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New Jersey Court of Errors and Appeals

Notice of Appeal

(Filed, April 3, 1923)

NEW JERSEY SUPREME COURT

MIDDLESEX COUNTY

GRACE M. GIBESON,

Plaintiff,

vs.

DAVID SKIDMORE,

Defendant.

20

Action at law

*To the above named defendant and Messrs. R. E.
and A. D. Watson, his Attorney:*

Take notice that the defendant appeals to the
Court of Errors and Appeals of the State of New
Jersey from the whole of the judgment entered in
this cause on the following grounds:

1. Because the Trial Judge at the trial of the
said cause in the New Jersey Supreme Court at
the Middlesex Circuit directed a verdict in favor
of the defendant, whereas the question of the lia-
bility of the defendant should have been left to
the jury.

2. Because the Trial Judge in his direction of a
verdict determined, as a matter of law and fact

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Notice of Appeal

that the plaintiff was not an invitee of the defendant, whereas it was a question for the jury as to whether or not the plaintiff was an invitee of the said defendant.

10 3. Because it was a question for the jury as to whether or not the defendant was guilty of negligence, which caused the injuries sustained by the plaintiff.

4. Because there was evidence in the case from which the jury could infer an invitation to the plaintiff by the defendant to use the passageway or room in which she received her injuries by reason of the negligence of the defendant.

20 5. Because it appeared that the defendant in placing the hooks for the use of the attendants in the library including the plaintiff thereby extended to those attendants of whom the plaintiff was one an implied invitation to use the hooks, and it therefore became his duty to abstain from acts of negligence which caused the injuries to the said plaintiff.

30 6. Because at the close of the testimony on both sides it was a fair question of fact for the jury as to whether or not the plaintiff was led by the conduct of the defendant in placing the hooks for the coats in the room back of the library to believe that the same were intended to be used in the manner in which the plaintiff used them, and that such use was acquiesced in and was in accordance with the intention or design for which the hooks were adapted and prepared or allowed to be used, and it thereby became a further question for the jury as to whether or not the defendant extended an implied invitation to the plaintiff to use the
40 said room and hooks as above set forth, and the question of the negligence of the said defendant

Notice of Appeal

in leaving open the trap door became also a question for the jury and the said questions should have been submitted to the jury and not determined by the Court as questions of law and fact.

7. Because the said Court erroneously by its direction of a verdict determined the questions of fact in a case, which should have been submitted to the jury. 10

8. Because the said Court decided that the proofs in the case definitely determined that the hooks were put up at the instance of Mrs. Green, who was acting librarian for her personal use and decided that the testimony shows that it was done at her instance and for the benefit of herself or those who were with her, or whatever the case may be, and not at the instance of the defendant, whereas the proofs did not so definitely determine, but there was a question which should have been submitted to the jury under the proofs as to whether or not the hooks were put up at the instance of Mrs. Green for her personal use and those who were with her or whether they were put up by the defendant for the use of persons using the library with his permission and consent, thereby extending to such persons an implied invitation to use the hooks, and a question for the jury also as to whether or not the conduct of the defendant manifested an intention and design that the hooks should be used in the way for which they were adapted and prepared and allowed to be used. 20 30

9. Because in divers other respects the action of the said Court in directing a verdict was erroneous and contrary to law. Because for said reasons the Judgment should be reversed and a new trial granted. 40

Dated, New Brunswick, N. J., March 31, 1923.

FREEMAN WOODBRIDGE,
Attorney for Plaintiff and Appellant.

**TRANSCRIPT OF PLEADINGS FOR
TRIAL**

Complaint

(Filed, July 5, 1922)

10

NEW JERSEY SUPREME COURT

MIDDLESEX COUNTY

GRACE M. GIBESON,		Plaintiff,
vs.		
DAVID D. SKIDMORE,		Defendant.

20

Freeman Woodbridge, Esq., attorney for plaintiff.

R. E. & A. D. Watson, Esqs., attorneys for defendant.

Summons issued July 1st, 1922.

The plaintiff, Grace M. Gibeson, who resides in the Borough of Highland Park, County of Middlesex and State of New Jersey says:

30

1. That on or about the 21st day of March, 1922, the said defendant, David D. Skidmore was the owner and in occupation and possession of a certain house on Second Avenue in the Borough of Highland Park, County of Middlesex and State of New Jersey.

2. The said David D. Skidmore leased and rented the first floor of the said house to the Highland Park Library Association for a Free Library, said lease being made to a certain person

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Complaint

or persons individually for use of the voluntary Association which conducts, controls and operates a Free Circulating Library and Reading Room in the Borough of Highland Park.

3. That on or about the said 21st day of March, 1922 while the said plaintiff was lawfully on the said first floor of the said premises owned by and in the control and occupation of the said defendant on Second Avenue in the Borough of Highland Park without negligence on her part, she, the said plaintiff, fell into an open trap door leading into the cellar or basement of the said premises, with great force and violence. 10

4. The said trap door had been negligently and carelessly left open by the said defendant who was then in control and operation of the same with knowledge that the said first floor of the said premises was in use by the said plaintiff and other persons as a Free Library and Reading Room in the Borough of Highland Park, and with full knowledge of the dangers of said trap door, and the said defendant failed to give any warning or notice of the said trap door or that the same was left open and unguarded. 20

5. By reason of her said fall through the said trap door so as aforesaid carelessly and negligently left open by the said defendant without warning or notice to the said plaintiff and without negligence on her part the said defendant received and sustained severe injuries about the head, body and limbs and was bruised and cut about the head, body and limbs and received internal injuries and her teeth were loosened and destroyed and her eyes severely injured so that she was unable to see as clearly and plainly as 30
40

Complaint

before and the said plaintiff also sustained and underwent great pain and suffering and has since the date of the said injuries, to wit, March 21, 1922 been hindered and prevented from attending to her necessary business and affairs and has
10 from the said time down to the present sustained and undergone great pain and suffering and her limbs and body have been swollen and sore and the said plaintiff has been sick, sore and disordered and prevented from attending to her necessary business and affairs and household duties and also sustained permanent injuries and will be obliged to sustain and undergo great pain and suffering for the term of her natural life, and also
20 be obliged to expend and lay out large sums of money in and about being cured of her said injuries for medical services and medicines and surgical attendance and attention and also for nursing and was for a long space of time, to wit from thence hitherto confined to her bed in her home in Highland Park on account of said injuries.

5. Plaintiff claims damages in the sum of \$10,000.

FREEMAN WOODBRIDGE,
Attorney for Plaintiff.

Answer

(Filed, July 19, 1922)

The defendant, David D. Skidmore, in answer to the complaint says that:

1. Defendant admits that he was the owner of the house referred to in the first paragraph but denies that he was in occupation and possession of the entire house. Defendant was in occupation and possession of all of the said house except the store and store-room on the first floor. 10

2. Defendant denies the allegations of the second, third, fourth and fifth paragraphs.

FIRST DEFENSE.

1. At the time the accident mentioned in the complaint happened, plaintiff was a trespasser on the private property of the defendant. 20

SECOND DEFENSE.

1. The negligence of the plaintiff contributed to the said alleged accident.

R. E. & A. D. WATSON,
Attorneys for Defendant.

Reply*(Filed, July 20, 1922)*

The plaintiff denies every allegation of the Answer of the said defendant except so far as
 10 the same admits the allegations of the said Complaint.

FREEMAN WOODBRIDGE,
 Attorney for Plaintiff.

Postea

NEW JERSEY SUPREME COURT

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MIDDLESEX COUNTY

GRACE M. GIBESON, vs. DAVID D. SKIDMORE,	Plaintiff, Defendant.	}	Action at Law.
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30 This case was tried before Hon. Frank T. Lloyd, Circuit Court Judge, with a jury at the Middlesex Circuit on November 8th and November 9th, 1922. The said Judge directed the jury to return a verdict against the plaintiff in favor of the defendant, and the jury did accordingly return a verdict against the plaintiff and in favor of the defendant.

FRANK T. LLOYD,
 Judge.

40

Judgment

NEW JERSEY SUPREME COURT

GRACE M. GIBESON,					
	vs.	Plaintiff,	}	Action at Law.	10
DAVID D. SKIDMORE,		Defendant.			

It is ordered that judgment be and hereby is entered in favor of defendant and against the plaintiff with costs to be taxed *nisi*.

Entered November 29, 1922, on motion of 20

R. E. & A. D. WATSON, Attys.

Testimony

NEW JERSEY SUPREME COURT

MIDDLESEX COUNTY CIRCUIT

10

September Term 1922.

GRACE M. GIBESON,

VS.

DAVID D. SKIDMORE.

20 Transcript of stenographer's notes of evidence
in the above entitled cause, taken before HON.
FRANK T. LLOYD, Circuit Court Judge, and a jury,
at the Middlesex County Court House in the City
of New Brunswick, New Jersey, on the eighth day
of November, A. D. 1922, at 2.15 p. m.

Appearances:

Freeman Woodbridge, Esq., attorney for the
plaintiff.

30 Messrs. R. E. and A. D. Watson, Russell E.
Watson, Esqs., (Present), attorneys for the
defendant.

A jury being empanelled and found satisfac-
tory, they were sworn.

Mr. Woodbridge opens the case for the plaintiff.

Mr. Watson opens the case for the defendant.

40 Mr. Woodbridge: Mr. Watson, will you let me
have the lease?

Grace M. Gibeson—Direct

Mr. Watson: Yes, sir.

Mr. Woodbridge: I offer in evidence first a lease dated January 24th, 1922, made by David Skidmore, of the Borough of Highland Park, to Elmer Boyd, of the City of New Brunswick, County of Middlesex and State of New Jersey, of 10 the store and store room located on North Second Avenue, known as number 9, on first floor, with access to rear entrance; also use of sink, and water, with the understanding that said store be used as a library. Should the library be discontinued at any time, then the same may be used by the Home News Publishing Company. Mr. Boyd acted as trustee for a voluntary library association, it appears. "The party of the first part agrees to provide heat free, if the said party 20 of the second part, or whoever may take the library over, pays for the radiator and its installation." The annual rental was five hundred and forty dollars, payable monthly. Signed David D. Skidmore and Elmer B. Boyd. Mr. Watson said I need not have the subscribing witness here.

Mr. Watson: That is the lease. No doubt of it.

Lease entered in evidence and marked Exhibit 30 P-1.

GRACE M. GIBESON, the plaintiff, being duly sworn according to law on her oath, saith:

Direct-examination by Mr. Woodbridge:

Q. Miss Gibeson, where do you live? A. Highland Park.

Q. Are you the plaintiff in this case? A. I am.

Q. Do you remember the 22nd day of March, 40 1922? A. 21st day.

Grace M. Gibeson—Direct

Q. Where were you at that time? A. I went to the Highland Park library.

Q. Where is that located? A. North Second Avenue.

10 Q. Number 9, you think? A. I don't know as to the number.

Q. It was the 21st, was it, of March, or the 22nd? A. March 21st.

Q. What did you go there for? A. To assist Mrs. Green.

Q. What was she doing? A. She was acting librarian.

Q. Did you go there by request? A. I did.

20 Q. And were different ladies of Highland Park requested to go there from time to time? A. We were.

Q. What time did you go there, Miss Gibeson? A. About seven o'clock.

Q. Who did you find there? A. Mrs. Green.

By the Court: Q. In the morning, or evening? A. Evening.

By Mr. Woodbridge: Q. Who else did you find there? A. A number of children, and adults.

Q. The children were there to help? A. No.

30 Q. What were they there for? A. To exchange books.

Q. Did another lady come in afterwards? A. She did.

Q. Who came in? A. Miss Esther Reames.

Q. When you got there Mrs. Green was there. Tell us what you did? A. Mrs. Green directed me to a hallway in the rear, and to the left of the building.

40 Q. To the left of the building as you go in? A. Yes. To the left of the room, the library.

Grace M. Gibeson—Direct

Q. Where did that hallway lead to, do you know? A. I do not.

Q. What did you do when you got in? Was the door open? A. The door open?

Q. Yes. A. Mrs. Green opened the door.

Q. Into the hallway? A. Yes.

10

Q. And where did that hallway lead out to? Did you see where it went to? A. I could not, but she directed me to hang my hat and coat on a hook.

Q. Where was the hook? A. In this hallway.

Q. What did you do as the result? A. I hung my niece's coat and hat on the second hook, as she accompanied me. I then hung my own hat and coat on the third hook.

Q. How many hooks were there, there— A. I couldn't say as to that.

20

Q. What was on the first hook? A. Mrs. Green's hat and coat.

Q. How old is your niece, who accompanied you? A. Nine years old.

Q. Little girl. A. Yes.

Q. She was not there to help that night, she just went along with you? A. Just for company.

Q. When you went into this hallway to hang your hat and coat on the hook, was there anything that attracted your attention? A. Nothing.

30

Q. How was the floor? A. Solid floor.

Q. Was there any opening there at that time at all? A. There was not.

Q. Did you have anything there to call your attention to any opening? A. I did not.

Q. Now, we will assume that this place here is the hallway. You just went in and hung your hat and coat up like that (indicating)? A. I did.

Q. And turned around and walked out? A. I did.

Q. What did you do then? A. I then went into

40

. Grace M. Gibeson—Direct

the library room and assisted Mrs. Green in giving out books to borrowers.

Q. How long did you work there at that time?

A. Until closing time, which I presume was about 9:15.

10 Q. At closing time state what you did? A. I went to this hallway and got my niece's hat and coat, gave them to her, and returned to get my own hat and coat, when I fell through a trap door.

Q. What was the condition of the trap door when you fell through it? A. It was an open trap door.

Q. Had that trap door been open when you went in there to hang it up? A. It had not.

20 Q. Where did you fall to? A. To the cellar below, the basement.

Q. Where did you strike? What part of your body did you strike? A. I struck my spine. I injured my limbs, both legs, I sprained my left wrist, I had lumps on the back of my head, and also a lump on the top of my head.

Q. Any other part of your body did you strike? A. Well, in fact, I was bruised all over, Judge.

Q. What did you do? Were you struck unconscious? A. I don't remember anything.

30 Q. What was the next thing you knew? A. The next I knew, Miss Reames was to my assistance.

Q. Where did she come to your assistance? A. I was endeavoring to get up the steps.

Q. Do you recall calling to her? A. I do not.

Q. What happened? Did she help you up the stairs? A. She did.

40 Q. I don't want to lead you. Answer my questions as fully as you can. What did she do when you got upstairs? A. She got a chair for me, and then Mrs. Skidmore gave me a glass of water.

Grace M. Gibeson—Direct

Q. How long did you remain there then? A. I would say about a half hour.

Q. What did you do then? A. Then I went home.

Q. Out loud, please? A. I went home.

Q. Who went home with you? A. My little niece. 10

Q. What was your condition on your way home? A. I vomited at intervals on my way home.

Q. When you got home what happened to you? A. My sisters, I told my sisters what had happened, and they sent for my brother, Mr. Harry Gibeson.

Q. Well, did you do anything then? Did you take a train and go down to Coney Island, or anything of that kind? A. Hardly. 20

Q. What did you do? A. Well, I vomited after I got home, and my sisters gave me some aromatic spirits of ammonia, and then when my brother got to my home he 'phoned for Doctor Smith.

Q. Did you go to bed? A. Oh, yes. My sisters helped me to bed.

Q. How long did you remain in bed? A. Two weeks.

Q. During that time what were your injuries? Did you observe your injuries? A. Yes, indeed. 30

Q. What were they? A. The injury to the back of my spine, I had pains all the time, and terrible bruises, and suffered intensely.

Q. How about the bruises on your head? A. That also troubled me greatly.

Q. How about the bruises on your limbs? A. They were bruised very much.

Q. After you got up and about again were you confined to your house? A. Yes. I came down-stairs. 40

Q. How often did the doctor come to see you,

Grace M. Gibeson—Direct

Miss Gibeson? A. If I remember correctly I think Doctor Smith made three or four calls.

Q. What did you pay the doctor? A. I haven't paid the doctor as yet.

Q. Were you employed at the time? A. I was
10 not.

Q. Where was the last place you had been employed, Miss Gibeson? A. The Home News Publishing Company.

Q. At what? A. Doing bookkeeping and general office work.

Q. What salary had you received?

Mr. Watson: I object.

A. Fifteen dollars.

Mr. Watson: She was not employed at
20 the time of the accident.

Q. How lately had you been employed at the Home News office? A. Until February 25th.

Q. So you had been out less than a month? A. Yes.

Q. Were you about to take other employment? A. I was.

Q. Where were you to take it? A. In Newark.

Q. As what? A. Bookkeeping and general office work.

30 Q. You are a bookkeeper? A. I am.

Q. And have had considerable experience in that? A. I have.

Q. For how long a period, Miss Gibeson? A. For a number of years.

Q. What was the salary that you were getting as bookkeeper? A. Fifteen dollars.

Mr. Watson: I object to what she was getting. She said she was unemployed.

The Court: She had been employed,
40 however. She said she had been out of employment for a month. You can only

Grace M. Gibeson—Direct

judge what a person can make by what they did make. Let her answer.

By the Court: Q. What were you getting at the Home News? A. Fifteen dollars per week.

Q. What were you to get at the new place? A. Well, I hadn't decided.

Q. You hadn't made any terms? A. No, I hadn't made any terms. 10

By Mr. Woodbridge: Q. Miss Gibeson, do you notice any results from it now? A. I do.

Q. What do you notice? A. Well, I have great difficulty in walking.

Q. Where do you feel it? A. At the base of the spine.

Q. Is there any sign there yet? A. Well, I don't know as to that. 20

Q. Do you feel a bruise there yet? A. I do.

Q. How about your head? A. That pains me continually.

Q. Do you walk as well as you did? A. I do not.

Q. What has been your state of health since the accident? A. Very good.

Q. What is that? A. Very good.

Q. Since the accident? A. Oh, since the accident? 30

Q. Yes. What has been your general state of health since the accident? A. Very poor.

Q. What was your state of health before the accident? A. Very good.

Q. Did you have pretty steady employment before the accident? A. Yes, I did.

Q. Have you taken any employment at all since the accident, Miss Gibeson? A. I have not.

Q. Why not? A. Because I wasn't able to.

Q. Where do you feel pain now, if any? A. At the base of the spine, and my head pains me. 40

Arthur L. Smith—Direct

My left wrist, I have trouble with that, it is sprained.

Q. Your left wrist too? A. Yes.

Q. How about the use of your hand? A. Well, I have difficulty in using it

10 Mr. Woodbridge: Cross-examine. Dr. Smith is here and wants to get away. I wonder if it would be any harm to call him before Miss Gibeson is cross-examined.

Mr. Watson: That is all right.

The Court: Let him be called
Witness withdrawn.

20 ARTHUR L. SMITH, a witness produced on behalf of the plaintiff, being duly sworn according to law on his oath, saith:

Direct-examination by Mr. Woodbridge:

Q. Doctor Smith, you are a practicing physician in the City of New Brunswick? A. I am.

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

30 Q. You were called to attend Miss Grace Gibeson? A. Yes, sir.

Q. When was it, Doctor, do you know? A. March 22nd, I think, was the first time I saw her.

Where did you see her? A. At her home.

