New Jersey Supreme Court.

ABRAM DONNELLY, Plaintiff in error, vs. HAENICHEN BROTHERS SILK Co. Defendant in error.	*In Tort.* *On error to Passaic Circuit.*

BRIEF OF PLAINTIFF.

STATEMENT OF FACTS.

The plaintiff, a loom-fixer of fifteen years experience, had been in the employ of the defendant for four years in his capacity as loom-fixer. In January, 1903, the defendant started a new department in its mill which was known as the Jacquard section, and was placed under the control and management of one Edward Donnelly, who, in the capacity of mill-wright, was to erect and put in operation the Jacquard looms in this section. Edward Donnelly was retained in this particular department, as mill-wright, until about the first of April, at which time the looms had been placed in good running order by him. The plaintiff had never worked in this particular department until about ten days before the injury, when his work was changed by the defendant from the straight

loom section and he was assigned to work in the Jacquard-loom section as loom-fixer. There were fourteen looms in this department, each being operated by means of a belt running from a pulley on the loom upward to a shafting. The shafting ran the length of the mill and the looms were placed at right angles thereto. The pulley on the loom and the pulley on the shafting, operating the belt, were placed at right angles, making what is known as a quarter-turn pulley. Above the loom and situated immediately around the pulley on the shaft were three vertical levers which moved, when the machine was in operation, up and around the pulley and shafting and which, to avoid hitting the same, were bent in a peculiar manner. It was amidst these levers that the belt ran around the pulley on the shaft. The loom-fixer's duty was solely concerned with keeping the looms in repair, and repairing and adjusting the belt. It was no part of his employment, nor had he any concern with repairing, inspecting, or in anywise attending to the shafting, as this was solely the duty of the millwright.

The customary and usual manner, and in fact the only way for a loom-fixer to adjust a broken belt on Jacquard looms was to throw the belt around the shaft, put it under the pulley on the loom, clamp the ends together, place a ladder against the gantry, which was a beam above the loom and below the shaft, mount the ladder until the loom-fixer's body was on a level with the shafting, then lean over and along the shaft, and lifting the belt, slip it over the pulley attached to the shaft. It was not possible to stand in any other position. It was customary and necessary for a loom-fixer to lean against the shaft at such times.

While performing this duty, the loom-fixer's body

always came in contact with the shafting. It was never possible to adjust a belt with a shafting motionless, nor was it permitted, the loom-fixer to have the shaft cease running while performing this duty. To do so even if the required permission were given would have stopped the work of the entire section, and in addition thereto, it would have been impossible to adjust the belt.

The shaft at such places above the looms, whether there coupled together or not, in accordance with the usuage of the trade always presented a smooth surface against which the loom-fixer would always be obliged to lean. The loom-fixers always leaned against these places without the slightest danger. This was true of all other parts of the mill, except the place which caused the injury. The shafting revolved at a great rate of speed which made it impossible for a loom-fixer to perceive whether or not the surface was entirely smooth, and as it was impossible for him to stop the machinery, he was compeled to assume that the shafting was in the natural and customary condition.

The plaintiff had adjusted a number of belts in this section, in similar places, in exactly the same manner as described above with absolute safety, but had never been called upon to adjust a belt at the place which caused the injury.

At the time of the accident, plaintiff was called upon to adjust a broken belt over the loom in question. He threw the belt around the shaft, clamped it together, placed a ladder against the gantry, mounted the ladder, looked carefully along the shafting, reached over among the levers, took the belt and slipped it on the pulley, and instantly he was whirled around the shaft, and received the injuries for which this action was brought.

When the machinery was stopped it was discovered that at this particular place against which the plaintiff in the cutomary performance of his duty had been compelled to lean, the shafting had been coupled or joined together with a coupling of an unusual and dangerous character, in this, that although in appearance it was the same as other couplings used at such places, it had projecting from its otherwise smooth surface, set screws, which were invisible when the shaft was in motion. It thus acted as a natural, but invisible, hook.

The condition of this coupling was actually known to the defendant, but unknown to the plaintiff.

Couplings of this dangerous character were used in no other part of the mill at such places, and never known by the trade to be used in any mill, at such places, and their unguarded use prohibited by the statute laws of this State.

The couplings always used at such places presented an absolutely smooth surfaces. The ends of the shaft to be joined were inserted in the coupling; bolts were then passed through the coupling, parallel with the shaft and tightened or keyed up. Each end of the coupling had a rim or flange which projected along the shaft and over the bolts, so that the heads and ends of the bolts were completely covered and hidden by the rims or flanges, thus making it impossible for the coupling or bolts to catch or "hoop up" anything with which they came in contact.

All these facts were clearly proven upon the part of the plaintiff.

On the above facts the trial Judge granted a non-suit. To review this and other rulings, the plaintiff brings Error.

I.

IT WAS THE DEFENDANT'S DUTY TO PROVIDE THE PLAINTIFF WITH A REASONABLY SAFE PLACE TO WORK.

The rule is thus stated in the American and English Ency. Law, Vol. 20, p. 55: "In accordance with the rule that reasonable care must be taken to protect one's servants from injury, masters owe to their servants the duty of providing them a reasonably safe place in which to work, and of maintaining it in a reasonably safe condition during the employment, having regard to the character of the services required, and the dangers that a reasonably prudent man would apprehend under the circumstances of each particular case. This is a positive duty which the master owes, and is not one of the perils or risks assumed by a servant in his contract of employment."

"The master must take reasonable care to furnish tools and appliances with which, and places on or about which, the servant is employed to work, reasonably safe for the work."

Electric Co. vs. Kelly, 28 Vr. 100.

"It is the duty of the master to exercise reasonable care to provide a safe place for his servant to work in."

Belville Stone Co. vs. Mooney, 31 Vr. 324. Affirmed 32 Vr. 253.

See also Smith vs. Erie Railroad Co. (Ct. Er. and App. June Term, 1902), 52 Atl. Rep. 634.

In the opinion of the Court in this case, delivered by Pitney J., the rule herein discussed is set forth clearly, and a large number of New Jersey authorities are cited in support thereof.

It is insisted that the defendant failed in this respect, in the duty it owed to the plaintiff.

(A) By supplying a collar or coupling dangerous in itself to any person working near same.

(B) By supplying such collar or coupling in a place around and against which it required the plaintiff to work.

(A) By supplying a collar or coupling dangerous in itself to any person working near same.

The plaintiff was injured by being caught by a projecting set screw in a collar or coupling on the shaft against which he was working. He testified that this was not a safe coupling. That it was unsafe because the set screws were projecting out of the rim (p. 16, lines 1 to 8). That the ordinary coupling used generally was "a run cast around one end of the shaft, another rim around the other, 1½ inches wide; they are fastened with a key on the shaft that keeps them from slipping, then they are brought together and a bolt and a nut goes through them."

Q. Goes through where? A. On the side, then the nuts are fastened on the bolt, and they are covered by the

smooth rim when they are brought together; a regular smooth surface, that extends out over the nuts. Q. What kind of a surface does that coupling you have just described present? A. Perfectly smooth. Q. Would it be possible to get caught by leaning against such a coupling? A. No, sir. Q. Is there any difference between the appearance of the coupling which you have last described, and the coupling that caught you when the shaft was working? A. No, sir; there is not. Q. Is there anything that indicates, or could indicate to a workman working around those shafts, the difference in those couplings, or which kind of a coupling the one was? A. No, sir. Q. While the shaft was in motion? A. No, sir. (Entire page 16, p. 17, lines 1-10).

These couplers, described as "safe couplers," had been in existence "a good many years," and was the kind which was generally used; in fact, plaintiff knew of no other mill which used a coupler similar to the one by which he was injured. (Page 17, lines 20 to bottom).

The set screw which caught the plaintiff, and caused the injury, projected from the surface of the collar. (Page 14, lines 18-20).

On cross-examination plaintiff testified that he never in his life saw a collar with a set screw in it,—on shafting, —that on shafting they had the "safe collars," and that this testimony was based upon his fifteen years' experience in different mills. (Pages 51 and 52).

EDWARD DONNELLY, the next witness for the plaintiff, testified:

He, like the plaintiff, is a loomfixer by trade. He had also worked as a millwright, and had had experience in putting up and taking down shafting. Such work is performed by a millwright,—a loomfixer has nothing to do with shafting. (Page 67, lines 1 to 12). That he had coupled shaftings with couplers, or collars, and knew what was the usual and common coupler to couple shafts together. He described the usual and common coupler used in such places (in mills) as follows: "That (evidently indicating) is the flange, and on this shaft here it is keyed on at each end, and the four bolts run underneath, and there is a rim projecting out on each side of the flange, and they go under the rim; these bolts go underneath the rim and you tighten them all up, and they are all smooth."

"Q. What sort of a surface is presented on the face outside of that coupler?" A. "Perfectly smooth." Q. "Whereabout are the screws or bolts?" A. "Underneath the rim." Q. "Are they exposed?" A. "No, sir." Q. "Is it possible for those screws or bolts to catch anything in going around?" A. "No, sir." Q. "Is it perfectly safe for a person to lean against the couplers?" A. "Yes, sir, if you lean against it, all you feel is friction; the heat would make it warm, that is all." Q. "What were the couplers usually used in *this mill?*" A. "They had safe couplers there." Q. "Was or not this coupler which caught you brother, an unusual coupler?" A. "I never saw any before in my life." (Pages 67 and 68).

These set screws could not be seen when the shaft was in motion. (Page 69, lines 3-6).

GEORGE GREER, a witness called by the plaintiff as

an expert loomfixer. He so qualified. Plaintiff offered to prove by this witness that the coupling by which plaintiff was injured, was an unsafe and unusual coupling. This offer was overruled, and exception taken. The pertinency of this testimony will be considered under another head. It is mentioned at this time, for the purpose of showing the quantity and character of the evidence offered by the plaintiff, and should be weighed as corroborative proof of other testimony offered, should the Court decide that his testimony should have been admitted.

It was admitted by counsel for the defendant that there are different kinds of couplings. (Page 92).

The question involved under this point is a simple one. The master had the choice of two couplings, one presenting a perfectly smooth surface against which a person could lean without the slightest danger; the other presenting the same surface plus a projecting set screw, which, if a person leaned against it, would undoubtedly hook or catch in his clothing, and whirl him around the shaft. It was a choice between a safe coupling generally used in all the mills, and a dangerous coupling which Edward Donnelly says he never saw before in his life. If it were necessary for the servant,—in this case plaintiff,) —to lean against the shafting, the set screw was certainly the most dangerous piece of machinery the plaintiff could have worked around, it needs no argument to prove it dangerous and unsafe,—it is too clear to need argument. It is equally clear that the "safe coupling" would not, and could not have caused injury to a person leaning up against it.

The question then is, was it necessary to lean against

the shafting in doing the work plaintiff set out to do, or would he be likely to do so in the exercise of *ordinary* care? On the answer to that question depends the answer to the question whether or not the coupling was dangerous, and the place therefore unsafe.

(B) By supplying such collar or coupling in a place around and against which it required the plaintiff to work.

The plaintiff, as loomfixer, was in charge of the "box loom section," the Jacquard section. (Page 9). In this section were twenty-eight looms, fourteen of which were Jacquards. (Page 10, lines 1 to 4). These looms were operated by means of a belt from the power shaft. The shaft ran lengthwise with the mill, and the looms crosswise. The belt passed around a pulley on the shaft, and another around the loom, running at right angles to the shafting, making what is known as a quarter turn pulley. (Page 10, lines 15 to bottom). The shaft was about nine or ten feet from the floor, and within two and a half or three feet from the ceiling. (Page 11, lines 13 to 17). Plaintiff, in describing the Jacquard loom (pages 11 and 12), testified that up at the shafting were a number of levers. These levers arose and fell, making the Jacquard known as a "rise and fall" (pages 11 and 12), in order to give the levers full play, so that they would not strike the shaft in traversing up and down, they had to bend some over and down in that manner, up and around over here (evidently indicating. There were some bent this way, and some that way, and right in the midst of those levers was a pulley that drives the loom.

(Page 12, lines 2 to 10). Around this pulley was thrown the belt that drove the loom. (Page 10, line 12).

The correct manner of putting on a belt on these Jacquard looms was as follows: Q. "What was it necessary with these Jacquards to do, in order to get a broken belt on?" A. "Well, it was necessary to throw the belt around the shaft, put it on the friction pulley on the loom, bring both ends together and clamp them and get a ladder and put it against the gantry (a scaffolding or framework above the loom and running at right angles to the shaft), mount the ladder and lean over and along the shaft and put your hand in and among them levers and throw that belt on." Q. "Was it necessary to lean along and over the shafting to put the belt on this Jacquard machine?" A. "Yes, sir." Q. "Was it possible to stand in any other position?" A. "No, sir." Q. *"Was it customary for a loomfixer in putting on this Jacquard machine to lean against the shafting?"* A. *"Yes, sir; you had to do it in order to get the belt on."* (Page 12, lines 15 to bottom).

There was no position that could have been assumed in putting on that belt, which would not have necessitated leaning against the shafting, to put on that belt. That the ladder could not have been put up from any other position to throw on that belt. (Page 14, lines 1 to 10).

The foregoing is taken from the testimony of plaintiff. He is corroborated by Edward Donnelly, who described the method of putting a broken belt on a Jacquard loom. (Page 64, lines 20 to bottom): "If a belt broke you would have to put it around the shaft, and then down below the friction pulley, and then couple it together, and then get your ladder and go up and grab hold of the belt;

you get hold of it like that (indiciting) and put it right on." Q. "When the loomfixer was doing that, how near to the shaft would his body necessarily be?" A. "His body would mostly strike the shaft the instant he put it on, if the belt is tight at all." Witness testified further, that there was no other way to put on that belt, or put on a belt on a Jacquard loom; and he knew of no one else who could. (Page 65, lines 1 to 15). Q. *"Is that or not the customary way for loomfixers to put belts on those Jacquard machines?"* A. *"It is the only way."* (Page 65, lines 20-23).

In the midst of these levers around the shafting, at the very spot where a person throwing on a belt in the manner indicated, this collar or coupling with the set screw was placed. (Page 29).

So that at this point of the case there had been presented to the Court and jury for its consideration, the fact that an unsafe and dangerous coupling or collar had been supplied by the defendant at a place where the plaintiff was obliged to work, and against which in the exercise of his employment, it was absolutely necessary for him to come in contact with this dangerous piece of machinery when performing his duty in this usual and only manner to be performed by a loomfixer. Let us emphasize the fact that without the hidden set screw the shafting was absolutely harmless.

II.

THE NEXT QUESTION IS, DID THE DEFENDANT AND PLAINTIFF HAVE NOTICE OF THIS DANGEROUS SITUATION?

It is insisted:

(A) That the defendant had constructive and actual notice of said dangerous place to work;

(B) That the Plaintiff had no such notice.

(A) THE DEFENDANT HAD CONSTRUCTIVE AND ACTUAL NOTICE OF SAID DANGEROUS PLACE TO WORK.

In support of the constructive notice, we have the proof already indicated of the dangerous situation created by using this dangerous coupling in a place which the defendant had designated or supplied as a place to work.

The least that can be said in favor of the defendant is that it was fairly a question of fact, and as such, a question for the jury, whether or not the defendant had exercised reasonable care in providing his servant with a safe place in which to work. The defective and dangerous condition must certainly have been obvious to those who supervised the erection of the machinery and shafting, and as this duty of supplying a safe place could not be delegated or avoided by the employment of others, the negligence of those who originally inspected and supervised the erection of the machinery and shafting was as a matter of law chargable to the defendant.

"The master's duty to exercise reasonable care in furnishing a place for the work, and appliances for the work, that shall be reasonably safe, for those engaged in a general employment, is not avoided by the employment of competent agents for its performance. Those servants to whom the duty is delegated are not fellow servants engaged in a common employment with those for whose reasonable safety the duty is imposed upon the master."

Smith vs. Erie Railroad Co., 52 Atl. Rep. 634. (Ct. Er. and App., June 16, 1902).

Opinion by Pitney J.

"The duty of a master toward a servant in his employment is to exercise reasonable care and skill to provide safe machinery and appliances for carrying on the business for which it employes the servant, *and in keeping such machinery and appliances in a safe condition* for such use, including the duty of *making inspections and tests at proper intervals* whilst the work progresses, to ascertain if it *remains* in such safe condition. The master is also bound to exercise reasonable care to provide a safe place for his servant to perform his work, and to the exercise of reasonable care to keep and *maintain* the place safe."

Comen vs. Belville Stone Co., 39 Vr. 226.

"A master's duty to his servant requires of the former the exercise of reasonable care and skill in furnishing suitable machinery and appliances for carrying on the business in which he employs the servant, and in keeping such machinery and appliances in repair, *including the duty of making inspections and tests at proper intervals.*"

North Duetscher Lloyd Steamship Co. vs. Ingerregsten, 28 Vr. 400.

There was no evidence that the defendant had made any inspection; there was the testimony of Edward Donnelly that two weeks previous to the accident he had observed the dangerous condition of the shafting (page 68, line 30), and there was the fact of its then present dangerous condition. If Edward Donnelly could have observed this dangerous situation, there was no reason why the defendant could not have observed the same, if inspection had been made. It was therefore a question of fact at least, whether or not this inspection had been made.

Aside from this, however, the defendant had actual notice of this dangerous condition. Edward Donnelly positively testifies that about two weeks before the accident, while acting as millwright, "one of the journals got hot on the shaft, so instead of seeing them all get hot I went and oiled them up; that was at the noon hour, and I saw this coupling." Q. "While you were oiling the shaft?" A. "Yes, sir; that is the first I knew about it; and about two hours afterward, I think in the afternoon, I was up there, and Mr. Haenichen came up and I told him he had better get that fixed or there would be an accident, and he said 'All right, I will look after it,' so I paid no attention." (Page 66, lines 2 to 18).

In view of the fact that the plaintiff had only just been placed to work in the Jacquard loom section, although he had worked in other parts of the mill before that (pages 9 and 10), the following quotation from the case of Comen vs. Belville Stone Co., 39 Vr. 226, applies with force. In discussing the master's duty to maintain safe machinery, appliances and place to work, quoted else-

where in this brief, the Court said: "Such duty as to machinery, appliances and place continues *when his servant is changed from place to place upon the work upon which he is engaged for his master, when the danger of such change is not obvious, and the servant is without knowledge of it, and cannot observe and acquire the knowledge in the exercise of ordinary care in the employment.*"

(B) THE PLAINTIFF HAD NO NOTICE OF THE DANGEROUS CONDITION OF THE PLACE AT WHICH HE WAS SET TO WORK.

On this point the plaintiff testified that he was put to work on the Jacquard section about a week or two previous to the accident. (Page 10, lines 11-13). During that time he had only put on two or three belts in that section, along the same shaft at other places, and these he had put on in the manner already described. That the belt on the particular loom at which he was working when hurt had never been put on by him before. (Page 13, lines 1 to 11). That he did not know before he was hurt of the existence of that dangerous collar or coupling at that place. (Page 18, lines 1-6). That there was nothing to indicate to a workman working around those shafts what kind of a coupling was in use, when the shaft was in motion. (Pages 16 and 17). That it was not the duty of the loomfixer to inspect these couplings or anything of that sort, that duty devolved upon the millwright. (Page 17). That it was not the loomfixer's duty to put on or inspect the couplings. (Page 17).

On this proof, it is submitted that it clearly appeared that the plaintiff had had no notice of the dangerous condition, either by warning, or inspection, or by knowledge of the condition of affairs gained by working about the place,—his first attempt to work at the place where the accident occurred, resulting in the injuries complained of. This will be discussed further, however, in the consideration of the question of contributory negligence.

Conceding for the purpose of argument, that different conclusions might be fairly drawn from the evidence on this point, it was at least a question of fact as to which conclusion should be drawn. As was said in the case of Carroll vs. Tidewater Oil Co., Ct. E. and App. 1902, 52 Atl., Rep. 275: "If the question presented by the evidence is one upon which a reasonable difference of opinion might be entertained, the duty of the trial court is to submit it to the jury. Whether or not there was negligence on the part of the defendant in not exercising reasonable care and skill in supplying safe machinery and appliances, and in keeping them in a safe condition for the work to be performed, was a question for the jury, depending upon the facts of the case Van Steenburgh vs. Thornton, 29 Vr. 160; Comen vs. Stone Co., 30 Vr. 226."

In Comen vs. Stone Co., 30 Vr. 226, cited in Carroll against Tidewater Oil Co., the Court held:

"Where there is a fair dispute in the evidence or two classes of conclusions can be reached from it, whether the injury to the servant was the result of negligence of the master to exercise care required to provide proper machinery and appliances for the use of the servant, or

a proper place in which to perform his work, or whether the injury was the result of obvious danger or risk to the servant, or the want of ordinary care on his part to observe dangers within his knowledge, or which he ought to have known in the exercise of reasonable care, then a case is made which should be submitted to the jury for their determination."

On the evidence presented by the plaintiff's case, however, the negligence of the defendant was clearly proven, and for the purpose of this case, on a motion for nonsuit, the evidence must be taken to be true.

III.

THE QUESTION OF CONTRIBUTORY NEGLIGENCE.

On the ground that the plaintiff had been guilty of contributory negligence, the Court granted the defendant's motion for non-suit. Before discussing the evidence on the question, and the Court's reason for its decision, there still remains to be considered the question of how far the plaintiff had the right to assume that the defendant had furnished safe appliances and a safe place to work.

It is insisted that

(A) The plaintiff had the right to assume that the defendant had complied with its duty to furnish safe appliances and a safe place to work.

(B) Was the plaintiff guilty of contributory negligence in his use of the place in question?

(A) THE PLAINTIFF HAD THE RIGHT TO ASSUME THAT THE DEFENDANT HAD COMPLIED WITH ITS DUTY TO FURNISH SAFE APPLIANCES AND A SAFE PLACE TO WORK.

In support of this the following cases so hold:

In Smith vs. The Erie Railroad Co., the Court, after discussing the master's duty to exercise reasonable care

in furnishing a safe place and appliances for the work, held:

(Syl. 4) "A servant has the right to take it for granted that his master has performed his duty by exercising reasonable care for the servant's safety above indicated, until the servant is warned or notified of a danger arising from the master's negligence or until the danger becomes so obvious that a reasonably prudent servant under the circumstances would observe it."

Smith vs. Erie Railroad Co., 52 Atl., Rep. 634. N. J. Ct. Er. and App., June, 1902.

Again: "A servant has the right to take it for granted that his master has performed his duty by the exercise of that reasonable care for the servant's safety which the law requires, until the servant is warned or notified of danger."

Smith vs. Erie Railroad Co., Supra.

(Syl. 3) "A servant is entitled to assume, in the absence of any notice to the contrary, that the master has exercised reasonable care and skill in providing for the safety of the servant."

Carroll vs. Tidewater Oil Co., Atl., Rep. 275, N. J. Ct. Er. and App., June Term, 1902.

Lippincott, J., in his opinion in the case of Comen vs. The Belleville Stone Co., at page 232, said: "The intestate had the right to assume that his employer had exer-

cised reasonable care in furnishing proper appliances and in keeping them safe."

Comen vs. Belville Stone Co., 29 Vr. 226.

"In the absence of notice to the contrary, a servant is entitled to assume that his master has exercised due care and skill in furnishing proper appliances for the work, and in keeping them safe." (Syl. 3).

North Deutscher Lloyd Steamship Co. vs. Ingebregsten, 28 Vr. 400.

Although the rule in this respect is so thoroughly settled, the case at bar is much stronger for the plaintiff, in that although he had the right to assume that the place was safe, nevertheless he made a careful inspection of the machinery which concealed the defect, before using the place, but was unable to discover anything which indicated to him that the shaft was dangerous, or in anywise differed from other shafts so used, and upon which he had heretofore worked in exactly the same manner, without injury. His testimony on that point is as follows:

"I got up and looked carefully along the shafting, reached over among the levers, took the belt and threw it on the pulley, and instantly I was whirled around the shaft." Q. "You say you looked at that shaft carefully, the levers and all that sort of thing?" A. "Yes, sir; I am always very cautious in doing anything like that." (Page 13, lines 17 to 24).

Q. "Did you know that that coupling or set screw was there?" A. "No, sir, I did not." Q. "Was there any way in the exercise of ordinary prudence and care while

putting on that belt?" A. "No, sir." (Page 15, lines 3 to 9).

On cross-examination plaintiff again testified to substantially the same thing.

But, we repeat, that aside from any inspection which he testifies he made, had he commenced working about this shafting solely upon the assumption that it was safe in all respects, he was guilty of no negligence.

Having discussed the legal right of the plaintiff to assume without inspection that the defendant had furnished a safe place to work, and going further, having shown that he made a reasonable inspection, the next question for consideration is:

(B) WAS THE PLAINTIFF GUILTY OF CONTRIBUTORY NEGLIGENCE IN HIS USE OF THE PLACE IN QUESTION?

Was it necessary and usual for the plaintiff in the usual performance of his work, to lean against shafts in the same manner as he did at the time of the injury?

Plaintiff testified that to put on the broken belt, it was necessary to lean over and along the shaft and put his hand in and among the levers; that it was impossible for him to stand in any other position, and that it was always customary and usual for a loomfixer to get in the same position that he was in, in order to put on a broken belt; that it was impossible for him to put on the belt on a Jacquard machinery without leaning against the shafting (p. 12). No other position could have been assumed by him without leaning against the shafting, to put on the belt. (P. 14).

Edward Donnelly testified that in order to put a belt on these machines, the loomfixer's body would necessarily strike the shaft the instant the belt was put on; that there was no other way to put on such belt; that this was the only and usual way and position a loomfixer could take. (P. 65).

The evidence on this point is more fully discussed in sub-division "B" of Point I.

Did the plaintiff have notice of the dangerous place in which he was directed to work by his employer?

Plaintiff testified that he was unaware of and had no notice of the dangerous condition of the coupling and shafting to which he was exposed and against which he had to lean his body in the course of his employment, as was customary and usual. (P. 18). That the belt on that particular loom had never been put on by him before. (P. 13). That there was nothing to indicate to a workman that the coupling was unsafe. (P. 16 & 17). That although he carefully inspected the shaft at this place, it was not possible for him to discover the existence of this set screw. P. 13).

The evidence on this point has already been more fully discussed under point II, subdivision "B."

Did the defendant have constructive or actual notice of such dangerous place to work, and fail in its duty to make such place safe?

Edward Donnelly testified that he had discovered the dangerous set screw and had reported the matter to the defendant. (P. 66). There is absolutely no evidence that the defendant ever remedied this dangerous condition.

This is more fully discussed under Point II subdivision "A."

The evidence discloses that the plaintiff in the usual course of his employment was injured while performing his duties at a place which he had the right to assume was safe, and which the master owed a duty to plaintiff to make safe; that the act by which he was injured was customary and usual in his trade, and in fact the *only* manner in which this duty could be properly performed. *That it was a duty which he and other loomfixers performed in the same manner at other similar places without injury, and which could have been performed by him in the same manner without danger or injury had the place been safe.* The unsafety consisted of a dangerous set screw which was hidden wholly unlooked for, and unusual at the place in question, and could not be discovered by him by reasonable inspection, but the danger of which was known to the master. The conclusion therefore that the servant was guilty of contributory negligence by allowing his body to come in contact with the dangerous shafting and (to him) hidden set screw, when performing this duty in the ordinary and usual way, is clearly erroneous.

IV.

THE COURT'S REASONS FOR GRANTING A NON-SUIT.

The Court's reasons for granting a non-suit, plainly show that he misconceived the evidence and the law in the case.

The Court states: "He was not directed on this occasion to adjust the belt." (P. 103, line 15).

The evidence shows: "Q. Now Mr. Donnelly was it a loomfixer's duty to put the belts on without permission? A. Yes sir." (P. 12, line 15). Also cross-examination at Page 38.

