

NEW JERSEY COURT OF ERRORS AND APPEALS.

No. 26. NOVEMBER TERM, 1907.

CLARK H. BATTEN, ADMINIS-	}	ON ERROR TO SU-	
TRATOR,			PREME COURT.
Plaintiff in Error,			
vs.			
PUBLIC SERVICE CORPORATION OF			
NEW JERSEY,			
Defendant in Error.			

BRIEF OF E. A. ARMSTRONG, FOR DEFENDANT IN ERROR.

The decedent in this cause was the wife of Clark H. Batten, who was appointed her administrator, and brings suit under the death act.

She died at the hospital in the city of Camden, on the eighth of September, nineteen hundred and five, from internal hemorrhage of the spleen; she was taken the fifth of September, in the afternoon, and removed to the hospital. At the time of her death she left two sons, one twelve and the other nine years of age. The suit is to recover for the financial loss of these two children.

The decedent had a fall from a trolley car June twenty-fifth, nineteen hundred and five. The claim is that her death was due to that fall. The Trial Court non-suited on the ground that no financial loss was shown by the children and that the fall from the car was not the proximate cause of the decedent's death.

The defendant offered no testimony and rested on the plaintiff's case. From the medical testimony, Dr. E. M. Howard, page 14, and Dr. A. S. Ironsides, page 19, it clearly appears that assuming the decedent received injuries to her spleen in her fall June twenty-fifth they were healing and she was recovering therefrom, and that the injury that caused her death happened on September fifth, being a fresh wound or tearing open of the spleen. When and how this was occasioned, from what the decedent told her attending physician, Dr. A. S. Ironsides (see page 25), explaining what she had done, which was to exert an undue strain by lifting a washboiler of clothes. The doctor said in his opinion this caused the rupture and hemorrhage, and was the occasion of her death. In this he is confirmed by Dr. Howard. So it clearly appears from the plaintiff's own evidence, that except for this intervening cause Mrs. Batten would have entirely recovered from the effects of the injury she received June twenty-fifth. Her death was not at all due to the legitimate consequence of the injuries she received June twenty-fifth, but was due to the violent strain she put upon herself September fifth.

It is respectfully submitted therefore, that the Court's ruling, found on page 65, is correct and the judgment should be affirmed.

E. A. ARMSTRONG,
Of Counsel with Defendant in Error.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

CLARK H. BATTEN,

Administrator, etc.,

Plaintiff in Error,

vs.

PUBLIC SERVICE CORPORATION

OF NEW JERSEY,

Defendant in Error.

In Tort.

BRIEF FOR PLAINTIFF.

The only question in this case is: Whether a trolley accident which admittedly ruptured the spleen of the plaintiff's intestate, who was a passenger on one of the defendant's cars, really was the the proximate cause of her death.

Plaintiff in error contends that the accident which first ruptured her spleen, which said spleen was produced and put in evidence, was the first real and proper and only efficient cause of the whole trouble, was the proximate cause of plaintiff's intestate's death.

That the accident occurred was not disputed, and that the accident was the fault of the defendant was not in controversy, and the Trial Judge non-suited the plaintiff simply because the plaintiff's physician testified that the plaintiff told him before her death that she had been washing and had lifted a wash boiler. See testimony of Dr. Ironsides, pages 19 to 28.

Now it will be remembered that the plaintiff, Mrs. Batten, was injured on the twenty-fifth day of June and died on the eighth day of September and according to the uncontradicted testimony of all the witnesses, Mrs. Batten never saw a well day from the time she was injured because of the indiscretions of that drunken, maudlin car crew, until she died in the hospital. See testimony of Dr. Ironsides, who said her color was so bad, and Mattie Steelman, pages 7 and 8; Clark H. Batten, page 29; Mrs. Holmes, page 44; Mrs. Fennimore and Mrs. Leary, page 49. So that the testimony in this case shows first the fall from the car, thence the continued sickness from June until September, and then the operation and death.

Now how can a case be clearer, and how can a cause be more efficient? All the witnesses say that the injured woman was so hardy and rugged and worked both day and night in her noble effort to second her husband's struggle for existence.

Counsel for defendant laid so much stress upon the fact that the immediate cause of the death was a sudden hemorrhage, while strange, neither physician called, testified that the old wound had ever healed in any other

than a partial manner; it is true that they said that granulation had set in and had nearly closed the wound, but all that only serves to intensify her case as one that had afflicted a delicate organ and one, (see Dr. Howard, page 15,) concerned in the blood making-processes of the body. The spleen was offered in evidence and admitted and the jury inspected it, and they should have been given the chance to have passed upon the fact as to whether the accident was the proximate cause of the wound or not. In fact the sure exhibition of the lacerated spleen from which the hemorrhage that caused the death came, coupled with the testimony of Mrs. Steelman, pages 4 to 13, should have taken this case to the jury.

It is a novel proposition to say the least, that when a woman in active life, is injured in June, that she must die and be buried in June in order to recover, and simply because a rugged constitution enables her to stave off trolley-death for three months instead of a few hours, that she or her dear ones must suffer for her temerity.

Can a mere lapse of time defeat recovery of damages, when there has been no recovery of health? The victim in this case was stricken in late June and it took her until early September, a little over two short months to stagger to the grave. Counsel for the plaintiff in error feels certain that the resourceful counsel for the defendant in error, asked for his non-suit simply to kill time and worry the other side, and never in his wildest dreams did he ever expect to get it, but it is simply one of those lucky strikes entirely unwarranted by either the facts in this case, or the law in the books, and is based on a

mistake stumbled into by an ignorant and incompetent doctor who was led to make statements that he didn't mean. This is a case where that awful instrument of destruction, the wash boiler, has thrown the meek and humble trolley car into the shade and careful legislators should place "stop, look and listen" signs, wherever dire necessity compels mothers' backs to carry burdens that are hard to bear; a logical result of the theory of the law applicable to the facts in the case would be ridiculous in the extreme.

Mrs. Batten after her accident should never have made a motion without a permit of the Board of Health, or some official from the defendant's office. If lifting an empty boiler from the stove caused her death, a mere effort to button her shoe would endanger her life also. Dr. Ironsides did not say, even when Judge Armstrong endeavored to insert the words in his mouth, that Mrs. Batten told him that the lifting of the boiler caused her sickness, all he would say was that it happened the same afternoon.

The other feature of the case was what seemed small damages. We submit that even if our recovery was limited to six cents, that then there should have been no non-suit; and the question as to the right of recovery is entirely separate from the amount thereof. And Hooker's definition was right when speaking of law he said, "There is nothing so high as to be beyond the reach of its power, and nothing so low as to be beneath its care."

Respectfully submitted,

WILLIAM C. FRENCH,

Attorney for Plaintiff in Error.

NEW JERSEY COURT OF ERRORS AND APPEALS.

CLARK H. BATTEN,
Administrator, &c.,
Plaintiff in Error,

vs.

PUBLIC SERVICE CORPORATION OF NEW
JERSEY,

Defendant in Error.

IN TORT. ON ERROR TO SUPREME COURT.

PRINTED BOOK.

WILLIAM C. FRENCH,
Attorney for Plaintiff in Error.

E. A. ARMSTRONG,
Attorney for Defendant in Error.

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PLAINTIFF'S WITNESSES :

	DIRECT.	CROSS.	RE CALLED.	RE-CROSS.
Batten, Clark H., - - -	28	36		
Fennimore, Clarissa C., -	46	48		
Holmes, Mrs. Hannah, -	43	46	57	60
Howard, Dr. E. M., - - -	14	16		
Ironsides, Dr. Allan S., -	19	19		
Leary, Mrs. Sue, - - - -	48	51		
Steelman, Mrs. Mattie, -	4	8	62	

NEW JERSEY, SS. :

The State of New Jersey to the
Chief Justice and other Justices of
our Supreme Court of Judicature,
Greeting:

Forasmuch as in the record and proceedings, and also
in the giving of judgment in a certain plaint, which was
in our said Supreme Court of Judicature, before you,
between Clark H. Batten, Administrator of the Estate of
Laura Batten, deceased, plaintiff, and the Public Service
Corporation of New Jersey, defendant, in an action of tort, 10
manifest error hath intervened, to the great damage of the
said plaintiff, as it is said, we being willing that the error,
if any there be, should, in due manner, be corrected, and
full and speedy justice done to the parties aforesaid in
this behalf, do command you that if judgment be there-
upon given and affirmed, then you distinctly and
openly send, under your seal, the record and proceedings
aforesaid, with all things touching the same, to our
Judges of our Court of Errors and Appeals in the last 20
resort in all causes, at Trenton, on the twelfth day of
December, next, together with this writ, that the record
and proceedings aforesaid being inspected, we may cause
to be further done thereupon for correcting that error
what of right and according to the law and custom of the
State of New Jersey, ought to be done.

Witness, our Chancellor and President Judge of our
said Court of Errors and Appeals, at Trenton aforesaid,
the twenty-third day of November, in the year one
thousand nine hundred and six.

S. D. DICKINSON,
Clerk.

WILLIAM C. FRENCH,
Attorney.

30

RETURN.

The answer of the Chief Justice of the Supreme Court of Judicature of the State of New Jersey.

The records and proceedings of the plea whereof mention is within named, with all things concerning the same to the Court of Errors and Appeals in the last resort in all cases, within specified, at the day and place
10 within contained, I certify in a certain schedule to this writ annexed, as I am within commanded.

WM. S. GUMMERE,
Chief Justice.

NEW JERSEY SUPREME COURT, CAMDEN
COUNTY CIRCUIT.

CLARK H. BATTEN,	}	In Tort.	10
Administrator, &c.,			
vs.			
PUBLIC SERVICE CORPORATION			
OF NEW JERSEY	}		

SEPTEMBER TERM, 1906.

20

Appearances :

For the Plaintiff, W. C. FRENCH, ESQ.
For the Defendant, E. A. ARMSTRONG, ESQ.

Before ENDICOTT, J. and a Jury. 30

THE CASE FOR THE PLAINTIFF.

— — —

MRS. MATTIE STEELMAN, sworn.

By Mr. French :

Q. Mrs. Steelman, where do you live?

10 A. 906 Mt. Ephriam Avenue.

Q. In Camden?

A. Yes, sir.

Q. Did you know Mrs. Batten, the wife of Clark H. Batten?

A. I did.

Q. You knew her very well?

A. I did.

Q. Did you see an accident happen to her last June a year?

20 A. I did.

Q. And was it on the 25th of June?

A. The 25th of June, a Sunday night.

Q. Just state to the Court and Jury what you saw happen there. Sit still.

30 A. Oh, yes. Well, we got transfers to get off the car at Third and Federal and conductor gave the bell for the car to stop and there was two men and a women got off the car, and Mrs. Batten was getting off the car at the same time and so was I, and she had one foot on the ground and was just taking the other one, just about ready to take the other one from the platform when the conductor rung the bell and started the car and threwed her headlong into the street, and took me clear on down to Second street and then didn't give the bell until the motorman stopped the car, throwed us both back, throwed

her on the ground, on the street, and threw me back in the seat with two children.

