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New Jersey State Library

Notice and Grounds of Appeal.

(Filed October 5, 1935.)

New Jersey Supreme Court

JOE BRUNO,  
*Petitioner-Respondent,*

*vs.*

TURNER & Co., INC.,  
*Prosecutor (Respondent below)-  
Appellant.*

Action at Law.

10

Henry Harris, Esq.,  
Attorney for Petitioner-Respondent.

Sirs:

TAKE NOTICE, that the Prosecutor, Turner & Co. Inc., in the above entitled cause, appeals to the New Jersey Court of Errors and Appeals in the last resort in all causes from the whole of the judgment entered in the above entitled action and in the above mentioned court, for that:

20

1. The New Jersey Supreme Court erred in affirming the Hudson County Court of Common Pleas in rendering judgment in favor of the Petitioner-Respondent, and against the Prosecutor-Appellant.

30

WALL, HAIGHT, CAREY & HARTPENCE,  
Attorneys of Prosecutor.

Dated: September 14, 1935.

Service of a copy of the within Notice and Grounds of Appeal is hereby acknowledged, this 16th day of September, 1935.

HENRY HARRIS,  
Attorney for Petitioner-Respondent.

40

**Rule of Affirmance and Remittitur.**

(Filed August 3, 1935.)

## NEW JERSEY SUPREME COURT.

10

JOE BRUNO,  
*Petitioner,**vs.*TURNER & Co., INC.,  
*Respondent-Prosecutor.*

On Certiorari.

20

The Court having inspected the transcript and proceedings of the Court of Common Pleas in and for the County of Hudson, returned with the certiorari in this cause, and reasons for reversing the judgment below, and having considered the argument of counsel therein,

It is hereby ORDERED, that the judgment of the Court of Common Pleas, in and for the County of Hudson, be and the same hereby is in all things affirmed and the said record remitted to the Court below to be proceeded with according to law and the practice of the said Court.

30

Entered August 3rd, 1935.

On motion of Henry Harris, Attorney  
of Petitioner-Defendant, in Certiorari.

A true copy

FRED L. BLOODGOOD,  
Clerk.

40

**Writ of Certiorari.**

(Allowed May 6, 1935.)

(Returnable May 14, 1935.)

NEW JERSEY, ss.: THE STATE OF NEW JERSEY, to  
the COURT OF COMMON PLEAS 10  
in and for the County of Hud-  
son and GUSTAV BACH, Clerk  
(L. s.) of the said COURT; SECRETARY  
OF THE WORKMEN'S COMPEN-  
SATION BUREAU OF NEW JERSEY  
and JOHN C. WEGNER, Esq.,  
REFEREE:

GREETINGS:

We being willing for certain reasons to be certi- 20  
fied of and concerning a certain proceeding, deter-  
mination and judgment rendered on the 10th day  
of January, 1935, by the Honorable Thomas F.  
Meaney, Judge of the said Court of Common  
Pleas, in and for the said County of Hudson, in a  
certain proceeding brought on behalf of Joe  
Bruno, petitioner against Turner & Co., Inc., re-  
spondent, for the determination and recovery of  
compensation under an Act of the Legislature of  
the State of New Jersey, entitled "An Act pre- 30  
scribing the liability of an employer to make com-  
pensation for injuries received by an employe in  
the course of employment, establishing an elective  
schedule of compensation and regulating proce-  
dure for the determination of liability and com-  
pensation thereunder", approved April 4, 1911,  
and the acts amendatory thereof and supplemental  
thereto, WE COMMAND YOU, that the said proceed-

*Writ of Certiorari*

ing, 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  
 10 this Writ, to our Justices of our Supreme Court of Judicature at Trenton, on the 14th day of May, 1935, that therein may be caused to be done what of right and according to law ought to be done.

WITNESS, the Honorable Thomas J. Brogan,  
 Chief Justice of our said Supreme Court at Trenton, this 6th day of May, 1935.

FRED L. BLOODGOOD,  
 Clerk.

20

WALL, HAIGHT, CAREY & HARTPENCE,  
 Attorneys for Respondent-Prosecutor.

This writ is allowed this 6th day of May,  
 A. D., 1935.

Let it be sealed.

THOMAS J. BROGAN,  
 Chief Justice of the Supreme Court.

30

40

**Return of Hudson County Court of  
Common Pleas.**

The Answer of Thomas F. Meaney, Esquire,  
Judge of the Court of Common Pleas holden in  
and for the County of Hudson and Gustav Bach,  
Clerk of said Court, and within named, the record  
and proceedings of the plaint whereof mention is 10  
within made, with all things touching the same, I  
send to the Justices of our Supreme Court of  
Judicature, at Trenton, N. J., at the day and year  
within contained in a certain schedule to this writ  
annexed as within I am commanded.

THOMAS F. MEANEY,  
Judge.

Attest:

GUSTAV BACH,  
Clerk.

20

(SEAL)

**Return of Workmen's Compensation Bureau  
of New Jersey.**

Trenton, N. J., May 7, 1935.

I, W. E. STUBBS, Secretary of the Workmen's  
Compensation Bureau of New Jersey, do hereby  
certify to the Supreme Court of Judicature of the 30  
State of New Jersey, that the petitioner's claim pe-  
tition for compensation filed with the Workmen's  
Compensation Bureau of New Jersey, together  
with the Findings and Order of said Bureau there-  
on, have heretofore been certified to the Court of  
Common Pleas of Hudson County.

IN WITNESS WHEREOF, I have hereunto set my  
hand and the official seal of said Workmen's Com-  
pensation Bureau of New Jersey, at Trenton, New  
Jersey, this 7th day of May, A. D., 1935. 40

(SEAL)

W. E. STUBBS.

**Reasons.**

## NEW JERSEY SUPREME COURT.

10	JOE BRUNO, <i>Petitioner-Respondent,</i>  <i>vs.</i>  TURNER & COMPANY, INC., <i>Respondent-Prosecutor.</i>	}	On Certiorari.
----	---	---	----------------

Turner & Co., Inc., the prosecutor in the above entitled proceedings, relies upon the following reasons in its application to have set aside and for nothing holden, the findings and judgment of the Hudson County Court of Common Pleas, dated January 10, 1935:

1. The learned judge of the Hudson County Court of Common Pleas erred in giving judgment, in part, upon an erroneous assumption of facts and a misconception of the purport of the evidence submitted by the respondent-prosecutor.
2. The said judge of the Hudson County Court of Common Pleas erred in ruling that the petitioner-respondent sustained the burden of affirmatively proving that the injury to the petitioner-respondent arose out of and in the course of his employment with respondent-prosecutor.
3. The said judge of the Hudson County Court of Common Pleas erred in ruling that the physical condition of the petitioner-respondent was the result of the alleged accident.
4. The said judge of the Hudson County Court of Common Pleas erred in predicating his judg-

*Reasons*

ment of reversal, in part, on inconsistent interpretation of the evidence that

“this *admitted* atrophied condition of the petitioner-appellant’s leg *did not exist* prior to the date of the accident in question.”

and

10

“It seems inconceivable to me that the petitioner-appellant, employed at this particular kind of labor for a *period of eleven years*, suffered *during that time* from an atrophied condition of his leg equal to a two-thirds disability of that leg.”

5. The said judge of the Hudson County Court of Common Pleas, as a matter of law, erred in reversing the judgment of the Workmen’s Compensation Bureau by merely finding that

20

“this *admitted* atrophied condition of the petitioner-appellant’s leg *did not exist* prior to the date of the accident in question”

without finding that the said atrophied condition of the leg was caused by the accident of July 3, 1933.

6. The said judge of the Hudson County Court of Common Pleas, as a matter of law, erred in reversing the judgment of the trial court (Workmen’s Compensation Bureau) without finding that the petitioner-respondent suffered injuries resulting from an accident that arose out of and in the course of his employment with respondent-prosecutor or that the alleged injury was the cause of the said atrophied condition of the said leg.

30

7. The Supreme Court is not limited on certiorari to a review of the law only, but may also

40

*Reasons*

10 determine disputed questions of fact, not merely to ascertain if there is any competent evidence to support the findings of the judge of the Hudson County Court of Common Pleas but rather to weigh all the evidence produced in the cause and establish the ultimate conclusions of fact to be drawn therefrom.

20 8. By the greater weight of the evidence it was clearly established on the trial of this cause that, although petitioner-respondent has an atrophied leg, the condition bore no relation to the alleged accident and the Hudson County Court of Common Pleas, by a reading of the record, determined that petitioner-respondent did not have the said atrophied condition of the leg until after the alleged accident but did not find that the alleged accident caused the said condition.

9. There is no competent evidence in the case upon which to support the findings of the said learned judge of the Hudson County Court of Common Pleas.

30 10. After weighing all the testimony produced in the cause, it has been established by a preponderance of evidence the petitioner-respondent did not receive the physical condition mentioned, from an accident arising out of and in the course of his employment with respondent-prosecutor.

WALL, HAIGHT, CAREY & HARTPENCE,  
Attorneys for Respondent-Prosecutor.

**Employee's Claim Petition for Compensation.**

(Filed December 14, 1933.)

Form No. 20.

NEW JERSEY DEPARTMENT OF LABOR,

WORKMEN'S COMPENSATION BUREAU,

Trenton, N. J.

10

<p style="text-align: center;">JOE BRUNO, <i>Petitioner,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">TURNER &amp; Co., INC., <i>Respondent.</i></p>	}	<p>Received at Trenton Dec. 14 1933 Claim Petition No. ....</p> <p>Date of Accident 7/3/33</p>	20
--	---	--	----

Attorney for Petitioner—Samuel Greenstone,  
1060 Broad St., Newark, N. J.

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

The claimant respectfully alleges the following  
facts:

1. What is your name?—Joe Bruno.
2. Where do you live?—380 First St., Jersey  
City, N. J.
3. Sex—Male.
4. Age—48.
5. Married—Yes.
6. By whom were you employed at the time of  
the accident? (Give name and business address)

30

40

*Employee's Claim Petition for Compensation*

—Turner & Co. Inc., 336 West Side Ave., Jersey City, N. J.

7. What was the business of your employer?—Silk dyers & finishers.

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.

20 12. If so, on what date?—Same day of accident.

13. Have you made claim to your employer for compensation?—

14. What was your regular occupation, and what kind of work were you doing at the time of the accident?—Laborer.

15. When did the accident happen?—July 3, 1933.

30 16. Where did the accident happen?—Tin room on premises.

17. What was the nature of the accident, and how did it happen?—Right leg caught in floor that broke and left leg was run over by baggage truck, causing man to fall.

18. On what date were you compelled to stop work because of the injury?—Same day.

*Employee's Claim Petition for Compensation*

19. On what date were you well enough to work again?—Cannot tell yet.

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

21. Give nature of any injury from which you will recover—Cannot tell yet. 10

22. If any permanent injury has resulted, either amputation or loss of usefulness of any member, or impairment of any physical organ, explain fully—Permanent injury to left leg, foot and other parts of the body.

23. Were your wages fixed by piece-work?—

24. If so, what was your average weekly wage?— 20

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

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

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

28. State the amount of weekly wages—\$20.00.

29. How much money have you received from your employer as compensation (not medical aid) since your accident?—Temporary disability to date. 30

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

31. If so, how much?—

32. Was medical aid required?—Yes.

*Employee's Claim Petition for Compensation*

33. Did you receive any medical, surgical or hospital service?—Yes.

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

10 35. Were they furnished?—Partly.

36. If so, between what dates?—

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

38. Give name and address of physician and hospital—

20 39. What other facts are there which you believe important?—Did not offer petitioner sufficient temporary and permanent disability.

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

41. If you are unwilling, state reasons—

30 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 procedure for the determination of liability and compensation thereunder," approved April 4th, 1911, and the Acts supplemental thereto and amendatory thereof and that your petitioner may be

40

*Employee's Claim Petition for Compensation*

awarded his costs in this proceeding, and such other or further relief as may be proper.

And your petitioner will pray, etc.

His

(Petitioner)—Joe X Bruno.

mark

10

(Address)—380 First St., Jersey City, N. J.

Witness to mark

JEANNETTE MINK

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX, } ss.:

JOE BRUNO, 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; and that he has read the same and is familiar with the contents thereof; and that the matter and things therein set forth are true according to the best of his knowledge and belief.

20

His

(Petitioner)—Joe X Bruno.

mark

Subscribed and sworn to before me, this 13th day of December, 1933, at Newark, N. J.

30

SAMUEL GREENSTONE,  
A Master in Chancery of N. J.

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

40

*Employee's Claim Petition for Compensation*

## 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.

10

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

## WORKMEN'S COMPENSATION BUREAU.

20

I, W. E. STUBBS, Deputy Commissioner and Secretary of the Workmen's Compensation Bureau, hereby certify the foregoing to be a true copy of the Petition filed in this cause.

W. E. STUBBS.

30

40

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

(Filed January 3, 1934.)

Form No. 23.

NEW JERSEY DEPARTMENT OF LABOR,  
WORKMEN'S COMPENSATION BUREAU,  
Trenton, N. J. 10

<p style="text-align: center;">JOE BRUNO, <i>Petitioner,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">TURNER &amp; Co., INC., <i>Respondent.</i></p>	}	<p>Claim Petition No. 27751 January 2, 1934</p>	20
--	---	---	----

Attorney for Respondent—Wall, Haight, Carey & Hartpence, 15 Exchange Place, Jersey City, N. J.

In answer to Claim Petition filed in this cause:

1. What is the petitioner's name?—Joe Bruno.
2. Where does he reside?—380 First Street, Jersey City, N. J. 30
6. Was the petitioner in your employ at the time of the alleged accident?—Yes.
7. State your business—Silk dyeing & finishing.
8. Did you receive written notice from the Petitioner at the time of hiring, or later, that the Compensation Law was not to apply to him?—No.
9. Did you give such notice to him?—No. 40

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

10. When did you first have knowledge of this accident?—July 4, 1933.

11. Did you receive notice of this accident from the Petitioner?—No.

10 12. If so, on what date?—

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?—Laborer. Petitioner claims wheel of truck ran over toe while he was pulling it.

20 15. When did the accident happen?—July 3, 1933, according to petitioner.

16. Where did the accident happen—At respondent's plant, according to petition.

17. What was the nature of the accident, and how did it happen?—No knowledge petitioner's report that while he was pulling a truck the wheel of truck ran over the great toe on his left foot.

30 18. On what date was the petitioner compelled to stop work because of injury?—July 3, 1933.

19. On what day was the injured well enough to work again?—December 4, 1933.

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

21. Give your understanding of the nature of any injury from which he should recover—See # 17.

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

22. Give your understanding of any permanent injury which has resulted, either amputation or loss of usefulness of any member or impairment of any physical organ. Explain fully.—None resulting from accident. 10
23. Were the wages fixed by piece-work?—No.
24. If so, what was the average weekly wage of the injured?—
25. If wages were fixed by the hour, state rate per hour—33¢.
26. Give number of hours in an ordinary working day—10.
27. Give number of days in an ordinary working week—6 20
28. State the amount of weekly wages—\$20.00.
29. How much money have you paid the injured as compensation (not including medical aid) since the accident?—\$279.93.
30. Have you promised to pay compensation?—Have paid.
31. If so, how much?—See #29. 30
32. Was medical aid required?—Yes.
34. Were you requested to supply the necessary medical service required by law?—No.
35. Did you furnish this service?—Yes.
36. If so, between what dates?—July 3, 1933 to December 4, 1933.
37. If not, give reason for failure to do so— 40

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

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

10 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—Other than petitioner's report respondent has no information or knowledge of the happening of an accident and, therefore, denies that petitioner suffered injuries from an accident that arose out of and in the course of his employment with respondent.

TURNER & Co., INC.

20 By: WALL, HAIGHT, CAREY & HARTPENCE,  
Respondent Attorneys,  
Jersey City, N. J.

STATE OF NEW JERSEY }  
COUNTY OF HUDSON } ss.:

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

CHARLES J. GORMLEY,  
Attorney for Respondent.

Subscribed and sworn to before me, this second day of January, 1934, at Jersey City, N. J.

40 ALFRED F. CONWAY,  
Master in Chancery of New Jersey.

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

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

I, W. E. STUBBS, Deputy Commissioner and Secretary of the Workmen's Compensation Bureau, hereby certify the foregoing to be a true copy of the Answer filed in this cause. 10

W. E. STUBBS.

---

**Determinations of Facts and Rule for  
Judgment.**

NEW JERSEY DEPARTMENT OF LABOR, 20  
WORKMEN'S COMPENSATION BUREAU.

JOE BRUNO,  
*Petitioner,*

*vs.*

TURNER & COMPANY, INC.,  
*Respondent.*

} Claim Petition  
No. 27751

30

The above matter coming on for hearing and having been submitted for decision, I hereby find and determine as follows:

1. A petition was heretofore filed in the above entitled cause, praying for the compensation to which the petitioner may be entitled by virtue of the terms and provisions of an act of the Legisla-

40

*Determination of Facts and Rule for Judgment*

10 ture 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 elec-  
tive schedule of compensation and regulating pro-  
cedure for the determination of liability and com-  
pensation thereof," approved April 4, 1911, to-  
gether with the supplements thereto and amend-  
ments thereof; said petition was duly served upon  
the respondent; an answer was duly filed by the  
respondent; time and place for the hearing of the  
petition was fixed and due notice thereof was  
served upon both parties; the petitioner and re-  
spondent appeared on the 6th day of April, 1934,  
and on the 24th day of April, 1934, the dates set  
20 for the hearing, the petitioner being represented  
by Samuel Greenstone and the respondent by  
Charles J. Gormley for Wall, Haight, Carey &  
Hartpence, and both sides produced witnesses who  
were examined in the presence of said counsel for  
the respective parties.

2. That Joe Bruno, of Jersey City in the  
County of Hudson and State of New Jersey was,  
on the third day of July, 1933, in the employ of  
the respondent, his duties being that of a laborer,  
30 which said employment was subject to Section 2,  
Chapter 95, Laws of 1911, commonly known as  
the "Workmen's Compensation Act" and the sup-  
plements thereto and the amendments thereof.

3. That on July 3, 1933, petitioner, while as-  
sisting in moving a truck on respondent's prem-  
ises, slipped on the floor and caught his foot, re-

*Determination of Facts and Rule for Judgment*

sulting in an injury to the great toe of his left foot when the wheel of the truck struck the said toe.

4. Petitioner claimed that an existing atrophy of the left leg was the result of the trauma to the great toe but, from the medical testimony I feel that the said atrophy existed prior to the said accident of July 3, 1933, and that the said trauma did not in any way aggravate the condition. 10

Whereupon, it is, on this 31st day of May, 1934,

ORDERED that judgment final be entered in favor of the respondent, Turner & Company, Inc., and against the petitioner, Joe Bruno and that no costs or fees be assessed against the said respondent.

JOHN C. WEGNER, 20  
Referee.

I, W. E. STUBBS, Deputy Commissioner and Secretary of the Workmen's Compensation Bureau, hereby certify the foregoing to be a true copy of the Determination filed in this cause.

W. E. STUBBS.

Filed Clerk's Office Sep. 15, 1934.

Hudson County, N. J.  
GUSTAV BACH, Clerk. 30

**Notice of Appeal.**

(Filed June 27, 1934.)

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

10

JOE BRUNO,  
*Petitioner-Appellant,**vs.*TURNER & COMPANY, INC.,  
*Respondent-Appellee.*On Appeal from  
Workmen's Com-  
pensation Bureau

To:

20

Wall, Haight, Carey & Hartpence, Esqs.,  
Attorneys for Respondent-Appellee.Secretary of the Workmen's Compensation  
Bureau, Trenton, New Jersey.County Clerk, Hudson County, Jersey City,  
New Jersey, or to whom it may concern:*Gentlemen:*

30

PLEASE TAKE NOTICE, that the petitioner-appel-  
lant hereby appeals to the Court of Common  
Pleas, in and for the County of Hudson, from  
the Determination of Facts and Rule for Judg-  
ment of the Workmen's Compensation Bureau,  
made in the above-entitled matter on the 31st day  
of May, 1934, dismissing the petition for compen-  
sation herein and entering judgment for the re-  
spondent-appellee.

Respectfully,

40

SAMUEL GREENSTONE,  
Attorney for Petitioner-Appellant.

**Order Extending Time for Filing.**

(Filed July 5, 1934.)

HUDSON COUNTY COURT OF  
COMMON PLEAS.

JOE BRUNO,  
*Petitioner-Appellant,*

*vs.*

TURNER & COMPANY, INC.,  
*Respondent-Appellee.*

On Appeal from  
Workmen's Compensation  
Bureau.

10

Application having been made by Samuel Greenstone, attorney for the above-named petitioner-appellant, to extend the time for filing of the transcript of the record and testimony in the above cause, and good cause having been shown therefor,

20

It is, on this 29th day of June, 1934,

ORDERED, that the time for filing certified copies of the transcript of the record and testimony in the above case be extended until Aug. 30th, 1934.

30

THOMAS F. MEANEY,  
Judge.

40

**Order of Substitution of Attorney.**

HUDSON COUNTY COURT OF COMMON  
PLEAS.

10

JOE BRUNO,  
*Petitioner-Appellant,*

*vs.*

TURNER & COMPANY, INC.,  
*Respondent-Appellee.*

On Appeal from  
Workmen's Com-  
pensation Bureau

20

Application having been made to substitute Henry Harris, Esq., as the attorney for the above-named petitioner-appellant, in place of Samuel Greenstone, who died on August 13, 1934, and it appearing that the petitioner has consented hereto,

It is, on this 18 day of September, 1934,

ORDERED, that Henry Harris, be and is hereby substituted as attorney for petitioner-appellant.

THOMAS F. MEANEY,  
Judge.

30

40

**Memorandum of Opinion.**

(Filed December 10, 1934.)

(Not to be printed or published in either the official or unofficial reports.)

HUDSON COUNTY COURT OF COMMON PLEAS. 10

36086.

JOE BRUNO, <i>Petitioner-Appellant,</i>  <i>vs.</i>  TURNER & Co., INC., <i>Respondent-Appellee.</i>	}	On Appeal from Workmen's Com- pensation Bureau	20
--	---	--	----

Henry Harris, Esq., for Petitioner-Appellant.  
 Wall, Haight, Carey & Hartpence, Esqs., for  
 Respondent-Appellee.

MEANEY, J.

This is an appeal from a judgment of the Workmen's Compensation Bureau in favor of the respondent-appellee. 30

The petitioner-appellant alleged that on July 3rd, 1933, while employed by the respondent-appellee, he fell backwards, injuring his sciatic nerve, which caused an atrophy of the left leg and a foot drop of the same.

The respondent-appellee contended that the atrophy of the leg was of long standing and not related to the accident.

The petitioner-appellant testified that he had been employed by the respondent-appellee for over 40

*Memorandum of Opinion*

eleven years doing heavy and laborious work and that his left leg was in no way disabled until the aforementioned accident of July 3rd, 1933. This testimony is corroborated by the petitioner-appellant's witnesses.

10 I find from an examination of the entire record that this admitted atrophied condition of the petitioner-appellant's leg did not exist prior to the date of the accident in question.

It seems inconceivable to me that the petitioner-appellant, employed at this particular kind of labor for a period of eleven years, suffered during that time from an atrophied condition of his leg equal to a two-third disability of that leg. That there was no such apparent condition of the leg is apodictic.

20 With this statement of fact decided in favor of the petitioner-appellant, I am constrained to reverse the judgment of the Court below and I find that the petitioner-appellant did receive a compensable injury while employed by the respondent-appellee.

30 The judgment of the Workmen's Compensation Bureau is therefore reversed and judgment entered in favor of the petitioner-appellant and against the respondent-appellee for 116.2/3 weeks compensation at the compensation rate of \$13.33 per week, together with costs.

THOMAS F. MEANEY,  
J.

**Judgment and Order.**

(Filed January 11, 1935.)

HUDSON COUNTY COURT OF  
COMMON PLEAS.

JOE BRUNO,

*Petitioner-Appellant,**vs*

TURNER &amp; Co., INC.,

*Respondent-Appellee.*

10

On Appeal from  
Workmen's Com-  
pensation Bureau

A petition for compensation having been filed in the above-stated matter by the petitioner-appellant, praying for compensation, to which he might be entitled by virtue of the terms and provisions of the Workmen's Compensation Act of the State of New Jersey, and the supplements and amendments thereto, and the respondent-appellee having filed an answer to the aforesaid petition; and the matter having come on for formal hearing before the Deputy Commissioner of the Workmen's Compensation Bureau, and after having heard the testimony presented on behalf of the parties hereto, the said Deputy Commissioner did, on May 31, 1934, Order that judgment be entered in favor of the respondent-appellee, and against the petitioner-appellant; and the petitioner-appellant having thereupon appealed to the Hudson County Court of Common Pleas, from the Order of the Workmen's Compensation Bureau, dismissing the said petition, and the said appeal having come on for hearing before me as Judge of the Hudson County Court of Common Pleas, the peti-

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30

40

*Judgment and Order*

10 tioner-appellant being represented by Henry Harris, and the respondent-appellee being represented by Charles J. Gormley of Wall, Haight, Carey & Hartpence, and after having reviewed the evidence and testimony taken in the Workmen's Compensation Bureau, and considered the  
10 briefs filed by counsel, from all of which it appears that the Workmen's Compensation Bureau erred in dismissing the petition for compensation.

I therefore find and determine as follows:

1. That on July 3, 1933, the petitioner-appellant met with an accident arising out of and in the course of his employment by the respondent-appellee when the big toe of his left foot was run  
20 over by a hand truck causing him to fall backwards to the floor striking his back and causing him injury to the sciatic nerve, which caused an atrophy and foot drop of the left leg.

2. That the petitioner-appellant, as a result of the aforesaid injury, suffered a disability of 66- $\frac{2}{3}$ % of the left leg amounting to 116- $\frac{2}{3}$  weeks compensation, at the compensation rate of \$13.33 per week.

30 3. The medical expenses of the aforesaid action are as follows: Dr. Vincent Rigerone \$35.00 for court appearance and treatment; Dr. Otto Lowy \$60.00 for blood examination and court appearance; Dr. Lawrence A. Cahill \$50.00 for X-rays and court appearance; Dr. C. C. Beling \$25.00 for examination. The said medical expert fees are to be paid \$85.00 by the petitioner-appellant, and \$85.00 by the respondent-appellee.

*Judgment and Order*

The stenographic fee of \$105.00 for the transcript of testimony herein is to be paid by the respondent-appellee.

The attorney for petitioner is to receive a counsel fee of \$350.00 payable \$150.00 by the petitioner-appellant, and \$200.00 by the respondent-appellee.

It is, therefore, on this 10th day of January, 1935, 10

ORDERED, that the Judgment and Order of the Workmen's Compensation Bureau, dismissing the petition in this case, be reversed, and that judgment be entered in favor of the petitioner-appellant and against the respondent-appellee for 116- $\frac{2}{3}$  weeks compensation, at the compensation rate of \$13.33 per week, payable from last date of payment of compensation. 20

IT IS FURTHER ORDERED, that the respondent-appellee pay \$85.00 on account of the medical expert fees, together with \$105.00 for transcript of testimony herein.

IT IS FURTHER ORDERED, that the respondent-appellee pay \$200.00 on account of counsel fee of petitioner-appellant's attorney. together with costs to be taxed.

THOMAS F. MEANEY, 30  
Judge.

**Judgment.**

(Entered, January 11, 1935.)

HUDSON COUNTY COURT OF  
COMMON PLEAS.

10

JOE BRUNO,

*Plaintiff,**vs.*

TURNER &amp; Co., INC.,

*Defendant.*Judgment entered  
January 11, 1935.

Damages	\$1,555.17
Medical Fees	85.00
Stenographic Fee	105.00
Counsel Fee	200.00
Costs	58.34

Total \$2,003.51

HENRY HARRIS,  
Attorney.

20

Judgment "Finding of Facts and Determination" in the above entitled cause was entered in this Court on the 11th day of January in the year of our Lord One Thousand Nine Hundred and Thirty-five, in favor of the plaintiff Joe Bruno and against the defendant Turner & Co., Inc., in a plea of Action at Law for the sum of Fifteen hundred fifty-five Dollars and Seventeen Cents damages; Eighty-five Dollars Medical Fees; One hundred five Dollars Stenographic Fees; Two hundred Dollars Counsel Fee; and Fifty-eight Dollars and Thirty-four cents costs of suit.

30

Judgment entered and signed this 11th day of January, 1935.

THOMAS F. MEANEY,  
Judge.

40

### Testimony.

NEW JERSEY DEPARTMENT OF LABOR,  
 WORKMEN'S COMPENSATION BUREAU,  
 JERSEY CITY, HUDSON COUNTY DISTRICT.

JOE BRUNO, <i>Petitioner,</i>  <i>vs</i>  TURNER & COMPANY, INC., <i>Respondent.</i>	}	10       April 6, 1934.
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Before:

HONORABLE JOHN C. WEGNER, *Referee.* 20

Appearances:

SAMUEL GREENSTONE, Esq., for the Petitioner.

WALL, HAIGHT, CAREY & HARTPENCE, Esqs.,  
 by CHARLES GORMLEY, Esq., for the Respon-  
 dent.

JOE BRUNO, the Petitioner called as a witness  
 on his behalf, being duly sworn, testified as fol- 30  
 lows:

(Discussion between Court and Counsel.)

*Direct examination by Mr. Greenstone.*

Q. Mr. Bruno, how long you work for com-  
 pany? A. Over eleven years.

Mr. Greenstone: We can stipulate the  
 wages, I assume.

40

*Joe Bruno—Direct*

The Court: Twenty Dollars a week. \$13.33 is admitted in the answer. The alleged accident occurred on July 3rd. Is there a question of accident?

10 Mr. Gormley: That we don't know, nothing more except his statement to us. For the purpose of the record we deny the accident. We have no information other than his report. There is, therefore, a general denial that the accident happened and we leave him and that part to proof.

*By Mr. Greenstone.*

Q. On July 3, 1933, what happened to you while working for the company? A. Well, I was against truck.

20 Q. Talk slow and loud so we can understand you. A. I slip on the floor, catch on foot (indicating).

Mr. Greenstone: He needs an interpreter, your Honor.

The Court: No, I don't think so. He is indicating the toe, large toe.

*By Mr. Greenstone.*

30 Q. Tell us what work you were doing that time when this happened? A. I work on the tinning room and have stuff all—

The Court: You had work or stuff on the truck?

The Witness: Yes, I work on the truck, take stuff from big tin, take stuff from big tin to drop on truck. After load the truck start to pull them out.

*Joe Bruno—Direct**By Mr. Greenstone.*

Q. Who started pulling it out? A. Myself and another man push, two man push. I was in front and another man he was in back push.

Q. You mean in the back of the truck? A. Yes.

Q. You were in front of the truck? A. I in front of truck, yes. 10

Q. Tell us what happened. A. My foot, this foot (indicating) was catch on piece of wood.

The Court: It was caught on a piece of board?

The Witness: Yes, because floor was, you know, no good, rough.

*By Mr. Greenstone.*

Q. Go ahead. A. This foot slip off (indicating) and I fall down flat. 20

Q. Which foot slipped off? A. This one (indicating).

The Court: Indicating the left one.

The Witness: Left one. I fell down flat. Catch this one on the wheel (indicating).

Mr. Greenstone: Indicating the left foot.

The Witness: Yes, left.

*By Mr. Greenstone.*

30

Q. Which foot first slipped? A. Well, this one slipped (indicating). This one catch on the board (indicating).

Q. This one caught on the board (indicating)? A. Yes.

Q. What do you mean by "catch on the board"? A. Well, when pull—

Q. You mean the right foot—indicating the right foot? A. Yes, this one (indicating). 40

*Joe Bruno—Direct*

Q. What happened when it "catch on the board"? A. We go over there—

Q. What do you mean by "catch on the board"? Was there a nail on the board? A. Piece of board was loose. Piece of board was loose, you know, somebody he forgot to nail up that piece of board.

10

Mr. Gormley: I object to that.

The Witness: He forgot to nail up that piece of board.

The Court: Strike it out.

Mr. Greenstone: It does not matter.

Mr. Gormley: The right foot was caught.

Mr. Greenstone: In the floor, I guess.

The Court: The left foot slipped and he fell.

20

*By Mr. Greenstone.*

Q. Now, when you fell how did you fall? A. Well, I fall because I slip up—

Q. How did you fall? A. After catch the wheel?

Q. Yes. A. Catch on my thumb. I fall down that way (indicating) and start to holler. Some peoples they come in and help me, pick me up.

The Court: Did you fall on your back?

30

The Witness: Yes, flat; flat.

*By Mr. Greenstone.*

Q. Is there any places, machinery around there or what? A. Oh, yes. Machine one side, machine another side. No room enough for the truck. You know what I mean, about so wide (indicating).

