. Watertown*,
 "130 U. S. 320, 9 Sup. Ct. 539; *Bennett v.*
 "*Worthington*, 24 Ark. 487; *Vance v. Vance*,
 "108 U. S. 514, 521, 2 Sup. Ct. 854. The act of
 "February 17, 1888, is not an amendment of
 "any previous act on the subject to which it re-
 "lates. It is new and independent legislation,
 "and complete in itself. It establishes the rule
 "for the class of cases to which it relates. The
 "power of the legislature to enact the statute is
 "not questioned. It would be entirely com-
 "petent for the legislature to enact a general
 "statute of limitations putting minors and
 "adults on the same footing as to all causes of
 "action, and such would be the legal effect of a
 "statute which contained no saving clause ex-
 "empting infants from its operation. This
 "principle has never been questioned. It is
 "clearly and forcibly stated by Mr. Justice
 "Miller in delivering the opinion of the supreme
 "court in *Vance v. Vance*, 108 U. S. 514, 521, 2
 "Sup. Ct. 854, as follows:

'It is urged that, because the plaintiff in
 'error was a minor when this law went into
 'operation, it cannot affect her rights. But
 'the constitution of the United States, to
 'which appeal is made in this case, gives to
 'minors no special rights, beyond others, and
 'it was within the legislative competency of
 'the state of Louisiana to make exceptions
 'in their favor or not. The exemptions from
 'the operation of the statutes of limitation
 'usually accorded to infants and married
 'women do not rest upon any general doc-
 'trine of the law that they cannot be sub-
 'jected to their action, but, in every instance,
 'upon express language in those statutes giv-
 'ing them time after majority, or after cessa-
 'tion of coverture, to assert their rights.'

"The ground upon which saving clauses in
 "statutes of limitation in favor of infants and
 "married women are upheld is the injustice of
 "barring the cause of action of one who is
 "technically incapable of suing. Theoretically,

"this reason is extremely persuasive; but,
 "speaking for myself, I give it as my deliberate
 "judgment, after 40 years' experience at the
 "bar and on the bench, that the saving clauses
 "in statutes of limitation, exempting infants
 "and married women from their operation,
 "have been productive of more hardship and in-
 "justice than would have resulted from the ab-
 "sence of such provisions. An examination of
 "the Reports will disclose the fact that the
 "most flagrantly unjust and inequitable judg-
 "ments and decrees that courts have been com-
 "pelled to render resulted from these saving
 "clauses. Technically, an infant cannot main-
 "tain a suit, and, in contemplation of law, is
 "ignorant of his rights; but, in fact and in
 "practice, infants, through their guardians and
 "next friends, are commonly the most diligent
 "and persistent of suitors, and the instances
 "are few where any meritorious right is al-
 "lowed to slumber. The self-interest of those
 "who desire to administer the infant's estate
 "usually results in a speedy action for its re-
 "covery. But, however this may be, the argu-
 "ment against the justice and wisdom of the
 "statute which contains no saving clause in
 "favor of infants must be addressed to the leg-
 "islature, and not to the courts. In *Blivens v.*
 "*City of Sioux City* (Iowa), 52 N. W. 246, the
 "supreme court of Iowa gave effect to the
 "statute under consideration, and declared that
 "its 'evident purpose was * * * to give the
 "municipal corporations such notice of injuries
 "for which it is claimed to be liable as will
 "enable it to investigate the injuries, and the
 "circumstances under which they were re-
 "ceived, while witnesses who knew and remem-
 "ber the facts can be found, to the end that
 "fraud may be prevented and justice be done."

In *Schauble vs. Schulz*, 137 Fed. Rep. 389, the
 question was whether the exemption in favor of
 minors provided by the general Statute of Limita-
 tions of North Dakota was to be imported into a
 statute providing that persons who had been in

adverse possession of real property for ten years should have valid titles thereto. The Court said (p. 395) :

“Two of the appellants are minors, and it is
“urged in their behalf that they are excepted
“from the operation of the act of March 8, 1899.
“It is said of this act in *Streeter Company v.*
“*Frederickson, supra*, that it ‘is entirely un-
“like the statutes of limitations common in
“most of the states, and also the 20-year limi-
“tation statute of this state. In fact, it is so
“dissimilar that its identity as a statute of
“limitations is almost obscured’. An examina-
“tion of the state statutes shows that section
“5198, Rev. Codes, 1899, which is claimed to
“make the exception, is part of a subdivision
“in the Code of Civil Procedure limiting the
“periods within which actions can be com-
“menced. The first section of the subdivision
“declares that its provisions shall be ap-
“plicable ‘except when in special cases a dif-
“ferent limitation is prescribed by statute’;
“and section 5198 provides, *inter alia*, that the
“time during which one is within the age of
“21 years shall not be a part of the periods
“‘in this article’ limited for commencing ac-
“tions or interposing defenses or counter-
“claims thereto or making entry upon real
“property. The act of March 8, 1899, is not
“part of the Code of Civil Procedure or of the
“subdivision or article limiting the periods
“within which actions can be commenced, but
“is a distinct and later statute, which declares
“that it shall have effect according to its
“terms, ‘any law to the contrary notwithstand-
“ing.’ It is evidently intended to be complete
“in itself, and to prescribe a different limita-
“tion for a special class of cases. Indeed, it is
“unlike the ordinary statutes of limitation, in
“that it contains no reference to the commence-
“ment of actions, suits, or other judicial pro-
“ceedings, and makes the affirmative action
“of the claimant in adverse possession rather
“than the inaction of the other claimant the
“criterion of its operation upon the title. It

