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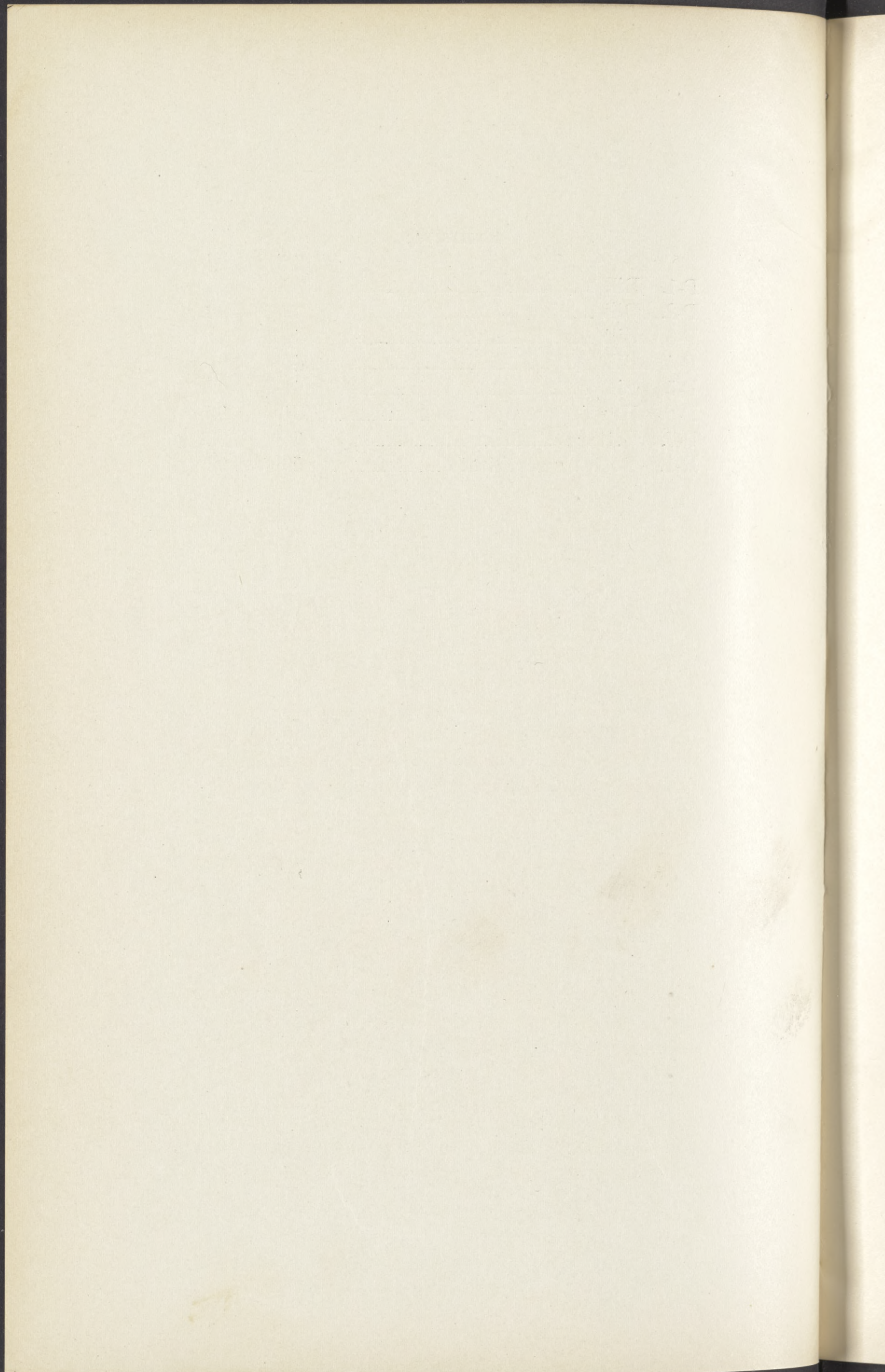

Writ of Certiorari Sued Out by Massie.

(Filed April 21, 1930.)

10

New Jersey, ss:

Seal

The State of New Jersey to the Court of Common Pleas in and for the County of Monmouth, and Joseph McDermott, Clerk of said Court, and Frank L. Lambertson.

GREETING:

20

We being willing for certain reasons to be certified of and concerning a certain determination and judgment rendered on the 21st day of March, 1930, by the Honorable Jacob Steinbach, Jr., Judge of said Court of Common Pleas in and for the County of Monmouth, in certain proceedings brought on behalf of Frank L. Lambertson, petitioner, against Mitford C. Massie, respondent, for the determination and recovery of compensation under an act of the Legislature of the State of New Jersey entitled "An Act prescribing the liability of an employer to make compensation for injuries received by an employe in the course of 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 amendatory thereof and supplemental thereto, we command you that the said determination and judgment, together with all proceedings for

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the making of the same, as fully and entirely as before you they remain, or are in your custody and control, you do certify and send, together wth this writ, to our Justices of our Supreme Court of Judicature at Trenton, on the 19th day of April, 1930, that therein may be caused to be done what of right and according to law ought to be done.

10

Witness Hon. William S. Gummere, Chief Justice of our Supreme Court, at Trenton, this 31st day of March, 1930.

FRED L. BLOODGOOD,
Clerk.

20

Arthur Lovell,
Attorney.

Allocatur.

This writ is allowed. Let it be sealed.
March 31st, 1930.

J. L. BODINE,
J. S. C.

30

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Reasons.

(Filed April 21, 1930.)

NEW JERSEY SUPREME COURT.

MITFORD C. MASSIE, Prosecutor, vs. COURT OF COMMON PLEAS in and for the County of Monmouth, JOSEPH McDERMOTT, Clerk, and FRANK L. LAMBERTSON, Defendants.	On Certiorari Reasons.

10

20

The prosecutor presents the following reasons for setting aside the proceedings, determination and statement of facts and judgment brought before this Honorable Court by the writ of certiorari in the above entitled cause.

1. The Workmen's Compensation Bureau was without jurisdicton to entertain the petition and make an award for compensation, because, under the provisions of the Act under which the petition was filed, the claim of the petitioner was barred, it not having been filed with the Secretary of the Workmen's Compensation Bureau at the State House, in Trenton, within one year after the date on which the accident occurred.

30

2. The respondent's failure to make a report of the accident to the Compensation Bureau, as required by Chapter 187 of the Laws of 1924, did

40

not deprive him of the right to urge the defense of lack of jurisdiction for the reason that said Act of 1924 does not apply to employers of farm labor such as the respondent was.

10 3. Failure to make such report did not deprive respondent of the right to urge such defense, because such Act of 1924, even if it does apply to employers of farm labor, obviously requires knowledge of the accident by the employer within three weeks after the accident and pre-supposes actual knowledge by the employer or his agents of the accident at or about the time it happened. The petitoner's own testimony established that no one other than the 20 petitioner could have had any knowledge of the accident and that he deliberately concealed from the employer for over forty days all information concerning the accident.

4. Although the petition as filed with the Compensation Bureau set up that notice of the accident was given the employer on October 27, 1926, to wit, six days after the accident, and, 30 in addition, set up knowledge by the employer of the accident, on the trial, petitioner not only made no effort to prove the giving of such notice on the date alleged, but conceded that no notice of the accident was given the employer at any time and rested his case on knowledge of the accident by the employer gained from oral statements made to the employer's agent forty days after the alleged accident.

40 Section 15 of the Workmen's Compensation Act requires that when knowledge by the employer of the accident is obtained more than

thirty days after the accident, the petitioner shall give some reasonable cause or excuse why he did not give prior notice. At the trial not only was no such cause or excuse given, but, on the contrary, petitioner clearly established that there was no such reason but that he deliberately concealed from the employer all information that there was an accident and made misleading and false statements as to the reason for his failure to return to work. 10

5. The finding of the Deputy Commissioner and of the Court of Common Pleas that the petitioner sustained an injury arising out of and in the course of his employment with the respondent is not supported by the evidence. 20

6. The increase from 10 to 15% made by the Court of Common Pleas in the award for permanent disability was not justified by the evidence.

7. The Act of 1924 is unconstitutional and void in that it deprives the employer of his property without due process of law and denies him the equal protection of the laws and thus is in violation of the Fourteenth Amendment to the Constitution of the United States. 30

8. The Act of 1924 is unconstitutional and void in that it violates paragraph 4 of Section VII of Article IV of the Constitution of the State of New Jersey which provides that every law shall embrace but one object and that shall be expressed in the title.

40

9. The said proceedings in divers other respects are illegal, unjust and oppressive to the prosecutor.

ARTHUR LOVELL,
Attorney for Prosecutor.

Writ of Certiorari Sued Out by Lambertson.

(Filed April 21, 1930.)

L. S.

The State of New Jersey to the Court of Common Pleas in and for the County of Monmouth, and Joseph McDermott, Clerk of the said Court, and Frank L. Lambertson.

10

GREETING:

We being willing for certain reasons to be certified of and concerning a certain determination and judgment rendered on the 21st day of March, 1930, by the Honorable Jacob Steinbach, Jr., Judge of said Court of Common Pleas in and for the County of Monmouth, in certain proceedings brought on behalf of Frank L. Lambertson, petitioner, against Mitford C. Massie, respondent, for the determination and recovery of compensation under an act of the Legislature of the State of New Jersey entitled "An Act prescribing the liability of an employer to make compensation for injuries received by an employe in the course of 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 amendatory thereof and supplemental thereto, we command you, the said Court of Common Pleas in and for the County of Monmouth and Joseph McDermott, Clerk of said Court, that the said determination and judgment, together with a transcript of the evidence and all proceedings for the making of the same and all things touching and concerning the same, as fully and entirely as before you they remain, or

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are in your custody and control, you do certify and send, together with this writ, to our Justices of our Supreme Court of Judicature at Trenton, on the 25th day of April, 1930, that therein may be caused to be done what of right and according to law ought to be done. 10

Witness, the Honorable William S. Gummere, Chief Justice of our said Supreme Court at Trenton, on the 5th day of April, 1930.

FRED L. BLOODGOOD,
Clerk.

JOSEPH C. PAUL,
Attorney and of Counsel for Petitioner-Prosecutor in Certiorari. 20

Allocatur.

This writ is allowed. Let it be sealed.

J. L. BODINE,
Justice of Supreme Court.

3/31/30. 30

I consent to the entry of the within Writ of Certiorari.

Arthur Lovell,
Attorney for Respondent.

40

Reasons.

(Filed April 21, 1930.)

NEW JERSEY SUPREME COURT.

<table>
<tr><td>Frank L. Lambertson,
Prosecutor,
vs.
Court of Common Pleas in and for the County of Monmouth, Joseph McDermott, Clerk, and Mitford C. Massie,
Defendants.</td><td>On Certiorari Reasons.</td></tr>
</table>

10

20

The prosecutor, Frank L. Lambertson, presents the following reasons for setting aside the determination and judgment brought before this Honorable Court by the Writ of Certiorari in the above entitled case:

1. That the Court of Common Pleas was in error in reversing that part of the Determination and Order of the Workmen's Compensation Bureau wherein medical expenses and hospital bills were allowed.

30

2. That the Court of Common Pleas did not correctly interpret Section 14, Chapter 95, Pamphlet Laws of 1911 in that from the testimony it appears that the foreman of the respondent, Mitford C. Massie, was requested by the petitioner to give financial assistance.

40

3. That the Court of Common Pleas failed to consider that the petition for compensation was

filed and therein was set forth the reasons for the medical expenditures which were properly proved in court and which were properly allowed by the Deputy Commissioner of Compensation but disallowed by the Court of Common Pleas. 10

Respectfully submitted,

JOSEPH C. PAUL,
Attorney for Prosecutor,
FRANK L. LAMBERTSON.

3/31/30.

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Return.

(Filed April 21, 1930.)

To the Honorable, the Justices of the Supreme Court of Judicature of New Jersey:

10 In obedience to the command of this writ, directed to the Court of Common Pleas and Joseph McDermott, Clerk of said Court, and Frank L. Lambertson, I hereby certify and send, under the seal of the said Common Pleas Court, to the Honorable Justices of the Supreme Court of Judicature of New Jersey, the judgment, order and proceedings in said Common Pleas Court of Monmouth County, in a certain action, 20 plaint or proceedings brought against Mitford C. Massie, at the suit of Frank L. Lambertson, in which judgment was rendered against the said Mitford C. Massie on the twenty-first day of March, one thousand nine hundred and thirty, together with all papers touching and appertaining to the same as fully and entirely as before said Common Pleas Court of Monmouth County, they remain as commanded.

30 In Testimony Whereof, I, Harry Truax, Judge of the Court of Common Pleas of Monmouth County, have hereunto set my hand as Judge of said Court of Common Pleas and caused the seal of said Court to be affixed and attested by the Clerk of said Court this fourth day of April, one thousand nine hundred and thirty.

HARRY TRUAX,
Judge of the Court of Common
Pleas of Monmouth County.

40

Seal.

Attest:
Joseph McDermott,
Clerk.

Employee's Claim Petition for Compensation.

(Filed January 28, 1929.)

NEW JERSEY DEPARTMENT OF LABOR,

WORKMEN'S COMPENSATION BUREAU,

10

Trenton, N. J.

Employee's Claim Petition for Compensation.

FRANK LAMBERTSON, Petitioner, vs. M. C. MASSIE, Respondent.	20

Received at Trenton Jan. 28 1929

Claim Petition No.

Date of Accident 19 .

Attorney for Petitioner, John C. Grimshaw, 207 Market Street, Newark, N. J. 30

To the Workmen's Compensation Bureau of New Jersey:

The claimant respectfully alleges the following facts:

1. What is your name? Frank Lambertson

2. Where do you live? c/o Chas. Hughes, Keyport, N. J. 40

3. Sex Male 4. Age 23 5. Married Yes

6. By whom were you employed at the time of the accident?

(Give name and business address)

10 M. C. Massie,
R. F. D. #1,
Matawan, N. J.

7. What was the business of your employer? Farmer

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.

20

9. Did you receive such notice from your employer? No.

10. Did your employer have knowledge of your accident? Yes.

11. Did you notify your employer of your accident? Yes.

12. If so, on what date? October 27, 1926.

30

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

14. What was your regular occupation, and what kind of work were you doing at the time of the accident? Farm hand, operating tractor.

15. When did the accident happen? October 21, 1926 about 2:45 P. M.

40

16. Where did the accident happen? On farm in Matawan.

17. What was the nature of the accident, and how did it happen? Operating tractor, going from barn to field when tractor hit rock throwing me off seat and as I came down struck left buttock on knob of seat.

10

18. On what date were you compelled to stop work because of the injury? October 23, 1926.

19. On what date were you well enough to work again? Still disabled.

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

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

20

22. If any permanent injury has resulted, either amputation or loss of usefulness of any member, or impairment of any physical organ, explain fully. Multiple abscesses of left buttock, and left gluteal area, causing impairment of function of left leg, and lower back, including gluteal region.

23. Were your wages fixed by piece-work?

30

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

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.

40

28. State the amount of weekly wages. $27.00 per week.

29. How much money have you received from your employer as compensation (not medical
10 aid) since your accident? None.

30. Has your employer promised to pay you any compensation? No.

31. If so, how much?

32. Was medical aid required? Yes.

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

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

35. Were they furnished?

36. If so, between what dates? Oct. 26, 1926 to date and still being treated.

37. If not, what sum did you expend for medical, surgical or hospital services? Have paid $60.00 to date some bills still unpaid.

30 38. Give name and address of physician and hospital. Dr. Silcox and others, Monmouth Memorial Hospital, Long Branch.

39. What other facts are there which you believe important? Petitioner requests such temporary compensation as he may be entitled to and payment on permanent disability resulting from the injury he sustained together with payment of all of the medical, hospital and drug
40 bills. The petitioner's right to compensation at

this date is provided for in Chapter 187 Laws of 1924, paragraph 6 which provides that the respondent is deprived of the defense referred to in Paragraph 23 (H) of the Workmen's Compensation Act approved April 4, 1911 as Chapter 95 as amended by Chapter 93 Laws of 1919. Chapter 187, Laws of 1924 being effective as of March 11, 1924, no notice of accident, having been filed by employer or carrier, respondent is debarred from setting up the running of the statute.

40. Are you willing that the Compensation Bureau endeavor to secure compensation for you, by agreement, before calling for an official hearing? Yes, if respondent so requests and notifies my attorney.

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 Act supplemental thereto and amendatory thereof, and that your petitioner may be awarded his costs in this proceeding, and such other or further relief as may be proper.

And your petitioner will ever pray, etc.

FRANK LAMBERTSON,
Keyport.

State of New Jersey,
County of Essex, ss:

Frank Lambertson of full age, being duly sworn according to law, on his oath deposes
10 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.

FRANK LAMBERTSON.

Subscribed and sworn to before me, this
twenty-first day of December, 1928,
at Newark, N. J.,
20 J. C. Grimshaw,
Atty. at Law of N. J.

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

TO THE RESPONDENT

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

We hereby notify you that unless an answer 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
40 to be admitted and no testimony will be required from the petitioner to prove such facts.

WORKMEN'S COMPENSATION BUREAU
W. E. Stubbs
Secretary.

Respondent's Answer to Employee's Claim Petition.

(Filed March 15, 1929.)

NEW JERSEY DEPARTMENT OF LABOR,

WORKMEN'S COMPENSATION BUREAU, 10

Trenton, N. J.

Respondent's Answer to Employee's Claim Petition.

FRANK LAMBERTSON, Petitioner, vs. M. C. MASSIE, Respondent.	Claim Petition No. 9956 March 15, 1929

20

Attorney for Respondent, Wicoff & Lanning, Broad Street Bank Building, Trenton, N. J.

In answer to Claim Petition filed in this cause: 30

1. What is the Petitioner's name? Frank Lambertson

2. Where does he reside? Cliffwood, N. J.

6. Was the petitioner in your employ at the time of the accident? Was in my employ October 21, 1926.

7. State your business Farmer. 40

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.

10

9. Did you give such notice to him? No.

10. When did you first have knowledge of this accident? December 2, 1926, I was informed Petitioner alleged he had been bruised on my tractor, but without notice or information as to how, when or the nature of any accident or injury on my farm caused Petitioner.

20

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

12. If so, on what date? About April 1927.

13. Has any claim for compensation been made? Yes, about April 1927.

14. What was the Petitioner's regular occupation, and what kind of work was he doing at the time of the accident? Farm labor.

30

15. When did the accident happen?

16. Where did the accident happen?

Respondent denies there was any accident on his farm at Matawan, N. J. causing injury to Petitioner.

17. What was the nature of the accident, and how did it happen? There was none.

40

18. On what date was the petitioner compelled to stop work because of injury? Did not

stop work because of any accident or injury at Respondent's farm but because of the recurrence of an old ailment.

19. On what day was the injured well enough to work again? Has not returned to work for Respondent. 10

20. If still disabled, on what date do you estimate he will be able to work? Do not know.

21. Give your understanding of the nature of any injury from which he should recover? There was none.

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, so far as the result of any accident while in my employ. 20

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

24. If so, what was the average weekly wage of the injured? Petitioner's wages $27.00 weekly. 30

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

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

27. Give number of days in an ordinary working week. Six. 40

28. State the amount of weekly wages. $27.00.

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

30. Have you promised to pay compensation? No, but have refused to do so and informed Petitioner to that effect about April 1927.

10 31. If so, how much?

32. Was medical aid required? Not because of any accident occurring on my farm.

34. Were you requested to supply the necessary medical service required by law? None was required by law. Further, I was not requested to supply any.

35. Did you furnish this service?

20 36. If so, between what dates?

37. If not, give reason for failure to do so. Was not informed of any accident occurring on my farm or any injury resulting therefrom.

38. Give name of physician and hospital rendering service at your direction. None.

39. What other facts are there which you believe important? If you deny that compensa-
30 tion is payable in this case, explain fully your reasons for this conclusion. I do so deny. Petitioner was not injured while in my employ and did not give me notice of any accident or any injury resulting therefrom. On the contrary, on October 27, 1926, Petitioner called at the farm and stated that he was unable to work then because of the recurrence of an old case of piles; that he knew how to treat them and would soon
40 be well and return to work; that on various occasions thereafter he repeated substantially the same statement. Petitioner did not give notice of injury and especially did not give such notice October 27, 1926.

Respondent's Answer to Employee's Claim Petition

Any proceeding and recovery by Petitioner is barred by the Statute of Limitations.

Respondent insists on his right under said Statute and is not debarred from urging it.

The Workmen's Compensation Law has no application hereto. 10

Respondent denies each and every allegation in the Petition except as herein specifically stated.

MITFORD C. MASSIE
(P. O.) Matawan, N. J.
R. F. D. 1—Box 147
Farm in Middlesex Co.
New Brunswick Road 20

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

Mitford C. Massie of full age, being duly sworn according to law, on his oath deposes and says: That he is 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. 30

MITFORD C. MASSIE.

Subscribed and sworn to before me, this
15th day of March, 1929,
at New York, N. Y.,
August White,
Notary Public,
Westchester Co.
Certf. filed N. Y. Co. #471. 40

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

Motion to Dismiss.

NEW JERSEY DEPARTMENT OF LABOR,

WORKMEN'S COMPENSATION BUREAU,

10 Asbury Park, Monmouth County District.

FRANK L. LAMBERTSON,
Petitioner,
vs.
MASSIE,
Respondent.

20 Transcript of stenographic notes of the testimony taken in the above-entitled matter before Hon. Charles E. Corbin, Deputy Compensation Commissioner, at the District Court Chambers, Electric Building, Asbury Park, New Jersey, on the third day of October, A. D. 1929, at 12 o'clock noon.

