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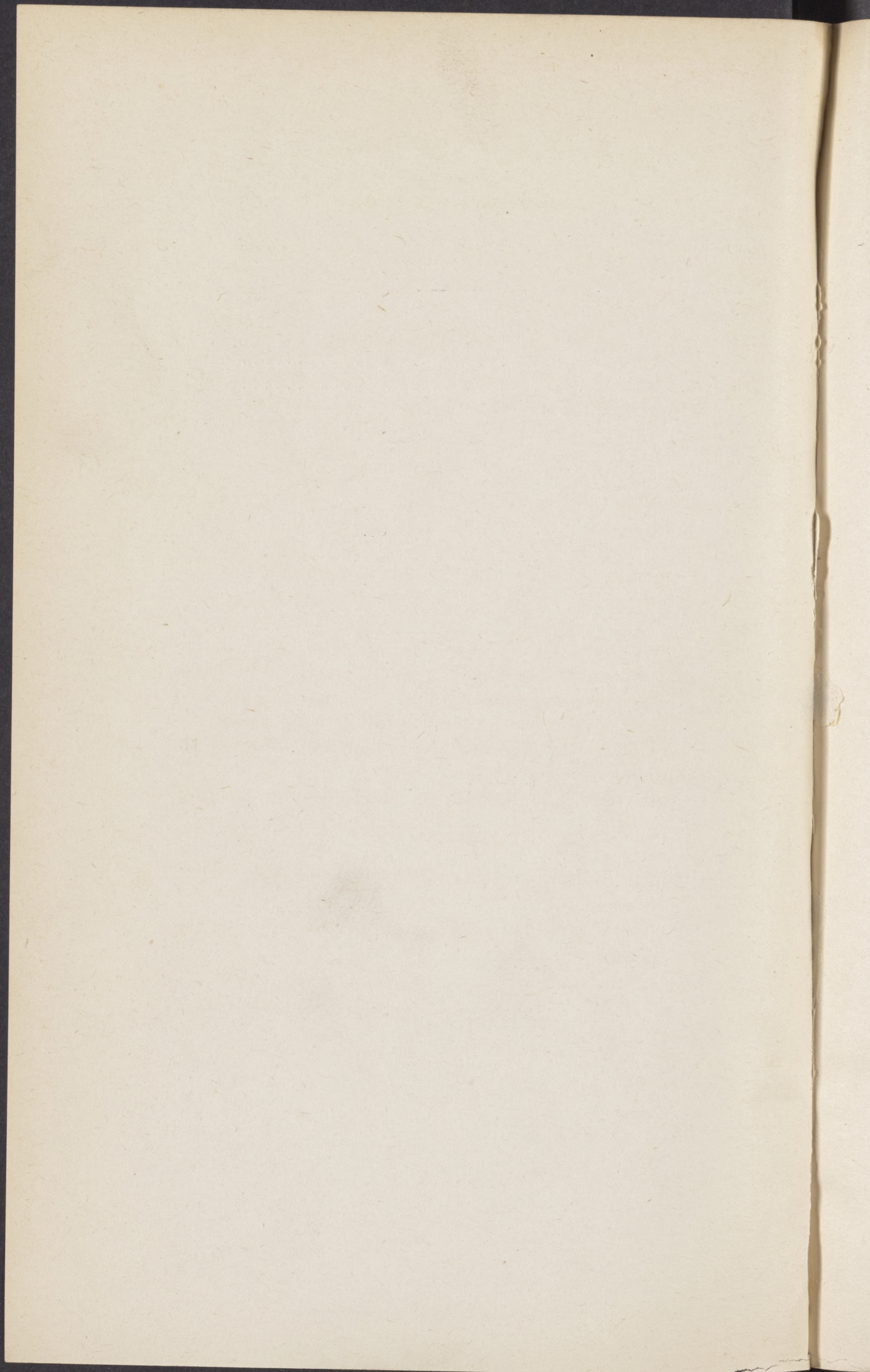
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NOTICE OF APPEAL.

CAMDEN COUNTY CIRCUIT COURT.

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WILLIAM WALLACE GRIFFEE,

VS.

DELAWARE RIVER FERRY  
COMPANY.

ACTION AT LAW.  
NOTICE OF APPEAL.

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To Roney & Jacobs,  
Attorneys of plaintiff.

Take notice that the defendant appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause.

And that appellant states the following grounds of appeal:

1. The Court denied a motion for non-suit.

30

2. The Court denied the motion to direct a verdict for the defendant.

FRENCH & RICHARDS,  
*Attorneys for Appellant.*

[ENDORSED]

Due and legal service hereby acknowledged.

Roney and Jacobs,  
Solicitors.

January 4, 1917.

10

True copy of the original filed with the clerk by me January 4, 1917.

Floyd H. Bradley.

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**CERTIFICATION.**

STATE OF NEW JERSEY,  
COUNTY OF CAMDEN,

20

I, FRANCIS F. PATTERSON, Jr., clerk of the county of Camden, do hereby certify, that the foregoing is a true copy of notice of appeal in the case of

William Wallace Griffee,

vs.

Delaware River Ferry  
Company.

Action at Law.  
Notice of Appeal.

30

filed January 4, 1917, in the clerk's office of the county of Camden.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Camden, this ninth day of January, A. D. 1917.

(Seal)

F. F. PATTERSON, JR.,  
*Clerk.*

JUDGMENT ON VERDICT.

CAMDEN COUNTY CIRCUIT COURT.

WILLIAM W. GRIFFEE,

VS.

DELAWARE RIVER FERRY  
COMPANY.

ACTION AT LAW. 10  
JUDGMENT ON VERDICT.

Witness Howard Carrow, Judge. Roney and  
Jacobs, attorneys, F. F. Patterson, Jr., clerk.

Judgment entered on the fifth day of October, A.  
D. nineteen hundred and sixteen.

Damages	\$150.00	20
Costs	61.20	

\$211.20

The plaintiff, a resident of the city and county of  
Camden, says that:

1. Defendant on December 1st, 1915, was and still  
is a corporation, and was also a common carrier of  
passengers by ferry boat upon the Delaware River 30  
between Camden, New Jersey, and Philadelphia,  
Pennsylvania.

2. On said day at Camden, plaintiff became a  
passenger of defendant upon a certain ferry boat  
owned and operated by defendant on the river Dela-

ware as aforesaid, and entered upon and went aboard said ferry boat and was entitled safely to be carried and transported by the defendant by said ferry boat from Camden, New Jersey, to Philadelphia, Pennsylvania.

3. While he was such a passenger, said ferry boat, as a result of the negligence of the defendant's servants, crashed into and collided with the piling at  
10 and forming part of a ferry slip belonging to said defendant at the place where its said boats tie up for the discharge of passengers in the city of Philadelphia, with such force and violence that plaintiff was thrown upon the deck or other part of said ferry boat where plaintiff was bruised and severely hurt and injured; the elbow, wrist, and other parts of his right arm being seriously injured.

Plaintiff replying to defendant's answer says  
20 that:

1. He denies the first defense, except that he admits that the injuries were sustained on a ferry boat belonging to the defendant.

2. He denies the second defense.

3. He says that the defendant was guilty of negligence.

30 4. He denies that the plaintiff's negligence contributed to the injuries which he sustained.

We hereby consent to the substitution of Messrs. Roney & Jacobs, as attorney of record of the above-named plaintiff.

Dated July 5th, 1916

Entered July 6, 1916

Wilson & Carr.

Therefore the sheriff is commanded that he cause to come before the Judge of our Circuit Court at Camden, in the county of Camden, on the fifth day of October, 1916, twelve, etc., by whom, etc., who neither, etc., to recognize, etc., because as well, etc., the same day is given to the parties, etc., and the jurors of the jury whereof mention is made also come to speak the truth of the matter within contained being chosen, tried and sworn upon their oaths say that they find for the plaintiff damages at the sum of one hundred and fifty dollars and the Court doth order judgment final in favor of the plaintiff and against the defendant for the sum of one hundred and fifty dollars besides costs of suit to be taxed. 10

Therefore it is considered that the said plaintiff do recover against the said defendant his damages by the jurors aforesaid in form aforesaid assessed and also the sum of sixty-one dollars and twenty cents for his costs and charges by the said court before the Judge now here adjudged, of increase to the said plaintiff and with his assent which said damages, costs and charges in the whole amount to the sum of two hundred and eleven dollars and twenty cents. 20

4. By reason of said injuries caused as aforesaid by the negligence of defendant's servants, plaintiff has suffered great physical pain and will continue to suffer great physical pain for a long time yet to come, and has expended and will be compelled to expend large sums of moneys in an endeavor to be cured of his injuries and has been prevented from following his ordinary occupation, whereby he has also lost a large sum of money. 30

Plaintiff demands \$5000 damages.

Defendant, the Delaware River Ferry Company of New Jersey, a corporation of New Jersey, who has been sued in this action by the name of Delaware River Ferry Company, says that:

1. It denies the truth of the matters contained in the complaint.

10

## FIRST DEFENSE.

Whatever damages were sustained by the plaintiff were sustained on or about December 30th, 1915, on a ferry boat of the defendant and were caused and contributed to by plaintiff's negligence; he neglected to take precautions or to exercise care to guard and protect himself against such an accident and at the time and place aforesaid he was conducting himself in a careless and reckless manner and  
20 was not exercising care and was not taking precautions to avoid the accident.

## SECOND DEFENSE.

The defendant's boat was docked at the time last aforesaid in the ordinary and customary way with no unusual crashing into or collision with the piling at the forming part of the ferry dock and slip at  
30 which said boat was making a landing.

## THIRD DEFENSE.

The defendant was not guilty of any negligent act at the time of the injury complained of.

FOURTH DEFENSE.

The negligence of the plaintiff was the cause of the injury complained of.

And the said defendant in mercy, etc.

Judgment entered and signed this fifth day of October, 1916.

HOWARD CARROW,  
*Circuit Judge.*

10

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STATE OF NEW JERSEY,  
COUNTY OF CAMDEN,

I, FRANCIS F. PATTERSON, JR., clerk of the county of Camden, do hereby certify, that the foregoing is a true copy of record and proceedings with all things touching and concerning the same in the case of

20

William W. Griffee,

vs.

Action at Law.

Delaware River Ferry  
Company.

filed October 5, 1916, and recorded in the clerk's office of the county of Camden, in Book J of Circuit Court Judgments, page 633.

In Testimony whereof, I have hereunto 30  
(Seal) set my hand and affixed my official seal, at Camden, this ninth day of January, A. D. 1917.

F. F. PATTERSON, JR.,  
*Clerk.*

**TESTIMONY.**

NEW JERSEY SUPREME COURT.  
CAMDEN COUNTY CIRCUIT.

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WILLIAM WALLACE GRIFFEE, )

VS. )

DELAWARE RIVER FERRY )  
COMPANY. )

IN TORT.

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October Term, 1916.

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APPEARANCES:

30 For the plaintiff, GEORGE H. JACOBS, ESQ.  
For the defendant, THOMAS E. FRENCH, ESQ.

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Before CARROW, J., and a jury.

WILLIAM WALLACE GRIFFIEE, SWORN.

By Mr. Jacobs:

Q. Mr. Griffiee, how old are you?

A. I am thirty-eight my next birthday.

Q. Where do you reside?

A. Camden, 523 Benson Street.

Q. How long have you resided in Camden? 10

A. Why, I have been here all my life, except for about a year and a half, when I lived in Atlantic City.

Q. What line of work do you do now?

A. I drive a team at the present time.

Q. For whom?

A. For the Otto Coke Company.

Q. By whom were you employed on December 30th, last?

A. Why, the Otto Coke Company.

Q. On that day did you have occasion to go to 20 Philadelphia?

A. Yes, sir.

Q. With your team?

A. Yes, sir.

Q. To deliver a load of material for your employers?

A. Yes, sir.

Q. How did you cross the river?

A. I was crossing toward Chestnut Street.

Q. On what ferry line? 30

A. On the Chestnut Street Ferry, from Kaighns Avenue.

Q. Do you know the name of that ferry line?

A. I couldn't exactly tell you the name of the boat because I never looked at the boat; I drove the team and went on.

Q. Do you know the name of the ferry?

A. It is supposed to be the Delaware River Ferry Company.

Q. Do you know that that is one of the parts of the Reading System?

A. So I hear; I do not—

Mr. French: I object.

10 The Witness: (Continuing) That is all I know; all I know it is the Delaware River Ferry Company of the Reading system; that is all I know about it.

Q. After you drove your team on the boat, where did you leave your team with respect to the boat?

A. I left the team right on the right side with my horses' heads about even with the cabin.

Q. On a line with the cabin?

A. Yes, sir.

20 Q. Then where did you go?

A. I went inside of the boat to see Cooper.

Q. Inside of the boat? What do you mean by that?

A. Inside the cabin; I went in there.

Q. This was in the winter, wasn't it?

A. Yes, sir.

Q. Is that a usual or unusual practice among drivers?

A. They generally go in, yes.

30 Q. Is it a long ride up the river?

A. It is about ten minutes, I believe; around there.

Q. When did you come out of the cabin?

A. I had an argument with a fellow on the boat; he took me for my brother, and he said to me—

Q. I do not care about that.

A. I came out of the boat; I wasn't in there any time when I came out.

Q. What do you mean by saying you were not in there any time?

A. I think a little over five minutes; I judge about there.

Q. What did you do when you came out of the cabin?

A. I stood there with my horses, right at the head; I stood there right by the horses. 10

Q. Was there any particular reason why you came out of the cabin?

A. Why, yes; one reason was I didn't want no fight on the boat.

Q. Was there any other reason?

A. No other reason, no; no other reason at all; I go in and come out too; I have been crossing the ferry for years and I have been in and out.

Q. Just answer my questions.

20

By the Court:

Q. Which way were you going?

A. Going toward Chestnut Street, Philadelphia.

By Mr. Jacobs:

Q. Do you recall the weather that day?

A. I remember the day.

Q. What kind of a day was it?

30

A. It was a fair day.

Q. Clear or foggy?

A. Clear.

Q. Any rain or any snow?

A. No rain or nothing; it was a clear day.

Q. Did you notice the tide that day?

A. No; I didn't notice the tide.

Q. You have been across the river many times?

A. Yes; I can remember the slips was pretty even.

Q. How many years have you been crossing the river?

A. Oh, I guess over twenty years.

Q. How many years have you been crossing with teams?

A. I couldn't exactly tell you; I worked for my father and I drove teams.

10 Q. Have you any idea?

A. And I have been a huckster, you know.

Q. Five years or ten years?

A. I guess five years.

Q. Fifteen years?

A. No; I don't believe it has been that long. I worked for my father—

Q. Never mind that. Have you been crossing the river for so many years that you would be apt to notice an unusual tide?

20 A. Yes, I could tell.

Q. What would make you notice it?

A. Why, sometimes the slips are up when the water is low and other times, when the tide is high, the slips is even; that is all I know of, more even than they are at low water.

Q. In other words, on normal tides the slip and the ferry-boat are even?

A. When the tides are right they are pretty even up.

30 Q. When the tide is low which is lower, the ferry-boat or the slip?

A. Why, the slip is,—why, they come very near even after the boat gets in, they even pretty well up, except the tide punches the boat up and down.

