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

**New Jersey Department of Labor**

WORKMEN'S COMPENSATION BUREAU.

MEYER RUGG, Petitioner, <i>vs.</i> DRIWOOD CORP., Respondent.	Received at Trenton Mar. 21, 1940. Claim Petition No..... Date of Accident October 20 and October 21, 1940.	10
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If known, state name of insurance company  
Liberty Mutual Insurance Co.

Attorney for Petitioner S. MARTIN MANDON,  
5 Colt Street, Paterson, N. J. 20

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

Petitioner alleging that he sustained an acci-  
dent arising out of and in the course of his  
employment with the respondent, respectfully  
states:

1. What is your name? Meyer Rugg. 30
2. Where do you live? 7303 20th Avenue, Brook-  
lyn, N. Y.
3. Sex Male.
4. Age 58.
5. Marital Status Married.
6. By whom were you employed at the time of  
the accident? Driwood Corporation, Steinwell  
Street, Plainfield, N. J. 40

*Employee's Claim Petition for Compensation.*

7. What was the business of your employer?  
Office partitions and cabinet work.
8. Did you give written notice to your employer  
at the time you were hired, or later, that Arti-  
cle 2 of the Workmen's Compensation Law of  
New Jersey should not apply to you? No.
- 10 9. Did you receive such notice from your em-  
ployer? No.
10. Did your employer have knowledge of your  
injury? Yes.
11. If so, on what date? October 21, 1939.
12. Did you notify your employer of your injury?  
Yes.
- 20 13. If so, on what date? October 21, 1939.
14. What was your regular occupation? Cabinet  
worker.
15. What kind of work were you doing at the time  
of the accident? Lifting a section.
16. When did the accident happen? October 20  
and October 21, 1939.
17. Where did the accident happen? Employer's  
premises, Plainfield, N. J.
- 30 18. What was the nature of the accident, and how  
did it happen? Lifting section 10 feet by four  
feet and felt severe pain in abdomen, thighs,  
and back. This was on Friday, October 20,  
1939. Unable to continue with work that  
afternoon. Returned to work Saturday morn-  
ing, and while bending down to hammer on  
section, again felt pain in back and abdomen.
- 40 19. On what date were you compelled to stop  
work because of the injury? October 20 and  
October 21, 1939.

*Employee's Claim Petition for Compensation.*

20. On what date were you well enough to work again? Still unable to work.
21. If still disabled, on what date do you think you will be able to work? Do not know.
22. Give nature of any injury from which you will recover ..... 10
23. Has any permanent injury resulted? If there has been amputation or loss of usefulness of any member, or impairment of any physical organ, explain fully Do not know what injuries are permanent.
24. Were your wages fixed by piece-work? .....
25. If so, what was your average weekly wage?...
26. If wages were fixed by the hour, state rate per hour Seventy Cents per hour. 20
27. Give number of hours in an ordinary working day Eight hours per day and four on Saturday.
28. Give number of days in an ordinary working week Six days.
29. State the amount of weekly wages Approximately \$32.00 per week.
30. Have you been paid compensation? No. 30
31. If so, how much? .... Compensation Rate...  
Temporary Disability.....Permanent Disability .....
32. Has your employer promised to pay you any compensation? .....
33. If so, how much? .....
34. Was medical aid required? Yes. 40

*Employee's Claim Petition for Compensation.*

35. Did you receive any medical, surgical or hospital service? .....
36. Did you request your employer to furnish these services? Yes.
37. Were they furnished? No.
- 10 38. If so, between what dates? .....
39. If not, what sum did you expend for medical, surgical or hospital services?.....
40. Give name and address of physician and hospital Doctor Irwin Paul Train, 150 Crown Street, Brooklyn. Hospital: Jewish Hospital of Brooklyn, Prospect Place and Classom Avenue, Brooklyn, N. Y. Also Doctor Paul W. Aschner, 160 New York Avenue, Brooklyn, N. Y.
- 20 41. What other facts are there which you believe important? .....
42. Have you made claim to your employer for compensation? Yes.

30 Your Petitioner therefore prays that the Workmen's Compensation Bureau will determine the amount of compensation due to your Petitioner from said Respondent, under Revised Statutes of New Jersey, 1937, Title 34, Chapter 15, 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.

And your petitioner will pray, etc.

MEYER RUGG,  
(Petitioner)

*Employee's Claim Petition for Compensation.*

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

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

MEYER RUGG,  
 (Petitioner)

Subscribed and sworn to before me, this 16th day of March, 1940, at Paterson, New Jersey. 20

S. MARTIN MANDON,  
 An Attorney-at-Law of New Jersey.

(This affidavit may be sworn to before any person authorized to administer an oath.) 30

*Employee's Claim Petition for Compensation.*

## TO THE RESPONDENT:

10 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. Unless an answer in duplicate is filed within ten days after the service of this notice, with the Secretary of the Bureau, in the State House, at Trenton, the Petitioner will proceed with proof of claim according to law.

WORKMEN'S COMPENSATION BUREAU.

DANIEL A. SPAIR,  
Secretary.

20

I, DANIEL A. SPAIR, Secretary of the Workmen's Compensation Bureau, hereby certify the foregoing to be a true copy of the Petition filed in this cause.

DANIEL A. SPAIR.

30

40

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

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

<p style="text-align: center;">MEYER RUGG, Petitioner, <i>vs.</i> DRIWOOD CORP., Respondent.</p>	}	<p style="text-align: right;">April 19, 1940. Claim Petition No. 48645. April 18, 1940.</p>	10
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Attorney for Respondent JOHN W. TAYLOR,  
24 Commerce Street, Newark, N. J. 20

In answer to Claim Petition filed in this cause :

1. What is the petitioner's name? Meyer Rugg.
2. Where does he reside? 7303 20th Avenue,  
Brooklyn, New York.
6. Was the petitioner in your employ at the  
time of the accident? See No. 39.
7. State your business Manufacturing. 30
8. Did you receive written notice from the Petitioner at the time of hiring, or later, that the compensation Law was not to apply to him?  
No.
9. Did you give such notice to him? No.
10. When did you first have knowledge of this  
accident? See No. 39.
11. Did you receive notice of this accident from  
the Petitioner? See No. 39. 40

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

12. If so, on what date? .....
13. Has any claim for compensation been made?  
Formal petition filed.
- 10 14. What was the Petitioner's regular occupa-  
tion, and what kind of work was he doing at  
the time of the accident? See No. 39.
15. When did the accident happen? See No. 39.
16. Where did the accident happen? See No. 39.
17. What was the nature of the accident, and how  
did it happen? See No. 39.
18. On what date was the petitioner compelled to  
stop work because of injury? See No. 39.
- 20 19. On what day was the injured well enough to  
work again? See No. 39.
20. If still disabled, on what date do you esti-  
mate he will be able to work? .....
21. Give your understanding of the nature of any  
injury from which he should recover? See  
No. 39.
- 30 22. Give your understanding of any permanent  
injury which has resulted, either amputation  
or loss of usefulness of any member or im-  
pairment of any physical organ. Explain  
fully See No. 39.
23. Were the wages fixed by piece-work? .....
24. If so, what was the average weekly wage of  
the injured? .....
25. If wages were fixed by the hour, state rate  
per hour See No. 39.

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

26. Give number of hours in an ordinary working day See No. 39.
27. Give number of days in an ordinary working week See No. 39.
28. State the amount of weekly wages See No. 10  
39.
29. How much money have you paid the injured as compensation (not including medical aid) since the accident? See No. 39.
30. Have you promised to pay compensation? See No. 39.
31. If so, how much? See No. 39.
32. Was medical aid required? See No. 39. 20
34. Were you requested to supply the necessary medical service required by law? See No. 39.
35. Did you furnish this service? See No. 39.
36. If so, between what dates? See No. 39.
37. If not, give reason for failure to do so.....
38. Give name of physician and hospital rendering service at your direction See No. 39.
39. What other facts are there which you believe important? If you deny that compensation is payable in this case explain fully your reasons for this conclusion 30
  1. Respondent denies that petitioner sustained any accident arising out of and in the course of his employment by respondent.
  2. Respondent denies that petitioner sustained any disability arising out of and in the course of his employment by respondent. 40

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

3. Respondent denies that petitioner's present condition is in any way causally related to his employment by respondent.

10

DRIWOOD CORP.  
(Respondent)

By: RICHARD H. TUNSTEAD,  
(Address)  
Agent for Respondent,  
24 Commerce Street  
Newark, New Jersey.

20

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

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

30

DRIWOOD CORP.  
(Respondent)

By: RICHARD H. TUNSTEAD,  
Agent for Respondent.

Subscribed and sworn to before me, this 18th day of April, 1940, at Newark, New Jersey.

40

HELEN G. VERIAN,  
A Notary Public of New Jersey.

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

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

---

I, DANIEL A. SPAIR, Secretary of the Workmen's  
Compensation Bureau, hereby certify the fore-  
going to be a true copy of the Answer filed in this  
cause.

DANIEL A. SPAIR.

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*Meyer Rugg, Petitioner—Direct.*

**Testimony.**

NEW JERSEY DEPARTMENT OF LABOR,  
WORKMEN'S COMPENSATION BUREAU,  
ELIZABETH, UNION COUNTY DISTRICT.

10

<p>MEYER RUGG, Petitioner, <i>vs.</i> DRIWOOD CORPORATION, Respondent.</p>
--

June 20, 1940.

20

Before HONORABLE HARRY UMBERGER, Deputy Commissioner.

Appearances:

S. MARTIN MANDON, Esq., for the petitioner.

EVERITT RHINEHART, Esq., for the respondent.

30

MEYER RUGG, the petitioner, called as a witness on his own behalf, and duly sworn, testified as follows:

40

Mr. Rhinehart: The respondent will admit that that petitioner was employed on October 20th and October 21, 1939, and prior thereto. My wage information varies from the petitioner's claim by five cents an hour, but it would seem to be not of very much importance. According to my infor-

*Meyer Rugg, Petitioner—Direct.*

mation the wage is 70 cents an hour, 8 hours a day, 5½ days a week, making \$30.80.

Mr. Mandon: That is correct.

Mr. Rhinehart: That can be agreed upon?

Mr. Mandon: Yes. So that the employer is stipulating that the wage rate is \$30.80 a week. 10

The Court: You can stipulate that the wages are Thirty Dollars or more.

Mr. Mandon: Yes, which doesn't make any difference.

*Direct examination by Mr. Mandon:*

Q. Mr. Rugg, you are the petitioner in this case? A. Yes, sir. 20

Q. And in October, 1939, by whom were you employed? For whom were you working in October, 1939? A. For the Driwood Corporation.

Q. And how long had you been working there? A. I been working there about six or seven years.

Q. Regularly? A. Regularly.

Q. And what did your job consist of; what was the nature of your work? A. I was working cabinet work. 30

Q. A cabinet maker? A. Yes.

Q. And what were your hours of work? A. Eight hours a day, forty-four hours a week.

Q. And when did you start in the morning? A. Eight o'clock in the morning.

Q. And when would you finish? A. 4:30.

Q. And how about Saturday? A. Saturday four hours; eight o'clock to twelve.

Q. Did anything happen to you on October 20th, on Friday, 1939? A. Yes, sir. 40

*Meyer Rugg, Petitioner—Direct.*

Q. What happened? A. I was examining a very heavy section, I had a helper working with me, but the helper disappeared, and I lift up this section and I couldn't get it down, and I was hollering for help.

10 Q. A little louder. A. I strained my back on the right side. I couldn't bend and I couldn't stand up.

Q. About how heavy was this section you were lifting at the time? A. I couldn't tell you how heavy the section was. It was heavy because they make a new thing. It is a sample of partition ten feet high and four feet wide and inside is with rockwool packed.

Q. And outside is what, wood? A. Yes, wood; it is heavy.

20 Q. At about what time of the day was this? A. Four o'clock.

Q. And what, if anything, did you do at the time you felt the pain? A. I stop work. I couldn't do it, but I give it to the other man he should finish it and put it away, but the other man—it was for two men. I handle it myself.

Q. And until what time did you stay in the plant that day? A. Until four o'clock—no, four-thirty.

30 Q. And this accident happened at four o'clock? A. Four o'clock.

Q. And you went home at four-thirty, did you? A. I want home four-thirty.

Q. How did you feel at night? A. I feel very bad at night, but I put myself something, a plaster on the side, and this warmed me up a little bit, and in the morning I was feeling better.

40 Q. And did you return to work the next morning? A. Yes, I went to work Saturday morning.

*Meyer Rugg, Petitioner—Direct.*

Q. And did anything happen to you on Saturday morning? A. As soon as I start working I work about half an hour and the pain come on right side and in the front.

Q. What were you doing at the time? A. I start working about fifteen minutes and then I told the foreman I wouldn't be able to do my work until twelve o'clock, he should give me somebody to help me because I don't feel good. 10

Q. At the time you felt the pain on Saturday morning what were you doing? A. I glued some panels. It was also heavy. I put on about four clamps. Each clamp is about fifteen or twenty pounds one clamp weight.

Q. Do I understand that you were lifting a panel containing four of these clamps? A. And I lift up one panel, the pain came right here (indicating), and I stop. 20

Q. Where did the pain come? A. In the right side on the bottom.

The Court: Right side in the back?

The Witness: Yes—right here (indicating).

By Mr. Mandon:

Q. Where was it? A. In the front, right here (indicating). 30

Mr. Mandon: Indicating front, right side of the abdominal wall.

The Court: Indicating the right groin.

By Mr. Mandon:

Q. Did you feel anything there? A. Yes, as soon as I feel better I help the other fellow to get ready with that work. 40

*Meyer Rugg, Petitioner—Direct.*

Q. I mean, did you feel anything where the pain was? A. I tell you, after about nine o'clock the pain come back again and I went in, you should excuse me, in the men's room, and I looked over the way I looked at the pain, and I find a ball on the side.

10 Q. What was that? A. A little ball on the side.

Q. And about what size was that? A. Very little, small.

Q. And about how soon after you felt the pain in the morning was that? A. Perhaps every hour came the pain and I stopped it and then I started working again, and twelve o'clock I told Mr. Klein, "I'm sorry, I can't do no more work. I have to go home because I feel very bad".

20 Q. Did you go home Saturday? A. Yes, sir; I went home.

Q. And at about what time did you get home? A. I came home about two o'clock. I went home about twelve o'clock.

Q. What, if anything, did you do when you got home? A. I came home, I laid down in bed, but I see the pain is on, so I tried to help myself. I made myself an enema.

Q. And did that help you? A. That didn't help me nothing.

30 Q. What was done after that? A. I was waiting until about seven o'clock and my son came in, and my wife told him that I am feeling very bad, and he says, "Why didn't you call the doctor?" And he went and he called Dr. Train.

Q. You say you were working to about seven. Where were you working, in the shop? A. Not until seven. I was waiting until seven until my son came in.

40 The Court: Who called the doctor? And who was the doctor?

*Meyer Rugg, Petitioner—Direct.*

The Witness: Dr. Train.

By Mr. Mandon:

Q. And where was his office? A. Crown Street.

Mr. Mandon: The doctor will be in court.

10

By Mr. Mandon:

Q. And when was the doctor called? A. The doctor was called about seven, around eight o'clock, but he came eleven.

Q. When did he come? A. Eleven o'clock.

Q. About eleven o'clock Saturday night? A. Yes.

Q. And did he examine you at that time? A. Yes, sir.

Q. What did he do for you? A. He says, "I can't do nothing for you——" 20

Mr. Rhinehart: I object to that, if the Court please.

The Court: Don't tell us what the doctor said.

The Witness: "You need an operation," the doctor say.

By Mr. Mandon:

30

Q. And did you go to the hospital? A. Not right away. I didn't want to go——

Q. When did you go to the hospital? A. In the morning I called in Sunday morning.

Q. Sunday morning? A. Yes, sir. Sunday morning he came and he says, "If you don't go to the hospital it is going to be worse," so I went to the hospital and they operated me.

Q. And do you know about what time you went to the hospital on Sunday? A. I couldn't tell you 40

*Meyer Rugg, Petitioner—Direct.*

the exact time. It was in the morning maybe nine o'clock, maybe eight o'clock.

Q. And you say Dr. Train operated on you?

A. Yes, sir.

Q. At what hospital? A. At Jewish, Brooklyn Jewish Hospital.

10 Q. And when did he operate on you? A. Right away, in the morning.

Q. And how long were you confined to the hospital? A. I was three months in the hospital.

Q. Three months? A. Yes.

Q. And how many times were you operated on during those three months? A. About five times.

Q. And you developed other conditions while you were in the hospital? A. No. I mean yes, because I had double pneumonia. After the  
20 double pneumonia I couldn't pass my water.

Q. And what other doctors, if any, treated you besides Dr. Train? A. Dr. Ashner.

Q. And where is he from, Brooklyn? A. In Brooklyn, yes.

Q. Anybody else? A. There is another doctor, a medical doctor.

Q. Is that Dr. Seligman? A. Dr. Seligman.

Q. And he treated you, too? A. Yes, sir.

Q. Any other doctors? A. No.

30 Q. And did Dr. Train discharge you? A. What do you mean?

Q. Did Dr. Train discharge you as cured? A. Sure.

Q. When? A. I went last week also to him, but last week he told me that he is finished, that I am all right now.

Q. Last week? A. Last week.

Q. From the time of the accident up to the time or up to the present time have you done any  
40 work at all? A. Nothing. I couldn't work.

*Meyer Rugg, Petitioner—Direct.*

Q. Have you been able to work during that time? A. Now I could work but they ain't got no work.

Q. Could you work until now? A. Until now I wasn't doing anything.

Q. Could you work until now? A. No, sir.

Q. What was the name of the man at your place of employment you spoke to when you weren't feeling well? A. Mr. Klein. 10

Q. Mr. Klein? A. Yes.

Q. And who was he? A. He was working with me, not as a helper. He is a good cabinet maker, but he give me to help me to do that work.

Q. Who gave you Mr. Klein? A. The foreman in the shop.

Q. What was the foreman's name? A. Mr. Berger. 20

Q. And is he the person to whom you said you weren't feeling well Saturday morning? A. Only to Mr. Klein.

Mr. Rhinehart: I object to that as leading, if the Court please.

Mr. Mandon: I will withdraw that and reframe it.

The Witness: I told to another fellow also. He is here. 30

By Mr. Mandon:

Q. He is here? A. Yes.

Q. What is his name? A. Henry.

Q. A few minutes ago you said that you told somebody on Saturday morning that you weren't feeling well and you would have to have somebody to help you? A. That I told the foreman he should give me somebody to help me.

Q. What was the foreman's name? A. Berger. 40

Q. Berger? A. Yes.

*Meyer Rugg, Petitioner—Cross.*

Q. And you didn't work Saturday afternoons, did you? A. No, no. I couldn't work.

Q. And you didn't work on Sundays, did you? A. No, I never worked on Sunday.

Q. And up to the time of this accident had you been in any other accidents before? A. No.

10 Q. And how was your health up to the time of these two incidents? A. I was feeling very good. I never had treatments from doctors since I live. That is the first time I went in the hospital.

Q. And had you been working regularly up to that time? A. Yes, sir.

Q. Were you ever paid for any compensation or any other claim? A. No, sir.

Q. Did you ever have any other claim? A. No.

20 Mr. Mandon: That is all. You may cross examine.

*Cross examination by Mr. Rhinehart:*

Q. Now, what was it you told Mr. Berger, the foreman, Saturday morning? What did you tell him? A. I tell him that I don't feel very good, he has to give me somebody to help me because I wouldn't be able to finish that work.

30 Q. Is that all you told him? A. That is all I told him.

Q. On Friday, Mr. Rugg, wasn't it about two o'clock, between two and three o'clock— A. Four o'clock.

Q. (Continuing) —that you had some trouble? A. No, sir.

Q. What time did you usually quit work on Friday? A. Four-thirty.

40 Q. What makes you so sure it was four o'clock? A. Because I had to make another section. We used to make twenty-five sections a day, so I

*Meyer Rugg, Petitioner—Cross.*

wanted to make one more section and a fellow, my helper, went away.

Q. Was that Mr. Klein? A. No, he was just an Italian fellow, a laborer. He disappeared and I lift up the section myself. I know it was four o'clock because I looked at the time what time is it, maybe I have to go and ring the clock, punch the clock and go home. But I was sitting about ten or fifteen minutes and then I was feeling better so I start working again. 10

Q. Now, on Friday when you lifted this section, that is what happened to you, you had this pain while lifting this section? A. In the right side in the back. I couldn't stand up straight and I couldn't walk.

