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Dependants' Claim Petition for Compensation.

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

10

Trenton, N. J.	}	Claim Pe- tition No. 20 17304.
FREDERICK BUEHL (fatal),		
ELIZABETH BUEHL,		
<i>Petitioner,</i>		
<i>vs.</i>		
MEADER ATLAS Co.		
<i>Respondent.</i>		

January 15, 1925.
Jan. 21, 1925.

Attorney for Petitioner Edward Stover 84
Washington St., Hoboken, N. J. 30
*To the Workmen's Compensation Bureau of New
Jersey:*

The claimant respectfully alleges the following facts:

1. What was the full name of the decedent?
Frederick Buehl.

40

Claim Petition.

2. Where did decedent live? #72 Garden Street, Hoboken . New Jersey.
3. Sx of deceased Male.
4. Date of birth of decedent February 20, 1894.
- 10 5. Give below, in reference to each person claimed to be dependent upon the deceased at the time of accident or death:

Name of each dependent, Elizabeth Buehl, age at last birthday 25, date of birthday, August 17, Relation to decedent, wife.

Name of each dependent, Oscar Erick Buehl, age at present, 5 months old, date of birthday, August 7, relation to decedent, son.

- 20 6. By whom was decedent employed at the time of accident? (Give name and business address) Meader Atlas Co. Willow Avenue and Sixteenth Street, Hoboken, New Jersey.
7. What was the business of the employer? Dealing in horse feed.
8. Did the decedent give a written notice to the employer at the time of hiring, or later, that the Compensation Law was not to apply to him? No.
- 30 9. Did he receive such notice from the employer? No.
10. Did the employer have knowledge of this accident? Yes.
11. Did you notify the employer of this accident? Yes.
12. If so, on what date? December 17, 1924.
13. Have you made claim to the employer for compensation? Yes.
- 40 14. What was the regular occupation of the de-

Claim Petition.

- cedent, and what kind of work was he doing at the time of the accident? At the time of the accident, decedent was running and operating an elevator at the place of Meader Atlas Co., Hoboken.
15. When did the accident happen? December 17, 1924. 10
16. Where did the accident happen? At place of Meader Atlas Co., Willow Avenue and Sixteenth Street, Hoboken, N. J.
17. What was the nature of the accident, and how did it happen? While operating said elevator as above stated, decedent's left arm became wedged between the floor and the car, his arm was broken, and his whole body badly crushed, resulting in his death four hours later at the hospital. 20
18. Did deceased work any after the accident? No, died four hours later.
19. If so, give date he was compelled to stop work December 17, 1924.
20. Give date of death December 17, 1924.
21. Were his wages fixed by piece work? No.
22. If so, what was his average weekly wage? \$27.00 per week.
23. If wages were fixed by the hour, state rate per hour 50¢ per hour. 30
24. Give number of hours in an ordinary working day 9½ hours.
25. Give number of days in an ordinary working week 5½ days.
26. State the amount of weekly wages \$27.00 per week.
27. How much money have you received from the employer as compensation (not medical aid) since the accident? Nothing. 40

Claim Petition.

28. Has the employer promised to pay you any compensation? Yes.
29. If so, how much? No stated amount.
30. Was medical aid required? Yes.
31. If so, was this service furnished by the employer? Yes.
- 10 32. What other sum did you expend for medical, surgical or hospital service? Nothing.
33. Give name and address of physician and hospital Immediately after the accident the ambulance was called from St. Mary's Hospital, Hoboken, and Dr. Ponterey of the hospital staff treated decedent.
34. What other facts are there which you believe important?
- 20 35. Are you willing that the Compensation Bureau endeavor to secure compensation for you, by agreement before calling for an official hearing? Yes.

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

40 And your petitioner will ever pray, etc.

ELIZABETH BUEHL, individually
and as admx ad prosequendum,
111 Bloomfield Street, Hoboken, N. J.

Claim Petition.

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

Elizabeth Buehl of full age, being duly sworn according to law, on his oath deposes and says: That he is the petitioner named in the foregoing petition that he has read the same and is familiar with the contents thereof; and that the matters and things therein set forth are true according to the best of his knowledge and belief.

10

ELIZABETH BUEHL.

Subscribed and sworn to before me, this 15th day of January 1925, at Hoboken, New Jersey.

Charles W. Stover,
 Master in Chancery of N. J.

20

(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 presented by the petitioner to the Workmen's Compensation Bureau for hearing and determination in accordance with the provisions of the Workmen's Compensation Act.

30

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

40

Workmen's Compensation Bureau,
 W. E. STUBBS.

Certification of Petition.

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

W. E. STUBBS.

10

Respondent's Answer to Dependant's Claim Petition.

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

Trenton, N. J.

20

FREDERICK BUEHL (fatal),

ELIZABETH BUEHL,

Petitioner,

vs.

MEADER ATLAS CO.

Respondent.

Claim Pe-
tition No..
3575.

30

February 4, 1925.

Attorney for Respondent Walter L. Glenney
916 Madison Ave., Plainfield, N. J.

In answer to Claim Petition filed in this cause:

1. What was decedent's name? Fred Buehl.
2. Where did decedent reside? 72 Garden Street, Hoboken, N. J.
5. Do you question the dependency, age or relation of any of the persons named in ques-

40

Answer to Petition.

- tion No. 5 of the Claim Petition? If so, specify Yes. The dependency, age and relation of Elizabeth Buehl, and Oscar Erik Buehl questioned.
6. Was the decedent in your employ at the time of the accident? Yes. 10
 7. State your business. Feed manufacturers.
 8. Did you receive written notice from the decedent at the time of hiring, or later, that the Compensation Law was not to apply to him? No.
 9. Did you give such notice to him? No.
 10. When did you first have knowledge of this accident? December 17, 1924.
 11. Did you receive notice of this accident from the Petitioner? No. 20
 12. If so, on what date?
 13. Has any claim for compensation been made? Yes.
 14. What was the regular occupation of the decedent, and what kind of work was he doing at the time of the accident? Deceased was employed as a laborer and at the time of the accident his duties were to work just outside our plant unloading feed from a railroad car. 30
 15. When did the accident happen? December 17, 1924, 11:15 A. M.
 16. Where did the accident happen? 1633 Willow Ave., Hoboken, N. J.
 17. What was the nature of the accident, and how did it happen? Deceased started the elevator up and attempted to hide a hand truck load of feed so as to play a joke on the men upstairs. He was going to hold the truck on the elevator when the fellow 40

Answer to Petition.

- employees attempted to pull it off. He did not allow himself sufficient room in squeezing in behind the truck and got caught in the doors of the elevator and was crushed.
18. Did the decedent work any after the accident? No.
- 10 19. If so, give date he stopped work.
20. Give date of death December 17, 1924.
21. Were his wages fixed by piece-work? No
22. If so, what was his average weekly wage?
23. If wages were fixed by the hour, state rate per hour 48 cents.
24. Give number of hours in an ordinary working day 9.
25. Give number of days in an ordinary working week 6
- 20 26. State the amount of weekly wages \$27.00.
27. How much have you paid as compensation (not medical aid) since the accident? none.
28. Have you promised to pay compensation? No.
29. If so, how much?
30. Was medical aid required? Yes.
31. If so, did you furnish all the medical, surgical, or hospital services, or other expenses of last sickness Called ambulance; had deceased taken to hospital.
- 30 32. Between what dates was service rendered?
33. Give name and address of physician and hospital rendering service at your direction? None.
34. What other facts are there which you believe important? If you deny that compensation is payable in this case, explain fully your reason for this conclusion. The respondent denies that compensation is pay-
- 40

Answer to Petition.

able in this case because of the fact that the accident did not arise out of and in the course of the decedent's regular employment, but was the result of an act of deceased outside the scope of his employment.

The Meader Atlas Co. **10**
H. Lynn Robinson,
Treasurer.

1633 Willow Ave. Hoboken N. J.

(Corp Seal)

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

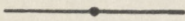
H. Lynn Robinson of full age, being duly sworn according to law, on his oath deposes and says: **20**
That he is the treasurer of respondent named in the foregoing answer to claim petition; that he has read the same and is familiar with the contents thereof; and that the matters and things therein set forth are true according to the best of his knowledge and belief.

BUEHL ADD. 4— **
H. LYNN ROBINSON, **30**
Treasurer of Corporation.

Subscribed and sworn to before me, this Tenth day of February, 1925 at Hoboken, N. J.

Benj. Benson,
Notary Public.

(This affidavit may be sworn to before a Deputy Commissioner or a Compensation Referee, or any other person authorized to administer an oath.) **40**



Certification of Answer.

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

10

W. E. Stubbs.

Testimony.

WORKMEN'S COMPENSATION BUREAU.

NEW JERSEY DEPARTMENT OF LABOR,

20

JERSEY CITY, HUDSON COUNTY, DISTRICT

FREDERICK BUEHL and ELIZABETH

BUEHL,

vs.

MEADER ATLAS COMPANY, #3575.

30

Transcript of stenographer's notes of evidence taken in the above entitled matter before the Hon. Charles E. Corbin, Deputy Compensation Commissioner, at the Workmen's Compensation Bureau, #571 Jersey Avenue, Jersey City, New Jersey, on the twenty-ninth day of May, 1925, at 10.00 o'clock, a. m.

40

Elizabeth Buehl—Direct.

Appearances:

EDWARD STOVER, Esq., appears for the Petitioner,
W. H. D. COX, Esq., (Walter L. Clenney, Edwards
& Smith) appears for the respondent.

10

ELIZABETH BUEHL, the petitioner, sworn.

DIRECT EXAMINATION BY MR. STOVER:

THE COURT: Any stipulations in this case to shorten it?

MR. COX: Yes. I think perhaps as to the amount of money he was receiving; also the fact that he was working for the Meader Atlas Company. 20

THE COURT: Suppose you stipulate on the record what you will, Mr. Cox.

MR. COX: As soon as I find out the forms. We can stipulate for the record, I think, that Mr. Fred Buehl was employed by the Meader Atlas Company, the respondent in this case, at their warehouse, 1633 Willow Avenue, Hoboken, New Jersey on or about December 17, 1924; that his wages were forty-eight cents an hour, that he worked nine hours a day. 30

THE COURT: What were the wages?

MR. COX: Forty-eight cents an hour; worked nine hours a day and received the sum of twenty-seven dollars a week. Is that correct?

MR. STOVER: Well, in the main. But I beg to state that he worked over time, at the rate counsel states his wages would be 40

Elizabeth Buehl—Direct.

the sum of twenty-seven dollars per week, we claim that he made on the average of three dollars more.

THE COURT: Of course overtime is not allowed.

10 MR. STOVER: All right, your Honor. If the Court does not consider overtime that was received so steadily that it was almost part of the wages we claim and we state instead of working nine hours he worked nine and a half hours, and instead of five days, five and one half days.

THE COURT: Then you cannot stipulate as to wages?

20 MR. STOVER: No; I don't think so. We stipulate the ordinary salary was twenty-seven but we say almost always, in fact always worked over time and got three dollars more, thirty dollars a week.

MR. COX: Well, we can stipulate that his wages were twenty-seven dollars a week and leave Mr. Stover to his proof about the overtime work.

MR. STOVER: All right; that is all right.

30 MR. COX: If that is correct, of course.

MR. STOVER: The petitioner was appointed administrator ad prosequendum by the Surrogate Court of the County of Hudson. I do not think we need it in a case like this but it is in the discretion of the Court.

MR. COX: You had better have it in the record so she has the right to bring the action.

40 MR. STOVER: Yes. I do not know whether they are going to stipulate dependency of the widow and children.

MR. COX: Better prove that.

Elizabeth Buehl—Direct.

MR. STOVER: I may add as a preliminary this lady speaks German but she speaks a broken English.

THE COURT: Do you deny an accident?

MR. COX: No; the accident happened, sir, but the accident happened not in the course of employment, as he was not working at the time the accident happened. 10

MR. STOVER: I offer that in evidence.

(Papers appointing administratrix ad prosequendum as submitted in evidence received and marked Exhibit P-1).

MR. STOVER: The record of the Surrogate's appointment, she is administrator ad prosequendum of her husband, the deceased, the petitioner in this case. No objection? 20

MR. COX: No objection. No, it is in evidence.

BY MR. STOVER:

Q. Where do you live now, Mrs. Buehl? A. 164 First Street.

Q. What was the name of your husband? A. Frederick Buehl.

Q. How old was he at the time of his death? A. Thirty years. 30

Q. What? A. Thirty years.

Q. I may say, if you do not understand me, don't answer: A. All right.

Q. I will try to make it plain, and the same with the Judge and the counsel. A. Yes.

Q. When did your husband come to this country? A. May, approximately, 1923.

Q. 1923? A. Yes.

Q. And you and your husband, Frederick 40

Elizabeth Buehl—Direct.

Buehl, had a child, is that right? A. Yes.

Q. And is this the little baby here? A. Yes, sir.

Q. What is the name of this little child? A. Oscar Buehl.

10 Q. Oscar Buehl? A. Yes, sir.

MR. STOVER: We offer the child. It may We will offer the child in evidence now. I We will offer the child in evidnec now. I don't know whether the Court will mark it in evidence.

THE COURT: I will leave that for Mr. O'Brien.

20 Q. When was that little baby born? A. The seventh of August, 1924.

Q. 1924. That is the only child, Frederick Buehl, your husband and you had? A. Yes.

Q. Is that right? A. Yes.

Q. Do you know when your husband started to work for the Meader Atlas Company? A. I think in June or July.

Q. In August. I see. Do you know the date when your husband died? A. The seventeenth of December, 1924.

30 Q. The seventeenth of December, 1924. You are his widow, are you not? A. Yes.

Q. And do you know what were his hours in the day time, from when to when he worked?

MR. COX: I—

A. Seven o'clock to five o'clock.

MR. COX: (Continuing):—object to that. I think that is going a little too far.

THE COURT: She can answer if she knows.

40 MR. COX: If she knows.

Elizabeth Buehl—Direct.

Q. Do you know from what time to what time your husband worked? A. From seven o'clock until five o'clock.

MR. COX: Just a minute.

THE COURT: Answer yes or no.

Q. Answer yes or no. Do you know when your husband worked? Do you understand me? A. No. 10

Q. Tell me you do not understand. Did your husband bring his wages home to you? A. Yes.

Q. What did he bring home to you each week? A. Altogether thirty dollars; sometimes twenty-eight, some times thirty one and thirty two. Beside.

Q. What was his average—his usual wages? How much did he mostly always bring home, about? A. About thirty dollars. 20

MR. COX: Just a minute; I would like to object to that as it is calling for speculation on the part of this witness.

MR. STOVER: As to what he brought home?

MR. COX: On an average. There is not sufficient evidence in here to show what an average would be, or how she arrived at an average. 30

THE COURT: Objection sustained.

Q. Did you see his pay envelope? A. Yes.

Q. What was on the pay envelope when he came home? A. What?

Q. What is that? How much was in that pay envelope? A. Thirty dollars.

Q. Thirty dollars. A. Some would— 40

Q. (Continued) Did you see your husband die? A. Yes.

Elizabeth Buehl—Direct.

Q. Where did he die? A. Four o'clock.

Q. On December seventeenth? A. Yes.

Q. 1920— A. Four.

Q. (By the Court) Where did she say he died?

MR. STOVER: She did not answer that.
 10 She answered another question but we will make it part of the question.

Q. Where did he die, what place? A. St. Mary's Hospital.

Q. Where is that, in Jersey City? A. Hoboken.

Q. I see. Did you see him die? A. Yes.

Q. Who told you to go to the hospital? A. The foreman.

Q. The foreman of the Meader Atlas Company?
 20 A. Yes.

Q. And when did he tell you to go to the hospital? A. Half past eleven.

Q. And what did he tell you? A. He told me to come over, my husband was sick, to come over to St. Mary's Hospital.

Q. And did he tell you what had happened to your husband?

MR. COX: Just a minute.

30 A. No, nothing.

MR. COX: I object to what he told her.

MR. STOVER: It is an admission by the agent in authority, the foreman.

MR. COX: There is no evidence he was in authority yet.

Q. Who is the foreman of the Meader Atlas Company?

40 MR. COX: I object. It calls for a conclusion.

Elizabeth Buehl—Direct.

THE COURT: If she knows.

Q. Do you know who is the foreman? A. Yes, sir.

Q. Who is the foreman? A. Over there (indicating).

Q. Is this the gentleman here? A. Yes, sir. 10

Q. What is his name? A. I don't know.

Q. I see. Did the foreman tell you on the 17th of December, 1924 that your husband was injured? A. Yes.

Q. And did he tell you how your husband was injured?

MR. COX: I object.

A. No. 20

MR. COX: (Continuing)—to anything he might have told her how he was injured.

