

tences. It was simply in effect a certificate of good health, which permitted the employment. This law was reënacted in Laws 1921, c. 85, s. 25 (3); and in P. L., c. 118, ss. 27 and 28.

The defendant takes the further position that even though the insurance company may not be obligated to pay the damages recoverable by the employee, it is obligated to defend the suits at law, by reason of clause 3 in the policy which provides that the insurance company shall "defend, in the name and on behalf of this Employer, any suits or other proceedings which may at any time be instituted against him on account of such injuries, including suits or other proceedings alleging such injuries and demanding damages or compensation therefor, although such suits, other proceedings, allegations or demands are wholly groundless, false or fraudulent."

The primary obligation of the insurer is "to indemnify this employer against loss by reason of the liability imposed upon him by law for damages on account of such injuries to such of said employees as are legally employed." That obligation being removed there is no further duty on the part of the insurer to defend actions against the insured. This is decided very definitely in *Lumbermen's Mutual Casualty Co. v. McCarthy*, 90 N. H. 320, 321, 323, and cases cited. For further authority on this point see *United Waste Mfg. Co. v. Casualty Co.*, *supra*.

Judgment for the plaintiff.

BRANCH, J., did not sit: the others concurred.

Hillsborough, }
Dec. 1, 1942. } No. 3350.

CATHARINE CARTIER *v.* F. M. HOYT SHOE CORPORATION.

WILLIAM J. CARTIER *v.* SAME.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Warren, Wilson, McLaughlin & Wiggin (Mr. Wiggin orally), for the plaintiffs.

Devine & Tobin (Mr. Tobin orally), for the defendant.

ALLEN, C. J. The evidence warranted a finding that the tread at the edge of the floor from which the plaintiff stepped to go down the stairway was so worn as to make its condition one of negligent maintenance. She testified: "The top landing was not even. It was grooved in, I would say, about an inch. In other words, the edge of it was worn and looked very slippery looking." While some wear of stair treads is to be expected and creates no demand for repair, the point at which the wear has become so great as to make the stairs unduly hazardous is one of fact, and the evidence quoted tended to show that the danger point had been passed.

If the evidence shows no cause of the fall other than the defect, it is sufficient. *Harmon v. Richardson*, 88 N. H. 312, 314. And if the fall might be found due to failure to appreciate and observe the distance from the door through which the plaintiff passed to the edge of the floor at the top of the stairs, it was for the jury to weigh the probabilities between the causes claimed. *Boucher v. Larochelle*, 74 N. H. 433.

The evidence fails to compel a conclusion of the plaintiff's fault. Due care did not necessarily require her to anticipate the unsafe condition at the edge of the floor where she stepped down on the stairway, and thus to look at it to see if it was safe. It was in evidence that she was familiar with the premises and had used the stairway in going up to the floor from which she fell without notice of any defects. The defendant owed her the duty to maintain reasonable conditions of safety, and she was entitled to place some reliance upon the performance of the duty. What occasion she had to take precautions against the chance of the danger she encountered became an issue of fact. Failure to investigate, however simple and easy the investigation might be, was not an omission of care as matter of law. Her conduct findably measured up to the required standard in anticipating and taking precautions against possible dangers. *Halley v. Brown, ante, 1; Perkins v. Company, 91 N. H. 211; Martin v. Railroad, 91 N. H. 63; Shea v. Manchester, 89 N. H. 547; Dorrien v. Sirois, 87 N. H. 144, 147; Howe v. Company, 87 N. H. 122, 126; Burns v. Côté, 86 N. H. 167; Barrett v. Company, 85 N. H. 33, 35; Pickford v. Abramson, 84 N. H. 446, 448, 449; Sevigny v. Company, 81 N. H. 311, 313.*

In the cases cited by the defendant the circumstances were of obvious dangers demanding precaution and protection against them.

Exceptions overruled.

All concurred.

Hillsborough, }
Dec. 1, 1942. } No. 3357.

JOSEPH BENNETT *v.* ALFRED DUPUIS.