40

Q. Just show the judge again. A. About so wide, you know. You know what we got the truck in the middle, when we was loading you know—

*Joe Bruno—Direct*

The Court: It does not make any difference how wide the truck is.

Mr. Greenstone: Indicating, your Honor please—

The Court: Three and a half feet.

*By Mr. Greenstone.*

10

Q. Go ahead, tell the story. A. Well, after boss—you know, these two guy help me, pick me up.

Q. Who was the two guys that picked you up? A. Over there (indicating).

Q. Who were the men? A. This one over there (indicating) and another one in the back (indicating).

Q. What is the name of this man (indicating)? A. Dominick.

20

Q. And what is the other man's name? A. Quinto (indicating).

Q. What is his name? A. Tony Quinto.

Q. And the other man's name was Dominick Guedo. Those two men (indicating)? A. Yes. That one picked up me (indicating).

Q. What did they do when they picked you up? What did they do when they picked you up? A. Well, pick me up, bosses come after and say what did happened over here. Foreman says, "What happened over here?" "Well, Joe fall down."

30

Q. Who was that said to, the foreman, Dell Assandro? A. Dell Assandro. He got hold of me and he come in the office, take pail water, put some salt in, put feet in. I sit down there for half hour, about twenty minutes; after, you know, I start, you know, cold, you know, fever.

Q. Fever? A. Fever.

Mr. Gormley: He had fever?

The Court: Had cold and fever.

40

*Joe Bruno—Direct*

The Witness: After about for about after twenty minutes.

The Court: Chills and fever?

The Witness: Yes.

*By Mr. Greenstone.*

10 Q. Go ahead? Then what did you do? A. Boss take me in the office. He put me in pail of salt water. Then says, "Can't stand it. Can't stand up." Says, "I give you job sit down." Me no feel I go sit. I says, "I want doctor right away." "All right," he says. "If you want to go doctor I telephone." He don't know if the doctor is home. I telephone in the office and the watchman says, "Yes, all right, go ahead, hurry up; doctor is home."

20 Q. Yes, but slow, slow. A. Doctor is home.

Q. Yes, go ahead. A. I got down there to see the doctor about—I don't know—maybe about half past seven; between eight and seven I was in doctor.

Q. What doctor, Dr. Hoops? A. Yes, Dr. Hoops no home that night.

Q. Dr. Furman? A. Dr. Furman, yes. Hoops no home that night.

30 Q. He is the assistant to Dr. Hoops?

Mr. Gormley: Just a minute, let him testify.

Mr. Greenstone: Is there any question about that?

Mr. Gormley: There is a question there. Dr. Hoops is not the first doctor as I understand it.

The Witness: Dr. Hoops was no home that night, assistant.

40

*Joe Bruno—Direct*

Mr. Greenstone: He says his assistant is the first doctor.

*By Mr. Gormley.*

Q. Is Dr. Hoops the first one that attended you?

A. No, no.

10

Mr. Gormley: That is what I want to find out.

The Witness: No.

*By Mr. Greenstone.*

Q. Where was the first office you went to, the first doctor's office? A. I don't remember the name, he is Mr. Hoops' helper. I don't know what he is. He is under this, he is—another office, another Mr. Hoops.

20

Q. Not Mr. Hoops' office first—Dr. Hoops? A. No.

Q. Who was the first doctor, where was this office?

Mr. Gormley: Dr. Furman was the first doctor.

(Discussion between Court and counsel.)

The Court: What date was that on, July 3rd?

Mr. Gormley: Yes.

30

*By Mr. Greenstone.*

Q. Then were you treated after that? A. Well, only way to do put bandage on this night. He says, "Keep them bandage on," and he put piece of stick on and tie it up. He says, "Tomorrow I want you in the hospital; I want X-ray."

Q. He said that he wants you in the hospital tomorrow and he wants to take an X-ray? A. Yes.

40

*Joe Bruno—Direct*

Q. Did they take you to the hospital the next day? A. No, I was slip all along and I take taxicab and I going down there to the taxicab in the morning.

Q. Where, in the hospital? A. Yes.

10 Mr. Greenstone: Is that agreed, the Fairmount Hospital? It is agreed that he went to the Fairmount Hospital, is that right?

Mr. Gormley: Yes.

*By Mr. Greenstone.*

Q. How long were you treated by Dr. Furman? A. Dr. Furman, I don't remember; maybe weeks. I don't know.

20 Q. About a week Dr. Furman treated you? A. I don't remember how many days.

Q. After Dr. Furman treated you, who treated you? A. Mr. Hoops, Dr. Hoops.

Q. Dr. Hoops? A. Yes, sir, Dr. Hoops.

Q. And then you were treated until when? A. Well, I don't remember when he stop.

Mr. Greenstone: Can we agree that it was on December 11th?

Mr. Gormley: No, I don't know.

30 Mr. Greenstone: Dr. Hoops can tell us.

Mr. Gormley: He says he does not remember.

The Witness: Over five months.

Mr. Greenstone: Over five months? It will come out exactly later on.

Mr. Gormley: Did you say over five months?

The Witness: No. A long time. I don't remember. Four months, I think.

40 Mr. Gormley: Four months?

*Joe Bruno—Direct*

The Witness: About four months, five months work steady. I was down there steady there every day three times a week.

*By Mr. Greenstone.*

Q. Five times a week? A. Three times a week steady. 10

Q. When was the last time you were treated? Do you know the date? Was it after Christmas.

A. I don't remember.

Q. Or before Christmas? A. I don't remember.

Q. Was it before New Year's, a little while before New Year's?

Mr. Gormley: He says he does not remember. 20

Mr. Greenstone: I will leave it to Dr. Hoops.

The Court: There is no question of temporary, is there?

Mr. Greenstone: Yes, there is.

Mr. Gormley: Yes, there is. There is some question of temporary.

The Court: There is?

Mr. Greenstone: There is a question about temporary disability. 30

The Witness: I don't remember the day when he stopped.

Mr. Greenstone: Yes, but I understand the temporary was to December 11th.

Mr. Gormley: I don't know; let it come out in the testimony.

Mr. Greenstone: The answer, I think, will tell us that.

The Court: You paid about twenty weeks temporary? 40

*Joe Bruno—Direct*

Mr. Greenstone: Yes, it says that; he was paid temporary from July 3, 1933 to December 4, 1933.

The Court: \$179.00.

*By Mr. Greenstone.*

10 Q. Now, were you treated also by another doctor besides Dr. Furman and Dr. Hoops? A. Dr. Rigerone.

Q. When did you see Dr. Rigerone? A. I see him the second day. July 4th.

Q. July 4th? A. Yes.

Q. That is the day after the accident? A. In the morning.

Q. In the morning? A. Yes.

20 Q. Did you see him a number of times after that? A. Oh, yes.

Q. Altogether, how many times did he come to treat you after that? A. He come in three or four times, of course, he come to see me.

Q. He came daily, a lodge doctor? A. Yes, a lodge doctor. He is supposed to come to see me. He is not treat me anyway, just come see me.

Q. How long have you belonged to this lodge? A. Thirteen years.

30 Mr. Gormley: That is objected to as immaterial.

The Court: Objection sustained.

Mr. Greenstone: I want to bring out the disability benefits so far.

The Witness: Thirteen years.

Mr. Greenstone: I don't know what harm there is in it. What harm can there be?

Mr. Gormley: What is the ruling?

The Court: Objection sustained.

40 Mr. Gormley: Strike out the answer.

*Joe Bruno—Direct*

Mr. Greenstone: I withdraw the question.

*By Mr. Greenstone.*

Q. Now, Dr. Rigerone saw you today also? A. Yes, sir.

Q. Dr. Cahill saw you today? A. No, don't see me today. 10

Q. The man with the mustache? A. No.

Q. You saw him sitting—

Mr. Gormley: He said no.

The Witness: Doctor?

Mr. Greenstone: Give me a chance to ask the question. Give the man a chance. He does not know who Cahill is.

Mr. Gormley: Why did you ask him?

Mr. Greenstone: Just a minute. I am trying to describe the doctor. 20

Mr. Gormley: What is the difference?

*By Mr. Greenstone.*

Q. Dr. Ruoff saw you, this gentleman here (indicating)? This doctor saw you? A. Oh, sure, he see me.

Q. He saw you a few times? A. I don't remember what times; about two or three times I see him over there in the room (indicating). 30

Q. That room on the side? A. Yes.

Q. Is that when two or three doctors saw you that day? A. More than that two.

Q. Now, what is the matter with your foot and with your leg? A. What is the matter because is crippled for life with that.

Q. How is it crippled? A. What you mean? Because I living skeleton.

Mr. Gormley: I object to the question, if the Court please. If the Court please, there 40

*Joe Bruno—Direct*

is no testimony about any foot or leg injury as yet. I think it is up to him to testify as to what the trouble is himself.

Mr. Greenstone: That is what I am trying to get at.

10 Mr. Gormley: Don't lead him.

Mr. Greenstone: Oh, your objection is that it is leading?

The Court: Objection sustained.

*By Mr. Greenstone.*

Q. What is the matter with your leg, if anything?

Mr. Gormley: That is objected to.

The Court: Objected sustained.

20 Mr. Greenstone: How are we going to put the question?

The Court: You ought to know; you have been practicing for forty years.

*By Mr. Greenstone.*

Q. Is there anything the matter with your leg?

Mr. Greenstone: Forty years? I object to that, not quite forty years.

30 Mr. Gormley: That is objected to.

The Witness: Because the man—

Mr. Gormley: I object to that—just a moment.

The Court: Objection sustained.

*By Mr. Greenstone.*

Q. Is there—tell the Court what is the matter, if anything, with you at this time. A. Well, this truck go on top big toe, smash up.

40

*Joe Bruno—Direct*

Mr. Greenstone: He didn't get the question.

(To the reporter) Will you please repeat the question?

(The reporter read the last question as follows: "Tell the Court what is the matter, if anything, with you at this time?")

10

*By the Court.*

Q. What is the matter with you now? What is wrong with you? A. When is bad day like this only rainy, you know, pain me little and feel weak.

*By Mr. Greenstone.*

Q. Is that all that is the matter with you, just pain and feel weak? A. Pain and feel weak; I can't walk much.

20

Q. You can't walk much? A. Six or seven blocks and feel tired.

Q. Is this—was this like the same as it was before the accident? A. The same? What you mean, "same"?

Mr. Gormley: I object, if it please the Court, as the witness has answered as there is nothing the matter with him except pain and weakness in weather such as this and it becomes affected then.

30

Mr. Greenstone: He said he can't walk in weather like this.

Mr. Gormley: That was brought out by your insistent question.

The Court: He says he could not walk much.

Mr. Gormley: I don't mind that. I think he should be precluded from going further unless he himself testifies.

40

*Joe Bruno—Direct*

Mr. Greenstone: I want the testimony of the witness.

Mr. Gormley: Don't lead him all the way through.

The Court: Suppose we proceed.

10 Mr. Greenstone: Of course, your Honor realizes I am trying to do the best I can without an interpreter. That is the only reason I have for questioning him along this line, and furthermore, I will forego my examination if Mr. Gormley will consent to have your Honor examine him or whichever way the Court deems best. The witness cannot intelligently understand the language. I am wondering if

20 Mr. Gormley: I am not afraid of the question. I am not afraid of it.

Mr. Greenstone: I don't want to lead the witness.

The Court: He testified he has pain in the leg, feels weak, cannot walk much, and that weather like today causes pain.

*By Mr. Greenstone.*

30 Q. Could you work with this leg since the accident?

Mr. Gormley: I object to that.

The Witness: No.

Mr. Gormley: There is no foundation for the question.

Mr. Greenstone: He says he can't walk much, that is the question I asked him.

The Court: Suppose you lay your foundation first.

40 Mr. Greenstone: That is the foundation.

*Joe Bruno—Direct**By Mr. Greenstone.*

Q. What do you mean by saying that you can't walk much? Explain to the Court what you mean by that. A. Well, when I walk on the street I walk about five or six blocks and be tired.

Q. Why do you get tired? Why? A. No strength; no strong enough leg. 10

Q. Which leg? A. Left; left one.

Q. Show the leg to the Court. A. This one (indicating).

Q. Turn around this way (indicating). Show both legs; show it up further (indicating). I am indicating the right and left legs of the petitioner.

The Court: You are going to have medical testimony?

Mr. Greenstone: Yes. 20

The Court: You are going to have medical testimony but you are now showing the difference in the size?

Mr. Greenstone: Yes, of course.

*By Mr. Greenstone.*

Q. Now, tell us how the leg was before this accident, the left leg. A. Well, just the same as this one (indicating).

The Court: Indicating the right leg. 30

*By Mr. Greenstone.*

Q. What do you mean by "the same as this one"? How do you mean "the same"? A. Well, I always felt strong the same as this one (indicating) before. I think got to be the same.

Q. As to looks, what have you got to say before the accident, how did it look before the accident?

A. It was good. 40

*Joe Bruno—Direct*

Q. I mean outside of looking good, was it all right? A. Look same as this one (indicating).

Q. Indicating the same as the right leg? A. Yes, sir.

10 Q. Were you able—withdraw that. How did you work before this accident?

Mr. Gormley: That is objected to. I don't know the purpose of it. What is the purpose of it?

Mr. Greenstone: Merely to show whether the man was able to work before the accident.

Mr. Gormley: That is admitted.

Mr. Greenstone: You admit that he was working at manual work, laboring work before the accident.

20 *By Mr. Greenstone.*

Q. What kind of work did you do before this accident? A. Well, I work on tinning, heavy work, tanks, heavy work all the time, whiz.

The Court: One of those whiz machines?

The Witness: Yes.

*By Mr. Greenstone.*

30 Q. Was this—how much did that weigh? A. Some bag weigh about one hundred and fifty, some bag two hundred pounds; raise it up and put it on the truck, that's all.

Q. Did you try to work? A. No.

Q. Why not? A. No try.

Q. Why not? A. Where you going to try?

Q. Would they give you a job in the same place?

Mr. Gormley: That is objected to unless you tried to get a job.

40 The Witness: I could not try.

*Joe Bruno—Direct*

Mr. Gormley: He didn't try.

The Witness: No try.

*By Mr. Greenstone.*

Q. Do you think you will be able to do the same kind of work as before? A. No.

10

Mr. Gormley: I object to that—just a minute—the question is, “Do you think you will be able to do the same kind of work as before?”

The Court: Were you going to say something?

Mr. Gormley: I object to the question as to what he will be able to do and what he thinks he will be able to do.

The Court: Objection sustained.

20

*By Mr. Greenstone.*

Q. Did you try to do lifting things around the house, trying to do something? A. Yes.

Q. Well, how did you make out? A. Last week I buy load wood, load some lumber like railroad ties. I got hold of one and want to put it in to cut them in the yard. I take half way and I got tired for the feet, have this one (indicating).

Mr. Gormley: What was that answer?

30

(The reporter read the last answer.)

*By Mr. Greenstone.*

Q. Are you able to stand on that leg good? A. No.

Mr. Gormley: I object to the form of the question.

The Witness: I stand when I got shoe, you know; I stay but I can't put heels on the floor; I can put.

40

*Joe Bruno—Direct**By Mr. Greenstone.*

Q. Did you ever have any trouble like that at all before this accident with that leg? A. No. I have teeth about four or five years ago I was sick about a few weeks.

10 Q. Did you have an accident some twenty years ago of the head? A. Yes.

Q. How long were you laid up with the head accident? A. Two weeks and after we start to work in concrete place.

Q. How long did you work for this company? A. Over eleven years.

Q. You got people in Court who saw you working? A. Yes, I got—wait a minute. Over twelve years. I don't remember, but over twelve years  
20 anyway.

Q. You got people who worked with you before this accident? A. Yes.

Q. How did you—how did you walk when you walked? Did you walk—do you walk the same as before the accident? A. Where you going to work some?

Q. Walk, not work. Do you walk the same as before the accident? A. No.

Q. Why not? A. Where you going to walk?  
30 Before I have two legs good. Now I got one leg.

The Court: How did you walk? How do you walk now? Your walking.

The Witness: Walk?

*By the Court.*

Q. Do you walk now the same as you did before you got hurt? A. No, no, no, can't do.

Q. You don't? A. What you going to do? See  
40 this is skinny (indicating) this I could not put heels on floor, get tired quick (indicating).

*Joe Bruno—Cross*

Mr. Greenstone: I guess that is all.

*Cross examination by Mr. Gormley.*

Q. Were you doing the same kind of laborious work from the time that you were employed for the respondent, Turner & Company? A. Turner and Company? 10

Q. You were doing the same work for twelve years? A. No, I never do the same. I was two years watchman, but down there after, you know, I no have no like same watchman and they put me in tinning room. I go to boss and he tell me if you want job over here I can put you do heavy work. I tell him I no care what you put me I no want to stay watchman.

Q. How long ago was that? A. Tinning room I worked over four years straight. 20

Q. How long before this alleged accident were you doing heavy laborious work? A. Before that?

Mr. Greenstone: What does he know about laborious work, for Heaven's safe?

Mr. Gormley: Why don't you object and don't be insulting?

Mr. Greenstone: I don't want to be insulting, but why don't you get into this man's language? 30

*By Mr. Gormley.*

Q. Do you know what laborious work is? A. No.

Q. Do you know what hard work is? A. Hard work?

Q. Yes. A. Yes.

Q. What is hard work? A. Hard work is no say tank what you put good, not to make good. 40

*Joe Bruno—Cross*

Q. That is hard work? A. That is hard work.

Q. How long were you doing that kind of work before the date of this alleged accident? A. Oh, I work all the time only two years I no work hard work, but rest I got hard work all the time.

10 Q. Up until that day, the day of the alleged accident, you were doing the similar kind of work, the same kind of work that you did before, lifting this heavy stuff up and putting it in the truck? A. Yes.

Q. Moving the truck? A. Yes.

Q. Your duties were to put the heavy stuff in the truck? A. Yes.

Q. Then you pushed the truck? A. Pushed the truck, cart on whiz.

20 Q. You carted it on the whiz. Now, did you ever have any assistance when you put the wet goods into the— A. Assistance?

Q. Did you have any assistance, a helper when you put the goods into the truck? A. Yes.

Q. How many people assisted or helped you on that? A. Well, sometimes I have two, sometimes I only have one.

30 Q. Is that the stuff that you say weighed about one hundred and fifty pounds? A. Well, yes, I got to work all alone.

Q. You have to work all alone? A. Yes.

Q. What did you mean when you said that you had two or three people helping you? What did they help you with? A. Well, I take one, he had another one, you know.

Q. Which one did you—withdraw that. Each one of you took separate bundles, is that the idea? A. Yes, sometimes when you have strong man help you put on the truck. I have people push

*Joe Bruno—Cross*

the back and in front I am; stand on the truck and taking the tank over here and put on the top of truck, just push with the hands.

Mr. Greenstone: Indicating from one place to another with his hands.

The Witness: When people strong. 10

*By Mr. Gormley.*

Q. How often did you carry the—these wet goods that you call “wet goods”? A. Yes.

Q. How often did you carry wet goods from the place that you got them to the truck? A. About fifteen or twenty feet; about that, fifteen feet far.

Q. Were those goods wet goods, on an elevation, raised part? A. Yes.

Q. So then you took it from this raised part, took it about fifteen feet, put them on this truck on wheels, is that the idea? A. Going to put about twenty-four, twenty-six back on truck; after going to carry on the truck, after bring on whiz, put inside on the whiz to dry. 20

Q. After you did that, what did you do? What was the usual thing after you got them in this truck? Did you push them or pull them somewhere else? A. To going to get hold of lots of bags and put them in whiz to dry. 30

Q. How often did you have to go to do that? How often did you push it or pull the truck? A. Floor fifteen feet far.

Q. How many people were engaged in pushing or pulling the truck? A. Oh, sometimes two or three.

Q. At the time that you claim to have been injured, how many people were helping in pushing or pulling this truck? A. I says two or three.

Q. Two or three? A. Yes. 40

*Joe Bruno—Cross*

Q. You were pulling the truck? A. Yes.

Q. As I understand it, your right foot caught, your foot slipped under the wheel of this truck and went over your big toe of the left foot? A. Left foot under the wheel of the truck, left one.

10 Q. How long did you remain in that position on the floor; you say you fell down flat on the floor if I remember it? A. Yes.

Q. How long were you there in that position? A. Oh, no stay long. Peoples down there get hold of me quick, you know, take me off the room, rest me, make me sit down little bench.

Q. Then you got up and sat down with the aid or help of these two? A. Yes.

20 Q. With those two men? A. Yes, two mens over there (indicating) help me that day.

Q. Did you then try to continue your work? A. The boss, he says, you want to try.

Q. Never mind about what the boss said. A. The foreman—

Q. Did you do anything after that in the plant? A. No.

Q. You went home then? A. Yes.

Q. Came back the next day? A. No.

Q. You never came back after that? A. No.

30 Q. Now, when did you first notice that your legs were different in what you call "looks"? A. Well, after weeks was so, after two weeks maybe.

Q. Why didn't you look at them before that? A. Before is good.

Q. Did you look at them before this accident? A. I see little bit every day getting skinny.

Q. Did you examine your legs at any time before the date of this alleged accident? A. Every day.

*Joe Bruno—Cross*

Q. Every day? A. Yes, sir.

Q. Why? A. Every day.

Q. Why did you examine them every day before this accident? A. What you are going to examine? Leg is good long before accident, never examined that time.

Q. Well, as I understand you, did you mean— 10  
A. I understand.

Mr. Greenstone: He didn't say—

*By Mr. Gormley.*

Q. Every day before the accident you examined—

Mr. Greenstone: No, no.

The Court: He said he didn't examine 20  
them.

Mr. Greenstone: He said that he did—

Mr. Gormley: Let him answer it.

Mr. Greenstone: Well, the Court is satisfied.

The Court: Just a minute. Ask him the question again.

Mr. Gormley: I don't know what I am going to ask him now.

Mr. Greenstone: There is no use trying to 30  
catch this poor fellow.

Mr. Gormley: Don't be silly.

*By Mr. Gormley.*

Q. Before the accident you never examined your legs?

(The reporter read as follows: "Why did you examine them every day before this accident"?)

*Joe Bruno—Cross**By Mr. Gormley.*

Q. Before the accident you never examined your legs? A. Before the accident?

Q. Yes. A. Sure examined legs; leg is good. What are you going to examine leg?

10 Q. Don't let me mislead you as counsel has accused me of doing. Before the date of the alleged accident, did you examine—did you ever examine or compare your two legs? A. Before?

Q. Before the accident. A. Before accident is good, I have two legs what is good.

Q. Before, you did examine them, before the accident? A. Why you are going to examine because I have two legs good? What you say good legs?

20 Q. I don't want to argue. Did you look at your legs to see how one compared against the other any time before the date of this accident? A. No. I looked after.

Q. Before that you never looked at them at all? A. No.

Q. You did say on your direct examination, did you not, when Mr. Greenstone put the question to you, that before the accident your legs looked good? A. Mr. Greenstone? What is know Mr.  
30 Greenstone if leg is good?

Q. Don't you know?

Mr. Greenstone: He said what business is it of Mr. Greenstone; how would Mr. Greenstone know?

The Court: He didn't understand your question.

*By Mr. Gormley.*

40 Q. When Mr. Greenstone asked you questions— A. Yes.

*Joe Bruno—Cross*

Q. (Continuing.) He asked you how your legs were before the accident and you answered good.  
A. Yes, it was good.

Q. That they looked good. A. Yes, before accident it was good.

Q. How do you know they looked good before if you didn't examine them before the date of the accident? A. I know myself because I feel good then. 10

Q. You felt good? A. I feel good before; I know myself, I says.

Q. Then you said it looked good; you didn't mean that you looked at your legs? A. It was good before. No use trying to mix up. I have two good legs before. I got no bum leg.

Q. So you never examined them before the accident but you know they were good, and some weeks after the accident you found that there was a difference in the legs, and that there was a difference in the looks of them; that is what you mean? A. It looks different. 20

Mr. Greenstone: If the Court please—all right.

The Witness: Before is good.

Mr. Greenstone: I would like to say this your Honor; if we are going to have a technical examination— 30

The Court: What question are you objecting to?

Mr. Greenstone: It has been answered, but if it is going to be a technical examination I think we ought to get an interpreter for this man.

The Court: We are getting along nicely.

*Joe Bruno—Redirect*

Mr. Greenstone: I am not going to have him prejudiced. I do not want to have his rights jeopardized.

The Court: Neither do I. I will see to it that his rights will not be jeopardized.

10 Mr. Gormley: Now, before we get started on this case, if those remarks are going to continue we are going to have some trouble. There will be a fight started.

The Witness: I got peoples talk better than me.

Mr. Gormley: I don't know whether we have been accused of jeopardizing the witness. or counsel, or being disrespectful to the Court.

20 That is all.

*Redirect examination by Mr. Greenstone.*

Q. Did you ever take a bath? A. Yes, sir.

Mr. Gormley: That is objected to.

The Court: Objection sustained.

The Witness: I got two guys here (indicating).

Mr. Gormley: Just a minute.

30 *By Mr. Greenstone.*

Q. Did you ever take a bath—did you ever take baths before this accident? A. Before, yes.

Q. Before the accident? A. Last summer I have about four weeks straight on the bed in Coney Island, take showers.

Q. I mean—

The Court: You were there for four weeks?

40 The Witness: Swimming in the water, swim in the water.

*Joe Bruno—Redirect**By Mr. Greenstone.*

Q. In the water? A. Yes.

Q. Well, did you look around yourself, look at yourself when you took these baths? A. Sure, yes. I got one guy over there—

Q. You meant they went swimming with you? 10  
A. Yes.

Q. Before this accident? A. Oh, about last summer.

Q. That is before the accident? A. Yes, before.

The Court: The accident happened on July 3, 1933.

Mr. Greenstone: He said last Summer.

*By Mr. Greenstone.*Q. You mean before this accident? A. Yes, 20  
first year I got four weeks; last year two weeks, you know, it was every Sunday.

Q. You mean you had a vacation and stayed in Coney Island? A. No, just every Sunday went down there.

Q. You went down there every Sunday? A. Yes.

Q. Well, this last Summer, when was it, last Summer that you went to Coney Island? A. About August, I think. 30

Q. Is that after the accident or before? A. Before.

The Court: The accident happened on July 3, 1933.

Mr. Greenstone: It just shows how you can get along without an interpreter.

The Witness: First years no get much bad.

*Joe Bruno—Recross**By the Court.*

Q. Last year did you go to Coney Island? A. Just a couple of times; it was cold.

Q. Before the accident you didn't go swimming and last summer— A. No, I was no.

10 Q. It was cold in June? A. I was inside in hot water.

*By Mr. Greenstone.*

Q. Hot water? A. Yes, sir.

Q. The pool? A. Yes, inside, you know.

Q. Was this before the accident? Was this before the accident? A. No, before it was Coney Island before. Now I got couple of showers this year inside.

20 Q. Inside you go to take a shower, you went to take a shower inside, this year, too? A. Yes; last year I going with that man (indicating); two years ago with that man and take bath.

Q. When you go before this accident— A. Yes.

Q. (Continuing.) To take showers and baths, did you look at yourself? A. Yes, sir.

Q. Did your legs look like they look now? A. No.

Q. Before the accident? A. No.

30 Q. You are sure about that? A. I sure—excuse my—I was altogether, make a lot of joke, sit on the sand, play around.

Mr. Greenstone: That is all.

*Recross examination by Mr. Gormley.*

Q. Now, you said you looked at your legs before the date of this accident?

Mr. Greenstone: We have to show them off.

40 The Witness: What you mean?

*Joe Bruno—Recross*

Mr. Gormley: Just a minute.

The Court: Please, Mr. Greenstone.

*By Mr. Gormley.*

Q. You said before the accident you did look at your legs, didn't you? A. After look at legs I know it was good before. 10

Q. When I asked you a question before you said you had no reason to look at your legs, didn't you, that they were good? A. Sure, good before.

Mr. Gormley: That is all.

The Witness: Before accident.

The Court: That is all.

Mr. Gormley: Just a minute.

*By Mr. Gormley.*

Q. When did you say you were in the hospital for the head injury? A. Hospital? 20

Q. Yes. A. Yes.

Q. When? A. About seven, eight years ago.

Q. About seven or eight years ago you had an injury to the head? A. Yes, brick, you know.

Q. Is that the scar on your forehead now as the result of it? A. Yes, over here (indicating). Only stay about over two weeks. Only stay about from two weeks and start work again. 30

Q. Well, you were in the hospital for some other ailment? A. Just put medicine on there and after go home.

*By Mr. Greenstone.*

Q. Did you stay in the hospital two weeks? A. No, no, no. An hour long I stay in hospital.

Q. How did you get the injury that caused that scar (indicating)? A. Piece of brick. Car is past and get hold of me and catch me, that's all and knock my head. 40

*Joe Bruno—Recross**By Mr. Gormley.*

Q. That is about seven years ago? A. Yes, was that.

Q. Weren't you in a hospital after that for some other cause? A. No.

10 Q. You were in a hospital, weren't you? A. For teeth.

Q. You were in a hospital for that? A. Yes, pull out the teeth, that's all.

Mr. Gormley: That is all.

*By Mr. Greenstone.*

Q. How long were you in the hospital for the teeth? A. By about half hour, over half hour; I stay in hospital for about half hour and have to wait for the time.

20

*By Mr. Gormley.*

Q. You were there about four weeks, weren't you? A. What?

Q. You were there about four weeks for your tooth condition? A. No, no; just go down there for pulling it out.

Q. Weren't you there from July 1st to July 28th? A. No. I got some cards over here (indicating) say a half hour down there. I no was there for weeks. I got here is the cards from the hospital.

30

Q. Never mind that. Did you ever live at Wallace Street? A. No.

Mr. Greenstone: Do you want those in evidence?

Mr. Gormley: No. That is all.

Mr. Greenstone: We have nothing to hide. If you want those put into evidence, we will do so.

40

*Dominick Guedo—Direct*

(Witness excused.)

(Whereupon an adjournment was taken to  
2:00 P. M.)

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AFTERNOON SESSION.

Mr. Gormley: May I just call the petitioner back for a couple of questions? 10

Mr. Greenstone: You can do it afterwards, can you?

Mr. Gormley: Yes.

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DOMINICK GUEDO, called as a witness on behalf of the petitioner, being duly sworn, testified as follows: 20

*Direct examination by Mr. Greenstone.*

Q. Mr. Guedo, how long have you known Mr. Bruno? A. I can't talk.

Q. How long have you known him. You talk the best you can.

The Court: You can talk?

The Witness: How long?

*By Mr. Greenstone.*

Q. How long? A. About 1933. 30

Q. About 1933? A. Yes.

Q. You didn't know him before 1933? A. No.

Q. How many years do you know Joe Bruno?  
A. 1933.

Q. 1933. Did you know him before the accident?  
Did you know him before the accident? A. I can't talk.

Q. No, you go ahead. You must talk. Did you know him before the accident? A. Yes. 40

*Dominick Guedo—Direct*

Q. How long before the accident do you know him, one year, two years, three years? A. About five years.

Q. About five years. You worked with him at the place five years. A. By the silk.

Q. Turner Company? A. About three years.

10 Q. About three years you worked with him? A. Yes.

Q. Now, when you worked with him these three years, how did he work? A. I work on tin room, same place he work, tin room.

Q. Did you hear what the kind of work was that he was doing when he was on the stand here? A. Yes.

Q. Lifting things, moving trucks, and so forth; you do that work too? A. Yes.

20 Q. How much these things weigh when you left them, about how much they weigh? A. About forty pounds by the bag I mean.

Q. Bag. How much the tanks weigh? A. I don't know.

Q. You got light things and heavy things to lift? A. Truck?

Q. Not truck; any time you work there— A. I can't talk.

30 Q. Light work or heavy work? A. I can't talk.

Q. You can't talk but go ahead; you must talk. What kind of work you do there, light work; sew needles and make stockings? A. No, I work.

Q. What kind of work you do? A. I work on kind of tanks.

(Discussion between Court and counsel.)

(The testimony of this witness was given through James M. Santoro, who was duly sworn to act as Italian Interpreter.)

*Dominick Guedo—Direct*

*By Mr. Greenstone.*

Q. Now, Mr. Guedo, how much did these things weigh that you worked with? A. Bags of silk do you want to know?

Q. Anything you worked with. A. The first weighed forty pounds. 10

Q. You got light things to lift there and heavy things? A. We lift them with our hands, these bags of silk.

Q. Did you ever lift any heavy things there? A. Yes.

Q. What are the heaviest things you have lifted there? Ask him if he ever lifted tanks. A. Yes. Tanks weigh two or three hundred pounds. The tanks is filled with silk and we hoist them with chains. 20

Q. What was the heaviest you have ever lifted yourself? A. This tank filled with silk and are lifted by me and another fellow, one on one side and one on the other.

