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## Writ of Certiorari.

THE STATE OF NEW JERSEY.

New Jersey ss.:

10

To: HONORABLE DANIEL J. O'REGAN,  
(Seal) Judge of the Court of Common Pleas,  
County of Hudson, and JOHN J. MCGOV-  
ERN, Clerk of said Court.

GREETING:

We being willing, for certain reasons, to be certified of and concerning a certain order, proceedings and determination made and rendered by Daniel J. O'Regan, Esquire, Judge of the Court of Common Pleas in and for the County of Hudson, which determination was dated April 5th, 1929, and filed with the Clerk of the said Court on April 5th, 1929, in certain proceedings brought on behalf of Frank Franko, petitioner, against Ohio Chemical Company, respondent, to recover compensation under an Act of the Legislature of the State of New Jersey entitled, "An Act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation and regulating procedure for the determination of liability and compensation thereunder," approved April 4, 1911, and its supplements and amendments, do command you, that the said order, proceedings, determination and judgment, together with all things touching and concerning the same, as fully as before you they remain or are in your custody or control, you do certify and send, to-

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30

40

*Order Extending Time for Return.*

gether with this writ, to our Justices of our Supreme Court of Judicature, at Trenton, on the 5th of June, 1929, that therein may be done what of right and according to law ought to be done.

10 WITNESS, WILLIAM S. GUMMERE, Esq., Chief Justice of our Supreme Court, at Trenton, aforesaid, this 21st day of May, 1929.

COLLINS & CORBIN,                      FRED L. BLOODGOOD,  
Attorneys.    Clerk.

I allow this writ. Let it be sealed May 18th, 1929.

SAMUEL KALISCH,  
J. S. C.

20 [Filed Clerk's Office, May 23, 1929, Hudson County, N. J.]

**Order Extending Time for Return.**

(Filed June 6, 1929.)

NEW JERSEY SUPREME COURT.

30 FRANK FRANKO,  
*Petitioner-Respondent,*

*v.*

OHIO CHEMICAL COMPANY,  
*Respondent-Prosecutor.*

On Certiorari.  
Order Extending  
Time for Return.

40 A writ of Certiorari having been allowed May 18, 1929, directed to Honorable Daniel J. O'Regan, Judge of the Court of Common Pleas, County of Hudson, and John J. McGovern, Clerk of said Court, to review proceedings under an act entitled "An Act prescribing the liability of an employer to

*Return.*

make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation and regulating procedure for the determination of liability and compensation thereunder," which said writ was returnable June 5, 1929; and it appearing that the said Honorable Daniel J. O'Regan, Judge of the Court of Common Pleas, County of Hudson and John J. McGovern, Clerk of said Court, will be unable to make return by June 5th due to the size of the record which has to be copied; 10

It is on this 4th day of June, 1929, ORDERED that the return of the said writ be and the same hereby is extended to June 19, 1929.

Let this rule be entered in the Minutes. 20

On Motion of Collins & Corbin, Attorneys of Respondent-Prosecutor.

SAMUEL KALISCH,  
Justice of N. J. Supreme Court.

[Filed Clerk's Office, June 6, 1929, Hudson County, N. J.]

**Return.**

(Filed June 20, 1929.) 30

The answer of Daniel O'Regan, Judge of the Court of Common Pleas in and for the said County of Hudson, and John J. McGovern, Clerk of said County and within named, the record and Proceedings of the Plaint whereof mention is within made with all things touching the same, We certify and send to the Justices of our Supreme Court of Judicature at Trenton, New Jersey, at 40

*Petition for Compensation.*

the day and year within contained in a certain schedule to this writ annexed as within we are commanded.

DANIEL O'REGAN,  
Judge.

(Seal)

10

Attest:

JOHN J. MCGOVERN,  
Clerk.

**Petition for Compensation.**

NEW JERSEY DEPARTMENT OF LABOR

WORKMEN'S COMPENSATION BUREAU

Trenton, N. J.

20

EMPLOYEE'S CLAIM FOR COMPENSATION

FRANK FRANKO, 540-28th St.,  
Union City,  
*Petitioner,*

*v.*

OHIO CHEMICAL & MFG. Co., 12th  
and Grand St., Hoboken, N. J.,  
*Respondent.*

30

Received at  
Trenton .....  
Claim Petition  
No. ....  
Date of Accident  
On or about  
Jan. 7th, 1926.

Attorney for Petitioner, SAMUEL GREEN-  
STONE, 591 Summit Avenue, Jersey City,  
N. J.

To the Workmen's Compensation Bureau of New  
Jersey:

The claimant respectfully alleges the following  
40 facts:

*Petition for Compensation.*

1. What is your name?—As above.
2. Where do you live?—As above. (Street Address)—As above. (City or Town)—As above.
3. Sex—Male.
4. Age—58.
5. Married—Yes. 10
6. By whom were you employed at the time of the accident?—(Give name and address)—As above. (Name)—As above. (Street Address)—As above. (City or Town)—As above.
7. What was the business of your employer?—Chemical Co.
8. Did you give written notice to your employer at the time you were hired, or later, that the Compensation Law should not apply to you?—No.
9. Did you receive such notice from your employer?—No. 20
10. Did your employer have knowledge of your accident?—Yes.
11. Did you notify your employer of your accident?—Yes.
12. If so, on what date?—As above.
13. Have you made claim to your employer for compensation?—Yes.
14. What was your regular occupation, and what kind of work were you doing at the time of the accident?—Gas operator, while releasing pressure of gas, said gas chemical or other substance struck petitioner's left eye, later infecting petitioner's both eyes. 30
15. When did the accident happen? On or about January 7th, 1926.—(State month, day, year and hour.)
16. Where did the accident happen?—As above.
17. What was the nature of the accident, and how did it happen?—As in #14. 40

*Petition for Compensation.*

18. On what date were you compelled to stop work because of the injury?—Feb. 28, 1927.

19. On what date were you well enough to work again?—Worked at intervals.

10 20. If still disabled, on what date do you think you will be able to work?—Cannot tell.

21. Give nature of any injury from which you will recover—Undetermined.

22. If any permanent injury has resulted, either amputation or loss of usefulness of any member, or impairment of any physical organ, explain fully—Will have considerable permanent injury of both eyes.

23. Were your wages fixed by piece work?—

24. If so, what was your average wage?—

20 25. If wages were fixed by the hour, state rate per hour—

26. Give number of hours in an ordinary working day.—10 hours per day.

27. Give number of days in an ordinary working week—5½ days.

28. State the amount of weekly wages—\$37.52.

29. How much money have you received from your employer as compensation (not medical aid) since your accident?—

30 30. Has your employer promised to pay you any compensation?—

31. If so, how much?—

32. Was medical aid required?—

33. Did you receive medical, surgical or hospital service?—Hospital and medical.

34. Did you request your employer to furnish these services—Yes.

35. Were they furnished?—Partly.

40 36. If so, between what dates?—At intervals since date of accident.

*Petition for Compensation.*

37. If not, what sum did you expend for medical, surgical or hospital service?—This case may cost several hundred dollars in medical treatment.

38. Give name and address of physician and hospital.—

39. What other facts are there which you believe important?—No notice of accident filed with the Department of Labor. 10

40. Are you willing that the Compensation Bureau endeavor to secure compensation for you, by agreement before calling for an official hearing?—Yes, if counsel is notified.

You petitioner therefore prays that your Honorable Bureau will determine the amount of compensation due to your petitioner from the said defendant, under the act entitled "An Act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of the employment, establishing an elective schedule of compensation and regulating procedure for the determination of liability and compensation thereunder," approved April 4th, 1911, and the Acts supplemental thereto and amendatory thereof, and that your petitioner may be awarded his costs in this proceeding, and such other or further relief as may be proper. 20 30

And your petitioner will ever pray, etc.

FRANK FRANKO  
(Petitioner)

State of New Jersey, }  
County of Hudson, } ss.:

FRANK FRANKO of full age, being duly sworn according to law, on his oath deposes and says: That he is the petitioner named in the foregoing petition; that he has read the same and is familiar 40

*Petition for Compensation.*

with the contents thereof; and that the matter and things therein set forth are true according to the best of his knowledge and belief.

FRANK FRANKO  
(Petitioner)

10

Subscribed and sworn to before me, this 13th day of May, 1927, at Jersey City, N. J.

SAMUEL GREENSTONE  
Master in Chancery of N. J.

(This affidavit may be sworn to before a Deputy Commissioner or a Compensation Referee, or any other person authorized to administer an oath.)

## TO THE RESPONDENT

20

The foregoing claim petition has been presented by the petitioner to the Workmen's Compensation Bureau for hearing and determination in accordance with the provisions of the Workmen's Compensation Act.

30

We hereby notify you that unless an answer shall within ten days after the service of this notice, be filed in duplicate with the Secretary of the Bureau, in the State House at Trenton, the facts alleged in the petition will be deemed to be admitted and no testimony will be required from the petitioner to prove such facts.

WORKMEN'S COMPENSATION BUREAU  
Secretary.

I, Charles E. Corbin, Deputy Commissioner and acting Secretary of the Workmen's Compensation Bureau, hereby certify the foregoing to be a true copy of the petition filed in this cause.

40

CHARLES E. CORBIN.

**Answer to Petition.**

NEW JERSEY DEPARTMENT OF LABOR  
 WORKMEN'S COMPENSATION BUREAU  
 Trenton, N. J.

RESPONDENT'S ANSWER TO EMPLOYEE'S CLAIM  
 PETITION.

10

<p style="text-align: center;">FRANK FRANKO,  <i>Petitioner,</i></p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">OHIO CHEMICAL &amp; MFG. CO., a          foreign corp.,  <i>Respondent.</i></p>	}	<p>Claim Petition          No. 7705.          August 6, 1927.</p>
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Attorney for Respondent, Norman F. Kaz-  
 enstein, 100 William St., N. Y. C.

In answer to Claim Petition filed in this cause:

1. What is the petitioner's name?—Frank Franko.
2. Where does he reside?—540-28th St., Union City, N. J.
6. Was the petitioner in your employ at the time of the accident?—Yes.
7. State your business—Manufacturer oxygen and hydrogen.
8. Did you receive written notice from the petitioner at the time of hiring, or later, that the Compensation Law was not to apply to him?—No.
9. Did you give such notice to him?—No.
10. When did you first have knowledge of this accident?—On or about March 18th, 1927.

30

40

*Answer to Petition.*

11. Did you receive notice of this accident from the petitioner?—Yes.

12. If so, on what date?—March 18, 1927.

13. Has any claim for compensation been made?—Yes.

10 14. What was the petitioner's regular occupation, and what kind of work was he doing at the time of the accident?—Retort Operator.

15. When did the accident happen?—Unknown sometime early in January, 1926.

16. Where did the accident happen?—Plant.

17. What was the nature of the accident, and how did it happen?—While reducing pressure on a retort some foreign matter blew into his left eye.

20 18. On what date was the petitioner compelled to stop work because of injury?—March 14th, 1927.

19. On what day was the injured well enough to work again?—

20. If still disabled, on what date do you estimate he will be able to work?—

21. Give your understanding of the nature of any injury from which he should recover?—

30 22. Give your understanding of any permanent injury which has resulted, either amputation or loss of usefulness of any member or impairment of any physical organ. Explain fully—According to information secured from Dr. Pyle an eye specialist, petitioner is suffering from glaucoma of both eyes, which is not the result of an accidental injury.

23. Were the wages fixed by piece work?—Fixed.

40 24. If so, what was the average weekly wage of the injured?—\$33.00.

*Answer to Petition.*

25. If wages were fixed by the hour, state rate per hour—\$.60.

26. Give number of hours in an ordinary working day—10 hours.

27. Give number of days in an ordinary working week—5½. 10

28. State the amount of weekly wages—

29. How much money have you paid the injured as compensation (not including medical aid) since the accident?—None.

30. Have you promised to pay compensation?—No.

31. If so, how much?—

32. Was medical aid required?—Yes.

34. Were you requested to supply the necessary medical service required by law?—Not until March 18, 1927. 20

35. Did you furnish this service?—No.

36. If so, between what dates?—

37. If not, give reason for failure to do so—Lack of notice of injury.

38. Give name of physician and hospital rendering service at your direction—

39. What other facts are there which you believe important? If you deny that compensation is payable in this case, explain fully your reasons for this conclusion.—The petitioner failed to give notice of injury as required by law within four months after his alleged accident, and further failed to file his petition within one year from the day of his alleged accident. 30

THE OHIO CHEMICAL COMPANY

(Respondent)

Hoboken, N. J.

*Answer to Petition.*

State of New York, }  
 County of New York, } ss.:

10       NORMAN F. KAZENSTEIN, of full age, being duly sworn according to law, on his oath deposes and says: That he is attorney for the respondent named in the foregoing answer to claim petition; that he has read the same and is familiar with the contents thereof; and that the matters and things therein set forth are true according to the best of his knowledge and belief.

NORMAN F. KAZENSTEIN,  
 Attorney for (Respondent).

20       Subscribed and sworn to before me, this 6th day of August, 1927, at New York City, N. Y.

NORMAN L. READ,  
 Notary Public,  
 Westchester Co.

N. Y. Co. Clks. No. 692, Reg. No. 8461.  
 Commission expires March 30, 1928.

(This affidavit may be sworn to before a Deputy Commissioner or a Compensation Referee, or any other person authorized to administer an oath.)

30       I, Charles E. Corbin, Deputy Commissioner and acting Secretary of the Workmen's Compensation Bureau, hereby certify the foregoing to be a true copy of the answer filed in this case.

CHARLES E. CORBIN.

*Dr. Richard Paganelli, direct.*

NEW JERSEY DEPARTMENT OF LABOR,  
 WORKMEN'S COMPENSATION BUREAU.  
 Jersey City, Hudson County District.

F. FRANKO,  
*Petitioner,*

*v.*

OHIO CHEMICAL Co.,  
*Respondent.*

10

Transcript of stenographic notes of the testimony taken in the above entitled matter before Hon. Charles E. Corbin, Deputy Compensation Commissioner at the Department of Labor Building, 571 Jersey Avenue, Jersey City, New Jersey, on the eighteenth day of November, A. D. 1927 at 10:30 A. M. in the forenoon.

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APPEARANCES:

SAMUEL GREENSTONE, Esq., for the Petitioner.

NORMAN F. KAZENSTEIN, Esq., for the Respondent.

30

DR. RICHARD PAGANELLI, a witness on behalf of the petitioner, sworn.

*Direct examination by Mr. Greenstone:*

Q. Dr. Paganelli, are you a practicing physician in New Jersey? A. Yes, sir.

Q. How long have you practiced? A. Twenty-five years.

Q. And do you practice a specialty of medicine or surgery? A. Yes, sir.

40

*Dr. Richard Paganelli, direct.*

Q. What is that specialty? A. Eye, eye disease.

Q. Are you connected with any hospitals and institutions in that respect? A. Yes, sir.

10 Q. What are they? A. Surgeon to the Ophthalmic Hospital, New York City. Assistant surgeon, New York Eye and Ear Hospital. Consultant surgeon, Eye Infirmary, and Manhattan Dispensary, all in the eye department.

Q. Doctor, did you examine the petitioner, Frank Franko? A. Yes, sir.

Q. When was that, Doctor? A. A few weeks ago.

20 Q. Was he sent to you for examination for the injury he alleged he received while working for the respondent? A. He was sent to me by yourself for an examination.

Q. Did you examine him in your capacity as expert? A. Yes, sir.

Q. Now, Doctor, assuming that the petitioner worked at a chemical plant, the respondent in this case, about four years prior to January 7th, 1926, and on or about that date he met with an accident as follows: While—

30 Mr. Kazenstein: Mr. Commissioner, this is subject to proof later on.

Mr. Greenstone: To be connected up, yes.

40 Q. While he was operating an air retort machine at the plant of the defendant the machine overheated and as the petitioner opened the safety valve to permit the air and chemicals to get out the machine exploded and threw a lot of chemicals and rust and dirt into his face, both eyes, and all over his body.

Mr. Kazenstein: I object to that on the

*Dr. Richard Paganelli, direct.*

ground there was no claim of any injury to the right eye.

The Court: Let him finish the question and then you can object.

Q. —Both eyes and all over his body and that soon after he washed his face and eyes, the left eye was stinging him, the right not so much. The petitioner standing with his face about eight inches in front of the safety valve when it blew, and he received the force of the air pressure, chemicals, rust, and other matter came out of the machine. The force was so great that the wall back of him, four feet away was covered with the same stuff and that the markings are still on the wall today. That a shirt which he wore at the time and which was washed out about a dozen times still contains some of the markings of acid, rust, and other matter that struck him at the time, that he worked about one-half an hour later, continued work for two days thereafter but was obliged to go to a doctor for relief and then stayed home for about a week on account of the pain in his left eye and that he subsequently continued work, but kept putting drops in his left eye as advised by his physician. About five or six months later his eyes felt bad and in about February of 1927 (that is over a year after the accident), he went to the New York Hospital where he was treated once a week until March of that year, the treatment received about four weeks in all, when Dr. Duchtel and Dr. Thum took him in hand in Jersey City and also treated him, Dr. Thum operating on the right eye at the time in Christ Hospital. The petitioner is now unable to see to any reasonable extent on both eyes as far as work is concerned, it having appeared also that the petitioner was ex-

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*Dr. Richard Paganelli, direct.*

10 amined by Dr. Wallace Pyle on April 14th, 1927, for the Department of Labor and he was of the opinion that the man was suffering from a complication of chronic glaucoma in both eyes at that time and that the accident in his opinion may possibly have caused the aggravation of the pre-  
disposed glaucomatous condition. Under the fore-  
going circumstances, what is your opinion with a  
reasonable degree of probability as to the bearing,  
if any, of the accident, with respect to the peti-  
tioner's present condition and loss of vision?

