

# INDEX.

	PAGE.
Summons .....	1
Complaint .....	2
Answer .....	4
Motion for direction of Verdict.....	102
Charge to Jury.....	107
Rule for Judgment.....	111
Notice of Appeal.....	112
Grounds of Appeal.....	113

## TESTIMONY FOR PLAINTIFF.

Dr. Nicholas Falvello,	
direct examination.....	6
cross " .....	9
re-direct " .....	11
Joseph Duffy,	
direct examination.....	11
cross " .....	24
re-direct " .....	35
Dr. Harry H. Bowles,	
direct examination.....	36
cross " .....	42
re-direct " .....	43, 45
re-cross " .....	44
Dr. Watson B. Morris,	
direct examination.....	48
cross " .....	50
James McCue,	
direct examination.....	50

TESTIMONY FOR DEFENDANT.

	PAGE.
William C. Bates,	
direct examination.....	52
cross           “ .....	62
re-direct     “ .....	79
re-cross     “ .....	80
Daniel C. Tingley,	
direct examination.....	81
cross           “ .....	83
Guy Bates,	
direct examination.....	87, 91
cross           “ .....	89, 94
George W. Hopkins,	
direct examination.....	97
cross           “ .....	100
re-direct     “ .....	102

*Summons.*

**Summons.**

(Issued May 29, 1916.)

Filed June 6, 1916.

THE STATE OF NEW JERSEY,  
To WILLIAM C. BATES,

10

[SEAL] You are summoned to answer the annexed Complaint of Joseph Duffy in an action at law, in the Union County Circuit Court. And take notice that unless you file your answer with the Clerk of said Union County Circuit Court at Elizabeth, 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.

20

WITNESS, George S. Silzer, Esquire, Judge of the Union County Circuit Court, this twenty-ninth day of May, nineteen hundred and sixteen.

ABRAM P. MORRIS,  
*Clerk.*

JOHN B. WALSH,  
*Attorney.*

30

40

*Complaint.*

**Complaint.**

Filed June 6, 1916.

**Union County Circuit Court.**

10

JOSEPH DUFFY,

*Plaintiff,*

*vs.*

WILLIAM C. BATES,

*Defendant.*

*Action at  
Law.*

*Complaint.*

20

Plaintiff, Joseph Duffy, residing at No. 16 Middle avenue, in the City of Summit, County of Union and State of New Jersey, complaining, says:

30

1. At the times herein stated, plaintiff was a laborer employed in the service of the Summit and Madison Ice Company, a corporation, at their plant, on Orchard street near the north-westerly corner of said street and Park avenue, in the City of Summit, County of Union, New Jersey, and defendant was president of said Company and engaged in active work of directing the employees of said company, at its said plant.

2. On May 29, 1914, the plaintiff was engaged in the service of the company and working under the direction of the defendant, moving ice from the storeroom to the first floor of the plant by means of an elevator operated by the defendant.

40

3. Plaintiff was directed by defendant to enter upon the said elevator with defendant and

*Complaint.*

its cargo, to make the descent from the store-room to the main floor of said plant, plaintiff obeyed defendant, and while said elevator was descending it was operated by defendant in violation of his duty in so careless and negligent a manner and by reason of the defendant's negligence said elevator was allowed to drop to the bottom of the shaft and cause plaintiff to be thrown violently and crushed between the cakes of ice being so carried. 19

4. Plaintiff was thereby severely bruised and sustained a compound fracture of the bones of the left leg between the knee and ankle and severe lacerations of the muscles of the left arm, and he became in consequence of said injuries personally permanently disabled and disfigured, and will be, in consequence of his said injuries, permanently prevented from pursuing his usual occupation for the rest of his life. 20

5. By reason of said injuries, plaintiff has been for a long time prevented from attending to his business and occupation and thereby lost his earnings for a long time, and has incurred \$100.00 for medical attendance and medicine expense, and has suffered great pain and was made a cripple for life. 30

The plaintiff demands \$5,000.00 damages.

JOHN B. WALSH,  
*Plaintiff's Attorney.*

*Answer.*

**Answer.**

Filed June 19, 1916.

UNION COUNTY CIRCUIT COURT.

10	JOSEPH DUFFY,  <i>Plaintiff,</i>	}	<i>Action at</i>
	<i>vs.</i>		<i>Law.</i>
	WILLIAM C. BATES,  <i>Defendant.</i>		<i>Answer.</i>

The defendant, William C. Bates, residing at Whippany, New Jersey, says that:

FIRST DEFENSE.

20 1. He admits that at the time stated in the said complaint, plaintiff was a laborer employed in the service of the Summit and Madison Ice Company, a corporation, at its plant in the City of Summit, Union County, New Jersey, and admits that he was President of said company and was engaged in the general direction of the employees of said company at the said plant. He denies that at the time in question he was

30 immediately directing or superintending the work done by plaintiff.

2. He admits that on May 29, 1914, plaintiff was engaged in the service of the company in moving ice from the store-room to the first floor of the plant by means of an elevator operated by defendant. He admits that plaintiff was working under his general direction but denies that at the said time and place he was working under the immediate direction or supervision of

40 the defendant.

*Answer.*

3. He denies the allegations of the third, fourth and fifth paragraphs of the said complaint.

4. He denies that the plaintiff is entitled to the damages claimed, or any thereof.

SECOND DEFENSE.

10

5. He says that plaintiff was guilty of contributory negligence.

LINDABURY, DEPUE & FAULKS,  
*Attorneys for Defendant.*

20

30

40

*Dr. Nicholas Falvello, direct.*

UNION COUNTY CIRCUIT COURT.

January Term, 1917.

10	JOSEPH DUFFY, <i>vs.</i> WILLIAM C. BATES,	}	<i>Action at Law.</i>  <i>No. 52 in the List.</i>
----	--	---	---

20 Transcript of stenographer's notes of evidence, taken in the above entitled matter, before HON. GEORGE S. SILZER, Circuit Court Judge and a Jury, in the Union County Court House, in the City of Elizabeth, New Jersey, on the thirtieth and thirty-first days of January, A. D., 1917, at 1:55 p. m.

Appearances:

JOHN B. WALSH, Esq., for the plaintiff.

LINDABURY, DEPUE & FAULKS,

Present JOHN W. BISHOP, JR., for the defendant.

A jury being empanelled and found satisfactory they were sworn.

30 Mr. Walsh opens the case for the plaintiff.

Mr. Bishop opens the case for the defendant.

DR. NICHOLAS FALVELLO, produced as a witness, on behalf of the plaintiff, being duly sworn on his oath, according to law, saith:

*Direct examination* by Mr. Walsh.

Q Doctor, where do you reside? A Summit, New Jersey.

40 Q And your profession is what? A Physician and surgeon.

*Dr. Nicholas Falvello, direct.*

Q How long have you been engaged in the practice? A Two years.

Q Two years? A Since 1914.

Q Since 1914? A Yes.

Q Have you—what experience have you had?  
A Why I have been house physician and ambulance surgeon and house surgeon at the St. Mary's Hospital in Jamaica, fifteen months. Four months Bushwick Hospital, and one year as assistant to Dr. Pflug in Brooklyn at the Eastern District Hospital.

10

Q How long have you been engaged in practice of your profession at Summit? A Since last August.

Q Do you know Joseph Duffy, the plaintiff in this case? A I know him; yes, sir.

20

Q Did you make any examination of him?  
A I did once on the twenty-fourth of October, 1916.

Q Will you tell the Court and jury what you found? What you did and what you found?

A The patient came to me complaining of back aches. And I noticed him limp and questioned him as to the history and cause of these back aches and I found from the history that he gave me and the examination that I made that he had one limb shorter than the other. So he asked me to take measurements and I did and I found that the shortening was between one inch and three-quarters from fixed points to one and one-half inches in the left leg. And when he was standing in an erect position I saw he had compensatory tilting of the pelvis with also a bending of the spine. I attributed that the cause of his back aches and suggested treatment. Which was the building up of the

30

40

*Dr. Nicholas Falvello, direct.*

shoe on that side and possibly lifting up of that tilt.

Q Did you make any examination of the bone? A I did, as far as I could find. I found the upper fragment was a little displaced outward and inward and by a little more careful manipulation I found he had a certain device in there at the time. I don't know what, at the time. I thought it would be Lane's plate, to hold these two fragments in alignment.

Q Have you ever seen these Lane's plates used? A Yes, sir.

Q Are they a permanent affair or temporary? A Some have to be kept in and some don't have to be kept in. It is according to the seriousness of the fracture or break.

20 Q How long would they have to be kept in? A Some are kept in six months; others may be kept only two or three months according to the degree of the injury.

Q If it was necessary—if they had been in the leg for over two years would you say then they were a permanent affair? A I should think so.

30 Q What would you say as to Duffy's ability to work as a day laborer?

*Mr. Bishop.* I object to that.

Q From your examination.

*The Court.* If you put it in another form. How his functions are impaired, if they are impaired at all.

40 Q From your examination would you say that the functions, doctor, normal functions of Duffy are impaired in any way? A They are greatly impaired.

*Dr. Nicholas Falvello, cross.*

Q Will they improve in time? A That depends. I couldn't answer that.

Q You could not answer that? A No, sir.

Q The leg will never lengthen, will it? A No, sir.

Q That is permanent? A That is permanent.

10

Q The shortening. The permanent shortening of the leg, doctor, is that in your estimation—will that interfere with the normal functions—his normal functions as a laborer? A That will unless mechanical means are brought into play. As that lifting or building up of the shoe; what we call in the medical profession, orthopedic shoes.

Q What would you say as to the strength of that leg to bear the burden of ordinary laboring work? A Any violence direct or indirect it is apt to break again in the same place in my opinion.

20

Q Apt to break again the same place? A Yes, sir.

Q Have you made any examination of Duffy since October twenty-fourth? A I have not; no, sir.

*Mr. Walsh.* That is all.

30

*Cross examination by Mr. Bishop.*

Q Doctor, you said, as I understood you, there was some displacement inward and outward in this bone. Those terms seem to me to be contradictory. A The lower fragment of the left limb at the junction of the lower and middle third of the leg, as we call it, in inches, I should judge it would be about four inches above the ankle. The lower fragment is point-

40

*Dr. Nicholas Falvello, cross.*

ing outward and upward. The inner fragment which is the longer part of the bone, of the two, is pointing inward, a little displaced outward; a little overriding.

Q You do not know what caused this condition do you? A From the history?

10 Q I mean of your own knowledge? You depend for your knowledge as to what caused this condition entirely on the man's statements, do you not? A Yes, sir.

Q That is also true as to his back aches, is it not? A His back aches I could see from physical signs there was a twist in it.

Q You couldn't say whether he had a back ache or not? A No. That is just subjective.

Q Subjectively entirely? A Yes, sir.

20 Q All the conditions you found, except the shortening of the leg— A Yes, sir.

Q (Continued)—is based entirely upon Mr. Duffy's statements to you, is it not? A Yes, sir; but from my own knowledge of those things; what I have seen—

Q That is all that I—has the bone united at the point of the fracture? A There is no false partial motion at the point of the fracture, as far as I could detect.

30 Q What do you mean by that? A I tried to move the fragments and I found they were fixed. There is a union there. May be one or two; either fibrous or callus.

Q You don't know which? A Which?

Q You don't know which? A No. Because the two plates there are holding the bone in position.

Q The bone is at present firmly united? A Very good result.

*Joseph Duffy, direct.*

Q Very good result? A Yes, sir.

*Mr. Bishop.* That is all.

*Re-direct examination by Mr. Walsh.*

Q You say it is firmly united. Is that because of the union of the bone or because of the plates being fixed? A I didn't say it was firmly united. I said it was fixed there. The union may be either one of two; either fibrous or callus union.

10

Q Is that due to the plates or union of the bone itself? A Possibly to the plates and possibly to the union.

Q You can't say definitely? A No, sir.

*By Mr. Bishop.* Do you know whether there were any plates in there?

20

A I could feel the plates.

JOSEPH DUFFY, the plaintiff, being duly sworn on his oath, according to law, saith:

*Direct examination by Mr. Walsh.*

Q Mr. Duffy, you are the plaintiff in this case? A Yes, sir.

Q Talk out so the jury can hear you. By whom were you employed on the twenty-ninth of May, 1914? A Summit and Madison Ice Company, Summit.

30

Q In what capacity? A Well, in laboring capacity.

Q In laboring capacity? A Yes, sir.

Q For how long had you been so employed? A Five years.

Q How old are you, Mr. Duffy? A I am thirty-five.

40

*Joseph Duffy, direct.*

Q Thirty-five. Do you know Mr. Bates, the defendant? A Yes, sir.

Q What company was he connected with, if you know? A Summit and Madison Ice Company.

10 Q Do you know whether he held any office there or not? A Yes, sir.

Q What office, if you know? A I could not really say.

Q You can't say? A No, sir.

Q Who was in charge of the Summit and Madison Ice Plant at Summit? A Mr. Bates.

Q The defendant in this suit? A Yes, sir.

20 Q On the twenty-ninth of May, under whom or whose directions were you working? A Mr. Bates; William C. Bates.

Q What were you doing that morning; just tell the Court what you were doing that morning? A That morning I was working with John Brewster on the wagons; helping them on the route.

Q I mean after you got back to the plant. A I might as well tell it all.

*The Court.* We want to know about the accident.

30 A When I got back to the plant I went home to lunch. And while I was home to lunch Mr. Bates left word with John Brewster—

40 Q No. When you got back to the plant, what happened? A When I got back to the plant, Mr. Bates ordered me and Mr. Tingley to come into the storeroom with him to lift down ice. We went into the store room and lifted down ice. I imagine we lifted down fifteen to sixteen loads. And on the last load—

*Joseph Duffy, direct.*

Q Who was operating the elevator? A Mr. William C. Bates. The last load there was three cakes loaded on the platform of the elevator, and Mr. Bates stood on the right of the elevator where the ropes were which operated the elevator and Mr. Tingley stood on the left. There was no other place for me to stand. Mr. Bates said get on the elevator and he lowered the elevator about eighteen inches to two feet; perhaps a little over two feet. Then he lowered the elevator perhaps seven feet; and there me and Mr. Bates stopped, as he stopped the elevator, we stopped and went and spread a canvas cover we had on there to stop the ventilation going into the ice and spoiling it. After we stopped and fixed a curtain, Mr. Bates got ready to start the elevator; got back to where the ropes were in his corner. Instead of doing as he should do I could tell—they say perhaps there is no electricity needed—but whatsoever, he pulled the brake rope instead of the current. He should have put the current on and then released the brake; instead of that he released the brake without the current which caused the fall.

*The Court.* What fall? 30

Q What fall? What happened? A The elevator.

*The Court.* Tell us.

A The elevator, ice and all went to the bottom.

*The Court.* That is, to the bottom of the shaft?

A To the bottom of the shaft; yes, sir, Judge, your Honor. 40

*Joseph Duffy, direct.*

Q Where did you go? A I went between the ice and stayed between the ice. Mr. Tingley was throwed out the door. The door at the bottom of the elevator what is always open when they take up ice. He was thrown out the door, and as the elevator came down it bounced about  
 10 so high (indicating) anywheres from six inches to ten, enough to leave Mr. Tingley's foot under the elevator; it caught him in by the sole of the shoe (indicating). Just enough to turn his leg over and crack his ankle. Mr. Bates seen Mr. Tingley was caught.

Q Never mind that. What happened to you?  
 A I seen it, Mr. Tingley was caught under the elevator and I was wedged in the ice. Mr. Bates started to raise the elevator enough to  
 20 release Mr. Tingley's foot under the elevator, and then I was still wedged in the ice. Mr. Tingley was sitting up at the time holding his foot. He said: "What's the matter, Joe, are you still caught yet?" I said: "Yes, Dan." He said: "You won't stay there if I can help it." And got on his back and helped pull me out from the ice. Mr. Bates returned from the office. He went to the office before that to telephone—

30 Q No. He left you and came back again?  
 A He left me and came back again; when he came back again then he and James McCue took me out and put me in an automobile truck in which Harry Double took me to the hospital.

Q At the time Mr. Bates released the brake?

A Yes, sir.

Q What became of him; when you went down the shaft what became of Bates? A Me and  
 40 Mr. Tingley went down the shaft and Mr. Bates

*Joseph Duffy, direct.*

went up with the ropes to safety, and then slid down after we hit the bottom of the shaft.

Q You say you were taken to the hospital?

A Yes, sir; I was taken to the hospital.

Q What hospital? A Overlook, Summit.

Q How long did you remain there? A I think six to seven weeks the first time; and then I came home. 10

Q Then where did you go? A Home to my home, thirty-six Orchard street.

Q Did you receive medical attention at the hospital while you were there? A At the hospital?

Q Yes. A Oh, yes.

Q Who treated you there? A Who treated me there? Dr. Bowles.

Q After you had left the hospital and went home did anybody treat you there? A Yes, sir; Dr. Morris of Springfield. 20

Q How long did you remain at home? A I remained home until about, I can't just say for sure, I imagine two weeks before Christmas.

Q Two weeks before Christmas? A Yes, sir.

Q What year was that? A Same year.

Q Same years as the accident? A As the accident, 1914. 30

Q What did you do then? Go to work then?

A Let's see? Yes, sir.

*The Court.* How long was it before you went to work again?

A Before I went to work? At the first accident I went to work, I was hurt on May. And I went back I think about two weeks. I can't say positively what date. About two weeks before Christmas. I worked only a day or two about. Didn't amount to anything. 40

*Joseph Duffy, direct.*

Q What salary were you receiving for your work prior to the accident and up to the accident? A Up to the accident? Up to the accident I was getting eleven dollars a week.

10 Q Then you say you went back to work two weeks before Christmas. For whom did you go to work then? A Summit and Madison Ice Company.

Q At what salary? A Three dollars a week.

Q How long did you work at the salary of three dollars a week? A Let me see. One week, I think. I started the second week.

Q You started the second week? A Yes, sir.

Q And Mr. Bates still in charge of the—

20 A Yes, sir.

Q (Continued)—company's business there?

A Yes, sir.

Q Are you a married man? A Yes, sir.

Q And have a family? A Four children.

Q Now, what caused you to leave the second time? A What caused me to leave the second time?

Q What caused you to stop employment the second time?

30

*Mr. Bishop.* I object to that.

*Mr. Walsh.* I withdraw that question if there is an objection to it.

Q You say you went back to work for the Summit and Madison Ice Company about two weeks before Christmas? A Yes, sir.

Q And you worked about two weeks? A I worked about two weeks; yes, sir.

40 Q Did you stop working for the ice company then? A No, sir; I didn't stop working. I was stopped.

*Joseph Duffy, direct.*

Mr. Bishop. Just a minute. I object.  
Not to your question, but to the answer.

*By the Court.*

Q Were you able to work any longer? A  
Sir?

Q Were you able to work any longer? A  
Not at the work I was doing before the accident,  
your Honor.

Q You went back and worked about two  
weeks? A Yes, sir. Up to Christmas Eve.

