

the bonds applied to the construction of the road constituted a fund equal in amount to the full par value of the bonds, and also that for the stock sold by the town its treasury received in cash a sum of money equal to the par value of the stock so sold. The statute authorized the town to issue the bonds, and the railroad company expended in the construction and equipment of the road a sum from the proceeds of the bonds equal to their par value. It is, we think, clearly shown that the bonds were disposed of by the town at par. It is not for us to consider whether or not the subscription made by the town of Darlington, in its bonds, towards the construction of the railroad, was a profitable one. It had the right to subscribe, and the power to issue bonds. The road desired and contracted for has been built according to the terms of the agreement relating to the same, and is now in operation. The town has received the consideration stipulated for when the bonds were issued, and is now enjoying the benefits of the same. The coupons offered in evidence were past due, and unpaid. The town of Darlington was liable for the same, and judgment was properly rendered therefor. The defense was without merit, and the judgment of the court below is affirmed.

HOLMES v. JUNOD.

(Circuit Court of Appeals, Fifth Circuit. June 4, 1895.)

No. 379.

NEGLIGENCE AND CONTRIBUTORY NEGLIGENCE—EVIDENCE—QUESTION FOR JURY.

In an action to recover damages for a personal injury sustained by a workman by being crushed under an elevator, where there was evidence tending to show that the boy running the elevator and other agents of defendant had been warned to stop it, *held*, that the questions both of negligence and contributory negligence were for the jury.

In Error to the Circuit Court of the United States for the Eastern District of Louisiana.

This was an action by J. L. Junod against D. H. Holmes to recover damages for personal injuries sustained by being crushed under an elevator while working in the elevator shaft of defendant's building. At the trial, before the case was given to the jury, defendant moved the court to direct a verdict in his favor, which motion was denied. The jury returned a verdict for plaintiff in the sum of \$1,500, and judgment was entered accordingly. Defendant brings error.

E. H. Farrar, B. F. Jonas, E. B. Kruttschnitt, and Hewes T. Gurley, for plaintiff in error.

Charles Louque, for defendant in error.

Before PARDEE and McCORMICK, Circuit Judges, and BRUCE, District Judge.

PARDEE, Circuit Judge, delivered the opinion of the court.

The evidence in the case tended to show that the boy in charge of the elevator and other agents of the plaintiff in error were warned

that the defendant in error was to be put to work in the elevator shaft to do the painting required by the Schneider contract, and that assent was given to the proposal to stop running the elevator while said painting was being done. Whether this, with the other circumstances shown, was sufficient notice to the plaintiff in error to charge him with negligence in permitting the elevator to be run, whereby the defendant in error was injured, was a proper question for the jury. On the facts, reasonable men might not draw the same inferences as to negligence. See *Railway Co. v. Ives*, 144 U. S. 408, 417, 12 Sup. Ct. 679; *Gardner v. Railroad Co.*, 150 U. S. 349, 361, 14 Sup. Ct. 140. The same may be said with regard to the question of contributory negligence on the part of the defendant in error, as the evidence tended to show that he did take certain precautions to protect himself from running the elevator before entering upon the work. While it is true that from previous experience of the defendant in error while working in the same elevator shaft, as well as from the nature of the work, it may be said that the defendant in error knew the danger of the occupation and assumed the risks thereof, yet it cannot be said that he also assumed the risk of negligence on the part of the plaintiff in error, and whether the plaintiff in error was guilty of negligence, as said above, was a question proper to be determined by the jury. For these reasons, we are of opinion that the refusal of the trial judge to instruct the jury to find for the defendant in error on the grounds assigned was not erroneous. This refusal being the only error assigned, the judgment is affirmed.

METCALF v. CITY OF WATERTOWN.

(Circuit Court of Appeals, Seventh Circuit. July 10, 1895.)

No. 233.

1. PRACTICE—SECOND APPEAL—JUDGMENT ON MANDATE.

Where the judgment or decree in a case, upon the mandate of an appellate court, determines questions not covered thereby, it is subject to review, by appeal or writ of error, in the proper appellate court.

2. JUDGMENT—INTEREST—SPECIAL FINDING.

Upon trial of a case by the court without a jury, the court made a special finding of facts from which the amount then due the plaintiff for principal and interest, if he was entitled to recover, could be computed, but gave judgment for the defendant. The supreme court, on error, reversed the judgment, and directed the entry of judgment for the plaintiff on the finding. The statute of Wisconsin, where the case arose (Rev. St. § 2922), allows the recovery of interest on a verdict until the entry of judgment. *Held*, that the plaintiff was entitled to have interest computed, to the time of entry of judgment on the mandate of the supreme court, upon the whole amount of principal and interest due him at the time the finding was made.

In Error to the Circuit Court of the United States for the Western District of Wisconsin.

This was an action by Eliab W. Metcalf against the city of Watertown, Wis., on a judgment. The case was twice carried to the supreme court on error. See 9 Sup. Ct. 173, 128 U. S. 586, and 14 Sup. Ct. 947, 153 U. S. 671. A judgment having been entered on