

1923, by Smith to the plaintiff below, the payment of rent by the defendant to Smith in October of 1923, the letting of the store by the defendant to Atlantic City and the default judgment in the landlord and tenant suit, all negative the fact that any new contract was made and it is submitted that the proof thereof, especially in view of the stipulated renewal, should not have been received by the trial Court.

The remaining reasons will not be discussed, except as they have been hereinbefore referred to.

It is respectfully submitted that the judgment of the Supreme Court affirming the judgment of the District Court of Atlantic City was erroneous, and should be reversed and judgment should be entered for the plaintiff below for the sum of \$240.00, with interest from February 12, 1920, with costs.

BARCOCK & CHAMPION,
Attorneys for Appellant.

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New Jersey State Library

COMPLAINT.

NEW JERSEY SUPREME COURT.
ATLANTIC COUNTY.

10

GEORGE W. LEECH,
Plaintiff,

v.

ATLANTIC DELICATESSEN
COMPANY, a corporation,
OR ROBERT HEILIG, BRUNO
GARR and JOSEPH BRUNIG,
partners trading &c., as
ATLANTIC DELICATESSEN
COMPANY, in the alterna-
tive,

20

Defendants.

Action at Law.
Complaint.

Plaintiff, George W. Leech, a resident of the City of Pleasantville, in the County of Atlantic and State of New Jersey, says:

30 1. That during the month of November, 1922, Charles I. Lafferty was lessee of certain rooms on the second floor of premises known as #1410 Atlantic Avenue, Atlantic City, New Jersey, of which Atlantic Delicatessen Company, a corporation, or Robert Heilig, Bruno Garr and Joseph Brunig, part-

ners trading &c., as Atlantic Delicatessen Company, defendants, were the then owners.

2. That said premises consisted of a brick building, containing three stories, the first floor of said building being occupied and used as a pastry shop, the second and third floors of said building were rented by said defendant for dwelling and office purposes.

10

3. That the second and third floors of said premises were reached by a common hallway, under the control of the lessor, and lighted by electric lights under the control of said lessor, and operated from a switch within the pastry shop on the first floor of said building.

4. That the rooms occupied by the said Charles I. Lafferty, above-mentioned, were used as the Democratic political headquarters, and that plaintiff, on the 7th of November, 1922, was a challenger for the Democratic party in said City of Pleasantville, N. J., and after the vote had been counted, carried the returns from said City of Pleasantville to the Democratic headquarters, located in the rooms leased by the said Charles I. Lafferty, as aforesaid.

20

5. That plaintiff remained in said rooms until the vote from various precincts and districts had been received, and at or about half-past one o'clock on the morning of November 8th, 1922, plaintiff left said Democratic headquarters, intending to go to his home.

30

6. That the defendant lessor had neglected and failed on the said night of November 7th and 8th,

1922, to light and cause to be lighted the electric lights in said hallway.

7. That plaintiff, while proceeding carefully along said hallway in the darkness, and without any fault upon plaintiff's part, fell down one flight of stairs, and was seriously and permanently injured.

10 8. That as a result of said fall, plaintiff sustained a fractured right femur, his right leg and muscles became shortened, his right foot turned outward, loss of motion in his right leg, severe shock, and nervousness, with great pain in the spine, and a constant cough, which injuries are permanent.

20 9. That plaintiff, since said fall, has been and is in impaired health, and unable to follow his usual vocation, resulting in great monetary loss to plaintiff because of plaintiff being obliged to expend large sums of money for painters, carpenters and other artisans, and suffers great mental pain, anguish, humiliation and mental suffering by reason of said injury and consequent lameness.

10. Plaintiff, in endeavoring to effect a cure has expended large sums of money for doctors' and nurses' services, medicines, hospital expenses, X-rays, massage and electrical treatments.

30 11. Plaintiff demands against the defendant, Atlantic Delicatessen Company, or in the alternative against the defendant, Robert Heilig, Bruno Garr and Joseph Brunig, partners, trading as Atlantic Delicatessen Company, damages in the sum of \$40,000.00.

BOURGEOIS & COULOMB,
Attorneys of Plaintiff.

Duly served with summons and complaint, April 28th, 1924, on Atlantic Delicatessen Company, by leaving a copy at the residence of Robert Heilig, president of said Atlantic Delicatessen Company, at Northfield, Atlantic County, New Jersey, with a member of his family above the age of fourteen years, to wit, his niece; April 28, 1924, on Robert Heilig, by leaving a copy at his residence in Northfield, Atlantic County, New Jersey, with a member of his family above the age of fourteen years, to wit, 10 his niece; April 28, 1924, on Bruno Garr, by leaving a copy at his residence in Northfield, Atlantic County, New Jersey, with a member of his family above the age of fourteen years, to wit, his niece; May 8th, 1924, on Joseph Heilig, by leaving a copy at his residence, 232 South Connecticut Avenue, Atlantic City, Atlantic County, New Jersey, with a member of his family above the age of fourteen years, to wit, his wife.

HOWARD R. CLOUD, 20
Sheriff,
By JAMES CIMINO,
Under Sheriff.

Sheriff's fees \$11.18.

ANSWER.

(Filed May 17, 1924.)

NEW JERSEY SUPREME COURT.
ATLANTIC COUNTY.

10

GEORGE W. LEECH,
Plaintiff,

v.

ATLANTIC DELICATESSEN
COMPANY, a corporation,
OR ROBERT HEILIG, BRUNO
GARR and JOSEPH BRUNIG,
partners trading &c., as
20 ATLANTIC DELICATESSEN
COMPANY, in the alterna-
tive,

Defendants.

Action at Law.
Answer.

Atlantic Delicatessen Company, a corporation of
New Jersey, one of the defendants in the above-en-
30 titled cause, by this answer:

1. Denies the allegations contained in paragraphs 1, 2 and 3 of the complaint.
2. Avers that it has no knowledge or information sufficient to form a belief as to the allegations con-

tained in paragraphs 4 and 5 of the complaint, and for the purpose of requiring proof thereof, denies said allegations.

3. Denies the allegations contained in paragraph 6 of the complaint.

4. Avers that it has no knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 7, 8, 9 and 10 of the complaint 10 and for the purpose of requiring proof thereof, denies said allegations.

FIRST DEFENSE.

1. Defendant performed each and every obligation and duty it owed to the plaintiff.

2. Defendant was under no duty or obligation to 20 light or cause to be lighted the hallway of the building as set forth in paragraph 6 of the complaint at the time of the occurrences set forth in said complaint.

SECOND DEFENSE.

1. The conduct of the plaintiff contributed to the injury complained of.

2. Plaintiff was guilty of contributory negligence. 30

3. The conduct of the plaintiff was of such a character as to prevent recovery against the defendant in that the plaintiff did not exercise due care as he was using the hallway set forth in the complaint,

and with knowledge of the existence of the flight of stairs referred to in the complaint, carelessly and negligently used the said hallway and without any negligence on the part of the defendant, walked into and fell down the stairway referred to in the complaint, as a result of which he was injured.

LEWIS STARR,
Attorney of Defendant, Atlantic
Delicatessen Company.

10 A true copy.

EDWARD J. KELLEHER,
Clerk.

REPLY TO ANSWER OF DEFENDANT.

NEW JERSEY SUPREME COURT.
ATLANTIC COUNTY.

20

GEORGE W. LEECH,
Plaintiff, }
v. } Action at Law.
ATLANTIC DELICATESSEN } Reply to Answer of
COMPANY, a corporation, } Defendant, Atlantic
et al., } Delicatessen Co.
Defendants.

30

Plaintiff, George W. Leech, says:

1. Plaintiff denies the allegation set up in the first defense.

2. Plaintiff denies the allegation set up in the second defense.

BOURGEOIS & COULOMB,
Attorneys of Plaintiff.

ORDER TO DISCONTINUE.

NEW JERSEY SUPREME COURT.

10

GEORGE LEECH,
Plaintiff, }
v. } Action at Law.
ATLANTIC DELICATESSEN } Order to Discontinue.
COMPANY, et al., }
Defendants. }

20

Ordered that plaintiff have leave to discontinue the above-stated action against Robert Heilig, Bruno Garr and Joseph Brunig, defendants, without payment of costs to said defendants. And it is hereby discontinued accordingly.

BOURGEOIS & COULOMB,
Attorneys of Plaintiff.

30

We consent to the entering of above order.

SCHWINGHAMMER & QUINN,
Attorneys of Defendants,
Heilig, Garr and Brunig.

ORDER.

(Filed December 18, 1926.)

NEW JERSEY SUPREME COURT.
ATLANTIC COUNTY.

10

GEORGE W. LEECH,
Plaintiff,

v.

ATLANTIC DELICATESSEN
COMPANY, a corporation,
OR ROBERT HEILIG, BRUNO
GARR and JOSEPH BRUNIG,
partners trading &c., as
ATLANTIC DELICATESSEN
COMPANY, in the alterna-
tive,

Defendants.

Action at Law.
Order.

20

It appearing to the Court that a discontinuance in
30 the above-stated cause was consented to by plaintiff
and defendants, Robert Heilig, Bruno Garr and Jo-
seph Brunig; and it further appearing to the Court
that a non-suit was granted to defendant, Atlantic
Delicatessen Co., upon the trial of said cause, and
that by inadvertence and mistake the postea recited
all the party defendants, and that judgment was en-
tered against the plaintiff and in favor of all the
above defendants:

It is, on this 17th day of December, 1926, upon
motion of Bourgeois & Coulomb, attorneys of plain-
tiff, ordered that said judgment as to Robert Heilig,
Bruno Garr and Joseph Brunig be and the same is
hereby vacated and for nothing holden; so that said
judgment will remain of record against the plaintiff
and in favor of Atlantic Delicatessen Co., defendant,
only.

LUTHER A. CAMPBELL,
Judge. 10

We consent to the making of the above order.
LEWIS STARR,
Attorney.

EXHIBIT P1. 20

Standard Lease, Atlantic City Real Estate Board
THIS INDENTURE, Made the first day of ~~Decem-~~^{October}
~~ber~~ A. D. Nineteen Hundred and Twenty two,
BETWEEN Atlantic Delicatessen Co., by H. G.
Harris & Co., Agents, a corporation of the State of
New Jersey, of the first part and Charles I. Lafferty
of the City of Atlantic City, State of New Jersey, of
the second part,
WITNESSETH, That the said party of the first 30
part hath let and by these presents doth grant, de-
mise and farm let unto the said party of the second
part Rooms 5 and 6, second floor, 1410 Atlantic
Avenue, Atlantic City, N. J., with the appurten-
ances, from ~~December~~^{October} 1, 1922 to ~~June~~^{November} 1, 1923, at
the rent or sum of ~~THREE HUNDRED DOLLARS~~
One hundred seventy - three dollars

to be paid as follows: ~~Fifty Dollars on the 1st of December, 1922, January, February, March, April, May, 1923.~~

one hundred seventy three

dollars on signing of this lease receipt whereof is hereby acknowledged

All rents due on this lease to be paid at the office of H. G. Harris & Co., Guarantee Trust Building, Atlantic City, N. J.

10 PROVIDED, that if any rent shall be due and unpaid, or if default be made in any of the covenants herein contained, then this lease shall immediately cease and become void, and it shall be lawful for the said party of the first part, without notice and without any demand for said rent, to re-enter the said premises and remove all persons therefrom, or to proceed by action for the recovery of the possession thereof, or otherwise however.

20 AND the said party of the second part doth hereby covenant and agree, to and with the said party of the first part, to pay the said rent in the proportions and upon the conditions aforesaid, and not to assign this lease, or underlet said premises, or any part thereof, nor permit any person or persons to occupy the same, or any part thereof, without the written consent of the party of the first part, or use nor permit any part thereof to be used for any other purpose than for offices nor make or suffer to be made any alteration therein, without the written consent of said party of the first part; and also at the expiration of said term, to yield up and surrender the possession thereof, with the appurtenances, in as 30 good state and condition as the same now are; or may be put into by the said party of the first part, reasonable wear and tear and accidents happening by fire or other casualties excepted; it is further agreed between the parties hereto that the said party of the second part shall pay for all gas consumed, repair or replace all articles that may be

lost, broken or damaged; repair or replace any plumbing, pipes, or fixtures, heating apparatus, or radiators, that freeze and burst, due to tenant's neglect, and pay any excess water bills, and remove all ashes and rubbish that may accumulate during the term of this lease; and should the said leased premises be destroyed by fire during the term of this lease the party of the first part shall return to party of the second part a just and equitable share of such rent as may be paid in advance to cover unexpired term of said lease. 10

In consideration of services rendered by H. G. Harris & Co., as agents of the Lessor in procuring the within named tenant for the leased premises and the further consideration hereinafter named, said Lessor agrees with said agent that they shall be and remain agents for said Lessor and said leased premises mentioned so long as said Lessee is a tenant under this lease, or any renewal thereof, or any new lease; said agent is to receive a commission of five 20 Percent. on the amount of rent actually paid by the Lessee, and said agent agrees, if required by said Lessor, in consideration of said commission, to endeavor to collect the rent as it falls due; and in the event that said Lessee should purchase the leased premises during the term of this lease, or any renewal or new lease thereon, then said Lessor agrees to pay said agent a commission of three Percent. upon the purchase price.

RULES and REGULATIONS

30 Lessor will keep in operation in said building warming apparatus for the use of tenants during such periods as the same may be necessary, except on Sundays, and will cause said demised premises to be cleaned and cared for, and will also furnish a reasonable amount of electricity, as Lessor may de-

termine, for lighting said premises during business hours, reserving the right, however, in case Lessee, in the judgment of Lessor, or Lessor's Agent, or Attorney for the time being, uses the electricity in an extravagant or unreasonable manner, of requiring Lessee to put in meters and pay for the amount used, or in default thereof, the supply to be cut off. In consideration of the fact that no extra charge is made for light, excepting as aforesaid, and for heat and Janitor's services, Lessor shall not be liable for any failure to supply the same not due to gross negligence on Lessor's part.

No sign, advertisement or notice shall be inscribed, painted or affixed on any part of the outside or inside of said building, unless of such character, color, size and material, and in such places, as shall be first designated by Lessor by endorsement hereon. A sign painter authorized by Lessor will do such work at tenants' expense.

20 The use of rooms as sleeping apartments is prohibited.

And the said party of the first part doth covenant that the said party of the second part, on paying said rent, and performing the covenants aforesaid, shall and may peaceably and quietly have, hold and enjoy the said demised premises for the term aforesaid.

30 IN WITNESS WHEREOF, the said parties have interchangeably set their hands and seals hereto the day and year first written.

Atlantic Delicatessen Co.
 H. G. Harris & Co., Agents
 By W. Zimmerman, Vice-Pres. [Seal]
 Charles I. Lafferty [Seal]

SIGNED, SEALED AND DELIVERED
 IN THE PRESENCE OF
 W. L. Cortelyou

STANDARD LEASE
 Atlantic City Real Estate Board
 Atlantic Delicatessen Co., by H. G.
 Harris & Co., Agents
 to
 Charles I. Lafferty
 Expires 192
 H. G. Harris & Co.
 Guarantee Trust Bldg.
 Atlantic City, N. J.

10

20

30

A. I attended him for a comminuted fracture of the neck of the femur.

Q. Everybody knows what that means but me.

A. You know what a fracture is.

Q. I know what a fracture is, but maybe some of them do not even know that.

A. A fracture is a break in the bone, and when you say comminuted you mean that the break instead of being straight across the bone is broken into
10) a lot of little pieces, so that it is not a straight crack in the bone, but it is a sort of crushing of the bone. That is commonly as near as I can explain it.

Q. And sometimes it may be like an impacted fracture?

A. This was an impacted fracture, and the fragments of the lower portion were driven into the fragments of the upper portion, and the bone was locked in this broken condition.

Q. Now, where was that fracture, what part of
20) the femur?

A. It was just below the head of the bone, the articulating portion of the bone of the hip, just an inch below the portion that fits into the pelvis, which allows the leg to move upon the pelvis.

Q. And the femur is what? That is that large bone of the leg?

A. That is that large bone of the thigh, the thigh bone.

Q. What did you do for him? What did you do
30) for him?

A. Put him in bed, put sand bags on the leg and had him X-rayed.

Q. Then what?

A. That is all.

Q. What did you put the sand bags on his leg for?

A. To keep him from moving his leg and getting any further injury.

Q. Is that the usual practice in cases of fracture of the leg?

A. That is the usual practice in cases of comminuted fracture.

Q. What did you have the X-ray taken for?

A. To verify the diagnosis. The first X-ray was on the 8th, to verify the diagnosis; then we took another one on the 25th to see the progress, and again on the 12th of December to see what progress
10) had been made in the healing of the fracture.

Q. And was the progress such as you could expect?

A. Yes, as much as we could expect.

Q. Now, as the result of that fracture, what was the result to Mr. Leech's leg?

A. Well, on the 12th—on the 27th when he left the hospital he had an inch shortening with an eversion—by that I mean the foot was turned out; and a stiff knee from the position in bed.