Q. Highland Park? A. Highland Park.

Q. Where was she? A. In bed.

40 Q. What did you find about her, Doctor? A. She was badly bruised, what is commonly called black and blue, her hip, her whole thigh, right side, and large spots on her back, and all the way to the ankle, different spots. And her left wrist seemed swollen and painful, and there were

Arthur L. Smith—Direct

bruises on the back of her head. No skin broken, no bones broken.

Q. What would the swelling of the left wrist indicate, that it had been sprained in some way?

Mr. Watson: Let the Doctor tell.

Q. What would it indicate? A. Sprained wrist. 10

Q. You didn't know how those bruises had occurred? A. No.

Q. They might have occurred from a severe fall? A. Yes.

Q. Doctor, how long did she stay in bed?

The Court: No dispute about that, is there, Mr. Watson? She said two weeks in bed.

Mr. Watson: I don't know. 20

A. I saw her the last time on the 2nd of April. That was about ten days after. I haven't seen her since then. She was in bed then when I last saw her.

Q. How were the bruises getting on? A. Fairly well. They were doing all right.

Q. During that period, Doctor, would those bruises be attended with pain? A. Yes, surely.

Q. Quite severe pain? A. Well, that is relative. There would be some pain, surely. 30

Q. Have you seen her again recently? A. Yes.

Q. Have you made an examination of her? A. Yes, sir.

Q. What evidence do you find now, Doctor, if any, of the injury? A. I don't see any evidence of the injury. No physical evidence at all.

Q. No physical evidence? A. No, sir.

Q. Do you find evidence of a bruise at the base of her spine? A. No. She is tender there. She 40

Arthur L. Smith—Direct

says it hurts her, but there is nothing I can see myself. It looks just like anybody else's spine.

Q. That is subjective, isn't it? A. The pain is subjective.

Q. Is there any lameness about her at all? A.
10 I notice she limps, I saw she limped.

Q. Might that limp come from such a fall, and bruises as you saw there? A. Yes.

Q. Now with regard to vomiting immediately after the fall, where she struck on the head, what would that be evidence of? A. Slight concussion.

Q. Of the brain? A. Of the brain.

Q. Vomiting is one of the evidences of concussion of the brain? A. Yes.

By the Court: Q. Doctor, she complains of pain
20 at the spine now. Is that consistent with the appearance of it? A. Yes, I think she might be sensitive there.

Q. Without showing it? A. Without showing. From the sprain and bruising of the top tissues.

Q. I suppose you cannot tell anything about its duration? A. No, I cannot.

Q. Will it clear up? A. Surely.

Q. What? A. I think it will, surely.

By Mr. Woodbridge: Q. Doctor, did you make
30 any examination of her eye at all? A. No.

By the Court: Q. Her walking, has that anything to do with the present pain in her back? A. She says it hurts her. I can't see a pain. She says it hurts her.

Q. Hurts her where? A. In her hip, and in the back. But there is nothing I can see objectively that is any different from—

Q. When the pain clears up in the back will that straighten out the walking? A. I think so.

40 By Mr. Woodbridge: Q. Might this happen, that a person who received a fall like that would have

Arthur L. Smith—Cross

pain at this time, as the result of a blow at the base of the spine, and the black and blueness on the limbs and back? A. That is possible.

Q. And the headaches as the result of the blow on the head yet, where there was a slight concussion? A. Well, I suppose that is possible, but you don't often see it. 10

Q. How about her nervous state when you saw her, had she evidently been through a shock of some kind? A. Well, there wasn't any great evidence of that. She seemed very calm and collected there. She was bruised and sore, but she didn't seem extremely nervous to me.

Mr. Woodbridge: Cross-examine.

CROSS-EXAMINATION by Mr. Watson: 20

Q. You saw her, Doctor Smith, on March 22nd?

A. I think.

Q. Do you recall what time of the day? A. I don't know now what time of the day.

Q. The accident occurred the previous day, on March 21st, did it not? A. I understood so, yes.

Q. How many times did you attend Miss Gibeson altogether? A. Three times.

By Mr. Woodbridge: Q. What was your bill, Doctor, do you remember? A. I haven't sent her a bill. 30

Q. Can you say what it was? A. About ten or twelve dollars, something like that.

Q. To remind you of it, I think you told me twelve dollars. A. Something of that kind.

By Mr. Watson: Q. You attended her three times? A. Yes. Upon my records.

Q. Do you know during what period of time those three visits were? A. 22nd and 23rd of March, and the 2nd of April. 40

Q. And you didn't attend her again until when?

Arthur L. Smith—Re-cross

A. I haven't seen her since, until last week she came in for this examination for this trial.

Q. After April 2nd you felt it unnecessary to visit her again? A. Yes.

10 Q. It would be unusual to have headaches resulting from that condition, at this time? A. It would seem to me so. Of course, it is not impossible.

Q. Not impossible, but unusual? A. With the degree of injury which she had it didn't seem to me that there was going to be any after result as this.

Q. At the time you saw it you didn't think it would last as long as this? A. No, it didn't seem to me so.

20 Q. There were no broken bones? A. No.

Q. Just bruises? A. Bruises.

Mr. Watson: That is all.

RE-DIRECT-EXAMINATION by Mr. Woodbridge:

Q. Did she have a lump on the back of the head? A. Yes.

RE-CROSS-EXAMINATION by Mr. Watson:

30 Q. Doctor, had Miss Gibeson, prior to this fall, suffered from valvular heart trouble? A. Yes.

Q. Had you attended her for that? A. I had.

Q. Is she still suffering from that? A. Yes.

Mr. Watson: That is all.

By Mr. Woodbridge: Q. And such a fall as this would be good for valvular heart trouble, Doctor? A. No, not especially.

Grace M. Gibeson—Cross

GRACE M. GIBESON re-called.

Cross-examination by Mr. Watson:

Q. Miss Gibeson, when you went in the library that night, March 21st, about seven o'clock, you said? A. About seven. 10

Q. Was Mrs. Green there then? A. She was.

Q. And you found the doorway into this hallway closed? A. Mrs. Green opened the door.

Q. The door was closed when you went there? A. Yes.

Q. That is what I mean. Now, Miss Gibeson, does this little drawing show the lay-out of that floor? This is the front door, Miss Gibeson, there is the hallway where you go up to the second floor, here is the library room with the shelves around, here is this door back here through into the back room, and to get to the little entry-way where the books were, you turn around this door in there (indicating)? A. You do, to the left. 20

Q. That is right? A. Yes.

Q. And this door at the entry-way, the hinge is on the left-hand side facing it, where my pencil is? A. Yes.

Q. I will mark that with an "X." And that door swings into the library room? A. I can't say as to that. 30

Q. You don't recall? A. I don't recall that.

Mr. Woodbridge: I think I will have to object to the use of this diagram, unless it is proven.

The Court: That has nothing to do with it now. It is a cross-examination of the witness.

Q. Did you notice that the cellar stairway was at the point indicated on this drawing? A. I did not. 40

Grace M. Gibeson—Cross

Q. How far was it, Miss Gibeson, from the cellar stairway—from the hooks to the stairway? A. I couldn't say as to that, Mr. Watson.

Q. Well, was it about three feet? A. I couldn't say.

10 Q. You say when you went in there the first time Mrs. Green directed you to the hallway? A. She did.

Q. And opened the door for you? A. Yes.

Q. And told you to hang you hat and coat out there? A. She did.

Q. You would not have hung it there had she not told you to, would you? A. No, sir.

Q. And you say the floor there was solid? A. It was.

20 Q. You say that that cellar stairway at that time was not open? A. It was not.

Q. Then you went out there again about 9:15? A. About that time.

Q. And you got your niece's hat and coat? A. Yes.

Q. Where was your niece at that time? A. She was in the library room.

30 Q. You went back, you got your niece's hat and coat and went back in the library room and helped her put it on, I suppose? A. No. I just handed it to her.

Q. Then you went back after your own? A. I did.

Q. Did you take your hat and coat from the hook? A. I did not.

Q. You fell before you got your hat and coat? A. Yes, sir.

40 Q. Miss Gibeson, what was the condition of the floor when you went after your niece's hat and coat? Was it the same as when you were there

Grace M. Gibeson—Cross

the first time at seven o'clock? A. Why, no, it couldn't have been.

Q. I am not asking you what it could or could not have been, Miss Gibeson. What did you see?

A. Well, when I got my niece's hat and coat, you see, that was on the second hook, next to Mrs. Green's, and my hat and coat was on the third hook. 10

Q. How far apart were the three hooks? A. Well, I couldn't say as to that, Mr Watson.

Q. Oh, about so far, measuring about ten inches? A. I couldn't say as to that.

Q. Well, were they two or three feet apart? A. No, I don't think they were.

Q. Can't you give us any idea as to how close together those hooks were? A. I cannot. 20

By the Court: Q. Can you give us something a little more definite as to the location of this hallway to the room that you were working in there?

A. I don't know very much about that room, Judge.

Q. Well, you say that you went into this entryway after Mrs. Green had opened the door? A. Yes.

Q. How far did you get into that, on the first occasion? A. I couldn't say as to the distance. 30

Q. Well, was it as far as from yourself to the table there, or less, or more? A. Well, I would say it was about that distance.

Q. And the floor was then intact? A. Yes, sir.

Q. Of course, I suppose you went to the same spot, or at least approximately so, to get your things, when you went for them later in the evening? A. I did.

Q. Was it the floor you went into that you say was opened when you went the second time? A. It was. 40

Grace M. Gibeson—Cross

Q. Well, how was it different when you went for your niece's, any? A. I don't know.

Q. Was it open then? A. I didn't observe it.

Q. Do you know how wide an open passage it was? A. I don't know.

10 Q. You didn't observe it afterward at all? A. I did not; no, sir.

The Court: All right.

By Mr. Watson: Q. When you went out there the first time, at seven o'clock, you walked—you say the door was here, across from this point to that point, you walked through the door, and then turned to your left, didn't you? A. Yes.

Q. And went back and hung up your coat? A. Yes.

20 Q. To the hooks which were up on the wall so (indicating)? A. Yes.

Q. When you went the second time for your niece's clothing, did you go over the same piece of floor that you went over the first time? A. No, because I didn't go to the third hook.

Q. Oh, you mean you didn't go quite so far? A. Quite so far.

Q. You say that Mrs. Green's clothing was hung on the hook nearest the door? A. Yes, sir.

30 Q. And then your niece's on the second hook? A. On the second.

Q. And your's on the third? A. Yes, sir.

Q. Well, when you went the first time you hung your own clothing up? A. Yes.

Q. So that when you went the second time for your niece's clothing you went over, in part, the same piece of floor that you went over the first time? A. Yes.

Q. Only not quite so far? A. Not quite so far.

40 Q. Was that floor open then? A. The first time.

Grace M. Gibeson—Cross

Q. The second time, when you went for your niece's clothing? A. Well, I didn't observe it at that time.

Q. Well, did you look? A. I didn't look. I wasn't expecting any trap door to be open.

Q. You didn't look where you were going? A. 10
No.

Q. Well, when you went the third time you went over the same piece of flooring that you had gone over the first time, didn't you, and you went to the third hook? A. Yes, sir.

Q. Did you go just exactly the same way you went the first time? A. Yes, sir.

Q. How far did you get before you fell? A. Well, I didn't get my hat and coat. I fell immediately. 20

Q. As soon as you made the left turn you fell right away? A. No. When I got to the third hook.

Q. When you got to the third hook? A. I fell immediately.

Q. Did you get to the third hook, or not? A. Well, I didn't get to the third hook, because I fell.

Q. How close to the wall were you when you fell? A. I don't know as to that, Mr. Watson.

Q. Well, were you right close to the wall? A. 30
I must have been.

Q. You think you were? A. I think I was.

Q. Did you look where you were going this third time, or did you go, as you say the second time without looking? A. I went as I had the first time.

Q. Without looking, or did you look? A. Why, of course I looked into the hall.

Q. What I mean is this, Miss Gibeson: You told me the second time that you couldn't tell me 40

Grace M. Gibeson—Cross

whether the floor was open or not, because you didn't look where you were going? A. Yes.

Q. Did you look where you were going the third time, or did you go as you had gone the second time? A. The third time? I didn't go in there the third time, Mr. Watson.

10 Q. You mean you didn't go where the third time? A. Into the hallway.

Q. Where did you go?

The Court: He is speaking of the whole three times, the early evening, and your going in for your niece's things, and your own.

A. I see.

Q. Three trips you made? A. Yes.

20 Q. You said the first time the floor was solid? A. It was.

Q. You said the second time, when you went after your niece's clothing, you didn't look, and you don't now whether it was, or not? A. No.

Q. The third time, did you go as you did the second time, without looking? A. Yes, I did.

Q. You didn't look? A. I didn't look.

30 Q. How is that little hallway lighted? A. Well, it was lighted from the library room. The light from the library room showed into this hall.

Q. This partition between the two "X's" on this paper, which we ask to have marked for Identification—

Paper marked D-1 for identification

Q. (Continued)—That partition does not go all the way up to the ceiling, does it? A. I can't say as to that, Mr. Watson. I don't know.

Q. Do you remember? A. I do not.

40 Q. The only light that goes into that little entry-way is what comes over the top of that partition, isn't it? There was no light in the entry-

Grace M. Gibeson—Cross

way, was there? A. None that I could see; no, sir.

Q. Well, what was the condition of the light in there? A. The light shone from the library room.

Q. Well, was it bright, or dull, or poor? A. 10
It was bright.

Q. Bright light in there? A. Yes.

Q. No trouble about your seeing? A. No.
Didn't seem to be.

Q. How far did you get into the entry-way the third time, when you fell? A. Well, I fell immediately.

Q. Your first step? A. No, not the first step.

Q. What do you mean by immediately? A.
Well, as soon as I got near where I thought my 20
hat and coat was.

Q. Where you thought your hat and coat was. Couldn't you see your hat and coat? A. Yes. I knew where I had hung it.

Q. How far from your hat and coat were you when you fell? A. Well, I couldn't say as to that, Mr. Watson.

Q. Well, could you reach up and get them, or were you two steps from it? A. I reached to get it and fell. 30

Q. It is only a step or two after you turn the the door to where that third hook is, isn't it? A. Not any great distance.

Q. Hardly more than three or four feet, is it? A. I would say about that. I don't know as to that.

Q. Where were you when you first saw Miss Reames? A. Miss Reames came about 7.15, or 7.30, and I was then at the desk in the library, giving out books. 40

Q. Where were you when you first saw Miss

Grace M. Gibeson—Cross

Reames, after you fell? A. Miss Reames assisted me up the stairs.

Q. Did she come down the stairs? A. She did.

Q. All the way, or part way? A. Well, I don't remember as to that. I know she helped me up the
10 stairs.

Q. Had you gotten up and were part way upstairs when she came to you? A. Well, I think I was making an effort to get up the steps, when she came to my assistance.

Q. Do you remember whether you were on the steps, or not? A. I do not.

Q. Then Miss Reames helped you upstairs? A. Yes, sir.

Q. And you stayed there about a half an hour? A. About a half hour.
20

Q. And then you walked home with your little niece alone? A. I did.

Q. How old is she? A. Nine years old.

Q. How far do you live from the library? A. About three blocks and a half.

Q. You sent for no conveyance? A. No.

Q. You didn't send for your brothers or sisters or anyone to help you? A. No.

Q. And no one from the library, Miss Reames, or Mrs. Green, went with you? A. Mrs. Green
30 was not there.

Q. Well, Miss Reames then? A. Miss Reames and Mrs. Skidmore were there.

Q. Neither of them went home with you? A. They did not.

Q. And after you got home, you went to bed, and sent for Doctor Smith? A. Yes.

Q. Doctor Smith didn't come until the next evening, did he? A. Doctor Smith—my brother
40 'phoned for Doctor Smith that evening, and he couldn't get Doctor Smith. I believe he was out

Grace M. Gibeson—Re-direct

of town. And then my brother 'phoned the next morning, and he came about noon.

Q. And he came again the next day, and on April 2nd, is that right? A. Yes, sir.

Q. Where was this other position you were about to take? A. It was the position my niece 10 had spoken to me of, in Newark.

Q. Had you actually been engaged? A. No. I was to make an appointment.

Q. This was a prospective position that you thought you might get and might take? A. Yes, sir.

Q. But there was nothing definite about it? A. Nothing definite.

Q. No salary fixed? A. No, sir.

Q. And if the terms had been unsatisfactory, 20 you would not have taken the position? A. No, I surely would not.

Mr. Watson: That is all.

RE-DIRECT-EXAMINATION by Mr. Wood-bridge:

Q. You have told Mr. Watson that there was a bright light. Where was the bright light? A. Well, there was a bright light n the library room.

Q. When you opened this door and went in 30 there, was there any light in the entry? A. There was not.

Q. So that whatever light there was in there shone in from the library room?

Mr. Watson: I object to leading on this point. The witness should be asked to describe the situation as it was.

The Court: I think it is leading, but I think almost the same thing has been said before. 40

Grace M. Gibeson—Re-cross

By the Court: Q. Do you know how it got into the hallway? A. Did it get in over the top of the partition? A. I don't know.

Q. It was too light to get in by the door? A. I think it was.

10 Mr. Woodbridge: For the light to come in through the door?

The Court: Yes, for the light to come in through the door.

A. Pardon me. I misunderstood you on that. I thought you were alluding to the electric light bulb.

Q. No. I am asking whether or not the light that came into the closet, or hallway, was too much to come in through the door that entered into
20 the library? Was it too bright in there for that?
A. It was not.

By Mr. Woodbridge: Q. What was the condition of the lighting in the little entry where you fell down? Was it light in there? A. It was not.

Q. Where did the only light that came in there come from? A. The library room.

Q. Was there anything at all to call your attention to this trap door, before you fell down it? A.
30 No, sir.

Q. And did you see it? A. No, sir.

RE-CROSS-EXAMINATION by Mr. Watson:

Q. Miss Gibeson, wasn't there a light in the rear room, which shone into this entry-way also?

A. No, sir.

Q. There was not? A. No, sir.

Q. Could you see well, or not, in that entry room? A. Well, I think I could have seen a light,
40 had there been one there.

Grace M. Gibeson—Re-cross

Q. Yes, I understand you on that. Was your vision good, or poor, in there? A. It was good.

Q. Your vision was good? A. Yes.

Q. Did you go back after your own hat and coat immediately after getting your niece's hat and coat? A. Yes, sir.

10

By Mr. Woodbridge: Q. He says your vision was good. Do you mean, when you say your vision, are you using that synonymous with sight, or are you using it as synonymous with the light in the room?

Mr. Watson: I presume she means what she says.

Q. You mean your vision was good, do you mean you had good eyesight? A. I think I had at that time.

20

Q. At that time you had good eyesight. Now, was there good light in the entry room, where you went in to hang up your hat and coat, was there good light in there? A. No, sir.

Q. What did you tell Mr. Watson your vision was good in there for then? A. I didn't just understand that question.

Q. What did you think he meant when he asked if your vision was good? A. Well, I thought he meant at the time of going in for my coat and hat.

30

Mr. Watson: That is the time I did mean.

Mr. Woodbridge: That is all.