Q. Where was this?

A. This was Third and Federal, a little past Third and Federal.

Q. Where the car usually stops?

A. The car was stopped, but before she got off it started.

Q. Did any one else get off there?

A. Two men and one woman, if I ain't mistaken, as far as I could say that was all, getting off together. It was their last trip in and the car was going awful fast. 10

Q. What do you mean by "awful fast?"

A. The car was going awful fast, didn't hardly any more than stop, and they started up again. It was their last trip into the Ferry, and when they had the last trip into the Ferry they go as fast as they can.

Q. Was the car in motion when she started to get off?

A. No, the car was stopped or she wouldn't undertake to get off. We was very careful when we went out together. 20

Mr. Armstrong: Just tell what was done without any description.

Q. What was done with Mrs. Batten?

A. Why, these here people picked her up and she had got over to wait for the car the time I got to her, because I just kept screeching and screaming for him to stop the car, and he was just as drunk as ever he could be and he couldn't hear nothing. 30

(Objected to.)

Mr. French: I submit that this is perfectly competent testimony. If this man was drunk she has a right to say so.

The Witness: He was not only drunk, but he was insulting.

(Objected to as not responsive.)

The Court: It may be stricken out.

Q. I then ask you what was the conductor's condition?

10 Mr. Armstrong: I object; so far as anything is concerned here in the declaration there is nothing shown, no statement made as to that; it is altogether a matter of surprise.

Mr. French: The transcript is here and it sets out fully what the cause of the trouble was, the careless running of the car and negligence in the operation of it, and it is a matter of common knowledge to the jury or any one else that a drunken man cannot give that care and
20 attention to his business that a sober man could. That has been frequently allowed and admitted in cases as an important point.

The Court: I will take the testimony.

(Exception noted for the defendant.)

A. He was drunk.

Q. How do you know?

A. Because he acted so, and looked so, and acted in
30 every way so.

Q. What did he do and how did he act?

A. Well, he knowed she was going to get off the car, and he didn't care and when I told him he didn't care whether he killed the woman, he said, "Oh, I guess she ain't much hurt." He wouldn't stop the car and the car

was just packed with people, and I screamed and carried on something terrible to get off the car because I thought the woman had been killed, and he would not stop the car. I told the motorman to stop the car to let me off at Second street, because they are not allowed to ——

(Objected to.)

The Court: No, don't say anything else.

Q. Was Mrs. Batten taken home then? 10

A. Only with me; we got transfers and went down on the car, that is all, but she went to my house, as she was so sore she couldn't walk. Her head was all red, and black and blue, her arm all the way from here to her shoulder; she was in a terrible condition all down her side here.

Q. Did you see her after this occurrence?

A. I did, seen her the next morning, and she was sick and she never seen a well day afterward, and she was never sick before; she never complained, never 20
 knew what a pain in her head was.

Q. Do you know when she died?

A. Well, this happened on the 25th of June. She died in September. Let's see, I will have to count that up. She was buried a year ago last Thursday.

Q. Were you present at the operation?

A. No, I was not at the hospital, but I was there when they were taking her to the hospital. I was there that morning when the doctor said she had had a fall.

Q. How far did you live from Mrs. Batten? 30

A. About half a square.

Q. Did you see her very often?

A. Every day, two and three times a day.

Q. What have you to say as to her health before this accident?

A. She never complained; she never was sick.

Mr. Armstrong: I object; she has already replied to that.

The Court: Yes, she said it was perfect.

Q. Was this a Public Service car?

A. I guess so, I think so.

Q. Where did you get your transfer?

10 A. At Third and Federal, or we got our transfers when we paid our fare and we got off at Third and Federal.

Q. And where did you get on?

A. At Woodlynne.

Q. Woodlynne Park?

A. Woodlynne Park on a Haddon Heights car.

Cross-examination.

20 By Mr. Armstrong.

Q. You had both been out to the park?

A. Yes, sir.

Q. What time was this?

A. Well, now, it was quite late. Now, I can't just exactly tell you the date but it was the last trip in. It was this here conductor's last trip in.

Q. How do you know it was his last trip?

A. Because I do; I can't tell why, but I know it was, because my husband worked for the trolleys at the same
30 time, and I just know about their time when they came in.

Q. That is the way you knew it was his last trip?

A. That is the way I knew it was his last trip.

Q. Near midnight, was it?

A. Yes, it was near midnight and then we heard them talking in the car it was their last trip.

Q. You heard them say it was their last trip?

A. I heard them say it was their last trip.

Q. Who did you hear say that.

A. I heard them when they got on the car about their last trip, the motorman and conductor talking, and it was near 12 o'clock, so I know it must have been his last trip.

Q. And you say your husband was working for the company then?

A. Yes, he was working for the company, too.

Q. Mr. Batten was working for the company, too? 10

A. He was.

Q. Did you know this woman?

A. I certainly did.

Q. Did you know the conductor?

A. I did.

Q. An acquaintance of yours, was he?

A. No, indeed he wasn't, only I knew him just the same as I knew a good many conductors and motormen.

Q. You had no friendly relations with them at all?

A. I guess not. 20

Q. Did you have unfriendly relations with him?

A. I didn't know him to like or dislike before that night, and I had all the cause in the world to dislike the man afterward, not only then but since then, too.

Q. Have you had words with him since then?

A. Yes, he pretty near threw me off the car last winter which I ought to have reported him, and I wish I had done it.

Q. He didn't try to throw you off the car but once, did he? 30

A. Yes, twice and used dreadful language to me, too, which he ought to lose his situation for the talk which he had with me, if I had only reported him as I should have done.

Q. But you did not report him?

A. No, I did not.

Q. The Company didn't know how he acted toward you?

A. They knowed it since, though; they didn't know it at that time but they have knowed it since; Mr. Hewitt did, rather; I didn't talk to anybody else.

Q. That is the Company's representative?

A. Yes.

Q. But he didn't know it at that time?

10 A. No.

Q. When did you notice he was drunk?

A. When he got on the car at Woodlynne.

Q. Was the motormen drunk, too?

A. No, not as far as I know, but I don't think so.

Q. Was he much drunk?

A. Why he couldn't hardly stand. Oh, well, anybody ought to know when anybody is drinking, their looks show; I think anybody must be very green if they can't tell.

20 Q. He was so plainly under the influence of liquor that you saw it, was he?

A. Yes.

Q. What kind of a car was this?

A. A Haddon Heights car.

Q. An open or closed car?

A. Why, it was a summer car; it had running boards on the side.

Q. It had running boards on the side?

A. Yes, to get on the side.

30 Q. Where did the conductor stand?

A. In the back, only when he collected the fares.

Q. How did he collect the fares?

A. Why, came around the running board and went in the aisle, no other way he could collect them.

Q. Went from end to end of the car along the running board, did he?

A. Yes, sir.

Q. When you got on, did you get your transfers?

A. Pretty soon after I got on we got our transfers, when we paid our fare.

Q. As soon as you paid your fare you got your transfers?

A. As soon as we paid our fare we got our transfers; we wouldn't have got them any other way, for they don't allow them to give them to you. 10

Q. When you got down to Third and Federal, was it?

A. Yes, when we got down to Third and Federal.

Q. Two gentlemen and a lady got off?

A. Yes, and I don't know who else; I know I seen that many. I don't know how many got off; we was getting off at the same time.

Q. You didn't see anything of the conductor at all that time, I suppose until after the car started up, did you?

A. Why, didn't have no time; as soon as the car started up— 20

Q. I didn't ask you why you didn't; I ask you whether you did or not.

A. I didn't have no chance to.

Q. You didn't then, did you?

A. The car stared—

Q. You didn't see anything of the conductor until after the car started?

A. No.

Q. And where was the conductor then? 30

A. On the back of the car.

Q. You say Mrs. Batten had almost gotten off the car, one foot was on the ground and the other was about leaving the running board as the car started?

A. Just about ready; she hadn't started to put it on

the ground. One was on the ground and the other was on the platform.

Q. I say, she was just about stepping down with the other foot when the car started.

A. When he rang the bell.

Q. Was the car then quite crowded?

A. Quite a good many in.

Q. Did you see her fall, or did you just see the commotion?

10 A. I seen her fall, because I was right back of her. I don't know what saved me from going, too.

Q. You were on the running board yourself?

A. Just started to get on the running board, throwed me back on the seat with two children here.

Q. You were standing in between the seats yet, hadn't got down on the running board?

A. I hadn't put my foot on the running board at all.

Q. And the car ran very rapidly down to Second street?

20 A. Yes, awful fast.

Q. You don't know how Mrs. Batten got over to the sidewalk except what she told you, of course?

A. I seen her; I was with my face to the conductor, telling him to stop the car all the time, I could see her all the time.

Q. You saw her all the while, did you?

A. Yes, and these here people helped her up.

Q. You saw the people help her up?

A. Yes, and saw her all the way.

30 Q. Until you got off at Second street?

A. Yes.

Q. Then you walked back?

A. I didn't walk back, I ran back to Third street to get to her.

Q. You had the children with you all the time?

A. Had the children, had the baby in my arms and the other little girl run as fast as I did.

Q. And you ran with the baby in your arms?

A. Yes.

Q. And the other ran as fast as you did?

A. Yes.

Q. You say her arm was all bruised?

A. Oh, her arm was scandalous.

Q. Which arm?

A. I think it was the left arm, if I ain't mistaken. 10

Q. When did you next go out to Woodlynne?

A. Well, that I can't exactly say; it was no more that week, for the woman was so sick she couldn't hardly hold her head up all the week.

Q. You didn't go out that week at all?

A. No.

Q. Now, are you positive about that?

A. I am positive that I did not go out any more that week, nor I don't think we did the next Sunday night; I don't think it was until one night through the week 20 she was down at my house after that, but she laid around.

Q. You did go out sometime the next night, didn't you, the next week?

A. I guess we did; I won't say for sure, because we used to go out an awful lot.

Q. Well, you, of course, don't remember the different times you went out after that?

A. No, I don't exactly remember that.

Q. But you went out as you say an awful lot during the season? 30

A. Yes, we went out, but she never seemed well.

DOCTOR E. M. HOWARD, sworn.

By Mr. French:

Q. Doctor, you are a practicing physician in this city?

A. Yes, sir.

Q. Of how many years standing?

10 Mr. Armstrong: It is admitted Dr. Howard is a prominent physician and surgeon.

Q. Doctor, did you ever have charge of an operation performed on Mrs. Elizabeth Batten some time in last September?

A. Yes.

Q. Have you made a note of the date?

A. I have a note of the date, yes, sir, on September 6th.

20 Q. Were you assisted by any other physicians?

A. The regular staff of the hospital.

Q. And what did you do?

A. The case was admitted in a state of collapse, showing signs of internal hemorrhage, and she was operated with the object of stopping the hemorrhage and saving life. We succeeded in stopping the hemorrhage, but we only kept her alive for a couple of days; she died two days later.

