

NEW JERSEY COURT OF ERRORS AND
APPEALS

GEORGE CLARK,)
)
)
 Plaintiff-Appellant,)
)
 vs.)
) On Appeal
 HUDSON & MANHATTAN) Notice
 RAILROAD AND PENN-)
 SLYVANIA RAILROAD)
 COMPANY,)
)
 Defendants-Respondents.)
)

To Messrs. Collins & Corbin,
Vredenburgh, Wall & Carey,
Attorneys for Defendants.

PLEASE TAKE NOTICE, that I will apply to the Court of Errors and Appeals, on Monday, the 27th day of November, 1916, at the State House in Trenton, at 10:30 A. M., or as soon thereafter as counsel can be heard, for an order directing the Supreme Court to make an order for a further return in the above entitled cause and for leave to file a petition for re-argument when the corrected return is made, and on said application I will use the affidavit hereto annexed, and the annexed petition.

Dated November 22, 1916.

Yours, &c.,

ALEX. SIMPSON,
Attorney for Plaintiff-Appellant.

Davis v Little 64 Law 595

NEW JERSEY COURT OF ERRORS AND APPEALS

GEORGE CLARK,)
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 Plaintiff-Appellant,)
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 vs.)
) On Appeal
 HUDSON & MANHATTAN)
 RAILROAD AND PENN-)
 SLYVANIA RAILROAD)
 COMPANY,)
)
 Defendants-Respondents.)
)

State of New Jersey)
) ss.
 County of Hudson)

ALEXANDER SIMPSON, being duly sworn according to law, upon his oath deposes and says:

I am the attorney of record of the plaintiff in the above entitled cause. The case was tried twice. The first time a verdict was recovered by the plaintiff and set aside on a rule to show cause. At the second trial the printed book was offered and the verdict directed on the printed book. Through an error when the return was made, there was no transcript or record filed of the proceedings at the trial and the printed book does not show any objection to the direction of a verdict. As objection was taken to the direction of a verdict as appears by the minutes of the stenographer at the second trial, a true copy of which are annexed hereto.

Faint handwritten text at the bottom of the page, possibly a signature or date.

Sworn and subscribed to
before me, this 23rd
day of November, 1916.

Alex. Simpson.

Charles Newkirk,
Commissioner of Deeds, of N. J.

TO THE HONORABLE, THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY:

The petition of GEORGE CLARK, of the City of Jersey City, in the County of Hudson, respectfully shows:

1. That he is the appellant in the case of George Clark vs. Hudson & Manhattan Railroad Company, et al., in which judgment was affirmed at this term of court, for the reason that the printed record failed to show at the direction of verdict by the trial court, any objection was made by the defendant.

2. Your petitioner shows that the fact is an objection was made by the defendant and by an error in printing the printed State of Case the minutes were omitted from the said printed State of Case.

3. Your petitioner shows and annexed hereto, is a copy of the stenographer's minutes at the second trial, which minutes were not filed in the Supreme Court Clerk's office when notice of appeal was filed, but now are on file in the Clerk's office of the Supreme Court.

4. Your petitioner therefore prays that your Honorable court will permit an amendment of the printed State of Case and as additional return to be made supplying the omission heretofore set forth and an amendment of the grounds of appeal so as to set forth that it was a judgment for the direction of a verdict for the defendants and not for direction of a verdict of non-suit.

Your petitioner begs leave to refer to paragraph 28 of the new Practice Act, as follows:

“Upon appeal or on application for a new trial, the court in which the appeal or application shall be pending, may in its discretion, take additional evidence by affidavit or deposition, or by reference, provided, that the error complained of is

NEW JERSEY SUPREME COURT

GEORGE CLARK,)

vs.)

HUDSON & MANHATTAN)
 RAILROAD AND PENN-)
 SLYVANIA RAILROAD)
 COMPANY,)

Tried October 28, 1914, before Speer, J. and a jury.

Alexander Simpson for the plaintiff.

Collins & Corbin and Vredenburgh, Wall & Carey for the defendants.

Mr. Simpson: I will offer this printed book so far as it shows the testimony in the previous case, by consent of the defendants, and ask to have it marked.

(Marked P-1.)

PLAINTIFF RESTS.