Q. Well, will that leg ever again attain its full
20) length?

A. It is impossible.

Q. Then it is permanent?

A. Absolutely.

Q. Now, what with regard to the pain and suffering? Does a fractured leg cause any pain and suffering?

A. At times—it is one of the most painful injuries you can get in the line of a fracture.

Q. And how long does that pain continue, if it
30) can be determined?

A. That is very hard to say, Mr. Bourgeois. I cannot say that; I don't know, it varies so in different people; it varies so in the construction of the tissues around the fracture, and whether it is in a mal-position pressing on the nerves. So many things enter into that that I cannot answer that question.

Q. Now, about this turning out of his foot, what will be the effect of that? Will that in time attain its original position or will it always remain that way?

A. No; that will never come in because that is due to the impaction; in other words; this bone impacted in a false position and that stayed there. He will have to learn to walk that way; that is all.

10 Q. Will it cause him any pain when he is lying down or sitting down or anything of that sort?

A. I don't know; that would be entirely a subjective symptom. I don't know. It might; it might not.

Q. How long was he in the hospital?

A. He was in the hospital from the 8th of November to the 27th of December, and as my memory serves me, he went home in the ambulance.

Q. After that time did you see him again?

A. I never saw him again.

20 Q. Doctor, did that fracture and the turning out of his leg—might it cause a stiffness, limitation of motion of the leg?

A. Well, there would be a limitation of motion from the injury to the hip. There would be a limitation of motion in the knee from the long-continued position, and some of that limitation would be permanent. The turning out of the foot I don't believe would make any difference in the limitation except it would make a strain on the muscles, and an unusual strain on the muscles, and, therefore, cause discomfort; which, of course, would go away then.

30 Q. What would be the effect of that fractured hip and the turning out of the foot upon his tiring? Would he tire more quickly?

A. Oh, certainly.

Q. He would tire more quickly?

A. Certainly he would, sure.

Q. Would it have any effect upon his nervous system?

A. I think it would, and on his disposition both.

Q. Both his disposition and nervous system?

A. I should think so.

Q. Well, if the nerves are shattered the disposition usually goes, anyway, doesn't it?

A. Yes.

Cross-examination.

10

By Mr. Starr:

Q. You first saw Mr. Leech on what day?

A. I saw him on the 8th of November, according to my record.

Q. On the 8th of November?

A. Eleventh month 8th, 1922.

Q. And you saw him at the hospital?

A. I saw him at the hospital.

20

Q. And was he under your direct care while he was in the hospital?

A. He was under my care; yes, sir.

Q. And he remained in the hospital how long?

A. Until the 27th of December.

Q. Well, you said a moment ago the 27th of November. Which was it?

A. No, 27—12th month 27th, 22 he was discharged.

Q. So he was in the hospital from the 8th of November until the 27th of December?

30

A. That is right.

Q. Did you see him just before he was discharged from the hospital?

A. Yes, sir.

Q. Same day?

A. Well, now, I don't know; I imagine so; I usually do.

Q. And you have not made any examination since that?

A. No; I haven't examined him since.

Q. He has not been under your care since he was discharged from the hospital?

A. I have not seen him since until today.

Q. And at that time he had the stiffness of the knee?

A. Yes, sir.

10 Q. That, of course, to a certain extent would be alleviated by time, would it not?

A. Oh, yes.

Q. Would be corrected—that is, of the knee?

A. Yes; that was from disuse.

Q. And he had then a shortening of the limb of about an inch?

A. About an inch. That is the same shortening he had at the time of injury. He didn't get any shorter nor any longer.

20 Q. Well, that was the result of the —

A. Impacted fracture, yes.

Q. Was there any stiffness of the ankle that you recall?

A. I don't recall any particularly, no.

Q. No reason why the ankle should be stiff?

A. Excepting that disuse again, as in the knee.

Q. Well, if it is the same as the knee, it would be stiff from disuse?

A. Yes, from disuse.

30 Q. What this injury an ordinary broken hip?

A. An ordinary broken hip?

Q. Yes.

A. Well, no; I would not say so.

Q. Why not?

A. Well, the "ordinary" broken hip is not usually a comminuted hip; nor is it always impacted.

Q. Well, with this, would you say it was an ordinary broken hip?

A. Well, I don't think there is such a thing as an ordinary broken hip. I don't think you ever do have two alike; I haven't.

Q. But this was comminuted and impacted both?

A. Yes.

Q. Now, you spoke of the stiffness of the muscles of the upper limbs occasioned by the change in location of the hip. Of, course, that would be compensated eventually by the use of that member, would it not? 10

A. From exercise, yes. By education mostly, yes.

Mr. Starr: That is all, Doctor.

Re-direct examination.

By Mr. Bourgeois:

Q. Doctor, will a fracture such as Mr. Leech suffered, with a leg turned out, ever retain its normal position? 20

A. Absolutely no.

Q. Will it ever be free of some stiffness?

A. No; I don't think it can ever be free.

Q. In other words, it is permanent?

A. He is absolutely permanently injured. There is no question about that.

(Witness excused.) 30

WILLIAM J. CARRINGTON, called as a witness on behalf of the plaintiff, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Bourgeois:

10 Q. Doctor, you are a practicing surgeon in Atlantic City?

A. Yes, sir.

Q. Of how many years standing?

A. Sixteen.

Q. Did you make an examination of Mr. Leech's leg some time after November 8th, 1922?

A. Yes. I examined it twice; first on August 14th, 1923, and the second time September 29th, 1924.

Q. Did you measure the length of his legs?

20 A. Yes.

Q. Can you tell me whether or not one of them is shorter than the other?

A. Yes; the right is an inch shorter than the left.

Q. That is the one that was injured?

A. The injured leg is an inch shorter than the other.

Q. Will that shortening ever disappear or will it always be short?

A. No; that is permanent.

30 Q. And what did you find with relation to his foot? Is that in line with the other foot? In alignment or is that turned out?

A. No; that is turned out fifteen degrees.

Q. Fifteen degrees out?

A. Yes.

Q. Will that ever come back to normal?

A. No; that is also permanent.

Cross-examination.

By Mr. Starr:

Q. When you saw Mr. Leech in September, 1924, was he wearing a specially made shoe?

A. Yes; he had a shoe the heel of which was lifted 10
—oh, half an inch.

Q. What effect had that on his injury?

A. Well, it partly compensated for the shortening.

Q. When you made the examination in August of 1923, you found some ankylosis of the ankle, did you not?

A. Yes; I found ankylosis of the knee and of the ankle both.

Q. Now, when you made the examination in September of 1924, that had all disappeared? 20

A. That had disappeared.

Q. And the only thing that you found upon the last examination was the shortening?

A. No.

Q. The shortening —

A. Shortening and the stiffness and the turning out.

Q. Stiffness of what?

A. Of the hip joint. There was limitation of motion around the hip.

Q. To what extent was there limitation? 30

A. Well, there was limitation in each direction. It would be hard to say in percentages.

Q. So that there was the shortening, limitation, and the eversion of the ankle?

A. Yes, sir.

Q. Can you show the jury, what would indicate

an eversion of fifteen degrees, using your own foot and leg?

Mr. Bourgeois: He can use Mr. Leech's.

The Witness: (Indicating.) Fifteen degrees. This is ninety degrees. Fifteen degrees would be turned out about like that.

10 Q. So that if he had a ninety-degree eversion, it would be like this, at right angles?

A. Yes, sir.

Q. One foot to the other, and fifteen degrees would be just one-fourth of that; wouldn't it—one-sixth of it?

A. Yes.

Q. So that it is one-sixth of the distance of what it would be if it were at right angles with the other?

A. That is right.

20

Re-direct examination.

By Mr. Bourgeois:

Q. Tell us what ankylosis is?

A. Stiffness.

Mr. Bourgeois: Well, now, Mr. Leech, will you step up here before the jury and put your foot out
30 and let me ask the doctor one question. Now, stand just normal.

Q. Now, Doctor, do you mean by fifteen degrees, fifteen degrees from a straight line, or fifteen degrees beyond what would be normal in him?

A. Fifteen degrees beyond what would be normal in him, in Mr. Leech.

Mr. Bourgeois: That is what I understood. That is all.

(Witness excused.)

CLYDE M. FISH, called as a witness on behalf of the plaintiff, being duly sworn, was examined and testified as follows: 10

Direct examination.

By Mr. Bourgeois:

Q. Doctor, you are a practicing physician?

A. I am.

Q. Where?

A. Pleasantville.

Q. And how long have you been practicing? 20
There, I mean, Pleasantville?

A. Since 1901, in June.

Q. You know George Leech?

A. I do.

Q. How long have you known him?

A. I have known him ever since I came to Pleasantville, about 1901 or 1902.

Q. Have you treated him?

A. I did.

Q. When? 30

A. I couldn't give you the definite dates, but I have taken care of him off and on for the past fifteen years.

Q. Now, then, have you treated him since November—or December of 1922?

A. I have.

Q. Since he had the accident?

A. I did.

Q. What sort of treatment have you given him?

A. December, the 27th, of 1922, I was asked to see Mr. Leech. He was then at his home. Previous to that time I had seen him two or three times in the hospital. In going by the door I would walk in and just talk to him, who was one of my family. But it was the 27th of December I first saw him in Pleasantville in bed, with a fracture that he told me he had received on election —

Mr. Starr: I object to the conversation.

Mr. Bourgeois: I think he has a right to tell.

The Court: I think that is all right.

Mr. Bourgeois: He is the family physician.

20 Q. And after that did you treat him somewhat?

A. I did.

Q. For how long a time?

A. Until he was up and on his feet.

Q. And what was the treatment you gave him?

A. Passive motion at first, and then had a massage man loosen up the joints, and got him out on a chair first, moved him around gradually, and then on his feet.

30 Q. Was there anything, Doctor, that you could have done or should have done for him to restore him to normal condition that was not done?

A. Not that I know of, no.

Q. In other words, you did the best you could?

A. Yes.

Q. Now, what did you find his condition to be when he was up? Was he lame?

A. There was a shortening of the right limb.

Q. Did that cause him to limp?

A. It did.

Q. Did he have any limp before the accident?

A. No; he did not.

Q. And did you observe this condition of his right foot, turning out?

A. I did.

Q. Is that curable? I mean will it ever get back where it ought to be, straight? 10

A. No; it will not come down.

Q. How long before the stiffness will be out of this joint, if it ever is out?

A. When I first saw him he had considerable stiffness in his knee and in his ankle, which has practically disappeared now. The stiffness in the hip joint will never disappear.

Q. Well, now, assuming that he cannot bend his knee, there is limitation of the motion of the knee at the present time, will that ever disappear or will it remain there, if it is there now? 20

A. I don't think it will ever disappear.

Q. You think it has had time to regain whatever it will regain toward recovery?

A. I do.

Q. What effect, Doctor, if any, have you observed in his general appearances since this accident as compared with prior to the accident, if there is any difference?

A. He aged considerable during the time that he was in the hospital, from the time that I saw him previous to the accident until I saw him in bed. 30

Q. He did what?

A. Aged in a way.

Q. Is he as stout as he was then?

A. No; he is not.

Q. And have you had any opportunity of observing his nervous condition since the accident?

A. Yes; I have.

Q. What is that?

A. He is far more nervous than he was previous to the accident.

Q. And what effect does nervousness have upon a person's health?

A. The health of a nervous person is never as
10 good as that of a person who is not nervous.

Q. And it has some effect, maybe, on the disposition?

A. Yes; I think it has.

Q. You think it has. Well, what effect, Doctor.

Q. You think it would. Well, what effect, Doctor, does the accident—what effect is it probable that the accident would have upon his nerves?

A. A broken hip of this character?

Q. A broken hip of this character that he had,
20 what is the probable effect of that upon his nervous system?

A. The shock of the accident with the confinement in bed for the month following the accident, it could not help but aggravate and irritate the nervous system.

Q. Well, Doctor, what effect would it have upon one's nervous system—the fact that he was suddenly permanently lamed? Suppose, for instance, I was
30 to meet with some accident and should be permanently lamed and I would know that hereafter I would have to go among everybody that I went among, in a lame condition, limp, and unable to get around; what effect would that have upon my nervous system?

A. It would have a bad effect on your nervous system.

Q. It would have a tendency to make one nervous?

A. It would, yes.

Mr. Bourgeois: Cross-examine.

Cross-examination.

By Mr. Starr:

Q. You saw him first on the 27th of December, 10
1922?

A. I did.

Q. How long did he remain in bed?

A. About two weeks until we set him up on a chair.

Q. Was his leg in a cast when he was brought from the hospital?

A. I cannot answer that question. I think it was. It was either in a cast or a splint. It was at rest.

Q. Did you take the splint off or the cast off? 20

A. I took it off.

Q. When?

A. About that same length of time.

Q. About two weeks?

A. About two weeks, just after the New Year.

Q. And thereafter was he able to walk with a cane or a crutch?

A. There was a long period of time between the date when he sat up on a chair and when he was able to walk across the room or away from the
30 apartment.

Q. Had you treated Mr. Leech before this accident for any trouble of any kind?

A. Oh, yes.

Q. What?

A. Minor troubles. I remember his having a cold

one time, and he had a slight attack of indigestion, years before.

Q. Was he subject to your treatment for any other serious troubles at all?

A. Not that I can remember of.

Re-direct examination.

By Mr. Bourgeois:

10

Q. Do you remember how long he was on crutches after he was up out of bed?

A. The two periods crossed each other. I had him on a chair and then urged him to stand up and try supporting himself on his crutches; but he was really not able to walk on crutches. Then he gradually drifted away from the chair on to the crutches; so that I couldn't answer that question definitely. The first time that he was able to come down was March.

20

His apartment is on the second floor. I remember that date distinctly, but the other dates I couldn't tell.

Q. Do you recall whether or not when he got down so that he could get downstairs, he used crutches, when he got about on the street?

A. Oh, yes; there was a period when he was around the streets of Pleasantville quite a while with crutches.

30 (Witness excused.)

GEORGE W. LEECH, the plaintiff, being called as a witness in his own behalf, was examined and testified as follows:

Direct examination.

By Mr. Bourgeois:

Mr. Bourgeois: I offer in evidence a lease between the Atlantic Delicatessen Company and Mr. Lafferty. (The paper offered is received in evidence and marked as an exhibit for the plaintiff, P1).

Q. Mr. Leech, you live where?

A. Pleasantville.

Q. And how long have you lived in Pleasantville?

A. 40 years.

Q. What was your business? You used to be in business there, didn't you?

A. I was; for twenty-five or thirty years I was in business there.

Q. What was your business in November, 1922?

A. Well, my main business was looking after some properties I had, and did the work about them.

Q. What work did you do about that time?

A. I done practically all the repairs, such as—that is, small jobs like carpenter work, paper and painting and all such things as that; did a little plumbing.

Q. That is, on your own properties?

30

A. That is on my own properties.

Q. You were able to do that, were you?

A. Yes, sir.

Q. Did you have an accident on the 8th of November, 1922?

A. Yes, sir.

Q. Early in the morning?

- A. Yes, sir.
- Q. What had you been doing the day previous?
- A. I had been around the polls on election day in Pleasantville.
- Q. When was election day?
- A. That was the day before.
- Q. I say the 7th was election day?
- A. The 7th was election day.
- Q. How late were you around the polls on that
10) election day?
- A. Pretty near one 'clock in the morning.
- Q. Where?
- A. Pleasantville.
- Q. And did you have any work or any position on that day connected with the election?
- A. I was sort of challenger in one of the voting precincts.
- Q. And what did you do when you left the voting place?
- 20) A. I went from one polling place to the other and got the returns and from there I went to Atlantic City.
- Q. How did you go to Atlantic City?
- A. By automobile.
- Q. And where did you go when you went to Atlantic City?
- A. Right out to the headquarters there at 1410 Atlantic.
- Q. And who maintained those headquarters?
- 30) A. Well, as I understood, Lafferty rented them for headquarters for the committee.
- Q. That is your county Democratic Committee?
- A. Yes, sir.
- Q. What time do you say it was when you left Pleasantville that night?
- A. It was close on to one o'clock.

- Q. And what time was it when you got to headquarters?
- A. About fifteen minutes to one.
- Q. And what did you do then?
- A. I went up and turned in the returns and stood there for a little while —
- Q. You went up to the headquarters, to the rooms?
- A. Yes.
- Q. And where were those rooms?
- A. In the back end of the second floor of 1410 10 Atlantic.
- Q. And had you been there before?
- A. Different times.
- Q. When you went up were there lights to direct you so that you could see to get up there?
- A. No lights at all.
- Q. Did you get up?
- A. Yes, sir.
- Q. And go into headquarters?
- A. Yes, sir. 20
- Q. What about those rooms—who was in there when you went in?
- A. Oh, I suppose fifteen or twenty people in the room; maybe more than that. They were receiving the returns. They are always listening to them.
- Q. Were they able to see one another?
- A. Oh, there was light in the offices.
- Q. They were lighted?
- A. Yes, sir.
- Q. But not in the stairway? 30
- A. Not on the stairway.
- Q. How long were you in the headquarters?
- A. I don't suppose over ten minutes I stayed.
- Q. And then what did you do?
- A. I started to come through the hallway down the steps.
- Q. Can you tell me how that vestibule and stair-

way and hallway are lighted or arranged? Can you tell the jury so they will understand? Can you tell me how that vestibule and stairway and hallway are arranged? Can you tell the jury so they will understand?

