

New Jersey Court of Errors and Appeals

FRANK LEENIG,
Plaintiff-Appellant,

against

NEW YORK CENTRAL & HUDSON
RIVER RAILROAD COMPANY,
Defendant-Appellant.

On Appeal from New
Jersey Supreme Court

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APPELLANT'S BRIEF.

This was an action for damages for personal injuries alleged to have been sustained by plaintiff while boarding one of the defendant's ferry boats at the West Shore Railroad Ferry, Weehawken, New Jersey, on December 20, 1912, at about 6:50 A. M., on his way to New York. 20

Plaintiff's state of demand alleged that defendant negligently "*lowered the deck [dock] leading to said boat and the boat toggle running from said dock to the said boat was thereby brought down upon his left foot.*" (Case p. 6.)

The ferry boat was one of those they are always operating there (p. 18, lines 30-33), with latest designed gates—lift gates—double style with jackknife (p. 35, lines 1-12). Equipment similar to other ferries and the harbor and of the best (p. 35, lines 1 to 12). 30

The dock or bridge was about 50 feet long from the main shed to the boat (p. 9, line 26). It was arranged with swinging gates, half way down (p. 9, lines 21-22). There were two gates, one on each 40

side, the gates swinging out (p. 23, lines 20-29). They were made of iron pipe (p. 31, line 35). The dock was raised and lowered according to the tide to keep it level with the deck of the boat (p. 11, lines 10-30).

10 There were two toggels, *one on each side of the vehicle way* (p. 31, lines 20-26). Each toggel was a square log of wood rounded so there were no sharp edges, and lined with iron strips on the top and bottom (p. 18 lines 1-4). They were eight or ten feet long (p. 17, line 40), and about a foot square (p. 11, line 26), and were held to the dock by large staples and lay firm against the archway (p. 32, line 12), twelve or fourteen inches away from the ladies' gangway (p. 39, lines 1 to 10). These toggels lay about half on the dock and extended four or five feet out over the deck of the boat when the boat is fastened to the dock (p. 11, line 24; p. 18, line 13). They extended over the boat to keep the dock and boat on a level (p. 11, lines 28-30; See photograph Exhibits "D1" and
20 "D2," pp. 47 and 48).

Eiseman, for defendant, testified (p. 35, line 4) that the boat, dock and equipment were similar to that of other ferries *and that he knew of none better*. On page 34, line 25, he says that the ferry is operated very much the same as the ferries on the Jersey side from Communipaw to Weehawken.

30 Plaintiff's testimony was to the effect that on the morning in question after the gates on the bridge were opened as usual he walked down the ladies' gangway, and as the deckhand *attempted to raise* the gates he stepped on the boat, and when the deckhand *went to raise* the gates he stepped to one side out of the passenger gangway, to the vehicle gangway, some 12 or 14 inches away, where the toggel was, without looking, and that one of the toggels came down across the toes
40 of his left foot.

The case was tried by the Court and a jury and a verdict was rendered by the jury against the defendant for \$500.

I.

The Supreme Court erred in affirming the refusal of the trial judge to non-suit plaintiff as requested by defendant.

(1) Because *there was no negligence shown on defendant's part.* 10

Plaintiff's testimony was that he had been crossing this particular ferry twice a day for a year and a half (p. 9, line 13), and he "judged he knew a little about it" (p. 9, line 18); that on the morning in question, after the gates on the dock were opened, *and he says that these gates are always opened before the boat is fastened up* (p. 17, line 11), he went down the ladies' or south gangway toward the boat, and that when the deck hand *attempted to raise the gates on the boat,* plaintiff stepped on the boat (p. 10, line 27), and that when the deck hand *went to raise the gates on the boat,* plaintiff stood to one side, so that he would not conflict with the passengers coming off (p. 10, line 39; p. 17, lines 31-35). *As he stepped to one side the toggel came down* (p. 11, lines 1-2). The toggel was in the vehicle way. 20

Plaintiff further testified that he could see where he was going (p. 16, line 26). That he knew the toggel was there, but he didn't notice it (p. 19, lines 1-18). He did not look to see (p. 18, line 38). He just stepped on the boat and thought that the toggel was down already (p. 19, line 20). 30

The plaintiff's testimony did not show in what way, if at all, defendant was negligent, or that on the morning in question when he was injured, the 40

defendant did anything unusual. In fact, plaintiff's whole testimony is to the effect that only the customary things were done by the defendant in operating the ferry.

10 *The toggel was not an obstruction in the passenger way, but was located in the vehicle way, and it was absolutely impossible for plaintiff or any other passenger to be injured by it unless he went to the vehicle way. Plaintiff was not crowded or pushed, but left the passenger way voluntarily, and went over to the vehicle way, where the toggel was. Furthermore, it was not shown that any of defendant's employees knew that plaintiff had placed himself where he could be injured by the toggel. Nor is there anything to show that they ought to have known of it and guarded against injury.*

20 *There was absolutely no testimony in the case to show a negligent handling of the dock or toggel about which plaintiff complained. It should be noted from plaintiff's testimony that he stepped on the boat before the gates on the boat were raised, and that he stepped out of the lady's or south gangway, a place of safety for passengers, and the way provided by the defendant, over to where the toggel was located in the vehicle way, and that had he continued to stay in the lady's gangway, he would have been safe.*

30 A similar case was that of *Duke v. Ferry Co., etc.*, 29 N. Y. Supp. 739, affirmed in Court of Appeals, 145 N. Y. 640, in which the court held the defendant not negligent. The plaintiff had her foot caught between the floor of the deck and the bridge, the deck of the boat being about a foot lower than the bridge, and there being a space of about two inches between the deck and the bridge. The court said:

"There was no evidence that the mode of bringing the boat up to the bridge and fasten-

ing it was not the usual and ordinary way customarily in use for ferry boats, but on the contrary, the evidence shows that the appliances and equipments were the best known. The boat used was like those in common use around New York. The bow was curved to correspond to the curve of the bridge. The outward end of the bridge floats, and can be raised and lowered with the tide. The boat is made fast to the bridge by cables and windlasses. Defendant was not negligent and it was contributory negligence for the plaintiff not to see." 10

In *Loftus v. Union Ferry Co.*, 84 New York, at page 459, Mr. Justice Andrews said:

"The charge of negligence is based upon the alleged insufficiency of the guard on the side of the bridge or float adjoining the passageway for passengers going upon or leaving the ferryboat. It is not claimed that the bridge was not in other respects properly constructed. It did not fill the entire space between the piers. On each side there was a space open to the water from eight to twelve inches between the bridge and adjoining pier. The space was left for the movement of the bridge caused by tides and the impact of the boat entering the slip. The guard was a frame of wood constructed by laying a sill lengthwise of the bridge along the outer line of the passageway, and rising up six or eight inches above the floor of the bridge and spanned by an arched rail. There was a space in the guard six feet wide and twenty-two inches high. The bridge was similar to the bridge at other ferries. Intestate was a child six years old. In some manner not clearly explained the boy fell into or got through the opening in the guard and fell 30 40

into the water and was drowned. The case is governed by *Dougan vs. Champlain Trans. Co.*, 56 N. Y. 1; *Crocheron vs. North Shore Staten Island Ferry Co.*, 56 N. Y. 656; *Cleveland vs. New Jersey Steamboat Co.*, 68 N. Y. 306. We think the exemption of the defendant in this case rests upon the fact which we think clearly appears as an inference from other facts that the company had no reason to apprehend an accident like this, and that the arrangements made were such as experience had, up to that time shown to be safe and suitable, and sufficient to meet the requirements of its duty. The line which separates a pure misadventure resulting in injury for which no one is responsible from accidents creating responsibility by reason of negligence, is often narrow and difficult to be drawn, but we think the casualty in this case is of the former and not of the latter class. It results that defendant was not liable, and judgment absolute ordered for defendant.

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See also:

Paynter v. Traction Co., 67 N. J. L. 619.

Hummer v. Lehigh Valley R. R., 75 N. J. L. 704.

As there is no such thing as negligence at large,

Bien v. Unger, 35 Vr. 596.

Wyckoff v. Birch, 47 Vr. 653.

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we are unable to determine on what theory the trial judge refused the motion to nonsuit which was made by the defendant at the end of plaintiff's case.

(2) *Because plaintiff was guilty of negligence which was the proximate cause of his injury.*

Plaintiff's own testimony was to the effect that

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it was daylight and that he could see where he was going, that he had been crossing this particular ferry twice a day for a year and a half (p. 9, line 13; p. 15, line 36 to p. 16, line 5), and he "judged he knew a little about it" (p. 9, lines 13-19; p. 22, lines 16-18); that when the deck hand went to raise the gates on the boat he stepped to one side to the vehicle way, where the toggel was located, and so placed himself that the toggel came down on his foot. *He testified that he could see where he was going* (p. 196, lines 26 and 27); *that he knew the toggel was there but he didn't notice it* (p. 19, lines 1-18). *He did not look to see* (p. 18, line 38). *He thought the toggel was down already* (p. 19, line 20). *He could not say he attempted to look* (p. 19, lines 3-4). 10

Plaintiff was clearly negligent in not looking where he was going—he had knowledge of the toggel and its operation (p. 11, lines 20-30), and yet he did not attempt to look out for it.

As said by Chief Justice Beasley, in *Dwyer vs. N. Y., L. E. & W. R. R. Co.*, 18 Vr. p. 9. 20

"The point of junction of the ferry boat and its dock must, of necessity, be a point of danger. It is idle to liken the transit over such a place to the passing along an ordinary public thoroughfare, for under ordinary conditions, the latter is a place of safety, while the former must of necessity be liable to be perilous, for its safeness is altogether dependent on the exercise of incessant caution on the part of human agents which, while man remains the imperfect creature that he is, cannot be entirely trustworthy. I can, looking at the reason of things, see no difference between the man who with his eyes closed crosses a railroad track trusting his safety to the fact that the flagman is at his post, and him who, *waiving the use of his* 30 40

eyes, attempts to pass from one of these boats, *concluding* that all is right because the gates had been *opened*. A man's eyes are the sentinels that usually warn him of the approach to danger, and if he chooses to abandon them, it is the general rule of law that he does so at his own cost. . . .

"I think he should have been non-suited."

Reversal and *venire de novo*.

10 In *Fogassi v. N. Y. Central R. R. Co.*, 45 N. Y. Supp. 175, 17 App. Div. 286, decided in 1897, it appeared plaintiff and her husband were passengers on the defendant's ferryboat from New Jersey to New York. The ferryboat was of the usual pattern, rounded to fit a corresponding curve in the bridge at which the boat landed. The boat on this occasion was not brought up close to the bridge, but there was an opening between the boat and the bridge. Across this opening a gang plank without guards or rails was thrown and upon this 20 the passengers passed. Plaintiff saw the plank and started and joined the crowd, and as she says she stepped off the plank and fell in the river. Upon a trial a verdict was rendered for plaintiff, and the judgment entered thereon was reversed by the Appellate Term of the Supreme Court, and the reversal affirmed by the Appellate Division. Mr. Justice Van Brunt said:

30 "It seems to us, as held by the Appellate Term, that the plaintiff was guilty of contributory negligence. *Passengers upon public conveyances are bound to take some care of themselves, and where there is a manifest danger they are required to use reasonable care to avoid it.* . . . In the case at bar plaintiff heard the plank put up. . . . After she joined the crowd, she did not attempt to look for the plank or pay any attention to it, but followed the crowd. . . .

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Knowing thus the situation it was the plain duty of the plaintiff to have used some care in keeping upon the plank and not to go forward heedlessly and without paying the slightest attention to her steps. As but one inference can be drawn from the facts proven upon the trial, the question of contributory negligence was one for the court, and should not have been submitted to the jury. Order of reversal of judgment affirmed."

In *Race v. Union Ferry Co.*, 53 N. Y. State Rep. 10 9, Decided by the N. Y. Court of Appeals, June, 1893, it appeared that plaintiff went to the Fulton St. Ferry, Brooklyn, to take the boat to New York. In passing from the ferry bridge on to the ferryboat she fell down and was injured. Her allegation of negligence was that the boat was eighteen or twenty inches lower than the bridge, and that was the occasion of her fall.

Plaintiff testified:

"I passed down the bridge and I stepped 20
from the bridge to the boat and fell because
the boat was below the bridge. . . .
I didn't know anything about the boat being
lower than the bridge until I fell, because I
couldn't see; *I didn't think to look; I walked
right along as usual; I didn't look; I went
about my business; walked right along.*
. . . Q. I know; but if you had looked
you could have seen, couldn't you? A. Why, 30
I suppose I might if the light had been suf-
ficient, but it was very dim."

Judgment was obtained by plaintiff, and on appeal the Court of Appeals said:

"The ferry company in the management of its business has the right to assume that passengers will take some care of themselves, and if it conducts its business with such care 40

and skill as will make the entrance upon its boats safe for persons of ordinary prudence, it meets the requirements of law. . . . Plaintiff had the burden of showing the defendant was guilty of culpable negligence in permitting the boat on the occasion of this accident to be lower than the bridge and we think she failed. . . . Judgment reversed.

