

## I N D E X

	PAGE
Rule to Show Cause.....	1
Summons .....	2
Complaint .....	3
Answer of Charles I. Adkins.....	7
Answer of Farr & Bailey Manufacturing Co...	8
Reply .....	10
<b>PLAINTIFF'S TESTIMONY:</b>	
Samuel Fiorentino—Direct .....	12
Cross .....	33
John C. Price—Direct.....	48
Cross .....	52
Edward Carroll—Direct .....	54
Cross .....	61
Dr. Paul M. Mecray—Direct.....	64
Cross .....	70
Dr. Joseph L. Nicholson—Direct.....	72
Dr. Joseph E. Roberts—Direct.....	74
Ishum Lee—Direct .....	78
Cross .....	86
Anthony Melfi—Direct .....	93
Cross .....	98

	PAGE
Frank Green—Direct .....	101
Cross .....	102
James A. Wells—Direct.....	103
Cross .....	107
Elmer J. Lex—Direct .....	110
Cross .....	115
Howard H. Waitt—Direct.....	119
Cross .....	123
Mathew Dolson—Direct .....	138
Cross .....	145
Motion for Non-suit .....	147
 DEFENDANT'S (Farr & Bailey Co.) TESTIMONY:	
Edward I. Berry—Direct .....	152
Mathew M. Dolson—Recalled—Direct .....	155
Recalled—Cross .....	159
George N. Bond—Direct.....	170
Cross .....	172
Gus Goodwin—Direct .....	175
Cross .....	177
John Brill—Direct .....	181
Cross .....	184
Omar Burton—Direct .....	190
Frank Green—Recalled—Direct .....	194
Recalled—Cross .....	198

	PAGE
DEFENDANT'S (Charles I. Adkins) TESTIMONY:	
Charles I. Adkins—Direct.....	211
Cross .....	212
Charge of the Court .....	217
Defendant's Exceptions .....	227
Defendant's Requests to Charge.....	228
Reasons for New Trial.....	230
Opinion .....	231
Judgment .....	234
Notice of Appeal.....	235
Reasons for Reversal.....	236

18

1831

1831

1831

1831

1831

1831

1831

1831

1831

1831

1831

1831

RULE TO SHOW CAUSE.

(Filed April 23, 1923.)

NEW JERSEY SUPREME COURT.

---

SAMUEL FIORENTINO,  
*Plaintiff,* ) 10  
v. )  
CHARLES ADKINS and FARR )  
& BAILEY MANUFACTUR- )  
ING COMPANY, )  
*Defendants.* )

Action at Law.  
Rule to Show Cause.

---

Application being made for this purpose within 20  
the time limited by law, and sufficient cause appear-  
ing therefor;

It is, on this 23d day of April, 1923, on motion of  
Lewis Starr, attorney of Farr & Bailey Company,  
ordered that the plaintiff, Samuel Fiorentino, show  
cause before the Justices of the New Jersey Su-  
preme Court, at the State House in Trenton, on the  
first Tuesday in June, 1923, at the hour of eleven  
o'clock in the forenoon, or as soon thereafter as  
counsel can be heard thereon, why the verdict of 30  
the jury, in favor of the plaintiff, should not be  
set aside and a new trial granted. Reserving, how-  
ever, all exceptions taken at the trial.

FRANK T. LLOYD,  
*Circuit Court Judge.*

## SUMMONS AND COMPLAINT.

10 THE STATE OF NEW JERSEY TO  
Charles Adkins, Farr and Bailey Manu-  
facturing Company, a corporation, and  
Delaware River Ferry Company, a cor-  
poration. You are summoned to an-  
swer the annexed complaint of Samuel  
Fiorentino, in an action at law in the New Jersey  
Supreme Court. And take notice that unless you file  
your several answers to said complaint with the clerk  
of New Jersey Supreme Court at Trenton within  
20 twenty days after service upon you of this writ and  
the annexed complaint, the plaintiff may proceed in  
the suit and judgment may be entered against you.

Witness, WILLIAM S. GUMMERE, Chief Justice of  
the Supreme Court, at Trenton, this eighth day of  
June, A. D. nineteen hundred and twenty-one.

ENOCH L. JOHNSON,  
*Clerk.*

ALBERT S. WOODRUFF,  
*Attorney.*

30

COMPLAINT.

NEW JERSEY SUPREME COURT.  
CAMDEN COUNTY.

SAMUEL FIORENTINO,  
*Plaintiff,*

10

v.

CHARLES ADKINS, FARR AND  
BAILEY MANUFACTURING  
COMPANY, a corporation,  
and DELAWARE RIVER  
FERRY COMPANY, a cor-  
poration,

*Defendants.*

Action at Law.  
Complaint.

20

Plaintiff, Samuel Fiorentino of 1135 Nelson Street,  
Camden, Camden County, New Jersey, says that:

1. On the eleventh day of May, 1921, plaintiff was  
a passenger on a ferry-boat of the Delaware River  
Ferry Company to be safely carried from Philadel-  
phia, Pennsylvania, to Camden, New Jersey. As  
said ferry-boat was docked at the wharves of said  
company at the foot of Kaighn Avenue, Camden, 30  
New Jersey, plaintiff was caught by a truck of the  
defendant, Farr & Bailey Manufacturing Company,  
and crushed against parts of the ferry-boat and run  
over.

2. The defendant, Farr and Bailey Manufacturing

Company, is a corporation of the State of New Jersey with a manufacturing plant at Camden, New Jersey; in its business it owns and uses automobile trucks which are driven by its servants and agents, at said time and place one of its automobile trucks, in charge of and being operated by one of its servants and agents, was standing near the bow of said ferry-boat and so being transported from Philadelphia, Pennsylvania, to Camden, N. J.

10

3. The defendant, Delaware River Ferry Company, is a corporation of the State of New Jersey and on said day owned said boat and its docks at Camden, N. J., and was a common carrier of passengers for hire; at said time and place, this defendant owed to the plaintiff, one of its passengers, a high degree of care to see that he was safely transported and safely permitted to land from its ferry-boat.

20

4. On said day defendant, Charles Adkins, residing at Camden, New Jersey, was there engaged in the business of trucking and therein used automobile trucks; at said time and place one of this defendant's automobile trucks was standing on said ferry-boat immediately in the rear of the automobile truck of the defendant, Farr and Bailey Manufacturing Company, where it had been transported on said ferry-boat from Philadelphia, Pennsylvania, to Camden, New Jersey; this defendant's said truck was in charge of and being operated by one of this defendant's servants and agents and was being used in this defendant's business.

30

5. Said defendant was caused by carelessness and negligence. The negligence of which the plaintiff

complains as against the defendant, Delaware River Ferry Company, is that notwithstanding the high degree of care it owed to the plaintiff, its passenger, it, by its servants and agents failed and neglected to place any block before the wheels of the said automobile truck of the defendant, Farr and Bailey Manufacturing Company, or in that it failed to see that such block was in position when said ferry-boat was being docked.

The negligence of which the defendant complains 10  
as against defendants, Farr and Bailey Manufacturing Company, is that notwithstanding the fact that said ferry-boat was being docked and said plaintiff and other passengers on said ferry-boat were in front of its said automobile truck, this defendant's servants and agents in charge of and operating its said truck carelessly and negligently and prematurely removed a safety block from the front of the wheel of said truck or carelessly and negligently failed to place and maintain such block in front of 20  
the wheel of said truck or see that same was so placed and there caused to remain while said ferry-boat was being docked and in that the defendant's said servant there and then carelessly and negligently failed and neglected to apply and keep applied the brakes on said automobile truck and to remain on said truck to control and brake the same.

The negligence of which the plaintiff complains as against Charles Adkins, is that at said time and place this servant and agent, in charge of his said 30  
automobile truck, carelessly and negligently started the engine of said automobile truck while it was in gear without its brakes applied and before it was reasonably safe to do so. Said ferry-boat not having then been completely docked and plaintiff and other passengers being then in front of said truck

of defendant, Farr and Bailey Manufacturing Company, which was immediately in front of his truck.

6. By reason of the negligence of defendants, as aforesaid, said automobile truck of defendant, Charles Adkins, was started and being uncontrolled by its operator or its brakes, was by its engine propelled forward into the truck of the defendant and Farr and Bailey Manufacturing Company, which  
10 was also then controlled by its operator and unchecked by block or brakes and so was forced against plaintiff and through the safety gates of said ferryboat.

7. As a result of said accident plaintiff suffered a broken leg, contusions, abrasions, sprains, strains and shock. At the time of said accident he was employed and by reason of his injuries has been incapacitated and in consequence has lost and will lose  
20 earnings he otherwise would have had and enjoyed. He has spent and will be caused to expend moneys in and about attempting to be cured, he has suffered and will suffer great physical and mental pain and has been permanently maimed and crippled.

Plaintiff, Samuel Fiorentino, demands \$35,000 damages.

(Signed) ALBERT S. WOODRUFF,  
*Attorney of Plaintiff.*

ANSWER.

NEW JERSEY SUPREME COURT.  
CAMDEN COUNTY.

SAMUEL FIORENTINO,  
*Plaintiff,*

v.

CHARLES ADKINS, FARR AND  
BAILEY MANUFACTURING  
COMPANY, a corporation,  
and DELAWARE RIVER  
FERRY COMPANY, a cor-  
poration,

*Defendants.*

10

Action at Law.  
Answer.

20

The defendant, Charles I. Adkins, of Camden,  
New Jersey, says:

He denies the allegations contained in the plain-  
tiff's complaint, which pertain to this defendant.

As to the allegations pertaining to the other de-  
fendants, this defendant is without knowledge or  
information.

30

HARRY C. KRAMER,  
*Attorney for Plaintiff.*

ANSWER.  
NEW JERSEY SUPREME COURT.  
CAMDEN COUNTY.

---

10	SAMUEL FIORENTINO, <i>Plaintiff,</i>	}	
	v.		
	CHARLES ADKINS, FARR AND BAILEY MANUFACTURING COMPANY and DELAWARE RIVER FERRY COMPANY, <i>Defendants.</i>		
	<i>Defendants.</i>		

Answer.

---

20 Farr & Bailey Manufacturing Company, one of the defendants in the above stated cause, doing business in Camden, in the State of New Jersey, by this answer:

1. Avers that it has no knowledge or information sufficient to form a belief as to the allegations contained in paragraph 1 of the complaint.
- 30 2. Admits the allegations contained in paragraph 2 of the complaint.
3. Avers that it is not required to answer the allegations contained in paragraph 3 of the complaint.
4. Avers that it has no knowledge or information sufficient to form a belief as to the allegations contained in paragraph 4 of the complaint.

5. Denies the allegations contained in paragraph 5 of the complaint insofar as the same show or charge any negligence or want of care on the part of the defendant, Farr & Bailey Company, and avers that it has no knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 5.

6. Denies the allegations contained in paragraph 6. 10

7. Avers that it has no knowledge or information sufficient to form a belief as to the allegations contained in paragraph 7.

FIRST DEFENSE.

1. Defendant, and its agents and servants, performed every duty and obligation it and they owed to the plaintiff. 20

SECOND DEFENSE.

1. The conduct of the plaintiff contributed to the injury set forth in the complaint.

2. As to this defendant, the plaintiff was guilty of contributory negligence.

3. As to this defendant, plaintiff carelessly and negligently left a place of safety and occupied one of danger at the time he was injured. 30

LEWIS STARR,  
*Attorney of Defendant, Farr  
& Bailey Manufacturing  
Company.*

## REPLY.

10

NEW JERSEY SUPREME COURT.  
CAMDEN COUNTY.

---

SAMUEL FIORENTINO,  
*Plaintiff,*

v.

20 CHARLES ADKINS, FARR AND  
BAILEY MANUFACTURING  
COMPANY and DELAWARE  
RIVER FERRY COMPANY,  
*Defendants.*

Action at Law.  
Reply.

---

The plaintiff denies every allegation in the answer.

ALBERT S. WOODRUFF,  
*Attorney of Plaintiff.*

30

TESTIMONY.

NEW JERSEY SUPREME COURT.  
CAMDEN COUNTY.

---

SAMUEL FIORENTINO,  
*Plaintiff,* ) 10  
v. )  
CHARLES ADKINS, FARR AND ) Action at Law.  
BAILEY MANUFACTURING )  
COMPANY, )  
*Defendants.* )

---

April Term, 1923. 4-12-'23. 20

APPEARANCES:

For the plaintiff, A. S. WOODRUFF, ESQ.  
For the defendant, Adkins, E. G. SCOVEL, ESQ.  
For the defendant, Farr & Bailey Co., LEWIS  
STARR, ESQ.

---

Before LLOYD, J., and a jury.

---

30

(Mr. Woodruff opens the case for the plaintiff to the jury.)

(Mr. Scovel opens the case for the defendant, Adkins, to the jury.)

(Mr. Starr opens the case for the defendant, Farr & Bailey Co., to the jury.)

---

THE CASE FOR THE PLAINTIFF.

SAMUEL FIORENTINO, SWORN.

10 By Mr. Woodruff:

Q. Mr. Fiorentino, how old are you?

A. I am thirty-five now.

Q. Speak out so these people can hear you.

A. Thirty-five.

Q. You live in Camden?

A. Yes.

Q. How long have you lived in Camden?

A. A little over three years.

20 Q. You met with an accident, didn't you?

A. Yes, sir.

Q. Before that accident where had you been working?

A. In the navy yard—before the accident?

Q. Yes.

A. The Reading Railroad; at the time I was working in the navy yard.

Q. Whereabout in the navy yard, what kind of work?

30 A. Drilling.

The Court: Speak out louder, Mr. Fiorentino; I know these ladies can't hear you at the far end of the jury box.

Q. How long had you been a driller at the navy yard?

A. Since 1917.

Q. Before 1917, where did you work or before you went in the navy yard?

A. I was working for the Reading Railroad.

Q. How long did you work for the Reading Railroad?

A. Six years.

Q. Now, when you went down to the navy yard in 1917, what was your first job there?

A. Drilling.

10

Q. Drilling?

A. Yes.

The Court: Just a moment, Mr. Fiorentino; you speak as loud as your lawyer is; you not only talk very low, but you put your hand over your face and that stops what little comes.

Q. You started in drilling immediately; is that the same job that you had at the time you got hurt? 20

A. Yes.

Q. What kind of work was that—what did you do?

A. Well, climbed up scaffold, everywhere they told me, where I was supposed to drill a hole, that is what I was drilling, what they gave me the orders to do.

Q. Did you work on the boats?

A. Yes.

Q. The Government boats?

30

A. Yes.

Q. How much of your work was climbing around scaffolding and ladders and things like that.

A. A whole lot, pretty near most of it all the time scaffold work.

Q. Was your work hard work?

- A. Yes.
- Q. What did you have to handle?
- A. Well, the machine, the smaller machine weighs sixty pounds, some ninety pounds, over a hundred pounds, some of them.
- Q. Is that the drill you worked with?
- A. Yes.
- Q. How is that operated, by power?
- A. Yes, by air power.
- 10 Q. By air pressure?
- A. Yes.
- Q. You had to carry those with you up and down ladders and scaffolding?
- A. Yes.
- Q. How much were you making at that job at the time you were hurt, just before that?
- A. My regular wage day work was \$5.80.
- Q. That was your regular day wage?
- A. Yes, but at the time I was working piece work.
- 20 Q. You were working piece work?
- A. Yes, I was working piece work.
- Q. How many days a week did you work?
- A. Well, six days, but at that time it was five and a half.
- Q. You were working five and a half then?
- A. Yes.
- Q. What was your average pay envelope—how much did you get in it every week working piece work?
- 30 A. Well, I was making some days ten dollars, some days nine dollars, some days eleven.
- Q. Well, for the week, how much would you get in your pay envelope?
- A. Well, get from sixty to seventy dollars a week.
- Q. And how long had you been getting that big money?

A. That was over a year I was working piece work, on the new boat; I pretty near had all the electrician's work on that, all the time I was working piece work on that boat, to finish it up.

The Court: When did the accident happen?

Mr. Woodruff: May 11, 1921.

Q. Did you make more money when you worked 10 piece work that way?

A. Yes.

Q. What was your regular wage, how much a week—five dollars and eighty-two cents, you said, a day?

A. Yes.

Q. Was that a week of six days or five and a half days?

A. No, I got five days and a half; when I was working five days and a half that is what I was getting paid for.

Q. You had not been doing that for a year; you had been making bigger money on piece work for a year, had you?

A. Yes.

Q. All right; did you have good health at that time?

A. Yes.

Q. Could you climb around ladders and carry your machine around with you? 30

A. Yes.

Q. Had you ever had any trouble with this leg that was afterward broken?

A. Afterward broke?

Q. The one that was broken in the accident, did you have any trouble before with it?

A. No.

Q. How long had you been traveling back and forth on the ferryboats?

A. Well, I have been traveling on the ferryboats as long as I have been working down in the yard. I was living at the time a little over a year, I was working in the yard and I was going back and forth, and then about six years I was working for the Reading, I was working at Kaighn Point Ferry  
10 at the time.

Q. So for seven years you went back and forth on the ferryboats, did you?

A. Yes.

Q. Which ferry was that, the Reading Ferry?

A. Yes.

Q. What time did you come back at night usually from your work at the navy yard?

A. Well, I got the half-past five boat from South Street Ferry.

20 Q. That brought you where, here in Camden, what street?

A. Five or ten minutes to six.

Q. And what street did it bring you here?

A. Kaighn Avenue Ferry.

Q. Now, on the night of the accident, was anybody with you that you knew?

A. Yes, sir.

Q. Who was with you?

A. A fellow by the name of Carroll, and then  
30 Melfi was with me.

Q. You knew these two men, did you?

A. Yes, I was talking with them.

Q. What position did you take on the boat when you got on the boat on the Philadelphia side?

A. Well, I was inside, over in the women's side; I was inside, sitting there.

Q. In the cabin?

A. Yes, in the cabin. When the boat started to get in the slip, we walked out, and the people started to walk out of the cabin, walk outside there, it was too crowded.

Q. It was too crowded where?

A. On the side where the women was, and I walked out against the rail there, I walked between the rail and out on the driveway, and I was standing where they divide from the driveway the women's side there—I was standing right there near the gates. 10

Q. Near the big post that is between—

A. No, inside that big post, it was toward the center of the boat.

Q. Who was next to you?

A. Carroll on one side, Carroll was on my right-hand side, then the other kid was on the other side about the center of the boat.

Q. Melfi was about the center of the boat?

A. Yes. 20

Q. Were there other people up front there?

A. Yes.

Q. How many other people?

A. Well, I couldn't say how many.

Q. Just give us an idea.

A. They were along that rail there; all people were standing.

By the Court:

Q. What time of the day was it? 30

A. About quarter of six.

Q. In the evening?

A. Yes.

Q. Was the boat crowded or not?

A. Yes.

By Mr. Woodruff:

Q. On the front end, on the ladies' side where you had come out of the cabin as you came into the dock before the accident, was that crowded?

A. Yes.

Q. How crowded was that?

A. Oh, I would say fifty or sixty people; women was there and——

10 Q. Speak a little louder.

A. Women was standing there when I came out of the cabin, and they were on the front, waiting until the gates would be open to go out.

Q. Over on the men's side in front, was that crowded, too?

A. Yes.

Q. Now, when you came on into the dock, what was the first you knew of any accident?

A. I knew nothing until I was standing there and  
20 ——

The Court: Mr. Fiorentino, let me tell you something; you turn around and talk to counsel and talk in a low tone, and it is very hard for this gentleman here, the stenographer, to get you.

Q. Now, tell us what happened.

A. I was standing near the gates and someone was pushing me in the back, I thought it was people  
30 that wanted to pass; I tried to protect myself by the gates, and they kept pushing and pushing and the gates started to go down, and I went down with the gates; then I fell over on the side, then I turned around and saw a truck was rolling down. This Carroll was alongside of me, he grabbed me on the side there and I caught myself on the rail there

what divide the driveway from one side and the center of the boat, and I tried to pull myself over, and Carroll gave me a hand, grabbed me on the side there and pulled me over with it, and I see that front truck, that truck, that front wheel went over the heel of my shoe there, just jump over and fall, then it continued to go ahead, and my leg was puffed up like that, right up here, at the time they grabbed me and carried me out.

Q. Where did the truck stop, Sam? 10

A. Right near the slip.

Q. What brought it to a stop?

A. Oh, well, that dropped, put the boat down close to two feet; that is what stopped it; the slip was high.

By the Court:

Q. What do you mean?

A. The boat, the truck went forward when it stopped, put the end of the boat down. 20

Q. Where did the truck stop, the question was, how far did it go? Did it go off the boat or stay on the boat?

A. No, it stay on the boat, went to the slip and it stopped.

Q. Did it go to the edge of the boat outside of the gates?

A. Yes.

Q. And fetched up against the slip, did it? 30

A. Yes.

Q. Now, how high did you say the slip was above the boat?

A. Close to two foot.

Q. You don't mean that, do you?

A. Yes, I do mean that.

By Mr. Woodruff:

Q. Then it fetched up right against that, did it, Sam, and stopped there?

A. Yes.

Q. Now, when you went out and went up to the gates and leaned on the gates, how close to you was this Farr & Bailey truck?

10 A. Well, I think it was a little over two feet, because there was a place you could walk by there; it was over two feet, I think it was.

Q. Had you any warning at all that the truck was moving until you felt this push on your back?

A. No.

Q. You didn't hear any warning yourself at all?

A. No.

Q. Where was it that your leg was broken, do you know?

20 A. I know my leg was puffed up, you know, when I went down, that is all I know, but that is when I fell.

Q. When the gate gave way and you all went down on the deck?

A. Yes, when I was laying on the side there, because I seen my leg, you know, was swelling up right away; I didn't know what it was.

Q. Now, Sam, when the truck pushed you, what kind of push was it; describe that to us.

30 A. It was no heavy push, just jabbed me in the back, it pushed me, and just kept pushing, it continued to push all the time.

Q. Now, you say they picked you up and took you away; where did they take you?

A. Right on the front, the women's waiting room there, laid me on the floor there.

Q. Then were you taken to Cooper Hospital?

A. Yes.

Q. After that?

A. Yes.

Q. Now, how long altogether, Sam, were you in the hospital the first time?

A. Why, for 137 days.

Q. You were there continuously that time, were you?

A. Yes.

Q. 137 days?

10

A. Yes.

Q. Now, what did they do with you first?

A. Well, they laid me in the bed and put weights on my leg; then I stayed with weights on my leg eight weeks.

Q. Were they weights that pulled over the end of the bed and pulled on your leg all the time?

A. Yes.

Q. Now, eight weeks they did it that way?

A. Yes.

20

Q. Did they take X-ray pictures?

A. Three or four times took an X-ray of me.

The Court: They set the leg first, didn't they?

Mr. Woodruff: No, I think not; they were pulling it in place for eight weeks.

Q. Did they do anything to set your leg for eight weeks?

30

A. That is all; there was a little bit cut on the side, where a little blood came out, and after I was in there eight weeks—no put no medicine or nothing on the top here; this was with weights; it was from here down my leg, hanging weights over the side of the bed.

By the Court:

Q. Didn't they put splints along your leg?

A. No.

By Mr. Woodruff:

Q. Just pulling all the time down on your leg?

A. Yes.

10 Q. During that eight weeks, did you have any pain?

A. Oh, pain—nobody couldn't touch the foot; if it touched on the bed—sometimes the nurse was sweeping there and touched on that bed, and I shall feel that pain all the way up my back.

Q. Did that continue all the time during eight weeks?

A. Yes; well, for three weeks I felt pain all the time, for three weeks I couldn't stand it, howled  
20 all night long, and after that the pain started to go down, it didn't pain all the time.

Q. At the end of eight weeks, what did they do with your leg?

A. Took an X-ray again, and the doctor came there and said, "I think I have to operate on you."

Mr. Starr: I object to that and move it be stricken out.

30 Q. Not what they said, just what did they do to you; never mind what they said to you.

A. They took an X-ray after that, said my leg was no good, because I couldn't lift it, couldn't lift my leg.

Mr. Starr: I move that be stricken out, if the Court please.

The Court: Strike it out.

The Witness: And July 8th, I think it was, they operated on me then.

Q. Now, when they operated, Sam, did you take an anesthetic so that you didn't know anything?

A. I didn't know nothing about it.

Q. They gave you ether or something, did they?

A. Yes.

Q. And operated on you in the operating room?

A. Yes.

Q. Then were you put back in bed again?

A. Yes.

Q. And what was done with you then?

A. Put it in plaster of paris, I think they called it, all the way up from here, all the way down to my foot, and I couldn't move; that is the way I was laid, couldn't move it anyway.

Q. And how long did they keep you in that cast? 20

A. Eight more weeks.

Q. Now, Sam, during all that sixteen weeks, were you able to move your knee or bend your knee?

A. No, I couldn't, because they had weights on me.

Q. That is what I mean, did it keep you so you couldn't move your knee?

A. Yes.

Q. Now, after the eight weeks, when you had the cast, you could not move your knee at all, could you? 30

A. It was stiff all over my body then, it was stiff, I couldn't move at all.

Q. That is what I mean, for the whole sixteen weeks you never could bend your knee?

A. No.

Q. When you had the cast on, did it still hurt you after they had operated?

A. Well, hurt me for the first couple of days, then I didn't feel nothing no more.

Q. Just the inconvenience of the cast?

A. Yes.

Q. Now, after that additional eight weeks, what did they do?

A. That is all, they took an X-ray after the operation on the top, you know, took an X-ray two or three times.

10 Q. And did they take the cast off?

A. Yes, after eight weeks took the cast off.

Q. Then what did they do with you after that, after they took the cast off and took an X-ray?

A. Then I stayed in bed for another week with no plaster on, and then rubbed it about twice a day, rubbing, massage, and after that put me in a rolling chair they had in there maybe for two more weeks, a little over that.

20 Q. Now, when was it, finally, Sam, that you got out of the hospital, what day, do you remember?

A. I think it was the 17th of September, I think it was, when I got out.

Q. Now, when you went out of the hospital, how were you taken home?

A. Well, the doctor told me I had to get a splint made.

Q. Now, just describe that and tell us what it looked like.

30 A. The splint is going under there, a piece of iron under there came up to my leg up there and rolled around; my leg was put in and rubber, I think, or lead, inside, I don't know what was inside, and all the way up here, and when I stepped the weight would come on my splint and no go on my leg. Then I had to go on a crutch.

Q. That was iron, you say, on each side of your leg?

A. Yes.

Q. And underneath your shoe?

A. Yes.

Q. You wore that when you went out of the hospital, did you?

A. Oh, I wore that for pretty near a little over three months.

Q. Three months that you had that?

A. Yes.

Q. Then after that was it taken off? 10

A. After that, started to take them off, take them off one day, you know, and put them on back again, take them off maybe another day and put them back again. Well, then the doctor told me to go back to the hospital, he wanted to try to bend my knee. I went back.

Q. Well, Sam, that was after the other trial, wasn't it?

A. Yes.

Q. That you went back again? 20

A. Yes.

Q. At the other trial you still had your brace, did you?

A. Yes.

Q. Now, when you went back to the hospital, when did you go in again, do you remember?

A. No, I can't remember the exact date when it was, when I went back.

Q. What doctors had taken care of you at the Cooper Hospital the first time you were there, what 30 surgeons?

A. Well, the first doctor took care of me is Dr. Nicholson, and then the one that operated on me is Dr. Meecray, who operated on me.

Q. And Dr. Nicholson and Dr. Meecray took care of you, did they?

A. Yes.

Q. Now, when you went back the second time, at which doctor's suggestion did you go back—which doctor got you to come back?

A. Dr. Mecray.

Q. You went in there again, did you, after the other trial?

A. Yes.

Q. What did they do with you then, after you  
10 went back?

A. Gave me gas or something, put me to sleep, I know, got hold of my leg, a couple of doctors was up here holding my leg on the table, and a couple of doctors got hold of my leg below there and shoved the leg up and down there and tried to break it and stopped then and go back. I open my eyes—I had my brother with me at the time; my brother came up with me—

Q. Well, the doctor can testify, Sam, what hap-  
20 pened inside, you know. Up until that time when you went back for Dr. Mecray to bend your knee, could you bend your knee yourself?

A. No.

Q. What had you been doing after you got out of Cooper Hospital to try to get your knee limbered up?

A. I went over to Dr. O'Neill on Broadway here.

Q. What did he do for you?

A. Put massage on there. Then, after that, this  
30 was after I went back to the hospital—

Q. I am getting in between the time first. How long did you go to Dr. O'Neill?

A. I went to Dr. O'Neill for three weeks, then I went over to another doctor, it is a chiropractic doctor, he is called, on Haddon Avenue here.

Q. Well, now, Sam, had they helped you with their massage and treatments?

A. They helped me a little bit.

Q. And how did you notice that?

A. Well I could move my leg better.

Q. How much could you move it at the time we had the case before?

A. The time before I couldn't bend it any, it was stiff, but I started to move it a little bit.

Q. You were getting some strength back in it, were you?

A. Yes.

10

Q. Now, Sam, at the present time, since the last operation—I will withdraw that question. After the operation where they broke your knee forcibly, have you had any other massage treatments or electrical treatments?

A. Yes.

Q. What doctor did you get?

A. Dr. Coffin at Collingswood.

Q. And what has he been doing?

A. He was massaging with his hand and electrical; he tried to force it back, to bend. 20

Q. And how long did he work on the leg after that last time at Cooper Hospital?

A. Well, I went—the first time I went one dozen times, then I went over twice a week for about two months.

Q. Did Dr. Coffin help your leg, help your knee?

A. He helped me a whole lot, because after I went to Dr. Coffin, I started to step about just with a cane; then I put the crutch away. 30

Q. After you came out of Cooper Hospital, and they had attempted to break the adhesions, could you walk then and bend your leg?

A. No, I had to wear the splint again.

Q. You had to wear the splint again?

A. Yes.

Q. And it wasn't until after Dr. Coffin got working on it that you got better?

A. When I went to Dr. Coffin, when I put my crutch away after I went to Dr. Coffin for about pretty near over two months, then they told me I could start to step around with a cane, and I did; I got a cane and started.

Q. Now, Sam, show us now how far you can bend your knee—what is the matter with it?

10 A. That is how far I can bend it (illustrating).

Q. That is the most?

A. That is the most I can bend it.

Q. Just about a right angle?

A. Yes.

Q. Show us the other one, how much you can bend the other one.

A. I can bend the other one that way (indicating).

Q. You can't bend this one that way?

A. No.

20 Q. When was the first, Sam, that you were able to go to work, do any work?

A. July 8th the first I ever went to work.

Q. July 8th of what year?

A. Last year.

Q. How long altogether then from the time of the accident up to the time that you were able to go back and do any work?

A. Thirteen months.

30 Q. Had you been able to earn any money by working yourself during any of that time?

A. No.

Q. Now, how much was the bill at the Cooper Hospital the first time, Sam?

A. I think it was four hundred dollars and something, I think.

Q. It is \$384.50; now, that was the first time; what was it the second time, Sam?

A. I don't know what it was, the bill, the second time.

Q. How long were you there altogether?

A. They took an X-ray when I went in there, and laid me in the bed for, I think, if I am not mistaken, five days.

Q. And did they put the splints on, too?

A. Put me with a splint on, what I was using when I was walking, they kept that in the bed with it, the shoe and everything on. 10

Q. Oh, the steel brace?

A. Yes, kept that on so I couldn't move my leg at all then.

Q. How much was it for the four days and the X-ray picture?

A. I don't know.

Q. How much did you have to pay Dr. O'Neill; he was the first one you went to.

A. He charged me three dollars. 20

The Court: Can't you tell us all your expenses, all your doctors' bills? Have you got them there, Mr. Woodruff?

Mr. Woodruff: Yes, I have got a list of them.

The Court: Suppose you submit them; that may shorten the matter.

Mr. Starr: We haven't any objection to this statement, Dr. Roberts \$5.00; Dr. O'Neill \$11.00, brace \$13.00, and the other doctor \$20.00. 30

Mr. Woodruff: Making a total of \$446.00 for doctors and hospital.

Mr. Starr: Yes, I don't think there is any question about that.

The Court: Doctors and hospital, \$446.00?

Mr. Woodruff: Yes, that is the total of the doctors and hospital.

10 Q. Now, Sam, what kind of work did you go back and do after thirteen months?

A. I can't go back in the navy yard.

Q. Were you able to go back and do that work at all?

A. No.

Q. That machinist's work?

A. No.

Q. Could you now?

20 A. No, I couldn't do it now, because I couldn't go down the steps on a ship—you know a ship's step is awful steep—and I couldn't climb any scaffolding or anything now.

Q. You don't think you could climb up ladders and carry a sixty pound drill?

A. No, I couldn't go up a ladder.

Q. Well, you haven't gone back at all to work at the navy yard?

A. No.

Q. What work did you start doing thirteen months after?

30 A. Drove a car.

Q. Driving a truck?

A. Yes.

Q. That is a jitney bus, isn't it?

A. Yes.

Q. Is that what you have done ever since?

A. Not all the time, because I had one little bus

first, and that little bus I can manage now. The big one, the brake was hard, you know; I didn't want to drive the big bus at all; I drove the small one.

Q. You have two that you run in the jitney business now, do you?

A. No, just one now.

Q. Just one?

A. Yes.

Q. The big one you say you can't drive, can't handle that? 10

A. I never drove the big one to drive.

Q. But the little one you could handle all right, could you?

A. Yes.

Q. Where do you run your bus—where is your route?

A. Down Broadway to Fairview.

Q. Down Broadway to Fairview?

A. Yes.

Q. And who spells you—who is the driver who helps you out, works with you? 20

A. I have got a fellow by the name of Max Miller.

Q. Your brother, too, doesn't he?

A. Yes, and my brother.

Q. Is that all the kind of work that you have been able to do since?

A. Yes.

Q. You own the bus, and you drive, Sam, and have these other two men to drive for you?

A. Yes. 30

Q. Do you have any trouble with your leg when you are walking around?

A. Well, now, in the mornings, when I get up out of the bed, it pains me right under here, and then when I walk about five or ten minutes, then lame a little bit; then after that no feeling of pain, only

when the weather changes, I feel pain right up here (indicating).

Q. Where the break was?

A. Yes.

Q. When you walk a long distance or are on your leg a good bit, does it give you any trouble?

A. I feel pain right here, you know, get tired right around this spot on the leg, but not where it is broke.

10 Q. Now, where the break is, down around there?

A. No.

Q. Now, that is the only trouble you have at the present time with it, is it?

A. Yes.

By the Court:

Q. Won't you step down on the floor there and stoop down for me? Just turn your face toward  
20 the jury. Now, stoop down just as far as you can.

A. That is as far as I can (indicating).

Q. That is as far as you can get down, is it?

A. Yes.

By Mr. Woodruff:

Q. Now, how far can you get down with the other one?

30 The Court: Well, he went all the way with that; nothing wrong with that.

Cross-examination.

By Mr. Starr:

Q. Have you a trade, Sam?

A. Yes.

Q. What is your trade?

A. The last time with my trade was the drill.

Q. How long had you been working at that?

A. I have been working in the navy yard close to  
three years, since 1917. 10

Q. 1917 you started in the navy yard?

A. Yes.

Q. Did you immediately begin to do work as a  
driller?

A. No, but before that I was drilling over at the  
Brill Car Works, over in Philadelphia.

Q. How long had you worked for the Brill Com-  
pany?

A. Well, I worked for the Brill Company about  
a year and a half, I think. 20

Q. And what work did you do there?

A. Drilled.

Q. Did you do any drilling before that?

A. Before?

Q. Before you went to the Brill Company?

A. No.

Q. Then you started as a driller with the Brill  
Company—that is right, is it?

A. Yes.

Q. And you worked there a year and a half? 30

A. Yes.

Q. And then went to the navy yard?

A. No.

Q. Where did you go then?

A. I quit then and went back to work at the rail-  
road.

Q. Which railroad?

A. The Reading Railroad.

Q. What work did you do there?

A. Car cleaner.

Q. Cleaned cars?

A. Yes.

Q. Well, did you work anywhere except at the railroad company between the time you left Brill and the time you went to the navy yard?

10 A. No, went to work on the railroad, I quit the railroad and went to work for Philadelphia Repair work, down in Front and Mifflin, and then from Front and Mifflin I went down to the navy yard.