Q. You said it hurt your back and your right side? A. And right side right here (indicating). 20

Q. Was that where it hurt you Saturday morning too? A. No, Saturday morning when I start work about half an hour the pain came in this side (indicating).

Q. In which side? A. In the right side (indicating).

Mr. Mandon: Let the record indicate that the witness is pointing to the right groin. He says right side, but he is indicating the right groin. 30

By Mr. Rhinehart:

Q. Did you feel dizzy or sick when this happened to you? A. Well, I was feeling—I lost my strength from everything. I feel very bad, but it happened only about ten or fifteen minutes and then I feel better. I start working again.

Q. Mr. Klein is just another cabinet maker that works there with you, is that so? A. Yes. 40

*Meyer Rugg, Petitioner—Cross.*

Q. And he also lives in Brooklyn? A. He lives in Brooklyn.

Q. And you told him about it, did you say, on the way home? A. Yes, sir.

10 Q. That night on the train? A. He took me to the train because I told him, "I am going to lose the train, you better go and get the train, Mr. Klein," and he says, "I won't leave you. I'll walk with you."

Q. And on Saturday morning did it hurt you in your back, too? A. Saturday morning I didn't feel the pain in the back. Just I start working and I start lifting and I feel the pain in front, in the right side.

20 Q. Hadn't you had a similar occurrence about two weeks before October 20th, Mr. Rugg? A. I never had it before.

Q. You never what? A. I never was feeling like that before. I always was feeling good.

Q. About two weeks or a week and a half before October 20th, don't you recall the same, about the same thing happened to you? A. No.

Q. Do you remember telling Mr. Berger about it? A. No.

Q. Never told him about it? A. No.

30 Q. Do you know who Mr. Leher is? What is the superintendent's name in the plant? A. I don't know that name.

Q. Who is the superintendent in the plant? A. In the place?

Q. Yes. A. We haven't got a superintendent.

Q. Who is the man in the office? A. Dan. There was a fellow upstairs, Mr. Dan.

Q. Mr. Who? A. Dan. He takes care upstairs.

40 Q. Isn't there a man in the plant by the name of Daniel Leher? Daniel Leher, is that who you mean when you say Dan? A. Yes, Dan.

*Meyer Rugg, Petitioner—Cross.*

Q. Who is he, is he the manager? A. He is the foreman in the finish room, the varnish room.

Q. And do you remember telling him a couple of weeks before the 20th that you had pain in your side from lifting? A. I didn't tell him nothing.

Q. You didn't tell him anything? A. No, because I ain't got nothing to do with him.

10

Q. Had you been to a doctor within a month or so prior to the 20th? Had you been to a doctor at all for any reason? A. No.

Q. Did you tell anyone about the trouble on Friday before quitting time at 4:30? A. Just four o'clock I told Mr. Klein because I couldn't put away the section. That is finished work. If I drop it I'll damage it. I was hollering, "Mr. Klein, take away the section, I can't leave it go." And he came over and he took it away from me with another man.

20

Q. That was at four o'clock? A. Four o'clock.

Q. And you just said to him then you couldn't lift it? A. No. If I am not mistaken Henry Gruber helped Mr. Klein to take away the section from me.

Q. What did you say at the time? A. I told him I strain myself; I can't hold the section; I can't bend and I can't stand straight.

30

Q. And from four to four-thirty you continued at work, is that so? A. Yes. I took a rest and I start working again, but as soon as it got 4:30 we went out.

Q. When was it you went to the men's room and looked at your side? A. I never see about the side. It was Friday four o'clock I told him.

Mr. Mandon: He doesn't understand you.

40

*Meyer Rugg, Petitioner—Cross.*

By Mr. Rhinehart:

Q. When was it you went into the men's room and looked at your side? A. Oh, this was Saturday about nine or after nine. I can't tell you exactly the time.

10 Q. It was not on Friday? A. No, that was on Saturday.

Q. Now, did your back continue to get worse, the pain in your back continue to get worse? A. The back in the morning I was feeling very good because I put a plaster on.

Q. After you went back to work what happened to that? A. I went back to work and the back didn't bother me. The pain came on the right side and in the front.

20 Q. You worked until noontime Saturday morning, is that so? A. That's right, up to twelve o'clock.

Q. And that was your regular quitting time, isn't that so? A. That's right.

Q. You say you got home about two o'clock? A. The train takes time, two o'clock. I missed one train and I had to wait for another one.

Q. Then you went and laid down? A. Yes, I lay down.

30 Q. And when you were lying down a while you began to get cramps in your stomach, is that right? A. That isn't the stomach. This isn't the stomach (indicating).

Q. Well, the bottom of your stomach, you began to get cramps down there? A. That's right.

Q. And you felt something dropping like in your groin, is that so?

Mr. Mandon: I object to counsel characterizing how he felt. The witness didn't

*Meyer Rugg, Petitioner—Cross.*

testify to that. He can ask him how he felt, I object to counsel characterizing it.

The Court: It is cross examination. I will allow the question.

By Mr. Rhinehart:

Q. It felt as though something was dropping in your abdomen at that time? A. I didn't tell you that. I don't remember what it was. I know I had very bad pain.

10

Q. It was much worse when you were lying down than while you were working, wasn't it? A. Every minute it got worser and worser. Before it stopped the cramps and after it didn't. I was feeling bad all night.

Mr. Mandon: May I have what night you refer to?

20

The Witness: Saturday night I feel very bad.

By Mr. Rhinehart:

Q. Do you remember a man coming to see you in the Jewish Hospital about the middle of November, from the insurance company? A. No.

Q. What did you say? A. Who told you that? When?

30

Q. I am asking you questions, Mr. Rugg, and just answer them. A. That was my first time I went Saturday—Sunday morning to the hospital. I was never in the hospital before.

Q. I am talking about the middle of November after you went to the hospital, do you remember some man from the insurance company coming and asking you what had happened? A. I couldn't tell you that time. I didn't know where I was. I

40

*Meyer Rugg, Petitioner—Cross.*

had such a high fever I didn't know even if they talk to me.

Q. When was this? A. I couldn't tell you when. I know I had 108 fever.

Q. You went in the hospital October 21st or the 22nd, is that right, Sunday? A. Sunday.

10 Q. Now, I am talking about the middle of November, you were still in the hospital then, weren't you? A. Yes, I was. I was three months in the hospital.

Q. And do you recall a man from the insurance company coming and talking to you while you were in the Jewish Hospital, about the middle of November? A. I know he was in the hospital, but I didn't even open my eyes to look on him the way he looked. He told me he is a doctor.  
20 He is not from the insurance.

Q. If he told you he was a doctor what made you think he was from the insurance company? A. I don't know. He told me he was from the insurance company, that he is a doctor from the insurance company.

Q. You don't remember telling him or anybody else in the hospital that this happened about two o'clock on Friday, two o'clock in the afternoon on Friday, do you? A. No.

30 Q. You never said that? A. No.

Q. You said you told Henry. Who is he? A. A cabinet maker also in the shop. He worked in the shop.

Q. Is he a foreman, or anything like that? A. No, he is not a foreman. He is just the same as I am. He is a cabinet maker. His name is Henry Gruber. He is over here. Somebody called him here.

40 The Court: We will have a short recess.

(At this point a recess was taken.)

*Meyer Rugg, Petitioner—Cross.*

MEYER RUGG, the petitioner, resumed the stand and testified further as follows:

*Cross examination (continued) by Mr. Rhinehart:*

Q. Mr. Rugg, did you hurt yourself in any way about two or three weeks before October 20th?

A. No.

10

Q. Did you ever trip while you were carrying a section, stumble? A. Never. That was my first time on Friday.

Q. The first time that anything ever happened to you? A. Yes. Never was happening to me anything.

Q. And the first time you ever spoke to the foreman was on Saturday, is that right? A. Saturday.

20

Q. And then you just told him that you needed some help, you didn't feel well? A. Yes.

Q. That is all you said to him at that time? A. That is right.

Q. Wasn't it after you had been lying down in bed at home on Saturday afternoon that you first noticed a lump in your side? A. The lump I noticed when I went in nine o'clock in the men's room.

Q. And what did you do about it; did you say anything to anyone about that? A. I didn't say nothing because I didn't know what it is. I know I had pain over there, so I look, and the pain is coming so fast.

30

Q. It was about seven o'clock Saturday night that Dr. Train was called, seven or eight o'clock Saturday night? A. Yes.

Q. And he came about eleven o'clock? A. About eleven.

Q. Up to that time nothing had been said to the foreman or anybody else in authority at the place

40

*Meyer Rugg, Petitioner—Re-direct.*

of your employment, at the place of your employer's place of business, is that so? A. I done myself before. I made myself enemas. I was trying myself to help myself.

Mr. Rhinehart: That is all.

10

*Re-direct examination by Mr. Mandon:*

Q. When Dr. Train came on Saturday, late Saturday night, about how long was he there with you? A. In my house?

Q. Yes. A. About an hour. He examined me all around but he was trying to push that back and he says, "If you can't push it back you got to go for operation."

20

Q. Can you tell us whether he was there—you say he was there about an hour? A. Yes, he was there about an hour.

Q. Now, on Saturday morning before you started—before you had this second strain or whatever it was, were you working alone or with somebody else? A. That time I took already the helper when—

Q. I mean before. A. The first time I was working alone.

30

Q. I mean Saturday morning up to the time you started to feel this pain. A. I was working myself.

Q. And when did you start to work with a helper? A. After nine o'clock; around nine o'clock.

40

Q. And that is after you had asked the foreman for a helper? A. When I took a rest about fifteen minutes and then the pain went away and I walked over to the foreman; I told him, "Mr. Berger, I don't feel very good and the work has to be done up to twelve o'clock. I'll never make it." And he says, "I'll send you Mr. Klein."

*Harold Rugg, for Petitioner—Direct.*

Q. And he did send you Mr. Klein? A. Yes.

Q. And Mr. Klein was with you until he left you? A. That's right.

Mr. Mandon: That is all.

The Court: Did you tell the foreman why you didn't feel well?

The Witness: No, I didn't told him nothing. I just told him I don't feel very good.

10

By the Court:

Q. When you were in the hospital did you notify the company?

Mr. Mandon: I have a witness on that, your Honor.

The Court: Anything further?

Mr. Rhinehart: That is all.

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(Witness excused.)

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HAROLD RUGG, called as a witness on behalf of the petitioner, and duly sworn, testified as follows:

*Direct examination by Mr. Mandon:*

Q. You are the son of the petitioner, Meyer Rugg? A. That is correct. 30

Q. And you live with your father? A. I do.

Q. And how old are you? A. I am twenty-five.

Q. And were you home when your father came home Friday evening on October 20, 1939? A. I was home, yes, I believe I was.

Q. And do you remember whether or not he was in pain at that time, so far as you could see? A. No, no mention of pain to me was disclosed.

40

*Harold Rugg, for Petitioner—Direct.*

Q. And do you remember the Saturday following? A. I do.

Q. And what time—who called Dr. Train? A. I did.

Q. You called Dr. Train? A. That is correct.

10

Q. About what time did you call him? A. Well, towards the very early or late in the afternoon, or early towards evening, about 6:30 or 7 o'clock. I can't recall exactly.

Q. And were you home when Dr. Train came in? A. Yes, I was.

Q. About what time did he come? A. He came very late in the evening, about ten-thirty or a quarter to eleven.

20

Q. And was he there a short time or quite a while? A. He gave him a thorough examination. As to how long he spent, I didn't watch, but he was there quite a while.

Q. And so far as you could see, was your father in pain? A. Yes, he was in pain, that is correct.

Q. What time did you come home Saturday? A. Well, I came home just prior to my calling him. I came home and my father had been complaining of this pain, and seeing him in pain was a shock to us, as we had never seen him in pain, and I asked my mother why she hadn't called the doctor.

30

Q. Leave that out. Anyway, the doctor came Saturday night. A. Yes.

Q. Was your father taken to the hospital—were you home when your father was taken to the hospital? A. That is correct.

Q. And that was when? A. That was on Sunday.

Q. And did you have any occasion to communicate with the employer at all? A. I did have occasion.

40

*Harold Rugg, for Petitioner—Cross.*

Q. When was that? A. On the following working day, which was Monday morning. The very first thing on Monday morning I called his employer. I spoke to a Mr. Banker, his employer's representative in the New York office.

Q. What did you tell him? A. I told him that my father was taken to the hospital and was operated, and he inquired as to what the name of the hospital was. 10

Q. Did you tell him? A. I told him he had injured himself on the job on Saturday, and as a result he was being operated.

Q. And that was Monday morning? A. Yes, and he said he would notify the proper authorities.

Q. Had your father, as far as you know, ever been in ill health before this accident? A. No, sir. 20

Q. And so far as your observation was concerned, did he work regularly all that time? A. That is correct.

Q. How long was your father in the hospital, if you know? A. He entered the hospital on October 22nd, and left the hospital around January 20th, or thereabouts. I was out of town on business at the time.

Q. Some time in January? A. Yes. 30

Mr. Mandon: You may cross examine.

*Cross examination by Mr. Rhinehart:*

Q. Your father was never one to complain to you about himself, even if he did feel bad; that is so, isn't it?

Mr. Mandon: Well, I object to that. I don't think this witness could say that. 40

*Certificates of Deputy Commissioner and  
Court Reporter.*

By Mr. Rhinehart:

Q. Well, he didn't say anything to you Friday about the difficulty that he had on Friday, did he?

A. No, that was not disclosed to me.

10 Q. I mean, he wasn't the complaining type, was he? A. No, not a chronic complaining type. He never had cause to be.

Mr. Rhinehart: That is all.

Mr. Mandon: That is all.

(At this point the hearing was adjourned to a later date.)

20

**Certificate of Deputy Commissioner.**

I HEREBY CERTIFY the foregoing to be a true and accurate transcript of the proceedings in this matter, as taken before me, at the time, place and date hereinbefore set forth.

HARRY H. UMBERGER,  
Deputy Commissioner.

30

**Certificate of Court Reporter.**

I HEREBY CERTIFY the foregoing to be a true and accurate transcript of the proceedings in this matter, as taken stenographically by me, at the time, place and date hereinbefore set forth.

ROBERT A. BIRCHMAN,  
Court Reporter.

40

*Dr. Irwin P. Train, for Petitioner—Direct.*

NEW JERSEY DEPARTMENT OF LABOR,  
WORKMEN'S COMPENSATION BUREAU,  
ELIZABETH, UNION COUNTY DISTRICT.

<p style="text-align: center;">MEYER RUGG, Petitioner, <i>vs.</i> DRIWOOD CORPORATION, Respondent.</p>	}	10
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July 18, 1940.

Before HONORABLE HARRY H. UMBERGER, Deputy  
Commissioner. 20

Appearances:

S. MARTIN MANDON, Esq., for the petitioner.

JOHN W. TAYLOR, Esq., by EVERITT RHINE-  
HART, Esq., for the respondent.

DR. IRWIN P. TRAIN, called as a witness on be-  
half of the petitioner, and duly sworn, testified as  
follows: 30

*Direct examination by Mr. Mandon:*

Q. Dr. Train, you are a duly licensed, practicing  
physician of the State of New York? A. Yes,  
sir.

Q. How long have you been such? A. Since  
1930, ten years. 40

*Dr. Irwin P. Train, for Petitioner—Direct.*

Q. And what schools have you attended? A. New York Medical College and New York Post Graduate Medical School.

10 Q. And are you affiliated with any institutions at the present time? A. Yes. I am affiliated with Kings County Hospital in Brooklyn; Jewish Hospital in Brooklyn; Caledonia Hospital in Brooklyn; Mt. Sinai Hospital in New York.

Q. In what capacity, Doctor? A. At Kings County I am attending surgeon; Mt. Sinai, clinical assistant; at Caledonia and at Jewish Hospitals I am a surgeon, courtesy staff.

Q. In connection with the practice of medicine, have you made any particular specialty? A. Yes. I specialize in surgery.

20 Q. And where do you maintain your office, Doctor? A. 150 Crown Street, Brooklyn.

Q. Have you had occasion to treat the petitioner, Meyer Rugg? A. I did.

Q. When did you first see him? A. May I refer to some records?

Q. Surely. A. I saw Mr. Rugg on October 21, 1939. It was quite late; it overlapped over midnight to the following morning to October 22nd, 1939.

30 Q. Can you tell us where you saw Mr. Rugg? A. I saw him at his home.

Q. Will you tell us what you observed as to his condition at the time you first saw him on that occasion? A. Well, Mr. Rugg was acutely ill, very acutely ill. Do you want me to describe his medical condition?

40 Q. Yes. A. He had been vomiting, he was suffering from a severe condition, an intestinal obstruction as the result of a strangulated right inguinal hernia.

*Dr. Irwin P. Train, for Petitioner—Direct.*

Q. Did you get a history from the patient, Doctor? A. I did.

Q. What history did you obtain? A. Well, Mr. Rugg is a carpenter by trade, and he tells me that as part of his occupation he lifts a good number of heavy objects during the course of his work, and on Friday, that is on the 20th of October, in the late afternoon he had lifted some heavy objects and he felt a pain. The pain at that time was in the abdomen, in the back—particularly in the back, upper part of the right thigh. He is a phlegmatic sort of individual and he thought it would go away, and he kept on working. The pain became severe. It was close towards returning home, and he returned home. At home he rested and he felt a lot better. In the morning the pain completely subsided and he returned to work. That was Saturday morning. There again he continued his usual occupation, lifting several objects, one particularly heavy one and he again felt pain. This time it was more severe. It was in the abdomen, much more so over the right lower part of the abdomen, and again it was close to closing time—it was about noon this time that he was entitled to go home and he went home. At home the pain increased and he noticed that there was a lump in the region of his right groin. He began to vomit and he found he could not move his bowels. He tried an emetic and this didn't help him, and he finally called my office, asking me to come over to see him.

Q. Do you recall about what time you got there on Saturday, Doctor? A. Well, it was quite late. It must have been in the region of perhaps eleven o'clock. I stayed there a few hours.

Q. A few hours? A. Yes.

*Dr. Irwin P. Train, for Petitioner—Direct.*

Q. And what did you advise, Doctor? A. As soon as I saw him and after I examined him, I saw the nature of his condition, I advised immediate hospitalization and immediate operation.

10 Q. And did you operate on Mr. Rugg? A. Not immediately. I operated on the—upon the following day.

Q. When? A. In the morning, Sunday morning at the Jewish Hospital.

Q. And what was the condition of the hernia when you saw it first? A. Strangulated.

Q. Strangulated? A. It was strangulated.

Q. And what type of operation did you perform? A. I did a release of his strangulation, exploration, and then a repair of his hernia.

20 Q. And did some other condition develop after that? A. Yes. He developed several complications post-operatively.

Q. Will you tell us about those. A. Well, after operation—do you want me to give you the exact dates?

30 Q. Yes. If you don't remember the exact dates, don't give them to us, but I would like to know the specific type of treatment, just what the condition was, just what operations were performed. A. After the operation he developed difficulty in voiding, necessitating frequent catheterizations, and as a result of this he developed a urinary sepsis, developed a temperature as high as 108; and he developed temperatures not as high at intervals after that. We tried to encourage him to void spontaneously at different times, but it always failed. We had to recatheterize him. At another time he developed changes in his lungs. I called in Dr. Seligman, who is an internal man, who  
40 formed the impression that he had a broncho-pneumonia and we treated him for the broncho-

*Dr. Irwin P. Train, for Petitioner—Direct.*

pneumonia. And then I called Dr. Aschner in concerning his urological complication, and he formed the impression that he had a urinary sepsis due to acute obstruction of his prostrate, causing an acute urinary retention, and he advised conservative measures first, and if these failed to resort to some type of operation, either transurethral or prostatectomy to release the obstruction. 10

Q. In your opinion, Doctor, were these subsequent conditions which you just described, attributable to this same injury? A. Yes, sir; they were.

Q. To the same accident? A. Yes.

Q. Do you know how long in all that Mr. Rugg was confined to the hospital? A. Well, I would have to resort to the dates.

Q. Can you tell us from the record? A. He was admitted to the hospital on October 22nd, and he was discharged from the hospital on January 13, 1940. 20

Q. How long have you been treating him? A. I have been treating him ever since then, until the last date I saw him, which was about June 13th.

Mr. Rhinehart: June, Doctor?

The Witness: June.