In *Strutt v. Brooklyn & L. B. R. Co.*, 45 N. Y. Supp. 728, 18 App. Div. 134, it appeared that
 10 plaintiff's intestate (a passenger) in walking along the wharf at which defendant's steamboats landed at Rockaway Beach, tripped on a rubber hose and fell receiving injuries which caused his death. The hose 3 or 4 inches in diameter, lay extended on the wharf. . . . On this wharf were mooring posts and the hydrant itself. It is conceded that as to these the deceased was bound to observe and take notice of them. . . .
 20 I know of few, if any, places where the traveler is justified in proceeding wholly unobservant of his surroundings. . . . As he walks along a wharf he must look to see what structures are upon it. . . . It is not necessary that the deceased should pick his step, but it seems clear to us that if he had paid any attention whatever to the place where he was walking he would have discovered the hose and avoided it, or stepped over it. In failing to do so he was guilty of contributory negligence. Judgment for plaintiff re-
 30 versed.

See also:

Gassert v. Central R. R., 45 Vroom 11.

Watson v. Camden R. R., 55 N. J. L. 125.

Dougan v. Trans. Co., 56 N. Y. 1.

40 Plaintiff was also negligent in that he voluntarily left a place of safety and one of the ways provided, namely, the ladies' gangway, and went

over to the vehicle way where the toggel was located, and so invited his injury. There was no legal or reasonable excuse for his leaving the way provided for passengers and where the defendant's employees had a right to expect him to stay, and going to the vehicle way where the defendant's employees would not reasonably be expected to look for passengers. Had plaintiff remained in the ladies' gangway and boarded the boat that way he could not possibly have been injured by the toggel. Instead he went over to the vehicle way where the toggel was and which was the only 10 place he could possibly have been injured by it and where he had no business to be. Plaintiff testified that he stepped to one side to where the toggel was, some 12 or 14 feet from the end of the archway. He stepped in between the round post and the archway (p. 39, lines 3-8; p. 10, lines 39-40). A safe way was provided by defendant and as plaintiff chose to leave it and go over to a place of known danger, he alone is responsible for 20 his injury, and the more so, because he testified that he knew of the toggel and its operation, but "thought it was down already" (p. 19, line 20), yet he stepped over to where the toggel was without in any way looking or guarding his own safety.

The case of *Hoboken Ferry Co. v. Fieszt*, 58 N. J. L. 198, is similar.

Fieszt was a passenger on a ferry boat from New York to Hoboken. Arriving at Hoboken on his way to the street, going over the usual ferry 30 exit, he took the north-side passenger-way, alongside of the team or vehicle way of the exit. This exit was of the ordinary style, widening out from the slip, fan-like, towards the street, with passenger-ways on each side of the tramway. On the occasion referred to, Mr. Feiszt left the northside of the boat and went towards the street, using the north-sideway. He continued on this way for 40

some distance, until he reached a point about twelve or fifteen feet from the street opening, when, according to his testimony, he heard the sound of an on-coming horse and wagon, and, without looking towards the boat to see where the wagon was, he turned quickly to the left and ran as fast as he could for the southside gate. The instant after his sudden change of course, and as he was across the teamway, the on-coming horse and wagon struck him . . . the wagon was loaded and the horse was coming on a fast walk or jog trot. . . . *At the time Mr. Fieszts changed his course he was in a place of safety and if he had continued on his way as he was going, he would have reached the street without hurt. . . .*

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Ferry exists for common use of foot passengers and for teams and vehicles are places of obvious danger, and passage over them suggests and requires a prudent watchfulness against the dangers attendant upon that use. *Watson v. Camden & A. R. R.*, 26 Vr. 125. Opinion of Chancellor, 128.

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The facts in this case show beyond question that Mr. Fieszts was not observant of his surroundings and paid no heed whatever to his personal protection or safety and that his own carelessness was the sole cause of his hurt and of the collision from which it came. The defendant's motion to non-suit should have been granted. There was error in its refusal

In Hopkins v. West Jersey & S. R. Co. (Sup. Ct. Penna.), 73 Atl. 1104.

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Plaintiff entered defendant's ferryboat upon the horse or wagon gangway, which was located on the boat between the passenger apartments. Instead of going into one of the passenger apartments which were open to him, as soon as he boarded the boat he attempted to reach the front of the boat by passing between the teams which were standing in the gangway. When he had

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reached about the middle of the boat he passed to

the right of a cart which was discharging coal and because of obstructions, he concluded to return to the point where he boarded the boat and there enter the passenger apartment. While attempting to pass around the rear of the coal cart, which had started toward shore leaving the coal hole exposed, plaintiff fell into the coal hole and was injured. The trial court directed a non-suit.

Mr. Justice Stewart said:

“We have said with respect to street cars that the proper and assigned place for passengers is inside the car; *that unless he shows* 10
some valid reason to excuse, a passenger is bound to put himself in the appointed place, and if he does not he takes the risk of his location elsewhere. *Thane v. Traction Co.*, 191 Pa. 249; 43 Atl. 136-71, Am. St. Rep. 767. There is no reason why this rule should be limited in its application to railroads. It applies generally. The plaintiff attempted no excuse for pushing his way between the teams occupying the gangway. . . . The occur- 20
rence was in the daytime. The plaintiff says nothing obscured or concealed the hole from his view but the cart. . . . The cart at the time was not over the hole, but at the side, and if plaintiff did not see it, it must have been because in his haste he did not look. The occurrence admits of no other explanation.

Judgment of non-suit affirmed. 30

In *Grabler v. N. Y. & East River Ferry Co.* (Supreme Court), 64 Misc. Rep. (N. Y.) 58.

It appeared that plaintiff started to walk off the ferryboat by the middle or vehicle gangway, after dark, and fell over the gate chain which had not been removed, receiving injuries. The deck-hand had called, “Come on drivers” before

plaintiff had started to leave the boat. The court said:

10 "An ordinarily prudent and careful man will not select a place, in getting off a ferry boat, not intended for passengers, when the regular passageway for pedestrians is easily accessible and ready for present use. The plaintiff voluntarily assumed to go off the boat at a place reserved for the use of horses and wagons and which was not intended for the use of foot passengers. He thereby invited the accident which was caused by his own negligent conduct."

See also:

Seddon v. Bickley, 153 Pa. St. 271.

The Supreme Court erred in affirming, the refusal of the trial judge to non-suit at the close of plaintiff's case, as requested by defendant.

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II.

The Supreme Court erred in affirming the refusal of the trial judge to direct a verdict for defendant at the close of the whole case

30 The defendant's testimony was that the boat was fastened in the usual manner on the morning in question; Eiseman, a man of wide experience, testified that the ferry was operated the same as other ferries on the New Jersey side, from Communipaw to Weehawken (p. 34, line 25), that the boat, dock and equipment was similar to that of other ferries around New York Harbor, *and that he knew of none better* (p. 35, lines 1-12).

40 The defendant having shown that the ferries were operated the same as other ferries and its equipment was of the best: the plaintiff having

failed to prove any acts of negligence, and it appearing that the plaintiff was guilty of negligence which was the proximate cause of his injury, the trial judge should have directed a verdict for defendant at the close of the whole case, as requested by defendant.

III.

Having declined to non-suit or direct a verdict the trial judge at the close of the whole case should have charged the jury as set forth in defendant's request number 5 (Case, p. 40, lines 22-27). The refusal to so charge (p. 42) was error. 10

It is respectfully submitted that the judgment of the New Jersey Supreme Court affirming the judgment of the District Court of the City of Hoboken under review by this appeal should be reversed, set aside and for nothing holden, and that judgment should be entered in favor of the defendant and against the plaintiff. 20

VREDENBURGH, WALL & CAREY,
of Counsel with Defendant-Appellant.

THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

PHYSICS 311

LECTURE 10

STATISTICAL MECHANICS

PROBLEMS

New Jersey Court of Errors and Appeals.

FRANK LEENIG,
Plaintiff-Appellee,
vs.
NEW YORK CENTRAL & HUDSON
RIVER RAILROAD Co.,
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On Appeal.

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PLAINTIFF-APPELLE'S BRIEF.

This case comes up on an appeal from a judgment of the New Jersey Supreme Court affirming a judgment of the District Court of Hoboken, in an action for damages.

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On the 20th day of December, 1912, the defendant company operated certain ferryboats between the West Shore ferry at Weehawken, N. J., and the City of New York; the bridges leading to the boats at Weehawken are of the usual kind with long arched timbers dividing the team gangway from the passenger gangway on either side. About the middle of each bridge the defendant maintains swinging gates (9-10) across the passenger gangways and team gangway to keep passengers from entering the boat until it has been adjusted to the bridge (Ex. D-2, p. 48). The bridge is raised and lowered so as to meet the level of the boat at the varying heights of the tide. To hold the bridge and boat in place after they have been brought together by means of windlasses and chains, there is a toggle consisting of a log stick of timber, bound with iron, on each side of the bridge, just inside of the arched timber dividing

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the team gangway from the passenger gangway, and extending 4 or 5 feet over the slip (11-22), so that when the bridge is lowered the ends of the toggle rest on the boat, thereby keeping the latter at a level with the bridge.

The defendant also maintains gates on the boat ten feet or more from the end thereof (10-27) to keep passengers from leaving the boat until it has been made fast.

10 On the morning in question, the gates at the middle of the bridge were closed when the plaintiff arrived there, and a crowd of people was waiting for them to be opened (10-4). After a while the gates were opened (10-8) (26-16), and the waiting passengers were thereby invited to, and did walk down the gangways and board the boat. Plaintiff walked down the passenger gangway on the south side of the bridge and waited until the boat had been docked, and then

20 boarded it (9-37); before boarding the boat, however, he saw the bridgemen on each side of the bridge hook up the boat and turn the wheel (pp. 17-20). As he stepped onto the boat, he saw one of the deck-hands stoop down to lift the gates on the boat (10-23), so as to allow the passengers to leave it. As the passengers had been allowed to board the boat plaintiff thought the bridge was already down (19-17). He stepped to the left to avoid the passengers about to leave

30 the boat (10-35) and just then the bridge was lowered, the toggle on that side of the bridge caught the left side of plaintiff's left foot, squeezed it down on the deck of the boat, and injured him severely. As shown by Exhibit D-1, page 47, the end of the toggle comes down on the boat just at the edge of the passenger gangway and divides the passenger gangway from the team gangway. When plaintiff was injured he stood in the passenger gangway and not in the

40 vehicle gangway as stated in defendant's brief.

He brought suit in the District Court of Hoboken, the jury rendered a verdict in his favor for \$500, and the defendant has appealed.

The specification of causes for reversal filed in the Supreme Court are eleven in number. The first, second, fifth and sixth specifications relate to the negligence of the defendant and the contributory negligence of the plaintiff, all of which were properly disposed of by the Court. The third and fourth specifications relate to questions of fact which were properly left to the determination of the jury and the other five specifications relate to the refusal of the Court to charge as requested, which refusal was legal and proper. 10

POINT I.

The defendant was guilty of negligence.

The defendant, being a common carrier, was bound to use a high degree of care for the safety of the plaintiff. It must be the design of the defendant to open the gates on the bridge and also the gates on the boat simultaneously, in order to save time and crowding, or else to open the bridge gates only after the boat has been secured and a safe way made for the passengers. If it were intended that the gates on the bridge should be opened before the boat was properly docked and fastened, then they might as well have no bridge gates. When the gates on the bridge were opened the waiting passengers were thereby invited to board the boat. 20 30

“The raising of the gate was a substantial assurance to him of safety just as significant as if the gateman had invited him to come on, and that any prudent man would not be influenced by it, is beyond all human experience.”

Glushing v. Sarp, 96 N. Y., 676.

“A closed gate was an obstruction preventing access to the road; an open gate was 40

equally positive in the implication to be derived from it that the way was safe. Nothing less could be implied and no other conclusion could be drawn from the circumstance”

Palmer, et al, v. N. Y. C., etc., R. R. Co.,
112 N. Y., 241.

The toggle was not in the team gangway but as shown by Ex D-1 divides the passenger gangway from the team gangway.

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POINT II.

Plaintiff was not guilty of contributory negligence.

Plaintiff had a right to assume that the boat was properly docked and adjusted when the bridge gates were opened and the waiting passengers invited to board it. Even if plaintiff was familiar with the operation of the boat, he was not bound to examine the toggle before boarding it. But he says, p. 17, l. 35, “I never took notice to them before that, but I took notice of them after.”

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“A public bridge and those travelling upon it as a part of a public road or street have a right to presume, in the absence of notice or knowledge to the contrary, that such bridge is clear of unguarded obstructions and dangers.”

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Mahnken v. Freeholders, &c., 62 Law.,
404.

“Plaintiff was riding a bicycle over a public drawbridge in the daytime. As she approached the draw she found it off and a carriage in front of her waiting to cross and another carriage coming up behind her. Concluding to dismount she wheeled to her left, stepped on the timber guard with one foot, and in her effort to step upon the floor of the bridge with her other foot, she stepped

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into an opening along the timber guard 9 x 5 inches in dimension, and was injured. She did not see the opening, but might have seen it if she had looked at the floor, &c. A non-suit was held to be wrong.

Ibid.

"FRANK LEENIG (Cross examination).
(19-9)

"Q. You don't remember that you did look at it or that you attempted to look at it?
A. I don't remember. I didn't notice it at all until I got caught.

