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SUMMONS AND COMPLAINT.

THE STATE OF NEW JERSEY TO THE CITY OF CAMDEN,
A MUNICIPAL CORPORATION, AND CHARLEY GRIP,
INC., A CORPORATION OF THE STATE OF NEW JER-
SEY, JOINTLY AND SEVERALLY.

You are summoned to answer the an- 10
nexed complaint of James Smith, in an
(Seal) action at law in the New Jersey Su-
preme Court.

And take notice that unless you file
your answer to the said complaint with the Clerk
of the New Jersey Supreme Court, at Trenton, New
Jersey, within twenty days after service upon you
of this writ and annexed complaint, the plaintiff
may proceed in the suit and judgment may be en-
tered against you. 20

Witness, HONORABLE WILLIAM S. GUMMERE, Chief
Justice of the New Jersey Supreme Court, at Tren-
ton, this 7th day of October, nineteen hundred and
thirty-two.

FRED L. BLOODGOOD,
Clerk.

WALTER S. KEOWN,
Attorney.

COMPLAINT.

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY.

10

JAMES SMITH,

Plaintiff,

v.

THE CITY OF CAMDEN, a
municipal corporation,
and CHARLEY GRIP, INC.,
a corporation of the
State of New Jersey,
jointly and severally,

20

Defendants.

Action at Law.
Complaint.

Plaintiff, James Smith, residing in the City and
County of Camden and State of New Jersey, says
that:

FIRST COUNT.

30

1. Said defendant, The City of Camden, a munic-
ipal corporation, was on the date hereinafter stated
and still is a corporation of the State of New Jersey.

2. Said defendant, The City of Camden, a munic-
ipal corporation, prior to and on the 29th day of

February, in the year of 1932, and at the present time, owned a certain building, including its equipment, appliances, fixtures, chairs, benches, grandstands, etc., said building being commonly and generally known as Convention Hall, located and situate at Princess Avenue and Line Street, in the City and County of Camden and State of New Jersey.

3. Said defendant, The City of Camden, on the aforesaid date and on prior days thereto and since the aforesaid date, has rented and leased the aforesaid hall or building, including its equipment, appliances, fixtures, chairs, benches, grandstands, etc., for purposes outside of its governmental function, to other persons and for a certain sum of money.

4. Said defendant, The City of Camden, on the aforesaid date, did rent or lease the said building, to wit, the said Convention Hall, located as aforesaid, together with its equipment, appliances, fixtures, chairs, benches, grandstands, etc., to one Charley Grip, Inc., a corporation of the State of New Jersey, for a certain sum of money for the purpose of a wrestling bout, or some other sport, wholly for the benefit of the said lessee. Said defendant, The City of Camden, derived a benefit or profit from the renting or leasing of the said hall or building, together with its equipment, appliances, fixtures, chairs, benches, grandstands, etc., and upon the leasing or renting of said hall or building, as aforesaid, reserved the right for its employees, agents or servants to go in and out of said hall or building and to have complete control, management

10

20

30

Complaint

and direction over the said equipment, appliances, fixtures, chairs, benches, grandstands, etc., in the aforesaid building.

5. On the aforesaid date, a wrestling bout, or other sport, was held at the aforesaid hall or building, commonly and generally known as Convention
10 Hall, by the aforesaid lessee, who extended an invitation, either expressed or implied, to the public at large, to attend said exhibition, for a certain sum of money as an admission fee.

6. Said plaintiff, James Smith, on the aforesaid date, to wit, the 29th day of February, in the year of 1932, did purchase a ticket for a certain sum of money paid by him and was admitted to the aforesaid hall or building to witness a certain per-
20 formance suggested and managed by the said Charley Grip, Inc., a corporation of the State of New Jersey. Said plaintiff was, therefore, lawfully upon the premises of the said defendant, The City of Camden.

7. Said defendant, The City of Camden, by and through the means of its servants, agents and employees, owned, had complete charge and control of and managed the equipment, appliances, fixtures,
30 chairs, benches, grandstands, etc., prior to and on the aforesaid date, and did, upon the leasing of the said premises as aforesaid, together with its equipment, appliances, fixtures, chairs, benches, grandstands, etc., know of the safe or unsafe condition of the said equipment, appliances, fixtures, chairs,

Complaint

benches, grandstands, etc., or should have known the condition of the said equipment, appliances, fixtures, chairs, benches, grandstands, etc.

8. Said defendant, The City of Camden, by and through the means of its servants, agents or employees, did see or should have seen that the condition of the said equipment, appliances, fixtures, 10 chairs, benches, grandstands, etc., of the said building, as aforesaid, were in a fit and safe condition to be occupied by the public at large upon the leasing or renting of the said hall or building, as aforesaid, to the said Charley Grip, Inc., the other defendant herein.

9. At the time and place aforesaid, and prior thereto, said defendant, The City of Camden, by and through the means of its servants, agents or 20 employees, negligently, carelessly and improperly maintained, managed, directed, controlled and kept the said hall or building, commonly and generally known as Convention Hall, inside and outside, its equipment, appliances, fixtures, chairs, benches, grandstands, etc., in an unsafe and dangerous condition; in that said defendant, as aforesaid, negligently, carelessly and improperly failed to inspect the said equipment, appliances, fixtures, chairs, benches, grandstands, etc., of the said hall or build- 30 ing, as aforesaid, prior to and at the time of the leasing or renting of the said hall or building, as aforesaid, and the opening of the said wrestling bout, or other sport; in that said defendant, as aforesaid, negligently, carelessly and improperly allowed,

Complaint

caused and permitted the said equipment, appliances, fixtures, chairs, benches, grandstands, etc., in the aforesaid hall or building to be in a condition unfit and unsafe for the use of any person or persons lawfully upon the said premises, as aforesaid, and to the peril of the public at large, to invitees to the said wrestling bout, or other sport; in that said
10 defendant, as aforesaid, negligently, carelessly and improperly failed to secure and fasten the said equipment, appliances, fixtures, chairs, benches, grandstands, etc., of the said building or hall, as aforesaid, so as to properly prevent same from breaking, crashing or injuring the public at large, or the invitees, or any other person or persons lawfully upon said premises; in that said defendant, as aforesaid, negligently and carelessly allowed and permitted said equipment, appliances, fixtures,
20 chairs, benches, grandstands, etc., in the aforesaid building, to become and be loose; in that said defendant, as aforesaid, negligently, carelessly and improperly failed to have the structure, girders and other equipment and appliances which help support the said fixtures, chairs, benches, grandstands, etc., in a safe and sound condition or sufficiently strong structure or firmly fastened, so as to prevent the said fixtures, chairs, benches, grandstands, etc., from breaking or giving away; in that said defendant, as
30 aforesaid, negligently failed to properly place signs or notices of the condition, dangerous condition or the danger of the said equipment, appliances, fixtures, chairs, benches, grandstands, etc., in and about the said premises; in that said defendant, as aforesaid, was otherwise negligent so that while the

said plaintiff, James Smith, was lawfully upon and occupying one of the seats in one of the grandstands provided for the said patrons or invitees, in the aforesaid building, the structure of the said grandstand weakened, or some part of same became loose, broken, etc., so that some part of it or all of it collapsed and fell to the floor, so that the said plaintiff, James Smith, was hurled to the floor and seriously injured. 10

10. As a result of the aforesaid premises, said plaintiff, James Smith, was seriously and permanently injured both internally and externally; has, still is and in the future will suffer great pain; has been, still is and in the future will be compelled to lay out and expend much money for medicines, medical attendance, hospital bills, surgical operations, and other incidentals, in his endeavors to have himself healed and cured of his said injuries; was, still is and in the future will be unable to follow his occupation, thereby causing him to lose much money in wages, earnings, profits and commissions; was, still is and in the future will be disfigured and incapacitated. 20

SECOND COUNT.

Plaintiff, James Smith, says that:

30

1. Said defendant, Charley Grip, Inc., prior to and on the date hereinafter stated, was and still is a corporation under and by virtue of the laws of the State of New Jersey, organized for the purpose

Complaint

of promoting professional wrestling bouts, and other sports, etc., for the patronage of the general public.

2. On or about the 29th day of February, in the year of 1932, said defendant, Charley Grip, Inc., was and still is engaged in the promotion of professional wrestling bouts, and other sports, etc., in
10 the City and County of Camden and State of New Jersey.

3. Prior to the date hereinbefore set forth, on said date, and thereafter, said defendant, Charley Grip, Inc., for the purpose of promoting a wrestling bout, or other sport, etc., leased a certain building commonly and generally known as Convention Hall, located and situate at Princess Avenue and Line Street, in the City and County of Camden and State
20 of New Jersey.

4. On the date aforesaid, said defendant, Charley Grip, Inc., rented or leased the equipment, appliances, fixtures, chairs, benches, grandstands, etc., in the said building commonly and generally known as Convention Hall, as aforesaid, from the said defendant, The City of Camden, a municipal corporation.

30 5. At the time and place aforesaid, said defendant, Charley Grip, Inc., operated the aforesaid wrestling bout, or other sport, etc., by and through the means of its servants, agents, or employees.

6. At the time and place aforesaid, said defendant, Charley Grip, Inc., by and through the means

of its servants, agents or employees, had complete control, management, direction and charge of the said wrestling bout, or other sport, etc.

7. At the time and place aforesaid, said defendant, Charley Grip, Inc., held said exhibition for the benefit of the public at large, charging a certain stipend for admission to witness the said wrestling bout, or other sport, etc. 10

8. At the time and place aforesaid, said plaintiff, James Smith, was lawfully upon the premises hereinbefore designated, having had an invitation extended to him, either expressed or implied, which was extended by the said defendant, Charley Grip, Inc., to the general public at large, and having purchased a ticket of admission and paid the sum for the same for the purpose of witnessing the aforesaid performance, or event, which was being held for the benefit of the said defendant, Charley Grip, Inc. 20

9. At the time and place aforesaid, said defendant, Charley Grip, Inc., by and through the means of its servants, agents or employees, negligently, carelessly and improperly maintained and kept the said equipment, appliances, fixtures, chairs, benches, grandstands, etc., contained in the said building commonly and generally known as Convention Hall, in a careless and dangerous manner; in that said defendant, as aforesaid, negligently failed to properly inspect the condition of the said equipment, appliances, fixtures, chairs, benches, grandstands, etc., 30

Complaint

as aforesaid; in that said defendant, as aforesaid, negligently failed to properly see that the said equipment, appliances, fixtures, chairs, benches, grandstands, etc., were properly fastened or in a safe condition for usage by the said patrons, general public and invitees to said event; in that said defendant, as aforesaid, negligently, carelessly and
10 improperly allowed, caused and permitted the said equipment, appliances, fixtures, chairs, benches, grandstands, etc., in the aforesaid building to be in a dangerous, unfit and unsafe condition, to the peril of persons attending the aforesaid exhibition, wrestling bout, or other sport, etc.; in that said defendant, as aforesaid, negligently and carelessly failed to place notices or warnings of the unsafe and unfit condition of the said equipment, appliances, fixtures, chairs, benches, grandstands, etc., in the aforesaid
20 building, although said defendant, as aforesaid, had knowledge of or should have had knowledge of the unsafe and unfit condition; in that said defendant, as aforesaid, negligently failed to protect or make safe the said plaintiff, James Smith, or other invitees, to the said exhibition, or wrestling bout, or other sport; in that said defendant, as aforesaid, negligently permitted the seats and benches on the said grandstands, and the other equipment, appliances and fixtures, to become and be loose; in that
30 said defendant, as aforesaid, negligently failed to properly secure or firmly fasten the said seats, benches, grandstands, equipment, appliances and fixtures, to their proper supports, or to the floor, or to other parts of the said building, as aforesaid; in that said defendant, as aforesaid, negligently,

carelessly and improperly failed to have the structure, girders and other equipment and appliances which help support the said fixtures, chairs, benches, grandstands, etc., in a safe and sound condition or of sufficiently strong structure or firmly fastened, so as to prevent the said fixtures, chairs, benches, grandstands, etc., from breaking or giving away; in that said defendant, as aforesaid, was otherwise negligent so that while the said plaintiff, James Smith, was lawfully upon and occupying one of the seats in one of the grandstands provided for the said patrons or invitees, to witness the aforesaid wrestling bout, or other sport, etc., in the aforesaid building, the structure of the said grandstand weakened, or some part of same became loose, broken, etc., so that some part of it or all of it collapsed and fell to the floor, so that the said plaintiff, James Smith, was hurled to the floor and seriously injured. 10 20

10. As a result of the aforesaid premises, said plaintiff, James Smith, was seriously and permanently injured both internally and externally; has, still is and in the future will suffer great pain; has been, still is and in the future will be compelled to lay out and expend much money for medicines, medical attendance, hospital bills, surgical operations, and other incidentals, in his endeavors to have himself healed and cured of his said injuries; was, still is and in the future will be unable to follow his occupation, thereby causing him to lose much money in wages, earnings, profits and commissions; was, still is and in the future will be disfigured and incapacitated. 30

Complaint

THIRD COUNT.

Plaintiff, James Smith, says that:

1. For the sake of brevity, paragraphs 1, 2, 3, 4, 5, 6, 7, 8 and 9 of the first count are hereby made paragraphs 1, 2, 3, 4, 5, 6, 7, 8 and 9 of this count.

10

10. For the sake of brevity, paragraphs 1, 2, 3, 4, 5, 6, 7, 8 and 9 of the second count are hereby made paragraphs 10, 11, 12, 13, 14, 15, 16, 17 and 18 of this count.

20

19. The joint and several negligence of the defendants, The City of Camden, a municipal corporation, and Charley Grip, Inc., a corporation of the State of New Jersey, as set forth in the first and second counts, was the cause of the injury to the said plaintiff, James Smith.

30

20. As a result of the negligent acts of the said defendants, The City of Camden, a municipal corporation, and Charley Grip, Inc., a corporation of the State of New Jersey, said plaintiff, James Smith, was seriously and permanently injured both internally and externally; has, still is and in the future will suffer great pain; has been, still is and in the future will be compelled to lay out and expend much money for medicines, medical attendance, hospital bills, surgical operations, and other incidentals, in his endeavors to have himself healed and cured of his said injuries; was, still is and in the future will be unable to follow his occupation, thereby causing him to lose much money in wages, earnings, profits

Complaint

and commissions; was, still is and in the future will be disfigured and incapacitated.

Plaintiff, James Smith, demands damages of the defendant, The City of Camden, a municipal corporation, under the first count, in the sum of \$25,000.00.

Plaintiff, James Smith, demands damages of the defendant, Charley Grip, Inc., a corporation of the State of New Jersey, under the second count, in the sum of \$25,000.00. 10

Plaintiff, James Smith, demands damages of the defendants, The City of Camden, a municipal corporation, and Charley Grip, Inc., a corporation of the State of New Jersey, jointly, under the third count, in the sum of \$25,000.00.

WALTER S. KEOWN,

Attorney for Plaintiff. 20

Duly served, October 14th, A. D. 1932, on The City of Camden, by delivering and leaving with Frank Albright, City Clerk, a true copy of the annexed summons and complaint, at office, City Hall, City and County of Camden, New Jersey. On Charley Grip, Inc., by delivering and leaving with Edward F. Hodges, registered agent, a true copy of the annexed summons and complaint, at office, West Jersey Trust Building, City and County of Camden, New Jersey. 30

E. FRANK PINE,
Sheriff.

By JOHN CAMPBELL,
Special Deputy Sheriff.

Sheriff fees, \$4.62.

ANSWER OF DEFENDANT, THE CITY OF
CAMDEN.NEW JERSEY SUPREME COURT.
CAMDEN COUNTY.

10

JAMES SMITH,

Plaintiff,

v.

THE CITY OF CAMDEN, a
municipal corporation,
and CHARLEY GRIP, INC.,
a corporation of the
20 State of New Jersey,
jointly and severally,
*Defendants.*Action at Law.
Answer of Defendant,
The City of Cam-
den.Defendant, The City of Camden, a municipal cor-
poration, answering the plaintiff's complaint, says:30 1. It admits the allegations contained in para-
graph 1 of the first count.2. It denies the allegations contained in para-
graphs 2, 3, 4, 5, 6, 7, 8 and 9 of the first count.

3. It denies each and every of the allegations set

forth in the second count, insofar as the same relate to this defendant.