20 Mr. Kazenstein: I object to that inas-  
much as there is no allegation that the ex-  
plosion caused any dirt to fly in his right  
eye.

The Court: I understand that is to be  
connected up. Is there any objection?

Mr. Kazenstein: No.

A. I share the same opinion that Dr. Pyle has ex-  
pressed; there is a great probability that that acci-  
dent would aggravate the predisposing eye condi-  
tion such as has been described.

30 Q. Now, what essential element, if any, do you  
consider as the cause of the injury; is it the acid,  
the rust, the water, the chemicals or— A. No, it is  
the pressure.

Q. Air pressure? A. To my mind it would be  
only the pressure, or any other condition which  
would produce an inflammatory condition at the  
time might produce it.

Q. In your opinion which do you think was the  
most important? A. In my opinion in this case  
that pressure was most instrumental.

40 Q. Why? A. Because if you get the pressure  
you are apt to disturb the angle of the iris and in

*Dr. Richard Paganelli, cross.*

that way block the circulation causing the glaucoma, or this condition may go on very slowly and take all that time, very slow inflammatory condition, taking over six months to a year to produce a condition of that kind.

Q. Doctor, in view of the fact that the man was employed at this plant about four years steadily, prior to this accident, and that this sequence of fact developed after the accident, is that also tending to have a bearing in your opinion as to whether or not this accident had anything to do with this man's present condition. A. I am taking that into consideration.

10

Mr. Greenstone: That's all. Cross examine.

20

*Cross examination by Mr. Kazenstein:*

Q. Doctor, is glaucoma usually caused by accidents or is it a natural development? A. It can be caused by accident. It can be caused by accident.

Q. But in the ordinary case you see is it caused by accident? A. We have those not caused by accident as well.

Q. You first examined this man how long ago? A. A few weeks ago.

30

Q. About two weeks ago. You wouldn't be able to tell, doctor, what his condition was one year ago last January, would you? A. No.

Q. In other words, this glaucomatous condition may have antedated January, 1926. I am taking into consideration the facts as given in the hypothetical question.

Q. In other words, then, your opinion is that this alleged injury that happened is merely an aggravating factor. A. That can be one of the factors.

40

*Dr. Richard Paganelli, cross.*

Q. It can be. You are not prepared to state positively that it is one of the factors? A. Well, according to the sequence of happenings that is the only thing that could have caused it in this case.

10 Q. Well, Doctor, if the man has a glaucoma in both eyes, and the glaucoma is a progressive disease, is it not? A. Yes.

Q. Then, in two years' time, following an alleged accident, he has vision in one eye and no vision in the other eye, how do you account for that?

Mr. Greenstone: Just a moment. The question stated does not jibe with the facts, because it is not two years' time.

20 Q. Well, a year and a half.

Mr. Greenstone: What was the accident?

Mr. Kazenstein: Sometime in January.

Mr. Greenstone: January 7th, 1926.  
About a year and a half.

Q. He has some vision in one eye and no vision in the other eye? A. How is that accounted for?

30 Q. Yes. A. One doesn't necessarily have to go blind because he has a condition, one can have any degree, one may lose vision completely and the other one may have just a partial loss, through glaucoma.

Q. In a chronic glaucoma such as this, when the history given shows the dirt flew into one eye only, would you expect that eye to be the eye to be affected by the alleged accident? A. One could have an injury to one eye in the case of a man who has a predisposition to glaucoma and the other eye may become affected.

40 Q. Is that the usual course, Doctor? A. Pretty nearly.

*Dr. Richard Paganelli, redirect.*

Q. Could you state that in all cases where a year and six months has elapsed, could you state with any degree of certainty whether it was the result of it? A. Why, if he had an accident to one eye which had a glaucoma there is nothing in the world that I wouldn't say if the other eye became affected that the first eye predisposed the other eye in getting the glaucoma too. 10

Q. Is glaucoma a condition that can be arrested by treatment? A. Sometimes despite of the best efforts it will go right ahead and destroy your vision.

Q. Even if adequate medical treatment is rendered immediately? A. In spite of it, medical or surgical.

Mr. Kazenstein: That's all. 20

*Redirect examination by Mr. Greenstone:*

Q. Now, Doctor, does it matter to any appreciable extent in your opinion as to whether there was any dirt flew into this man's one eye or two eyes or any eye? A. No, it does not.

Q. What is the factor you consider important in this trauma? A. I consider the factor of pressure, injuring the eye and as far as the other eye is concerned, that would come on anyhow. 30

Mr. Kazenstein: How soon would he ordinarily complain of the condition of his eye after the pressure is applied?

A. The condition is a slow process and if the person is of great intelligence they recognize the difference much more speedily than a man lacking in gray matter. A man may go right on and not notice it, he thinks he is all right, or attributes it to something else. 40

*Hearing of December 1, 1927.*

Mr. Greenstone: That's all.

Mr. Kazenstein: That's all.

(At this point the hearing was adjourned.)

10                   NEW JERSEY DEPARTMENT OF LABOR  
                       WORKMEN'S COMPENSATION BUREAU  
                       Jersey City, Hudson County District.

20                   F. FRANKO,  
   *Petitioner,*  
                                   *v.*  
                       OHIO CHEMICAL Co.,  
   *Respondent.*

Transcript of stenographic notes of the testimony taken in the above entitled matter before HON. CHARLES E. CORBIN, Deputy Compensation Commissioner at the Department of Labor Building, 571 Jersey Avenue, Jersey City, New Jersey, on the first day of December, A. D., 1927, at 11 A. M. in the forenoon.

30

APPEARANCES:

SAMUEL GREENSTONE, Esq., for the Petitioner.

NORMAN F. KAZENSTEIN, Esq., for the Respondent.

40

Mr. Kazenstein: We can stipulate Mr. Franko was employed by the Ohio Chemical Company in or about the month of January, 1926, and his wages were six dollars per day for a five and one-half day week.

*Frank Franko, direct.*

The Court: How much would that make the wages per week?

Mr. Kazenstein: That would make the wages \$33.00.

FRANK FRANKO, the petitioner, sworn.

10

*Direct examination by Mr. Greenstone:*

Q. Mr. Franko, were you working for the Ohio Chemical Company on January 7th, 1926? A. Yes, sir.

Q. How long had you been employed by the Ohio Chemical Company? A. A little over four years.

Q. What was the work that you did for them? A. I was a gas operator.

20

Q. What did you do as a gas operator? A. Operating retorts, made 72 stills.

Q. Stills, you say? A. Yes.

Q. You mean acids? A. No, a still. They made like a still, only instead of stilling water we stilled gas.

Q. Oh, distilled. A. Yes.

Q. Only instead of distilling water you distilled gas? A. Yes.

Q. What else did you do besides operating this air retort machine? A. That's all I done except operate and repair, half the time I would repair the machine.

30

Q. You would repair the machine? A. Yes, sir.

Q. What happened to you, if anything, on that date, January 7th, 1926? A. On that day I couldn't—we carried about two hundred to forty-five or fifty degrees of heat in the retort.

Q. You mean in the machine you were working on? A. In the machine I was working on.

40

Q. Yes. A. It got so hot I couldn't get it under

*Frank Franko, direct.*

control so to avoid an explosion I opened the safety valve and as I did I got the full explosion of the gas, chemical and acid, which I call it, in my face, in the whole face, all over my face.

10 Q. What else was there besides this acid? A. Rust.

Q. Whereabouts did it hit you besides your face?

A. In the left eye and head, all over.

Q. Did it touch the other eye? A. It touched it but not as bad as the left eye.

Q. Whereabouts on your body, describe to the Court, indicate with your hand how much of your body was covered with this stuff that came out of the machine? A. About from eight—

20 Q. Show with your hand about your body how much of it was covered with the stuff. A. All over here and about over there.

Q. Indicating from about the head to the waist, would you say?

The Court: About the head and chest.

A. About the head and chest and shoulder.

30 Q. What else did this stuff strike besides striking you? A. Struck the wall, there is a wall about four feet from the machine and a window, that was all splashed up like rust, of blood and rust and pink like, red color.

Q. Now, what happened to your clothes when this stuff got on them? A. The clothes was all painted up like, red, the shirt.

40 Q. Have you still got the undershirt on that was on at that time? A. I got the same undershirt here and it is going to be two years old this Christmas. Here is the spots, your Honor, and this here sleeve is as good as new.

*Frank Franko, direct.*

Mr. Kazenstein: I don't think this is material, your Honor.

Mr. Greenstone: I don't think you need show that.

A. This shirt has got a spot on it.

10

The Court: Indicating the left arm of the shirt which shows reddish spotting.

Q. Now, did you also wear over this undershirt an overshirt? A. I had a khaki overshirt.

Q. What happened to this khaki overshirt you had on? A. My wife washed it a couple of dozen times but still the marks is on it.

Q. You still have that shirt? A. I have it.

Mr. Greenstone: May I say for the record that the shirt will be introduced later.

20

Q. What did you do when this occurred, what was it you did? A. I went right quick, my eye started to burn, I went quick under the sink and ducked my head and everything under the cold water and turned the faucet on full and I washed my head and face and everything.

Q. Did you wash your eyes? A. Washed my eyes, face, naturally everything.

30

Q. Did you wash one eye or two? A. Both eyes, the whole face.

Q. Was your face partly covered or how? A. Well, the face was all covered.

Q. What sort of stuff, how did this come out of this air retort machine, can you describe it in any way? A. It came out like locomotive steam out of a locomotive safety valve and I left it open for about ten or twenty minutes and it still blowed, there was awful pressure in there.

40

*Frank Franko, direct.*

Q. How far away were you from this machine when she blew? A. About six or eight inches.

Q. What part of your body was six to eight inches away from it at the time? A. My head.

10 Q. Were you facing it at the time? A. I had my head a little on the side but the pressure spread.

Q. When you say a little on the side can you indicate to the Court just how the machine was and just how your face was in relation to this machine, just take this blotter, for instance, and indicate that as the machine and show us in relation the position of your face to this machine. How your face was in position against this machine. A. About that far (indicating).

20 Q. How was your face turned, toward it? A. My face was like this (indicating).

Mr. Greenstone: Will your Honor indicate that for the purpose of the record?

A. My face was like this. Here I had a lever, I turned the lever and first thing you know, shh, it went all over my face. I quick ducked over and let it go over against the wall and I ran to the sink. My eye started to burn and I ran to the cold water.

30 Q. Did you have much trouble with the other eye right while this happened? A. No, the other eye didn't seem to bother me much, only the left eye.

Q. You mean right at the time of the accident? A. Right at the time of the accident.

Q. Then what did you do after you washed this stuff off your face? A. Well, I took a towel and dried my face, my partner was right there and I said I got a good dose this time. He said, "Yes, I seen it."

40 Q. What did you do, that is what I wanted to

*Frank Franko, direct.*

know. You said you washed the stuff off your face, what happened then, what did you do? A. My eye stung me a little, I cleaned everything up, washed myself and took my shirt off and then started to run it again.

Mr. Kazenstein: When you say you started to run again, you started to work again?

10

A. Yes.

Q. About how much time elapsed from the accident to when you started to work again? A. About a half an hour, I guess.

Q. About a half an hour later? A. Yes.

Q. Who was your partner, what was his name?

A. John Tisso.

20

Q. Is he here in Court? A. Yes, sir.

Q. Is that John sitting there second from the end? A. Yes.

Q. When you were washing your eyes or face at the time did anybody come over to you from your employer or foreman, or superintendent at the time to inquire about this matter at all? A. When I washed my face?

Q. Yes. A. I couldn't say because I was excited, I didn't see nobody then only my partner, in the place.

30

Q. Do you recall whether anybody came over to you and asked what happened to you? A. I couldn't say that.

Q. You don't remember that? A. I don't remember.

Q. Then you finished your work that day? A. Yes, sir.

Q. Did you come back to work the next day? A. I did.

40

*Frank Franko, direct.*

Q. What day was that then? A. That was on the eighth, the eighth of January, 1926, I came back on the eighth.

Q. You came back the next day was the eighth?

A. The next day was the eighth.

10 Q. What day of the week was that? A. On Friday.

Q. Then did you work the following day, Saturday? A. Saturday, the following day I came in, it was only a half day, I came in that half day and I worked that half a day.

Q. Did you come back to work Monday? A. No, sir.

Q. What is that? A. No, sir.

20 Q. Why not? A. I went Saturday night to the doctor, my eye hurt me then worse, I got pain in the eye and I went to see an eye specialist, Dr. Schultz.

Q. All right. A. And when I went to see him, Saturday, was the ninth, he said, "What have you been doing, your eye is pretty bad, you got a bad eye there. Where are you working?" I said, "I work in the Ohio Chemical Works." I said, "Some back pressure of gas and chemical exploded in my face and my eye is bad."

30 Q. Have you got that original bottle that Dr. Schultz gave you the drops in? A. Yes.

Q. Is that the original bottle, the first bottle? A. Yes, the first bottle.

Mr. Greenstone: I ask the bottle 793124 prescription, be marked as Exhibit P-1 in evidence.

The Court: Any objection?

Mr. Kazenstein: No.

40 (Bottle referred to above entered in evidence and marked Exhibit P-1.)

*Frank Franko, direct.*

Mr. Greenstone: And it be noted the bottle contains the name Dr. Schwartz on the bottom.

The Court: Well, it is in evidence.

Q. What did you do then after you got these drops? A. He examined the eye and said I got pretty bad eyes, washed out both eyes, gave me drops, said "You can't go to work, you got pretty bad eye, you'd better stay home a week, so I did, and he came to see me every day the next week. So I couldn't send word down on Sunday, there is nobody in the plant so Monday morning my wife telephoned down and told them that I got hurt down there and I am under the doctor's care and I don't know who it was from the factory told her everything would be all right, I should stay home, so I stayed home a week and then Monday, the following Monday I went Saturday to the doctor and I asked him can I go to work because my eye is getting to be a little better and he said, "Well, if you have to go, go ahead, but take a bottle of drops and put them in or have somebody put them in for you," so I went down on Monday and then I started to work—

Q. When you speak of Monday, what Monday is that in relation to the day you stopped work? 30

A. That was the eleventh, January 11th, 1926.

Q. That would be a week after, would it, you say you were out a week? A. Out a week, that's right, I made a mistake.

Q. Do you mean one week after the Saturday that you quit? A. Yes, sir.

Q. Are you sure of that? A. Yes, sir.

Q. That you stayed out a week at the plant? A. Yes, sir. 40

*Frank Franko, direct.*

Q. The week following January 9th, is that right? A. Yes, sir.

Q. And you worked up to January 9th, that is two days after the accident? A. Yes, sir.

10 Q. You are clear about that, are you? A. Yes, sir, in a week after that I went back to work.

Q. Do you say you got these drops on January 9th? A. On the 9th, that was Saturday.

Q. Now, what happened when you came back to work a week after? A. Then that Monday, the following Monday when I came back to work I waited for Mr. Chris Lohse. He was my boss.

20 Q. What happened then? A. I told him now I said, "Mr. Lohse, before you want me to work here again, I says, you better get some safety elbows to be put on those valves because I said I don't want anybody else—

The Court: I don't know that is relevant, is it, or material?

Q. Well, give the reason why, that is why it is material. A. —I didn't want nobody else to lose their eyes and I didn't know how my eyes is going to be so he went right away the same day down, Mr. Lohse, and bought twenty-four elbows.

30 Q. Why did you tell him you wanted these valves, what was the reason? A. I got hit in the eye, I told him that.

Q. How would these valves change the situation, why did you want these valves? A. To protect somebody else and myself.

Mr. Kazenstein: I object to that as not material.

40 Q. Did you explain to him because of the lack of

*Frank Franko, direct.*

valves you were hurt? A. Yes, sir, I wouldn't get hurt again or somebody else.

Q. Did you explain that to him? A. Yes, sir.

Q. Did you tell him what happened? A. Yes, sir.

Q. What did you tell him? A. I told him I got an explosion of gas in my face and I said I didn't know how my eyes are going to be. 10

Q. Did you show him the drops? A. I showed Mr. Lohse the drops and my partner comes and puts the drops in in the factory.

Q. At the plant? A. At the plant.

Q. Did you keep on working after that? A. I worked steady after that.

Q. Were you out a few times for colds or so forth? A. I was out for a cold, once I had a heavy cold and occasionally I went to see the doctor for my eyes. 20

Q. When again did you go to see a doctor for your eye after you got this treatment from Dr. Schwartz. First tell us about how many times you went to Dr. Schwartz. A. I went to Dr. Schwartz about two weeks.