Q Were you able to work any longer than  
two weeks? A Yes, sir. At the work I was  
at. I was working at the work I always usually  
done every winter when I was there; helper in  
the shop.

Q You stopped at the end of two weeks?  
A No, sir. I was told to stop at the end of  
two weeks over a little words we had in the  
office. Mr. Bates told me to stop. I didn't  
stop.

*By Mr. Walsh.*

Q Then what happened? A Then what  
happened?

Q If anything? A I went home, got ready  
and went to do a little shopping, and stayed  
uptown maybe an hour. I wouldn't say to the  
minute.

Q Was this the day Mr. Bates discharged  
you? A Yes, sir; same day.

Q Then what happened? A On my way  
back I was coming the Summit avenue way down  
Park avenue to Orchard street to my home  
where I live. As I came down Summit avenue  
and came to a place, I stepped down one side

10

20

30

40

*Joseph Duffy, direct.*

and walked across the street to get on the other side of the street. I got on the other side of the street, through I making a mistake, when I always step—since my leg was hurt—on the good leg, instead of that I stepped up with my left leg, and as I did, my leg simply crushed under me.

10 Q Crushed under with you? A Crushed under with me; I simply sat down on the leg.

Q What do you mean? A Well, then, at that time young Mr. Bates and Mr. Hopkins came along. They got word of it some way; I think through a young lady who passed by. Anyway, they took me home, thirty-six Orchard street. I sent for Dr. Morris before I went to the hospital. Dr. Morris got my leg ready; put it in splints and sent for the ambulance and the ambulance took me to the hospital.

20 Q How long were you in the hospital the second time?

*Mr. Bishop.* I object on the ground it is incompetent, irrelevant and immaterial.

*The Court.* The plaintiff claims it is a result of the first accident.

30 *Mr. Walsh.* Oh, yes.

*The Court.* I will allow the question.

*Mr. Bishop.* Prays exception.

Exception allowed, signed accordingly.

*Judge.*

*The Court.* You will connect it, Mr. Walsh, with the doctor's testimony.

40 *Mr. Walsh.* I think I have connected that part. The physician already, I understand,

*Joseph Duffy, direct.*

said it is liable to break at any time there again.

*Mr. Bishop.* He said on the application of external violence.

*The Court.* If you do not connect it I will strike it out.

10

Q You went to what hospital? A Same hospital. Overlook, Summit.

Q By whom were you treated there? A Dr. Bowles, same doctor.

Q How long did you remain at the hospital that time?

*Mr. Bishop.* Same objection.

*The Court.* Yes. Question allowed.

A Six weeks; I think.

*Mr. Bishop.* Allow an exception.

20

*The Court.* Yes.

Exception allowed, signed accordingly.

*Judge.*

Q After being discharged from there, where did you go? A Back home, thirty-six Orchard street.

Q How long did you remain at home then after that before you went to work?

30

*Mr. Bishop.* I object to that on the same ground.

*The Court.* Same ruling. You may answer that.

*Mr. Bishop.* Exception.

Exception allowed; signed accordingly.

*Judge.*

A Well, I done about two weeks' work. I don't want to say about two weeks; I want to

40

*Joseph Duffy, direct.*

tell the truth. I done about five weeks' work altogether down on that Plank road in Newark for the Leonard Construction Company and I was laid off with other men, and the reason I was laid off because I wasn't able to do the work.

10 Q Five weeks' work in that time? A Up to the time I was hired by the Commonwealth Water and Light of Summit.

Q How long ago? A One year ago.

Q One year ago you were employed by the Commonwealth Water and Light Company of Summit? A Yes, sir.

Q Then I understand at the time of your first injury you were employed two weeks by Mr. Bates? A Yes, sir.

20 Q At three dollars a week? A Yes, sir.

Q Five weeks by the Summit Construction Company in Newark? A Leonard Construction.

Q Up to one year ago. A One year ago.

*The Court.* You mean February 15?

A Yes, sir.

Q February sixteenth? A Yes, sir; that's right.

30 Q And you say you are now employed by the Commonwealth Water and Light Company? A Yes, sir.

Q In what capacity? A Janitor.

Q Where? A Commonwealth Water and Light, City of Summit.

Q What wages do you receive there? A Sixty dollars a month.

Q Sixty dollars a month? A Yes.

40 Q Did you pay any money out for hospital attendances? A No, sir.

*Joseph Duffy, direct.*

Q You didn't pay any money out there on those occasions? A No, sir.

Q No bill from the Overlook Hospital? A I had the bills, but I didn't pay anything.

Q Were you charged with anything? A Oh, yes.

10

*The Court.* He still owes it.

Q How much does that amount to? A I think both bills amounts to—

Q Do you know? A One bill; first bill amounts to something like \$135.00.

Q Was it \$135.00? A It was \$135.00; I am not quite sure to the dollar. It might be a dollar or so more or less.

Q As to the second bill?

*Mr. Bishop.* I object to the second bill as incompetent, irrelevant and immaterial.

20

*The Court.* Allowed.

*Mr. Bishop.* Exception.

Exception allowed, signed accordingly.

*Judge.*

*The Court.* What is the second bill?

A The second bill I think there was two separate bills sent—

30

*The Court.* What was the total?

A They amounted to \$110.00, I think.

Q Did you pay Dr. Morris? A No, sir.

Q Do you owe him any money? A Yes, sir.

Q Has he rendered a bill? A Yes, sir.

Q How much do you owe Dr. Morris? A I owe Dr. Morris one hundred dollars and I owe Dr. Taylor, of Maplewood, thirteen dollars.

40

*Joseph Duffy, direct.*

Q When did Dr. Taylor treat you? A Dr. Taylor treated me after I came home; pus set in the leg.

Q After you came home when? A The last time.

10 *Mr. Bishop.* I ask that be stricken out; the last time.

*The Court.* Deny the motion; allow you an exception.

Exception allowed, signed accordingly.

*Judge.*

20 Q You said you were employed about five weeks by the construction company; what time of the year was that; if you remember? A What time of the year? I don't just know. I think it was in September, I think.

Q In September? A Yes.

Q Did you try to do any work in between? A In between that time? Yes, sir.

Q Could you do it? A No, sir.

Q Are you able now to do work? A Well, work that I have got to do.

30 *Mr. Bishop.* I object to that because it appears he is doing it.

Q Have you tried to do laboring work, the kind you were doing before that?

*Mr. Bishop.* I object to that on the ground it is irrelevant.

A. Yes, sir.

*The Court.* Well—

A. Yes, sir.

40 Q Can you do that kind of work? A No, sir.

*Joseph Duffy, direct.*

Q Do you suffer now from anything that has any relation whatever to the injury received?

*Mr. Bishop.* I object to that—

A Yes, sir.

*Mr. Bishop.* On the ground it is leading.

*The Court.* The question is answered.

10

Q Just tell us how you feel now. A Well, there is times I feel quite good, and I don't have leg aches; I don't have back aches. But, if I have a hard day at the place where I am employed; even doing light work, if I have too much running up and downstairs, or anything of that kind; if I have to shift anything to amount to anything, on the level floor, that night I suffer nothing but back aches and pains. I wake up in the morning with the leg paining same as it was when I went to bed.

20

Q How does it act on the leg? A My leg swells.

Q How often does that happen now? A That happens now perhaps it would be a week it would go on and not at all; and then other times it would come on in spells and get every night or every other night.

Q At the time the elevator dropped did you receive any other injury? A I had the muscle of my left arm tore out there.

30

Q Muscle of your left arm? A Yes, sir.

Q Did that heal? A That is healed.

Q What is the condition of that now? A It is not as strong as the other arm is, that is sure. Or it has never got the muscle back as it was. But, still, I can't really complain of that arm very much.

Q Does it give you pain? A I get pains in the muscles of the cord. But it is nothing like

40

*Joseph Duffy, cross.*

the pain in the leg.

Q Can you do the same work with it as you did before the accident? A No. It is stiff. In lifting up over my head I can feel it. Of course, below I can lift as much as I think as—

Q You ever could? A Yes, sir.

10

*Mr. Walsh.* That is all.

*Cross examination by Mr. Bishop.*

Q Mr. Duffy, how long had you been employed by the Summit and Madison Ice Company before this accident? A Before this accident?

Q Before this accident. A Let me see. Before this accident I guess about four years.

20

Q During that time had you ever ridden on this elevator before? A Yes, sir.

Q Who ran it on those occasions? A Well, there is several different ones up there runs it. Mr. Bates has ran it; young Mr. Bates has ran it. George Hopkins run it; Harry Double run it.

Q Mrs. Bates? A Mr. Bates and the young Mr. Bates; Guy Bates. It was always up to the engineers and Mr. Bates and his son.

Q It was the duty of Mr. Bates, his son or  
30 the engineer to run it? A No. It was the duty of the engineers.

Q It was the duty of the engineers to run it?  
A Yes, sir.

Q Mr. Bates was not supposed to run it?  
A If he had them busy at anything else he would run it.

Q He run it on frequent occasions, didn't he?  
A What is it?

Q He run it pretty often? A Not very  
40 often. Unless he got in a hole.

*Joseph Duffy, cross.*

Q You had seen him run it before? A Yes, sir.

Q You had ridden on it before? A Oh, yes.

Q Did you ever hear of him having any accidents before? A No, sir; I never heard of him having any accidents before; but I heard of him going up before when he was running it up and down before when he was running it himself. And he would go on the ropes to save himself. 10

Q Did you ever run the elevator yourself?

A No, sir; I watched it so much I know just how it was run.

Q How was it run? A Run by ropes.

Q How many ropes? A Two circular ropes.

Q Two what? A Two circular ropes.

Q Two—what were those two ropes? A Brake rope and current rope. 20

Q One rope to operate the brake? A Yes, sir.

Q And what was the other rope for? A Operate the electric current.

Q How did that elevator work, do you know?

A Yes. I have been up there and seen the machinery.

Q What made it go up? A Electricity made it go up. 30

Q What made it go down? A When the electricity was put on and the brake released, and the weight of the ice would carry it. It was regulated to that.

Q You had to have the electricity to have it go down? A When it was loaded with ice.

Q It would not go down without having the current on? A It would by brake jar but very slow if it caught. It would not go down without the current on with the brake off. 40

*Joseph Duffy, cross.*

Q I understand this; in order to have this car go down when there was any ice on it you had to turn on the current? A To hold the weight of the ice. If you wanted to release the brake.

Q How then could you run the car down?  
10 A How then could you run the car down?

Q You couldn't run the car down with the brake on? A Certainly not. You had to have some current to hold the weight.

Q The only way you would move the car was with the brake off? A Yes, sir; with the current on.

Q You had to have the current on to go down with the ice on? A You certainly did when you were loaded or you would go down the way  
20 we went.

Q Where were those ropes? A On the right hand side of this elevator where Mr. Bates stood.

Q Which—were they at the side of the car, front or back? A Side. Right hand side.

Q Right hand side as you face the storage room? A As you face the storage room.

Q It was the right hand side as you were facing the storage room; were they at the front  
30 door of the storage room or back? A Right hand side.

Q Were they at the front of that side nearest the storage or outer end? A There is one outer; and it was on the right hand side of the elevator.

Q The elevator platform was square, wasn't it? A Yes, sir.

Q The nearest was against the storage room? A That was inside.

Q The outside was against the outside shaft?  
40 A Yes, sir.

*Joseph Duffy, cross.*

Q Well, one side nearest the storage room, was front; as you faced the front was the store room the further side toward the rear? A Yes, sir.

Q How long was that side? A That side from the doorway in?

Q To the outside of the shaft? A To the outside of the shaft, why, four feet. 10

Q Now, where in that four feet were those ropes? A Were those ropes?

Q Yes. Were they nearest to the door? A Nearest to the outside door.

Q That is back of the elevator? A At the front of the elevator, facing outside; next room back of the elevator is the part toward the ice.

Q No, I call the front of it the part toward the ice. I mean the side away from the storage room is where the ropes were? A At the doors; yes. 20

Q At the door? A Yes, sir.

Q Which rope was nearest to the door? A Which rope was nearest to the door?

Q The current rope or brake rope? A I don't know as you can tell which was nearest to the door. One rope is here and one here (indicating); side by side on the same side. 30

Q Well, which rope was nearest to the inside of the elevator then? A Current rope.

Q Brake rope was outside of that? A Yes, sir.

Q You had to reach around the current rope to get hold of the brake rope, is that the idea? A They handle both ropes at the same time; inside rope or current rope.

Q Current rope and brake rope are the same distance from the outside shaft? A No. 40

*Joseph Duffy, cross.*

Q Which was nearest to the outside of the shaft? A Brake rope.

Q Which was nearest to the front of the shaft; meaning by front the doorway opening into the outside room? A I couldn't say there was any difference; as I say they set side by side on a straight line. There couldn't be any nearest to the door the way I can see. One might be a little nearer the door. Which I could not say.

Q The current rope was nearest the inside of the car? A The current rope was nearest the inside of the car right alongside of the elevator where the partition was. Nearest to the center of the elevator.

Q You say the brake rope was nearest the center of the elevator? A Yes, sir; it faced the center of the elevator.

Q The current rope was outside of that? A Yes, sir.

Q Where were you standing at the time this elevator made its last stop? A Last stop?

Q Yes. A Where did I stand?

Q Yes. A I stood on the top of the ice.

Q Which way did you face? A That is you mean the last time that that elevator came down?

Q Before it came down. A Before it came down? I faced both ways before it came down. I had to turn my back toward the ice and help spread the canvas. And after that was done and after Mr. Bates was satisfied that was done I turned my face toward the other way. I had my hand on the cross bar.

Q The cross bar on the top of the elevator car? A Yes, sir. That is all I had to put my hand on.

*Joseph Duffy, cross.*

Q Then the car fell? A What is it?

Q Then the car fell? A The car fell when the brake was released.

Q Why do you say when the brake was released? A Simply because the brake is used to hold the car and when the brake was on it it didn't fall; and when the brake was released it did fall. 10

Q You say the brake was released, because the car fell? A Certainly.

Q Is that the only reason you say the brake was released? A The brake was released without the current.

Q I say, is that the only reason you say the brake was released? A No, it wasn't; it was released in a mistake, of Mr. Bates pulled the wrong ropes. 20

Q Did you see which rope he pulled? A What is it?

Q Could you see which rope he pulled? A I could see. I don't see why I shouldn't see.

Q I asked you if you did see.

*The Court.* No, the question is if you did see?

A Yes, I did see and I know he didn't put the current on because I could hear. 30

Q You say you saw which rope he pulled. Which rope did he pull; one nearest or furthest— A He pulled the one toward the elevator center, which was the brake rope.

Q You saw him pulling on it? A I seen the mistake as soon as he done it. And it was done like that (indicating by snapping fingers).

Q As a matter of fact, you do not know which rope he pulled, Mr. Duffy, aside from the fact the car fell? A Yes, sir; I answered you. 40

*Joseph Duffy, cross.*

I am not here to lie. I am here to tell the truth. I said, he pulled the brake rope.

Q As a matter of fact when you pull the brake rope it applies the brake? A It does. First you pull it; it pulls this way to open it. This way to close it. Same way on the electric.

10 Q As a matter of fact there are two brake ropes through the car? A Sir?

Q As a matter of fact there are two brake ropes through the car? A There was one splice rope for each.

Q There are two ropes going up; up and down? A I called them two circular ropes.

Q It is one rope pulled over a pulley; as you stand over the car there is four ropes in front of you, two of those work brake? A Yes, sir.

Q And the other two work the current? A Yes.

Q And you pull one side to start and the other side to shut it off? A Yes, sir.

Q You apply one side to apply the brake? A Yes, sir.

Q And one side to shut it off? A Yes, sir.

Q You said you saw Mr. Bates take hold of the brake rope? A Yes, sir.

Q Of these two brake ropes did they stand one of them nearer to the outside and the other nearer to the inside, or were they the other way? A They set just the way I explained a few minutes ago. One nearest to the center of the elevator than the other. The least bit. One side and the other.

Q You said the brake rope was inside of the current rope? A No, sir; I didn't. I said the current rope was inside of the brake rope.

40

*Joseph Duffy, cross.*

Q By inside you mean further away from the elevator? A No, sir; which do you mean?

Q When you say inside do you mean the inside toward the elevator? A No, sir.

Q With respect to the inside of the elevator, the brake rope was furthest inside, wasn't it?

A No, sir; the current rope was furthest inside.

10

Q Nearest the center of the elevator? A No, sir; to the side of the partition on the right.

Q I don't understand; you say that the brake rope—that the current rope was inside of the brake rope and yet the brake rope was nearest the inside of the elevator? A No, sir. I said nearest to the center of the elevator.

Q Isn't the center of the elevator inside of it? A You said the ropes. The rope is inside; you didn't say about the elevator at all.

20

Q You said, as I understand you, that the current rope was inside of the brake rope? A Yes, sir.

Q And yet the brake rope was nearest the inside of the elevator? A To the center of the elevator.

Q Isn't the center of the elevator inside of the elevator? A Yes, sir.

Q How could it be nearest the center of the elevator without being nearest to the inside of the elevator? Were all four ropes strung in line? A No, sir; they weren't strung in line. Two circular ropes hung side by side; there was no row at all. There was only two circular ropes.

30

Q Of the circular ropes that operated the brake, which side—of this circular rope—one side of it was nearest to the outside of the shaft and the other side was nearest to the ice com-

40

*Joseph Duffy, cross.*

partment, wasn't it? A (Witness nods head affirmatively.)

Q Which rope, Mr. Duffy, or which side of this rope did you use to apply this brake?

*Mr. Walsh.* Did he use?

10 A To apply the brake?

Q I want to know which side you use to apply the brake? A To apply the brake?

Q Yes. A You certainly pull the outside.

Q Which side would you pull to release the brakes? A Inside.

Q Which side did you say Mr. Bates pulled in this case? A Which side did Mr. Bates pull? The inside.

Q You saw him pull the inside rope? A I certainly did. I didn't have time to tell him to stop.

Q Did he pull the same rope he pulled when he let it down from the last preceding stop? A Sir?

Q Did he pull the same rope he pulled when he let it down from the last preceding stop? On the floor above? A Yes, sir; he did.

Q He did? A Yes, sir.

Q Did he pull the same rope that he pulled when he let it down from the top floor? A He pulled the same rope; certainly.

Q Can you explain if he pulled the same rope at the top floor that he pulled from the floor you fell from why it didn't fall at the top? A Simply because he pulled the right side of the brake.

Q That is what I am asking you, Mr. Duffy, why, if he pulled the same rope— A He threw the cog into the clutch instead of out at the top.

40

*Joseph Duffy, cross.*

Q How do you know that? A I have been up at the top. I know that machinery.

Q You don't know what happened at the top at the time of this accident? A No.

Q You say he pulled the rope at the top? A Yes.

Q And you say he pulled the same rope at the time of the accident? A Yes, sir; but the opposite side of the rope. 10

Q He pulled the different side of the rope? A Yes, sir.