Appearances:

30 Joseph C. Paul, Esq., for the petitioner (for John Grimshaw, Esq.).

Arthur Lovell, Esq., for the respondent.

Mr. Lovell: This is an application to dismiss the petition on the ground that the Compensation Bureau is without jurisdiction due to the fact that the petition was not filed within a year of the alleged accident as required by Paragraph 23H of the Act. The accident happened on
40 October 21st, 1926, which the petition so states.

The petition was not filed until January 28th, 1929, two and a quarter years after the accident. Now, the petition itself undertakes to meet that objection of lack of jurisdiction by the contention that the respondent is deprived or barred from raising that issue by reason of the fact that he has filed no notice of an accident with the Bureau. Now, in reply to that I would say that this Act of 1924 which requires the making of a report by the employer evidently has to do with the same subject-matter as the Compensation Insurance Act and the two Acts are to be read together. The Compensation Insurance Act by its terms states that it does not apply to household servants or employers of farm laborers. Therefore, I contend that the Act of 1924 requiring the report of the accident to be made by employers and imposing a penalty for the failure to make such a report, does not apply to an employer of household servants or an employer of farm laborers, such as the respondent was and, therefore, this respondent was not under a duty to make a report and cannot be penalized in any way for his failure to do so. And on that point I might state that it seems hardly conceivable that the Legislature should have intended that every time a household servant met with a small accident, immediately the employer of that servant should make a report to the Bureau, when the cook cut her finger or something of that kind. The two Acts very clearly cover two classes of employers, those who are insured in an insurance company and those that are self-insurers by the reason of their ability to satisfy the

Bureau that they have responsibility. I don't think the Act of 1924 any more applies to employers of farm laborers than the Compensation
10 Insurance Act.

Mr. Paul: I think we can agree, Mr. Lovell, that there were no forms filed with the State.

Mr. Lovell: No, there were no reports made of the accident, I agree to that.

The Court: Well, I won't hear your argument, Mr. Paul, because I have been over this matter several times and it is not a new proposition to me and I am going to deny your motion.
20 I will grant you an exception if you wish to take it up.

At this point the hearing was adjourned to take its proper place in the Court's calendar.

KATHLEEN BARBER, a witness on behalf
30 of the petitioner, sworn.

Direct-examination by Mr. Paul:

Q. What date was Mr. Lambertson admitted to the hospital in Long Branch, the first time? A. The first time he was admitted was December 20th, 1926.

Q. And discharged when? A. February 26th, 1927.

Q. And the second time when was he admitted?
40 A. September 9th, 1927.

Q. And discharged when? A. October 8th, 1927.

Q. And what was the bill for the total time he was in the hospital? A. The first time it was $231 and the second time $94. 10

Q. $94? A. Yes.

Q. And have either of those bills been paid? A. No.

Q. Now, in the hospital did Dr. Ruhlman treat him? A. Yes.

Q. Have you Dr. Ruhlman's bill there? A. Yes, his bill is $291.

Q. And are you familiar with the charges of the Monmouth Memorial Hospital? A. Yes.

Q. How long have you been there? A. Ten years. 20

Q. What services did this man have? A. He had ward service.

Q. What is the rate for ward service? A. Three dollars a day.

Q. What are the charges for the doctors who attend the patients on ward service, per day? A. That I don't know.

Mr. Paul: I offer these bills, if necessary, for what they are worth. 30

The Court: Any objection?

Mr. Lovell: Well, of course, they have not been connected with this case yet.

Mr. Paul: Well, I will waive the admission of them, the testimony is in. Cross-examine.

Mr. Lovell: No questions.

40

DR. JAMES H. TRAINOR, a witness on behalf of the petitioner, sworn.

Direct-examination by Mr. Paul:

10 Q. Dr. Trainor, are you a licensed physician in the State of New Jersey? A. Yes, sir.

Q. How long are you practicing, sir? A. Twenty-six years.

Q. And where? A. In Newark.

Q. Do you know Mr. Lambertson, Frank Lambertson? A. I met him on July 12th of this year.

Q. What was the occasion? A. He was sent to my office for examination.

20 Q. Did you examine him? A. Yes, sir.

Q. What did you find, Doctor?

Mr. Lovell: I object to that, the result of an examination taken on July 12, 1929, as bearing on an accident happening in 1926.

The Court: I will allow this evidence subject to being connected up, of course.

30 Q. Did the patient give you a history, Doctor? A. Yes, he did.

Q. What history did he give you? A. That he had been riding a tractor—

Mr. Lovell: I object to that as hearsay.

The Court: Did the doctor treat him?

Mr. Paul: He wasn't the attending physician, no, but he examined him and

40 as part of the case he told him what had happened.

The Court: It is not good evidence. You will have to give the doctor a hypothetical question.

Q. Tell what you found when you examined him? A. I found he had a very badly scarred left buttock, some of the scars reaching over to the center line, over the lower part of his sacrum and part of the soft tissue being lost. **10**

Q. Was a part of the buttock removed, Doctor? A. Yes.

Q. Did it show any evidence of operation? A. Oh, yes, there was evidence that he had had extensive operations, at least a piece of the buttock had been incised on several occasions, maybe as many times as six or seven, those were operative scars but there were other scars besides that. 20

Q. Was it an abscess, Doctor, on the buttock had been removed?

Mr. Lovell: I object to the form of that question.

The Court: It is leading.

Q. Doctor, assuming that the testimony of the petitioner will be that he sustained an injury on or about the date of the accident, October 21st, 1926, and that about four or five days after he noticed a lump form on his left buttock which in six days he had to have lanced and which was an abscess, that after that he had seven more abscesses, would you say that having those abscesses and resultant operation was the result of the condition you found when you examined him on the date of your examination? 30 40

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

The Court: On what ground?

Mr. Lovell: I don't think the doctor should be asked to state absolutely whether any certain condition resulted from something else.

The Court: Well, he may answer that, the question is leading.

A. Well, the scars that man has on his buttock are of two kinds, those the aftermath of an operation and those undoubtedly caused by the destruction of the tissue that is manifested, and they helped cause this permanent condition the man has.

Q. Suppose the man had an injury while riding on a tractor and the tractor hitting a stone and throwing him up in the air and he came down on the seat with the left buttock hitting the center part of the seat, such as a bicycle seat would be, and four or five days later he noticed a lump forming on the left buttock, and in eight days the abscess formed and after the accident the next day he noticed a black and blue mark right at the seat of where he landed on the tractor, would you say the abscess could form as the result of the history that I have just given you? A. Yes, sir, undoubtedly he had a hematoma formed at the site of the bruise and that hematoma subsequently became infected and it evidently was a large hematoma with the subsequent destruction of tissue in his buttock, evidently parts of the two large muscles were removed.

Q. Having the history he was in the hospital from December 20th, 1926, until February 26th, 1927, a period of sixty-eight days, and in that interim having four or five operations for successive abscesses and then being discharged and returning again on September 9th, 1927, and remaining until October 8th, 1927, and in that interim of thirty days having two operations for abscesses, what period would you say as the result of your examination would be a sufficient time for the temporary disability as the result of the injury of October 21st, 1926? 10

Mr. Lovell: I object to the question, the form of the question, it is confusing.

The Court: I think it is all right if the doctor can answer it. 20

A. From the looks of the man's buttock now it must have taken quite a long time for it to heal. I am not permitted to say what he told me but he did tell me what I think was true, the wounds were not healed up for two years. He had a very, very bad case.

Q. As the result of your examination is there any permanent disability to his system or constitution as the result of that? A. Yes, I think there is. 30

Q. In what way, Doctor? A. Well, there is a destruction of the tissue in his buttock, part of his gluteus maximus and gluteus minimus muscles have been removed with other adjacent tissues, the nerves and blood vessels undoubtedly, and his left sacroiliac joint is slightly movable and causes him pain when it is moved, he evidenced that when I moved the joint. 40

Q. Did you examine him this morning, Doctor? A. Yes, outside.

Q. This morning did he manifest any result of any injury from the accident? A. Yes, sir.

10 Q. In what way, Doctor? A. I noticed when I had him off guard that he was sitting on his right buttock, he apparently did that from choice.

Q. What complaints, if any, did he make to you this morning about his condition? A. That after he works for a day, he is a married man and has two children, and goes home, and he doesn't have the ordinary pleasures that other men have in life, he is right ready to go to bed, although it is three years since the acci-
20 dent happened.

Q. Is that, in your opinion, a natural condition for him to be in? A. I think he tires more readily than other men would on account of the condition of his buttocks and hip joints.

Q. These operations, Doctor, do you know if he was etherized or not? A. Only from what he told me. He said he had ether once and chloroform five times.

30 The Court: Just a minute, you cannot testify to what he told you.

A. I don't know from first-handed knowledge.

Q. As the result of your examination in July and this morning and your knowledge of the history of the case, what, in your opinion, regarding the temporary disability and regarding the removal of the muscles and the left sacro-iliac joint strain and destruction of the nerve
40 tissue, would be a fair amount for this man's disability? A. You ask his temporary disability, too?

Q. Yes. A. I estimated his temporary when I saw him in July, and I see no reason to change that opinion, that in my opinion he should be given temporary disability of two years for the time the wounds were discharging, before they were healed, and at least ten per cent of total disability. 10

Q. What is your fee for testifying here today? A. I have been there all day, I left Newark at nine o'clock this morning.

Q. What is your fee? A. I think I should charge him one hundred dollars.

Mr. Paul: That's all.

CROSS-EXAMINATION by Mr. Lovell: 20

Q. These abscesses might have resulted from a bruise of any character, might it not? A. They might have followed any sort of bruise, yes.

Q. And they might be the result of other physical disability, might they not? A. Other physical disabilities?

Q. Would piles, long continued, produce abscesses, neglected? A. Never, I never heard of such a thing. There is nothing the matter with this man's anus now. I looked at that very carefully in July, he would have had scars there and he has none. 30

Q. Wouldn't these operations that you have testified to have removed any evidence of that? A. No, sir, the condition does not reach to the anus, it is more in his buttock and runs towards the center of his body. When I say the buttock 40

I mean the big thick part of his lower back, and runs toward the center of the body, the backbone, but does not effect his rectum or anus. I watched that very particularly. And there is no loss of tone in his anus or sphincter muscles, or any evidence of disability there.

10

Q. Is it your opinion that he is not suffering from piles? A. I wouldn't say that, he may have had piles but there is no evidence in my opinion that this condition is the aftermath of any piles.

Mr. Lovell: That's all.

Mr. Paul: That's all.

20

At this point the hearing was adjourned.

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

WILLIAM C. O'BRIEN,
Court Stenographer.

30

40

NEW JERSEY DEPARTMENT OF LABOR,

WORKMEN'S COMPENSATION BUREAU,

Asbury Park, Monmouth County District. 10

FRANK LAMBERTSON,
Petitioner,
vs.
M. C. MASSEY,
Respondent.

Transcript of stenographic notes of the testimony taken in the above-entitled matter before Hon. Charles E. Corbin, Deputy Compensation Commissioner, at the District Court Chambers, Electric Building, Asbury Park, New Jersey, on the 5th day of December, A. D. 1929, at 11:30 o'clock in the forenoon. 20

Appearances:

Joseph C. Paul, Esq., for the petitioner. 30
Arthur Lovell, Esq., for the respondent.

FRANK LAMBERTSON, the petitioner, called as a witness on his own behalf, being duly sworn, testified as follows:

Direct-examination by Mr. Paul:

Q. How old are you? A. Twenty-five.
Q. Are you married? A. Yes, sir.
Q. Any children? A. Three. 40

Q. How old are they? A. Three years, one year, and three weeks.

Q. On October 21, 1926, were you working for Mr. Massey? A. Yes, sir.

10 Q. What was your job with him? A. Driving a tractor.

Q. And how long had you been working for him? A. Three months, I think.

Q. What kind of a tractor were you driving? A. A Fordson tractor.

Q. What kind of a place does Mr. Massey have? A. A farm.

Q. Where is the farm located? A. Cedar Grove.

20 Q. New Jersey? A. Yes, sir.

Q. Will you describe this tractor and what you did with this tractor? A. What did I do with it?

Q. Yes. A. I used to plough with it, use it for all kinds of general farm purposes.

Q. What kind of a seat does it have? A. Iron.

Q. Is it shaped—what is the shape of the seat? A. It has a piece sticking up in the center of it.

30

Q. It has a pommel, they call it? A. Yes.

Q. Like a bicycle seat? A. Yes.

The Court: Like a mowing machine?

The Witness: Yes, sir; that is just what it is.

Q. On October 21st were you driving this tractor? A. Yes, sir.

40 Q. What happened? A. I was going across the field, right after dinner hour, down to the

orchard—I was going down to the orchard and I had been ploughing previously, right in that field, and turned around that road. In turning around I pulled a rock out in the road, and as I was going down to the orchard I didn't notice it and I struck this rock and it bounced me up off the seat and my left buttocks come down and struck the piece that sticks up in the center.

Q. Have you any idea how high you went in the air before you came down? A. Eight or nine inches.

Q. What did you do then? A. I kept on working.

Q. What part of your body was hit by the pommel? A. The left buttocks.

Q. Did you work the next day? A. Yes, sir.

Q. Did you work the next day? A. Yes, sir.

Q. Then what did you do? A. The next day was Sunday. I didn't go to work on Monday.

The Court: You continued working three days and then the next day was Sunday; is that right?

The Witness: Yes, sir.

Q. Why didn't you work Monday? A. Because that hurt considerable; I had considerable pain.

Q. Where? A. In the left buttocks.

Q. What did you do? A. I didn't do nothing that day, and the following day I went to see Dr. Silcox.

Q. Where is he? A. Keyport.

Q. When you saw Dr. Silcox, what did you do? A. I told him just how I done it, and he told me—

Q. What did you tell Dr. Silcox? A. Well, how I did it, I told him how I done it.

Q. Then what happened? A. The following day I went up to the farm and I see Mr. Pitney.

Q. Who is Mr. Pitney? A. He was the foreman on the place.

Q. Is he the man who hired you? A. Yes, sir.

Q. Is he the one who paid you off? A. Yes, sir.

Q. And is he your boss? A. Yes, sir.

Q. What did you tell him? A. I told him I wasn't able to work, I told him I had been to the doctor's and the doctor thought that I was going to have an abscess or he said it looked very much like an abscess, he wasn't positive of it, not at that time.

Q. Then what did you do? A. I was under the doctor's care for about two weeks.

Q. Did you stay in bed? A. No, not at that time; I wasn't able to go away from the house, but I wasn't in bed.

Q. You couldn't leave the house? A. No, sir.

Q. How often did you see Dr. Silcox? A. Every other day.

Q. What did you do? A. I changed doctors.

Q. Yes? A. Someone recommended me to go to another doctor.

Q. You did? A. That was Dr. Irwin.

Q. What did he do? A. He lanced it the first time.

Q. Did he give you ether? A. Chloroform.

Q. Where did he lance it? A. In his office.

Q. Did you see Mr. Pitney again after that

October 27th? A. No, sir; the next I saw him was when I wrote him a letter to come down, I wanted to see him.

Q. About when was that? A. That was some time in November.

Q. Did he come? A. Yes, sir, and I reported to him right in my house. 10

Q. Where were you when he came? A. In bed.

Q. Did Mr. Pitney come to your house? A. Yes, sir.

Q. What did you tell him? A. I told him just how I had done it and told him I wished that he would speak to Mr. Massey about it.

Q. What did he say? A. He said he would; he offered to help me out in any way that he could. 20

Q. Now, did you go to the hospital later on? A. Yes, sir, December.

Q. What hospital? A. Long Branch.

Q. When did you first go to the hospital? A. December.

Q. Before you went to the hospital did Dr. Irwin lance it any more times? A. Yes, sir, six times. 30

Q. Six times? A. Seven abscesses.

Q. Did Dr. Irwin lance all of them? A. Yes, sir.

Q. Who treated you at the hospital? A. Dr. Rullman.

Q. Did Dr. Silcox see you again? A. After I came from the hospital.

Q. You went back to him for treatment? A. Yes, sir. 40

Q. Is Dr. Silcox the one sent you to the hospital? A. Dr. Irwin.

Q. And you went to the hospital on December 20, 1926? A. Yes.

10 Q. And you stayed there until February 25, 1927; is that right? A. Yes, sir.

Q. Now, up until December 20, 1926, when you entered the hospital, until that time and the date of the accident, October 21st, had you worked at all? A. No, sir.

Q. Did you go back to the hospital again? A. The second time?

Q. Yes. A. Yes, sir.

Q. That was September 9, 1927? A. Yes, sir.

20 Q. And between the date you left the hospital the first time and went back the second time had you worked? A. No, sir.

Q. When did you go back the second time, do you know?

The Court: Start to work, you mean?

Q. No, discharged from the hospital the second time; was it October 8, 1927? A. Yes, sir.

30 Mr. Lovell: If your Honor please, he ought not to testify for the witness.

Mr. Paul: Well, if your Honor please, it was testified to at the last hearing by the young girl who had the records here.

The Court: Well, you are leading.

Q. Do you know how many days, in all, you were at the hospital? A. I think it was ninety-eight days.

40 Q. Is this a bill you received for your first

time in the hospital (handing paper to witness)? A. Yes, sir.

Q. $235? A. Yes, sir.

Q. Is this the bill you received for your second time in the hospital? A. Yes, sir.

Q. $94? A. Yes, sir. 10

Q. Have they been paid? A. No, sir.

Mr. Paul: I offer them in evidence.

Mr. Lovell: I haven't any objection.

Bills above referred to entered in evidence and marked Exhibits P-1 and P-2, respectively.

Q. Now, on October 8, 1927, when you left the hospital the second time, what did you do, Mr. Lambertson? A. I didn't do anything; I was unable to do anything. 20

Q. Where were you? A. At home—at home, at my mother-in-law's place.

Q. What condition were you in, physically? A. Pretty bad condition.

Q. How do you mean? What was the matter with you? A. I couldn't hardly walk.

Q. Any part of your body paralyzed? A. My right leg was practically paralyzed. 30

Q. Were you in bed most of the time? A. I was up and around, I wasn't in bed, but I couldn't do nothing, I couldn't go nowhere.

Q. How long did that condition exist? A. Oh, it must have been eight or nine months. I went back to the hospital regularly.

Q. For what? A. For about six months, for treatment.

Q. What did they do to you at the hospital, 40

for treatment? A. Violet ray treatments, to heal the wound.

Q. What is the first time you returned to work after the accident from October 21, 1926? A. It was in 1928.

10 Q. About when, do you know? A. I just don't remember, to be exact.

Q. About what month? A. March, I think.

Q. March, did you say? A. Yes.

Q. Now, how do you feel now? A. I feel all right, as far as feeling is concerned; but as far as work, I can't do the work that I used to do.

Q. Do you have any feeling in your limbs at 20 all, any numb feeling? A. Yes, sir.

Q. Where? A. In my left leg.

Q. Do you know the strength there now you had before? A. No, sir.

Q. In what way do you notice that? A. I can't raise my leg like I used to.

Q. How far can you get your leg? A. About three-quarters of the way up.

Q. It pains you above that, or can't you lift it above? A. Yes, I can't lift it above.

30 Q. Lift it three-quarters of the way. Does it pain you at all? A. It draws all the muscles like. It is not intense pain, but it is a drawing of the muscles.

Q. Can you sit now on a chair, or can't you sit on equally—that is, with both cheeks on the chair? A. Yes, sir, but not for any length of time.

Q. About how long a time? A. Well, a half 40 an hour.

Q. Then what happens? A. Then I get a

numb feeling and I have to move. It is a slight pain.

Q. And when you move what do you do? A. Sit on the right buttocks, favor the left.

Q. You say you had the abscesses lanced seven times? A. Yes, seven different abscesses. 10

Q. Each time you had chloroform? A. Yes, sir.

Q. How much did you make a week from Mr. Massey? A. Twenty-seven dollars.

Q. Did that include your eats? A. No, sir.

Q. Is this the bill you got from Dr. Silcox, forty dollars (handing paper to witness)? A. Yes, sir.

Q. Has that been paid? A. Yes, sir, that is paid. 20

Q. Is this the bill you got from Dr. Irwin, $76 (handing paper to witness)? A. That is not paid.

Q. Is that the bill you got? A. Yes, sir.

Q. Is this the bill you got from Dr. Rullman, $290 (handing another paper to witness)? A. Yes, sir.

Q. Has that been paid? A. No, sir.

Mr. Paul: I offer those bills in evidence, your Honor. 30

Mr. Lovell: No objection.

Bills above referred to entered in evidence and marked Exhibits P3, P4 and P5, respectively.

Mr. Paul: Your witness. Cross-examine.

40

CROSS-EXAMINATION by Mr. Lovell:

Q. Mr. Lambertson, you testified that you were injured on the 21st of October, 1926. Do you remember what day of the week that was? A. No, sir, I am not positive. I think it was either a Wednesday or a Thursday.

Q. Well, assuming it was a Wednesday, did you work the next day? A. Yes, sir.

Q. And did you work Friday? A. Yes, sir.

Q. And did you work Saturday? A. Yes, sir.

Q. And you were paid off on Saturday, weren't you? A. Yes, sir.

Q. Who paid you? A. Mr. Pitney.

Q. And you say that you told him at that time that you had been injured? A. No, not at that time; I didn't say that.

Q. Did you say anything at that time, at the time you were paid off, about this accident? A. No, sir.

Q. Did you say anything to anybody at the Massey farm that date you were paid off, about having had an accident? A. No, sir.

Mr. Paul: May I inquire, for the purpose of the record, what counsel means by "paid off." Does he mean paid off for that week or paid off as though being discharged?