Q. As a driver would you notice this condition?

A. At the time of the accident?

Q. No; at any time would you notice it?

A. I can tell whether it is low or high water.

Q. The day you drove on the ferry-boat at Kaighns Point did you notice any unusual condition or did you have any difficulty in getting your team on the boat?

A. No, I didn't.

Q. Where did this boat strike?

The Court: Did he say what the condition of the weather was? 10

Q. What was the condition of the weather?

A. It was a fair day.

Q. A clear day?

A. Yes.

Q. Before the boat was finally fastened in the dock what happened?

A. Before it entered this here happened, it hit the side, on the left side and went over. 20

Q. When you say the left side what do you mean?

A. The left side on going into the dock.

Q. Into Philadelphia, Chestnut Street?

A. Yes, sir. Then on the other side is another piling, but they are the dividing piling; it hit what they call the dividing piling; that is all I know to call it; it is in the centre going into the docks.

Q. Did it hit with great force?

A. It hit with pretty good force.

Q. Have you been on other boats that have hit 30 the piling?

A. I have been, many times.

Q. In the many years you have travelled?

A. Yes; many times.

Q. Were you ever on a boat that hit the piling with greater force than on this particular occasion?

A. Not much more, no. I have been on them when there have been fogs when they hit awful blows; I have been on when there have been fogs and stood at the horses' heads there, holding the horses, when they hit the docks, and everything.

Q. Have you ever been on them when they hit with less force than on this particular occasion?

A. Yes; I have been on them when they have not hardly hit, when they entered perfectly, went right  
10 in the dock.

Q. What happened to the boat after it hit the dock?

A. It went into the slip and tied up.

Q. Did it go right into the slip easily?

A. No; it went to the side, went on the right side, and it entered afterwards.

Q. Did it hit the right side?

A. Yes, sir.

Q. Did it hit both sides?

20 A. Yes, sir.

Q. After that it went in?

A. Yes, sir, and it was tied up.

Q. Tell the jury what happened to you when the boat hit the slip, that is, the left side.

A. I was standing there by my horses and just as the boat hit I fell, fell on my right elbow; and I gets  
up—

Q. When you fell which way were you lying?

A. I fell backwards right on this right elbow.

30 Q. Which way was your head?

A. Why, towards Camden.

Q. Were you dazed and stunned?

A. Yes; I was kind of scared because I was afraid the horses would step on me; I got up and started to run and fell on my face.

Q. Did the horses trample upon you?

A. They started to kick up, and the last I knowed I laid on the deck.

Q. Did you fall again?

A. Yes, sir.

Q. Where were you then?

A. In front of the horses' heads toward the gate, the centre of the boat.

Q. The second time?

A. Yes, sir.

Q. Were your horses moving?

10

A. They started to move but they stopped.

Q. Did somebody stop them or did they stop themselves?

A. I don't remember; I couldn't tell you that, because my elbow hurt me so bad.

Q. Did you see any one else thrown?

A. No, no one else that I know of.

Q. Did you look around and see?

A. I didn't look around.

Q. Were you in great pain?

20

A. Yes, sir.

Q. And suffering?

A. Yes, sir.

Q. Who spoke to you?

A. Why, Mr. Bakely, the bridgeman; he said to me, "Are you hurt, Griffiee?" I said, "Oh, yes, my elbow."

Q. Never mind what he said, but he spoke to you?

A. Yes, sir.

Q. Any of the ferry men?

30

A. No; he was the only one.

Q. Did any of them take your name and address?

A. No; none of them.

Q. Did you manage your team?

A. I drove it out to Baldwin's, yes, sir.

Q. Did you experience any trouble in driving?

A. Yes; I had my arm—

Q. I am asking whether you experienced any trouble in driving your team?

A. Oh, yes, in this way, my arm was paining me, but I kept on going.

Q. Could you handle your team with both hands or only with one hand?

A. I handled it just the same as having the lines in my hands that way (indicating), and when I came back I drove it left-handed.

10 Q. I am not asking you that.

A. Oh, going out, going to the Baldwin Locomotive Works?

Q. Yes.

A. Yes; I drove until I got to Vine Street hill and Cooper took the team up the hill.

Q. Who was Cooper?

A. A driver who was with me to go to Baldwin's.

Q. Your helper?

A. No; he was working for himself on the trip.

20 Q. When you got to Baldwin's Locomotive Works was it a part of your work to unload the team?

A. Yes, sir.

Q. Could you do it?

A. No; a man helped me.

Q. Why not?

A. Because I was not able; I was in pain.

Q. You did not help unload the team?

A. I helped some, yes.

Q. How much of it did you unload?

30 A. I couldn't tell you how much, but a fellow got in there and helped me out.

Q. Did you unload a large portion of it or a small portion?

A. I couldn't tell you exactly.

Q. When you left Baldwin's to return home did you experience any trouble in driving your team?

A. Yes; my arm kept on paining and I took my lines in my left hand as much as I could.

Q. By the time you got home did you have the use of both arms or one arm?

A. One arm.

Q. Did you turn your team in?

A. I turned it in but not into the stable; I turned it into the office.

Q. Did you report the accident?

A. Yes, sir; and they put the team away. 10

Q. Then what did you do?

A. I went right out to Dr. Moore's.

Q. What is his first name?

A. I couldn't tell you his first name.

Q. Where does he live?

A. On Haddon Avenue; I couldn't tell you the right number.

Q. What did he do?

A. He put stuff on it and bandaged it up.

Q. Did he examine it? 20

A. Yes, sir.

Q. What did he tell you?

(Objected to.)

Q. How many times did you see Dr. Moore?

A. Why, I seen him about,—I couldn't tell you exactly, but he attended to it.

Q. Of your own knowledge, how many times did you go to see him? 30

A. I guess about six or seven times; then I went from there to the hospital, you know.

Q. What hospital?

A. The West Jersey.

Q. Why did you go to the West Jersey Hospital?

A. Why, because I had no money, so I went out there.

Q. You went to the West Jersey Hospital as a charity patient?

A. Yes, sir; I had no money and I went there.

Q. Prior to the date of the accident were you a right-hand or left-hand man?

A. I was a right-hand man.

Q. You used your right hand?

A. All my life, yes, sir.

Q. Since the accident what are you?

10 A. Why, I work with my left.

Q. You are a left-hand man?

A. Yes, sir.

Q. Prior to the accident was your right hand covered with corns?

A. Yes; I had them before that.

Q. Was your left hand soft at that time?

A. Yes, sir.

Q. And without callous and corns?

A. Yes, sir.

20 Q. Since the accident what is the condition of your right hand?

A. There ain't a corn on it, it is the left.

Q. Since the accident is your right hand soft?

A. Yes, sir.

Q. Is your left hand covered with corns?

A. Yes, sir.

Mr. Jacobs: I would like the plaintiff to show his hands to the jury, if your Honor please.

30

(Witness complied.)

Q. Since the accident, Mr. Griffie, have you experienced any loss in the use of your right hand and arm?

A. Yes, sir; I have not got the same strength I had before the accident.

Q. What do you mean by that?

A. I cannot use it the same as I did before.

Q. Can you punch as well as before?

A. No, sir.

Q. Can you grip as well?

A. No, sir.

Q. Are you solely dependent for your living on manual labor or hard labor?

A. Yes, sir.

Q. As a team driver?

A. No; I have been working in the shipyard and I worked in different places.

Q. Is lifting an essential part of your work?

A. Lifting,—yes, sir.

Cross-examination.

By Mr. French:

Q. You say this accident happened on December 20 30th?

A. Yes, sir.

Q. 1915?

A. Yes, sir.

Q. Was anybody else on the boat?

A. Why, there was Cooper and a gentleman who works for—I cannot recall his name, but he works for the noodle people, Krumm & Son.

Q. Were they the only people on the boat?

A. No; there was other people, but the boat 30 wasn't especially crowded, not so very many on there.

Q. How many,—four or five?

A. I couldn't tell you.

By the Court:

Q. What time of the day was it?

A. Why, I judge from about between two and three.

Q. In the afternoon?

A. Yes, sir.

By Mr. French:

10

Q. Was it a train boat?

A. No, sir.

Q. Then when the boat struck the piling you were standing facing your team, were you, with your back to Philadelphia?

A. No, sir; my back was toward the Camden side.

Q. Then you were facing —

A. Going over.

Q. You were facing the slip?

20 A. Yes, sir.

Q. The dock as you come in?

A. Yes, sir.

Q. That is not what you testified to, so you were mistaken the first time? You said you had your back toward Philadelphia before.

A. No, I said I was standing in front of my horses.

Q. You were facing Philadelphia?

A. Yes, sir; that is right.

30 Q. I guess that is right. Had you hold of your horses?

A. No, I was just standing by them.

Q. Right alongside of them?

A. Yes, sir.

Q. And you fell backwards?

A. Fell sideways like.

Q. On the level floor of the boat?

A. Right between the floor and the stringer.

Q. You fell between the floor and the stringer?

A. Yes, sir.

By the Court:

Q. What caused you to fall?

A. Why, the jar of the boat when it hit the slip.

Q. What did it strike? One time you said it was the slip and another time the piling.

A. No; I said it hit the piling on the side, the 10 dividing piling.

Q. The piling at the end of the dock?

A. Yes, sir. There is two places where the boat goes in; right in the centre there is piling, and it hit the side and glanced over toward the other side, the right side, and that is the time I fell.

By Mr. French:

Q. Now, there are two slips, two docks at Chest- 20 nut Street, aren't there?

A. Yes, sir.

Q. Which dock was this boat going into,—the north one or the south one?

A. The north one, as I remember.

Q. Then it struck the piling that divides the two docks, did it?

A. It struck the south side of that dock and shifted over toward the north side, and then went in and was tied up. 30

Q. Which side of the team were you on?

A. On the right-hand side of the team.

Q. Between the team and the cabin?

A. Between the team and the cabin, yes, sir.

Q. You say you were a charitable patient, but you were engaged in the business of the Otto Coke Company?

A. Yes, sir.

Q. And they paid your doctor's bills and hospital expenses, didn't they, for a time?

A. They paid the liability, yes, sir.

Q. You got all of that?

A. Yes, sir.

Q. That is to say, they paid you all that was coming to you under the New Jersey Workmen's Compensation Act?

10 A. Yes, sir.

Q. And whatever expenses there were at the hospital they paid ?

A. I couldn't tell you that.

Q. You did not pay them?

A. No; I didn't pay them, no.

By the Court:

20 Q. Then you have been put to no expense,—is that the idea?

A. No, no expense at all; what I paid out to Dr. Moore the company sent to me.

Q. You are not claiming for any medical expenses, are you?

Mr. Jacobs: No, sir.

The Court: You are claiming for the disability?

30 Mr. Jacobs: Yes, sir; and pain and suffering incident thereto.

By Mr. French:

Q. Now, you spoke to Samuel Bakely, the bridge-man, did you not?

A. Yes, sir.

Q. He asked if you were hurt?

A. Yes, sir.

Q. Did you not in answer to that say you did not think it would amount to anything?

A. No; I didn't say that.

Q. You did not say that?

A. Oh, no; it did hurt me, but I took the blankets off the horses and went away.

By the Court:

10

Q. You said it was a clear day. What did you mean by that?

A. Why, a clear day, the same as today, only it was cooler, but the sun was shining.

Q. What with reference to the wind?

A. There wasn't no wind at all; there was no wind at all that day.

Q. What about the action of the water?

A. As far as I know the water was smooth, because when the wind is heavy the ——— 20

Q. Did you observe the water so as to be able to say whether it was smooth or not?

A. No, I didn't pay no attention to that, because I entered the boat and I never paid no attention to the water at all; I just stood there by the team after I came out of the cabin; I had words with a fellow in the boat there; he took me for my twin brother, you know, and I got out before there was any trouble. 30

By Mr. Jacobs:

Q. How long were you away from your employment?

A. Why, from the 30th of December until about the 3rd or 4th of March.

Q. And how much were you paid a week when you were working?

A. \$2.25 a day.

Q. What did you average per week?

A. \$13.50, but when you work Sundays,—you can work Sundays if you wish to.

Q. How much were you paid by your employers as compensation under the Employers' Liability Act?

10 A. I drew off of them \$37.

Q. What did that represent?

A. That was supposed to pay for the time that the doctor —

Q. Answer my question. What period of time did that represent?

A. I couldn't tell you.

Q. In other words, how many weeks at so much per week did that represent?

20 A. I couldn't tell you unless I added it up and counted it.

Q. Do you know that as a matter of law you were entitled to \$5 a week as minimum compensation? Do you know that or not?

A. No, I don't.

The Court: Did he say how much his wages were?

Mr. Jacobs: He said they averaged \$13.50 a week,  
30 \$2.25 a day.

---

CHARLES COOPER, SWORN.

By Mr. Jacobs:

Q. What is your first name?

A. Charles.

Q. By whom are you employed at this time?

A. Otto Coke Company.

Q. At this time?

A. I am chauffeur for the F. F. Patterson.

Q. Is he the county clerk of Camden County?

A. Yes, sir.

Q. What do you do for him?

A. Chauffeur.

Q. Where do you reside?

A. Atlantic City.

10

Q. At this time?

A. Yes, sir.

Q. By whom were you employed on December 30th, last?

A. Camden Coke Company.

Q. Did you have a team of your own or were you working on someone else's team?

A. I had a team of my own as driver; it was their team and I was driving for them; it was not my team personally, but I was driving it for them.

20

Q. Did you have occasion on that day to go to the city of Philadelphia from the city of Camden?

A. Yes, sir.

Q. And where did you take the boat?

A. At Kaighns Avenue ferry.

Q. About what time of the day?

A. I judge, as near as I can relate, between two and three o' clock.

Q. Do you know who is the owner of the Kaighns Avenue Ferry?

30

Mr. French: We will admit that it is the Delaware River Ferry Company.

Q. When you drove the team on the boat did you experience any difficulty in going on?

A. No, sir; the same as I always have done on a clear day; the tide seemed to be smooth, as near as I can remember; it was low tide then.

Q. If the tide had been unusual would you have experienced any difficulty in going on?

A. Yes, sir.

Q. What would have been your difficulty?

A. When the tide is awfully low we always generally get stuck, when it is low tide.

10 Q. When the tide is extra high do you get stuck?

A. No, we get off easy.

Q. Then isn't this the situation: If there is a low tide you have difficulty in going on and if it is high tide you have difficulty in trying to get off?