Q Mr. Duffy, had you ever gone down on that elevator before with the current on? A Yes, sir.

Q You had? A Yes.

Q Gone down? A Yes, sir.

Q With the current on? A Yes, sir. 20

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

Q Certain of it? A Yes, sir.

Q How far did this elevator fall? A How far did it fall?

Q Yes. A Well, as near as I can judge the fall was from nine to eleven feet.

Q I see. You say after it struck bottom it bounced up again? A Yes, sir.

Q How far? A Perhaps ten inches.

Q Then after it settled back in position? A Yes, sir. 30

Q You say Mr. Bates went up with the rope?

A Sir? Not after it hit the bottom.

Q As the car went down, how far up did he go? A How far up did he go? He went up ten or eleven feet; something like that.

Q What made him go up? A What made him go up?

*The Court.* Do not repeat the question over again. 40

*Joseph Duffy, cross.*

A He went up I suppose to be saved from getting injured.

Q How did he get up? Climb up the rope?

A No, the ropes took him up.

Q Did the ropes take him up? A Yes, sir; and the elevator went down and the ropes had

10 to take him up.

Q How far did you say he went up? A What say?

Q How far did you say he went up? A Ten or eleven feet.

Q Then what did he do? Slide down the rope? A Yes, sir.

Q Then what did he do? A Then what did he do?

Q Yes, sir.

20 *Mr. Walsh.* Do not repeat the question each time. Just answer.

A He ran out to get the ambulance.

Q And then after he came back he started the current and raised the car up, is that true?

Q And released you— A No, he raised the car before he went out. He released Mr. Tingley's foot.

30 Q How did he raise the car up? A With the current.

Q Did you see him do that? A Yes, sir.

Q And are you sure he raised it up with the current? A Yes, sir.

Q Are you as sure of everything else you said as you are that he raised that car up with the current after the accident? A Yes, sir.

Q You are? A Yes, sir.

40 Q Did you go up into the rigging of this elevator after the accident at all? A No, sir. I went up to the hospital.

*Joseph Duffy, re-direct.*

Q You don't know what the condition of the machinery up there was? A Sir?

Q You don't know what the condition of the machinery up there was; the hoisting machinery was after the accident, do you? A No, sir.

Q Now, you went to work sometime after the accident for some construction company in Newark, you say? A Yes, sir. 10

Q How much did they pay you? A How much did they pay me?

Q Yes, sir. A They paid me twenty-five cents an hour.

Q How much a week did that come to? A How much a week did that come to? Why it is according to what hours you work. You could work as much as you wanted. 20

Q How much did you make a week on that job? A How much did I make a week on that job? It averaged thirteen and a half a week while I was there.

Q You are getting sixty dollars a month now? A Yes, sir.

*Mr. Bishop.* That is all.

*Re-direct examination by Mr. Walsh.* 30

Q Mr. Duffy, you say Mr. Bates pulled the same rope at the top as he did when the elevator fell; is that right? A Yes, sir.

Q Which caused the elevator to go down? A Yes, sir.

Q Did he pull any other rope at the same time he pulled that brake rope at the top in order to let it go down? A Why certainly. He put the current on. 40

*Dr. Harry H. Bowles, direct.*

Q He put the current on up above? A He put the current on up above before he released the brake at the top.

Q When he came down and made the first stop what did he do when he started there again?

A Why, he put on the brake and shut the current off until we got the curtain spread across.

Q I mean when he stopped for you. Didn't he stop for you? Did you tell us he came down about two feet? A Yes, sir. Just the thickness of the cakes of ice for me to step on.

Q Then he started off? How did he start off? A He started off by putting the current on and then releasing the brake.

*The Court.* We have been all over that, *Mr. Walsh.* Then Mr. Bishop asked him about pulling the same rope and why was it he fell.

Q Did he start after spreading the curtain and when he pulled the brake rope? A Yes, sir.

Q And he didn't apply any current? A No, sir.

*Mr. Walsh.* That is all.

30 DR. HARRY H. BOWLES, produced as a witness, on behalf of the plaintiff, being duly sworn on his oath, according to law, saith:

*Direct examination by Mr. Walsh.*

Q Doctor, you are a physician and surgeon?

A I am.

Q And have been engaged in the practice of your profession for how long? A Well, since 40 1909.

*Dr. Harry H. Bowles, direct.*

Q Where were you practicing your profession in the year 1914? A Summit, New Jersey.

Q In connection with some institution? A Overlook Hospital.

Q What was your official position there at that time? A I was resident surgeon.

Q What is it at the present time? A Attending surgeon. 10

Q Do you know Joseph Duffy? A I do.

Q Did he come to your institution during the month of May, 1914? A He did.

Q Did you see him? A I did.

Q Treat him? A I did.

Q Was he under your care for some time? A He was.

Q What was his condition when brought to your hospital? Or to the Overlook Hospital with which you were connected? A Why he came in with a fracture of the leg. 20

Q Simply fracture or double? A Compound fracture.

Q How long did he remain at the institution? A One month. Four weeks. He left on June twenty-seventh.

Q June twenty-seventh? A Yes, sir.

Q Did you see him after that? A I saw him several times. I don't remember the number of times. I seen him later. He re-entered the hospital the following December. 30

Q December? A Yes, sir.

Q What was his trouble at that time?

*Mr. Bishop.* I object to that.

*The Court.* Allowed.

Q What was his trouble when he re-entered the hospital in the following December? A Fracture of the leg. 40

*Dr. Harry H. Bowles, direct.*

*The Court.* Had that any relation, doctor, to the former fracture?

A Same place.

*The Court.* Same place?

10 A Yes, sir.

Q Same place? A Yes.

Q Did you treat him the second time at the second confinement in the hospital? A I helped to treat him there.

Q You helped to treat him there. Do you know what was done at that time? A The second time he had an operation.

Q An operation? A Yes, sir.

Q What did that operation consist of?

20 *Mr. Bishop.* I object to that on the same ground, if the Court please.

*By the Court.*

Q Tell us, doctor, what caused the second fracture; did it have any relation at all to the first one? A I should judge it did.

30 Q Tell us something about it. A Well, the fracture was in the same place and I judge that former fracture had weakened it at that place, or it did not unite as firmly as it might have.

Q What would cause the second fracture? A Fall, blow and severe traumatism.

Q Due to the weakened condition that existed there? A Yes, it could have been broken perfectly well if it had never been broken before.

*The Court.* I will allow the question.

*Dr. Harry H. Bowles, direct.*

*By Mr. Walsh.*

Q What did the operation consist of that was performed after the December visit to the hospital?

*Mr. Bishop.* I object to that, if the Court please.

10

*The Court.* I will allow it.

*Mr. Bishop.* This witness has testified the second fracture could have occurred just as well if there had been no previous fracture.

*The Court.* That is true; but when the leg breaks at the very same place where there was a break there before, doesn't that become a question for the jury, whether or not the second break was due to the first injury indirectly or directly?

20

Q What does the operation consist of which you performed? At which you were? A Incisions of the flesh down to the bone and a steel plate put on, overlapping the fragments which were put in apposition and screws inserted holding the plates, through the steel plates; holding the ends of the bones together.

30

*By the Court.*

Q That is done in a different way, isn't it, doctor, now? A Sometimes; sometimes we use bone graft.

Q That is the method Dr. Albee used in New York? A Yes, sir; post-graduate.

*By Mr. Walsh.*

Q Is this plate you describe known as Lane's bolt? A Yes, it is.

40

*Dr. Harry H. Bowles, direct.*

Q Did you take any X-ray pictures of that leg, doctor? A I did.

Q Have you them with you? A I have.

Q Will you produce them, if you please? A The plate will probably throw most light on the case is the last plate taken at the last session of court. I don't know when that was exactly.

10

*Mr. Bishop.* When was that plate made?

A In the last part of the last—1916. When the last court convened.

*Mr. Bishop.* October, 1916?

A Probably when it was; I don't remember the date.

Q Does that show the plates?

20

*Mr. Bishop.* I object to the admission of those photographs because they were not made at the time of the accident.

*Mr. Walsh.* I submit they were made in the course of the treatment of the injury.

*The Court.* You are showing the present conditions—the time the photograph was taken shows the present condition?

*Mr. Bishop.* I withdraw the objection.

30

Q This plate you now hold, was taken at what time by you? A In the fall just past, 1916?

Q 1916?

*The Court.* That shows the condition of the leg at that time?

A Yes, sir.

*The Court.* It will be admitted in evidence.

*Dr. Harry H. Bowles, direct.*

(X-ray plate entered in evidence and marked Exhibit P. 1.)

*The Court.* Hold it up and explain it to the jury.

A Do you want me to pass it to them?

*The Court.* Just stand right in front of the jury with the light in back of you; not in front of you.

A That is where the fracture occurred (indicating) and the ends of the bones were placed in apposition, and they are now surrounded by what looks like buldging of the bone; that is callus. You see what is apparently a swelling of the bone; that is callus formed, holding the fractured end of the bone together. And this plate was put on in the operation and screws inserted into the bone; two to the upper fragment and two to the lower fragment to keep them from slipping. This plate is still in. The large callus around the bone shows the union is now quite firm. That is the smaller bone, not so important for supporting the weight of the body.

*The Court.* What is this; the other leg?

A Same leg, different. That is taken from forward back; on this side to that side.

Q The callus shown there, will that indicate the bone has grown around the plate? There is callus around the plate? A There probably is callus around the plate.

Q Is there danger of that sloughing off and causing trouble? A It is possible.

Q It is possible. Beside putting on these two plates was there any other operation per-

*Dr. Harry H. Bowles, cross.*

formed? A Only the wound here, of course, supurated, and the leg was put in splints.

Q Was there any of the bone taken out? A Well, the ends; the ends were freshened.

Q The ends were freshened? A Yes, sir.

10 Q So that pieces of the bone were taken out and ends freshened and those plates applied?  
A Just the ends.

Q Just the ends? A Yes, sir.

Q Did you take measurements of his leg at that time? A I didn't. I didn't perform the operation.

Q You were assisting at the operation? A Yes.

20 Q Do you know whether his leg was its normal length before this operation? A I do not. I never measured him. I have never looked after him after he left the hospital.

Q Would the freshening of the bone shorten the leg? A Probably would.

Q Probably would? Then you have never taken any measurements of the leg? A No. Because he passed into someone else's care.

*Cross examination by Mr. Bishop.*

30 Q Would you consider this operation successful? A Very successful.

Q It healed up properly, didn't it? A It did.

Q Not only flesh and skin but bone, apparently? A It did.

Q He has a firm union, has he not? A He has.

Q The formation of callus at the point of fracture strengthens the bone rather than otherwise? A It certainly does.

40 Q Is it not a fact that at the point of fracture where a bone has united and callus formed

*Dr. Harry H. Bowles, re-direct.*

there is greater strength at that point than otherwise? A Sometimes, possibly.

Q Isn't that usually the case? A Sometimes it isn't as healthy as a normal bone.

Q There was no evidence of any unhealthy or unsatisfactory conditions in the course of the healing of this operation? A There was not. 10

Q Nothing to indicate there would be any future complications? A Nothing.

Q Such as infection or anything of that kind? A No.

Q No evidence of any disease in the bone or otherwise? A No evidence.

*Mr. Bishop.* That is all.

*Re-direct examination by Mr. Walsh.*

Q You say the formation of callus around it will strengthen the bone? Do you mean that bone will be stronger at the point of fracture than it ever was? A I didn't mention any specific instance; I said that is usually the case. 20

Q Usually the case? A Sometimes it was not.

Q But the formation of the callus around the fracture cannot be determined until it happened to break again so that you could see what kind of a callus had formed; isn't that right? A There is ways of testing. 30

Q No way of testing it? A You could tie a heavy load on it and see; pull on two legs and see which one would snap first. That is a practical test. It wouldn't be a very good one.

Q It wouldn't be a very good one? A No.

Q The matter of whether that leg is as strong as it was before is a matter of guess- 40

*Dr. Harry H. Bowles, re-cross.*

work, isn't it, doctor? A The physician in attendance would have to judge that by the amount of weight the man put on that leg and its usefulness.

*Mr. Walsh.* That is all.

10 *Re-cross examination by Mr. Bishop.*

Q You treated this man for the first fracture? A I did.

Q When he left the hospital what was the condition of that leg? A Well, it hadn't got strong enough to walk upon.

Q Did you treat him after he left the hospital at all? A Doctor Morris treated him after he left the hospital; but he came back to the hospital afterwards; I don't know how many times; I looked at it.

Q And what was the condition of the leg the last time you saw it, prior to this accident? A He could bear his weight on it; but he wasn't working on it.

Q He wasn't working on it? A I wouldn't say definitely; I am not absolutely sure of it.

Q Would you say in order to fracture that leg again there would have to be some blow, shock or unusual strain?

30

*Mr. Walsh.* I object. I think that is too general a question for the doctor to answer.

*The Court.* I will allow that.

(Question repeated by the stenographer.)

A Judging from the X-ray pictures, yes. I haven't examined him.

*The Court.* Mr. Bishop meant after the first fracture.

40

*Dr. Harry H. Bowles, re-direct.*

Q I mean after you last saw him before the second accident, in the conditions he was in at that time would you say that to cause a second fracture of that leg there must be some shock, strain or trauma? A Yes. I didn't think he would get it from walking into the street.

Q You don't think that is probable? A I didn't see him after that— 10

Q I mean last time you did see him: you wouldn't consider it dangerous for him to walk down the street? A I am not sure enough about that; because I don't remember distinctly.

*The Court.* He claims, doctor, as I recall his testimony, he stepped from the street to the sidewalk and the knee suddenly gave out from under him. Would that be possible for him to do it that way? 20

A That was sometime after I last saw him and the bone healed quite a lot in that time; could have healed quite a lot in that time.

*The Court.* The question is would it be possible to happen in that way?

Q No, I asked him would it probably happen in that way. 30

*The Court.* What do you say, doctor?

A I didn't think it would.

*Re-direct examination by Mr. Walsh.*

Q After a fracture of this kind. You saw him in October, 1914? A I didn't say the exact date.

Q Well, let us see. He was injured 1914, May? A Yes, sir. 40

*Dr. Harry H. Bowles, re-direct.*

Q Treated at your hospital until June 27, 1914? A Yes, sir.

Q When he left. And then you saw him on the following October? A I didn't say that.

Q You saw him sometime after? A I saw him sometime after; I don't remember the month or day.

Q Don't remember the month. Before the second accident, is that right? A Before the second accident.

Q At that time he was still lame from the first accident? A He was.

Q Would you say that it was possible for his leg to be in such a condition that there would be a sudden weakness if he bore his whole weight on it and it would cause him to fall and that fall break the leg at the same place? A You mean when I last saw him?

Q I mean when you last saw him? A I don't remember when that was.

*Mr. Bishop.* I object on the ground it states a hypothesis not shown by the evidence.

(Question repeated by the stenographer.)

*Mr. Bishop.* That is not what he said; half of it.

*The Court.* What part of it—

*Mr. Bishop.* As I understood his testimony he said he stepped on the leg and it snapped under him.

*The Court.* That is my recollection of it. He said instead of stepping on the curb with the good leg he stepped up with the one that had been broken and the knee gave way under him.

*Dr. Harry H. Bowles, re-direct.*

*Mr. Walsh.* Gave way and he fell and crushed it. He said I fell and crushed it.

*The Court.* Of course, he does not know what happened.

*Mr. Walsh.* I think he said it gave way and I crushed it.

(Testimony of Mr. Duffy on that point repeated by the stenographer.)

*The Court.* With that situation, knowing the leg as you knew it, and Mr. Duffy's statement of just what took place at that time, would it be possible or probably for a leg to give out in that way and produce the second fracture you found?

A It is possible if the union wasn't firm enough to hold his weight, of course. That I don't know because I didn't see him the day he was hurt. I didn't see him for some time before that. I don't know when.

Q You saw him immediately after he was hurt? A I seen him that same night.

Q You saw him that same night. When he was first brought to the hospital did the bone come through the skin? A The first time?

Q The first time? A May, 1914?

Q May, 1914? A It did.

Q The second time it was broken did it come through the skin? A My recollection is it didn't.

Q That it didn't.

*Mr. Walsh.* That is all.

10

20

30

40

*Dr. Watson B. Morris, direct.*

DR. WATSON B. MORRIS, produced as a witness, on behalf of the plaintiff, being duly sworn on his oath, according to law, saith:

*Direct examination by Mr. Walsh.*

Q Doctor, you are a physician and surgeon?

10 A I am.

Q Engaged in practice in Springfield, New Jersey? A Yes, sir.

Q Have been for how many years? A Ten years.

Q In your practice—do you know Joseph Duffy? A I do.

Q Has he been a patient of yours? A He has.

20 Q When? A Oh, for some years.

Q For some years? A Yes, sir.

Q Did you treat him in the year 1914? A I did.

Q And for what? A For fracture.

Q For a fracture of what, doctor? A Of the left leg.

Q Do you remember what month that was? A The latter part of June, after he left the hospital.

30 Q How long was he under your care? A For four or five weeks, until I left for my usual vacation; that was in August.

Q And you turned him over to another physician? A I turned him over to an associate of mine.

Q Did you see him after that? A Yes, I saw him after my return in the fall.

Q In the fall? A Yes, sir.

40 Q Did you make any examination of this fracture he complained of? A I did.

*Dr. Watson B. Morris, direct.*

Q What did you find? A Why, there was a very exuberant callus formation, and I kept the cast on him for quite some longer than the usual period because there wasn't a good firm formation of bone tissue. I think the splint was replaced and left until the middle of August, but I can't be sure, because I was away at that time. 10

Q Did you remove the splint? A No. The cast was removed by Dr. Taylor.

Q You saw him on your return. What was his condition at that time? A There was a very very fair union; so much so there was no necessity for his wearing splints, and there was apparently a firm union at that time. That was, I think, in September.

Q Was he lame at that time? A Yes. 20

Q He was lame? A Yes, sir.

Q And you treated him in September? A I think it was in September. It was sometime after I had come back from my summer vacation.

Q After that did you see him at all? A I saw him the twenty-fourth of December.

Q What was his condition at that time? A I was called to his home and found him with a fracture of the left leg. 30

Q Where was the fracture of the left leg with relation to the first one? A Same place.

Q And did you treat him after that? A I sent him to the hospital that night.

Q Any further treatment by you? A I saw him at the hospital and assisted at the operation which he had performed.

Q What operation? The same as Dr. Bowles has described it? A Exactly. 40

*James McCue, direct.*

Q He has stated he owes you one hundred dollars for medical services, is that so? A Somewheres thereabouts. I don't remember exactly.

Q You have rendered a bill for it, and it has not been paid? A Not recently.

10

*Mr. Walsh.* Now, doctor, that is all.

*Cross examination by Mr. Bishop.*

Q Doctor, does the bill you rendered cover any services other than those in the reduction of this fracture? A I really can't tell you.

*The Court.* Did he have any other illness?

A Yes.