Edward Donnelly's testimony: "Q. Is it a loomfixer's duty to put on belts when they break? A. Yes, sir. (P. 64, line 7)."

Also testimony of witnesses Hughes and Greer.

The Court states: "He says that it was usual to lean against the revolving shaft, although he had never done so before." P. 103, line 18).

"Q. Had you put those belts on in just the way you have described? A. Yes, sir. (P. 13, line 6. Q. Was it customary for you to lean against the shafting in putting on these belts? A. Yes, sir. (P. 14, line 10.)."

The Court states: "At least one of his witnesses denies the statement that it was usual to lean against the revolving shafting." (P. 103, line 22).

A careful examination of the testimony fails to disclose that any witness denies the statement that it was usual to lean against the revolving shafting.

The Court states: "He had been in the defendant's employ four years and had ample opportunity to inspect the shaft. (P. 104, line 17).

The plaintiff testified: "Q. How long did you say you had been working in this section? A. About a week or two." (P. 10, line 11).

The Court states: "I do not think it can be said that the defendant's failure to screw down the nuts, when it was told that they projected a little further than usual, by reason of their having become loose, constitutes negligence."

Edward Donnelly testifies that he told the defendant that the shafting was dangerous and had better be fixed, or there would be an accident. (P. 66, line 14). There was no evidence that the set screw projected but the fraction of an inch more than usual, or that the defendant had simply been notified that the set screw had become a little loosened. At any rate, the question whether the defendant was negligent in the promises, was a question of fact.

Carroll vs. Tidewater Oil Co., 52 Alt. Rep. 275 and cases cited.

The law on the question as to whether or not the defendant's acts or failures constituted negligence is clear, and was fully discussed under point I.

The Court states: "The plaintiff accepted all the usual risks incident to his employment. And if it be true as he

says, that it is usual to lean against these revolving shafts, then, when he followed that custom, he assumed the attendant risks." (P. 104, line 13, &c).

The Court failed to distinguish the difference between a servant assuming the attendant risks in leaning against a revolving shaft with a smooth, safe and usual surface, at a place necessary to do so and usually and ordinarily so used by a loomfixer, *with absolute safety;* and doing exactly the same thing with absolute danger at an exactly similar place with an unusual surface where the master had placed a trap in the form of a hidden screw, when under all the circumstances the servant had a right to assume, and the place appeared, upon careful inspection to be perfectly safe and usual. Thus being subject to risks not attendant nor assumed.

The Court in effect held that what the évidence showed to be a special hidden danger, was to his mind an obvious risk.

The rule as to what extent a servant assumes the risk, is discussed by Pitney J. in the case of Burns vs. D & A. T. & T. Co., 59 Alt. Rep. 220, hereafter discussed. An examination of this case discloses the misconception by the trial Judge, of the rule of assumed risks as applied to the facts of this case.

The Court states: "And if he failed to do so (inspect the shaft) he cannot complain of defendant's conduct." (P. 104, line 18.)

The plaintiff testified that he looked carefully along the shafting before leaning against it. (P. 13, line 17). That it was impossible on the day of the accident to see those

set screws at the rate at which the shaft was revolving. (P. 34, line 3, &c).

Edward Donnelly testified that when the shaft was revolving at the usual rate, it was impossible for a person working around and about the shaft to see the set screws which had caused the injury. (P. 68, line 37).

The plaintiff testified that the shaft had to be running to put on the belts. (P. 32, line 6). That it was never customary to stop the shaft to put on belts. (P. 2, line 15;) That during working hours, the shafting was always running. (P. 74, line 27). That it never was the duty of the loomfixer to inspect the shaft. (P. 32, line 33., P. 17, line 15.)

The case of Pitney J. in the cases of Burns vs. D. & A. T. & T. Co., 59 Atl. Rep. 220 discusses the question of the extent of risk assumed by the servant. His conclusions showed that the trial Judge erred in this case at bar.

The Court states; "The only thing which made the set screws invisible to the plaintiff when he ascended the ladder was the great velocity of the shaft, and if, under such circumstances, he leaned against the revolving shaft, with which he was unfamiliar, and at a time when he admits he could not, owing to its great velocity, see whether its surface was even or covered by these set screws, he was negligent, and must accept the consequences." (P. 104, line 21, &c.)

Again the Court failed to take into consideration the rule of law that the plaintiff had a right to assume that the defendant had complied with its duty to furnish a safe place to work; that his act was the usual and ordinary method of performing this particular duty; that the danger was not apparent upon inspection, and that perform-

ing his duty in the usual and ordinary manner, the plaintiff was compelled to place his body in contact with the hidden danger.

Conceding for the purpose of argument that the plaintiff was bound to make an inspection, the evidence shows clearly that he did all that a reasonable and prudent man would have done under the circumstances. He was not bound to have the machinery of the mill stopped in order to inspect this shaft which transmitted the power, as was said in Am. and End. Ency. Law, vol. 20 P. 89: "A system of inspection which would embarrass the master's work is not required." See cases cited in note to same.

The Court undoubtedly misconceived the rule requiring a servant to inspect the machinery upon which he works, as applied to this case. Assuming that the plaintiff was obliged to inspect any machinery, such inspection would have been confined to the machinery under his control and care, viz., the looms and belts. Under no circumstances would he have been required to inspect or care for the shafting, or any other machinery over which he exercised no control or care.

The shafting, couplings, &c., were under the control and care of a millwright, whose duty it was to inspect and repair same on behalf of the master. (P. 17, line 15). As Collins J. said:

"The engineer runs, and therefore must inspect his engine, but not the shafting or machinery to which he transmits power. The turner runs and therefore must inspect his lathe, but not the shaft which brings him power." in

> Eustice vs. Banister Co., 34 Vr. 469. See also Burns vs. D. & A. T. & T. Co., 59 Alt. Rep. 220.

In granting the non-suit, the Court plainly pursued the theory that the mere fact that the plaintiff placed his body agains a revolving shaft without being absolutely certain that no injury could occur thereby, was contributory negligence.

On this theory an engineer of a locomotive running his engine at a great rate of speed over a railroad track allowed to become dangerous by the employer, through lack of inspection, could not recover for injuries caused through derailment of the engine. Yet the Court of Errors and Appeals of this state have held the contrary in the case of Smith vs. Erie Railroad Co., 52 Atl. Rep., 634 (June, 1902, term). In that case the motions for non-suit and to direct a verdict were based on the ground that it appeared from the evidence that a certain portion of the track was sunken and out of repair, and that the engineer knew of this, having passed over the same place an hour before, and the dangerous place had caused a sudden lurch or jolt that was readily observed by the passengers, and that therefore the plaintiff had assumed the risk. The Court held, however, that "the risk of injuries from a defect in a track or roadbed negligently permitted to remain in bad repair is not one of the ordinary and natural risks of the employment of the trainmen. It was, therefore, not assumed by the plaintiff unless it was known to him, or was so obvious, that by the exercise of ordinary care on his part, it would have been known. But plainly it was far from obvious to one traveling upon a train that the roughness of the track indicated a weakness sufficient to cause derailment. The trial judge therefore could not say as a matter of law, that the plaintiff assumed the risk of the injury that he received; and so it was, at least, a question for the jury to determine whether the *special*

danger was known to the plaintiff, or was so obvious that he ought to have known it."

It needs but a moments consideration of the evidence of this case, to realize how much stronger a case was presented for the consideration of the jury than the case just cited.

In the Railroad case the engineer had passed over the dangerous place an hour before and felt the lurch or jolt, so that the Court in that case might have properly said that he was thus put on notice. In the case at bar, however, there was absolutely nothing to put the plaintiff on notice. The place was apparently safe, and the plaintiff was both from his past experience with the same shafting, at similar places and from a careful inspection he had made, justified in so concluding.

As well might it be held that an engineer on a locomotive traveling over apparently perfectly safe rails be held to assume the risk of injury from a hidden defect in the rails, due to the negligence of his employer, and of which the employer had notice, and the engineer no notice. And, to carry out this illustration a little farther, let us assume that the engineer had traveled over other portions of the road and found them safe, and the defect in question was due to the use of a mechanism that was used on no other part of that railroad, nor in any other railroad in the country.

Finally, the plaintiff in leaning against the revolving shaft as he was obliged to do to perform his duty, assumed no more risk than the engineer in running over the rails as he also was obliged to do. If the engineer was not guilty of contributory negligence in such event, surely the plaintiff at bar could not be so charged.

On "all fours" with the Smith case is that of Ousterhout vs. J. C. H. & P. St. Ry. Co., 62 Atl. Rep., 190.

McMullen vs. Western Union Tel. Co., 29 Vr., 157, is another case which under the ruling of the trial judge in this case should have resulted in a verdict for the defendant, but in which, however, the Court of Errors and Appeals upheld a verdict for the plaintiff. In that case McMullen the plaintiff was in the employment of the Western Union Tel. Co., engaged in helping to set poles and string wires. While in the performance of this duty, and as he was about to attach a new wire, he received such a strong current of electricity from the Western Union wire that he was knocked insensible and sustained injuries.

It appeared in the case that there was a current of electricity at all times through the wires, in the course of their ordinary use, but not sufficiently strong to do injury. It further appeared that on poles of the defendant were strung other wires heavily charged with electricity, so close to the wires of the defendant company as to be dangerous.

Observe the similarity of this case with the case at bar. In the McMullen case the plaintiff picked up a *new* wire to string it upon the pole, simply upon the assumption that it was no different from other wires he had handled in the same manner. In the case at bar the plaintiff assumed that the shafting was no different from the same shafting at similar places, but with this additional fact in his favor, that he had inspected the shaft before so using. He had nothing upon which to base a belief that there might be danger in leaning against the shafting, while in

the McMullen case just cited, the plaintiff might have taken into consideration the fact that the proximity of the electric wires to the telegraph wires might be dangerous, hence call for greater care.

Pitney J. in the case of Burns vs. D. & A. Tel. Co., 59 Atl. Rep., 220, after a thorough and comprehensive discussion of the law on this point says:

"But where the danger is unknown to the servant, he cannot be held to have voluntarily assumed it although the physical surroundings that create the danger are known to him." At bottom of page 222.

"It is the DANGER that must be known or obvious, and not merely the physical situation, in order to charge the injured servant with assumption of an obvious risk," citing numerous authorities in this state. Middle first column p. 223.

The distinction which was made by the Court in the Burns case, between the knowledge of danger and the physical situation, was not taken cognizance of by the trial judge in the case at bar, in that he held that the plaintiff knowing physical situation consisting of a revolving shaft, apparently safe, and then proceeding to work against it, he assumed the danger of a hidden set screw, which was not an incident to the ordinary physical situation.

The Court also erred in confounding the assumption of an obvious risk to the thing itself, with the special hidden danger consisting of a set screw, not incident to the thing, ie., the revolving shaft.

Another error into which the Court fell, was that he formed his own conclusion that the method employed by

the plaintiff in fixing the belt, viz: by leaning against the shafting was improper and dangerous, in the face of all the evidence of expert witnesses, showing that it was the proper and ONLY way in which it could be done.

"The question whether the plaintiff's method of operating the machine and his position while at work established contributory negligence was also a jury question."

Dunkerley vs. Webendorfer Machine Co., 58 Atl. Rep. 95; (N. J. Sup. Court, June Term, 1904).

This quotation it is submitted applies forcibly to a situation in which there is conflicting evidence as to whether a proper method was used, but at the granting of the non-suit, all the evidence submitted, was that the position assumed by and the manner in which the plaintiff worked as the only method to be used.

On a motion for non-suit this evidence the Court was bound to assume to be true, and construe it most favorably for the plaintiff.

THE QUESTIONS INVOLVED ARE MAINLY OF FACT.

It is insisted that giving the evidence the most favorable construction for the defendant, the questions envolved are mainly of fact.

These questions are: (1) Did the defendant use reasonable care to furnish a safe place for the plaintiff to work, and use reasonable inspection and care to see that it was kept safe; (2) Was the plaintiff under all the circumstances of the case guilty of contributory negligence.

"Whether a *defect in a revolving shaft* is an obvious risk assumed by the employe, is, when reasonable minds may differ, a question for the jury."

Kalker vs. Hedden, 61 Atl. Rep., 395, (N. J. Ct. Er. and App).

In the case at bar, all the evidence was to the effect that the danger was latent.

"If the qestion presented by the evidence is one upon which a reasonable difference of opinion might be entertained, the duty of the trial Court is to submit it to the jury."

Cole vs. Mfg. Co., 34 Vr. 626.

"Where there is a fair dispute in the evidence, or two clases of conclusions can be reasonably reached from it, whether the injury to the servant was the result of negligence of the master to exercise care required to provide proper machinery and appliances for the use of the servant, or proper place in which to perform his work, or whether the injury as the result of obvious danger, or risk to the servant, or the want of ordinary care on his part to observe dangers within his knowledge, or of which he ought to have known in the exercise of such care, then a case is made which should be submitted to the jury for their determination."

Comen vs. Belville Stone Co., 39 Vr., 226.

"When at the close of the case for the plaintiff, there exists upon the evidence, a substantial dispute whether

the injury arose from the negligence of a servant or not, a motion to non-sut on this ground cannot prevail."

Comen vs. Belville Stone Co., Supra.

It will be observed that in the case just cited the Court makes use of the expressions "fair dispute" and "substantiol dispute." In the case at bar however, there was no dispute, the evidence was all in favor of the plaintiff.

Lippencott, J. said: "In view of the principle that the intestate had the right to assume that his employer had exercised reasonable care in furnishing proper appliances and in keeping them safe, the facts are such, that whether the danger was obvious to him, or whether he could have seen the danger by ordinary observation, BECAME QUESTIONS FOR THE JURY AND NOT FOR THE COURT TO SOLVE."

Comen vs. Belville Stone Co., 39 Vr. 232.

Before closing the discussion, in view of the frequent use of the words "apparent" and "obvious," it will not be amiss to insert the definitions of these words:

"Apparent" "What seems to exist or is indicated by appearances; also manifest; evident.

Am. and Eng. Ency. Law, vol. 2, p. 423.

"Capable of being seen, or easily seen; open to view; visible to the eye."

Webster's Dic., Int. Ed.

"Obvious" Easily discovered, seen or understood; readily preceived by the eye or intellect; plain; evident; apparent.

The authorities of this state clearly sustain every contention of plaintiff. In the state of Massachusetts, a number of cases have been reported where injuries received by the persons sueing, were occasioned by coming in contact with set screws on the machinery upon or about which they were working. A brief reference will be made to them here.

Ciriack vs. Merchant's Wollen Co. 23 N. E. Rep. 829. (Mass.)

In that case the plaintiff was caught in the gearing of some machinery and injured. KNOWLTON J. said: "He had no instruction, and it is not clear that he had had any observation or experience, which showed the danger of getting down and looking under the machine, and getting up again, some part of his clothing might come in contact with the gearing and be caught and draw his hand or arm between the wheels. On the whole, we are of opinion that there was same evidence to submit to the jury on the question whether the plaintiff was not obviously in need of information as to this risk. On similar grounds the plaintiff was allowed to go to the jury and receive a verdict, in Coombs vs. Cordage Co., 102 Mass. 527. See also Wheeler vs. Manufacturing Co., 132 Mass. 294; Glover vs. Manufacturing Co., 148 Mass. 22; Swoboda vs. Ward, 74 Mo. 13; Haizaga vs. Lumber Co., 51 Mich. 272. There was evidence for the jury upon the question whether the plaintiff was in the exercise of due care."

Goodenow vs. Walpole Emery Mills (Mass.) 15 N. E. Rep. 576.

The plaintiff in this case was called upon to do some extra work which was not part of his regular employment. *At a distance of three feet,* from where he was to perform the work, was a shaft and set screw by which he was caught and injured. He knew the office of set screws; knew where they were liable to be found; knew the shaft was revolving, and was familiar with the spot. From his testimony he knew the danger of revolving machinery, and intended to keep a safe distance from it. He could have stopped the revolving shaft, and thus avoided the accident. It was not necessary for him to get within a couple of feet of the shaft, nor could he tell how it happened. There was no reason why he should get within a couple of feet of the shaft.

It cannot be said that this case at all applies, as in the case at bar it was necessary and customary for the loom-fixer to lean against the shaft, which was always safe, nor could he have stopped the shaft.

Hale vs. Cheney, 34 N. E. Rep. 255 (Mass)

"It appeared that in defendant's shop where plaintiff was working was a horizontal shaft, a foot from the floor, to one end of which an iron collar was fastened by a set screw to prevent longitudinal vibration. The screw, which projected half an inch from the collar, caught plaintiff's clothes as he was passing, and threw him down. It was not denied that such a collar with a projecting screw, was in ordinary use, and was preferable to any known device for preventing longitudinal vibration."

The distinction between that case and the case at bar is clear. In the Hale case, the collar and set screw used was preferable to any known device, while in the case at bar, the preferable and best known device was what we have already shown was the "safe collar," in fact the device used was so dangerous as to have been used in no other mill, or in that particular mill, at any other place.

In the Hale case, the Court found that "The plaintiff might have reached Bernier's machine by going around the shaft. Instead of doing so, he went, as he testified, 'the shortest way regardless of the machinery and went right up to the revolving shaft.' His trousers were caught by the set screw and he was thrown down and injured. He testified that when he was caught he was not looking at the shaft, but over it, and straight at Bernier (the person he was attempting to reach)."

In the case at bar the reverse of this was the truth,—there was no other way by which the plaintiff might have worked around the shaft at the point in question, and just before he was caught had looked carefully along the shaft.

Rooney vs. Sweall & Day Cordage Co. (Mass.), 36 N. E., Rep. 789.

This case may be briefly dismissed with the following quotation, which plainly shows the dissimilarity between it and the case at bar: "Where a servant was injured by being caught in a set screw which projected a little beyond the pulleys and belt, the fact that he was not told about the set screw, does not make the master liable, *when the servant knew that the pulleys, belt and shaft were dangerous.*"

This closes the discussion of the question of non-suit, which is raised under the eighth assignment of error.

EVIDENCE EXCLUDED BY THE TRIAL JUDGE.

The third, fourth and seventh assignments (pages 107 and 108) are based upon exceptions taken to the ruling of the trial Judge refusing to permit George Greer, a witness produced by the plaintiff, after he had qualified as an expert, to testify whether or not, in his opinion, the coupling which had caused the injury was a safe or a dangerous one, and also what was the usual and common kind of couplings used in such places, and whether or not the coupling which caused the injury was the proper or usual kind to be used for the purpose for which it had been used, and in the place where the injury had been caused.

For the evidence on these assignments, see pages 92, 97 and 100.

In view of the well established rule of law that a master is under a legal obligation to supply reasonable safe tools and appliances, and of a character commonly used, although not necessarily of the latest pattern, it was competent for the plaintiff to show that the coupling and set screw which had caused t' e accident, were dangerous, unusual and never used in a place of the character in which the plaintiff was injured. In excluding this evidence, therefore, the trial Judge plainly erred.

The fifth and sixth assignments are based upon exceptions taken to the ruling of the trial Judge in refusing to permit Thomas Hughes, a witness produced by the plaintiff, after he had qualified as an expert, to testify whether or not it was necessary for a loomfixer to bring his body in close contact with the shaft in adjusting a belt, under

circumstances similar to those which existed when the plaintiff was injured. (Page 97).

The object of showing this fact was to corroborate the plaintiff, who had testified that he was doing his work in the usual and ordinary way at the time of the accident. To exclude Hughes' testimony was error.

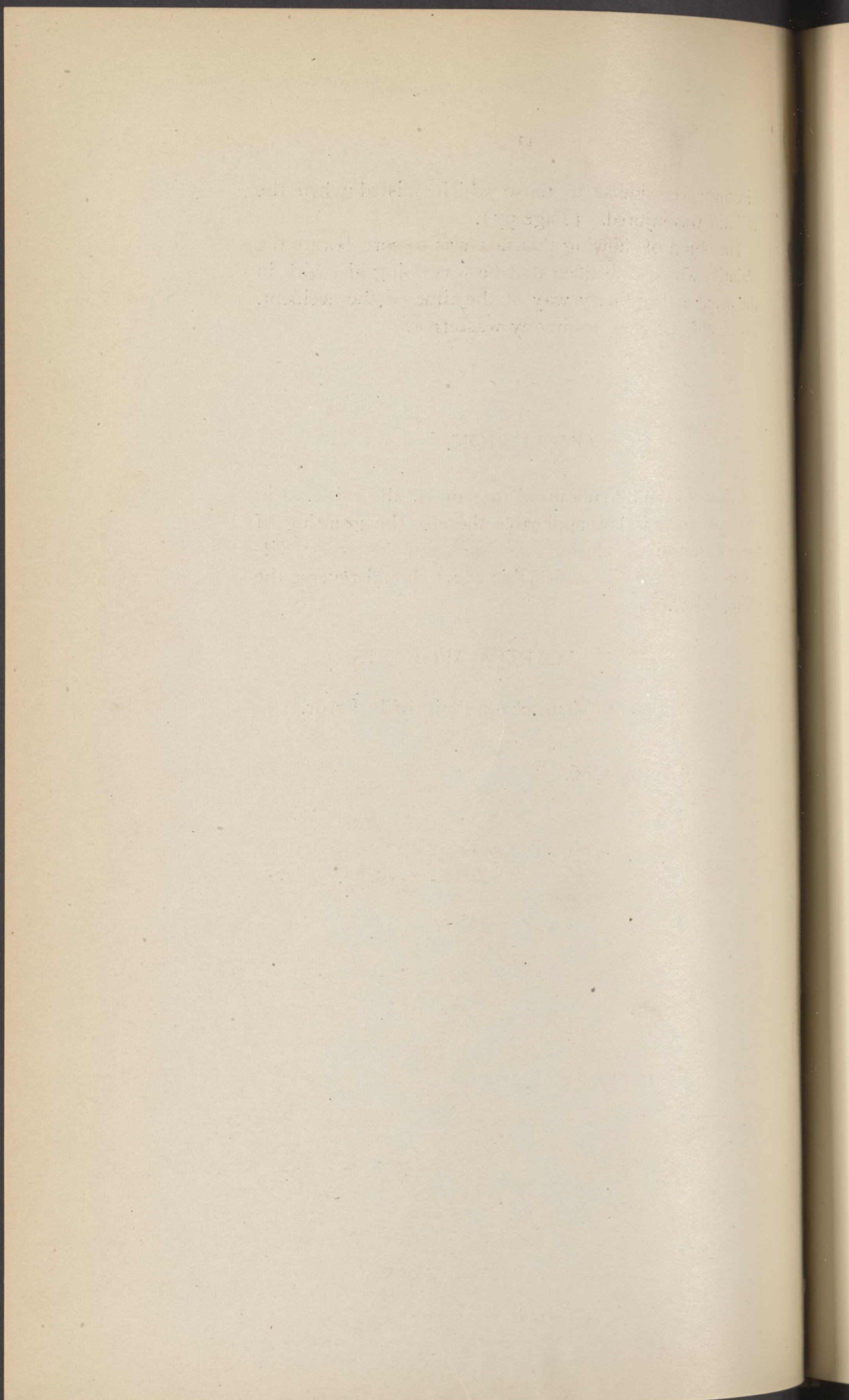
CONCLUSION.

It is respectfully submitted that under the evidence in this case and the law applicable thereto, the granting of the non-suit and exclusion of evidence of the expert witnesses, was error, for which this court should reverse the ruling below.

WARD & M'GINNIS,

Attorneys and of Counsel for Plaintiff in Error.

February Term, 1906.



NEW JERSEY ~~SUPREME~~ COURT

ABRAM DONNELLY, *Plaintiff in Error*, *vs.* HAENICHEN BROTHERS SILK COMPANY, *Defendant in Error.*	*On Writ of Error.* *In Tort.*

Brief of Defendant in Error.

This writ brings up for review a judgment of non-suit in the Passaic Circuit Court, granted by the Hon. Wilbur A. Heisley, judge of that Court, on December 28, 1904, in favor of the defendant below, and against the plaintiff below. Incidentally the writ also brings up for review several rulings of the learned trial judge, refusing to admit certain testimony of witnesses produced by the plaintiff.

The defendant insists that the learned trial judge committed no error in granting the non-suit, and that his various rulings on evidence which were excepted to, were in every respect correct.

I.

The Non-Suit Was Properly Granted.

The evidence at the close of the plaintiff's case was to the effect that he was injured while attempting to adjust a belt upon a pulley, in the regular performance of his duties to his employer. In attempting to adjust the belt he leaned his body against the revolving shaft upon which the pulley was, and he was hooked in the body by a set-screw, protruding from a coupling attached to the shaft. The accident occurred in what was known as the jacquard section of the mill (p. 9). There were at that time in that section of the mill about twenty-eight looms altogether, of which twelve or fourteen were jacquard looms. These jacquard looms had been put up in January, 1903. The accident occurred April 2nd, 1903. The jacquard looms were operated by a belt which ran from a shaft above and applied the power to the pulleys on the looms (p. 10). The shaft was about nine or ten feet from the floor and two and one-half to three feet from the ceiling (p. 11). There was a wooden beam that ran across the room at right angles to the shafting and just in front of the jacquard loom on which the plaintiff was placing the belt at the time of the accident. This beam was about two feet below the shafting. In order to start the jacquard looms the loomfixer had to place a ladder against the beam and mount it, and then reach over and slip the belt on the pulley which operated the loom. Notwithstanding the fact that it was shown at the trial (without objection), down at the mill, to the Court and jury, that the man could place the ladder several feet away from the shafting and reach over and adjust the belt on the pulley

without the slightest necessity or danger of placing any part of his body in contact with the shaft, the plaintiff's witnesses nearly all testified *that it was actually necessary to lean against* this swiftly revolving shaft in order to place the belt upon the pulley. The thrilling picture was drawn by these witnesses of the loomfixer standing on this frail ladder, at a considerable height from the floor, and leaning over and pressing the middle of his body against this swiftly revolving shaft, with a large collar upon it, in order that he might get sufficient purchase to exert all his strength to adjust the belt on to the pulley (p. 12, 13, 14.)

The plaintiff testified that it was customary for him to lean against the shafting in adjusting belts, which was a part of his regular work, and that it was necessary for him to lean against it at the time of the accident (p. 12, l. 12 to p. 14, l. 12; p. 38, l. 9 to p. 39, l. 8; p. 85, l. 9 to 14). He further testified that he did not know of the existence of the set-screws and could not see them because of the speed with which the coupling was revolving. He had worked in the room where the accident occurred for a continuous period of four years previous to its occurrence (p. 9, l. 5 to 20; p. 35, l. 5 to 14). He had been in the room at times when the machinery was at rest (p. 47, l. 30 to p. 51, l. 14). *Although new looms had been put in three months before the accident, there was no evidence to indicate that the conditions in the room overhead in regard to the shafting, pulleys and this particular coupling, had been changed in any respect during the entire period of the plaintiff's employment.*

Another form of coupling was described by the plaintiff and his witnesses, the screws in which were countersunk, which was claimed to be the usual kind of coupling in ordinary use and the kind used in other silk mills where they had been employed. These countersunk couplings had no protruding set-screws, but presented a smooth surface, so that it was claimed it would be safe to lean the body against them while in motion. It is quite obvious, however, that it would have been a very dangerous thing to do to lean up against or let any part of your clothing come in contact with couplings even of such character as those were or indeed with any swiftly revolving shaft.

The sole ground of negligence set forth in the declaration and attributed to the defendant was the maintaining this coupling in the mill, the charge being that the coupling was dangerous and unsafe by reason of the protruding set-screws.

The learned trial judge granted the motion for a nonsuit upon the ground that the danger which the plaintiff incurred was a risk incident to the work he had undertaken to do in the course of his employment, the risk being one which he might have observed had he taken reasonable precautions for his own safety; and upon the further ground that it was contributory negligence upon the plaintiff's part to lean against a shaft revolving so fast, according to

his own testimony, that he could not see whether it was safe for him to do so or not.