A. Yes; but it is more trouble getting off than getting on.

Q. Did you have either of those difficulties on that day?

A. No, sir.

20 Q. Where was your team with respect to Griffee's team?

A. In the rear of Griffee's team.

Q. That is, on the right-hand side of the boat?

A. Yes, sir.

Q. Did you leave your team?

A. Yes, sir.

Q. Where did you go?

A. In the cabin.

Q. Did you see other team drivers in there?

30 A. About all the team drivers were there, were in the cabin; when it is cold we blanket the horses and go inside.

Q. That is the usual practice?

A. Yes, sir.

By the Court:

Q. You go inside to get warm?

A. Yes, sir; because it is windy going across.

By Mr. Jacobs:

Q. Now, Mr. Cooper, what was the weather on that day?

A. As far as I can relate it was a fair day, only 10 cool, awful cool.

Q. What do you call a fair day?

A. Well, the sun was shining bright.

Q. Fair like today?

A. Yes, only a little cooler.

Q. Was there any fog?

A. No, sir.

Q. Any rain?

A. No, sir.

Q. Or snow?

20

A. No, sir.

By the Court:

Q. Was there any wind?

A. No, sir.

Q. How was the water,—was it smooth?

A. Yes, sir; it seemed to be smooth.

Q. You mean the water in the river was smooth?

A. Yes, sir.

30

By Mr. Jacobs:

Q. Tell the jury just what happened as the boat entered the city of Philadelphia.

A. Why, just when it was going in Mr. Griffee

came out of the cabin; he was outside the cabin, standing in front of his horses, and when the boat hit the left-hand side of the slip of the piling, going in, that knocked him over on his right side.

Q. Did the boat strike with violence?

A. Yes, sir; with awful force.

Q. It was with great violence?

A. Yes, sir.

Q. How many years have you been crossing the  
10 ferry?

A. About,—well, you mean as a driver?

Q. Yes, or either way.

A. Oh, that is about four years steady, most every day.

Q. Nearly every day?

A. Yes, sir.

Q. As a result of your observation in four years' travel across the river—

20 The Court: Strike out the word "observation."  
Ask him what he saw.

Q. As a result of what you saw that day was the force of the blow struck by the boat unusual or usual?

A. It was unusual.

Q. Greater than anything you had ever seen before?

A. No; I have been on there when we have struck  
30 and smashed one side of it; it is not greater than I have seen, but there was awful force in the blow.

Q. Was this an usual or unusual blow?

A. Whether it was what?

Q. I asked whether it was usual or unusual?

A. It was unusual; it was a hard blow.

Q. Did it make you lurch?

A. Yes, sir.

Q. What was there to keep you from falling?

A. The side of the post between—the post that holds you up, you know.

Q. The cabin?

A. The cabin posts, yes, sir.

Q. If that had not been there would you have fallen?

A. I might have fell, yes, sir.

Q. Did you see any one thrown?

A. Yes, sir.

10

Q. Whom did you see?

A. I seen some lady who partly fell, but she caught herself.

Q. Did you see any children thrown?

A. She had a baby coach with her.

Q. Did you know the lady?

A. No, sir.

Q. Ever see her before?

A. No, sir.

Q. Have you ever seen her since?

20

A. No, sir.

Q. Did you know any other passengers on the boat outside of Mr. Griffee?

A. Well, there was some drivers I knew by sight but not by name; lots of them I knew by sight but not by name; we travelled across every day and I seen them.

Q. Now, which side of the slip did the boat strike?

A. Left-hand side.

Q. And was it the piling at the end or the side of 30 the slip that it struck?

A. As near as I can remember it was the piling at the end.

Q. Then what happened to the boat?

A. She hit the left-hand side and that naturally forced her over on the right-hand side.

Q. Did she strike the right-hand side?

A. Yes, sir; but not with as hard force.

Q. Did it seem to strike as hard on the right-hand side as it did on the left?

A. No, sir.

Q. Did the boat go into the slip then?

A. Yes, sir.

Q. Did any of the crew take any names or addresses?

10 A. Not as I seen them, they didn't.

Q. Now, where were you to deliver your wagon-load of material?

A. At Baldwin's Locomotive Works.

Q. When you arrived at Baldwin's Locomotive Works to deliver your material was Mr. Griffee there?

A. Well, we got there about the same time.

Q. He was there?

A. Well, we were going together but he was ahead  
20 of me.

Q. Was it part of your work to unload your team when you arrived there?

A. Yes, sir; we were supposed to unload each wagon.

Q. Did you unload yours?

A. I did.

Q. Did Mr. Griffee unload his?

A. He had help; a man from the plant helped  
him.

30 Q. Why did he need help?

A. Because he couldn't shovel with his hand, with his right hand; a fellow came outside and got in the wagon and throwed it off for him; he stood around and pushed it off with one hand.

Q. Did Mr. Griffee seem to be in great pain?

A. He did, yes, sir.

Q. How long did you work for the Otto Coke Company?

A. Well, all winter.

Q. I mean after the accident?

A. That happened in December,—until March.

Q. During that period of time was Mr. Griffec working for the company?

A. He didn't come in the whole time I was there.

Q. Did you see him from time to time?

A. I saw him that next following pay day; he came 10  
in and got his money, but he had his arm in a band-  
age, and then I didn't see him any more until yester-  
day.

Cross-examination.

By Mr. French:

Q. You have lived in Camden for quite a while?

A. Yes, sir. 20

Q. Did you ever cross the other ferry, the Pennsyl-  
vania Railroad ferry?

A. Yes, sir, I have.

Q. And frequently crossed from Kaighns Avenue?

A. Traveled from there quite often, yes, sir.

Q. It is not unusual for the boats to strike the pil-  
ing as they enter the dock?

A. Oh, yes it is, quite often.

Q. It is usual for them to strike, isn't it; they  
usually strike? 30

A. Yes, sir.

Q. With more or less force?

A. Oh, yes, sir; sure.

Q. When you say this was unusual you mean that  
it don't strike that hard every time?

A. That is it, yes, sir.

- Q. Were there many people on the boat?  
A. No, sir.
- Q. There are seats in this cabin?  
A. Yes, sir.
- Q. Where were you?  
A. In the cabin.
- Q. No. Where were you when the boat struck?  
A. Over on the other side just getting ready,—I came out of the cabin to get on my team and was  
10 taking the blankets off my horses, but I had not got to my team; I was in front of —
- Q. Between his team and the end of the boat?  
A. Yes, sir.
- Q. You say you lurched some when the boat struck?  
A. Yes, sir, I did.
- Q. And caught the post?  
A. Yes, sir.
- Q. If you had remained in your seat in the cabin  
20 you would not have lurched any, would you?  
A. I might; I don't know.
- Q. You could not have fallen down if you had been sitting down?  
A. I might have, because I was sitting on the left-hand side of the cabin; I might have fell frontwards; she might have thrown me that way.
- Q. Were there any seats in the cabin?  
A. Lots of them, yes, sir.
- Q. This woman that you said lurched some,—  
30 where was she, out in front of the cabin?  
A. Yes, sir.
- Q. The slip that you speak of moves up and down with the tide, does it not?  
A. Yes, sir.
- Q. The slip that the boat is tied to?  
A. Yes, sir.

Q. And when the tide is low that slip goes down with the tide and the boat meets it level and you have to go up grade to get on the level ground?

A. Yes, sir.

Q. And when the tide is very high you may have to go up grade to get on the boat?

A. Yes, sir.

Q. But the slip itself and the boat are usually ——

A. Nearly together.

Q. Flush with one another?

10

A. Yes, sir.

Q. How long had Mr. Griffee been out there before you? Did he go out ahead of you or had he been there some time?

A. He had been there a few minutes; he went out ahead of me because he got in an argument and went out.

Q. He went out before you, did he?

A. Yes, sir.

20

By the Court:

Q. Did you say it was a customary thing for the boat to go in the dock that way?

A. Well, sometimes, yes, sir; I have saw that happen, when they would be going a little above and slack down and start ahead and hit the piling quite often, but not with so much force as at that present time, that day; it is a common thing for them to hit the piling.

30

Q. Without regard to weather conditions?

A. Yes, sir.

RICHARD P. LUEY, SWORN.

By Mr. Jacobs:

Q. Where do you reside?

A. 1250 West Hazard Street, Philadelphia.

Q. By whom are you employed?

A. A. C. Krumm & Son.

10 Q. In the course of your employment have you ever had occasion to pass from Philadelphia to Camden and from Camden to Philadelphia?

A. Yes, sir; twice a day.

Q. How many days a week?

A. Four.

Q. How many years have you been doing that?

A. I think it is about seven.

Q. Do you travel on the boats of the defendant as well as on boats of other companies?

20 A. Yes, sir.

Q. Do you recall the day in question? Were you on the boat that Mr. Griffee and Mr. Cooper were on?

A. I couldn't tell you the date; I don't remember the date.

Q. Do you recall being on such a boat?

A. I recall being on the boat, yes, sir.

Q. Did you board that boat at Kaighns Point, Camden?

A. I did.

30 Q. What was your observation as you passed on the boat?

A. Well, I didn't pay any attention.

Q. Did you have any difficulty in driving on?

A. None whatever.

Q. If you had had would you have noticed it?

A. Yes, sir.

Q. If there had been an unusual tide would that have given you difficulty?

A. I very seldom have any difficulty myself and I don't take notice of that.

Q. But you do have difficulty at times in boarding boats?

A. No; I never knew of any.

Q. As the boat went up the river did you leave your team?

A. Yes, sir. 10

Q. Where did you go?

A. In the cabin.

Q. Is that the usual practice among drivers?

A. Yes, sir.

Q. Before the boat arrived at Philadelphia did you leave the cabin?

A. I did; I followed Griffiee out, Mr. Griffiee.

Q. And where were you standing with respect to Mr. Griffiee?

A. I was in the act of taking my blanket off of the horse. 20

Q. What happened at about the time you were taking the blanket off your horse?

A. The boat went into the piling very hard, harder than I had noticed it for a long time.

Q. Where was your team on the boat with respect to Griffiee's team?

A. On the left-hand side.

Q. You were on the front?

A. I was on the front of the boat; I ain't sure whether there was anybody in front of me, but I think there was an automobile. 30

Q. From your position could you see where the boat struck the piling?

A. Well, I guess I could have seen but I didn't pay any attention to it myself.

Q. Did the shock of the collision between the piling and the boat throw you?

A. It didn't throw me down but it shook me around and shook the horses around; there was an awful commotion among the teams on there.

Q. Did you see it strike?

A. No; I say there was an awful commotion among the horses.

Q. Did your horses lurch?

10 A. Yes, sir.

Q. Did other horses lurch?

A. Yes, sir.

Q. Did you fall against anything?

A. No, sir.

Q. Now, in the course of your travels across the river, back and forth, have you been on boats frequently when they have struck the pilings or wharves?

A. I have, yes, sir.

20 Q. Is it the usual practice?

A. It is the usual practice, it seems to me, to hit the piling, but I never seen them hit that hard.

Q. Was that the most severe blow you ever saw?

A. I wouldn't say the most severe.

Q. Have you seen more severe?

A. Yes, sir.

Q. What happened then?

A. I don't know.

Q. Was there any wreckage?

30 A. Not that I know of.

By the Court:

Q. Would that be in clear weather?

A. Why, it seems to happen in any kind of weather.

Q. Did you notice the weather on this day?

A. No, sir, I didn't.

Q. Did you notice the water, whether it was smooth or not?

A. No, sir, I didn't; I don't recall it.

By Mr. Jacobs:

Q. Did you see anyone else lurch?

A. Yes, sir; most all of the horses there. 10

Q. About how many horses were on that boat? Have you any idea?

A. No; I have no idea. I know there was two Otto Coke wagons and myself, and I think there was an automobile in front of me, although that I don't know.

Q. Did you see any passengers lurch?

A. No; I couldn't say I did, because I was in the act of taking the blanket off of my horse.

Q. As an actual fact were you in such a position on the boat that you could not see the passengers? 20

A. I was.

Q. In other words, you were down the centre of the driveway?

A. Well, I was right near the end of the centre of the boat; I don't know what you call that.

Q. Did you see Mr. Griffie fall?

A. I did.

Q. How many times did you see him fall?

A. I only seen him fall once. 30

Q. What was his position when he fell with respect to his team?

A. Well, he was just ahead of his horses when the boat hit the piling.

Q. Was he in danger when he fell?

A. Well, I didn't think so at the time myself.

Q. Was there any danger of his team walking over him?

A. Yes; the horses started up.

Q. Then he was in danger?

A. I think so.

No cross-examination.

---

10

Mr. Jacobs: If the Court please, when the list was called I permitted Dr. Moore to return home, thinking he would not be needed until tomorrow. I have phoned and expect him here any moment. Will counsel consent to put in their case and allow me to put Dr. Moore on the stand afterward?

Mr. French: I will make a motion for non-suit on two or three grounds. First, the testimony is  
20 that this accident happened on the 30th of December, while the plaintiff in his complaint alleges that it happened on the first of December. So he has not proved the accident that he complains about. The first clause of the complaint is that "Defendant on December 1st, 1915, was and still is a corporation, and was also a common carrier of passengers by ferry-boat upon the Delaware River between Camden, New Jersey, and Philadelphia, Pennsylvania." And  
30 the second clause is that "On said day at Camden, plaintiff became a passenger of defendant upon a certain ferry-boat owned and operated by defendant on the river Delaware aforesaid, and entered upon and went aboard said ferry-boat and was entitled safely to be carried and transported by the defendant by said ferry-boat from Camden, New Jersey, to Philadelphia, Pennsylvania." The next ground

is that the plaintiff is bound to show some negligence on the part of the defendant, some duty to the plaintiff that he has neglected. This boat had a cabin with seats in which passengers were perfectly safe. His own case shows that it is customary and usual for the boats to strike the piling as they enter the dock. All of us who travel know they do and if we get off of our seats, go out of the cabin and stand on the front of the boat, we are apt to lurch around when the boat strikes the piling coming into the dock. 10  
The ferry company cannot guard against that; that is the usual way of docking a boat and the only way it can be done. All the witnesses say there was nothing unusual about it, that they noticed even more severe bumps than there was this day. So the plaintiff, if he had remained seated on his team outside in the cold, would not have suffered any injury, or if he saw fit to go into the cabin he might have stayed in the cabin or remained in his seat in the cabin until the boat was docked; then there would not have been any injury. So, first, there was no negligence that has been shown here in the plaintiff's case on the part of the defendant, and, next, the accident was caused entirely by the negligence or chance that the plaintiff took in leaving his seat and going out there. He could have stayed on his wagon, when he knew the boat would be apt to strike the piling when it entered the dock. 20

The Court: What have you to say as to the first point? Your complaint alleges that the cause of action arose on the first day of December, but there appears to be a variance between the complaint and the evidence. 30

Mr. Jacobs: If your Honor please, this particular pleading was drawn by the law firm of which I was a member at that time, and this mistake in date is a surprise to me.

The Court: The Court will allow you to amend the complaint by alleging that the date of the accident was December 30th.

10 Mr. Jacobs: Now, with respect to the second part of the motion, I respectfully refer to the case of New Jersey Express Company vs. Nichols, 33d N. J. L., page 438, where the Court of Errors and Appeals held that the plaintiff in an action for injuries occasioned by negligence is not bound to prove affirmatively as part of his case that the injury he complains of was not occasioned or contributed to by any negligence on his part.

20 The Court: That is true enough, but if it appears in the case, upon his own showing, that he was guilty of contributory negligence he cannot recover. Discuss the second ground of the defendant's motion. He takes the position that you have shown no facts from which the jury can infer negligence.

Mr. Jacobs: The general rule is that every person has a right to presume that every other person will perform his duty and obey the law, and in the absence of reasonable grounds to think otherwise, it is not negligence to assume that he is not exposed to danger which can come to him only from violation of law or duty to such other person.