Q. What did you find to be the trouble?

30 A. Well, we found at the operation that the bleeding was coming from the spleen and after her death we made a post-mortem to confirm the diagnosis and we found a ruptured spleen.

Q. Did you see the spleen itself?

A. Yes, sir.

Q. What is the function of the spleen?

A. Well, it is concerned with the blood-making processes of the body.

Q. Was this rupture the cause of her death?

A. I am sure so, yes, sir, the hemorrhage following this rupture.

Q. Outside of the injury to the spleen, what was the woman's condition?

A. Well, I know nothing about her previous condition. As I stated, I found her in a state of profound collapse, near death's door, and I could not state anything regarding her physical condition except her general appearance. 10

Q. What have you to say as to that?

A. She was generally well nourished, a good deal of adipose flesh, quite fat.

Q. And well developed?

A. Well developed, yes, sir.

Q. Were there any traces of any organic trouble outside of the spleen? 20

A. No, sir.

Q. You know nothing as to the history of the case?

A. No, sir, only from hearsay.

Q. What is the location of the spleen?

A. It is on the left side of the body just beneath the ribs. I removed the spleen and I have it here; it is in fair condition, better condition than I supposed. I can show it, if you so desire.

Mr. French: Will your Honor permit the exhibition of the spleen in evidence? 30

The Court: Yes.

Q. All right, Doctor, just show it.

A. Here is the spleen, somewhat shriveled in its con-

dition, and here is the overlying fat, the bed in which it laid on the posterior aspect. The spleen lies in this position on the posterior aspect. Here is plainly to be seen the tear, which I should say was an inch and a half in length.

Q. Is that it (indicating)?

A. That is the tear here, the overlying fat here.

Mr. French: Will your Honor permit the Doctor to
10 go to the jury and show the tear there?

The Court: Yes; speak loud enough for the stenographer to take what you say.

The Witness: Here is the tear on the posterior aspect; here is the overlying fat as it is drawn away. We made a tear at the time on the other surface to show the difference between a fresh tear in the spleen—this is made at the post-mortem (indicating)—to show the difference
20 between that and the tear which had evidently occurred previous to her death. This is clean cut, and the edges of this at the time were round, showing that it was a previous injury. A fresh tear in the spleen will make a regular tear as it is shown there in this that I made. I don't know as there is anything more.

Q. Might an injury such as you have described be the result of a fall or blow?

A. Such injuries usually are the results of severe contusions, blows or falls.

30 Cross-examination.

By Mr. Armstrong:

Q. Had there been any healing of that wound, Doctor?

A. Yes, sir, that is what I was trying to show to the

jury, the difference between the tear that occurred at her death and the tear that was quite fresh in the spleen. There was evidence that the edges had rounded in as though it had partially healed and then broken open again.

Q. Now, would a strain break it up and start the hemorrhage that you found?

A. That is what we supposed.

Q. That from the injury she was recovering, and from what you found you supposed that it had been return, re- 10
injured by some sort of a strain?

A. Yes.

Q. From the examination that you made of the spleen, Doctor, and you have made now except for this subsequent injury, I will call it, this subsequent strain, did the spleen apparently appear in a fair way to recover?

A. Well, all I can say is that the spleen appeared to be perfectly healthy outside of this tear.

Q. And granulation has started about the wound?

A. Yes, it had evidently sealed up and then torn 20
open.

Q. And evidently from what you saw the wound had entirely sealed up, as you say?

A. Yes.

Q. The condition of the patient would make that almost sure, wouldn't it—I mean the other general conditions of the patient?

A. Well, I could hardly answer anything about that except as I have stated.

Q. I understand you to say she was well nourished 30
and appeared to be healthy?

Q. Yes.

Q. Well, if there had been a bleeding wound there not at all healed up for some time, you would not have found that state of affairs, would you?

A. No, certainly, this was a sudden hemorrhage which carried her off.

Q. And the state of collapse that you found was the result of this sudden hemorrhage?

A. Yes, sir.

Q. Did you trace the origin of this hemorrhage to the spleen, Doctor?

A. What do you mean, at the time of the operation?

Q. Yes.

10 A. At the time of the operation we traced it to the spleen, but her condition was such that we did not expose the wound.

Q. I understand you did not expose the spleen at the time of the operation?

A. No, we simply stopped the hemorrhage by packing; her condition was such that we could not do any more.

Q. You could go no further than simply pack the wound?

A. Yes.

20 Q. I understand you to say on your direct examination that she was not wasted away at all; she was well nourished, not to say fat.

A. Yes, she was plump and in apparently good physical condition.

Q. And her state in which you found her was a state of collapse from which she did not rally and died and was due to a sudden hemorrhage of this tearing open of the spleen?

A. That is our view of it, yes, sir.

30 Q. And that had happened within comparatively a few hours, would you judge? Of course, you could not tell except from hearsay.

A. Well, it is very evident that it only lasted a few hours, the hemorrhage; it is very evident that had only lasted a few hours.

DR. ALLAN S. IRNSIDES.

By Mr. French:

Q. Doctor, you are a practicing physician of this city, aren't you?

A. Yes.

Q. And family physician of Mr. and Mrs. Batten?

A. Yes, sir.

Q. How long have been in that capacity as their family physician? 10

A. Well, I attended the family eight or ten years or more; then they moved out of town and came back and employed me again.

Q. Well, prior to the 25th of June of last year what was her general health?

A. I had not seen her, as I told you. They had gone away from the town and come back and had no need to employ me until just shortly before she died, after her accident. 20

Q. Were you present at the post-mortem examination?

A. Yes.

Q. And you assisted, did you?

A. Yes, sir.

Q. What was the cause of her death?

A. Rupture of the spleen.

Q. Could that be caused by a fall or blow?

A. Yes. 30

Cross-examination.

By Mr. Armstrong:

Q. When were you called in to see her, Doctor?

A. The 5th of September that year.

Q. And when did she die?

A. I think it was two days after she went to the hospital—I am not certain—which would make it about the 8th of September, the 7th or 8th, I am not certain.

Q. Did she go to the hospital the same day on which you were called in?

A. No, sir, the following day.

Q. When you were called in was she suffering from hemorrhage then?

10 A. She had tremendous pain in the abdomen. I inquired if any indigestion might be the cause. There was a history of nothing of the kind having been eaten which might have produced the pain. I prescribed a remedy and told her I would call in a couple of hours. This was 6 o'clock in the evening. I came after 8 and saw by the blanched appearance of the skin and the character of the pulse and sweating that there was a hemorrhage going on.

Q. It had not yet manifested itself?

20 A. Not at my first call.

Q. Had it at the second call? Did you see the blood manifest itself?

A. You would not see the blood; it was an internal hemorrhage.

Q. Oh, it was altogether internal?

A. Altogether.

Q. There would be no outward discharge?

A. None.

30 Q. And the only way you could diagnose it as a hemorrhage was the withdrawal of the blood from the surface that showed the blanched appearance?

A. With the sweating.

Q. And that told you that there was some internal hemorrhage?

A. Yes.

Q. Then you sought to trace it up, did you?

A. I did.

Q. Did you then in your own mind satisfy yourself that it was from the spleen?

A. Oh, I didn't know what was the cause.

Q. You had not yet determined that?

A. Oh, no.

Q. But that there was an internal hemorrhage you were satisfied?

A. Yes. 10

Q. Had that hemorrhage started when you were first called in, do you think, Doctor?

A. I did so.

Q. How long do you think it had been in progress then?

A. I couldn't say, but from the history of what they told me I would judge it must have been some time between 3 and 4 o'clock in the afternoon.

Q. So that you think the hemorrhage had started from the history you got some two or three hours before you got in? 20

A. Yes, sir.

Q. And had increased in intensity, hadn't it?

A. Yes, sir.

Q. Would a slight rupture, that is, producing relatively a slight hemorrhage go on increasing, probably — that is, would the gush of the blood probably tear the wound further?

A. You would have to have a condition previous——

Q. I understand, but the condition that she was in if there had been a little break, the hemorrhage would break it further? 30

A. Yes, I do think so.

Q. And so cause the further and serious condition that developed?

A. Yes.

Q. The examination that you made, the post-mortem examination satisfied you that there had been a wound of some standing?

A. Yes.

Q. Some time standing?

A. Yes, sir.

Q. Sufficient standing for it to have healed over?

A. Partly so.

10 Q. Well, I mean covered over, not of course entirely recovered—I don't know what you call it.

A. It had a form of granulation.

Q. Granulation that had covered the wound itself?

A. Well, we hardly use the word "covering"; the granulations form there as a sort of healing process.

Q. If it were an outside thing, like a scab over it?

A. No, there was no scab.

Q. No, but I say like an outside wound covered by a scab, something on that order.

20 A. Yes.

Q. That is the way granulation forms on the outside?

A. Yes.

Q. And on the inside the tissues build up and join together, wouldn't they?

A. Yes.

Q. And by granulation you mean the joining of the tissues together—is that correct?

A. Yes.

30 Q. Now, some strain or jar ordinarily that would not be injurious in that state of affairs might break the wound, mightn't it?

A. Yes.

Q. And if some unusual strain or jar came and made a slight break in the wound so that it caused a slight hemorrhage, the very fact of that hemorrhage itself, as I

understood you, would have tendency to further break the wound and increase its seriousness?

A. I don't know that the actual hemorrhage would increase the wound, but it is the sudden hemorrhage when once started that produced death.

Q. So that the wound itself need not increase in size from what it was the first time?

A. Not necessarily at all.

Q. I did not know whether the gushing of the blood might not with this granulation further part it? 10

A. No, there was no evidence of any further enlargement of the original wound. You could easily distinguish the two, because the fresh tear you could co-adapt the edges. There was no evidence of any such tear in it.

Q. No, what I mean by that, Doctor is, this wound that had granulated, whether a small portion of that wound might not open with a slight injury?

A. Yes.

Q. And then the fact of its opening again by the coming of the hemorrhage force the rest of the old wound open—might not that happen? 20

A. It might happen.

Q. Now, when you first came in to see Mrs. Batten, between five and six o'clock on the day you were called in, she with the exception of this intense pain seemed to be in good health?

A. No, she was of a bad color. I had called there about ten days previous. She called me in; I was going by and I observed she was a very bad color.