Q. What did the foreman tell you? A. Come over, my husband is sick, come over to the hospital.

Q. And did you go over? A. I go over with him.

Q. And did you see your husband? A. I see my husband, yes. 30

Q. What did you find the matter with your husband? What was the matter with him? A. All blue and the arm.

Q. Yes. A. But speaks all the time to me.

Q. He spoke to you? A. Yes, sir.

Q. What did he tell you? A. He told me—

MR. COX: I object to what he told her.

THE COURT: Objection sustained.

MR. STOVER: Isn't this sort of—I suppose that is the criminal rule, death-bed confession or statement. 40

Elizabeth Buehl—Direct.

MR. COX: That is as to who killed a person.

MR. STOVER: Yes; that is as to who killed a person.

10 Q. How long after that did your husband live? A. Four hour.

Q. For hours? A. Yes.

Q. Before this accident what was the condition of the health of your husband? Was he sick or weak or strong before the accident? A. He was strong, not sick.

Q. Strong? And who buried your husband, who was the funeral man, the undertaker? A. Mr. Necker.

20 Q. What is his bill? A. Two hundred dollars.

Q. Is any part of that paid? A. I paid nothing; the insurance company paid one hundred and fifty dollars.

MR. COX: You mean they did pay one hundred and fifty dollars?

WITNESS: I don't know; they told me.

Q. Toward the funeral bill? A. I don't know; they told me.

30 Q. You say that your husband started to work —when your husband started to work who worked with him? A. My brother Henry.

Q. Your brother is he in court here? A. Yes. (Man stands up in the court room)

MR. STOVER: All right sit down.

Q. Have you any means of support; are you poor?

40 MR. COX: I object.

A. I am poor.

Elizabeth Buehl—Direct.

MR. COX: That is immaterial, if your Honor please.

MR. STOVER: Is that admitted as a rule of law dependency of a widow.

MR. COX: Dependency is conclusively presumed as to the widow.

MR. STOVER: I understand that is a conclusion or is it presumed? 10

THE COURT: As a matter of law as they lived together is is presumed.

Q. You and your husband lived together? A. Yes, sir.

Q. Were friendly together? A. Yes.

Q. Is this a picture of your husband? A. Yes, that is me and my husband.

Q. When was the picture taken? A. The ninth of June, 1917. 20

MR. STOVER: It is offered in evidence.

MR. COX: What is it offered in evidence for?

MR. STOVER: To prove the condition of health of the man.

MR. COX: That was 1917; that was about seven years before this accident. I don't see how it could be material. 30

MR. STOVER: I think it is some evidence as to the condition of health of this man.

MR. COX: Just not to hold up the case I will let it go for what it is worth.

MR. STOVER: For what it is worth it is offered in evidence.

MR. COX: Before it is marked, Mr. Stover.

(Picture entered in evidence and marked exhibit P-2). 40

MR. STOVER: That is all.

Elizabeth Buehl—Cross.

CROSS EXAMINATION BY MR. COX:

Q. Your husband was wounded in the war, wasn't he? A. I cannot understand that.

MR. STOVER: Yes, I will speak German if that is satisfactory.

10

THE COURT: She can understand; speak louder.

Q. Your husband was wounded in the war. He got hurt in the war? A. Was hurt in the war?

Q. Yes. A. Yes.

Q. How was he hurt? A. I don't know.

Q. Where was he hurt, what part of his body? A. I cannot understand.

20

MR. STOVER: I have a witness here who was in the war at the time he was hurt, an eye witness, if that will do any good.

MR. COX: Sure.

THE COURT: Are you going to put that witness on?

MR. STOVER: Yes, I will put him on.

THE COURT: You can get that evidence from him.

30

MR. COX: That is all right.

Q. You said on your direct examination that Mr. Buehl had thirty dollars in his pay envelope, when was that? A. I don't know when was this.

Q. You don't know when it was? A. No.

Q. Do you know how many times it was? A. Oh a couple of times there was \$32.50, he got something like that one time.

40

Q. It was different amounts at different times? A. Yes.

Elizabeth Buehl—Cross.

Q. And you did not keep a list of what you got each week, did you? A. No.

Q. So you do not know how many times you got thirty dollars and how many times you got thirty-two dollars? A. A couple of times but I don't know how many times, see.

Q. How many times did you get thirty dollars? A. I don't know. 10

Q. You do not know? A. No.

Q. Do you know how many times you got twenty-eight dollars? A. I don't know.

Q. You do not know? Did he ever bring his envelope with twenty-seven dollars in it? A. Yes, he bring the envelope home closed.

Q. It was closed? A. Yes.

Q. Did you ever find twenty-seven dollars in it? A. I find twenty-seven dollars in it. 20

Q. And sometimes twenty-six dollars? A. I think not. Yes, with holidays then I got no more money, see?

Q. You got more when it was holiday? A. No.

Q. Not so much? A. Not so much.

Q. This foreman, you said that this man here is the foreman of the Meader Atlas Company? A. Yes, sir. 30

Q. How do you know? A. I saw him in the shop.

Q. You saw him in the shop? A. Yes.

Q. When did you see him in the shop? A. When my husband lived.

Q. When your husband lived? A. Yes.

Q. How did you know he was the foreman? What was he doing showed you he was the foreman? A. My husband told me he is the foreman. 40

Henry Vietze—Direct.

Q. Your husband told you he is the foreman?

A. Yes. I spoke with him in the shop. My husband, I bring him his lunch.

Q. You brought him the lunch? A. Yes.

Q. And this man told you he was foreman?
A. Yes.

10 Q. And your husband told you? A. My husband told me.

Q. But outside of that you do not know what he was, is that right?

MR. STOVER: The question is not clear to me.

Q. You do not know he was foreman any other way except he told you he was? A. Yes.

20 Q. And your husband told you he was? A. Yes.

Q. This one hundred and fifty dollars you say has been paid on the funeral bill? A. Yes.

Q. You don't know whether that has been paid or not? A. No; they told me that, that is all.

(Answer repeated by the stenographer.)

MR. COX: That is all.

30 MR. STOVER: That is all.

HENRY VIETZE, witness on behalf of petitioner,
SWORN.

DIRECT EXAMINATION BY MR. STOVER:

40 MR. STOVER: He is a little slow on the language too but I think we can get along with him.

Henry Vietze—Direct.

Q. Mr. Vietze, where do you live? A. 164 First Street.

Q. Where? A. For my sister.

Q. Hoboken? A. Yes, I am a boarder only.

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

Q. Is this lady who was just on the stand your sister? A. Yes, sir. 10

Q. The petitioner. And that was your brother, who was her husband? A. It was my brother-in-law.

Q. Oh, your brother-in-law. And what was his name? A. Frederick Buehl.

Q. Frederick Buehl. And did you start to work with Frederick Buehl at the Meader Atlas Company? A. Yes, he and I started in together.

Q. You worked together. When did you start to work with Frederick Buehl? A. It was in the month of August. 20

Q. The month of August what year? A. 1904.

Q. What is that? 1904? A. 1924.

Q. Don't say 1904. If you do not understand me tell me. What did your brother-in-law do when you started to work with him at the Meader Atlas Company? A. To bring horse feed up the elevator up or down.

Q. To bring horse feed up the elevator, up or down? A. Yes. 30

Q. Did you see him use the elevator? A. Yes. Superintendent saw him and told him to run the elevator.

Q. Is this the superintendent here? A. No. Here (indicating).

Q. That gentleman? A. Yes.

Q. And who was this gentleman here, sitting to my right, Mr. Huber? A. Foreman of the Meader Atlas Company. 40

Henry Vietze—Direct.

THE COURT: What is the name?

MR. STOVER: The foreman of the Meader Atlas Company, Huber.

Q. You worked there, did you, at the Meader Atlas Company? A. Yes.

10 Q. And you know Mr. Huber is the foreman?
A. Yes.

Q. And you say the superintendent over to the left, he told your brother to run the elevator?

MR. COX: Do not lead him.

A. Yes.

MR. STOVER: He said it all right.

20 Q. Who told your brother-in-law, Mr. Frederick Buehl, to run the elevator? A. The superintendent.

Q. The superintendent; you mean the superintendent of the Meader Atlas Company? A. Yes.

Q. What is his name? A. I don't know his name.

MR. COX: Well, for the record it is Mr. Campbell.

30 A. I forget.

Q. Do you know what your brother-in-law, Mr. Frederick Buehl, the deceased, made when you first started to work together?

MR. COX: That is too long before the time of the accident. I object.

THE COURT: Objection sustained.

40 Q. You said before that your brother-in-law took the feed up the elevator? A. Yes.

Q. Is that right? A. Yes, sir.

Henry Vietze—Direct.

- Q. How did he take the feed up the elevator?
 A. In a small truck.
- Q. What kind of a truck? A hand truck?
 A. Hand truck, to pull.
- Q. What was the length of that truck, about?
 A. Five feet length.
- Q. Five feet long? A. Yes, sir. 10
- Q. And how wide? A. Four; about four.
- Q. Four feet. Was it pulled or pushed? A. Pulled.
- Q. How was it pulled? I mean what did he grab to pull it? How many bars? A. Has iron stick.
- Q. I see; did your brother-in-law do any other work besides taking up feed up the elevator? Did he do anything else besides taking up the feed? A. Yes. 20
- Q. Did he sweep or clean? A. Put it back in the—bringing the elevator up.
- Q. Yes. What sort of an elevator is this? How did you make it go? Did you pull a rope or—A. Pull a rope.
- MR. COX: Do not lead him.
- MR. STOVER: I will withdraw that question. 30
- Q. Answer the question, what sort of an elevator is this? How do you make it go? A. Elveator went—elevator only have—not have the belt.
- Q. How did you make the elevator go? A. In the rope, pull the rope.
- Q. What kind of a rope is it? I mean what is the rope made out of; is it made out of a stick? A. No. I don't know—is the rope made from iron— 40
- Q. All right.

Henry Viteze—Cross.

MR. COX: We are going to describe that elevator through our witnesses.

MR. STOVER: We have witnesses; we will describe it.

MR. COX: All right.

10 Q. You did not see your brother-in-law killed, did you? A. No.

MR. STOVER: That is all.

CROSS EXAMINATION BY MR. COX:

Q. You only worked there four days, didn't you? A. Seven days.

Q. Seven days? A. Yes, sir.

20 Q. How many other people were working there at that time? A. Was one on the second floor, one was a mixer, this colored fellow and foreman, my brother-in-law, I and another fellow, another German fellow.

Q. This fellow here was working at the time? A. Yes; that is the mixer.

Q. That is the mixer? A. Yes, sir.

Q. And this Mr. Campbell, was it, who told your brother to run the elevator? A. Yes, sir.

30 Q. Did he used to come out each day and tell you what to do during the day? A. What?

Q. He used to come out each day and tell you what to do during the day? A. Yes.

Q. He did? A. Yes.

Q. And you were supposed to do that and nothing else, weren't you? A. I?

Q. Yes. You, you were supposed to do that and nothing else, weren't you?

40 MR. STOVER: I object to that. That makes no difference what he was supposed to do.

MR. COX: We are showing what sort of instructions were given to him.

Henry Viteze—Cross.

MR. STOVER: Well, I——

MR. COX: Well, I let this thing go in about the elevator? It is quite some time, according to this man's testimony, it was quite some time before the accident he was given instructions to run the elevator. We want to show how definite the instructions were and what they were. 10

MR. STOVER: I submit the instructions given to this gentleman cannot appertain to the instructions given to the deceased. Irrelevant, immaterial and incompetent.

THE COURT: How is it relevant as to the instructions given this man? He only worked seven days.

MR. COX: That is not what I really asked; I asked him did Mr. Campbell assign certain duties to each of the men and if they weren't supposed to do them. 20

THE COURT: Ask him that.

Q. Mr. Vietze, when you were there working did Mr. Campbell tell each one of you what to do during the day? A. Everybody got the same job that was the same.

Q. What? A. Got the same job. 30

Q. Got the same job every day? A. Yes, sir.

Q. But he told you what you were supposed to do during the day? A. He told my brother-in-law to run the elevator.

Q. That is not what I am asking you; he told you what to do, during the day?

MR. STOVER: I object now; it is very plain that the gentleman now does not want to know what he told the deceased. He wants to know what he told the witness to 40

Henry Viteze—Cross.

do. The witness has just answered what was told to the deceased in his presence to do.

MR. COX: I am asking him about each person.

10 MR. STOVER: He has just answered what is pertinent, what the deceased was told to do.

THE COURT: Go ahead.

Q. He would tell Mr. Gash to do something; he would tell Mr. Buehl to do something; he would tell the other fellows to do something? A. Yes, sir.

20 Q. He would tell one to run the elevator, one to load the elevator and one to load the bags on the truck. He would tell you to do that? A. Yes.

Q. And you were supposed to do that. Each one was supposed to do what he was told to do? A. Do what the superintendent told them.

Q. You were supposed to do what the superintendent told you and you were not supposed to change and go and do someone else's work, were you?

30 MR. STOVER: I will object now on another ground. That calls for a conclusion what he was supposed to do.

MR. COX: He knows what he was instructed to do, what he was supposed to do.

THE COURT: You have to prove it if he got instructions of what he was not supposed to do.

40 MR. COX: The only point of that is it leads back to the question I asked him before, whether he himself was instructed not to do

Henry Viteze—Cross.

anything else; he cannot answer for the rest of them.

Q. Were you told not to interfere with the other people who worked? A. I don't know what you mean.

Q. Were you told when you started to work you and each of the other people who were working at the time, to do your work and not to bother the other people who were at work? A. I still don't know what you mean. **10**

MR. STOVER: It is not clear what you mean. You will have to ask simple questions. You have a lot of clauses there, too many clauses.

Q. Were you told not to run the elevator? A. No, sir. **20**

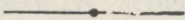
Q. You were not told that? A. By the superintendent?

Q. Superintendent; did he tell you not to run the elevator? A. No; he don't told that; everybody run the elevator.

Q. Everybody run the elevator? A. Yes, sir.

MR. COX: That is all.

MR. STOVER: That is all. **30**



Roy Anderson—Direct.

ROY ANDERSON a witness on behalf of petitioner,
sworn.

DIRECT EXAMINATION BY MR. STOVER:

Q. Roy, how old are you? A. Eighteen.

10 THE COURT: Roy Anderson?

WITNESS: Yes.

MR. STOVER: He speaks good English so
you are all right with him.

Q. How old are you, Roy? A. Eighteen.

Q. And you worked for the Meader Atlas Com-
pany? A. Yes, sir.

Q. And how long did you work for the Meader
Atlas Company? A. About three years, I think.

20 Q. Did you know Frederick Buehl? A. Yes,
sir.

Q. During his life time? A. Yes.

Q. Were you at the building the time he was
killed? A. Yes.

Q. Or injured? A. Injured.

Q. How long before he was injured did you
work for the Meader Atlas Company? A. Worked
about two and a half years, about two and a
30 half years; I don't know exactly at that time.

Q. Do you know exactly when the injury hap-
pened to Mr. Buehl? A. Yes, December 17th,
1924.

Q. Were you in the building then? A. Yes.

Q. By the way, just before the accident and
some months before that what was the condition
of the elevator? A. Well, anyone could run the
elevator as far as that was concerned, during
their working hours.

40 Q. And did the superintendent see you, see
everybody running the elevator, did he see it? A.
Yes.

Roy Anderson—Direct.

Q. Did he ever object to anybody running the elevator? A. Never.

Q. Tell us what happened on December 17, 1924 just before the accident? A. On December 17th, 1924 just before the accident?

Q. Yes, where were you? A. I was on the second floor. 10

Q. On the second floor? A. Yes.

Q. Who was there with you, who was working with you? A. Stanley Patchules.

Q. Did Stanley Patchules sometimes have charge of the elevator? A. Sometimes—he was to run the elevator at all times during the unloading of cars.

Q. And when he was not there who would run the elevators? A. Just anyone who could run the elevator at the time, you see. 20

Q. Now where was Stanley Patchules at the time of the accident? A. He was working with me at the time.

Q. Then he was not in charge of the elevator then? A. No, he just relieved a friend of mine who had to go to the lavatory.

Q. Now tell us what next you heard and what happened. I heard somebody scream, I thought it was Mr. Buehl who screamed and I rushed over to the elevator and tried to stop it but I couldn't stop it. I hurt my eye in the attempt. 30

Q. You hurt your hand? A. My eye.

Q. Did you stop the elevator? A. Yes.

Q. Did you stop the elevator? A. No; it was stopped at the time.

Q. You say you heard a scream? A. Yes.

Q. What kind of a scream was that? Can you describe it? A. A scream like a joke or fooling? A. 40
No, a scream like someone was in agony.

Roy Anderson—Direct.

Q. And then you rushed down? A. Yes.

Q. What did you do? A. I seen Frederick Buehl in the elevator then after it was stopped.

Q. Someone else stopped it then, didn't they?
A. Yes, from below.

15 Q. When you saw Frederick Buehl where was his arm? A. Left arm, it was laying kind of, between the elevator and the wall.