Q. About two weeks? A. About two weeks.

Q. What was there he advised you, Dr. Schwartz, as to treatments? A. Dr. Schwartz said that is all you can put in is drops, keep on putting drops in the eye. 30

Q. How long did you keep on putting drops in the eye? A. Several months.

Q. What happened then? A. Five months after that this eye started to bother me.

Q. Well about how long after that did you go to a doctor on account of the other eye troubling you? A. I went over to the New York Hospital February, I guess I don't know exactly the date. 40

*Frank Franko, direct.*

Q. That is February of this year? A. Yes, 1927.

Q. That is over a year after the accident? A. Yes, after the accident.

Q. You went over there because of the other eye? A. The other eye.

10 Q. What hospital was that? A. That was the Memorial Hospital.

Q. Knapp Memorial? A. Yes.

Q. What was it they did there for you? A. They examined my eyes, Dr. Shaneburg and doctor by the name of Siricusa, I think that was his assistant, and when they got through examining my eye I asked the doctor, I said, "What kind of sickness have I got, doctor, in my eyes. I didn't know, I was never sick in my life. I said my father only died last year, 89 years old—"

20

Mr. Greenstone: Just a minute.

The Court: Strike that out.

Q. Now, never mind telling us what was said about these things. Tell us what was done for you, what treatment. A. The examiner said, "You got glaucoma."

Q. Were you treated then? A. I was treated, I asked the doctor, what does that come from and he said—

30

Mr. Kazenstein: I object.

The Court: Objection sustained.

Mr. Greenstone: Don't answer that, you mustn't say what the doctor said.

Q. Did you tell the doctor what happened? A. I told him I got hit by gas pressure by an explosion of gas pressure in the Ohio Chemical Works.

Q. Did you go to see other doctors after that?

40

*Frank Franko, direct.*

A. I went to see another doctor in New York, 13th Street, Eye Hospital, Second Avenue.

Q. That is New York, Dr. Paganelli's Hospital?

A. Yes, sir, Eye and Ear Hospital.

Q. 13th Street and Second Avenue? A. 13th Street and Second Avenue. 10

Q. Did you see any local doctors here, see any doctors in the City, Jersey City or Hudson County?

A. I seen Dr. Duckett, and Dr. Thum.

Q. What did they do for you? A. They told me that my right eye was pretty bad.

Mr. Kazenstein: I object to that.

The Court: Objection sustained.

Q. Now, what they told you, don't tell us what they told you. Tell us what they did for you, what treatment they did. They operated on my right eye. 20

Q. Was that at Christ Hospital? A. That was at Christ Hospital.

Q. Jersey City? A. Yes, sir.

Q. Were you able to get around then, do your work? A. I couldn't do my work, I couldn't do anything, I was blind, I couldn't do anything, I was awfully sick.

Q. How do you look with both eyes, what are you able to see? A. I can't see anything, it is like a fog in front of me, this left eye, I can't see anything, the right eye I can only see about two feet apart. 30

Q. Are you able to work at all? A. Can't do anything.

Q. How was your eye sight before this accident?

A. My sight was always good, never had no bother with it.

Q. How do you know that? A. Because I never had no trouble, never wore glasses. 40

*Frank Franko, cross.*

Q. Did you ever go to an eye doctor before?

A. Never went to an eye doctor in my life.

Q. You mean before the accident? A. Not before.

10 Q. How do you know that this date, January 7th is the time the accident happened, what is there that you have that indicates that is the time, what fixed that time in your mind? A. Pay day, Friday was pay day.

Q. It was about two days after the accident? A. One day before.

Q. When was the pay day? A. On a Friday.

Q. Not Saturday? A. No, on a Friday.

20 Q. Did you write any paper, any letters to any sick benefit, any sick association, about that time, about your condition? A. Yes, sir, I reported myself sick to the Lodge I belonged for thirty-nine years, it is a Lodge for sick benefits and death.

Q. Is this the paper that you handed out? A. That's the paper, yes, sir.

Mr. Greenstone: Is there any objection to it?

30 Mr. Kazenstein: I object to this on the ground it bears no relationship to any accidental injury.

Mr. Greenstone: Simply he reported sick at a certain time.

The Court: Objection sustained.

Mr. Greenstone: That's all.

*Cross examination by Mr. Kazenstein:*

Q. Mr. Franko, how many of these retorts did you say you operated? A. Ten.

40 Q. Does anyone else operate retorts? A. Another man with me.

*Frank Franko, cross.*

Q. In other words, the two of you do all of the operating of the retorts? A. Yes, sir.

Q. Prior to this occurrence in January did you ever have occasion to blow off these retorts before, that is, turn on the safety valve? A. We have every morning when the pressure is low, opened it and close it, every morning and night. 10

Q. Every morning and night? A. Every morning and night we got to operate on these valves.

Q. Does the valve ordinarily blow off with force? A. Only with force.

Q. How much pressure is there on the valve? A. Well, I couldn't figure out but that way but I say we got to carry two hundred and forty-five or fifty degrees to run it, to make the gas, I ain't an engineer, I ain't smart enough to figure how much pressure it is. 20

Q. Did you ever have the gas blow on your face before? A. Not as bad as when I got hurt.

Q. Was it a common occurrence for the gas to blow in your face? A. It was very easy, there was hardly any pressure upon it.

Q. In all cases there wasn't any pressure upon it? A. In all cases.

Q. How do you explain at this time there was so much pressure upon it? A. Something went wrong in the retort, it got on fire, I couldn't get it under control. If I hadn't opened that valve it would have exploded and killed me and my partner and wrecked the whole place. 30

Q. After this gas blew in your face you say you don't know whether there was anyone present or not in the way of a foreman or anybody from the office? A. There was my partner.

Q. Your partner, but he is just the partner? A. Just my partner. 40

Q. Do you know who your wife called at the

*Frank Franko, cross.*

plant? A. I couldn't say, because she couldn't say herself, I don't know that because she called somebody down at the plant, she told somebody.

Q. Well, you don't know who it was? A. I don't know who it was, I was sick at the time.

10 Q. When you were in here at the informal hearing last summer, you were unable to name the date of the accident, were you not? A. No, sir.

Q. Why? A. Because nobody asked me.

Q. Oh, yes. A. Nobody asked me anything.

Q. When you called on Dr. Pyle you weren't able to name the date of the accident, were you? A. I was an awful sick man, I was nervous and broken down.

20 Mr. Greenstone: Is that right after the operation?

A. After the operation, I was an awful sick man.

Q. Did you make any request of your employer for any medical treatment? A. What do you mean?

Q. Did you ask your employer to take you to a doctor?

30 Mr. Greenstone: Just a moment, if the Court please. I object on the ground it is not relevant as to reporting the accident.

Mr. Kazenstein: It is relevant as to reporting the injury.

Mr. Greenstone: As to the medical treatment, it is not requisite as far as the evidence of the report of the accident is concerned.

(Further discussion.)

40 The Court: You are not asking for any medical? Go ahead and answer the question.

Mr. Greenstone: Answer the question.

*Frank Franko, cross.*

Q. Did you ask your employer to send you to a doctor? A. I did not.

Q. Did you claim to be hurt at that time? A. Yes, sir.

Q. Isn't it customary at your plant when you get hurt to ask them to send you to a doctor? A. 10  
Well, I didn't know, I never had experience.

Q. Why didn't you ask him to send you to a doctor?

Mr. Greenstone: He just told you he didn't know, he didn't have experience.

A. I didn't know, I didn't have experience.

Q. What did you tell Mr. Lohse when you went back to work? A. I told him to get those safety elbows, I said I got hit bad in the eye with the gas explosion and I didn't want somebody else to get hurt. 20

Q. Did you claim at that time that you were hurt? A. Yes, sir.

Q. Are you certain about that? A. Yes.

Q. How long did you continue to work steadily after January, 1926? A. I worked steadily all the time only that I lost a day, one day or a half a day it was on account of maybe sickness, I had a cold, but I always worked steadily and Mr. Lohse can show it to you. 30

Q. When was the last you worked for the Ohio Chemical Company? A. The last I worked was March 15th, 1927.

The Court: March 15th.

Q. When did you first claim to Mr. Lohse that you had suffered any permanent injury as the result of any occurrence in 1926? 40

Mr. Greenstone: Just a moment, I object

*Dr. Wallace Pyle, direct.*

to the question. Calling for a medical proposition asking this witness when he first gave notice or claimed he suffered a permanent injury, asking a layman as to his medical situation.

10           The Court: Objection sustained.

Q. When you quit working March, 1926, did you send any word to Mr. Lohse?

The Court: '27, you mean, don't you?

Q. 1927, yes. A. In 1927. I sent word in right away.

Q. What did you tell him? A. I don't know, sir, my wife, I was too sick, I couldn't see anything.

20           Mr. Kazenstein: That's all.

Mr. Greenstone: That's all.

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DR. WALLACE PYLE, a witness on behalf of the respondent, produced and sworn out of turn, by consent of counsel.

*Direct examination by Mr. Kazenstein:*

30           Q. Dr. Pyle, you are a physician and surgeon, duly licensed to practice medicine in the State of New Jersey? A. Yes.

The Court: It is admitted he is qualified as an eye expert.

Mr. Greenstone: Yes, qualifications admitted.

Q. Doctor, in the course of your practice did you have occasion to examine the petitioner in this case, Mr. Frank Franko? A. I did.

40           Q. When did you examine him? A. On April 13th, 1927.

*Dr. Wallace Pyle, direct.*

Q. What history did you get from him, Doctor?  
 A. He stated to me that in January, 1927, he opened a safety valve and the gas exploded and struck him in the left face—in the face, with pressure on the left side, striking him on the left eye with some gas, dirt, rust and so forth. Nothing went into the right eye. It didn't knock him down but came with a good deal of force and the eye was burned, the left eye. He washed off his face and bathed the eye and went back to work. He told me he thought it was sulphuric acid in the pipe. He told me it didn't scar his face though there were some scars on his face, but he told me these didn't come from this accident. He worked along about two weeks and then his eye began to sting and burn and he hadn't seen a doctor up to that time. Then he went to a drug store and he said an eye specialist there looked at it and put some drops in it and he went back to work even though the eye was sore, didn't go to any other doctor until the right eye became affected and on March 15th, 1927, Dr. Duckett and Dr. Thum examined this eye.

Mr. Greenstone: Speaking of the right eye, now, Doctor? Which eye?

A. It must be the right eye because that is the one they operated on. He was operated on by Dr. Thum in the right eye, that he has an iridectomy process and the iris was taken out. The tension in both eyes was very high.

Q. Doctor, did he give you the date of this alleged accident in 1926? A. No, January, 1926, he didn't remember the date.

Q. What condition did you find at the time you examined him? A. I found that each eye was very

*Dr. Wallace Pyle, direct.*

10 hard to the feel, harder than natural. The entire eye was inflamed, the right pupil was widely dilated from the operation and the glaucoma. The left is somewhat dilated but there were unequal. That was probably due to the removal of a portion of the iris in the operation. The left eye shows evidence of atrophy or partial loss of function, partial death so to speak, of the iris, which is quite a common thing in glaucoma. There were no marks of injury that I could see, external injury except there was a central scar in the pupillary space in the left eye. I found he had some beginning cataract in each eye background, the retina, the nerve head of each eye showed a typical  
20 glaucoma cup, that is a cupping of the nerves from the pressure of the fluid. Vision in the right or infected eye was reduced to about 8/200th. The left I considered blind. I see there is one more note he doesn't know when his vision in the left or affected eye began to diminish. That is what he told me.

Mr. Greenstone: Right or left?

30 A. He doesn't know when his left or principally affected eye began to diminish and it was only about two weeks before he went to Dr. Thum that he realized that the left eye was blind. That is the history that the man gave to me.

Q. Doctor, at the time that you examined him he had been suffering from what disease? A. Chronic glaucoma.

Q. What is the usual cause of glaucoma, is it usually due to natural causes? A. Yes.

40 Mr. Greenstone: I ask counsel not to lead the witness.

The Court: Of course, you are leading.

*Dr. Wallace Pyle, direct.*

Q. What is the cause of glaucoma, Doctor? A. It usually comes in people over forty or forty-five, more particularly in women, more particularly in the Hebrew race, a recurrent inflammation affecting the passageways in through the route of the iris, of the artery, from what we call the posterior chamber behind the iris to the interior chamber. Direct traumatism, injury directed to the eye—the cause of glaucoma has been never been absolutely positively determined. 10

Q. Is glaucoma a progressive disease? A. Yes, usually progressive. There may be different stages of that, some of them are very rapid and some very slow.

Q. What is the usual cause? A. This is a chronic glaucoma this man has. I don't quite understand what you want. 20

Q. What is the usual period of duration of chronic glaucoma? A. I don't think you can say any particular time, I have seen people with chronic glaucoma blind in three months and some of them with care have gone on for years.

The Court: It doesn't get any better?

A. Glaucoma is a very desperately dangerous disease to the vision and sight. 30

Q. You first saw the claimant in April, 1927? A. Yes, 4-13-27.

Q. Can you tell with any degree of accuracy how long this glaucoma had existed? A. No.

Q. From the history that the claimant gave you would you consider that the right eye was affected in any way by the injury which he claims to have sustained? A. I do not think so because the idiopathic glaucoma, that is the glaucoma we know without cause, comes almost always in both eyes. 40

*Dr. Wallace Pyle, cross.*

Q. Doctor, ordinarily without an injury intervening would you expect to find the same vision in both eyes of a patient suffering with glaucoma?

A. No, one eye may be blind and the other have only the beginning of a glaucoma, it don't necessarily have to come exactly at the same time.

Q. At the time that you examined the plaintiff, would you state with any degree of certainty his amount of vision that he had lost due to the alleged accident of January, 1926? A. No, I couldn't, I only saw the man once and at that time I considered he was blind.

The Court: That was in the left eye?

A. That was in the left eye and the vision in my estimation—

The Court: How much loss of function to the left?

A. 8/200ths.

The Court: What is that?

A. That is Industrial blindness.

Q. But you stated that it is your opinion that is not related to the accidental injury that he described to you? A. I don't think so.

Mr. Kazenstein: That's all.

*Cross examination by Mr. Greenstone:*

Q. Doctor, are you of the opinion that this man had a predisposed glaucomatous condition prior to this accident in both eyes? A. I think so, yes.

Q. In other words, this man had a tension of both eyes in your opinion prior to this accident?

A. I don't know whether it was prior to that accident or not.

*Dr. Wallace Pyle, cross.*

Q. No, I don't mean the Insurance feature. I simply mean in your best judgment, do you think he had a tension of both eyes prior to this accident of the same form, same stage of glaucoma?

A. I think he has an elevation of the tension prior to this time he came to see me, I don't know whether it was before this accident or whether it was after.

10

Q. In your best opinion do you think it is likely he had it prior to January, 1926, considering the fact you found him blind in the left eye, practically blind in the other eye? A. He has had plenty of time between the time of the accident and the time I examined him to have the loss of vision he has already lost, in both eyes. I don't know that.

Q. It is a fact, Doctor, in your opinion before the Department of Labor, you set forth you thought he had a predisposed glaucomatous condition? A. Yes, before I saw him.

20

Q. I mean before the accident. A. If this man had had an ulcer of the cornea secondary to an infection of a foreign body by the explosion or trauma it might be possible for him to have developed a glaucoma in his eye, if there had been a predisposition to this condition.

Q. So in your opinion at the time you examined him in April you thought very probably it was a pre-disposed glaucoma. That was the reason for your judgment on it? A. For my judgment on it, yes.

30

Q. There is nothing to change your opinion as far as you are concerned. You have nothing to indicate now he didn't have a pre-disposed glaucoma prior to the accident? A. Not a bit, or after.

Q. You say this pre-disposed glaucomatous condition develops, some in a short space of time and

40

*Dr. Wallace Pyle, cross.*

others at a great length of time. A. Acute ones develop very rapidly, a few hours.

Q. Depends upon the difference of the condition of the patient, I suppose? A. The difference is between the acute glaucoma and chronic glaucoma.

10 Q. Now, assuming, doctor, that this man had an accident as described here, with a pre-disposed glaucoma in both eyes and that there was pressure, I am not speaking of the acid, water and rust, I am speaking now of the pressure of force, the air pressure that emits these various matters, acid, rust and water, but this force struck this man and he was only about eight inches away, his face was only about eight inches away from the retort machine at the time, that the man had a tension of the eye-balls at the time, do you think it may possibly affect that condition? A. Yes, I do, but I don't think so much the air pressure as it would be the foreign substance that produced the irritation of the eye-ball in the affected eye.

20

Q. You think this irritation setting up would increase the tension? A. Yes, I mean the irritation may be accelerated and raised the tension on that affected eye. That is a supposition on my part.

30 Q. You can't tell how long that would take place so as to render the man totally blind as he is now? A. No.

Mr. Greenstone: That's all.

*By the Court:*

Q. Doctor, why do you think the right eye was not affected? A. Because I don't think—just glaucoma that comes from injury direct is localized in one eye. The idiopathic or the kind we don't know what it comes from is usually bilateral.

40

*Dr. Wallace Pyle, redirect.*

*Redirect examination by Mr. Kazenstein:*

Q. You mean outside of the trauma it is usually bilateral? A. Yes, I wouldn't expect an eye that had been hurt and developed glaucoma to find it in the other eye unless there was a pre-disposition to it. In other words, I don't believe he can get a glaucoma to his right eye from an injury to his left.

10

Mr. Greenstone: We are not contending that at all. We are contending that he always had the glaucoma in both eyes, not that he first got the glaucoma because he had an injury to one eye.

The Court: Just a minute, I am asking questions.

20

*By the Court:*

Q. Your theory is that if this caused it it caused a glaucoma or aggravated a previous pre-disposing condition, that it would show in the other eye immediately? A. No, I don't think it would show in the right eye. There is a possibility, it is one of the possibilities that it may show in his affected eye, the left eye, in which we see, but again I don't know how sore that eye is, or how sore it was. He may have had just a little conjunctival irritation, would have been almost a minimum.

