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New Jersey Supreme Court

Employee's Claim Petition for Compensation

NEW JERSEY DEPARTMENT OF LABOR

WORKMEN'S COMPENSATION BUREAU

Trenton, N. J.

NUNZIO CRISTO,

Petitioner,

vs.

STANDARD OIL COMPANY,

Respondent.

Claim Petition 20
No.

September 27,
1921.

Attorney for Petitioner G. M. Belfatto,
191 Market St.,
Newark, N. J.

To the Workmen's Compensation Bureau of New Jersey: 30

The claimant respectfully alleges the following facts:

1. What is your name? Nunzio Cristo.
2. Where do you live? 89 1-2 Seventh Avenue.
Newark, New Jersey.
3. Sex, Male.
4. Age, 25 years.
5. Married? No.
6. By whom were you employed at the time of 40

Employee's Claim Petition for Compensation

the accident? (Give name and business address)
Standard Oil Company, Bayway Refinery, Elizabeth, N. J.

7. What was the business of your employer?
Oil refinery and other works.

10 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.

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? March 25, 1920.

20 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? I was employed in the blacksmith's shop placing iron pipes in the oven heated by gas and removing them when they were red hot.

15. When did the accident happen? March 25, 1920.

30 Q. Where did the accident happen? Bayway Refinery, Elizabeth, N. J.

17. What was the nature of the accident, and how did it happen? While working with four men in removing an iron pipe from the oven, the flames shot out and caught the back of my head. I became unconscious; two men brought me near the sink and there threw water on my head, afterwards, I felt slight pains in my stomach but was unable to work after having rested three or four hours, I continued to work until May 12, 1921, on
40 which day I felt severe pains in the stomach and

Employee's Claim Petition for Compensation

went to the hospital where I was operated for appendicitis.

18. On what date were you compelled to stop work because of the injury? May 12, 1921.

19. On what date were you well enough to work again? I don't know.

10

20. If still disabled, on what date do you think you will be able to work? I can't tell.

21. Give nature of any injury from which you will recover, None.

22. If any permanent injury has resulted, either amputation or loss of usefulness of any member, or impairment of any physical organ, explain fully. I have lost almost all the hair on my head and the head itches me, I suffer pain in my stomach and my bowels are always constipated and move only when I take laxatives. On August 19, 1920, I called at the office of the Compensation Bureau at Elizabeth; to obtain compensation by agreement but without success. On September 23d, 1921, my attorney, G. M. Belfatto, was requested by the Commissioner to file a formal petition.

20

23. Were your wages fixed by piece-work? No.

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

25. If wages were fixed by the hour, state rate per hour. No.

30

26. Give number of hours in an ordinary working day. 10 1/2 hours at night.

27. Give number of days in an ordinary working week? 5.

28. State the amount of weekly wages? \$35.

29. How much money have you received from your employer as compensation (not medical aid) since your accident? \$129.33 which was paid me on July 15, 1921.

40

Employee's Claim Petition for Compensation

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

31. If so, how much? They did not say.

32. Was medical aid required? Yes.

33. Did you receive medical, surgical or hospital services? All of them.

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

35. Were they furnished? No. They told me to go to my own doctor.

36. If so, between what dates?

37. If not, what sum did you spend for them during the first four weeks after the accident? \$27.

38. Give name and address of physician and hospital; Dr. Schiff, Elizabeth, N. J. Alexian Brothers Hospital, Elizabeth, N. J. and several other doctors.

39. What other facts are there which you believe important? The sickness worked in my system by degrees and I felt strong enough to work until May 12, 1921, when I was overcome by severe pains in the stomach and compelled to go to the hospital where an operation was performed upon me for appendicitis. The operation proved to be a mistake.

40. Are you willing that the Compensation Bureau endeavor to secure compensation for you, by agreement, before calling for an official hearing? No.

Your 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 proced-

Employee's Claim Petition for Compensation

ure 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.

10

And your petitioner will ever pray, etc.

NUNZIO CRISTO,
89 1/2 Avenue, Newark, N. J.

State of New Jersey, County of Essex, ss:

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

20

NUNZIO CRISTO.

Subscribed and sworn to before me this

27th day of September, 1921,

at Newark, N. J.,

W. P. Allen,

Attorney at law of New Jersey.

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

30

TO THE RESPONDENT

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.

We hereby notify you that unless an answer 40

Employee's Claim Petition for Compensation

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.

10

WORKMEN'S COMPENSATION BUREAU.

Secretary.

I, W. E. Stubbs, Deputy Commissioner and Secretary of the Workmen's Compensation Bureau, do hereby certify the foregoing to be a true and correct copy of the PETITION in the above case.

W. E. STUBBS.

20 Filed Feb. 9, 1922,

John H. Scott,
Clerk.

**Respondent's Answer to Employee's
Claim Petition**

NEW JERSEY DEPARTMENT OF LABOR

WORKMEN'S COMPENSATION BUREAU

Trenton, N. J.

10

NUNZIO CRISTO,

Petitioner,

vs.

STANDARD OIL COMPANY,

Respondent.

Claim Petition
No. 1318.

Attorney for Respondent,

James H. Hayes,

26 Broadway,

New York City.

20

In answer to Claim Petition filed in this cause:

1. What is the petitioner's name? Nunzio
Cristo.

2. Where does he reside? 89 1/2 Seventh Ave-
nue, Newark, New Jersey.

6. Was the Petitioner in your employ at the
time of the accident? Yes.

7. State your business; Manufacture and sale
of petroleum and its products. 30

8. Did you receive written notice from the Peti-
tioner at the time of hiring, or later, that the Com-
pensation 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? Sept. 9, 1921 (At informal hearing).

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

12. If so, on what date? Sept. 9, 1921 (At in- 40
formal hearing).

Respondent's Answer to Employee's Claim
Petition

13. Has any claim for compensation been made?
Yes.
14. What was the Petitioner's regular occupation, and what kind of work was he doing at the time of the accident? Regular occupation was
10 blacksmith's helper. Was not working on March 25, 1920.
15. When did the accident happen? No record of any accident.
16. Where did the accident happen? See answer to question 15.
17. What was the nature of the accident, and how did it happen? See answer to question 15.
18. On what date was the petitioner compelled to stop work because of the injury? Denied.
- 20 19. On what date was the injured well enough to work again? Denied.
20. If still disabled, on what date do you estimate he will be able to work? Denied.
21. Give your understanding of the nature of any injury from which he should recover? We deny to occurrence of any accident.
22. Give your understanding of any permanent injury which has resulted, either amputation or loss of usefulness of any member, or impairment
30 of any physical organ. Explain fully. See answer to question 21.
23. Were the wages fixed by piece-work? No.
24. If so, what was the average weekly wage of the injured? \$31.05.
25. If wages were fixed by the hour, state rate per hour? 60 3/4 plus 10% bonus.
26. Give number of hours in an ordinary working day. Eight.
- 40 27. Give number of days in an ordinary working week. Five.

Respondent's Answer to Employee's Claim
Petition

28. State the amount of weekly wages. \$31.05.
29. How much money have you paid the injured as compensation (not medical aid) since the accident? Nothing.
30. Have you promised to pay compensation?
No. 10
31. If so, how much?
32. Was medical aid required? No.
34. Were you requested to supply the necessary medical service required by law? No.
35. Did you furnish this service? No.
36. If so between what dates?
37. If not, give reason for failure to do so. The first knowledge we had of any accident was on September 9, 1921 (At informal hearing).
38. Give name of physician and hospital rendering service at your direction. None. 20
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? Respondent by way of answer says Compensation Law affords a full and complete defense to this action, since no payment of compensation ever made by this company to date; nor was any claim presented until long after the expiration of the statutory period. The payment made on July 15, 1921, referred to by the petitioner as compensation was sickness benefits under this company's "Plan for Annuities and Benefits" and covered a period of sickness disability from May 12, 1921 to July 8, 1921. 30
- (2) We deny the occurrence of any accident on March 25, 1920.

STANDARD OIL COMPANY (N. J.).

Respondent.

by M. H. Eames, 40
26 Broadway,
New York City.
Milton H. Eames.

Respondent's Answer to Employee's Claim
Petition

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

10 Milton H. Eames on behalf of the Standard Oil Company (N. J.) of full age, being duly sworn according to law, on his oath deposes and says: That he is Assistant Secretary of 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 that the reason deponent executes this affidavit is because respondent is a corporation.

MILTON H. EAMES,
Respondent.

20 Subscribed and sworn to before me this
19th day of October, 1921,
at New York, N. Y.
E. A. Manning,
Notary Public,
Bronx County.

(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, W. E. Stubbs, Deputy Commissioner and Secretary of the Workmen's Compensation Bureau, do hereby certify the foregoing to be a true and correct copy of the ANSWER in the above case.

W. E. STUBBS.

Filed Feb. 9, 1922.

John H. Scott,
Clerk.

Dismissal of Petition

(*Filed Feb. 9, 1922*)

NEW JERSEY DEPARTMENT OF LABOR

WORKMEN'S COMPENSATION BUREAU

10

NUNZIO CRISTO, vs. STANDARD OIL COMPANY (N. J.),	}	Petitioner, Respondent.
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An informal hearing was held in the above entitled cause on September 9th, 1921, and continued to September 23d, 1921. Because of disagreement of the parties, a petition was later filed and served, praying for compensation for injuries received by Nunzio Cristo, the petitioner; an answer was filed by the respondent, and the cause set down for a hearing, which hearing was held on the 28th day of November, 1921, and continued to December 5th and December 29th, 1921, before me. The respondent was represented by Mr. James H. Hayes and the petitioner by Mr. Belfat-
to.

From the evidence, it appears that the petitioner alleges that an accident occurred sometime between March 25th and March 30th, in the year 1920; that he continued to work, except for short absences, until May 12, 1921, on which date he was operated upon, remaining disabled on this account until July 8, 1921.

The petitioner contends that the payment of \$129.33 which was made on July 13, 1921, was a payment of compensation and that, therefore, he

Dismissal of Petition

was in time in petitioning for compensation. The respondent, however, contends (and this contention is supported by the best evidence) that this was a payment of "sickness benefits" under the terms of its "Plan for Annuities and Benefits" and that it was made on account of a period of disability resulting from the operation above referred to and which had no relation whatsoever to the alleged accident; further, that respondent never made any payment of compensation on of the alleged accident.

I do, therefore, determine that the petitioner failed to bring his action within the period by the statute and is, therefore, without relief.

It is, therefore, on this 26th day of January, 1922, ORDERED, that judgment final be entered in favor of the respondent and against the petitioner and that the prayer of the petitioner be denied and the petition dismissed.

(Signed) HARRY J. GOAS,
Deputy Commissioner.

I, W. E. Stubbs, Deputy Commissioner and Secretary of the Workmen's Compensation Bureau, do hereby certify that the above is a true and correct copy of the Dismissal of Petition in the case of Nunzio Cristo vs. Standard Oil Company.

W. E. STUBBS.

Notice of Appeal to Common Pleas

(Filed Jan. 31, 1922)

NEW JERSEY DEPARTMENT OF LABOR

WORKMEN'S COMPENSATION BUREAU 10

Trenton, New Jersey

NUNZIO CRISTO,

Petitioner,

vs.

STANDARD OIL COMPANY,

Respondent.

20

Please take notice that the petitioner hereby appeals to the Court of Common Pleas in and for the County of Essex from the determination of the Workmen's Compensation Bureau made in the above entitled matter on the 26th day of January, 1922, dismissing the petition filed in the above stated cause.

Respectfully yours,

30

G. M. BELFATTO,
Attorney for Petitioner-Appellant.

To:

James H. Hayes, Esq.,
Attorney for Respondent or
to whom it may concern.

Judgment Entered February 9, 1922ESSEX COUNTY COURT OF COMMON
PLEAS

10	NUNZIO CRISTO,	Petitioner,	}	32218
	vs.			On Petition.
	STANDARD OIL COMPANY,	Respondent.		On Determina- tion of Harry J. Goas Dep- uty Commis- sioner.
				After Hearing.

James H. Hayes,
Attorney of Respondent.

20 Judgment on Determination of Harry J. Goas, Deputy Commissioner, after hearing in the above entitled Action was rendered on the ninth day of February A. D. Nineteen Hundred and Twenty-two in favor of the said Respondent, Standard Oil Company, and against the said Petitioner, Nunzio Cristo.

Judgment entered and signed February 9, 1922.

30 EDWIN C. CAFFREY,
Judge.
Q-2. Common Pleas Judgment page 239.

Order Dismissing Appeal

(*Filed June 16, 1922*)

ESSEX COUNTY COURT OF COMMON PLEAS

<p>NUNZIO CRISTO, Petitioner-Appellant, vs. STANDARD OIL COMPANY, Respondent-Appellee.</p>	}	<p>On Appeal from Work- men's Com- pensation Bur- eau.</p>
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10

The above matter coming on for hearing and a motion to dismiss appeal having been submitted to me for decision, I hereby find and determine as follows: 20

That this is a proceeding brought by Nunzio Cristo and against the Standard Oil Company, a corporation of the State of New Jersey, 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 thereto and supplemental thereof. That a petition was filed with the Workmen's Compensation Bureau on the 9th day of September 1921; that a copy of said petition was duly served on the respondent and that an answer was duly filed with the said Bureau; that due notice of hearing of said petition and answer was given to respondent; that hearing was had and the Workmen's Compensation Bureau determined 30 40 that the proof showed that the alleged accident oc-

Order Dismissing Appeal

curred some time between March 25th and March 30th, in the year 1920, and that therefore the petitioner failed to bring his action within the period allowed by the statute and was therefore without relief; that notice of appeal was filed with the
10 Secretary of said Workmen's Compensation Bureau on the 4th day of March 1922, and with the County Clerk of Essex County on the 4th day of March, 1922, that an order fixing time and place for hearing of said appeal was made on the 15th day of February, 1922, that notice of the order fixing time and place for hearing appeal was served upon the respondent-appellee on the 16th day of February, 1922, filed on the 3d day of March 1922;
20 that the said appeal came on for hearing of motion to dismiss on the 17th day of March, 1922, that said motion was held in the presence of G. M. Belfatto, attorney for petitioner-appellant and James H. Hayes, attorney for respondent-appellee; that after hearing the argument of counsel therein and the motion for dismissal of appeal made by attorney for the respondent-appellee and having duly considered the same.

I find therefore that petitioner-appellant failed
30 to file his petition within one year after the date on which the accident occurred.

It is therefore on this 16th day of June 1922 ordered that the motion of the respondent-appellee be granted and the appeal of the petitioner-appellant be hereby dismissed.

EDWIN C. CAFFREY,
Judge.

Writ of Certiorari*(Filed May 23, 1922)*

New Jersey, ss:

*The State of New Jersey to the Court of Common
Pleas in and for the County of Essex, and* 10
*John H. Scott, Clerk of the said Court, GREET-
ING:*

We being willing for certain reasons to be certified of and concerning a certain (L. S.) determination and judgment rendered on the first day of May, 1922, by the Honorable Edwin C. Caffrey, Judge of the said Court of Common Pleas, in and for the county of Essex, in a certain proceeding brought on behalf of Nunzio Cristo, petitioner against Standard Oil Company, respondent, for the determination and recovery of 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 the acts amendatory thereof and supplemental thereto, we command you, the said Court of Common Pleas in and for the County of Essex and John H. Scott, Clerk of the said Court, that the said determination and judgment, together with a transcript of the evidence and all proceedings for the making of the same and all things touching and concerning the same, as fully and entirely as before you they remain, or are in your custody and control, you do certify and send together with this Writ, to our Justices of our Supreme Court of Judicature at Trenton, on the

20
30
40

Writ of Certiorari

6th day of June, 1922, that therein may be caused to be done what of right and according to law ought to be done.

Witness, the Honorable William S. Gummere, Chief Justice of our Supreme Court at Trenton,
10 this 20th day of May, 1922.

ENOCH L. JOHNSON,
Clerk.

G. M. Belfatto,
Attorney.

State of New Jersey, County of Essex, ss:

20 I, Edwin C. Caffrey, Judge of the Court of Common Pleas in and for Essex County, do hereby certify and return to the Supreme Court of Judicature of the State of New Jersey, the proceedings had before Harry J. Goas, Deputy Commissioner, New Jersey Department of Labor, Workmen's Compensation Bureau, and the proceedings had before the Court of Common Pleas in appeal and the order dismissing the appeal and all things touching and concerning the same as by the within writ to me directed, I am commanded.

30 In witness whereof I have hereunto set my hand and the seal of the said Court at Newark, N. J. this 30th day of August, 1922.

EDWIN C. CAFFREY,
Judge of the Court of Common Pleas
of Essex County.

Testimony

WORKMEN'S COMPENSATION BUREAU

Newark, Essex County, District

NUNZIO CRISTO,

Petitioner,

vs.

STANDARD OIL COMPANY,

Respondent.

10

Transcript of stenographer's notes of evidence taken in the above entitled matter, before HON. HARRY J. GOAS, Deputy Compensation Commissioner, at the Workmen's Compensation Bureau Building, 9-15 Franklin Street, Newark, N. J., on the 28th day of November, A. D. 1921. 20

Appearances:

G. M. Belfatto, Esq., on behalf of the petitioner.

J. M. Hayes, Esq., on behalf of the respondent.

Mr. Hayes: We have subpoenaed Dr. Funk here this morning and he came about 10 o'clock and he raised ballyhoo and he said he was not coming back this afternoon. I do not know whether he will be here or not. I have a written statement, and if it is such that cannot be admitted we will ask permission to get Dr. Funk's testimony later. 30

The Court: That can be arranged some way.

Mr. Belfatto: If your Honor please, the main point in this case is this: This petition was filed long after the limitation by the statute, because the sickness was developing was an obscure sickness and developed long after the alleged accident. 40

Dr. Eugenio Sturchio—Direct

In other words he met with the accident on March 25th, 1920, and the sickness developed long afterwards. Therefore it was entirely unknown and undiscovered at the time the accident took place, and for long afterwards, the same condition seemed to exist. We are going to examine Dr. Sturchio, one of the witnesses in this case.

DR. EUGENIO STURCHIO, a witness on behalf of the petitioner, sworn:

Direct-examination by Mr. Belfatto:

(This witness spoke such broken English that he was frequently stopped by the Court, Counsel and the Stenographer to ascertain the meaning of some of the words he spoke.)

Q. Dr. Sturchio, where is your office? A. #178 Mount Prospect Avenue.

Q. Newark? A. Newark.

Q. How long have you been practicing medicine in Newark? A. About sixteen years.

Q. About sixteen years, and you have had your offices in the same place? A. No.

Q. But always in Newark? A. Always in Newark.

Q. Do you know Mr. Nunzio Cristo? A. Yes, sir.

Q. When did you first examine him? A. About three months ago.

Q. Three months ago? At what place? A. At my place.

Q. What did you find in his body? A. I found some abnormal conditions.

Q. Abnormal conditions? A. Of the skin of the head and chronic gastritis.

(Answer repeated by the stenographer.)

Dr. Eugenio Sturchio—Direct

Q. Did you make a minute examination of the skin of the head? A. Yes.

Q. And what was the result of your examination? A. I found a number of parasites.

Q. A number of parasites? A. Parasites.

Q. A great number or small number or what number? A. No; no number. 10

Q. It was not a number? A. Unnumbered. The fall of the hair was due not to parasites.

Q. What was the cause of the falling of the hair on the head? A. In my judgment prolonged heat.

Mr. Hayes: Q. From what? A. From prolonged action of the heat.

Q. Dilatory action? A. Dilatory action of the heat.

Q. Of the head? A. Of the heat. 20

Q. What was the cause of the dilatory—

Mr. Hayes: I object to that; he cannot testify as to what is the cause. He can testify as to what causes might produce falling of the hair, but he cannot testify in this cause what caused it.