Q. Was she well nourished? 30

A. Well nourished, but a very bad color.

Q. That was the only thing that you saw that seemed to be abnormal with her?

A. Yes.

Q. And when you were called in this time outside of the pain there was nothing else but this bad color?

A. No.

Q. Did that continue up to that time?

A. Yes.

Q. So that you were satisfied that the hemorrhage was not of longer duration than the hours you have given?

A. No.

10 Q. And that therefore the cause, the immediate cause of the hemorrhage, was some rupture that had shortly before that occurred?

A. Yes.

Q. Did you learn whether that day she had done anything to cause this rupture?

A. Yes.

(Objected to as hearsay.)

20 Mr. French: You did not see her do anything, did you?

The Witness: No, I saw her doing nothing.

The Court: He has answered the question yes.

Q. What did you learn that had happened that day.

(Objected to.)

30 Q. Did you learn it from the lips of the patient?

A. I did.

The Court: Then it is competent.

(Objection withdrawn.)

A. I inquired naturally for the cause of the sickness; when any articles which would cause indigestion were excluded and I saw the evidence of hemorrhage I inquired for what might have caused it, and it was then I got the history of the whole case.

Q. Well, I asked you whether you heard of anything happening that day.

A. Yes.

Q. What was that?

A. She told me she lifted a wash boiler off the stove. 10

Q. What did this wash boiler have in according to statement?

A. Well, she gave me no particular statement as to how much, but said it was a wash boiler with some clothes in.

Q. Did she say whether it was heavy or not?

A. No.

Q. Well, did she say that occasioned anything.

A. The distress of which she complained followed the lifting of that boiler? 20

Q. Followed practically immediately, did she say?

A. Well, it was some time in the afternoon, and the pain commenced between 3 and 4 o'clock.

Q. Well, didn't she say about something, she felt something at the time of the lifting?

A. Not that I know of, but she said she did not feel well afterward, but did not specify.

Q. Don't you recall she said something about giving way?

A. I will not be certain of that. 30

Q. You of course cannot remember the words that she used, but what she told you was in effect, wasn't it, that she had lifted from the stove a wash boiler and that caused the trouble which followed to her?

A. That is right.

Q. Now, from your examination, Doctor, of her and of the spleen could the lifting of a wash boiler with the ordinary contents by a woman of her physique and build cause such a rupture of the healing up wound which you discovered at the post-mortem?

A. Yes, sir.

Q. So that in the absence of any such thing as this from the condition that you discovered of her wound and the condition of good health in which she appeared to
10 be, her well nourished condition and the spleen itself, it would have gone on to a successful healing in all probability, wouldn't it?

A. I think with sufficient quietness that might have healed.

Q. It was apparently going along successfully except for this untoward thing?

A. Yes.

Q. And the spleen was in healthy condition, wasn't it?

A. It was apparently so far as we could tell, but it
20 was not performing its functions, because that is what I attribute her bad color to.

Q. I understand, of course the wound would more or less interfere with the functional operation of the spleen, but it was recovering itself?

A. Yes.

Q. And the strain that she said she put on it was in your opinion sufficient to cause the rupture which produced this severe hemorrhage?

A. Yes.
30

Q. When you operated on her, Doctor, that was the next day after she went to the hospital?

A. Dr. Howard operated.

Q. Yes, but you were present at the operation?

A. Yes.

Q. When the operation was performed you could not go all the way to the spleen, could you?

A. You could not bring it to view.

Q. That was owing to her weakness?

A. Her weakness and its location.

Q. So that you could only pack the wound and the leaking spleen?

A. Yes.

Q. Well, why was that not successful in restoring her, because of her extreme weakness, because of her nervous condition? 10

A. I think so.

Q. The hemorrhage had been so profuse, so violent that she was weakened and could not rally from the operation—is that it?

A. I think so.

Q. That is your opinion?

Q. Yes.

Q. Of course, you cannot speak definitely, you only speak to the best of your scientific opinion? 20

A. Yes.

Q. This condition of hemorrhage could not have lasted from June 25th?

A. Oh, no.

Q. That was only——

A. A few hours.

By Mr. French:

Q. Then, Doctor, is it your opinion that the wound was of the same size at the time of the operation that it was when the spleen was first ruptured? 30

A. The original wound, you could see the granulations filling that.

Q. And that indicated to your mind that the wound

had not enlarged any, that is, the wound to the spleen, from the time it was first received?

A. Not any enlargement whatever.

CLARK H. BATTEN, sworn.

By Mr. French:

- 10 Q. Where do you live?
 A. 336 Clinton street.
 Q. How old are you?
 A. Forty.
 Q. What is your occupation?
 A. Clerk in a hardware store now.
 Q. How long have you worked there?
 A. Since April 23rd.
 Q. Where did you work before that time?
 A. For the Public Service.
- 20 Q. What doing?
 A. Motorman.
 Q. Do you remember the occasion of the accident to your wife?
 A. I do.
 Q. When was that?
 A. On the 25th day of June, the night of the 25th.
 Q. What year?
 A. 1905.
 Q. Your wife is dead, isn't she?
 A. Yes, sir.
- 30 Q. When did she die?
 A. On the 8th day of September.
 Q. In what year?
 A. 1905.

Q. What was the condition of your wife's health before the 25th day of June, 1905?

A. Perfect, I never paid a dollar's doctor bill for her outside of confinements in the fourteen years we have been married, never a doctor to my recollection, never had a physician to call at the house at all.

Q. What was her condition during the time that elapsed between the injury and her death?

A. She never had a well day after the fall. Some days she looked real good, and like enough the next day she looked as though she was going to collapse right away. Some days her flesh would be white looking and the next it would be awful yellow; she began to look sallow from that time on. She was able to be about the house, the big strong ambition she had; I coaxed her to have a physician but she said——

Mr. Armstrong: No, don't tell what conversation you had between you.

A. She got medicine from the drug store and doctored for her kidneys; she said, "It must be my kidneys"—that is what she blamed the cause of her trouble to.

Q. You can't say that.

A. Well, that is what I laid it to.

Q. Well, you can't even say what you laid it to; you are not an expert.

A. She took medicine until the 5th day of September. The 5th day of September she was just walking out of the house——

Mr. Armstrong- Did you see this? Don't tell what has been told you, only what you saw, please.

A. Well, she called me and when I came down she

was out of the house. I assisted her back in, got her on the lounge. She called me and I came down; she was taken with a severe pain in front of the house. I got her back in the house, got her up stairs on the bed. She never rallied from that time. We called a physician right in, had a consultation that night after Dr. Ironsides came and couldn't exactly locate the trouble, held a consultation with Dr. Howard.

10 Q. Were there any children as a result of your marriage?

A. Two.

Q. What are the names?

A. Earle W. and Floyd C.

Q. How old were they at the time of your wife's death?

A. Earle was twelve in October and Floyd was nine in June.

By Mr. Armstrong:

20 Q. This last October and June of last year?

A. Yes, 1905.

A. October, 1905, and June, 1905?

A. Yes.

By Mr. French:

Q. What have you to say of the habits of your wife as to outside work?

30 A. Well, she done a great deal of outside work after we married and had a child or two. I never made big wages and she took outside work and whatever she could get to do, sewing or fancy work.

Q. Did she do any washing?

A. Yes, sir, she done some washing.

Q. How much per week would she average as her earnings?

A. Well, different times all the way from four to six dollars, according to the work she got.

Q. What was done with that money?

A. She kept it and put it away.

Q. For whom?

A. She saved the money up.

(Objected to.)

Mr. French: I think that is a very pertinent question. Our recovery is limited to the financial benefit that the mother was to these children and that she probably would have been in the future, and that is a very material question. 10

The Court: The question is over-ruled; you may show what she did with her earnings.

Q. What did your wife do with her earnings?

A. She put it in bank.

Q. For whom? 20

(Objected to.)

A. The children.

The Court: The question is over-ruled.

Q. Were your funds mixed with those of your wife's?

(Objected to.)

A. No, sir. 30

Mr. Armstrong: That is altogether immaterial whether they were or were not.

The Court: He has answered it no; is there any objection to that standing?

Mr. Armstrong: Yes, I move that that be stricken out. I, of course, interpose my objections as quickly as I can.

The Court: Well, I will consider your motion and pass upon it later as to whether it shall be stricken out or not.

10 Q. Do you know whether or not your wife gave any money to the children?

(Objected to. Question allowed.)

(Exception noted for the defendant.)

A. I do.

Q. What have you to say as to that?

A. I do.

Q. Well, did she?

A. She did.

20 (Objected to as improper and immaterial.)

(Question allowed.)

(Exception noted for the defendant.)

Q. What portion, if any, of her earnings was devoted to the use of the children?

Mr. Armstrong: I object; that is a conclusion altogether. Your Honor allowed a previous question and it has not been answered in that line.

30

Mr. French: We have got to show how much financial benefit she was.

The Court: The question is allowed.

(Exception noted for the defendant.)

A. It was all put away for the children except what she used for herself.

Mr. Armstrong: I move that that be stricken out.

The Court: Yes, the Court has ruled he can show what she did with the money. Now, to say she put it away for the children is a matter of stating her mental condition, which is certainly incompetent; what she proposed to do is too indefinite.

10

Q. What did she do with the children?

A. Clothed them and dressed them and bought every dollar's worth of clothes they had until her death.

Mr. Armstrong: I object to that and move it to be stricken out. That, of course, is of no advantage to the children; that is the father's business, to dress them, to clothe them.

The Witness: I never bought a dollar's worth——

20

The Court: No, I will let that stand.

(Exception noted for the defendant.)

A. I never bought a dollar's worth for them until after her death.

Q. Then ever since the marriage she has bought the clothing for the children?

(Objected to.)

30

The Court: Yes, that is mere repetition; that is over-ruled.

Q. Now, as to the giving of money to the children, what do you know, Mr. Batten?

A. I know she gave them money right along.

Q. How much on an average?

Mr. Armstrong: I object; that question certainly isn't proper. He may show what money she devoted to it.

The Court: Yes, he cannot average it.

Q. Then how much per week did she give to the children?

10

(Objected to.)

The Court: It is allowed.

A. She put the money in bank herself, turned around and had it transferred in my name——

Mr. Armstrong: I move that be stricken out.

The Court: The motion is allowed.

20

(Question repeated.)

A. Why, from four to six dollars, sometimes be more and sometimes be less than six.

Q. Do you mean that outside of the clothing?

A. Well, it amounted to about that, yes, sir.

Q. Now, how do you know that this was done?

A. I seen her go buy the things for the children and gave me the money to put in bank.

30 Mr. Armstrong: I ask that all this be stricken out.

The Court: Yes.

Mr. French: Does your Honor rule it is not a proper question?

The Court: No, he don't answer your question; that is the trouble.

(Question repeated.)

Mr. Armstrong: This witness said that his wife gave four or six dollars to the children. He was asked how he knows and he said the money was given to him to put in the bank, so I move that that having been explained as it was by this witness be stricken out. It is not an answer to a question. It refers to exactly the same thing your Honor has already ruled out. 10

Mr. French: I submit that the first part where he said he saw it was proper and responsive to the question.