By Mr. Mandon: 30

Q. 1940? A. 1940.

Q. And what have you—taking into consideration, Doctor, the history you obtained and the treatment you rendered, and the various conditions you observed, what have you to say with respect to the cause of this hernia? A. Well, the cause decidedly was due to a sudden effort of an unusual type, that is a degree of exertion that was more than usual. I would say sudden, like in the lifting of a heavy object, or a sudden, very severe strain. 40

*Dr. Irwin P. Train, for Petitioner—Direct.*

Q. Doctor, in your opinion, was there casual relationship between this condition and the accident?

A. Decidedly so.

10 Q. Of Friday, Saturday, October 21st? A. Yes, particularly the one of Saturday, which became very obstructive, and which progressed into these symptoms.

Q. Doctor, in your opinion, was medical treatment required within twenty-four hours after the occurrence of this event? A. Oh, yes.

Mr. Rhinehart: I object to that as being immaterial.

The Court: I will allow it.

20 Q. Were there any adhesions as the result of these various operations, Doctor? A. Well, at the time of the operation there were no adhesions because it was an acute affair. By adhesions—of course, if we consider post operative adhesions, that we cannot tell, not immediately. He has not had any symptoms referable to those as yet.

30 Q. Well, Doctor, what effect, if any, would these various operations—do these various or will these various operations on this man's ability to perform his usual work as a carpenter? A. They are going to limit his activities as far as heavy work is concerned. He has a slight weakening of the abdominal wall as a result of his suprapubic cystotomy, also as a result of his hernial repair, the tissues in that area were very poor even at the time of the operation.

Q. Will that condition be permanent, Doctor?

A. They will be.

40 Q. I don't recall whether you said—I don't recall whether you stated whether or not there was causal relationship between the accident and the various conditions you just outlined? A.

*Dr. Irwin P. Train, for Petitioner—Direct.*

There is. I mean, one caused one, that is indirectly, that is as a complication and of the cause of the others.

Q. Doctor, have you rendered any bills for your services? A. Yes, I did. There is an additional one that I have to add on.

Q. Well, what is the total amount of the bill? 10

Mr. Rhinehart: I object to this as not being chargeable against the respondent in any case, and being limited by the provisions of the Compensation Act, in the second place.

The Court: Maybe it is under the limit.

Mr. Rhinehart: Sir?

The Court: Maybe it is under the limit.

Mr. Rhinehart: It may be. 20

The Court: I will allow it. I would like to have it in the record, no matter how I might assess it.

Mr. Mandon: I didn't get your last statement.

The Court: I say that I would like to have it in the record no matter who it might be assessed against.

What was your bill?

The Witness: The total amount is \$775.00. 30

By Mr. Mandon:

Q. That covers treatment rendered between what time, Doctor? A. Between the time of the admission to the hospital and the last time that I saw him, that is about June 13th.

Q. And— A. Excuse me. It is before the time—from the very first time I saw him, that is even before the time I operated upon him, and before the time he went to the hospital. 40

*Dr. Irwin P. Train, for Petitioner—Cross.*

10 Q. And what have to say—would you say, Doctor, and will you tell us whether or not these various treatments were rendered necessary—whether or not they were rendered necessary by the same incidents, by the same accident? A. Yes, they were. They all arose directly or indirectly as a result of this accident.

Mr. Mandon: You may cross examine.

*Cross examination by Mr. Rhinehart:*

Q. Is that \$775.00 just your bill? A. That is my bill, \$775.00.

Q. \$775.00? A. Yes.

20 Mr. Mandon: By the way—I am sorry—I was going to offer the bills in evidence for the purpose of the record.

Do you have those bills with you, Doctor?

The Witness: Yes, I have.

Mr. Mandon: These bills are for the exact dates of treatment; they have the exact dates on?

The Witness: They have.

Mr. Mandon: I offer them in evidence.

30 (The article referred to was received in evidence and marked P-1.)

Mr. Mandon: I am sorry, Mr. Rhinehart.

By Mr. Rhinehart:

Q. Doctor, from whom did you receive your history? A. From the patient.

Q. And as I have written it down from your testimony, the history that you received on late evening of October 21st, Saturday night? A. Yes.

40 Q. Was that on Friday, October 20th, in the late afternoon he had—felt a pain in his abdomen,

*Dr. Irwin P. Train, for Petitioner—Cross.*

back and right thigh, following a heavy lifting?

A. That is right.

Q. That is the history you received from Meyer Rugg? A. That is right.

Q. Is that correct? And subsequently that he returned—the history is, as I recall your testimony, continues that on Saturday morning the pain had somewhat subsided? A. Had subsided. 10

Q. Had subsided? A. Yes.

Q. That he returned to work and that in the course of lifting again on Saturday morning near quitting time— A. Well, not near quitting time, I mean sometime during the morning.

Q. Sometime during the morning the pain returned? A. Yes.

Q. And he remained at work until quitting time, twelve o'clock? A. That is right. 20

Q. And came home? A. Yes.

Q. And after he arrived at home he noticed a lump in his right side? A. Well, that is the impression I had, around that time.

Q. I mean, you have that down in writing, don't you, Doctor? A. Well, I mean, I didn't put down exactly the time, whether he found it while he was still at his place of business. All I know is after he experienced the pain he noticed that he had a lump there, or whether it was actually at home, or whether he was—while he was in transit, because, as I recall, while he was traveling home he almost fainted, experienced this tremendous pain, and whether he experienced it at that particular moment or not, I am not quite sure. 30

Q. In any case, it was on Saturday? A. Yes.

Q. Now, as I understand your testimony, there is no doubt in your mind that the occurrence of Friday, October 20th, and the occurrence of Saturday morning are causally related to his hernia? 40

*Dr. Irwin P. Train, for Petitioner—Cross.*

A. I don't understand. You mean the pain that he experienced?

Q. Yes. I mean the incidents, the things that happened on Friday and Saturday are the things that in your opinion caused this hernia? A. Yes.

10 Q. And you performed the operation yourself, Doctor? A. I did.

Q. I take it that the operative findings were such as to indicate a traumatic hernia of recent origin, is that so? A. That is right, yes.

Q. In other words, the findings on your operation indicated that he had not had a preexisting hernia? A. Not from the findings that I found there, that is right.

20 Q. You aren't licensed to practice medicine in New Jersey, are you, Doctor? A. No, I am not.

Q. The subsequent conditions from which the petitioner suffered, that is subsequent to his operation for a right inguinal hernia were all related more to the hospitalization and the operation performed than directly to the accident or alleged accident? A. Yes, they developed as complications.

30 Q. They were secondary and incidental to an operation for a right inguinal hernia that was performed on Sunday, October 22nd, is that so? A. Yes, sir.

Q. In other words, there is no direct causal connection between this alleged lifting and the various other operations that you performed? A. That is so.

Mr. Mandon: The answer was yes. I don't know whether the witness understood you or not.

40 Mr. Rhinehart: (To the reporter) Will you repeat the question?

*Dr. Irwin P. Train, for Petitioner—Cross.*

(The reporter read the last question and answer as follows: "In other words, there is no direct causal connection between this alleged lifting and the various other operations that you performed? Answer: That is so.")

10

By Mr. Rhinehart:

Q. Of course, you say that there is a causal connection but the point is that it is not a direct one? A. Yes, that is correct.

Q. That is so. Doctor, do I understand that Mr. Rugg was discharged on June 13th? A. Practically, unless he developed any further trouble.

Q. As I recall, he testified that you told him he could return to work? A. Yes.

20

Q. Is that so? A. Yes.

Q. I show you what purports to be an affidavit executed by you on the form of the Department of Labor of New York. I ask you if that is your report on the case of Meyer Rugg? (Handing to witness.) A. That is right.

Mr. Mandon: May I have the date on that, please?

Mr. Rhinehart: The date?

The Witness: February 26, 1940.

30

By Mr. Rhinehart:

Q. Is that—this was made, as I take it, when it was thought that this case might come under the New York law? A. That is right.

Q. Among other things, in answer to question 15, "Will the injury result in permanent defect?" As I read the report the answer is, "No". A. Well, at that particular time.

40

*Dr. Irwin P. Train, for Petitioner—Cross.*

Q. On February 26, 1940? A. Yes. I mean, I could not tell how he would react as far as his tissues are concerned. I could not foretell—in fact, for instance, that he would have a suprapubic cystotomy later on that would particularly weaken that wall.

10 Q. Doctor, he was discharged from the hospital on June—on January 13, 1940? A. Yes.

Q. Is that so? A. Well, is that the date? I have the day on here (indicating). I could refer to it. That is right.

Q. So that this report that he would—that you thought there was no permanent injury was made more than a month after he had left the hospital and, of course, after he had had his suprapubic cystotomy? A. That is right, but when one has  
20 any type of operation one can't foretell when and if the post operative type of incisional hernia is going to develop. Now, at the time that this report was made at the time of discharge of this patient from the hospital, his abdominal wall to all intents and purposes apparently looked well and firmly healed, but there is no guarantee that several months or in a year later he may develop weakening from that.

Q. So that—was that the thought in saying that he has some residual condition because merely that he might in the future have some aggravation of his condition or perhaps some increased disability? A. Well, right now he has some to  
30 some extent. I mean, there is a decided weakness—a decided weakening of that area in the region of the suprapubic cystotomy.

Q. What has occurred since February 26th to change your opinion about that? A. Well, that  
40 particular thing. He has shown a little bit of relaxation there, a little bit of protrusion there on exertion now that wasn't present at the time of

*Dr. Irwin P. Train, for Petitioner—Re-direct.*

February. It could be—very well be present though. It may have appeared as it did appear, around the region of the latter part of April. It may have been further developed than that as the months go on. One does not develop an incisional hernia immediately.

Q. And has he developed any incisional hernia?

10

A. It has not come to the point where we would call it definitely an incisional hernia, but it is a weakening; that is the first stage. It may not develop any more than that, but it may.

Q. Of course, there is no doubt in your mind that, I take it, that the pain in the back was attributable to this hernia? A. Well, not necessarily due to the hernia. It was attributable to the fact that he was straining himself in lifting up a heavy object, and he developed a hernia, and at the same time some strain of his posterior muscles. Pain in the back is not usually a sign of hernia, but he may have had more than one condition at that time. Of course, when I saw him he didn't complain of any particular pain in the back. It was entirely localized to the right lower quadrant.

20

Q. Were you the treating—the family physician for Mr. Rugg? A. No. I am not doing general practice.

Q. Had you ever treated him for— A. No.

30

Q. Prior to October 21st? A. I never did.

Q. You hadn't? A. No, sir.

Q. Did you receive any history of previous medical treatment? A. No.

Mr. Rhinehart: That is all.

*Re-direct examination by Mr. Mandon:*

Q. Doctor, this charge as set forth in your bill which is offered in evidence, is that a reasonable charge for the various treatment? A. Yes.

40

*Dr. Paul W. Aschner, for Petitioner—Direct.*

Q. For the various treatment rendered the patient and for the various operations you performed on him? A. Yes, considering the length of time it is.

10 Q. And in your opinion, Doctor, would these after complications have developed without the original hernia? A. No, they would not have.

Mr. Mandon: That is all.

The Witness: I would like to ask a question about having the Court fix a fee for testifying.

By Mr. Mandon:

Q. What is your charge for testifying, Doctor?

20 A. I leave that to the discretion of the Court.

Mr. Rhinehart: I object to that as being chargeable against the respondent, if the Court please.

Mr. Mandon: Well, it is in the record. All right, Doctor.

(Witness excused.)

30 DR. PAUL W. ASCHNER, called as a witness on behalf of the petitioner, being duly sworn, testified as follows:

*Direct examination by Mr. Mandon:*

Q. Doctor, you also are licensed to practice in New York? You are a practicing physician of the State of New York? A. I am.

Q. How long have you been such? A. Since 1912.

40 Q. During that time have you been engaged in the active practice of medicine? A. I have.

*Dr. Paul W. Aschner, for Petitioner—Direct.*

Q. What institutions of learning did you attend? A. College of Physicians and Surgeons, and Columbia University.

Q. And with what medical institutions are you connected at the present time? A. The Mt. Sinai Hospital, New York; the Hospital for Joint Diseases in New York City; and the Jewish Hospital in Brooklyn. 10

Q. In what capacity? A. As attending surgeon, as attending urologist.

Q. And in connection with your practice of medicine, have you made any specialty on it to any branch of medicine? A. Specialize in surgery and genitourinary surgery.

Q. And how long have you been engaged in that specialty, Doctor? A. Ever since 1916, since I have started to practice. 20

Q. And can you give us a rough estimate as to approximately how many operations along those lines you have performed, roughly? A. Five thousand.

Q. And did you have occasion to treat the petitioner, Meyer Rugg, in this case? A. I did.

Q. And do you have your records with you, Doctor? A. I have some notations, yes.

Q. Can you tell us from your notes or otherwise when you first saw Mr. Rugg? A. I first saw him November 2, 1939, in consultation. Dr. Train asked me to see him. 30

Q. And what did you observe at that time when you first examined him? A. He had the wound of a recent repair for a strangulated hernia. He was extremely ill with high fever. He had a retention of urine and pus in his urine, a large amount of pus in his urine.

Q. Where was he when you saw him at that time? A. In bed, was a patient in the Jewish Hospital in Brooklyn. 40

*Dr. Paul W. Aschner, for Petitioner—Direct.*

Q. And did you have a consultation with Dr. Train? A. Yes, I did.

Q. And Dr. Seligman also, or was that later? A. Well, he wasn't there at the time, if I recall. He may have seen us. I think he went at a subsequent time.

10 Q. As a result of your examination and the conditions disclosed by the examination, and as a result of your conference with Dr. Train, what operative procedure did you adopt in this case? A. Well, we didn't adopt the operative procedure at once. Our diagnosis was that he had a retention of urine and infection of his bladder, incidentally too, and as commonly occurs after hernia operations; that in his particular instance there was an  
20 added factor of some enlargement of the prostate gland which is common in men of his years. We planned by means of catheter drainage, keeping a catheter in place, and by bladder irrigations, and by antiseptic to control the infection and to hope that when the man's general condition improved that he might resume urination.

Q. Did urination resume automatically afterwards? A. No, it didn't. Despite all these measures he continued to have complete retention of urine. We attempted on three or four occasions  
30 to leave the catheter out and he would promptly have a chill and a high rise in temperature and again have retention of urine, became very much more ill as a result of these repeated attacks of infection.

Q. How long did you have the tube in him, Doctor? A. Well, we had a catheter in him for periods of three to four days up until the first bladder operation which was done on the fourth  
40 of December, 1939. That operation consisted of making an opening into the bladder, suprapubic

*Dr. Paul W. Aschner, for Petitioner—Direct.*

opening in the bladder, draining the bladder from above.

Q. Did that operation leave a scar in the bladder, Doctor? A. Yes.

Q. Is that permanent, Doctor? A. There is a scar in the bladder—not the bladder. He has a scar in the abdominal wall through which the operation is made. 10

Q. And were any other operations necessary subsequent to this bladder operation? A. Yes. That was the first operation which was intended to give the—to restore him to normal urination. We subsequently performed two operations to remove the obstructing prostatic tissue; that was done in two stages, by what is known as the transurethral method, which is an electrical method for cutting away the obstructing tissue. After that his tube was removed and then normal urination was restored. 20

Q. Were any further treatments rendered by you subsequent to that time? A. Well, he was treated throughout that period on the genitourinary service at the hospital for the infection by bladder irrigations and by medication. He was discharged from the hospital the 13th of January, 1940. I saw him once at my office, January 23, 1940, at which time he still had a great deal of pus in his urine, and then, too, I attempted to pass an instrument into his bladder but he still had some residual swelling. That was a catheter and it could not be passed into his bladder. Nevertheless, he was voiding freely. His subsequent treatment, naturally, was in the hands of Dr. Train. 30

Q. Now, Doctor, what effect, if any, would those various operations performed by you and Dr. Train, have upon this man's capacity to perform work such as carpentry work? A. Well, I can 40

*Dr. Paul W. Aschner, for Petitioner—Direct.*

only answer directly with reference to the part I had to play in this procedure. He had—he developed considerable infection in the suprapubic wound after the operation, and this naturally leaves a point of weakness in the fascia through which a hernia might subsequently—might develop—may have developed by now for all I know, because I haven't examined him since the 23rd of January. I cannot make a statement as to his present condition.

10 Q. Is there—can you tell us whether or not the abdominal wall and the wall of the bladder were weakened as a result of these operations? A. Why, I cannot answer that. I can answer that on experience from other cases of this sort.

20 Q. Yes. Based on your experience. A. There is no question that he would have weakness at both sites, above the site of his hernial repair and at the site of the suprapubic cystotomy.

Q. Can you tell us whether or not such a weakness would ever interfere in any way with his ability to lift heavy objects? A. I think it certainly would. I don't think he should be allowed to engage in the lifting of heavy weights or very marked physical activity.

30 Q. And the weakening of these structures, Doctor, is that a permanent condition? A. I think it is.

Q. And have you rendered a bill, Doctor, in connection with your treatment? A. I did. I rendered a bill to the Liberty Mutual Insurance Company.

Q. You forwarded it to the company? A. I think they have a bill in their files.

Q. Do you have a copy of it with you, Doctor? A. I have a copy, yes.

40 Q. What is the amount? A. It is \$346.00.

*Dr. Paul W. Aschner, for Petitioner—Direct.*

Q. Is that a reasonable charge for the various—

A. Yes, sir.

Q. (Continuing)—operations and treatment?

Mr. Rhinehart: Of course, I object to that as being a charge against the respondent, if the Court please, being beyond the limits of the Act. 10

Mr. Mandon: I think it is connected up, your Honor.

The Court: I will allow it.

Mr. Mandon: Is this the one you have, Mr. Rhinehart? (Indicating.)

The Witness: I think in the original bill there was an error of addition in Ten Dollars. I think the bill you may have may show 336 instead of 346. 20

Mr. Mandon: At any rate, I offer it in evidence.

(The article referred to was received in evidence and marked P-2.)

The Court: Was it paid, Doctor?

The Witness: No.

By Mr. Mandon:

Q. It was not paid in part, Doctor? A. No. 30

Q. By the way, Doctor, did you get a history of this patient—from the patient? A. Yes.

Q. And do you recall what the history was, or do you have any notations on it? A. Well—

Q. If you recall? A. I should say I would not say I got the history directly from the patient with reference to his hernia. I could not say that. I got the history from Dr. Train; naturally, the history had been taken in the hospital and by the patient—by Dr. Train. I received that history. 40

*Dr. Paul W. Aschner, for Petitioner—Cross.*

Q. That history was given to you in connection with your consultation with Dr. Train? A. That is right.

Mr. Mandon: Your Witness.

10 *Cross examination by Mr. Rhinehart:*

Q. The part of the history that you were particularly interested in was the fact that the petitioner or the patient had had an operation for a strangulated hernia on October 22, is that so? A. That is correct.

20 Q. Now, I believe you have said it, and tell me if I understand you correctly, that all of these conditions for which you treated Meyer Rugg, were secondary to that operation? A. Specifically that as a result of the operation for hernia he developed complete retention of urine, and that following that he developed infection in his bladder and that the complete retention and the infection persisted, which required naturally subsequent measures to restore him to health.

30 Q. The retention of urine and the infection that you say followed weren't related to any trauma—alleged trauma beyond or before the operation for the hernia except indirectly through the hernia? A. They were incidental results of the fact that the man developed a strangulated hernia for which he had been operated upon.

Q. And, as I understand you, you last saw him on June—on January 23, 1940? A. That is right.

Q. You also apparently sent to the insurance company, Doctor, a form under date of February 2, 1940? A. That is correct.

Q. On the form of the New York Department of— A. That is right.

40 Q. (Continuing)—Labor? A. Yes.

*Dr. Paul W. Aschner for Petitioner—Re-direct.*

Q. Reporting that there was no permanent injury? A. That is right, that is under the New York law. The New York law regards as permanent injury loss, anatomical loss of the parts.

Q. You mean that you can't collect compensation in New York unless you have an amputation?

A. If you have—no, either an amputation or an impairment of motion, fixation of a joint. 10

Q. Impairment of function? A. Impairment of function.

Q. And there is no impairment of function in this case? A. Depends on what you mean by impairment of function. The man is able to do the ordinary things of life but he has a limitation in his working capacity. That is a different thing.

Q. Well, without arguing that with you, Doctor, he is functionally restored, is that so, so that as far as the urinary function is concerned, which I understand is the only thing you are talking about, he is back to normal? A. He is symptoma- 20  
logical—I haven't examined him. As I said, the last time I examined him I could not pass an instrument through that area; whether or not he has a stricture there or not, I am not in a position to say. Perhaps Dr. Train has examined him in that respect.