Esther L. Reames—Direct

ESTHER L. REAMES, a witness produced on behalf of the plaintiff, being duly sworn according to law on her oath, saith:

Direct-examination by Mr. Woodbridge:

10 Q. Where do you live? A. I live in Highland Park.

Q. Where are you employed? A. Judge Woodbridge's office.

Q. Where were you on the night of March 21st, 1922? A. I was in the Highland Park library.

Q. That is located where? A. On South Second Avenue—on North Second Avenue.

Q. At whose request did you go there? A. Why, I was volunteer for the library association.

20 They had volunteers from the Park.

Q. Were the young ladies and the ladies in Highland Park coming there from time to time to help? A. Different ones were, yes.

Q. When you got there that night who did you find? A. I found Miss Gibeson and Mrs. Green and another lady.

Q. Did you hang up your hat and coat? A. No.

Q. What did you do with it? A. I put my hat and coat on the shelf in back of the desk.

30 Q. How long did Mrs. Green stay? A. Oh, probably about fifteen minutes, ten or fifteen minutes.

Q. Then what happened to her? What did she do? A. She left.

Q. Who remained there then, Miss Reames? A. Miss Gibeson and myself, Miss Gibeson's niece, and the children for the books. That was all.

40 Q. The children were coming and going, they were sort of takers out of the library, weren't

Esther L. Reames—Direct

they? A. Yes, they were bringing in books and taking them out.

Q. How late did you and Miss Gibeson stay there, about? A. Probably until about nine o'clock, or quarter after nine. Something like that.

10

Q. Was that nearly closing up time? A. Nine o'clock was supposed to be the closing time.

Q. Then I suppose you all got ready to go? A. Then we got ready to go.

Q. Just tell me, as you got ready to go, did you notice Miss Gibeson leave the room? A. She did, she went in the back.

Q. Where did she go? A. She went in through the door in the rear to the rear room, and the little hallway which is back there.

20

Q. Where were you then? A. At the desk.

Q. What was the next that you heard? A. I heard a crash in the back, and I heard Miss Gibeson say, Miss Reames, help me, and I went out the back and I reached around—I went to the hallway and I looked, and there was an opening there which I didn't suspect, but I heard the noises coming from there, and as I did I put my hand around the side and found a switch which turned on a light in the cellar, so Miss Gibeson was probably on the second step from the bottom, and I helped her up the steps.

30

Q. Did you go down the steps and help her up? A. I went down the steps and helped her up.

Q. When you went in there, Miss Gibeson, and you found this—and heard Miss Gibeson's voice coming up from underneath? A. From underneath.

Q. Was it light in there, or dark? A. It was dark in the little hallway—

40

Esther L. Reames—Direct

Q. And you turned on the electric switch?

Mr. Watson Let her finish the answer.

A. And I turned on the switch into the cellar.

Q. Then you went down the steps? A. Then I went down the steps and helped her up.

10 Q. When you got her up what did you do? A. Why, I don't know. I just asked her what happened, and she said, oh, I fell, or something of the kind; and her hair was down, and I kind of brushed up her hair, because she kept holding the back of her head. Helped her on a chair.

Q. Did you see that trap door open there? A. It was open when she was down through it, but I don't know before that.

20 Q. Do you know those hooks where the ladies hung up their hats and coats? A. Yes, I do.

Q. Had you ever hung your hat and coat up on them? A. Yes, I had once, I think.

Q. Had you ever seen any one else hang their hat and coat on them? A. Yes, I had.

Q. And when you went into the entry to hang them up, did you fall down the stairs, ever? A. No.

Q. Or the trap door? A. No.

30 Q. I understand you to say you got Miss Gibson seated in a chair. What did you do, Miss Reames, after that? A. I rubbed her head.

Q. Did you notice what was the matter with it? A. Why, no. But I would not know if it was bumped, it probably wouldn't have raised at that time. I just felt it at the back, her hair was down, and I think her comb was broken, and her beads were gone.

40 Q. What else did you find? A. I found her ring, which had been knocked off her finger, and her beads, and I brought them up and gave them to her.

Esther L. Reames—Cross

Q. Did you go home? A. Yes. I asked her if I should take her home, and she said she didn't know, or something like that. I had some work to do and I stayed and finished it.

Q. I think she said Mrs. Skidmore came in. A. Mrs. Skidmore came in, I think, and gave her a 10
glass of water.

CROSS-EXAMINATION by Mr. Watson:

Q. You say you had hung your hat and coat there? A. Yes, I had.

Q. Before that, once, or since? A. Before that.

Q. How did you come to do that? A. I was told that I could hang my coat and hat up in there.

Q. Mrs. Green tell you? A. Mrs. Green told 20
me I might hang my hat and coat up in there, that it was all right. She evidently had permission to hang them there, and I hung mine there.

Q. Mrs. Green was a paid librarian, wasn't she? A. Not that I know of.

Q. I thought she was? A. I don't know about that, Mr. Watson. I have no knowledge of it.

Q. At any rate, Mrs. Green was the one in charge of the library? A. She has had charge 30
of it, yes.

Q. And she was the one who was there steadily all the time? A. No, not all the time. Most of the time.

Q. She was the one who was there most? A. Most of the time.

Q. And she was assisted by you and other ladies? A. Yes.

Q. As volunteers? A. As volunteers.

Q. When you heard Miss Gibeson fall—did you hear her fall, or hear her call? A. I heard a 40
noise, as a crash, I thought something had fallen

Esther L. Reames—Cross

in the rear, a stick, or something, and then I heard her say, Miss Reames, help me, and I went out and helped.

Q. You went out and turned on the switch? A. Turned on the switch.

10 Q. Where was the switch? A. The switch was sort of in the stairway down the trap door, on the side.

Q. Did you have to go down the trap door? A. No, I didn't go down the trap door. I stood at the top. I heard her down at the bottom, and I couldn't see her, and I felt around for a switch and then went and turned on the light, which turned on the light in the cellar.

20 Q. How far did you have to go from the doorway to get to the trap door? A. Well, it isn't a very long distance. I don't believe it is further than from here—well, I don't believe it is half-way to the edge of the desk there. It isn't so very far.

Q. Isn't it about three feet, or so? A. From the doorway to the trap?

Q. Yes? A. I don't think it is—it isn't so very far, Mr. Watson. I couldn't say it was three feet.

30 Q. Something like that? A. It might be that far. It all depends. From the doorway where you go in, oh, probably not, from the hooks—

By the Court: Q. Is the trap a part of the hallway itself? A. The trap door?

Q. Yes. A. It is a part of the flooring.

Q. That is what I mean. A. Yes.

40 Q. Is it beyond where the hooks are? A. Yes. It is probably a short distance beyond the hooks. The hooks run, at that time, and the trap door runs this way, sort of catercornered toward where the hooks are. It comes to a point there.

Esther L. Reames—Cross

Q. Which is furthest from the door, the entrance, the last of the hooks, or the trap door?

A. The last of the hooks would be closer than the trap door.

Q. Closer to the door than the trap, do you mean? Which is closer to the door, the last of the hooks, or the trap door? A. Well, as you come to the door in the library, the three hooks are there (indicating), and the third hook from the door would be closer than the trap door. 10

By Mr. Watson: Q. You have to pass the hooks to get to the trap door? A. You would not have to pass them, Mr. Watson. I think if you got to the last hook you would just be about where the trap door is. From my recollection—I was only in there that once, and the previous time; the previous time I didn't know there was any trap door there when I hung my own there. I was there one afternoon. 20

Q. How long before was that? A. Well, it was probably—I don't know. It might have been a month before, it might have been a couple of weeks.

Q. You didn't have any trouble that time at all? A. No, no trouble. Of course not.

Q. Where was Miss Gibeson when you found her? A. Foot of the stairs. 30

Q. Doing what? A. Well, I don't know what she was doing, she just seemed to be just laying there, half laying and half crawling.

Q. And you helped her up the stairs? A. I helped her up the stairs.

Q. Did you notice any bruises on her? A. No, I didn't notice.

Q. Did you see any bruises? A. No.

Q. And in about a half hour she went home? A. Probably about that time. 40

William Gibeson—Direct

Q. Did you notice anything else about her during that half hour? A. What do you mean, in the way of injury?

Q. Yes, anything that indicated injury? A. Not that I could see. She was sitting in a chair.
10 I couldn't notice anything.

Q. You didn't see anything? A. No. I wasn't looking closely for any injury. I noticed the back of her head.

Q. And then she went home alone? A. No, she went home with her niece.

Q. With her young niece? A. With her niece, yes.

Mr. Watson: That is all.

20

WILLIAM GIBESON, a witness produced on behalf of the plaintiff, being duly sworn according to law on his oath, saith:

Direct examination by Mr. Woodbridge:

The Court: Judge Woodbridge, you have witnesses connecting the defendant with the accident, have you?

30 Mr. Woodbridge: Yes, sir. Two more witnesses. I understood it was admitted that he was the lessor here. Isn't it?

Mr. Watson: Yes, but we deny we are responsible for those hooks being there in any way.

Q. Mr. Gibeson, where do you live? A. Elizabeth, New Jersey.

Q. And are you a brother of Miss Grace Gibeson, the plaintiff in this case? A. I am.

40 Q. Do you remember the time of her accident in March, 1922? A. I do.

William Gibeson—Direct

Q. That she has testified to here, on the 21st? When did you come to New Brunswick? A. The 23rd of March.

Q. Did you see your sister? A. I did.

Q. Where was she? A. In bed.

Q. As the result of any conversation you had with her, or anybody else, what did you do? A. I went to Mr. Skidmore's property on Second avenue, Highland Park, and there met Mr. Skidmore. I told him that I would like to see where the trap door was where my sister met with the accident. 10

Q. Did you know him before, by sight? A. Yes.

Q. Did you know him personally? A. I had spoken to him, yes. 20

Q. All right. What did Mr. Skidmore do, and what did Mr. Skidmore say to you? A. Mr. Skidmore, he let me in the building from the rear, into the hallway, which is—going in from that way it would be on the right of the room which was, and is, I believe, used as a library. It is the left going in from the front of the house. And Mr. Skidmore said to me, he said, I am very sorry that it happened, wouldn't have had it happen for anything. I said, I should think you would be, I said, but that doesn't help my sister. And he said—he, Mr. Skidmore, said that he didn't lease that part of the library, but he put hooks up there in the hall for the ladies of the library to hang their hats and coats on, and gave them permission to do that, and to use that hallway, also to get water, if they wished from a sink in the rear of that hall. 30

Q. Did you see a sink in the rear of the hallway? A. I am quite sure I did, when I went in, yes. 40

William Gibeson—Direct

Q. In the rear of that hallway, does that hallway run out so that there is a door at the back out doors? A. There is a door in the back. I don't know whether it is in direct line with that hallway, or whether there is an offset. I know
 10 we came in from the rear, and if I remember rightly, it is sort of a winding, or some offset. I am not positive as to that.

Q. Did you talk with Mr. Skidmore any further there at that time? A. Yes. I told him, I said, Mr. Skidmore, how did that trap door come to be open. He said, I opened it to permit heat to come up to the library room.

Q. Did he say anything further to you? I am calling your particular attention to a matter, did
 20 he say when he had opened that trap door? A. He said he had opened it that night to let heat come up to the library room.

Q. When were you at New Brunswick again? A. On the following day, March 30th; it was March 29th that I went there that I have just been relating; March 30th I came to New Brunswick again.

Q. So that the first time you went to see Mr. Skidmore was five or six days after the accident?
 30 A. After the first time that I saw my sister. I came up the 23rd and saw my sister, and then came up the 29th and went to see Mr. Skidmore and the place where the accident happened. Then I came on the 30th of March.

Q. Mr. Gibeson, when did you see Mr. Skidmore again after that? A. March 30th.

Q. Who was present that time? A. My brother, and yourself.

Q. Did you have any further conversation with
 40 Mr. Skidmore then? A. I called and told him that we would like to—I would like to see the

William Gibeson—Direct

place again, and then he ushered we three in the building again, from the rear.

Q. Well? A. And I asked him who put those hooks there. He said, I did, for the ladies of the library to hang their hats and coats on.

Q. Your brother was present then? A. He was. 10

Q. Did you see your sister on those visits to New Brunswick? A. I did.

Q. Where was she when you saw her? A. In bed.

Q. How long did your sister remain in bed? A. Two weeks.

Q. Did she complain of pain at all? A. She did.

Q. Did you see the doctor there at all? A. I didn't see the doctor there. He wasn't there when I was there. 20

Q. Have you noticed your sister since then? A. I have.

Q. Have you seen her walk? A. Yes.

Q. What is the condition of her walk? A. She limps, and it is very hard for her to make progress, and especially going up and down steps.

Q. Does she complain of pain? A. She does.

Q. Have you observed her general state of health since then? A. I have. 30

Q. How often do you see her? A. Oh, I see her on an average of once a week, probably. I manage to get up to see the folks that often.

Q. Has she done any work since that time? A. She has not.

Q. The second time you were there with your brother, the next day after your first interview, or two or three days after your first interview with Mr. Skidmore, was any remark made then about the door? A. Yes. 40

William Gibeson—Cross

Q. What was the remark? A. Mr. Skidmore said that he left the door open to permit heat to go to the library room.

Mr. Woodbridge: Cross-examine.

10 CROSS-EXAMINATION by Mr. Watson:

Q. Did you see Mrs. Skidmore when you went there the first time? A. I did. She came to the front door and told me I would have to go to the rear, that Mr. Skidmore was there.

Q. Was she present at this conversation? A. I didn't see her. She may have been somewhere in the rear. I couldn't say as to that.

Q. Mr. Skidmore told you that this little entry-way was not leased to the library? A. He did.

20 Q. It was his private property? A. Didn't say it was his private property.

Q. Well, he said he hadn't leased it? A. Hadn't leased it to the libraary.

Q. And he said he had given permission to the ladies to use it? A. To use it to hang their hats and coats up on the hooks he had put up for that purpose. And also to get water.

Q. You didn't have to go in there to get water, did you? A. I don't know what they had to do.
30 I am telling you what Mr. Skidmore said to me.

Q. You looked over the premises there, didn't you? A. Well, casually, yes.

Q. Does that drawing outline accurately the layout of that building? A. I wouldn't say exactly whether that is accurately drawn.

Q. You wouldn't? A. No.

Q. It wasn't necessary to go back in that entry-way to go to the sink, was it? A. I don't know. I haven't specified about the sink positively.
40 I told you I believed there was a sink in the back there. I thought I saw one. I didn't pay much attention.

William Gibeson—Cross

Q. Did Mr. Skidmore tell you that Mrs. Green, in charge of the library, had requested him to put those hooks up there? A. He did not.

Q. Didn't he tell you they had asked permission to put their hats and coats there? A. He did not.

Q. He told you he had given them permission? 10
A. He did.

Q. And he told you he had left the trap door open to let heat into the library? A. No. He told me that he opened the trap door that night to let heat in the library.

Q. Didn't say what time that night? A. No, he didn't.

Q. You didn't ask him whether it was before or after supper? A. I didn't.

Q. The second time you were there, with Judge Woodbridge, he told you the door was left open to permit heat to come up in the library? A. He didn't. 20

Q. That is what you said. A. No. I said, who opened that door. He said, I did, to let heat up to the library.

Q. On your direct-examination you said that when you were there with Judge Woodbridge, Mr. Skidmore said that he left the door open to permit heat to come up in the library. A. He opened the door. Of course, he would leave it open, after he did open it. 30

Q. Then when you say he said he had left it open, you misspoke, is that right? A. No. I don't say that I misspoke. I say that he told me he opened the door that night to let the heat up to the library. If he said—if I said he left the door—

Q. Why did you tell us on your direct-examination, when you were there the second time, you said he left the door open? A. I meant that he left it open, after opening it. 40

Harry Gibeson—Direct

Q. Mr. Gibeson, did you measure the distance from the floor, where the trap door closed down, to the concrete floor of the cellar? A. I didn't. But I measured one of the risers, that is, going from one step to the other.

10 Q. How many steps were there? A. There were ten steps of nine inches rise.

Q. That would make about, from the floor to the cellar, about seven and two-thirds feet? A. That would be ninety inches. Seven and one-half feet.

By the Court: Q. No, that would not be right. The risers you say are nine inches? A. Nine inches. There were ten.

Q. Ten risers? A. That would be ninety in-
20 ches, you see.

Q. They were nine inches straight up and down? A. Yes, from one step to the other step.

Q. Not lengthwise? A. No.

HARRY GIBESON, a witness produced on behalf of the plaintiff, being duly sworn according to law on his oath, saith:

30 Direct-examination by Mr. Woodbridge:

Q. Mr. Gibeson, where do you reside? A. 103 South Third Avenue, Highland Park.

Q. What is your business? A. Piano business.

Q. Are you a brother of Miss Grace Gibeson, the plaintiff in this case? A. I am.

Q. Do you remember the accident that occurred to her on the 21st day of March, 1922? A. I do.

Q. When did you see her after that accident?
40 A. I was sent for that night, and I went to her home.

Harry Gibeson—Direct

Q. Where was she? A. She was at her home there, in bed.

Q. Subsequent to that, a few days later, did you see Mr. Skidmore, the defendant in this case?

A. I did.

Q. Where did you see him? A. I saw him on North Second Avenue, at his home. 10

Q. What time of the day was it? A. It was in the afternoon.

Q. What was the purpose of your call? A. I went there to look over the place.

Q. Who went with you? A. My brother, William Gibeson, and yourself.

Q. Did you have a conversation with Mr. Skidmore there that day? A. Well, I had very little conversation personally with Mr. Skidmore. I passed the time of day with him. 20

Q. Did you know him before? A. Yes. I am acquainted with Mr. Skidmore.

Q. What did Mr. Skidmore say to you, or your brother, there that day? What date was it, by the way? A. April 30th.

Q. April 30th? A. March 30th, I should say.

Q. What did Mr. Skidmore say to you there that day? A. Why, he was in conversation with my brother; my brother was talking to him in reference to the hooks. He asked him who put the hooks up there, and he said he put them up for the help in the library, or the ladies in the library, I don't recall just the words he used, I think he said the ladies in the library to hang their hats and coats on. 30

Q. Did you make any other remark to him? Did you hear him say anything else? A. Yes. My brother spoke to him about the trap door, and he told my brother that he had opened the trap door that night, the night that my sister was there, to let the heat up into the library. 40

Harry Gibeson—Direct

Q. Did he express any regret at all as to the accident? A. Why, I don't recall hearing him say anything about that.

Q. Your brother said that he said he was sorry. Do you remember that about it? A. I don't recall his saying that, Judge. He might have said
10 it. I didn't hear him say it.

Q. How long was your sister confined to her bed?

The Court: I suppose there is no contradiction of that, is there, Mr. Watson?

Mr. Watson: No.

Q. Has your sister worked since that time? A. She has not.

Q. How often do you see her? A. Oh, I see
20 her every day, sometimes a couple of times a day, because I live very near there, about one or two minutes walk from them.

Q. What has been her general condition since then? A. Well, her general condition has been very, very bad, and I have been very much alarmed over her.