The Court: He may state how he knows what amount of money was given to the children weekly or spent for their benefit. (To the witness.) Can you tell us that, how you know it? 20

The Witness: Well, I saw it.

The Court: Well, that is what they are asking you.

Q. What was done with the rest of your wife's earnings, if there was any?

A. She gave some to the children, gave cash to the children, and outside of that she gave it to me and I put it in bank for them.

Q. Did your wife do any outside work after she was injured up to the time of her death? 30

A. She had to give her work up.

Q. She did her housework?

A. Well, she did part of it, did what she could not help from doing and what the children and I did not do.

Q. You did not see this accident yourself, of course?

A. No, sir, I didn't see it because I was working myself at the time of the accident.

Q. What did you make a month at that time?

(Objected to.)

The Court: I do not see that that is competent; it is over-ruled.

10 Mr. French: I desire to introduce in evidence the letters of administration, a copy in the case.

The Court: The question reserved is allowed to stand; the motion to strike out is refused and exception noted. The letters of administration are admitted.

Mr. Armstrong: I interposed my objection but he answered it before I could get in my objection.

20 The Court: I will consider it as having been interposed before so you can have the fullest benefit.

Cross-examination.

By Mr. Armstrong:

Q. I understood you to say that you counted your wife made from four to six dollars a week?

A. I did.

Q. You do not mean to say that in addition to doing her housework, do you?

A. I do.

30 Q. What did she work at?

A. Anything at all that came along, made no difference whether it was dressmaking or children's clothes making or cleaning house or washing, she was not particular at all what she did.

Q. How many days did she work on an average a week?

A. She worked every day some weeks.

Q. Worked out every day some weeks?

A. Oh, no, not every day.

Q. How much did she get a day?

A. She got a dollar and a half, two dollars, sometimes a dollar, according to what the work was.

Q. She didn't work out half the time, did she?

A. She done some of the work right home, lots of it. 10

Q. She didn't do outside work half of her time, did she?

A. I don't know but what she didn't; I believe she did.

Q. Will you say that your wife devoted half of her time to outside work?

A. With what she did at home, I am satisfied she did, for she would sit there doing sewing at nights until ten and eleven o'clock sometimes, fancy work. 20

Q. So you are satisfied that she devoted three days a week to outside work, outside of her own household?

A. Yes, before she got hurt, yes, sir, all of that.

Q. Then after she got hurt, she did not do any of that work?

A. She had to give that work up?

Q. Answer yes or no; will you please, to my question?

A. She didn't do any of that work; she gave it up, she had to.

Q. When she gave that up, she superintended her household just the same, didn't she? 30

A. No, not just the same, no, sir.

Q. I say she superintended it, didn't she? She did all the work that you and the children didn't do, didn't she?

- A. Well, what little was done, yes, sir.
- Q. She washed, didn't she?
- A. Very little; I washed some myself.
- Q. The day that she was taken sick she was working about the house, wasn't she?
- A. I believe so in the morning, yes, sir.
- Q. When she called you, where were you?
- A. I was up stairs in bed.
- Q. In the afternoon?
- 10 A. Yes, sir.
- Q. And she was out front?
- A. She had just gone through and called me, went through the entry, gave me a call to come right down.
- Q. Where was she then?
- A. She was out front of the house.
- Q. Out in front of the house?
- A. In the front yard.
- Q. What time was this?
- A. About ten minutes of four, I think, somewhere
- 20 about there.
- Q. Ten minutes of four in the afternoon?
- A. Yes, quarter to four, something like that.
- Q. Do you know what day of the week this was?
- A. I do.
- Q. What?
- A. Tuesday.
- Q. Do you know what work she had been doing that day?
- A. She washed out a few pieces in the morning that
- 30 she had to have washed.
- Q. When she called you and you came, she was then suffering considerable pain?
- A. She was taken with very severe pain right in her left breast or left side.
- Q. And you then went for the doctor?

A. I got her in the house and upstairs to bed and got my own supper.

Q. You didn't go for the doctor then for some little time after that?

A. I gave her some medicine; she asked me to get her some medicine and I gave her some. She thought it was just a pain——

Q. Won't you please answer my question?

(Question repeated.)

10

A. I told her to send one of the boys for the doctor. I went on and got my supper.

Q. What time did the doctor come?

A. I was not there when the doctor came, I don't know.

Q. What time did you leave?

A. Left there about a quarter of 5 to 5 o'clock.

Q. And you left there about an hour after you had taken her upstairs?

A. Yes.

20

Q. Three-quarters of an hour to an hour?

A. Yes.

Q. Up to that time you hadn't had the doctor at all?

A. Well, I told her to send the boy after the doctor; I had to go to work.

Q. I understand; I say up to that time since the accident she hadn't had a doctor?

A. No, the doctor hadn't got there yet.

Q. I know, but she hadn't had a doctor at all to treat her up to that time from the time of the accident? I understood you to say you wanted her to have a doctor but she wouldn't? 30

A. Only what medicine she got; she didn't call a physician in the house; she went to the drug store and got medicine.

Q. She hadn't had any doctor to come and treat her at all; she got medicines herself from the drug store?

A. Yes.

Q. You said she said she thought her kidneys were the difficulty?

A. That is what she thought was the trouble.

Q. Now, Mr. Batten, how much money did you ever know your wife to give to either of these twelve- and nine-year old boys? I am speaking about money given
10 to them.

A. How much money did she give to them?

Q. Yes.

A. What, altogether?

Q. How much did she hand to them in any week?

A. Well, she didn't always give it to them; she gave it to me.

Q. You said she gave them from four to six dollars a week. Now, she never gave them four dollars a week, did she?

20 A. Yes, gave them as high as \$50.

Q. Which one did she give \$50 to?

A. Gave it to me to put in bank for them. She would save the money up until she got——

Q. Did you ever know her to give the children—I am speaking about giving the children money—except a few cents to spend?

A. Certainly, I have knowed her to give money to the children.

Q. How much did you ever know her to give them?

30 Mr. French: I submit, your Honor, he has answered that two or three times.

The Court: Well, no, in view of the last answer I think there is some uncertainty as to what his testimony means. Counsel may examine him.

A. I have known her to give them as high as \$50 at a time.

Q. Did you ever know her to give the child \$50 at one time, either child?

A. It was just the same; she gave it to me to put in bank for them.

Q. When you say she gave them four to six dollars, you mean she gave the money to you and you put it in the bank to their credit?

A. She put it in there herself to her credit first. 10

Q. You said you knew about it because she gave it to you to put in bank.

A. She did.

Q. That is what you mean by giving money to the children putting it in bank?

A. Certainly.

Q. And putting it in bank to her credit, her name, wasn't it.

A. Yes, sir.

Q. Now, did you ever know her to give directly to the child, any money? 20

A. Certainly, yes.

Q. How much?

A. Well, she gave them money every week regularly as far as that goes.

Q. How much?

A. I suppose 25 or 50 cents that she gave to them personally.

Q. She gave 25 or 50 cents to each child each week?

A. Beside buying— 30

Q. I am not talking about what she bought them; I am asking about what she gave them. Is that what you mean to say?

A. She gave them that much money, yes.

Q. You didn't mean to say that she gave to them personally four or six dollars a week, did you?

A. It was for their benefit.

Mr. Armstrong: Will your Honor please instruct the witness to answer the questions.

The Court: Yes. (To the witness.) Answer the questions directly.

10 A. It was for the children.

The Court: Now, that is not an answer to the question; just answer the question.

Q. Did you ever know her to give the children over 25 or 50 cents a week directly, I am speaking about giving them the money?

A. That she gave them just to spend.

Q. That is all you ever knew her to give them?

A. That is what she gave them to spend.

20 Q. I say, that is all you ever knew her to give to them directly?

A. To spend, yes, sir.

Q. From what time did she relieve you from clothing the children?

A. Well, she always bought all their clothes, always.

Q. You never had to clothe them at all?

A. My wages wouldn't do it.

Q. Then she used her money to clothe the children and herself?

30 A. Part of it.

Q. So much as was necessary?

A. Yes, sir.

Q. Or do you mean to say you contributed part?

A. I don't think I contributed much; my wages wasn't large enough to do it.

Q. But whatever was left out of your wages beyond your housekeeping expenses went toward the care of the children and herself?

A. I don't think there was any left.

A. Well, what became of what was left, if anything?

A. There wasn't any left, I guess.

Q. All that you made was spent on the house, was it?

A. Yes.

Q. And you were unable to keep your family yourself—is that correct? 10

A. My wages was not sufficient.

Q. I say, you were unable to keep the family yourself?

A. They were not sufficient to do it, yes, sir.

Q. Who has kept the family since then?

A. I have tried to, but that is all.

Q. You have done what you could in order to keep them?

A. I am going behind two or three dollars every week. 20

Q. But you are the one that is endeavoring to keep them now?

A. Yes, sir.

MRS. HANNAH HOLMES, sworn.

By Mr. French:

Q. Where do you live? 30

A. I live at 334 Clinton street.

Q. Did you know Mrs. Elizabeth Batten before her death?

A. I did.

Q. Did you see her very often?

A. I did.

Q. How long had you known her?

A. Over fourteen years.

Q. What have you to say as to the condition of her health before the accident?

A. Perfect.

Q. Did you know her and see her frequently after the accident?

A. I did.

10 Q. What have you to say as to the condition of her health after that time?

A. Well, she was never well, and she used to go and lie down frequently, and she would say, "I don't know what ails me; I feel so bad, I never used to feel this way."

Q. Did you notice anything about her color?

A. Yes, she had a very bad color.

Q. What?

A. Sometimes it would be very white and sometimes
20 it would be a greenish white all over her whole face.

Q. Did you ever notice that before the accident?

A. No, I never did; she always was in perfect health.

Q. Where did she complain of pain?

Mr. Armstrong: I object to what she said as not admissible.

Q. What did she do in the way of indicating to you the seat of pain?

30 Mr. Armstrong: I object; of course this is asking for a conclusion of this witness and I object to it as incompetent, immaterial and improper.

The Court: The question is allowed.

(Exception noted for defendant.)

A. Why, she complained of such a hurt in through her breast and back.

The Court: I suppose declarations of this deceased woman made to this lady are not competent; therefore what she said the witness cannot tell. She has told some things without objection which are in the testimony. She may show her conduct, how she acted, from which the jury might infer that she was not in good health, but she will have to avoid telling what she said. 10

Q. What do you know about Mrs. Batten's habits of work outside of her own housework, if anything?

A. I knew she was a very hard working woman and done a great deal of outside work.

Q. What kind of work?

A. Well, she would go out by the day housecleaning and so on.

Q. Do you know what she did with her money?

(Objected to.) 20

The Court: The question may be answered yes or no.

