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Notice of Appeal.

(Filed _____, 1920.)

New Jersey Supreme Court

PASSAIC COUNTY

MAUD VAN NOORDT,
Plaintiff,

vs.

THE DELAWARE, LACKAWANNA
AND WESTERN RAILROAD
COMPANY,
Defendant.

Action at Law. 10
Notice of Appeal.

To MESSRS. WARD AND MCGINNIS,
Attorneys of Plaintiff.

SIRS:

20

PLEASE TAKE NOTICE that the defendant appeals to the Court of Errors and Appeals of the State of New Jersey, from the whole and every part of the judgment entered in the above entitled action, upon the following grounds, viz:

The Trial Court refused, on motion of defendant made at the close of the plaintiff's case, to grant a nonsuit in favor of the defendant and against the plaintiff, whereas a nonsuit should have been granted on the grounds stated in said motion. 30

The Trial Court refused, on motion of the defendant made at the close of the whole case, to direct a verdict in favor of the defendant and against the plaintiff, whereas said Trial Judge should have directed a verdict in favor of the defendant on the grounds stated in said motion.

W. J. LARRABEE,
Attorney of Defendant. 40

Summons.

(Filed Feby. 16, 1918.)

PASSAIC COUNTY: ss. THE STATE OF NEW JERSEY:
 (SEAL) TO THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY, a corporation.

10

GREETING: You are hereby summoned to answer the annexed complaint of Maud Van Noordt, in an action at law, in the New Jersey Supreme Court. And take notice, that unless you file your answer to said complaint, with the Clerk of the Supreme Court, at Trenton, within twenty days after service upon you of this writ and the annexed complaint, then the plaintiff may proceed and judgment entered against you.

20

WITNESS WILLIAM S. GUMMERE, Chief Justice of the New Jersey Supreme Court, at Trenton, this 14th day of February, 1918.

WILLIAM C. GEBHARDT,
 Clerk.

WARD & MCGINNIS,
 Attorneys.

30

40

Amended Complaint.

(Filed May 24, 1919.)

NEW JERSEY SUPREME COURT.

PASSAIC COUNTY.

MAUD VAN NOORDT, Plaintiff, vs. DELAWARE, LACKAWANNA & WESTERN RAILROAD COM- PANY, a corporation, Defendant.	}	10 Action at Law. Amended Com- plaint.
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The plaintiff, by Ward & McGinnis and Jaffe & Mirsky, her attorneys, complains of the defendant as follows:

1. That the plaintiff is a resident of the City of Passaic, County of Passaic and State of New Jersey.
2. That the defendant is a foreign corporation, authorized to do business in the State of New Jersey. ³⁰
3. That at the time of the committing of the grievances hereinafter mentioned, the defendant was the owner of a certain railway system, and of certain lands in the City of Passaic, County of Passaic and State of New Jersey, over and along which said land there were certain railroad tracks and switches, over and along which the said defendant, ⁴⁰

Amended Complaint.

also operated and controlled certain trains consisting of certain engines and cars.

4. Plaintiff avers that said land or right of way of said defendant, upon which said tracks were maintained as aforesaid crossed at right angles a certain public street or highway in said City of
10 Passaic known as Factory Street, which said street or highway was commonly used by persons along said street as a public highway, and that by reason of the right of way of the said defendant crossing
Factory Street as aforesaid, it became extremely dangerous for persons who had the right to and who passed along said Factory Street to cross said
right of way of the said defendant, by reason of
20 the said defendant running its trains and engines crossing along said right of way and crossing said
Factory Street.

5. That because of said conditions aforesaid, the said defendant on or about the 3rd day of April, 1914, made application to the City of Passaic for permission to connect Factory Street across its tracks by a foot-bridge, which application was granted.

30 6. That thereupon the said defendant did erect said foot-bridge and did undertake to maintain the same in a sufficient and proper condition, so that persons entitled to use the same could do so with safety.

7. Plaintiff avers that on the 16th day of February, 1916, the said plaintiff was then and there passing along Factory Street, and was then and
40 there using said passage-way or structure, so main-

Amended Complaint.

tained by the defendant aforesaid, and was then and there crossing said passage-way from the westerly to the easterly side thereof, and that the said defendant, so carelessly, negligently and improperly permitted said structure to get into a dangerous condition, and so carelessly, negligently and improperly permitted ice and snow to collect upon the walk of said structure, making it dangerous to those passing thereon, and so carelessly, negligently and improperly failed to clean the ice and snow from the walk of said structure, and so carelessly, negligently and improperly failed to warn those using said structure of the dangerous condition in which it was then and there maintained; and well knowing that the manner in which the said bridge, and the approaches thereto by means of steps, with the presence of snow and ice thereon, constituted a nuisance, carelessly, negligently and improperly permitted said plaintiff to use said structure while it was in said dangerous condition as aforesaid; that the said plaintiff while using said structure as aforesaid, and because of the negligence of the defendant as aforesaid, then and there slipped and fell upon said structure or said passage-way with great force and violence, injuring the plaintiff severely and permanently as hereinafter set forth.

8. Plaintiff's both arms were fractured, bruised and injured, and in the future will be permanently injured; her right leg was fractured and injured, so as to render same weak, deformed, turned inward, and in the future will remain permanently injured, and also sustained paralysis of the nerves; her nose was broken and bruised, and is permanently deformed, and in the future will so remain; her forehead was bruised and contused, and is per-

Amended Complaint.

manently injured and discolored; that by reason of said injuries plaintiff continually suffers from headaches and loss of appetite; she suffered concussion of the brain; that plaintiff's left arm by reason the said injuries to same as aforesaid will be permanently stiffened and continually discharges sinus; that plaintiff's left leg was also
10 bruised and injured, and she was bruised and contused about the shoulders, back and entire body, and she was also bruised and contused about the head, eyes, ears, and her hearing and vision have been affected and will be permanently injured in the future; that her nervous system was permanently shocked.

20 9. That by reason of the defendant's negligence and carelessness as aforesaid, the said plaintiff was rendered sick, sore, lame, wounded, diseased and disordered, and has continued to be sick, sore, lame, wounded, diseased and disordered, and in the future will so remain, as a result of said accident.

30 10. That plaintiff was obliged to lay out and expend a large sum of money, to wit, \$2000, endeavoring to be healed and cured of said injuries, and in the future will be obliged to lay out and expend a large sum of money for said purpose; that plaintiff also lost and was deprived of a large sum of money, to wit, her earnings, which she would have otherwise received, and in the future will be deprived of same, by reason of her inability to work, by reason of said injuries.

40 By reason of the premises, plaintiff will claim judgment against the defendant in the sum of \$10,000.

Amended Complaint.

SECOND COUNT:

1. Paragraphs one, two and three of the first count are hereby made part of this count.

2. That at the time of the committing of the grievances hereinafter mentioned, there was a certain public street in the City of Passaic known as Factory Street, which said street extended at right angles to said right of way of the defendant, but did not cross the same, said street terminating at its point of contact with the right of way of the defendant on each side thereof, and in consequence the said Factory Street did not cross the said right of way of the defendant. ¹⁰

3. That at the request of certain land owners and factory operators operating plants along or near said railroad in the vicinity of Factory Street, the said defendant, did on or about the 3rd day of April, 1914, erect over its tracks and right of way a foot bridge, and did on or about the 3rd day of April, 1914, make application to the City of Passaic for permission to connect said foot-bridge with said Factory Street on either side thereof, by erecting abutments, approaches and stairs to said bridge within the limits of Factory Street on each side of defendant's right of way, and undertook to maintain the same in a sufficient and proper condition, so that persons entitled or requested to use the same could do so with safety. ²⁰
³⁰

4. Paragraphs seven, eight, nine and ten of the first count are hereby made part of this count.

By reason of the premises plaintiff will claim judgment under this count for the sum of \$10,000.

WARD & MCGINNIS

Attorneys of Plaintiff. 40

Answer to Amended Complaint.

(Filed June 13, 1919.)

NEW JERSEY SUPREME COURT

PASSAIC COUNTY

10

MAUD VAN NOORDT,
Plaintiff,

vs.

THE DELAWARE, LACKAWANNA
AND WESTERN RAILROAD
COMPANY,

Defendant.

Action at Law.
Answer to
Amended Com-
plaint.

20

The defendant above named answers the amended complaint of the plaintiff as follows:

FIRST COUNT:

1. It admits the allegations of paragraphs numbered "1", "2", "3", "4" and "5".

2. It admits so much of paragraph "6" as alleges
30 "that thereupon the said defendant did erect said foot-bridge". All other allegations of said paragraph are denied.

3. It denies the allegations of paragraphs numbered "7", "8", "9" and "10".

SECOND COUNT:

4. It admits the allegations of paragraph "1" of
40 the second count.

Answer to Amended Complaint.

5. It admits the allegations of paragraph "2" of the second count.

6. It admits so much of paragraph "3" of the second count as alleges "that at the request of certain land owners and factory operators operating plants along or near said railroad in the vicinity of Factory Street, the said defendant did on or about the 3rd. day of April, 1914 erect over its tracks and right of way a foot bridge, and did on or about the 3rd. day of April, 1914, make application to the City of Passaic for permission to connect said foot bridge with said Factory Street on either side thereof, by erecting abutments, approaches and stairs to said bridge within the limits of Factory Street on each side of defendant's right of way". All other allegations contained in said paragraph are denied.

7. It denies the allegations of paragraph "4" of the second count.

Defendant demands that complaint be dismissed and that it be allowed its costs to be taxed.

W. J. LARRABEE

Attorney of Defendant.

30

40

Postea.

(Filed Dec. 30, 1919.)

This case was tried before the Honorable George S. Silzer, with a jury, at the Passaic Circuit, on November 17th, 1919.

The jury rendered a general verdict against the defendant and in favor of the plaintiff for the sum
10 of \$10,000.

GEORGE S. SILZER
Judge.

Judgment.

(Entered Dec. 30, 1919.)

20

It is ordered that judgment be and hereby is entered in favor of the plaintiff and against the Defendant for the sum of ten thousand dollars besides costs to be taxed *nisi*.

Entered December 30, 1919.

On motion of

WARD & MCGINNIS, Attorneys.

30

Arthur J. Strange—Direct.

Testimony.

NEW JERSEY SUPREME COURT.

PASSAIC COUNTY.

<p style="text-align: center;">MAUD VAN NOORDT, Plaintiff,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">DELAWARE, LACKAWANNA AND WESTERN RAILROAD COM- PANY, a corporation, Defendant.</p>	}	<p>10</p> <p>Before: Hon. GEORGE S. SILZER, <i>J.</i>, and a jury.</p>
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PATERSON, N. J. November 14, 19

20

APPEARANCES:

MESSRS. WARD & MCGINNIS,
For the Plaintiff.
W. J. LARRABEE, Esq.,
For the Defendant.

(A Jury being impaneled and found satisfactory, they were sworn.) 30

(Mr. McGinnis opens for the Plaintiff.)

(Mr. Larrabee opens for the Defendant.)

ARTHUR J. STRANGE, sworn as a witness on behalf of the Plaintiff, testifies as follows

DIRECT-EXAMINATION BY MR. MCGINNIS:

Q. What is your occupation and profession?

A. Civil Engineer.

40

Arthur J. Strange—Direct.

Q. Connected with what office?

A. With the City Engineer's office in Passaic.

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

A. Since a year ago last August.

Q. How long have you been a civil engineer?

10 A. For twenty five years.

Q. And you are in the City Engineer's office of what City?

A. Passaic, the City of Passaic.

Q. Do you know of the different streets in the City of Passaic and their existence etc.?

A. I do. I have charge of the transfers for the tax maps.

Q. Do you know of a street called Factory street?

20 A. I do.

Q. Can you tell the Jury just where and how Factory street runs?

A. Factory street runs east and west starting at Liberty street formerly known as Bismarck street, and from there to the railroad, the Delaware, Lackawanna Railroad, and westerly from the railroad it continues on the other side of the railroad westerly from the railroad to Van Houten avenue.

30 Q. It runs at grade with the railroad tracks of the Lackawanna railroad?

A. Practically, yes sir.

Q. Does the street cross the Lackawanna Railroad?

A. There is no physical crossing, except a bridge.

Q. Who owns the property on what would be the public street where it crosses the tracks?

40 Mr. Larrabee: Objected to. I object to any evidence on the part of the witness as to who

Arthur J. Strange—Cross.
Zabriskie A. Vanhouten—Direct.

owns the property unless he shows some knowledge.

The Court: As I understand it the witness says the street runs up to the railroad and on the other side of it, it continues after it passes the railroad.

10

CROSS-EXAMINATION BY MR. LARRABEE:

Q. The substance of your testimony, as I understand it is that the street terminates at each side of the railroad tracks or railroad right of way and does not extend across?

A. That is correct.

ZABRISKIE A. VANHOUTEN sworn as a witness on behalf of the plaintiff, testifies as follows: 20

DIRECT-EXAMINATION BY MR. MCGINNIS:

Q. Where do you live?

A. In Passaic.

Q. Do you occupy any official position under the City Government of Passaic?

A. Yes sir, I am the City Clerk of Passaic.

Q. How long have you been City Clerk?

A. Since 1914. 30

Q. Do you have charge of the records of the City Clerk's office?

A. I do, yes sir.

Q. Have you there any records with reference to the construction of a foot bridge over the right of way of the Lackawanna Railroad at Factory street?

A. Yes sir.

Q. Will you produce those please? 40

Zabriskie A. Vanhouten—Direct.

A. I have them here (producing).

Q. This paper here marked number one, entitled Delaware, Lackawanna & Western Railway to the City of Passaic Petition, and endorsed Received by the Commissioners April thirteenth, 1914, City of Passaic New Jersey, with the further endorsement, Received and Referred to Director of Streets and
10 Public Improvements on call of roll, I ask you what that petition is——

Mr. Larrabee: Objected to.

Q. That is a petition with reference to Factory street?

A. Yes sir, with reference to an overhead bridge.

Mr. Larrabee: We will admit the petition in evidence as having been filed by the Delaware Lackawanna & Western Railroad Com-
20 pany with the City of Passaic. That is the petition itself, not the letter attached to it.

The Court: The petition may be admitted.

ADMITTED AND MARKED "Plaintiff's Exhibit P-1" of this date.

Q. There is attached to that, pasted and pinned on a letter on the stationery of the Delaware,
30 Lackawanna & Western Railroad Company dated November 23rd, 1914, addressed Hon. George N. Seger, Mayor, Passaic, New Jersey; do you know anything about that letter?

A. I know it was received and became a part of the petition.

Mr. McGinnis: We offer it in evidence.

Mr. Larrabee: I would like to cross-examine the witness on that before it is admitted.

40 The Court: You may do so.

Zabriskie A. Vanhouten—Direct.

By Mr. Larrabee :

Q. To whom is that letter addressed?

A. It is addressed to George N. Seger Mayor of the City of Passaic.

Q. He was the mayor of the City of Passaic at that time?

A. Yes sir. 10

Q. What was your position at that time?

A. My position at that time was controller of the City of Passaic.

Q. Was that letter addressed to you?

A. No sir.

Q. Was it sent to you?

A. No sir.

Q. Was it delivered to you?

A. It was not delivered to me, no. 20

Q. Have you any personal knowledge about that letter?

A. No sir, I have not; simply that it was attached to the petition I assume when——

Q. The communication is addressed to an individual, namely, Hon. George N. Seger Mayor of Passaic, New Jersey?

A. Yes sir.

Q. By whom was the letter written? Whose name appears as signing, what name appears? 30

A. W. R. Crosson, Attorney.

Q. Did you have any correspondence with Mr. Crosson?

A. I had none personally, no sir.

Mr. Larrabee: We object to the admission of the letter as not proven and not competent evidence, not competently proven. The witness shows that he has no personal knowl- 40

Zabriskie A. Vanhouten—Direct.

edge of it, and it appears that the letter was not addressed to him.

The Court: There is no proof of the signature or as to who the man is?

10 Mr. McGinnis: It has relation to the subject matter of the petition and it is physically attached to the petition and it has become a part of the official records of the City of Passaic attached to the petition.

The Court: Who signed it?