Mr. Belfatto: If your Honor please, we are dealing with expert testimony in this case. We can investigate the cause and the fact and we can investigate as many causes as possible until we find the root where we cannot go any further. There should be no limitation with reference to scientific method of introducing evidence in this case with reference to examination by this expert witness. We are in a position entitled to find out the cause. 30

Mr. Hayes: If the Court please, this is an expert witness as Mr. Belfatto states, because he puts him on the stand as an expert witness and using him as an expert 40

Dr. Eugenio Sturchio—Direct

10 witness he must proceed in the proper manner. He cannot ask the witness a question what was the cause of the particular injury that he examined him, procuring a cause possibly occurring some months prior thereto. The witness can testify as to what could have caused the condition which he found there, but when he takes the stand and directly says the cause, that is something I think he has gone beyond his powers as an expert witness in this case. He can frame a hypothetical question and give him the facts, but he certainly cannot take this identical case and this identical injured man and tell us here from a physical examination the cause of that particular accident.

20 The Court: On the theory nobody can?
Mr. Hayes: Yes.

Mr. Belfatto: The practice in this Court is not so strict as in the upper courts. If he wished me to follow that system of putting the questions—

The Court: Let him tell in his opinion.

30 Mr. Belfatto: It is absolutely optional with your Honor to admit the question or not.

The Court: All right, Doctor, in your opinion.

A. In my opinion, prolonged action of the heat produces some physical exchange in the tissue, cause an atrophy of the capillary bulbei, in some stomach some chemical change in the function.

40 Q. You mean chemical? A. Chemical change in the function of the stomach, such as to produce permanent injury in the functioning of the digestion.

(Answer repeated by the stenographer.)

Dr. Eugenio Sturchio—Direct

Q. Now, if a man has been working for a long time in a place where actions of flames are used for that particular work would such a person be subject to be affected with such a condition as you have just testified? A. That is admitted in pathology. That is the case admitted in common pathology. 10

Q. Do you admit it? A. I admit it; yes.

Q. That would be the cause? A. Yes.

Q. If a person while working is overtaken sick by gas fumes or flames causing his fall to the ground and afterwards is unable to do work would that be one of the causes of the sickness? A. Yes.

Q. Of this petitioner? A. Yes.

Q. Now, in your opinion, how long would sickness develop or how long would it remain latent until it appeared? A. There is no fixed time for that. 20

Q. There is no fixed time for that? A. Time, time, time. In correllation to the strength of the patient.

Q. Is it possible with a man affected with such sickness as you described to notice it? A. After many months.

Q. How many months after? A. Possibly five or six or seven month, one year. 30

Q. One year? A. Sure.

Q. And then what will begin to exist at the end of the year? A. We note the change in the physical conditions of the patient, of course, then you notice the effect of those change.

Q. Can a man do any work during that time, that period of time during which the sickness remains latent? A. It is possible.

Q. It is possible? A. Yes, sir.

Q. With reference to the falling of the hair? 40
When does that falling begin as the result of the

Dr. Eugenio Sturchio—Cross

accident? A. After the prolonged action of the heat.

Q. Do you mean head or heart? A. Hot, hot.

Q. How many times have you examined Nunzio Cristo? A. I think a dozen times.

10 Q. A dozen times. And have you prescribed for him? A. I give some treatments, Electrical and some other treatments.

Q. Electric treatment where? A. In my office.

Q. On what part of his body do you apply the electricity? A. On the head and stomach region.

Mr. Belfatto: Take the witness.

CROSS-EXAMINATION by Mr. Hayes:

Q. When did you first examine Cristo? A.

20 About three months ago.

Q. About three months ago? A. August 19th.

Q. August, 1921? A. '21, yes.

Q. '21. What was he suffering from when he first came to see you? A. Well, from the stomach.

Q. From the stomach? A. And then he showed to me the rest.

Q. Did he tell you how long he had been suffering from the stomach trouble? A. Oh, sure.

30 Q. How long did he say? A. He tell me about one year and half.

Q. If he had been suffering about one year and a half, would the trouble evidence itself to him from time to time? A. Well, from the history of the case.

Q. From the history of the case? A. Yes.

Q. From the history of the case you got was it indicated to you that he had received treatment for gastritis at all? A. Well, he received some
40 treatment for appendicitis.

Dr. Eugenio Sturchio—Cross

Q. For appendicitis? A. Yes. But I can't judge whether it is true or not at the office.

Q. Did he tell you he had? A. He told me I never had appendicitis.

Q. He told you he never had appendicitis? A. I can judge whether it is correct or not. 10

Q. Yes. But you do not know whether or not he was ever treated during that previous year for gastritis at all? A. Well, he told me he was treated in some place. Some hospital: He don't know where.

Q. Did he say how many times he had been to see physicians for sickness at all? A. He told me he saw many physicians; many physicians.

Q. How many physicians? A. Yes; even in New York. 20

Q. You were speaking of hot a little while ago instead of heart weren't you? A. Hot, yes.

Q. You meant that a man was subjected to continuous heat — A. Hot.

Q. (Continued) — for continuous period he was liable to lose his hair, was that it? A. Yes.

Q. And also that it was possible for his stomach to have been affected? A. Yes.

Q. Could his stomach have been affected by any other causes besides? A. Many other causes. 30

Q. There are many causes? A. Yes, sir.

Q. Can you tell us a few of them? A. I can't tell many. But in that case I can't find any other.

Q. How many can you tell? A. I can't explain myself. I must find the words.

Q. Take your time and get the words. A. Improper or misuse of the meals.

Q. Improper food? A. Improper misuse, abuse.

Mr. Belfatto: Suppose you use an interpreter. 40

Dr. Eugenio Sturchio—Cross

Q. You mean of his person? A. Yes, sir; this is one of the causes.

Q. One of the causes. What others? Are there many others? A. Many others. Some constitutional disease. "Artritism." Many cases malaria.
10 Many cases anaemia. And many other cases.

(Reporter's note: The word "artritism" was written in long hand by the witness and furnished to the stenographer.)

Q. So in the medical profession there are many causes which could bring about the particular trouble which this man supposed he had outside of this one particular cause? A. But we generally fix our attention when examining a patient on the direct cause. We can't find any malaria,
20 any —

Q. Did you make any examination as to any misuse or abuse of himself? A. Yes; yes.

Q. Did you use the Wasserman test? A. Yes; I had the Wasserman.

Q. What did you find, negative or positive? A. Negative.

Q. You did not find anything at all? A. I had negative.

Q. Have you the result — did you get a result
30 of that Wasserman which is among your records?

A. This Wasserman test was made in the St. Gerad Hospital.

Q. When was that made? A. That is negative.

Q. What? A. That is negative.

The Court: When was it made? A. It is in the hospital. I can't take myself.

Q. Can you get a copy of the records, doctor?
A. If I ask, sure.

Q. Won't you ask for a copy so the Com-
40 missioner can have that? A. Yes; yes.

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Mr. Hayes: I would like to have that.

The Court: St. Gerad Hospital, where is it?

Mr. Belfatto: On Bloomfield Avenue, near Fifth Street. It is a new hospital, Your Honor.

10

Q. Doctor, if Cristo had been examined about nine times during the year 1920 by physicians and had been reported sick, cause gastritis, would you still say he could continue working without this present disease having manifested itself? A. I don't understand very well.

Q. You examined Cristo, didn't you? A. Yes

Q. And on your direct-examination you said that this man could have worked for five, six, seven — A. Months.

20

Q. — (continuing) months, or a year? A. Yes.

Q. Before this disease evidenced itself? A. Yes.

Q. In what state was this disease at the time you examined him in September? A. Well, I think the disease was in its best flourishness.

Q. Best flourishness? A. Best flourishness.

Q. And from that examination could you tell us about when that disease first evidenced itself? First became known? A. I can explain that because I noticed it.

30

Q. Could it have been six months? A. Following the history of the patient.

Q. It could have been? A. Sure. But the stomach disease developed gradually. Very gradually. That is the way stomach disease can give evidence.

Q. This condition of the heart, could that be brought about by this stomach condition? A. No; I don't think so. No corollary. Only one corollation, general misfunction of the sympathetic nerves.

40

Dr. Eugenio Sturchio—Cross

Q. Sympathetic nerves? A. Sympathic nerves. And that can give many manifestations outside. Such as fall of hair or stomatitis, or other disease.

10 Q. Did Mr. Cristo tell you when his hair first began to fall out? A. He told me about February of this year.

Q. February, 1921? A. '21, yes.

Q. That is when it first began to fall out? A. Yes; he told me.

Q. Did he tell you his hair had been burned at all? A. No; after falling out.

Q. Did he tell you it had been burned before falling out? A. No.

20 Q. He did not tell you that a flame had hit his head? A. He told me that after the last accident he noticed some fall, gradual fall of his hairs.

Q. Right after the accident? A. But never have any evidence of a complete fall before February of last year — of this year.

Q. There would not be a complete fall, would there? A. No; gradual falling.

Q. There would be a gradual fall? A. Gradual falling.

30 Q. Certainly. Did he tell you he had received a flame on his hair? A. Yes; but I cannot put any correllation between this last accident and the fall of the hairs.

Q. Then you do not think there is any relation between this flame hitting his hair and his present condition that you examined him in September?

A. I put the correllation between all the action—prolonged action of the heat, but not from the action of one accident only.

40 Q. You take the prolonged action of the heat? A. Months and months.

Q. Instead of the accident which occurred in

Dr. Eugenio Sturchio—Cross

March, 1920? A. I don't put that present state of the patient with relation to the last accident.

Q. There is no relation between them? A. No.

Q. You say this condition— A. It is an aggravated case.

Q. It is an accumulated effect? A. It is an accumulated case, but for me it is repeated action of the heat on his body. 10

Q. What kind of heat? A. Any heat. Direct heat of fire.

Q. Any direct heat of fire? A. From a fire.

Q. Did you know he was working any place where there was any heat? A. He told me he was working in a foundry, or something.

Q. He told you he was working in a foundry or something? A. Yes. 20

Q. And he told you he is working in a room where there is heat, did he? A. Yes; where there is a furnace.

Q. Where there is a furnace. And that is how you got the idea that heat had affected his body? A. Yes, sir.

Q. If he had not told you that he had been working in a heated room what would you have looked for the cause of his condition? A. The heat, the direct heat from a fire. 30

Q. The direct heat from a fire. Suppose he had not told you anything about a furnace. Suppose he had just come in and you examined him, what would be your natural diagnosis? A. "Artritis."

Q. That is an affection of the heart? A. No; general affection of the body.

Q. General debility? A. It is a general exchange of phenomena of the life, we call that arteritis, such as hemorrhoids, or — 40

Dr. Eugenio Sturchio—Re-direct

Q. Did you examine him for diabetes? A. Yes, sir.

Q. What did you find? A. No sugar or albumen.

Q. No sugar or albumen? A. Because relations
10 generally the "artritism" is generally associated with its father and mother, hereditary matter.

Q. From examination you had in September, leaving aside any history of the case, how long would you say that his condition had been prevalent in his body or system? A. Well, possibly three or four months.

Q. Two or three or four months. Couldn't it have been any longer? A. Sure.

Q. It could have been over a year, couldn't it?
20 A. Yes.

Q. And as far back as two years, couldn't it?

A. Maybe.

Mr. Hayes: That is all.

RE-DIRECT-EXAMINATION by Mr. Belfatto:

Q. Is there any hope of the hair returning to him? A. I don't think so. I tried many things. Even an x-ray. And ultra-Violet rays.

30 Q. Can the stomach get better? A. There is many things in the abdomen, because he had an operation performed.

Q. He was operated for appendicitis? A. He was operated for appendicitis and there is many alterations.

Q. Adhesions? A. Adhesions in the bowels that cannot be relieved in any way.

Q. Cannot be cured? A. No.

Q. In the stomach? A. No, sir.

40 Q. No cure for it? A. No.

Q. And there is no cure for the hair? A. No.

Dr. Eugenio Sturchio—Re-direct

Q. Can the patient sleep normally? A. I don't think so.

Q. Can he digest same as a well man? A. No; there is too many changes in the function.

Q. Does the condition of the stomach produce any pains? A. Yes; many pains.

10

Q. How often? A. Any moment.

Q. Any moment? A. Any moment of the life.

Q. What kind of pain? Severe pain or slight?
A. Generally all the stomach trouble produced in general debilitation.

Q. And the food cannot be digested? A. From the insufficient association of elements.

Q. How about the condition of the bowels under such circumstances? A. They are very torpid.

Q. They are very torpid? What is necessary to make them move? A. He must take some cathartics.

20

Q. He must take some cathartics? Laxative you mean? A. Laxative and cathartic are just the same.

Q. Are you sure he needs laxative almost every day? A. If the conditions remain just like now. I don't think he has any other way, for him.

Q. So he cannot— A. I don't think he can have a better chance to grow well in himself.

30

Q. How often do you think, doctor, he is in need of a laxative to cause the bowels to move? A. Every day. Every day he function.

Q. That is an every day function. There is no exaggeration in our statement, I hope? A. It is imperfect.

Q. You are positive of that? A. Positive.

Q. Isn't there any hope in the future there will be no need of a laxative so often as you have testified? A. Must change all the relations of the

40

Dr. Eugenio Sturchio—Re-cross

stomach and everything. If he have a new stomach and bowel.

Q. You have got to put a new stomach there?

A. Sure.

Q. You say that the condition of the head, the
10 loss of the hair was caused by different ailments?

A. Syphilis.

Q. Did you examine him for syphilis? A. And the arteritism.

Q. Did you examine him with reference to these two? A. Three or four days after he came to my office.

Q. Did you examine him? A. Yes.

Q. And did you not find any such cause? A. No; any trace of the syphilis.

20 Q. You say the course of the heat developed gradually? A. Gradually.

Q. Into the actual sickness? A. Yes; that is right.

Q. And it is many months before he can see the very sickness in existence, is that right? A. A good intelligent man can recognize after a little while. But the general man of common intelligence must wait months and months.

Q. Before it develops? A. Before he can.

30 Mr. Belfatto: That is all.

RE-CROSS-EXAMINATION by Mr. Hayes:

Q. You do not know how long he had been working in any room where there was any heat? A. No.

Q. How long would it take ordinarily for a man working in the heat in ordinary physical condition to get his condition you say Cristo was in? A. Well, a couple of years, one year. This cannot
40 occur in every man. We must find the different

Dr. Eugenio Sturchio—Re-cross

physique in the man. (Answer repeated by stenographer).

Q. And you do not know what this man's condition was a year ago? Do you? A. No; I never saw him before.

Q. And you do not know whether, through any 10
acts of his own, he weakened his condition at all? You do not know whether he himself weakened his own body? Do you understand me?

Mr. Belfatto: I don't wish to object to this but it is very irrelevant.

Mr. Hayes: You put an expert on the stand.

Mr. Belfatto: I am giving you all the latitude.

Mr. Hayes: You are giving me nothing. 20

Mr. Belfatto: You take anything you wish to take.

Mr. Hayes. That is the idea.

Mr. Belfatto: If you are entitled to it.

A. If you can explain better the question.

Q. I will try to explain it better.

(Question repeated by the stenographer.)

Q. We will frame it in another way. There are many things which could have occurred to Mr. Cristo which would be an explanation of his pre- 30
sent condition, of which you do not know? A. Well, but I can find any trace.

Q. You find traces? A. From the process.

Q. Of elimination? A. Of the visits of the patient.

Q. Now, what process of elimination did you take in respect to Cristo? A. Well, before, syphilis.

Q. You eliminated syphilis, and as I understand it, you eliminated syphilis at the St. Gerad Hospi- 40
tal? A. Yes, that is right.

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Q. And the records are there and you will bring them to the Commissioner? A. Yes, sir.

Q. And you will— A. I eliminated arteritism. Eliminated malaria, eliminated anaemia. I eliminated some distrophic condition of the nerves,
10 nervous systems. Those are the general things apt to produce this.

Q. You eliminated everything as you considered, except this general prolonged effect of the heat? A. Yes.

Q. Would that have to be continuous? Itself? Continuous? A. Continuous heat?

Q. Yes. A. Well, that is my opinion.

Mr. Hayes: That is all.

Mr. Belfatto: That is all.

20

NUNZIO CRISTO, the petitioner sworn:

Direct-examination by Mr. Belfatto:

Q. How old are you? A. Twenty-six.

Q. Twenty-six? A. Yes.

Q. Talk loud and keep the hand away from your mouth. Did you ever work for the Standard Oil
30 Company? A. Yes.

Q. At Bayway? A. Bayway Refinery.

Q. For how long did you work there? A. Two years.

Q. Two years. When did the two years begin?
A. What?

Q. When did you first go there? What month?
A. December 1st, 1919.

Q. You went there to work on December 1st, 1919?
A. December 1st.

40 Q. Did you continue to work there? A. Yes, sir.

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Q. Until what time? A. March 25; March 25th.
That time when I got burned.

Q. March 25th? A. Yes, sir.

Q. What happened to you on that day? A. I
was working in the gas furnace.

Q. You were working in the gas furnace? A. 10
Yes, sir; and me used to make pipe. Heat pipe.
Big long pipe.

Q. Tell the Court how did you do that work. A.
Three fellows bring pipe inside and we take it
out.

Q. Three men would take a pipe? A. Yes, sir.

Q. And take it inside where? A. Inside of the
oven.

Q. Inside of the oven? A. And bring the steam
hammer. 20

Q. You first were putting a pipe in the oven?
A. In the oven.

Q. And was there any fire in the oven? A. It
was red hot.

Q. It was red hot? A. Big furnace.

Q. What kind of fire did you have there? Coal
or gas? A. Gas fire.

Q. For how long would the pipe remain in the
oven? A. Might have to wait about half an hour
or three quarters to heat. 30

Q. What did you do with the pipe after? A.
Took it out red hot.

Q. Pull it out of the oven? A. Yes.

Q. Red hot? A. Yes, sir.

Q. How many men did it require to pull that
pipe out? A. Three men.

Q. Three men? A. Yes, three or four men.

Q. Were you one of the three men? A. No;
was a couple of fellows.

Q. Three fellows? A. Yes.

Q. You were one of the three? A. Yes, sir. 40

Nunzio Cristo—Direct

Q. And two other men were working? A. Yes.

Q. Give us the names of the other two men. A. One is Louis Verlengieri.

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

Q. What is the name of the other man? A. The
10 other man runs the steam hammer. He was work-
ing right—

Q. Is he in court too? A. Yes, sir.

Q. What is his name? A. Nick De Rose.

Q. While you were pulling that pipe from the
oven what happened? A. This pipe is supposed
to be on the steam hammer. And I was holding
the tongs on the back and the furnace was open.

Q. Furnace was open? A. Was open, yes. And
I was hit back and hit in front and the light of
20 fire hit me on the back, flame.

Q. Yes. A. Flame hit me on the back and I had
a burn and I fell down.

Q. What hit you on the back? Flames? A.
Flames, Hit me on the back, there was fire in
front and fire in back. Flames hit me on the back
and I fall down.

Q. You fell down? A. Yes, sir; and two fel-
lows took me in the cold water. Louis Verlengieri
and Nick De Rose.

30 Q. These two men took you to the sink? A. Yes,
sir.

Q. How far was the sink from the furnace? A.
About four feet.

Q. Four or five feet? A. Yes, sir.

Q. Four feet? A. Yes, sir.

Q. What was done to you at the sink? A. I was
all sweat, and they put cold water on, half an hour
or so and I was all right.

Q. Put cold water on what? A. On top of my
40 head.

Q. How long did they put cold water on your

Nunzio Cristo—Direct

head? A. About fifteen to twenty minutes. And I feeling I started in talking and then the boss came around.