Q. Do you know personally what she did with her money?

A. No.

Q. Do you know who clothed the children?

A. I know she did.

Q. Was she a strong woman?

A. She was. 30

Q. What kind of outside work did she do?

A: Well, she sewed and she washed, cleaned house.

Q. Have you any idea what she made a week?

A. I have not.

Cross-examination.

By Mr. Armstrong:

Q. Of course, you only know that she clothed the children from what you have been told?

A. I have been with her when she would say, "This is my money and I buy such things."

Q. I say, that is all you know, what she told you?

A. Yes.

10 Q. You have no knowledge yourself outside of what she told you?

A. No, only what she told me.

By Mr. French:

Q. Have you been with her when she has purchased these things for the children?

A. Oh, yes, lots of times.

20

CLARISSA C. FENNIMORE, SWORN.

By Mr. French:

Q. Where do you live?

A. 529 S. Third street.

Q. Camden?

A. Camden.

Q. Did you know Mrs. Elizabeth Batten before her death?

30 A. I did.

Q. How long?

A. About seven years.

Q. What have you to say as to the condition of her health before the accident?

A. Healthy, strong.

Q. Were you in a position to observe her after the accident up to the time of her death?

A. I was.

Q. What did you notice, if anything, outside of what she said to you? Don't tell that.

A. She had a bad color and she looked white, you know; her eyes were hollow looking.

Q. What was the peculiarity with reference to the color?

A. Why, sometimes she would look yellowish and greenish, funny looking color, you know; I can't just describe it; but she generally was an awful yellow. 10

Q. Were you intimate with her?

A. I was, yes, sir.

Q. Do you know whether she did any outside work?

A. I do.

Q. Very much?

A. Yes, sir.

Q. Have you any idea how much she made per week?

A. No, sir. 20

Q. Do you know what she did with her earnings?

Mr. Armstrong: Of your own knowledge, of course, not what somebody told you, but of your own knowledge.

A. I suppose she saved it for her own use, for the children. Of course, I don't know anything about her family affairs, you know.

Q. Do you know who clothed the children? 30

A. She did.

Q. How do you know that?

A. Because I have been with her when she has got things for them and I know that Mr. Batten didn't make the wages.

Cross-examination.

By Mr. Armstrong:

Q. You don't know what wages he did make, except what you have been told?

A. No, sir.

Q. And you don't know what she earned except what she told you, do you?

A. That is all, yes, sir.

10 Q. And you don't know whose money she spent, except what she told you when she was buying them?

A. Oh, no, of course.

Q. Of course, you have no knowledge of that yourself?

A. Of course, no.

Q. It is only what you have been told?

A. Of course, I always believed the woman.

Q. Yes, of course, that is why you say that, because you believed what she told you?

20 A. Yes.

MRS. SUE LEARY, sworn.

By Mr. French:

Q. Mrs. Leary, where do you live?

A. Moorestown.

30 Q. You are a relative of Mrs. Batten, now deceased, aren't you?

A. Yes, sir, sister.

Q. What do you know about the condition of her health up to the time of this accident?

A. Good health.

Q. And after the 25th of June last year, what do you know about it?

A. She had poor health.

Q. What did you notice in reference to her health after her accident and before her death, if anything?

A. I didn't see her only once or twice afterward, and she complained of feeling bad.

Q. Don't say what she complained. Did you notice anything about what she did, her physical condition, how she looked or anything of that sort?

10

A. Well, she looked bad.

Q. Do you know anything about whether she did outside work or not?

A. I do; she worked hard, done lots of outside work, washed and ironed and house cleaning and different things.

Q. Do you know what she did with her money?

A. Saved it for the children.

Mr. Armstrong: "Saved it" is all right.

20

Mr. French: Isn't it a question for the jury after she has saved this money what she was going to do with it?

The Court: She can show what portion of it she spent on the children, if she knows.

Mr. French: Well, as to the portion that she did not spend?

The Court: Yes, she can show what she did not spend.

30

Mr. French: I mean as to what the disposition of this fund was that was not spent?

The Court: Oh, no, not what the intention was.

The question is what was the financial loss to these children because of her death. It is proper to show how much she earned and what she did with it.

Mr. French: How about the money that it was not necessary to spend, if there was any, but that was put aside for their use, if that could be shown; isn't that just as much a financial benefit to these children.

10 The Court: You run then into hearsay evidence and into a matter of intention which might never have become effective; you could not base a verdict on that.

Mr. French: Suppose it is shown that this money was placed in bank in her name or her husband's name; then if that money was saved, hasn't the jury a right to infer as to what was done with it or to draw their own conclusion without any hearsay testimony or anything of the sort?

20 The Court: I think that is too vague, Mr. French.

Q. Do you know, Mrs. Leary, what was done with the money; what she did with the money she earned?

Mr. Armstrong: This witness should be cautioned that she can only tell what she knows of her own knowledge, not what she was told.

30 The Court: Yes. (To the witness.) The question, you understand, is whether you know what she did with her money.

A. Yes, I know.

Q. What did she do with it?

The Court: I think before you do that, you should ask her how she knows it.

Q. How do you know it?

A. I know, she lived with me one time two or three years; they both lived in the same house together.

Q. After they were married?

A. Yes, sir.

Q. Then what did she do with the money?

A. What she didn't put on the children, she put away for them.

Q. How long did you say she lived with you?

A. Two or three years, lived in the same house. 10

Q. Where was that?

A. At Audabon.

Q. How old was Mrs. Batten when she died?

A. Thirty-two.

Q. Do you know how much she made outside of her usual occupation?

A. Between five and six dollars a week; some weeks she would make more and some weeks less.

Q. Who clothed the children?

A. She did. 20

Q. How many children were there?

A. Two.

Cross-examination.

By Mr. Armstrong:

Q. Did she clothe herself and the children too?

A. Yes, sir.

Q. And the rest of the money that she made you say she put away? 30

A. Yes, sir.

Q. Put it in bank?

A. Yes, sir.

Q. Kept it herself, did she?

A. Yes, sir.

Q. In her own name?

A. She had it in her name and then she took it out and put it in his name. I was with her the day she done it.

By the Court:

Q. In whose name?

A. Her husband's, for the children.

10 By Mr. Armstrong:

Q. She put it in her husband's name?

A. For the children, yes.

Q. Was it put directly in her husband's name?

A. For the children; he wasn't to give it to the children directly.

Q. Where did she put it in her husband's name?

A. At the deposit bank.

Q. In a bank.

A. Yes.

20 Q. She got a bank book, showing what it was?

A. Yes.

Q. And she took that book, did she?

A. Yes.

Q. When was this done?

A. I couldn't say what year it was done in.

Q. While you were living there with them?

A. Yes.

Q. You lived there three years after their marriage?

A. Yes, we lived out together on the pike; he worked
30 for Raxon, drove a milk wagon.

Q. Were both of the children born that time?

A. Yes, sir.

Q. Do you remember how long ago it was since you lived together?

A. I couldn't say; about five years ago, I suppose,

since we went there. We didn't go very far then, just went to another house.

Q. I am speaking about the time you lived together, about five years ago.

A. Well, it was about five years ago since the bank account was changed from the husband. It was for the children; she thought if anything happened to her, the children would not be able to get it if she was gone, so she had it changed that way.

Q. That was about five years ago? 10

A. Yes, sir.

Q. You, of course, only know the amount of her earnings from what she told you, don't you?

A. Yes, but then she worked with me and I seen her.

Q. You didn't often work together, did you?

A. No, sir, I kept her children when she worked out.

Q. And so you only knew, of course, what she got from what she told you?

A. Yes, and what I seen.

Q. And you saw that she had money. 20

A. Yes, sir, I seen she had money.

Q. Didn't her husband clothe the children or herself?

A. It took as much as he made to keep the house.

Q. All that he made was consumed in keeping the house?

A. Yes, sir, paying the rent.

Q. So she had the clothing of herself and the children?

A. Yes, sir.

Q. And she kept the balance of what money she had, did she? 30

A. Yes.

PLAINTIFF RESTS.

Mr. Armstrong: I call on them to produce the evidence of deposit. You now have already shown there were evidences of deposit, books, &c., and you certainly can't show by the statements of these witnesses when there is better evidence on it.

Mr. French: We have no further evidence to produce.

Mr. Armstrong: Then I move it be stricken out as to the question of deposits.

10

The Court: Yes, that portion of the testimony of the last witness which told of the deposit in the name of the husband and the purpose of it is stricken out.

20

30

Mr. Armstrong: The plaintiff's evidence is clear, if your Honor please, that the immediate cause of the death of this decedent was a subsequent injury to the original wound; that that was successfully and properly progressing and would have resulted in a cure, had it not been for some unusual and extraordinary strain put upon the woman, such as has been testified she stated she underwent. The defendant can be held responsible only for the immediate and approximate results of the injury. Both doctors testify that this death was caused by a hemorrhage, and that the hemorrhage was induced but a few hours before the seizure, according to Dr. Ironsides it could not have been more than two or three hours before the time he saw her, which was between 5 and 6 o'clock; according to the husband's testimony it occurred about 4 o'clock of the 5th of September and she died on the 8th of September. The wound had entirely healed over by granulation, according to the testimony of both the physicians who examined it and according to the production here of the injured spleen; therefore this death was not the immediate result of the injury. The

proximate cause of the death was not the injury in falling from the car. According to their conclusion and according to the deduction to be made from the testimony she received injuries from the defendant, injuries for which to that extent a recovery might be had, but those injuries were not the proximate cause of her death. That is clearly in the plaintiff's case. Moreover there has been no proof of any sums or figures here that will entitle this plaintiff to recover any sum in damages. In the Gctt- 10
 lieb case it was held by the Court of Errors that while the husband could maintain a suit as administrator, he had no especial interest whatever in the recovery; it was only to recover such financial benefits as the children might have received or would in all probability receive from the mother. They are not the care and maintenance of the child, because that belonged clearly to the husband. All of her earnings that went to clothe the children and herself were given to the husband; they were the husband's. She was in no way released from the marital relation, she was his wife and a part of his 20
 household and she engaged in no independent business or anything of that sort. He himself testified that he could not maintain the house and she was required to do a portion of it. Of course, then she was clearly and entirely doing that for him and it was his; so that the plaintiff on that stage of the case has failed to make out any beneficial interest by which these children can recover. The only thing that was at all testified is the giving of spending money to the children, which was such an intermittent thing that it was no substantial 30
 thing which the child could be entitled to receive and which would be sufficient to base a recovery. On both these grounds, I ask for a non-suit.

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

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

The Court: (After argument on the motion) I will reserve decision on this motion and let the defendant put in its case.

10

DEFENDANT RESTS.

Mr. French: I have another witness here, I have just been informed, who knows all about that washing affair, if I can explain that.

The Court: Application is made to open the case to introduce another witness.