Q. Then at the Philadelphia Repair Company, what sort of work did you do?

A. Drilling, the same.

Q. How long were you there?

A. Well, I was only there about a month, one month I was there.

20

By the Court:

Q. What do you mean by drilling?

A. Well, drilling a hole, you know.

Q. In iron?

A. In iron, yes.

Q. Not in the ground?

A. No.

30 By Mr. Starr:

Q. And you didn't do any drilling work when you worked for the railroad company?

A. No.

Q. How long did you work for the railroad company?

- A. Close to six years.
- Q. And that was immediately before the time you went to work for the Philadelphia Repair Company?
- A. Yes.
- Q. And you did other work before, cleaning cars?
- A. Yes.
- Q. What do you mean by that, cleaning the windows and sweeping them out?
- A. Cleaned the windows, climbed up the ladders, cleaned the window outside, cleaned them inside, 10 mopped the car up.
- Q. Before that time you worked at the Brill Company?
- A. Yes.
- Q. Where did you work before that?
- A. I used to work over at Croft & Allen.
- Q. In the candy business?
- A. Yes.
- Q. What kind of work did you do there?
- A. Marshmallows, had marshmallow work. 20
- Q. You made candies, helped make candies?
- A. Yes.
- Q. And did you have any employment in this country before you went to Croft & Allen?
- A. Yes.
- Q. Where did you work before that?
- A. That is the first place I went to work.
- Q. That is what I thought; so that when you came to this country you started work at Croft & Allen making candies? 30
- A. Yes.
- Q. Then you worked at Brills for a while drilling?
- A. Yes.
- Q. Then went and did car cleaning at the railroad company?
- A. Yes.

Q. Then started at the Philadelphia Repair Company?

A. Yes.

Q. Then went to the navy yard?

A. Yes, to the navy yard, that is right.

Q. How long had you been on piece work before the accident happened?

A. On piece work, I believe, if I am not mistaken, it is a little over a year. I know when I started  
10 piece work, it was on New Years, right after New Years, year before last, before I got hurt in my leg.

Q. Well, that would be 1919, wouldn't it?

A. Yes, 1919.

Q. So a little after New Years, 1919, until the accident happened you worked piece work?

A. Yes.

Q. And before that time you worked by the day, and you say your wages were about \$5.80 a day?

A. No, before that time my wages were not that  
20 much. I was not rated the first time on the same rate; I was rated less time.

Q. When you were hurt, were you working piece work or by day's labor?

A. The first time, before I went to work piece work, I wasn't at the same rate.

Q. But, Sam, I am trying to find out when you were hurt, when the accident happened, were you then working piece work or on days' labor?

A. No, I was working piece work at the time.

30 Q. Piece work?

A. Yes.

Q. When was it you say you got wages of \$5.80?

A. When I started working piece work, I had that wage then, \$5.80.

Q. Then when they transferred you from day's labor on piece work, you were then getting \$5.80?

A. Yes, but I never worked any labor, because

there is two classes, three classes, first, second and third.

Q. Well, maybe we don't understand each other. How much were you getting a day when they shifted you over to the piece work?

A. I was getting \$5.80 a day.

Q. How long had you been working at that, those wages?

A. How long? I was at that time in the yard for about a year, then they put me on first class. 10

Q. Was that \$5.80 first class?

A. Yes.

Q. What had you gotten before that?

A. \$4.80, second class.

Q. What did you get at the railroad company?

A. On the railroad then it was nineteen cents an hour, I think it was.

Q. You were getting nineteen cents an hour at the railroad company?

A. Yes. 20

Q. What did you get at the Philadelphia Repair Company?

A. \$4.80.

Q. \$4.80?

A. Yes.

Q. What did you get at Brill's?

A. Oh, Brill, at that time \$19.00 or \$18.00 a week at the time, but Brill was light work, not like the navy yard.

Q. Lighter? 30

A. Sure; cars, they don't have thick metal like they have them on the ship.

Q. Did you do drilling, the same kind of drilling?

A. Yes.

Q. Did you sit down in the ladies' cabin the day of this accident?

A. Yes, sir.

Q. You were sitting down there, were you?

A. Yes.

Q. And you and Carroll walked out together?

A. Yes, sir.

Q. And as you took your position along the gate in the front of the boat, the ferry-boat, did you pass by in front of the first truck, the truck that was standing there?

A. No.

10 Q. Did you get ahead of that?

A. See, the boat was standing there; these are the gates, and the post what the gates is tied to it; then I was standing right outside of that post on the driveway.

Q. So that you did not pass in front of the car to get in the position you were standing?

A. No, alongside of the car.

Q. And you say that the car was about how far from you?

20 A. About two feet, a little over two feet, I think it was, over two feet.

Q. Was there room enough for people to pass in front of the car, between that and the gate?

A. Yes, there was place for two persons to pass.

By the Court:

Q. Was anybody else there with you?

A. Yes.

30 Q. Beside this one man—any other people standing there?

A. Yes, all the way along the gates there was other people standing.

By Mr. Scovel:

Q. Sam, at the time you were hurt, you owned two busses, didn't you?

A. No.

Q. You owned one bus, didn't you?

A. Yes.

Q. Is that the Oriental jitney bus?

A. Yes.

Q. That bus is owned by you, isn't it?

A. Yes, but owned by me and my brother now.

Q. It was owned by you at the time you were hurt, wasn't it?

A. Part of it paid, part was to be paid for at the 10 time I was hurt.

Q. You were buying it on time payments, were you?

A. Yes, and then my brother——

Q. You were operating it through your brother as chauffeur, is that right?

A. Yes.

Q. And the earnings of the bus went to you, didn't they?

A. Went to me, and I had to pay the notes off. 20

Q. Didn't you own the G. M. C. bus at the time you were hurt?

A. No.

Q. When did you buy the G. M. C. bus?

A. The G. M. C. bus, I bought that the last of July. There was something the matter with this——

The Court: Never mind about what was the matter with it; he didn't ask you that.

30

The Witness: I had to buy the other car and put on this brace to work with.

Q. You bought the G. M. C. last July?

A. Yes.

Q. Do you own the G. M. C. now?

A. No.

Q. You still own the Oriental bus, don't you?

A. Yes.

Q. Sam, when this Farr & Bailey truck first struck you, was it a sudden bump that you got or a gradual squeezing into the gate?

A. No, just a gradual squeeze; I never thought it was a car in back of me, I thought it was people.

Q. And you had your back turned to the truck at  
10 the time, did you?

A. Yes, I was looking for the deckhand, you know, to open the gate.

Q. The Farr & Bailey truck passed over your leg, didn't it, the front wheel?

A. I can't say whether it passed over the front part of my leg, but I seen the front wheel pass over my heel, I seen that.

Q. It passed either over the upper part of your leg or the lower part?

20 A. The lower part, I couldn't see the upper part.

Q. It did pass over the lower part?

A. Yes.

Q. It didn't stop then, it kept moving?

A. Yes, went as far as that pier there, to the middle of that post, if I am not mistaken, a little over that.

Q. What made it stop then?

A. Stopped against this slip.

Q. That is, the ferry dock stopped it?

30 A. Yes, the dock.

Q. The dock was about, you say, two feet above the level of the bow of the boat?

A. Yes, that boat was down close to two foot.

Q. Did the Farr & Bailey truck come to a sudden stop when it hit the ferry slip?

A. That is when it stopped, right there.

Q. Did it come to a sudden stop then?

A. Yes.

By Mr. Woodruff:

Q. I forgot to ask you, Sam—you just mentioned it—you said you were watching the deckhand?

A. Yes.

Q. What were they doing at the time you first felt this push—where was the boat and what was 10  
going on?

A. The first they threw the hook, you know, on the eye, you know, what they have got on the end of the boat; then they spin the wheel, the wheel go around, and then they leave that and get hold of the rope and put that board, what the people walk out, and try to pull the other board on—

By the Court:

Q. Was this a slip and a system of fastening like 20  
the old style or new?

A. No, the old style.

Q. They had a rope on each side with a hook on it?

A. Yes.

Q. And that was pulled out to where the boat was and put in the eye?

A. Yes.

Q. In the eye bolt, and then the boat pulled up to the dock? 30

A. Yes.

Q. Now, which one of those do you say was in when the accident happened?

A. The one on the right-hand side.

Q. On the other side or your side?

A. On my side.

Q. The one on your side was being put in, was it?  
A. Yes.

By Mr. Woodruff:

Q. And when you felt the pushing, Sam, what was the man doing with his hook or his wheel?

A. He was pulling that plank, what the wagon come off.

10 Q. Pulling the plank that the wagons would come out on?

A. Yes.

Q. Had any of the gates been opened?

A. No.

Q. None of the gates had been opened?

A. No.

Q. Had the boat come all the way into the dock yet?

20 A. Well, I couldn't say, it was close to it, but that wheel continue to spin around.

Q. The wheel was still spinning around?

A. Yes.

Q. And still pulling against the boat, was it?

A. Yes.

Q. When the boat gets all the way up, and the rope is taut—

A. Yes.

Q. Does the wheel spin then?

A. No.

30 Q. When you got hit and got hurt you say the wheel was still spinning, was it, the wheelman's wheel that pulls the boat in?

A. Yes, when I felt somebody in back of me was pushing, that wheel was still going around.

Q. Still going around?

A. Yes.

By Mr. Starr:

Q. Now, Sam, you say at the time that you were struck in the back the deckhands were putting the plank between the boat and the slip where the wagons come off?

A. Yes.

Q. That plank, or rather that gangway, I guess you call it——

A. Yes.

10

Q. Was on the land side, that is, in the slip side?

A. Yes.

Q. And that was then being pulled from the slip to the boat?

A. No, the deckhand, you know, put the one on the side what the people are going out, then they get hold of the rope.

Q. Then the plank for the pedestrians, for the people to leave the boat, was in position; that connected the slip with the boat, didn't it, before you were hurt?

20

A. No, I couldn't say if it was in position or not, because generally that is the first they put down.

Q. Now, was it there? You say the wagon gangway was being put in position when you were struck in the back.

A. The deckhand got hold of that rope and tried to pull——

Q. Yes, they were then putting that in position, weren't they?

30

A. Well, they were getting ready to put them in position.

Q. They had hold of the ropes pulling on it?

A. Had hold of the rope, but I don't say they were pulling.

Q. Well, the deckhands on the boat had hold of

the ropes for the purpose of pulling the gangplank on the boat from the slip?

A. Yes.

Q. And that was the plank that was used for the wagons to go off?

A. Yes.

Q. Now, on the right of that, or to your right, rather, was another plank for the pedestrians?

A. A little plank, yes.

10 Q. Now, was that in position at the time you were struck?

A. I couldn't say that.

Q. As a usual thing they put that first, don't they?

A. Put that first.

Q. And then put the wagon plank on later—that is the usual way, isn't it?

A. Yes.

20 Q. Now, did you notice whether the boat had been fastened to the slip on the left-hand side of the boat?

A. No, I couldn't.

Q. You didn't notice that?

A. No.

Q. But the rope was in the eye, that is, the hook was in the eye on the boat, on the bow of the boat, wasn't it?

A. Yes.

Q. And the wheel was then being wound around?

A. Yes.

30 Q. And the boat and slip were connected with this rope?

A. Yes.

Q. And you observed that before you were hit, before you were struck?

A. No, when they started to push me, this wheel, what the man puts the eye on, then was moving

around yet when somebody started to push me in the back.

Q. But when you were being pushed in the back, had the hook on the rope been connected with the eye on the bow of the boat?

A. Yes, they just throwed it on and spin that wheel.

Q. Was there a deckhand on the front part of the boat on the right-hand side about where you were?

A. He was on the slip. 10

Q. On the slip?

A. On the slip.

Q. And he had then taken the rope with the hook and passed it over the bow of the boat and fastened it on the boat, is that it?

A. He would throw them at them.

Q. And then hook it on?

A. Yes, but when the boat—when they throw the hook, it ain't in the eye.

Q. Pretty close to it, isn't it? 20

A. Sometimes Gus there, he can throw that hook from the middle of that table there, he can hook them right in, take them in then.

Q. But it was close enough for the men on the bow of the boat to have hold of the rope and pull the gangplank on?

A. No on the boat; it was on the slip; that rope was on the slip side; the rope, it ain't on the boat.

Q. Is this gangplank on the bow of the boat or on the slip? 30

A. On the slip.

Q. For vehicles?

A. Yes.

Q. Well, the man on the bow of the boat had the rope to pull it on to the boat, didn't he?

A. On the bow of the boat, you say?

Q. Yes.

A. I seen the man who was on that slip, he is the one that had to get hold of the rope, the rope laid on the slip, and he had hold of the rope and tried to pull it up on the boat; it wasn't on the boat yet.

By Mr. Scovel:

Q. Sam, did you notice what happened to the gate  
10 after the Farr & Bailey truck pushed you?

A. I know the gates went down.

Q. Went down?

A. Yes.

Q. They broke down, did they?

A. Yes.

Q. Did they take the post with them? Did they take the post with them to which they were attached?

A. No.

20 Q. Did you notice whether they did or not?

A. I don't think they took that post with them.

Q. All you know is that it broke the iron gate down, it went down?

A. Yes, that is all I know.

By Mr. Woodruff:

Q. This man that you speak of, Gus, is he one of the ferry hands there?

30 A. He is the deckhand on the slip side all the time, been working there since I was working there.

By the Court:

Q. Had any of them men gotten off of the boat when you were hurt?

A. No, the gates were not open yet.

By Mr. Woodruff:

Q. The deckhands, the men who work on the boat, had they gotten over on the slip?

A. I couldn't say if he got over on the other side of the boat.

Q. But on your right-hand side?

A. No.

Q. Was Gus working there that day, the one you call Gus?

10

A. Yes.

Q. He was working there that day?

A. Yes.

Q. Was Gus on the slip when your boat came in?

A. Yes.

Q. That is where he belonged, on the slip?

A. That is where he belonged.

Q. And he didn't step over on the ferryboat?

A. No.

Q. Or the men step over from the ferryboat on 20 the slip?

A. I couldn't say on the men's side.

Q. I mean on your side, the ladies' side?

A. No, didn't get out there.

Q. You say he could throw it from the table to here—how far is that?

A. He could throw it three feet easy.

Q. Judge Starr asked you about the usual way they did it up there; how do they do it usually?

A. Well, a foot and a half or two, you know, they 30 throw it that far, if they have got enough room to hook it in there.

Q. When it is hooked, what else do they do?

A. Spin their wheel and try to pull it in.

Q. Do they wait at the wheel and keep on turning until the boat is in or do they do something else?

A. The wheel turns around, then they put the plank down.

Q. So when they put the plank down, the wheel is still turning, the boat still coming in?

A. Yes.

Q. But is not all the way in?

A. No.

Q. What is Gus' last name, Sam?

A. I don't know his last name.

10

---

JOHN C. PRICE, sworn.

By Mr. Woodruff:

Q. Mr. Price, where do you live?

A. 2910 North Camac Street, Philadelphia, Pa.

Q. What is your job?

20 A. Supervising driller at the Philadelphia Navy Yard.

Q. How long have you held that position?

A. As near to my recollection, it is ten years.

Q. Did Sam Fiorentino work under you?

A. Not all the time.

Q. Was he working under you in May?

A. He was working under me at the time of this accident.

Q. And what classes of drillers do you have?

30 A. There are now only one class, but at that time there were three classes, known as first, second and third.

Q. Which got the highest pay—which were the best workmen?

A. The first class.

Q. Which was Sam in at the time?

A. The first class.

Q. What did the first class drillers get at that time?

A. Under my supervision—that is, Sam came under me—the salary had been reduced then; he had wages of \$5.56 per day. Previous to that the salary was as high, that is, in piece work rating, they could make then as high as ten to twelve dollars a day, that is, during the war.

Q. Yes, I understand; now, at the time Sam came with you, under your direct supervision, did he work piece work then or—

A. He worked piece work at the day rate then. After the reduction, that is, after the war when a reduction came in salary, they were making then on an average of \$8.00 per day.

Q. They made more money—

A. Or \$48.00 for six days a week work.

Q. They made more money working at piece work, did they?

A. Oh, yes; Sam did not very often work day work.

Q. Practically all piece work?

A. Practically all piece work; he was a man that could be placed in any position in a ship to do any kind of work as a first class driller.

Q. And you say at that time the average would be forty-eight dollars a week?

A. \$48.00 a week for six days.

Q. Was Sam an active man?

A. Sam was very active, a man that I could place in any portion of a boat in the course of construction, and a man that could be depended upon.

Q. Will you describe, Mr. Price, a little of the work that Sam had to do, and whether it was difficult and hard or not.

A. Well, in some cases the work that Sam has

the rating of, a driller, is very difficult. Now, when Sam came to me, it was just about the construction of the new cruisers, and at that time there was a great deal of climbing, and a driller has to carry with him what is known as a driller's kit, a box of tools, from fifty to seventy-five feet of inch and a half hose, and either one or two drilling machines.

Q. And how heavy are those machines?

A. Well, it is according to the machine which he is  
10 using. A machine runs—we have four grades; we have what is known as 1 rating, about from sixty to seventy pounds; then we have a No. 3 and so on down to No. 1 or No. 4, until No. 4 is the smallest machine, weighing about fifteen pounds.

Q. Now, they have to carry those and drag a hose, do they?

A. Not at all times do they carry those four machines, but they have to carry with them one machine, that is, for the size of the drill that they are  
20 using.

Q. And they have to carry those up and down the steps and around scaffolding and ladders?

A. Yes.

Q. And that was the kind of work, was it, that Sam himself was doing?

A. That was the kind of work Sam was doing under my supervision when the accident happened.

Q. You have seen him stoop here and show us how he could bend his leg, Mr. Price; could a man  
30 with that limitation do that work?

A. Not very handy, no, sir; a man that couldn't bend any further than did Sam at that time could never manage climbing a ladder, that is, hand over hand.

Q. And carry these tools and drill and everything?

A. And carry his tools.

Q. Now, Mr. Price, after Sam was hurt, did that same job continue—did you still have those same kind of workmen doing the work that Sam did?

A. Yes.

Q. And do you still have them?

A. Still have them.

Q. Is there any reason at all why Sam should not still be working for you?

A. Well, the reason is this, that Sam couldn't hold up his rating as a first class driller, simply because he could not accomplish the work, owing to the limb being in such condition that he could not get to places where the work would be, that he would have to crouch in corners—

Q. I mean otherwise, Mr. Price, from your experience with Sam as a workman there, if he had not been hurt, is there any reason at all why he could not have gone right on working for you and still be working for you?

A. Oh, no, if he had not been hurt, he could have gone right on.

Q. You regarded him as a valuable man?

A. A valuable man, yes.

Q. Now, Mr. Price, after this you said there was a reduction of wages; what was that reduction to per week?

A. \$5.56 a day, which was day work rating. They allowed them then at the piece work scale to make \$8.00 a day or a dollar an hour.

Q. When did that change?

A. That was after the war, just at the time I can't recollect.

By the Court:

Q. Has there been any change since?

A. There has been a change since, yes.

Q. In which direction?

A. A reduction; drillers today are getting \$4.88 a day.

By Mr. Woodruff:

Q. For a six-hour day?

A. For an eight-hour day.

Q. How many days a week?

10 A. For six days.

Q. What is the average per week that these men make working piece work?

A. Well, we haven't got so much piece work there now; I would say, at a fair figure, I would say between \$6.30 and \$7.00 per day now, for just at the present time our work is such that we can't go ahead with it. The majority of work that is being done now there is being done day work at the rate of \$4.88 per day.

20 Q. So \$6.30 or \$7.50 would be a fair average wage, would it?

A. Yes.

Cross-examination.

By Mr. Starr:

Q. Mr. Price, when Sam was hurt at the time the accident happened, he was then on day rating or piece rating?

30 A. Sam was then working piece work.

Q. And how long had he been working piece work?

A. I just can't recall that now; off and on they worked piece work. I would imagine that previous to that injury Sam worked about one year or so, maybe a little less or a little more; I can't just get right down to that date.

Q. What is there that happens in the navy yard whereby a man is transferred from day work to piece work?

A. Well, I will tell you; now, in case we have work in bulk, and the work has got to be done in good time, then the man is privileged to go to work working piece work to get the work through.

Q. Is it optional with the Government or with the man himself?

A. Well, it is the man's own pleasure; if he desires to work piece work, he has that privilege. Of course, there is no course of compulsion for a man to work in the Government service either piece work or—it is the man's own pleasure working piece work; it is to his advantage, and it is also to the Government's advantage to advance the work. 10

Q. Now, the ordinary work of a navy yard, outside of emergency jobs, is usually on day time?

A. Day work.

Q. And not piece work? 20

A. Not piece work.

Q. And when was the first reduction of the day wage from \$5.56 to \$4.88?

A. If I am not mistaken it was last July when the reduction—

Q. July of 1922?

A. Of 1922.

Q. Had there been any change from the time Sam had met with this accident until July, 1922?

A. In the course of salary? 30

Q. Yes.

A. That is, from \$5.56? Not until this reduction to \$4.88.

Q. That, you say, was July, 1922?

A. If my memory serves me right. \$4.48 is the scale now.

Q. That is an eight-hour day, six days a week?

A. Eight hours, six day week.

---

EDWARD CARROLL, SWORN.

By Mr. Woodruff:

- 10 Q. Where do you live, Mr. Carroll?  
A. 422 Vine Street.  
Q. What kind of work do you do?  
A. I am a police officer at the present time.  
Q. Here in Camden?  
A. Yes.  
Q. Where were you working at the time of the accident?  
A. Philadelphia Navy Yard.  
Q. The same place that Sam worked?  
20 A. Yes.  
Q. Did you know him at that time?  
A. Yes.  
Q. And did you travel often back and forth together on the boats?  
A. Back and forth together, yes.  
Q. And were you on the boat the evening of the accident with him?  
A. Yes.  
Q. Were you also hurt?  
30 A. Yes.  
Q. What time was it, about, that you took that boat from Philadelphia to come to Camden?  
A. Well, between 5.30 and 6 o'clock.  
Q. At that time of the day, were those boats crowded?  
A. Yes, sir, the rush hour.

Q. How much so?

A. Well, the front of the boat was pretty well crowded.

Q. And this particular boat that you were on, what was the condition there as regards crowding?

A. Well, you could not get in the sides, that is, the front of the boat, ladies' or men's side either, on account of so many people standing around there.

Q. What do you mean inside, you could not get inside where? 10

A. In on the ladies' side.

By the Court:

Q. You mean front or back?

A. Off the driveway.

Q. From that end of the boat, from the end of the boat coming in, you mean?

A. No, from the front of the boat, coming to the ladies' cabin or men's cabin either. 20

Q. Yes, but you mean on this end of the boat, on the Camden end as the boat was coming?

A. Yes.

By Mr. Woodruff:

Q. On the Camden end of the boat, the open space in front of the cabins was so filled up you could not step in there, that is what you mean?

A. Yes. 30

Q. Where did you and Sam go and take your positions?

A. First we walked inside, we saw there was a pretty good crowd outside, we goes in and sits down in the cabin. I think we stayed there about five minutes, and he said, "I think I will go outside; it

is pretty warm in here," and to tell you the truth, we were kind of sweaty, working all day anyhow, and he starts outside and I went on out behind him. We squeezed out through the crowd, got out the driveway alongside of the big truck there, and we got at the front; someone moved away and we moved up to the front, right at the gate, and I was right close to the hinges on the side, right by the post.

Q. That is, the hinges on which side?

10 A. On the right-hand side of the boat.

Q. Where was Sam?

A. Sam was on my left.

Q. What were the two of you doing then when you got there by the post, by the hinges?

A. Well, we were just looking ahead; we weren't talking or nothing like that.

Q. How close were you to the gate?

A. Leaning right up against it.

Q. Leaning right up against the front gate?

20 A. Yes.

Q. There are double gates where the vehicles go, aren't there, great big double gates that swing together in the middle?

A. Yes.

Q. And then you were on the right-hand side of the gates near the hinge?

A. Yes.

Q. Whose truck was this big truck that you say you squeezed by?

30 A. I don't know really; they say it was Farr & Bailey's truck.

Q. That was the first truck, the one you squeezed by; did you have to go in front of that, you people?

A. That is the only place there we could stand if we wanted to get up against the gate.

Q. The only open space, was it?

A. Yes.

Q. Were there other people beside the gates beside yourself, you people?

A. Yes.

Q. How many of them?

A. All the way along the front, just how many I couldn't say.

Q. All the way across the front?

A. Yes.

Q. And what was the crowd doing as you came 10 over close to the dock on the Camden side?

A. The crowd that was in the cabins and in the boat, they all kind of moved forward, getting ready to get off, see?

Q. Did you see what was back of the first truck, the Farr & Bailey truck, whether there were other machines there?

A. No, I didn't take notice to that.

Q. Over on the men's side up front, did you see whether there were other machines or not? 20

A. Yes, there was lighter machines there.

Q. Lighter machines, so that the heavy were on your side?

A. Yes.

Q. What was the first thing you knew that anything was happening unusual?

A. The first thing I knew was that something came behind me, I thought it was the crowd.

Q. Had you had any warning?

A. Well, just at the time as I felt this coming 30 behind me, some one yelled, "Look out, look out." I was just about to turn around, and it kept coming tighter, and I couldn't move then; I tried to wriggle my way out of there; it tore all the clothes off my back, and I grabbed the post, you know, back here, and this limb and that foot—

Q. You were close to the main post?

A. Yes.

Q. And you really got your body out so you didn't get broken up badly?

A. I just moved away from that light on the right-hand side of the truck.

Q. The big headlight?

A. Yes.

Q. You got away from that so you didn't get  
10 crushed?

A. I just about wriggled away from it.

Q. I see; now you say you felt the motion of this truck pushing you in the back and you heard somebody holler, "Look out, look out."

A. Yes, as it came close to me, I thought it was the crowd behind me; just that quick, you know, I heard some one holler, "Look out, look out," and I went to turn, and then it had me tighter all the time.

20 Q. I see; what happened to Sam when this pushing came?

A. Sam was alongside of me; to tell you the truth I didn't think of Sam or no one else; I tried to get out of that.

Q. Surely; after that the gate gave way?

30 A. The gate gave way, the hinge broke right alongside of me, I heard it snap, and the whole gate went down, and as it did, I had ahold of the top of that gate, and as it threw it down, I pulled myself away from the wheel that was coming right behind me; I threw myself aside of that and I tried to get up, and by that time the truck threw him over the gate in front of me there right by the wheel, and I figured the wheel was going over his body again, and I reached down and got hold of him under his arms, and I pulled him over just far

enough for the wheel to come alongside of him, his leg and his arm, too, right straight alongside of him.

Q. How was that truck moving, Carroll, when you first felt it pushing you backward?

A. Very slowly; I just merely thought it was the crowd behind me.

Q. Now, when the gate crashed down, do you know whether it got an extra impulse or anything—do you know whether anything extra happened?

A. No.

10

Q. Nothing that you know of?

A. Only I know the truck went right on going, went right over the gate, didn't stop until it hit the slip.

Q. Where did it fetch up?

A. Right at the slip.

Q. What brought it up there—what was it that stopped it?

A. The slip was anywhere from twelve to fifteen inches above the level of the dock; that is what caused it to stop.

Q. As this heavy truck went on and still at you behind, did it depress it more and more, push the boat down more and more?

A. Yes, it went down a little further.

Q. Then she fetched up against that slip?

A. Yes.

Q. It stopped right there, did it?

A. Stopped all of a sudden, yes.

Q. How far did it go then as near as you can give it to us from the time it first began to push you until it went on up on the gate and against the slip?

A. It didn't stop, just went right on going.

Q. Well, how far was it as near as you can give it to us?

A. From the gate to the slip, you mean?

Q. Yes.

30

A. Well, between six and eight feet.

Q. So after it broke the gate down it still went that far before it fetched up?

A. Yes.

Q. What did you see, at the time you began to feel the pushing or just before that, what did you see about the boat docking—tell us what position that was in.

10 A. There was a man on the slip, on the right-hand side of the boat coming in, and there was a deckhand on the left-hand side of the boat, but the man on the left-hand side hadn't got hold of his line yet with the hook, because he has to get pretty close, I believe, to get a hold of it, get up on the slip and hook it.

Q. Oh, he has to step from the boat, the one on the left-hand side, and get his hook and come back, does he?

A. Yes.

20 Q. I see.

A. By the time we got in there, and I was pulling Sam out of there, the deckhand that was on the slip on the right-hand side had hold of the line of that big running-board that they put out in the runway or driveway, rather.

Q. That was when the gate was down and you were pulling Sam out?

A. I was just moving him out.

30 Q. Before that, when you felt the pushing, before the gate broke down and you were jammed, what was this man doing on your side that was on the slip?

A. Well, he threw the hook out, threw it out I suppose three or four feet in the eye, and hooked it and rolled his wheel around, getting the boat pretty well bound up, and threw out the board.

Q. Which board was that that he threw out?

A. The ladies' runway there.

Q. Now, that was happening, you say, as you got pushed?

A. Yes.

Q. When you were pushed by the truck, when you first felt it pushing, can you tell us just then what he was doing, the last you saw of him, as you felt this pushing and wondered what was going on back of you.

A. Well, he was only standing there that I know 10  
of. No one gave me any warning outside of that one yell, "Look out, look out," but then it was too late.

By the Court:

Q. Do you know how near the boat got to the slip, or did it get up to it before the truck started to go?

A. Well, it could have been about any where be- 20  
tween six and eight feet away from the slip when I was first caught.

Cross-examination.

By Mr. Scovel:

Q. Mr. Carroll, it is further than six or eight feet from the gate on those ferryboats to the end of the bow of the boat, isn't it? It is almost as long as that 30  
bench there, isn't it, from the gate to the end of the bow of the ferryboat?

A. Well, that I never measured; I can't just tell you the exact measurement of it.

The Court: I think you had the measurements here before, didn't you?

Mr. Woodruff: The captain of the boat is here; he can give us exact measurements.

By Mr. Starr:

Q. Now, Carroll, did the boat come in contact with the slip, up against the slip?

A. Well, this was after the gate—after we were squeezed is when it was coming in all the time; it  
10 was landed in by that time, see.

Q. Yes, but did it finally reach the slip?

A. It finally reached the slip.

Q. Where were you at that time—what was happening to you at that time?

A. The gate was just about breaking.

Q. And you were right up against the gate?

A. Yes.

Q. Nobody standing between you and the gate?

A. No.

20 Q. And the first that you felt of the truck was, you say, pushing in the back?

A. Yes.

Q. At that time had this outcry occurred, "Look out, look out?"

A. Just about as I thought the crowd was behind me, some one yelled—

Q. I didn't ask you what you thought; I am trying to find out when you heard the outcry with respect to the pushing in the back.

30 A. Just about the same time.

Q. Now, the Farr & Bailey truck, that is, the first truck, was how far back of you?

A. About three or four feet, something like that.

Q. As much as that?

A. Yes.

Q. Wasn't it a shorter distance than that?

A. You mean before it started?

Q. Yes.

A. When I first went out there?

Q. Yes.

A. About three or four feet away from the gates.

Q. And were you and Sam the only ones that were along the gate in front of the machine?

A. No, sir.

Q. Who else was there?

A. A fellow by the name of Lex there; he works 10 at the navy yard, too.

Q. He was right in front of the truck?

A. No, he was between both of us, and he finally stepped out; I don't know what he stepped out for.

Q. Was he between you and Sam?

A. No, in back of us.

Q. Was anybody back of you when the truck started, or rather when you felt the truck?

A. I don't know that he was back there when we first went out, but after that— 20

Q. I am speaking about whether there was anybody between you and the truck when you felt this pushing?

A. No, there wasn't nobody there; I know, when we first went out there, he was in back of us, but whether he went away from there or not I don't know, whether he jumped out of the way or whether he went out of the way before anything ever happened, I don't know.

30

At this point a recess was taken until 1.30 o'clock P. M.

Trial of the cause resumed at 1.30 P. M., pursuant to adjournment in the presence of counsel for the respective parties.

---

DR. PAUL M. MECRAY, SWORN.

10 By Mr. Woodruff:

Q. Dr. Mecray, you are a practicing physician here in Camden, aren't you?

A. Yes.

Q. And connected with which of our institutions?

A. Cooper Hospital.

Q. How long have you been connected with that institution?

A. Since 1892.

20 Q. And what is your position in connection with that hospital?

A. Visiting surgeon.

Q. Do you know Sam Fiorentino, the plaintiff in this case?

A. I do.

Q. And did you have him in your care there at the hospital and operated on him subsequently?

A. I did, yes.

30 Q. What was the matter with him—what was the injury that he had?

A. He wasn't under my care until after he had been in the hospital about a month, I think.

Q. Dr. Nicholson had him first, didn't he?

A. Yes, when he came in he had a fracture of the shaft of the thigh; there was some muscle in between the fragments, and the usual methods of ex-

tension and the use of splints and so on did not permit the thing to heal; so that when I saw him about a month after that, I saw him because I was asked to operate on him, and I operated on the leg, opened it up and put an internal split on it, and put it in plaster of paris.

Q. The muscle, Doctor, that was in there, was that in between the two ends of the bone where they had been broken apart?

A. Yes.

Q. And that prevented them from coming together in the natural way, did it?

A. Yes.

Q. Now, when you operated, was he put under an anesthetic?

A. He was.

Q. Before that operation, what treatment did you find Dr. Nicholson had been using?

A. He had him in bed with weights arranged over a pulley to pull the leg out, and with splints and sandbags to hold it in position.

Q. That was designed to pull the bones apart so that the muscle could free itself, get out of the bone?

A. Yes, pull that apart that way and then hold it, but there was a muscle between and it could not be untangled.

Q. That had not been successful, that particular method?

A. No.

Q. Now, after it was he was put under an anesthetic, Doctor, and you operated, you found that muscle condition to exist there, muscle between the bones?

A. Yes.

Q. You found that as a fact then?

A. Yes.

10

20

30

Q. What did you do to remedy the trouble?

A. We made an incision in the side of his leg, we removed some of the callus that had formed and placed the bones end to end put a steel plate on them and fastened that plate to hold them together, and then put the leg and part of the body in plaster of paris.

Q. Now, that steel plate is still in there, isn't it, Doctor?

10 A. Yes.

Q. You have never removed that?

A. No.

Q. And then he was put back in plaster of paris covering how much of his body?

A. The lower third of his body and down to his ankle and toes.

Q. Doctor, the time Sam has described as eight weeks, whatever the period was, before the time you operated, while they were using weights, was that  
20 knee of Sam's kept in an immobile position so that it could not be moved, the joint?

A. Yes.

Q. Now, afterward, when you put it in the cast, that also kept it for an additional time absolutely still, so that there wasn't any movement in the knee joint?

A. It did.

Q. Sam has testified that that lasted eight weeks with the cast, or approximately that time; at the  
30 end of that time when the cast was removed, what condition had developed in the knee?

A. He had a rigidity of the knee; he was not able to bend the knee.

Q. Will you explain to the jury what brought that about and why it happened?

A. I think there were two or three causes. One

was the traumatism and the inflammation that resulted from it; second, when the knee was pulled apart by the extension apparatus for the first eight weeks it probably relaxed the knee somewhat, and the long continued fixation of the knee—his knee was held rigid perhaps for sixteen weeks before it was bent.

Q. Now, the traumatism that you speak of, Doctor, that is which traumatism?

A. Why, the same force that broke his thigh probably caused some inflammation of the knee. 10

Q. Inflammation of the knee itself?

A. Yes.

Q. You examined him prior to the last trial in this Court, didn't you, Doctor, and testified in the last trial?

A. Yes.

Q. What was his condition at that time with regard to being able to bend the knee?

A. At that time he wasn't able to bend the knee I think practically at all, as I remember it. 20

Q. I just want to get the date of that time; that was October, 1921. Did you make a recommendation as to what could be done to give him motion in the knee at that time?

A. Yes, at the trial I did.

Q. And following that, did Sam follow out your suggestion and come to Cooper Hospital?

A. Yes.

Q. What was the purpose of that? 30

A. To try to restore motion in the knee joint.

Q. By what method?

A. The method that we pursued was to give him gas and use some force to flex the knee. The union was not very strong then and we had to desist because there was some show of weakness at the fracture point.

Q. The point that you had mended with your steel plate?

A. Yes, we were afraid of breaking that.

Q. So that you were not able to complete your breaking up of the adhesions in the knee as you wished?

A. Well, perhaps not as much as we wished, but we did gain a good bit.

10 Q. Yes, I understand. Now, when that weakness developed, what was done with Sam then?

A. He was advised to stay in the hospital for a few days, but he didn't do it; he put his brace back and went on out, and I didn't see him until some-time afterward, saw him walking on the street.

Q. I understand Sam had enough of the hospital, is that it?

A. He was sort of a hard fellow to handle, Sam was.

20 Q. What was the brace that was put on him, Doctor?

A. It was the usual brace that I almost always put on after a fractured thigh. It consists of a ring around the upper part of the thigh and two rods down the side of the thigh and leg and fastened into the heel. That is to prevent any bowing or refracture.

