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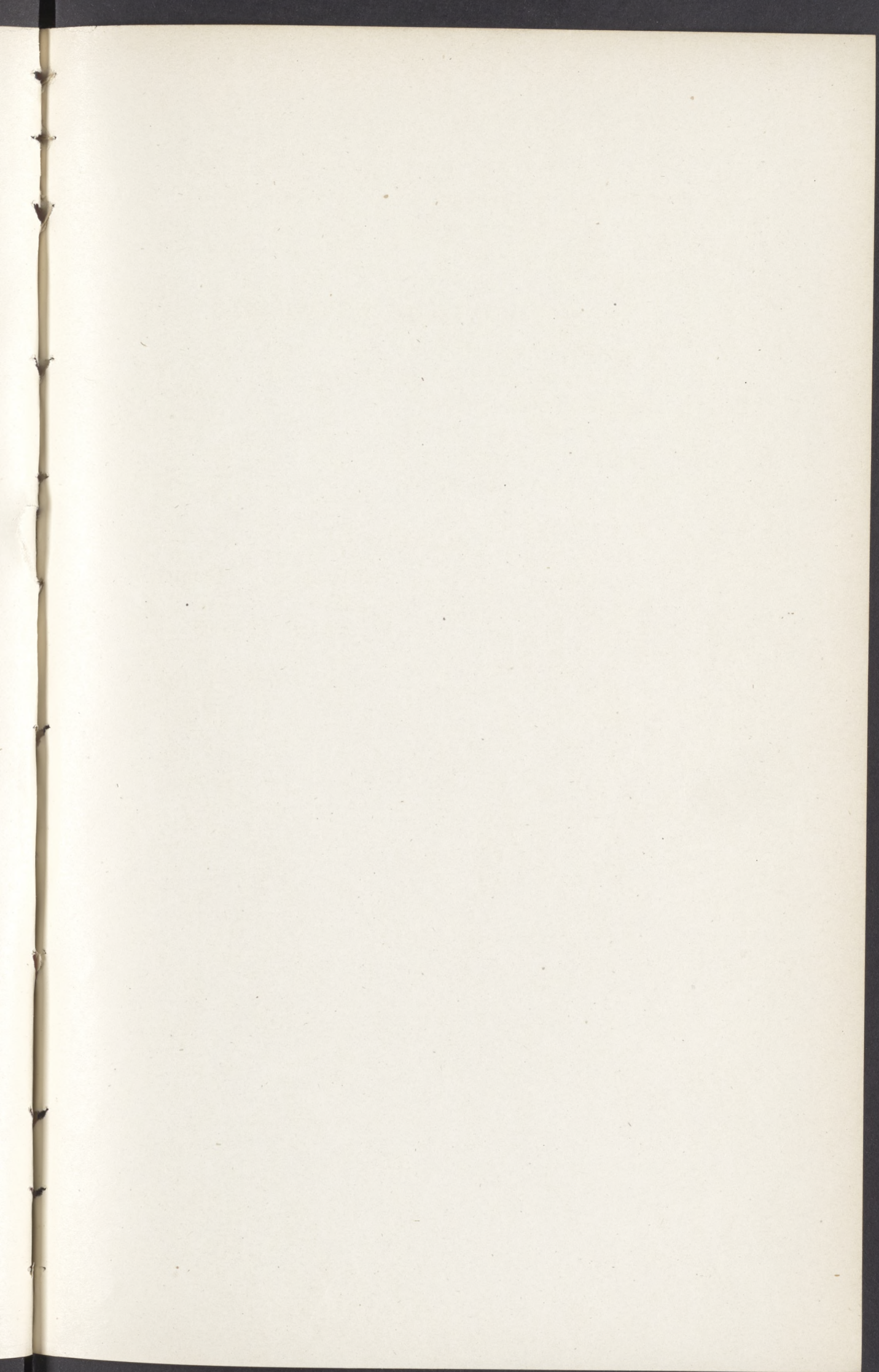
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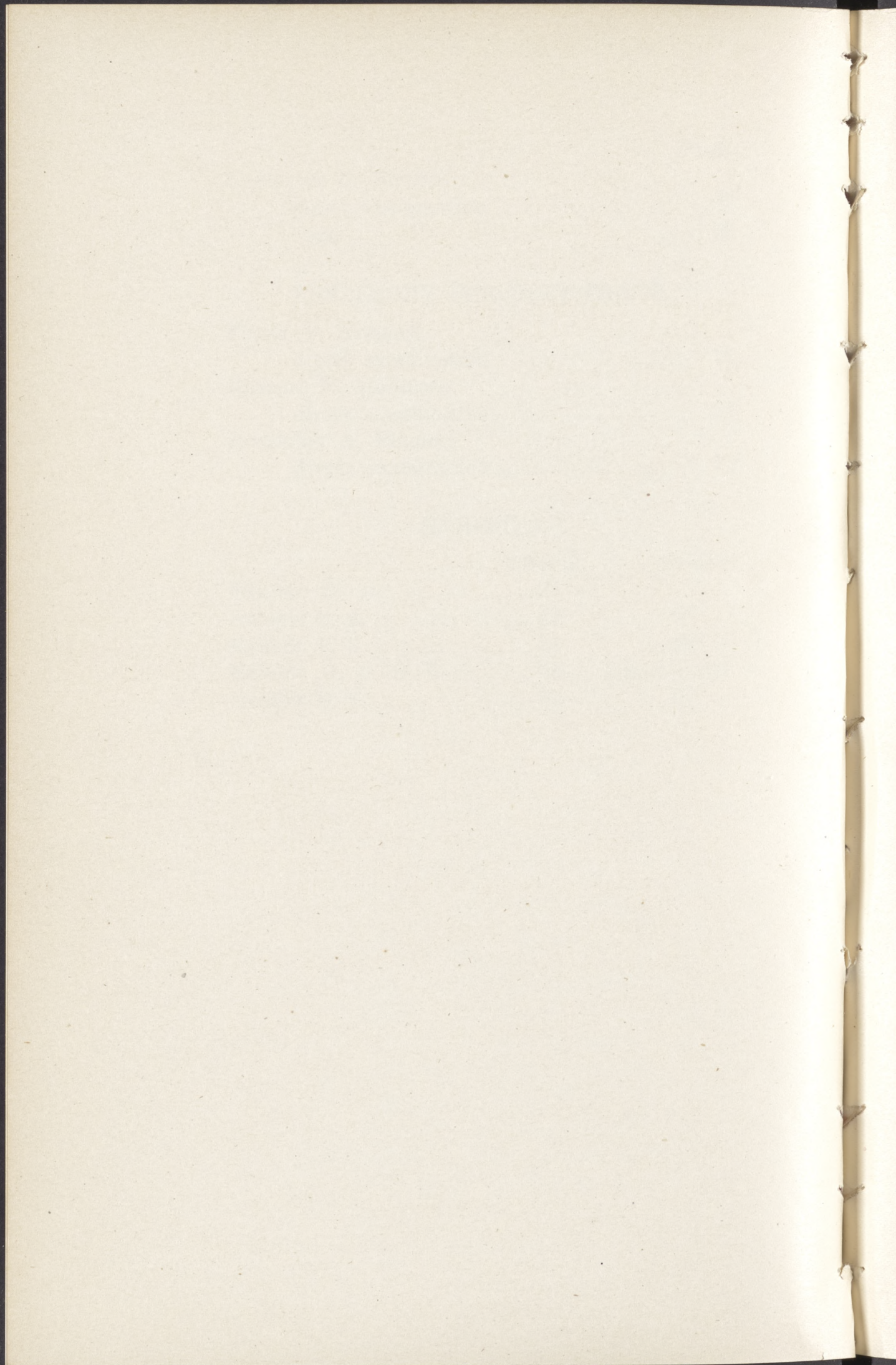
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Notice of Appeal.

Notice of Appeal.

Filed December 11, 1916.

ESSEX COUNTY CIRCUIT COURT.

On Appeal to the Court of Errors and Appeals.

JAMES DARVILLE,
Plaintiff-Respondent,

vs.

THE BOARD OF CHOSEN FREE-
HOLDERS OF THE COUNTY OF
ESSEX,
Defendant-Appellant.

10

*Notice of
Appeal.*

20

TO HUGH B. REED, ESQ.,
Attorney of Plaintiff.

TAKE NOTICE, that the defendant appeals from the whole of the judgment in this cause on the following grounds:

1. The court refused to grant a non-suit.
2. The court refused to direct a verdict.
3. The court charged the jury:

30

“You may also take into consideration whether the Freeholders have done anything to recognize their responsibility in this matter, whether they have painted it, whether they have, after the accident, done anything recognizing the fact that it was their duty to take care of this rail.”

4. The following question was admitted in evidence; to the witness, Harry Otter:

40

Summons.

“Did you see any of the county officers after the accident to the bridge?”

5. To the witness, Frederick A. Reimer:

“Did you order or direct any repairs to be made or protection to be given to those sides between the bridge and the blacksmith shop after this accident?”

10

HAROLD A. MILLER,
Attorney of Appellant.

Summons.

The State of New Jersey to the Board of
[L. s.] Chosen Freeholders of the County of
Essex. You are summoned to answer
the annexed complaint of James Darville, in an
action at law in the Essex County Circuit Court.
20 And take notice that unless you file your answer
to said complaint with the Clerk of the Essex
County Circuit Court, at Newark, within twenty
days after service upon you of this writ and the
annexed complaint, the plaintiff may proceed in
the suit and judgment may be entered against
you.

30 Witness, William S. Gummere, Judge of said
Court at Newark, this 30th day of March, nine-
teen hundred and fifteen.

JOSEPH McDONOUGH,
Clerk.

HUGH B. REED,
Attorney.

40

Complaint.

Complaint.

Filed March 31, 1916.

ESSEX COUNTY CIRCUIT COURT.

JAMES DARVILLE,

Plaintiff,

vs.

THE BOARD OF CHOSEN FREE-
HOLDERS OF THE COUNTY OF
ESSEX,

Defendant.

Action at 10
Law.
Complaint.

Plaintiff, who resides at Nutley, New Jersey, says that:

1. The defendant is, and at the time of the happening of the circumstances hereinafter related, was, The Board of Chosen Freeholders of the County of Essex and charged by law with the repair of bridges crossing streams at their intersection of public roads in said county, and especially with the repair of the bridge crossing Third River, in the town of Nutley, in the County of Essex, at Chestnut street, in said town. 20

2. By reason of long usage and exposure to the weather and from other causes, the hand-rail on the most westerly side of said bridge crossing "Third River," at Chestnut street, Nutley, New Jersey, became and was out of repair and insecure and dangerous to persons passing upon said bridge and unfit for the use for which the same was designed and erected and so remained for a long space of time, to wit; for a period of six months preceding the happening of the accident to the plaintiff hereinafter mentioned. 30 40

Complaint.

3. Said bridge was in such condition at the time of the happening of said accident, and, for a long time prior thereto had been, within the knowledge of said defendant, who had been duly notified thereof, and since said notification more than sufficient time had elapsed to enable said defendant to repair said bridge and said hand-rail.

10

4. On the second day of November, nineteen hundred and fourteen, said plaintiff, in the exercise of due care, was lawfully passing over and upon said bridge, and in so doing took hold of said hand-rail on the westerly side of said bridge, which by reason of such state of disrepair and failure to repair, thereupon gave way and precipitated said plaintiff from said bridge and into the said "Third River," thus causing to said plaintiff serious injury, from which he has not yet recovered.

20

5. By reason of said injuries so sustained said plaintiff has suffered great pain, was severely bruised and injured in and about his head, face, back and sides; has been unable to perform his usual duties; has been obliged to expend money in payment of doctor's bills and for medicines and has not been able to follow his ordinary employment.

30

6. That by virtue of the provisions of the ninth section of an act of the legislature of New Jersey, entitled "An act respecting bridges," plaintiff is entitled to bring this action against said defendant and recover his said damages.

Plaintiff says he has been damaged in the sum of five thousand dollars.

HUGH B. REED,

Attorney for Plaintiff.

40

Complaint.

To the within-named defendant:

If this complaint is served personally upon you and you intend to make a defense to this action you must file an affidavit of merits within ten days of such service and an answer to the action within twenty days of such service and in default of the filing of such affidavit of merits and answer or either of them as aforesaid judgment will be entered against you. 10

HUGH B. REED,
Attorney of Plaintiff.

Service of within summons and complaint acknowledged this 31st day of March, 1915.

H. A. MILLER,
Attorney of Defendant.

20

30

40

Answer.

Affidavit.

Filed April 1, 1915.

ESSEX COUNTY CIRCUIT COURT.

10	JAMES DARVILLE, <div style="text-align: right;"><i>Plaintiff,</i></div> <div style="text-align: center;"><i>against</i></div> BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF ESSEX, <div style="text-align: right;"><i>Defendants.</i></div>	}	<i>Action at Law. Affidavit of Merits.</i>
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STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. } ss:

20 Walter A. Evans, of full age, being duly sworn according to law, upon his oath deposes and says, that he is the Director of the Board of Chosen Freeholders of the County of Essex, the defendant in the above entitled cause, and that he believes that the said defendant has a just and legal defense to the said action on the merits of the case.

WALTER A. EVANS.

30 Subscribed and sworn to before me at Newark, N. J., this 1st day of April A. D. 1915.

HAROLD A. MILLER,
Master in Chancery of New Jersey.

*Answer.***Answer.**

Filed April 19, 1915.

ESSEX COUNTY CIRCUIT COURT.

JAMES DARVILLE,

*Plaintiff,**vs.*BOARD OF CHOSEN FREEHOLDERS
OF THE COUNTY OF ESSEX,*Defendant.**Action at
Law.
Answer.*

10

Defendant, a municipal corporation, says that:

1. It admits the first paragraph of the complaint.

2. It denies the truth of the matters contained in the second paragraph of the complaint.

20

3. It denies the truth of the matters contained in the third paragraph of the complaint.

4. It denies the truth of the matters contained in the fourth paragraph of the complaint.

5. As to the fifth paragraph of the complaint, it has no knowledge or information thereof sufficient to form a belief.

6. It denies the truth of the matters contained in the sixth paragraph of the complaint.

30

FIRST DEFENSE.

1. It avers that the negligence of the plaintiff contributed to the happening of the said alleged accident.

SECOND DEFENSE.

1. It avers that the plaintiff was not lawfully passing over and upon said bridge at the time of the said alleged accident.

ALFRED N. DALRYMPLE,

Attorney for Defendant.

40

Amended Complaint.

Amended Complaint.

Filed May 11, 1915.

ESSEX COUNTY CIRCUIT COURT.

10	<p>JAMES DARVILLE,</p> <p style="text-align: right;"><i>Plaintiff,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>THE BOARD OF CHOSEN FREE- HOLDERS OF THE COUNTY OF ESSEX,</p> <p style="text-align: right;"><i>Defendant.</i></p>	}	<p><i>Action at Law. Amended Complaint.</i></p>
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Plaintiff, who resides at Nutley, New Jersey, says that:

20 1. The defendant is, and at the time of the happening of the circumstances hereinafter related, was, The Board of Chosen Freeholders of the County of Essex and charged by law with the repair of bridges crossing streams at their intersection of public roads in said county, and especially with the repair of the bridge crossing "Third River," in the town of Nutley, in the County of Essex, at Chestnut street, in said town.

30 2. By reason of long usage and exposure to the weather and other causes the hand-rail on the most westerly side of the northerly end of said bridge, and guarding the approach to that end of the bridge along the abutment of said bridge became and was out of repair and insecure and dangerous to persons approaching and passing from said bridge at that point and unfit for the use for which the same was designed and erected, and so remained for a long space of

40 time, to wit: for a period of six months preceding

Amended Complaint.

the happening of the accident to the plaintiff hereinafter mentioned.

3. Said hand-rail was in such condition at the time of the happening of said accident, and, for a long time prior thereto had been, within the knowledge of said defendant who had been duly notified thereof, and since said notification more than sufficient time had elapsed to enable said defendant to repair said bridge and said hand-rail. 10

4. On the second day of November, nineteen hundred and fourteen, said plaintiff, in the exercise of due care was lawfully approaching said bridge, for the purpose of passing over the same, and when he had reached a point at or upon the abutment of said bridge at or near its junction with Chestnut street, in said town of Nutley, and along the said hand-rail at the northerly end of the westerly side of said bridge hereinabove described, placed his hand upon said hand-rail, which by reason of such disrepair and failure to repair on the part of said defendant, and the insecurity thereof, which was unknown to said plaintiff, thereupon gave way and precipitated said plaintiff from the approach to said bridge and into said "Third River," thus causing to said plaintiff serious injury from which he has not yet recovered. 20 30

5. By reason of said injuries so sustained said plaintiff has suffered great pain, was severely bruised and injured in and about his head, face, back and sides, has been unable to perform his usual duties, had been obliged to expend money in payment of doctor's bills and for medicines and has not been able to follow his ordinary employment. 40

Amended Complaint.

6. That by virtue of the provisions of the ninth section of an act of the legislature of New Jersey, entitled "An Act respecting bridges," plaintiff is entitled to bring this action against said defendant and recover his said damages.

Plaintiff says he has been damaged in the sum of five thousand dollars.

10

HUGH B. REED,
Attorney for Plaintiff.

I hereby consent to the filing of the within amended complaint.

H. A. MILLER,
Attorney of Defendant.

May 10, 1915.

20

30

40

Answer to Amended Complaint.

Answer to Amended Complaint.

Filed May 27, 1915.

ESSEX COUNTY CIRCUIT COURT.

<p>JAMES DARVILLE,</p> <p style="text-align: center;"><i>Plaintiff,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF ESSEX,</p> <p style="text-align: center;"><i>Defendant.</i></p>	}	<p><i>Action at Law.</i></p> <p><i>Answer to Amended Complaint.</i></p>	<p>10</p>
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Defendant, a municipal corporation, says that:

1. It admits the first paragraph of the amended complaint.

2. It denies the truth of the matters contained in the second paragraph of the amended complaint. 20

3. It denies the truth of the matters contained in the third paragraph of the amended complaint.

4. It denies the truth of the matters contained in the fourth paragraph of the amended complaint.

5. As to the fifth paragraph of the amended complaint it has no knowledge or information thereof sufficient to form a belief. 30

6. It denies the truth of the matters contained in the sixth paragraph of the amended complaint.

FIRST DEFENSE.

1. It avers that the plaintiff had full knowledge of the weakened or insecure condition, if any existed, of the rail mentioned in the complaint, and had knowledge of the condition of dis- 40

Answer to Amended Complaint.

repair if such existed, of the rail mentioned in the complaint, and that having such knowledge, complainant deliberately leaned against said rail and placed himself in a condition of danger and contributed to the happenings of the said alleged accident.

SECOND DEFENSE.

10 1. It avers that the plaintiff was not lawfully passing over and upon said bridge at the time of the said alleged accident, but that at the time of the alleged accident, the plaintiff was upon private property.

2. That the hand-rail mentioned in the amended complaint constituted no part of the said bridge.

ALFRED N. DALRYMPLE,
Attorney for Defendant.

20

30

40

*Judgment.***Judgment.**

ESSEX COUNTY CIRCUIT COURT.

26313

10	JAMES DARVILLE, <i>vs.</i> BOARD OF CHOSEN FREEHOLDERS, <i>Defendants.</i>	<i>Plaintiff,</i>	<i>Action at Law. Verdict by a Jury. Judgment for Plaintiff. Am't \$750.00 Costs . 72.97</i>	<hr/> <i>Total \$822.97</i>
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HUGH B. REED, Attorney of Plaintiff.

20 This action was tried before Judge Willard W. Cutler with a jury at the Essex County Circuit Court, on October 20, 1916.

The cause having been heard and submitted to the jury they return their verdict as follows:

They find in favor of the plaintiff, James Darville, and assess the damage against the defendant Board of Chosen Freeholders at the sum of seven hundred fifty dollars:

30 Whereupon it is adjudged that the plaintiff recover of the defendant the sum of seven hundred fifty dollars and costs which are taxed at the sum of seventy-two dollars and ninety-seven cents, making in the whole the sum of eight hundred twenty-two dollars and ninety-seven cents.

Judgment entered and signed October 20, 1916.

WM. S. GUMMERE,
Judge.

40 Book 93—page 567.

Judgment.

ESSEX COUNTY CLERK'S OFFICE.

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. } ss:

I, JOSEPH McDONOUGH, Clerk of the Circuit Court, in and for the County of Essex in the State of New Jersey, do hereby certify that the foregoing is a true and correct copy of a certain notice of appeal, transcript of entire proceedings and judgment record in the case of James Darville vs. Board of Chosen Freeholders, and the same is taken from and compared with original papers and record and as the same now remains on the files of said office. 10

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of said Court and County at Newark, N. J., this 22nd day of December A. D. 1916. 20

[L. s.] JOSEPH McDONOUGH,
Clerk.

30

40

James T. Boylan, direct.

ESSEX CIRCUIT COURT.

10	<p>JAMES DARVILLE, <i>vs.</i> BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF ESSEX.</p>	}	<p><i>Action at Law.</i></p>
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Transcript of shorthand notes of testimony, and so forth, taken in the above stated cause, upon the trial thereof, at the Court House, Newark, N. J., on Thursday, October 19, 1916.

20 Before Hon. Willard W. Cutler, Judge, and a jury.

Hugh B. Reed for plaintiff.

Herbert W. Taylor and Harold A. Miller for defendant.

(A map produced is placed upon the wall.)

Mr. Reed opens for plaintiff.

Mr. Miller opens for defendant.

30 JAMES T. BOYLAN, sworn in behalf of plaintiff.

Direct examination by Mr. Reed.

Q Mr. Boylan, you are a contractor? A Yes, sir.

Q A mason contractor? A Yes, sir.

Q How long have you been engaged in that business? A Twenty years.

Q In this vicinity? A Yes, sir.

40 Q Do you know Chestnut street, Nutley, and

James T. Boylan, direct.

the bridge that crosses Third avenue? A Yes.

Q Did you have any part in the building of that structure? A Yes, sir.

Q What did you do? A I had the contract for the masonry of that job.

Q Will you turn to that map and tell us what you did in the completion of that contract? A I built those (indicating) walls.

10

Q By those walls you mean— A The bridge walls.

Q From what point did that run, to what point? A Well, I can only say that approximately. I would say that they ran from this point (indicating) to here, approximately 60 feet.

Q Approximately 60 feet. That is, on the west side of the creek or river? A Yes, sir; on both sides; on the east and on the west.

20

Q Now, on the east side of the street you notice a structure there marked "Blacksmith Shop?" A Yes, sir.

Q Do you know the position of that, on the ground? A Yes, sir.

Q How near to the wall did you build the bridge, of that shop? A The bridge walls met the walls of the blacksmith shop.

Q That is, up to the walls of the blacksmith shop? A Yes, sir; we built right up to the wall of the blacksmith shop.

30

Q That ran across to the south side of the road there? A Yes, sir.

Q When was that built, Mr. Boylan? A That was built fourteen years ago last July.

Q You didn't have any part in the building of the upper part, the superstructure? A Yes, sir; I built the superstructure, but not the iron.

Q Just what did you do with regard to

40

James T. Boylan, cross.

the superstructure? A I built these bridge arches (indicating).

Q It is a brick arch bridge? A Yes, sir.

Q You built the brick arches? A Yes, sir.

Q That gave the floors to the bridge? A Yes, sir.

10 Q What runs from the bridge northerly to the blacksmith shop? Was there a coping or anything of that kind? A Yes, sir.

Q A stone coping? A Yes, sir.

Q How broad? A I should say it was in the neighborhood of eighteen inches.

Q Did that form one stone or more? A I couldn't say positively; I think it was about one stone.

Q Who placed that there? A One of my men.

20 Q Under your direction? A Yes, sir.

Q By whom were you employed to do this work? A Essex County.

Q When you say Essex County what do you mean? The Board of Chosen Freeholders? A Yes, sir.

Q Have you had any occasion to do any work there since that time? A No, sir.

Cross examination by Mr. Miller.

30 Q By what authority, Mr. Boylan, did you build that wall in the street line to the blacksmith shop? A On the engineer's orders.