30

Q. Your theory is he would have had to have been hit in the right eye in order for that eye to have been infected? A. I think so, I don't think the infection in the right eye could have come from an injury to the left.

Q. If the right eye was not injured then the glaucoma could not have come from the left eye. A. I don't think so.

40

The Court: That's all.

*Dr. Wallace Pyle, recross.*

*Recross examination by Mr. Greenstone:*

10 Q. Now, doctor, is it likely for a man standing as he has indicated before this retort machine and blowing off these substances, acid, chemical, water, rust, against him, only eight inches away, is it likely for the left eye to receive the force of it and yet nothing to get into the right eye when his whole face was covered with it, is that likely?  
A. Possible, it is the man's history to me.

Q. But it isn't likely, is it, doctor? A. Well, I don't know, I am taking what the man told me.

20 Q. I am asking you what is the likely thing, you are taking the medical diagnosis, doctor, and naturally from the physical facts you can discover and the environment of the situation, as to what actually took place. A. If this thing came in the left side of his face, the left side of the face would be struck, if it came in the full face both eyes would get it, but the man told me there was nothing in the right eye.

30 Q. But assuming the man faced this machine as indicated, about eight inches away and he said his entire face was covered and chest was covered down to his waist with this stuff and he also set forth that he washed his face and washed both eyes.

Mr. Kazenstein: I object to that, Mr. Commissioner.

The Court: What ground?

Mr. Kazenstein: On the ground the doctor received his history from the petitioner and he has to base his finding on the history received.

40 Mr. Greenstone: I will change the question.

*Dr. Wallace Pyle, recross.*

Q. It is a fact, Doctor, you asked him if he suffered any pain or injury in the other eye, that is so, isn't it? A. No, I asked him if he got anything into it.

Q. And he told you that he was struck in the face, wasn't he? A. Struck him in the face with the pressure on the left side. 10

Q. Did you ask him how far his face was covered with this substance? A. No, I did not.

Q. Did you ask him how far his body was covered with this substance? A. No.

Q. Did you ask him which eye or eyes he washed out after this accident? A. Yes, he washed his left eye.

Q. Now, assuming that the stuff went into the other eye and he didn't complain of the other eye until some time thereafter, could the same stuff have gotten into it to set up an irritation of the predisposed glaucomatous condition, notwithstanding the fact that he complained at no time until some considerable period of time, say even a year afterwards. A. Anything getting into his eye, any acid, rust or foreign body or sulphuric acid would certainly have produced some irritation at that time. When a little speck of dust enters the eye it produces that. 20 30

Q. I understood you to say a little while ago there may be a minimum of irritation set up so he wouldn't know that until some time after? A. No, you must have misunderstood me, anything in your eye will produce distress.

Q. Did you say a minimum amount? A. A minimum amount, yes.

Q. Would he necessarily have to know of it right away? A. I think so, yes.

Q. Ordinarily you would expect that? A. Ordinarily I would expect that, yes. 40

*John Tisso, direct.*

Q. But you don't always get that to be so, do you? A. I can't conceive of it, anybody having anything in the eye and not feeling it.

Q. In eye cases do you always have the man complain at once when he gets something in the eye, as to pain? A. Of course he does, it produces irritation and the man feels it.

Q. Don't you have cases where a man—

Mr. Kazenstein: I object to this on the ground the doctor has already answered it.

A. I can't remember a case of a man had something in the eye didn't have some irritation or redness or distress.

Q. You are speaking about foreign body, some tangible substance you can take out of the eye?

A. Take a caustic, take any of the acids, you can't take them out.

Q. Have you made a study of these cases in regard to the effects of air pressure on the tension of the eye ball in cases of glaucoma? A. No.

Mr. Greenstone: That's all.

30 JOHN TISSO, a witness on behalf of the petitioner, sworn.

*Direct examination by Mr. Greenstone:*

The Court: In looking over the record here I see the statute of limitations is raised here. What is your defense to that?

Mr. Greenstone: The defense is they failed to make a report of the accident and therefore that voids that defense as prescribed by the statutes.

40

The Court: All right, go ahead.

*John Tisso, direct.*

Q. Now, John, were you employed by the Ohio Chemical Company? A. Yes, sir.

Q. On January 7th, 1926? A. Yes, sir.

Q. How long had you worked there before that day? A. About three years and a half.

Q. Three and a half years? A. Yes, sir. 10

Q. Did you work with Franko there? A. Yes, sir.

Q. Was he employed at a machine as he described it here on the witness stand?

Mr. Kazenstein: We are willing to admit he was employed at that machine.

Q. On this date, January 7th, 1926, will you tell us what happened? A. Yes, sir.

Q. Tell us. A. In the morning, Thursday. 20

Q. Thursday morning. A. Yes, sir, about ten o'clock, half past ten, one machine on the retort got hot, something wrong in it, some rust or something make it hot, he put water three or four times on it, and it can't cool down.

Q. Did you help also put water on it? A. After.

Q. You mean after the explosion? A. Yes.

Q. Who put the water on while the machine was hot? A. Mr. Franko.

Q. What happened? A. After I see Franko in trouble I go see him, we worked together there, I said, "What is the matter, Frank?" "This no cool down," he said. We put more water on it, it no cool down. I see the bottom smoking down. 30

Q. The bottom of the machine smoked? A. The pipes. I say, "Frank, what you going to do before the machine blows down? Go in back and open the pipe and let some pressure blow out." Frank go in back and take a wrench and open the pipe and it blow out, all rust and smoke and all. 40

*John Tisso, direct.*

Q. Did it ever blow like that before, before this accident? A. No.

Q. Where was Frank standing when this blew, how far was he standing from the machine when it blew? A. He has got open the valve there to open the pressure.

10 Q. Did he stand right near by when he opened the valve? A. Not to stand over there, no stand over there, he no can open the valve.

Q. To reach it with his hands? A. Sure, two wrenches, one in the left, one in the right.

Q. How far was his face away from the valve when it blew? A. About right here.

The Court: Indicating about six inches.

20 Q. What happened to him when this valve blew? A. What he do?

Q. What happened to him when the valve blew? A. Let go the valve and go quick to the sink.

Q. What struck him, did you see anything strike him? When this valve blew, did stuff come out of the valve? A. Yes, stuff came out of the valve.

30 Q. Where did it go, this stuff? A. Go to the window, go on the side, all over the place, three or four feet around over there.

Q. Where was he standing when it blew, you said he stood right in front of it. What happened to him when it blew? A. He no stand in front like that, he just get the stuff in the face and he left the valve and run away.

Q. When the stuff blew in his face what did he do? A. Go to the sink and wash his face and eyes out and dry up after.

40 Q. Did you see him do that? A. Sure.

Q. Did you go over to help him? A. No, I no

*John Tisso, direct.*

help him, he has got hands to wash off his face, you know.

Q. Did you go over to him at all? A. What do you mean?

Q. Did you walk over to Franko? A. Oh, sure.

Q. What happened when you walked over? A. I said, "What is the matter, Frank?" He said, "I got it good this time." I said, "Well, wash it up." I think maybe it will be all right after he washed up and dry up the face. 10

Q. Did you see him wash his face? A. Oh, sure.

Q. See him wash his eyes? A. Everything, wash eyes and face.

Q. Did you see him wash one eye or two? A. I couldn't say he washed one eye or washed two, I see him wash the face. 20

Q. What did he do then when he washed his face, did he do it with his hands? A. Sure, with the hands.

Q. How did he act when he was rubbing the face with the hands? Just tell us how he did it.

A. He go over to the sink. Opened the water valve, put the face in and wash up with two hands.

Q. Show us with your hands up against your face like Frank did. A. Like this, took the water like that three or four or five times (indicating). 30

Q. Indicating he washed his face, both sides and both eyes.

Mr. Kazenstein: He didn't say both eyes, he said both sides.

Mr. Greenstone: Indicating, I said, over both sides of his face.

The Court: Indicating washing the entire face with his hands, that is what his indication is. 40

*John Tisso, direct.*

Q. Now, where did this stuff cover outside of the man, how far did this stuff travel? That came out of the machine, where did it hit besides Franko? A. Where did it hit?

10 Q. What did it strike, besides Franko, what else did it strike? A. The window right in front, all on the window.

Q. Did it strike anything else besides the window? A. The window.

Mr. Kazenstein: I object on the ground it is irrelevant if it did strike anything else or anywhere else.

The Court: I don't think so.

20 Q. How far was the wall in back of him? A. About a couple of feet, two or three feet, I think.

Q. Two or three feet in back of him. Did it strike the wall, this stuff, did it strike the wall? A. Yes, that stuff.

Q. Don't you understand, I am trying to talk plain to you? A. Yes, the stuff goes along about three or four feet.

Q. Where did it strike against, the wall? A. Out of the window.

30 Q. Was there a window in back of him? A. Yes.

Q. Was the window open? A. No, closed.

Q. Struck up against the window? Now, what happened when he was washing his face, anybody come over? A. The boss came over after about five or six minutes.

Q. Who is the boss? A. Mr. Lohse.

40 Q. What did he say or do? A. He told me how is everything? I said everything is N. G. Franko pretty soon is blind, all the stuff go in the eyes, right in back of the retort, blow out and Franko

*John Tisso, direct.*

get everything in the face. I say, try to make something better, some elbow or something else so the pressure go through the other way.

Q. What did he say to that? A. He said, "I try to do something."

Q. Then how long did Franko stay away from work at that time, did he go to work right after that? A. Oh, yes, wash his face, take about a half an hour, then after, started working again.

10

Q. And he completed working that day? A. Yes, sir.

Q. And he came back to work the next day too? A. The next day he started, he worked a half a day.

Q. What happened Monday morning? A. Monday morning he no come in.

20

Q. Are you sure of that? A. Yes, sir.

Q. Was that the Monday morning following the Thursday when he had the accident, was that the Monday after the Thursday when he had the accident? A. Yes, sir.

Q. He didn't come in, so what happened when he didn't come in. You were his partner, what happened when he didn't come in? A. I started to work all alone.

30

Q. Did anybody come over and ask you anything at all? A. The boss came after eight o'clock and said "What's the matter, John, Frank no come in. I no see him in, what is the matter?" "You know what is the matter, he is hurt, maybe his eyes are bad. He no come in, no can work."

Q. The next day did he come in? A. The next day he no come in.

Q. How long was it before he came in? A. He stayed out all week, next Monday, after a week.

40

Q. Now, when he came the following Monday,

*John Tisso, direct.*

the next week Monday, what happened then? A. Franko told the boss, he said, "Chris, before I start work again you try to fix something better in back."

10 Q. Were you present when Franko said that to Mr. Lohse? A. Yes, I got to be present, over there is this place I worked.

Q. What did Mr. Lohse say? A. He said, "I ordered them already, I ordered some nipples to be put in there."

Q. Some what? A. Some elbows.

Q. He told you that he had ordered some elbows? A. Yes.

Q. Were those elbows put on? A. Friday.

20 Q. They were put on this Friday after this Monday? A. Yes, Friday afternoon and when we finished Friday he put on some more, three or four more Saturday.

Q. When Franko came in did he talk at all to Lohse about what happened, were you present when he spoke to Lohse about what happened? A. Oh, yes.

Q. What was it Franko said to Mr. Lohse? A. I just told you now he said, "Chris, I no work, you no try to fix something better in the back."

30 Q. Did he show him a bottle? A. He showed him a bottle, showed him the machine and everything.

Q. What do you mean by "showed him everything." What was it he said when he showed him this? A. Showed him the machine what blew out.

Q. Did he tell him the machine blew out? A. Sure.

Q. Did he tell him what blew out? A. He knew when it blew out.

40 Q. I am asking you did Frank tell him when this happened, when it blew out, did he tell him when it blew out? A. I no can understand now.

*John Tisso, direct.*

Q. Did you hear Franko tell Mr. Lohse what date it was when the machine blew out? A. Yes.

Q. What date did Mr. Franko say it was? What date did he say it blew out? A. That is the seventh, 1926, Thursday.

Q. Thursday, you are pretty sure about that, are you, he was out about a week after the accident, after working two days he was out about a week. You are pretty sure about that? A. Yes, sir. 10

Q. You were his partner in this department? A. Yes, sir.

Q. These machines—then he kept on working there after he came back, he kept on working? A. Yes, sir.

Q. He was out a couple of times, was he, again? A. Yes, a couple of times he was out, but after. 20

Q. Did you help him put any drops in his eye or did anybody else put drops in his eye at the factory? A. I put the drops in his eye and one time I see the chemist put the drops in his eye and a couple of times I put the drops in his eye.

Q. Are you quite sure he brought this bottle in the plant with him? A. Sure.

Q. You are sure you helped put the drops in his eyes? A. Yes, sir. 30

Q. And the chemist at the plant also put the drops in his eyes? A. Sometimes I get dirty hands. I asked the chemist help put the drops in his eye.

Q. How long was it that he kept putting the drops in his eye, as far as you know, at the plant? A. Well, I see a couple of weeks after, I never see anything no more.

Q. About a couple of weeks after then you didn't see him put any drops in his eyes? A. I didn't see him no more, maybe he go to the office or across the street, I don't know. 40

Mr. Greenstone: That's all.

*John Tisso, cross—redirect.**Cross examination by Mr. Kazenstein:*

Q. How do you know that it was January 7th, 1926, when this occurred? A. What I know?

10 Q. How do you know? A. I know I worked over there together, I see everything I could see.

Q. What was it fixed January 7th in your mind more than any other date? A. Some time worked nights, no get no trouble, some days get a lot of trouble, maybe a piece of rust like that block the pipe and you have a lot of trouble.

Q. Did you very often have pieces of rust get in these valves? A. What do you mean?

20 Q. When you blew off the machine very often pieces of rust come out? A. No, piece of rust no come out, piece of rust go down, water come out, water and rust, no pieces, pieces of rust go down in the bottom.

Q. Did you ever have the water come out on you when you were turning these valves? A. Sometimes I had it.

Q. Ever hit you in the face? A. No, never get it in the face.

Q. You say after this happened Mr. Lohse got some elbows? A. Yes, sir.

30 Q. When did he get those? A. The next week, two weeks after when Franko come in and started to work again.

Q. After he came back after he was away for a week and then came back, then they put the elbows on? A. Then they put the elbows on, some Friday night and some I seen him putting on Saturday morning, that is two weeks after.

Mr. Kazenstein: That's all.

40 *Redirect examination by Mr. Greenstone:*

Q. What does this elbow do when it is put on

*Christian Lohse, direct.*

the machine, how does it blow off now? A. Now it blows off the other way, see, the machine right here like that, the machine is here, I am working here, it goes the other way, this way, when you open the machine.

Mr. Greenstone: That's all. I have the wife here also.

10

The Court: Will she just testify she telephoned the plant? Will you admit that?

Mr. Kazenstein: We will admit she telephoned the plant, but we don't know who she talked to.

The Court: Well, she doesn't know that, herself. That is the petitioner's case.

Mr. Greenstone: Yes.

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RESPONDENT'S CASE.

CHRISTIAN LOHSE, a witness on behalf of the respondent, sworn.

*Direct examination by Mr. Kazenstein:*

Q. Mr. Lohse, are you employed by the Ohio Chemical Company? A. Yes, sir.

Q. In what capacity? A. Assistant superintendent.

30

Q. Were you so employed in or about the month of January, 1926? A. Yes, sir.

Q. Do you know the petitioner in this case, Mr. Franko? A. Yes, sir.

Q. Are you the person to whom accidental injuries are reported in the usual course of affairs in the Ohio Chemical Company? A. Ordinarily, yes.

40

Q. Did you ever receive a report of an injury to Mr. Franko? A. Well, I might say a casual report about an injury.

*Christian Lohse, direct.*

Q. An injury or accident? A. Or accident, that the happening took place there.

10 Q. What did he tell you at that time? A. Why, in the reducing of the pressure on the line which you sometimes clear off, if the pressure on the gas is not retarded the work this valve to clear the bridge out, clears the line and makes it better for an easier flow. What happens when the re-  
10 tort gets away on them, as we term it, it becomes overheated and if the water doesn't cool it sufficiently we take some of the back pressure off it and that helps retard the fast flow.

20 Q. What did he tell you? A. I don't know what his term was but I know what he meant by it in that respect, in order to control the retort he had to reduce the pressure and felt some foreign matter get into the eye.

Q. He stated he was hurt? A. Well, I don't know as he termed it hurt. He got it into his eye but he said he got some of that stuff in his eye and something had to be done about deflecting that pressure that way.

Q. Did you do anything about it, deflecting the pressure that way? A. Yes, sir.

30 Q. Do you remember the date you purchased these elbows A. We looked up the purchase order in respect to them, when we made the purchase, and I believe it was the latter part of January, 1926.

40 Q. Did you have a conversation with our investigator to the effect it was on January 11th? A. Well, if that report says the 11th we did look up as a positive fact on what date we made the purchase of the elbows. I don't just recall what day it was, but if I remember we gave that information to the investigator from our records.

*Christian Lohse, direct.*

Q. Now, at this time that Mr. Franko reported this occurrence having some things blow in his left eye, did he tell you that he was injured at that time? A. No.

Mr. Greenstone: Don't lead your witness.

10

Q. Did he continue to work after January? A. Yes, I think Franko was on our payroll in March of this year.

Q. And subsequent to January did he ever make any complaint to you that he thought his eye had been injured? A. No.

Mr. Greenstone: Subsequent to January, that would be a year after that.