A. Well, what do you mean, from the office to the end —

Q. No, go in the other way, off Atlantic Avenue.

A. Well, going in off Atlantic Avenue you lead
1() right from the vestibule off the street, up a flight of stairs, I suppose probably twelve or fifteen steps; I don't know just exactly; then there is a landing straight up; then it goes up in another direction like that.

Q. Which way does it turn, to the right or left?

A. Why, it turns to the right, I think it is.

Q. Well, now, did it? You go up 1410, turn to your left, then where do you go?

A. You go up about six or seven steps more to
2() the main hallway.

Q. Then you turn which way, right or left?

A. Turn to your right then.

Q. Where did you go then?

A. Oh, about, I suppose, twenty-five or thirty feet back to the back office.

Q. And you say none of those were lighted at that time, neither the hallway nor the vestibule nor the stairway?

A. No light at all in the hallway or vestibule.

30 Q. Now, you say you were there about ten or fifteen minutes; then you came out. Now, what did you do as you came out in order to find the stairway?

A. When I got to the turn where you come down to come to the small hallway to the first flight of steps, I struck a match to kind of get a look at the position and started, and the first thing I knew I

went one step too far and landed in the landing.

Q. Well, now, had you reached the stairway before you struck the match, or did you strike the match before you reached the stairway?

A. Just as soon as I turned around the corner of the hallway where the steps were supposed to be.

Q. At that time were there any lights there in the hallway or on the stairway or vestibule?

A. No lights at all.

Q. When you made the step and fell, what hap- 10
pened to you?

A. Well, I just fell in a heap down there and I managed to get up and slide down the step to the street.

Q. Did you know that your leg was broken at that time?

A. No, not at that time; no.

Q. Well, how far down did you slide?

A. All the ways down the twelve or fifteen steps; I managed to get down; it was painful but I didn't 20
suppose my leg was broken or anything.

Q. What happened to you when you got to the bottom of the steps.

A. I sort of fainted when I got to the bottom of the steps.

Q. Anybody come to your assistance?

A. Yes; they were parties I was with; were looking for me at the bottom, at the street door when I got down there.

Q. Who were they?

A. Mr. and Mrs. Taylor.

Q. Are they here today?

A. No; they are not.

Q. Where are they?

A. Florida.

Q. When they came to your assistance what was done with you? 30

A. Why, they kind of got me to the automobile right near the curb, it was, right in front—almost in front of the building.

Q. Then what happened?

A. They got a driver to drive me to the hospital.

Q. And when you got to the hospital what was done with you then?

A. Why, the doctor there examined me and said I would have to stay. So they put me in a ward
10 until morning and left me there until I got in touch with my wife.

Q. How soon did Dr. Senseman call to take care of you?

A. Why, he called there—he was called sometime that morning. I don't know just what time it was; and he ordered it X-rayed.

Q. And then what was done with you?

A. I was taken to a private room.

Q. But what was done with you when you were
20 taken to the private room? Did he dress it? What treatment did they give you?

A. They put me to bed, put sand bags all around my leg and straightened it out that way. That is all I know they done at the time.

Q. And how long were you there?

A. I was there seven weeks.

Q. What effect did this fall have upon your mental system? I don't mean whether it made you nervous or not, but whether or not it was painful?

A. Well, it was very painful for some time. Still
30 it is painful off and on even to this day.

Q. What effect did it have on your nervous system?

A. Well, it kind of made me sort of nervous and irritable all the time, I guess; something like that.

Q. You say you were there for seven weeks in bed all the time?

A. In bed all the time at the hospital.

Q. With sand bags on your leg all the time?

A. Except twice when they took me on the car to the X-ray room to take X-rays.

Q. And what became of you after you left the hospital?

A. I was brought home in the ambulance and put to bed at home.

Q. Did the sand bags still go along with you or
10 did you have splints?

A. Sand bags.

Q. Who attended you when you came to your home?

A. Dr. Fish was supposed to take care of me according to the understanding with Dr. Senseman.

Q. And who took care of you while you were in the hospital?

A. Dr. Senseman was the one looked after me and the nurses.

Q. Now, Mr. Leech, what was the result of this
20 fracture upon your leg?

A. I am an inch shorter. It makes me lame in walking. I also cannot walk like I used to, that is, I can't walk no distance, and I can't walk fast; for I couldn't begin to run across the street if I had to run; I couldn't begin—the leg sort of drags. Also the foot falls out if I don't brace it up; it falls so much that it seems to put a sprain on the ankle all the time. The result is I have to brace it against something, brace it on my foot, or even when I am
30 in bed, when I am lying on a certain side I have to have a pillow to brace it up.

Q. Will you step out here and show the jury the situation? I guess maybe they saw the position of your leg when you were standing up. Come out here so the jury can see.

A. (Witness does so.) That is as far as I can get around. I can't get around without spraining it.

Q. Let us see you sit down in this chair.

A. Well, I always have to go that way, straighten it out, because I can't bend my knee.

Q. Can't you put it up the same as this one is?

A. I can put it up there but —

Q. I mean straighten it up?

A. I can't straighten it up only that way.

10 Q. Now, in order to get your knee in, what do you have to do with your body? Let's see you get your knee in.

A. What do you mean?

Q. Pull your knee in with the other one, just like mine, this way. Can't you do that without turning your body over?

A. No; it seems to catch me all the time.

Q. Do you have any limitation of the motion of your leg, of that knee?

20 A. It is stiff all the time.

Q. Can you bend it back like you can the other one?

A. No; I can't begin to bend it back like the other one.

Q. How far can you bend the other one back?

A. All the distance.

Q. And what with relation to your hip? Do you have any limitation of motion there? Do you have the same freedom with that right leg that you do with your left one?

30 A. Why, I have in the hip. The trouble is all when I get down here, where the stiffness is all in.

Q. Do you have any pain from it at the present time?

A. Occasionally; at different times I have pain with it, when I stay in one position too long it gets stiff, and sort of painful.

Q. What with regard to the times when these pains affect you, when do you feel the pain?

A. Well, I couldn't say just exactly. It may be a little in the weather sometimes; maybe it has the effect of doing it; I don't know.

Q. What effect, if any, has that accident had upon your ability to work or be happy?

A. Well, I can't begin to get around and do different work, climbing and one thing and another that I could do before I got hurt. I can't get down on the floor and do anything like that. I have to stay flat. I can't get down on my knees and do it and go around. 10

Q. Can you get up on a ladder and do painting nowadays?

A. Oh, I can climb a ladder but I wouldn't want to go quite as high as I used to.

Q. What about the effect of the accident upon your tiring? Do you tire quickly or not so quickly as you did before? 20

A. Oh, I tire more quickly. The leg seems to be always tired. A very little exercise makes it tired.

Q. What about your sitting? Can you sit a long time, sit down a long time or not?

A. I can, but I get all stiffened up around here, when I put my weight on it; sometimes if I don't catch myself by a chair I almost go out. I don't know what it is. It seems to give.

Q. Now, will you go back to the witness stand, please. (Witness does as directed.) Mr. Leech, can you tell me if you had by reason of this accident any expenditures? 30

A. Yes, sir.

Q. For doctors and nurses, etc.?

A. Hospital, nurses, doctors, electrical treatments and one thing and another.

Q. Tell me the amount of moneys that you were

obliged to expend for cure; tell us so far as you may be cured as the result of this accident.

A. Why, I spent \$1137.

Mr. Starr: I think we are entitled to have the items.

The Witness: I can give you the items.

10 Q. All right. Tell me how much the first bill you had was. I suppose it was Dr. Senseman's, was it?

A. No. Atlantic City Hospital, \$412.25; that was for room and board and one thing and another; nurses during the seven weeks I was there \$753.00; Dr. Senseman's was \$150.00; Dr. Stickney's was \$10.00. He had to be called. Dr. Fish's was \$35.00; Dr. Wescott for X-rays—after I left the hospital I went to the X-ray again—that was \$25.00. Dr. Chew for neuropath treatments was \$78.50; Galen
20 Hall was \$32.00 for treatment there; Dr. George Lensby of Atlantic City, electrical treatment was \$30.00; there was \$3.40 for a pair of crutches; \$8.84 for rubbing alcohol, and one or two other little things that I had bills for. I paid out a great deal more than that but I never had any account, so I couldn't put them in. That is about all.

Q. Mr. Leech, I didn't hear about Dr. Fish.

A. Dr. Fish was \$35.00.

Q. How much did those amount to?

30 A. That amounted to \$1127.99 I think.

Q. Was there any other money you were obliged to pay out by reason of your accident?

A. Yes. At the time I was hurt I was painting a building outside and inside and I had it pretty well done on the outside when I was hurt, and I had to hire a painter to finish it up and he charged me

\$99.00 for his time painting it, which I could have done myself.

Q. How about carpenter work that you could have done, any of that?

A. Not on this building, no.

Q. Well, any building?

A. I had another place here for carpenter work around my own apartment. I paid \$72.00 out for carpenter work that I could have done myself, too.

Q. And would have done if you had not been hurt? 10

A. And would have done if I had not been hurt, certainly.

Q. And what else?

A. And I paid a colored man there for cleaning up around the place, the dirt made, and attending to the furnace and one thing and another like that, \$37.60.

Q. What else?

A. Then there was another house that I had painted in the spring of 1923 which cost me \$300.00. I could have done that myself if I had not been hurt. 20

Q. And would you have done it?

A. I would have done it, certainly. That is about all I can itemize.

Q. And how much does that all amount to?

A. \$1536.59.

Q. Did I understand you to say that you still suffer pain at times?

A. I do off and on. 30

Mr. Bourgeois: Cross-examine.

Cross-examination.

By Mr. Starr:

Q. Mr. Leech, may I ask your age?

A. At the present time?

Q. At the present time?

A. Sixty-one this month.

10 Q. How old were you when this accident hap-
pened?

A. It was in 1922. I would be about fifty-seven, I guess.

Q. Fifty-seven. Had you a trade? Have you a trade?

A. No, sir.

Q. And prior to this accident were you employed regularly at anything except taking care of your own properties?

20 A. That is all; I have been out of business for fifteen years.

Q. What was your business when you were working at it?

A. General store.

Q. Had a store at Pleasantville?

A. Yes, sir.

Q. Were you one of the election officers on the day of this election in 1922?

A. I was a challenger, if you call that an election officer.

30 Q. Well, you were not a member of the election board; that is, the inspectors who are —

A. No; I was what you call a challenger; the challenger over at the polls on that day.

Q. Had you been regularly appointed by the chairman of that committee?

A. I had.

Q. By whom, Mr. Lafferty?

A. Mr. Lafferty.

Q. At which polling place were you a challenger?

A. Why, in the first ward, in the fourth voting district, but I didn't stay there; I was from one end of the town to the other. In fact, I was supposed to look after the whole town.

Q. Were you designated at any particular polling place?

A. Yes; I was designated at my own voting pre-
cinct. 10

Q. How long were you there that day?

A. I was there off and on all day long.

Q. And you also went around the other places?

A. I also went around the other places.

Q. Now, did you volunteer to take the returns over to Atlantic City that night?

A. Yes; they asked me to get them over.

Q. Who asked you to get them over?

A. Either Harrold or Lafferty; I don't know just
which one. 20

Q. Who is Harrold?

A. He was secretary of the county committee.

Q. Now, which one asked you?

A. I couldn't tell you which. I was asked to make the returns over there as soon as we could get them.

Q. When you were asked to make the returns—when were you asked to make the returns?

A. Oh, a few days before election.

Q. Do you know whether they had a telephone in the headquarters in Atlantic City? 30

A. Yes; they had a telephone.

Q. And there was a telephone, of course, in Pleasantville?

A. I had a telephone in my own house. I could have telephoned if I wanted to, but I have been in the habit of going over in a machine.

Q. You did not telephone the returns over?

A. No; I did not. I didn't intend to.

Q. And you took some little interest in politics, did you not?

A. I had at that time, but I am done with them now.

Q. Now, how did you get from Pleasantville to Atlantic City that night?

A. In a car.

Q. Whose car was it?

10 A. My own.

Q. You drove the car?

A. I drove it.

Q. And who went with you?

A. Mr. and Mrs. George Taylor.

Q. Nobody else?

A. Nobody else. They were on the committee.

Q. And you say that you left Pleasantville pretty near one o'clock?

A. Very nearly it was; close to it.

20 Q. Well, was it before or after one?

A. Oh, it might have been five minutes or ten minutes to one; I don't know just exactly what time; it was close to one o'clock. It was not after one I don't think.

Q. Well, what time did you reach headquarters? You say fifteen minutes after one?

A. I was there fifteen minutes after one.

Q. And did you go up the stairway alone?

30 A. No; Mr. and Mrs. Taylor went up at the time with me.

Q. You mean they went up to headquarters with you?

A. They went up to headquarters, the three of us together.

Q. And that was at least fifteen minutes after one?

A. Yes, sir.

Q. And when you got up into the headquarters were there other people there?

A. Yes, sir.

Q. Was Mr. Lafferty there?

A. Yes, sir.

Q. Can you give us the names of anybody else that were there?

A. And Frank Harrold was there; Frank May was there.

Q. Wait a minute, Lafferty, May. 10

A. Frank May; John T. French; Charles R. Moore and—I don't know; there was a whole crowd; I knew them all so far as that goes but I don't just remember the name. Charles Collins was there.

Q. Who?

A. Charles Collins.

Q. And you remained there about, as you say, ten minutes?

A. About ten minutes I stayed in the room.

Q. When you started out to come down the stair- 20 way were you alone or were Mr. and Mrs. Taylor with you?

A. Mr. and Mrs. Taylor had went just ahead of me. So coming down the hallway I met Mr. Moore, Charles R. Moore, and they continued on down and I stopped to talk to him about a minute or two, maybe, and by that time they were down the street before I got to the stairway.

Q. So that, did you come out of the headquarters with Mr. and Mrs. Taylor? 30

A. I come out of the headquarters.

Q. I mean the room of the headquarters?

A. Yes, the room was right back of them.

Q. Then they started ahead of you while you were talking to Mr. Moore?

A. Yes; they continued on down while I talked a few seconds.

Q. It was light enough in the hallway to recognize Mr. Moore, was it?

Q. No; it was not. I knew him by his voice.

Q. Couldn't you tell it was Mr. Moore at all?

A. I knew him when I heard him speak.

Q. Now, the stairway leading from the street you say is about twelve steps?

A. I never counted them, but I should judge.

Q. Twelve or fourteen steps I think you said.

10 A. Something about that.

Q. Then you reached the landing. About how wide and long is that landing?

A. Why, it was only about three foot wide, I should say, if it is that, and I don't believe it is over four feet long.

Q. Now, there is a hand rail that runs to the side—there is a hand rail that runs up the side of the stairway; is there not, on both sides?

20 A. I don't know whether there is or no. I think there is a hand rail but I don't know whether it is on both sides or no.

Q. But you know there is a hand rail on one side?

A. Yes.

Q. Then in ascending you get to this platform; then you turn to the left and go up, you say, about five or six more steps; that is right, isn't it?

A. Yes, sir.

Q. And there is a hand rail on that portion of the stairway, isn't there?

30 A. Well, really, I don't know myself, really; there may have been.

Q. Then when you reached the second floor there was a short distance of hall before you reached the hall which ran back to headquarters?

A. Yes, sir.

Q. About how long is that hallway before you reached the main hall?

A. It was only a very short distance. I don't suppose over four or five or six foot.

Q. That is level?

A. Yes; that is level.

Q. Then you reached the hallway that runs at right angles to Atlantic Avenue back to headquarters?

A. Yes, sir.

Q. And about how many feet was it from the first short hallway back to Mr. Lafferty's room? 10

A. Well, I should say it was about twenty or twenty-five feet; along somewheres in that neighborhood.

Q. Well, when next before this particular day—or, rather, particular night, had you been in headquarters?

A. I couldn't say just that, but I had been in and out of them at different times. I had been in different times.

Q. Daytime or night-time? 20

A. Both day and night.

Q. And when you were there at night those halls were lighted, weren't they?

A. I have seen them in darkness.

Q. Weren't they lighted at all?

A. Sometimes they were. Most of the time they were lighted, but I have been in there at eight o'clock at night when they were in darkness.

Q. How many times were you in there from the first of October to the time this accident happened? 30

A. Oh, I don't know. I might have been there a dozen times. I might have been there more than that for all I know. I didn't keep any record.

Q. Do you know how long Mr. Lafferty had had the rooms there, his headquarters?

A. Why, I don't know just how long. He had

been there I suppose maybe two months before the election or maybe more than that. I don't know just how long.