Q. Did you ever see Mr. Bruno lift these tanks at all? A. Yes.

Q. Did you see how he worked around there these three years you worked with him? Did you see how he worked around there? A. Yes, he worked. 30

Q. How was he able to do the work from what you saw? A. He was good to work.

Q. Did you see this accident? A. Yes, sir.

Q. Tell us what happened? A. The truck was loaded with bags of silk and he went ahead and one of his workman in back of him and he fell backwards and struck his head against the machine.

Q. What did you do? A. He fainted and I grabbed him. 40

*Dominick Guedo—Direct*

Q. What did you do with him? A. I took him to the office of the head boss.

Q. Before you took him to the office when he fainted, what did he do? How did he lay? A. His toe nail was busted.

10 Q. Did he have his shoes on? A. Yes.

Q. He had his shoe on and you saw his toe nail busted through his shoe?

Mr. Gormley: Just a moment. If counsel does not like that part of the testimony, we can object to the other testimony.

Mr. Greenstone: We will withdraw that. I will withdraw the answer if you want to.

Mr. Gormley: No.

20 Mr. Greenstone: Well, let it stand. I don't care.

*By Mr. Greenstone.*

Q. What did you see when the man was laying down? Where was his foot? A. Under the wheels.

Q. Wheels of what? A. Under the wheels of what? Under the wheels of the truck.

Q. What did you do? A. I pushed the truck away.

30 Q. Couldn't you take his foot out before you pushed the truck away?

Mr. Gormley: That is objected to.

Mr. Greenstone: Withdraw it.

*By Mr. Greenstone.*

Q. Then what did you do when you pushed the truck away? A. I took him and took him to the boss, took him to the office.

40 Q. Who else was with you at the time? A. Bernandino Berzotti.

*Dominick Guedo—Cross*

Q. Is he here in Court now? A. No.

Q. Was Tony there at the time (indicating)?

A. Yes.

Q. Who was Dell Assandro? A. He was the boss.

Q. Is that the foreman? A. That is the foreman. 10

Q. Did he see this happen, Dell Assandro?

Mr. Gormley: I object to the form of the question. He may have been there but this witness can't say whether he saw him.

The Court: Objection sustained.

*By Mr. Greenstone.*

Q. Was he there at the time that this accident happened, Dell Assandro? A. Yes. 20

Q. Did you see Bruno when he used to go into the water and bathe? A. Two years ago.

Q. Did you see his legs? A. Sure.

Q. What did they look like, anything different from the right and left leg or were they the same? A. No difference.

Q. You have seen him walking, you have seen him walking lame before this accident? A. Never, always straight.

Q. Did you ever see him complain about any trouble with his leg before this accident? A. No, always good. 30

Mr. Greenstone: Take the witness.

*Cross examination by Mr. Gormley.*

Q. Did you see Mr. Bruno at the time that this truck hit him or ran over his toe? A. Yes, I saw him.

Q. And where were you at the time? A. I was then coming into work. 40

*Dominick Guedo—Cross*

Q. That is entering the door? A. Yes.

Q. How far away from the door or—withdraw that. How far away from the door was Mr. Bruno at that time? A. About twenty feet.

Q. Was it in front as you came into the door, was it in front of the entrance or to the side? A. In the middle of the floor.

Q. Is that right in front of the door, the entrance? A. The door was here (indicating) and the floor was over there (indicating).

Q. Were you about to start work or change your clothes? A. I had changed my clothes.

Q. Then you were not just coming in to work? A. Yes, at seven o'clock in the morning.

Q. Did you— A. Seven o'clock at night, pardon me.

Q. Did you change your clothes after you got there? A. After.

Q. As you entered the plant you were about twenty feet from Bruno when this accident happened; is that what you mean? A. I saw him and ran right away.

Q. Ran away where? A. Because he was under the truck with his foot.

Q. Then the first time that you saw him this wheel of the truck was on his foot, was it? A. Yes.

Q. And what condition was his body in at that time? A. He had his shoulders to the ground.

Q. In other words, he was laying flat on his back, was he? A. He was flat on his back with his head backwards.

Q. That is the position he was in when you first saw him. He was flat on his back and the wheel of this truck was over his left big toe, is that right? A. Yes.

*Dominick Guedo—Cross*

Q. Sure of that? A. Yes.

Q. Then you didn't see him fall at all, did you?

A. No, I only saw him when he was on the floor.

Q. The first time you saw him he was on the floor; you didn't see him fall at all? A. On the floor.

Q. When did you see him hit his head? A. I saw his head against another machine. 10

Q. You didn't see the machine hit the head or the head hit the machine, or whatever expression you used? A. I saw him with his shoulders and his head backwards like this (indicating).

Q. When you said on your direct testimony that you saw him fall and hit his head, that is not quite correct, is it? A. How is it not correct?

Q. You now say you didn't see him fall, as I understand you? A. No, I didn't see him. I only saw him under the truck. 20

Q. Now, you said he fainted. When did he faint? A. He fainted when the wheel was on his foot.

Q. How long after he fell? A. I saw the wheel on his foot and I pulled the truck away because it was heavy.

Q. As a matter of fact, you didn't know that he fainted, do you? A. I saw that he was laying there two or three minutes without being able to talk. 30

Q. That is what you call fainting? A. Fainted, didn't talk.

Q. You used the word "faint", I assume, because he had his foot under the wheel and he didn't talk; that is what you mean, isn't it? A. The pain.

The Interpreter: He answered the word "pain". 40

*Dominick Guedo—Cross**By Mr. Gormley.*

Q. Pain whom? A. To the—

Q. To you? A. No, no, to Bruno.

Q. How do you know that? A. Because I took him up.

10 Q. That spells pain?

Mr. Greenstone: Just a moment. If the Court please, I move that remark of counsel be stricken from the record. "That spells pain," is not sensible.

Mr. Gormley: That is put in the form of a question. You can object to it or he can answer it.

20 Mr. Greenstone: I ask that your Honor rule that "That spells pain", be stricken out from the record.

Mr. Gormley: I will withdraw the question.

*By Mr. Gormley.*

Q. The fact is that his foot was under the wheel, he didn't talk, you had to lift him up, and you then thought that he was in pain, isn't that so? A. Yes.

30 Q. Now, how long have you known Bruno? A. 1913.

Q. Nineteen thirteen. Is that what say? A. 1913.

Q. That is more than five or six years. A. 1913.

Q. Where was he in 1913? A. I knew him in 1913.

Q. Where did he live then? A. I knew him but I don't know where he lived.

Q. Where did you live in 1913? A. 382 Second Street.

40 Q. Twenty years ago? A. Yes.

*Dominick Guedo—Cross*

Q. Were you working with Bruno at that time?  
A. No.

Q. How did you come to get acquainted with him? A. As a friend.

Q. He hadn't been in the country long at that time, had he? A. I got acquainted with him here.

Q. You had no business relations or social relations with him at the time? A. No. 10

Q. Was he, Bruno, working with Turner & Company before you started? A. Before me.

Q. Were you working with him all the time that you were there? A. Yes, sir.

Q. And were you—withdraw that. After business hours did you associate? A. No.

Q. So that the only time that you were with Bruno was at the time that you were at the plant of Turner & Company while you were working there? A. Yes, sir. 20

Q. You understand the question, don't you? A. In Italian?

Q. So that after business hours that you and he were working with Turner & Company, and you didn't ordinarily see him, did you, until the next day that you went to work? A. The next day.

Q. That was continuous; you didn't see him excepting at work for upwards of two years, is that so? A. Yes, sir. 30

Q. When did you find out there was any difference in the appearance of Mr. Bruno's legs? A. After he was hurt.

Q. Why did you come—how was it that you came to examine his legs after the accident? A. I examined him? The doctor examined him. The doctor examined him.

Q. Were you present when the doctor examined this man's legs? A. No, sir. 40

*Dominick Guedo—Redirect*

Q. Did you ever examine his legs alone?

The Interpreter: He shakes his head  
“no”.

*By Mr. Gormley.*

10 Q. Were you present when anybody else examined Mr. Bruno's legs? A. No.

Mr. Gormley: That is all.

*Redirect examination by Mr. Greenstone.*

Q. Now, what do you mean by the word “examine,” doctor's examination? A. He examine.

Q. The lawyer asked you did you examine his legs. Did you have in mind a doctor's examination?

20

Mr. Gormley: Now, just a minute. I object to the form of the question. If you want to ask him what he meant by the word, all right, but don't lead him.

Mr. Greenstone: I will withdraw that.

*By Mr. Greenstone.*

30 Q. Did you ever—you testified on direct examination with me that you saw his legs while the man was bathing in the ocean. When was that?  
A. About two years ago.

Q. Did you go over to his legs and make an examination of them, or did you just look at them?

A. Just glanced at them.

Q. And from what you saw of them, did it appear to you to be anything wrong with his legs or did they appear to be all right? A. Both good.

Q. Is there any doubt about that in your mind?  
A. No, no doubt.

40

*Dominick Guedo—Recross*

Mr. Greenstone: That is all.

*Recross examination by Mr. Gormley.*

Q. Who else was with you at the time you were making this extended examination or inspection of Mr. Bruno's legs?

10

Mr. Greenstone: Just a moment. If the Court please, there was nothing on the direct about any extended examination, and the practical evidence is the other way. He just looked at them, no extended examination of the legs at all.

The Court (To the Reporter): Read the question.

(The reporter read the last question as follows: "Who else was with you at the time you were making this extended examination or inspection of Mr. Bruno's legs?")

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Mr. Gormley (To the Reporter): Read back a couple of questions.

The Court: I will overrule the objection.

The Witness: Just he and I.

*By Mr. Gormley.*

Q. How did you come to direct your attention to Mr. Bruno's legs two years ago? A. We swam together.

30

Q. There were many other people around there at the same time, were there not? A. The baths are that way.

Q. That way, what does that mean? A. Don't you know how the baths are?

Q. You didn't notice anybody else's legs, did you at that time? A. We were all bare in swimming.

40

*Dominick Guedo—Recross*

Q. Yes, but you made no—took no particular notice of anybody else's legs there? A. Sure I did. What am I supposed to do, close my eyes?

Q. Did Mr. Bruno at that time say anything about his legs to you? A. No, he didn't tell me anything.

10 Q. And the only reason that you now say that two years ago you saw his legs was that you were both naked and you simply saw him generally, no particular attention paid, as I understand it?

Mr. Greenstone: We will admit that.

Mr. Gormley: Don't, please.

The Witness: The legs were good.

*By Mr. Gormley.*

20 Q. You haven't seen him in bathing since that time, have you?

The Interpreter: He shook his head no.

*By Mr. Gormley.*

Q. That is two years ago, 1932? A. Yes.

Q. Have you seen Mr. Bruno's legs since then? A. No. Do you think I live with him? Do you think I sleep with him?

30 Q. Now, you now state on the stand that you remember specifically some day two years ago that his legs were good? A. Yes, sir.

Q. With whom did you talk this case—talk about this case? A. With nobody.

Q. Never mentioned a word to anybody? A. No, sir.

Q. How did you come to be so familiar and particularly with Mr. Bruno's legs when the questions are put to you? A. I saw that they were good; then he got hurt.

40

*Dominick Guedo—Recross*

Q. Now, you say you never spoke to anybody about the case as to your testifying today? A. With nobody.

Q. Nobody at all; you never gave a statement to anybody? A. Nobody.

Q. Just look at that and see if that is yours, signature (handing to witness)? A. Yes. 10

Q. You made that statement, didn't you?

Mr. Greenstone: Just a moment, just a moment. I object to the question, and as to that statement that is not what the word statement means. "Did you make that statement," that is the question. Can he read? That is number one; let him read it and then if he can understand and if he can say he read it and understood it, that is different. 20  
Let us catch these things especially when they can't talk without an interpreter. To make a statement without asking a man to read—I ask to have your Honor—your Honor should permit the witness to look at the paper and see if he can read before he can answer the question. All right.

Mr. Gormley: Perfectly agreeable. Look at it.

Mr. Greenstone: Your Honor will permit that procedure? 30

The Court: Surely.

Mr. Greenstone: Will you put the question to him? Let him read it and say if he made that statement and if he can read it.

The Witness: That is not my handwriting. I was only in the second grade. This is not my handwriting.

*Dominick Guedo—Recross**By Mr. Gormley.*

Q. Is that your signature (indicating)? A. This is not my writing.

The Court: Is that your signature (indicating)?

10 The Witness: Yes.

*By Mr. Gormley.*

Q. Do you know where it was signed? Where were you when this was signed? A. This is English. I can't read it. This is my name (indicating). This is my name but this is not my handwriting.

Q. We know it is not your handwriting. Do you remember having signed that paper? A. Who signed this paper?

20 Q. Just answer the question. Do you remember where you were when you signed that paper?

Mr. Greenstone: Wait a minute. First, we want to get that he did sign the paper. Did you say that?

The Court: Yes, he admitted that was his signature.

Mr. Greenstone: All right.

30 Mr. Gormley (To the reporter): Just repeat the last question.

(The reporter read the last question as follows: "Do you remember where you were when you signed that paper?")

The Interpreter: "Excuse me," he says, "this is in English or American."

Mr. Greenstone: He signed it in America.

40 Mr. Gormley: Ask him the question if he knows where he was when he signed that paper.

*Dominick Guedo—Recross*

The Witness: That is not my handwriting and I can swear to it.

*By Mr. Gormley*

Q. That is your signature, isn't it (indicating)?

A. That is my signature.

Q. Where were you when you signed your name to that paper? A. I can't remember. 10

Q. You don't remember. But when you signed that paper did you not have a conversation with some man? A. That is not my handwriting.

Mr. Greenstone: Just a moment. I object to the introduction of it.

Mr. Gormley: We haven't introduced it.

Mr. Greenstone: I know, but there is an examination on the paper. I object to the examination on this paper unless it is shown that it is in evidence, and not being in evidence I object to any examination on this paper not in evidence as being hearsay and not proper examination. 20

Mr. Gormley: I am not offering this paper in evidence. He has admitted his signature and I want to find out where he was when he signed it.

The Court: Objection overruled. 30

Mr. Greenstone: I ask for an exception.

Mr. Gormley: What was the last question?

(The reporter read the last question as follows: "But when you signed that paper did you not have a conversation with some man?")

*By Mr. Gormley.*

Q. Did you have a conversation with anybody at the time you signed that paper? A. With nobody. 40

*Dominick Guedo—Redirect*

Q. Just signed the paper, don't know where you were and you had no conversation? A. No, with nobody.

Mr. Gormley: That is all.

*Redirect examination by Mr. Greenstone.*

10

Q. Who asked you to sign this paper?

Mr. Greenstone: Let me have it, Mr. Tucker.

Mr. Gormley: It is not in evidence.

Mr. Greenstone: If the Court please, I am asking pure redirect, on the cross examination of the signed paper, that is cross examination, and I want this paper to ask the witness who asked him to sign this paper on the

20

redirect.

I ask a ruling.

Mr. Gormley: He can ask him the question without the paper.

Mr. Greenstone: Oh, no. I have got to show the witness the paper.

The Court: Objection sustained.

Mr. Greenstone: I ask for an exception.

*By Mr. Greenstone.*

30

Q. Did the man when the—was there a man, woman, or child that showed this paper to you for signature? A. This paper here?

Q. Yes, the one that was shown to you by the lawyer on the other side; who showed it you, a man? A. I don't know myself.

Q. Do you remember seeing this man (indicating Mr. Tucker), before? A. No.

Q. Did any fellow speak to you in Italian when you signed this paper? A. No.

40

*Dominick Guedo—Redirect*

Q. Can you read this paper that you signed?

Mr. Gormley: Now, counsel objected to my going into the examination that he is now putting in.

Mr. Greenstone: Go ahead and object to it.

Mr. Gormley: I object to it and ask that it be stricken out. 10

The Court: Objection overruled.

The Witness: That is in English. How can I read it? How can I read it?

*By Mr. Greenstone.*

Q. Did anybody tell you what this paper was when they asked you to sign it? A. No, nobody explained anything to me.

Q. Now, did Mr. Bruno— 20

Mr. Greenstone (To the Petitioner): Mr. Bruno, put up your pants quick.

Mr. Gormley: There is no jury here, and it would not have much effect.

Mr. Greenstone: The judge is here.

Mr. Gormley: The Court has seen the legs.

*By Mr. Greenstone.*

Q. Do you see the petitioner's legs now, Mr. Witness? A. Sure, I see them. 30

Q. Is that the way they looked two years ago when you saw them?

Mr. Gormley: That is objected to as not redirect examination.

Mr. Greenstone: Absolutely right on it. The question was, did you pay any attention to his legs, how they looked, did you see them after the accident? That was the question. 40

*Dr. Vincent J. Rigerone—Direct*

by Mr. Gormley and the witness said no, he didn't see them after the accident. Now on redirect he is looking at them and I am comparing it as it was then and now.

The Court: Objection overruled.

(The reporter read the last question.)

10

The Witness: No, no.

*By Mr. Greenstone.*

Q. If you had seen them two years ago that way would you be able to remember it without trouble?

Mr. Gormley: That is objected to.

The Court: Objection sustained.

Mr. Greenstone: Withdraw the question.

That is all.

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(Witness excused.)

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DR. VINCENT J. RIGERONE, a witness on behalf of the petitioner, being duly sworn, testified as follows:

*Direct examination by Mr. Greenstone.*

Q. Doctor, are you a practicing physician of Jersey City? A. Well, I am licensed to practice in Jersey City. I haven't been practicing for the past month, but I did for two years, up until a month ago today.

Q. Well, did you have charge of this case, of this case of Bruno? A. Bruno?

Q. Bruno. A. In an indirect way I did.

Q. In what way, Doctor? A. His lodge physician. As lodge physician I examined Mr. Bruno.

Q. Before we go ahead, why aren't you practicing now? A. I am on active duty with the Reserve Officers of the United States Army.

40

*Dr. Vincent J. Rigerone—Direct*

Q. We would like to know that. Now, did you examine—have occasion to examine Mr. Bruno?

A. I did.

Q. When was the first time you saw Mr. Bruno?

A. July 4, 1933.

Q. What was the history he gave you when you saw him? 10

Mr. Gormley: Objected to.

Mr. Greenstone: I will withdraw that.

*By Mr. Greenstone.*

Q. Did you see him for the purpose of observing his case? A. I did.

Q. (Continuing.) And if necessary treat it? A. Yes, sir.

Q. In what capacity did you examine him? 20  
What relation did you have with him? A. His lodge physician.

Q. His lodge physician? A. That is right.

Q. Was that your duties to take care of members? A. That is right.

Q. Including this man? A. That is right.

Q. What did you observe when you saw him?

Mr. Gormley: When?

*By Mr. Greenstone.* 30

Q. When, first? A. July 4, 1933. I observed swelling and slight discoloration, tenderness of the left big toe.

Q. And did you—how often did you see him?  
A. At least once a week up until January 6, 1934.

Q. And were you able to examine both legs at various times throughout that period? A. I was.

Q. When did you first examine both legs throughout that period? A. July 5, 1933. 40

*Dr. Vincent J. Rigerone—Direct*

Q. That is two days following this accident? A. Two days after, that is right.

Q. What was this condition of those two legs when you saw them July 5, 1933? A. The condition of these two legs were practically similar, except for a fracture of the distal phalanx of the left big toe.

Q. Doctor, you have seen—you have examined him— A. I have.

Q. (Continuing.) Throughout this period you have described? A. I have.

Q. Just relate when you first noticed any marked change in the asymmetry of his two legs? A. I have the exact date when I first noticed it.

Q. All right, Doctor, refer to your dates. A. August 30th was the date I particularly noticed the difference between the two legs.

Q. August 30th? A. Yes, sir.

Q. What did you see at that time? A. Well, I noticed an atrophy of the entire leg from the hip right down to the toes.

Q. And thereafter did you examine—did you measure the legs throughout that period? A. I did. I think the first time—I did. I think the first time I measured the leg.

Q. What did you note? A. I noted atrophy, difference in size in the two legs.

Q. What was the amount of difference? A. Well, it varied in the different spots from—

Q. Say the calf, for instance. A. The calf, there was almost two inches difference in the two legs on the first date that I noticed the atrophy.

Q. Was there that much difference or any difference at all apparent the first day that you examined the man's leg? A. There wasn't.

Q. Sure about that, Doctor? A. I am.

*Dr. Vincent J. Rigerone—Direct*

Q. Now, how did the upper extremity, that is above the knee—did you examine that also? A. I examined that occasionally, yes.

Q. And was there any difference in the symmetrical appearance of the two legs on July 5, when you examined him? A. July 5th, no.

Q. There was no difference? A. No, none that I could discern. 10

Q. On August 3rd—that is August 30th? A. August 30th, 1933.

Q. What was the difference then above the knee? A. The difference then above the knee at the mid thigh there was one inch difference, upper thigh three-quarters of an inch difference.

Q. You have also examined him, you say, at regular periods throughout this time that you have mentioned? A. I have. 20

Q. You examined him again today? A. I have.

Q. What did you treat him for, Doctor? I mean what did you examine him for, what did you find? A. I examined him for injury. The man called me and said he was in an accident—

Mr. Gormley: Just a moment, please.

The Witness: I examined him for an injury.

Mr. Gormley: Now, the Court has ruled against your giving the history in this case. Please don't bring it in now. 30

The Witness: Is that history?

Mr. Greenstone: Just a moment.

*By Mr. Greenstone.*

Q. Did you treat him part of the time? A. I treated him from December 17th to January 6th.

Q. What was the history that you got from the man? A. At what time? 40

*Dr. Vincent J. Rigerone—Direct*

Q. Of his accident. A. The time of the accident? The history of the injury—injury to the toe in a fall.

Q. And was that the condition that you were examining and treating him for? A. That is right.

10 Q. And what was your diagnosis? A. On the first day?

Q. Well, throughout the period, the final diagnosis throughout the period—what was the diagnosis? A. The final diagnosis as today?

Q. Today, yes, your observation throughout this period of time, your opportunity to observe in the beginning throughout this period of time, your final conclusion today and diagnosis? A. Well,  
20 the first diagnosis was possible fracture of the distal phalanx of the left big toe, confirmed by X-ray. Subsequent and final diagnosis added, traumatic neuritis left leg, with contracture, atrophy and limited motion to the ankle.

Q. Where was this contracture, Doctor? A. Contracture was mainly in the muscles of the calf.

Q. Is that in the region of the tendon Achilles? A. That is above the tendon Achilles.

30 Q. What have you noticed as to his gait, Doctor? A. The man walks with a limping gait—

Q. Now, assuming, Doctor, that the man, this man whom you have treated, met with an accident as you have described, wherein the toe was caught by a truck wheel, the truck was pushed off, the man was then lifted up and put aside to rest a little while and bathed with some salt water, warm water—was it hot salt water—

The Court: Salt water.

*Dr. Vincent J. Rigerone—Direct*

*By Mr. Greenstone.*

Q. (Continuing.) Salt water, hot water. He was thereafter treated by Dr. Hoops for a fracture of the big toe, peripheral neuritis, and some time thereafter—withdraw that,—peripheral neuritis following to this left leg, also atrophy of the muscles, foot drop; that you observed him throughout this period of time, and treated him subsequent to the treatment given by Dr. Hoops at the various times that you have designated. What is your opinion, with a reasonable degree of certainty, as to the relation of the man's present condition of that left leg to this accident? 10

Mr. Gormley: That is objected to. In the first place, there is no foundation for the hypothetical question. Counsel is bringing into the record testimony that may be. 20

Mr. Greenstone: As far as Dr. Hoops, I will connect it later. Well, leave out anything I said about Dr. Hoops. What you observed yourself.

Mr. Gormley: Well, I ask the question be repeated.

Mr. Greenstone: Leave out Dr. Hoops.

The Court: Is that the only objection?

Mr. Gormley: I don't remember it. I think that is all. 30

The Court: The stenographer will read the question and if you have any changes to make stop him and make them then and there.

(The reporter read the last question as follows: "Now, assuming, Doctor, that the man, this man whom you have treated, met with an accident as you have described, wherein the toe was caught by a truck wheel, the truck was pushed off, the man was then lifted up 40

*Dr. Vincent J. Rigerone—Direct*

10 and put aside to rest a little while, and bathed with some salt water—warm water—was it hot salt water—salt water, hot water. He was thereafter treated by Dr. Hoops for a fracture of the big toe, peripheral neuritis, and some time thereafter—withdraw that—  
 10 peripheral neuritis following to this left leg, also atrophy of the muscles, foot drop; that you observed him throughout this period of time, and treated him subsequent to the treatment given by Dr. Hoops at the various times that you have designated. What is your opinion, with a reasonable degree of certainty, as to the relation of the man's present condition of that left leg to this accident?")

20 Mr. Greenstone: I wanted to leave that that part out about Dr. Hoops.

I will withdraw the whole question.

*By Mr. Greenstone.*

30 Q. Assuming, Doctor, that you have treated this case, as you have related here, with the history given to you as related, and that you noticed this musculature atrophy as you have set forth during that period of time; as you stated you have treated this man, as you have related, at the period of time that you stated. What do you ascribe this muscular atrophy and this condition of the left leg that you find at the present time with a reasonable degree of certainty to?

40 Mr. Gormley: I don't think the hypothetical question is in proper form at all. If this is a question to be put to the witness, it should be a question to be answered without having to refer to the record. The history is not

*Dr. Vincent J. Rigerone—Direct*

related, all the circumstances that you have noticed, it does not mean a thing.

Mr. Greenstone: Just exactly what he testified to himself, not reciting what somebody else said about the witness himself—I mean just not reciting what somebody else said, but what the witness saw himself. 10

Mr. Gormley: I don't think it should be left hanging in the air. It should not be left to conjecture for counsel and the Court to go all through the record to see and hear what the witness said.

The Court: Objection overruled.

Mr. Gormley: Exception, please.

The Witness: Answer it?

*By Mr. Greenstone.*

20

Q. Answer it. A. It is such a complicated question—if I get the gist, may I ask if I get the gist of the question?

Mr. Greenstone (To the reporter): Read the question.

The Witness: May I state what I think the question is?

Mr. Greenstone: Better have the stenographer read it so you can have it without guessing. 30

(The reporter read the last question as follows: “Assuming, Doctor, that you have treated this case, as you have related here, with the history given to you as related, and that you noticed this musculature atrophy as you have set forth during that period of time; as you stated you have treated this man, as you have related, at the period of time that

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*Dr. Vincent J. Rigerone—Direct*

you stated. What do you ascribe this muscular atrophy and this condition of the left leg that you find at the present time, with a reasonable degree of certainty, to?"')

10 The Witness: With a reasonable degree of certainty, I attribute the present condition of the left leg to an injury to the nerves of that leg sustained in the original accident or in the accident.

*By Mr. Greenstone.*

Q. Doctor, you have had occasion to observe what he is able to do in walking around throughout this period of time, have you not? A. I have.

Q. You have tested him, I suppose, as to strength of the leg? A. I have.

20 Q. Generally observed him as to his comparative condition of those two legs? A. I have.

Q. Throughout that period of time. What have you to say as to the amount of disability the man has permanently of that left leg, if any? A. The amount of permanent disability, did you say?

Q. Yes. A. I believe the permanent disability to his leg to be two-thirds.

30 Q. Two-thirds of that leg? A. Of total of the leg.

Mr. Gormley: Of what?

The Witness: Two-thirds of total of that leg.

*By Mr. Greenstone.*

Q. Is that—withdraw that. Do you think that this man is able to do any laborious work in the condition he is now?

40 Mr. Gormley: I object to that.

*Dr. Vincent J. Rigerone—Cross*

The Court: Objection sustained.

Mr. Greenstone: Withdraw that.

*By Mr. Greenstone.*

Q. What is your opinion, Doctor, as to whether or not the man is able to do any laborious work at this time? A. In my opinion the man is not capable of doing any laborious work. 10

Mr. Greenstone: All right. Take the witness.

*By Mr. Greenstone.*

Q. I would like to ask a further question: Doctor, after you took him in charge was there any indications for further treatments at the time? When the doctor stopped treatment was there occasion for further treatment in December? 20

A. In my opinion the man was still in need of, and amenable to treatment.

Q. What was your bill? A. Eighteen dollars.

Mr. Greenstone: Take the witness.

*Cross examination by Mr. Gormley.*

Q. Doctor, from what institution did you graduate? A. St. Louis University, St. Louis, Missouri. 30

Q. When did you graduate? A. 1930.

Q. Since leaving that institution, what has been your activities in a professional way? A. I have been an interne for one year at Christ Hospital, Jersey City, New Jersey.

Q. That is 1931? A. Yes. I spent one year as medical resident at the Medical Center, Jersey City, New Jersey.

*Dr. Vincent J. Rigerone—Cross*

Q. That is 1932? A. Yes, sir. And since that time engaged in practice until March 1, 1934, engaged in practice in Hudson County.

Q. Where is your office located? A. I am not in practice at the present time.

10 Q. Where were you up to the time you discontinued your practice in the local community? A. 45 Crescent Avenue.

Q. 45 Crescent Avenue? A. Crescent Avenue.

Q. How long were you practicing there? A. Two months.

Q. Are you connected with any institutions now? A. Medical institutions, is that what you mean?

Q. Yes. A. No.

20 Q. You haven't been since your internship? A. I have.

Q. What institutions? A. Christ Hospital, Jersey City, New Jersey.

Q. That is when you were resident physician? A. No.

30 Q. What is it— A. I interned at Christ Hospital in Jersey City, New Jersey. After resuming practice I was on the staff of Christ Hospital, Jersey City, New Jersey, as assistant medical surgeon.

Q. On the staff of Christ Hospital, what were your duties? A. My duties were to—I had care of private patients and clinical ward work.

Q. When did you establish yourself? When did you establish your office? A. What date? December 15, 1932, at 2680 Boulevard, Jersey City, New Jersey.

40 Q. So that your practice in a personal capacity has been from the term of four months, is that correct, less some few months that you have discontinued to practice, is that right? A. That is right.

*Dr. Vincent J. Rigerone—Cross*

Q. At 45 Crescent Avenue; is that a private house? A. That is a private house and a doctor's office.

Q. Dr. Introcaso was there? A. That is right.

Q. So you were sharing the office of Dr. Introcaso, were you not? A. I shared it in a sense. I rented it for certain hours for my own private practice. 10

Q. Of this long term of professional activities, did you have occasion to testify—

Mr. Greenstone: Just a moment. Go ahead, finish the question.

Mr. Gormley: I don't know how I am going to.

Mr. Greenstone: The witness started to answer and I wanted to interrupt him. I am going to object to this question. 20

Mr. Gormley: Well, you wait until I finish it.

(The reporter read the last question as follows: "Q. Of this long term of professional activities, did you have occasion to testify—")

*By Mr. Gormley.*

Q. (Continuing.)—in court?

Mr. Greenstone: Just a moment. I object because of the sarcastic innuendo of counsel in saying, "This long term of activities." 30

The Court: Reframe your question.

Mr. Greenstone: That is it.

*By Mr. Gormley.*

Q. During the course of your activities as a physician have you ever had occasion to testify

*Dr. Vincent J. Rigerone—Cross*

in a court of law? A. In the course of my practice as a physician I previously have testified twice in this court.

10 Q. And by that do you mean since you established your office in Crescent Avenue? A. No, since I established my office in the beginning, December 15, 1933, at 2680 Boulevard, Jersey City, New Jersey.

Q. That is, you say two times? A. Twice previous.

Q. Now, Doctor, in this case you were good enough to send a report of your findings, were you not? A. To whom?

Q. To anybody.

20 Mr. Greenstone: Just a moment. If the Court please, I don't see the sense of that question. Did he send a report all right, but I don't see the sense of that question.

The Court: Objection overruled.

*By Mr. Gormley.*

Q. Did you give me the report that you have there (indicating)?

30 Mr. Greenstone: Oh, why talk about that report?

Mr. Gormley: Let me have your report.

Mr. Greenstone: No.

*By Mr. Gormley.*

Q. Doctor, did you send Mr. Greenstone a report of this case? A. I sent him a resume of my record of that case.

Q. In that you made an estimate of the disability too, did you not? A. I did.

40 Q. What was it? A. That was based on a different case.

*Dr. Vincent J. Rigerone—Cross*

Q. Doctor, what was the estimate? A. You want my estimate? That was entirely based—

Q. Doctor, won't you please answer the question? What was the estimate? A. A hundred per cent.

Q. A hundred per cent. loss of function of the leg, was it? A. No, no. A hundred per cent. of the ability to do his previous work; that is the way I estimated. 10

Q. You based it on the permanent disability of work? A. On the ability of the time of doing his previous work, which was a hundred per cent.

Q. In other words, he was a hundred per cent. disabled, was he not? A. A hundred per cent. disabled from doing his previous occupation at the time when I wrote that report. 20

Mr. Greenstone: That is plain enough.

Mr. Gormley: Mr. Greenstone, will you please shut up. If I may use the expression?