20 Q Did he have any other illness? A Not he; his family.

Q When his bill came it includes all of his family? A I don't remember.

Q You said your bill covered services to his family during the period covered by this bill? A I don't know. I think there was a balance from another bill that was added on to the treatment at that time.

30 Q Do you remember how much that balance was? A No, I don't.

*Mr. Bishop.* That is all.

*Mr. Walsh.* That is all, doctor.

JAMES McCUE, produced as a witness, on behalf of the plaintiff, being duly sworn on his oath, according to law, saith:

*Direct examination by Mr. Walsh.*

40 Q Mr. McCue, where are you employed? A By the City of Summit.

*James McCue, direct.*

Q And by whom were you employed in May, 1914? A William McCue, a brother of mine; dealer in ice.

Q Dealer in ice. In the course of your employment did you have occasion to visit the Summit and Madison Ice plant on the twenty-ninth of May? A I did; yes, sir. 10

Q Were you there at the time a certain accident happened? A Yes, sir.

Q Just tell us what you saw of that accident? A Well, I didn't see a great deal of it. That is all I can say in regard to the accident. I happened to help carry Mr. Duffy from the ice house to the automobile truck owned by the Summit and Madison Ice Company.

Q Were you there when the—what part of the ice plant were you when the accident happened? A I was out on what is called the bridge; platform when they load ice. I wasn't inside when the accident happened. 20

Q Did you hear the crash? A No, sir.

Q What directed your attention to it? A Mr. Bates directed my attention to it, when the elevator dropped. Why, when I entered after bringing out one cake I started to enter again and opened the door leading on the platform, what we call the dump room; started up from the storage house where the elevator is and at that time Mr. Bates had Mr. Duffy on top of the ice in the dump room; he had carried him off the elevator. 30

Q He had carried him off the elevator? A That is the first inkling.

Q He called to you? A He called to me and I helped Mr. Bates carry him out to the platform. 40

*William C. Bates, direct.*

Q That is all you know? A That is all I know.

Q Could you see the shaft room from where you were? A I could have. I didn't pay particular attention to it.

10 Q Where was Mr. Tingley? A I didn't know at that time.

Q You didn't know at that time? A No, sir.

Q And you didn't look at the shaft? A I didn't look at the shaft.

*Mr. Walsh.* That is all.

*Mr. Bishop.* That is all.

*Mr. Walsh.* That is our case.

PLAINTIFF RESTS.

20

#### DEFENDANT'S TESTIMONY.

WILLIAM C. BATES, the defendant, being duly sworn on his oath, according to law, saith:

*Direct examination by Mr. Bates.*

30 Q Mr. Bates, are you the defendant in this case? A Yes, sir; I am.

Q Where do you live? A I live in Chatham at present.

Q Where are you employed? A Beg pardon?

Q Where are you employed; what is your business? A With the Summit and Madison Ice Company.

40 Q What do you do there? A I am manager; working manager of the Summit and Madison Ice Company. And I do general man-

*William C. Bates, direct.*

aging work, turn a hand in and do anything when it is necessary.

Q Pitch in and work with the men when it is necessary? A Yes, sir.

Q Who owns the plant? A It is a company.

Q Where this accident happened? A It is a company. 10

Q A corporation? A Yes, sir. A dozen or fifteen people.

Q What is its name? A Summit and Madison Ice Company.

Q Incorporated under the laws of the State of New Jersey? A Yes, sir.

Q Was the plaintiff, Duffy—By whom was the plaintiff, Duffy, employed in May, 1914? A By the ice company. 20

Q What was his position there? A Well, he was sort of an extra man during busy seasons, at anything we had. Sometimes we put him on the wagon if a man was sick as helper. Sometimes we put him in cold; or whatever occasions require; whatever turned up. We put him on with two or three other men of that character we had.

Q Is there an elevator in the building in which this happened? A Yes, sir. 30

Q What sort of an elevator is it, freight or passenger? A It is a freight elevator.

Q Who usually operates it? A Well, it is chiefly operated by me; unless I am away and the engineer or another man we had there before as engineer.

Q Was that one part of Duffy's duty, to operate it? A No, sir. We never allowed anybody to operate it. Only one of the three of us. 40

*William C. Bates, direct.*

Q What is the construction of the elevator; does it run in a shaft? A Yes, sir. It runs in a shaft and guided by a groove, which runs from the bottom to the top.

Q What sort of power operates it? A Electric motor drives it.

10 Q How is that motor stopped and started? A Motor is stopped by turning off the current and started by turning it on.

Q How is it done? By the person driving the car? A Well, at that time there were two circular ropes; one over a wheel and one under the bottom.

*The Court.* And one what?

(Answer repeated by the stenographer.)

20 A And one over a wheel at the bottom and one at the top. That clutch rope that cuts the current off was right by the rope that puts the orake on, and you could take them with one hand and pull them both. By that means you cut the current off and stop the elevator. And when the current was off, of course, the brake rope was the one you depended on entirely.

Q That is, you could cut the current off?

A Yes, sir.

30 Q And apply the brakes simultaneously? A Yes, sir.

Q With one hand? A You could do so.

Q When the current was on did the car go up or down? A Up.

Q Did the car ever go down with the current on? A It couldn't.

Q What was the manner of lowering the car?

A When the elevator is raised to a certain height in the room; this large storage room, we  
40 have no floor except at the bottom. And that

*William C. Bates, direct.*

is used for putting cakes of ice of uniform size; and we put them in like brick, and that lowering the ice forms a smooth floor and then we raise the ice up and that—

Q That hasn't anything to do with the question I asked you. I asked you how the elevator was lowered. A Releasing the brake partially so as to guide it down. And let it go by gravity. 10

Q Descend by gravity? A Yes, sir.

Q Controlled the speed by that entirely? A Entirely.

Q There was no current on? A There was no current on because if there was current on it would have gone up.

Q So that it is erroneous to state the car went down with the current on? A Why, it couldn't. 20

Q On the day of this accident—by the way, whose duty was it to inspect that elevator? A Why, our engineer, Mr. Hopkins was to inspect it once a week when we are using it. There was some periods in the year when we didn't use it for weeks. It is only for storing in this one house, we use it. And then Mr. Hopkins always goes up and examines it and oils it.

Q That is no part of your duty? A That has nothing to do with me. That is him; he is engineer. 30

Q On the day of this accident did you operate the car for any length of time before the fall occurred? A Before the fall?

Q Yes, sir. A Yes, sir.

Q Was it operating properly? A Properly. I operated it in the morning and this was the afternoon. 40

*William C. Bates, direct.*

Q On the trip in which the accident occurred did you have any difficulty with the car as you took it up? A Not a particle.

Q How far up did you take it? A We took the ice off the fifth layer; that would be ten feet; or rather the sixth layer; that would bring us on the level with the fifth layer which was about ten feet possibly.

Q That is the highest you took the car? A Yes, sir; that is the highest we went at that time.

Q On the trip when the car fell who was on it? A Duffy was on it and Mr. Tingley and myself.

Q Was there any ice on it? A Yes.

Q How much? A Three cakes.

Q Did you request Mr. Duffy to get on the car at that trip? A No, sir; I didn't.

Q Did you give him any instructions at all with respect to getting on the car? A It is always my habit when I use the elevator loaded to go down with it myself and have it unloaded and go back after the men. In this instance I said to them: "Boys, I guess we have got enough. I guess this will be the last load. I will be back after you." And I think Mr. Tingley said: "It is only a little way, I can go with you." I said: "No. Go back." And they jumped on the car. I stopped, and said: "I would rather you would not go on." But it was such a short distance I waived the matter. It was only ten feet; hardly ten; and they got on. I said: "Is your footing good?" They both stood and they said "Yes." They both stood at the bottom of the elevator by side of the ice. There was plenty of room.

*William C. Bates, direct.*

Q Then what happened? A I started the car down and we went down but about six feet of the bottom of the elevator and the curtain we have hanging down from the top on the open part of the elevator shaft that enters into the large store room was a little kinked in the corner.

10

Q Was there any current on since you made the last descent? A No, sir. Hadn't been any since I went up after the last load.

Q You came down without any current on, all right? A Yes, sir.

Q Stopped at six feet above the floor? A Yes, sir.

Q And some work was done and you started to come down? A Yes, sir.

Q What did you do then? A I released the brake.

20

Q Is that the usual method of starting the car to descend? A That is the only way. I released the car and we went down perhaps a foot or more. I couldn't tell how far we went. We went down. And I felt a jerk, and as I always have my hand on the brake rope under any circumstances, and impulsively I clutched the rope tighter and I found it didn't stop and then I put my other hand on it and I held it as tight as I could and tried to check it; I thought something had caught.

30

Q You were attempting to apply the brake? A Yes, sir. I thought perhaps it caught and I was more forcible.

Q Did you have hold of the right rope for the purpose of applying the brake? A Yes, sir.

Q Then what happened? A It went down to the bottom.

40

*William C. Bates, direct.*

*The Court.* It is the hour of adjournment. Tomorrow morning, gentlemen, at the usual hour.

(Mr. Bishop and Mr. Walsh after consultation at the Court's desk consent to go on with eleven jurors; excusing Juror No. 7.)

10 *Mr. Walsh.* Then it will be noted on the record that we are willing to go on with eleven jurors?

*Mr. Bishop.* Oh yes, yes.

Adjournment until January 31st, 1917, at 9.45 A. M.

20 JANUARY 31ST, 1917 SESSION, 9.45 A. M.

WILLIAM C. BATES, (resumed).

*Direct examination* (continued) by Mr. Bishop.

Q Mr. Bates, when we adjourned last night you had just described the passage of this elevator on its last trip before the accident down to the time it made its last stop. What work was done when it stopped there the last time?

30 A Why, that is before it fell, you mean?

Q Yes. A I said we had a canvas curtain and one of the corners of it was folded over and we stopped and one of the men, Mr. Tingley, spread it straight and he says that is all right now and so I—

Q The curtain was spread, is that right?

A The curtain was spread.

Q How had you stopped the car at that floor in order to do that? A By putting on the  
40 brake.

*William C. Bates, direct.*

Q Did you apply any current to stop it?

A I beg pardon?

Q Did you apply any power to stop it? A No.

Q Was there any power on while it descended, before it made that stop? A No.

Q Then what did you do? A I released the brake partially so as to start it down the rest of the way and we went down a short distance. 10

Q Then what happened? A Why I felt a little jerk and it seemed to be going faster and my hand—of course I had my hand on the brake rope all the time because we control the descent of it by that. And it seemed to be going faster and I put both hands and pulled with all my might to bring the brake tighter on the bearing; the wheel; and it didn't seem to do any good and the elevator went down. 20

Q Did you go down with it? A I did in a measure. I was holding so tight on the brake rope that it broke my fall and I slid down gradually.

Q Slid down the rope? A Yes, sir.

Q Did you go up with the rope? A No, sir.

Q Did the rope go up? A No, sir.

Q When you reached the bottom of the shaft what condition did you find? A I found two men there on either side of the elevator. 30

Q What two men? A Duffy was one and Mr. Tingley was another.

Q What did you do? A Why, I first asked them if they were hurt.

Q Yes, sir; go on. A And Duffy was kind of screaming and saying, "I am dead; I am dead." I said, "Dan, are you hurt?" He said, "No, I don't think I am." 40.

*William C. Bates, direct.*

Q What do you mean by Dan? A Mr. Tingley.

10 Q I see. Then what did you do? A I opened the door into the room where—the delivery room and called for someone to come and help me and there wasn't anyone there so I turned back and picked Duffy up in my arms and carried him out and sat with him back over on the ice in the delivery room, as far as I could go.

Q Did you have to raise the elevator car? A No.

Q At that time? A No.

Q Did you attempt to raise it? A No.

Q Was it necessary to raise it in order to release Tingley? A No, sir.

20 Q Then what did you do after that? A Well, I sat there holding Duffy on the cake of ice until someone came in the door.

Q Who came in; do you know? A I think it was, as I recall, Jim McCue came in first, and I called to him to help me take him out.

Q Did he help you? A He did. He helped me. I think it was him. There was two or three came in after that and we took him out on the platform and laid him on some planks.

30 Q Then he was sent to the hospital? A Then he was sent to the hospital right away.

Q What happened to Tingley? A I immediately went back and Tingley had got up out of the elevator and was sitting on the ice in the delivery room, and I said to him: "Dan, are you hurt?" He said: "One of my feet seem to—"

40 Q Never mind that. Did you then raise the elevator or attempt to raise it? A No, sir; I didn't touch it.

*William C. Bates, direct.*

Q Did you have any investigation as to the condition of the elevator made after the accident? A Yes.

*Mr. Walsh.* Did you make any or have any?

Q Did he have it made? Who made that investigation? A Why, our engineer. 10

Q What is his name? A Hopkins; Mr. Hopkins.

Q When did he make it?

*Mr. Walsh.* If he knows.

Q Do you know when he made it? A I couldn't say just when.

Q Same day? A Oh, yes, sir. He and Mr. Double both made the examination. 20

Q Mr. Duffy, when he was on the stand, testified that prior to December twenty-fourth, 1914, he returned to the Summit and Madison Ice Company's plant and worked for about two weeks; is that so? A Yes.

Q What work did he do during that period? A He didn't do anything practically. We were out of work then. It was a season when all our work had stopped.

Q He didn't actually perform any work? A Not of any significance. 30

Q He testified he was discharged; did you discharge him? A I didn't.

Q Did you order anyone else to discharge him? A No, sir.

Q As I understood Mr. Duffy's testimony, he stated Mr. Tingley was thrown out of the door of the elevator shaft by the shock when the car struck the bottom. Do you recall whether or not that was a fact? A It was not a fact. 40

*William C. Bates, cross.*

He was in the elevator sitting there when I took Duffy out.

Q Inside the elevator? A Inside the elevator on the other side of the elevator and the door.

10 *Mr. Bishop.* That is all.

*Cross examination by Mr. Walsh.*

Q You are general manager of the Summit Ice Company? A Yes, sir.

Q Also the President? A Yes.

Q And have been for how long? A I have been manager for I think it is about seven years.

Q And you said it was a stock company? A I beg pardon.

20 Q Stock company? A Yes, sir.

Q Regular corporation? A Yes, sir.

Q Controlled by you?

*Mr. Bishop.* I object to that question as irrelevant.

(Question and answer repeated by the stenographer.)

*The Court.* I overrule the question.

30 Q Did you say you know Duffy; is that right? A Oh, yes.

Q And that he was an extra man for you? A Yes.

Q Worked for you five years? A I didn't say so.

Q How long did he work for you? A Well, I couldn't tell you.

40 Q You know it was over four years, don't you? A No; I couldn't tell you that.

*William C. Bates, cross.*

Q You can't say how long he worked for you?

A He worked for me on and off; he used to work for a while and he would get drunk and go for a spree and when he did he was always supposed to be discharged. And then he would come back and ask for a job.

Q Was that when you were drunk? Were you drunk at those times he was discharged?

10

A I wasn't, no.

Q It has often occurred you were drunk at the plant?

*Mr. Bishop.* I object to that as irrelevant.

*Mr. Walsh.* All right.

A I am perfectly willing to answer that.

Q Mr. Bates, can you tell us when Mr. Duffy went in your employ? A Oh, I could not.

20

Q No. Nor you couldn't tell how long he remained in your employ? A Not any particular period.

Q He had been in your employ for over two years continuously every month, every day, every week, for two years prior to this accident, without any interruption, had he not? A Well, I haven't looked that up. And he was so desultory in his duties there that sometimes he would be there two or three months and sometimes six months, and I couldn't tell you that. I couldn't answer that.

30

Q He said he was employed by you for four or five years at that plant. Will you say that is not so? A I will say that is not so, regularly, continuously.

Q And you say he was simply an extra man? A He was a man to do what we had for him to perform.

40

*William C. Bates, cross.*

Q There is nothing extra about that. He is the same as other men about the plant; laborers.  
A We never hired him permanently; for any specified time.

Q For any specified time? A No. Never did.

10 Q Do you hire any of your drivers for any specified time? A Yes.

Q All of them? A No.

Q And you don't know how long before this accident Duffy had been continuously employed by you? A I couldn't say; no.

Q In regard to the elevator in the building; there was an elevator there? A Yes.

Q Constructed by you and your son? A No. I had nothing to do with it.

20 Q What is that? A No. I had nothing to do with it.

Q Constructed by your son? A The elevator—

Q Yes or no. A No.

Q Was it constructed under your son's supervision?

*The Court.* Yes or no?

A We bought the elevator.

30 Q And your son put it up? A He helped to put it up as engineer.

Q How long had it been in operation before this accident?

*Mr. Bishop.* I object to that, if the Court please.

(Question repeated by the stenographer.)

*Mr. Walsh.* I will withdraw it. It can't accomplish the object.

*William C. Bates, cross.*

Q It was operating on the twenty-ninth of May?

*Mr. Bishop.* That is admitted.

A Yes.

Q And I believe you have stated that you were the one that operated that elevator? A I 10  
was operating it then.

Q Then. And who operated the elevator up to that time, beside you? A Mr. Hopkins; my son sometimes.

Q And yourself? A Myself, yes.

Q Mr. Double? A Duffy.

Q Double? A Double; yes.

Q Matthews? A No. Matthews was not in our employ.

Q Matthews was not in your employ at that time? A No. 20

Q Any of your engineers who happened to be around there operated the elevator, is that right?

*Mr. Bishop.* I object to that, if the Court please; it is irrelevant.

(Question repeated by the stenographer.)

*The Court.* You brought out yesterday, Mr. Bishop, how the elevator was operated and who operated it. I will allow the question. 30

A Mr. Hopkins and Mr. Double were engineers and they operated it if they were at liberty to do so, and not engaged.

Q And you often operated the elevator? A Yes.

Q Is that the only elevator you ever operated? A Yes. 40

*William C. Bates, cross.*

Q And for how long before the accident had you been in the habit of operating yourself?

A I couldn't give that; ever since it has been in the building.

Q And you can't say how long that was?

A No; I don't remember the date. I could  
10 not. It is some years.

Q You say they operated by two circular ropes? A We had two ropes; one rope for the power and one for the brake.

Q One for the brake. And you operated it from the car by pulling these ropes? A Yes.

Q How high was the shaft? A What do you mean by that?

Q Shaft. From the bottom to the top of the shaft? A I don't know. I could give you  
20 measurements. Something about from extreme top above the elevator to the bottom, I think it is something like nineteen feet.

Q Nineteen feet? A Something like that. I couldn't give you that. The engineer knows those things and they can tell you how high it is.

Q You say that you operated that elevator that morning? A Yes.

Q And you had taken how many loads down?  
30 A Oh, I couldn't tell you that.

Q Several? A Oh, yes. I had probably taken seventy-five cakes; that would be three cakes to the load.

Q What is the weight of those cakes? A Three hundred pounds.

Q What is the capacity of that elevator? A I think it is twenty-five hundred pounds.

Q Do you know? A That is my impression.