Mr. McGinnis: It is signed W. R. Crosson, Attorney and it is written on what purports to be stationery of the Delaware, Lackawanna & Western Railroad Company.

The Court: Does it show that he is the attorney?

20 Mr. McGinnis: It is from the Legal Department. It is simply offered as a part of the record in the case.

The Court: I cannot admit the letter; not at present.

(Plaintiff excepts.)

The Court: If you can show that Mr. Crosson was the attorney for the Company it may be again offered and it might be admissible.

30 Q. I now show you a paper marked Report from the Directors of Streets and Public Improvements Reporting on Petition of Delaware, Lackawanna & Western Railroad for permission to connect Factory street across its tracks by a foot bridge and recommending that the Petition be granted, marked Received by the Commission April twenty fourth 1914, City of Passaic, N. J., Report received, Recommendation adopted and Clerk instructed to
40 send a copy to Delaware, Lackawanna and Western

Zabriskie A. Vanhouten—Direct.

Railroad Company on call of roll; and I ask you what that paper is?

A. That is an official paper; the report of the committee. A report was substituted for it later on.

Mr. McGinnis: We offer this paper in evidence.

ADMITTED AND MARKED "Plaintiff's Exhibit P-2" of this date. ¹⁰

Q. I next show you a paper entitled Report from Director of Streets and Public Improvements reporting on Petition of Delaware, Lackawanna & Western Railroad Company for permission to connect Factory street across its tracks by a Foot Bridge, and recommending that the Petition be granted, provided that same be located in the centre of said Factory street also recommending that the action of the Board of April twenty fifth relative to this petition be rescinded; Received by Commission June seventeenth 1914, City of Passaic, N. J., Report Received, recommendation adopted on call of roll. That is a part of the official record?

A. Yes sir.

Mr. McGinnis: We offer it in evidence.

ADMITTED AND MARKED "Plaintiff's Exhibit P-3" of this date. ³⁰

Mr. Larrabee: If it will help matters any I will consent that the originals be introduced in evidence and then withdrawn for the purpose of substituting copies.

Q. I show you a blueprint showing the tracks and street market Factory street, which blueprint ⁴⁰

Zabriskie A. Vanhouten—Direct.

is entitled as follows: Delaware, Lackawanna & Western Railroad, Boonton Branch, location plan for proposed footbridge at Factory street Passaic, New Jersey, office Division Engineer, Hoboken, N. J., dated February twenty third, 1914, and I ask you what that is?

10 A. To the best of my knowledge and belief that is the plan that was filed with the petition by the Railroad Company showing the proposed location of the overhead bridge. It is in our files.

The Court: At any rate you found it on file?

The Witness: Yes sir, it is in our files.

Mr. McGinnis: We offer it in evidence.

Mr. Larrabee: I would like to cross-examine on that before it is admitted.

20 The Court: You may do so.

By Mr. Larrabee:

Q. Referring particularly to your last remark that this was a copy of the map filed with the petition; is it not the fact or can you say one way or the other, whether this is not a map that was substituted for the one originally filed with the petition?

30 A. I cannot say that. I took the papers as I found them. They were turned over to me by the gentleman whom I succeeded in the office. I don't know anything personally about it and did not at that time.

The Court: It is a paper he found in the files and that is all he knows about it. It was in the City Clerk's office when he became clerk.

40 Q. Did you notice the date of the petition?

Zabriskie A. Vanhouten—Direct.

A. I have not had the time to do that, to go into that at all.

The Court: He says he does not know anything about the papers, he simply found them in the files.

The Witness: I was subpoenaed last night and did not have a chance to go over the matter.

Mr. Larrabee: I object to the paper going in evidence. 10

The Court: I think it is admissible as one of the papers found in the City Clerk's office, as part of the record.

Mr. Larrabee: I have no objection to its going in with that understanding, but not as the map annexed to the petition, because the map annexed to the petition appears on the record.

The Court: This witness's statement does 20 not make it so. He does not know. He says so very frankly. He simply found these papers on file and he surmises the fact that it was attached to the petition.

Mr. Larrabee: The map attached to the petition is still so attached.

The Court then ordered a recess until two o'clock this day.

30

AFTER RECESS.

IT IS AGREED between Counsel that the map dated February twenty third, 1914 and revised March thirtieth and April ninth 1914 is to go in evidence and that this blueprint shows the plans according to which the footbridge was constructed.

ADMITTED AND MARKED "Plaintiff's Exhibit P-4" of this date. 40

Eber Probert—Direct.

EBER PROBERT, sworn as a witness on behalf of the Plaintiff, testifies as follows:

DIRECT-EXAMINATION BY MR. MCGINNIS:

Q. Where do you live?

A. 567 Market street, Paterson.

Q. Have you or not made it a practice or business to observe the weather conditions?

A. Yes sir.

Q. When? For how many years?

A. For fifteen years.

Q. Are you in any wise connected with the national weather bureau?

A. Not at the present time.

Q. Have you been?

A. Yes sir.

Q. For how many years?

A. For fifteen years.

Q. Were you so connected in February 1916?

A. Yes sir.

Q. Did you make observations and records at that time?

A. Yes sir.

Q. Have you the records of weather conditions in this vicinity during the month of February 1916?

A. Yes sir.

Q. Will you turn to them please, and, beginning on the night of the tenth of February give us the record of each day, day by day, including the sixteenth?

A. Do you want the temperatures or conditions of the day?

Q. Give it all, take the temperature, the rain, the snow, the temperature, of course, especially with reference to freezing?

A. February tenth, the day was partly cloudy,

Eber Probert—Direct.

and the temperature ranged from twenty four to thirty seven.

Q. Did any snow or rain fall that day?

A. No snow fell on that day.

Q. February eleventh?

A. February eleventh the day was cloudy, the temperature ranged from twenty one to thirty two and there was a snow-fall of three-tenths of an inch. 10

February twelfth the day was cloudy, and the temperature ranged from twenty four to twenty five and there was snow, two inches;

February thirteenth the day was cloudy, the temperature ranged from eighteen to twenty seven and there was snow, five inches;

February fourteenth the day was clear and the temperature ranged from zero to nineteen.

February fifteenth the day was partly cloudy, and the temperature ranged from one below zero to twenty nine, there was no snow on that day. 20

February sixteenth the day was dull and cloudy, and the temperature ranged from eighteen to thirty six.

The Court: What time of the day did this accident happen?

Mr. McGinnis: On the sixteenth.

The Court: What time of the day?

Mr. McGinnis: Approximately around 30 twenty minutes to seven in the morning.

Q. Thirty two degrees is the freezing point is it not?

A. Thirty two degrees is the freezing point.

Q. Does your record show how much snow there was on the ground on the fifteenth of February?

A. There were seven inches of snow still on the ground that day at six o'clock at night when I took my observation. 40

Eber Probert—Cross.
Maud Van Noordt—Direct.

CROSS-EXAMINATION BY MR. LARRABEE:

Q. How much did you say fell on February fifteenth?

A. There was seven inches still on the ground when I took my observations.

10 MAUD VAN NOORDT, sworn as a witness on behalf of the Plaintiff, testifies as follows:

DIRECT-EXAMINATION BY MR. MCGINNIS:

Q. You are the plaintiff in this case?

A. Yes sir.

Q. Where do you live?

A. 96 Linden street, Passaic.

Q. How long have you lived in the City of Pas-
20 saic?

A. All my life.

Q. How old are you?

A. Twenty four years old.

Q. Do you remember the month of February
1916?

A. Yes sir.

Q. At that time where were you working?

A. At the Manhattan Rubber works.

30 Q. What was your employment?

A. I was running a winder, a hose machine.

Q. What time did you start to work there, what
time each day?

A. I started seven o'clock in the morning.

Q. To get to this place of employment was it or
not necessary for you to pass along Factory street?

A. Yes sir, we had to pass that way.

Q. Do you know where the Lackawanna Rail-
road crosses Factory street?

40 A. Yes sir.

Maud Van Noordt—Direct.

Q. In the vicinity of this mill?

A. Yes sir.

Mr. Larrabee: I object to the evidence relative to the railroad crossing at Factory street in view of the statement in the complaint.

The Court: That is only descriptive.

Q. When you get to a point on Factory street 10 by these railroad tracks, how do you then get across the tracks to get to the mill?

A. We had to cross the bridge, we were told to cross the bridge.

Q. Did you have to cross the bridge?

A. Yes sir.

Q. Was there anything along the railroad tracks that would prevent you from crossing on the level?

A. The railroad put up a fence. 20

Q. So that you then had to cross this bridge to get to your work?

A. Yes sir.

Q. Can you describe what this bridge was like?

A. Well, it was a high bridge and we had to cross it to get over the tracks, we were not allowed to go underneath it.

Mr. Ward: Mr. Larrabee you have some pictures. I don't think there is any dispute about 30 the character of the bridge.

Q. Did you have to go up over the steps?

A. We had to go up over the steps, yes sir.

Q. Then across the landing?

A. Yes sir.

Q. And down the other side?

A. Down another landing and down another flight of stairs on a landing and down another flight. 40

Maud Van Noordt—Direct.

Q. So that to get from the platform on the top of the bridge there was really two flights of stairs?

A. Yes sir.

Mr. Larrabee: I will produce these photographs.

Q. Is this a picture of the bridge that you are speaking of?

A. Yes sir.

10 Mr. McGinnis: We offer it in evidence.

ADMITTED AND MARKED "Plaintiff's Exhibit P-5" of this date.

The Court: Tell us what happened.

Q. What time did you start to work on the morning of this accident?

A. We had to start at seven o'clock. I was going to work twenty minutes to seven.

Q. What time was it when you reached this
20 bridge?

A. Around a quarter to seven.

Q. What kind of a morning was it?

A. It was not daylight, it was just getting daylight, it was dusk like, and I had to cross that bridge to get over, and it was slippery and I crossed it and held onto the rail and still I lost my balance, my foot slipped right from under me and I fell on my spine.

30 Q. Did you get up the stairs?

A. I was going down.

Q. You had crossed and was going down, is that
it?

A. Yes sir.

The Court: How far down were you?

The Witness: I was on the first landing when I fell the rest of the ways down the steps.

The Court: Down the rest of the steps?

40 The Witness: Down the second flight.

Maud Van Noordt—Direct.

Q. You say you were on the first landing what do you mean by the first landing?

A. That is going down the first flight.

Q. The first flight from the top of the bridge?

A. Yes sir.

Q. That is the landing you fell from?

A. Going down the last flight of stairs.

The Court: She had gone down the first flight and was on the landing when she slipped and fell down the second flight.

Q. Is that right?

A. Yes sir.

Q. And you landed on your spine?

A. Yes sir.

Q. What was it made you fall down from that landing?

A. It was slippery and I held onto the railing but I could not save myself.

Q. What made it slippery?

A. The bridge was never cleaned off.

Q. What was on it that morning?

A. Snow and ice, that made it hard for walking.

Q. Do you know whether the snow and ice was on that bridge before that morning?

A. It was always on the bridge.

Q. Take the day before?

30

A. Yes sir.

Q. You say that you were told to use that bridge?

A. Yes sir, we had slips in our pay envelopes that we had to use it.

Q. Was there anything else?

A. There was a notice posted up in the mill that we had to use that bridge.

Q. I show you a paper marked "Notice to Em- 40

Maud Van Noordt—Direct.

ployes" "Don't walk upon the Railroad Track"
Was that one of the notices posted in the mill?

A. Yes sir.

Mr. McGinnis: I offer the notice in evidence.

ADMITTED AND MARKED "Plaintiff's Exhibit
P-6" of this date.

10 Q. Do you know whether or not other employes
used that bridge?

A. Yes sir, they had to use it, they had men
there standing to guard you from crossing the
tracks, you had to use the bridge.

Q. What was that?

A. I say, there was men there that would pro-
tect you from going over the tracks, you had to use
the bridge.

20 Q. Where were these men from?

A. As far as I know they were from the railroad
because there was the boss of the working men
working there on that fence when they were putting
up that fence and they told us we had to use the
bridge.

Q. You say the boss of the railroad gang?

A. Yes sir.

Q. How many employes used that bridge daily?

A. The majority of them.

30 Q. About how many would you say?

A. I should say about three hundred anyway.

Q. When you fell, as you told us a few minutes
ago, what part of your body did you land on?

A. On my spine.

Q. About how far did you fall?

A. Well, I fell from that landing to the bottom,
slid right down.

40 Q. What was your condition when you reached
the bottom of the steps?

Maud Van Noordt—Direct.

A. Well, I laid there stunned a few minutes, and I got up, because my clothes had went up and I was ashamed and I limped away and walked on.

Q. Was there anybody with you at the time?

A. My sister was with me, but she was in the back of me.

Q. You were picked up, then where did you go or what did you do? 10

A. I went on to work and I started complaining when I got in the mill that my back hurt me.

Q. What part of your back then hurt you?

A. The lower part of my back.

Q. Can you indicate on my back just about where?

A. It was right here (indicating).

Q. Indicating the bottom of the spine?

A. Yes sir. 20

Q. Was it painful?

A. Yes sir, very painful.

Q. Did that continue to pain you or not?

A. Well, it pained me and I thought then that was only from the fall and I thought by using home remedies that it would be all right and I tried it and I was not successful with it.

Q. How long were you using home remedies?

A. I tried it about three weeks. 30

Q. Then what?

A. Then I went to the doctor and he treated me.

Q. What doctor did you go to?

A. Dr. Shelburn.

Q. And he treated you how long?

A. He doctored me about a week or two and I was not satisfied with him, so I went to another doctor and he ordered me to the hospital.

Q. Did you go to the hospital?

A. Yes sir. 40

Maud Van Noordt—Direct.

Q. What hospital did you go to?

A. The Passaic General Hospital.

Q. Was there anything done to you there at the hospital?

A. The first three days they did not know what they could do with it, first they tried different things with it and had an X-ray taken and finally they
10 claimed it to be operated, that it had to be operated on, there was pus there at the time, it was full of pus that had gathered down there and it had to be operated on.

Q. Were you operated on?

A. Yes sir.

Q. Who operated you?

A. Well, Dr. Temple and Dr. Kummel assisted.

Q. Dr. Kummel I believe has been treating you since?

20 A. Yes sir.

Q. Dr. Temple where is he?

A. He is in the service.

Q. How long were you in the hospital?

A. I was in the hospital for a month and I came out and I had to go back again for another operation.

Q. How long were you out of the hospital before you went back again?

30 A. Well, it was in August.

Q. And you left when?

A. In May.

Q. How long were you in the hospital then the second time?

A. I was in there nearly, I guess it was around a month, I cannot say, two months, pretty near two months I was in there the second time and they operated on me.

40 Q. And they operated again?

Maud Van Noordt—Direct.

A. Yes sir.

Q. The same place?

A. Yes sir.

Q. When you came out of the hospital what was your condition then?

A. I had to go back and forth for treatment, I had to be treated all the time.

Q. Where did you go back and forth? 10

A. To Dr. Kummel.

Q. How long did you receive treatment at Dr. Kummel's hands?

A. For about a year.

Q. How often did you go back and forth to Dr. Kummel after you came out of the hospital?

A. About every day for about three months.

Q. Then after that gradually less?

A. Yes sir.

Q. Did you succeed in getting cured? 20

A. Why, it did not get along very well from the discharge all the time and I had trouble with it, very severe pains that I had to lie on my stomach all the time, I laid on my stomach fully a year, I could not lie on the side or back at all.

Q. Is there any discharge yet?

A. At times it opens up on me.

Q. At this present moment what is its condition?

A. Just at present it is closed. 30

Q. When was it open last?

A. Why, about two months ago.

Q. Where this opening is, is it at the point which you indicated to me?

A. Yes, sir.

Q. That is the bottom of the spine?

A. Yes sir.

Q. Did this injury interfere with your sitting?

A. Yes sir. 40

Maud Van Noordt—Direct.

Q. Or with your taking sitting positions.

A. Yes sir, I cannot sit down for long periods straight, it bothers me quite a good deal, it hurts me and many times I have to stand up. I could not sit down very well and many times I had to sit on my side or change my position every once in a while
 10 because it pains me a good deal and I was crippled up, I had a bend from it, it pained me so that my back got a bend from it, so finally towards the last when I was getting near the end of the year I was gradually gaining my strength in my back, but at the present time it is not like it was, but I still have severe pains in it at times.