Q Have you a copy of the contract and specifications? A No, sir; I have not.

Q Did you, at that time? A Yes, sir.

Q Do you know whether it was called for in them? A That I could not recall.

40 Q Do you know whether that coping on the back of the wall was called for in the contract

Harry Otter, direct.

and specifications? A I couldn't recall that either, Mr. Miller.

Q You simply built it because you were directed to by the county engineer? A Yes, sir.

Q Who was the engineer at that time? A James Owen.

Q You had nothing to do with the iron work, did you? A Not a particle. 10

Q Mr. Owen was county engineer? A Yes, sir; at that time.

Q Of the Board of Chosen Freeholders? A Yes, sir.

Q Where are your plans and specifications, do you know? A No; I haven't the slightest idea.

Q Have you made any effort to find them? A Yes, sir.

Q Where have you looked? A Looked 20 home; but then I have changed my residence three or four times since that and it was impossible to locate them.

Q You looked for them and were unable to find them? A I looked for them and could not find them.

Q Do you know whether you were paid anything outside of the contract price for the laying of this stonework? A The only money I was paid outside of that was for the grading 30 for the approaches to the bridge.

HARRY OTTER, sworn in behalf of plaintiff.

Direct examination by Mr. Reed.

Q Mr. Otter, where do you live? A Nutley, New Jersey.

Q In what business are you engaged? A I am a blacksmith. 40

Harry Otter, direct.

Q Where is your place of business? A Chestnut street.

Q How near the bridge on Third River? A Adjoining it.

Q Adjoining the bridge? A Yes, sir.

Q Then you occupy, do you not, this square place called "Blacksmith Shop" (indicating on map)? A That is it.

10 Q And how long have you been there? A About twenty-one years.

Q You know, of course, the bridge that crosses the stream there? A Yes.

Q Do you recall when it was rebuilt? A Yes, I do.

Q How long ago is that, about? A Well, I couldn't say.

20 Q Well, about? A About fourteen or fifteen years, I judge.

Q What was done there at that time? A Well, the old bridge was pulled down and this new one was put there, and the street widened at that time.

Q What kind of a bridge is it? A Well, I don't know what kind you would call it, I am sure.

Q Well, I mean, it has railings along the side, outside? A Yes, sir.

30 Q Of what material? A Iron.

Q An iron rail? A Yes.

Q And a brick and cement floor? A Yes, sir.

Q Now, on the side near your blacksmith shop, how near does the corner of the bridge come to the corner of your shop? It is marked here on this map. A About 4 feet, I guess.

Q You should say about 4 feet? A Yes.

40 Q Well, on this east side of the street how does the wall fall to the river? Is it sharp

Harry Otter, direct.

or gradual? A It is sharp, straight up and down.

Q Straight up and down? A Yes.

Q How high is it from the top of the wall to the river? A About 10 feet.

Q About 10 feet? A Yes.

Q That is straight down? A Straight down.

Q Mr. Boylan was telling us that he built the wall there. From what point does that wall extend, do you recall? Does it run out to the southerly side of the bridge? A Yes.

10

Q And on the northerly side where does it run to? A Right on the corner of the blacksmith shop.

Q Well, now, beyond that what is there where your blacksmith shop is? What keeps your blacksmith shop out of the water? A A brick and stone foundation.

20

Q But the wall of the bridge runs to the corner of that blacksmith shop? A Yes.

Q Will you describe, now, the iron railing along the side of the bridge? What was there, if anything, at the time this accident happened, which is alleged to be November 2, 1914, to fill up that space from the bridge to the corner of your blacksmith shop, if anything?

A A pipe railing.

30

Q When was that put there? A When the bridge was built.

Q Who put it there, do you know? A I believe it was Hay's Foundry; I am not sure.

Q You say it was put there when the bridge was built, fourteen or fifteen years ago? A Yes.

Q Now, the pipe railing, can you describe that a little more definitely? What sort of a railing? Would it be V-shaped like this,

40

Harry Otter, direct.

for instance (illustrating)? A No; it was two uprights, and cross pieces screwed into them.

Q An upright going up, across and down on the other side? How were they fastened?

A They were put in with T's across, one piece, put in with a T.

10 Q How were they held in place? A On the ground?

Q Were they on the ground or were they on the stone coping? A One was on the girder of the bridge and the other was on the stone coping.

Q How near to the stone coping was the rail, with regard to your blacksmith shop? A Adjoining the shop.

20 Q How was that fastened to the stone coping? A There were holes bored in the stone coping and wooden plugs put in them, and lag screws put in.

Q I want to show you something that I have and ask you what that is? A That is one of the connections.

Q One of the lag screws you refer to? A Yes.

30 Q Well, when did you first see that? A That was near where it tipped over. That was fastened into a piece, fastened into a seat, you know, of the railing. This was rusted fast into the seat.

Q What did you do with that screw? A I took it out—on, I didn't take it out. I don't know whether it was your man or some other man took it out.

Q Were you there? A Yes.

Q What was done with it then? A With what?

40 Q With that screw? A It was taken away.

Harry Otter, direct.

Q Who took it? A I suppose it was your man. I don't know; I am not sure.

Q You couldn't say who took it? A No.

Q How do you recognize it as one that was taken out? A I remember it well. There were three of them.

Q There were three? A Yes.

Q And which end of this railing that you speak of, the 16-foot one, the one near the bridge or the one near your shop? A The one near the shop. 10

Q That went through this iron base of this iron pipe stem, through the base of it into the stone? A Yes.

Mr. Reed. I offer this in evidence.

(Marked Exhibit P. 1.)

Q Now, do you remember the condition of this railing prior to November 2, 1914? A Yes, sir. 20

Q Had you examined it at that time? A Yes.

Q When did you see it? When was your attention attracted to it before that time? A Perhaps a year before the accident.

Q And what condition did you find it in then? A The bottom of the connection of the bridge was rusted off, rusted in two. 30

Q That is, the one on the bridge end was rusted in two? A Yes.

Q That had been fastened to the bridge itself, I understand you? A No, not to the bridge, to the girder.

Q To the girder of the bridge? A Yes.

Q That had rested in it? A Yes.

Q What did you do in connection with that, with regard to the county, anything? A No; I told one of the town officers of it. 40

Harry Otter, direct.

Q You didn't tell anyone else? A No, sir.

Q That was about a year before November, 1914. And was anything done to repair that, do you know? A Nothing.

Q Nothing was done? A No.

Q Do you know whether these bridges are inspected? Did you ever see any one inspecting those bridges for the county? A No, I did not.

10 Q Well, do you know James Darville, the plaintiff? A Yes, sir.

Q Do you remember the 2d of November, 1914? A Yes, sir.

Q And did you see him on that day? A Yes, sir.

Q Where was he? A He was in the shop.

Q That is, the shop near the bridge? A Yes.

20 Q Well, did he leave it? A Yes.

Q When did you see him next after he had left it? A In the brook.

Q What attracted you to the fact that he was in the brook? What opportunity had you to see him there? A The noise he made.

Q You came out, anyway, and found him? What did you do? A A couple of fellows took hold of him and dragged him out, and I gave him some help.

30 Q What did you do with him then? A Put him in a wagon and took him home.

Q Did you notice whether he appeared to have suffered any injury? A He seemed to be pretty badly hurt in the back.

Q What about his face and head? A The railing was on top of him, struck him in the face.

40 Q Just where was he when you first saw him? What position was he in then? A He was in the brook.

Harry Otter, direct.

Q Where was his head and shoulders? A He was into the water completely; he was on his back.

Q You say this railing was on top of him?

A Yes, sir.

Q (*By the Court.*) How deep was the water? A Well, I should judge there was about 2 foot of water in it at the time, sir.

Q (*By Mr. Reed.*) Well, does the water run rapidly or slowly there? A Well, rather rapidly.

Q What have you to say about the bottom of the brook there? Is that sandy or otherwise? A No; at that time there was a lot of stones that had washed down with the stream. At that time it was lined with them.

Q Lined with rocks? A Yes.

Q How large were those rocks? A Some of them might be cobblestones, you know, and some of them perhaps a foot.

Q From a foot in diameter to cobblestones? A Yes.

Q You say that he complained of his back, as I understand you? A Yes.

Q Did you see any indication of any bruise on him? A I didn't, no. At his home, his face was bruised and bleeding.

Q You spoke of his having been struck across the face with this railing. Did you see this railing on his face? A Well, the position he was in, the railing was this way (illustrating). He seemed to have the joint of the railing—the railing was on top of him this way (illustrating). How it got there I don't know.

Q Anyway, you took him home, did you not? Did you see him after you had taken him home?

A Yes, several times.

Q How did you see him, and where? A

Harry Otter, direct.

He was in bed for a couple of weeks, I should judge, and then he was dragging around pretty well all winter.

Q Then you saw him at his house? A Yes, sir.

Q You went there to call on him? A Yes, sir.

10 Q You are friendly with him? A Yes, sir.

Q You say he was in bed for a couple of weeks? A Yes, I judge he was.

Q How long was he confined to the house, if you know? A He was in the house pretty much all winter.

Q When did you first see him out after the accident? A Well, I couldn't say that I am sure; I don't remember.

20 Q Do you know what trade he was in? A House painter.

Q Did he work at his trade before this accident, do you know? A Yes.

Q Did he work after it, so far as you know? A No, I don't think he has worked any since.

Q Well, what happened with regard to this place there after this accident happened? A Well, we went and got an old cart wheel and put in the hole, and plugged up the hole.

Q Is that there yet? A No, sir.

30 Q When was that taken away, if at all? A About last February or March, I should judge.

Q And that remained there until then? A Yes.

Q Who took it away?

Mr. Miller. I object to anything that was done after the accident by way of repairing or replacing the condition of the stone.

40 *The Court.* How is it competent?

Harry Otter, direct.

Mr. Reed. To show that it was repaired by the county.

The Court. That would not show liability, would it?

Mr. Reed. It seems to me that that would show an admission of liability, that it amounts to an admission.

10

The Court. (After further argument.) I will exclude the evidence.

Plaintiff's counsel prays an exception to this ruling of the Court, and the same is allowed.

Q Did you see any of the county officers after the accident to the bridge?

Mr. Miller. I object to that.

20

The Court. I will allow it.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

A Yes, I did.

Q Who was it? A Mr. Reimer.

Q Do you know what connection he has with the county? A County engineer.

30

Q Did you have a conversation with him regarding this? A Yes; I believe I did; he came in the shop.

Q Did he say anything about this railing?

A Yes, sir.

Q What did he say?

Mr. Miller. I object to what the engineer might have said. I do not see how that could bind the county. It was after the accident.

40

Harry Otter, direct.

The Court. Suppose the engineer says he did have knowledge?

Mr. Reed. That is not what I want to show. What I want to show is that he directed him what to do with respect to it.

10 *The Court.* I do not think whether he repaired it afterwards or not would show negligence on their part, or show liability.

Mr. Reed. It would show knowledge.

The Court. After it occurred.

Mr. Reed. That is true.

20 *The Court.* If you can show that any of the engineers or county officers made any admissions that would show, directly or indirectly, knowledge prior to that time, I will admit it.

Q. Did the county engineer say anything about the condition of this railing prior to the accident? A No, sir.

Mr. Reed. Well, I would like to get this question on record. I want to ask him who repaired it and who paid for the repairs.

30 *The Court.* You may ask your question and get your ruling, and get the benefit of your exception.

Q Who repaired the bridge, if you know?
A I did.

Mr. Miller. I object.

Mr. Reed. I understand your Honor rules that out?

40 *The Court.* Yes. I do not think that makes any difference; it is immaterial at

Harry Otter, cross.

this time, and I will rule it out. I do not say that under certain directions that the case might take it might not be competent later on; I am only ruling on the case as it now stands.

Q Who paid for the repairs made?

Mr. Miller. I object.

10

The Court. Objections sustained.

Plaintiff's counsel prays an exception and the same is allowed.

Cross examination by Mr. Miller.

Q How long have you been there in the present stone blacksmith shop? A About twenty-one years.

Q How long have you known Mr. Darville? A About the same time. 20

Q Mr. Darville has been in the habit, for some time past, of coming around to your blacksmith shop? A Yes, sir.

Q What would he do? A Just sit around a little while and go off.

Q How frequently would he do that? A When he wasn't working he would most generally come every day, once a day.

Q That covered a period prior to the accident of how much time? How many years? 30

A Twenty years.

Q For the past twenty years, then, prior to the accident, he had been coming around on the bridge once a day? A Yes.

Q Sitting around the blacksmith shop talking? A He would stay just a few minutes.

Q Well, he would stay for a while? A Yes, sir.

Q Sometimes longer than others? A Yes. 40

Harry Otter, cross.

Q He would stand around outside and talk during those visits? A Yes.

Q During those visits he would stand around where? Outside? Just point to that map, will you, and just show us where he would stand around and talk? A He would stand around here, I judge (indicating).

10 Q Up by that rail? A Yes, up with his back against the shop.

Q With his back against the rail, too? I am not speaking about the day of the accident, now; I am speaking about prior times. A Any time, if anyone was around there, he would just loll up against the shop.

Q Did you ever see him loll up against the rail, too? A No; I would not say that I did.

20 Q But you have seen him around the rail, though? A Yes.

Q Talking with others who would congregate? A Yes.

Q That covered the period of twenty years, about? A Yes.

Q You say the corner of the bridge is about 4 feet from that shop? A Yes, sir.

Q As near as you can judge? A Yes.

30 Q You say that the time during which the rail had been out of repair was about a year prior to the accident? A Yes, I should judge it was.

Q How did you happen to notice that it was out of repair? A I noticed that it was rusted off, and I tied it with bale wire.

Q How long before the accident did you tie it with bale wire? Have you any recollection? A No, I have not.

40 Q About how long? Six months? A Fully that.

Harry Otter, cross.

Q Ten months? Was it a year before? A I wouldn't say positively.

Q I don't want you to, positively. Was it about a year before the accident that you tied it up with bale wire? A Yes, sir.

Q So that for a year prior to this accident the bale wire was on the rail? A Yes.

Q Was the condition of disrepair and rust noticeable from the street? A No. If you looked for it particularly, it was on the bottom. 10

Q On the bottom? A Yes.

Q How did you happen to notice it? A I was just around there and I noticed it.

Q You noticed it because you are around there a great deal? A Yes.

Q Nobody called your attention to it prior to that? A No. 20

Q You just saw it by yourself? A Yes.

Q What part of the structure was this bale wire on, on the upright nearest to the bridge or nearest to the shop? A Nearer the bridge.

Q What did it tie? A Connected the upright with the post of the bridge.

Q Was this iron rail connected to the rail of the bridge so that they touched? A No, sir.

Q They were separate, were they not? A Yes. 30

Q There is a space between the end of this iron rail, where it came nearest to the bridge, and the bridge proper, of about how much, would you say? A Perhaps about three inches.

Q You say that iron rail was put on there at the time the bridge was built, by the Hay Foundry Company? A That I couldn't say; I think it was, though. 40

Harry Otter, cross.

Q But you don't know who put it on, do you? A No, I do not.

Q Why did you say the Hay Foundry Company? A Because I think I remember some of the men that was working there. Of course, I forget at that time, but I think it was the Hay Foundry Company.

10 Q As a matter of fact, you don't know who put the rail on at the time it was built, do you? A Only the men who built the bridge put the rail up.

Q Do you know who the contractor was? A Who built the bridge?

Q Yes. A Mr. Boylan.

Q I mean who did the iron work? A Hay Foundry.

20 Q That is what you were told? A That is what I recollect.

Q (*By the Court.*) As I understand it, the man who put up this bridge, the ironwork of the bridge, put up this rail? A Yes, sir.

Q (*By Mr. Miller.*) You say Mr. Darville appeared to be hurt in the back when pulled out of the stream? A Yes.

30 Q How did you come to that conclusion? A He couldn't stand on his feet. He complained of pain in the back. We had to lift him into the wagon and out of it.

Q Were you one of the men who took him home? A No, sir; I helped put him in the wagon and sent a couple more men with him.

Q How long after the accident did you call on him? A The next day.

Q Did you call on him frequently after that? A Well, about twice a week.

Q For two weeks? A Yes, sir.

40 Q During that time he was in the house? A Yes, sir.

Harry Otter, cross.

Q In bed? A About that time, yes, sir.

Q What kind of cuts or marks did he have on his face at the time he was taken out of the brook? A Bleeding very bad.

Q Whereabouts? A On his jaw.

Q The left jaw? A I couldn't say whether the left or right. I think it was his left.

Q Was there a cut there that you could see? A Yes.

Q Was there a hurt anywhere else on his face that you could see? A He had a bruise on his cheek bone.

Q Did the bruise show up at the time you pulled him out of the brook? A No; at the time I pulled him out of the brook, of course—

Q I am speaking, now, of the time you pulled him out of the brook. A No.

Q All you could see, then, was the cut? A Blood, that is all.

Q You saw the bruise later? A Yes.

Q At the time? A Yes.

Q Where were you when Mr. Darville fell into the brook? A In the shop.

Q You were in there working? A Yes, sir.

Q Just in what situation was he when you came out? A Lying on his back.

Q In the brook? A In the brook.

Q You didn't see him fall in? A No, sir.

Q Did you see him after he left the shop, just before he fell in? A I just saw his head through the window, that is all.

Q When you last saw him outside the shop, before he fell into the brook, show us by that map, if you will, where he was, where he was standing? A About here (indicating).

Q About how far from the rail, would you say? A About a foot.

Q Leaning against the blacksmith shop? A Yes.

10

20

30

40

Harry Otter, cross.

Q You say that Mr. Darville worked at his trade as painter prior to the accident? A Yes, sir.

Q How do you know how much of the time he worked? A I don't know; only I know to say he was working; that is all I know.

Q I see. Just from what he said? A Yes.

10 Q But you don't know from own knowledge? A No.

Q Why do you say that after he had this accident he didn't work? A Because he was able to get up. He had been down in the shop pretty much every day.

Q Would he stay longer than he would before the accident? A No; about the same length of time.

20 Q In other words, the visits would be about the same frequency and of the same duration as before the accident? A Yes.

Q So that of your own knowledge you don't know whether he was working after the accident or not, do you? A No, I do not.

Q Except what people might have told you? A That is all.

Q (*By the Court.*) What was his business? A House painter.

30 Q (*By Mr. Miller.*) Did you go right out after the accident and pick up this lag screw, Mr. Otter? A No, sir.

Q How long after the accident did you pick it up? A After we got rid of him we pulled the railing out of this brook and that was connected to the railing.

Q When did you pull the rail out? A Directly afterwards.

Q Fifteen minutes or so? A Yes.

40 Q And this screw was connected to this rail? A Yes.

James Brown, direct.

Q Was that when you took this lag screw?

A I didn't take it.

Q Oh, who did take it? A I left it in.

Q When did you next see this lag screw?

A I left it down there. It was there all the time.

Q When did you see it again? A Someone came around to look at it.

10

Q Do you know who it was came around to look at it? A I don't know. That was one of Mr. Reed's men.

Q He took the screw then? A Yes.

Q You saw him take it? A Yes, sir.

Q You haven't seen it since until today? A Yes, I have.

Q Where did you see it after that? A In Mr. Reed's office.

JAMES BROWN, sworn in behalf of plaintiff. 20

Direct examination by Mr. Reed.

Q Where do you live, Mr. Brown? A 182 Chestnut street, Nutley.

Q Do you know Mr. James Darville, the plaintiff? A Yes, sir.

Q How long a time have you known him? A A couple of years, I guess, or more—I don't know.

Q Do you know Mr. Otter, the blacksmith? 30

A Yes, sir.

Q You have been in his blacksmith shop?

A Yes, sir.

Q And on the bridge across Chestnut street?

A Yes, sir.

Q Did you see Mr. Darville near that bridge, in November, 1914? A Yes, sir.

Q What day was it, do you remember? A The day before election, in the evening, the town election, Monday evening.

40

James Brown, direct.

Q Where was he then? A He was coming out of Harry Otter's blacksmith shop.

Q What did he do? A A young man came down there and spoke to him. He turned around, and as he turned around he put his hand on the rail and fell in.

10 Q What rail? A The rail that connected there from the blacksmith shop to the bridge.

Q You say he put his hand on that and fell in? A Yes.

Q Did that happen at once? A Well, this man spoke to him. He turned around suddenly. I was speaking to another friend on the rail, waiting to get my horse shod. The first thing I knew I saw him in the water.

Q Saw him where? A Saw him down in the water.

20 Q How high is that wall there to the blacksmith shop? A I never measured; I suppose 8, 9 or 10 feet.

Q Where was he when you saw him? Where were you? How far were you from the edge of the wall? A I say about 2 feet from the edge of the wall?

Q Yes. A You mean from the edge to the rail?

30 Q The rail was right near the edge of the wall, wasn't it? A $2\frac{1}{2}$ to 3 feet.

Q When he fell over what did you do? A This Jimmie Egan, that he was talking to, jumped in and took the iron rail off him, and myself and another young man picked him up and helped to get him out.

Q You say that Egan took the iron rail off whom? A Off Mr. Darville.

Q Where was the rail? A Right on top of his chest and face.

40 Q Where was Mr. Darville at that time?

James Brown, direct.

A He was underneath the rail.

Q In the bottom of the river? A Yes.

Q How much water was there there? A A foot and a half or 2 feet.

Q What kind of a bottom was it? A Rubble bottom, full of stones.

Q Did you see Mr. Darville strike the water when he fell? A My back was turned to him. Not until the splash. 10

Q You turned at the splash? A Yes.

Q But you saw the rail where it lay on top of him, did you? A Yes.

Q Saw him take it off? A Yes, sir.

Q And helped him out? A Yes.

Q Describe his condition when you took him out? A He was shaking and moaning as his face was cut and a wagon came along, and this Mr. Otter and Mr. Egan put him in the wagon, and they took him home. 20

Q You didn't go with him? A No, sir.

Q Did you see him afterwards? A On Sunday I went down to see him.

Q One call on him? A Yes, sir.

Q Where was he then? A He was up, then, complaining of his head, back and face.

Q When did you see him after that? A I didn't see him after that no more, sir.

Q Well, you did see him after he got out again, didn't you? A Oh, I never took any more interest in it. I might have seen him three or four months afterwards; I don't remember. 30

Q Where was he? Locate it on that map. Where was he with regard to that map, when you saw him? A He came out of the blacksmith shop and he faced down Chestnut street. Mr. Egan was coming down Chestnut street and he was coming toward the bridge. Egan 40

James Brown, cross.

spoke to him about the election. He put his hand on the rail quick, looked around, and went over.

Q How near the bridge was he? A About 2½ feet from it.

Q From the bridge? A From the rail.

Q Oh, from the rail, when he grabbed it?

10 A Yes.

Q How near was he to the end of the bridge, did you notice that? A From the blacksmith shop, do you mean?

Q Here is the end of the bridge, here (indicating on map.) A About a foot and a half.

Q A foot and a half to the end of the bridge? A Do you mean to the street rail or blacksmith shop?

20 Q I mean from the blacksmith shop. A About 2½ feet to there (indicating).

Q He was right about in the center, between the rail of the bridge and the blacksmith shop? A Yes.

Cross examination by Mr. Miller.

Q Had you seen Mr. Darville around the blacksmith shop before this accident? A Yes, sir.

30 Q About how often? A Really, I don't know.

Q Three or four times a week? A I wasn't up around there; I am not working every day. Sometimes I used to go and get a horse shod.

Q Did you frequently see him standing around there, talking? A Yes.

Q Usually, would he be standing about the same place he was when he fell overboard? A Sometimes; sometimes some place else.

40 Q But he would be standing around that

James Brown, cross.

place also? A Yes.

Q By this rail? A By this door and by this railing.

Q You say when he fell over he was about a foot or so, about a foot away from the railing of the blacksmith shop? A I judge about a foot and a half of the blacksmith shop.

Q Did you see him when he was falling over or after he actually lay there? A Yes, sir; I saw him come out of the blacksmith shop. I saw him when he was lying there. 10

Q What was he doing before you saw him fall? A He was going along. This Mr. Egan came down the street and spoke to him. As he spoke to him he turned around and spoke to him, put his hand on this rail and went right over.