SUBDIVISION I.

It was not negligent per se for the defendant to maintain and use in its mill shafting equipped with the particular coupling by which the plaintiff was injured, it not being claimed that the coupling was not in its normal condition at the time of the accident.

An employer owes a servant no duty to change the construction and arrangement of his plant in those parts which were in good repair and plainly visible when he entered into the contract of employment. It is one of the implied terms of the contract that the work shall be done with the construction and permanent arrangements which then appeared.

Labatt on Master and Servant, vol. 1, chap. 5, sec. 36a, p. 94.

LeMoin vs. Aldrich, 177 Mass., 89.

Hall v. Wakefield & C. R. Co., 178 Mass., 98.

The recognition of the right of an employer to carry on his business in his own way and to adopt any pattern or description of instrumentalities which he may prefer, involves the consequence that any risk which is due merely to

the character of an instrumentality and not to its abnormal condition or intrinsically defective quality, is to be deemed as an ordinary risk of the employment.

Labatt on Master and Servant, vol. 1, chap. 17, sec. 263, p. 598, and cases cited in foot note.

A master is not bound to change his machinery in order to apply every new invention or supposed improvement in appliances, and he may even have in use a machine or appliance *shown to be less safe than another in general use*, without being liable to his servant for the consequences of the use of it. If the servant thinks proper to operate such a machine, it is at his own risk. All that he can require is that he shall not be deceived as to the degree of danger that he incurs.

Bailey on Masters' Liability, p. 19.

Wonder vs. Baltimore and O. R. Co., 32 Md., 418.

Haurathy vs. Nor. Cent. R. Co., 46 Md., 280.

Indiana Car Co. v. Parker, 100 Ind., 187.

"Few courts draw the proper distinction between the method of construction of a machine or appliance and defects in a machine or appliance caused by breakage or use. A complaint can rarely be upheld upon the ground that the appliance is not so constructed as to guard as well as it might against accidents sim-

ilar to the one the cause of which may be under consideration. The master is not restricted by law to the character or kind of the machine he shall use. This is a matter for his own selection and judgment. The Federal courts have made this distinction in forcible language. Other courts have as emphatically spoken."

Bailey, Master's Liability, p. 541.

Walsh vs. Whitely, 21 Q. B. Div., 371.

Sweeney vs. Envelope Co. 101 N. Y., 520.

Schroeder v. Car Co., 56 Mich., 132.

South Pacific R. R. Co. vs. Seley, 152 U. S., 145.

Rooney v. Sewell, 161 Mass., 153.

Demers v. Marshall, 172 Mass., 548.

Syllabus:

"An action cannot be maintained, either at common law, or under the employers' liability act, St. 1887, c. 270, for personal injuries sustained by a boy eighteen years old, who, in the performance of his duties as an apprentice in a machine shop, while oiling the bearing of a revolving shaft, is caught by a projecting set screw which fastens a collar to the shaft near the bearing."

See also Hale v. Cheney, 159 Mass., 268.

SUBDIVISION II.

The danger which the plaintiff in-

curred was a risk incident to the work he had undertaken to do in the service of the defendant, and as such was assumed by the plaintiff.

The plaintiff was hurt by leaning upon the shafting in an attempt to adjust the belt to a pulley. It was a part of his duty to adjust the belt (p. 12, l. 12). He testified that in order to perform this duty it was necessary to lean against the shafting (p. 13, l. 25 to p. 14, l. 12; p. 85, l. 3 to 14). Reckless and foolhardy as this thing was to do, if he undertook to do it, he assumed the risk.

In Coyle v. Griffing Iron Co., 63 N. J. Law, 609, the Court of Errors and Appeals has held that a person who enters into the employ of another assumes all the risks and perils usually incident to the employment; *and included in such risks and perils are those which it is a part of his duty to take knowledge of by observation.*

In that case an employee was injured while attempting to oil certain pulleys upon a rapidly revolving shaft. His hand was caught in cog-wheels to one side of the pulleys. The accident was caused by an improper shifting of a belt, due to a defect owing to the absence of a bolt which had been displaced.

The Court held that although the absence of the bolt was a defect which might have been discovered upon an inspection by the master, nevertheless, because the servant might himself, by exercising a reasonable degree of caution and ordinary care in observation, have dis-

covered its absence during the nine months it had been lacking, he could not recover.

Compare the circumstances in that case with those in the case at bar, in which the plaintiff had four years in which to discover the existence of the set screws, which were not in themselves defects.

See also the following authorities:
Dillenberger vs. Weingartner, 64 N. J. Law, 292.

Syllabus:

"The obvious dangers, the risks which are assumed by the servant in his master's employment, are such risks as he becomes acquainted with in such employment. He is bound to use his eyes to see that which is open and apparent to any person using his eyes, and if he fails to do so he cannot charge the consequences upon his master, for such a risk is impliedly assumed by him."

Quotation:

"The obvious dangers are those which are apparent. They are the apparent risks of the work. They are the risks which are apparent in the exercise of ordinary observation, and which are disclosed by the use of the eyes and other senses. If the servant fails to observe what is obvious, and suffers, he cannot charge the consequences upon his master. The risk so taken is impliedly assumed by him. In contemplation of law, his undertaking to assume the apparent risk of the work is general and unqualified. A like knowledge of dangers by the servant with

the master absolves the master from liability. If the dangers are incident and obvious, however extraordinary they may be, the servant is without remedy against the master. If he fails to see that which is an obvious danger, and suffers, he cannot charge his master."

Atha & Illingworth Co. v. Costello, 63 N. J. Law, 27.

Syllabus :

"An employee assumes the risk of such dangers attending the prosecution of his work as he would discover by the exercise of ordinary care for his personal safety, and for hurt happening to him from those dangers the employer is not responsible.

"A charge which, by the fair import of its language, confines the obvious dangers of which the employee assumes the risk to the dangers arising from facts known to him, does not properly embody the rule above stated."

Quotation :

"The charge dealt with facts known to the plaintiff; the requests dealt with facts which he ought to have known, which he would have known had he exercised ordinary care to keep himself informed as to the matters concerning which it was his duty to inquire, viz. his personal safety while engaged in his work. The distinction between the facts known to a person and those which would become known to him if he exercised ordinary care, involves a question of negligence, and when applied to the relation of master and servant involves a question of

legal responsibility. The conduct of an employee, tested by the facts known to him, may disclose no negligence and no legal assumption of risk, while the same conduct, tested by the facts which ordinary care would have revealed to him, may appear negligent or show that in law he assumed the risk of injury. Either of these conclusions would secure immunity to the master."

Rooney v. Sewall, 161 Mass., 153.

Quotation :

"When the plaintiff entered the defendant's service he impliedly agreed to assume all the obvious risks of the business, including the risk of injury from the kind of machine then openly used. *It is not material whether he examined the machinery before making his contract or not.* He could look at it if he chose, or he could say 'I do not care to examine it ; I will agree to work in that mill and I am willing to take my risk in regard to that.' In either case he would be held to contract in reference to the arrangement and kind of machinery then regularly in use by his employer, so far as those things were open and obvious so that they could readily be ascertained by such examination and inquiry as one would be expected to make if he wished to know the risks and perils of the service in which he was about to engage."

In the case at bar the plaintiff had four years within which at any time he might have ex-

amined the collar in question while the machinery was at rest. He preferred, however, without any justification for his conduct, to presume that there would be nothing dangerous in his leaning his body against these swiftly revolving shaft and collar.

We further submit that apart from our insistment that the risk *arising from the protruding set screw* would have become known to the plaintiff if he had exercised ordinary care, the risk the plaintiff ran in purposely leaning his body against a revolving shaft with any kind of collar on it, while he knew the shaft was in motion, was necessarily incident to his work. It was not necessary in order to bind the plaintiff as the one who assumed the risk, that he should realize the precise degree of the danger. It was sufficient that he ought to have known that it was dangerous to lean his body against a swiftly revolving shaft of small diameter. It is a matter of common knowledge even to those who are not mechanics that one of the most fruitful sources of accident of this character is due to a man's clothing almost unaccountably getting wound round a perfectly smooth, swiftly revolving shaft, and the plaintiff's story that in this case it was his duty to lean against the shaft and press against it with his body is simply incredible.

Murphy v. Rockwell Engineering Co., 70 N. J. Law, 374, cited for another purpose *infra*, is an exactly analogous illustration of the principle that if the plaintiff knew of the *danger* he need

not know of the full degree of *risk* in order to hold him as the one who assumed the risk. There the plaintiff knew that the machine he was cleaning was in motion, but he did not know of the cog-wheels inside, which caught the waste, drew in his finger and caused him the injury complained of.

In the case at bar, even though the plaintiff may not have known, as he ought to have known, of the protruding set screw, he certainly knew that the shaft and collar were in motion, and under the case last cited he cannot recover.

The plaintiff's claim is predicated upon an alleged negligence on the part of the defendant in permitting the set screw in this collar to project above its surface or circumference.

The question of the duty which owners of revolving machinery owe to their workmen engaged in working upon and around such machinery has been discussed quite frequently in the decisions of the Supreme Court of Massachusetts. It has there been held that the employer owes no obligation to the employee to substitute for a projecting set screw a safer screw in common use.

Connelly vs. Hamilton Woolen Co., 163 Mass., 156.

In this case an employe was injured by com-

ing in contact with a revolving shaft, which had a keyway projecting from one end. The Court said : "The plaintiff's intestate voluntarily undertook the very dangerous work of whitewashing the walls and the ceiling of a card room, while the machinery was in operation. The dangers to which this work exposed him were open and obvious. He was capable of fully understanding them, and must be taken to have comprehended them. Besides this, he had been specially cautioned to look out for the pulleys and shafting, and it was by coming in contact with a shaft, apparently as a result of losing his balance while at work standing upon an elevated wooden horse or staging, that he was caught and injured. It is urged that there was a keyway in the end of the shaft which made it more likely to catch his clothing than a plain shaft. *But the keyway was not a defect, and the shaft was in the same condition when he was hurt as when he began to whitewash the room.* The danger of being caught by contact with the shaft, whether he knew of the keyway or not, was so great and obvious, that he must have appreciated and taken upon himself the risk of being caught and injured by coming in contact with the shaft. It was not necessary that he should appreciate every particular of the danger.

Goodnow vs. Walpole Emery Mills,
146 Mass., 261.

Syllabus :

"A machinist and engineer, who undertakes extra work for extra pay, first examining the place and receiving particular directions, within

three feet of a rapidly revolving shaft, which he knew was in operation, and is caught by a set screw projecting from a collar on the shaft next a journal which he had once before oiled, the screw being of a kind in common use, with the nature and use of which he was familiar, cannot recover from the employer for an injury so received."

Hale v. Cheney, 159 Mass., 268.

Syllabus :

"In an action at common law for personal injuries received by the plaintiff while at work for the defendant, there was evidence that at the time of the accident there was in the room where the plaintiff worked a horizontal shaft, twelve feet long and about one foot above the floor, resting on bearings at each end, to which power was communicated by a belt from an upper shaft; that, to prevent longitudinal vibration of the lower shaft, an iron collar was fastened to one end of it by a set screw, the end of which projected half an inch outside the collar; that such a shaft near the floor was a common and proper method of distributing power to the machinery, and that the device to prevent vibration was in ordinary and common use, and preferable to any other, although the collar could have been secured to the shaft without a projecting screw or nut; that at the end of the shaft was an upright post, extending from the bearing in which the end of the shaft rested to the ceiling, the object of which was to hold the bearing in place, and to protect any one from getting on to the pulley, belt, or shaft; that the

plaintiff, who was sixteen years old, and of ordinary intelligence, had been in the defendant's employ three months, doing odd jobs about the shop, and at various times, amounting in all to three or four times, working on a machine; that on the day of the accident he was working on a machine the nearest part of which was five feet and four inches from the end of the shaft where the collar was; that on the other side of the shaft, and about the same distance from it, was another machine, at which there was another workman; that while at work the plaintiff had occasion to pass from his machine to hand some work to the other workman; that in so doing he went 'the shortest way, regardless of the machinery, and went right up to the revolving shaft,' instead of going around it, as he might have done; that his trousers were caught by the set crew, and he was thrown down and injured; and that when he was caught, as he himself testified, he was not looking down at the shaft, but over it, and straight at the workman who had just taken the work from his hand, and that he did not know that the screw was there. The evidence was conflicting on the question whether this screw was visible when the shaft was revolving. There was also evidence that the plaintiff 'was not a very careful boy around machinery,' and 'would get too near the machines, and would not apparently know where he was.' *Held*, that there was no evidence that there was a breach of any duty on the part of the defendant which he owed to the plaintiff. *Held, also*, that the defendant was not bound to box the shaft, and that the fact that

the collar could be secured to the shaft without a projecting screw or nut was not evidence from which the jury would be warranted in finding that the defendant was not justified in using the device."

Quotation, p. 271 :

"Upon the evidence, the defendant did not owe to the plaintiff the duty of boxing the shaft. Sullivan v. India Manuf. Co., 113 Mass., 396. Rock v. Indian Orchard Mills, 142 Mass., 522. Foley v. Pettee Machine Works, 149 Mass., 294. Tinkham v. Sawyer, 153 Mass., 485. It cannot be successfully contended that the shaft, placed near the floor, with the set screw projecting, was defective or unsuitable for the purpose. The evidence was uncontradicted that such a device was in ordinary and common use, and preferable to any other. The fact that the collar could be secured to the shaft without a projecting screw or nut was not evidence from which the jury would be warranted in finding that the defendant was not justified in using the device which he had in his shop. Goodnow v. Walpole Emery Mills, 146 Mass., 261. Carey v. Boston & Maine Railroad, 158 Mass., 228."

Rooney v. Sewall, 161 Mass., 153.

Syllabus :

"When a person enters the service of another, he impliedly agrees to assume all the obvious risks of the business, including the risk of injury from the kind of machinery then openly used ; and it is immaterial whether he examined the machinery before making his contract or not.

"If the proprietor of a factory has in use a projecting set screw for holding the collar on a shaft upon which is a pulley, although there is a safer kind of set screw in common use, he owes no duty to a person entering his employ to box the pulley or shaft, or to change the set screw for a safer one.

"A person who was over forty years old and had had considerable experience was employed in a factory to haul piles of soft, loosely coiled hemp along the floor through a narrow space between a machine and rows of this hemp. The machine was all boxed in except the end of the shaft and two pulleys thereon projecting from one side. One of the pulleys was fixed tight to the shaft, and the other was loose and held in place by a collar flush with the end of the shaft, and fastened by a set screw. The screw and shaft stood about three and a half feet from the floor, and were left exposed. The collar and end of the shaft were round and smooth, but the set screw had a sharp-cornered square head, and stood out perpendicularly from the collar about an inch. He did not know of the set screw, which could not be seen when the shaft was revolving, but was plainly visible when the shaft was at rest; but he was well aware of the danger from the moving pulleys and shaft. While passing the machine in performing his work, he came in contact with it and was injured. *Held*, that he could not maintain an action against his employer for the injury.

Ford v. Mount Tom Sulphite Pulp. Co., 172 Mass., 544.

Syllabus:

"A workman, who was on a platform three feet lower than a revolving shaft, which was about thirteen feet from the floor, trying to throw a belt off a pulley at the end of it, on the other side of the bearing and one foot distant from a set screw fastening a collar near the end of the shaft, was caught by the screw and injured. The screw had been put in since the beginning of his employment, and, although he had charge of the machinery in the room and oiled the shaft and bearing, he never had seen this screw. There were other similar screws in the place, and there was not much light. *Held*, that he could not maintain an action against his employer for his injury, either at common law or under the employers' liability act, St. 1887, c. 270."

See also Demers vs. Marshall, 172 Mass., 548, supra.

Keats v. National Heeling Mach. Co., 65 Fed. Reporter, 940.

Syllabus:

"Employing a set screw on a revolving shaft in the ordinary way is not negligence, making a master liable for injuries to his servant caused by the screw catching the servant's clothing.

"Nor is a master guilty of negligence in not having given warning of danger from such a screw to a servant who was a mechanic of mature years, had worked on the premises for some

time, and might have performed his work without danger by adopting a different method of reaching it."

"**Per Curiam.** We do not find in thiscase any evidence of negligence on the part of the defendant in the construction and arrangement of its premises and machinery. The employment of a set screw upon a revolving shaft, which caused the injury to the plaintiff, was the common and ordinary way in which such shafts were constructed. The defendant was a mechanic of mature years, and had worked on these premises for some time before the accident occurred. It is also shown that he might have performed the work without danger by another method of reaching it, requiring, perhaps, a little more time. Upon this state of facts, we think the defendant had no reasonable cause to believe that the plaintiff would do the work in such a way as to expose himself to danger, and that it was not guilty of negligence in not warning him. The rule laid down in cases where employees are set at work in positions of unusual and concealed danger is not applicable to the present case. In our opinion, there was no evidence of negligence sufficient to support a verdict by the jury for the plaintiff, and the court below committed no error in directing a verdict for the defendant. Judgment affirmed."

SUBDIVISION III.

In leaning against the shafting, as he admitted he did, the plaintiff was guilty of contributory negligence.

The plaintiff knew the shaft was in motion. He knew there was a collar attached to it, swiftly revolving. He could see the shape of the collar and that it had defined edges to it. For him to lean his body against such machinery as that while it was swiftly revolving, and press his body against it, as he distinctly swore he did, was certainly contributory negligence.

Furthermore, there is absolutely no escape from the position that the plaintiff either in fact saw the set screw when he went up the ladder or could have seen it if he had used his eyes. At all events, he had ample opportunity to see it on frequent occasions during the four years he worked in the defendant's mill, when the machinery was at rest. In either event it was very great negligence on his part to get his clothing caught on this screw, which was right before his eyes.

C. C. C. & R. R. Co. vs. Elliott, 28 Ohio, 341.

Pennsylvania Co. vs. Rathegeb, 32 Ohio, 66-73.

Wabash R. R. Co. vs. Skiles, 64 Ohio, 458, 471.

SUBDIVISION IV.

There was no evidence in the case that the defendant had notice that the plaintiff was ignorant of the protruding set screw.

In Murphy v. Rockwell Engineering Co., 70

N. J. Law, 374, supra, the plaintiff, a laborer about twenty-seven years of age, was directed to clean a drill press. To do so, he took a piece of waste and was wiping the oil off the outside of the machine, when cog-wheels inside caught the waste and drew it in and his finger, causing the injury for which the suit was brought. The cog-wheels were revolving within an upper column about five inches from its outer surface, and in this surface, near the floor, was a hole, about six inches long and five inches wide, through which the waste was drawn. The plaintiff knew that the machine was in operation while he was cleaning it, but as it stood in a dark corner of the shop he failed to notice the hole. On this state of facts he contended that the employer was responsible because it had not warned him of the danger. It was held that the employer was not responsible.

Note that in the case at bar there is no allegation in the declaration complaining of the failure of the defendant to warn the plaintiff of the danger incident to the set screw. But the point is that even had the declaration contained such an allegation, there is nothing in the case at bar to indicate that the defendant was aware that the plaintiff was ignorant of that danger. The Court said, in Murphy v. Rockwell Engineering Company, "It is not claimed by the plaintiff that the machine was in any respect out of order, and it is evident that the risk which he ran while cleaning the machine, *while he knew it was in motion*, was necessarily incident to his work. It sprang from a circumstance known to

every one familiar with such machines, and resulted in injury to the plaintiff only because of his ignorance. There is nothing in the case to indicate that the defendant or the foreman was aware of such ignorance. The employer cannot be held responsible for such dangers in the absence of notice that the experience of the workman was less than his contract implied."

See also Keats vs. National Heeling Machine Co., 65 Fed., 940, supra.

SUBDIVISION V.

Upon the conclusion of the plaintiff's case, upon motion of his counsel, leave was granted to amend the declaration by setting forth that the defendant had not properly safeguarded its machinery, as required by the statute law of the state.

Although in fact no amendment seems to have been since made, nevertheless, inasmuch as this Court may treat the declaration as so amended, a further ground of liability upon the part of the defendant is thus raised which calls for a brief discussion. The accident occurred in April, 1903, before the Act of 1904 was passed (P. L. 1904, p. 152.) The Act of April 7, 1885, was the act which prescribed the defendant's duty in regard to safe-guarding the machinery. (Gen'l Stats. of N. J., p. 2345, sec. 29.)

This section reads as follows : "That the belt-

ing, shafting, gearing and drums in all factories and workshops, when so placed as to be dangerous to persons employed therein, while engaged in their ordinary duties, shall be securely guarded *when practicable.*"

See Dowd vs. Erie R. R. Co., 70 N. J. Law, 451, 457.

No evidence was offered in the case at bar tending to show that it was practicable or possible to adjust a guard of any kind over the coupling, by which the plaintiff was hurt. The coupling was up in the air away from the reach of the ordinary employees, and it has never been customary, nor would it be practicable, to protect main shafting of this character. There was no evidence that guards of any kind were in use upon couplings of similar construction in other mills. The evidence of the plaintiff and the other witnesses in regard to couplings used in other mills where they had worked was to the effect that these other couplings were entirely dissimilar in construction to the one in use in the defendant's mill. They had no guard, but they were so constructed as to present a smooth outside surface, (p. 16, l. 9-25 p. 36, l. 26-31; p. 46, l. 20-30 ; p. 67, l. 17-30).

The statute in question is a penal one, for the violation of which an action may be prosecuted in the name of the inspector of factories.

The evidence offered by the plaintiff would clearly have been insufficient if offered by the

inspector of factories to have entitled him to have recovered the statutory penalty. Even granting, therefore, that the statute does affect an employer's common law liability so as to make the employer civilly liable to an employee for a failure to comply with its provisions, the testimony offered did not present a case within the reach of the statute.

The mere fact that a pulley is attached to a shaft with a set screw with projecting head left uncovered, does not establish negligence as a matter of law, either under statutes or our common law.

Glens Falls &c. Co. vs. Travellers &c. Co. (N. Y.), 56 N. E., 897.

Hoffman vs. American &c. Co. (Wash.), 51 Pacific, 385.

Demers v. Marshall, 172 Mass., 548, supra.

At all events, statutes affecting the liability of employers do not change the common law as to the effect of contributory negligence.

Corning &c. Co. vs. Pohlplatz, 29 Ind. App., 250.

Perrigo v. Ind. &c. Co., 21 Ind., 328.

Buehner &c. Co. vs. Feuhner, 29 Ind. App., 479.

II.

The learned Trial Court committed no error in excluding the evidence referred to in the first seven assignments of error.

SUBDIVISION I.

The first two assignments of error are based upon the Court's refusal to allow two slightly differently worded questions, covering substantially the same ground, to be put to the plaintiff upon his re-examination (p. 52, l. 22 ; p. 53, l. 12). Objection was made by defendant's counsel on the ground that answers to these two questions would be mere repetitions of the plaintiff's previous testimony upon his direct examination. The plaintiff had, in fact, testified upon this very point (p. 14, l. 16, et seq).

Upon direct examination he was asked by his counsel (p. 14, l. 13) "What was it caught you ?" A. "I was hooked by a set-screw, in the side." Q. "And how soon after you leaned against the shafting did that occur ?" A. "Instantly. When I put the belt on the pulley I was hooked in the side, etc."

The proper scope of the re-examination of a witness is confined to an explanation by the witness of matters brought out on cross-examination.

Stephens Digest Law of Ev. Beers Ed., Chap.

16, Art. 127, p. 443. "The re-examination must be directed to the explanation of matters referred to in cross-examination , and if new matter is, *by permission of the Court*, introduced in re-examination, the adverse party may further cross-examine upon that matter."

In the case of Stern vs. Stanton, 184 Pa., St. 468, the Court said (p. 478), "The allowance or disallowance of questions addressed to a witness, on a re-examination of him, for the purpose of obtaining a repetition of some part of his former testimony, is a matter within the sound discretion of the Court, and therefore not subject to review, unless a palpable abuse of the discretion appears."

Regardless of other considerations the plaintiff suffered no injury by not being allowed to answer these two questions. He must either have given the same reply he had already given to the same question upon his direct examination, or a different one. He had already testified that he was hooked instantly after he leaned against the shafting. The question and answer were so entirely clear and explicit, it is hard to see how the plaintiff could have done anything but injury to his own case by varying in this respect from his previous testimony. If, nevertheless, he had seen fit to do so, he could only have varied his story by swearing that instead of having been hooked *instantly* after he leaned against the shafting, some period of time had elapsed after he leaned and before he was caught. For

the three questions, viz. : the one the plaintiff actually answered upon his direct examination, and the two unanswered, were all upon this question of time. If, therefore, he had been permitted to answer the two questions, and had altered his previous testimony, so that his final testimony had been to the effect that some period of time had elapsed between the moment when he first touched the shafting, and when he was caught, it is impossible to see how his case could have been strengthened.

It is confidently submitted, therefore :

First. That there was no error in the trial court's refusal to allow the plaintiff to answer these two questions ; and

Second. Even if error was committed, no injury was done to the plaintiff for which the judgment of the trial court should be reversed.

SUBDIVISION II.

The third assignment of error is based upon the trial court's refusal to allow the witness, George Greer, to answer the two questions set forth in the assignment. As a matter of fact no exception was taken to the first of these questions, but only to the second question (pp. 91, 94).

Both questions will, however, be here discussed.

In the first question the witness, who had testified that by occupation he was a loom-fixer,

and had been such between nine and ten years, and was acquainted with the different kinds of couplings used in silk mills, was asked whether, *in his opinion*, the coupling by which the plaintiff had been hurt, was a safe one.

The issue in the suit, presented by the pleadings, had regard to this very question, which the witness was asked to decide, by answering yes or no, and by the exercise of *his judgment* to thus relieve the jury of the necessity of exercising *its own*.

The question as to the safety of the coupling did not require special knowledge of machinery to determine it. It was a very simple piece of mechanism, easily described. Whether or not a revolving coupling, with protruding set screws, was safe, the jury was fully as competent as this witness to determine.

In Cook vs. The State, 24 N. J. L., 843, Green, C. J., said, "The line between questions of science or professional skill, to which an expert may legally testify, and questions of mere judgment, which the jury alone are to answer upon the facts proved, is not always susceptible of being clearly defined. The distinction stated by Mr. Smith, in his notes to Carter & Boehm, (I. Smith's L. Cas., 206) is, perhaps, as satisfactory a statement of the rule as can be made. 'The opinion of witnesses, possessing peculiar skill, is admissible, whenever the subject matter of inquiry is such that inexperienced persons

are unlikely to prove capable of forming a correct judgment upon it, without such assistance; in other words, when it so far partakes of the nature of a science as to require a course of previous habit or study in order to the attainment of a knowledge of it; but the opinion of witnesses cannot be received when the inquiry is into a subject matter, the nature of which is not such as to require any peculiar habits or study, in order to qualify a man to understand it.' "

N. J. Traction Co. vs. Brabban, 57 N. J. L., 691.

Syllabus :

"To justify the admission of expert evidence, the subject must be one not within common knowledge and the witness offered must appear to be possessed of special knowledge concerning the subject."

Bergen County Traction Co. vs. Bliss, 62 N. J. L., 410.

Syllabus :

"The opinion of a witness that the kind of block signals used on a trolley road are not such as to insure reasonable safety to the employes operating the cars of that road is incompetent and irrelevant, that conclusion being a question for the jury alone to determine from all the evidence in the case."

Graham vs. Pennsylvania Co., 139 Pa., St. 149.