Q Isn't it a fact that that was a half ton  
40 elevator? A No, it isn't.

*William C. Bates, cross.*

Q It isn't? You are certain as to that? A I feel very sure on that. I can give you testimony as to what the elevator will do, though.

Q When you—you use the current to go up with the elevator? A Yes.

Q And after you put nine hundred pounds of ice on, do you want us to understand that you simply released the brake and let its own momentum carry it to the bottom? A Why no. 10

Q How was it carried to the bottom with nine hundred pounds of ice and you on it? A We kept the brake on it.

Q You kept the brake on it? A Yes, sir; perfectly. We hold our hand on the rope and graduate the descent by control of the brake.

Q By control of the brake? A Yes. 20

Q You had been operating the elevator when it dropped before this time? A No.

Q Will you swear to it positively? A I don't remember it to.

Q You don't remember it to; will you say it didn't occur? A I couldn't say it did.

Q You couldn't say it did? A No.

*Mr. Walsh.* Stand up, Mr. Matthews.

Q Do you know that gentleman? A Yes. 30

Q Has he been in your employ? A Yes, sir.

Q He is not now? A No.

Q Does the seeing of him recall anything to you about the falling of the elevator at a time prior to this accident? A No. I have the belt slip off.

Q You have had the belt slip off; what happened to the elevator then? A It stopped.

Q It stopped; it didn't drop? A No. 40

*William C. Bates, cross.*

Q Can you say positively it never dropped while you were operating it before this accident?

A I couldn't say so.

10 Q You couldn't say so. Is the matter of the dropping of the elevator so common place in your mind, Mr. Bates, that it would not impress anything on your mind? Why is it you can't remember the falling of the elevator? A I do remember the falling.

Q You do remember this one falling? A Yes, sir.

Q You can't say whether there was a fall prior to this time while you were operating it or not? A I don't remember.

20 Q You don't remember. You were up at the storage room with this elevator and nine hundred pounds of ice had been put on it? A Yes.

Q You operated it then and dropped it how far the first time, when you started going? That is on the last load? A Well, I would have to figure that. Little way, about, I should say, six or seven—six feet or seven feet.

Q Yesterday afternoon you said your first stop was made about a foot down? A No; I didn't say that.

30 Q You didn't say that? A No; I didn't say so.

Q Your first stop was made about six feet down? A Yes.

Q In other words you released the brake and dropped six feet and applied it again; is that right? A Yes.

Q Q Without the application of any current whatever? A Certainly.

40 Q And stretched this curtain, is that right? A Yes.

*William C. Bates, cross.*

Q You say the curtain was folded over? A Well, what do you mean by that?

Q I don't know what you mean by that. Was it your custom to stretch that canvas cover after each time you had taken out these loads of ice? A Sometimes. Sometimes it would fall straight, and sometimes it would kink inside. 10

Q And then you straightened it? A No, sir; I didn't straighten it.

Q Didn't touch it? A No, sir; I didn't touch it. I wasn't on that side of the elevator; I couldn't reach it.

Q Who touched it? A Tingley on this side. I don't remember whether Duffy did on the other side or not. They were on the other side of the elevator. I couldn't reach it possibly. 20

Q You said this particular time you cautioned them not to get on? A Always cautioned them not to get on.

Q Always cautioned them not to get on? A Always cautioned them not to get on; we never let them get on. I never had.

Q Wasn't it your custom to always take the men down from the storage room on the last trip? A No.

Q Haven't you often taken Matthew, Duffy and Tingley down on your last trip with the ice prior to the accident? A I have sometimes when we were at the lower part of the house; they would get on that way; when we were up they didn't. 30

Q You never did when you were up? A Not to my recollection.

Q Not to your recollection; will you say it did not happen? A I don't remember it.

Q You don't remember that? A No. 40

*William C. Bates, cross.*

Q You always told them not to get on? A I didn't have to tell them.

Q You didn't have to tell them? A No.

Q When you told us yesterday afternoon on this last trip down, on this particular afternoon, you told Mr. Tingley and Mr. Duffy, "Please  
10 don't get on,"— A No, I didn't say so.

Q What did you say to them? A I said—

Q Did you say anything to them about getting on? A I said this: I said this would be all we want. Don't bring any more ice up to the shaft. I will be right back after you.

Q Yes. A Then one of them, I didn't know which, said: "We will go down with you." I said: "No, I will be right back." And then started and got on just as I was about to release  
20 the brake.

Q You don't know who said that? A I don't know which one.

Q Yesterday afternoon you said you said to them "I would rather you would not get on on this trip." Do you say anything of the kind to either one of them then? A I don't remember my exact words. This was the idea; I said I will be back after them.

Q So that yesterday afternoon when you  
30 told us those were your exact words, you were stating something you were guessing at, is that right? A I simply told them I would be back after them.

Q Did you tell them that? A I told them not to get on.

Q You told them not to get on? A I told them not to get on.

Q On those other occasions when you brought other men down that shaft did you stop each  
40 time and tell them not to get on? A I said

*William C. Bates, cross.*

I didn't have to tell them; they didn't get on.

Q Why was it you had to tell them that this particular afternoon? A Because they said they would get on.

Q On the other times they had gotten on without saying they were getting on, is that the difference? A I couldn't tell you those things. 10

Q As a matter of fact, Mr. Bates, do you recall what you said to the men that day prior to the accident? A I have already stated.

Q But you have stated it in three different ways. I would like to know which is the correct one? A You ask so many questions in a peculiar way. It is difficult for me to say in exact words. I have tried to give you to understand what I said, and I have said it.

Q When you were at the top of that shaft, what, if anything, did you say to anybody? A I wasn't at the top of the shaft at all. 20

Q When you were at the storehouse; store room where you were taking the ice off what, if anything, did you say to anybody? A Why, I have already said I told them this would be the last load and don't bring any more ice up and I will be right back after you. I will come right up after you. 30

Q That is all you said? A No. When they said "Well, we will go down with you," I said: "No, don't get on, I will come right back."

Q That is the first time you ever said that to the men; the other times you didn't say that to the men? A I don't remember what I said. Sometimes I may have and sometimes I didn't.

Q Duffy said you said to him "Come on and get on here and come down." A It isn't so.

Q It isn't so? A No. 40

*William C. Bates, cross.*

Q Yet you can't recall exactly what you did say? A I have told you my words.

Q You have told us your words. Did you say anything else to them after they had gotten on? A I don't remember.

10 Q You don't remember. Was your recollection any clearer yesterday afternoon than it is this morning about what went on? A I guess my recollection is about as clear now as to that.

Q Yesterday afternoon you told us you stopped the elevator after starting it and you said to them: "Are you sure, boys, your footing here is good?" A I didn't say that at all.

Q You didn't say that at all? A I will tell you what I said.

20 Q You say you didn't say that? A Not those words.

Q What words did you say about the boys footing? A I told them not to get on. I said I will go down and come back after you. And they said "No, we will go down."

30 Q All right. A And he said something about the short distance and I thought to myself there would be no danger. And then I pulled the rope. I was going to pull the rope to start it; I practically started it. And they stepped on. And I stopped and I said, "Now, boys, are you on safe? Get on safe. Get on carefully." That is what I said, or some such—something to that effect. That was the purport of it.

Q You weren't doing anything out of the ordinary that afternoon? A No.

Q Nothing about that particular trip that occasioned you to warn the men about their danger? A No.

40 Q Because all of the other times these men and other men had ridden down on the elevator

*William C. Bates, cross.*

you never had to say anything to them, did you?

A I have always told them. I never brought them down unless I said get yourself in good position.

Q Did you bump? A Because they always had ice tools with them. And they usually carried it under their arms with them and it was dangerous operation to ride on anything where you might catch these tongs and I wanted to be sure they were free so they wouldn't strike anything. 10

Q It was a dangerous operation for them to ride down on the ice? A Dangerous for anyone; yes.

Q And you were their superintendent? A Why, of course, I am.

Q And you knew it was dangerous? A Don't know it is dangerous— 20

*The Court.* Answer the question; do not argue.

(Question repeated by the stenographer.)

A I didn't consider it particularly dangerous. I wanted to guard against any possibility of carelessness; that was my object.

Q You say then you started your car off by releasing the brake? A Yes. 30

Q What did you do with that brake, or brake rope? A Just held it in my hand and kept up a certain pressure on the brake all the time.

Q You kept your hand on the power rope at the same time? A No. Had nothing to do with the power rope.

Q Don't you know, as an elevator operator, it was your duty to keep your hand on the power rope so that in case you were descending 40

*William C. Bates, cross.*

too fast you could rely on the power rope to check your fall? A I know the power had nothing to do with it.

10 Q If you had kept your hand on the power rope after starting, and when you felt this sudden jerk had applied power, wouldn't it have checked the fall of that elevator? A It would have taken us up to the top.

Q It would have taken you up to the top, but it would have checked the fall? A I didn't consider it is necessary at all to keep your hand on it.

*By the Court.*

20 Q He asked you when the power was on, and you started to fall and you put the power on if that would not break the fall? A I don't know as I can answer that it would or wouldn't. I think it would be more dangerous than otherwise.

Q Why? A Because it would throw the elevator up.

Q Couldn't you take it off when you went to the top? A Wouldn't you fall then if there was no brake?

30 Q Do you fall every time the elevator runs up? A No. But if the elevator wasn't working and we were only six feet from the floor and put the power on and took us up ten and we went down ten, wouldn't we—

Q What happens when you get to the top of the shaft? A We have the brake control on it; and we take the power off.

40 Q What caused the fall this day, do you know? A I don't know for myself. The engineers have examined it.

*William C. Bates, cross.*

Q And they know what they found? A And they know what they found; yes.

Q As I understand you pull a rope and the elevator comes down by gravity? A Yes, sir.

Q And you regulate the speed by pressure put on this rope? A Yes.

Q And when you don't put any pressure on, it goes to the bottom? A Yes, sir. 10

Q So the speed you go down depends on how much pressure you put on the rope? A Yes, sir.

Q When everything is normal? A Yes.

*By Mr. Walsh.*

Q Now, Mr. Bates, if you had applied the power when you felt yourself give you say the elevator would have raised? A Certainly. 20

Q If you had immediately applied power wouldn't the weight of the ice have lowered the elevator if you didn't throw that power on full? A I am not so sure of the construction of the elevator. I couldn't tell you that.

Q Well, as an elevator operator what would you do if your brake failed to work? A I suppose we would do as we did last time.

Q Let her go? A We would have to. What could we do? 30

Q That is all you know about it? A That is what we did.

Q That is what you did. And the power rope was at your hand where you could have easily reached it? A Yes.

Q Right within reach? The two ropes hung side by side? A Yes.

Q Is that right? A Yes.

*William C. Bates, cross.*

*By the Court.*

Q Would not putting the power on act as a brake itself, when the elevator was falling? A I am not sure.

10 Q You have operated the elevator; you know how it works? A It would raise the elevator.

Q It would raise the elevator if it had enough momentum to go up; if it was traveling rapidly down and you put the up power on, doesn't that act as a brake? A I presume so; we were at the bottom.

20 Q What counsel wants to know is why you did not put that on to prevent the bump? A We were at the bottom before we realized where we were. We were only about six feet from the bottom of the elevator and it was just an instant and you could hardly do anything only pull on the brake. My first thought was the brake was stuck and I threw all my force on it to release it. I thought it caught in there and to put more pressure on the wheel, and by that time we were down at the bottom.

*By Mr. Walsh.*

30 Q Now, you thought it was caught, Mr. Bates? A Yes, sir.

Q And you gave it a yank to jerk it loose? A Yes.

Q That released the whole brake, didn't it? A No.

Q Didn't that release the whole brake off altogether? A No; pulled it on tighter.

Q Pulled it on tighter? A Yes, sir.

Q You said the elevator only fell six feet? A That's all.

40 Q Will you say that the bottom of that curtain—from the bottom of that curtain to the

*William C. Bates, cross.*

bottom of that shaft is only six feet, Mr. Bates, yes or no? A No, I won't say that.

Q It is about twenty feet, isn't it? A Bottom of that curtain?

Q Yes. A Oh, no.

Q How far is it? A Bottom of that curtain was about seven feet perhaps from the bottom of the elevator shaft; and we were down below the bottom of the curtain, so they put their hands out this way and brushed it aside this way (indicating). And we were right at the top, at the entrance door, because I could see in the door. 10

Q You could? A From the bottom of the elevator to the door is about six feet high.

Q You say you pulled the brake and pulled it tight, but you didn't have your hand on the power rope, nor you didn't pull the power rope when you felt it give; is that right? A I didn't have time. 20

Q Didn't have time? A No.

Q The thing about it is you didn't go to the bottom at all, did you? A Yes, I did.

Q Weren't you lifted off your feet and had to slide down the rope? A I was not lifted; I held my hands on the brake rope. And with what pressure I could I held on to it and gradually slid down. I was down practically the same time they were. I couldn't hold myself by that rope. 30

Q You weren't lifted off the elevator; rather the elevator lifted your feet so you were clear of the elevator, weren't you? You weren't in the bump at all, were you? A Yes.

Q Yes, but your feet were up in the air? A I went down with the elevator. 40

*William C. Bates, cross.*

Q You slid down afterwards, and got there practically the same time? A It broke my fall.

Q It broke your fall and it broke your fall because your feet were clear of the elevator at the time of the bunk. A It broke my fall.

10 Q Because your feet were clear of the elevator? A I couldn't tell I was clear of the elevator or ice. I couldn't tell that. I might have been on top of the ice; I don't remember that.

Q Do you remember anything very definitely about that accident at all? A Oh, yes.

Q Yes? A Yes, I do.

Q You say that you asked if they were hurt? A Yes.

20 Q What did you see when you came down the rope practically at the same time? A Why, I saw Duffy sitting on one side and Tingley sitting on the other.

Q And you saw a three-hundred-pound cake of ice sitting on Duffy's leg? A No.

Q What? A No.

Q Where was Duffy's leg at the time you came down, with relation to the ice? A Between two cakes of ice.

30 Q Each three hundred pounds? A Yes.

Q And you asked him whether he was hurt? A Yes.

Q And where was Tingley at that time? A He was on the elevator.

Q Wasn't he caught under the elevator? A No.

Q What happened to Tingley at that time, if you know? A What do you mean?

40 A I mean in regard to injuries? A Why, he had his ankle broken.

*William C. Bates, re-direct.*

Q He had his ankle broken? A Yes, sir.

Q And he was just—when you came down practically at the same time you found Duffy in between two three-hundred-pound cakes of ice and Tingley just sitting there with his ankle broken and you asked them were they hurt? A Yes, sir.

10

Q That is all. Was Tingley's foot caught anywhere? A No.

Q Not at all? A Not to my knowledge; he had a jar.

Q He had what? A He had a jar when the ice standing up on edge, that was about twenty-two inches high, and their feet were between these cakes of ice. Ice had jolted and in the fall the ice had shifted and their feet went between them.

20

Q Will you say Tingley's foot went between three-hundred-pound cakes of ice, too? A His feet was between one cake of ice and the side of the elevator.

Q Then the ice had fallen over, didn't it? A No, it didn't fall over; just jolted over.

Q It didn't fall over; just jolted over? A Could not fall over. unless it broke; one cake was broken.

30

Q Wasn't Tingley caught? A How do you mean "caught?"

Q By the side of the elevator and the cake of ice? A No. He got out himself.

Q He got out himself?

*Re-direct examination by Mr. Bishop.*

Q Mr. Bates, when you say if, when you felt this jar, if you had at that time applied the power— A No, brake.

40

*William C. Bates, re-cross.*

Q You said, if at that time you had applied power, you say the car, the elevator, would have gone up? A Yes.

Q That would be so only if the apparatus for raising the elevator was in proper working order, would it not? A Certainly.

10 Q If there was anything broken which would prevent the application of the power to raise that car, it would not raise the car, would it? And that would not be so?

*Mr. Walsh.* I object to that.

(Question repeated by the stenographer.)

*Mr. Walsh.* There is nothing in the evidence shows the lifting apparatus was out of order.

20 *The Court.* I understand, Mr. Bishop. I will allow the question.

(Question repeated by the stenographer.)

A It would not have raised the elevator; no.

Q It would not have prevented the elevator from falling, would it? A No.

*Re-cross examination by Mr. Walsh.*

30 Q You didn't try to apply the power, did you? A I have already—

Q Yes or no. A No, I didn't. There wasn't time.

Q There wasn't time, but there was time to raise yourself off the elevator and break your fall? Yes? A There was time for me to clutch the brake rope to pull it on tight, and by doing so it prevented my fall because I held on to the rope.

40 Q You didn't apply any current then to it?

*Daniel C. Tingley, direct.*

*The Court.* He said that, Mr. Walsh, several times.

DANIEL C. TINGLEY, produced as a witness, on behalf of the defendant, being duly sworn on his oath, according to law, saith:

10

*Direct examination by Mr. Bishop.*

Q Mr. Tingley, where do you live? A Summit.

Q Where were you employed in May, 1914? A Summit and Madison Ice Company.

Q Are you still employed there? A Yes, sir.

Q Do you recall the occurrence of the elevator accident on that day? A Yes, sir.

20

Q Were you on the elevator? A Yes, sir.

Q How high; how far from the floor was the elevator at the time it dropped? A About six feet; maybe six feet six; not over that.

Q Not over that? A No.

Q Where was the elevator when you got on it; on that trip? A Oh, probably around ten feet up.

Q Who was running the elevator? A Mr. William Bates.

30

Q Are you familiar with the manner in which the elevator is operated? A Not up at the upper part I am not; no, sir.

Q Do you know how it is operated from the floor of the car? A I have seen it operated; yes, sir; I never operated it myself.

Q What did Mr. Bates do after you first got on the car to descend, if you remember? A We descended about four feet, maybe, or something like that.

40

*Daniel C. Tingley, direct.*

Q Do you know how he made the car go down? A Yes, sir; same as he always did.

Q How is that? A Just simply pull off the brake rope; enough to let it descend itself.

Q Does he apply any power? A No, sir.

10 Q When the car got down to about six feet or six feet six from the floor, he stopped again, didn't he? A Yes, sir.

Q What did he do then? A He simply turned and said, "put the curtain down." And we put the curtain down, and we started to descend.

Q Then what happened? A We just dropped out.

Q Did you see Mr. Bates pull any rope before you dropped? A Yes, sir; same as he always done.

20 Q Same rope as when he came down before? A Yes, sir.

Q Just exactly the same rope as when he let you down safely, wasn't it? A Yes, sir.

Q Did Mr. Bates go up? A No, sir.

Q Did the rope go up? A No, sir.

Q What did happen? A He simply held on to the rope and the elevator went from under him and left him hanging fast where he was.

30 Q And he slid down the rope to the bottom of the shaft? A Yes, sir.

Q Were you caught under the elevator? A No, sir.

Q Was the elevator raised to let you get out? A No, sir.

Q Mr. Bates didn't raise the elevator off your foot? A No, sir.

Q Did he attempt to raise the platform of the elevator at all? A No, sir.