30

The Court: You must get down to the testimony here. What duty did this ferry company owe the

plaintiff with respect to approaching the Philadelphia dock?

Mr. Jacobs: This ferry company owed to the plaintiff the duty of delivering him safely there; that was their duty and he had a right to presume that they would do it. If we accept Mr. French's contention, that Mr. Griffee was injured because he was standing, then we are placing the whole community in the position that if they do not have a seat on a ferry-boat they must anticipate being thrown. 10

The Court: But did the ferry company insure his safety?

Mr. Jacobs: They were bound to use reasonable care and diligence, and we have shown that there was no unusual tide and no unusual weather conditions; that there was nothing to obscure the vision of the pilot and nothing to prevent the correct maneuvering of the boat into that slip. 20

The Court: The motion for non-suit is denied. You may renew your motion at the conclusion of the whole case.

(Exception noted for defendant.)

Mr. Jacobs: Dr. Moore is now here and I will call him. 30

DR. FRANK F. MOORE, SWORN.

By Mr. Jacobs:

Q. Where do you reside?

A. 826 Haddon Avenue, Camden.

Q. Are you a practicing physician?

A. Yes, sir.

10 Q. What is the nature of your practice,—medical or surgical?

A. Well, I do a general practice and I do surgical work at the Homeopathic Hospital; also in private practice.

Q. How long have you been practicing?

A. Five years and a half.

Q. On or about December 30th, do you recall examining one William Wallace Griffiee?

A. Yes, sir.

20 Q. Had you been his family physician prior to that date?

A. I had attended his mother and sister; I do not recall attending him previously.

Q. Did he come under your notice while attending the other members of his family?

A. I had met him, yes.

Q. What was the condition of his health when you met him on those occasions?

A. As far as I could judge he always had pretty  
30 good health.

Q. About how much did he weigh at that time?

A. I should judge about 150 pounds, a pretty stocky man.

Q. Could you judge his weight if he stood up before you at this time?

A. I could approximate it.

(Plaintiff was requested to stand up and complied.)

Q. What would you say his weight is now?

A. I should say about 140 pounds now.

Q. When he came to see you on or about December 30th, what, upon examination, did you find?

A. He came to me about December 31st, I think; he had an injury to the right elbow, which he claimed to have sustained ———

10

By the Court:

Q. When was that?

A. I think it was the 31st.

Q. Of what month?

A. December, 1915. He claimed to have sustained this injury on a ferry-boat. Of course, the details I didn't go into deeply. He had a very suspicious looking elbow; what I mean by suspicious is that it looked to me though there was a fracture; there was swelling and great pain on motion; there was no crepitus, by which we mean the noise which two ends of a broken bone will make if they are rubbed together. I treated the elbow the same as though it was broken at the time.

20

Q. How many times did you examine Mr. Griffee?

A. He came to me from the 31st of December, or 30th,—I am not sure of that, either the 30th or 31st; he came for about two weeks to my office.

30

Q. How often did he come?

A. He came there every day for about a week and then every second day.

Q. Was his arm greatly swollen?

A. The arm, especially in the region of the olecranon, was considerably swollen; the olecranon is the point of the elbow, you might say.

By the Court:

Q. I believe you said the arm was not broken?

A. I said I treated it expecting it was broken.

Q. What is the fact?

A. The arm was not broken; I had it X-rayed.

Q. What was the matter with it?

A. What was the matter with the arm?

Q. Yes.

10 A. There was a condition there of sprain, synovitis, a swelling of the joint, which persisted for several weeks, even after I stopped treating him. I also thought at that time, and I think now, that there was some slight injury to the bone.

By Mr. Jacobs:

Q. You spoke, Doctor, of there being some possible slight injury to the bone. What would be the nature  
20 of that?

A. The nature of the injury would result in an injury to the periosteum, the covering of the bone, the lining of the bone, the outer lining.

By the Court:

Q. Wouldn't you discover that by the use of the X-ray?

30 A. No, sir, not necessarily; we might if the condition was extensive; then it might be determined by a very good X-ray plate.

By Mr. Jacobs:

Q. What period of time would it take for this condition to become manifest?

A. Which condition do you mean?

Q. This injury to the bone which would produce permanent injury?

A. That would depend on the extent of the injury. I do not think there was enough injury to the bone to result in any permanent disability of the bone. I think the periosteum was injured which for a while interfered with the management of it; there was no necrosis or rotting of the bone; if that had been extensive there probably would have been some rotting of the bone, some actual necrosis in the bone. 10

Q. Was the main injury centered at the fork of the arm or point of the elbow?

A. It centered right at the tip of the elbow.

Q. Is that where there is a nerve called the ulnar, the crazy nerve or crazy bone?

A. Why, yes and no; the so-called crazy bone is the inner side of that tip.

Q. And is a slight blow on the arm of a person at that point usually felt over the entire body? 20

A. If it strikes that nerve sometimes the tingle will be felt all over the body.

Q. A slight jar will do that?

A. Yes, sir.

Q. Will a heavy jar make it painful?

A. A heavy jar will make it painful, yes, sir.

Q. Will that produce in a person great pain and suffering?

A. An injury of the kind that Mr. Griffec sustained is more or less painful, yes, sir. 30

Q. And would that painfulness continue for a long period of time?

A. That is a question that cannot be answered; we can only approximate on that; in some cases, if the nerve was injured, it might last for years; if the nerve was not seriously injured it might last only days or weeks.

Q. Would there be any physical indication of it to an observer, that is, the effect it was having on that nerve?

A. Not unless the nerve was permanently injured, when there might be some atrophy and loss of function of the part.

Q. If a person suffered an injury to such a nerve the pain would only be known to the sufferer, would it not?

10 A. A slight injury to that nerve might cause traumatic neuritis; traumatic neuritis would not necessarily show any external manifestations, I mean, any objective signs; the suffering would be entirely by the patient; we could not determine accurately whether there was any pain there or not, only to a certain extent.

Q. As an actual fact, Doctor, a person might be suffering greatly and a physician might not know anything of it,—is that true?

20 A. That is my opinion. I believe that a person can sometimes—using the common vernacular—pull the wool over a doctor's eyes regarding pain; I don't believe we can always determine the presence of pain.

Q. Do you know from your examination of Mr. Griffee's injuries whether they were painful enough to keep him from sleeping at nights?

The Court: How could he tell that? He could  
30 simply tell from what the patient told him.

(Question withdrawn.)

Cross-examination.

By Mr. French:

Q. Doctor, there are ways of finding out whether a patient is malingering, are there not?

A. Oh, yes, in some cases.

Q. For a man of Mr. Griffee's height 140 pounds would be about his normal weight, wouldn't it?

A. Yes, sir.

10

Q. An X-ray plate would show these injuries, no matter how extensive they were, if properly taken, would it not?

A. No, sir.

Q. Are you sure of that?

A. Yes, sir.

---

Mr. Jacobs: If the Court please, I would like to offer in evidence a copy of the Philadelphia Evening Bulletin, under date of December 30th, 1915, on the 4th page whereof and at the foot of the first column, under the head of "Weather," we have the following report of the United States Weather Bureau, showing that for the city of Philadelphia the temperature at 8 A. M. was 30; the latest temperature taken was 30; the rain was .46; the wind northerly and the velocity Lt., which I believe means "light," and the weather was clear.

30

Mr. French: I do not object to that, but I do not think that is the way to prove weather conditions.

(Said paper marked Exhibit P1.)

PLAINTIFF RESTS.

## THE CASE FOR THE DEFENDANT.

JOHN E. PHILLIPS, SWORN.

By Mr. French:

Q. Captain, you are in the employ of the Delaware River Ferry Company, New Jersey?

10 A. Yes, sir.

Q. And were you on December 30th, last?

A. Yes, sir.

Q. What did you do?

A. Steered the ferry-boat Delaware.

Q. You were in charge of the boat, captain of the boat?

A. Yes, sir.

Q. And pilot?

A. Yes, sir.

20 Q. Has your attention been called to an accident that happened on December 30th, about 2.45 P. M.?

A. Yes, sir.

Q. Shortly after that day?

A. I think it was a couple of days afterwards, or three days.

Q. It was shortly after that?

A. Yes, sir.

Q. And as a result of that did you undertake to recollect what happened that day?

30 A. Yes, sir.

Q. Can you tell what happened on your trip from Kaighns Point to Philadelphia between two and three o'clock in the afternoon of that day?

A. Yes, sir.

Q. Just state what sort of trips you had.

A. I left Camden at 2.30 bound for Philadelphia,

the tide was low, dead low water; approached the upper dock very slowly, the tide was low; I got within about from thirty to twenty feet—I don't know exactly, I couldn't tell out of the pilot house—of what some people call the cribbing or piling, but it is the boards that goes up and down on each side; I had entered my corners of the dock and I was about thirty feet from the slip, and she was going up tide, she goes up tide, you know, and she started lunging in this side (indicating). Well, every time she hits this side there is about a foot on this side, and she worked along up, I was working her ahead under one bell; I stopped backing her and worked her up; so she goes on lunging on this side, starboard side, and there was only twelve inches clearance there, before she finally goes right up and tied to the slip. 10

Q. Was there or was there not any unusual bump of the boat against the dock or afterwards in going into Chestnut Street wharf?

A. No, sir. 20

Q. If there had been would you know?

A. I think I ought to know.

Q. I mean would you know?

A. I would know it, yes, sir.

Q. Can you operate a boat and get it in the slip without coming in contact with the piling?

A. You cannot do it; it can't be done.

Q. What is the usual manner of docking those boats, so far as their striking the piling is concerned? 30

A. Well, of course, there is times you might rub against the outer corner, the tide might fool you, but you can't get in without coming against, in contact with these boards, this cribbing, and that is what this was.

Q. Does the force with which you strike the piling depend on the stage of the tide?

A. Well, it might, yes, sir.

Q. If you were not going very fast it wouldn't strike very hard?

A. I was not going very fast; I was going very slow, because I take very close caution when the tide is low.

Q. What would be the effect on the slip if you went in there at good speed?

A. It would knock it up.

10

Cross-examination.

By Mr. Jacobs:

Q. You are an employee of the ferry company?

A. Yes, sir.

Q. You said that this particular accident came to your notice some days later. How many days later?

20 A. I couldn't exactly say, maybe a couple of, maybe three. Mr. Miller called me down and asked me about it.

By the Court:

Q. I did not get your official position with the company. Are you the captain of this boat?

A. Yes, sir.

Q. You are the pilot?

A. Yes, sir.

30 Q. You were up in the pilot house and steered the boat?

A. Yes, sir; I have charge of her in general.

Q. And you say you did not bump into the corner of that wharf?

A. Not in the corners, no, sir; I had entered by the corners, and got within about thirty feet of the slip

that goes up and down, and by working her ahead,— I had stopped backing her; sometimes we give two bells to hold her and sometimes one; I don't know whether I gave her two or not, but anyhow at low tide I take my time; she is a big, heavy boat and you have to go very cautious in the dock when the tide is low or there is a changing tide; we go in at cross tides, you know. I was going in very carefully, and after I had entered by the corners then comes the planking, the cribbing, which goes up for 10 about thirty feet, and in working her up there she will lunge against one side or the other, but where she lunges there is not over twelve inches, over to the other side.

By Mr. Jacobs:

Q. Do you keep a record of the manner in which your boat enters and leaves the various slips?

A. No, sir.

20

By the Court:

Q. What is the usual way of entering the slips,— to enter without bumping against the piling? Is not or is that the usual way, Captain?

A. To bump up against the piling?

Q. Yes.

A. No, sir; not at all times.

Q. I say, what is the usual way of entering a slip? 30

A. To go in straight.

Q. Without striking either side?

A. Yes, sir, without striking the piling, swinging her in straight.

By Mr. Jacobs:

Q. You say, Captain, that you keep no record of the manner in which your boat enters a slip on different trips?

A. No, sir.

Q. What particularly fastened in your mind the manner in which this particular boat on this particular trip entered the Chestnut Street slip, Philadelphia?

A. I knowed exactly as soon as Mr. Miller called my attention to it.

Q. What was it that particularly fastened in your mind this boat and this trip of all the trips you made that day or subsequent days or preceding days?

A. Well, I didn't particularly keep any account of this trip or other trips, of course.

Q. Is it not true that you do not know that there was any difference between the manner in which this boat entered the slip at that hour, the preceding hour or six hours afterwards?

A. Well, I know this trip, that it was called to my attention.

Q. Tell the jury what it was on this particular trip that identified it and made it stand out over all the other trips when your attention was called to it some days later.

A. Because it was low water.

Q. How long does low water last?

A. About a trip, or change in tide.

Q. What time was this trip?

By the Court:

Q. Was the water smooth?

A. Yes, sir; it was a nice day.

Q. No wind?

A. Oh, I don't know; there wasn't any great deal of wind, I guess.

By Mr. Jacobs:

Q. Do you know what hour it was low water that day, that particular day?

A. It was low water at half-past two; of course, the paper don't give the true time of the change in tide; sometimes there is a half hour and an hour's 10  
difference in the changing of the tides.

Q. Was there any distinction between the low water of that day and the following day that made it possible for you to distinguish this particular trip?

A. I don't know that there was.

Q. There was not?

A. I don't know that there was.

Q. You say the boat docked very slowly on this particular trip? 20

A. She went in very slowly, yes.

Q. What fact establishes that in your memory?

A. Because it was low tide and I was docking her carefully.

Q. The following day was it low tide?

A. Yes; about three o'clock it was low tide.

Q. Did you dock carefully the following day?

A. Yes, sir.

Q. More carefully than the day before?

A. No. 30

Q. Was there any difference in the degree of care?

A. I don't know that there was; when there is a change in tide we work carefully; we have got to be careful on high water or low water.

Q. Then your testimony is not from any set of records, is it?

A. No.

By the Court:

Q. How long have you been running this boat?

A. I have been running this boat two years last June; it is a new boat. I have been on the ferry for forty-one years; it has been very nearly forty-three; I have had charge of a boat about forty-one.

By Mr. Jacobs:

10

Q. Are there not many times when the boat goes into the slip without apparently bumping either to the right or to the left?

A. Yes; I have gone in thousands of times.

The Court: He says that is the usual way of entering.

20 Q. Are there not times when it bumps more and times when it bumps still more? Are there not times when it jars in going in?

A. Oh, there is times.

Q. Have you kept a record of those particular instances?

A. Not without there is an accident, some accident, then we do.

Q. Do you make a record if the accident is reported to you?

A. Yes, sir.

30 Q. Do you make a record if it is not?

A. If it is not referred to me of course not.

Q. There was no record taken in this case?

A. Mr. Miller called my attention to it.

Q. That was some days later, though?

A. Well, he knew the day.

Q. On the day of the accident was a record taken?

A. Not that I know of.

By Mr. French:

Q. Mr. Phillips, in answer to my question, as I recollect it, you told me that you could not operate the boat without coming in contact with the piling, and in answer to the Judge's question you said the usual way to bring a boat in was without striking the piling. Now, which is right?

A. I said you cannot get up to the slip without hitting the piling or hitting the cribbing a little, just 10 as it was in this case; in working her ahead she will smack the cribbing.