4. It makes the same answers to paragraph 1 of the third count as are made to paragraphs 1, 2, 3, 4, 5, 6, 7, 8 and 9 of the first count.

5. It makes the same answers to paragraph 10 10 of the third count as are made to paragraphs 1, 2, 3, 4, 5, 6, 7, 8 and 9 of the second count.

6. It denies the allegations contained in paragraphs 19 and 20 of the third count.

7. It denies that any damages are due the plaintiff from this defendant under the entire complaint.

FIRST DEFENSE.

20

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

SECOND DEFENSE.

1. Plaintiff was guilty of contributory negligence.

2. Plaintiff contributed to the injuries complained of.

30

3. Plaintiff assumed the risk of his injury, if any, and cannot, therefore, recover.

This defendant reserves the right at or before the time of trial to move to strike out the plaintiff's

Answer of Defendant, City of Camden

complaint on the ground that this defendant is a municipal corporation engaged in such duties.

STARR, SUMMERILL & LLOYD,
*Attorneys of Defendant, The
City of Camden.*

[ENDORSED]

I hereby consent to the filing of the
within answer out of time.

Walter S. Keown,
Attorney of Plaintiff.

*Reply to Answer of Defendant,
City of Camden*

17

REPLY TO ANSWER OF DEFENDANT, THE
CITY OF CAMDEN.

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY.

10

JAMES SMITH,

Plaintiff,

v.

THE CITY OF CAMDEN, a
municipal corporation,
and CHARLEY GRIP, INC.,
a corporation of the
State of New Jersey,
jointly and severally,

Defendants.

Action at Law.
Reply to Answer of
Defendant, The City
of Camden.

20

Plaintiff, James Smith, residing in the City and
County of Camden and State of New Jersey, replying
to answer of defendant, the City of Camden,
says that:

30

1. He denies the allegations set forth in the first
defense.

2. He denies the allegations set forth in paragraphs 1, 2 and 3 under the second defense.

18

Answer of Defendant, Charley Grip, Inc.

Plaintiff denies the unnumbered paragraph and joins issue thereupon.

WALTER S. KEOWN,
Attorney for Plaintiff.

10

ANSWER.

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY.

JAMES SMITH,

Plaintiff,

v.

20 THE CITY OF CAMDEN, a
municipal corporation,
and CHARLEY GRIP, INC.,
a corporation of the
State of New Jersey,
jointly and severally,
Defendants.

Action at Law.
Answer.

30

FIRST COUNT.

The defendant, Charley Grip, Inc., a corporation of the State of New Jersey, says:

1. Paragraph 1 is admitted.

2. Paragraph 2 is admitted.

3. Paragraph 3 is admitted.

4. Paragraph 4 is admitted.

5. Paragraph 5 is admitted.

6. This defendant has no knowledge or information sufficient to form a belief as to the matters set forth in the sixth paragraph of the first count of said complaint.

10

7. Paragraph 7 is denied.

8. Paragraph 8 is denied.

9. Paragraph 9 is denied.

20

10. Paragraph 10 is denied.

SECOND COUNT.

1. Paragraph 1 is admitted.

2. Paragraph 2 is admitted.

3. Paragraph 3 is admitted.

30

4. Paragraph 4 is admitted.

5. Paragraph 5 is admitted.

6. Paragraph 6 is denied.

Answer of Defendant, Charley Grip, Inc.

7. Paragraph 7 is admitted.

8. This defendant has no knowledge or information sufficient to form a belief as to the matters set forth in the eighth paragraph of the second count of said complaint.

10 9. Paragraph 9 is denied.

10. Paragraph 10 is denied.

THIRD COUNT.

1. Paragraph 1 is denied except to the extent of the facts admitted in the answer to the second count.

20 10. Paragraph 10 is denied except to the extent of the facts admitted in the answer to the second count.

19. Paragraph 19 is denied.

20. Paragraph 20 is denied.

FIRST DEFENSE TO FIRST COUNT.

30 1. It denies that it performed any act, the performance of which did or would have endangered said plaintiff while he was in the said building as alleged in said complaint, or that it was in any way responsible for any injury then and there occurring to or claimed to have been suffered by the plaintiff.

SECOND DEFENSE TO FIRST COUNT.

2. Defendant is not guilty of the negligence charged in the complaint.

THIRD DEFENSE TO FIRST COUNT.

3. Defendant denies that it neglected or failed to perform any duty in the premises which it owed to the plaintiff. 10

FOURTH DEFENSE TO FIRST COUNT.

4. The injury, if any, sustained by the plaintiff was due solely to the negligence of the plaintiff.

FIFTH DEFENSE TO FIRST COUNT.

5. Plaintiff was guilty of contributory negligence. 20

SIXTH DEFENSE TO FIRST COUNT.

6. The alleged accident did not happen or occur because of any defect in any apparatus or materials supplied by this defendant, or either of said defendants named in said complaint, but was entirely due to the actions and conduct of the said plaintiff then and there carried on and performed by him on said premises. 30

DEFENSES TO SECOND COUNT.

Defendant repeats the allegations in paragraphs 1 to 6, inclusive, of the aforesaid defenses to the first count, as defenses to the second count.

*Reply to Answer of Defendant,
Charley Grip, Inc.*

DEFENSES TO THIRD COUNT.

Defendant repeats the allegations in paragraphs 1 to 6, inclusive, of the aforesaid defenses to the first count, as defenses to the third count.

BLEAKLY, STOCKWELL & BURLING,
*Attorneys for Defendant, Charley
Grip, Inc.*

10

REPLY TO ANSWER OF DEFENDANT,
CHARLEY GRIP, INC.

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY.

20

JAMES SMITH,

Plaintiff,

v.

THE CITY OF CAMDEN, a
municipal corporation,
and CHARLEY GRIP, INC.,
a corporation of the
State of New Jersey,
jointly and severally,

Defendants.

30

Action at Law.
Reply to Answer of
Defendant, Charley
Grip, Inc.

Plaintiff, James Smith, residing in the City and County of Camden and State of New Jersey, replying to answer of defendant, Charley Grip, Inc., says that:

*Reply to Answer of Defendant,
Charley Grip, Inc.*

23

1. He denies the allegations set forth in the first, second, third, fourth, fifth and sixth defenses to first count.

2. He denies the allegations set forth in the defenses to second count.

3. He denies the allegations set forth in the defenses to third count and joins issue thereupon.

10

WALTER S. KEOWN,
Attorney for Plaintiff.

20

30

TESTIMONY.

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY.

10 JAMES SMITH,

Plaintiff,

v.

THE CITY OF CAMDEN, a
municipal corporation,
and CHARLEY GRIP, INC.,
a corporation of the
State of New Jersey,
jointly and severally,
Defendants.

20

March 14th, 1934.

PALMER, J., and jury.

APPEARANCES:

For the plaintiff, WALTER S. KEOWN, Esq.

For the defendant, FRANK T. LLOYD, JR., Esq. (ap-
pearing for STARR, SUMMERILL & LLOYD,
Esqs.).30 WM. S. ZINK, Esq. (appearing for BLEAKLY, STOCK-
WELL & BURLING, Esqs.).

LEWIS LIBERMAN, Esq., and

FRANK M. TRAVALINE, JR., Esq.

(Mr. Keown opened the case for the plaintiff to the jury.)

(Mr. Lloyd and Mr. Travaline opened the case for the defendant to the jury.)

10

Mr. Keown: Do I understand that Bleakly, Stockwell & Burling are still attorneys in this case, and you are only associate counsel?

Mr. Travaline: That's correct.

Mr. Keown: Bleakly, Stockwell & Burling are not appearing for the City, they are appearing for Mr. Grip?

20

Mr. Travaline: That's correct.

Mr. Keown: You are associated?

Mr. Travaline: With that firm for Mr. Grip, Inc.

Mr. Lloyd: Mr. Liberman, Assistant City Counsel, is also appearing in this case.

30

JAMES SMITH, SWORN.

By Mr. Keown:

Q. Mr. Smith, how old are you?

A. 53.

10 Q. Married?

A. Yes, sir.

Q. And living where?

A. 1040 Mechanic Street, Camden.

Q. With your family?

A. Yes, sir.

Q. Did you attend the wrestling bouts at Convention Hall on the 29th day of February, 1932?

A. Yes, sir.

Q. Did you purchase the ticket to get in?

20 A. Yes, sir.

Q. And is this the stub that you retained from your ticket?

A. Yes, sir.

Mr. Keown: I would like to offer that in evidence.

The Court: Any objection?

30 Mr. Travaline: There's no date on here, I don't know if it was used that night.

The Court: He testified that was the stub of the ticket he purchased. Any objection to that?

Mr. Travaline: All right, then.

(Received and marked Exhibit P1.)

Q. That ticket is for a general admission?

A. Yes, sir.

Q. That means that there was no reserved seat for you?

A. Not when I went in.

Q. There was no reserved seat accompanying the ticket, you took what you could get? 10

A. Yes, sir.

Q. What seat did you take that you could get?

A. Top row.

Q. The top row of what is commonly called the bleacher section?

A. Yes, sir.

Q. What does the bleacher section consist of, are they chairs, boards, or what is the construction of the bleachers where you were sitting on the night of this accident? 20

A. Boards just lapped over.

Q. Boards, how wide are those boards, do you know, Mr. Smith?

A. I couldn't tell you.

Q. Having sat on one, approximately how wide is it?

A. I guess about 10 or 11 inches, something like that.

Q. About how thick would you say it was? 30

A. I didn't look at that.

Q. While you were sitting on this particular board, what happened to you?

A. I fell off.

Q. The board fell off?

A. Yes, sir.

The Court: He doesn't say that.

Q. Do you know what caused you to fall off?

A. I couldn't tell you that.

Q. Where did you go when you fell?

A. Down on the floor.

Q. What happened to you when you went to the
10 floor?

A. I don't remember, they picked me up.

Q. What is the first thing you remember after
you were picked up?

A. I asked them where was I at that time.

Q. And where were you?

A. They said, "You are in the Convention Hall,"
so I seen a gang there, and I asked them to take
me around to a doctor, that was the first thing I
said.

20 Q. Where were you in the Convention Hall at the
time of this conversation?

A. Alongside the bleachers in the back.

Q. Near or far from the place where you had
been sitting watching the bout?

A. I couldn't tell you that, because I was hurt, I
couldn't tell you that.

Q. Where were you removed to, do you know?

A. They moved down and they took me up to get
it bandaged up, to a doctor.

30 Q. Did they take you to a doctor in the Conven-
tion Hall, or take you out of Convention Hall to a
doctor?

A. They took me to a doctor in Convention Hall,
and then they took me to the doctor, Dr. Baker.

Q. Do you know the doctor that treated you at
Convention Hall?

A. I couldn't tell you his name.

Q. Do you know what he did to you?

A. He just asked me for a handkerchief, he took my handkerchief and wiped the blood off, and he said, "Go on about your business," he said, "You are all right," and he put a little of that red stuff on.

Q. On what?

10

A. Above the eye where it was cut.

Q. Were you cut above the eye?

A. Yes, sir.

Q. Was it bleeding?

A. Yes, sir.

Q. Did you go on about your business when he told you to, or where did you go?

A. I come down from up above, and the fellows was waiting for me, and one of the fellows took me to Dr. Baker.

20

Q. Was Dr. Baker your family physician?

A. Once in a while.

Q. What did Dr. Baker do to you when he saw you that night, or did he see you that night?

A. Yes, sir.

Q. What did he do when he saw you that night?

A. He bandaged it up, and put more stuff on it, and examined my arm and side.

Q. Did you go home?

A. Yes, sir.

30

Q. Did Dr. Baker see you later?

A. Yes, sir.

Q. When was the next time he saw you?

A. I don't remember that.

Q. Approximately how long after the accident was it when he next saw you?

A. I think the next day, or the second day, I couldn't tell you exactly.

Q. What did you do the following morning when it got time to get up?

A. My wife raised me up.

Q. What other injuries did you receive besides the injury to your eye?

10 A. My side, where I fell on the plank.

Q. What injury did you have to your side as a result of falling on the plank?

A. A sort of cave-in there, and the doctor thought it was my liver punctured.

Q. Was that painful the following day?

A. Yes.

Q. What did the doctor do for that injury to your side?

A. He give me medicine and stuff.

20 Q. What?

A. He give me medicine and stuff there.

Q. When you say "stuff," we don't know what you mean. He gave you medicine; what else did he do, if anything?

A. Medicine, and he took my urine.

Q. What did he do, if anything, to your side?

A. He told me to put chloroform liniment on it.

Q. Did you do that?

A. Yes, sir.

30 Q. What did he do, and what was the injury, if anything, to your arm?

A. It must have been a splinter there, because I couldn't raise it, and it was stiff for about three and a half weeks.

Q. What was the word you used, "splinter"?

A. That's the way I thought it, I couldn't move my elbow.

Q. Your arm was hurt in the elbow?

A. Yes.

Q. Did it hurt there?

A. Yes, and it still hurts.

Q. How long did you stay in bed, if you stayed in bed at all?

10

A. I laid in bed that day, part of the morning she left me up, I had a little breakfast, and she put me on the couch, and I was on the couch for three weeks.

Q. During those three weeks, was it necessary as a result of the pain you were having, to be on the couch the biggest part of the day and night?

A. I would not want those pains again.

The Court: Answer the question.

20

Mr. Keown: Repeat the question.

(Question repeated.)

A. It was the pain in the side and the arm.

The Court: Answer whether it was necessary as a result of that pain to be on the couch.

A. Yes, sir, I was on the couch.

30

Q. Did the doctor call upon you during those three weeks?

A. No, sir.

Q. What?

A. Did the doctor call on me after three weeks?

The Court: During that period of three weeks did the doctor come to see you?

The Witness: I went to see him after three weeks.

Q. While you were home on the couch or cot, did
10 the doctor come to see you?

A. I don't recall that, I can't get you.

Mr. Keown: Repeat the question.

(Question repeated.)

A. I went down to him.

Mr. Keown: Will you repeat that answer for
20 me?

(Answer repeated.)

Q. Do you remember when it was you first went
to the doctor's office after the accident?

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

Q. Do you remember how many times you went
to the doctor's office?

A. Eleven times.

Q. Do you know what the doctor's bill was?
30

A. I think \$20.

Q. You don't remember the doctor coming to your
home more than the once?

A. This was so long, you know.

The Court: He has testified, Mr. Keown, he has

no recollection, he doesn't know whether he came, or not.

Q. Did you pay the doctor for each time you saw him?

A. Yes, sir.

Q. How much did you pay him when you went to his office?

10

A. I paid \$18 to him, and \$2 after.

Q. What?

A. \$18 to him and \$2 after.

Q. Did you pay him that all at one time?

A. No.

Q. Did you pay some of that each time you saw him?

A. Yes, because I didn't have enough to pay him.

Q. How much did you pay him when you went to his office to see him each time?

20

A. He charges \$1.50.

Q. What treatments did you give your side and arm during those three weeks that you say you were home, away from work?

A. I kept on rubbing and bandaged it up.

Q. What did you bandage it with?

A. That's the tape, taped the elbow up, and I had put a plaster —

Q. Who taped the elbow up?

A. My wife did.

30

Q. What kind of tape did she use, do you know?

A. I guess about two inch tape.

Q. What?

A. Two-inch tape, I guess.

Q. Was it sticky tape, or smooth gauze?

A. It's a gauze.

Q. Where were you working at the time of this accident?

A. Public Service.

Q. What were you doing for Public Service?

A. I was street—working on the street, foreman then.

10 Q. You were street foreman?

A. Yes.

Q. What is a street foreman?

A. Putting in mains, gas mains and all.

Q. What was your wages at the Public Service per week at the time of the accident?

A. \$37.50.

Q. How many weeks did you actually lose from your employment as the result of the injuries that you sustained by your fall at Convention Hall?