20

Mr. Armstrong: I object to that.

Mr. French: I did not know of this witness before and I have made diligent effort to obtain all the testimony in the case, and it was in reference to the lifting that was done, concerning which argument has been made, and I could introduce some testimony to explain the feature about which the doctor spoke. I think it is within the discretion of the Court to permit such an offer.

30 Mr. Armstrong: I shall certainly object to that, because the case was closed on the other theory. The medical testimony was put in in the first instance and her statement is what the doctor based it on.

The Court: The case may be opened. You may note an exception, if you desire.

Mr. Armstrong: Well, I suppose that is a matter of discretion.

Mr. French: This was a witness who was already on the stand, but at that time the question had not arisen.

Mr. Armstrong: Well, that shuts it out, your Honor.

The Court: I will take the testimony.

HANNAH S. HOLMES, recalled.

10

By Mr. French:

Q. Mrs. Holmes, were you at Mrs. Batten's house before she was taken down sick at this last occurrence?

A. I was there when the Doctor came; I was the one sent for him.

Q. And were you there at the time he was there, while he was there?

A. I was.

20

Q. Were you there while he asked the question as to what she had been doing?

A. I was.

Q. What did Mrs. Batten tell the doctor, if anything, at the time?

(Objected to.)

The Court: That would not be competent from this witness. It is competent in the case of a physician where statements are made for the purpose of enabling him to prescribe, but statements made to other persons in the presence of other people I do not think would be competent; it would be hearsay testimony.

30

Mr. French: I am simply relating to this testimony

that is already in, the statement that has been admitted on the part of the doctor as to what she said.

The Court: I understand, but my view is that while it is competent from the lips of the doctor under rather an exception to the general rule, it would not be competent from the lips of this witness. It would be hearsay.

10 Mr. French: I am simply explaining what they brought out on the other side, and it is within the discretion of your Honor to allow us to explain just what took place there.

The Court: I do not think I have any discretion to vary the rules of evidence. Your offer is refused.

Whereupon the plaintiff, by his Counsel, prays a bill of exceptions which is allowed and sealed accordingly.

ALLEN B. ENDICOTT,
Circuit Court Judge.

20

Q. What did you see there at the time?

A. Why, nothing, only I found her very sick. Being a next door neighbor I went in. The little boy told me mama was very sick and of course I went in.

Q. Had you been with her before when she was washing?

A. I was right next door to her, talking to her over the fence, and she didn't do any washing after dinner.

30 Q. Did you see her the day before this sickness occurred?

A. Oh, yes.

Q. When she was washing?

A. She didn't wash the day before.

Q. Immediately before her sickness?

A. Oh, yes, I saw her.

Q. Did she wash that day she was taken sick?

A. In the morning she did a few pieces.

Q. She did what?

A. Washed a few pieces. She didn't do a large wash, just washed a few pieces.

Q. With hot water?

A. I can't say about that.

Q. Do you know whether or not she did any lifting from the stove or anywhere?

(Objected to.)

10

A. I know she said she didn't.

Q. The question is whether you know; you must answer that yes or no, whether you yourself know, whether you saw her.

A. No, I didn't see her do any lifting.

Q. You didn't what?

A. I didn't see her do any lifting?

Q. Do you know whether she did or not any lifting?

20

(Objected to.)

The Court: If she did not see her she can only know it by hearsay.

By the Court.

Q. I suppose you only know what somebody told you?

A. I didn't see her do any heavy lifting.

Q. Is the only source of your knowledge what you heard some one say?

30

A. I heard her say—

The Court: No don't tell what she said.

Q. Do you know any other way?

A. No, I don't know any other way.

By Mr. French:

Q. Where did she do the washing in the morning?

A. In the kitchen.

Q. Could you see the kitchen from where you were?

A. Oh, yes.

Q. Were you watching her all the time she was washing?

10 A. No, for I was washing myself, but I could look out and see her.

Q. Do you know how many pieces she washed?

A. No, I do not.

Q. When you saw them, what were they in?

A. They were on the line when I saw them.

Q. Did you see them before they were put on the line?

A. No.

Q. About how many were there?

20 A. Well, there was just a small number; I didn't count them, but it was just a small number of pieces.

Q. Can't you approximate the number?

A. No, I couldn't say just how many, because some were large, a few pieces and maybe half a dozen small ones, I couldn't say just how many of them, I don't know.

Q. Was anyone assisting her?

A. Yes, the boy was helping her.

Cross-examination.

30 By Mr. Armstrong:

Q. Which boy, the nine- or twelve-year-old one?

A. The oldest one.

By Mr. French:

Q. What did he do, what assistance did he render?

A. I am sure I couldn't say, but I know he always put the tubs in the cellar.

(Objected to.)

Q. He put the tubs in the cellar?

A. Yes.

Q. Well, do you know whether or not he did the heavy lifting?

(Objected to.)

10

A. I don't know.

The Court: She doesn't know, she says.

Q. Do you know how she heated her water?

Mr. Armstrong: That is certainly not redirect examination; I do not see that that is within what your Honor permitted when the case was opened.

20

The Court: I will allow it.

A. I don't know.

The Court: You may proceed with the argument. The motion to non-suit is refused, and exception noted.

Mr. French: Your honor, I am informed there were other witnesses who were actually present at the time. I ask your Honor's leave to put them on in the same line as the other.

30

The Court: Well, you may call your witnesses; I will see whether it is competent.

Mr. Armstrong: This is all subject to my objection.

The Court: Certainly.

MATTIE STEELMAN, recalled.

By Mr. French:

10 Q. Mrs. Steelman, were you present at the house of Mrs. Batten on the day she was taken sick?

A. I was in the morning.

Q. Were you there when she did her washing?

A. I was there just when it was done; that was 11 o'clock, and I was there until she finished. She only washed out a dozen pieces that day.

Mr. Armstrong: Wait a minute; just answer the question.

20 Q. Did you see her do any heavy lifting?

A. No, sir, I did not.

(Objected to as incompetent and immaterial.)

The Court: I will take the testimony.

(Exception noted for the defendant.)

Q. Did she do any?

A. No, sir, she did not.

30 The Court: How can she tell that? She was not there all the time.

The Witness: I was there while she was washing; I stayed there until it was done. It was done at 11 o'clock.

Q. Were you there when she commenced?

A. I was, commenced to rub; I was not there before.

Q. Now, do you know how she got the hot water from the stove?

(Objected to as incompetent and immaterial.)

The Court: I will take the testimony.

(Exception noted for the defendant.)

10

Q. Do you know?

A. She didn't boil the clothes; there was no boiler used that day.

The Court: Strike out the answer.

(Question repeated.)

The Court: The question is whether you know how she did it; the answer to that is yes or no.

20

A. Yes.

Q. State what she did.

(Objected to on the same ground.)

The Court: You may note an exception to all this testimony, Judge Armstrong.

A. What water she heated Earle lifted from the stove, but she didn't boil no clothes; she had no boiler to lift off the stove like people does who boil the clothes, for she didn't do none but a few pieces.

30

Mr. Armstrong: I ask to have that stricken out.

The Court: It is stricken out.

Q. State what Mrs. Batten did.

A. In what?

Q. Not what Earle did or any one else did, just what Mrs. Batten did.

A. Well, she just washed these dozen pieces of clothes; she didn't do no big wash that day or lift a heavy boiler.

Q. Did she have assistance there that day?

A. Earle always helped her.

10 Q. Did he helped her then?

A. Yes, he always helped her.

Q. What did he do?

(Objected to.)

A. He would empty her tubs.

Mr. Armstrong: I object to that as clearly incompetent.

20 The Court: I will allow it.

(Exception noted for defendant.)

Q. What did Earle do?

A. He emptied the water and put the tubs away.

No cross-examination.

30

BOTH SIDES REST.

At this point a recess was taken until Tuesday morning, September 25th, 1906.

Camden, N. J., Tuesday, September 25, 1906.

Trial of the cause resumed on the above date at 9.15 A. M., in the presence of Counsel for the respective parties.

The Court: The Court has come to the conclusion that there must be a non-suit in this case. That Mrs. Batten received certain injuries upon the part of the defendant Company has been clearly proven and stands in the case uncontradicted. For this in her lifetime she would had a right to bring a suit for the pain and suffering which she endured. Her husband could have brought suit for the loss of services and any money she spent in trying to effect her recovery. But this action is of entirely a different character. It is brought under what is called the Death Act for the benefit of the next of kin, her two children, for the financial loss which they sustained in her death. Now, it appears from the testimony of the physicians in this case that after the injury caused by the defendant Company there was a subsequent and intervening cause, that she by her own act in lifting a boiler strained herself, producing a rupture of the spleen, that hemorrhage followed and then death resulted. While the defendant Company would be liable for the injuries which resulted from the accident of several months prior, there being a subsequent intervening cause, she having aggravated the injuries by her own act, the Company in the opinion of the Court should not be held responsible for that.

There are other difficulties in the case. The only loss which these children sustained was some pin money that the mother gave them and their clothing, so far as the testimony shows, the only financial loss. No one has said how much it cost to clothe them or how much she spent upon their clothing. The jurors are not allowed

to guess as to the amount of damages in such cases, and taking it all together the Court feels that the motion for non-suit must prevail.

Whereupon the plaintiff, by his Counsel, prays a bill of exceptions which is allowed and sealed accordingly.

ALLEN B. ENDICOTT,
Circuit Court Judge.

NEW JERSEY SUPREME COURT.

<p>CLARK H. BATTEN, Administrator, &c., vs. PUBLIC SERVICE CORPORATION OF NEW JERSEY.</p>	}	<p>In Tort. On Postea. Judgment for Defendant.</p>	<p>10</p>
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E. A. ARMSTRONG, Attorney.

As yet of the twenty-fourth day of June, A. D. nineteen hundred and six.

<p>Witness, WILLIAM S. GUMMERE, Esquire, WILLIAM RIKER, JR., Clerk.</p>	<p>Chief Justice. 20</p>
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CAMDEN COUNTY, SS.