Q. Well, had you been in there before the first of October of that year?

A. First of October?

Q. Yes.

A. I don't know. I was in there after he rented the place. For his office, whatever time that was.

10 Q. Well, were you in there before he rented?

A. I was not in there, no.

Q. Where did he have the offices before he located there?

A. On South Indiana Avenue, number four, I think it was.

Q. And he went from South Indiana Avenue to this particular place?

A. Yes, sir.

20 Q. And his headquarters were transferred to there?

A. Yes, sir.

Q. That is right, is it?

A. Yes, sir.

Q. And you were never in that building before Mr. Lafferty rented it for headquarters?

A. No, sir; I never was.

30 The Court: I want to say to the members of this jury that I do not want you to discuss this case with anybody or permit anybody to discuss it with you at all. Now, remember that and remember that that goes for anybody at all, except among yourselves.

(Recess to 9:30 A. M. the following day.)

February 17, 1926.

TRIAL RESUMED PURSUANT TO ADJOURNMENT.

GEORGE W. LEECH, the plaintiff, recalled.

Cross-examination.

10

By Mr. Starr (Resumed):

Q. Mr. Leech, at the other times you were at headquarters before this accident happened, was it day-time or night-time?

A. Both day and night.

Q. How many times were you there in the evenings?

A. Oh, I suppose between the time they rented it until I was hurt—I suppose maybe a dozen times, maybe fifteen. I don't know just how many.

Q. Were you there early in the evening?

A. I have been there around half-past seven or eight o'clock.

Q. How late?

A. I have been there ten or eleven o'clock at night.

Q. Ever there after eleven o'clock?

A. I might have been; I would not say for certain.

Q. Were you in the habit of going there daily or only occasionally?

A. Oh, no; I was only over there—I would stop in in the afternoon, not as a usual thing; mostly it was in the evening.

Q. Now, on this particular occasion where were you when you say you lighted a match?

30

- A. I was right at the turn of the hallway.
 Q. That is the hallway —
 A. Turning to go down the stairs.
 Q. Did you stop there?
 A. Well, I just sort of struck a match; that was all. I don't know as I —
 Q. Then walked right on?
 A. Then walked right on.
 Q. Then was the match out when you reached the
 10 top of the stairway?
 A. Why, it went out very quickly; for it was only just one of these small cardboard matches.
 Q. The paper matches?
 A. Yes.
 Q. Do you know how you came to fall?
 A. No; I do not. I just fell over in a heap; that is all I know.
 Q. Did you slip off of the step?
 A. No; I didn't slip. I suppose I stepped one
 20 step too far thinking I was on the even part of the hallway and I stumbled over.
 Q. Could you see the step?
 A. No; you couldn't see the step.
 Q. So dark you couldn't see anything after your light went out?
 A. Not in that hallway; not in that entry, anyhow.
 Q. And what was the distance from the main hall that runs parallel with the side of the building back
 30 to the headquarters to the top of the steps on the second floor?
 A. Twenty to twenty-five feet, the hallway was.
 Q. You misunderstand. Not the long hallway but the short hallway before you reached the top of the second flight of steps.
 A. I know where you mean. I suppose it was five or six foot; I don't know just exactly.

- Q. And how wide is that hall?
 A. Not over three foot.
 Q. Did you take hold of the hand rail as you were approaching the top of the flight of stairs?
 A. I don't remember of doing it.
 Q. You knew there was a hand rail there, didn't you?
 A. No; I don't know even today.
 Q. Don't you know there was a hand rail there at
 the other time you were there? 10
 A. I couldn't just say for certain.
 Q. Those steps had rubber mats, or had they not; that is, the treads?
 A. I don't think so. I wouldn't say there wasn't.
 Q. You are not sure about that?
 A. I don't think there was.
 Q. When you went up the stairway originally that evening were there men around the front of the
 pastry shop? 20
 A. What is that?
 Q. When you went up the stairway originally that evening were there men around the front of the
 pastry shop?
 A. Why, I don't know whether there was, standing right around the doorway there. There were a lot of machines there.
 Q. There was nobody around the front of the store in Atlantic Avenue that you noticed?
 A. I didn't take notice to anybody.
 Q. Well, if there had been a crowd there you
 would have noticed that, wouldn't you? 30
 A. No doubt I would; yes, sir.
 Q. When you came down after you had the accident, did you notice whether there was anybody else there around the store?
 A. There was a whole load came in just at the

time I was going down the steps, when I fell, twelve or fifteen of them.

Q. Where were they when you fell?

A. They were coming up the stairway as I was picking myself off the landing.

Q. And you say you fell the first flight?

A. Yes, sir.

Q. Then sort of slid down the second flight?

A. No; I kind of got myself up and managed to drag myself down the next flight.

10 Q. How did you get down to the second flight, the lower flight?

A. Well, I sort of crawled down. I don't know just how; but I got down there.

Q. Was there anybody in the hallway or stairway when you landed on the little platform?

A. Nobody just at that moment, but they come in before I got up out of there.

20 Mr. Starr: That is all.

Re-direct examination.

By Mr. Bourgeois:

Q. Mr. Leech, just for the moment assume there is a hand rail there. Did it have electric lights on it? Was it lighted?

A. There were no lights in the hall.

30 Q. Then if you couldn't see the hand rail, could you have seen the hand rail if it had been there?

A. No, sir.

Q. When you went there at night-time on the previous occasion were the stairways lighted always?

A. Not always. I have been there when there has not been no light.

Q. And were any bills paid for you by any person other than yourself?

A. My wife paid pretty nearly all the bills while I was there.

Q. And have you included the bills that you paid by your wife in your statement?

A. Not all the little bills; odds and ends I didn't.

Q. Who knows about them?

A. She knows, I suppose; because she kept account of them. I never kept any regular account of them. She kept the account. 10

Q. Were you a member of the county executive committee?

A. Yes, sir.

Q. And that was the headquarters of the county executive committee?

A. Yes, sir.

(Witness excused.)

20

ANERTA LEECH, called as a witness on behalf of the plaintiff, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Bourgeois:

Q. Mrs. Leech, you are the wife of George Leech? 30

A. Yes, sir.

Q. Now, face the jury and tell them. You have been married how long?

A. Since 1887.

Q. What was Mr. Leech's health and disposition prior to November 8th, 1922?

A. Well, my husband's health was exceedingly good, his general health, and he had a wonderful disposition.

Q. Wonderful in what way?

A. Well, he had a good disposition.

Q. That applies two ways.

A. Well, excuse me, please. He was congenial in everything.

Q. Now, when did you learn that there had been
10 an accident?

A. After midnight November 8th, 1922.

Q. And how long was Mr. Leech away from your home?

A. In the Atlantic City Hospital seven weeks.

Q. You saw him in the meantime, I suppose?

A. I visited him every day, some days twice, with the exception of one day when I was ill and I couldn't leave my home.

Q. Now, after he was discharged from the hos-
20 pital and brought home, how long was he there before he was able to get about?

A. I think it was March, sometime in March the doctor put him on crutches.

Q. What difference did you notice in him after he came home from what his condition had been before he was hurt?

A. Why, I noticed in his nervousness and great suffering. He endured a great deal of pain and he cried continuously day and night.

Q. What evidences did you notice of pain experi-
30 enced by him or suffered by him after he came home?

A. Well, he complained of his hip and his leg and his foot and his spine, and we had to bodily—my son and I had to bodily lift him to turn him before he got out of bed. That is in March.

Q. What is there that you notice even about him at the present time that indicates suffering or pain?

A. Well, he is very irritable. Excuse me for saying that, but he is, and he also suffers a great deal during the night and in the morning, when he has to get out of bed, he can scarcely get out, I don't know whether it is the blood stops circulating or what, but he moans and groans something terrible.

Q. During the night time?

A. During the night and in the morning. In the
10 morning he has this terrible distress.

Q. Now, when does he moan and groan, during his waking hours or during his sleeping hours?

A. During the waking hours.

Q. Do you sleep in the same room with him?

A. Well, up till about a few weeks ago I have been suffering myself with a nervous breakdown and I just slept in a room where I leave my door open and I can hear him.
20

Q. Now, what unusual precaution does he have to take when he goes to bed, or what unusual precaution does he take when he goes to bed in order to sleep?

A. I don't quite catch what you say.

Q. I want to know what he does that people usually don't do, when he goes to bed in order to sleep; how does he get himself in position so he will be comfortable to sleep?

A. Well, ever since he has been in the hospital he has to have a pillow to rest his foot. The ankle,
30 it falls over, and, of course, I get that ready myself most of the time.

Q. Mrs. Leech, he appeared to have the right leg turned out further than the left one.

A. Yes, sir.

Q. Is that so all the time when he is home and around everywhere?

A. Yes, sir.

Q. What effect does that have so far as you can see on his sitting down, on his ability to sit down?

A. Well, when he sits down he has to put his leg out straight, and when he is resting, sitting, why, he has to rest it on his other foot.

Q. Is there any difference between his going about visiting now than there was before he was hurt?

10 A. Yes; he won't go anywheres at all. On several occasions I have gotten him to go out to card parties, church affairs or something like that.

Q. Why?

A. Well, he just does not—he hasn't got the ambition, the vitality to go. He just says people just look at him and look as though he is in the way, and when he sits down after he sits any length of time he is so stiff that I think that is one thing that is mortifying to him, too, besides his suffering. 20 He says when he is home he feels better. He feels when he is out he is in the way and consequently he doesn't go. He doesn't go, and I just have to take care of him.

Q. Now, Mrs. Leech, did you while he was incapacitated or at any other time for that matter, pay any bills that were chargeable against him, pay the bills that resulted because of this accident?

A. Yes, sir.

Q. Did you keep a record of them?

30 A. Well, as near as I could. I just kept track of some.

Q. Will you tell me what they are? I don't want anything except those bills that were paid for some service that he would have rendered had he not been hurt or that were caused by his hurt.

A. Beg pardon?

Q. I say or that were caused by reason of his hurt.

A. Well, when I was called in the morning, after midnight, to the hospital, I was there all day—I was there all the day to get him fixed comfortably when I was in the ward. Of course, he was suffering, and when I got home, of course, my plaster had fell in my living room and dining room. I tried to get someone to repair the plaster and I couldn't get them. At that time help was very scarce. So I called Mr. Ed. Wolbert in. I am sorry to say now 10 he has met with an accident in an automobile so he is not here as a witness. And he said the only thing was to tear it all down —

Mr. Starr: I object to the conversation, if your Honor please.

Q. We cannot have the conversation. Was this work that Mr. Leech could have done?

A. Yes, sir.

Q. How much did it cost to have it done? 20

A. \$1991.60 it cost us. There were some things which they said were not —

Q. Was that all for plastering?

A. No, it was not all for plastering. I had to hire help for the furnace and I had to hire labor for —

Q. You were giving me the plastering first?

A. Pardon me. I didn't put in for the plaster. I just put in for what I had to hire, help, and I had to hire paper hangers. Mr. Leech did all that 30 work himself. We never used to paper the building. He always did the papering and painting. So while he was away in the hospital, of course, I had to have all this done and hired extra help, and I bought just the paper and paid the paper hanger, and paid for telephone bills backward and forward

while he was in the hospital; also to my son in college and my daughter and sister which was all extra, and I had to give up my home. I had to give up my home through this plastering.

Q. Well, you would have had to do that if he had been doing it?

A. Beg pardon?

10 Q. You would have had to do that if he had been doing it, and I don't want the cost of the paper. I just want the cost of the labor, no telephone bills.

A. Well, I have to scratch that out then.

Q. I beg your pardon?

A. I have that all added.

Q. Haven't you that separate?

A. Yes, but I meant the whole amount. Do you want me to call it off?

Q. Surely, I want you to tell just the labor.

A. Well, I paid for hiring —

20 Mr. Starr: I do not know whether the witness understands or not. She is entitled to testify, but I don't want the testimony to come in in a lump sum.

A. (Continuing.) \$2.00 I had to pay a man to take me to the hospital in the morning —

30 Mr. Starr: Well, that is not a proper measure of damage in this case.

The Court: No; strike that out. What Mr. Leech would have done that other men did, if he had been home, is what Mr. Bourgeois is trying to find out from you. The cost of labor.

A. E. Campbell, \$31.90.

Q. What was that for?

A. We put the furnace out of commission.

The Court: Labor on account of furnace is what she has on her list here.

Q. And was that work which Mr. Leech could have done?

A. Yes; he always did all those things himself and I had to hire someone to have it done.

Q. What next? 10

A. Colored man by the name of Lucas \$37.28, for labor.

Q. What labor was that?

A. Well, he helped with the furnace, and also had to tear down the plaster.

Q. All right.

A. R. Murray, another laborer, \$11.25.

Q. What was that for?

A. Furnace and labor.

Q. What sort of labor? 20

A. Well, he had to tear down the plaster and take down waste pans and things.

Mr. Starr: How much was that?

Mr. Bourgeois: \$11.25.

Q. What next?

A. I had to pay Dr. Starr for my husband's teeth \$26.00. 30

Q. What was that for?

A. For attention to his teeth. That was from the nerves from the disease.

The Court: No; I think probably that is not admissible.

A. (Continuing.) R. Brickman for scraping and papering, \$31.60. I paid out for wall paper —

Q. No, he could not make the wall paper.

A. No, but I had to buy the wall paper, where he could have painted. He always painted the walls.

Q. Well, you would have had to buy the paint then.

A. Well, all right. E. R. Wolbert, contract and labor, \$185.85.

10 Q. What was that for?

A. That was for tearing out all this plaster.

Q. Was that work that Mr. Leech could have done?

A. Well, it would not have happened. He would have done that. I wouldn't have had all this extra work if he had been home.

Q. Why?

A. I don't know anything about patching plaster.

20 Q. Well, if it had happened he could have done the work?

A. I wouldn't have had to tear out the plaster. I had four ceilings and two side rooms.

Q. Why did you have to tear it down?

A. Because the contractor, I brought him in and I didn't know what to do and he said it must be done and he started to tear —

30 Mr. Starr: One moment. This witness is detailing conversations with third parties.

The Witness: Well, that is all right. Excuse me.

Q. Well, now, Mrs. Leech, I don't want you to give anything at all excepting those moneys that were paid, that you would not have had to pay if Mr. Leech had been there. Now, personally I don't see how his absence would make any difference, I

don't see why you should have had any more done because he was not there than if he had been there.

A. Well, I beg your pardon. If my husband had been there he could have gone ahead with that work or have someone to go ahead with him and all this extra work would not have had to be done and I wouldn't have been under that extra expense.

Q. You couldn't recover for what he would expend for somebody else to go ahead with him. You can only recover for the moneys that were expended that he would have saved you if he had been there, or saved himself. 10

The Court: I was going to say this is his case, you know.

The Witness: Well, I paid also L. Betterton for labor and work, \$87.20.

Q. What was that for? 20

A. That was for labor, paperhanging.

Q. What kind of labor?

A. Paper hanging.

Q. And that Mr. Leech could have done?

A. Yes.

Q. And would have done?

A. Yes, sir. C. Ireland, \$20.00 for same.

Q. What?

A. Charles Ireland, \$20.00.

Q. What was that for? 30

A. Some labor in paperhanging. H. Brown, \$7.50.

Q. What was that for?

A. Paperhanging; and G. W. Flood, \$36.50, the same.

Q. For paperhanging?

A. Yes, sir. J. H. Palesi, repair work.

Q. What kind of repair work?

A. Why, locks in the building there. We had to put on locks. My husband always did that kind of work at home. \$18.00. Earl Jenkins for labor and furnace work, \$12.21. Now, then, I had to give my laundry out while my husband was sick.

Q. Well, why?

A. Because I was not able to do it. I had to give my attention to him. I have always ever since I have been in the business—I was in the general merchandise business—done my own work and laundry.

Mr. Starr: I object to that as not a proper element of damage.

The Court: I think not. There is no suit here for the value of his wife's services.

Mr. Bourgeois: Well, I am not so sure it is not; because it takes the place of a nurse. She did the nursing, but I will not insist on it.

The Witness: I took the place of an extra nurse in the Atlantic City Hospital. We would have had two nurses, but I gave some of my time in order to save an extra nurse. We only had one nurse.

Q. Well, don't let us take any chance on that.

A. That is the reason I put in those bills. Excuse me if they are not right. Mr. Nelson, labor for work on the building, \$32.00.

Q. What was that?

A. Mr. Nelson, labor for work, \$32.00.

Q. What kind of work?

A. For carpenter work in one of the apartments.

Q. Was that work Mr. Leech could have done if he had not been incapacitated?

A. Well, I don't know whether he could have done that kind of work or not but he could have patched the plaster.

Q. We don't want any expenditure —

A. Well, I feel that is a just bill.

Mr. Bourgeois: I will consent that be stricken out, if your Honor please.