Q. You aren't admitted to practice in the State of New Jersey? A. No, I am not. I never applied. 30

Q. Sir? A. I never applied.

Mr. Rhinehart: That is all.

*Re-direct examination by Mr. Mandon:*

Q. Was that bill you rendered a reasonable charge for the services rendered? A. That bill is in accord with the New York State Compensation 40  
Laws.

*Certificates of Deputy Commissioner and  
Court Reporter.*

Q. Is it generally a reasonable charge? A. It is extremely reasonable.

Mr. Mandon: Thank you, Doctor.

(Witness excused.)

10

(Whereupon an adjournment was taken to a future date.)

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**Certificate of Deputy Commissioner.**

I HEREBY CERTIFY the foregoing to be a true and accurate transcript of the proceedings in this matter, as taken before me, at the time, place and date hereinbefore set forth.

20

HARRY H. UMBERGER,  
Deputy Commissioner.

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**Certificate of Court Reporter.**

I HEREBY CERTIFY the foregoing to be a true and accurate transcript of the proceedings in this matter, as taken stenographically by me, at the time, place and date hereinbefore set forth.

30

JACOB BAER,  
Court Reporter.

40

*Dr. Gerald M. Feigen, for Petitioner—Direct.*  
 NEW JERSEY DEPARTMENT OF LABOR,  
 WORKMEN'S COMPENSATION BUREAU,  
 ELIZABETH, UNION COUNTY DISTRICT.

<p style="text-align: center;">MEYER RUGG,          Petitioner,  <i>vs.</i>          DRIWOOD CORPORATION,          Respondent.</p>	}	10
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August 1, 1940.

Before: HONORABLE HARRY UMBERGER, Deputy  
 Compensation Commissioner. 20

Appearances:

S. MARTIN MANDON, Esq., for the petitioner.

EVERETT RHINEHART (JOHN W. TAYLOR, Esq.),  
 for the respondent.

DR. GERALD M. FEIGEN, called as a witness on be- 30  
 half of the petitioner, was sworn and testified as  
 follows:

Mr. Mandon: I have here the hospital  
 record of the Jewish Hospital, Brooklyn,  
 and Doctor Bernard Seligman. The doc-  
 tor's bill is \$60 and the hospital bill is  
 \$442.70, of which we have paid \$398.20 on  
 account.

Any objection to these?

40

*Dr. Gerald M. Feigen, for Petitioner—Direct.*

10 Mr. Rhinehart: Yes, there is an objection to them. I make no objection to the form of the proof in so far as the hospital bill is concerned. I do object to it as being chargeable against the respondent, and in any case as being beyond the limit of medical fixed by the hernia provision of the act, that is, 34:15:12X; and as being in excess of \$50, no petitions having been filed for medical under 34:15:15 of the Revised Statutes of 1937.

20 Now, as to Doctor Seligman's bill: I make no objection to his offering the hospital bill in this form. If the petitioner has paid Doctor Seligman's bill, I will not object to his testifying; otherwise I don't know that I ought to consent to it going into evidence.

Mr. Mandon: That was the one referred to at the last hearing by Doctor Train, the first treating physician, who said he called him in. Of course, I can bring Doctor Seligman down, if necessary; he is in New York. I don't know what the set-up would be here.

30 Mr. Rhinehart: I suggested to counsel it wouldn't make any difference; he has already proved medical of over a thousand dollars.

Mr. Mandon: I believe under the Act we are entitled to prove everything attributable to the injury.

The Court: Who is Doctor Seligman? He didn't testify, did he?

40 Mr. Mandon: No. Doctor Seligman was called in by Doctor Train, the original treating physician, when his pneumonia

*Dr. Gerald M. Feigen, for Petitioner—Direct.*

developed as a result of post-operative conditions. I believe the record will bear me out on that, and Doctor Seligman treated in connection with the pneumonia. Doctor Train testified he called him in for that purpose.

The Court: What is the bill of Doctor Seligman? 10

Mr. Mandon: Bill of Doctor Seligman is \$60.

Mr. Rhinehart: I don't see that it makes any difference whether that goes in or not, but I don't have any objection to the form of the proof as far as the hospital bill is concerned.

Mr. Mandon: Do you want to make the same provisions with respect to Doctor Seligman's bill? 20

Mr. Rhinehart: Off the record.

(Discussion off the record.)

Mr. Rhinehart: I will let it go in evidence; I won't object to the form of it, neither do I admit its reasonableness.

Mr. Mandon: All right.

(The paper referred to was marked "P-1" in evidence as of today's date, being the hospital bill.) 30

(The paper referred to was marked "P-2" in evidence as of today's date, being Doctor Seligman's bill.)

*Direct examination by Mr. Mandon:*

Q. Doctor, you are a licensed, practising physician in the State of New Jersey? A. Yes, sir.

40

*Dr. Gerald M. Feigen, for Petitioner—Direct.*

Q. How long have you been licensed to practice in the State of New Jersey? A. In the State of New Jersey two years.

Q. How long have you been licensed to practice, Doctor? A. Five years.

10 Q. What medical institutions did you attend?  
A. I attended Bellevue Medical School, and I was resident surgeon in the Harlem Hospital for three years.

Q. Are you affiliated with any institutions at the present time? A. Yes, I am associated with the Barnert Memorial in Paterson.

Q. Have you had occasion in the course of your practice to estimate disabilities pursuant to the New Jersey Workmen's Compensation Act? A. Yes, sir.

20 Q. And have you made a specialty of any particular branch of medicine? A. My practice is limited to surgery.

Q. Have you had occasion to operate for hernias, Doctor? A. Yes, I have.

Q. Have you treated in connection with hernia cases? A. Yes, I have.

Q. Did you have occasion to examine the petitioner, Meyer Rugg, on June 29th, 1940? A. Yes.

30 Q. Will you tell us what your examination disclosed at that time? A. He told me that on October 20th—

Mr. Rhinehart: I object to the history, sir.

The Court: Sustain the objection; just what you saw from your own observation.

40 The Witness: Patient was an elderly white male of phlegmatic disposition, and doesn't appear acutely ill. His facial expression was somewhat lethargic. His eyes

*Dr. Gerald M. Feigen, for Petitioner—Direct.*

react to light. The tongue is furred; it has a coarse tremor; it doesn't deviate to either side. There is a scar of a cystotomy extending to three inches below the umbelious, circular in shape with an upward linear projection. There is a definite defect in the facia behind this scar, a bulge on cough; there is a six inch scar parallel to poupart's ligament and somewhat above it. Both internal rings are dilated, but there is no inguinal hernia. There is a slight impulse on the left side in the inguinal canal. Testicles are not swollen, and there is no functional loss in the back. 10

Mr. Rhinehart: You say no functional loss of the back. 20

By Mr. Mandon:

Q. Doctor, assume the following facts: Assume that a man of approximately fifty-eight years of age had been employed as a carpenter for a period of approximately five or six years, in the course of which work it was frequently necessary for him to lift heavy objects of various weights; up to the time of the occurrence of this particular event he was in perfectly good health, worked regularly, and never was operated on for any conditions; and that on the afternoon of October 20th, 1939 approximately 4:00 P. M., while lifting some heavy objects in connection with his work he felt a pain in his right side and back; this pain disappeared over night; he returned to work the following morning and while lifting another object felt a severe pain in the right groin; and he stopped what he was doing and went into the men's room and there for the first time noticed 30 40

*Dr. Gerald M. Feigen, for Petitioner—Direct.*

10 the bulge over the right inguinal region; a little while later he told the person in charge of the floor of which he was working that he wasn't feeling well and needed some help in order to finish that particular job; and that up to the time of this occurrence he did not need any helpers to work with him; that he stayed until about twelve or one o'clock and then went home and all of this time pain persisted in the right inguinal region; and that sometime late Saturday afternoon a physician was called, Doctor Train finally arrived at about eleven o'clock at night; and immediately advised an operation; that this man was operated on for a strangulated hernia on the following morning in the Brooklyn Jewish Hospital; and that subsequent to this operation for strangulated  
20 hernia the following conditions set in; urinary retention, infection—severe infection—hypertrophy of the prostatic gland; inability to urinate, which persisted despite treatment for some time; and also the pneumonia; and he was confined to the Brooklyn Jewish Hospital for a period of approximately three months; that he was not able to work from the time of this occurrence up to the time of the last hearing, which was held on July 9th, 1940, I believe.

30 Assuming those facts, Doctor, and taking into consideration the findings made by you on the date of your examination, can you state whether or not the strangulated hernia with the resultant conditions as previously outlined were attributable to the accidents of October 20th and October 21st, 1939?

40 Mr. Rhinehart: One objection I have to the question is that counsel says he was unable to work at the last hearing. The

*Dr. Gerald M. Feigen, for Petitioner—Direct.*

evidence is he was discharged from treatment by Doctor Train on June 13th, and that he was all right and able to go to work then. Both the doctor and the petitioner testified to that, as I recall. Isn't that so?

Mr. Mandon: I think that is correct, sir. I will amend the question to state that Mr. Rugg was discharged by the Doctor on June 13th. 10

Mr. Rhinehart: Yes.

Mr. Mandon: On June 13th, 1940, and was able to work at that time.

The Witness: I think that it is related to those occurrences.

By Mr. Mandon:

Q. In your opinion can you state, Doctor, whether or not these conditions were attributable to the accident of October 20th or the one of October 21st, 1940? 20

Mr. Rhinehart: Of course, the Doctor has already answered the question by saying they were attributable to the circumstances that occurred on October 21st—I mean, that is the question he just answered.

The Court: I think your question is a little indefinite, counsel, one of them is anyway. Are you now trying to bring out which one of these occasions actually caused it, from the Doctor, if he can tell you? 30

Mr. Mandon: If he can tell us.

The question was can he state whether there was any causal relationship between the strangulated hernia and these other post-operative conditions and the accidents of October 20th or 21st? 40

*Dr. Gerald M. Feigen, for Petitioner—Direct.*

The Court: I will allow the question.

The Witness: I couldn't state positively, but if the history is correct I would relate it to the time that the lump appeared and I believe that was the 21st of October.

10 By Mr. Mandon:

Q. What do you base your opinion on, Doctor?

A. A strangulated hernia is a hernia whose sac is constricted and the blood supply to the contents of the sac is cut off; and therefore you get decay of the contents of the sac. If the sac had any content and it was strangulated it would seem to me there should be an evident mass of such strangulation; and if he didn't notice it the first  
20 time and his pain disappeared there, the strangulation certainly didn't occur on the day before.

Q. In your opinion when did the descent occur?

A. I would say that the descent occurred on the 21st.

Q. Doctor, do you feel that this man has any permanent disability at the present time as a result of these conditions? A. Yes, there is—

30 Mr. Rhinehart: I object to that, if the Court please, on the ground that the Act, of course, clearly does not contemplate any permanent allowance for hernia cases. The provisions of the Act require that where an operation is performed, as in this instance, that the employer shall be liable to meet the expense incident to such operation and recovery not in excess of \$150; together with compensation as provided in paragraph "A" of this section during the  
40 periods of disability prior to and following the operation.

*Dr. Gerald M. Feigen, for Petitioner—Direct.*

Now, the compensation payable, therefore, is on paragraph "A" of Section 34:15:12 of the Revised Statutes, which allows compensation for temporary disability. The only other compensation contemplated by the Act in such case is if death results; so very clearly the question of permanency, even assuming, although not conceding he has any, is not material, not in issue, and not recoverable.

10

All the testimony throughout and the uncontroverted fact is that all of these conditions are secondary and incidental to the hernia and, of course, the Act uses that language: The employer shall meet expense incident to such operation and pay compensation for the disability prior to and following the operation. Prior resultant periods of disability.

20

So, that the intent of that provision is very plain, that hernia is specifically provided for in the Act and under the specific provisions of the Act, which provides for specific disability, and no allowance is made or contemplated for permanent injury resulting.

30

The Court: Well, you may be right, Mr. Rhinehart, but subject to the determination of the legal issue, I will allow the question for the purposes of the record.

Mr. Rhinehart: May we have the question, please?

(The last question was read.)

The Witness: Yes, I do.

40

*Dr. Gerald M. Feigen, for Petitioner—Direct.*

By Mr. Mandon:

10 Q. What is that? A. There is a potential ventral hernia there. There is a considerable defect in his abdominal wall over the site of the cystotomy wound, so much so you could put your fingers through it.

Mr. Rhinehart: May I have the last part, please?

20 The Witness: I said there is a definite defect in his abdominal wall where the cystotomy was done; you could put your fingers through it and notice the defect in the facial; a bulge on cough or strain; and that plus the fact that he subjectively complains of increase in urination and frequency of urination, I thought that also constituted a certain amount of permanent disability.

By Mr. Mandon:

30 Q. Doctor, assuming that an opening was made in the bladder in connection with the condition he had in the retention of urine, in your opinion, would that have any effect upon the strength of the bladder wall?

Mr. Rhinehart: May I have that question?

(The last question was read.)

The Witness: Yes, I think it would; it would weaken the bladder wall at that point.

By Mr. Mandon:

40 Q. Would that be a permanent condition, Doctor? A. Yes, it would be a permanent condition.

*Dr. Gerald M. Feigen, for Petitioner—Direct.*

Q. Will you estimate for us what in your opinion this man's disability is at the present time?

A. I would say ten per cent of total.

Q. Will you tell us whether or not the weakness in the abdominal wall and the bladder would have any effect upon this man's ability to lift objects of various weights?

10

Mr. Rhinehart: If the Court please, may we understand that I have the same objection to this series of questions, and I presume the same ruling?

The Court: Yes.

The Witness: It would be strictly inadvisable for this man to do any work involving lifting or straining, anything that would increase his intra-abdominal pressure.

20

By Mr. Mandon:

Q. Doctor, how soon after a strangulated hernia occurs is medical treatment necessary, in your opinion?

Mr. Rhinehart: I object to that, if the Court please as being speculation, particularly in this case where there were so many other things involved; and, besides, we have the evidence of the treating physician that he was discharged on June 13th and he treated him up to that time.

30

Mr. Mandon: I think counsel missed my point; the question was how soon after a strangulated hernia occurs in his medical opinion is necessary as treatment, that is under the Act.

Mr. Rhinehart: His medical opinion?

40

*Dr. Gerald M. Feigen, for Petitioner—Cross.*

Mr. Mandon: No, is medical treatment necessary in this Doctor's opinion.

Mr. Rhinehart: I object to that.

The Court: I think it is immaterial; I will sustain it. We have had the facts in this case; what might occur in another witness is not going to help.

10

Mr. Mandon: Your witness.

*Cross examination by Mr. Rhinehart:*

Q. Doctor, I understood you to express an opinion that the descent of this hernia occurred on the 21st of October. A. I thought it probably did.

Q. Of course, you don't know anything about that except what you have been told; isn't that so?

20 A. Yes, sir, that is so.

Q. The descent of the hernia doesn't always immediately follow the cause, does it? A. No, it doesn't always.

Q. What? A. No.

Q. So the fact that the descent occurred on the 21st is no indication as to when the hernia might have been caused? A. Well, the cause might have been due to a number of factors.

30 Q. The cause might have been the and probably was the strain——

Mr. Mandon: I object to that part; I object to the "probably was" part.

*By Mr. Rhinehart:*

Q. The result of the strain that occurred on Friday; isn't that so? A. You are telling me that. You said the cause probably was the cause of the strain that occurred on Friday?

40 Q. Yes, isn't that so? A. No.

Q. Is it not? A. No, I don't think it probably was.

*Dr. Gerald M. Feigen, for Petitioner—Cross.*

Q. Didn't you say in answer to the first hypothetical question that counsel asked you that the hernia was related to the occurrences of October 20th and of October 21st? A. Yes, I did.

Q. And isn't that so? A. Yes.

Q. What do you mean by that? A. You asked me if the events of October 20th caused the descent and I said no; they might have set up conditions. 10

Q. I either misstated myself or you misunderstood me, Doctor. What I said was that the descent of the hernia is not necessarily coincident with the cause; is that so? A. I think that in order to make it clear I would have to state that hernias may be caused gradually or suddenly. I don't know whether this was caused gradually or suddenly. If it were caused suddenly then the appearance of the mass would lead me to believe that it occurred on Saturday, and that the events on Friday were merely strains on the canal. If it occurred gradually the events on Friday might have set the thing up, and the descent happened on Saturday. I only know what he told me. 20

Q. You examined his back, Doctor? A. Yes.

Q. You found nothing wrong with it? A. Nothing functionally wrong. I didn't have the privilege of seeing any X-Ray pictures. 30

Q. But there is no doubt in your mind that the symptoms of Friday, October 20th, were referable to the inguinal region? A. There is a doubt in my mind. How do I know that he didn't have a sick back then? I only know he didn't have a sick back in June, 1940 when I examined him, but I don't know about the time of the accident.

Q. Well, assuming that the history received by the attending physician in this case is true—I am not asking you to pass upon it or not—but assum- 40

*Dr. Gerald M. Feigen, for Petitioner—Cross.*

ing it is true that the petitioner felt a pain that afternoon in his abdomen, back, and side, would that lead you to the obvious conclusion that those symptoms were referable to his inguinal difficulty?

10 Mr. Mandon: I object to counsel characterizing the obviousness; it is a conclusion.

The Court: No, he is asking the doctor.

Mr. Rhinehart: I said it was an obvious conclusion.

Mr. Mandon: Yes, but the Doctor didn't say so.

The Court: Leave out the "obvious".

The Witness: It was inguinal difficulty?

By Mr. Rhinehart:

20 Q. Yes. A. Frankly, I don't know what inguinal difficulty is. Would you be more specific?

Q. The condition that resulted finally. A. You mean hernia or don't you mean hernia.

Q. The condition that resulted finally in the hernia, the strangulated hernia. A. Events on Friday might have had some relationship to it. I don't know; it is possible.

Q. Would you say it is probable? A. No, I wouldn't.

30 Q. Haven't you already testified they were related to it? A. Yes, but I can't say as to the extent of the relationship or the degree of relationship. All I have from my history was that he suffered pain in his thigh, groin, and back on Friday and it passed away over night. I don't know what went on there.

40 Q. You would not tell us that if—I understand you to say you would not suppose that that would have anything to do with the hernia that developed the next morning? A. It might have been;

*Dr. Gerald M. Feigen, for Petitioner—Cross.*

it might have paved the way for it; it might have enlarged his ring.

Q. It might have been a beginning hernia? A. Possible.

Q. As a matter of fact, it might have been an actual hernia at that time? A. What might have been an actual hernia? 10

Q. I say, the petitioner might have suffered an actual hernia at that time.

Mr. Mandon: May I ask counsel to state when?

By Mr. Rhinehart:

Q. On October 20th. A. It is within the realm of possibility, yes.

Q. What reason have you to suppose that these complaints were attributable to something else? A. I didn't say they were; I don't suppose they were; I don't know what they were attributable to. 20

Q. In the absence of anything else to explain them why are you unwilling to admit that they probably came from the inguinal region? A. They might have been attributable to the inguinal region, but you can get sprains—backs take strains without leaving anything to do with inguinal hernias. On Saturday I was positive there was a mass but on the events on Friday, as far as I was concerned, they are completely cloaked in mystery. 30

Q. As I understand it, you attribute the percentage of total disability you expressed to weakness in the abdominal wall and weakness in the bladder wall; is that so? A. Well, it is functional with the bladder and anatomical with the abdominal wall. I don't think the weakness in the bladder wall, per se, has anything to do with the disability. Just 40

*Dr. Gerald M. Feigen, for Petitioner—Cross.*

that he has a frequency of urination which decreases his ability to do his work, as well as before.

Q. This is something that the petitioner told you? A. Yes, that part is only subjective; I mean, I don't know.

10 Q. Doctor, there is no competent evidence in this case of that fact, so I am going to ask you to disregard that entirely.

Mr. Mandon: I object to counsel's statement, your Honor, whether there is competent evidence or not as a conclusion.

Mr. Rhinehart: It is a fact. This is the first time it was mentioned in the case, and certainly the history that the Doctor received is not in evidence.

20 Mr. Mandon: That is for the Court to decide.

The Court: What is the question? It wasn't finished.

Mr. Rhinehart: I really didn't finish it.

Mr. Mandon: I submit it was improper up to that point.

30 Mr. Rhinehart: I started out by asking the Doctor to disregard the alleged frequency of urination in view of the fact that there is no competent evidence of that fact before us, and then I was going to proceed to ask him what the disability was referable otherwise.