(The reporter read the last question and answer as follows: "Q. In other words, he was a hundred per cent. disabled, was he not? A. A hundred per cent. disabled from doing his previous occupation at the time when I wrote that report.") 30

*By Mr. Gormley.*

Q. That means, Doctor, I assume he was unable to do anything? A. Unable to do his previous work.

Mr. Greenstone: Yes.

Mr. Gormley: I never tried a case in this manner before.

The Court: We will adjourn the case for four weeks. 40

*Dr. Vincent J. Rigerone—Cross*

(Discussion between Court and counsel.)

Mr. Gormley: I think now, at this stage our objection should be noted on the procedure of this thing. I don't feel like examining the doctor at all.

10 The Court: Do you want to note on the record the reason why the doctor has been examined?

Mr. Gormley: I would like to have it noted on the record that the case was officially adjourned and at the solicitation of counsel for the petitioner, after we had and we were about to leave the courtroom we were recalled to continue the further examination.

20 The Court: Let the record show that the only reason for that is due to the fact that Dr. Rigerone is assigned to C. C. C. Camp 136 at Gaelton, Pennsylvania.

Mr. Gormley: Also add this—

The Court: And it would be impossible for him to be present at any further hearing.

Mr. Gormley: Also then my suggestion if that is the case, that counsel, if he is being annoyed, take the deposition of the witness at his place of residence.

30 (The reporter read as follows: "Q. That means, Doctor, I assume he was unable to do anything? A. Unable to do his previous work.")

Mr. Gormley: Mr. Greenstone, will you deliver that report that the doctor submitted?

Mr. Greenstone: No, certainly not.

*By Mr. Gormley.*

40 Q. Doctor, you said that you were the doctor of the lodge? A. That is right.

*Dr. Vincent J. Rigerone—Cross*

Q. What is the lodge? A. The lodge is called the Metapontinna Society.

Q. Did you ever render a bill for your services? A. For what services?

Q. What services did you perform? A. For services performed to the lodge.

Q. Did you ever render a bill to Mr. Bruno for services to him? A. Yes, I did. 10

Q. Was it paid? A. It was not.

Q. When did you render the bill? A. I have the date here (indicating). January 6, 1934.

Q. You say that you saw this man the day after the happening of the accident? A. I did.

Q. And how soon thereafter? A. I saw him the following day.

Q. Did you continue your examinations from then on? A. I did. 20

Q. Continuously? A. I examined him approximately once a week from then on.

Q. You knew during the time that he was under the care and attention of Dr. Hoops, did you not? A. I did.

Q. You saw no—withdraw the question. Of what did your examination consist on the first visit? A. The first visit I examined the left leg, especially the foot and toes. 30

Q. How did you come to examine the leg? What was the reason for it? A. Well, for possible injury.

Q. Didn't you examine the right leg on that day? A. Not that day.

Q. Did he complain about the leg? A. He did not.

Q. His complaint was nothing more than that his big toe had been fractured? A. His complaint was the pain on the left big toe. 40

*Dr. Vincent J. Rigerone—Cross*

Q. You saw or did you find evidence of fracture? A. I did.

Q. Did you have the benefit of an X-ray? A. Not personally, but an X-ray was taken.

10 Q. How many visits did you make? A. I have no accurate record; approximately once a week.

Q. For how many weeks? A. Up until January 6, 1934.

Q. That is approximately six months, is it not? A. Approximately.

Q. Did you work in cooperation with Dr. Hoops? A. I didn't treat the case until the very latest stages, and my part in the case was merely to examine and to report ability or inability to work.

20 Q. Each time that you made your examination, what did you do? A. That question varies. In the beginning I examined—well, suppose I change that. On the first day I examined the left foot; the following day I made a complete examination for any further possible injury; subsequent to that and until August 30, the examination was of the left foot. On August 30, examination of both legs was made in detail, that is under a general physical examination. Subsequent to that both

30 legs were examined on each visit.  
Q. At whose solicitation were you making these examinations? A. Solicitation—I can't quite understand you.

Q. Who asked you to make these examinations? A. They were part of my duties as lodge physician.

40 Q. Just answer the question. Who asked you to make these examinations? A. No one asked me. These examinations were performed weekly

*Dr. Vincent J. Rigerone—Cross*

and as a part of my routine duties as lodge physician, which required a weekly examination. Does that answer it?

Q. I just want to find out who asked you or who directed you to make examinations. I understand you to say now nobody? A. No one.

Q. What did you find was the trouble with this man's foot? A. This man had a fracture of the left big toe, with contracture of muscles of the leg, causing a pescavus. 10

Q. What was the cause of the contracture? A. In my opinion the contracture was due to injury of his motor nerves of the leg.

Q. What examination did you make for that? A. I examined the sides of the leg, the response to reflexes and to sensory stimuli. 20

Q. You never made an examination of this man prior to the day of this alleged accident, did you? A. I did not.

Q. Did you know what the condition was prior thereto? A. I had no definite knowledge.

Q. What particular nerve has been affected in the foot? A. In the foot? In the foot?

Q. Is it the foot? A. It is the leg.

Q. What leg is it? A. The sciatic nerve.

Q. There are various things that upset the sciatic nerve, are there not? A. There are. 30

Q. Imperfect boots would do it, would it not, posture? A. Would do what?

Q. Affect the sciatic nerve. A. It might.

Q. Can you state when this condition first became known or noticeable? A. Yes.

Q. When was that? A. August 7.

Q. So until August 7, there was no indication of it at all? A. There was no indication as far as I could discern of nerve injury. 40

*Dr. Vincent J. Rigerone—Redirect*

Q. How many similar cases have you ever had during your experience since being admitted to practice? A. Similar cases, I would not say any.

Q. How many cases have you had of affected sciatic nerve? A. Two.

10 Q. How long since? A. How long since have I had them?

Q. Yes. A. I don't understand. How long ago did I treat these cases?

Q. Yes. A. Oh, six months ago.

Mr. Gormley: That is all.

*Redirect examination by Mr. Greenstone.*

20 Q. Now, Doctor, did you also look up literature in making your diagnosis of this condition? A. I do. I do.

Q. Did you do that in this case? A. I did.

Q. Is that a usual thing when you get a peripheral nerve involvement to have muscular atrophy? A. It is.

*By Mr. Gormley.*

Q. Doctor, have you—

30 Mr. Gormley: The Doctor has not said anything about peripheral nerve involvement as far as I recall.

*By Mr. Greenstone.*

Q. All the nerves, were they not, were they not involved where the atrophy existed?

Mr. Gormley: I object to the question.

The Court: Objection sustained.

*By Mr. Greenstone.*

40 Q. In the region of this atrophy how does that affect the nerves? Withdraw that. What causes

*Joe Gaito—Direct*

atrophy? A. It is loss of motor supply, motor nerve supply to the muscles.

Q. Does that also include the peripheral nerves?

A. They are peripheral nerves; motor nerves are all peripheral nerves.

Mr. Greenstone: That is all.

10

Mr. Gormley: That is all.

(Witness excused.)

## NEW JERSEY DEPARTMENT OF LABOR,

WORKMEN'S COMPENSATION BUREAU,  
JERSEY CITY, HUDSON COUNTY DISTRICT.

JOE BRUNO,  
*Petitioner,*

*vs.*

TURNER & COMPANY,  
*Respondent.*

20

April 24, 1934.

Before:

Honorable JOHN C. WEGNER, *Referee.*

Appearances:

SAMUEL GREENSTONE, Esq., for the Petitioner. 30

WALL, HAIGHT, CAREY & HARTPENCE, Esqs., by

CHARLES GORMLEY, Esq., for the Respon-  
dent.

JOE GAITO, called as a witness on behalf of the petitioner, being duly sworn, testified as follows:

*Direct examination by Mr. Greenstone.*

Q. Mr. Gaito, you worked for the—did you work for the Turner Company while Mr. Bruno was 40

*Joe Gaito—Direct*

working there? A. No. This Mr. Bruno he was working for me the last time about seven or eight years ago at—I had about two or three wagons myself. Because I was sick I get him. Have another man besides him work with me. He is not here. He go back to the other side. I also seen—

10

Mr. Greenstone: Do you think he needs an interpreter?

The Court: I don't think so, but he is rambling all over the lot.

*By Mr. Greenstone.*

Q. Take it slowly.

The Court: Read the question.

20

(The last question was read by the reporter as follows: "Did you work for the Turner Company while Mr. Bruno was working there?")

The Witness: Mr. Bruno was working with me.

*By Mr. Greenstone.*

Q. Did you work for the Turner Company with Mr. Bruno? A. Yes.

30

Q. I say, did you work for the Turner Company with Mr. Bruno? A. No. I work for myself. I have business myself.

Q. But you didn't work for the Turner Company? A. No.

Q. Did you have Mr. Bruno do any work for you? A. Yes.

Q. What was the last time Mr. Bruno— A. That was about seven years ago, seven and a few months.

40

Q. Never mind.

*Tony Quento—Direct*

Mr. Greenstone: We will ask the other witness. (Witness withdrawn.)

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TONY QUENTO, called as a witness on behalf of the petitioner, being duly sworn, testified as follows: 10

*Direct examination by Mr. Greenstone.*

Q. Mr. Quento, you worked with Bruno for the Turner Company? A. Yes. Best thing call interpreter, no speak very good.

Q. How long did you work for Bruno—with Bruno for the Turner Company? A. About six years.

Q. Did you see this accident to Bruno, or didn't you see it? A. No, I need call somebody. I can't speak. I don't know just some words. 20

Mr. Greenstone: Do you think we should have an interpreter here?

The Court: Who was here the last time? (Discussion off the record between Court and Counsel.)

The Court: Let me try him.

Did you see Bruno get hurt?

The Witness: Yes. 30

The Court: Don't use big words.

*By Mr. Greenstone.*

Q. Tell us what you saw.

The Court: What happened to Bruno?

The Witness: I can't understand.

*By Mr. Greenstone.*

Q. Tell us of the accident, what you saw in the accident to Bruno. 40

*Tony Quento—Direct*

The Court: You saw Bruno get hurt?

The Witness: Yes.

The Court: How did he get hurt; what happened?

The Witness: On the truck.

10

The Court: How? What was he doing?

The Witness: Pushing the truck back (indicating).

Mr. Greenstone: Speak louder so that the stenographer will get you.

The Court: Pushed truck back and fell down. How did he fall?

The Witness: On the floor.

*By Mr. Greenstone.*

20

Q. Can you show us, tell us how the accident happened; stand up and show how it happened? Show us what happened, to the judge. A. Fall like that (indicating).

Mr. Greenstone: Indicating how, your Honor?

The Court: Fell backwards.

Mr. Greenstone: Indicating he fell backwards.

*By Mr. Greenstone.*

30

Q. You helped pick him up or did somebody else help to pick him up? A. Yes, Dominick.

Q. Who? A. Dominick.

Q. You helped, too? A. No. Dominick help.

Q. Did you ever work with him before? A. Yes. I work for six years.

Q. For the Turner Company? A. Yes.

Q. And how did he work before the accident happened?

40

*Tony Quento—Direct*

Mr. Gormley: I object to that as being too remote.

The Witness: Like any kind of job. Heavy job.

Mr. Gormley: This is six years ago.

*By Mr. Greenstone.*

10

Q. You worked with Bruno the six years? A. Yes.

Q. And you worked up to the time of the accident with Bruno?

Mr. Greenstone: Indicating "yes", with his head.

*By Mr. Greenstone.*

Q. Tell us what you saw; how Bruno worked during those six years, what kind of work did he do? A. Watchman over there. Make watchman first thing. After—

20

Q. I am asking about Mr. Bruno, what work you see Mr. Bruno do. A. Any kind of job he do. Make heavy job too. In the tin.

Q. What kind of heavy job? A. Phosphate, big bag.

Q. How much those bags weigh? A. How much heavy?

30

Q. Yes, how much heavy? A. Phosphates was two hundred pounds. Big bag like that (indicating).

Mr. Greenstone: Indicating, what would you say, about four feet?

Mr. Gormley: I didn't see it.

*By Mr. Greenstone.*

Q. Show how high from the floor. A. About like that (indicating).

40

*Tony Quento—Direct*

Mr. Greenstone: About three feet, I guess.

Mr. Gormley: Yes.

*By Mr. Greenstone.*

Q. And how wide? A. Wide, about like that  
(indicating).

10

Mr. Greenstone: What would your Honor  
say?

The Court: A foot and a half.

*By Mr. Greenstone.*

Q. Did you see him do that work himself?

(The witness shakes his head.)

Q. You want to talk. Don't shake your head.  
He means yes. A. I work together over there.

20

Q. And what other work did he do besides lift-  
ing bags of phosphates; what other kind of work?  
A. Working on the silk. Fix ton heavy.

The Court: He worked on silk.

The Witness: Yes.

The Court: Bales.

The Witness: You know big drums. There  
was tin.

The Court: How heavy were they?

30

The Witness: Over one thousand pounds.

*By Mr. Greenstone.*

Q. How many fellows lift that? A. Two men.

Q. You mean throw them up? A. Roll them up.

Q. What other kind of work did he do there?

A. Well, I can't speak.

Q. What other kind of work besides lifting phos-  
phate bags? A. He work on the coal.

Q. What kind of work did he do on the coal?

40

A. Throw in the barrel. Make any kind of job.

*Tony Quento—Direct*

Q. Throw in the barrel? A. Yes.

Q. You mean fire in the boiler? A. Help the fireman.

Q. Shovel coal in the boiler? A. Yes.

Q. What other kind of work did he do besides that; besides any kind of lifting work what other kind of stuff he lift? A. Well, that is all. Silk, phosphate, coal. 10

Q. Only three things he lift all the six years? A. Three or four things over there.

Q. Only three or four things over there? A. Yes.

Q. Lifting machines? A. I was on the machines, too; load machines.

Q. How did he load machines; how would he load machines? A. I load myself, too. 20

Q. What would he do in loading machines; what was the work he do? A. Stop the machine; after start the machine; piece of silk on the top, throw the silk over top machine.

Q. When you see him work during those six years around there, did you see him—withdraw the question. When you see him work those six years how did he look to you when he walked around; did he walk with any trouble during the six years? A. No. He have nothing. 30

Q. Did you ever see him walk lame before this accident?

Mr. Gormley: I don't want to be objecting, but it seems to me it is leading too much.

Mr. Greenstone: The trouble is the way this man speaks English.

The Court: I think we need an interpreter.

Mr. Greenstone: Maybe we can get along as best we can. 40

*Tony Quento—Direct*

Mr. Gormley: The only thing is I don't want you to be or to put the important words in his mouth. I don't care about your leading a little bit.

10 Mr. Greenstone: I think under the circumstances, if your Honor took the witness in hand. Then there can be no objection. Where there is difficulty with a witness it is usual the Court takes a witness in hand where leading is concerned.

The Court: I have tried it, but I think we ought to have an interpreter around.

(At this point a short recess was had.)

(At this point James M. Santoro was sworn to act as Italian Interpreter.)

20 *By Mr. Greenstone.*

Q. (Through the interpreter.) Now, Mr. Quento, when you saw this man do all this work for six years you worked with him up to the accident, how did he look while he was doing this work to you? A. (Through the interpreter.) Well.

Q. He looked well? A. Well.

30 Q. And how did he work during those six years with you? A. When I first went to work there he was working there as a watchman and then after a watchman he passed over to—he passed over into the tinware to work with me.

Q. How long did he work with you in the tinware? A. Surely three or four years. He was changed from watchman to there.

Q. Now, these three or four years working in the tinware department with you, was that light or heavy work? A. He used to do heavy work there.

40

*Tony Quento—Direct*

Q. And what do you mean by heavy work? A. There was silk that was dyed with acid. This gives weight to the silk.

Q. How much would that weigh, this stuff that he handled? A. Fifty or sixty pounds for every piece when it was wet.

Q. And what other weights did he lift? A. He raised bags of phosphate which weighed two hundred pounds. 10

Q. And what other weights did he lift? A. The drums which were full of tin. They weighed about one thousand pounds. They were pushed by two persons.

Q. And all this work—withdraw that. What other work did he do besides the silk and the drum of tin? A. I also saw him work in the yard loading wheelbarrows with coal. 20

Q. And all this work that you saw him do, did he have any trouble doing the work or did he do it well? A. He did it well.

Q. Did you see him walk before the accident in working around the place? A. We were together.

Q. Well, how did he walk before this accident? A. In my opinion I always saw him walk well.

Mr. Gormley: I ask that that be stricken out. 30

The Court: Strike it out.

*By Mr. Greenstone.*

Q. Just tell us what you saw, how he walked. A. I saw him regular the same as anybody else.

Q. Now, did you ever hear him complain of any trouble with his leg before this accident?

Mr. Gormley: I object to that as leading.

The Court: It is a leading question. 40

*Tony Quento—Direct**By Mr. Greenstone.*

Q. Do you know whether he complained or did not complain of any trouble before this accident?

Mr. Gormley: That is objected to.

Mr. Greenstone: It is in the alternative.

10 Mr. Gormley: Unless he answers yes or no.

Mr. Greenstone: That is the question.

The Court: Read the last question.

(The last question was read by the reporter as follows: "Do you know whether he complained or did not complain of any trouble before this accident?")

The Court: Answer yes or no.

20 Mr. Greenstone: I withdraw the question. It is rather confusing.

*By Mr. Greenstone.*

Q. Had you seen him walk around since this accident? A. Yes. After he walked lame because he was hurt.

Mr. Gormley: I ask that part of the answer be stricken out, "because he was hurt."

The Court: Strike it out.

30 Mr. Greenstone: That part, "because he was hurt"?

The Court: Yes, "because he was hurt".

*By Mr. Greenstone.*

Q. Did you see him a number of times after the accident? A. Yes. I saw him several times.

Q. And on all these times that you saw him after the accident how did he walk? A. I saw him walk lame.

40

*Tony Quento—Cross*

Mr. Greenstone: Take the witness. I think it stands as far as the evidence of the accident, or shall we go into that?

The Court: I don't think we need go into that.

*Cross examination by Mr. Gormley.*

10

Q. How long were you working with this man?

A. Six years I worked with him sure.

Q. And did you notice his actions each day of those six years? A. We were always together. I had to see him all the time.

Q. There is nothing particular that directed your attention to how he walked or conducted himself during those six years, was there? A. No.

Q. So when you say he conducted himself all right, it is just your general impression that there was nothing that drew your attention to anything that was wrong?

20

The Interpreter: That is too long.

Mr. Gormley: I withdraw that.

*By Mr. Gormley.*

Q. When you said that this man was all right for the six years prior to this accident, do you mean that there was nothing that you noticed wrong about him? A. (Through the interpreter.) When a person sees another person and sees there is nothing the matter with him he is all right and then working with him.

30

Q. So you don't know now whether anything was wrong with him prior to the six years back, or during the six years he worked with you?

Mr. Greenstone: I object to the question. The question assumes that the witness does

40

*Tony Quento—Cross*

not know that there was anything wrong with him prior to the accident.

Mr. Gormley: I withdraw the question.

*By Mr. Gormley.*

10 Q. What was wrong with this man during the six years that he was working with you?

Mr. Greenstone: I object to the question. The question assumes a state of facts not in the case that there was something wrong with the man while he was working with him.

The Court: I sustain the objection.

20 Mr. Gormley: My impression is that the direct testimony is that the man couldn't walk; prior to the six years he was all right and then couldn't walk immediately thereafter.

Mr. Greenstone: But your question is during the six years he worked with him.

The Court: I sustain the objection.

*By Mr. Gormley.*

30 Q. When did you find out that there was—that this man experienced any difficulty, that there was anything wrong with him? A. After he was hurt I saw that he walked lame.

Q. How soon after he was hurt? A. Every time I had occasion to see him.

Q. When was that? A. I don't remember the precise date, but he was hurt in the month of July.

Q. What year? A. Last year.

Q. 1933? A. Yes.

40 Q. Where was he when you first saw him after that? A. I saw him near his house.

*Tony Quento—Cross*

Q. Did you visit him then? A. I saw him near his house.

Q. Did you visit him then? A. I saw him outside in front of the door.

Q. What was he doing; walking up and down the street? A. No. He was standing in front of his door and I passed and I asked him. 10

Q. He was standing in front of his door? A. Yes.

Q. And did you have a conversation with him then? A. I asked him how he felt.

Q. How long did you talk with him at that time? A. A few minutes. Well, one word and another. You ask him how he is and how he isn't.

Q. And where was this house? A. The first street near Brunswick. 20

Q. That is his home, isn't it? A. Yes.

Q. He didn't go to any store with you at that time, did he? A. No.

Q. So you just happened to be along at this particular place at that time and you saw him and you asked him how he felt, is that what you mean? A. Yes.

Q. And he remained in front of the house talking with you? A. Just for a moment. I asked him and then I went away. 30

Q. When did you next see him? A. After a time; a long time.

Q. How long a time after that was it you next saw him? A. About five or six months. I don't remember the exact month.

Q. So that would be at least six months after the accident, would you say? A. Yes, something like that.

Q. And where was it you saw him on that occasion? A. In front of the house the same way. 40

*Tony Quento—Cross*

Q. The same way? A. Yes.

Q. You happened to meet him standing outside of his door. Did you talk to him? A. (In English.) Just ask him.

Q. Just asked him how he was? A. Yes.

10 Q. And that was all that was said, a short conversation? A. (Through the interpreter.) That is all.

Q. So he remained standing in front of his house door during the conversation, did he? A. Yes. The conversation of a moment. Just passing and I asked him, "How are you?"

Q. How did you come to find out he didn't walk so well? A. I knew he was hurt in the shop and I could see he was lame working in the same department with me.

20 Q. He wasn't lame while he was working, was he? A. No.

Q. And you weren't walking with him on the street, were you? A. No.

Q. Now, you said that he worked with you doing heavy work, that is true, isn't it? A. Yes.

Q. But you weren't his overseer, you weren't above him in doing the work, his boss? A. No.

30 Q. And you were doing the same kind of work, were you not? A. The same work.

Q. Was he your partner in doing this work? A. There was lots of persons in the department. Once we would be on one place and then in another. Sometimes he was my partner and sometimes he was somebody else, a partner.

Q. At the time you said he was assisting in the heavy work, was he working with you or with some co-worker? A. He worked with others, Dominick Caito.

*Tony Quento—Cross*

Q. And you didn't see them particularly; you didn't notice their work? A. Everybody does his own work and when something happens everybody looks up.

Q. So until this thing happened you paid no particular attention to Bruno, did you? A. No.

Q. Now, you said that the silk that was dyed with acid became heavier by reason of its being wet. A. Yes. 10

Q. Had you anything to do with the dyeing of that silk? A. No. There is a tinware department you dye the silk.

The Interpreter: Pardon me, will you ask that question again?

(The last question was read by the reporter as follows: "Had you anything to do with the dyeing of that silk?") 20

The Witness (Through the interpreter): With the dyeing of it no.

*By Mr. Gormley.*

Q. How do you know acid was used? A. (Through the interpreter.) It comes from us to where they dye it.

Q. But you have nothing to do with the dyeing of silk; you don't use the dye nor the acid, do you? A. No. 30

Q. Did you ever weigh the silk after it was wet? A. I didn't weigh it, but I could feel it was heavy.

Q. By your method of feeling the weight could you tell the exact number of pounds? A. Fifty or sixty pounds, yes, sure; possibly more.

Q. Now, when did you last discuss this case? A. This is the first time.

Q. The first time? A. Yes. This is the first time. I was never here before. 40

*Tony Quento—Redirect—Recross*

Mr. Gormley: That isn't the question.  
Read the question.

(The last question referred to was read by the reporter as follows: "Now, when did you last discuss this case?")

10 *By Mr. Gormley.*

Q. When did you talk about it? A. I talked to no one.

Q. What is the answer? A. I talked to no one about it.

Mr. Gormley: That is all.

*Redirect examination by Mr. Greenstone.*

20 Q. You mean to say that you didn't talk to anybody about this case before? A. No.

Q. Didn't you tell me through this man here (indicating) what happened?

Mr. Gormley: That is objected to.

The Court: It is immaterial anyway.

Mr. Greenstone: What is that?

The Court: It is immaterial.

Mr. Greenstone: Well, I just want to clear that up as a matter of record.

30 *By Mr. Greenstone.*

Q. Did anybody ask you—did Mr. Bruno ask you if you would be a witness for him in a case?

A. Yes, sir; to come here, he asked me, and I'll tell what I know.

Mr. Greenstone: That is all.

*Recross examination by Mr. Gormley.*

40 Q. Did you tell Mr. Bruno what you were going to say? A. No, I didn't. I'll tell what I saw.

Mr. Gormley: That is all.

*Tony Quento—Recross**By Mr. Greenstone.*

Q. Now, when you say that you saw Mr. Bruno lift bags of phosphate, are you guessing about that, or did you see that? A. I saw him. We did it together. We put them on our shoulders. Both of us lifted them from the floor. It is two hundred pounds. 10

Q. When you say you saw him roll drums weighing one thousand pounds with another man, are you guessing about that, or did you actually see him do that.

Mr. Gormley: Well, I object to that, because that question has dual effect. If he is guessing about the weight then I object to it. If the purpose of the question is whether he saw him roll it. I have no objection. 20

*By Mr. Greenstone.*

Q. Well, put the question as to whether he saw him roll those big drums. A. Yes. Sometimes we did it together because they are heavy.

Q. Now, when you say you talked to Bruno after the accident and you saw him walk lame, did you see him walk lame or you think he walked lame? 30

Mr. Gormley: Now, I object to that because the testimony is that on direct examination that he saw him walk lame.

Mr. Greenstone: I am cross examining.

Mr. Gormley: But you are not cross examining your own witness. On cross examination we have got him down in front of the door and he hasn't walked at all. Whether he saw him or thinks he saw him or what he thinks is improper. 40

*Tony Quento—Recross*

Mr. Greenstone: On redirect examination I can explain the cross examination.

Mr. Gormley: But you are taking an assumption of facts that isn't so.

10 Mr. Greenstone: You are assuming because he stood still at the house while he was talking to the man, therefore he didn't see him walk lame. Therefore, I want to bring that out.

Mr. Gormley: Does it make any difference what he thinks?

The Court: I sustain the objection.

*By Mr. Greenstone.*

Q. Did you actually see the man walk lame after the accident? A. Yes, I saw him walk lame.

20 Q. About how many times did you actually see him lame after the accident? A. Several times I met him I saw him walk that way.

Mr. Greenstone: I guess that is all.

*By Mr. Gormley.*

30 Q. Now, you said on direct examination that you saw him walking lame and you are now saying you saw him walking lame. When I asked the question you said you had been talking with him in front of his house and only standing there. Now, which is correct? A. When he came here didn't I see he was walking lame?

Q. Oh, when he came to this court you saw him walking lame?

Mr. Greenstone: Just a moment.

Mr. Gormley: Read the question before, please.

40 (The question referred to was read by the reporter as follows: "Now, you said on direct

*Tony Quento—Recross*

examination that you saw him walking lame and you are now saying you saw him walking lame. When I asked the question you said you had been talking with him in front of his house and only standing there. Now, which is correct?")

The Witness (through the interpreter): He was moving in front of his house and you could see he was lame. 10

*By Mr. Gormley.*

Q. Didn't you testify when I asked you the question that you had seen him on two occasions within six months after the accident? And that he was standing in front of his house and you just had a short conversation with him? A. (Through the interpreter.) Yes. And then when he came here didn't I see he was lame? 20

Q. So until you saw him in this courtroom had you ever seen him walk lame? A. I did not see him walk lame before he came here.

Q. And this is the first day you have been in court, as I understand your testimony? A. Yes, the first time.

Mr. Gormley: That is all.

*By Mr. Greenstone.* 30

Q. Did you see him walk lame out on the street before he came to Court?

Mr. Gormley: That has been answered two or three times. It seems to me it is improper at this time.

The Court: Read the question.

(The question referred to was read by the reporter as follows: "Did you see him walk 40

*Tony Quento—Recross*

lame out on the street before he came to court?")

The Witness (through the interpreter): I saw him a month and a month and a half ago when we came here together.

10 Mr. Greenstone: What was the answer?  
(The last answer was read by the reporter as follows: "I saw him a month and a month and a half ago when we came here together.")

*By Mr. Greenstone.*

Q. Did you have occasion to see how he walked before these times that you came here together with him?

20 Mr. Gormley: Same objection. This is re-examining the old stuff.

The Court: He is trying to clarify it. Overrule the objection.

The Witness (through the interpreter): No.

Mr. Greenstone: That is all.

*By Mr. Gormley.*

30 Q. So you saw him in this courtroom a month and a half ago, did you? A. Three or four times. I came here and I saw him and I saw him walk.

Q. So you have been here three or four times, have you? A. Four or five times.

Q. What did you mean when you said before this is the first time you have seen him when you first came to Court and this is the first day you have been in Court?

Mr. Greenstone: Just a moment. I don't think we can get anywhere with this. It is

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*Tony Quento—Recross*

argumentative in the first place, what do you mean by saying this is the first time.

The Court: Reframe the question.

*By Mr. Gormley.*

Q. You did say that this is the first day you have been in Court, did you not? A. As a witness. 10

Q. What were you here for before? A. For the same case.

Q. For the same purpose? A. Yes.

Q. How many times were you here before today? A. Three times.

Q. And that is over a month and a half? A. About. The first time we came here was quite a while ago and the case wasn't held.

Q. Is that the time that Bruno asked you to come here as a witness? A. Yes. 20

Q. And what did he say after that first day? A. He told me nothing. What would he say? He told me when the case is heard again come.

Q. And that is all? A. And that is all.

Q. Didn't he notify you when the case was on? A. He would tell me on a certain date. I didn't know.

Q. And that was all that was said? A. That is all. 30

Mr. Gormley: That is all.

Mr. Greenstone: That is all.

(Witness excused.)

*Dr. Lawrence Cahill—Direct*

DR. OTTO LOWY, called as a witness on behalf of the petitioner, being duly sworn, testified as follows:

Mr. Greenstone: We are taking Dr. Lowy a little out of turn.

10 All right, Dr. Cahill is here.  
(Witness withdrawn.)

DR. LAWRENCE CAHILL, called as a witness on behalf of the petitioner, being duly sworn, testified as follows:

*Direct examination by Mr. Greenstone.*

20 Q. Dr. Cahill, did you examine the petitioner—  
(to the petitioner) Come up here, Bruno— A. I have.

Q. (Continuing.) On several occasions? A. Yes, sir.

Q. At my request? A. Yes, sir.

Q. And did you examine both legs? A. I did.

Q. Did you examine them for—withdraw that.

Mr. Greenstone (To the petitioner): Come here. Roll up your pants.

30 *By Mr. Greenstone.*

Q. Doctor, will you look at the man's legs and tell us your findings?

Mr. Gormley: I object to the exposition of the man's limbs, and the doctor testifying from the present examination.

The Court: You know that you can't do that. You can't examine the man in the courtroom. That is the Commissioner's orders.

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(Off the record.)

*Dr. Lawrence Cahill—Direct*

(Discussion off the record between Court and Counsel.)

*By Mr. Greenstone.*

Q. Was the amount of atrophy at the time you examined him the same as you find now?

Mr. Gormley: That is objected to. No foundation. 10

Mr. Greenstone: I'll withdraw that.

The Court: I sustain the objection.

*By Mr. Greenstone.*

Q. Tell us what you found on your examination.

A. My recollection is that my first examination was made in my office on last November or December, and at that time he had a general atrophy of his left lower extremity with contraction of his tendo achillis so that he walked more or less on his toes. His atrophy at that time, to my recollection, around the calf of his leg was about half an inch, and it increased from that to an inch in his thigh. I have examined him on several occasions since then and it has been my experience that his atrophy is increasing all the time. So that at the last time I examined him he seemed to have an atrophy from one to two inches of his whole extremity. 20 30

Q. What was the atrophy that you found around the thigh? A. I think it was up to—I am not sure about it—it runs to about an inch to about two inches different parts that are measured.

Q. What was your finding upon the general examination that you made of this condition? A. My conclusion was that the man's leg was atrophied as the result of paralysis of the muscles, probably, from the history he gives me, due to 40

*Dr. Otto Lowy—Direct*

an injury to the peripheral nerves, and that he had an existing disability of about two-thirds of the leg as far as hard work is concerned.

10 Q. What nerves run through the entire leg which would be affected by this condition? A. The chief nerve is the sciatic nerve and it distributes branches down to the leg below the knee and called the anterior tibia and the perineal nerves.

Q. You have had experience, Doctor, in traumatic injuries? A. Yes. I have had a number of years, twenty years or more.

Q. And would you get atrophy with an involvement of a nerve injury? A. Yes, sir.

20 Q. How does that affect the muscles? A. Where it is injured it controls the nourishment to the part so that it isn't sufficiently nourished. It isn't used as much as it would be if it was active, and it wastes away.

Mr. Greenstone: Take the witness.

Mr. Gormley: No questions.

(Witness excused.)