Quotation :

"That the opinions of witnesses are in

some cases admissible as evidence, even when not coming properly under the head of 'expert testimony', has long been established in practice. In several classes of questions the line between the witness's judgment or opinion and his affirmation of a fact is so indistinct that it cannot be marked out in practice. Such are questions of identity of persons or things, of the lapse of time, of comparative shape or color or sound, of expression, and, through it, of meaning, etc. In all of these, however positively the witness may affirm facts, what he says is, after all, only his opinion, but so blended with knowledge and recollection that the line where opinion ends and fact begins cannot be distinguished. Hence, both must be admitted or both excluded, and to do the latter is often to shut out the only light the case admits of. In questions, therefore, of identity, of sanity, of handwriting, and some others of like nature, opinions of witnesses having sufficient knowledge, of the particular circumstances to form the basis of a responsible judgment have been admitted without hesitation. Such is the elementary doctrine laid down in Greenleaf and other authoritative works, but the theory on which such evidence is admitted is very slightly developed. The cases, however, which have extended far beyond the classes mentioned in the text books, may be said not only to have become legion, but legion against legion. An examination of a large number of them, while not enabling us to reconcile all the practical applications, does, we think, show that the ground on which such evidence must always rest, as expert testimony, strictly

so called, does, is a clear necessity. * * * In those matters where mere descriptive language is inadequate to convey to the jury the precise facts or their bearing on the issue, the description by the witness must of necessity be allowed to be supplemented by his opinion, in order to put the jury in position to make the final decision of the fact. * * * But, as necessity is the ground of admissibility, the moment the necessity ceases the exception to the general rule that requires of a witness facts, and not opinions, ceases also. Hence, whenever the circumstances can be fully and adequately described to the jury, and are such that their bearing on the issue can be estimated by all men, without special knowledge or training, opinions of witnesses, expert or other, are not admissible. This is well stated by Chief Justice Shaw in Glass Co. vs. Lovell, 7 Cush., 321. 'The principle upon which this evidence is admissible is clear and entirely just. In applying evidence which does not go directly to the fact in issue, but to facts from which the fact in issue is to be inferred, the jury have two duties to perform; first, * * * to ascertain the truth of the fact to which the evidence goes, and thence to infer the truth of the fact in issue. This inference depends on experience. * * * Now, when this experience is of such a nature that it may be presumed to be within the common experience of all men of common education, moving in the ordinary walks of life, there is no room for the evidence of opinion; it is for the jury to draw the inference.' The law is thus summed up in the American & English Encyclo-

pedia Law, tit. 'Expert and Opinion Evidence, VI. 'Opinions are never received if all the facts can be ascertained and made intelligible to the jury, or if it is such as men in general are capable of comprehending and understanding. The ordinary affairs of life cannot be the subject of expert testimony.' See volume 7, p. 493, and cases there cited."

Siegler vs. Mellinger, 203 Pa., St. 256.

Syllabus 3 :

"Opinions of witnesses that a place was dangerous are not admissible, there being nothing in the situation which a brief description would not enable the jury fully to understand."

Connelly vs, Hamilton Woolen Co., 163 Mass., 156.

Syllabus :

"In an action for personal injuries occasioned to the plaintiff's intestate while in the defendant's employ, by coming in contact with a revolving shaft having a keyway in the end, the evidence of a witness called as an expert to show that a keyway in a shaft enhances the ordinary dangers of a revolving shaft is properly excluded."

The second question mentioned in the third assignment of error, as illegally excluded by the trial justice, was, "In addition to that coupling you saw there, tell the Court and jury

what other kinds of couplings you have seen used in silk mills."

This question was overruled by the learned trial justice of his own motion, no objection having been raised to it by counsel for the defendant, who was willing to have it admitted in the case that there are different kinds of couplings in use. In fact it was so admitted (p. 92, l. 14).

Counsel for the plaintiff stated that it was desired to show, not only that there were other couplings in use, but that those others were "practically the only kind used," and that loom-fixers knowing of such couplings used in other mills, had the right to assume that every coupling was of such latter description; the inference of course being, that the plaintiff also had the right to assume that the coupling by which he was injured was of the description, which it was desired to show by this witness, George Greer, was "practically the only kind used."

We submit that the reasoning of the learned trial judge, in overruling the question, correctly stated the law. (P. 92, line 30 to page 94, line 2.)

We are, of course, aware of the rule of law, which we suppose the plaintiff's counsel had in mind, that the standard of safety in regard to a

given appliance may be the ordinary usage of the business. This rule is properly applied where an attempt has been made to show that a machine is unsafe, because of a lack of some safe-guard, which might have rendered it more safe. Upon such a contention, it may be sufficient to show that similar machines, without the safe-guard, are ordinarily in use in the trade, or, otherwise stated, when it is contended that a certain appliance is not reasonably safe, it may be sufficient to show that similar appliances are in customary use.

Titus vs. Railway Co., 136 Pa., St. 618.

But the converse of the rule just stated by no means follows. The rule, as stated, being, that an appliance may be held to be reasonably safe if shown to be that in ordinary use in the trade, the converse would be, that an appliance must be held to be unsafe, if it should be shown to differ from those in ordinary use. This, we submit, is not the law, and we are unaware of a case where such a rule is attempted to be laid down.

To apply the rule to the case at bar: There was some testimony offered in behalf of the plaintiff's case, in regard to couplings in other mills constructed so as to offer a smooth outside surface. If the contention had been made that the coupling by which the plaintiff was injured was unsafe, because it was not made in a similar manner, it would have been a sufficient an-

swer for the defendant to have shown (*as it could have shown*) that couplings, of similar construction to that which caused the injury, were in ordinary use in other factories. Going further, even had the plaintiff shown that couplings, in other factories, ordinarily were constructed as those described by plaintiff and his witnesses it would not follow that it was negligence for the defendant to have had this particular coupling, that caused the accident, in use in its factory.

In short, while it is a good defence to show that a machine, alleged to be unsafe, is similar to those in ordinary use, it is not negligence, per se, if the machine is shown to differ from those in ordinary use. For, if this latter were true, a manufacturer could not adopt what he might consider an improvement, even for the purpose of protecting his operatives, without rendering himself liable in case of accident. Such a rule would be a bar to progress. And yet this would have been the effect of the contention of the plaintiff's counsel.

The true rule, we submit, is laid down by Labatt, Master & Servant, vol. 1, No. 35, p. 85, as follows: "He (the master) cannot be charged with a breach of the duties owed to his servant, simply on the ground that a safer method or a safer instrumentality than that from which the injury resulted was available and might have been adopted by him. In other words, the question whether the particular machinery

provided by a master is proper and suitable is to be determined by its actual condition, and not by comparing it with other machinery. Or, as the doctrine may also be expressed in more general terms, evidence which merely tends to show that the particular accident which caused the injury might not have happened if a particular precaution had been taken goes for nothing, in considering the question of legal liability on a charge of negligence." * * * Page 89 "as a matter of procedure, the effect of the principle now under discussion is that evidence going to show that some other kind of instrumentality would have been safer and better than that which caused the injury should be excluded."

Hale v. Cheney, 159 Mass., 268.

Quotation, supra :

"The fact that the collar could be secured to the shaft without a projecting screw or nut was not evidence from which the jury would be warranted in finding that the defendant was not justified in using the device which he had in his shop."

Rooney vs. Sewell, 161 Mass., 153.

Quotation:

"In an action for personal injuries occasioned to the plaintiff while employed in the defendant's factory by coming in contact with a machine having a dangerous device, which was in use when he entered the employment, evidence of a custom in other factories using similar machines to guard the device, is immaterial."

Ford v. Mount Tom Sulphite Pulp Co., 172 Mass., 574.

Syllabus :

"In an action for personal injuries caused by being caught by a set screw fastening a collar near the end of a revolving shaft, the question 'whether or not it is customary in factories to have a collar with a projecting set screw placed near a pulley where it is necessary for a person to go frequently to do something with reference to putting on a belt,' is properly excluded."

What other kinds of couplings the witness, George Greer, had seen used in silk mills, we therefore submit, was immaterial and utterly irrelevant. It was not error upon the part of the learned trial judge to overrule the question put by plaintiff's counsel.

The fourth and seventh assignments of error raise precisely the same questions as those just disposed of.

SUBDIVISION III.

The fifth and sixth assignments of error both relate to the exclusion by the trial judge of the question put to the witness, Thomas Hughes, (p. 97, line 30), "If that belt were tighter, and you were required to throw that belt on that pulley, could you have done it without bringing your body in close contact with the shaft?"

This witness had been put upon the stand

after the jury had visited the scene of the accident, and had seen the plaintiff illustrate how the belt was put on the pulley. At this visit, the ease with which the belt was then adjusted was so evident, that plaintiff's counsel, fearing for the effect upon the case, directed considerable effort in an endeavor to show that at the time of the accident it was a more difficult thing to do, and could not have been done without bringing the body in contact with the shaft. This they attempted to do, by trying to show that the belt was tighter at the time of the accident than at the time of the jury's visit. This question put to the witness Hughes had that aim in view.

The trial justice, in over-ruling the question as it was put, expressly stated to counsel that they had the right to show that the belt was in an unusual condition on the morning of the jury's visit. Counsel then put two questions only to the witness upon this point (p. 98, line 20-25). In answer to these two questions, the witness merely replied, that the belt "appeared * * * to go on very easy", and that "it must have been loose to go on so very easy", on the morning of the jury's visit.

Counsel made no effort to bring out from the witness whether he had any knowledge of the actual conditions at the time of the accident, nor to renew the question over-ruled by reframing it in proper form.

In the form the question was put to the witness, and over-ruled by the court, it was clearly improper, it being entirely immaterial and irrelevant, whether or not, if that belt were "tighter", it could be thrown on the pulley without bringing the body in close contact with the shaft, in the absence of evidence that the belt actually was tighter at the time of the accident.

But admitting that it was necessary for the plaintiff at the time of the accident to bring his body in contact with the shaft, in order to put the belt on the pulley, it would follow that, having undertaken to do that particular work in the performance of his duty to the master, the danger due to the alleged necessity of placing the body in contact with the shaft in doing that work would have been naturally incident to the work, and therefore a danger which the plaintiff had assumed.

The question was manifestly objectionable in form also, because while it called for a direct affirmative or negative answer, a direct affirmative or negative answer to it could not have been honestly given. The vice now alluded to in the question is that the word "tighter" is in the comparative degree, and the witness in answering the question could take his choice to suit the answer he desired to make, and assume either that the question meant "if the belt were very much tighter", or that it meant "if that belt were just a little tighter", and answer according-

ly. Obviously, the belt might have been so tight that the loom-fixer could not have thrown the belt on the pulley at all. On the other hand, at the time that the test was made before the jury the belt went on so very easily that it was quite obvious that even if the belt were somewhat tighter than it then was there would still have been no difficulty in throwing it on to the pulley. The question, therefore, for all practicable purposes was no different in character from this question, "If that belt were so much tighter that it was almost impossible to throw it on the pulley, could you have done it without bringing your body in close contact with the shaft?" and even then the question would have been objectionable, as still leaving in doubt how tight, in fact, the belt was.

For the above reasons, we respectfully submit that the nonsuit should be affirmed.

HUMPHREYS AND SUMNER,

Of Counsel with the Defendant in Error.

No. 53
ARCH T. 1907

New Jersey Supreme Court.

ABRAM DONNELLY,
vs.
HAENICHEN BROTHERS SILK COMPANY.

10

IN ERROR TO PASSAIC CIRCUIT COURT.

BEFORE GUMMERE, CHIEF JUSTICE, AND JUSTICE HENDRICKSON.

For Plaintiff in Error, P. J. McGINNIS.

20

For Defendant in Error, J. B. HUMPHREYS.

PER CURIAM.

This writ brings up for review a judgment of non-suit in the Passaic Circuit. The evidence discloses that the plaintiff was injured while attempting to adjust a belt upon a pulley in the regular performance of his duty. In attempting to adjust the belt he leaned his body against the shaft upon which the pulley revolved, and was hooked in the body by a set screw protruding from a coupling, or collar, attached to the shaft. A non-suit was directed

30

upon the ground that the danger which the plaintiff incurred was a risk incident to the work he had undertaken to do in the course of his employment; and that the risk was one which he might have observed had he taken reasonable precautions for his own safety.

We think the non-suit was properly directed. Although it appeared from the proofs in the case that in other mills with which the plaintiff's witnesses were familiar, the set screws used in the collars, or couplings,
10 upon shafting, were countersunk, this affords no ground for attributing negligence to the defendant company in using set screws which projected; it does not follow that such a construction was improper, and not in ordinary use. But even if the contrary conclusion could properly be drawn, the character of the construction was one with which the plaintiff could readily have familiarized himself by observation, and the trial judge rightly held that the risk of accident from it was incident to the work which he had undertaken.

20

The judgment should be affirmed.

Filed June 11, 1906.

30

New Jersey Supreme Court.

ABRAM DONNELLY, Plaintiff in error, *vs.* HAENICHEN BROTHERS SILK COMPANY, Defendant in error.	*In tort.* *On error to New Jersey Supreme Court.* *Stipulation.*

10

It is hereby stipulated and agreed that the State of Case as used in the Supreme Court in this case, together with the judgment in said Supreme Court and the writ of error from the Court of Errors and Appeals and Assignments of Error in said last mentioned Court, shall constitute the State of Case in the Court of Errors and Appeals in this cause. 20

Dated October 26, 1906.

WARD & McGINNIS,
Attorneys of Plaintiff in Error.

JOHN B. HUMPHREYS,
Attorney of Defendant in Error. 30

NEW JERSEY, ss:

THE STATE OF NEW JERSEY, to the Chief Justice and other Justices of our Supreme Court of Judicature, GREETING:

Forasmuch as in the record and proceedings, and also in the giving of judgment in a certain plaint, which was in our said Supreme Court of Judicature, before you, be-
10 tween Abram Donnelly, plaintiff in error, and Haenichen Brothers Silk Company, defendant in error, in an action of tort, manifest error hath intervened to the great damage of the said Abram Donnelly, as by his complaint we are informed, we being willing that speedy justice should be done to the parties aforesaid in this behalf, do command you distinctly and openly to send under your seal, the record and proceedings aforesaid, with all things touching the same, to our Judges of our Court of Errors and Appeals in the last resort of all causes, at
20 Trenton, on the fifth day of July next, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon, for correcting that error, what of right and according to the law and custom of the State of New Jersey ought to be done.

WITNESS, our Chancellor and President Judge of our said Court of Errors and Appeals at Trenton, aforesaid, the nineteenth day of June, in the year nineteen hundred and six.
30

WARD & McGINNIS, Attorneys.

S. D. DICKINSON, Clerk.

Usual endorsement by Chief Justice of Supreme Court.

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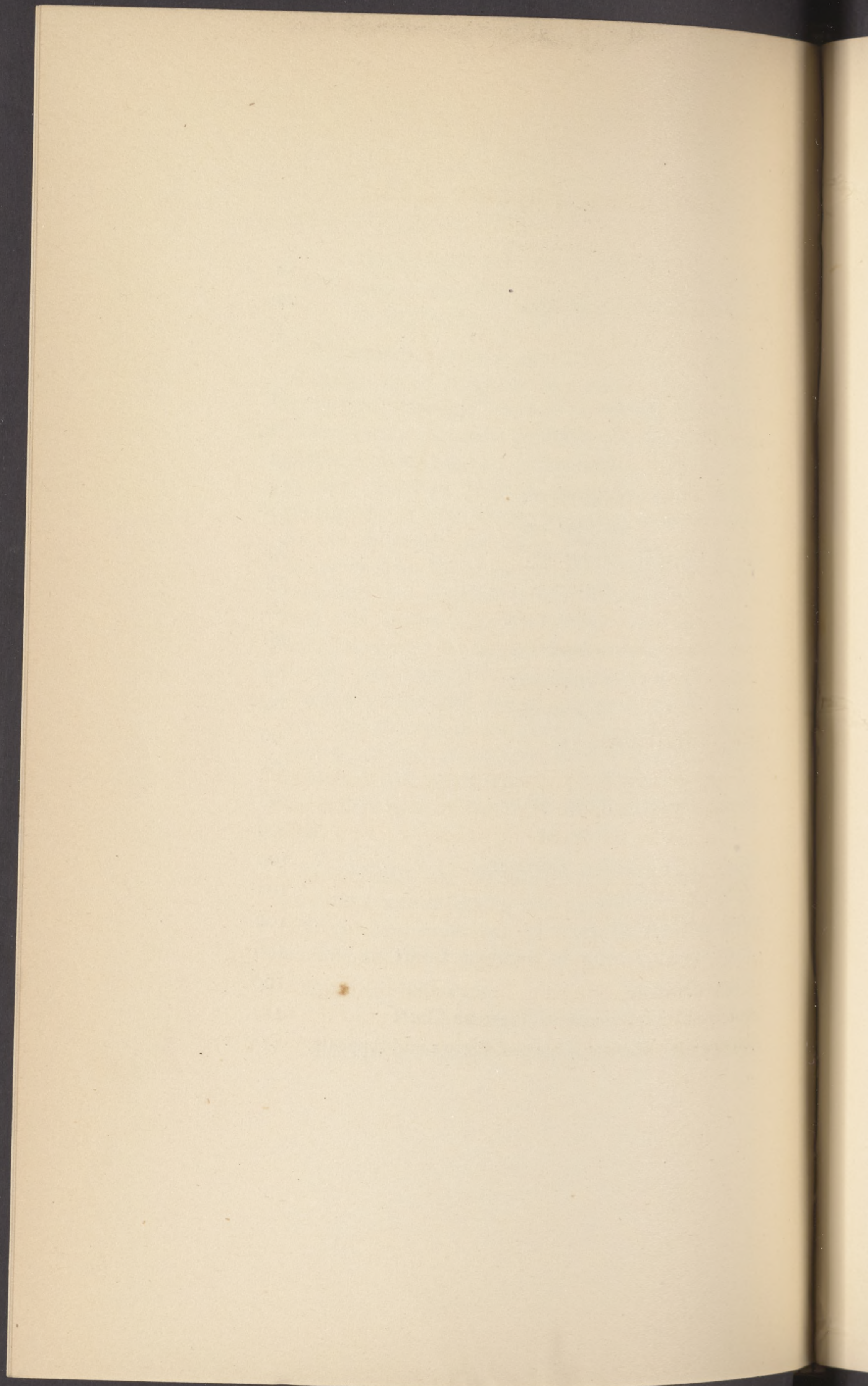

New Jersey Supreme Court.

ABRAM DONNELLY, Plaintiff in error, *vs.* HAENICHEN BROTHERS SILK COMPANY, Defendant in error.	*On error to Passaic Circuit.*

10

CASE.

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NEW JERSEY, ss:

THE STATE OF NEW JERSEY, to Mahlon Pitney, Esq., Judge of our Circuit Court at Paterson, in and for the County of Passaic, GREETING:

Because in the record and proceedings, and also in the giving of judgment in a plaint which in our Circuit Court holden at Paterson, in and for the County of Passaic, between Abram Donnelly, plaintiff, and Haenichen Brothers Silk Company, defendant, in an action of tort, manifest error hath intervened to the great damage of the said Abram Donnelly, as by his complaint we are informed; 30

we being willing that speedy justice should be done to the parties aforesaid in this behalf, do command you distinctly and openly to send, under your seal, the record and proceedings aforesaid, with all things touching and concerning the same, to our Justices of our Supreme Court of the State of New Jersey, on the second day of August next, together with this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon what of right and according to the
10 law ought to be done.

WITNESS William S. Gummere, Chief Justice of our said Supreme Court, at Trenton, this tenth day of July, in the year nineteen hundred and five.

WARD & McGINNIS,
Attorneys.

WM. RIKER, JR.,
Clerk.

20 I, Mahlon Pitney, Associate Justice of the Supreme Court, Presiding Judge holding our Circuit Court at Paterson, in and for the County of Passaic, do hereby, in the schedule hereto annexed, send to our Justices of the Supreme Court of the State of New Jersey the record and proceedings mentioned in the within Writ of Error, with all things touching and concerning the same, as I am within commanded.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said
30 [L. S.] Court, this twenty-fifth day of July, A. D. Nineteen Hundred and Five.

MAHLON PITNEY, J.

Passaic Circuit Court of the twenty-fourth day of August, nineteen hundred and four.

Passaic County, ss:

The Haenichen Brothers Silk Company, a body corporate of the State of New Jersey, the defendant in this suit, was summoned to answer unto Abram Donnelly, the plaintiff therein, in an action of TORT, and thereupon 10 the said plaintiff, by Ward & McGinnis, his attorneys, complains,

FOR THAT WHEREAS the said defendant, before and at the time of the committing of the grievances hereinafter mentioned, to wit, on the second day of April, nineteen hundred and three, at the City of Paterson, in the County of Passaic, was the owner of or controlled a certain building or mill, situate on Broadway in said City of Paterson, in which mill or building it carried on the business of manufacturing and weaving of silk goods, 20 and, being such silk manufacturing establishment, hired and employed the said plaintiff, Abram Donnelly, to work in its establishment as a loomfixer, at which employment he was working at the time of the grievances hereinafter mentioned.

And the plaintiff avers that at the place and in the building aforesaid there was, among the other machinery, gearing, shafting and belting, used in connection with the said business, a large shaft or axle, which extended along the entire length of the second floor a short distance from 30 the southerly wall of the building, and within about three feet of the ceiling, which shaft or axle revolved by means of steam power under control of the defendant, and when

said shaft or axle was put in motion revolved with great rapidity.

That said shaft or axle was made up or composed of two parts joined together and held in place, end to end, by means of a collar or band of steel fastened about and around said shafting, and held in place by two or more screws or bolts, which said collar was on said shaft or axle at a point about twenty feet from the western extremity thereof.

10 And the plaintiff avers that the screws or bolts fastening said collar to the shaft or axle were improperly placed therein; and the said collar so improperly placed, put and maintained upon said shaft or axle, that by reason thereof said shaft or axle at said point when revolving was extremely dangerous and subjected the servants and employees of the defendant working on or about said shaft or axle at said point to great hazards and dangers of bodily injury.

Yet the said defendant, well knowing the premises, 20 disregarded its duty in that behalf in that it negligently, carelessly, improperly and knowingly set up, erected, constructed and inspected said shaft or axle, and did so carelessly, negligently and improperly conduct itself in the premises, and in and about erection, inspection guarding and operation of said shaft or axle and of the collar thereon, that by reason of the premises said shaft or axle was allowed to remain in said unsafe, dangerous and improper condition, and was in such condition at the time of the committing of the grievances hereinafter mentioned.

30 And the plaintiff avers that the defective, dangerous and unsafe condition of the shaft or axle and the collar thereon was at the time of the committing of the grievances hereinafter mentioned well known to the said de-

fendant, or should have been known to it by reasonable inspection; but he, the said plaintiff, had no knowledge thereof, and at the time he was set to work thereon, as hereinafter set forth, could not ascertain said dangers by reasonable inspection, nor were they such as were required by his employment.

And the plaintiff avers that on, to wit, the second day of April, nineteen hundred and three, while then and there in the employment of the said defendant as aforesaid, he was set to work by the said defendant at or near 10 the axle or shaft aforesaid, and at or near where said collar or band of steel was around the same, and while then and there so working, and while said shaft or axle was revolving with great rapidity, he became caught and entangled in said shaft or axle and the collar thereon, and was with great force and violence whirled and dragged around said shafting, and the gearing, belting and machinery connected therewith or nearby; that by reason thereof he suffered and sustained severe injuries, to wit: his left arm was greatly bruised, hurt and torn its entire 20 length, and broken below the elbow; his left arm between the elbow and shoulder and the left shoulder were wrenched; his left breast was cut, bruised and injured; his neck and back were wrenched and strained; his ribs were injured; his head cut, bruised and injured; his right arm was wrenched, twisted and injured; his stomach was injured; his right leg torn and injured, and the muscles permanently injured, and he was otherwise cut, bruised and injured throughout his entire body; his nervous system was completely wrecked, and he suffered in- 30 ternal injuries, so that he became sick, sore, lame, wounded and disordered, and has remained so for a long space of time, to wit, from thence hitherto, and during all that

time was obliged to spend a large sum of money in endeavoring to be cured of said injuries, to wit, one thousand dollars, and was hindered and prevented, and will be always hindered and prevented, from carrying on his regular calling or trade, that of loomfixer.

By reason of the premises the plaintiff hath sustained great damages, to wit, ten thousand dollars, and therefore he brings his suit, &c., to wit, at the City of Paterson, in the County of Passaic, aforesaid.

10 And the said defendant, by John B. Humphreys, its attorney, comes and defends the wrong and injury when, etc., and says it is not guilty of the said supposed grievances above laid to its charge, or any or either of them, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against it. And of this the said defendant puts itself upon the country, etc.

Therefore let a jury thereupon come before the Court here on the fourth Tuesday of September next, by whom, &c., to recognize, &c., because as well as, &c., and the
20 same day is given to the parties aforesaid, at the same place.

And the jurors of the jury whereof mention is within made are respited from day to day, until Tuesday, the twentieth day of December, A. D. nineteen hundred and four, at which day, before the Court aforesaid, at Paterson aforesaid, come the said parties, by their respective attorneys aforesaid, and the jurors of the jury whereof mention is within made also come, who to speak the truth of the matters and things within contained, being chosen,
30 tried and sworn upon their oaths, and after evidence for the plaintiff being given thereupon and the same having been duly considered by the Court, and it appearing therefrom that the defendant, through its servants, was not

guilty of the negligence charged in the declaration in this cause, the Judge of said Court did thereupon direct that judgment of non-suit be entered against the said plaintiff.

Therefore it is considered that the plaintiff take nothing by his said action and that the said defendant do go thereof without day, &c. And it is further considered by the Court here that the said defendant do recover against the said plaintiff the sum of thirty-four dollars and eighty-seven cents for its costs and charges by it, at its suit in this behalf expended, now here taxed and by the Court 10 adjudged to it with its assent according to the form of the statute in such case made and provided, and that the said defendant have execution therefor if need be, &c.

Costs, $34.87.

Judgment entered and signed this 28th day of December, A. D. 1904.

WILBUR A. HEISLEY, J.

STATE OF NEW JERSEY, } ss. 20
PASSAIC COUNTY, }

I, John J. Slater, Clerk of said County and Clerk of the County Courts thereof, do hereby certify that the foregoing is a true copy of the judgment entered in the above stated cause as the same remains of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal at [L. S.] Paterson, this Twenty-fifth day of July, A. D. 1905. 30

JOHN J. SLATER,
Clerk.

Passaic County Circuit Court.

10

ABRAM DONNELLY,
Plaintiff,
vs.
HAENICHEN BROTHERS SILK CO.,
Defendant.

Transcript of testimony taken before Hon. Wilbur Heisley, and a Jury, December 20, 1904, at the Paterson Court House.

20

Appearances:

WARD & McGINNIS, for the plaintiff.

JOHN B. HUMPHREYS, ESQ., and JOHN W. HARDING, ESQ., for the defendant.

30

DR. JAMES W. SMITH, sworn in behalf of the plaintiff, testified as to injuries only. Testimony omitted.

ABRAM DONNELLY, sworn in his own behalf, testified as follows:

DIRECT EXAMINATION BY MR. WARD.

Q. How old are you?

A. Forty years old.

Q. What is your occupation?

A. Loomfixer.

Q. How long have you been at that?

A. Fifteen years. 10

Q. Whereabouts were you employed a year ago last April?

A. Haenichen Brothers.

Q. Is that the defendant in this suit?

A. Yes, sir.

Q. How long had you been employed there?

A. Almost four years.

Q. And during that time, in what capacity had you been employed?

A. As a loomfixer. 20

Q. Do you remember what part or section of the mill you were working in on the second of April last—April, 1903, I mean?

A. Yes, sir.

Q. What section of the mill was it?

A. That known as the box loom section; the jacquard section.

Q. Whereabouts is this mill situated?

A. At Broadway and Prospect Streets.

Q. And in what position in the mill was this box loom section? 30

A. It is on what is known as the river side of the mill.

Q. How many looms are there in this section?

A. About twenty-eight.

Q. How many jacquard looms?

A. Twelve or fourteen at that time.

Q. And how long had you been working on these jacquard looms?

A. About two weeks.

Q. Do you know when those jacquard looms were put in?

10 A. They started to put them up in January.

Q. Now, how long did you say you had been working in this section?

A. About a week or two.

Q. How were these looms operated?

A. They were operated by a belt from a shaft.

Q. What did the belts run around?

A. Around a pulley, I think to a pulley on the loom.

Q. What were those belts and pulleys known as?

A. The shafting was set lengthwise with the mill, 20 and the loom was set crosswise; the shafting, I should judge, if I remember right, was about 8 inches off from the loom.