Mr. Lovell: Well, I mean he was paid for the week's work.

Q. Weren't you? A. Yes, sir.

Q. You weren't discharged, nobody discharged you? A. No, sir.

Q. And that Saturday was the last time you worked, wasn't it? A. Yes, sir.

Q. When did you next visit the farm? A. I think it was the following Wednesday.

Q. The following Wednesday. And how did you get there on that day? A. My car.

Q. What kind of a car was it, what make of car was it? A. A Ford. 10

Q. How far did you have to drive? A. About two miles.

Q. You drove yourself? A. Yes.

Q. And you drove home yourself? A. Yes, sir.

Q. Now, on that Wednesday following the 21st of October, whom did you see there at the Massey farm? A. Mr. Pitney.

Q. Any one else? A. And Mrs. Massey. 20

Q. And Mrs. Massey? A. Yes, sir.

Q. Whom did you see first? A. Mrs. Massey, I think, because Mr. Pitney was down in the field. I inquired for him.

Q. Did you say anything to Mrs. Massey about the accident, that you had sustained the preceding week? A. I didn't say nothing to her about the accident.

Q. Did you say anything to her about why you didn't come to work on Monday? A. Yes, sir. 30

Q. What reason did you give her? A. I told her I thought I had an abscess.

Q. Is that all you said to her? A. That is all I remember saying.

Q. Was that the only time you saw Mrs. Massey? A. Yes, sir—you mean, the only time that day?

Q. No, I mean at any time after the accident. A. No, that was the only time. 40

Q. Did you say to Mrs. Massey on that date,

or on any subsequent date after the accident, that you hadn't come to work because you had piles? A. No, sir.

Q. You never mentioned piles to Mrs. Massey? A. I mentioned piles, but I didn't say that I had piles; I said I wasn't positive whether it was abscesses or piles.

10

Q. You told him you weren't positive whether it was an abscess or a pile? A. The doctor told me—

Q. No, I am asking you what you told Mrs. Massey. A. I told Mrs. Massey I wasn't positive whether it was an abscess or piles.

Q. Did you say to her that you had had piles before and knew what to do for them? A. No, sir.

20

Q. Never made any such statement? A. No, sir.

Q. Did you say to her on that date or on a subsequent date that your trouble with piles had come because you had lifted some heavy bags of fertilizer? A. No, sir.

Q. Made no such statement to her at any time? A. No, sir.

30

Q. Now, you saw Mr. Pitney, you say, on the Wednesday following the accident, is that your testimony? A. Yes.

Q. What did you say to him? A. What did I say to him?

Q. What reason did you give him for not having come to work on Monday? A. Because I wasn't able to get there.

Q. Well, what reason did you give? A. Pain.

40

Q. Pain. Did you tell him what you had or

what you thought you had? A. I told him just what I told Mrs. Massey.

Q. That you had either abscesses or piles, you didn't know which? A. That's it.

Q. Was that the statement you made to Mr. Pitney? A. Yes. 10

Q. Did you tell Pitney on that occasion that you had had piles before and knew what to do for them? A. No, sir, I never had them.

Q. You testified on direct that you wrote a letter to Mr. Pitney. When did you write that letter? A. It was some time in November, I don't remember the exact date.

Q. You are sure it was November? A. Pretty sure it was November. 20

Q. Wasn't it the 2d of December? A. I am not positive whether it was November or December.

Q. Did you keep a copy of that letter? A. No, sir.

Q. What did you say in the letter? A. I just mentioned to him that I wanted him to come down and see me.

Q. That is all you said in the letter? A. That is all I remember. That was the object of the letter, to get him to come down, that I wanted to see him. 30

Q. Did you say anything in that letter about Mr. Massey coming to see you? A. No, sir.

Q. Did you see Mr. Massey at the farm on any of these occasions when you visited it after the accident? A. After the accident, after I came home from the hospital the first time.

Q. When was that? A. 1927.

Q. That is the first time you saw Mr. Massey after the accident? A. Yes, sir. 40

Q. When did you go to work for Mr. Massey? A. I don't remember the date I went to work for him.

Q. What time of the year was it? A. In the fall, the early fall.

10 Q. Had you been working before that time? A. Yes.

Q. For whom? A. Alderman, the coal dealer in Matawan.

Q. What kind of work had you been doing for him? A. Truck driving.

Q. How long had you been driving a truck? A. How long have I been driving trucks?

Q. How long had you been driving a truck at 20 that time? A. Seven months, for him.

Q. Did you have any accidents while you were driving a truck? A. No, sir.

Q. You went to work for Massey some time in the fall of 1926. How did you get to work from your home? A. A car.

Q. Whose car? A. Mine.

Q. What kind of a car was it, what make? A. A Ford.

Q. Where did you live then? A. Cliffwood.

30 Q. How far is that from the Massey farm? A. In the neighborhood of two and a half miles, something like that.

Q. And you used to drive to the farm from your home and back again each day? A. Yes, sir.

Q. In this car? A. Yes, sir.

Q. Now, after the accident, on the Wednesday following the accident, you drove that same car, 40 or was it another car? A. The same one.

Q. You hadn't gotten rid of the car that you

had when you came to work for him? A. If I remember right, I got a different car while I was working for him.

Q. You got a different car while you were working. How many times did you visit the Massey farm after the accident? A. After the accident? 10

Q. Yes. A. Twice.

Q. Only twice. And you drove your car each time? A. No, the second time I had some one take me, I wasn't able to drive a car.

Q. Who took you? A. My father-in-law.

Q. Do you remember coming to work one morning before the accident and telling Mr. Massey that you were late because you had to come—you 20 were late when you started from home and come a shorter road, over a rough road? A. No.

Q. You were up in the air most of the time? A. No, sir.

Q. When he asked you what you meant you said, "I was coming so fast and the road was so rough I was bounced away off the seat and had an awful jolting;" did you say anything like that? A. No, sir.

Q. Never said anything of that kind? A. No, 30 sir.

Q. When did you get rid of this car that you had when you first came to work for Mr. Massey? A. When I first went to work for him?

Q. Yes. A. I think I got rid of that while I was there.

Q. Well, what time, about; how long before the accident? A. I don't know—a month, three weeks, something like that. 40

Q. Three weeks. Did you sell the car? A. Yes.

Q. Buy another car? A. Yes, sir.

Q. Do you know where the car is now? A. No, sir.

10 Q. To whom did you sell it?

> Mr. Paul: I don't think that is material, about this car. I can't see the connection whatever.
>
> The Court: What is the materiality, about this car?
>
> Mr. Lovell: I propose to show that he may have had this trouble through this ride over these rough roads in this car.
>
> 20 The Court: Have you anything to prove that?
>
> Mr. Lovell: Yes, I propose to offer proof.
>
> The Court: All right, I will allow it.
>
> (Former question repeated by the reporter as follows: "To whom did you sell it?")

A. I don't remember the fellow's name now,
30 somebody in Matawan, that's all I can remember.

Q. Are you working now? A. Yes, sir.

Q. For whom? A. Basino.

Q. What are you doing? A. In a garage.

Q. How much do you get a week? A. Twenty-four dollars.

> Mr. Paul: I don't think that is material, your Honor, what he gets a week now.
>
> The Court: Well, it is answered.

40

Q. How long have you been working for him? A. About two months. I just went to work

in the garage yesterday. I have been driving a truck.

Q. For him? A. Yes.

Q. Did you get the same wages for that? A. No, sir, more money, only I couldn't stand it. 10

Q. How much did you get? A. Thirty dollars a week.

Q. How long did you work for him at thirty dollars a week? A. About eight weeks.

Q. And for whom did you work before that, immediately before that? A. I worked in another garage, Bryan's garage, Cliffwood.

Q. How much did you get there? A. Commission. 20

Q. How long did you work for him? A. About four or five months.

Q. And then prior to that for whom did you work? A. I don't remember.

Q. Were you in any accident, in any motor vehicle accident, prior to October 21, 1926? A. No, sir.

Q. Were you in any accident, have you been in any accident, this year? 30

> Mr. Paul: I object to that. I don't see the materiality of it.
>
> (Discussion between counsel.)
>
> The Court: Except on the question of permanent disability. I will allow it.
>
> Mr. Paul: I will withdraw the objection.
>
> (Question repeated by the reporter.) 40

A. Yes, sir.

Q. When was it? A. About two and a half months ago.

Q. And where did it occur? A. Keyport.

Q. What were you doing? A. Driving a car.

Q. And what was the accident?

10 Mr. Paul: I think, your Honor, we can save time. The only thing involved here is whether the man was injured in this accident, and if so how and what the injuries were.

Mr. Lovell: I have a right to question him as to the details.

The Court: I don't think it is necessary to go any further than the question whether he was injured or not, and if so, how much and where. 20

Q. Were you injured in this accident? A. No, sir.

Q. Were you thrown out of the car? A. No, sir.

Q. How did you come to go to Dr. Silcox, had you been a patient of his before that? A. Yes, sir, he was always our doctor, my doctor. 30

Mr. Lovell: That's all.

RE-DIRECT EXAMINATION by Mr. Paul:

Q. Mr. Lambertson, have you ever had piles? A. No.

Q. You say you quit driving a truck two or three weeks ago, was it? A. No, just the day before yesterday. 40

Q. Why? A. I couldn't stand the riding.

Q. How does it affect you? A. I couldn't sit

long. Any least little bump hurt my buttocks, gave me pain.

Q. Was the seat of your car in which you drove back and forth from your home to the Massey farm, was that an iron seat or a leather covered cushion with springs on it? A. It was a leather cushion. 10

Q. With springs in it? A. I guess so.

Q. It wasn't an iron seat, was it? A. No, sir.

Q. What kind of a road was it from your house to the Massey farm? A. It wasn't such a rough road.

Q. It wasn't such a rough road? A. No, sir. 20

Mr. Paul: That's all.

DR. JAMES SILCOX, a witness on behalf of the petitioner, being duly sworn, testified as follows:

Direct-examination by Mr. Paul: 30

The Court: Are the qualifications admitted? Do you know Dr. Silcox?

Mr. Lovell: I don't know him, but I will admit the qualifications.

The Court: As a general practitioner.

The Witness: Yes, sir.

Q. Doctor, do you know Mr. Lambertson here? A. Yes, sir. 40

Q. How long have you known him? A. About seventeen years.

Q. Has he been a patient of yours during

that time? A. No, not for seventeen years; I have known him ever since I have been in Keyport.

Q. And he has been there for all that time,
10 too? A. Yes.

Q. Did you have occasion to examine him some time in October, 1926? A. I did.

Q. Do you recall about when that was, Doctor? A. About the 27th of October.

Q. Did he come to your office? A. He came to my office.

Q. And what did he do? A. Well, he told me he had an injury and I examined him and
20 I noticed a dark spot, an ecchymosis, we call it—a discoloration of the tissues—and I told him I thought he looked to me as if he were going to have an abscess.

Q. Where was that dark spot or ecchymosis? A. On the left gluteal minimus, down on the lower part of the buttocks.

Q. Near the rectum, Doctor? A. Well, it was probably two or three inches from the
30 rectum.

The Court: On the left buttocks?
A. Yes, sir.

Q. Did he tell you how he was injured? A. He told me he was thrown up in the air and came down on the seat of the tractor.

Q. What did you think it was at that time, Doctor? A. I thought it was an abscess form-
40 ing there which was very tender and discolored and swollen.

Q. Did you treat him? A. I gave him something to put on it, probably thought it would

relieve the pain, but I told him probably he better go to the hospital or go to a surgeon and have it opened up.

Q. Do you do any lancing yourself, Doctor? A. No. 10

Q. You never do it at all? A. No, sir.

Q. Did he come back to you again? A. That was in October. He came back to me in March, along about the middle of March, if I remember right. He came from the hospital and he asked me if I would dress the wound.

Q. You did? A. Yes, sir.

Q. What was the condition of his buttocks then, Doctor, when you saw it? A. Well, it was 20 pretty well ripped.

Q. Did it show evidence of having been operated on? A. Oh, my, I should say so.

Q. How much was missing, Doctor? A. What did you say?

Q. How much was missing; was any part of it missing? A. Well, probably a quarter of his muscles had been removed, by the appearance of it. 30

Q. In your opinion, Doctor, with the history he gave you of the injury occurring on October 21st and you saw him on October 26th, was it possible that the injury could have caused the condition you saw on October 26th? A. I don't know what else could have caused it.

The Court: We are not interested in possibilities.

40

Q. Is it also probable that that is what happened, Doctor? A. Yes, sir.

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

The Court: On what ground?

Mr. Lovell: As to possibilities.

10 The Court: He has changed the question.

Objection sustained to the first one.

Q. Is it probable, Doctor, in your opinion, that the condition you saw on October 26th when you examined him was the result of the injuries he complained to you about as having occurred on October 21st? A. It was due to the injuries, yes, sir.

20 Q. And could the injury have happened five or six days before the time you saw him? A. Yes, sir.

Q. And for the second or third day could the man have worked; in other words, does it take a period of time for those things to come to a head, or become painful? A. Yes, sir.

Q. Did you examine Mr. Lambertson again, Doctor? A. Yes, sir; the last time I examined
30 him was this morning.

Q. What did you find, Doctor, as the result of your examination this morning, the man is suffering from now? A. Well, he has got quite a lot of disability there; he has lost a lot of muscular power of his leg, in raising his leg; he can raise it, but he raises it very slowly and he has had an injury to his sciatic nerve, which has probably regenerated again, but not
40 to the full extent.

Q. Would you say there is any loss of motion of the hip, Doctor, around the sacroiliac joint?

A. Yes, he has lost probably twenty per cent of motion there.

Q. Is it probable, Doctor, that his condition as you see him today, could cause him pain and uneasiness in sitting in one position very long? A. Yes, sir. 10

Q. Has there been any involvement of the nerves of the leg? A. Well, as I say, the sciatic nerve, the popliteal nerve, which goes down the back of his leg.

Q. How far does that one go? A. Down to the bend of the knee.

Q. As to the sacroiliac joint involvement, how does that affect him? A. By the muscles 20 being removed, when he draws his leg up, that draws up the ligaments and muscles and the muscles are unable to draw the leg all the way up.

Q. In your opinion, is that a permanent condition? A. Yes.

Q. What would you say, in terms of percentage, is this man's permanent condition today? A. Thirty per cent. 30

Q. What would—he testified that he returned to work in March of 1928, that would make it one year and five months from the time of the accident to the time he returned to work. Is that, in your opinion, a reasonable length of time for temporary disability with the injury and the treatment this man had? A. He returned very early, I think, for the condition he was in. 40

Q. Is your bill of forty dollars a reasonable bill, in your opinion? A. Well, just the office.

Q. The entire permanent condition is 25 to 30 per cent, is that right, Doctor? A. Yes, sir.

Mr. Paul: That's all.

10

CROSS-EXAMINATION by Mr. Lovell:

Q. Has your bill been paid? A. Yes, sir, he paid me every visit he came to the office.

Q. When he came to see you on October 27, 1926, did you say anything to him about piles? A. No, sir; it was too far away from his rectum, in the first place, for a pile condition.

Q. Well, you said nothing to him anyway,
20 about his having piles? A. No, sir.

Q. You told him it was the result of this injury? A. Yes, I just told him I thought he was developing an abscess there from the injury he had had.

Q. That is the kind of an abscess you call a gluteal abscess? A. Yes, sir.

Q. Can that result only from an injury? A. Well, it could result from probably a sinus in
30 the rectum, but he had none there; I examined him there, I examined his rectum.

Q. How many examinations did you make of his rectum? A. Well, I went up in his rectum to examine, to see if there was anything wrong with his rectum before I made the diagnosis of gluteal abscess from an injury.

Q. Had he been to you for piles before that time? A. No, sir.

40

Q. Did you make an entry in your book account at that time of his trouble? Do you keep a record of cases? A. Well, I keep a record of my calls.

Q. Don't you keep a record of the disease or injury that the patient is suffering? A. Not necessarily, no.

Q. And your testimony is this morning then based on your recollection? A. Yes. 10

Q. How do you fix this time as October 27th? A. From his date of the visit.

Q. You have that in your record? A. Yes, sir, I have that in my record.

Q. And did you bring your record with you? A. No.

Q. Did you send Lambertson to a surgeon, suggest to him that he go to a surgeon? A. I suggested to him to go to a surgeon, I thought 20 it was a surgical case and a hospital case, not a case for home treatment, in his condition. I have done the dates here on this bill, October 26th to September 12th.

Q. October 26th? A. Yes.

Q. I thought you testified it was the 27th. A. Well, it must have been the 26th, it is on the bill as the 26th, but I can't remember that date in my head very well. 30

Q. Well, your bill, I suppose, was made up from your records? A. Yes.

Q. He paid you each time he came, didn't he? A. Yes, sir.

Q. Well, how did you come to make out the bill, then? A. He asked me to make a bill out, so he would know, probably, what he had paid me; I don't know for what other reason.

Q. When did he ask you that? A. Oh, after 40 I had finished treating him.

Q. And that was the amount that he had paid you, the total amount? A. Yes, sir.

Q. How many visits had he made to you? A. I don't remember; I didn't count them in particular, but there must have been forty, because I only charged him a dollar a visit.

10 Q. Forty visits? A. Twenty office visits, that is it, at two dollars a visit, for the dressings and gauze and adhesive that I used on him.

Q. That was your regular charge? A. Yes.

Q. And your book would show those charges, I suppose? A. Yes, sir.

Q. Did you give a certificate at any time as to Lambertson; did you make out a certificate at any time? A. Not as I recall.

20 Q. Was there a certificate produced here on one of the preliminary hearings, from you? A. I don't know.

Q. You do not remember? A. No. I probably may have given him one, I don't recall, because I have so many of those things that occur—cases—I don't make any record of them. I don't recall.

30 Mr. Paul (to Mr. Lovell): There it is, if you care to use it, sir. Is that what you refer to (handing paper to counsel)?

Q. I show you a writing and ask you if that is your certificate? A. Yes, that is mine.

Q. When was that made? A. This is when he came from the hospital?

Q. When was that made out? A. This was made out August 22, 1927. He came from the hospital in March.

40 Q. Is this certificate you said: "This is to certify that I treated Frank Lambertson, of Cliffwood, New Jersey, October 26, 1926, for

an abscess of the gluteal region that I thought was due to an injury"? A. Yes.

Q. How did you come to phrase your certificate in that way? A. Well, because those kind of conditions hardly ever come from anything but an injury in some form; a blow or injury of some kind to the muscles of the gluteal region. 10

Q. Were you in doubt as to what it was due to? A. Well, that kind of an injury—yes, I was in doubt.

Q. But you say, "that I thought was due to an injury"; were you in doubt as to whether it was due to an injury? A. No, I was not in doubt, but I didn't know what kind of an injury caused it. 20

Q. Why did you then say that you thought it was due to an injury, if you were certain? A. Well, those were my sentiments; I thought that was what it was due to.

Mr. Lovell: I offer the certificate in evidence.

Mr. Paul: No objection, sir. 30

Certificate referred to entered in evidence and marked Exhibit R1.

Mr. Paul: That is all.

Mr. Lovell: That is all.

RE-DIRECT EXAMINATION by Mr. Paul:

Q. By the way, Doctor, what is your fee for appearing here today and testifying? A. Twenty-five dollars. 40

DR. WALTER RULLMAN, called as a witness on behalf of the petitioner, being duly sworn, testified as follows:

10 *Direct-examination by Mr. Paul:*

Q. Doctor, where is your office? A. Red Bank, New Jersey.

Q. How long have you been practicing? A. Since 1912—1911; pardon me.

Q. You are a regularly licensed physician? A. Yes.

Q. Are you with any hospitals? A. Yes, the Monmouth Memorial Hospital.

20 Q. Do you know Mr. Lambertson? A. Yes, sir.

Q. Are you a surgeon, Doctor? A. Yes.

Q. When was the first time you saw Mr. Lambertson, do you recall? A. May I refer to these records?

Q. Are they your hospital records? A. They are my hospital records.

Q. Did you make them yourself? A. These
30 are made under my supervision.

Mr. Paul: I offer the records in evidence.

The Court: Any objection?

Mr. Lovell: I haven't seen them.

(Papers handed to Mr. Lovell.)

Mr. Lovell (after examining papers): Do you want to put the whole record in?

40 The Witness: These are the regular records, as required by the American College of Physicians and Surgeons.

Mr. Lovell (to witness): You say you didn't

make these, but they are made under your supervision?

The Witness: They are made under my supervision; they are made under my residence, my interneship, by the supervising nurse. 10

Mr. Lovell: Do you check them up, Dr. Rullman?

The Witness: Oh, yes, they are checked every morning.

> Mr. Lovell: No objection.
>
> Records above referred to entered as one exhibit and marked collectively as Exhibit P6.

20

Q. Doctor, Mr. Lambertson entered the hospital on December 20, 1926, did he not? A. Yes, that is right.

Q. Did you see him on that day? A. I saw him the next morning.

Q. The next morning when you saw him, what condition was he in? A. He presented an abscess of the left buttocks, with a large amount of pus there. 30

Q. Did you give him any treatment, Doctor? A. Yes, operated on him on the 23rd.

Q. The 23rd of December? A. The 23rd of December, that's right, 1926.

Q. To operate, did you give him any ether? A. Oh, yes; yes, indeed.

Q. What did the operation consist of, Doctor? A. An incision into the sac and a curettement, drainage and packing. 40

Q. Do your records indicate you operated on him again while he was in the hospital the first time? A. He was dressed daily, of course; that

wound was dressed daily, and the drain was kept in there for quite a period of time. Not at that admission he was not operated on again, during that period.