40 Mr. Mandon: I ask that that part of the question which states whether or not there is competent testimony in the record be deleted from the question; that is not proper, certainly. Counsel is attempting to pass upon the prerogative of the Court. It is for the Court to determine whether it is competent evidence.

*Dr. Gerald M. Feigen, for Petitioner—Cross.*

The Court: Well, it does allude to the opinion also of the witness as to what competent evidence is; we will strike out the word "competent".

Mr. Rhinehart: All right.

By Mr. Rhinehart:

10

Q. Disregarding the frequency of urinating, what would you estimate the disability at? A. Nine per cent.

Q. Nine per cent. Now, what is that nine per cent due to? A. I explained it before; aside from the urination, I explained it.

Q. About what? A. About the defect in the abdominal wall.

Q. Well, due to the defect in the abdominal wall? A. That is right.

20

Q. At the site of the cystotomy scar? A. Yes, it has extended beyond that, though.

Q. What do you mean by that? A. Well, a cystotomy tube is practically about an inch across and this defect is bigger than an inch.

Q. In other words, you mean that the actual incision that was made for the cystotomy was a very small incision; is that so? A. I have the exact size; it is about an inch and a half long.

30

Q. Is the alleged weakness in the wall—abdominal wall—at that site? A. Yes, at that site and extending up and down.

Q. In other words, you say that the weakness in the abdominal wall extends beyond the point where there is any scarring? A. Yes, I think it does.

Q. Where is the point where you say that you can feel a bulge? A. Well, the bulge comes right up through that region; it includes the region of the scar.

40

*Dr. Gerald M. Feigen, for Petitioner—Cross.*

Q. Have you ever seen a ventral hernia from a cystotomy scar? A. I have seen one.

10 Q. What sort of a case? A. A case where a man hadn't urinated for seven days and developed a sloughing in his peritoneum and we did a cystotomy on him, and he eventually developed a strangulated ventral hernia from the cystotomy wound and died. I didn't see that in my private practice; I saw that when I was interning.

Q. Would you say that that is a comparable situation to the case of this petitioner? A. In what respect? It is comparable in that they both had strangulated hernias.

20 Q. Yes, your estimate of disability contemplates and includes, I gather, the fact that the man may in the future have a ventral hernia; is that so? A. Yes.

Q. Now, Doctor, our Compensation Act provides specifically for no increase in disability and I want you to disregard any increase in disability that this petitioner may have and give us at this time a percentage of functional loss, or the percentage of impairment of his function, that he has at this time, and disregarding some further disability that may possibly arise.

30 Mr. Mandon: I object to that—

The Witness: That wouldn't change my estimate, anyway.

Mr. Mandon: I don't think that is proper, sir.

40 The Court: Disability is defined as anything that interferes with the human body in the ordinary pursuits of life, not necessarily limited to loss of function. I think they broadened that function idea that they used to have ten or fifteen years ago.

*Dr. Gerald M. Feigen, for Petitioner—Cross.*

Mr. Rhinehart: That might be. What I am trying to get out of this nine per cent is the proportion of it which would be rather substantial, which may be allowed for the possibility that the man may have a ventral hernia in the future, and I don't think the Act allows that compensation shall be allowed. 10

The Court: As I understand the Doctor's testimony, it was merely one of the factors; it was the theory of weakness of the abdominal wall. That was his opinion, I think.

Mr. Mandon: I have no objection to counsel asking the witness to break up the ten per cent. I think he did already. I have no objection to him asking again. 20

Mr. Rhinehart: Does not your Honor feel it is proper to disregard any considerations of future increase in disability?

The Court: Oh, yes, surely, but he has merely said that the weakness of the abdominal wall—all right, if you want to, you can pursue that; you may have something in mind.

By Mr. Rhinehart: 30

Q. You did say that the potentiality of a ventral hernia was one of the conditions that enters into your consideration of your estimate of disability. There is no doubt about that, is there?  
A. No.

Q. And I would like to have you disregard the possible increase in disability, or change in condition that the petitioner may have, and tell us what the percentage of disability is at the present time. A. I told you that before; it is nine per 40

*Dr. Gerald M. Feigen, for Petitioner—Cross.*

cent. If he develops a ventral hernia then he will have increased disability; then it will probably be 15 or 20 per cent.

The Court: That is what counsel wanted to bring out.

10 The Witness: But I am not worrying about that now; I only know this defect in the abdominal wall restricts him from doing certain types of labor, and what he develops five years from now is not pertinent in my estimate.

By Mr. Rhinehart:

20 Q. There is no question, Doctor, that in your mind and from the history that you received in the hypothetical question—there is no question in your mind but that all of the subsequent conditions—I am referring to the urinary retention, the cystotomy, pneumonia—that the petitioner is said to have developed, the infection, the catheterization, the incision in the abdominal wall—all of these, Doctor, is incidental and secondary to the operation for the hernia; is that so? A. Yes.

30 Q. I mean, so far as the history you received. A. So far as I know, yes.

Q. In other words, it is not in any wise directly attributable—directly attributable—to the alleged incident of October 20th and October 21st?

Mr. Mandon: I object to that on the ground that is not the test.

The Court: Will you read that question?

(The last question was read.)

40 Mr. Rhinehart: I mean, that the conditions we have referred to as incidental and

*Dr. Gerald M. Feigen, for Petitioner—Re-direct.*

secondary are not directly related to the alleged accidents of October 20th and October 21st.

Mr. Mandon: I object to that, sir, on the ground that that is not the test under the statute.

The Court: I will allow the question; you can always have the opportunity to clarify it by re-direct. 10

The Witness: My answer is no to that.

By Mr. Rhinehart:

Q. They are not directly attributable? A. To the original events, only in so far as they followed the operation.

Mr. Rhinehart: That is all. 20

*Re-direct examination by Mr. Mandon:*

Q. Doctor, is there any question in your mind as to whether or not these subsequent conditions would have occurred but for the original accidents of October 20th and 21st? A. I don't think they would have occurred. It seems pretty obvious that the operation was a result of a hernia, was done for a hernia, and the other things that happened were complications of the operation. I can't put any legal construction on it, but it seems to me they followed and they were related to that indirectly. 30

Q. So, Doctor, if there were no accidents of October 20th and 21st, these resultant conditions in your opinion would or would not have occurred? A. Would not have occurred.

Q. Now, assuming the truth of the petitioner's history that he felt a pain in the right side and back on Friday afternoon, while lifting something, 40

*Dr. Gerald M. Feigen, for Petitioner—Re-Cross.*

10 and that pain passed away over night, and that the following morning while lifting another object he felt pain in the inguinal region, and then felt a mass shortly thereafter, and then with the rest of the history; assuming the truth of those facts, Doctor, would you state whether or not the strangulated hernia and the resultant conditions—  
 10 can you state whether or not the strangulated hernia with the resultant subsequent conditions were attributable to either one or the other of the accidents of October 20th and 21st? A. I think the immediate cause occurred on October 21st and I think it is possible that events on October 20th were related to it.

20 Q. Is there any question in your mind that the event of October 21st was causally related to these conditions? A. No.

Mr. Mandon: That is all.

Mr. Rhinehart: That is all.

The Court: Doctor, can you state definitely what effect the events of October 20th had on his abdomen?

The Witness: I don't see how, sir. It was manifested by symptoms which are not typical of inguinal hernia.

30 The Court: It is not a complete inguinal hernia?

The Witness: It may not have been a hernia at all.

By Mr. Rhinehart:

Q. When you say it is not complete, you mean there was no descent? A. I didn't say that; his Honor said that.

40 Q. Don't you agree with that? A. I said there may not have been a hernia at all; I wasn't there.

*Dr. Gerald M. Feigen, for Petitioner—Re-Cross.*

Q. You do subscribe to the theory that the descent need not follow the cause; isn't that so? A. Yes.

Q. And in a case like that, let's assume a case where the descent does not immediately follow the cause, what peculiar circumstances are there about this case that lead you to believe or apparently lead you to infer that this is not one of those cases? 10

Mr. Mandon: I object to that, sir; I don't think it is proper.

Mr. Rhinehart: Of course, my theory is, your Honor, that the hernia was caused on Friday and the descent may have come about on Saturday. That is the usual history of a hernia. Now, I want to find out from this doctor what there is about this case that leads him to believe that that situation didn't exist here. 20

The Witness: What situation?

Mr. Mandon: I object to the original form of the question on the ground it is not the proper method of cross. The Doctor has stated his conclusion. If counsel wants to interrogate as to what he bases this conclusion on, I have no objection at all, but I do object to his using the term "peculiar circumstances" and the like. I don't think the question in its present form is proper. 30

Mr. Rhinehart: It is still cross examination.

The Court: I will allow the question. Do you recall what it was, Doctor?

The Witness: No.

(The last question was read.) 40

*Dr. Gerald M. Feigen, for Petitioner—Re-cross.*

Mr. Mandon: I object to that; there is no such testimony in the case; he is still asking him to assume "peculiar circumstances."

The Court: I have already ruled it. What was the answer?

10

The Witness: If the—the reason I feel that way about this case is this: I feel if that hernia had occurred on Friday he would have had pain in the groin and not in the back. He would have had continued pain the entire day, the entire night, and the next day, because if it had been caused then it would probably have been strangulated also.

20

He didn't feel any mass—the man himself—he was able to go back to work the following day, but on the following day I have the testimony that he did again strain himself and suddenly noticed a lump and he had severe pain there. And these events led to an operation wherein the surgeon found strangulation. Therefore, the events of Saturday to me are positive, and the events of Friday are problematical.

30

By Mr. Rhinehart:

Q. Doctor, when you say that the hernia didn't occur on Friday, what do you mean, that the hernia didn't descend on Friday? A. No, I mean that the hernia didn't probably occur.

Q. Do you mean it was not caused on Friday?

A. I mean there was no sac in the inguinal canal.

Q. Well, now, Doctor, that is the usual case, isn't it? The cause of the hernia, we are agreed, doesn't necessarily coincide with the descent?

40

*Dr. Gerald M. Feigen, for Petitioner—Re-cross.*

That is so; we have been over that four times or more. A. Yes, not necessarily.

Q. So the fact that he may not have had a descent on Friday is of no reason for supposing that the hernia was not caused on Friday, is it? A. Well, when the hernia is caused there is a certain set of symptoms, and while I can't say positively—and I haven't said positively—it is my opinion that this is one of the cases where it didn't happen that way. 10

Q. In other words, you mean that this is a case out of the ordinary? A. I wouldn't say that.

Q. Isn't it the ordinary and usual trend of symptoms in hernia cases to find that symptoms will occur and subside and reoccur again sometimes over long periods of time? Isn't that the usual and common history that we get in inguinal hernia cases? A. Yes, but when this series of symptoms occur there is already a hernia and it is a question of descent. 20

Q. You mean perhaps there is some slight portion of the omentum into the inguinal canal? A. I didn't say what was in it, anything might be in the tract.

Q. Yes, but I mean there may be a partial descent without giving evidence of any lump; isn't that so? A. Once the internal inguinal ring has been violated and the peaceful conditions that exist between the inguinal canal and the inside of the abdomen have been broken, the hernia has appeared. 30

Q. There is a hernia regardless of any descent? A. That is right.

Q. When you speak of descent you mean an actual descent of a portion of the intestines through the inguinal canal? A. Not necessarily through it, but into it; it can descend all the way down to the scrotum. 40

*Dr. Gerald M. Feigen, for Petitioner—Re-cross.*

Q. But into the inguinal canal? A. And the contents may not necessarily be in it. If the sac is pushed down the contents may go back, leaving the sac there.

10 Q. When, as you say, it violates the internal ring, that is the cause of the hernia regardless of whether there is any descent or not; is that so? A. That is a contributory cause of hernia coming down.

Q. Then you say a contributory cause? A. Yes, there may have been other strains which weakened it.

Q. Isn't that a circumstance without which there would be no descent? A. Isn't what the circumstances?

20 Q. The violation that you term it of the internal ring. A. I don't understand that question.

Q. Isn't that the anatomical lesion from where ordinary results follow? A. Yes, that is one of the necessary conditions for the production of a hernia.

30 Q. So if we are to suppose the cause and the descent of the hernia need not coincide, as we have already agreed, if we are speaking of cause we must be speaking of the time and the circumstances that causes the violation of the internal ring? A. Yes.

Q. Now, is there anything in this case that is different from any other hernia case that makes you believe that the internal ring wasn't violated on October 20th? A. Yes.

Q. What are those circumstances? A. As I said before, he had pain in his back and the pain subsided very quickly, and that throws the balance against it happening at that time.

40 Q. So you are assuming he had an injury to his back? A. I don't know what he had; I only know

*Dr. Gerald M. Feigen, for Petitioner—Re-direct.*

what symptoms he had; I don't know what he injured at that time.

Q. Assume— A. I assume an assumption and supposition. I don't know what happened on Friday, but it doesn't sound to me like he developed a hernia on Friday.

Q. Because he complained of his back? A. For one reason. 10

Q. Supposing he also complained of his abdomen? A. He did.

Q. He did complain? A. He might have had an injury to his internal ring plus a back injury, I don't know, but it is not a typical picture.

Q. If he complained of injury to his abdomen, it was a typical picture, isn't that so? A. I don't think so.

Q. If he complained of pain in his abdomen. Supposing Friday night—Friday afternoon he had pain in his abdomen, wouldn't that be the usual and typical picture of the cause of an inguinal hernia? A. Well, the abdomen extends from the diaphragm to the pelvis. I would have to exactly know where he had the pain. If he had it over his inguinal canal I would say yes, he probably strained the ring. 20

Mr. Rhinehart: That is all. 30

*Re-direct examination by Mr. Mandon:*

Q. Aside from taking into consideration the complaint of pain of Friday, did you take any other elements into consideration in concluding that the hernia in this case occurred on Saturday rather than on Friday?

Mr. Rhinehart: I object to the words, "hernia occurred." The question in this case is when it was caused. 40

*Dr. Gerald M. Feigen, for Petitioner—Re-direct.*

The Court: He said from his conclusion it occurred on Saturday. He didn't say "occurred"; he said from the Doctor's conclusion. I will allow the question.

10 The Witness: I agreed that the descent need not necessarily occur immediately in the formation of a hernia, but it is just as possible that it might as it might not. The fact that it is not necessary doesn't make it impossible for it to happen that way. I know on Saturday I have a perfect series of symptoms: I have a man lifting a heavy weight; I have a sudden pain in the inguinal region; I have a mass; later on I have the surgeon's corroboration that it is a strangulated hernia. If I never heard of 20 Friday I would be positive that that would be the sequence of events and so forth. I don't know what happened Friday except that he had some pain in his abdomen and back, and I said it might possibly have been related to it. It might have strained that internal ring; I don't know whether it strained it or violated it or not. That is as clear as I can make it, because we are going 30 entirely on an assumption.

By Mr. Mandon:

40 Q. Doctor, assuming, further, that the fact is that no physician was called any time on Friday or at any time at all, but that the man returned to work on Saturday morning stating he felt perfectly all right then. Would that factor have anything to do with your conclusion as to when the hernia occurred? A. If a certain accident to the ordinary individual—if he developed a hernia he would call a doctor, but it is possible he developed it and didn't call a doctor.

*Dr. Gerald M. Feigen, for Petitioner—Re-cross.*

Q. Is that one of the factors you use to form your conclusion? A. Ordinarily I would consider that, but I would not put too much weight on it.

Mr. Mandon: That is all.

*Re-cross examination by Mr. Rhinehart:*

10

Q. Of course, you can't lose under the Workmen's Compensation Act because if the man didn't see a doctor within twenty-four hours then he didn't have a hernia.

Mr. Mandon: I object to that, sir.

Mr. Rhinehart: So every hernia case would be compensable under that theory.

Mr. Mandon: I submit that the question is improper.

20

The Court: It is not very material. I will sustain the objection.

Mr. Rhinehart: That is all.

(Witness excused.)

The Court: We will recess until two o'clock.

(A recess was had for lunch.)

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AFTERNOON SESSION.

Mr. Rhinehart: I presume the petitioner has rested?

Mr. Mandon: Except to call the petitioner back to testify to Doctor Seligman's treatment.

The Court: I think you had better reserve that until later.

Mr. Mandon: Yes.

40

*Dr. Leon Lewis, for Respondent—Direct.*

DR. LEON LEWIS, called as a witness on behalf of the respondent, was sworn and testified as follows:

*Direct examination by Mr. Rhinehart:*

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

Mr. Mandon: I will admit the Doctor's qualifications.

By Mr. Rhinehart:

Q. What is your specialty? A. Diagnoses and clinical pathology.

20 Q. At the request of the respondent did you conduct an examination of the petitioner, Myer Rugg? A. Yes, sir.

Q. What was the date of that, Doctor? A. June 15th, 1940.

Q. Will you tell us, first, what the history and complaints were, briefly? A. Patient stated he was fifty-eight years of age, that he had been a cabinet maker for over forty years. His family and past medical histories were non-contributory. He smoked moderately, he drank sparingly, and denied venereal disease.

30 Questioned as to the complaints at the time of my examination he stated he had none and indicated that he made a good recovery from his illness. He told me about 4:30 P. M. on October 20th, 1939, while at work he was inspecting some portable partition sections which were about 10x4'x3" thick, and filled with rock wool. Usually in inspecting them he was assisted by another workman, but at that particular time he had been left alone and he attempted to tilt the section  
40 without aid. While tilting one partition he felt a

*Dr. Leon Lewis, for Respondent—Direct.*

sudden pain in his back indicating the left lumbar region, which persisted through the remaining half hour at work. At home he applied a plaster to his back. During the ten or fifteen minutes following the onset of this pain, both his legs felt shaky and weak, and during his trip home he found walking difficult.

10

The following morning he returned to work as usual at about 9:00 A. M., was engaged in clamping some panel work together. At this time he felt pain across his lower abdomen and because it interfered with work he asked his foreman to provide a helper. During the remainder of the morning he rested a few minutes intermittently approximately every hour. The shop closed at noon and he went home. His abdominal symptoms then persisted and the administration of an enema afforded no relief. At ten P. M. his son summoned Doctor Train, who, after examining the patient, recommended immediate surgery. According to the patient, Doctor Train attempted to reduce a lump in the right groin without success. Pain persisted through the night and on October 22nd patient entered a hospital where an operation was performed. He then described the subsequent chain of complications which I think need not be repeated. They agree with what was described here before.

20

30

Q. Now, will you give your findings on examination, Doctor? A. Patient weighed 132 and 1/2 pounds, was five foot and one-half inches tall; blood pressure 152 systolic, 75 diastolic; pulse 64.

Patient is a short middle-aged white male in apparent good health. He has an exaggerated dorsal spinal curve and a barrel-shaped chest. Skin and scalp were clear. There is a lineal healed right inguinal surgical scar and a con-

40

*Dr. Leon Lewis, for Respondent—Direct.*

tracted stellate mid-abdominal scar about half way between the pubes and umbilicus.

10 The examination of the head, eyes, ears and nose, and throat is not entirely negative, but is not essential to this examination. The respiratory excursion of the chest is limited. The nostril angle is obtuse and fixed. Percussion note is somewhat generally impaired, and high pitch breast sounds are distant and no rales. Heart rate and rhythm are normal; sounds are loud, and the aortic and pulmonary second sounds exaggerated.

20 Fluroscopy of the chest showed clear lung fields with the exception of a dense right hyler shadow. Diaphragm was irregular but intact in so far as motion is concerned. The aorta is slightly widened; the heart is definitely bow shaped and enlarged to the left. The abdomen was tense and difficult to examine. No organs or masses were felt; no tenderness. Percussion note was normal. Right inguinal scar with excellent hernial repair. There was no impulse in either groin. There was a supra-pubic contracted, rigid scar, as noted, and bladder dullness was not abnormal.

30 Incidentally, there was no indication to my mind of any relaxation of the abdominal wall of sufficient severity to warrant any precaution, and feel that the abdominal repair, so far as hernia is concerned, is excellent, and I don't think the supra-pubic scar represents any hazard so far as abdominal strain is concerned.

40 The genitalia showed nothing striking. The peritoneum had no scar. I mention that because there was evidently no external scar from a prostatectomy; rectal sphincter was indicated; prostate gland was small and slightly irregular and not tender. Extremities showed hypertrophy and

*Dr. Leon Lewis, for Respondent—Direct.*

nodulation of the joints of the fingers and some deformities of the toes.