A. January, 1927.

20

Q. Subsequent to January, 1926, did he make any complaint to you that his eye had been injured? A. No, not that his eye bothered him in any respect.

Q. When was the first knowledge that you had that he was claiming disability as the result of the accident that he alleges? A. I believe on March 15th, 1927, his wife, Mrs. Franko, called on me at the plant, and related to me then for the first time that Mr. Franko was blind and being operated on at Christ Hospital that day. That is the first idea I had Mr. Franko was incapacitated in that respect.

30

Mr. Greenstone: Totally blind.

A. Or even in the one eye. Because we probably wouldn't have let the man operate the retorts, because it takes a man with two eyes to operate these retorts, let alone a man with one eye.

Q. Did you notice anything wrong in 1926 would indicate to you that he was suffering from eye

40

*Christian Lohse, direct.*

trouble? A. When we looked back afterwards we found Mr. Franko did have an abnormal amount of difficulty operating his retort which we attributed then to the sight of the one eye.

10 Mr. Greenstone: You mean, 1927, don't you?

A. Yes, and the latter part of 1926, all the way through 1926 and 1927.

Q. What was your idea as to the cause of this?

Mr. Greenstone: Just a moment, if the Court please, I object to what the witness's idea was.

The Court: Objection sustained.

20 Q. Did he complain at all to you during the summer of 1926 of any trouble that he attributed to any accidental injury? A. None whatever.

Q. Did he ever request any medical attention from you during the whole year 1926 or 1927? A. None.

30 (At this point it was agreed between counsel the purpose of calling Mr. Stahl was to prove the man was unable to name the date of the accident at the time of the informal hearing. Upon Mr. Greenstone agreeing this would be Mr. Stahl's testimony Mr. Kazenstein announced he would not call Mr. Stahl as a witness.)

Q. When you receive reports of accidental injuries at your plant, what is your custom?

Mr. Greenstone: I object.

40 Q. What do you do when you receive reports?  
A. We make out our accident report direct to the Insurance Company covering that accident, relat-

*Christian Lohse, cross.*

ing how the accident happened and all other necessary information.

Q. And forward it? A. Direct to the office.

Q. In this case did you have any knowledge that the man was actually injured? A. Yes, I know that the happening took place because I am regularly around there, I go over as my custom was and asked how things were and it was told to me that Mr. Franko got some of this foreign matter into his eye, but of course it was only a casual report, they didn't think much of it any more than if you walk in the street and get something in your eye, I know he went and washed it out, that is as far as the complaint went.

10

Q. No further complaint? A. No further complaint, I know that happened, I know the retort got away from the report I had. I know it is a possible condition if Mr. Franko didn't get his face out of the way of the line he possibly would get some of that solution into his eye.

20

Q. But the first time you had knowledge he was claiming any disability was in March, 1927, is that right? A. That's right.

Mr. Kazenstein: Cross examine.

*Cross examination by Mr. Greenstone:*

30

Q. Did you have a chemist at your plant there?

A. I am a chemist myself, we have a young fellow there taking care of the routine analytical work.

Q. Did you ever see the chemist put a drop in his eye? A. No, sir, I never see him.

Q. Did you ever see him doing it yourself at the plant? A. No. Mr. Franko just kept this to himself, that is all the trouble, we just treated the accident lightly because it wasn't reported.

40

Q. Did you ask him when he came back if he

*Christian Lohse, cross.*

went to a doctor? A. No, I don't think I did because had I asked and he told me yes I would have got in touch with the Insurance Company immediately because we would have given him the best of service.

10 Q. Now, was he out two days after the accident, have you your records here? A. No, I haven't.

Q. He contends he was out a week following January 9th, that would be January 11th to January 18th. He was out that week. Is there anything in your records that contradicts that? A. I don't know there is, we have none of those office records at the plant, time records aren't at our plant, they are kept at our office.

20 Q. Do you remember me interviewing you at your plant about six months ago, being at your plant and going over the records with you? A. I can't say I do. Did you remember me? I remember that fellow there, that is the one I remember (indicating gentleman at Counsel table with Mr. Greenstone).

Q. Don't you remember me being with him? A. No, sir.

Q. He had a man with him, didn't he? A. I don't know.

30 Q. You don't recall whether there was one or two men there at the time? A. No, I remember just one man.

Q. Your memory is not very distinct as to what took place in this conversation with the one man who was there, is it? A. No, it is not.

40 Q. Do you remember some notes being jotted down on a piece of paper, a sheet of paper of this kind taken from the record, as to the dates that he was out, certain hours that he was out during the week? A. I can't say that I do, I remember looking that information up one time for the In-

*Christian Lohse, cross.*

insurance Company but after that I don't remember it.

Q. Does your brother look somewhat like you?

A. Yes.

Q. The same build? A. Yes.

Q. Your brother has charge of the books there, hasn't he? A. Payroll books? 10

Q. Yes. A. No, we have no record at our plant as to what time a man puts in, that has to be done at our office.

Q. You have it at Cleveland Avenue? A. We get it through our New York office, if we want it.

Q. When this took place didn't you call up somebody at the New York office? Did you call up or was it your brother? A. My memory is hazy, that you were there and interviewed me. I can't say I truthfully remember it, but I remember getting that information after I made an application to the Insurance Company, they wanted that information. 20

Q. Was that when this man came to see you, about six months ago? A. I said around then.

Q. About six months ago? A. Something like that, maybe five months, I don't know.

Q. More or less. There is nothing that you have in mind that would dispute the date that they fix as January 7th, as being the date of the accident? 30  
A. There is nothing there to prove it actually happened that date, I don't know what date, it is guesswork as to the exact date of the happening.

Mr. Greenstone: That's all.

Mr. Kazenstein: That's all. That's my case. I move the petition be dismissed upon the ground no petition was filed within one year as provided by the statute and the penalty in this cause does not apply. 40

Reading section of the statute, "In case of per-

*Case.*

sonal injury, or death all claim for compensation on account thereof shall be forever barred unless a petition is filed in duplicate with the Secretary of the Workmen's Compensation Bureau at the State House in Trenton within one year after the date on which the accident occurred, or in case an agreement of compensation has been made between such employer and such claimant, then within one year after the failure of the employer to make payment pursuant to the terms of such agreement; or in case a part of the compensation has been paid by said employer then within one year after the last payment of compensation. Any employer or insurance carrier failing to make report as required by the act shall in such instance be deprived of the defense provided in paragraph #23 H of the Workmen's Compensation Act. In any such case it shall be incumbent upon the employee or dependent to show that the employer had knowledge of the accident and resulting permanent injury or disability extending beyond the waiting period."

The and is conjunctive and not disjunctive.

The employer in this case had no knowledge of any disability or injury till after one year had elapsed and furthermore the employer's lack of knowledge greatly prejudiced him in that he was unable to furnish proper medical treatment during that time and that such medical treatment would have alleviated the degree of disability the patient now suffers from.

The Court: Do you agree you didn't file a notice?

Mr. Kazenstein: There was no notice filed.

The Court: I will deny your motion then. The law states you must file a notice of accident whether there is a waiting period or not, but it

*Case.*

goes on and states you don't have to file a supplemental report if he is able to return to work by the expiration of the waiting period. So I will deny your motion on that ground.

Mr. Kazenstein: Will your Honor allow me an exception?

10

The Court: Surely.

(Both sides sum up the case.)

The Court: It would appear from the evidence produced that the petitioner suffered an accident arising out of and in the course of the employment and he fixes that date, which is not questioned to any great extent, as January 7th, 1926. That accident consisting of being struck in the face by a safety valve blowing off, and he was struck by gas and rust and some chemical. That he immediately washed his face and from then on felt a stinging in his left eye and from then on was further troubled. Considering the whole matter having all the case in mind, my judgment is that this man had been suffering with a chronic glaucoma before the accident and I feel that this injury did aggravate that condition but I don't feel that it affected the right eye. I can't see how it did. The left eye seems to have immediately been lit up and his having been troubled with it immediately and from then on getting worse, but it strikes me that the glaucoma in the other eye simply has been a chronic condition and the accident had nothing to do with it. If it had, he surely would have felt the condition before. He stated in his evidence there was no stinging or no sensation and I don't in my own judgment, think that the theory of pressure is sufficient. I think it is more getting something in the eye, which aggravates and starts up a disease which is already there.

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*Case.*

I am therefore going to find a judgment in this case for total loss of the left eye which will be 100 weeks' compensation at the rate of \$17.00 a week.

Mr. Greenstone: Will your Honor note an exception?

10 Mr. Kazenstein: Please note my exception also.  
(Discussion as to costs.)

The Court: I will allow Dr. Paganelli \$50.00 for testifying. I think a counsel fee of about \$300.00 against the respondent is proper in this case and I will fix it and have it subject to being approved by the Board, so it won't necessitate coming before the Board.

20 I hereby certify that the foregoing is a true and accurate transcript of the above entitled matter as taken stenographically by me at the time, place and date hereinbefore set forth.

WILLIAM C. O'BRIEN,  
Court Reporter.

I hereby certify that the foregoing is a true and accurate transcript of the above entitled matter as taken stenographically before me at the time, place and date hereinbefore set forth.

30 CHARLES E. CORBIN,  
Deputy Compensation Commissioner.

I, Charles E. Corbin, Deputy Commissioner and Acting Secretary of the Workmen's Compensation Bureau, hereby attest the authenticity of the signature of William C. O'Brien, and that he, as the official who took the notes in this case is the proper one to certify as to the transcript of the testimony.

CHARLES E. CORBIN.

40 Filed Clerk's Office,  
January 30, 1928,  
Hudson County, N. J.

**Determination of Compensation  
Commissioner.**

NEW JERSEY DEPARTMENT OF LABOR,  
WORKMEN'S COMPENSATION BUREAU.

<p style="text-align: center;">FRANK FRANKO, <i>Petitioner,</i></p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">OHIO CHEMICAL Co., <i>Respondent.</i></p>	}	Determination Order.	10
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It appearing that the above matter came on for hearing before me as Deputy Commissioner of Compensation on Friday, December 2, 1927 at #571 Jersey Avenue, Jersey City, N. J., and that the said parties were represented by counsel, Samuel Greenstone, appearing for the petitioner and Norman F. Kazenstein, appearing for the respondent and after having considered the testimony of the respective parties and their witnesses, I hereby find and determine as follows:

1. That the petitioner met with an accident arising out of and in the course of his employment by the respondent on January 7, 1926 and that knowledge was had of the same by the respondent but that no notice of accident was given by the respondent to the Department of Labor as required by statute so that the defense of the respondent as to the Statute of Limitations by reason of the petition for compensation being filed after one year from date of accident does not apply as set forth in said statute.

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*Determination of Compensation Commissioner.*

10 2. That the accident was caused by the forceful and unexpected release of gas and air pressure from a machine at which the petitioner was working as gas operator and that the contents including chemical, rust and dirt struck the petitioner about the face and eyes causing the left eye to become affected and injured so that it later became blind.

20 3. That the petitioner also lost the partial sight of his right eye about a year following the accident, but do not think that it became blind as a result of the accident. It appears that the petitioner was probably suffering from a glaucoma of both eyes prior to the accident and that the injury to the left eye aggravated his predisposed condition of glaucoma so as to cause the left eye to finally become blind.

4. The petitioner was earning wages prior to the accident amounting to \$37.52 per week and is therefore entitled to compensation at the rate of \$17.00 per week.

30 5. That the petitioner is entitled to compensation for loss of use of the left eye amounting to one hundred weeks at the compensation rate of \$17.00 per week from date of accident, January 7, 1926.

6. Petitioner is entitled to medical expert fees for services in court of Dr. Paganelli amounting to \$50.00 payable by the respondent together with stenographer's costs amounting to \$10.00.

40 7. The attorney for petitioner is entitled to a counsel fee amounting to \$300.00 payable by the respondent.

It is therefore ORDERED on this 21st day of De-

*Determination of Compensation Commissioner:*

ember, 1927, that judgment be entered by petitioner against the respondent for compensation of one hundred weeks at the compensation rate of \$17.00 per week payable from January 7, 1926, together with medical expert fees of \$50.00 and stenographer's costs of \$10.00. The attorney for the petitioner to receive a counsel fee as above noted. 10

CHARLES E. CORBIN,  
Deputy Commissioner.

I, Charles E. Corbin, Deputy Commissioner and Acting Secretary of the Workmen's Compensation Bureau, hereby certify the foregoing to be a true copy of the determination filed in this cause.

CHARLES E. CORBIN. 20

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**Notice of Appeal.**

NEW JERSEY DEPARTMENT OF LABOR,  
WORKMEN'S COMPENSATION BUREAU.

10

FRANK FRANKO,  
*Petitioner,*

*v.*

OHIO CHEMICAL COMPANY,  
*Respondent.*

On Petition for  
Compensation.  
Notice of Appeal.

To The Secretary of the Workmen's Compensation Bureau:

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To The Hudson County Clerk:

SIRS:

30

TAKE NOTICE that the respondent hereby appeals from the judgment of Deputy Commissioner Charles E. Corbin, dated December 21, 1927, to the Court of Common Pleas of the County of Hudson, from the whole of the award made in favor of the petitioner, allowing one hundred (100) weeks at the rate of \$17 per week, \$50 for medical expense fees, \$10 for stenographer's costs and \$300 for counsel fee.

Respectfully,

COLLINS & CORBIN,  
Attorneys of Respondent.

Dated, January 18, 1928.

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I, Charles E. Corbin, Deputy Commissioner & Acting Secretary of the Workmen's Compensation Bureau, hereby certify the foregoing to be a true copy of the notice of appeal filed in this cause.

CHARLES E. CORBIN.

### Notice of Appeal.

NEW JERSEY DEPARTMENT OF LABOR,  
WORKMEN'S COMPENSATION BUREAU.

<p style="text-align: center;">FRANK FRANKO, <i>Petitioner,</i></p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">OHIO CHEMICAL COMPANY, <i>Respondent.</i></p>	}	<p>On Petition for Compensation. Notice of Appeal.</p>	10
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To The Secretary of the Workmen's Compensation Bureau:

To The Hudson County Clerk: 20

SIRS:

TAKE NOTICE that the respondent hereby appeals from the judgment of Deputy Commissioner Charles E. Corbin, dated December 21, 1927, to the Court of Common Pleas of the County of Hudson, from the whole of the award made in favor of the petitioner, allowing one hundred (100) weeks at the rate of \$17 per week, \$50 for medical expenses fees, \$10 for stenographer's costs and \$300 for counsel fee. 30

Respectfully,

COLLINS & CORBIN,  
Attorneys of Respondent.

Dated January 18, 1928.

Filed Clerk's Office, January 18, 1928, Hudson County, N. J.

JOHN J. MCGOVERN,  
Clerk. 40

**Notice of Appeal.**

HUDSON COUNTY COURT OF COMMON PLEAS.

10

FRANK FRANKO,  
*Petitioner,*

v.

OHIO CHEMICAL Co.,  
*Respondent.*

7005.

Notice of Appeal.

To Attorney for Respondent, The Secretary of the Workmen's Compensation Bureau, The Clerk of the County of Hudson, or to whom it may concern:

20

PLEASE TO TAKE NOTICE that the petitioner hereby appeals to the Court of Common Pleas in and for the County of Hudson from the determination of the Workmen's Compensation Bureau made in the above entitled matter on the 21st day of December, 1927, wherein the Deputy Commissioner allowed compensation for 100% loss of sight of left eye but did not award compensation for the loss of sight of right eye as a result of the accident and therefore appeals to the above Court for allowance of compensation for total loss of sight of both eyes following the accident, and as a result thereof.

30

Dated January 19, 1928.

Respectfully,

SAMUEL GREENSTONE,  
Attorney for Petitioner.

Filed Clerk's Office, January 19, 1928, Hudson County, N. J.

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JOHN J. MCGOVERN,  
Clerk.

## Order Fixing Time for Hearing Appeal.

HUDSON COUNTY COURT OF COMMON PLEAS.

<p style="text-align: center;">FRANK FRANKO, <i>Petitioner-Appellee,</i></p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">OHIO CHEMICAL COMPANY, <i>Respondent-Appellant.</i></p>	}	<p>On Appeal from Workmen's Compensation Bureau.</p> <p>Order Fixing Time and Place for Hearing.</p>	10
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Application having been made to this Court by respondent-appellant for the fixing of a time and place for hearing of the appeal in this matter, it is on this 17th day of February, 1928, ORDERED that the said appeal be heard before such judge as shall be presiding in this Court for the hearing of appeals in compensation cases at the Court House, Jersey City, New Jersey, on April 6, 1928, at ten o'clock in the forenoon.

CHARLES M. EGAN  
Judge

On motion of

COLLINS & CORBIN  
Attorneys of Respondent-Appellant.

Filed Clerk's Office  
February 18, 1928  
Hudson County, N. J.

JOHN J. MCGOVERN  
Clerk.

**Judgment of Common Pleas Court.**

HUDSON COUNTY COURT OF COMMON PLEAS.

10	FRANK FRANKO, <i>Petitioner-Appellee,</i>  <i>v.</i>  OHIO CHEMICAL COMPANY, <i>Respondent-Appellant.</i>	}	On Appeal. Judgment and Determination.
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The above matter came on for hearing upon appeal before me and having been submitted to me for decision I hereby find and determine as follows:

20     1. That this is a proceeding brought by Frank Franko, Petitioner-Appellee and against Ohio Chemical Company, Respondent-Appellant, under an act entitled "An act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment establishing an elective schedule of compensation and regulating procedure for the determination of liability and compensation thereunder," approved April 4, 1911, and the acts amendatory thereof and supplemental thereto.