Q. Wedged in? A. Yes, sir.

Q. Where was his left shoulder? A. It was lying on the side of the elevator along with his arm.

Q. Did he have hold of any hand truck? A. I couldn't say about that.

20 Q. Was there any hand truck there in the car?
A. Yes, sir.

Q. Was there space enough in that car for a hand truck and a man to stand at the back of the hand truck or was there just about— A. There was just about space enough for him at the time.

30 Q. Not for him? A. There was just about—I couldn't say whether there was space enough for him at the time. He had pushed it forward so the handle fell down and closed the door of the elevator at the time, do you see.

Q. You saw him there? A. Yes, sir.

Q. And who else was there when you saw him?
A. Well, Mr. Campbell and Stanley.

Q. Was Mr. Campbell, is that the negro gentleman, the colored gentleman? A. No, no.

Q. Did you see a colored gentleman there? A. No, sir.

40 Q. I see. You did not see him there. Just tell us what else you saw; how did this accident happen?

Roy Anderson—Direct.

MR. COX: If he knows.

A. I don't really know how it happened.

Q. From the position that you saw Frederick Buehl in could you judge how the accident happened?

MR. COX: I object to that as calling for a conclusion. 10

THE COURT: Objection sustained.

Q. All right. What time of the day was this that you saw Mr. Buehl here? A. It was about ten thirty.

Q. In the morning? A. In the morning.

Q. What time was his hour to start work? A. Seven o'clock.

Q. And what was in that hand truck? A. It was loaded with all kind of mixed feed, cotton seed meal, hominy, gluten and all like that. 20

Q. You know who carted the feed? A. Who done what?

Q. Who carted the feed. Whose business was it to cart the feed to the hand truck? A. Well, it was—We would figure it out. There were two on the bottom floor, one in the elevator and the two to unload. Two to load it on, one to bring it up and two to unload it. That is the way we worked it. 30

Q. Was it the business of Mr. Buehl to get the hand truck? A. That was one of his duties, yes; that was one of his duties to unload seed.

Q. Was it one of his duties to take the feed up in the elevator?

MR. COX: I object to that; that is what Mr. Stover objected to me. 40

THE COURT: Unless he knows.

Roy Anderson—Direct.

10 Q. Do you know what the duties of Mr. Buehl were? What did he have to do in the business? ployed to take care of—take off seed after he came there. They took him and put him on seed. He pulled off seed. When he didn't pull off seed he unloaded cars. Him and the colored fellow, they worked together you see.

Q. He had quite a bit of work, varied work?

A. Just all around work like.

Q. Did you get any orders not to take charge of the elevator? A. No, sir.

Q. Did the boss see him on the elevator? A. Well, sometimes he did, yes.

Q. And did you sometimes run the elevator?

A. Yes, sir. Most daily.

20 Q. Did he ever object to your running the elevator? A. No, sir.

Q. Did the boss see other people using the elevator? A. Why at times, yes, sir.

Q. Did he object, ever, to anybody using the elevator? A. Not that I know of.

Q. Did the boss or the foreman or the superintendent see Mr. Buehl on the elevator after this? A. Well, I believe he did. I couldn't say for sure.

30 Q. Did you see him, Mr. Buehl, run the elevator before his death?

MR. COX: I object to that—

A. Yes, sir.

MR. COX: —whether he saw him run the elevator or not; that is immaterial.

40 Q. How many times did Mr. Buehl run the elevator there before his death: was it often or not often? A. Well, if there wasn't enough men there is was pretty often.

Roy Anderson—Direct.

Q. Did you ever hear the boss or superintendent give Mr. Buehl instructions not to run the elevator? A. No, sir; I never did hear anyone do that.

Q. What was the custom of the running of the elevator in that business there? A. Anyone could run it if they wanted to. Yes, that was in the business. 10

Q. Did you some of that day see Mr. Buehl doing any fooling or joking around just prior to the accident? A. No.

Q. Or did you hear any sounds of fooling or joy or mirth just before the accident? A. No, sir.

Q. And you were right on the floor above? A. Yes, sir. One flight up.

Q. And you did hear the scream of pain? A. 20 Yes, sir.

Q. Do you know what Mr. Buehl was paid for his work? A. Well, when he first came there he was paid forty-eight cents an hour.

MR. COX: I think that is stipulated enough for the record unless this man knows what he actually got from the payroll.

MR. STOVER: We are trying to bring in extra average. I think it is competent. 30

THE COURT: The question is whether he knows; you can cross examine.

Q. Do you know how much Mr. Buehl was paid just prior to the accident? A. Well, he was paid twenty-seven dollars a week and overtime. He made an average of thirty something always; I am not sure.

Q. Do you know what he was paid for all overtime? A. Yes; he was paid for overtime. 40

Roy Anderson—Cross.

MR. COX: I ask that the last be stricken out what he was supposing.

THE COURT: Strike it out.

MR. STOVER: I consent to "supposing" but the last question was do you know, and he said: "Yes, I do know."

10

Q. Do you know how much of an average he worked overtime? A. Well I could not say. I know nothing about that at all.

MR. STOVER: I see; cross examine.

CROSS EXAMINATION BY MR. COX:

20 Q. Mr. Anderson, just a minute ago you said you did not hear any sounds of fooling down stairs; you were working upstairs, were you not? A. Yes, sir.

Q. And the warehouse is a concrete warehouse? A. Yes, sir.

Q. You were working in. And you and Mr. Patchules were working up there just before the accident? A. Yes, sir.

Q. You had to drag a truck along the floor? A. Yes, sir.

30 Q. Cement floor, was it? A. No, sir; it was a wooden floor.

Q. And it had wooden wheels on the truck? A. Yes, sir.

Q. So you were not listening for any joking downstairs? A. No, sir.

Q. You said you did not see Mr. Cash there at the time of the accident. He was working there before, wasn't he? A. On the bottom floor, yes

40

Q. He was working there before the accident wasn't he? A. He was working there before the accident on the bottom floor.

Roy Anderson—Cross.

Q. And he was working there with Mr. Buehl?

A. Yes, sir.

Q. I see. How many times do you remember Mr. Campbell seeing any of you men running the elevator besides Patchules? A. I couldn't say for certain.

Q. Do you remember any time he saw anyone else? A. Well, I remember it but I wouldn't say the time; I don't know. 10

Q. Do you remember any times? A. Yes, I remember seeing him.

Q. Who was running it then? A. I don't know; off and on.

Q. How far were you from the elevator— A. What do you mean?

Q. How far were you from the elevator at the time? A. I was on the second floor at the time of the accident. 20

Q. No, I do not mean at that time. I mean when you say Mr. Campbell saw somebody else running the elevator, how far were you from the elevator? A. Well, at times I was on the elevator.

Q. At times; did Mr. Campbell ever see you on the elevator? A. He did; he rode with me.

Q. He rode with you? Did he say anything to you about running it? A. No, sir. 30

Q. This elevator was so constructed that it had doors that opened to a loading platform, did it not? A. Yes, sir; on the bottom floor.

Q. The loading platform was right alongside of the box cars and the elevator was right next to the floor of the building? A. Yes, sir.

Q. So you came right through the wall of the building right on to the elevator; is that correct? A. Yes, sir. 40

Roy Anderson—Cross.

Q. On the first floor and the other side of the elevator from the wall of the building there were also doors, were there not? A. Where is this on, the second floor, do you mean?

Q. No, the first floor. A. Yes.

10 Q. If you wanted to load—if you wanted to load bags on the first floor you would wheel it right across the elevator and on to the first floor? A. Yes, sir.

Q. So the elevator opened at both ends? A. Both sides.

Q. Can you tell us from your experience with that elevator, where the control of that elevator was located? A. Well, it was located in that cog in the ceiling of the second floor near the walls.

20 Q. Which corner of the elevator was it? Which corner was it located? A. The right corner.

Q. The right corner? Would that be the inside or the outside corner? Toward the outside of the building? A. Towards the inside.

Q. Toward the inside? A. The corner was shaped something like that and the elevator was just inside, and the corner of the elevator was setting like this and the door like this, just three feet.

30 MR. COX: I wonder if you have any objection to using the blue print.

MR. STOVER: I will say if counsel says that is correct, as far as he believes, I won't object. I might say I tried to inspect the elevator but counsel would not be decent enough to give me that right but as counsel says, it is correct to his knowledge, I won't object to that.

40 MR. COX: That is correct, Mr. Campbell,

Roy Anderson—Cross.

isn't it? This being the loading platform and that is the warehouse? Is there any way of fastening this blue print up? This represents the elevator with the stable right next to the elevator, does it not?

WITNESS: Yes, sir.

19

Q. So the elevator itself was not on the corner of the building? A. It was the corner of the elevator.

Q. Oh, the corner of the elevator. These lines right along here where it has the word "siding" that is where the box cars were backed? A. Yes, sir.

Q. They were backed alongside of the building. That is the outside of the building and this is the inside of the building? A. Yes, sir.

20

Q. Just a minute ago you testified about doors being on the outside of the building. That is what you mean just here, next to the loading platform? A. No; they weren't outside of there.

Q. Inside? A. Inside of the building.

Q. But between the loading platform and the elevator? A. They were close to the elevator.

Q. They were between the two? A. Yes, they were between the elevator and the platform.

30

Q. I see. And then there were also closed doors between the elevator and the building? A. Yes, sir.

Q. Is that right? Will you point out on this diagram the elevator as you see it here, just where the control would be at? I will give you a pencil and ask you to point it out. A. The lavatory was right here.

Q. Yes. A. And the elevator pulley works, machinery, was just above the lavatory in the corner.

40

Roy Anderson—Cross.

Q. That was the machinery that ran the elevator? A. That run the elevator, yes.

Q. Where would be the controls. These ropes you said you started the elevator with? A. On the side right here.

10 Q. (Indicating) Just put a cross right where that is. (Mr. Stover marks the map.)

Q. That will be offered.

MR. COX: I suppose the proper thing to do is offer this in evidence. Of course the testimony concerns it so I will offer that in evidence at this time. Have you any objection to it?

MR. STOVER: I have stated if counsel says he believes that is correct—

20

MR. COX: That is correct.

MR. STOVER: I have no objection.

(Blue print marked in evidence D-1.)

Q. Did you get to the elevator before Mr. Buehl was removed from it after this accident? A. Before he was removed?

Q. Yes. A. I jumped in there first.

Q. You jumped in there first? A. Yes.

30

(Testimony repeated by the stenographer.)

Q. Where was Mr. Buehl lying in the elevator when you got there? A. Well, he was lying on the side with his arm hanging about half way.

Q. What side? A. On the left side going out.

Q. Going out toward the outside of the building? A. Yes; he was lying up against the outside wall of the building.

40

Q. And that is on the other side of the building from the yard? In the other end of the building from which the control is? A. Yes, front entrance.

Roy Anderson—Cross.

Q. That is on the other entrance from where the control is located? A. The control is located on this side; he was laying this side of it.

Q. That is the opposite side from the control. The controls are on the inside end of the elevator and he was lying on the outside end of the elevator? A. No, no. The elevator control was lying on this side and he was lying just inside of the wall on the same side the control is on. 10

Q. What I mean is this: Perhaps I am not very clear; by the control I mean the ropes. A. Ropes, yes.

Q. Coming right down through the elevator itself; that is what I refer to. A. That runs the elevator.

Q. I am not talking about themachinery. A. 20 That is not the machinery; that is what you operate the elevator with.

Q. That elevator had a rope come right down and went through the floor of the elevator. Perhaps we had better refer to this again. Will you show us on this diagram, here is where these ropes are coming down to run the elevator? A. There are two cables, there.

Q. There are two cables there. Where was Mr. Buehl lying when you saw him? A. He was lying in this corner. 30

Q. Where was his arm? Between the elevator and the wall? A. And the elevator.

Q. And the elevator? A. Yes.

Q. Will you indicate where he was lying? A. He was lying about here.

Q. Will you mark this one over here "A" and this one "B"? A. (Marks map.) Why should I mark that "B" there? 40

Roy Anderson—Cross.

Q. Just so we will know this one was for the control and this one Mr. Buehl. A. I see.

Q. Otherwise when you refer to marks we don't know which was which.

10 Q. At the time of the accident there was a loaded truck going up on the elevator, was there not? A. Yes, sir.

Q. And the loaded truck was faced which way? Which way was the front of this truck on this elevator? A. This way.

Q. Toward the inside of the building? A. Yes.

Q. So Mr. Buehl was at the back of the truck? A. Back of the truck.

20 Q. The truck had to have its front wheels turned under in order to fit in that elevator, didn't it? A. It didn't have to be.

Q. But they did? A. They turned it in order for safety on account of the handle. The handle would fall there this way and hit the elevator and push the truck against the wall which would cause an accident.

Q. Did Mr. Buehl turn the wheels? A. No; he didn't turn the wheel.

30 Q. He did not turn the wheels? A. No; but the handle fell down on the elevator door which closed the door and bent the handle.

Q. How many times had you run this elevator? A. Oh, I don't know. I ran it pretty nearly every day.

40 Q. And that elevator was fixed with a clutch, was it not, so that you could start it at the first floor and set the clutch and it would stop at the second floor without anything else being done? A. I always done that. I always started it and then would pull out a little clutch.

Roy Anderson—Cross.

Q. And that would stop it at the second floor?
A. Yes, sir.

Q. Without anybody trying to stop it, anybody doing anything further to stop it? A. No.

Q. Do you know whether the clutch was set at the time of the accident or not? A. I don't know. 10

Q. You don't know whether it was or not? A. I don't know.

Q. Had Mr. Buehl ever been in the habit of playing any jokes around that warehouse? A. Well, yes, he did play jokes.

Q. What sort of jokes did he play? A. Why, just kind of scare us, that is all.

Q. How would he try to scare you? A. From behind us. 20

MR. STOVER: I object to that if the court please. It has to be referred to this particular moment. Unless it is referred to the time of the accident, I object.

MR. COX: Just what happened at the particular moment we can show afterwards, but I think it is corroborating the testimony to show this was a custom of the man.

MR. STOVER: I do not think you can prove a custom for playing jokes. That is far fetched. 30

THE COURT: I do not see how that is material to this issue.

MR. COX: Because the man was killed while he was playing a joke, because he was killed while he played a joke.

THE COURT: I appreciate that at this time—

MR. STOVER: I object to that and ask that it be stricken out. 40

Roy Anderson—Cross.

MR. COX: What is that?

THE COURT: But as to what he had done other times; he might have played a joke two days ago but be terribly serious today.

10 MR. COX: I will ask an exception. It seems to me it is material for this reason, that the only evidence the respondent can introduce to show what Mr. Buehl was doing at the time were merely declarations of his intention and his general behavior which would corroborate his statement of intentions. That is the reason I think it is material.

20 MR. STOVER: If that is the case we all play jokes. I play them myself. That does not say I perpetually play jokes. Today I am not playing jokes; I am serious. I object to any jokes being played except at the time of the accident.

THE COURT: Objection sustained.

MR. COX: I ask an exception.

30 Q. Was Mr. Buehl between the back of the truck and the outside wall of the building as he laid there? A. The truck was—yes, he was between the truck and the wall.

Q. That is between the back of the truck and the wall? A. Yes.

Q. The handle of his truck was the other way? A. Yes.

Q. And the handle of the truck struck the floor door and closed the second floor door, is that correct? A. Yes.

40 Q. So you could not reach through and stop the elevator? A. I tried stopping it but I couldn't stop it. The door was closing on me and I had to get out of it.

Roy Anderson—Cross.

Q. And when the truck in the elevator reached the second floor the truck would be removed by taking hold of the handle which was pointed toward the inside of the building and pulling it out? A. Yes, sir.

MR. COX: Is that right?

13

Q. How many men did you use to pull it off?
A. Two of us.

Q. Get hold of the handle and pull it? A. No, sir; one would pull off and the other push from behind; that is more convenient.

Q. And those men were on the second floor, you and Mr. Patchules or you and Mr. Hanley?
A. Me and Mr. Hanley worked on the second floor at that time.

20

But Stanley Patchules was running the elevator—or supposed to run the elevator but he relieved me, he helped me while my helper went to the toilet.

Q. You backed the truck on and took the empty truck off? A. Not every time.

Q. On the morning this accident happened you took the full truck on the elevator and backed the empty one off? A. At times when we were in a hurry I would back it off.

30

Q. Who would back it on if you would not back it on? A. My helper would.

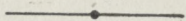
Q. Your helper would? A. Or he would run and put it on himself.

Q. The elevator man would put it on himself if you did not put it on? A. Or my helper.

Q. Either your helper or the elevator man would pull the truck on? A. Yes, sir.

Q. I see.

40



Henry Vietze—Direct.