By the Court:

Q. You mean, strike along the piling?

A. Yes, sir; a little jar; it will jar, of course, the whole boat, a little bit.

By Mr. French:

20

Q. Is it usual or unusual to strike the piling when you are docking the boat?

A. As a general thing you strike the piling, rub against the piling.

Q. Do you strike the end of the piling on going in?

A. No, sir.

Q. At low tide?

A. Not at low tide.

Q. At high tide?

30

A. No, sir.

Q. Any tide?

A. No.

Q. You don't ever strike the end of the piling?

A. Oh, once in a great while.

Q. When I say "piling" what do you think I mean,—the end of the piling?

A. Well, I think you mean the clumps outside.

Q. And not the cribbing?

A. No, sir.

Q. Is it usual or unusual to strike the cribbing?

A. We generally come up against the cribbing.

Q. You mean that part that is between the two docks?

A. Yes, sir.

Q. Then it is usual to strike the cribbing between  
10 the two docks?

A. You cannot get in any other way.

Q. You cannot get in any other way?

A. No, sir.

Q. It is unusual to strike the bunch of piles out at the end?

A. Oh, yes; it is unusual, of course.

The Court: Let the Court understand and the jury understand. Now, which does the plaintiff contend  
20 was struck by the boat?

Mr. Jacobs: We contend that bunch of logs which stand at the very entrance; that is, the logs furthest from the wharf were struck.

Mr. French: I understood the plaintiff's witnesses to say they struck the cribbing between the two docks. I am quite sure that Mr. Griffee stated that the boat struck on the left and bounded over  
30 to the right side of the piling in going into the dock.

The Court: If there is any question about it I will allow him to be recalled to ascertain what the fact is.

Mr. French: I certainly do not recollect it the same as Mr. Jacobs.

The Court: I got the impression that it was the end of the dock that the boat struck.

Mr. French: Won't the stenographer's notes show what he said?

The Court: If there is any difficulty about the matter we will clear it up.

10

SAMUEL BAKELY, SWORN.

By Mr. French:

Q. Mr. Bakely, were you in the employ of the ferry company on December 30th, last?

A. Yes, sir.

Q. Are you employed by them now?

A. No, sir.

20

Q. What were you doing on the afternoon of December 30th, last?

A. Cleaning up my floors, as is usual in the afternoon.

Q. What were you doing? What did you have to do for the ferry company?

A. My business was hooking up the boats when they come in the dock.

Q. You were what is called bridgeman?

A. Yes, sir; I was at the time.

30

Q. And do you remember the trip on which Mr. Griffie claimed to be hurt?

A. Yes, sir.

Q. Do you know whether the boat struck the piling coming in that day?

A. Well now, I couldn't answer.

Q. You do not recollect?

A. I don't recollect; I went down on the bridge to hook her up about a minute before she came in the dock; she was about ten feet away from the dock at the time.

Q. Do you know whether she came in swiftly or slowly?

A. I couldn't say whether she came swift or slow.

Q. If it had come in with unusual violence you  
10 would know it?

A. Yes, sir.

Q. Did it?

A. No, sir.

Q. What was the first you saw of Mr. Griffee?

A. Getting up off the floor.

Q. What part of the boat?

A. Up off the deck in front of the horses.

Q. Did he fall after that?

A. I didn't take notice of him falling.

20 Q. Did you say anything to him?

A. I asked him if he hurt his arm and he said yes, it hurt him.

Q. Did he say whether it was much or little?

A. He said it hurt him quite a good bit.

Q. Did he say whether it would amount to anything or not?

A. No; he didn't say whether it would amount to anything or not to me.

30 Q. When Mr. Miller interviewed you about this didn't you say that Mr. Griffee said that he didn't think it would amount to anything?

A. I said —

Mr. Jacobs: I object to what he said to Mr. Miller.

Mr. French: I am now rather cross-examining my

own witness, because he is making a statement different from the statement he made to the investigator.

The Witness: I said what?

The Court: I doubt the propriety of this evidence.

Mr. French: I want to ask him whether he did not make that statement.

10

(Question repeated.)

A. He said something similar to that but I couldn't quite catch it because he went right off the boat.

Cross-examination.

By Mr. Jacobs:

20

Q. Where were you when the boat was coming in?

A. I had been washing my floor and I was coming down to hook the boat up.

Q. How far away from the point of landing were you?

A. A little over the length of the bridge.

Q. Did you observe the boat coming in?

A. I did, yes, sir.

Q. When did you first see the boat?

30

A. When she was about ten feet from the slip, what we call the slip.

Q. What do you call the slip?

A. Where the teams goes up.

Q. Did you say you saw Mr. Griffee lying on the deck of the boat?

A. Yes, sir.

Q. Did Mr. Griffee take off his coat and shirt and make an examination?

A. I don't remember him taking off anything there.

By the Court:

Q. What caused him to fall? Did you see anything?

10 A. I couldn't tell whether it was the rock of the boat or what.

Q. Do you know whether the boat struck any part of the piling?

A. No, I don't know, I was out at the other end of the bridge working.

By Mr. Jacobs:

Q. Didn't Mr. Griffee say to you that he had made  
20 no examination of himself at that time?

A. I don't remember.

Q. Do you recall that day? Was it a clear day?

A. Yes, sir.

Q. Like today?

A. Yes, sir.

---

JOHN FRANCIS, SWORN.

30 By Mr. French:

Q. You were a deckhand on the Delaware on December 30th, 1915?

A. Yes, sir.

Q. Do you remember the trip when Mr. Griffee claims to have been hurt?

A. Well, just that it was low tide.

Q. What was the condition of the tide?

A. It was low.

Q. What part of the boat were you on?

A. On the front end.

Q. Did you see him fall?

A. No, sir.

Q. Did you see the accident?

A. No, sir.

Q. Do you know whether the boat hit the piling in coming in? 10

A. No, sir; not to my recollection.

Q. Is it usual for it to hit the division piling between the slips?

A. They have, yes, sir.

The Court: Did he say no, it didn't strike? Did you say that?

The Witness: No; it didn't hit the end, no, sir. 20

Q. Is it usual or not usual to hit the division piling between the two slips?

A. Sure, to hit one side or the other; yes, sir.

By the Court:

Q. When you fasten the boat to the slip it fits snugly, does it not?

A. Well, it hits one side or the other, but it does fit in when you are all the way up to the slip. 30

Cross-examination.

By Mr. Jacobs:

Q. Where did you say you were on this boat?

A. On the end of the boat.

Q. What do you mean,—the front or back?

A. The stern,—the bow or stern; I was on the front end of it.

Q. In going to Philadelphia were you nearer to Philadelphia?

A. I was on the Philadelphia end, on the women's side.

Q. You say you remember this particular trip by low tide. Do you recall all trips by low tide?

10 A. No; I recall them by different tides, high tide or low tide.

Q. Then the tide particularly establishes in your mind a recollection of the trip?

A. Why, surely it does, yes.

Q. Just what happened the day before the 30th of December at low tide?

A. I don't know that I could tell that.

Q. Were you on the day after?

A. No, sir.

20 Q. What unusual feature about this tide on this particular day was there that fastens it so vividly in your memory?

A. It was low.

Q. Was it low on other days?

A. Well, yes, low and high; different tides.

Q. That is not an answer. Was it low on other days?

A. Why, sure it would be low on other days.

30 Q. Do you only recall trips on the boat that are made on low tides?

A. No; I recall them on different tides.

Q. Do you recall them all?

A. I don't know that I can recall them all.

Q. What was there about this particular trip, during low tide on the 30th of December, which so impressed it on your memory that it stands out over all other trips?

A. All I can say is it was low tide.

Q. Tell me what it was that particularly impressed it upon your memory?

(No response.)

The Court: Well, proceed. If he cannot tell let him say so, and let us go on.

Q. Can you answer the question? 10

A. No.

Q. Did you see Griffee on the boat?

A. No, sir.

Q. Did you see him fall?

A. No, sir.

Q. Where were you standing?

A. I was standing there right on the guard rail.

Q. Facing Philadelphia?

A. Yes, sir.

Q. And you did not see him fall? 20

A. No, sir.

Q. Do you remember the weather that day?

A. Yes, sir; clear.

Q. As clear as it is today?

A. Yes, sir.

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JOHN MATTHEWS, SWORN.

30

By Mr. French:

Q. You were a deckhand on the Delaware on the afternoon of December 30th, 1915?

A. Yes, sir.

Q. Do you remember having your attention called

to the trip on which Mr. Griffee claims to have been injured?

A. I didn't hear anything about it until the following day, by Mr. Miller.

Q. When you did hear about it then you recollected about this particular trip, did you?

A. I recollected that trip, yes, sir.

Q. And what part of the boat were you on?

A. On the stern end, dropping the pin.

10 Q. Toward Camden?

A. Yes, sir.

Q. Did you see the accident or any part of it?

A. No, sir.

Q. Do you know—and the answer is yes or no—whether the boat struck either the end of the piling or the cribbing between the slips, as it went in, with any unusual force?

A. It didn't strike the end at all; when it got in the centre of the dock it knocked from one side to the  
20 other, like it always does.

Q. It always does that, does it?

A. Yes, sir.

Cross-examination.

By Mr. Jacobs:

Q. You testified that you were on the rear end of the boat?

30 A. Yes, sir; the stern end.

Q. What particular part of the stern?

A. That is the back end of the boat going into Chestnut Street.

Q. Were you attending to the pin which holds the steering gear?

A. Yes, sir; I was there to drop the pin.

Q. Isn't that immediately in the rear of the driveway of the boat?

A. Yes, sir.

Q. On this particular day was the driveway blocked by teams and automobiles?

A. No, sir; perfectly clear.

Q. No teams or automobiles on it?

A. Oh, there were wagons and automobiles on there, but I don't know how many there was, because I was on the stern end.

10

Q. When automobiles and teams are on a boat and you are on the rear end can you see what is happening on the front end?

A. No, sir.

Q. You cannot?

A. No, sir.

Q. Then, as an actual fact, you didn't see where this boat struck?

A. I can't say where it struck, only in the centre of the dock; it can't go out on the end because it goes in perfectly straight.

20

Q. As a matter of fact you don't know whether it hit the piling or not?

A. I know it didn't hit the end.

Q. How do you know if you couldn't see?

A. I can see the end of the dock from the stern end of the boat.

Q. You don't quite understand me. If the front end of the boat is up to the piling, I mean those round logs which act as a bumper, and you are on the back end away from them, how could you tell whether the boat hit them?

30

A. I don't know anything about that.

Q. As an actual fact you don't know whether it hit the logs or not?

A. I don't know anything about that.

Q. Do you recall that day?

A. The 30th I do.

Q. What was the weather that day?

A. Clear.

Q. You testified that you knew nothing of this matter until the next day?

A. The next day.

Q. When one of your employers called it to your attention?

10 A. Yes, sir.

Q. Was there anything unusual about that trip which fastened it in your mind?

A. Nothing that I know of.

By Mr. French:

Q. When you are on the boat you can tell whether the boat strikes the end of the piling or the cribbing as it goes in?

20 A. Yes; if it did it would throw me.

By the Court:

Q. And if the boat had struck the end of the wharf would that have been such a circumstance as would have fastened it in your memory, so that you could have recalled it the next day?

A. I don't quite understand you.

30 (Question repeated.)

A. Well, I don't know; I can't quite understand that.

CHARLES A. WILSON, SWORN.

By Mr. French:

Q. You were the second pilot on this trip that has been testified about?

A. Yes, sir.

Q. In which Mr. Griffee claims to have been hurt?

A. Yes, sir.

Q. What is your recollection about that trip on 10 entering the slip in Philadelphia?

A. Well, we had very low tide, and we left Camden about 2.30 and went up the river; entered the Chestnut Street dock and got inside the clump, I judge, about thirty or forty feet from the end of the slip when the boat rolled against the cribbing, from one side to the other, but not with any great force.

Cross-examination.

20

By Mr. Jacobs:

Q. Did you see Mr. Griffee fall?

A. No, sir.

Q. Did you know that a passenger had fallen?

A. No, sir.

Q. When did it first come to your knowledge that such a thing had happened?

A. From Mr. Miller drawing my attention to it.

Q. What time did that happen?

30

A. Well, two or three days afterwards.

Q. Is there any record kept of the manner in which a boat enters the slip?

A. Only when they have an accident; that is all.

Q. When they have an accident? You mean when an accident is called to your attention?

A. Well, when we have an accident then a record is taken of it.

Q. What particular fact on this ride impressed itself so indelibly on your memory that when your employer, Mr. Miller, called it to your attention you could distinguish that trip from any other trip the boat made?

A. Well, not particularly, but I will tell you the reason why: On dead low water we always take  
10 notice just how we dock the boats.

Q. How many times a week does dead low water occur?

A. Well, we have dead low water every twenty-four hours.

By the Court:

Q. That you can always expect?

A. Yes, sir.

20

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

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Trial of the cause resumed after recess, in the presence of counsel for the respective parties.

30

EDWARD A. Y. SCHELLENGER, SWORN.

By Mr. French:

Q. You are a physician and surgeon?

A. Yes, sir.

Q. And connected with Cooper Hospital?

A. Yes.

Q. Did you make an examination of the plaintiff in this case?

A. Yes.

Q. When?

A. Sometime in the early part of April and then October 3d of this year.

Q. State what you found each time.

A. Why, there were no subjective signs that I could find at all, or, rather, objective signs, of any injury.

10

Q. That is, now?

A. Yes.

Q. What did you find in April?

A. I couldn't find any then.

Q. You couldn't find any sign of the injury?

A. No.

Q. Did you undertake to manipulate his arm?

A. Yes.

Q. Had he the same use of it as he had of the other arm?

20

A. Yes. He complained of pain; he said he had pain in his arm during rainy weather particularly, but he had full motion.

Q. That pain from rainy weather,—what might cause that? A number of causes?

A. Oh, yes; he could have a rheumatic condition.

Q. It couldn't certainly be attributed to this accident, that is, it couldn't be attributed to this accident with a certainty?

A. No.

30

Cross-examination.

By Mr. Jacobs:

Q. Doctor, do you make a number of examinations for the defendant corporation?

A. Yes, sir.

Q. Do you usually testify in those cases for the defendant corporation?

A. When I make the examination, yes.

Q. You testified that there are no objective signs?

A. No.

Q. Did you find any subjective signs?

A. Only what he told me as regards pain in the joint.

10 Q. That was not visible to you?

A. No.

Q. If he had a tenderness over the arm, or subjective condition, would it pain him a great deal?

A. Would it pain him?

Q. Yes.

A. I couldn't find any distinct point of tenderness in the arm around the elbow at all.

Q. Did you try his grip power?

A. Yes.

20 Q. What did you find?

A. I didn't see any difference between the right and left arm.

Q. How did you try it?

A. Just by squeezing my hand.

Q. In other words, you did not try it with any device to determine that?

A. No.

30 Q. So that your decision as to the loss or no loss of grip power is based on the pressure which he made on your hand?

A. Yes.

By Mr. French:

Q. Can you tell by that pressure whether there is loss or the absence or presence of grip power?

A. You can tell with fair certainty, but you cannot be as accurate, of course, as you could with the dynamimeter.

By Mr. Jacobs:

Q. You testified that you noticed no difference. Isn't there usually a difference, where a man is right-handed in his grip power,—isn't he stronger in his right than in his left?