30     2. That a hearing was had before the Workmen's Compensation Bureau and a judgment therein entered in favor of the petitioner-appellee on the 21st day of December, 1927, and as follows:

40     (a) That the petitioner met with an accident arising out of and in the course of his employment by the respondent on January 7, 1926, and that knowledge was had of the same by the re-

*Judgment of Common Pleas Court.*

spondent but that no notice of the accident was given by the respondent to the Department of Labor as required by statute so that the defense of the respondent as to the Statute of Limitations by reason of the petition for compensation being filed after one year from date of accident does not apply as set forth in said statute. 10

(b) That the accident was caused by the forceful and unexpected release of gas and air pressure from a machine at which the petitioner was working as gas operator and that the contents including chemicals, rust and dirt struck the petitioner about the face and eyes causing the left eye to become affected and injured so that it later became blind. 20

(c) That the petitioner also lost the partial sight of his right eye about a year following the accident but do not think that it became blind as a result of the accident. It appears that the petitioner was probably suffering from a glaucoma of both eyes prior to the accident and that the injury to the left eye aggravated his predisposed condition of glaucoma so as to cause the left eye to finally become blind.

(d) The petitioner was earning wages prior to the accident amounting to \$37.52 per week and is therefore entitled to compensation at the rate of \$17.00 per week. 30

(e) That the petitioner is entitled to compensation for loss of use of the left eye amounting to one hundred weeks at the compensation rate of \$17.00 per week from date of accident, January 7, 1926.

(f) Petitioner is entitled to medical expert fees 40

*Judgment of Common Pleas Court.*

for services in court of Dr. Paganelli amounting to \$50.00 payable by the respondent together with stenographer's costs amounting to \$10.00.

10 (g) The attorney for petitioner is entitled to a counsel fee amounting to \$300.00 payable by the respondent.

3. That an appeal from said judgment was made by the respondent-appellant in accordance with the statute in such case provided and that the said appeal came on for hearing before me on the 6th day of April, 1928, and that counsel for both parties submitted briefs which were carefully considered.

20 4. I find upon due consideration and hearing of said matter after viewing the filed transcript of record in addition to the briefs herein that the award made by the Department of Labor was proper and that the petitioner had maintained his case by the greater weight of the evidence.

30 I therefore determine and order this 5th day of April, 1929, that the judgment of the Department of Labor be and is hereby affirmed, as above set forth and that the respondent-appellant pay to the petitioner-appellee, 100 weeks' compensation at the rate of \$17.00 per week, from January 7, 1926, together with medical expert fee of \$50.00 stenographer's costs \$10.00 and that the attorney for petitioner receive counsel fee of One Hundred and Fifty Dollars (\$150.00) for his services on appeal in addition to the fees allowed upon trial of these proceedings before the Workmen's Compensation Bureau.

40 DANIEL O'REGAN,  
Judge.

Filed Clerk's Office, June 17, 1929, Hudson County, N. J.

JOHN J. MCGOVERN,  
Clerk.

**Reasons.**

(Filed July 8, 1929.)

## NEW JERSEY SUPREME COURT.

FRANK FRANKO,  
*Petitioner-Respondent,*

*v.*

OHIO CHEMICAL COMPANY,  
*Respondent-Prosecutor.*

On Certiorari.

Reasons.

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The said prosecutor, Ohio Chemical Company, by Collins & Corbin its attorneys, comes and prays that the judgment of the Hudson County Court of Common Pleas may be reversed for the reasons following, to wit:

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1. Because the Court erroneously ordered final judgment to be entered in favor of Frank Franko and against Ohio Chemical Company in the sum of \$17.00 a week for a period of 100 weeks, together with taxed costs and fees to counsel and medical experts.

2. Because the petition not having been filed within a year from the date of the accident, all claims of the petitioner against the respondent were forever barred under the Workmen's Compensation Act of this State.

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3. Because said Court erroneously constructed Chapter 187, P. L. 1924, particularly paragraph six, to hold that under the facts in this case the claim of the petitioner was not barred by the failure to file his petition within one year from the date of the alleged accident.

40

*Reasons.*

4. Because the Hudson County Court of Common Pleas had no jurisdiction of the proceedings before it, as the petitioner did not institute his claim for compensation within the time required by law.

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COLLINS & CORBIN,  
Attorneys of Respondent-Prosecutor.

Served July 8, 1929.

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**Notice of Appeal.**

(Filed July , 1930.)

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">FRANK FRANKO, <i>Respondent-Appellee,</i></p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">OHIO CHEMICAL &amp; MANUFACTURING COMPANY, <i>Prosecutor-Appellant.</i></p>	}	<p>Notice of Appeal. On Appeal from Supreme Court. Workmen's Com- pensation.</p>	10
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To

SAMUEL GREENSTONE, Esq.,  
Attorney for Appellee.

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SIR:

PLEASE TAKE NOTICE that the Ohio Chemical & Manufacturing Company, appellant, appeals from the Court of Errors and Appeals of the State of New Jersey, from the whole of the judgment entered in this cause.

Dated July 9, 1930.

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Respectfully,

COLLINS & CORBIN,  
Attorneys for Appellant.

Service acknowledged July 10th, 1930.

SAMUEL GREENSTONE,  
Attorney for Frank Franko.

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**Grounds of Appeal.**

(Filed July 14, 1930.)

The Ohio Chemical & Manufacturing Company writes down the following grounds of appeal.

10 Said judgment is erroneous in that it affirmed the judgment of the Hudson County Court of Common Pleas brought before the Supreme Court by writ of certiorari in said cause, whereas, said court by its judgment should have reversed the said judgment of the Hudson County Court of Common Pleas for one or more of the reasons filed in that court.

COLLINS & CORBIN,  
Attorneys of Prosecutor-Appellant.

20 Service acknowledged July 12th, 1930.

SAMUEL GREENSTONE,  
Attorney of Appellee.

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**Opinion of Supreme Court.**

(Filed May 10, 1930.)

NEW JERSEY SUPREME COURT.

#207 October Term 1929.

FRANK FRANKO, <i>Respondent,</i>	}	10
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" v.

OHIO CHEMICAL COMPANY, <i>Prosecutor.</i>	}	
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Submitted October Term 1929. Decided April  
 , 1930.

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On Certiorari,

For the Prosecutor: COLLINS & CORBIN.  
 For the Respondent: SAMUEL GREENSTONE.

Before Justices TRENCHARD, LLOYD and CASE.

PER CURIAM:

This is a workmen's compensation case and the question presented for decision is whether the one year limitation as provided in Section 6, Chapter 187, P. L. 1924, is available to the employer. The petitioner, employed by the Ohio Chemical Company, was operating one of its retorts, and while so working on January 7, 1926, received an injury to the eye by a blast of the gasses from the retort. The claim was not presented for judicial determination for a period of fourteen months after the occurrence, and if this were the whole situation the petition would be debarred from recovery by virtue of paragraph 23 of the Workmen's Compen-

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*Opinion of Supreme Court.*

sation Act of 1911, page 144 (as amended in 1919, at page 211) which provides that all claims for compensation shall be barred unless a petition is filed within one year after the date on which the accident occurred. In 1924, however, the legisla-  
10 ture passed an amendment to the act requiring employers to make report of accidents to the Department of Labor. Section 6 of the Act provides that "Any employer \* \* \* failing to make report as required by this act, shall in such instance be deprived of the defense provided in paragraph 23 (h) of the Workmen's Compensation Act, approved April 4, 1911, as chapter 95 as amended by chapter 93, laws 1919. In any such case it shall  
20 be incumbent upon the employee or dependent to show that the employer had knowledge of the accident and resulting permanent injury or disability extending beyond the waiting period."

In the present case no such report was made. It is contended, however, by the prosecutor that the burden imposed by this section of the act on the employee "to show that the employer had knowl-  
30 edge of the accident and resulting permanent injury or disability extending beyond the waiting period" was not met. The commissioner found that it was and this finding was affirmed by the court of common pleas of Hudson County and with this conclusion we agree.

The facts fairly inferable from the proofs were that the petitioner had been employed for approxi-  
40 mately four years as an operator of a machine known as a retort. On the date of the accident, one of the machines overheating, it became necessary to open a safety valve in order to avoid an explosion. On opening the valve some of the gas contained in the machine blew out striking him in the face and upper part of the body. He went

*Opinion of Supreme Court.*

at once to a sink nearby and washed his face, head and eyes with cold water. After doing this he resumed his work and continued to the end of the day. He worked for the next two days, being Friday and Saturday. On Saturday night he went to a physician and received treatment for his eyes and on the following Monday his wife telephoned to the respondent's factory to advise that he had been hurt and was under the doctor's care. He remained at home a week and then returned to his work. On returning he reported to Losche, the assistant superintendent of his employer, the injuries and requested that safety elbows be put over the valves as he did not want anybody else to lose their eyes; that he had received the explosion of gas in the face and did not know how his own eyes were going to be; showed him the drops that had been prescribed as treatment for his injuries. Losche, the assistant superintendent, testified to receiving information from the petitioner as to his injury but stated that the first information of any claim was in March 1927.

The waiting period referred to in the section quoted is defined in the amendment of 1925, page 405 as follows:

“No compensation other than medical aid shall accrue and be payable until the employee has been disabled seven days, whether the days of disability immediately follow the accident, or whether they be consecutive or not. These days shall be termed the waiting period. The day that the employee is unable to continue at work by reason of his accident, whether it be the day of the accident or later, shall count as one whole day of the waiting period.”

*Opinion of Supreme Court.*

We think it fairly inferable from the evidence that the plaintiff's injuries were of such character as to come within the period defined as the waiting period and that the employer was fairly apprised that the injuries were of such a character as to be then existing but such also as might continue. The information conveyed by the petitioner to his employer established the fact of notice of the injuries, and the fact that treatment was being given therefor within the knowledge of the employer, together with the information conveyed by the wife that the petitioner was unable to come to work, all combined to make a case which required the employer, if intending to avail itself of the statutory limitation within which a petition could be filed, to report the accident as required by the act of 1924 *supra*.

The judgment of the Court of Common Pleas will be affirmed with costs.

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**Order of Affirmance.**

(Filed June 12, 1930.)

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">FRANK FRANKO, <i>Petitioner- Defendant in Certiorari,</i></p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">OHIO CHEMICAL &amp; MANUFACTURING COMPANY, <i>Respondent- Prosecutor in Certiorari.</i></p>	<p>On Certiorari. Rule of Affirmance and Remittitur.</p>	<p>10</p>
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The court having inspected the transcript and proceedings of the Court of Common Pleas in and for the County of Hudson returned with the Certiorari in this case, and reasons for reversing the judgment below, and having duly considered the same, it is hereby ORDERED, that the judgment of the Court of Common Pleas in and for the County of Hudson, be and the same hereby is in all things affirmed with costs, and the said record remitted to the court below to be proceeded with according to law and the practice of said court.

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Entered July 12, 1930.  
On motion of  
SAMUEL GREENSTONE,  
Attorney for Petitioner-  
Defendant in Certiorari.

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MEMORANDUM FOR THE RECORD

DATE: 11/15/54

RE: [Illegible]

[Illegible text]

[Illegible text]

## New Jersey Court of Errors and Appeals

FRANK FRANKO,  
*Defendant-Respondent,*

*v.*

OHIO CHEMICAL & MFG. CO., a  
corporation,  
*Prosecutor-Appellant.*

On Appeal from  
Supreme Court.

### BRIEF OF COLLINS & CORBIN IN FAVOR OF THE APPELLANT.

(1)

#### Statement of the Case.

Frank Franko, the defendant-respondent (hereinafter called the petitioner), filed a petition with the Workmen's Compensation Bureau of New Jersey, to determine his claim for compensation against the Ohio Chemical Company, prosecutor-appellant (hereinafter called respondent) (pp. 4-8). The respondent filed answer and the matter was referred to Deputy Commissioner Charles E. Corbin, who heard the testimony of the respective parties pursuant to notice duly given. At the conclusion of the hearing Commissioner Corbin filed a determination and order awarding the petitioner compensation against the respondent at the rate of \$17.00 a week for one hundred weeks, representing the amount due for the total loss of vision of the

left eye together with medical expert fees in the amount of \$50 and a counsel fee of \$300 (pp. 65-67). The respondent appealed from the determination and order of Commissioner Corbin to the Hudson County Court of Common Pleas (pp. 68-69). That Court, after regularly fixing the time and place of hearing (p. 71), affirmed the judgment of Commissioner Corbin and in addition allowed a counsel fee on the appeal of \$150 (pp. 72-74).

A writ of certiorari was allowed by the Supreme Court to review the validity of the order of the Hudson County Court of Common Pleas (pp. 1-2). The Supreme Court affirmed the judgment (pp. 79 to 83). It is to determine the validity of the action of the Supreme Court that this appeal is taken. The question to be decided in this case is one of law and involves the construction of Chapter 187, P. L. 1924, particularly paragraph six as applied to the facts in this case (pp. 75-76). The legal question, briefly stated, is whether the claim involved in this suit is barred by the one year statute of limitations, despite the failure of the respondent to file a notice as provided for in Chapter 187, P. L. 1924.

## (2)

### **Grounds of Appeal.**

The only ground of appeal urged is that the Supreme Court erred in affirming the judgment of the Hudson County Court of Common Pleas, whereas said court should have reversed the said judgment for one or more of the reasons filed.

## (3)

### **BRIEF OF THE ARGUMENT.**

The Workmen's Compensation Act of the State of New Jersey, by paragraph 23 (h), P. L. 1911,

Chapter 95, page 144, as amended by P. L. 1919, Chapter 93, page 211, provided:

“In case of personal injury or death all claims for compensation on account thereof shall be forever barred unless a petition is filed in duplicate with the secretary of the Workmen’s Compensation Bureau, at the State House, in Trenton, within one year after the date on which the accident occurred or in case an agreement of compensation has been made between such employer and such claimant, then within one year after the failure of the employer to make payment pursuant to the terms of such agreement; or in case a part of the compensation has been paid by such employer, then within one year after the last payment of compensation.”

According to the undisputed evidence in this case, the accident occurred on January 7, 1926, and the petition was filed with the secretary of the Workmen’s Compensation Bureau July 18, 1927, or more than one year after the date on which the accident occurred. There is no contention that there was any agreement of compensation between the parties or any payment of compensation by the employer. In other words, the claim would clearly be one that is barred by virtue of 23 (h) quoted *supra*, as the law stood in 1919.

In 1924, the Legislature passed an act entitled, “An act requiring reports of accidents, report of compensable occupational diseases, and compensation agreements to be made to the Workmen’s Compensation Bureau and to insurance carriers.” As the construction of this act is involved, we quote the entire act, which reads as follows:

“CHAPTER 187, LAWS OF 1924.

“An act requiring reports of accidents, report of compensable occupational diseases, and compensation agreements to be made to

the Workmen's Compensation Bureau and to insurance carriers.

"BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

"1. Upon the happening of any accident or the occurrence of any compensable occupational disease in any employment of labor in this State, report thereof shall be made as follows:

"Any employer carrying insurance as required by chapter 178 of the Laws of 1917, shall, when an accident occurs to one of his employees, or an employee contracts a compensable occupational disease, make report thereof in accordance with the terms of his insurance policy. Such report shall be prepared in triplicate upon a form, designated as 'First Notice of Accident,' to be furnished by the insurance carrier. One copy shall be sent to the Department of Labor of the State, one copy to the insurance carrier, and one copy shall be kept on file by the employer. *A supplemental report shall be prepared on a form designated as 'Supplemental Report,' and sent in like manner, at the expiration of the waiting period prescribed by paragraph thirteen of the Workmen's Compensation Act.* If, however, the employee is able to resume work before the expiration of said waiting period, the supplemental report shall be sent immediately upon his return. Thereafter the employer shall promptly furnish the carrier whatever information is demanded and necessary to enable it to carry out the intent of the Workmen's Compensation Act. These reports on the First Notice and Supplemental Forms, filed with the State, must be signed by the employer and mailed by him directly to the Workmen's Compensation Bureau, as a check on the operations of the insurance company.

"2. Any employer not carrying compensation insurance, shall make report of any acci-

dent or compensable occupational disease causing a disability extending beyond the waiting period prescribed by paragraph thirteen of the Workmen's Compensation Act, or causing any permanent injury. Such report shall be prepared and sent immediately upon the employer's having knowledge of the disability or injury named above, and shall be made out in duplicate upon forms to be secured from the Workmen's Compensation Bureau. One copy shall be mailed to the above bureau and one copy kept on file by the employer. Within three weeks after the accident, or the obtaining of knowledge of compensable occupational disease, the employer operating under section II of the compensation act, shall send to the Workmen's Compensation Bureau a second report, containing a statement of wages and an agreement to care for the case according to the terms of the compensation law. This form shall be signed by the employee as provided thereon and by the employer. Immediately upon the employee's recovering so as to be able to resume work, the employer shall file with the bureau a final report, setting forth the length of disability, the nature and extent of permanent injury, if any, and the compensation payable for each. This form shall also be signed by the employer and the employee.