20 A. Six weeks.

Q. During those six weeks, did you suffer any pain from the injuries that you received?

A. Yes, sir.

Q. To what extent were those pains after the third week?

A. I couldn't even sneeze, when I sneezed I had to hold my side.

Q. What else?

A. And the elbow.

30 Q. Were you able to work for those six weeks?

A. No, sir, not all these six weeks.

Q. During the six weeks were you able to work?

A. No, sir.

Q. Did the pain cease at the end of six weeks when you started back to work?

A. No, sir.

Q. How long did the pain continue?

A. About four or five months after I went to work.

Q. Were you able to do your same work with the Public Service after you returned to work after a period of six weeks?

A. No, sir, they give me a job painting.

Q. Who was it that changed your nature of work after you returned to the Public Service? 10

A. Mr. Gall.

Q. Had you told him of your accident?

A. Yes, sir.

Q. Was it painful for you to do your work after it having been changed to that of painting, after you returned to work?

A. Lots of times I had to come down off the step-ladder to get a little wind.

Q. Was that painful? 20

A. Yes, sir, by standing.

Q. What?

A. By standing.

Q. And what part of which injury, if any, was it that was painful?

A. On the side.

Q. Had the injury to your arm ceased paining you?

A. Yes, if I raised it up, I couldn't lift a bucket of paint, that's a gallon of paint, for a while. 30

Q. How long did the injury to your arm continue to pain you?

A. I guess about four or five months.

Q. Four or five months from when?

A. From the day I went into work.

Q. How long did the injury to your side pain you after you returned to work, if at all?

A. It gives me a little trouble every once in a while now.

Q. What trouble do you have with the injury to your side now?

A. Just like a sharp pain, like it scratches with
10 a pin.

Q. In addition to the \$20 doctor bill which you say you paid, have you had any other expenses as the result of the injuries that you received in this fall?

A. Yes, sir, I bought a lot of liniment and plasters, Red Cross plasters.

Q. Where did you use Red Cross plasters?

A. On that side, I worked with it for about seven months.

20 Q. When did you start using Red Cross plasters on your side?

A. I think it's the fourth week.

Q. After you started to work, or before you started to work?

A. Before I went to work.

Q. You continued to use Red Cross plasters after you started, and you used them how long?

A. For about three or four months, I bought more of them, you know, when I used four I think I had
30 in the house, then after you sweat a little bit you have to take them off, because it's itching, and I put more on.

Q. What kind of liniment was it you bought and where did you use that liniment?

A. Sloan's liniment, I used that up and chloroform liniment.

Q. Did you use that liniment on your arm or on your side?

A. I used it on the both, because it was painful.

Q. How soon after the accident was it that the injury to the eye disappeared?

A. It didn't disappear at all.

Q. How long after the accident was it that the injury to your eye healed? 10

A. I think the third or fourth week, I had a black eye for about four weeks, and green with it.

Q. Were there any stitches taken in your eye?

A. No, sir.

Q. How far over the surface of your face was there discoloration around the eye?

A. All the way around. When the superintendent come to see me, he was surprised —

The Court: You have answered the question. 20

Q. How long did that discoloration last around your eye?

A. Pretty near five weeks, it was yellow after it, pretty near five weeks.

Q. Is there any result or effect now of the injury to your eye, does it bother you after the discoloration disappeared?

A. No, sir.

Q. Was the eye painful? 30

A. Yes, sir.

Q. Where did it ache or pain?

A. Right across there. (Indicating.)

Q. Was there any injury to your nose?

A. A little bit.

Q. What injury was there to your nose?

A. A sort of a big bump, and it was bleeding inside, and I spit blood for about three days.

Mr. Keown: Cross-examine.

Cross-examination.

10

Mr. Lloyd: We have no questions.

By Mr. Travaline:

Q. You say you worked for the Public Service at the time this accident occurred?

A. Yes, sir.

Q. During the six weeks you were away from there, you received no money from the Public Ser-

20 vice, is that correct?

A. No, sir.

Q. That's correct, is it?

A. No, sir.

Q. Then what is correct?

A. It's correct that I didn't receive it.

Q. You didn't receive any money from Public Service during those six weeks?

A. If I did —

30 Q. Did you receive any money from Public Service for those six weeks you were out?

A. No, sir.

Mr. Travaline: That's all.

CASIMIR BIELICKI, SWORN.

By Mr. Keown:

Q. Mr. Bielicki, do you know James Smith, the witness that was just on the stand?

A. I do.

10

Q. Were you attending the bouts at Convention Hall on the 29th of February, 1932?

A. I was.

Q. Did you see Mr. Smith there?

A. Yes, I accompanied Mr. Smith.

Q. What?

A. I went with Mr. Smith.

Q. Where did you go to sit?

A. We sat on the top row of the bleachers on the west side of the hall.

20

Q. While you and he were sitting on that row, what happened to the thing that you were sitting on?

A. What we were sitting on, the board fell off the platform and we fell with it.

Q. What happened to Mr. Smith when the board fell off the platform?

A. Mr. Smith was the first one to fall, and the other folks fell on top of him, and Mr. Smith was injured.

30

Q. Which end of the board was Mr. Smith sitting on?

A. He was sitting about the middle of the board.

Q. How long was the board that fell?

A. I don't know, about the length of that table.

Q. How wide was the board?

A. I would say about 8 inches.

Q. And how thick was it?

A. About an inch, an inch and a quarter, somewhere, approximately, I don't know exactly.

Q. Do you know how that board was put on the stand?

10 A. That particular board I don't know how it was put on, because the fans were already seated when I came.

Q. Was there anything in back of the board to prevent or keep the board from sliding off?

A. Absolutely nothing.

Q. Did the board break?

A. No.

Q. After Mr. Smith fell, did you see what injuries, if any, he sustained?

20 A. Yes, I was one that assisted him —

Q. What injuries did he sustain that were then apparent?

A. The only visible injuries I saw was the gash above his eye and a scratch on his face.

Q. Did you go with him to the Convention Hall for first aid treatment?

A. I did.

Q. Did you accompany him after that to the doctor?

30 A. Yes, I took him to Dr. Baker.

Q. Did you see what Dr. Baker did to him?

A. I don't know what Dr. Baker done to him, he took him in his private room.

Q. Did you see Mr. Smith after the accident?

A. I saw him after the accident, yes.

Q. Where?

A. At his home.

Q. How soon after the accident did you see him at his home?

A. About three days later.

Q. Did you see anything that was the result of the injuries that he received the night of the accident?

10

A. The only thing that I saw was the discoloration of his eye and face, and I saw he had his arm in a sling when I came to see him the first time.

Q. What portion of his face was discolored?

A. His eye and cheek.

Q. And when did you next see him after the accident?

A. I saw him a few weeks later after the accident.

Q. What have you to say as to the discoloration of his face then, was it there, or had it disappeared?

20

A. It was still there, it was noticeable, it became greenish.

Q. Did you see him after that while the discoloration still was on his face?

A. After the discoloration was on his face?

Mr. Keown: Repeat the question.

(Question repeated.)

30

A. No, I only saw him once after the accident while the discoloration was on his face.

Q. Do you know of your own knowledge whether Mr. Smith returned to work after the accident, and if so, when?

A. I don't know when he returned, but I know I saw him more than a month afterwards, and he wasn't working yet.

Q. Were you seated or standing at the time that this board fell off?

A. I was seated alongside of Mr. Smith.

Q. Was Mr. Smith seated or standing at the time
10 the board slipped?

A. He was seated.

Q. Which bout was it that was in progress at the time of this accident?

A. The final bout.

Q. That was between whom?

A. As I recollect, I think Kilonis was one, I don't remember his opponent.

Mr. Keown: Cross-examine.

20

Cross-examination.

By Mr. Lloyd:

Q. Are you related to Mr. Smith?

A. No, sir.

Q. Just you and he went to the matches that
night?

A. Yes, sir.

30 Q. Do you recognize that picture?

A. I do.

Q. What is it?

A. That's the bleacher stand at Convention Hall.

Q. Can you mark where you were seated that
night on there?

A. Is this the west side of the hall?

Q. That's supposed to be the west side.

A. About here in the center I would say.

Q. You put a mark where you were stated.

A. A cross mark in about the center of the picture.

Q. That's right, and where was Mr. Smith seated?

A. He was seated on my right.

Q. On your right?

10

A. That's right.

Q. Just mark where he was seated with a circle, please.

A. That's the right, making the ring in the right of the picture, I mean the right, this is facing the left.

Q. You put the circle where he was seated. This was the final bout, I understand?

A. Yes.

Q. Between Gentle John Kilonis, is that right, and 20 somebody else?

A. Yes, Kilonis was the one fighting.

Q. How many were seated on that top row?

A. How many?

Q. Yes, on that board that you were seated on?

A. The board was fully occupied.

Q. It was fully occupied?

A. Yes.

Q. That's the choicest seat in the whole bleachers, isn't it, that top row?

30

A. Not necessarily.

Q. Because you get a view down on the mat?

A. It all depends, I don't know, it's not my choice of a seat.

Q. Isn't it?

A. No.

Q. It's the choice seat of many of the bleachers, isn't it?

The Court: That has nothing to do with it.

Mr. Lloyd: I will withdraw it.

10 Q. Was anybody else with you that night except Mr. Smith?

A. A few other of my friends were always congregated around the club and go to the bouts.

Q. What club was it?

A. Polish American Citizens Club.

Q. Is that where you met Mr. Smith that night?

A. No, I didn't meet Mr. Smith there, I met him going down.

Q. Who was with you while you were going down?

20 A. Mr. Supernack, Walter Supernack.

Mr. Lloyd: That's all.

Mr. Travaline: No questions.

JOHN SKANISH, sworn.

30 By Mr. Keown:

Q. Were you at the fights on the 29th of February, 1932?

A. Yes, sir.

Q. On that occasion did something happen on the row of benches that you were sitting on?

A. Yes, collapsed over top of me, I was sitting in the second row.

Q. What happened that night?

A. I heard a crash, see.

Q. What did you see?

A. I turned around and looked, and they had went down there, and I ran around.

Q. Who had went down?

10

A. That man and a couple more of them went down.

Q. Did you see the board?

A. Yes, the board was on the floor.

Q. The board went down, too?

A. Yes.

Q. Was the board broken?

A. No, not so far as I seen, it wasn't broken.

Q. Did you see what happened to Mr. Smith?

A. I seen he had a cut eye, yes, he was bleeding. 20

Q. Did you see any more, or watch the fights?

A. No, I stayed there, I didn't bother much.

Q. You watched the bouts?

A. Yes, they took him, I think, to the office there in front.

Mr. Keown: Cross-examine.

Cross-examination.

30

Mr. Lloyd: I ask this photograph be marked for identification.

(Received and marked Exhibit D1 for identification.)

By Mr. Lloyd:

Q. You were on the second row, I understand?

A. Second row from the bottom.

Q. And Kilonis was wrestling at the time?

A. He was.

10 Q. Quite a little excitement, I suppose, with him wrestling, wasn't there?

A. The same as usual when he does wrestle.

Q. The same as usual when he wrestles?

A. Yes.

Q. Wrestling in his usual form this night, was he?

A. I guess he was.

The Court: I don't see how this has anything to do with it.

20 Q. As I understand it, you heard a noise in back of you?

A. Yes.

Q. You turned around?

A. They had went down already on the floor, and then I went around and that's when I seen that man.

Q. Did you get out of your seat?

A. Afterwards?

Q. Yes.

A. After that happened, sure.

30 Q. Where did you go?

A. Went around the back, back of the seats.

Q. How did you get around the back?

A. Walked.

Q. Did anybody else walk around the back?

A. Jeess, a few people, sure, there was excitement there.

Q. The bout was still going on?

A. Yes, it was in progress, yes.

Q. So that you walked around there after the bout was all over, or after the match was over?

A. No, as soon as they went down, that's when I walked around.

Q. You had quite a distance to walk, didn't you?

A. Yes, quite a little distance, it ain't so far when 10 you walk fast.

Q. Do you mean you walked fast?

A. Usual walk, I ain't no slow walker.

Q. You weren't interested in the wrestling bout?

A. Not after I heard somebody fall.

Q. You heard somebody fall?

A. I heard others go down, and naturally I got out there.

Q. Aren't you thinking of the time at the Armory when the seats fell? 20

A. I wasn't there that night when Primo Carnera fought, I wasn't there.

Q. The first you saw that anybody had fallen was when you walked around?

A. Yes.

Q. You couldn't see them from where you sat?

A. No, I couldn't see them from the front.

Q. And then what you saw, as I understand it, was a man down on the floor?

A. That's right, they were lifting a man up. 30

Q. You saw him on the floor, that's about all you did see, wasn't it?

A. Standing up there he was, he was bleeding, and they were talking to a couple of men, I don't know.

Q. Him and one or two other men were talking?

A. And the crowd was talking and coming around them.

Q. And you went back to your seat and watched the balance of the match?

A. Yes, sir.

Q. It ended up pretty shortly after that, didn't it?

10 A. It wasn't long.

Mr. Lloyd: That's all.

By Mr. Travaline:

Q. Where do you live?

A. 215 South Fourth Street.

Q. Do you belong to this Polish Citizens Club, or Polish organization?

20 A. Who, me, no.

Mr. Travaline: That's all.

GEORGE SCHAEFER, SWORN.

By Mr. Keown:

30 Q. Where do you live?

A. 1182 Atlantic Avenue, Camden.

Q. Were you at Convention Hall on the night of February 29th, 1932?

A. If that's the date this bout was on, and Mr. Smith fell, yes.

Q. Did you know Mr. Smith before that night?

A. Yes, sir.

Q. How long had you known him before?

A. I have known Mr. Smith I guess about five years now.

Q. Did you go to the bouts with him?

A. No, sir.

Q. Were you supposed to meet him there, or was it just by chance he happened to be there with you? 10

A. Just a chance.

Q. How close were you sitting to him?

A. I was in the next tier from him, the next row of seats from him.

By the Court:

Q. Below him?

A. Below him, yes, sir.

20

Q. Down a tier, or up?

A. On the top row, too.

By Mr. Keown:

Q. And seated to the right or left of him as you faced the bouts?

A. To the left of him.

Q. And were you on the same board that he was seated on? 30

A. No, not on the same board.

Q. How many boards from you was the board that Mr. Smith was sitting on?

A. One.

Q. Were those boards nailed or made secure in any way on the night of this accident?

A. No, I have never seen any of them nailed.

By the Court:

Q. You were asked about the boards on this particular night?

A. No, sir.

By Mr. Keown:

Q. Was there anything in back of the board to guard the board from sliding off back?

A. No, not that I could see.

Q. What happened to the board that Mr. Smith and the other men were on?

20 A. The board went to the floor, and the crowd fell off.

Q. How many went to the floor with the board?

A. That I couldn't say.

Q. What is your best judgment?

A. I would judge four or five or them, anyhow.

Q. Were there any other boards besides this board that went?

A. No, not that I know of.

Q. Did you see what happened to Mr. Smith?

30 A. I seen someone fall, and looked down, and I seen Mr. Smith there on the floor and a few others.

Q. What happened to him after he fell, did you see any injuries he received?

A. Yes, the bleeding over the eye.

Q. Did you go with him to the doctor?

A. No, sir.

Q. You stayed in your seat?

A. I was down on the floor there, and helped him up, helped the man with him up, but some other men took him away.

Q. You went on back then and saw the bouts?

A. I went back in the seat, yes.

10

Mr. Keown: Cross-examine.

Cross-examination.

By Mr. Lloyd:

Q. I show you this photograph, marked D1 for identification, and ask you if you recognize that?

A. Yes.

Q. Does that show the place where you sat the 20 night of this bout?

A. Up here, but not on the same seat that he was.

Q. With relation to the cross mark and circle marked where Mr. Smith and the other men were seated, which seat were you seated on?

A. Up this way. (Indicating.)

Q. You were seated towards the north?

A. Towards the north.

Q. Or the left as they were seated facing the ring?

A. Yes, sir.

30

Q. These boards, or these seats, are like regular circus seats?

A. Practically, yes.

Q. Boards laid on top of each other?

A. Just laid over.

Q. And then there's a board that goes diagonally up, which has supports on it, and this board rests on it?

A. As a rest.

Q. And the back of that board is against the upward slope?

A. That is on the seats going up, yes.

10 Q. On each seat going up?

A. Yes.

Q. That's also true all the way up, isn't it, even to the top?

A. No, I would not say that.

Q. Just look at the picture, are you sure?

A. It does show a sort of back on there, no, it doesn't, either.

Q. You have never noticed that particularly?

A. They have no back to it.

20 Q. Yes.

A. I know it has no back.

Q. You mean there's no board to it?

A. No rest to it.

Q. You go to these matches regularly, do you?

A. Yes.

Q. You try to get up about as high as you can, don't you?

A. Yes.

Q. So you can see down on the ring?

30 A. That's my idea.

Q. That's the best seat, and ——

A. I would say yes, it's a good view.

Q. This was the last bout when this accident happened?

A. Yes, sir.

Q. It was almost over at that time, wasn't it?

A. Well, I couldn't say that, whether it was almost over, or what kind of a bout was on at the time.

Q. The board had not fallen previous to this time?

A. Not before Mr. Smith went off, no.

Q. That was the only time it fell?

A. Yes.

10

Mr. Lloyd: That's all.