Q. What is the name of the boss? A. Jack Bradley. I was working night work.

Q. You were doing night work? A. Yes, sir. 10

Q. And did the boss see you then? A. Boss was working in the boiler shop and he came about a half an hour later and I told him about it. And he sent me to the doctor and I went to see the doctor and he put some vaseline on my head.

Q. Where was the doctor then? A. In the office.

Q. In the company's office? A. Yes, sir; in the company's office.

Q. What did he do to you? A. Put some vaseline on top of my head. 20

Q. What did you do after that? A. I might go home because it was night I work.

Q. What time did this accident happen? A. About ten o'clock.

Q. About ten o'clock? A. Second hour I would be on.

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

Q. At night? A. Yes, sir.

Q. For how long did you work at night? A. I guess about a year and a half; something like that. 30

Q. A year and a half? A. Yes; pretty near.

Q. After the doctor put the vaseline on your head what did you do? A. I started working because I can't go home.

Q. Did you continue to work? A. Not the same work. Over there was other work, red hot, and I can't stand it.

Q. What work did you start to do then? A. Started sweeping in the shop.

Q. Started sweeping in the shop? A. Yes, sir.

Q. What did you do on the following day? 40

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What did you do next day? A. Next day I stayed home.

Q. Why? A. I feel pain in the stomach and pain in the head. Didn't bother me right along.

Q. Did not bother you? A. No.

10 Q. What did you do? Go to work? A. Next day.

Q. Next day did you go to work? A. Yes.

Q. Did you feel strong enough to go to work? A. No; I didn't feel very good but I had to go to work.

Q. You had to go to work? A. Yes, sir.

Q. For how long did you work after the accident? A. I had to work and had to go and see the doctor once a week.

20 Q. You went to see the doctor once a week? How long were you able to work after the accident? A. Until March.

Q. Until March? A. Yes, sir; 20th. I went to the City Hospital.

Q. You met with the accident in March? A. March.

Q. And you continued to work for how many months after? A. May 9th; something like that.

Q. May 9th? A. Yes.

30 Q. You stopped working May 9th? A. Yes.

Q. Where did you go on May 9th? A. I went to the hospital.

Q. Which hospital? A. City Hospital.

Q. And what was done to you in the hospital? A. Well, examined me and he find gas in the stomach.

The Court: City Hospital Newark? A. Elizabeth.

The Court: All right.

40 Q. Now, I show you a certificate. Is that the certificate you got in the hospital? A. Yes.

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Mr. Hayes: What is this date here?

Q. From Dr. Funk, I think. A. No.

Q. Who gave it to you? A. City Hospital; this one.

Mr. Belfatto: Dr. Reilly. If your Honor please this is a certificate which I offer in evidence. 10

Mr. Hayes: As I understand it whatever records you have here and whatever records I have, we are not going to call the medical authorities down to prove.

Mr. Belfatto: No.

Mr. Hayes: We will just admit them.

Mr. Belfatto: That is it.

Mr. Hayes: So I have no objection at all. 20

Mr. Belfatto: There is another document which I wish to offer in evidence.

Mr. Hayes: I have no objection to that.

Dr. Reilly's certificate, entered in evidence and marked Exhibit P-1.

Receipt from Alexian Brothers Hospital, Elizabeth, entered in evidence and marked Exhibit P-2.

Statement of Charles O'Neil entered in evidence and marked Exhibit P-3. 30

Q. After you went to the Elizabeth hospital how long did you remain in the hospital? A. Two weeks.

Q. Two weeks? A. Yes.

Q. Was anything done to you during these two weeks? A. They gave me something, some kind of treatment they gave to me.

Q. Some treatment? A. Yes.

Q. After you were released from the hospital what did you do? A. After I left the hospital? 40

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Q. Yes. A. I went to see the doctor in New York. Back again.

Q. Did you go to work? A. No; I was two weeks more before I went to work.

Q. For two weeks more? A. Yes; after I came
10 out of the hospital.

Q. You returned to the company to work? A. After two weeks I went to the company back again to work.

Q. And for how long did you continue to work? A. I worked there right along, and every week I had to go and see the doctor.

Q. You could work every day, could you? A. No; I can't work.

Q. You worked right along and went to see the
20 doctor. A. Yes; and I went to see the doctor once a week.

Q. You received pay for your working during that time. A. Never.

Q. Didn't they pay you? A. Time I was working?

Q. Working? A. Yes, yes, yes.

Q. And did you go in any other hospital after that? A. 1921.

Q. 1921. Which hospital did you go? A. Alex-
30 ian Brothers Hospital.

Q. Do you remember the date? A. Yes.

Q. What? A. I went 1921. May 12th, and I got laid off the 9th, and I went to the hospital the 12th.

The Court: Q. 12th of what? A. May.

Q. 1921? A. Yes.

Q. This year? A. Yes.

Q. On May 13th the record shows; what was done to you while in the second hospital? A. I
40 was over there and I was in pretty bad shape. I

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can't stand. I had to go over there. And never had no examination at all.

Q. Were you examined? A. So Dr. Funk, he examined a little bit, you know, to find out. And he said you need an operation. He examined a little bit. Do you feel pain here? And I said no. 10
And I had an x-ray over there from Dr. Dolan.

Q. Dr. Dolan took an x-ray? A. He gave me x-ray 1920, and I left the hospital and he told me I don't need no operation.

Q. You were operated? A. On another occasion I went to see Dr. Dolan and I found Dr. Funk in the hospital and he operated for appendicitis, and I went to see all the doctors in New York and they told me I had gas in the stomach, and I got treatment for acute stomach in May 1921, this 20
year.

Q. How long were you in the second hospital?
A. Second hospital. I was there only about two months.

Q. Two months? A. Yes.

Q. Did you get any money from the company?
A. I went down to see the company and they gave me \$129.33.

Q. One hundred and twenty-nine? A. Yes, sir.

Q. Do you remember the date when you got that 30
money? A. It was—

Mr. Hayes: July 13th.

Mr. Belfatto: We agree to that, July 13th, 1921, he got \$129.33.

Q. Did you get any more money after that? A. No; I came home. And he told me he should pay me right along. I ain't to receive no money, and I went to see the Compensation Bureau at Elizabeth. Somebody sent me over there.

Q. Did you get any money after that? A. No; 40
he said he write company and see what he said. I

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wait two weeks and I got no answer, and I came here.

Q. You saw many doctors, did you? A. Ten or eleven doctors.

Q. Ten or eleven doctors, and you saw these
10 doctors for what purpose? A. What do you mean?

Q. What was the trouble with you? What did you feel when you saw the doctor? A. I went to see the doctor, I had feel pain in the stomach all the time.

Q. You could work nevertheless? A. I went to work but I can't do no work.

Q. Will you state to the Court when you first noticed you could not work any more? What
20 date? A. It was March 9th.

Q. March 9th, which year? A. 1921.

The Court: March or May? A. March I couldn't work any more.

Q. In March you could not work any more? A. No.

Q. March, 1921? A. In March, 1921.

Q. What did you do on that day? A. I went to the Alexian Brothers Hospital.

Q. That is the time you went to the hospital?
30 A. Yes, sir.

Q. Before that time you could work? A. I could work but I didn't feel good.

Q. Did you have any hair before March 9th?
A. My hair started to fall in February.

Q. In February? A. February, 1921.

Q. And that is the time the hair started to fall?
A. Yes, sir.

Q. For how long did the hair continue to fall?
A. It started in to fall right along.

40 Q. And how about your stomach? A. In the stomach feel pain all the time. I can't stand it in doing any work.

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Q. You could not do any work at all? A. I can't do any work at all.

Q. With reference to your digesting food, can you digest? A. Digest?

Q. Yes. A. I feel all over. Pain in the chest.

Q. Digest. You mean in the stomach? A. 10
Yes.

Q. How often do the bowels move? A. I guess to get medicine every day. Don't bother me.

Q. You got to get medicine every day? A. Yes, sir; don't move at all. I don't move once in a week, like this.

Q. How often do you get the medicine before your bowels move? A. Doctor give druggist.

Q. Did you take it every other day or every week or every month? A. Every day. 20

Q. You take the medicine every day? A. Every day.

Q. Suppose you don't take the medicine every day, whate happens to you? A. Pains in the head and pain in the stomach, and I couldn't sleep in the night or anything.

Q. Yes. How about your head, have you got any trouble in your head? A. I got pain all over.

Q. In the head or over the head? A. Top of the head and all over. 30

Q. In the head? A. Yes.

Q. How about sleeping at nights? Can you sleep? A. I couldn't sleep.

Q. Can't sleep? A. Never; I couldn't sleep at all. I suffer every night.

Q. Did you try to work? A. I tried to make a living but I couldn't work.

Q. How have you tried to do any work? Tell us. What attempts have you made to do any work? A. I can't do no heavy work. 40

Q. What? A. I can't do no heavy work.

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Q. Why not? A. Stomach no help me do no heavy work.

Q. How often do you suffer from pains? Do you suffer from pains every day? A. I suffer from pains every day long, I suffer from pain.

10 Q. Did anyone from the company come to see you while you were in the second hospital? A. Nurse.

Q. Nurse? A. Yes, sir.

Q. Do you know the name of the nurse? A. No.

Q. Who sent the nurse there? A. Standard Oil.

Q. You knew the nurse when you were with the Standard Oil? A. Yes.

20 Mr. Hayes: Ask if her name was Maloney.

A. I don't know. I don't remember. She came every week.

Q. She used to come every week? A. Yes.

Q. And you don't know the name of the nurse? A. No.

Mr. Belfatto: Take the witness.

CROSS-EXAMINATION by Mr. Hayes:

30 Q. You say you have been suffering from gastritis? Gas in the stomach? A. Gas in the stomach.

Q. How has it left you? Pretty nervous? Are you very nervous? A. A little bit.

Q. How does it affect you from a nervous standpoint? A. Gas.

Q. Just the gas? A. Bowels don't move; that is the reason.

Q. You are not nervous, are you? A. Feel pain all over.

40 Q. You are not nervous, are you? A. Yes.

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Q. You just feel a little pain all over. A. I am nervous.

Q. You are very nervous? A. Yes.

Q. How does the nervousness affect you? What does it make you do; cannot sleep at night? A. I can't sleep.

Q. You cannot force yourself? A. When I lay in the bed I feel pain all over. 10

Q. You are all worked up? A. Yes.

Q. You cannot sit still? A. No.

Q. You cannot sit still at all? A. No.

Q. You must twitch around all the time? A. Yes.

Q. And do you have to get up and down after you sit in a chair for a while? A. What?

Q. Do you have to stand up after you sit down a while, you become so nervous? A. After I got up in the bed? 20

Q. No. I am speaking about when you sit down. A. When I sit down, feel pain and constipation in the stomach.

Q. You are considerably more nervous now than when you sit down. A. I feel nerve when I do anything, I feel nervous.

Q. You are not nervous now. A. Not very much.

Q. You are not nervous now, are you? A. Yes, a little bit. 30

Q. How? A. I am nervous because I feel all over.

Q. Because you feel all over? Does your body twitch all over? A. Yes.

Q. You have been sitting pretty quietly while your lawyer was examining you? A. Lawyer.

Q. Yes. While Mr. Belfatto was examining you you sat there very quietly, didn't you? A. Yes. 40

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Q. Just as quietly as your are sitting now? A. Yes.

Q. When did you have this accident? March 25th, 1920? A. March 25th or 28th. End of March Something like that.

10 Q. You said it was March 25th. You were certain about that. A. I remember it was in March.

Q. What called your mind to March 25th? A. I say March 25. It might be the end of March. Something like that.

Q. You did not say that. In answer to your lawyer's question you said you were injured on March 25th? A. Yes.

Q. How do you fix that positive date in your mind? How do you know it was March 25th? A. 20 March 25th? Because I was working at that time.

Q. You are positive you were working at that time? A. Yes; I was working March 25th.

Q. You are sure you were working. Were you working in the night time or day time? A. Night time.

Q. How long had you been working in the night time? A. About a year and a half.

Q. About a year and a half? A. Yes; over a year.

30 Q. And that was March 25th? A. That was March 25th.

Q. When did you go to work for the Standard Oil Company? A. First started?

Q. Yes. A. December 1st.

Q. 1919? A. 1919.

Q. How in the world could you be working for the Standard Oil Company for a year and a half in the night time and only gone there on December 1st 1919, and you were injured March 25, 1920.

40 A. I got started in 19—

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Q. You started with the Standard Oil Company on December 1st, 1919? A. 1919.

Q. And you were injured, as you claim, on March 25th, 1920. A. March 25th; yes.

Q. 1920? A. Yes.

Q. You say you had been working at night work both on direct-examination by your attorney,—
A. Yes. 10

Q. (Continued)—and in answer to me, a year and a half night work. A. Yes; maybe less than that.

Q. Who had you been working for before going to the Standard Oil Company? A. What?

Q. Who were you working for prior to December 1st, 1919? A. Yes.

Q. Before December 1st, 1919, who were you working for? A. I was working in the shipyards. 20

Q. Where. A. Shooters Island Shipyards.

Q. What was your job there? A. Bolter-on.

Q. Boiler man? A. Bolter-on.

Q. Was that outside work? A. Yes, sir.

Q. Did you do that daytime or nighttime? A. Daytime.

Q. Then you were mistaken when you said you worked a year and a half for the Standard Oil in the nighttime? A. Yes. 30

Q. You did not mean that at all. What did you mean when you said you worked a year and a half in the night time? A. I was working blacksmith helper, blacksmith shop.

Q. Where? A. Standard Oil Company.

Q. When? A. 1920.

Q. What month? A. March 25th.

Q. You were working in the blacksmith shop on March 25th? A. Yes.

Q. How long had you been working in the blacksmith shop? A. About eight or nine months. 40

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Q. When did you first go to the Standard Oil Company? December 1st, 1919? A. Yes; about that.

Q. And from the time you went to the Standard Oil Company up until about March 25th, you had
10 been working in the blacksmith shop? A. Yes.

Q. You were not working in any furnace room?
A. I got hired from the boiler shop.

Q. What? A. I got hired from the boiler shop.

Q. You got hired from the boiler shop? A. Yes, sir.

Q. When were you hired? A. March, 1918. I got.

Q. 1919. You say you were hired in the boiler room shop on December 1st, 1919? Yes.

20 Q. And from there you went into the blacksmith shop? A. Boss put me in the blacksmith shop.

Q. You did not work in the boiler shop at all, did you? A. No.

Q. You went right in the blacksmith shop. A. I worked a couple of months in the boiler shop.

Q. You worked a couple of months in the boiler shop? A. Yes, sir.

Q. And is that December and January.

30 Mr. Belfatto: That is objected to. He is leading the poor witness on some wrong track, which is not the fair way.

The Court: You should not ask in that direct way, but let the witness explain.

Q. What months did you work in the boiler shop? A. I can't remember the month. Used to change gangs every day and work in the blacksmith shop.

40 Q. What? A. I can't remember the month. Used to change the gang every day and work in the blacksmith shop.

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Q. How many weeks in December 1919, did you work in the blacksmith shop? A. I was work in the blacksmith shop over a year.

Q. You worked in the blacksmith shop over a year? A. A year and a half.

Mr. Hayes: I submit, if your Honor 10 please, the kind of witness we have got—

Mr. Belfatto: If they will bring the record here—

The Court: The witness is intelligent enough to know how long he was working there. It is very material if he was working in the boiler room or the blacksmith shop.

Q. And when you were working for the Standard Oil Company the first time— A. First time? 20

Q. (Continuing)—1919, didn't you? A. 1919; yes.

Q. You say now you were hired in the boiler shop. A. I got hired from the boiler shop, 1919; yes.

Q. Hired from the boiler shop? A. Yes.

Q. After you were hired from the boiler shop, how long did you work in the boiler shop? A. About a couple of months.

Q. About a couple of months? A. Yes. 30

Q. Was that immediately after you were employed on December 1st, 1919?

Mr. Belfatto: I am going to object to this kind of testimony. And I will ask Your Honor to rule on it. It is immaterial and irrelevant as to the exact time when this witness or the petitioner was engaged in the premises. It is absolutely immaterial and there is no limit to that.

The Court: That is nothing. There is 40

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no leading. The witness is intelligent enough.

10 Mr. Belfatto: Does not require any such exactness of time. He has been asking repeating asking a question which is based on the wrong premises. I object to that.

The Court: Note an exception.

Mr. Belfatto: I am going to object to all his testimony on that line.

Mr. Hayes: We understand you object to the whole business, and we will let it go at that.

Q. Do you remember whether you were working in the boiler shop?

20 Mr. Belfatto: I object to that. I note an objection.

Mr. Hayes: I don't wish to be interrupted.

The Court: He has a perfect right to ask a witness a question.

Mr. Belfatto: There is a limitation to all this abuse on the part of the attorney.

Mr. Hayes: I also take an exception to Mr. Belfatto's saying "abuse."

30 The Court: Colonel Hayes asked a perfectly logical question. Even if the witness is unable to locate the exact time, 1918, 1919 or 1920, he can surely tell approximately how long he was working for the company. I don't know whether he was working for the company at the time of this alleged accident.

Mr. Belfatto: There should be a limit as to this stuff.

Mr. Hayes: This is cross-examination.

40 The Court: It is cross-examination.

Mr. Belfatto: There is a limit to that.

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Mr. Hayes: You and I do not agree about that.

The Court: I will take the witness in hand and ask a couple of questions.

Mr. Hayes: I reserve my right to ask a couple of questions. 10

The Court: Merely to explain that one point.

By the Court: Q. How many times were you hired by the Standard Oil Company once or twice?

A. Once.

Q. Once? And you say the accident happened when? A. March 25th, 1920.

Q. About how long did you work for the Standard Oil Company? A. About two years.

Q. When you came first to work for the Standard Oil Company what job did they put you at? 20

A. At the time I went in the shop?

Q. Yes; what department. A. Blacksmith shop.

Q. They first put you in the blacksmith shop? A. No; I got hired from the boiler shop.

Q. What do you mean you got hired from the boiler shop? When you first came to the Standard Oil Company, what sort of work did you do and where? A. Before I went to the company?

Q. No. When you first came to work for the Standard Oil Company, what kind of work did you do? A. Blacksmith shop. 30

Q. What do you mean?

Mr. Hayes: I think what he means is he was originally hired by the boiler shop and instead of working in the boiler shop they put him to work in the blacksmith shop.

Q. Is that it? A. Yes.

Q. How long did you stay in the blacksmith shop? A. About a year and a half. 40

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Q. Did you work in any other department while you were there? A. No.

Q. Always worked in the blacksmith shop steady? A. Always worked in the blacksmith shop steady.

10 Q. Did you ever work in the boiler shop? A. No.

Q. Never? A. Never.

Q. You always worked in the blacksmith shop or in the boiler shop? A. In the blacksmith shop.

Q. Up until the time you left? A. Yes, sir.

Q. Where did this accident happen? In the blacksmith shop or the boiler shop? A. Blacksmith shop.

20 Q. Do they have any ovens in the blacksmith shop? A. Inside of the furnace.

Q. In the blacksmith shop? A. Yes; inside of the furnace.

Q. They have a furnace in the blacksmith shop? Of that kind? A. Yes.

Q. All right.

By Mr. Hayes: Q. How large buildings are the blacksmith shops? A. What?

The Court: What?

30 Q. How large a room is the blacksmith shop? A. It was a big room.

Q. It was a big room? A. Four times as big as this.

Q. Four times as big as this? A. Yes, sir.

Q. Where was it? A. On the ground floor.

Q. Do you know where the forge is? Do you know what that is? A place gives heat— A. Yes.

Q. How many of those did they have in the blacksmith shop? A. About eight or nine.

40 Q. About the number. I am not trying to pin you down to the number. A. About eight or nine.

Q. Did they have any ovens? A. Two.

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Q. Two? A. Yes, sir.