HENERY VIETZE recalled.

BY MR. STOVER:

Q. You know that Mr. Buehl was hurt in the war, don't you? A. I know only from the meat in the leg; I don't know whether it was left or
10 right, not in the bones.

Q. Was it very badly hurt? A. Not badly.

Q. When was this he was hurt in the war? What year? A. I don't know what year.

MR. COX: I object. He doesn't know; he did not see it.

Q. In the war was he hurt? All right. How was his leg in December just before the accident?

20 MR. COX: I object. He is not an expert. He is not a medical man.

THE COURT: From his observation how was his leg before the accident, just before December 17, 1924?

A. It was the same as his other one.

Q. You mean it was in good condition? A. Yes.

30 Q. And you are his brother, aren't you? A. Yes.

MR. COX: Brother-in-law.

Q. Brother-in-law or brother? A. Brother-in-law.

MR. STOVER: That is all.

MR. COX: That is all.

Stanley Patchulis—Direct.

STANLEY PATCHULIS a witness on behalf of the petitioner, sworn.

DIRECT EXAMINATION BY MR. STOVER:

Q. Now, Mr. Patchulis, how old are you? A. Seventeen. 10

Q. And you worked there for the Meader Atlas Company, didn't you? A. Yes, sir.

Q. How long did you work for the Meader Atlas Company before you quit? A. One year.

Q. And did you work there for the Meader Atlas Company on December 17, 1924? A. Yes, sir.

Q. Did you know Mr. Fred Buehl? A. Yes, sir.

Q. What floor were you when the accident happened? A. Second floor. 20

Q. And with whom were you working? A. Roy Anderson.

Q. You ran the elevator at times? A. Yes, sir.

Q. And did anyone else run the elevator besides yourself? A. Yes, sir.

Q. Who else ran it? A. Well, almost all the employees there. 30

Q. And did the boss, Mr. Campbell, see the employees run the elevator? A. Yes, sir.

Q. Did he ever object to it? A. No, sir.

Q. Did Mr Buehl sometimes run the elevator? A. Yes, sir.

Q. Did the boss, Mr. Campbell, sometimes see him? A. Yes, sir.

Q. Did he ever object to it? A. No, sir.

Q. Did the foreman here see Mr. Buehl run the elevator? A. I couldn't tell. 40

Stanley Patchulis—Direct.

Q. Tell us what you heard and saw on December 17, 1924. A. I was on the second floor and I heard a scream.

Q. Yes. A. I ran to the elevator.

Q. And did you hear any joking before this scream? A. No, sir.

10 Q. Was there any joking before this scream?

MR. COX: I object.

A. Not that I could tell of.

THE COURT: The objection is sustained.

Q. What did you hear? A. I heard a scream and ran toward the elevator.

Q. Yes. A. The doors closed on us. I ran up-
20 stairs in order to help stop the elevator but I saw it was stopped and Mr. Campbell and other employees were on the second floor.

Q. Yes, continue. What time of the day was it? A. Ten thirty.

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

Q. All right, continue. Tell us what you saw then. A. Well, I did that, they were taking out Buehal's body and taking him to the ambulance.

Q. Yes; do you remember how long Buehl had
30 worked for that company before this accident?

A. Well, I could not tell.

Q. Was it for over a week? A. I cannot re-
Buehl's body and taking him to the ambulance.

Q. Now, did you see Buehl joke or fool there?

MR. COX: I—

A. No, sir.

MR. COX: Object to it on the same ground
40 he objected to mine.

Q. At that time?

Stanley Patchulis—Cross.

MR. COX: No. He did not see him at the time. I object to that.

(Objection sustained.)

Q. Did you hear what the boss told you about the work of Mr. Buehl and his duties? A. Well, at times he would come over and tell his employees to help others out on their work when they needed help? A. Yes. 10

Q. What was Buehl doing at the time of the accident? A. He was pushing, pulling trucks, pushing feed on the elevator.

MR. STOVER: I see.

CROSS EXAMINATION BY MR. COX:

Q. You mean that he was on the first floor loading the trucks on the elevator? A. Yes. 20

Q. And Mr. Cash was down there with him, wasn't he? A. Yes, sir.

Q. And you were the regular elevator man at that time, weren't you? A. Yes, sir.

Q. How much did you get paid an hour? A. I was getting paid thirty-five.

Q. Thirty-five? A. Yes, sir.

Q. And was it part of your duties to oil the machinery of the elevator? A. Yes, sir. 30

Q. Your duties just consisted in running the elevator up and down stairs? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. I understand that at the time of this accident, Mr. Hanley wanted to go down first and go to the lavatory on the first floor? A. Yes, sir.

Q. And took the elevator down to go to the lavatory? A. Yes, sir.

Q. —on the street floor, first floor. Just what 40

Stanley Patchulis—Cross.

happened before you heard the scream by Mr. Buehl you don't know? A. No, sir.

Q. I will show you this diagram here. This word "siding" outside here. A. Yes, sir.

Q. Is where the box cars were. Here is the platform? A. Yes, sir.

10 Q. By the way Mr. Cash and Mr. Buehl were working on this platform? A. Yes, sir.

Q. Unloading box cars and took it across on the elevator? A. Yes, sir.

Q. And as you came on the elevator they would take the empty trucks off and push the full trucks on? A. Yes, sir.

Q. And you would take it to the second floor where Mr. Anderson and Mr. Hanley would take
20 the full truck off and put the empty truck on? A. Yes, sir.

Q. And then you would take it down? A. Yes, sir.

Q. This is the outside wall of the elevator and here is the inside wall? A. Yes, sir.

Q. Will you point to the spot where the controls of that elevator are located? That is indicated on here by the "A" as was marked by the other witness? A. Yes, sir.

30 Q. And did you see Mr. Buehl on the elevator before he was taken off? A. Not that I can remember.

Q. You do not remember it. To run this elevator you stood right here by the ocntrrol, did you not? A. Yes, sir.

Q. And you pulled the control and the elevator went to the second floor? A. Yes, sir.

40 Q. And stopped there, did it? A. Well, you have to put the catch in.

Q. Do you know whether the catch was set at the time or not? A. No, sir.

Stanley Patchulis—Cross.

Q. You do not know? A. No, sir.

Q. I see. Whatever catch was set it would stop by itself? A. Yes, sir.

Q. Did you see that truck on the elevator, the one that was on the elevator at the time Mr. Buehl was killed? Did you see it before it was moved off the elevator after the accident? A. No, sir. 10

Q. You did not. Then you do not know what its position was until later? A. No, sir.

Q. I think that is all as far as this map goes. I think you said you did not hear any sounds of fooling downstairs? A. Yes.

Q. You and Mr. Anderson were working upstairs so just at the time of the accident? A. Yes, sir. 20

Q. Before hearing the scream? A. Yes, sir.

Q. You were not listening for anything downstairs? A. No, sir.

Q. So you do not know what they were doing downstairs at all? A. No, sir.

Q. Do you know whether if a person talked downstairs at all? A. No, sir.

That depends on how he used his voice.

Q. If he talked in an ordinary tone of voice, you could not hear it on the second floor? A. Well, no. 30

Q. And you were the one who was regularly designated to run that elevator? A. Yes, sir.

Q. How long had you been on that elevator before this accident happened? A. Well, about five minutes.

Q. You had been on the elevator five minutes? A. Well, at the time I relieved him. At the time I relieved Joseph Hanley. 40

Stanley Patchulis—Re-Direct.

Q. You were not running the elevator, you were not on the elevator when this accident happened? A. No, sir.

Q. You had been running it all the morning before? A. Yes, sir.

10 Q. So you had been on the elevator more than five minutes? A. Yes, sir.

Q. You had been off the elevator five minutes? A. Yes, sir.

Q. But you had been on all the morning? A. Yes, sir.

Q. And isn't it the custom to set that clutch for the second floor if you are unloading on the second floor so the elevator stops without your having to do anything at all to it? A. No, sir.

20 Q. Then you cannot tell us whether that clutch was set or not? A. No, sir.

Q. You do not know? A. No, sir.

Q. But if it were set it would stop the elevator? A. Yes, sir.

MR. COX: That will be all.

RE-DIRECT EXAMINATION BY MR. STOVER:

30 Q. You have no experience in charge of an elevator, have you? A. No, sir.

Q. And you were practically a green hand, weren't you? A. Yes, sir.

Q. In handling an elevator? A. Yes, sir.

MR. COX: I object to that; that is not material.

THE COURT: I cannot see the materiality of this.

40 MR. STOVER: If Mr. Buehl had been fooling and joking and laughing would you have heard it on that day?

MR. COX: I object. He said he would not.

Stanley Patchulis—Re-Direct.

A. Sure.

Q. What? A. Sure.

MR. COX: I object. Before he said he could not hear any man on the first floor on the second floor.

A. I said from the tone of his voice, it was how he used his voice. 10

Q. You would have heard Mr. Buehl if he had been fooling? A. Yes, sir.

MR. COX: I object on the further ground that it calls for a conclusion.

THE COURT: I think that is calling for a conclusion. Objection sustained.

MR. STOVER: All right.

20

MR. COX: I—

Q. Did you hear Mr. Buehl fooling?

A. No.

MR. COX: —object to what he heard. That is hearsay, "fooling".

MR. STOVER: I mean did he hear Buehl fooling.

Q. Did you hear Buehl fooling? A. At what time? 30

Q. At the time of the accident? A. Oh, no.

MR. STOVER: That is all.

40

Joseph Huber—Direct.

JOSEPH HUBER a witness produced on behalf of the petitioner, sworn.

DIRECT EXAMINATION BY MR. STOVER:

10 Q. Mr. Huber, where do you live? A. No. 8 Grand Street, Weehawken.

Q. What? A. No. 8 Grand Street, Weehawken.

Q. And you came here because you have been subpoenaed? A. Yes, sir.

Q. And were you foreman of the Meader Atlas Company in December, 1924? A. Yes, sir; that is through the instructions of Mr. Campbell.

Q. And did you know Fred Buehl? A. Yes sir.

20 Q. Did Fred Buehl work for the Meader Atlas Company on December 17, 1924? A. Yes, sir.

Q. Prior to that date do you know how much wages Buehl received as foreman? A. Well, sometimes he would make twenty-eight, sometimes thirty and if he done extra watch on Saturday, which he usually done, or Sunday watch, I believe once or twice he had done it, they would give him an additional \$1.20 or \$3.40 for a Sunday watch.

30 Q. His maximum wages then were about how much? A. I believe twenty-eight dollars; figuring his overtime I would make it he received \$32.40 or \$32.50.

Q. What were his average wages per week?

MR. COX: I object unless this man kept the books and knows.

40 Q. Do you know what his average wages were? Did you see his pay envelope or see him get paid? A. Occasionally I would get his envelope and sometimes I would look at it. As a general rule I used to get the envelope from the superintendent and distribute it to the men.

Q. As a general rule you knew what Buehl got? A. Yes.

Joseph Huber—Direct.

MR. COX: I object. He said sometimes. There is nothing to show what was on the envelope or was not on the envelope.

THE COURT: He said he usually got the envelope.

Q. What were the average wages of Mr. Buehl per week? 10

MR. COX: I object.

THE COURT: Objection sustained.

A. \$28.50.

THE COURT: How can he fix an average unless he saw them all?

Q. Did you see the amount that he got paid most of the time? A. Most of the time I did, yes. 20

Q. Yes? A. That is when the superintendent gave me the envelopes to distribute amongst the men.

Q. How often did he give you the envelopes to distribute to the men? A. Well, probably every other week; sometimes for two or three weeks straight.

Q. And you then received the envelope from the superintendent belonging to Mr. Buehl? A. I received them all. 30

Q. And when you received the envelope for Mr. Buehl what were the wages in it? A. Well, as I say, sometimes thirty-two fifty; sometimes thirty-two dollars, according to what the man made during the week. That included his overtime and watching some times.

Q. Did he work over time often or not? A. Where the job worked overtime, he made it. If he had over time to do he staid there to finish the work. 40

Joseph Huber—Direct.

Q. Were you there in the Meader Atlas Works on December 17th, 1924 at 10:30 A. M.? A. I was in the office at the time talking.

10 Q. Did you see Mr. Buehl pass through with the truck? A. No; previous to that, about ten minutes before that I went into the mill to see how the men were getting along with the work.

Q. Yes, sir. A. And at the time I was in to examine this, Fred Buehl and Cash were loading a truck, loading— on a flat truck as we call them to go up to the second floor where these men were working.

Q. Were they fooling then? A. No, sir; there was no fooling going on.

20 Q. Please tell us whether you heard any fooling before the accident? A. No, sir; before I went for the car I walked to the elevator.

Q. Was there any fooling? A. There was no fooling, not then. Before I got on the elevator I walked around the cars to where the two men were working and when I got out of the elevator these two men were working then.

Q. Was there any fooling then? A. No, sir.

30 Q. Would you have heard if there was fooling?

MR. COX: I object to it as calling for a conclusion.

MR. STOVER: I think this is such a conclusion a man can testify. He was right near, right near the very place, and if there had been fooling he would have heard it.

40 A. Of course, that was my duty to see to the men. That is what I was getting paid for, to see that the men were working and doing work properly.

Joseph Huber—Direct.

MR. COX: I ask that that be stricken out.

THE COURT: Strike it out.

MR. COX: The question is there is all sorts of fooling.

THE COURT: That is the point. Some kind of fooling you could hear and some kind of fooling nobody could hear. 10

MR. STOVER: Yes.

THE COURT: And you asked the question whether he would have heard them if they were fooling or talking among themselves, or like that. Specify.

Q. If they were joking or talking among themselves would you have heard it? A. Yes, sir.

Q. Did they do so? A. No, sir; when I got to the men they were working. And the men on the second floor were performing their duty. 20

Q. And it was your business to watch the men? A. That is what I was instructed.

Q. You were paid for that? A. As far as I was concerned; yes, sir.

Q. Did you at that time, or shortly before, examine the condition of the elevator door? A. What, the condition of the doors?

Q. Yes. A. Why, I will tell you the truth, why, the elevator door, I got sick and tired looking at it. 30

MR. COX: I ask that that be stricken out as not being responsive.

Q. You do not tell us why. You do not tell us why. A. The elevator doors, in plain talk, were not working properly.

Q. Why weren't they in proper condition? A. They wouldn't close in the proper way. 40

Joseph Huber—Direct.

Q. What was the next thing you knew about the accident when you saw Buehl on the hand truck on the elevator? What was the next thing you saw or heard? A. In what way? How do you mean?

10 Q. Anything, what you observed? By the way, were you hurt at the elevator?

MR. COX: I object to that.

A. No; I wasn't hurt at the elevator.

MR. COX: Object to that as immaterial.

WITNESS: No; I wasn't hurt at the elevator.

Q. In the same place.

20 MR. COX: I object.

MR. STOVER: All right. Now, did you give Mr. Buehl any instructions about using the elevator?

WITNESS: I told him at the time, to run the elevator, like I did to all the men.

30 Q. You were the foreman of the works. What was the first thing you heard? You knew when Mr. Buehl was injured. A. After I left Mr. Buehl and Mr. Cash, and went to the office, and the superintendent, Mr. Campbell and I, we sat down there and we were talking about different seed. We were sitting there quite a while when I heard this colored man scream: "Oh, Chief! oh, Joe! Hurry up! Fred is caught in the elevator!"

40 Q. Yes. A. And with that Mr. Campbell and I—that is the superintendent—we ran out and Mr. Campbell ran to the elevator, bottom floor and he stood there a few minutes. And then he

Joseph Huber—Cross.

run up away from me. Where he run to I don't know. A little while after I seen Mr. Campbell coming down the elevator with this Fred Buehl, and I jumped on the elevator right away and helped him carry him out and laid him on some bags, which we could collect at the time. And I believe in the meantime, Mr. Campbell, he called for the ambulance. I couldn't say for sure whether he did or not, but I think he did. 10

Q. Do you know where he was taken to? A. Yes; I remember the ambulance came there and Mr. Campbell instructed me to go to the St. Mary's Hospital with him, which I did.

Q. And did you do so? A. And then from there I went and brought his wife, the lady there.

Q. He died four hours afterwards? A. How long after I don't know. Because I brought his wife there and I stood at the bedside with him for a while, and then finally I left the hospital and I left his wife there with him. 20

Q. Did you observe the condition of Mr. Buehl in regard to health before this accident? A. He was in the best health, to my knowledge.

MR. STOVER: Cross examine.

30

CROSS EXAMINATION BY MR. COX:

Q. These doors you say were out of order, they were the doors between the loading platform and the elevator, were they not? A. They were between where the man got hurted and on the second floor.

Q. I mean they were between the loading platform and the elevator itself. A. Yes; sure.

Q. And on the day of the accident those doors were fastened open, were they not? A. They were what? 40

Joseph Huber—Cross.