By Mr. Travaline:

Q. There's a place for your feet there to stand on in these seats, is there not, as well as a place to sit?

A. Yes, there's a place there to put your feet, yes, sir.

Q. And at the time this bout was going on, and this accident occurred, were you seated or standing on your foot-rest?

A. I was seated on my seat, yes, sir.

Q. You were seated?

A. Yes, sir.

Q. Did you see anybody else around there standing up anywhere in your vicinity at the time this occurred?

A. No, after it occurred, I think everyone stood up after the accident occurred.

30

Q. The board on which you were seated, did that overlap your board, or did your board overlap that?

A. I couldn't say that.

Q. But they were overlapped?

A. They all overlapped, yes.

Q. Any other boards besides this one fall at that time?

A. No, sir, not that I know of.

By Mr. Keown:

Q. When the board that Mr. Smith was sitting on
10 slipped off, did it disturb the board on which you were sitting?

A. Naturally, everyone got up —

The Court: Answer the question.

Mr. Keown: Repeat the question.

(Question repeated.)

20 A. I would not say it didn't go down, I know naturally it disturbed it, but it didn't go off.

Q. When it went down did it throw your board in the air, or did your board stay where it was?

A. It stayed where it was.

Mr. Keown: That's all.

(At this time a recess for five minutes was taken.)

MAURICE E. BAKER, SWORN.

By Mr. Keown:

Q. You are a practicing physician of the State of New Jersey?

A. Yes.

Q. Licensed under the laws of the State of New Jersey, and you have been practicing how long? 10

A. Since 1922.

Q. A graduate of what college?

A. Jefferson.

Q. You have your offices now where?

A. 1149 Kaighn Avenue.

Q. Do you know the plaintiff, James Smith?

A. Yes.

Q. Did you have occasion to see him around the 20
29th day of February, 1932?

A. Yes.

Q. To be exact, what was the date that you saw him?

A. It was the night, the first time I saw him was the night of February 29th.

Q. What was he suffering with that night when you saw him?

A. I suppose it's all right for me to read that off my records, is it? 30

Mr. Lloyd: Sure.

Mr. Keown: I presume counsel would want it accurate, and that will be the most accurate way of getting it.

The Court: Any objection?

Mr. Lloyd: No, sir.

A. Had a contusion of his nose and left super orbital area of the forehead.

Q. Indicate on your body where that area is.

10 A. The nose and here (indicating), contusion of his left elbow, left forehead and his left side.

Q. Yes, what did you do for him the first night?

A. The first night I had seen him he had already had some first aid treatment, I think, before I saw him. I put some mercurochrome over the scarified areas, and just examined him and gave him something, he was in quite a bit of shock when I saw him, he was sick and nauseated, and I gave him some nerve sedative.

20 Q. What did you prescribe him to do?

A. At that time I gave him this nerve sedative, told him to go home and go to bed, and let me hear from him.

Q. Did you see him shortly after that?

A. Yes.

Q. His complaints then were what?

A. This pain in the left side and back, left elbow, headache, and he was rather nauseated for a few days, which was symptomatic of shock.

30 Q. In addition to giving him a nerve sedative, what else did you give him, if anything?

A. I advised him to get some liniment, or something, and have his wife give him a good rub-down every day.

Q. Yes, but did you give him any other medicine to take to relieve the pain?

A. I gave him a nerve sedative, and some salicylate, something to relieve the pain.

Q. How long did you continue to prescribe for him?

A. Up to March 22nd.

Q. And how many visits did he make, including the visit that he made to you on the night of the accident?

10

A. Ten visits, as I recall it.

Q. Were his injuries such that pain, did exist?

A. Of course, you can't see pain, you have to go by what man tells you, but in view of his symptoms, my opinion was that at that time he was suffering from quite a bit of pain.

Q. In your opinion was that pain such that he would be unable to work?

A. To do any kind of manual work I would say it was.

20

Q. How long would you estimate that he would be unable to work as a result of these injuries?

A. Well, I saw him, the last visit he made me was the 22nd of March, and I thought he would probably be able to work in say a couple of weeks after that.

Q. In your opinion, would those pains after that couple of weeks period continue, or not?

A. Well, at the time I saw him I felt like his pain ought to be all right in a few weeks.

Q. What?

30

A. The last time I saw him I felt like the man ought to be, his pain ought to clear up in say a couple of weeks.

Q. A couple of weeks after you last saw him?

A. Yes.

Q. Was there a loss of function or impairment of the elbow in addition to the pain that was there?

A. The pain itself would cause an impairment, it would not cause a total loss of function, if a man had pain he couldn't use it.

Q. Do you know how he carried his arm at first, whether he carried it in a sling, or not?

10 A. No, he didn't carry it in a sling.

Q. You did not bandage it?

A. No.

Q. You just applied liniment?

A. Yes, I just told him to give it a rub-down.

Mr. Keown: Cross-examine.

Cross-examination.

20 Mr. Lloyd: No questions.

Mr. Travaline: No questions.

RAYMOND PAUL, sworn.

By Mr. Keown:

30 Q. Where do you live?

A. 1177 Atlantic Avenue, Camden.

Q. Did you attend the bouts at the Convention Hall on the 29th day of February, 1932?

A. I did.

Q. Do you know the condition of the top row of boards on that night?

A. I do.

Q. Was the condition of the top row of boards on that night the same as they had been the week before?

Mr. Lloyd: I object to that as a conclusion.

The Court: How is that justifiable, Mr. Keown? 10

(Unreported conference at the bench.)

The Court: Overruled.

Mr. Travaline: There's nothing—Will you repeat the question?

(Question repeated.)

Mr. Travaline: There's no testimony to show this witness had been there the week before so that he could have seen it. 20

The Court: I assume he was from the question.

Q. Were you there the week before?

A. I was there the week before, yes, sir.

Q. Did you notice the condition of the boards, the top row, on the week before? 30

The Court: Yes, or no, and did you notice it.

A. Yes, sir.

Q. Did something happen to those boards the week before?

A. Yes, sir, they did, sir.

Q. What happened?

A. The week before my son and I —

Mr. Lloyd: I object to this as incompetent, irrelevant, improper and immaterial, it seems to me we are concerned with the boards on this particular
10 night that the accident happened, and not the week before.

The Court: Overruled.

Mr. Lloyd: Exception.

(Exception so noted.)

A. The week before my son and I were going up
20 on the west side of Convention Hall, and as we were going up the board, I was ahead of him, and the board came down from the top stands, that's on the west side, and knocked my son cold, and another boy approached me, and said, "Mr. Paul —

The Court: Not the conversation.

The Witness: (Continuing) When he was knocked cold, I picked him up and brought him out
30 in the air.

Q. As the result of what happened the week before, did you talk to anyone in charge?

A. The following week, sir.

Q. Concerning that accident to your boy?

A. The following week.

Mr. Lloyd: I object to that as a conclusion.

The Court: The question is whether he talked or not.

A. Yes, I did.

Q. With whom did you talk?

A. Mr. Grip, I believe, and a gentleman named 10
Mr. Haley.

Q. Do you know Mr. Grip?

A. I do by sight.

Q. What did you say to Mr. Grip about the accident to your boy, and the condition of these boards?

A. I told Mr. Grip about it, and Mr. Grip told me that those out at the Central Airport are nailed down, but these didn't belong to him.

Mr. Lloyd: I object to this, as far as the City is 20
concerned.

The Court: Strike it out.

Q. What did Mr. Grip say, if anything, about remedying the condition?

A. He said he would look into it.

Q. On the night, or were you there the night that the board slipped and Mr. Smith fell down?

A. I was there when the board slipped, yes, sir. 30

Q. What row were you seated on that night?

A. Top row, sir.

Q. How near to Mr. Smith?

A. A board length.

Q. Did you have occasion to notice the condition of the boards on the night that Mr. Smith fell?

A. Only lapped over, that's all.

Q. Was there anything done towards nailing the boards?

A. Not as I seen.

Q. When Mr. Smith's board slipped, did it in any way disturb the board that you were sitting on?

A. Yes, it disturbed the board I was on.

10 Q. Did it upset your board?

A. No, I just made a grab and moved.

Q. Did the board to the right of the board that Mr. Smith was seated on go down, or was there only one board that went down?

A. One board I could see.

Q. The board you were on didn't go down?

A. Didn't go down.

Q. And the board that was next to Smith the other way didn't go down?

20 A. No.

Q. Did you see how this board that Mr. Smith was on did slip off, as it was slipping?

A. No, I didn't.

Q. Did you see what happened to Mr. Smith?

A. I seen Mr. Smith bleeding.

Q. Can you tell us whether the board that Mr. Smith was on slipped frontwards or slipped backwards?

A. It slipped to the back of the stand.

30 Q. And the people that were on the board, were they thrown to the front, or were they thrown to the back, as the board fell?

A. About four or five of them was thrown to the floor, to the back.

Q. Did you see the injuries that Mr. Smith sustained?

A. Only from the stand, I could see he was bleeding.

Mr. Keown: Cross-examine.

Cross-examination.

10

Mr. Lloyd: No questions, just a minute.

By Mr. Lloyd:

Q. You are a regular fan?

A. I have been.

Q. You go pretty nearly every Thursday night?

A. Not this year, since June I ain't worked.

Q. You did at that time?

20

A. I used to go, yes, sir.

Q. You know Mr. Smith?

A. I didn't know him personally, no.

Q. Just see him there regularly, would you?

A. Just see him, yes.

By Mr. Keown:

Q. Are your sons here?

A. Yes, he is here.

30

Q. What is his name?

A. Raymond, Jr.

RAYMOND PAUL, JR., sworn.

By Mr. Keown:

Q. You are a high school student?

A. Junior high.

10 Q. You are out at junior high?

A. Yes.

Q. Were you present at the fights on the night that Mr. Smith was dropped to the floor by the board slipping?

A. I was.

Q. Were you at the fights the week before that?

A. Yes, sir.

Q. Did something happen to you the week before that by a board slipping off the top?

20

Mr. Lloyd: Objected to as immaterial and irrelevant.

The Court: Overruled.

Mr. Lloyd: Exception.

(Exception so noted.)

30 A. Yes.

Q. Were you present when your father spoke to Mr. Grip concerning the condition of these boards?

A. Yes, sir.

Q. What did you hear Mr. Grip say he would do concerning the condition of the boards?

Raymond Paul, Jr.—Direct

Mr. Lloyd: Objected to as far as we are concerned.

The Court: State your objection.

Mr. Lloyd: Hearsay.

The Court: Overruled.

10

Mr. Lloyd: That's as to the City of Camden.

The Court: Yes, surely, it can have no weight beyond the people to whom it was directed, of course, it can't affect anybody else.

Mr. Lloyd: That's my objection, as far as we are concerned.

20

The Court: Yes, but nevertheless I think the testimony is competent so far as the defendant is concerned.

Mr. Keown: Repeat the question.

(Question repeated.)

A. He said he would take care of it.

Q. Where were you sitting the night that the 30 board slipped that Mr. Smith was on?

A. On the top row, one board on the side of him.

Q. Next to your dad or near your dad?

A. Right next to my dad.

Q. When the board that Smith slipped on, did it cause the board you were sitting on to also go over?

A. It didn't cause it to go over, but it moved a little, and we grabbed for the seat.

Q. And the board the other side of the board Smith was on, did that go over, or not?

A. I didn't take notice.

Q. Were the men still sitting on that board after the accident, or were they thrown off?

10 A. They were looking at the men down on the ground.

Q. They were not on the ground?

A. No.

Q. When the board Mr. Smith was on went over, did it go over backwards or go over frontwards?

A. Backwards.

Q. And the men that were on the board that Mr. Smith was on, when it went over, did they go over backwards or over forwards?

20 A. Went to the ground backwards.

Mr. Keown: Cross-examine.

Cross-examination.

Mr. Lloyd: No questions.

Mr. Travaline: No questions.

WALTER SUPERNAK, SWORN.

(With the court interpreter.)

By Mr. Keown:

Q. Were you at the Convention Hall on the night 10
of the 29th of February, 1932, at the time that Mr.
Smith, the plaintiff, had an accident?

A. I was.

Q. What row were you sitting on?

A. The last seat on the top.

Q. How near to Mr. Smith?

A. We met in the road.

Q. How near to Mr. Smith were you sitting at the
time that Mr. Smith fell over?

A. Right near him.

Q. How many people were in between you and 20
Mr. Smith at that time?

A. Only him and I was sitting together.

Q. Were you sitting on the same board Mr. Smith
was sitting on?

A. On the same board.

Q. When the board that you were sitting on
slipped, did it go over backwards, or over front-
wards?

A. In the back it fell. 30

Q. Did you go with the board over backwards or
frontwards?

A. I don't know what way, I was running, and I
just fell and I hurt myself.

Q. Where did you fall, on the floor or on the
bleachers?

Motion for Non-suit

A. I don't remember where I fell, I think I fell on top of him.

Q. When he fell on the floor?

A. Yes.

Q. Did the board fall to the floor?

A. Yes, sir.

10 Mr. Keown: Cross-examine.

Cross-examination.

Mr. Lloyd: No questions.

Mr. Keown: That's my case.

The Court: Plaintiff rests.

20

SIDE BAR.

Mr. Lloyd: I move for a non-suit on the ground there's no evidence of any negligence on behalf of the City of Camden.

30 Mr. Travaline: I make the same motion, there's no negligence in the plaintiff's case as to Grip, Inc.

The Court: You are conceding you were in control of the bouts this particular night?

Mr. Travaline: Of the bouts, that's correct.

The Court: And you had rented the hall for that purpose from the City?

Mr. Travaline: From the City, as well as the equipment.

The Court: It's also conceded the City owns the hall and the equipment.

10

Mr. Travaline: That's correct.

The Court: The motion for a non-suit will be granted as to both defendants, as I am unable to see from the testimony as presented by the plaintiff any evidence of negligence either on the part of the City or Charles Grip, Inc., and the motion will be granted.

20

Mr. Keown: Exception.

(Exception noted for plaintiff.)

UPON RETURN TO THE COURT ROOM.

The Court: Ladies and Gentlemen: The Court has assumed the responsibility of ordering a non-suit to be entered in this case, so your consideration of it is relieved.

30

NEW JERSEY SUPREME COURT.

10 THE CITY OF CAMDEN, a
municipal corporation,
and CHARLEY GRIP, INC.,
a corporation of the
State of New Jersey,
jointly and severally,
Defendants,
ads.
JAMES SMITH,
Plaintiff.

Action at Law.
On Postea.

20 Costs of
City of
Camden
Costs of
Charley Grip,
Inc.

It is ordered that judgment of non-suit be and hereby is entered in favor of defendants and against the plaintiff with costs to be taxed *nisi*.

On motion of

30 STARR, SUMMERILL & LLOYD,
Attys. for Deft. City of Camden,
and
BLEAKLY, STOCKWELL & BURLING,
Attys. for Deft. Charley Grip,
Inc.

Entered March 20, 1934.

A true copy

FRED L. BLOODGOOD,
Clerk.

JUDGMENT OF NON-SUIT.

10

NEW JERSEY SUPREME COURT.

JAMES SMITH,	}	Action at Law.
<i>Plaintiff,</i>		On Postea.
v.	}	Judgt. of Non-Suit.
		Starr, Summerill &
THE CITY OF CAMDEN, a		Lloyd, Attys. for 20
municipal corporation,		deft. City of Cam-
and CHARLEY GRIP, INC.,		den.
a corporation of the	}	Bleakly, Stockwell &
State of New Jersey,		Burling, Attorneys
jointly and severally,		for deft., Charley
<i>Defendants.</i>		Grip, Inc.

Costs of City of Camden \$

30

Costs of Charley Grip, Inc. \$

Judgment entered this twentieth day of March,
A. D., nineteen hundred and thirty-four against the
plaintiff and in favor of defendant, The City of
Camden, a municipal corporation, for the sum of

Notice of Appeal

costs; and in favor of defendant,
 Charley Grip, Inc., a corporation of the State of
 New Jersey, for the sum of costs.