Q. Now, he had had that on before the last operation, didn't he, Doctor, the last breaking?

A. He had, yes.

30 Q. And then when he was sent out from the hospital the second time, he still had it on?

A. Yes.

Q. Wore it away from the hospital?

A. Yes.

Q. Now, at my request did you examine him just a few days ago in advance of this trial?

A. I practically looked at him; I didn't make a thoro examination.

Q. I see; well, what is his condition at the present time?

A. Well, he has a good healing at the point of fracture in the thigh bone; there is naturally an outward and forward bowing of the thigh; nature has arranged that to make the bone stronger; that is perhaps slightly exaggerated, but the fracture has healed in a very satisfactory way. He can now bend his knee to perhaps forty-five degrees, maybe a little more than that. 10

Q. This bowing and this limitation of motion in the knee are permanent, are they, now?

A. He may increase the motion in the knee a little bit. The leg or the femur I think will be very much as it is now.

Q. Is there any necessity for removing that plate?

A. No.

Q. What is the usual practice with regard to the plate? 20

A. Occasionally they will cause some irritation and have to be removed, but I have many patients that have worn them for years without any discomfort, wouldn't know that they were there if they were not told so.

Q. Time has to tell on each person, I suppose?

A. Yes.

Q. Will Sam, in your opinion, Doctor, ever get an absolute return of free motion in his knee the same as the natural knee on the other leg? 30

A. I don't think he will.

Cross-examination.

By Mr. Starr:

Q. Doctor, to what extent will the failure to flex the knee be permanent?

A. I think he will probably gain a little more than he has, but I don't think he will ever gain full flexion; he has very much better flexion now  
10 than he had at the last time that I examined him.

Q. Hasn't there been a gradual improvement of his flexion from the time he was in the hospital the last time?

A. I think that is true, yes; I haven't seen him since he left the hospital until the other day.

Q. There is no indication of any return of the fracture where the break occurred, is there?

A. No, sir.

Q. A satisfactory result, as far as that is con-  
20 cerned?

A. It is.

Q. Was this a compound fracture or just a simple fracture?

A. A simple fracture.

By the Court:

Q. Doctor, won't you look at his leg—just step out here, will you, Mr. Fiorentino and take a chair  
30 there; now, just bend your leg as far as you can.

(Plaintiff complies.)

The Witness: Is that forty-five degrees?

The Court: I guess that is a little more, isn't it, Doctor—it is probably eighty, isn't it?

The Witness: That would be forty-five, wouldn't it?

The Court: That would be ninety.

The Witness: Yes, that is right.

The Court: What I wanted to ask was, how much that impairs the usefulness of the leg in ordinary normal uses, considering him as a workman. 10

The Witness: I should think ten or fifteen per cent.

By Mr. Woodruff:

Q. Doctor, the man's occupation at the time of this injury was that of a machinist or driller on war vessels, marine work, which necessitated his climbing ladders carrying a sixty-pound drill and tools and dragging a line of hose after him up and down this scaffolding. Would you think that he could do that work with this limitation? 20

A. I think he could do it, but with some inconvenience.

By Mr. Starr:

Q. What about the use of the limb in driving an automobile?

A. I think it would be just as good; I don't believe that would interfere with it. 30

Q. In using it to throw out the clutch or brake of the machine, would the condition of the leg have any effect on the use of it for that purpose?

A. He might be a little awkward with it, but he could do it perfectly well, I should think.

Q. Is there any reason why he should have any discomfort or pain from that member now?

A. I would not expect him to have pain in it, no, sir.

By Mr. Woodruff:

Q. He would have, Doctor, the usual stiffness in the mornings, and changes of weather would make  
10 some difference?

A. Yes, I think he would be stiff, he would have a feeling of stiffness in the knee; I think that would be his chief discomfort at this time.

---

DR. JOSEPH L. NICHOLSON, affirmed.

By Mr. Woodruff:

20

Q. Dr. Nicholson, you are a practicing physician here in Camden?

A. Yes.

Q. And connected with the Cooper Hospital, are you not?

A. Yes.

Q. How long have you been connected there?

A. Well, as a surgeon for twenty-eight years.

Q. And how long have you been in practice?

30 A. I graduated in 1890.

Q. And been in practice ever since, have you?

A. Yes.

Q. Dr. Nicholson, Mr. Fiorentino, the plaintiff in this case, came under your observation first at Cooper Hospital, didn't he, before Dr. Mecray was called in on the case?

A. Yes, I think so.

Q. Won't you just describe to the jury his condition first when he was brought in and what means were taken to reduce the injury?

A. Well, we diagnosed that he had a fracture of the femur, a simple fracture, and we then did the best we could to get it in proper position.

Q. And you did that using what means in this particular case?

A. I don't know whether we used an anesthetic in 10 his case or not, but we measured to see whether we had the leg the same length as the other, and as far as we could tell with our fingers and with the X-ray, that we had it in good position.

Q. Sam has testified that for eight weeks he was kept with weights pulling over the edge of the bed; what was that for, what was the purpose of it?

A. To counter-balance the contraction of the muscles. They are always irritated, and if you let them have their own way, they pull the ends of the 20 bone by.

Q. This was to pull the two ends of the bone down so they would be in that position?

A. Yes.

Q. Now, at the end of that time, Dr. Mecray operated, didn't he?

A. Yes, about that time.

Q. Doctor, you have described this as a simple fracture; that term is used by you physicians to indicate what? 30

A. That there is no external opening, and that it is not complicated by comminution.

Q. But it does not mean that it is not a difficult fracture to handle, does it, simple in that respect?

A. Yes. Well, it is just a simple break; it is not—the ends are not cracked or broken, and there is no wound externally.

Q. Dr. Mecray has testified that there was muscle which pulled down between the ends of the bone for which he was forced to operate; is that a usual condition or unusual?

A. Well, it is not a usual condition but it sometimes happens.

Q. Was that the reason that the ordinary methods of reduction with weights did not become effective in this case?

10 A. That is probably the reason.

No cross-examination.

---

DR. JOSEPH E. ROBERTS, SWORN.

By Mr. Woodruff:

20 Q. Doctor, how long have you been in practice?

A. Since 1903.

Q. And what is your specialty?

A. Roentgenology.

Q. Are you connected with Cooper Hospital as the X-ray expert there?

A. I am; I am in charge of the X-ray department there.

Q. Doctor, in Sam Fiorentino's case, did you take a great number of X-ray pictures?

30 A. Yes, I recall there were a great number of X-ray pictures taken of this man.

Q. I remember at the last trial we eliminated all except two; will you look at these two and describe what they show? This is one that was Exhibit P6 at the last trial, No. 8654.

A. These are two views of the right thigh of the

patient, and it shows a transverse fracture of the thigh bone.

Q. Doctor, will you walk around to the window where we usually take you and show that to the jury?

By Mr. Starr:

Q. When was that taken—give me the date, please. 10

A. I think on the 4th of November, 1921. The upper film is a picture taken of the lower two-thirds of the thigh of Mr. Fiorentino; it shows a transverse fracture of the thigh bone along this line; it shows a loose fragment of bone on the inner side at this point; it shows a long metal plate with three screw holes in either end, with three screws screwed down through those screw holes into the bone so that the two fragments of bone are held in position by this plate and the screws. It shows some considerable callus formation along this line to the outer side and above this plate, this metal plate. This is a side view and shows callus formation above and what I believe was a loose piece of bone there; it shows the screws in position, a slight bowing of the leg so that the convexity of the curve is outward, so that the screws are holding the plate in better contact with the bone right at the arch, at the crest of the arch of the curve than they are at either extremity, the plate being separated about a quarter of an inch at either extremity. 20 30

Mr. Woodruff: I will offer those two.

(Said papers are marked Exhibits P1 and P2.)

Q. Now, Dr. Roberts, did you take a picture the other day for me, just recently?

A. Yes, I took two films on the 7th, I think the 7th of April.

Q. And have you those with you?

A. Yes.

Q. Will you describe those two, showing us at the window what the present condition is.

A. The upper film was taken from before back-  
10 ward, and the lower film was taken from side to side, this being the upper part of the thigh, this the lower part, this the upper and this is the lower in the second film. It shows the metal plate in position with the three screws above and three screws below, and it does also in this lower plate. It shows that the callus which had been thrown out to glue these broken fragments together has been thrown out rather abundantly so that it has made the bone somewhat thicker in diameter at the fracture site  
20 than it is above it or than it is below it, almost—well, thirty-three per cent thicker, and it shows also the same bowing that was in the other examination, except slightly increased in amount, and it shows this upper screw, the plate not being in contact with the bone by probably three-eighths of an inch. It shows the same condition of the plate at the lower angle of the bone, the screw in position but the plate not touching the bone. The union is certainly firm, and what callus has been thrown out  
30 has been made into firm bone.

Q. Dr. Roberts, there has been no callus thrown out in the opening underneath the plate where the two ends of the plate are separated from the bone that is sufficient to fill up that opening?

A. No, there is no callus thrown out underneath the upper surface of the plate. There is a tendency

toward it in the lower surface at this point, but there is no callus up in the upper part.

Q. So then the two ends of that plate project to the extent that we see there and you have described into the flesh, do they, from the bony surface itself?

A. Well, they project that much away from the bone; I don't know just what you mean by "into the flesh."

Q. I mean the muscles must play over those ends, mustn't they?

10

A. Yes, the coverings of the muscles play over the ends. I don't believe it means the plate itself projects into the muscle, for the muscle would have coverings over it, and that would rather be walled off, so I don't believe it would irritate the muscle like absolutely sticking into the muscle.

Q. Now, Doctor, what permanent angle is there indicated showing that the bone has been bent out of a straight line?

A. Well, the angle of the upper fragment with the plate I should say was about ten to twelve degrees and the lower plate not quite that much, maybe eight degrees or ten degrees.

20

Q. That bowing is permanent, is it?

A. Yes, I think that bowing is permanent.

No cross-examination.

(Films heretofore produced are offered in evidence and marked Exhibits P3 and P4.)

30

ISHUM LEE, sworn.

By Mr. Woodruff:

Q. Mr. Lee, where do you live?

A. Lawnside, New Jersey.

Q. Do you know Mr. Fiorentino, the plaintiff in this case?

10 A. Yes, sir.

Q. Were you on this ferry-boat that he was on at the time of his injury?

A. Yes.

Q. Where did you work at that time?

A. League Island Navy Yard.

Q. And did you travel back and forth on this same line of ferry-boats?

A. Yes, sir.

Q. Every day?

20 A. Yes, sir.

Q. Did you know Mr. Fiorentino personally before that accident?

A. Yes, sir.

Q. You knew him personally, did you?

A. Yes, sir.

Q. Now, when the boat came over from the Philadelphia side toward the Camden side, was it crowded?

A. Yes, sir.

30 Q. How much was it crowded?

A. Well, there was a pretty good crowd on the front of it.

Q. Where were the people standing?

A. At the gate, and on the ladies' part was awful crowded, ladies and young girls on there, you know, that had been working at factories.

Q. How nearly filled up was the whole front?

A. I guess they were standing there about three or four thick.

Q. And along the gates that go across where the machines were, how many people were in there?

A. Well, three or four thick across there.

Q. Along in there, were they?

A. Yes.

Q. And on the men's side in front of the cabin, in that open space between the gate and the cabin, 10 how filled up was that?

A. That wasn't filled up as bad as on the ladies' side.

Q. On the ladies' side—

A. It wasn't filled up quite as bad as it was on the ladies' side.

Q. Now, were there some machines in that driveway?

A. Yes, on the ladies' side it was.

Q. On the ladies' side? 20

A. Yes.

Q. And that is where most of the passengers were, too, you say, over on that side?

A. Yes.

Q. What was the first machine that was there on the ladies' side?

A. I didn't take notice what machine it was in front on the ladies' side.

Q. What kind of machine?

A. It was a big truck. 30

Q. Is that the truck that we know as the Farr & Bailey truck?

(Objected to.)

A. Yes.

Mr. Woodruff: All right; you opened it, we opened it and everybody opened it.

Mr. Starr: It is leading.

Q. All right; what kind of looking truck was it?

A. I just couldn't tell you that now; I know it was a big truck on the front.

Q. Loaded or not?

10 A. Yes, it was loaded.

Q. Did you see where Sam was standing?

A. He was standing on the front right by the post where the hinge of the gates, you know, was fastened.

Q. Where the hinges of the big gates fasten?

A. Yes.

Q. Had you been in the cabin at all?

A. Yes, I come through the cabin.

Q. You came through the cabin, which side, the  
20 men's side?

A. On the ladies' side.

Q. Then where did you go?

A. Then I stood on—I couldn't get to the gates that Sam was at, so I stood kind of back.

Q. Now, what was the first that you knew of anything out of the usual that was happening—what was the first thing you heard or saw?

A. Well, the first thing I heard, I was standing  
30 over there and I wanted to smoke, and I goes on the men's side to take a smoke, and just as I went to light my cigarette, I heard a holler, "Look out, look out." I looked and I seen a car running down and I went to try to hold it back; I went over to try to hold it back.

Q. Well, you heard somebody holler, "Look out, look out," and you turned and saw a car moving down; which car was that?

A. The car in the front.

Q. Which way was that moving?

A. Moving toward the water, going toward the gate.

Q. Toward the gate?

A. Yes.

Q. How was it moving when you first looked and saw it moving?

A. It was rolling right down toward the gate slowly.

Q. And you say some men grabbed hold of it and tried to hold it?

A. Tried to hold it back, yes.

Q. What did you do?

A. Taken hold of it and tried to help hold it back.

Q. Were you men able to hold it then?

A. No, sir.

Q. What was its movement, sudden, or just describe it in your own way.

A. Just seemed to be—when I looked at it going, when I heard this yell and I looked at it, the car was going on down.

Q. After that when you got hold of it, how did it move?

A. Just kept right on going that way; we tried to hold it back and couldn't do it.

Q. Was there any driver on it when you heard somebody holler, "Look out," and you looked?

A. No, there was no driver on it.

Q. No driver at all?

A. No.

Q. Was there any driver that got up on it at any time until it got through the gates?

A. I seen a man reach up here and try to put on a lever or something, leaning over, trying to put on a hand brake or something.

10

20

30

- Q. Was he a white man or colored?  
A. A white man.
- Q. Do you know who he was?  
A. I would know him if I seen him.
- Q. Did you know him at the time of the accident?  
A. No, I didn't know who he was at that time.
- Q. Did you see him at the last trial here?  
A. I don't remember, but I would know him if I seen him.
- 10 Q. Mr. Green, will you stand up?  
A. Yes, sir.
- Q. Is that the man?  
A. Yes.
- Q. Now, what was it that he was doing?  
A. I don't know what he was trying to do; I don't know how to run them.
- Q. What did you see him doing?  
A. I just seen him reaching in, trying to reach a lever in there, something.
- 20 Q. Now you say you could not stop the machine?  
A. No, sir.
- Q. What did it do?  
A. Broke through the gate, and just as the boat landed up against the pier, going on, this front wheel jammed the pier.
- Q. And that is when it came to a stop, did it?  
A. Yes.
- Q. Was the slip level with the boat?  
A. No, sir, the slip was higher than the boat.
- 30 Q. How much, as near as you can give it to us?  
A. As near as I can give it to you, it was about as high from the boat as one of them blocks that is on the boat, you know, in front of the wheels.
- Q. A block or chock?  
A. Yes.
- Q. Did you see Sam when he got hit?

A. No, sir, I was on the men's side, see, holding on to the truck.

Q. Where was he when you saw him?

A. When I seen him, he was lying on the deck of the ferry-boat.

Q. That was after the big truck had come to a stop?

A. Yes.

Q. Now, did you see anything happen with regard to the second truck in line? 10

A. The second truck in line? I heard that motor go off on the second truck, and she come on down behind this other truck.

Q. You heard that motor go off, did you?

A. Yes.

Q. When did you hear that go off?

A. Just when they hollered, "Look out, look out," I heard this motor go off on that second truck.

Q. Did you see the second—you say the second motor truck came on down; did you see it when it 20 came down?

A. No, sir.

Q. You didn't see that?

A. No, sir.

Q. Do you know whether it actually struck the Farr & Bailey truck or not?

A. No, sir; I couldn't say that.

Q. Did it strike it while you were turning to look before you got over to the truck?

A. No, sir, because I didn't look at it then; I ran 30 over and took hold of this truck that was going.

Q. When was it that you heard the explosion?

A. Just as I lit a cigarette; I lit a cigarette and I heard this holler go off then, and heard this motor go off; then I went over to the truck when I saw it moving.

Q. Now, Mr. Lee, you have spoken of the crowd and the trucks over on that side; what condition was the boat in before it came to the dock with regard to the front part of it?

A. That was lower down in the front.

Q. And was it lower on one side than it was on the other?

A. Just a trifle, yes, because there were no cars on the other side, and this side was the heaviest.

10 Q. No cars on the men's side?

A. No, no cars over there.

Q. These cars were on the ladies' side?

A. Yes.

Q. Now, where was the ferry-boat when you heard somebody holler, "Look out, look out," and you turned around and saw the big truck rolling down?

A. Just midway of the slip, going in midway of the slip.

20 By the Court:

Q. What do you mean by "midway of the slip?"

A. Well, it would be just about the same as half way in the saloon here.

Q. Well, do you mean it was half-way in the slip, is that what you mean?

A. Yes, sir, just about half-way of the slip.

By Mr. Woodruff:

30 Q. Put it this way; how far was the front of the ferry-boat from the part of the slip that it strikes against?

A. Where they make it fast when it gets in?

Q. Yes.

A. I guess the whole thing from the front of the

ferry-boat to where they make fast, I guess is about thirty-five feet.

Q. When you first heard somebody holler—

A. Yes, it might have been a trifle less or more than that.

Q. I see; now, did the ferry-boat come in when you were looking and ran over and got hold of the truck?

A. Yes, it was coming into the dock all the time, coming in.

Q. When it got up and got in the dock, did you see men making the hooks fast, or were you busy? 10

A. Yes.

Q. You saw that, did you?

A. Yes.

Q. Which one did you see?

A. I seen two men there making fast, one on the ladies' side and one on the men's side; he stepped off to get the hook to hook on.

Q. The one on the men's side, when did they start to make fast, what was happening when they started to make fast? 20

A. Everything nearly happened together, about the car hitting the dock and the boat being tied up; they almost worked together, almost.

Q. At the time the car hit the dock—

A. At the time the boat hit the dock, understand, it hit just in time for this car to hit the dock, too, you understand, to keep from going overboard.

Q. You mean the big truck when you speak of the car? 30

A. Yes.

Q. At the same time that the boat hit the dock, that got up there and hit the dock, too?

A. Yes, sir.

Cross-examination.

By Mr. Scovel:

Q. Mr. Lee, you said this first truck was rolling down to the front of the boat; it was rolling slowly, wasn't it?

A. Yes.

Q. Going slowly?

10 A. Yes, sir.

Q. You didn't see any sudden spurt of speed or account of the—on the part of the Farr & Bailey truck, did you?

A. No, sir; I didn't notice no speed in it, no, sir.

Q. All that you saw then was the first truck rolling slowly down to the front of the ferryboat, is that right?

A. Yes, sir; rolling slowly down to the front of the boat, yes, sir.

20 Q. Who was it that was trying to get hold of the levers on the truck?

A. I don't know his name.

Q. Now, you say you heard the motor go off in the second truck?

A. Yes, sir.

Q. Are you sure whose motor that was?

A. It was the second truck's motor that I heard.

Q. How do you place it as being the second truck's motor?

30 A. Because it kept on, the motor kept on moving after we stopped the other, held on to the other machine.

Q. Couldn't it have been any of the other motors of the other trucks?

A. I didn't see but the two trucks on there.

Q. Couldn't it have been any of the other motors of the other trucks?

A. I don't understand.

Q. Isn't it possible that it was the motor of another truck beside this second truck that went off that you heard?

A. No, sir, it couldn't be possible, because this car behind—after the motor of that was running I got hold of the other car.

Q. You are sure then that it was the second truck's motor because you saw the second truck moving a little bit?

10

A. I seen the fellow when he was trying to start the motor.

Q. Well, now, there were other trucks on the ferry-boat beside these two, weren't there?

A. Those two in front were all I seen.

Q. You didn't see any more?

A. No, sir, I did not.

Q. How far did you see this second truck move?

A. Well—

Q. It didn't go very far, did it?

20

A. When I went between those two trucks to go on the other side to light a cigarette, this fellow, he gave way to let me get by, and just as I lit the cigarette I heard this motor go off, and I heard a fellow yell, "Look out, look out," and I ran; when I looked, the car in front was rolling down; I ran to help stop the car like the other boys were doing.

Q. Where was the second truck?

A. It was behind the truck I was trying to stop.

Q. How far did you see it move?

30

A. I didn't see how far it moved.

Q. You did not see how far it moved?

A. No, sir; I did not.

Q. It did not follow down behind the first truck, did it?

A. In fact, I didn't notice that part of it, whether

it moved any or not; I know the motor was running; I know the fellow started the motor.

Q. When the first truck stopped at the ferry slip, where was the second truck?

A. I don't know; I didn't take notice to that.

Q. It had not moved very far from its original position, had it?

A. I did not take notice of that.

Q. You didn't see the second truck move very  
10 far, did you?

A. I didn't take notice how far she moved or whether she moved or not.

Q. You said a moment ago she moved?

A. I seen the first truck rolling down—

Q. Didn't you see the second truck move at all?

A. No.

Q. Then you don't really know whether the second truck actually struck the Farr & Bailey truck, do you?

20 A. No, sir, I do not.

Q. I understand you to say that the front part of the ferry-boat was lower than the dock, that is, the bow of the ferryboat was lower than the dock, the slip, is that right?

A. Yes.

Q. And how high do you place that, how much higher?

A. Well, as near as I can tell you, about as high as one of those blocks that you put in front of the  
30 wheel on a boat.

Q. About two feet, would you say?

A. Well, it may have been two feet, I don't know that it was just that close; I know it was close enough for the wheel to be hugged against it at the dock.

Q. You say you were over on the gentlemen's side when this front truck started to roll down?

A. Yes, sir.

Q. What course did you take in running over there in trying to stop it from going any further?

A. What caused me to do it?

Q. What course did you take—did you go in front of the first truck or between the first and second truck?

A. No, I ran over there to it because there was nothing in the road of me to keep me from going there.

10

Q. You ran over to the side of the first truck, is that it?

A. Right over to the first truck; I seen it moving and I ran to that truck, yes.

Q. You did not see the second truck moving then, did you?

A. I did not notice the second truck.

By Mr. Starr:

Q. Well, Mr. Lee, you passed between the two trucks, didn't you?

20

A. Yes, sir.

Q. When you went from one side of the ferry-boat to the other?

A. Yes, when I was leaving the ladies' side going to the gentlemen's side, I passed between the two trucks; that is the reason I know there was two trucks there.

Q. The rear of the first truck and the forward part of the rear truck you passed between?

30

A. Yes.

Q. Now, there was just room enough there for you to get through?

A. Yes.

Q. And the chauffeur of the second truck was then getting ready to crank his machine, wasn't he?

A. Yes.

Q. Then you started across to the men's side and were about to light a cigarette, as you said, when you heard somebody—you heard the second truck's motor start?

A. Yes, sir.

Q. Heard that start?

A. Yes, I heard that start.

Q. Did you see the chauffeur of the rear truck  
10 crank his machine?

A. Yes, sir.

Q. You saw him cranking it?

A. Yes, because he moved out to let me get by before he started the machine up.

Q. Then he cranked it?

A. Yes.

Q. And at that time you heard the motor explode, that is, the motor start?

A. Yes.

20 Q. And then at the same time you heard somebody or about the same time you heard somebody cry out, "Look out, look out" and then it was that you turned around and saw the front car, the front truck, as you say, rolling down slowly and you ran over and tried to stop it?

A. Yes.

Q. That is the way it happened, is it?

A. Yes, sir; that is what I done.

Q. Well, did you see the rear truck move at all?

30 A. I didn't notice it, whether it moved any at all or not.

Q. You did not notice that?

A. No.

Q. You had not got over to the men's side before you heard this motor go off, had you?

A. Yes, sir; just as I lit, was striking a match, I heard the motor go off.

Q. You walked across the deck?

A. Right across the deck.

Q. And got in front of the men's cabin and were lighting a cigarette when you heard the motor explode, the motor in the rear truck?

A. Yes.

Q. And then it was that you heard this outcry and you ran across?

A. Yes, sir.

Q. The forward truck had not struck the gate, had it, when you got over to where it was and tried to stop it? 10

A. No, sir, it had not got to the gate yet.

Q. There was no car between the men's side of the ferry-boat and where these two trucks were on the ladies' side, was there?

A. No, sir; no car on that side at all; I could run right across to it.

Q. And you had a clear view of what was going on on the ladies' side? 20

A. Yes.

By Mr. Woodruff: Mr. Lee, when you looked, when you heard somebody holler, "Look out," and you looked, did you see the chauffeur of the second truck then?

A. No, sir, I didn't notice that one.

Q. You didn't notice that?

A. No. 30

Q. Just noticed the big truck?

A. I noticed the big truck moving, and I ran.

Q. Which was the first, Mr. Lee? You have spoken about three things, seeing the big truck moving, hearing the explosion from this other machine, and hearing somebody holler, "Look out, look out"—which was the first thing?

A. The first thing I heard was "Look out."

Q. That was the first thing you heard?

A. Yes.

Q. The second was what?

A. Was this motor behind.

Q. And the third was when you saw the big truck, was it?

A. Yes, when that "Look out" was yelled, understand, I heard this motor behind, you know, go off,  
10 but I looked toward the way the boat was going, and I seen this truck rolling, and I ran over to help hold it back, but we couldn't hold it back.

By Mr. Starr:

Q. Now, one moment; didn't you in answer to my question, say that the first thing you heard was the motor go off and then the cry, "Look out"—don't you remember saying that?

20 A. No, sir, I said when I was going between the two trucks and going on the gents' side, that this fellow was there, standing there ready to crank his car up, and gave way to let me get by him, and just as I got on the gents' side, ready to scratch my match, I heard, "Look out, look out," and I heard this motor go off, looked toward the way the boat was going, and I ran to help hold this truck back.

Q. Did you get all the way across before you heard the motor go off?

30 A. Yes, got all the way across when I lit the match, that is when I heard this yelling.

By Mr. Scovel:

Q. In other words, you heard the cry, "Look out, look out," before you heard the motor go off, didn't you?

A. Yes, sir.

ANTHONY MELFI, SWORN.

By Mr. Woodruff:

Q. How old are you, Anthony?

A. Seventeen.

Q. At the time of this accident were you working in Philadelphia?

A. Yes. 10

Q. Where were you working?

A. Philadelphia Navy Yard.

Q. Speak out loud so we can hear you. Were you returning at the time of the accident on the same ferry-boat with Mr. Fiorentino?

A. Yes.

Q. And with Mr. Carroll?

A. Yes.

Q. Is Mr. Carroll related to you?

A. Yes. 20

Q. Now, did you go in the cabin at all on that trip?

A. No.

Q. You did not go in the cabin; where did you go?

A. I was on the outside.

Q. And where about did you take up your position?

A. In the middle of the two gates.

Q. Well, which two gates?

A. On the driveway. 30

Q. The two big gates?

A. Yes.

Q. You were about in the middle of those. were you?

A. Yes.

Q. Did you stay there all the way over?

A. Yes.

Q. The whole trip?

A. Yes.

Q. Did you see Sam and Mr. Carroll when they came out of the cabin?

A. Yes, sir.

Q. Where did they take their positions—where did they stand?

A. On the right-hand side near the post.

10 Q. And that was on your right-hand side, too, was it?

A. Yes.

Q. As you came over to the Camden side, were there other passengers out front, out in the front part of the boat?

A. Yes, sir.

Q. Where were they standing as you came toward the dock?

A. In the front.

20 Q. Whereabout in the front?

A. Over near the gates, in the driveway on the men's side and ladies' side.

Q. The space that is in front of the cabin up to the front gates on the ladies' side and men's side, inside the little railing, how many people were in there as you came over to the Camden dock?

A. About twenty-five or thirty.

30 Q. That many people in each corner of the boat, and how many people were along—I don't mean in number, but were there people along the gates in the middle?

A. Yes.

Q. How many would you say, or how thick were they in there?

A. I couldn't tell you.

Q. Were there men, people between you and Mr. Carroll and Mr. Fiorentino?

A. Yes.

Q. How much space did you have there between the gates and the first machine?

A. About four feet.

Q. Had you stood there before other times?

A. Yes.

Q. Do people generally stand there?

A. Yes, sir.

Q. Now, when you came into dock on the Camden side, came into the open space there, were you still standing at your place there in the middle? 10

A. Yes.

Q. What was the first you knew of anything about to happen that was unusual?

A. I heard somebody holler, "Look out" twice, and just about to turn my head around, I seen Sam and Carroll get squeezed up against the gate, and I had the clamp off that gate.

Q. You mean you took it off?

A. Yes.

20

Q. You lifted it off?

A. Yes.

Q. That is the ring that fastens the two gates together in the middle?

A. Yes.

Q. Now, when you took that off, what did that do?

A. That gave the gates a chance to break down.

Q. Now, as soon as you heard this "Look out" that you say somebody hollered, what was the first thing that you saw when you looked? 30

A. I seen the truck squeezing Sam and Carroll up against the gates.

Q. Just as soon as you half turned your head?

A. Yes.

Q. What happened to Sam and Carroll after you took off the ring or loop?

A. The gate broke and Sam and Carroll went over the gate and fell underneath the truck.

Q. Where did the truck go?

A. The truck hit the slip, that is where it stopped.

Q. Now, was the slip and the boat level?

A. No, sir.

Q. How much difference was there?

A. About twelve to fifteen inches.

Q. Which was higher?

10 A. The deck.

Q. What do you mean by the deck?

A. Right where they wind the wheel up.

Q. We have been speaking of it as the slip.

A. The slip.

Q. How did this big truck move when you saw it squeezing Sam and Carroll?

A. Rapidly, moving rapidly.

Q. And how was it moving with respect to its speed—did it increase its speed or go faster or  
20 slower?

A. No, just kept going the same as it was started.

Q. Just right on the same speed, did it?

A. Yes.

Q. Until it came to a stop?

A. Yes.

By the Court:

Q. What did it stop at—where did it stop?

30 A. Where it hit the slip.

By Mr. Woodruff:

Q. Was there any driver on that truck?

A. I didn't see none.

By the Court:

Q. Well, did you look?

A. I looked, yes.

Q. Well, was there any?

A. No.

By Mr. Woodruff:

Q. Now, did you see anything about the second truck? 10

A. I didn't see anything about the second truck.

Q. Did you hear anything from it at all?

A. No, I didn't hear anything.

Q. What position was the boat in when this was happening, all these things were happening?

A. The boat was on one side, on the ladies' side.

Q. What do you mean—I don't understand you?

A. The load, see, was all on one side when the truck came down.

Q. The whole load was on that corner of the boat? 20

A. Yes.

Q. What did that do to the boat?

A. Let it go all on one side.

Q. Tilted it?

A. Yes.

Q. And tilted it down which way—which side was down?

A. The right-hand side.

Q. Was it more down in front or in back? 30

A. In front.

Q. That was the corner that was down furthest, was it?

A. Yes.

Q. Now, how near did it get into the dock when you heard somebody holler, "Look out, look out?"

A. About seven or eight feet.

Q. Then what happened after that with regard to docking? What did the men do to fasten the boat up, if anything?

A. The man, he stood on the dock and threw the hook with the eye, you know, and was turning the wheel around.

Q. When did he do that—what was going on when he did that?

10 A. When the truck was coming down.

Q. When the truck was coming down?

A. Yes.

Cross-examination.

By Mr. Starr:

Q. Were you in the cabin at all?

A. No, sir.

20 Q. You went directly from the ferry-house right to the front of the boat?

A. Yes, sir.

Q. And you stood all the time up against the front gate?

A. Yes, sir.

Q. How close to this front truck were you?

A. About four feet.

Q. And in front of it, were you?

A. Not in front of it, alongside of it.

30 Q. Were you right up against the gate?

A. Yes, sir.

Q. The motor in that truck was not running, was it?

A. No, sir.

Q. The motor in the rear truck was running, wasn't it?

A. I didn't hear none.

Q. Well, after the accident did you notice whether the motor was running?

A. I didn't take notice; when I went out, I helped Carroll walk out.

Q. Oh, you didn't take notice of that?

A. No.

By the Court:

Q. How many cars were on the boat, do you know? 10

A. I can't tell you.

Q. Were there many?

A. Yes, there was quite a good many.

Q. When you came through from the Philadelphia end to the outer end of the boat did you pass cars?

A. No, because the people can usually come in before the cars does.

Q. Oh, you came in ahead of them?

A. Yes. 20

By Mr. Starr:

Q. Were there any cars in the rear of these two trucks, did you notice?

A. I don't know; I was in the front; I couldn't look in back.

Q. Did you come through the passageway for vehicles, for automobiles and wagons?

A. Yes. 30

Q. Do you know whether there were any cars on the left-hand side of the ferry-boat?

A. I didn't take notice.

Q. Which side did you come through, the right or left-hand side?

A. The right-hand side.

Q. Then you came in back of these two trucks, or were they there?

A. I came there before the two trucks.

Q. Then they came up after you?

A. Yes, sir.

By Mr. Scovel:

10 Q. Was this first truck moving slowly or swiftly down to the front of the ferry-boat?

A. It was moving slowly.

Q. A slow gait, wasn't it?

A. Yes.

Q. Didn't you notice whether or not there were more than two trucks on the ferry-boat?

A. No, I didn't take notice.

Q. You didn't hear any motor go off on any of the trucks, did you?

A. No.

20 Q. Did you notice where the driver of the Farr & Bailey truck was?

A. I don't know who the driver is.

Q. You noticed that the boat had an inclination, a dip in the front, didn't you, as you were approaching the dock?

A. Yes.

FRANK GREEN, SWORN.

By Mr. Woodruff:

Q. Mr. Green, you are here under subpoena, aren't you?

A. Yes, sir.

Q. What was your job?

A. Chauffeur. 10

Q. At the time of this accident, May 11, 1921?

A. Chauffeur.

Q. For whom?

A. Farr & Bailey.

Q. Where was your truck, what position was your truck in on the boat at the time of the accident?

A. The first truck on the right-hand side.

Q. How big was it?

A. A five-ton truck.

Q. What make? 20

A. Pierce-Arrow.

Q. How big a load on it?

A. Well, I couldn't exactly tell you, maybe five ton, maybe less.

Q. Did you drive it on the boat?

A. Yes, sir.

Q. Did you see a block, a chock placed under your wheel?

A. Yes, sir.

Q. Was that there all the time the boat came over? 30

A. Yes, sir.

Q. Who removed it?

A. I did.

Cross-examination.

By Mr. Starr:

Q. When did you remove the block, Green, as far as the boat, the ferry-boat being docked in the slip was concerned?

A. After the boat had been docked and tied up.

Q. Did you feel the impact of the boat against  
10 the slip?

A. Yes, sir.

Q. Did you take the block away from the front wheels of your truck after that?

A. After the gangplank was put down.

Q. Which gangplank do you mean, for vehicles or for passengers?

A. For passengers, they were pulling the gangplank for vehicles.

Q. Now, were you on the truck all the time while  
20 the boat was crossing the river?

A. No, sir.

Q. You went over into the men's cabin?

Mr. Woodruff: I object to this as not cross-examination; I purposely limited my questions.

Mr. Starr: Well, do you object to it on that ground?

30 Mr. Woodruff: Yes, I do.

The Witness: Do you wish me to tell it?

Mr. Woodruff: No, just wait a moment.

Mr. Starr: I suppose it is not cross-examination,

if the Court please; if Mr. Woodruff objects on that ground, I will have to call him again.

---

JAMES A. WELLS, SWORN.

By Mr. Woodruff:

Q. Mr. Wells, where do you live? 10

A. 1138 South 9th Street, Camden.

Q. And where did you work on May 11, 1921?

A. The Philadelphia Navy Yard, for the Government.

Q. Were you on the ferry-boat that Sam was on at the time of his accident?

A. I was.

Q. Who were you with?

A. Well, Mr. Lee and I generally came over together. 20

Q. What position did you take on the boat?

A. Well, I came through the women's cabin and walked out on the front, and as the boat was getting ready to go into the slip I walked across the driveway to the men's side of the boat, in front of the Farr, or the front truck that was on the boat.

Q. Mr. Lee went over there with you, did he?

A. He did.

Q. How was the boat with regard to its passengers, where were they at the time you were coming to the dock? 30

A. The front of the boat was very crowded with passengers, especially the entrance to the ladies' cabin and out in front of the driveway.

Q. Where were the people standing with respect to the driveway?

A. They were standing on both sides, both the women's and inside and clean across the front of the driveway.

Q. Did people usually stand there as they came into the dock?

A. They did.

Q. How long had you been traveling over the ferry?

A. I have been on it at that time for five years.

10 Q. Had you seen that happen other times, people standing along the gates that way?

A. Every time passing over, to and fro, except when it was very cold.

Q. Now, Mr. Wells, where were the machines, on which side of the boat?

A. On the right-hand side, the ladies' side of the boat.

Q. The same place where most of the crowd was, wasn't it?

20 A. The same corner, yes.

Q. What did that do to the boat?

A. It kind of tilted the boat some.

Q. What was the first thing you knew of anything unusual happening—what was the first thing that attracted your attention?