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"Q. You could not see that great big log of wood there, a foot square on the boat; is that what you mean to say? A. I knew it was there; but I didn't notice it until I got my foot caught. *I didn't know I was that close to it.*

"Q. You just shuffled on there without looking for it at all? A. I just stepped on the boat *and I thought the toggle was down already.*"

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POINT III.

The Court properly refused to charge as requested.

The first and second requests assume facts not proven in the case. Besides this the requests were illegal and contrary to law. If the Court had charged that the opening of the gate was not an invitation to plaintiff to board the boat, it would have been reversible error.

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The third and fourth requests were improper because plaintiff did not know he was likely to be injured by boarding the boat.

The fifth request was improper, because the injury to the plaintiff was not because of the size of the toggle nor because he might have seen it if he had looked, but because the toggle was raised a short distance from the deck of the boat, a fact which plaintiff did not know until

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it was lowered on his foot. So far as plaintiff knows the toggle might not have been more than 2 or 3 inches from the deck of the boat.

The charge of the Court was correct, and covered the matters concerning which the defendant was evidently endeavoring to request him to charge.

10 The cases cited by the plaintiff-in-error seem to have no application to the case before the Court. A number of them refer to injuries sustained at the junction of the ferry boat with the bridge. As this is always a point of more or less danger, a person attempting to step from one to the other is bound to observe the conditions existing and exercise some care for his safety.

20 In this case, the plaintiff was not at the junction of the boat and bridge, but on the boat where he had been invited by the defendant and where he had a right to assume that he was in no danger.

The other cases cited by the plaintiff-in-error refer to injuries received in the team gangway, where there is also always more or less danger.

The plaintiff in this case, however, was not in the team gangway, but in the passenger gangway on the south side of the boat, and stepped to his left to allow the passengers to leave the boat.

30 We most respectfully submit that the judgment of the Supreme Court should be affirmed.

WELLER & LICHTENSTEIN,
Attorneys for Plaintiff-Defendant-
in-Error.

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Notice of Appeal.

(Filed April 24, 1914.)

NEW JERSEY SUPREME COURT

FRANK LEENIG,
Plaintiff-Appellee,

vs.

NEW YORK CENTRAL & HUDSON
RIVER RAILROAD COMPANY,
Defendant-Appellant.

In Tort.
Notice of Appeal.

10

To:

MESSRS. WELLER & LICHTENSTEIN,
Attorneys for Plaintiff.

TAKE NOTICE:

That the defendant appeals to the New Jersey Court of Errors and Appeals in the last resort in all causes, from the whole of the judgment entered in the New Jersey Supreme Court in this 20 cause, upon the following grounds:

First: That the said Supreme Court erred in affirming the refusal of the District Court of the City of Hoboken to non-suit plaintiff because no negligence was proved in the part of defendant, and because plaintiff was shown to have been guilty of contributory negligence which was the proximate cause of his injury.

30

Second: That the Supreme Court erred in affirming the refusal of the District Court of the City of Hoboken to direct a verdict for the defendant at the close of the whole case, because no negligence had been shown on defendant's part, and because plaintiff was shown to have been guilty of contributory negligence which was the proximate cause of his injury.

40

II

Notice of Appeal.

Third: That said Supreme Court erred in affirming the action of the District Court of the City of Hoboken, in refusing to charge the jury in accordance with defendant's request to charge No. 5.

10 That if the toggle in question was of a size to be readily seen and avoided in daylight, and plaintiff was injured by the toggle when, had he made reasonable use of his eyes, he could have seen and avoided the injury, he cannot recover for the injuries so sustained.

Fourth: That said Supreme Court erred in affirming the judgment of the District Court of the City of Hoboken, and in not reversing the same.

Fifth: That said judgment of said Supreme Court is in divers other respect erroneous, illegal and contrary to law.

20 VREDENBURGH, WALL & CAREY,
Attorneys for Defendant-Appellant.

Dated, April 17, 1914.

(Endorsed)

NEW JERSEY SUPREME COURT.

Frank Leenig, Plaintiff-Appellee, vs. New York Central & Hudson River Railroad Company, Defendant-Appellant.

30 In Tort. Notice of Appeal.

We hereby acknowledge service of within notice of Appeal and waive further recognizance other than that already given on the appeal to the Supreme Court of New Jersey, from the District Court of the City of Hoboken.

Weller & Lichtenstein, Attys. for Pltff-Appellee.
April 17, 1914.

III

Judgment in Supreme Court.

(Entered April 4, 1914.)

NEW JERSEY SUPREME COURT.

NOVEMBER TERM, 1913.

| | |
|--|--|
| FRANK LEENIG, <i>Plaintiff, Respondent,</i> | } In Error to Hoboken District Court. 10 |
| <i>vs.</i> | |
| NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, <i>Defendant, Appellant.</i> | } Order on Affirmance of Judgment. 20 |

This cause having been duly argued at the February, 1914, Term of this Court, by Vredenburgh, Wall & Carey, of counsel for the defendant-appellant, and Weller & Lichtenstein, of counsel for the plaintiff-respondent, and the Court having considered the same, and finding no error in the record or proceeding in the Hoboken District Court, 20

It is thereupon, ordered and adjudged that the judgment of the Hoboken District Court removed by the appeal in this cause be affirmed with costs, and that the record be remitted to the Hoboken District Court to be proceeded with in accordance with this judgment and the practice of said Court. 30

Entered April 4, 1914.

On motion of

WELLER & LICHTENSTEIN,
Attorneys for plaintiff-respondent.

IV

Opinion in the Supreme Court.

(Filed March 24, 1914.)

NEW JERSEY SUPREME COURT.

NOVEMBER TERM, 1913.

FRANK LEENIG,
Plaintiff and Appellee,

vs.

NEW YORK CENTRAL & HUDSON
RIVER RAILROAD COMPANY,
Defendant and Appellant.

10

Submitted December 4, 1913; Decided March 24, 1914.

On Appeal from the District Court of the City of Hoboken.

Before Justices Garrison, Trenchard and Min-
turn.

20

For the appellant, Vredenburg, Wall & Carey.
For the appellee, Weller & Lichtenstein.

Per Curiam:

The question whether the defendant exercised the high degree of care required for the safety of the plaintiff, a passenger, was for the jury, in view of the proof that the gates on the dock were opened before the ferry boat was adjusted to the dock.

30

The question whether the plaintiff was guilty of contributory negligence was also under the proof for the jury.

We see no error in the refusal of the judge to charge as requested.

The judgment will be affirmed, with costs.

DISTRICT COURT

OF THE CITY OF HOBOKEN.

| | | | |
|---|---|----------------------|----|
| FRANK LEENIG, <i>Plaintiff,</i> | } | In Tort. | 10 |
| <i>vs.</i> | | | |
| NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, <i>Defendant.</i> | } | Notice of Appeal. | |

To:
MESSRS. WELLER & LICHTENSTEIN,
Attorneys for Plaintiff. 20

SIRS:
PLEASE TAKE NOTICE, that the defendant, the New York Central & Hudson River Railroad Company hereby appeals to the New Jersey Supreme Court from the judgment of the District Court of the City of Hoboken rendered in the above stated cause on the 27th day of June, nineteen hundred and thirteen.

Yours respectfully, 30
Dated July 1st, 1913.

VREDENBURGH, WALL & CAREY,
Attorneys for Defendant.

Service of a copy of the within notice of appeal is hereby acknowledged this 5th day of July, 1913.

WELLER & LICHTENSTEIN,
Plaintiff's Attorneys. 40

Specifications of Causes of Error.

NEW JERSEY SUPREME COURT.

| | | | |
|----|--|---|---|
| 10 | FRANK LEENIG, <i>Plaintiff-Appellee,</i> <i>vs.</i> NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, <i>Defendant-Appellant.</i> | } | In Tort. On Appeal from District Court of the City of Hoboken. Specifications of Causes of Error. |
|----|--|---|---|

20 The NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, the above named appellant, specifies the following determinations or directions of the District Court of the City of Hoboken in the above entitled cause, with which it is dissatisfied in point of law:

1. Because the trial judge refused to non-suit plaintiff also duly moved to do so by the defendant.
2. Because the trial judge refused to direct a verdict for defendant although duly moved to do so by the defendant.
3. Because said verdict was contrary to the evidence.
- 30 4. Because said verdict was contrary to law.
5. Because said verdict failed to disclose any negligence on the part of the defendant.
6. Because the plaintiff was affirmatively shown to have been guilty of contributory negligence.
7. Because the trial judge refused to charge the jury as follows:

40 That if plaintiff was familiar with the operation of this ferry, the opening of the

Specifications of Causes of Error

gate on the bridge was not an invitation to him to board the boat while it was eight or more inches away from the bridge, and before it had been fastened up and the gates on the boat opened, and if plaintiff did so board the boat before it was properly fastened up and thereby placed himself in a position which resulted in his injury, he was guilty of contributory negligence and he cannot recover. 10

8. Because the trial judge refused to charge the jury as follows:

That if plaintiff was familiar with the operation of this ferry, the opening of the gate on the bridge was not an invitation to him to board the boat while it was eight or more inches away from the bridge, and before it had been fastened up and the gates on the boat opened, and if plaintiff did so board the boat before it was properly fastened up and thereby placed himself in a position which resulted in his injury, his act in boarding the boat was a negligent act and was the proximate cause of his injury and for the result of which he cannot recover from the defendant. 20

9. Because the trial judge refused to charge the jury as follows: 30

That if the plaintiff was familiar with the operation of this ferry, and boarded the boat before it was fastened up, before the gates on the boat were opened, thereby placing himself where he should have known he was likely to be injured by the toggle in question, he was negligent and cannot recover for his injury.

10. Because the trial judge refused to charge the jury as follows: 40

Specifications of Causes of Error

That if plaintiff boarded the boat before it was fastened up, before the gates on the boat were opened, thereby placing himself where he should have known he was likely to be injured by the toggle in question, he was negligent and cannot recover for his injury.

11. Because the trial judge refused to charge the jury as follows:

10

That if the toggle in question was of a size to be readily seen and avoided in daylight, and plaintiff was injured by the toggle when, had he made reasonable use of his eyes, he could have seen and avoided the injury, he cannot recover for the injuries so sustained.

VREDENBURGH, WALL & CAREY,
Attys. for Defendant-Appellant.

20

30

40

Declaration.

DISTRICT COURT OF HOBOKEN.

| | | |
|--|---|---|
| <p style="text-align: center;">FRANK LEENIG, <i>Plaintiff,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, a corporation, <i>Defendant.</i></p> | } | <p>In Tort.</p> <p>Declaration. 10</p> |
|--|---|---|

STATE OF NEW JERSEY. }
County of Hudson. } ss.

FRANK LEENIG, the plaintiff in the above cause, 20
by Weller & Lichtenstein, his attorneys, complain-
ing of the defendant, the NEW YORK CENTRAL &
HUDSON RIVER RAILROAD COMPANY, a body cor-
porate, says:

On December 20, 1912, the defendant, New York 30
Central & Hudson River Railroad Company, was
a common carrier and was running and operating
the ferries between Weehawken, in the County
and State aforesaid, and the City of New York,
and as such common carrier said defendant owed
all persons who were passengers on its ferries
aforesaid, a high degree of care, but said defend-
ant, its agents, servants, and employees so negli-
gently, carelessly and improperly conducted
themselves in and about the operation of said
ferries and of the boats and appliances thereto
belonging; that on said 20th day of December,
1912, while plaintiff was lawfully a passenger on
one of said boats, without any negligence, care- 40

Declaration

lessness or improper conduct, whatsoever on his part, the said defendant, its agents, servants and employees lowered the deck leading to said boat and the boat "toggel" running from the said dock to the said boat was thereby brought down upon his left foot, and by means and by reason whereof the said left foot of the plaintiff was thereby greatly hurt, cut, bruised, wounded and injured, and plaintiff thereby by reason thereof became and was sick, sore, lame, and disordered and so remained and continued for a long space of time, to wit, from thence hitherto, during all of which time he has suffered and undergone great pain and torment both of body and mind, and by reason thereof said plaintiff was hindered and prevented from carrying on his necessary affairs and business for a long space of time, to wit, for the space of two months; and was obliged to pay, lay out and expend and did pay, lay out and expend a large sum of money for medicine, and doctor bills, to wit, the sum of One hundred Dollars (\$100) in and about endeavoring to be healed and cured of his said injuries, in all the damage of said plaintiff Five hundred Dollars (\$500.), and therefore he brings his suit, &c.

WELLER & LICHTENSTEIN,
Attorneys for Plaintiff.

Endorsed: Declaration.
30 Filed March 17, 1913.
HARRY BENNETT, *Clerk.*

Case.

HOBOKEN DISTRICT COURT.

| | | | |
|---|---|----------|----|
| FRANK LEENIG, <i>Plaintiff,</i> <i>vs.</i> NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, <i>Defendant.</i> | } | In Tort. | 10 |
|---|---|----------|----|

Transcript of evidence taken in the above cause before his Honor, J. W. R. BESSON, and a jury, in the Hoboken District Court, on the 27th day of June, 1913.

APPEARANCES: 20

WELLER & LICHTENSTEIN, by JOHN I. WELLER, Esq., attorneys for the plaintiff.

VREDENBURGH, WALL & CAREY, by JOHN H. PATTERSON, Esq., attorneys for the defendant.