THOMAS J. BROGAN,
Chief Justice.

A true copy

FRED L. BLOODGOOD,
Clerk.

10

NOTICE OF APPEAL.

NEW JERSEY SUPREME COURT.

JAMES SMITH,

Plaintiff,

v.

20 THE CITY OF CAMDEN, a
 municipal corporation,
 and CHARLEY GRIP, INC.,
 a corporation of the
 State of New Jersey,
 jointly and severally,
Defendants.

Action at Law.
 Notice of Appeal.

To: Starr, Summerill & Lloyd, Esys., Att'ys. for
 def't., The City of Camden, 4th & Market,
 Street, Camden, N. J.

30 Bleakly, Stockwell & Burling, Esqs., Att'ys for
 def't., Charley Grip, Inc., West Jersey Trust
 Bldg., Camden, N. J.

Sirs:

Take Notice that the plaintiff in the above entitled

Notice of Appeal

cause appeals to the Court of Errors and Appeals in the last resort in all causes in New Jersey from the whole of the judgment entered in this cause.

WALTER S. KEOWN,

Attorney for Plaintiff.

Dated: April 3rd, 1934.

10

[ENDORSED]

Due and legal service of the within notice is hereby acknowledged this 3rd day of April, 1934.

Starr, Summerill & Lloyd,
Atty's for def't The City
of Camden.

20

Due and legal service of the within notice is hereby acknowledged this 7th day of April, 1934.

Bleakly, Stockwell & Burling,
Att'ys for def't Charley
Grip, Inc.

30

REASONS.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10

JAMES SMITH,

Plaintiff,

v.

THE CITY OF CAMDEN, a
municipal corporation,
and CHARLEY GRIP, INC.,
a corporation of the
State of New Jersey,
jointly and severally,

20

*Defendants.*On Appeal.
Reasons

The above named plaintiff rests his appeal in this
cause upon the following reason:

1. That the trial Court committed reversible error
in directing, upon motion of the defendants, a non-
30 suit against the plaintiff in favor of the defendant,
The City of Camden, in that there was sufficient evi-
dence produced to submit the issue of the defen-
dant's negligence to the jury.

2. That the trial Court committed reversible error
in directing, upon motion of the defendants, a non-

Reasons

75

suit against the plaintiff in favor of the defendant, Charley Grip, Inc., a corporation of the State of New Jersey, in that there was sufficient evidence produced to submit the issue of the defendant's negligence to the jury.

WALTER S. KEOWN,
Attorney for Plaintiff.

Dated: Feb. 11, 1935.

10

[ENDORSED]

Due and legal service of the within reasons hereby acknowledged this 13th day of Feb., 1935.

Starr, Summerill & Lloyd,
Att'ys for def't City of
Camden

20

Att'ys for def't., Charley
Grip, Inc.

30

AFFIDAVIT OF SERVICE.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10

JAMES SMITH,

Plaintiff,

v.

THE CITY OF CAMDEN, a
municipal corporation,
and CHARLEY GRIP, INC.,
a corporation of the
State of New Jersey,
20 jointly and severally,*Defendants.*On Appeal.
Affidavit of Service.State of New Jersey, }
County of Camden, } ss.WILLIAM E. STROUSE, of full age, being duly sworn
according to law on his oath deposes and says that:

30

1. He is an attorney at law in the State of New
Jersey, associated with Walter S. Keown, the attor-
ney for the plaintiff in the above entitled matter, in
the practice of law, with offices at 402 West Jersey
Trust Building, Camden, New Jersey.

Affidavit of Service

77

2. That he did on the 18th day of February, 1935, serve upon Bleakly, Stockwell & Burling, Esqs., the attorneys for the defendant, Charley Grip, Inc., a corporation of the State of New Jersey, the reasons in the above case, by serving a copy of same upon William S. Zink, Esq., an attorney associated with Bleakly, Stockwell & Burling, Esqs., while the said William S. Zink, Esq., was in the offices of the said 10
Walter S. Keown, 402 West Jersey Trust Building, Camden, New Jersey.

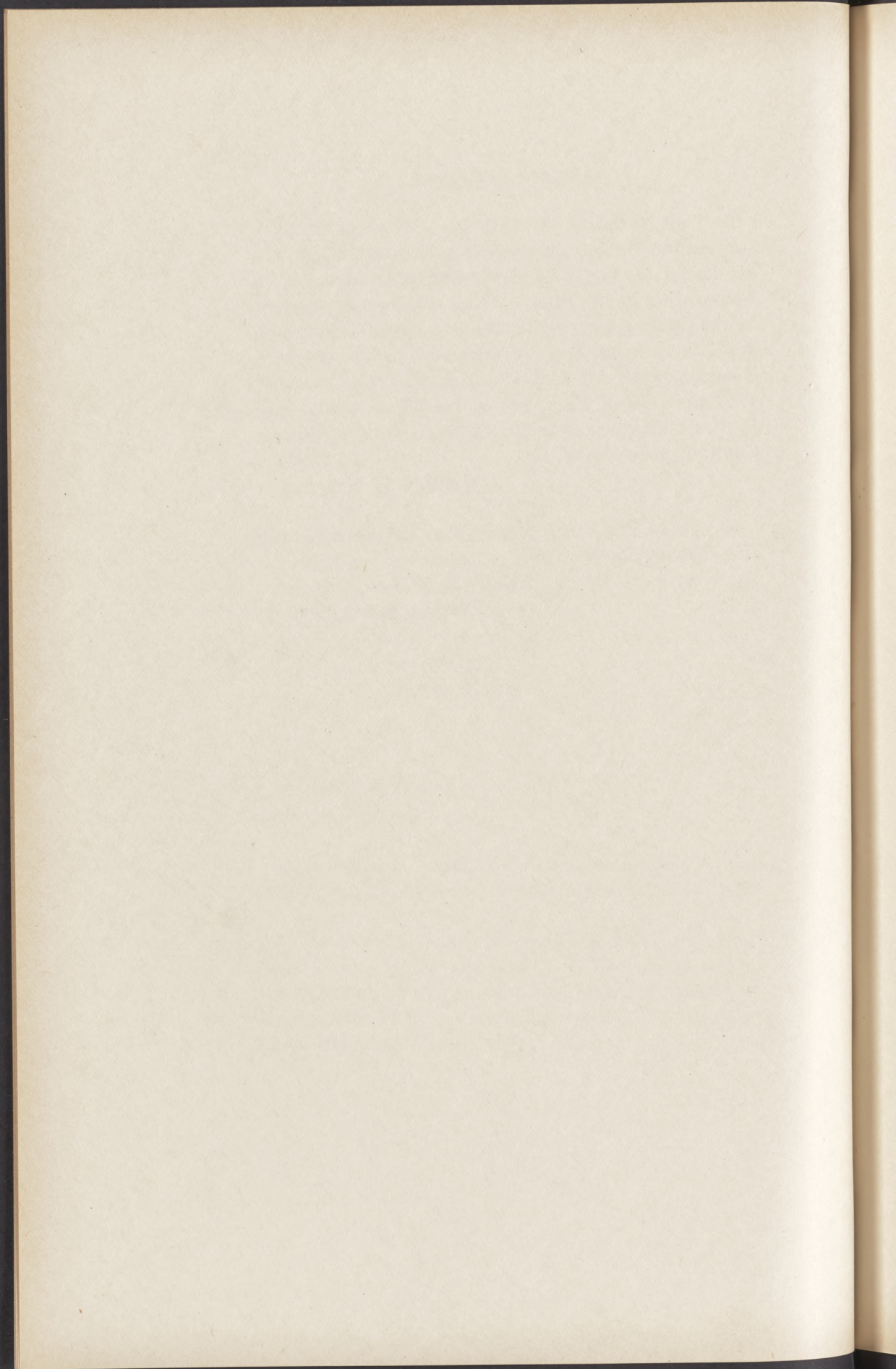
WILLIAM E. STROUSE.

Sworn to and subscribed before me this 19 day of February, A. D. 1935.

MARY E. MORRIS,
Notary Public of N. J.

20

30





**NEW JERSEY COURT OF ERRORS
AND APPEALS.**

JAMES SMITH,
Plaintiff-Appellant,

v.

THE CITY OF CAMDEN, a municipal corporation, and
CHARLEY GRIP, INC., a corporation of the State
of New Jersey, jointly and severally,
Defendants-Appellees.

ACTION AT LAW.

ON APPEAL FROM NEW JERSEY SUPREME COURT.

BRIEF FOR PLAINTIFF-APPELLANT.

STATEMENT AND FACTS.

The question before the Court in this case is whether or not the learned trial Judge erred in granting a non-suit at the close of the case of the plaintiff-appellant, at the trial below.

The plaintiff was a spectator and had paid an admission fee to a wrestling exhibition or bout at the Convention Hall in the City of Camden. The Convention Hall referred to is a hall or auditorium in the City of Camden and owned by that municipality and leased and rented for various public

gatherings for a fixed fee or compensation. One of the lessees was the other defendant in this case, Charley Grip, Inc., a corporation of the State of New Jersey.

The firm of Charley Grip, Inc., had for some time engaged or rented the Convention Hall for one night a week for the purpose of giving wrestling bouts for paid admissions to which the general public was admitted at a price. Stands were erected by the City of Camden and there was exercised no control over such erection by Charley Grip, Inc., the arrangements between Charley Grip, Inc., and the City of Camden merely being the use of the Convention Hall for a price for each evening that wrestling matches were given.

Plaintiff, on the night in question, purchased a general admission ticket for the price of one dollar and ten cents (\$1.10), and entered the hall and took a place among the spectators, occupying such seats on the top or last row of the stands or bleachers.

During the progress of the wrestling match, the board or platform which was used for the row of seats on which the plaintiff was sitting was insecurely fastened or became loosened, and plaintiff, with several others, was precipitated a considerable distance to the floor and several of the others who were sitting with him fell on top of him and plaintiff sustained serious injuries as a result of this fall entailing medical expenses and certain losses of wages. At the trial of the case, on a motion for non-suit, the learned trial Court granted a non-suit as to both defendants.

ARGUMENT.

In a discussion of this case, there are three questions which present themselves and the argument will be divided, therefore, into three parts dealing with each of these phases of the case.

A

THE TESTIMONY CONCERNING THE COLLAPSE OF THE SEATS AND THE CONDITION OF THE SEATS WAS SUFFICIENT TO WARRANT AN INFERENCE OF NEGLIGENCE BEING DRAWN BY THE JURY AS TO THE DEFENDANT, CHARLEY GRIP, INC.

The plaintiff, James Smith, testified (State of the Case, page 26, lines 16 to 23), that he attended the wrestling bouts at the Convention Hall on the date alleged in the complaint, February 29th, 1932, and purchased a ticket for general admission, and he further testified (State of the Case, page 27, lines 5 and 12), that he entered the hall and that the ticket purchased was for general admission. On page 27, State of the Case, lines 15 to 17, he testified that he sat on the top row of what is commonly called the bleacher section which consisted of boards lapped over (State of the Case, page 27, line 22), and that the board on which he was sitting fell off (State

of the Case, page 27, lines 32 to 36). From page 28, line 20 to page 38, lines 3 to 5 of the State of the Case, the plaintiff describes the extent of his injuries.

The happening of the accident is more clearly amplified by one of the plaintiff's witnesses, Casimir Bielicki, on page 39, State of the Case, lines 21 to 33:

"Q. While you and he were sitting on that row, what happened to the thing that you were sitting on?

A. What we were sitting on, the board fell off the platform and we fell with it.

Q. What happened to Mr. Smith when the board fell off the platform?

A. Mr. Smith was the first one to fall, and the other folks fell on top of him, and Mr. Smith was injured.

Q. Which end of the board was Mr. Smith sitting on?

A. He was sitting about the middle of the board."

On page 40 of the State of the Case, lines 8 to 17, the witness, Casimir Bielicki, further testified as follows:

"Q. Do you know how that board was put on the stand?

A. That particular board I don't know how it was put on, because the fans were already seated when I came.

Q. Was there anything in back of the board to prevent or keep the board from sliding off?

A. Absolutely nothing.

Q. Did the board break?

A. No."

Brief for Plaintiff-Appellant

And to continue the testimony on page 42, State of the Case, lines 9 to 11, the witness, Casimir Bielicki, testified:

“Q. Was Mr. Smith seated or standing at the time the board slipped?

A. He was seated.”

The witness, George Schaefer, testified as follows on page 49, State of the Case, lines 32 to 34 and on page 50, lines 3 to 21:

“Q. How many boards from you was the board that Mr. Smith was sitting on?

A. One.

Q. Were those boards nailed or made secure in any way on the night of this accident?

A. No, I have never seen any of them nailed.

By the Court:

Q. You were asked about the boards on this particular night?

A. No, sir.

By Mr. Keown:

Q. Was there anything in back of the board to guard the board from sliding off back?

A. No, not that I could see.

Q. What happened to the board that Mr. Smith and the other men were on?

A. The board went to the floor, and the crowd fell off.”

And the same witness describes the boards under cross-examination by counsel for the defendant, The City of Camden, on page 51, State of the Case, lines 31 to 35:

“Q. These boards, or these seats, are like regular circus seats?

Brief for Plaintiff-Appellant

A. Practically, yes.

Q. Boards laid on top of each other?

A. Just laid over."

And referring to this last row of seats, his testimony on page 52 of the State of the Case, lines 20 to 32, is as follows:

"A. I know it has no back.

Q. You mean there's no board to it?

A. No rest to it.

Q. You go to these matches regularly, do you?

A. Yes.

Q. You try to get up about as high as you can, don't you?

A. Yes.

Q. So you can see down on the ring?

A. That's my idea.

Q. That's the best seat, and —

A. I would say yes, it's a good view."

The witness, Raymond Paul, when asked about the construction of these stands, testified as to the accident as follows (State of the Case, page 59, lines 27 to 36; page 60, lines 3 and 4 and lines 19 to 35; page 61, lines 8 to 18 and lines 25 to 36; page 62, lines 3 to 6):

"Q. Were you there the week before?

A. I was there the week before, yes, sir.

Q. Did you notice the condition of the boards, the top row, on the week before?

The Court: Yes, or no, and did you notice it.

A. Yes, sir.

Q. Did something happen to those boards the week before?

A. Yes, sir, they did, sir.

Q. What happened?

A. The week before my son and I were going up on the west side of Convention Hall, and as we were going up the board, I was ahead of him, and the board came down from the top stands, that's on the west side, and knocked my son cold, and another boy approached me, and said, 'Mr. Paul' —

The Court: Not the conversation.

The Witness: (Continuing.) When he was knocked cold, I picked him up and brought him out in the air.

Q. As the result of what happened the week before, did you talk to anyone in charge?

A. The following week, sir.

Q. Concerning that accident to your boy?

A. Yes, I did.

Q. With whom did you talk?

A. Mr. Grip, I believe, and a gentleman named Mr. Haley.

Q. Do you know Mr. Grip?

A. I do by sight.

Q. What did you say to Mr. Grip about the accident to your boy, and the condition of these boards?

A. I told Mr. Grip about it, and Mr. Grip told me that those out at the Central Airport are nailed down, but these didn't belong to him.

Q. What did Mr. Grip say, if anything, about remedying the condition?

A. He said he would look into it.

Q. On the night, or were you there the night that the board slipped and Mr. Smith fell down?

A. I was there when the board slipped, yes, sir.

Q. What row were you seated on that night?

A. Top row, sir.

Brief for Plaintiff-Appellant

Q. How near to Mr. Smith?

A. A board length.

Q. Did you have occasion to notice the condition of the boards on the night that Mr. Smith fell?

A. Only lapped over, that's all.

Q. Was there anything done towards nailing the boards?

A. Not as I seen."

The testimony of Raymond Paul is corroborated on pages 64 and 65 of the State of the Case by a son who was present at the bout held the week before the accident in question when the boards collapsed, and was likewise present on the night the accident happened in question and was also present at the colloquy between his father and Mr. Grip when his father made a complaint about the condition of the seats. From this testimony produced by the plaintiff, it may be seen that evidence was given of the following facts at this point in the plaintiff's case:

1. That the plaintiff was a paid invitee at the boxing match conducted by Charley Grip, Inc., at the Convention Hall, in the City of Camden.