A. After passing over in front of the truck, going over to the men's side, I heard a noise of some one shouting, "Look out," and I turned to look around to see what was the trouble there, seeing the front

30 truck gradually moving toward the gate.

Q. Was there any driver on that truck?

A. There was not.

Q. Was there any driver on it when you passed over?

A. There was not.

Q. What did the men do that tried to stop the truck?

A. Well, there was some men ran out toward the truck and tried to stop it; I don't know who they were.

Q. I see; what did the truck do?

A. It continued to move until it had pressed against the gate or against the men that were standing there.

Q. Then the gates gave way, did they?

A. The gate gave way and the truck continued until it hit the slip. 10

Q. What fetched it up—what stopped the truck?

A. Why, butting up against the slip.

Q. And what was the position of the slip and the edge of the boat?

A. It was elevated, I judge, about eighteen inches above the boat.

Q. Which was elevated?

A. The slip.

Q. Now, did you see anything happen with respect to the second machine? 20

A. Well, I heard the motor going, and the second machine gradually following the first.

Q. And then that stopped, didn't it, the second one—that didn't go on down through the gate with the other one?

A. No, after, of course, the other machine stopped, the second machine in the rear had to stop by coming in contact with it.

Q. How was the boat, what position was the boat in with respect to its docking when you heard somebody holler, "Look out, look out?" 30

A. Well, the man, the deckhand on the right-hand side, had thrown out his hook—he has to tie the boat up; the man over on the side that I was standing had not tied his boat up as yet, had not engaged his hook.

Q. Was the boat docked, completely docked, tied up against the slip?

Mr. Starr: I object.

A. No, sir, it was not.

The Court: It is rather leading, Mr. Woodruff.

10 Mr. Starr: Let the witness testify what he observed.

Q. All right; how far was the boat from the dock, from the hook—was the hook into the ring into the boat?

A. Well, I judge it were about three feet out or something of that sort.

Q. When did the man throw that hook, what was going on then?

20 A. The boat was continually coming into the dock.

Q. What was going on with respect to the accident?

A. Well, I don't know as far as the accident were concerned whether at that time that this truck were moving, I don't know, but I knew that during the accident or thereafter, the moving of this truck, that this man had caught on his hook to the boat.

Q. You did not observe just when that occurred  
30 with respect to the accident?

A. No.

Cross-examination.

By Mr. Starr:

Q. You were standing where, Mr. Wells—I didn't catch that—when you observed this?

A. On the left; I had gone to the left, to the men's cabin side.

Q. Were you with Mr. Lee?

A. Mr. Lee and I were standing there together. 10

Q. Standing there together, were you?

A. Yes.

Q. Did you pass over from the right to the left-hand side of the boat with him?

A. No, we split as we passed over.

Q. Then he went between the trucks and you went ahead of the first truck?

A. Yes, between the truck and the gate.

Q. Now, there was just room enough for you to get through? 20

A. I don't know; I didn't have no difficulty in passing through.

Q. Yes, but between the forward part of the first truck and the men that were standing up against the gate—

A. There was room enough for me to get through.

Q. Then you went over there, did you, and re-joined Lee?

A. I did.

Q. Then you heard an outcry, is that right? 30

A. Yes.

Q. And saw this first truck moving slowly?

A. Yes.

Q. And saw the second truck moving also back of it, didn't you?

A. I saw that moving afterward, following the first truck.

Q. Following the first truck; of course when the first truck stopped the second truck stopped?

A. Naturally.

Q. They were right together?

A. Well, of course, the first truck stopped first, because it hit the slip.

Q. And the other truck ran up against it?

A. Yes, and when it came up against it, it would have to stop.

10 Q. Now, you said something about a plank or gangway on the right-hand side of the ferry-boat; did you see that put in position?

A. I didn't say anything about that.

Q. Well, was that put in position?

A. It was not, not at this time, I didn't see it.

Q. On the left-hand side was the gangway in position?

A. It was not.

20 Q. What about the gangplank in the vehicle part, was that in position?

A. No, because that is the last one that is put down.

Q. Did you see a man on the right-hand side with a rope in his hand to put the hook in the eye?

A. I did see him throw it out.

Q. Now, at the time that you saw the truck moving, was the rope in the eye, the hook in the eye?

A. I think so.

30 By the Court:

Q. How near to the gate did you stand?

A. Well, I was standing from the left-hand side of the boat, I judge, about three feet from the post that holds the gates.

By Mr. Starr:

Q. The motor in the forward machine was not running?

A. Not that I know of.

Q. Did you see the chauffeur of the rear machine?

A. Did I see him in the car?

Q. No, see him at all?

A. Oh, I wouldn't know him; I did not notice it, as far as that part is concerned. 10

By Mr. Scovel:

Q. You say you noticed this second truck moving slowly behind the first truck?

A. Yes, sir.

Q. You mean to say that it kept on going all the way until it hit the first truck, bumped into the rear of the first truck on the ferry-boat?

A. Yes. 20

Q. Didn't you see the chauffeur of the second truck at all?

A. Oh, I wouldn't know him from anybody else, as many men as there were around there; I wouldn't know that chauffeur.

By the Court:

Q. Was anybody in the truck?

A. There was no one in the truck. 30

Q. Neither of them?

A. No, sir.

By Mr. Scovel:

Q. Didn't you see him under the axle of the second truck, the front axle?

A. I did not.

Q. Do you know whether he was there or not?

A. I couldn't say, I didn't see him.

Q. Did you try to help stay the forward movement of this front truck?

A. No, I did not.

Q. What did you do?

A. Stood in the position where I were.

Q. The motor was not running on the second truck,  
10 was it?

A. The motor running on the second truck? It were when I looked back, when I looked over to it.

Q. How do you know it was running?

A. How do I know it were running?

Q. Yes.

A. Because I saw it and heard it.

The Court: Mr. Scovel, the driver himself said  
he started it up at the last trial.  
20

---

ELMER J. LEX, SWORN.

By Mr. Woodruff:

Q. Where do you live, Mr. Lex?

A. Gloucester City.

Q. Mr. Lex, you worked where?

30 A. Philadelphia Navy Yard.

Q. And did you go to and fro from the navy yard by way of the Reading boat?

A. Yes, sir.

Q. And were you on this particular boat that Sam was on when he got hurt?

A. Yes, sir.

Q. Did you know him at that time?

A. Knowed him for about two years from traveling back and forth with him.

Q. You worked down at the same place, the same yard?

A. The same yard, yes.

Q. Was that boat crowded that night?

A. It was.

Q. Where were the people crowded mostly?

A. Well, they were up forward, that was the front 10  
of the boat, the ladies' cabin and along the front,  
the vehicle passageway and also the men's cabin.

Q. Now, Mr. Lex, as the boat came over toward  
the Camden side, where were, what part of the boat?

A. I was up forward, right at the big gates on  
the starboard side.

Q. Did you see Fiorentino and Carroll?

A. They were standing right there, right leaning  
up against the gates.

Q. Were other people standing along there, too? 20

A. Other people right along there, and I was  
alongside of it.

Q. Then what did you do?

A. I got out of there for some reason or other,  
and I stayed on the stringer, or, in other words,  
the foundation there that holds the forward end of  
the pilot house up.

By the Court:

30

Q. You mean that raised plank that separates the  
ladies' entrance from the main deck?

A. Yes, I stayed on there, and I turned around  
and I happened to look down at the wheel—in fact,  
I glanced all around, and I did not see a block in  
front of the wheel.

By Mr. Woodruff:

Q. Now, which truck was that?

A. That was the Farr & Bailey truck.

Q. The first truck?

A. The first truck.

Q. Where were you then—where was the boat with respect to the dock when you noticed that?

A. Well, that was about twenty feet out then.

10 Q. From what?

A. From the slip.

Q. Was there any block at all there in front of either wheel?

A. Not when I looked down, no, sir.

Q. Where was the Farr & Bailey driver?

A. There wasn't anybody around the truck, that is, on the seat; I don't know where he was; he might have been around in the crowd there.

Q. Yes, but he wasn't up on the seat?

20 A. No one was on the seat.

Q. What were the people doing who were in the cabin at that time?

A. Well, they were all moving forward in order to get off as soon as the boat was docked.

Q. Was the boat level?

A. No, she couldn't be.

Q. What inclination was there?

A. Well, due to the load there, she would have an inclination; she would have a list on her starboard  
30 bow.

Q. That is which bow, the right or left?

A. That is the right side and forward.

Q. That corner is the corner that would be down?

A. Yes.

Q. Did you notice how much it was down when it finally came into the dock?

A. Well, after she went into the dock, I judge about eighteen or twenty inches below the top, the top of the slip.

Q. Now, after you noticed that the blocks were not there, and that there was no driver on the truck, and you were then some twenty feet out, what occurred after that?

A. I happened to turn around then and looked forward, and I heard someone yell then—this was about ten foot in, ten foot from the slip—and all of a sudden, this here truck was squeezing Carroll and Fiorentino. 10

Q. That was the first truck?

A. Yes, that was the first truck was squeezing them; I didn't do a thing; I just stayed there, because my idea was that—

Mr. Starr: I object; wait.

Q. Never mind what your idea was; you just stood there? 20

A. I just stood there.

Q. What was the movement of the truck as it squeezed them—what did you notice about how it moved?

A. Why, just slowly, a steady squeeze; there wasn't a bump or anything.

Q. Then the gate broke and they went down, didn't it?

A. The top of the bolt—the bolt that holds the gate in place at the top, that snapped off, and then this short fellow, the boy, he slipped the latch off. 30

Q. That is when the gate went down?

A. Then the gate went down.

Q. What was done to hold the truck back—did you see anybody doing anything?

A. No, I didn't see anybody, because I was looking forward. I leaped over the ladies' gate, that is, on the ladies' side, thinking that these men were going overboard, and I was going to try to help them there.

Q. Did you notice anything with respect to the second truck?

A. No, sir.

Q. How close in was the boat to its actual berth, 10 being tied up, when the gates went down and the men were squeezed?

A. Well, the boat was ten feet out when these men were being squeezed; the boat then when the gate broke was about one foot from the slip, when the gates broke.

Q. Did you see the man throw his hook in the eye of the boat?

A. That is the bridgeman, he threw his hook in the eye.

20 Q. Then what did he do?

A. Well, they generally do it all in one operation; well, it takes about three operations to do it all. To try to save time, he threw the hook in the eye, and then he threw out the plank and seen what was happening—I don't know why he done it, just to leave the people off, I guess—but he threw the plank out, that is, on the ladies' side. Then he went back and tightened up his rope.

30 Q. Well, at the time the gates broke down, the men were squeezed and the gates broke down, was the boat docked at that time?

A. The boat was not firmly tied up.

Q. Was there still movement?

A. Sure, there was bound to be movement there, yes, sir.

Cross-examination.

By Mr. Scovel:

Q. Mr. Lex, when you first saw that the block was not in front of the truck, the Farr & Bailey truck, had the ferry-boat docked?

A. Had it docked?

Q. Yes.

A. No.

10

Q. How far away was it from the dock?

A. About twenty feet.

Q. About twenty?

A. Yes, when I first noticed it.

Q. And during the time that the boat made that twenty feet from when you first noticed it until it actually struck the slip, the block was not there, is that so?

A. No, I did not see the block there at all.

Q. Now, you were standing where, did you say? 20

A. I was standing leaning right up against the gate, alongside of Carroll, and then Fiorentino was alongside of Carroll; I was on the right side, Carroll was in the middle, and Fiorentino was on the end.

Q. That is, on the ladies' side?

A. On the ladies' side of the large gate, see, that is for the vehicles.

Q. You must have been very near the post then, weren't you? 30

A. I was right by the post.

Q. Now, you saw the truck come down slowly and not stop until it struck the slip, didn't you?

A. Yes.

Q. And you stayed there all that time, didn't you, and watched; that is, you didn't change your position, did you?

A. Oh, I moved out of my position and stood up on this here stringer, as I told you before, in other words, the foundation.

Q. That is where the posts are that divide the pedestrians from the vehicle passageway—is that what you mean?

A. Right.

Q. You did not turn your back on the truck, did you?

10 A. Oh, yes, I looked forward.

Q. But I mean, you kept looking at the first truck, didn't you, looking at the scene of the accident, didn't you?

A. When I left my place, I was looking at the truck, then looking all around; I looked down at the wheels and I didn't see no block there, so I turned around and looked forward, that is, looking in the slip; my back was then on the truck.

20 Q. But while the Farr & Bailey truck was moving forward, you were watching it—you saw it, didn't you?

A. No, my back was turned.

Q. When did you first see the Farr & Bailey truck after the time it started to move forward?

A. Well, I heard someone yell, then I turned around.

Q. Then what did you see when you turned around?

30 A. I seen the truck gradually squeezing these two men.

Q. You were then facing the truck, of course?

A. Then, yes.

Q. And you could have seen the second truck, then, too, couldn't you?

A. Hardly; I don't see how you could see it; not where I was standing.

Q. What interfered with your view—you were looking then at the first truck?

A. Well, the truck is right alongside of the cabin; it is only a matter of twelve inches between the cabin and the truck; I would have to look right up between the cabin and the truck to see what was back there.

Q. You did not see the second truck moving, did you?

A. No, I don't know anything about the second truck; all I seen was the second truck going off the boat. 10

Q. Well, when the Farr & Bailey truck came to a stop, when it struck the ferry slip, you were still standing there, weren't you?

A. I was assisting these two men, getting them off.

Q. And you did not see Adkins' truck come up behind the Farr & Bailey truck and stop there, did you? 20

A. No, sir.

Q. It had not come forward that far, had it?

A. I don't know.

Q. Well, you would have seen it, wouldn't you, if it had come that far and been right up against the Farr & Bailey truck?

A. The only way I could have seen it was to pass on the other side of it and try to get in its place.

Q. I mean, at the time that the Farr & Bailey truck had actually come to a stop and you went out to help, if the Adkins' truck had come up as far as the Farr & Bailey truck, you would have seen it there, wouldn't you? 30

A. Sure, if they came up as far as that truck, I would have seen it.

Q. And you didn't see it there, did you?

A. No.

Q. You didn't see where it was there, did you?

A. No.

Q. But if it had been up against the Farr & Bailey truck you would have seen it, wouldn't you?

A. If it had been up alongside of it, I would.

Q. If it had been right up against the back of it, the front touching the back?

A. No, not then I wouldn't, because my thoughts  
10 were on these two men.

Q. Did you ever look back to see where the Adkins' truck was?

A. No, I wasn't paying no attention to the rear of that front truck?

Q. You didn't see the Adkins' truck at all then, did you?

A. After it got off the boat, as it was coming off the boat is the only time I seen it.

20 By Mr. Starr:

A. Mr. Lex, the motor of the forward truck was not running, was it?

A. Not that I know of.

Q. After the accident happened and the excitement was all over, you were in the front part of the ferry-boat near the front end of the forward truck where these two men were?

A. Yes, sir.

30 Q. That is right, isn't it?

A. I was there all the time.

Q. And of course the Adkins' truck was in the rear of this big five-ton truck, the forward truck?

A. I don't know whether it was or not.

Q. Well, it had not come up alongside of where you were standing?

A. No.

Q. How far were you from the forward truck when you heard this outcry?

A. About three feet.

Q. On the right of it, weren't you?

A. Well, to the right it would be about two foot.

Q. And opposite what part of the truck were you standing?

A. Well, I was on the right-hand side of the truck.

10

By the Court:

Q. What part of the truck, where the motor was, the body or front, where?

A. The front wheel.

---

HOWARD H. WAITT, SWORN.

20

By Mr. Woodruff:

Q. Mr. Waitt, you are hereby subpoena, aren't you?

A. Yes, sir.

Q. For whom were you working at the time of this accident on May 11, 1921?

A. Charles Adkins.

Q. He is one of the defendants in this case?

30

A. Yes.

Q. What was your job?

A. Chauffeur.

Q. Were you in charge of the second truck on this ferry-boat?

A. Yes, sir.

Q. What kind of truck was it?

A. A Federal five-ton.

Q. What truck was ahead of you?

A. Farr & Bailey's.

Q. Now, when you came into the Camden dock, did you get off your truck?

A. I did after we got about half-way into the slip, sir.

Q. And what did you then do?

10 A. Went around to the front of my car.

Q. To do what?

A. Why, to get ready to crank the car when we got pretty near in.

Q. Then did you crank the car?

A. As I started to crank the car, I noticed the car coming forward.

Q. What happened to you when your car came forward?

20 A. I dropped down underneath of it.

By the Court:

Q. You had cranked it, had you?

A. I was getting ready to crank it; I couldn't swear I had cranked it.

Q. You mean you were working at the crank?

A. I was getting ready to crank it.

Q. What do you mean—had you turned it or not?

30 A. I was getting ready to pull up on it, getting ready to crank it when it came forward.

By Mr. Woodruff:

Q. Then, Mr. Waitt, what did you do when you felt your car coming forward?

A. I only had a short space there, I couldn't get out from either side, so I dropped underneath of it.

Q. You dropped right down on the deck?

A. Yes.

Q. Then did the car come up over you?

A. When the cars stopped, I got out; the front axle was over my shoulders; when I got up I struck my neck on the axle of the truck.

Q. You threw yourself down on the deck face down?

A. Yes.

Q. And your feet in which direction? 10

A. My feet toward the forward part of the deck.

Q. Then your motor had come that far over you so that your head was under the axle, is that right?

A. Yes, sir.

Q. What was broken on the front of your truck?

A. Why, there was nothing broke but the fender and radiator guard on the front of it.

Q. What is that?

A. Why, the same as your radiator—it is something like this sleeve is here; it is quarter-inch iron 20 and resembles this very much in regard to space; it is up there to guard your radiator in case of collision of any kind.

Q. It is not the radiator itself?

A. No, sir.

Q. A shield in front of it?

A. A light shield in front of it, yes, sir.

Q. What happened to that?

A. That was bent back slightly.

Q. Was it pulled loose anywhere? 30

A. No, there was only two three-eighths bolts up underneath it, and they weren't snapped or anything. There is a light angle as a brace on it from the chassis, about thirty-five degrees; that was bent slightly; it wasn't bent very much; the guard wasn't back against the radiator.

Q. Just bent backward?

A. Yes.

Q. What bent that back?

A. I suppose it was the Farr & Bailey truck, the rear part of it.

Q. But that was all the part of your machine that was damaged, was it?

A. Yes.

10 Q. What happened to your machine when it got up close enough to bump the Farr & Bailey or bend that iron back?

A. I couldn't tell you what happened to it then; I was underneath of the car.

Q. I mean, as to the motion of your machine?

A. Why, my machine must have stopped, because it was over my shoulder when I got out.

Q. And standing still?

A. Yes.

20 By the Court:

Q. Mr. Waitt, when you were here before, you testified, didn't you? You testified before when this case was tried?

A. Yes.

Q. Why do you change your testimony now?

A. I don't know as I have changed it.

30 Q. Listen to this, "Why, I got out of my truck and stood in front of it and the boat had already bumped the landing, and after it had bumped the landing, why, I cranked my car and the first stroke up, why, the car came forward. Q. The engine started to go, did it? A. Yes, sir." Why do you say now that you did not start it at all, didn't even turn the crank?

A. I don't recall that, sir; I am telling you as

straight as I can remember the action of it. That was two years ago, sir.

The Court: Well, go on.

Cross-examination.

By Mr. Starr:

Q. Now, Waitt, will you say you did not swear as the Judge has read from the testimony? 10

A. Well, that was two years ago.

Q. Now, answer the question; will you swear that you did not so testify at the last trial?

A. Why, no, sir, not to my knowledge; the only thing I can tell you to the best of my knowledge what happened.

Q. This testimony was taken a year ago, taken the 31st of October, 1921, nearly eighteen months ago, and within a short time after this accident happened; wasn't your recollection better then than it is now? 20

A. Why, I don't know, I seem to remember it just about as clear.

Q. Now, isn't it a fact that when you cranked your car the first stroke up the motor started; isn't that a fact?

A. Not to my knowledge it didn't, no, sir.

Q. What do you mean by that?

A. I mean that I don't remember hearing the motor start. 30

Q. Well, did the motor start at all?

A. Not to my knowledge it did not, no, sir.

By the Court:

Q. Waitt, who have you been talking to since the last trial?

A. Why, I spoke to Mr. Woodruff, told him about the case.

Q. How did Mr. Scovel get the idea to open to this jury that you did not start that car up—did you tell him?

A. No, sir.

Q. You know that you are changing your testimony altogether, don't you?

A. No, sir.

10 Q. What?

A. No, sir, I do not, sir.

Q. Do you remember this gentleman sitting here taking your testimony as you went along (referring to reporter)?

A. Yes, sir.

Q. You don't remember anything at all of saying what has been read to you about coming out, going in front of your car, turning the crank and the engine starting up?

20 A. I don't remember saying the engine started up, no, sir.

Q. You said the car started up, didn't you?

A. I said the car started forward, if I remember correctly, sir.

Q. As you cranked it?

A. As I was cranking it, as I was starting to crank it, the car.

30 Q. Which do you mean; you have said here just now as you started to crank it and in this prior testimony you said as you turned it, "As I cranked my car the first stroke up the car came forward"?

A. As I was coming up with the stroke to start the motor, the car came forward.

Q. Well, that is the way it starts, isn't it? That is the way a car starts, isn't it, by pulling up the crank?

A. Why, you usually have to give it a spin to start your motor.

Q. What did you pull it up for?

A. Why, that is the action of the spin.

Q. What kind of truck is it?

A. It is a Federal truck, sir.

Q. You had just left your engine on the other side running, hadn't you—that is to say, it had been running when you brought it on the ferryboat within a few minutes?

10

A. Yes, sir.

Q. It was warm?

A. Yes, sir.

Q. Now, did you or did you not turn the crank?

A. I was pulling up on the crank, yes, sir.

Q. And the car started up?

A. The car came forward, but I don't remember the motor starting.

Q. "Q. The engine started to go, did it? A. Yes, sir. Q. Do you know how it got in gear? A. No, sir, I do not. Q. But it was in gear—that is what made it come forward? A. Yes, it must have been; I wouldn't swear that it wasn't." Now, was that true as you gave it on the last trial?

20

A. I don't know; if it is there I must have said it, but I don't remember it.

Q. But you do remember starting the car up by attempting to crank it, by turning the crank?

A. I was pulling—see, the crank was forward; it is a trick crank that folds up underneath and swings up on a hook; I had brought that out and was bringing it around, and as I was coming up on it, why, the car came forward. It didn't shoot forward; it just gradually started forward, and as I seen that it was coming forward, I looked at both sides quickly, like that, and I seen I had no chance to get out from

30

either side, so I dropped down on the deck, and when the thing stopped I heard them hollering around there.

Q. When what stopped?

A. When the cars stopped. When I went to get out, the axle has got a bend in it like that underneath—it is not a straight axle; of course, it has a little bend in about the center of it.

Q. Do you understand the ignition of an engine?

10 A. Yes, sir.

Q. You know that as you raise the pistons at a certain point there usually is a contact, an electric contact?

A. Yes, sir.

Q. And that starts the engine?

A. Yes, sir.

Q. Was that what you did this time?

A. Well, I don't remember the engine starting, sir; that is the only thing I can say about it; I don't  
20 remember the engine starting.

By Mr. Starr:

Q. Well, now, Waitt, you remember just after this accident you signed a paper for the ferry company, gave them a description of how the accident happened?

A. I signed a paper in the presence of Mr. Adkins and—

30 Q. And a representative of the ferry company?

A. Yes.

Q. Now, didn't you say in that paper, "The leading truck ahead of me was about two feet——"

Mr. Woodruff: I object, unless the paper is produced; he signed it.

Mr. Starr: Well, Captain Dolson, have you got that paper here? Let me have it, please.

The Court: Well, the question is proper enough, regardless of whether the paper is present here or not.

Mr. Starr: I will present the original and have him identify the signature now; it gives me a chance.

Q. Is that your signature, Howard Waitt?

10

A. Yes.

Q. And Mr. Adkins' signature underneath it?

A. That is Mr. Adkins' signature, as far as I know.

Q. Did you sign that paper?

A. Yes.

Q. And you signed that paper at the request of the ferry company, didn't you?

A. In the presence of Mr. Adkins, yes.

20

Q. What you said in that paper was true, wasn't it?

A. As near as I can remember.

(Said paper is marked Exhibit D1 for identification for the Farr & Bailey Company.)

By the Court:

Q. You say you didn't talk to any one about this case since the last trial?

30

A. No, sir, not a word, sir.

Q. Didn't you give anybody the information of your change of testimony so that it could be opened to this jury?

A. No, sir.

Q. You haven't talked to anybody at all and told them so that your testimony could be treated differently than what it was before?

A. No, sir.

Q. Do you know how they got the information?

A. No, sir, I do not.

Mr. Scovel: There is nothing in that statement that the motor was started; read it all over if you  
10 want.

By Mr. Starr:

Q. Now, did you say in this statement, "The leading truck ahead of me was about two feet, and I started to crank the car just as the hook lines were being wound up. The machine must have been in gear unknown to me, and when I started to crank and swing the handle around the truck jumped forward, and I dropped right underneath to escape being caught. The truck struck the truck ahead and pushed it ahead until it was stopped." Did you say that in that statement?  
20

A. I don't recall saying it pushed it ahead until it was stopped, no, sir.

Q. Well, did you read this statement before you signed it?

A. No, sir, I didn't read the statement.

Q. Well, as a fact, did your truck strike the forward truck?  
30

A. Why, from all identifications it did.

Q. Well, did it or didn't it—you were there, weren't you?

A. I was underneath the truck, sir.

Q. And you couldn't tell whether it hit the other truck or not?

A. No, sir, I was underneath the truck, with my face in toward the deck.

Q. Wasn't the engine on your truck running?

A. Not to my knowledge it wasn't, no, sir.

Q. And don't you say in this statement, "The engine of my truck stopped just as it hit the car ahead of mine?"

A. Not to my knowledge I did not, no, sir.

Q. Didn't you also say that your car was shoved back to clear the other car after they had stopped—do you remember saying that? 10

A. No, I don't remember saying it, no, sir.

Q. Was that true?

A. I won't say that it is.

Q. Will you say that it is not true?

A. I won't say that it was true, because it was stopped; I was right underneath the car, my neck was right underneath the axle; my neck and shoulders was right underneath of the forward axle.

Q. You had some scratches on your face, didn't you? 20

A. Not on my face, on my neck.

Q. Well, did you say in that statement you had scratches on your face?

A. I wouldn't say anything that wasn't true.

Q. Well, now, at the last trial, in addition to what has already been read to you, Mr. Scovel asked you this question, didn't he, on page 58: "Q. Mr. Waitt, did I hear you say that the boat had already docked?"

A. It had already hit the slip, yes. Q. Had it completely stopped, docked? A. Now, I was the second one in line; I couldn't vouch for that." Did you so testify then? 30

A. I don't recall it.

Q. Well, was it true if you said it at the last trial?

A. I don't recall saying it.

Q. Can't you answer my question? If you said it at the last trial, was that a truthful statement?

A. If I said that, I couldn't see the forward part of the boat; I was around at the front of my machine.

Q. Please answer my question; if you made that statement at the last trial, was it truthful at the time you said it?

10 A. Why, yes, sir.

Q. Didn't I ask you this question: "Do I understand you to say that you noticed the bump before you started to crank—you said that, didn't you?" A. Yes, sir. Q. So that the boat had struck the slip before you started to crank? A. It had struck the slip, yes, sir." Didn't you so testify at the last trial?

A. Yes, on the side part of the slip.

Q. Is that what you meant?

20 A. It hit the slip sideways coming in.

Q. Is that what you meant when you said that?

A. Yes.

Q. Is that the slip?

A. Yes.

Q. Isn't the slip the thing that the boat is tied up to and not the piling on the side?

A. No, sir, the slip extends all the way out to the end of those piling.

30 Q. That is what you meant when you said that, is it?

A. Yes, sir.

Q. Well, now, you were further questioned about that on page 56, this question: "Q. Now, what happened as you came over to the Camden slip and were going into the slip—what did you do? A. Why. I got out of my truck and stood in front of it and

the boat had already bumped the landing, and after it had bumped the landing, why, I cranked my car, and the first stroke up, why, the car came forward." Didn't you say that?

A. If I said that, I meant inside the slip; I didn't mean the bridge.

Q. You said the landing; didn't you mean to use the word "landing?"

A. I don't know; I can't recall it, sir; if it is in there, I said "landing." 10

Q. And in another place, on examination by Mr. Scovel, page 60, "Now, you said in your direct examination the boat had bumped before you started to crank, didn't you? A. Yes, sir. Q. How long before you started to crank? A. Well, that I couldn't say, sir. Q. Half a minute? A. I wouldn't say that. Q. Well, have you any idea at all? A. Not over a minute, sir. Q. Not over a minute? A. No, sir. Q. So for a minute your car had not started before before you started to crank, had it? A. Well, 20 not to my knowledge it hadn't." So it is a fact, is it, that your car had not started forward at all until you had started to crank? Can't you answer that question?

A. When I was bringing up the crank handle, I noticed the car coming forward.

Q. You did not have any brakes on, did you?

A. Yes, sir.

Q. Now, didn't you testify at the last trial as follows: "Q. Do you remember telling him at that 30 time that your car started when it was in gear and you did not have your brakes on? A. That I did not have my brakes on? Q. Yes. A. No, sir. Q. Do you remember telling him at that time the accident was your fault"—did you ever tell anybody that?

A. Not to my knowledge I didn't, no, sir.

Q. Well, did you have your emergency brake on?

A. My emergency brake was about half-way up to the best of my knowledge.

Q. And you testified at the last trial, didn't you, in answer to this question: "Q. Now, you know that would not have sent your car forward, don't you? A. I beg pardon? Q. That would not have sent your car forward? A. It would if your brakes  
10 were not up tight. I will admit I did not have my emergency on full." You testified to that fact, didn't you?

A. Yes.

Q. That is true, isn't it?

A. Yes, my emergency brake was half-way on, which would have been sufficient to hold it under ordinary conditions.

By the Court:

20

Q. Well, it is not customary to put blocks under the second car, is it?

A. No, sir.

Q. Only under the front car?

A. Yes; now they put them under both.

Mr. Starr: I object to any testimony with reference to custom as to the blocks. It is not in the case as yet; I think it is entirely immaterial. If  
30 you will permit me, I object to your Honor's question.

The Court: Yes, one of the witnesses has previously stated that there was no block in front of his car. The reason I asked was because of that, whether it was customary to put them.

Mr. Starr: There is nothing in the case yet as to any custom or requirement of the presence of blocks anywhere.

The Court: Yes, I understand that, but the next to the last witness was asked about blocks and he said there was none under this car or none under the one driven by the witness.

The Witness: They use them under both cars 10 now.

The Court: Never mind.

Mr. Starr: I object to any testimony as to the presence of blocks under either car and move it be stricken out.

The Court: All right.

By Mr. Starr:

20

Q. Well, your engine was in mesh, wasn't it, when it started?

A. Not that I know of, sir, no, sir.

Q. What would start it if it had not been in gear when you attempted to crank it?

A. There are lots of things could have started it.

Q. What could have started it?

A. Why, the incline, for one thing, would have 30 started it; the bump.

Q. With the emergency brake on? There wasn't any bump exactly at the same time the car started, was there?

A. Well, there was the reaction to the bump.

Q. What kind of reaction to the bump?

A. Why, the absorption of it, the car, the rocking of the car.

Q. Do you offer that as an explanation, that the car started, the motor started because of the rocking of the car?

A. No, sir, I merely said——

Q. How do you explain the starting of your car under those conditions?

10 A. I don't know, sir.

By the Court:

Q. You did know when you testified before, didn't you?

A. No, I couldn't say how the car started; I didn't give the reason before.

Q. You said in that statement, according to the statement, that the car jumped when you cranked it——what would make it jump?

20 A. I don't know, I can't say what would have made it jump, your Honor.

Q. You don't know what would make the car jump?

A. No, sir.

Q. You do not?

A. No, sir, I couldn't say what could have made it jump. As near as I recollect, I don't remember the car jumping; it was merely coming forward.

30 Q. In this signed statement that you have made, you say there the car jumped as you cranked it; now, which did it do, did it jump or did it move just quietly?

A. No, sir, the car was just gradually coming toward me, and I looked on both sides and I seen I couldn't get out on the side of it, and I dropped underneath of it, and when the car stopped, when the car came to a stop——

Q. Didn't you give as a reason for getting under it that the car jumped, and for that reason you did not have time to get out?

A. No, the car was barely then two feet, just room enough to stand in there, and there is a bumper on the truck which would put you in a leaning position like that, and here was the crank handle there which would take up all your space; I didn't have time to get out.

10

By Mr. Scovel:

Q. Well, Waitt, your truck was empty, wasn't it?

A. Yes, sir.

Q. It did not have any load on; there was a load on the Farr & Bailey truck, wasn't there?

A. Why, there was a part of a load on there, yes, sir.

Q. Now, you say that you were underneath the front of your truck when your truck stopped moving 20 forward?

A. Yes, sir.

Q. And you had fallen down with your feet toward the dock, is that right?

A. My feet went underneath the Farr & Bailey truck.

Q. Yes, facing the dock, and your head toward the rear of the ferryboat?

A. Yes.

Q. And where did you say your head was when 30 your truck stopped?

A. My head was just beyond the axle; the axle was over my shoulders and neck.

Q. The front axle?

A. Yes.

Q. So that your car, your truck, did not move forward more than three feet, is that right?

A. Three or three and a half at the very most.

Q. And it had stopped, was completely stopped when you crawled out, is that right?

A. It stopped when I crawled out, yes.

Q. Now, can you crank that five-ton truck without spinning the crank handle?

A. No, I have never started it—I drove that truck for about three weeks, and I have always had to spin it in order to start it.

10 Q. It won't start with one turn, will it, a pull up?

A. It never has done, no, sir.

Q. How long did you say you had driven this truck of Mr. Adkins?

A. I drove that truck about three weeks.

Q. Can you start a five-ton truck, can you crank a five-ton truck while it is in gear?

A. Why, no, sir.

Q. Now, this statement that Judge Starr showed to you, did you write that statement yourself?

20 A. No, that statement was dictated.

Q. Did you read it over before you signed it?

A. I believe I did, yes, sir.

The Court: Just a moment; let me have that book.

By the Court:

30 Q. Now, won't you begin at the top of the page there and read down to the figure twenty?

Mr. Starr: What page, your Honor?

The Court: Page fifty-six; just read it out loud, will you?

A. From the question where it is marked off there, sir?

Q. From the top, yes, the mark in the enclosure there.

A. "Now, what happened as you came over to the Camden slip and were going into the slip—what did you do? A. Why I got out of my truck and stood in front of it and the boat had already bumped the landing, and after it had bumped the landing, why, I cranked my car, and the first stroke up, why, 10 the car came forward. Q. The engine started to go, did it? A. Yes, sir. Q. Do you know how it got in gear? A. No, sir, I do not, sir. Q. But it was in gear—that is what made it come forward? A. Yes, it must have been; I wouldn't swear that it wasn't. Q. How did you save yourself? A. By dropping to the floor. Q. How much room was there between your truck and the Farr & Bailey truck? A. About a foot and a half or two feet."

Q. Now, does that refresh your memory as to what 20 actually occurred? That was your testimony on the last trial, wasn't it?

A. Yes.

Q. Now, does that refresh your memory as to what happened?

A. Yes, but I didn't mean to say in here that the engine started, sir.

Q. Why did you say it?

A. I don't know whether I was nervous or what.

Q. Are you nervous now? 30

A. No, sir.

Q. Well, in point of fact, you did crank the car and it started?

A. Not that I know of, no, sir; if I said that there, sir, I didn't mean to say that the engine started.

Q. Well, you had no idea that that car, with the

brakes partly on, even, would start pushing ahead simply because you turned the crank part way over unless the engine started, would it?

A. I don't know what would bring it forward, but—

Q. I say, nothing else would, would it?

A. I just don't quite understand what you mean.

Q. I say, nothing that you saw there would move it except the engine, was there?

10 A. Why, nothing that I seen, no, sir.

---

MATHEW DOLSON, SWORN.

By Mr. Woodruff:

Q. Captain Dolson, you are here under subpoena, aren't you?

20 A. I am.

Q. Were you the captain of the ferryboat on which Sam Fiorentino was hurt?

A. I was.

Q. What regulation is it that provides these blocks in front of automobiles?

Mr. Starr: I object to that, if the Court please.

The Court: What is the objection?

30

Mr. Starr: If it is a regulation, it must emanate from some source, and the best evidence of what the regulation is is the regulation itself; the mere statement by this witness that there is a regulation, it seems to me, is insufficient to show that there is anything binding, or which is required to be observed

by the users of the ferryboat, and it is not the proper method of proving the requirements, if there were any.

The Court: I suppose it is competent to show what the practice was, what the custom was on the boat.