Q. Does it pain you yet?

A. Occasionally.

20 Q. Before this accident what was the condition of your health?

A. Very good, I never went to a doctor before.

Q. Did you ever indulge in athletic exercises?

A. Yes sir.

Q. Was there any particular exercise in which you excelled?

A. Well, I liked a good many of them. I kept up, I belonged to the Young Women's Christian Association and used to go swimming. I was good at
 30 swimming.

Q. Did you ever win any swimming championships?

A. I was very good in it and I was crazy for basketball, and things like that and baseball, but I had to give them up after that.

Q. What teams did you play on in basketball?

A. The Mohawks from Passaic.

Q. How many years did you play basketball?

40 A. Ever since I was fourteen years old.

Maud Van Noordt—Direct.

Q. Did you indulge in those sports up to this——?

A. Yes sir.

Q. Up to the time of the accident?

A. Yes, sir.

Q. What about swimming?

A. Well, I was not allowed to go swimming any 10 more.

Q. Up to the time of the accident did you do any swimming?

A. Yes sir, I used to go every night pretty near.

Q. What contests did you indulge in?

A. I was in the contest to see who was the best swimmer in the City of Passaic and I had to drop out of it, at that time, I could not go into it otherwise I was very good at it and I used to go even out to the Beach and swim and I could not go any 20 more.

Q. After the accident all that stopped?

A. Yes sir.

Q. Did you do any skating before the accident?

A. Yes sir.

Q. Did you do much skating?

A. Quite a good deal, every winter.

Q. Were you obliged to desist from that after this accident? 30

A. I was not able to do it.

Q. The accident stopped all those things?

A. Yes sir.

Q. Had it made any change in your weight?

A. Yes sir, it has pulled me down.

Q. Are you able to indulge in any of those athletic sports now?

A. No sir, I cannot do it.

Q. Why? 40

Maud Van Noordt—Direct.

A. Because, if I do it hurts my spine and opens it up.

Q. Does the weather condition make any difference in respect to your pain?

A. Yes, when it is bad weather it pains me more.

Q. In the early part of this suffering after the accident did it interfere in any way with your
10 sleep?

A. Why, I had a hard job sleeping at night, I used to lose most of my sleep during the night and my sister would sit up with me nights to take care of me.

Q. Did you lose any time from your work as a result of this accident?

A. Yes sir; I did not work for a whole year, and then when I went back to work I only worked a short time, and lost time again. I was not able to
20 keep up with it.

Q. You had to lose time even after the year?

A. Yes sir.

Q. And you lost a year in the work?

A. Yes sir.

Q. Before the accident how much a week were you earning, up to the time of the accident?

A. Twelve dollars a week.

Q. And did you have steady work?

30 A. Yes sir.

Q. For one year you lost your work?

A. Yes sir.

Q. Then when you went back you say that you were not able to work as well as before?

A. No sir.

Q. What was your pay when you started to go back?

A. They gave me the same pay again.

40 Q. How much time did you lose after that?

Maud Van Noordt—Direct.

After you went back, after the expiration of this year?

A. I only worked about, I should say, about a week, then I would lose a week, and so on, like that, which would continue, and then I worked about a month and a month off, and I would lose a week and then work a week and like that, I could not work steady.

10

Q. Has that continued that way up to the present time?

A. Yes sir, I am not able to work at the present.

Q. You mean at this time?

A. Yes sir.

Q. From the time you started to go to work up to the present time about what time have you lost from your work?

A. What was that?

Q. From the time you went back, after a year, up to the present time, about what portion of the whole time did you lose from your work? That is to say, was it a half, a quarter a third or what?

20

A. I should say about half of it.

Q. And during this period from the time you went back up to the present time were your wages just the same, or was there any increase in the wages?

A. Well, they increased in the wages.

30

Q. To what extent?

A. I was raised, I got fourteen dollars.

Q. Was there any raise after that?

A. Yes sir.

Q. How much?

A. The highest I went was sixteen dollars.

Q. When did you start working for sixteen dollars a week?

A. That was last year.

40

Maud Van Noordt—Direct.

Q. Were the other employes raised at the same time?

A. Yes sir. We got like a yearly increase.

Q. You say you are not working at this time?

A. No sir.

Q. How long have you been out of work this last time?

A. Now I am out of work about four months.

10 Q. Due to what?

A. I went back to work and I would lose time and they told me they could not stand for it, they were claiming you had to work steady or they could not employ me.

Q. Why was it that you were not able to work steadily?

20 A. On account of this on my back, I would get to work and it would get open and make me sick, sometimes I would have to go to bed, and sometimes I would be in such pain in my back that I would not be able to go to work and finally they claimed being as I was not able to work they told me it would be better for me to stay home.

Q. Who told you that?

A. The boss.

Q. Are you suffering pain at this time?

30 A. Well, I have pains in it, at times, yes, it pains me once in a while. Of course it is not a steady pain.

Q. Did you have any other trade by which you can make your living than this mill work?

A. That was the only thing that I could get along with.

Q. What education have you? What grade were you when you quit school?

A. Only about the sixth.

Q. The sixth grammar grade?

40 A. Yes sir.

Maud Van Noordt—Cross.

CROSS-EXAMINATION BY MR. LARRABEE:

Q. I understand you to say you were hurt on your back?

A. Yes sir.

Q. While you were on your way to work?

A. Yes sir.

Q. This happened about what time in the morning? 10

A. A quarter to seven.

Q. You were descending the steps on this foot-bridge at the time?

A. I was going down.

Q. On which side, that is, the side nearest the Factory?

A. On the side of the factory.

Q. That is the side on which the street is well defined, is it not, the south side of the railroad? 20

A. I don't know what you might call it, but it is going down on the side where the factories are there.

Q. Also I understood you to say that you had descended from the top of the bridge down the first flight of steps and you had reached the landing?

A. Yes sir.

Q. Were you on the landing when you slipped and fell or on the steps? 30

A. I was going down from the landing when I fell.

Q. You were about to leave the landing?

A. I was going down.

Q. You were about to leave the landing and go down the steps?

A. I was going down from the landing and I fell.

Q. Was there very much snow on this bridge? 40

Maud Van Noordt—Cross.

A. Yes sir.

Q. A great deal of it?

A. Well, enough to make you fall anyway.

Q. About how much was there there?

A. I could not say how much, the steps were full, filled with it frozen on there.

Q. Full?

10 A. Yes sir.

Q. All over the steps was it?

A. The steps were covered.

Q. Was the platform of the bridge covered with snow also?

A. Yes sir.

Q. And was there snow all over the landing?

A. Yes sir.

Q. And all over the steps?

20 A. Yes sir.

Q. You came up on the other side, I presume also?

A. Yes sir.

Q. That is on the north side of the track or the side opposite the factory?

A. Yes sir.

Q. Were the steps on that side filled with snow also?

A. Yes sir.

30 Q. How do you know they were filled with snow?

A. Because it was; we had a very hard job getting up the bridge.

Q. You did?

A. Yes sir.

Q. Before you started to go down did you notice that the snow was deep?

A. Well, it was hard, it was packed down.

Q. It was ice, was it, congealed?

40 A. Half ice and half snow.

Maud Van Noordt—Cross.

Q. Frozen?

A. Yes sir.

Q. Did you notice that before you started down?

A. I never took particular notice of it, but I know we had a very difficult job to get down, I was holding on the railing and that was the best I could do.

Q. Did you notice that when you started from 10
the top of the bridge and went down to the first
landing, did you notice that same condition then?

A. Why, certainly.

Q. And did it appear to you that it was slip-
pery?

A. Why, certainly.

Q. I understood you to say that two hundred or
more people used this bridge every day?

A. Yes sir.

Q. Are you speaking now only with respect to 20
those who worked in the factory where you did?

A. All the factories around there the people used
that bridge.

Q. All the factories all around that neighbor-
hood?

A. Yes sir.

Q. There is a street on both sides of the bridge
isn't there?

A. One side is not cut through. 30

Q. What right did you think you had to use that
bridge?

A. Because we were forced to use it.

Q. Who told you to use it?

A. We had notice in our envelopes to use it and
notices were put up in the mill.

Q. Did you think it was a public bridge?

A. I did not know what it was but I know we
had to use it. 40

Maud Van Noordt—Cross.

Q. The people that you worked for told you to use it, is that right?

A. Well, the railroad compelled me to use it too, because they had men standing there would not let us cross the tracks, we all wanted to cross the tracks, many times the fence was cut down and the railroad had to put it back again, they put it back again as quick as it went down.

10 Q. Who cut it down?

A. The boys cut it down who did not want to cross the bridge, did not like the bridge.

Q. That is they tore down the railroad fence?

A. I suppose so they did unless they repaired it.

Q. Who repaired it?

A. The railroad company repaired it.

Q. And when you speak of the "boys" you mean the employes of the factory where you worked?

20 A. I don't know whether it was alone in the factory that I worked, they worked in both factories.

Q. Did you ever see them tearing down the fence?

A. No sir.

Q. Before this bridge was built how did you get across the tracks?

A. We used to cross the tracks before the fence was up.

Q. Is there any planking there or street crossing?

30 A. No sir.

Q. Is it not the fact that before this bridge was built there was a fence there?

A. No sir.

Q. Wasn't there a fence on either side of the track?

A. No sir.

Q. How long had you worked for that factory before this bridge was built?

40 A. I don't just remember how long I worked there

Maud Van Noordt—Cross.

before that bridge was put up, but when the bridge was put up the bridge was no more than finished when the fence was started.

Q. There were not any planks laid across the railroad tracks between the ends of the street?

A. No sir.

Q. You had to cross the stones and ballast didn't you, on the tracks, to get to the other side?

10

A. Yes sir.

Q. Where did the bridge lead to on the other side, where did it stop, on the side opposite the factory?

A. What do you mean, where did it stop?

Q. Which side of the tracks did you live on, the side with the factory or the side opposite the factory?

A. On the other side, not the side of the factories, the other side.

Q. You had to cross the tracks in order to reach the section of the town where you lived?

20

A. Yes sir.

Q. Did you live in Passaic?

A. Yes sir.

Q. This made a short cut, didn't it, for you to get home?

A. Why, certainly. It was the way we had to use. If we had to go anywhere, we had to go that way; if we had to go another way we would have to go an hour's walk out of our way.

30

Q. Isn't there a crossing perhaps a quarter of a mile to the east, that is, towards New York, as you walk along the track?

A. I don't know just how far it is to the crossing but I know it was about an hour's walk to go around that way, about an hour's walk from my house.

Q. How long a walk is it from the factory where

40

Maud Van Noordt—Cross.

you worked to the first street which crosses the tracks?

A. Well, at least, I guess about three-quarters of an hour's walk.

Q. Do you mean to say it would take you three-quarters of an hour to go from the factory where you worked to the first street crossing that you could get over these tracks?

A. Yes sir, the crossing of the railroad, yes sir, where the gates are.

Q. Is there no crossing nearer than the crossing where there are gates?

A. No crossing, no sir.

Q. This bridge upon which you fell, that did not lead to any freight house or railroad station did it?

A. What is that?

Q. This bridge on which you fell that did not lead to any station, did it, or any freight yard or freight house on the railroad?

A. No sir, it led to the street.

Q. Do you know where the railroad station is in Passaic?

A. No sir.

Q. In order to reach the railroad station or any of their facilities you did not have to use this bridge at all in order to get to their property?

A. Not to get to the station, no.

Q. When you used it you were not going to transact any business with the railroad, were you?

A. What is that?

The Court: She said she was going to work that morning to her factory. That is what she said she was going to do. Is that right?

The Witness: Yes sir.

Maud Van Noordt—Cross.

Q. You had no business with the railroad Company.

The Court: She said she was going to work in another factory entirely, and was not going to do anything else.

Q. In order to do that you crossed the tracks?

A. Yes sir.

Q. Everybody that you knew that worked around there that had occasion to cross the tracks used this bridge? ¹⁰

A. Why, they all used it, they crossed that way and came that way, they all used it.

Q. They used it in place of walking across the tracks?

A. Well, they could not cross the tracks, the fence was there.

Q. In other words, after the building of this bridge there was a fence put up which prevented them from going down on the tracks, is that right? ²⁰

A. Yes sir.

Q. You thought you had a perfect right to use the bridge?

A. Oh, we had to have the right to use it, we were forced to use it.

Mr. Ward: She has said three or four times that employes of the railroad forced her to use it. ³⁰

Mr. Larrabee: I don't understand that she said they forced her; she said they would not let her cross on the tracks but I have not heard anything about forcing her.

Mr. Ward: The railroad men forced her she said.

Q. When did you use the bridge to go over the tracks when you were forced by the railroad men as you say, to use it? ⁴⁰

Maud Van Noordt—Cross.

A. When the fence was down we made an attempt to go over the tracks and the men that were there they told us to use the bridge. That is what it was there for.

Q. How long before the accident happened was that that you were directed by the railroad men to use the bridge?

A. When the bridge was first put up.

10 Q. How long was that before the accident happened?

A. Well, it was quite a while before that, and it continued that way each time the fence went down they put the fence up and they would keep us from crossing over the tracks and tell us we would have to use the bridge.

Q. How many times did you use that bridge?

A. In the morning and at night when we came
20 home from work.

Q. How many days?

A. That is every day in the week except Sunday.

Q. How long did you work there while this bridge was up before this accident?

A. I worked there since I was about fifteen years old.

Q. How old were you when the accident happened?

A. About eighteen.

30 Q. Then you had been going across this bridge for about three years before you were hurt?

A. Well, I got using the bridge as long as I worked there since that bridge was put there I kept on using it.

Q. You were about fifteen years old when you went to work at the factory?

A. Yes sir.

Q. And you were eighteen when you were hurt,
40 when you met with this accident is that right?

Maud Van Noordt—Cross.

A. I am twenty four now.

Q. I would like to have an answer to the question; how old were you when the accident happened?

A. I think about eighteen years old.

Q. Between the time when you were fifteen years old and when you became eighteen you were working in the factory all the time is that right? 10

A. What is that?

Q. You were working in the factory all this time from the fifteenth to the eighteenth birthday?

A. I worked there all the time, yes sir.

Q. And every day you passed back and forth over this bridge, or six days out of the week from the time the bridge was built?

A. I worked over there before the bridge was built too. 20

Q. And you went back and forth over this bridge every day?

A. Yes sir.

Q. Summer and Winter?

A. We had to use it all the time.

Q. How many times did the railroad employees make you use this bridge or refuse to allow you to cross the tracks?

A. Well, when they were repairing the fence as long as the fence was open they sent men there to repair the fence. 30

Q. How many times was that?

A. I never kept track of it how many times the fence was cut down, but the employees there can testify to that, that they had to cross the bridge that the men would not allow them to cross the tracks when they repaired that fence when they were working there, before the fence was up, they said to use the bridge that is what it is there for. 40

Maud Van Noordt—Cross.

Q. Did you think you had a right to walk on the track?

A. Well, I don't know whether we had the right or not, but we did it when we could.

Q. Did you think you had the right to walk on the track?

A. We thought we did, I did, anyway.

Q. That was the reason why you wanted to go
10 over them wasn't it, you thought you had the right to go over them?

A. Certainly.

Q. You also thought you had a right to go over the bridge didn't you?

A. We were forced to go over, we had to use the bridge.

Q. That don't prove that you had the right to do that though?

A. How could you cross the tracks when the fence
20 was up.

Q. Did anybody use physical force to compel you to travel over that bridge?

A. What do you mean by that?

Q. Did anybody take you by the arm and march you over to the bridge?

A. I am sure I would not be that stubborn if I was told to use the bridge I would use it.

Q. At the place where you worked you say they
30 had notices posted all over the factory.

A. Yes sir.

Q. Requesting all of the employes to use this bridge?

A. They put those notices up.

Q. Those notices instructed the employes to use the bridge?

A. Yes sir.

The Court: The petition of the railroad for
40 permission to build the bridge says that the

Maud Van Noordt—Redirect.
Amelia Endine—Direct.

factory owners requested it and that is the reason the railroad asked to put the bridge there.