Q. Now, the next?

A. Well, for help, hiring —

Q. What?

A. For help, hiring in the house —

Q. Well, that can't go in.

A. Well, I didn't have to have help if it was not for my husband being injured.

Q. There is some question as to whether we have a right to have that. Don't let us take a chance on that.

A. And Mr. Rankins for labor, \$11.75.

Q. What was that for?

A. For labor.

Q. That Mr. Leech would have done?

A. Yes, sir; and Mr. Happersak, \$53.60.

Q. What was that for?

A. He did some painting in one of the apartments while the Mister was ill.

Q. That Mr. Leech could have done?

A. Yes, sir; and I have the hot water—I have it itemized all together, for hot water bottles, ice cap, air cushion, and bed pans and urinals, olive oil, grape juice and malted food, milk, etc., \$126.54.

Q. What else?

A. And I had to hire an electrician to do some work that was unnecessary, T. Harris.

Q. Was that work that Mr. Leech could do or is he not an electrician?

A. I beg your pardon, but all this work would not have had to be done if my husband were home. I didn't know how to manage those things. Of course, if you want to strike that out, I had to pay it just the same.

Q. You cannot recover for that.

A. C. A. Newland, repairing lock, \$2.70.

Q. What next?

A. Nothing else so far—so long as you won't
10 allow me to put those other things in—oh, yes; I beg your pardon. I have massaging here for 78 weeks at \$20.00 a week.

Q. That is massaging for him?

A. Yes, sir.

Q. That amounted to how much? How many weeks did you say there were?

A. 78 weeks.

Q. 78 weeks at \$20.00 a week?

A. \$20.00.

20 Q. Did you pay that every week?

A. I have not paid it at all yet.

Mr. Starr: I object, if your Honor please.

Q. I mean did you have the massage? Was he massaged that many weeks?

A. Yes. He was massaged for that many weeks.

Q. By whom?

A. Why, my son.

30 Q. Who?

A. My son.

Q. Well, is he a masseur?

A. No, he is not a masseur but, my goodness! He had to give his time and he was there from school day and night; he took care of the man.

Mr. Starr: I ask that be stricken out, if your Honor please.

The Court: Yes; I think that will have to be stricken out.

Mr. Bourgeois: I think that should come out.

Q. Now, is there anything else that you paid that your husband would not have had to pay? 10

A. Well, there are some things I didn't put down on this bill, such as lumber and many other things.

Mr. Bourgeois: You may cross-examine.

Cross-examination.

By Mr. Starr:

Q. Mrs. Leech, I do not quite understand why it
20 was necessary to have all these repairs done while your husband was in the hospital. How many properties were taken care of while he was away?

A. Well, this is including just the building we live in.

Q. The house that you live in?

A. Yes.

Q. How large is that house?

A. It is an apartment house.

Q. Well, how big is it?

A. Oh, how big is the house? 30

Q. Yes, how many rooms in it, how many stories?

A. Well, we had the Government there, the post office.

Q. What?

A. The post office was on one of the ground floors. Then we had two stores, and one store to a family,

and then we had seven families besides ourselves, and that had to be kept warm and kept going while the Mister was in the hospital.

Q. Then in your apartment house you have the post office building on the first floor?

A. We did have then, not now.

Q. Well, at this time, at the time of the accident?

A. Yes, sir.

Q. Post office building on the first floor?

10 A. Yes, sir.

Q. How many stores on the first floor?

A. Two stores and one apartment back of one of the stores.

Q. So that is two stores and one apartment on the first floor?

A. Yes, sir.

Q. And how many stories in the building?

A. Three stories.

20 Q. And you had how many apartments on the second and third floors?

A. Four apartments including ours on the second floor and four apartments on the third floor.

Q. Now, what happened to the building at that time that necessitated all these repairs?

A. Well, we had—in my own home the plaster fell from the ceiling in the living room and dining room while I was over at the hospital.

Q. The plaster fell from the ceiling?

A. Yes.

30 Q. What caused it to fall?

A. I don't know.

Q. Well, what was the area? What was the space that fell?

A. You mean on the floor?

Q. On the ceiling.

A. From the ceiling to the floor?

Q. Well, the entire ceiling?

A. Oh, no, just part of it.

Q. How large a space?

A. I couldn't say how much.

Q. Well, now, anything happen that required all these moneys to be spent for repairs?

A. My husband always took care of the furnace and looked after the building. We didn't hire a janitor.

Q. I understand that, but I am speaking about 10 the repairs, painting and plastering and paperhanging.

A. Of course, if my husband had been home he would have taken care of that, because I never had to take charge of those things myself, never had anything to do with it because he looked out for that. I didn't know what to do. I tried to get a plasterer and everybody seemed to be busy.

Q. How much did you pay for repairing the plaster in those two rooms? 20

A. Well, I didn't—I had to tear out; I brought in a contractor, Mr. Wolbert to find out what to do. He said "it has to come down." So, of course, I let him go ahead.

Q. Then this money that you included in the bill is for Mr. Wolbert in tearing out the building; is that right?

A. Tearing out—it is for paperhanging and for painting and labor that was necessary.

Q. How many rooms were done? 30

A. Well, I had to tear out four ceilings, two sidewalls, and two rooms entirely.

Q. That is, the four ceilings, two side rooms?

A. Two side rooms and two extra—two other rooms besides.

Q. And that is all the papering and plastering that was done?

A. No; I had to go through the whole house then.

Q. Why did you have to do that?

A. Why, if my husband had been home he would have done that if there was anything wrong, and I had to hire all this extra labor.

Q. Covering what period of time was this work done?

A. Well, from the time he was—I think it was the day or I know the day I was in the hospital
10 looking after my husband.

Q. That is when it began. When did it end?

A. It didn't end until after he got home. I tried to have all this done while he was away and I wouldn't let anybody know—I didn't want him to know what was going on to home because of his condition.

Q. Then all this work was done in the seven weeks that he was away?

A. Well, I don't know whether some of it was
20 done—yes, I think it was, although outside of the extra help I had to have help to look after the furnace, you know, and do the janitor work.

Q. How many rooms were papered?

A. They were all papered with the exception of—I couldn't say how many; I couldn't tell how many.

Q. What?

A. I just can't count them.

Q. How many rooms in the house altogether?

A. I think there are forty-four.
30

Q. Forty-four rooms. How many of those forty-four rooms did you paper?

A. You mean while he was in the hospital or during this time?

Q. Was all this work done while he was in the hospital?

A. I beg pardon. I withdraw that. My own home, my own apartment—I had that done while he was in the hospital and, of course, the others I had done during the time that he was injured. You see, he was sick at home.

Q. When was the last time you did any work at papering?

A. I cannot remember.

Q. It has been now, from November, 1922—it has
10 been over two years and a half since the accident. Now, was that work done over all that period of time?

A. I know we have one apartment that has been done since, I think.

Q. Since when?

A. Since he has been able to get around. Of course, he can't do any work much of any amount.

Q. I want to know whether you papered and repaired all the apartments in that house from the time your husband had this accident up to the present time?
20

A. I cannot say. There is one part we didn't paper at all.

Q. Well, with the exception of that one apartment have you repapered all of the apartments in that house?

A. We never had to paper before. It always has been painted. My husband could have painted it, and, of course, I didn't know what to do. I had to have it papered.
30

Q. Well, your husband was able to give you some advice was he not?

A. Beg pardon?

Q. He was able to give you some advice after he returned from the hospital?

A. Well, I kept all the advice I could away from him on account of his health.

Q. Well, what papering has been done since he came back from the hospital?

A. Oh, since he came back from the hospital? I cannot recall.

Q. What is that?

A. I cannot recall.

Q. How much papering was done as the result of the plaster falling off while he was in the hospital?

10 A. I know I have seven rooms, I think, and the hallways in my apartment, and bath; then I had to have apartment number four; that is where I had this carpenter work done. If the tenant —

Q. I wish you would answer my questions.

A. Well, I had to have that papered while he was away.

Q. Well, as a result of the plaster falling off?

A. Yes, sir.

Q. All of it?

20 A. No. I beg your pardon. I had a family in there that had a child who broke the plaster with a hammer.

Q. Well, did you charge that up, too?

A. Well, you told me to strike that out, \$32.00.

Q. That is not charged up, then. Now, I again ask you how many rooms were papered in your apartment as a result of the plaster falling off?

A. Seven rooms and a bath and the hallway.

Q. Your entire apartment was papered?

30 A. Yes, sir.

Q. In how many rooms did the plaster fall?

A. Well, the plaster fell in two rooms and the other rooms it started. They took it down because some of it was ready to come down.

Q. So then you took that occasion to tear the plaster off of the side walls and re-paper them; is that right?

A. Yes.

Q. Now, is your husband a plasterer?

A. No, my husband is not a plasterer, but my husband could do all those things. He can patch plaster.

Q. Did he ever do any plaster work?

A. Yes, he has.

Q. Of an entire room?

A. No, not of an entire room.

Q. Or an entire ceiling?

A. No, not an entire ceiling.

Q. Now, you have given a bill of \$119.00 and something for contracting. What was the name of the contractor? I didn't get that.

A. Ed. Wolbert, \$119.85.

Q. \$119.00 how much?

A. \$119.85.

Q. And what work did he do?

A. Well, he had—this work was done in my 20 apartment.

Q. Well, what work did he do?

A. He had some men there taking down the laths and he had to put in joists. I don't know much about that part. He was the contractor and bossed the job.

Q. What?

A. He was the contractor and seen that the place was put back in shape.

Q. Well, did he do any more than provide for 30 re-plastering?

A. Well, there had to be a lot of carpenter work done. You see, they had to tear out all the plaster and tear off the laths and—I don't know what you call it—joists every few inches.

Q. Was that done while your husband was in the hospital?

A. Yes, sir.

Q. Do you know the entire amount of money that you paid for paperhanging? Can you give us that?

A. Well, I just got it here, there and everywhere.

Q. Now, can you tell us the last time that you paid a bill for paperhanging, how recently?

A. I have to go over this —

Q. What did you say?

10 A. I didn't put the dates down, I don't think, on here.

Q. Then you cannot give us that?

A. I cannot.

Q. Was that done after your husband was able to get about?

A. Beg pardon?

Q. Was that done after your husband was able to get about?

20 A. I know C. Ireland's bill—that was done after he was about to get about; that was \$20.00.

Q. That was after your husband was able to be about?

A. Yes, sir.

Q. What about the Betterton bill, \$70.00?

A. My husband wasn't able to do that.

Q. Was he about when that work was done?

A. Well, he was not about when that work was done; he is not well enough to get around to do those things.

30 Q. Well, was he off crutches?

A. Oh, yes; he was off crutches.

Q. When was that Betterton work done?

A. I don't know; I would have to go through these bills here.

Q. And when was the Brown bill incurred?

A. I don't know.

Q. Have all these moneys been paid or do you still owe it?

A. No; I paid them as I went along outside of

Q. Have they all been paid?

A. Yes, sir.

Q. All?

A. I think so, to the best of my knowledge.

Q. Are you sure about that? Have you receipted bills for all of them?

A. Some of them, and my check.

Q. Well, can you tell us what portion of the bills 10 have not been paid?

A. No; I cannot. Those bills, all I read out to you, have been paid.

Q. Did you mention any bills at all that have not been paid?

A. Yes. I mentioned just the massaging, you know.

Q. I am speaking for material and labor.

A. No.

20

Re-direct examination.

By Mr. Bourgeois:

Q. Mrs. Leech, were these moneys that were expended, all except the \$119.00 you paid to Wolbert, all for labor that Mr. Leech could and would have done if he had not been injured?

A. Yes, sir.

Q. Is he able at the present time to do the kind 30 of work that he used to do?

A. No.

Mr. Starr: I object to that, if your Honor please. It calls for an opinion and conclusion on the part of this witness.

The Court: Well, I am wondering whether this witness is not qualified to give an opinion.

Mr. Starr: I doubt very much whether she is. She can state what she has observed but not state an opinion or state a conclusion.

Mr. Bourgeois: Well, I will withdraw it. I do not think it makes so much difference. The jury have seen him. They know pretty well whether he can get around and do paperhanging and plastering and things of that sort.

The Court: A man's wife is a pretty good judge of whether a man can get around and do work around the house.

Mr. Starr: I move that this testimony be stricken out because it is entirely too uncertain and indefinite as testimony which could go to the jury upon which they could pass a verdict.

The Court: Well, I doubt it myself, but I think I won't strike it out because there is too much of it. Some of it may be good. I think I would rather charge the jury concerning the weight to be given to it.

Mr. Starr: Allow me an exception.

The Court: Yes.

(Which exception was duly allowed and noted.)

(Witness excused.)

CHARLES I. LAFFERTY, called as a witness on behalf of the plaintiff, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Bourgeois:

Q. I show you Exhibit P1, which is a lease between Atlantic Delicatessen Company and Charles I. Lafferty and ask you if the Charles I. Lafferty mentioned in that lease is you? 10

A. Yes.

Q. You were chairman of the Democratic Executive Committee were you—County Executive Committee at that time?

A. Yes, sir.

Q. For what were these premises used? 20

A. Political headquarters.

Q. And what hours do you have in political headquarters?

A. Well, we have no particular hours. I suppose when it is necessary to go there —

Mr. Starr: I object to that.

Q. You say you have no particular hours. How long were you in headquarters on the night of November 7th and 8th, 1922? That was election night? 30

A. Well, I was there the early part of the evening and then the latter part of the evening.

Q. Until what time the next morning?

A. Well, I was there at least to two-thirty or three o'clock. I do not exactly recollect now.

Q. And during that period that you were there

were there or were there not lights in the rooms that you rented?

A. Yes; there were lights in the rooms.

Q. Now, when you went there early in the evening do you remember whether or not there were lights in the vestibule and stairway and hallways?

A. There were lights there when I left. I left there around I think it was—around half past seven or quarter past seven.

10 Q. In the evening?

A. Yes.

Q. Now, were there lights in the hallways and stairways and vestibules when you left at half past two or three o'clock the next morning?

A. No.

Q. Do you know whether or not Mr. Leech was requested to bring in the returns on that night?

Mr. Starr: I object to that, if your Honor please.
20 The request made by this witness, of course, would be competent.

Mr. Bourgeois: What?

Mr. Starr: A request made by this witness, of course, would not be objectionable.

Mr. Bourgeois: Well, I am going to ask that. I cannot ask him a leading question.

30 The Court: Yes; I think that is all right.

Mr. Starr: I have no objection if the instruction was given by this witness, but it seems to me it would be objectionable if the knowledge of this witness is based upon what somebody else told him.

The Court: He may answer this question "yes" or "no."

Q. (Repeated by the stenographer.) Do you know whether or not Mr. Leech was requested to bring in the returns on that night?

A. Yes.

Q. By whom was he requested?

A. By myself as chairman of the county committee. 10

Q. And did he bring them in?

A. Yes.

Q. To you?

A. They were left at the office, Mr. Harrold was secretary.

Q. Do you happen to recall the time of the morning he brought them in?

A. No; I cannot recall that, Mr. Bourgeois.

Q. Do you know whether there were any hand rails up that stairway or not? 20

A. There were not, no.

Q. Beg pardon?

A. No.

Cross-examination.

By Mr. Starr:

Q. You say there were no hand rails up the side of that stairway in November, 1922? 30

A. Not the inner stairway.

Q. What?

A. Not the inner stairway.

Q. What do you mean by that?

A. There are two landings. There was a landing from the street up to the landing, and then there is another hallway and stairway.

Q. What do you mean when you speak of the inner stairway?

A. I mean the one leading off the landing from the main entrance of the street, from the street up.

Q. Was there a hand rail from the lower flight?

A. I cannot recall whether there was or not.

Q. Can you recall whether there was any on the upper flight?

10 A. I am sure they were not there.

Q. You are sure about that but you cannot recall about the other?

A. I cannot; no, sir.

(Witness excused.)

20 RUSSELL T. LOVELAND, called as a witness on behalf of the plaintiff, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Bourgeois:

Q. Mr. Loveland, are you familiar with the democratic headquarters in the Atlantic Delicatessen Building—that were the headquarters in 1922?

30 A. Very much.

Q. Did you go up there frequently?

A. Very often.

Q. Can you tell this jury whether or not there were hand rails up that stairway?

A. There were the hand rail from the street entrance up to the first landing. From the first landing there is no hand rail.

Q. Now, were you in that building on the night of election day, November 7th, 1922?

A. Yes.

Q. Tell me, more than once?

A. I was up there a number of times that evening.

Q. Will you tell the jury whether or not in the early part of the evening the stairway and vestibule were lighted?

A. Well, in the early part of the evening I was busy in the election precinct and, therefore, was not there in the early part of the evening. 10

Q. What time did you first go there?

A. It must have been at least half past ten or quarter to eleven.

Q. Now, —

A. Possibly later.

Q. When you went there were the stairway and vestibule lighted?

A. The last time I went there they were not. 20

Q. Were they lighted the first time you went, earlier when you first went?

A. Well, I cannot recall that.

Q. And what was the time when you went there the last time?

A. The last time is the time that Mr. Leech was staggering around in the vestibule.

Q. Did you see him?

A. Oh, yes.

Q. Will you tell the jury what you saw?

A. Well, I came in from the street and was going up to find out further returns and Mr. Leech was staggering in the vestibule. 30

Q. Where?

A. At the street entrance.

Q. Anybody there with him?

A. No. He apparently was there alone but there was a crowd came following me up the stairs.

Q. And was he on his feet then walking?

A. He had a hold of the rail and kind of leaning against the wall.

Q. That is the rail that goes down from the first flight?

A. Yes, sir.

Q. And what time was that, do you know?

A. I don't know. It was very late. There was a parade forming out there.

10

Mr. Bourgeois: Cross-examine.