40 Q Was it necessary? A No, sir.

*Daniel C. Tingley, cross.*

Q What was done? A Why, Mr. Bates came down and simply took Duffy up in his arms and took him out. He asked me first if I was hurt; I said "No, I don't think very bad." And Duffy, I think, passed a remark he was all in or something or other like that. I don't just remember the word he did say, And he took him in his arms and took him up. 10

Q How did you get out of the elevator? A Got myself out.

Q Just got up and limped out? A Yes, sir.

Q Did you see the elevator raised at all after the accident on the same day? A No, sir.

Q Did you investigate or personally examine the condition of the apparatus above which raises and lowers the elevator? A No, sir. 20

*Mr. Bishop.* That is all.

*Cross examination by Mr. Walsh.*

Q Mr. Tingley, you say you are employed by the Summit & Madison Ice Company? A Yes, sir.

Q Also stockholder and one of the directors? Aren't you?

*Mr. Bishop.* I object to that. 30

*The Court.* Shows the witness' interest; I will allow it.

Q Is that right? A Yes, sir.

Q You just remembered that? A What say?

Q I withdraw that. What is your position there? A Foreman.

Q Foreman. Beside being a director and stockholder? A Yes, sir. 40

*Daniel C. Tingley, cross.*

Q How high is that shaft? A What do you mean; as high as we lift it?

Q As high as you lift it? A About twelve feet, six inches.

Q Mr. Bates said nineteen feet? A That is uppermost. It won't go that far. The elevator is twelve feet high.

Q Twelve feet six inches? A Yes.

Q Is the ice on the store house room on a level with the bottom of the shaft? A Yes, sir.

Q From what level were you taking the ice on that day? A I think it was off the sixth layer.

Q You think it was off the sixth layer? A Yes, sir.

Q And how high is each layer? A Each occupies—

Q Three feet? A No, sir; ice is twenty-two inches.

Q Twenty-two inches? A Yes, sir.

Q And you were taking ice from the sixth layer? A Yes, sir.

Q So when you say the elevator was six feet up you mean that was half way up to where it was, is that it? A No, sir; not quite. A little bit more than half way up.

Q Will you say the sixth layer of ice, twenty-two inches in each case was only six feet from the bottom of the shaft? A No, sir.

Q How is it you happened to stop so far below the sixth layer? A Came down to turn the curtain, as we always do.

Q You stopped there? A Yes, sir.

Q You had been up higher? A Yes, sir.

Q Who spread the curtain? A Mr. Duffy and myself.

Q You had your back turned to Mr. Bates, didn't you, facing the inside of the elevator

*Daniel C. Tingley, cross.*

shaft? A We both stood the same way facing the inside. (Answer repeated by the stenographer.)

Q You both stood the same way? A Yes, sir; practically side by side.

Q You weren't looking at what Bates was doing? A Standing side by side of him. 10

Q Side by side? A Nearly side by side. So far apart (indicating).

Q Wasn't the ice between you and Bates? A No, sir.

Q What were you holding on to? A Nothing.

Q Nothing at all? And you were standing watching Bates? A Standing as we were always standing going down. 20

Q You weren't paying any attention what rope he was pulling? A Same as he always pulled. 20

Q Did you watch him that day? A No more than any other day.

Q Who was running the elevator. You didn't watch him? A Surely did look at who is running the elevator when you ride on it.

Q What did you see Bates do with the rope? A Took hold of it and released it same as he always did. 30

Q Did he put his hand on any current rope or any other rope? A No, sir. Never put it on when we were coming down.

Q When he put his hand on that one rope the same as he always did, the elevator dropped to the bottom, is that right? A Not the first time.

Q Not the first time, but the second time it did? A Yes, sir. 40

*Daniel C. Tingley, cross.*

Q Was that the same as it always does? A No, sir.

Q You had known it to drop before, hadn't you? A No, sir.

Q That elevator never dropped before, Mr. Tingley? A No, sir.

10

*Mr. Bishop.* I object to this.

A Not to my knowledge.

*Mr. Walsh.* I want to show that it often dropped.

*The Court.* Go on; do not argue. He answered the question.

Q What injuries did you suffer that time? A Broken ankle.

20 Q And nobody got you out away from the elevator, you say? A No, sir.

Q Nobody raised the elevator? A No, sir.

Q And you weren't hurt, you didn't think? A Well, I didn't feel as if I was hurt so badly until after I got up.

Q After you got up you walked down the street and went to the hospital? A No, sir.

Q Where did you go? How far did you go? A About as far as from here to you.

30

*The Court.* What difference would that make? Let us get right to the issue in this case.

*Mr. Walsh.* That is all.

*Mr. Bishop.* That is all, Mr. Tingley.

*Guy Bates, direct.*

GUY BATES, produced as a witness, on behalf of the defendant, being duly sworn on his oath, according to law, saith:

*Direct examination by Mr. Bishop.*

Q What is your profession, Mr. Bates? A Refrigerating engineer; mechanical refrigerating. 10

Q Are you related to the defendant in this case? A Yes, sir.

Q Are you familiar with the plant of the Summit & Madison Ice Company in Summit? A Quite.

Q Are you familiar with the elevator? A I am.

Q Sure. Do you know by whom it was built? A I do. 20

Q By whom? A Sedgwick Elevator Company.

Q Who erected it? A Well, it was erected by a company that is not now in existence. That is to say the men who furnished the mechanical labor have ceased to do that sort of work; but it was done under my supervision.

Q How long was it in use prior to this accident? A Several years. I don't quite recall how long. It was several years. 30

Q What was the manner in which the elevator was operated? A The shaft above the elevator; that is, above the shaft that carries the car is on a drum.

Q By the shaft you mean the shaft here? A The elevator well, we will call it.

Q Yes. A The elevator well has directly over the top a floor; a solid floor supported on heavy timbers. On these timbers is carried a frame made by the Sedgwick Elevator Company, 40

*Guy Bates, direct.*

and shipped assembled. One of the shafts on which the power to raise the elevator is applied is extended beyond, and is coupled to the driving motor by means of a clutch, which can be released in very much the same manner as an automobile clutch, except that you don't put your  
 10 foot on it and at this particular time it was operated by a rope instead of a foot peddle.

Q Operated by a rope which was hung from the floor of the car? A The rope extended down all the way down the length of the elevator well; it was operated because it was more convenient this way and the only way, in fact.

Q Is that the usual way of operating elevators? A That is the usual way of operating this type of elevator.

20 Q Was there a brake used in connection with this elevator? A There was a brake on the same shaft that the driving power was applied to.

Q Brake on the power shaft? A Brake on the power shaft.

30 Q Was the rope which raised and lowered the elevator wound up on the power shaft? A The drum on which the elevator cable was wound is connected to the power shaft or driving shaft by a gear wheel, on the shaft. There is a large gear wheel on the drum shaft and a small gear wheel on the driving shaft. The driving shaft extends to the shaft on which the power from the motor is applied.

Q On which of the two shafts; the drum shaft or the power shaft is the brake applied? A The brake is applied on the power shaft.

40 Q Is it customary or necessary in the raising or rather—

*Guy Bates, cross.*

*Mr. Walsh.* I object to this unless I have a chance to examine Mr. Bates as an expert. I would like to cross examine him as to his expertness.

*Special cross examination by Mr. Walsh.*

Q You say you are a mechanical engineer, Mr. Bates? A That is the way I have been earning my living, by the practice of mechanical engineering; refrigerating. 10

Q That is of how long standing? A About eleven years.

Q During that time—how long have you been employed by the Summit & Madison Ice Company? A I don't recall that exactly.

Q Well, I mean how long have you practiced mechanical engineering? A Since 1906. 20

Q Did you commence—where were you employed in 1906? A All over the United States.

Q All over the United States? A Yes.

Q All over the United States? A Yes.

Q And for how long? A Well, I did various sorts of work. My work was designing cold storage warehouses; and superintending the erection of refrigerating plants and machinery in those plants.

Q All over the United States? A Not in every single town in the United States, but in various parts of the United States. 30

Q How long have you been employed for a salary by your father?

*Mr. Bishop.* I object to that.

A I do the same thing now I did then.

Q How long? A I don't recall how many years. Perhaps five years. I could not be certain. I don't remember the day we had a definite arrangement. 40

*Guy Bates, cross.*

Q You wouldn't say, Mr. Bates, for the last five years you have been practicing mechanical and refrigerating engineering? A I do designing at the present time.

Q For your father? A For anybody who desires to have me do it. And there are a  
10 number of people desire me to do it.

Q Have you any office anywheres? A I use the office in the Summit and Madison Ice Company.

Q How many plants have you erected? A I don't recall. I should say ten or twelve.

Q Ten or twelve. From 1906 up to five years ago you erected ten or twelve refrigerating plants? A Yes.

Q In how many of those were there elevators? A There were three of them.  
20

Q In three of them there were elevators? And that has been your experience in elevator construction? A On this type of elevator construction. They weren't all the same type of elevator.

Q Any electric? A There was rarely two plants constructed with the same type of machinery for various reasons.

Q What I want to get at, is I want you to tell me what is your experience in construction? A I don't pretend to be an elevator constructor. When we want an elevator I go to the person who designs and builds elevators and ask him how much he wants for the elevator and ask him.  
30

Q You haven't considered yourself an expert on elevator construction, yes or no? A In our profession we don't try to design everything. We admit there are men who are very  
40 much more capable of handling some things than

*Guy Bates, direct.*

we are. And we get machinery from them with their specifications as to what value it is, and put it in.

Q And you have never drawn specifications for any electrical elevator? A I never had.

Q You never had?

*Mr. Walsh.* That is all. It doesn't seem to me the witness is qualified as an expert on elevator construction. 10

*Direct examination (resumed) by Mr. Bishop.*

Q Are you familiar with the manner in which elevators of this type are operated? A Yes, sir.

Q Have you made a study of such elevators? A Yes, sir.

Q Have you examined any other elevators of the same type as this one? A That is the same type elevator used in a great many places for raising and lowering automobiles in garages; same type, too. 20

*The Court.* I will admit it, Mr. Bishop, and the weight will be for the jury.

Q What is the proper method of lowering an elevator of this type when it is loaded? A An elevator of this type you release the clutch from the power shaft. 30

Q That is, throw off the power? A Throw off the power and allow gravity to carry the elevator down. Use the brakes to govern the speed at which the car travels.

Q In other words, the car is not lowered by the application of power? A Gravity is the thing that lowers the car.

Q Did you examine the construction of the driving machinery of this elevator after the accident? 40

*Guy Bates, direct.*

*Mr. Walsh.* I object, if your Honor please to after.

*The Court.* Why not?

10 *Mr. Walsh.* After; the condition of the elevator after this accident was very much wrecked, like an automobile going into a tree. Somebody might examine it and find it all out of order. When this elevator hit the bottom of this shaft I imagine everything was twisted.

*Mr. Bishop.* I will refer to the machinery at the top.

*The Court.* It might be and might not. I will allow the question.

*Mr. Walsh.* Allow me an exception.

20 *The Court.* Yes; I will allow you an exception.

(Question repeated by the stenographer.)

A I did.

30 Q How soon after? A Why, I think it was about an hour. I am not absolutely certain as to the exact number of minutes; it was probably about an hour. I took Mr. Tingley to the hospital in my automobile and when I came back I went to the shaft to see what happened, because I didn't know.

Q Did anyone go with you? A No.

Q Did you make any repairs or changes at that time or did you come downstairs and leave the condition as it happened? A I saw what happened and I came down; I had no tools.

Q You left the condition as you found it; what condition did you find? A The pinion at this driving gear had gotten out of mesh with the gear on the hoisting drum.

40 Q That would prevent the application of any power on the whole drum to raise? A

*Guy Bates, direct.*

That would prevent any action of the brake drum whatever; and you couldn't retard or accelerate the motion of that drum.

Q You could neither raise or lower the elevator with that drum? A No. Those two shafts were entirely disconnected.

*Mr. Walsh.* I object to this on the ground it is leading. 10

*The Court.* It was a little leading.

Q Could you use—what was the effect of the condition you found upon the brake? A Upon the brake?

Q Yes. A The brake could not be operated. This brake would not have any effect on the hoisting drum. The brake drum is on the driving shaft, and the driving shaft was disconnected from the hoisting drum because the gear had travelled along the driving shaft to a point where it had become disengaged from the gear on the drum, that was, the hoisting drum. 20

*The Court.* What was the cause of the gears disengaging?

A The gears travel along the shaft; that is impossible to tell. 30

*The Court.* What was the cause of the gears disengaging?

A What caused that on the shaft it is impossible to tell. It just happened, that's all.

Q What effect would the condition have on the application of power? A The two shafts were entirely independent of one another. Whatever you did to the driving shaft would have nothing to do with the driven shaft, which was the hoisting drum shaft. 40

*Guy Bates, cross.*

*The Court.* Mr. Bishop wants to know what would happen if you put power on?

A Nothing would happen; it would revolve.

Q Would the handling or use of ropes by which the car is customarily controlled, have any effect on the car at all? A None whatever.

10

*Cross examination by Mr. Walsh.*

Q You mean to say, Mr. Bates, if you applied—the current rope was there? A The current rope was there.

Q If your current rope was pulled, which turned the power on full, wouldn't that reach the hoist? A Only thing would happen is the driving shaft would revolve.

Q Wouldn't that raise the hoist? A No.

20

Q Wouldn't have enough pull; the motor would start but nothing would happen? A The motor would start and the driving shaft would revolve, but nothing further would happen.

Q Will you tell us why that was? A I have explained that.

Q You have explained about the brake being disconnected. A The driving shaft contains a small gear.

30

*The Court.* The gears were out of mesh?

A Yes, sir; the gears were out of mesh.

Q When had you examined it before this time, Mr. Bates? A I don't remember.

Q Months— A Might have been a month; might have been a week.

Q You don't remember at all anything about it? A I go up there frequently and look the thing over.

Q After accidents? A Before hand; I do it right straight along.

40

*Guy Bates, cross.*

*By the Court.*

Q Would the sudden application of the brake if the car was falling be apt to throw these gears out of mesh? A No, sir; it isn't apt to.

Q It isn't what? A It isn't likely to.

Q Could it be done that way? A I doubt it; I seriously doubt it. 10

*By Mr. Walsh.*

Q You mean to say if that elevator was coming down loaded with nine hundred pounds of ice and three men of an average weight of about one hundred and forty pounds; with that weight, coming down by gravity, that the sudden application of the brake wouldn't throw it out up above? A I know it wouldn't, because after the accident I wondered if it would and I tried to find out and it wouldn't do it. I tried letting the elevator go; I raised the elevator up high with a load on it and let it come down rapidly and jammed on the brake rapidly and tried to do that; it would not. 20

Q That was after you repaired the machinery? A There wasn't any repairs; simply slide the gears back again and put in the key.

Q Wasn't there a pin holding that gear in mesh? A There was a key in the shaft. 30

Q And yet it slipped over this? A That key is forward to the shaft and upward to the axis of the driving pinion.

Q You say you bought this elevator from the Sedgwick Elevator Company? A I did.

Q Several years before? A Yes, sir.

Q How many years? A I don't recall how many.

Q Second-hand then, wasn't it? 40

*Guy Bates, cross.*

*Mr. Bishop.* I object to that if the Court please.

*The Court.* It shows the condition of the machinery they were operating.

10 *Mr. Bishop.* This is not a suit against a master.

*The Court.* I understand that, but the man who was running it might have had cognizance of its condition. Might have had a difference in its operation. You may answer the question

*Mr. Bishop.* Exception. Exception allowed, signed and sealed accordingly.

A It was a brand new elevator.

20

*Judge.*

*Mr. Walsh.* That is all.

Q You are a stockholder and officer of the ice company?

*Mr. Bishop.* I object to this on the ground it is irrelevant, because this action is not against the ice company.

*Mr. Walsh.* It shows interest.

30 *The Court.* I will allow the question.

*Mr. Bishop.* I pray an exception.

Exception allowed, signed and sealed accordingly.

*Judge.*

A Yes.

Q And director? A Yes, sir.

40 Q Yes? A Yes.

*George W. Hopkins, direct.*

*Mr. Walsh.* That is all.

*Mr. Bishop.* That is all.

GEORGE W. HOPKINS, produced as a witness, on behalf of the defendant, being duly sworn on his oath, according to law, saith:

*Direct examination by Mr. Bishop.*

10

Q Mr. Hopkins, where do you live? A Summit, New Jersey.

Q Where are you employed? A Summit and Madison Ice Company.

Q How long have you been in their employ? A Ten years last September.

Q In what capacity are you employed there? A Chief engineer.

Q Are you familiar with the construction of the elevator? A Yes, sir.

20

Q Which is involved in this action? A Yes, sir.

Q Upon the day of the accident were you notified an accident had happened? A No, it wasn't until I seen him take Mr. Tingley by the engine room.

Q When you saw him carrying him out? A When I saw him carrying him out; that's all.

30

Q Then you knew there was an accident happened? A Then I knew there was an accident happened.

Q Did you go out and make an inspection of the elevator? A Yes, sir.

Q When was that? A About ten or fifteen minutes after it happened.

Q What condition did you find? A I found the key out of the main shaft that held the cogs in place.

40

*George W. Hopkins, direct.*

Q What was the effect of the fact that key was out?

*Mr. Walsh.* I object if your Honor please, unless Mr. Hopkins can qualify as an expert.

10 *Mr. Bishop.* I want to show by Mr. Hopkins the physical condition caused by this—

*Mr. Walsh.* I don't think Mr. Hopkins knows, with all due respect to him.

*Mr. Bishop.* He said he went up there and saw.

*Mr. Walsh.* He saw a pin out.

*Mr. Bishop.* I asked him what is the effect of that.

*By the Court.*

20 Q What do you know about this elevator, Mr. Hopkins? They both seem to be afraid to ask you? A Well, the key came out of the main shaft.

Q What do you know about the elevator and its operation, and its machinery? Have you any experience in that direction? A I have run it ever since it has been there.

Q What do you know about the machinery part? A I understand machinery same as—

30 Q What experience have you had with that machinery? A None. Only that one elevator.

Q What has been your experience with this elevator? A I have kept it in repair since it has been there; installed the dynamo.

*The Court.* I will allow the question.

*By Mr. Bishop.*

40 Q What was the effect of that fact? A The fact of the key being out would leave the jack shaft free.

*George W. Hopkins, direct.*

Q That would leave the drum shaft how? A  
Would have no control over the elevator.

Q The handling of the ropes from the car  
of the elevator would not have any effect on  
the machinery? A No, sir.

Q It would be impossible to apply power  
or brake— 10

*Mr. Walsh.* I object. That is leading.

Q Would it be possible to apply power? A  
No, sir.

Q Would it be possible to apply the power  
from the car?

*Mr. Walsh.* I object, if your Honor  
please, on the ground it is leading.

A No, sir. 20

*The Court.* I will allow it.

Q Would it be possible to apply the brake?  
A No, sir.