Neurological examination showed diminution of vibration perception over the great toes. Eighth nerve conduction over the mastoid process was diminished. Otherwise, the neurological examination was negative. The Achilles reflexes were elicited with difficulty. From the orthopedic standpoint the patient has increased, fixed dorsal kyphosis, and spinal motion is somewhat impaired. There are no complaints referable to the back. There is no tenderness over the spinus processes or the lower spinal joints. 10

Q. Does that complete your examination? A. Yes.

Q. Did you receive a history or complaint of abnormal urination? A. No, the patient had no complaint, and from the systemic standpoint all the questions as to genitol urinary complaints were answered negatively. 20

Q. In view of the nature of the petitioner's complications following his operation for hernia, was that a matter of importance on your examination? A. Yes. As a matter of fact, the striking thing in this case was the excellence of recovery in a patient with so many complications and so many medical difficulties. 30

Q. Doctor, the petitioner has testified that on Friday, October 20th, 1939, while lifting a panel section he was seized with a pain in his back, that the pain subsided that night after he put a plaster on it; that the following morning he returned to work and while moving panels and putting clamps on them suffered pain in his right groin. He continued at work intermittently Saturday morning until quitting time, at twelve o'clock. He noticed a lump in his groin Saturday morning and it de- 40

*Dr. Leon Lewis, for Respondent—Direct.*

veloped subsequently that he had a strangulated right inguinal hernia for which an operation was performed on Sunday morning, October 22nd, or on Sunday. I wish you would tell us, assuming the truth of those facts, your opinion as to the relationship between the incident of Friday, October 20th, when he is said to have suffered a pain in his back while lifting, and the hernia.

Mr. Mandon: I think the question should include the testimony that the pain which the petitioner felt Saturday morning in the right groin persisted all that day and up to and including the time of the operation.

Mr. Rhinehart: I don't think that is the testimony. Petitioner said that the pain would come on every hour, about.

Mr. Mandon: I don't recall that, sir.

The Court: After he collapsed at home—I don't know whether you want to call it collapsed or not—but when he had the attack at home, they called the doctor, I think. Is that it?

Mr. Mandon: I believe—

The Court: They called the doctor at around ten or eleven.

Mr. Mandon: Yes.

Mr. Rhinehart: I have a note of the petitioner's testimony on direct examination, quote every hour came the pain.

The Court: He went to bed when he got home and at two P. M. he was still in pain.

Mr. Mandon: Yes.

The Court: His son called the doctor and he came at eleven o'clock.

Mr. Mandon: I believe there was some testimony that right from the time he went

*Dr. Leon Lewis, for Respondent—Direct.*

home up to the time he was operated on the pain was consistently present.

Mr. Rhinehart: I will include that, that after he got home the pain was more or less—was altogether, let's say—continued until he got surgical relief.

The Witness: Well, it seems to me that the relationship between all the events can best be understood by an appreciation of what happened when an inguinal hernia first becomes manifest, and with the Court's permission I would like to begin with an intact inguinal ring. 10

The Court: I think the question was limited to October 20th.

Mr. Rhinehart: Yes.

The Witness: Just the one event? 20

The Court: Do you recall just how the question did wind up?

The Court: I think you had better give the end of that, Mr. Yauch.

(The following was read: "I wish you would tell us, assuming the truth of those facts, your opinion as to the relationship between the incident of Friday, October 20th, when he is said to have suffered a pain in his back while lifting, and the hernia.") 30

The Witness: It seems to me that the event of Friday, which he described to me, and which was included in your hypothetical question, representing the separation of fibres at the internal ring, which was the anatomical basis for an inguinal hernia. That is to say, the cribriform fascia was at that time injured in such a way as to permit the eventual descent of a hernial sac. 40

*Dr. Leon Lewis, for Respondent—Direct.*

By Mr. Rhinehart:

10 Q. Assuming that the petitioner on being consulted by his treating physician gave a history that he suffered a pain on Friday, October 20th, in his back and abdomen and side, would that confirm your conclusion in that regard? A. Yes, I think so. I think his description to me of difficulty in walking is also confirmatory, because inguinal pain or inguinal distress is a frequent cause of inability to walk straight, and pain on walking.

20 Q. Do you feel that the pain in the back—in view of the circumstances that I have stated to you hypothetically, do you feel that the pain in the back was caused by the injury to the inguinal canal or the surrounding tissues of the ring? A. Yes, I believe under the circumstances and in view of the developments, that this was a referred pain. The inguinal canal is supplied by the twelfth dorsal and first lumbar segments, and radiating pain would go to the dorso-lumbar junction of the back, just about the lower mid back. That is a common and characteristic referred pain.

30 Q. With respect to the complications, Doctor, which you may assume came on following the hernia operation, that is, a retention of urine, pneumonia, supra-pubic cystotomy, bladder drainage, catheterization, transurethral prostatic resection, bore what relationship to the alleged trauma, that is, the strain of lifting?

Mr. Mandon: I don't think this witness would be in a position to answer that, sir.

The Court: Why?

40 Mr. Mandon: This witness wasn't present during the testimony and I don't know that he is of sufficient familiarity with all the evidence so far with respect to the post-operative conditions.

*Dr. Leon Lewis, for Respondent—Direct.*

Mr. Rhinehart: I am stating as a hypothetical question that he had these difficulties following the operation for the hernia, and I want to know the nature of the relationship between those conditions and the incident of October 20th and of October 21st, if any.

10

The Court: I think the question is permissible. Of course, the value of the answer is for the Court to determine. I will let him answer.

The Witness: They are all in the nature of post-operative complications. They form a chain of circumstances beginning with anesthesia and urinary obstruction and they all resulted from the surgical procedure.

20

By Mr. Rhinehart:

Q. Secondary and incident to the hernia operation? A. Yes, by way of complication.

Q. By way of complication? A. Not the direct result of the strain, but they are the result of surgical intervention.

Q. With respect to the abdominal scars, that is, the cystotomy and the hernia scar following the operation, what is your opinion regarding what disability, if any, exists from those circumstances, Doctor? A. The hernial scar is an excellent one. No one can predict whether or not an inguinal hernia will recur. If it does, that is another question, but at present there is excellent repair. The supra-pubic cystotomy scar is the usual one, in mid-line, made at a place where the abdominal wall consists merely of skin, fascia and peritoneum. And in my experience this stellate and well contracted cystotomy scar represents no hazard

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*Dr. Leon Lewis for Respondent—Cross.*

whatsoever. I have never seen a hernia or a ventral relaxation of any consequence of that area, and I think it is an inconsequential anatomical defect, without any functional difficulties at all. I don't think there is any disability referable to that scar.

10 Q. You may assume, Doctor, there was an incision made in the bladder, as I recall, for the purpose of draining. In your opinion, Doctor, would there be any disability referable to that scar? A. No, this patient has had a transurethral prostatectomy, and now has a good urinary flow. I watched it and I know there is a good, free urinary stream. In the absence of urinary obstruction, there is no reason to suspect that any part of the bladder will give under strain, because it will be  
20 subjected to no strain, but even if urinary obstruction were to occur, I don't believe that that bladder would be any weaker at the point of scar than at any other place. I have also never seen ruptures of the bladder at the site of supra-pubic cystotomy, and I don't believe it ever occurs, and that bleeding takes place. That part of the wall is as strong as any other part.

30 Q. I gather from what you say that an incision in the bladder is a necessary incident in the supra-pubic cystotomy? A. That is what it means. "Cystotomy" means an incision into the bladder.

Q. Do you feel in your opinion there is any disability referable to the pneumonia that you may assume the petitioner also suffered in the post-operative period? A. No, he had no complaints and he had no anatomic residua.

Mr. Rhinehart: Cross examine.

*Dr. Leon Lewis for Respondent—Cross.**Cross examination by Mr. Mandon:*

Q. Doctor, you never treated this patient, did you? A. No.

Q. You examined him on one occasion? A. In your presence.

Q. Yes. Now, this man may have first had an injury to his back, may he not and still not have had the hernia until the following morning, isn't that so? 10

Mr. Rhinehart: If the Court please, the petitioner's attending physician who saw him on Saturday, didn't contend that there was any injury to the back.

Mr. Mandon: I will change that word to pain.

The Witness: You will change which word to pain? 20

Mr. Mandon: I will withdraw that and reframe it.

*By Mr. Mandon:*

Q. Doctor, for all you know, this man may have simply had pain in the back on Friday afternoon without having the hernia occurring until the following Saturday, isn't that so? A. I would say that is a possibility. There are reasons why I doubt it. One has to take the whole clinical picture into consideration. It would seem unlikely that the man would have a back injury of any source producing pain one day, which would entirely disappear the next day and be hounded by a hernia which was already strangulated. I don't believe a hernia can develop a strangulation within a few hours. It is always a matter of time before—at least it is very unlikely that a man will have a hernia develop and strangulate the same 30  
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*Dr. Leon Lewis for Respondent—Cross.*

day, and which that is also a point against the incident of a hernia on Saturday.

Q. Doctor, do you mean to say you never heard of a strangulated hernia occurring within the space of ten hours? A. From what? You mean *de novo* in a man who had no hernia at all before?

10 Q. Yes. A. I haven't happened to have heard of such a thing. I will agree that it may occur; it must be very rare.

Q. And have you heard of such strangulated hernias taking place within the space of twenty-four hours? A. I don't know offhand. I simply point out that the rapidity with which strangulation occurred is a point which in my point of view seems to work a longer period of time rather than a shorter one. It is not specifically bearing  
20 on the question.

Q. In response to counsel on direct examination when did you assume that the strangulation took place in this case? A. Well, from the facts I don't think actual strangulation took place until shortly before Doctor Train saw the patient. A hernia is first incarcerated and unable to be reduced, and subsequently strangulation takes place when the blood supply to the part is interfered with. We have no way of knowing when incarceration ended and strangulation began. All we know is that when Doctor Train saw the man apparently he was unable to reduce the hernia. Therefore, it was incarcerated and it may have  
30 been strangulated.

Q. Do you know when the operation was performed in this case? A. Sunday morning. I don't know the exact time.

Q. Do you know when Doctor Train first saw Mr. Rugg? A. He told me he was seen at ten  
40 o'clock that evening. I was again given to assume he saw him at eleven o'clock on Saturday evening.

*Dr. Leon Lewis for Respondent—Cross.*

Q. Now, referring to the abdominal scar, Doctor, did you examine the scar on this petitioner—the abdominal scar he had? A. Yes.

Q. Were there adhesions? A. It would take a better man than I to tell whether there are adhesions under the scar, because I can't discover adhesions by palpation.

10

Q. What effect, if any, does a scar of that nature have on one's ability to lift heavy objects? A. As I said—and I mean it very seriously—I don't think a supra-public cystotomy scar ever interferes with a patient's ability to lift. It is in a position where there are no muscle structures, and his recti muscles are perfectly intact. I don't believe this man should be discouraged from doing his ordinary work merely because he has that little scar.

20

Q. I am not referring to discouraging him from anything, Doctor; I would like to know whether a scar of that type has any effect with respect to the strength of the abdomen? A. No, I don't believe so. That is why I say I would not recommend against heavy lifting in this man, because I think he is perfectly able to do it.

Q. With respect to the bladder, Doctor, the urinary control is based to a large extent upon the strength of the bladder, is it not? A. Urinary control?

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Q. Yes. A. Not usually, no. Urinary control is dependent upon the intact nature of the internal and external sphincters, and the nerve supply to the sphincters as well as to the nerve supply to the bladder wall and in the presence or absence of obstructions.

Q. If there were a weakening of the bladder wall at any particular spot, that would tend to effect the urinary control, would it not? A. That

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*Dr. Leon Lewis for Respondent—Cross.*

is not very clear to me. It is pretty difficult to speculate about just weakness of the bladder wall. The bladder wall becomes generally weak when the bladder is subjected to any undue strain. First it hypertrophies and then it becomes weak. If you are referring specifically to the nature of a puncture wound such as is made for supra-pubic cystotomy, I don't believe that that is of any importance in either urinary control or bladder function.

10  
20  
Q. Do you think as a general proposition then, that the mere fact that there has been an opening made in the wall, whether in the bladder or in the abdominal wall, in your opinion such an opening within a resultant scar would have absolutely no effect on the man's ability to lift? A. That is right. I have seen hundreds and hundreds of people who have had prostatectomies with supra-pubic cystotomy scars, and I have yet to see an instance of failure of abdominal wall or bladder wall as a result of that procedure.

Mr. Mandon: That will be all, Doctor.

Mr. Rhinehart: That is all, Doctor, thank you.

(Witness excused.)

30  
Mr. Mandon: May I recall Mr. Rugg for one question?

The Court: All right. I think Doctor Train mentioned that he treated him, but it won't hurt to corroborate it. There were two doctors.

Mr. Rhinehart: Just for the purpose of saving time let's admit it. I think it is \$60; it is just a drop in the bucket.

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The Court: Doctor Aschner and Doctor Seligman.

*Henry Gruber, for Respondent—Direct.*

It is admitted he was treated by Doctor Seligman, and there is a bill of \$60?

Mr. Rhinehart: Yes, with the same reservations as I have as to the other bills, all of the medical bills, as exceeding the \$50 and \$150 limit.

Mr. Mandon: Yes. What about the other bill, what about the hospital? He was in the hospital and it is about \$300. I don't think you will say that that was an unreasonable bill? 10

Mr. Rhinehart: No.

Mr. Mandon: How about the bill of Doctor Seligman?

Mr. Rhinehart: That is in evidence, isn't it?

Mr. Mandon: Do you have Doctor Aschner's bill? 20

The Court: No, I haven't.

Mr. Mandon: Suppose I offer that. That was offered.

The Court: I think it was marked "P-2" at the earlier hearing.

Mr. Mandon: All right, I will withdraw it.

Mr. Rhinehart: Does that conclude the petitioner's case? 30

Mr. Mandon: Yes, that is the petitioner's case.

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HENRY GRUBER, called as a witness on behalf of the respondent, was sworn and testified as follows:

*Direct examination by Mr. Rhinehart:*

Q. Mr. Gruber, you were employed by the Driewood Corporation in October, 1939? A. Yes. 40

*Henry Gruber, for Respondent—Direct.*

Q. What was your position there? A. I am working there as a carpenter.

Q. You knew the petitioner, Meyer Rugg, from having worked also at that plant? A. Yes, sir.

Q. Do you recall the Friday or a day that Mr. Rugg had some difficulty? A. Yes, I do.

10 Q. Can you tell us when and what that was? A. You mean how it happened?

Q. No, I say what do you know about it? When did it happen and what was it? A. It happened on Friday afternoon. I think it was between two and three.

Q. Between two and three o'clock in the afternoon? A. That was my estimate. I couldn't say for sure.

20 Q. That is your best idea of when it happened? A. Yes.

Q. You were working there at the time? A. Yes.

Q. In the same room with Mr. Rugg? A. Same job, yes.

Q. What was it you noticed? What did you see? A. Well, I saw him standing there and bent over holding his front and back.

30 Q. Will you stand up and show just what you saw? A. He was standing there like this, bending over (indicating).

Q. Would you say he was about one-quarter bent over? A. Something like that.

Q. And he had one hand on his back? A. Yes (indicating).

Q. And one on his stomach, is that so? A. Yes.

Q. And did he appear to be in pain? A. Yes.

Q. And he said something about having a pain to you? A. Yes, he said he was lifting off a section off the wooden horse and he hurt himself.

40 Q. Did you see him walking to the station that night? A. Yes, I did see him on the station.

*Henry Gruber, for Respondent—Cross.*

Q. How did he walk? How was he walking then? A. He was walking kind of slow, bent over (indicating).

Q. All bent over and still holding on to himself or not? A. I don't know if he was holding on to himself.

Q. But he was bent over? A. But he was bent over. 10

Q. Walking very slowly? A. Walking very slowly.

Q. That was Friday? A. Friday night.

Q. Did you see him on Saturday? A. No.

Q. Where were you, at work? A. No, I was home; I wasn't working Saturday.

Q. You were not in the office at all on Saturday? A. No.

Mr. Rhinehart: Cross examine. 20

*Cross examination by Mr. Mandon:*

Q. Mr. Gruber, you say it happened about two or three o'clock, as best you can remember? A. Yes.

Q. Did Mr. Rugg stay there the rest of the day? A. Yes.

Q. He worked the rest of the day? A. I told him to sit down for a while. He rested for quite a while. I don't know just how long, but after that he resumed work. 30

Q. He resumed work after that? A. Yes.

Q. Was he doing the usual thing whatever he was supposed to do? A. I don't know what he was doing after that.

Q. At any rate, after sitting down for a while he started work again? A. Yes.

Q. And he worked until quitting time? A. Yes.

Q. And then went home? A. And then went home. 40

*Henry Gruber, for Respondent—Cross.*

Q. You still work for the Driwood Corporation? A. Yes.

Q. How long had you been working for the Driwood Corporation up to the time this thing happened? A. I worked there since May, 1929.

10 Q. How long has Mr. Rugg worked there? A. I don't know, six or seven years or something like that.

Q. About six or seven years? A. Maybe more; I am not sure.

Q. You worked with him during that time? A. Yes.

Q. And you have seen him every day? A. Yes.

Q. As far as you know, was Mr. Rugg ever out of work during this time? A. Only on an occasion when there wasn't nothing to do.

20 Q. Was he ever sick? A. No, I don't remember that.

Q. Did he ever get an accident while working up to this time? A. No.

Q. He never complained of being ill or anything? A. Not that I know.

Mr. Mandon: That is all.

Mr. Rhinehart: That is all.

Mr. Mandon: Pardon me, just one thing.

30 By Mr. Mandon:

Q. Weren't you in Saturday at all? A. No.

Q. And you don't know anything what happened Saturday? A. No.

Mr. Mandon: That is all.

Mr. Rhinehart: That is all.

(Witness excused.)

*Daniel Lerer, for Respondent—Direct.*

DANIEL LERER, called as a witness on behalf of the respondent, was sworn and testified as follows:

*Direct examination by Mr. Rhinehart:*

Q. What is your position with the Driwood Corporation? A. Manager. 10

Q. Sir? A. Manager.

Q. That is, of the plant in Plainfield? A. That is right, sir.

Q. Where Meyer Rugg worked? A. That is right.

Q. Were you the manager of that plant in 1939, in October or thereabouts? A. Yes, sir.

Q. Do you know anything about the occurrences on Friday and Saturday, the last two days that Mr. Rugg worked? A. No, sir. 20

Q. You don't know anything about it of your own knowledge? A. No.

Q. Where did you learn of that?

Mr. Mandon: I object to that, sir.

## By Mr. Rhinehart:

Q. When did you learn of his difficulties?

Mr. Mandon: I object to that, sir. 30

The Court: What is the purpose of that? I could understand why the petitioner would put it in.

Mr. Rhinehart: Merely to show the surrounding circumstances and help fix the time, that is all.

Mr. Mandon: The witness stated he didn't know. I don't see how the situation would be helped, sir. 40

*Daniel Lerer, for Respondent—Direct.*

Mr. Rhinehart: I don't mean that; I want to fix the time in the witness' mind. I have some other things.

The Court: If it is foundationally, I will allow it for the present.

10 By Mr. Rhinehart:

Q. You subsequently learned of the reason why Mr. Rugg wasn't at work? A. Yes.

Q. And when was that, do you recall? A. Say about Tuesday or Wednesday.

Q. Now, prior to the Friday, the last two days worked—prior to that time did you ever have any conversation with the petitioner about any complaints in the groin? A. Complaint of what?

20 Q. About any complaints in his groin or his lower stomach? A. Yes, about two or three weeks ago—two or three weeks prior to the accident.

Q. Two or three weeks before he left? A. Yes.

Q. And before you learned of the alleged accident? Before you learned about the accident? A. Yes.

30 Q. Tell us what happened on that occasion. A. Mr. Meyer came up to my office, my office is upstairs, and Mr. Meyer worked downstairs, and he came up and he told me he lifted something and he feels a pain.

Q. Did he show you where he felt the pain? A. Yes, he did.

Q. Where was that? A. Right here (indicating).

Q. Would you stand up and show the Deputy Commissioner? A. (Witness indicates).

Mr. Rhinehart: Indicating the—  
The Witness: Groin.

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*Daniel Lerer, for Respondent—Cross.*

Mr. Rhinehart (Continuing): Right inguinal region. Can we agree, counsellor? Can we agree that the witness indicates that the petitioner complained of pain in his right groin, inguinal region?