10

A. Yes, sir; but that doesn't apply to every case; you can tell, with a reasonable certainty, by having a man squeeze your hand. However, I never let them go the limit in squeezing; if they have a reasonable amount of pressure that is all we ask for.

Mr. French: We rest.

BOTH SIDES REST.

20

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Mr. French: As I understand this case, there has been no proof of negligence on the part of the defendant company. The plaintiff himself testifies that the boat struck the cribbing between the two slips as it went in and then ran into the north slip and then bounced against what he called the piling on the other side, and that that was not unusual; that he had known of boats striking that way more severely than it did that time, and that he had been a traveler on the river for a great many years. Mr. Cooper also testified practically to the same effect,—that is, that it was a smart blow but he meant it was not an unusual one.

30

The Court: Did he not say it was unusual?

Mr. French: He said it was unusual but he explained what he meant by "unusual" by saying—I do not remember his exact words. It seems to me that it is certain that where the boat first struck was the piling between the two slips and not the piling at the end.

10 The Court: Did he not say the end?

Mr. French: He said it struck first on the left and then went over on the right, and Mr. Griffée's testimony—and his is the only testimony as to where it was—said it was the north slip, and this piling that it struck was this division piling between the two slips. And he says it struck first on the left and bounced over on the right, of course, struck the piling at the end but not the end of these division  
20 piling. The testimony on the part of the plaintiff is that it is not unusual for the boat to so strike. The pilot himself said that he could not get in at low tide without striking this division piling, so that unless the Court should hold that it was negligent operation of the boat to strike that middle piling in going in at low tide there could not be any verdict for the plaintiff that would be justified, because there is no negligence, and the plaintiff has not shown it was negligent operation. The testimony  
30 is simply that the boat struck, he says with unusual force because it did not strike that way every time. But, as I say, the pilot said it could not be docked without striking it, so that there isn't anything unusual in the striking of the piling by the boat, and that there wasn't any unusual force, because no other person was knocked down. Your Honor has

seen, probably, people lurch as the boat strikes the piling in going in; if they do not want to lurch there are seats provided for the passengers in the cabin; if this man had been in the cabin he would not have fallen, but he went out because he wanted to avoid having trouble with somebody who was having some discussion with him. Even then he could have taken his seat on the wagon and if he had been in his seat on the wagon he would not have lurched. So I feel that there is no negligence shown on the part of the defendant and that the negligence of the plaintiff contributed to the accident. Therefore I ask for a direction for the defendant. 10

Mr. Jacobs: If the Court please, in the case of *Peters vs. Philadelphia & Camden Ferry Company*, which was a case in the Circuit Court of Camden County, the Court of Errors and Appeals decided that on the question of a motion for non-suit it is for a jury to decide the question of the contributory negligence of the plaintiff and that the motion for a non-suit was properly refused by the Court. 20

The Court: That is very clear. The criticism that Mr. French makes is that you have not shown enough facts in this case from which the jury can infer negligence. Now, negligence is not a matter that is presumed; it has to be proven. Will you be kind enough to state, in your own way, what facts you have in this case which you think entitle you to go to the jury, eliminating the element of contributory negligence, because that is a defense. 30

Mr. Jacobs: In the first place, Mr. Griffee was a passenger on the ferry-boat and was entitled to be safely delivered in the city of Philadelphia. Now,

he did nothing to jeopardize himself but conducted himself in an orderly and proper manner. In the second place, counsel insists that the negligence was that Mr. Griffee got up from a seat in the cabin and returned to his team.

The Court: The Court is eliminating that from further consideration, because that is a defense. I want you to point out what facts you think there  
10 are in this case which entitle you to go to the jury upon the ground of negligence as against the defendant.

Mr. Jacobs: The next point to be considered is the fact that Mr. Griffee has testified that the boat struck the piling at the end of the slip.

The Court: Who said that?

20 Mr. Jacobs: Mr. Griffee.

The Court: No; he did not say that. Mr. Griffee's testimony is here:

(“Q. Before the boat was finally fastened in the dock what happened? A. Before it entered this here happened, it hit the side, on the left side, and went over. Q. When you say the left side what do you mean? A. The left side on going into the dock. Q. Into Philadelphia Chestnut Street? A. Yes, sir.  
30 Then on the other side is another piling, but they are the dividing piling; it hit what they call the dividing piling; that is all I know to call it; it is in the center going into the docks.”)

There are two docks, are there not?

Mr. Jacobs: Yes.

The Court: And the two docks are divided by piling?

Mr. Jacobs: Yes. When counsel framed that question he had in mind the group of piling, the round logs which are at the very entrance of the slip. In other words, the straight boards that form a part of the side between the piling and the ferry house proper were not in counsel's mind at that time, and I think that is what the witness was asked. Now, 10  
Mr. Griffee, Mr. Cooper and Mr. Luey all testified that they have crossed the ferry for a great many years, in fact several times a day; that it was their observation that with possibly very few exceptions—one exception when there was an actual wreckage or destruction of the boat—that this one case was a more violent jar or collision than anything they had experienced. I do not think it is necessary to prove that the boat broke away and floated down the river; I do not think it is necessary to go that far to prove 20  
the fact that there was a collision. I think it is for the jury to determine whether or not the boat hit with such force as to amount to negligence in the conduct and operation of the boat.

The Court: I am inclined to submit the case to the jury.

(Exception noted for the defendant.)

**CHARGE OF THE COURT.**

CARROW, *J.*

Gentlemen: There are a few simple rules of law which you must know and apply in this case. You have nothing to do with laying down any rules of law; that the Court does; but it is your duty to apply  
10 the law which the Court gives you to the particular facts of the case. The first rule of law is that there can be no recovery where the damages have been shown to have been caused by an unavoidable accident; no action lies for consequences growing out of an unavoidable accident. This case is predicated upon the theory of negligence. That being so the plaintiff cannot recover unless he proves to your satisfaction by a preponderance of evidence that the defendant was negligent and that its negligence was  
20 the probable cause of the accident in which he claims to have been hurt. Negligence is not to be presumed merely from the happening of the accident. Bear that in mind. Negligence must be proved in the way I have said, it must be proved to your satisfaction by a preponderance of evidence. When the case shows that the plaintiff himself was guilty of contributory negligence the plaintiff cannot recover, even though the defendant is shown to have been guilty of negligence in the first instance. It is the  
30 law of this state that if there is contributory negligence upon the part of the plaintiff in any degree—the law will not measure the degree—there can be no recovery for the plaintiff. That is the rule if both of the parties, the plaintiff and defendant, were to blame for the accident. There can only be recovery where the defendant was wholly to blame.

Contributory negligence is a defense and must be proved by the defendant by a preponderance of evidence, unless the plaintiff has shown it in his side of the case. If it already appears it does not have to be proven over again. So you start out with the proposition, as I told you in the first instance, that there can be no recovery if the damages were the result of an unavoidable accident. There can be no presumption of negligence against the defendant and there can be no presumption of contributory 10 negligence against the plaintiff. Both negligence and contributory negligence must be proved in the way I have indicated.

The plaintiff was entitled to a high degree of care because he was a passenger on the ferry-boat. It was, therefore, the duty of the defendant to exercise due care in the light of all the circumstances. Now, gentlemen, it is unreasonable to expect a ferry-boat to be landed smoothly at all times and without any jars. I take it that that is a matter of common 20 knowledge, that boats in docking will run up against either side of the dock and sometimes they will go head on with more or less violence, and there are natural causes for it. Sometimes the wind will cause it, sometimes the tide will cause it, and sometimes the action of the water in other respects may cause it. You have to take that into consideration in your investigation of this case. If this was only the ordinary or usual way of landing that ferry-boat you cannot find a verdict against the defendant. You 30 have got to be satisfied from a preponderance of the evidence that there was negligence, neglect of duty, on the part of the employes of the defendant company in landing that boat so that the entrance into that dock was carried on negligently by defendant's agents, and that the force with which the boat hit the

side of the wharf was unusual and something that could have been provided against by the exercise of due care, that is, such care as the circumstances demanded.

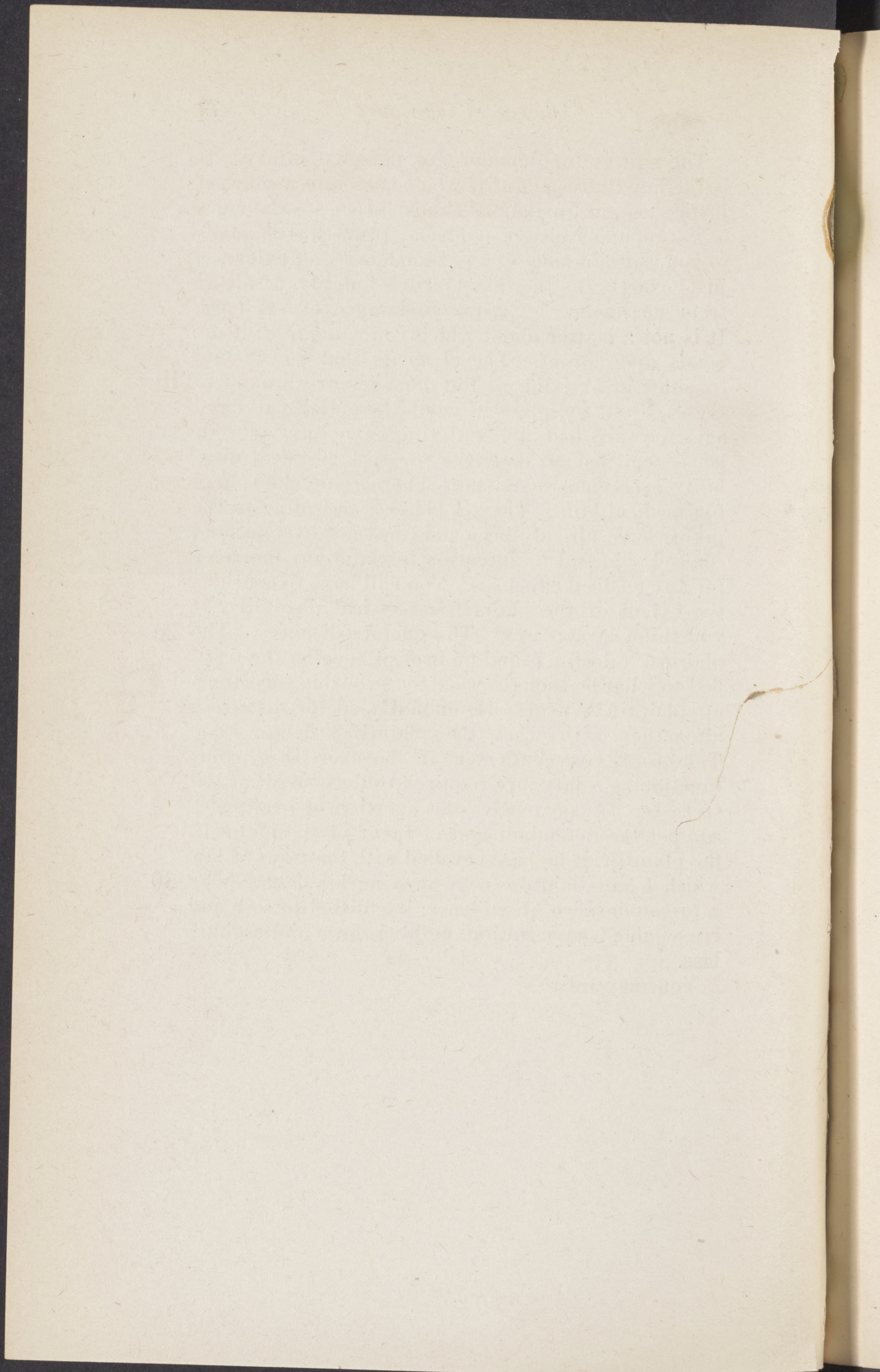
There are two sides of this case which you will have to consider, two sides with reference to the merits. You must consider both sides, because each side is entitled to a fair and impartial consideration and a one-sided decision will not be very creditable  
10 to the administration of justice. So you must look at both sides with strict impartiality and fairness.

Plaintiff says he boarded this boat with his team and he observed no unusual weather conditions, in fact, he said the water, I think, was smooth, the atmosphere clear and that it was a cold day; that as the boat was about to enter the dock on the Philadelphia side it struck the piling somewhere between the end and the slip with such violence that he was thrown down to the deck of the boat and injured. He  
20 is corroborated to some extent by other witnesses.

The defendant tells quite a different story. The captain of the boat, Mr. Phillips, I think his name was, who has been a captain and pilot on the river for forty years, said that he entered that dock in the usual way; that he did not strike the piling at the end and that there were no unusual circumstances, and that that ferry-boat was docked on that afternoon in the way it is usually docked. He is corroborated to some extent by other witnesses. Now,  
30 gentlemen, if that is true, if what that pilot said is the truth, there can be no recovery in this case. Whether it is true or not is not for the Court to say; it is for the jury to say. It is your function, gentlemen of the jury, to find out what the truth is and decide the case according to the truth in the light of the law which the Court has given you.

The suit is for damages for personal injury. It is the law that a plaintiff who comes into a court of justice asking for damages must prove his damages by a preponderance of evidence, prove his damages to your satisfaction by a preponderance of evidence, just exactly as he must prove liability resulting from negligence by a preponderance of evidence. It is not a matter about which you can guess; it depends upon proof. The elements that you should consider in arriving at the damages are limited to these: First, the plaintiff would be entitled to damages for such pain and suffering as he has endured; he is entitled to damages for such physical disability as he has sustained. There is no claim here for medical bills. They, I believe, according to the proof, have already been paid but not by him, and counsel signified no intention to claim any damages for any medical expenses. You will have to consider the extent of the plaintiff's physical disability, if you think he has any. The doctors disagree. The plaintiff's doctor found no broken bone but he testified to what he thought were the probable conditions of plaintiff's arm. Defendant's doctor disagrees altogether with what the plaintiff's doctor says. Therefore, you gentlemen, in the exercise of your function as a jury, are required to find out what the truth is. If you resolve the question of negligence against the defendant and in favor of the plaintiff, the plaintiff, if he has complied with the rules of law which I have laid down by proving his damages by a preponderance of evidence, is entitled to fair and reasonable compensation, nothing more and nothing less.

You may retire.



NEW JERSEY COURT OF ERRORS AND  
APPEALS.

---

No.

JUNE TERM, 1917.

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WILLIAM WALLACE GRIFFEE,  
*Plaintiff-Respondent,*

VS.

DELAWARE RIVER FERRY  
COMPANY,  
*Defendant-Appellant.*

APPEAL FROM JUDG-  
MENT OF CAMDEN  
COUNTY CIRCUIT  
COURT.

---

**BRIEF FOR APPELLANT.**

---

**STATEMENT OF THE CASE.**

This appeal is from the judgment of the Camden County Circuit Court in an action brought by respondent against appellant wherein respondent alleged that while a passenger on appellant's ferry boat as a result of the negligence of appellant's servants said boat crashed into and collided with the piling at and forming part of appellant's ferry slip in the city of Philadelphia, with such force and violence as to throw respondent upon the deck of the boat and injure him.