Cross-examination.

By Mr. Starr:

Q. You say it was very late?

A. Yes.

Q. It was about one o'clock, wasn't it?

20

A. It was about that time, I judge.

Q. They were forming a parade to celebrate the victory; were they?

A. That was it.

Q. And you saw Mr. Lafferty in the lower flight?

A. Not Mr. Lafferty.

Q. Mr. Leech. I beg your pardon.

A. Yes, sir.

Q. Mr. Leech at the bottom of the lower flight?

A. I did.

30

Q. That was the last time you went up the stairway that night?

A. Yes, sir.

Q. And you say at that time the lights were not lighted?

A. They were not.

Q. Now, the other times during that evening that

you were there the lights in the hall were lighted; were they not?

A. Well, I couldn't say. I don't think they were lit.

Q. Well, are you sure about that?

A. No; I am not sure.

Q. You have no recollection about it. That is all.

Re-direct examination.

10

By Mr. Bourgeois:

Q. Were you a member of the Democratic Executive Committee?

A. I was and I am.

Mr. Starr: Still continue to be, do you?

The Witness: Yes, sir.

20

(Witness excused.)

CHARLES COLLINS, called as a witness on behalf of the plaintiff, being duly sworn, was examined and testified as follows:

Direct examination.

30

By Mr. Bourgeois:

(Witness withdrawn for the present.)

FRANK HARROLD, called as a witness on behalf of the plaintiff, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Bourgeois:

- 10 Q. Mr. Harrold, you live where?
A. Atlantic City.
Q. And have lived there all your life?
A. I have.
Q. Do you remember election night of November, 1922?
A. I do.
Q. At that time did you have any position with the Atlantic County Democratic Executive Committee?
20 A. I was secretary.
Q. Were you in headquarters that night?
A. I was.
Q. What time of the night did you go up there?
A. I had been there practically all day. I had my dinner sent in to me.
Q. And did you go out for supper or dinner?
A. No; it was sent in to me.
Q. Do you know whether the lights were lighted in the vestibule and stairways that night?
30 A. Several times when I went down the hall I noticed they were not lit.
Q. Were not?
A. No.
Q. Now, what time of it was it when you went down the hall and saw they were not lit?
A. Well, between—I guess around between eight

or nine, ten o'clock; three or four times I went down there.

Q. What time did you go out of the rooms that night?

A. I didn't go out until word was brought to me that Mr. Leech had fallen downstairs. That was about two-thirty in the morning.

Q. Were the lights lighted when you went out at that time?

A. They were not. 10

Q. What about in your room? Were they lighted in your room?

A. Yes, they were.

Q. Who had control of the lights in the hallway?

Mr. Starr: I object to that, if your Honor please, unless this witness has personal knowledge of it.

A. I cannot say.

Q. Well, did you? 20

A. No.

Q. They were not controlled from the rooms—or were they controlled from the rooms of the Democratic Executive Committee?

A. They were not controlled from our headquarters, no.

Q. Now, do you know whether or not those lights were always kept burning that you noticed in the hallway?

A. The only thing I can say in regard to that is 30 I know frequently they were not lit.

Q. Were not lit?

A. No.

Q. How do you know?

A. Because I was—the last few weeks of the campaign I was around headquarters until one or two o'clock in the morning.

Q. Ever hear any complaint?

Mr. Starr: I object to that, if your Honor please.

The Court: Objection sustained.

Q. Ever know anybody to fall there?

Mr. Starr: I object to that.

10 The Court: Objection sustained.

Q. Did you see Mr. Leech over there that night?

A. I did.

Q. Do you know whether or not he brought the election returns over?

A. He did; gave them to me.

Q. Beg pardon?

A. He gave them to me.

20 Q. He gave them to you. Cross-examine.

Cross-examination.

By Mr. Starr:

Q. After Mr. Leech came in that night did you go down the stairway?

A. Not to my present recollection, no.

Q. When did you finally leave headquarters that night?

30 A. It was around two-thirty in the morning when I finally left there.

Q. At that time were the lights in the hallway lighted?

A. They were not.

Q. How many times were you in and out of the headquarters that night?

A. I was not out of the headquarters until I left. I was up and down the hall, though.

Q. You were in the hall?

A. In the hallway, yes.

Q. You were down the stairway?

A. I did not go down the stairway, no.

Q. Oh, in the hall. Then you don't know whether the lights were lighted in the stairway or not until you finally went down?

A. I could tell they were not.

10

Q. How?

A. Because the hallway was dark and if there had been a light on the stairway, why, naturally there would have been some reflection.

Q. Only by reflection, however. Do you know how many lights there were in the hallway and stairway?

A. I do not, but most of the time when I would notice them they were out.

Q. Then it was not the custom to have the lights lighted in the evenings there?

20

A. Apparently not, because I know I used to object to it.

Mr. Starr: I move that be stricken out.

The Court: That will be stricken out.

Q. As a matter of fact, the lights were frequently unlighted in the evenings?

30

A. Yes, sir.

Q. The headquarters were there two months; were they not?

A. I cannot say for sure just how long they were there.

Q. Were you there frequently in the evenings?

A. Every evening.

Q. How late would you usually stay there?

A. Between one and two o'clock in the mornings; that is for the last two weeks of the campaign.

Mr. Starr: That is all.

Re-direct examination.

By Mr. Bourgeois:

10

Q. Mr. Harrold, you say the lights were frequently not lighted. Do you know whether or not any complaint was made about it?

Mr. Starr: I object to that, if your Honor please.

20

The Court: I think I will have to sustain it. I do not think that the question of custom with respect to lighting that hallway is necessarily involved in this case.

Mr. Bourgeois: I do not think it is, either, if your Honor please; not the custom, but I want to know

Q. Did you ever make any complaint because those lights were not lighted?

30

Mr. Starr: I object to that as immaterial and irrelevant.

The Court: I think it is irrelevant, Mr. Bourgeois.

Mr. Bourgeois: Allow me an exception.

(Which exception was duly allowed and noted.)

Q. Now, Mr. Harrold, you say the headquarters

had been there about two months. How long were they there altogether?

A. What do you mean, prior to this campaign?

Q. No, afterwards and all? How long did you have those same offices as headquarters?

A. I don't recollect because I had nothing to do with the leasing of the office. We had been there, though, I think for much longer than two months before the campaign started; at least a year, I believe. 10

Q. What is that?

A. At least a year.

Q. Before?

A. I believe so; but that I would not say.

Q. I show you a lease, what purports to be a lease for the year 1922. Do you know whether you occupied the building under that lease?

Mr. Starr: I object to that as immaterial in this cause. 20

Mr. Bourgeois: All right. I want to offer that lease in evidence. Will you consent to it subject to its relevancy?

Mr. Starr: I object to it because it is dated the first day of June, 1923. It could have no materiality in this suit.

Mr. Bourgeois: You do not object to it on account of the signature, the execution? 30

Mr. Starr: Oh, no; but this was subsequent to the time of this occurrence. It is immaterial and irrelevant.

Mr. Bourgeois: Then I will withdraw the offer. That is all.

(Witness excused.)

CHARLES COLLINS, recalled, having been previously duly sworn, was examined and testified as follows:

10

Direct examination.

By Mr. Bourgeois:

Q. You live where, Mr. Collins?

A. Somers Point.

Q. Were you a member of the Atlantic County Executive Committee?

A. I was state committeeman during 1922 and had charge of the whole thing.

20

Q. As state committeeman were you sometimes in the Atlantic County Democratic headquarters?

A. Yes, sir, every day except Sunday, towards election day, and Sunday or two before election. I went then also; but every day and every night I was there.

Q. Do you recall the night of November 7, 1922, and the following morning?

A. Oh, yes.

30 Q. What time did you go to the headquarters that night?

A. I left home. I was at Somers Point seeing after the different polling places there, and after the polls were closed I saw that the challengers got on the job and looked after the vote and saw that it was being counted properly and when I got that arrangement all completed I went home, washed up

and had a bite to eat, and I had a young man who was driving a car for me during that campaign to take me directly to the headquarters. I judge I got there at headquarters about nine o'clock that evening.

Q. You are familiar with the stairways up there?

A. I ought to be.

Q. And the vestibule?

A. I ought to be. I went up and down them often enough.

10

Q. Will you tell the jury whether or not when you went there about nine o'clock the lights in the vestibule and stairway were lighted or in darkness?

A. I complained very much about that condition; all in darkness. I complained very much about that condition.

Mr. Starr: I move that be stricken out.

The Court: Strike it out.

20

Q. It was in darkness?

A. It was in darkness.

Q. Now, prior to that time had you made any complaint—prior to that time had the vestibule been lighted always?

A. Well, about half lighted and half in darkness.

Q. And had you made any complaint about the fact that they were not lighted?

A. Yes, sir.

30

Mr. Starr: I object to that as irrelevant.

Mr. Bourgeois: That is relevant in this cause, I think, for the purpose of showing that the owner had been cautioned about this very condition.

The Court: About this particular night?

10 Mr. Bourgeois: No, not about this particular night; because you cannot show that, but he had been cautioned about it and it was for him to keep them lighted. For instance, if the premises of a person become out of repair a man is entitled to a reasonable length of time, I assume, to put them in repair; but if they go and tell him that they are out of repair you do not have to go every day and night and keep on telling him they are out of repair. Now, if there was any trouble about these lights, he had gone and told him they were out, and that was notice to him that they ought to be kept lighted. So I think this question is relevant.

The Court: I do not think so. I will overrule it.

20 Mr. Bourgeois: Allow me an exception.

(Which exception was duly allowed and noted.)

Q. Now, do you know whether or not there was any complaint made to them about lighting the stairs that night?

Mr. Starr: I object to that as being immaterial and irrelevant.

30 The Court: I am very much inclined to think it is immaterial as to that night, because I do not see what obligation the landlord had to light them.

Mr. Bourgeois: I thought it was the other way about. I thought it was because there was a positive duty on his part to light them.

The Court: That is the thing I am not convinced of; that there was a positive duty upon his part to light them. Where does it come from?

Mr. Bourgeois: It comes from the common law; that a man who has premises and invites you to come on those premises is bound to keep them in a reasonable condition for your safety.

The Court: That means physical condition. 10

Mr. Bourgeois: Oh, no; not simply physical condition. That means anything, whatever it may be, that would make it safe to you. But lights are physical. That is a physical condition. (Citing 85 N. J. L. page 632).

The Court: (After discussion.) I am going to overrule this question because I do not think they were under any obligation to furnish light except 20 in the offices during business hours.

Mr. Bourgeois: Allow me an exception.

(Which exception was duly allowed and noted.)

The Court: Perhaps in the hallways during business hours, "during business hours" meaning the ordinary business hours which are maintained by the ordinary businesses, and that does not mean 30 all night.

Mr. Bourgeois: Any business at all?

The Court: No. I say business hours within the interpretation of that lease, properly interpreted,

mean the ordinary business hours of the ordinary business conducted in, that city.

Mr. Bourgeois: I do not think that can be possible. I think it must be interpreted with relation to the particular business for which the premises are let.

10 Q. Did you make any complaint to the people about lighting the stairway during the time the democratic headquarters were in that building prior to this election night?

Mr. Starr: Objected to as immaterial and irrelevant.

The Court: Objection sustained.

Mr. Bourgeois: Allow me an exception.

20 (While exception was duly allowed and noted.)

Q. Mr. Collins, what rooms were there upstairs in this building? What rooms were there upstairs in this building, 1410 Atlantic Avenue?

30 A. On the second floor the Blum—the Corporation, decorating company; they had the front rooms; and the next room as you go down that long hallway was occupied by some kind of a blueprint manufacturing concern, made blueprints, had some kind of machinery in there that made blueprints. Then the three rooms beyond that were held as our headquarters, and on the side as you get to the top of the stairs there was another—I think he was a draftsman. I think that covered the second floor. On the third floor as I understand it —

Mr. Starr: I object, if your Honor please, unless the witness has personal knowledge.

Mr. Bourgeois: Well, he knows the rooms.

Q. You know these rooms?

Mr. Starr: He says "as I understand." If he has personal knowledge I do not object.

The Witness: Well, I was up on the third floor 10 and the big rooms on the front there were occupied by the Atlantic City Press Club.

Q. Press club?

A. Yes, newspaper men, for a social headquarters, club room as you would call it. The other rooms were unoccupied when I was there.

Q. How many rooms were there up there?

A. Well, the same number of rooms on the third 20 floor as on the second. They were practically the same.

Q. Then these rooms were occupied for various businesses?

A. By various businesses, yes.

Q. This Press Club, I suppose they had their meetings about eleven o'clock in the morning?

Mr. Starr: I object to that.

Q. Did you see Mr. Leech when he came in that 30 night?

A. Yes, sir.

Q. And know that he brought the returns?

A. Yes, sir; talked to him, asked him how he made out.

Q. Can you tell me where the electric light for these hallways was switched on and off?

A. Yes.

Q. Where?

Mr. Starr: I object unless the witness knows of his own knowledge.

Q. How do you know?

10 A. I went down and in the store and saw the young man who was in charge, as I thought, around there back of the counter; went there several times and told him about the condition of those lights.

Mr. Starr: I object.

Mr. Bourgeois: He is showing why he knows where it is.

20 Mr. Starr: I object to it as irrelevant and incompetent.

The Court: I think that is true, and the answer will have to be stricken out, other than that he knows where the lights were controlled from.

Mr. Bourgeois: Allow me an exception.

(Which exception was duly allowed and noted.)

30 Q. When you went down and saw the man in that store—did you?

A. Yes, sir.

Q. And you said something to him?

A. Yes, sir.

Q. When you said something to him what did he do?

A. He went straight back to that room; the room was about seventy-five feet long, opened the door, went out into another room and there the lights were switched on from that back room.

Q. He turned on the switch?

A. Yes.

Q. Now when he turned the switch on what did it do to the lights?

A. That lighted the hallway.

Q. And you say that you went down there when 10 he did that more than once?

A. Oh, yes, and I brought witnesses with me because the janitor—I complained to him so often.

Mr. Starr: I object to that.

Q. Was anybody with you when you went down there and saw this man in the front room?

A. Yes.

Q. And then followed him back into the back room 20 and saw him switch on the lights?

A. I don't believe he followed him back, no.

Q. Well, you went back with him?

A. Well, he didn't follow him back. He only brought me down to show me he done his duty.

Q. Was anybody with you when you did that?

A. No.

Q. Never?

A. No, not when he turned the lights on.

The Court: I suppose it is conceded in this case 30 that the landlord had control of the hallways and he also had control of the hallway lights.

Mr. Bourgeois: Yes; he had control of them both. We concede it but we want to prove it. I don't know whether they concede it or not.

Mr. Starr: There is no objection to it if proved properly.

Q. Did you have any access to that switch?

A. No, sir.

Q. I mean did the lessee of the rooms four, five and six have any access to that switch?

A. No.

Q. What was the condition of the floor of that
10 hallway, Mr. Collins?

Mr. Starr: Objected to as immaterial and irrelevant. There is no allegation in this complaint with reference to any condition of the hallway.

The Court: I think that is so, Mr. Bourgeois.

Mr. Bourgeois: Well, I reckon that is so, too, but maybe I ought to amend. Would it be any sur-
20 prise to you if I did amend?

Mr. Starr: I don't know anything about it at all. I prepared the case on the question of the lights. I have no knowledge of anything else.

Mr. Bourgeois: I won't move to amend. Cross-examine.

Cross-examination.

30

By Mr. Starr:

Q. Mr. Collins, the Blum Company there has the front room in this building on the second floor, and is a contracting organization, contractors and build-
er?

A. Yes, sir.

Q. And the blueprint place is where they make blueprints from drawings?

A. Yes.

Q. Photographing establishment?

A. Yes.

Q. Then there is a draftsman's office there?

A. That is right.

Q. On the night of this election in 1922, was the third floor of the building occupied by the Press Club
then? 10

A. I couldn't say.

Q. So you don't know about that?

A. I don't know about that.

Q. And you don't know to what use the third floor rooms were put on the night of the election?

A. No, I don't.

Mr. Starr: That is all.

(Witness excused.)

20

JOHN T. FRENCH, called as a witness on behalf of the plaintiff, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Bourgeois:

30

Q. You live in Atlantic City?

A. I do.

Q. Were you in the Democratic Headquarters on the night of November 7th, 1922?

A. I was.

Mr. Bourgeois: If your Honor please, what is the use, if your Honor has the notion that you have at the present time—what is the use of us going on with this case?

The Court: Well, I do not see any use in it, personally.

10 Mr. Bourgeois: I do not want to take up the time of the Court if when you get to the end of it you are going to non-suit; because the question is whether or not there is any liability and your Honor thinks there is not, and I think there is and I do not suppose I will be able to change your mind.