Q. In what way? A. Well, she complains continually about pains in the back of the head. She has been extremely nervous. In fact, they have
30 sent for me at night to come over there to see her, and I have talked to her, and she has told me that she could not sleep with her head. It pains her continually. She limps. She is lame. Complains of pain in her back, in the spine.

Q. Has she worked as bookkeeper since then? A. She has not; no, sir.

Q. Does she walk any distance? A. Very little. She might go out in the yard, don't you know, at home, or the porch, but very little walking
40 she does.

Harry Gibeson—Cross

CROSS-EXAMINATION by Mr. Watson:

Q. Did Mr. Skidmore say that night that he had given the ladies permission to use that place for their hats and coats? A. Why, Mr. Watson, to use the exact words of Mr. Skidmore, I was there as a listener, to listen, I will be perfectly frank with you, I went there to listen to the conversation. 10

Q. Yes. A. And he told my brother that he put the hooks up there for the ladies, he either said the help in the library, or the ladies. If my memory serves me correct, he said he put hooks up there for the ladies in the library to hang their clothes on.

Q. Your brother in his testimony said that Mr. Skidmore had said something about giving them permission to use that entryway, that he hadn't leased it. Was that mentioned in your hearing? A. I don't recall his saying that. He might have said it. 20

Q. He might have said that he hadn't leased that part for the library, that he had given the ladies permission to use it, and that he put the hooks there for them? A. He said that he put the hooks up there.

Q. But you are not certain whether these other references were made or not? A. About the lease? 30

Q. Yes, and the permission to the ladies, not sure about that? A. He said he put the hooks up there.

Q. I heard you say that, Mr. Gibeson. I am asking you again whether you are certain on the other part— A. Refreshing my memory, I believe he did say that he gave the ladies permission to put their coats there. He put the hooks up there. 40

Harry Gibeson—Cross

Q. Yes. A. For them, I am positive of that. And I think he said that he gave them permission to put them there.

Q. Since April 2nd your sister's condition has been very bad? A. It is; yes, sir. No question
10 about it.

Q. Extremely nervous? A. She is nervous.

Q. Can't sleep? A. She can't sleep. I say she can't sleep, she sleeps some, but she is bothered in sleeping. She does not get good rest, and she complains continually, and especially about her head, and her spine, and her back.

Q. Has that condition been more or less continuous since April second? A. Since April
second?

20 Q. Yes. A. It has been continuous since the accident, since she got around.

Q. Since March 21st? A. Since the accident. After that. She was all right prior to the accident. I say all right, with the exception of her condition.

Q. Does the condition grow worse, or get better? A. I can't see any improvement in it. I am very much alarmed over her condition.

Q. You are exceedingly alarmed, aren't you? A. I certainly am; yes, sir.

30 Q. And very much worried about it? A. I am; yes, sir.

Q. And you can't see that she gets any better? A. I can't see that she is getting any better.

Q. And it is quite probable that she is getting worse? A. I won't say that. I will be perfectly fair with you.

Q. You think she stays about the same? A. I think she does, yes. I can't see any improvement.

Mr. Watson: That is all.

40 Mr. Woodbridge: That is all.

Plaintiff rests.

Motion for Nonsuit

MOTION FOR NONSUIT

Mr. Watson: I move for a nonsuit on two grounds:

First: That there is no evidence here of inducement or invitation. That what evidence there is goes to show that the persons, the helpers there in the library, were given permission to use this place, that they were there, as licensees, with the permission, or passive acquiescence of the owner of the property, and not upon his invitation or inducement. 10

I call attention particularly to those cases which bear upon this subject, inducement and invitation, and this is without the general rule, in that these say some inducement or invitation of the owner of the property implies some purpose of his to be served, in some way. This was a mere matter of accommodation on his part. It served no purpose of his whatsoever. Entirely different from the storekeeper cases, and those keeping more or less public places. 20

The Court: Do you think the rule of law goes so far as to relieve a man from responsibility, if he performs an act which in its nature is calculated to do injury to those who are using it by his permission? 30

Mr. Watson: The rule there is that there must be some acts wilfully injurious. Mere negligence is not sufficient. The acts must be wilfully injurious. I think I can refer Your Honor to cases on that point. There is a case "Saunders vs. Smith Realty Company" (citing case). 40

Motion for Nonsuit

The Court: Oh, no, but I am speaking of the opening of a trap door, after the permission has been given, and under circumstances well calculated to do injury to one.

10 Mr. Watson: There have been elevator cases, and such things, in which the rule has been applied, I think.

The Court: You are familiar, of course, with the recent fire case against the Pennsylvania Railroad?

Mr. Watson: No, I am not, sir.

The Court: A case where some little boys commenced playing with a fire on a piece of property adjoining the railroad, and one of them burned to death.

20 Mr. Watson: Phillips vs. The Library Company holds that the land owner is under no obligation to keep his premises in a non-hazardous state. His only duty to a licensee is to abstain from acts wilfully injurious. I think there are several cases along that line.

30 My second point is that the plaintiff's own case shows her guilty of contributory negligence, in that she says she went herself into this place, without looking, and in that she went into a dark place without exercising what would be ordinarily reasonable care of a person going into such a place (citing cases).

The Court: Judge Woodbridge, is there anything in this case that adds to a mere permission? Is there anything in the case which makes it more than a mere permission?

40 Mr. Woodbridge: Yes, sir.

The Court: What is it?

Argument

Mr. Woodbridge: There is implied invitation. He puts up the hooks for them to hang their hats on himself. That is an implied invitation, under Phillips against the Library Company. In Phillips against the Library Company they supplied a water closet. This man puts up the hooks. But we are in a little different situation from that here; we are under the landlord and tenant cases, which hold that the landlord is bound to keep his passageway safe for the tenants, and those having business with the tenants. 10

Mr. Watson: Those are passageways used in common.

The Court: That is where he undertakes some duty. But what I am asking first is whether this is a permission or an invitation, whether they are mere licensees, or whether they are there by invitation. 20

Mr. Woodbridge: They are there by invitation, on account of the hooks being put up.

The Court: Well, are they?

Mr. Woodbridge: Yes, sir. Here is that case of McDonough vs. Woolworth, in 91 N. J. law. There the Woolworth Company had a case of books between two counters, and the place of their clerks was behind the counters, but they had that case of books behind the counters, it was an opening where two counters, came together, one like this and one like this, and an opening in between, and a lady walked through to look at the back of the books and she fell. They held that the display of the books was an invitation to customers to inspect them. 30 40

The Court: That is a very different

Argument

thing. That is a thing done for the benefit of the party giving the invitation.

10 Mr. Woodbridge: Here Mr. Skidmore does this: He leases this room, the front room there, with access to the rear entrance, also use of the sink, and water. In the hallway—

The Court: How much of that is invitation in this?

Mr. Woodbridge: I am going to point out, if I may. In the hallway that leads to the rear entrance he hangs up these hooks for the ladies to put their hats on, and says so himself, and I do not apprehend that he will deny it.

20 The Court: Well, do you understand that the premises are included in the lease?

Mr. Woodbridge: Yes, sir; I do, for this reason: If Your Honor will examine this map you will see they come in through this door from Second Avenue here; then they go in to that door there (indicating); there is no door between here and here (indicating); that is just a blank partition up there just like that. They go through here; there is nothing to distinguish, no door here. This is the door they go through, and the door—this is the door Mrs. Green opened, to show them where they could go in (indicating).

30 The Court: Now, read me the provision of the lease which deals with that privilege.

40 Mr. Woodbridge: "The store and room located on Second Avenue, known as number 9, on the first floor, with access to rear entrance, also use of sink and water."

Argument

Now, when they get in here—

The Court: Where is the rear entrance?

Mr. Woodbridge: Here is the rear entrance. And also the use of the sink and water, and here is the sink. When they get in here, can he limit them to go right along 10
this way and go out that way?

The Court: Turning the other way what does it lead to, another stairway?

Mr. Woodbridge: Turning another way it leads to three hooks, which were not closed off at all from these steps.

The Court: No. What does it lead to? A stairway?

Mr. Woodbridge: That is the cellar stairs she fell down, that is the trap door. He has 20
marked it here "private," but, of course, we are not governed by his marks on that. That is the stairs she fell down. She had access to go out this way, or to go here, but instead of that, in the very place to which she had access, he puts three hooks up for the ladies to hang their hats and coats on, and says he gave them permission to hang their hats and coats there.

Mr. Watson: That is just the crux of the 30
case.

The Court: It is clear, is it not, that the original lease does not go so far as to permit the use of anything beyond what was reasonably necessary to get to the entrance, or to get to the sink?

Mr. Woodbridge: Yes, sir; as far as the original lease is concerned, but we are dealing now as to whether or not he had a 40
trap.

Argument

The Court: Wait one moment. Now, that being so, if they stepped out of it, without anything more, they would be stepping on private property, would they not?

10 Mr. Woodbridge: No, sir; I don't think so.

The Court: I say, without more than the lease, which gave them the right to go to the sink, and to go to the other entrance, which are both in the rear, is that?

Mr. Woodbridge: Yes.

The Court: The moment they step out of that, they are not within their rights under the lease, that is true, is it not?

20 Mr. Woodbridge: No, sir; not if he gave them permission.

The Court: I am talking about limiting it to the lease itself. In other words, a person going to the rear would not turn toward the turn, when they come in this hallway, as though to go down a cellar stairs?

Mr. Woodbridge: Not unless there was some inducement there.

The Court: The lease calls for nothing of the sort.

30 Mr. Woodbridge: No, sir.

The Court: Your contention is that the lease covers it?

Mr. Woodbridge: With access to rear entrance, and also use of sink and water.

The Court: The rear entrance you speak of is the one in the rear of the building, and not the one adjoining this passageway that goes to the cellar? You don't mean that.

40 Mr. Woodbridge: No, sir; I don't mean that.

Argument

The Court: So that it comes down then to a question as to how far the defendant is liable, when he has given permission to use the hallway, and further has put up hooks for their use.

Mr. Woodbridge: I think that is a question for the jury clearly, under the authorities in Phillips against the Library Company. Here you see he was a landlord. People having business with the tenant. These were people having business with his tenant. 10

Mr. Watson: We admit they were lawfully there.

Mr. Woodbridge: These were people having business with his tenant, and who had his implied invitation there. He had a place for the people having business with his tenants to go to and to use. I think that as against a trap door— 20

The Court: I think much depends upon how they are put there, and how they come to be put there.

Mr. Woodbridge: They are put there for the tenants—

The Court: I say I think much depends upon how it comes to be put there, whether it is an invitation, or a mere license. If I own a property, and a tenant comes to me and asks my permission to use another room, which is no part of the lease, and no part of the consideration, and I permit him to do it, I take that to be a mere license, or permission. If, on the other hand, I invite him there, it is my act, and I invite him to a place where I am using reasonable care to provide for his safety. 30 40

Argument

Mr. Woodbridge: If he puts hooks there to hang their hats and coats on, isn't that tantamount to an invitation?

10 The Court: I think that is not crucial in the case. I think the crucial point is whether the original use was by invitation or by permission.

Mr. Woodbridge: Even then, in Philips against the Library Company it holds the invitation may be expressed or implied.

The Court: Yes, there is no doubt about that I will hold this motion until I can think it over a little, and I will rule on it later.

20 Mr. Watson: I might just say to Your Honor I made a mistake in citing a case; it is not Phillips against the Library Company which holds the only duty to a licensee is to abstain from acts wilfully injurious; that case is the Fleckstein against Atlantic & Pacific Tea Company, in 91 N. J. Law.

Mr. Woodbridge: That is a very different thing, and there three judges of the Court of Errors & Appeals dissented.

30 The Court: There is no use talking about dissents. The Court's opinion is the Court's opinion.

Mr. Woodbridge: It is, but where there is strong dissent, I think the rule is that it will not be extended beyond its precise features.

The Court: No case will be extended beyond its features, by its own act.

40 Mr. Woodbridge: That is where a man was chopping a box, and the axe head flew off and hit a little boy in the eye. Very different.

Hattie T. Green—Direct

The Court: Judge Woodbridge, I will look at the cases you have there.

Mr. Woodbridge: May I give you a reference to them?

The Court: Yes.

10

DEFENDANT'S CASE

HATTIE T. GREEN, a witness produced on behalf of the defendant, being duly sworn according to law on her oath, saith:

Direct-examination by Mr. Watson:

Q. Mrs. Green, where do you reside? A. Highland Park.

Q. Last March were you connected with the Highland Park Library? A. Yes, sir. 20

Q. In what capacity, Mrs. Green? A. Acting librarian.

Q. Were you at the library a good part of the time? A. Most of the time that it was opened.

Q. What hours was the library open? A. Every evening from seven to nine.

Q. When did you first come there, Mrs. Green? A. Twenty-sixth of January.

Q. Was the library open afternoons? A. Just once. And then we had it open evenings until after the fifteenth of March, and then we started a circulation of books, and then it was open afternoon and evening. 30

Q. You were there afternoon and evening? A. Yes, sir.

Q. Mrs. Green, do you know about coat hooks being in the entryway, near the cellar stairs? A. Yes, I do.

Q. How did those hooks come to be placed there? A. I asked Mr. Skidmore if he would 40

Hattie T. Green—Direct

put up some nails for my hat and coat, and he put up the nails, and afterward took the nails out and put the hooks there for me.

Q. Did you use it? A. Yes, I did.

Q. Did you permit others to use it? A. I permitted two.

Q. What two? A. Miss Reames, one afternoon we were there alone, and Miss Gibeson that night.

Q. Are those the only two times that you know of that they were used by others? A. That is the only two that I remember.

Q. Mrs. Green, how was the library heated? A. Two pipes run up in Mr. Skidmore's apartment, and from the cellar door.

Q. Will you please look at this drawing, Mrs. Green; this shows the store room? A. Yes.

Q. And the back room, and there is a door through the back room there. A. Yes.

Q. Is that right? A. That is right.

Q. And then you turn to the left to go back to this entryway where the hooks were? A. Yes, you turn to the left.

Q. This partition between the two "X" marks, does that go all the way to the ceiling? A. No, it does not. That is where we get the heat from.

Q. The heat came up from the cellar? A. Yes.

Q. Was there a heater in the cellar? A. Yes, sir.

Q. Was there any reason for leaving the door to the cellar stairway open? A. Mr. Skidmore left it open so the heat could come up from the basement.

Q. How long was that done?

(No answer.)

By the Court: Q. Do you mean the trap door?

A. Yes.

Hattie T. Green—Direct

By Mr. Watson: Q. Was that down a trap door? A. Yes.

By Mr. Woodbridge: Q. Opened up that way? A. It opened back against the wall, under the back stairs.

By Mr. Watson: Q. How often was that door left open? A. It was open all the time, to let the heat in the library. 10

Q. Did you see the door on the night that Miss Gibeson fell? A. No, I did not.

Q. Did you see it that day at all? A. It was open when I went home.

Q. What time was that? A. Between five and six.

Q. Were you there when Miss Gibeson came that evening, about seven o'clock? A. Miss Gibeson and Gertrude met me in front of the Baptist Chapel and walked back with me that evening, and she told me the crowd was waiting for me. 20

Q. Was the trap door open or closed when you went in there that night? A. I didn't go in that evening.

Q. Where did you hang your hat and coat? A. I didn't hang it up.

Q. But you say the trap door was open between five and six, when you went home? A. Yes, when I went home. 30

Q. Could the library have been heated, without leaving that door open? Was there any other means of heating, that you know of? A. Just those two pipes that go through.

Q. You mean two risers? A. Yes.

Q. Going up to the apartments on the second floor? A. Yes.

Q. Aside from that, the only means of heat was the heat from the cellar? A. Yes. 40

Q. Passing over the partition? A. Yes.

Hattie T. Green—Cross

Q. You opened the door for Miss Gibeson to go out there? A. I don't remember whether I opened the door for her or not, but I told her there were some hooks there I had for my hat and coat, some hooks there I used, and she put her hat and coat
10 on it. I won't be positive whether I opened the door, or whether she did.

CROSS-EXAMINATION by Mr. Woodbridge:

Q. Mrs. Green, how many hooks did you use for your hat and coat? A. I had one for my hat and coat, and one for my umbrella, most of the time.

Q. Did you hang your umbrella on a hook? A. I did. I guess it is there yet, if I look.

Q. You were not going to use all those hooks
20 the night that you told Miss Gibeson to use them, were you? A. I didn't use them at all that night.

Q. So you said, there are some hooks to put your hat and coat on? A. I said there were some hooks that I had for my hat and coat, and I don't know whether I opened the door, or whether she did, and hung them up.

Q. Mr. Skidmore first put up a nail there for your hat and coat, didn't he? A. Yes, after I asked him to.

30 Q. You asked him to put up a nail? A. I asked him to put up a nail.

Q. And then he took that nail down, didn't he. A. I suppose he did. It was taken down, and the hooks put up.

Q. Three hooks were put up? A. Yes.

Q. You saw Mr. Skidmore around there frequently, didn't you? A. Yes.

Q. Who put up the three hooks, Mr. Skidmore? A. I suppose he did. I didn't see him.

40 Q. He was around there all the time, wasn't he? A. Not all the time.

Hattie T. Green—Cross

Q. Off and on, I mean, of course not every minute, but back and forth he was in there? A. No. He was back of the store.

Q. He knew that ladies came to help you with the library, didn't he? A. I guess he did.

Q. He used to see them there, didn't he? A. 10
Yes.

Q. And they used to go back and forth freely into this room for water as they wanted to? A. No.

Q. Did you use to go back and forth after water to the sink? A. No.

Q. Go out the back door at all? A. No.

Q. So that the only use that you know of, or that Mr. Skidmore knew of, for the use of this place by these ladies, was to hang their hats and coats on those hooks? A. The ladies didn't have that privilege. Mr. Skidmore put them up for me. 20

Q. How do you know? A. Because I asked him to.

Q. Told him to put them up to hang hats and coats on? A. To hang my hat and coat on.

Q. Did Miss Reames hang hers up there one night? A. She hung hers up there one afternoon she and I were there alone. 30

Q. Was Miss Gibeson there at your request? A. She came in and volunteered twice to help me.

Q. Did you ask her to come down that afternoon? A. I asked her if she would like to come in the afternoon and evening, and she said she would come in the evening.

Q. She was there at your request? A. Yes, she came.

Q. Did you see Mr. Gibeson about this matter? 40

Hattie T. Green—Cross

A. Did I see him? Why, no, I didn't go to see him.

Q. Didn't you see Mr. Gibeson after this accident happened? A. He came to the house, he and his brother.

10 Q. Did you tell him, when he came to see you after the accident—how long after the accident was it? A. I don't remember.

Q. Well, was it a week, or a month? A. I don't remember.

Q. Was it a year? A. It was April. It hasn't been a year since the accident, so it couldn't be.

Q. Did you tell him that you hung your hat and coat on those hooks that night? A. I said that for a bluff, and then he told me that his sister
20 hung her hat and coat.

Q. Are you saying now that you didn't for a bluff? A. I didn't hang my hat and coat up; I was not out—kept my hat on.

Q. Did you tell Mr. Gibeson, the night that he came there to see you about this accident, that you hung your hat and coat on those hooks that night? A. I don't know as I did exactly. I think I said the trap door was open when she went out. I didn't hang my hat and coat up that night.