Q. I asked you what those belts and pulleys were known as?

A. They set off about 8 inches from the loom, and the shafting being lengthwise, and the looms being set crosswise, or at right angles, the pulleys coming around the shafting this way, the other pulley running the opposite way, made what is known as a quarter-turn, as we 30 call it in the trade.

Q. It was known as a quarter-turn pulley?

A. Yes, sir.

Q. What operated the pulley that you have reference to?

A. A belt from a shaft.

Q. Do you mean that the shafts operated the pulleys —what operated the pulleys on the shaft?

A. A belt.

Q. What operated the pulleys on the shaft; was the shafting running?

A. Yes, sir.

Q. Was it necessary for the shafting to run to operate these belts? 10

A. Yes, sir.

Q. Now, just describe as nearly as you can the position of that shaft with reference to the floor.

A. The shaft was about 9 or 10 feet from the floor.

Q. How far from the ceiling?

A. Two and one-half to three feet.

Q. Now, Mr. Donnelly, just describe as nearly as you can the position of this shaft with reference to the looms; how did it run? 20

A. Run parallel to Broadway.

Q. Was it over the looms?

A. It was over the looms, about 9 feet off, about 8 inches I should judge to one side.

Q. And just give the jury as good a description as you can of these jacquard machines.

A. There is different kinds of jacquard machines; there is some known as the single lift, others known as the rise and fall; now this shaft being placed lengthwise and the jacquard machine, of couse, had what is known 30 as levers, three of them, one came this way, then there would be another one, and then a third, there are three, two to operate the jacquard machine and one to operate

the cylinder, it is known as the independent cylinder motion—in order to give them levers full play, so that they would not strike the shaft in traversing up and down, they had to bend some over and down in that manner, up around and over here, so that they were clutched on this side by the rods that works them up and down. There were some bent this way, and some that way, and right in the midst of those levers was a pulley that drives the loom.

10 Q. That was the pulley on which the belt run?

A. Yes, sir.

Q. Now, Mr. Donnelly, was it a loomfixer's duty to put the belts on without permission?

A. Yes, sir.

Q. What was it necessary with these jacquards to do, in order to get a broken belt on?

A. Well, it was necessary to throw the belt around the shaft, put it under the friction pulley on the loom, bring both ends together and clamp them and get a 20 ladder and put it against the gangtry and mount the ladder and lean over along the shaft and put your hand in among them levers and throw that belt on.

Q. Was it necessary to lean along and over the shafting to put the belt on this jacquard machine?

A. Yes, sir.

Q. Was it possible to stand in any other position?

A. No, sir.

Q. Was it customary for a loomfixer in putting on this jacquard machine to lean against the shafting?

30 A. Yes, sir; you had to do it in order to get the belt on.

Q. On the morning that you received these injuries, did anything happen to any of the looms?

A. Yes, sir.

Q. Just let me ask you first, during your employment in this particular section, how many of those belts had come down in that way?

A. Possibly two—three.

Q. Had you put those belts on in just the way you have described?

A. Yes, sir.

Q. Had the belt ever broken, and had you ever put the belt on the particular loom on which you were hurt? 10

A. No, sir.

Q. Did that loom become out of order on the morning in question?

A. The weaver came to me and told me his belt was broken; I went down and took the belt and threw it around the shaft, clamped it together, put the ladder against the gangtry, got up and looked carefully along the shafting, reached over among the levers, took the belt and threw it on the pulley and instantly I was whirled around the shaft. 20

Q. You say you looked at that shaft carefully—the levers and all that sort of thing?

A. Yes, sir; I am always very cautious in doing anything like that.

Q. Now, Mr. Donnelly, just repeat, what position did you get into in order to put on that belt?

A. I had to stand on the ladder, lean against the shafting, lean against and along the shafting, and reach over among the levers, and threw the belt on.

Q. Was it necessary for you to assume that position? 30

A. Yes, sir.

Q. Was there any other position you could have

assumed, in which you would not have leaned against that shafting, to put on that belt?

A. No, sir.

Q. Could you have put up your ladder from any other position on that loom and around the loom, and throw on that belt?

A. No, sir; it was too short to reach on the shafting, and if I did reach on the shafting, I could never get the belt on from there.

10 Q. Was it customary for you to lean against the shafting in putting on these belts?

A. Yes, sir.

Q. What was it caught you?

A. I was hooked by a set-screw in the side.

Q. And how soon after you leaned against the shafting did that occur?

A. Instantly, when I put the belt on the pulley, I was hooked in the side and whirled around.

Q. Where was that set-screw?

20 A. It was in a collar on a shaft.

Q. What happened next after you were whirled around?

A. After a while the power slackened and I dropped to the floor.

Q. And what then, were you conscious or unconscious?

A. I was conscious.

Q. And who was there?

A. My brother and Joseph Seavil, one of the
30 twisters in the mill, and as I dropped to the floor they caught me; I dropped feet first.

Q. What was the condition of your clothing as you dropped from that shaft?

A. I was almost naked, my clothing was wrapped around the shaft.

Q. Did you know that that coupling or set-screw was there?

A. No, sir, I did not.

Q. Was there any way in the exercise of ordinary prudence and care that you could have become aware of that?

A. No, sir.

Q. Did you exercise prudence and care while putting on that belt? 10

A. Yes, sir, I did.

Q. Was that a safe coupling?

MR. HUMPHREYS: Objected to.

MR. WARD: He is a loomfixer; he can tell how it is regarded in the trade.

THE COURT: Of course, if it was a safe coupling there would be no cause of action. 20

Q. Are you conversant with shafts and couplings?

A. Yes, sir.

Q. Where did you gain your knowledge?

A. While in the Bridgeport Silk Company, Bridgeport, Connecticut.

Q. Did you work around shafts and at shafts there?

A. Yes, sir.

Q. And couplings?

A. Yes, sir. 30

Q. Did you or did you not acquire a pretty thorough knowledge?

A. I did.

Q. Do you know what is considered safe in good couplings, and what is considered unsafe?

A. Yes, sir.

Q. Was this a safe coupling?

A. It was not, otherwise I would not have been ——

Q. In what respect was it unsafe?

A. Because the set-screws were projecting out of the rim.

Q. Can you describe to the jury, if you will, the
10 common ordinary couplings used in such places?

A. The ordinary coupling used is generally, you take a rim, cast around one end of the shaft, another rim around the other, 1½ inches wide, they are fastened with a key on the shaft, that keeps them from slipping; then they are brought together and a bolt and a nut goes through about four of them—

Q. Goes through where?

A. On the side, then the nuts are fastened on the bolt, and they are covered by the smooth rim when they
20 are both brought together; a regular smooth surface that extends out over the nuts.

Q. What sort of surface does that coupling you have just described present?

A. Perfectly smooth.

Q. Would it be possible to get caught by leaning against such a coupling?

A. No, sir.

Q. Is there any difference between the appearance of the coupling which you have last described, and the
30 coupling that caught you, when the shaft was working.

A. No, sir; there is not.

Q. Is there anything that indicates, or could indicate to a workman working around those shafts, the differ-

ence in those couplings, or which kind of a coupling the one was?

A. No, sir.

Q. While the shaft was in motion?

A. No, sir.

Q. Was it the loomfixer's duty to inspect those shafts?

A. No, sir.

Q. Or to inspect the couplings, or anything of that sort? 10

A. No, sir.

Q. Was it the loomfixer's duty to put those couplings on?

A. No, sir; it was the duty of the millwright or machinist, if they had such in the mill.

Q. Was it your duty as a loomfixer there to inspect that shaft, to put on that coupling, or have anything to do with particular belts and the appliances of the mill?

A. No, sir.

Q. How long have those safe couplers been in existence? 20

A. A good many years.

Q. Which is the usual kind of coupler to use?

A. The kind that I described.

Q. You have described both—which one?

THE COURT. The one with the flange.

Q. Is it usual for mill owners to use those other couplers similar to the one with which you were hurt?

A. No, sir. 30

Q. To your knowledge were there any other couplers similar to the one with which you were hurt, used along that shafting in that mill?

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A. Not that I know of.

Q. Did you know before you were hurt that that coupling was there?

A. No, sir.

Q. Or in that condition?

A. No, sir.

Q. Was it within your duty to know that?

A. No, sir; only by seeing it revolve around.

Q. After you fell to the floor and these people
10 gathered around you, can you mention any others who were there?

A. When I dropped to the floor, Joseph Seavil and my brother went a few steps with me and lowered me gently to the floor, and then there was a Mr. Frederick Haenichen was there and a few others, how many I don't know.

Q. Were there any others of the Haenichens there?

A. Yes, sir; Mr. Otto Haenichen was there, he was the Superintendent.

20 Q. Did Mr. Otto Haenichen say anything?

A. Yes, sir.

Q. What was it he said?

MR. HUMPHREYS: We object to any statement made after the accident by the Superintendent; he cannot bind the corporation by anything he may have said.

THE COURT: You cannot find any case
30 that holds that declarations made after the happening of an event is part of the res gestae; a declaration to be part of the res gestae must be, not a recital of what has gone before, but must

be something, some exclamation happening at or immediately after the occurrence.

Q. Within what time after this accident was this remark made?

A. I could not tell exactly, but it was while I was lying on the floor.

Q. How soon after you fell down do you think it was?

A. Five minutes, maybe. 10

Q. Was it all during the general confusion there during the——

A. Yes, sir.

Q. I believe you said that Mr. Otto Haenichen was Superintendent of that mill?

A. Yes, sir.

Q. After again asking that question what did Mr. Haenichen say at that time?

Objected to. 20

THE COURT: It is not competent as part of the res gestae, and I doubt very much if anything which the Superintendent could say afterwards as to the happening of the accident, would be binding upon the defendant; look at the case of Huebner vs. Erie Railroad, I think the court discussed that question, and I should say that at least it is exceedingly doubtful if any statement that he made—I would not admit it unless you 30 had some authority to support you: I think it is an exceedingly dangerous proposition, and I doubt very much if any admission that he would

make at that time would be binding upon the complaint, because that, I should say, was not within the scope of his authority. The objection is sustained.

Q. Whose duty was it to inspect that machinery, and to whom were reports made, if anything was out of order, or anything of that sort?

10 MR. HUMPHREYS: Objected to.

Q. Do you know?
A. Yes, sir.
Q. And who was it?
A. Otto Haenichen, the Superintendent.

CROSS-EXAMINATION BY MR. HUMPHREYS:

Q. How do you know that?

A. We always do report to our Superintendent if
20 there is anything amiss and we found it. It is our duty.

Q. In this case you would have reported anything amiss to Mr. Haenichen?

A. Yes, sir.

Q. Anything that did not fall within your functions to remedy. You would not draw his attention to a loom that needed fixing?

A. No, sir; that was my business.

Q. Where did you draw the line between his business and yours?

30 A. I was employed as a loomfixer.

Q. Was it your duty to draw his attention to this collar?

A. If I knew about it; yes, sir.

Q. And who made inspections there then?

A. There was not any that I am aware of.

Q. Now, do you know whose duty is was to make those inspections?

A. Surmise.

MR. HUMPHREYS: I repeat my objections.

MR. WARD: It is part of the general transaction of that sort of things. Any admission made by the Superintendent, or any statement made by him, would be part of the res gestae, and I also base it on the contention——

10

THE COURT: It seems to me there cannot be any question—it is not part of the res gestae. I never heard it said that anything that happened five minutes after the occurrence was res gestae; anything that happens afterwards is nothing but a narrative; it cannot be res gestae.

20

MR. WARD: Argues.

THE COURT: On the broader ground that any admission made by this Superintendent would not affect the corporation, I should say that unless you can show, for instance, that it was a part of his duty to inspect the machinery, if he had charge of it, and that this alleged defective shaft was brought home to his attention, I should say that, in the absence of that, any declaration that he may make would not be binding, because that simply summarizes—in other words, he convicts his employer without having any authority whatever;

30

but if he had the authority, it was his duty to inspect, and this alleged defective machinery was brought home to his attention, and if he afterwards said, "Oh, yes, I knew that; I knew it was wrong," I think you might be right.

DIRECT EXAMINATION CONTINUED:

Q. Now, Mr. Donnelly, after this where were you
10 taken?

A. I was taken downstairs into the office and laid on a table—carried down on a stretcher.

Q. And from there where were you taken?

A. I was taken out into the ambulance and hurried away to St. Joseph's Hospital.

Q. How long were you in St. Joseph's Hospital?

A. I was about seventeen or nineteen weeks.

Q. For the first period that you stayed at St. Joseph's Hospital, what was your bill? Is that the bill (indicat-
20 ing)?

A. That is it—$239.28.

Q. That was the amount of money that you had to pay the hospital alone up to that time?

A. Yes, sir.

Q. And you left when, do you say?

A. Along in, I think it was the 20th of July—the 18th or 20th.

MR. WARD: The 18th of July it was.

30

Q. (By the Court): Did that exclude the physician's bill?

A. Yes, sir; that excludes the physician's bill.

MR. WARD: I offer that in evidence.

Marked Exhibit P-1.

Q. During that time who was your attending physician?

A. Dr. James W. Smith.

Q. Just describe as nearly as you can to the jury your injuries?

A. My arm was broken here. 10

Q. Take off your coat and show that to the jury.

(Witness goes over to the jury and shows where his arm was broken.)

Q. And what other injuries did you have?

A. Over the heart.

Q. Can you show any others? Just show what others you had. Get up on the witness stand again. How long ago was that, Mr. Donnelly?

A. Since the 2d of April, 1903. 20

Q. Where else were you injured?

A. Oh, I was bruised.

Q. Whereabouts were you bruised?

A. Around in the body; around on my hips; cut on my head; my head was just scraped.

Q. And what have you to say as to the pain and suffering you underwent during that time?

A. If I had that accident happen again I would rather be killed; I would rather die than suffer what I did.

Q. Did you suffer any pain? 30

A. Yes, sir.

Q. Could you sleep?

A. Not very well; no, sir.

Q. How long did that pain and suffering continue?

A. For months, even up unto March last.

Q. Up to last March?

A. Yes, sir; I have pain now, too, when the weather changes.

Q. And after you left the hospital, whereabouts did you go?

A. The first time I left it I returned to my mother.

Q. How long were you there?

10 A. I was there until the latter part of January.

Q. And were you confined to the house in all that time?

A. Yes, sir, all the time.

Q. To your bed?

A. I used to get up sometimes and go 'round on my crutches; the doctor ordered me to, so my leg would not be drawn up.

Q. And after that where did you go?

A. I went back to the hospital again.

20 Q. When was that?

A. I think the latter end of January.

Q. How long were you in the hospital that time?

A. Two weeks.

Q. Why did you go back to the hospital?

A. The doctor ordered me to go back to perform another operation.

Q. The first time you left the hospital, were you discharged?

A. No, sir.

30 Q. What made you leave?

A. The expenses were so high.

Q. The second time you went back you were there two weeks?

A. Yes, sir.

Q. I show you this bill. Is that the bill for the two weeks?

A. Yes, sir.

Marked Exhibit P-2.

Q. At the expiration of two weeks you say you left?

A. Yes, sir.

Q. Then where did you go?

A. I went home. 10

Q. And how long did you stay there?

A. I stayed with my mother until the 6th of June.

Q. The 6th of last June?

A. Yes, sir.

Q. And from there where did you go?

A. I went to live with one of my brothers.

Q. Do you still live with him?

A. Yes, sir.

Q. And during all that time, from the time of the accident up to the present, what has your condition been? 20

A. I have been suffering all the time.

Q. What have you to say as to the usefulness of the leg that was injured?

A. If I stand on it and don't move around, it will get awfully painful, and if I stand I get awfully tired.

Q. Have you tried hard to accustom yourself to its use?

A. Yes, sir; the doctor ordered me to, and I used to do so even when I was suffering.

Q. What do you say as to the use of your arm? 30

A. That is not one-quarter as strong as it was.

Q. Can you turn it around that way (indicating)?

A. I can get it this far (indicating); I cannot get it

around like this, no matter how I try. It pains right there.

Q. Is there any difference in the size of your hands?

A. Yes, sir; one is a little one and the other is a big one.

Q. Was that so before the accident?

A. No, sir.

Q. Can you lift with that hand—with your left hand?

A. Nowhere near where I used to.

10 Q. Have you been able to work from the time of the injury up to the present?

A. No, sir; I have not.

Q. Are you able to work now?

A. No, sir.

Q. Did you have any other physician attending you during that time?

A. Yes, sir—Dr. Briody.

Q. I show you that paper (indicating). Is that his bill?

20 A. Yes, sir.

Q. Has that been paid by you?

A. Yes, sir.

Q. I believe these hospital bills have been paid also?

A. Yes, sir.

Q. How much is that for?

A. $22.50.

Q. (By Mr. Humphreys): What were these services for?

A. While Dr. Smith was on his vacation—during his

30 absence.

Q. (Further Direct): Have you paid Dr. Smith's bill yet?

A. No, sir.

MR. WARD: I offer that in evidence.

Marked Exhibit P-3.

Q. Now, Mr. Donnelly, how much did you spend for medicine and for things that have been ordered by the physician during this illness?

A. Near on to $200, as near as I can judge.

Q. How has that been spent?

A. Different things—medicines I have used, and different kinds of foods I had to get, and bandages. 10

Q. How much were you earning at the time you were injured?

A. $16.50 a week.

Q. Were you able to get steady employment?

A. Yes, sir.

Q. How long had you steady employment?

A. I always worked steady; I was never out of work.

Q. Did you always command that much?

A. Yes, sir; sometimss more. 20

Q. Have you been able to earn anything from that time—from the time of the injury up to now?

A. Yes, sir; I earned $28.50.

Q. Is that all you have earned?

A. Yes, sir.

Q. How did you earn that?

A. I was a watchman at the loomfixers' fair.

Q. Was it necessary for you to stand up to hold that position?

A. No, sir. 30

Q. Was there any other way for you to put that belt on than the way you put it on?

A. No, sir.

Q. Can you think of any other expense that you have been put to because of this accident?

A. Well, no.

Q. (By the Court): What did you say was the name of this thing which hooked into your clothes?

A. It was called a set-screw.

Q. Now, I would like you to say whether the flange which you say they put over the other scerw which made a smooth surface, whether you know whether that flange
10 could have been placed over these set-screws, or was this apparatus complete as it was?

A. It was complete as it was.

Q. The apparatus which had the flange over it, and which presented a smooth surface, was a different kind of apparatus from this apparatus?

A. Yes, sir; it was different.

Q. (Further direct): Was it possible with this coupling with which you were caught to fix that in any other way?

20 A. No, sir.

ADJOURNED to 10 o'clock, December 21st.

DECEMBER 21st, 1904.

30

The Court, and all connected with the case, including the jury and counsel, then proceeded to the mill where the accident occurred.

MR. ABRAM DONNELLY resumes:

Q. (By the Court): Just show where you stood—about your position, and what you were reaching to do, and how you say you were hooked.

A. In order to get the belt on, the power must be running in order to get it on this pulley, and in order to throw it over on the pulley there will be a resistance. I have to get in in this manner (illustrating). In order to get the belt on there will be a resistance, and I have got to get over in this manner to get it on. There will be a resistance, you see, so that I have got to brace myself right against that shafting to throw that belt on. 10

Q. (Further Direct by Mr. Ward): Face around a little ways.

A. I have got to see what I am doing; there are some levers there; I don't want my hand to slip over and get down in there.

Q. Face around a little and see how it looks. 20

A. Then I could never get it on.

Q. (By the Court): Where was the set-screw—point?

A. They were right here, see, in the sides.

THE COURT: Indicating an iron shaft.

MR. WARD: Indicating the outer surface at right angles to the floor and ceiling.

30

THE COURT: The point on the shaft that the witness indicates is about opposite the witness' navel.

MR. WARD: Lean in that position to put that belt on, Mr. Donnelly—right in the position you were in.

MR. WARD: The witness does so, and coupling, set screws, etc., come in contact with that part of his body, the right side, about midway between the arm-pit and the hip.

THE COURT: The witness said he only could
10 put this belt on when the pulley was in motion.

THE COURT: Is there a set-screw on that shofting now?

THE WITNESS: Yes, sir.

Q. (By the Court): What is it? Put your hand on it.

20 (Witness does so.)

MR. McGINNIS: It has been driven in closer to the pulley.

THE COURT: He says it all looks the same; the collar and the shaft is in the same place as it was when he was here.

Q. How much more is that set-screw in now?
A. From the manner in which I was hooked around
30 it, it seems to be in over one-quarter of an inch more than it was then.

MR. WARD: Throw the power on.

Q. What have you to say, Mr. Donnelly, as to the belt itself—is it looser or tighter than it was then?

A. It is looser now.

(The Court and jury, and everybody connected with the case, then returned to the courtroom.)

ABRAM DONNELLY resumed the witness stand.

10

DIRECT EXAMINATION CONTINUED BY MR. WARD:

Q. While you were working as a loomfixer, or in that particular section, was or was not that shaft moving?

A. It was always moving, always working.

Q. Was it your duty as a loomfixer to inspect that shafting, or have anything to do with it?

A. No, sir.

Q. Was that incidental to your employment?

20

MR. HUMPHREYS: We object to giving legal conclusions and leading questions; the witness has a right to describe what his duties were.

THE COURT: That is right.

MR. WARD: What were your duties?

A. To fix looms, to put in warps, and see that they made the goods perfect.

30

Q. Did you have anything to do with that shaft at all?

A. No, sir.

Q. Was or was not that shaft running when they would put on belts?

A. Yes, sir; you could not get it on otherwise, if the belt was right; whenever you had to put a belt on, the power was always running.

Q. Was there any way of putting on those belts with the power stopped?

A. No, sir; you could not get it on.

10 THE COURT: This pulley had to revolve in order to get the belt on?

A. Yes, sir.

Q. Is it or is it not ever customary to stop the shaft to put on pulleys?

A. No, sir; it is not.

Q. To put on belts, I mean?

A. No, sir.

Q. How is your eyesight?

20 A. First rate.

Q. What was the condition of your clothing before that accident?

A. I had on a pair of shoes and stockings and under-drawers and undershirt; also overalls and jumper.

Q. Was your jumper buttoned or unbuttoned?

A. It was buttoned.

Q. Was it in good or bad condition?

A. It was a new one; I only bought it a few weeks before.

30 Q. Whose duty was it to inspect and keep that shaft in order?

A. Mr. Haenichen's.

Q. Was it the loomfixer's duty?

A. No, sir.

Q. Was that belt to-day in the same condition that it was the day that you tried to put it on?

A. No, sir.

Q. What was the difference?

A. That belt was awfully slack to-day.

Q. I noticed to-day that you put that belt on when the shaft was not running?

A. Yes, sir, because the belt was slack.

Q. Would it be possible to put the belt on when the shaft was not running and the pulley standing still, if the belt were in proper condition and proper to run that loom? 10

MR. HUMPHREYS: Objected to.

THE COURT: That is another way of getting at the condition of the belt. He says that to-day it was awfully loose; of course, he has not described what condition it was in on the day of the accident. I think it is proper. 20

No exception taken.

Q. What was the condition of the belt on the day of the accident?

A. It was tighter than it was to-day.

Q. What was the condition of the collar and set-screws on the day of the accident as compared with to-day?

A. The set-screws were projecting out further. 30

Q. What was the velocity or speed of that shaft with which that shaft revolved on the day of the accident as compared with to-day?

A. It revolved about close onto 200 revolutions a minute then, and to-day it did not revolve so fast.

Q. Was it possible at that time, the day of the accident, to see those set-screws at the rate at which the shaft was revolving at that time?

A. No, sir.

Q. With the belt in the proper condition, and as tight as you have described to us, would it or wouldn't it be necessary for a loomfixer, in putting on that belt, to get
10 up close to and come in contact with the shaft?

A. He would have to, to get it on.

Q. Had you or had you not been warned of the condition of the set-screw?

MR. HARDING: Objected to; the witness was of age, and no warning was necessary under the law; it is immaterial.

THE COURT: I don't see how it is competent.
20

Question withdrawn.

CROSS-EXAMINATION BY MR. HARDING:

Q. Your age is about 40?

A. Yes, sir.

Q. And you previously worked in some other place as a loomfixer?

A. Yes, sir.

30 Q. Where was that?

A. I have worked in the Bridgeport Silk Company.

Q. When did you first work there?

A. Ten years ago. I worked with Cheney Brothers.

Q. And where else?

A. I have worked in Bamford Brothers'.

Q. Where else?

A. Clifton Silk Company.

Q. When did you begin to work for Haenichen Brothers?

A. Almost four years before the accident.

Q. As a loomfixer had you worked for them?

A. Yes, sir.

Q. In this same mill? 10

A. Yes, sir.

Q. In this same room that you and the jury were in this morning?

A. I worked four years in that room.

Q. Did you go in it in the same way that we went in it this morning?

A. Yes, sir.

Q. Every day?

A. Yes, sir.

Q. How long had that particular collar been in this 20 mill—in this room?

A. I don't know.

Q. When did you first see it there?

A. I did not notice that collar in particular. I never noticed it. I did not know anything about it until I was hooked there that day.

Q. And yet you have been going by there every day for four years?

A. Yes, sir; but my business was not to look up.

Q. Were there any other collars like that in that room? 30

A. I don't know.

Q. You never looked to see what kind of collars are around the different rooms?

A. I did not notice whether they are different from that or not.

Q. Do you mean to say at this time you cannot tell any particular collar on the shaft in that room?

A. I don't know whether they are like that or not in that room.

Q. You frequently had occasion to put on belts?

A. Yes, sir.

Q. On the pulleys?

10 A. Yes, sir.

Q. When you put belts on the pulleys in any place in that room, what kind of collars were they?

A. The kind of collars?

Q. Yes.

A. Whether they are like that or not I don't know.

Q. Why shouldn't you, when you stood there putting on the belts?

A. When you are putting on a belt a person is not looking to see really what kind of a collar is on there.

20 Q. You did not look at the collar?

A. Oh, yes.

Q. You did not look at it with the idea of seeing the kind of collar it was at all?

A. You cannot tell that when the shafting is revolving.

Q. There are two flanges that stick up on those collars you refer to?

A. Yes, sir.

Q. Stick way up above the part that fastens the collar to the shafting, so that all the fastening is covered?

30

A. Yes, sir.

Q. Don't those present an entirely different appearance from this collar that you saw this morning?

A. Not to the casual observer.

Q. If you looked at it, tell us how you could distinguish the difference?

A. That is hard to say. If you look at it minutely?

Q. I mean to say as you glance at it with your eyes, when it is a foot or two away from you, is there any difficulty at all from determining the collar with the flange on, such as you have described, from this collar?