Mr. Larrabee: To build the bridge I think.

Mr. McGinnis: And she says that in the pay envelopes there was a notice telling them to use it and there were notices posted in the 10 factory telling them to use it and everybody did use it.

Q. Were there any notices posted outside of the factory that you know of?

A. No sir. Inside of the factory.

By a Juror:

Q. Was it dark on the morning of this accident?

A. It was just getting daylight. 20

Q. Did they have any lights upon that bridge?

A. There is no lights upon the bridge.

REDIRECT-EXAMINATION BY MR. MCGINNIS:

Q. Where did you live at the time of the accident?

A. Number ninety six Linden Place. Linden street.

Q. Number ninety six Linden street is near what cross street? What is the nearest cross street to that? 30

A. Bloomfield avenue.

AMELIA ENDINE, sworn as a witness on behalf of the plaintiff, testifies as follows:

DIRECT-EXAMINATION BY MR. WARD:

Q. You are a sister of the plaintiff?

A. Yes sir, 40

Amelia Endine—Direct.

Q. You have married since this accident, I believe?

A. Yes sir.

Q. Do you remember the time of the accident?

A. Yes, it was in February 1916.

Q. Whereabouts were you employed at that time?

10 A. At the Manhattan Rubber Works.

Q. At the same place where your sister was working?

A. Yes sir.

Q. Did you go to and from your work with her?

A. Yes, I did.

Q. You were living where?

A. At Number ninety six Linden street.

20 Q. To go to your place of employment what road or across what would you go over?

A. Well, we had to use the Delaware, Lackawanna and Western Railroad bridge to go over the track.

Q. To go from your home what street would you go down to get to the bridge and get over the tracks?

A. We had to go through lots, I think.

Q. Through some lots?

A. Yes sir.

30 Q. Then you would come to a street, what street?

A. Well, I don't know the name of that street.

The Court: You had to cross this bridge to get to your work?

A. Yes sir.

Q. That was the direct course, was it?

A. Yes, it was.

The Court: Were you with your sister on the morning of the accident?

40 The Witness: Yes sir.

Amelia Endine—Direct.

Mr. Ward: We offer in evidence some more photographs which have been kindly supplied to us by the other side.

ADMITTED AND MARKED "Plaintiff's Exhibits P-7, P-8, P-9, P-10, of this date.

Q. I show you the exhibit P9 and ask you if that is a part of the bridge over which you had to pass? 10

A. Yes sir.

Q. Is that the side towards the mill?

A. Yes, this is the side towards the mill.

Q. Will you just tell us what you did on the day of this accident? I believe you said you were with your sister?

A. Yes sir.

Q. Just tell these gentlemen of the Jury what happened there that day? 20

A. I was in the back when the accident happened, when she slipped on the bridge, it was all ice, we had a hard time getting down, we had to hold on to the railing and it was all ice and they never cleared it off.

Q. You went up the one side?

A. Yes sir.

Q. And crossed over?

A. Yes sir.

Q. And you went down the other side? 30

A. Yes sir, we went down the other side and she was ahead of me and I was in the back of her and she was holding on and then she slipped on the ice, it was so icy, she fell, and struck her back.

Q. How far did she fall?

A. From that second landing down there.

Q. From about the second landing down?

A. Yes sir.

Q. What time of the day was it? 40

Amelia Endine—Direct.

A. It was not dark it was not light, it was in between.

Q. What time of the day was it?

A. It was around a quarter to seven in the morning.

Q. After she fell what did you do and what did she do?

10 A. Well, I could not get down there because I was holding on the rail myself otherwise I would fall.

Q. Were there any lights on the bridge?

A. No sir, no lights at all.

Q. Was there anything there to show you the condition of the bridge to make it plain to you, such as lights, or anything of that kind?

A. There was not any lights.

20 Q. Why were you using that bridge?

A. We had to, because in the Manhattan they put up notices to do it that we were forced to use the bridge and they put a wire fence up so that you could not cross the track so you were compelled to use the bridge.

Q. Did you ever see this Notice to employes, Exhibit P-6?

A. I certainly did.

Q. How did you see that?

30 A. That was tacked up on the wall.

Q. Did you ever make any effort to cross that railroad at any other place in that vicinity than by crossing the bridge?

A. Why, walking across the railroad, but you could not cross it, they had a wire fence up and you had to use the bridge.

Q. Was the wire fence ever up or down or holes in it?

40 A. No. Sometimes they would tear it down if

Amelia Endine—Direct.

they did not want to cross the bridge and they would cross the railroad, but the railroad would repair it, there was always men watching to see that you would have to cross the bridge and not cross the track.

Q. What men?

A. Railroad men.

Q. How would they prevent you from going 10 across the tracks?

A. You would get chased, you would not dare go across.

The Court: Did you cross over this bridge the day before?

The Witness: We crossed it every day.

The Court: What was the condition of it the day before the accident?

The Witness: Oh, it was full of snow. They 20 would never clean it.

The Court: How was it the day before that?

The Witness: It was all ice and snow, it would rain and snow and the rain would freeze on top of the snow and it would be all ice.

The Court: For how long was it that way before this accident?

The Witness: For three or four days.

The Court: It was not cleaned off during 30 that time?

The Witness: No, they never cleared it.

The Court: And there was no sand put on?

The Witness: Oh, no.

Q. When your sister fell what happened to her then?

A. After she fell?

Q. Yes, after she fell?

A. Why, she went to work that morning and of 40

Amelia Endine—Direct.

course her back hurt her so and then of course we tried to get her better with home remedies.

Q. What kind of a looking girl was your sister as compared with her appearance at this time?

A. She was good looking then, a very nice looking girl, she has failed since the accident, she has not been the same at all since.

10 Q. What have you to say as to the difference in her actions, whether she is as lively as she was?

A. No, she is not, she is not worth anything any more since she fell on that bridge.

Q. Do you know whether your sister was an athletic girl?

A. Yes, she was.

Q. What forms of athletic sports did she indulge in if you know?

20 A. She used to go swimming in the Y. W. C. A. and basket ball.

Q. Had she played basket ball for any length of time?

A. Yes.

Q. With a regular team?

A. Yes, with the Mohawks.

Q. What other athletic sports did she indulge in?

A. Swimming, she was a great swimmer.

30 Q. And skating?

A. Yes sir, skating too.

Q. Since this accident has she indulged in those athletic sports?

A. No, she has not, she could not.

Q. Did she ever dance before the accident?

A. Yes, she used to dance too.

Q. What about since?

40 A. She cannot do anything any more since because her back bothers her.

Amelia Endine—Direct.

Q. How long after the accident was it before she went to the hospital if you know?

A. I think she went in May in the Hospital, she went to different doctors and then in May she was ordered to the hospital.

Q. When she went to the hospital, do you remember how long she stayed there?

Mr. Ward: There is no dispute about that is there? 10

Q. She was in the hospital twice wasn't she, once a month and once two months?

A. Certainly; she was in quite a while.

Q. Do you remember how many operations she had performed?

A. Two.

Q. After she left the hospital was she or not under the care of a physician? 20

A. Yes sir.

Q. And has she continued to be or not?

A. Back and forth, she goes to the doctors, she always has doctored.

Q. How long was it before she went back to work?

A. She did not work for a time after the accident.

Q. Do you know whether she suffered any pain or complained? 30

A. Certainly, she used to sit up all night long.

Q. And you were up with her too?

A. Yes sir.

Q. Can you tell the jury how this pain from which she said she was suffering affected her sleep?

A. She could not sit down, she could not sleep, she could not lay down on her back. She could not sleep on her back. 40

Amelia Endine—Direct.

Q. Do you know whether she seemed to have any difficulty in lying on her back?

Mr. Larrabee: Objected to on the ground that this witness is not competent to testify as to the condition of the plaintiff.

The Court: She may state what she observed of her. Just what you observed of her lying on her back, what did she do?

The Witness: She could not sleep on her back.

Q. How do you know that?

A. Because, her back hurt.

Q. How do you know it hurt?

A. She used to scream that it pained her.

Q. How often do you see her now?

A. I come up home every week.

Q. After she went back to work were you still working there?

A. Oh, yes.

Q. Do you know whether she worked regularly after that or irregularly?

A. No, she never worked regularly after that.

Q. About how much of the time did she work there?

A. She worked a couple of weeks and was home a couple of weeks and that is the way it went.

Q. About half the time?

A. Yes sir.

Q. And has that been continued up to the present time?

A. Yes sir. It has.

Q. Do you know whether during all these years that wound has ever broken open?

A. Yes sir.

Q. Has it, to your knowledge?

Amelia Endine—Cross.

A. Yes sir.

Q. Have you seen it?

A. Yes sir.

Q. How frequently has that wound broken open?

A. I believe it has broken open quite a lot.

CROSS-EXAMINATION BY MR. LARRABEE:

10

Q. How long had you been working down at the Rubber Company before this accident happened?

A. I must have worked a year or two before that.

Q. Were you working at the Manhattan Rubber Company when the bridge was built?

A. Certainly, yes.

Q. Did you use this bridge every day going to and from work?

A. Yes, I had to.

20

Q. After it was built?

A. Yes, we were told to use it and they had this fence up and you could not cross.

Q. You used it because the notices in the factory directed you to do so?

A. Yes, we had to, because they put the fence up over the tracks.

Q. That is the only way you could get across the tracks, wasn't it?

A. Certainly; you had to cross the bridge. 30

Q. Do you know how far it is from the Manhattan Rubber Company plant where you worked down to Bloomfield avenue? Bloomfield avenue crosses the tracks does it not?

A. Yes, that is way over though, that is not anywhere near this bridge.

Q. That is, it is down towards the Passaic station is it not?

A. Yes, it is. 40

Amelia Endine—Cross.

Q. Have you any idea how far it is from the factory where you worked?

A. I never measured that; I don't know how far that is. That is quite a ways.

Q. But it was a very much shorter way for you to reach your home across the tracks over this bridge, wasn't it?

10 A. We had to.

Q. It was very much shorter than if you went down to Bloomfield avenue and then crossed the tracks?

A. Yes, I would have been late if I had to go all the way around the track.

Q. But, of course, going home, that was different?

A. We had to cross the bridge to go home at night.

20 Q. But you could have gone down to Bloomfield avenue, couldn't you and get across the tracks at the place where they had crossing gates?

A. Yes, but we were told to use the bridge. We used the bridge when we were told to. No one was going to walk all the way around there.

Q. And you used the bridge instead of going over the tracks?

30 A. You could not cross the tracks because they had a fence there, a wire fence.

Q. But there is a way where you could cross the tracks?

The Court: It has been pretty well established that some distance away there is another street, and at this place there is a bridge and there are tracks there, to protect which there is a wire fence.

40 Mr. Larrabee: In view of the fact that the plaintiff testifies that it would take about an

James Black—Direct.

hour to go down to Bloomfield avenue I was trying to show that the Bloomfield avenue crossing was not so far away.

The Court: You may ask her that.

Mr. Ward: She said she did not know how far it was.

The Court: I cannot see that it is very material anyway. 10

By a Juror:

Q. Did any one else use that bridge besides the employes of this factory?

A. Yes, all around there was factories.

Q. What did they call it?

A. I don't know what they called it.

Q. Isn't it for public use?

The Court: Did everybody use it? 20

A. Yes, everybody that wants to could use it, everybody that wants to go to work.

Q. I mean the people living there who want to go across from one side to the other did they use that bridge?

A. I suppose they did.

JAMES BLACK, sworn as a witness on behalf of the Plaintiff, testifies as follows: 30

DIRECT-EXAMINATION BY MR. WARD:

Q. Where do you live?

A. On Terry street, Passaic.

Q. Whereabouts were you working in February 1916?

A. At the Manhattan Rubber Works.

Q. How long had you been working there?

A. About seven years. 40

James Black—Direct.

Q. Did you go across the tracks from one side of Factory street to the other?

A. Well, you had to cross the tracks to get to the Manhattan.

Q. You had to cross them?

A. Yes sir.

Q. How did you cross them? What did you use?

10 A. Over the tracks first and then they put up the bridge and we had to use the bridge.

Q. Why did you have to use the bridge?

A. Well, we were not allowed to cross the tracks.

Q. Why not and by whom?

A. By the railroad company.

Q. Do you remember the sixteenth day of February 1916?

20 A. Yes sir.

Q. The time this accident happened?

A. Yes sir.

Q. Did you see it?

A. I saw some one falling down the stairs.

Q. Where were you at the time?

A. Coming up Factory street towards the bridge.

Q. From where?

A. From the Manhattan Rubber Works.

30 Q. And you were on the side of the bridge towards the Manhattan Rubber Works which was the side where the accident happened?

A. I was coming from work while they were going to work.

Q. You were on the night shift?

A. I was on the night shift, yes sir.

Q. They were going to work?

A. They were going to work, yes sir.

Q. And you saw someone fall down there?

40 A. Yes sir.

James Black—Cross.

Q. Who was it?

A. When I came up I found it was the young lady who was up here.

Q. Miss Van Noordt?

A. Yes sir.

Q. What was the condition of that bridge?

A. It was hard snow like, tramped down, packed down hard and slippery. 10

Q. Were there any lights there?

A. No, there were no lights of any kind.

Q. Was there anything by which you could see the dangerous condition of that bridge?

A. Well, when you got onto it then you saw it, it was not light and it was not dark, it was in the morning.

Q. A sort of a twilight, wasn't it?

A. It was dusk. 20

Q. What you know as dusk or twilight?

A. Yes sir.

Q. How long had that bridge been in that condition to your knowledge?

A. Well, I never seen that bridge cleaned off.

Q. And do you know whether there had been snow and rain and sleet for a week before that?

A. It was snowing a few days before that.

Q. What became of Miss Van Noordt, do you know, after she was hurt? 30

A. That I could not say. I went on home.

CROSS-EXAMINATION BY MR. LARRABEE:

Q. I understand you to say that you saw the accident?

A. I saw someone fall down the stairs, yes sir; I was not up to her when she picked herself up, when she got up, but I was coming up the street and I saw someone fall down the stairs. 40

James Black—Cross.

Q. What time was this?

A. Between half past six and seven o'clock.

Q. What was the condition of the steps according to your observation?

A. Well, the snow was packed down and it was slippery, it was not cleaned off.

Q. Did you pass over the bridge that day?

10 A. I passed over the bridge that morning.

Q. Before or after the accident?

A. After.

Q. Did you ever meet with any accident yourself?

A. I very near met with it.

By Mr. McGinnis:

Q. You say you passed after the accident?

A. Yes sir.

20 Q. How long after, a matter of a few minutes?

A. Well, a few minutes.

Q. Where did you work?

A. At the Manhattan Rubber Works.

Q. How often did you go back and forth over the bridge? You passed back and forth over the same bridge every day didn't you?

A. Yes sir.

30 Q. To get to and from your place of business and your home?

A. Yes sir.

By Mr. Ward:

Q. Did other people besides the employes of that factory use that bridge, or was it only used by them? Or was it used by all the people passing back and forth?

40 A. Well, people living over there used it, the other side of the tracks,

David Holster—Direct.

By Mr. Larrabee:

Q. It was not only factory employes who used the bridge?

A. No, it was more than that.

Q. Anybody who wanted to get from one side of the tracks to the other used that bridge?

A. The public used it on the way home.

Q. It was a public foot bridge, that is what you thought it was?

A. Yes sir.

10

* * *

(Testimony of Dr. Max Kummel and Dr. Aaron Simon omitted as not being necessary to present questions raised on appeal.)

DAVID HOLSTER, sworn as a witness on behalf of the Plaintiff, testifies as follows: 20

DIRECT-EXAMINATION BY MR. WARD:

Q. Were you employed in the Manhattan Rubber Works in 1916?

A. Yes sir.

Q. Did you see this accident?

A. Yes sir.

Q. Just tell the Court and Jury briefly what you saw? 30

A. I usually leave the house at half past six to get there about between a quarter to seven and seven o'clock—

The Court: Get down to the scene of the accident, what did you see?