Mr. Starr: It seems to me that is not sufficient, if the Court please, that the practice inaugurated 10 by the ferry company would not be binding upon either of these two defendants.

The Court: That is probably true, but it might create a custom which people were bound to take notice of, and which might characterize their conduct in violation of it.

Mr. Starr: Independently of that, if the Court please, if there is any regulation it must be the 20 result of some action taken by either the ferry company itself or some other agency. Now, the mere statement by this witness that there had been the observance of a practice, it seems to me, is not sufficient evidence of that regulation, that is, it is not affirmative proof that a regulation of that kind was ever made; the testimony is immaterial, irrelevant and incompetent.

The Court: You haven't the regulations them- 30 selves here, have you?

The Witness: No, sir.

Mr. Starr: My information is, if the Court please, that there is no regulation, at least, I have not been able to find it.

Mr. Woodruff: We inquired for it; it is a practice, if the Court please, it is a custom.

Q. How long have you been putting—first, I will ask you to describe them; what is the size and shape of the chock or block used on the boat?

Mr. Starr: I object to that as immaterial and irrelevant.

10

The Court: Well, I think before we have the size and shape we ought to find out what, if anything, is done ordinarily on the ferry-boats.

Mr. Woodruff: Also in this case, if your Honor please, we have the admission by their driver, whom I was forced to call under subpoena, that the block was under there when he came across.

20

The Court: You have got the fact that the block was there, but whether it was there—it might have rolled in out of some wood piled on the boat, as far as we know; now, the question is why it got there rather than the shape and size at this time.

Q. How long had they been using these—

Mr. Starr: I object to all this line of testimony as incompetent, irrelevant and immaterial.

30

The Court: Why don't you ask him whether there was any means used of chocking or blocking the cars?

Q. Is there any means used, Captain, of blocking or chocking the cars?

Mr. Starr: I will make the same objection, your Honor, as immaterial and irrelevant as far as this case is concerned; the question whether any means were provided seems to me to be irrelevant and immaterial and not the best method by which it could be proved.

The Court: I will admit the question.

Mr. Starr: I ask an exception on the grounds 10 stated.

(Exception noted.)

(Question repeated.)

A. Why, we use a block about eight inches high and about twelve inches long.

The Court: Well, the first answer is yes, I suppose? 20

The Witness: Yes.

Q. That you do use a means of blocking the cars?

A. Yes.

Q. And how are those blocks used, where with relation to the cars?

Mr. Starr: Without interposing an objection to each question, may I have an objection noted? 30

The Court: Yes, unless some different principle is involved.

(Exception noted.)

A. What is the question?

(Question repeated.)

A. Why, the blocks are put under the first two machines that come on the boat, that is, on the bow on both sides of the driveway they are blocked; each machine has one block.

Q. By whom?

10 A. By the deckhands.

Q. Of the ferry company?

A. Of the ferry company.

Q. And they are blocked when?

A. When they come on the boat.

Q. Before the boat leaves the dock on the Philadelphia side?

A. Before the boat leaves the dock.

Q. What other blocks are used beside those two?

20 A. Blocks on the rear; they are supposed to block each machine on the rear of the boat.

Q. Of the line of automobiles?

A. Of the line of automobiles or wagons, either one, whichever is the last machine on the boat or wagon.

Q. Any blocks in between?

A. No, sir.

Q. On the machines in the middle of the line?

A. Not at that time, no, sir.

Q. What is the purpose of those blocks?

30 Mr. Starr: I object to that as immaterial and irrelevant, on the grounds stated before.

Mr. Woodruff: I will change that so there won't be any objection.

Q. What is the effect of the block there?

Mr. Starr: I make the same objection.

Mr. Woodruff: That is a question of fact, if the Court please.

The Court: Yes, but I suppose all of us are as competent to say what would be the effect of putting a block in front of an automobile as the captain is.

Q. Captain, how is that block shaped?

10

A. Well, I suppose, take it from here, from its height, it runs down the shape of an automobile tire, so that when they put it up underneath there, the tire will fit right into it.

Q. Now, when are these blocks removed?

Mr. Starr: I object to that as immaterial and irrelevant.

(Exception noted.)

20

A. After the boat is made fast to the bridge.

Q. And by whom?

A. By the deckhand; sometimes they are removed by some of the drivers of the machines.

Q. Is that according to the custom as a rule?

Mr. Starr: I object to that, if the Court please, as immaterial and irrelevant.

Mr. Woodruff: Well, there seems to be no rule except according to custom.

30

The Court: Strike that word out.

Mr. Starr: He already says that sometimes the men do it, the drivers.

Q. When, with respect to docking, do your men on your boats, your employees, remove these blocks?

Mr. Starr: I object to that on the same ground.

(Objection overruled.)

(Exception noted.)

10 A. Why, after the boat is made fast.

Q. After the boat is made fast, before or after the gates are opened?

A. Why, after the gates are opened.

Q. Before or after the passengers and pedestrians are out?

A. Why, the passengers start off—they open both side gates, that is, the entrance to both wings on the passenger entrance to the cabins; you see them come off both sides, they open both of those  
20 gates before they open the middle gates.

Q. Captain, is it customary for passengers, foot passengers, to gather in the front of the boat in the vehicle way along the gates?

A. Sometimes they do.

Q. And in the late afternoon or early evening, the crowded hours, do they do that?

A. They do.

Q. And has that been going on a long time?

A. That has been going on, but we have signs  
30 there forbidding them to stand in that space.

Q. How recently have those been put up?

A. They have been there now about four years.

Q. Where are those signs?

A. Right up alongside of the cabins; the entrance to the driveway.

Q. Inside of the cabins?

A. No, outside, alongside of the driveway.

Q. Still everybody does it?

By the Court:

Q. But they make a habit of doing it—you don't drive them off, because there isn't room enough to stand otherwise?

A. We don't drive them on.

Q. You let them on?

A. Yes.

10

By Mr. Woodruff:

Q. And don't even tell them about it, do you?

A. The signs are there; they can see them.

Q. And your men go through them and elbow their way—

A. No, because they go out the side gates; we have chains across these big gates, and that chain is never released until after the boat is made fast.

20

Cross-examination.

By Mr. Starr:

Q. What are these signs that are put up on the passageway for vehicles, say?

A. It cautions the passengers to not get in front of the machines or in the wagon way; if they do, it is at their own risk.

30

Q. You say they have been there for four years?

A. Yes.

Q. Where are these signs displayed?

A. Right at the entrance of the driveway, right alongside of both cabins, the men's cabin and the

women's cabin; as you go out the women's cabin door, for instance, you look out here and it is up here (indicating).

Q. Does it project into the passageway?

A. No, right up against the side of the house.

Q. You have to step out, however, to see it and then turn around and look?

A. Yes, if you step out about a foot you can see it; there is nothing to obstruct the view.

10 Q. I see, a man approaching the boat would not see it?

A. He would see it, because if it was on this side entering the boat, he could look across and see that one, and a party on this side could see this one here.

By Mr. Woodruff:

Q. Is that the same side where the sign is not to smoke?

20 A. Right underneath it, yes, there is a sign, "No smoking allowed."

Cross-examination.

By Mr. Scovel:

Q. Captain, how far did the Farr & Bailey truck go—

30 Mr. Starr: I object to that as not cross-examination. I will say for Mr. Scovel's benefit I propose to call the captain for a witness and he will have an opportunity then, but I did not think it was proper in view of the limited examination of Mr. Woodruff.

PLAINTIFF RESTS.

Mr. Starr: If the Court please, there is a motion I would like to make at side bar.

(Court and counsel then adjourned to the Judge's room.)

Mr. Starr: Now, if the Court please, on behalf of the Farr & Bailey Company, I move for a non-suit on two grounds, the first being that the plaintiff was guilty of contributory negligence in occupying at the time of the accident the place on the ferry-boat where he was standing; second, that no actionable negligence chargeable to the defendant, the Farr & Bailey Company, has been shown. Now, with respect to the first ground, that matter was thoroughly argued at the former trial, and your Honor ruled that the rule or doctrine which has prevailed in Pennsylvania with respect to the risk assumed by passengers on the ferry-boat would not be adopted by your Honor here in New Jersey, and I suppose the same ruling will be made, but I desire to have the benefit of the objection made.

The Court: That was not passed on in the court.

Mr. Starr: No, that was not argued and was not passed upon. We had a case, Hopkins v. The Ferry Company, a Pennsylvania Supreme Court case, which seems to hold that a passenger who occupies the part of a ferry-boat which is reserved for vehicular traffic takes the risk, although that rule has never been adopted in New Jersey as far as I know. Now, the main ground of objection, if the Court please, is that no negligence chargeable to the defendant, Farr & Bailey, has been shown in this

case. The cause of action alleged in the complaint with respect to the operation by the Farr & Bailey truck—there are two, one that the driver carelessly and negligently failed and neglected to apply and to keep applied the brakes on the automobile truck and remain on the said truck to control and direct the same. Now, my point with reference to that is that there is no evidence in this case to justify the finding that there was any failure or neglect  
10 to apply and keep on the brakes. As far as his presence on the machine is concerned, I don't think there is any rule of conduct which would oblige a man under those conditions to remain on his truck; I know of no rule of conduct; it seems to me it is not within the range of the reasonable operation of a truck for a man on the ferry-boat to remain on his truck all the time to take care of emergencies which may arise.

20 The Court: Judge Starr, what about the situation when he removed the block—wasn't there an obligation then for him to be on the top of his truck or to get on it?

Mr. Starr: I am coming to that in a moment, if the Court please; there are three grounds alleged here. A man cannot remove the block and be on the truck the same time; if he removes the block he must necessarily be off the truck. The three grounds  
30 of negligence alleged are failure to have the brakes on, secondly, failure to be on the truck, and thirdly, removing the block. Now, as far as the first two are concerned to my judgment there is absolutely no evidence which would justify finding negligence on either of those grounds. Now, we come to the question of the removal of the block, and that is the

specific matter which was passed upon by the Supreme Court. The testimony in this present case is not materially different from the testimony which was introduced at the trial before; the only added element, as I recall it, is the fact that more stress has been laid upon the pitching forward of the boat. It seems to me that is immaterial, and there is no element alleged in the complaint which has coupled that pitching forward or rather the inclination of the boat with any act of negligence which would justify a recovery on that ground. We are then relegated, it seems to me, to the cause of action which was directly passed upon by the Supreme Court, and it seems to me that your Honor, with all due deference to your Honor, is obliged to follow this opinion, because it is the law of the case; it is the rule of law which has been laid down by the Supreme Court which, it seems to me, is somewhat your Honor's superior in the determination of this matter, which the Supreme Court has said applies to these facts, and I think your Honor is obliged to follow the ruling of the Supreme Court, regardless of what your own private individual opinion may be. (Reading opinion): Now, that is precisely the situation which is present in this case, and regardless of whether there was any practice or any regulation which required Green to permit that block to remain until the boat had actually been tied up and the passengers going off, he had no right to assume that if he moved that block away from in front of the truck that some fellow in the rear would start his machine while it was in mesh, bump into it and accelerate the movement of his car toward the place where the accident happened. That is the theory, it seems to me, upon which the Supreme Court acted, that the moving cause, the primary

cause and proximate cause of this accident was the act of the man in the rear starting the car in motion, and that Green was not obliged to assume that when he moved that block just at that particular moment some fellow would violate the rules of conduct in the rear by starting the motor while the engine was in mesh. That being the law of the case it seems to me we are entitled to have a non-suit.

- 10 The Court (after argument): I think I will deny the motion. It will be observed that the opinion of the Supreme Court is wholly, so far as the question presented to it, upon the weight of the evidence. There seems to have been no contention made as to the legal sufficiency of the testimony to take the case to the jury, and I think that even on the case, if it were exactly as it stood before, I would be not disrespectful to that tribunal if I regard it merely as an expression that was not intended to be binding on this Court.
- 20 There is, however, in the case now an entirely new aspect, and that is that a boat is coming into dock in a position, gradually increasing, of depressing the bow, so much so that it is, according to some of the testimony, nearly or quite two feet lower than the slip that it was intended to connect with. Such a condition would obviously create a departure from a level which could be easily be the basis of a car moving. There is the new testimony in the case, whether it be believed or not,
- 30 this witness Waitt, that he did not start his car by the engine, and that it gradually moved forward, and hence the jury could infer that a slight movement gave the impetus which started the Farr & Bailey car on through, particularly in view of his testimony that his car only went a distance of about three feet. The court of review was dealing

wholly with the question as to the method of starting, and on that it gave expression to this view. We have now the added fact of the position of the boat, which might of itself have made a prudent man hesitate to remove the block, but when that is coupled with the fact that back of him was a large number of cars, any one of which might have been left unbraked and started a line that could have impelled his car forward, it seems to me that I cannot withdraw the case from the jury.

10

Mr. Starr: May I have an exception, if the Court please?

(Exception noted for the defendant, Farr & Bailey Co.)

(At this point a recess was taken until Friday, April 13, 1923, at 10 o'clock, A. M.)

20

30

Camden, N. J., April 13, 1923.

Trial of the case resumed at 10 o'clock A. M., pursuant to adjournment, in the presence of counsel for the respective parties.

10 EDWARD I. BERRY, SWORN.

The Court: Do you want Mr. Berry sworn? Counsel, I suppose, will admit that this is the record; that is what you want?

Mr. Woodruff: Yes.

Mr. Starr: All right; then may I read into the record those portions of the testimony—

20

Mr. Woodruff: You have my consent.

Mr. Starr: On page 56, a question put by Mr. Woodruff to Mr. Waitt: "Q. Now, what happened as you came over to the Camden slip and were going into the slip—what did you do? A. Why, I got out of my truck and stood in front of it and the boat had already bumped the landing, and after it had bumped the landing, why, I cranked my car, and the first stroke up, why, the car came forward. Q. The engine started to go, did it? A. Yes, sir. Q. Do you know how it got in gear? A. No, sir, I do not, sir. Q. But it was in gear—that is what made it come forward? A. Yes, it must have been; I wouldn't swear that it wasn't. Q. How did you save yourself? A. By dropping to the floor. Q.

How much room was there between your truck and the Farr & Bailey truck? A. About a foot and a half or two feet."

Mr. Starr: Also on page 58, "Cross-examination. By Mr. Scovel: Q. Mr. Waitt, did I hear you say that the boat had already docked? A. It had already hit the slip, yes. Q. Had it completely stopped, docked? A. Now, I was the second one in line; I couldn't vouch for that. Q. You couldn't vouch 10 for that? A. No, sir."

Mr. Starr: Also on page 59, "By Mr. Starr: Q. Do I understand you to say that you noticed the bump before you started to crank—you said that, didn't you? A. Yes, sir. Q. So that the boat had struck the slip before you started to crank? A. It had struck the slip, yes, sir."

Mr. Woodruff: Judge Starr, in examining him, 20 you read on page 59 on down including line 25; do you want to include that whole testimony?

Mr. Starr: I didn't recall that I did.

Mr. Scovel: There was another question and answer in my cross-examination that you did not read, too, Judge.

Mr. Starr: All right. (Reading): "By Mr. 30 Bradley: Q. Then at that time you had your brakes on, didn't you? A. Yes, sir. Q. Now, you know that wouldn't have sent your car forward, don't you? A. I beg pardon? Q. That wouldn't have sent your car forward? A. It would if your brakes were not up tight. I will admit I didn't have my

emergency on full. Q. Oh, you didn't have your emergency on full? A. I didn't have it right up to the last notch, no, sir."

Mr. Starr: Now, on page 60, cross-examination by Mr. Bradley: "Q. Now, you said in your direct examination that the boat had bumped before you started to crank, didn't you? A. Yes, sir. Q. How long before you started to crank? A. Well, that I  
10 couldn't say, sir. Q. Half a minute? A. I wouldn't say that. Q. Well, have you any idea at all? A. Not over a minute, sir. Q. Not over a minute? A. No, sir. Q. So for a minute your car had not started forward before you started to crank, had it? A. I beg pardon? Q. Your car had not started forward before you started to crank, had it? A. Well, not to my knowledge it hadn't."

Mr. Starr: Is there a question I did not read?  
20

Mr. Scovel: The bottom of page 58.

Mr. Starr (Reading): "Is it possible that the bump received in hitting the dock could have started your truck forward? A. It would have helped a whole lot, yes, sir."

No cross-examination.

30

Mr. Starr: Now, if the Court please, I offer in evidence the statement which was identified by Waitt yesterday and is marked for identification.

(Said paper is marked Exhibit D1.)

MATHEW M. DOLSON, recalled.

By Mr. Starr:

Q. Captain, you are the Captain of the Ocean City ferry-boat that is involved in this case, aren't you?

A. Yes.

Q. And were at the time of the accident?

A. Yes.

10

Q. And on the trip over from Philadelphia to Camden, in what part of the ferry-boat were you?

A. In the pilot house.

Q. Who was there with you?

A. Mr. Bond.

Q. Was he a pilot?

A. He is a pilot, yes, sir; a licensed pilot.

Q. Could you see these two trucks from where you were?

A. I could see one of them.

20

Q. Which one?

A. The Farr & Bailey.

Q. Did you see the Farr & Bailey truck start forward?

A. After I had made fast and I was through with the boat, this truck went ahead and I said to Mr. Bond, I said, "Look at that," I said. This truck went right out through the gates; it broke the top part of the post off that holds the top part of the gate, busted the chain that goes across the gate that is fast for the protection of automobiles going out, to keep them from going through the gates, in case they come down against it, and it bent the clasp that holds the gate in the center, and it went right on through the gates up against the bow of the slip.

30

Q. Now, when you saw the truck starting forward had the ferry-boat been fastened to the slip?

A. Properly fastened to the slip by both hook lines, and both foot boards put down, that is, on the side of the slip and the dock end of the boat, and the bridgeman had just stooped down to pull on the big board, the wagon plank, when this truck went through the gates.

Q. Did you observe the distance between the front part of the Farr & Bailey truck and the gate?

A. I should judge it was about four foot.

10 Q. And what stopped the progress of the Farr & Bailey truck?

A. When it fetched up against the face of the slip.

Q. Did you observe whether or not the forward part of the deck of the boat was below the face of the slip?

A. It was below, I suppose, about four or five inches when we landed, and after this truck went out through the gates, I should judge it was about ten inches then below on account of the weight of this  
20 truck being out on the bow, the extreme bow.

Q. What would cause the lowering of the front part of the ferryboat beyond the face of the slip before the truck arrived there?

A. Why, the passengers, the load aboard of her, all on the one end.

Q. And did the front wheels of the truck come up flush against the slip before it stopped?

A. Yes.

Q. Now, did you go right down there?

30 A. Yes, I left the pilot house, left Captain Bond, and I rang one bell for the engineer to hold her up there, because the lines were cracking, snapping like, you know, and I thought that the weight out on the bow, after the boat had been made fast, might cause the lines to part.

Q. When you got down there, what was the position of the two trucks?

A. The Farr & Bailey truck was right up against the face of the slip; the Adkins' truck was right up against it.

Q. Right up against the rear?

A. Right up against the rear.

Q. Was it touching it?

A. Touching it, yes, sir.

Q. And to get the Farr & Bailey truck out, what was necessary to be done to the truck in the rear, the Adkins' truck? 10

A. We all got there and pushed it back.

Q. Pushed it back?

A. Pushed it back.

Q. Then the Farr & Bailey truck backed out of the position?

A. Yes, we pushed it back too, partly, so he could crank his machine.

Q. Now, did you observe when you got down there whether or not the brakes on the Farr & Bailey truck were on—what did you observe with respect to that? 20

A. The first that I observed about that was when I seen Mr. Green get up in the cab for to release his brake, and he took both hands and pulled back on it and then let go of it.

Q. Now, was that after the accident?

A. That was after the accident.

Q. After you had gotten down there?

A. Yes, sir.

Q. Did you examine the Adkins' truck to see whether the brake was on that? 30

A. No, sir.

Q. Did you have a talk with Waitt?

A. I did.

Q. And did Waitt at that time tell you that he had started the machine while it was in gear?

A. He told me that he started—

Mr. Scovel: I object to that, if the Court please, unless it can be shown that this examination took place such a short time after the accident occurred as to make it a part of the *res gestae*.

The Court: Was he examined on this?

Mr. Starr: I thought I examined him; I have it marked here as though I examined him. I don't  
10 want to turn back to the minutes and see, but I have it marked here, these two questions.

The Court: Do you object on that ground, Mr. Scovel?

Mr. Scovel: Yes.

Mr. Starr: Well, I will withdraw it then; I won't  
take the time.

20

Q. Did you at my request make some measurements with respect to the front part of the ferry-boat?

A. Yes, sir.

Q. And what is the distance between the gate post on the left-hand side of the boat and the bow of the boat opposite the gate?

A. From the gate post to the bow of the boat is nine feet eight inches.

30

By the Court:

Q. What part of the bow, Captain?

A. That is the bow of the boat, say this is the bow of the boat here, and this here is the right-hand post; from this here post right straight.

Q. Right straight out, a continuing line right straight parallel with the boat?

A. Yes.

Q. It would be much further if you took it further toward the center?

A. Yes, it is thirteen feet right at the center.

Q. Nine feet from the post and thirteen feet at the deepest point?

A. At the deepest point, right in the center.

10

Cross-examination.

By Mr. Woodruff:

Q. That thirteen feet one inch is from the extreme rounded point to the point of the bow?

A. That is right from the center of that post, that is, the bottom part of it, right out to the end of the bow.

20

By the Court:

Q. This is nine feet?

A. That is nine feet.

The Court: Now, he is asking you about the center.

By Mr. Woodruff:

Q. From the double part of the gate where the boy threw the loop off over to the center of your boat is what?

A. Thirteen feet one inch.

Q. So the Farr & Bailey truck moved altogether thirteen feet one inch plus four feet it was shy of the gate before it started?

30

A. No, four feet and nine feet one inch or eight inches.

Q. Because it went close to the post?

A. Because it came right across the post.

Q. One wheel had nine feet to go and the other one a little bit further, according to the curve?

A. Yes, a little bit further.

Q. You could not see the Adkins truck at all from your pilot house?

10 A. No, not from the pilot house.

Q. Did you have a crowd on at that time?

A. I should judge we had from a hundred to a hundred and twenty-five passengers.

Q. That is one of your heavy trips, isn't it, that boat?

A. Yes, that is one of our heavy trips.

Q. And this big truck was on the right-hand side of the boat, wasn't it, the ladies' cabin side?

A. The right-hand side, yes.

20 Q. Was that where the most of your crowd of passengers were, on that side?

A. Well, no, not all of them.

Q. I am talking about the biggest portion of them?

A. The biggest portion of them, I should say, was on the men's side.

Q. Were there any trucks on that side to balance the trucks that were on the right-hand side?

A. No, there wasn't any trucks, but there were  
30 heavy wagons.

Q. Up front?

A. There was a touring car first, and then a wool-wash team in back of that, and two other ones in back of that; there was four on that side.

Q. But up in the bow on the men's side was a light touring car?

A. Yes.

Q. Do you remember the make of the car?

A. I do not; it was a five-passenger car.

Q. And as against that on the ladies' side was this Farr & Bailey five-ton truck with a load on it?

A. A five-ton truck with a load on it.

Q. Did you notice when the truck started forward, the Farr & Bailey truck, whether there was any driver on it or not?

A. I couldn't see anybody in the cabin from the pilot house. 10

Q. Nobody at all?

A. No.

Q. And when it went crashing through the gate and on over to the slip, was there anybody on the cab?

A. Not as I could see, not from the pilot house.

Q. Did you see what the people were doing to try to hold it back?

A. No, sir.

Q. You did not see? 20

A. No, sir.

Q. A crowd of people around there, were there?

A. Well, there was a few people, some women and men standing on the women's side and men on this side, and there was a few passengers in front of the gate.

Q. But you didn't see the men that took hold and attempted to hold it back?

A. No, because I was watching three men grab —I forget what the gentleman's name is now, grabbed him and pulled him out of the way of the Farr & Bailey truck as it started ahead; he was standing there and the truck just touched him and knocked him down, and they grabbed him. If they had not moved him, this truck would have went over his leg; I was watching that. 30

Q. What was the speed, the progress of the big truck as you saw it, the Farr & Bailey truck?

A. Well, she went through there mighty quick. I couldn't say just exactly the speed.

Q. Was there any increase or decrease of its speed?

A. Not until she had hit the slip.

Q. Just one steady speed?

A. Just one steady speed until she hit the bow  
10 of the slip.

Q. Did you see the driver when he left the cab of that Farr & Bailey truck?

A. I did not.

Q. You didn't see him?

A. No.

Q. Did you see the Farr & Bailey truck when it came on the boat on the Philadelphia side?

A. I saw it when it came on the boat.

Q. Did you see that it was blocked?

20 A. Yes, I saw that it was blocked when I went to to other end of the boat.

Q. Who placed the blocks on it?

A. Mr. Brill.

Q. That is one of your men?

A. One of the deckhands.

Q. That was the Philadelphia side, was it?

A. That was the Philadelphia side, in the dock.

Q. Did you see when Mr. Green removed them?

A. I did not.

30 Q. You didn't see that?

A. I didn't see him remove the block, because I docked the boat; I didn't have time to see everything that was going on on the boat.

Q. Now, Captain, as you come down to your Kaighn Avenue slip, do you come in at right angles to your slip?

A. Sometimes we do, but that trip it was high water, and I came in the dock just as straight—I came right down the river, see—for instance, this is the dock here; I came right down the river here and went right straight in, right on the high water, and she never touched either side of that rack until I brought her up against the slip.

Q. How long is that line of piling that runs out from the slip?

A. I should judge it to be about ninety feet. 10

Q. About ninety feet, and how long is your ferry-boat, the Ocean City?

A. The Ocean City is 156 feet.

Q. Now, when you first come into that dock between the piling, when do you retard your speed, at what point?

A. We retard our speed before we get into the dock, I should say, at five hundred feet off of the dock we slow down, and we stop within two hundred feet of the end of the rack, that is, the cribbing. 20

Q. The outside end?

A. The outside, and she drifts all the way in until about within twenty-five feet of the clump before I put it to backing, that is, the end of the cribbing.

Q. How do you control it then, Captain, when it is about twenty-five feet off from the slip itself, the bridge?

A. Well, if she hasn't got much headway, we go back on her. 30

Q. And how do you do that yourself up in the pilot house?

A. By pulling the bells.

Q. You pull the bell, and that signals who?

A. The engineer.

Q. What signal do you give him at that point?

- A. I give him two bells to go back on her.
- Q. Then he reverses his power, does he?
- A. No, he is lying still then, and when I ring the two bells, then he reverses the engine.
- Q. And your propellers are still at that point?
- A. They are still.
- Q. And you are just drifting in?
- A. Just drifting.
- Q. Then he puts power on the propellers?
- 10 A. He puts power on.
- Q. In reversing, and they begin to pull back on the boat, is that right?
- A. That is the idea.
- Q. On your boat, which propeller is it which is applying that pressure, the one in front or the one in the back?
- A. This is a side-wheel boat.
- Q. Oh, this is a side-wheel boat?
- A. Yes.
- 20 Q. So on each side of that point, you have from each side of the boat a pressure pulling the boat backward?
- A. Both wheels, yes.
- Q. Now, what action does that have on your boat itself in changing its level position, the level position of the deck?
- A. It doesn't have any at all, because there is nothing there for to cause the boat to list or otherwise, go down in the bow or up in the stern on a side-wheeler.
- 30 Q. On a side-wheeler, when you retard her progress by having both wheels turn on each side in reverse, doesn't that pull your bow down?
- A. No, sir.
- Q. Not at all—doesn't make any change in it?
- A. No, sir.

Q. No movement in the boat at all?

A. A little vibration.

Q. Vibration from the engine?

A. From the engine.

Q. Movable objects on your deck—what effect does it have on them when you retard the motion of your boat?

A. Well, I have seen trucks sway when I would start to back.

Q. Now, a truck that does not have its brake on tight, and does not have any block in front of it, what happens? 10

A. Well, sometimes it might move, and it again it might not. We have had lots of them that never did move.

Q. But if it did not have its brake on tight and did not have any block in front of it, and no driver on it, and there was a heavy truck up on the bow, depressing the bow, and your crowd of passengers was congregated mostly on the bow so as to depress your bow, then wouldn't the effect of that great retarding of your speed move that movable object forward? 20

A. It might and it might not.

Q. That would be the natural and mechanical result, wouldn't it?

A. It might.

Q. Well, isn't that the natural, mechanical result always when you stop an object which is carrying movable objects, that the movable objects continue on in their course, or attempt to? 30

A. No, sometimes I have seen trucks where they would move, and maybe they might move two or three inches and then come back again.

Q. But that depends always on the controls, doesn't it?

A. Well, not altogether, no.

Q. Well, what makes them come back?

A. Why, I should judge that the decking sometimes might be hollowed out from wear, and the wheel might just come up there on that there rise in there, and then go back again.

Q. Now, Captain, if your bow is depressed even four inches or ten inches or fourteen inches, whatever it may be depressed, the stern of your boat,  
10 a hundred feet or so back, is elevated to the same extent, isn't it?

A. It is.

Q. The water acts the same as a pivot on your boat?

A. Yes.

Q. And the stern of your boat goes up that high, so you double the height of your incline, don't you, the angle of your incline?

A. Yes, but the boats are—say from the center of  
20 the boat out to each end, it is an incline.

Q. Inclined which way?

A. Both way, because—

Q. But what I mean is that your stern always has to go up if you bow goes down?

A. Oh, certainly it has to go up if—

By the Court:

Q. You mean the deck incline?

30 A. The deck has an incline from the bow to amidships.

Q. Each end?

A. Each end.

Q. What is that, is it an even decline all the way—an incline, rather?

A. Yes, to amidships; I should judge.

Q. Even all the way to the edge of the bow?

A. From the bow, yes, clean to amidships.

Q. What is that, do you know, for the distance half-way of the boat?

A. I should judge about eight inches.

By Mr. Woodruff:

Q. There is an eight-inch drop to the center of the boat? 10

A. To the bow.

Q. In the seventy-eight feet?

A. Yes.

Q. And of course, that is increased, Captain, by whatever there is to depress the bow, isn't it?

A. Yes, sir.

Q. Now, Captain, this block that you saw placed there when you started over, you say you didn't see who removed it?

A. I didn't see who removed it at all. 20

Q. Did you see where it was when you got down?

A. No, I didn't notice the block when I got down; I had too much other stuff to look after at the time.

Q. You were more interested in the men who had been hurt?

A. I was more interested in the men, to see who was injured.

Q. The engine on the Farr & Bailey truck didn't start, I understand, is that correct?

A. No, it didn't start. 30

Q. Did you see Mr. Green, the chauffeur, as the truck was moving on these men or crashing down the gate, attempting to work his levers?

A. I did not.

Q. You didn't see that?

A. I couldn't see that at all, no, sir.

Q. But after the truck had come to a stop flush up against your slip, fetched up by the slip, that is when you saw him climb up in the cab of his truck and release his brake?

A. I saw him after we got Adkins' truck back; then we had to get the Farr & Bailey truck back and get Sam out; he was hurt the worst of any of them. That is when he got up and released his brakes.

10

By the Court:

Q. You mean so you could push the truck back?

A. So we could push the truck back.

By Mr. Woodruff:

Q. But before that, you don't know where it had been put on, that pressure, do you?

20 

A. No, sir.

Q. Whether it had been before or during the happening of the accident?

A. I couldn't say that.

Q. Captain, what notice did you have on your boat to drivers—what public notice to drivers about starting their engines or running their engines while the boat is in motion?

30 

A. Why, we give out slips—we have given slips out, I suppose, according to my knowledge, twenty-five times, had set a day, and when they would come on the boat, the deckhand would hand him one of these little slips. We have slips about that big square, cautioning them not to start the machines while en route until the boat is properly made fast to the slip.

Q. Does that have any notice to the traveling pub-

lie or vehicular traveling public about the blocks or chocks?

A. No, it does not.

Q. Just about not cranking their—

A. Starting the motor.

Q. Not cranking their motor until the boat is completely docked?

A. Until the boat is completely docked.

Q. Was there any notice posted in the boat itself about the running of their motors or in your gang- 10 ways going into the ferry?

A. Now, I just can't think. We have got two notices there, one smoking and one cautioning people about standing in the gangway.

Q. But you don't recollect whether the notice also cautioned motorists about their machines?

A. It seems to me we have notices right up in front of the center house, that is, the center of the boat, in the driveway, there is a notice there cautioning them not to start their vehicles. 20

Q. Does this notice that you hand out to the driver—

The Court: Start the vehicles or the engine?

The Witness: The engine, I should say.

Q. Or the notice you have posted, does that say by whose orders that is?

A. That is by orders of the local inspectors. 30

Q. Who do you mean by the local inspectors?

A. The United States Local Steamboat Inspectors.

Q. Does the notice say that to the traveling public?

A. That is what it does, it is on the bottom of that.

By the Court:

Q. How long have you been using these chocks?

A. Well, we have been using these chocks for—  
well, I should say twenty years.

Q. Do you have a book of rules from the company?

A. No, I have no book of rules; they just notify us by letter from the office.

10

Mr. Starr: Your Honor, this is the objection I interposed yesterday.

The Court: I appreciate that, Judge Starr, and you shall have an exception.

Mr. Starr: Yes, I wish an exception to this line of testimony, because in my view of it, this matter is not properly in the case, and to take advantage  
20 of that I want an exception.

The Court: Yes.

---

GEORGE N. BOND, SWORN.

By Mr. Starr:

30 Q. Are you employed by the ferry company?

A. Not at the present time.

Q. You were when this accident happened?

A. Yes.

Q. And were you in the ferry-boat Ocean City at the time the accident happened?

A. I was.

Q. What were you doing?

A. I was pinning the boat up.

Q. Well, what particular part of the work had you to do with navigating the boat?

A. To pin it up on that side of the river, and on the other side I usually docked her.

Q. What do you mean by pinning it up—where were you?

A. In the pilot house.

Q. Oh, you were in the pilot house?

10

A. Yes.

Q. Well, are you a pilot?

A. Yes.

Q. Was Captain Dolson in the pilot house with you?

A. He was.

Q. Were you in a position to see either one or both of these trucks in the front part of the boat?

A. I did see it.

Q. Which one did you see?

20

A. The first one.

Q. That is, the Farr & Bailey truck?

A. Yes, sir.

Q. Now, tell the jury in your own way what you observed as you were coming in the dock and after you had reached the slip with respect to the movement of either one of these trucks.

A. My attention was called by Captain Dolson to the truck going through the gate, and I did notice the truck strike the gate; then my attention was attracted to a man who later I found out was a chemist who was knocked down by the truck, and his wheel was broken—my attention was attracted to him as they kept pulling him away from this approaching vehicle foot by foot, so that my attention was really more attracted to this man than it was to the truck.

30

Q. Now, at that time what was the position of the ferry-boat with reference to the slip?

A. It was made fast, made fast to the slip.

Q. Made fast to the slip?

A. Yes.

Q. What about the gangplanks, were they out or on the slips?

A. These two gangplanks, the passenger gangplanks, were down, and they had started to pull the  
10 wagon plank.

Q. What about the lines on either side of the boat?

A. They were taut.

Q. They were taut and fast?

A. Yes.

Q. Now, did you go down on the deck to the scene of the accident?

A. How is that?

Q. Did you go down on the deck?

A. Later I did, yes.

20 Q. When you got down there, what was the relative position of these two trucks?

A. They were touching each other.

Q. And what stopped the progress of the Farr & Bailey truck?

A. The face of the slip.

Q. And was the Adkins truck right flush up against the rear of the other truck, touching?

A. Yes, sir.

30 Cross-examination.

By Mr. Woodruff:

Q. Mr. Bond, was there anything to stop the truck going, as far as you could see?

A. To stop the truck from going where?

Q. From moving?

A. The first truck?

Q. Yes.

A. There was nothing to stop it going, no. I saw it when it had brought up against the slip.

Q. That was the slip that fetched it up, wasn't it?

A. Yes, it was the slip that fetched it up, stopped the truck.

Q. Even the gate was broken down by the truck, and that did not stop it, did it? 10

A. No, that did not stop it.

Q. Was there anything else that you saw to help stop it at all, any driver on the truck?

A. I didn't see any.

Q. Was there any chock in front of it then?

A. I didn't see.

Q. You couldn't see from where you were?

A. No, I could not.

Q. What has been your experience with those chocks on the boats? 20

Mr. Starr: I object to that as immaterial and irrelevant.

The Court: Well, that is not cross-examination.

Mr. Woodruff: No, I do not want the objection on the record anyhow; I will withdraw the question.