30 Q. Did you tell Mr. Gibeson? A. I don't know as I did.

Q. Why did you say a minute ago, I said that for a bluff? A. Well, I don't know. Maybe I did.

Q. Are you talking now for a bluff? A. No.

Q. Why were you talking then for a bluff, and not talking now for a bluff? A. Because I didn't care to have him come and see me.

40 Q. You have talked a great deal with Mr. Skidmore since this accident happened? A. No, I haven't.

Hattie T. Green—Cross

Q. Not at all? A. I won't say at all, but there were weeks and weeks we haven't mentioned it.

Q. How often have you talked with Mr. Skidmore about it? A. I don't know.

Q. Have you talked with him about it twice?
A. Maybe so. 10

Q. Three times? A. Maybe so.

Q. Did he tell you to say here that he put those hooks there for you to hang your hat and coat on, and for nobody else? A. He did not.

Q. Did you tell him you were going to say that? A. No, I did not.

Q. You have talked a good deal about this case around Highland Park, haven't you, among your friends and neighbors? A. No, I have not.

Q. You haven't talked about it a good deal? A. 20
Not a good deal.

Q. Have you talked about Miss Gibeson bringing an unjust case against Mr. Skidmore, and said that you were going to do all you could to help Mr. Skidmore? A. No, I haven't expressed myself.

Q. What have you said in that respect? A. I don't know.

Q. You don't know what you said in that respect? A. I haven't said I was going to help Mr. 30
Skidmore, not more than anyone else.

Q. You have expressed yourself as being very favorable to Mr. Skidmore in the matter, haven't you? A. I don't know as I have.

Q. Repeatedly? A. I am telling the truth.

Q. And you remember now, nearly a year afterwards, do you, that Mr. Skidmore's exact words were—that the exact words were that Mr. Skidmore put the hooks up—that your exact words to Miss Gibeson were, those are hooks he put up for 40

Hattie T. Green—Cross

me to hang my hat and coat on? A. I didn't say those to Miss Gibeson.

Q. Tell me what were the exact words? A. I said there were hooks out there I had for my hat and coat.

10 Q. Did you have them for your hat and coat?
A. Yes.

Q. And Miss Reames had them for her hat and coat, didn't she? A. She did one afternoon.

Q. And Miss Gibeson had them for her hat and coat that night? A. Yes.

Q. And they were for the hats and coats of all comers who came to that library? A. No one else used them.

Q. All helpers? A. No one else used them.

20 Q. None of the ladies? A. Only those two.

Q. Did any other ladies ever come there besides those two, to help? A. Yes.

Q. Which ones? A. Mrs. Kull was there.

Q. Did she hang her hat and coat on them?
A. No.

Q. Who else? A. Mrs. Lufburrow was there.

Q. Did she hang her hat and coat on them? A.
No.

30 Q. How do you know? A. Because she put
them on there in the library. We were there alone.

Q. In the night, was that? A. It was in the morning. We were there all day.

Q. What did you say to them about the hooks?
A. To who?

Q. To Mrs. Lufburrow and Mrs. Kull? A. I didn't say anything about it.

Q. And yet you remember just exactly what you said to Miss Gibeson about the hooks, do you? A.
Yes, I do.

40 Mr. Woodbridge: That is all.

Mr. Watson: That is all, Mrs. Green.

Wallace Conover—Direct

WALLACE CONOVER, a witness produced on behalf of the defendant, being duly sworn according to law on his oath, saith:

Direct-examination by Mr. Watson:

Q. Mr. Conover, by whom were you employed last March and April—or last January? A. Home News Publishing Company. 10

Q. Did you have anything to do with the negotiating of this lease, Exhibit P-1? A. Yes, sir. I arranged for the renting of the premises.

Q. You acted for Mr. Elmer Boyd? A. I acted for Mr. Elmer Boyd.

Q. Mr. Elmer Boyd is connected with the Home News Publishing Company? A. Yes, sir; he was the general manager. 20

Q. And the Home News Publishing Company were largely instrumental in the launching of this Highland Park Library? A. They were.

Q. And you were in charge of that? A. I was.

Q. The lease calls for heat to be provided by the party of the first part. Do you know how heat was to be gotten to the library?

Mr. Woodbridge: I object.

The Court: It provides itself, doesn't it?

It says they may put in radiators. 30

Q. Were there any radiators in the place at the time.

Mr. Woodbridge: I object.

The Court: He may answer that.

A. There were not.

Q. What arrangements were made, if any, to get heat to the library?

Mr. Woodbridge: I object to that. The lease speaks for itself.

The Court: Do you mean what was done? 40

Wallace Conover—Direct

Q. What was done, how was the library heated?

Mr. Woodbridge: I object to this testimony. It is to contradict the terms of the lease.

10 The Court: Oh, no. Counsel is asking him after the library came into existence how it was heated. Your own proof is that it was heated by two pipes, or rather, by some heat coming up from the basement. They have a right to show how it was heated.

A. Mr. Skidmore explained that there was no regular heating system in the place, but he said that he would make it a practice to leave the trap door open to allow the heat to come up from the
20 furnace in the cellar.

Mr. Woodbridge: I move to strike out what Mr. Skidmore said as pure hearsay testimony.

The Court: Strike it out.

Mr. Watson: Cross examine.

Mr. Woodbridge: That last was stricken out.

Mr. Watson: Was it stricken out?

30 The Court: Yes, that part was stricken out.

Mr. Watson: I did not understand Your Honor to say so.

Q. Now, regardless of what Mr. Skidmore said, Mr. Conover, how did the library receive heat, if you know? A. I know. From the furnace in the cellar. The heat came up through the trap door, which was left open.

40 Q. How did it get into the library? A. There was a wall—well, anyway, the partition between the library proper and the adjoining room in the

James H. Skidmore—Direct

rear, and the hallway, did not reach all the way to the ceiling. There was probably four feet of space above it, and heat from the cellarway came up and over this partition.

Q. I show you this drawing, not yet marked, and ask you if the partition marked "XX" was such a partition? A. Yes, it was. 10

Mr. Watson: Cross examine.

CROSS-EXAMINATION by Mr. Woodbridge:

Q. How about the partition on the other side marked "YY"? A. It was the same as the partition marked "XX."

Q. You weren't there the night of this accident, were you? A. No.

Q. You don't know anything about it, do you? 20
A. Why, I know—

Q. Except what you heard here to-day? A. No. I don't. I was reporter for the Home News at that time, and I made it my business to find out about it for the paper.

Q. You reported for the Home News? A. Yes, sir.

Q. And got the account as accurate as you generally do articles in the Home News? A. Yes, sir. 30

Mr. Woodbridge: That is all.

JAMES H. SKIDMORE, a witness produced on behalf of the defendant, being duly sworn according to law on his oath, saith:

Direct-examination by Mr. Watson:

Q. Mr. Skidmore, where do you live? A. Pis- 40
catawaytown, Raritan Township.

James H. Skidmore—Direct

Q. What is your occupation? A. Carpenter and builder.

Q. How long have you been a carpenter and builder? A. About eight years in Highland Park and New Brunswick.

10 Q. How long have you followed that occupation? A. Carpenter? All my life.

Q. Are you familiar with the drawing of plans, and the reading of plans? A. I am.

Q. Do you know the property owned by David D. Skidmore, number 9 North Second Avenue, Highland Park? A. I do.

Q. Did you make a plan of the first floor of that building? A. I did.

20 Q. I show you a plan. Is that the one that you made? A. It is.

Q. Does it portray accurately? A. It does.

Q. The condition of that first floor? A. Yes.

Q. When did you make it, Mr. Skidmore? A. Well, I couldn't give you the exact date. It was just after this accident happened.

Q. Shortly after the accident? A. Shortly after.

Q. What relation are you to Mr. Skidmore, the defendant? A. I am a brother.

30 Q. How long have you known this property? A. Well, that I can't give definite information.

Q. How long have you been familiar with it? Had you ever been there before? A. Oh, yes.

Q. How many times? A. Well, a whole lot of times. He is a brother, and I often visit him.

Q. Now, can you tell me whether this first floor was in the same condition in March, 1922, as it was at the time that you made this plan? A. It was. It is.

40 Q. There had been no change in it? A. No.

James H. Skidmore—Direct

Q. Now, look at the plan, the partitions marked "XX" and "YY," in lead pencil, how far did those partitions extend toward the ceiling? A. This partition "XX" and "YY," that is the same thing, is about three feet six inches between the top of the ceiling and the ceiling proper of the library. 10

By the Court: Q. You don't mean the top of the ceiling? A. This is built out of ceiling boards, that is what I meant.

Q. There is no ceiling there at all. A. The top of the partition to the ceiling.

Q. What is the whole height of the room? A. Ten feet.

By Mr. Watson: Q. Now, I direct your attention to this stairway which you have marked "down, private, to the cellar." Was there a trap door over that stairway? A. There is. 20

Q. How does the door open? A. Opens against the wall on the north side of that building.

By the Court: Q. And that is which side of that plan? A. This is on the north side. The house faces east and west.

By Mr. Woodbridge: Q. If this is the trap door, it will open up like that (indicating), against the cellar wall? A. Yes. 30

By Mr. Watson: Q. The door going from the front room into the entryway opens on what, a hinge? Where are the hinges, which side of the door? A. I have forgotten which way I put that door on to. I think the hinge is on this side. I am not sure.

Q. Did you build this house? A. Yes.

Q. You think it is hinged on the left side, but you are not sure? A. Yes.

Q. Do you remember which way it opens, into 40

James H. Skidmore—Cross

the room, or not? A. Well, it opens out into the library, I know that.

Q. It opens into the library? A. Yes.

Mr. Watson: That is all. We offer the plan in evidence.

10

CROSS-EXAMINATION by Mr. Woodbridge:

Q. What scale have you drawn this plan to? A. I don't remember whether I made that accurate or not. I can tell you in a minute.

Q. We don't want it here if it is not accurate. Then you don't know whether it is accurate, or not? A. No, I don't.

Q. Who told you to put those words there, that word "private, down to cellar," on there? A. I
20 did myself.

Q. Did anybody tell you to put that word "private" on there? A. No.

Q. You just put that on yourself? A. Yes.

Q. Did you know when you made this plan the lease your brother had made called for entrance to the sink, and out the rear door? A. Yes.

Q. You did know it? A. I did.

Q. You just thought you would put "private" on there for your own benefit? A. Not for my
30 benefit.

Q. For your brother's benefit? A. No.

Q. What for? A. For the benefit of wherever it was used.

Q. Why didn't you put in the front room then, public, for the use of the library? A. It wasn't necessary in this case.

Q. All you wanted to call attention to was something that in your mind you thought was proper, is that right? A. Yes, that is right.

40

James H. Skidmore—Cross

Q. Did you put public, back here for the sink, and by the door? A. I did not.

Q. But you did put "private" for the cellar stairs? A. Yes.

Q. Did you see those hooks hung up there when you were there? A. I did not. 10

Q. You didn't see those hooks when you made this plan? A. No.

Q. He had taken them down, hadn't he, after Miss Gibeson fell? A. I hadn't noticed them at all. I knew he had nails up; I didn't notice whether he took the hooks down, or what he had to hang them on.

Q. When you went there to make this plan you were not looking for hooks, were you? A. No, I was not. 20

Q. You were just trying to make out this plan so it would appear that cellar stairway down there was private? A. No, not so it would appear. So it does appear.

Q. How far is it from the point where that door swings there on that partition that goes nearly up to the edge of the cellar stairway? A. What is that question again, please? I didn't get you.

Q. How far is the point there that you have made with a double headed arrow on it, from the edge of the cellar door, to where that door swings? A. It is three feet, or more. 30

Q. Why did you mark three feet, if it is three feet or more? A. I just marked that to show how much space a person would have if they went in there to get their coat.

Q. I know, but you are a carpenter. A. Certainly I am a carpenter.

Q. Didn't you mark accurately the distance of three feet? A. I would if I had been making a plan to build a house from. 40

James H. Skidmore—Cross

Q. Show me how far three feet is on here? A. I haven't got my rule with me. I don't guess. I usually measure.

Q. You are a carpenter. Can't you guess? A. Yes. About there (indicating).

10 Q. So that when that cellar door was up and back against the wall, raised up this way against the wall (indicating), there was only three feet from the partition to the edge of the opening, is that right? A. Yes.

Q. This partition that runs within three feet six inches of the ceiling, that runs on a slant like that, don't it? A. Yes.

Q. So that the further you go along the partition the nearer you get to the edge of the cellar
20 door, don't you? A. Yes.

Q. Did you portray on this place here, or attempt to portray the angle at which that runs? In other words, is that slant intended to be a true slant, or did you just guess at that too? A. Now, that is within an inch or two, one way or the other, it is that close.

Q. Inch or two of what? A. It may be an inch more, or may be an inch less.

Q. An inch more or less slant? A. Yes.

30 Q. Tell me what an inch more or less on a slant is, will you? A. No, I can't. It all depends on what kind of a slant it is.

Mr. Woodbridge: That is all.

Mr. Watson: That is all.

Mr. Woodbridge: Are you offering the map?

Mr. Watson: Yes, sir.

Mr. Woodbridge: I think the map will be
40 some help, but I think it is still objectionable, there being no testimony as to its ac-

Frederick W. Fisher—Direct

curacy, and while I do not object to its going in, I do not think we ought to be bound by it. Your Honor can take care of that with the jury, and what has been said.

The Court: I think the word "private" ought to come off there. 10

Mr. Watson: Yes, sir. I agree to that.

The Court: Of course, the jury will understand that it does not purport to be an accurately drawn plan.

Mr. Woodbridge: To scale; yes, sir.

FREDERICK W. FISHER, a witness produced on behalf of the defendant, being duly 20 sworn according to law on his oath, saith:

Direct-examination by Mr. Watson:

Q. Mr. Fisher, where do you live? A. Highland Park.

Q. Whereabouts in Highland Park? A. 232 Benner street.

Q. Do you know Miss Gibeson? A. I have seen Miss Gibeson, yes.

Q. Where does she live? A. Next door to me. 30

Q. Can you see her premises from your house? A. Yes, sir. Very plainly.

Q. Have the Gibesons a back yard? A. Yes, sir.

Q. Can you see into that back yard? A. Very plainly you see.

Q. Do you remember when Miss Gibeson was hurt by falling downstairs at the library? A. I heard of it, Mr. Watson.

Q. Do you remember hearing that at the time last March? A. Yes, sir. 40

Frederick W. Fisher—Cross

Q. Do you remember when you next saw Miss Gibeson after that? A. Why, it was the early part of April.

Q. Where did you see her? A. In the yard.

Q. What was she doing? A. Walking about.

10 Q. How many times since then have you seen Miss Gibeson in the yard? A. Well, that is a very hard thing to say, Mr. Watson. They have got a lot of young chickens, and she seemed to be awfully interested in these young chickens, and anybody ever raised young chickens, or had anything to do with them, knows the care that young chickens require.

Mr. Woodbridge: I move to strike that out.

20 A. And she has been walking—

Q. Mr. Fisher, my question goes to this: Have you seen her since then frequently in her back yard? A. Yes, sir; very often.

Q. How does she walk, Mr. Fisher? A. Well, she would come out of the house limping, walk over towards the chickens, look around, kind of forget herself, and then make say from fifteen to twenty steps the natural way, and then probably would limp again.

30 Q. How many times have you observed that, Mr. Fisher? A. A great many times.

CROSS-EXAMINATION by Mr. Woodbridge:

Q. You are very friendly to Miss Gibeson, aren't you? A. I have no hard feelings towards her, Judge.

Q. Have you manifested that feeling that you have of no hardness towards Miss Gibeson by frequently standing on your back porch and swearing at her when she went out in the yard?
40 A. No, sir.

Frederick W. Fisher—Cross

Q. You haven't? A. No, sir.

Q. You have never sworn at Miss Gibeson? A. No, sir.

Q. You have got chickens too, haven't you? A. I have, yes.

Q. And Miss Gibeson has made complaints that your chickens come over into her yard and scratch up her flowers? A. Yes, she complained to me about it.

Q. Has she ever made complaint to the Recorder about it? A. I don't know anything about it.

Q. It never came to your ears that she had? A. No, sir.

Q. And you have never stood on your back stoop, after Miss Gibeson made complaint about your chickens, and sworn at her? A. No. When she complained about my chickens, Mr. Woodbridge, I put up a small fence.

Q. What did you say, anything? A. I didn't say anything. I said, I will see they won't come over and annoy you no more, and I put up a foot wide piece of wire, as a fence there didn't do any good. The chickens still went over.

Q. They have a little way of doing that. A. Yes. To stop all argumentation, and to keep her peaceful, I went to work and bought a roll of wire six foot high, and I have my chickens fenced in ever since, and they haven't been in her yard since.

Q. You have had no hard feelings towards her at all? A. No, none whatsoever.

Q. How did you ever tell anybody about this manner of Miss Gibeson in limping when she walked? A. What?

Q. How did you come to tell anybody about it? A. Why, I didn't tell nobody about it in particular.

Frederick W. Fisher—Cross

Q. You didn't tell anybody. The first time you have ever spoken about it to anybody is on the witness stand here? A. I only told Mr. Skidmore.

Q. When did you tell him? A. Why, I met him one day, and he started to talk to me about the
10 trouble he was in. He was telling me about the case, and I says, well, that can't be much of a case, it can't be very severe, the way I see Miss Gibeson walking around the yard all the time.

Q. Did you tell him she walked lame? A. Why, yes, I said sometimes she limps, and then again she will walk the natural way.

Q. That is the only time you have spoken of it? A. That is the only time I have spoken of it.

Q. Did you know this case was going to be
20 tried? A. Why, I got a subpoena. That is all I know about it. Outside of that I didn't know when, or what.

Q. Can you tell about anything of your neighbors on the other side? Who are your neighbors on the other side? A. On my side there is no neighbors at all. It is a street.

Q. Who are your nearest neighbors in any other direction? A. Oh, there is some people in back of me.

30 Q. Have you ever noticed what their gait was when they were out in the yard? A. What?

Q. What their gait was when they were out in the yard, whether they were lame, or not? A. Why, of course.

Q. Are they lame, or not? A. No, they are not lame, that I have noticed.

Q. You have not noticed at all about it, have you? A. No.

Q. And yet you noticed Miss Gibeson? A.
40 Well, who wouldn't?

Q. And took the trouble to tell Mr. Skidmore

David D. Skidmore—Direct

about it? A. I merely mentioned it to Mr. Skidmore, because he told me of the case, about the accident.

Q. How long ago did you mention it to him?

A. Oh, that is quite a long time ago.

Q. And then sometimes Miss Gibeson was lame, 10 and sometimes she was not? A. Yes, sir.

Mr. Woodbridge: That is all.

Sketch entered in evidence and marked Exhibit D-I.

DAVID D. SKIDMORE, the defendant, being duly sworn according to law on his oath, saith:

20

Direct-examination by Mr. Watson:

Q. Where do you live, Mr. Skidmore? A. Highland Park.

Q. How long have you lived there? A. Twelve years.

Q. You own the property number 9 North Second avenue? A. Answer that in my own way?

Q. Do you own that property? Is it in your own name? A. Yes.

Mr. Watson: The answer admits that, 30 so I did not produce the deed.