2. That the board or stand on which the plaintiff was seated collapsed without any warning to him.

3. That no provision was made for the securing of the board or seat in question but it was merely loosely held and not nailed or secured in any respect.

4. That a similar occurrence had occurred the week before with the very same row of seats and the president and agent, Charley Grip, of Charley Grip, Inc., was notified as to this condition and readily admitted the existence of this situation.

The position of Charley Grip, Inc., in connection with the bout is perhaps best summarized by the Court on page 68 of the State of the Case, lines 31 to 34:

“The Court: You are conceding you were in control of the bouts this particular night?”

Mr. Travaline: Of the bouts, that’s correct.”

If is, therefore, submitted that upon the evidence of the facts set forth above, sufficient was produced to make the question of negligence one for the jury under the rule set forth in *Thompkins, et al. v. Burlington Island Amusement Co., et al.*, 102 N. J. L. 411, particularly as set forth in the following language:

“The first ground of appeal is that the trial Court erred in refusing to non-suit the respondents and to direct a verdict for the appellants because there was no evidence of negligence. But there was evidence of negligence requiring a submission of the cause to the jury. Respondents were upon the premises of the amusement company by invitation. The slip which collapsed was constructed by the company and was under its control. Its collapse when being used for the purpose for which it was constructed and designed, at least, raised a pre-

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sumption of negligence calling for an explanation from the company."

And then the rule laid down in *Clark, et al. v. Borough of Cliffside Park, et al.*, 110 N. J. L. 589, where the evidence produced in that case is submitted here in the language which was used in a summary of the Court when it said:

"At the trial the only proof of negligence was the undisputed fact that the stand collapsed and the testimony of the plaintiff Mrs. Clark that after the collapse of the stand she found a piece of wood full of nail holes, and which 'looked like it had been used a dozen or more times.'"

The Court said further in this connection:

"We conclude that the collapse of the stand, plus the testimony of the plaintiff, before referred to, spoke negligence in the construction and erection thereof. At least these proofs were sufficient to require the sending of this question to the jury for solution and determination."

In view of the testimony hereinabove set forth, certainly Charley Grip, Inc., was responsible for the condition of these seats as the effect was apparent and further than that, the corporation had been notified about a similar accident occurring just a week before, occasioned by the construction, and it is, therefore, submitted that under the rule laid down in *Johnson v. Zemel*, 109 N. J. L. 197, where the case was submitted to the jury on the question

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of the negligence of the exhibitor as well as the owner of the premises, and in the case of *Eckman v. Atlantic Lodge*, 68 N. J. L. 10, that the defendant, Charley Grip, Inc., is liable for the negligence which occurred.

It is, therefore, submitted, under the tests laid down in the cases above, that under the circumstances there was sufficient evidence to go to the jury on the question of negligence on the part of the defendant, Charley Grip, Inc., because:

1. It was shown that Charley Grip, Inc., knew of this condition.

2. Knowing of this existing condition, it sold tickets by which the plaintiff became an invitee on the premises.

3. The defect existing was such that it could have been ascertained by a reasonable inspection even though the corporation was not informed of the existence of such a condition.

4. The plaintiff, when the stand or seat collapsed, was seated thereon in accordance with the terms of his general admission ticket.

5. The plaintiff suffered injuries as a result of his being precipitated to the floor.

6. That the evidence produced was to the effect that no provision had been made for securing the top row of seats upon which the plaintiff was seated, but in fact, there was affirmative evidence that the seat was not affixed but put in such a position that the row of seats could easily collapse or fall as they did.

B.

THE CITY OF CAMDEN WAS RESPONSIBLE
FOR THE CONDITION OF THE LEASED
PREMISES.

From the argument set forth under Part A, it has been pointed out that the condition of the seats was such as to bespeak negligence and sufficient facts were produced to take the question of negligence to the jury. The City of Camden, the lessor of the premises, was likewise liable for this condition which caused the injury to the plaintiff. The position of The City of Camden is, perhaps, best summarized in the testimony on page 69 of the State of the Case, lines 3 to 12, where the following colloquy took place and wherein there is set forth the position of the defendant, The City of Camden, so far as its relation to this accident is concerned in the succinct summarization of the Court which fact is accepted as true by counsel for the defendant, The City of Camden:

“The Court: And you had rented the hall for that purpose from the City?

Mr. Travaline: From the City, as well as the equipment.

The Court: It's also conceded the City owns the hall and the equipment.

Mr. Travaline: That's correct.”

It is, therefore, submitted that under the facts set forth under Part A of this argument with respect

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to the condition of the seats and in view of the testimony and admissions concerning the City of Camden in connection with these premises, there was evidence sufficient to take the case to the jury on the question of negligence on the part of the City of Camden for the case is unquestionably within the rule laid down by this Court in the case of *Martin, et al., v. City of Asbury Park*, 111 N. J. L. 364, and the situation here is perhaps best covered by the expression of the Court used on page 367 in connection with that case:

“The true rule undoubtedly is that where an owner designs and devotes a building to public or semi-public use, the public is deemed to be invited to make such use thereof by the owner and the latter cannot evade responsibility of exercising due care to make it reasonably safe by demising it to a tenant.”

“Such is the text in 16 R. C. L. 1069, and such seems, likewise, to have been the burden and obligation placed by the courts of this State upon owners of such buildings. *Phillips v. Library Co.*, 55 N. J. L. 307; *Eckman v. Atlantic Lodge*, 68 Id. 10; *Smith v. Delaware River Amusement Co.*, 76 Id. 461, and *Johnson v. Zemel*, 109 Id. 197.

“Such a legal doctrine has every power of logic to support it. To hold that an owner may construct a building to be used for public purposes and in such construction transgress every requirement of structural safety and escape liability therefor by the simple process of leasing to another by whom such public use is carried on would be absurd.”

Certainly, the absurdity of such a situation as pointed out by this Court in the case above men-

tioned, is clearly present in this case when one considers the facts adduced on the part of the plaintiff where the seat on which the plaintiff was seated was not even fastened but made in such a condition as to permit it to easily slide and fall as the testimony showed. Therefore, under the doctrine of this case on this ground it is submitted that The City of Camden cannot escape liability.

Any contention on the part of The City of Camden that the liability is that of Charley Grip, Inc., and not of The City of Camden, particularly in view of the fact that Charley Grip, Inc., knew of the condition of the seats in question, as the said Charley Grip admitted, and as was set forth in the testimony at length under Part A, is disposed of by the Supreme Court in the case of *Eckman v. Atlantic Lodge*, 68 N. J. L. 10, in the following language:

“It has been assumed in the present case that the duty of inspecting such a building for the purpose of seeing that it is safe rests as well upon a person who hires it for the purpose of holding a public ceremony in it. Whether such a duty rests upon the temporary lessee of a building constructed and used for public purposes may be doubted, and the determination of this case does not require a decision of that question. Conceding that such duty exists, the liability of the temporary lessee to answer for injuries resulting from defective construction or maintenance must be limited to such defects as an inspection would disclose, and does not charge him with responsibility for an accident which is produced by a defect entirely latent.”

Certainly, therefore, if there was any duty upon Charley Grip, Inc., to make an inspection to discover

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defects and guard against them, The City of Camden is not relieved from the duty set out under the rule in the case of *Martin, et al., v. City of Asbury Park, supra*, and the cases mentioned therein.

The factual situation in this case is perhaps more closely akin to the factual situation presented in the case of *Johnson v. Zemel*, 109 N. J. L. 197, where the very situation presented here was passed upon by the Supreme Court, namely, that of a suit against a promoter of boxing matches and the owner of a building. A reading of this case will show that the case was sent to the jury on the liability of both the boxing exhibitor and the owner of the building and there was a judgment in favor of the exhibitor but against the owner of the building and such a judgment against the owner of the building was sustained by the Supreme Court and the duty of such an owner was clearly pointed out.

It is, therefore, submitted that The City of Camden is jointly liable with Charley Grip, Inc., for the injuries suffered by the plaintiff and for the reasons set forth above sufficient testimony to present a jury question was given in the Court below.

C.

THE DEFENDANT, THE CITY OF CAMDEN,
CANNOT ESCAPE ITS LIABILITY BE-
CAUSE IT IS A MUNICIPAL CORPORA-
TION.

The defendant, The City of Camden, set up in its answer a reservation to strike out the complaint at

the time of trial in that it was a municipal corporation "engaged in such duties" (see State of the Case, page 15, lines 35 and 36, and page 16, lines 3 and 4). No point was made of this at the time the motion was argued for a non-suit. Under the facts set forth, admittedly, The City of Camden was a municipal corporation; that it had a Convention Hall which it rented out for various gatherings none of which were in connection with the performance of any of its governmental functions; that the rental to Charley Grip, Inc., was one of such activities. Certainly, it cannot be contended by any stretch of the imagination, nor is there a scintilla of law to support such a contention in any of the cases in this State that the conducting or renting of municipal buildings to conduct boxing matches for hire is a governmental function and the case is one clearly within the law of *Martin, et al., v. City of Asbury Park, supra*, where a municipal bathing pavilion was leased. Here it was a municipal Convention Hall leased for the purpose of a wrestling match. From a legal standpoint, it is respectfully contended that there is no difference between the facts and situations presented and The City of Camden cannot escape liability on this ground.

CONCLUSION.

It is, therefore, submitted that the judgment of the learned trial Court of a non-suit in favor of the defendants, The City of Camden and Charley Grip, Inc., should be reversed for the following reasons:

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1. Because there was testimony concerning the defective construction of the seats which the plaintiff, as a member of the public, was invited to occupy and for which privilege he paid.

2. Because the defect in the construction of the seats was such that the defendant, Charley Grip, Inc., could have ascertained the defect by a reasonable inspection even though there was not any notice given to him of this condition and he failed to remedy such defect so ascertainable.

3. Because the defendant, The City of Camden, which municipality was the owner of the structure in question and controlled the seats, was responsible for the condition of the structure and it, therefore, cannot escape, by a leasing arrangement, any duty which it owed to the public of whom the plaintiff was one and whom the City of Camden knew would be invited to occupy the building in question.

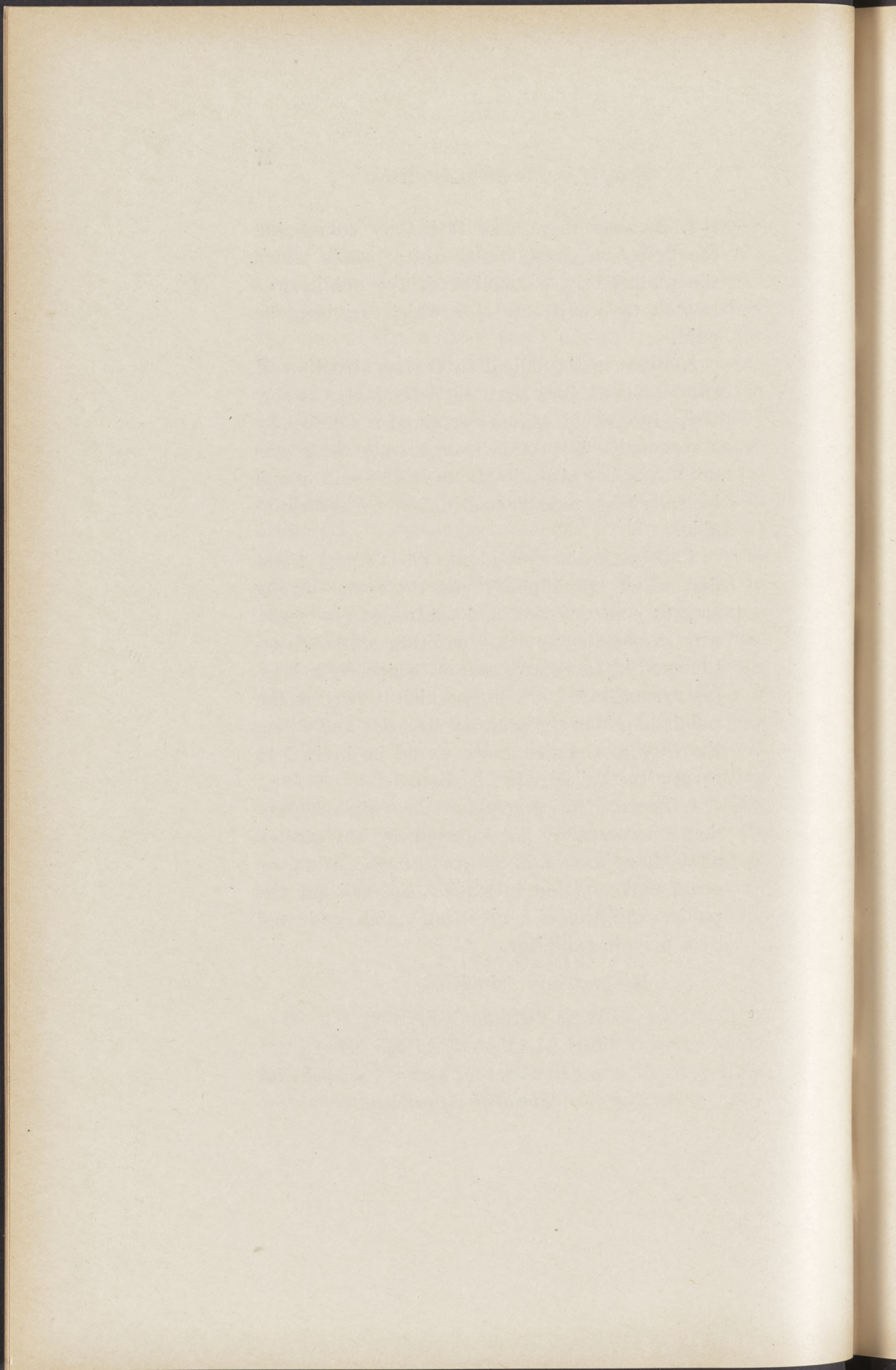
4. Because the defendant, the City of Camden, was certainly not engaged, by any stretch of the imagination, in the performance of a governmental function in leasing the hall for the public exhibition of a wrestling match conducted by a private exhibitor.

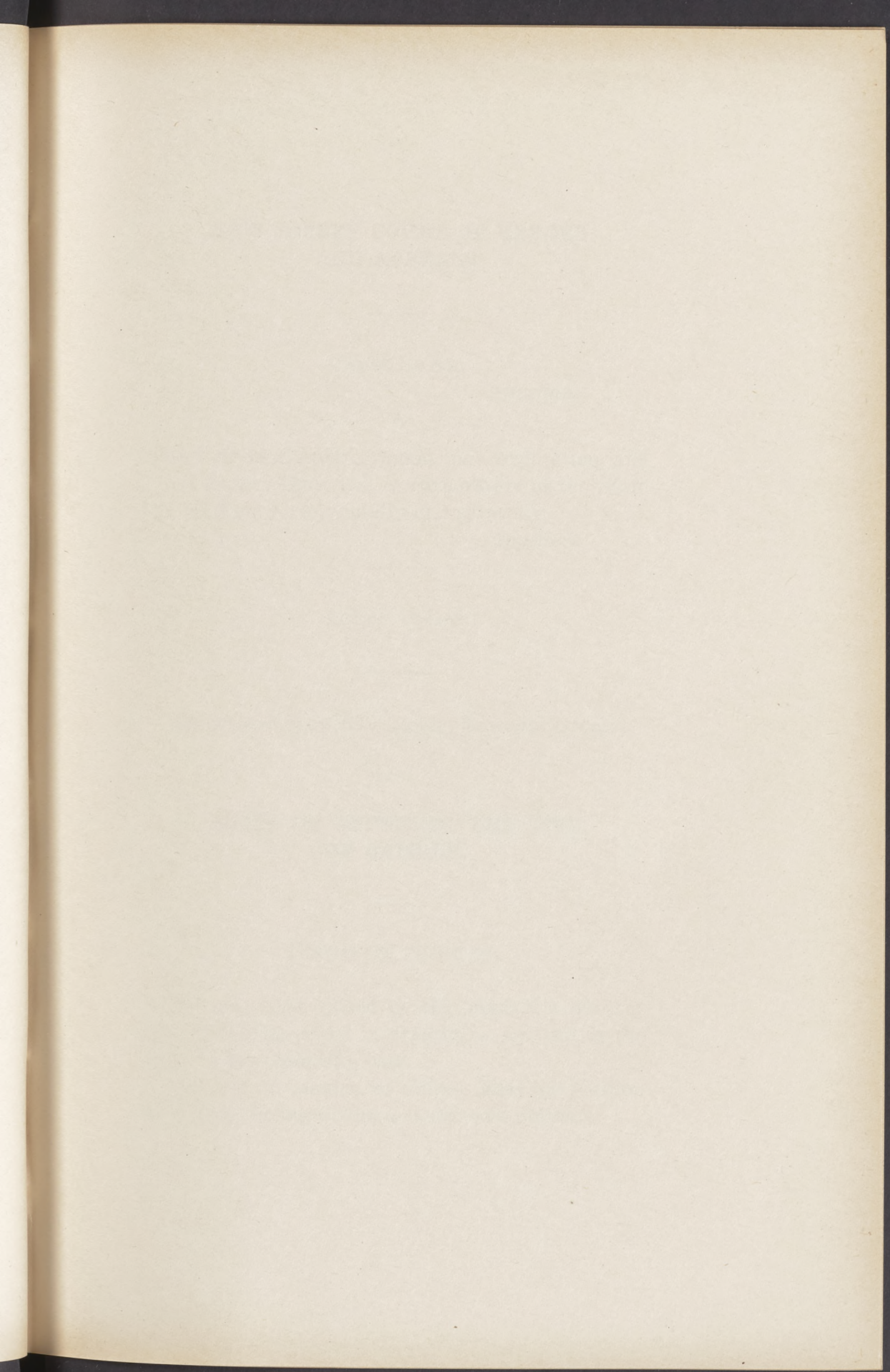
Respectfully submitted,

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NEW JERSEY COURT OF ERRORS
AND APPEALS.