Q. Where are they located? A. One on the left hand and one on the right hand. All the same way.

Q. Both at one end of the blacksmith shop? A. Yes. 10

Q. What was your particular job there? A. general helper? A. Yes; blacksmith's helper.

Q. Blacksmith helper. And how many blacksmiths did they have there? A. I don't know; not was working very big blacksmith.

Q. Very few there. And yourself as helper. Did they have many helpers beside yourself? A. These two men here.

Q. They had three men as helpers at the blacksmith shop? A. Yes. 20

Q. How many blacksmiths did they have? A. Three or four blacksmiths.

Q. Three or four blacksmiths. And was this place very warm or comfortable? A. Very warm, and the gas smell all over.

Q. Where would the gas come from? A. From the furnace.

Q. You do not mean the forges. You mean the furnace. A. Furnace and the forges.

Q. Two ovens. What you call two ovens. A. 30 Yes.

Q. And also the forges. A. Yes.

Q. And you mean the ovens were heated by gas. A. Yes.

Q. And the gas came from the pipes up into the oven and that made the heat. A. No; ovens had to heat the gas. And it is big like this room and it is very hot. And I was working there. I had a steady job over there, because it was a dangerous work and nobody wants to take that job. And the 40

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boss sent me over there because I know how to do the work. See?

Q. How long had you been doing work at the oven A. Well,—

Q. Is that the only night you had done it? A.
10 No; every night.

Q. Every night? A. Maybe three nights a week.

Q. What was your duty in the nighttime? A.
I had the same work on the furnace.

Q. I don't know what it was; and I want to know the character of your work during the night time. A. Blacksmith helper.

Q. What did you do in there to help? A. In there to help?

Q. Yes. Tell me some of the work you did. A.
20 I had a pipe and bring it from the furnace; and bring it to the steam hammer to make square.

Q. You would go over to the oven and take a pipe out and bring it to the anvil and the blacksmith would do the other work?

Mr. Belfatto: I object to that. He didn't say that. He didn't say he carried it.

Mr. Hayes: I am trying to find out.

Mr. Belfatto: Let him testify.

Mr. Hayes: Don't you testify.

30 The Court: He is asking a perfectly proper question.

Q. Will you tell me just exactly what you did.
A. Yes.

Q. I am trying to help you but your lawyer won't permit me to help you. What were you doing at the time you were injured? A. I bring this pipe out of the furnace. Piece of pipe.

Q. How long was the pipe? A. About four-
40 teen inch wide. Sixteen inch wide. About six feet long.

Q. And De Rose and Verlengieri were helping

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you? A. Yes; they were helping me. Bring three men was take this pipe out. Because a big long pipe. Very heavy pipe. And bring the steam hammer. Used to put the pipe on the back of the steam hammer and the steam hammer was working, and the furnace was open. 10

Q. How far away was the furnace? A. It was right near. About two feet, the furnace was open.

Q. Why was the furnace opened? A. Because can't waste no time because pipe is red hot. Can't waste no time to get cold.

Q. So they got the pipe right out. A. So they got the pipe right out and the furnace is open and bring the steam hammer and the man was working, and the flames come out of the furnace and hit me on the back and I fell down. 20

Q. Yes. A. And I fall down and I had two men bring me to the cold water. I was all sweat, and I had cold water on top of my hair, and in a half an hour or so I was all right. The boss came around and I told the boss he was send me cver to the doctor.

Q. Who was the boss? Mr. Bennett or Mr. Butler? A. Mr. Butler; he came in a half an hour and he said what is the matter, and I said I have a burn over here. And he said you go— 30

Q. Just— A. And he said you go to the doctor. It is in the night time and I was sent to see the man. And there was one man. And I was up to the office.

Q. Do you know the man you saw? A. I don't know; it was a doctor.

Q. It was a doctor? A. Yes, sir.

Q. On duty then? A. Yes; night doctor.

Q. Night doctor? A. Yes; and he put vase- 40
line on my hair.

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- Q. Why did he put vaseline on your hair? A. It was burned.
- Q. Was your hair all burned off? A. Yes.
- Q. Where did this flame strike you? A. Struck in the back of the other.
- 10 Q. Did this strike you in the back? A. I had in front hot and back hot from the fire. Back heat came, and the flame hit me on the back of my head and I was fall down.
- Q. Where did the flame hit you? A. On the back.
- Q. On the back of the head? A. Yes.
- Q. Did it hit you on the shoulders? A. On the shoulders and clothes and everything.
- Q. Did it burn your clothes? A. Burned my
20 clothes because I had a very light hair.
- Q. Did it burn your clothes? A. No.
- Q. Did not burn it at all? A. A little bit.
- Q. It burned your hair right off? A. Yes.
- Q. And it didn't burn your clothes at all? A. No; a little bit. But my hair was all burned.
- Q. Your hair was all burned in the back? A. Yes.
- Q. Was this room where the blacksmith shop was, all closed in or was one end of it open? A.
30 One end—two end open.
- Q. Two ends open? A. It was all the time closed, but sometime open one door.
- Q. One door? A. Yes, sir; sometimes; air open all the time—closed all the time.
- Q. Closed all the time? A. Yes.
- Q. Four walls on this room are always closed? A. Yes, sir.
- Q. Any partition open at all? A. Only half way open.
- 40 Q. Open only half way open? A. Yes, sir.
- Q. Was it half way open the night you were

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injured? A. Maybe one end half way open, to have a little fresh air.

Q. Do you know Mr. Hurley? A. Mr. Hurley?

Q. Yes. A. No.

Q. Mr. Hurley stand up.

(Gentleman does so.)

A. Mr. Bill.

Q. Bill Hurley. A. Yes, sir.

Q. Do you know him all right? A. Yes, sir.

Q. When was the first time you went to the company's doctor after the accident. A. After the accident I went to the hospital, I went to see the doctor.

Q. When was that? A. Right after I came out. March, 1921. March, 1920.

Q. March, 1920? A. Yes.

Q. Who did you see then? You mean March or May? A. May. May.

Q. You mean May? A. Yes, sir.

Q. Now you say you went to the doctor once a week. A. Yes; every week I went to him.

Q. The Company's doctor? A. No; the Company told me better see your own doctor.

Q. Better see your own doctor? A. Yes, sir.

Q. And who told you he would pay you money right along? A. A man bringing me check down.

Q. Who was that, do you remember? A. Man working over there; he hired me. In the employment office. Skinny fellow. He brought me check.

Q. After this accident and your hair was burned off did it ever grow back again? A. No.

Q. Has it been that way ever since you received the burn? A. Just started now, still falling.

Q. Still falling? A. Yes, sir.

Q. What I say is: You say this flame hit your head. A. Yes.

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Q. Burned your hair off. A. Yes, sir.

Q. Did your hair stay in that condition or get worse? A. Get worse right along.

Q. Got worse? A. Yes, sir.

Q. How much of it was burned off at the time,
10 do you remember? As much as there is now? A.
No; it was all burned.

Q. What A. It was all burned. Just left me
a little bit on the back where I put my hands on.

Q. Burned your hair off? A. Yes, sir.

Q. In the back? A. Yes, sir.

Q. Your hair in the front was all right? A.
No; burned altogether.

Q. You mean you were practically bald, were
you? A. Yes.

20 Q. And the hair has grown back on the fore-
head? A. Yes.

Q. On the front part? A. Yes.

Q. But it has not grown back in the back? A.
I just fall like what there is. I got that way. Fall
in February 1921, I started lose it all.

Q. You started to lose it all? A. That is the
time I started to lose it all.

Q. How much did you lose? Was it bare right
after the accident for a while? A. No; I started
30 lose February 1921.

Q. You do not understand me. You say your
hair was entirely burned off? A. Yes.

Q. Did it start to grow back in again? A. I
didn't lose all. I was burned but I didn't lose.
Start to die.

Q. It started to die? A. Yes; I went to the
barber shop.

Q. When did it first start to die? A. 1921,
February.

40 Q. Do you mean to tell me that this accident

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occurred on March 25th, 1920 and it wasn't until February 1921— A. Yes.

Q. (Continued)—nearly a year after— A. A year after.

Q. — (concluding) that you started to lose your hair? A. Yes; because I feel pain in my stomach. And at the same time I had pain in the head. 10

Q. Just a minute. How long has your hair been the way it is now? A. February.

Q. February 1920? A. Yes; February 1921.

Q. You had as much hair on the back of your head in the summer of 1921 as you have now in the forepart of your head. A. I only have a little bit. I started lose just now, all at once. I started to pull my comb and it all fall.

Q. In the summer of 1921 you did not have 20 much hair in the back of your head. A. A little bit.

Q. A little bit? A. Two or three months after I was working I started lose, but I never pay any attention to it. Because I got this accident, but never pay any attention to that, and later on I started to lose my hair.

Q. How many meals a day do you eat? A. Three.

Q. What time in the morning do you eat your 30 breakfast? A. Nine o'clock.

Q. Nine o'clock. What do you usually have for breakfast? A. Light stuff. Light stuff.

Q. A cup of coffee? A. Corn flakes or oatmeal sometimes.

Q. Do you have any fried eggs? A. Once in a while.

Q. Do you eat any boiled eggs at all? A. I can't eat any boiled eggs. My stomach bad.

Q. Your stomach is bad, and you just eat corn 40

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flakes and some cereal. A. I can't eat no sweet stuff.

Q. I didn't say sweet stuff. Quaker Oats or Cream of Wheat? A. Yes.

Q. And corn flakes or milk or coffee. What do
10 you generally eat for lunch time? In the middle
of the day? A. Toast bread and milk and green
stuff. Spinach.

Q. Spinach? A. Yes, sir.

Q. What do you eat for supper at night time?
A. Some fish, fresh fish, and some potatoes.
Just light for my stomach.

Q. Do you eat any meat during the day at all?
A. No; doctor don't allow me eat any meat.

Q. He does not allow you to eat any meat? A.
20 No, sir.

Q. But you eat three meals a day? A. Yes.

Q. Is this your signature there? Is that your
signature there? A. Yes; that is the time when
I got the money.

Q. Were you examined in March 28th, 1920 by
Dr. Shiriff? A. Yes.

Q. Did he give you that certificate? A. Yes.

Q. And you sent that to the company by that
letter in June, 1920? A. 1920?

30 Q. Yes. Here is the date right here. A.
1920?

Q. Yes. Can you read it right here? A. I
didn't send no letters to the Company.

Q. How did the company get this, do you
know? A. I gave it to the doctor.

Q. You gave it to the doctor? A. Yes, sir;
of the company.

Q. Who sent this for you? 408 Miles Street.
Is that your address? A. Yes; that is where the
40 old lady was.

Q. The old lady was there? A. Yes, sir.

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- Q. Is she there yet? A. No; moved.
- Q. Were you examined on June 14th, 1920?
A. 1920?
- Q. Yes. A. For whom?
- Q. Did you report at the Bayway Refinery First Aid? A. Yes. 10
- Q. On June 16th did you see Dr. Dolan? A. Yes; June?
- Q. Yes, 1920. A. 1921, yes.
- Q. Not this year. A year ago. A. Yes; last year.
- Q. Who was the doctor examined you between May 25th, 1920 and June? It was not Klein? A. He had eye certificate, condition.
- Q. Then you were examined on June 22nd by Dr. Green, weren't you? A. Yes; he sent me to the City Hospital. 20
- Q. And then on June 30th by Dr. Green, weren't you? A. Yes; but I never had no examination from him. He sent me to the hospital.
- Q. Then on July 6th, 1920, you got a certificate from Dr. Sinclair, didn't you, that you were able to resume work on July 6th, 1920? A. Doctor who?
- Q. Sinclair. A. Sinclair.
- Q. That is at the Company's place. A. That is at the Company's place? 30
- Q. Yes. A. I got no examination off him.
- Q. Didn't you report to him? A. I got examined when I started in working and I got examined in 1920.
- Q. In July did you get some sort of a certificate telling you you were fit to go back to work again? A. July, 1920?
- Q. Yes. A. I passed two examinations of the doctor from the company. 40
- Q. Didn't you go back to work for the Com-

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pany, March, 29th, 1920? A. Yes; I stay sick at that time.

Q. Did Dr. Montfort examine you on July 6th, 1920? A. Who was that?

Q. Dr. Montfort, M-u-n-f-o-r-t. A. I never had that doctor. The company only got two certificates.

Q. Did you remember whether Dr. Montfort examined you July 6th, 1920? A. No; he never examined me.

Q. He never examined you? A. No:

Q. Didn't you see him? A. No.

Q. Was Dr. Montfort a doctor at the hospital, do you know? A. At the hospital, just examined me.

Q. There was a doctor by the name of Montfort examined you? A. Yes; at the City Hospital.

Q. At the City Hospital? A. Yes.

Q. And you left the hospital on July 4th, 1920? A. Yes.

(Fourteen papers marked for identification as R-1 to R-14, inclusive, respectively.)

Mr. Hayes: That is all.

RE-DIRECT-EXAMINATION by Mr. Bel-fatto:

Q. Mr. Cristo, you have testified that before the accident you worked for the company for a year and a half. A. Yes.

Q. And then you said that the first time you went to work was in December, 1919? A. In December I went to work.

Q. Do you know that December is the last month of 1919? December, January, February, March. Three months afterwards you met with

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the accident. How do you reconcile that situation? A. Four months after.

Q. Four months after? December, 1919 is the last of the year. A. That is the last of the year.

Q. How can you make a year and a half before the accident? Will you try to recollect and tell us approximately when you went to work. 10

Mr. Hayes: I would like to know exactly, if he can tell; I said, if he can tell.

Mr. Belfatto: The Almighty is the only one can tell, I suppose, in this case. Try to remember.

A. January, 1921.

Q. No. A. January, 1919.

Q. January, 1919? A. Yes, sir; because the year was over. Because I got my first paper was 1919, and next day I went over and got a paper and got a doctor. 20

Q. So it was the first of the year, wasn't it? A. Yes, sir.

Q. Of 1919? A. Yes, sir; of 1919.

Q. So you wish to correct your former testimony? A. Yes.

Q. Because you made a mistake when you said before, 1919? A. Yes; I made a mistake because I got no rule. 30

The Court: Because what? A. I got no stuff it was in January, 1919.

(Answer repeated by the stenographer).

Q. What do you mean by rule? A. I no have the things signed all signed.

Q. You mean book? A. Yes; yes, I mean book.

Q. Record? A. Record, to mark it down.

Mr. Belfatto: If there is any dispute about the exact date when this man went to work. 40

Nunzio Cristo—Re-cross

The Court: It may not be material. I don't know.

Mr. Hayes: It will be material now. The way he has stated it has made it material now.

10 Q. So you wish to be understood that it was January 1st, you went to work, 1919? A. Yes, sir.

Q. And not December 31st? A. No; January.

Mr. Belfatto: That is all.

RE-CROSS-EXAMINATION by Mr. Hayes:

Q. You are absolutely positive, Mr. Cristo, that you begun with the Standard Oil January 1st, 1919, and not December 1st, 1919? A. January
20 1st.

Q. January 1st. What makes you now think it was January 1st, 1919, instead of December 1st, 1919? A. It was January 1st, 1919.

Q. What has made you change your mind? You told me it was December 1st, 1919. You would swear to that? When Mr. Belfatto talk to you you say that it is January 1st, 1919. Now, I want to know what made you change your mind from December 1st to Januar 1st. A. I know it was
30 in January.

Q. What recalled it to your mind now that it was January 1st, 1919? You cannot tell me? A. You mean the time I started in to working?

Q. Yes. You told me it was December 1st, and I asked you a number of time and you said it was December 1st, 1919; when I stopped, and Mr. Belfatto talks to you again and he asks you whether or not you possibly were not mistaken and it was
40 January 1st, 1919 instead of December 1st, 1919,

Louis Verlengieri—Direct

you say it was January 1st, 1919. A. January 1st, 1919.

Q. I want to know how is it you fix that date? How do you know it was January 1st, 1919? If you cannot tell me, say so. A. Because it was around December, 1919.

10

Q. December, 1919.

Mr. Hayes: That is all.

RE-DIRECT-EXAMINATION by Mr. Belfatto:

Q. Were you examined when you went to work?

A. Yes; I got examined from the company.

Q. Do you remember the date when you were examined? A. Same day I went to work.

Q. What was it? What day? Can you bring some documents, something that will tell you when you went to work? On which day you were examined? Got any memorandum? What?

Mr. Hayes: If he has I will be very glad to have him bring it at anytime.

A. Over here, I don't know.

Q. What is it? A. I don't know. Insurance, 1920.

Mr. Belfatto: We will reserve the right to come here with some kind of data. 30

Mr. Hayes: We will prove that.

Mr. Belfatto: That is all.

LOUIS VERLENGIERI, a witness on behalf of the petitioner, sworn:

Direct-examination by Mr. Belfatto:

Q. Mr. Verlengieri, where do you live? A. Brooklyn, New York. 40

Louis Verlengieri—Direct

Q. Did you ever work for the Standard Oil Company? A. Yes.

Q. Where? A. In Bayway, New Jersey.

Q. For how long did you work for that company? A. I was out there over two years.

10 Q. Two years? A. Over two years.

Q. Do you remember the time when you first went to work for the company? A. No.

Q. At Bayway? A. No: I don't.

Q. Which year was it? A. 1918.

Q. You went there in 1918. Could you remember the month? A. It was sometimes in the end of the year but I don't know.

Q. At the end of the year? A. Yes.

Q. And you worked there for two years? A.
20 Over two years.

Q. Do you know Nunzio Cristo? A. Yes; I know him when he comes to work there.

Q. What kind of work did he do in the company, or for the company. A. Well, at that time I seen him he was working in the blacksmith shop.

Q. Where were you working at that time? A. I was working in the boiler shop and they were run short in the blacksmith shop. And they put me to work to help in the blacksmith shop.

30 Q. In the same shop where Nunzio Cristo was working? In the same shop where Nunzio Cristo was working.

Q. You remember the time he was burned? A. Yes.

Q. What date was it? A. It was—

Q. I will withdraw that question. Do you know what happened? What happened? A. It happened we were working on a hot furnace. On a hot piece of iron. Heavy pipe. When we took
40 off the heavy pipe, and we were working on this

Louis Verlengieri—Direct

pipe, and Nunzio Cristo was working between the pipe and the furnace, so from the heat of the pipe and the heat of the furnace he fainted and he fall on the ground, so I and Nick De Rose we picked him up and bring him near the water, and we bring him near the water and throw cold water on him. 10

Q. Let me ask you where were you at the time they were putting the pipe into the oven. A. I was right there.

Q. You were one of the three working there? A. Yes, sir; I was one of the three working there.

Q. How long was the pipe in the oven before it is pulled out? A. It stayed long enough to get red hot.

Q. How long? A. Twenty minutes or a half an hour. 20

Q. Twenty minutes or a half an hour. Did you see Nunzio Cristo and the other fellow pull out that pipe? A. Pull out that pipe from the oven.

Q. The three of you? A. Yes.

Q. While this work was being done, what happened to Cristo? A. He fall down.

Q. He fall down? A. Yes.

Q. Did you see anything external happening at that time? A. No. 30

Q. Did you see any burn of his body or anything about it? A. I see he dropped down and we take him near the water. That is all I see.