Q. Fastened open. A. Well, they were partly open; yes, because they wouldn't close themselves.

Q. I see. But they did not start to close each time the elevator went up, did they? A. No; they could not.

10 Q. They could not? A. They were not in working condition to do that.

Q. So they remained open all the time? A. So they remained open all the time. That is not all full, but just partly. The only way they would shut, you'd have to run the elevator up so far, probably two feet, and then walk around and shut them yourself. They would not shut.

Q. That is the only way they were out or order; they would not shut? A. There was a chain broke on them. Band broken on them.

20 Q. The chain being broken was the reason for them not shutting? A. They wouldn't shut; yes.

Q. The men were working there that day? A. You have to press on them with your hands and sometimes put a board on it and step on it.

Q. Wasn't there a board on them that day?

30 A. I believe there was. Every time you took the truck over you had to put the board over and take it up to work the elevator.

Q. On this day they were working? A. I believe they were.

(At this point a five minute intermission was taken.)

40 Q. Didn't they used to put a stick of wood between the door and the floor to hold that door open? A. Yes; that's what I said.

Joseph Huber—Cross.

Q. Wasn't that in there at the time on the day of the accident? A. The day of the accident, as I say, they used to have to put that down in order to hold the door down in its place. If you would not do that the door would probably come up about four inches; that would not allow the truck to go over. See?

10

Q. And that stick was in there, and used a stick there right straight along, didn't they? A. While the door was out of order; yes. But if the door was in proper order it wouldn't be necessary to put the stick there.

Q. The stick was there on the day of the accident? A. That I couldn't say, I didn't take notice, but as a general rule you would have to do that in order to get the door in the proper place.

20

Q. And that would keep the door open all the time? A. That would keep it down; yes.

Q. Did you see Mr. Buehl as he lay on the elevator before he was taken off? A. Why, yes, sir; I did.

Q. When did you see him? When they brought the elevator down first? A. When they brought the elevator down; yes.

Q. You did not see him before they brought the elevator down, did you? A. No.

30

Q. How long had you been talking to Mr. Campbell when this accident happened? A. Well, probably—I couldn't just exactly give you as to the minute, probably might have been ten, maybe fifteen, probably twenty. I couldn't give you the exact time.

Q. You had been in his office quite some time? A. I had been probably ten or fifteen minutes anyhow.

40

Joseph Huber—Cross.

Q. Those pay envelopes—did you ever make any record of what Mr. Buehl received? A. No, sir; I was never instructed to do it.

Q. And would you know how much was in the envelope? A. Well, that is by the writing on the outside.

10 Q. Writing on the outside? A. Name and the amount.

Q. Sometimes he used to get only twenty six dollars a week? A. That is according to the time he worked.

Q. That is according to the time he worked. Sometimes only twenty seven. A. Sometimes only twenty seven, and then if he done Sunday work, if we take turns, that would be three forty extra.

20 Q. And you can't tell how many times it was twenty seven dollars? A. Oh, no.

Q. Or how many times he got twenty eight? A. No; that would be too far. I wouldn't be able to keep it in my mind. See?

Q. You would not be able to keep it in your mind. You said Mr. Campbell was on the elevator when it came down with Mr. Buehl. Are you sure of that? Are you sure he had not gone to call the ambulance? A. That's what I say. I don't know whether Mr. Campbell had called the ambulance, or who had called it. Because Mr. Campbell left me on the run; whether he went to the second or third floor I couldn't really say, but when the elevator came downstairs, Mr. Campbell was on the elevator. I stated that before.

Oscar Sparmann—Direct.

OSCAR THEODORE PAUL SPARMANN a witness on behalf of the petitioner, sworn.

DIRECT EXAMINATION BY MR. STOVER:

Q. Mr. Sparmann, where do you live? A. 111 Bloomfield Street, Hoboken.

10

Q. 111 Bloomfield Street, Hoboken. Did you speak to the superintendent of the Meader Atlas Works on December 17th, 1924? A. No; on the 18th.

Q. All right. A. Next day after the accident was happened.

Q. Do you see the superintendent here? A. Yes; right straight there.

Q. What did the superintendent say to you or what did you say to him?

20

MR. COX: I object.

WITNESS: Well——

MR. COX: Just a minute.

THE COURT: Just a minute.

MR. COX: I object. Mr. Campbell, as the agent of the Meader Atlas Company has no power to bind them by any statement he may make or any admission.

MR. STOVER: I can state to the Court he is the superintendent. It is admitted that he is.

30

MR. COX: There is no admission he is superintendent, yet.

MR. STOVER: Please give me a little chance. I gave you full sway. Please exert a courtesy to me too. And also as a provision of the law is that your Honor is not confined to the strict rules of evidence and I think that here we have the agent, superintendent, speaking for and in behalf of the

40

Oscar Sparmann—Direct.

10 company, that is the only way a corporation can make admissions. I know for a time it was doubtful as to whether a company could make admissions. But the law has switched around, decisions to the effect they allow the boss, superintendent, overseer to bind the company; otherwise a corporation could not make any admissions. Also on the ground, if your Honor is doubtful whether this testimony should be heard or should not be heard, I call your attention to the fact that your Honor is not bound by the strict rules of evidence, by a provision of the Compensation Law.

20 Mr. Cox: I might say as to the provision that the Compensation Court is not bound by the strict rules of evidence as interpreted by a recent decision of the Court of Errors and Appeals, and the decision states, the intention of inserting that into the Compensation Act was for the purpose of allowing commissioners to hear cases without feeling that they would be reversed all the time they made a wrong decision on the evidence that was admitted, 30 but if there is a question that comes up as to the admission of evidence and the Court knows what the law is on the point, or what the rule of evidence is on the point, I understand the Court is under a duty to apply that rule of evidence. That is merely for the purpose of giving greater latitude to the Court and for the purpose of not having so many appeals, that that is made. As to the 40 balance, I think what Mr. Stover says is true, as far as making contracts and so on

Oscar Sparmann—Direct.

is concerned. Of course, a corporation cannot speak except through its agents. A case I am thinking of is Blackman against the West Jersey Railroad that is reported. That is where the conductor said to the woman after she got off the car, he said, "It is all my fault. I started the car too soon." They held he was not an agent of the company for the purpose of making admissions. 10

MR. STOVER: I am familiar with that. That is a car conductor is not able to make admissions. Of course not. A car conductor may only collect the money, but the superintendent of that same company could make admissions. I am well familiar with the car conductor or motorman. Their business is to steer the car or collect the fare; not to make admissions. But here we have the superintendent, the manager of the works, who employs them, superintends them; the highest man in the company at the scene. I contend he certainly, if anybody, has the right to admit in favor of the company. If he was not allowed to make any admission, the company could not do any business. 20 30

(Further argument of counsel.)

THE COURT: I will allow the question.

MR. COX: I will ask an exception.

I might also state, before the question is answered, the only proof that Mr. Campbell is superintendent is what they have said. One of their witnesses said he is the superintendent. And I said for the purpose of the record, this man is Mr. Campbell and I pointed to this man. That is how Mr. Campbell's name was mentioned. 40

Oscar Sparmann—Direct.

Q. Tell us what the superintendent said to you about Mr. Buehl the next day.

MR. COX: That is objectionable and exception.

10 A. Next day I was there with Mrs. Buehl, talked and asked about the funeral, you know. Who should attend to that. So we came to a talk, and then he said Buehl was an all around man, handy man, and he was good worker, and sober all the time. That is what he said to me. He never had a drink because he was every night in my house.

Q. Did the superintendent tell you that Mr. Buehl had been fooling that day? A. No; 20 nothing of the kind at all.

MR. STOVER: That is all. That is our case.

MR. COX: That is all.

MR. STOVER: That is all. That is our case.

30 MR. COX: At this time I would like to make a motion to have the petition dismissed on the ground that evidence of the petitioner clearly shows Mr. Buehl was not acting in the course of his employment at the time. There has been some testimony Mr. Buehl was ordered to run the elevator and was instructed to run the elevator and was allowed to run the elevator, all of which can very easily be admitted and for the purpose of this motion I am willing to admit it, but the evidence stands 40 Mr. Buehl's body was found after the accident in the back of the elevator on the furthest point from the control, behind the

James Cash—Direct.

truck and Mr. Pechulos said it was customary for the man who ran the elevator to stand at the controls and run them up and down. At the time this accident happened Mr. Buehl was away from his post, and not doing anything in connection with the elevator. He was doing something of his own. What it was, I don't know. **10**

THE COURT: I will deny the motion.

MR. COX: I ask an exception if the Court please.

JAMES CASH, a witness on behalf of the respondent, sworn. **20**

DIRECT EXAMINATION BY MR. COX:

Q. Mr. Cash, on or about December 17th, 1924, you were employed by the Meader Atlas Company? A. Yes.

Q. And you had been employed by them for some time before that, had you? A. Yes.

Q. About how long had you been employed by them? A. For nine or ten years. **30**

Q. For nine or ten years? A. Yes.

Q. And on December 17th, 1924, were you working with Mr. Frederick Buehl? A. I was working with Buehl, yes.

Q. What did your work consist of? A. Unloading a flat car.

Q. Were they flat cars or box cars? A. Box cars.

Q. Box cars that had a roof over them? A. Yes. **40**

James Cash—Direct.

Q. How did you unload them? A. We generally put ten bags on the flat truck off the car.

Q. On a flat truck? A. On a flat truck.

Q. And then what did you do with the truck when you put the bags on? A. After we loading the flat truck we put it on the elevator.

10 Q. On the elevator? A. Yes; and turn the handle around and leave it for the elevator man to take it up.

Q. Turn the handle around and the elevator man would take it up? A. Would take it up.

Q. On the day of this accident who was running the elevator on the morning of this day? A. Stanley.

Q. You mean Stanley Pechulos? A. Yes.

20 Q. Did you see anyone else run the elevator that morning? A. Not before. He was running that morning.

Q. Did you see Mr. Hanley run the elevator that morning? A. He took the elevator upstairs with the loaded truck on and then Hanley came down with him.

Q. He came down with him? A. He came down with him and went in the lavatory.

30 Q. He came down with him and went in the lavatory? A. Yes.

Q. And did he come out on the platform where you were? A. No.

Q. Or did he go inside? A. He went inside of the mill.

40 Q. These doors that were between the elevator and the outside of the building how were they fixed that day? A. They always open, and we loaded the flat truck and put it on the elevator and turn the handle around.

James Cash—Direct.

Q. Turned the handle around? A. Yes, Fred said, "Jim, I am going to take it up." I said, "No, Fred, leave it stay there until Stanley comes out of the lavatory." He said, "No, I am going up." I said, "If you are going up, I am coming off." He pulled the rope and he stepped behind the truck. 19

Q. He stepped what? A. He stepped behind the truck and squeezed behind the truck.

Q. Did he tell you why he was going to take the elevator? A. He said he was going up and when he got the elevator up he pull the truck back on this fellow going to get it off.

Q. He was going to pull it off? A. Yes.

(Question and answer repeated by the stenographer.) 20

Q. Was he supposed to pull the truck back on this fellow?

MR. STOMER: I object to that. It calls for a conclusion.

THE COURT: Objection sustained.

MR. COX: The only situation is, I do not know if it is clear to the court at this time what this man means. I would like to clear it up, if it is not. 33

Q. By pulling the truck back—

THE COURT: Ask him.

MR. COX: Beg your pardon?

THE COURT: Ask him.

Q. Was he going to pull it the way the fellows were going to pull it on the second floor? A. No. 40

James Cash—Direct.

MR. STOVER: I object. I object to what he was going to do. That implies he knew what was in this fellow's mind.

THE COURT: Objection sustained.

10 Q. Did he tell you why he was going to pull this truck back? A. Yes.

Q. Why? A. He said fooling like when a man pulls out he would pull back on it to hold the truck to keep him from pulling it off.

Q. Where was the last that you saw Mr. Buehl? A. Behind the truck squatting down.

Q. What position was he in? A. Squatting down like that, see, and the elevator was going up.

20 Q. Where were his hands? A. Behind the truck.

Q. Were they touching the truck? A. He had his hands on the axle, do you see? Hand on the axle.

Q. How many hands did he have on the axle? A. One.

Q. Where was the other hand? A. On the outside, like that.

30 Q. Do you know whether he had ever done this before or not?

MR. STOVER: I object.

MR. COX: I ask a ruling.

THE COURT: What?

MR. COX: I asked him if he had ever done this before.

THE COURT: Asked him if he?

40 Q. Do you know if he had ever held this truck before? A. He done the same thing—

James Cash—Direct.

MR. STOVER: Object to that. The answer is yes or no.

WITNESS: Yes.

Q. Did he ever do it? A. Yes.

MR. STOVER: Object to the question if he ever did before. Same reason as your Honor's reason before, whether he ever did it before. 10

THE COURT: Does he know?

(Testimony repeated by the stenographer.)

MR. STOVER: You see what the man did before. I will say the same as the court said last time, if we fooled two days before that would not show we were fooling two days hence.

MR. COX: The testimony is now he was fooling at this time. 20

THE COURT: I will sustain the objection.

MR. COX: I will ask an exception if the court please.

Q. Do you know where the rope is located in that elevator that runs the elevator? A. Yes, sir; the rope hangs down.

Q. Hangs down? A. Yes; the rope hangs down, come between the elevator and the wall. 30

Q. Was it on the part of the elevator that Mr. Buehl was on when he was hurt? A. On the part?

Q. Was it in the same corner that Mr. Buehl was hurt? A. Same corner, yes, sir.

Q. The rope was on the same side Mr. Buehl was hurt? A. Same side.

Q. Just a minute. This is where the siding was where the car was were unloading. Here is the platform across which you wheel those 40

James Cash—Cross.

trucks. This is the elevator. This is the inside of the building. Will you point on it with your pencil, show me where the control of that elevator was located? A. Right here.

Q. Here where? A. On this corner.

10 Q. That is where the elevator or control on the elevator was? A. Yes. And Fred was over there.

Q. Here is the elevator, as you would be facing it from the outside of the building. Now, show me where that control for the elevator was located. A. Over here.

Q. Right over here? Indicating point "A". Whereabouts was Fred? A. Over here.

Q. Over there? A. (Witness indicates.)

20 Q. And will you put a mark there? A. (Witness does so.)

Q. Call that mark "C". Did you ever run that elevator? A. Once in a while I run it.

Q. When you go from the first to the second floor did you have to stop the elevator at the second floor or would it stop itself? A. Stop itself. Put the clutch in.

Q. What is that? A. Put the clutch in, it stopped itself.

30 MR. COX: Cross examine the witness.

CROSS EXAMINATION BY MR. STOVER:

1 Q. Mr. Cash, where do you live? A. I live 119; 315.

2 Q. 119? A. Yes, 119th Street.

Q. What is the number? A. 315.

Q. Is it West or East New York? A. West.

40 Q. Are you employed by the Meader Atlas Company yet? A. Not just at present.

Q. Have you been paid for coming over here? A. No.

James Cash—Cross.

Q. Have you been promised payment? A. No.

Q. Have you been subpoenaed to come over here? A. Yes.

Q. And you expect payment, don't you, for your time and expenses? A. Sure.

Q. Well, now, if you have not been promised to be paid, how is it that you expect payment? 10

A. Well, they pay you to attend the court, don't they?

Q. Did they tell you you were going to be paid and paid well for your work? A. No; no.

Q. You know that the doors of this elevator were defective, don't you? You know that, don't you? A. I don't know.

Q. Well, you know that the chains were broken on this door. A. If the chains were broken you could not use that side; couldn't open the door. 20

Q. Don't you know as a matter of fact those chains were broken and that the door did not properly close? A. No; if the chain was broke you couldn't use the door at all, see.

Q. You know the doors could not properly close, don't you? A. They closed as much as they always does, as I know of.

Q. They did not always close; they always stay a little open; they would not be closed, would they? A. I don't know. They closed as much as they always does. 30

Q. Don't you know the foreman here went again and again to the superintendent and complained to him about the defective doors?

MR. COX: I object.

A. He may have told that to the foreman. I don't know that, see? The super, I mean. 40

Q. Will you say that the doors were in good

James Cash—Cross.

running order, good shape? A. I can't say if they were in good running order, but I know the chain wasn't broken. I only speak what I know.

Q. You used those doors often? A. I used those doors.

10 Q. You won't say as to whether they were in good or bad condition, will you? A. The chain wasn't broke. You asked me if the chain wasn't broke. I don't know. They weren't broke.

Q. You do know that the doors were not closed entirely? A. It had a little opening in there.

Q. It was always a little opening? A. Yes.

Q. If the doors had been in good condition they would have been closed entirely, wouldn't they?

20 MR. COX: I object to that.

A. I don't know that.

Q. If those doors had closed entirely, then you know this would not have happened, this accident, don't you?

MR. COX: I object to that.