Q. Captain Bond, did you see the driver on the 30  
Farr & Bailey truck at all?

A. Well, I don't recall now whether I did or not.

Q. Or any man on the truck?

A. I didn't see any one on the truck, no.

Q. At the time the accident was happening, was there any man on truck?

A. I didn't see.

Q. Now, Mr. Bond, you looked—you have already testified now about your men, your crew were working at the planks; do you recollect this testimony at the last trial: "Q. Where was the other man—what was he doing? A. His position when I saw him, he was picking up the foot board to drop it on the boat. Q. And when you did look at him, before or after it had happened? A. The deckhand? Q. Yes. A.

10 Well, I couldn't say whether it was just before or just after it happened." Isn't that correct?

A. Yes.

Q. That is the way you testified the last time here?

A. Yes.

Q. So that you couldn't be sure—you had the picture in your mind, but you couldn't be sure whether the picture made the impression just before the accident or just after the accident?

20 A. No, I wouldn't say positively.

Q. And you were called here at the first trial, of course, when the ferry company was in the case, weren't you?

A. Yes.

Q. All of you ferry men?

A. Yes.

By Mr. Scovel:

30 Q. You did not notice the Adkins truck until after the Farr & Bailey truck had come to a stop, did you?

A. No, I didn't notice that until quite a while after, because I was left in charge.

Q. The first time you noticed the Adkins truck was when you saw it immediately behind the Farr & Bailey truck, is that right?

A. Yes.

Q. Stopped, in a stationary position?

A. Yes.

---

GUS GOODWIN, SWORN.

By Mr. Starr:

Q. Mr. Goodwin, are you in the employ of the  
ferry company now? 10

A. I am.

Q. And were you in the ferry company's employ  
when this accident happened?

A. I was.

Q. And what was your particular employment?

A. I was bridgeman.

Q. And were you on the bridge when the Ocean  
City on this day came into this slip? 20

A. Yes, sir.

Q. Which side were you?

A. Why, I was on the left-hand side from the slip  
end.

Q. That would be the right-hand side of the boat?

A. Yes.

Q. Then you were right opposite the ladies' cabin?

A. Yes, sir.

Q. Now, did you observe the truck coming  
through the gate and bringing up against the slip? 30

A. I did.

Q. Now, when that truck started, can you say  
whether or not the boat was docked?

A. It was docked, yes, sir.

Q. How was it docked?

A. I throwed my hook, wound the boat in, had

placed my foot board and had just stepped down on the boat to pull the wagon board when I heard a crash behind me, and I looked and saw this truck of Farr & Bailey crashing through the gates.

Q. Had the ferry-boat, at that time, come up to the slip?

A. Yes, sir; right tight.

Q. And the ferry-boat was not moving?

A. No, she was entirely stopped.

10 Q. Now, after the first truck came up to the slip, did you observe where the Adkins truck, the truck in the rear, was located?

A. Why, it was right behind the Farr & Bailey truck.

Q. And was it touching it or away from it?

A. Why, it appeared to be touching it from where I stood.

Q. And did you notice what they had to do with the Adkins truck before they got the Farr & Bailey  
20 truck out?

A. Why, they had to push it back.

Q. Did you see what the chauffeur of the Farr & Bailey truck did to release the brakes to get it back?

A. I saw him afterward, yes, take both hands and start to pull back this way; I suppose it was the brake; I don't know anything about an automobile.

Q. He was in the cab, was he?

30 A. No, I think he stood alongside; whether he got up in or stood alongside of it, I wouldn't be positive about that, but I remember seeing him put his hand up, and I suppose he tried to release the brakes.

Q. And that was before he moved the truck back?

A. Yes.

Cross-examination.

By Mr. Woodruff:

Q. Did you see him doing that at the time of the accident, when it was happening?

A. No.

Q. Did you see him doing anything with the brakes?

A. No, I don't remember anything of that.

10

Q. Was there any man on the truck at the time of the accident?

A. Not to my knowledge, no, sir.

Q. You are the man who throws the hook out three or four feet sometimes?

A. I am the guy, yes.

Q. And you can hit that eye three or four feet away from the dock, can you?

A. Pretty good, yes.

Q. What is your usual practice, Mr. Goodwin— you throw out the hook and start your wheel whirling, don't you?

20

A. Yes.

Q. And that wheel applies pressure which pulls your boat right up to the slip?

A. No, the boat, the pressure on the boat, you know; that wheel draws the line up, that takes the slack right up, and when she comes up tight, that holds her right there.

Q. Now, on this occasion, you made the hook fast and then you whirled your wheel, did you?

30

A. Yes.

Q. Did you stay there until that wheel was tight, or did you take hold of your foot plank?

A. I stayed right there, took hold of my plank while the wheel was still spinning.

Q. That is what I mean; then you throw your plank out?

A. Threw my foot board.

Q. What is the next thing you do?

A. Then I see that the boat is wound securely tight, the boat properly hooked up.

Q. But you don't do that until after you throw out your plank?

A. Yes.

10 Q. Because your passengers can't get out, they are locked in?

A. Yes.

Q. And you let your wheel whirl around while you put the plank down?

A. Yes.

Q. And if it is not tight, you give it an extra twist, don't you?

A. Yes.

Q. That is what you did this time, didn't you?

20 A. Yes.

Q. Then if I understand you, after that had occurred, you then turned to your wagon plank, going to get hold of the rope?

A. Going to get hold of the rope and pull the wagon plank.

Q. And that is when you heard the crash?

A. That is when I heard the crash.

Q. What did you see when you first turned around?

30 A. Saw this Farr & Bailey truck pushing through the gates.

Q. It was clear up there when you turned around?

A. Yes.

Q. Did you see the men getting crushed there with it?

A. Yes, I was there; I didn't think much about that, but I saw—

Q. Things were happening pretty fast, were they?

A. Yes.

Q. Mr. Goodwin, was it time for the gates to be opened when this crash occurred?

A. No, we had not had our wagon board on yet.

Q. Who opens those gates?

A. I open one side and the deckhand opens the other side.

Q. On the ladies' side where this truck was, whose duty was it? 10

A. It was mine.

Q. You don't ride over on the boat?

A. No.

Q. Didn't have anything to do with placing the block?

A. No.

Q. Whose duty was it to take away the chock or block from in front of the truck?

A. The deckhand.

Q. That was not your duty? 20

A. No, sir.

Q. What do you do after you fix the wagon plank?

A. Then I open the little gate and let the passengers out, then go over and open the big gate and let the vehicles out.

Q. While you are opening the big gates to let the vehicles out, what does the deckhand do?

A. He is doing the same thing; he opens the ladies' side of the passageway, then he opens the gate on his side. There are two gates, see. 30

Q. Then when does the deckhand take the chocks away from the front of the machine?

A. He is supposed to take them after he gets his gates properly opened.

Q. After which gates, the passenger gates or the big gates?

- A. No, sir, after the wagon gates.  
 Q. After the wagon gates?  
 A. Yes.  
 Q. And that gives you a chance for all of your foot passengers to get started off the boat?  
 A. Yes.  
 Q. Before the chocks are removed at all?  
 A. Yes.  
 Q. Whose duty is it to remove the chocks?  
 10 A. The deckhand's.  
 Q. How about the man on the machine?  
 A. He has got no right to do it.  
 Q. You say you don't know whether there was a chock there or not—you couldn't tell?  
 A. No, sir.  
 Q. On this particular machine?  
 A. No, sir.  
 Q. Do you know anything about the other machines starting or being cranked or anything?  
 20 A. No, I couldn't say; I didn't notice that, I was busy hooking my boat up.  
 Q. Now, Mr. Goodwin, there is always movement of water in the dock, isn't there, when the boat is coming in?  
 A. Yes.  
 Q. The surging of the water back and forth in this dock that imprisons it?  
 A. Yes.  
 Q. And if the propeller is reversed, of course, that  
 30 stirs the water up more?  
 A. Yes.  
 Q. And doesn't that give some movement to the boat itself, some shaking, some vibration?  
 A. Well, a vibration, a certain amount of vibration there, yes.  
 Q. I understand there is a natural drop of about eight inches from the middle of the boat to the bow?

A. That I couldn't positively state; I never noticed that particularly.

Q. But you know there is some drop?

A. I judge there is some drop, yes, sir.

Q. Is that increased or decreased by your passengers who are moving forward as you come into the dock?

A. It would naturally be increased, the weight on the bow of the boat would set her down.

Q. More and more, as the passengers move up 10 front?

A. Yes.

Q. You have seen that happen many, many times, haven't you?

A. Yes.

By Mr. Starr:

Q. Mr. Goodwin, you agree with Captain Dolson that there are times when drivers take the chocks 20 or blocks out, do you?

A. I do, yes.

Q. That is done frequently?

A. Yes.

---

JOHN BRILL, SWORN.

By Mr. Starr:

30

Q. Are you in the employ of the ferry company?

A. Yes.

Q. Were you in the employ of that company the day this accident happened?

A. Yes.

- Q. And what was your duty?  
 A. Deckhand.  
 Q. On the Ocean City?  
 A. Yes, sir.  
 Q. On which side?  
 A. On the Camden end.  
 Q. On the Camden end?  
 A. Yes.  
 Q. The right or left-hand side of the boat?  
 10 A. Why, on the left-hand side of the boat.  
 Q. That is opposite the men's side of the boat?  
 A. Yes.  
 Q. The men's cabin?  
 A. Yes.  
 Q. Now, were you there when this accident happened?  
 A. On the slip.  
 Q. Yes, on the slip?  
 A. Yes.  
 20 Q. You had gotten then from—  
 A. From the boat to the slip.  
 Q. From the boat on the slip?  
 A. Yes.  
 Q. And at the time the accident occurred had the boat touched the slip?  
 A. Yes, sir.  
 Q. And can you say whether or not it was docked?  
 A. Yes, sir.  
 Q. What had been done before the accident happened to dock it, dock the boat?  
 30 A. Why, she came in, and I stepped off of the boat on to the bridge and picked up my hook line and put it into the eye and wound the wheel up tight, and stooped down and throwed my board on, ready to pull my wagon board on.  
 Q. That all happened before the accident happened?

Mr. Woodruff: I object to that, if the Court please; this is Judge Starr's witness.

The Court: It is a little bit leading. I don't think any of these witnesses are surprised, though, now, or misled.

Q. When with respect to the time that you had fastened the boat, did the accident happen, before or after that? 10

A. Before.

Q. Before or after—read the question.

(Question repeated.)

A. Had I made the boat fast before the accident?

Q. Yes.

A. Yes, sir, I had made it fast.

Q. Now, what did you observe with reference to the accident? 20

A. I heard the gates crash, and I stepped around for fear the gates would hit us, didn't know which way, how fast they would come.

Q. And did you see the forward truck?

A. I seen the truck come through the gate.

Q. Yes, and what stopped it?

A. Why, the bridge, the bow of the bridge.

Q. Do you mean what we have been calling the slip?

A. Yes. 30

Q. Now, did you observe the second machine—where was that?

A. No, sir, not at the time, because I was out on the bridge.

Q. Well, afterward?

A. I did observe it after the accident happened, yes.

Q. Where was it then?

A. Why, it was jammed up against the first truck.

Q. The rear of the first truck?

A. Yes.

Q. At any time after the accident did you see the Farr & Bailey chauffeur do anything to the brakes?

A. No, sir.

Q. You didn't notice him working the brakes at all?

10 A. No, sir.

Cross-examination.

By Mr. Woodruff:

Q. You rode over on the boat, did you, Mr. Brill?

A. Yes.

Q. Did you see the Farr & Bailey truck when it came on the boat on the Philadelphia side?

20 A. I was standing on the Camden end, that is, the outer end in the Philadelphia side.

Q. Dropping your pin?

A. No, I generally stay there to block the cars, the head cars, as they come on.

Q. Was that where you were when this Farr & Bailey truck came on?

A. Yes.

Q. And who blocked this particular truck, the Farr & Bailey truck?

30 A. I did.

Q. What block did you use?

A. The wagon block.

Q. It was a regular form that you have, is it?

A. Yes.

Q. Is it like Captain Dolson has described?

A. Yes.

- Q. Shaped to fit in under the wheel?  
A. Yes.
- Q. And where did you place that?  
A. Under the front wheel.
- Q. Now, whose duty is it ultimately to remove that, finally to remove it when you get back to the Camden side?  
A. Why, the deckhand's.
- Q. And that is either you, or is there another deckhand? 10  
A. Yes, sir.
- Q. Two of you?  
A. Yes.
- Q. Either one or the other of you?  
A. Yes, sir.
- Q. Now, when you came over, what was your position in the boat when you were riding over?  
A. Why, just see if everything was all right, wait until we get to Camden, that is all.
- Q. Moving around the boat, were you? 20  
A. Yes, walking around.
- Q. Do you recollect seeing the driver of the Farr & Bailey truck or the first truck at all, going over?  
A. No, sir.
- Q. Do you remember looking at the truck?  
A. Only when I put the block down.
- Q. Only when you put the block down; he was on his truck then, was he?  
A. Oh, yes.
- Q. Were people out in front of the boat at that 30 time, passengers?  
A. Some few.
- Q. Gathered along the front of the gates?  
A. Yes, sir.
- Q. So that when the Farr & Bailey driver drove up there, he could see people in front of him, couldn't he?

A. Yes.

Q. Gathering along the front?

A. Yes.

Q. Of course, you turned your back to them as you put the block down, I suppose?

A. Yes, and after I got the block down I walked away.

Q. How much space did you leave between the front of the truck and these people or gates?

10 A. About four feet.

Q. That is where you blocked him and stopped it?

A. Yes.

Q. Now, when you came over to the Camden side, before you went through the gates and went out front, did you notice whether or not the driver was on the Farr & Bailey truck?

A. No, sir.

Q. You did not notice it at all, one way or the other?

20 A. No, sir.

Q. Then you went out on the front, on the bow, did you?

A. Outside the gates, yes.

Q. Closed the gates after you?

A. Yes.

Q. When you came on up into the dock, you were right on the outside there?

A. Yes.

30 Q. You don't know then what was happening back of you, do you?

A. No, sir.

Q. Now, when you came into the slip, who made the hook fast first, you or Mr. Goodwin?

A. Mr. Goodwin.

Q. He throws out his hook and catches it first, does he?

A. First, because he can reach it further than I can step off to it.

Q. And he does that before the boat actually gets up against the bridge, does he, is that right?

A. Yes.

Q. Then he whirls his wheel to take up the slack and gather the boat in tighter?

A. Yes.

Q. Just how close up does the boat have to get for you to step over? 10

A. About eighteen inches or two feet.

Q. Then you step over, get your hook, and reach out to get that?

A. Yes.

Q. You did that in this case?

A. Yes.

Q. So that you were busy with that at that time?

A. Yes.

Q. Then what was the next thing that you did?

A. After I wound the wheel up tight I threw 20  
the foot board on, what we call the foot board, for the pedestrians, and picked up the lines to pull the wagon board on.

Q. First after making the hook fast, you give your wheel a whirl?

A. Yes.

Q. Then pick up the foot board and drop that down?

A. Yes.

Q. Then you said you turned your back to the 30  
gates when this crash came?

A. Yes.

Q. You were reaching, were you, for the big plank?

A. Yes.

Q. You don't know what had happened before the crash, do you?

A. No, sir.

Q. You don't know anything about the starting of the machine or how it had gotten over that four feet?

A. No, sir.

Q. Then you heard the crash?

A. Yes.

Q. Then you say the boat was tied at that time when she came through the gate?

10 A. Yes.

By Mr. Scovel:

Q. Mr. Brill, at the time this case was tried before, you were subpoenaed by the ferry company, weren't you, as a witness?

A. The first time?

Q. Yes.

A. Yes, sir.

20 Q. And you testified for them, didn't you—you were called by Mr. Bradley and testified for the ferry company at that time, didn't you?

Mr. Starr: We didn't get that far, Mr. Scovel; there was a non-suit.

By Mr. Starr:

30 Q. Mr. Brill, you say it is the duty of the deck-hand to remove the blocks; as a matter of fact, the drivers do it?

A. Lots of times; at the present time they do it yet, incautiously.

By Mr. Woodruff:

Q. Do you tell them about it when you see them doing it?

A. Yes.

Q. What do you tell them?

A. Tell them that they shouldn't never move it. Lots of times I have been going through and seen them take it away, and would pick it up and put it back again, but this time I was outside; I couldn't get back.

Q. What happens when they do take these blocks, if they don't have their brakes on tight, when they come to the dock?

10

Mr. Starr: I object to that as immaterial and improper.

The Court: No, that is not re-cross examination.

Mr. Woodruff: I think it is a matter of logic and argument anyhow.

By the Court:

20

Q. Tell me exactly, when are these blocks taken away by the deckhands?

A. After the gates are opened and everything is all clear.

Q. What do you mean by "all clear?"

A. Well, that there is nobody running up and down the bridge or coming on, no wagons, when they come over, such as heavy train passengers coming on or going off; we hold them there until things is all—

30

Q. The passengers go out in all directions, do they?

A. Yes, all over.

Q. And you hold the blocks until the people are all off?

A. Yes.

Q. That is to say, the wagon way is clear?

A. Yes, sir.

---

OMAR BURTON, SWORN.

By Mr. Starr:

10

Q. Mr. Burton, where do you live?

A. 33 South 19th Street.

Q. Where?

A. Philadelphia.

Q. What is your occupation?

A. Superintendent.

Q. Of what?

A. Garford Truck Company, Philadelphia.

20 Q. How long have you been in the automobile business?

A. I never worked at anything else outside of three years in the machinist's trade.

Q. You learned that originally—you were machinist for how long?

A. At the start for three years.

Q. And how long have you had to do with automobiles?

A. Let's see—fifteen years.

30 Q. And what has been the character of your employment or work with respect to automobiles?

A. Well, as a mechanic, from mechanic to running a shop of my own.

Q. How long did you run a shop of your own?

A. About three years.

Q. You say you are superintendent of the service station of the Garford agency?

- A. Yes.
- Q. How long have you been that superintendent?
- A. About nine months.
- Q. What did you do before that?
- A. I was shop foreman.
- Q. Of the same concern?
- A. Of the same place, yes.
- Q. Do you know the mechanism of the five-ton truck—the motor on the Federal trucks?
- A. Why, yes, I know them in general. 10
- Q. What kind of motor is used?
- A. I think they use a Buda motor.
- Q. Now, have you had any experience in starting a five-ton truck motor similar to the kind that is used by the Federal truck while the gears are in mesh?

Mr. Woodruff: I object to that unless you can show that this witness has had experience with the truck in question, the Adkins truck, which was a Federal truck. 20

The Court: Would it not be some proof as to the operation of this truck if this is a similar make?

Mr. Woodruff: Not necessarily; there might be a great deal of difference in different makes of cars, even though the engine be the same.

The Court: I know, but would it not be some proof—it would not be conclusive, perhaps, but would it not be some evidence? I suppose it does not follow that all trucks are made alike or all motors. 30

Mr. Woodruff: May I examine the witness on that point before he answers the question?

Mr. Starr: Go ahead.

By Mr. Woodruff:

Q. Have you ever handled the service of Federal trucks?

A. No, I have not.

Q. Never overhauled those motors?

A. I have worked on them occasionally.

10 Q. On Federal trucks?

A. Yes.

Q. Have you ever driven a Federal truck?

A. Yes, I have, not any more so than around the shop, I guess.

Q. Just in the shop, when you are repairing them, you mean?

A. Yes.

Q. Do you recollect any particular Federal truck that you have driven any where?

20 A. No, I could not.

Q. You are not sure what kind of motor they have?

A. No, I am not positive.

Q. Not sure about the ignition?

A. Well, only the general opinion.

Q. I mean, on a Federal truck—are you familiar with the ignition on a Federal truck?

A. Yes.

Q. Do you know what ignition the motor has?

30 A. I wouldn't say positive, no.

Q. What make?

A. It is either Bosch, Dixie or Elsemann, either one of the three.

Q. Those are three different kinds, aren't they?

A. Yes.

Q. That work three different ways?

A. Yes.

Q. You are not sure which one it has?

A. No.

Q. Do you know what horse-power the Federal truck has in its motor?

A. I would imagine it would be—

Q. I don't want what you imagine—do you know?

A. No, I do not.

Q. Do you know the size of the pistons, the size of the bearings, the pressure capacity in the engine? 10

A. Two tons, four and a quarter.

Q. Which, the bore?

A. Four and a quarter bore.

Q. Do you know the stroke?

A. No, I do not.

The Court: Just a moment, Judge Starr; isn't there some one who knows this machine better than this gentleman?

By Mr. Starr:

20

Q. Is the same kind of motor used in the Garford truck as the Federal truck?

Mr. Woodruff: I object, if the Court please; he says he does not know what kind of motor is used in the Federal truck. This is leading, also.

The Court: Well, of course if he can't tell what was used in the Federal, he can't tell whether it was the same as in another truck, unless he knows. (To the witness): Do you know the other truck? 30

The Witness: Which one?

The Court: The Garford.

The Witness: Yes, sir.

Q. I understand you are the service manager of the Garford agency in Philadelphia?

A. That is right.

Q. And you come in contact with the Garford truck every day?

A. Yes.

Q. And know the motor?

10 A. Yes.

Q. Now, do you know whether or not the motor in the Garford truck is similar to the motor in the Federal truck, the five-ton Federal truck?

Mr. Woodruff: That is obviously unanswerable by the witness, if the Court please, because he says he does not know the motor in the Federal truck.

A. I wouldn't say positively.

20

No cross-examination.

---

FRANK GREEN, recalled.

By Mr. Starr:

Q. Green, you are the driver of the Farr & Bailey truck, aren't you?

30

A. Yes.

Q. Now, when you reached the front of the ferry-boat on the Philadelphia side, before the boat left, what did you do to secure the brakes?

A. Why, I had to put them on or go on and drive overboard, one or the other.

Q. Did you put them on?

A. Why, sure.

Q. Will you say whether or not they were tight or otherwise?

A. Tight, that is the only way you can stop on the ferryboat, put the brakes on; they don't put the chocks under your wheels to stop you.

Q. You stopped the truck as you came to the bow by putting the brakes on?

A. Yes.

10

Q. Did you release those brakes at any time before the accident happened?

A. No, sir.

Q. Is there a self-starter on your machine, or do you have to crank it?

A. No, sir, it has got to be primed before you start with it. Lots of times I have been pulled off the boat with it; the deckhands like to see me come on with it.

Q. Was there a self-starter—that is what I am trying to find out?

20

A. No, sir.

Q. You were obliged to crank it?

A. Yes, sir.

Q. And were you also obliged to prime it?

A. Yes, sir.

Q. Did that have a foot brake on that truck?

A. Yes, sir.

Q. As well as the emergency brake?

A. Yes.

30

Q. Which was on when you stopped the progress of the truck at the bow of the boat?

A. The emergency brake.

Q. And where were you when your truck started to move forward?

A. Where was I?

Q. Yes.

A. Priming the car.

Q. On which side?

A. On the right-hand side.

By the Court:

Q. Doing what, did you say?

A. Priming the car.

10

By Mr. Starr:

Q. Had you the hood up?

A. The hood? No, sir; you don't have to put the hood up.

Q. How do you prime it?

A. Just a little pump in the front.

Q. And did you get your motor started at all?

A. No, sir.

20 Q. Now, just tell in your own words to the jury what happened after you started to prime the car and your truck moved forward.

A. Why, as I walked around from the men's side, I walked around to prime the car, and I had it primed; in fact, I starts in front to get ready to crank, but I had not reached there when the Adkins truck crashed in the back part of me and I had to jump myself to get out of the way, and his truck kept on pushing until it got outside. I heard his driver make the remark yesterday that his hood—

30 Q. No, we don't want that; your truck kept on going?

A. Yes, sir, until it hit the slip.

Q. And what with respect to the Adkins truck—did that keep on going, too, or did it stop?

A. Yes, sir, all the way, up until it hit the slip.

Q. And when the two cars stopped, where was the Adkins truck located with respect to yours?

A. Right in back of mine, right up against it.

Q. Did you see Waitt, the Adkins' chauffeur?

A. Yes, sir, he was under the car.

Q. You saw him when you went back—was he under the car?

A. Yes.

Q. What part of the car?

A. In the rear.

10

Q. You had a Pierce-Arrow car, didn't you, or a Pierce-Arrow truck?

A. Yes, sir.

Q. What did you do, if anything, to try to stop the progress of your car, your truck, as it was moving forward?

A. Why, I tried to put my brakes on harder if possible, and could not get them any tighter.

Q. How did you try to do that?

A. Reached around the post when it was moving forward. 20

Q. And did you find your brakes were on tight?

Mr. Woodruff: I object.

A. Yes, they were on tight.

Q. Were they on tight or not?

A. Yes, sir; my brakes are always on tight on a ferry-boat.

Q. And when did you reach around, you say, the post— 30

A. As the car was moving.

By the Court:

Q. Can you move your car when the brakes are on?

A. Sir?

Q. Can you move your car when the brakes are on?

A. No, sir.

Q. Not with the engine?

A. No, sir—you mean with the engine going? Well, if you happen to crank it up, it might go.

Q. No, I mean to say, can you move your car—  
10 are on tight?

A. Oh, yes, sir.

Q. You can?

A. Yes, sir.

Q. In other words, the engine is stronger than the brakes?

A. Oh, yes, you can move any car with the brakes on.

Q. You would not stall your engine, eh?

A. No, sir.  
20

By Mr. Starr:

Q. This particular car that you were driving that day, do you know whether or not you could move it with the brakes on under power, if you had your engine going?

A. If I had it going?

Q. Yes.

A. Why, sure, you could move it.  
30

Cross-examination.

By Mr. Woodruff:

Q. If you did not have your brakes on, that truck would roll down hill, wouldn't it?

A. It would.

Q. If that truck was on a grade, on a hill, and you did not have the brake on tight, it would roll down the hill, wouldn't it?

A. Why, sure.

Q. How long have you been travelling over on the ferry-boat, using machines?

A. About a year before the accident.

Q. A year before the accident?

A. Yes.

10

Q. How long had you been a chauffeur before the accident?

A. About a year.

Q. And during that time you had been travelling back and forth over the ferry?

A. Yes.

Q. And used both ferries, the Pennsylvania and Reading?

A. Well, we never used the Pennsylvania so much, once in a while.

20

Q. You used the Reading mostly, did you?

A. Yes.

Q. Driving Farr & Bailey trucks all that time?

A. Yes.

Q. And using this ferry-boat and other ferry-boats?

A. Of the Reading.

Q. Had you been up at the front of the line before many times?

A. Yes.

30

Q. Were you familiar with the deckhands putting the chocks in front of your truck on one side of the river and taking them away on the opposite side of the river?

A. Yes.

Q. And you knew if you waited until the gates

were opened that the deckhand would come and remove the chock, didn't you?

A. Yes.

Q. You knew that fact?

A. Yes.

Q. You had seen this notice that was posted and handed out to the men, didn't you, not to start—

A. I never saw one, not concerning chocks.

Q. Not concerning chocks?

10 A. No, sir.

Q. But you saw a notice about not starting your motor until the boat was completely docked?

A. Yes.

Q. And you knew if you waited that the deckhand would come and take the chock away?

A. Yes.

Q. When did they do that?

A. Well, done that after the boat was docked.

Q. What man did it, in your experience in going  
20 on the boats—which man was it of the crew that came and removed it?

A. Whatever man was on the end of the boat; they work on different ends.

Q. He did not do it until after the boat had been docked and the gates were opened, did he?

A. No, sir.

Q. He first had to open the passenger gate, and afterward go and open the big gates, and then come and remove the chock, didn't he?

30 A. Yes.

Q. Why didn't you wait for him this time?

A. Well, I don't know why I didn't wait; there was lots of teams and everybody moving, as far as that was concerned.

Q. You just took a chance?

A. I was just getting ready to go off; the boat was docked.

Q. To save time?

A. Yes.

Q. You knew these men were gathered along that gate, didn't you?

A. Yes, sure; there was notices up there to the effect not to go on the gate there.

Q. I am talking about you; you saw them there?

A. Yes.

Q. And saw them there when you came on the boat, some of the gathering there already? Didn't 10  
you come up and stop three or four feet from them?

A. I stopped where I was told.

Q. Where the deckhand told you—he came and put a chock under your wheel, is that right?

A. Yes.

Q. You saw them in front of you then?

A. Yes.

Q. Then you got off your truck and went over in front of the men's cabin, didn't you?

A. Yes. 20

Q. To take a smoke, you say?

A. Yes.

Q. When did you do that—when did you get off?

A. After the brakes had been securely put on and chocked.

Q. Which did you do first—did you put on your brakes or have the man drop his chock and tell you where to stop?

A. After you put the brakes on; they don't stop your car; you have to stop yourself. 30

Q. Then you got off and took a smoke, you say?

A. Yes.

Q. And went over to the men's side? When did you get back to your truck, go over to your truck?

A. Just as the boat was landing.

Q. As she was coming into the dock between the piling?

A. Yes.

Q. That is when you came over, was it?

A. Yes.

Q. And that is when you removed the block, wasn't it?

A. No, sir.

Q. You remember you testified here the last time, don't you remember this on page 103: "By Mr. Scovel: Q. When did you take the block away? A. Just  
10 as I came out of the cabin. Q. Just as you came out of the cabin? A. I was on the other side taking a smoke"?

A. Yes.

Q. You testified that way at the last trial, and that is correct, isn't it?

A. I didn't come out until the boat was pretty near docked.

Q. That is what you have already said; you came out when it was coming in between the piling?

20 A. She had hit the slip when I came over.

Q. She had hit some part of the slip?

A. She hit right straight in that day.

Q. She hit straight in?

A. Yes.

Q. Had she bounced out or been gathered in or hooked in?

A. No, she was not hooked, just hit the slip.

Q. So she had to come back again and be hooked up tight on the rebound?

30 A. Yes.

Q. And while you were waiting for that, you took the block out?

A. Yes.

Q. Now, when you took the block out, where did you put it?

A. Up on that piece, I don't know what you call it.

Q. That stringer that runs along?

A. Yes.

Q. Then you started to prime your engine, you say?

A. Yes.

Q. You don't do that in front on a Pierce-Arrow, do you?

A. Yes.

Q. Don't you do it alongside of your hood?

A. Alongside of the hood? No. 10

Q. Out in front of the radiator?

A. Against your dashboard.

Q. But not out in front of your radiator?

A. No.

Q. Not where you crank your car?

A. No.

Q. So that you were safely alongside of your machine, weren't you?

A. I had primed my car and started in the front to get ready to crank it. 20

Q. But you yourself were not out in front of the motor, were you?

A. No, sir.

Q. Even when the accident happened, you were not out there—you were alongside of your hood?

A. Just getting ready to go there.

Q. Getting ready to go there, yes; now, there wasn't anybody with you that day, no helper, was there?

A. No, sir. 30

Q. All alone?

A. Yes.

Q. How big a load did you have on?

A. I would say five tons, maybe less.

Q. On your five-ton truck?

A. Yes.

Q. And you started back, with nobody on there to work the foot brake at all in your cab, to crank your car, did you?

A. It is not necessary to have the foot brake on if you have your emergency brake on.

Q. Was there anybody there to work the foot brake?

A. No, sir.

Q. You were the only one in charge of the truck?

10 A. Yes.

Q. Now, if your foot brake is not tight, or your machine moves, or if your emergency brake is not tight and your machine moves, your foot brake will hold it, won't it?

A. I suppose it would, yes.

Q. Hasn't that been your experience, many, many times on the boat that in docking your machine will quiver or shake and move ahead a few inches or feet?

20 A. My machine never moves.

Q. You never had that experience?

A. No, I overhauled my trucks three times a week.

Q. Have you ever been on a grade or a street then, an asphalt street—ever been on a grade?

A. Yes, right in front of the court house, I backed up on this sidewalk out here.

Q. I am talking about a grade, a hill, an incline?

A. That is a grade out there.

Q. This front pavement is?

30 A. Yes.

Q. Then you put on your emergency brake?

A. The emergency brake.

Q. And you say she has never moved with you?

A. Did not move, no, sir.

Q. You never have had also to put on your foot brake to hold it?

A. Never used the foot brake, only on the street, driving.

Q. Now, this time when the truck started to crash through the gates and crush these men down, you reached around a post and grabbed hold of your emergency brake, didn't you?

A. Yes.

Q. The emergency brake on a Pierce-Arrow is on the outside, isn't it?

A. Yes.

10

Q. Outside of your cabin?

A. Yes.

Q. Out on the outside of the chassis?

A. Yes.

Q. So it was out handy, where you could get hold of it, wasn't it?

A. Yes.

Q. You were on that side?

A. Yes.

Q. You reached up to put more pressure on that, 20 didn't you?

A. Tried to.

Q. You tried to—tried to make it tighter, didn't you?

A. Yes, it couldn't be done.

Q. It couldn't be done?

A. No, sir.

Q. Didn't you think it was sliding when you tried to put more pressure on?

A. No, I knew what was the matter.

30

Q. You didn't think you could get more pressure on?

A. I was going to try; I didn't know whether I could or not.

Q. But you are the man any how that did it?

A. Yes.

Q. And it was not until after it came to a stop that you got up and had to use two hands to get it free?

A. What?

Q. It was after it came to a stop that you got up in your cab to release the brake?

A. Yes.

Q. That was after it was all over?

A. Yes.

10 Q. Now, you say today that there was a crash back of you from the other machine—the other machine crashed into you, don't you?

A. Yes.

Q. Do you remember testifying in the first trial as follows, page 99, Judge Starr was examining you at the last trial, and he was asking you the questions, and he said this to you: "Q. And what happened to your truck when the truck in the rear struck it?" and you answered this way, "Why, 20 started to move off the boat. Q. Moved forward?

A. Yes, sir." Is that the way you answered at the last trial?

A. Yes, sir.

Q. And you described it then at the first trial as starting to move off the boat, didn't you?

A. Yes.

Q. Well, that was the movement of your truck, wasn't it?

A. Yes.

30 Q. A gradual movement of a heavy body?

A. A gradual movement of a car being pushed by another car in back of the first car is what it looked like to me.

Q. That is what it looked like to you, but I am talking about the movement of your truck irrespective of what was going on; it started slowly and

moved slowly with the increasing power of a heavy body until it crashed down through the gates and stopped at the head of the slip, wasn't it?

A. Yes.

Q. There was no sudden jumping of it ahead and stopping or anything of that kind?

A. Only at the start, that is all, when he first hit it.

Q. Just a steady movement of your truck?

A. Yes.

10

Q. Right on through the gates and up against the dock?

A. Yes.

Q. From driving through these gates, Mr. Green, you know there is a natural incline on the deck from the center of the boat each way to the bow?

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

Q. Haven't you noticed that?

A. No.

Q. Haven't you noticed that the bow, when you come into the dock, always inclines downward somewhat?

A. I never took notice to it; it may be, but I didn't take notice to it.

Q. You never noticed that downward tilt?

A. No.

Q. On this day, with your ten-ton load up in the bow and with the people up there, the boat was depressed in the bow, wasn't it?

A. I never took notice to that, not that I took notice to.

30

Q. You mean you took that block away without noticing those things?

A. I wasn't supposed to watch the boat.

Q. You were not supposed to see whether you were going down hill or not?

A. I wasn't supposed to know at all—

Q. You say you didn't take any notice to whether the front of the boat was down or not?

A. No, I didn't take much notice to it.

Q. All you knew was the man had thrown one hook in and was beginning to wind the boat in, is that right?

A. No, he had both hooks in.

Q. Did you see that?

10 A. Sure, I wouldn't have undertook to monkey with the car.

Q. I am not asking you what you would have done, but I am asking you what you saw; you have already testified that you saw the man throw the hook in and start to draw the boat in or take up the slack?

A. Yes.

Q. And that is when you took a chance and took the block away?

20 A. Yes.

Q. Now, I ask you whether you saw two men do that?

A. Two men? No, I didn't take notice to two men.

Q. You only took notice to one man?

A. Yes.

By Mr. Starr:

30 Q. Now, Green, can you say whether or not your car started forward until it was struck in the rear?

A. It did not.

Q. Are you in the employ of the Farr & Bailey Company at the present time?

A. Sir?

(Question repeated.)

A. No, sir.

By Mr. Scovel:

Q. What way were you facing when your truck started to move forward?

A. What way was I facing?

Q. Yes.

A. Facing the truck.

Q. You were looking right at your truck, were you—from which side? 10

A. From the right-hand side.

Q. That would be looking left?

A. Looking to the left of the boat, yes.

By Mr. Woodruff:

Q. Mr. Green, you came out of the cabin and walked over and took the block away, didn't you?

A. Yes.

Q. And right after that was when your car moved forward, wasn't it? 20

A. After it was hit.

Q. Right after you took the block out?

A. No, not when I took the block out; I took the block out and then went and primed the engine.

Q. Now, on page 100 of the transcript of the last trial—by Mr. Bradley, this question was, "How long after you took the block out did the car from the rear hit your car? A. How long? Q. Yes. A. Why, I just got out and got on the side, and it bumped. 30

Q. As I understand it, just after, immediately after you reached that block out, the crash came right away? A. Yes, I just reached down and got the block and turned around to prime my machine to start it." Isn't that correct?