The Witness: I seen Maud go up the Bridge and as she was going down the other side, I was then about on top and she was down as far as the second landing, and she went to the 40

David Holster—Cross.

stairs and she slipped from there and went down and I even went down to help her up.

Q. You went to pick her up?

A. Yes sir.

Q. Did she seem to be in pain or not?

A. She seemed to be in pain, but she did not want to admit it, she felt ashamed.

Q. Her clothing was somewhat disarranged?

A. Yes sir.

10 Q. By reason of the fall?

A. Yes sir.

Q. What was the condition of the bridge at that time?

A. Well, there was snow and ice, packed upon it, ice on it.

Q. What was the condition of the light, was it light or dark?

A. It was not exactly light, just one morning, like it was then, just between, just getting daylight.

20 Q. Were there any lights there?

A. No, there were no lights there.

Q. Was that bridge commonly used or not by persons working in the mill there?

A. Yes, it was used every day.

Q. By others as well?

A. Yes, by the people all around there.

30 Q. Were you ever prevented from going across the railroad, or directed by the employes of the railroad to cross that bridge to use the bridge?

A. Yes sir.

Q. When you say Maud, you mean Maud Van Noordt, the plaintiff?

A. Yes sir.

CROSS-EXAMINATION BY MR. LARRABEE:

Q. How many times were you prevented from crossing the tracks except by means of the bridge?

A. Well, that was naturally, it was fenced and

David Holster—Cross.

all us folks did not want to but we had to and the fence was broke sometimes and they fixed it up, they had to fix it up almost every day they tore it down, now they have got one there they cannot tear down.

Q. Who tore it down?

A. The employes around there.

Q. The employes of the factories? 10

A. Yes sir, that is what I mean.

Q. People who wanted to cross the tracks?

A. Yes sir.

The Court: They insisted on getting killed, did they?

The Witness: The fellows did not mean it, they would attempt it every once in a while, but they had to go careful, they took that chance too. 20

Q. The employes of the railroad company would not let you go across the track?

A. No sir, they would not let us go across the tracks.

Q. So the result was that you, if you went across at all at that point, you had to use this bridge?

A. We had to use the bridge.

Q. That is the way everybody went across that had occasion to pass from one side of the tracks to the other? 30

A. If you used the bridge it would be much shorter too.

Q. It made a very short cut over to the north side of the town didn't it?

A. Yes sir.

Q. You did not live on that side of the tracks?

A. Yes sir.

Q. Do you know how far it is to the Bloomfield 40

Margaret Goetschius—Direct.

avenue crossing from the Manhattan Rubber Company factory?

A. I don't know exactly how long it would take to walk, to me it makes no difference which way I go. It made no difference to me which way I went.

10 Q. Do you have to cross the tracks to go to and from your home and your place of work?

A. No, I do not. I could have taken the crossing but this was nearer to me about five months of the year, then I took it but the other way was not much difference to me.

Q. This was a public bridge, was it?

A. It was a public bridge.

20 MARGARET GOETCHIUS, sworn as a witness on behalf of the Plaintiff testifies as follows:

DIRECT-EXAMINATION BY MR. WARD:

Q. Were you acquainted with the plaintiff in February 1916?

A. At the time of the accident? Yes sir.

Q. Where were you working at that time? A. At the Manhattan Rubber Works.

Q. Did you see this accident?

A. I certainly did.

30 Q. Whereabouts were you?

A. I was on the top landing, right directly in the back of her sister.

Q. What did you see?

A. I saw her fall from the second landing, she was holding on, the ice was quite hard and she was holding on right down and the first thing you know she slipped down to the bottom.

40 Q. As she left the second landing what did you see happen?

Margaret Goetschius—Direct.

A. I seen her fall and seen her get up and she was holding her side.

Q. You saw her slip on the second landing and fall?

A. Yes sir.

Q. And she slid all the way to the ground did she?

A. And I saw her get up holding her back.

Q. And at the time she slipped and fell she was holding the rail I understood you to say? 10

A. Yes sir.

Q. What was the condition of the place where she slipped and fell, of those steps?

A. The snow was there and the snow was frozen and it was quite hard and it is never cleaned off.

Q. How long was it that way?

A. Ever since I have known the bridge to go up it has always been that way.

Q. How long had the ice and snow been there about on that occasion, how long before that? 20

A. About three days.

Q. It had not been cleaned off during that time?

A. No sir.

The Court then adjourned until Monday November seventeenth, 1919 at 10:00 o'clock A. M.

PATERSON, N. J. November 17th, 1919. 30

SECOND DAY.

MARGARET GOETSCHIUS resumes the stand.

DIRECT-EXAMINATION (CONTINUED) BY MR. WARD:

Q. You say you had seen that snow there for three days before that?

A. Yes sir.

Q. And the ice as well? 40

Margaret Goetschius—Direct.

A. Yes sir.

Q. Did you see the accident?

A. Yes sir, I was right in the back of her sister.

Q. Will you just tell the Court and Jury what you saw?

A. I was right in the back of her and I seen she slipped on the first landing and went right down and a young man picked her up and by the time I
10 got there she had already gone walked along and gone to work.

Q. As she was going down this steps to the first landing, do you know whether or not she was holding on to anything?

A. Yes, she was holding on to the banister.

Q. Of what material were those steps constructed?

A. They were cement steps.

20 Q. Were there any lights of any kind there or anything to disclose the danger of the situation?

A. Nothing: No sir, there was no lights.

Q. There were no lights?

A. No sir.

Q. Do you know whether or not that the bridge was commonly used by persons living in that vicinity?

A. Yes sir.

30 Q. What time of the day was this?

A. About a quarter to seven.

Q. Was it light or dark?

A. No, it was not light and it was not dark, it was dusk.

Q. Just twilight?

A. Yes sir.

Q. Had you ever received any instructions with reference to the use of that bridge?

40 A. Yes sir, they had men around that place with a stick, railroad men.

Margaret Goetschius—Cross.

Q. Railroad men instructed you as well?

A. Yes sir.

Q. How long before that time had you known Miss VanNoordt?

A. Oh, well, I knowed her for quite a while, but I never was personally acquainted with her.

Q. Have you known her since?

A. Yes, I was in the hospital the same time she 10 was.

CROSS-EXAMINATION BY MR. LARRABEE:

Q. How do you know that these were railroad men that compelled you to use this bridge?

A. Well, they always said that they were railroad men.

Q. Who told you?

A. The men that were there. 20

Q. They were working on the railroad, is that it?

A. They would not let us cross there, they were fixing the fence and they would stop you from going across.

Q. You mean the people who wanted to run across the tracks were breaking down the fence?

A. Yes sir.

Q. And these men were there to stop them from running across the tracks? 30

A. To compel them to go across the bridge.

Q. How did they compel you to go across the bridge?

A. Well, when you got there you had to go across.

Q. In other words they would not let you go across the tracks at grade, would they?

A. No sir.

Q. If you wanted to cross you had to go across the bridge?

A. Yes sir. 40

William J. Van Noordt—Direct.

Q. You could not go down on the level of the tracks and cross?

A. No sir.

Q. That is what they stopped you from doing, isn't it?

A. Yes sir.

Q. They did not drive you across the bridge, did they?

A. When you got there you had to go across.

Q. They told you go across?

A. We was warned and we had to go back again.

Q. You were warned not to go over the tracks, isn't that the situation?

A. Yes sir.

WILLIAM J. VAN NOORDT sworn as a witness on behalf of the Plaintiff, testifies as follows:

DIRECT-EXAMINATION BY MR. WARD:

Q. You are the father of the plaintiff in this case?

A. Yes sir.

Q. Do you remember the accident that happened to your daughter?

A. Yes sir.

Q. And, on the day that the accident happened, did you, or not, cross that bridge?

A. I did, in the morning, coming from work. I worked at night at that time in the Brighton mill, as Engineer.

Q. Did you cross it daily, or had you crossed it daily before that time?

A. I crossed it every night going to work.

Q. In what condition was it on the morning of the accident?

A. It was covered with snow and ice, ice underneath and snow on top.

William J. Van Noordt—Direct.

Q. Were there any lights there?

A. There were no lights whatever.

Q. Was there anything to disclose to a person who might use that bridge the dangers of the situation?

A. There was nothing there to show the dangers, no sir. Nothing. I did not get that right, I would like to answer that right. 10

Q. Was there anything there such as lights to show the situation?

A. No sir, there was no lights there.

Q. How long had the bridge been in that condition?

A. All winter through I have never known it to be cleaned.

Q. How long had the ice and the snow been there before the accident, the day of the accident? 20

A. Why, it was never cleaned off, because nobody ever took it off.

Q. What was your daughter's health before this accident?

A. She was the picture of health.

Q. Has there been any change in her appearance since then?

A. Certainly there has.

Q. In what respect?

A. She has got older and aged looking, her condition in every way has changed, she goes about like an old person. 30

Q. When did you first know about the accident?

A. I heard of it the following morning when I came home from work.

Q. Was she there?

A. No sir.

Q. When did you first see her after the accident happened? 40

William J. Van Noordt—Direct.

A. I seen her the day after when she came home.

Q. What was her condition then?

A. She complained she had hurt her back when she fell down.

Q. What kind of a girl was she, aside from her appearance, prior to this accident, with reference to her activities and what she did?

10 A. There was no better athlete ever born as a girl.

Q. She was an athletic girl was she?

A. She was an athletic girl in all forms, baseball, swimming and all kinds of athletics.

Q. Since this accident has she indulged in any of those sports, those athletic sports?

A. She cannot indulge into it.

Mr. Larrabee: I object to that.

20

Q. Has she or not?

A. She has tried it at times and she has had to stop on account of the condition of her spine.

Q. Has she appeared to you to be suffering any?

A. She has. Many a night I have been woke up with her moaning and I have lost—a good many times I have lost sleep, between me and my daughter, we have both sat up with her.

Q. You have been up with her?

30

A. Yes sir.

Q. Do you know when it was she went to the hospital?

A. She went to the hospital in May.

Q. What was done there, what was done at the hospital?

A. She was operated on.

Q. She remained there for some time?

A. About two months.

40

Q. And then she left?

William J. Van Noordt—Direct.

A. Then she left and came home.

Q. How long was it before she went back to the hospital?

A. In August she went back again.

Q. How long was she there then?

A. Two months again, in the neighborhood of that I could not exactly say.

Q. You are giving these dates approximately 10 now, aren't you?

A. Yes sir.

Q. What was done the second time she went to the hospital?

A. She was operated again, onto her spine.

Q. Did you see the wound yourself?

A. Well, no sir.

Q. After the second operation, how long was it before she went back to work?

A. About three or four weeks, she was home²⁰ during that time.

Q. Do you know what her wages were?

Mr. Ward: We have had that testified to and I suppose there is no dispute about that, is there?

Mr. Larrabee: No.

Q. After she went back to work how steadily or regularly did she work? 30

A. Very irregularly, half time mostly.

Q. Does she now seem to you at times to be suffering from pain?

A. She does at times, in the change of weather.

Q. After this accident did you ever communicate at your daughter's request with this company?

A. I did.

Q. Will you just tell the Court and Jury about that please? 40

William J. Van Noordt—Cross.

A. I wrote to the Delaware, Lackawanna and Western Railroad claim department.

Q. Where?

A. At Hoboken, New Jersey.

Q. Did you or not personally mail the letter?

A. I personally mailed the letter.

Q. How did you get the information as to where
10 to direct the letter?

A. From Mr. Meter of the Welfare Department in the Brighton Mills.

Q. Is that the department that looks after the grievances and difficulties of their work people and assist them and help them in any way they can?

A. Yes sir.

Q. Did you ever receive a reply to that letter?

A. I never heard from them.

20 CROSS-EXAMINATION BY MR. LARRABEE:

Q. I understand you to say you crossed over this bridge every night?

A. Not now.

Q. You did at that time?

A. I did at that time, yes sir.

Q. Where are you working now?

A. The Magor Car Corporation.

Q. You don't have occasion to use this bridge
30 then?

A. No sir, I use the other one further up.

Q. Your daughter worked in the Manhattan Rubber Company then?

A. She did at the time, but does not work now.

Q. You worked in the Brighton Mills?

A. I worked in the Brighton Mills at the time.

Q. Those factories are close by each other?

A. Right together, the bridge is between the two
40 of them.

Motion for Nonsuit.

Q. All the employes that work there use this bridge do they?

A. The majority of them go over that bridge.

Q. And go back and forth every day?

A. Yes sir.

Q. In fact, anybody who wants to goes over that bridge?

A. Goes over there, yes sir, has that privilege. 10

Q. It is open to the public generally?

A. Yes sir.

Q. Did you personally witness these operations on your daughter?

A. I did not. None was allowed to witness them operations in the hospital.

Q. Then you don't know of your own knowledge what she was operated on for, do you?

A. I do not.

20

[PLAINTIFF RESTS.]

Mr. Larrabee: If it please the Court I move for a nonsuit in favor of the Defendant against the Plaintiff for the following reasons, namely:

That from the evidence it appears that this is a public way open to the public generally.

That it does not in any way serve the business of the railroad company as a carrier. 30

The Court: Why do you say that. I understand you applied for permission to put it up and at your own expense erected it over the tracks.

Mr. Larrabee: That is admitted.

The Court: It therefore serves you for the purpose of keeping people who are foolish enough to go on the tracks, off the tracks, and 40

Motion for Nonsuit.

while that may be a very humanitarian purpose it is very useful to the railroad company.

Mr. Larrabee: Will your Honor just permit me to finish and to discuss the grounds afterwards. So as not to break the continuity of the motion.

10 It appears that the bridge in question does not serve the purpose of an approach to any of the railroad company's facilities, that it is erected across the tracks solely for the purpose of affording a means of access between two disconnected portions of a public highway and, as I said before, is open to the public generally as a public way.

The Court: Couldn't you close it any time you wanted to?

20 Mr. Larrabee: I think that we probably could except for our obligations to the city.

The Court: What obligation?

Mr. Larrabee: The permission obtained from the city to construct and maintain it, the city having given its consent, it is a question in my mind whether the railroad company could withdraw if it wanted to, after having once obtained the consent of the city.

30 The Court: I don't see why not. You have not agreed to maintain it forever.

Mr. Larrabee: Irrespective of whether we agreed to maintain it forever or whether we can withdraw at any time, the fact remains that it is a public way, open to the public generally, held out as a public way and for all practical purposes it is a public way.

40 The Court: You asked for permission to put up a bridge and to maintain it. Now, when you agreed to maintain it and knew that people

Motion for Nonsuit.

were going over it, do you think there is no duty upon you to maintain it?

Mr. Larrabee: Yes sir, the duty that is owing in respect to all legal highways and only that.

The Court: The city has not said that this is a highway.

Mr. Larrabee: I don't have to establish that. If the railroad company held it out as a high- 10 way, as a public way, the duty of the company is the same as though it were established by the municipality over its tracks.

The Court: The municipality has not done anything upon it.

Mr. Larrabee: I understand that, but I say the duty is the same.

The Court: Why would it be? You asked for permission to put up the abutments at each 20 end, which the city gave you; and then you erect for your own protection and your own purposes and convenience the bridge and agreed to maintain it, and you let the people come across. You could close that tomorrow. But while you have it open and have agreed to maintain it, haven't you some duty to perform?

Mr. Larrabee: I say, so long as we keep it there we are under a duty to maintain the 30 structure, that is, the bridge itself, in a safe condition. We cannot permit it to tumble down from decay or to get into such a state of disrepair as to be unsafe for the support of traffic.

The Court: What is the difference whether you leave a hole in it or leave ice on it for people to fall down?

Mr. Larrabee: I think the duty is analagous 40

Motion for Nonsuit.

to that of an owner of abutting property with respect to the sidewalk. There is no obligation on the part of the owner of abutting property to sweep off the snow and clean the ice from the sidewalk, but if he makes excavations there or if he affirmatively does something to create or which results in a dangerous condition, if he places an obstruction on the sidewalk, he may be liable.

10

The Court: That is a public way.

Mr. Larrabee: I say the same duty exists on the part of the railroad company in this case to the plaintiff as though it were a public sidewalk; that this is in fact a public way.

The Court: You say the public only are licensees?