A. I don't know that.

THE COURT: Just a minute.

30 MR. COX: I object. It calls for a conclusion.

THE COURT: Objection sustained.

MR. STOVER: It is cross examination.

THE COURT: Calling for a conclusion on cross examination.

Q. If these doors had closed entirely, Buehl, he would have been right inside the elevator, would he? A. He was inside of the elevator.

40 MR. COX: I object, the same thing.

WITNESS: He was inside of the elevator.

THE COURT: That is a conclusion.

James Cash—Cross.

Q. Was Buhl drunk at the time? A. Drunk?

Q. Yes. A. I don't think so.

Q. He was always a good worker, wasn't he?

A. Yes.

Q. Now where were you when this accident happened? In what part of the elevator? A. Standing on the outside. 10

Q. Yes. You could not see everything that happened, could you? A. I see it—

Q. Could you or did you see where Mr. Buehl had his hands then? A. Do you want me to tell you?

Q. Well, yes or no. A. He had his hands on the axle of the truck.

Q. Yes. A. See?

Q. Were you able to see the whole time or did you see the whole time where he had his hands? 20

A. Yes. I seen it, and I tell him he must not go up. Must not take the elevator up.

Q. Yes. A. And I don't want to holler for the chief.

Q. Did he take his hands off? Do you know or don't you know? A. He had the door closed then.

Q. The door was closed then? A. Yes.

Q. And after it was closed you did not see what he did with his hands? A. No; I didn't see that. 30

Q. And you did not see if he pulled back the truck? A. Yes.

Q. How could you see if the doors were closed? A. The door wasn't closed then. The door only closed after you start the elevator there.

Q. The accident did not happen then? A. Yes.

Q. Did it? A. Sure it happened then, at the time. At the time that happened. 40

James Cash—Cross.

Q. I thought you said the door closed and you could not see his hands? A. No; I said the door closed after.

Q. You said he was holding the truck back? A. Yes.

70 Q. Do you know how many bags were on that truck? A. Yes.

Q. There were ten bags there? A. Yes, sir.

Q. And each bags weighs one hundred pounds, is that so? A. Yes.

Q. And that is one thousand pounds, is that right? A. Yes.

Q. Do you now wish to tell us that Buehl held back a thousand pounds?

20 MR. COX: I object to that as a conclusion.

A. He didn't have one thousand pounds; he had it on the truck.

THE COURT: Wait a minute.

MR. COX: I object to that as calling for a conclusion and arguing with the witness, both.

THE COURT: I will allow it.

MR. COX: I will ask an exception.

30 Q. Do you mean to tell us that he forced back one thousand pounds? A. I am only telling you what I seen, what I know. That's all. I aint trying to tell any more.

Q. You did not see everything happened, did you? A. Well, I did when I stopped the elevator.

Q. Don't you know it was impossible for Buehl to hold back that truck containing one thousand pounds, as a matter of fact?

40 MR. COX: I object to that as calling for a conclusion.

Lorin Campbell—Direct.

THE COURT: I think you have a wrong conception. He did not hold back the truck at that time. The way I understand the case, I think he was to hold back the truck and when he got to the second floor they would try to pull it off.

10

MR. STOVER: I see

THE COURT: Is that right?

WITNESS: That's right, sir.

THE COURT: He was not holding back the truck in the elevator.

MR. COX: That is all. All right.

LORIN CAMPBELL, a witness on behalf of the 20
respondent, sworn.

DIRECT EXAMINATION BY MR. COX:

Q. Mr. Campbell, you are the superintendent of the Meader Atlas Company at the time this accident happened? A. I was.

Q. And can you tell us what you first knew of an accident occurring? A. Hearing screams coming from Mr. Cash and hollering at the elevator. 30

Q. What did you do? A. I immediately run to the inside elevator door.

Q. Inside elevator door. During that time were the outside elevator doors closed? A. When we opened the inside door the outside was then closed.

Q. Was then closed? A. Yes.

Q. And those were the doors those people have testified were not working? A. They testified to that effect. 40

Lorin Campbell—Direct.

Q. Are you acquainted with the machinery that runs the outside doors of the elevator? A. Yes, sir.

10 Q. Do you know whether or not any chain was broken on the outside door? A. The chain was broken was repaired by Joe Huber some three months before the affair occurred.

Q. Would it have been possible for those doors to close if the chain had broken? A. No, those doors are equal balanced doors.

Q. If the chain was broken would the doors close? A. If the chain was broken on that side they would not close.

20 Q. You are sure they were closed at the time this accident happened? A. At the time this accident happened they were closed in the elevator.

Q. Did you get down on the elevator when you saw Mr. Buehl there? A. I did; on the second floor.

Q. Where was Mr. Buehl lying on the elevator with reference to the control of the elevator? A. He was lying at the door, on the platform between the outside door, beyond the truck.

30 Q. Behind the truck. I will ask you to mark on this just where you saw Mr. Buehl lying at the time you got there. A. At that point (indicating).

Q. Indicating the point "B". Mr. Hubert testified you came down with Mr. Buehl. Is that so? A. No.

Q. You had gone to call the ambulance? A. Ordered the elevator down and then went to call the ambulance.

40 Q. I see. Can you tell us how much Mr. Buehl was earning at the Meader Atlas Company at the time of the accident? A. Forty eight cents when he was first employed and later on fifty.

Lorin Campbell—Cross.

Q. What were his average weekly wages? A. About twenty-eight twenty-five.

Q. Twenty-eight and a quarter? A. Yes.

Q. And you were the one who made out the pay envelope each week? A. I did not.

Q. Who made it out, do you know? A. Our accountant, Mr. Robinson. 10

Q. And he is not in court? A. No; I made out the time and Mr. Robinson filled in the time slips in the envelope himself.

Q. You can tell us from making out the time he got twenty-eight and a quarter on an average? A. About that; I wouldn't say exactly. He worked overtime on various periods. Especially on a Sunday.

Mr. COX: That is all. 20

CROSS EXAMINATION BY MR. STOVER:

Q. Mr. Cambell, this gentleman here, was he your foreman? A. He was.

Q. Do you remember him complaining to you again and again that the doors were defective?

A. I do not.

Q. And would you say that he never complained to you about the doors being defective? 30

A. I would not.

Q. Well, would you swear he did not say anything about the doors being defective? A. I would not.

Q. What is that? A. I would not.

Q. I ask you to make this clear: I ask you, will you swear whether he never complained to you about the doors, will you or will you not? A. I will swear neither way. 40

Lorin Campbell—Cross.

Q. Why not? A. Because I don't remember.

Q. Oh, you don't remember. Then your memory is rather hazy about the condition of these doors; is that right? A. Possibly.

10 Q. And when you say the chains were all right you may be mistaken on it, too, may you not? A. No sir; no, sir.

Q. And when you say they were closed you may be mistaken there, may you not? A. No, sir.

Q. If you are so sure about those points, why aren't you so sure about the other points of the foreman making complaints to you about those doors? A. Because you are going back a period of two or three years.

20 Q. Would you say the last three months preceding the accident he did not make complaints to you about the doors? A. I don't recall any.

Q. I see. And for all you know he may have made complaints to you about the doors? A. He may.

Q. And you do not know whether you had them all repaired or not, when he made those complaints to you? You would not remember that, would you? A. What is that?

30 Q. You would not remember as to whether you had them repaired or not after he made those complaints, would you? A. I don't get you clearly.

Q. You do not remember whether he complained to you about the doors the last three months preceding the accident, do you? A. No; I don't recall.

40 Q. You do not recall whether repairs were made as the result of his complaint to you, do you? A. There were no repairs made on those doors.

Q. Were the chains broken? A. They were

Lorin Campbell—Cross.

broken one time and repaired by him.

Q. By who? A. By Hubert.

Q. I see. The pay envelope, you say he made how much on an average per week? A. Around twenty-eight dollars and twenty-five cents.

Q. And how many times did you see the pay envelope of Mr. Buehl? A. Every time. 10

Q. Every time. Was he paid extra for overtime? A. He was.

Q. And can you tell us during the last two weeks how many days he worked overtime preceding the accident? A. I cannot.

Q. If you saw the pay envelope, and you testified about the pay he received, why don't you know whether he worked overtime or not? How many days during the two weeks preceding the accident? 20

MR. COX: I object to this. That is argument with the witness.

THE COURT: Objection sustained.

Q. I see. Well, as a matter of fact, you do not know how long and how many times during the last two weeks he worked overtime, do you? A. No.

Q. Then you do not know how much he was paid on an average, do you? A. On an average what? Overtime? 30

Q. Yes. A. Would not average over three hours a week at any time.

Q. I see. You saw your witness, Mr. Sparmann, in court here, the last witness produced by the plaintiff, did you not? A. I did.

Q. And did you speak to him on December 18th, 1924? A. I probably did, or some day thereabouts. 40

Lorin Campbell—Cross.

Q. Did you or did you not? A. I don't know. Not on the 18th. I can't remember.

Q. Did you speak to him shortly after the accident? A. I did.

30 Q. And did you tell him that he was a good man, that is, Mr. Buehl and worked steadily and was a sober man and an industrious man?

MR. COX: I object to this.

A. I didn't tell him all those—

MR. COX: It is immaterial whether he told him that or not. We have not denied he was a good man and an industrious man.

MR. STOVER: I think that is pertinent to their claim.

20

MR. COX: It might be pertinent—

MR. STOVER: —if the claim is proven, which I say, has not been proven. Their answer is that this man was fooling around. A good man would not fool around and make jokes and do that in the course of his time.

THE COURT: I do not see how that is material.

(Discussion of counsel.)

30

MR. STOVER: I withdraw the question.

Q. Do you remember what you said to Mr. Sparmann at the time of the accident or shortly after? A. I may have told him he was a good worker.

Q. You still think so? A. Absolutely.

Q. And you have no complaints against him, is that right? A. I did.

40

MR. STOVER: I am finished.

Lorin Campbell—Re-Direct.

RE-DIRECT EXAMINATION BY MR. COX:

Q. What is the complaint?

MR. STOVER: I object to that.

MR. COX: Why? On what ground?

MR. STOVER: On the ground it is not proper. I did not ask him about that. Also 10
on the ground——

MR. COX: You brought out, if he had complaints.

MR. STOVER: Now, please! Please! And also on the ground that he had said that the man was a sober and industrious man.

MR. COX: I think he opened the door for it by asking him whether he was a sober, industrious man and whether he ever had 20
complaints.

MR. STOVER: I simply asked him what did he say to Mr. Sparmann.

MR. COX: Oh, no.

MR. STOVER: And then I asked him if he had any complaint.

MR. COX: Yes.

MR. STOVER: I did not ask him what the complaints were, I feel——

THE COURT: I will allow the question. 30

Q. What was the complaint?

MR. STOVER: And when?

A. A day or two days I saw him on the second floor fooling with another employee and I believe Anderson was employed at that time and censured him from further fooling in the plant, industrial plant.

Q. Are you the man who designated the jobs 40

*Lorin Campbell—Re-Direct.**Decision of Deputy Commissioner.*

these men were to take during the day? A. All work came from my department at the time. But I may have given to Hubert to carry forth when I couldn't do it myself.

10

MR. COX: That is all.

MR. STOVER: Well, that is all.

MR. COX: That is the respondent's case, if the court please.

MR. STOVER: That is our case.

THE COURT: Care to sum up?

MR. STOVER: Yes. I would like to sum up.

(Mr. Cox sums up on behalf of the respondent.)

20

(Mr. Stover sums up on behalf of the petitioner.)

30

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THE COURT: In this case the only defense is put up is whether the arrident arose out of and in the course of his employment, and the defense being that the accident was caused as the result of skylarking. The evidence really resolves itself to the testimony as to what happened when the man got on the elevator. Mr. Cash testifies he got on the elevator, and the man was hiding behind the truck so as to hold the truck so that the man on the next floor couldn't pull it off. There seems to be no doubt but what it was part of the employment of all the men to run the elevator. The men did run it. I don't think the fact that he ran the elevator and took the truck of feed up to the second floor put him out of the course of his employment. I think that can be assumed. The burden is on the respondent to prove skylarking. The

Decision of Deputy Commissioner.

question is whether he has done it or not. Mr. Cash has testified that was the intention, but I fail to see where the respondent has proven that because of his going up, getting behind the truck, that is the reason he had the injury. There is no proof of that. I will grant you he went up behind the truck, but there is no proof he was injured by doing that. 10

MR. COX: If I may interrupt the court, I think the petitioner's own testimony was you could just squeeze in behind the truck, between the truck and the wall.

THE COURT: I will grant you that, but I think you have to go further than that. I am going to make an award in this case. I will make an award, figuring the wages at \$28.25, as testified to by the respondent. The rate of compensation would be forty per cent of that amount to the widow for a period of three hundred weeks, and his child. At the end of the three hundred weeks the rate would drop down to thirty-five per cent of \$28.25 for a period until the child arrives at the age of sixteen years. I will allow a funeral bill of \$150, and I guess there were no medical expenses. 20 30

(Discussion as to counsel fee.)

THE COURT: The point is, Mr. Stover, I feel you ought to have a counsel fee of more than \$200, but I don't feel it should be all chargeable to the respondent. The respondent rightfully thought they had a good defense, and if a respondent has a good defense they have the right to be heard. But I have 40

had orders from the Commissioner of Labor I should not allow a counsel fee of over \$200, without taking it up personally with him. I will therefore let you take the matter up with the Commissioner of Labor as to fixing a counsel fee.

10 Certification of Deputy Commissioner.

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

CHARLES E. CORLIUS,
Deputy Commissioner.

20 Certification of Stenographer.

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

Court Reporter.

30

40

Finding of Facts and Determination.

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

ELIZABETH BUEHL, wife and de-
pendent of FREDERICK BUEHL,
(Fatal),

Petitioner,

vs.

MEADER-ATLAS COMPANY,

Respondent.

10

On Petition
for Com-
pensation.
17304.

20

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

1. That this is a proceeding brought by Elizabeth Buehl, and against the above named Meader-Atlas Co., under an act entitled "An act prescribing the liability of an employer to make compensation for injuries resulting in death received by an employee in the course of employ-
ment, establishing an elective schedule of compensation and regulating procedure for the determination of liability and compensation there-
under," approved April 4th, 1911, and the acts amendatory thereof and supplemental thereto; that a petition was filed on or about the 15th day of January, 1925, that an order was made setting the same down for hearing for the 22nd day of May, 1925, which was adjourned and continued to May 29, 1925, that process was duly served

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40

Findings of Fact, and Determination.

upon the respondent, and that the answer of the respondent was duly filed, that the case came on for hearing on the 29th day of May, 1925, which hearing was held in the presence of Edward Stover, attorney for the petitioner, and Mr. Cox, of the office of Edwards & Smith, attorneys for the respondent, on which day both parties produced witnesses who were examined in the presence of said counsel.

10

2. That the petitioner's husband Frederick Buehl was employed by the respondent to assist generally, cart in and out feed, and run the elevator some months prior to the day of the accident, and that he continued in such employment up to December 17, 1924, and that his duties consisted in working as above stated.

20

3. That the petitioner's husband Frederick Buehl at the time of the injury received for his services average wages amounting to (\$28.25) twenty eight dollars and twenty five cents, per week.

30

4. That on the 17th day of December, 1924, the petitioner's husband Frederick Buehl sustained personal injuries as a result of an accident, from which he died; that the said accident consisted of that while operating an elevator of respondent, decedent's arm became wedged between the floor and the car, his arm was broken, his body was badly crushed, resulting in his death about four hours later, at the hospital, and that the said accident arose out of and in the course of petitioner's husband's employment.

40

5. That the respondent had actual knowledge of the occurrence of the said injury.

6. That the said deceased left two dependents, who were wholly dependent on the deceased at the time of the accident and death, namely his wife this petitioner, Elizabeth Buehl, and his one

Findings of Fact, and Determination.

natural child Oscar Erick Buehl, born August 7th, 1924.

7. That a reasonable funeral bill for the burial of deceased incurred was \$150.

8. I find therefore that the said Elizabeth Buehl, petitioner, is entitled on behalf of herself and a child, Oscar Erik Buehl, to compensation for 300 weeks of 40% of deceased's weekly wages of \$28.25, and at the termination of the 300 weeks compensation at the rate of 35% of \$28.25, deceased's weekly wages, until the said Oscar Erik Buehl arrives at the age of sixteen years. 10

9. Said petitioner is entitled to \$150.00 for funeral expenses.

10. The attorney for the petitioner, Edward Stover, is entitled to a fee in the sum of \$300 of which \$200.00 is payable by respondent, and \$100.00 by petitioner. 20

It is therefore on this 22nd day of June, 1925 ORDERED that judgment final be entered in favor of the petitioner, Elizabeth Buehl, and against the respondent Meader Atlas Co. for compensation on behalf of the said Elizabeth Buehl and her child Oscar Erick Buehl in the sum of \$11.30 per week for a period of 300 weeks, and further compensation in the sum of \$9.89 per week for that period of time from the termination of the 300 weeks until the said Oscar Erick Buehl shall arrive at the age of 16 years; also funeral expenses of \$150.00. 30

It is further ordered that respondent pay the attorney for petitioner a counsel fee of \$200.00, and that petitioner pay her attorney a fee of \$100.00. 40

CHARLES E. CORBIN,
Deputy Commissioner.