A. It must be if that is the way I testified.

By Mr. Starr:

Q. Now, at that time, can you say whether or not there had been a crash in the rear of your truck?

A. What was that?

Q. At the time you started to prime, will you say whether or not there had been a bump in the rear of your truck, when you started forward?

A. When I started to prime? No, sir, after I  
10 primed.

Q. And did your car start forward at all until there had been this bump in the rear?

A. No, sir, it did not.

By the Court:

Q. Sit down a minute; did you notice the engine on the other car running?

A. I heard it; I didn't see it.

20 Q. You did hear it running?

A. Yes, sir.

By Mr. Scovel:

Q. You didn't see this car bump, did you?

A. No, sir.

By Mr. Woodruff:

30 Q. You say now in answer to Judge Starr, after you primed was when you heard the bump of the other machine?

A. I do.

Q. But you said at the last time the question that I have just read to you, didn't you, "A. Yes, I just reached down and got the block and turned around to prime my machine to start it"—is that right?

A. How was that?

Q. Read it yourself and see if this is not correct, the way you testified the last time, the question I have just read to you?

A. Yes, sir.

Q. Is that correct?

A. Yes.

Q. So that your started to move before you had actually primed it, didn't it—before you had actually pumped the primer? 10

A. No, I had primed it, though.

Q. Then which is correct, what you testified the last time or what you are testifying this time?

A. I guess the first time is correct; I thought I remembered priming the car.

DEFENDANT, FARR & BAILEY COMPANY,  
RESTS.

20

THE CASE FOR THE DEFENDANT,  
CHARLES I. ADKINS.

CHARLES I. ADKINS, sworn.

By Mr. Scovel:

Q. Mr. Adkins, you are one of the defendants in this suit? 30

A. Yes.

Q. Where do you live?

A. 509 Liberty Street.

Q. How old are you?

A. Fifty-five.

Q. The truck, the second truck in question, was your truck, wasn't it?

A. Yes, sir.

Q. Did you see the truck immediately after it was brought back to you by Mr. Waitt?

A. I did, yes, sir.

Q. Did you particularly notice the condition of the radiator fender?

A. Yes, I went right out and examined it as soon as I heard of it.

Q. What was wrong with it?

10 A. There wasn't anything wrong at all only the fender in front of the radiator was bent slightly; whether that was bent during the accident or not, I don't know.

Q. Nothing else?

A. That was all, yes, sir.

Cross-examination.

By Mr. Woodruff:

20 Q. What kind of shield is that in front of your truck?

A. It is just a little shield that is put up there to protect any light bump from the radiator, like for instance, we come into the boat lines, and we are backed up to a platform, and there are wagons comes in there, and a fellow will be backing up his team and it will swing the pole around like that, you know; it is done to catch the end of the pole

30 so it won't go into the radiator.

Q. How heavy iron is it?

A. It is not over a quarter of inch iron.

Q. How is it fastened to your chassis?

A. It sets right up in front of the radiator, see, the same as if this here was the chassis, it sets up on the chassis, and there is a portion comes down

like that, small three-eighths inch bolt on, something like that comes down there just to steady it.

Q. How far is that naturally separated from the front of your radiator?

A. From two to three inches in front of the radiator.

Q. It is not fastened to the radiator?

A. No, sir.

Q. Just fastened down at the bottom by this stay?

A. That is all, just on the chassis.

Q. Mr. Adkins, you saw where it was bent back from the radiator? 10

A. No, it wasn't bent back, except the rods that goes down just the same as this here, there was a couple of them bent in a little bit.

Q. Just bent in?

A. Yes.

Q. What with regard to the stays on the frame?

A. Why, nothing at all.

Q. They were all right?

20

A. Yes.

Q. Were your mudguards or lights damaged?

A. There was not any lights on the front of this truck; the mudguard was not damaged any.

By Mr. Scovel:

Q. How long have you been running these Federal trucks?

A. This one is practically a new truck; I had just got it out the previous fall. 30

Q. How long have you been running them up to date?

A. Why, about seven years.

Q. You can run a Federal truck yourself, can you?

A. Yes.

Q. Have you ever tried to crank a Federal truck in gear?

Mr. Starr: I object to that as immaterial and irrelevant.

The Court: I will admit it.

10 A. Yes.

The Court: You mean this one?

Q. Have you ever tried to crank this particular truck in gear?

A. Yes.

Q. Is it possible to do so?

Mr. Starr: May I cross-examine, please?

20

By Mr. Starr:

Q. When was it—when did you do that?

A. Well, I have done it lots of times, and I have done it lots of times with this truck since it has happened to see whether it could be done or not.

Q. Since the accident?

A. Yes.

Q. Did you ever try it before?

30 A. Yes, when it was new I tried it.

By Mr. Scovel:

Q. It is possible to do so?

Mr. Starr: I make the same objection as before.

(Exception noted.)

A. No, sir.

By Mr. Starr:

Q. Why did you start or try to crank the truck in gear before this accident—what was your object?

A. Before the accident?

10

Q. Yes.

A. Only to get her out myself, for to take her out and run her, get her out of the yard or out of the shop or something like that.

Q. Purposely?

A. Yes.

Q. Why would you do that?

A. To get the truck out of the way, out in the yard or in the shop, have to run the truck, take the truck probably out on a job or something.

20

Q. Well, would you crank it in mesh for that purpose?

A. No, not in mesh.

Q. That was the question, whether or not you had ever cranked this car while it was in mesh, in gear?

A. Not before, I haven't, no, sir, but I have since.

Q. Have you done it—were you able to do it?

A. No, sir.

Q. How many times have you tried it?

A. I tried it down there one day three or four different times.

30

Q. When?

A. Since the accident, right after the accident.

Q. How soon after the accident?

A. Why, I think it was about two days afterward; yes, it was just about two days afterward.

By Mr. Woodruff:

Q. Then, Mr. Adkins, you had some information from your driver within two days after this accident that he had either cranked it in gear or that some one had accused him of cranking it in gear, didn't you?

A. The way it came up, there was an argument came up in the office.

10

(Objected to.)

Q. No, you are not answering my question; had you not had either some information—excuse me, you had had some information from your driver within those two days that he had either cranked his car in mesh on the boat at the time of the accident, or that somebody had accused him of doing it, didn't you?

20

A. Somebody had accused him of it.

ALL SIDES REST.

---

(By consent of counsel the complaint is amended by adding at the bottom of paragraph five of the complaint the words, "And that the brakes on said truck were not properly and sufficiently applied at that time and place.")

30

At this point a recess was taken until 1.30 o'clock P. M.

Trial of the cause resumed at 1.30 P. M., pursuant to adjournment, in the presence of counsel for the respective parties.

---

CHARGE OF THE COURT.

10

LLOYD, J.:

Ladies and Gentlemen: This is what is known in the law as a negligence case, that is to say, the parties are litigating in the case over questions of negligent conduct or alleged negligent conduct. You or some of you are undoubtedly serving here for the first time as jurors, and this is the first case that you have been called upon to pass on, and it is perhaps wise that the Court should give you some preliminary direction before discussing this particular case. 20

In the first place, you are parts of the administration of justice, just as the Judge is. A Judge sits here with authority to deal with the legal questions that are presented, that is to say, questions arising under the law; the jury sits here to pass upon questions of fact after they have received the instruction of the Judge on questions of law; and your responsibility, your sphere, is to my mind more sacred and more important, and it is more essential that you should be right in your conclusion than it is that the Judge should be right, because ordinarily when a jury makes a mistake, it is difficult to correct it, but when a Judge makes a mistake there is a Court in review to pass upon it and determine its rightfulness or wrongfulness. 30

Now, I need not say to you that when you come into Court, you take an oath to determine cases according to the evidence; that means that you eliminate from your minds all questions that are outside of the direct problem presented, namely, the responsibility of parties to each other for wrongs alleged to have been committed. You see, that lets out of consideration all elements of sympathy and prejudice or of feeling. When a man or woman enters the jury box, he is under a sworn duty to discard from the mind everything that will in anywise impair his efficiency as a determiner of facts; and to do that, he must make his mind absolutely impartial between the parties. It does not make any difference in cases in Court whether men are rich or poor, whether they are artificial bodies, as corporations, or whether they are individuals; they all stand on precisely the same plane, and jurors must disregard entirely their status in any one of those respects, and determine the rights and wrongs upon the evidence, irrespective of the conditions of the parties.

Now, in a general way, coming to this particular case, you will have to pass upon the conduct of these parties. The plaintiff was a passenger on a ferry-boat coming to his home in Camden. The defendants had trucks upon that same ferry-boat. The plaintiff was standing at or near the post of the large gate in the wagon or vehicle passageway, and while in that position, the truck of the Farr & Bailey Company ran into him or pressed against him and caused the injuries of which you have heard the testimony in this case. The defendant who owned the car back of the Farr & Bailey car was operating by his chauffeur, and the charge is made against him that his chauffeur improperly handled

his car. I will speak to you in a minute about the particular thing that is alleged to have been done or omitted to be done, but that was the sequence of events leading up to the complaint in this case.

Now, negligence is want of care according to the circumstances; it may be either affirmative, positive, or it may be negative; it may consist in the doing of something that one ought not to do under the circumstances or it may consist in the failure to do something that ought to have been done under the circumstances. In all human relations there are rights and obligations; human society could not exist without them, a community would not be civilized if it did not decently behave toward its members, one toward the other. Now, that being so, there are many, many relations in life where people are thrown together and where they must regard the rights and duties that those relations impose, and the law has set up an invariable standard which must be the guide in every case, and that is, when an affirmative act is charged, that a person must do the thing that a reasonably prudent man under the circumstances would do, and when an omission is charged, that he has not omitted to do the thing which a reasonably prudent man would have done. In the language of a case decided in our highest Court, this language is used with respect to negligence generally, and how our conduct is to be regulated with respect to things that we may see or ought to see in advance: "But whether the overt act be one of omission, or of commission, and whether the conduct of the defendant be stated in terms of duty or of fault, the one common denominator, so to speak, of the action of negligence is this element of what we may call discoverable danger; that is to say, a danger that is susceptible of being

discovered in advance of action or inaction by the exercise of that degree of care which, if a man fails to exercise, he becomes civilly liable for the consequences of his conduct." You see, that involves two things; it involves first the thing that we do or fail to do, and secondly the consequences which we should or should not anticipate to happen by reason of it.

Now, coming to the particular case before you,  
10 there are various allegations of failure to perform the duty which the plaintiff says was owing to him by these defendants. The first complaint against Adkins is that his car was started at a time when it ought not to have been started, that the chauffeur of the car cranked the engine while the engine was in mesh with the running gear of the car, forcing it onward and against the car immediately ahead, and driving the latter car against the plaintiff. The  
20 other charge is that he failed to have the brakes of the car in proper shape so that if any motion, whatever it may have been, had started his car up, it would have been halted if the brakes had been in proper condition. With respect to the Farr & Bailey Company, the allegation is again two-fold; it is that the car was not properly protected by having the brakes adequately set, and secondly, that the chauffeur removed a block which was placed in front of it by one of the deckhands of the ferry company, and that in consequence of that failure,  
30 when the movement of the car behind began, it forced the Farr & Bailey car ahead and injured the plaintiff in consequence. So that you see there are two allegations of negligence against each of these two defendants, and there is an allegation of joint negligence against them.

I do not think you can come to any other conclusion than that the Adkins car undoubtedly

started up, whether it started with its engine going, or whether it started without its engine going, it started up and came against the other car. Now, in that situation, you may fairly infer that it was caused either by the engine itself propelling the car, or by the action of the chauffeur in attempting to start the engine without the brakes adequately set. Under those circumstances, can there be any doubt that the chauffeur of that car, at least, was guilty of negligence in setting in motion the train 10  
of events which ultimately caused the injuries to the plaintiff? If there is no doubt upon that point, that is to say, if you feel satisfied that that is so, you ought to find a verdict against Adkins in favor of the plaintiff unless the plaintiff was guilty of some negligence of his own which precludes his recovery against both parties.

Now, coming to the other company, the Farr & Bailey Company, you have heard the testimony as to the removal of this block. There is no doubt in 20  
the world it was done, no doubt in the world that it ought not to have been done, it was not his duty to do it, and it was a wrongful thing to do; but the law requires more than wrongfulness or negligence in order to hold a man responsible for the results of that negligence. There may be such a thing as negligence in the abstract; a man may do a very careless thing and nothing happen from it, or a man may do a very careless thing and something happen 30  
but not happen as a direct consequence of that wrong. Now there comes in the paragraph that I have read to you from the case in the Court of review. He undoubtedly took out this block; now, was that or was it not a negligent act under the circumstances? A man is bound to anticipate the things which ordinarily may be expected to be the

result of a wrongful act, or, in the language of this decision, those foreseeable things which he, as a prudent man exercising reasonable care, ought to see. Now, if this accident happened by the chauffeur of the Adkins car starting up the engine while in gear, and that in turn creating a driving force against the Farr & Bailey car which pushed it ahead, you must ask yourselves the question, was that one of the foreseeable things which reasonable  
10 prudence on the part of the chauffeur of the Farr & Bailey Company ought to have known or anticipated? If it was not, then it does not make any difference how negligent his act was in removing this block; there would be no legal relation between the two, and the defendant in that case would not be responsible for what happened.

There is, however, some evidence in the case from which you might possibly infer that even if this car behind was not started up by the action of the  
20 engine, that there was a slight contact between the Adkins car and the Farr & Bailey car, due to the shape of the boat, the condition of the boat and its depressed position in front. The captain says that there was a fall of about eight inches from the center of the boat to the outer extreme, and that at this time the boat was quite a little depth below the face of the dock, and that as the car rolled forward that space became greater. Other witnesses testified to  
30 quite a marked difference between the level of the boat and the level of the slip. Under those circumstances, you can ask yourselves the question, if the accident happened in that way, was it a prudent thing for him to have taken the block away with such conditions confronting him, and these people standing immediately in front of the car?

Now, all these are questions which present themselves to you, and they are for you to determine.

There is another question presented, and that is the alleged negligence of the plaintiff himself in standing where he was. It has been said that there was a rule posted forbidding persons to stand or be in this passageway. Well, that was, of course, between the ferry company and its patrons; this action is not now between the ferry company and the plaintiff; it is between others, it is between the plaintiff, a passenger, and the defendants who are also passengers on the boat, not individually, but passengers 10 by their vehicles; and the question comes down whether or not it was a prudent and careful thing for the plaintiff to stand where he was, within two or three feet or four feet possibly, whatever you should find the distance to be, in front of this truck as the boat was coming into the slip. If it was, then no negligence can attach to him by reason of the fact that he was there. It has appeared in the case that it was quite customary, indeed on that very trip others appeared to have been standing along the 20 gate, and the proofs are that it was quite customary for passengers to stand in that position. Now, it is for you to say whether under all these circumstances the plaintiff himself was guilty of any negligence in being where he was; there was no other claim of wrongdoing upon his part.

The law upon the subject is this, that if he was himself failing to exercise reasonable and proper care for his own safety, then he cannot complain of anybody else if he was hurt. There is a 30 wide distinction between actions of negligence where injuries arise and actions of wilfulness. Two men cannot get into a fight and acquit themselves of responsibility for any damages which they do on the ground that they are participants, but that is because the thing that they do is wilful, one against

the other; but in cases of negligence, the law is very clear that any negligence on the part of the plaintiff debars him from recovery against another, no matter how much negligence may have existed to bring about the injuries which he suffers by the defendant or defendants.

If you find that the plaintiff is without remedy in this case, then that ends the consideration of it; the verdict is one of no cause of action. If you find  
10 that he has a right of action against one or both of these defendants, then you are called upon to assess the damages, and the damages would be assessed in one amount. There are three elements which have been brought to your attention by way of claim. The plaintiff's injuries consisted of a broken leg, a leg that required a very considerable time to heal, and a very considerable amount of treatment to restore it. It has been measurably re-  
20 stored now, although it is perfectly clear that its flexibility is not as much as you or I or any normal person would have in the limb. The plaintiff himself says that it is practically free from pain except on occasions of bad weather or when he gets up in the morning, when he feels a certain amount of stiffness. Now, it is damages resulting from that which you are to assess if you find a verdict in favor of the plaintiff. The three elements of which I speak are, first, the reasonable expense of being  
30 cured, which is a proper element for your consideration in reaching a verdict; and, second, what sum of money has he been prevented from earning by reason of the injury sustained? It is claimed here that he was out of work definitely from the time of the accident until about the first of July of the following year, the accident occurring in May of 1921. There is some dispute as to what wages he was

getting, and what wages he would have gotten during that period if he had been at work, but whatever you would find it to be would be a proper matter for you to take into consideration in determining the loss actually sustained by reason of being out of employment. Now, another feature complained of is that he cannot efficiently follow the old trade. Dr. Mecray spoke of an impairment of the efficiency of that limb of ten or fifteen per cent —I don't think he was speaking of the specific 10 trade, because I don't know that he knew exactly what it was; I think he was asked as to how efficient he might be in climbing and in carrying machinery or the machines which he was called upon to use. The overseer at the navy yard said that he would not be as efficient in his old trade as a first-class man as he was before. Now, that is all a proper matter for you to take into consideration.

Now, the last item to which I would direct your attention is the one of pain and suffering. Now, 20 ladies and gentlemen, there is a case where you must be on your guard and give most careful consideration, that, on the one hand, you do not minimize it, nor, on the other hand, that you do not extend it beyond what it ought to be. Do not allow your sympathies or your feelings to come into a case of this kind; one of the criticisms, you know, of the woman juror, is that she might allow her sympathies to run away with her. Well, I have not found that to be the fact, I am very glad to say, and 30 I do not believe I shall find it to be the case with the jurors in this panel, but it is a caution which the Court should give to all jurors. It is very hard for people to sit in a jury box or for me to sit behind this bench and see men or women injured and not have the heart go out to them in sympathy and

feeling; but you can see that that is not the basis on which we must act; we must act solely according to our reason, and our reason says that we must give that which is just and that which is due; so that you must not, upon the one hand, make it less than it ought to be, or, on the other hand, make it more. When you come to consider this element of pain, it is an exceedingly difficult one; it means the conversion of somebody else's feelings into a commercialized value and giving it a dollars and cents equivalent. Now, that burden is on you if you reach the conclusion that the plaintiff is entitled to recover; if he is not entitled to recover against either of the defendants, that is the end of the case; if he is entitled to recover against either or both, then you come to the question what sum of money should be fair compensation to make good the loss sustained.

Ladies and gentlemen, counsel calls my attention to what he fears may be a misapprehension on the part of the jury, and that is that by dealing with the specific acts of negligence on the part of each, it may indicate to you that you had the alternative only to find against one or the other defendant or against neither. Of course, I did not mean that; what I meant to call to your attention was the specific allegations against these parties. Each defendant is claiming himself absolved; the plaintiff is claiming that both of them were responsible for this accident, that while one may have done one thing, another did another thing, and that both were direct causes of the injuries which resulted. Now, I am not indicating to you at all how your verdict ought to go; I am simply calling attention to the fact as to how the parties stand, what their claims are, in a qualified way what the evidence

tends to show, and what the problems are that are presented to you. The solution of those problems is one for you entirely.

The eighth request given to me by the defendant, Farr & Bailey Company is this: "It was not an act of negligence on the part of the driver of the Farr & Bailey truck not to remain on the truck while it was on the boat." Putting that in another way, I would say to you that it is no evidence of negligence for him to have done so. The others are declined. 10

---

DEFENDANT'S EXCEPTIONS.

Mr. Starr: I desire to except to your Honor's refusal to charge each of the specific requests one to seven inclusive.

The Court: You want to except to each one individually, I suppose? 20

Mr. Starr: Each one individually, and also to your Honor's refusal to charge the eighth request and to the charge which your Honor made modifying such request. I also desire to except to the statement which your Honor made that the block ought not to have been removed by the driver of the Farr & Bailey truck. 30

(Exceptions noted.)

Mr. Starr: I also except to that portion of the charge which permitted the jury to take into consideration the shape of the boat, the condition of

the boat, and the tilting position toward the slip, in order to determine whether or not it was a prudent act on the part of the driver of the Farr & Bailey truck to take the block away.

(Exception noted for defendant.)

---

10 DEFENDANT'S REQUESTS TO CHARGE.

1. No actionable negligence chargeable to the defendant, Farr & Bailey Manufacturing Company, has been shown; consequently, the jury should be instructed to return a verdict for the defendant, Farr & Bailey Manufacturing Company.

2. The action of the plaintiff contributed to his injury; consequently, he cannot recover.

20

3. It was not negligence on the part of the driver of the truck of the Farr & Bailey Manufacturing Company to remove the chuck block under the circumstances as shown by the testimony.

4. When the driver of the Farr & Bailey Manufacturing Company's truck removed the chuck block, he had no reason to suppose that after he had done this, his truck would be pushed forward  
30 by the act of the driver of the truck in his rear.

5. If the jury find as a fact that the driver of the Adkins' truck did crank the motor while in gear, as a result of which the engine started, and the truck ran into the Farr & Bailey truck, and forced it forward against the plaintiff, the latter is not en-

titled to a verdict against Farr & Bailey Manufacturing Company.

6. If the jury find as a fact that the driver of the Adkins' truck did crank the motor while in gear, as a result of which the engine started, and the truck ran into the Farr & Bailey truck, and forced it forward against the plaintiff, regardless of the removal of the chuck block by the operator of the Farr & Bailey truck, the plaintiff is not entitled to a verdict against the Farr & Bailey Manufacturing Company. 10

7. It was not an act of negligence on the part of the driver of the Farr & Bailey truck to remove the chuck block, even if the weight of the passengers and vehicles on the ferry-boat caused the forward part thereof to tilt toward the slip.

8. It was not an act of negligence on the part of the driver of the Farr & Bailey truck not to remain on the truck while it was on the boat. 20

The jury returned a verdict of \$10,000 against both of the defendants jointly.

## REASONS FOR NEW TRIAL.

(Filed June 8, 1923.)

## NEW JERSEY SUPREME COURT.

10

SAMUEL FIORENTINO,

*Plaintiff,*

v.

CHARLES ADKINS, FARR &  
BAILEY MANUFACTURING  
COMPANY,*Defendants.*} Action at Law.  
} Reasons for a New  
} Trial.

20

The defendant, Farr & Bailey Manufacturing Company, presents the following reasons why the verdict of the jury, rendered against it and in favor of the plaintiff, should be set aside and a new trial granted:

1. The verdict in favor of the plaintiff and against the defendant, Farr & Bailey Manufacturing Company, was against the weight of the evidence and the charge of the Court.

2. The damages awarded the plaintiff were grossly excessive.

LEWIS STARR,

*Attorney of Farr & Bailey Manu-  
facturing Company.*

OPINION.

(Filed Nov. 9, 1923.)

NEW JERSEY SUPREME COURT.

---

June Term, 1923.

10

---

SAMUEL FIORENTINO  
v.  
FARR & BAILEY MANUFAC-  
TURING COMPANY. }

---

Argued before GUMMERE, Chief Justice and  
JUSTICES MINTURN and BLACK.

20

---

For the rule, Lewis Starr.  
Contra, Albert S. Woodruff.

---

30

*Per Curiam:*

This suit was brought to recover compensation for personal injuries received by the plaintiff while crossing the Delaware River from Philadelphia to Camden on a ferry-boat of the Delaware River

Ferry Company. In the gangway of the ferry-boat there was a truck belonging to one Adkins, who was joined with the Farr & Bailey Company as a defendant. Just in front thereof was another truck, belonging to the Farr & Bailey Company. As the ferry-boat was entering the slip, the plaintiff stepped into the gangway in front of the Farr & Bailey truck for the purpose of getting off more speedily. While he was standing there the driver  
10 of the Adkins truck cranked his motor while it was in gear, and, as a result, the truck started forward and stuck the rear of the Farr & Bailey truck. That truck had been anchored in its position by a chuck block under its wheel, but this had been removed by the driver just before the collision occurred. As a result of that collision, the Farr & Bailey truck started forward, running the plaintiff down and injuring him. The jury found a verdict in favor of the plaintiff as against the Farr & Bailey Company,  
20 awarding him as compensation the sum of \$10,000.

The defendant seeks to have the present rule made absolute upon two grounds: first, that the finding of the jury that the accident to the plaintiff was the result of negligence on the part of the Farr & Bailey Company's driver was against the weight of the evidence; and, second, that the verdict is excessive.

The present rule brings up the proceedings at a second trial of this case; and on each trial the verdict of the jury established the existence of liability  
30 on the part of the defendant. In this situation, we do not consider that we would be justified in disturbing this second verdict, so far as the question of the liability of the defendant is concerned. We think, however, that the amount of the award cannot be justified by the proofs in the case, and we are

not hampered by the fact that two juries have concurred upon this phase of the case. On practically the same testimony, the first jury fixed as fair compensation to the plaintiff the sum of \$5500, a little more than one-half of the amount of the present award. Our examination of the testimony satisfies us that the finding of the first jury upon the question of damages was a very proper award, under the circumstances, and that necessarily, therefore, the present verdict is grossly excessive. 10

If the plaintiff will consent to have the present verdict reduced to \$5500, he may enter judgment for that amount. Otherwise the rule to show cause will be made absolute.

20

30

## JUDGMENT.

## NEW JERSEY SUPREME COURT.

10	SAMUEL FIORENTINO, <i>Plaintiff,</i>	}	Action at Law. On Postea. Albert S. Woodruff, Attorney.
	v. CHARLES ADKINS and FARR & BAILEY MANUFACTUR- ING COMPANY, <i>Defendants.</i>		

20

\$10,000.00 C. A.  
 106.82

---

\$10,106.82

\$ 5,500.00 F. & B. Mfg. Co.  
 26.25

---

\$ 5,526.25

30

Judgment entered this seven-  
 teenth day of April, A. D.  
 nineteen hundred and twenty  
 three in favor of plaintiff  
 and against the defendant  
 Charles Adkins for the sum  
 of ten thousand dollars dam-  
 ages and one hundred and six  
 dollars and eighty-two cents  
 costs; and against the defen-  
 dant Farr & Bailey Manu-  
 facturing Company for the  
 sum of five thousand five hun-  
 dred dollars damages and  
 twenty-six dollars and twen-  
 ty-five cents costs.

WM. S. GUMMERE,  
*C. J.*

A true copy.  
 EDWARD J. KELLEHER,  
*Clerk.*

NOTICE OF APPEAL.

(Filed Dec. 1, 1923.)

NEW JERSEY SUPREME COURT.

---

SAMUEL FIORENTINO,  
*Plaintiff,* )  
v. )  
CHARLES ADKINS and FARR )  
& BAILEY MANUFACTUR- )  
ING COMPANY, )  
*Defendants.* )

10

Notice of Appeal.

---

A. S. Woodruff, Esq., Attorney of Plaintiff: 20

Dear Sir:

Take Notice that the defendant, Farr & Bailey Manufacturing Company, hereby appeals from the judgment entered in the New Jersey Supreme Court on the 17th day of April, 1923, for \$5500 damages and \$26.25 costs to the Court of Errors and Appeals of New Jersey, in accordance with the statute in such case made and provided.

Your obedient servant, 30

LEWIS STARR,  
*Attorney of Defendant, Farr  
& Bailey Manufacturing  
Company.*

Dated November 30, 1923.

## REASONS FOR REVERSAL.

(Filed Dec. 3, 1923.)

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

10

---

SAMUEL FIORENTINO,  
*Plaintiff-Respondent,*

v.

FARR & BAILEY MANUFAC  
TURING COMPANY, a cor-  
poration, *et al.*,  
*Defendant-Appellant.*

Reasons for Re-  
versal.

20

---

The defendant, Farr & Bailey Manufacturing Company, appellant in the above cause, hereby presents the following reasons for the reversal of the judgment entered in the Supreme Court, in favor of the plaintiff and against the defendant, viz:

1. The learned trial Judge erred in refusing to direct that the plaintiff be non-suited, in favor of the appellant.

30

2. The learned trial Judge wrongfully refused to charge the following requests of the defendant-appellant:

A. No actionable negligence chargeable to the defendant, Farr & Bailey Manufacturing Company,

has been shown; consequently, the jury should be instructed to return a verdict for the defendant, Farr & Bailey Manufacturing Company.

B. The action of the plaintiff contributed to his injury; consequently, he cannot recover.

C. It was not negligence on the part of the driver of the truck of the Farr & Bailey Manufacturing Company to remove the chuck block under the circumstances as shown by the testimony. 10

D. When the driver of the Farr & Bailey Manufacturing Company's truck removed the chuck block, he had no reason to suppose that after he had done this, his truck would be pushed forward by the act of the driver of the truck in his rear.

E. If the jury find as a fact that the driver of the Adkins truck did crank the motor while in gear, as a result of which the engine started, and the truck ran into the Farr & Bailey truck, and forced it forward against the plaintiff, the latter is not entitled to a verdict against Farr & Bailey Manufacturing Company. 20

F. If the jury find as a fact that the driver of the Adkins' truck did crank the motor while in gear, as a result of which the engine started, and the truck ran into the Farr & Bailey truck, and forced it forward against the plaintiff, regardless of the removal of the chuck block by the operator of the Farr & Bailey truck, the plaintiff is not entitled to a verdict against the Farr & Bailey Manufacturing Company. 30

G. It was not an act of negligence on the part of

the driver of the Farr & Bailey truck to remove the chuck block, even if the weight of the passengers and vehicles on the ferry-boat caused the forward part thereof to tilt toward the slip.

H. It was not an act of negligence on the part of the driver of the Farr & Bailey truck not to remain on the truck while it was on the boat.

10 3. The learned trial Judge erred in charging the jury as follows:

“Now come to the other company, Farr & Bailey Company, you have heard the testimony as to the removal of the chuck block. There is no doubt in the world it was done; no doubt in the world that it ought not to have been done. It was not his duty to do it and it was a wrongful thing to do.”

20 4. The learned trial Judge erred in charging the jury as follows:

30 “There is, however, some evidence in the case from which you might possibly infer that even if this car behind was not started up by the action of the engine, that there was a slight contact between the Adkins car and the Farr & Bailey car, due to the shape of the boat, the condition of the boat and its depressed position in front. The captain says that there was a fall of about eight inches from the center of the boat to the outer extreme, and that at this time the boat was quite a little depth below the face of the dock, and that as the car rolled forward, that space became greater. Other witnesses testified to quite a marked difference between the level of the boat and the level of the slip. Under those circumstances, you can ask your-

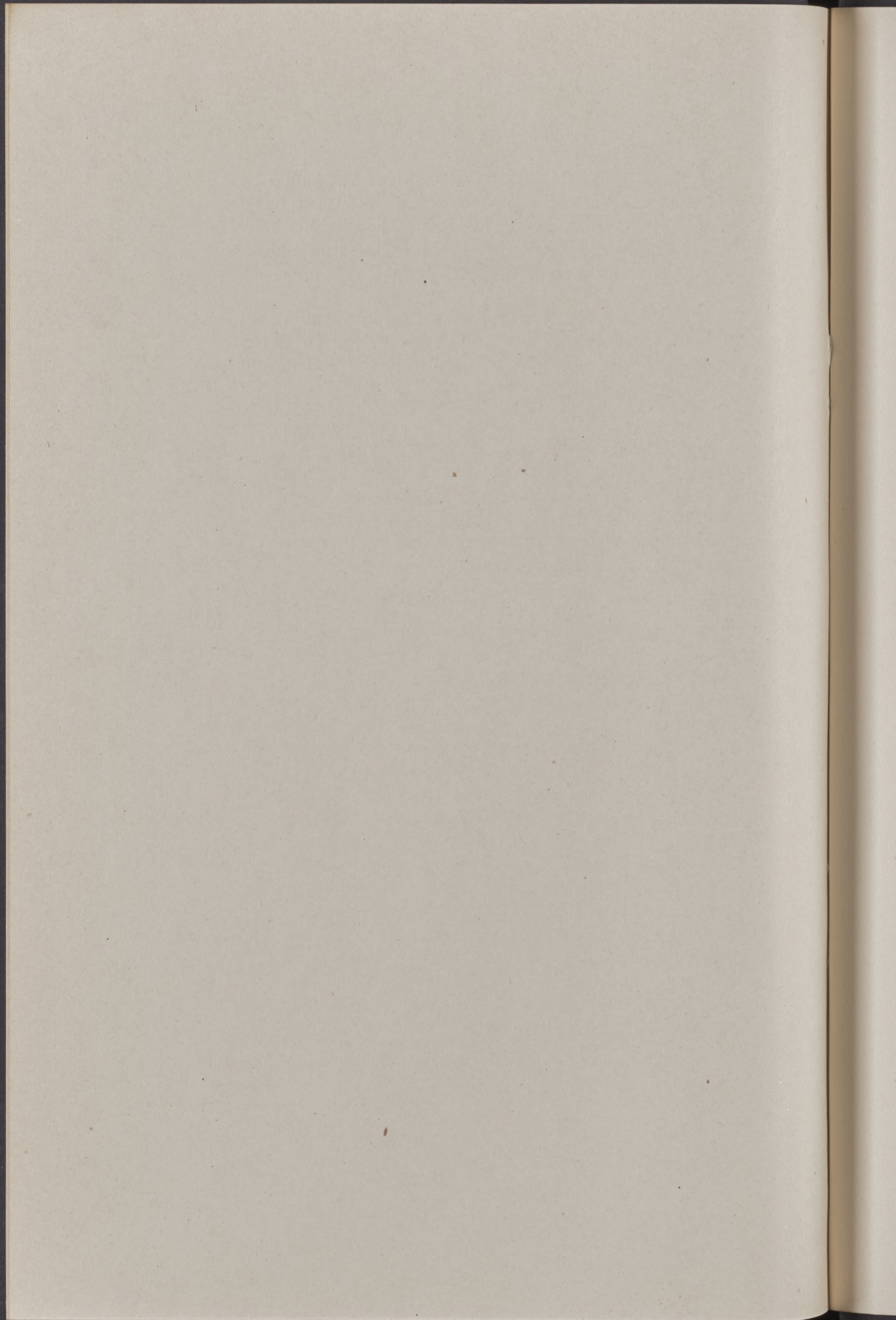
selves the question, if the accident happened in that way, was it a prudent thing for him to have taken the block away with such conditions confronting him, and these people standing immediately in front of the car?"

5. The learned trial Judge erred in refusing to direct a verdict against the plaintiff and in favor of the defendant, Farr & Bailey, at the conclusion of the taking of evidence. 10

LEWIS STARR,  
*Attorney of Appellant.*

20

30



NEW JERSEY COURT OF ERRORS AND  
APPEALS.

---

SAMUEL FIORENTINO,  
*Plaintiff-Respondent,*

v.

FARR & BAILEY MANUFACTURING COMPANY,  
*Defendant-Appellant.*

---

ACTION AT LAW.

---

ON APPEAL FROM THE SUPREME COURT.

---

BRIEF OF PLAINTIFF-RESPONDENT.

---

INTRODUCTORY STATEMENT.

This case has been tried twice and has been twice before the Supreme Court. There were two defendants, joint *tort feasons*. The first trial resulted in a verdict of \$5,500.00 against the defendant, Farr & Bailey Manufacturing Company, alone. The Supreme Court granted a new trial. The second trial resulted in a verdict against both defendants for

\$10,000. On a further rule to the Supreme Court judgment was entered in favor of plaintiff, upon his acceptance of a reduction of the verdict, against the defendant, Farr & Bailey Manufacturing Company, for \$5,500.00. That rule reserved exceptions and thus the matter comes before this Court on appeal.

Plaintiff was injured on a ferry-boat as it was docking at Camden. A passenger, he was squeezed against the heavy vehicle gate by a Farr & Bailey Manufacturing Company automobile truck until the gate gave way. Behind that machine was a truck of Adkins. It also moved forward and as the squeezing occurred or thereafter, made contact with the first automobile.

Suit was brought against three defendants, Adkins, Farr & Bailey Manufacturing Company, and the ferry company. A non-suit was entered as to the ferry company.

At the first trial the Adkins chauffeur indicated that he had prematurely started his, the second car, in gear, and that it had been driven into the first or Farr & Bailey truck. The jury returned a verdict against Farr & Bailey Manufacturing Company alone. On that testimony and such single theory it was illogical. The trial Court granted a rule and the Supreme Court, *upon the weight of the evidence*, directed a new trial. On retrial the Farr & Bailey chauffeur admitted vital facts not before developed. A new witness, J. A. Wells, testified to additional facts, witnesses called at the first trial were examined at greater length, and, at the close of the case, it was a clear question of facts and inferences as to the negligence of the Farr & Bailey chauffeur, the negligence of the Adkins' chauffeur, and of the possible concurrence thereof in injuring the plaintiff.

The trial Court makes clear the changed situation in its reply to the motion to non-suit (p. 148, l. 20, and pp. 150 & 151).