30 Dr. OTTO LOWY, having been previously sworn, as a witness on behalf of the petitioner, resumed the stand and testified as follows:

Mr. Greenstone: As a matter of expenses, it is all a matter of discretion with your Honor as regards Dr. Cahill's expenses.

*Direct examination by Mr. Greenstone.*

Q. Now, Dr. Lowy, how long have you been practicing?

40 Mr. Gormley: The doctor's qualifications are admitted.

*Dr. Otto Lowy—Direct*

*By Mr. Greenstone.*

Q. Doctor, did you examine the petitioner at my request? A. I did.

Q. And when did you examine him, Doctor? A. About three weeks ago in my office.

Q. Now, Doctor, assuming that this man had an accident such as described here where a truck ran over the man's toe of the foot and remained there until the truck was moved, and when the man was run over, he fell backwards. That prior to this accident which occurred in July, 1933, the man had been working steadily for the employer for some years, about seven or eight years, doing laborious work, such as lifting fifty or sixty pound weights; at times two hundred pound weights; at times rolling drums weighing approximately one thousand pounds with another man; doing other muscular labor, such as loading wheelbarrows with coal, and helping the fireman, and that he complained of no trouble in his manner of work prior to this accident; that since the accident the man complains that he cannot do any labor, that he walks lame; that you have examined him as you have described on that day, what would you say as to whether the condition that you examined and found on that day is attributable to this accident of July, 1933?

Mr. Gormley: Well, it seems to me the last part of the question is very leading. I think if the doctor were asked what he would consider the cause of it, but to say, but to connect up now with an accident—

*By Mr. Greenstone.*

Q. (Continuing.) Or the cause of it. Well, what is this attributable to? A. If other things which

*Dr. Otto Lowy—Direct.*

are apt to cause a condition similar to this can be excluded then I should say that the condition I found was caused by the trauma, which he received in that fall.

10 Q. And assuming, Doctor, that the man prior to this accident had no trouble of this nature, that he claims that his legs were both about the same size and circumference and contour and strength; that he was able to work prior to this accident, what is that factor as an element to corroborate the theory that it is attributable to this accident?

20 A. That is one of the factors if the man was perfectly well prior to that time and had no atrophy of that leg it would be one of the factors. The other factor would be the question whether or not this man had an infantile paralysis or poliomyelitis subsequent to the injury. I mean after his fall. If he didn't have any infantile paralysis subsequent to that then I would say it was caused by the fall.

Q. Assuming that there is no history of any infantile paralysis subsequent to this injury?

30 Mr. Gormley: I object to that because there is no testimony of exclusion of infantile paralysis or poliomyelitis or anything.

Mr. Greenstone: There is no evidence of it.

Mr. Gormley: I know, but you are putting the question to the doctor on the facts that haven't even brought before the Court.

The Court: I sustain the objection.

*By Mr. Greenstone.*

40 Q. Assuming that the man wasn't treated for infantile paralysis subsequent to this injury?

*Dr. Otto Lowy—Direct*

Mr. Gormley: I object on the same ground, because there is no testimony he wasn't treated for that or no testimony for what he was treated.

Mr. Greenstone: All right, suppose we get this connected up.

10

*By Mr. Greenstone.*

Q. Assuming, Doctor, that this man was treated by Dr. Hoops and his associate since the time of the accident and that the diagnosis was by Dr. Hoops fractured distal phalanx of the left big toe—

Mr. Gormley: That is objected to, putting this in the question.

Mr. Greenstone: Just a minute, can I complete that question, please? 20

*By Mr. Greenstone.*

Q. (Continuing.) Fracture of the distal phalanx of the left big toe, peripheral neuritis causalgia of the calf of the left leg with atrophy and foot drop, that he was treated for that condition by the attending physician for the company after the accident—

Mr. Gormley: I object to the question. There is no such testimony here. 30

*By Mr. Greenstone.*

Q. (Continuing.) And that this testimony will be connected up by the appearance of Dr. Hoops on the stand.

Mr. Gormley: I object to it at this time then. Unless you are going to produce Dr. Hoops yourself. 40

*Dr. Otto Lowy—Direct*

Mr. Greenstone: Unless you admit that. Here is the certificate. Do you want to admit the certificate signed by Dr. Hoops?

Mr. Gormley: I don't know whether it is or not.

10 Mr. Greenstone: You can ask him. He is in Court.

Mr. Gormley: I object to the question at this time.

The Court: I sustain the objection.

Mr. Greenstone: I withdraw the question.

*By Mr. Greenstone.*

20 Q. Did you find any evidence of infantile paralysis since the accident? A. There was no active condition of infantile paralysis there. The man has an atrophy of the muscles in the left leg, a condition which may be the result of infantile paralysis. Infantile paralysis is an acute infectious disease which is very definite and specific in its symptoms, and if the individual had infantile paralysis the attending doctors surely would have noted it.

30 Mr. Gormley: Now, as to that part of the doctor's answer, I ask that it be stricken from the record.

Mr. Greenstone: That is diagnostic opinion.

Mr. Gormley: What another man would do?

Mr. Greenstone: It is diagnostic.

The Court: It isn't permissible. Strike it out.

*By Mr. Greenstone.*

40 Q. If a man would have had infantile paralysis would the general practitioner be able to ascertain that?

*Dr. Otto Lowy—Direct*

Mr. Gormley: That is objected to.

Mr. Greenstone: Why not? That is diagnostic.

Mr. Gormley: How can this doctor testify to another man's ability?

The Court: I sustain the objection.

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*By Mr. Greenstone.*

Q. Did you find any direct evidence that the man is now suffering or did suffer from infantile paralysis?

Mr. Gormley: That is objected to because there is no testimony that he had it.

Mr. Greenstone: I know there isn't, but the doctor injected the infantile paralysis and I want to find out whether he definitely has evidence that the man is or was suffering.

20

Mr. Gormley: He is your witness.

The Court: The doctor did answer that.

Mr. Greenstone: That is what I want, to get that definitely.

The Court: I think the doctor answered it definitely. He found no acute infantile paralysis, that is the answer.

*By Mr. Greenstone.*

Q. What was the condition that you found; describe that in detail. A. That condition I found was that the man had an atrophy of the thigh amounting, or, rather, of the thigh muscles. The measurements were approximately an inch less than on the corresponding side on the other leg. He had an atrophy of the calf muscles which was approximately an inch and a half less than the corresponding point on the other side. He had a foot drop, that means the toes are down and he

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*Dr. Otto Lowy—Cross*

cannot straighten up the foot. He has a contraction of the calf muscles with a tenseness of the tendo achillis, and he does not seem to be able to put his foot squarely on to the ground. There is also tenderness along the course of the sciatic nerve, beginning at about the middle of the thigh and extending down to the popliteal space where the sciatic nerve divides.

10 Q. This condition that you have described, does that cause the man permanent disability? A. Yes, sir.

Q. To what extent would you say this man is permanently disabled? A. I should say from sixty to seventy per cent, permanent disability of the leg.

20 Mr. Greenstone: Take the witness.

*Cross examination by Mr. Gormley.*

Q. Doctor, what are the causes of the condition you found in Mr. Bruno? A. What may be the causes?

Q. Yes. A. Infantile paralysis as I have mentioned; poisoning by heavy metals, such as bismuth; toxins, such as diphtheria; and injuries anywhere from the fourth lumbar down to the middle of the thigh. That is, trauma—injuries.

30 Q. And is the condition that you found, Doctor, an unusual condition? A. In what way?

Q. In anything other than trauma, is it often found from infantile paralysis? A. I have mentioned the infantile paralysis. It is common knowledge individuals suffering from infantile paralysis have atrophies such as these. It is common knowledge that lead, for instance, will cause a foot drop. It is common knowledge that bismuth will cause it.

40 It is common knowledge that diphtheria will cause

*Dr. Otto Lowy—Cross*

a peripheral neuritis, and other poisons will cause it.

Q. So that there is nothing— A. (Continuing.) And trauma will cause it.

Q. There is nothing in this particular situation that shows you the causation of this condition, does it? A. I defy any man to tell what particular thing caused this man's condition. I have said in answering the hypothetical question that I think I have been quite fair in the matter that you must exclude other causes. 10

Q. In other words, that these several things, causes, that you have named, might produce the condition other than trauma? A. Yes. That is, the things that I have mentioned may produce a similar condition as this. 20

Q. And is it a usual thing that there would be an atrophy of the muscles of the leg, including the sciatic nerve, or injury to the sciatic nerve from a wheel of a truck running over the great toe of the left foot? A. No. A truck running over the toe of the left foot would not cause an atrophy above. But an injury caused by a fall, may. 20

Q. Were this an injury caused by a fall, where would be the contact of the trauma that would create a condition that exists now in Mr. Bruno? A. That is something that I question whether anybody can answer, but if I may be permitted to say this; that the sciatic nerve originates from the anterior portion of the fourth and fifth lumbar, first and second sacral nerves, and then forms the largest nerve in the body and comes out through a notch, the sacral sciatic foramen, and likewise— as it comes out. If I may demonstrate it on myself, I think it would be better. It comes out at 30 40

*Dr. Otto Lowy—Cross*

10 about the point, this point through the sacral sciatic nerve, goes down into the center of the buttocks and is covered by the gluteous maximus. That is the place where it has its greatest protection. When it gets down to the middle of the thigh there is very little protection to that nerve and it then goes down to the popliteal space so that an injury to that nerve anywhere along the course, or an injury to the nerve roots as they emerge from the various points I have mentioned. either the fourth, fifth lumbar, or first and second, would be apt to produce a condition similar to this. Where this injury actually happened, I don't know.

20 Q. By that you mean that there must be some particular point of the trauma to the part of the body to cause that condition? A. There must be a trauma to the nerve itself. When I speak about a trauma I should also like to explain this, that sometimes a trauma to a nerve is not a direct injury to the nerve, but an injury to the surrounding parts which cause pressure upon the nerve itself, and in that way sets up the neuritis.

30 Q. Neuritis, however, is caused by many things, is it not, Doctor? A. Yes, sir; I have enumerated, I believe, most of the causes of neuritis.

Q. Quite a number of things nowadays? A. I have seen many cases.

Q. And not particularly of a traumatic nature? A. I have seen cases that were due to lead poisoning.

40 Q. And that would also have the tendency of an atrophy of the affected parts? A. Yes. May I say this: as far as the pathology is concerned, the pathology is always the same whether it is

*Dr. Otto Lowy—Redirect*

caused by poison or whether it is caused by pressure.

Mr. Gormley: That is all.

*Redirect examination by Mr. Greenstone.*

Q. Now, Doctor, when you were given this man to be examined by me, did you have in mind all of those elements that you have described? A. I had everything in mind when I examined him. 10

Q. And assuming the facts as described that the man did meet with this accident as described, what is your opinion, with a reasonable degree of certainty as to what relationship this accident has to the man's present condition? A. That is the same question that I have answered before. Excluding everything else this man is suffering from a traumatic, sciatic peripheral neuritis. 20

Q. And did you exclude as much as you could all these other conditions? A. I have excluded them as much as I could.

Q. And did you also take a blood test of this man? A. I did not.

Q. Any Kahn test? A. I did a Kahn test. Pardon me, I forgot about that.

Q. And what did that indicate? A. I am sorry to say in the cause of factors I forgot to mention syphilis is one of the most common causes and I took a Kahn to eliminate the syphilis as a causative factor. 30

Q. How did you find that test? A. I said, permit me to correct that.

Mr. Gormley: Yes.

The Witness: That was negative.

Mr. Greenstone: Take the witness.

*Dr. Otto Lowy—Recross**Recross examination by Mr. Gormley.*

10 Q. Why was there an exclusion of all these possibilities, Doctor? A. Well, we have excluded syphilis by the Kahn test. We have excluded lead poisoning by the absence of tremors, by the absence of a lead line, and by the absence of other symptoms that are associated with lead, or the heavy metals. We have excluded diphtheria by the history and we have excluded polio by the history.

Q. So the history played a very important part in the making of your diagnosis and your findings? A. As far as exclusion of some of the factors were concerned at the time of my examination. However, the hypothetical question now clarified that.

20 Q. So that your answer is entirely—withdraw that. Your statement about the possibility of disability of a traumatic nature is entirely due to the hypothetical question put to you? A. With the exception of the exclusion of the syphilis and lead it is the hypothetical question.

Q. Doctor, you don't know when this condition developed, I assume? A. Except from the hypothetical question.

30 Q. And I don't think that gives you the time. I mean the time after the alleged accident? A. No, I don't know when that occurred.

Mr. Greenstone: It was stated July, 1933.

The Witness: You stated the accident, but you didn't state when the atrophy occurred.

Mr. Greenstone: Well, maybe we can correct that, get that on the record. I think you will agree that Dr. Rigerone noticed it about six weeks after the accident.

*Dr. Otto Lowy—Recross*

Mr. Gormley: I think it was in the latter part of August, so I think that would be upwards of six weeks. I think that is so.

*By Mr. Gormley.*

Q. In the event of its being a traumatic nature, how long would the condition take to develop to the extent that it is easily seen, the existence of atrophy? A. That would depend on how carefully and how closely the physician watches or measures the limb. When it was observable then it had gone on for several weeks. 10

Q. I mean when would. A. As I understand it the doctor observed it six weeks following the accident. Is that correct?

Q. About. A. Therefore the atrophy started within two weeks after the injury. 20

Q. Is that the usual thing in traumatic origin? A. That is the usual time for the atrophy to become observable, from four to six weeks, unless there is a complete severance of the nerves. In that event it is immediate. That is, you can notice it immediately by lack of motion.

Q. And the same thing, I assume, applies in a case of slowly progressive nature when it is caused by syphilis or infantile paralysis? A. As I have pointed out, the pathology is the same in any of these causes. 30

Q. Now, Doctor, is there another cause, if I may ask, that might be the result of an infection? A. Well, I said toxine.

Q. If this man—assuming, Doctor, that this man was in the hospital for a jaw condition, remained there for some little while, confinement of about three weeks, would that in any way have a bearing upon the condition you found? 40

*Dr. Otto Lowy—Recross*

Mr. Greenstone: Just a moment. When? It may be very important.

Mr. Gormley: I don't recall when he said he was in the hospital. It was some years prior to that.

10 Mr. Greenstone: I think he said seven or eight years before.

The Witness: May I answer that?

Mr. Greenstone: Yes.

The Witness: An infection of several years ago would have no bearing whatsoever upon the peripheral neuritis that I saw.

*By Mr. Gormley.*

20 Q. If there was an infection—isn't it so that many times the progress of the infected area is slow and then it emanates to a weakened part of the anatomy? A. Well, now, may I ask in this connection are you now referring to focal infections, because of focal infections?

30 Q. Yes, exactly. A. The course of a focal infection is one of very slow progress and it sometimes goes on without its being noted by the patient until an injury occurs when the organisms attack that part which had been injured, or the so-called spot of least resistance. Does that answer your question?

40 Q. Isn't this so, Doctor, that you may have a point of origin of infection that may result in a different part of the body? A. Yes. That is why we term it focal infection. An individual, let us say, with ulcerated teeth or with bad teeth with pus in the mouth or pus in the tonsils, he may have no symptoms referable to the teeth or to the tonsils, yet at some time or other he may develop arthritic changes. He may develop so-called rheu-

*Dr. Otto Lowy—Recross*

matism, which infection is nothing else but an infection of the joints. He may also develop as a result of the toxins a neuritis. It may attack almost any part of the body. Does that answer your question?

Q. Now, is this so, Doctor, if you have an infection it creates a toxic condition in many cases, doesn't it? A. Yes. 10

Q. And that toxic condition may be progressive over a term of years? A. Now, may I say this again. The toxemia or the substance which is given off by the infected spots of infected material goes into the blood stream. If the individual has sufficient antibodies in his blood stream to neutralize the toxins or the poison nothing will happen. If, at some time or other, something occurs to this individual which lowers the amount of anti toxin or anti bodies or resisting material to this toxin, then the individual may develop symptoms and the symptoms will occur usually in the spots offering the least resistance. 20

Q. That may be in almost any part of the human anatomy? A. It may be anywhere.

Q. And this condition you found, as I understand your testimony, is very possible as the result of the toxic condition some way or other? A. I didn't say it was very possible. I said it may occur. It may come from a toxemia. 30

Q. Doesn't that mean possible?

Mr. Greenstone: You said very possible.

The Witness: You said very possible. Just as I stated that syphilis is one of the possibilities; that diphtheria is one of the possibilities. Those are the things that must be taken into consideration in attempting to find out the causative factor in a case of this kind. 40

*Dr. Arthur J. Hoops—Direct*

Mr. Gormley: That is all.

Mr. Greenstone: That is all. I think we can dispense with the lay witnesses. We have had enough of them. We would go through the same difficulties with the others, and that is the case.

10

DR. ARTHUR J. HOOPS, called as a witness on behalf of the Respondent, being duly sworn, testified as follows:

*Direct examination by Mr. Gormley.*

Q. Doctor, you are a practicing physician, are you not? A. Yes, sir.

Q. And have been practicing for how long? A. Fourteen years.

20

Q. And your office is where? A. 202 Boulevard.

Q. A graduate of what institution? A. Bellevue.

Mr. Greenstone: I will admit the doctor's qualifications.

*By Mr. Gormley.*

Q. Doctor, did you know the petitioner, Mr. Bruno? A. Yes, sir.

30

Q. When did you first see him? A. When did I first see him or when did my associate first see him.

Q. Do you know when your associate saw him? A. Yes. He saw him on July 3rd.

Q. And who is that? A. Dr. Furman.

Q. Does Dr. Furman work under your supervision and instructions? A. Yes, sir.

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*Dr. Arthur J. Hoops—Direct*

Q. And do you know the result of—how do you get the results of his examinations? A. Well, he reports them to me by phone or personally.

Q. Does he make a record of them? A. Yes, sir.

Mr. Greenstone: If your Honor please, if there is going to be any hearsay testimony, I will object to it. 10

*By Mr. Gormley.*

Q. When did you first see him, Doctor? A. I saw him on the 17th of July.

Q. Did you make an examination? A. I did.

Q. What did you find his condition to be? A. Well, he had his foot elevated on a chair and splints on his great toe, which I did not remove, of the left foot. 20

Q. And what was his history? A. That he had a truck run over his toe and the history I received from the doctor was that he had a broken toe.

Q. Was there an X-ray picture taken? A. There was.

Q. And that confirmed the original diagnosis? A. Yes, sir.

Q. What complaint did he make to you, Doctor. What was his complaint at the time of your examination? A. He had no particular complaint at that time. He felt pretty good. He had his foot up on a chair and splinted. 30

Q. In other words, he showed you his toe? A. Yes.

Q. And your examination was directed to the great toe of the left foot? A. Yes, that is right.

Q. And did he then say he had been injured?

Mr. Greenstone: Don't lead the witness.

*Dr. Arthur J. Hoops—Direct*

*By Mr. Gormley.*

Q. Did he complain of any other complaints, Doctor? A. Not at that time, no, sir.

10 Q. Did he at any other time complain of any injury or an injury? A. Well, eventually he told me how he felt. I don't know just when that was. It was some time later he told me the manner in which he fell.

Q. And do you remember what that was? A. Well, he said as he got his foot under the truck he strained himself and fell backwards.

Q. Did he then complain of any other injury? A. Well, I noticed when I took the splint off and told him to walk he couldn't walk as he should. He said he couldn't put his foot down at that time.

20 Q. And that was caused by what, if you know?

Mr. Greenstone: Will you fix the time, Mr. Gormley?

*By Mr. Gormley.*

Q. What time was that?

Mr. Greenstone: When that splint was taken off.

30 The Witness: It was taken off either the 17th or 28th of July. I saw him on the 17th and the 28th. I haven't the record when the splint was taken off.

*By Mr. Gormley.*

Q. What was the cause of that inability to properly walk, if you know? A. Well, he couldn't—he had this apparent foot drop and stiffness of the ankle.

40

*Dr. Arthur J. Hoops—Direct*

Q. Caused by what? A. Caused by the condition in question, the neuritis. His nerve injury or nerve disease, whatever it may have been.

Q. Did you prescribe for him, Doctor? A. Yes, sir.

Q. And what was your— A. I gave him massage and he had Alpine Light therapy, injections of iron. Gave him sodium salicylate. 10

Q. And what was the progress? A. (Continuing.) And diathermy. He could walk better but his atrophy did not either diminish or decrease or increase, rather.

Q. When did you first notice the atrophy? A. (Referring to record.) Now, I think about August 4, 1933.

Q. What was your diagnosis or final diagnosis, Doctor? A. I will be frank. I did not know what was causing this condition at the time, and I phoned the Ocean Accident Insurance Company and asked them the privilege to consult a neurologist on this case to find out the cause. 20

Q. As the result of that, what did you do? A. I sent him down to Dr. Dowd, or the insurance company sent him down to Dr. Dowd, either one or the other. I believe they referred him to Dr. Dowd. 30

Mr. Greenstone: Just a moment. Is there going to be any testimony by this witness about Dr. Dowd?

Mr. Gormley: From this witness, of course not.

*By Mr. Gormley.*

Q. Did you make an examination of the patient with Dr. Dowd? A. Not with Dr. Dowd. 40

*Dr. Arthur J. Hoops—Direct*

Q. Did you make any subsequent examination after your conference with Dr. Dowd? A. Yes, I did.

10 Q. What did you ascertain, if anything? A. I ascertained the same thing, he had an atrophy of the leg with a foot drop and spastic tendon achilles.

Q. From your examination and the history, are you in a position, Doctor, to say with a reasonable degree of certainty what the cause of the atrophy and foot drop was? A. No, sir; I am not certain.

Q. Do you know what causes or the causes of such a condition as you found in Mr. Bruno?

20 Mr. Greenstone: Just a minute. I think we are concerned with exactly this case. The previous question related particularly to this case, and the doctor very frankly made a statement he doesn't know in this particular case. Why should we delve into other causes and other cases? I object because it is immaterial, irrelevant and incompetent.

Mr. Gormley: That is a matter of interpretation of the doctor's meaning of his answer.

30 The Witness: I meant I didn't know the exact cause in Mr. Bruno's case. There are so many causes.

Mr. Greenstone: That is what I am objecting to, other cases and other causes.

The Court: Overrule the objection.

*By Mr. Gormley.*

Q. All right, Doctor? A. Shall I answer it?

40 Q. Yes. A. Well, the most important thing that causes this is poliomyelitis, infantile par-

*Dr. Arthur J. Hoops—Direct*

alysis. The next in frequency is syphilis. Then there is the heavy metal poisonings—mercury, bismuth, lead; and there is the toxins from typhoid, diphtheria and other infectious diseases; and then there is other toxins from chronic infections such as osteomyelitis, bad teeth. That is—

10

Mr. Greenstone: Focal infection?

The Witness: Focal infections.

*By Mr. Gormley.*

Q. And did you make an examination—withdraw that. In your examination did you exclude the several reasons and arrive at any definite disease? A. There were some foci of infections in his teeth for which I referred Mr. Bruno to a dentist.

20

Q. And from the teeth infections—from your experience, would that be one of the causes that would create the condition in which you found Mr. Bruno?

Mr. Greenstone: Just a moment, if the Court please. It seems to me that certainly counsel is leading the witness pretty well, indicating the cause or one of the causes when the witness previously on direct examination already said he could not give an opinion. Counsel is trying to make the witness give an opinion in other words.

30

The Witness: I can give an opinion. I mean, I said I do not know definitely what was the cause in Mr. Bruno's case.

Mr. Greenstone: That is what I am objecting to.

Mr. Gormley: My understanding is that the doctor is not in a position to say definitely

40

*Dr. Arthur J. Hoops—Direct*

what caused this condition because there are so many conditions.

*By Mr. Gormley.*

Q. Is that right, Doctor? A. That is right.

10 Mr. Gormley: However, he may still be in a position to say what in his best judgment, what his opinion is in his best judgment.

The Witness: I didn't say I couldn't give a diagnosis. I said I couldn't give a positive cause in Mr. Bruno's case.

Mr. Greenstone: That is the exact point I am objecting to.

The Court: Overrule the objection.

20 Mr. Greenstone: I ask for an exception.

*By Mr. Gormley.*

Q. Now, will you answer the question, Doctor?

A. Well, I have forgotten the question.

(The question referred to was read by the reporter as follows: "and from the teeth infection,—from your experience, would that be one of the causes that would create the condition in which you found Mr. Bruno?")

30 The Witness: It would be one of the causes, or, I should say it could be one of the causes.

*By Mr. Gormley.*

Q. What would you say is the present disability of this man's leg, Doctor? A. I would approximate it about between forty and fifty percent of his leg.

Q. And that is based on the existing atrophy—

40 Mr. Greenstone: Just a moment. May I suggest Mr. Gormley not lead so much. I object. It is leading.

*Dr. Arthur J. Hoops—Cross**By Mr. Gormley.*

Q. Upon what is that based, Doctor? A. Oh, upon his ability to walk, and the strength that he has in that leg on pressure, and the size.

Q. Would you name that in terms of a functional loss? A. Yes.

10

Q. Not cosmetic at all? A. No. I would say it was functional.

Mr. Gormley: Take the witness.

*Cross examination by Mr. Greenstone.*

Q. Dr. Hoops, did you sign this certificate—you did sign this certificate, did you not? (Handing paper to witness.) A. Yes. That is my writing.

Q. Will you read it? A. This is to certify that Joseph Bruno had been attended—has been under my care since July 3, 1933. Dr. Saul Furman, my associate, attended him from July 3rd to July 11th, 1933. Diagnosis, fracture of the distal phalanx of the left big toe, periphenel neuritis, causalgia of the left leg with atrophy and foot drop.

20

Q. Now, Doctor, is this condition definite, this one about the spastic tendon achilles? A. Is it definite?

Q. Is that a definite condition; there is no question about that that you found? A. No, it is quite tense.

30

Q. And this atrophy of the leg is definite with the foot drop; there is no question about that? A. There is no question about that.

Q. And there is no question, is there, that it would affect the man in laborious work? A. Yes.

Q. You are sure about that? A. There is no doubt about it.

40

*Dr. Arthur J. Hoops—Cross*

Q. No question at all it would be observable by lay people, a man working around with a leg of this kind, if he had this condition before the accident?

A. I don't think you would observe the atrophy.

10 Q. I mean, walking around, a man with that leg in that condition, it would be observable that he had something the matter with that leg? A. Not necessarily; not with his pants on.

Q. Well, he had a foot drop? A. Yes, but he could walk.

20 Q. But he walked lame? A. No, he doesn't walk particularly lame. You wouldn't call him a lame man. If you were looking for it you can note he has some peculiarity in his walk, but if you had noticed the man walking along the street and you weren't looking for anything, I don't think you would particularly detect that or not.

Q. Well, you noticed the foot drop; no question about that? A. There is a question whether you would notice it walking along the street.

Q. Would the man walk lame with a foot drop?

A. With a degree footdrop he has? There are all kinds of degrees.

Q. Hasn't he got a marked degree of foot drop?

A. He has a degree of foot drop.

30 Q. I said hasn't he a marked degree of foot drop? A. I wouldn't say it was marked.

Q. Has he a marked spastic tendon achilles? A. Yes.

Q. Wouldn't that cause him to walk lame? A. Well, if it was marked enough, but the man doesn't walk particularly lame so that you would notice it in the street unless you were looking for it.

Q. Isn't that spastic tendon achilles marked?

40 A. Well, he has a marked spasticity of his tendon achilles.

*Dr. Arthur J. Hoops—Cross*

Q. And wouldn't that cause him to walk lame no matter how he tried to walk, the fact that he has this spastic tendon achilles? A. He would walk with a defect.

Q. In other words, lame? A. Not necessarily lame; with a defect.

Q. It would be observable, would it not, Doctor? 10  
A. By whom?

Q. Anyone who would see him. A. Not necessarily, no.

Q. How would he walk with a defect? A. There are plenty of people with tilted hips having a defect in walking, but we wouldn't notice it on the street. Anybody would notice Mr. Bruno in a bathing suit or on a beach if he was out there bathing, but walking along with his long trousers and walking as he does, you wouldn't necessarily 20  
notice it.

Q. And wouldn't this spastic tendon achilles contract the muscles of the lower leg and cause him to walk lame? A. Not necessarily lame; with a defect. There is a difference between lameness and defective walk.

Q. How would you describe the defect? A. For a man to walk lame he would have to have a shorter leg. 30

Q. Well, how do you describe this defect you speak of? A. Let Mr. Bruno walk and he can show you better than anyone else can how he walks.

Mr. Greenstone (To the petitioner): You walk around here, Mr. Bruno; walk across from here to the door.

(The petitioner does as instructed.)

*Dr. Arthur J. Hoops—Cross**By Mr. Greenstone.*

Q. Is that the manner in which you saw him walking (indicating)? A. No, not to that degree.

Q. Was it to a less degree? A. Yes, it was to a less degree.

10 Q. You have said, did you not, Doctor, when you took his splints off you noticed he couldn't walk, didn't you, Doctor? A. That is right.

Q. And did you notice him trying— A. I inferred he wouldn't walk properly at that time.

Q. You meant he couldn't walk properly; you saw the defect at that time? A. Mr. Bruno after the accident would not walk as well then as he does now.

20 Q. In other words, he walks across the room now better than he did after the splints was off? A. Yes. That would naturally happen with anybody when a splint is off and a sore toe.

Q. Was that why you attributed that he had this trouble in walking because he had sore toe alone? A. Yes, at first, until I saw him in my office.

Q. And when did you see the atrophy? A. Well, I said I noticed that either the 17th or the 28th. That is when I examined his leg.

30 Q. But didn't you say you noticed the atrophy first in August? A. I beg your pardon?

Q. Didn't you say you noticed the atrophy first in August; just look at your notes carefully, Doctor. A. Well, it was probably—yes, it was August 4th at my office.

Q. That was the first time you observed it? A. That was the first time I examined his leg. Prior to that I didn't examine his leg.

*Dr. Arthur J. Hoops—Cross*

Q. So you did take the splints off either on the 17th or the 28th of July? A. Yes, but I didn't examine his leg at that time.

Q. Didn't you look at the leg at all with the splints off? A. No.

Q. And when again did you examine the leg after August; some time in August? A. The 18th. 10

Q. The 18th of August? A. Right.

Q. And did you ask him if he ever had this trouble before the accident? A. I did.

Q. And what did he tell you? A. He said no.

Q. Have you any reason to doubt it?

Mr. Gormley: That is objected to.

The Court: I sustain the objection.

*By Mr. Greenstone.*

20

Q. Did you try to get a history from him as to the various trouble he had, diseases and so forth? A. Yes.

Q. Did you ask him whether he had infantile paralysis?

Mr. Gormley: That is leading.

*By Mr. Greenstone.*

Q. Did you try to eliminate all those conditions? A. Yes, I did. 30

Q. And you found no definite evidence of any other condition but this trauma as a matter of fact, isn't that so, Doctor, definite evidences? A. Well, I mentioned before he had infected teeth. And I also mentioned before that it wasn't clear in my mind whether it was due to trauma or whether it was due to something else. That is the reason I referred him to a neurologist.

40

*Dr. Arthur J. Hoops—Cross*

- Q. And is it not a fact, Doctor, that if a man has any infections in his body, whether it is due to focal infection or infected teeth, or whatnot, that infection which he may have will attack the part of the body that has the least resistance; isn't that so? Isn't that well known in medicine?
- 10 A. Well, that is very far fetched.
- Q. You think that is very far fetched. A. Yes, it is very far fetched.
- Q. Isn't that a general principle in medicine?
- A. I beg your pardon?
- Q. Isn't that a general principle in medicine that infections will attack the weakest part of the body? A. Well, how can you tell what is the weakest part of the body?
- 20 Q. For instance, you have heard of tuberculosis of the spine, have you not? A. I think I have.
- Q. And you have heard that men get tuberculosis of the spine and don't know a thing about the tuberculosis of the spine until they get a fall on the spine, Pott's Disease of the spine? A. They had tuberculosis of the spine before they had the injury, and the injury—
- Q. And the injury accelerated it? A. The injury accelerated it or exaggerated it.
- 30 Q. In other words, the weakened part of the body made that portion susceptible to the infection? A. No. they had infection before.
- Q. All right, but it exacerbated the infection, increased the infection? A. Oh, sure.
- Q. Increased the infection, right? A. Yes.
- Q. And brought about the man's disability? A. Right.
- Q. You have also heard of tuberculosis of the hip, have you not? A. Yes.
- 40

*Dr. Arthur J. Hoops—Cross*

Q. Where a man gets a fall, strikes his hip and gets tuberculosis of the hip? A. No, he had it before.

Q. He had the germs before? A. He had the tubercular hip before.

The Court: You are working backwards to my mind. 10

*By Mr. Greenstone.*

Q. In other words, if a man has an infection in his body and superimposed on that gets a trauma, it would tend to exacerbate the infection? A. Yes. If he has a disease of a—

The Court: Particular organ?