Q. You made this lease which has been offered in evidence marked Exhibit P-I? A. Yes, sir.

Q. I show you this Exhibit D-I; is that a true representation of the first floor of your premises number 9 North Second Avenue? A. Yes, sir.

Q. That lease refers to access to the rear entrance. Where is the rear entrance on the drawing D-1? A. Out doors, to the back room.

Q. Point it out? A. Out here and out here. 40

Q. This is the street up here.

David D. Skidmore—Direct

The Court: Do you realize you are not giving the jury the slightest help in this? They have not seen that plan and they do not know a thing about it.

A. Over here.

10 Mr. Watson: Acting upon His Honor's suggestion, the plan which has just been offered in evidence, purporting to be the first floor of the premises we are discussing, the street is at this end, and this is the front entrance, and this is the library room, or store room, with bookshelves around it so. Here is a partition here, at an angle so, and you go through this door to this rear room, and back here is the rear entrance.

20 There is a sink over there. The door was here. To get to this cellarway and trap door, you come around so, to go down cellar, and the hooks in question were on the inside, the cellarway side of this partition marked "XX," along that wall. The partition which has been referred to as not going all the way to the ceiling is the one starting at "X" and ending at "Y." The trap door which covered this cellarway

30 swung on hinges against this north wall of the building, so that this trap door opened on hinges so (indicating), back against the wall.

Mr. Woodbridge: I wanted to ask Mr. Skidmore one or two questions. Maybe you will agree with me. How high is that ceiling in there?

The Court: He said ten feet.

40 Mr. Woodbridge: Then the ceiling is about six feet six inches.

Adjourned until tomorrow, Thursday, November 9th, 1922, at 10:45 a. m.

David D. Skidmore—Direct

DAVID D. SKIDMORE, resumed:

Direct-examination (continued) by Mr. Watson:

Q. Mr. Skidmore, with reference to Exhibit D-1, will you please point out the sink referred to in the lease Exhibit P-I. 10

Mr. Watson: Witness points to the place marked on the map "sink."

Q. Will you please point out the rear door referred to in the lease? A. (Witness indicates.)

Mr. Watson: Witness points out the point near the sink marked "door."

Q. Will you please point out the door through which access could be had from the store to the sink and rear door? A. (Witness indicates.) 20

Mr. Watson: Witness points to the place marked "X Y" in lead pencil.

Q. Mr. Skidmore, were there hooks in the partition marked in lead pencil "XX"? A. Between those, yes.

Q. Which side of the partition were those hooks? As you go in on the left.

Q. Were they on the store side of the partition? A. Yes, sir.

Q. Or on the other side? A. The store side. 30

Q. Now, Mr. Skidmore, this is the store side, and this is the other side. A. Well, I was looking back towards home. The partition side.

Q. When were those hooks placed there? A. When?

Q. Yes. A. I can't just recall the date.

Q. About when? A. Oh, I should judge possibly a couple of weeks or so after the library was opened.

Q. When did the library open, what month? A. That is, after they came there to work to get it open. 40

David D. Skidmore—Direct

Q. When did they come there? A. Well, just to the date of that I can't tell.

Q. Well, was it February or March? A. March.

Q. 1922? A. 1922.

Q. Did you put those hooks there? A. I first
10 put nails there.

Q. How did you come to do that? A. Why, Mrs. Green asked me if I would put up some nails there to hang her clothing on.

Q. Yes. A. And I told her yes.

Q. Where was she when she asked you that? A. In the library.

Q. Did she say what she wanted to make of it?

Mr. Woodbridge: I object to what she said.

20 Q. Did she say anything else?

Mr. Woodbridge: I object to that.

The Court: What is the objection?

Mr. Woodbridge: What Mrs. Green said. Mrs. Green is not a party to this suit.

The Court: I understand, but it shows it is part of the *res gestae*, how this condition arose, whatever it may have been. It is the very vitals of the case.

A. She asked me if I would put some nails
30 there to hang her clothing on.

Q. Did you do it? A. I certainly did.

Q. How many nails did you put there? A. Three.

Q. How far apart were they? A. Eight inches.

Q. What part of that entryway are then in, or were they in? A. Why, just near the door as you go in, the first one was.

Q. How long did those nails stay there? A. Oh, possibly a week or so.

40 Q. Then what did you do? A. Well, I kind of

David D. Skidmore—Direct

considered it cheap like on my part to put nails instead of putting hooks there.

Q. What did you do? A. I went upstairs in my own apartments and got three clothes hooks, secured them out of a place upstairs in my apartment and took them down.

10

Q. Where did you put them? A. Put them down in the place of the nails.

Q. Did you have a conversation with Mr. Gibeson at the library about this? A. Why, no more with him than any of the three of them was there, or two. What time are you speaking of particularly? They were there twice.

Mr. Woodbridge: Mr. William Gibeson was there first.

Q. Mr. William Gibeson, did he come there to see you shortly after this accident? A. Why, I don't know how short it was. I thought it was long enough there wasn't going to be anything done about it.

20

Q. He came to see you. Yes, sir.

Q. Did you have a conversation with him about these hooks? A. I don't remember any conversation I ever had with him about the hooks. I never had no conversation with him about any hooks.

30

Q. Do you remember a time when the two Gibeson brothers and Judge Woodbridge came to see you? A. I do.

Q. Did you have a conversation about the hooks that time? A. No, I did not. I remember Mr. Gibeson making this motion towards the hooks (indicating).

Q. Do you recall whether you said anything about how they came to be placed there? A. I don't recall it at all; no, sir. I know I didn't say that I put them there for the public.

40

Mr. Watson: Cross-examine.

David D. Skidmore—Cross

CROSS-EXAMINATION by Mr. Woodbridge:

Q. Who told you to say anything about the public in the matter? A. I did.

Q. Who told you that that was an important proposition in this case, whether it was public or
10 private? A. Nobody.

Q. You just happen to know that much law, or thought that much law? A. No. I tell you where I got that from; from Mr. Gibeson's testimony in regard to saying I put them there for the ladies, which I didn't.

Q. You were around that library from time to time after it was opened, weren't you? A. That is my home upstairs.

Q. Well, you were there from time to time,
20 weren't you? A. Yes, sir.

Q. And you used to supply heat? A. I supplied it as it was there.

Q. And you used to go down into the cellar and open the trap door for the heat to come up, didn't you? A. Certainly.

Q. You saw these hooks hanging up there? A. After I put them there.

Q. And from time to time you saw hats and coats hanging up on the hooks, didn't you as you
30 walked around? A. Mrs. Green's.

Q. Didn't you ever see any others there besides Mrs. Green's? A. Not to my recollection.

Q. How do you know it was only Mrs. Green's? A. Well, for the simple reason I know she has a brown coat and a black hat and an umbrella, and those three things generally was always there.

Q. You don't recollect ever seeing any other things there? A. Well—

Q. You do recollect seeing other things there?
40 A. Other things, yes.

David D. Skidmore—Cross

Q. There were other clothes hanging on the hooks A. I didn't say that. Other things.

Q. There were other things hanging there from time to time? A. Yes, sir.

Q. You never made any protest, did you, against there being any other things hanging there? A. Why, no. Because it was for Mrs. Green's purpose. 10

Q. You know there were other ladies working and helping Mrs. Green there from time to time? A. Yes.

Q. You saw them there? A. Sure.

Q. And you have seen them in the back room, haven't you? A. In the back room?

Q. Yes. Mrs. Green and other ladies, you have seen them back through here, to the back door, and go to the sink? A. Not to my knowledge in the back room. 20

Q. Not to your knowledge you have never seen them in the back room? A. Not in the back room, no.

Q. I mean, you have seen them on the other side of this door from the library, haven't you, from time to time, while in there? A. No.

Q. Not any of the ladies? Not Mrs. Green? A. Mrs. Green I have, yes. 30

Q. But none of the others? A. No, sir; I have not.

Q. You knew that you gave a lease to the use of this door and this sink, didn't you? A. Absolutely to this door and this sink; yes, sir.

Q. Do you remember Mr. Gibeson coming there first, Mr. William Gibeson? A. Which is William?

Q. The one who testified first, he came there first, the first day, didn't he? A. I can't say whether he came singly, or whether they were both there the first day. 40

David D. Skidmore—Cross

Q. Well, not the second day, the next day, or a few days after, when the two brothers came there with me, you took us in this back door here, didn't you? A. I did, yes.

Q. And showed us the trap door? A. Surely.

10 Q. And showed the hooks? A. No, I didn't show no hooks, that I know of. I showed you the trap door, and he showed you the hooks.

Q. And then you took us in through this door and into the library? A. I didn't do anything of the kind. You were trespassing in that library.

Q. Did you stop anybody from going into the library? A. Didn't know you were in there until you got in there.

20 Q. We all walked right in, didn't we? A. Sure you did.

Q. You didn't attempt to stop them at all? A. Didn't attempt to stop them?

Q. Yes. A. Didn't know you were going in until Mr. Gibeson got in there.

Q. You had conversation with Mr. Gibeson and his brother, in my presence there about the whole matter, didn't you? A. No, I did not.

30 Q. You didn't? A. No more than showing him the entrance to the cellarway. I did that as a gentleman.

Q. Didn't you say you were very sorry that it happened? A. Yes, I did.

Mr. Woodbridge: That is all.

Mr. Watson: May I ask an omitted question I overlooked through inadvertence.

Mr. Woodbridge: One more yet.

Q. Who took care of that library when Mrs. Green was out West? A. Mrs. Kull.

40 Q. She was there from day to day, wasn't she, and from time to time? A. Why, I suppose she was.

David D. Skidmore—Cross

Q. During what period of time was that? A. I don't know.

Q. How long a time was it? A. I don't know.

Q. You saw her going back and forth around there, didn't you? A. In the library when I saw her.

Q. And you never told her not to hang her coats and hats up on the hooks, did you? A. I never gave her the privilege. 10

Q. Never gave her the privilege? A. No, sir.

Q. You never told her not to, did you? A. Why should I?

Q. I don't know. I am asking you if you ever did, or not? A. No.

By Mr. Watson: Q. Mr. Skidmore, how was the library heated? A. Why, there is two risers goes up to my apartments, and the cellar door is always left open for my own benefit, when I was in business there. 20

Q. At that time, last March, at the time of this accident, was the trap door left open or closed? A. Open.

Q. All the time? A. All the time.

Q. Do you recall the night of Miss Gibeson's accident? When did you first hear of it? A. Why when I came home from the doctor's that night. I took my little boy to the doctor's. 30

Q. That same night it happened? A. Yes, sir.

Q. Had you opened or closed that trap door that night? A. No, sir.

Q. Or that day? A. No, sir.

Q. Reference has been made to Mrs. Kull, a lady in charge of the library. Was that before or after this accident? A. Afterward.

Q. How long after? A. Why, I don't know whether that was in March or April. I know she was away something like two months. 40

David D. Skidmore—Cross

Mr. Watson: That is all.

The Court: That is all.

By Mr. Woodbridge: Q. You say Mrs. Kull was there after the accident, when Mrs. Green went out West? A. Yes, sir.

10 Q. Wasn't Mrs. Kull there on March fifteenth?
A. I don't know.

Q. Did you see her there on March fifteenth?

A. I don't know.

Q. When was the time that Mrs. Green went out West and Mrs. Kull took her place? A. I don't know.

Q. How do you know it was after the accident?

A. Well, I know it was during that period of time. It was after the accident that Mrs. Kull was there,
20 because Mrs. Green, I was afraid she wouldn't be back as a witness, because I didn't know when the case was coming up.

Q. After the accident you kept the trap door closed, didn't you? A. I did not.

Q. Wasn't it closed when Mr. Gibeson and we were there? A. No, sir.

Q. Was it open? A. Yes, sir. You were there.

Q. Didn't you open it? A. No, I did not.

Q. To show what it looked like there? A. No,
30 sir; I did not.

Q. You never told anybody not to use those hooks, did you? A. Why should I tell anybody? No, I didn't.

The Court: He answered that before, Judge.

Mr. Woodbridge: That is all.

Mr. Watson: That is all, Mr. Skidmore.

Mr. Watson: We renew the motion for a nonsuit, and also make a motion for—

40 The Court: Do you rest?

William Gibeson—Cross

Mr. Watson: We rest.

The Court: Is there any rebuttal?

Mr. Woodbridge: Yes, sir. I think there is now a different situation from what Your Honor spoke of.

The Court: I ask you if there is any re- 10
buttal?

Mr. Woodbridge: Yes, sir; I have re-
buttal.

The Court: Put it on.

 PLAINTIFF'S REBUTTAL TESTIMONY

WILLIAM GIBESON, re-called: 20

Direct-examination by Mr. Woodbridge:

Q. Mr. Gibeson, the day that you were there with your brother and your attorney to look over the situation, when you went in what was the condition of the trap door? A. Mr. Skidmore led the way—

The Court: What was the condition of the trap door, the question is.

A. Closed.

Q. What did he do when we all got in there? A. 30
He opened the trap door.

Q. For what purpose? A. So that we could view the stairway, or cellar, where my sister fell.

Q. And the general situation there? A. Yes.

Mr. Woodbridge: That is all. Cross-examine.

CROSS-EXAMINATION by Mr. Watson:

Q. When was that? A. That was March thir- 40
tieth.

Motion for Direction of a Verdict

By the Court: Q. What kind of weather was it, do you know? A. If I remember rightly, I do remember, it was a stormy afternoon, and I took the Judge to his home in my car. I remember it was raining.

10 Q. Was it warm or cold? A. Well, I couldn't say as to the temperature. It wasn't a very agreeable day. It was a disagreeable day.

Q. You don't know whether heat would be needed in the room, or not? A. I couldn't say. It was a chilly, damp day.

Mr. Woodbridge: Mr. Harry Gibeson, re-called.

The Court: I will assume he will testify the same way.

20

MOTION FOR DIRECTION OF A VERDICT.

Mr. Watson: I renew the motion for a nonsuit, and also make a motion for a direction of a verdict on the ground that—

The Court: I will hear Judge Woodbridge on a motion to direct a verdict.

Mr. Woodbridge: I think the situation is quite different. This man has testified now that he has
30 seen other clothing besides Mrs. Green's hanging up there on that hook.

Mr. Watson: He did not say so. He said "other things," and you did not ask him what the other things were. He said they were not clothes. If that will make any legal difference anyhow.

Mr. Woodbridge: I think that fairly raises a question for the jury. I have made quite an elaborate memorandum here, and I ask Your Honor to hear me. I wish to call to your attention Phil-
40 lips vs. the Library Company. (Citing from case.)

Motion for Direction of a Verdict

The Court: Judge, I think there is no question whatever about the law. The question is of its application, in all of these cases. The distinction is undoubtedly very clear between the treatment of one you invite to your house, or your business place, and one who comes there by mere permission. The law raises a very different class of obligation. The question in this case is whether or not the plaintiff was there by, so to speak, was the guest of the defendant, or was there by his permission. 10

Mr. Woodbridge: She was there as his invitee.

The Court: That means a guest, in a legal sense I mean.

Mr. Woodbridge: As a landlord he had persons come there to the library, and he put up hooks for persons to hang their coats on. He says he limited the use of those hooks to Mrs. Green. She had no notice that that was the limitation of their use. She goes into a back room that is a part of the demised premises. 20

The Court: When you go on somebody else's property you must know your rights.

Mr. Woodbridge: Yes, sir; you must.

The Court: It was not for her to be notified. It was for her to ascertain her rights in going there. 30

Mr. Woodbridge: Yes, sir; but she sees hooks, and there is no limitation. (Further argument.)

The Court: They are not lawfully upon his premises, except they get there by invitation, or license.

Mr. Woodbridge: This was a place where people are to go for the purposes of the library, which he had leased.

The Court: No, it was not. It was a place 40

Motion for Direction of a Verdict

apart from the library, and no part of the leased premises.

Mr. Woodbridge: I do not think that the rule of law can be split so finely as to say if passages in this room are a part of the leased premises, that they had a right to use the sink and the door, that he can have a trap door in another part.

The Court: One led to the street, and the other led to the cellar. He has given a right to the street, not to the cellar.

Mr. Woodbridge: And to the sink.

The Court: The sink did not lead to the cellar; it led to the rear, by the street.

Mr. Woodbridge: Here she is stepping in that room, and she falls down a trap door which he had left open.

The Court: If there is danger of that, it is up to the lessee to provide against his patrons being hurt. If they are liable, by reason of the proximity of the dangerous condition, to be leased premises, it is up to the lessee to protect. Not the lessor.

Mr. Woodbridge: I do not so understand the rule. That would make Mr. Boyd liable in this case. He had no control of the trap door.

The Court: I mean to say, if there is a hole in the ground next to my leased premises, I cannot make the man who owns the hole fill it up, but I must protect my people against it. In other words, if there is a dangerous place on my neighbor's property, and I invite guests to my house, I must tell those guests about the hole, or put some barrier up, if I do not want them to fall into it. It is not up to the man who owns the property to fill up the hole.

Motion for Direction of a Verdict

Mr. Woodbridge: It is a little different, the hole.

The Court: I do not see the distinction between a hole in the ground, and one in the floor.

Mr. Woodbridge: One is where this man opens it, right next to where he has put up hooks for somebody, Mrs. Green, let us assume, to hang up her coat. If Mrs. Green had fallen down there would he be liable? 10

The Court: No. That is, if you want me to answer the question. Unquestionably not.

Mr. Woodbridge: She was unquestionably an invitee.

The Court: No, she was not. She asked permission to put her coat there.

Mr. Woodbridge: And he hung hooks for that purpose, and then puts a dangerous trap right where the hooks are. 20

The Court: The law in our State I think is clear, the only question is the question of the relation between the two parties.

Mr. Woodbridge: I think that is always a question for the jury, and I think it is a question for the jury in this case. That is the theory upon which I brought the case.

The Court: Yes, I appreciate it is your theory of the case. 30

The Court: Ladies and Gentlemen: This case has reached a stage where it would not be proper to proceed with it further, in the line of proofs. There have been two motions made, which the Court must deal with as a matter of law. The first motion, I will say to counsel, I think may possibly be debatable, because, as the testimony stood at the close of the plaintiff's case, it indicated an admission, or a declaration of the defendant that he had put the hooks there for the ladies 40

Motion for Direction of a Verdict

of the library. It does not make any difference who he put them there for; the vital question is how they came to be put there, whether at his instance and at his invitation, implied or direct, or at the request of someone else. The testimony at that stage might have left that question in doubt, as to how they came to be there. But the further proofs in the case determine definitely that the hooks were put there at the instance of Mrs. Green, who was the acting librarian, for her personal use. Whether it went beyond that is perhaps not important. The conclusive testimony shows that it was done at her instance, and for the benefit of herself, or those who were with her, or whatever the case may be, and not at the instance of the defendant. In those circumstances there was nothing, the proofs show now, by way of invitation, and under the law as it stands, and very aptly and clearly illustrated in two different aspects in the two cases in 91 N. J. Law, the one of Fleckenstein, I think it is, against the A. & P. Tea Company, and MacDonough against the Woolworth Company. In the one case it was a case similar to this, in that it created no invitation, the Court declared no liability. In the subsequent case, where there was evidence from which the jury could infer an invitation, it was submitted to the jury, and properly so. I think those two cases illustrate the rule and illustrate its application. There is nothing better settled in this State that where one goes upon the property of another, by mere permission or license, there is no obligation resting upon that other except to refrain from acts of wilful injury. I assume that there is no pretense or claim in this case that this trap door was left open with any malicious purpose, or with the wilful purpose of injuring anybody. It

Exhibit P. 1.

was left open under an arrangement of some sort, apparently, to get heat to the library room wholly, apparently, for the accommodation of the library. There was certainly nothing wilful in the act, nor could the jury infer such.