Q Were you looking at him when he put his hand down on the rail? A No; I was like this (illustrating); I was standing up against the street rail and I could see him. 20

Q What do you mean by "the street rail"? A That one that runs along Chestnut street.

Q That is the one on the bridge? A Yes.

Q You were standing up against that? A Yes sir; the street rail.

Q That is Chestnut street? A Yes, sir.

Q How far on the bridge were you? A I was about 2½ feet to 3 feet from the corner. 30

Q And Mr. Darville was standing— A He just came out of the blacksmith shop right close by the wall, I judge about a foot and a half or two feet from the blacksmith shop.

Q The last you saw of him was when he stood in that position and put his hand on the rail? A He was just walking along and Mr. Egan spoke to him. He turned around and put his hand out, back, and fell. 40

James Brown, cross.

Q Did he lean up against the rail, did you notice? A No, sir; I did not.

Q Did you notice what condition this rail, was in? A No, sir; I did not.

Q Had you ever noticed it tied up with wire? A I had noticed a place with wire around there, but I never took any notice of it.

10 Q Did you notice that it was rusted? A No.

Q Had you been in the habit of standing around there with other men and talking? A No, sir.

Q You just saw them there as you passed? A I was waiting there to get my horse shod.

Q How long before the accident had you noticed that wire on the rail? A I couldn't say.

20 Q Haven't you any idea? A No.

Q A month or so? A Maybe a month or two, or three months—six months—something like that.

Q Six months or so? A Yes.

Q It was plain? Anybody could see the rail easily? A Anybody could see it.

Q How soon after he was injured did you go to see him? A On the following Sunday.

30 Q This happened on Monday? A Monday evening.

Q And you went on the following Sunday? A Yes.

Q You say he was up? A He was up, yes; he was complaining of his head. He said he had to go back to bed again.

Q Did he complain of anything else? A No; he said he felt sore all over.

40 HERBERT W. HEILMAN, sworn in behalf of plaintiff.

Herbert W. Heilman, direct.

Direct examination by Mr. Reed.

Q Mr. Heilman, you are connected with the county engineer's office? A Yes, sir.

Q In what capacity? A Assistant county engineer.

Q How long have you held that position? A Since January 1, 1913.

Q Who has charge of the records of that office? A County engineer. 10

Q They come under your jurisdiction? A Yes, sir.

Q Did you make any effort to find the plans and specifications and contract relating to the bridge across the Third River in Chestnut street, Nutley? A Yes, sir.

Q When did you do that? A I did that since this plan was made, since 1915, April 2, 1915. 20

Q Did you find them? A No, sir.

Q Where did you look? A I looked through my index which I have in the office.

Q Through your index. Would you find them there if they were there? A Yes, sir.

Q You say they were not there? A They were not.

Q Can you suggest where these plans and specifications and contracts might be? A No, sir; I could not. 30

Q They should be there? A They should be, yes, sir.

Q You satisfied yourself that they are not? A Yes, sir.

By the Court.

Q Do you ever record the contracts filed in the county clerk's office? A This was done under Mr. Owen's administration and then the office wasn't up here. He had it all done in 40

James Darville, direct.

his private office, and whether it was filed or not I do not know.

By Mr. Reed.

Q Is the custom to file bridge contracts in the county clerk's office? A That is, the law department does it, not we.

10 JAMES DARVILLE, sworn in his own behalf.

Direct examination by Mr. Reed.

Q Mr. Darville, you are the plaintiff, are you not? A Yes, sir.

Q How old are you? A I was born in 1851.

Q Where do you live? A Nutley.

Q What part of Nutley? A William street.

20 Q William street, Nutley. How long have you lived there? A About fifty years.

Q What is your trade? A I generally follow house painting most of the time.

Q How long have you been engaged in that trade? A More or less for twenty-five years.

Q What other trade have you, if any? Have you any other trade? A I work good many things, carpenter, good many things, turn my hand to any dollar that I can make, but I generally follow house painting most of the time.

30 Q Do you remember an accident that occurred on Chestnut street? A Yes, sir.

Q When was that? A November 2, 1914—two years next Monday.

Q You were in the blacksmith shop, near the bridge, weren't you? I say, you had been in this blacksmith shop, Otter's blacksmith shop there? A Yes, sir.

Q You came out of the blacksmith shop?
40 A Yes, sir.

James Darville, direct.

Q Where did you go? A I went just a little ways and put my hand on the bridge, on the rail and it went over all of a sudden.

Q Where were you when you put your hand on the rail? A A little ways from the blacksmith shop and a little ways from the rail and I put my hand out so.

Q How near the bridge were you? A I 10
suppose about a foot and a half.

Q Which direction were you going in? A
Going north on the bridge sidewalk home.

Q Tell us what happened. You were there. Tell us what happened. A Well, I went over backward with the rail and the railing kind of come on top of me, hit me alongside the cheek bone and jaw and I fell on the back of my head and my back and legs and everything got cut, cut up around the face and head and I never got 20
over my back again.

Q Where did you fall to? A In the brook.

Q How far is that, how much of a fall? A I should judge it is about 10 feet, they tell me; water and stones.

Q What is on the bottom? A Water and stones.

Q What size stones? A Some of them were seventy-five pound, maybe more, big stones. 30

Q What part of you struck the bottom of the river first? A Well, I seem to fall on my head and the back, stunned me.

Q How did you go over, head first or backwards? A I went over that way (indicating).

Q Over backwards? What did you do with this railing, what became of the railing? A Fell over on top of my head.

Q In the river? A Yes, my cheek bone and jaw, stunned me. I guess I would have got 40

James Darville, direct.

drowned if somebody hadn't jumped in and pulled me out.

Q Who pulled you out? A Higgins.

Q Who else? A Tom Burns and Brown, they pulled me up over the abutment.

Q What then? A They took me home in the wagon, undressed me and sent for the doctor.

10 Q What doctor? A Dr. Philhower.

Q Where were you hurt? A Back, back of the head, jaw bone and cheek and ribs.

Q Did you go to bed? A I couldn't eat anything with my jaw for about a month and months, only soft food.

Q Did you go to bed? A Yes, sir.

Q How long were you in bed? A I was in bed for a month off and on.

20 Q Off and on? A Only up once in awhile.

Q How much of the time were you up? A Some time maybe ten minutes, sometimes half an hour and back in bed again. I couldn't sit up and I couldn't lay half the time with the pain.

Q What was the pain, where was the pain? A From my back and jaws and head.

Q How often did Dr. Philhower come to see you? A I doctored about seven or eight days and then I doctored again with him later on.

30 Q How much later on? A Two months. I had tried to shovel a little snow and I felt bad over it and I couldn't rest that night and I went up to the doctor and he examined me and he said that I would get better when it came warm weather, but never did.

Q Was your back that way before this accident or not? A No, sir.

40 Q Was it a good back? A I could handle most anything with my back.

James Darville, direct.

Q What can you do since that time? A Eat and sit around.

Q I want to know if you can do anything else? Can you paint houses? A Not now.

Q Why not? A I can't commence to handle a scaffold or ladders, to get up on the stepladder. I am liable to fall down, shaky on my feet.

Q Were you shaky on your feet before this happened? A No. 10

Q You were all right then? A All right. I could go out and earn my day's pay if I had it to do.

Q How much of the time were you employed before this accident happened? A I worked off and on when I got it to do and sometimes at something else.

Q How much of the time did you work? Were you working every day? A I guess I made about ten, twelve or fifteen dollars a week. When I got work at the trade I got \$3 a day, the last time I was working at it. 20

Q \$3? A Yes.

Q That was doing what, painting? A Painting.

Q What did you get at this other work you worked at? A Sometimes got a job for a couple of dollars, maybe make \$3 doing some odd job. 30

Q A day? A A day.

Q What did you average? A I suppose I average, the year around?

Q Yes. A About \$500.

Q \$500 a year? A Yes. That ain't a great deal at that when you come to figure it up.

Q You averaged that, did you? You averaged that every year? A Oh, well, I don't know. Sometimes I averaged more, sometimes a little less. Depends how the trade runs and 40

James Darville, direct.

how much work I did. Sometimes I would not have no work for a week or would not have outside work. You don't get as much inside work. Storm knock you out sometimes.

Q Can you tell me what you averaged a week?

A I said if I wanted to I could make \$500 a year easy.

10 Q Why can't you do that now? A Well, because I fell off the bridge.

Q What changes has it made in you, how are you changed so that you cannot work now? A Well, because my legs and back are bad.

Q Your legs are shaky? A That would interfere with my work.

20 Q Your back, does your back interfere with your doing these other jobs? A Yes, sir, I can't hardly no more than fetch out a shovel of coal. Sometimes I have to get a man in the house to fetch it up for me. I tell you when your back is gone you are done.

Q Did the doctor charge you anything, Dr. Philhower? A Yes, surely, he did.

Q What? A I had two bills and I paid one bill of \$26 and one bill of \$15. I don't think that was all. I think I owed him a little before that but it all came in one bill. I don't know whether he has got any more against me or not.

30 Q The \$26 bill, that included something else? A I can't say. \$15 or \$16 I paid him and then \$26.

Q First you paid him \$15 and \$16, and then you paid him \$26? A Yes.

Q Was it the first bill or last bill that contained something outside? A I guess it was the last bill.

40 Q Did you buy any medicine? A Yes, lots of it. Kept taking it a whole month and more, three months.

James Darville, cross.

Q What did that cost? A Cost me fifty, sixty or seventy cents sometimes.

Q Altogether? A I can't tell you.

Q How often did you get it? A Maybe a month.

Q Every day or once a week? A I took it every day.

Q How often did you buy it in a bottle? A I suppose maybe three or four weeks. What I got lasts that time. 10

Q You kept taking it for a couple of months? A Yes.

Q Haven't you earned anything at all since this happened? A No, sir.

Cross examination by Mr. Miller.

Q Just take this, will you, and show us where you stood when you took hold of the rail and fell off the bridge? A I can't see it. 20

Q Can't you see those lines? A I see them lines (indicating).

Q This line is the blacksmith shop. Here is a street line, here is the rail that you fell overboard with. A Well, here, I think, here about two feet or so from the blacksmith shop that I stood and it wasn't a foot and a half from the bridge.

Q You think you were about in the middle? A I was more than in the middle, more toward the sidewalk when I fell. I don't think I was over a foot and a half from the bridge. 30

Q You think you were about two feet from the blacksmith shop? A Yes, sir.

Q The door of the blacksmith shop is about in the center of the building? A Yes, sir.

Q You came out of the door and went away? A Came out here, came out so (indicating).

Q Went over toward the rail? A Yes. 40

James Darville, cross.

Q How long did you stand there before you fell in? A I didn't stand over a minute or so.

Q How did you happen to fall in, talking to somebody? A Two or three talking there, but I turned around so and put my hand on the bridge and over I went, the whole thing.

10 Q You leaned your back against it? A No, sir.

Q Did you have your back toward it when you fell over? A No, kind of sidewise like, so, and the rail just switched around and went clean over so they said but I was so scared—

Q You didn't look? A No, I wasn't looking to see where I was going to alight.

Q Which way were you looking? A I was looking so. There is the street looking like that.

20 Q Looking out at Chestnut street, looking out this way toward Chestnut street? A Toward Chestnut street.

Q This rail that fell overboard with you had a wire on it to hold it up? A I can't say.

Q Before it fell over with you? A So they told me.

Q When did they tell you that? A When I fell over I looked to get out.

30 Q Before you fell over, before this day you had seen wire on that rail, hadn't you? A No, sir, I had not.

Q Did anybody tell you before you fell over that that was out of repair, that it was rickety? You had been in the habit of coming around to the blacksmith shop and standing around by this rail for a number of years before the accident? A No, sir.

40 Q That is the first time you had ever been around there? A No, sir, I have been around there many a time, not standing around the rail.

James Darville, cross.

Q I don't mean standing around the rail, but the men would call in the blacksmith shop frequently before that? A Oh, yes, sir.

Q For the past twenty years? A I guess off and on, yes.

Q You would go in the blacksmith shop and sit around? A Sometimes I sat there and read the morning paper and talked to somebody.

Q Sometimes you stand outside talking? A Once in a while, very seldom. Generally in the shop reading a paper or talking to the blacksmith or somebody in the shop getting their horses shod.

10

Q Generally somebody else was there when you were not there? A Yes.

Q And very often people were standing outside talking? A Sometimes.

Q You didn't stand around yourself and talk with them? A Very seldom. Lately I can't talk to nobody.

20

Q Before the accident, I mean? A No, sir. Oh, there might be somebody there to say a few words to and pass on, go up the road, go back home.

Q Which cheek bone did it hurt? Did it hurt your cheek bone when you fell overboard? A Yes, sir.

Q The left one? A (indicating) Sore there for, I guess, a month. Couldn't eat only soft food.

30

Q All right now? A Yes, sir.

Q Where else, does it hurt in the back? A The jaw was hurt here.

Q That is all right now? A That is pretty good.

Q The back, hurts you in the back? What part of the back, the upper part or the lower part? A Here (indicating).

40

James Darville, cross.

Q In the middle, yes, about the small of the back. A That is a bad thing for anybody to get their back hurt.

Q Had you had anything to drink that day?

A I wasn't drinking for three years.

Q You had quit for three years? A Yes, sir.

Q You used to before that didn't you? A I would take a little swing at it and stop.

10 Q But before the day of the accident, you hadn't had anything to drink for three years? A No, sir.

Q This was the day before election? What did you do before the accident, what kind of work did you do? A Painting most of the time.

Q Besides painting? A Through my life I worked different things, carpenter work, hatting.

Q You say you averaged \$500 a year before the accident, the year just before the accident you thought you made \$500 in painting? A

20 Yes, sir. Q Painting and other things, too? A I would not say all painting. Figure that up, that ain't much a week.

Q How much of that did you make at painting? A Well, I generally got \$3 a day before the accident.

Q During the year preceding your accident how much of the \$500 do you think you made at painting? A There, you got me again, I can't

30 say. Q Two-thirds of it? A I guess about two-thirds.

Q Who did you do the painting for? A Different places in Nutley.

Q Tell us the name of some them. A I worked for Riker.

Q I am speaking of the year just before the

40 accident. A I worked for Riker.

James Darville, cross.

Q Where does he live? A Stager street.

Q What did you do for him this year before the accident? A I don't know.

Q What jobs? A Different jobs around.

Q Tell us what the jobs were. Where were the houses? A Houses in Montclair. I would go up that way.

Q Tell us the jobs that you painted for him just prior to the accident, the year prior to the accident? A I helped around two or three jobs, but I done a lot of work on my own hook. 10

Q Now, this man, you say you worked for Riker for the year before you fell overboard. This man Riker, you say you worked for Riker during the year prior to your falling over? A Yes, off and on.

Q Just tell us some of the jobs that you did for Riker during that year? A I can't mention now. 20

Q Can't you tell us any of them? A I ain't no book-keeper or anything like that.

Q Can't you tell us any of the jobs? A Sometimes I don't know the man's name that has got the job. I worked on Hillside avenue.

Q Whereabouts? A Hillside avenue.

Q Nutley? A Yes, sir.

Q In what street? You don't know what street it was. Not on Hillside avenue, we want to know what houses they were? A On Hillside avenue. 30

Q Hillside avenue is quite long, quite a long street? A Well, it runs from Prospect street to West Nutley station.

Q Was it near West Nutley station or near Prospect street? A No, near Prospect street.

Q Near where from Prospect street? A Near Church street.

Q What did you do on that job? Did you 40

James Darville, cross.

paint the whole house? A Yes, sir.

Q What did you do, help? A I helped. I painted some of it and he painted the rest.

Q Were you paid by the day or did you have a contract? A Yes, sir.

Q By the day? A Yes, sir.

Q What other houses did you paint for Riker?

A One way up there by the—

10 Q In Nutley? A No, sir; I don't know whether it was in Nutley or Bloomfield Township.

Q Do you know what street it was? A East Passaic avenue.

Q Can't you tell us about how many of these jobs you did for Mr. Riker during this year just prior to the accident? A How many?

20 Q Yes, about how many you did for Riker during this one year? A I don't know how many, because I am doing a lot of work for myself.

Q You helped him with three or four? A Yes, I guess something like that.

Q How many days? A I don't know how many days, a few days.

Q Three or four days on each job? A Yes, sir, something like that.

Q What did you get a job? A \$3 a day.

30 Q Who else did you do work for during this year before the accident when you made the \$500? A I worked for a man by the name of Griffin before I worked for Riker.

Q Griffin in Nutley? A Yes, sir.

Q How much work did you do for him, three or four times? A I worked for him for years, but that is a good many years ago.

40 Q I am speaking of this year just before you fell in? A No, I didn't work for nobody only Riker.

James Darville, cross.

Q That is the only man you worked for in that year? A Beside doing a lot of work for myself.

Q Tell us what work you did for yourself. Is that painting work, this work that you did for yourself, was that painting work or something of that kind? A Painting, paperhanging, tearing down plaster and fixing it up.

10

Q Who did you do some of that for? A Myself.

Q Your own house? A Yes, I did it myself, but I got a mason to do the mason work. I can't spread mud.

Q Outside of the work you did for yourself this year you only did three or four odd jobs for Mr. Riker? A I helped him when they want me. When they don't want you they don't pay you. Sometimes they do work themselves, don't need no help.

20

Q How long were you in bed after the accident? A I was in two weeks off and on.

Q Mostly off or mostly on? A I got up once in awhile. The doctor told me to get up, get some of the stiffness out of me, walk around the floor a little bit, hobble around and then go back to bed.

Q Before this accident you had had rheumatism in your back? A No, sir.

30

Q Never had rheumatism? A Oh, yes, I had it a good many years ago but I ain't had it lately for a couple of years.

Q But you had it before the accident? A Yes, about twenty years ago I was laid up with it. I had the measles, too, when I was young.

Q How long since you have had the rheumatism? A One time I was laid up about three months.

40

James Darville, cross.

Q Where was it, in your back? A No, sir, on my leg.

Q Didn't hit your back? A No, sir.

Q These two bills that you paid Dr. Philhower? A Yes, sir.

Q You say one of them was not for items in this treatment? Had Dr. Philhower been treating you before this accident, had he been your doctor? A Yes, he had been the doctor for years.

Q You owed him a bill before the accident, didn't you? A I owed him a little.

Q You don't know how much? A No, I didn't owe him any.

Q Before the accident, at the time of the accident, you didn't owe him anything? A I paid the first bill. I didn't pay the doctor there any more until I got paid and I went up to see what he thought about me and he examined me.

Q What I want to get at is this. Before you had the accident and when you fell overboard at that time you owed Dr. Philhower a bill for treatment he had given you before that? A No.

Q You paid him all up? A Yes, paid him all up.

Q Did not owe him a cent then? A No, sir.

Q But he did other work for you beside treating you for this injury in one of these two bills? A Well, yes, I go home. Maybe he won't send me a bill until it gets to a little more.

Q If anything happened you would go home and he would treat you? A Yes.

Q You say sometimes you worked when you got the work? A Sure.

Q Work wasn't very plentiful, was it? A It ain't so much.

Q Work wasn't so plentiful? A Sometimes

James Darville, cross.

it ain't, sometimes more than you want to do, sometimes a little slow.

Q Have you tried to paint since you were hurt? A No, sir.

Q Haven't tried it at all? A No, sir.

Q You don't know whether you can paint or not? A How can I paint when I can't climb ladders? I suppose I could paint if I had it like so and so, but I ain't a mountain. I don't think I will live for a hundred years yet and I don't want to kill myself with another fall. People said I was lucky coming out of that thing alive. 10

By Mr. Reed.

Q Mr. Darville, I got the impression from your cross examination as to what work you had done during the year just before you were hurt, that you worked on your own house? A Yes, sir. 20

Q And that you worked on three or four jobs for Riker? A Yes, sir.

Q How long did it take you on your own house? A I worked for a month or two plastering and fixing up. I had the house empty. I guess I was musing around a couple of months.

Q Repairing your own house? A Yes.

Q Didn't you do any work outside of that two months and three or four jobs that you did for Riker? What did you do the rest of the time? A No, I worked around home those two months. 30

Q What about? A For ten months before that I wasn't doing much painting in the winter time because outside it is too cold generally unless I get an inside job. On a nice sunny day get out and do a little.

Q What I want to get at is whether you 40

James Darville, direct.

worked for anybody else but Riker during that whole year? A Well, I don't know of anybody else, I don't remember.

Q You were asked if you had tried to paint and you said, "No," you hadn't tried to paint. A No, sir.

10 Q Why haven't you tried to paint? A Because I can't climb a ladder. I can't get up a ten-foot ladder without afraid of falling.

Q Can't you do any painting without climbing a step-ladder? A I can do it if you give me the painting here but I ain't going to climb to do it.

Q How about your other work? A I can't do anything.

Q Why not? A My back and legs won't allow me to do. As much as I can do to walk around here.

20 Adjourned until Friday, October 20, 1916, at ten o'clock A. M.

SECOND DAY.

Friday, October 20, 1916.

Met pursuant to adjournment.

Present, counsel as before stated.

30 *Mr. Reed.* These are photographs of the place where the accident occurred.

(Admitted in evidence as Exhibit D. 1 to D. 5 inclusive.)

JAMES DARVILLE resumes the stand in his own behalf.

Direct examination by Mr. Reed (continued).

Q Mr. Darville, who attended you, what doctor attended you? A Philhower.

40 Q Where is he? A I heard he has gone up

James Owen, direct.

to Canada. I was up to the house last night and he wasn't in. That is all I know.

Q Did you suffer any pain? A Pain, I was full of it for a couple of months.

Q At what time? A Pain in the back, back of the head, legs.

Q What two months? You say two months?

A November and January, February, three months. 10

Q What about December? A December, why, I laid on my back then, bad for pain.

Q You say you had pain in your back? A Yes, sir.

Q In your head? Did the pain in your head continue for two months? A No, off and on.

Q What about now, do you notice any pain in your back now? A I do if I go to do anything, go to lift anything I feel the effect of it. 20

Q There is no such pain in your back now?

A No, not now. Sometimes I walk a little ways too much and I feel the pain.

JAMES OWEN, sworn in behalf of plaintiff.

Direct examination by Mr. Reed.

Q Mr. Owen, you were for a couple of years county engineer, were you not? A Yes, sir.

Q Essex County? A Yes, sir. 30

Q What period did that cover? A Oh, from 1868 to about three years ago, I think it was.

Q Did you have anything to do with the building of bridges in the county? A I did, sir, during that period.

Q Do you know the bridge on Chestnut street, Nutley, that picture of it there? A Yes, sir, I know it.

Q About when was that built? A Oh, I can't tell you now. 40

James Owen, direct.

Q I will show you the contracts and that will refresh your recollection.

Mr. Miller. I might state to the Court that I found those contracts and specifications that were asked for yesterday. We found them last night.

A 1891. That is the contract.

10 Q These are the contracts for the mason work and for the iron work, are they not? A I presume so, yes, that is right.

Mr. Reed. I offer those in evidence.

(Marked Exhibit P. 2 and Exhibit P. 3.)

Q These contracts refer to certain plans. Were there plans drawn? A Oh, yes.

Q Do you know where those plans are? A No, sir, I don't.

20 Q The reason I ask that, I understood from one of the witnesses here yesterday, the assistant county engineer, that sometimes some of the plans had been in your office? A Oh, yes, they were all in my office.

Q Did you make any investigation to find them? A I have looked through and the understanding was, when I retired from the office that I should turn all the plans over, so I got my clerk to do it but probably—I found some this morning that I thought were turned over but they didn't include these plans.

Q You were unable to find these? A Unable to find them so far.

Q Exhibit D. 5. Do you remember this space? A Yes, sir.

Q Was anything done to protect that space, do you recall? A No, we didn't do anything because it was outside the jurisdiction of the
40 county.

James Owen, direct.

Q Are you sure of that? A At that time.

Q This here on the other side, that was a railing over there, a pipe? A Yes, I remember.