—

CHARLES YOUNG, the stenographer, was duly sworn to honestly, faithfully and impartially take stenographically the evidence to be offered in said cause, and to accurately transcribe the same to the best of his skill and ability. 30

—

JAMES J. BENSON, a witness called on behalf of the plaintiff, was duly sworn and examined as follows: 40

James J. Benson, for Plaintiff—Direct
Frank Leenig, for Plaintiff—Direct

Direct-examination by Mr. Weller:

Q. You are a practicing physician in West New York, doctor? A. Yes, sir.

Q. How long have you been practicing there? A. Thirteen years.

10 Q. I believe you do not remember much about this case? A. I remember making one call.

Q. Did he call on you or you on him? A. I called at his house.

Q. Why didn't you treat him? A. He seemed inclined to want to go to a hospital, and the facilities at his home were not such that he could be properly treated there, and I told him to call Dr. Poole—he was on the staff of the Hospital—and have him get him in the hospital.

20 Q. Do you remember what you observed about his foot? A. I can't recall, it is so long ago. I only saw him once.

FRANK LEENIG, the plaintiff, was duly sworn and testified as follows:

Direct-examination by Mr. Weller:

Q. Where do you live? A. 1326 Newkirk Street, East New Durham, N. J.

30 Q. How old are you? A. Twenty-eight years old.

Q. What is your business? A. Telephone inspector.

Q. And where were you employed on the 20th of December last? A. 58 West Houston Street is the office, but we leave the office and go to our own district on 23rd Street.

Q. And what wages were you receiving at that time? A. Twenty dollars a week.

40 Q. Do you remember the morning of the 20th of December last? A. Yes, sir.

Frank Leenig, for Plaintiff—Direct

Q. What ferry did you cross in going to your work? A. West Shore Ferry.

Q. Did you cross that ferry that morning?

A. Yes, sir.

Q. Tell the jury as near as you can how the ferry slips and the docks, etc., are arranged there?

Mr. Patterson: "I object unless he shows he is acquainted with them."

The Court: "He can testify as to what he observed." 10

Q. How long have you been crossing there?

A. I have been crossing that ferry for a year and a half. I was taking the old ferry quite frequently; that is the old ferry in West New York.

Q. Do you know how the ferry slips and docks, etc., are arranged there? A. I should judge I should know a little about it.

Q. The one that you cross on, how is that arranged? Tell us about the dock. A. The dock is arranged so with swinging gates on it halfway down the dock. 20

Q. How far are these docks from the main shed down to the boat? A. About fifty,—forty-five or fifty feet.

Q. And where are the gates? A. In the center.

Q. Near to what, the wire? A. Near the piping and wire.

Q. How do they swing, these gates? A. When you do down the ladies' or gents' passageway, they swing them upon us—towards the passengers—and the gates in the horses' gangway go the opposite way. 30

Q. Turn right around? A. Yes, sir.

Q. Which gangway were you in that morning? A. The ladies' side.

Q. Is that on the south or north side of the boat? A. The south side. 40

Frank Leenig, for Plaintiff—Direct

Q. These gates on the dock are to keep you from going down to the boat? A. Yes, sir.

Q. Were there many people waiting there on the dock on this morning? A. Yes, sir; there was quite a crowd collected there.

10 Q. While you were waiting there, what happened to the gates? A. While I was waiting there, and the boat was on its way in, they opened the gates to let the passengers down.

Q. Did the passengers go down on both sides? A. Both sides and also in the horses' gangway.

Q. You went down the ladies' gangway? A. Yes, sir.

Q. Were there other people going down the gangway at the same time? A. Yes, sir.

20 Q. How many? A. All the people that were on the dock in back of the gates; they all went down.

Q. When you got down to the boat, what did you do? A. I walked down to the boat and stopped and then they tied up the boat and I waited for them to open the gates.

Q. Did you step on the boat after they tied it up? A. After they tied up the boat securely, I stepped on, as they made an attempt to raise the gates.

30 Q. How far back are the gates on the boat,—the gates that cross the teamway and the ladies' passageway on this boat, how far back are they from the end of the boat? A. I should judge ten or more feet.

Q. You say they tied up the boat and then you stepped on the boat? A. Yes, sir.

40 Q. When the deckhand went to raise up the gates to let the people on the boat off— A. I stood to one side so that I would not have any conflict with the passengers coming off.

Frank Leenig, for Plaintiff—Direct

- Q. When you stood to one side, what happened?
 A. Down came the dock on my foot.
- Q. What do you mean by the dock? A. The dock itself they raise and lower.
- Q. What is it, the toggle or the dock? A. The toggle is attached to the dock.
- Q. Something like the way I hold this card?
 A. Yes. 10
- Q. Is it a log? A. Yes, sir.
- Q. And runs from the dock out over the boat?
 A. Yes, sir.
- Q. When the tide is high does that go over the dock or under the dock? A. When the tide is high I should judge it goes above the dock on the boat.
- Q. When the tide is low what do they have to do to get the dock down level with the boat?
 A. They would have to raise it and when they get it high enough, they let it down. 20
- Q. Raise what? A. The dock.
- Q. These toggle extend out about four or five feet over the boat? A. Probably more than four or five feet.
- Q. How big around are they? A. About a foot square.
- Q. They let the dock down and these toggle extend over the boat, and keep the dock and boat on a level? A. Yes, sir. 30
- Q. When you stepped aside to let the people off, what happened? A. The dock came down.
- Q. What happened to you? A. I had my foot just under there.
- Q. Under where? A. Under the toggle.
- Q. What happened? A. I hollered.
- Q. Which foot was it? A. The left foot.
- Q. Whereabouts was this toggle on your foot?
 A. Right across the toes.
- Q. And how long were you held there before 40

Frank Leenig, for Plaintiff—Direct

you got your foot out? A. I should judge about a minute and a half or two minutes.

Q. How did you get your foot out? A. I yelled for them to raise the dock; others came with a crow-bar to try to crow-bar my foot out.

Q. What was done then? A. Then one gentleman held me and the deckhand took me to one side and from there they brought me to the superintendent's office.

Q. And then where did you go? A. Went home.

Q. And at home did you have a doctor come there? A. Yes, Doctor Benson came first.

Q. He came there once? A. That is all.

Q. Who wrapped up your foot? A. At home?

Q. Yes. A. I did and my mother-in-law.

Q. What was done with you after that; after Doctor Benson got there? A. I waited from the time I was injured until four or after four before he called at all; I had to telephone twice before he came at all.

Q. He was their physician? A. No, Dr. Poole.

Q. Then he came there? A. Yes, sir.

Q. Were you treated at home? A. No, sir, I was sent to the North Hudson Hospital.

Q. How long did you remain in the hospital? A. Around four and a half weeks, and I was laid up at home for two more weeks; altogether six and a half weeks.

Q. Did you lose all that time, six and a half weeks? A. Yes, sir.

Q. Did you know they were going to let that toggle down on your foot? A. I did not, otherwise I would not have stood there.

Q. Did you know there was any danger there at all? A. No, sir.

Q. Did you know your foot was near or under this toggle? A. No, sir, I certainly did not.

Frank Leenig, for Plaintiff—Cross

Q. Did you, after your foot was injured, suffer any pain? A. Certainly did.

Q. Tell us about it. A. After I was released from the toggle?

Q. Yes? A. I suffered so much pain I almost fell unconscious, but recovered enough to hobble down to the superintendent's office.

Q. How did you get home from the superintendent's office? A. They wanted to send me to the hospital right away, but I didn't want to go there until the wife knew something about it. 10

Q. When you took off your shoe, what did you find? A. I saw it was mashed; I didn't see it until I got home.

Q. How did it look when you got home? A. All mashed, the four toes, and the fifth toe was a little bruised.

Q. Could you see the bone? A. Yes, sir.

Q. Can you walk as well now with that foot as before? A. No, sir. 20

Q. Why not? A. It hurts me on the toes a little; also the ball of the foot.

Q. Do you know whether the toes were broken or not? A. I could not tell you. I could not move the toes for several weeks after.

Q. Was that the shoe you had on at the time of the accident? A. Yes, sir.

Q. Is this mark across here the point where the toggle came down on the shoe? A. Yes, sir. 30

Q. Just the end of your foot? A. Just the toes.

Q. How does your foot feel now when the weather changes? A. I feel it; I certainly feel pain. Sometimes I have to hobble and limp and kick around before I can get it into circulation.

Cross-examination by Mr. Patterson:

Q. Let me see you walk. A. I can walk pretty fair. (Witness does as instructed.) 40

Frank Leenig, for Plaintiff—Cross

Q. Walk a little faster. (Witness does as instructed.)

Q. There does not seem to be much the matter with your foot? A. Not just now; it feels pretty well now, but in change of weather I feel pain.

Q. What kind of pain? A. Sticking pain, like pins and needles running through my foot. I can't just explain how it is.

10 Q. Do you walk much in your business? A. Yes, sir.

Q. How much a day do you walk? A. I could not just judge how often I walk.

Q. What is your work? A. Telephone inspector.

Q. What do you mean by that? A. Inspect telephones, repair them and go wherever I am sent.

20 Q. Around different places? A. Yes, sir. I have the Metropolitan Building as a district.

Q. How many calls do you make a day? A. Twenty-eight to thirty-two.

Q. How close are they together? A. Not over fifteen or twenty minutes apart.

Q. That takes you all day long? A. Yes, sir.

Q. You don't sit down very much, do you? A. While I am on the job I do.

30 Q. How much of the day do you sit down as compared with the walking? A. I sit down more than I walk because it is more of a sitting job to repair phones than it is standing.

Q. But still you have to be on your feet a good deal? A. Yes.

Q. And you have to stoop down and lean under the board when you fix the wires? A. Yes.

Q. You have a good deal of that to do? A. Not so much of that.

40 Q. Is it not true that when you fix a telephone, the sitting down part of it is very small? A. In

Frank Leenig, for Plaintiff—Cross

repairing the back part of the board you have no sitting at all, but the front part of the board you have.

Q. The front part of the board is not very much to fix about it, outside of the part you talk into, the mouthpiece? A. We have to inspect the board.

Q. And to do that you have to take out the back part of the board? A. Yes, sir.

Q. And go over the different wires? A. Yes. 10

Q. And the wires inside? A. The wires are on the back, but we never look over them unless there is trouble.

Q. And to do that, you have to stoop down because that is usually lower than you are? A. Yes, sir.

Q. Does not that walking and stooping have something to do with the pain in your foot? A. It never did before the injury.

Q. You don't remember whether it did or not before the injury? A. I certainly do. I never was bothered with any trouble at all. 20

Q. You were out six weeks, you say? A. Six and a half weeks.

Q. You did not work in New York during any part of that time? A. I could not.

Q. Where did you stay during that time? A. Down at the hospital for 4½ weeks and the rest of the time at home. 30

Q. You didn't go out at all? A. Not out of the house.

Q. When you did go out again, did you go out of your own accord or did someone advise you to go? A. I went to work because I had nothing in the house.

Q. You say you had been going over this ferry for a year and a half? A. Yes, sir.

Q. What time did you go over in the daytime? A. Generally 6:40 or 6:50 trip. 40

Frank Leenig, for Plaintiff—Cross

Q. What time did you get to work? A. Eight o'clock. I have to be in the office a little early because there is other business to attend to.

* Q. You came back at night? A. Yes.

Q. Same ferry? A. Same ferry.

Q. You say you live in New Durham? A. East New Durham.

10 Q. How do you go up there? A. By Bergen-line Avenue car to 17th or 18th Street.

Q. They all go into the West Shore ferry? A. Yes.

Q. This was your usual boat in the morning? A. I generally get the 6:50; I missed the 6:40 that morning.

Q. What kind of a day was this, light or dark, clear? A. I don't know how it was that morning.

20 Q. Just about as it is now, was it not? A. Not quite as bright as it is now.

Q. It was daylight, though? A. It was winter time that time; that was in December, December 20th. I can't just remember how light it was.

Q. You could see the boat all right when it came in? A. Yes.

Q. You could see where you were going? A. Yes.

Q. You could see the cabin? A. Yes.

30 Q. And could see inside the cabin; you could see some of the seats in the cabin? A. I could not see that with the people on the front of the boat.

Q. You could see the top of the boat, the pilot house? A. Yes, sir.

Q. That is up on top at the end of the wagon-way? A. Yes.

Q. Some fifty feet away? A. I could not tell you exactly; that or more.

Q. In going on the ferryboat in the morning, what side of the boat do you generally take?

40 A. Always the ladies' side—never the gents' side—because I don't care for smoking.

Frank Leenig, for Plaintiff—Cross

Q. And you followed your usual custom this morning? A. Yes, sir.

Q. You said something about opening the gate on the bridge? A. Yes, sir.

Q. What was that gate? A. That is a gate, as far as I can judge, to hold the people from going down to the boat—down the bridge—until the boat is fastened.

Q. What do they usually do with that gate? 10
A. They always open it up before the boat is fastened, and I have seen them open that gate before the boat was in the slip.

Q. When that gate was opened you started down toward the boat on the ladies' side? A. Certainly.

Q. Then you walked right down and stepped on the boat? A. I waited until they had the boat hooked up.

Q. How did they hook up the boat that morn- 20
ing? A. After the bridgeman opened this gate, he ran down his side on the gents' side and hung in his hook and hooked up his side and the other fellow put in his hook and hooked up his side.