Under the circumstances there is nothing for the Court to do but to direct a verdict for the defendant. You may render a verdict for the defendant. 10

Mr. Woodbridge: Prays exception.

The Court: Exception allowed.

Exhibit P-1

THIS AGREEMENT, made the twenty-fourth day of January in the year of our Lord One Thousand Nine Hundred and Twenty-two. 20

BETWEEN David Skidmore of the Boro of Highland Park, in the County of Middlesex and State of New Jersey party of the first part.

AND Elmer B. Boyd of the City of New Brunswick, in the County of Middlesex and State of New Jersey party of the second part. 30

WITNESSETH, that the said party of the first part, has hereby let, and rented to the said party of the second part, and the said party of the second part, has hereby hired and taken from the said party of the first part.

ALL of store and store room located on N Second Ave. known as No. (9) nine on first floor with access to rear entrance also use of zinc and water.

With the understanding said store be used as library. Should the library be discontinued or 40

Exhibit P. 1

moved same may be used by Home News Pub. Co. for office purposes for the unexpired term.

Or power to sub-let with approval of party of 1st part.

The party of the first part agrees to provide
 10 heat free if the party of the second part or whoever may take the library over pays for radiator and its installation for the term of Two (2) years, to commence on the twenty fourth day of January A. D., 1922, at the yearly rent of Five hundred forty dollars (\$540) payable monthly.

AND it is agreed that if any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be
 20 lawful for the said party of the first part to re-enter the said premises, and to remove all persons therefrom:

AND the said party of the second part covenants to pay to the said party of the first part, the said rent as herein specified, to wit: Forty-five dollars monthly.

AND at the expiration of the said term, or the termination of this lease, the said party of the second part will quit and surrender the premises
 30 hereby demised, in as good a state and condition as reasonable use thereof will permit, damage by the elements excepted.

AND the said party of the first part covenant, that the said party of the second part, on paying the said yearly rent, and performing the covenants, aforesaid, shall and may peaceably and quietly have, hold and enjoy the said demised premises for the term aforesaid.

Exhibit P. 1

IN WITNESS WHEREFORE, the said parties hereto have hereunto set their hands and seals the day and year first above written.

DAVID D. SKIDMORE (L. S.)

EIMER B. BOYD (L. S.)

Signed, Sealed and Delivered

10

In the Presence of

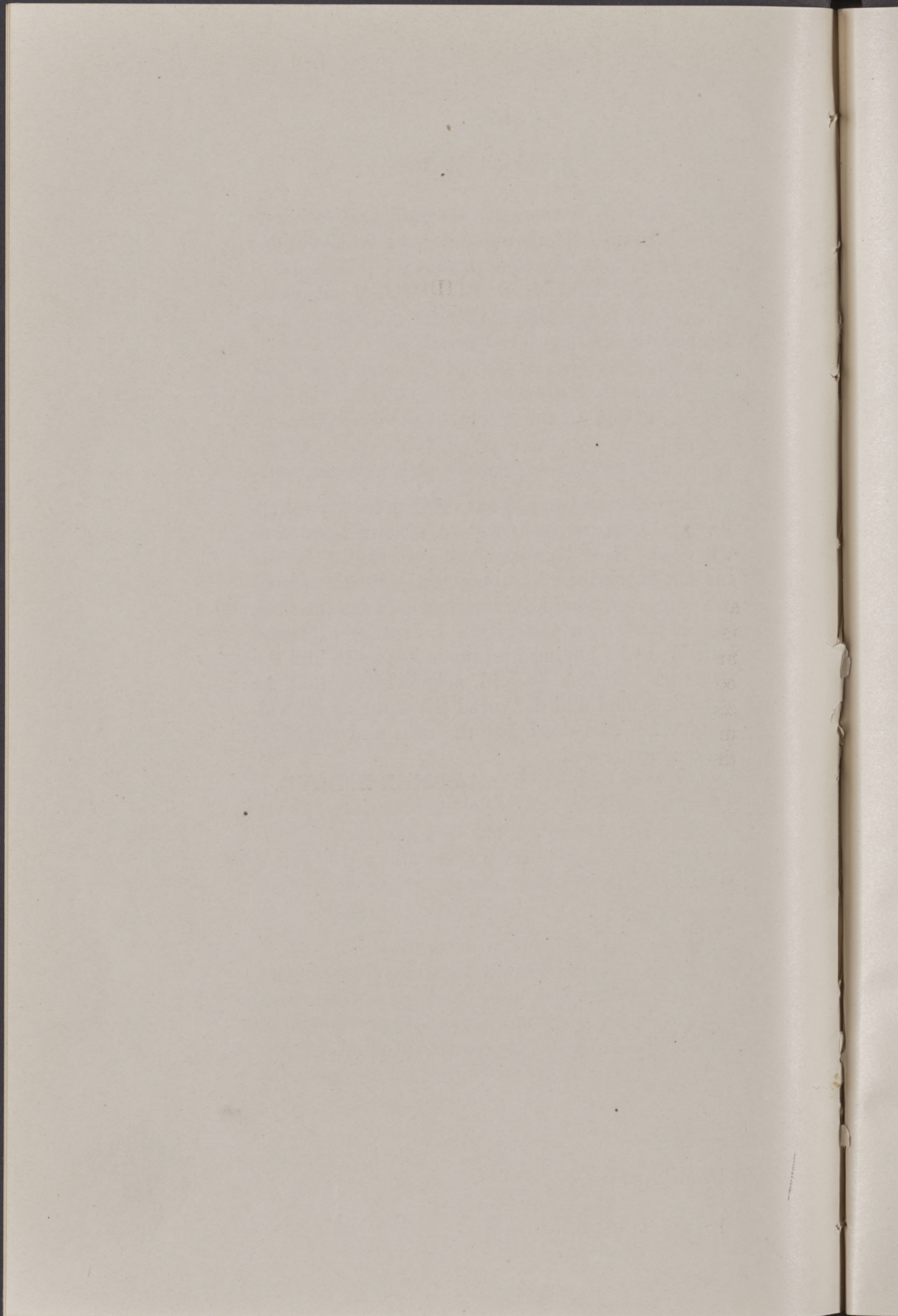
Chas. W. Larason

Justice of the Peace.

State of New Jersey, County of Middlesex, ss:

BE IT REMEMBERED, That on this twenty-fourth day of January in the year of our Lord One Thousand Nine Hundred and twenty-two, before me, the subscriber, a Justice of the Peace personally appeared David Skidmore, who, I am satisfied, 20 is the person in the within Indenture of Lease named; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

ELMER B. BOYD.



New Jersey Court of Errors and Appeals

GRACE M. GIBESON, Plaintiff & Appellant, vs. DAVID SKIDMORE, Defendant & Appellee.	}	On Appeal.
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BRIEF FOR PLAINTIFF AND APPELLANT

FREEMAN WOODBRIDGE, Attorney for and of
counsel with plaintiff and appellant.

Facts

This case comes up on appeal from a judgment entered November 29, 1922, on the direction of a verdict for the defendant by the HON. FRANK T. LLOYD, Circuit Judge at the trial (Case, p. 8, l. 30, etc., p. 9, l. 20).

The defendant, David Skidmore, leased to one Elmer Boyd of New Brunswick, New Jersey, by a written lease (Ex. P-1, p. 95, etc.) certain premises known as 9 North Second Avenue, Highland Park, Middlesex County in this State for use as a Free Library at the rent of Five Hundred and Forty (\$540) Dollars a year, payable monthly. The leased premises are described as follows—

All of the store and store room located on North

Second Avenue, known as No. 9 on first floor with access to rear entrance, also use of sink and water (p. 95, l. 35, etc.).

The defendant, Skidmore, Lessor, was to supply heat (p. 96, l. 9, etc.).

It was without dispute that Mr. Boyd, Lessee, acted for a voluntary library association, and that the rooms were to be used for a free circulating library in the Borough of Highland Park.

It appears that the library was in charge of Mrs. Green and she called upon different women of Highland Park to help her from time to time.

On the day in question March 22, 1922, the plaintiff went there as such a helper and arrived about 7 o'clock in the evening (p. 12, l. 21, etc.). When the plaintiff arrived Mrs. Green directed her to the room back of the library room. It appears by the diagram offered in evidence (Ex. D-1, p. 79, l. 10. see blue prints p. 98) that it was the rear room with a stairway leading down into the cellar, at the back of which room was the rear entrance and also a sink, as mentioned in the lease.

The plaintiff entered this rear room, which she calls a "hallway" and turning sharply to her left hung up her hat and coat on hooks, which had been placed there by the defendant for the purpose of hanging the hats and coats of the attendants at the library, according to the admission of the defendant himself (p. 41, l. 30; p. 47, l. 30, etc.).

At that time she says the floor was all solid, and there was no opening (p. 13, l. 30, etc.). She hung up her hat and coat and turned around and walked out and worked in the library until closing time. She then went back into the rear room to get her hat and coat and the hat and coat of her niece and plunged through an open trap door into the cellar, which had been opened just at the place where she had hung her hat and coat. She sustained the

injuries complained of and proved by uncontradicted testimony in the case (p. 14, ll. 3-25).

Mrs. Green said that the defendant had put up the hooks for her to hang her (Mrs. Green's) hat and coat on, although she permitted others to use the hooks for that purpose (p. 59, l. 40, etc., p. 60, l. 16).

Mr. Skidmore, the defendant, testified when asked about this subject that Mrs. Green asked him to put the hooks up there and he put up three (p. 82, l. 30, etc.). When asked about the conversation in which he admitted putting up the hooks for the attendants in the library he said:

“I do not remember any conversation that I ever had with him (meaning Mr. Gibson, a witness called for the plaintiff) about the hooks. I never had no conversation with him about any hooks” (p. 83, l. 25, etc.) and again—

“Q. Do you recall whether you said anything about how they came to be placed there.

“A. I do not recall it at all. No sir. I know I didn't say I put them there *for the public.*”

Nobody had testified and there was no claim in the case that he had ever said he put them there “for the public.”

Two witnesses had testified that Skidmore admitted shortly after the accident that he had put the hooks on the wall “*for the ladies of the library to hang their hats and coats on and gave them permission to do that*” (p. 41, l. 30, etc., p. 47, l. 27, etc.).

It is obvious that the defendant Skidmore leased this place for a free library, the front room to be used for library purposes with access to the back

room for the attendants of the library and that for these attendants he put up these hooks.

It is true that Mrs. Green stated that he put them there at her request, but in view of his admission, it was a fair question for the jury as to whether by placing the hooks there he extended an implied invitation to the plaintiff as one of the ladies working in the library to enter the back room and put her hat and coat on the hooks.

It was not disputed in the case that he opened the trap door. He admitted it himself (p. 84, l. 20, etc., p. 87, l. 22, etc., p. 42, l. 18, etc., p. 47, l. 36, etc.).

The learned trial Judge thought, and directed a verdict in favor of the defendant on the theory that all this testimony proved conclusively as a fact that Skidmore did not put up the hooks for the benefit of the ladies who came to the Library to help, but put them up exclusively for the benefit of Mrs. Green, and that anybody else who used them, used them as a mere trespasser or licensee.

It was the theory of the plaintiff that this state of the testimony raised a question for the jury on this subject.

The defendant Skidmore had admitted, according to the testimony of two witnesses, that he put the hooks up for the use of the ladies in the library (p. 41, l. 30, p. 47, l. 27). Therefore the testimony of Mrs. Green given at the trial, to the effect that he put the hooks up for her use and at her request and his own testimony first to the effect that he did not remember any such conversation and second his denial of any such conversation as the two witnesses testified to, raised a question of fact for the jury to pass on.

Wigmore Evidence, Vol. II, sec. 1048.

The learned Judge said (p. 94, l. 12, etc.):

“But the further proofs in the case determine definitely that hooks were put there at the instance of Mrs. Green, who was acting librarian, and for her personal use. Whether it went beyond that is perhaps not important. The conclusive testimony shows that it was done at her instance, and for the benefit of herself or those who were with her, or whatever the case may be, and not at the instance of the defendant. Under these circumstances there was nothing the proofs show now by way of invitation * * * There is nothing for the Court to do but direct a verdict for the defendant. You may render a verdict for the defendant.”

As a matter of fact all the ladies who went to the library went there as volunteers; Mrs. Green was nothing more nor less than the head of a voluntary association. All of them went there as volunteers for the purpose of maintaining a free circulating library in Highland Park and giving out books to children and other persons.

It is true that the defendant says that the trap door was open all the time (p. 87, l. 23, etc.). *Miss Gibeson says, however, that the door was not open when she first went in there, that it was all solid floor* (p. 13, l. 27, etc.).

Probably what happened is this—

When Miss Gibeson and Mrs. Green went to the leased premises for the purpose of arranging and giving out books that evening, they went into the back room, a part of the leased premises, and hung up their hats and coats. As it was only about 7 o'clock the defendant had not yet opened the trap door, but was solid floor as Miss Gibeson says it was. Subsequently he heard people moving about in the leased premises, or probably even

saw the hats and coats hanging on the hooks and thereby had notice that the ladies had arrived. He then opened the trap door without thought, of course, that it would harm them, for the purpose of letting heat into the library, just as he says he did.

All this is a reasonable inference and it might have been drawn by the Jury and it might not have been drawn by the Jury. It was for a Jury to pass upon and not for the Judge, in view of all the proof in this case. *Sefler vs. Vanderbeek*, 88 N. J. L., 636.

It is to be noted that the diagram, which was offered in evidence was made by a brother of the defendant, Joseph H. Skidmore, whose testimony is found on page 69. He is a carpenter and does not claim that he drew it to scale (p. 72, l. 10, etc.). He put the word "Private" on the diagram in front of the arrow indicating down to the cellar, but the Court properly directed that that word "Private" come off (p. 75, l. 9).

Note his testimony with regard to the slant of the partition, through which the door leads into the back room.

On the diagram he indicates three feet from the edge of the trap door to the partition, but on page 74 the testimony shows this state of affairs:

"Q. Show me how far three feet is on here. A. I haven't got my rule with me. I don't guess. I usually measure.

"Q. You are a carpenter. Can't you guess? A. About there (indicating).

"Q. So that when that cellar door was up and back against the wall raised up this way against the wall, there was only three feet from the partition to the edge of the opening, is that right? A. Yes.

"Q. This partition that runs within three feet six inches of the ceiling, that runs on a slant like that don't it? A. Yes.

“Q. So that the further you go along the partition the nearer you get to the edge of the cellar door, don't you? A. Yes.

“Q. Did you portray on this place here, or attempt to portray the angle at which that runs? In other words is that slant intended to be a true slant, or did you just guess at that too? A. Now that is within an inch or two, one way or the other, it is that close.

“Q. Inch or two of what? A. It may be an inch more, or may be an inch less.

“Q. An inch more or less slant? A. Yes.

“Q. Tell me what an inch more or less on a slant is, will you? A. No, I can't. It all depends on what kind of a slant it is.”

It is apparent then that this brother of the defendant made this map or diagram for the purpose of getting these hooks that were hung on the partition as far away from the cellar door as he possibly could, and that the measurements are not accurate. The most favorable view of his testimony would indicate that the partition on which the hooks were placed, in order that the ladies working in the library might hang their hats and coats up, was within three feet of that cellar door at the left-hand entrance of the door leading into the rear room, and that as one went further along the partition the nearer one came to the opening.

All this was for the consideration of the Jury and not for the Court.

Law

The Notice of appeal is found on page one, and is intended to cover every question in the case, but there is really only one proposition to be argued.

Point I

It was a question for the Jury in this case, as to whether or not the action of the defendant in placing the hooks there raised an implied invitation to the plaintiff to use the hooks for the purpose of hanging her hat and coat. If so it became his duty to abstain from acts of negligence, which caused the injuries to the plaintiff and it thereby became a question for the Jury as to whether or not he was guilty of such negligence.

A

All these questions the Judge determined as a matter of law.

This was error.

The leading case on this subject in New Jersey is *Phillips vs. Library Co.*, 55 N. J. L., 307. In that case on page 314, Mr. Justice Depue writing the opinion of this Court says:

“Indeed it is impracticable to lay down any precise rule in set terms, which shall embrace all the cases within range and exclude all the cases without range of the owner’s liability for injuries. The utmost that can be done is to state in general terms the controlling principle, that the liability of an owner or occupier for the condition of his premises arises where the plaintiff was induced to make use of the premises in the course of which he sustained the injury sued for, by express invitation, or by invi-

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

The learned Judge thought that the case of *Fleckenstein vs. Great Atlantic and Pacific Tea Company*, 91 N. J. L., 145 was controlling, but in that case the presence of the boy in the store of the defendant Company was merely permissive. He was not there as a customer. He was not there on business. There was no invitation expressed or implied.

But in the case of *McDonough vs. Woolworth Co.*, 91 N. J. L., 677, this Court unanimously held that:

"Where, however, there was through the counter an opening or passage way leading to a small book rack against the wall, filled with books with titles displayed for selection and so dimly lighted that it was necessary to enter the passage way to read the titles and make selection, held that such circumstances *constituted evidence of an implied invitation and that a Jury question consequently arose*, although the testimony showing the circumstances was undisputed."

On page 678, near the bottom, Judge White writing the opinion of this Court says:

“It was therefore, for the Jury to visualize the situation from the evidence and decide whether the plaintiff had reasonable ground from what she saw for belief that she was invited or expected to go where she did go, for the purpose she had in mind.”

Citing: *Phillips vs. Library Co.*, 55 N. J. L. 307.

I think there can be no distinction in principle between the placing of books for a customer to look at near a dangerous trap door, or opening, and placing of hooks for the hats and coats of attendants in a library, leased for that purpose by the person who put them there, and who opened the trap door.

She was lawfully there on the business for which the premises were leased and the hooks were put up to be used by the very persons who were there on that business. She was a customer of the defendant then in this sense and the hooks were displayed for her use, just as the books in the McDonough case were displayed for the inspection of the customers in the Woolworth store, and just as the toilet in the rear of the library with a pathway leading thereto was displayed and kept for the use of persons attending the lodge meeting in the *Phillips* case.

Pelpon vs. Schmidt, 53 American State Reports, 462-104 Michigan, 345, held:

“An owner who invites a truckman to enter his store to obtain a receipt for goods is required to give him notice of an open trap door on the premises of which the truckman has no knowledge and it was immaterial in that case that the person injured

was an employee and went there by the direction of his employer.”

So it is immaterial in this case that Miss Gibeson was using this at the direction of Mrs. Green.