The Witness: I don't know exactly where it was, but I know he held his hand right here (indicating). 10

By Mr. Rhinehart:

Q. Down in the lower part of the stomach, is that so? A. Yes.

Q. What was said by him and what was said by you? A. I asked him whether he would like me to send him to the doctor. He said, "Yes", he would like to go down to the doctor, but he says, "I feel weak now, let me rest a little bit, and then I will go down there". 20

So I gave him a chair in the office and he sat there for a while, and about 4:30 the whistle blew. I asked him how he feels again. He says he feels a little better now and he would go down—he doesn't want to go down to this doctor. He will go tomorrow morning, to his own doctor.

Q. Was anything ever said—did you ever say anything to him about it? A. He came to work the next day and he never spoke about it again. 30

Q. He never said anything to you about it again? A. No, and I didn't ask him.

Q. You are sure that that was before and was not one of the last two days that that happened? A. No.

Mr. Rhinehart: Cross examine.

*Cross examination by Mr. Mandon:*

Q. Mr. Lerer, you are the manager of this company? A. Yes. 40

*Daniel Lerer, for Respondent—Cross.*

Q. What floor are you on? A. Second floor.

Q. And on what floor does Mr. Rugg work? A. First floor.

Q. Who was in charge of the floor on which Mr. Rugg worked? A. Foreman downstairs.

Q. What is his name? A. P. Berger.

10 Q. Is he in court? A. No, he is not.

Q. And if any incidents arose downstairs, who would take care of them? A. The foreman.

Q. The foreman? A. Yes.

Q. That is the person you just mentioned, Mr. Berger? A. Yes.

Q. When you say Mr. Rugg went to see you on this occasion and complained of pain in his stomach did he say he had talked to P. Berger? A. No.

20 Q. Did he say he had said anything at all to P. Berger? A. No.

Q. How long have you been with the company? A. Oh, about seven or eight years.

Q. You are still with them now? A. Yes, sir.

Q. In the same capacity? A. Yes.

Q. How long has Mr. Rugg worked for the company? A. I should say about six or seven years.

Q. Did he work regularly during that time? A. Yes, he did.

30 Q. Was he one to complain or not? A. Never.

Q. He worked regularly right along? A. Yes.

Q. So far as you know, was Mr. Rugg ever hurt before in an accident? A. No.

Q. Did he ever make any claim to the company for compensation before? A. No, sir.

Q. Did he ever stay out of work after he talked to you? A. No, sir.

Q. He went right to work the next day and did the usual job? A. Yes.

40 Q. He never talked to you about it again? A. Yes.

*Daniel Lerer, for Respondent—Re-direct.*

Q. Are you sure just what part of the stomach he held? A. No, I am not sure.

Q. Are you sure what hands he used? A. No.

Q. About what time of the afternoon did he come to you? A. Oh, sometime before quitting time, I don't know, between 4 and 4:30 I should say. 10

Q. What day of the week was it? A. I couldn't say; I don't remember.

Q. Did you know on Monday that Mr. Rugg was not at work, on Monday after this accident? A. No.

Q. But the foreman downstairs knew about it, didn't he? A. I don't know because I didn't inquire about it.

Q. You never had any trouble with Mr. Rugg during the time he worked for you, did you? 20

Mr. Rhinehart: I object to that, if the Court please, as being remote.

The Court: Yes, I think it is rather repetitious.

Mr. Mandon: That is all.

By Mr. Rhinehart:

Q. Just one further question, Mr. Lerer. The plant is regularly open on Saturday in North Plainfield? A. No, sir. 30

Q. You say it is not? A. No, sir.

Q. Well, what is it, just in busy seasons you work on Saturdays? A. Unless it is a special order.

Q. Do you recall that the plant was operating the last Saturday that Mr. Rugg worked? A. I think it was, but I am not very sure.

Q. You aren't sure, that is all. 40

*Meyer Rugg, Petitioner, in Rebuttal—Direct.*

By Mr. Mandon:

Q. At any rate, the company never worked in the afternoon on Saturdays, did they? A. No, sir.

Mr. Mandon: That is all.

10 (Witness excused.)

Mr. Rhinehart: That is the respondent's case, sir.

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MEYER RUGG, the petitioner, recalled as a witness on his own behalf in rebuttal, testified further as follows:

20 The Court: This is rebuttal?

Mr. Mandon: Yes, just one question.

The Court: It is not about Doctor Seligman?

Mr. Mandon: No.

*Direct examination by Mr. Mandon:*

Q. Mr. Rugg, do you ever remember going up to Mr. Lerer's office about two or three weeks before this accident and telling him that you hurt yourself? A. No.

30 Q. Until this last accident did you ever have any other accident there about which you complained? A. Yes, I had, but I never complained. Somebody put an iron clamp behind me; I didn't see it, and the clamp slipped and it knocked me right in the eye. At that time I went upstairs and he fixed me up a little bit upstairs because I didn't want to go to the doctor.

40 Q. About how long was that before this last accident? A. I couldn't remember how long it was; it was a long time.

*Meyer Rugg, Petitioner, in Rebuttal—Cross.*

The Court: When was that?

The Witness: Maybe six weeks or three weeks before.

By Mr. Mandon:

Q. Is that the only time you went up to Mr. Lerer's? A. Yes, that is all. 10

Q. Did you ever talk to him about any stomach pains? A. I didn't say nothing.

*Cross examination by Mr. Rhinehart:*

Q. Well, you did go up to Mr. Lerer and not to P. Berger when you stuck yourself over the eye? A. Yes.

Q. You went to Mr. Lerer about that? A. Yes.

Q. And not to Mr. Berger? A. Not to Mr. Berger—Mr. Berger was upstairs, too. 20

Mr. Rhinehart: That is all.

Mr. Mandon: That is all.

(Witness excused.)

Mr. Mandon: That is our case.

(Mr. Rhinehart summed up on behalf of the respondent and Mr. Mandon summed up on behalf of the petitioner.) 30

The Court: There seems to be several rather complicated factors here to establish as they would control the law applicable. As a matter of fact, one situation under the law presents itself to me, which has not been mentioned by either of counsel in their examinations, and the question being such a serious one, I don't think I should be hurried on it, and I will therefore reserve decision. 40

(Decision reserved.)

**Certificate of Deputy Commissioner.**

I HEREBY CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically before me at the time, place and date hereinbefore set forth.

10

HARRY H. UMBERGER,  
Deputy Compensation Commissioner.

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**Certificate of Court Reporter.**

I HEREBY CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by me at the time, place and date hereinbefore set forth.

20

HERBERT E. YAUCH,  
Court Reporter.

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**Certificate of Secretary of Workmen's  
Compensation Bureau.**

I, DANIEL A. SPAIR, Secretary of the Workmen's Compensation Bureau, hereby attest the authenticity of the signature of Harry H. Umberger, and that he, as the official who heard the case, is the proper one to certify as to the transcript of the testimony.

30

DANIEL A. SPAIR.

40

**Exhibit P-1.**

7-18-1940

150 Crown Street  
 Brooklyn, N. Y.  
 President 3-2022  
 July 1, 1940

Liberty Mutual Ins. Co. 10  
 20 Clinton St.,  
 Newark, N. J.

Re:  
 Meyer Rugg  
 vs.  
 Criwood Corp.

To IRWIN PAUL TRAIN, M. D.

For Professional Services from

March 1 to July 1, 1940:  
 Office visits 20

March 1, 8, 15, 22, 29	5
April 5, 12, 19, 26	4
May 3, 10, 17, 24, 31	5
June 6, 13	2

Total visits 16 @ \$3.00

Amount Due \$48.00

Receipt returned upon request.

30

40

*Exhibit P-1.*

150 Crown Street  
Brooklyn, N. Y.  
President 3-2022

February 26, 1940

Liberty Mutual Ins. Co.  
10 Rockefeller Plaza  
New York, N. Y.

10

re:  
Meyer Rugg  
vs.  
Driwood Corp.

To Irwin Paul Train, M. D.

For Professional Services from  
Oct. 22, to Nov. 1, 1939

Initial Visit—Home—night .....	\$ 25.00
Subsequent home visits—2 @ \$5.....	10.00
Operation for Intestinal Obstruction.....	150.00
Hospital Visits—Day—12 @ \$3.....	36.00
“ “ Night—6 @ \$5.....	30.00
Venosurgery therapy 6 @ \$5.....	30.00
Gastric lavage 2 @ \$10.....	20.00
Bladder lavage with retention catheter.....	10.00
Amount due .....	<u>\$311.00</u>

20

S A C 85464

Receipt returned upon request

For Professional Services during month of  
November, 1939

Hospital Visits—Day—34 @ \$3.....	\$102.00
“ “ Night 10 @ \$5.....	50.00
Venosurgery therapy 6 @ \$5.....	30.00
Bladder lavage with retention catheter 7 @ \$10...	70.00

30

Amount Due \$252.00

S A C 85464

For Professional Services during month of  
December, 1939

Hospital visits—daily at \$3.....	\$ 93.00
31	

40

Amount Due \$ 93.00

S A C 85464



*Exhibit P-1.*

Special Nursing—

AM 10/29-30; 11/2-8;

PM 10/22; 10/28-29; 11/2-6

Nite 11/22; 10/28-29; 11/1-9; 11/18

9 twenty-four hr shifts @ \$18.....\$162.

5 eight hr shifts @ \$6.50..... 32.50      194.50

10

Board—Ward Service

11/23N-11/27N-39

4 days @ \$4..... 16.00

Paid on a/c      \$442.70  
    398.20

Balance due      44.50

To attorney —

Martin Mandon, Esq.,

5 Colt St.

Patterson, N. J.

20

EXHIBIT

No. P-1

Date 8-1-40

W. C. O'BRIEN

Official Stenographer

Hospital charges are payable in advance.

30

40

**Exhibit P-2.**

7-18-1940

Tel. Atwater 9-1468

PAUL W. ASCHNER, M. D.  
12 East 88th Street  
New York

To Liberty Mutual Ins. Co. 10  
14 E. 40 St., N. Y. C.  
20 Clinton St., Newark, N. J.

Inj: Meyer Rugg  
Case #39610176  
Emp. Driwood Corp.  
Ins. #C2499266

11/ 2/39	Surgical & Biological Consultation...\$	15.	
11/11/39	Cystorapy .....	25.	
11/20/39	Biological Consultation .....	15.	
	transferred to G. U. Service		20
	11/23/39 to 1/13/40		
21	Hospitalizations @ 3.....	63.	
12/ 4/39	Suprapubic Cystotomy .....	75.	
	vas resection		
12/14/39	Transuethral resection .....	75.	
	left lobe of prostate		
1/ 2/40	Transuethral resection .....	75.	
	rt. lobe of prostate		
1/23/40	Office visit .....	3.	
	Total .....	\$346.00	30

**Exhibit P-2.**

8-1-1940

Phone Ingersoll 2-0780

BERNARD SELIGMAN, M. D.  
163 Ocean Avenue  
Brooklyn, N. Y.

10

November 10, 1939.

For Professional Services rendered  
Mr. Meyer Rugg  
7003—20th Avenue  
Brooklyn, New York

	October 28	\$10.
	“ 29	5.
	November 1	5.
	“ 2	5.
	“ 3	5.
	“ 4	5.
	“ 5	5.
20	“ 6	5.
	“ 7	5.
	“ 8	5.
	“ 11	5.
		<hr/>
		\$60.

## EXHIBIT

No. P-2  
Date 8-1-40

30

W. C. O'BRIEN  
Official Stenographer  
LY H Y

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

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

<p style="text-align: center;">MEYER RUGG, Petitioner,  <i>vs.</i>  DRIWOOD CORPORATION, Respondent.</p>	}	<p style="text-align: center;">On Petition for Compensation.  C. P. 48645.  Determination of Facts and Rule for Judgment.</p>	10
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This matter coming on for determination in the presence S. Martin Mandon, attorney for the petitioner, and John W. Taylor, attorney for respondent, by Everitt Reinhardt, under the provisions of the New Jersey Workmen's Compensation Act, in which a petition was filed on the 21st day of March, 1940 and answer filed April 19th. The case came on for hearing in the City of Elizabeth, County of Union, and State of New Jersey. 20

The facts in this case are briefly that on October 20, 1939 petitioner in the course of his employment attempted to lift a partition section and while doing so was seized with a severe pain in the right side and back. This was about 4 P. M. and he stopped active work but remained about the premises until 4:30 P. M. when he went home. At home that night he applied home remedies and feeling improved the next morning, Saturday, October 21, 1939, he went into work. About a half hour after starting work, while applying heavy clamps to a panel in gluing the same together, he got a severe pain in the right groin and at about 9 30 40

*Determination of Facts and Rule for Judgment.*

10 A. M. noticed a "ball" in his side at the site of the pain. He was compelled to rest for fifteen minutes and then resumed work with the aid of a helper furnished by the foreman at his request. He went home at noon and went to bed about 2 P. M. because of the pain which grew so severe that at 7 P. M. his son summoned Dr. Paul C. Train, who on his arrival at 11 P. M. found petitioner acutely ill and suffering from a strangulated, right inguinal hernia. On the advice of this Doctor petitioner entered The Jewish Hospital of Brooklyn on Sunday morning, October 22nd, 1939 and underwent a herniatomy. Following this operation complications developed, namely retention of urine, infection of bladder and bronchial pneumonia. The petitioner remained at the hospital until January 20 13, 1940 and was thereafter treated by Dr. Train until June 13, 1940, when he was discharged and all treatment ceased. Medical and hospital bills have been submitted for allowance totalling \$1,-623.70, in addition to the claim for temporary disability and permanent disability fixed by petitioner's medical witness at 10% total.

30 Respondent contends that the hernia occurred on Friday, October 20, 1939 and as no descent was shown to have resulted until following the occurrence of the morning of October 21, 1939 it is, therefore, not liable for the claim as the descent did not immediately follow the cause. However, I am of the opinion that the hernia did not occur until the morning of October 22nd, 1939 and that the testimony supports a finding of a compliance with the five statutory requirements in a non-traumatic hernia such as this one is and do so determine.

40 Respondent makes the further claim that since the statute in such cases limits its liability for ex-

*Determination of Facts and Rule for Judgment.*

penses incidental to the operation and recovery to a sum not in excess of \$150.00 it cannot be required to meet the total medical costs admitted to have been incurred in this case of \$1,623.70. However, the medical expenses in this case were not entirely incidental to the operation and recovery therefrom but were in a large measure the result of the complications ensuing from the operation and, under the theory laid down by the Supreme Court in *Dunn v. Atlantic City*, 120 N. J. L. 141, affirmed 121 N. J. L. 588, the respondent would be liable for the entire cost of medical treatment, as hereafter assessed, and all disability resulting from the original injury. 10

Respondent's medical expert maintained there was no permanent disability resulting from the original injury or consequent complications. 20

After a careful consideration of all the evidence and law involved I do find and determine:

That on October 22, 1939 the petitioner sustained a non-traumatic right inguinal hernia arising out of and in the course of his employment which meets all the statutory requirements for a hernia of that class and that as a result of the operation to correct said hernia petitioner sustained additional injury resulting in a temporary disability of 33-6/7 weeks for the period October 21, 1939 to and including January 13, 1940 and permanent disability of five per cent of total. 30

That on said date of October 21, 1939 petitioner was in the employ of respondent and that his wages were \$30.80 per week and compensation rate \$20.00 per week.

That the respondent had due notice or knowledge of said injury.

It is, therefore, on this 8th day of August, 1940, ORDERED that judgment final be entered in favor of 40

*Determination of Facts and Rule for Judgment.*

the petitioner and against the respondent, and that the respondent make payment to the petitioner as follows:

For temporary disability from October 21, 1939 to and including June 13, 1940, 33-6/7 weeks at \$20.00 per week totalling \$677.14.

10 For permanent disability five per cent of total or twenty-five weeks at \$20.00 per week totalling \$500.00.

For medical treatment rendered by Dr. Paul C. Train, \$739.00.

For medical treatment rendered by Dr. Bernard Seligman, \$40.00.

For medical treatment rendered by Dr. Paul W. Aschner, \$300.00.

20 For hospitalization at The Jewish Hospital of Brooklyn, \$405.20.

For Dr. Gerald N. Feigan for his appearance and testimony, \$25.00.

For petitioner's attorney as counsel fee, \$100.00.

For Court reporter's stenographic charges.

It is further ORDERED that the petitioner pay:

To Dr. Irwin P. Train for court appearance and testimony, \$50.00.

To Dr. Paul W. Aschner for court appearance and testimony, \$50.00.

30 To his attorney as counsel fee, \$100.00.

To Dr. Gerald Feigan, examination, \$10.00.

(Signed) HARRY H. UMBERGER,  
Deputy Commissioner.

**Amendment to Determination of Facts  
and Rule for Judgment.**

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

<p style="text-align: center;">MEYER RUGG, Petitioner, <i>vs.</i> DRIWOOD CORPORATION, Respondent.</p>	}	<p>C. P. No. 48648. Amendment to Determination of Facts and Rule for Judgment.</p>	10
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Whereas in the Determination signed in this case on August 8th, 1940 it is stated in Paragraph 2 on Page 2 as follows: "However, I am of the opinion that the hernia did not occur until the morning of October 22nd, 1939 \* \* \*" and also in Paragraph 1 on Page 3 as follows: "That on October 22nd, 1939 the petitioner sustained a non-traumatic right inguinal hernia \* \* \*" which dates are hereby amended to read in each case "October 21, 1939".

(Signed) HARRY H. UMBERGER,  
Deputy Commissioner. 30

30th day of August, 1940.

**Notice of Appeal to Common Pleas.**

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

10

MEYER RUGG,  
Petitioner,

*vs.*

DRIWOOD CORPORATION,  
Respondent.

C. P. No. 48645.  
On Appeal for  
Compensation.  
Notice of  
Appeal.

20

*To: Meyer Rugg, Petitioner, and S. Martin Mandon, Esq., his attorney, 5 Colt St., Paterson, N. J.*

*The Secretary of the Workmen's Compensation Bureau,*

*and*

*The Clerk of the County of Union:*

30

PLEASE TAKE NOTICE that the respondent, Driwood Corp., intends to appeal and does hereby appeal from the whole of the Determination of Facts and Rule for Judgment entered in this matter on August 8, 1940 by the Hon. Harry H. Umberger, Deputy Commissioner of Compensation, wherein, it was adjudged, determined and ordered that judgment final be entered in favor of the petitioner and against the respondent in the sum of \$20.00 per week for 58-6/7 weeks compensation for both temporary and permanent disability payments to begin as of October 21, 1939 besides the following allowances: \$739.00 to Dr. Paul C. Train for medical treatment rendered; \$40.00 to Dr. Bernard Seligman for medical treatment rendered; \$300.00 to Dr. Paul W. Aschner for medical attention; \$405.20 to the Jewish Hospital at Brook-

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*Order Fixing Time and Place of Hearing.*

lyn for hospital care and treatment; \$25.00 to Dr. Gerald N. Feigan for his testimony and court appearance; \$100.00 to S. Martin Mandon, Esq., being respondent's share of the counsel fee and the allowance to the stenographer for three (3) trial day attendances.

John W. Taylor,                   10  
JOHN W. TAYLOR,  
Attorney for Respondent.

I, DANIEL A. SPAIR, Secretary of the Workmen's Compensation Bureau, hereby certify the foregoing to be a true copy of the Notice of Appeal filed in this cause.

Daniel A. Spair.                   20  
DANIEL A. SPAIR.

**Order Fixing Time and Place of Hearing.**

UNION COUNTY COURT OF COMMON  
PLEAS.

MEYER RUGG,  
Petitioner-Appellee,

*vs.*

DRIWOOD CORPORATION,  
Respondent-Appellant.

C. P. No. 48645.                   30  
On Appeal from  
the New Jersey  
Department of  
Labor,  
Workmen's  
Compensation  
Bureau.  
Order Fixing  
Time and Place  
of Hearing.

This matter being opened to the Court by John W. Taylor, Esq., attorney for respondent-appel-                   40

*Order Fixing Time and Place of Hearing.*

lant, and application having been made for an Order Fixing Time and Place for the Hearing of the appeal pending herein, it is hereby, on this 26th day of September, 1940,

10 ORDERED that the appeal be heard on the 11th day of October, 1940, at ten o'clock in the forenoon or as soon thereafter as counsel may be heard, before such Judge of this Court, as may on the aforesaid day, be available for the hearing of such appeal at the Union County Court House, Elizabeth, New Jersey.

EDWARD A. McGRATH,  
Judge.

20

Service of a copy of the within Order Fixing Time and Place of Hearing is hereby acknowledged by me this 27 day of Sept., 1940.