JAMES SMITH,
Appellant,

v.

THE CITY OF CAMDEN, a municipal corporation, and
CHARLEY GRIP, INC., a corporation of the State
of New Jersey, jointly and severally,
Appellees.

ACTION AT LAW.

ON APPEAL FROM NEW JERSEY SUPREME COURT.

BRIEF OF APPELLEE, THE CITY
OF CAMDEN.

ISSUE ON APPEAL.

The sole issue raised by this appeal is whether the trial Judge erred in granting a non-suit at the close of the plaintiff's case.

The City of Camden, of course, takes the position that the granting of the non-suit was proper.

Brief of Appellee, The City of Camden

WITH REFERENCE TO THE FACTS.

It is submitted that what the testimony fails to contain in this case, speaks more eloquently than the testimony which was offered.

At the outset it should be noted that the complaint charges that the defendant, The City of Camden, "negligently, carelessly and improperly maintained, managed, directed, controlled and kept the said hall or building * * *, its equipment, appliances, fixtures, chairs, benches, grandstands, etc., in an unsafe and dangerous condition, in that said defendant, * * * negligently, carelessly and improperly failed to inspect the said equipment, appliances, fixtures, chairs, benches, grandstands, etc., * * * and in that said defendant, * * * carelessly and improperly allowed, caused and permitted the said equipment, appliances, fixtures, chairs, benches, grandstands, etc., in the * * * building, to be unfit and unsafe for the use of any person or persons." (Paragraph 9 of complaint, C., p. 5, l. 18.)

The defendant is thus charged with the improper maintenance of equipment. This charge of negligence was denied by the defendant and constitutes the theory upon which the case was tried. The complaint likewise charges that the defendant, The City of Camden, leased the premises and equipment in question to the defendant, Charley Grip, Inc. This charge was also denied. No proof was offered on this point by the plaintiff.

This is in contrast with the situation which ex-

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isted in the case of *Martin v. City of Asbury Park*, 111 N. J. L. 364; *Eckman v. Atlantic Lodge*, 68 N. J. L. 10; *Johnson v. Zemel*, 109 N. J. L. 197.

The testimony concerning the occurrence of the accident is extremely short. Smith, the plaintiff, testified that he entered the building and took his seat on the top row of the bleachers' section. (C., p. 27.) His entire statement as to what happened, reads as follows (C., p. 27, l. 31):

"Q. While you were sitting on this particular board, what happened to you?

A. I fell off.

Q. The board fell off?

A. Yes, sir.

Q. Do you know what caused you to fall off?

A. I couldn't tell you that.

Q. Where did you go when you fell?

A. Down on the floor.

Q. What happened to you when you went to the floor?

A. I don't remember, they picked me up."

The plaintiff's witness, Bielicki, testified as follows (C., p. 39, l. 21):

"Q. While you and he were sitting on that row, what happened to the thing that you were sitting on?

A. What we were sitting on, the board fell off the platform and we fell with it.

Q. What happened to Mr. Smith when the board fell off the platform?

A. Mr. Smith was the first one to fall, and the other folks fell on top of him, and Mr. Smith was injured.

Q. Which end of the board was Mr. Smith sitting on?

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A. He was sitting about the middle of the board.

Q. How long was the board that fell?

A. I don't know, about the length of that table.

Q. How wide was the board?

A. I would say about 8 inches.

Q. And how thick was it?

A. About an inch, an inch and a quarter, somewhere, approximately, I don't know exactly.

Q. Do you know how that board was put on the stand?

A. That particular board I don't know how it was put on, because the fans were already seated when I came.

Q. Was there anything in back of the board to prevent or keep the board from sliding off?

A. Absolutely nothing.

Q. Did the board break?

A. No."

The testimony of plaintiff's witness, Skanish, is limited to a statement that the board that went down was not broken. (C., p. 45, l. 12.)

The plaintiff's witness, Schaefer, testified that the boards were not nailed down.

On page 7 of appellant's brief, the testimony of Raymond Paul is quoted. It will be remembered that this testimony had to do with an occurrence that is alleged to have taken place the week before when a board struck his son. Through inadvertence the plaintiff fails to note in his brief that a portion of the testimony quoted by him on page 7 of his brief was struck out by the Court and no objection

made to this ruling by the plaintiff. This testimony reads as follows (C., p. 61, l. 14):

“Q. What did you say to Mr. Grip about the accident to your boy, and the condition of these boards?

A. I told Mr. Grip about it, and Mr. Grip told me that those out at the Central Airport are nailed down, but these didn't belong to him.

Mr. Lloyd: I object to this, so far as the City is concerned.

The Court: Strike it out.

Q. What did Mr. Grip say, if anything, about remedying the condition?

A. He said he would look into it.”

This constitutes the entire testimony in the case so far as the occurrence of an accident is concerned. It likewise constitutes the entire testimony so far as any reference to the City of Camden is concerned. There is in the case, however, the voluntary statement made by the attorney representing the defendant, Charley Grip, Inc., but not the City of Camden, as follows (C., p. 69):

“The Court: And you rented the hall for that purpose from the City?

Mr. Travaline: From the City, as well as the equipment.

The Court: It's also conceded the City owns the hall and the equipment.

Mr. Travaline: That's correct.”

It is to be noted:

1. There is no evidence in this case as to who

erected the stands from which a board is alleged to have fallen.

2. There is no evidence in this case that these stands were ever under the control or management of the City of Camden.

3. There is no evidence that the City of Camden ever had any notice that this particular seat was in a defective condition.

4. There is no evidence as to what caused the fall of the plaintiff.

5. There is no evidence that these stands were erected in other than an approved method and pursuant to standard construction methods, having in mind that we are dealing with movable stands; *i. e.*, "circus type."

6. There was no evidence with respect to any leasing arrangement between the City of Camden and the defendant, Charley Grip, Inc.

7. There was evidence that the building and equipment on the night of the accident was under the control and management of the defendant, Charley Grip, Inc.

8. There was evidence that the stands were fully occupied by persons who had apparently purchased tickets from the defendant, Charley Grip, Inc., although the latter point may only be surmised and is not clearly proven in the testimony.

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It is respectfully submitted that upon this set of facts the trial Judge properly granted a non-suit in favor of the defendant, The City of Camden.

WITH REGARD TO THE LAW.

So far as the City of Camden is concerned, the plaintiff, in his brief, has relied almost entirely upon the case of *Martin v. City of Asbury Park*, 111 N. J. L. 364.

Counsel has very carefully examined the printed book and the briefs as submitted to the Court in the cited case. It is apparent that in that case the question before this Court was whether or not there was sufficient evidence with regard to a structural defect to warrant the case going to the jury.

With the law as established in that case we can, of course, have no quarrel. However, it is important to note that the Chancellor, in his opinion, points out that it was the testimony of the witness, Schneider, an engineer and architect who testified with regard to standard methods of construction, that permitted the case to go to the jury. The following extract from the opinion of this Court, written by the Chancellor, fully establishes the distinguishing features between the cited case and the case at bar.

“Among the several charges of liability as against the city, is the outstanding one of improper construction of the stairway.

Much of the testimony, in this direction, is from the respondents' witness, Schneider,

which is largely devoted to the height of risers, widths of treads and matters of construction of a like character, which, to us, appears to be irrelevant to the actual situation which evidently caused the happening.

This witness did, however, testify that he was familiar with the standard and generally approved methods of construction of stairways in bathing establishments, frequented by large numbers of persons at seashore resorts, and that such methods required a non-slip tread or nosing for the purpose of making them non-slip, a condition and method of construction not found in the stairway in question, which consisted of a one-piece spruce tread with open risers.

The testimony of this witness is, to us, not impressive, but it existed, and was sufficient to send that issue to the jury for settlement, which was done, under instructions from the trial Judge, which were not excepted to, and the jury must have found thereon in favor of the respondents, as it could have done upon the proofs. Whether the weight of the proof was sufficient and proper to warrant such a finding is a matter not before us."

The testimony in the Martin case discloses that the theory upon which the case was tried was that there existed a structural defect or improper construction. All-important to the plaintiff's case was the testimony of Schneider who testified that the proper practice had not been followed in erecting the steps in question. There is no corresponding testimony in the case at bar. There is not the slightest indication that these stands were not

erected, and for that matter maintained, in accordance with standard methods adopted generally; *i. e.*, "circus type."

The case of *Eckman v. Atlantic Lodge*, 68 N. J. L. 10, likewise involves a question of structural defect. It will be remembered that in that case the floor collapsed and the occupants were thrown to the floor below.

So also in the case of *Johnson v. Zemel*, 109 N. J. L. 197, where the injuries to the plaintiff were the result of a defect in the floor of an aisle used for the passage of patrons. On this point the Court, in its opinion written by Mr. Justice Case, stated:

"According to the plaintiff's evidence, the hole was a defect in the floor of an aisle constructed and intended to be used, for the passage of patrons. There were indicia, as for instance the evenly cut edges of the surrounding boards, that the condition was purposeful and was not the result of wear or of a recent mishap."

There is no evidence in the present case that the defendant, The City of Camden, had any notice with respect to possibilities of the board falling from these stands, nor, for that matter, is there anything in the testimony to indicate that these stands appeared to be in any other than in good condition when the patrons of Charley Grip, Inc., occupied the same. On the contrary, the testimony appears to be that at the time the plaintiff clambered up on the stands they were in their customary position and that he was aware of just what their condition was.

It will be remembered that the testimony of the plaintiff as to the construction of the stands was all given as the result of his observation prior to the accident as he states that after the accident "he didn't remember what took place."

It is the law that patrons of places of amusement as well as of the various means of transportation, assume the risk and dangers normally attendant thereon. These risks are incident to the enjoyment of the particular amusement enjoyed by the patron.

The duty of an owner of a building designed and devoted to public or semi-public use, is to exercise due care to make it reasonably safe for the use for which it was intended.

Martin v. City of Asbury Park, 111 N. J. L. 364.

The owner of the building, however, does not become an insurer.

Schnatterer v. Bamberger & Co., 81 N. J. L. 558 (E. & A. 1911).

Likewise, where the question, as in this case, is improper maintenance, the owner cannot be held liable unless the owner has had notice of the condition before the accident or the condition has existed for such a length of time as to charge the owner with notice thereof.

Schnatterer v. Bamberger & Co., *supra*.

Dyer v. Robinson, 110 Fed. 99.

There is no evidence in the case at bar that the defendant, City of Camden, had any notice of the

Brief of Appellee, The City of Camden

alleged defective condition nor is there any evidence in this case with regard to standard methods of erecting stands of this type, which charges the defendant, The City of Camden, with such notice.

To establish a case of negligence, placing the burden upon the defendant, The City of Camden, it is incumbent upon the plaintiff to prove some fact which is more consistent with the negligence of the defendant than with the absence of it.

Alvino v. Public Service Railway Co., 97 N. J. L. 526.

Likewise, it is equally well recognized that negligence is a fact which must be proved and which will not be presumed. Thus, where the evidence is equally consistent with the absence as with the existence of negligence, the presumption against negligence justifies a non-suit in favor of the defendant.

Alvino v. Public Service Railway Co.,
supra.

In the case of *Clark v. Cliffside*, 110 N. J. L. 589, where, incidentally, a judgment was not recovered against the Borough, the testimony disclosed that one of the boards that supported the stand was full of nail holes. The Court permitted the case to go to the jury to determine whether or not the use of this board, in its weakened condition, was negligence.

In the instant case, such evidence is lacking—there were no broken boards. The testimony goes no further than showing that one board, apparently in good condition, fell from the stand.

THE DOCTRINE OF RES IPSA LOQUITUR IS
NOT APPLICABLE IN THIS CASE.

The doctrine of *res ipsa loquitur* is applicable in those cases where the cause or thing producing the injury was in the possession of and under the control or management of the person charged with negligence.

Conover v. Delaware, Lackawanna & Western R. R. Co., 92 N. J. L. 602 (E. & A., 1918);

Adriance v. Schenck Bros., 95 N. J. L. 185 (E. & A. 1920).

In the case at bar the testimony clearly discloses that the equipment and building had been leased by the defendant, Charley Grip, Inc., and that the latter was in charge of the bouts. The testimony further discloses that the stands were well filled and that this particular section where the plaintiff was seated, was fully occupied. Under those circumstances the doctrine of *res ipsa loquitur*, as followed in this State, can have no application.

It is respectfully submitted that the judgment of non-suit was proper and should be sustained by this Court.

STARR, SUMMERILL & LLOYD,
*Attorneys for Appellee, City of
Camden.*

ALFRED E. DRISCOLL,
Of Counsel.

**NEW JERSEY COURT OF ERRORS
AND APPEALS.**

JAMES SMITH,
Plaintiff-Appellant,

v.

THE CITY OF CAMDEN, a municipal corporation, and
CHARLEY GRIP, INC., a corporation of the State
of New Jersey, jointly and severally,
Defendants-Appellees.

ACTION AT LAW.

ON APPEAL FROM NEW JERSEY SUPREME COURT.

**BRIEF FOR DEFENDANT-APPELLEE,
CHARLEY GRIP, INC.**

STATEMENT OF CASE.

It is respectfully submitted that the trial Court was justified in directing a non-suit against the plaintiff and in favor of the defendant, Charley Grip, Inc., a corporation of the State of New Jersey, upon the motion of said defendant.

The following observations are made in relation to the portion of the brief of the appellant called "Statement and Facts."

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Charley Grip, Inc.*

In the state of the case, evidence appears from which it was shown that the plaintiff was a spectator and that he had paid an admission fee to be admitted to a wrestling exhibition held on the evening of February 29, 1932, in the Convention Hall in the City and County of Camden and State of New Jersey. It is admitted by the pleadings of the appellee that the appellee leased said Convention Hall and equipment, benches, stands, etc., from the co-defendant, The City of Camden, a municipal corporation (complaint, State of Case, page 8, paragraphs 3 and 4, and answer, State of Case, page 19, line 30), and at the trial the attorney for this appellee made the following admissions (State of Case, page 68, line 31):

“The Court: You are conceding you were in control of the bouts this particular night?

“Mr. Travaline: Of the bouts, that’s correct.

“The Court: And you had rented the hall for that purpose from the City?

“Mr. Travaline: From the City, as well as the equipment.

“The Court: It’s also conceded the City owns the hall and the equipment.

“Mr. Travaline: That’s correct.”

There is no direct evidence and none from which a legal inference may be drawn that associates this defendant-appellee with the operation of wrestling bouts in the Convention Hall on any prior occasion.

The plaintiff sat in the portion of the auditorium in the bleacher section. (State of the Case, page 27,

*Brief for Defendant-Appellee,
Charley Grip, Inc.*

line 16.) In this section the boards were like regular circus seats and were described by witness, George Schaefer (cross-examination, State of Case, page 51, line 31) as follows:

“Q. These boards, or these seats, are like regular circus seats?