Q. That is all you saw? A. Yes.

Q. He dropped down? A. Yes.

Q. What was his condition? Could he talk? A. No; he couldn't talk right away.

Q. How long was it before he was able to talk? A. About twenty minutes. 40

Louis Verlengieri—Direct

Q. How much? A. About twenty minutes.

Q. And you and the other gentlemen took him to the sink to put water on the head? A. Yes.

Q. How long did it take Cristo to revive and be able to talk? A. It took about twenty minutes.

10 Q. After this twenty minutes, and he was in a position to talk, what was done to him? A. We throw cold water on him.

Q. Again? A. Why, yes.

Q. How many times did you throw cold water on him? A. Three or four times.

Q. Three or four times. And after you stopped throwing water on his head did anybody come there, from the shop, from the factory? A. The boss came from the factory.

20 Q. What is the name of the boss? A. Jack Butler.

Q. Do you know Jack Butler? A. Yes.

Q. Do you know him very well? A. Yes.

Q. For how long before the accident did you know him? A. I know him since I came to work there.

Q. What did Mr. Butler say to Cristo, if anything? A. I don't know what he said to him. I saw them speak together. I went back to work.

30 Q. What did Cristo do? A. I seen him speak to Mr. Butler.

Q. Do you know the conversation between Cristo and Mr. Butler? Did you hear anything with reference to what had happened to Cristo? A. I never noticed anything after that.

Q. How long did the conversation last? Do you know? A. I don't know.

Q. You do not know. Was Cristo able to work that night after the accident? A. Why—

40 Q. Was he able to work; did he work? A. Yes;

Louis Verlengieri—Direct

he did work, but he couldn't do the same work he did.

Q. What kind of work did he do? A. All sweeping around.

Q. Did you see him on the following day, the day following? A. I don't remember. 10

Q. How long after did you see Cristo working in or about the shop, there, working? A. I seen him a few days after.

Q. You seen him a few days after? A. Yes, sir.

Q. What kind of work did he do? A. Running light work.

Q. Running light work. A. Around the shop.

Q. How long did you see him afterwards doing work in the factory? A. From there I got transfer, from the boiler shop I got the transfer to the high pressure still. 20

Mr. Hayes: High pressure, I guess.

A. Yes. And I never saw him after.

Q. What? A. I never saw him after that.

Q. You never saw him after that? A. No, sir.

Q. When were you transferred to the high pressure? A. I don't remember the exactly day.

Q. You don't have to remember exactly. Give us an idea. Approximately. A. I don't remember that. 30

Q. Was it a question of weeks or months or what? A. Months.

Q. How many months after? A. What do you mean how many months after? After what?

Q. After the accident. A. About a couple of months after it; three months after, I guess.

Q. Three months after. And during those three months Cristo was working, doing this light work, is that right? A. Yes.

Q. And did you see him after that any more, 40

Louis Verlengieri—Direct

when he was transferred? A. I see him outside but I don't speak to him.

Q. Did you see him working after the accident?

A. No.

Q. Did you meet him outside in the street? A. 10 Outside the City of Elizabeth.

Q. I mean in the factory, not in the streets of the city? A. No.

Q. Do you know whether he was working up to the time when you left the place. A. I know he was working there, yes, that is all I know.

Q. When did you leave your employment? A. I left that employment on 1920. On the first of September.

Q. November, 1920, you went away. A. First 20 of September.

Q. You left? A. I went away; yes.

Q. Up to that time did you see Nunzio Cristo working in the factory? A. No; because I wasn't around there.

Q. No. Not when you were away. While you were there. A. Yes, sir.

Q. While you were there you saw him working there at that time? A. Yes, sir.

Q. Up to the day you left? A. Yes, sir; up to 30 the day I left.

Q. But you do not know what kind of work he was doing? A. I don't know what kind of work he was doing.

Q. But you saw him coming in the morning. A. I saw him coming in the night.

Q. And in the night, yes. What is the name of the man that was with you at the time of the accident? A. Nick De Rosa.

Q. Nick De Rosa. Is he in court now? A. Yes, 40 sir.

Louis Verlengieri—Re-direct

Mr. Belfatto: That is all. Take the witness.

CROSS-EXAMINATION by Mr. Hayes:

Q. What was the date of the accident, do you remember what month it was in? A. In March. 10

Q. Do you remember what day it was? A. I don't know the day. Between the 20th and 30th.

Q. Between the 20th and 30th? A. Yes.

Q. Did he come back to work the next day after the accident, do you remember? A. Yes.

Q. He did come back. You say the only thing you noticed that night was he just fainted? A. Yes; he just fainted.

Q. That is all you saw? A. That is all I saw.

Q. And you were right there? A. I was right 20 there; yes, sir.

Q. You heard nothing said by him? A. No.

Q. He did not cry out. He just flopped down?
A. He just flopped down.

Mr. Hayes: that is all.

RE-DIRECT-EXAMINATION by Mr. Belfatto:

Q. Did you see the work he was doing at the time? A. Yes. 30

Q. You were working with him? A. Yes; I was working with him.

Q. And why did you take him to the sink, then?

Mr. Hayes: I think you have told all that?

A. Because he flopped down and we picked him up and took him to the sink to wake him up.

Q. Did you see anything about the hair?

Mr. Hayes: I object to that.

A. No.

Louis Verlengieri—Re-direct

The Court: Ask him why did he apply water.

Q. Why did you put water on the head? A. To wake him up.

Q. Why? Why? A. Because he faints after he
10 got burned from the heat.

Q. After he got burned from the heat? A. Yes.

Q. How did you know he got burned? A. Because I was right there. Didn't I see it?

Q. Did you see it? A. Yes.

Q. Why didn't you say it? A. I did say it. I don't have to say fifteen times.

Q. Did you see him burned by the heat? A. I saw him burned by the heat.

Q. And that is the reason why he fainted? A.
20 Yes.

Q. And you took him to the sink? A. And we took him to the sink.

Mr. Hayes: I ask that be stricken out.

The Court: Strike it out.

Mr. Belfatto: Which part?

Mr. Hayes: Why he fainted.

The Court: Why he fainted.

Mr. Belfatto: My conclusion.

The Court: Yes. Your conclusion.

30 Q. Did you see anything about the head? A. I saw he was burned, that is all.

Q. Where was he burned? A. In the Standard Oil; in the blacksmith shop.

Q. What part of his body was burned? A. All over his head.

Q. All over head? A. Yes.

Q. Did you hear him complaining? A. No; I seen him talk to the boss. That's all.

40 Mr. Belfatto: That is all.

Louis Verlengieri—Re-cross
Nick De Rose—Direct

RE-CROSS-EXAMINATION by Mr. Hayes:

Q. You say you saw him burned on the head. What do you just mean by that? You saw him burned on the head? How? A. By the flame.

Q. Did you see the flame? A. Yes. 10

Q. Where did it come from? A. From the furnace.

Q. Did it come from the back or front? A. It came from the door at the furnace and he was—he had his back to the furnace, and he got burned all—

Q. Was it a big flame or small flame? A. Big flame.

Q. Who was next to him? A. I was next man.

Q. How close were you to him? A. About six 20 feet from him.

Q. About six feet from him? A. Yes, sir.

Q. Was he the nearest one to the furnace door? A. He was the nearest one to the furnace door; yes, sir.

Q. Was anybody helping him at his end of the pipe? A. No.

Q. Just he alone? A. Yes, sir.

Mr. Hayes: That is all.

30

NICK DE ROSE, a witness on behalf of the petitioner, sworn:

Direct-examination by Mr. Belfatto:

Q. Mr. De Rose, you live in Elizabeth? A. What is it?

Q. Where do you live now? A. Elizabeth, New 40 Jersey.

Nick De Rose—Direct

Q. How long have you been living there? A. Over two years.

Q. Have you ever been working for the Standard Oil Company? A. Yes, sir.

Q. From what time to what time? When did you first go there to work? A. March, 1918, March or April.

Q. About March, 1918? A. Yes, sir.

Q. For how long did you continue to work there? A. What?

Q. For how long did you work since that time? A. Let us see, March, and April, 1918, to July 18th, 1920.

Q. Are you working there now? A. No.

Q. You left the job when? In 1920? A. Yes.
20 Mr. Hayes: July 18th, 1920.

Q. Yes. Do you know Nunzio Cristo? A. Yes, sir.

Q. How long have you known him? A. Since he was working in the Standard Oil Company.

Q. Were you working with him in the month of March, 1920? A. Yes.

Q. What kind of work did you do? A. I run the steam hammer there

Q. You had the steam hammer? A. I had the steam hammer in the blacksmith shop.
30

Q. What kind of work were you doing? Steam hammer? A. Steam hammer.

Q. And you were beating the round pipe and making it square. Is that your kind of work?

A. No: another hammer make that.

Q. Square round? A. Square around.

Q. Did you see Nunzio Cristo and Verlengieri working at the oven? A. Yes.

Q. And were you doing any work there while the two were working? A. I had been running the steam hammer.
40

Nick De Rose—Direct

Q. Do you know what happened to Cristo? A. I see on the floor.

Q. You saw him on the floor? A. Yes, sir.

Q. What made him go on the floor, do you know? A. Well, I was a little far away. I don't know how.

10

Q. What did you do when you saw him on the floor? A. I pick him up and bring him to the water sink and throw water on him.

Q. For how long did you throw water on him? A. A few minutes.

Q. Was Verlengieri there? A. Yes.

Q. You and Verlengieri helped him, heh? A. Yes.

Q. How long did it take you two to help Nunzio Cristo from that predicament? A. Less than twenty minutes.

20

Q. Twenty minutes. After that what did Cristo do? A. I saw him talking with the foreman and I went back to work again.

Q. You saw him talking to the foreman? What is the foreman? A. Jack Butt.

Q. Do you know Jack Butler very well? A. Yes.

Q. And he was the foreman? A. Yes.

Q. Is he in the courtroom today? A. Yes.

30

Q. Did you hear the conversation between Cristo and the foreman? A. What is that?

Q. Did the foreman see Cristo sick, do you know? A. Yes; I guess—

The Court: What did you say? A. Yes; he sent him a doctor to him. I don't know what he said to him.

Q. Did Cristo talk to the foreman? A. Yes.

Q. What did Cristo say to the foreman? A. I don't know. It was far away as from here to the end of the room.

40

Nick De Rose—Direct

Q. What was done with Cristo? Did Cristo do any work afterwards? A. I never remember. I think he went up to see the doctor, I suppose.

Q. To see the doctor? A. Yes.

10 Q. How long did it take Cristo to see the doctor? A. About a half an hour, I guess. I don't remember.

Q. About a half an hour. When he came back did he have anything on his head? A. I didn't see very good. He had a hat on.

Q. A hat on? A. He had a hat on, sure. He had a cap on.

Q. What did he do after he returned? A. Work.

Q. What kind of work did he do? A. Light work. He didn't do the same job again.

20 Q. What kind of light work was being done by him? A. Sweeping around the shops.

Q. Sweeping around, cleaning the shop? A. Cleaning the shop.

Q. For how long did you see him cleaning, around the shop after the accident? A. I see him all night.

Q. How many days afterwards did he continue to work? A. Came back next morning.

30 Q. Came back next morning, and for how long thereafter? A. What.

Q. For how many months thereafter did he work? A. I left him working there. I don't know when he quit. I got laid off.

Q. When did you leave? 18th of July? A. 18th of July, 1920.

40 Q. Was he working there? Was Cristo there when you left? A. Yes; I left him working there, at the Standard Oil, and I took six months off, and I went over on the other side.

Nick De Rose—Cross

Q. And Cristo was still working there? A. Yes, sir.

Q. And he had been working there all the time?
A. Yes; when I got back again he was still working there.

Q. When did you get back? A. March 1st. 10

Q. Which year? A. 1921.

Q. And did you see Cristo there? A. I didn't see him there. I heard he hadn't got laid off, and I know people in there—

Mr. Hayes: I ask to strike that out.

The Court: Strike that out; it is not relevant.

Q. You did not go to work for the company when you came back from the other side? A. What? 20

Q. Did you go to work for the company when you came back from the other side? A. No; I didn't have no chance to get it again. It was kind of slack.

Mr. Belfatto: Take the witness.

CROSS-EXAMINATION by Mr. Hayes:

Q. You are quite positive, are you, that on the evening of March 20th, you saw Mr. Butler come in the shop? A. When is this? 30

Q. March 20th, 1920, the night of the accident to Mr. Cristo. A. You mean when he got the job in the shop?

Q. No. Do you remember when the accident was? What month? A. Oh, I see. Between—I think the end of March.

Q. The accident was the end of March? And you say that you saw the boss come in there and talk with Cristo? A. Yes; I seen him talk to him.

Q. About what time was it in the night? A. I don't remember what time in the night, you know. 40

Nick De Rose—Cross

Q. And who was the boss? A. Boss right there, Jack Butler.

Q. This Mr. Butler here? A. Yes, sir.

Q. Who recalled it to your mind that Mr. Butler was in there that night? Have you talked
10 this over with Cristo and Verlengieri? A. I didn't talk over with Cristo.

Q. You have talked it over with Cristo? A. No; I didn't talk it over with Cristo, because I wasn't working there.

Q. Who recalled it to your mind Mr. Butler came in there that night and talked to Cristo? How do you happen to remember? A. I remember he talked to him.

Q. How? A. Because I seen him.

20 Q. When did you first remember that Mr. Butler had been in there? A. I don't know. I don't remember that. You mean when he be foreman in there?

Q. Yes. You say you went back to the old country? A. Yes.

Q. In July, 1920? A. Yes.

Q. And you returned in March, 1921. A. '21, yes. I didn't return to work. I returned to this country.

30 Q. You returned to this country? A. Yes.

Q. When did it first come up in your mind or when were you first asked to remember who was there on the night of March, 1920? A. Who was there?

Q. Yes. When did it first come up in your mind? You did not talk about it between March, 1920 and March, 1921 with anybody, did you? As to who was present immediately after the time
40 of this accident? Do I make myself plain? A. Yes.

Nick De Rose—Cross

Q. Do you understand me? A. I understand you; yes.

Q. What I mean is this: There was an accident on March 25th, 1920, they say. You say Mr. Butler was there after the accident and talked with Cristo. When did you first talk with anyone after the accident about Mr. Butler's being there. A. I don't talk—you mean when I was talk to him? 10

Q. Yes. A. I talk to him all the time.

Q. When was the first time? A. When he came to work in there, first I know. I know him.

Q. I know you know Mr. Butler. Certainly. I grant that. But I do not make myself plain. And I am trying to get as plain as I can to you. You say Mr. Butler saw Mr. Cristo immediately after, the night of the accident, sometime in March, 1920. A. Yes. 20

Q. You come here today and say you remember Mr. Butler talking to Mr. Cristo. A. Yes.

Q. The night of the accident. Have you talked it over with anyone? A. No; I haven't talked it over with anyone.

Q. Who did you first tell that Mr. Butler was there? Did you tell it to Mr. Cristo or Mr. Verlengieri or Mr. Belfatto. A. No. When I saw him talk to him, Mr. Cristo? 30

Q. When did you first see Mr. Belfatto about this case? A. I don't know, when started, about a month.

Q. About a month or so ago. And Mr. Belfatto asked you whether Mr. Cristo talked with Mr. Butler or not, didn't he? A. What you say, if I remember—

Q. Do you remember whether or not Mr. Belfatto asked you if you remembered— A. Yes. 40

Nick De Rose—Cross

Q. (Continuing)—Cristo's having talked with Butler? A. Yes.

Q. And what was your answer to Mr. Belfatto? Yes? A. You mean if I didn't talk with Mr. Butler?

10 Q. No; When you saw Mr. Belfatto about this case about a month ago, Mr. Belfatto, we will say, asked you if you remembered seeing Cristo talk with Mr. Butler the night of the accident. A. Sure; he told me that; sure.

Q. Did he ask you that question? A. Sure he asked me that question.

Q. And what did he say to you? A. Who?

Q. Mr. Belfatto.

Mr. Belfatto: Does he know my name?

20 A. He only asked me if I saw Mr. Cristo talk with Mr. Butler and I told him yes. I did see him.

Q. And that is all he said to you? A. Yes.

Q. Did he ask you anything more about the case? A. He asked me how did I know Mr. Cristo? How long I know him, and how he got hurt.

Q. And he told you Mr. Cristo said Mr. Butler was present that night? A. What is that.

Q. Did he tell you that? A. Did he tell me that?

30 Q. Did he tell you whether Cristo had said he talked with Butler that night? Do you remember? A. No; he didn't told me that.

Q. How did the name of Butler come up when he talked with you? A. I don't know about that. All I know about it, I know he got hurt in there. I didn't see when he got hurt because I was a little far away, far as from here to the end of the room and I didn't see all about it.

40 Q. But you are positive you saw Mr. Butler talk to him there that night? A. Yes; I saw him talk there.

Nick De Rose—Re-direct

RE-DIRECT-EXAMINATION, by Mr. Belfatto:

Q. Do you know my name? A. No; I don't know your name. That is second time I saw you.

Q. Did you ever talk to me about this case? A. Yes. 10

Q. When was the first time? A. About a month or so ago.

Q. Where? A. I think it was over in Elizabeth; wasn't it?

Q. Did I tell you what to testify in Court? A. Yes.

Mr. Hayes: I didn't say that.

Q. Did I tell you what to say? A. You don't tell me what to say. No. No. You don't tell me nothing like that. No. 20

Q. And that is the only time you saw me in Court. A. This is the only time I see you.

Q. You were sitting in the courtroom. A. Where?

Q. You were sitting in the courtroom. A. In Elizabeth, New Jersey; yes.

Q. And that is the only place I saw you. A. Yes.

Q. With the rest of the crowd. A. Yes, sir.

Q. And then you testified there, didn't you? A. Yes. 30

Q. You testified to the same thing you are testifying to today. You said the same thing you said today? A. Yes.

Mr. Hayes: Have you finished?

Mr. Belfatto: Yes. I have another physician if you wish. I would like to have an opportunity.

Mr. Hayes: Is he here now?

Mr. Belfatto: No.

Mr. Hayes: I have a couple of witnesses. 40

Argument

As far as the medical testimony, we can agree on some other date.

Mr. Belfatto: All right. We can agree on any other date.

10 Mr. Hayes: I want to offer in evidence our annuities and benefit plans. That is under which he received his policy. That is dated October, 1920. If your Honor please, what I have here is a pamphlet of our annuities and benefit plan of the Standard Oil Company which was started some years ago. The date appearing on this pamphlet is the date of October 1st, 1920. By that it means as we got out of the copies, we have to have them printed up again. But as far
20 as the case applying to Mr. Cristo is concerned this was in force and effect at the time when he was in the employ of the company. Whatever amendments have been made since that time do not affect his case in any particular because I will point out the clauses that do affect him and there has been any changes in them.

William G. Gilson—Direct

RESPONDENT'S CASE

WILLIAM G. GILSON, a witness on behalf of the respondent, sworn.

Direct-examination by Mr. Hayes: 10

Q. By whom are you employed? A. Standard Oil Company of New Jersey.

Q. As what? A. Clerk in the Annuities and Benefits Office.

Q. How long have you been with the company? A. Including military service, about five years.

Q. And you are perfectly familiar with the annuities and benefit plans? A. Yes, sir; indeed.

Q. I show you the pamphlet which I now hand you, marked "Annuities and Benefits for the employees of the Standard Oil Company," and ask you whether this was in force and effect on December 1st, 1918. 20

Mr. Belfatto: Note an objection.

The Court: He is not only testifying to the force and effect; he is himself testifying to the pamphlet.

(Question repeated by the stenographer.)

A. It was.

Q. Have you heard how long prior to that it was in effect? A. It was in effect April 18th, 1918, first made effective. 30

Q. First made effective?

Mr. Belfatto: By-laws should speak for themselves.

Mr. Hayes: I ask for the production of the policy and certificates which your client has. I offer this in evidence.

Policy received in evidence and marked Exhibit R-15. 40

William G. Gilson—Direct

Mr. Hayes: I demand production of the copy of the plan from Mr. Belfatto.