The Court: If your testimony remains as it now is and your theory remains as it now is, I think there is no doubt that on an application for non-suit I will allow it.

20 Mr. Bourgeois: I cannot change the theory without changing my plea and my testimony will go along to support that pleadings; so I do not see how I can change it.

The Court: The rest of your testimony is merely cumulative.

30 Mr. Bourgeois: The rest of my testimony is merely cumulative, if you show that there were no lights there and show that they attempted to put them there, or that they made complaints, rather, that they were not there; that they were there some of the time and some of the time they were not there.

The Court: I do not think under the state of the testimony at the present time you can recover.

Mr. Starr: I move for a non-suit on two grounds: first, that no actionable negligence chargeable to the defendant has been shown and the other ground, is that the plaintiff himself by his conduct contributed to the injury; that he is guilty of contributory negligence and in entering the hallway at the time and under the conditions he assumed the risk of injury. 10

The Court: I take it that you have nothing more to say to me than what you have already said, but I will be glad to listen.

Mr. Bourgeois: I have not, except on the question of contributory negligence. I do not see how a man can be considered as contributorily negligent in entering premises when he is invited to go there. 20

The Court: I think the testimony in this case brings the case clearly within the decisions in *Saunders v. Smith*, 84 Law, 276; 96 Law, 267, and 58 Law 475. Those cases deal adversely to the contention of the plaintiff with what seems to me to be all of the phases of this present case. I will, therefore, allow the motion to non-suit and enter a judgment accordingly. 30

Mr. Bourgeois: Allow me an exception.

(Which exception was duly allowed and noted.)

NOTICE OF APPEAL.

NEW JERSEY SUPREME COURT.
ATLANTIC COUNTY.

10

GEORGE W. LEECH,
Plaintiff,

v.

ATLANTIC DELICATESSEN Co.,
a corporation of ROBERT
HEILIG, BRUNO GARR
and JOSEPH BRUNIG,
partners, trading, &c.,
as ATLANTIC DELICATES-
SEN Co., in the alterna-
tive,

Defendants.

Action at law.
Notice of Appeal.

30 To Lewis Starr, Esq., Attorney of Defendant, At-
lantic Delicatessen Co.:

Take notice that the plaintiff appeals to the Court
of Errors and Appeals from the whole of the judg-
ment entered in the above-stated cause, on the fol-
lowing ground:

1. Because the Court erred in non-suiting the
plaintiff.

Dated: June 29th, 1926.

BOURGEOIS & COULOMB,
Attorneys of Plaintiff.

Service ack'd.

Lewis Starr,

Atty. of Atlantic Delicatessen Co.

7/1/26.

10

AMENDED NOTICE OF APPEAL.

NEW JERSEY SUPREME COURT.
ATLANTIC COUNTY.

20

GEORGE W. LEECH,
Plaintiff,

v.

ATLANTIC DELICATESSEN Co.,
a corporation, *et al.*,
Defendants.

Action at law.
Amended notice of
Appeal.

To Lewis Starr, Esq., Attorney of Defendant, At- 30
lantic Delicatessen Company:

Take notice that the plaintiff appeals to the Court
of Errors and Appeals from the whole of the judg-
ment entered in the above-stated cause on the fol-
lowing grounds:

1. Because the Court erred in non-suiting the plaintiff.

2. Because the Court erred in overruling the following question:

“Q. Did you ever make any complaint because these lights were not lighted?”

3. Because the Court erred in overruling the following question:

“Q. Now, do you know whether or not there was any complaint made to them about lighting the stairs that night?”

4. Because the Court overruled the following question:

“Q. Did you make any complaint to the people about lighting the stairway during the time that the Democratic Headquarters were in that building prior to this election night?”

5. Because the Court erred in striking out the answer to the question:

“Q. How do you know?”

A. I went down and in the store and saw the young man who was in charge, as I thought, around there back of the counter; went there several times and told him about the condition of those lights.”

30 Dated: June 29th, 1926.

BOURGEOIS & COULOMB,
Attorneys of Plaintiff.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

GEORGE W. LEECH,
Plaintiff-Appellant.

v.

ATLANTIC DELICATESSEN COMPANY,
a corporation, *et al.*,
Defendants-Respondent

ON APPEAL.

BRIEF OF BOURGEOIS & COULOMB, ATTOR-
NEYS FOR PLAINTIFF-APPELLANT.

STATEMENT.

This is an appeal from a judgment of non-suit entered against the plaintiff at the trial of this cause in the New Jersey Supreme Court at the Atlantic County Circuit. The action was instituted to recover for personal injuries sustained by the plaintiff when the plaintiff fell down a flight of stairs in the hallway of a building owned by the defendant, Atlantic Delicatessen Company.

The Atlantic Delicatessen Company is a corporation of the State of New Jersey, and owns a certain building known as 1410 Atlantic Avenue, Atlantic City, New Jersey, which building was occupied

by the delicatessen company on the ground floor as a pastry shop and the rooms on the remaining floors were leased to various tenants (p. 94). Rooms 5 and 6 on the second floor had been leased to Charles I. Lafferty, who was chairman of the Democratic Executive Committee of Atlantic County, and the rooms in question were used as the Democratic headquarters of this committee (p. 77). The accident happened early in the morning of the day after election day of the year 1922. The plaintiff, a man of 57 years of age (p. 44), on the election day in question, had been appointed by Mr. Lafferty as a challenger in one of the voting precincts in the City of Pleasantville, New Jersey, and was requested by Mr. Lafferty to bring the election returns from that city to the Democratic headquarters as soon as the same had been counted (pp. 34, 78 and 79). Plaintiff left Pleasantville at about one o'clock A. M., on the morning in question, and arrived at the headquarters at Atlantic City shortly thereafter (pp. 34 and 35). As has been previously stated, the rooms used for the headquarters were on the second floor of the building at 1410 Atlantic Avenue. In order to reach these headquarters from the street it was necessary to go, from the street, through a door into a vestibule on the ground floor, then straight up a flight of stairs to a landing, then to make a turn to the left and go up another flight of stairs to a hallway which lead to the rooms in question (pp. 35, 36 and 37).

Plaintiff, upon arrival at the headquarters, went up these stairs and into the rooms, where there were a number of people receiving the returns. Plaintiff testified that when he went up to the headquarters there were no lights lit at any place on the stairs or in the hallway (p. 35). After staying at the headquarters a few minutes plaintiff left and

started to go through the hallway to the steps. His story of the accident from that point forward is set forth on pages 35, 36 and 37, and is as follows:

“Q. Can you tell me how that vestibule and stairway and hallway are lighted or arranged? Can you tell the jury so they will understand? Can you tell me how that vestibule and stairway and hallway are arranged? Can you tell the jury so they will understand?”

A. Well, what do you mean, from the office to the end —

Q. No, go in the other way, off Atlantic Avenue.

A. Well, going in off Atlantic Avenue you lead right from the vestibule off the street, up a flight of stairs, I suppose, probably, twelve or fifteen steps; I don't know just exactly; then there is a landing straight up; then it goes up in another direction like that.

Q. Which way does it turn, to the right or left?

A. Why, it turns to the right, I think it is.

Q. Well, now, did it? You go up 1410, turn to your left, then where do you go?

A. You go up about six or seven steps more to the main hallway.

Q. Then you turn which way, right or left?

A. Turn to your right then.

Q. Where did you go then?

A. Oh, about, I suppose, twenty-five or thirty feet back to the back office.

Q. And you say none of those were lighted at that time, neither the hallway nor the vestibule nor the stairway?

A. No light at all in the hallway or vestibule.

Q. Now, you say you were there about ten

or fifteen minutes; then you came out. Now, what did you do as you came out in order to find the stairway?

A. When I got to the turn where you come down to come to the small hallway to the first flight of steps, I struck a match to kind of get a look at the position and started, and the first thing I knew I went one step too far and landed in the landing.

Q. Well, now, had you reached the stairway before you struck the match, or did you strike the match before you reached the stairway?

A. Just as soon as I turned around the corner of the hallway where the steps were supposed to be.

Q. At that time were there any lights there in the hallway or on the stairway or vestibule?

A. No lights at all.

Q. When you made the step and fell, what happened to you?

A. Well, I just fell in a heap down there and I managed to get up and slide down the step to the street."

After the accident happened plaintiff was taken to the hospital in Atlantic City where he remained for seven weeks, suffering from a fracture of a thigh bone (pp. 18 and 38). As a result of the injury plaintiff's leg was shortened one inch and will never again attain its full length (pp. 19 and 24).

At the trial the plaintiff offered testimony to prove that the defendant had lights in the hallway and on the stairs, which lights were lit on some occasions, and were lit in the early evening of the date when the accident happened (p. 78), but were not

lit later on in the evening, at half-past ten, and were not lit at the time the accident happened.

A motion was made for a non-suit on two grounds, namely; first, that no actionable negligence chargeable to the defendant had been shown and that the plaintiff himself was guilty of contributory negligence. The trial Court granted the motion (p. 101).

The defendant had control of the hallways and also had control of the hallway lights. The tenants had no access to the electric light switch (pp. 97 and 98).

LAW.

I.

THE TRIAL COURT WAS IN ERROR IN NON-SUITING THE PLAINTIFF.

In allowing the motion to non-suit, the trial Court stated as follows (p. 101):

"The Court: I think the testimony in this case brings the case clearly within the decisions in *Saunders v. Smith*, 84 Law 276; 96 Law 267, and 58 Law 475. Those cases deal adversely to the contention of the plaintiff with what seems to me to be all of the phases of this present case. I will, therefore, allow the motion to non-suit and enter a judgment accordingly."

A short time previous to this the Court had expressed the opinion that there was no duty on the part of the defendant to light the stairs in question, and that the defendant was, therefore, not negligent in failing to have the stairs lighted (pp. 92

and 93), and in granting the motion to non-suit the trial Court was evidently acting upon this theory.

It is submitted that the trial Court was in error in adopting this theory of the case and in allowing the motion to non-suit.

The case of *Saunders v. Smith* (84 N. J. L. 276), cited by the Court in allowing the motion to non-suit (p. 101), was a case where the plaintiff was an employe of a tenant in an office building, his duties being to sweep up the refuse on the floor and dispose of it. Upon asking the janitor of the building where he should put the refuse the janitor took him to the rear cellar of the building and showed him a place where he might leave it. On a certain day the plaintiff, while returning from this part of the cellar, stumbled upon the steps and fell and was injured. At the trial it was contended that the plaintiff was using this back cellar by invitation of the defendant and that the latter was, therefore, under a duty to him to use reasonable care to keep it safe, and that the defendant failed to perform this duty. The Court held that there was nothing in the proofs to show that the plaintiff was using the cellar by invitation of the defendant and that the plaintiff was guilty of contributory negligence in attempting to pass along a dangerous way in a total darkness. It is obvious that this case can have no application to the present situation because the way which was being used by the plaintiff, Leech, in the present case, was a common way; put there for use by all of the tenants and those invited upon the premises, and was not comparable to a dangerous way leading to the back part of the cellar. Furthermore, it appears in the *Saunders* case that the plaintiff might have been able to turn on the lights himself or else could have requested

the janitor to do so before going into this part of the cellar. Here Leech had no access to the lights in the hallway and stairs (p. 98).

The second case cited by the Court is 96 N. J. L. 267, but it is apparent that this is an erroneous citation and that the Court intended to cite the case of *Guse v. Martin* (96 N. J. L. 262). In that case the plaintiff took a job as a weaver in a factory, but stopped working on the same day on which he was employed. He was directed to return some days later to receive his wages and, upon returning, he entered the building and walked back towards the stairway and seeing a door partly opened thought that this was the entrance to the stairway, when, in fact, it was an entrance to an elevator shaft. There was no gate across the entrance and when the plaintiff reached the door, he could see nothing because it was dark. He had never been through that door before, and he fell into the shaft and was injured. It was held that the plaintiff was properly non-suited on the ground that the invitation to the plaintiff to enter the building and receive his wages did not include an invitation to enter the elevator enclosure or use the elevator, and when he entered the doorway of the elevator shaft he had departed from the place to which he had been invited and entered a place which he had not been invited to use. It was further held that the plaintiff was guilty of contributory negligence in undertaking to go through a door beyond which he could not see, and which was an entrance to he knew not what. This case, again, is obviously distinguishable from the case at bar, for here the plaintiff, Leech, was using a passage which had been placed there for the common use of all persons who had occasion to go into the building, and it cannot be said that he was en-

tering a place which he had not been invited to use. Furthermore, he was familiar with the way and had lighted a match to see where he was going before attempting to go down the stairs (p. 36).

The third case cited by the Court is that of *Gleason v. Boehm* (58 N. J. L. 475), in which case the plaintiff made a social call on one of the tenants in an apartment house, which house the plaintiff had never entered before. In going to the apartment the plaintiff passed along a hall and up a stairway, which was a common way. She remained in the apartment until after dark and then left. She was accompanied by her sister and by her friend's daughter, but was going ahead of them and fell down the stairs and was injured due to the fact that there was no light in the hall. The plaintiff obtained a verdict against the owner of the apartment house upon which a judgment was entered. The Supreme Court ordered a new trial, holding that the trial Court erroneously charged the jury that they were to determine whether the maintenance of a light in the hall was necessary to render the plaintiff's descent reasonably safe and, if they found such necessity that it was the defendant's duty to exercise reasonable care to maintain a light there. The Court held that these instructions improperly enlarged the defendant's duty; that he was bound to take reasonable care to have the hall and stairway reasonably fit for the passage to and fro of his tenants and their visitors, but that no duty was imposed upon him in respect to the safe use of the means of passage provided by him, and that if the stairway was fit for use in ascending and descending, and if to use it safely a light was requisite, a light must be provided by the person using the stairs and not by the landlord. The Court fur-

ther stated that while the landlord may assume the duty to provide necessary light and while there was evidence in this case upon which the Court might have been requested to direct the jury to determine whether an implied contract to maintain such a light might not be inferred and a corresponding duty to maintain it, but no such request was made, and that, therefore, this phase of the case cannot be considered by the Court. In the present case there was evidence from which the jury might infer an assumption by the defendant of the duty of lighting the hall and stairway in question. The plaintiff produced evidence for the very purpose of showing that the defendant had assumed this duty and that he had neglected to perform this duty on the night when the accident occurred.

In *Rhodes v. Fuller Land and Improvement Company* (92 N. J. L. 569), the plaintiff brought suit against the owner of an apartment house for injuries received in a fall down a common stairway leading from the first floor to the basement, which fall was occasioned by reason of the absence of a light which was usually maintained by the landlord at the foot of the stairs. On page 572, Judge Trenchard, speaking for the Court of Errors and Appeals, said:

"We think the true rule is that if a landlord assumes the duty of providing and maintaining a light upon a stairway, it continues thereafter to be his duty to exercise reasonable care to maintain a light there until notice of its discontinuance has been given, and failure to perform such duty is negligence, and a tenant who is injured because of such negligence, whilst himself in the exercise of due care, is entitled to recover. *Andre v. Mertens*, 88 N. J. L. 626; *Kargman v. Carlo*, 85 Id. 632; *LaBrasca v. Hinchman*, 81 Id. 367.

In the present case it was open to the jury to find, if they saw fit, from the evidence, that the defendant company assumed the duty of providing and maintaining a light on those stairs, because it realized that their use was likely to be dangerous, even in the daytime, without a light, and that its failure to do so was the proximate cause of Mrs. Rhodes' injury."

The rule was also well expressed by Judge Min-turn in the case of *LaBrasca v. Hinchman* (81 N. J. L. 367), at page 368, as follows:

"The principle of liability involved received its first notable application in the famous adjudication of *Coggs v. Bernard* (1703), 2 Ld. Raym. 909, where Lord Holt gave expression to the doctrine of misfeasance as applied to the dereliction of a mere volunteer, and this doctrine has since found application in various phases of tort-feasance. In that case the bailee undertook to carry the hogsheads of wine as a mere volunteer, and did it so negligently that damage resulted. Liability was not predicated upon a contractual relationship, nor upon the interposition of a consideration or benefit accruing to the bailee, but upon the common law doctrine that one who undertakes to perform an act, and performs it negligently, whereby damage results, is liable for his misfeasance."

In the present case Charles I. Lafferty, a witness called by the plaintiff, testified as follows (p. 78):

"Q. Now, when you went there early in the evening do you remember whether or not there were lights in the vestibule and stairway and hallways?"

A. There were lights there when I left. I left there around I think it was—around half-past seven or quarter past seven.

Q. In the evening?

A. Yes.

Q. Now, were there lights in the hallways and stairways and vestibules when you left at half-past two or three o'clock the next morning?

A. No."

Frank Harrold, testifying for the plaintiff, stated that he was secretary of the county committee and on page 85 testified as follows:

"Q. Now, do you know whether or not those lights were always kept burning that you noticed in the hallway?"