10 Q. When he returned to the hospital again the second time, was he operated on a second time? A. Yes, sir.

Q. When was that, about? A. He was operated on September 12, 1927.

Q. And what was that operation? A. That was an incision and drainage of two sinuses that formed as a result of the first abscess.

Q. And in these operations was there any 20 gluteal tissue removed, or gluteal muscle removed? A. Well, there was a great deal of sloughing of the muscle tissue from the amount of pus that formed there. That was curetted, as I told you, in the beginning.

Q. And was some part of it removed, too? A. In the curettement, of course, some part of it had been removed by the action of the pus, and we curetted the margins of it, to get down 30 to the healthy tissue.

Q. Was there any nerve tissue involved? A. The curettement was adjacent to the nerves, yes.

Q. Did you examine him at the time as to any motion involvement or nerve involvement? A. I examined him for muscle involvement, not for any nerve involvement.

Q. What have you to say as to the disability 40 due to the muscular condition, Doctor? A. He was unable, on account of the removal of a portion of these muscles—of the gluteal muscles—to flex and extend his leg freely.

Q. That would also affect the hip, wouldn't it? A. The hip joint?

Q. Yes. A. It would not affect the joint proper; it would only affect the joint, due to the lack of muscle tissue there to move the joint. 10

Q. The man complains today, Doctor he cannot sit in one position very long and has to favor the left buttocks; from the examinations you made and the operations you made, is that probable, Doctor? A. Yes, that is entirely probable, because there is so much destruction of tissue there he is down pretty well to the nerve tissue and bone.

Q. Is that, in your opinion, a permanent condition? A. Oh, that is definitely permanent; that muscle tissue will never reform. 20

Q. Can you tell us, Doctor, in your opinion, what percentage of disability this man has on account of the muscle involvement, the nerve impairment, and sacroiliac joint impairment and function of the hip? A. I have not examined the man since he left the hospital. At the time he left the hospital he was quite lame and at that time he had fully fifty per cent of total. I should frankly say he ought to regain at least twenty-five of that fifty per cent. 30

Q. Would you feel better, Doctor, if you made an examination of the man at this time and determined that? A. I would feel very much better, yes; because I would like to see just how much involvement there is there and how much tissue is gone. 40

Q. Will you do that, please, Doctor. A. (At this point the witness left the witness stand and took the petitioner into an adjoining room,

from which place he returned within about five minutes and resumed the stand.)

Q. Doctor, you just examined Mr. Lambertson? A. Yes.

10 Q. Will you now answer my question as to what you find at the present time. A. He has lack of muscle tissue there, just as I told you in the beginning; he can't help but have. And as he flexes his leg he has a pull, the scar tissue pulls a great deal; that limits his free motion to a certain extent. And, in answer to your question, I would give him—I think he has regained about 25 per cent—I would give

20 him about 25 per cent of disability.

Q. Is there any involvement in the sacro-iliac joint region, do you think—nerve involvement? A. There is no objective symptom; whether he has any subjective symptom or not, I can't tell.

The Court: I beg your pardon, is that of the leg you are fixing 25 per cent?

The Witness: Yes, sir; of the leg.

30

Q. Is that 25 per cent disability of the leg or total disability? A. I should say total disability. You have to reckon that by the man being unable to do his work.

Q. Now, Doctor, this man returned to work some time in March, about a year and five months after the occurrence of the accident. In your opinion, having treated the man in the

40 hospital and knowing his condition, is that a reasonable length of time for what we call temporary disability to exist? A. When did he return to work?

Q. Some time in March, 1928. A. You must realize, I didn't see Mr. Lambertson during that time. I can't answer that question.

Q. When he left the hospital what condition was he in? A. He had a reddened area there and a very tender area. 10

Q. He said he was paralyzed for quite a while after, could only walk around his house with a dragging of his leg after him. A. That is why I wanted to examine him now; that is the condition he was in, and I wanted to see him again. I would have given him 50 per cent at the time.

Q. When he left the hospital the second time, he was in no condition to go to work, was he? A. Oh, no, he was in no condition to go to work. 20

Q. Now, Doctor, your bill was $291. I ask you if that is the reasonable value of the services performed? A. I think, due to the fact he had two operations and the length of time he was under treatment—I think that is very reasonable indeed.

Q. Has that been paid, Doctor? A. No. 30

Q. I show you a bill from the Monmouth Memorial Hospital, marked Exhibit P1, the first time in the hospital, $231; the second time in the hospital, $94. I ask you if that is a reasonable charge? A. Yes, because Mr. Lambertson was in the ward and he couldn't have gone in any cheaper portion of the hospital; so I am perfectly confident that bill is reasonable. 40

Q. What is your bill for testifying this morning, Doctor? A. Twenty-five dollars.

Q. Doctor, with the history that the man

(Mr. Lambertson) was riding a tractor and he hit a stone, which caused him to go up in the air about eight inches and when he came down he struck the pommel of the seat—an 10 iron seat—with the left buttocks, and five or six days later he went to Dr. Silcox, who saw an abscess forming there—an ecchymosis on the buttocks at the point where Mr. Lambertson landed on the seat; in your opinion, is it probable that that kind of an accident would produce the ecchymosis or abscesses which Dr. Silcox found? A. In that particular region it is more probable than it is in any other part 20 of the body, and it is probable in any part of the body.

Mr. Paul: That is all.

CROSS-EXAMINATION by Mr. Lovell:

Q. That type of abscess is produced by other causes, is it not? A. Oh, yes.

Q. What are some of them? A. What are 30 some of them?

Q. Yes? A. All abscesses are of bacterial origin.

Q. This particular abscess might have been produced by some disease, might it not? A. We see a great many abscesses; we don't know what they are produced by.

Q. Can abscesses of this character be produced by a local irritation continued for a 40 length of time? A. Yes.

Q. Was there anything—you judge what caused it from what somebody told you? A. Yes.

Q. That was all? A. Yes; I had no other means of judging it.

Q. Do you think that Mr. Lambertson's occupation, that of a truck driver, necessitated his remaining out of work for a year and three months after he left the hospital? A. I should think if anything in the world would keep him away from work that length of time, it would be truck-driving; because that necessitated his sitting, of course, and I have never ridden in many trucks, but the ones I have been on were pretty rough.

10

Q. And it would be bad for a person in his condition? A. Yes.

20

Q. Wouldn't driving a truck over rough roads produce these abscesses that this man was suffering from? A. It could, yes.

Q. Driving a car over rough roads for a sufficient length of time might produce it, too, might it not? A. I think that would depend entirely upon how elastic his seat was, how much travel, how much injury—in other words, wear and tear—there would be as a result of his being on the seat.

30

Mr. Lovell: That is all.

Mr. Paul: That is all. The petitioner rests.

40

Respondent's Case.

WILLIAM PITNEY, called as a witness on behalf of the respondent, being duly sworn, tes-
10 tified as follows:

Direct-examination by Mr. Lovell:

Q. Where do you live, Mr. Pitney? A. It is called Haightstown.

Q. Do you know the petitioner here, Frank Lambertson? A. Yes, sir.

Q. How long have you known him? A. From the time he first applied for a job over at Mr.
20 Massey's.

Q. Applied where? A. He came over to my home to see about it.

Q. How long ago was that? A. Well, that was, I guess, in 1926; the late summer or early fall.

Q. What were you doing at that time? A. I was working for Mr. Massey, and at that particular time I was home.

30 Q. But you were working for Mr. Massey at that particular time? A. Yes.

Q. What kind of work—did you employ Mr. Lambertson? A. I employed Mr. Lambertson, yes.

Q. At what wage? A. The wage was twenty-seven a week; that is, he was paid by the day.

Q. Paid by the day? A. The days absent he was not paid for.

40 The Court: But the rate was twenty-seven dollars a week?

The Witness: Yes.

Q. What kind of work was he supposed to be doing? A. General farm work; principally, driving the tractor.

Q. How long did he work there? A. He worked up until Saturday, pay day, October 23rd. **10**

Q. Now, on that day, October 23rd, did you see him? A. Yes, I paid him off.

Q. Did he say anything to you at that time about having had an accident— A. No, sir.

Q. —the preceding Wednesday? A. No, sir.

Q. When did you next see him? A. The Wednesday following that pay day.

Q. Did he come to work on Monday? A. No. **20**

Q. Or Tuesday? A. No, sir.

Q. And he came on Wednesday and saw you? A. Yes, sir.

Q. What did he say to you? A. He told me that he was not able to come to work the Monday and Tuesday preceding that and he would not be able to come to work for a little while because he had recurrence of an old trouble of his—that was piles. **30**

Q. Did he say whether or not he had been to any doctor? A. He said he was treating it himself.

Q. Did he say anything about any accident, on that occasion? A. No, sir.

Q. Do you know whether he saw anybody else about the farm on that day? A. He saw Mrs. Massey.

Q. When next did you see Lambertson? A. About a week later. **40**

Q. Had he been to work in the meantime? A. No, sir.

Q. What did he say to you at that time? A. He only saw me for a very short length of time and he said that he still had the same trouble, but to hold the job open for him and
10 he probably would be back as soon as he could.

Q. Did he say anything on that occasion about an accident? A. No, sir.

Q. When did you next see Mr. Lambertson? A. He came back again within the neighborhood of about ten days—I believe it was on a Saturday—when Mr. Massey was home.

Q. Had he been to work in the meantime? A. No, sir, not with us.

20 Q. Did he see you on that occasion? A. Probably, yes.

Q. What did he say to you at that time? A. Nothing worth remembering, because at that time Mr. Massey and I didn't bother with him at all; he just asked me whether Mr. Massey was home.

Q. And he saw Mr. Massey? A. Yes.

Q. Now, did you get a letter from Lambertson
30 after that? A. Yes, sir.

Q. When did you get it? A. December 2nd.

Q. What does that letter say—have you got that letter? A. No, sir.

Q. What did the letter say? A. It stated that he, Frank, was sick in bed; that he wanted to know if Mr. Massey carried any liability insurance on us, and that he had received an injury at that time while driving the tractor and
40 that he was very sick and wanted to know if either Mr. Massey or I could come over and see him.

Q. What did you do after you received the

letter with reference to seeing Mr. Massey? A. The next morning I showed the letter to Mr. Massey—you understand, that letter was sent to my home and I didn't receive it till that evening—so the next morning I showed it to Mr. Massey. 10

Q. What did he say with reference to seeing Mr. Lambertson? A. He told me to go to see Mr. Lambertson, because he was going away on a trip to Florida and he couldn't delay it.

Q. Did you go to see Mr. Lambertson? A. Yes, sir.

Q. Where did you find him? A. He was at his home. 20

Q. What did he say to you on that occasion? A. He inquired further as to whether Mr. Massey carried liability insurance, and he told me he was sure that it happened—that his sickness was the result of an injury which happened while he was driving the tractor, and he stated that he knew of another fellow that had—practically the same sort of an injury, and he said that was due to driving a tractor and that is what he thought it was. 30

Mr. Lovell: Your witness.

CROSS-EXAMINATION by Mr. Paul:

Q. Mr. Pitney, did he explain to you at that time how the accident happened—while riding the tractor? A. At what time?

Q. When you saw him at his home in bed? A. Yes. 40

Q. What did he say? A. He said the injury was the result of being bounced in his

seat while he was driving the tractor going to and from the orchard and the barn.

Q. Did he say by hitting a stone? A. Yes; he said he received it from that.

10 Q. Did you tell Mr. Massey that? A. Well, at that time Mr. Massey was on his way to Florida, of course, and I wrote him about it.

Q. In the letter Mr. Lambertson wrote you, he simply asked you to come and see him, didn't he? A. No, it was as I said; he inquired as to whether or not Mr. Massey had liability insurance, and he wanted to know whether or not Mr. Massey or I could see him,

20 and he said that he was hurt while driving the tractor.

Q. That is your signature, isn't it (handing paper to witness)? A. Yes, sir.

Q. And that letter was written to Mr. Lambertson as a result of your going to his house, is that right? A. Yes, sir.

Q. And it is dated December 8, 1926, is that right? A. That's right.

30 Q. (Reading): "Just a few lines to let you know that I have not forgotten you. I am sorry I could not get over to see you, as I could not manage to get away because of the weather. I spoke to Mr. Massey about you, but he didn't make any definite answer before leaving for Florida. However, he said he would write me what he intended to do to help you out in case he was delayed in getting home.

40 I hope you are feeling much better and on the road to recovery. I will try to get over to see you again soon, but I may not do so until I hear from Mr. Massey. I cannot leave the

place alone very long, and so hate to go anywhere. With sincere wishes for better health, I am, William Pitney, Jr. Dated Matawan, N. J., December 8, 1926." Now, you and Mr. Lamberton were good friends, weren't you, Mr. Pitney? A. Yes, good friends in the sense we worked together; I never knew him before that. We weren't pals or anything like that; actually, we called each other by our first names. 10

Mr. Paul: That's all. I ask to have the letter marked for identification.

Letter read above marked Exhibit P7 for identification. 20

RE-DIRECT EXAMINATION by Mr. Lovell:

Q. Did you see Mr. Massey before he went to Florida on that occasion? A. Just that morning.

Q. That is, before you went to see Mr. Lambertson? A. Yes.

Q. Do you think that you saw Mr. Massey after you got back from seeing Mr. Lambertson? A. Well, do you mean that same day? 30

Q. Yes, that same night? A. No.

Mr. Lovell: That is all.

At this point the hearing was adjourned for luncheon.

40

Afternoon session.

2 P. M.

RE-DIRECT EXAMINATION resumed by Mr. Lovell:

10

Q. Mr. Pitney, are you still working for Mr. Massey? A. No, sir.

Q. How long is it since you left him? A. April 1st of this year.

Mr. Lovell: That's all.

Mr. Paul: No further questions.

20

AMY V. MASSEY, a witness called on behalf of the respondent, being duly sworn, testified as follows:

Direct-examination by Mr. Lovell:

Q. Mrs. Massey, you are the wife of the respondent in this case, are you? A. I am.

Q. And live with him on a farm near Matawan? A. I do.

30

Q. When did you first see Mr. Lambertson after the 21st of October, 1926? A. I think it was the following Wednesday, as nearly as I can remember.

Q. What did he say to you at that time? A. Well, he just came in, and I said, "Have you been sick?" and he said, "Yes." And I said, "Well, what seems to be the matter with you?" and he said, "Well, I think I have a case of the piles." And I said, "That is a very dangerous thing to let run on and you should cer-

40

tainly have medical attention. Have you?" "No," he says, "I have not." I said, "Well, you do something about it, because it is a dangerous condition and might eventually result in a cancer."

10

Q. Is that the whole conversation at that time? A. Practically so.

Q. Did he say anything to you on that occasion about having been in an accident? A. He did not.

Q. When did you next see Lambertson? A. As nearly as I can remember, in about a week.

Q. And what did he say to you on that occasion? A. Well, I asked him again how he was and he said he was no better and that he thought perhaps his condition had been brought about by having to lift a one hundred pound bag of nitrate of soda and giving him a great strain.

20

Q. Did he say anything on that occasion about having suffered an accident? A. He did not.

Q. Did you see him again? A. Yes.

Q. How long afterwards? A. Well, it is very indefinite in my memory, but I think possibly it may have been November, but I am not sure.

30

Q. What did he say to you at that time? A. At that time he was in on a Saturday and he just came in between two open doors, and I looked up and said, "How are you?" and he said, "I am feeling very badly." And I said, "It is certainly too bad, after such a long time." And he said nothing more, and turned around and went out.

40

Q. Did he say anything to you on that occasion about an accident? A. He did not.

Q. Did you see him after that? A. Once.

Q. How long afterwards? A. It was the following—I think in May.

Q. Of this year? A. Yes.

10

Mr. Lovell: That's all.

CROSS-EXAMINATION by Mr. Paul:

Q. Mrs. Massey, after October 21, 1926, in all, how many times did you see Mr. Lambertson? A. Four times.

Q. And each time he came to your home? A. Yes.

20

Q. And the first time, you say, was about a week after that date? A. Yes, the following Wednesday.

Q. The following Wednesday. And the next time was a week later? A. Around about that time.

Q. And the next time in November? A. As near as I can tell you that.

Q. And in November did he say anything about an accident then? A. No, not a thing.

30

Q. Are you sure about that? A. Positive.

Q. When did you first know about an accident? A. Only the letter was written to Mr. Massey.

Q. By whom? A. By Frank Lambertson.

Q. That was in December, wasn't it? A. In December.

Q. Did you tell Mr. Massey about that or did the letter come direct? A. It came to Mr. Massey through Mr. Pitney.

40

Mr. Paul: That's all.

RE-DIRECT EXAMINATION by Mr. Lovell:

Q. Was the letter addressed to Mr. Massey? A. No, it was addressed to Mr. Pitney and received by him at his own home. 10

Mr. Lovell: That is all.

RE-CROSS EXAMINATION by Mr. Paul:

Q. Was Mr. Pitney the foreman there? A. Did you say was he?

Q. Yes? A. He was at that time.

Q. He had charge of the employing and discharging of employees? A. To a certain extent. 20

Q. He hired Mr. Lambertson, didn't he? A. Yes—with Mr. Massey's consent, I believe.

Q. But he was considered the boss of the farm when Mr. Massey was not there? A. Yes—in a way.

Mr. Paul: That's all.

30

MITFORD C. MASSEY, the respondent, being duly sworn, testified, on his own behalf, as follows:

Direct-examination by Mr. Lovell:

Q. Where do you live, Mr. Massey? A. Near Matawan on the New Brunswick Road, in Middlesex County, New Jersey.

Q. And what do you do there? A. Farming. 40

Q. Was that true in 1926? A. It was.

Q. Was Mr. Lambertson, the petitioner here, employed on your farm in 1926? A. He was.

Q. Do you remember when he came there? A. Why, I don't remember exactly, but it was after August 28th. August 28th is the date that the preceding man left, and Mr. Lambertson took
10 his place. I don't remember now whether it was right after that or whether there was an intermission.

Q. How long did he work for you? A. Well, from that time to October 23, 1926.

Q. Did you discharge him at any time? A. Oh, no.

Q. Now, when did you first see Mr. Lambertson after October 21, 1926? A. I would say
20 that was along towards the latter part of November; not at the very last part, but it was a Saturday when I was home and they were all at work there in the house fixing up. The doors were open and Lambertson came in.

Q. Did he see you? A. Oh, yes.

Q. Did he have a talk with you? A. Well, there was no talk, particularly; I asked him how he was feeling—I knew before that he
30 had been sick; I had been informed of that and he replied that he was not feeling any better.

Q. Did he say what was the matter with him? A. No, he didn't say anything at that time, but of course, I thought I knew already.

Q. That was in November, you say? A. Yes; it was not at the very last, but it was in the latter part.

40 Q. And that was the first time you had seen him since October 21st, or at least, since that week of October 21st? A. Yes.

Q. Do you know when he stopped work, the last day he worked? A. October 23, 1926.

Q. Now, when was the next time you saw Mr. Lambertson after that November? A. My first recollection of it, at the time I prepared the facts for the answer, was that it was some time after the 2nd of April or the 1st of April, I forget which. 10

Q. Of the following year? A. Of the following year; but after that I found out that possibly I was mistaken, that it was in May. The way I fix the date is that we employed a woman there in the house and she came to work about the 5th of April and she was present at the time when he came, and therefore it was after the time she was hired. 20

Q. When is the first time that you had any information as to any accident? A. On the 2nd of December, 1926.

Q. And in what form did that come to you? A. Mr. Pitney came over. He had received a letter from Mr. Lambertson, and he wanted either Pitney or myself to come and see him. 30

Q. Did you see the letter? A. I either saw the letter or it was read to me, and in that he stated that he had been hurt on a tractor and he wanted one of us to come over and see him.

Q. Is that the first time that you had had any information as to any injury he claimed to have received? A. I got it second-hand from my wife, that on his prior visits there he had suggested that maybe this condition of piles had been brought on by lifting this heavy sack of nitrate of soda. 40

Mr. Paul: I object to that as hearsay.
The Court: Objection sustained.

The Witness: Well, that is true, it is.

10 Q. Well, when this letter you testified about—I understand that is the first occasion that you heard anything of any accident suffered or claimed to have been suffered by Lambertson on your farm, with reference to any tractor? A. Yes, that is the first with reference to the tractor.

Q. What action, if any, did you take when you read that letter, or had it read to you? A. Well, in view of the fact that he said he wanted to see either Pitney or myself and as I had to leave the next day on business, I told Bill to go down to him and find out what it was all about.

20

Q. Was there an occasion prior to October 21, 1926, that Mr. Lambertson came to you one morning and explained the reason for his being late, and said that he had come a short way and over a rough road?

30

Mr. Paul: Now, if your Honor please, who is testifying?

Mr. Lovell: If your Honor please, I laid the foundation for this on cross-examination of the petition, and this is the proper method of putting this question to this witness. It can't be put to this witness except by a leading question.

40

The Court: I will allow the question.

(Question repeated by the reporter as follows):

"Q. Was there an occasion prior to October 21, 1926, that Mr. Lambertson came to you one morning and explained the reason for his being late, and said that he had come a short way and over a rough road?" 10

Q. (Continued) —and that he was up in the air most of the time, and when you asked him what he meant by that, he replied he was coming so fast and the road was so rough he was bounced away up off the seat and he got an awful jolting? A. I would say yes to that, with one correction; that is, he didn't get there late, but he was explaining how he came pretty near being late; that he knew when he left home that he was late and therefore he came the short way. 20

Q. When did he make that statement to you? A. As near as I can recall it, it was around about the 1st of October.

Q. What year? A. 1926.

Mr. Lovell: Your witness.