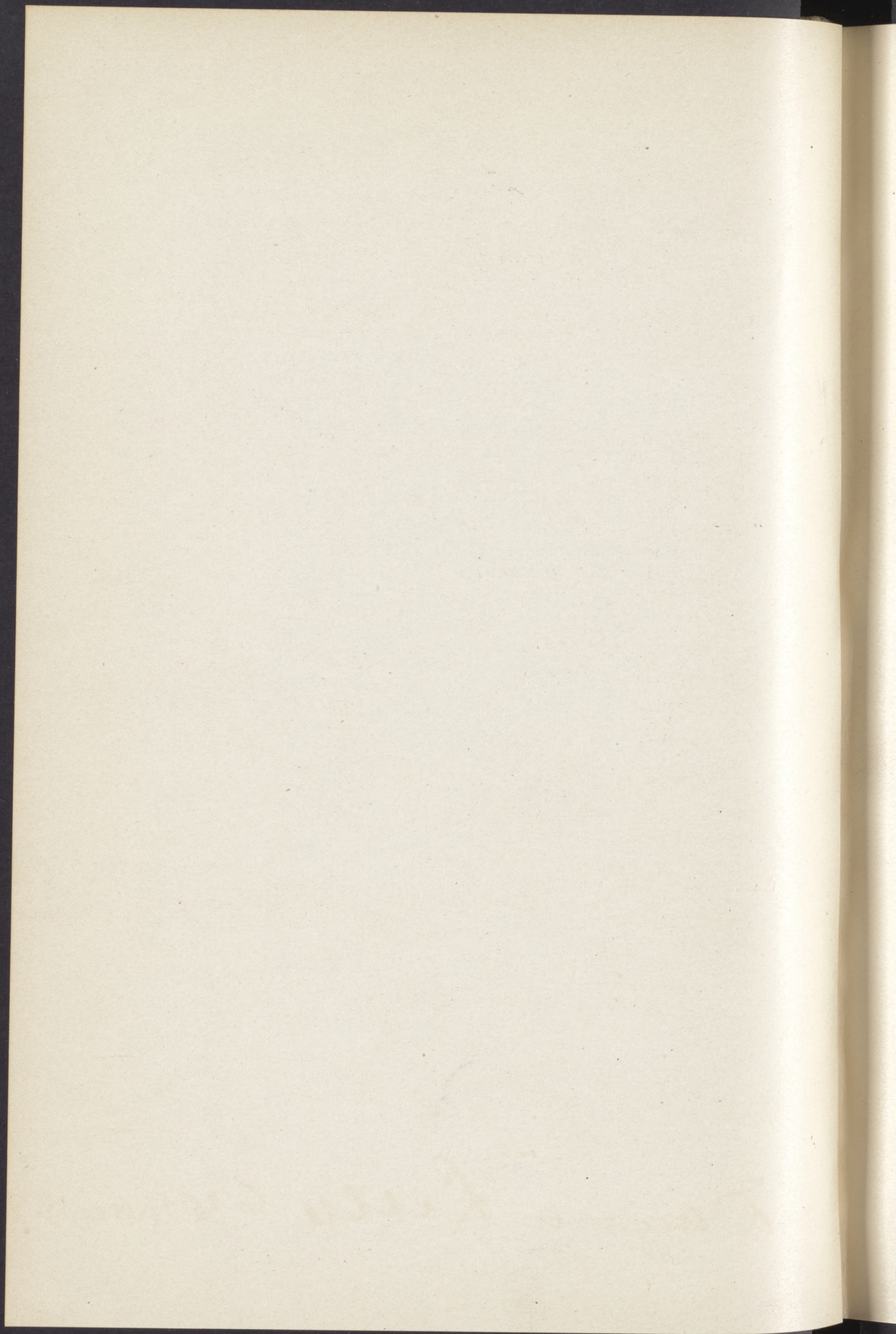
Mr. Hobart: We ask, on behalf of both defendants, for a direction of a verdict in favor of both defendants, on the ground that there is no evidence of negligence on the part of either defendant. The evidence shows that the accident was an impossible physical event, and the evidence shows that the plaintiff's alleged condition was due to some other cause than electric shock, to wit, an accident sustained by him in June, 1906; and finally that any verdict rendered for the plaintiff against

either defendant would have to be set aside as against the overwhelming weight of the evidence.

The Court: Gentlemen of the Jury: This case, by the consent of all counsel, is tried before you on a printed book of a case that was tried herebefore and in which the Supreme Court of the State has declared that there was no proof of negligence in the case upon which the jury could found a verdict. Of course I am bound by that decision. It is the decision of a higher court than this, and therefore I direct the jury to find a verdict in favor of both defendants in the case.

Mr. Simpson: Note my objection on the record.

The Court: And Mr. Simpson's objection against my acting that way will be entered on the record in the form of an exception.



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Plaintiff-Appellant,

vs.

HUDSON & MANHATTAN
RAILROAD AND PENN-
SLYVANIA RAILROAD
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