Q Wasn't that put on there at that time? A No, sir.

Q Are you sure of that? A Yes, sir.

Q One of the witnesses, who testified here yesterday, said that those were built at the same time, that there was a piece left to the bridge here which came up and was wired into that stone? A I don't think so because if I had designed a bridge for a continuous railing I would have made the railing similar to the railing on the bridge. As a matter of fact, that railing is something I would never build, never have done. 10

Q Do you know when that was built? A No, I don't. 20

Q Do you know whether there was any there at all? A Yes.

Q Do you know that there was any at the other end? A Yes, there is one at the other end.

Q There was one? A There is one now.

Q Do you say definitely that there was none there at that time? A Yes, sir.

Q Sure of that, are you? A Pretty nearly sure. 30

Q Do you mean by that it might have been possible? A No, I don't think so. I, of course, haven't been there lately for some years, but I remember the rail was put there. The usual rail was placed that the county built for bridges with parallel wing walls to the side of the street and put the railings on the walls that were built parallel to the side of the street. Certain locations and certain conditions require sometimes the construction of the walls at right angles as 40

James Owen, direct.

a matter of protection to the bridge, and also to the property, but those walls were outside the line of the street and really was something that we did under sufferance. The county did build those walls.

10 Q Do you know how near the street line the bridge was? A The bridge was supposed to be as far as I could say, to be put on the line of the street.

Q This copy here shows there is a space of a foot between the outside railing? A The usual method was to build the abutment and wing walls on the line of the street. Then, when we put the railing up, of course, we couldn't put the rail up on the man's place because we could not hold it so we used to put the rail about a foot back from the line of the street.

20 Q You did that in this case? A We did that in this case.

Q Then, that left a foot of the road unprotected? A In that case.

Q Did you leave that without protection? A I did, yes, sir.

Q You did? A I presume so. I don't remember putting a rail there. The rail of the bridge stopped right there; I presume I didn't put anything more.

30 Q But isn't it customary, isn't it required that you should protect the approaches to the bridge and would not you have done that in this case? A It all depends. Now, this case, there was a wall of the building within 3 feet of the bridge. Of course, we can't construct the retaining wall parallel to the street because it would be a thing so easy to maintain this by putting the wall in at right angles to the street and connect that house wall so as to make a
40 complete protection for the bridge and prevent

James Owen, cross.

accidents. But the presumption was that the locality would take care of the rest.

Q You know, do you not, that wall was a sheer drop of 8 or 10 feet to the river? A Oh, yes.

Q So that space they left open would have been dangerous? A A foot?

Q Well, 3 foot space? A 3 foot dangerous, but not a foot. 10

Q That foot in connection with the other two would have been dangerous? A Yes.

Q You mean to say you left the bridge there without any protection at all between that bridge? A And the building, yes.

Q None was put there? A None was put there; that is, as far as I remember. I think there was some arrangement with a blacksmith shop, if I remember rightly, right there. You see, all these arrangements of wing wall outside of the wall of the street were done either with the consent or under sufferance and I had only a talk with the owner of the blacksmith shop as to what the county would do. The presumption was that if the county would take care of the one foot he would take care of the two feet. 20

Q You had a talk with him as far as the wall was concerned? A Yes. 30

Q That is all you talked to him about? A That is all, yes, sir.

Cross examination by Mr. Miller.

Q Will you look at that contract for the iron work, Exhibit P. 3, contract with Eugene B. Hedden and the Board of Freeholders, will you please look at the specification, and see if there is any provision in the specification for the railing at right angles from the sidewalk running 40

James Egan, direct.

from the bridge to the blacksmith shop? A No.

Q There are 28 feet of rail mentioned in there. Can you tell us what rail that is? A That is the rail that is fastened to the iron beams.

Q Do they show in this photograph? A Show in that rail.

10 Q Exhibit D. 5? A Yes.

Q Running along the side of the bridge. That is the only railing mentioned in that specification? A That is the only railing mentioned in that specification, yes, sir.

By Mr. Reed.

20 Q That specification refers to plans and, of course, if there had appeared on the plans this rail that would be included in the contract, would it not? A Oh, yes.

By Mr. Miller.

Q Do you know whether they did appear or were mentioned on the plans? A The plans would be in accord with those specifications. There was no provision for the rail on the wing wall. The contract contracted for the railing on the bridge.

30 Q It might have appeared on the plan, you cannot recall as to that? A Oh, yes, I can't be satisfied about that.

JAMES EGAN, sworn in behalf of plaintiff.

Direct examination by Mr. Reed.

Q Mr. Egan, do you live in Nutley? A Yes, sir.

Q Do you know James Darville? A Yes, sir.

40 Q Did you see him on November 2, 1914? A Yes, sir.

James Egan, direct.

Q Under what condition, what happened? A I just bid him the time of the day and asked him how he felt as I was going up after leaving the shoemaker's.

Q What happened to him? A All I know, when I bid him good-day he must have laid his hand on the rail of the bridge and it someway toppled over. All of a sudden he was in the brook. I heard the splash and I seen he couldn't get out. I jumped in after him. 10

Q How did you find him there? A Laying on his back with the rail across his face.

Q You took it off and helped him out? A Yes, sir.

Q Did you accompany him home? A Yes, sir; took off his clothes and dried him.

Q Did you see him afterwards? A Yes, sir.

Q How often? A A couple of times a week. 20

Q Where did you see him? A I saw him in bed every time I went there.

Q At his home? A Yes, sir.

Q How long a time? A About two weeks after the thing happened.

Q How soon was he out again? A I can't say. I seen him out on a Monday a week or so afterwards, sitting on the lounge a week or so afterwards.

Q When did you see him out around town again? A Well, it is seldom I get down in the town. It might have been a month or so after the thing happened. 30

Q What condition was he in when you got him out of the brook? A He was pretty well broken up. His face all smashed, back, complained of hitting a stone with his back in the bottom of the brook.

Q Later when you saw him did you see any bruises or injuries? A Yes, sir; he had a 40

James Egan, cross.

bruise here on his jaw bone and he said he couldn't eat any solid food.

Q Do you remember when this bridge was painted, if it was? A I can't say if it was painted that season or the season before this accident happened.

10 Q What do you mean, before or after the accident? A Before the accident.

Q How long before? A It might have been six months or a year. I can't really say. I can't really recollect.

Q Six months or a year? A Yes, sir.

Q What part of it was painted? A All the iron work just to the rail.

20 Q You say, "All the iron work." What do you mean by that, just the side? A The whole rail that was around from the blacksmith shop, clean around on both sides of the bridge.

Q Who did the painting, do you know? A I can't tell you.

By the Court.

Q All the iron work of the bridge was painted? A Yes, sir.

Cross examination by Mr. Miller.

30 Q When do you say the bridge was painted? A It may have been that season or the year before that the accident happened.

Q As a matter of fact, you don't remember when it was painted? A I cannot. because I live up back, all the way up what they call Pocashon Hill, and it was only once or twice a week that I got down.

40 Q How frequently did you get down during the course of the preceding year, did you get down to the blacksmith shop? A About every Friday.

James Egan, cross.

Q You got down at least once a week? A Yes, every Friday.

Q Sometimes oftener? A If I had any other message to do I would come in generally in the daylight.

Q You are familiar with that end of the bridge, the blacksmith shop? A No, I really never stood much around that bridge.

Q You had often seen that rail running across from the bridge to the blacksmith shop?

A Yes, sir.

Q You had seen that wire on the rail? A I saw a wire on the rail, yes, sir.

Q And that wire had been there for some time? A Some time, yes, sir.

Q Would you say it had been there six months before the accident? A That would be pretty hard to tell.

Q How long would you say, as near as you can remember? A It might be on there a year. In just the same conditions it would be six months unless somebody broke it, especially head wire.

Q As far as you can remember. Having seen it on there, how long would you say you had seen it there before the accident? A It might be a month or two months.

Q You remember seeing it there before the accident? A Yes, sir.

Q Do you remember noticing whether this rail was rusted in any place? A I never took much notice whether the rail was rusted because they had the paint over it. The steel that the paint was on, you can't really tell whether it was rusted there or not.

Q Where did you stand, show us where you stood when Mr. Darville fell overboard? A This is the blacksmith shop.

James Egan, cross.

10 Q Yes? A This is the door. I just come out of the blacksmith shop and Mr. Darville was standing right there, right off from the flag sidewalk in on the dirt. I spoke to him and asked him the time of the day and how was he. He said he was feeling pretty good and I said, "Good day," and then he fell in the brook and I dropped the shoes that was in my arms and jumped in the brook.

Q When he actually fell in you weren't looking at him? A No, I had my back to him and when I turned around I heard him say, "Oh, oh," like that.

Q You don't know how it actually happened. All you know is he went over? A Yes.

20 Q The time you saw him before he went over he was standing away from the rail? A A little way from the rail, yes.

Q Mr. Darville says at the time he went over he stood a foot and a half from the blacksmith shop. That might be so? A Sure, it might be so. That was the end that gave way that made it swing like. He made a grab for it and off it went.

Q Had you ever stood around by that rail at previous times and talked? A No, sir, never stood around the rail at all.

30 Q Do you know whether the rail was rickety? A No, sir; I do not.

Q Had you often seen Mr. Darville around the blacksmith shop the day before the accident? A I was down for every week. I might have seen him twice in a month.

Q Sometimes oftener? A Maybe so.

40 Q What would he be doing, sitting around, standing around talking? A He would generally take a walk down that way and smoke his pipe and go back home again. He always quit

Frederick A. Reimer, direct.

his work around four o'clock so as to get home to feed his chickens and that is the time I would go back home again.

Q At the times you saw him at the blacksmith shop, when you saw him there what would he be doing, sitting around or standing around talking? A Standing around talking, bidding people the time of day the same as anybody else when they stand around like that. 10

Q Sometimes inside and sometimes outside? A Yes, sir.

Q And sometimes he would be standing where he was when he fell over? A I have never seen him that close to the bridge before.

By Mr. Reed.

Q You never saw him fall in like that before? A No, sir; never saw him get wet like that before. 20

FREDERICK A. REIMER, sworn in behalf of plaintiff.

Direct examination by Mr. Reed.

Q Mr. Reimer, you are county engineer and have been so for the last three years? A Yes, sir.

Q Do you know this bridge in Nutley? A Yes, sir. 30

Q Do you inspect bridges for the county? A I do.

Q How often? A At intervals of probably a year apart on some of them but ones that are moving bridges I inspect about once a month or more frequently as the occasion demands.

Q Did you order or direct any repairs to be made or protection to be given to those sides between the bridge and the blacksmith shop after this accident? A Yes, sir. 40

Frederick A. Reimer, cross.

10 *Mr. Miller.* I object to that. The evidence proves conclusively and indisputably that the abutment, especially the part that this rail was on, was outside of the highway, was on private property and that being the case even if the county may have ordered that to be erected afterward it does not bind them because they have no legal authority to do so.

The Court. It appears now that one foot of it was on the bridge. It did not appear when that offer was made before that any portion of this was on the bridgt. Question allowed.

Defendant's counsel prays an exception to this ruling of the Court.

20 Exception noted as ground of appeal.

Q You did? A On this basis—

Q One step at a time? A I did.

30 Q What did you order done? A I directed the blacksmith who has a shop immediately next to this bridge, for the sake of policy, so as to avoid any possibility of the accident occurring again, avoiding delays of compelling the Town of Nutley to put it there, to put that rail back, and that would be the case, so I said I would see it was paid.

Q And you did pay him? A I assume we did. I don't know that we ever got the bill.

Cross examination by Mr. Miller.

Q Do you know who put the rail up there in the first place? A I do not.

40 Q As far as you know was it put up by the county? A I would assume it wasn't put up by the county.

Motion for Non-suit.

Mr. Reed. I ask that that be stricken out.

The Court. Yes.

Q It wasn't put up by the county as far as you know? A No, sir.

Mr. Reed. I think that is immaterial. He was not the engineer at that time.

The Court. I think that is all right on cross examination. He said he had it replaced. I think that is competent. 10

Q Why did you order it replaced? A The old rail was gone and for the sake of avoiding a repetition of the accident I ordered the blacksmith to put that rail back. It was a matter of two or three dollars to do it.

Q Were you authorized to do so by the Board of Freeholders? A No, sir. 20

Q Were you ordered by any committee to do it? A No, sir.

Q You did it without authority and without any authorization? A Yes, sir.

By Mr. Reed.

Q You employed him to do it as county employee for the county? A I naturally, whenever I gave instructions of that kind I took the bill to that body but I had no authority in this case. I went ahead and did it. 30

Q You assume to employ him for the county to do the work? A Yes, sir.

PLAINTIFF RESTS.

Mr. Miller. I would like to move at this time for a nonsuit on the ground that the testimony of the plaintiff's witness without exception was that at the time that Mr. 40

Motion for Non-suit.

10 Darville fell overboard he was on private property. He was off of the public highway. Mr. Darville's only testimony as to the fact is he was about a foot and a half from the blacksmith shop. The testimony indisputably is that there is a clear space of private property between the highway line and the blacksmith shop of almost 3 feet, 2.84 feet. 3.84 feet is the entire space to the bridge. There is one foot of that on the public highway which the bridge does not cover and leaves a clear of 2.84 feet or almost 3 feet, 2 feet 10 inches of private property. According to Mr. Darville's own testimony and the testimony of his own witnesses, he was on this private property but not on the public highway and not on any part of the property that the freeholders were in any way responsible for when he took hold of this rail and fell over. The former county engineer, Mr. Owen, who is the only man who has testified on that point and who has had any knowledge of the fact, has testified that the freeholders did not construct that rail, that they did not construct it because they had no right to go on the man's land except by sufferance and I think that the facts are plain that at the time that this man fell over, fell into the brook, that he was on private property, and therefore, the freeholders were not liable.

20

30

The Court. I shall refuse the motion.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

40 *Mr. Miller.* I would like to offer in evi-

Frank T. Shepard, direct.

dence the report of the surveyors of the highway laying out Chestnut street.

Mr. Reed. I consent.

(Admitted in evidence and marked D. 6.)

FRANK T. SHEPARD, sworn in behalf of defendant.

Direct examination by Mr. Miller.

10

Mr. Shepard, what is your occupation? A I am a civil engineer and surveyor.

Q Were you at any time civil engineer for the Town of Nutley? A I was.

Q During what period? A During a period of about fifteen years.

Q Were you civil engineer for the Town of Nutley in 1902? A I was.

Q During the entire year? A I was.

20

Q I show you a map, signed Franklin, New Jersey, February 25, 1902, Frank T. Shepard, township engineer, and ask you if you made that map? A I did.

Q Is Nutley now what has been known as Franklin township? A It is.

Q What does that map show? A This map shows the laying out and widening of Chestnut street, I mean Passaic avenue and Franklin avenue.

30

Q Does this show the bridge over Third river, which is in question here? A It does not.

Q Does it show where the bridge is? A It shows the position of the bridge. It does not show any bridge.

Q Does it give the measurements of the highway at the bridge? A It does.

Q Have you measured the distance from the highway to the blacksmith shop at the point where this rail was on the bridge? A I have.

40

Frederick A. Reimer, direct.

Q Can you tell us what that distance is? A 2 feet 10 inches; that is, from the street line to the blacksmith shop.

Q From what have you taken those figures?

A From the present line of Chestnut street, from the recorded line as shown on this map.

10 HERBERT W. HEILMAN, recalled in behalf of defendant.

Direct examination by Mr. Miller.

Q Mr. Heilman, what is your occupation? A Assistant county engineer of Essex County.

Q Have you measured the distance from the highway line to the blacksmith shop along this wall where the rail was? A I did.

Q And what did you take your figures from?

20 A The center line as shown on this map which has been presented.

Q Will you tell us what the distance is between the highway line and the blacksmith shop measured along the wall? Does that map show it? A 2.84 feet, 2 feet 10 inches.

Q Did you make that map? A It was made under my supervision, yes, sir.

Q From the measurements which you took?

A Which I took personally.

30 FREDERICK A. REIMER, recalled in behalf of defendant.

Direct examination by Mr. Miller.

Q Will you tell us, Mr. Reimer, whether or not in cases similar to this it is customary to extend the rail at right angles, along the wall?

A It is not customary.

40 Q Where the wall is on private property do you know of any other instance where it has been extended by the freeholders?

Frederick A. Reimer, direct.

Mr. Reed. I object to that. I think that is immaterial. The question is what was done here and what may not have been done in some other instances.

Q (Question repeated.)

The Court. That you see, is to a special instance. I do not think that is proper and I sustain the objection to the question. 11

Q Do you know whether it has ever been the custom to extend a road in a situation like this?

A Not on the Essex county bridges.

By the Court.

Q If the bridge does not take up the whole road what do you do with the portion of the road between the bridge and the side. For instance, what I mean is, if you have a road 40 feet wide and your bridge is 25 feet wide what do you do with the balance? A The original filling against the bridge has been carried out on what we call a foot and a half to one slope, making this end supported by the bank, that is, on that slope. 20

By Mr. Reed.

Q There is no slope here? A That is because there is no wing wall. They allow the dirt to assume this natural slope and rest there. 30

Q How often is it in your experience have they built the wing wall in this way or a wall in this way for the Essex county bridges? A For the last four years I think there probably have been a half a dozen cases of this kind.

Q If the street comes on a level to the bridge so there is no slope to the grade of the street how would you protect that, how would you protect that wall that was built there in this way? 40

Frederick A. Reimer, direct.

A I can't conceive of a case where the grade of a street but what must meet the level of the street in which case you have got—

Q Take this case. The grade of the street is practically the same as the grade of the bridge? A Necessarily in every case.

10 Q I mean in some cases the street comes up to the bridge, but in this case it approaches on a level without a fill? A Practically so.

Q So that we will say the street approaching the bridge and the bridge are practically the same grade? A As regards the slope of the street you are referring to?

Q Yes. A Oh, I don't recollect just the profile of the road. On one side of the bridge it goes down and up on the other, if I recollect correctly.

20 Q They built this wall straight to the blacksmith shop gate and it left a space. Assuming the street is wider than the bridge so that there is a space of feet between the north side of the bridge and the north side of the street what would be the custom as to that? A It would be allowed to take its natural slope?

30 Q If there is no slope, it is all the same grade? A That is because they kept a continuous grade and filled in against the wing wall.

Q They built in against the wing wall and built it up to the same grade? A It wasn't necessary to do so.

Q It was done in this case. Having been done in this case what is the custom as to protection of that space between the side of the bridge and the side of the street? A We haven't put any railings or protection on it.

40 Q So there is no custom? A It is the custom not to do it.

Motion for Direction of Verdict.

Q Not to protect? A Not to put any rail up.

Q How do you protect them? A We don't protect them.

Q Leave it unprotected? A Leave it unprotected.

Q Even if maybe a space of several feet between the side of the bridge and the side of the road and the fall from the wall which you have built there would be 8 or 10 feet into the creek? A There are several unprotected bridges of that kind in Essex County. 10

Q Don't protect them at all? A No, sir.

DEFENDANT RESTS.

Mr. Miller. I move for a direction of verdict on the following grounds: In the first place, that there is nothing in the evidence to show that the rail, which gave way, was constructed by the freeholders, the owners of the bridge. It is the testimony of one witness, Mr. Otter, the blacksmith, who says that the bridge was built fourteen or fifteen years ago, that as near as he can remember the Hayes Foundry Company did the work and it appears from the contract that the Hedden Company did the work, simply showing he was wrong in that recollection. We now come to the main point of his testimony, which is, as he remembers it, the same man who erected the iron work on the bridge put up this fence rail from the bridge to the blacksmith shop. The only other evidence on that question, giving us any light, is the evidence of Mr. Owen, who has been county engineer from 1868 down to 1913, a man whom at least everybody in Essex 20 30 40

Charge to Jury.

10 county knows and has the highest opinion of as to his ability and he says that the contract and specifications, and the plans would correspond with them and did correspond with them, did not call for any iron work to be built across from the bridge to the blacksmith shop. The specifications show that the only iron work called for to be erected by Hedden Company was the rail along the sides of the bridge which are shown in the photographs. There is absolutely no testimony whatever showing that that rail was constructed by the freeholders. Secondly, assuming for the sake of argument that the freeholders constructed that rail across there it was *ultra vires* pure and simple. They went upon the land by sufferance and there is no question in my mind but what if the freeholders had constructed that rail and the individual landowner came along and wanted to eject them he could do so, that the freeholders acted *ultra vires* and that the man when he fell over was on private property and that the freeholders owed no duty whatever to this plaintiff.

20

30 *The Court.* I think it is a jury question. I refuse to direct a verdict.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Counsel sum up.

The Court charges the jury as follows:

CUTLER, J.

40 Gentlemen of the Jury. It is contended by the plaintiff that the Board of Chosen Freehold-

Charge to Jury.

ers of the County of Essex a number of years ago constructed a bridge at Nutley, in the county of Essex, over a stream called Third river, and that the plaintiff fell into the stream by reason of the giving way of a rail, which was part of the bridge, and was thus injured, and this suit is brought to recover damages for the injuries he so received. It is not disputed, as I understand it—although you are to be the sole judges of the evidence—that the plaintiff on November 2, 1914, fell into the stream and received injuries, but the fact that he fell and was injured by the fall will not itself entitle him to recover damages against the Board of Freeholders, the defendant in this case. 10

Under the common law a board of freeholders was not liable to respond in damages for injuries received by reason of a defective bridge, and this doctrine was held by the Supreme Court in the case of Freeholders of Sussex against Strader, reported in 18 New Jersey Law, 108, but in 1860 the legislature of this state passed an act making the freeholders liable in certain instances for injuries received on bridges and this act is found in the compiled statutes of our state, volume 1, on page 304, and is known as section 9 and reads as follows: 20

“That in all cases where a township or the board of chosen freeholders of a county are chargeable by law with the erection, rebuilding, or repair of any bridge or bridges and the said township or board of chosen freeholders shall wrongfully neglect to erect, rebuild, or repair the same by reason whereof any person or persons shall receive injury or damage in his or their persons in property, he or they may bring 30 40

Charge to Jury.

his or their action of trespass on the case against said township or said board of chosen freeholders, as the case may be, and recover judgment against them to the extent of all such damage sustained as aforesaid, which said judgment shall be paid by the township or county, as the case may be.”

10

The law in this case, is, therefore, statutory, and unless the circumstances in this case bring it within the provisions of this act there can be no recovery, for this is the only section of the act which makes the board of chosen freeholders responsible for damages for injuries which may be received by a person in crossing over a bridge. In order to reach a verdict in this case there are several matters that you have to decide, and I suggest you decide them in the following order; however, the order is not material, but it is necessary that they should be decided by you in order to reach a verdict.

20

First, was the rail which gave way part of the bridge? If it was not, that is the end of your labors and your verdict should be in favor of the defendant, because you see the legislature has made it the duty of the freeholders to repair bridges. The Court has held, however, that an abutment of a bridge is as much a part of the bridge as the piers, the arches or the timbers of the bridge and they have, also, in one of their cases explained what the abutments of a bridge are.

30

“It consists of a mass of stone or solid work at the end of the bridge by which the extreme arches or timbers are sustained.”

40

Charge to Jury.

It was said, however, in the case of Ballantine against Kearny, one of the cases in which the questions have been before the Court, that the approaches to a bridge are clearly regarded as appurtenant structures requiring the same distinct legislation for their construction as the bridge itself. I do not find that the question of the relation of a rail, such as the one in the present case, to the bridge itself has ever been passed upon by the upper courts of this State, but in the case of Hahn against the Freeholders of Hudson County, which has been referred to today, the Court in speaking of a road uses the following language:

“Proof that a guard-rail has been placed at right angles to the sides of a bridge where the highway is broader than the width of the bridge, running from said bridge toward the side of the highway, assuming that such rail was so placed by the board of chosen freeholders, and forms a part of said bridge, is not evidence of wrongful neglect on the part of such board to erect, rebuild or repair the bridge, to sustain a recovery under the Bridge Act for damages resulting from a vehicle running into such guard-rail at night.”