Q. And they were turning the wheel? A. Yes, sir.

Q. While they were turning the wheels you went on the boat? A. I waited until they were done.

Q. You said they had to raise the gates on the 30
boat? A. They were in the attempt to raise them when I stepped on the boat. I stepped to one side to let the passengers off, so that I would not have any run in with them.

Q. How closely have you watched the operation of these ferries? A. I never took notice to them before that, but I took notice of it after.

Q. What are these toggles like; how long are they? A. I never measured them, but I should 40
judge about eight or ten feet, if not more.

Frank Leenig, for Plaintiff—Cross

Q. They are square logs of wood? A. Square and rounded off so that there is no sharp edge, and they are lined with iron strips on top and bottom.

Q. To hold them to the bridge? A. Yes.

Q. What is the diameter? A. I should think about a foot or more square.

10 Q. A good solid piece of wood? A. Yes.

Q. How far do they stretch out over the edge of the boat from the bridge? A. About four or five feet.

Q. When they are resting on the deck of the boat, the boat is pretty level? A. I suppose it is.

Q. That is what they are for? A. I suppose so.

Q. That is the boat holds the bridge up,—it rises and falls with the boat,—with the tide? A. The bridge?

20 Q. Yes, and when the toggles are on the boat? A. Yes, sir.

Q. When did they put this toggle down on the boat this morning, with respect to this boat coming in the slip; I am only talking about this particular boat? A. You mean in time of day?

Q. Yes, with respect to what you were doing. A. As far as I can judge what you mean, they let it down after they had the boat hooked up.

30 Q. You say they did? A. Certainly.

Q. Was this the usual kind of boat they had there? A. It is one of those they are always operating there.

Q. You didn't see anything wrong with any part of it? A. I don't know anything about it, whether there was or not.

Q. When you stepped on this boat as you say you did, did you look to see this log of wood? A. I didn't notice I was so close to it.

Q. Did you look to see? A. No.

40 Q. Didn't even attempt to look? A. I didn't

Frank Leenig, for Plaintiff—Cross

know I was that close to it, but I knew it was there.

Q. Did you attempt to look at it? A. I can't say that.

Q. Did you or did you not? A. I don't remember that.

Q. You don't remember that you did look at it or that you attempted to look at it? A. I don't remember. I didn't notice it at all until I got caught. 10

Q. You could not see that great big log of wood there, a foot square, on the boat; is that what you mean to say? A. I knew it was there; but I didn't notice it until I got my foot caught. I didn't know I was that close to it.

Q. You just shuffled on there without looking for it at all? A. I just stepped on the boat and I thought the toggle was down already. 20

Q. As a matter of fact, it was there? A. I guess it was.

Q. Is it not a fact, Mr. Leenig, that at the time your foot was hurt, that the deck hand was standing there still with these gates down and saw you?

Mr. Weller: What gates do you refer to?

Q. The gates on the boat. Is it not true that when your foot was hurt, the deckhand on the boat was holding the gates on the boat and looking at you? A. I don't know whether he was looking at me or not. He was in the attempt to open the gates. 30

Q. And he was just standing there holding them when your foot was hurt? A. He was at the lower rail.

Q. He opens them and gives them a shove this way and they go up in the air on a post, and he was just standing there holding the gates, and is 40

Frank Leenig, for Plaintiff—Cross

it not a fact that while you were getting your foot hurt, the gates were not open? A. They seemed to be jumping on and off the boat at the time.

Q. Those were the people behind you? A. I don't know.

10 Q. Don't you know as a matter of fact that the people on the boat were standing behind the gates and the gates were closed while the toggle was on your foot? A. I saw the people jumping on and off the boat.

Question objected to by Mr. Weller and objection overruled.

Q. You said you were watching them hook up the boat. What did you see them do when they hooked up that boat that morning? A. As soon as he came in—

20 Q. Who is he? A. The deckhand; I don't know his name.

Q. What side of the bridge is he on? A. He came from the boat on the ladies side; he is the deckhand.

Q. Just what did he do? A. As soon as the boat hit the dock, he threw in his hook and wound up the wheel. We were on the way down. That is after they opened the gates.

30 Q. Did you watch the man on the other side of the boat? A. I could not watch them because the crowd was there.

Q. You don't know whether he had his side hooked up or not? A. I don't know that.

Q. Did you look to see? A. I could not notice that because the crowd was there?

Q. But you didn't look? A. Does anybody look for anything at all?

Q. Did you try to look? A. No, I did not.

40 Q. Then you don't know whether his side of the boat was fixed up or not, do you? A. It must

Frank Leenig, for Plaintiff—Redirect

have been because as soon as he had his side—

Mr. Patterson: "I ask that that be stricken out."

Q. You didn't see it?

Mr. Weller: "He said he didn't."

Q. Then you don't know whether that boat was properly hooked up or not at the time you stepped on the boat, do you?

10

Mr. Weller: "I object to the question on the ground, if your Honor please, that it was not his business to know whether the boat was properly hooked up, but the Company's business to know that the boat was properly hooked up before opening the gates."

Objection overruled. Exception.

A. On the opposite side. I do not know.

Q. That boat has got to be hooked up on both sides in order to be properly hooked up, has it not? A. I suppose it has.

20

Redirect-examination by Mr. Weller:

Q. Were there any other people on the boat when you were hurt; I mean outside of the gates?

A. Yes, there were people in front of me.

Mr. Weller: "I want to offer this shoe in evidence."

Shoe offered and admitted in evidence and marked "P-1".

30

Q. Was that broken by the accident? A. Yes, sir.

Recross-examination by Mr. Patterson:

Q. You knew, did you not, that the passengers on the boat were not to get off until the gates on the boat were raised? A. I suppose so. They could not get off anyway.

40

George F. Ziedlick, for Plaintiff—Direct

Q. And those gates on the boat are raised the last thing, are they not, when everything else has been done? A. They are supposed to be, but I have seen them raise the gates before they lowered the dock.

Q. You knew, did you not, that you were not to go on that boat until these gates were raised? A. I went on that boat so that I would not get
10 in trouble with the passengers coming off.

Q. You knew that you were not to go on there until the gate was raised,—that it would not be safe to do so? A. I wanted to get away from the people on the boat.

Q. You knew just how that thing was worked, coming over that way twice a day for a year and a half? A. Yes.

Q. Then you knew that you were not to go on the boat until the gates on the boat had been
20 raised, did you not? A. Could not anyway; no, you could not.

Q. You mean you could not get all the way into the cabins? A. No.

Q. But you knew that from the fact that the gates on the boats were not raised, that everything was not done, did you not? You knew that everything was not all right from that fact? A. I didn't know that, no.

30

GEORGE F. ZIEDLICK, a witness called on behalf of the plaintiff, was duly sworn and testified as follows:

Direct-examination by Mr. Weller:

Q. Where do you live, Mr. Ziedlick? A. 537 Wetherbee Park, North Bergen.

40

Q. Where did you work on the 20th of Decem-

George F. Ziedlick, for Plaintiff—Direct

ber last? A. H. H. & C. S. Odell, organ builders, 42nd Street and 9th Avenue.

Q. Were you on the boat on which Mr. Leenig was injured? A. Yes, sir.

Q. Where were you going? A. Going to work.

Q. What time did you have to be at work? A. Supposed to be there at seven o'clock.

Q. What time was it he was injured? A. Ten minutes to seven. 10

Q. That was on December 20th? A. That was the Friday before Christmas; I don't know what date it was.

Q. And was it dark or light? A. I don't remember that far back whether it was dark or light.

Q. Just tell the jury—maybe you can explain it better than the other gentleman—how the boats and gates, etc., are arranged there? A. The dock is about forty or fifty feet long and in the center is a swinging gate that opens one side turning that way and the other side swinging in. There are two gates, one on each side; the gates swing out. There are two gates like this and one here and these gates swing right across the team-way and across the passageway. When they turn them like that, the gates swing up against the—I don't know what you call them, they are on the bridge. 20

Q. When you got there that morning, were there many people waiting outside of the gates? A. Yes, people who had missed the twenty to seven boat. 30

Q. How long did you wait before the gates on the dock were opened? A. I should judge I waited there about five minutes.

Q. Which side were you on, the south or north side of the dock? A. North side. 40

George F. Ziedlick, for Plaintiff—Direct

Q. That is the gentlemen's passageway? A. Yes, sir.

Q. Did those gates open? A. What gates is that?

Q. On the dock? A. Those gates were opened to let the people go down to the boat.

Q. They were not open when you got there? A. Not when I got there.

10 Q. Did the people who had been waiting there go towards the boat? A. Yes, sir.

Q. Did you go on the boat? A. I waited until the boat was tied up. There were people in front of me, and after they stepped on the boat, I stepped on and just as I stepped on, I heard Mr. Leenig holler.

Q. Had you known him before that time? A. I met him a few times playing ball.

20 Q. What did you do when you heard him holler? A. I jumped over to him and got him under the arm. His foot was under this toggle.

Q. You got him under the arm and what was done then? A. After they raised the bridge, the deckhand got him under one arm and I got him under the other arm and we brought him to one side of the bridge and we took his shoe off and his foot was badly crushed.

30 Q. Was there blood on it? A. I didn't get hold of his foot and two deckhands took him to one side. I don't know where they took him after that as I went on the boat.

Q. At the time you got on the boat, there were people ahead of you? A. Yes, sir.

Q. Do you know whether the gates on the boat had been opened to allow the people to leave the boat?

40 Mr. Patterson: "I object unless he connects it up with the time of the injury."

Motion for Nonsuit
Charles Crouse, for Defendant—Direct

Q. At the time you heard Mr. Leenig holler, had the gates been opened on the boat? A. I don't know whether they have been opened or not. I was just stepping on the boat when I heard Mr. Leenig holler.

No cross examination.

PLAINTIFF RESTS.

10

Mr. Patterson moves the direction of a nonsuit on the ground that no negligence was proved on the part of the defendant, and on the further ground that the plaintiff was guilty of contributory negligence, and that his negligence was the proximate cause of his injury.

Argument.

Motion denied.

Defendant's attorney objects.

20

Court grants exception.

CHARLES CROUSE, a witness called on behalf of the defendant, was duly sworn and testified as follows:

Direct-examination by Mr. Patterson:

Q. Where do you live, Mr. Crouse? A. 743 State Street, North Bergen. 30

Q. What is your business? A. Bricklayer.

Q. Where? A. New York.

Q. Do you recall December 20th, 1912? A. Yes, sir.

Q. Where were you early in the morning of that day? A. In the ferry house.

Q. Whereabouts? A. In the slip where the ferryboat comes in.

40

Charles Crouse, for Defendant—Direct

Q. What place? A. I was walking around until—

Q. Whereabouts was this, Hoboken or Jersey City? A. Weehawken ferry.

Q. What ferries are those? A. 42nd Street and Cortlandt Street ferries.

Q. Were you waiting for a boat? A. Yes, sir.

10 Q. What time was it about? A. I think it was about a quarter of seven when I got there.

Q. What boat were you waiting for? A. 42nd Street boat, leaves there about ten minutes to seven.

Q. Do you recall an accident or anybody being hurt or anything of that sort that morning? A. Yes, sir.

Q. Do you recognize that man there? A. Yes.

20 Q. When did you first see him that morning? A. When he started to walk out there when the gates were opened.

Q. What gates? A. The gates on the bridge.

Q. What did he do? A. Walked through the ladies' cabin gangway.

Q. Where did he go to? A. To the front end of the bridge.

Q. And then what did he do? A. Stepped on the boat while the boat was nearing the slip.

30 Q. Was it not up to the slip? A. No, sir.

Q. Was there a space between the boat and the bridge? A. When the boat comes in the slip, it generally hits one side of the slip, and when they hook it on there is always a few inches or more sometimes before the boat is tied up.

Q. You mean there was a space between the edge of the boat and the dock? A. There is a half circle like and when it hits one side, the other side does not fit in.

40 Q. And Mr. Leenig stepped over this space? A. Yes, sir.

Charles Crouse, for Defendant—Cross

Q. Do you know whether the boat was hooked up at that time? A. No, sir; they were starting to hook it up; it was not in far enough to reach it.

Q. This man stepped on the boat before it was hooked up and before it was entirely up to the bridge? A. Yes, sir.

Q. Did you see the gates on the boat? A. Yes, sir. 10

Q. How were they? A. Closed.

Q. Did you go over to see the man when he was injured? A. Yes, sir.

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

Q. While he was being injured by the toggle, how were the gates on the boat? A. Closed.

Cross-examination by Mr. Weller:

Q. You work in Weehawken? A. No, sir, New York. 20

Q. Where were you working at that time? A. 101st Street and West End Avenue.

Q. Where did this thing happen, over there? A. No, sir, Weehawken ferry.

Q. What were you doing there that morning? A. Waiting for a boat to take me to New York. I was going to work.

Q. You were going to work in New York? A. Yes, sir. 30

Q. Did you notice the gates on the bridge closed when you got there? A. Yes, sir.

Q. What is the object in having those gates closed? A. You have to wait until the boat comes in before the gates are opened; otherwise, children and horses and wagons are liable to go overboard.