**Order Dismissing Appeal, Confirming
Determination and Allowing Counsel
Fee, etc.**

HUDSON COUNTY COURT OF COMMON PLEAS.

10 ELIZABETH BUEHL, et al.,
Petitioner-Appellee,
vs.
MEADER ATLAS COMPANY,
Respondent-Appellant.

20 An appeal having been taken from the Deter-
mination and Judgment of the New Jersey
Department of Labor, Workmen's Compensation
Bureau, entered in the above-entitled cause, and
the matter having come on for hearing and argu-
ment on November 4, 1925 in the Hudson
County Court of Common Pleas, and then being
continued to November 13, 1925 at which time
the appeal and the argument were heard, and
the Court having heard the argument of Ray-
mond Dawson, of Edwards & Smith, attorneys
30 of the respondent-appellant, and Edward Stover,
Attorney for the Petitioner-Appellee, and the
Court having found that the finding of facts
and determination were correct, and that the
appeal should be dismissed, it is on this 16th
day of November, 1925 ORDERED that the appeal
taken by the respondent-appellant be and the

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Order Dismissing Appeal by Common Pleas Court.

same is hereby dismissed, and the finding of facts and determination and judgment stand, and be in full force and effect.

AND IT IS FURTHER ORDERED that in addition to the counsel fee allowed to Edward Stover, he receive the further sum of \$500 from the respondent-appellant with taxed costs forthwith. 10

AND IT IS FURTHER ORDERED that execution do issue as heretofore provided by law as if the said appeal had not been taken, and that execution also be issued for the said fee of \$500.00 and costs.

ROBERT KINKEAD,
Judge Hudson Co. Court of Common
Pleas.

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Writ of Certiorari.

(Issued Feb. 26, 1926.)

NEW JERSEY, SS:

[L. S.] THE STATE OF NEW JERSEY, to the
Court of Common Pleas in and for the10 County of Hudson, and John J. McGovern, Clerk
of the said Court, and Elizabeth Buehl, GREETING:

We being willing for certain reasons to be certified of and concerning a certain determination and judgment rendered on the 13th day of November, 1925, by the Honorable Robert V. Kinkead, one of the judges of the said Court of Common Pleas, in and for the said County of Hudson, in certain proceedings brought against Meader Atlas Co., respondent, for the determination and recovery of compensation under an Act of the Legislature of the State of New Jersey entitled "An Act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation and regulating the procedure for the determination of liability and compensation thereunder", approved April 4, 1911,

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30 and acts amendatory thereof and supplemental thereto, we command you that the said determination and judgment, together with all proceedings for the making of the same and all things touching and concerning the same, as fully and entirely as before you they remain or are in your custody or control, you do certify and send together with this Writ, to our Justices of our Supreme Court of Judicature, at Trenton, on the Fifth day of March 1926, that therein may be caused to be done what of right and according to law ought to be done.

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WITNESS, the Honorable WILLIAM S. GUMMERE,
Chief Justice of the said Supreme Court, at
Trenton, this 26th day of February 1926.

EDWARD J. KELLEHER,
Clerk.

EDWARDS & SMITH,
Attorneys.

[Endorsed:]

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Allocatur:

Let the within Writ be allowed
Feb. 18, 1926.

JAMES F. MINTURN,
J. S. C.

Reasons on Certiorari.

(Filed April 3, 1926).

NEW JERSEY SUPREME COURT.

MEADER ATLAS COMPANY,

Prosecutor,

vs.

FREDERICK BUHL and ELIZABETH
BUHL,

Defendants.

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

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FIRST: The said Workmen's Compensation

Reasons on Certiorari.

Bureau was without jurisdiction to entertain the said petition and to make an order for compensation, because the petitioner was not entitled to compensation under the provisions of the said laws, unless the petitioner sustained an injury by accident arising out of and in the course of the employment, and unless the injury which the petitioner suffered was due to an injury by accident arising out of and in the course of the employment.

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SECOND: It did not appear by a preponderance of the evidence that the petitioner sustained an injury by accident arising out of and in the course of the employment, and that the injury which the petitioner suffered was due to an accident arising out of and in the course of the employment.

THIRD: It appeared by the evidence that the injury which the petitioner suffered arose while petitioner was not acting in the scope of his employment but was engaged in the playing of a practical joke, or engaged in horseplay.

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WALTER L. GLENNEY,
EDWARDS & SMITH,
Attorneys of Prosecutor.

Opinion of the Supreme Court.

NEW JERSEY SUPREME COURT.

 MEADER ATLAS COMPANY,

Prosecutor,
v.

FREDERICK BUEHL, et ux,

Defendants.

 On
 Certiorari.

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No. 239. May Term, 1926.

Submitted May Term, 1926; decided October 7th, 1926.

Before: Justices PARKER, BLACK and CAMPBELL.

For the Prosecutor: Messrs. Edwards & Smith
 and Walter L. Glenney.

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For the Defendants: Mr. Edward Stover.

PER CURIAM:

The certiorari was issued in this case to review a judgment of the Hudson County Court of Common Pleas affirming an award made by the Workmen's Compensation Bureau in favor of the defendant Elizabeth Buehl. The accident occurred on December 17, 1924. The prosecutor's point in the case is that the decedent Frederick Buehl was not injured in an accident arising in and out of the course of his employment. The testimony taken before Charles E. Corbin, the Deputy Commissioner in the Workmen's Compensation Bureau is quite voluminous. Our reading of the testimony satisfies us that the conclusion reached by him was correct and, that it was not error for the Hudson County Court of Common Pleas to affirm the judgment. The judgment of that court is affirmed and the writ of certiorari is dismissed with costs.

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Notice and Grounds of Appeal.

NEW JERSEY SUPREME COURT.

10	<p>MEADER ATLAS COMPANY, <i>Prosecutor,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>FREDERICK BUEHL, et ux, <i>Defendants.</i></p>	<p>On Certiorari.</p>
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To:

EDWARD STOVER, Attorney of Defendants.

Sir:

20 TAKE NOTICE that the prosecutor appeals to the New Jersey Court of Errors and Appeals, from the whole of the judgment entered in the above entitled matter, upon the following ground:

30 1. The Supreme Court erred in affirming the judgment of the Hudson County Court of Common Pleas, which judgment affirmed the judgment of the Workmen's Compensation Bureau making an award to petitioners (defendants) herein, for that it appears that the injury causing the death of petitioner's decedent did not occur in an accident arising out of and in the course of his employment.

Respectfully,

EDWARDS & SMITH.

Attorneys of Prosecutor.

Dated: Dec. 10, 1926.

New Jersey Court of Errors and Appeals.

THE MEADER ATLAS COMPANY, <i>Prosecutor-Appellant,</i> <i>vs.</i> ELIZABETH BUEHL, <i>Defendant-Appellee.</i>	}	Action at Law.	10
		On Appeal from Su- preme Court.	

BRIEF FOR THE PROSECUTOR-APPELLANT. 20

Statement.

This is an appeal from a judgment of the New Jersey Supreme Court, confirming a judgment of the Hudson County Court of Common Pleas, sustaining an award made by the Workmen's Compensation Bureau in the above-entitled matter.

Facts. 30

On December 17, 1924, the respondent-appellant company conducted a grain and feed business, having a warehouse in Hoboken, New Jersey, for the purpose of storing their goods until they were sold. A railroad siding ran the length of one side of the building on which cars were placed to be unloaded and their contents were stored in the warehouse. Along this side of the building, between the warehouse and the track, 40

there ran a platform used in unloading the cars. From this platform several doors opened into the warehouse. At one of these doorways was a freight elevator (pp. 37-38), which was used for lifting trucks loaded with bags of grain and feed to the second and third floors of the building. The elevator was separated from the outside of the building by doors which closed automatically when the elevator left the first floor. 10
 Opposite the doorway leading from the outside of the building to the elevator was another doorway leading from the elevator shaft to the first floor of the warehouse. This doorway was also provided with doors which closed automatically as the elevator left the first floor. Access was gained to the elevator on the second and third floors through doors directly over the one on the first floor, inside the warehouse, leading from 20
 the elevator shaft to the floor of the warehouse.

The elevator itself consisted of a flat platform. It had no sides. It was operated by control ropes located in the inside right-hand corner of the elevator as one faced the inside of the building; that is, the corner of the elevator which would be to the right of and all the way across the elevator from one entering the elevator through the door leading from the loading platform to the elevator shaft (p. 39). 30

On the 17th of December, 1924, several carloads of grain or feed were being unloaded and the grain or feed stored on the second floor of the warehouse. For this purpose, hand trucks were being used. The truck was a four-wheeled truck having a handle attached thereto, by means of which it was pulled. There were two of these trucks in use. A truck would be loaded from the box cars and run on the elevator at the 40
 first floor. The truck was so long that, in order

to get it on the elevator, its handle had to be turned to one side. Between the rear of the truck and the edge of the elevator, there remained only a small space, so that, if one wanted to get behind the truck, he would have to squeeze himself in.

The hand trucks were loaded by Frederick Buehl (defendant's intestate) and James Cash at the freight cars, were drawn onto the elevator by these men, and were taken up, on the elevator, to the second floor by an elevator man named Pechulis (p. 45). On the second floor, the loaded truck was drawn off by Roy Anderson and Joseph Hanley, and an empty one placed on the elevator and taken down. 10

During the morning of the day on which decedent was injured, Hanley, one of the men working on the second floor, wanted to go to the lavatory on the first floor, and for that purpose asked Pechulis, the elevator man, to help Anderson on the second floor, while he, Hanley, took the elevator down, went to the lavatory, and brought the elevator back (pp. 31-49). Hanley took the elevator down to the first floor and went through the doorway into the warehouse to the lavatory. Upon the elevator reaching the first floor, the doors leading to the platform above-mentioned, opened automatically. Cash and Buehl loaded the full truck on the elevator and took the empty one off (p. 68). Buehl then said to Cash that he was going to run the elevator up to the second floor and play a joke on the man on the second floor by hiding behind the loaded truck and holding it back when they went to pull it off (p. 69), and went upon the elevator. The elevator was equipped with a clutch which automatically stopped it at the second floor, and the operator could so leave the control ropes and 20
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hide, as he stated his intention was. Cash tried to dissuade Buehl from doing this, but could not (pp. 69-70). Buehl started the elevator by use of the control ropes, and then crossed to the rear of the elevator and squeezed in between the rear of the truck and the edge of the elevator (p. 70), assumed a stooping position, his left hand holding the axle of the truck, and his right arm hanging outside of the elevator. The elevator was then rising and the doors closing. The doors closed and, shortly thereafter, Buehl was heard to scream. The elevator was finally stopped and he was found with his right arm wedged between the floor of the elevator and the outside wall, and his side badly crushed. He was on the other side of the elevator from the control ropes and where he was when he had last been seen by Cash (p. 46), to wit, behind the truck.

All the men at the respondent-appellant's plant were familiar with the operation of the elevator and capable of running it. One particular man, however, was assigned to its operation when merchandise was being lifted from the first to other floors (p. 49).

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POINT I.-

The decedent was not injured in an accident arising out of and in the course of his employment.

It is well established by our courts that the workman must have sustained his injury in an accident arising out of and in the course of his employment. 10

Bryant vs. Fissell, 84 N. J. L. 72;
Hulley vs. Moosbrugger, 88 N. J. L. 161.

It is an equally well-established rule of law, which applies as well to trials in the Workmen's Compensation Bureau as to the law courts, that the party instituting the suit must establish his case by the preponderance of the evidence. 20

It, therefore, becomes necessary to examine the evidence in the case at bar with this thought in mind to see if the petitioner has succeeded in her duty, and has proven the necessary elements of her case by such preponderance of evidence.

The case is a singular one in that throughout the record there does not appear any conflict in testimony on any particular point. The defendant's witnesses are all in accord with the theory and testimony of the prosecutor-appellant. 30

The defendant proved in her case that on December 17, 1924, her husband, Frederick Buehl, an apparently healthy man, was in the employ of the Meader Atlas Company, the prosecutor-appellant in the case at bar, and that the prosecutor-appellant had in its warehouse an elevator which had been put in charge of one, Stanley Pechulis (pp. 31, 49-51). The defendant-appellee also showed that different men were accustomed to run the elevator, with the knowledge of the 40

prosecutor-appellant's foreman, should the regular operator chance to be absent temporarily (p. 31). The proof also showed that on the above day the employees were engaged in unloading a freight car filled with bags of grain and storing them on the second floor, the elevator being used to lift the grain from the first to the second floor. Pechulis was in charge of the elevator on that day (p. 52), Buehl and Cash were working on the first floor (pp. 36-37), and Anderson and Hanley were working on the second floor (p. 45). Hanley, desiring to use the toilet on the ground floor, got Pechulis to assist Anderson while he, Hanley, took the elevator down (pp. 49-51). The elevator was heard to start up and a man screamed as if in pain (p. 31). The elevator was stopped and Buehl was found in the elevator in an injured condition. He was taken to the hospital, where he died the same day. No doctor was called to show that he died of any injuries received on the elevator.

The above constituted the defendant-appellee's case.

The witnesses of the defendant-appellee admitted on cross examination that Mr. Buehl had been in the habit of playing practical jokes at the plant of the prosecutor-appellant (p. 43), and that, at the time he was injured, he was not where he should have been in the ordinary operation of the elevator, namely, at the control ropes (pp. 40-41), but that he had gone to the other side of the elevator from the side where the control ropes were located (pp. 40-41), and had squeezed in between the rear of the loaded hand truck on the elevator and the edge of the elevator (p. 42). They also testified that Buehl's arm was caught between the edge of the elevator and the outside shaft wall (p. 40). Mr. Pech-

ulis, the regular elevator operator at the time of the accident, testified that one running the elevator was supposed to stand at the control ropes (p. 50).

At this juncture, despite the evidence last above referred to, the Referee would have a right to find that, inasmuch as the evidence showed that any of the employees might run the elevator during the temporary absence of the elevator man, the presumption arises that Buehl's presence upon the elevator, at the time of his injury, was in the ordinary course of his business. 10

However, the prosecutor-appellant called as its first witness, James Cash, the man who had been working with Buehl on the ground floor that morning before he got on the elevator and took the ride on which he was injured, and the only man who was present when Buehl started up with the elevator. He testified that during the morning of December 17, 1924, he and Buehl were loading the hand trucks mentioned in the testimony, from the cars and drawing them on to the elevator which was taking them to the second floor. He stated that, while loading one of these trucks on the elevator, they found the operator temporarily away. Buehl thereupon stated to Cash that he was going to take the elevator up and play a joke upon the men on the second floor by holding the truck back when they went to pull it off (pp. 67-72) and that Buehl then went upon the elevator and, after starting the elevator, left the control ropes and went to the opposite edge of the elevator from the one where the control ropes were located, and squatted behind the loaded truck. (It will be remembered at this point that the testimony of the defendant's witnesses was to the effect that the opening into the elevator shaft on the second floor was 20 30 40

on the opposite side of the shaft from the side through which the loaded trucks were drawn from the loading platform outside of the building to the elevator. It will also be remembered that the control ropes for the elevator were across the elevator from the entrance to the elevator from the loading platform to the elevator shaft.) As he squatted behind the truck, he did not have much
 10 room, for Cash says that he squeezed in behind the truck, and that one of his arms hung outside of the elevator, the other hand holding the axle of the truck (p. 70). The elevator started, the doors closed, and a short time later Cash heard Buehl scream. The elevator was lowered and Buehl was found lying behind the truck where he had last been seen squatting (p. 81).

The prosecutor-appellant's other witnesses
 20 merely corroborated the testimony of the defendant-appellee's witnesses and of Cash as to the location of the control ropes and Buehl's body after the accident, and also as to the fact that Buehl was in the habit of playing practical jokes on his fellow workmen.

It will be noted that all witnesses, of both posecutor-appellant and defendant-appellee, agree as to the position of Buehl at the time he was found after he was injured, and that all agree

30 that he was found behind the truck on the rear (or outside) side of the elevator, with his right arm caught between the edge of the elevator floor and the outside wall of the building; and

that the control ropes were at the opposite side of the eievator.

40 At the close of the whole case, therefore, it appeared that the avowed, or expressed, purpose

of Buehl in entering upon the elevator was not to perform an act for his employer in the ordinary course of his employment, but on the contrary, to accomplish an object of his own, for his own amusement and entertainment, and to the discomfort and annoyance of his fellow employees.