Mr. Belfatto: Yes, sir.

Mr. Hayes: And he produces a copy of the plan marked Cristo, and of the edition of 1920, and I offer this in evidence.

10

Certificate entered in evidence and marked R-16.

Plan booklet entered in evidence and marked R-17.

Q. Will you turn to the plan—I read from Part 3, Death Benefits, Section One, “Death from sickness (including accidental injuries not incurred in actual performance of duties of employee’s occupation) (a) Eligibility all employees of one year’s service, including future annuitants shall, without any contribution on their part, be eligible to Death Benefits, in accordance with the following plan.” I call the Court’s attention that the Exhibit R-15 is dated December 1st, 1920. Now I show you receipt here which has been duly identified by Mr. Cristo. You see that, Mr. Cristo? A. Yes, sir.

20

Q. Payment of some one hundred and some odd dollars. What is it in payment of? A. That is in accordance with our custom of paying half pay during the term of disability and for eight and one third weeks at the rate of \$15.52, \$129.33.

30

Q. What is that for? A. It is for sickness disability.

Q. For sickness disability? What is the date of that receipt? A. July 13th, 1921.

Q. For eight and one third weeks? A. Eight and one third weeks at \$15.52 per week.

40

Q. Can you tell me under the plan what total disability would have amounted to? A. He would have been entitled to service eleven weeks at half pay.

William G. Gilson—Direct

Q. Can you tell me how it is he got eight and one third weeks—A. Because that is all his disability extended. That is the maximum period for which he would have been paid.

Q. Eleven weeks is? A. Eleven weeks is.

Q. How is it he only got eight and one third weeks? A. Because he was only disabled for a period of eight and one third weeks. From May 12th to July 8th inclusive. A period of eight and one third weeks. 10

Mr. Belfatto: Q. July, 1921? A. Yes, sir.

Q. Do you know under what sickness payments was made? A. Under the sickness resulting from the operation for appendicitis performed by Dr. Funk.

Mr. Belfatto: I object to that line of testimony and I move to strike out the answer because it does not tally with this receipt. The answer is it was for sickness and this receipt is to cover disability. 20

Mr. Hayes: Will you read in the right hand corner.

Mr. Belfatto: I leave this to the Court.

Mr. Hayes: Will the Court look at it?

Mr. Belfatto: This says sickness on top and disability below. 30

Mr. Hayes: In accord with our plans we give the definition of disability: Sickness disability and maybe injury disability; and if the Court will see at part five,—

The Court: How do you get this rate of \$15.52?

A. Half pay.

(Discussion of counsel.)

Section of plan for relating to employees of more than two and less than three years service, read, marked Exhibit R-17. 40

The Court: That, I take it is the crux

Receipt

of the whole case. That is very important. And still at the same time I do not see any necessity of prolonging this thing indefinitely all evening.

10 Mr. Hayes: We paid, if your Honor pleases, we paid this man between the dates of May, 1921 and June, 1921, or July, whatever that date is, certain benefits under our annuities and benefits plan. Those payments were made by reason of this man's having had an operation preformed and his being disabled from continuing his work for a period of eight and one third weeks. That is exactly what the payments are made for.

20 Mr. Belfatto: I ask Your Honor to have that receipt embodied in evidence.

Mr. Hayes: I have already offered it.

Mr. Belfatto: I want the whole contents.

30 The Court: You can recall Mr. Cristo and have him testify as to whether or not he got those payments regularly. If he got them regularly, he can recall what he got. And if that is in conformity with these payments it is indicative it is not compensation.

(Copy of receipt.)

"July 13th, 21.

(Bonus included.)

Name: Ninzio Cristo.

Check No. 1435.

Case No. 8980, account sickness.

40 Received from Standard Oil Company (N.J.),
Bayway Refinery, (Works or Department) One
Hundred Twenty-nine and Thirty-Three One

William G. Gilson—Direct

Hundreths Dollars, (\$129.33), covering disability from May 12th, 1921 to July 8th, 1921 inclusive. Eight and one third weeks, at the rate of \$15.52 per week.

Approved: G. A. Humphries (signed) Nunzio Cristo.

10

(Mc G.)

Witness: H. H. Pennoyer.”

Duplicate.

Mr. Hayes: Any question?

Mr. Belfatto: No questions at all.

Q. In the Annuities and Benefits Committee, does it also have under its control all of the Workmen's Compensation cases? A. They do.

Mr. Belfatto: Objected to. We should have the real document before him. 20

Mr. Hayes: This is his work.

The Court: He is the best evidence.

Mr. Belfatto: He is testifying as to a document.

The Court: No. He is testifying to the administration of the Annuities & Benefits work, which is a sort of clearing house for the compensation work. In other words, I take it all your work is localized and concentrated in it. 30

Mr. Hayes: That is right.

Q. And as the report of cases come in, do you examine those cases? A. I handle every accident case.

Q. You handle every accident case? A. I handle every accident case that comes in the place.

Q. Did any accident case ever come in your record so far as Nunzio Cristo is concerned? A. No. 40

William G. Gilson—Direct

Q. Outside of the petition of Mr. Belfatto? A. Never.

Q. What is the usual course of your business when you voluntarily make payments in accordance with the Workmen's Compensation Act? A. 10 We do that immediately. Or if it is a long drawn out affair we will take it up with the employee.

Q. Were any payments made in accordance with the Workmen's Compensation Act so far as Cristo was concerned? A. Never.

Q. If you had made any payments would it have to be on certain forms? A. E-1, and 2 and 3.

Q. From whom do you get those forms? A. I prepare those myself and send them back for signature.

20 Q. To whom? A. To the employee at the refinery.

Q. To the employee at the refinery. Did you prepare any forms in this case? A. None.

Q. Were any ever signed and sent to you? A. None.

Q. And is this the only receipt you have any knowledge of? A. This is the only one I have any knowledge of in connection with this case at all.

Q. And this is R-1 for identification.

30 Mr. Hayes: I offer that in evidence.

Paper heretofore marked R-1 for identification, entered in evidence and marked Exhibit R-1,

Mr. Hayes: That is all.

Mr. Belfatto: That is all.

John M. Butler—Direct

JOHN M. BUTLER, a witness on behalf of the respondent, sworn:

Direct-examination by Mr. Hayes:

Q. Mr. Butler, by whom are you employed? A. Just now? 10

Q. Yes. A. Nobody.

Q. Were you ever employed by the Standard Oil Company? A. Yes, sir.

Q. How long were you in their employ? A. Not quite two years.

Q. When did you leave their employ? A. In June, 1921.

Q. In June, 1921? A. First part of June.

Q. Have you been in Court here listening to this case? A. Yes, I have been here all afternoon. 20

Q. And you know Cristo? A. Not by that name. We called him Tony. And took it as his name. And Louis—

Q. You saw Cristo and Verlengieri and De Rose on the stand? A. Yes.

Q. You heard their testimony? A. Yes.

Q. As I recollect it they testified on the evening of March 25th or latter part of March, 1920, after an accident which was supposed to have occurred to Cristo, that you came in and talked with Cristo 30 sometime after the accident. Can you tell me whether or not you talked with Mr. Cristo? A. Well, are you going to put that after an accident? During the course of the work I might have talked to him any night, but on any special night I never heard of any accident.

Q. You never heard of any accident. Did he ever tell you he had an accident such as he described here today? A. Why, here in about September of this year he came down to where I was 40

John M. Butler—Cross

working and he told me he had a case in Court. Something about an accident.

Q. Did he tell you when the accident occurred?

A. He tried to tell me. Something along in March.

10 Q. 1920? A. 1920.

Q. 1920? A. Yes.

Q. Do you ever remember having talked with him the night of the accident which he says occurred to him? A. I never heard of an accident. Might have talked to me many a night, but never heard of any accident.

Q. You never heard of any accident at all? A. Never heard of any accident at all.

20 Q. Was it your practice to go in and out of this blacksmith shop? A. Oh, yes; during the night several times; in and out.

Q. And was it your practice in March, 1920, to go in and out of the blacksmith shop? A. Oh, yes.

Q. Are you quite positive at no time did Mr. Cristo call attention to the fact he had been injured, except as he called it to your attention in September, 1921. A. I am positive.

Mr. Hayes: Cross-examine.

30 CROSS-EXAMINATION by Mr. Belfatto:

Q. Mr. Butler, you were the foreman? A. Yes, sir.

Q. During the night work? While the night work was going on? A. Yes, sir.

Q. Any other foreman there beside yourself? A. No, sir.

Q. How many employees did you have working under you? A. From fifty to sixty.

Q. From fifty to sixty? A. Yes, sir.

40 Q. Were you in the habit of visiting the diff-

John M. Butler—Cross

erent departments there where work was being done? A. Yes, sir.

Q. Did you have any opportunity of going to this blacksmith shop where Cristo was employed?

A. Yes, sir.

Q. What time of the night did you go there? A. 10
I went through there a half dozen different times in the night. Not any specified time.

Q. So it was customary for you to go and visit the different places every night? A. Yes, sir.

Q. Of course. Whom did you see working in the blacksmith shop beside Tony? I understand by Tony means Nunzio Cristo. A. Yes, sir.

Q. Besides Nunzio Cristo, how many others were working there? A. How many?

Q. Yes, A. Anybody was there working there I 20
would see him.

Q. Did you see Louis Verlengieri? A. Louis?

Q. Yes. A. Yes.

Q. Was he working there in March, 1920? A. I
guess he was.

Q. And the other gentleman, De Rose, was he working there that night? A. What night?

Q. During the month of March, 1920. A. I
suppose he was working there several nights dur- 30
ing the month.

Q. I am asking you about De Rose. During the 20th to 30th of March, 1920, have you any recollection about his working there in the blacksmith shop? A. On when?

Q. From March 20th until March 31st. A. He
might have worked there.

Q. You remember him working there. A. I
don't say I remember him, no.

Q. He might have worked there. A. He might
have worked there. 40

Q. Do you remember whether these three men

John M. Butler—Cross

were working in the blacksmith shop during the month of March and the last part of March especially. A. Are you going to tie me down to time—

Q. Yes, yes.

Mr. Hayes: Going to try to.

10 A. I wouldn't say so.

Q. You would not say so? A. No.

Q. Then where were they working? A. I wouldn't say where they were working.

Q. What kind of work would they be doing? A. They wouldn't be doing anything if I didn't know where they were working.

Q. Did you see them working at any other work? A. When?

20 Q. March 20th. A. They might have been doing anything.

Q. Did you see them working at any other work? A. They might have been doing anything. But not for me.

Q. You had seen De Rose and Verlengieri prior to March 20th, had you not? You remember those people having been working there, don't you? A. Yes, sir.

30 Q. And you say you don't remember your attention was called to the fact that Nunzio was hurt on this particular night?

(Question repeated by the stenographer)

A. My attention was never called to Nunzio in an accident.

Q. Don't remember that. A. Never was called.

Q. Did you ever send Nunzio to the nurse or doctor in the factory? A. I might have.

Q. Do you remember whether you sent Nunzio on any particular night to the nurse or doctor? A. No.

40 Q. You don't remember that? A. No.

Mr. Belfatto: That is all.

John M. Butler—Re-direct

RE-DIRECT-EXAMINATION by Mr. Hayes:

Q. If Mr. Nunzio had been injured in the way he explained it on the stand the flame coming from the furnace and burning the back of his head, and all the hair off, and you had come into the blacksmith shop, what would you have done so far as Nunzio was concerned? A. If he was able to walk I would have sent him to the medical department, and if he wasn't we would have carried him there or else brought the doctor there. 10

Q. Do you remember whether or not you saw Nunzio with his head burned or not? A. I never saw him.

Q. If he had been burned at the time you would have known it, wouldn't you? A. I would have known it. 20

Q. And you are positive to say you never sent him to any medical department to have his head treated for burns, or the back of his body treated? A. I don't remember having sent him there.

Q. And if you had sent him you would have remembered, wouldn't you? A. I think I would recall it; yes, sir.

Q. Do you know whether or not Mr. Cristo was sick off and on? A. He had mentioned to me at one time about being sick. 30

Q. And was he taking periods off from his work on account of sickness, do you remember? A. I can remember one time about two weeks, I believe, he was off.

Q. Two weeks? A. Yes.

Q. You do not remember when that was? A. No; not to dates. I would say in the spring, 1920. Something like that, or summer.

John M. Butler—Re-cross

RE-CROSS-EXAMINATION by Mr. Belfatto:

Q. What kind of work was Cristo doing after March 20th? A. I couldn't say.

Q. Don't remember? A. General work.

Q. General work? A. Yes, sir.

10 Q. And before March 20th, what was he doing?

A. Same thing.

Q. Did he work in this blacksmith shop pushing pipes into the oven? A. That was to be done at that time he was there. He was blacksmith's helper at that time. General helper.

Q. How long was he a blacksmith's helper? A. All the time I was in charge of the gang.

Q. How long was that? A. From February to November.

20 Q. Which year? A. 1920.

Q. Until November, 1920? A. Yes, sir.

Q. He was always at the blacksmith shop? A. Yes.

Q. And then you left? A. No. Then the night gang was taken off. We were all taken off and put on days.

Q. Where was Cristo put? A. Let me call him Tony. Will it make any difference?

Q. Call him Tony.

30 The Court: Call him Tony. A. Tony was assigned to a machine, what we call a tool cutter; tool threader. And when I left there I think Tony was still working there.

Mr. Hayes: At the tool cutter? A. Yes, sir.

Q. And you left in November, 1920? A. No; that was when the gang was taken off. I left in June of this year.

Q. June of this year? A. Yes, sir.

40 Q. And Cristo was still working there? A. I think he was; yes.

John M. Butler—Re-direct

Q. And he had been working right along? A. To my knowledge, yes, I think so.

Q. Right along. Covering a period of two years; is that right, two years?

(Question repeated by the stenographer.)

A. I don't know anything about the man's length of employment. He was working there all during my time. 10

Q. Will you give us the period of your time of work? A. From about two years.

Q. Prior—A. All told.

Q. Prior to July? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. July, 1921.

RE-DIRECT-EXAMINATION by Mr. Hayes: 20

Q. Was it very hot in that room? Was it a very warm room? This blacksmith shop? A. Was that very warm?

Q. Yes. A. I suppose it might have been. It wasn't exceedingly warm.

Q. It was not exceedingly warm? A. No, sir.

Q. Was there any gas in the place at all? Where would gas be used? A. Gas? We had a furnace there we used gas for fuel.

Q. Used gas for fuel? A. Yes, sir. 30

Q. Was that a forge or furnace? A. That is what we call a furnace. Yes, sir.

Q. And was Cristo's job particularly working at this furnace? A. No, no. Cristo was what is known as a general helper. And during my time he was assigned to a blacksmith. Helping out a blacksmith. He didn't work at a furnace; at a regular blacksmith's forge, if you know what that is. Entirely different from the furnace.

Q. He didn't work on the furnace? A. No; 40 possibly an odd night.

John M. Butler—Re-cross

Q. It was not his regular duty to work on the furnace? A. No, sir.

Q. And he did not do it continuously? A. No, sir.

Mr. Hayes: That is all.

10

RE-CROSS-EXAMINATION by Mr. Belfatto:

Q. Did you take any particular notice of the kind of work that Touy was doing? A. What time?

Q. While you were there? A. Yes.

Q. This year what kind of work was Tony doing? A. Work, what year?

Q. Of your incumbency or employment. A. First when I came there Tony was helping a
20 blacksmith on the forge.

Q. How far from the furnace where the gas is used to burn pipe? A. Was he?

Q. Yes. How far? A. Oh, possibly twenty feet.

Q. Possibly twenty feet? Do you know whether or not he was doing any work in putting pipes into the oven in which gas was burned? A. At any particular time?

Q. Yes. A. No; I can't recall him doing the
30 work.

Q. You can't recall him doing it? A. No.

Q. He has testified he has been working there as a helper for over a year. That might be right? A. That he was a helper for a year?

Q. Yes. A. Yes. That was perfectly right.

Q. Helping putting the pipes into the oven. A. No; he didn't.

Q. Do you get— A. That is only a spasmodic job. The job you speak of, putting pipes
40 in the oven; there might be possibly twenty-four or forty-eight to do. And that might last two

John M. Butler—Re-cross

or three weeks. Then they might run two or three months and they wouldn't have any more to do.

Q. He had two jobs to attend to? Oven and blacksmith? A. Who?

Q. Tony. A. No, sir.

Q. He had two places to work at? A. No, sir; 10
Tony would work any place he was put.

Q. Mention the place he was put. A. Helping the blacksmith for one.

Q. Where else? A. Wherever I needed a man if I thought he was intelligent enough to fit I put him there. I remember he operated the steam hammer, I think, later.

Q. Did he ever work at the oven? A. Not that I remember.

Q. This place was how large? was the place 20
where Cristo was working? A. About forty by eighty.

Q. About forty by eighty? A. Forty wide by eighty long.

Q. How many men were working there? A. How many men are working there?

Q. Were working. A. On the night shift?

Q. Yes. A. About fifty to sixty.

Q. In that place? A. No; that was an annex 30
to the big house.

Q. In this place? A. About eleven.

Q. Eleven. This was a pretty hot place? A. I wouldn't call it so.

Q. It is an oven and blacksmith, isn't that pretty warm? A. I wouldn't say that. I worked there at first and I wouldn't consider it hot.

Q. What work did this consist of Louis and Nick were doing? A. Louis and Nick?

Q. Yes. A. What is the question? What work they were doing? 40

Q. What kind of work with reference to the

John M. Butler—Re-direct

use of the oven? Were they not putting pipes, round pipes in the oven? A. I can't recall any particular time of them doing the job. They might have.

10 Q. You are hazy about the whole situation, are you not? You do not remember anything except what your counsel tells you. A. He doesn't have to remind me of anything.

Q. Well, reminds you. A. First time I saw the man.

Q. My question is every question your counsel puts to you you can answer, but you don't seem to be able to answer my questions. A. What is wrong with your questions?

20 Q. You do not seem to remember. A. I will tell you if I remember.

Q. I am asking you whether or not Nunzio Cristo was working at the oven with Verlengieri and De Rose in the month of March, 1920, and you seem to be unable to tell. A. I tell you I don't remember.

Q. And you were foreman of that place. A. I was foreman.

Mr. Belfatto: That is all.

Mr. Hayes: That is all.

30

RE-DIRECT-EXAMINATION by Mr. Hayes:

Q. This space was it open or closed, in this shop? A. I would say one side had been pulled out for alterations of the shop. One whole side.

Q. Do you know how long it had been that way? A. I would say that was for about one year.

Q. Would say it was in March 20th? A. I would say it was. I wouldn't tie myself offhand.

William Hurley—Direct

WILLIAM HURLEY, a witness on behalf of the respondent, sworn.

Direct-examination by Mr. Hayes:

Q. Who do you work for, Mr. Hurley? A. Mit whom I work with? 10

Q. Yes. A. I am working with the Standard Oil.

Q. As what? A. As a clerk.

Q. As a clerk? A. Yes, sir.

Q. Were you working with them in March, 1920? A. Yes, sir.

Q. Do you know Louis Verlengieri and Nick De Rose? A. Yes, sir.

Q. Were they working there in March, 1920? A. Yes, sir. 20

Q. What were you doing at that time? A. I was night timekeeper at that time.

Q. You were night timekeeper at that time? A. Yes, sir.

Q. Is this your timebook? A. Yes, sir.

Q. Can you tell me from the timebook when Nunzio Cristo went to work for the company? A. December 1st, 1919

Q. And will you turn to the month of March, 1920 and tell me what days Nunzio did not work in that month? A. On the 5th day of March he didn't work. On the 5th of March. That was on Friday night. He returned on Monday and he worked Monday night. 30

Q. When is the next day? A. Beginning March 1st, worked the 1st, 2nd, 3rd.

Q. No. I want the dates he didn't work. A. March 5th he did not work, and March 16th he didn't work.

Q. Yes. Any more in March? A. 17th, 18th, 19th, 22nd, 23rd he worked. 40

William Hurley—Direct

Q. He worked? A. Yes, sir.

Q. What is the next time he didn't work? A. 24th he didn't work. 25th he didn't work. 26th he didn't work. And 29th he worked and the 30th he worked, 31st he worked.