"3. Every insurance carrier, writing workmen's compensation insurance in this State, shall make report of accident, or compensable occupational disease, as follows: Immediately upon receiving knowledge of an accident to an employee, or the contracting of a compensable occupational disease, *causing a disability extending beyond the waiting period prescribed by paragraph thirteen of the Workmen's Compensation Act, or causing any permanent injury*, the company insuring the employer of such employee, shall at once make report to the Workmen's Compensation Bureau on a form prescribed by said bureau.

Within three weeks after the carrier has learned of the accident or the contraction of such disease, such carrier shall send to the bureau a second report containing a statement of wages and an agreement to care for the case according to the terms of the compensation law. This report shall be signed by the employee as provided thereon and by the employer or insurance carrier. Immediately upon the carrier's learning that the employee has recovered so as to be able to resume work, the carrier shall prepare a final report, and take such steps as are necessary to have it signed by the employee, as provided thereon. This form shall also be signed by the employer or carrier and sent to the bureau as promptly as possible. When an employee refuses to sign any of the required forms, such fact shall be noted on the blank at the point where the signature should be placed, and the forms filed with the bureau. These forms shall be fully prepared before presentation to the employee for his signature. It shall be unlawful to request or direct any injured employee to sign blank forms to be later filled out and filed with the bureau.

"4. The First Reports of Accidents filed with the Workmen's Compensation Bureau, in accordance with this act, shall not be made public, and shall not be open to inspection unless, in the opinion of the Commissioner of Labor, some public interest shall so require, and such reports shall not be used as evidence against any employer in any suit or action at law brought by an employee for the recovery of damages.

"5. As a part of the necessary medical service required by the compensation law, the employer or insurance carrier shall, when directed so to do, file with the Workmen's Compensation Bureau copies of such medical certificates or reports as it may have on file.

"6. Any corporation, firm, person or insurance company failing to comply with the terms of this act, shall for each offense, be liable to a fine of not less than ten nor more than fifty dollars, the amount thereof to be determined by and paid to the Commissioner of Labor upon demand. Upon refusal to pay said fine, it shall be recovered in an action of debt, brought by the Commissioner of Labor in the name of the State of New Jersey. *Any employer or insurance carrier failing to make report as required by this act, shall in such instance be deprived of the defense provided in paragraph 23 (h) of the Workmen's Compensation Act, approved April fourth, one thousand nine hundred and eleven, as chapter 95 as amended by chapter 93, Laws of 1919. In any such case it shall be incumbent upon the employee or dependent to show that the employer had knowledge of the accident and resulting permanent injury or disability extending beyond the waiting period.*

"7. The Workmen's Compensation Bureau is authorized to make such rules and regulations as may be necessary to carry out the purpose of this act, and the bureau is hereby directed to keep on file the agreements filed with it for a period of eight years. Any agreements, however, covering a period greater than eight years shall be kept on file for the full term of such agreement.

"8. An act entitled 'An act requiring reports of industrial accidents to be made to the Department of Labor,' approved March twenty-sixth, one thousand nine hundred and twelve, is hereby repealed, and this act shall take effect immediately. If any portion of this act shall be declared unconstitutional, the validity of the remainder thereof shall not thereby be impaired.

"Approved March 11, 1924."

The particular part of this statute that requires construction, is that part of paragraph six which is underlined. The petitioner contended in the Workmen's Compensation Bureau that this statute prevented the bar of the statute of limitations from running in the case, because no notice had been filed with the Workmen's Compensation Bureau as provided in Section One. The respondent contends that the award of compensation was erroneous because there was no proof by the petitioner showing that the employer had knowledge of the accident and resulting permanent injury or disability extending beyond the waiting period. The respondent does not contend that it did not have notice of the occurrence which might be called the accident, but does contend that there was no proof of any knowledge that the occurrence resulted in permanent injury or disability extending beyond the waiting period. The respondent contends, therefore, that Chapter 187, P. L. 1924, Paragraph Six, does not suspend the operation of the one year limitation contained in 23 (h), P. L. 1919, Chapter 93.

In order to demonstrate the truth of the respondent's contention, it is necessary to analyze the testimony of the witnesses dealing with the accident. The petitioner, Mr. Franko, testified he had been employed by the respondent, Ohio Chemical Company, a little over four years on January 7, 1926. He was employed as an operator of a machine known as a Retort (p. 21, lines 10-30). On January 7, 1926, one of the machines that he was working on got so hot that it was necessary for him to open a safety valve in order to avoid an explosion. While opening the valve, some of the gas contained in the machine blew out of the open valve, striking his face and upper part of his body (p. 21, line 30, to p. 22, line 40). He

at once went to a sink nearby and washed his face, head and eyes with cold water (p. 23, lines 20-30). After doing this, he resumed work and completed that day. He returned to work on the following day, which was the eighth of January and a Friday of the week. He returned to work on the next day, which was a Saturday, January 9th, and worked one-half day, which was all the time that the plant normally operated on a Saturday (p. 25, line 10, to p. 26, line 15). On Saturday night he went to Dr. Schultz, who gave him drops for his eyes and told him that he could not return to work. On Monday, January 11th, his wife telephoned to the respondent's factory to advise that he had been hurt and was under the doctor's care. To whom she spoke, the petitioner or his wife did not know, and there was no record of the matter in the respondent's plant. He remained out a week from January 11th, and then returned to the plant (p. 26, line 20, to p. 27, line 40). On his return to the plant, he told Mr. Lohse, his boss, as follows:

"Q. What happened then? A. I told him now now I said, 'Mr. Lohse, before you want me to work here again, I says, you better get some safety elbows to be put on those valves because I said I don't want nobody else—

"The Court: I don't know that is relevant, is it, or material?

"Q. Well, give the reason why, that is why it is material. A. I didn't want nobody else to lose their eyes and I didn't know how my eyes is going to be so he went right away the same day down, Mr. Lohse, and bought twenty-four elbows.

"Q. Why did you tell him you wanted these valves, what was the reason? A. I got hit in the eye, I told him that.

"Q. How would these valves change the situation, why did you want these valves? A. To protect somebody else and myself.

"Q. Did you explain to him because of the lack of valves you were hurt? A. Yes, sir, I wouldn't get hurt again or somebody else.

"Q. Did you explain that to him? A. Yes, sir.

"Q. Did you tell him what happened? A. Yes, sir.

"Q. What did you tell him? A. I told him I got an explosion of gas in my face and I said I didn't know how my eyes are going to be.

"Q. Did you show him the drops? A. I showed Mr. Lohse the drops and my partner comes and puts the drops in in the factory" (p. 28, line 15, to p. 29, line 15).

The petitioner continued to work at the same job steadily after that. He continued to see Dr. Schwartz for about two weeks. About five months after this accident his eye started to bother him (p. 29, lines 15-35). In February, 1927, more than a year after the accident, he next consulted medical aid because of his eye, by going to the New York Hospital (p. 29, line 25, to p. 30, line 30). At no time did he request the respondent to furnish him with a doctor. He worked steadily, after being out one week, up to March 15, 1927, or a year and two months after the accident (p. 34, line 20, to p. 35, line 40).

John Tisso, who worked with the plaintiff, testified that about ten o'clock in the morning on January 7, 1926, one of the machines got so hot that it was necessary to open a safety valve (p. 47, lines 10-40). The petitioner took a wrench and opened the valve. When the valve was open, the gas came out of the valve with considerable force and some of it struck the side of the petitioner's face and upper part of his body. The petitioner went to the sink and washed his face and eyes and dried them (p. 48, lines 10-40). Mr. Lohse, the foreman, came

over about five or six minutes after this occurred and asked the witness how everything was going. The witness replied:

"A. He told me how is everything? I said everything is N. G. Franko pretty soon is blind, all the stuff go in the eyes, right in back of the retort, blow out and Franko get everything in the face. I say, try to make something better, some elbow or something else so the pressure go through the other way.

"Q. What did he say to that? A. He said, 'I try to do something'" (p. 50, line 30, to p. 51, line 10).

The petitioner, after washing his face, resumed his work and finished the day. He worked the following day, which was a Friday, and half of the next day, which was a Saturday. On Monday, January 11th, he did not go in to work (p. 51, lines 10-30). The petitioner stayed out a week and then returned. Upon his return to work, the witness heard the petitioner say to the foreman:

"A. Franko told the boss, he said, 'Chris, before I start work again you try to fix something better in back.'

"Q. Were you present when Franko said that to Mr. Lohse? A. Yes, I got to be present, over there is this place I worked.

"Q. What did Mr. Lohse say? A. He said, 'I ordered them already, I ordered some nipples to be put in there'" (p. 52, lines 1-20).

Mr. Lohse, assistant superintendent of the respondent, testified that he was the person to whom accidental injuries were reported. He heard casually that the petitioner, while opening the valve, had some of the gas blow into his face (p. 55, lines 20-40). The petitioner told him this. The petitioner did not claim to have been hurt, but merely reported the matter in the nature of a complaint

that something should be done to prevent a recurrence of the matter, and suggested a pipe be put on the valve to deflect the gas when it escaped (p. 56, lines 1-30). He continued to work up to March of 1927, and at no time up to that time did he make any complaint that he had sustained an injury. The first knowledge that he had of a claim being made that an injury existed because of the occurrence, was March 15, 1927, a year and two months after the accident, when the petitioner's wife called him on the telephone at the plant, and stated that her husband was being operated on in Christ Hospital. The petitioner did not request any medical attention from the witness or the respondent during the entire fourteen months. He testified:

“Q. In this case did you have any knowledge that the man was actually injured? A. Yes, I know that the happening took place because I am regularly around there, I go over as my custom was and asked how things were and it was told to me that Mr. Franko got some of this foreign matter into his eye, but of course, it was only a casual report, they didn't think much of it any more than if you walk in the street and get something in your eye, I know he went and washed it out, that is as far as the complaint went.

“Q. No further complaint? A. No further complaint, I know that happened, I know the retort got away from the report I had. I know it is a possible condition if Mr. Franko didn't get his face out of the way of the line he possibly would get some of that solution into his eye.

“Q. But the first time you had knowledge he was claiming any disability was in March, 1927. Is that right? A. That's right” (p. 59, lines 5-25).

The above is a complete rèsumé of the testimony in the case, so far as the question involved for decision is concerned. Tersely summarized, we have a situation where the petitioner on January 7, 1926, while opening the valve of a machine, is sprayed about his face and upper part of his body, with the air or gas that escaped through the valve opening. He immediately washes his face and makes no complaint of any injury to himself. His foreman has knowledge that this trivial occurrence took place, but has no knowledge that the petitioner sustained any injury from the occurrence. The employee, after washing his face, resumes his work and continues at work for two and a half days. He then stays off one week and resumes his employment, working steadily for fourteen months. During the entire fourteen months, no complaint is made to the respondent that any disability resulted from the occurrence on January 7th. At the end of the fourteen months, the respondent is notified that he is being operated upon for his eye.

It seems to us clear that the plain wording of Section Six requires that in order to prevent the one year statute of limitations barring the claim, the employee must show that the employer had not only knowledge of the accident, but also knowledge of a resulting permanent injury or a disability extending beyond the waiting period. The waiting period under the statute is defined in Paragraph Thirteen of Chapter 95, P. L. 1911, as amended by Chapter 163, P. L. 1925.

“No compensation other than medical aid shall accrue and be payable until the employee has been disabled seven days, whether the days of disability immediately follow the accident, or whether they be consecutive or not.

These days shall be termed the waiting period. The day that the employee is unable to continue at work by reason of his accident, whether it be the day of the accident or later, shall count as one whole day of the waiting period. Should the total period of disability extend beyond seven weeks additional compensation shall at once become payable covering the above prescribed waiting period."

It is clear that from the testimony quoted above, there was no disability in this case extending beyond the waiting period, because even if it is assumed that there is any proof, the petitioner was disabled one week because of this accident, and even if it is assumed that there is proof, the respondent knew he was disabled one week because of this accident, nevertheless, that is not a disability extending *beyond* the waiting period. It must be constantly kept in mind, that the provision of the statute upon which the petitioner relies, provides:

"Any employer or insurance carrier failing to make report as required by this act, shall in such instance be deprived of the defense provided in paragraph 23 (h) of the Workmen's Compensation Act, approved April 4, 1911, as Chapter 95 as amended by Chapter 93, Laws of 1919. In any such case it shall be incumbent upon the employee or dependent to show that the employer had knowledge of the accident *and* resulting permanent injury or disability extending beyond the waiting period."

It is to be noted that the word "and," underlined, makes it incumbent upon the employee to prove not only knowledge of the accident, but also to prove knowledge of resulting permanent injury or knowledge of disability extending beyond the waiting period.

In view of the fact that this statute has not been in existence very long, there is no adjudicated case to act as a precedent, and we are compelled in construing it to adopt such construction as will effectuate the intention of the Legislature. It will be observed that the first part of Section Six provides a fine for failing to comply with the act relative to filing reports. The object of the filing of reports as required by this act, is to facilitate the work of the Workmen's Compensation Bureau in the Department of Labor, created by Chapter 149, P. L. 1918. Section Four of that act provides that when reports of accidents are received, the Bureau shall endeavor to get the parties to agree on compensation, and if no agreement can be reached within twenty-one days from the happening of the injury, the Bureau shall endeavor as far as practicable to bring about an adjustment, and may institute an investigation on its own motion for this purpose. Assuming for a moment that a report of the occurrence of January 7, 1926, had been filed by the respondent in this case, pursuant to Chapter 187, P. L. 1924, it would merely have stated that on January 7, 1926, the petitioner, while opening a valve, had some gas come into his face, that he worked for the following three days, had stayed home for one week, and had resumed work. Inasmuch as he would not be entitled to any compensation for the first week, no investigation would have been instituted by the Bureau, and the petitioner would not have been entitled to any compensation. It seems ridiculous that this statute should be so construed as to require an employer, at his peril, to report every trivial occurrence under the penalty that if he did not do so and a disability should arise fourteen months after the occurrence, he would not have the benefit of the one year limitation in the act. Every man who got

a particle of dust or dirt in his eye, who perhaps received a minor laceration of his fingers, or picked up a splinter in his work, would have to be reported, even though the occurrence was so trivial that the employee did not cease work at all, and apparently from all that could be observed, continued to work for a year thereafter. Such a construction would absolutely abolish Section 23 (h) of the act. It is a rule of construction requiring no citation of authority, that where two statutes cover the same field and can be construed together harmoniously, such a construction should be given to both that they will each stand. It hardly seems necessary to apply this rule, in view of the plain language of paragraph six, but if we do apply it, the construction would be that the one year limitation bars the petitioner's claim unless the employee shows that the employer had not only knowledge of the accident, but also knowledge of resulting permanent injury or disability extending beyond the waiting period.

## (4)

**Conclusion.**

We respectfully submit that the judgment of the Supreme Court should be reversed and for nothing holden.

CHARLES W. BROADHURST,  
*Of Counsel.*

COLLINS & CORBIN,  
*Attorneys of Appellant.*

October Term, 1930.

### Comment on Opinion of the Supreme Court.

The Supreme Court after reciting the evidence in the case, affirmed the Hudson County Court of Common Pleas for the following reasons stated in their opinion (p. 82) :

“We think it fairly inferable from the evidence that the plaintiff’s injuries were of such character as to come within the period defined as the waiting period and that the employer was fairly apprised that the injuries were of such a character as to be then existing but such also as might continue. The information conveyed by the petitioner to his employer established the fact of notice of the injuries, and the fact that treatment was being given therefore within the knowledge of the employer, together with the information conveyed by the wife that the petitioner was unable to come to work, all combined to make a case which required the employer, if intending to avail itself of the statutory limitation within which a petition could be filed, to report the accident as required by the act of 1924 *supra*.”

We respectfully contend that while it is true, as pointed out by the Supreme Court, the employer in this case had notice of the occurrence which might be called the accident, and the fact that the employee stayed home for two days from work during which time he had a doctor, that nevertheless this is not sufficient to bring the case within Chapter 187, P. L. 1924, Paragraph 6. That section as set forth in the brief of the argument *supra*, specifically provides that the employer shall only be deprived of the defense of the one year limitation contained in the act where the employee shows that the employer had knowledge of the accident *and resulting permanent injury or disability extending beyond the waiting period*.