At the trial it appeared that the boat entered the dock as usual, that the respondent, who was driving a team, left his team, went into the cabin and before

the boat entered the slip came out and stood on the deck at the head of his team, that the boat lurched as it entered the slip and respondent fell.

A motion for a non-suit was made and refused.

A motion to direct a verdict for appellant was made and refused.

The grounds of the motions were that no negligence of the appellant was shown or appeared and the negligence of respondent contributed to the accident.

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### **GROUND OF APPEAL.**

The grounds of appeal are contained in the notice of appeal found at page 1 of the case. They are:

1. The Court denied a motion for non-suit.
2. The Court denied the motion to direct a verdict for the defendant.

---

### **BRIEF OF ARGUMENT.**

#### **I.**

#### **The Motion for a Non-Suit Should Have Been Granted.**

*a. There was no Proof That the Appellant was Negligent.*

The injury to respondent happened as the boat of appellant was entering its dock in the city of Philadelphia, December 30, 1915. It appears in the proofs

that there are two docks or slips of appellant at Philadelphia divided by some pilings, that do not extend so far out into the river as the outside pilings of the slips, one called the south slip and the other the north slip. The boat in question was entering the north dock, struck the pilings dividing the two slips and lurched over against the cribbing or piling on the north side of the north slip and then reached the north slip and was tied up. The respondent fell when the boat struck the pilings dividing the two slips.

Respondent's account of the accident is as follows, page 13, line 24:

"A. Yes, sir. Then on the other side is another piling, but they are the dividing piling; it hit what they call the dividing piling; that is all I know to call it, it is in the centre going into the docks."

Page 14, line 23:

"Q. Tell the jury what happened to you when the boat hit the slip, that is the left side.

A. I was standing there by my horses and just as the boat hit, I fell on my right elbow."

Page 21, line 10:

"A. No, I said it hit the piling on the side, the dividing piling.

Q. The piling at the end of the dock?

A. Yes, sir. There is two places where the boat goes in; right in the centre there is a piling, and it hit the side and glanced over toward the other side, the right side, and that is the time I fell."

Page 21, line 23:

“Q. Which dock was this boat going into, the north one or the south one?

A. The north one as I remember.

Q. Then it struck the piling that divided the two docks, did it?

A. It struck the south side of that dock and shifted over toward the north side, and then went in and was tied up.”

He says, page 12, top, that he had been crossing the river 20 years, and page 13, line 30, that he had been on other boats that hit the piling many times and at the bottom of page 13 and top of page 14:

“Q. Did it hit with great force?

A. It hit with pretty good force.

Q. Have you been on other boats that have hit the piling?

A. I have been many times.

Q. In the many years you have traveled?

A. Yes, many times.

Q. Were you ever on a boat that hit the piling with greater force than on this particular occasion?

A. Not much more, no. I have been on them when there have been fogs when they hit awful blows; I have been on when there have been fogs and stood at the horses' heads there, holding the horses, when they hit the docks, and everything.

Q. Have you ever been on them when they hit with less force than on this particular occasion?

A. Yes; I have been on them when they have not hardly hit, when they entered perfectly, went right in the dock.”

Respondent's witness Cooper said:

Page 28, commencing bottom of page 27: "Why, just when it (the boat) was going in Mr. Griffee came out of the cabin; he was outside of the cabin standing in front of his horses and when the boat hit the left-hand side of the slip of the piling going in that knocked him over on his left side." That the boat struck with awful force, great violence, that he crossed the river as a driver about four years steady nearly every day; at line 24, that the blow struck by the boat was unusual; at line 35 "It was unusual, it was a hard blow."

On cross-examination page 31 he says:

"Q. It is not unusual for the boats to strike the pilings as they enter the dock?

A. Oh, yes, it is, quite often.

Q. It is usual for them to strike, isn't it; they usually strike?

A. Yes, sir.

Q. With more or less force?

A. Oh, yes, sir; sure.

Q. When you say this was unusual you mean that it don't strike that hard every time?

A. That is it, yes, sir."

And in answer to a question by the Court, bottom of page 33:

"Q. Did you say it was a customary thing for the boat to go in the dock that way?

A. Well, sometimes, yes, sir; I have saw that happen, when they would be going a little above and slack down and start ahead and hit the piling quite often, but not with so much force as at that present time, that day; it is a common thing for them to hit the piling.

Q. Without regard to weather conditions?

A. Yes, sir."

Respondent's witness Luey said page 35, line 24, "The boat went into the piling very hard, harder than I had noticed it for a long time" and at page 36, line 15:

"Q. Now, in course of your travels across the river, back and forth, have you been on boats frequently when they have struck the pilings or wharves?

A. I have, yes, sir.

Q. It is the usual practice?

A. It is the usual practice, it seems to me, to hit the piling, but I never seen them hit that hard.

Q. Was that the most severe blow you ever saw?

A. I wouldn't say the most severe.

Q. Have you seen more severe?

A. Yes, sir.

Q. What happened then?

A. I don't know.

Q. Was there any wreckage?

A. Not that I know of.

By the Court:

Q. Would that be in clear weather?

A. Why, it seems to happen in any kind of weather."

No other passengers fell.

Respondent says page 15, line 17, that no one else was thrown that he knew of.

The witness Cooper says bottom of page 28 and page 29—that it made him lurch, that he might have fallen but for the cabin posts, that he noticed some lady who partly fell but she caught herself.

The witness Luey says page 37, line 10, that the horses lurched but he could not say that he noticed any passengers lurch.

The respondent took the chances of all the normal and usual movements of the boat. It is usual for a boat on entering a dock to strike the pilings dividing the docks where there is a second dock or slip. The respondent and his witnesses so testified. A boat is not like a railroad train running on the land on rails, it is in the water, controlled by machinery, operated by the crew and is subject to the movement of the winds and tide. The respondent had been crossing the river on boats more than twenty years and been on boats when they hit the pilings with greater force.

The witness Cooper said he meant by unusual that it did not strike that hard every time. The witness Luey that the boat struck harder than he had noticed for a long time, that he had seen the boat strike more severe blows, that he did not know that anything happened then, that there was no wreckage that he knew of.

There was a failure to prove that the appellant was in any way negligent in the operation of the boat and no proof that the respondent was not standing in such a position that he could not protect himself from falling when the boat struck the piling.

*b. The Respondent's Negligence Contributed to the Accident.*

He was driving a team, left his team on the part of the boat where teams are carried and entered the cabin where there were plenty of seats. He afterwards came out and stood at the heads of his horses knowing the boat would strike the pilings and lurch.

It is perfectly clear that if he had remained seated on his wagon or in the cabin, he would not have

fallen. He had experience in crossing the river on ferry boats and knew they struck as they docked and yet left places of perfect safety and took the chance of standing in the driveway.

The only protection the appellant could give respondent against the effect of the boat striking the pilings as it docked was the seat in the cabin if respondent saw fit to leave his seat on his wagon. He was standing in the driveway a place for teams. The witness Cooper (page 32, line 28) says there were lots of seats in the cabin.

If there was negligence on the part of appellant in docking the boat it affected every passenger on the boat; respondent was the only one thrown from his feet.

The case of *Aiken vs. Southern Pacific Ry. Co.*, 29 Southern Reporter, p. 1; 104 Louisiana, p. 157, is somewhat similar. Plaintiff was sitting on his valise as the boat struck first, then supposing the boat had docked he got up and as the boat on the rebound struck the other side of the pilings he was thrown to the deck and injured. A judgment for plaintiff was reversed. The Court in its opinion saying "The blows at the pilings were such as were habitually made and no one other than the plaintiff was thrown from his feet or in any way injured."

II.

**A Verdict Should Have Been Directed for the Appellant.**

*There was no Proof in Appellant's Case That Strengthened the Case Made by Respondent.*

The captain says, page 49, line 20, there was no unusual bump, and at line 25:

“Q. Can you operate a boat and get it in the slip without coming in contact with the pilings?

A. You cannot do it; it can't be done.

Q. What is the usual manner of docking those boats, so far as their striking the piling is concerned?

A. Well, of course, there is times you might rub against the outer corner, the tide might fool you, but you can't get in without coming against, in contact with these board, this cribbing and that is what this was.”

The captain said, at the bottom of page 5, the usual way of entering a slip was to go in straight without striking either side, without striking the piling swinging her in straight; at page 56 he explained that by the piling he meant the bunch or piles out at the end which it is unusual to strike but you cannot get in any other way than by striking the cribbing between the two docks.

The other witnesses said that it was usual to hit the division piling between the two slips,

Francis, page 61, line 20.

Matthews, page 64, line 20.

The witness Matthews was on the stern end of the boat dropping the pin. He says page 64, line 18:

“It didn't strike the end at all, when it got in the centre of the dock it knocked from one side to the other like it always does.”

And at page 66, line 20, that if the boat struck the end of the piling or cribbing as it went in it would throw him if he was on the end of the boat.

If the boat struck hard in going in it would be more likely to throw a man standing at the stern where the witness Matthews was than one standing in the driveway; near the bow was where the respondent stood.

As the respondent failed to show any unusual operation of the boat and it affirmatively appeared that he, knowing that the boat usually hit the cribbing or piling as it entered the dock with more or less force, failed to remain on the seat on his wagon in control of his team and after he left his team failed to remain seated in the seats on the boat provided by appellant, we respectfully contend that the motions to non-suit and direct a verdict made on behalf of the appellant should have been granted and and judgment below should be reversed.

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

---

No.

JUNE TERM, 1917.

---

WILLIAM WALLACE GRIFFEE,  
*Plaintiff-Respondent,*

VS.

DELAWARE RIVER FERRY  
COMPANY,  
*Defendant-Appellant.*

APPEAL FROM JUDG-  
MENT OF CAMDEN  
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COURT.

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**BRIEF FOR APPELLANT.**

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At the trial it appeared that the boat entered the dock as usual, that the respondent, who was driving a team, left his team, went into the cabin and before

the boat entered the slip came out and stood on the deck at the head of his team, that the boat lurched as it entered the slip and respondent fell.

A motion for a non-suit was made and refused.

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The grounds of the motions were that no negligence of the appellant was shown or appeared and the negligence of respondent contributed to the accident.

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### **BRIEF OF ARGUMENT.**

#### I.

#### **The Motion for a Non-Suit Should Have Been Granted.**

*a. There was no Proof That the Appellant was Negligent.*

The injury to respondent happened as the boat of appellant was entering its dock in the city of Philadelphia, December 30, 1915. It appears in the proofs

that there are two docks or slips of appellant at Philadelphia divided by some pilings, that do not extend so far out into the river as the outside pilings of the slips, one called the south slip and the other the north slip. The boat in question was entering the north dock, struck the pilings dividing the two slips and lurched over against the cribbing or piling on the north side of the north slip and then reached the north slip and was tied up. The respondent fell when the boat struck the pilings dividing the two slips.

Respondent's account of the accident is as follows, page 13, line 24:

"A. Yes, sir. Then on the other side is another piling, but they are the dividing piling; it hit what they call the dividing piling; that is all I know to call it, it is in the centre going into the docks."

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He says, page 12, top, that he had been crossing the river 20 years, and page 13, line 30, that he had been on other boats that hit the piling many times and at the bottom of page 13 and top of page 14:

“Q. Did it hit with great force?

A. It hit with pretty good force.

Q. Have you been on other boats that have hit the piling?

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Q. In the many years you have traveled?

A. Yes, many times.

Q. Were you ever on a boat that hit the piling with greater force than on this particular occasion?

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"Q. It is not unusual for the boats to strike the pilings as they enter the dock?

A. Oh, yes, it is, quite often.

Q. It is usual for them to strike, isn't it; they usually strike?

A. Yes, sir.

Q. With more or less force?

A. Oh, yes, sir; sure.

Q. When you say this was unusual you mean that it don't strike that hard every time?

A. That is it, yes, sir."

And in answer to a question by the Court, bottom of page 33:

"Q. Did you say it was a customary thing for the boat to go in the dock that way?

A. Well, sometimes, yes, sir; I have saw that happen, when they would be going a little above and slack down and start ahead and hit the piling quite often, but not with so much force as at that present time, that day; it is a common thing for them to hit the piling.

Q. Without regard to weather conditions?

A. Yes, sir."

Respondent's witness Luey said page 35, line 24, "The boat went into the piling very hard, harder than I had noticed it for a long time" and at page 36, line 15:

"Q. Now, in course of your travels across the river, back and forth, have you been on boats frequently when they have struck the pilings or wharves?

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Q. Was that the most severe blow you ever saw?

A. I wouldn't say the most severe.

Q. Have you seen more severe?

A. Yes, sir.

Q. What happened then?

A. I don't know.

Q. Was there any wreckage?

A. Not that I know of.

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Q. Would that be in clear weather?

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No other passengers fell.

Respondent says page 15, line 17, that no one else was thrown that he knew of.

The witness Cooper says bottom of page 28 and page 29—that it made him lurch, that he might have fallen but for the cabin posts, that he noticed some lady who partly fell but she caught herself.

The witness Luey says page 37, line 10, that the horses lurched but he could not say that he noticed any passengers lurch.

The respondent took the chances of all the normal and usual movements of the boat. It is usual for a boat on entering a dock to strike the pilings dividing the docks where there is a second dock or slip. The respondent and his witnesses so testified. A boat is not like a railroad train running on the land on rails, it is in the water, controlled by machinery, operated by the crew and is subject to the movement of the winds and tide. The respondent had been crossing the river on boats more than twenty years and been on boats when they hit the pilings with greater force.

The witness Cooper said he meant by unusual that it did not strike that hard every time. The witness Luey that the boat struck harder than he had noticed for a long time, that he had seen the boat strike more severe blows, that he did not know that anything happened then, that there was no wreckage that he knew of.

There was a failure to prove that the appellant was in any way negligent in the operation of the boat and no proof that the respondent was not standing in such a position that he could not protect himself from falling when the boat struck the piling.

*b. The Respondent's Negligence Contributed to the Accident.*

He was driving a team, left his team on the part of the boat where teams are carried and entered the cabin where there were plenty of seats. He afterwards came out and stood at the heads of his horses knowing the boat would strike the pilings and lurch.

It is perfectly clear that if he had remained seated on his wagon or in the cabin, he would not have

fallen. He had experience in crossing the river on ferry boats and knew they struck as they docked and yet left places of perfect safety and took the chance of standing in the driveway.

The only protection the appellant could give respondent against the effect of the boat striking the pilings as it docked was the seat in the cabin if respondent saw fit to leave his seat on his wagon. He was standing in the driveway a place for teams. The witness Cooper (page 32, line 28) says there were lots of seats in the cabin.

If there was negligence on the part of appellant in docking the boat it affected every passenger on the boat; respondent was the only one thrown from his feet.

The case of *Aiken vs. Southern Pacific Ry. Co.*, 29 Southern Reporter, p. 1; 104 Louisiana, p. 157, is somewhat similar. Plaintiff was sitting on his valise as the boat struck first, then supposing the boat had docked he got up and as the boat on the rebound struck the other side of the pilings he was thrown to the deck and injured. A judgment for plaintiff was reversed. The Court in its opinion saying "The blows at the pilings were such as were habitually made and no one other than the plaintiff was thrown from his feet or in any way injured."