In the case of *Smith vs. Jackson*, 70 N. J. L., 183, the owner of property gave the key of a house to the plaintiff who was a prospective purchaser and the plaintiff in going through the house was injured by the falling of the stairs. The court followed *Phillips vs. Library Co.* and held that there was an invitation.

In *McCormick vs. Anistaki*, 66 N. J. L., 211, it was held (p. 218):

“The question was whether the use of entrance and hallway was not by the invitation of the defendant. Taking that word in its legal sense of inducement, which is always tantamount to invitation.”

The gist of the liability consists in the fact that the person injured did not act merely on motives of his own to which no sign or act of the owner contributed, but that he entered the premises because he was led by the acts or conduct of the owner to believe that the premises were intended to be used in the manner in which he used them.

In this case hanging up her coat and hat on hooks placed there by the defendant for that purpose.

In such cases if there be evidence tending to show inducement or invitation it becomes a question of fact for the jury whether conditions exist under which a legal duty is imposed upon the owner of the premises to exercise care.

It is not disputed that the use of the rear room for some purposes was allowed by the lease. Now Miss Gibeson is instructed to go in there and sees hooks put up by the defendant. It is testified

that he knew there were ladies working there (pp. 84 and 85, l. 12). He was certainly bound to give her notice that their use was to be limited if he intended to do it, or else keep it safe. The situation cannot be distinguished from that disclosed in the case of *Mapes vs. Splitdorf Electrical Co.*, 94 *N. J. L.*, 460.

The presence of the three hooks entirely negatives the notion that their use was to be limited to one person.

In *Siggins vs. McGill*, 72 *N. J. L.*, 263, it was held that the landlord is under the responsibility of a general owner to keep the passage ways safe for tenants and those having occasion to visit them.

So that if we assume in this case that the use of the hooks was limited to Mrs. Green, still the liability extended to Miss Gibeson, if Miss Gibeson was lawfully there with Mrs. Green. The invitation to use the property extends to others than the tenants. It doesn't matter whether they come there as the guests of the tenants or for the purpose of business.

I do not believe that a distinction can be made in the uses to be made of the different portions of the same apartment. This back room was a part of the leased premises. I do not believe that a tortfeasor is exempt from liability, simply because a person lawfully there happens to be using it for a purpose not mentioned in the lease. I think the landlord must be held to know and be charged with knowledge that if a person goes there lawfully for any purpose, it must be kept safe.

In other words if he lets them in for any purpose he must keep it safe, no matter what the actual purpose of their presence so long as it is not unlawful.

B

There is a clear distinction in regard to the measure of duty required with regard to devices that are dangerous in themselves and those that are not dangerous.

In *Cyc.*, Vol. 29, Pg. 470 the following language is used:

“One who maintains a trap, pitfall or other harmful device on his premises, is generally held liable for injuries whether the person injured was rightfully there or not.” Citing *Harris vs. Perry*, 2 Kings Bench, 219-72, L. J. K. B., 725 and 89 L. T. R. T.—N. S., 174.

Illustrations of this are spring guns, *unguarded openings*, piles of live coals, tilted grates over holes, etc.

The same principle was followed in the case of *New Jersey Fidelity Plate Glass Insurance Co. vs. Lehigh Valley R. R. Co.*, 92 N. J. L., 467, where the rule is thus stated:

“Individuals or Companies which maintain agencies dangerous to human life are in duty bound to exercise a very high degree of care for the safety of those who may be exposed to danger.”

A recent case on this subject is *Piraccini vs. Director General*, 95 N. J. L., 114, where the defendant was held liable for negligence, regardless of any implied invitation on this principle of law.

Seftler vs. Vanderbeek, 88 N. J. L., 636. On page 639, Justice Trenchard writing the opinion of this Court says:

“The guardrail so insecurely placed was in the nature of a trap or concealed source of mischief.”

The case of *Foren vs. Roderick*, 90 Maine, 276-38 Atl. Rep., 175 is very much in point. There a visitor entering a building to call on a doctor turned into the wrong door on the first floor and plunged into the cellar. She actually opened the door, which was not the doctor's office, but she was unfamiliar with the premises and seeing the doctor's sign, supposed that it indicated the cellar door as the place of entrance. Held that the plaintiff was on the premises by an implied invitation of the defendants, who were the owners of the building on legitimate business, and that the defendants on the verdict of the Jury were responsible. Cases in Maine, Massachusetts and Illinois are discussed in the opinion of Mr. Justice Whitehouse of the Maine Supreme Court and the judgment on the verdict of a Jury was affirmed.

In *Black vs. Central Railroad Company*, 85 N. J. L., 197-200, this Court in an opinion written by Mr. Justice Garrison adopted the following as a statement of the law with regard to implied invitation, citing *Furey vs. New York Central and Hudson River Railroad Co.*, 67 N. J. L., 38 Vr. 270.

“Implied invitation is a part of the law of negligence by which an obligation to use reasonable care arises from the conduct of the parties. *Its essence is that the defendant knew or ought to have known that something he was doing or permitting to be done might give rise in the ordinarily discerning mind to a natural belief that he intended that to be done which his conduct had led the plaintiff to believe that he intended.*”

It certainly cannot be disputed that Miss Gibson, the plaintiff in this case, was lawfully in the library that evening. It certainly cannot be disputed that she was lawfully in the back room. It

certainly cannot be disputed that the defendant had put up the hooks there for the attendants in the library to hang their hats and coats on.

At least, in view of the testimony, it was a question of fact for the Jury, as to whether or not he had put them there for that purpose.

If these things be true and the foregoing statement of the law of implied invitation is still the law in this State, and I respectfully submit that it is, then it was certainly error for the Trial Judge to direct a verdict in favor of the defendant.

It is respectfully submitted that the judgment should be reversed and a new trial granted.

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New Jersey Court of Errors and Appeals

GRACE M. GIBESON, <i>Plaintiff and Appellant,</i>	} <i>On Appeal.</i>
<i>vs.</i>	
DAVID SKIDMORE, <i>Defendant and Appellee.</i>	

BRIEF FOR DEFENDANT AND APPELLEE.

**R. E. & A. D. Watson, Attorneys for and Counsel
with Defendant and Appellee.**

Facts.

The facts upon which the verdict in favor of the defendant and appellee was directed below are within a narrow compass. The defendant, David Skidmore, leased to Elmer Boyd, acting for the Highland Park Library Association, a portion of the first floor of the premises owned by him at Highland Park, in Middlesex County, for use as a library. The lease and diagram of the first floor are incorporated in the State of the Case. The tenant had the use of the store and storeroom and access to the rear entrance and the use of the sink. Persons could pass from the library room to the rear door and sink through the door shown on the plan between the book shelves and the chimney. The door swung inward into the library room on hinges on the left side facing it (p. 23, l. 25). Mrs. Green was in charge of the library. At her request, the defendant put up three hooks upon which to hang her clothing on the cellar stairway side of the partition beginning at the end of the book shelves and ending at the door jamb upon which the door hinges were hung. In order to get to these hooks, persons passing from the library room through the door would have to turn sharply to the left, while persons going to the rear door or the

sink would have to turn to the right. The stairway to the cellar was protected by a trapdoor, which opened against the north wall of the building; the north wall being the one upon the long side of the building where the stairways are. The only means of heating the library room was by leaving this trapdoor open in order that heat might escape from the cellar to the library room. The plaintiff was injured by falling through this trapdoor at a time when it was left open for that purpose.

- The point at which the hooks were hung was no part of the leased premises and was the private property of the defendant. Plaintiff testified that she went to the library as a helper and hung her clothing upon the hooks at the suggestion of Mrs. Green. It was in going for her clothing that she fell through the open trapdoor. The question below was whether the plaintiff was using the hooks as an invitee or a licensee of the defendant.

The only evidence adduced by the plaintiff with reference to the putting up of the hooks came from William Gibeson and Harry Gibeson, brothers of the plaintiff. They testified that Mr. Skidmore stated to them that he put the hooks up and gave the ladies of the library permission to hang their hats and coats thereon (p. 44, l. 24; p. 49, l. 38). In the defendant's case it appeared that Mr. Skidmore put up the hooks for the use of Mrs. Green at her request (p. 62, l. 28; p. 82, l. 9). There was evidence of only two occasions when these hooks were used by anyone else other than Mrs. Green (p. 60, l. 8), and Mr. Skidmore testified that he never knew of any use of the hooks except by Mrs. Green (p. 84, l. 28).

The facts before the Court below were that the hooks were placed on David Skidmore's private property subsequent to the possession of the library by the Library Association under the lease, at the request of Mrs. Green, in charge of the library, for her use and convenience, and that there inured to the defendant no benefit or advantage therefrom. The only additional evidence was that the defendant has stated to the two brothers of the plaintiff that

he had given the ladies of the library permission to use the hooks. From these facts the Court below held that the plaintiff was not an invitee but was a licensee, to whom the defendant owed only the duty of refraining from the perpetration of acts wantonly or wilfully injurious.

POINT ONE.

There was no evidence before the Court tending to show that the plaintiff was an invitee.

The plaintiff relies largely upon the case of *Phillips v. Library Company*, 55 N. J. Law 307, but overlooks obvious distinctions between that case and this. In that case the plaintiff was injured while going to a toilet, which was provided for the common use of the several tenants of the defendant's building, and which the tenant used as a matter of right under its lease. When a certain gate through which access to the toilet could be had was locked, the landlord provided a key for the use of the members of the society which was one of the tenants. The use of the toilet was one of the privileges of the lease and was there at the time the lease was entered into and the tenant took possession. In *Siggins v. McGill*, 72 N. J. L. 263, this Court explains *Phillips v. Library Company*, as follows:

“In *Phillips v. Library Company*, 26 Id. 307, which was a case of one of several tenants of a building injured while using a path to the rear *that was arranged for the common use of the tenants*, this Court affirmed the responsibility of the landlord for the condition of the path.”

In the case at bar, the hooks were put up by the defendant at the request of Mrs. Green, the head librarian, and for her special use in a part of the premises not covered by the lease, and the use of the hooks by her or anyone else was permissive. No benefit inured to the lessor and his act in putting up the hooks was one of mere courtesy. In nearly all of the cases a distinction is prop-

erly made between those in which the use is for the benefit of the owner of the premises or for the mutual benefit of the parties, and those in which the use is for the sole benefit or convenience of persons using owners' property. An examination of the cases cited in *Phillips v. Library Company* bears out this contention.

In *Vanderbeck v. Hendry*, 34 N. J. L. 467, plaintiff used a passageway between piles of lumber standing in the defendant's yard. His use of the way was for his own convenience and the defendant derived no benefit therefrom. He was held to be a licensee.

Similarly in *Matthews v. Bensel*, 51 N. J. Law, page 30, the injured plaintiff was upon the defendant's property for his own purposes and was held a mere licensee.

A similar factor controlled the decision in *Hounsell v. Smyth*, 7 C. B., N. S. 731. A contradictory conclusion was reached in the case of *Corby v. Hill*, 4 C. B., N. S., 556, because the plaintiff was using a road held out by the defendant to all persons having occasion to proceed to the defendant's property. It was the only means of access of the general public to the place of business of the defendant. So in the case of *Holmes v. N. E. Ry. Co.*, L. R., 4 Exch. 254, the case turned upon the fact that the plaintiff was upon the premises for the transaction of business thereby preventing it from being one of a mere licensee.

An examination of all the precedents cited in *Phillips v. Library Company* shows that it is usually a controlling factor whether the plaintiff was upon the defendant's premises for his own purposes or convenience or for some purpose which inured to some degree to the benefit of the owner.

Saunders v. Smith Realty Company, 84 N. J. Law, page 276, is directly in point. In that case, the plaintiff was a tenant of part of a building of the defendant. Plaintiff used the cellar for depositing rubbish and while doing so was injured. In that case, as in this, the tenant's use of the landlord's property was not as of right, or as ap-

purtenant to the leasehold or such that inured in any way to the benefit of the defendant. The tenant's lease did not cover the portion of the property where the accident occurred. The use of the property was permitted by the landlord and he acquiesced in it. The Court held "but a mere passive acquiescence by the owner * * *, in a certain use of his property by others involves no liability. * * * It may relieve such users from liability as trespassers, but the most that can be said in their favor is that their use is permissive; and when that is the case the owner is under no obligation to them except to abstain from acts which are willfully injurious."

The distinction is clearly pointed out in two recent decisions of this Court reported in 91 N. J. Law, *Fleckenstein v. The Great Atlantic and Pacific Tea Company*, at page 145, and *McDonough v. F. W. Woolworth Company* at page 677. Fleckenstein entered the store of the defendant, not intending to buy anything, with his friend, Young, who intended to make purchases. Fleckenstein was struck by a fragment of metal, which flew from a hatchet with which a clerk was opening a box, resulting in the destruction of the sight of one eye. Fleckenstein was held to be a licensee in the following language:

"The question arises, was the infant plaintiff lawfully upon defendant's premises, and if so, was he an invitee or licensee? In our judgment, he was lawfully in the store of the defendant, not as an invitee, however, but only as a licensee.

Merchants invite the public to enter their stores to buy wares. It cannot be said that they invite the entrance of those who accompany them, but who have no intention of purchasing; such persons are mere licensees. While it may be that they invite those to enter, who, after inspecting their wares may become purchasers, such an invitation did not extend to young Fleckenstein, when he accompanied his friend, Young, into the store, as he, Fleckenstein, admittedly, had no intention of purchasing anything.

This Court in *Saunders v. Smith Realty Co.*, 84 N. J. L. 276, said (at p. 279) that where the use of property is permissive, the owner is under no obliga-

tion to the users except to abstain from acts which are willfully injurious.

In *Fitzpatrick v. Glass Manufacturing Co.*, 61 N. J. L. 378, the Supreme Court held that the owner of lands is under no obligation to keep them in a safe condition for the use of a person who comes upon them not by the invitation of the owner, but merely by his permission.

And this Court, in Delaware, Lackawanna and Western Railroad Co. *v.* Reich, 61 N. J. L. 635 (at p. 643) held—

‘The general rule with regard to the duty which a landlord owes to persons coming upon his premises is that where the entry is made by his invitation, either express or implied, he is required to use reasonable care to have his premises in a safe condition; but where the entry is made merely by his permission * * * the landowner is under no obligation to keep his premises in a non-hazardous state; his only duty to a licensee or a trespasser is to abstain from acts willfully injurious. And this rule has been frequently enforced by the courts of this state. *Phillips v. Library Company*, 55 N. J. L. 307; *Mathews v. Bensel*, 51, *Id.* 30; *Vanderbeck v. Hendry*, 34 *Id.* 467; *Fitzpatrick v. Glass Manufacturing Co.*, *supra*; *Turess v. New York, Susquehanna and Western Railroad Co.*, 61 N. J. L. 314.’

There is no pretence in the matter before us that the infant plaintiff was injured by a willful act of any of the defendant company’s employees, and that is entirely dispositive of the case. The judgment of non-suit was right and must be affirmed.”

McDonough on the other hand went into the defendant’s store with the vague purpose of buying something if she saw anything she took a fancy to. She looked at a shelf of books and decided to buy one. While looking at the books, she fell down an open stairway. The Court held that she was an invitee and entitled to recover.

These two cases, both decided by this Court, clearly illustrate the rule upon which this appellee relies. The placing of the books by the appellee was something from which he derived no benefit or advantage whatsoever, and was a mere act of courtesy. The use thereof by the plain-

tiff under the evidence in this case, was at most, with his mere permission or acquiescence.

Counsel for the plaintiff-appellant overlooks the controlling factor which distinguishes the cases. Fleckenstein was upon the defendant's property for his own purposes and pleasure. McDonough was upon the defendant's property for the defendant's purposes, as well as her own.

Another decision of this Court in which the plaintiff was held to be an invitee because he was on the defendant's premises on business in which both the plaintiff and defendant has an interest in *Sefler v. Vanderbeck & Sons*, 88 N. J. L. 636.

The case of *Pelpon v. Schmidt*, 104 Mich. 345, relied upon by the plaintiff, in truth supports the defendant's contention, because in that case the plaintiff was in the owner's premises upon the latter's business, namely: to obtain a receipt for goods delivered.

Likewise the case of *Smith v. Jackson*, 70 N. J. L. 183, cited by the plaintiff, is distinguished from the case at bar, because in that case the plaintiff was a prospective purchaser of the property and was thereon upon an errand which might inure to the defendant's benefit. The plaintiff was clearly an invitee.

In the case of *McCormick v. Anistaki*, 66 N. J. Law 211, also cited by the plaintiff, it is held that "mere permission to pass over dangerous lands, or acquiescence in such passage *for the benefit or convenience of the licensee*, creates no duty on the part of the owner, except to refrain from acts wilfully injurious."

It was also held in this case that long continued user of the hallway in question without interference or molestation did not create in the plaintiff a right in the premises, for acquiescence by the owner is not sufficient to impose upon him liability for an injury resulting from the situation of the premises. It was necessary to show something more than mere user with the acquiescence of the owner. In that case such further evidence was before the Court in that

the defendant had directed the plaintiff to put up his sign at the doorway of the hall in which the accident occurred from which the jury might infer an invitation to use the hallway as an entrance to the portion of the premises leased by him.

Mayes v. Splitdorf Electrical Co., 94 N. J. Law, page 460, is a clear case of invitation, the plaintiff having been shown where to work by the defendant company's representative.

Siggins v. McGill, 72 N. J. L. 263, is not pertinent because it has to do with the duty of a landlord who lets out portions of the building to several tenants, retaining in his own possession or control the passageway or stairways for the common use of the tenants and those having occasion to visit them.

The cases cited by counsel for the plaintiff under "Title B of Point 1," are not pertinent to this discussion. The rule applied in those cases has to do only with the use of a highly dangerous agency, such as the storage of explosives, as in the case of *New Jersey Fidelity Plate Glass Insurance Company v. Lehigh Valley Railroad Company*, 92 N. J. Law 467, or of fire, as in the case of *Piraccini v. Director General*, 95 N. J. Law, page 114.

The obligation of the owner to licensees, where the use is not of a highly dangerous agency, such as explosives or fire, is as set forth above in the case of *Saunders v. Smith Realty Company*, namely: to abstain from acts which are wilfully injurious. That is well settled.

Moreover, the Library Association not having provided a radiator as provided under lease, the trapdoor was left open for the purpose of permitting heat to escape from the cellar into the library. Far from being the use of a dangerous agency, it was an act of accommodation to the Library Association by the defendant.

In conclusion, the defendant quite agrees with the plaintiff that she was lawfully in the library, that she was lawfully in the back room, and that there is evidence tending to show that the defendant put up the hooks and per-

mitted those using the library to hang their clothing there. That, however, is not enough under the cases to hold the defendant. That amounts to nothing more than permission or acquiescence. The hooks were on defendant's property, the plaintiff while lawfully there, was not there as a matter of right, the use of the hooks was not appurtenant to the leasehold, and in no way inured to the benefit of the defendant. The hooks were put up by the defendant at the special instance and request of the head librarian for her use, and the use of the hooks by the plaintiff or any other person was without his knowledge, consent or acquiescence.

Upon this state of facts the plaintiff was a mere licensee, and it is respectfully submitted that the judgment of the Court below be affirmed.

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