The Witness (Continuing): Has an injury to that particular organ as it gets worse. 20

*By Mr. Greenstone.*

Q. Now, Doctor, where is the sciatic nerve? A. It comes off from the plexus and goes through the sciatic foramen down the back of the leg and then divides in the popliteal space. One goes anteriorly and the other goes posteriorly, and supplies the nerves.

Q. Including the peripheral nerves? A. Yes.

Q. Doctor, you got the history that this man fell after he had the truck run over his toe, fell backwards? A. Yes. 30

Q. And could a man suffer an injury to the sciatic nerve with that kind of a fall; yes or no, Doctor? A. How can I answer that when I told you before I didn't know, and that is the reason why I sent him to a neurologist. I can't answer that honestly.

Mr. Greenstone: That is all. 40

*Dr. Arthur J. Hoops--Redirect**Redirect examination by Mr. Gormley.*

Q. Now, Doctor, was there any evidence of trauma to this man's leg? A. No direct evidence, no.

10 Q. In addition to this statement that has been read this certificate that has been read, did Dr. Furman submit any other report to you?

Mr. Greenstone: Just a moment. There wasn't a report submitted by Dr. Furman. It was submitted by Dr. Hoops.

Mr. Gormley: This is Dr. Furman's report (indicating).

The Witness: No, it is mine.

*By Mr. Gormley.*

20 Q. Dr. Furman's name is mentioned here, is it not? A. Yes. My associate attended him from 7-3 to 7-11.

Q. Whose diagnosis was that? A. That was my diagnosis and also Dr. Furman's diagnosis except the neuritis and the atrophy wasn't there. His diagnosis was the fracture of the distal phalanx of the big toe.

Q. Confined solely to the toe? A. Yes, sir.

30 Mr. Gormley: That is all.

Mr. Greenstone: That was Dr. Furman's diagnosis?

The Witness: Dr. Furman's diagnosis.

Mr. Greenstone: That is all.

Mr. Gormley: That is all.

(Witness excused.)

*Dr. William C. Stuart—Direct*

DR. WILLIAM C. STUART, called as a witness on behalf of the respondent, being duly sworn, testified as follows:

*Direct examination by Mr. Gormley.*

Q. Doctor, you are here under subpoena, are you not? A. Yes. 10

Q. What is your official capacity? A. The State Compensation Examiner for Hudson and Bergen Counties.

Mr. Greenstone: Just a moment. If the doctor is going to be asked in his examination as to what he found, there is no objection as to what he actually observed of the man's leg and condition; but if the doctor is going to be asked an opinion of disability, that will be objected to. 20

The Court: What do you mean?

Mr. Greenstone: Expert opinion as to the amount of loss of function.

The Court: Well, the doctor can answer that question. He is not going to answer a hypothetical question. He is not here as an expert, but as an examining physician for the department.

Mr. Greenstone: That is the very thing 30 that Dr. McBride promulgated seven or eight years ago, that any of the department doctors used by either party—

The Court: The doctor is here under subpoena.

The Witness: I am here under subpoena and not to give any expert testimony whatsoever; just to read from my examination.

*Dr. William C. Stuart—Direct*

Mr. Greenstone: But the part of the opinion as to disability, asking the doctor for loss of function, is the function of an expert.

10 The Court: I mean Dr. McBride never had any such rules and regulations. I was under Dr. McBride and he always allowed the doctor to testify.

Mr. Greenstone: But not to give expert evidence.

The Court: I was here under Dr. McBride and he allowed it.

The Witness: As far as I recall Dr. McBride made the ruling that the State Doctor could read from his report of the examination for informal hearings and read all of his report.

20 Mr. Greenstone: Not as to the evidence as to any opinion as to disability.

The Witness: He didn't say that at all.

The Court: I will overrule the objection.

Mr. Greenstone: I ask for an exception.

Mr. Gormley: Do you admit the doctor's qualifications?

Mr. Greenstone: Yes.

*By Mr. Gormley.*

30 Q. Did you examine the petitioner, Joe Bruno?  
A. I examined Mr. Joe Bruno on November 2, 1933 (referring to record).

Q. And will you be good enough to read the report or findings? A. I will read from the report of this examination.

Mr. Greenstone: When was that examination?

40 Mr. Gormley: November 2, 1933, wasn't it, Doctor?

*Dr. William C. Stuart—Direct*

The Witness: What do you mean?

Mr. Greenstone: On what date was that examination?

The Witness: November 2, 1933.

Mr. Greenstone: Is that the date of the examination?

The Witness: That is the date of the examination. 10

Mr. Greenstone: All right.

The Witness: He gave a history that a wheel of a truck passed over the great toe of his left foot. Examination of the left foot shows there is a marked discoloration of the nail of the great toe. A radiographic negative of the left foot is submitted, numbered 2647, dated July 4, 1933, and disclosed a fracture through the entire length of the distal phalanx communicating with the phalangeal joint of the great toe. Another X-ray numbered 2694, dated August 13, 1933, discloses a fracture of the distal phalanx united and in good position. The petitioner presents an atrophy of the left leg. He presents in addition to this injury to the great toe a marked atrophy of the entire left lower extremity with a deformity in the region of the left hip. There is a talipes deformity of the left foot known as talipes equinus, in which gets about walking on the top of the foot. He is unable to stand erect and put his whole foot on the ground. Measurement of the circumference of the middle of the right thigh seventeen and a half inches; at the middle of the left thigh fifteen and seven-eighths inches; middle of the calf of the right leg, 12½ inches; middle of the calf of the left leg, ten and three-eighths inches. 20  
30  
40

*Dr. William C. Stuart—Direct*

This deformity of the left foot and marked atrophy of the left lower extremity are of long duration and bear no relation to the injury of the great toe.

10 Mr. Greenstone: Just a minute. There is your expert evidence right there, and I object to it.

Mr. Gormley: What is the doctor here for?

Mr. Greenstone: If you want to call him as an expert, all right. That is the objection. You can't use the doctor as an expert.

The Court: Suppose you eliminate that feature, of long duration.

The Witness: Well, do you want me to read the next estimate of permanency?

20 The Court: Yes.

Mr. Gormley: How about the balance? The doctor hasn't finished the sentence.

*By Mr. Gormley.*

Q. You said there is a deformity of the foot being of long—

30 The Witness: This deformity of the left foot and a marked atrophy of the left lower extremity are of long duration and bear no relation to the injury of the great toe.

Mr. Greenstone: That is exactly what I want stricken from the record.

Mr. Gormley: How does the Court rule on that?

The Court: Strike it out.

Mr. Gormley: I wish my objection noted with an exception.

40 The Court: It is. You can't cross examine the doctor on that. The doctor didn't answer a hypothetical question.

*Dr. William C. Stuart—Cross*

You wouldn't answer a hypothetical question, would you?

The Witness: No, I wouldn't.

The Court: So that we will have to strike it out.

*By Mr. Gormley.*

10

Q. Is that all, Doctor? A. Because of the fracture of the great toe a permanency of ten percent of total should be allowed and temporary disability has ceased.

Mr. Gormley: I wish to offer the doctor's report in evidence.

Mr. Greenstone: I object to it because of the fact it was already partially stricken out, and the Courts have said from time immemorial that it isn't evidential.

20

The Court: I sustain the objection.

Mr. Gormley: Will you note my exception? That is all.

*Cross examination by Mr. Greenstone.*

Q. Dr. Stuart, what would you say would be the disability of that leg entirely, irrespective whether or not in your opinion it is due to this fracture of the leg? A. As I read my report I didn't say the disability was to the leg at all. It was to the toe.

30

Q. You examined the leg, nevertheless; you found an atrophy and you measured the atrophy? A. I did.

Q. And you gave the disability as to the toe, did you not? A. As to the toe, yes.

Q. Well, what would you say would be the disability of the leg; did you test that and come to

40

*Dr. William C. Stuart—Cross*

any conclusion? A. The leg deformity bore no relation to the toe injury.

Mr. Greenstone: We heard that and that was ruled out.

10 Mr. Gormley: Wait a minute. This is a question. This is in answer to counsel's question.

Mr. Greenstone: I am asking—he did measure the disability of the toe. I am asking if he measured the disability of the leg.

Mr. Gormley: That is the doctor's answer.

The Court: He has already answered that.

*By Mr. Greenstone.*

Q. Did you test him for disability of that leg?

20 A. I did not make any estimate of the disability of the leg because I did not believe that the deformity of the leg had anything to do with his injury to the toe.

Mr. Greenstone: I ask that that be stricken out, the doctor's opinion as to whether or not the disability in the leg is due to the injury to the toe.

The Court: I deny it. You brought it out yourself.

30

Mr. Greenstone: I ask for an exception.

*By Mr. Greenstone.*

Q. Did you endeavor to make any—yes or no, did you endeavor to estimate the disability in that leg? A. No. I did not.

Q. This disability of the leg that you noticed, where you say he had—what do you call that; what is that term you used? Will you give me the regular medical—something about equinus?

40

A. Talipes equinus.

*Dr. William C. Stuart—Cross*

Q. Is that a definite condition? A. That is an old condition in all probability due to

Q. Not what it is due to. I am asking you whether it is a definite condition. Just answer the question, please. A. It is a definite condition that exists. I found it in my report.

Q. Was it a marked definite condition? A. Yes. 10

Q. Yes or no? What did you say? A. Yes. Otherwise I wouldn't have noted it.

Q. There was no trouble about seeing that condition, was there; it was easily observable; in other words, that is what I am trying to get, yes or no? A. I read my report of my examination what I found. That is clear enough.

Q. Doctor, I am trying to get if his condition, if that was easily observed. It was easily observed, that is your answer, is it not? 20

Mr. Gormley: I object, if Your Honor please.

The Court: I sustain the objection.

The Witness: I have already answered your question.

The Court: I say I sustained the objection.

Mr. Greenstone: I ask for an exception.

*By Mr. Greenstone.*

30

Q. With this condition that you observed this man had, would he be able to walk perfectly well?

A. No. I stated he gets about, walks on the toes of his foot.

Mr. Greenstone: That is all, Doctor. Just a moment.

*By Mr. Greenstone.*

Q. Assuming, Doctor, that this man did not walk about on the toes of his foot before this acci- 40

*Dr. William C. Stuart—Cross*

dent— A. That is a hypothetical question and I am not going to give expert testimony. I am here under subpoena only.

The Court: I sustain the objection.

*By Mr. Greenstone.*

10

Q. So that all your diagnosis as to whether or not it was due to the fracture of the toe is irrespective of any hypothetical question that may have been put to you? A. When I make examinations, I don't think of hypothetical questions of any kind. I deal with facts as they present themselves to me at the time.

20

Q. In other words, you didn't get all the facts in this case? A. To my best knowledge I got all the facts that I wanted for a diagnosis in this case.

Q. You got all the facts from the man himself, did you not? A. I got it from my examination.

Q. And only from the man himself? A. I beg your pardon?

Q. And only from the man himself? A. I don't understand your question.

30

Q. From your examination and from the man himself you got the facts of the accident from the man, and where did you get your information on which you based your diagnosis? A. On the examination, objective findings.

Q. Now, would an attending doctor's experience with a case help you any in making a finding? A. They help in a way, but I use my own opinions, to a great extent base my opinions on past experience.

40

Q. Suppose, Doctor, this man never had a condition before this accident, what would you say then?

*Dr. William C. Stuart—Redirect*

Mr. Gormley: I object.

The Court: I sustain the objection.

Mr. Gormley: Well, there is no objection to that question.

The Court: But he is going into—

Mr. Gormley: Here is the situation. I have been overruled on my question to the doctor. You have ruled out the report. Counsel comes in and directly in opposition to the objection he makes, he opens up a wide field. 10

The Court: You have your opportunity. I was going to allow you on redirect examination. I am not closing you out, but I am not going to allow any hypothetical question.

Mr. Greenstone: That is why I stopped. That is all. 20

*Redirect examination by Mr. Gormley.*

Q. Doctor,—

Mr. Gormley: I now renew my motion to offer this report in evidence based on the fact that counsel has opened up the field on his cross examination, and I ask the Court to ask the doctor specifically to read the part of the doctor's report that has been overruled.

The Court: I will permit the doctor to read that in. 30

*By Mr. Gormley.*

Q. Doctor, won't you read that part of your report again where you state there is no—

Mr. Greenstone: Just a moment. Then let me speak a minute to ask the question.

Mr. Gormley: Are you through with your cross examination? 40

*Dr. William C. Stuart—Redirect*

Mr. Greenstone: No. If the Court is going to permit this, the Court can't stop me.

The Court: We are going at this in an odd manner.

Now, we are on redirect.

10 Mr. Greenstone: I object to any examination and permission of this nature. I object to the question for the reason that the Court did not permit counsel for the petitioner to ask a hypothetical question. What is irrelevant, immaterial and incompetent for the petitioner in the case is immaterial, irrelevant and incompetent for the respondent on redirect examination.

20 The Witness: You can't make the statement that I am incompetent.

Mr. Greenstone: I am not saying you are incompetent, Doctor.

Mr. Gormley: He didn't mean it as regards to you, Doctor.

The Court: That wasn't connected with you.

Mr. Greenstone: We are getting the thing all balled up. We are talking about incompetent as a matter of legal evidence and not as to the doctor.

30 You have a wrong slant. I am not saying you are incompetent.

The Witness: All right, all right; that's different.

*By Mr. Gormley.*

40 Q. Doctor, won't you read that part of the report that you say the injury to the toe is not the basis of the injury to the leg. I think something like that, of that character? A. (Reading.) "This deformity of the left foot and the marked atrophy

*Dr. William C. Stuart—Recross*

of the left lower extremity are of long duration and bear no relation to the injury of the great toe.”

Mr. Greenstone: I object to that and ask that it be stricken from the record as no part of the testimony material or competent in this issue; and for the further reason that the Court did not permit counsel to ask on cross examination questions and hypotheses as to the witness’ opinion as to the result of this condition, the source, the sequence, and what it is due to. 10

The Court: I deny the motion.

Mr. Greenstone: I ask an exception.

Mr. Gormley: I now wish to offer that report in evidence.

Mr. Greenstone: I ask—I object to the report being put in evidence because of the long standing rule that it can’t be put in. 20

The Court: The report is in the record now. It isn’t necessary to put in the report. It is already in the record.

Mr. Gormley: Take the witness.

*Recross examination by Mr. Greenstone.*

Q. What fact have you in basing your opinion besides the story from the petitioner? A. Because in the main, the chief reason was that his primary injury was to his great toe and he didn’t have any in evidence or give any history of injury to his left leg. 30

Q. Did you have the history that the man fell backwards? A. No.

Q. You didn’t have that? A. No. He did not state anything like that at all.

*Dr. Ambrose Dowd—Direct*

Mr. Greenstone: That is all.

Mr. Gormley: That is all.

(Witness excused.)

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AFTERNOON SESSION.

10 DR. AMBROSE DOWD, called as a witness on behalf of the respondent, being duly sworn, testified as follows:

*Direct examination by Mr. Gormley.*

Q. Doctor, you are a practicing physician, are you? A. Yes.

Q. How long?

20 Mr. Greenstone: I will admit the doctor's qualifications.

Mr. Gormley: All right.

*By Mr. Gormley.*

Q. Doctor, in your practice have you specialized in any branch? A. I have.

Q. What branch? A. Nervous and mental diseases and conditions.

Q. And for how long have you been doing that? A. Eighteen years.

30 Q. Now, did you examine the petitioner in this case, Mr. Bruno? A. I did.

Q. What date? A. September 7, 1933.

Q. And was that in the company with any other physician? A. No.

Q. Where was it, in your office? A. At my office.

40 Q. And will you give us the benefit of your examination and findings? A. He presented objectively at that time an atrophy of the left leg.

*Dr. Ambrose Dowd—Direct*

Left leg on that date at a definite level measured ten and one-quarter inches, and the right at the same level measured twelve and one-half inches. The left thigh measured fourteen and three-quarter inches and the opposite thigh fifteen and one-quarter. There was a foot drop. Weakness of his extensor muscles; weakness of his flexor muscles; and no particular nerve trunk tenderness. Knee jerk on that side was diminished, and his Achilles was diminished. No anaesthesia; no hyperesthesia; no sensory changes at all. There was a general weakness in sensation just over the leg. He had a very marked oral sepsis. Atrophy of his nasal mucous membrane. Some hardening of his arteries. There were some rales throughout his chest. Systolic blood pressure 126 and diastolic was 96. His cranial nerves were normal; pupils were normal. He had no pathological reflexes whatsoever. Those were the findings.

10

20

Q. Doctor, had you made a subsequent examination? A. Yes, I did.

Q. On what date was that? A. On November 4, 1933.

Q. And what was the condition then that you found? A. Just about the same.

Q. Any examination thereafter? A. No, sir. 30

Q. Now, Doctor, did you examine this man's left leg? A. Yes, sir.

Q. What was the condition of that? A. Atrophic.

Q. And from your examination and I suppose you got a history? A. Yes, I did.

Q. Can you tell us the cause of the existing atrophy? A. In my opinion—

Mr. Greenstone: Just a moment. If your Honor please, I would ask that the history be 40

*Dr. Ambrose Dowd—Direct*

submitted. We don't know what history he got.

*By Mr. Gormley.*

10 Q. Suppose you repeat the history. A. The history was that about nine weeks prior to my original examination he was pushing a heavily loaded truck on to a concrete platform. The truck ran over his left foot. Foot and leg were skinned. At the time of my examination he complained of pain and weakness in the left leg and foot.

Q. No mention made of a fall? A. None whatever.

20 Q. With that history and your examination, Doctor, can you state with any reasonable degree of certainty, the cause of the existing condition of atrophy? A. I can.

Q. What is it, please? A. It is a long standing atrophy probably due to either a long standing peripheral neuritis of possibly an old infantile paralysis.

Q. In any way of a traumatic nature? A. No.

Q. From your examination would you say that there is any relation between that condition and the alleged trauma? A. No.

30 Q. And the main cause and complaint at the time of your examination was what? A. Pain and weakness of the leg.

Q. Where? A. Of the leg.

Q. And did you see the result of any injury to the great toe? A. I knew the great toe had been fractured.

Q. That was part of your history, was it? A. Yes.

40 Q. Now, the peripheral nerves, are, they are closest to the skin, aren't they? A. Yes. They

*Dr. Ambrose Dowd—Direct*

are nerves throughout the body outside of the spinal canal.

Q. Did you find any condition that would follow an injury to the tendon achilles? A. He has a drop foot. There is contract of the tendon achilles.

Q. And in your opinion, what is the cause of that? A. The atrophy of the leg. It is a compensatory contraction. 10

Q. Doctor, in your examinations had he showed any improvement? A. No. He stayed just about the same.

Q. And for the purpose of the record what would you say his existing disability is? A. I would say he has perhaps forty percent of that leg due to the atrophy.

Q. Due to the atrophy solely? A. Yes. 20

Q. This condition, the condition to the tendon achilles may have caused—

Mr. Greenstone: Don't tell him.

*By Mr. Gormley.*

Q. (Continuing.) By many things such as—

Mr. Greenstone: You are telling him what it may be caused by. I object to the question.

Mr. Gormley: Wait until I finish. 30

*By Mr. Gormley.*

Q. (Continuing.) It may be caused by many things, can't it, Doctor? A. Yes.

Q. What may it be caused by, Doctor? A. The commonest cause is club foot due to old atrophy, usually from infantile paralysis or some spinal cord lesion, and a very common cause is gonorrheal bursitis under the tendon Achilles; spurs on the heel bone. 40

*Dr. Ambrose Dowd—Cross*  
*Frank D'Elio—Direct*

Q. Which could be caused by what? A. Old injuries and old infections.

Mr. Gormley: Take the witness.

*Cross examination by Mr. Greenstone.*

10 Q. Did you have an interpreter there, Doctor, while you examined the man? A. No.

Mr. Greenstone: No further examination.  
 (Witness excused.)

---

FRANK D'ELIO, called as a witness on behalf of the respondent, being first duly sworn, testified as follows:

20 *Direct examination by Mr. Gormley.*

Q. Where do you live, Mr. D'Elio? A. 55 Wallace Avenue.

Q. And how long have you been living down there? A. What did you say?

Q. How long have you been living down there? A. When come my country long time over there about twenty-four years.

Q. Twenty-four years? A. Yes, 1889.

30 Q. Do you know Joe Bruno? A. I know Joe Bruno.

Mr. Gladstone: This man here (indicating)?

The Witness: Yes.

*By Mr. Gormley.*

Q. You know him? A. Yes.

40 Q. How long do you know him? A. So many years, living across the street, number 50 Wallace Avenue.

*Frank D'Elio--Direct*

Q. About how many years have you known him, about? A. Oh, belong to my country.

Q. Well, did he live on Wallace Avenue? A. Yes.

Q. Near you? A. Eight or nine years ago.

Q. How long did he stay there as a resident? A. I don't remember; a year—I don't remember, it is about eight or nine years ago he stay over there. 10

Q. You were pretty well acquainted with him; you knew him very well? A. I don't understand.

Mr. Greenstone: Don't lead the witness. I object to it. It is leading.

*By Mr. Gormley.*

Q. You have known him since you were in the old country, is that right? A. Yes. 20

Mr. Greenstone: Just a minute. I object. It is leading.

The Court: Do you want to use an interpreter?

Mr. Gormley: No, it isn't important enough.

Mr. Greenstone: Go ahead, and lead him a little.

*By Mr. Gormley.* 30

Q. Did you say you knew him in the old country? A. Yes.

Q. And then you knew him all the time since he has been over here, living near him? A. Living on Wallace Avenue about a year and a half and then he move Jersey City.

Q. Do you remember him being in the hospital? A. When he was in Wallace Avenue, he was in the hospital. 40

*Mrs. Vera Sullivan—Direct*

Q. Do you remember what time that was? A. I don't remember the year; about nine years ago.

Q. And do you know how long he was there?

A. When he was sick about three weeks. The teeth was sick. Taken away. Then he go away in the hospital say about two or three weeks.

10 Q. Do you know what hospital he went to? A. I think City Hospital.

Mr. Gormley: Take the witness.

Mr. Greenstone: No questions.

(Witness excused.)

20 MRS. VERA SULLIVAN, called as a witness on behalf of the respondent, being first duly sworn, testified as follows:

Mr. Greenstone: Do your records indicate how long he stayed there?

*Direct examination by Mr. Gormley.*

Q. Suppose you give the date of admission and discharge? A. He was admitted July 7, 1934, and he signed a release to go home on the twenty-sixth of July, 1934.

30 The Court: What hospital?

The Witness: Medical Center, Jersey City.

Mr. Greenstone: There is no objection. I admit the records for what they are worth.

(The records referred to were received in evidence and marked R-1.)

*By Mr. Gormley.*

40 Q. Will you be good enough to read from the record the reason for Mr. Bruno's admission to the medical center?

*Mrs. Vera Sullivan—Direct*

Mr. Greenstone: Just a moment. I am admitting the records. All of it is in evidence. You can't put part of it in evidence. We both agreed to admit the records.

Mr. Gormley: I want her to read the statement. The whole record is in already.

Mr. Greenstone: The Judge can very well read it. He doesn't need the aid of the witness. 10

Mr. Gormley: That is up to him to pass on it.

Mr. Greenstone: I object to having emphasis placed on certain portions of the record. Then we will have to go over the entire record.

Mr. Gormley: Whatever the Court rules. 20

Mr. Greenstone: The Court can read the record just as well as anybody else; perhaps better.

The Court: All you want is the history while he was in there. I see no objection to that. Overrule the objection.

Mr. Greenstone: There isn't any objection. I just want to have the whole record in there.

The Court: Well, it is all in.

Mr. Greenstone: That is what I said. It is all in. I am objecting to having part of this read by the young lady because the entire record is before the Court, and the Court has to consider the entire record. 30

Mr. Gormley: I won't urge it.

The Court: All right, it is marked anyway. (Witness excused.)

*Horace Cody—Direct*

HORACE CODY, called as a witness on behalf of the respondent, being first duly sworn, testified as follows:

*Direct examination by Mr. Gormley.*

10 Q. Mr. Cody, you are associated with the—employed with the Ocean Accident Guarantee Corporation, are you not? A. Yes, sir.

Q. Do you know who this man who testified, by the name of Domenic Guedo? A. Yes.

Q. Did you take a statement from him? A. Yes.

Q. Do you remember when it was?

Mr. Greenstone: Just a moment. If the Court please, I object to the introduction of any statement now.

20 Mr. Gormley: I am not introducing any statement.

The Court: He can answer yes or no.

*By Mr. Gormley.*

Q. Did you take a statement from this man? A. Yes.

Q. And do you remember when it was? A. No, I don't.

30 Q. About how long ago; could you refresh your recollection by looking at this statement? A. Yes, it would refresh my recollection.

(Mr. Gormley hands papers to witness.)

Mr. Greenstone: Is that a copy or the original?

Mr. Gormley: It probably is a copy.

Mr. Greenstone: If it is a copy, I am going to object to it.

Mr. Gormley: I haven't offered it.

*Horace Cody—Cross*

Mr. Greenstone: That isn't permissible. You can show the original for the purpose of refreshing his recollection, but not copies.

Mr. Gormley: I haven't offered it.

Mr. Greenstone: I am objecting to the—

*By Mr. Gormley.*

10

Q. Take a look at this one (indicating). A. I took a statement from him on July 27, 1933.

Q. And he signed it in your presence, did he?

A. Yes, sir.

Mr. Gormley: That is all.

*Cross examination by Mr. Greenstone.*

Q. Do you know whether he could read? A. He says he could.

20

Q. He told you he could read? A. Yes, sir.

Q. Did you see him read it? A. Yes, sir.

Q. He read it to you? A. No, he read it to himself.

Q. He read it to himself? A. Yes.

Q. You mean because he looked at it you thought he read it? A. He said he read it.

Q. He told you he read it? A. Yes.

Q. Were you here in court the last time when this man testified, Dominick Guedo? A. No, I wasn't.

30

Q. Do you know he testified he couldn't read because it was English, and he can't read English?

Mr. Gormley: It is objected to because he said he wasn't here and didn't hear the testimony.

The Court: I sustain the objection.

Mr. Greenstone: This is cross examination.

40

*Horace Cody—Cross*

The Court: What was the question?

(The last question was read by the reporter.)

*By Mr. Greenstone.*

10 Q. Do you know whether or not he can read English? A. I know he said he could read English.

Q. I am asking you this question: answer that; do you know whether or not from your own knowledge whether he can read English? A. Yes.

Q. How do you know? A. Because he told me.

Q. Did you read the statement to him? A. Yes.

Q. And then you told him to read it to you?  
A. No, I didn't tell him to read it to me. I asked  
20 him if he had read it.

Mr. Greenstone: Where is that statement?

Mr. Gormley: Right here.

Mr. Greenstone: Can I see it?

Mr. Gormley: No. It isn't in evidence.

Mr. Greenstone: I want to cross examine  
on it.

Mr. Gormley: He hasn't testified to this  
except the date.

30 *By Mr. Greenstone.*

Q. You said he told you he could read the statement? A. That is right.

Mr. Gormley: And that was enough for you?

The Witness: Certainly.

*By Mr. Greenstone.*

40 Q. Do you know what the statement contained?  
A. Yes.

*Horace Cody—Cross*

Q. Did you get the statement for the purpose of putting it in evidence?

Mr. Gormley: That is objected to.

The Court: I sustain the objection.

*By Mr. Greenstone.*

Q. What was the purpose of getting the statement from the man? A. To complete my investigation.

Q. Did you get the story from the man? A. Yes.

Q. Was it for the purpose of trying to introduce it in evidence if you got to court?

Mr. Gormley: That is objected to.

The Court: I sustain the objection.

*By Mr. Greenstone.*

Q. Does that statement contain a description as to how the accident happened?

Mr. Gormley: If your Honor please, I think Mr. Greenstone has a wrong idea. We have given no testimony about the statement. I'll submit it if you want, but I haven't offered it.

*By Mr. Greenstone.*

Q. Did you have any trouble talking to the man in English at all? A. No.

Q. None whatever? A. No.

Q. Do you talk Italian? A. No.

Q. Now for—how much did you converse with him? A. Well, perhaps ten minutes.

Q. What did you say to him; what was it you talked about for these ten minutes? A. I asked him how the accident happened. I asked him to

*Horace Cody—Cross*

tell me how it happened, what he was doing at the time when it happened, what he saw take place.

Q. He told you all that? A. Yes, sir.

Q. And you wrote it all down on paper? A. I wrote a summation of what he said. I didn't write down each of the sentences as he gave them to me.

10 Q. You wrote a summation of it in your own handwriting? A. Yes, sir.

Q. Is this statement in your handwriting? A. Right.

Q. Is your handwriting legible? A. I think so.

Q. You write pretty well? A. Well, I don't know what you call, "Pretty well"; I write legible.

20 Q. Well, do you write well? A. I write legible, in my opinion.

Q. What were the words you wrote down in the statement? See if they are legible.

Mr. Gormley: That is objected to.

Mr. Greenstone: Why?

Mr. Gormley: Why don't you let the thing go in?

*By Mr. Greenstone.*

30 Q. You say the words you wrote in there were legible? Will you write the words you say were legible?

Mr. Gormley: I object to that.

The Court: I sustain the objection.

Mr. Greenstone: I ask for an exception. Of course, your Honor, will get the purpose of it as to what kind of words, whether they were long or short, whether they were understandable to this witness.

40 That is all.

*Joe Bruno—Direct*

Mr. Gormley: That is all.  
 (Witness excused.)

---

JOE BRUNO, the petitioner, recalled in rebuttal, having been previously duly sworn, testified as follows:

10

*Direct examination by Mr. Greenstone.*

Q. Mr. Bruno, when you had this accident was the foreman present at the time? Do you understand what I said? A. Delassendra.

Q. Was he there at the time? A. Yes, sir.

Q. Did he see how it happened? A. Yes, sir.

Mr. Gormley: That is objected to.

Mr. Greenstone: That is all.

20

The Court: It isn't rebuttal.

Mr. Gormley: He testified on direct examination the same thing when he was first put on the stand.

Mr. Greenstone: Well, it is in rebuttal how the accident occurred.

Mr. Gormley: It is cumulative.

Mr. Greenstone: It isn't, exactly.

The Court: It is repetition.

Mr. Greenstone: It is cumulative in a way, but still it corroborates how the accident happened.

30

*By Mr. Greenstone.*

Q. When you spoke to the doctors and they asked you about how the accident happened, did you have an interpreter at the time? A. What doctor?

Q. Any doctors. Did you have an interpreter at the time? A. Well, who is my doctor talk

40

*Joe Bruno—Direct*

Italian; don't need interpreter. Maybe for sure I need interpreter because I can't speak good.

Q. Did you have any interpreter with your own doctor, Dr. Rigerone? A. No.

10 Q. Could he speak Italian? A. Yes, sir. Well, he can't speak Italian, but he know what I say. I can't—you know.

Q. You say he could understand you? A. Yes, he understand me.

Mr. Gormley: What is the object of this? How can he tell what a man can understand?

*By Mr. Greenstone.*

20 Q. You are sure Dr. Rigerone understood you? A. Well, he can't talk. He understand, all right; but he can't talk.

Q. You mean he can't talk as well as you Italian? A. Sure, because he is born over here.

Q. Did you have an interpreter at the time Dr. Dowd examined you in Newark or was there no interpreter there? A. No.

Q. No interpreter there? A. No.

Q. Except Dr. Dowd and yourself? A. Yes, sir.

30 Q. Now, when Dr. Dowd asked you how the accident happened, what did you tell him? A. Well, I tell him I fall down that way (indicating), and the doctor says, "That all?" Fall down and pick up on the floor. "What you do after," he says. I put my feet on. The boss pick up and Dominick Guedo. That is the first one pick up and after the boss come in and pick up underneath the arm. That is what I tell the doctor too. He put feet in hot water and salt.

40 Q. Did you tell that to Dr. Dowd, he put your feet in hot water and salt? A. Yes, sir.

*Joe Bruno—Cross—Redirect—Recross*

Q. And who was present at the time you put your feet in the hot water and salt? A. There was the foreman.

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

Q. Was Delassendra there when you fell down?

A. Well, he was in back of the truck. He see— 10

Mr. Gormley: I object to this. This will open up the whole case.

The Court: We have gone over that.

Mr. Greenstone: That is all.

*Cross examination by Mr. Gormley.*

Q. Where is Dr. Dowd's office? A. It is in Newark; that is Broadway, I think, Broadway or Broad Street.

Q. Where? A. Newark. 20

Q. What other doctor did you see in Newark?

A. Well, he visit me, measure the leg, put me on top of the table.

Mr. Gormley: That is all.

*Redirect examination by Mr. Greenstone.*

Q. Mr. Bruno, when you were in the hospital for this other trouble, did you have any trouble with your leg after that, before this accident? A. I did not. 30

Q. Are you sure of that? A. Yes, sir, I can prove it. I have no trouble. I have thousand witnesses. Only have toothache.

Mr. Greenstone: That is all.