There is no proof in this case by the employee that the employer had knowledge of resulting permanent injury until fourteen months after the accident had occurred, during all of which time the employee was working steadily for the employer. There was no disability in this case extending beyond the waiting period, because the waiting period is defined in the statute, Paragraph 13 of Chapter 95, P. L. 1911, as amended by Chapter 163, P. L. 1925, as follows:

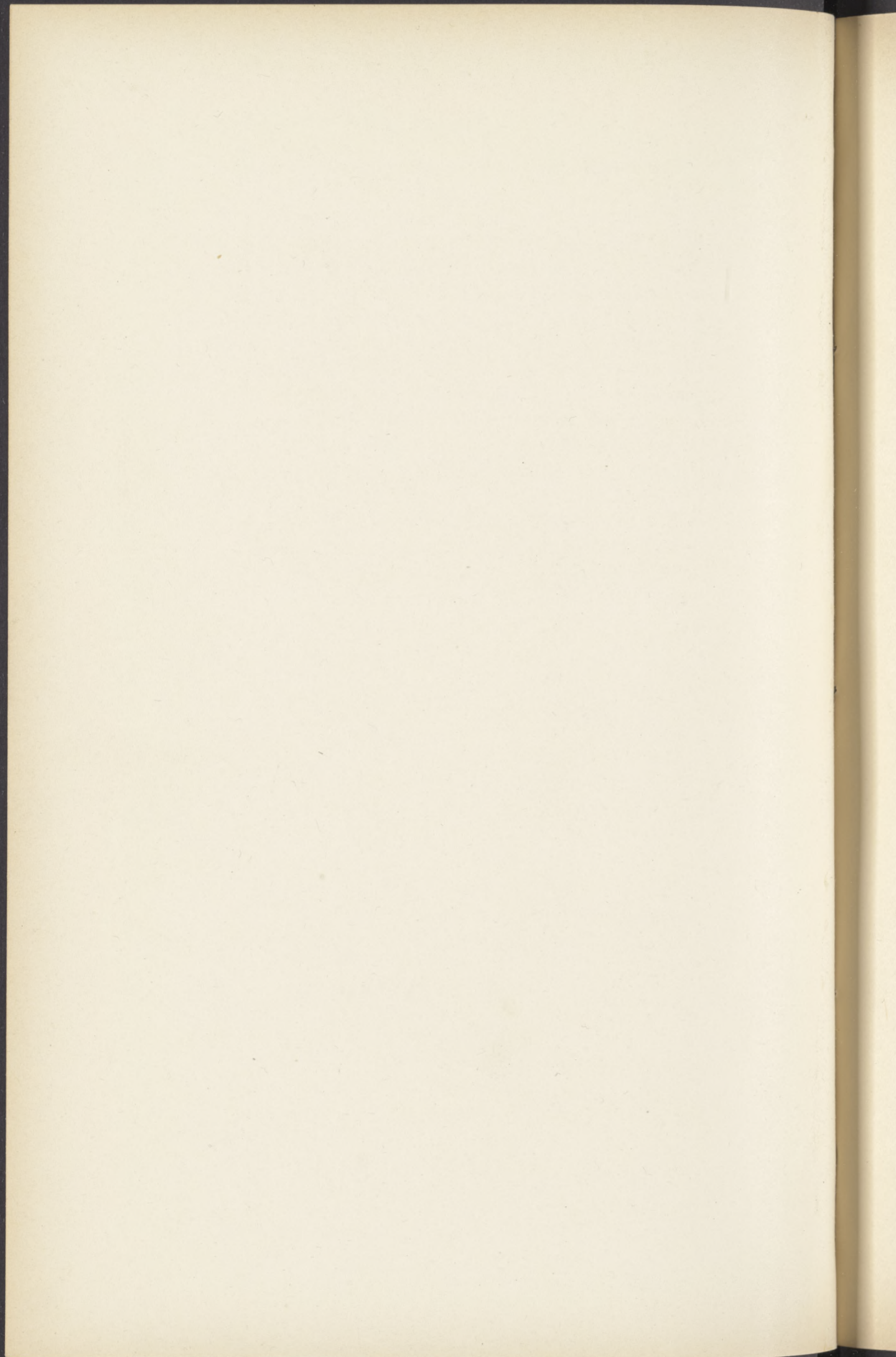
“No compensation other than medical aid shall accrue and be payable until the employee has been disabled seven days, whether the days of disability immediately follow the accident, or whether they be consecutive or not. These days shall be termed the waiting period. The day that the employee is unable to continue at work by reason of his accident, whether it be the day of the accident or later, shall count as one whole day of the waiting period.”

The proof in this case is clear that the petitioner was not disabled beyond seven days from the date he quit work.

The Supreme Court concluded that the injuries were such as to fairly appraise the employer that they might continue after he returned to work. We respectfully contend that there is no evidence in the case to warrant this conclusion. Under the heading of “Brief of the Argument,” *supra*, we have quoted the language of the petitioner himself and the other witnesses, which indicates that the only notice brought home to the employer as to the nature of the injuries, was that they had caused a disability of a few days, and that is borne out by the fact that the petitioner continued to work for fourteen months after that without making one complaint as to his eyes.

The construction placed upon the statute by the Supreme Court, requires an employer at his peril to report every trivial occurrence under the penalty that if he does not do so and disability should arise fourteen or fifteen months after the occurrence, he is deprived of the benefit of the one year limitation in the act. Every employee who got a particle of dust or dirt in his eye, who perhaps received a minor laceration of his finger or picked up a splinter in his work, would have to be reported, even though the occurrence was so trivial that the employee did not cease work at all, and apparently from all that can be observed, continued to work thereafter for a long period of time. Such a construction absolutely abolishes Section 23-A of the original act.

We respectfully contend that the Supreme Court erred in its conclusion as expressed in its opinion.



## New Jersey Court of Errors and Appeals

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FRANK FRANKO,  
Defendant-Respondent,

v.

OHIO CHEMICAL & MFG.  
COMPANY,  
Prosecutor-Appellant.

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On appeal from  
Supreme Court.

### BRIEF IN FAVOR OF DEFENDANT- RESPONDENT.

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(I)

#### Statement of the Case.

The petitioner, Frank Franko, was employed by the Ohio Chemical & Mfg. Company for about four years when he met with an accident arising out of and in the course of his employment on January 7, 1926. An air retort machine upon which he was working exploded, blowing chemicals and other matter into his eyes and face. The petitioner has since become totally blind. He was awarded 100 weeks compensation by the Workmen's Compensation Bureau at the rate of \$17.00 per week for the loss of sight of one eye. This award was sustained by the Hudson County Court of Common Pleas on appeal. A writ of certiorari was then allowed by the New Jersey Supreme Court to review the validity of the order of the Court of Common Pleas.

The Supreme Court affirmed the judgment of the Common Pleas Court (S. C. pp. 79-83) 150 Atl. page 221.

The petition for compensation was filed July 18, 1927. The respondent contended that the action for compensation was barred by virtue of paragraph 23 (h) of the Workmen's Compensation Act, approved April 4, 1911, as chapter 95, as amended by chapter 93, Laws of 1919, which provides that all claims for compensation shall be barred unless a petition is filed within one year after the date on which the accident occurred. In 1924, however, the legislature passed an amendment to the act requiring employers to make reports of accidents to the Department of Labor. Section 6 of that act deprived the employer of his defense of the statute of limitations, if he failed to make the required report. In this case no such report was made, and the trial Court thereby deprived the respondent of invoking the aid of the one year limitation period.

## (II)

### **Brief of the Argument.**

This statute is remedial and was obviously passed for the benefit of the Workman, and is set forth as follows:

#### **"CHAPTER 187, LAWS OF 1924**

**An act requiring reports of accidents, report of compensable occupational diseases, and compensation agreements to be made to the Workmen's Compensation Bureau and to insurance carriers.**

*BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:*

1. Upon the happening of any accident or the occurrence of any compensable occupational disease in any employment of labor in this State, report thereof shall be made as follows:

Any employer carrying insurance as required by chapter 178 of the Laws of 1917, shall, when an accident occurs to one of his employees, or an employee contracts a compensable occupational disease, make report thereof in accordance with the terms of his insurance policy. Such report shall be prepared in triplicate upon a form, designated as 'First Notice of Accident,' to be furnished by the insurance carrier. One copy shall be sent to the Department of Labor of the State, one copy to the insurance carrier, and one copy shall be kept on file by the employer. A supplemental report shall be prepared on a form designated as 'Supplemental Report,' and sent in like manner, at the expiration of the waiting period prescribed by paragraph thirteen of the Workmen's Compensation Act. If, however, the employee is able to resume work before the expiration of said waiting period, the supplemental report shall be sent immediately upon his return. Thereafter the employer shall promptly furnish the carrier whatever information is demanded and necessary to enable it to carry out the intent of the Workmen's Compensation Act. These reports on the First Notice and Supplemental Forms, filed with the State, must be signed by the employer and mailed by him directly to the Workmen's Com-

pensation Bureau, as a check on the operations of the insurance company.

2. Any employer not carrying compensation insurance, shall make report of any accident or compensable occupational disease causing a disability extending beyond the waiting period prescribed by paragraph thirteen of the Workmen's Compensation Act, or causing any permanent injury. Such report shall be prepared and sent immediately upon the employer's having knowledge of the disability or injury named above, and shall be made out in duplicate upon forms to be secured from the Workmen's Compensation Bureau. One copy shall be mailed to the above bureau and one copy kept on file by the employer. Within three weeks after the accident, or the obtaining of knowledge of compensable occupational disease, the employer operating under section II of the compensation act, shall send to the Workmen's Compensation Bureau a second report, containing a statement of wages and an agreement to care for the case according to the terms of the compensation law. This form shall be signed by the employee as provided thereon and by the employer. Immediately upon the employee's recovering so as to be able to resume work, the employer shall file with the bureau a final report, setting forth the length of disability, the nature and extent of permanent injury, if any, and the compensation payable for each. This form shall also be signed by the employer and the employee.

3. Every insurance carrier, writing workmen's compensation insurance in this State, shall make report of accident, or compensable occupational disease, as follows: Immediately

upon receiving knowledge of an accident to an employe, or the contracting of a compensable occupational disease, causing a disability extending beyond the waiting period prescribed by paragraph thirteen of the Workmen's Compensation Act, or causing any permanent injury, the company insuring the employer of such employe, shall at once make report to the Workmen's Compensation Bureau on a form prescribed by said bureau. Within three weeks after the carrier has learned of the accident or the contraction of such disease, such carrier shall send to the bureau a second report containing a statement of wages and an agreement to care for the case according to the terms of the compensation law. This report shall be signed by the employe as provided thereon and by the employer or insurance carrier. Immediately upon the carrier's learning that the employe has recovered so as to be able to resume work, the carrier shall prepare a final report, and take such steps as are necessary to have it signed by the employe, as provided thereon. This form shall also be signed by the employer or carrier and sent to the bureau as promptly as possible. When an employe refuses to sign any of the required forms, such fact shall be noted on the blank at the point where the signature should be placed, and the forms filed with the bureau. These forms shall be fully prepared before presentation to the employe for his signature. It shall be unlawful to request or direct any injured employe to sign blank forms to be later filled out and filed with the bureau.

4. The First Reports of Accidents filed with the Workmen's Compensation Bureau, in ac-

cordance with this act, shall not be made public, and shall not be open to inspection unless, in the opinion of the Commissioner of Labor, some public interest shall so require, and such reports shall not be used as evidence against any employer in any suit or action at law brought by an employee for the recovery of damages.

5. As a part of the necessary medical service required by the compensation law, the employer or insurance carrier shall, when directed so to do, file with the Workmen's Compensation Bureau copies of such medical certificates or reports as it may have on file.

6. Any corporation, firm, person or insurance company failing to comply with the terms of this act, shall, for each offense, be liable to a fine of not less than ten nor more than fifty dollars, the amount thereof to be determined by and paid to the Commissioner of Labor upon demand. Upon refusal to pay said fine, it shall be recovered in an action of debt, brought by the Commissioner of Labor in the name of the State of New Jersey. *Any employer or insurance carrier failing to make report as required by this act, shall in such instance be deprived of the defense provided in paragraph 23 (h) of the Workmen's Compensation Act, approved April fourth, one thousand nine hundred and eleven, as chapter 95 as amended by chapter 93, Laws of 1919. In any such case it shall be incumbent upon the employee or dependent to show that the employer had knowledge of the accident and resulting permanent injury or disability extending beyond the waiting period.*

7. The Workmen's Compensation Bureau is authorized to make such rules and regulations

as may be necessary to carry out the purpose of this act, and the bureau is hereby directed to keep on file the agreements filed with it for a period of eight years. Any agreement, however, covering a period greater than eight years shall be kept on file for the full term of such agreement.

8. An act entitled 'An act requiring reports of industrial accidents to be made to the Department of Labor,' approved March twenty-sixth, one thousand nine hundred and twelve, is hereby repealed, and this act shall take effect immediately. If any portion of this act shall be declared unconstitutional, the validity of the remainder thereof shall not thereby be impaired.

Approved March 11, 1924."

The appellant contends that it did not have knowledge of the accident to the appellee, and the injury resulting therefrom. The trial Court was guided by the facts in evidence and applied common sense in making its award. The appellant does not call the explosion of the machine upon which Franko worked an accident, but calls it an "occurrence" (S. C., p. 57). It is hard to understand what the appellant would require to term an accident. The appellant, however, *admitted it was informed by the petitioner that he would not return to work unless the particular machine was provided with a safeguard which would deflect the pressure* (S. C., p. 56) and which was later installed upon the machines at the plant (S. C., pp. 28, 29). This safeguard was for the purpose of preventing the contents of the machine being blown into the eyes and face of the operator (S. C., p. 28).

The facts clearly proved that the petitioner had been employed for approximately four years as an operator of retort machines (S. C., p. 21). On Thursday, January 7, 1926, one of the machines overheated, and it became necessary to open a safety valve in order to avoid an explosion (S. C., pp. 21, 22). On opening the valve, the gas, chemicals, acid, and rust, contained in the machine, blew out and struck the petitioner in the face and upper part of the body (S. C., p. 22). He went at once to a nearby sink and washed his face, head and eyes with cold water (S. C., pp. 23, 24), then resumed his work even though he felt a sting in his eyes. He continued to work on Friday, and the usual one-half day on Saturday (S. C., p. 26). On Saturday night he visited Dr. Schwartz who examined his eyes and told him not to go back to work because they were in a serious condition (S. C., p. 27). On Monday, his wife telephoned to his employer and advised them that her husband had been hurt and was under the doctor's care. The petitioner remained at home one week and then returned to work, at which time he personally informed Christian Lohse, the assistant superintendent of the accident and injury as follows (S. C., p. 29):

“Q. Did you tell him what happened?

A. Yes, sir.

Q. What did you tell him?

A. I told him I got an explosion of gas in my face and I said I didn't know how my eyes are going to be.

Q. Did you show him the drops?

A. I showed Mr. Lohse the drops and my partner comes and puts the drops in in the factory.

\* \* \* \* \*

A. I went to Dr. Schwartz about 2 weeks.

Q. What was there he advised you, Dr. Schwartz, as to treatment?

A. Dr. Schwartz said that is all you can put in is drops, keep on putting drops in the eyes.

Q. How long did you keep on putting drops in your eye?

A. Several months."

The appellant does not seriously dispute the notice of the accident (S. C., p. 56), but claims, because Mr. Lohse, the assistant superintendent treated it as a trivial or casual matter (S. C., p. 59), that it therefore was not required to file the statutory notice of the accident. There is nothing in the statute which enables the respondent to treat these matters lightly within the waiting period and do as it pleases in the matter of filing notice of an accident. *The act is compulsory as to filing of a notice and is obviously for the benefit and protection of the workman.*

The appellant claims it did not know of the disability of the petitioner's eyes. The co-employee Tisso testified, in corroboration, that the petitioner had a bottle of medicine (S. C., p. 52), noted as Exhibit P-I, with the name of Dr. Schwartz prescription No. 793,124 (S. C., p. 26) *and that this was shown to the assistant superintendent. The assistant superintendent was informed by Tisso that Franko had been hurt as a result of the accident and might go blind* (S. C., pp. 50, 51, 52). According to the contention of the appellant an employer may stand supinely by and have an employee go blind, and is under no duty to protect him by filing a notice of the accident, nor inquire into the medical condition of his employee. In this case the workman actually did go blind because of the ne-

glect of the employer. If proper medication had been provided instead of doing nothing, the petitioner might have retained the sight of both eyes. Not only did the employer fail to help the employee, but in failing to file the notice of accident it prevented the Department of Labor from investigating the case as is its custom and statutory duty, and take proper steps to see that the petitioner received proper medical attention and compensation. It is contended by the appellant that the Department of Labor does not investigate cases on first notice. That is not the fact for there are numerous cases where even though the injured employee returns to work within seven days, he still has a serious temporary or permanent disability, which may develop after the waiting period.

*It further appears that the assistant superintendent admitted that during the years of 1926 through to 1927 he noticed that the petitioner had trouble with his vision while operating his machine, yet nothing was done to relieve the petitioner in any way (S. C., pp. 57, 58). The assistant superintendent treated the accident as a trivial matter even though he knew that the respondent was using dangerous chemicals at its plant and that the chemicals blown into the petitioner's face and body had left permanent stains on his clothing and on the wall of the factory, and could not be eradicated by washing or cleaning.*

After carefully considering all the facts in this case, the New Jersey Supreme Court affirmed the findings of the Court of Common Pleas in the following language (S. C., p. 82), 150 Atl., p. 221:

“We think it fairly inferable from the evidence that the plaintiff's injuries were of such character as to come within the period defined as the waiting period and that the employer was fairly apprised that the injuries were of

such a character as to be then existing but such also as might continue. The information conveyed by the petitioner to his employer established the fact of notice of the injuries, and the fact that treatment was being given therefor within the knowledge of the employer, together with the information conveyed by the wife that the petitioner was unable to come to work, all combined to make a case which required the employer if intending to avail itself of the statutory limitation within which a petition could be filed, to report the accident as required by the act of 1924 *supra*."

It is to be borne in mind that three courts of competent jurisdiction have already heard and reviewed the evidence in this case and have concurred in their findings of the above facts. Such findings should not be lightly disturbed by the appellate court.

Mountain Ice Co. v. Durkin, 144 Atlantic  
6, affirmed (N. J. Err. & App.) 147 Atlantic 451;  
Richmond v. Scheidell, 150 Atlantic 570.

### (III)

#### Conclusion.

It is therefore respectfully submitted that the findings of the New Jersey Supreme Court be affirmed, with costs.

SAMUEL GREENSTONE,  
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HENRY HARRIS,  
of Counsel.

October Term, 1930.

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