20

Mr. Larrabee: I don't attempt to define their status. What I am attempting to do is to define the duty of the owner of property with respect to persons using it as a public way, be they licensees, invitees or what. If they are invitees then I say the owner owes them the same duty in such a case as this that would be owing to them were the property in fact a public street and this bridge a part of it, a sidewalk; there is no duty to keep the sidewalk free from snow and ice.

30

The Court: This is no public way that has been established?

Mr. Larrabee: I say it is in fact a public way and that it was held open to the public as such.

The Court: That is to say, you invite the public to use it.

40

Mr. Larrabee: We invite the public to use it as a public way and the public does so, and the duty is measured by the nature of the invitation.

Motion for Nonsuit.

The Court: I think that is what prevents me from nonsuiting.

Mr. Larrabee: I am free to confess I am relying on the case of *BLACK v. CENTRAL R. R. N. J.* 85 Law.

The Court: Don't you think that is just the other way?

Mr. Larrabee: No, I think it is clearly in favor of my contention. Where you hold 10 property out as a public way, with respect to the public who are using it, the duty is the same as if it is a public way. Whether or not it is a public way is beside the point. The question how you hold it out and the manner in which you hold it out is what limits you one way or the other with respect to the duty. I say, in this case it was held out as a public way, it was used as such indiscriminately, by 20 everybody who wanted to use it, and, I say, under those circumstances, the duty of the railroad company to persons using that bridge is just the same as would be the case if it were a way established by municipal ordinance or any other method of establishing public ways. I say the duty is just the same, that it is no different, and that there is no duty on the part of the abutting property owners to keep 30 the sidewalk free from snow and ice or to keep the street free from snow and ice for that matter. That there is no duty on the part of the railroad company at a crossing of a public highway over its tracks or a private crossing of this character over its tracks, to keep it free from snow and ice. The fact that this crossing is an elevated crossing does not alter the situation at all. The duty is the same as though it were at grade. Unless you can find 40

George J. Ray—Direct.

10 a duty on the part of the railroad company to keep a crossing at grade free from snow and ice you cannot find one here. It is immaterial whether the crossing is over or under the tracks, the duty with respect to keeping it free from snow and ice is the same as if it were at grade. It is immaterial whether there was a crossing there before or not.

The Court: We have no evidence that there was one there before.

Mr. Larrabee: No, there is no evidence there was any there before, but one count of the complaint alleged it.

Motion denied. Defendant excepts.

20 GEORGE J. RAY, sworn as a witness on behalf of the Defendant, testifies as follows:

DIRECT-EXAMINATION BY MR. LARRABEE:

Q. What is your occupation?

A. Engineer. Assistant to the Regional Director, Eastern Region.

Q. That is the United States Railroad Administration?

A. Yes sir.

30 Q. You were formerly Chief Engineer of the Lackawanna Railroad, were you not?

A. I was, yes sir.

Q. Did you occupy that position of Chief Engineer during the year 1914?

A. Yes sir.

Q. Are you familiar with the foot bridge across the tracks of the Lackawanna Railroad at Passaic that is involved in this suit here?

A. Yes sir.

40 Q. Did you have anything to do with the con-

George J. Ray—Direct.

struction of that foot bridge or the negotiations leading up to its construction?

A. Yes, I did.

Q. What did you have to do with it? Were you in charge of it?

A. I was in charge of the construction, and in fact, originated the idea in the way of building this bridge, together with the City authorities and the 10 factory people in the vicinity in order to eliminate crossing of the tracks at grade by the pedestrians at various places over the tracks at that point.

Q. When this bridge was constructed what purpose did the company or did you as the general officer of the company and authorized to speak for it have in mind with respect to its use?

Mr. Ward: Objected to.

The Court: The plaintiff has introduced the 20 testimony of a number of witnesses from which it desires the jury to draw the inference that this was for the purpose of the convenience of the railroad as well as of the public generally, to keep the people off the tracks, to prevent people getting killed and to prevent delaying traffic and to accommodate the factory owners who had plants on both sides. That is the inference the plaintiff wishes to 30 have drawn is it not?

Mr. Ward: We withdraw the objection.

A. It was for the purpose of providing a way across the tracks other than at grade for the public in general, the people who desired to cross back and forth one way or the other across the tracks. As a matter of fact before the bridge was built people were crossing the tracks—

Mr. Ward: Now, we object to this.

40

George J. Ray—Direct.

Q. Was it, or was it not, the intention of the company that the use of this bridge was to be limited to any particular class of the public?

A. It was not.

10 The Court: Of course, once it was thrown open you knew that you could not limit it very well?

The Witness: There was no idea of limiting it.

The Court: But you don't answer the question; you knew that once it was thrown open it was impossible to limit it, you knew that you could not limit it to any particular class unless you had a watchman or somebody else there watching it all the time.

20 The Witness: Certainly.

The Court: So that it was not practical to limit it, was it?

The Witness: No sir, neither practical nor desirable.

Q. You never intended it should be limited?

A. No sir.

Q. The Company did intend it should be open to the public generally?

30 A. Yes sir.

Mr. Ward: I object to the leading forms of these questions.

Q. Did it, or did it not, was it or was it not the intention of the company that the bridge was to be open to the public generally?

A. It was.

40 Q. Before the bridge was constructed did the company encounter any difficulty in keeping per-

George J. Ray—Direct.

sons who desired to cross the tracks at grade from doing so?

Mr. Ward: Objected to on the ground that it must surely be hearsay unless this gentleman was there himself and witnessed the attempts, etc.

Objection overruled. Plaintiff excepts. 10

A. We constructed a fence on both sides of the track.

The Court: The question counsel asked was did you encounter any difficulty in keeping people off the tracks?

The Witness: Yes, we did. We encountered all kinds of trouble keeping them off the tracks. They even went to the extent of cutting down the fence which we built on both sides of the track in order to keep them from crossing the track. 20

Q. Is there any other means of crossing the tracks, to your knowledge, in this vicinity, than this footbridge?

A. Not in the immediate vicinity. Bloomfield avenue is east of there some distance.

Q. How far is it from Factory street where the Manhattan Rubber Company is located and the crossing at Bloomfield avenue, do you know? 30

A. Why, it is six or seven hundred feet, to state it off hand; I don't know exactly.

Q. You are familiar with the location up there are you?

A. I am.

Q. You have been up there a great deal in connection with the construction of these bridges?

A. I have been up there dozens of times. 40

George J. Ray—Cross.

CROSS-EXAMINATION BY MR. WARD:

- Q. You occupy the same position that you occupied before the railroad was taken over by the Federal Administration don't you?
- A. I do not.
- Q. Is it not the same character of position?
- 10 A. Yes sir.
- Q. In other words, the only change was that the railroad was taken over, isn't that so?
- A. No sir, not at all.
- Q. And when you say there was some difficulty was encountered in keeping people up there from crossing the tracks, is that from your own knowledge, your own knowledge?
- A. Yes, it is.
- 20 Q. Incidents and circumstances that you witnessed yourself?
- A. Yes sir, I have.
- Q. You are very familiar with that neighborhood?
- A. Yes sir, I am.
- Q. You have been down there dozens of times?
- A. Yes sir.
- Q. You are an engineer?
- A. Yes sir.
- 30 Q. You are accustomed to estimating distances?
- A. Yes sir.
- Q. And find yourself pretty accurate as a rule?
- A. Fairly so.
- Q. And you say that it is only six hundred feet?
- A. I did not.
- Q. Did you?
- A. I did not.
- Q. Was that the estimate you gave?
- 40 A. I said it is about seven hundred feet and I

George J. Ray—Cross—Redirect.

qualified it by saying that I don't remember the distance.

Q. The estimate that you gave was about six to seven hundred feet was it not?

A. That is an offhand estimate, that is all, just an offhand estimate as I remember it.

Q. That is the estimate you gave on the stand and don't you know that it is fourteen hundred feet, as a matter of fact? 10

A. I don't know anything about it, it may be.

Q. Why are you testifying to something you don't know anything about?

A. I qualified my answer.

REDIRECT-EXAMINATION BY MR. LARRABEE:

Q. I show you a map, an atlas of the City of Passaic— 20

Mr. Ward: We will admit the atlas without any question at all.

Mr. Larrabee: Will you admit it in evidence as showing the correct location of the bridge, the streets and the distances, etc.?

Mr. Ward: Yes.

(Testimony of Dr. Charles Scribner, omitted as not being necessary to present questions raised on appeal). 30

[DEFENDANT RESTS.]

[TESTIMONY CLOSED.]

Mr. Larrabee: At this point I ask the Court for the direction of a verdict in favor of the defendant and against the plaintiff on the 40

 Charge of the Court.

ground that under the facts, the evidence adduced in the case, no obligation is shown on the part of the defendant to keep the bridge in question and the approaches thereto free from snow and ice, or to keep it lighted for the plaintiff, hence no actionable negligence has been shown.

10 Also on the ground that the plaintiff herself, by her own statement, was guilty of contributory negligence in that she testified that before she attempted to negotiate the passage of the bridge she saw that the steps and the platform of the bridge were heavily coated with snow and ice and she attempted to use it in that condition.

The Court: I think it is a question for the jury and will deny the motion.

20 Motion denied. Defendant excepts.

(Mr. Larrabee then sums up for the Defendant.)

(Mr. Ward then sums up for the Plaintiff.)

The Court then charged the Jury as follows:

30 The Court: Gentlemen of the Jury, the Plaintiff, on the morning of February sixteenth, 1916, while crossing the bridge erected over the right of way of the Defendant at Factory street, in the City of Passaic, slipped on the ice and snow that was on the bridge, injured herself, and she now seeks to recover damages.

There are some facts, Gentlemen, that are substantially not in dispute in this case; the first of those is, that the defendant owned the right of way.
40 The defendant had a railroad, private right of way

Charge of the Court.

at this place, Factory street. In order to come to the other side of the railroad right of way a great many people, including employees of factories on the other side of the right of way found it necessary to cross the railroad at this particular point, to and from their work, and that resulted in danger both to the people who were using that method and to the railroad company.

In that situation the railroad company petitioned the Mayor and Aldermen of the City of Passaic setting up, first, that Factory street does not cross the right of way; second, that the land owners and factory operators in the vicinity of Factory street requested the railroad company to connect the street across its tracks by a foot bridge; that the railroad company was willing to do this if it could obtain permission from the City to erect the abutments and approaches of such a bridge within the limits of Factory street, and it asked that the City grant it the right to erect and maintain within the lines of Factory street on each side of the right of way, piers and abutments and stairways leading to a steel foot-bridge over the right of way.

So that you will see, the railroad company asked for permission to erect and maintain these abutments and the other things necessary, in the public street, in order that it might erect a bridge over its own private property.

That permission, apparently was granted; the railroad company built this bridge, and threw it open to the use of the people who were required to or who found it convenient to cross there.

Now, the plaintiff alleges, Gentlemen, that the defendant is liable for the damages which resulted from this accident, and the claim is based upon negligence, that the railroad company was negli-

Charge of the Court.

gent, that it failed to perform some duty. So that your first question is to determine what duty the railroad company owed.

The defendant, the railroad company, claims that it had no duty to perform, because this was simply a street, that the people who used this bridge were mere licensees and that the defendant's
10 only duty was to refrain from wilfully injuring the people who used the bridge.

The Plaintiff, on the other hand, contends, that the railroad company invited the people to use this bridge, and, as such invitees, it had a duty to perform. And the law on that situation is this:

“Mere permission to pass over dangerous lands, or acquiescence in such passage for the benefit or convenience of the licensee, creates
20 no duty on the part of the owner, except to refrain from acts wilfully injurious.

“But the owner or occupier of lands, who, by invitation, express or implied, induces persons to come upon the premises, is under a duty to exercise ordinary care to render the premises reasonably safe for such purpose, or at least to abstain from any act that will make the entry upon or use of the premises dangerous.

30 “The gist of the liability in such cases consists in the fact that the person injured did not act merely on motives of his own, to which no sign of the owner or occupier contributed, but that he entered the premises because he was led by the acts or conduct of the owner or occupier to believe that the premises were intended to be used in the manner in which he used them, and that such use was not only ac-
40 quiesced in but was in accordance with the in-

Charge of the Court.

tention or design for which the way or place was adapted and prepared or allowed to be used."

Now, the contention of the plaintiff in this case is, that this was just such a situation; that this place was the property of the railroad company, that it was essentially for its convenience and benefit, and that it invited people to come across 10 this bridge, not solely for the benefit of the people who were invited to come there, but also for the benefit of the railroad company. And the burden is upon the plaintiff to satisfy you of those facts. If you are satisfied of those facts then you come to the next question of fact; did the railroad company perform the duty which it was required to perform in such a situation? That duty would be to exercise reasonable care for the safety of the 20 people using the passage.

The plaintiff says no such care was exercised; that the railroad company failed to light this place, that it failed to remove the snow and ice within a reasonable time after it had fallen, and that, by reason of such carelessness this place was rendered dangerous and unsafe.

So, if you find that the railroad company performed its duty, or that this was merely a place where people for their own benefit went across, and 30 not by invitation of the defendant company, then, of course, your verdict would be no cause of action.

On the other hand, if you find that this was a place that the people were invited to use, in the way that I have indicated to you, and that the railroad company did this for some advantage or benefit of its own, and that it was careless and negligent in the maintenance of such place, then you come to the second question in the case, and 40

Charge of the Court.

that is, to examine the conduct of the plaintiff; because, she was also obliged to exercise reasonable care for her own safety in her use of the bridge; she knew that she had to go up and down the stairs there, she knew that there was snow and ice there, and it was her duty to exercise reasonable care for her own safety.

10 The railroad company contends that she did not do that, and that if she had exercised the requisite care she would not have been hurt. The plaintiff, on the other hand, says that she did exercise care, that she was holding fast to the railing, and that, notwithstanding that, her feet went out from under her and she went on down the stairs and was injured.

So that is the second question you have to determine.

20 If you find that the plaintiff did not exercise the care which she should, then, of course, she cannot recover. Or, if you find that the railroad company was under no duty to her, or that it performed whatever duty it was obliged to perform, then your verdict would be no cause of action.

On the other hand, if you find that the plaintiff was invited upon these premises in the way that I have already indicated to you and that the railroad company failed to perform its duty, and that
30 the plaintiff was not careless, then you may find a verdict for the plaintiff.

The elements of damage in a case of that kind are, first, the pain and suffering, which you translate into dollars and cents; the effect upon her health, which you have had described here by the doctors, in which you may consider whether it is permanent or only a temporarily existing condition; how long
40 it will continue. The bodily injuries that have

Charge of the Court.

been sustained, the effect it has had upon her, which you have heard her describe here. You may also consider the doctor's bills and the other outlays necessarily incurred in curing her, or endeavoring to cure her, and her loss of wages. And, taking all of those elements together, you fix such sum as will compensate her for her loss.

So take the case, Gentlemen, if you find there is no liability, then the form of your verdict will be no cause of action; if you find there is liability, then you assess the damages to the amount that you fix as proper.

The suit is brought in this case for ten thousand dollars. I only mention that, Gentlemen, so that you may know that there is a limitation placed on the amount of damages, but that does not bind you at all one way or the other. It is simply for the purpose of informing you what the pleadings in the case are and it is no indication to you one way or the other, simply a statement of the limitation of the pleadings.

(The Jury then retire.)

30

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Exhibit P-1.

TO THE MAYOR AND COMMISSIONERS OF THE CITY OF
PASSAIC:

The petition of The Delaware, Lackawanna and
Western Railroad Company respectfully shows to
your Honorable Body:

1. That it is a corporation of the State of Pennsyl-
vania, authorized to do business in the State of New
10 Jersey, and operating a railroad through the City
of Passaic, in a generally northerly and southerly
direction.

2. That Factory Street in said City does not cross
the right of way of your petitioner, but terminates
at each side thereof.

3. That the land owners and factory operators in
the vicinity of said Factory Street have requested
your petitioner to connect said street across its
tracks by a foot bridge, which your petitioner is
20 willing to do if it can obtain permission from the
City of Passaic to erect the abutments, approaches
and stairs to such a bridge within the limits of said
Factory Street on each side of your petitioner's
right of way.