You have heard in this case evidence to show when this guard-rail was erected, and the evidence has been conflicting. You have heard the blacksmith, who says it was put up there at the time the bridge was erected by the same persons who built the bridge, and you have heard the engineer who was then in charge of the work say it was not part of the bridge and you have also had the specifications and contracts under which the bridge was erected offered in

Charge to Jury.

evidence before you. Unfortunately the plans referred to in the contract and the specifications have been mislaid and it is for you to determine upon this whole evidence whether or not the rail in question was part of the bridge erected by the board of freeholders and maintained by them. If it was not erected by the board of freeholders and not maintained by the board of freeholders they had nothing to do with it. If it was put up by a private person, then, gentlemen, of course, if it was not part of the bridge they were not under any responsibility to keep it in order and if they were not, then it is immaterial whether or not the plaintiff fell over and was injured so far as damages are concerned. You may also take into consideration whether the freeholders have done anything to recognize their responsibility in this matter, whether they have painted it, whether they have, after the accident, done anything recognizing the fact that it was their duty to take care of this rail.

Now, gentlemen, if you determine that this was part of the bridge or it is an appurtenant part of which they are bound to take care, then you must go a step further and determine where the plaintiff was when he fell. Now, in all these instances, the plaintiff must prove his case by a preponderance of the testimony except as I shall hereafter mention.

The plaintiff is the party coming in court and he must establish his case by a preponderance of the testimony. If you find the rail is part of the bridge, then where was the plaintiff standing at the time he fell? You have heard it said that part of this rail was on the public road protecting that portion of the road which was outside of the bridge. If this plaintiff,

Charge to Jury.

at the time he fell, was on the public road or that portion of the public road outside of the bridge there can be a recovery. If you find the rail was part of the bridge but if he was entirely on private property there can be no recovery because the board of freeholders were not responsible and were not obliged to keep up a protection for private property and there was no duty on their part to keep the rail to protect private property in safe and proper condition. Their duty was to provide a bridge, keep it in repair and keep it in such a way that persons could safely approach that bridge; not to protect private, individual property. 10

Now, if you find the rail was part of the bridge or its appurtenances and that the plaintiff was on the public road and not on private property when he fell, then you may go a step further, but if you find he was on private property that ends the case because he cannot recover under this action. If you find he was on a public road then you go a step further. What was the condition of the rail? Whether it was in such a condition that it needed repair and whether the board of freeholders were negligent in not repairing this rail? The question of the duty of the board of freeholders depended somewhat of their knowledge of the defect and it is necessary in this action for the plaintiff to show to you, in order that he may recover, not only that the bridge was out of repair, this rail was out of repair, but that in addition either the board of freeholders had knowledge of its condition or, at least, that it had been out of repair for so long a time that the board was chargeable with notice of the fact and, further, that they had or were chargeable with this knowledge in time to have made the necessary 30 40

Charge to Jury.

repairs before the happening of the accident, for unless they had or should have had such knowledge in time to make the repair they were not guilty of any wrongful neglect in failing to make it. In that connection you may take into consideration that it was the duty of the board of freeholders to make such inspection from time to time to see that the bridges were in proper repair and you may take into consideration the evidence that has been offered that from time to time this rail has been out of repair and then say whether or not it had been inspected and whether such inspection would have shown the defects and whether the board of freeholders did not have actual notice of the bad condition of this rail, if it was their duty to repair it, whether the length of time warranted you in saying that they were negligent in not causing the repair. Of course, if you come to the conclusion that it was not part of the bridge or part of the structure they were not compelled to keep it in repair, they were not doing something which they were obliged by law to do.

If, after passing on all these things, you find that the rail was part of the bridge, that the plaintiff was on the roadway when he fell, and that the defendant was negligent in not repairing the rail, then you must come to another question and that is, was the plaintiff negligent himself.

We are not responsible for what the law is, but we have to take it as the legislature and the courts have determined it to be. The courts have said that if a person is guilty of contributory negligence; that is guilty of conduct which contributes toward the accident, he can-

Charge to Jury.

not recover, even if the defendant was guilty of negligence. The defendant who sets up contributory negligence on the part of the plaintiff must establish that by a preponderance of testimony and you can see the fairness of it. The plaintiff must establish his case that the defendant was negligent and the defendant, when he sets up that the plaintiff cannot recover by reason of his negligence, he must from that portion of the testimony by a preponderance of the evidence. 10

You have had the testimony that the rail was in bad condition, that it had been wired up, that it was loose and had been for some length of time, and you are to say whether or not the defendant was guilty of negligence in acting the way he did on the day in question. Of course, if he knew nothing about it, if he was a stranger and he saw a rail there and knew nothing about its dangerous condition, that is one situation of the case. If he knew it was in a dangerous condition, if he knew it was loose, if he knew it had been unsafe and it had been wired up or was shaky and he leaned against it, that would be an entirely different situation. You are to determine from this evidence whether or not the defendant by his conduct on that day contributed to the injury. 20
If he did, then there can be no recovery even if you believe the rail was in bad condition and the board of freeholders knew or should have known it and were guilty of negligence and that this was part of the bridge which they were to keep in order. 30

If you find for the plaintiff you must go one step farther and then determine the damages which he should receive for the injury and that, gentlemen, is a matter for you to com- 40

Charge to Jury.

pute. The rules of law are that he shall recover for his pain and suffering. That is a matter for you to determine. There is no measure of damages but you must be governed by the circumstances of each individual case. You do not deal that out for sympathy, you do not deal out compensation for pain and suffering by way of punishment, but such amount as you consider him to be entitled to for the pain and suffering which he has undergone. He is entitled for the loss of his services, the loss of his wages during the time he was laid up and in order to determine that you must take into consideration what he had been earning prior to the accident and whether he has been able to do any work since that time and if so, what proportion of the time he has been able to work. You will note in this case there has been no physician here to testify as to this man's condition, but he has gone on the stand himself and he is a competent witness in his own behalf, and you may take into consideration what he has said in reference to his physical condition, but, of course, when you consider the question of permanent injury you must recollect that you cannot allow him anything for permanent injury on account of his age. The question is, what permanent injury he did receive or is he suffering from or will suffer from in the future by reason of this accident, and in addition to all that he is entitled to receive compensation at your hands for the money he has paid out.

Now, gentlemen, you are to take this case. If you find for the plaintiff, then you are to find the damages and assess them in the way I have mentioned. If, on the contrary, you find that the rail was not part of the bridge your

Exceptions to Charge.

verdict must be for the defendant. If you find that the man when he was injured was not on the public road but was entirely on private property, then your verdict must be for the defendant. If you find that the freeholders were not guilty of negligence, then your verdict must be for the defendant, but if you find on this point in favor of the plaintiff, then assess the damages as I have mentioned. 10

I have three requests to charge which I will dispose of now.

“1. If you find from the evidence that the plaintiff was upon private property when he fell into the stream you must find in favor of the defendant.”

I have already charged you and so charge you now. 20

“2. If you find that the rail in question was constructed on private property you must find for the defendant.”

If it was entirely on private property and not part of the bridge, then, of course, you must find for the defendant.

“3. If you find that plaintiff knew or should have known of the dangerous condition of the rail then you must find for the defendant.” 30

I so charge you.

(The jury retires.)

Mr. Reed. I except to that part of your Honor's charge where your Honor said that if the railing was not put up by the county it is not responsible. My contention is that they had a liability there to protect the bridge regardless of whether 40

Exceptions to Charge.

they actually did build this or not, and so I ask for an exception.

Exception noted as ground of appeal.

Mr. Reed. Also, as to what you said about if he was on private property.

Exception noted as ground of appeal.

10

Mr. Reed. Also I ask an exception to the specific charge of the third request of the defendant.

Exception noted as ground of appeal.

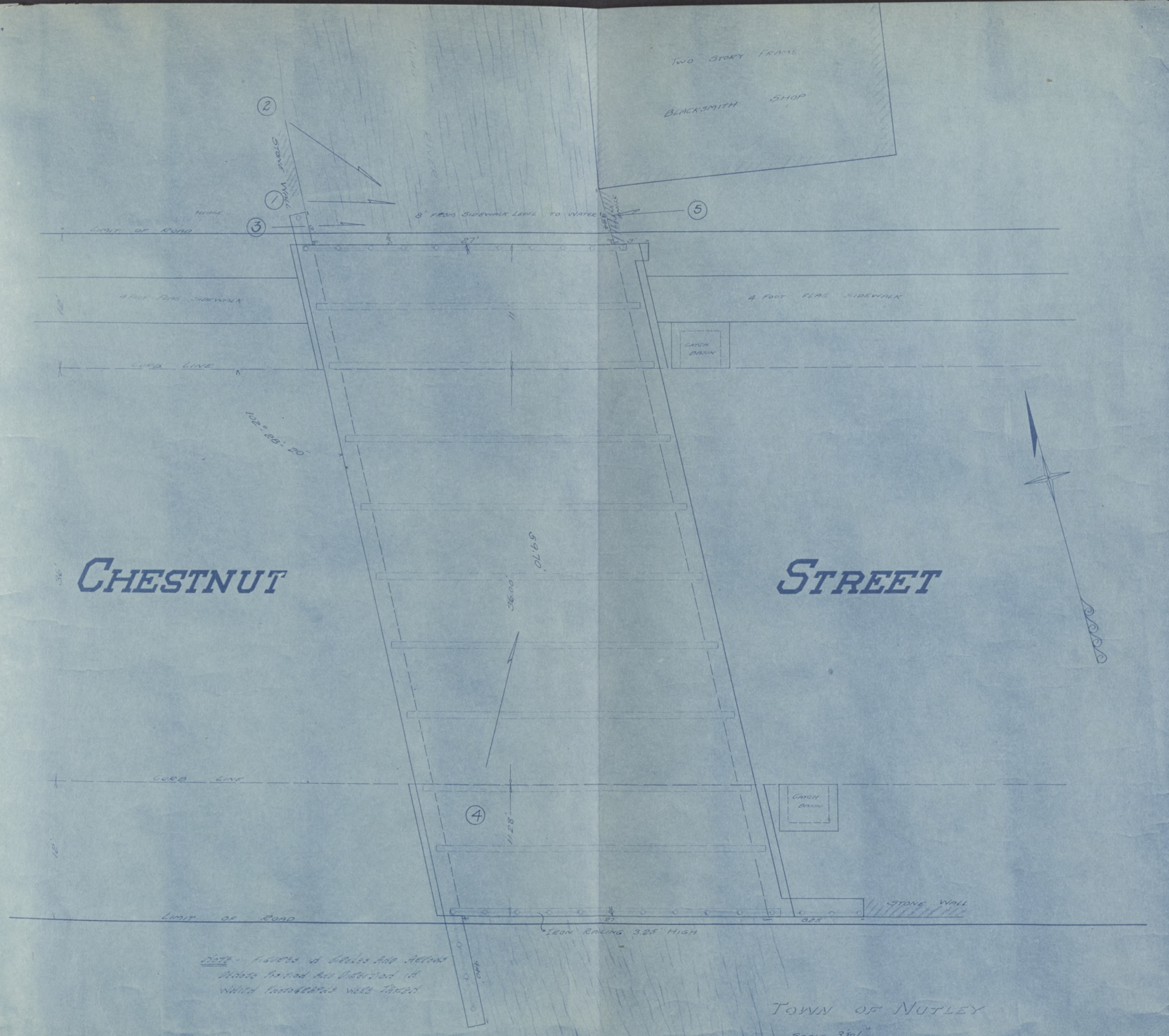
Mr. Miller. I except to that part of your Honor's charge wherein your Honor charged that the jury may consider whether the freeholders have done anything to the rail such as painting or anything to recognize it as theirs.

20

Exception noted as ground of appeal.

30

40



CHESTNUT

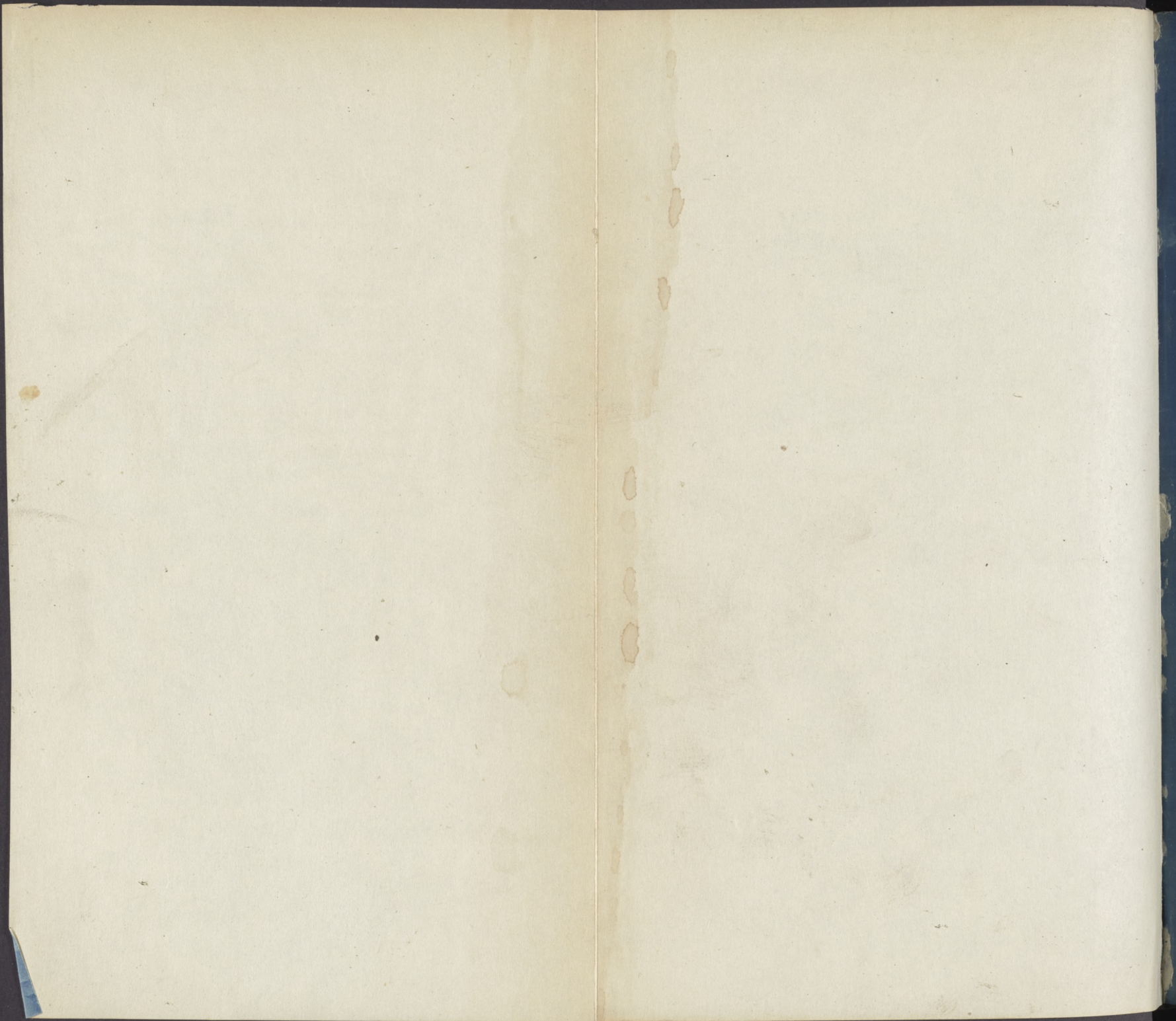
STREET

*NOTE - 1. Slope of Street for Allowance
 2. Slope for and for Disturbed or
 3. Width for Disturbed or*

TOWN OF NUTLEY

SCALE 3"=1'

APRIL 2, 1918



Passage
Luce
Franklin N. 7/1/21
Trust of Chicago
University of Chicago

Chestnut
Anna E. B.
Ludwig Braiss
Herman Thierble
Michael Herz
William Little
Stancton P.
Abram DeWaal
S. S. Davis

Joseph R. ...
Caroline H. ...
Albert B. ...
Henry H. ...
Wanda ...
Mary ...
Richard 1011.94
Henry Hilton Est.
Carrie Stager
Robert Cunningham
Flora Rolier
Leah Tiers
River

Elm St
Board of Education
Street
Warren Ureland
Warren Ureland
Warren St

Prudential
Luce

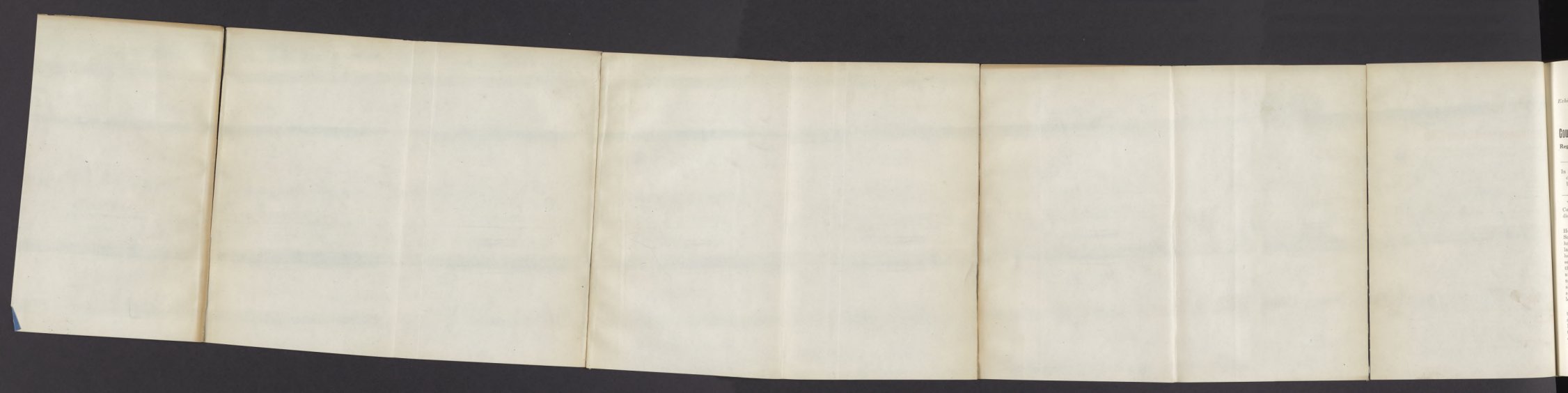


Exhibit D. 6.

EXHIBIT D. 6.

Filed April 18, 1902.

Court of Common Pleas of the County of Essex**Report of the Surveyors of the Highway Laying Out Chestnut Street.**

In the matter of the alteration
of Chestnut Street, in Frank-
lin township.

10

WHEREAS, the Court of Common Pleas of the County of Essex, at the present December term, did order and appoint as follows:

“Application being made to the Court by Henry A. Connolly, William F. Dittig, Calvin D. Sargent, A. M. Hallidy, John H. Buter, Abraham Blum, Charles H. Kierstead, S. P. Vreeland, Simon Tuers and John Conway, ten freeholders and residents of the County of Essex, setting forth that they think it necessary that the public road lying between Franklin avenue and Passaic avenue, and now known as Chestnut street, in the Township of Franklin, in said county, should be altered by vacating the same, which as now laid is described as follows:

20

30

BEGINNING at a monument stone planted at the intersection of the centre line of the street about to be described with the centre line of Franklin avenue as laid September 13, 1895; thence running south forty-five degrees twenty-one minutes east four hundred and thirty-four feet and five one-hundredths of a foot; thence

40

Exhibit D. 6.

10 on a curve to the left with a radius of three hundred and twenty-eight feet and thirty-eight one-hundredths of a foot tangents eighty-three feet and fifty one-hundredths of a foot; thence south eighty-five degrees seventeen minutes east two hundred feet and eighty-three one hundredths of a foot; and thence on a curve to the right, with a radius of three hundred and three feet and sixty-seven one hundredths of a foot, tangents fifty feet; thence south sixty-six degrees twenty-five minutes east five hundred and three feet and eighteen one-hundredths of a foot; thence on a curve to the right, with a radius of nine hundred eighty-six feet and fifty-four one hundredths of a foot, tangents 62-50/100 feet; thence south fifty-nine degrees ten minutes east fifty feet to a monument stone planted at the intersection of the

 20 centre of the street above described with the extension of the centre line of Passaic avenue running south and there ending; the above described courses and distances being the centre line of a street fifty feet in width and known as Chestnut street, and being also that portion of Chestnut street, between Franklin and Passaic avenues as laid May 1, 1889; and by laying out in lieu thereof a road—

20 BEGINNING in the centre line of Franklin avenue as now established, at a point therein distant on a course of south thirty-seven degrees twenty-seven minutes west five feet and four one hundredths of a foot from a monument stone planted in the centre of Chestnut street as laid May 1, 1889; running thence in or about the following courses and distances which are stated in general terms:

 40 (1) South forty-five degrees twenty-one minutes east three hundred and eighty-three and forty-

Exhibit D. 6.

seven one hundredths of a foot; thence (2) on a curve to the left with a radius of three hundred and forty-six feet and eight one hundredths of a foot, tangents one hundred feet; thence (3) south seventy-seven degrees thirty-five minutes east two hundred and eleven feet; thence (4) on a curve to the right, with a radius of ten hundred and twenty-two feet and ninety-four one hundredths of a foot, tangents one hundred feet; thence (5) south sixty-six degrees twenty-five minutes east two hundred and six degrees twenty-five minutes east two hundred and forty-six and seventy-seven one hundredths feet; thence (6) south sixty-five degrees twenty-one minutes east three hundred and fifty feet to the centre line of Passaic avenue at the point where the same is intersected by the centre line of Chestnut street running easterly therefrom and there ending; the above courses and distances, or such portion or variation of them as may be adopted, to be the centre line of a street sixty feet in width and to be known as Chestnut street; and due proof being made that at least ten days' previous notice was given of such intended application and of the day on which said application was intended to be made by advertisements under the hands of said applicants set up at three of the most public places in the said township of Franklin in which said road was proposed to be altered: IT IS on this twenty-eighth day of February, nineteen hundred and two, ORDERED that William H. Jacobus of Verona Township, William Cole of Belleville Township, Theodore B. Kanouse and J. H. Cadmus of Caldwell Township, Walter Riker and Charles W. Stager of Franklin Township, six surveyors of the highways of the County of Essex, be, and they are, hereby ap-

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Exhibit D. 6.

pointed accordingly, which said surveyors shall meet at Park Hall on Chestnut street in said Township of Franklin on the twenty-sixth day of March, nineteen hundred and two, at the hour of ten o'clock in the forenoon.

ALFRED F. SKINNER, J."