A. The man is on the floor.

Q. When you are up putting the belt on, can you discover then the difference between the two kinds of collar— can you easily tell whether it is a flange collar or this kind of a collar with the set-screws in it? 10

A. You could not tell the difference.

Q. Why not?

A. The shafting is revolving around.

Q. Suppose it is; it is an entirely different kind of collar, isn't it?

Q. Don't the rings stand out above the collar?

A. Just about like that. 20

Q. You have just said, as I understand you, that the set-screws were standing further out?

A. Yes, sir.

Q. In this collar at the time you were hurt?

A. Yes, sir.

Q. How much further out were they standing?

A. They must have been one-quarter of an inch, the way I was hooked.

Q. When did you determine that it was standing out one-quarter of an inch more? 30

A. By the manner in which it hooked me—it dug right in.

Q. Is that the only way?

A. By the feel—that is the only way. I never saw that since until to-day.

Q. Now, I would like to have you tell me about what time of day it was when you were called to adjust this belt?

A. About 10 o'clock.

Q. The belt had broken?

A. Yes, sir.

Q. And it was your duty as a loomfixer to fix the belt?

10 A. Yes, sir.

Q. A loomfixer's duty requires you to fix the belt?

A. Yes, sir.

Q. And other parts of the loom when they get out of order?

A. Yes, sir.

Q. All other parts of the loom?

A. Yes, sir.

Q. A loomfixer also puts on the material on the loom for the weaver, doesn't he?

20 A. What do you mean by that?

Q. Well, puts on the silk?

A. No, sir; that is a twister's work.

Q. Is not that generally a loomfixer's duty?

A. No, sir.

Q. Don't they ever put the material on the loom?

A. We are speaking of a Jacquard loom. No, sir.

Q. You did not do it on this loom?

A. No, sir.

Q. So your duties were simply duties of repairing the

30 loom?

A. Fixing the loom.

Q. And fixing the belt when it became too loose? Did

you ever fix the belt when it became too loose? Who did that?

A. In there I fixed them on the other loom.

Q. Was that your duty?

A. Yes, sir.

Q. If this belt had been too loose, you would have fixed it?

A. Yes, sir.

Q. Is that belt down there this morning not in proper shape for the operation of the loom? 10

A. That belt is awfully loose.

Q. Is it any looser than the average belt around the place?

A. Yes, sir.

Q. That was the loosest belt there?

A. I never saw any but that one.

Q. Is that not the way they are usually put on the loom?

A. No, sir; that belt is pretty slack.

Q. It broke this way? 20

A. Yes, sir.

Q. Where did it break?

A. I don't remember whether the hook pulled out, or what.

Q. Who told you about it?

A. The weaver.

Q. Where were you when he told you?

A. At the other end of the floor, away from there.

Q. I suppose you are busy all the time in repairing the looms in that section? 30

A. Not all the time.

Q. Didn't it keep you busy?

A. It did at that time.

Q. How many looms are there in that room?

A. About fifty-six.

Q. You must have worked, then, on each loom a great many times in the course of your four years there?

A. No, sir.

Q. Why not?

A. Because that section is divided.

Q. How many loomfixers are there in that section?

A. Two.

10 Q. Didn't you look over very frequently all the looms that were there?

A. I looked over on the shaft looms for a good many years.

Q. What hour in the day was it that you started to fix this belt?

A. Ten o'clock in the morning.

Q. Of an April day. Where did you go to fix the shafting—did you stand in front of the loom where you did this morning?

20 A. I stood back where we stood this morning.

Q. After you fixed the shafting, did you have a man there helping you?

A. The belt, you mean. No, sir.

Q. Was there any man standing there when you did fix the belt?

A. No, sir.

Q. Was there any man holding it while you were putting it on?

A. Yes, sir.

30 Q. Who was that?

A. The weaver, I think.

Q. He stood there holding the lower part of the belt?

A. I could not swear to it.

Q. I understand you to say that after you fixed the belt—did you put the belt on the lower pulley first—put it under the lower pulley?

A. I threw it over the shaft, and then I adjusted it under the lower pulley.

Q. And then you went up the ladder—walked up the ladder and took the belt off the shaft?

A. Yes, sir.

Q. And put it over the upper pulley?

A. Yes, sir. 10

Q. That is the first thing you did before you were caught?

A. While I was doing that I was caught.

Q. You got the belt on?

A. I could not swear to that, because I was whirled around the shaft at the time.

Q. The belt was in fact on the pulley, placed there by you, wasn't it?

A. I put it on; whether it had run around the pulley or not I don't know. 20

Q. You had got hold of the belt and stood upon the ladder and placed it on the pulley?

A. On the edge of the pulley.

Q. When you felt yourself caught?

A. Yes, sir.

Q. Now, how did you first feel yourself caught?

A. I felt myself hooked right in the side.

Q. As I saw you standing up there this morning, in order to adjust this belt, you have to stand against the shaft? 30

A. Yes, sir; you get brought against the shaft, and when you are throwing it on, right away, as you attempt to throw it on.

Q. So, then, you must have felt the movement of the shaft on you before it actually hooked you, didn't you?

A. You have to lean against the shaft.

Q. You did lean against it before you were hooked?

A. Yes, sir.

Q. And were trying to put the belt on?

A. Yes, sir.

Q. And as you were trying to put it on it suddenly hooked you?

10 A. Yes, sir. You do not put all your weight against it when you lean, you know.

Q. You say you were perfectly conscious of something hooking you in the side?

A. Yes, sir.

Q. Show us where it hooked you in the side.

A. Here (indicating).

Q. On the righ side?

A. Yes, sir.

Q. As soon as that hooked you, what did you do?

20 A. Went right around the shaft.

Q. Immediately?

A. Yes, sir.

Q. Were you conscious?

A. Yes, sir.

Q. What did you do as soon as that happened? Did you take any means to protect yourself?

A. I swung around so fast I could not.

Q. In what way did you go around?

A. I could not tell you.

30 Q. Was your body diagonal with the shaft?

A. I was going around the shaft.

Q. Your body was at right angles with the shaft?

A. I went around with it.

Q. Sort of crossed the shaft?

A. The shaft was going that way (indicating), and I went around the shaft.

Q. Do you know how many times you went around?

A. That I could not tell.

Q. I observed, when you went up the ladder this morning to show how you adjusted the belt, that your body leaned against the shaft?

A. Slightly; yes, sir.

Q. It was leaning against the shaft as you first took the belt to put it on the pulley. Is that right? Is that the way you did it? 10

A. Yes, sir.

Q. And then afterwards you lifted up the belt and put it on the pulley, and just as you did it you felt this clutch in your clothes?

A. Yes, sir.

Q. Did you say you could give us any idea about how many times you were whirled around the shaft?

A. Half a dozen or more; probably a dozen, for all I know; it seemed an age. 20

Q. You saw Mr. Haenichen adjust the belt to the pulley this morning?

A. Yes, sir.

Q. And you saw two other gentlemen—Mr. Barker and another man—adjust it, too, did you?

A. Yes, sir.

Q. When they adjusted it, their bodies were from sixteen to eighteen inches away from the collar—you saw that? 30

A. Yes, sir.

Q. You saw them stand up erect, reach their hand over on the belt, and when they put the belt on the pulley

the body of each of these gentlemen was from sixteen to eighteen inches away; the right-hand side of their bodies was sixteen or eighteen inches from the nearest point of the collar?

A. I saw that; yes, sir.

Q. But I understand you to say that you did not do it that way, but did it in the way that you showed us this morning. I ask you that question.

A. That is the way you have to do it when the belt is
10 tight.

Q. That is the way you did that day?

A. You have to do it that way.

MR. HARDING: I ask that the response of the witness be struck out and that he answer my question.

THE COURT: Strike it out.

Q. (Question read.)

20 A. Yes, sir.

Q. That is the way you did it that day; you did it the way you showed us this morning on the day you were hurt?

A. Yes, sir.

Q. In your direct examination I understood you to say that just before you put the belt on the pulley you looked carefully along some part of the machine?

A. Yes, sir; along the shaft; looked carefully along the shaft.

30 Q. Do you mean the shaft that the belt was on?

A. Yes, sir.

Q. You looked carefully along it? How far along it?

A. Along from where I got up on the ladder.

Q. As I understood you, then, before you took hold of the belt at all you directed your eyes to the shaft on which the power was and looked along it?

A. When I was coming up the ladder I looked along the shaft.

Q. Carefully?

A. Yes, sir.

Q. Why did you do that?

A. I am always cautious when I get in a position like that, because I don't like to get injured. 10

Q. You did, then, think there might be danger if you got near to the shaft?

A. Not exactly there, but anywhere, wherever I go, where there is a revolving shaft.

Q. You say you looked at the shaft and the collar?

A. Looked along, glanced at it.

Q. For the purpose of not getting hurt?

A. Yes, sir.

Q. Then it was that you took up the belt and put it on the pulley? 20

A. I tried to put it on the pulley.

Q. Was your ladder firm all the time?

A. Yes, sir.

Q. You adjusted that carefully, did you?

A. Yes, sir.

Q. You were torn from the ladder. Did anything happen to the ladder when you were torn from the ladder?

A. I could not tell you what happened to the ladder. 30

Q. You don't know about that?

A. No, sir.

Q. You did not feel any toppling to the ladder, then?

A. I felt myself pulled away from it; whether it toppled or not I could not swear.

Q. I understand you were perfectly conscious, and I want to understand how long it was from the time you first felt this clutch of some kind in your clothing until you were taken from the ladder—how long a time elapsed?

A. It was almost instantly.

Q. Did it seem to gather your clothing up in any way?

A. It hooked me right in there and whirled me right
10 around.

Q. You had on a jumper?

A. Yes, sir.

Q. That is a tight-fitting jacket?

A. Some fit tight and some loose.

Q. Well, it is a jacket?

A. Something like a coat; it is made of some kind of cotton goods, generally blue.

Q. It was buttoned all up?

A. Yes, sir.

20 Q. Now, I am anxious to know, inasmuch as we have not seen one, just exactly what this flange collar is.

A. A flange collar is a collar that goes around one end of the shaft; then another flange goes around the other end of the next shaft that is going to be joined together, and right in under the flange there is bolts and nuts to clamp them together; they go together.

Q. As you stand on the side or on the end of this flange collar, you could see the bolts and nuts sticking in there?

30 A. If the power was stopped and you looked in.

Q. Cannot you see the cavity where they go in at all?

A. You can see the general blur.

Q. Then, as I understand, there are some of these collars that have the flanges on in this room?

A. I don't know.

Q. Don't you know there were some there?

A. No, sir.

Q. See if I understand what the appearance is. Can you draw me a little diagram showing me how this flange is put on the power? I don't understand your kind. What kind of collar did they have in these other places where you worked? 10

A. The kind that I have just tried to describe to you.

Q. Where did they have those?

A. In Bamford Brothers', and they had them in the Bridgeport Silk Company; they also had them in Cheney Brothers'.

Q. Did they have any set-screw kind?

A. I never saw any.

Q. How did you happen to know that they had the flange kind in all of these other places you have spoken of? 20

A. Because I have seen some of them in operation.

Q. Seen some of them in operation?

A. Yes, sir; in putting up the shaft.

Q. In all these other places you have seen them in operation?

A. I have seen them in operation in different places; yes, sir.

Q. How could you tell they were that kind unless you examined them?

A. I did not examine them. 30

Q. Why is it you cannot tell any of the kind of collars that were in this mill, although you worked in this

room for four years, and yet you can tell so much about them in other mills?

A. You could not help but see them.

Q. Could you help but see them in this mill that you worked in for four years?

A. No, sir.

Q. What time did you go to work here?

A. Five minutes to seven.

Q. The most of the hands do that?

10 A. Yes, sir.

Q. What time did you leave?

A. Twelve o'clock.

Q. In the course of four years that you were there, I suppose, of course, that the power was often off when you were there during those four years?

A. The power was running most of the time that I was there.

Q. But there were times when you were there during the four years that the power was off?

20 A. Before the starting up time, perhaps.

Q. You often came in when the power was not running?

A. Yes, sir.

Q. You walked up where we walked up this morning, and saw that collar and that shaft when it was not moving at all?

A. No, sir; I was in a hurry to get my things off and be ready for work.

Q. In the twelve hundred days that you worked in

30 that place do you mean to say you never observed over your head the collar or the shaft there, do you pretend to say that?

MR. WARD: Objected to; he has already answered that question.

THE COURT: Objection overruled.

Q. Do you pretend to say that; that you were for four years you were going in there when the power was not on, and you never looked to see three or four feet over your head whether this set-screw was there, and never observed the situation?

A. No, sir; I did not. 10

Q. And although you were as careful as you say you were whenever you adjusted a belt, and have frequently been there when the power was not on, you are not able to tell us or to describe to us a single kind of power that was in that mill during the four years you were there?

A. No, sir.

Q. Where did you put your jumper and overalls?

A. I used to put them right around the corner.

Q. How far from the shaft?

A. About ten feet. 20

Q. You went in the morning and took off your street clothes, didn't you?

A. Yes, sir.

Q. Within eight or ten feet of where this collar was?

A. Yes, sir; but it was around the corner on the left-hand side.

Q. But you passed by it, didn't you; you passed by this collar and went to your left, you passed under your collar and went to the left.

A. In coming in? 30

Q. Yes.

A. Many a time I came up the stairs and came right around and hung up my clothes.

Q. Didn't you come right in the place where we went in this morning, and turn to your left eight feet—are you prepared to swear it was eight feet?

A. About that, I should judge.

Q. Do you think it was over five feet?

A. Oh, yes.

Q. Well, these eight feet; we will say you took your clothes off there, and then you took your clothes off and went under the collar again and went out in the
10 gangway and went off to your work around the other parts of the room, is that so?

A. Not the way you tell it; I went in there and took off my jumper, and took off my clothes, and I used to hang my jumper and overalls in the W. C., then I would go and hang my clothes up, and then I went down.

Q. Where did you hang your clothes?

A. Right around where we were standing this morning.

Q. You hung your clothes on what?

20 A. On pegs; I changed in the W. C., where I used to change.

Q. Where you put your clothes off and put them on, if you had stood this way, you would have been looking, within eight feet of you, at this collar.

A. If I looked up at it.

Q. And very often you did, and when the power was off.

A. No, sir.

Q. The power was not put on there generally until
30 you got there in the morning.

A. Yes, sir; for three years.

Q. But a great many times it was not on when you got there.

A. I used to put the power on myself a great many times.

Q. Sometimes you would?

A. Yes, sir.

Q. Was not the power usually put off before you left in the evening and got your clothes changed?

A. I would change my clothes before the power was off.

Q. Did you ever put up any shaft in this shop? 10

A. No, sir.

Q. Nowhere in the shop?

A. No, sir.

Q. I mean in this room?

A. No, sir.

Q. In any other part of the shop outside of this room?

A. No, sir.

Q. (By the Court): Do you say, Mr. Donnelly, that at least a year before this time you did not put up a shaft on that same floor? 20

A. I helped—with the tools down below, passed them.

Q. What part of that floor did you put it up?

A. On the jacquard section.

Q. Was it this shaft?

A. No, sir; the one this side of it.

Q. What kind of collar did it have on?

A. I never noticed, I was not up there putting it on.

Q. Did you ever see a collar with a set-screw in it anywhere in your life? 30

A. No, sir.

Q. Sure of that?

A. On shafting—no, sir; they generally have these safe collars.

Q. And for fifteen years you have worked in all these mills?

A. Yes, sir.

Q. And you swear you never saw a collar with a set-screw in it—never saw such a collar as this one where you were hurt?

A. No, sir.

10 Q. Will you swear there were none in the other mills?

A. That I would not swear to.

RE-DIRECT EXAMINATION BY MR. WARD:

Q. You say you had put belts on these looms before. Was that before or after the jacquard machine had been put in?

A. That was before.

Q. And were the belts put on the same or differently

20 with these jacquards?

A. Had to put them on differently with the jacquards.

Q. With regard to the time, after you put or slipped that belt on, when were you caught?

A. Instantly.

MR. HARDING: We have been all over that subject, and the witness has been cross-examined on it, and now he is trying to hitch from his previous examination.

30

THE COURT: I don't think we should say "trying to hitch." I think he has been all over that.

MR. HARDING: I ask that the question and answer be struck out.

THE COURT: I think it has all been gone over. I sustain the objection.

To which ruling of the Court the plaintiff's counsel prays an exception.

Exception allowed; let it be sealed, and it is sealed accordingly. 10

WILBUR A. HEISLEY, J.

Q. How soon after you touched the shaft, how soon after you came in contact with the shaft, were you caught?

MR. HUMPHREYS: Objected to.

Objection sustained.

To which ruling of the Court the plaintiff's counsel prays an exception. 20

Exception allowed; let it be sealed, and it is sealed accordingly.

WILBUR A. HEISLEY, J.

Q. In your cross-examination you testified that you saw these men this morning slipping these belts on and off, and slipping them on and off while from 16 to 18 inches away from that shaft? 30

A. Yes, sir.

Q. Could or could not these men have adjusted the belts on that shaft this morning if there had been the same

conditions existing this morning that existed at the time —if the same conditions existed at the time that you were hurt that existed this morning?

MR. HARDING: Objected to, on the ground that they have previously been over; and further objected to on the ground that it is a conclusion of the witness with reference to facts. The jury and the Court have seen the facts. He can testify 10 to facts, but he cannot draw the conclusions about what could have been done.

MR. WARD: On direct examination I abstained from asking any questions regarding the adjustment of these belts by other men; that was not gone into on direct examination at all; it was gone into on cross-examination—the cross-examination alone. I think this witness is capable and is a proper witness to give his opinion on that, sir.

20

MR. HARDING: Objected to on the ground that it calls for an opinion from the witness.

Objection sustained.

MR. WARD: This is what I want to show, and I think I should be allowed to show it.

THE COURT: It will be nothing but his opinion.

30

MR. WARD: But I want to show the circumstances that surrounded the putting of the belt on this morning were not the same; if they had been

the same it would not have been possible for those men to have stood in the position they stood in in putting that belt on.

THE COURT: If he can show, if he can demonstrate it to the jury, I suppose it is competent. A mere matter of opinion of whether the accident would have happened under the same conditions or not I do not think is relevant; but if he can show the jury any facts from which they could say that under the conditions that prevailed at the time of the accident it would have been impossible to have stood 18 inches away, I suppose that is competent. 10

Q. Then I ask you why——

THE COURT: I think, Mr. Harding, he should be allowed to show that.

20

MR. HARDING: I am objecting to an inference, that is all.

THE COURT: Ask the question; you are entitled to show the facts, of course.

Q. If the same circumstances had existed, if the same conditions had existed around and about that loom, shaft and belt this morning that existed at the time of the accident, would it have been possible for those men who slipped that belt on this morning at the time of the accident to have stood from 16 to 18 inches away from that shaft? 30

MR. HARDING: Objected to on the grounds previously mentioned, as not showing the facts.

THE COURT: Amend your question by asking him if he can say whether it was possible, and then follow it up, if he says he can, by asking why; I will admit it.

Q. (Question read.) Can you say that?

10

MR. HARDING: Objected to on the grounds I have already stated, and on the further ground that it is reopening the case, reopening direct examination that should have been completed before.

THE COURT: The objection is sustained, because the question is not modified along the lines which I have indicated.

Q. Can you say whether or not it would have been
20 possible for those men to slip on that belt, at the place they did this morning, and stand from 16 to 18 inches away from that shaft, if the conditions existed this morning the same as they existed at the time you put the belt on?

MR. HARDING: Objected to on the same grounds that I have stated.

Objection overruled. Exception to defendant.

A. They could not do it.
30 Q. Can you say whether or not you know?
A. I know they cannot.

MR. HARDING: I ask that that answer be

struck out, as not responsive and as immaterial and irrelevant.

THE COURT: Strike it out. You are not asked to say whether they could or could not; you are asked whether you can say, and you must say yes or no; then you will be asked another question.

Q. Are you able to tell us? Can you say whether, under the conditions that prevailed on the day that you were hurt, whether a man could have gone up on that ladder and adjusted that belt, and kept his body from 15 to 18 inches away from the shaft? Can you say? 10

A. Yes.

Q. You can say that?

A. Yes, sir.

Q. Why can you say that?

A. Because the belt was tighter then.

Q. And anything else?

A. In order to get that belt on, you would have to get purchase from the shaft to throw it on. 20

Q. Now, I ask you now if the same circumstances had existed to-day that existed at the time you were injured——

THE COURT: He has answered that.

MR. WARD: He first said whether he could say, I thought.

30

THE COURT: Then you followed it up, and he said he could not because the belt was tighter then.

Q. Now, Mr. Donnelly, did you apprehend any danger from that shaft at that place?

A. No, sir.

Q. Did that ladder slip before you were caught by that pin?

A. No, sir.

Q. You said on cross-examination that there were other mills in which you had seen these safe couplers, or common, ordinary couplers. In these other mills, where
10 you saw these safe common couplers, did you or did you not come in contact with the shaft, and was it or was it not your duty to repair that shaft and take it down, etc.?

A. In some of the other mills, yes, sir.

Q. Was it your duty to take down the shaft in this mill where you were working, or repair it or inspect it?

A. No, sir.

THE COURT: Inspect it? That is a conclusion.

20 Q. You testified in your cross-examination that about six or seven months prior to the accident, you had assisted or had something to do with fixing a certain shaft in that mill?

A. Yes, sir.

Q. Was that in the line of your duty?

A. We were called on by Mr. Haenichen.

Q. Answer my question. Was that in the line of your duty as a loomfixer?

A. Not as a loomfixer; no, sir.

30 .Q And was that shaft that you fixed, or assisted in fixing at that time, the same one——

MR. HARDING: Objected to.

Q. (By the Court): How many times do you suppose, in the four years that you were working in this mill, that you had gone up on this ladder and adjusted this belt?

A. This same belt?

Q. Yes; just approximately.

A. I could not tell you how many times.

Q. Approximately?

A. Probably once in a couple of weeks, or something like that; but I could adjust the belt from the front of the loom before the jacquard was put up. 10

Q. How long had the jacquards been put up before the day of the accident—about?

A. About, oh, three months.

Q. How often do you suppose—of course, it is only an approximation—during the three months, you have gone there and adjusted that belt if a jacquard had been put up?

A. I never put that belt on that loom before.

Q. That was the first time? 20

A. Yes, sir.

Q. Had you put any other belt on that loom on a pulley—had you put any belt on that pulley after the jacquards had been put up?

A. I put them on other pulleys, yes, sir; but not on that loom—on other looms.

Q. Speak of this pulley. As I understand it, the pulley is where the belt goes on?

A. Yes, sir.

Q. After the jacquards were introduced into the mill, I want to know whether you had put a belt on this particular pulley by going up the ladder the same as you did on the day when you were injured? 30

A. Not on that particular pulley; no, sir, I did not.

Q. You had never put any belt, then, you say, on this particular pulley after the jacquards were put up?

A. No, sir, I did not.

Q. That was during the period of three months?

A. Yes, sir.

Q. Now, then, before the jacquards were put up, did you go up this ladder the same way to put on the belt?

A. Yes, sir.

10 Q. Would you lean against this shaft when you would do that?

A. Well, you see, on account of them levers, you had to get the purchase, you know, and you would have to put your hand right among them to throw it on, and get your body in a different position.

Q. Did you lean against the shaft before the jacquards were introduced when you put on the belt?

A. Yes, sir.

Q. How do you account, then, if you can, that you 20 were not hurt before?

A. I never put that belt on that particular loom before until after the jacquards were on.

Q. You have testified jacquards were on. As I understand it, before the jacquards were put up you put the belt on the pulley by going up in front instead of on the side you went up this morning—is that it?

A. Yes, sir.

Q. That is it?

A. Yes, sir.

30

MR. EDWARD DONNELLY, sworn in behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION BY MR. WARD:

Q. How old are you?
A. Twenty-eight.
Q. What is your occupation?
A. Loomfixer.

MR. HARDING: I want to recall the plaintiff for a moment.

10

ABRAM DONNELLY recalled for further cross-examination by Mr. Harding.

Q. I think you said that shaft was revolving about 200 revolutions a minute?
A. Yes, sir.
Q. And you said to your counsel that it seemed to be running slightly less, without telling him how many less —slightly less this morning, I mean. How much less would you say it was?
20
A. It might be running probably 30 or 40 or 50.
Q. It would be running this morning, then, 170?
A. Yes, sir.
Q. And about 200 when you were hurt?
A. No, sir; it was running, I should judge, between 180 to 200 when I got hurt, and it was running slower now.
Q. How much slower now?
A. It seemed to be running, well, 20 to 30 revolutions slower; so it seemed.
30
Q. It is running at about the way they operate a mill on jacquards?
A. On some mills they run 240 revolutions a minute.

Q. On these mills they usually run somewhere around 200—I mean these looms of Haenichen Brothers?

A. Before I was hurt they went somewhere around, I should judge, about 180; somewhere like that.

Q. And you think now it is 30 less?

A. Yes, sir.

Q. (By Mr. Ward): How many revolutions do you think it was making this morning?

A. 130; something like that.

10 Q. (Further cross): Did you look to see how fast it was running at the time you were hurt?

A. It seemed to me it was running faster when I was hurt than it is now.

Q. Then you must have looked at it carefully. You looked at the collar which was running around?

A. It was a blur.

Q. You saw this morning, didn't you, when you looked, that you could see the set-screw very plainly this morning, when it was running?

20

MR. WARD: Objected to; it has all been gone into.

MR. HARDING: Not this question.

Q. Did you, this morning, when you saw it running, see the set-screws very plainly on the collar when it ran?

A. They were very bright this morning.

30 Q. (By Mr. Ward): Could you see them that day?

THE COURT: He has already said he could not.

EDWARD DONNELLY resumes the witness stand.

DIRECT EXAMINATION CONTINUED BY MR. WARD:

Q. How old are you?

A. Twenty-eight.

Q. What is your occupation?

A. Loomfixer. 10

Q. How long have you been a loomfixer?

A. About 8½ years to 9.

Q. How long have you worked in the silk business?

A. I think about 14 years.

Q. Whereabouts were you working a year ago last April?

A. With Haenichen Brothers, Broadway.

Q. How long have you been working there?

A. I think I worked there about 10 or 11 months.

Q. You are a brother of the plaintiff? 20

A. Yes, sir.

Q. And in what capacity were you working for them?

A. As a loomfixer.

Q. Now, for several months prior to April, what section or part of the mill of Haenichen Brothers' mill have you been working in?

A. Jacquards—starting them up.

Q. When were they put in?

A. Along in January.

Q. Before that, what kind of looms were they? 30

A. The same kind of looms—the jacquard machine; they had shaft work in there; they were the same kind of looms, but they were running shaft work.

Q. Do you mean that these looms had the jacquards on before January?

A. No, sir.

Q. You mean they were the same kind of looms without the jacquards?

A. Y'es, sir.

Q. Is it a loomfixer's duty to put on belts when they break?

A. Y'es, sir.

10 Q. And with these plain looms, without the jacquards, how were the belts put on?

A. We got right up on the railing of the loom; there is two rails, and you stand up like that and reach over and put it on.

Q. Is it necessary to jacquard looms to put the belt on?

A. Certainly, and you cannot get—there is a lot of levers there; you cannot reach your hand through there; you grab hold of the belt like that and throw it on.

20 Q. Describe to the jury, if you will, what is necessary for a loomfixer to do, when a belt breaks, to put that belt on a jacquard loom?

A. As you saw down there this morning, if a belt broke you would have to put it around the shaft, and then down below around the friction pulley, and couple it together, and then get your ladder and go up the ladder and grab hold of the belt—but not like they did it down there; it was tighter than that; you get hold of the belt like that and put it right on.

30 Q. When the loomfixer was doing that, how near to the shaft would his body necessarily be?

A. His body would mostly strike the shaft the instant he put it on, if the belt is tight at all.

Q. And is there any way known to a loomfixer in which he can put it, or put a belt, on a jacquard machine without his body coming in contact with the shaft?

A. Not at that particular place.

Q. I mean any jacquard machine?

A. Any jacquard machine?

Q. Yes.

A. Well, now, excuse me a moment.

Q. Do you understand my question?

A. No, sir. You are talking about this separate shaft? 10

Q. I am talking about jacquard looms, and I am asking you if it is possible for a loomfixer to get in any other position, or any position in putting those belts on those jacquard looms, without his body touching and coming in contact with that shaft?