“A. Practically, yes.

“Q. Boards laid on top of each other?

“A. Just laid over.

“Q. And then there's a board that goes diagonally up, which has supports on it, and this board rests on it?

“A. As a rest.

“Q. And the back of that board is against the upward slope?

“A. That is on the seats going up, yes.

“Q. On each seat going up?

“A. Yes.

“Q. That's also true all the way up, isn't it, even to the top?

“A. No, I would not say that.”

There was no direct evidence presented as to the cause of the falling of the board upon which the plaintiff was sitting.

*Brief for Defendant-Appellee,
Charley Grip, Inc.*

ARGUMENT.

A.

Measure of responsibility of this defendant-appellee.

The proprietor of a place of public amusement is only required to use ordinary or reasonable care to put and keep the premises, appliances, and amusement devices in a reasonably safe condition for persons attending, and if he fails to perform his duty in this regard, a patron who is injured in consequence thereof is entitled to recover for the injury sustained.

Rom v. Huber, 93 N. J. L. 360 (Supreme Court, 1919), affirmed 94 N. J. L. 258 (E. & A., 1919).

It must appear that there existed a condition, from lack of reasonable care, which produced the fall of the plaintiff.

The general rule seems to be that in order that an act or omission may be regarded as negligent, the person charged therewith must have knowledge that such act or omission involved danger to another or that there was some defect or danger in the instrumentality or property causing the injury, or must be chargeable with such knowledge.

Schnatterer v. Bamberger, 81 N. J. L. 558 (E. & A., 1910);

Sobel v. Lincoln Construction Co., 12 Misc. 203 (Sup., 1934).

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A person is liable for those results of his negligence which are reasonably to be anticipated.

Meyer v. Benton, 74 N. J. L. 533 (E. & A., 1906).

Patrons of places of public amusement assume all natural and inherent risks pertaining to the character of the structure and habitations or to the form of amusement.

Gardner v. G. Howard Mitchell, Inc., 107 N. J. L. 311 (E. & A., 1930);

Thurber v. Skouras Theatres Corp., 112 N. J. L. 385 (Sup., 1933).

B.

Plaintiff failed to present evidence of actionable negligence.

Appellant has failed to present evidence which, viewed in its most favorable light, supported a cause of action against Charley Grip, Inc.

The following are terse comments upon the evidence of witnesses offered by the plaintiff on this subject.

(a) The testimony of the plaintiff (State of Case, page 27, line 32) is of no assistance. He said:

“Q. While you were sitting on this particular board, what happened to you?

“A. I fell off.

“Q. The board fell off?

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"A. Yes, sir.

"The Court: He doesn't say that.

"Q. Do you know what caused you to fall off?

"A. I couldn't tell you that.

"Q. Where did you go when you fell?

"A. Down on the floor."

(b) The testimony of Casimir Bielicki (State of Case, page 39, line 21) offered no proof of negligence. He said:

"Q. While you and he were sitting on that row, what happened to the thing that you were sitting on?

"A. What we were sitting on, the board fell off the platform and we fell with it."

And on page 40, line 16, he said:

"Q. Did the board break?

"A. No."

(c) John Skanish, a witness, testified relating to alleged negligence as follows (State of Case, page 45, line 5):

"Q. What happened that night?

"A. I heard a crash, see.

"Q. What did you see?

"A. I turned around and looked, and they had went down there, and I ran around."

And at line 17, page 45, he stated further:

"Q. Was the board broken?

"A. No, not so far as I seen, it wasn't broken."

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On page 46, line 20, he also stated:

“Q. As I understand it, you heard a noise in back of you?”

“A. Yes.”

(d) George Schaefer, the next witness called, testified (State of Case, page 49, line 29), as follows:

“Q. And were you on the same board that he was seated on?”

“A. No, not on the same board.”

His testimony does not disclose evidence of negligence. He further stated (State of Case, page 50, line 18):

“Q. What happened to the board that Mr. Smith and the other men were on?”

“A. The board went to the floor, and the crowd fell off.”

(e) Raymond Paul (State of Case, page 62, line 21) stated as follows:

“Q. Did you see how this board that Mr. Smith was on did slip off, as it was slipping?”

“A. No, I didn't.”

(f) The testimony of Raymond Paul, Jr., is devoid of any evidence of value, relating to the alleged cause of action.

(g) Walter Supernak (State of Case, page 68, line 7) stated as follows:

“Q. Did the board fall to the floor?”

“A. Yes, sir.”

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In the case of *Paynter v. Bridgeton and Millville Traction Co.*, 67 N. J. L. 619 (E. & A., 1902), Mr. Justice Garretson, speaking for the Court, on page 625, said as follows:

“The mere happening of the accident raised no presumption of the negligence of the defendant. It was necessary to show, by direct evidence, that the defendant was responsible for the accident, or to show the existence of such circumstances as would justify the inference that the injury was caused by the wrongful act of the defendant, and would exclude the idea that it was due to a cause with which the defendant was unconnected. *Suburban Electric Co. v. Nugent*, 29 Vroom 658; *Houston v. Traphagen*, 18 Id. 23; *Benedict v. Potts*, 41 L. R. A. 478.”

In the case of *Abt v. Leeds and Lippincott Co.*, 109 N. J. L. 311 (E. & A., 1932), Mr. Justice Trenchard, speaking for the Court, on page 312, stated as follows:

“Considering the evidence in the light most favorable to the plaintiff, as we must do in determining the propriety of the non-suit, it was in substance that the wooden stairs, upon which the plaintiff slipped and fell as she was descending were waxed, highly polished and very slippery. That was the full extent of the proof as to the condition of the stairway, and it was insufficient to justify an inference of negligence upon the part of the defendant. There was no evidence — not even the slightest — tending to show that the stairs were improperly con-

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structed, nor out of repair, nor that the waxing or polishing was improper or had been done in any improper manner, nor that the stairs had been left in any different condition than is usual in waxed and polished floors or stairs. And as a matter of fact the plaintiff herself testified that the stairs in question were finished in the same way as the floors in the hospital in her home town where she was employed as a trained nurse when on duty."

C.

Alleged notice to this defendant-appellee.

Appellant has failed to produce testimony to demonstrate that the condition which produced the fall had been brought to the attention of Charley Grip, Inc., or that the condition had existed for such a space of time as would have afforded Grip sufficient opportunity to make proper inspection as to the safety of the place.

The pertinent testimony introduced by the appellant relating to the subject as alleged notice is found in the testimony of Raymond Paul (State of Case, page 60, line 19), as follows:

"A. The week before my son and I were going up on the west side of Convention Hall, and as we were going up the board, I was ahead of him, and the board came down from the top stands, that's on the west side, and knocked my son cold, and another boy approached me, and said, 'Mr. Paul ——' "

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Raymond Paul (State of Case, page 61, line 14) continued:

“Q. What did you say to Mr. Grip about the accident to your boy, and the condition of these boards?

“A. I told Mr. Grip about it, and Mr. Grip told me that those out at the Central Airport are nailed down, but these didn't belong to him.

“Mr. Lloyd: I object to this, as far as the City is concerned.

“The Court: Strike it out.

“Q. What did Mr. Grip say, if anything, about remedying the condition?

“A. He said he would look into it.”

Raymond Paul, Jr. (State of Case, page 64, line 31), stated as follows:

“Q. Were you present when your father spoke to Mr. Grip concerning the condition of these boards?

“A. Yes, sir.”

Analyzing all the testimony produced on behalf of the appellant in this connection, we find:

That there was no evidence that:

- (a) Mr. Grip conducted the exhibition the week before;
- (b) It was the board in question;
- (c) The board was defective;
- (d) The cause of the falling of the board.

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D.

Not a "res ipsa loquitur" case.

It is indubitable that there must in each case be something in the facts that speaks of the negligence of the defendant.

Appellant's theory of the case, in view of the facts presented, indicated that he was invoking the doctrine of *res ipsa loquitur*, thus warranting the calling upon the part of the defendant to explain.

1.

It is respectfully contended that the case does not present sufficient facts to demonstrate that this theory (*res ipsa loquitur*) should apply.

Analyzing all the testimony produced on behalf of the appellant in this case, we find:

- (a) As to the occurrence:
 - (1) The board fell;
 - (2) It was not broken.

There is no evidence as to:

- (a) The cause of the fall of the board;
- (b) That it was defective or in disrepair;

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(c) And most important, the cause of the falling of the plaintiff off the exhibition seat.

We cite for consideration the case of *Adriance v. Schenck Bros.*, 95 N. J. L. 185 (E. & A., 1920). Mr. Justice Black, speaking for the Court, on page 186 said, as follows:

“The defendant, Johnson, had a concession to operate an amusement device called a ‘racer’ located within the boundaries of the park. The plaintiff with his companions went to the park and paid for a ride on the racer. The plaintiff sat in the rear seat of the car; on his right sat one of his companions; in the front seat of the car sat the other two; an iron bar was placed in front of them across their laps and fastened to the outside of the car. Toward the end of the second ride something happened; the plaintiff ceased to remember anything; his companion sitting by his side spoke to him a few moments before the accident. The next thing he knew or saw he found the plaintiff doubled up, bleeding. No one of the party saw the plaintiff struck or saw how he was injured. The facts disclose an injury which is admitted, but do not disclose how it happened and no one gave any testimony on the point. It is urged as a ground of reversal, that the plaintiff made out a *prima facie* case of negligence by proof of the injury and that the doctrine or maxim *res ipsa loquitur* is applicable, thus making a jury question.

“Suffice it to say, we cannot accept this view. Mr. Justice Garrison, speaking for this court, in the case of *Bahr v. Lombard, Ayres & Co.*, 53 N. J. L. 233, 239, said: ‘It is evident that

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this phrase clearly imports that there must, in each case, be something in the facts that speaks of the negligence of the defendant.' It would serve no useful purpose to carry forward, further, the discussion of this subject. The books are full of cases illustrating the doctrine and the literature of the law is replete with a discussion of the subject.

"In this Court, in the case of *Conover v. Delaware, &c. R. R. Co.*, 92 N. J. L. 602, Mr. Justice Kalisch has reviewed many of the leading cases, pointing out their correct application. He, also, in that case made a collection of the cases on this subject in our own reports.

"If there is no proof of any fact by which the conduct of the defendant can be ascertained, there is nothing for a jury to pass upon. *Bahr v. Lombard, Ayres & Co.*, supra.

"The only presumptions of fact which the law recognizes are immediate inferences from the facts proved. *Price v. New York Central R. Co.*, 92 N. J. L. 429.

"The rulings of the trial Court were not error on the meritorious question in the case. The result we have reached renders it unnecessary to discuss the other points argued."

The Court affirmed a directed verdict in favor of the defendant, Johnson, who had the concession on which the plaintiff was alleged to have been injured.

A very recent case and one which we respectfully submit for consideration, is that of *Moore v. Peoples Palace*, 13 N. J. Misc. Rep. 336 (Supreme, 1935).

The pertinent facts in that case are as follows:

The defendant was the owner of the building,

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known as the Peoples Palace in Jersey City, and had rented out three rooms to a lodge of which the plaintiff was a member and officer. On March 14, 1931, an accident in which the plaintiff was injured occurred. The accident in question happened in one of the rented rooms which might be called a locker room, adjoining the lodge room. In this room were several lockers containing the paraphernalia of the lodge.

From one of the exhibits in the case, it appears that two of the lockers, to wit, those numbered four and five, were affixed to the wall at a height of, perhaps, nine feet above the floor. The defendant had provided a ladder for the use of the tenant to gain access to these lockers.

Just before the evening meeting of the lodge, the plaintiff had ascended the ladder and was in the act of taking out some lodge papers from these lockers, when the ladder gave way or slipped from under him, as the complaint charges, and the plaintiff fell to the floor and suffered a broken knee cap.

The defendant was charged with negligence, in that it maintained the said room in an unsafe condition by permitting the floors thereof to be in an "oily and slippery" condition and by "providing the ladder aforesaid which was unsafe and out of repair" and unsatisfactory for the purpose for which the defendant placed it there, namely, to reach the said lockers.

At the trial, the Court below refused to grant defendant's motion for non-suit and likewise refused

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to direct a verdict for the defendant. In discussing the testimony, the Court said:

“There is no proof that this appliance was out of repair or that it was an unusual fixture such as to render the ladder unsafe. In the absence of proof that it was so, we cannot assume that it was so unusual an appliance as to render the ladder unsuitable for the use for which it was intended. It may be that the weight of the plaintiff in ascending the ladder tore the cleat loose from its fastenings. This alone did not prove negligence. There is no proof before us that the fixture in question was loose or out of repair, or if it was, that the defendant had notice thereof or was chargeable with notice. The doctrine of *res ipsa loquitur* is not helpful to the plaintiff. It has no application to the facts before us. The doctrine of *res ipsa loquitur* is applicable when the mere happening itself bespeaks negligence. The facts before us do not bespeak negligence but merely the happening of an accident. The proofs before us on this particular do not contain facts that spell negligence or testimony from which negligence might be inferred. * * *

“The judgment is reversed and a *venire de novo* awarded, costs to abide the event.”

2.

Appellant has cited for consideration several cases as supporting his contention in this regard, the first was that of *Tompkins v. Burlington Amusement Co.*, 102 N. J. L. 411 (E. & A. 1926). A care-

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ful reading of that case will disclose the following facts:

1. The amusement company had provided * * * a float for smaller vessels or launches. The float was connected to a pier by a slip.
2. The slip was constructed by the company.
3. The slip collapsed.
4. The manager was general manager of the company, had charge of and directed the construction of the structure.
5. The general manager had the supervision and management of the park and all matters therein were under his direct control.

In the present case we have the following salient facts:

1. The Convention Hall including the bleachers and all equipment was furnished to Grip, Inc., by the City of Camden. (State of Case, page 69, lines 1 to 12.)
2. The board did not break. (State of Case, page 40, line 16.)
3. Charley Grip, Inc., controlled only the bouts. (State of Case, page 68, line 31.)

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Appellant further cites the case of *Clark, et al. v. Borough of Cliffside Park, et al.*, 110 N. J. L. 589 (E. & A. 1933), in support of his contention, and in that case there is disclosed the following facts:

1. The stand collapsed.
2. A piece of wood full of nail holes was found.

In the present case:

1. The stand did not collapse. (State of Case, page 40, line 16.)
2. There was no evidence of a defect in the board. (State of Case, page 50, line 3.)

Appellant next calls attention to the case of *Eckman v. Atlantic Lodge*, 68 N. J. L. 10 (Supreme 1902), and a reading thereof discloses the following:

1. The defendant Lodge did not own the building but merely rented it.
2. The floor of the hall collapsed.
3. There was a latent defect in the floor.

In the present case:

1. Grip, Inc., rented the building and the equipment.

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2. The stand did not collapse.
3. There was no evidence of a defect.

Appellant further cites the case of *Johnson v. Zemel*, 109 N. J. L. 197 (Supreme Court 1932). In considering this case, we find:

1. The defendant, Zemel, never surrendered exclusive occupancy of the premises to the tenant.
2. The defect that occasioned the injury was in a platform owned by the tenant but used jointly by him and Zemel.
3. The platform was, as occasion required, removed and installed by the Zemels, set up by them, and turned over to the tenant prior to the entertainment.

In the present case, there was no proof that:

1. Grip, Inc., had exclusive occupancy of the premises.
2. The stand or bleachers were erected by him.
3. There was a defect over which he had or could be considered to have control.

All of the above cases cited by the appellant seem to have facts and circumstances involved therein

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that are different from those in the present case, as heretofore pointed out.

CONCLUSION.

Summarizing the testimony, at its best, produced on behalf of the appellant in the present case, we find that there was no evidence of the cause of the falling of the plaintiff, and that a board fell from the stands, and that there was no evidence of the cause of the fall of the board or of any defects therein; that the defendant, Grip, Inc., was the exhibitor and controlled the bouts only and that he did not own any of the equipment; and that there was no proof that he had control or supervision over the erection or maintenance of any of the equipment. The appellant failed to produce testimony to demonstrate the negligence of this appellee.

It is respectfully submitted that the trial Court did not err when it took control and disposed of the case so far as the defendant-appellee, Charley Grip, Inc., was concerned, and granted its motion for non-suit.

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