10 Now we, the Surveyors of the Highways
 aforesaid, DO CERTIFY AND RETURN that William
 H. Jacobus, William Cole, Theodore B. Kanouse,
 J. H. Cadmus, Walter Riker and Charles W.
 Stager met at the time and place in the said
 order specified, and due proof being made to
 us that the advertisements of our said meeting
 had been set up according to law on which we
 decided, and having viewed the premises, we,
 whose names are hereto subscribed, think and
 20 adjudge said alteration of said public road to be
 necessary and do alter the same as appears to
 us must for the public and private convenience,
 having regard for the best ground for a road
 and the shortest distance, in such manner as
 to do the least injury to private property, that
 is to say: we do alter said road by vacating
 the same, which as now laid is described as
 follows:

30 BEGINNING at a monument stone planted at
 the intersection of the centre line of the street
 about to be described with the centre line of
 Franklin avenue as laid September 13, 1895;
 thence running south forty-five degrees twenty-
 one minutes east four hundred and thirty-four
 feet and five one-hundredths of a foot; thence
 on a curve to the left with a radius of three
 hundred and twenty-eight feet and thirty-eight
 one hundredths of a foot tangents eighty-three
 40 feet and fifty one-hundredths of a foot; thence

Exhibit D. 6.

south eighty-five degrees seventeen minutes east two hundred feet and eighty-three one hundredths of a foot; and thence on a curve to the right, with a radius of three hundred and three feet and sixty-seven one hundredths of a foot, tangents fifty feet; thence south sixty-six degrees twenty-five minutes east five hundred and three feet and eighteen one-hundredths of a foot; thence on a curve to the right, with a radius of nine hundred eighty-six feet and fifty-four one hundredths of a foot, tangents 62-50/100 feet; thence south fifty-nine degrees ten minutes east fifty feet to a monument stone planted at the intersection of the centre of the street above described with the extension of the centre line of Passaic avenue running south and there ending; the above described courses and distances being the centre line of a street fifty feet in width and known as Chestnut street, and being also that portion of Chestnut street, between Franklin and Passaic avenues as laid May 1, 1889;

AND WE DO LAY OUT IN LIEU THEREOF, a road,

BEGINNING in the centre line of Franklin avenue as now established, at a point therein distant on a course of south thirty-seven degrees twenty-seven minutes west five feet and four one hundredths of a foot from a monument stone planted in the centre of Chestnut street as laid May 1, 1889; running thence: in or about the following courses and distances which are stated in general terms: (1) South forty-five degrees twenty-one minutes east three hundred and eighty-three and forty-seven one hundredths of a foot; thence (2) on a curve to the left with a radius of three hundred and forty-six feet and eight one hundredths

Exhibit D. 6.

of a foot, tangents one hundred feet; thence
 (3) south seventy-seven degrees thirty-five
 minutes east two hundred and eleven feet;
 thence (4) on a curve to the right, with a radius
 of ten hundred and twenty-two feet and ninety-
 four one hundredths of a foot, tangents one hun-
 dred feet; thence (5) south sixty-six degrees
 10 twenty-five minutes east two hundred and forty-
 twenty-five minutes east two hundred and
 forty-six and seventy-seven one hundredths
 feet; thence (6) south sixty-five degrees
 twenty-one minutes east three hundred and fifty
 feet to the centre line of Passaic avenue at the
 point where the same is intersected by the centre
 line of Chestnut street running easterly there-
 from and there ending; the above courses and
 distances to be the centre line of a street sixty
 20 feet in width and to be known as Chestnut street;
 which said line has been marked by us at
 proper distances in the line of the same.

AND WE DO ORDER the same to be opened by
 the Overseers of the Highways, or other com-
 petent authority, on the twentieth day of May,
 nineteen hundred and two, and do herewith
 return a map or draft of said road with the
 courses and distances and references to the
 most remarkable places, and the improvements
 30 through which it passes.

AND WE DO FURTHER RETURN that we have
 made an assessment of the damages to the re-
 spective owners, other than the applicants for
 the said road, of the land taken for altering
 the same, and do hereby assess in favor of
 Anna E. Bunnell the sum of seventy-five dollars
 for the damages she will sustain by the alter-
 ing of said road, and in favor of Leah Tuers the
 40 sum of ten dollars for the damages which she

Exhibit D. 6.

will sustain by the altering of said road, and in favor of Ludwig Graisch, Herman Thierfelder, Michael Heintz, William F. Dittig, Abraham De Waal, Selden S. Davis, Sarah Yearance, Caroline Stager, Robert Cunningham, Flora Adler, Warren Vreeland, Board of Education of the Township of Franklin or its successors, Josephine Russell, Caroline Hughes, Albert B. Hilton, Edward Hilton, Henry Russell, Trustee, and J. Sigler or Mrs. Kierstead, each the sum of ten cents for the damages they will respectively sustain by the altering of said road, making in all the sum of eighty-six dollars and eighty cents.

10

AND WE DO FURTHER RETURN that we have taken into consideration the advantages which will accrue to the said persons, owners of the land as aforesaid, and have assessed the damages they will sustain over and above such advantages.

20

IN WITNESS WHEREOF, we, William H. Jacobus, William Cole, Theodore B. Kanouse, J. H. Cadmus, Walter Riker and Charles W. Stager, the Surveyors aforesaid, have hereunto set our hands and seals this fourth day of April, nineteen hundred and two.

WALTER RIKER	[SEAL]	
JAMES H. CADMUS	[SEAL]	30
THEODORE B. KANOUSE	[SEAL]	
WILLIAM H. JACOBUS	[SEAL]	
WILLIAM COLE	[SEAL]	
CHARLES W. STAGER.	[SEAL]	

(The above document is endorsed.)

ESSEX COURT OF COMMON PLEAS.

In the matter of the alteration of Chestnut street in the Township of Franklin.

40

Exhibit D. 6.

RETURN OF SURVEYORS OF THE
HIGHWAYS.

Filed April 18, 1902.

William O. Kubler,
Clerk.

Recorded in Book H of Road Records, page
10 157.

Hugh B. Reed, Counselor at Law, Lawyers'
Building, Newark, N. J.

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30

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Exhibit P. 2.

EXHIBIT P. 2.

10/20/16

MEMORANDUM OF AGREEMENT made this seven-
 teenth day June, nineteen hundred and one, be-
 tween the The Board of Chosen Freeholders of
 the County of Essex, and State of New Jersey,
 of the first part, and James T. Boylan, of the
 Township of Belleville, in the County of Essex 10
 and State of New Jersey, of the second part.
 The said party of the second part covenants
 and agrees with the said party of the first part,
 to make, erect, build and finish in a good, sub-
 stantial and workmanlike manner, a bridge on
 Chestnut street, over the Third River, in the
 Township of Franklin, agreeably to the plans
 and specifications hereto annexed, by the first
 day of September next; and the said party of
 the first part covenants and agrees to pay unto 20
 the said party of the second part, for the same,
 the sum of one thousand six hundred and ninety-
 seven (\$1,697.00) dollars, lawful money of the
 United States, when completed. And it is here-
 by agreed that the party of the second part
 shall, notwithstanding such payment, be liable
 for all damages sustained by reason of any de-
 fective or improper construction of said work.

And for the true and faithful performance of
 all and every of the covenants and agreements 30
 above mentioned, the parties to these presents
 bind themselves, each unto the other, in the sum
 of eight hundred and fifty (\$850.00) dollars, as
 liquidated damages to be paid by the failing
 party.

IN WITNESS WHEREOF, the said party of the
 first part have hereto set their common seal and
 caused these presents to be signed by the Chair-
 man of the Special Committee duly authorized 40

Exhibit P. 2.

by the party of the first part to contract for the building of said bridge. And the said party of the second part have hereunto set his hand and seal the day and year first above written.

Signed, Sealed and Delivered
in the presence of Oliver H.
Perry as to James T. Boylan.

10

JNO. F. CLARK (L. S.)
JAMES T. BOYLAN (L. S.)

SPECIFICATION.

SPECIFICATIONS FOR MASONRY OF BRIDGE

To be built on Chestnut street over Third River, in the Township of Franklin. The present iron bridge to be removed to some suitable spot and
20 to be the property of the county.

Excavation.

The excavation to be carried down to a depth of $11\frac{1}{2}$ feet below the new level of the roadway at bridge, and to a length of 76 feet and a width of 40 feet. The level of roadway of new bridge will be 8 inches higher than the old.

Abutments.

30

The abutments to be built as shown on plan 60 ft. 6 in. long, 9 ft. 10 in. high to under side of beams; 4 ft. 0 in. thick at bottom, and 2 ft. 0 in. at top.

Wing Walls.

The wing walls to be 4 in number, each 8 ft. long, 11 ft. 6 in. high, 4 ft. 0 in. thick at bottom, and 2 ft. 0 in. at top; on top lay a blue
40 stone coping 3 inches thick, 9 ft. long and 20

Exhibit P. 2.

in. wide; each stone to be securely anchored to the masonry beneath with $2\frac{3}{4}$ inch anchor bolts not less than eighteen inches long, with heads countersunk and well grounded.

They are to be built of good, sound coursed masonry, well bonded with headers not more than 5 feet apart horizontally nor 1 foot vertically, and running two-thirds through the wall; each stone on the lower course to extend the full width of the foundation; no stone to be less than 10 inches thick; no stone to have greater rise than bed, and every stone to be well bedded in good cement mortar mixed in the proportion of one part Rosedale cement to two parts clean sharp sand. 10

The masonry to show a rock face of quarry stone, with close joints well pointed. 20

Inlets.

Build inlets as shown on plan. Each inlet to be 12 ft. long with an opening 2 ft. square covered with 3 in. blue stone on top, and with a $2\frac{1}{2}$ in. blue stone between their whole length.

Brick arches.

Build between the iron beams 9 brick arches 29 ft. 0 in. long, 4 ft. 0 in. span, 8 in. rise and 8 in. thick under roadway, and 4 brick arches 29 ft. long 5 ft. 3 in. span, 8 in. rise, and 8 in. thick under sidewalk. 30

To be built of good, sound, hard, burnt brick, well keyed in centre, with haunches cut to fit the beams; every brick to be well bedded in good cement mortar, mixed in the proportion of one part Saylor's Portland cement to three parts clean sharp sand.

Mason in on walls under arches with work similar to rest. 40

Exhibit P. 3.

Concrete.

Fill in on top of arches to a level of 2 inches above tops of beams with good, sound concrete mixed in the proportion of one of Saylor's Portland cement, three of sand and six of broken stone, well rammed; smooth off on top with a coating of cement mixed as for brick
 10 work.

Waterproof covering.

When the concrete and mortar are thoroughly set, a water-proof covering is to be laid, consisting of the best tarred paper, laid in and covered with a coating of asphalt and tar so as to be thoroughly water tight, the whole then to be covered with two inches of sand.

The contractor to remove all material not
 20 used entirely away; to make all excavations for bridge and waterway, and to make all necessary provisions to keep the work in progress free from water. All workmanship and material to be first class, and the whole work to be completed in a thorough and workmanlike manner, satisfactory to the Committee and Engineer.

Furnish and lay to each sidewalk the full width and from rear to rear of abutments, a
 30 first class concrete walk, equal in all respects to the best monolithic walk.

EXHIBIT P. 3.

10/20/16

MEMORANDUM OF AGREEMENT made this seven-
 teenth day of June, nineteen hundred and one,
 between the The Board of Chosen Freeholders
 of the County of Essex and State of New Jersey
 40 of the first part, and Eugene B. Hedden, of the

Exhibit P. 3.

Town of East Orange, in the County of Essex and State of New Jersey, of the second part. The said party of the second part covenants and agrees with the said party of the first part, to make, erect, build and finish in a good, substantial and workmanlike manner, the steel work of bridge in Chestnut street over the Third River, in Franklin, agreeably to the plans and specifications hereto annexed, by the first day of September next; and the said party of the first part covenants and agrees to pay unto the said party of the second part, for the same, the sum of eight hundred and sixty-three (\$863.00) dollars, lawful money of the United States, when completed. And it is hereby agreed that the party of the second part shall, notwithstanding such payment, be liable for all damages sustained by reason of any defective or improper construction of said work. And for the true and faithful performance of all and every of the covenants and agreements above mentioned, the parties to these presents bind themselves, each unto the other, in the sum of four hundred and twenty-five (\$425.00) dollars, as liquidated damages to be paid by the failing party.

IN WITNESS WHEREOF, the said party of the first part have hereto set their common seal and caused these presents to be signed by the Chairman of the Special Committee duly authorized by the party of the first part to contract for the building of said bridge. And the said party of the second part have hereunto set his hand and seal the day and year first above written.

Signed, Sealed and Delivered in the presence of

ERNEST A. BARKER. (L. S.)
EUGENE B. HEDDEN. (L. S.)

Exhibit P. 3.

SPECIFICATION.

SPECIFICATIONS FOR STEEL WORK OF BRIDGE
To be built on Chestnut Street over the Third
River, in the Township of Franklin.

Furnish and set 16 20-inch rolled steel beams,
192 lbs. per yd. 30 ft. 0 in. long.

10 Drill all beams for 3 rows of $\frac{3}{4}$ inch tie rods,
the first and second beam at each end of bridge
to have 2 extra holes at each end of beam, also
the four gutter beams and the beams next to
them towards centre of bridge.

Furnish 81 $\frac{3}{4}$ inch round wrought iron tie
rods, 40 6 ft. long, 41 4 ft. 6 in. long, tapped at
each end, with four nuts to each rod.

Adjust beams with rods and screw up tight;
insert clips at ends of outside beams.

20 Furnish and set on each end of bridge 28 ft.
0 in. of wrought iron picket railing 3 ft. 6 in.
high pickets inch square of the general design
shown on plan, subject to approval, and to be
securely braced.

Paint all iron with two good coats of the best
white lead and linseed oil well mixed.

All material and workmanship to be first class
and satisfactory to the Committee and Engi-
neer.

30

40

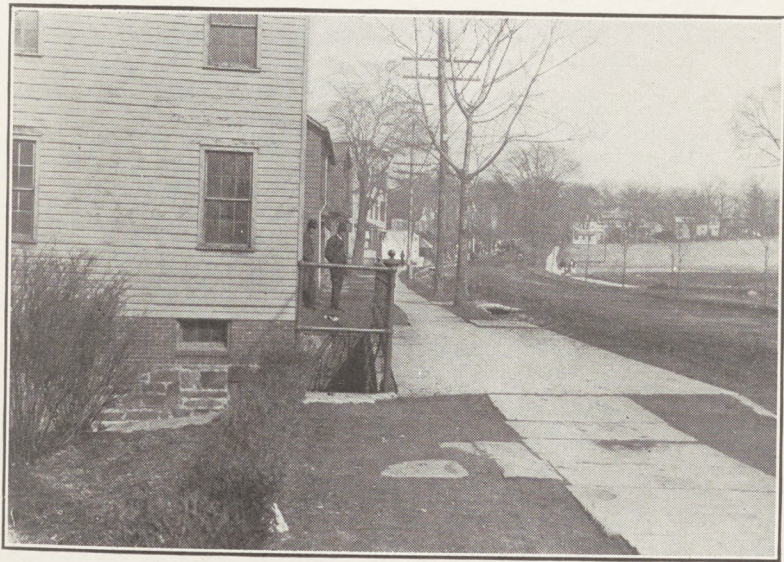
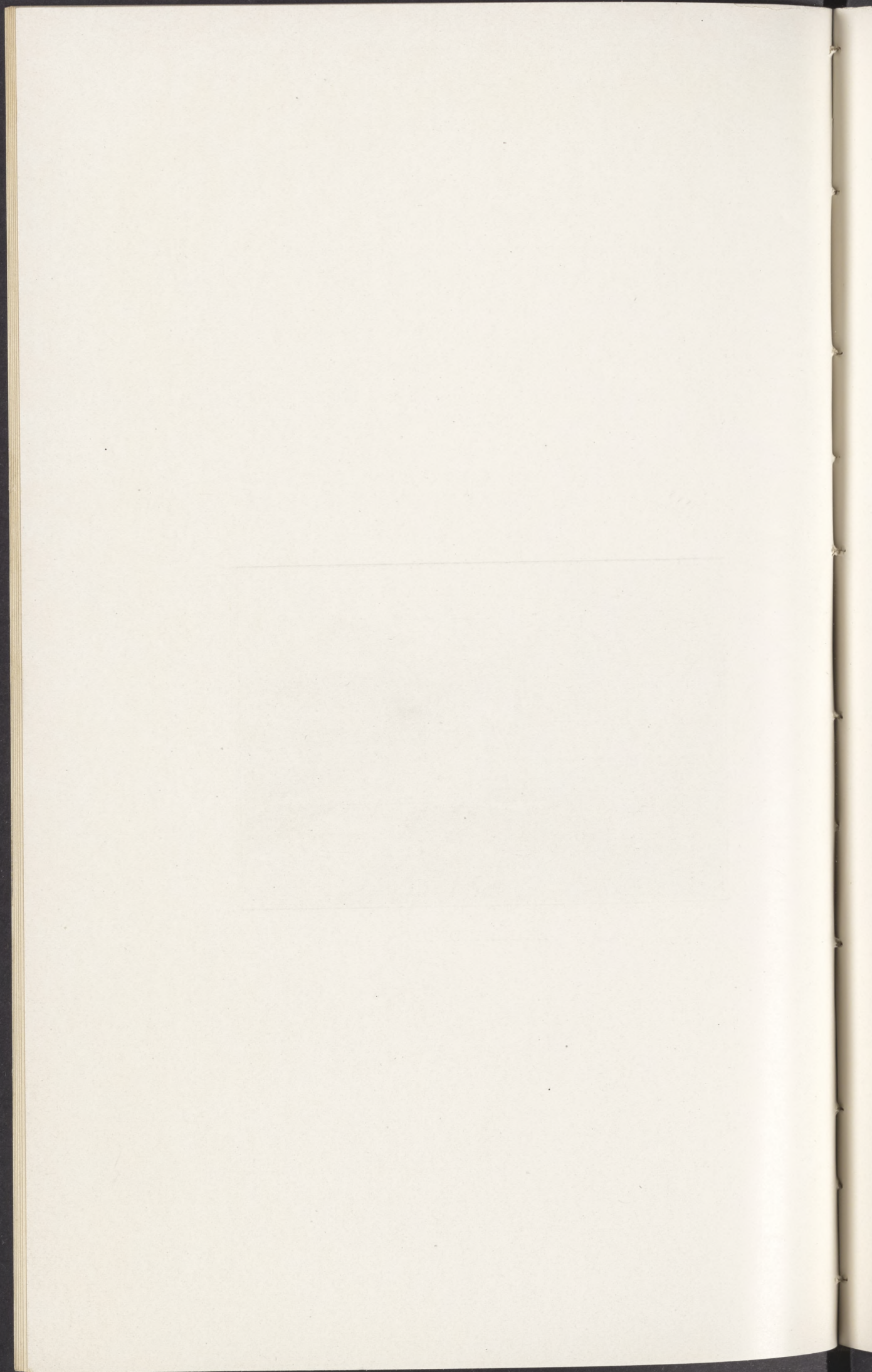


EXHIBIT D. 1



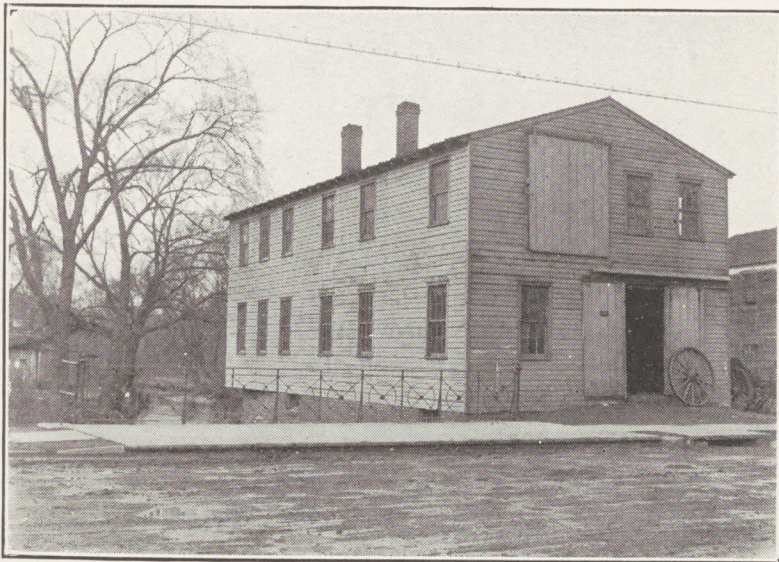
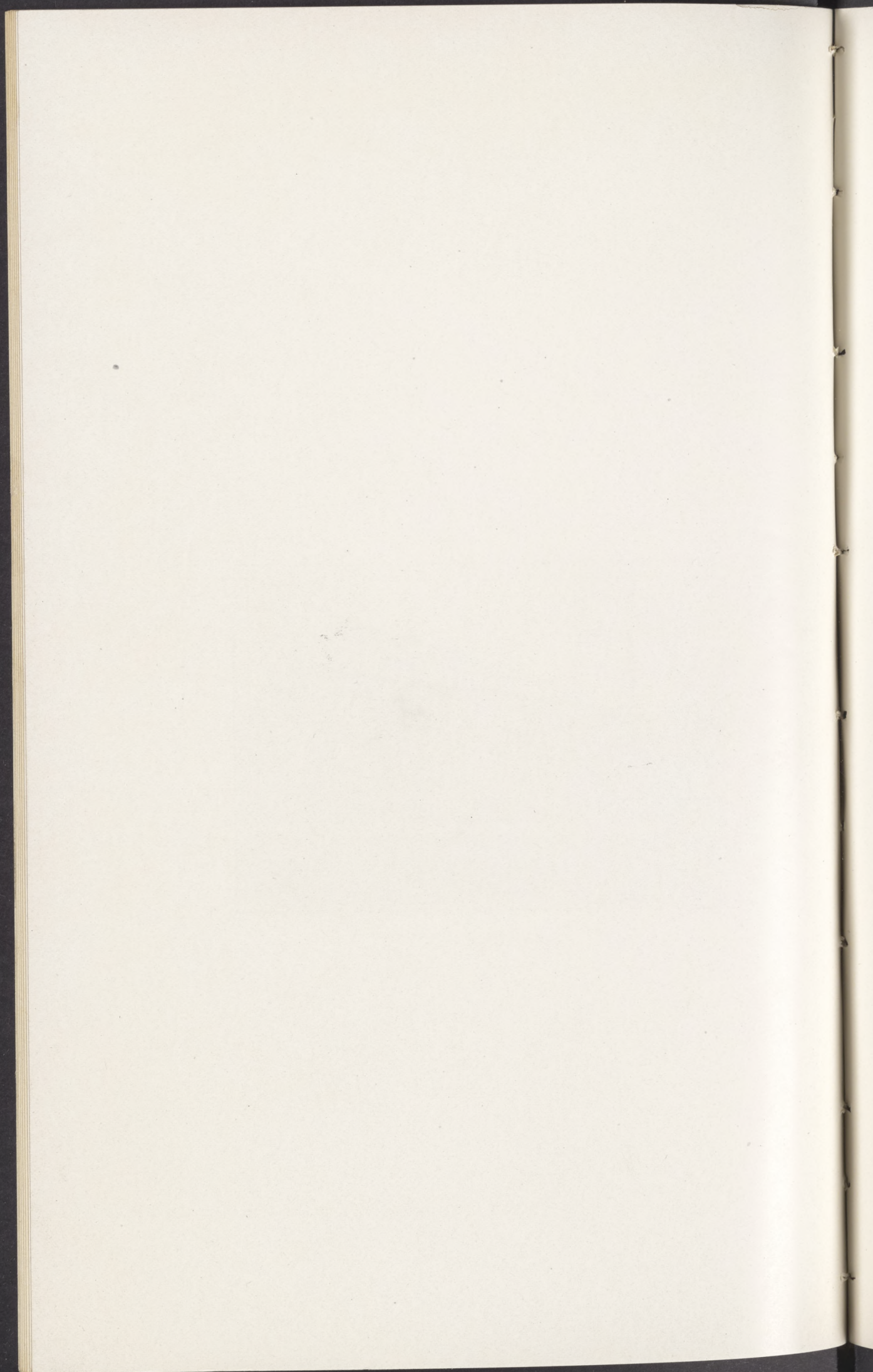