30

CROSS-EXAMINATION by Mr. Paul:

Q. Mr. Massey, did you ever see the car he came to work in? A. Yes, sir.

Q. And it had a seat in it, didn't it? A. My recollection is, it had not.

Q. Didn't have a seat in it? A. Didn't have a cushion, if that is what you mean. He had, as I recollect it, the panels on the seat, and there were some sacks and a piece of Army blanket on there, and at the time I saw it, it was rolled up in the corner; but I want to 40

say there were two cars, and that applies to the first car. The second car did have a cushion.

Q. When did he get the second car, do you
10 know—about? A. Well—

Q. It was before October 8th, that year, wasn't it? A. No, he got the car, to my recollection, some time after the 1st of October; maybe a week.

Q. The first knowledge you had of this accident was some time in December of 1926? A. 1926, December 2nd, particularly.

Q. December 2, 1926? A. December 2nd was
20 when I saw the letter. The reason I fix the date is because December 3rd I left for Florida.

Q. That letter is not here now, is it? A. No; I told Mr. Pitney to keep the letter.

Q. Do you recall the contents of that letter, Mr. Massey? A. In a general sense, yes. He said he had been hurt on the tractor and he wanted Mr. Pitney or myself to come and see him.

30 Q. Did he say anything about hitting a stone and leaving his seat and coming down again on his buttocks? A. No, it wasn't in that detail.

Q. In your answer which you filed, which is dated March 15, 1929, you state, in reply to Question 37: "Was not informed of any accident occurring on my farm, or any injury resulting therefrom." Now, in March, 1929,
40 you knew about this accident, didn't you? A. Yes.

Q. As far back as December 2, 1926? A. Yes.

Q. Why didn't you say so in your answer?

A. I understood it was stated—I gave the attorney the facts, to put them in.

Q. That was your own signature on that answer, wasn't it? A. Yes.

Q. And it was sworn to? A. Yes.

10

Q. Did you read it before you signed it? A. I think I did.

Q. But you didn't think about making that correction? A. Well, I really would want to even see the thing now; I can't believe it isn't in there because I gave that in such detail.

Q. That answer was given in answer to Question 37, which is: "If not, give reason for you failure to do so"; that referring to the previous question of your failure to supply medical aid; so why didn't you, Mr. Massey, correct this petition under oath before it was filed, knowing in March of 1929, when it was signed, that he did have an accident which he reported to you on December 2, 1926, which is about five weeks after the accident? A. Will you let me see that petition, please?

20

Mr. Lovell: Now, if your Honor please, this date refers to 1926; it is not calling for information that he had in 1929. He is not calling for 1929, he is asking him to give the reason why he didn't supply medical services in 1926. He says because in 1926 he didn't know there was any accident. It is not because he knows, in 1929, there was an accident.

30

The Witness: In answer to 34, I stated—the question was: "Were you requested to supply the necessary medical service required

40

by law?" None was required by law; further, I was not requested to supply any. Now, I am simply—

Q. As a matter of fact, you were requested to help Mr. Lambertson, were you not? A. To supply medical services? No, he had medical services.

Q. You knew he was very sick, didn't you? A. I certainly knew he was sick.

Q. It was reported in December, 1926, and Mr. Pitney wrote you that he spoke to Mr. Lambertson and he promised to see what you were going to do about it? A. That's true.

Q. Did you do anything at all to suggest to him any medical treatment or aid? A. I certainly did not, because at the time Mr. Pitney came to me about that he was explaining that this man wanted some money, and I said, "Well, if it is a matter of charity, sure, I will help him out; but if I give him any money, then I am committed on this, and I know, as a matter of fact, he never was hurt on this tractor, and I am going to think this thing over first and think what I will do about it."

Q. You are a lawyer, aren't you, Mr. Massey? A. Well, I used to be.

Q. You were a member of the New York bar recently? A. No, sir.

Q. The New Jersey bar? A. No, sir.

Q. What bar? A. The District of Columbia, Washington, D. C.

Q. And you are now a retired lawyer? A. Well, practically so; I go to the office part of the time.

Q. Do you recall having Mr. Lambertson examined by a doctor in Keyport, Dr. Cassidy, in Keyport? A. I know that that was done, in this way: The first attorney—

10

Mr. Paul: That is all, Mr. Massey; that is all.

RE-DIRECT EXAMINATION by Mr. Lovell:

Q. Well, Mr. Massey, you may explain how it came about, that examination? A. Why, I first employed another attorney and he wanted to have this examination, and I told him I didn't see the necessity for it—

20

Mr. Paul: I don't think we should be bound by any conversation he had with another attorney with reference to that.

Mr. Lovell: He has a right to explain how the examination was made.

The Court: Not as to the conversation; of course, that is hearsay.

30

The Witness: Well, the point is, it was really made against my request and in contradiction of my agreement that an examination was not to be made—at least until I had had a talk with the doctor.

Mr. Lovell: That's all. That is our case.

Mr. Paul: I ask that P7 for identification be marked in evidence.

40

P7 for identification, above referred to, entered in evidence and marked Exhibit P7.

Mr. Paul: That is our case.

Mr. Lovell: I want to renew my motion to dismiss on the same grounds as stated be-

fore, which your Honor has ruled upon, and on the further ground that the petitioner has failed to sustain the burden of proof that the respondent had knowledge or notice within
10 ninety days of the accident, as required by Section 15 of the Compensation Act; and on the third ground that there is no proof the injury which the petitioner claims to have suffered was the result of an accident arising out of and in the course of his employment by the respondent.

Now, in support of the first ground, upon the first application I made to dismiss the peti-
20 tion which was on the ground that the Act of 1924 did not apply to employers of farm labor such as Mr. Massey was, I want to say further on that that this Act of 1924 requires self-insuring employers to make a report of any accident, causing a disability extending beyond the waiting period, or causing a permanent injury, and directing that such report shall be prepared and be sent immediately upon
30 the employer having knowledge of the disability, and a second report within three weeks after the accident. Now, the petitioner is conceding he didn't give any notice whatsoever of this accident until some time after more than three weeks—I think as the testimony now stands it is conceded the first notice of any alleged accident was contained in this letter by the petitioner on the 2nd of December, a month
40 and a half after the date of the alleged accident, and I submit that the respondent never had knowledge as required under the statute sufficient to warrant him in making an investigation. He had nothing to go upon; there wasn't any machinery that he could have ex-

amined; no claim of a defective structure. There wasn't anything except the claimant's own statements, and those were conflicting. At one time he said he was suffering from piles, at another time he told Mrs. Massey he had brought on these piles by lifting heavy bags of fertilizer, and it was not until the 2nd of December, when this letter was received, that Mr. Massey could have had any information that there was any claim of an accident suffered by this petitioner while working on his farm; and the way in which such claim was then made, it could not have been investigated there. There were no witnesses present who saw this alleged accident and there was no broken machinery or any defect in a structure that one could look at. Mr. Lambertson did not immediately after the accident or within a few days when he says he had this black and blue mark or what not on him—he didn't say anything of that kind to anybody so anybody could look at it; I mean, anybody representing Mr. Massey—and there wasn't any way in which this employer could have had knowledge which would enable him to make that report required by the Act of 1924 within the time therein stated.

That is so much for the motion to dismiss. Does your Honor want to rule on that now?

The Court: Well, I will hear you sum up first.

(Counsel for both sides sum up the case.)

The Court: On the motion to dismiss, I will deny said motion. Under the act, on the question of filing the report, the law states that any employer or insurance carrier failing to make

a report as required by this act shall, in such instance, be deprived of the defenses set forth in Paragraph 23, which is the Statute of Limitations. On the testimony I have listened very carefully, and as the petitioner's testimony has been presented I have seen no flaw; I do not
10 see any reason why I should not believe the testimony. He has proven an accident arising out of and in the course of his employment, and from the testimony as presented there is only one thing I can find, and that is that the petitioner suffered an accident arising out of and in the course of the employment, and I shall therefore render a judgment in favor of the petitioner for temporary compensation from
20 October 23, 1926, to March 1, 1928. The rate of compensation will be seventeen dollars per week, two-thirds of twenty-seven dollars. I will find further a permanent disability of 10 per cent of the total, amounting to fifty weeks' compensation at $17.00 per week. All compensation due to date shall be paid in a lump sum and the balance weekly.

On the question of expenses, there seems to
30 be no question but that these medical expenses were reasonable, and I believe the facts were such that the respondent should take care of them. I see no reason why the respondent has not. The respondent had the opportunity to furnish medical treatment, but furnished none at all after he had been notified of the accident. I will therefore allow the medical bills, which are as follows: Monmouth Me-
40 morial Hospital, $235 and $94; Dr. Silcox, $40; Dr. Rullman, $291; Dr. Irwin, $76. I will further allow Dr. Trainor $50 for testifying and Drs. Rullman and Silcox $25, respectively, for testifying.

I will now hear you on the question of counsel fee, gentlemen.

(Discussion between counsel.)

The Court: I will fix the counsel fee at $600, $400 against the respondent and $200 against the petitioner.

Mr. Lovell: I don't know whether I have to take an exception to your Honor's refusal to dismiss. 10

The Court: You may enter it; I don't suppose it makes any difference. You have the right to appeal in accordance with the procedure set down.

20

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

WILLIAM C. O'BRIEN,
Court Reporter.

I hereby certify that the foregoing is a true and accurate transcript of testimony in the above entitled matter, as taken stenographically before me at the time, place and date hereinbefore set forth. 30

CHARLES E. CORBIN,
Deputy Compensation Commissioner.

I, William E. Stubbs, Deputy Commissioner and Secretary of the Workmen's Compensation Bureau, hereby attest the authenticity of the signature of William C. O'Brien, and that he, as the official who took the notes in this case, is the proper one to certify as to the transcript of the testimony. 40

W. E. STUBBS.

Exhibit P-1.

Long Branch, N. J. Nov. 26th, 1927

Mr. Frank Lambertson,
Cliffwood, N. J.

10 to Monmouth Memorial Hospital, Dr.

Board and nursing Dec. 20th, 1926—Feb. 26th, 1927—68 days ($3 day)	$204.00
Special Nursing	
Operating room—Delivery room	10.00
X-ray	15.00
Laboratory work	2.00
Miscellaneous	
20 Total charges	$235.00

Exhibit P-2.

Long Branch, N. J. Nov. 26th, 1927

Mr. Frank Lambertson,
30 Cliffwood, N. J.

to Monmouth Memorial Hospital, Dr.

Board and nursing Sept. 9th to October 8th, 1927—29 days ($3 day)	$87.00
Special Nursing	
Operating room	5.00
X-ray	
40 Laboratory work	2.00
Miscellaneous	
Total charges	$94.00

Exhibit P-3.

Keyport, N. J., June 26th, 1929

Mr. Frank Lambertson,
to J. E. D. Silcox, M. D. Dr.
79 First Street

10

For Services rendered
Oct. 26th, 1926 to Sept. 12, 1927
20 office visits @ $2.00 $40.00

Exhibit P-4.

MEMORANDUM OF ACCOUNT

20

Statements rendered monthly

Matawan, N. J. 6/27/29

M. B. Erwin, M. D.
174 Main Street

Professional services to $76.00/100
Paid on account
Balance

30

To Mr. Frank Lambertson,
Cliffwood, N. J.

40

Exhibit P-5.

WALTER A. RULLMAN, M. D.

58 West Front Street

Red Bank, N. J. October 3, 1929

10 Mr. Frank Lambert
Cliffwood, New Jersey.

For Professional Service Rendered and operation

December 20 to February 26, 1927 at $3 per day visit	$204.00
September 9, 1929 to October 8, 1929 at $3 per day visit	87.00
	$291.00

20

Received payment

Exhibit P-6.

30

Records of Monmouth Memorial Hospital.

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Exhibit P-7.

"Just a few lines to let you know that I have not forgotten you. I am sorry I could not get over to see you, as I could not manage to get away because of the weather. I spoke to Mr. Massie about you, but he didn't make any definite answer before leaving for Florida. However, he said he would write me what he intended to do to help you out in case he was delayed in getting home. I hope you are feeling much better and on the road to recovery. I will try to get over to see you again soon, but I may not do so until I hear from Mr. Massie. I cannot leave the place alone very long, and so hate to go anywhere. With sincere wishes for better health, I am, 10 20

WILLIAM PITNEY Jr.

Dated Matawan, N. J., December 8, 1926."

Exhibit R-1.

"This is to certify that I treated Frank Lambertson of Cliffwood, N. J. October 26, 1926 for absess of gluteal region what I thought was due to an injury. I also treated him since March 1927 when he came from Hospital. 30

J. E. D. SILCOX, M. D.

Date Aug. 22—27"

40

Determination and Order.

(Filed December 28, 1929.)

NEW JERSEY DEPARTMENT OF LABOR,

10 WORKMEN'S COMPENSATION BUREAU.

FRANK L. LAMBERTSON, Petitioner, vs. MITFORD C. MASSIE, Respondent.	Determination and Order 9956.

20

Summary of Award:

Temporary disability Oct. 23, 1926, to March 1st, 1928, 70 5/7 weeks @ $17.00 per week equals,		$1,202
10% of total permanent, 50 weeks $17.00 equals,		850
Hospital fees and doctors' bills,		832
Counsel fee, by respondent,		400
		$3,284
Counsel fee, by petitioner,	$200.00	

30

A Petition having been filed in the Workmen's Compensation Act of the State of New Jersey, by virtue of the Act of 1911 and its amendments, wherein petitioner alleges that on or about the 21st day of October, 1926, he was
40 employed by the respondent as a helper on a farm and that his duties among other things, was to drive a tractor; that his wages were

$27.00 per week and that on said date, he was driving said tractor when it hit a stone and he bounced in the air about eight inches and landed on the pummel of the iron seat of the tractor on his left buttocks, that he continued to work for three days, on the fifth day saw a doctor and the doctor advised him that it was an abscess and that thereafter, petitioner had seven operations performed on his buttocks for said abscesses; that he spent ninety-seven days in the Monmouth Memorial Hospital at Long Branch, New Jersey. 10

That said accident above referred to arose out of and in the course of his employment with the respondent. 20

The case having been heard before me at Asbury Park, on October 3rd, 1929, and continued to December 5th, 1929, and the respondent appeared with his witness and the petitioner produced three doctors who testified as to his disability.

I find and determine: 30

1. That the petitioner was employed by the respondent on Oct. 21st, 1926, and that he sustained an injury arising out of and in the course of his employment with the respondent.

2. That his wages were $27.00 per week.

3. That he suffered temporary disability from October 23, 1926, to March 1st, 1928; that in additional thereto, he has suffered a permanent disability of 10% of total. 40

4. I do find and determine that his hospital bills and medical expenses incurred are a proper item.

It is therefore on this 11th day of December, 1929,

Ordered that judgment final be entered in favor of petitioner and against respondent in
10 the following sums:

Temporary disability, October 23, 1926, to March 1st, 1928, 70 5/7 weeks @ $17.00 per week equals,	$1,202
10% of total permanent, 50 weeks @ $17.00 equals,	850
Hospital, Monmouth Memorial,	325
Dr. Silcox,	40
Dr. Rullman,	291
20 Dr. Erwin,	76
Dr. Trainor, Expert testimony fee,	50
Dr. Rullman, Expert testimony fee,	25
Dr. Silcox, Expert testimony fee,	25

I do further find and determine that the attorney for the petitioner be allowed a counsel fee of $600.00 and that the respondent pay $400.00 and petitioner pay his attorney the sum of
30 $200.00 and that judgment final be entered in the total sum of $3,284.00.

CHARLES E. CORBIN,
Deputy Commissioner of Compensation.

Determination & Order
entered on motion of
John Grimshaw,
Attorney for Petitioner,
Jos. C. Paul,
40 Trial Counsel.

Notice of Appeal.

(Filed Dec. 21, 1929.)

NEW JERSEY DEPARTMENT OF LABOR,

WORKMEN'S COMPENSATION BUREAU. 10

FRANK L. LAMBERTSON, Petitioner, vs. MITFORD C. MASSIE, Respondent.	Claim Petition No. 9956. Notice of Appeal.

20

Gentlemen:

Please Take Notice that Mitford C. Massie, the respondent herein, hereby appeals to the Court of Common Pleas in and for the County of Monmouth, from the determination and judgment of the Workmen's Compensation Bureau, made in the above entitled matter on the 11th day of December, 1929, rendering judgment in favor of the petitioner and against said respondent and awarding said petitioner temporary and permanent disability, medical and hospital expenses and a counsel fee, the whole aggregating $3,284 and that such appeal is from the whole and each and every part of said determination and judgment. 30

Dated, December 17, 1929.

Yours, &c.,

ARTHUR LOVELL, 40

Attorney for Respondent-Appellant.

To:

John C. Grimshaw, Esq.,
Attorney for Petitioner.

William E. Stubbs, Esq.,
Secretary Workmen's Compensation Bureau.

Joseph McDermott, Esq.,
Clerk of Monmouth County.

Order Fixing Time and Place for Hearing Appeal.

(Filed Jan. 4, 1930.)

MONMOUTH COUNTY COURT OF COMMON
10 PLEAS.

Frank L. Lambertson, Petitioner-Appellee, vs. 20 Mitford C. Massie, Respondent-Appellant.	On Appeal From Workmen's Compensation Bureau. Order Fixing Time and Place for Hearing Appeal.

On motion of Arthur Lovell, Attorney for the respondent-appellant in the above-entitled matter, it is hereby ordered that Thursday, the twenty-third day of January, 1930, at ten o'clock in the forenoon be and hereby is fixed as the
30 time and the Monmouth County Court House, Freehold, New Jersey, as the place for the hearing of the appeal in said matter.

JACOB STEINBACH, Jr.,
Judge of the Monmouth County
Court of Common Pleas.

40

Notice of Appeal by Lambertson.

(Filed Jan. 7, 1930.)

NEW JERSEY DEPARTMENT OF LABOR,

WORKMEN'S COMPENSATION BUREAU. 10

FRANK L. LAMBERTSON, Petitioner, vs. MITFORD C. MASSIE, Respondent.	On Petition. Notice of Appeal.

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To:
William E. Stubbs,
Sec. Trenton, N. J.
To:
Clerk of Common Pleas,
Monmouth County.
To:
Arthur Lovell,
Attorney for Respondent,
1211 Martine Av.,
Plainfield, N. J.

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Please Take Notice, that the petitioner, Frank L. Lambertson, does appeal from the judgment of the Workmen's Compensation Bureau of the State of New Jersey in the above cause, to the Monmouth County Common Pleas.

Said judgment and determination of the facts thereon, dated December 11th, 1929, and signed by Charles E. Corbin, Deputy Commissioner of Compensation, and the effect of said judgment

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is to make an award against the respondent in favor of the petitioner for temporary disability amounting to 70 5/7 weeks @ $17.00 per week and 10% of total permanent, or 50 weeks
10 @ $17.00 per week, hospital and doctor's bills amounting to $832.00, together with counsel fee of $400.00 making a total award of $3,284.00 and the petitioner appeals from said award on the grounds, to wit:

1. That the Deputy Commissioner of Compensation did not allow sufficient amount of permanent disability in that the testimony of the
20 operating surgeon and the attending surgeon gave petitioner 25 to 35% total permanent whereas the Commissioner only allowed petitioner disability of 10% total permanent.

2. That the award is against the weight of evidence insofar as the amount of permanent disability is concerned.

JOHN GRIMSHAW,
Attorney for Petitioner.
30 JOSEPH C. PAUL,
Of Counsel.

1/3/30.

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Conclusions.

(Filed Mar. 21, 1930.)

MONMOUTH COUNTY COMMON PLEAS COURT.

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Frank L. Lambertson, Petitioner-Appellee, vs. Mitford C. Massie, Respondent-Appellant.	On Petition for Compensation on Appeal. Conclusions.

For Petitioner-Appellee, John Grimshaw, Esq. (Joseph C. Paul, Esq., trial counsel). 20

For Respondent-Appellant, Arthur Lovell, Esq.

Steinbach, J.: This is an appeal from the determination of facts and rule for final judgment entered by the Workmen's Compensation Bureau (Deputy Commissioner Hon. Charles E. Corbin), which found and ordered that judgment should be entered in favor of the petitioner 30 and against the respondent, in the following sums:

Temporary disability, October 23, 1926, to March 1st, 1928, 70-5/7 weeks @ $17.00 per week equals	1,202.00
10% of total permanent, 50 weeks @ $17.00 equals	850.00
Hospital, Monmouth Memorial	325.00
Dr. Silcox	40.00
Dr. Rullman	291.00

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Dr. Erwin	76.00
Dr. Trainor, expert testimony fee	50.00
Dr. Rullman, expert testimony fee	25.00
Dr. Silcox, expert testimony fee	25.00

10 I do further find and determine that the attorney for the petitioner be allowed a counsel fee of $600.00 and that the respondent pay $400.00 and petitioner pay his attorney the sum of $200.00 and that judgment final be entered in the total sum of $3,284.00.

The first question raised by the respondent-appellant is that the petition was not filed within the time provided by the statute.

20 Under Section 23-(h) of the Workmen's Compensation Act "P. L. 1911, Chapter 95 as amended by P. L. 1919, Chapter 93," it is provided that—"In case of personal injury all claims for compensation on account thereof, shall be forever barred unless a petition is filed in duplicate with the Secretary of the Workmen's Compensation Bureau at the State House

30 in Trenton, within one year after the date on which the accident occurred, * * *."