Q. So you think the gates are there to keep people from jumping overboard? A. When there is no ferryboat in the slip, the gates are closed, as children could walk out there and fall in. 40

Charles Crouse, for Defendant—Cross

Q. When do they open those gates? A. When the boat comes in.

Q. Is it not the duty of the deckhands not to open those gates until the boat is tied up? A. That I cannot tell you.

Q. How long have you worked on the ferry? A. I never worked on a ferryboat.

10 Q. What do you do in New York? A. Brick-layer.

Q. Where do you live? A. 743 State Street, North Bergen.

Q. You were going to work that morning? A. Yes, sir.

Q. What time do you get to work in New York? A. Generally about a quarter to eight or twenty minutes to eight; it all depends on the boats and cars.

20 Q. What time was it this morning when you got down to the boat? A. Quarter to seven.

Q. It was dark yet? A. No, sir.

Q. Don't you know it is dark on the 20th of December? A. It was not any more than it is now.

It was not sunrise? A. It was about sunrise at that time of the year.

Q. How many people were behind these gates when they were opened? A. I could not tell; quite a number of people.

30 Q. Where were you when the plaintiff was injured? A. Right in front where the wheels are on the bridge.

Q. How many people were on the boat? A. That is hard to tell.

Q. How many people that were on the gangway had gone to the boat? A. I didn't count them; I suppose about fifty or seventy-five. There might have been a hundred.

40 Q. When these gates were opened, all the

Charles Crouse, for Defendant—Cross

people went down the gangway and all got on the boat? A. No, sir; they stood on the bridge; there were two or three jumped on the boat.

Q. Didn't you just say there were about seventy-five? A. They were on the bridge.

Q. How do you know the boat was not tied up yet? A. I stood next the wheel where they tied the boat up.

Q. How do they tie up the boat with the wheel? A. They have a piece of rope with a hook on it; they fasten the hook on the boat and turn the wheel and tie it up. 10

Q. How long after they had turned the wheel did you hear this fellow holler? A. Before they had turned the wheel.

Q. Do you mean to tell this jury that they had let the dock down before they turned the wheel? A. It was not hooked up before that fellow was hurt. 20

Q. Don't you know they have to put the boat in place before they let the toggle down? A. No, sir.

Q. You mean to tell this jury, do you, that they let the toggle down before the boat was pulled up firm against the dock? A. No, sir.

Q. What do you mean to tell them about this? A. When this fellow jumped on the boat—here is the boat; it hit this side and he stood here and when the boat turned around that way, he stood still and got near the toggle and when he got near the toggle, he got his foot caught under the toggle. 30

Q. We are talking about when they hurt him; you said they hurt his foot before they tied up the boat? A. Yes, sir.

Q. They let the bridge down on his foot before they tied the boat up? A. Yes, sir. 40

George Albus, for Defendant—Cross

GEORGE ALBUS, a witness called on behalf of the defendant, was duly sworn and testified as follows:

Direct-examination by Mr. Patterson:

Q. Where do you live, Mr. Albus? A. 409 Jane Street, West Hoboken.

10 Q. You are employed by the Ferry Company, the West Shore? A. Yes, sir.

Q. You remember December 20th last? A. Yes, sir.

Q. Were you working up there at the Weehawken Ferry that day? A. Yes, sir.

Q. Do you remember this man Leenig? A. I could not remember his face.

Q. Do you remember anything about anybody being injured there? A. Yes, sir.

20 Q. What first called your attention to anybody being hurt? A. I heard a holler.

Q. When you heard the holler, what did you do? A. Lowered the bridge down.

Q. Had you hooked up the boat? A. At that time I had hooked up the boat.

Q. And you were lowering the bridge down? A. Yes, sir.

Q. Were the gates on the boat open? A. No, sir.

30 Q. Did you go over to see this man? A. Yes; when I got there, he had his foot away from the toggle and I took him down to the office.

Q. How many years have you been up there? A. Going on five years.

40 Q. What did you do this morning, starting with the gate on the bridge; just tell us what you did; what your duties were? A. I wait until the boat comes under the toggle; then I open the gates on the bridge and walk over to the wheel and when the bridge is very high, I lower it down to about

George Albus, for Defendant—Cross

three inches above the boat and hook her up and when she is hooked up, I lower it down on the boat and then open the gate on the boat.

Q. Then you opened the gate on the bridge before you went to work on the wheel? A. Yes, sir.

Q. Why did you do that? A. I have to open the gate, because after the boat is hooked up, the passengers open it themselves.

Q. Do you or do you not know whether the opening of that gate would interfere with the passengers going both ways? A. We have to open the gate. When the passengers come off and on, they get close to the gate and we have to tell them to move back a little more to allow us to open the gate. 10

Q. It is a swinging gate? A. Yes.

Q. So the jury can look at this photograph, Mr. Albus, I show you exhibit 1 for identification; what is that a picture of? A. A picture of a boat lying in the slip, tied up. 20

Q. Where is the toggle that has been testified about? A. Right here (indicating).

Q. Is there another one? A. Yes, sir, on this side (indicating).

Q. One on each side? A. Yes, sir.

Q. Where are the gates on the boat? A. They are up now.

Q. These two here are the gates up in the air? A. Yes, sir. 30

Q. I show you #2 for identification and ask you to show where are the gates on the bridge? A. Right here.

Q. These two wire affairs here? A. Iron pipe.

Cross-examination by Mr. Weller:

Q. How far do these toggles extend over the boat? A. About three feet.

Q. The end of the toggle comes right close to 40

George Albus, for Defendant—Cross

the iron post at the entrance to the ladies' gangway? A. No, sir.

Q. How far from that post does it come?

A. About four feet away from it.

Q. Is it not a fact that the photograph shows they are on a straight line,—the toggle and the outside of the ladies' cabin here? A. They are on a straight line, yes, sir.

10 Q. The iron post is right in front of the arch, is it not? A. In front of this, yes, sir.

Q. And the toggle lies firm against the arch?

A. Yes, sir.

Q. Then it is not four feet from the post?

A. Yes, sir; the post is here and the toggle is here (indicating).

Q. What I mean is this: when you are at the ladies' gangway, if you step behind that post, you would be at the toggle right by the arch? A. No, sir; over four feet away from it.

20

Q. Here is the end of the arch and the toggle runs right against that arch? A. Yes, but from the post.

Q. I am not speaking about the post. Suppose you go down the ladies' gangway to the arch, how far is the arch there away from the toggle? A. From this post to the toggle?

Q. Suppose you go down the ladies' gangway and turn toward the horses' gangway, how far would you have to go before you came to the toggle? A. About four feet.

30

Q. This man, when you saw him, had his left foot under the toggle? A. I didn't see his foot under the toggle.

Q. The object of the gates is to keep people off the boats until you are ready? A. Yes, sir.

Q. If you should keep those gates closed until the boat was adjusted—tied up and adjusted—no one could get hurt in that way? A. If they stayed

40

George J. Eiseman, for Defendant—Direct

on the bridge. The gates on the boat are closed.

Q. But if you keep the gates on the bridge closed until the boat was tied up and the bridge adjusted and then open the gates, no one could get hurt in that way? A. No, sir.

Q. Is not that the way they do it at every other ferry? A. I don't know.

Q. Is it not a fact that where they allow the people to go down before adjusting the boat, there must be danger, which could be avoided by a little bit of care? They could avoid all that danger by keeping the gates on the bridge closed? A. Yes, sir. 10

Q. By keeping the gates closed on the bridge until the boat was adjusted? A. Yes, sir.

Q. You said you had already hooked up the boat when you heard this man holler? A. Yes, sir. 20

No redirect-examination.

GEORGE J. EISEMAN, a witness called on behalf of the defendant, was duly sworn and testified as follows:

Direct-examination by Mr. Patterson:

Q. Where do you live? A. Just at present I am living down on the Island; my home is in Brooklyn. 30

Q. By whom are you employed? A. New York Central & Hudson River Railroad Company.

Q. What is your position? A. Superintendent of Repairs and Construction of Marine Department.

Q. How long have you been employed by the New York Central? A. I have been connected with the same department since 1873, but I did 40

George J. Eiseman, for Defendant—Direct

not go direct with the railroad until 1881. Mr. Starin prior to that had the contract and I was an employe of his in the same department. In 1881, the railroad took the work themselves and I have been with them since.

10 Q. You are familiar with the West Shore Ferries in Weehawken? A. Since the day they have been built.

Q. Are you familiar with the other ferries around the harbor? A. More or less. I travel on them a great deal and naturally look to see what they have and compare it with what we have.

20 Q. In your experience, how does the operation as recited by the witness,—the opening of the gate on the bridge by the bridgeman, his going to the left side of the boat and letting down the bridge, lowering the bridge, then hooking up the boat and then lowering the bridge again flat on the boat,—compare with the operation of the other ferries? A. Very much similar; there is not much difference on the Jersey side. From Communipaw to Weehawken all ferries are operated in the same manner.

30 Q. Is that so with respect to the opening of the gate on the bridge before the boat is hooked up, entirely hooked up? A. That is done right straight along on all the ferries. That gate on the bridge is really only intended—

Mr. Weller: "I don't think that is evidence, if your Honor please."

Mr. Patterson: "It is merely to show the custom with respect to these gates."

40 (Witness continues) to keep people from going overboard when the ferryboat is not in. It is customary to open the gates as soon as the ferryboat is up to the bridge.

George J. Eiseman, for Defendant—Cross

Q. And in regard to the equipment—toggle, bridge and boat generally—how does that equipment compare with the equipment on other ferries? A. Similar. We have the latest designed gates on our boats—lift gates, double style with jack-knife. The toggles are similar.

Q. Can you say from your experience whether that equipment is as good as that in use? A. I don't know of any better. 10

By Foreman of Jury:

Q. How do you account for people getting down so they can go on the ferryboat before the ferryboat is tied to the dock; why are they let out of the ferry-house before the boat is ready? A. You will find that all along the railroad terminals.

Cross-examination by Mr. Weller:

Q. Don't you know that the Lackawanna Ferry never lets anyone out of the ferry-house until the boat is adjusted and fastened to the dock? A. You are on the boulevard and the boat goes out— 20

Q. Don't you know right here at the Lackawanna Ferry they have a ferry-house? A. Yes.

Q. And they have gates on both sides; don't you know they will not let anyone go out of the ferry-house until they first tie up the boat and adjust the boat and let all the passengers off? A. I know there is a ferry-house there with gates, and I know that when the gates are opened you are allowed to go on the boulevard. 30

Q. What boulevard are you talking about? A. You can go from one slip to another.

Q. You mean the team gangway? A. You cross the team gangway to get to the passenger gangway.

Q. Don't you know they will not let anyone leave the ferry-house until the boat is adjusted and everybody has gotten off the boat? A. They open the gates when the boat arrives. 40

George J. Eiseman, for Defendant—Cross

Q. Is it not a fact that the people come off the boat first before the new passengers are allowed out of the ferry-house? A. There might be one bridge with a boat in and the other where the boat is out.

10 Q. But it is a fact that that is their policy; that they do that nearly every time? A. Their policy is that they let the people out of the ferry-house, and if the boat goes to Barclay or Christopher or 23rd Street, they open the gates and you can go to either bridge you want to.

Q. If they would adjust those boats before letting the people down on the boats, there would not be any danger of getting hurt, as this plaintiff was hurt? A. They have to open those gates to let the people off the boat.

20 Q. Why could they not open the boat gates simultaneously—those on the boat and those on the bridge—after the boat was fastened up?

Mr. Patterson: "It is immaterial what might have been done. The question is what is the custom?"

Question admitted.

A. These gates on the bridge as a rule are opened before the boat is fastened to the dock.

30 Q. Don't you know that the Pennsylvania never opens the outside gates until the boat is tied up and adjusted? A. I have seen them open.

Q. When and where? A. Different ferries.

Q. We are talking about the Pennsylvania now. Did you ever know the Pennsylvania to open up the outer gates before the boat was tied up? A. I have walked down the bridge and stayed there. Of course, they are double-deckers. You can go down the teamway, but not on the upper deck.

40 Q. But is it not a fact that they always adjust their boats before letting the people off and on?

George J. Eiseman, for Defendant—Cross

A. They could do that with the upper deck.

Q. Is it not a fact that they do that with both decks? A. They work separately; they always open the gate on the bridge first.

Q. Why? A. To get ready to unload the boat.

Q. What is the object of opening the gates on the bridge? A. To get ready to let the passengers off.

Q. Before the boat is tied up? A. It doesn't take but half a minute to hook the boat up. 10

Q. You expect then when the gates are opened the boat will be hooked up before the people reach the gates? A. The man puts the hook in and the gates on the boat are not opened until the boat is securely fastened to the bridge and those on the bridge are to remain there to give the passengers on the boat a chance to get off. Passengers and teams have to come off before others go on again, and the man on the boulevard has ample time to let the passengers and teams on. 20

Q. And that has been your practice as long as you have been running the ferries? A. Yes, sir.

Q. And passengers are getting on and off at the same time? A. Not all of them; some do.

Q. Three-fourths of them do? A. No, sir.

Q. When you are there, you always wait outside, do you? A. I can't say that I do. I am an employee and might take my chances. If I were a passenger I would not. 30

Q. You say the Pennsylvania allows passengers— A. I say I walked down the gangway; I don't say on the boat. I walked down the bridge.