EXHIBIT D. 2



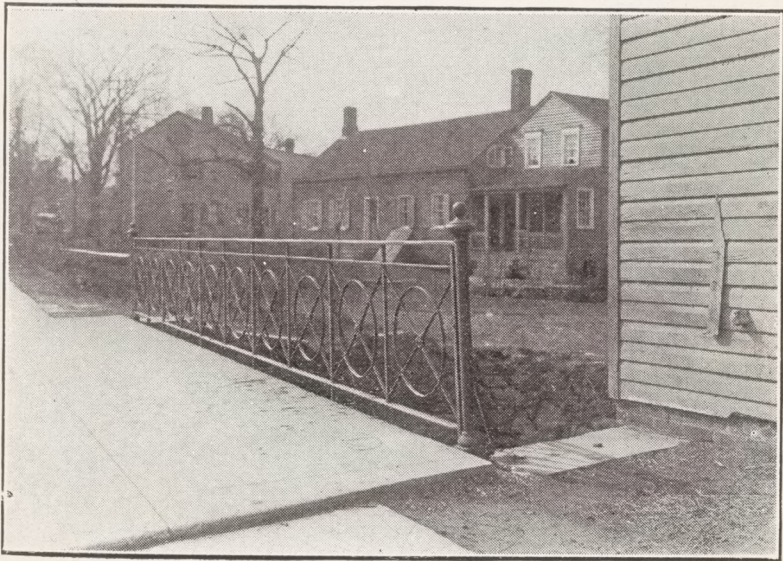


EXHIBIT D. 3

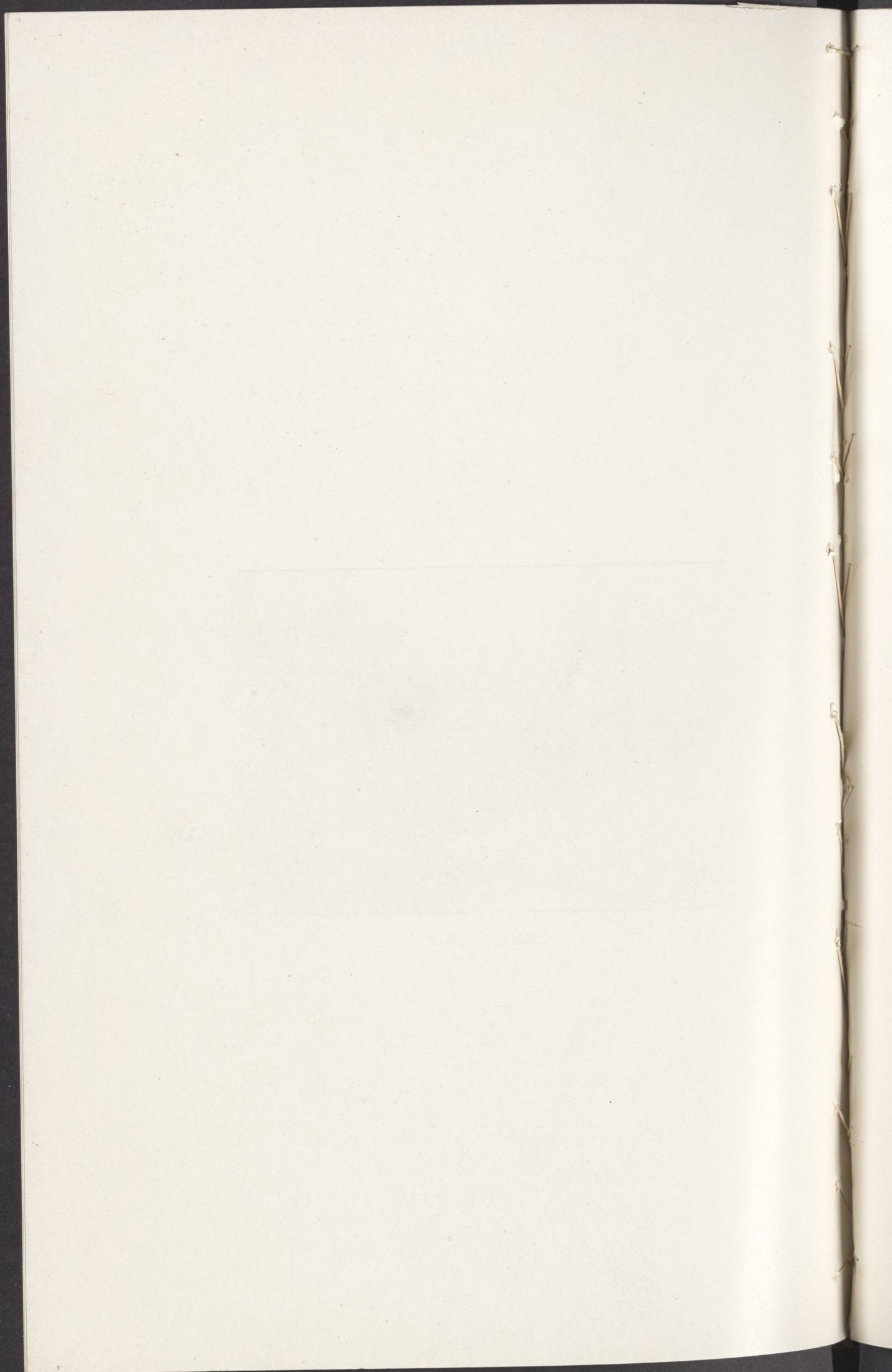
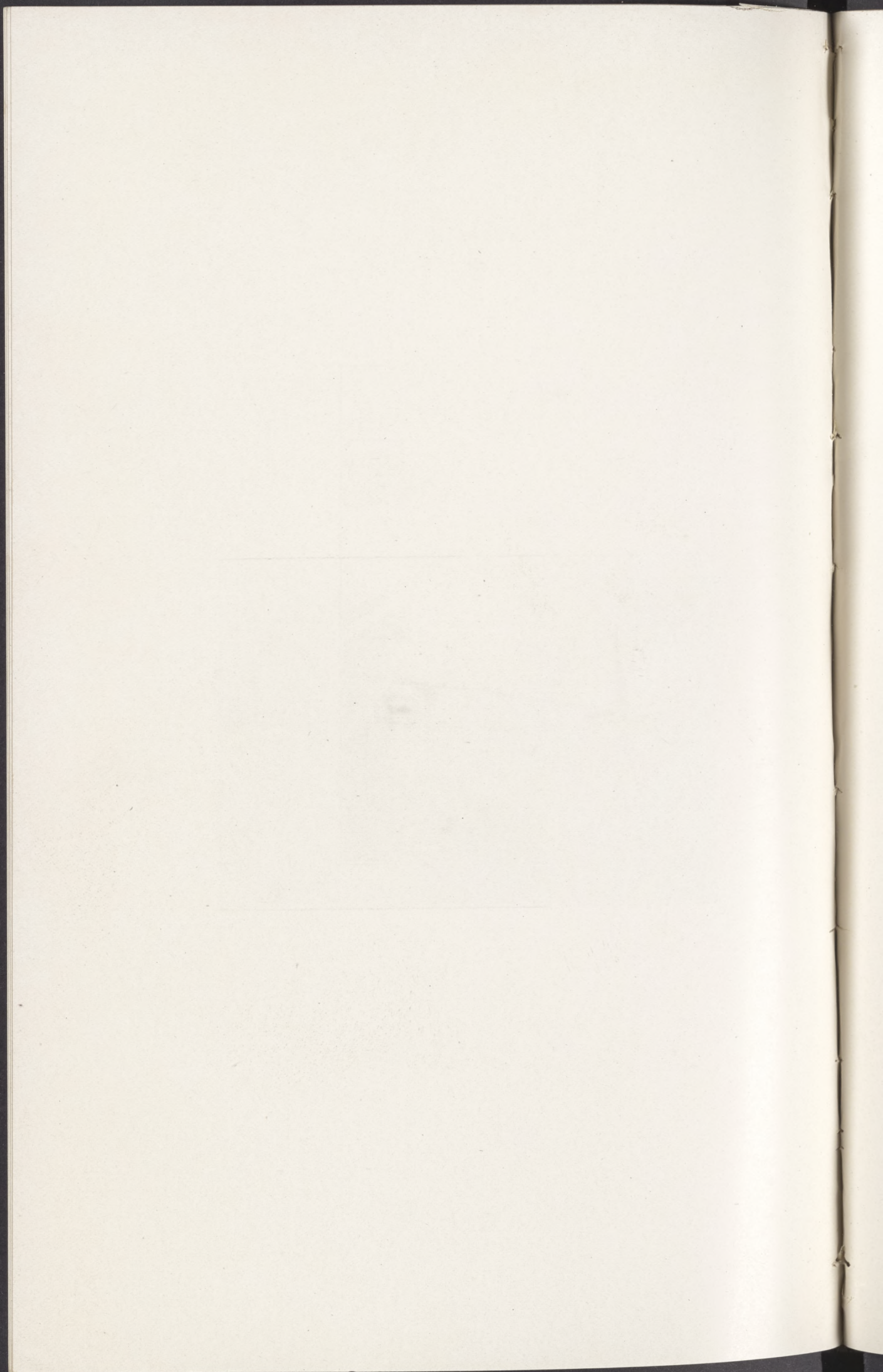




EXHIBIT D. 4



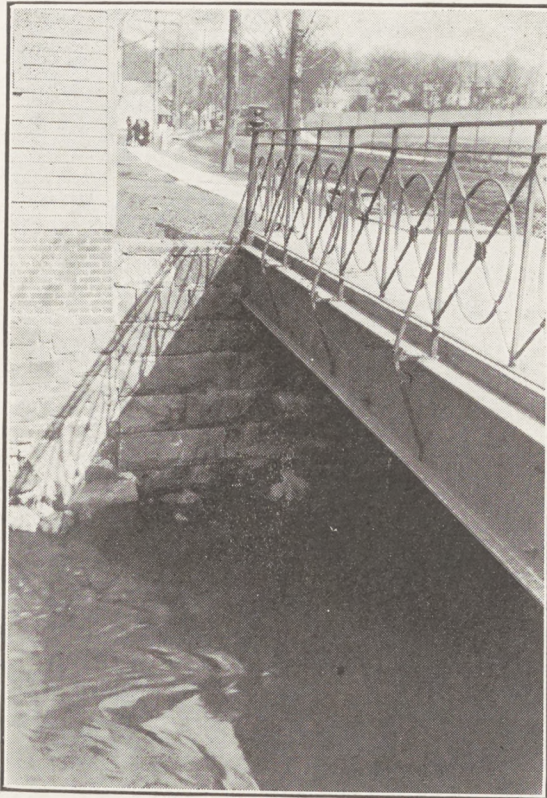
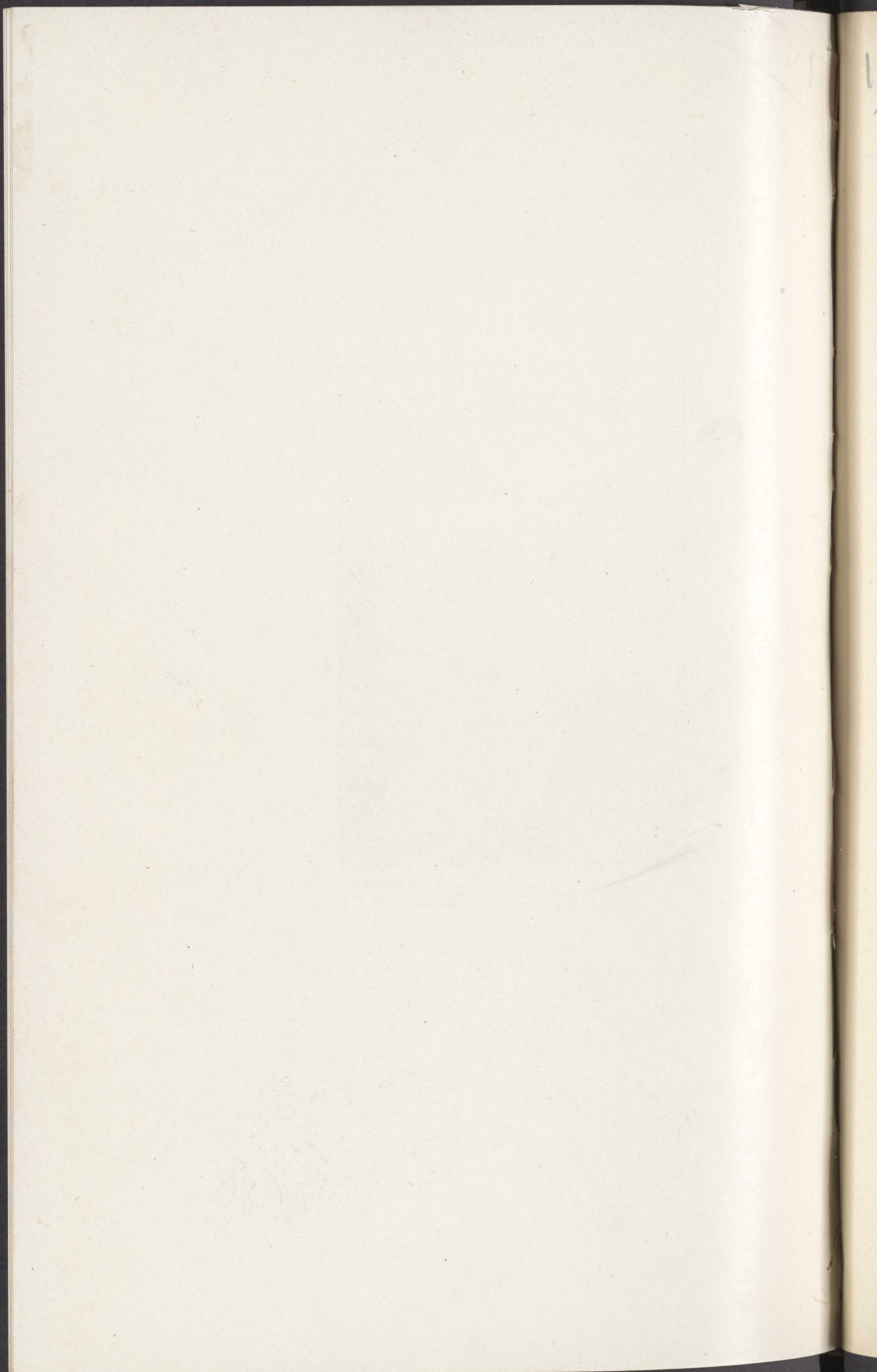


EXHIBIT D. 5



New Jersey Court of Errors and Appeals

JAMES DARVILLE,
Plaintiff-Respondent,

vs.

THE BOARD OF CHOSEN FREE-
HOLDERS OF THE COUNTY OF
ESSEX,
Defendant-Appellant.

Brief for Plaintiff-Respondent.

Statement.

In 1891, defendant erected over a stream, known as Third River, a bridge on Chestnut street in the town of Nutley. This bridge was narrower than the highway. The abutment for the bridge was built at right angles to the bridge, and was constructed so that it ran from the building, shown on Exhibit D. 5, hereinafter referred to as the blacksmith shop, to a point on the other side of the bridge. This abutment was perpendicular and about ten feet in height, the river being at this point about two feet in depth, the bed of the river being composed of stones from the size of cobble stones to those of a foot in diameter (page 25, line 10, etc.), Exhibits 4 and 5. The space between the end of the bridge and the blacksmith shop was approximately three feet ten inches. Of this about one foot was road and two feet ten inches property belonging to the owner of the blacksmith shop. The flag sidewalk, approaching the bridge, was apparently a foot, or more, inside the bridge line, and thus two feet, or two

and one-half feet, inside the street line, Exhibits D. 3 and D. 5. The space between the bridge and the blacksmith shop was protected by an iron railing consisting of two uprights and cross pieces screwed into them, one end of which was fastened to the girder of the bridge and the other end was fastened to the stone coping, erected by the county, by lag screws (page 22, line 1, etc.). This railing was constructed when the bridge was built (page 21, line 30), by the men who built the bridge (page 32, lines 12 and 23). The aperture to be filled by this railing appears from Exhibits D. 3 and D. 5, and the railing itself was similar to that shown in Exhibit D. 1, which shows the other end of the bridge with its railing still in place. Plaintiff going north on the bridge sidewalk home (page 43, line 12) placed his hand on the railing which gave way, precipitated him into the river, and fell on top of him (page 43, line 15). It appears that a year, or so, before the happening of the accident, the end of the rail, which had been attached to the girder of the bridge, had rusted off (page 23, line 25). The blacksmith tied it up with a piece of bale wire (page 30, line 35). The bridge, including the railing (and presumably the bale wire) was painted six months, or a year, before the accident (page 64, line 10).

After the accident happened, the county engineer ordered the rail to be repaired (page 67, line 36, and page 68). The blacksmith was employed on behalf of the defendant for this purpose (page 69, line 32).

Points I and II of Appellant's Brief.

These deal with the refusal of the trial Court to grant a non-suit, and to direct a verdict for the defendant.

The argument seems to be based upon the theory, first, that plaintiff was on private property at the time of the accident, and second, that the rail, which gave way, was built without legal authority, and the defendant was under no obligation to repair it.

Both these questions were left to the jury. (See Judge's charge, page 78.) "First, was the rail, that gave way, part of the bridge? If it was not, that is the end of your labors, and your verdict should be in favor of the defendant." Then followed a statement of what constituted a bridge, and of what the evidence on the subject was. Then the Court further said (page 80, line 7) "If it was not erected by the Board of Freeholders and not maintained by the Board of Freeholders, they had nothing to do with it. If it was put up by a private person, then, gentlemen, of course, if it was not part of the bridge, they were not under any responsibility to keep it in order, and if they were not, then it is immaterial whether or not the plaintiff fell over and was injured so far as damages are concerned."

And on the question of the plaintiff's position with regard to the public street (page 81, line 3), "If you find the rail was part of the bridge, but if he (plaintiff) was entirely on private property, there can be no recovery because the Board of Freeholders were not responsible and were not obliged to keep up a protection for private property, and there was no duty on their part to keep the rail to protect private property in safe and proper condition. Their

duty was to provide a bridge, keep it in repair and keep it in such a way that persons could safely approach that bridge, not to protect private, individual property."

There is the following evidence on these questions. James T. Boylan, contractor, who built stone work and bridge floor, testified (page 17, line 26):

A The bridge walls met the walls of the blacksmith shop.

Q That is up to the walls of the blacksmith shop?

A Yes, sir. We built right up to the wall of the blacksmith shop.

(Page 18, line 7):

Q What runs from the bridge northerly to the blacksmith shop? Was there a coping or anything of that kind?

A Yes, sir.

Q A stone coping?

A Yes, sir.

Q How broad?

A I should say it was in the neighborhood of eighteen inches.

Q Did that form one stone or more?

A I couldn't say positively, I think it was about one stone.

Q Who placed that there?

A One of my men.

Q Under your direction?

A Yes, sir.

Q By whom were you employed to do this work?

A Essex County.

Q When you say Essex County what do you mean? The Board of Chosen Freeholders?

A Yes, sir.

(Line 31.) (Cross examination):

Q By what authority, Mr. Boylan, did you build that wall in the street line to the blacksmith shop?

A On the engineer's orders.

(Page 19, line 3):

Q You simply built it because you were directed to by the county engineer?

A Yes, sir.

(Page 21, line 24.) Witness—Henry Otter:

Q Will you describe, now, the iron railing along the side of the bridge? What was there, if anything, at the time this accident happened which alleged to be November 2, 1914, to fill up that space from the bridge to the corner of your blacksmith shop, if anything?

A A pipe railing.

Q When was that put there?

A When the bridge was built.

Q Who put it there, do you know?

A I believe it was Hay's foundry, I am not sure.

Q You say it was put there when the bridge was built fourteen or fifteen years ago?

A Yes.

Q Now the pipe railing, can you describe that a little more definitely? What sort of a railing? Would it be V shaped, like this for instance? (Illustrating.)

A It was two uprights and two cross pieces screwed into them.

Q An upright going up, across, and down on the other side? How were they fastened?

A They were put in T's across, one piece, put in with a T.

Q How were they held in place?

A On the ground?

Q Were they on the ground, or were they on the stone coping?

A One was on the girder of the bridge and the other was on the stone coping.

Q How near to the stone coping was the rail with regard to your blacksmith shop?

A Adjoining the shop.

Q How was that fastened to the stone coping?

A There were holes bored in the stone coping and wooden plugs put in them and lag screws put in.

(Page 32, line 9.)

Q As a matter of fact, you don't know who put the rail on at the time it was built, do you?

A Only the men who built the bridge put the rail up.

Q Do you know who the contractor was?

A Who built the bridge?

Q Yes.

A Mr. Boylan.

Q I mean who did the iron work?

A Hay foundry.

Q That is what you were told?

A That is what I recollect.

Q *By the Court.* As I understand it, the man who put up this bridge, the iron work of the bridge, put up this rail?

A Yes, sir.

James Owen, the county engineer, at the time the bridge was built, was uncertain as to the building of the railings. At first he denied that the railing was built when the bridge was built,

but when pressed he became uncertain (page 59, line 28):

Q Do you say definitely that there was none there at that time?

A Yes, sir.

Q Sure of that, are you?

A Pretty nearly sure.

Q Do you mean by that it might have been possible?

A No, I don't think so. I, of course, haven't been there lately for some years, but I remember a rail was put there. The usual rail was placed that the county built for bridges with parallel wing walls to the side of the street and put the railings on the walls that were built parallel to the side of the street. Certain locations and certain conditions require some times the construction of the walls at right angles as a matter of protection to the bridge and also to the property, but those walls were outside the line of the street and really was something that we did under sufferance. The county did build those walls.

Q Do you know how near the street line the bridge was?

A The bridge was supposed to be as far as I could say to be put on the line of the street.

Q This copy here shows that there is a space of a foot between the outside railing?

A The usual method was to build the abutment and wing walls on the line of the street. Then when we put the railing on, of course, we couldn't put the rail up on the man's place because we could not hold it so we used to put the rail about a foot back from the line of the street.

Q You did that in this case?

A We did that in this case.

Q Then that left a foot of road unprotected?

A In that case.

Q Did you leave that without protection?

A I did. Yes, sir.

Q You did?

A I presume so. I don't remember putting a rail there. The rail of the bridge stopped right there, I presume, I didn't put anything more.

(Page 61, line 13):

Q You mean to say you left the bridge there without any protection at all between that bridge?

A And the building, yes.

Q None was put there?

A None was put there; that is, as far as I remember. I think there was some arrangement with a blacksmith shop if I remember rightly, right there. You see all these arrangements of wing wall outside of the wall of the street were done either with the consent or under sufferance, and I had only a talk with the owner of the blacksmith shop as to what the county would do. The presumption was that if the county would take care of the one foot he would take care of the two feet.

(Page 62, line 16) referring to the plans and specifications:

Q That specification refers to plans and, of course, if there had appeared on the plans this rail that would be included in the contract, would it not?

A Oh, yes.

By Mr. Miller.

Q Do you know whether they appear or were mentioned on the plans?

A The plans would be in accord with those specifications. There was no provision for the rail on the wing wall. The contract contracted for the railing on the bridge.

Q It might have appeared on the plan, you cannot recall as to that?

A Oh, yes. I can't be satisfied about that.

Some six months or a year before the accident, the bridge was painted, all of it, including the rail in question (page 64, line 16). (James Egan):

Q You say all the iron work? What do you mean by that, just the side?

A The whole rail that was around from the blacksmith shop clean around on both sides of the bridge.

The county repaired the rail after the accident) page 67, line 37). (Frederick A. Reimer):

Q Did you order direct any repairs to be made or protection to be given to those sides between the bridge and the blacksmith shop after the accident? A Yes, sir.

(Page 68, line 23):

Q What did you order done? A I directed the blacksmith who has a shop immediately next to this bridge, for the sake of policy, so as to avoid any possibility of the accident occurring again, avoiding delays of compelling the town of Nutley to put it there, to put that rail back, and that would be the case, so I said I would see it was paid.

Q And did you pay him? A I assume we did. I don't know that we ever got the bill.

(Page 69, line 26):

Q You employed him to do it as a county employee for the county? A I naturally, whenever I gave instructions of that kind, I took the bill to that body, but I had no authority in this case. I went ahead and did it.

Q You assume to employ him for the county to do the work? A Yes, sir.

And on the question of the position of the plaintiff when he took hold of the railing and fell, it will be remembered that the distance from the side railing of the bridge to the blacksmith shop was approximately three feet ten inches. Of this space, one foot was within the line of the street and the remainder outside that line, but the flag sidewalk line, as will be evident from Exhibits D-3 and D-5, is at least one foot inside of the street line, and consequently five feet, or more, from the blacksmith shop. The plaintiff came from the door of the blacksmith shop, shown on Exhibit D-2, and walked toward the sidewalk of the bridge, and had reached a point of about one and one-half feet from the bridge when he put his hand upon this rail, and upon its giving way, was precipitated into the river.

(Page 42, line 39.) (Plaintiff):

Q You came out of the blacksmith shop?

A Yes, sir.

Q Where did you go? A I went just a little ways and put my hand on the bridge, on the rail, and it went over all of a sudden.

Q Where were you when you put your hand on the rail? A A little ways from the blacksmith shop and a little ways from the rail, and I put my hand out so.

Q How near the bridge were you? A I suppose about a foot and a half.