It is admitted that in this case the petition was not filed within one year after the date on which the accident occurred. It is claimed by the petitioner-appellee that Chapter 187 of the Pamphlet Laws of 1924 applies in this case and that the employer did not make report of the accident immediately upon the em-

40 ployer having knowledge of the disability or injury as provided in Section 2 of that Act; and that, therefore, the employer was deprived of that defense inasmuch as Section 6 of that

Act provides: "Any employer or insurance carrier failing to make report as required by this Act shall in such instance be deprived of the defense provided in paragraph 23 (H) of the Workmen's Compensation Act." 10

The employer argues that the Act of 1924 treats of the same subject-matter as Chapter 178, P. L. 1917, which provides that every employer of labor shall make provision for the payment of any obligation which he may incur to any injured employee—under the provisions of Section 2 of the Workmen's Compensation Act either by taking out insurance for their benefit in any proper insurance company or satisfying 20 the Commissioner of Banking and Insurance as to the permanence and financial standing of his business so that he may be permitted to carry his own liability insurance.

The employer in the instant case was a farmer. Chapter 178 of the Laws of 1917 particularly exempts employers of farm labor from its operation.

That both Acts relate to the same subject in 30 part cannot be doubted. However, Chapter 187 of the Laws of 1924 also relates to the same subject-matter as Chapter 95 of the laws of 1911—farmers are subject to the provisions of the Act of 1911. They are particularly exempt from the Act of 1917 but the Act of 1924 relates clearly to all employers coming under the Act of 1911. There are two classes mentioned in the Act of 1924: 40

1. Employers carrying insurance as required by Chapter 178 of the Laws of 1917.

2. Any employer not carrying compensation insurance.

The second subdivision does not speak of any employer satisfying the Commissioner of Banking
10 and Insurance of his financial ability to respond to any judgment, but includes such a person and also any other employer of labor not carrying compensation insurance; and that includes the farmer in this case.

The employer surely had knowledge within the meaning of the Act on December 2, 1926 and he may have had it prior to that time. The fact that he received it at such a time as made it
20 impossible for him to file a three weeks' notice with the Commissioner of Labor or a final notice when the employee resumed work does not affect the matter, because to say so would be to mean that if he did not promptly receive a notice he would be exempt, therefore, from notifying the Workmen's Compensation Bureau. The duty incumbent upon him was to notify the Workmen's Compensation Bureau as soon as he had knowl-
30 edge. This, he did not do. Again, to hold otherwise, would be to hold that if the employer and employee did not agree to care for the case in accordance with the terms of the Workmen's Compensation Law, or the employee did not resume work for the employer, no notice at all would be necessary. Clearly, this is not what the act means.

The respondent-appellant cannot avail himself
40 of the failure to file the petition for compensation within one year.

The next point is that the injury did not arise in the course of and during the employment.

Conclusions

After considering the testimony of the case, I believe that it did.

The next point is that notice was not served within thirty days after the injury.

It may not be absolutely demonstrated that notice of the accident was given to the employer or his foreman within thirty days after the accident, but I do believe that even if it were not given within the thirty days there was reasonable cause or excuse for not giving it, when we consider how slowly the injury manifested itself and how ill the petitioner became when a full realization of his injury had been brought home to him. Even within the thirty days there had been information given to the foreman that there was probably an abscess.

I do not believe that 10% represents the true proportion of the permanent injury suffered by the petitioner. I do believe that 15% is a fair and proper estimate of the injury received.

The only remaining question is that of the medical expenses and hospital bill.

The petitioner-appellee clearly did not make the application to his employer as contemplated by Section 14 of Chapter 95 P. L. 1911, nor am I able to see circumstances so peculiar as to justify expenditure by the employer. There is no such finding of peculiar circumstances in the opinion of the Workmen's Compensation Bureau. The Commissioner simply says, "On the question of expenses, there seems to be no question but that these medical expenses were reasonable and I believe the facts were such that the respondent should take care of them. I see no reason why respondent has not. The respondent had the

opportunity to furnish medical treatment but furnished none at all after he had been notified of the accident."

There was a time when the employer, through
10 the foreman, was chargeable with knowledge that the employee was home sick in bed and in considerable pain. Although the foreman knew of the injury and the employer was told, nevertheless, the extent of the injury became known only gradually, and I do not see how the employer could have been charged with knowledge that the medical treatment taken could, or did, become necessary and so, we cannot say that the em-
20 ployer neglected to provide it.

The employee did nothing further than ask for money. He did not file the petition under Section 14, nor did he, as far as the testimony shows, in any way bring home to the employer the fact that he was unable to get the proper medical attention or needed or would need aid in that particular beyond the sums allowed by the statute of $50.00 for physician's services and
30 $50.00 for hospital services. Surely it was not the duty of the employer to constantly inquire if medical aid was requested or needed beyond the usual extent. Some duty rested upon the employee.

The Court finds that the petitioner-appellee is entitled to judgment against the respondent-appellant, as follows:

Temporary disability October 23, 1926 to March 1st, 1928 70 5/7 weeks @ $17 equals	$1,202.00
15% of total permanent, 75 weeks @ $17 equals	1,275.00

(40 in margin)

Hospital service	50.00
Physicians' service	50.00
Dr. Trainor, expert testimony fee	50.00
Dr. Rullman, expert testimony fee	25.00
Dr. Silcox, expert testimony fee	25.00

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and in addition thereto that the attorney for the petitioner be allowed a counsel fee of $600 of which the respondent shall pay $400 to be included in the judgment, and the petitioner shall pay his attorney the sum of $200, making the aggregate amount due from the respondent-appellant to the petitioner-appellee, the sum of $3,077 and costs.

Let a rule for final judgment be entered accordingly.

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JACOB STEINBACH, Jr.,
Judge.

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Rule for Final Judgment.

(Filed Mar. 21, 1930.)

MONMOUTH COUNTY COURT OF COMMON PLEAS.

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FRANK L. LAMBERTSON, Petitioner-Appellee, vs. MITFORD C. MASSIE, Respondent-Appellant.	Rule for Final Judgment.

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The above matter coming on from appeal and cross appeal from the Workmen's Compensation Bureau on account of an Order made by Deputy Commissioner Charles E. Corbin, wherein the petitioner recovered against the respondent, compensation and hospital and medical expenses totalling $3,284 on account of an injury to the petitioner which occurred on or about the 21st day of October, 1926.

30

Upon consideration of the questions raised, by the both appeals, I do find and determine as follows:

1. That the petitioner was in the employ of the respondent on Oct. 21st, 1926; that he received wages of $27 per week and that he sustained an accident arising out of and in the course of his employment.

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2. I do further find that the respondent is not exempt as an employer of farm labor within the contemplation of the Act of 1924, Chapter 187.

3. I do further find that 10% total permanent disability is insufficient for the petitioner and find that 15% is a fair and proper estimate of the injuries received.

4. I do further find that the petitioner is not allowed to recover for hospital expenses of $325, nor Dr. Silcox's bill of $40, or Dr. Erwin's bill of $76, for the reason that petitioner did not file a petition under Section 147, requesting an extension of medical services and I therefore allow petitioner $50.00 for physicians' services and $50.00 for hospital services. 10

It is therefore on this 21st day of March, 1930, ordered, that judgment final be entered in favor of the petitioner Frank L. Lambertson and against the respondent Mitford C. Massie as follows: 20

Temporary disability October 23, 1926 to March 1st, 1928, 70 5/7 weeks @ $17 per week equals	$1,202.00
15% of total permanent, 75 weeks @ $17 equals	1,275.00
Hospital service	50.00
Physicians' service	50.00
Dr. Trainor, expert testimony fee	50.00
Dr. Rullman, expert testimony fee	25.00
Dr. Silcox, expert testimony fee	25.00

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and in addition thereto that the attorney for the petitioner be allowed a counsel fee of $600 of which the respondent shall pay $400.00 to be included in the judgment, and the petitioner shall pay his attorney the sum of $200.00 making the 40

aggregate amount due from the respondent-appellant to the petitioner-appellee, the sum of $3,077.00 and costs.

10 It is further ordered that the respondent-appellant pay to the attorney for the petitioner-appellee an additional counsel fee to that above set forth in the sum of Fifty Dollars. On Motion of

John C. Grimshaw,
Attorney for Petitioner-Appellee,
Joseph E. Paul,
Of Counsel.

3/21/30. Costs $107.45.

20 JACOB STEINBACH, Jr.,
Judge of the Monmouth County
Court of Common Pleas.

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Judgment Entered March 21, 1930.

MONMOUTH COMMON PLEAS COURT,

December Term 1929.

22356-28-277 10

FRANK L. LAMBERTSON, Petitioner-Appellee, vs. MITFORD C. MASSIE, Respondent-Appellant.	On Appeal. On Petition for Compensation. Judgment by Rule.

20

Judgment entered March 21, A. D. 1930.

Compensation for temporary disability 70 5/7 weeks at $17 per week		$1,202.00
15% of total permanent, disability 75 weeks at $17 per week		1,275.00
Hospital service		50.00
Physicians' service		50.00
Dr. Trainor, expert testimony fee		50.00
Dr. Rullman, expert testimony fee		25.00
Dr. Silcox, expert testimony fee		25.00
Counsel fee due from Respondent		400.00
Counsel fee due from Petitioner	$200.00	
Costs		107.45
		$3,184.45

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John C. Grimshaw, Atty.

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Judgment in the above entitled action was entered on the Twenty-first day of March, A. D.

One thousand nine hundred and Thirty in favor of the Petitioner-Appellee Frank L. Lambertson and against the Respondent-Appellant Mitford C. Massie, On Appeal, On Petition for Compensa-
10 tion; Judgment by Rule, compensation for temporary disability Seventy and Five sevenths weeks at Seventeen Dollars per week amounting to One thousand Two hundred Two dollars, Fifteen per cent of total permanent disability Seventy-five weeks at Seventeen Dollars per week amounting to One thousand Two hundred Seventy-five dollars, Hospital Service amounting to Fifty dollars, Dr. Trainor, expert testimony fee, Fifty dol-
20 lars, Dr. Rullman, expert testimony fee, Twenty-five dollars, Dr. Silcox, expert testimony fee, Twenty-five dollars.

It is ordered that the attorney for the petitioner be allowed a counsel fee of Six hundred dollars of which the respondent shall pay Four hundred dollars to be included in the judgment, and the petitioner shall pay the sum of Two hundred dollars. Costs of suit One hundred Seven
30 dollars and Forty-five cents.

Judgment entered and signed March 21, A. D. 1930; 11:00 A. M.

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Opinion.

NEW JERSEY SUPREME COURT.

Nos. 226, May Term, 1930.
246

MITFORD C. MASSIE,
Prosecutor,
v.
COURT OF COMMON PLEAS IN AND FOR THE COUNTY OF MONMOUTH, JOSEPH McDERMOTT, Clerk, and FRANK L. LAMBERTSON,
Defendants.

FRANK L. LAMBERTSON,
Prosecutor,
v.
COURT OF COMMON PLEAS IN AND FOR THE COUNTY OF MONMOUTH, JOSEPH McDERMOTT, Clerk, and MITFORD C. MASSIE,
Defendants.

Argued May 6, 1930. Decided on Certiorari.

For prosecutor, Mitford C. Massie, Arthur Lovell, Esq.

For prosecutor, Frank L. Lambertson, Joseph C. Paul, Esq., and John Grimshaw, Esq.

Before: Justices Parker, Campbell and Bodine.

Opinion

Per Curiam: Frank L. Lambertson was employed as a farm laborer by Mitford C. Massie. On October 27, 1926, while he was so occupied he was injured while driving a tractor which struck a stone and unseated him. When he re-
10 gained his seat he struck the iron pommel in such a way as to cause abrasions of the buttocks which resulted in painful abscesses.

The Workmen's Compensation Bureau awarded compensation, but on appeal and cross appeal to the Monmouth County Court of Common Pleas the percentage of disability allowed for was increased and the award for hospital and medical bills was disallowed. Both employer
20 and employee seek a review here.

Lambertson's petition for compensation was filed with the Workmen's Compensation Bureau January 28, 1929, more than two years after his injuries were received.

Section 23 (h) of the Workmen's Compensation Act, as amended P. L. 1919, p. 214, provides as follows: "In case of personal injury or death all claims for compensation on account thereof
30 shall be forever barred unless a petition is filed in duplicate with the secretary of the Workmen's Compensation Bureau, at the State House, in Trenton, within one year after the date on which said accident occurred."

At the hearing before the Bureau, in the Common Pleas Court and here, this statute was urged as a bar to the action and there is no doubt that such would be the case (Lusczy v. Seaboard By-Products Co., 101 N. J. L. 170), were
40 it not for a subsequent Legislative enactment. Pamphlet Laws 1924, p. 401, is as follows:

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

"Any employer carrying insurance as required by Chapter 178 of the Laws of 1917, shall, etc." 10
* * *

"2. Any employer not carrying compensation insurance, shall make report of any accident or compensable occupational disease causing a disability extending beyond the waiting period prescribed by Paragraph Thirteen of the Workmen's Compensation Act, or causing any permanent injury. *Such report shall be prepared and sent immediately upon the employer's having knowledge of the disability or injury* named above, 20 and shall be made out in duplicate upon forms to be secured from the Workmen's Compensation Bureau. One copy shall be mailed to the above bureau and one copy kept on file by the employer. Within three weeks after the accident, or the obtaining of knowledge of compensable occupational disease, the employer operating under Section II of the Compensation Act, shall 30 send to the Workmen's Compensation Bureau a second report, containing a statement of wages and an agreement to care for the case according to the terms of the Compensation Law." * * *

"6. * * * Any employer or insurance carrier failing to make report as required by this Act, shall in such instance be deprived of the defense provided in Paragraph 23 (h) of the Workmen's Compensation Act, approved April fourth, 40 one thousand nine hundred and eleven, as Chap-

ter 95 as amended by Chapter 93, Laws of 1919. In any such case it shall be incumbent upon the employee or dependent to show that the employer had knowledge of the accident and resulting permanent injury or disability extending
10 beyond the waiting period."

This latter statute applies, first, to employers carrying insurance in accordance with the Workmen's Compensation Insurance Act, P. L. 1917, p. 522. That act expressly does not apply to farmers. Secondly, the act applies to all employers not carrying insurance. They are required to make reports of accidents causing a disability beyond the waiting period of ten days
20 prescribed under the Workmen's Compensation Act, P. L. 1919, p. 208. Since farmers are not exempt from the liabilities imposed by the Workmen's Compensation Act (McGlynn v. Elliss, 99 N. J. L. 283), they are not excused from the making of reports as required by P. L. 1924, p. 401, if they are to save to themselves the defense of Sec. 23 (h) of the Compensation Law.

Massie had knowledge of the accident on De-
30 cember 2, 1926. This was nearly forty days after the accident and it is said that he could not then comply with the reporting act since the second report must be made three weeks after the accident, and since the first notice of the accident was more than two weeks after the second report was due compliance with the statute was impossible, and hence Massie was under no obligation in the premises. The legisla-
40 tive intent is very clearly expressed. It requires a report upon obtaining knowledge of the accident, or the obtaining of knowledge of com-

pensable occupational disease. Certainly, the legislature did not require the employer to report that which he did not have knowledge of. Of course, knowledge of an accident is often immediate, but this is not always so. In the case of occupational disease, knowledge is not immediate. The words in the statute are not to be used in such a way as to defeat the legislative purpose. The legislature intended to place in one bureau all the data as to injuries sustained in cases where the employer does not carry compensation insurance. It is not every accident which must be reported, but only those accidents resulting in a disability extending beyond the waiting period. When the employer gains knowledge of such accident it is his duty to report if he would plead limitation. (Franko v. Ohio Chemical Co., 150 Atl. 221.)

The accident reporting act like the Workmen's Compensation Act is a remedial law of prime importance and should be liberally construed. Jersey City v. Borst, 90 N. J. L. 454; Combination Rubber Co. v. Obser, 95 *Id.* 43; affirmed 96 *Id.* 544; Fischer v. Tidewater Oil Co., 96 *Id.* 103, affirmed 97 *Id.* 324.

The proofs that the employer had knowledge of the accident in early December of 1926 satisfied the Bureau and the Court below. There is no dispute that the injured employee returned to the farm the latter part of October and informed the foreman and the employer's wife of the accident and of his injury. Later, while in the hospital, he sent for the foreman and told him just how the injuries occurred. There is no concealment on his part. Naturally, he as-

sumed at first that his injury was slight, but he grew progressively worse. Hence, he did the best he could and early in December gave formal notice of the occurrence.

10 We think that the proofs sustain the Court below in saying that if notice of the accident was not given within the thirty days that there was reasonable cause and excuse for not so giving it. The proofs do show that the employee did everything he could, and that the delay was due to the very nature of the injury.

There is no doubt that the evidence does show that the injuries arose out of and in the course of the employment. Such was the finding of the 20 Commission and of the Court below.

The increase of the award by the Court of Common Pleas was justified by the evidence adduced. One physician testified to a 10 per cent disability; two others to a 25 per cent disability. The testimony of both is credible and predicated upon a careful examination of the injured man. An award for a 15 per cent disability is within the bounds of a wise discretion.

30 The accident reporting act of 1924 is entitled: "An act requiring reports of accidents, reports of compensable occupational diseases, and compensation agreements to be made to the Workmen's Compensation Bureau and to insurance carriers."

It is urged that the title is insufficient. The rule is settled in this state that the title of an act is a label and not an index. We do not think the accident reporting act is supplemental 40 to or an amendment of the Workmen's Compensation Act. It is an act to require reports of

accidents and casting certain burdens upon those who fail to comply with it. It is not an act like the one under review in Bryant v. Lindsay, 94 N. J. L. 357, 96 *Id.* 268.

Clearly, there was no basis for the allowance for medical expenses and hospital bills. Hence, the disallowance of these items by the Court below was proper. That Court said: "There was a time when the employer, through the foreman, was chargeable with knowledge that the employee was home sick in bed and in considerable pain. Although the foreman knew of the injury and the employer was told, nevertheless, the extent of the injury became known only gradually, and I do not see how the employer could have been charged with knowledge that the medical treatment taken could, or did, become necessary and so, we cannot say that the employer neglected to provide it."

The judgment below will be affirmed.

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Order.

NEW JERSEY SUPREME COURT.

Nos. 226, May Term, 1930.
246

10

Mitford C. Massie,
Prosecutor,
vs.
Court of Common Pleas In and for the County of Monmouth, Joseph McDermott, Clerk, and Frank L. Lambertson,
20
Defendants.

Frank L. Lambertson,
Prosecutor,
vs.
Court of Common Pleas in and for the County of Monmouth, Joseph McDermott, Clerk, and Mitford C. Massie,
30
Defendants.

This cause having been argued at the May, 1930, term of this court and the Court having considered the pleadings, evidence and record on certiorari bringing up the judgment of Monmouth County Court of Common Pleas.

It is on this 25th day of July, 1930, on motion
40 of John C. Grimshaw and Joseph C. Paul, attorneys of Frank L. Lambertson, ordered that

the judgment of Monmouth County Court of Common Pleas be and same hereby is in all things affirmed with costs to be taxed in favor of said Frank L. Lambertson.

And that the record be and the same is hereby remitted to the Court below to be proceeded with in accordance with the judgment and the practices of said Court. 10

Entered August 8, 1930.
On motion of
John C. Grimshaw and
Joseph C. Paul,
Attorneys of Prosecutor, etc.

A true copy. 20
Fred L. Bloodgood,
Clerk.

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Notice and Grounds of Appeal.

NEW JERSEY SUPREME COURT,

MITFORD C. MASSIE, Prosecutor-Appellant, vs. COURT OF COMMON PLEAS IN AND FOR THE COUNTY OF MONMOUTH, JOSEPH McDERMOTT, Clerk, and FRANK L. LAMBERTSON, Defendants-Respondents.	On Certiorari.

10

20

To:

John C. Grimshaw, Esq.,
Attorney for Defendant-Respondent, Frank L. Lambertson.

Sir:

Take notice that the prosecutor-appellant, Mitford C. Massie, appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in this cause in favor of the defendant Frank L. Lambertson, on the following ground:

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1. The Supreme Court erred in affirming the judgment of the Monmouth County Court of Common Pleas.

ARTHUR LOVELL,
Attorney for and of Counsel With
Prosecutor-Appellant.

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53/

New Jersey Court of Errors and Appeals

MITFORD C. MASSIE,
Prosecutor-Appellant,

vs.

COURT OF COMMON PLEAS in and for the County of Monmouth, JOSEPH McDERMOTT, Clerk, and FRANK L. LAMBERTSON,
Defendants-Respondents.

BRIEF FOR PROSECUTOR-APPELLANT.

This is an appeal from a judgment of the Supreme Court which affirmed a judgment of the Court of Common Pleas in and for the County of Monmouth, which modified and as so modified, affirmed a determination and judgment of the Workmen's Compensation Bureau awarding Frank L. Lambertson temporary and permanent disability, medical and hospital expenses and a counsel fee, the whole aggregating $3,284.

Facts.

Frank L. Lambertson was employed as a farm laborer by the prosecutor-appellant, Mitford C. Massie. On January 28, 1929, Lambertson filed a petition with the Compensation Bureau alleging that on October 21, 1926, he was injured while driving a tractor on the farm; that the accident caused abrasions of the buttocks which resulted in abscesses which necessitated medical and hospital treatment and that he notified his employer of the

accident on October 27, 1926. The answer of the employer, filed in due course, denied the accident and the giving of notice thereof and set up the Statute of Limitations as a bar. It also set up that on October 27, 1926, Lambertson called at the farm and explained his inability to work as being due to the recurrence of an old case of piles, stating that he knew how to treat them and would soon be well and return to work, and that on various occasions he repeated substantially the same statement.