The Public Service Corporation of New Jersey, the defendant herein, was summoned to answer unto Clark H. Batten, administrator of all and singular, the goods and chattels, rights and credits, which were of Laura Batten, deceased, the plaintiff herein, in an action of tort, and thereupon the said plaintiff by William C. French, his attorney, complains for that whereas the said defendant before and at the time of committing the grievances hereinafter mentioned, was the owner and proprietor, and by its servants had control and management of a

30

certain car which was propelled by electricity in, upon and along a certain track of the said defendant, which said track extended along Federal street and Broadway and divers other streets in the City and County of Camden and State of New Jersey, for the carriage and conveyance of passengers along the said streets, for hire and reward to the said defendant in that behalf, to wit, at Camden, in the County of Camden aforesaid; and the said defendant being such owner, operator and proprietor
10 of said car, and having the control and management of same as aforesaid, thereupon theretofore, to wit, on the twenty-fifth day of June, nineteen hundred and five, to wit at Camden in the County of Camden aforesaid, at the special instance and request of the said defendant, the said Laura Batten, deceased, became and was a passenger on said car, to be safely and securely carried and conveyed thereby on a certain journey; to wit, from Woodlynne Park in the County of Camden, to Federal and Third
20 streets, in the City and County of Camden for a certain fare and reward to the said defendant in that behalf, and the said defendant then and there received the said Laura Batten, deceased, as such passenger as aforesaid, and it thereupon then and there became and was the duty of said defendant to use due and proper care that the said Laura Batten, deceased, should be safely and securely carried and conveyed by and upon the said car on the journey aforesaid, and to suffer and to permit the said Laura Batten, deceased, to safely get from the said car and the platform thereof to the ground or street for the
30 pupose of alighting, at the corner of Federal and Third streets in the City and County of Camden, where the said car had stopped for that purpose; yet the said defendant not regarding its duty in that behalf, did not use due and proper care that the said Laura Batten, deceased, should be safely and securely carried and conveyed by and upon

the said car on the said journey as aforesaid, and did not suffer nor permit the said Laura Batten, deceased, to safely get off said car and the platform thereof for the purpose of alighting therefrom at the corner of Federal and Third streets aforesaid, but wholly failed and neglected so to do, and the said defendant by its servants, on the day and year aforesaid, to wit, at the corner of Federal and Third streets in the City and County of Camden and State of New Jersey, the said Laura Batten, deceased, while in the act of getting off said platform and off said car, and being a passenger as aforesaid, the said defendant carelessly and negligently suffered and permitted the said car to be violently propelled and started forward after said car had been stopped to permit the said Laura Batten, deceased, to get off said platform for the purpose of alighting therefrom and while the said Laura Batten, deceased, was alighting from the said car, and without any fault on the part of the said Laura Batten, deceased, she was violently by the means aforesaid thrown and precipitated to the ground and sustained serious injuries, and from which injuries the said Laura Batten died on the eighth day of September, nineteen hundred and five, to wit, at Camden, in the County of Camden aforesaid. And the said plaintiff avers that the said Laura Batten, deceased, at the time of her death was married and thirty-two years of age, and that she left surviving her husband, the said plaintiff, and two sons, her next of kin, and that they have sustained great pecuniary damage, loss and injury from and by reason of the death of the said Laura Batten, to wit, the amount of fifteen thousand dollars, whereby and by force of the statute in such case made and provided, an action hath accrued to the said plaintiff as administrator of the goods and chattels, rights and credits of the said Laura Batten, deceased, to demand and have of and from the said defendant the damage aforesaid, and therefore he brings his suit, &c.

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And the said plaintiff brings into Court here, letters of administration issued by Harry Reeves, Surrogate of the County of Camden which give sufficient evidence to the Court of the grant of administration aforesaid to the plaintiff aforesaid, the date whereof is the twenty-fourth day of April, A. D. 1906.

10 And the said defendant Public Service Corporation of New Jersey, by E. A. Armstrong, its attorney, comes and defends the wrong and injury when, &c., and says that it is not guilty of the supposed tort, wrong and injury as the said plaintiff hath above thereof complained against it, and of this it puts itself upon the country, &c.

Therefore, let a jury thereupon come before our Chief Justice or some other Justice of the Supreme Court of the State of New Jersey, at a Circuit Court to be holden at Camden, in and for the County of Camden, on the second Tuesday of September, in the year of our Lord, one thousand nine hundred and six, by whom, etc., and the same day is given to the parties aforesaid there, etc.

20 And now at this day, to-wit, the seventh day of November, A. D., nineteen hundred and six, before our said Supreme Court at Trenton, comes the said parties by their attorneys aforesaid, and the Justice before whom, etc., having first sent hither his record had before him in these words, to-wit:—

30 Afterwards, to-wit, on the twenty-fifth day of September, in the year of our Lord, one thousand nine hundred and six, at a Circuit Court held at Camden, in and for the County of Camden, his Honor Charles G. Garrison, one of the Justices of the Supreme Court of Judicature of the State of New Jersey holding the said Circuit Court having referred the said cause to his Honor Allen B. Endicott, Judge of the Camden County Circuit Court for trial according to the form of the statute in such case made and provided, comes as well the within named plaintiff

as the within named defendant and the jurors of that jury being summoned, also come who to speak the truth of the matters within contained, were tried and sworn; and after evidence being given to them upon the part of the plaintiff he rested his case, whereupon the defendant moved the Judge to direct a non-suit by reason that the matters aforesaid so given in evidence as aforesaid by the plaintiff, do not support the case set forth in the declaration, and the argument of counsel thereupon heard and due consideration had, it is deemed that the plaintiff be non-suited; whereupon the jurors of the jury are discharged from further consideration of the premises. 10

Therefore it is considered that the said Clark H. Batten, administrator, etc., take nothing by his said writ, and that the said Public Service Corporation of New Jersey, do go thereof without day, &c.

WM. S. GUMMERE,
C. J.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10	CLARK H. BATTEN, Administrator, &c., Plaintiff in Error, vs. PUBLIC SERVICE CORPORATION OF NEW JERSEY, Defendant in Error.	} In Tort. } Assignment of Errors.
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And the said plaintiff this day assigns the following causes of error:—

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1. Because the Trial Judge erroneously and unlawfully non-suited the plaintiff.

2. Because the Trial Judge erroneously and unlawfully non-suited the plaintiff on the ground that there was not evidence that the deceased was of any and sufficient pecuniary benefit to the plaintiff.

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3. Because the evidence adduced showed that the injury complained of was the proximate cause of the death.

4. Because the Trial Judge erroneously and unlawfully non-suited the plaintiff on the ground that there was no evidence to show that the injury complained of was the proximate cause of the death.

5. Because the Trial Judge erroneously and unlawfully refused to admit testimony that money was deposited in bank in the father's name for the benefit of the children.

6. Because the said proceedings are in sundry other respects irregular, illegal and void.

7. Because the said verdict is contrary to the law and the evidence.

WILLIAM C. FRENCH,
Attorney for Plaintiff.

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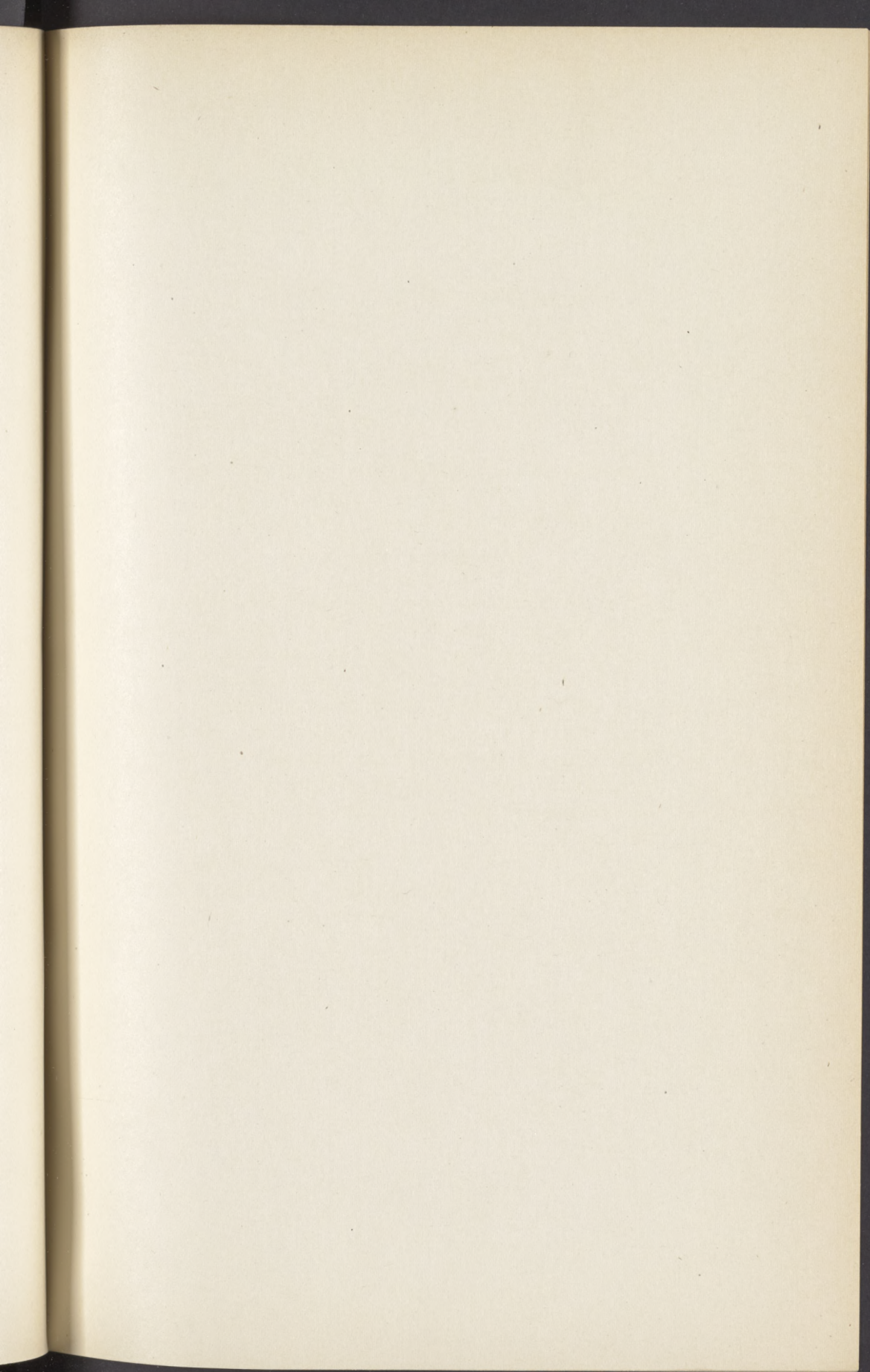
NEW JERSEY COURT OF ERRORS AND
APPEALS.

10	CLARK H. BATTEN, Administrator, &c., Plaintiff in Error, vs. PUBLIC SERVICE CORPORATION OF NEW JERSEY, Defendant in Error.	}	Joinder in Error.
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20 And hereupon, afterwards, to-wit, on this day, the said
 Public Service Corporation of New Jersey, by E. A.
 Armstrong, its attorney, comes into Court and says that
 there is no error either in the record and proceedings
 aforesaid, or in giving the judgment aforesaid, and it
 prays that the Court here may proceed to examine as
 well the record and proceedings aforesaid as the matters
 aforesaid assigned for error, and that the judgment afore-
 said, in manner aforesaid given, may in all things be
 affirmed, &c.

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E. A. ARMSTRONG,
 Attorney for Defendant in Error.



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