The Supreme Court on the first rule, dealt only with the one theory of the accident—a forcing of the Farr & Bailey truck ahead *solely* by a sudden blow from the rear truck, presumably cranked in gear. The new testimony, the previous testimony clarified and accentuated in detail, and the present admissions of the Farr & Bailey chauffeur present now clear questions of fact, and inferences to be drawn from facts are presented, upon which both defendants could logically and legally be found guilty.

#### TESTIMONY AND ARGUMENT.

Additional testimony or new testimony at the second trial, not brought out at the first, was in part:

*Captain Dolson* testified that this ferry-boat had a deck which slanted downward from amidship to the bow and the stern, a drop each way of eight inches (p. 167, l. 9).

*Green, Farr & Bailey's chauffeur*, admitted his truck would roll down a grade if not tightly braked (p. 199, ll. 1,2). That he had driven trucks using these same ferries for a year (l. 8); that he had had his truck first in line many times (l. 30), and knew that deckhands placed chocks in position on one side of the river and that they removed them themselves "after the boat was docked" (p. 201, l. 2). He saw passengers at the gates when he drove into position behind them (p. 201, l. 17). He knew of the Federal Steamboat Inspectors' regulation prohibiting the starting of motors until after the boat was completely docked (p. 200, l. 11). He knew

that when a boat hit the dock, if it "was not hooked," it had to rebound and then go back and be hooked (p. 202, ll. 25-32). After he had removed the chock his truck started slowly and heavily forward; it weighed altogether ten ton (p. 101, ll. 19-23). He was not on his truck, he had no helper, and the foot-brake was never used (p. 204, l. 8). As the truck moved he grabbed at the emergency brake to put more pressure on it (p. 205, l. 20). He "never took notice" of the eight-inch natural drop forward of the deck (p. 207, l. 19), he didn't notice that the crowds moving forward and the fifteen tons in weight of the two trucks accentuated this natural drop (l. 30). He took the block away without noticing these factors because, "I wasn't supposed to watch the boat" (l. 34). He took a chance and removed the chock before the boat had docked, before the gates were open, and when only one landing hook had caught (p. 208, ll. 18-26).

There was direct as well as inferential testimony of this aggravated tilt forward and to the right hand or port side.

*Captain Dolson, a witness for Farr & Bailey,* said the bow was depressed by "the passengers, the load aboard of her, all on one end" (p. 156, l. 21).

*Bridgeman Goodwin, a witness for Farr & Bailey,* testified that the downward slant "would naturally be increased, the weight on the bow of the boat would set her down," and more and more so as the passengers move forward, as he had observed many times (p. 181, ll. 8-15).

*A. J. Lex, a witness for the plaintiff,* testified that the bow was depressed below level eighteen to twenty inches (p. 113, l. 1), that the passengers "were all moving forward in order to get off as soon as the boat was docked" (p. 112, l. 21), and the list was to the "right side and forward" (l. 32).

A new witness, *J. A. Wells*, testified that the weight was on the right front corner and that this "tilted the boat" (p. 103, l. 29, and p. 104, l. 22).

*Melfi*, a witness for plaintiff, said "the boat was on one side, the ladies' side," the front right hand corner (p. 97, l. 13-33). It depressed this side of the bow "twelve to fifteen inches" below the ship level (p. 96, l. 4-10).

*Lee*, a witness for plaintiff, testified to the depressed right corner of the bow, "because there were no cars on the other side, and this side was the heaviest" (p. 84, l. 7), and the bow was thus below level (p. 82, l. 29).

*Carroll*, another witness for plaintiff, said that the crowd was moving forward (p. 56, l. 12) and the bow was depressed twelve to fifteen inches (p. 59, l. 19).

*Plaintiff*, whose face was forced down to the deck where he could clearly see the extent of the depression, testified it was "close to two feet" (p. 40, l. 33).

There was new testimony elicited from which it could be logically inferred that the natural movements of the boat and water in docking started both trucks forward slowly and heavily *and* that *the Farr & Bailey truck was already moving or actually squeezing the plaintiff when the second truck came in contact with it.*

The *plaintiff* (p. 40, l. 7), *Carroll* (p. 59, l. 5), *Lee* (p. 81, l. 9), *Wells* (p. 104, l. 30), and *Lex* (p. 113, l. 25), all testified clearly that the *Farr & Bailey* truck did not plunge or jump forward, but that it began to move slowly, and ponderously continued until stopped against the slip.

The *Adkins chauffeur*, *Waite*, at the first trial, testified, "I wouldn't swear that it wasn't; it must have been," cranking it in gear which started his

truck (p. 125, l. 19, &c.). At the second trial he testified, "As I started to crank the car, I noticed the car coming forward" (p. 120, l. 15), and he dropped down, letting it pass over him; that it stopped within a very few feet (p. 121, ll. 3-15); that there was no indication of contact with the Farr & Bailey truck ahead except a slight bending of a light metal shield in front of the radiator; nothing was broken (p. 121, ll. 24-36); that the boat hit the slip sideways in coming into the dock (p. 130, l. 20). Asked to explain what started his car he said: "*A.. There are a lot of things could have started it. Why, the incline, for one thing, would have started it; the bump. Well, there was the reaction to the bump. Why, the absorption of it, the car, the rocking of the car*" (p. 133, l. 26).

There was a cry "look out; look out." As the witnesses turned, the Farr & Bailey truck was already slowly moving, *then* the exhaust of the Adkins motor was heard and it began to move. Carroll (p. 57, l. 30); Lee (p. 80, l. 28, &c.); Melfi (p. 92, l. 35); Wells (p. 104, l. 26); Lex (p. 113, l. 25).

Both Lee and the new witness, Wells, testified *that the Adkins truck did not bump the Farr & Bailey truck into motion, but that the latter was already slowly moving when the lighter Adkins truck started, then that it overtook the others*; Lee, "I heard that motor go off on the second truck, and she come on down behind this other truck" (p. 83, l. 9). Wells, "A. Well, I heard the motor going, and the second machine *gradually following the first*. Q. And then that stopped, didn't it, the second one? A. No, *after, of course, the other machine stopped, the second machine, in the rear, had to stop by coming in contact with it*" (p. 105, l. 19). Q. And saw the second truck moving also back of it, didn't you?

A. I saw that moving *afterward, following the first truck*" (p. 107, l. 32).

The natural and inevitable forcing forward and down grade of these trucks, unprotected by block, driver or tightened brakes, by the movements of docking, was also developed at the second trial in detail.

*Captain Dolson* testified the dock pilings extending riverward ninety feet (p. 163, l. 10), and that power is reversed about twenty-five feet out from the crib (p. 163, l. 23). *Lee* noticed that the chock had been removed from in front of the Farr & Bailey truck when the boat was still about twenty feet from its slip (p. 112, l. 9). *Lee* said the boat was going into dock but about thirty-five feet or a little less distant out from its slip when the cry of "look out; look out" was shouted (p. 84, l. 14 & p. 85, l. 5). *Waitt* said the boat hit the dock sidewise as it was coming in (p. 130, ll. 10-31). *Carroll* said the boat was still six to eight feet out from its slip as the squeezing of plaintiff began (p. 61, l. 17). The bridgeman, *Goodwin*, testified that there was always a movement of water in the dock as the boats came in, a surging back and forth, increased by reversing power and resulting in vibration of the vessel (p. 180, l. 22, &c.).

*All of the above testimony was distinct from and in addition to the proof adduced on the first trial.*

This proof presented questions of fact, circumstance and inferences to be drawn therefrom, necessarily for a jury. Logically such facts and the reasonable inferences force a conclusion that the chauffeur of Farr & Bailey was so situated that he should have made observations and anticipated not only the natural forward movement of his truck down hill, but the possibility of a forward movement of the Ad-

kins truck through forces natural to the existent situation or a premature start. He heard the Adkins engine running (p. 210, l. 20). His only answer to the natural query of observations made and care taken was, "*I wasn't supposed to watch the boat*" (p. 207, l. 34).

It is the theory of the plaintiff that the chauffeur of the Farr & Bailey machine, knowing that plaintiff and other passengers were standing with their backs to his truck and but a few feet distant, knowing that, by regulation of the government and practice on the ferry, blocks were placed by ferry hands and removed only after the gates had been opened and the passengers released, he could and should have anticipated a forward movement of his truck and injury to plaintiff if he removed the block placed and required to be in front of his machine to protect against that very danger; that he could and should have anticipated a forward movement of his truck by reason of the fact that his emergency brakes were not firmly set, he was not at his wheel to operate his foot brake and his truck was on a sharply declining smooth wooden deck undergoing more and more depression because of the forward movement of a large crowd of passengers; that he could and should have anticipated such forward movement by reason of the unusual tilt and decline of the deck due to the fact that the heavy trucks and the crowd of passengers were forward and at one corner of the boat; that he could and should have anticipated forward movements of other machines in the rear of his truck due to various impulses, the Federal regulations providing for only two blocks, one to the front and one to the rear of the line; and that he could and should have anticipated a movement forward of his truck if the chock was removed, as a natural result

of a reversal of the engines, a collision with the dock, or an impact with the slip.

The charge presented this theory to the jury. The finding against both defendants was logical and in accordance with the weight of the evidence.

---

#### THE ARGUMENT OF DEFENDANT-APPELLANT.

Counsel for defendant-appellant argues that the Adkins truck was cranked in gear, that it then came in contact with the rear of the Farr & Bailey truck, "pushing it toward the front of the boat so that it struck the plaintiff." This is only one theory to be drawn from the evidence. It ignores completely a stronger theory, more consistent with the evidence, and more logical in reason, viz.: that the two trucks naturally moved forward, started by the reversing of the engines or the motion of the boat in docking and assisted by the sharp decline of the boat forward and to the right. The testimony hereinbefore quoted and cited clearly demonstrates this situation. With several theories possible of inference from the testimony, it was for the jury to determine which was most consistent with the evidence.

Counsel argues that it appeared conclusively that the driver of the Farr & Bailey truck had applied his brakes. The truck could not have moved if the brakes had been tightly applied. After the truck had started to move defendant's chauffeur then frantically grabbed at his brake levers to stop it (p. 82, l. 17 and p. 205, l. 3).

Counsel argues that the absence of the defendant's driver from the seat of his truck was not evi-

dence of lack of care. It possibly would not have been negligence if the chock still remained in front of the wheel, but when the chock was removed and the ten-ton truck stood on a down grade where it might at any moment be started by a reversing of the boat engines, which would force moveable weights forward, or, by other motions incident to docking, the only safeguards were the foot and emergency brakes operated from the seat. The foot brake was never used and the emergency brake only attempted to be more tightly applied as plaintiff was actually being crushed.

Counsel for defendant-appellant quotes from the opinion of the Supreme Court following the first trial granting a new trial *on the weight of the evidence*. The Supreme Court was then considering only one theory. Additional testimony was introduced at the second trial and has been fully cited above, supporting the more logical theory of a natural movement.

Counsel for defendant-appellant argues that this case is governed by the rule concerning intervention of an independent act of a third person. Such argument ignores the fact that the jury found or may properly have found upon an entirely different theory. But even on the theory which counsel adopts, that the first truck was impelled forward by the second, there is ample argument that defendant's chauffeur was negligent in removing the block. His testimony clearly demonstrates that he knew or should have known every element entering into a possibility or probability of an accident, at the time he removed the chock. His cross-examination (p. 198—p. 211) proves his utter irresponsibility.

In the fourth point of defendant-appellant's brief, counsel argues that the Court should not have re-

ferred to the depressed condition of the bow of the boat and permitted the jury to say that under the existing circumstances it was not prudent for defendant's chauffeur to have removed the block. It is claimed that the complaint did not cover this theory. The complaint is:

“The negligence of which the defendant complains as against the defendants, Farr and Bailey Manufacturing Company, is that, notwithstanding the fact that said ferry-boat was being docked and said plaintiff and other passengers on said ferry-boat were in front of its said automobile truck, this defendant's servants and agents in charge of and operating its said truck carelessly and negligently and prematurely removed a safety block from the front of the wheel of said truck or carelessly and negligently failed to place and maintain such block in front of the wheel of said truck or see that same was so placed and there caused to remain while said ferry-boat was being docked and in that the defendant's said servant there and then carelessly and negligently failed and neglected to apply and keep applied the brakes on said automobile truck and to remain on said truck to control and brake the same.”

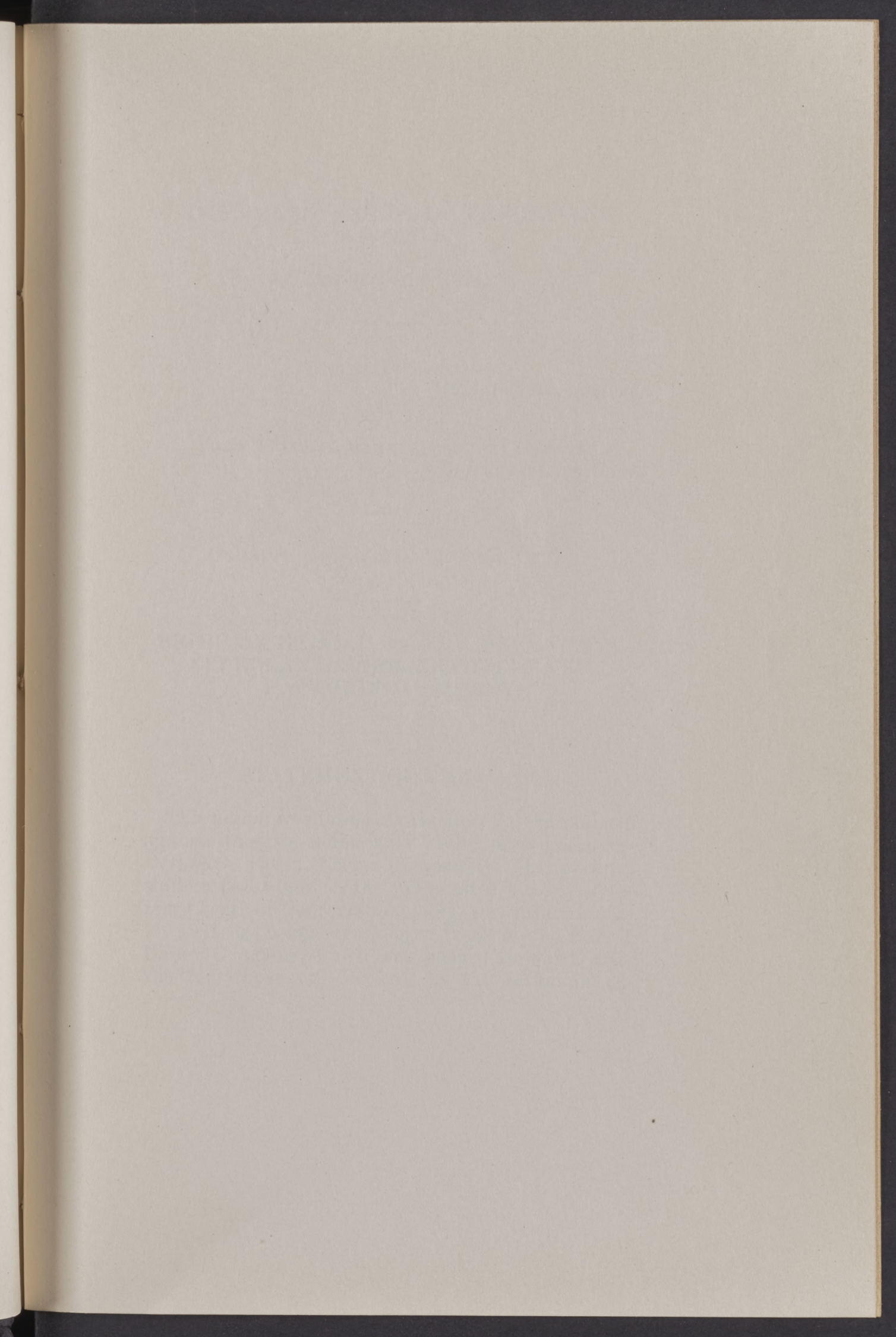
The facts were for the jury as were the inferences to be drawn from the testimony. The negligence of defendant's chauffeur was demonstrated by direct testimony, by inference, and most conclusively by his admissions under cross-examination. The trial Court in its charge (p. 217, &c.) carefully and properly submitted this case to the jury and the jury was justified in finding both defendants guilty.

ALBERT S. WOODRUFF,  
*Attorney for Plaintiff-Respondent.*











NEW JERSEY COURT OF ERRORS AND  
APPEALS.

March Term, 1924.

---

SAMUEL FIORENTINO,  
*Plaintiff-Respondent,*

v.

FARR & BAILEY MANUFACTURING COMPANY,  
*Defendant-Appellant.*

---

ON APPEAL FROM THE SUPREME COURT.

---

BRIEF ON BEHALF OF THE DEFENDANT-  
APPELLANT, FARR & BAILEY MANU-  
FACTURING COMPANY.

---

STATEMENT OF THE CASE.

This action was brought originally by the plaintiff against the two defendants above named and the Delaware River Ferry Company. The plaintiff while a passenger on the "Ocean City," one of the ferry-boats of the ferry company, was injured, May 11, 1921, by being struck by a truck of the Farr & Bailey Company, which was pushed forward, after the ferry-boat was docked, by the action of the

chauffeur of the Adkins truck, which was in the rear of the Farr & Bailey truck, cranking same while in gear, as the result of which the plaintiff was pressed against the gates of the ferry-boat and his leg broken.

When the case was originally tried, on October 31, 1921, the plaintiff was non-suited with respect to the ferry company and the jury found a verdict against the Farr & Bailey Company alone, for \$5,500.00 and exonerated the defendant, Adkins.

The Circuit Court Judge, before whom the case was tried, on November 9, 1921, allowed Farr & Bailey Company a rule to show cause for a new trial, of which the following is a copy:

“NEW JERSEY SUPREME COURT.

“Camden County.

“Samuel Fiorentino,

“Plaintiff,

“v.

“Charles Adkins, Farr &

“Bailey Manufacturing

“Company and Dela-

“ware River Ferry Com-

“pany.

“Defendants.

Action at Law.  
Cause for a New  
Trial.

“Application being made within the time provided by law, and sufficient cause appearing therefore;

“It is, on this ninth day of November, 1921,  
“on motion of Lewis Starr, attorney of Farr &

“Bailey Manufacturing Company, ordered that  
“the plaintiff, Samuel Fiorentino, and the de-  
“fendant, Charles Adkins, show cause before  
“the Justices of the New Jersey Supreme  
“Court, at the State House in Trenton, on the  
“third Tuesday in February, 1922, at the hour  
“of eleven o'clock in the forenoon, or as soon  
“thereafter as counsel can be heard thereon,  
“why the verdict of the jury in favor of the  
“plaintiff for \$5,500 against the defendant,  
“Farr & Bailey Manufacturing Company, and  
“no cause of action against the defendant,  
“Charles Adkins, should not be set aside and  
“a new trial granted;

“And it is further ordered that, in the mean-  
“time, all proceedings in said action be stayed  
“until the further order of the Court.

“In addition to the ground appearing of rec-  
“ord, this rule is allowed for the reason that  
“the jury totally disregarded its oath in find-  
“ing this defendant guilty, and relieving  
“Charles Adkins, who was personally respon-  
“sible for the plaintiff's injuries.

“Frank T. Lloyd,  
“Circuit Court Judge.”

The above mentioned rule came on for argument before the Supreme Court and was made absolute.

The following is a copy of the *per curiam* opinion of the Supreme Court allowing a new trial.

“Per Curiam:

“This was an action for personal injuries  
“based upon the contention that the accident  
“which produced these injuries was the direct  
“result of the combined negligence of the two  
“defendants. The undisputed facts are these:  
“Plaintiff was a passenger upon a ferry-boat

“crossing the Delaware River between Philadel-  
“phia and Camden. As the boat was approach-  
“ing the slip he stepped out into the wagon-way,  
“in order to disembark more speedily, and stood  
“in front of a truck belonging to the Farr &  
“Bailey Company. Just behind this truck was  
“another one owned by the defendant Adkins.  
“After the boat had entered the slip the driver  
“of the Adkins truck cranked his motor while  
“it was in gear. As a result, it started forward  
“and struck the rear of the Farr & Bailey truck.  
“Just before this occurred the driver of the lat-  
“ter truck had removed from under the wheel  
“a chuck which had been placed there to pre-  
“vent its moving, and the impact started the  
“Farr & Bailey truck forward, and it ran over  
“the plaintiff. On these facts the jury rendered  
“a verdict exonerating the defendant Adkins  
“from liability, and holding the Farr & Bailey  
“Company responsible for the accident.

“The defendant Farr & Bailey Company  
“seeks to have the verdict against it set aside  
“upon the ground that it is contrary to the  
“weight of evidence. We think this contention  
“is well founded. The theory of the plaintiff  
“seems to have been that the accident would  
“not have happened if the driver of the Farr &  
“Bailey truck had not removed the chuck from  
“under the wheel; but that act was not the  
“producing cause of the accident, nor does it  
“suggest negligence on the part of the driver,  
“for he had no reason to suppose that after he  
“had done this his car would be pushed forward  
“by the act of the driver of the truck in his rear.

“In addition, the fact that the jury, by its  
“verdict, exonerated the defendant Adkins  
“from liability for the accident, and at the same

“time declared the defendant Farr & Bailey  
“responsible for it, shows either gross incom-  
“petency or gross prejudice upon the part of  
“that body. Such a verdict ought not to be ac-  
“cepted.

“The rule to show cause will be made ab-  
“solute.”

Based upon said opinion the following rule was  
entered, setting aside the original verdict:

“NEW JERSEY SUPREME COURT.

<p>“Samuel Fiorentino, “Plaintiff, “Charles Adkins and Farr “v. “&amp; Bailey Manufactur- “ing Company, “Defendants.</p>	}	<p>Rule Setting Aside Verdict.</p>
--	---	--

“The rule to show cause—applied for by the  
“defendant, Farr & Bailey Manufacturing Com-  
“pany, why the verdict of the jury in favor of  
“the plaintiff and against the defendant, Farr  
“& Bailey Manufacturing Company and no  
“cause of action against the defendant, Charles  
“Adkins, should not be set aside and a new  
“trial granted, coming on to be heard at the  
“February Term of this Court in the presence  
“of Lewis Starr, attorney of said defendant,  
“and Albert S. Woodruff, attorney of the plain-  
“tiff, and no one appearing for the defendant,  
“Adkins, and the Court having inspected the

“record and heard and considered the argument  
“of respective counsel thereon, being of the  
“opinion that the rule to show cause allowed  
“should be made absolute, and that the verdict  
“of the jury against the defendant, Farr &  
“Bailey Manufacturing Company and in favor  
“of the plaintiff, and of no cause of action  
“against the defendant, Charles Adkins, be set  
“aside, and a new trial granted;

“It is, thereupon, by the Court considered  
“that the said rule to show cause obtained by  
“the said Farr & Bailey Manufacturing Com-  
“pany above referred to be and the same is  
“hereby made absolute, and the verdict of the  
“jury in favor of the plaintiff, Samuel Fioren-  
“tino, and against the defendant, Farr & Bailey  
“Manufacturing Company, and of no cause of  
“action against the defendant, Charles Adkins,  
“should be set aside and a new trial granted.

“Rule actually entered this 6th day of Sep-  
“tember, 1922, on motion of Lewis Starr, attor-  
“ney of Farr & Bailey Manufacturing Com-  
“pany.”

No change was made in the pleadings in advance of the new trial, which is the subject of the present appeal, and the facts developed at the second trial were substantially the same as those at the first trial, except that:

1. The chauffeur of the Adkins truck attempted to repudiate his testimony at the former trial, to the effect that he had cranked his motor while in gear.
2. The plaintiff produced testimony showing the slope of the deck of the ferry-boat and that as it ap-

proached the slip, just before the accident happened, the weight of the passengers and vehicles in the bow of the boat, depressed the surface of the deck below the slip to which it was fastened.

With respect to the first point, it is manifest that the jury did not given any weight to the changed testimony of Waite, the Adkins chauffeur, because they returned a verdict of \$10,000.00 against both defendants.

Therefore, it is perfectly manifest that the proximate cause of the plaintiff's injury was the act of Waite in cranking the motor while it was in gear, as the result of which his truck was started and struck the rear of the Farr & Bailey truck and started the latter in motion, before it came in contact with the plaintiff.

After the second trial, at which a verdict for \$10,000 was returned in favor of the plaintiff, against both defendants, a rule to show cause for a new trial was allowed April 23, 1923, upon the application of the Farr & Bailey Company, which rule contained a reservation to all of the exceptions taken at the trial.

On the argument of this rule the Supreme Court found that the damages were excessive and entered a rule, if the plaintiff would consent to have the verdict reduced to \$5500, he may enter judgment for that amount, otherwise the rule to show cause would be made absolute (C. p. 233, l. 10).

The plaintiff entered judgment against the defendant, Farr & Bailey Manufacturing Company for \$5500 (C. p. 234) from which judgment the present appeal is taken (C. p. 235). The reasons for reversal filed in this Court appear on page 236, *et seq.*

## FACTS.

As the ferry-boat on which he was a passenger approached the slip in Camden, the plaintiff was standing in that portion of the boat reserved for vehicles, close to gates, which were maintained in front thereof. In the rear of the plaintiff was a truck owned by Farr & Bailey, and immediately in the rear of latter truck was another owned by the defendant, Adkins.

After the ferry-boat had entered the slip and the deck hands were about to fasten the same to the bridge, the chauffeur of the Adkins truck cranked his motor while it was in gear, as a result of which the truck started, the chauffeur threw himself on the deck to avoid injury to himself, the truck partially passed over his body, the wheels not striking him, and came in contact with the rear of the Farr & Bailey truck, pushing it toward the front of the boat so that it struck the plaintiff, who was then standing near the gates, against which he was thrown and injured.

The driver of the Farr & Bailey truck removed a chuck block, which had theretofore been placed in front of the right-hand wheel of his truck, just before the Adkins truck started forward.

## ARGUMENT.

The complaint, as originally filed, charged the following negligence against the Farr & Bailey Company:

1. The driver carelessly, negligently and prematurely removed a safety block in front of the wheel

of the truck and carelessly and negligently failed to place and maintain such block in front of the wheel, or see that the same was so placed, and there caused to remain while the ferry-boat was being docked.

2. That the driver carelessly and negligently failed and neglected to apply and keep applied, brakes on the truck, and remain on the truck to control and brake the same (C. p. 5, l. 10).

It appeared conclusively that the driver of the Farr & Bailey truck did apply his brakes when the truck stopped on the front of the ferry-boat and that these brakes were not released until after the accident happened. This will be shown by extracts of the testimony as follows:

Mathew M. Dolson, C. p. 157, l. 18.

Gus Goodwin, C. p. 176, l. 32.

Frank Green, C. p. 194, l. 29.

Frank Green, C. p. 194, l. 17.

There was serious contradiction of this testimony. The Farr & Bailey truck was the first one in the bow of the boat and would have gone overboard as it came on if the brakes had not been applied.

#### FIRST.

Manifestly the absence of the driver from the seat of the Farr & Bailey truck, at the time of the accident, was no evidence of lack of care. He was obliged to leave the truck to crank his engine (C. p. 195, l. 22), and it does not appear that any rule of reasonable conduct would oblige him to remain on the truck, all the time it was on the ferry-boat, to guard against any emergencies which might arise.

It is perfectly obvious, therefore, that the plaintiff must, for the affirmance of the judgment ap-

pealed from, rely exclusively upon the other element of negligence alleged, to wit: removal by the driver of the Farr & Bailey truck of the block just at the same time the driver of the Adkins truck cranked the motor while it was in gear. Upon this ground alone, the learned trial Judge permitted the case to go to the jury on the question of negligence of the defendant, Farr & Bailey Company.

The propriety of the ruling is covered by the first, second and fifth reasons for reversal (C. p. 236) based upon the refusal of the Court to non-suit, direct a verdict for the defendant and charge in accordance with requests, raising the same questions (C. pp. 151, and 228).

On this point, the sole issue to be determined is whether or not the removal of the block, by the driver of the Farr & Bailey truck was the proximate cause of the plaintiff's injury, and as incidental to this question, whether such driver was reasonably obliged to anticipate that at the same moment of the removal of the block, the driver of the truck, in the rear, would perform the unusual act of starting his vehicle while the motor was in gear, so as to propel it forward suddenly, thereby pushing the Farr & Bailey truck ahead even with the brakes on.

The Supreme Court, when this case was before that tribunal, upon the first rule to show cause for a new trial, disposed of this question by the following language, which appears in the *per curiam* opinion of the main court:

“The theory of the plaintiff seems to have  
“been, that the accident would not have hap-  
“pened if the driver of the Farr & Bailey truck  
“had not removed the chuck from under the  
“wheel, but that act was not the producing  
“cause of the accident, nor does it suggest neg-  
“ligence on the part of the driver, for he had no

“reason to suppose that after he had done this,  
“his car would be pushed forward by the act of  
“driver of the truck in his rear.”

We submit that the Supreme Court adopted the proper view with respect to the responsibility of the Farr & Bailey Company, in holding that the intervening and efficient cause, resulting in the plaintiff's injury, was the negligent act of the driver of the Adkins truck, which started the latter in motion and pushed the Farr & Bailey truck into the plaintiff.

Mr. Justice Depew, in *Cuff v. Newark, etc., R. R. Co.*, 35 L. 17, states the rule applicable to such cases as follows:

“The intervention of the independent act of  
“a third person between the wrong complained  
“of and the injury sustained, which act was  
“the immediate cause of the injury, is made a  
“test of that remoteness of damage but forbids  
“its recovery.”

This statement of the law was approved by this Court in *D. L. & W. v. Salmon*, 39 L. 299, at p. 308.

There seems to be no doubt about the fact that the rule laid down by Mr. Justice Depew has been recognized in New Jersey continuously since that case was decided in 1871, but, of course, the difficulty sometimes arises in applying such rule of law to the particular facts of any given situation. The primary inquiry is whether the driver of the Farr & Bailey truck, in the exercise of ordinary care and prudence, was obliged to anticipate that when he removed the block from in front of the wheels of the truck, upon which the brakes were fixed, that the driver of the truck in the rear would do the unusual and unnatural thing of cranking his motor while in gear. It would seem that the situation would be the

same as if the truck in the rear was deliberately driven into the forward one. Certainly a chauffeur should not be obliged to anticipate this sort of an act.

There has never been any claim in this case that the Farr & Bailey truck would have been propelled forward had it not been for the action of the driver of the truck in the rear. So it follows that the direct cause of the plaintiff's injury was the act of the driver of the Adkins truck.

We submit as a matter of law that the driver of the defendant's truck was not obliged to assume that his truck would be pushed forward by the act of a third person at the very moment that he removed the block.

The rule with reference to anticipation of intervening cause or injury is generally stated in 29 *Cyc.*, 501, as follows:

“If the occurrence of the intervening cause  
“might have been anticipated such intervening  
“cause will not interrupt the connection be-  
“tween the original cause and the injury. Thus  
“one who fails in his duty to remedy a defective  
“or dangerous condition is liable for injuries  
“resulting therefrom, although the immediate  
“cause of the injury is a wind or rainstorm  
“usual at the time of the injury, or a snow-  
“storm. Where an injury might reasonably  
“have been anticipated from the negligent act,  
“notwithstanding the intervention of an inde-  
“pendent agency, the casual connection is not  
“broken and the original wrong-doer is liable  
“for the injury sustained. But where the in-  
“tervening agency could not have been antic-  
“ipated such agency becomes the proximate  
“cause. And a person is not bound to anticipate  
“the criminal acts of others by which damage

“is inflicted and hence is not liable therefor. The  
“failure of another to guard against the negli-  
“gence of defendant will not prevent it from  
“being proximate.”

In order to render the defendant liable by reason of the removal of the block, it must be established that the defendant's driver, when he removed the block, was reasonably expected to anticipate that his truck would be pushed forward by the act of the driver of the one in the rear. We submit that the measure of duty imposed upon the driver of the Farr & Bailey truck was not of such a character as to have required <sup>him</sup> to anticipate the probability or even the possibility, of the driver of the Adkins truck starting his motor while connected with the wheels.

An important case decided by the New York Court of Appeals, illustrating the principles of law involved here, is *Leeds v. N. Y. Telephone Company*, 178 N. Y. 118, 70 N. E. 219, in which the facts were as follows:

“Defendant, two years prior to the accident,  
“fastened one of its wires to a chimney, thence  
“at a height of thirty-nine feet across a street.  
“A third party erecting a building with a der-  
“rick, while lifting an iron girder, struck the  
“wires and pulled the chimney over, part of the  
“bricks striking plaintiff. There was evidence  
“that the chimney had been weakened by age  
“and decay and the negligence of the defendant  
“in maintaining its wire upon it, under the cir-  
“cumstances, is alleged and is relied upon as  
“constituting an efficient and proximate cause  
“of the injury sustained but the Court found  
“that the negligence of the iron works was an  
“intervening and the responsible cause of the

“accident. The negligent conduct of the persons in using the derrick upon the building was an unusual occurrence and not such as should have been foreseen by the defendant.”

### SECOND.

Another ground upon which the application to non-suit was based, is the claim that the plaintiff was guilty of contributory negligence, at the time of the accident, in that he was standing in that part of the ferry-boat reserved for vehicles.

We have not been able to find any direct authority upon this question in New Jersey, although the Supreme Court of Pennsylvania, in the well-considered case of *Hopkins v. Ferry Company*, 73 *Pa. Rep.* p. 1104 held that a passenger who stands in the part of the ferry-boat reserved for vehicles assumes the risk of injury incident to the place occupied.

We submit that the logic and reason of the opinion of the Supreme Court of Pennsylvania is applicable to this case and should be adopted in New Jersey.

### THIRD.

A part of the charge of the learned trial Judge was as follows:

“Now, coming to the other company, Farr & Bailey Company, you have heard the testimony as to the removal of this block. There is no doubt in the world it was done; no doubt in the world that it ought not to have been done. It was not his duty to do it and it was a wrongful thing to do” (C. p. 221, l. 18).

This language was excepted to (C. p. 227, l. 26), and is urged as one of the causes of reversal (C. p. 237, l. 10).

We submit that the learned trial Judge erred in making this statement. It was practically a statement to the jury by the Court that the driver of the truck was guilty of a negligent act when he removed the block from the front of one of the wheels of his truck, and upon the theory upon which the case was submitted to the jury, whether such act, under the circumstances was, or was not negligence, was a matter to be determined by the latter. The effect of the statement was to give the jury the impression that, the removal was negligence and they were to ascertain only if such removal was the proximate cause of the injury.

The ferry company provided the blocks to be put in front of wheels. Apparently there were no regulations requiring how these blocks should be used, although the drivers of machines were permitted by the ferry company to remove the blocks (see testimony of Captain Dolson, C. p. 143, l. 24).

#### FOURTH.

The fourth reason for reversal (C. p. 238, l. 20) refers to that portion of the Court's charge, found on page 222, l. 17.

We submit that the language used in the charge was not justified by the issue raised in the pleadings. There was no statement in the complaint basing the right to recover by reason of the shape or condition of the deck, or the depressed bow. The Court puts to the jury this query: "Under these circumstances, you can ask yourselves the question, If "the accident happened in that way (referring to

“the depressed condition of the bow of the boat)  
“was it a prudent thing for him to take the block  
“away with such conditions confronting him, and  
“these people standing immediately in front of the  
“car?”

The complaint does not contain any averment charging negligence with respect to removal of the block under the conditions mentioned in the charge. Furthermore there is no testimony in the case to indicate that the removal of the block, because of the depressed condition of the bow, would have caused the accident, had it not been for the propelling force of the Adkins truck, in the rear.

Manifestly, the learned trial Judge, in this portion of the charge, and by the question addressed to the jurors, injected into the case, at the last moment, a matter which was not comprehended by the pleadings.

The complaint alleges the removal of the block to be negligent, without any reference to the condition of the deck. The inference to be gathered from the language employed by the Court is that the removal of the lock under ordinary conditions might not be a negligent act, but he permitted the jury to decide whether it would be evidence of carelessness, in case they find that the bow of the boat was lower than the rest of the deck, or even below the level of the slip. This brought into the case an issue which is not covered by the pleadings and we submit that the learned trial Judge unquestionably erred in allowing the jury to base a finding of negligence upon such a situation as disclosed by this particular portion of the charge.

The attention of the learned trial Judge was particularly directed to this situation by exception found on page 227, l. 32.

The language complained of permitted the jury

to base a finding of negligence against the Farr & Bailey Company upon a condition, which added a cause of action not originally set out in the complaint, to wit: that while the removal of the block, under ordinary conditions, might not be negligent, it was wrong and imposed responsibility upon the defendant if the boat was tilted toward the slip.

The reasons for reversal founded upon the learned trial Judge's refusal to charge as requested, have been discussed herein under those points referring to the first, second and fifth reasons.

We submit that the judgment should be reversed.

LEWIS STARR,  
*Attorney of Defendant, Farr  
& Bailey Company.*