Lambertson himself was the only witness produced on his behalf as to the accident, and as described by him it is clear that no one except himself could have had any knowledge of it. Although in his verified petition filed with the Compensation Bureau, he set up that he gave notice of the accident to his employer on October 27, 1926; that is, six days after the accident, and in addition set up that his employer had knowledge of the accident, on the hearing, he not only made no effort to prove the giving of such notice on the date alleged but conceded that no notice of the accident was given the employer at any time and rested his case on the proposition that when he told his employer's agent more than 40 days after the alleged accident that he had been hurt in the alleged accident that thereby the employer had knowledge of the accident. Lambertson also conceded that he visited the farm on October 27, 1926, and informed the employer's representatives that he could not come to work because he had piles or an abscess (S. C. p. 44).

Section 23(h) of the Workmen's Compensation Act as Amended P. L. 1919, page 214, provides as follows: "In case of personal injury or death all claims for compensation on account thereof shall be forever barred unless a petition is filed in duplicate with the secretary of the Workmen's Compen-

sation Bureau, at the State House, in Trenton, within one year after the date on which the accident occurred."

At the hearing before the Bureau, in the Court of Common Pleas and in the Supreme Court, this statute was urged as a bar to the action and the court below conceded that such would be the case were it not for the Accident Reporting Act of 1924 (P. L. 1924, p. 401). This Act provides as follows:

> "1. Upon the happening on any accident or the occurrence of any compensable occupational disease in any employment of labor in this State, report thereof shall be made as follows:
>
> "Any employer carrying insurance as required by chapter 178 of the Laws of 1917, shall etc. * * *"
>
> "2. Any employer not carrying compensation insurance, *shall make report of any accident* or compensable occupational disease *causing a disability extending beyond the waiting period* prescribed by paragraph thirteen of the Workmen's Compensation Act, *or causing any permanent injury.* Such report shall be prepared and sent immediately upon the employer's having knowledge of the disability or *injury named above,* and shall be made out in duplicate upon forms to be secured from the Workmen's Compensation Bureau. One copy shall be mailed to the above bureau and one copy kept on file by the employer. Within three weeks after the accident, or the obtaining of knowledge of compensable occupational disease, the employer operating under section II of the compensation act shall send to the Workmen's Compensation Bureau a second report, containing a statement of wages and an agreement to care for the case according to the terms of the compensation law. * * *". (Italics ours.)
>
> "6. Any corporation, firm, person or insurance company failing to comply with the terms of this act, shall, for each offense, be liable to

a fine of not less than ten or more than fifty dollars, the amount thereof to be determined by and paid to the Commissioner of Labor upon demand. Upon refusal to pay said fine, it shall be recovered in an action of debt, brought by the Commissioner of Labor in the name of the State of New Jersey. Any employer or insurance carrier failing to make report as required by this act, shall in such instance be deprived of the defense provided in paragraph 23(h) of the Workmen's Compensation Act, approved April fourth, one thousand nine hundred and eleven, as chapter 95, as amended by chapter 93, Laws of 1919. In any such case it shall be incumbent upon the employee or dependent to show that the employer had knowledge of the accident and resulting permanent injury or disability extending beyond the waiting period."

Massie made no report of the alleged accident to the Compensation Bureau and his failure to do so has resulted in a judgment of over $3,000 against him.

POINTS.

I.

The Compensation Bureau was without jurisdiction.

Workmen's Compensation Act (Laws 1911, Chap. 95 as amended by Laws 1919, p. 214), Section 23(h).

Lusczy *v.* Seaboard By-Products Co. 101 N. J. L. 170 (Ct. of Err. 1925).

The validity of the Workmen's Compensation Act can be supported solely on the theory of a contract between employer and employee, conclusively presumed because of the absence of dissent.

Sexton *v.* Newark District Telegraph Co., 84 N. J. L. 85.

The Accident Reporting Act, non-compliance with the terms of which the court below has held deprived the appellant of the right to plead the bar of the one year's statute of limitation as a defense, is neither a supplement to nor an amendment of the Compensation Act (see opinion of court below) (S. C. p. 118, line 39) hence it cannot be supported upon a theory of contract. An essential part of the theoretical contract which alone gives the Compensation Bureau jurisdiction over claims for injuries arising from accidents to employees is that such claims be filed within one year after the date of the accident and if claims be not so filed the Bureau has no jurisdiction (Compensation Act, Section 23(h). Also, Chap. 149, Laws of 1918, par. 5.) In the case at bar an essential part of the consideration moving to the employer for entering into the contract with his employee was that any

claim for injury arising out of an accident suffered by the employee during the course of his employment should be filed within a year.

The Supplement of 1918 to the Workmen's Compensation Act, as amended by Laws 1921, page 731, requires every claimant to file a petition within one year after the date on which the accident occurred.

This requirement of filing within a year has been held to be jurisdictional and not merely a statute of limitations.

Miller *vs.* Bellis Electric Supply Co., 100 N. J. Eq. 444 (Chan. 1926-7).

Lusczy *vs.* Seaboard By-Products Co., 101 N. J. L. 170 (Ct. of Err. 1925).

It is undisputed that the petition in this case was not so filed until January 28, 1929, more than two years and a quarter after the alleged accident.

It is submitted that the purpose of the Accident Reporting Act is to prevent the employer pleading the bar of one year's limitation in a court of competent jurisdiction for the trial of personal injury cases, where the statute of limitations is two years and not one. The deprivation of this right to the employer caused by the Accident Reporting Act does not give the Compensation Bureau jurisdiction of an action which it had lost for one and one fourth years prior to the filing of the petition and which it only had in the first place by consent of both parties assumed from the elective contract.

If the Legislature had intended to restore jurisdiction to the Compensation Bureau of stale claims under certain circumstances it would have amended par. 5 of the Supplement of 1918 which limits the jurisdiction of the Compensation Bureau.

II.

The Accident Reporting Act is unconstitutional and void.

(a) Because it violates paragraph 4 of Section VII of Article IV of the Constitution of the State of New Jersey which provides that every law shall embrace but one object and that shall be expressed in the title.

Katz *v.* Eldredge, 97 N. J. L. 123, p. 134 (Ct. of Err. & App. 1921).

The title of the Act is "An Act requiring reports of accidents, reports of compensable occupational diseases and compensation agreements to be made to the Workmen's Compensation Bureau and to Insurance Carriers."

This title is fully covered by the sections 1, 2, 3, 4 and 5. Such portion of Section 6 as relates to the imposition of a fine for violation of the act creates a new tribunal for the trial of an offense where the fine of $10.00 to $50.00 is in excess of the jurisdiction of a magistrate alone. The provision, in Section 6, that "Any employer or insurance carrier failing to make report as required by this act, shall in such instance be deprived of the defense provided in paragraph 23(h) of the Workmen's Compensation Act * * *" has to do solely with the Compensation Act and is a supplement or amendment thereto and is not covered by the title to the Reporting Act and is therefore unconstitutional. This provision attempting to destroy an essential part of the consideration for the employer's consent to the jurisdiction of the Compensation Bureau, viz.: the limitation as to time, is hidden away

in a section of the Accident Reporting Act and not the slightest indication of the provision appears in the title, the very vice which Section VII of Article IV of the New Jersey Constitution is aimed against.

The objections as to these defects of the said Act are not answered by saying that the title of an act need only be a label and not an index, because at least it must not be a false or misleading label as it is when under the guise of commanding the making of certain reports, it creates a new tribunal with powers in excess of the jurisdiction of a magistrate sitting without a jury and in effect purports to alter in a most drastic manner another act which it does furthermore by reference to the amended section by title only. Furthermore, it alters substantive rights between the employer and employee without any warning in the title.

If it was not the purpose of the said paragraph 4, Section VII, Article IV of the State Constitution to protect against such things as this it is difficult to imagine a case where it would protect.

In Katz *v.* Eldredge (*supra*) in which the constitutionality of the Prohibition Enforcement Act, commonly called the Van Ness Act, was involved, Chancellor Walker said, at page 134,

"Appellants also contend that the Van Ness act is invalid because its title is constitutionally defective, in that it does not express a single object embraced in the act itself, but that the act embraces more than one object. The constitutional provision invoked (article 4, section 7, paragraph 4) reads:

"* * * every law shall embrace but one object, and that shall be expressed in the title."

It is argued in this behalf that section 24 alters the substantive rights existing between landlord and tenant by providing that any violation upon any leased premises shall give the lessor the right of re-entry; that section 55 gives a cause of action

to any person injured by an intoxicated person, or by reason of the intoxication or sale of liquor to any person in violation of the act; and that certain sections create a new tribunal, namely a Common Pleas judge, and, in certain circumstances, a justice of the Supreme Court, who are created "magistrates" with power in prescribed procedure to try without a jury alleged offenders against the act and to convict and sentence them.

In Jonas Glass Co. *v.* Ross, 69 N. J. L. 157, the Supreme Court held that an act entitled "An act concerning District Courts (Revision of 1898)," could not constitutionally change the relative rights of landlords and tenants; and, in Rader *v.* Township of Union, 39 *Id.* 509, the same tribunal held that an act entitled "An act in relation to streets in Union township, Union county", could not validly create a corporation to take charge of the streets. Chief Justice Beasley in this case observed (at p. 515):

'It is true that it may be difficult to indicate, by a formula, how specialized the title of a statute must be; but it is not difficult to conclude that *it must mean something in the way of being a notice of what is doing.* Unless it does this, it can answer no useful end. *It is not enough that it embraces the legislative purpose—it must express it; and where the language is too general, it will accomplish the former but not the latter.'* (Italics ours.)

Cases other than these might be cited, but it is unnecessary to do so. If, as in Jonas Glass Co. *vs.* Ross, an act concerning District Courts could not authorize a change in the rights of landlord and tenant, the act under consideration entitled "An act concerning intoxicating liquor used or to be used for beverage purposes" cannot affect the substantial rights of landlord and tenant; and if, as in Rader *v.* Township of Union, an act in relation to streets could not validly create a corporation to take charge of them, the Van Ness act cannot validly create a special statutory tribunal in which to try those who violate its provisions. This is not the view that the act is invalid because it imposes upon the judges who are directed to enforce its duties which do not inhere in, or appertain to, their judicial offices. My objection goes solely and only

to the effect that the *title does not and cannot permit of the acts setting up a special statutory tribunal.* As this view leads to the conclusion that the act is invalid because its title is constitutionally defective, it becomes unnecessary, therefore, to discuss other reasons advanced to show that this is so." (Italics ours.)

(b) Because it deprives the employer of the right of trial by jury vouchsafed to him by the State Constitution.

N. J. Constitution, Article I, Section 7;
In re McLaughlin, 87 N. J. Eq. 138;
Katz *v.* Eldredge, 97 N. J. L. 123 (Ct. of Err. 1921).

In Katz *v.* Eldredge (*supra*) Chancellor Walker said at page 124:

"I come at once to the point as to whether or not the Van Ness act is invalid, in that it violates the mandate of the constitution of 1844 that the right of trial by jury shall remain inviolate, which counsel terms the fundamental question. Our constitutional provision (article 1, section 7) is:

'The right of a trial by jury shall remain inviolate; but the legislature may authorize the trial of civil suits, when the matter in dispute does not exceed fifty dollars, by a jury of six men.'

In the constitution of 1776, we find this provision (article 22, section 7):

'And the inestimable right of trial by jury shall remain confirmed, as part of the law of this colony, without repeal, forever.' * * *

It is to be noted that the constitutional provisions mentioned are preservative of existing and not declaratory of new rights. This is obviously so both from the language used and the state of the law at the time of the adoption of those instruments. Numbers of our cases so decide. * * *

The offences created by the Van Ness act are not triable before inferior magistrates, but by a judge

of the Common Pleas, who is judge of the Quarter Sessions; and jurisdiction, in certain circumstances, is conferred on justices of the Supreme Court, although the judges of both classes are denominated 'magistrates' by the act.

It is here pertinent to inquire how severe were the punishments which could be inflicted in this commonwealth for petty offences triable by magistrates before the adoption of the constitution of 1776. * * *

Now, as seen, the longest term of imprisonment imposable by a magistrate upon an offender on a conviction by him without the intervention of a jury, prior to the constitution of 1776, was *one month,* and after 1779 up to the constitution of 1844, *three months.* * * *

The question of the legality of a sentence of a magistrate in excess of the time limit of the imprisonment he may inflict under a conviction had before himself, sitting with a jury, includes also the amount of fine he may impose upon the person so convicted, which was $16, down to the time of the adoption of the constitution of 1844. In State *v.* Zeigler, 32 N. J. L. 262, Mr. Justice Elmer said that $16 was the largest penalty that could be recovered before a justice of the peace sitting without a jury, in summary proceeding, at the time of the adoption of the constitution of 1776, and he expressed doubt as to whether a pecuniary penalty exceeding that amount could then (1867) be enforced without a jury trial. And Mr. Justice Van Syckel, in Unger *v.* Fanwood, 69 *Id.* 548, said that the question did not arise in that case whether a jury may be demanded when the penalty exceeds $16, thus indicating that as late as 1903 that learned jurist considered the question perhaps an open one. That was the highest fine which could be imposed under the Vice and Immorality act. * * *

There are two classes of offences under our law —one triable by a jury only and the other by a magistrate without a jury. As to existing offences the line of demarcation is known, because the law places them in one or the other category; and this quite irrespective of the penalties denounced. When, however, a new offence is created by statute it must inherently and of its own nature fall within one or the other; and the question always is, which

one? The touchstone is the constitution, and that provides that the 'right of trial by jury shall remain inviolate'. Therefore, if the punishment denounced is greater than that which could have been imposed upon conviction by a magistrate without a jury at the time of the adoption of the constitution, it can be imposed now only upon the verdict of a jury, because it could not then have been imposed without it; and it falls per force into the class of cases triable by jury."

(c) Because it deprives the employer of his property without due process of law and denies the equal protection of the laws and thus is in violation of the Fourteenth Amendment to the Constitution of the United States.

In the case of Bryant *v.* Lindsay, 94 N. J. L. 357, affirmed by this Court, 96 N. J. L. 268, the Supreme Court declared unconstitutional, Chapter 203 of the Laws of 1918, as amended by Chapter 101 of the Laws of 1919, saying, per Parker, *J.:*

> "This legislation is intended to affect the liability of employers as previously regulated by the Workmen's Compensation Act of 1911, but is neither an amendment nor a supplement to that act. * * *
>
> It will therefore be seen that the legislation in question amounts to this: That whereas, under the Workmen's Compensation Act, the liability of an employer in the case of an employé leaving no dependents was limited to 'expenses of last sickness and burial, the cost of burial, however, not to exceed $100' (see P. L. 1913, p. 306), the amended act now under consideration requires the employer to pay in addition to this the sum of $400. * * * *The Act as we have said, does not pretend to be either a supplement or an amendment of the Workmen's Compensation Act; it is separate and distinct.* Consequently it cannot be supported upon the theory of a contract between employer and employé, conclusively presumed

> because of the absence of dissent, pursuant to the statutory procedure outlined in the Compensation Act." (Italics ours.)

Similarly the Accident Reporting Act, though it is neither an amendment of nor a supplement to the Compensation Act, adds to the liability to which the employer is subject under the Compensation Act without any additional consideration to him, and destroys an essential part of the consideration, viz: the limitation as to time, on which the contract was based.

This constitutes a taking of property without due process of law.

Furthermore, the first part of Section 6 provides a tribunal for assessing a penalty of $10 to $50 without providing for any hearing. This constitutes a violation of the Fourteenth Amendment to the U. S. Constitution both because it does not provide for a hearing as to the amount of penalty and because it constitutes a taking of property without just compensation. It is to be noted that this part of the Section is indefinite because it does not state when the Commissioner of Labor is to make his assessment of the penalty. Apparently the employer in this case may be assessed this penalty as soon as this case is closed and hence is in a position to make this defence as to the violation of the U. S. Constitutional Amendment Fourteen.

III.

Even though the Accident Reporting Act be considered valid the appellant, the employer in this case, was not bound by its provisions for the reason that he did not have that knowledge of the accident contemplated by the Act which makes it incumbent on an employer to notify the Compensation Bureau.

Lambertson testified he was injured October 21, 1926, in the afternoon. He worked the remainder of that day, which was Thursday, all of Friday, October 22, all of Saturday, October 23, drew his pay for the week and yet never mentioned to his co-employe, Pitney, or any one connected with the employer that he had been hurt on the tractor. He testified he did not come to work Monday, October 25, 1926, on account of the pain he was suffering, and on Tuesday, October 26, he visited his family physician, Dr. Silcox. He testified he told him how he had been hurt, thus showing that on said date, according to his own testimony, he knew he was injured and knew how (S. C. pp. 34, 35, 36). With this knowledge, he visited his employer's farm on October 27, 1926, and notified the employer, through Mrs. Massie, respondent's wife, that his failure to return to work was due to "piles or an abscess," and told the same story to Pitney, his foreman (S. C. pp. 42, 43, 44).

With full knowledge then, according to his story, of the accident on the tractor on October 21, 1926, and while able to visit his place of employment and to discuss with his employer's wife the causes of his failure to come to work, he concealed all knowledge of the alleged accident and injury from his

employer until he wrote the letter to Pitney about December 2, 1926, to wit, more than 40 days after the date of the alleged accident.

Therefore, the employer at no time had or could have any knowledge of the accident other than that knowledge resulting from the notification by the letter of petitioner about December 2nd, 1926, and the verbal statements by Lambertson to Pitney on the same day, the two constituting nothing more than an uncorroboratable claim of accident. After having received this information he could not by any investigation whatever obtain any further evidence of the alleged accident itself beyond the mere assertions of the employee, which were in direct conflict with his previous acts and statements and made it impossible for the employer to determine whether the employé was lying then or lying on the occasions when he visited the farm after the accident and attributed his inability to work to a disease.

It is clear from the Act that knowledge of the alleged accident is to be contradistinguished from notice, written or verbal. If the employer has the kind of knowledge contemplated by the act it is unnecessary for the complainant to serve him with notice, because that would be merely telling him something he already knew.

Such knowledge as this must not be concealed but must at once be conveyed to the Bureau and must be followed within three weeks after the *date of the accident* by a report of settlement with the employe.

Where, however, the employer does not have such knowledge of the accident himself or through his duly authorized representatives and, on being notified of the accident, cannot by investigation obtain evidence sufficient to justify the ordinary business man in forming a belief that there was an accident he is not chargeable with such knowledge as compels him to file a report.

It is particularly significant that the Deputy Commissioner who tried the case in the first instance made no finding of fact on this point which is a jurisdictional one and as such under the decisions required to be set out in his formal determinations. Boyle *v.* Van Splinter, 127 Atl. Rep. 257 (at p. 258.)

Sec. 2 of the Act specifically states that the employer "shall make report of any *accident* * * *." It does not require report of a claim. When the employer makes his report it is based on the employer's knowledge that there has been an accident "causing a disability extending beyond the waiting period" and the Act prescribes that "Such report shall be prepared and sent immediately upon the employer's having knowledge of the disability or injury *named above*". The words "named above" are important, and make clear that there is no requirement to make a report on knowledge of some alleged disability, but only on knowledge by the employer of a disability or injury caused by an *accident* arising in the course of employment.

Violation of this act requires legal knowledge by the employer, not only of a disability but of the *accident itself* and unless the employer has such knowledge of the accident, he is under no compulsion to make a report. *As this Act is a penal statute, it must be strictly construed.* The evidence necessary to convict the employer must be of the same character as is required to sustain a conviction in criminal law. Yet in this case there is no such evidence, but on the contrary there is no doubt in this case that:

1. The employer himself had no personal, first hand knowledge of the alleged *accident* itself.

2. No agent of the employer had any personal, first hand knowledge of the alleged accident.

3. There were no facts or circumstances known to the employer or any agent of his which if followed up would give him evidence that such an accident as alleged had occurred.

These are the only classes of cases recognized in law under which knowledge can be charged.

The evidence clearly establishes that Lambertson called at his employer's farm after the alleged date of the accident, interviewed Mrs. Massie, the employer's wife, and Pitney, his boss, and explained that he did not come to work because he had piles, and according to the testimony of Pitney and Mrs. Massie, called twice after that and by his conversation kept up the impression that he was staying away from work because of his sickness from piles. He admits he did not inform them of the accident at his first visit, and denies that he made the second visit testified to by Pitney and Mrs. Massie, or the third visit also testified to by them and by the employer, Massie. It is to be noted that Pitney is an unbiased witness and a friend of Lambertson.

The contention which the respondent now makes is that after he had for 40 days impressed on the employer that he was away from work because of piles of an aggravated kind resulting in abscesses and then at the end of this time changed his story and claimed he was hurt on the tractor, it was the duty of the employer as a matter of law to believe his last statement notwithstanding his previous lies, and, hence, this constituted such knowledge by the employer, of the alleged accident, as is required by the Act of 1924.

It is submitted that there is no basis in law for any such contention.

The Court of Common Pleas seemed to think that because Lambertson had stated he had piles or an abscess, the mention of "abscess" was in the nature of a notice of an accident, probably on the erroneous supposition that an "abscess" comes only from an accident, although it is a matter of common knowledge that abscesses also come from internal causes as well as from chafing, irritation and the like. Aside from common knowledge the testimony of Dr. Silcox establishes that they come from rectal

sinuses because he examined for that (S. C. p. 56, line 30). Also Dr. Rullman testified to the many causes of abscesses (S. C. p. 66).

But even if it is assumed that an abscess comes only from an accident, it certainly does not follow that it comes from an accident in the course of employment. Hence, even if Lambertson had told Pitney and Mrs. Massie he had an abscess this would be no notification to the employer that the abscess was due to an accident occurring in the course of employment, and this is particularly true if he said "piles or an abscess", as was brought out on his cross-examination, because naturally it would be assumed by his hearers that the abscess was due to the piles.