*Recross examination by Mr. Gormley.*

Q. You say you have a thousand witnesses? A. Yes.

Q. To what? A. Because I be no sick. 40

*Dr. Lewis Stephenson—Direct*

Q. You have a thousand witnesses to what? A. Because I never been sick, just for the toothache.

Mr. Gormley: That is all.  
(Witness excused.)

10

DR. LEWIS STEPHENSON, called as a witness on behalf of the respondent, being first duly sworn, testified as follows:

*Direct examination by Mr. Gormley.*

Q. Doctor, are you a licensed practicing physician? A. Yes, sir.

Q. Admitted where? A. In the State of New York.

20 Q. And you have been practicing for how long? A. Practicing there since 1922.

Mr. Greenstone: I admit the doctor's qualifications.

Mr. Gormley: The Doctor's qualifications are admitted.

*By Mr. Gormley.*

Q. Do you specialize in anything, Doctor? A. The diseases of the nervous system.

30 Q. And I suppose that has been for some time? A. 1919.

Q. Now, Doctor, did you have occasion to examine Joe Bruno, the petitioner, in this case? A. Yes, I examined him on the fifth of April.

Q. 1933? A. 1934.

Q. 1934? A. Yes.

40 Q. And will you please let us have the benefit of your findings? A. (Referring to papers.) Well, the neurological examination showed that his

*Dr. Lewis Stephenson—Direct*

cranial nerves were normal; his speech was normal; his arms were normal; he had an atrophy of his left leg and thigh; I have the measurements there.

Mr. Greenstone: What is the date of that?

The Witness: Fifth of April, 1934. Do you want these measurements? I think you had them before. 10

Mr. Greenstone: It doesn't hurt.

*By Mr. Gormley.*

Q. All right, repeat it. A. His left thigh was fifteen and one-half inches, five inches above the patella; right thigh was seventeen, same distance. The left leg or calf was  $11\frac{1}{2}$  inches; right leg same distance was 14 inches. I also found his left foot was nine inches long and the right foot  $9\frac{3}{4}$  inches long. He had a shortening of the left tendon Achilles and an increase of the height in the left arch. His left ankle jerk was equal to the right; left knee jerk was equal to the right knee jerk. The other deep reflexes were normal. He had no Babinski sign. Abdominal reflexes and cremasteric reflexes were normal. He had no loss of sensation to touch, temperature, pain or vibration sensation. He had no atrophic changes in the left leg or elsewhere. Sensation of the pharynx was normal. He had an old talipes equinus of the foot. He walks on the toes of this foot. His disability, as far as I could ascertain was a fracture of the phalange of the right toe. 20 30

Mr. Greenstone: You mean his injury?

The Witness: His injury, yes. He had rather bad teeth and a red throat. I could see no evidence of any injury to his sciatic 40

*Dr. Lewis Stephenson—Cross*

nerve. I felt that the condition was an old talipes equinus of the left foot.

*By Mr. Gormley.*

Q. Did you find atrophy in the left leg? A. Yes.

10 Q. Any relation between that and the condition of the left foot as the result of a traumatic nature?

A. Of what?

Q. Of a traumatic nature? A. I didn't think so. He has atrophy above the knee as well as below. I thought it was part of the same condition.

Mr. Gormley: Take the witness.

*Cross examination by Mr. Greenstone.*

20 Q. Could you get an atrophy above the knee as well as below the knee if you have an injury to the sciatic nerve? A. To some extent you could, yes. All the muscles below the knee are not supplied by the sciatic, but some are.

Q. And this condition that you describe as talipes equinus, is what? A. Yes.

Q. Is that a dropped foot condition? A. No. It isn't the same as a dropped foot. It is a condition of walking on the toes, but it isn't dropped foot.

30 Q. Well, you stated, I believe, one foot was shorter or longer than the other? A. One foot, the left foot, was shorter, than the right foot, three-quarter inches.

Q. Could that be caused by this condition of talipes equinus? A. I believe so.

Q. And was there spasticity of the Achilles muscles, tendon achilles? A. I didn't find any specified in the muscles of the foot or leg.

40 Q. Did you find anything special in the tendon Achilles? A. No, I found shortening of the tendon Achilles, but not—

*Dr. Lewis Stephenson—Cross*

Q. Did you find any contracture of the muscles of the leg? A. I found contracture of the tendon Achilles—

Q. How would it affect a man in walking with a condition of that type? A. His heel would be raised and he walks on the toe. He might limp a little bit. His left leg is not as strong as his right. He might not limp very much. 10

Q. Does it affect him in weight bearing, in lifting weight? A. I think it would to some extent.

Q. Do you find that leg a little weak compared with the other? A. Yes.

Q. Would this discommode a man in heavy labor to use that leg as it is? A. He could still do a fair amount of manual labor with that leg.

Q. But not heavy manual labor? A. Perhaps not very heavy manual labor. It would affect his ability to some extent. 20

Q. Now, assuming, that this man did not have this condition prior to this accident, he says he did not have any trouble with his legs before this accident, that they were both the same contour and apparently normal, and the condition was first observed as to atrophy about five or six weeks after the accident, and that the man fell and struck his back, what is your opinion as to whether or not there may be a relationship of this accident to this atrophy? A. Well, the man demonstrated to me the way he fell and I couldn't see any relationship with what he showed me and what I found. 30

Q. Did you have an interpreter there, Doctor? A. Part of the time there was an Italian doctor there who asked him some questions and then he demonstrated what happened to him.

*Dr. Lewis Stephenson—Cross*

Q. Did you get the idea that the man fell and struck his back or was that eliminated? A. I got the idea—

Mr. Gormley: Just a minute, now.

10 The Witness: He twisted his leg, is what he seemed to try to tell me.

*By Mr. Greenstone.*

Q. You didn't get a history of his striking his back in the lower part of his spine? A. Yes, he said something about that.

Q. Well, did you eliminate that feature of the case in your diagnosis? A. No, I didn't.

20 Q. Well, could a man striking his body in that fashion sustain an injury to the sciatic nerve? A. He might.

Mr. Greenstone: That is all.

Mr. Gormley: That is all, Doctor.

We rest.

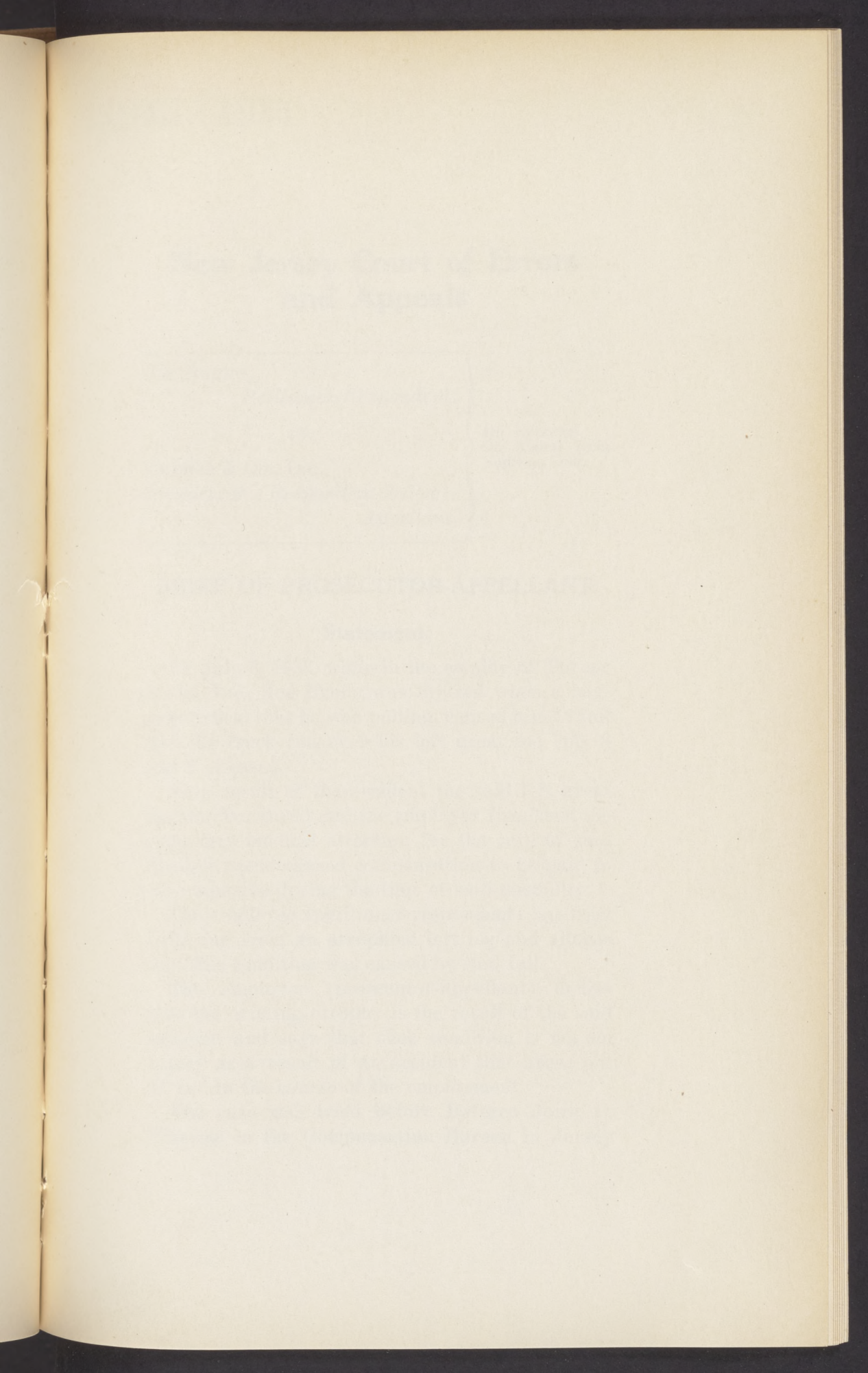
The Court: I will reserve decision.

30 I HEREBY CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically before me at the time, place and date hereinbefore set forth.

JOHN C. WEGNER,  
Referee.

I HEREBY CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by me at the time, place, and date hereinbefore set forth.

40 ROBERT A. BIRCHMAN,  
Court Reporter.





151OCT.T.1935

## New Jersey Court of Errors and Appeals

JOE BRUNO,  
*Petitioner-Respondent,*

*vs.*

TURNER & CO., INC.,  
*Prosecutor (Respondent below)-  
Appellant.*

On certiorari  
On Appeal from  
Supreme Court

### BRIEF OF PROSECUTOR-APPELLANT.

#### Statement.

On July 3, 1933, while in the employ of Turner & Co., Inc., Joe Bruno was injured when a baggage truck, that he was pulling, caused him to fall and the truck ran over his left great toe (pp. 8 and 9 of case).

As a result of the accident the said left great toe was fractured and the employer furnished the necessary medical attention for the cure of said disability and caused compensation to be paid to the employee during the time of said disability.

The employee (petitioner-respondent) has been suffering from an atrophied left leg and alleges that this condition was caused by said fall.

The employer (prosecutor-appellant) denies that the existing atrophy is the result of the said accident and says that such condition is not an injury as a result of an accident that arose out of and in the course of the employment.

The case was tried before Referee JOHN C. WEGNER in the Compensation Bureau in Jersey

City and, on May 31, 1934, the Referee found judgment in favor of the employer (prosecutor-appellant) and against the employee (petitioner-respondent), on the ground that the employee's (petitioner-respondent) existing physical ailment was not caused by the said alleged accident.

The employee (petitioner-respondent), on appeal, presented the case to the Hudson County Court of Common Pleas.

On said appeal, the Hudson County Court of Common Pleas reversed the judgment of the Compensation Bureau and ordered judgment entered in favor of the employee (petitioner-respondent) and against the employer (prosecutor-appellant).

The mandate of the Common Pleas Court was that the employer (prosecutor-appellant) pay  $116\frac{2}{3}$  weeks' compensation at the rate of \$13.33 per week; \$85 on account of the medical expert fees; \$105 for the transcript of testimony; \$200 to the attorney for the employee (petitioner-respondent) and costs to be taxed.

On May 6, 1935, the employer (prosecutor-appellant) was allowed a writ of certiorari and the cause was reviewed by the Supreme Court, which Court affirmed the judgment of the Common Pleas Court.

This appeal is now prosecuted for a review of the said judgment of the Supreme Court.

## ARGUMENT.

### POINT I.

**The Supreme Court erred in affirming Hudson County Court of Common Pleas in giving judgment, in part, upon an erroneous assumption of facts and a misconception of the purport of the evidence submitted by the prosecutor.**

The findings of facts and determination, signed by the Judge of the Hudson County Court of Common Pleas, indicates that the respondent, on July 3, 1933,

“met with an accident arising out of and in the course of his employment by the respondent-appellee, when the big toe of his left foot was run over by a hand truck causing him to fall backwards to the floor striking his back and causing him injury to the sciatic nerve, which caused an atrophy and foot drop of the left leg” (p. 26).

There is no such finding indicated in the Court's opinion. That part of the Court's findings, is as follows (p. 24):

“I find from an examination of the entire record, that this admitted atrophied condition of the petitioner-appellant's leg did not exist prior to the date of the accident in question.”

Therein the Court does not say that the accident in question caused the condition. Further, the said Hudson County Court of Common Pleas said

“it seems inconceivable to me that the petitioner-appellant employed at this particular kind of labor for a period of eleven years suf-

ferred during that time from an atrophied condition of his leg equal to a two-thirds disability of that leg. That there was no such condition of the leg is apodictic" (p. 24).

The prosecutor did not contend that the respondent who worked at this particular kind of labor for a period of eleven years

"suffered during *that* time from an atrophied condition, etc." (p. 24).

Further, the said Hudson County Court of Common Pleas, in part, says:

"I am constrained to reverse the judgment of the court below and I find that the petitioner-appellant did receive a compensable injury while employed by the respondent-appellee" (p. 24).

There is no denial that the respondent had suffered a compensable injury but, the prosecutor had paid compensation for the injury resulting from a fractured distal phalanx of the left great toe. Thus, the said Hudson County Court of Common Pleas apparently has misunderstood the purport of the testimony.

## POINT II.

The petitioner-respondent failed to affirmatively prove that his injuries were the result of an accident that arose out of and in the course of his employment with prosecutor, and

## POINT III.

The Supreme Court erred in affirming judgment of the Hudson County Court of Common Pleas in ruling that the respondent's physical condition was the result of the alleged accident.

To warrant a recovery under the compensation act, it must appear (1) that the injury was caused by accident, (2) that the accident arose out of the employment and (3) that the accident arose in the course of the employment.

*Bryant v. Fissell*, 84 N. J. L. 72;

*Steers v. Dunnwald*, 89 N. J. L. 601;

*Hully v. Moosbrugger*, 88 N. J. L. 161.

In the case at bar, the petitioner-respondent makes no claim for any disability to the great toe of the left foot for which payment was made. He now states that he fell down flat (p. 31 of the case) and was treated by Dr. Hoops and he saw Dr. Rigerone on the second day, July 4th (p. 38 of case), but on page 38 of case petitioner-respondent, referring to Dr. Rigerone, said

“he come in three or four times, of course, he come to see me.”

“Q. He came daily, a lodge doctor? A. A lodge doctor. He is supposed to come to see me. He is not *treat* me anyway. Just come to see me.”

Dr. Rigerone first examined both legs of the petitioner-respondent on July 5, 1933 (p. 77 of the case), two days after the accident. He then said that the condition of the two legs was *practically* similar (p. 78 of case). He *particularly* noticed a change in the asymmetry of the two legs on August 30th, wherein he noticed an atrophy of the entire leg from the hip to the toes. On page 79 of the case the doctor said that there was no difference in the leg "that he could *discern*." This witness went no further than to say,

"with a reasonable degree of certainty, I attribute the present condition of the left leg to the injury sustained in the original accident or in the accident" (p. 84 of the case).

He did not distinguish between the "original" accident and "*or* in the accident".

This doctor then estimated the permanent disability to be two-thirds of the leg (p. 84), although the same doctor, who graduated from St. Louis University, in 1930, admitted, on page 89 of the case, that he had estimated this respondent's disability

"A hundred per cent. of the ability to do his previous work"

and,

"a one hundred per cent. disabled from doing his previous occupation at the time when I wrote that report."

Dr. Lawrence Cahill testified that the petitioner-respondent had a general atrophy of the lower left extremity with a contraction of the tendo achillis so that he walked more or less on his toes and that, in his experience, the petitioner-respondent's atrophy is increasing all the time (p. 115 of

the case). Dr. Cahill's conclusion was that the man's leg was atrophied as the result of the paralysis of the muscles, probably, from the history that he gave due to an injury of the peripheral nerves, and that he had an existing disability of about two-thirds of the leg *as far as hard work was concerned* (pp. 117-118). This witness does not say that the atrophy is caused by the alleged accident.

Dr. Otto Lowy, in answer to a hypothetical question said,

“if other things which are apt to cause a condition similar to this can be excluded, then I should say that the condition that I found was caused by the trauma, which he received in that fall” (p. 120 of case).

On page 125 of the case, Dr. Lowy said:

“*I defy any man to tell what particular thing caused this man's condition. I have said in answering the hypothetical question that I think I have been quite fair in the matter that you must exclude other causes.*”

Thus, on the trial of this cause, the witness for the then petitioner, made no direct statement that the alleged fall was the cause of the said atrophied condition of the leg, but defied any man to tell what particular thing caused this man's condition.

Dr. Arthur Hoops, the attending physician stated that he first noticed the atrophy about August 4, 1933, and did not know the cause of the condition. He asked the privilege to consult a neurologist to learn the cause of said condition (p. 135). The patient was then sent to Dr. Ambrose Dowd (p. 135 of case).

Dr. Dowd examined the patient on September 7, 1933 (p. 158) and found the atrophied condition of the left leg, and definitely stated

“It is a long standing atrophy probably due to either a long standing peripheral neuritis or possibly an old infantile paralysis” (p. 160).

Dr. Dowd further stated that the condition was in no way of a traumatic nature.

Dr. William C. Stuart, the State Compensation Examiner for Hudson and Bergen Counties, who made an examination *for the State of New Jersey*, also found the atrophy of the left leg with a deformity in the region of the left hip (p. 149). On pages 150 and 157 of the case, Dr. Stuart said:

“this deformity of the left foot and marked atrophy of the left lower extremity are of long duration and bear no relation to the injury of the great toe.”

Dr. Lewis Stephenson, a specialist of diseases of the nervous system, stated that he felt that the patient's condition was an old talipes equinus of the left foot (p. 176). He found an atrophy of the left leg above the knee as well as below, but did not think that the condition was of a traumatic nature (p. 176).

The Trial Court who heard all of the testimony and saw the witnesses, after considering the evidence as submitted decided that, under the above recital, the petitioner in the Trial Court (petitioner-respondent) did not sustain the burden of proof of the happening of an accident that arose out of and in the course of his employment that caused the existing condition.

The Hudson County Court of Common Pleas did not have the benefit of seeing the witnesses and hearing the testimony and, evidently, gave greater weight to the opinion evidence of Dr. Rigerone, practicing less than three years, as

against the direct testimony of all of the other reputable and experienced physicians and specialists, and the Supreme Court stated that the case presented questions of fact and it sustained the finding of the Common Pleas Court.

#### POINT IV.

**The Supreme Court erred in affirming judgment of the Hudson County Court of Common Pleas, being predicated, in part, on inconsistent interpretation of the evidence, and**

#### POINT V.

**The Supreme Court erred in affirming the Hudson County Court of Common Pleas reversing the judgment of the Trial Court by merely finding that the respondent's condition did not exist prior to the date of the accident in question, without finding that the said atrophied condition was caused by the accident of July 3, 1933.**

From the decision of the Hudson County Court of Common Pleas the findings and judgment of the Court are founded on inconsistencies as follows (p. 24 of case):

“This *admitted* atrophied condition of the petitioner-appellant's leg did not exist prior to the date of the accident in question,”

and

“it seems inconceivable to me that the petitioner-appellant employed at this particular kind of labor for a *period of eleven years* suffered *during that time* from an atrophied condition of his leg equal to a two-thirds disability of that leg.”

There is no denial that the respondent has an atrophied leg, but there is no claim that he has had that condition for the period of eleven years during the time of his employment with the prosecutor. The said Hudson County Court of Common Pleas has failed to indicate in its opinion what was found to be the cause of the said accident of July 3, 1933.

#### POINT VI.

**Under the circumstances existing in this case, wherein the Appeal Court, on the record, has reversed the Trial Court, the Court of Errors and Appeals and the Supreme Court are not limited on certiorari to review the law only, but may also determine the disputed question of fact and weigh the evidence produced in the cause and establish the ultimate conclusion of fact to be drawn therefrom.**

The original act of 1911 (P. L. 1911, p. 141), provided that the decision of the Trial Court was conclusive on all questions of fact but in the Act of 1921 (P. L., p. 736) this provision was omitted.

The said act of 1911 and the supplement of 1918 (P. L., p. 435) as amended by P. L. 1921, page 734, provide that nothing therein contained shall limit the jurisdiction of the Supreme Court to review questions of law and fact by certiorari. The Certiorari Act (1 Comp. St. 1910, p. 405, Sec. 11) provides that, on certiorari to review the proceedings of any special tribunal, the Court shall determine disputed questions of fact as well as of law.

In this case the Supreme Court has included in its opinion the statement that it has full power to consider questions of fact and law on certiorari.

As this appeal is directed to a judgment in certiorari this Court is not limited to law questions only.

In the case of *Price v. Price*, decided April 9, 1931, 9 N. J. Misc. Rep. 435; 154 At. Rep. 323; the Supreme Court, after commenting that the findings of two tribunals should not be lightly disturbed, in part, says:

“Nor will the findings of the *trial judge* be disturbed if supported by the evidence.”

In the case under consideration there is an abundance of evidence to sustain the findings of the Trial Court, but the Common Pleas Court, after reading the testimony, says (p. 24 of case):

“It *seems inconceivable to me* that the petitioner-appellant employed at this particular kind of labor for a period of eleven years, suffered during *that* time from an atrophied condition of his leg equal to a two-thirds disability of that leg.” (Italics are ours.)

From the testimony of the disinterested State doctor (Stuart), the specialist, Dr. Stephenson, and the neurologist, Dr. Ambrose Dowd, it was “conceivable” that the atrophy was not related to the accident, although there is no claim that the atrophy had existed for the eleven years that respondent was in prosecutor’s employ.

Further, the Common Pleas Court found that the atrophy

“did not exist prior to the date of the accident in question” (p. 24)

but does not find that the accident caused the condition.

The Common Pleas Court also found

“that the petitioner-appellant did receive a compensable injury while employed by the respondent-appellee” (p. 24);

this is admitted, but the employer (prosecutor-appellant) paid compensation to the employee (petitioner-respondent) for the fractured distal phalanx of the great toe of the left foot, the injuries resulting therefrom.

#### POINT VII.

**By the greater weight of the evidence it has been established that the atrophy of the petitioner-respondent's leg bore no relation to the alleged accident.**

Dr. Rigerone, practicing

“for two years, up until a month ago” (p. 76),

although claiming to have attended the respondent, answered a hypothetical question, on page 84, as follows:

“With a reasonable degree of certainty, I attribute the present condition of the left leg to an injury to the nerves of that leg sustained in the original accident or in the accident.”

If “original” accident and “or in the accident” refer to two accidents this witness should have designated the respective dates.

On an earlier date this doctor had estimated the disability

“A hundred per cent. of the ability to do his previous work;” (p. 89).

Such is not the statutory basis for compensation.

On page 91 this doctor says he examined Mr. Bruno approximately once a week from then on (July 5, 1933; p. 91). Although Mr. Bruno, on page 38, referring to Dr. Rigerone, said the doctor did not treat him.

Dr. Rigerone had had no similar case during his time of practice (p. 94).

Dr. Lowy and Dr. Cahill corroborated Dr. Rigerone to the extent that petitioner-respondent has an atrophied leg. Neither of the latter doctors says the accident caused the atrophy.

As against that testimony the prosecutor-appellant presented the experienced medical experts as hereinbefore mentioned and they all agree that there is no causal relationship between the accident and the respondent's present atrophied leg condition.

As the Supreme Court said in its opinion “not to be printed in any report”, this is *essentially* a fact case and as the two inferior courts have disagreed it remained for the Supreme Court to decide “as between them”.

In part that decision reads:

“Our conclusion is that the finding of the Pleas, on the admitted or fully proved facts of the accident, of a subsequent general and decided atrophy of the leg which the doctors agreed might well follow a traumatic injury, on the evidence of the man himself that both legs had previously been strong and healthy and alike and the medical evidence which tended to exclude other causes as syphilis, for which the test was negative, or infantile paralysis, diphtheria, etc., negatived by peti-

tioner's general testimony as to his good health and strength and the heavy work he did before the accident justified the court in finding that the atrophy resulted from the accident. The evidence is far from satisfying us to the contrary."

Dr. Lowy, the witness who indicated the possibility of the trauma causing such a condition, by excluding other causes, is the author of the testimony that

"I defy any man to tell what particular thing caused this man's condition".

There is no other direct testimony that the said accident is the cause of the atrophy and, from hearing the testimony and seeing the witnesses, the Trial Court was convinced that the then petitioner failed to successfully assume the burden of proof.

Respondent respectfully urges that the judgments of the Supreme Court and the Hudson County Common Pleas Court should be reversed and judgment should be entered in accordance with the findings and rule for judgment of the Workmen's Compensation Bureau.

WALL, HAIGHT, CAREY & HARTPENCE,  
*Attorneys for and of Counsel*  
*with Prosecutor-Appellant.*

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NOTE—By agreement, counsel for Petitioner-Respondent will incorporate the decision of the Supreme Court, which, in error, was omitted from the State of the Case.

WALL, HAIGHT, CAREY & HARTPENCE,  
*Attorneys for and of Counsel*  
*with Prosecutor-Appellant.*

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## New Jersey Court of Errors and Appeals

JOE BRUNO,

*Petitioner-Respondent,*

*vs.*

TURNER & Co., INC.,

*Prosecutor-Appellant.*

*On Certiorari.*

*Appeal from  
Supreme  
Court.*

### BRIEF OF PETITIONER-RESPONDENT.

#### I.

#### Statement of Case.

The petitioner-respondent met with an accident arising out of and in the course of his employment by the prosecutor-appellant on July 3, 1933, when his left toe was run over and fractured by a hand truck, and he fell backwards to the floor, causing an injury to the sciatic nerve which resulted in an atrophy of the left leg and a drop of the left foot. The prosecutor paid compensation for the fractured toe, but alleged that the atrophy and foot drop pre-existed the accident and were unrelated thereto and refused compensation for that injury. The Workmen's Compensation Bureau sustained this contention and dismissed the compensation petition. An appeal was taken to the Hudson County Court of Common Pleas. That court reversed the Workmen's Compensation Bureau, finding as a fact that the atrophy and foot drop were caused by the accident. Judgment was thereupon entered against the prosecutor for 116  $\frac{2}{3}$  weeks compensation at the rate of \$13.33 per week, amounting to \$1,555.17. The prosecutor obtained

a writ of certiorari, and, after reviewing the entire record of the case, the Supreme Court affirmed the judgment.

## II.

### Review of the Evidence.

The Supreme Court, in its opinion, which we attach to this brief as Appendix "A," since it was erroneously omitted from the State of the Case, said, "*This is essentially a fact case.*" The only question is whether the admitted accident sustained by Joe Bruno during the course and scope of his employment by Turner & Co., on July 3, 1933, caused his atrophy of the left leg and a drop of his left foot.

The appellant's brief filed with this Court is in the main a copy of the brief submitted to the Supreme Court. It contains conclusions and statements contradictory to the record of the case. Some excerpts of the testimony quoted therein are entirely misleading because of the omissions to quote vital testimony by these same witnesses that explain and modify the quoted excerpts. In order to meet this situation, we will quote at length from the record.

### A.

#### Testimony on Behalf of Petitioner-Respondent.

The petitioner, Joe Bruno, testified that he had been employed by the prosecutor for over eleven years (pp. 29, 46) doing heavy and laborious work (pp. 44, 47, 48). On July 3, 1933, during the course and scope of his employment, his foot was caught in a loose board and a hand

truck ran over his left big toe, causing him to fall flat on his back (pp. 30, 31, 32, 50).

(p. 30) Q On July 3, 1933, what happened to you while working for the company? A Well, I was against truck. \* \* \* I slip on the floor, catch on foot (indicating).

The Court: He is indicating the toe, large toe.

Q Tell us what work you were doing that time when this happened? A I work on the tinning room and have stuff—

The Court: You had work or stuff on the truck?

The Witness: Yes, I work on the truck, take stuff from big tin, take stuff from big tin to drop on truck. After load the truck start to pull them out.

(p. 31) Q Who started pulling it out? A Myself and another man push, two man push. I was in front and another man he was in back push.

Q You mean in the back of the truck? A Yes.

Q You were in front of the truck? A I in front of truck, yes.

Q Tell us what happened. A My foot, this foot (indicating) was catch on piece of wood.

The Court: It was caught on a piece of board?

The Witness: Yes, because floor was, you know, no good, rough.

Q Go ahead. A This foot slip off (indicating), and I fall down flat. \* \* \*

The Court: Indicating the left one.

The Witness: Left one. I fell down flat. Catch this one on the wheel (indicating).

Mr. Greenstone: Indicating the left foot.

The Witness: Yes, left. \* \* \*

(p. 32) Q What do you mean by "catch on the board?" Was there a nail on the board? A Piece of board was loose. \* \* \*

The Court: The left foot slipped and he fell. \* \* \*

Q How did you fall? A After catch the wheel?

Q Yes. A Catch on my thumb. I fall down that way (indicating) and start to holler. Some peoples they come in and help me, pick me up.

The Court: *Did you fall on your back?*

The Witness: *Yes, flat; flat.* \* \* \*

(p. 50) Q As I understand it, your right foot caught, your foot slipped under the wheel of this truck and went over your big toe of the left foot? A Left foot under the wheel of the truck, left one.

Q How long did you remain in that position on the floor; you say you fell down flat on the floor if I remember it? A Yes.

His foreman, Delassendra, Tony Quento and Dominic Gudeo, helped to pick him up (pp. 33, 173). The foreman took him to the office where he bathed his foot in salt water (p. 33) and then sent him to Dr. Furman (pp. 34, 35). His leg was treated by the prosecutor's physicians, Dr. Furman and Dr. Hoops, three times a week, for about 5 months (pp. 36, 37). He was also examined and treated by his lodge physician, Dr. Rigerone (p. 38). About two weeks after his accident, the petitioner first noticed that his left leg was getting "skinny" (p. 50). At the present time his left leg is atrophied, painful, weak and he cannot stand or walk properly (pp. 41, 43, 45). Both of his legs looked the same and were in good condition before the accident (pp. 43, 44, 52, 53). Bruno testified:

(p. 43) Q Now, tell us how the leg was before this accident, the left leg. A Well, just the same as this one (indicating).

The Court: Indicating the right leg.

By Mr. Greenstone.

Q What do you mean by "the same as this one?" How do you mean "the same?"

A Well, I always felt strong the same as this one (indicating) before. I think got to be the same.

Q As to looks, what have you got to say before the accident, how did it look before the accident? A It was good.

(p. 44) Q I mean outside of looking good, was it all right? A Look same as this one (indicating).

Q Indicating the same as the right leg?

A Yes, sir.

Q Were you able—withdraw that. How did you work before this accident?

Mr. Gormley: That is objected to. I don't know the purpose of it. What is the purpose of it?

Mr. Greenstone: Merely to show whether the man was able to work before the accident.

Mr. Gormley: *That is admitted.*

\* \* \* \* \*

(p. 52) Q Before the accident you never examined your legs? A Before the accident?

Q Yes. A Sure examined legs; leg is good. What are you going to examine leg?

Q Don't let me mislead you as counsel has accused me of doing. Before the date of the alleged accident, did you examine—did you ever examine or compare your two legs?

A Before?

Q Before the accident? A Before accident is good, I have two legs what is good.

\* \* \* \* \*

By Mr. Gormley.

Q When Mr. Greenstone asked you questions— A Yes.

(p. 53) Q (Continuing). He asked you how your legs were before the accident and you answered good. A Yes, it was good.

Q That they looked good? A Yes, before accident it was good.

Q How do you know they looked good before if you didn't examine them before the date of the accident? A I know myself because I feel good then.

Q You felt good? A I feel good before, I know myself, I says.