“contains no exceptions, and it so plainly indicates that in itself it fully speaks the legislative will that no exceptions can be read into it. *Harris v. McGovern*, 99 U. S. 161, 167, 25 L. Ed. 317; *Dumphey v. Hilton*, 121 Mich. 315, 80 N. W. 1; *DeMoss v. Newton*, 31 Ind. 219, 222; *Smith v. Macon*, 20 Ark. 17.”

With regard to the other contentions advanced by appellant for the reversal of this judgment, it is sufficient to point out that an infant may sue at any time through a next friend, and that the Constitution does not require that the title of a statute shall be an index of its contents.

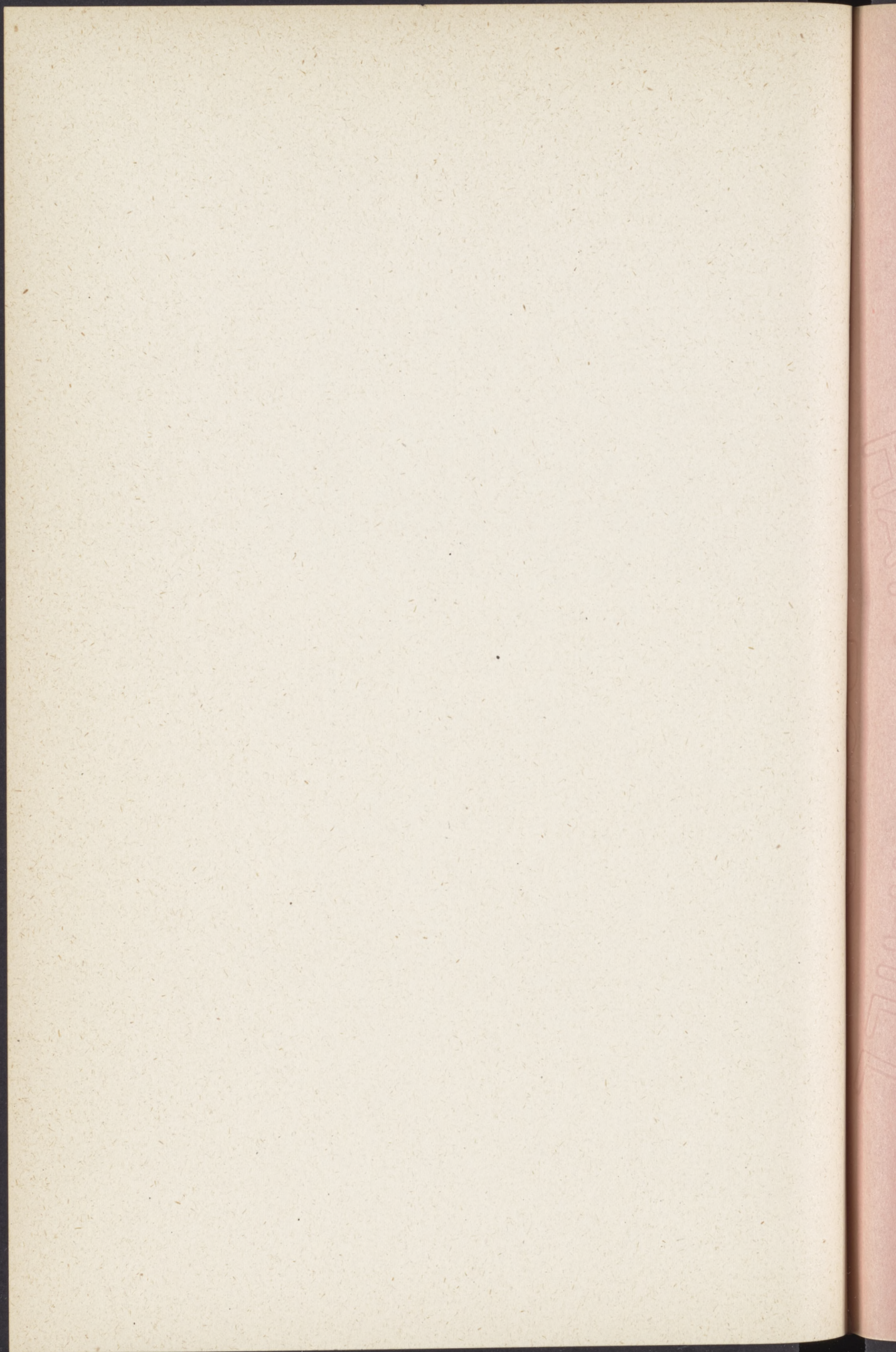
We submit that there was no error on the part of the Court below, and that its judgment should be affirmed.

Respectfully submitted,

CHARLES E. MILLER,

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