the damages claimed by the plaintiff are so remote, unnatural, and improbable as not to be recoverable. I think the matter of damages, under proper instructions concerning the law applicable thereto, must be left to the jury.

The demurrer must therefore be overruled.

PLANT INV. CO. v. COOK.[1]

(Circuit Court of Appeals, Fifth Circuit. February 24, 1896.)

No. 393.

1. CONTRIBUTORY NEGLIGENCE—DEFINITION.
   A statement, in charging a jury upon the subject of contributory negligence, that the same "must be such negligence as a person of ordinary care and prudence would not be guilty of, when in the exercise of such prudence," is erroneous, in failing to give a sufficiently comprehensive definition of such negligence, and to point out the necessity of a proximate connection between it and the injury.
2. NEGLIGENCE—GROUNDS OF LIABILITY—CHARGING JURY.
   In an action against the owner of a wharf for injuries caused to the plaintiff by a fall due to the presence of a slippery substance on the wharf, the court charged the jury that if the wharf was not in an ordinarily safe condition, on account of any slippery substance, and on account of that unsafe condition the plaintiff was injured, they should find for the plaintiff. *Held*, that such charge stated too broadly the conditions of defendant's liability; it should have been qualified by reference to the business conducted on the wharf, as bearing upon the question of its ordinarily safe condition, by pointing out the necessity of defendant's being found responsible for its condition, of the slippery substance being found to be the proximate cause of the injury, and of the plaintiff's being shown to have been free from contributory negligence.
3. SAME—ORDINARY CARE.
   Held, further, that it was error in such case to refuse to charge that if the jury found certain things to have been done, of the doing of which there was some evidence, and that these things were all that ordinary care required the defendant to do, the jury should find for the defendant.

In Error to the Circuit Court of the United States for the Southern District of Florida.

S. M. Sparkman and Joseph E. Hartridge, for plaintiff in error.

Thos. M. Shackleford and N. B. K. Pettingill, for defendant in error.

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

BOARMAN, District Judge. The action, as shown by the pleadings in the court below, was trespass on the case, for the recovery of damages in the sum of $15,000 for personal injuries caused by the negligence of defendant below, the Plant Investment Company. In the declaration, plaintiff below alleges, substantially: That the Plant Investment Company was in the full, unrestricted possession and control of certain wharves, known as the "Port Tampa Docks,"

[1] Rehearing denied April 21, 1896.

state of Florida, and kept the same open for the use of passengers to and from the steamers of the Plant Steamship Line; one of them being known as the steamship "Kissimmee," a common carrier of passengers between the said docks and the town of St. Petersburg, in said state. That on or about the 26th day of February, 1891, the plaintiff, while in the act of walking along said docks, at or near the landing place of the steamer Kissimmee, for the purpose of taking passage on said steamer, and while in the exercise of due diligence on her part, slipped and fell heavily upon her left side, and ankle of her left leg, on account of the slippery, insecure, and unsafe condition of the said wharves; the dock of same being carelessly and negligently kept and managed by the said defendant company, in this: that the said wharf was rendered slippery and unsafe to walk on by the presence of a slippery substance, to wit, cotton-seed meal saturated with water, which was left on the planks of said dock, carelessly, by the agent or employés of said defendant company. That in falling upon her left side she dislocated and otherwise injured her ankle, so that for many weeks she was unable to attend to her business, and in consequence thereof she suffered great pain, prostration of health, and incurred large expense for nurses and medical attendance. That at the time of the suit she had not recovered, and would always be lame and incapacitated to take care of herself, by reason of said injury. That in consequence of said injury she became sick and lame, and remained so for six months, during all of which time she was suffering intense pain, etc. Defendant below, to the said declaration, interposed a general demurrer, which was overruled, and afterwards filed three pleas: First, that the defendant was not guilty; second, that the injury was not caused by the negligence of defendant, but by that of the plaintiff; third, that the injury to plaintiff was caused by the contributory negligence of the plaintiff. The trial below resulted in a verdict for the plaintiff in the sum of $9,000.

During the progress of the trial a number of exceptions to the ruling of the court below were taken, and, in aid of them, it appears that all the testimony administered by either party to the jury is brought up in the record. The transcript shows 31 assignments of error presented by plaintiff in error. The plaintiff in error's brief shows 25 specifications of error relied upon. The first 2 specifications relate to the ruling of the court on the plea of jurisdiction, and the general demurrer to plaintiff's declaration. We think there was no error on the part of the court below shown therein. The assignments from the second to the eighth, inclusive, relate to the errors of the court below admitting, over the objections of the defendant, certain testimony to the jury. It may be that some of that testimony was erroneously admitted, but it was not of serious importance, in the view we take of the case. The tenth assignment comes under what we have just said above. In considering the ninth assignment, we think that the plaintiff, under the allegations averred in the declaration, as well as in the testimony offered by either side, should have stated her age to the jury, so they might have taken that fact into consideration with all the other evidence in the case; the failure of