Q Which direction were you going in? A Going north on the bridge sidewalk home.

A person walking from the door of the blacksmith shop to the bridge sidewalk, when he arrived at a point of a foot and a half from the bridge, would, beyond question, be within the street line.

On cross examination the plaintiff was asked (page 47, line 30):

Q You think you were about the middle?

A I was more than in the middle, more toward the sidewalk when I fell. I don't think I was over a foot and a half from the bridge.

The witness Brown testified (page 38, line 10):

Q How near was he (referring to plaintiff) to the end of the bridge, did you notice that? A A from the blacksmith shop do you mean?

Q Here is the end of the bridge, here (indicating on the map). A About a foot and a half.

Q A foot and a half to the end of a bridge? A Do you mean to the street, rail or blacksmith shop?

Q I mean from the blacksmith shop. A About two and a half feet to there (indicating).

(Page 39, line 32):

Q And Mr. Darville was standing? A He just came out of the blacksmith shop right close by the wall, I judge about a foot and a half, or two feet, from the blacksmith shop.

Q The last you saw of him was when he stood in that position and put his hand on the rail? A He was just walking along and Mr. Egan spoke to him. He turned around and put his hand out, back, and fell.

The witness Egan testified (page 66, line 1):

A This is the doct. I just come out of the blacksmith shop and Mr. Darville was standing right there, right off from the flag sidewalk in on the dirt. I spoke to him and asked him the time of the day, and how was he. He said he was feeling pretty good, and I said, "Good day," and then he fell in the brook, and I dropped the shoes that was in my arms and jumped in the brook.

Referring again the Exhibits D-1, D-3, D-5 and remembering that the line of the street occupied one foot of the space between the iron railing, as it appears in those pictures, and the corner of the blacksmith shop, it is evident from Egan's testimony that the plaintiff was within the lines of the street when he fell. He was standing "right off the flag sidewalk in on the dirt."

In deciding upon a motion of non-suit, or to direct a verdict, the Court is bound to regard that part of the evidence which is most favorable to the plaintiff, and if there is any evidence upon which the jury may properly find

a verdict for the plaintiff, such motion should be denied.

Hummer v. Lehigh Valley R. R. Co., 74 N. J. Law, page 196, at 199.

Haywood v. North Jersey St. Ry. Co., 74 N. J. Law, page 678, at 681.

Rand v. Armm, 74 N. J. Law, page 704.

I contend that the evidence in this case provides a question of fact for the jury upon both questions under consideration.

First: The plans of the bridge had been mislaid or lost. The engineer admitted that those plans might have contained directions that these railings along the wing walls should be erected. That if the plans did contain such direction, they would govern in spite of the fact that the specifications did not contain any reference to them. The engineer recollected that some arrangement was made with blacksmith, and the blacksmith recollected that the men who erected the iron work on the bridge erected the railings on the wing walls at the same time. They were painted, and after the accident were repaired by the county. It is inconceivable that anyone who had a regard for the safety of people using the street would have left a trap, such as depicted in the defendant's exhibits 1 to 5, inclusive, without protection. The wall fell sheer ten feet to a river running over rocks some of which were as large as a foot in diameter. If the county failed to safeguard this danger in some way, it was culpably negligent.

The question whether the defendant neglected to perform the duty of providing the public with a safe and convenient access to

the bridge was a question of fact for the jury upon the evidence.

Freeholders v. Hough, 55 N. J. Law, page 628-636.

These approaches must be constructed so as to be reasonably safe for passengers by night or day, or action lies.

Idem, page 643.

That case is also authority for the proposition that the county may by adoption make public the approach to a bridge as well as the main structure, and when it is thus made public, the county becomes bound to keep it in repair.

The abutment is a part of the bridge.

Sussex v. Strader, 18 N. J. Law, page 108.

And so are the approaches to a bridge a part of it.

McKinley v. Union, 29 N. J. Eq. 168, note.

Woodbridge v. Raritan Traction Co., 64 N. J. Eq., pages 169-171.

The case of *Spencer v. Freeholders of Hudson*, 66 N. J. Law, page 301, relied on by my opponent, was decided upon a state of facts entirely at variance with those in this case. There the whole bridge was on private property and connected a dead end of a street with private property across the stream, and in each of the other cases he cites, the Court distinguished the facts in such a manner as to take the question out of the general rule.

Second: The witnesses agree that plaintiff came out of the blacksmith shop and walked toward the bridge at a distance of at least two feet from the shop. The average man is one

and one-half feet across the shoulders. Approximately one-half of plaintiff would thus have been within the line of the street if the evidence most favorable to defendant were adopted. But the plaintiff testified that he was nearer to the sidewalk, and the witness Egan says plaintiff was "right off the sidewalk in on the dirt." Plaintiff must then have been wholly within the lines of the street.

Point III.

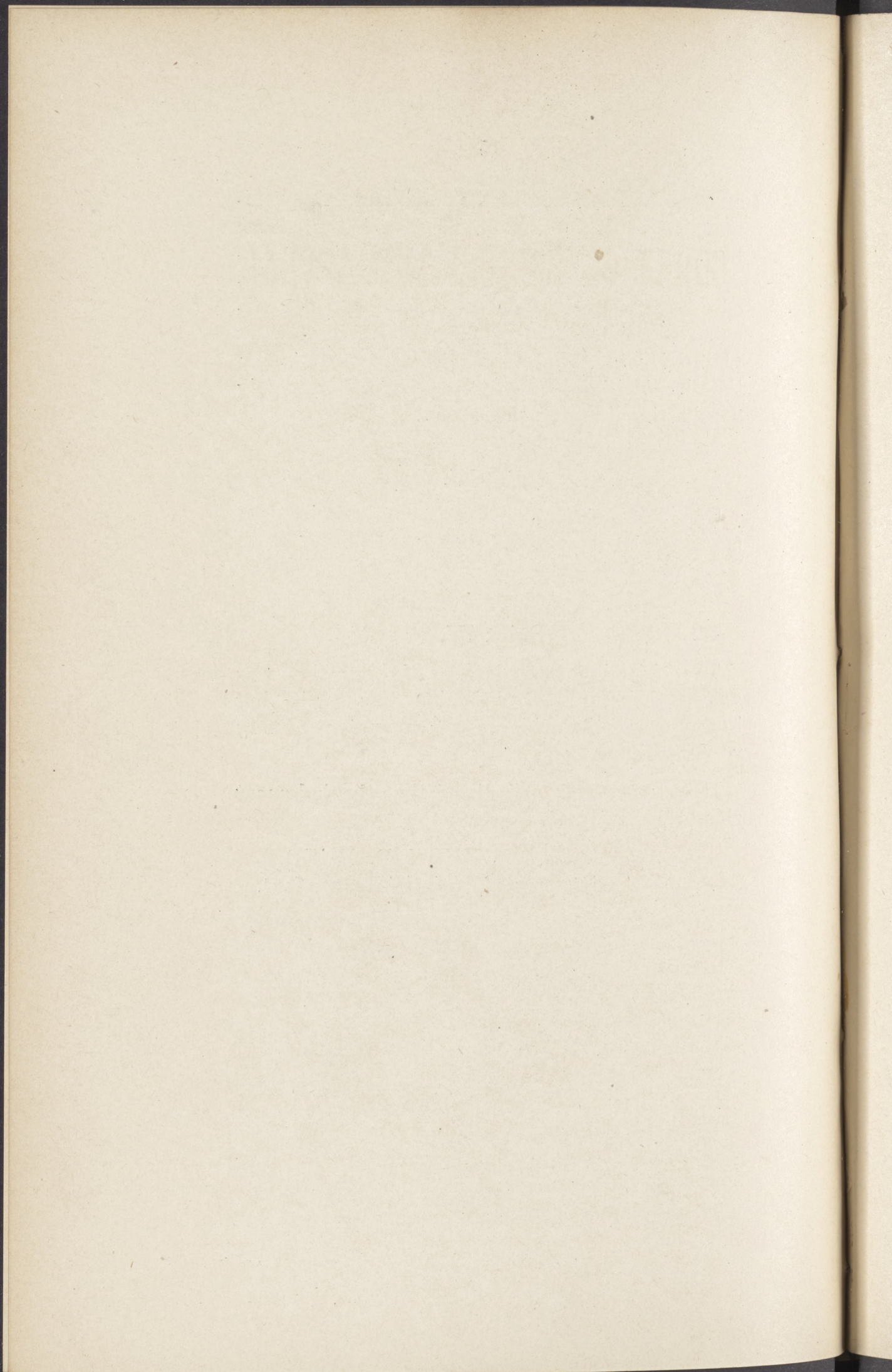
The charge of the Court in this respect is sustained by the case of *Perry v. Levy*, 87 N. J. Law, page 670.

Point IV.

The objection came late as the question was answered before the objection was made, but in any event, the evidence was competent. *Perry v. Levy, supra.*

It is respectfully submitted that the judgment should be affirmed.

HUGH B. REED,
Attorney of Plaintiff-Respondent.



COURT OF ERRORS AND APPEALS.

ON APPEAL FROM THE ESSEX COUNTY CIRCUIT
COURT.

JAMES DARVILLE,
Plaintiff-Respondent.

10

vs.

THE BOARD OF CHOSEN FREE-
HOLDERS OF THE COUNTY OF
ESSEX,
Defendant-Appellant.

POINTS OF DEFENDANT-APPELLANT.

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Statement.

This suit was brought by the plaintiff against the County of Essex to recover damages for injuries alleged to have been sustained by him in falling from an abutment or wing-wall of a bridge on Chestnut Street in the Town of Nutley, which bridge spanned a narrow stream known as Third River.

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The bridge in question was constructed by the County of Essex about fifteen years prior to the accident and at the time of the accident was a county bridge maintained by the Board of Chosen Freeholders. Chestnut Street at the pont where this bridge carried it across Third River, was at the time of the accident a public highway with well-defined boundaries, having been laid out some years before the accident by the Surveyors of the Highway, as will be seen by their report

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and map. (State of Case, page 87, Ex. D. 6, and large map.)

POINT I.

The Trial Court Erred in Refusing to Grant a Non-Suit.

10 The testimony throughout the plaintiff's case shows conclusively and without contradiction that the plaintiff was upon private property at the time that the rail in question gave way and precipitated him into the brook.

20 It further appears from the testimony in plaintiff's case and without the slightest conflict on that point, that the rail in question which gave way, was a rail extending from the easterly end of the bridge northerly to the blacksmith shop, a distance of 3.84 feet (see State of Case, small map and Exhibits D. 3 and D. 5); that of the 3.84 feet of space covered by the rail, 2.84 were upon private property over which the County of Essex had no rights whatever, either to construct the rail in question or to enter upon the same for any purpose, and that the rail in question, even if constructed by the county, was constructed entirely without legal authority and purely by sufferance of the owner of the property in question.

30 In substantiation of the foregoing statements, the testimony of the following witnesses on behalf of plaintiff, is referred to:

Harry Otter (State of Case, page 20, line 34) testified:

Q Now, on the side near your blacksmith shop, how near does the corner of the bridge come to the corner of your shop? It is marked here on this map.

40 A About 4 feet, I guess.

Q You should say about 4 feet?

A Yes.

(At page 31, line 27):

Q Was the iron rail connected to the rail of the bridge so that they touched?

A No, sir.

(At page 33, line 30):

Q Did you see him after he left the shop, 10
just before he fell in?

A I just saw his head through the window, that is all.

Q When you last saw him outside the shop, before he fell into the brook, show us by that map, if you will, where he was, where he was standing?

A About here (indicating).

Q About how far from the rail would you say? 20

A About a foot.

Q Leaning against the blacksmith shop?

A Yes.

* * * * *

James Brown in relating how plaintiff fell into the brook, said in reply to inquiries as to where plaintiff stood just prior to falling overboard (State of Case, page 38, line 11):

Q How near was he to the end of the bridge, did you notice that? 30

A From the blacksmith shop do you mean?

Q Here is the end of the bridge, here (indicating on the map).

A About a foot and a half.

Q A foot and a half to the end of the bridge?

A Do you mean to the street rail or blacksmith shop?

Q I mean from the blacksmith shop. 40

A About two and a half feet to there (indicating).

Q He was right about in the center, between the rail of the bridge and the blacksmith shop?

A Yes.

* * * * *

10 James Darville, the plaintiff, who had every interest in showing that at the time of the accident he stood upon the public highway and not upon private property, says (State of Case, page 43, line 4):

Q Where were you when you put your hand on the rail?

A A little ways from the blacksmith shop and a little ways from the rail and I put my hand out so.

Q How near the bridge were you?

20 A I suppose about a foot and a half.

Further on, the plaintiff (State of Case, page 47, line 23) testified as follows:

Q This line is the blacksmith shop. Here is a street line, here is the rail that you fell overboard with.

A Well, here, I think, here about two feet or so from the blacksmith shop that I stood and it wasn't a foot and a half from the bridge.

30 Q You think you were about in the middle?

A I was more than in the middle, more toward the sidewalk when I fell. I don't think I was over a foot and a half from the bridge.

Q Do you think you were about two feet from the blacksmith shop?

A Yes, sir.

40 James Owen, former County Engineer of Es-

sex County who was the engineer at the time of the construction of the bridge in question, testifying in behalf of the plaintiff says (State of Case, page 58, line 35):

Q Exhibit D. 5. Do you remember this space?

A Yes, sir.

Q Was anything done to protect that space, do you recall?

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A No, we didn't do anything because it was outside the jurisdiction of the county.

At page 59, line 9, Mr. Owen, being asked further about the rail in question, testified:

Q One of the witnesses, who testified here yesterday, said that those were built at the same time, that there was a piece left to the bridge here which came up and was wired into that stone?

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A I don't think so because if I had designed a bridge for a continuous railing I would have made the railing similar to the railing on the bridge. As a matter of fact, that railing is something I would never build, never have done.

(Line 26, page 59):

Q Can you say definitely that there was none there at that time?

30

A Yes, sir.

Mr. Owen further testifies (State of Case, page 60, line 2):

A * * * but those walls were outside the line of the street and really was something that we did under sufferance. The County did build those walls.

Q Do you know how near the street line the bridge was?

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A The bridge was supposed to be as far as I could say, to be put on the line of the street.

Q This copy here shows there is a space of a foot between the outside railing?

A The usual method was to build the abutment and wing-walls on the line of the street. Then when we put the railing up, of course, we couldn't put the rail up on the man's place because we could not hold it so we used to put the rail about a foot back from the line of the street.

Q You did that in this case?

A We did that in this case.

Q Then that left a foot of the road unprotected?

A In that case.

Q Did you leave that without protection?

A I did, yes, sir.

20 (Page 61, line 13):

Q Do you mean to say you left the bridge there without any protection at all between that bridge?

A And the building, yes.

Q None was put there?

A None was put there; that is, as far as I remember. I think there was some arrangement with a blacksmith shop, if I remember rightly, right there. You see, all these arrangements of wing-wall outside of the wall of the street were done either with the consent or under sufferance and I had only a talk with the owner of the blacksmith shop as to what the County would do. The presumption was that if the County would take care of the one foot he would take care of the two feet.

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40 Q You had a talk with him as far as the wall was concerned?

A Yes.

Q That is all you talked to him about?

A That is all, yes, sir.

On cross examination, Mr. Owen (State of Case, page 61, line 34, *et seq.*) upon being shown the contract and specifications (Exhibit P. 3), testifies that there was no provision made for the railing in question, which gave way with the plaintiff.

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* * * * *

James Egan (State of Case, page 66, line 21) testified:

Q Mr. Darville says at the time he went over he stood a foot and a half from the blacksmith shop. That might be so?

A Sure, it might be so. *That was the end that gave way that made it swing like.*

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An examination of the plaintiff's case will show that the testimony above quoted stood entirely uncontradicted at the close of plaintiff's case.

We have therefore the following facts:

A County bridge admittedly built and maintained by the defendant, at one side of which bridge and at right-angles thereto, some person had constructed an iron rail running along the wing-wall of the bridge and connecting the bridge with the blacksmith shop; that the rail running along the wing-wall and the wing-wall itself between the two points above mentioned, were 3.84 feet in length and that of said distance 2.84 (2 ft. 10 inches) were upon private property and 1 foot was within the street line;

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Further; that when the rail gave way with plaintiff, plaintiff was standing upon private property, over which the County of Essex had

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no jurisdiction and in which it had no rights whatever.

By Common Law an individual could not maintain an action against the Board of Chosen Freeholders for injuries sustained by reason of a defect in a public bridge constructed by them.

Cooley v. Freeholders of Essex, 3 Dutcher 415.

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Freeholders of Sussex ads. Strader, 3 Harrison 108.

It was not until the passage of the Act of 1860 (P. L. 1860, p. 285; C. S., p. 304, Sec. 9) shortly after the decision in *Cooley v. Freeholders of Essex*, that liability was imposed upon counties for defects in public bridges.

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See *Magouth v. Freeholders of Passaic*, 72 Law 226.

It is under this act that the plaintiff now claims liability. The act reads as follows:

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“That in all cases where * * * the board of chosen freeholders of a county are chargeable by law with the erection, rebuilding or repair of any bridge or bridges, and the * * * board of chosen freeholders shall wrongfully neglect to erect, rebuild, or repair the same by reason whereof any person or persons shall receive injury or damage in his or their persons or property, he or they may bring his or their action of trespass on the case against * * * said board of chosen freeholders * * * and recover judgment against them to the extent of all such damage sustained as aforesaid, * * *”

40 It is submitted that in the case in hand the defendant freeholders were not “chargeable by

law with the erection, rebuilding or repair” of the rail in question which gave way.

The case of *Spencer v. Freeholders of Hudson*, decided in this court, and reported in 66 Law, p. 301, was decided upon a state of facts almost identical with those in the case in hand. In the *Spencer* case the alleged liability of the defendant was based on its neglect to repair a washout in the culvert which it had erected in Kearny. This culvert was erected across Kearny's Brook at John street, which street ended at the brook. The plaintiff was nonsuited because it appeared that the bridge, although built and maintained by the defendant freeholders, was erected partly on private property and connected the end of John street with private land lying north of the brook. At page 302 this Court said:

“It thus appears that the bridge, although erected by the county, was no part of the public highway.”

On page 303, the Court continues:

“The defendant resists this suit on the ground that, although its officers and agents erected and maintained this culvert, it was in fact, no part of the defendant's duty to do so, and hence that it is not liable in this action.

“It is well settled that no liability existed at common law for the non-repair of a bridge by the county, the only remedy being by indictment * * *. This immunity from liability at common law was first invaded by an act of the legislature passed in 1860 which regulates the liability of townships and counties for failure of duty with regard to the erection, rebuilding or repair of any bridges with the erection of which they are

chargeable. But such libality is expressly limited to cases where a township or board of chosen freeholders of the county are chargeable by law with such erection, rebuilding or repairing * * *. The next inquiry, therefore, is, what is the limit of authority in the building of bridges by the chosen freeholders? Reason and authority both would seem to answer that they are limited to public bridges only, and such has become, when erected, a part of the public highway."

Continuing at page 304, the Court says:

"It is further held that the principal circumstances necessary to constitute a public bridge, is, that the people at large may have a free and uninterrupted user of it, not upon sufferance but as a matter of right."

In the case now before the Court, there was undoubtedly no right in the public at large to a "free and uninterrupted user" of the 2.84 feet of ground upon which the rail stood and upon which plaintiff also stood at the time of the accident. The user by the public of this particular strip of ground was unquestionably "upon sufferance" and not "as a matter of right."

In *Jernee v. Monmouth*, 52 Law, p. 553 (at p. 557), Justice Depew in speaking for this court and referring to the Bridge Act of 1860 above referred to, said:

"* * * It is quite obvious that the legislative intent was to give a remedy for injuries only where of right there is a dependence upon the bridge for the full and safe performance of its appropriate functions. The persons and property intended by the act may therefore be designated as

the persons and property to whom and to which the bridge involved in a given case, owes a duty."

Weeks v. Freeholders of Somerset, 68 Law, 662, decided by this Court, was a case where plaintiff traveling after dark mistook a wing-wall of a bridge for a foot path and upon using it as such, fell off and was injured. In the opinion, this Court said:

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"The liability of the board of freeholders to answer any damages for injuries received by a person crossing a county bridge, is a statutory one, and is limited to such injuries as directly result from the neglect of the board to properly 'erect, rebuild or repair' such bridge."

In the present case it is submitted that there was no failure of the board "to erect, rebuild or repair" this particular rail, as it was outside of the line of the highway and almost entirely on private property.

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"Mere proof of the happening of the accident, raises no presumption of negligence."

Weeks v. Freeholders of Somerset, supra.

In *Freeholders v. Hough*, 55 law, 628, this Court by a divided vote held the Freeholders of Morris County liable for failure to put a guard rail across the end of a sidewalk where it adjoined the abutment of a bridge which was in course of construction. In that case, however, the plaintiff was using the public highway and was not upon private land.

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Also in the case of *Murphy v. Freeholders*, 57 Law, 243-245, the County of Mercer was held liable for failure to place a railing across the end of a canal bridge in Trenton so as to pre-

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vent pedestrians from walking into the canal when the draw was open. This case, however, would seem to come in the same class as that of *Freeholders v. Hough, supra*, neither of which cases are in point in the case now before the Court.

POINT II.

10 **The Trial Court Erred in Refusing to Direct a Verdict.**

The testimony produced in behalf of the defendant was very brief and showed even more conclusively than before, that the rail which gave way with plaintiff, was almost entirely upon private property.

20 Frank T. Shepherd (State of Case, page 71, line 11, *et seq.*), after testifying that he had prepared the map showing the present boundary lines of Chestnut street in the locality of the Third River bridge (See State of Case, large map), testified as follows (State of Case, page 71, line 38):

Q Have you measured the distance from the highway to the blacksmith shop at the point where this rail was on the bridge?

A. I have.

30 Q Can you tell us what that distance is?

A 2 feet 10 inches; that is, from the street line to the blacksmith shop.

Q From what have you taken those figures?

A From the present line of Chestnut street, from the recorded line as shown on this map.

40 Mr. Heilman, Assistant County Engineer, testified (State of Case, page 72, line 21):

Q Will you tell us what the distance is between the highway line and the blacksmith shop measured along the wall? Does that map show it?

A 2.84 feet, 2 feet 10 inches.

The testimony above referred to, both in the plaintiff's and in the defendant's case, was in no way contradicted nor was there even an attempt made by the plaintiff to do so.

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It is respectfully urged that the trial court should have directed a verdict upon the evidence as it stood at the close of the defendant's case, and in support of such contention the defendant relies upon the authorities cited under Point I.

It is contended that the verdict should have been directed for the defendant not only because plaintiff was actually upon private property at the time of the accident, but that even if the testimony had shown that plaintiff was upon the public highway at the time that this particular rail gave way, yet, under the case of *Spencer v. Freeholders of Hudson, supra*, there could have been no recovery because the rail upon which plaintiff relied and which gave way with him, was built (if built at all by the Board of Chosen Freeholders), without legal authority, and the board, was under no legal obligation to erect, rebuild or repair the same.

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It is further submitted that the refusal to direct a verdict for defendant, was erroneous because nowhere in the testimony does it appear that the rail in question was erected by the defendant.

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POINT III.

The Court Below Erred in Charging the Jury as Follows :

"You may also take into consideration 40

whether the freeholders have done anything to recognize their responsibilities in this matter, whether they have painted it, whether they have, after the accident, done anything recognizing the fact that it was their duty to take care of this rail."

10 It is respectfully urged that anything which the agents of the Board of Chosen Freeholders might have done or ordered done to this rail after the accident, which rail was on private property, would in no way bind the defendant board, as it was under no obligation to erect, rebuild or repair in this particular instance.

POINT IV.

20 **The Court Below Erred in Admitting the Following Question to the Witness Frederic A. Reimer, in Evidence :**

"Did you order or direct any repairs to be made or protection to be given to those sides between the bridge and the blacksmith shop after this accident?"

The same objection is urged under this point as is urged under Point III.

Respectfully submitted,

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HAROLD A. MILLER,
Attorney for Defendant-Appellant.

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