Q. You are answering something that I am not talking about. Is it not a fact that the Pennsylvania Railroad Company always keep closed the gates on the bridge until the boat is tied up and adjusted? A. I have seen them open.

Q. When? A. I can't tell just when. 40

Frank Leenig (Recalled) for Plaintiff—Direct

Q. How long ago? A. Probably within a few days.

Q. What is the idea of having those gates halfway down the bridge; why are they not up at the upper end, next to the dock? A. I don't know; it has been customary to have them halfway down.

10 Q. Is it not for the reason that the people can walk down on the bridge and stand there until the gates are swung open and they go on? A. They can go down if they wish to.

Q. We all know they can walk down if they want to, but I am asking you if the gates are not so arranged for that purpose? A. The gates are intended to keep the people from going overboard when there is no boat in the bridge.

20 Q. Is it not the object in placing them halfway down the bridge so that people can walk down and gather in front of them and stand there until they are opened and they go on down? A. I don't think so.

No redirect-examination.

DEFENDANT RESTS.

30 FRANK LEENIG, the plaintiff, recalled for further examination on his own behalf, testified as follows:

Examined by Mr. Weller:

Q. There is one witness who swore that you jumped down on the boat before it was tied up; is that true? A. No, sir.

Q. This photograph, D-1, does that show the end of the boat and the bridge? A. Yes, sir.

40 Q. I show you that square stick there, is that the toggle? A. That is the toggle.

Frank Leenig (Recalled) for Plaintiff—Direct

Q. In going on the boat, you walked right down on the south side of that archway? A. Yes, sir.

Q. How far is it from the end of the archway over to the toggle? A. I should judge about twelve or fourteen inches.

Q. When the people were coming off, you stepped in there between the round post and the archway? A. Yes, sir.

Photographs offered in evidence and marked exhibits D1 and D2, by the Clerk. 10

No cross-examination.

Case closed.

Mr. Patterson moves the direction of a verdict for the defendant on the ground that the evidence shows there was no negligence on the part of the defendant, and on the further ground that the plaintiff was guilty of contributory negligence.

Motion denied. Exception. 20

The following requests to charge were made by the defendant, to wit:

1. That if plaintiff was familiar with the operation of this ferry, the opening of the gate on the bridge was not an invitation to him to board the boat while it was eight or more inches away from the bridge, and before it had been fastened up and the gates on the boat opened, and if plaintiff did so board the boat before it was properly fastened up and thereby placed himself in a position which resulted in his injury, he was guilty of contributory negligence and he cannot recover. 30

2. That if plaintiff was familiar with the operation of this ferry, the opening of the gate on the bridge was not an invitation to him to board the boat while it was eight or more inches away from the bridge, and before it had been fastened up and the gates on the boat opened, and if plain- 40

Frank Leenig (Recalled) for Plaintiff—Direct

tiff did so board the boat before it was properly fastened up and thereby placed himself in a position which resulted in his injury, his act in boarding the boat was a negligent act and was the proximate cause of his injury and for the result of which he cannot recover from the defendant.

10 3. That if the plaintiff was familiar with the operation of this ferry, and boarded the boat before it was fastened up, before the gates on the boat were opened, thereby placing himself where he should have known he was likely to be injured by the toggle in question, he was negligent and cannot recover for his injury.

20 4. That if plaintiff boarded the boat before it was fastened up, before the gates on the boat were opened, thereby placing himself where he should have known he was likely to be injured by the toggle in question, he was negligent and cannot recover for his injury .

5. That if the toggle in question was of a size to be readily seen and avoided in daylight, and plaintiff was injured by the toggle when, had he made reasonable use of his eyes, he could have seen and avoided the injury, he cannot recover for the injuries so sustained.

All of which requests to charge were refused by the Court, and exceptions duly allowed.

30 Judge's Charge: "This action is based on negligence. In order for this plaintiff to recover, you must find that the defendant was negligent. It was the duty of the defendant to provide a safe passageway to and from its boats, and this passageway, as has been testified, had this toggle hanging over the boat. The gates were opened and the plaintiff walked down and approached the boat, and in doing that it was his duty to observe the conditions at the boat and, as far as possible,
40 avoid danger. This has been held by our Supreme

Frank Leenig (Recalled) for Plaintiff—Direct

Court. The question for you to determine is, in the first place, whether this condition as it existed was obvious to the plaintiff and could have been avoided by him; whether he was justified or not in taking the position which he took in which the injury took place without seeing the danger. It seems that the man who tied up the boat has testified that the boat was fastened before his attention was called to the accident by the scream of the plaintiff, and that when he heard that scream, he was letting down the bridge; so that it is for you to determine whether there was a negligent act by the defendant's employees in letting down the bridge and causing the injury.

The measure of damages is, first, the actual loss—pecuniary loss—to the plaintiff by reason of the fact that he was laid up for six and a half weeks at twenty dollars a week. Then, in addition to that, the only evidence that has been produced here is the fact that he suffered pain. It is within your scope to determine how much compensation should be given to him for that pain and suffering, and in considering that, you must consider not only the length of time he was in the hospital, but the suffering that has continued since, and whatever in your opinion he is entitled to for his present condition, or the future.

You must also find that, in order for the plaintiff to recover, he was not guilty of contributory negligence, that there was no act of his that he was bound to do or to avoid that contributed to the accident. If you find that the company was guilty of negligence and that he was not guilty of contributory negligence, then you will find a verdict for the plaintiff and measure the damages as you have been instructed; but if you find that the company was not guilty of negligence, or that the plaintiff was guilty of contributory negligence, then your verdict should be for the defendant.

Frank Leenig (Recalled) for Plaintiff—Direct

Mr. Patterson, I refuse to charge as you request and will give you an exception.

10 In regard to the providing of a passageway to and from the boat, of course that passageway must be reasonable safe as far as the tying up of a boat can be made so; that is the obligation. It is not supposed to be absolutely safe under the circumstances under the decision of our court. The passageway must be reasonably safe, and the passenger must use reasonable care in going on and off a boat so as to avoid danger."

The jury thereupon retired to consider of their verdict, and subsequently returned and rendered a verdict for the plaintiff for five hundred dollars.

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Stenographer's Certificate.

To his Honor, J. W. R. BESSON, Judge of the Hoboken District Court:

I, Charles Young, the stenographer sworn in the foregoing cause, do certify that the foregoing is a true transcript of the shorthand notes of testimony taken by me on the trial of the cause wherein Frank Leenig is plaintiff and the New York Central and Hudson River Railroad Company is defendant on the twenty-seventh day of June, 1913.

10

CHARLES YOUNG,
Stenographer.

Judge's Certificate.

To his Honor, WILLIAM S. GUMMERE, Chief Justice, and to the Justices of the Supreme Court of the State of New Jersey: 20

I, J. W. R. BESSON, Judge of the Hoboken District Court, do certify that the foregoing stenographer's transcript of testimony, made by Charles Young, a stenographer designated by me, is my state of the case between Frank Leenig, plaintiff, and New York Central and Hudson River Railroad Company, defendant, as the same was tried before me in the said Hoboken District Court on the twenty-seventh day of June, 1913.

30

J. W. R. BESSON,
Judge of the Hoboken District Court.

Judgment.

DISTRICT COURT

OF THE CITY OF HOBOKEN.

STATE OF NEW JERSEY, }
 HUDSON COUNTY, }
 No. 11577

Before:

10

J. W. RUFUS BESSON, Esq.,

Judge.

HARRY BENNETT,

Clerk.

FRANK LEENIG,
Plaintiff,

vs.

20

NEW YORK CENTRAL AND HUDSON
 RIVER RAILROAD COMPANY, a
 Corporation,
Defendant,

\$500.00.

WELLER & LICHTENSTEIN,
*Plffs. Attys.*VREDENBURGH, WALL & CALEY,
Defts. Attys.

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| | | |
|--------------------|----------|---|
| | City al. | A summons was tested March 17, |
| Summons | \$1.50 | A. D. 1913, returnable March 25, A. D. |
| Service and return | .60 | 1913, at ten o'clock in the forenoon at |
| Mileage | .20 | the Court Room of said Court in the |
| Venire | 1.25 | City of Hoboken. The Sergeant-at- |
| Summoning jury | 1.00 | Arms returned the Summons as fol- |
| Attending jury | .50 | lows, viz.: I served the within Sum- |
| Jury fee | 3.00 | mons on the within named defendant |
| Trial fee | 1.50 | corporation on C. Campbell, Chief |
| Atty. fees, 5% | 25.00 | Clerk, this 17th day of March, 1913, |

by reading the same to him and leav-
 ing him a true copy thereof.

JOHN SOLFERINO,

Sergeant-at-Arms.

40

Judgment.

March 17, 1913—Plaintiff filed State of Demand and notice of trial by jury.

March 25, 1913—Case was placed on list of causes to be tried by Jury for June 27, 1913, at 10 A. M.

June 25, 1913—Venire was issued to John Solferino, Sergeant-at-Arms, returnable June 27.

The Sergeant-at-Arms returned the venire as follows: 10

By virtue of the above Venire Facias I have duly summoned the following lawful jurors to appear before the District Court of the City of Hoboken at the time designated:

Edward Carroll, George Le Dun, Samuel Teitelbaum, Joseph Keller, Albert Pussback, Charles Shafer, Vincent Amoroso, Thomas Kennedy, Richard Bohan, Edward McCloskey, Theodore Moeller and William O'Brien. 10

June 27, 1913—Parties appeared and proceeded to trial by jury. 20

On the part of the plaintiff the following witnesses were sworn and gave their evidence:

James J. Benson, Frank Leenig and George F. Zedlick.

Plaintiff offered one exhibit in evidence and was marked P1.

On the part of the defendant the following witnesses were sworn and gave their evidence: Charles Krouse, George Albuss and George J. Eicman. Defendant offered two exhibits in evidence and were marked D1 and 2. 30

Charles Young was sworn as stenographer.

July 5, 1913—Defendant filed notice of appeal.

Whereupon it is on this twenty-seventh day of June, A. D. 1913, by this jury considered and adjudged that said Frank Leenig, plaintiff, recover against said New York Central and Hudson River Railroad Company, a corporation, defendant, the 40

Judgment.

sum of five hundred dollars and _____ cents
damages and thirty-four dollars and fifty-five
cents, costs of suit:

I, HARRY BENNETT, Clerk of the District Court of
the City of Hoboken, J. W. RUFUS BESSON, Esq.,
Judge, do hereby certify that the foregoing is a
true copy of the record of a judgment of said
court.

10 In witness whereof I have hereto set my hand
as Clerk of said Court and affixed the seal of said
Court this 5 day of July one thousand nine hun-
dred and thirteen.

HARRY BENNETT,
Clerk.

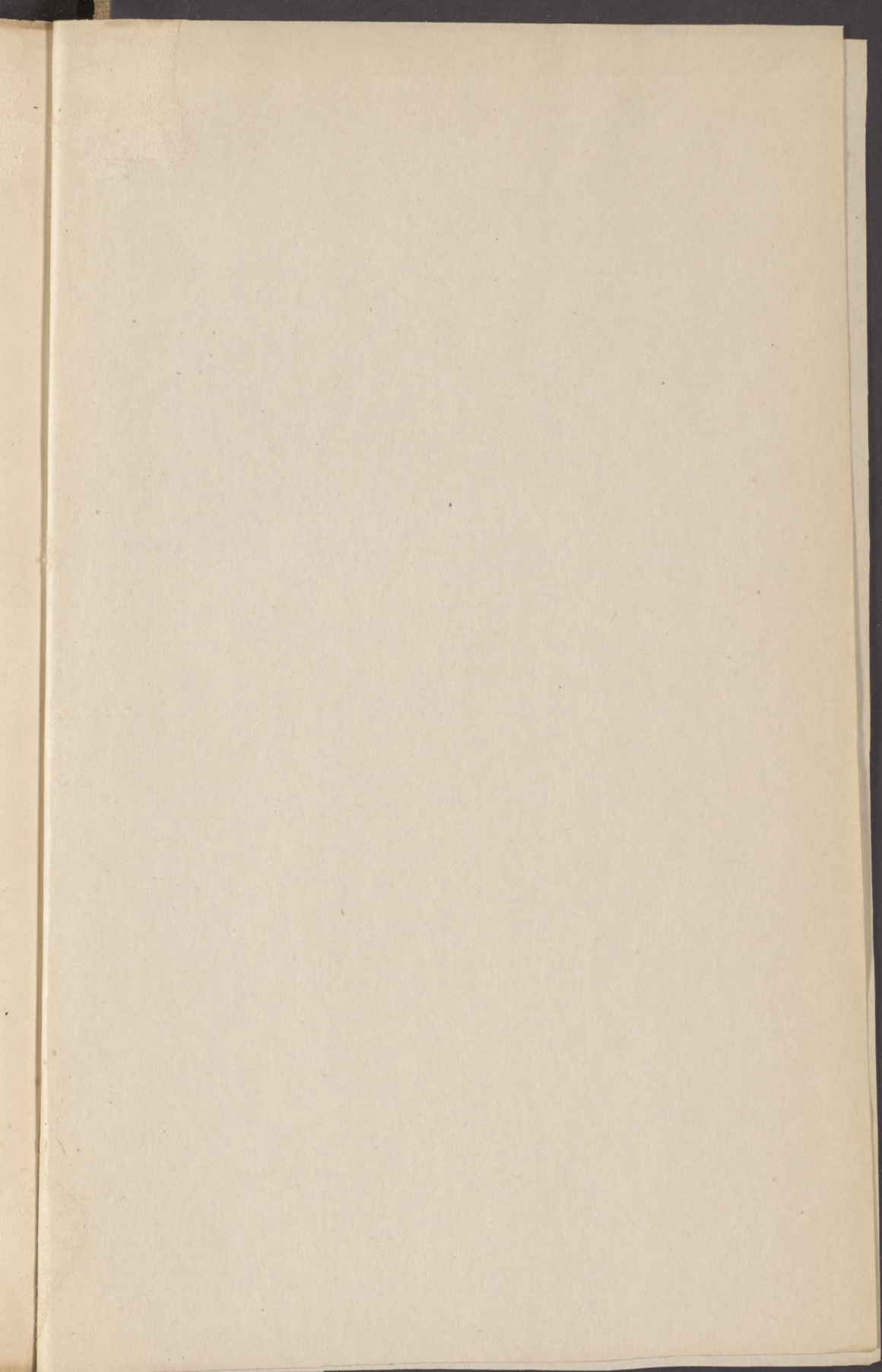
(SEAL)

[District Court
City of Hoboken]

20 Appeal Bond filed July 7, 1913.

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40



Judgment

sum of five hundred dollars and costs damages and thirty-four dollars and fifty-five cents, costs of suit:

I, HARRY BARRETT, Clerk of the District Court of the City of Hoboken, J. W. RUCKEN BRONN, Esq., Judge, do hereby certify that the foregoing is a true copy of the record of a judgment of said court.