10 Q. Now turn to April and tell me quickly if you can how many days he was absent from his job during April. A. Up until the 19th he had full time. Full time all during April.

Q. Full time during April. May? A. Lost one night on May 3rd.

Q. One night in May? A. That is for that, until May 3rd.

Q. Until May 3rd. A. Yes, sir.

20 Q. I want the month of May. How many nights didn't he work? A. He didn't work two nights.

Q. He did not work two nights? A. No, sir.

Q. How about June? A. There are three nights in May.

Q. Three nights in May instead of two? A. Yes.

Q. How many nights in June? A. I would say he lost all time in June. He started—on June 1st. He worked on June 1st and on June 4th and from June 4th up to—

30 Q. July 6th? A. Yes, sir; July 6th he returned to work.

The Court: In other words he was off all June from June 4th.

Q. So he was off from June 4th to July 6th. What can you tell me about July? A. Full time.

Q. Full time. August, 1920. A. Full time.

Q. September, 1920. A. September, full time also.

Q. October. A. That is all I have in that book.

40 Q. Where is your other book? A. The other book is when we went on day time.

William Hurley—Cross
William Hurley—Re-direct

Q. October you quit. I think that is what Mr. Butler said. After that you quit night work. A. Yes, sir.

Q. What time of the night did you generally check up your people in the book? A. I checked up at seven o'clock all the men were in. 10

Q. That is when you checked up the men? A. That is when I checked up the men, if they were in, at that time.

Mr. Hayes: That is all.

CROSS-EXAMINATION by Mr. Belfatto:

Q. Could you tell reading from your book, what kind of work was Nunzio Cristo doing during that time? A. No, sir; I just got the hours of night in this book. 20

Q. He did work at night, did he not? A. Yes, sir.

Mr. Belfatto: That is all.

Mr. Hayes: I offer this in evidence. I offer the book in evidence.

Mr. Belfatto: All right.

A. That is my own record.

Mr. Hayes: Will that tell you anything different from this? 30

Mr. Belfatto: That is immaterial.

A. It is the same as this.

RE-DIRECT-EXAMINATION by Mr. Hayes:

Q. You just brought the month of March? A. Yes, sir.

Q. Turn to the month of March and tell us what the payroll shows? What time he was absent and what time he was present.

Mr. Belfatto: We admit he got regular wages. 40

William Hurley—Re-direct

Mr. Hayes: You admit you got regular wages?

Mr. Belfatto: Yes.

Mr. Hayes: We admit you got regular wages too. We admit you only got them
10 for the days you worked.

A. This is the out: 24th, 25th, 26th, 27th, and 28th.

Q. He was not working according to your payroll on what? A. 24th, 25th, 26th, 27th, 28th.

Q. Was he working on the 23rd? A. On the 23rd? Yes, sir. An hour's time. We worked a day over.

Q. As I understand it now the payroll shows he was not working on the 24th, 25th, 26th, 27th, and
20 28th. A. And 27th and 28th.

Q. Of March? A. Yes.

(Papers heretofore marked R-1 to R-14 for identification, now entered in evidence and marked Exhibits R-1 to R-14 inclusive, respectively.)

The Court: What about these intervening numbers? A. These numbers haven't been assigned.

Mr. Hayes: That is the rate per hour.

Fifty-six cents per hour at that time.

30 A. This all means on these days he was off.

Q. Where there is nothing filled in the blank space it indicates he did not work at that time?

A. Yes, sir.

Q. Where he works the space is filled in with figures which indicate the number of hours? A. Yes, sir.

Q. That the person worked? Yes, sir.

Q. Cristo's check number was 6160. A. Yes, sir.

40 Q. And his rate was 55 cents an hour. A. Fifty six cents.

Argument

Q. Fifty-six cents per hour. A. Yes, sir.

Q. And the record shows that he did not work what dates? A. Why, the 24th, 25th, 26th, 27th and 28th.

Q. And 28th? A. Yes, sir.

The Court: How about the 23rd. A. 23rd is 10 when we end our pay; and therefore you get paid on that night regardless of whether or not you worked or not because the pay roll had to go in on Monday. Next day it would be taken out.

Q. Carries over, so to speak? A. Yes, sir.

Mr. Hayes: I offer the pay roll and the time book in evidence.

(Pay roll book entered in evidence and Marked Exhibit R-18)

Adjourned until Thursday, December 20 29th, 1921 at 3 o'clock p. m.

Transcript of stenographer's notes of argument taken in the above entitled matter before Hon. Harry J. Goas, Deputy Compensation Commissioner, at the Workmen's Compensation Bureau, 9-11 Franklin Street, Newark, N. J., on the 29th day of December, A. D. 1921 at 3 o'clock, p. m. 30

Appearances:

G. M. Belfatto, Esq. For the petitioner.

William G. Gilson, Esq. For the respondent.

Mr Gilson: Mr. Goas, Colonel Hayes is ill today and asked me to give you that letter.

The Court: Yes. You are Mr. Gilson? (Mr. Gilson hands letter to Court.)

The Court: Do you know about that Mr. Belfatto? 40

Mr. Belfatto: Sir?

Argument

The Court: Do you know what he wants to do?

Mr. Belfatto: He suggests certain facts be admitted in evidence. And the question is what else does he wish me to admit. If they are not dangerous, I will.

10 Mr. Gilson: I have two letters here I would like to read into the evidence and permit Mr. Belfatto to make any reservations he may see fit.

Mr. Belfatto: I have seen them and I want Your Honor to hear it.

(Mr. Gilson then reads two letters, which were not admitted in evidence as the Court ruled that they were irrelevant; the case being decided on the year's limitation provided in the statute.)

(Mr. Belfatto argues in regard to the limitation
20 in the statute.)

(Mr. Gilson argues on the limitation in the statute.)

(Mr. Belfatto answers.)

The Court: I will decide that no agreement to pay compensation was entered into, and if you can convince the Court of Common Pleas, I am satisfied. I am convinced that the Standard Oil Company does not conceal anything like that. It is too big a concern to resort to chicanery or evasion.
30 First was this payment of one hundred and twenty-nine dollars and some cents, which was admitted was paid to him, made as compensation. If it was not, that settles it.

Mr. Belfatto: It says for sickness.

The Court: It says for sickness, yes. If it was made for sickness and not compensation that closes the matter there. If it was made for compensation then the statute is still open and does
40 not run against him. Then the burden would still

Argument

be on the employee to establish first of all there was an accident, which the respondent denies.

Mr. Belfatto: The evidence is very preponderating in this case there was an accident.

The Court: "We deny the occurrence of an accident." That would be the question then. 10
And then if there were an accident established, as the result of the alleged accident, is there any resultant disability, and was there any temporary disability, and so forth. And then, in the event if it was construed as a compensation payment, whatever payment was made would be credited on the final award. The company produces a man; here is a man who has charge of this work, and these men came under his supervision, in this particular case, Cristo. He outlines the system there; 20
the annuities and sick benefits, death benefits, and accident payments. And that payment was made for the time Cristo was under medical disability as the result of an operation by Dr. Funk for appendicitis, and they paid it, not as compensation, but as a gratuity under a well defined plan in existence in their plant. There might be some doubt about it—I say there might be some doubt about it—if a payment had been made to a petitioner under certain circumstances, but they made 30
this particular payment of this particular amount under a well defined system which I dare say operates in the case of all other employees. Payment for sickness benefits. I do not know whether Mr. Gilson passes on them exclusively or it is done through a committee; it does not make any difference. But I dare say the operation is uniform and it hits everybody alike. And from the nature of the testimony introduced by Mr. Gilson and the petitioner, and the receipt, I cannot, do 40
anything else but decide that the payment alleged

Argument

was made, not as compensation, but as a gratuity, and under a well defined system of payments for sick benefits. And that, to my mind, settles the whole question. If that was made as a payment for sickness, under a well defined system, that settles it, so far as the year limitation is concerned; there is no doubt about it, outside of that one point you raise: "Does the yearly limitation begin at the time that the disability begins to manifest itself or at the time of the happening of the accident?" And to my mind there is no doubt about it. The law specifically says within one year after the date of the accident. And it is further the uniform practice of the whole Bureau, in interpreting that part of the statute, always, that it takes effect at the time of the date of the accident. I have yet to hear of a single case where the limitation has begun to run at the time that the disability begins to manifest itself. That may all be that you cite, but those are personal injury cases, controlled by common law, and in some respects the procedure is a little different. This particular action is purely statutory, and we must be controlled by what the statute says. And while there may be a difference of legal opinion as to what this or that statute means, still I do not think there can be any doubt about it in this case. I do not see there can be any doubt when it says "Within one year of the date on which the accident occurs." I do not see anything else to do but dismiss the petition. It is first of all a question whether or not it was an accident, and this was compensation. If this was not compensation, but paid in conformity with a well defined system of gratuities, then that controls it. And if, on the other hand it is compensation payment, which I do not think it is, then that still leaves the other question open.

Statement as to Evidence

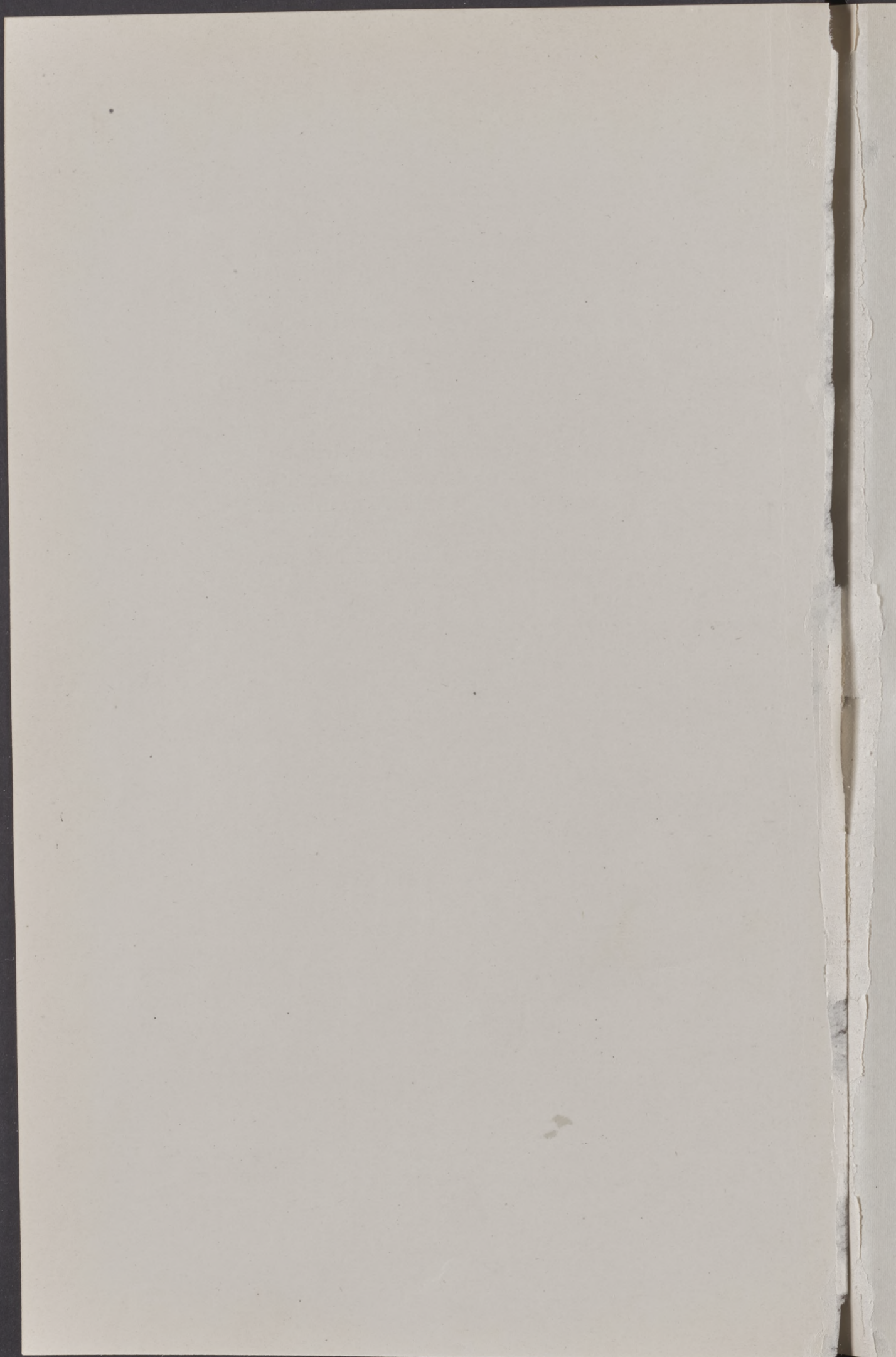
Mr. Belfatto: I will take an exception for the sake of the record. An exception to Your Honor's finding.

The Court: Yes. Your appeal will be as to whether or not the year limitation runs from the date of the accident or the date the injury manifested itself. 10

I hereby certify the foregoing to be a true and correct transcript of the above entitled matter at the time, date, and place hereinbefore mentioned.

HARRY J. GOAS.

Deputy Compensation Commissioner.



NEW JERSEY SUPREME COURT

No. 220, November Term 1922.

Nunzio Cristo,

Petitioner-Prosecutor,

-vs-

Standard Oil Company,

Defendant-Respondent.

Opinion

ON CERTIORARI.

Argued November 9th, 1922 - Decided Nov. 10th, 1922.

Before Justice Kalisch, Black and Katzenbach.

For the prosecutor - G. M. Belfatto.

For the Defendant -

The petitioner asks to review the validity of a judgment of the Court of Common Pleas dismissing his petition for compensation under the Workmen's Compensation Act for the reason that the petition was not filed within a year from the time of the happening of the accident as required by the act. The argument advanced by counsel in behalf of prosecutor that because no injurious results developed from the accident which prevented the prosecutor from continuing in his employment until after the expiration of a year from the time he received the injury, that, therefore, the time of the naming of the statute was automatically suspended until such injurious results developed, is palpably unsound, The Court of Common Pleas properly dismissed the petition.

Writ is dismissed and judgment affirmed.

THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

March 1954

Professor J. R. Oppenheimer

-73-

Stanford University

California

Dear Professor Oppenheimer:

I have just received your letter of the 12th and am glad to hear

that you are still in the hospital. I hope you will be able to

return to work soon. I will be glad to hear from you when you

are able to write.

Very truly yours,

Richard P. Feynman

Physicist

California Institute of Technology

Pasadena, California

Enclosed are two copies of the report on the

work done by me and my colleagues during the

last few months.

NEW JERSEY SUPREME COURT.

NUNZIO CRISTO, :
Petitioner-Prosecutor, : ON CERTIORARI.
vs : Rule of Affir-
mance and Remitt
STANDARD OIL COMPANY, :
Respondent-Defendant. :

The court having inspected the transcript and proceedings of the Court of Common Pleas in and for the county of Essex returned with the Certiorari in this cause, and reasons for reversing the judgment below, and heard the argument of counsel therein, 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 Essex be and the same hereby is in all things affirmed, and the said record remitted to the court below to be proceeded with according to law and the practice of said court.

Entered December 1, 1922.

On motion of

G. M. BELFATTO,
Attorney for Petitioner-Prosecutor.

NEW JERSEY SUPREME COURT

Munaco Grasso,

Petitioner-Appellant,

On Petition for Compensation

vs.

Notice of Appeal.

Standard Oil Company,
Respondent-Appellee.

To James H. Hayes, Esq.,
Attorney for Respondent-Appellee.

Take notice that the petitioner appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause on the following grounds:

1. The petition for compensation was not filed within one year from March 28th, 1920, which is the date of the accident because the petitioner was not appreciably injured and the disease developed 14 months after the accident.

2. Petitioner continued to do the same work for the respondent from March 28th, 1920 until May 18th, 1921, when he felt severe pains in the head and stomach and was obliged to go to the hospital.

3. The uncontradicted testimony of Dr. H. Starobin shows that the disease to the petitioner's stomach and head developed on May 18th, 1921, and that it was the direct result of the accident.

4. The respondent paid to the petitioner while in the hospital on July 15th, 1921, \$129.53 and promised to pay his further sum of money.

5. The finding of the Supreme Court dismissing the writ of certiorari and affirming the judgment of the Court of Common Pleas was erroneous.

G. M. Bellotto,

Attorney for Petitioner-Appellant.

New Jersey Court of Errors and Appeals

NUNZIO CRISTO, Petitioner-Appellant, vs. STANDARD OIL COMPANY, Respondent-Appellee.	} On Certiorari.
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APPELLANT'S BRIEF

Facts

Appellant 25 years of age on September 27th, 1921, filed a petition with the Workmen's Compensation Bureau claiming that on March 25th, 1920; while working at night in the blacksmith shop of the appellee at Elizabeth, N. J., a blast of flame from the furnace struck him on the back of his head burning his hair and causing him to faint and fall to the ground and remain unconscious for about twenty minutes. He continued to work until March 20th, 1921, when he went to the city hospital at Elizabeth, N. J., because of severe pains in the head and stomach.

Appellee filed a general denial and set up the statute of limitation. Deputy Commissioner Goas before whom the case was tried dismissed the petition because it had not been filed within one year from the date of the accident. An appeal was taken to the Essex County Court of Common Pleas and dismissed on the same ground (p. 15, l. 30).

Proof of Facts

At the trial before the deputy commissioner appellant testified that he had been working in the boiler shop of the appellee from January 1919 until December 1919 (p. 64 ll. 1-10) when he was put to work in the blacksmith shop (p. 48, ll. 1-15). His work consisted in putting iron pipes in an oven heated by gas and taking them out of the oven when they were red-hot and then putting them under a steam hammer (p. 35, ll. 10-40). On March 25th, 1920 while doing this work a blast of flames from the oven struck him on the back of the head causing him to fall to the ground and remain unconscious for about twenty minutes. Nick De Rosa and Louis Verlangieri who were working with him carried him to a sink and threw water on his head (p. 36, ll. 10-40). He spoke to the foreman, Jack Butler, about the accident and the latter sent him to the doctor whose office was in the factory. The doctor put vaseline on his head (p. 55, ll. 10-30). He continued to work that night by sweeping the shop (p. 37, ll. 1-40). On the following day he returned to the shop and was able to work until March 20th, 1921, (p. 38, ll. 20-30) when he felt severe pains in the head and stomach and went to the city hospital of Elizabeth, N. J., where he remained for two weeks (p. 39, ll. 30-40).

Upon coming out of the hospital he resumed his work and continued until May 12th, 1921, when he went to the Alexian Brothers Hospital (p. 40, ll. 10-40). A nurse from the appellee visited him every week (p. 44, ll. 10-15). He was operated for appendicitis but other physicians told him he had gas in the stomach. On July 13th, 1921, while

in the hospital, received from the appellee \$129.-33 and was told that he would be paid right along (p. 41, ll. 20-40). He consulted 10 or 12 other doctors.

He further testified that his hair began to fall in February, 1921, (p. 42, ll. 20-40) feels pains in the stomach, and cannot digest; must take medicines every day in order to move the bowels and relieve the pains in the head and stomach; is very nervous and cannot sleep because he feels pains all over his body (p. 45, ll. 1-20). He cannot do any work; (p. 43, ll. 10-30).