WHEREFORE, your petitioner prays that the City
of Passaic will grant to your petitioner the right to
erect and maintain within the lines of Factory
Street, on each side of your petitioner's right of
way, the piers or abutments and stairways leading
30 to a steel foot bridge over your petitioner's right
of way, as shown upon the annexed blueprint plan
and profile, marked "Exhibit A", which is hereby
made a part hereof.

THE DELAWARE, LACKAWANNA AND
WESTERN RAILROAD COMPANY,

By W. R. CROSSON,
Its Attorney.

Exhibit P-2.

PASSAIC, N. J., June 17, 1914.

THE BOARD OF COMMISSIONERS,
Passaic, N. J.

GENTLEMEN:

Your Director of Streets and Public Improvements, to whom was referred the petition of the D. L. & W. R. R. Company for permission to connect Factory Street across its tracks by a foot-bridge, would report that he has investigated the situation and would recommend that the petition of the said Railroad Company be granted, provided, said foot-bridge be located as requested by the abutting manufacturers, viz., in the center of said Factory Street. 10

He would further recommend that the action of the Board of Commissioners on April 24th, 1914, relative to this petition, be rescinded. 20

Respectfully,

WILLIAM A. REID

Director of Streets & Public Improvements

Approved:

GEORGE N. SEGER

JOHN H. KEHOE

J. HOSEY OSBORN

Commissioners. 30

I, Z. A. Van Houten, Clerk of the City of Passaic, do hereby certify that the foregoing is a true and correct copy of a report of the Director of Streets and Public Improvements, which was received and recommendation of the Commissioner adopted at a regular meeting of the Board of Commissioners held Wednesday, June 17th, 1914.

Z. A. VAN HOUTEN

(SEAL)

City Clerk. 40

Exhibit P-6.

NOTICE TO EMPLOYEES.

DO NOT WALK UPON THE RAILROAD
TRACKS.

Over five thousand trespassers are killed and a like number injured every year on the railroad tracks in the United States. Over eighty people are killed and as many more injured each year on the LACKAWANNA RAILROAD ALONE as a result of thoughtlessly or wilfully walking upon the railroad track. This is several times the number of persons killed upon all the grade crossings on the entire Lackawanna system.

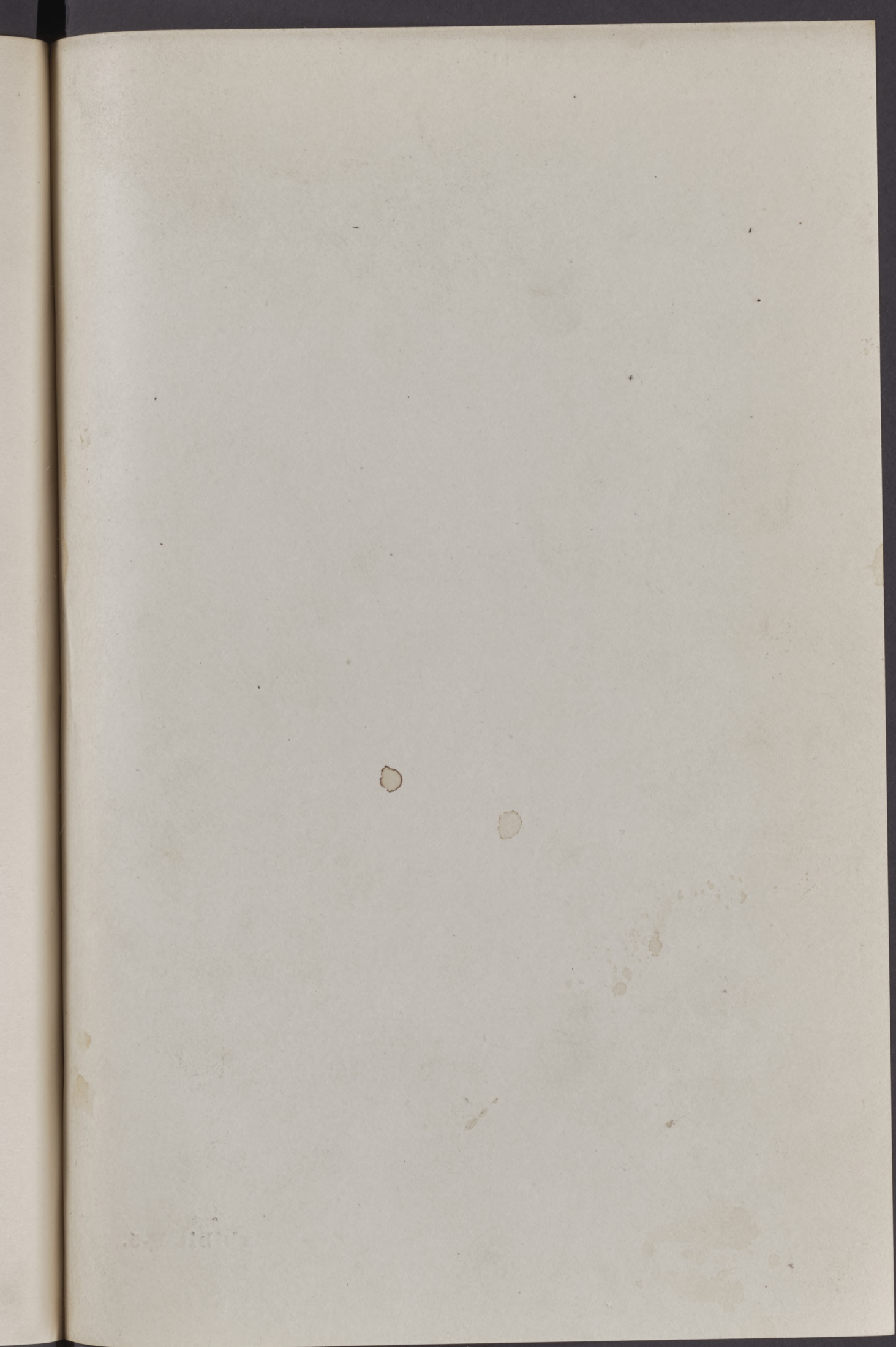
Much of this trespassing is thoughtless and all is of an inexcusable nature. People walk upon the tracks and permit their children to do so, without considering the serious risk which is being incurred.

Others use the right of way as the nearest and most convenient route between their homes and their work. Among this class are many mechanics like yourselves who are employed in industrial plants.

Of all the trespassers killed in the United States during the last twenty-four years, 14% were children, 66% were citizens of the locality in which the accident occurred—mostly wage earners—and only 20% were tramps or hoboes. So you see that working men and women like yourselves make up the large majority of those killed while walking on railroad tracks.

The management of this factory urges each of you to refrain from walking on the railroad track. You may lose a limb or your life by disregarding this request.

THINK IT OVER.



*Bridge as viewed from
Railroad tracks*

Exhibit P-5.



1001 BRIDGE PL. W. R. P. S. 1916

F001 - P. R. E. D. I. O. W. A. S. S. P. O. G.

LD 73

Factory Approach

Exhibit P-7.



92
92

by P. S.

1871



*Lower Flight of Stairs of
Westerly Approach.*

Exhibit P-8.



Exhibit P-9.

Westerly Approach

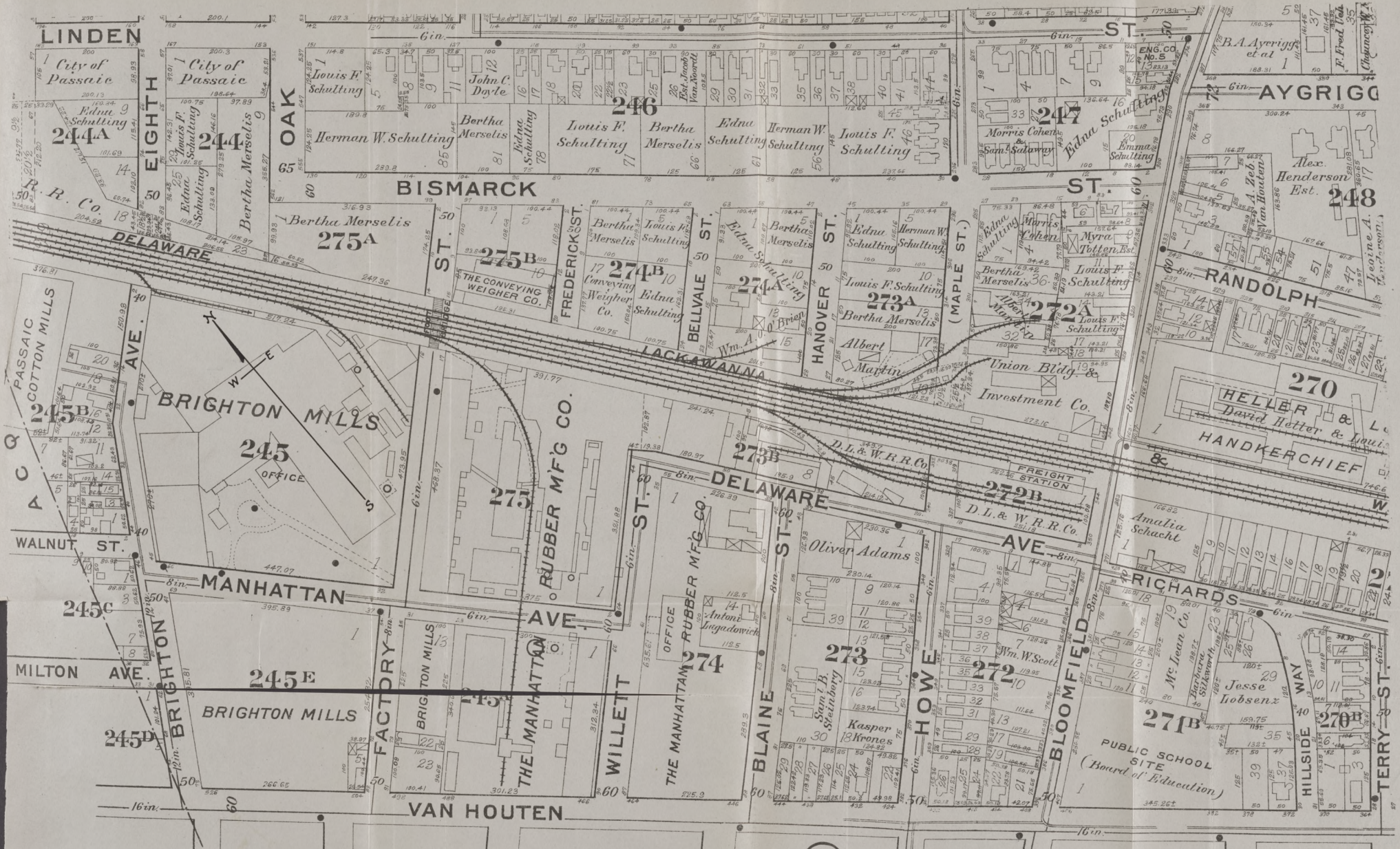


View of Bridge Lumber Back Mill at
along Factory Street at
Manhattan Avenue.

Exhibit P-10.



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Section of Plate 10 (Part of Ward 3 of Passaic, New Jersey) of Atlas of the City of Passaic and Acquackanonk Township, Passaic County, New Jersey, Wise & Ginsberg, Publishers, Edition of 1916. Scale 150 feet = 1 inch.

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New Jersey Court of Errors and Appeals.

MAUD VAN NOORDT, Plaintiff-Appellee, v. THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COM- PANY, Defendant-Appellant.	}	Action at Law. On Appeal from Supreme Court, Passaic County.
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APPELLANT'S BRIEF.

Statement.

This appeal is from a judgment rendered against the appellant (defendant below), at the September Term, 1919, of the Passaic County Supreme Court. The action was brought to recover for personal injuries suffered by the plaintiff-appellee as the result of a fall while descending the stairway approach of a foot-bridge of the defendant extending across its tracks, above grade, at Factory Street, in the City of Passaic. The accident, according to the complaint, was due to the plaintiff's slipping on snow and ice which defendant had negligently permitted to accumulate upon and failed to remove from the structure.

The facts, which are not in dispute, may be summarized thus:

Factory Street is a public highway extending from Liberty (formerly Bismark) Street in a westerly direction to the easterly line of defendant's

right of way (where it is broken by the railroad), and continuing westerly from the westerly railroad line to Van Houten Avenue. On account of its severance by the railroad the street ends in a cul-de-sac on each side of the railroad right of way (Case, p. 7, par. "2"; p. 12, lines 24-29; p. 96, Map).

Defendant's railroad consists of five tracks at the *locus in quo* (Case, p. 91, Ex. P-5; p. 96, Map), and persistent trespassing across them at grade by pedestrians, largely factory workers going to and from work (Case, p. 38, lines 24-30; p. 44, lines 1-4; p. 56, lines 1-11; p. 78, lines 39-40; p. 79, lines 1-23), coupled with requests of land owners and factory operators of the vicinity, resulted in the construction of the foot-bridge in question, permission of the City authorities having first been requested and obtained to locate and maintain the approaches within the lines of the street (Case, p. 7, paragraph "3"; p. 77, lines 8-13; p. 88, Ex. P-1, par. 3; p. 89, Ex. P-2).

Having constructed the bridge, the Railroad Company finally, after wire fences previously erected along its right of way had been repeatedly torn down by individuals who insisted on endangering their persons by crossing the tracks at grade, constructed a fence of more substantial character, which acted as an effective barrier (Case, p. 38, lines 5-20; p. 48, lines 38-40; p. 49, lines 1-7; p. 60, lines 38-40; p. 61, lines 1-20; p. 91, fence at left of Ex. P-5).

It also appears that after the bridge had been built, would-be trespassers on the railroad tracks, including the plaintiff, were prevented from crossing at grade by workmen employed in erecting or repairing the fence, or other railroad employees, and directed to use the foot-bridge (Case, p. 26, lines 12-28; p. 42, lines 1-16; p. 43, lines 26-30; p. 48, line 40; p. 49, lines 1-13; p. 56, lines 1-16; p. 60, lines 28-31; p. 64, lines 37-40; p. 65, lines 1-2, 15-40; p. 66, lines 1-16).

Plaintiff's employer, the Manhattan Rubber Company, whose plant is located on the west side of the

railroad and the south side of Factory Street (Case, p. 96, Map), placed notices in the pay-envelopes of its employees, directing them to use the foot-bridge, and also posted notices inside the mill where the plaintiff worked, cautioning employees against the danger of trespassing on the railroad tracks (Case, p. 25, lines 33-40; p. 26, lines 1-9; p. 37, lines 36-37; p. 90, Ex. P-6). It does not appear, however, that the defendant had anything to do with such notices (Case, p. 44, lines 29-40; p. 45, lines 1-14), or that it knew anything about them.

The foot-bridge in question, as will be noted on examination of the photographic exhibits P-5, 7, 9 and 10 (Case, pp. 91-95), is a steel structure with concrete floor and stairway approaches, protected by hand rails, such as is in common use in this State. There is nothing of record to the effect, nor is it contended, that the bridge is faulty in design or improperly constructed, or that it was not kept in a proper state of repair.

In appearance the bridge has all the indicia of a public way (see photographic exhibits and map, Case, pp. 91-96). It was held out as such by the defendant, whose sole purpose in erecting it was to provide a passageway above its tracks for the use of the general public (Case, p. 78, lines 1-38).

It does not constitute nor in any manner serve as an approach or way leading either to premises of the defendant to which the public is invited or must resort for the transaction of business with defendant as a common carrier (as, for example, its freight or passenger station), or to any other part of defendant's property (Case, p. 40, lines 17-24; p. 96, Map). In fact, its *only* function is that of a foot-passageway to which the public may resort in passing from one part of Factory Street to the other.

From the time of its erection in April, 1914 (Case, p. 9, par. "6"), the public, including the plaintiff, continuously used the bridge *as a public way* (Case, p. 37, lines 18-27; p. 41, lines 9-13; p. 43, lines 15-24; p. 55, lines 12-27; p. 58, lines 24-40; p. 59, lines

1-10; p. 62, lines 14-15; p. 64, lines 25-28; p. 66, lines 34-36; p. 71, lines 1-12). *It was a public bridge* (p. 62, line 15; p. 59, lines 1-10), *open to the public generally* (p. 71, lines 1-10).