Q Did you put the key back into place? A  
Yes, sir.

Q When? A About fifteen minutes or  
twenty minutes after it happened, about.

Q After that was it possible to operate the  
elevator as before? A Yes, sir; just the same  
as before. 30

Q Had you operated the elevator both before  
and after the accident? A Yes, sir.

Q Was it ever customary to apply any  
power while lowering the elevator? A No, sir.  
The elevator came down by gravity. The power  
is not reversible on it. She only travels one way  
with the power.

*Mr. Bishop.* That is all. 40

*George W. Hopkins, cross.*

*Cross examination by Mr. Walsh.*

Q What time was it you went and examined this, Mr. Hopkins? A About fifteen or twenty minutes after.

10 Q After Mr. Tingley had been taken away? A As soon as he took him by the engine room I went in the office to see what had happened. I didn't know anybody was hurt only him.

Q You are chief engineer there, are you not? A Yes, sir.

Q You are not an electrical engineer, are you? A No.

Q You are a locomotive engineer? A My license called for chief engineer, Summit and Madison Ice Company.

20 Q That is all you know about it; did you ever have charge of the operation of any elevator? A I have, that one; yes, sir.

Q I thought Mr. Guy Bates had charge of the mechanical engineering department? A You said operation.

Q I said operation? A Yes, sir.

Q You had charge of that? A Yes, sir.

30 Q In other words, Mr. Bates was into your line of business that day when he was operating it? A Yes, sir.

Q The older Mr. Bates? A Yes, sir.

Q Mr. Bates often ran this elevator? A As part of his work.

Q As part of his work? A Yes, sir.

Q And part of yours? And part of mine; yes, sir.

40 Q And you remember the elevator dropping before, don't you? A No, I can't remember it dropping before.

*George W. Hopkins, cross.*

Q Never dropped before this one date, while Mr. Bates was operating it? A Not while Mr. Bates was operating it; no, sir.

Q Did it ever drop when you were operating it? A No, sir.

Q When anybody else was operating it? A Not as I know of. 10

Q Not as you know of? A No, sir.

Q You are on duty at the plant every day? A Yes, sir.

Q Do you remember putting a new floor—do you remember—do you remember one occasion prior to this accident on which you and Duffy put a new floor on the elevator after the elder Mr. Bates had dropped it? A No, I don't.

Q Did you ever put a new floor on that elevator? A Yes, sir; I helped to put it in. 20

Q And Duffy helped you at one time? A Not to my recollection.

Q Not to your recollection? A Never.

Q Do you ever remember putting a new floor in that elevator after Mr. Bates dropped it? A No, sir.

Q You can't remember that? A No, sir.

Q Will you say you didn't do it? A Yes, sir; I will say I didn't do it. 30

Q Say you didn't do it? A Yes, sir.

Q How long before this accident had you looked at this machinery which operated the elevator? A Three days.

Q Three days before? A Yes, sir.

Q This was the only elevator you ever saw; ever had anything to do with? A It is the only one I ever run; yes.

Q The only one you ever run. Now, you say this descended entirely by gravity? A Yes, sir. 40

*Motion for direction of Verdict.*

Q If, in operating that, while you were operating it, if the brake rope had given way, what would you have done? A Brake rope?

Q Yes? A As long as all the rest of the machinery was all right I would let it down with power.

10 Q You would let it down with the power? A Yes.

*Mr. Walsh.* That is all.

*Re-direct examination by Mr. Bishop.*

Q Mr. Hopkins, when you examined this elevator machinery three days before the accident what condition did you find? A Perfect condition.

Q Had you ever put a new floor in the elevator car or helped to do that? A Yes, sir.

20 Q How often? A Well, it used to get wore out quite often. Have to renew it about once a year. Dragging ice off and on wears the floor out.

Q How long before the accident? A Sometimes pulling it off the second layer the men will pull it down and bust the floor and we had to put a new floor in.

30 *The Court.* Defense rests. Has the plaintiff anything further?

*Mr. Walsh.* That is all.

DEFENSE RESTS.

**Motion for Direction of Verdict.**

40 *Mr. Bishop.* If the Court please, I move for a direction of verdict in this case in favor of the defendant. The suit is not by a servant against a master, but by one of two servants against his fellow ser-

*Motion for direction of Verdict.*

vant. Two men were engaged in common employment, working for the same master, and under the same mutual obligations which arise in such a case. The law does not require of a servant for a fellow servant, the same duty which it requires of a master toward the servant. It does not require him to provide safe devices, to provide safe tools to use; none of these duties arise from one servant to the other. All it requires is the exercising of such care as a reasonably prudent man would use under the same circumstances. The evidence all shows when this car started to operate this day it was apparently in perfect condition. There was nothing to indicate any defects. As a matter of fact, it had been examined by a fellow servant a few days before and it worked perfectly. It was taken up on that trip to the top of the shaft and came down in a perfect manner. There seems to be no dispute it was controlled by gravity.

*The Court.* Did not the last witness say it was—

*Mr. Bishop.* It would have been possible, yes; but one other witness testified and that was Mr. Bates, the engineer. He stated the customary method of operating these elevators—and they are elevators of a common type, in use in garages and ice houses—and the customary method of lowering them is by gravity with the brake used to control the speed of the car. Now, the testimony shows that on this particular occasion when the car started on its final descent, that it dropped, and the only con-

*Motion for direction of Verdict.*

10 flict in the testimony in the case is what caused it to drop. Mr. Duffy said it was caused by the fact Mr. Bates took off the brakes without applying the power. That, by uncontradicted testimony, is the customary method. That is not a negligent act; it is the usual and customary method of lowering this type of elevator, when loaded.

*The Court.* Suppose that is true; isn't it still for the jury to say whether it was going down by gravity held by the brake, and whether Mr. Bates exercised proper care in applying the brake?

*Mr. Bishop.* There is no testimony that he applied the brake in any other but the customary manner.

20 *The Court.* Except the fact the elevator went down.

*Mr. Bishop.* It is contradicted by the plaintiff's own testimony that he put on the brake and didn't put power on. And Mr. Bates said he put it on gradually.

30 *The Court.* There was two ways in which the thing could have happened, as I gather it. One is by the gear slipping, which would have destroyed the usefulness of any method; and the other way, by Mr. Bates letting go of his brake so that the pressure on the drum would be released and then the thing would go down. Isn't it for the jury to say which method was how the thing happened?

*Mr. Bishop.* Not under the evidence in this case. All the evidence, including that of the plaintiff, as well as the witnesses of the defendant said Mr. Bates did not throw

*Motion for direction of Verdict.*

the brake off entirely. He did not remove his hand from the brake altogether.

*The Court.* That is so. But the pressure might be released.

*Mr. Bishop.* The uncontradicted testimony is the pressure was not released. The car began descending and he attempted to check its fall by applying the brake. And he saw the car didn't respond to the brake and he attempted to put on more power on the brake. The thing happened so quickly he didn't have time to stop and think what to do. He acted as a reasonably prudent man would have done. He tried to apply the brake, and the brakes did not work, for some reason, up above; had gotten out of alignment. The key had slipped out. There is no evidence why that happened. But there is evidence it did not happen through any fault of Mr. Bates.

*The Court.* Of course, if the jury find it was due to defective machinery, Mr. Bates can't be held.

*Mr. Bishop.* It seems to me the entire evidence in this case Mr. Bates acted as a reasonably prudent man would have acted in the circumstances. There isn't any evidence to indicate he did anything other than a reasonably prudent man would have done. There isn't any suggestion he jerked the brake wide open, and then tried to stop the car suddenly by a sudden applying of the brake. Even if he had the testimony is that would not have caused the gears to get out of mesh. The testimony is he did just exactly what is the customary method in elevators of this kind.

*Motion for direction of Verdict.*

*The Court.* Except it could be found by the act itself. Here is an elevator being brought down by gravity. If a man lets go of the brake he will come down hard—

*Mr. Bishop.* He didn't let go of the brake.

10 *The Court.* The fact it came down is a fact from which the jury might say he did let go.

*Mr. Bishop.* In the presence—

*The Court.* He was hanging on the elevator.

*Mr. Bishop.* Yes. But the plaintiff's own testimony is he didn't let go.

20 *The Court.* Of the rope. I think there is enough to go to the jury. It is very slight; but it is enough.

*Mr. Bishop.* I pray an exception.

*The Court.* Yes, I will allow you an exception.

Exception allowed, signed and sealed accordingly.

Mr. Bishop sums up the case for the defendant.

30 Mr. Walsh sums up the case for the plaintiff.

*Charge to Jury.***Charge to Jury.**

## UNION COUNTY CIRCUIT COURT.

(January Term, 1917.)

JOSEPH DUFFY,

*vs.*

WILLIAM C. BATES,

*Action at  
Law.*

10

*No. 52 in the  
List.*

Court's charge to the Jury, delivered by Hon. GEORGE S. SILZER, Circuit Court Judge, to the Jury on January thirty-first, A. D. 1917, in the Union County Court House, City of Elizabeth, New Jersey.

*The Court.* Gentlemen of the Jury: In this case, Mr. Duffy, the plaintiff, was working for the Summit Ice Company, and on the twenty-ninth of May, 1914, was descending in an elevator which was being operated by the defendant, Mr. Bates. The elevator fell, Mr. Duffy was injured and now sues Mr. Bates for damages.

I think I ought to call your attention to the fact this is not a case of master and servant, or a case of a passenger in an ordinary elevator. For instance, if you took an elevator in a public building and you became a passenger there, it would become the duty of the people who were conducting that elevator to use certain precautions for your safety. And it is also true when a man goes to labor for another who is his master—as in this case the Summit Ice Company—the law throws certain protection about that man, and requires certain duties from the master, for instance, to exercise reasonable care to provide a safe place to work; a reasonable inspection of the machinery that is being used, and

20

30

40

*Charge to Jury.*

things of that kind, but that is not the case here, gentlemen.

10 The sole question you are to try here is the case set out in the complaint, namely, if Mr. Bates, who was operating the car, operated it negligently and carelessly; and that is the whole question. So that is the question for you to take up, gentlemen, when you retire to your jury room. Determine first, how did this accident happen. If it happened in any way except by the negligent operation of the car by Mr. Bates then the plaintiff cannot recover, because the whole basis of the suit is the negligent operation on the part of Mr. Bates who was on the car. For instance, if the machinery itself was out of order, the company might be responsible, but  
20 that is not what we are trying. If the machinery itself was out of order and there was no negligence on the part of Mr. Bates, then there cannot be any recovery.

You see, it gets right straight down to the question: Did Mr. Bates, in the operation of this car, use reasonable care in its management? Did he exercise the care which a reasonably prudent man would in running that elevator? And that gets you to the question of fact: if he did  
30 exercise the care which a reasonably prudent man would under the circumstances, in operating that car, then there can be no recovery.

On the other hand, if you find he failed to exercise that care; that he did not do, in the operation of that car, what a reasonably prudent man would in operating it, then of course he would be responsible and there is where the divergence of testimony arises. The plaintiff claims, in the operation of the car, Mr. Bates  
40 did not exercise the care which he ought; that if

*Charge to Jury.*

he had thrown on the current the accident would not have happened. That, if, perhaps, he had held on and put more pressure on the brake, the elevator would not have come down.

The defendant, on the other hand, said he exercised all the care he could. He did every thing that was necessary in the operation, but that there was something wrong with the machinery; the gears not being in mesh, with the result that the thing came down. 10

It will be for you gentlemen to examine and weigh the evidence and determine where the truth lies, and how this accident happened; and then determine whether Mr. Bates was negligent. If you find he was not, then your verdict is no cause of action. If you find he was negligent and failed to exercise the care he should then you come to the question of damages. 20

The plaintiff, in this case, sues (as set out in his declaration) for damages of one hundred dollars for medical attention and five hundred dollars for the injuries. The elements, gentlemen, which may be considered in a case of this kind in considering the question of damages are first, personal injuries. You take the injury sustained by the plaintiff; the pain and suffering which he suffered; the effect on the health of the sufferer, according to its degree and probable duration; and the testimony here seems to be that this is a permanent injury. There is a permanent impairment; the man's leg is shortened and there is some testimony from which you may infer that he may not be able to earn as much at some time in the future as he did at the time he was injured. 30

And also another element is the pecuniary loss which he has sustained and which he is likely to 40

*Charge to Jury.*

and probably will sustain in the future by reason of the injury, and those losses in the past, are the wages which he claims he lost by reason of this injury.

So take the case, gentlemen. It has taken some little time to try it, but it is really within a very  
 10 narrow compass when you come to consider it. Determine first whether Mr. Bates was negligent. If he was not, then your verdict is no cause of action. If he was, then you take up the question of damages, and award such sum as you think proper under the evidence.

I have certain requests to charge which I think I have covered for Mr. Bishop. Are there any of these I have not charged, Mr. Bishop?  
 (no response).

20

30

40

*Rule for Judgment.*

**Rule for Judgment.**

UNION COUNTY CIRCUIT COURT.

JOSEPH DUFFY,

*Plaintiff-Respondent,*

*vs.*

WILLIAM C. BATES,

*Defendant-Appellant.*

*Action at Law.* 10

*Rule for Judgment.*

This action was tried before Judge George S. Silzer with a jury at the Union County Circuit, on January 30th and 31st, 1917.

The cause having been heard and submitted to the jury, they rendered their verdict as follows: That they find in favor of the plaintiff and against the defendant and assess the plaintiff damages at the sum of sixteen hundred dollars (\$1,600). 20

Whereupon it is adjudged that the plaintiff, Joseph Duffy, recover of the defendant, William C. Bates, the sum of sixteen hundred dollars (\$1,600) and his costs, which are taxed at the sum of fifty-one dollars and thirty-six cents (\$51.36), making in the whole the sum of sixteen hundred and fifty-one dollars and thirty-six cents (\$1,651.36). 30

Judgment entered April 2, 1917.

GEORGE S. SILZER,

*Judge.*

On motion of

JOHN B. WALSH,

*Attorney for Plaintiff.*

40

*Notice of Appeal.*

**Notice of Appeal**

Filed May 1, 1917.

UNION COUNTY CIRCUIT COURT.

10

JOSEPH DUFFY,  
*Plaintiff-Respondent,*

*vs.*

WILLIAM C. BATES,  
*Defendant-Appellant.*

*Action at  
Law.*

*Notice of Ap-  
peal.*

To John B. Walsh, Esq.,  
Attorney of Plaintiff-Respondent,  
746 Springfield Avenue, Summit, N. J.

20

PLEASE TAKE NOTICE that the defendant in the above stated cause hereby appeals from the judgment heretofore entered therein on the 2nd day of April, 1917, and from every part thereof to the New Jersey Court of Errors and Appeals in the last resort in all causes.

Yours respectfully,

30

LINDABURY, DEPUE & FAULKS,  
*Attorneys for Defendant-Appellant.*

Dated April 18, 1917.

Service of the within Notice is hereby acknowledged this 18th day of April, 1917.

JNO. B. WALSH,  
*Attorney of Plaintiff-Respondent.*

40

*Grounds of Appeal.***Grounds of Appeal.**

Filed May 1, 1917.

## UNION COUNTY CIRCUIT COURT.

10

JOSEPH DUFFY, <i>Plaintiff-Respondent,</i> <i>vs.</i> WILLIAM C. BATES, <i>Defendant-Appellant.</i>	}	<i>Action at Law.</i>  <i>Grounds of Appeal.</i>
---	---	--

To the above named plaintiff-respondent.

20

PLEASE TAKE NOTICE that the following are the grounds upon which the defendant-appellant, William C. Bates, appeals from the judgment heretofore entered in the above case on the 2nd day of April, 1917, and from every part thereof.

1. Said judgment is contrary to the law.
2. Said judgment is contrary to the weight of evidence.

3. Said judgment is in favor of the plaintiff, whereas it should have been in favor of the defendant.

30

4 Because the trial court erroneously permitted counsel for plaintiff to ask the plaintiff and plaintiff to answer the question:

“How long were you in the hospital the second time?” notwithstanding due and timely objection was made thereto on behalf of the defendant, to which erroneous ruling an exception was duly noted.

40

*Grounds of Appeal.*

5. Because the trial court erroneously permitted counsel for plaintiff to ask the plaintiff and plaintiff to answer the question:

10 "How long did you remain at the hospital that time?" notwithstanding due and timely objection was made thereto on behalf of the defendant, to which erroneous ruling an exception was duly noted.

6. Because the trial court erroneously permitted counsel for plaintiff to ask the plaintiff and plaintiff to answer the question:

"How long did you remain at home then after that before you went to work?" notwithstanding due and timely objection was made thereto on behalf of the defendant, to which erroneous ruling an exception was duly noted.

20 7. Because the trial court erroneously permitted counsel for plaintiff to ask the plaintiff and plaintiff to answer the question:

(Referring to the amount of plaintiff's doctor's bill for treatment after a second accident.)

"As to the second bill?"

30 notwithstanding due and timely objection was made thereto on behalf of the defendant, to which erroneous ruling an exception was duly noted.

8. Because the court erroneously denied a motion made by counsel for defendant to strike out the following testimony of the plaintiff:

"Q When did Dr. Taylor treat you? A Dr. Taylor treated me after I came home, pus set in the leg.

40 Q After you came home, when? A The last time."

*Grounds of Appeal.*

9. Because the trial court erroneously permitted counsel for the plaintiff to ask the witness, Guy Bates, and the witness to answer the question:

“You are a stockholder and officer of the Ice Company?”

notwithstanding due and timely objection was made thereto on behalf of the defendant, to which ruling an exception was duly noted. 10

10. Because at the close of the case the trial court erroneously refused to direct a verdict in favor of the defendant and against the plaintiff, although thereunto, duly requested by the defendant, to which refusal defendant duly took exception.