10 In witness whereof I have hereto set my hand as Clerk of said Court and affixed the seal of said Court this 5 day of July one thousand nine hundred and thirteen

HARRY BARRETT,

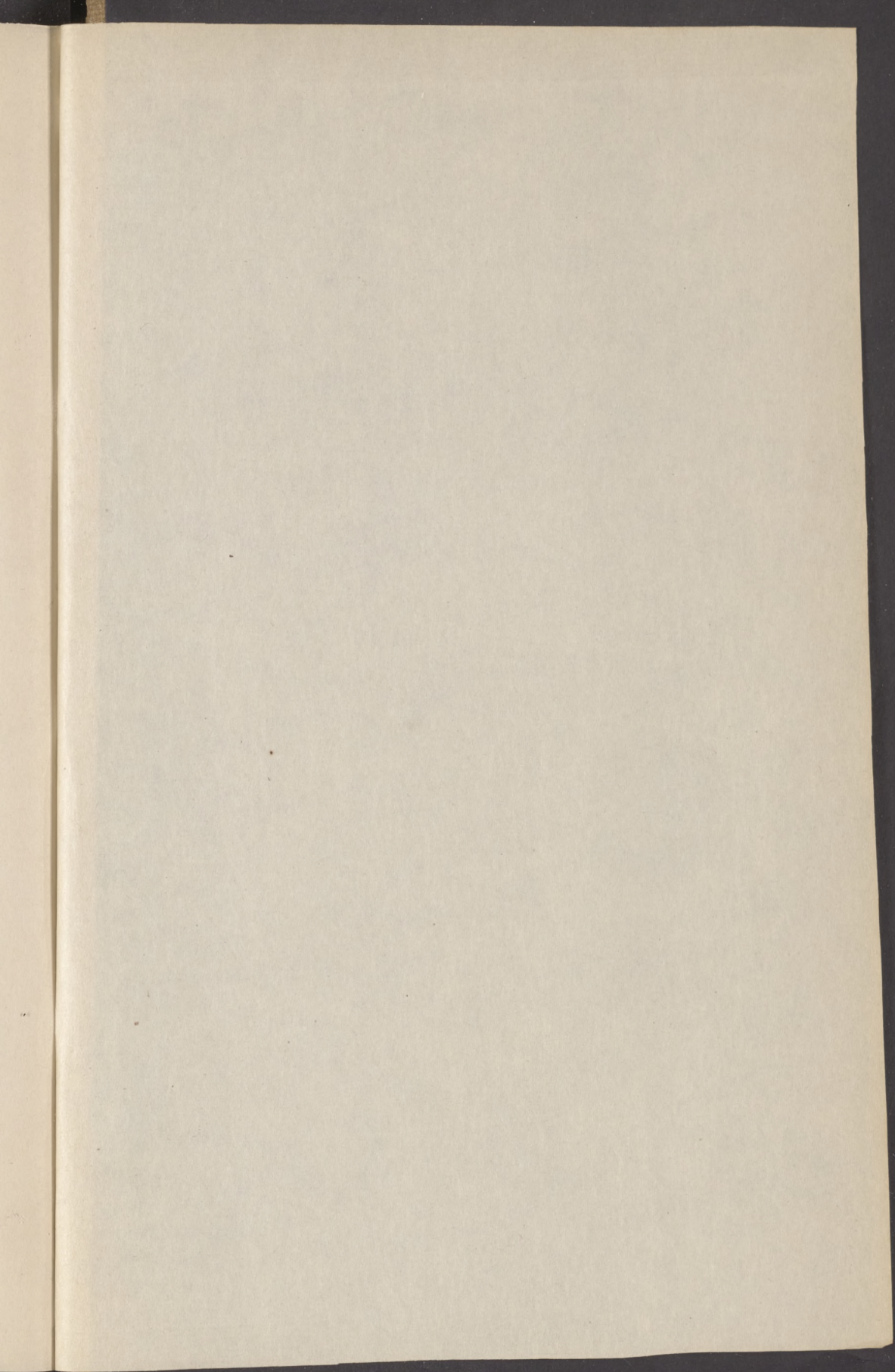
Clerk

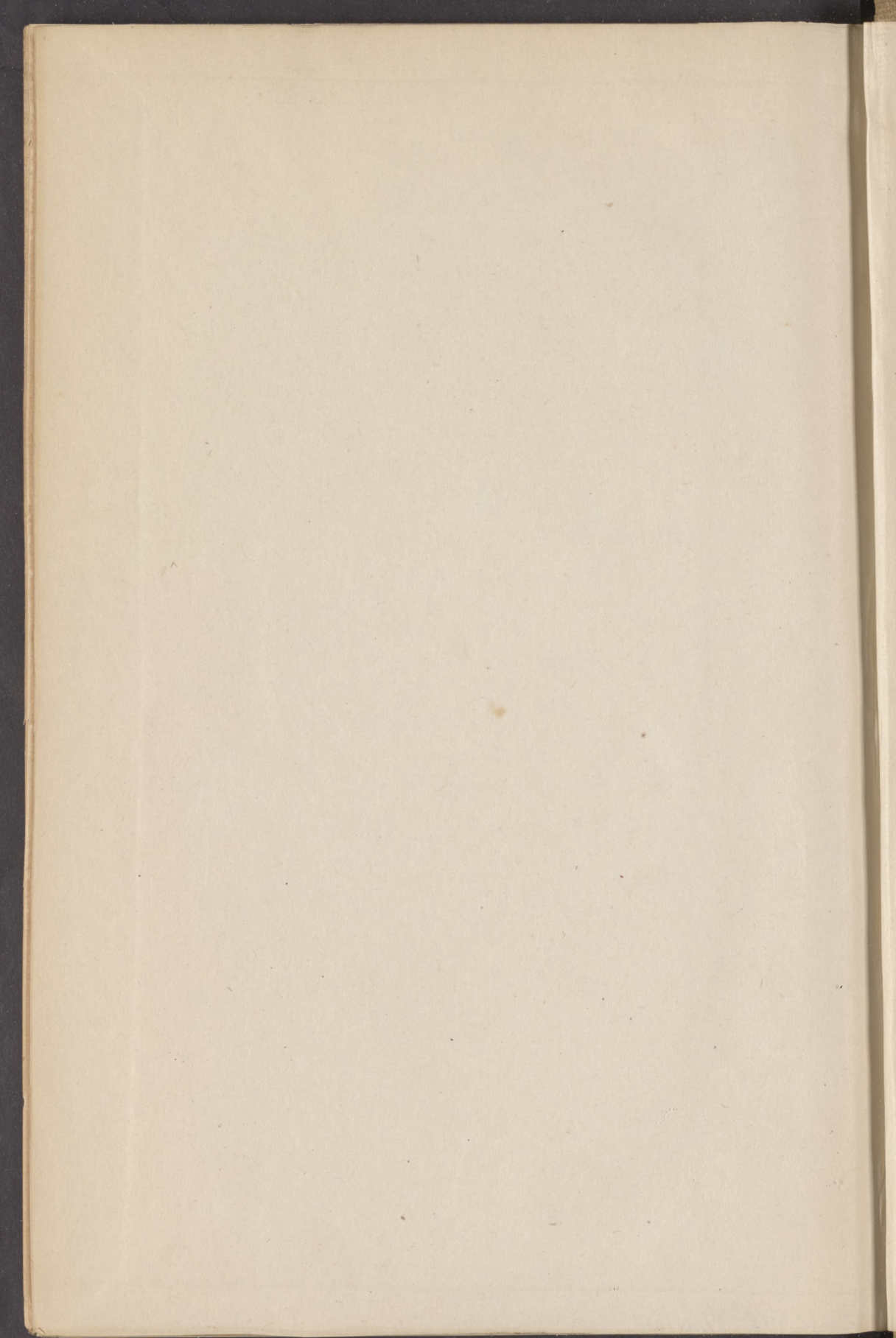
(seal)
(District Court
City of Hoboken)

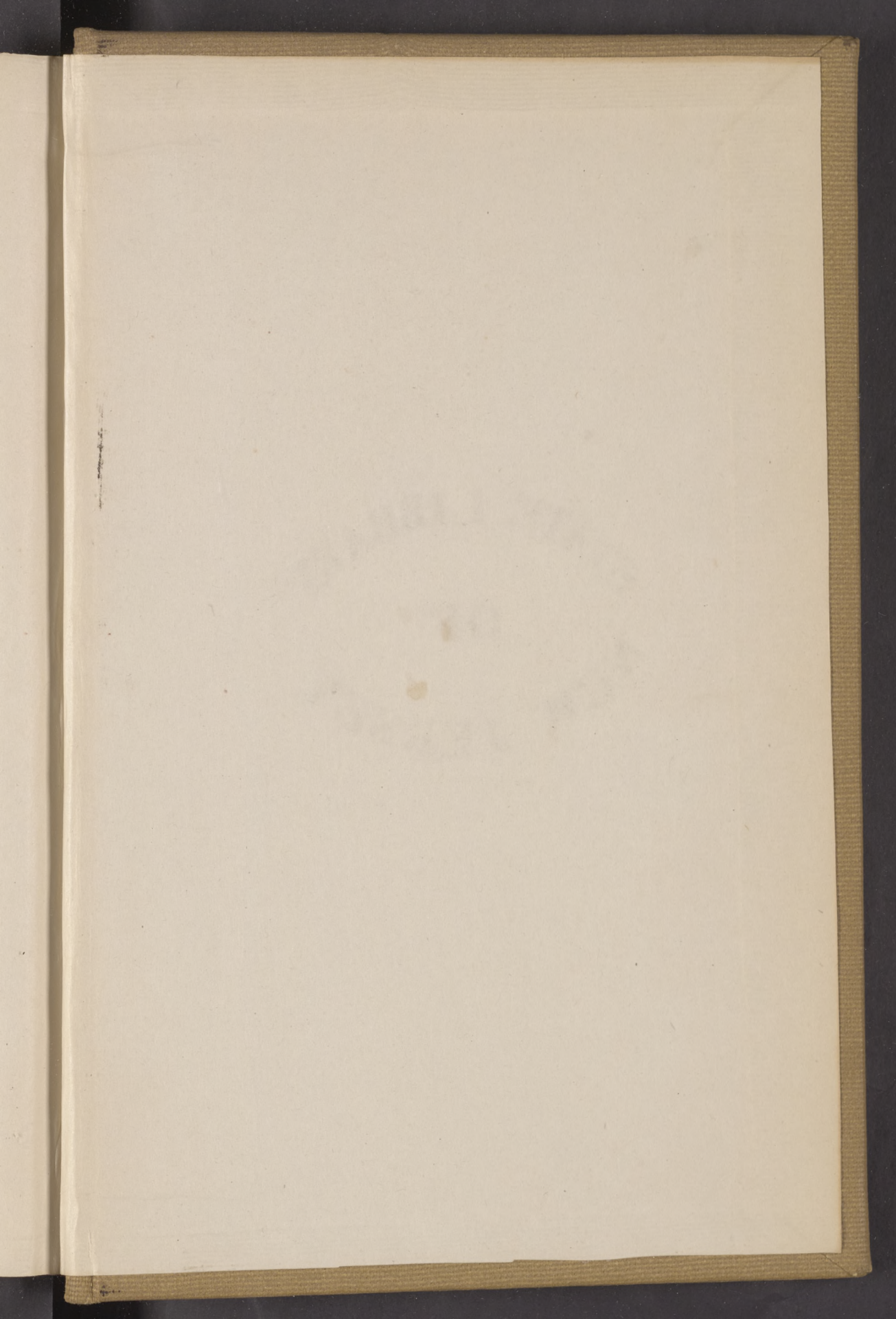
20 Appeal Remitted July 7, 1913

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