While so using the bridge on the morning of February 16th, 1916, about 6.45 o'clock, the plaintiff, in descending the lower flight of steps on the side nearest her place of employment, slipped on some snow or ice and was injured (Case, p. 24, lines 19-40; p. 25, lines 1-15; p. 35; p. 36, lines 1-19).

It appears without contradiction from the testimony of plaintiff's witness that there was a snow-fall of three-tenths of an inch on February 11th, two inches on the 12th, and five inches on the 13th. No snow or rain fell subsequently, up to the time of the accident. The depth of snow on the ground at 6.00 o'clock P. M. on the evening before the accident was seven inches. From February 11th, the day of the first snow-fall, up to the day of the accident, the temperature never rose above the freezing point, the highest being 32 degrees above zero on the 11th, and the lowest 1 degree below on the 15th, the day before the accident. On the day of the accident it ranged from 18 to 36 degrees above zero (Case, p. 20, lines 30-40; p. 21).

The testimony on behalf of the plaintiff was to the effect that no efforts had been made by the defendant to clean the snow from the bridge, either on the occasion in question or at any other time. The plaintiff herself, and all of her witnesses who testified concerning the removal of the snow, asserted of their own knowledge that it had never been the practice to remove it (Case, p. 25, lines 20-31; p. 49, lines 20-21, 32; p. 57, lines 22-24; p. 63, lines 13-19; p. 67, lines 14-21). Defendant offered no evidence to the contrary. The plaintiff also knew, before she started across the bridge on the morning of the accident, that the snow had not been cleaned from it (Case, p. 35, line 40; p. 36; p. 37, lines 1-16), and she was possessed of that knowledge the day before (Case, p. 25, lines 30-31).

Efforts were made at the trial to show that the plaintiff was "*forced*" by the defendant to use the bridge (Case, p. 26, lines 10-27; p. 38, lines 5-10; p. 41, lines 26-37), but it is apparent from her testimony on cross-examination that the term was improperly used. She *was* forcibly prevented from trespassing on the tracks and told to use the bridge (Case, p. 42, lines 1-5; p. 43, lines 34-40), but no physical effort was applied to her person to compel her to walk over it at any time (Case, p. 44, lines 22-28). Furthermore, the occurrences just referred to took place, according to the plaintiff's own testimony, "*quite a while*" before the date of the accident (Case, p. 42, lines 1-16). It nowhere appears that any employee or agent of the defendant expressly instructed or invited the plaintiff to make use of the bridge on the day she was injured. On the contrary, the sole inducement held out by the defendant was the general appearance of the bridge as a public way, from which arose the implied invitation extended by the defendant to the plaintiff, as one of the public, to make use of it *as a public way*.

At appropriate stages of the trial counsel for defendant moved for a nonsuit and for the direction of a verdict in defendant's favor, both of which motions were denied and exceptions thereto duly taken (Case, p. 76, line 15; p. 82, line 20). The case was permitted to go to the jury, who rendered a general verdict in favor of the plaintiff for ten thousand dollars, on which judgment was entered December 30th, 1919 (Case, p. 10), and from which defendant appeals.

Grounds of Appeal.

1. Error of the Trial Judge in refusing to nonsuit.
2. Error of the Trial Judge in refusing to direct a verdict in favor of the defendant and against the plaintiff.

The motion for nonsuit was made at the close of the plaintiff's case, on the ground that the evidence adduced by the plaintiff failed to disclose a situation calling upon the defendant to exercise care to remove the snow or ice from the bridge, and that the defendant, therefore, was guilty of no actionable negligence in failing to do so. The motion was necessarily spread at considerable length over the record (pp. 71-76), owing to the apparent interest of the learned Trial Judge and his desire to discuss the merits of the motion before counsel could finish, but the grounds, substantially as stated above, appear sufficiently set forth in the colloquy between the Court below and counsel.

Motion for direction of a verdict in favor of the defendant was put on substantially the same grounds as the motion for nonsuit (Case, p. 82, lines 38-40; p. 83, lines 1-20), with the added ground that plaintiff had shown herself guilty of contributory negligence in attempting to cross the bridge with knowledge of its then condition, which is not here pressed.

Argument.

The only question involved in this appeal is, whether or not, having held out its property as a public way, and the plaintiff having used it as such, the defendant was under a legal obligation to her, as one of the public, to exercise reasonable care to keep the premises free from snow or ice naturally accumulating and to the accumulation of which no act of the defendant contributed. The defendant contends that it owed no such duty to the plaintiff, for the reason that its duty to her was only co-extensive with its inducement or implied invitation to use the premises as a public way, and that the law cast upon it no obligation to exercise care to keep a public way free from snow or ice or to take precautionary measures (such as the sprinkling of sand or ashes on the way) to overcome the conditions created by the action of such elements.

POINT I.
NO OMISSION OF ANY LEGAL DUTY.

There do not appear to be any reported decisions of the Courts of this State dealing specifically with the duty of a property owner to remove snow or ice from premises held out by him as a public way, nor have we been able to find any in the reports of other jurisdictions. The limit, however, of the legal obligation to make such premises reasonably safe which the law casts upon the owner has been definitely settled in New Jersey by at least two decisions of this Court, viz., *Black v. Central Railroad Company of New Jersey*, 85 N. J. L. 197, and *Reaney v. same defendant*, 89 N. J. L. 282.

In the Black case, which dealt with a collision between plaintiff and a locomotive at a grade crossing and involved the alleged failure of the defendant to give statutory or other warning of its approach, it was contended by the defendant that the *locus in quo* was a private way and that the plaintiff was a mere trespasser to whom the defendant owed no duty to warn. The appearance, however, of the *locus* was that of a public street, and the defendant was held to the same accountability as if the way were such in fact. The syllabus of the case indicates that the duty of the owner under such circumstances is the same "as if such way were in fact a public street".

Applying the rule in the Black case to the one at bar, and treating the premises involved as a public footway or sidewalk, which is a fact, defendant's motions below should have been granted for the reason that the only alleged negligence mentioned in the complaint and sustained by the evidence was the failure of the defendant "to clean the ice and snow from the walk of said structure" (Complaint, p. 5, lines 11-13), and no duty devolves on a property owner to clean the snow and ice from the sidewalk of a public highway. See *Lightcap v. Lehigh Valley Ry. Co.*, 87 N. J. L. 64, where it is said (p. 67):

"it is quite well settled that the landowner owes no duty to a pedestrian to keep the sidewalk clean of snow and ice coming thereon from natural causes, or to guard against the risk of accident by scattering ashes or using any other like precaution."

This Court, in the Reaney case, held that

"A landowner who invites others to use a private way owned by him as though it was a public street, and under the belief that it is such, owes to them as such owner no greater duty than owed by the public to one using a highway."

The Reaney action grew out of an accident which occurred at the same place involved in the Black case. Plaintiff's case depended on the theory that the land was not a public highway, but the private property of the defendant which the plaintiff was invited to use as a private way. Plaintiff, on foot, was using the passageway early one winter morning when it was dark and the way, as he claimed, unlighted. The stone pavement was deep in soft mud. He was not seen by men in a wagon that came up rapidly behind him, and did not hear it on account of the muffling of the noise by the mud and earth, so that it ran into and injured him. Respecting the obligation of the defendant to keep the premises safe, this Court, per Justice Parker, said (pp. 284-5):

"We held, in the Black case, ubi supra, that defendant might be held liable on the theory of negligence in an accident at a highway crossing, because the duty of giving signals or protecting the crossing was involved in holding out the way as a highway. The defendant cannot, in such a situation, be held to any greater duty, i. e., it should not be said that by inviting the plaintiff to use this way as a public highway it laid itself under the duty of such care as would be called for on portions of its premises ostensibly as well as in fact controlled by it and reserved for private passageways. Its only duty was to maintain the pas-

*sageway in reasonably safe condition as to roadway for the use of passengers, animals and vehicles; * * ** There was no duty to light. That did not rest on the municipality at common law, and if it could be said that defendant assumed the charter duties of Jersey City with respect to this way, still it does not appear that that city is required by charter to light the streets and alleys of the city. Neither was there any duty to keep the pavements clean so as to enable wagons to be heard. Such a doctrine would be fanciful." (Italics ours.)

In view of the decisions in the Black and Reaney cases, particularly the latter, it is indeed difficult to understand upon what theory the judgment in the case at bar can be sustained. The learned Trial Judge, as appears from the colloquy during the motion to nonsuit (Case, pp. 71-76), as well as in his charge to the jury (Case, p. 84, lines 17-40; p. 85, lines 1-3), seemed to be unable to distinguish the facts in the instant case from those involved in decisions such as *Phillips v. Library Company*, 55 N. J. L. 307, in all of which the injured persons were making use of private premises ostensibly as well as in fact controlled and reserved for private uses. In none of the cases resting on *Phillips v. Library Company* were the premises held out as public ways, while here, that was the *only* manner in which they were held out. The non-applicability to the facts in this case of the rule applied by our Courts to private premises controlled and reserved for private uses is clearly indicated by the italicized portion of the extract above quoted from the Reaney case, yet the Court below applied such non-applicable doctrine with all its vigor.

The learned Trial Judge was also imbued with the notion that because the bridge was of some assistance to the defendant in ameliorating the trespassing evil, the duty with respect to it was the same as that defined in the Library case (Case, p. 73, lines 19-40; p. 74, lines 1-10). It is respectfully

suggested, again quoting Justice Parker in the Reaney case, that "such a doctrine would be fanciful". Under it, if the owner of a residential property whose shrubbery adjacent to a way followed by trespassers across his property was being destroyed by such trespassers, desired to protect his shrubbery but had no inclination to deprive the trespassers of a convenient means of passage, and accordingly fenced off from the way the property he desired to protect and threw the way open to public use, the benefit derived by such owner from the protection so afforded his shrubbery, would be sufficient to impose upon him the duty of keeping the way free from snow or ice naturally accumulating or of guarding against the risk of accident by scattering of ashes or using other precautionary measures—a duty not existent before nor imposed upon the municipality.

In closing this caption, it is respectfully submitted:

FIRST: That the plaintiff on the trial below failed to establish a case under any rule of law applicable to private ways reserved and controlled by the owner for private purposes (*Phillips v. Library Company, supra*, and kindred cases), in that no evidence was adduced to prove that the way served any private purpose of the defendant, or that she was invited to and was making use of it for any purpose incidental to the business of the defendant, the uncontradicted evidence (see Statement, *supra*) being that the bridge had all the indicia of a public way, that it was held out and intended to be used as such by the defendant, and that it was being so used by the plaintiff at the time of the accident.

SECOND: Under the decisions of this Court in the Black and Reaney cases, *supra*, the plaintiff failed to establish a case of actionable negligence against the defendant, in that she adduced no evidence of any duty on the part of the defendant to clean the

snow or ice from the bridge or to take precautionary measures to guard against the happening of the accident of which she complained, such as the sprinkling of ashes, or to light the bridge, it nowhere appearing that the City of Passaic owed such duty to one of the public using its public highways.

POINT II.

The judgment should be reversed.

Respectfully submitted,

WALTER J. LARRABEE,
Of Counsel for Defendant-Appellant.

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New Jersey Court of Errors and Appeals.

<p style="text-align: center;">MAUD VAN NOORDT, Plaintiff-Appellee,</p> <p style="text-align: center;">VS.</p> <p style="text-align: center;">THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY, Defendant-Appellant.</p>	}	<p>Action at Law.</p> <p>On Appeal from Supreme Court, Passaic County.</p>
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REPLY BRIEF FILED ON BEHALF OF APPELLANT BY LEAVE GRANTED IN OPEN COURT AT THE ORAL ARGUMENT.

Under Point I (p. 9 *et seq.*) of his brief, counsel for the plaintiff-appellee is at some pains to convince the Court that the status of the plaintiff below was that of an invitee, as distinguished from a mere licensee, all of which would appear to be superfluous in view of the fact that throughout the main brief of counsel for the defendant the plaintiff is dealt with as an invitee.

Admittedly there was an implied invitation to use the bridge, though the fact that plaintiff was directed by her employers to do so, as stated in the brief of plaintiff's counsel (p. 10), cannot be construed as an express invitation as against the defendant. The invitation was implied from the general appearance of the structure, indicating, as it did to the eyes of pedestrians traversing Factory

Street, that it was there for the purpose of affording anyone who wished to use it, a footway from one section of Factory Street across the tracks to the other section of the street. The passageway began and ended in a public street, and, the right of way of the Railroad Company being fenced in, the implied invitation presented by appearances was emphasized.

It seems to counsel for the defendant that plaintiff's counsel has missed the crucial point entirely, which is: What was the nature of the invitation; for what purpose and in what manner was the plaintiff impliedly invited to make use of the way? Was she invited to use it as a private passage, ostensibly as well as in fact controlled and reserved for *private* purposes, or was the invitation extended to her, as one of the public, to make use of it as a *public* way. If the former, then there would doubtless attach an obligation on the part of the owner to exercise reasonable care to keep the premises safe from the effects of snow and ice naturally accumulating, but if the latter, no such obligation arose, for, as said by this Court in *Phillips v. Library Company*, 55 N. J. L. 307, 315:

“The owner's liability for the condition of the premises is only co-extensive with his invitation.”

The foregoing, it is submitted, is a concise and accurate general statement of the law applicable to the instant case, and when the record is examined for the purpose of ascertaining the nature of the inducement or implied invitation it will be found that the evidence is uncontradicted that it was to use the premises in question *as a public way*.

It is indeed difficult to conceive of a passageway having more the appearance of a public thoroughfare than the one in question, dissociated, as it was, according to the record (Map and exhibits) entirely

from the rest of the defendant's property. There was nothing to indicate to the eye that it was in any sense reserved for private purposes, and the record is bare of evidence to the effect that steps were ever taken to exclude the general public, either by the posting of signs or otherwise. Certain it is that the structure could not have had any more the appearance of a public thoroughfare if it had been erected and maintained by the City of Passaic. The plaintiff herself stated that the majority of the factory employees—about three hundred, anyway—used the bridge daily (Case, p. 26, lines 28-31), and an examination of the testimony cited in the defendant's main brief (bottom of p. 3 and top of p. 4) shows that none of the witnesses was lulled into the belief that there was anything private about its use.

Plaintiff's counsel (brief, bottom of p. 10) asks, "What evidence is there which shows that the defendant disclaimed any ownership or control over this bridge?" Further along in the same paragraph (p. 11) he states that the defendant could close the bridge at any time to all persons, also, that every person who crossed did so "*not by right but by sufferance*". The quoted statement, of course, is in the teeth of argument of plaintiff's counsel that the plaintiff was there ~~by~~ right, as an invitee, for if her use of the structure was not of right, but by sufferance only, she was either a trespasser or a bare licensee. However, having contended that the plaintiff was invited to use the passage *as a public way*, counsel for the defendant has no desire to take advantage of an admission so damaging to the plaintiff's case. What counsel for the defense desires to point out, in answer to the question propounded by plaintiff's counsel and the two statements referred to, is that neither the defendant's ownership of the bridge nor its right to close it at any time and exclude all persons from

using it (conceding, *arguendo*, that such rights existed), can operate to charge the defendant with any greater duty with respect to keeping it safe for public travel than was imposed upon the City of Passaic, and it nowhere appears that the latter is obligated by charter or general law to do anything with the snow or ice naturally accumulating on public sidewalks or foot-passages. The way dealt with in the Reaney case, *supra*, was privately owned, although held out as a public thoroughfare, and for aught that appears, could have been closed at any time by its owner.

In conclusion it is submitted that the defendant's liability being only co-extensive with its invitation to use the premises as a public way, as stated in the Library case, it cannot, under the decisions in the Black and Reaney cases, be held to a greater responsibility for the safety of the way in question than was imposed upon the municipality, and the latter's responsibility to one of the public using its public thoroughfares is not shown by the record.

Respectfully submitted,

WALTER J. LARRABEE,
Of Counsel for Defendant-Appellant.

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