11. Because the said judgment is in other respects illegal, improper, irregular and contrary to law. 20

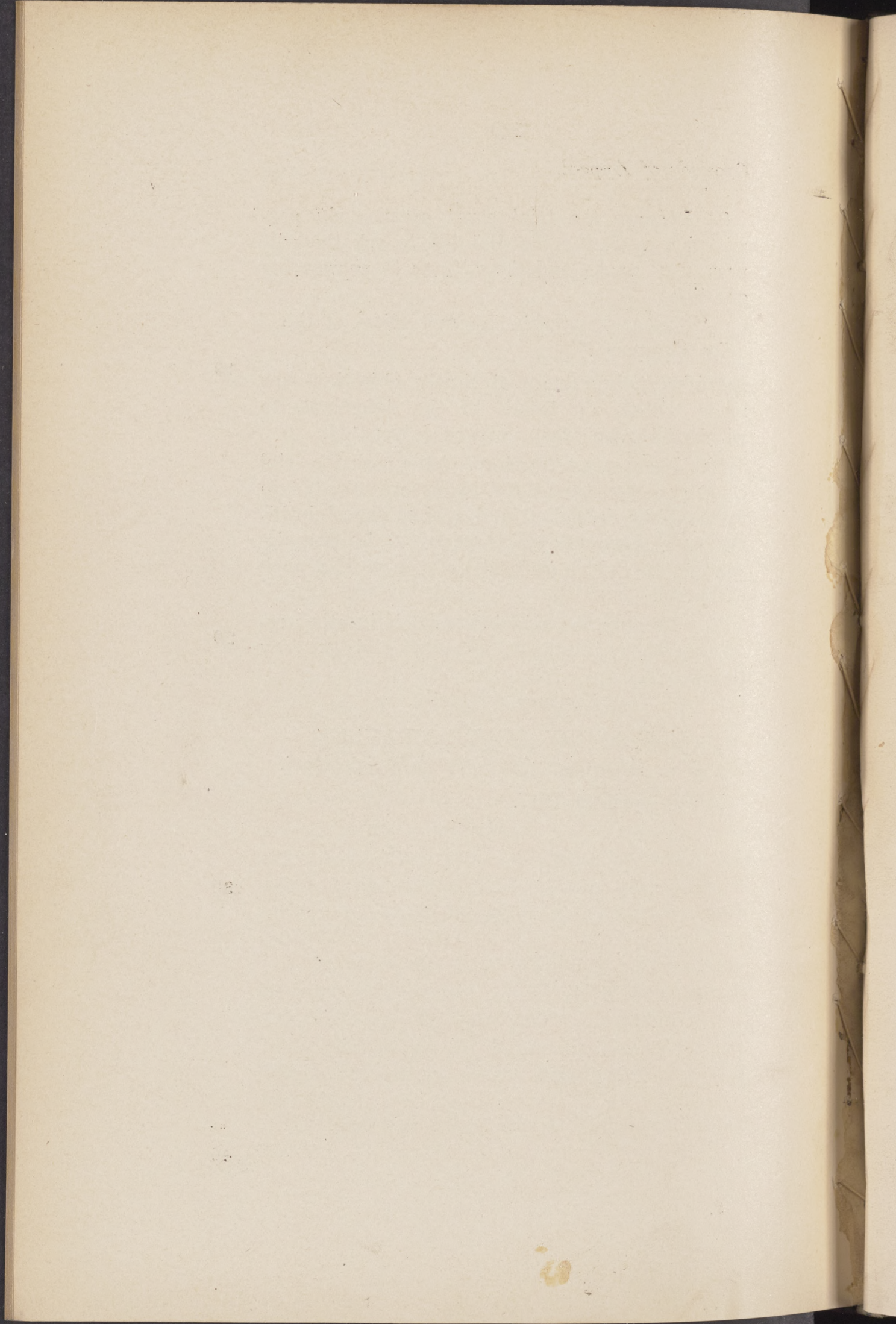
Yours respectfully,

LINDABURY, DEPUE & FAULKS,  
*Attorneys for Defendant-Appellant.*

Dated April 25, 1917.

30

40



## New Jersey Court of Errors and Appeals

JOSEPH DUFFY, <i>Plaintiff-Respondent,</i>	}	<i>Action at Law.</i>
<i>vs.</i>		<i>On Appeal from Union County Cir- cuit Court.</i>
WILLIAM C. BATES, <i>Defendant-Appellant.</i>	}	

### Brief for Defendant-Appellant.

#### I.

#### Statement of the Case.

The respondent Joseph Duffy brought suit against the appellant William C. Bates alleging as a cause of action that while employed as a laborer by the Summit & Madison Ice Company he was directed by appellant, who was the president of the company, to descend from the upper part of the plant to the ground floor upon a freight elevator, which appellant was operating; that while the elevator was descending appellant operated it in so careless and negligent a manner as to allow it to drop to the bottom of the shaft, as a result of which respondent sustained certain injuries. The case was tried at the Union County Circuit before Judge Silzer and a jury and a verdict was returned in favor of the respondent for \$1,600.

The questions involved are whether the appellant was negligent and whether the injuries complained of by respondent were the natural and proximate cause of any act or omission on the part of appellant. The questions are raised by an appeal from the judgment of the Union

County Circuit Court in favor of respondent, and by exceptions taken to the ruling of the Trial Court upon the admission of evidence and the refusal of the Trial Court to direct a verdict in favor of the appellant.

## II.

### Grounds of Appeal.

The grounds of appeal are that the Court erroneously permitted respondent to give certain evidence as to the length of time he was in the hospital after an injury several months subsequent to that referred to in the complaint, how long he remained at home thereafter, how much his doctor's bills were and what his treatment by Dr. Taylor consisted of (Case, p. 18, ll. 22-31; p. 19, ll. 15-22, 29-36; p. 21, ll. 19-40; p. 22, ll. 1-13; p. 113, ll. 32-40; p. 114, ll. 1-40); that the Court erroneously permitted counsel for the respondent to ask the witness Guy Bates whether he was a stockholder and officer of the Summit & Madison Ice Company (p. 96, ll. 23-32; p. 115, ll. 1-12) and because at the close of the case the Trial Court erroneously refused to direct a verdict in favor of the appellant (p. 102, ll. 35-40; pp. 103-106; 115, ll. 13-18), and generally that the judgment was contrary to law and to the weight of evidence and should be in favor of the appellant and against the respondent (p. 113, ll. 25-32).

## III.

**Brief of the Argument.**

## 1. THE APPELLANT WAS NOT NEGLIGENCE.

The appellant was operating an elevator which was used by the men at work and upon which the respondent had been riding prior to the accident and upon which he was at the time it occurred. Both respondent and appellant were in the employ of a common master (p. 12) and under the rule established in *Knutter v. N. Y. & N. J. Telephone Company*, 67 N. J. L. 646, the two are fellow servants. Appellant, therefore, did not owe respondent those duties which a master owes to a servant, but only the duty which one servant owes to another engaged in a common employment. As is held by this Court in *O'Brien v. Traynor*, 69 N. J. L. 239, this duty is merely to take care that his acts shall not do injury to the other. The degree of care required in such a case is that required in any other case, that is, to take such care as an ordinarily prudent man would take under all of the circumstances. As this court said in *Pesin v. Jugovich*, 85 N. J. L. 256 at page 259: "Reasonable care means, not extraordinary care, but such care as an ordinarily prudent person would exercise under the conditions existing at the time he is called upon to act."

Respondent's contention is that the accident resulting in his injuries was caused by the fact that appellant pulled the brake rope of the elevator without applying any power and that his act in doing so was negligent (p. 13, ll. 20-28, 34-38). In this connection it is important to note that respondent had never run the elevator in question (p. 25, ll. 14, 16). Although respondent stated that it was necessary to have

the elevator current turned on in order to lower the car (p. 25, ll. 24-31), he is contradicted as to this by every other witness in the case who testified as to the manner of the operation of the car. The appellant testified that the elevator was lowered by gravity, the speed being controlled by the brake (p. 75, ll. 3-14). Mr. Tingley's testimony is to the same effect (p. 82, ll. 1-8). Guy Bates testified that he was familiar with the manner in which elevators of this type were operated, that he had made a study of them and examined a great many; that the proper method of lowering it when loaded was to release the clutch from the power shaft, throw off the power and allow the car to descend by gravity using the brakes to govern the speed (p. 91, ll. 15-37), and Mr. Hopkins, the engineer, testified that the customary manner of lowering an elevator of this character was to lower it by gravity, the power not being reversed, as the car traveled only one way under power (p. 99, ll. 34-39).

It appears, moreover, by testimony which is not contradicted, that the gear which connected the hoisting drum with the driving shaft had gotten out of mesh (p. 92, ll. 35-40) owing to the slipping out of the key which held it (p. 97, ll. 31-40), and that this left no connection between the driving shaft and the hoisting drum so that the use of the ropes by which the car was ordinarily controlled would have no effect on it whatever (p. 99, ll. 1-25; p. 94, ll. 1-20). This condition was the cause of the dropping of the car. It was not the result of the drop. Mr. Guy Bates testified that in his opinion the sudden application of the brake if the car was falling would not be apt to throw the gears out of mesh (p. 95, ll. 1-10), and that he proved his opinion to be correct by a test (p. 95, ll. 13-25). It is ap-

parent, therefore, that respondent's contention is that appellant was negligent for failing to take a precaution which under the circumstances shown by uncontradicted evidence would have been useless. Omitting a useless precaution does not constitute negligence. Thus, in *Sowles v. Moore*, 26 Atlantic, 629, it was held that where horses become frightened, and run into a hole in ice near a highway, negligently left unguarded, and are drowned, their owner, though free from negligence, cannot recover from the person whose duty it was to place a guard around the hole, if their speed was so great that such guard would not have prevented the casualty.

At the time the accident occurred, appellant was attempting to lower the car in the same manner as he always did (p. 57, ll. 11-40; p. 59, ll. 10-14; p. 68, ll. 34-40; p. 82, ll. 1-23). It cannot be held that appellant was negligent in operating the elevator in the usual and customary manner and in the manner in which Mr. Hopkins, the engineer, and Mr. Guy Bates, a qualified expert, testified was the proper manner of lowering cars of this type (p. 55, ll. 8-20, 33-40; p. 82, ll. 1-8; p. 91, ll. 14-38; p. 99, ll. 34-39).

As this Court said in *Kingsley v. D. L. & W. R. R. Company*, 81 N. J. L. 536, 543, quoting with approval from *Laflin v. Buffalo and Southwestern Railroad Co.*, 106 N. Y. 136,

“As a general rule, when an appliance or machine or structure, not obviously dangerous, has been in daily use for years and had uniformly proved adequate and safe and convenient, its use may be continued without the imputation of culpable imprudence or negligence.”

It would follow that where a mode of operating an appliance was in accordance with the cus-

tomary practice, was not obviously dangerous, and had proved safe for years, it is not negligent to adopt that mode of operation.

Appellant's testimony shows that he acted as a reasonably prudent man would act under the circumstances and in so doing he fulfilled his whole duty toward the respondent. Just before the accident appellant said he stopped the car in the usual manner by putting on the brake; that he did not apply any power to stop it; that there was no power on while it descended previous to making the stop nor while it was stopped; that when he was ready to start he released the brake partially so as to let it down the rest of the way. Suddenly he felt a little jerk and it seemed to be going faster. He had one hand on the brake rope all the time and he immediately put both hands on it and pulled with all his might to apply the brake (p. 57, ll. 11-40; p. 58, ll. 38-40; p. 59, ll. 1-25). Certainly this was the act of a reasonably prudent man. The brake had proved sufficient to hold the car on every previous occasion. The natural and obvious thing to do when the car commenced to descend more rapidly than it should, was just what the appellant did—apply the brake. There is a conflict in the testimony as to whether the application of power when the car commenced to fall would have been beneficial if everything connected with the elevator had been in working order. Mr. Bates says that in his opinion if the brake was not working it would have been more dangerous to have applied the power than to have let the car drop. The application of power would raise the car to the top of the shaft. When it reached the top it is obvious that it would be necessary to take off the power or the continued strain upon the ropes would undoubtedly break them

and cause the car to drop, unless held by the brake. As soon as the power was turned off with the elevator at the top of the shaft, it would drop unless prevented by the brake (p. 74, ll. 18-37). In such a situation appellant cannot be held negligent for not attempting something which might reasonably be regarded as only increasing the danger.

Moreover appellant was acting in an emergency. By reason of the dislocation of the gear he was placed in a situation of imminent danger. He did what any ordinary man would have done under the circumstances and his failure to attempt something else which might have resulted differently cannot be held to be negligence. As this Court said in *Tuttle v. Atlantic City Railroad Company*, 66 N. J. L. 327, at page 330, quoting 1 *Shearm. & R. Negl.* 89:

“If one is placed \* \* \* in such a position that he is compelled to choose instantly, in the face of grave and apparent peril, between two hazards, and he makes such a choice as a person of ordinary prudence placed in such a position might make, the fact that if he had chosen the other hazard he would have escaped injury, is of no importance.”

And in *Staines v. Central Railroad Co.*, 72 N. J. L. 268, the Court said at page 272:

“The reason that persons who are encountered by peril are excused from the exercise of that care for their own safety which would otherwise be expected, is that the peril prevents a calm exercise of judgment.”

If this is true in cases where if the party who is alleged to have been negligent had acted differently the accident would have been avoided,

the case is certainly much stronger where as in this case if he had taken the other alternative suggested the accident would have happened just the same. Appellant's action was, under the circumstances, that of a reasonably careful and prudent man. The natural result of pulling on the brake rope, had everything been in order, would have been to stop the elevator. He had no reason to suppose that anything was out of order. The car had been in use during all the morning preceding the accident and was operating properly (p. 55, ll. 33-40). Just prior to the accident the car had been brought from the top of the shaft to a point about 6 feet from the bottom without the application of any current. The brake stopped it and held it without any difficulty (pp. 56, 57, ll. 1-15).

In *Ulshowski v. Hill*, 61 N. J. L. 375, the Supreme Court held that a person is not legally responsible for an injury which results to another from a lawful act, done by him in a lawful manner, and without any carelessness or negligence on his part, saying at page 377:

“The natural result of pulling the building in the direction in which it was desired that it should fall, would have been to cause the building to fall in that direction; and when the defendant gave orders that this should be done he did what a prudent and careful man would ordinarily have done under similar circumstances. He was not bound to anticipate that the laws of nature might be reversed, and that the building by being pulled in one direction, would possibly fall in another.”

This language applies forcibly to the case at bar. The natural result of pulling the brake would be to stop the elevator. He was not bound

to anticipate that the machinery would be out of order and that pulling the brake would have no effect upon the elevator at all. And if he had known that the elevator was out of order, it is difficult to see what other course he could have pursued, for the elevator was so constructed that the same defect which prevented the brake from working would also have prevented the power from affecting the motion of the elevator.

2. THE ACCIDENT WAS NOT THE NATURAL AND PROXIMATE RESULT OF THE BREACH OF ANY DUTY OWING FROM THE APPELLANT TO THE RESPONDENT.

The elevator in question was built by the Sedgwick Elevator Company (p. 87, l. 21). Its manner of operation was as follows: At the top well in which the elevator traveled is a floor supported by timbers in which is carried a frame made by the Sedgwick Elevator Company, which supports the drum on which the elevator cable was wound. There was another shaft which was known as the driving shaft, which was coupled to the driving motor by means of a clutch. There was a brake which operated upon the driving shaft. There was also a small gear wheel on the driving shaft which connected with a large gear wheel on the drum shaft (p. 87, ll. 32-40; p. 88, ll. 1-40). Immediately after the accident both Guy Bates and Mr. Hopkins went up to the top of the shaft to ascertain the condition of the machinery there. They found that the pinion on the driving gear had gotten out of mesh with the gear on the hoisting drum, owing to the fact that the key was out of place (p. 92, ll. 25-39; p. 97, ll. 31-40). This left the drum shaft free and would prevent the application of any power to the drum and would prevent any action of the brake upon it, so that the motion of the

drum could not be retarded by means of the brake nor accelerated by means of power (p. 92, ll. 40, 41; p. 93, ll. 1-40; p. 98, ll. 38-40; p. 99, ll. 1-23). As Mr. Guy Bates explained it, if the current was turned on the only thing that would happen was that the driving shaft would revolve, which would not raise the hoist because the gears were out of mesh (p. 94, ll. 1-25).

In order to establish the liability of the appellant, it must be shown that the respondent's damages are the natural and proximate effects of appellant's act, and if it is obvious that appellant's act or omission was not the natural and proximate cause thereof, there can be no recovery. The term "natural" imports that the results are such as might reasonably have been foreseen. The term "proximate" indicates that there must be no other culpable and efficient agency intervening between the appellant's dereliction and the loss. *Smith v. Public Service Corporation*, 78 N. J. L. 478, 480, 481.

That the accident was the proximate result of this defective condition and not of any act on the part of the appellant is obvious. That the defective condition was not caused by the appellant's act is shown by the testimony of Guy Bates on page 95 to the effect that the sudden application of the brake, if the car was descending rapidly would not be apt to throw the gears out of mesh. This was demonstrated by the experiment conducted by Mr. Bates after the elevator had been restored to the same condition in which it was prior to the accident (p. 95, ll. 14-30). The appellant was not responsible for this defective condition. He was not the master of the respondent and did not, therefore, owe him the duty of furnishing him with a safe place to work, furnishing him with safe appliances,

causing an inspection to be made of the machinery, etc. Appellant was exposed to the same extent as the respondent to the risks arising from any neglect in these respects. His only duty toward the respondent was to conduct himself in the operation of the elevator as a reasonably prudent man would. This duty, as has been shown, he fully performed. The duties of inspection, furnishing a safe elevator, keeping it in repair, etc., were duties imposed upon the common master. As a matter of fact the evidence shows that due care was exercised in respect to all of these things. The elevator was purchased from a reputable manufacturer, it had been properly installed and had been in satisfactory operation for several years (p. 87, ll. 20-30). It was inspected three days before the accident and found to be in perfect condition (p. 102, ll. 14-18). But even if this had not been the case, the respondent's remedy for injuries sustained by the defective condition of the elevator is against his employer and not against the appellant.

For the reasons above set forth, the refusal of the Trial Court to direct a verdict in favor of the appellant was erroneous.

3. THE ADMISSION BY THE TRIAL COURT OF EVIDENCE AS TO RESPONDENT'S SECOND VISIT TO THE HOSPITAL, THE EFFECTS OF HIS SECOND INJURY AND THE AMOUNT OF THE DOCTOR'S BILLS THEREFOR, WAS PREJUDICIAL ERROR.

As already pointed out the respondent's injuries must be the natural and proximate result of the appellant's acts in order to support a recovery. The original accident happened on

May 29, 1914. On Christmas Eve of that year respondent met with a second accident (pp. 17, 18). The original accident in May was not shown to have been the natural and proximate cause of the injuries sustained in December and therefore the admission of the testimony referred to in the fourth, fifth, sixth, seventh, eighth and ninth grounds of appeal was erroneous constituting error. This error was prejudicial because it gave the jury a basis to award a greater amount of damages than ought properly to have been awarded.

4. THE ADMISSION BY THE COURT OF THE EVIDENCE THAT GUY BATES WAS A DIRECTOR AND STOCKHOLDER IN THE SUMMIT & MADISON ICE COMPANY WAS PREJUDICIAL ERROR.

The Summit & Madison Ice Company was the common master of the respondent and appellant. It was not a party to the suit nor in any wise concerned in it. Whether or not the witness was a stockholder and director in it was irrelevant and should not have been admitted. It could not fail to have an unfavorable effect upon the jury who would consider that to possess any interest in the corporation would prejudice the witness in favor of the appellant who was its president. There was nothing in the Judge's charge to counteract the prejudicial effect of the admission of this testimony.

FOR THE REASONS ABOVE STATED  
THE JUDGMENT OF THE UNION COUNTY  
CIRCUIT COURT SHOULD BE REVERSED.

Respectfully submitted,

LINDABURY, DEPUE & FAULKES,  
*Attorneys for Defendant-Appellant.*

JOHN W. BISHOP, JR.,  
*Of Counsel.*