In view of the fact that no one other than Lambertson knew or could know of the accident itself; in view of his failure to say anything about it to his friend and co-worker, Pitney, at the time it occurred or for the remaining days he worked; in view of his failure to say anything about the alleged accident on the three visits which he made to the place of his previous employment, the first of which visits he admits; in view of his lying statements that he had piles when he never had had them in his life, in view of his false statement under oath in his petition that he notified his employer October 27, 1926, and his own testimony that he did not notify him at this or any other time; in view of his failure to file his petition until January 28, 1929, about 10 months after he returned to work (S. C. p. 40) and the subsequent resting of his case on the basis of knowledge by the employer, it is submitted that the employer cannot properly be held to have had knowledge of an accident because he was told so by Lambertson on whose credibility the whole case depends.

IV.

The claim was barred by the Statute of Limitations.

The court below has held that the Accident Reporting Act is not an amendment of nor a supplement to the Workmen's Compensation Act. Hence this action is an action in tort and is governed by the Statute of Limitations applicable to actions in tort. In such actions the period of limitation is two years.

3 Comp. Stat. p. 3164, section 3.

V.

Knowledge by the employer first obtained more than thirty days after the accident will not alone give jurisdiction. There must be a showing in the nature of an excuse for failure to notify the employer sooner. The evidence in this case prevents any finding that there was an excuse, because it establishes a deliberate concealment by the employee of all information as to the alleged accident and an intentional misrepresentation to the effect that the failure to come to work was due to a disease.

Workmen's Compensation Act, Sect. 2, par. 15.

The accident is alleged to have occurred Oct. 21, 1926. The employer is charged with knowledge as of Dec. 2, 1926, that is, more than 40 days afterward.

So much of par. 15, Sec. 2, of the Workmen's Compensation Act as applies to this case is as follows:

> "If the notice is given, or the knowledge obtained within ninety days, and if the employee or other beneficiary, shall show that his failure to give prior notice was due to his mistake, inadvertence, ignorance of fact or law, or inability, or to the fraud, misrepresentation or deceit of another person, or to any other reasonable cause or excuse, then compensation may be allowed." * * *

Lambertson not only did not attempt to offer any excuse for his failure to notify the employer sooner than he did, but himself established that he could have given the notice as early as October 27, 1926, the date he alleges in his petition, but did not and instead informed his employer through Pitney and Mrs. Massie that he did not come to work because he had piles or an abscess, and on two subsequent visits maintained the same impression that his continued inability to work was due to the sickness of which he had already told them (S. C. pp. 36, 43, 45).

There is a familiar maxim that he who will not speak when he should, shall not speak when he would. This maxim applies particularly in this case.

According to the testimony of Lambertson and his witness, Dr. Silcox, Lambertson told Silcox on October 26, 1926, that he had been hurt on the tractor, and Silcox says he told Lambertson he had an abscess and must go to a surgeon and have it lanced (S. C. pp. 35, 52). Lambertson testified that he could not work on account of the pain (S. C. p. 35, line 30; p. 44, line 39). Certainly, if these facts are true there is no justification for the false statements he made next day, October 27, 1926, to Pitney and Mrs. Massie, when called upon to speak.

It is submitted, that it is the intention of the Compensation Act to have the employer informed at as early a date as possible of any accidents or disabilities or injuries due to accident, to his employees while working for him, and that while the Act provides for a certain leniency as to the time of giving notice, it does not provide for deliberate concealment and misrepresentation at the whim of the employee to be then followed by a late notice after 30 days. It is significant on this point that the Deputy Commissioner made no finding in regard to this jurisdictional fact.

The Court of Common Pleas and the Supreme Court attempted to set up an excuse for Lambertson, viz:

(1) that the injury manifested itself slowly, and,

(2) the illness of the petitioner (S. C. p. 105, line 10; p. 118, line 10).

It is significant that Lambertson himself makes no such contentions. The evidence shows that the seriousness of the injury was manifested at once for Silcox immediately referred Lambertson to a surgeon, and furthermore Lambertson says he was in such pain he could not come to work.

As to the second part of the excuse suggested, viz: illness, it is to be noted that Lambertson, although too ill to work, was not too ill to visit the farm on three occasions and to discuss his physical condition and misrepresent its cause.

The Courts below seem to base the excuse in part on an assumed state of mind of Lambertson, as to a realization of his injury. Lambertson made no such excuse and there is no testimony to support such a view.

All of these attempts of the lower courts to find an excuse for Lambertson overlook the fact that Lambertson establishes by his own testimony that he concealed knowledge of the accident from the

employer and falsely stated that he could not come to work because he had piles or an abscess when as a matter of fact he knew he never had piles in his life.

The remark of the Judge of Common Pleas that "Even within the thirty days there had been information given to the foreman that there was probably an abscess" has nothing to do with the matter of an excuse for failure to give notice sooner (S. C. p. 105, line 20). It partakes more of the nature of a suggestion that Lambertson gave notice of an accident within thirty days.

It is submitted to this Court, that as a matter of law, the burden of proving the reasonable excuse is on the employee, and that it is beyond the province of the Court to presume excuses, which even the employee himself has not set up, particularly where the evidence establishes an intentional concealment of information as to the accident and injury from the employer, under circumstances where it was the duty of the employee to speak the truth.

VI.

The errors in the opinion of the Court below.

(a) The Court below said:

> "There is no dispute that the injured employee returned to the farm the latter part of October and informed the foreman and the employer's wife of the accident and of his injury."

The record shows that the exact contrary was the case. It is true the employee returned to the farm on October 27, 1926, but he did *not* inform the foreman, or his employer's wife, or anyone else at the farm of the accident and of his injury. Lambertson testified on direct examination that on the Monday following the accident he did not go to work because of the pain he was suffering, that Tuesday he went to see his doctor and told him of the accident and that on the day following he went to the farm, saw Pitney, the foreman, and told him he wasn't able to work, that he had been to the doctor and the doctor thought he was going to have an abscess. (S. C. p. 35, line 30; p. 36, lines 1 to 22).

On cross-examination Lambertson admitted that on that visit to the farm he saw both the foreman and Mrs. Massie but that he said nothing to either of them about the accident and explained his failure to come to work by saying that he had an abscess or piles he was not sure which (S. C. p. 43, lines 20, 29, 32; p. 45, line 1).

(b) The Court below said:

> "We think that the proofs sustain the Court below in saying that if notice of the accident was not given within the thirty days that there

> was reasonable cause and excuse for not so giving it. The proofs do show that the employee did everything he could and that the delay was due to the very nature of the injury."

It is respectfully submitted that there is not the slightest evidence that the employee did everything he could and that the delay was due to the very nature of his injury. On the contrary the proofs show that he went out of his way to deceive his employer. He was not obliged to go to the farm but he did go and while there undertook to explain his inability to return to work and he attributed it to a disease, the piles, and said nothing about any accident, though he had never had the piles, and the doctor had made no suggestion as to piles but had told him he was about to have an abscess. Furthermore, according to Lambertson's testimony he had told the doctor he had been hurt in an accident and how he had been hurt (S. C. p. 35, line 39). And this was just the day before he made the false statements to his employer's representatives.

VII.

The judgment of the Court below should be reversed.

ARTHUR LOVELL,
Attorney of and of Counsel
with Prosecutor-Appellant.

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Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

MITFORD C. MASSIE, *Prosecutor,* *vs.* COURT OF COMMON PLEAS in and for the county of Monmouth, JOSEPH McDERMOTT, Clerk, and FRANK L. LAMBERTSON, *Defendants.*	*On Certiorari.*

BRIEF ON BEHALF OF FRANK L. LAMBERTSON, DEFENDANT-APPELLEE.

Facts.

The petitioner filed a claim for compensation on account of an accident while working for the respondent who was a farmer. The accident occurred on the 27th day of October, 1926, while petitioner was driving a tractor which hit a stone on the ground and caused him to be hurled into the air about eight inches and he came down upon the iron pommel of the seat which caused abrasions on the left buttocks which resulted in abscesses.

The case was tried before the Workmen's Compensation Bureau and the court found that petitioner sustained an accident arising out of and in the course of his employment and that he was entitled to temporary disability amounting to one and one-half years and 10% of total permanent disability and hospital fees and doctors' bills amounting to $832 together with counsel fee making a total award of $3,284.

The respondent appealed from the whole of this award to the Monmouth County Court of Common Pleas and the petitioner also appealed from said award on the ground that enough permanent disability was not allowed by the Deputy Commissioner of Compensation to the petitioner.

The Court of Common Pleas affirmed the lower court in part and increased the percentage of disability from 10% to 15% and disallowed the allowance made by the Compensation Bureau for medical expenses and hospital bills.

From this judgment respondent appeals to this court and the petitioner appeals from that part of the judgment, disallowing the medical and hospital bills.

The Supreme Court affirmed the Court of Common Pleas and entered judgment against the appellant and from that affirmance this appeal is taken by the respondent-appellant.

ARGUMENT.

We shall argue the reasons presented by the prosecutor, Mitford C. Massie, who was the respondent below, in the order as set forth in the "State of the Case."

1. "The Workmen's Compensation Bureau was without jurisdiction to entertain the petition and make an award for compensation, because, under the provisions of the act under which the petition was filed, the claim of the petitioner was barred, it not having been filed with the Secretary of the Workmen's Compensation Bureau at the State House, in Trenton, within one year after the date on which the accident occurred."

The accident occurred on October 21, 1926, and the petition was filed January 28, 1929. Under Section 23H of the Workmen's Compensation Act, Pamphlet Laws of 1911, Chapter 85, as amended by Pamphlet Law of 1919, Chapter 93, it is provided that, "in the case of personal injury all claims for compensation on account thereof, shall be forever barred unless a petition is filed in duplicate with the Secretary of the Workmen's Compensation Bureau at the State House in Trenton within one year after the date on which the accident occurred. * * *"

The above reason would be a good defense if it were not for the Act of 1924, page 401, Section 6, which provides that any employee or insurance carrier failing to make a report as required by this act shall, in such instance, be deprived of the defense provided in Paragraph 23H of the "Workmen's Compensation Act."

It was admitted at the trial, State of Case, p. 24, l. 14, that no reports of the accident were filed by the respondent.

2. "The respondent's failure to make a report of the accident to the Compensation Bureau, as required by Chapter 187 of the Laws of 1924, do not deprive him of the right to urge the defense of lack of jurisdiction for the reason that said Act of 1924 does not apply to employers of farm labor such as the respondent was."

Under this reason our opponent contends that because he is an employee of farm labor that he is exempt from the operation of the Act of 1924 because the Act of 1917, P. L. p. 522, Article 2, Paragraph 5, exempts the employer of farm labor.

We deem it necessary to discuss the relationship of the 1917 and 1924 Acts.

It is elementary that an employer of farm labor comes within the contemplation of the Compensation Act. It has been held in the case of *Roe* v. *Bonham,* reported in 99 N. J. L. on p. 519, wherein the Court of Errors and appeals affirms the Supreme Court in refusing to dismiss the Petition because the respondent contends that he was exempt from the Compensation Act as amended because he is an employer of farm labor.

Our next concern is whether or not the Act of 1924 applies to the employers of farm labor. We have made a thorough search of the Law in New Jersey since the passage of the 1924 Act and have failed to find any cases which concerns farm labor with the operation of the act. It will be noted that the 1927 Act (*supra*) concerns compulsory insurance arising under Section 2 of the original Compensation Act and Section 2 of that act has to do with compensation cases where there is no agreement between the employer and the employee not to come within its scope so that every case where there is no agreement is compensable under Section 2 of the Act.

The 1917 Act provides that employers shall carry insurance or else satisfy the Commissioner of Banking & Insurance that they are financially responsible to take care of their own insurance and we call the Court's attention to Paragraph 4 of Article 2 of that Act wherein it states in brief that wherein any class of employers shall be exempt from the provision of Section 2 of the Compensation Act by an act of the legislature, such employers as may be thereby exempt shall be exempt from the provisions of the 1917 Act.

We now call to the Court's attention the provision of the 1924 Act and that act is silent as to exemption of farm labor but on the contrary Paragraph 2 says:

> "Any employer not carrying compensation insurance, shall make report of any accident, etc."

The second subdivision does not speak of any employer satisfying the Commissioner of Banking and Insurance of his financial ability to respond to any judgment, but includes such a person and also any other employer of labor not carrying compensation insurance; and that includes the farmer in this case.

The first section of that act refers to employers who carry insurance as required by the 1917 Act. The second section we have already dealt with and the third refers to insurance carriers and the sixth section of the 1924 Act further provides for a penalty, in the nature of a fine, which reads as follows:

> "Any employer or insurance carrier failing to make report as required by this Act, shall in such instances be deprived to the defense provided by Paragraph 23H of the Workmen's Compensation Act of 1911 as amended by the Laws of 1919, Chapter 93."

We feel that the Act of 1924 does not exempt an employer of farm labor.

3. "Failure to make such report did not deprive respondent of the right to urge such defense, because such Act of 1924, even if it does apply to employers of farm labor, obviously requires knowledge of the accident by the employer within three weeks after the accident and pre-supposes actual knowledge by the employer or his agents of the accident at or about the time it happened. The petitioner's own testimony established that no one other than the petitioner could have had any knowledge of the accident and that he deliberately concealed from the employer for over forty days all information concerning the accident."

The employer surely has had knowledge within the meaning of the act on December 2, 1926, and he may have had it prior to that time. The fact that he received it at such a time as made it impossible for him to file a three weeks' notice with the Commissioner of Labor or a final notice when the employee resumed work does not affect the matter, because to say so would be so mean that if he did not promptly receive a notice he would be exempt, therefore, from notifying the Workmen's Compensation Bureau. The duty incumbent upon him was to notify the Workmen's Compensation Bureau as soon as he had knowledge. This, he did not do. Again, to hold otherwise, would be to hold that if the employer and employee did not agree to care for the case in accordance with the terms of the Workmen's Compensation Law, or the employee did not resume work for the employer, no notice at all would be necessary. Clearly, this is not what the act means.

The testimony does not show that the employee deliberately concealed from his employer his accident but on the contrary does show that he

told him as soon as he was able to about the accident.

4. "Although the petition as filed with the Compensation Bureau set up that notice of the accident was given the employer on October 27, 1926, to wit: Six days after the accident, and, in addition, set up knowledge by the employer of the accident, on the Trial, petitioner not only made no effort to prove the giving of such notice on the date alleged, but conceded that no notice of the accident was given the employer at any time and rested his case on knowledge of the accident by the employer gained from oral statements made to the employer's agent forty days after the alleged accident.

Section 15 of the Workmen's Compensation Act requires that when knowledge by the employer of the accident is obtained more than thirty days after the accident, the petitioner shall give some reasonable cause or excuse why he did not give prior notice. At the trial not only was no such cause or excuse given, but, on the contrary, petitioner clearly established that there was no such reason but that he deliberately concealed from the employer all information that there was an accident and made misleading and false statements as to the reason for his failure to return to work."

Petitioner actually notified respondent of the accident on December 2, 1926 as the foreman admitted knowledge as of that time. It is unfortunate that counsel should set forth a reason such as the one above in which he attacks the creditability of the petitioner in such harsh language.

It is not a reason, it is more in the nature of an argument without one iota of testimony to

support it and we shall answer it only by a reference to the petitioner's testimony.

5. "**The finding of the Deputy Commissioner and of the Court of Common Pleas that the petitioner sustained an injury arising out of and in the course of his employment with the respondent is not supported by the evidence.**"

It is difficult to say how this reason can be advanced when the respondent did not produce one witness as to the accident. The petitioner's testimony stands uncontested and the Deputy Commissioner of Compensation in his summation said (p. 88, l. 10):

> "On the testimony I have listened very carefully, and as the petitioner's testimony has been presented I have seen no flaw; I do not see any reason why I should not believe the testimony. He has proven an accident arising out of and in the course of his employment, and from the testimony as presented there is only one thing I can find, and that is that the petitioner suffered an accident arising out of and in the course of the employment. * * *"

This is a finding of fact and there being evidence to support it and the same finding of fact having been affirmed by the Court of Common Pleas it is not a proper reason for review by The Court of Errors and Appeals as this court has repeatedly held that where there has been a finding of fact, supported by legal evidence that the Court of Errors and Appeals will not disturb that finding.

There is no question but what the employer in this case knew of the disability of petitioner, for he sent his foreman to see him and he was at that time confined to his bed.

6. "The increase from 10 to 15% made by the Court of Common Pleas in the award for permanent disability was not justified by the evidence."

The respondent produced no medical testimony whatever although it appears from the testimony that he had a doctor examine petitioner. There is no question but what the petitioner did sustain an accident and that as a direct result of the accident his present condition exists, was connected up by the testimony of the attending physician and the operating surgeon.

The petitioner suffered a temporary disability of one and one-half years and spent ninety-eight days in the hospital and underwent seven operations on his buttocks and as a result has had removed a considerable portion of his buttocks which extends down to the muscles and joints of his legs and hips. Dr. Trainor, on page 29, line 34, of the State of Case says as follows as to his condition:

> "A Well, there is a destruction of the tissue in his buttock, part of the his gluteus maximus and gluteus minimus muscles have been removed with other adjacent tissues, the nerves and blood vessels undoubtedly, and his left sacro iliac joint is slightly movable and causes him pain when it is moved, he evidenced that when I moved the joint.
>
> Q Did you examine him this morning, Doctor? A Yes, outside.
>
> Q This morning did he manifest any result of any injury from the accident? A Yes, sir.
>
> Q In what way, doctor? A I noticed when I had him off guard that he was sitting on his right buttock, he apparently did that from choice."

Dr. Trainor examined the man on two occasions more than two years after the accident and gave him a 10% disability.

Dr. Silcox was his attending physician and was the first one to treat the man and at the trial he examined the petitioner in court and he testified as to his condition as follows (p. 54, l. 34 of Testimony):

> "A Well, he has got quite a lot of disability there; he has lost a lot of muscular power of his leg, in raising his leg; he can raise it, but he raises it very slowly and he has had an injury to his sciatic nerve, which has probably regenerated again, but not to the full extent.
>
> Q Would you say there is any loss of motion of the hip, doctor, around the sacro-iliac joint? A Yes, he has lost probably twenty per cent. motion there.
>
> Q Is it probable, doctor, that his condition as you see him today, could cause him pain and uneasiness in sitting in one position very long? A Yes, sir.
>
> Q Has there been any involvement of the nerves of the leg? A Well, as I say, the sciatic nerve, the popliteal nerve, which goes down the back of his leg.
>
> Q How far does that one go? A Down to the bend of his knee.
>
> Q As to the sacro-iliac joint involvement, how does that affect him? A By the muscles being removed, when he draws his leg up, that draws up the ligaments and muscles and the muscles are unable to draw the leg all the way up.
>
> Q In your opinion, is that a permanent condition? A Yes.
>
> Q What would you say, in terms of percentage, is this man's permanent condition today? A Thirty per cent."

Dr. Rullman who is a surgeon of good standing in Monmouth County was the operating surgeon and he is the one who performed the various

operations at the Monmouth County Hospital. He examined the man in court the morning of the trial and he testified as follows (p. 64, l. 12):

> "A He has lack of muscle tissue there, just as I told you in the beginning; he can't help but have. And as he flexes his leg he has a pull, the scar tissue pulls a great deal; that limits his free motion to a certain extent. And, in answer to your question, I would give him—I think he has regained about 25%—I would give him about 25% disability."

It is hereto questioned why the Deputy Commissioner of Compensation took the figure of 10% total permanent when he is confronted with the testimony of the attending physician, of 30% and of the operating surgeon of 25%. It seems to us that either or both of these gentlemen were in a better position to know the man's condition than the examining doctor and we feel that this court would be justified in increasing the award of 10% to at least 25% of total permanent disability.

The Court of Common Pleas increased the award to 15% of total disability, and the Supreme Court affirmed it, and we feel that the testimony warrants the award.

7. **"The Act of 1924 is unconstitutional and void in that it deprives the employer of his property without due process of law and denies him the equal protection of the laws and thus is in violation of the fourteenth amendment to the Constitution of the United States."**

We can see no merit in this contention and feel that we have adequately met the issue by our argument to Reason No. 2.

8. **"The Act of 1924 is unconstitutional and void in that it violates Paragraph 4, Section VII, of Article IV of the Constitution of the State of New Jersey which provides that every law shall embrace but one object and that shall be expressed in the title."**

A reference to the title of the laws of 1924, Chapter 187, clearly indicates a contemplation that the reports of accidents be filed, and under our cases that is sufficient to indicate the nature of the act.

The appeal to this court is the fourth "day in court" for the respondent appellant and on each occasion the original award has been sustained and on two occasions increased.

> "Where two distinct tribunals have examined facts and heard testimony, conclusion reached should not be lightly disturbed by Supreme Court."
> *Bollman* v. *McGovern,* 150 A. 572.

> "Conclusion reached by Compensation Bureau and trial court on facts in compensation proceedings should not be lightly disturbed by the Supreme Court."
> *Richmond* v. *Scheidell,* 150 A. 570.

> "Conclusion by two independent tribunals who examined facts and heard testimony should not be lightly disturbed, when amply supported by testimony."
> *Adam Black & Sons* v. *Court of Common Pleas, Hudson County,* 150 A. 672.

The only ground of appeal stated by the appellant to this court is that the Supreme Court erred. We feel that the opinion of that court fully and completely answers every point raised by the appellant for reversal and for the reasons stated above, together with the well-considered opinion of the Supreme Court, we urge that the

judgment of the Supreme Court be affirmed by this court.

Respectfully submitted,

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