A. Not with that one; I could not do it.

Q. Could any one else?

A. No. Not that I know of.

Q. Is or is not that the customary way for loomfixers to put belts on those jacquard machines? 20

A. It is the only way.

Q. How long did you work on this jacquard section?

A. I started them all up.

Q. You put the jacquards in?

A. I put them all up and got them running.

Q. Was that in your capacity as a loomfixer?

A. No, sir; when you start them up you cannot do any fixing.

Q. Was that or was it not extra work?

A. It is extra work at every place; it is always considered extra work. 30

Q. And do you know the place where your brother was hurt?

A. Yes, sir.

Q. Did you become aware of the condition at that shaft prior to the time your brother was hurt at that particular place?

A. Yes, sir.

Q. Just tell the Court and jury how you became aware of the condition of that shaft.

A. One of the journals got hot on the shaft, so instead of seeing them all get hot I went and oiled them up; that
10 was at the noon hour, and I saw this coupling.

Q. While you were oiling the shaft?

A. Yes, sir; that is the first I knew about it; and in about two hours after, I think in the afternoon, I was up there, and Mr. Haenichen came up and I told him he had better get that fixed or there would be an accident, and he said: "All right, I will look after it," so I paid no attention——

Q. Was that or not a dangerous coupling?

A. It was a dangerous coupling.

20

MR. HARDING: Objected to.

THE COURT: I don't think it is competent.

Q. Just describe the condition of that coupling.

A. It was the same—the coupling was about the same, but the set-screws came out further, because I took the shafting down, and I know they were out further.

Q. Now, how long before your brother was hurt was
30 it that you told Mr. Haenichen about this?

A. Two weeks.

Q. Did you or did you not show him the place?

A. Certainly I showed him the place.

Q. Now, Mr. Donnelly, is it a loomfixer's duty to oil the shaft or to repair it?

A. No, sir.

Q. Has a loomfixer anything to do with the shaft?

A. No, sir.

Q. Have you ever worked as a millwright?

A. Yes, sir.

Q. And during your experience as a millwright have you ever put up and taken down shafting?

A. I have put up pretty nearly a whole mill at one time. 10

Q. Have you coupled it together with couplings?

A. Yes, sir.

Q. Do you know what is the usual and common coupler that is used to couple shafts together at such places?

A. Yes, sir.

Q. Will you just describe to the Court and jury what is the common and usual coupler used in such places?

A. That is the flange, and on this shaft here it is keyed on at each end, and four bolts run underneath, and there 20 is a rim projecting out on each side of the flange, and they go under the rim; these bolts go underneath the rim and you tighten them all up, and they are all smooth.

Q. What sort of a surface is presented on the face or outside of that coupler?

A. Perfectly smooth.

Q. Whereabouts are the screws or the bolts?

A. Underneath the rim.

Q. Are they exposed?

A. No, sir. 30

Q. Is it possible for those screws or bolts to catch anything in going round?

A. No, sir.

Q. Is it perfectly safe for a person to lean against those couplers?

A. Yes, sir; if you lean against it all you feel is friction; the heat would make it warm, that is all.

Q. What were the couplers usually used in this mill?

A. They had safe couplers there.

Q. Was or was not this coupler that caught your brother an unusual coupler?

A. I never saw any before in my life—that is, not like 10 that.

Q. Had you ever put the belts up, of any kind, for jacquard machines?

A. Yes, sir.

Q. And in doing that, was or was not it necessary for your body to lean against the shaft?

A. Just the same way.

Q. Is that the usual way for a loomfixer?

A. On a quarter-turn belt.

Q. Is that the only way you could get those belts on?

20 A. That is the only place I ever saw quarter-turns.

Q. Would it be any different in the appearance when the shaft was revolving by one of these safe couplers or one of the couplers similar to the one that hurt your brother?

A. For any one that did not understand it, why, the appearance would be about the same.

Q. And now, when that shaft was revolving at its usual rate at the place where your brother was hurt, was it or wasn't it possible for a person in working around 30 and about that shaft, and about that loom, in the performance of a loomfixer's duty, to see those set screws?

A. No, sir; it was not possible to see them.

Q. You could not see them?

A. Well, you could not see them because there is set-screws on one side of that coupling, and it is perfectly smooth underneath.

Q. Were those set-screws, while that shaft was revolving—could they be seen?

A. No, sir.

Q. You saw that coupling this morning?

A. Yes, sir.

Q. Was it running as fast this morning as it was the time your brother was hurt? 10

A. I should say it was not.

Q. And how much faster was it running at the time your brother was hurt?

A. Well, now, to-day, of course, I did not time it; but I don't think it was running more than 110 at the most; and the other one—I think it was a smaller pulley—for to drive that loom it must have been running 170 revolutions a minute.

Q. You saw that belt this morning. Was that belt in its usual condition? 20

A. Well, I cannot see how they can run looms with it, because there is not purchase enough—power—to drive the loom; the belt was too slack.

Q. Do you know, and can you say, whether or not it would be possible for a loomfixer, in putting on that belt when it was in its usual condition, to stand with his body from 16 to 18 inches away from that shaft?

MR. HARDING: I object to that. We have seen what could be done, and he is asking the witness to state a matter that is obviously physically possible, and trying to make him say it is not possible. I object to it. 30

Objection sustained. Question withdrawn.

Q. You saw the belt the day your brother was hurt?
A. Yes, sir.
Q. You know what its condition was at that time?
A. Yes, sir.
Q. You know what the condition was of that machinery at that time—how fast it revolved, etc., at that time?
A. Yes, sir.

10 Q. And that belt was the same that day that it usually was?
A. Yes, sir.
Q. Now, could a loomfixer on that day—do you know whether or not a loomfixer on that day could have stood 16 or 18 inches away from that shaft and slipped that belt on?

MR. HARDING: Objected to.

Objection overruled.

20

Q. (By the Court): Do you know whether on that day of the injury to your brother, whether a loomfixer could have stood 15 to 18 inches from that shaft and put on the belt?
A. He could not.
Q. You mean to say you know?

MR. HARDING: I ask for the answer to be struck out.

30 THE COURT: Strike it out.

Q. (Further Direct): Would you be able to say, if we asked you?

A. Yes, sir.

Q. Now, being able to say that, will you tell us——

(Question read.)

A. No, sir.

Q. Could a loomfixer on that day have stood 16 or 18 inches away from that shaft and slipped that belt on?

A. No, sir.

Q. Would he have been compelled to have pressed his body against that shaft, as your brother did this morning? 10

MR. HARDING: Objected to as leading.

THE COURT: It is leading.

Q. State why a loomfixer could not have been from 15 to 18 inches away on that day and put that belt on.

THE COURT: And adjusted the belt. 20

A. Here is the shaft; the pulley is here; this is lower than I am; when you have the belt tight, it takes some power; the instant you get the purchase you are right against the shaft; you run against the shaft and the belt goes right around; that is the only way I can throw them on.

Q. Now, Mr. Donnelly, were you present on the day of the accident?

A. Yes, sir.

Q. What was the first thing you heard of the accident? 30

A. Well, I heard a shriek, and I looked up and it was all done in an instant; I run across.

THE COURT: There is no question but what the accident happened, I suppose, and that the man was hurt practically as has been testified to.

Q. Who was Superintendent of that mill?

A. Mr. Otto Haenichen.

Q. Whose duty is it to inspect that machinery, and to whom are the repairs reported, and who exercises a general supervision over that mill?

10

MR. HUMPHREYS: I object to the question.

THE COURT: Of course, he cannot say that as a conclusion of law. If he knows there was a person there representing the defendant who had charge of the machinery, etc., and the defect was pointed out to him, I think that is competent.

MR. HARDING: He may show what, in fact,

20 he does; that is our objection.

Q. If anything was out of order in that mill, to whom was it reported?

A. To Otto Haenichen.

Q. And who superintended the repairs?

A. Mr. Otto Haenichen.

Q. Who superintended the machinery?

A. The same gentleman.

Q. Now, after your brother was hurt and fell to the

30 floor, who was there?

A. Well, I was there, and Mr. Seavil; there was quite a few came up afterwards.

Q. And Mr. Haenichen was there also?

A. They came right up; Mr. Otto Haenichen came right up there.

Q. Did he say anything—yes or no?

A. Yes, sir.

Q. What was it he said?

MR. HARDING: Objected to.

THE COURT: What Mr. Otto Haenichen said? Well, now, he has simply shown that they generally reported trouble and defects, etc., to him. Is that right? 10

MR. WARD: Yes, sir; and that he made all repairs, and supervised the making of repairs, and that he was the Superintendent of the mill.

THE COURT: Do you want to show an admission on the part of Mr. Haenichen?

MR. WARD: I will withdraw that question. 20

THE COURT: Yes, I think it is very doubtful.

Q. Was that shaft taken down afterwards?

A. Yes, sir.

Q. And how long after that?

A. Well, now, I think that accident happened on Thursday, for one day, either Wednesday or Thursday, and we took it down Saturday noontime; he said he did 30 not want any more accidents there.

THE COURT: Strike that out.

Q. On the day of the accident to your brother, did you see those set-screws?

A. Yes, sir.

Q. Was the machinery stopped to let your brother fall?

A. Yes, sir.

Q. And when that machinery was stopped you saw those set-screws?

A. I only saw one.

10 Q. Did you examine them?

A. Yes, sir.

Q. What was their condition with reference to the time we saw them?

A. They were just exactly the same.

Q. Now, Mr. Donnelly, did you see what your brother got caught on that day?

A. Yes, sir.

Q. What was it?

A. Set-screws in the couplings.

20 Q. Do you know what your brother's injuries were?

THE COURT: There is no doubt about that. I suppose the defendants' position is that they are not legally responsible; they don't deny that the accident happened.

Q. During working hours, what was the position of that shaft—was it running or stopped?

A. It was always running.

30 Q. And whose duty was it to inspect that shaft?

A. I think I answered that before.

Q. Should that shaft be stopped or running to put a belt on?

A. It has got to be running.

CROSS-EXAMINATION BY MR. HARDING:

Q. How long have you been a loomfixer?

A. About 8½ to 9 years.

Q. How long have you worked for the Haenichen Brothers?

A. About 10 or 11 months; I could not say.

Q. 10 or 11 months before the accident to your brother? 10

A. All together.

Q. Did you work there after the accident?

A. About 5 weeks.

Q. Five weeks after the accident?

A. Yes, sir.

Q. And did you work in the same room that your brother got hurt in?

A. Yes, sir.

Q. So I take it you had worked 9 months in the room before he got hurt? 20

A. Well, now, I have not figured it up.

Q. Is it about that?

A. We will say about that.

Q. Were there any other loomfixers in that room except you and your brother?

A. No, sir.

Q. You attended to all the looms in that room that we were in this morning?

A. Yes, sir. 30

Q. Where your brother was hurt?

A. Yes, sir.

Q. Did you ever put up any belts on the pulleys?

A. Yes, sir; hundreds of them.

Q. In that room?

A. Yes, sir.

Q. How many times did you put belts on this pulley before?

A. I could not exactly say; I cannot remember putting it on that loom at all.

Q. Can you remember putting it on any loom at all there, with a ladder?

10 A. Yes, sir.

Q. What looms did you ever put belts on with a ladder?

A. Further down the room.

Q. How many times? You say you put them on hundreds of times in that room?

A. Belts, I said, on pulleys.

Q. Upon the shaft?

A. In different places.

Q. Did you very frequently go upon ladders in that

20 room?

A. Yes, sir.

Q. Have you done that hundreds of times while you were a loomfixer?

A. Yes, sir.

Q. It is a large part of your work?

A. No, sir.

Q. When a belt gets loose, then you have to make it tighter?

A. Yes, sir.

30 Q. And when it is too tight, you make it looser?

A. Yes, sir.

Q. That is your duty?

A. Yes, sir.

Q. You remember you have seen the loom before—you have helped fix up the loom where this collar was that had the set-screw in it?

A. No, sir; not the loom.

Q. You never had anything to do with the loom?

A. Yes, sir; I used to set it up.

Q. How many times have you set the loom up?

A. What do you mean by that?

A. You say you set it up; what do you mean by setting the loom up? 10

A. I took it out from downstairs. Somebody swung a new loom——

Q. You put this particular loom that you have got there now—you set it up?

A. Yes, sir.

Q. You say you set up a loom; now what loom did you set up?

A. I didn't say I set up a loom.

Q. Didn't you say you set up a loom?

A. No, sir. 20

Q. What did you say about the loom?

A. I fixed the loom.

Q. When did you fix it?

A. When it got out of order.

Q. You fixed up this particular loom, did you, when it got out of order—this particular loom where the collar is that you saw this morning?

A. You are talking about fixing up a loom; the looms were already fixed up.

Q. You said you fixed it up just now to me. I want 30 to know what you mean——

A. I will explain. If they needed a chain on the loom, why, I put it on; if a strap broke, I put the strap on.

Q. Now, you understand ordinary English, and I ask you did you ever fix up this particular loom where the collar is on with the set-screw—did you or not?

A. I did.

Q. How many times, about?

A. I could not say; quite often.

Q. Before your brother was hurt?

A. I got them all started.

Q. Answer my question. Did you do this before your
10 brother was hurt?

A. Yes, sir.

Q. Was it before your brother was hurt?

A. Yes, sir.

Q. Several times, I understood you to say. Did you ever have anything to do with the belt before your brother was hurt?

A. No, sir; not with that belt.

Q. You did, some time before your brother was hurt, speak to Mr. Haenichen about the set-screws in this col-
20 lar?

A. Yes, sir.

Q. How long before your brother was hurt?

A. About two weeks.

Q. How did you come to do that?

A. I was oiling the shafting up and I saw it was dangerous, and I thought that somebody would get hurt.

Q. You were oiling it up?

A. Yes, sir.

Q. You say it was always running. Was it running
30 then when you oiled it?

A. No, sir; it was noon hour then. The shaft is running all the working hours.

Q. When you oiled it, it was not running?

A. No, sir.
Q. Where did you oil it?
A. I oiled the journal.
Q. Over the loom?
A. I will explain to you.

RECESS TILL 2 O'CLOCK.

10

SAME WITNESS resumes the witness stand.

FURTHER CROSS-EXAMINATION BY MR. HARDING:

Q. You were about to explain.
A. I just took the oil cup and oiled up the hanger where the journal goes in.
Q. How far away from that was the collar where you oiled it?
20
A. The collar is between the last two couplings.
Q. Do you mean to say you oiled this collar?
A. No, sir.
Q. Explain to us what you oiled.
A. I should judge about that far.
Q. It was three feet away from the collar where you put the oil on the shaft at the journal?
A. Yes, sir.
Q. I don't know which way that is. Is that over the loom—on the other side of the loom?
30
A. Yes, sir.
Q. I wish to know which direction it is from the collar where you put this oil. Now, when you went in and

first came to the collar, is it there—the collar—as you go in?

A. The coupling from the last hanger—about five feet.

Q. I have a picture here; perhaps that will help us out—a picture taken of this very collar and shaft. Now, that is a correct picture of the collar and shaft and the loom?

A. Yes, sir.

Q. Now, show me where you oiled.

10 A. There.

Q. I will mark that (O) in pencil. That is where you put the oil, is it? I will mark that (O) in pencil; that is near enough to it, I guess.

Q. How long did you take to oil it?

A. About three minutes, for an oil cup to get empty.

Q. You said the shaft was not moving then?

A. No, sir.

Q. How long had it stopped before you put the oil in?

20 A. I did it just as quick as it stopped.

Q. Did you stop it for the purpose of putting the oil in?

A. No, sir.

Q. It always does stop at the dinner hour?

A. Yes, sir.

Q. The shaft always stops at the dinner hour?

A. Yes, sir.

Q. Do the hands go away at the dinner hour to get their dinner?

30 A. Yes, sir.

Q. You go away, do you?

A. Yes, sir.

Q. Your brother always went away, too?

A. Yes, sir.

Q. Went out and went in at the same door that we went in this morning?

A. Yes, sir.

Q. Right by the coupling, isn't it? But never mind. You said something on your direct examination about a different kind of coupling that you were familiar with. Describe that coupling to us that you call the flange coupling.

10

THE COURT: What difference does it make?

MR. HARDING: I have a picture here that I think will help us out. I have a picture of a flange-faced coupling in two parts.

Q. Is it something like that (indicating)?

A. Yes, sir; some of them are.

Q. Looks very much like that?

A. There are lots of them longer.

Q. The flange coupling. How much would that be in diameter—how many inches through it? 20

A. About 3½ inches to 4 inches.

Q. Lots of those that you see are about 9 or 10 inches in diameter?

A. No, sir.

Q. How wide are these flange couplers? How wide is the flange part on each of them—both of them together?

A. About 7 inches.

Q. Some of them over 4 inches wide? Are not a great many of them more than 4 inches wide? 30

A. Oh, yes; more than that.

Q. I notice a hub of them here, on this picture here. This projection along the side of the shaft of the coupling,

which seems to be by itself, seems to be resting on the hub. How large is that hub usually?

A. It is very small.

Q. As I understand this flange coupling, this is two parts of the flange coupling, and the part that is resting on its hub goes right up against the other coupling?

A. They are both clamped together.

Q. As I understand it, that is about the sort of thing that was described by your brother when he gave his testi-
10 mony; that is about the kind that he described where he said that the shaft came together with the key, wasn't it?

A. With two bolts.

Q. That is practically the same kind as described by your brother?

A. Yes, sir.

Marked Exhibit D-1.

Q. I also show you another photograph of the collar of the loom taken from another view. Does that seem
20 to be a correct representation of it from another view?

A. The shaft extends further than it did before, it seems to me.

Q. In the second picture that I show you?

A. Yes, sir.

Marked Exhibit D-2 and D-3.

MR. HARDING: These are two large photographs that have been marked as Exhibit D-2 and D-3, and D-1 was a small piece of paper with a
30 picture on, but not a photograph.

Q. Do you know what the length of this collar is that has the set-screw in it?

A. No, sir.

Q. About a foot, isn't it?

A. I could not say.

Q. Would not you say it is about a foot?

A. No, sir, because I don't know.

Q. Didn't it look to you that, as you looked at it this morning?

A. No, sir; it did not look any foot to me; it looks about 8 inches.

Q. Did you ever put, did you say, a belt on this loom, on this pulley on this loom that we have been talking about, where the set-screw collar is, before? 10

A. No, sir; I never put it on.

Q. Did you ever see a belt put on there before?

A. On that one there? No, sir.

Q. Did you ever put a belt on any of the looms near it before?

A. Yes, sir.

Q. Which loom near it?

A. I could not exactly say the name of the man, but he is a loom fellow. 20

Q. During all the time that you worked there, do you mean to say that belt never got too loose?

A. It never needed adjustment.

Q. Did you ever work in other places besides Haenichen Brothers'?

A. Yes, sir.

Q. And I presume you have seen these collars with the set-screws on in other places, haven't you, like this coupling? 30

A. No, sir; I never saw any of those before.

Q. You never saw one anything like it before?

A. No, sir.

Q. Let us see if I understand you. You mean to say that, in all your experience as a loomfixer, you never, in any place in your life, saw a coupling or a collar with set-screws in it anything like this one?

A. I never had a coupling like that before.

Q. There are no two just alike, but did you ever see anything that was substantially like it?

A. No, sir.

Q. Did you ever see such screws used in a coupling?

10 A. No, sir.

Q. Have you ever been in the various mills in Paterson?

A. Yes, sir.

Q. What mills have you worked in?

A. I worked for Gallon Brothers.

Q. Where else have you worked?

A. The New Jersey Silk Company.

Q. Where else?

A. And for Mr. Mayhew.

20 Q. Will you swear now that Mr. Mayhew did not have any of those in his place at Wortendyke? Will you swear there was no coupling of substantially this kind of set-screws in his place at Wortendyke?

A. I never saw any.

Q. Wouldn't you have seen them if they had been there?

A. I will swear I never saw them.

Q. Were you ever in Strange's mill?

A. No, sir.

30 Q. Have you ever been in any other mills in Paterson except those you have mentioned?

A. No, sir, I don't think I have, except Dorrelly's.

Q. Will you swear that in Dorrelly's mill there were

not couplings there where there are set-screws like this one?

A. I will swear there is not one there.

Q. Now, in all these cases where you put a belt on a pulley, did you have to lean up against the coupling or the shaft in the same way that you said you had to lean up against this one?

A. Yes, sir.

Q. Now, I want to understand you exactly. Do you mean to say that it is literally true that in every case where you ever in your experience put on a belt on a pulley, you had to lean against the shaft to do it? Had to lean against the shaft, did you? 10

A. At a quarter-turn belt.

Q. In putting up the ladder as we saw it this morning, and as it was at the time when this accident happened, you could put the ladder as far away from the line of the shaft as you pleased, to the left?

A. No, sir.

Q. How far away would it go? You could put it away 3 feet? 20

A. No, sir; you would have to put it up against the leg of the machine.

Q. But there is room to put the ladder away, as that picture shows, 2 or 3 feet to the left?

A. Yes, sir.

Q. The ladder will go up 2 or 3 feet to the left?

A. Yes, sir.

Q. You can put the ladder up against the gantry 2 or 3 feet away from the perpendicular line from the shaft to the floor? 30

A. Yes, sir.

Q. You say that when you saw this coupling with the set-screws in it that you thought it was not right?

A. Yes, sir.

Q. You said that?

A. Yes, sir.

Q. You thought it was dangerous?

A. Yes, sir.

Q. Extremely dangerous?

A. Yes, sir.

10 Q. I suppose you knew you would have to go up there some time, probably, and put a belt on, didn't you?

A. Yes, sir.

Q. I suppose you told your brother about it?

A. No, sir.

Q. Why didn't you?

A. Because I told Mr. Haenichen, and I thought that he had it fixed. I told Mr. Haenichen and I did not tell my brother because I thought that Mr. Haenichen had it fixed. I did not think he would let it go so long; I thought
20 everything was all right.

Q. Did you tell anybody else there about it?

A. No, sir.

Q. And you thought if your brother would go up there to put it on that he would be in danger of getting caught, just as he was caught, didn't you, if it had not been fixed?

A. Yes, sir; if it had not been fixed.

REDIRECT EXAMINATION BY MR. WARD:

30

Q. What was it that ought to be fixed?

A. The couplings should have been changed; the set-screws protruded, too.

Q. How far out did they protrude?

A. Three-quarters of an inch; from a half an inch to three-quarters of an inch.

Q. How far would you say they projected this morning?

A. I don't believe they came out more than a quarter of an inch this morning.

RECROSS EXAMINATION BY MR. HARDING:

Q. You could see the set-screws very plainly as they revolved this morning, couldn't you? 10

A. Yes, sir.

Q. And that they were only sticking out a quarter of an inch?

A. Yes, sir.

Q. If they were sticking out still further at the time of the accident, you could see them still plainer?

A. The speed was faster.

Q. Now, did you measure to see how far they were sticking out, about? 20

A. No, sir.

Q. Well, I want to ask you as a machinist, do you pretend to say that if those set-screws had been sticking out as much further, as you now say, that they could have clamped fast enough on the shaft to have held? Do you mean to say that?

MR. WARD: I object to his being asked if he pretends to say that.

30

Q. Very well; change that. What do you say about that, leaving out the word "pretend?"

Q. (Question read.)

A. Yes, sir.

Q. Explain how it could.

A. Well, the set-screws might have been filed off and made shorter.

Q. Can you see any reason for doing that? Did you ever hear of that being done?

A. Yes, sir.

Q. Why do they do that?

A. Not to strike objects.

10 Q. Not to strike objects, eh?

A. Yes, sir.

Q. How do you happen to know now so much about this set-screw when you say you never saw one before?

A. Never saw a set-screw before?

Q. You said you never saw a collar with a set-screw on it before.

A. I never did.

Q. How do you know so much about it, then?

A. Because I have handled set-screws in machinery.

20 Q. Where?

A. In the looms.

Q. What part of the looms?

A. Different parts.

Q. Tell us which parts.

A. Down at the bottom, on the rocker shaft.

Q. That is not what we are talking about now.

A. That set-screw was longer, as I claim; it held it tight, then by cutting it off it would go in deeper and still hold it just as tight.

30 Q. Have you ever spoken to anybody about the collar and the set-screw and the condition of affairs down there since it happened?

A. Except that Saturday we took down the shaft.

Q. But since the accident happened, you have not talked about it to anybody?

A. No, sir.

Q. Not even to Haenichen Brothers?

A. No, sir.

Q. Nor your brother?

A. No, sir.

Q. Not even his lawyers?

A. No, sir.

Q. And nobody else? 10

A. No, sir.

REDIRECT EXAMINATION BY MR. WARD:

Q. What power operates that mill, or, rather, operated that mill at that time?

A. Electric power.

Q. Have all looms quarter-turn pulleys and belts?

A. Everywhere?

Q. Yes. 20

A. No, sir.

Q. You were down there this morning?

A. Yes, sir.

Q. And you talked in the presence of the jury?

THE COURT: You are leading.

Q. Did you or did you not, in the presence of the jury this morning, discuss those set-screws?

A. I would not want to swear to that. 30

RECROSS EXAMINATION BY MR. HARDING:

Q. Let me ask you one question. How do you come

to know that this belt was tighter on this day when your brother was hurt than it was to-day?

A. I know that he would not put on a slack belt like that.

Q. That is the only way you know?

A. Yes, sir.

Q. You did not try the belt that day when he was hurt?

A. No, sir.

10 Q. You are sure of that?

A. Yes, sir.

Q. You did not know how tight it was?

A. Yes, sir; I did the next day.

MR. GEORGE GREER, sworn in behalf of the plaintiff, testified as follows:

20 DIRECT EXAMINATION BY MR. McGINNIS:

Q. What is your occupation?

A. Loomfixer.

A. Did you, at one time, work for Haenichen Brothers?

A. Yes, sir; I took Mr. Donnelly's place.

Q. Do you remember the time Mr. Donnelly was injured there?

A. Yes, sir.

Q. With reference to that time, how soon after that

30 did you go there to work?

A. The next morning.

Q. In what capacity?

A. Loomfixer.

Q. Did you see this shaft—this coupling, rather—of which there has been something said here to-day?

A. Yes, sir.

Q. Did you do anything to that coupling?

A. I helped to take it down.

Q. When did you help to take it down?

A. The Saturday following the accident.

Q. Was there a set-screw protruding then?

A. Four—two on each end.

Q. Did you notice how far they protruded? 10

A. About half an inch to three-quarters of an inch, I should say; I did not measure it.

Q. How long after that did you remain there working—what period of time?

A. Somewhere about 2 or 3 months.

Q. While you were there was that coupling ever replaced?

A. No, sir.

Q. How many years have you been a loomfixer?

A. Between 9 and 10 years. 20

Q. Are you acquainted with the different kinds of couplings used in silk mills?

A. Yes, sir.

Q. Did you see this coupling?

A. Yes, sir.

Q. Did you in your experience ever see any other couplings like that?

A. Not in a silk mill; no, sir.

Q. In your opinion, Mr. Greer, was that a safe coupling? 30

MR. HARDING: Objected to.

Objection sustained.

Q. In addition to that coupling which you saw there, tell the Court and jury what other kinds of couplings you have seen used in silk mills.

THE COURT: I don't see what difference it makes.

MR. WARD: That this was an unsafe coupling.

10 THE COURT: I don't see what difference it makes whether there are other couplings or not. If counsel has no objection to the question, I have none.

MR. HUMPHREYS: It will be admitted in the case that there are different kinds of couplings.