A. The only thing I can say in regard to that is I know frequently they were not lit.

Q. Were not lit?

A. No.

Q. How do you know?

A. Because I was—the last few weeks of the campaign I was around headquarters until one or two o'clock in the morning."

He also testified, under cross-examination, on pages 87 and 88, that he was at the headquarters every evening and usually stayed until between one and two o'clock in the morning and that the lights were frequently not lit.

Mr. Lafferty's testimony was direct proof of the fact that the defendant had assumed the duty of lighting the vestibules, stairways and hallways for he said that they were lit on the very evening that the accident occurred.

Mr. Harrold's testimony was that for the last two weeks of the campaign he was at the headquarters every evening until one and two o'clock in the morning and that the lights were frequently not lit.

The necessary inference from this is that the lights were lit part of the time and were not lit on frequent occasions. The plaintiff, himself, testified that he had visited the Democratic headquarters both in the daytime and in the night-time, and that when he had been there at night the lights were lit sometimes and sometimes were not lit. The statements of these witnesses, therefore, would have justified a jury in finding that the defendant had assumed the duty of providing lights in the hallways and stairways, and there was, of course, abundant proof that the lights were not lit when Mr. Leech fell. In this situation it was error for the trial Judge to take the case away from the jury, for it was the duty of the Court to take as true all evidence which supported the view of the party against whom the motion to non-suit was made, and it was further the duty of the Court to give that party the benefit of all legitimate inferences which could be drawn therefrom in his favor. *Andre v. Mertens* (88 N. J. L. 626, 627). Here the proof and the legitimate inferences to be drawn therefrom constituted some evidence that the defendant had assumed the duty of lighting the halls and stairways, and there was further proof that the defendant had neglected to perform this duty on the night in question, and this being so it was for the jury to pass upon the question of negligence.

In *Bennett v. Busch* (75 N. J. L. 240), our Supreme Court held that:

"Where fair-minded men might honestly differ as to the conclusions to be drawn from

facts, whether controverted or uncontroverted, the question at issue should go to the jury."

As to contributory negligence that, too, was for the jury to pass upon.

The plaintiff testified that he had gone to the Democratic headquarters frequently before the accident occurred both in the daytime and in the night-time. He further testified that sometimes when he went there the halls were in darkness and sometimes they were lighted, but that he had been over these stairs both in the darkness and when the halls were lighted (p. 49). He further testified that after leaving the rooms on the night in question he struck a match just before reaching the stairway in order to see where he was, but miscalculated his step and fell down the stairs. Under this state of evidence the question of contributory negligence was for the jury. There was no rail on this portion of the stairs (p. 80), and the fact that the plaintiff lit a match was proof that he was proceeding carefully. Furthermore, he had used this stairway before and thought that he could safely descend. This being so then it cannot be said, as a matter of law, that it was negligence for the plaintiff to descend the stairs. *Andre v. Mertens* (88 N. J. L., at p. 629).

II.

THE COURT WAS IN ERROR IN OVERRULING QUESTIONS TO SHOW THAT COMPLAINTS HAD BEEN MADE TO THE DEFENDANT ABOUT LIGHTING THE STAIRS.

These questions are stated in grounds 2, 3, 4 and 5 of the grounds of appeal (p. 104).

The witness, Frank Harrold, secretary of the Democratic County Committee, stated that the lights were frequently not lighted and was asked whether or not any complaint was made about it. The Court sustained an objection to this question on the ground that the question of custom with respect to lighting the hallway was not involved in this case (p. 88).

The witness, Charles Collins, was asked the question whether complaints had been made about lighting the stairs both on the night in question and during the time when the Democratic headquarters were in the building. These questions were objected to and overruled on the ground that there was no obligation on the part of the defendant to light the stairs (pp. 92 and 94).

The plaintiff had produced proof to show that the defendant had assumed the duty of lighting the stairway and hallway, and he further produced proof to show that the defendant had failed to perform this duty both on the evening when the accident occurred and on previous occasions. It was, therefore, relevant for the plaintiff to show that the fact that the defendant was not properly lighting the halls was called to the defendant's attention and that although the defendant had had an opportunity to remedy this neglect of duty a reasonable time before the accident that it had failed to do so.

In *Rhodes v. Fuller Land and Improvement Company* (92 N. J. L. 569, at p. 573), the Court said:

"It is argued that there should have been a verdict directed for the defendant upon the ground that it appeared, without contradiction, that the light was burning fifteen or twenty minutes before the accident, and, therefore, sufficient time had not elapsed to charge the de-

fendant with knowledge of the fact that it was out, under the authority of *Krebs v. Rubsam*, 91 N. J. L. 426; *Schnatterer v. Bamberger*, 81 Id. 558, and *Timlan v. Dilworth*, 76 Id. 568.

But this contention is not well founded in fact. We think that matter did not appear beyond dispute. But even if it had appeared that the light was burning fifteen minutes before the accident, still a direction of a verdict would not have been justified, because it was fairly open to the jury to infer from the evidence that thereafter the light had been 'turned out' by the defendant's agent, whose duty it was to keep it lighted."

In *Buda v. Dzuretzko* (87 N. J. L. 34), plaintiff claimed that the heel of her shoe caught in a tin covering on the stairs of the apartment building, which covering was loose. The Supreme Court held, that, in order to charge the landlord with use of reasonable care it was necessary to show either (1) that the defect had been, in fact, brought to the notice of the landlord, or (2) to have existed for such a space of time before the accident as would charge the landlord with notice.

Under these cases testimony to show that the failure to light the halls and stairways had been brought to the attention of the defendant previous to the accident was relevant testimony and should have been admitted.

It is submitted that there was injurious error and that the judgment should be reversed.

Respectfully submitted,
 BOURGEOIS & COULOMB,
 Attorneys of Plaintiff-
 Appellant.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

GEORGE W. LEECH,
Plaintiff-Appellant,

v.

ATLANTIC DELICATESSEN COMPANY,
Defendant-Respondent.

ON APPEAL.

BRIEF ON BEHALF OF ATLANTIC
DELICATESSEN COMPANY.

STATEMENT OF THE CASE.

The plaintiff sued the Atlantic Delicatessen Company, a corporation, and three individuals, trading as a partnership, under the same name, for damages as the result of an injury sustained by him in a building owned by the corporation defendant.

The plaintiff was using a hallway in the said building between one and two o'clock in the morning of November 8, 1922, and fell down a stairway, leading from the same to the street level.

The only allegation of negligence is that the defendant neglected and failed to light or cause to be

lighted the electric lights in said hallway (C. p. 3, l. 34).

At the trial the suit was discontinued against the individual defendants and his Honor, Judge Schimpf, non-suited the plaintiff as against the corporation defendant.

FACTS.

The Democratic County Committee of Atlantic County was in possession of two rooms on the second floor of the building owned by the defendant, under a lease dated October 1, 1922 (C. p. 11, l. 22). The lease ran for a term of two months. The only provision of the lease, respecting illumination of the premises is as follows:

“Lessor * * * * will also furnish a reasonable amount of electricity, as lessor may determine for lighting said premises during business hours, reserving the right, however, in case lessee, in the judgment of lessor, or lessor’s agent or attorney, for the time being uses the electricity in an extravagant or unreasonable manner, of requiring lessee to put in meters and pay for the amount used or in default thereof, the supply to be cut off. In consideration of the fact that no extra charge is made for light, except as aforesaid, and for heat and janitor’s services, lessor shall not be liable for any failure to supply the same not due to gross negligence on lessor’s part.” (C. p. 13, l. 34.)

The lease prohibited the use of the demised rooms for sleeping apartments (C. p. 14, l. 20).

Plaintiff was a challenger at the election held in Atlantic County in the fall of 1922, and was requested to bring the returns from Pleasantville to the headquarters in Atlantic City. This he did and reached the headquarters at about fifteen minutes after one o’clock in the morning (C. p. 46, l. 25). There was a stairway from the street level, part way to the second floor, where there is a small platform and a few more steps and then a passage from the top of the latter to the back of the building, where the rooms occupied by the committee were located. When he went up the stairway, the latter was not lighted, although the offices were (C. p. 35, l. 28).

After stating that he was in the headquarters for ten or fifteen minutes, plaintiff was asked what he did as he came out of the room to find the stairway and he replied as follows:

“A. When I got to the turn where you come down to come to the small hallway to the first flight of steps, I struck a match to kind of get a look at the position and started, and the first thing I knew I went one step too far and landed in the landing.

Q. Well, now, had you reached the stairway before you struck the match, or did you strike the match before you reached the stairway?

A. Just as soon as I turned around the corner of the hallway where the steps were supposed to be.

Q. At that time were there any lights there in the hallway or on the stairway or vestibule?

A. No lights at all.

Q. When you made the step and fell, what happened to you?

A. Well, I just fell in a heap down there and

I managed to get up and slide down the step to the street." (C. p. 36, l. 30.)

The character of the stairway, steps and hall, is described by plaintiff on cross-examination (C. p. 48, l. 6, *et seq.*).

The plaintiff also stated that he had visited the headquarters, upon different occasions, both day and night, when sometimes the hallway was lighted and sometimes not, and that he had been there at eight o'clock at night when the stairway and hall were in darkness (C. p. 49, l. 18).

On cross-examination, plaintiff testified as follows:

"Q. Now, on this particular occasion where were you when you say you lighted a match?

A. I was right at the turn of the hallway.

Q. That is the hallway —

A. Turning to go down the stairs.

Q. Did you stop there?

A. Well, I just sort of struck a match; that was all. I don't know as I —

Q. Then walked right on?

A. Then walked right on.

Q. Then was the match out when you reached the top of the stairway?

A. Why, it went out very quickly; for it was only just one of these small cardboard matches.

Q. The paper matches?

A. Yes.

Q. Do you know how you came to fall?

A. No; I do not. I just fell over in a heap; that is all I know.

Q. Did you slip off of the step?

A. No, I didn't slip. I suppose I stepped one step too far, thinking I was on the even part of the hallway and I stumbled over.

Q. Could you see the step?

A. No, you couldn't see the step.

Q. So dark you couldn't see anything after your light went out?

A. Not in that hallway; not in that entry, anyhow.

Q. And what was the distance from the main hall that runs parallel with the side of the building back to the headquarters to the top of the steps on the second floor?

A. Twenty to twenty-five feet, the hallway was.

Q. You misunderstand. Not the long hallway but the short hallway before you reached the top of the second flight of steps.

A. I know where you mean. I suppose it was five or six foot; I don't know just exactly.

Q. And how wide is that hall?

A. Not over three foot.

Q. Did you take hold of the hand rail as you were approaching the top of the flight of stairs?

A. I don't remember of doing it.

Q. You knew there was a hand rail there, didn't you?

A. No, I don't know even today.

Q. Don't you know there was a hand rail there at the other time you were there?

A. I couldn't just say for certain." (C. p. 51, l. 35.)

The lessee was Charles I. Lafferty, chairman of the county committee. He testified that there were lights in the rooms occupied by the committee on the night in question and the stairway, vestibules and halls were lighted when the witness left around 7.30 or 8.45 P. M., but there were no lights in the

halls, stairways or vestibules when he left at 2.30 or 3.00 o'clock in the morning (C. p. 78, l. 3).

Russell T. Loveland testified that it was about one o'clock in the morning when he saw Mr. Leech at the bottom of the lower flight and that the lights in the hallway were not then lighted (C. p. 82, l. 22).

Frank Harold, who was secretary of the committee, testified as follows:

“Q. Now, what time was it when you went down the hall and saw they were not lit?”

A. Well, between—I guess around between eight or nine, ten o'clock; three or four times I went down there, and they were not lit at 2.30 in the morning.” (C. p. 84, l. 34.)

This witness also testified that he was around the headquarters between one and two o'clock in the morning during the last week of the campaign and that the lights were not lit (C. p. 85, l. 34). This witness also testified it was not the custom to have the lights lit in the evenings (C. p. 87, l. 20).

Charles Collins testified that on the night of the election, the vestibule and stairway was not lighted at 9.00 o'clock in the evening (C. p. 91, l. 12).

On this state of the record, a non-suit was ordered, the learned trial Judge stating that the case was controlled by *Sanders v. Smith*, 84 L. 276; *Guse v. Martin*, 96 L. 262, and *Gleason v. Boehm*, 58 L. 475 (C. p. 101, l. 22).

ARGUMENT.

The only claim of the plaintiff, in order to sustain the cause of action set forth in the complaint, was the allegation contained in paragraph 6 as follows:

“That the defendant lessor had neglected and failed on said night of November 7th and 8th, 1922, to light and cause to be lighted, the electric lights in said hallway.” (C. p. 3, l. 33.)

Two defenses were urged in the defendant's answer:

1. Defendant was under no duty or obligation to light or cause to be lighted the hallway in the building, as alleged in paragraph 6 of the complaint, at the time of the occurrences set forth therein.

2. The conduct of the plaintiff contributed to the injuries (C. p. 7, l. 20).

The theory of the plaintiff seems to be, that because the county committee occupied two rooms in the rear of the second floor of the defendant's premises and that ingress and egress to the same was by means of a common hallway, under the defendant's control, and lighted by electric lights, and operated from a switch from the pastry shop on the first floor of the building, that the defendant, under those circumstances alone, assumed a duty and obligation to cause the hall and stairways to be lighted at one o'clock in the morning. It must be remembered that there were no sleeping apartments in the building.

The complaint does not allege that the defendant ever agreed to furnish light in the hallways or assumed this duty in any way. The only bit of evidence, introduced in the cause, showing any contractual relation between the landlord and tenant, was the lease which stated that the defendant agreed to furnish electricity for lighting to the demised premises during ordinary business hours.

It will be further observed that there was no demise of the use of any passage or stairways to reach the leased apartment, so that a strict interpretation of the obligation to furnish light would apply only to the rooms actually occupied by the lessee.

Furthermore, the lease provided that in consideration of the fact that no extra charge would be made for light, except if the lessee be extravagant or make unreasonable use of the same, the lessor should not be liable for failure to supply same not due to gross negligence on its part.

It also appears, from the testimony, that apparently in the evenings, at the hours 8, 9 or 10 o'clock, at various times no light was provided in the halls or stairways. This is an interpretation, by the lessor, of its duty with respect to business hours.

There is no testimony whatever, that upon any occasion at one o'clock in the morning, did the landlord ever furnish illumination for the stairway, which the plaintiff was using at the time of the accident.

Therefore, the case is absolutely devoid of any express agreement on the part of the lessor to furnish illumination at one o'clock in the morning. Neither were any facts proven which would establish, in the slightest degree, any implied undertaking on its part so to do.

Obviously, the only question in the case was whether or not any duty was imposed upon the landlord to furnish light, at one o'clock in the morning, in the stairway and hall, which was used as a means of ingress and egress to offices on the second floor of the building.

The learned trial Judge non-suited the plaintiff, upon the authority of *Gleason v. Boehm*, 58 N. J. L. 475, where it was held as follows:

“The defendant, landlord, is bound to take reasonable care to have the hall and stairway reasonably fit for the passage to and fro of his tenants and visitors. But no duty was imposed upon him in respect to the safe use of the means of passage provided by him. If those means were such as the rule required to be provided he had performed his duty. If the stairway was fit for use in ascending and descending, the responsibility of safely using it was upon the person using it. If to use it safely at night, a light was requisite, he must provide it and not the landlord.”

Furthermore, it is manifest that the plaintiff was guilty of contributory negligence, which would prevent recovery. It only seems necessary to refer to *Sanders v. Smith*, 84 L. 276, which was cited with approval in the following cases: *Guse v. Martin*, 96 L. 262; *Rooney v. Silletto*, 96 L. 312.

No attempt was made either by pleading or proof to bring this case within the doctrine laid down in *Rhodes v. Fuller, etc. Co.*, 92 L. 569. The landlord never assumed the duty or obligation to provide light, beyond that provided in the lease, and the testimony shows conclusively that prior to the time of the accident the landlord had never done anything to indicate that such duty was undertaken.

Certain reasons have been assigned with respect to the rejection of testimony based upon questions propounded by the plaintiff's attorney.

The question referred to in the second reason will be found on page 88, l. 24. This question is clearly improper for several reasons. There is nothing to show to whom the complaint, referred to in the question, was made. In the second place, as shown by the cases above referred to, there is no obligation on the part of the landlord to light the hallways and in the last place there is nothing in the complaint to show that any negligence resulted from a failure on the part of the landlord to comply with any engagement to furnish light in the hallways and stairs.

The question referred to in the third reason is of the same general character and will be found on C. p. 92, l. 24. This question was also improper for the reasons referred to in the foregoing.

The question set forth in the fourth reason is found on page 94, l. 9, and it is clearly objectionable for the reasons stated as above, and upon the further ground that for aught that appears the question might have been made to the tenants or the persons who were occupying the two rooms as headquarters.

All of these questions were overruled, upon several grounds; among others, the fact that the lease provided for lighting the premises during business hours (C. p. 193, l. 26).

The question referred to in the fifth reason will be found on page 96, l. 9. Manifestly, this question was also improper for the reasons above stated.

We submit, therefore, that the judgment should be affirmed.

STARR, SUMMERILL & LLOYD,
Of Counsel with Defendant.

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