LOUIS VERLANGIERI, a witness for the appellant, testified that he worked for the appellee for two years; and had worked with appellant in the blacksmith shop (p. 66, ll. 20-40); that the appellant was working between red-hot pipes and a furnace. A big flame from the furnace struck appellant and caused him to fall to the ground (p. 73, ll. 1-30). He and Nick De Rosa picked him up and carried him to the sink and threw cold water on his head. He could not talk for twenty minutes (p. 67, ll. 1-40). He spoke to the boss, Jack Butler, about it and the boss sent him to the factory doctor. That night appellant continued to work by sweeping the shop, (p. 69, ll. 1-15). The accident happened between the 20th and 30th of March, 1920, (p. 71, ll. 1-20). He saw appellant working up to November 1920 when the witness left the shop (p. 70, ll. 20-30).

NICK DE ROSA, a witness for the appellant, testified that he worked for the appellee from March 1918 to July 1920 (p. 74, ll. 10-20). Appellant and Verlangieri worked at the oven (p. 74, ll. 20-40). Saw appellant falling to the floor. He and Verlangieri picked him up;

brought him to the sink and threw water on him (p. 75, ll. 1-20). Appellant spoke to the foreman, Jack Butler, about it and the latter sent him to the factory doctor (p. 75, ll. 20-40) (p. 79, ll. 20-30) (p. 80, ll. 38-40). Upon returning from the doctor appellant swept around the shop. On the following night appellant returned to work and continued to work until July 1920 (p. 76, ll. 30-40) when the witness left his job. The accident took place about the end of March 1920 (p. 77, ll. 30-40)

DR. EUGENIO STURCHIO, a witness for the appellant, testified that he had practised medicine for 16 years. On July 19th, 1921, examined appellant (p. 24, ll. 20-25) and found him suffering from chronic gastritis (p. 20, ll. 30-40). His scalp was in an abnormal condition with many parasites. The fall of the hair from his head was caused by the prolonged action of the heat (p. 21, ll. 1-20) which produces physice change in the tissue and atrophy of the capillary bulbei and chemical changes in the stomach (p. 22, ll. 30-40). The flames or gas fumes that struck the appellant causing him to fall to the ground was the cause of his sickness (p. 23, ll. 10-20). Such sickness remains latent for months and even a year during which time the person can work (p. 23, ll. 20-40). He examined the appellant a dozen times and prescribed medicines and gave him electrical treatments on the head and regions of the stomach (p. 24, ll. 1-20). Made a minute examination to determine the cause of his sickness and even made a Wasserman test and found it negative (p. 26, ll. 20-30). The disease of the stomach develops gradually (p. 27, ll. 35-40). Appellant told him that the hair began to fall in February 1921. The hair also falls gradually (p. 28, ll. 10-30). Appellant's sickness is an aggravated case. When he

first examined appellant the sickness had developed three or four months or possibly a year before (p. 30, ll. 10-20). His stomach cannot be cured (p. 30, ll. 25-40). He cannot digest or sleep normally, has pains in the stomach and his bowels are torpid and must take cathartic every day to move them (p. 31, ll. 20-40).

Appellant rested and appellee produced the following witnesses:

WILLIAM J. GILSON testified that on July 13th, 1921, paid to appellant \$129.33, it being half pay during the term of disability for eleven weeks from May 12th to July 8th, 1921, (p. 84, ll. 20-40) (p. 85, ll. 1-20) (p. 87, ll. 1-10).

JOHN M. BUTLER testified that he knew the appellant and used to call him Tony; and might have talked to him on any night but did not hear of the accident on March 25th, 1920; that the appellant spoke to him about it in September, 1921, (p. 89, ll. 30-40) that he the witness used to visit the blacksmith shop several times during the night in March 1920 (p. 90, ll. 20-30); that he was foreman of the shop and that 50 or 60 men were working there (p. 90, ll. 30-40). Used to visit the shop where appellant worked six or seven times every night. Verlangieri and De Rosa were working with appellant (p. 91, ll. 10-40). That he might have sent appellant to the nurse or doctor (p. 92, ll. 30-40) at one time appellant told him of being sick (p. 93, ll. 25-30); in the spring of 1920 was sick for two weeks (p. 93, ll. 30-40). Appellant did general work and was a helper in the blacksmith shop from February to November 1920 (p. 94, ll. 10-20). And worked right along while the witness was there covering a period of two years (p. 95, ll. 1-15). The fur-

nace was heated by gas and the shop was not very warm (p. 95, ll. 30-40). The room where appellant worked was 40 by 80 feet; one side of it had been pulled out for alteration and had been in that condition for one year and was in that condition in March, 1920 (p. 98, ll. 30-40).

WILLIAM HURLEY who testified that he was night clerk; that Nick De Rosa and Louis Verlangieri were working in March 1920. Appellant also worked during that month except on the 5th, 16th, 17th, 18th, 19th, 22nd, (p. 99, ll. 15-40) 25th, 26th, (p. 100, ll. 1-15) and continued to work from April to October 1920 (p. 100, ll. 1-40).

Law

AS TO THE STATUTE OF LIMITATIONS

It is respectfully submitted that in the case of *Church of Holy Communion vs. Paterson Extension R. R. Co.*, 66, L. 218 citing *Delaware Canal Co. vs. Wright*, 21, L. 469 the Court held that: "If the act is of itself not unlawful and plaintiff sues to recover damages subsequently accruing from and subsequent to the act, the cause of action accrues and the statute of limitation begins to run when and only when the damages are sustained and this is true although at the time the act is done, it is apparent that injury will inevitably result.

The Court further held that the test to determine when the statute of limitation begins to run against an act sounding in tort is whether the act causing the damage does or does not of itself constitute a legal injury, that is an injury giving rise to a cause of action because it is an invasion of some right of plaintiff.

It is well settled that where an act is not necessarily injurious or is not an invasion of the rights of another, the act itself affording no cause of action, the statute of limitations begins to run against an action for consequential injuries resulting therefrom, only from the time actual damage ensue, *Power vs. Munger* 52 Fed., 705, 10 U. S. App., 289.

A cause of action does not accrue until the party owning it is entitled to begin and prosecute an action thereon; it accrues at the moment he had a legal right to sue on it and no earlier, Ency. of Law, Volume 19 page 193.

Where the act complained of might or might not be injurious and the plaintiff's right of action must depend upon its proving to be injurious the cause of action cannot be considered as accruing until the injury has developed, and until then the statute of limitation does not begin to run, Ency. of Law, Volume 19 page 195.

The cause of action is not the negligent act but the consequences following it, for to support an action there must be not only the negligent act but a consequential injury; the injury being the gravamen of the charge. *Ochs vs. Public Service Railway Co.*, 81, L. 661. In such cases, the damage is the cause of action, and the statute begins to run from the time of the injury, and not from the doing the act which occasioned the injury, which gave no cause of action until damage ensued. *Delaware & Raritan Canal Co. vs. Wright* 21, L. 469.

THE ACCIDENT AROSE OUT OF THE EMPLOYMENT

If it appears that the employment is one of the contributing causes without which the accident which actually happened would not have happened

and if the accident is one of the contributing causes without which the injury actually followed would not have followed the accident arises out of and in the course of the employment. *New-Comb vs. Albertin* 85, L. 435.

Where a workman receives personal injuries from an accident arising out of and in the course of his employment and disease ensues which incapacitates him for work, the incapacity may be the result of the injury even though it is not the natural result of the injury. *Lundy vs. Brown* 93, L. 471.

In the same case the Court said an inference may properly be drawn from the evidence that the nature of the decedent's injury was of such seriousness as to greatly impoverish his system and predispose it to an infection of tuberculosis of which there was not the slightest indication before the injury and from which he died.

The petitioner in that case sustained a fracture of his ribs. He became broken down in his general health and went into a steady decline and died fourteen months after the accident.

His widow was permitted to file a petition on May 15th, 1918 while her husband was injured on December 19th, 1916.

For these reasons the finding of the deputy commissioner and the common pleas court should be set aside.

Respectfully submitted,

G. M. BELFATTO,
Attorney for Appellant.

New Jersey Court of Errors and Appeals.

NUNZIO CRISTO,
Petitioner-Appellant,

vs.

STANDARD OIL COMPANY,
Respondent-Appellee.

On Appeal from
Supreme Court.

BRIEF OF RESPONDENT- APPELLEE.

Statement of Facts.

This case is an appeal from the judgment of the Supreme Court rendered on a writ of certiorari affirming the judgment of the Essex Common Pleas, which latter judgment dismissed the appeal of the petitioner from the judgment of the Workmen's Compensation Bureau dismissing the petitioner's petition for compensation on the ground that his cause of action was barred because of his failure to file a petition within one year after the date of the alleged accident.

The finding of fact and determination of the Deputy Commissioner of Labor appears on pages 11 and 12 of the Case. This contains the finding and determination that the petitioner failed to bring his action within the period prescribed by the statute and that such action is therefore barred (Case, p. 12, lines 16 *et seq.*).

The order of the Court of Common Pleas dismissing the appeal appears on pages 15 and 16 of the Case, and is based upon the same grounds (see p. 16, line 29).

The judgment of the Supreme Court affirming the judgment of the Common Pleas Court appears on page 109 of the Case, and the opinion of the Supreme Court on page 108.

If reasons were filed in the certiorari proceeding they are not printed in the Case. The notice and grounds of appeal, however, are printed on page 110.

The petition (Case, pp. 1-5) states that the petitioner was injured as the result of an accident which occurred on March 25th, 1920 (Case, p. 2, line 19; lines 30 *et seq.*). The petition was sworn to on September 27th, 1921 (Case, p. 5, line 27). We assume that it was filed either on that or some subsequent date.

The respondent in its answer denied that it had any knowledge or notice of the alleged accident prior to September 9th, 1921 (Case, p. 7, line 40), and alleged that no payment of compensation was ever made by the respondent to the petitioner, and that the claim was not presented until long after the expiration of the statutory period (Case, p. 9, lines 25 *et seq.*).

The petitioner testified that on the 25th day of March, 1920, while he was assisting in the removal of a pipe from a furnace he was burned by a flame from the furnace (Case, p. 36, lines 19 *et seq.*). He continued, however, at work during that night (Case, p. 37, lines 35 *et seq.*). On the following day he had pain in the stomach and pain in the head and did not go to work (Case, p. 38, lines 1 *et seq.*). He, however, returned on the second day and continued to work (Case, p. 38, line 10), although he still suffered pain and was obliged to go and see a physician once a week (Case, p. 38, lines 18 *et seq.*). During the month of May, 1920, he went to the City Hospital at Elizabeth, where he remained for two weeks, and was told by the physicians that he was suffering from gas in the stomach (Case, p. 38, lines 30 *et seq.*). After he left the hos-

pital he consulted a physician in New York (Case, p. 40, line 1), and remained away from work for two weeks more, at the end of which time he returned to work and continued at work until May, 1921 (Case, p. 40, lines 10 *et seq.*). On May 13th, 1921, he again went to a hospital where an operation was performed upon him for appendicitis (Case, p. 41, lines 15 *et seq.*). This operation, however, did not relieve his trouble, and he continued to consult physicians after leaving the hospital (Case, p. 42, lines 7 *et seq.*). He testified that since leaving the hospital in July, 1921, he had been suffering from gas in the stomach to such an extent as to disable him from work (Case, p. 42, line 16, lines 41 *et seq.*; p. 44, lines 29 *et seq.*).

Dr. Eugenio Sturchio, testifying as a witness in behalf of the petitioner, stated that the petitioner was suffering from chronic gastritis (Case, p. 20, line 39), and that this was due to *prolonged* action of the heat (Case, p. 21, lines 16 *et seq.*). The doctor also testified (Case, p. 22, line 33) that (to use his language): "prolonged action of the heat produces some physical exchange in the tissue, cause an atrophy of the capillary bulbei, in some stomach some chemical change in the function."

The witness testified that he had examined the petitioner on August 19th, 1921 (Case, p. 24, line 21); that at that time he had been informed by the petitioner that he had been suffering from this stomach trouble for about one year and a half (Case, p. 24, lines 30 *et seq.*).

The witness did not attribute the petitioner's alleged disability to the supposed accident said to have occurred on March 25th, 1920. He testified that in his judgment the petitioner's condition was due to prolonged action of heat. He testified as follows:

"Q. Certainly. Did he tell you he had received a flame on his hair? A. Yes; but I cannot put any correlation between this last accident and the fall of the hairs.

Q. Then you do not think there is any relation between this flame hitting his hair and his present condition that you examined him in September? A. I put the correlation between all the action—prolonged action of the heat, but not from the action of one accident only.

Q. You take the prolonged action of the heat? A. Months and months.

Q. Instead of the accident which occurred in March, 1920? A. I don't put that present state of the patient with relation to the last accident.

Q. There is no relation between them? A. No.

Q. You say this condition—— A. It is an aggravated case.

Q. It is an accumulated effect? A. It is an accumulated case, but for me it is repeated action of the heat on his body" (Case, p. 28, lines 28 *et seq.*; p. 29, lines 1-12).

See also page 34, lines 13 *et seq.*, in which the witness testified that the condition was due to the general prolonged effect of heat which would have to be continuous in order to produce this result.

As above stated, the Deputy Commissioner of Labor determined that the action was barred because the petition had not been filed within one year after the date of the accident as required by sub-division (*h*) of Section 23 of the Workmen's Compensation Act as amended by Chapter 93 of the Session Laws of 1919 (P. L. 1919, p. 214).

The Court of Common Pleas dismissed the petitioner's appeal on the same ground and the Supreme Court affirmed the judgment of the Court of Common Pleas. The opinion of the Supreme Court appears on page 108 of the State of the Case, in the course of which they said:

"The argument advanced by counsel in behalf of prosecutor that because no injurious results developed from the accident which prevented the prosecutor from continuing in

his employment until after a year from the time he received the injury, that, therefore, the time of the running of the statute was automatically suspended until such injurious results developed, is palpably unsound. The Court of Common Pleas properly dismissed the petition."

We assume from the petitioner's brief that the only question intended to be raised by this appeal is whether the action was barred by failure to file the petition within one year from the date of the alleged accident.

Argument.

As above stated, the petition alleges that the petitioner was disabled as the result of an accident which arose out of and in the course of his employment on March 25, 1920. We desire to note in passing that the testimony tended to show that the alleged disability of the petitioner was due not to an accident but to an occupational disease for which compensation cannot be allowed under our Workmen's Compensation Act.

See *Liondale Bleach Works v. Riker*, 85
N. J. L. 426.

The petitioner, has, however, based his claim upon an alleged accident which he says happened on March 25th, 1920. It is conceded by petitioner's counsel that the petition was not filed with the Workmen's Compensation Bureau until September 27, 1921, one year and six months after the happening of the alleged accident.

Sub-division (h) of Section 23 of the Workmen's Compensation Act provides as follows: —

“(h) 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."

If we correctly understand the contention of the petitioner, it is that this statute does not commence to run until the injury resulting from the accident has become apparent.

If this were true we fail to see how it would sustain the appellant's position in this case. The evidence clearly shows that the petitioner continuously suffered from pains in the stomach from the date of the alleged accident until the time of the hearing and that during all of this time he was under the care of various physicians who were treating him for the disease from which he now claims to suffer (Case, p. 38, lines 3 *et seq.*; p. 39, lines 30 *et seq.*; p. 40, lines 1 to 30; p. 42, line 31; p. 60, lines 25 *et seq.*; p. 62, lines 10 *et seq.*).

We respectfully submit, however, that a sufficient answer to appellant's contention is contained in the language of the statute itself, which clearly provides that the petition must be filed *within one year after the date on which the accident occurred*. This language is not susceptible of more than one meaning, and we are entirely unable to see any basis for the petitioner's contention that it means something different from what it says.

The cases cited by the petitioner are obviously not in point. The legislature has seen fit to provide a special statutory remedy for injuries suffered by employes as a result of accidents arising out

of and in the course of employment and has seen fit to limit that remedy to cases where the petition of the employe shall be filed with the Workmen's Compensation Bureau "*within one year after the date on which the accident occurred*".

As was said by Fellows, *J.*, speaking for the Supreme Court of Michigan in *Cooke v. Holland Furnace Co.*, 166 N. W. 1013, on page 1014:

"If one does not protect himself and his rights under the law as written, it is his misfortune, and this court should not by judicial legislation, for the purpose of relieving that misfortune, write into the statute a provision that the Legislature has not seen fit to enact."

In the case cited it was held that the provision of the workmen's compensation law of Michigan which required the employe to make his claim for compensation within six months after the occurrence of the *injury* meant within six months after the happening of the *accident* which produced the injury, and if the claim were not made within six months after the happening of the accident it was barred by the limitation contained in the act.

In *Central Locomotive & Car Works v. Industrial Commission*, 125 N. E. 369 (290 Ill. 436), the Supreme Court of Illinois construing the limitation provision of the workmen's compensation act of that State, said, on page 370:

"The statute of this state refers to the accident as fixing the date from which the time shall run. Even if the injury may be regarded as occurring only after the effects of the accident have become apparent, we would not be justified, where the express language of the statute requires the claim to be made within six months after the accident, in extending the time to await the development of the injury. The Legislature has seen fit to fix the time for making claim for compensation at six months after the accident. By another section of the

statute, provision is made for reviewing the award and for re-establishing, increasing, diminishing, or ending the compensation if the disability of the employe shall have recurred, increased, diminished or ended. These provisions are within the domain of legislative power, and the court is without authority to modify them. If they operate unjustly, the remedy is in the amendment of the law."

The Workmen's Compensation Act of this State authorizes the modification or review of the award at any time if the incapacity of the employe shall have increased or diminished (Sec. 21 (f), P. L. 1919, p. 211).

See also:

- Petraska v. National Acme Co.* (Sup. Ct. Vt. 1921), 113 Atl. 536;
Smith v. Solvay Process Co. (Sup. Ct. Kans., 1917), 163 Pac. 645;
Kalucki v. American Car & Foundry Co. (Sup. Ct. Mich., 1918), 166 N. W. 1011;
Dane v. Michigan United Traction Co. (Sup. Ct. Mich., 1918), 166 N. W. 1017;
Schild v. Pere Marquette R. Co. (Sup. Ct. Mich., 1918), 166 N. W. 1018;
Peterson v. Fisher Body Co. (Sup. Ct. Mich., 1918), 167 N. W. 987.

We respectfully submit that the statute clearly expresses the intention of the Legislature and that the action in this case is barred because of the failure to file the petition within one year after the date on which the alleged accident occurred.

At the hearing before the Commissioner counsel contended that an agreement of compensation had been made between the respondent and the petitioner; that compensation had been paid pursuant to such agreement and that his petition had been filed within one year after the cessation of such payments.

The only evidence in support of this contention was the testimony of the petitioner that the respondent paid him \$129.33 on July 13, 1921 (Case, p. 41, line 25 *et seq.*). On this point the Deputy Commissioner determined as follows:

“The petitioner contends that the payment of \$129.33 which was made on July 13, 1921, was a payment of compensation and that, therefore, he was in time in petitioning for compensation. The respondent, however, contends (and this contention is supported by the best evidence) that this was a payment of ‘sickness benefits’ under the terms of its ‘Plan for Annuities and Benefits’ and that it was made on account of a period of disability resulting from the operation above referred to and which had no relation whatsoever to the alleged accident; further, that respondent never made any payment of compensation on account of the alleged accident” (Case, p. 11, line 39 to p. 12, line 15).

This determination was amply supported by the evidence (see testimony of Mr. Gilson, pp. 83-87).

It is respectfully submitted that the action of the petitioner is barred by reason of his failure to file his petition within the time required by the Act and that the judgment of the Supreme Court should be affirmed.

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