THE COURT: It is competent to show this coupling was out of order—was broken, or anything like that; but the fact that there were different kinds of couplings, I don't see what difference that makes. 20

MR. WARD: Our contention is that that coupling was an unsafe coupling by reason of those protruding screws. Now, we have a right to show by a competent witness that there are other couplings used in mills; not only that, but that they are practically the only kind used, and that that kind was all safe; that loomfixers know that fact, and they had a right to rely upon it. 30

THE COURT: Your theory is that this was such an unusual coupling that the plaintiff was justified in projecting his body against it, assum-

ing that it would be a safe coupling, knowing the mills always provided a safe coupling. I shall sustain the objection. I don't mean to say for one minute that if this machinery was defective that you shall not have the right to show that; it is already in evidence that there are various kinds of couplings. But I think this is settled—and if I am wrong I would like to be convinced to the contrary—that if an employee goes into the service of somebody else and sees there a coupling, or any 10 piece of machinery, he sees the character of it, and if he wants to take the risk of being hurt by it—if that is the case—and is hurt by it, it is a risk which he takes incidental to his employment. If, on the other hand, the risk is not obvious and he is hurt, I should not say that he would take the consequences of a risk which was not apparent. I say, on general principles, if a man goes into a factory and sees a shaft revolving, and it is revolving with such rapidity that he cannot tell whether its sur- 20 face is smooth or has projections upon it, I should say that if he threw his body against that purposely, without being able to see whether it was dangerous or not, and did it simply on the assumption that because he had seen other shafts against which he could have thrown himself with impunity, and he was hurt, I should say he was guilty of negligence. I think that it was the plaintiff's duty, if the danger was obvious, it was his duty to avoid it; if he took any risks of it, of course, he 30 must take the consequences. I think if the machinery was revolving in such a way that the danger was hidden, that he would have no right to

assume that it was safe for him to throw his body against a thing that he could not see.

MR. McGINNIS: That is just where we disagree, your Honor.

THE COURT: Now, if there is any authority to the contrary, of course, I would like to see it. These are simply my impressions. I realize how
10 serious this matter has been for this man; and my conversation does not dispose of the case, by any means.

MR. McGINNIS: (Argues.)

THE COURT: I sustain the objection.

To which ruling of the Court the plaintiff's counsel prays an exception.

20 Exception allowed. Let it be sealed, and it is sealed accordingly.

WILBUR A. HEISLEY, J.

Q. (Further Direct): In throwing a belt on, does it make any difference whether or not the belt is tight—does it make it more or less difficult to throw the belt on?

A. It is more difficult to put it on if it is tight.

Q. If the belt was ordinarily tight, and you mounted a ladder to throw that belt on the pulley, could a person
30 do that and remain 16 or 18 inches from the shaft, and throw it on with one hand, merely using the fingers—that is the way it was done this morning—on what is known as a quarter-turn?

A. No, sir; I don't think he could.
Q. Why?
A. You would not have the purchase.
Q. The more difficult it is to put on a belt, the more purchase you must get?
A. Certainly.
Q. Would that more or less draw you closely to the shaft?

MR. HARDING: Those things the jurymen know as well as the witness. 10

MR. WARD: We would like to get them on the record.

THE COURT: It seems to me, Mr. Ward, the truth of that must be self-evident. The jury were down this morning and saw how they put on the belts.

CROSS-EXAMINATION BY MR. HUMPHERYS: 20

Q. When you put on belts on a pulley, don't you generally exercise care to keep your body away from the shaft?
A. Yes, sir.

THE COURT: There is a ruling in 161 Mass., 159: (Reading the case.)

THOMAS HUGHES, sworn in behalf of the plaintiff, testified as follows: 30

DIRECT EXAMINATION BY MR. McGINNIS:

Q. What is your occupation?

A. I am a loomfixer.

Q. How long have you been such?

A. About 7 years.

Q. You are also a millwright?

A. I have done that work.

Q. In what mill?

A. The Shamokin Silk Mill, in Pennsylvania, and also at Fulton Street.

10 Q. Were you down at the Haenichen Brothers' mill this morning when certain experiments were made there?

A. Yes, sir.

Q. Did you observe the speed of that shaft?

A. Yes, sir.

Q. In your opinion, about what was the speed of that shaft, or how many revolutions did it make per minute?

A. About 110 revolutions a minute, I should think, at a guess.

Q. Did you observe the belt on the loom, which was 20 somewhat discussed about this morning?

A. I noticed one thing.

Q. You saw the belt?

A. Yes, sir.

Q. Was that belt loose or tight?

A. There was one thing that made it appear loose to me, and that was that Mr. Donnelly put it on, when the power revolved—he put the whole belt on the pulley.

Q. Could that be done under ordinary circumstances?

A. It is almost impossible on a tight belt to do it; I 30 have never attempted to do it.

Q. You mean as they are generally run?

A. Yes, sir.

Q. You have to put such belts on with the power?

A. Yes, sir.

Q. Could that have been done, as you saw it done this morning, by a person remaining away 16 inches from that shaft and using the fingers on one hand to throw it on?

MR. HUMPHREYS: I think that is a subject for a juryman just as much as this witness; I don't think it is a subject for expert testimony.

MR. McGINNIS: There were certain circumstances shown there this morning that we contend were not usual, and when those men made those experiments there, it was with the evident purpose of showing that the statements on the part of the plaintiff were untrue. Now, we are putting loom-fixers on to show that, running that machinery under ordinary circumstances, that it could not be done as they did it this morning.

THE COURT: I think that is beside the question. It is not how it was run under ordinary circumstances, it was how it was run at the time of the injury as compared with the way it was run this morning. It might have been run very differently under other circumstances, but what have we to do with that? Your client has said that at the time of the injury it was considerably tighter; your evidence is to the effect that it was tighter at the time of the injury than it was this morning.

Q. If that belt were tighter, and you were required to throw that belt on that pulley, could you have done it without bringing your body in close contact with the shaft?

Objected to.

Objection sustained.

To which ruling of the Court the plaintiff's counsel prays an exception.

Exception allowed. Let it be sealed, and it is sealed accordingly.

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WILBUR A. HEISLEY, J.

THE COURT: We know, this morning, they put that on with one hand, and without getting the body against the shaft. Your client's answer to that is practically this: they did it because the belt this morning was much looser than when he was hurt; if the belt was tighter it must be harder to put it on. It is proper to show that that belt this morning was in an unusual condition.

20

Q. Was that belt in the usual or an unusual condition, with reference to its looseness or tightness?

A. It appeared to me to go on very easy.

Q. Was it loose or tight?

A. It must have been loose to go on so easy.

Q. Did you see that coupling there this morning?

A. Yes, sir.

Q. Did you ever see a coupling like that before in a silk mill?

30 A. No, sir.

Q. Are you acquainted with the different forms of couplings used in silk mills?

A. I have seen a couple of different kinds.

Q. The kind you have seen—what kind of surface do they present?

A. Perfectly smooth.

Q. Those other couplings you have seen—if a person's body was to come in contact with the surface of the coupling while it was revolving, would that person be likely to get caught on it?

MR. HUMPHREYS: Objected to.

10

Objection sustained. No exception taken.

MR. McGINNIS: I suppose that is self-evident.

Q. How are the couplings—do you know how the couplings are made that are used in mills, or how they are constructed that are used in silk mills?

A. They are something in appearance like a loom pulley.

20

Q. Do they present a smooth surface or not?

A. Yes, sir; all couplings that are made now present a smooth surface.

Q. How long has that been so?

A. Ever since I have been in the business. I have worked in places where we have reported them dangerous, and they have taken them out.

CROSS-EXAMINATION BY MR. HARDING:

30

Q. You say most of the couplings that you have seen looked sort of like a pulley?

A. Yes, sir.

Q. Here is Exhibit D-1 for identification. Is that the kind of coupling you have usually seen?

A. Yes, sir.

Q. It don't look anything like this coupling that you saw this morning?

A. No, sir.

Q. You never would take one for the other, standing there and looking at it?

A. I would not; no, sir. I knew that was an unusual
10 coupling this morning.

Q. You were down at the mill this morning, I think you said to counsel?

A. Yes, sir.

Q. And the belt seemed to appear to be pretty loose?

A. Yes, sir.

Q. As a matter of fact, it was driving that loom, wasn't it?

A. I did not see the loom driving.

Q. The loom was in actual operation?

20 A. No, sir; I did not see a loom running while I was there. The weaver has to start the loom up, you know; if it was moving, those levers would be going up and down.

MR. GEORGE GREER, recalled.

DIRECT EXAMINATION BY MR. McGINNIS:

30

Q. This coupling by which it is claimed Mr. Donnelly was injured—have you ever seen couplings similar in size and appearance which did not have a set-screw in?

MR. HUMPHREYS: Objected to.

Objection sustained.

To which ruling of the Court the plaintiff's counsel prays an exception.

Exception allowed. Let it be sealed, and it is sealed accordingly.

WILBUR A. HEISLEY, J. 10

PLAINTIFF RESTS.

MOTION FOR NON-SUIT.

MR. HUMPHREYS: We move for a non-suit on 20 behalf of the defendant with considerable confidence. We submit, in the first place, that the risks of the injury which the plaintiff sustained was caused by one of the ordinary risks which he undertook when he entered the employment of the defendant. Under the law, he undertook all the ordinary risks that were apparent to him, or which he could have, by the exercise of reasonable care, have discovered. We submit there was nothing unreasonably unsafe in the character of this collar with these set-screws protruding. Of course, the plaintiff has endeavored by 30 his own testimony, and there is evidence in this case that the plaintiff had to lean up against this thing, which tend to lend some color to the idea. (Continues argument.)

MR. McGINNIS: (Argues.)

ADJOURNED TO 10 O'CLOCK, DECEMBER 22d.

DECEMBER 22d, 1904.

10

Counsel for the plaintiff asked leave to amend their declaration by setting forth therein that the defendants had not properly safeguarded their machinery as required by the statute law of this State.

There being no opposition, the motion was granted.

MOTION FOR NON-SUIT RENEWED.

MOTION FOR NON-SUIT GRANTED.

20

Counsel for the plaintiff thereupon prayed an exception to the ruling of the Court, and the same is allowed and sealed accordingly.

WILBUR A. HEISLEY, J.

DECEMBER 22, 1904.

30 HEISLEY, J.: The plaintiff was in the employ of the defendant, which is engaged in operating a silk mill in Paterson, and has been so employed for four years. One of his duties was to adjust a leather belt to a wheel.

In order to do so he was obliged to ascend a ladder distant about fifteen to twenty inches from a shafting having on it a collar which was attached to the shafting by bolts and screws, called "set-screws." These set-screws were kept in place by nuts which rested on the outside of the collar. These nuts, when screwed down tight, projected outside of the collar perhaps half an inch.

The plaintiff ascended the ladder while this shaft was revolving with such rapidity, as he says, that it was impossible to see the nuts on the collar. 10

He says the belt had slipped, but it was so short and tight that he had difficulty in replacing it on the wheel, and to do so he purposely leaned against the collar of the revolving shaft. Some of these nuts caught in his clothing and he was fearfully injured.

He was not directed on this occasion to adjust the belt. The nuts were plainly obvious when the shaft was motionless. He says that it was usual to lean against the revolving shaft, although he had never done so before, because, under former conditions of the machinery, 20 he approached the belt in another direction.

At least one of his witnesses denies the statement that it was usual to lean against the revolving shafting.

A witness testified that about two weeks prior to the accident he discovered that some of these nuts, having become loose, were projecting perhaps a quarter of an inch, maybe a trifle more, further than usual; and that he called the attention of the defendant's Superintendent to that fact, but the defendant did nothing to tighten the nuts. 30

The accident was so frightful, and the injuries of this unfortunate man so awful, that they appeal most strongly to one's sympathies; but this must not influ-

ence us in the endeavor to determine if the defendant is legally responsible for the resulting damages.

The defendant's duty to the plaintiff was to use reasonable care in the selection of appropriate machinery, and its proper and usual inspection. It was not an insurer of plaintiff's security from any and all kinds of accidents. I do not think it can be said that defendant's failure to screw down the nuts, when it was told that they had projected a little further than usual by reason
10 of their having become loose, constitutes negligence; because the nuts only projected a fraction of an inch more than usual.

The plaintiff accepted all the usual risks incident to his employment, and if it be true, as he says, that it is usual to lean against these revolving shafts, then, when he followed that custom, he assumed the attendant risks.

He had been in defendant's employ four years, and had ample opportunity to inspect the shaft, and if he failed to do so, he cannot complain of defendant's con-
20 duct.

The only thing which made the set-screws invisible to the plaintiff, when he ascended the ladder, was the great velocity of the shaft, and if, under such circumstances, he leaned against a revolving shaft, with which he was unfamiliar, and at a time when he admits he could not, owing to its great velocity, see whether its surface was even or covered by these set-screws, he was negligent and must accept the consequences, regrettable as they have been.

30 Nor will the fact that the belt was so tight that it was difficult to adjust excuse him in leaning on the revolving shaft; to do so was the assumption of a risk for the consequences of which the defendant is not responsible.

The motion to non-suit must prevail.

To which ruling of the Court plaintiff's counsel prays an exception.

Exception allowed. Let it be sealed, and it is sealed accordingly.

WILBUR A. HEISLEY, J.

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New Jersey Supreme Court.

ABRAM DONNELLY, Plaintiff in error, *vs.* HAENICHEN BROTHERS SILK COMPANY, Defendant in error.	*In tort.* *On error to Passaic Circuit Court.* *Assignment of Errors.*

10

Afterwards, that is to say, on the second day of August, nineteen hundred and five, in the Supreme Court of the State of New Jersey, comes the said Abram Donnelly, by Ward & McGinnis, his attorneys, and says that in the 20 record and proceedings aforesaid, also in the matters and things recited in the bill of exceptions, and in the giving of judgment of non-suit aforesaid, there is manifest error, to wit:

1. That at the trial of the cause at the Passaic Circuit Court, the Judge who tried the cause refused to permit, on re-direct examination, the plaintiff to answer the following question:

"Q. With regard to the time after you put or slipped 30 that belt on, when were you caught?"

Which exclusion was erroneous, and worked injury to the plaintiff, in that the question was proper on re-direct examination, and relevant and material to the issue.

2. That at the said trial, the plaintiff, on re-direct examination, was asked by his counsel the following question:

"Q. How soon after you touched the shaft, or how soon after you came in contact with the shaft, were you caught?"

On the objection of the defendant's counsel, the trial Judge excluded the question, which ruling was illegal, and to the injury of the plaintiff, in that the question was proper on redirect examination, and relevant and material to the issue. 10

3. That at the said trial one George Greer, a witness sworn for the plaintiff, was asked by plaintiff's counsel the following question:

"Q. In your opinion, Mr. Greer, was that a safe coupling?"

And

"Q. In addition to that coupling you saw there, tell the Court and jury what other kinds of coupling you have seen used in silk mills." 20

On the objection of defendant's counsel, the trial Judge excluded these questions, which ruling was illegal, and to the injury of the plaintiff, because the witness had qualified as an expert, and by reason thereof the questions were properly asked, and the answers called for thereby were relevant and material to the issue.

4. That at the said trial, the plaintiff offered to prove by one George Greer, who had been qualified as an expert, 30 that the coupling which had caused the accident was unsafe, and not the kind of coupling usually used, but that practically the only kind of coupling used for such a pur-

pose was perfectly safe; which offer was objected to by defendant's counsel, and excluded by the trial Judge, which ruling was illegal and to the injury of the plaintiff, in that the evidence offered to be proven was material and relevant to the issue and properly presented by said witness.

5. That at the said trial Thomas Hughes, a witness for the plaintiff, who had qualified as an expert, was asked by plaintiff's counsel the following question:

10

"Q. If that belt were tighter, and you were required to throw that belt on that pulley, could you have done it without bringing your body in close contact with the shaft?"

On the objection of defendant's counsel, the trial Judge excluded the question, which ruling was illegal and to the injury of the plaintiff, in that the condition suggested by the question was the same condition existing at the time of the accident, and the answer called for was material

20 and relevant to the issue.

6. That at the said trial the plaintiff offered to prove by one Thomas Hughes, an expert, that under the conditions assumed to have existed at the time of the accident it was impossible to have adjusted the belt without one's body coming in contact with the shaft; which offer, on the objection of the defendant's counsel, was excluded; which ruling was illegal and to the injury of the plaintiff, because the evidence excluded was relevant and material to the issue.

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7. That at the said trial the plaintiff's counsel asked of George Greer, an expert, a witness for the plaintiff, the following question:

"Q. This coupling by which it is claimed Mr. Donnelly was injured—have you ever seen couplings similar in size and appearance which did not have a set-screw in?"

On the objection of defendant's counsel the trial Judge excluded the question, which ruling was illegal and to the injury of the plaintiff, because the question was for the purpose of proving that the coupling that caused the accident was entirely unusual, and dangerous and unsafe.

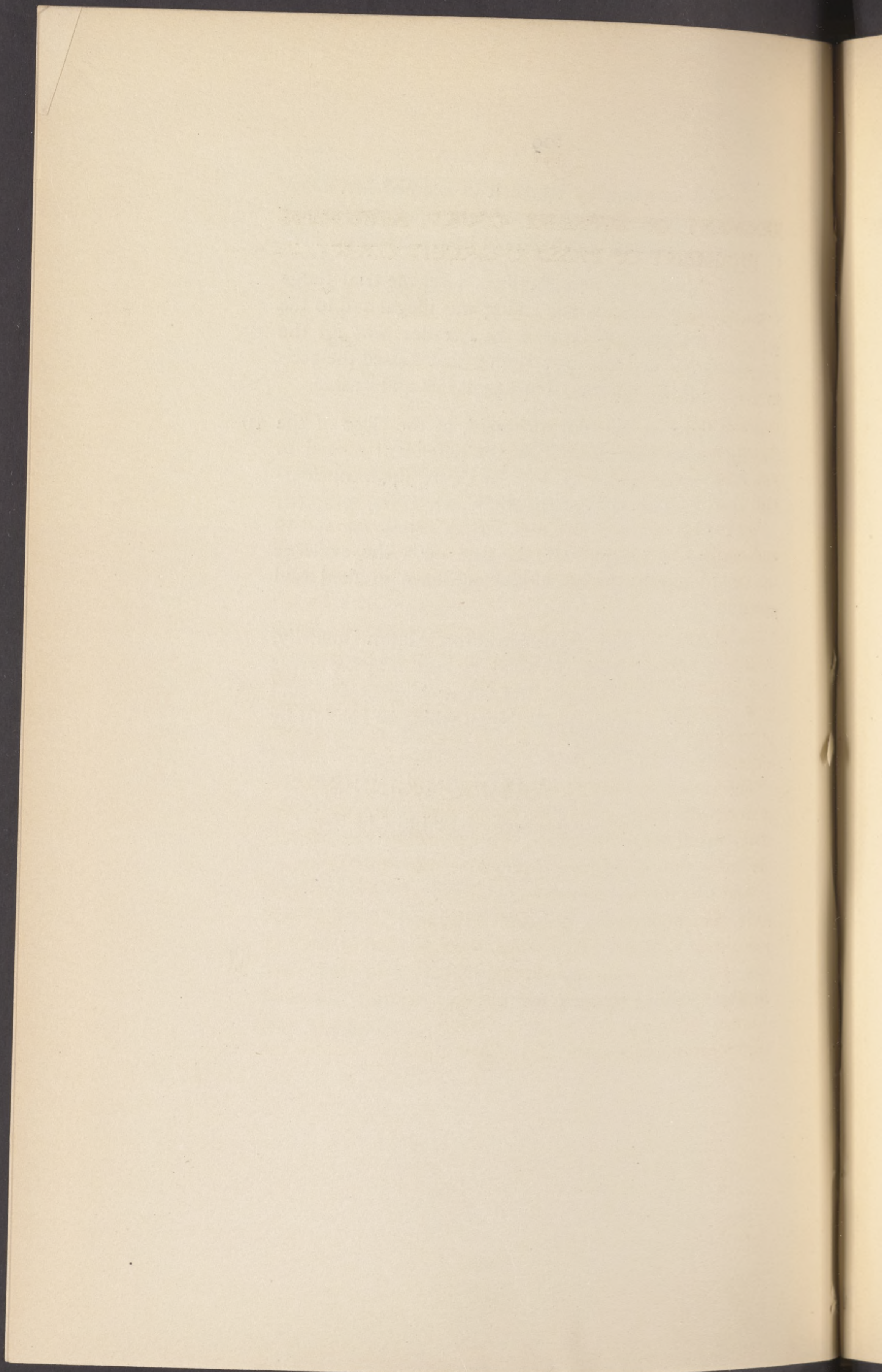
8. Because at the trial aforesaid, at the close of the plaintiff's case, the counsel for the defendant moved to grant a non-suit, which motion the Court, upon considering the evidence of the plaintiff's witnesses, granted; which ruling of the Court was illegal, erroneous and to the damage of the plaintiff, in that upon the evidence aforesaid the trial Judge should not have granted said non-suit. 10

Wherefore the said plaintiff in error, Abram Donnelly, prays that the judgment aforesaid, by reason of the errors aforesaid, may be reversed, and for nothing holden, and that he may be restored to all things which he has lost by reason of said judgment. 20

WARD & McGINNIS,
Attorneys of Plaintiff in Error.

30

Joinder of Error in usual form.



JUDGMENT OF SUPREME COURT, AFFIRMING JUDGMENT OF PASSAIC CIRCUIT COURT.

But because our said Supreme Court now here are not yet advised what judgment to give of, in and upon the premises, a day is therefore given to the parties aforesaid, to wit, until the eighteenth day of June, A. D., nineteen hundred and six, to hear the judgment of the said Court thereupon. At which day, before the said Court at Trenton, come the parties aforesaid by their attorneys aforesaid: 10

Whereupon all and singular the premises being seen and by the Court now here fully understood, and as well the record and proceedings aforesaid, and the judgment given in form aforesaid, as the matters aforesaid, by the said Abram Donnelly above for error assigned, being diligently examined and inspected and mature deliberation being thereupon had, it appears to our said Court now here that there is no error, either in the record and proceedings aforesaid, or in the giving of the judgment aforesaid. 20

Therefore it is considered that the judgment aforesaid, in form aforesaid given, be in all things affirmed, and stand in full force and effect, the said causes and matters above for errors assigned in anywise notwithstanding.

And it is further considered that the said Abram Donnelly take nothing by his said writ, and that the said Haenichen Brothers Silk Company do go thereof without day, etc., and it is also considered that the said Haenichen Brothers Silk Company do recover against the said Abram Donnelly the sum of thirty-four dollars and eighty-seven cents costs of judgment below, besides the 30

sum of thirty-six dollars and twenty-six cents for its costs and charges which it has sustained and expended, by reason of the delay of execution of the judgment aforesaid, on pretence of prosecuting the said writ of error of our Supreme Court now here adjudged to the said Haenichen Brothers Silk Company and with its assent, according to the form of the statute in such case made and provided, which said costs and charges in the whole amount to seventy-one dollars and thirteen cents.

10 And it is further ordered that the said Haenichen Brothers Silk Company have execution thereof.

Judgment signed this eighteenth day of June, A. D., nineteen hundred and six.

WM. S. GUMMERE, C. J.

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30

New Jersey Court of Errors and Appeals

ABRAM DONNELLY, Plaintiff in error, *vs.* HAENICHEN BROTHERS SILK COMPANY, Defendant in error.	*In tort.* *On error to New Jersey Supreme Court.* *Assignment of errors.*

10

Afterwards, that is to say, on the fifth day of July, nineteen hundred and six, in the New Jersey Court of Errors and Appeals, comes the said Abram Donnelly, by Ward & McGinnis, his attorneys, and says that in the record and proceedings aforesaid, and also in the matters and things recited and contained in the said bill of exceptions, and also in the giving of the verdict and judgment aforesaid, there is manifest error in this, to wit: 20

1. Because the Supreme Court decided that there was no error in the giving of judgment of non-suit at the trial of the cause, whereas upon the evidence produced in the aforesaid trial, no judgment of non-suit should have been given. 30

2. Because the said Supreme Court decided that there was no error in the admission against the objection of plaintiff, of certain evidence produced in said cause, nor in the rejection of evidence offered by the plaintiff, and before said Supreme Court in the bill of exceptions in the cause.

3. Because the Supreme Court committed error in affirming the judgment of the Circuit Court, whereas said
10 judgment should have been reversed and a new trial awarded to the plaintiff.

4. Because at the trial of the cause at the Passaic Circuit Court, the Judge who tried the cause refused to permit, on re-direct examination, the plaintiff to answer the following question:

"Q. With regard to the time after you put or slipped that belt on, when were you caught?"

20 Which exclusion was erroneous, and worked injury to the plaintiff, in that the question was proper on re-direct examination, and relevant and material to the issue.

5. Because at the said trial, the plaintiff, on re-direct examination, was asked by his counsel the following question:

"Q. How soon after you touched the shaft, or how soon after you came in contact with the shaft, were you
30 caught?"

On the objection of defendant's counsel, the trial Judge excluded the question, which ruling was illegal, and to the injury of the plaintiff, in that the question was proper

on re-direct examination, and relevant and material to the issue.

6. Because at the said trial one George Greer, a witness sworn for the plaintiff, was asked by the plaintiff's counsel the following question:

"Q. In your opinion, Mr. Greer, was that a safe coupling?"

And

"Q. In addition to that coupling you saw there, tell the Court and jury what other kinds of coupling you have seen used in silk mills." 10

On the objection of defendant's counsel, the trial Judge excluded these questions, which ruling was illegal, and to the injury of the plaintiff, because the witness had qualified as an expert, and by reason thereof the questions were properly asked and the answers called for thereby were relevant and material to the issue.

7. Because at the said trial, the plaintiff offered to prove by one George Greer, who had been qualified as an expert, that the coupling which had caused the accident was unsafe, and not the kind of coupling usually used, but that practically the only kind of coupling used for such a purpose was perfectly safe; which offer was objected to by defendant's counsel, and excluded by the trial Judge, which ruling was illegal and to the injury of the plaintiff, in that the evidence offered to be proven was material and relevant to the issue and properly presented by said witness. 20

30

8. Because at the said trial Thomas Hughes, a witness for the plaintiff, who had qualified as an expert, was asked by plaintiff's counsel the following question:

"Q. If that belt were tighter, and you were required to throw that belt on that pulley, could you have done it without bringing your body in close contact with the shaft?"

On the objection of defendant's counsel, the trial Judge excluded the question, which ruling was illegal and to the injury of the plaintiff, in that the condition suggested by the question was the same condition existing at the time of the accident, and the answer called for was material
10 and relevant to the issue.

9. Because at the said trial the plaintiff offered to prove by one Thomas Hughes, an expert, that under the conditions assumed to have existed at the time of the accident it was impossible to have adjusted the belt without one's body coming in contact with the shaft; which offer, on the objection of the defendant's counsel, was excluded; which ruling was illegal and to the injury of the plaintiff, because the evidence excluded was relevant and material
20 to the issue.

10. Because at the said trial the plaintiff's counsel asked of George Greer, an expert, a witness for the plaintiff, the following question:

"Q. This coupling by which it is claimed Mr. Donnelly was injured—have you ever seen couplings similar in size and appearance which did not have a set-screw in?"

On the objection of defendant's counsel the trial Judge
30 excluded the question, which ruling was illegal and to the injury of the plaintiff, because the question was for the purpose of proving that the coupling that caused the accident was entirely unusual, and dangerous and unsafe.

11. Because at the trial aforesaid, at the close of the plaintiff's case, the counsel for the defendant moved to grant a non-suit, which motion the Court, upon considering the evidence of the plaintiff's witnesses, granted; which ruling of the Court was illegal, erroneous and to the damage of the plaintiff, in that upon the evidence aforesaid the trial Judge should not have granted said non-suit.

Wherefore the said plaintiff in error, Abram Donnelly, prays that the judgment aforesaid, by reason of the errors aforesaid, may be reversed, and for nothing holden, and that he may be restored to all things which he has lost by reason of said judgment.

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WARD & McGINNIS,

Attorneys for and of Counsel with
Plaintiff in Error.

Joinder of error in usual form.

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