There was no contrary evidence. Therefore, under the evidence, the Referee could only come to one logical conclusion, to wit, that 10

Buehl went upon the elevator for the expressed purpose of playing a practical joke upon his fellow employees upon the second floor;

and that is just what the Referee did find.

He found that at the time Buehl entered upon the elevator, he did so for the purpose of playing a joke on the employees stationed on the second floor (p. 97). If this be so, then admittedly Buehl was not on the elevator in the course of his employment. The Referee took the position, however, that the burden was on the prosecutor-appellant to prove that Buehl *was injured while he was actually playing the joke* he admittedly entered upon the elevator to play. 20

In so holding the Referee was wrong. The burden was on the petitioner to prove that the injury arose out of and in the course of his employment, and such burden never shifts. 30

Lencke vs. Erie R.R. 116 Atl. 924; 97

N. J. L. 343;

Geisel vs. Regina Co. 114 Atl. 328; 96

N. J. L. 31; aff'd 116 Atl. 924, 97

N. J. L. 331.

When the petitioner's case ended and it appeared that any employee might operate the 40

elevator during the temporary absence of the designated operator, the presence of Buehl on the elevator would be presumed to be in the course of his employment, but when the proof appears that the entering of Buehl upon the elevator was not an act performed in the course of his employment but for the purpose of playing his joke upon his fellow employees, then
 10 the petitioner must go forward with the proof, and show by a preponderance of evidence that the injury did arise out of and in the course of the employment. In placing the burden upon the prosecutor-appellant, then the Referee erred. But, however, this may be:

The established fact being that Buehl entered upon the elevator *for the purpose of playing a practical joke upon his fellow employees*, it was immaterial that prosecutor-appellant did not show his injury was received *during* the playing of the joke.
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As we have shown above, it is well established that the injury to the workman must have arisen out of and in the course of his employment. As we have above shown, while, under the defendant's case, the mere presence of Buehl upon the elevator at the time of his injury would not
 30 take him out of the scope of his employment—for there was evidence that any employee might run the elevator during the temporary absence of the designated operator—yet, when the proof later developed that he went upon the elevator for the expressed purpose of playing a practical joke upon his fellow employees, it must be conceded that his presence upon the elevator was not in the course of his employment. It must
 40 also be conceded that an accident suffered by him under such circumstances did not arise out of and in the course of his employment.

It is an established rule of law that if a well-settled design is proved to exist, it is a legitimate inference that it will be persisted in and acted upon unless it appear that there is some supervening obstacle.

10 R. C. L. 873; 1 Wigmore Evi. § 102-112;

Harker vs. Western Union Tel. Co. 134 10
Wisc. 147, 14 L. N. S. 533.

This rule is more clearly stated by Bigelow, J. in *Cook vs. Moore*, 11 Cush. 213, 216, thus:

“The existence in the mind of a deliberate design to do a certain act, when once proved, may properly lead to the inference that the intent once harbored continued and was carried into effect by acts long subsequent to the origin of the motive by which they were prompted.” 20

When it appears that the expressed purpose of Buehl in entering upon the elevator was to play a practical joke, his starting the elevator upward was an act in furtherance of such purpose, design or intention, and such purpose, design or intention is presumed to continue and be persisted in, and when it further appears that he was seen to leave the control ropes and assume a position which would enable him to carry out such purpose, design or intention (to wit, crouching down behind the truck with one hand on the rear axle), and that when he was injured he was found in that position, there can be no other logical conclusion than that his injury was received while playing his practical joke, or preparing so to do. 30

One injured while indulging in the playing of practical jokes has not been injured in an 40

accident arising out of and in the course of his employment. This principle has been firmly established in New Jersey.

Hulley vs. Moosbrugger, 88 N. J. L. 161.

Mountain Ice Co. vs. McNeill, 91 N. J. L. 528;

Colucci vs. Edison Portland Cement Co.
94 N. J. L. 542.

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So, in the present case, inasmuch as Buehl was not taking the elevator to the second floor for the purpose of helping with the work of storing the bags, but, on the contrary, went upon the elevator for the expressed purpose of playing a practical joke upon his fellow employees, he was not acting within the scope of his employment in taking the elevator to the second floor, and his accident was not one arising out of and in the course of his employment.

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Buehl had temporarily abandoned his employment.

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Buehl was assigned, with Cash, to load trucks from the car on the railroad track, draw the truck to the elevator, receive the empty truck from the elevator, and place the loaded truck thereon. He stopped this work and went upon the elevator, *not in the course of his employment*, but for the expressed purpose of playing a joke. He had then abandoned his work temporarily. At the time of his injury he was not working; he was not performing an act for which hand and having his other hand hanging down. He had for the time abandoned his employment.

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In this respect, the case is not unlike the *Colucci* case, *supra*. There, the injured left his place of work and went 100 yards away to

another building and lay down to sleep. He was injured by another employee who was playing a joke upon him as he lay sleeping. The Court of Errors and Appeals said the injured was not so injured in the course of his employment, but that "he had for the time abandoned his employment". So in this case, Buehl went upon the elevator for the purpose of playing his joke. He was injured while performing an act which was part of his joke, to wit, crouching down behind the truck, holding the axle with one hand and having his other arm hang down. He had for the time abandoned his employment. 10

Under such circumstances, the Referee should have found that he was not injured in an accident arising out of and in the course of his employment and should have dismissed the petition, and the Court of Common Pleas erred in affirming the Referee's decision, and likewise, the Supreme Court erred in affirming the judgment of the Court of Common Pleas. 20

For the causes aforesaid, the judgment of the Supreme Court should be reversed.

Respectfully submitted,

WALTER L. GLENNEY,
EDWARDS & SMITH, 30
Attorneys of Prosecutor-Appellant.

WALTER L. GLENNEY,
EDWIN F. SMITH,
Of Counsel.

[Faint, illegible text covering the majority of the page, likely bleed-through from the reverse side.]

New Jersey Court of Errors and Appeals

MEADER ATLAS COMPANY,
Prosecutor,

vs.

FREDERICK BUEHL, *et als.*,
Defendants.

On Appeal From
Supreme Court.

BRIEF OF EDWARD STOVER, ATTORNEY OF DEFENDANTS.

Facts.

This is an appeal from the Supreme Court, to which Court the case was brought on a writ of certiorari to review the judgment of the Court of Common Pleas, which said Court of Common Pleas upheld the decision of the Compensation Bureau, after an extended trial. The case was first tried in the Compensation Court or Compensation Bureau, as it is known, and the Referee, an expert in his line and in those particular cases, decided in favor of the then petitioners-plaintiffs, Elizabeth Buhl and her child Oscar (not Frederick Buehl) and this was appealed to the Court of Common Pleas, and the Judge, after two hearings, also decided in favor of the defendants who were then known as petitioners-plaintiffs. Then the defendant, Meader Atlas Company, the present Prosecutor, removed the case to the Supreme Court on certiorari, and also failed there.

The Common Pleas Court, through Honorable Robert V. Kinkead, Jr., Judge, decided in favor of the two defendants (the then petitioners-plaintiffs), on November 16, 1925. (See State of Case, page 90.) The decision which was made in the Compensation Court is entitled "Finding of Facts and Determination" and appears on page 87 of State of Case.

The case came on in the Common Pleas Court below on a notice served by the Meader-Atlas Co. to have the Common Pleas Court review the Compensation Court. This notice does not appear in the State of Case. It was filed out of time.

In this case petitioner (now defendant) sued in the Compensation Court in behalf of her son Oscar Eric Buhl and herself Elizabeth Buehl.

Dependency, wages, employment, practically everything was admitted either in the answer or at the trial by the defendant, except "that the accident did not arise out of and in the course of the decedent's regular employment," or as the defendant in his answer puts it "deceased started the elevator up and attempted to hide behind a hand truck load of feed so as to play a joke on the men upstairs." While the answer says "the fellow employees attempted to pull it off," they fail in their proof, for all the evidence shows no fellow employees were there to play a joke, when the defendant was killed. The fact is no one was there when he was injured, although he was found wedged between elevator and wall. The petitioners present six witnesses, the defendant, two. Of the petitioners three witnesses are produced who saw Buhl immediately after the accident. Only one of defendant's witnesses and one of petitioners' are produced, who saw him almost immediately before the accident. A slight question was raised by counsel of de-

fendant, whether Buhl had a right to use the elevator. This was subsequently abandoned. The testimony of Roy Anderson, an employee, says, page 30, line 37 and page 31, lines 1 and 2:

“A. Well, anyone could run the elevator as far as that was concerned, during their working hours.

“Q. And did the Superintendent see you, see everybody running the elevator, did he see it?

“A. Yes.

“Q. Did he ever object to anybody running the elevator?

“A. Never.”

On page 33, line 32:

“Q. Was it the business of Mr. Buhl to get the hand truck?

“A. That was one of his duties, yes; that was one of his duties to unload seed.”

Other witnesses say it was the custom for anyone who needed it, to run the elevator.

Now, as to whether there was “fooling” or “skylarking,” there are three witnesses for petitioners who said there was not.

Page 35, line 12, Mr. Anderson was asked:

“Q. Did you some of that day see Mr. Buhl doing any fooling or joking around just prior to the accident?

“A. No.

“Q. Or did you hear any sounds of fooling or joy or mirth just before the accident?

“A. No, sir.

“Q. And you were right on the floor above?

“A. Yes, sir. One flight up.

“Q. And you did hear the scream of pain?

“A. Yes, sir.”

The above witness was the first one at the accident, for on page 40, from his cross-examination, we see, line 23:

“Q. Did you get to the elevator before Mr. Buhl was removed from it after this accident?”

“A. Before he was removed?”

“Q. Yes.

“A. I jumped in there first.

“Q. You jumped in there first?”

“A. Yes.”

The Court said, about jokes on page 44, second paragraph:

“* * * he might have played a joke two days ago, but be terribly serious today.”

Another employee, Stanley Patchulis, says, page 48, top line:

“Q. Tell us what you heard and saw on December 17, 1924?”

“A. I was on the second floor and I heard a scream.

“Q. Yes.

“A. I ran to the elevator.

“Q. And did you hear any joking before this scream?”

“A. No, sir.

“Q. Was there any joking before this scream?”

“*Mr. Cox—I object.*

“A. Not that I could tell of.”

Page 48; line 34:

“Q. Now did you see Buehl joke or fool there?”

“A. No, sir.”

Same witness says, on pages 52, second paragraph from bottom, and 53:

“Mr. Stover:

“Q. If Mr. Buhl had been fooling and joking and laughing would you have heard it on that day? * * *

“A. Sure. * * *

“Q. What?

“A. Sure. * * *

“Q. You would have heard Mr. Buhl if he had been fooling?

“A. Yes, sir.”

Page 53, line 22:

“Q. Did you hear Buhl fooling?

“A. No.

(The question is again asked below.)

“A. At what time?

“Q. At the time of the accident.

“A. Oh, no.”

Joseph Huber, the foreman, saw the deceased just before the accident. On page 56 (bottom of page) he said it was his duty to watch the men. He saw Buhl with Cash (negro). On page 57 about middle of page appears the following:

“Q. If they were joking * * * would you have heard it?

“A. Yes, sir.

“Q. Did they do so?

“A. No, sir. When I got to the men they were working and the men on the second floor were performing their duty.

“Q. And it was your business to watch the men?

“A. That is what I was instructed.”

On page 57, near end of page, Foreman says:

“A. The elevator doors, in plain talk; were not working properly.”

On page 66, counsel made a motion for a non-suit. He did not allege "fooling" or "skylarking" at all. He should have brought it up then.

Defendant has only one witness who attempts to show how accident happened. He did not see it. He was Mr. Cash.

On page 69, line 14 of Case, he says:

"A. He (Buhl) said he was going up and when he got the elevator up he pull the truck back on this fellow going to get it off."

The fact is he could never consummate his intention. He was injured before anybody came. So his intention died in his brain before he could act on it, if such was his intention.

In cross-examination he admits he did not see what happened after elevator was started.

Page 75, line 29:

"Q. And after it was closed, you did not see what he did with his hands?"

"A. No; I didn't see that."

Roy Anderson said negro was not there.

On page 32, fifth line before bottom:

"Q. Did you see a colored gentleman there?"

"A. No, sir."

On page 84, there is no motion for a non-suit or a direction for a verdict in favor of defendant for skylarking.

On pages 84, second line from bottom, and 85, Court says:

"The burden is on the respondent to prove skylarking. The question is whether he has done it or not. Mr. Cash has testified that was the intention, but I fail to see where the respondent has proven that because of his going up, getting behind the

truck, that is the reason he had the injury. There is no proof of that. I will grant you he went up behind the truck, but there is no proof he was injured by doing that."

On page 34, we see:

"It was one of the duties of Mr. Buhl to get hand truck, load on seed and feed, cart it to elevator, and unload seed and feed."

THE LAW

POINT I.

At the outset there appears no "Return." The writ is directed to the Court of Common Pleas in and for the County of Hudson, and John J. McGovern, Clerk of the said Court, and Elizabeth Buehl.

In 60 N. J. Law, page 132, *Houman v. Schuster*, syllabus says:

"2. The evidence on such questions before the Court of Common Pleas cannot be laid before this court by stipulation of counsel without a prior rule on the Common Pleas to certify it."

In the same case, the Court said on page 134:

"The legal mode of bringing such evidence before this court has been frequently declared. *Conover v. Bird*, 27 Vroom 228. That mode was not adopted in this case. A mere stipulation of counsel cannot form the foundation on which to reverse the judgment of the court below. *Monitor Lodge v. Goldy*, 29 Vroom 119.

"The proceedings of the Common Pleas should be affirmed, with costs."

It was also held in *State (Massasoit Tribe) No. 121 * * * Red Men v. Voorhees*, 43 Atlantic Reporter, page 571:

“If the facts relied on for reversal do not, on certiorari, appear in any manner entitling the supreme court to consider them, the judgment must be affirmed.”

In *Monitor v. Goldy*, 58 N. J. L., page 119, Court said:

“A *certiorari* directed to a Court of Common Pleas cannot be heard on a stipulation of counsel and a transcript of testimony in lieu of a certification of the record and a judicial report of the facts upon which action below was had.”

and at end of this case Court said on page 120:

“There is nothing before us but a *certiorari* to which there is no return; even the judgment is not here to be affirmed.

“The proper practice is clearly indicated by the reported cases.

“Let the writ be dismissed, with costs.”

POINT II.

The appeal to the Common Pleas (and consequently the Certiorari) should have been dismissed on the law. Unfortunately the State of Case fails to give the Notice of Appeal to the Common Pleas Court, or the date of filing of each paper, as the rules require.

Laws of 1918, Chapter 149, say:

“Within 5 days after filing the said transcript, the Judge of the Court of Common

Pleas, upon the application of the appellant shall fix a time and place for the hearing of said appeal.

“Any such appeal may be dismissed * * * if the appeal is not prosecuted in accordance with the provisions of this act.”

The records will show that the transcript was filed July 14th, while the order was filed (it only became effective as an order when filed, it is contended) July 29th, or 15 days after.

The Common Pleas Court did not, however, dismiss the appeal for the above ground, but considered all the evidence, and dismissed the appeal because intrinsically there was no merit to defendant's contention of substantial injustice. The law the Court there considered and pertinent here was, among other things, as follows:

POINT III.

Presumption is that accident arose out of and in the course of employment.

In *Muzik v. Erie*, 89 Atlantic, page 248, it was held:

“A railroad employee was found after a train had gone out, lying some 3 or 4 feet from the rails with his feet towards the track, having an injury in his head, and died shortly after—

“It was held that an inference arose that his injury was caused by an accident arising out of and in the course of his employment.”

See *Willever v. Delaware, L. & W. R. Co.*, 99 Atlantic Reporter, page 321, and cases there cited.

In Chance N. J. Liability Act, page 17, it was said:

“In a case where it appeared that an employee who was found dead had gone to his foreman in search of material, and there was no proof that he was doing anything to increase the hazard of his work, it was held that the injury arose out of and in the course of his employment.”

DeFazios Estate v. Goldschmidt, 88 Atlantic, page 705.

POINT IV.

Skylarking or horseplay will not be presumed.

In *Radosocky v. Columbia Salvage Corporation*, Volume III, No. 37, page 850, of New Jersey Advanced Reports, and Weekly Law Review, it was held:

“The testimony of Dr. Emmons, a witness produced by respondent for the purpose of endeavoring to show one Green’s general reputation for committing pranks or horseplay, can have no bearing on the case. * * * The burden of proving skylarking or horseplay is on the respondent.”

It is respectfully submitted that the Compensation Court should be upheld, that the Common Pleas Court should be upheld, that the Supreme Court should be upheld and that the writ of certiorari and appeal should be dismissed, with costs.

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