implements operated by defendant, by which the plaintiff was injured, were plainly apparent and observable, as well as the person operating the same, by the plaintiff. (3) That the testimony showed, without dispute, that the character and condition of the implements used by the defendant in the operation of his factory, and by which the plaintiff was injured, were in plain view, and their character and condition, and their defects, if any, and their manner and method of operation, were plainly visible to any person, including the plaintiff, from the position where the plaintiff was usually occupied, and was occupied at the time of the injury in question. (4) That the testimony shows that the plaintiff could have known, by the use of ordinary judgment and his sense of sight, the character and condition and the method of operating the appliances in use by the defendant, and through the use of which the plaintiff was injured. (5) That the undisputed testimony shows that the plaintiff had every means in his power of knowing and of gaining knowledge as to the character and condition of, and the dangers to be reasonably apprehended from, the appliances aforesaid, as fully as those possessed by the defendant. (6) That the undisputed testimony shows that the appliances used by the defendant were good, sufficient, and reasonably safe, and of such character and in such condition as the defendant had the right to use without further intervening fault on his part in the premises, in the work in which the plaintiff was employed. (7) That the testimony shows that the defendant, by means of suitable flooring and boards to stand upon, while the person engaged in removing the scantling and adjusting the fall and tackle over the position where the workmen had been employed below, had provided means by which said work, with ordinary care and precaution on the part of the person so moving and adjusting the same, could be removed in safety, not only to the person performing the labor, but to those below. (8) That the undisputed testimony shows that the accident in question was caused either by an accident to, or by neglect or want of proper precaution on the part of, one Smith, a fellow servant of plaintiff, in the performance of his duties, while removing the scantling and adjusting the tackle aforesaid. (9) That the testimony establishes that the plaintiff did, by contributory negligence on his part, place himself in a position where he knew, or ought to have known, and was bound to know, the danger to him during the removal of the scantling and adjusting of the tackle above his head, because of which facts, in law, there can be no recovery for damages against the defendant. (10) That the testimony shows that the plaintiff voluntarily entered into the place or position where he was injured, without legal obligation or necessity on his part, or act on the part of defendant amounting to coercion; and that, in law, plaintiff is bound to be held to have voluntarily entered into said position, and to have taken the risks involved in such entry. (11) The undisputed testimony shows that the plaintiff sought the employment in which he was injured, thereby impliedly representing that he was competent to perform its duties, and to apprehend and avoid all dangers that might be discovered by the exercise of ordinary care and prudence.'

"The court refused the application, to which refusal the defendant reserved its bill of exceptions, and subsequently presented such bill, with the testimony taken on the trial as part thereof, which bill was signed by the judge and filed. An application for a new trial was refused. The error assigned is that the 'trial court erred in refusing the motion made by defendant in open court, and on the trial of said cause, and at the conclusion of the testimony adduced and offered herein by both plaintiff and defendant, requesting the court to direct a verdict for the defendant, and refusing the said motion and request made in writing, as fully shown by the reasons and statements contained in the bill of exceptions and the testimony and evidence aforesaid, to be annexed thereto and made part thereof, as if repeated and copied therein, in full, filed and to be filed within the delay allowed by order of said court.' "

A study of the 363 printed pages of evidence found in the record as a part of the bill of exceptions satisfies us of the following propositions: That the evidence was conflicting as to whether O'Malley

contributed by his negligence to his own injury; that it is also conflicting as to whether O'Malley was injured through the negligence of a fellow servant; that the appliances in use in the ice factory, by which O'Malley was injured, were not reasonably safe; that O'Malley was not directly informed nor instructed as to the dangerous and unsafe appliances to be used over his head, and in connection with the work which he was to perform; that whether he knew, by the circumstances and his observation, or ought to have known, that the appliances were unsafe, and therefore assumed the risk thereof by accepting his employment, was a question to be determined wholly by proper and legitimate inferences to be drawn from a number of facts as to which the evidence was conflicting. In our opinion, the case was one eminently proper to be submitted to a jury, and it would have been error for the trial judge to have charged the jury to find for the defendant for any one of the reasons assigned. The judgment of the circuit court is affirmed.

PALATINE INS. CO. v. EWING et al.

(Circuit Court of Appeals, Sixth Circuit. March 7, 1899.)

No. 583.

INSURANCE—CONSTRUCTION OF POLICY—PERMISSION FOR ADDITIONAL INSURANCE.

A policy of fire insurance contained a provision that "unless otherwise provided by an agreement indorsed hereon or added thereto," the policy should be void if the insured then had, or should thereafter procure, any other contract of insurance on the property. At the time the policy was issued, an additional paper, or "rider," was attached, stating that it was attached to and formed a part of the policy, and containing a clause as follows: "Total insurance permitted is hereby limited to three-fourths of the cash value of the property hereby covered, and to be concurrent herewith." No other permit was indorsed on the policy, though there was at the time other insurance on the property, as the company knew. *Held*, that the rider constituted an agreement permitting additional insurance, within the provision in the body of the policy, which applied to the previous insurance, and to any thereafter procured, not exceeding in all three-fourths of the value of the property.

In Error to the Circuit Court of the United States for the Middle District of Tennessee.

This was an action on a policy of fire insurance. There was a verdict and a judgment for plaintiffs, and defendant brings error.

On the 3d day of April, 1895, the plaintiff in error, the Palatine Insurance Company, issued its policy of insurance in the sum of $3,000 to Gerstle Bros., on their stock of merchandise at Pulaski, Tenn. Gerstle Bros., on November 21, 1895, made an assignment, which included the insured merchandise, to the defendants in error, Solinsky and Ewing, as trustees for the benefit of their creditors. On the following day they also assigned to the said Solinsky and Ewing the above-mentioned policy of insurance. On the night of November 23, 1895, the insured property was partially destroyed by fire, the damage amounting to $16,250. There was other insurance on the property at the time when this policy was issued, and the whole amount of insurance, including the latter, was $7,500. On the day before the fire occurred, the trustees, Ewing and Solinsky, procured three additional contracts of insurance on the assigned stock of $2,500 each, without the knowledge of the Palatine