II.

**A Verdict Should Have Been Directed for the Appellant.**

*There was no Proof in Appellant's Case That Strengthened the Case Made by Respondent.*

The captain says, page 49, line 20, there was no unusual bump, and at line 25:

“Q. Can you operate a boat and get it in the slip without coming in contact with the pilings?

A. You cannot do it; it can't be done.

Q. What is the usual manner of docking those boats, so far as their striking the piling is concerned?

A. Well, of course, there is times you might rub against the outer corner, the tide might fool you, but you can't get in without coming against, in contact with these board, this cribbing and that is what this was.”

The captain said, at the bottom of page 5, the usual way of entering a slip was to go in straight without striking either side, without striking the piling swinging her in straight; at page 56 he explained that by the piling he meant the bunch of piles out at the end which it is unusual to strike but you cannot get in any other way than by striking the cribbing between the two docks.

The other witnesses said that it was usual to hit the division piling between the two slips,

Francis, page 61, line 20.

Matthews, page 64, line 20.

The witness Matthews was on the stern end of the boat dropping the pin. He says page 64, line 18:

“It didn't strike the end at all, when it got in the centre of the dock it knocked from one side to the other like it always does.”

And at page 66, line 20, that if the boat struck the end of the piling or cribbing as it went in it would throw him if he was on the end of the boat.

If the boat struck hard in going in it would be more likely to throw a man standing at the stern where the witness Matthews was than one standing in the driveway; near the bow was where the respondent stood.

As the respondent failed to show any unusual operation of the boat and it affirmatively appeared that he, knowing that the boat usually hit the cribbing or piling as it entered the dock with more or less force, failed to remain on the seat on his wagon in control of his team and after he left his team failed to remain seated in the seats on the boat provided by appellant, we respectfully contend that the motions to non-suit and direct a verdict made on behalf of the appellant should have been granted and and judgment below should be reversed.

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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No. 33.

JUNE TERM, 1917.

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WILLIAM WALLACE GRIFFEE, <i>Plaintiff-Respondent,</i>	}	APPEAL FROM JUDG- MENT OF CAMDEN COUNTY CIRCUIT COURT.
VS.		
DELAWARE RIVER FERRY COMPANY,		
<i>Defendant-Appellant.</i>		

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**BRIEF FOR RESPONDENT.**

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**STATEMENT OF CASE.**

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The defendant Ferry Company appeals from a judgment in favor of the plaintiff in the amount of \$150. These damages were allowed as compensation for injuries which the plaintiff sustained when the defendant's ferry-boat collided with the piling at its Philadelphia dock.

**Facts in the case.**

The facts may be briefly narrated. In the middle of the afternoon of December 30, 1916, the plaintiff,

a driver for the Otto Coke Company, with his team boarded the defendant's ferry-boat at the Kaighn's Avenue ferry-house for passage to Philadelphia. The day was clear and the water calm. The short trip across the river was accomplished and the boat started to enter the ferry slip. On the Philadelphia side there are two slips. Long bulkheads on either side protect these slips, and between them is a division piling which extends not quite as far as the bulkheads. The boat entered the north slip and was so carelessly handled by its pilot that it crashed violently into the division piling; thence it careened against the piling on the north side. The plaintiff, at the time, was standing at his horses' heads. The first shock threw him to the deck. He fell on his right elbow—injuring the bone—but was able to rise, dazed and stunned from the fall. He had just time to move from the dangerous proximity of his horses' feet when he fell again unconscious.

#### **Grounds of appeal.**

The defendant has presented two matters of appeal—first, the denial of its motion for non-suit, and, second, the denial of its motion for a directed verdict. These two motions were each based on the following grounds, which are now, in turn, made the basis of the appeal. They are:

(A). That there was no evidence of defendant's negligence in the case to go to the jury.

(B). That there was such conclusive evidence of the plaintiff's negligence contributing to the accident as to justify a directed verdict.

We shall discuss these grounds in turn with their relation to law and fact.

**(A). NEGLIGENCE OF DEFENDANT.**

**Test to be applied.**

Defendant claims that it was entitled to a non-suit. We are only required to show, in answer to this insistent, that some evidence of negligence was submitted to the jury. We do not have to measure the quantum of this evidence. Be it ever so slight, if it was possible for the jury, as reasonable men, to have found from the evidence submitted a negligent act by the defendant's servants, then the verdict must stand. The rule is a familiar one—

“Where there is any evidence tending to support the issues of the case, although slight, it should be submitted to the jury, and it is error to order a non-suit or to direct a verdict.”

*Coxe vs. Fields*, 13 N. J. L. 215 (1832);

*Bartow vs. Brands*, 15 N. J. L. 248 (1836).

“The test is whether there is any testimony from which the jury can reasonably conclude that the facts sought to be proven are established.”

*Baldwin vs. Shannon*, 45 N. J. L. 596 (1881).

“The trial Court properly refused to order a non-suit where it could only have been done by entirely disregarding plaintiff's testimony.”

*Metting vs. N. J. Street Ry. Co.*, 69 N. J. L. 605 (1903).

The actionable negligence proven in our case was the unskillful act of the pilot in driving his boat violently against the division piling of the ferry slip.

It is true that some slight collision with the piling on either side of the slip was almost inevitable in order to moor the boat, but the evidence in this case was of an unusually violent collision with this piling, a collision sufficient to cause passengers and horses to lurch and some to fall. It was a shock such as is never experienced in the habitual docking of these boats. That it constituted negligence, we shall show by the authorities.

#### **Evidence of negligence.**

First as to the proof of negligence. The weather conditions were ideal. The day was fair and clear. *Testimony of Griffee, S. of C. bottom p. 11.* There was no wind and the water was smooth. *Ibid, middle p. 23, Testimony of Cooper, Ibid, top pp. 26, 27.* There was no tide apparent. *Griffee, S. of C. bottom p. 11.* The hour was two or three in the afternoon. *Griffee, Ibid, top p. 20; Cooper, Ibid, bottom p. 25.* These facts were admitted by at least one of defendant's witnesses (Phillips, S. of C., pp. 52, 53) and not denied by the others. It is established, therefore, in evidence that the weather conditions were absolutely normal.

The evidence next showed that under these perfectly normal conditions, and without apparent cause, the boat crashed into the division piling between the two slips with a force altogether extraordinary. This was the unvarying testimony of all three of the plaintiff's witnesses. Thus Charles Cooper testified:

“Q. As a result of what you saw that day was the force of the blow struck by the boat unusual or usual?”

“A. It was unusual.

“Q. Greater than anything you had ever seen before?”

“A. No; I have been on there when we have struck and smashed one side of it; it is not greater than I have seen, but there was awful force in the blow.

“Q. Was this an usual or unusual blow?”

“A. Whether it was what?”

“Q. I asked whether it was usual or unusual.

“A. It was unusual; it was a hard blow.”

*S. of C. p. 28.*

Cooper said that passengers reeled under the shock.

“Q. Did it make you lurch?”

“A. Yes, sir.

“Q. What was there to keep you from falling?”

“A. The side of the post between—the post that holds you up, you know.

“Q. The cabin?”

“A. The cabin posts, yes, sir.

“Q. If that had not been there would you have fallen?”

“A. I might have fell, yes, sir.

“Q. Did you see any one thrown?”

“A. Yes, sir.

“Q. Whom did you see?”

“A. I seen some lady who partly fell, but she caught herself.”

*S. of C. pp. 28-29.*

Luey testified that it threw the horses into confusion:

“Q. Did the shock of the collision between the piling and the boat throw you?”

“A. It didn’t throw me down but it shook me around and shook the horses around; there was an awful commotion among the teams on there.

“Q. Did you see it strike?”

“A. No; I say there was an awful commotion among the horses.

“Q. Did your horses lurch?”

“A. Yes, sir.

“Q. Did other horses lurch?”

“A. Yes, sir.”

*S. of C. p. 36.*

The plaintiff himself testified that the collision was sufficiently hard to throw him off his feet and on to the deck of the boat, where he was “dazed and stunned,” and his right elbow injured. *S. of C. p. 14.*

It should be noted that the testimony of these witnesses agreed exactly as to the force of the blow. It was sufficient to establish the fact of a collision with unusual force. It may have been due to the failure of the pilot or employee in charge to lessen the speed of the boat or stop the engines in time, or it may have been due to unskillful handling of the wheel. We need not inquire in what precise act the negligence lay. *Res ipsa loquitur*. But negligence it certainly was, if an unexpected and unprecedented collision with a ship’s dock in fair weather is negligence. We shall show that the law so regards it.

**Authorities in support.**

Under these facts, we say that the defendant company was guilty of a breach of the plain duty of care which it owed the public. As a common carrier a very strict exercise of every precaution necessary to insure the safety of its passengers was required of it.

“A ferryman is a common carrier of passengers. Like other common carriers, the ferryman is not an insurer of the passengers' safety, but is required to exercise the highest degree of care, skill and foresight to protect them from injury. As soon as the ferryman signifies his assent or readiness to receive the passenger, he becomes liable for his safe transit and delivery.”

19 *Cyc.* 508.

“The owner of a ferry franchise is bound to provide proper boats, with competent boatmen, and with all other things necessary for the maintenance of the ferry in an efficient state and safe condition.”

12 *A. and E. Enc. of L.* 1107.

This Court, in *Peters vs. Phila. & Camden Ferry Co.*, 77 N. J. L. 540, 542, thus defines the duty of care resting upon a ferry company:

“The defendant company, being a common carrier of passengers, was bound to use a high degree of care to protect the plaintiff, a passenger, from danger that foresight could anticipate. *Hansen vs. North Jersey Street Railway Co.*, 35 *Vroom*, 686.

“As was pointed out in that case, by foresight is meant, not foreknowledge absolute, nor that exactly such an accident as has happened was expected or apprehended, but rather that the characteristics of the accident are such that it can be classified among events that, without due care, are likely to occur and that due care would prevent.”

*Snelling vs. Brooklyn, etc., Ferry Co.*, 13 N. Y. S. 398 (S. C. 1891), presents the same facts and questions as are involved in the case at bar, and is a direct authority in support of our contention. The facts and holding are set forth in the syllabus as follows:

“While defendant’s ferry-boat on which plaintiff was a passenger was attempting to enter its slip, it struck the side. After the boat struck, plaintiff rose from his seat, when it struck again causing him to fall and break his leg. Several witnesses testified that the boat came into the dock with unusual violence. There was no exceptionable weather or tide to make the landing difficult. *Held*, that the evidence was sufficient to justify the submission of the defendant’s negligence to the jury.”

The testimony as to the force of the collision was similar to that offered in the case at bar:

“Several witnesses testified that the boat came to the dock with a violence not previously seen by passengers who had traveled by the ferry for years.”

The *Snelling* case was cited with approval and followed by the New York courts in *Cash vs. N. Y.*

*Cent. etc. Co.*, 56 N. Y. App. Div. 473, Aff. 67 N. Y. S. 823. It was there held that:

“Proof of the striking of a ferry-boat against the slip with unusual violence and that there was no exceptional weather or tide to make the landing difficult is sufficient evidence of negligence to warrant a recovery by a passenger who was thrown and injured.”

The Court, in its opinion, said:

“We think that the evidence in this case was sufficient to establish the negligence of the defendant. There were no circumstances existing, either of wind or tide, which made the management of the boat difficult, and there existed no obstructions or extraneous conditions which prevented the boat from entering its slip in the usual manner. Therefore, when it appeared, as the evidence tends to show, that the boat was so managed in entering the slip as to make the impact with the rack much harder than was either usual or necessary, if such act caused the injury of which complaint is made, a sufficient basis exists upon which to found a recovery.”

*p.* 824.

The case of *Aiken vs. S. Pac. Co.*, 29 S. 1, 104 La. 157, cited on the brief of our opponent, *page* 8, is not in point. There was there no evidence of any harder blow at the pilings than such as was habitually made every time the boat entered the slip. The case was, therefore, entirely distinct in its holding from the New York cases cited and from the case at bar.

Opposing counsel say that a boat is not like a railroad train running on the land on rails, but is in

the water controlled by machinery and "subject to the movement of the winds and tide." *Appellant's Brief*, p. 7. As a matter of fact, however, the boat on which the plaintiff was injured was not subject in any way to the adverse movement of winds or tide; the docking was made under perfectly normal conditions, and the jury could properly draw the conclusion of negligence or unskillful management.

**(B). CONTRIBUTORY NEGLIGENCE OF DEFENDANT.**

Appellant seeks to draw an inference of negligence in the plaintiff's conduct from the fact that he was not seated at the time of the shock. The fact was that he was standing in the driveway by his horses' heads—which would seem to be the proper position for a driver to assume on the docking of a ferry-boat. But appellant's counsel find evidence of negligence in this. Their insistent applies equally to all the other passengers on Griffie's boat who were on their feet when the vessel struck. Indeed, the indictment of counsel is sufficiently broad to damn every person who has had occasion to use our river ferry-boats. For there is hardly an individual in this state who has not been standing at some time or other when their ferry-boat was being docked. The charge is too comprehensive in its scope to be accepted.

Nor is it reasonable to regard the conduct of Griffie as lacking in due care. The passage of our river ferries—particularly on the Delaware—is over smooth water. The river at Philadelphia is too narrow to be noticeably affected by either wind

or tide. Passengers, therefore, have a right to expect that the vessels will be moored without more than a trifling jar. A blow sufficient to throw an able-bodied man to the ground is not—within the rule of contributory negligence—such an event as, under the circumstances of our river navigation, could be foreseen by a reasonably prudent man. Certainly not when that man has been in the habit of crossing almost daily and has never experienced a collision with the dock sufficient to disturb his equilibrium.

Moreover, it is quite impossible in rush hours for the traveling public to find seats in these boats, as any one who has crossed the Delaware at Philadelphia, or the Hudson at New York, knows, and if the point were worth discussion, it would be incumbent on the opposing counsel to explain their client's remissness in not providing passengers with sufficient places of safety.

This same defence of contributory negligence was raised in the case of *Snelling vs. Brooklyn, etc. Ferry Co., supra*, and the Court dealt briefly with it, holding that:

“The fact that the plaintiff did not keep his seat till the boat was safely moored to the dock cannot be regarded as such evidence of negligence as to take the case from the jury.”

Certainly, the mere fact that the plaintiff was on his feet at the time of the accident is not sufficient evidence of a want of care on his part as to justify a withdrawal of the case from the jury. If it was possible for reasonable men to regard his conduct as negligent, it was also possible to regard it as the conduct of a reasonably careful man; and the jury

should have been allowed to reach the necessary conclusion.

We submit, therefore, in conclusion, that

1. There was evidence to go to the jury of the negligent management of the defendant's boat whereby the plaintiff received his injuries; and

2. That there was no evidence of contributory negligence sufficient to justify a directed verdict.

We ask, therefore, that the appeal be dismissed and the judgment affirmed.

HARVEY F. CARR,  
RONEY AND JACOBS,  
*Counsel for Respondent.*