Q Then you said it looked good; you didn't mean that you looked at your legs? A It was good before. No use trying to mix up. *I have two good legs before. I got no bum leg.*

The two co-employees, Dominic Guedo and Tony Quento, corroborated Bruno's testimony. They testified that they had worked with Bruno for many years (pp. 60, 97) at hard labor, and that he lifted and assisted in the lifting of tanks and bags weighing several hundred pounds (pp. 60, 61, 99, 100, 101, 102, 103, 109, 111). Previous to the accident, the petitioner's legs looked the same (pp. 63, 68, 70) and he worked and walked well (pp. 101, 103, 105, 111). Quento testified as follows:

(p. 101) Q When you see him work those six years how did he look to you when he walked around; did he walk with any trouble during the six years? A No. He have nothing. \* \* \*

(p. 105) Cross examination by Mr. Gormley:

Q How long were you working with this man? A Six years I worked with him sure.

Q And did you notice his actions each day of those six years? A We were always together. I had to see him all the time.

Q There is nothing particular that directed your attention to how he walked or conducted himself during those six years, was there? A No. \* \* \*

Q When you said that this man was all right for the six years prior to this accident, do you mean that there was nothing that you noticed wrong about him? A (Through the interpreter.) When a person sees another person and sees there is nothing the matter with him he is all right and then working with him.

Quento also witnessed the accident.

(p. 98) The Court: You saw Bruno get hurt?

The Witness: Yes.

The Court: How did he get hurt; what happened?

The Witness: On the truck.

The Court: How? What was he doing?

The Witness: Pushing the truck back (indicating). \* \* \*

The Court: Pushed truck back and fell down. How did he fall?

The Witness: On the floor.

By Mr. Greenstone:

Q Can you show us, tell us how the accident happened; stand up and show how it happened? Show us what happened, to the judge. A Fall like that (indicating).

Mr. Greenstone: Indicating how, your Honor?

The Court: Fell backwards.

Mr. Greenstone: Indicating he fell backwards.

The witness, Guedo testified (pp. 64, 63, 75, 76).

(p. 64). Q As you entered the plant you were about twenty feet from Bruno when this accident happened; is that what you mean? A I saw him and ran right away.

Q Ran away where? A Because he was under the truck with his foot.

Q Then the first time that you saw him this wheel of the truck was on his foot, was it? A Yes.

Q And what condition was his body in at that time? A He had his shoulders to the ground.

Q In other words, he was laying flat on his back, was he? A He was flat on his back, with his head backwards.

Q That is the position he was in when you first saw him. He was flat on his back, and the wheel of this truck was over his left big toe, is that right? A Yes. \* \* \*

(p. 63) Q Who was Dell Assandro? A He was the boss.

Q Is that the forman? A That is the foreman. \* \* \*

Q Was he there at the time that this accident happened, Dell Assandro? A Yes.

Q Did you see Bruno when he used to go into the water and bathe? A Two years ago.

Q Did you see his legs? A Sure.

Q What did they look like, anything different from the right and left leg or were they the same? A No difference.

Q You have seen him walking, you have seen him walking lame before this accident? A Never, always straight.

Q Did you ever see him complain about any trouble with his leg before this accident? A No, always good. \* \* \*

(p. 75) Mr. Greenstone (to the petitioner) Mr. Bruno, put up your pants quick \* \* \*

Q Do you see the petitioner's legs now, Mr. Witness? A Sure, I see them.

Q Is that the way they looked two years ago when you saw them? \* \* \*

(p. 76) The Witness: No, no.

Dr. Vincent Rigerone, physician for a lodge of which the petitioner was a member, examined and treated him many times. The doctor testified that he first examined Bruno the day after the accident, and once a week thereafter, to January 6, 1934 (p. 77). The doctor testified as follows (pp. 77, 78, 79, 80, 84, 85, 92, 93).

(p. 77) Q In what capacity did you examine him? What relation did you have with him? A His lodge physician.

Q Was that your duties to take care of members? A That is right.

Q Including this man? A That is right.

Q What did you observe when you saw him?

Mr. Gormley: When?

By Mr. Greenstone.

Q When, first? A July 4, 1933. I observed swelling and slight discoloration, tenderness of the left big toe.

Q And did you—how often did you see him? A At least once a week up until January 6, 1934.

Q And were you able to examine both legs at various times throughout that period? A I was.

Q When did you first examine both legs throughout that period? A *July 5, 1933.*

\* \* \*

(p. 78) Q *That is two days following this accident?* A *Two days after, that is right.*

Q What was this condition of those two legs when you saw them July 5, 1933? A *The condition of these two legs were practically similar except for a fracture of the distal phalanx of the left big toe.*

Q Doctor, you have seen—you have examined him— A I have.

Q (Continuing.) Throughout this period you have described? A I have.

Q Just relate when you first noticed any marked change in the asymmetry of his two legs? A I have the exact date when I first noticed it.

Q All right, Doctor, refer to your dates. A *August 30th was the date I particularly noticed the difference between the two legs.*

Q *August 30th?* A *Yes, sir.*

Q What did you see at that time? A *Well, I noticed an atrophy of the entire leg from the hip right down to the toes.*

Q And thereafter did you examine—did you measure the legs throughout that period? A I did. I think the first time—I did. I think the first time I measured the leg.

Q What did you note? A *I noted atrophy, difference in size in the two legs.*

Q What was the amount of difference? A Well, it varied in the different spots from—

Q Say the calf, for instance. A The calf, there was almost two inches difference in the two legs on the first date that I noticed the atrophy.

Q *Was there that much difference or any difference at all apparent the first day that you examined the man's leg?* A There wasn't.

Q Sure about that, Doctor? A I am  
\* \* \*

(p. 79) Q Now, how did the upper extremity, that is about the knee—did you examine that also? A I examined that occasionally, yes.

Q And was there any difference in the symmetrical appearance of the two legs on July 5, when you examined him? A July 5th, no.

Q There was no difference? A No, none that I could discern.

Q On August 3rd—that is August 30th? A August 30th, 1933.

Q What was the difference then above the knee? A The difference then above the knee at the mid thigh there was one inch difference, upper thigh three-quarters of an inch difference.

Q You have also examined him, you say, at regular periods throughout this time that you have mentioned? A I have.

\* \* \* \* \*

Q Did you treat him part of the time? A I treated him from December 17th to January 6th. \* \* \*

(p. 80) Q And what was your diagnosis? \* \* \* A Well, the first diagnosis was possible fracture of the distal phalanx of the left big toe, confirmed by X-ray. Subsequent and final diagnosis added, traumatic neuritis left leg, with contracture, atrophy and limited motion to the ankle.

Q Where was this contracture, Doctor?  
A Contracture was mainly in the muscles of the calf.

Q Is that in the region of the tendon Achilles?  
A That is above the tendon Achilles.

Q What have you noticed as to his gait, Doctor?  
A *The man walks with a limping gait.* \* \* \*

(p. 84) The Witness: *With a reasonable degree of certainty, I attribute the present condition of the left leg to an injury to the nerves of that leg sustained in the original accident or in the accident.*

\* \* \* \* \*

Q Throughout that period of time. What have you to say as to the amount of disability the man has permanently of that left leg, if any?  
A The amount of permanent disability, did you say?

Q Yes. A I believe the permanent disability to his leg to be two-thirds.

Q Two-thirds of that leg?  
A Of total of the leg.

\* \* \* \* \*

(p. 85) Q What is your opinion, Doctor, as to whether or not the man is able to do any laborious work at this time?  
A In my opinion the man is not capable of doing any laborious work.

\* \* \* \* \*

(p. 92) Q Who asked you to make these examinations?  
A They were part of my duties as lodge physician.

(p. 93) Q Just answer the question. Who asked you to make these examinations?  
 A No one asked me. These examinations were performed weekly and as a part of my routine duties as lodge physician, which required a weekly examination. Does that answer it?

Dr. Lawrence A. Cahill, who examined Bruno on several occasions, testified as follows (pp. 117, 118):

(p. 117) Q Tell us what you found on your examination. A My recollection is that my first examination was made in my office on last November or December, and at that time he had a general atrophy of his left lower extremity with contraction of his tendon achilles so that he walked more or less on his toes. His atrophy at that time, to my recollection, around the calf of his leg was about half an inch, *and it increased from that to an inch in his thigh. I have examined him on several occasions since then and it has been my experience that his atrophy is increasing all the time. So that at the last time I examined him he seemed to have an atrophy from one to two inches of his whole extremity.*

Q What was the atrophy that you found around the thigh? A I think it was up to—I am not sure about it—it runs to about an inch to about two inches different parts that are measured.

(p. 118) Q What was your finding upon the general examination that you made of this condition? A My conclusion was that the man's leg was atrophied as the result of paralysis of the muscles, *probably from the history he gives me, due to an injury to the peripheral nerves*, and that he had an existing disability of about two thirds of the leg as far as hard work is concerned.

Q What nerves run through the entire leg which would be affected by this condition? A The chief nerve is the sciatic

nerve and it distributes branches down to the leg below the knee and called the anterior tibia and the perineal nerves.

Q You have had experience, Doctor, in traumatic injuries? A Yes. I have had a number of years, twenty years or more.

Q And would you get atrophy with an involvement of a nerve injury? A Yes, sir.

Q How does that affect the muscles? A Where it is injured it controls the nourishment to the part so that it isn't sufficiently nourished. It isn't used as much as it would be if it was active, and it wastes away.

Dr. Otto Lowy also examined Bruno and testified that he had marked atrophy of the left leg, a foot drop, and pain and tenderness of the leg which caused a permanent disability of 60 to 70% of the leg (pp. 123, 124). The trauma that caused the atrophy involved the sciatic nerve, which originates in the lower part of the back (pp. 125, 126). The doctor further said (p. 126):

(p. 126) Q By that you mean that there must be some particular point of the trauma to the part of the body to cause that condition? A There must be a trauma to the nerve itself. When I speak about a trauma I should also like to explain this, that sometimes a trauma to a nerve is not a direct injury to the nerve, but an injury to the surrounding parts which cause pressure upon the nerve itself, and in that way sets up the neuritis.

Dr Lowy admitted that an atrophy could be due to nontraumatic causes but he was able to exclude all such causes by his blood and clinical examination and by the history of the case (pp. 127, 128, 122, 123). The doctor said:

(p. 127) Q And assuming the facts as described that the man did meet with this accident as described, what is your opinion with a reasonable degree of certainty as to

what relationship this accident has to the man's present condition? A That is the same question that I have answered before. Excluding everything else this man is suffering from a *traumatic*, sciatic peripheral neuritis.

Q And did you exclude as much as you could all these other conditions? A I have excluded them as much as I could.

\* \* \* \* \*

Q Any Kahn test? A I did a Kahn test. Pardon me, I forgot about that.

Q And what did that indicate? A I am sorry to say in the cause of factors I forgot to mention syphilis is one of the most common causes and I took a Kahn to eliminate the syphilis as a causative factor.

Q How did you find that test? \* \* \*

A That was negative. \* \* \*

(p. 128) Q Why was there any exclusion of all these possibilities, Doctor? A Well, we have excluded syphilis by the Kahn test. We have excluded lead poisoning by the absence of tremors, by the absence of a lead line, and by the absence of other symptoms that are associated with lead, or the heavy metals. We have excluded diphtheria by the history and we have excluded polio by the history.

Q So the history played a very important part in the making of your diagnosis and your findings? A As far as exclusion of some of the factors were concerned at the time of my examination. However, the hypothetical question now clarified that  
\* \* \*

(p. 122) Q Did you find any evidence of infantile paralysis since the accident? A There was no active condition of infantile paralysis there.

(p. 123) Q Did you find any direct evidence that the man is now suffering or did suffer from infantile paralysis?

Mr. Gormley: That is objected to because there is no testimony that he had it.

Mr. Greenstone: I know there isn't, but the doctor injected the infantile paralysis and I want to find out whether he definitely has evidence that the man is or was suffering.

Mr. Gormley: He is your witness.

The Court: The doctor did answer that.

Mr. Greenstone: That is what I want, to get that definitely.

The Court: I think the doctor answered it definitely. He found no acute infantile paralysis, that is the answer.

## B.

### Testimony on Behalf of Prosecutor-Appellant.

The prosecutor in its verified answer to the claim petition, admitted the following (pp. 15, 16):

(p. 15) 29. How much money have you paid the injured as compensation (not including medical aid) since the accident? \$279.93.

30. Have you promised to pay compensation? Have paid.

31. If so, how much? See No. 29.

32. Was medical aid required? Yes.

34. Were you requested to supply the necessary medical service required by law? No.

35. Did you furnish this service? Yes.

36. If so, between what dates? July 3, 1933 to December 4, 1933.

37. If not, give reason for failure to do so.

(p. 16) 38. Give name of physician and hospital rendering service at your direction—Dr. Harold Hoops.

Dr. Arthur Hoops who treated Bruno at the direction of the prosecutor, testified on its behalf as follows (pp. 132, 133, 134, 135, 136, 139, 143, 145):

(p. 132) Q Doctor, did you know the petitioner, Mr. Bruno? A Yes, sir.

Q When did you first see him? A When did I first see him or when did my associate first see him?

Q Do you know when your associate saw him? A Yes. He saw him on July 3rd.

Q And who is that? A Dr. Furman.

Q Does Dr. Furman work under your supervision and instructions? A Yes, sir. \* \* \*

(p. 133) Q When did you first see him, Doctor? A I saw him on the 17th of July.

Q Did you make an examination? A I did.

Q What did you find his condition to be? A Well, he had his foot elevated on a chair and splints on his great toe, which I did not remove, of the left foot. \* \* \*

(p. 134) Q Did he at any other time complain of any injury or an injury? A Well, eventually he told me how he felt. I don't know just when that was. It was some time later he told me the manner in which he fell.

Q And do you remember what that was? A Well, he said as he got his foot under the truck he strained himself and *fell backwards*.

Q Did he then complain of any other injury? A Well, I noticed when I took the splint off and told him to walk he couldn't walk as he should. He said he couldn't put his foot down at that time. \* \* \*

Q What was the cause of that inability to properly walk, if you know? A Well, he couldn't—he had this apparent foot drop and stiffness of the ankle.

(p. 135) Q Caused by what? A Caused by the condition in question, the neuritis.

His nerve injury or nerve disease, whatever it may have been.

Q Did you prescribe for him, Doctor?

A Yes, sir.

Q And what was your— A I gave him massage and he had Alpine Light therapy, injection of iron. Gave him sodium salicylate.

Q And what was the progress? A (Continuing). And diathermy. He could walk better but his atrophy did not either diminish or decrease or increase, rather.

Q When did you first notice the atrophy?

A (Referring to record). *Now, I think about August 4, 1933.*

Q What was your diagnosis or final diagnosis, Doctor? A I will be frank. I did not know what was causing this condition at the time, and I phoned the Ocean Accident Insurance Company and asked them the privilege to consult a neurologist on this case to find out the cause.

Q As the result of that, what did you do?

A I sent him down to Dr. Dowd, or the insurance company sent him down to Dr. Dowd, either one or the other. I believe they referred him to Dr. Dowd. \* \* \*

(p. 136) Q Did you make any subsequent examination after your conference with Dr. Dowd? A Yes, I did.

Q What did you ascertain, if anything?

A I ascertained the same thing he had an atrophy of the leg with a foot drop and spastic tendon achilles.

Q From your examination and the history, are you in a position, Doctor, to say with a reasonable degree of certainty, what the cause of the atrophy and foot drop was?

A No, sir; I am not certain. \* \* \*

(p. 139) Q Dr. Hoops, did you sign this certificate—you did sign this certificate, did you not? (Handing paper to witness). A Yes. That is my writing.

Q Will you read it? A This is to certify that Joseph Bruno had been attended—

has been under my care since July 3, 1933. Dr. Saul Furman, my associate, attended him from July 3rd to July 11th, 1933. Diagnosis, fracture of the distal phalanx of the left big toe, peripheneal neuritis, causalgia of the left leg with atrophy and foot drop.

Q Now, Doctor, is this condition definite, this one about the spastic tendon achilles?  
A Is it definite?

Q Is that a definite condition; there is no question about that that you found? A No, it is quite tense.

Q And this atrophy of the leg is definite with the foot drop; there is no question about that? A There is no question about that.

Q And there is no question, is there, that it would affect the man in laborious work? A Yes.

Q You are sure about that? A There is no doubt about it. \* \* \*

(p. 143) Q And did you ask him if he ever had this trouble before the accident?  
A I did.

Q And what did he tell you? A *He said no.* \* \* \*

Q Did you try to get a history from him as to the various trouble he had, diseases and so forth? A Yes. \* \* \*

Q Did you try to eliminate all those conditions? A *Yes, I did.* \* \* \*

(p. 145) Q Doctor, you got the history that this man fell after he had the truck run over his toe, fell backwards? A *Yes.*

Q And could a man suffer an injury to the sciatic nerve with that kind of a fall; yes or no, Doctor? A How can I answer that when I told you before I didn't know and that is the reason why I sent him to a neurologist. I can't answer that honestly.

Dr. William Stuart, who examined Bruno on November 2, 1933, testified he had a fractured toe, a marked atrophy of the entire left leg, a foot drop and an inability to stand erect and

put his entire foot on the ground (pp. 149, 152, 153). The doctor further said that the leg and foot deformity was not related to the toe injury (pp. 152, 156, 157). The doctor's conclusion, however, was based on a history of an injury to the great toe only and not on a history of a fall backwards (p. 157):

(p. 157) Q What fact have you in basing your opinion besides the story from the petitioner? A Because in the main, the chief reason was that this primary injury was to his great toe and he didn't have any in evidence or give any history of injury to his left leg.

Q Did you have the history that the man fell backwards? A No.

Q You didn't have that? A No. He did not state anything like that at all.

Dr. Ambrose Dowd examined Bruno on two occasions and observed the marked atrophy and foot drop of his left leg and pain and weakness of that leg (pp. 158, 159, 160). The doctor used no interpreter in speaking to Bruno (p. 162) and he received no history that Bruno had fallen backwards (p. 160). *From the history of an injury only to the toe* and his examination, the doctor testified that Bruno's atrophy was due to "either a long standing peripheral neuritis or possibly an old infantile paralysis" (p. 160).

Dr. Lewis Stephenson examined Bruno the day before the trial (p. 174) and testified that the condition of his leg was not traumatic (p. 176) although an injury to the sciatic nerve could cause such condition (p. 176). The doctor stated that Bruno's left foot is three-quarters of an inch shorter than the right foot (p. 176). The doctor also testified as follows:

(p. 177) Q Did you find any contracture of the muscles of the leg? A I found contracture of the tendon Achilles—

Q How would it affect a man walking with a condition of that type? A His heel would be raised and he walks on the toe. He might limp a little bit. His left leg is not as strong as his right. He might not limp very much.

Q Does it affect him in weight bearing, in lifting weight? A I think it would to some extent.

Q Do you find that leg a little weak compared with the other? A Yes. \* \* \*

(p. 178) Q You didn't get a history of his striking his back in the lower part of his spine? A Yes, he said something about that.

Q Well, did you eliminate that feature of the case in your diagnosis? A No, I didn't.

Q Well, could a man striking his body in that fashion sustain an injury to the sciatic nerve? A *He might.*

### III.

#### ARGUMENT.

It is undisputed that Bruno met with an accident arising out of and in the course of his employment by the prosecutor on July 3, 1933. In its answer to the compensation petition, the prosecutor admits that it paid Bruno compensation and furnished medical treatment for that accident. The testimony of Bruno, corroborated by his two co-employees, is conclusive that in that accident, his left toe was run over by a hand truck and *he fell backwards to the floor.* The prosecutor failed not only to deny the accident, but did not produce the testimony of its foreman, Delassendra, who was present at the scene of the accident, or account for his absence as a witness.

Bruno contended that as a result of his fall to the floor, he suffered an injury to the nerves

of his left leg, especially the sciatic nerve, that has resulted in a marked atrophy of that leg and a left foot drop that causes him to walk on the toes of that foot. The prosecutor contended that this condition of the left leg and foot was of long standing, caused by disease, pre-existing and unrelated to the accident. Under the case of *Atchison v. Colgate & Co.*, 3 N. J. Mis. 451, Affirmed 102 N. J. L. 425 (E. & A.),

“if the prosecutor seeks to avoid liability for a cause for which it is not responsible, the burden of proof is on the employer to show such cause.”

In the instant case, not only did the prosecutor fail to sustain its burden of proving any pre-existing unrelated cause of Bruno's condition, but it failed to offer any credible evidence on that point.

It was admitted that at the time of the trial, Bruno had a marked atrophy of the left leg, a left foot drop, and a shortened tendon Achilles that caused a three-quarters of an inch shortening of that leg. There was also evidence that he walked with a limping gait on the toes of his left foot; that his leg was weak and he would be unable to do heavy lifting work; and that he had a permanent disability of 66 2-3% of that leg. It is admitted that Bruno worked for the prosecutor for over eleven years at hard lifting work before this accident. The testimony of Bruno and the men who worked with him is uncontradicted that at no time prior to the accident did he ever complain of his left leg, ever have any difficulty in walking and working properly and ever have any atrophy of that leg. If the present condition of Bruno's left leg existed before the accident he would have been unable to perform his work properly and his

fellow employees and foreman would have noticed his crippled condition without any difficulty. It is therefore very significant that the prosecutor failed to produce a single lay witness to testify as to Bruno's condition before the accident.

Not only the lay, but the medical testimony as well, conclusively showed that Bruno's left leg was normal before the accident. Dr. Rigerone, Dr. Furman and Dr. Hoops were the only doctors who saw Bruno shortly after the accident. Dr. Rigerone stated definitely that Bruno's left leg was normal on July 5, 1933, two days after the accident, and that he first noted the atrophy on August 30, 1933. Dr. Furman and Dr. Hoops were hired by the prosecutor to treat Bruno. Dr. Furman treated him from July 3, 1933 to July 17, 1933. The prosecutor failed to call him as a witness or explain his absence. Dr. Hoops first treated Bruno on July 17, 1933 but did not notice the atrophy until August 4, 1933. Dr. Cahill examined Bruno in November, 1933, and noted the atrophy, but he testified that the atrophy increased at subsequent examinations. This would indicate that the atrophy was of recent origin, as a long standing atrophy would be fixed and stationary.

The lay and medical testimony therefore showed conclusively that Bruno's atrophic left leg followed his accident and there was no evidence to sustain the finding of the Workmen's Compensation Bureau in its determination and judgment that the "atrophy existed prior to the said accident of July 3, 1933." The Common Pleas Court was therefore justified in reversing this finding of fact by the Workmen's Compensation Bureau and in holding that the atrophy did not exist prior to the accident. The Supreme Court was also of the same opinion.

The testimony on behalf of Bruno was also overwhelming that the accident of July 3, 1933, caused the crippled condition of his left leg. The Workmen's Compensation Bureau in its determination and judgment erroneously conceived the issue of the case as being that Bruno "claimed that an existing atrophy of the left leg was the result of the trauma to the great toe." The record reveals that no such claim was made on behalf of Bruno. Because of its misconception of the real issue in the case, the Workmen's Compensation Bureau necessarily made a wrong finding of fact which was properly reversed and corrected by the Common Pleas Court.

The claim presented on behalf of Bruno was that the injury to the nerves of his left leg *was caused by his backward fall to the floor after his toe was run over.* The prosecutor's medical witnesses failed to answer this claim. Dr. Hoops, attending physician, admitted that he received a history of the fall and that Bruno had never had any trouble to his leg before the accident. This doctor first noticed the atrophy one month after the accident and treated Bruno for that condition and the attending foot drop for almost four months thereafter. Since the prosecutor hired Dr. Hoops to treat Bruno for his compensable injuries received in the accident of July 3, 1933, and since this doctor treated the atrophy and foot drop, such treatment is evidential that Dr. Hoops believed that the atrophy and foot drop were caused by the accident, even though the doctor testified that he did not know what caused the condition.

The testimony was uncontradicted that in addition to the toe fracture, Bruno also fell back-

wards to the floor. Dr. Hoops had this history as well as the history of the prior good health of Bruno, yet he did not communicate it to Dr. Dowd, whom he called in as a consultant, or to Dr. Stuart. Bruno, as can be seen from his testimony, has great difficulty in properly speaking or understanding the English language and probably could not convey the exact history of his case to these doctors. Dr. Dowd, and Dr. Stuart, testified that the atrophy and foot drop could not be due to the fractured toe but must have been due to a disease and pre-existed the accident, because these doctors admittedly received no history of the fall and the previous good health of Bruno. Their testimony is therefore worthless and based on an erroneous conception of Bruno's claim.

Dr. Stephenson, who testified last for the prosecutor, having received a history of the fall, admitted that such a fall might have caused an injury to the sciatic nerve and account for Bruno's present condition.

The medical witnesses called by Bruno, all agreed that the fall backwards caused an injury to the nerves of his left leg, especially the sciatic nerve, that resulted in his present condition. Dr. Rigerone came to this conclusion by his history of the case as an attending and examining physician of Bruno for 6 months, and the hypothetical questions asked him. Dr. Rigerone when he testified that the condition of Bruno's leg was attributable to an injury to the nerves of that leg "sustained in the original accident or in the accident", meant the accident of July 3, 1933 since his answer was given to a hypothetical question based upon that accident and the history of that accident obtained by him. The evi-

dence is conclusive that Bruno suffered no other accident.

Dr. Cahill reached this conclusion by his several examinations and history of the case. Dr. Lowy reached the same conclusion based upon his examination, hypothetical question and a process of exclusion. Dr. Lowy admitted that Bruno's condition could be due to non-traumatic causes, but he was able to exclude such causes by his clinical and blood examination and the hypothetical questions. The doctor then stated that in his opinion, the accident caused the condition of Bruno's left leg. The excerpt of Dr. Lowy's testimony contained in the appellant's brief is misleading when read in context with the rest of his testimony as previously quoted in this brief.

The Supreme Court after reviewing the entire record of this case said:

“Our conclusion is, that the finding of the Pleas, on the admitted or fully proved facts of the accident of a subsequent general and decided atrophy of the leg which the doctors agreed might well follow a traumatic injury, on the evidence of the man itself that both legs had previously been strong and healthy, and alike, and the medical evidence which tended to exclude other causes as syphilis, for which the test was negative, or infantile paralysis, diphtheria, etc., negatived by petitioner's general testimony as to his good health and strength and the heavy work he did before the accident, justified the court in finding that the atrophy resulted from the accident. The evidence is far from satisfying us to the contrary.”

## IV.

**Reply to Points Raised in Brief of  
Prosecutor-Appellant.**

The points relied upon by the prosecutor in its brief to reverse the Supreme Court, can be grouped under three headings.

1. Points 2, 3 and 7 of the appellant's brief contend that Bruno failed to prove an accident arising out of and in the course of his employment by the prosecutor causing the atrophy to his leg. This has been previously answered in this brief and requires no repetition. We merely wish to point out that the prosecutor is in error when it asserts in its brief that its doctor only treated Bruno for his fractured toe. The doctor himself admitted treating Bruno's atrophy and foot drop (pp. 134, 135, 139).

2. Points 1, 4 and 5 of the appellant's brief allege that the Common Pleas and the Supreme Courts erred because their opinions are alleged to be incomplete and inconsistent. This contention is contrary to the facts of the case as well as immaterial. It is interesting to note that the referee in the Workmen's Compensation Bureau, wrote no opinion but dismissed the case on an erroneous issue and without supporting evidence. The Court of Common Pleas in its opinion correctly stated the issues as follows (p. 23):

“The petitioner-appellant alleged that on July 3rd, 1933, while employed by the respondent-appellee, he fell backwards, injuring his sciatic nerve, which caused an atrophy of the left leg and a foot drop of the same.

The respondent-appellee contended that the atrophy of the leg was of long standing and not related to the accident.”

The Common Pleas after reviewing the testimony, came to the conclusion that Bruno would have been unable to do his work if his leg had been crippled before his accident, and that from the evidence, this condition followed the accident. The Pleas then summarized its findings in its Determination and Order as follows (p. 26):

"I therefore find and determine as follows:

1. That on July 3, 1933, the petitioner-appellant met with an accident arising out of and in the course of his employment by the respondent-appellee, when the big toe of his left foot was run over by a hand truck causing him to fall backwards to the floor striking his back and causing him injury to the sciatic nerve, which caused an atrophy and foot drop of the left leg.

2. That the petitioner-appellant, as a result of the aforesaid injury, suffered a disability of 66 2-3% of the left leg amounting to 116 2-3 weeks compensation, at the compensation rate of \$13.33 per week."

It has been well settled that the Common Pleas Court in reversing a Determination and Order of the Workmen's Compensation Bureau is not required to make any specific findings of fact to justify its conclusion, but that a "finding of fact is sufficient if the final conclusion reached by the judge of the Court of Common Pleas is justified."

*Charlock v. M. W. Kellogg Co.*, 4 N. J. Misc. 260.

*Dreyfus v. Lutz Co.*, 6 N. J. Misc. 608.

We respectfully refer this Court to the opinion of the Supreme Court annexed hereto as Appendix "A," to demonstrate that the Supreme Court properly conceived and decided all the issues in this case.

3. The prosecutor's final contention as Point 6, in its brief, that this Court may weigh the evidence and determine disputed questions of fact is contrary to law principles well established by this Court.

The cases cited by the appellant hold that the Supreme Court on certiorari will weigh the evidence. The Supreme Court so held in its opinion in this case. This rule does not apply to this Court.

The law is well settled that the Court of Errors and Appeals will not disturb factual findings in a compensation case, where there is *any evidence* to sustain them.

*Grant v. Metropolitan Ice Co.*, 108 N. J. L. 536;

*Lebits v. General Cable Corp.*, 112 N. J. L. 381.

The present case involves factual questions only that have been decided by both the Pleas and the Supreme Court in favor of Bruno. The appellant admits that there was some testimony to sustain such findings but contends that the evidence preponderated in its favor. Under the rule laid down by this Court in the two cases cited above, such a contention will not be considered by this Court.

Our lengthy review of the evidence, however, clearly demonstrated that the overwhelming weight of the testimony supports the judgment in this case.

**V.****CONCLUSION.**

It is respectfully submitted that the judgment of the Supreme Court in favor of the petitioner-appellee, is supported by sufficient evidence, and that the said judgment should be affirmed with costs.

**HENRY HARRIS,**  
Counsel for Petitioner-Respondent.

## APPENDIX "A."

Opinion of Supreme Court.

NEW JERSEY SUPREME COURT.

No. 263 May Term, 1935.

Filed July 22, 1935.

JOE BRUNO,

*Petitioner,**vs.*

TURNER &amp; Co., INC.,

*Respondent-Prosecutor.*

Submitted May 17, 1935; decided 1935.

On certiorari to Hudson Common Pleas in a workmen's compensation case.

Before Justices Parker, Case and Bodine.

For the prosecutor, Wall, Haight, Carey &amp; Hartpence.

For the petitioner, Henry Harris.

*Per Curiam.*

(Not to be printed in any report.)

This is essentially a fact case. An accident arising out of and in course of employment was admitted. Petitioner was treated and compensated for a fracture of the great toe. Later, he filed his petition claiming that he had been caused to fall backward at the time of the accident, sustaining permanent injury to the left leg. This was tried out before a deputy commissioner, who stated in his decision: "Petitioner claimed that an existing atrophy of the left leg was the result

of the trauma, but from the medical testimony I feel that the said atrophy existed prior to the said accident of July 3, 1933, and that the said trauma did not in any way aggravate the condition." The petitioner appealed to the Common Pleas, which on the testimony taken before the bureau reversed, stating in the determination that the accident caused "him to fall backwards to the floor striking his back and causing him injury to the sciatic nerve, which caused an atrophy and foot drop of the left leg." Accordingly, that court awarded compensation with costs and counsel fee. The present writ runs to that judgment.

For the petitioner, it is urged that as there was some evidence supporting the finding of the pleas, this court will not reverse on weight of evidence. Such is not the rule, since the amendment of 1921, at p. 735, preserving "the jurisdiction of the Supreme Court to review questions of law *and fact* by certiorari." We have held in a number of cases, as for example the recent case of *Yoshida v. Nichols*, 12 Misc. 197, that where the bureau and the Pleas are in accord on the facts, their conclusions should not be lightly disturbed; see also *Mountain Ice Co. v. Durkin*, 6 Misc. 1111, affirmed 105 N. J. Law 636, but even in such a case, this court examines and weighs the evidence. In the case at bar, as we have seen, the two inferior courts have disagreed; it remains for us to decide between them. Our conclusion is, that the finding of the Pleas, on the admitted or fully proved facts of the accident, of a subsequent general and decided atrophy of the leg which the doctors agreed might well follow a traumatic injury, on the evidence of the man itself that both legs had previously been strong and healthy, and alike, and the

medical evidence which tended to exclude other causes as syphilis, for which the test was negative, or infantile paralysis, diphtheria, etc., negatived by petitioner's general testimony as to his good health and strength and the heavy work he did before the accident, justified the court in finding that the atrophy resulted from the accident. The evidence is far from satisfying us to the contrary.

The judgment will accordingly be affirmed. There is some criticism in the brief of prosecutor, directed to the memorandum opinion in the Pleas, but we are reviewing the determination expressed in the record.