S. MARTIN MANDON,  
Attorney for Petitioner-Appellee.

30

JOHN W. TAYLOR, Esq.,  
24 Commerce St.,  
Newark, N. J.  
Attorney for Respondent-Appellant.

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

UNION COUNTY COURT OF  
COMMON PLEAS.

<p style="text-align: center;">MEYER RUGG, Petitioner-Appellee, <i>vs.</i> DRIWOOD CORPORATION, Respondent-Appellant.</p>	}	<p>Claim Petition No. 48645. New Jersey Department of Labor, Workmen's Compensation Bureau.  On Appeal.  Determination of Facts and Rule for Judgment.</p>	10
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Decided January 3, 1941.

Before EDWARD A. McGRATH, *J.*

S. MARTIN MANDON, Esquire, Attorney for  
Petitioner-Appellee.

JOHN W. TAYLOR, Esquire, Attorney for Re-  
spondent-Appellant.

Petitioner had an award and the respondent appeals. The evidence shows that on Saturday morning, October 21, 1939, about a half hour after starting work, while applying heavy clamps to a panel, the petitioner got a severe pain in the right groin and at about 9 A. M. noticed a "ball" in his side at the site of the pain. He was compelled to rest for fifteen minutes and then resumed work with the aid of a helper furnished by the foreman at his request. He went home at noon and went to bed about 2 P. M. because of the pain which grew so severe that at 7 P. M. his son summoned a doctor, who at 11 P. M. found the petitioner acutely ill and suffering from a strangulated,

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*Determination of Facts and Rule for Judgment.*

right inguinal hernia. The doctor sent him to the hospital and on Sunday morning, October 22, 1939, he underwent a herniatomy. Following this operation, complications developed in the kidneys and bladder and bronchial pneumonia set in. Petitioner remained at the hospital until January 13, 1940 and was thereafter treated until June 13, 1940.

Petitioner is a cabinet maker and has been employed by the respondent who makes office partitions and cabinet work and up to the time of the accident was so employed by them for a period of six or seven years, and it would appear from the evidence that his work was quite laborious in that he was compelled to lift heavy sections of partitions and that his work was not the light, fine work usually associated with the term "cabinet maker."

On Friday, October 20, 1939, the petitioner had attempted to lift a partition section and was seized with a severe pain in the right side and back but felt improved the next day which was Saturday. It was on Saturday that the accident occurred. The respondent contends that the hernia occurred on Friday, October 20, 1939, but I cannot see that the evidence warrants such a finding. The occurrence on Friday doubtless did the petitioner no good, but the evidence is that the hernia occurred on Saturday. According to human experience, it is not at all likely that the man would have come back to work on Saturday morning if the hernia occurred on Friday. All the statutory requirements have been complied with and the statutory elements have been conclusively proved and I so find. A construction of the statute is made by the Court of Errors and Appeals in *Furferi v.*

*Determination of Facts and Rule for Judgment.*

Pennsylvania R. R. Co., 117 N. J. L., at page 516, and I am applying the principles of law therein indicated.

I have carefully read the testimony and am of the opinion, under the circumstances in this case, that an allowance for doctors' and hospital bills is reasonable and lawful and I so find, as herein-  
after enumerated. (Dunn v. Atlantic City, 120 N. J. L., 141, affirmed 121 N. J. L., 588.)

From a consideration of all the evidence, I find that on Saturday, October 21, 1939, the petitioner while in the employ of the respondent sustained a non-traumatic right inguinal hernia arising out of and in the course of his employment which meets all the statutory requirements for compensation for a hernia of that class and that as a result of the operation to correct said hernia, petitioner sustained additional injury resulting in a temporary disability of 33-6/7 weeks for the period October 21, 1939 to and including June 13, 1940, and permanent disability of 5% of total, and that all the requirements of the statute for compensation for this hernia and resulting injury and disability have been conclusively proved.

That on said date of October 21, 1939, petitioner was in the employ of respondent and that his wages were \$30.80 per week and compensation rate \$20.00 per week.

That the respondent had due notice or knowledge of said injury.

I further find that petitioner is entitled to temporary disability from October 21, 1939 to and including June 13, 1940, or 33-6/7 weeks at \$20.00 per week, totaling \$677.14. I also find that petitioner is entitled to permanent disability in the

*Determination of Facts and Rule for Judgment.*

amount of 5% of total, or 25 weeks at \$20.00 per week, amounting to \$500.00.

I further find and allow Dr. Irwin P. Train, for medical treatment, the amount of \$739.00; Dr. Bernard Seligman, for medical treatment, \$40.00; Dr. Paul W. Aschner, for medical treatment, \$300.00; The Jewish Hospital of Brooklyn, for hospitalization, \$405.20; Dr. Gerald N. Feigan, for court appearance and testimony, \$25.00; to be paid by the respondent.

Petitioner's attorney is allowed a counsel fee for trial, in the amount of \$200.00, payable \$100.00 by the respondent and \$100.00 by the petitioner; also a counsel fee on this appeal of \$200.00, to be paid by the respondent.

Stenographic costs are assessed against the respondent.

It is, therefore, on this 9th day of January, 1941, ORDERED, that judgment be entered in favor of the petitioner and against the respondent, and that the respondent make payment as follows:

	For temporary disability, October 21, 1939 to and including June 13, 1940, 33-6/7 weeks at the compensation rate of \$20.00 per week.....	\$677.14
30	Permanent disability in the amount of 5% of total, or 25 weeks at the compensation rate of \$20.00 per week..	500.00
	Dr. Irwin P. Train, for medical treatments .....	739.00
	Dr. Bernard Seligman, for medical treatments .....	40.00
40	Dr. Paul W. Aschner, for medical treatments .....	300.00

*Determination of Facts and Rule for Judgment.*

The Jewish Hospital of Brooklyn, for hospitalization .....	405.20	
Dr. Gerald N. Feigan, for court appearance and testimony .....	25.00	
For petitioner's attorney .....	300.00	
Also stenographic costs .....		10

And it is further ORDERED that the petitioner pay to Dr. Irwin P. Train for court appearance and testimony, \$50.00; to Dr. Paul W. Aschner, for court appearance and testimony, \$50.00; to Dr. Gerald N. Feigan, for examination, \$10.00; and to his attorney \$100.00.

EDWARD A. McGRATH,  
Judge. 20

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**Stipulation Waiving Notice.**

NEW JERSEY SUPREME COURT.

10

MEYER RUGG,  
Petitioner-Defendant  
in-Certiorari,

*vs.*

DRIWOOD CORPORATION,  
Respondent-Prosecutor  
in-Certiorari,

Stipulation  
Waiving Notice.

20

It is hereby stipulated and agreed by and between S. Martin Mandon, attorney for petitioner-defendant-in-Certiorari and John W. Taylor, attorney for respondent-prosecutor-in-Certiorari that formal notice of the application of respondent-prosecutor for a Writ of Certiorari herein be and the same is hereby waived, and counsel for the respective parties do hereby agree to appear by consent before the Hon. Clarence E. Case, Justice of the Supreme Court, at his chambers in Trenton, New Jersey on Tuesday, February 11th, 1941 to attend the said application for a Writ of Certiorari.

30

Dated: February 11th, 1941.

S. MARTIN MANDON,  
Attorney for Petitioner-Defendant.

JOHN W. TAYLOR,  
Attorney for Respondent-Prosecutor.

40

**Petition and Affidavit.**

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">MEYER RUGG, Petitioner-Defendant in-Certiorari.</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">DRIWOOD CORPORATION, Respondent-Prosecutor in-Certiorari,</p>	}	<p style="text-align: center;">On <i>Certiorari</i>. Petition and Affidavit.</p>	10
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Your petitioner is the respondent to a petition filed in the Workmen's Compensation Bureau on March 21, 1940. Your petitioner by its attorney shows that: 20

1. This Petition and Affidavit is made on the knowledge and belief of Everitt Rhinehart, an attorney and counsellor at law of the State of New Jersey who is associated with John W. Taylor, attorney for the respondent, and who was personally charged with the conduct and supervision of this matter as attorney for the respondent.

2. Your petitioner desires to obtain a Writ of *Certiorari* to review the Determination and Judgment entered in the Court of Common Pleas in and for the County of Middlesex, on the 9th day of January, 1941 in a proceeding wherein Driwood Corp. is named as respondent-appellant and Meyer Rugg is named as petitioner-appellee. 30

3. The petition filed with the Workmen's Compensation Bureau herein alleged that the petitioner had suffered an injury on October 20, 1939 40

*Petition and Affidavit.*

and October 21, 1939 by accident arising out of and in the course of his employment with the respondent.

10 4. The case was noticed for hearing and was heard formally before Deputy Commissioner Harry H. Umberger on June 20, 1940, July 18, 1940 and August 1, 1940 at Elizabeth, New Jersey at which hearings it appeared that the petitioner had suffered a right inguinal hernia which was operated upon and which operation was complicated by the subsequent development of difficulty with the petitioner's kidneys and bladder and that the petitioner developed a urinary sepsis and bronchopneumonia.

20 5. At the hearings before the Deputy Commissioner of Compensation, the respondent resisted the petition for compensation benefits on the ground, among others that the petitioner had not sustained a compensable inguinal hernia within the conditions and limitations prescribed by the Statute in such cases known as R. S. 34:15-12 (X) and respondent also resisted the claim for compensation for permanent disability on the grounds that the same were not allowable under the terms of the Statute in such case provided.

30 6. The Deputy Commissioner of Compensation upon consideration of the evidence entered a Determination of Facts and Rule for Judgment on August 8, 1940 whereby compensation benefits were awarded in favor of the petitioner and against the respondent as follows:

40 Temporary disability for  $33 \frac{6}{7}$  weeks at \$20.00 per week, amounting to the sum of \$677.14; permanent disability, 5% of total, amounting to 25 weeks compensation at \$20.00 per week or the sum of

*Petition and Affidavit.*

\$500.00; the sum of \$739.00 for medical treatment rendered by Dr. Paul C. Train; the sum of \$40.00 for medical treatment rendered by Dr. Bernard Seligman; the sum of \$300.00 for medical treatment rendered by Dr. Paul W. Aschner; the sum of \$405.20 for the petitioner's hospitalization at the Jewish Hospital in Brooklyn; the sum of \$25.00 to Gerald N. Feigan, for court appearance and testimony and the sum of \$100.00 to petitioner's attorney as his counsel fee. 10

7. The respondent appealed from the whole of that Determination of Facts and Rule for Judgment to the Court of Common Pleas in and for the County of Union. Your petitioner there contended and here alleges that the Deputy Commissioner erred in awarding compensation benefits and other fees and allowances to and on account of the petitioner because the petitioner's hernia was not acquired in the manner and under the terms and conditions prescribed by the Statute. Your petitioner further contends that the allowances of fees for medical service and hospital treatment in the total sum of \$1,484.20 exceeds and violates the limitation prescribed by the Statute in R. S. 34:15-15 and R. S. 34:15-12 (X). Your petitioner further contends that the Deputy Commissioner and the Court of Common Pleas erred in allowing compensation benefits for a permanent disability because recovery for permanent disability is not contemplated in or allowed by the terms of the Statute cited. Your petitioner further contends that the petitioner failed to establish by a preponderance that he had or suffered any permanent disability as a result of the occurrences alleged. 20 30

8. Following a consideration of the record and of the arguments of counsel thereon, the Hon. Ed- 40

*Petition and Affidavit.*

ward A. McGrath, Judge of the Union County Court of Common Pleas on January 9, 1941 entered a Determination of Facts and Rule for Judgment whereby the Judgment of the Workmen's Compensation Bureau was affirmed in all respects for the amounts hereinabove set forth and wherein the petitioner's attorney was allowed the further sum of \$200.00 as and for his counsel fee.

9. As a result of these premises your petitioner is aggrieved at the Determination and Judgment of the Court of Common Pleas of Union County and feels that the findings and the Judgment of said court are contrary to law and against the weight of the evidence to such an extent as warrants a Supreme Court to review said Judgment on a Writ of *Certiorari*.

10. Your petitioner further alleges his belief that the question of the propriety of an allowance of medical expenses in excess of \$150.00 and the question of the allowance of compensation for permanent disability in cases of inguinal hernia are both questions of novel impression in the Supreme Court.

WHEREFORE your petitioner respectfully prays that a Writ of *Certiorari* issue out of the Supreme Court to the Union County Court of Common Pleas; that the Determination and Judgment made by said court in this matter dated January 9, 1941 together with a transcript of all the evidence and all the proceedings and all things touching and concerning same be certified and sent together with this Writ to the justices of our Supreme Court of Judicature at Trenton, New Jersey.

JOHN W. TAYLOR,  
Attorney for Respondent-Prosecutor,  
Driwood Corporation.

By EVERITT RHINEHART.

**Affidavit of Everitt Rhinehart**

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

EVERITT RHINEHART of full age, being duly sworn according to law upon his oath he deposes and says that:

10

As an Attorney and Counsellor at Law of the State of New Jersey and is associated with John W. Taylor, Esquire, Attorney for the respondent-prosecutor in the above entitled matter, that your deponent was personally charged with the conduct and supervision of this matter and that the matters, facts and things alleged in the petition herein are true to the best of his knowledge and belief.

20

EVERITT RHINEHART.

Sworn to and subscribed before  
 me at Newark, New Jersey,  
 this 10 day of February, 1941.

HELEN G. VERIAN.  
 Notary Public of New Jersey.

(Seal)

30

Service of the within Petition and Affidavit is hereby acknowledged by me this 11th day of February, 1941.

S. MARTIN MANDON,  
 Attorney for Petitioner-Defendant.

40



*Conclusions.*

ferred to at the beginning of R. S. 34:15-12x it is to be classed as a traumatic hernia and is thus distinguishable from "the hernia which is the culmination of a congenital or after-acquired physical weakness, classable as a disease".

The strangulation made an immediate operation necessary, and the operation was accordingly performed on Sunday, twenty-four hours after the bowel had protruded through the intestinal wall. Because of the day preliminary notice could not be given to the employer and, according to the terms of the statute, was not necessary. The employer was informed early Monday morning. The subsequent operations and a part of the ensuing hospitalization were made mandatory by a physical condition directly attributable to the hernia and the operation thereon. The allowances are within the ruling in *Dunn vs. Atlantic City*, 120 N. J. L. 141, affirmed 121 N. J. L. 588. No item of medical or hospital expense is attacked as unnecessary or exorbitant.

I find no open question except in prosecutor's point that an allowance for permanent disability arising out of hernia is not within the contemplation of the statute. The statute, R. S. 34:15-12x, provides that "in the case of hernia as above defined, the provisions of paragraph 'a' of this section and sections 34:15-14 and 34:15-15 of this title shall apply \* \* \*" and makes no specific reference to 34:15-12b (permanent total disability) or 34:15-12c (permanent partial disability). It is the respondent's contention that the allowance made in the instant case for permanent partial disability is grounded in the conditions that arose *out of* the hernia and not from the hernia *itself*. The statute is not clear and no controlling decision is brought to my attention. I think that the prosecutor is entitled to have the question considered and decided. The writ of *certiorari* therefore will be allowed.

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**Writ of Certiorari.**

NEW JERSEY, ss.: THE STATE OF NEW JERSEY TO  
 THE COURT OF COMMON  
 PLEAS IN AND FOR THE  
 COUNTY OF UNION AND  
 (Seal) HENRY G. NULTON, CLERK  
 OF THE SAID COURT AND  
 MEYER RUGG, GREETING:

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We being willing for certain reasons to be certified of and concerning a certain determination and judgment rendered on the 9th day of January, 1941, by the Honorable Edward A. McGrath, Judge of the said Court of Common Pleas, in and for the said County of Union, in a certain proceeding brought on behalf of Meyer Rugg, petitioner against Driwood Corporation, respondent, for the determination and recovery of compensation under the Statutes of the State of New Jersey, known and cited as R. S. 34:15-1 to R. S. 34:15-102, relating to the liability of an employer to make compensation for injuries received by an employe arising out of and in the course of his employment and the acts amendatory thereof and supplemental thereto, we command you, the said Court of Common Pleas in and for the County of Union and Henry G. Nulton, Clerk of said Court, that the said determination and judgment, together with a transcript of the evidence and all proceedings for making of the same and all things touching and concerning the same, as fully and entirely as before you they remain, or are in your custody and control, you do certify and send together with this our Writ, to our Justices of our Supreme Court of Judicature at Trenton, on the tenth day of March, 1941, that therein may be

*Allocatur.*

caused to be done what of right and justice according to law ought to be done.

Witness, the Honorable Thomas J. Brogan, Chief Justice of our Supreme Court at Trenton, this 20th of February, in the year of our Lord, one thousand nine hundred and forty-one.

10

FRED L. BLOODGOOD,  
Clerk.

JOHN W. TAYLOR,  
Attorney for Respondent-Prosecutor.

---

**Allocatur.**

This Writ is allowed. Let it be sealed. Dated 20  
February 17, 1941.

CLARENCE E. CASE,  
Justice of the Supreme Court.

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*Affidavit of Service.*

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

10 Richard H. Tunstead of full age being duly sworn according to law on his oath deposes and says that he served a copy of the within Writ of *Certiorari* on Harry Zax in charge of the office of S. Martin Mandon on February 24, 1941 at approximately 12:20 P. M.

(Signed) RICHARD H. TUNSTEAD.

Sworn and subscribed to before  
 me at Newark, N. J., this 24th  
 day of February, 1941.

20 HELEN G. VERIAN,  
 Notary Public of N. J.

---

Service of a copy of the within Writ of *Certiorari* is hereby acknowledged by me, this 25th day of February, 1941.

30 HENRY G. NULTON,  
 Clerk of Union County Court of  
 Common Pleas.

**Return to Writ.**

(Filed March 3, 1941.)

UNION COUNTY COURT OF COMMON  
PLEAS.

MEYER RUGG,  
Petitioner-Defendant-  
in-Certiorari,

*vs.*

DRIWOOD CORPORATION,  
Respondent-Prosecutor-  
in-Certiorari.

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Action at Law.  
Return.

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I, HENRY G. NULTON, Clerk of the County of Union and of the Court of Common Pleas holden therein, DO HEREBY CERTIFY that the records and proceedings and all things touching and concerning the same are hereby certified to the Clerk of the Supreme Court in a certain schedule to these proceedings, to wit:

Filed

Notice of Appeal	Sept. 6, 1940	
Transcript of Stenographers Notes	Sept. 18, 1940	30
Amendment to Determination of Facts	Sept. 19, 1940	
Employee's Claim Petition for Compensation	Sept. 20, 1940	
Respondent's Answer to Employ- ee's Claim	Sept. 20, 1940	
Order Fixing Time and Place of Hearing	Oct. 1, 1940	
Determination of Facts	Jan. 15, 1941	
Writ of <i>Certiorari</i>	Feb. 25, 1941	40

*Reasons for Reversal.*

All of which is returned this 1st day of March, 1941.

HENRY G. NULTON,  
Clerk of the Union County  
Court of Common Pleas.

10

IN TESTIMONY WHEREOF, I have here-  
unto set my hand and affixed my offi-  
(Seal) cial seal this 1st day of March, A. D.  
1941.

HENRY G. NULTON,  
County Clerk.

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**Reasons for Reversal.**

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NEW JERSEY SUPREME COURT.

MEYER RUGG,  
Petitioner-Defendant-  
in-Certiorari,

*vs.*

DRIWOOD CORPORATION,  
Respondent-Prosecutor-  
in-Certiorari.

On *Certiorari*.  
Reasons for  
Reversal.

30

The prosecutor presents the following reasons for reversal of the determination and judgment brought before this Honorable Court by the Writ of *Certiorari* in the above entitled cause:

40 FIRST: Because the petitioner-defendant-in-  
*certiorari* failed to establish by conclusive proof

*Reasons for Reversal.*

that his inguinal hernia was immediately caused by such sudden effort or severe strain as is required by the Statute in such case provided, R. S. 34:15-12(x), in that the facts proved did not satisfy the criteria, that is, the five points established by the Statute.

10

SECOND: Because the allowance of the sum of \$1,484.20 to petitioner-defendant-in-*certiorari* for medical and hospital expense incident to the operation for inguinal hernia and his recovery therefrom exceeds and violates the limitation of \$150.00 placed on such expense by statutory provision, R. S. 34:15-12(x).

THIRD: Because the allowance of compensation for a permanent disability to the extent of five per centum of total is illegal and improper in that the Statute, R. S. 34:15-12(x), does not provide for or permit of such compensation in cases of inguinal hernia.

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FOURTH: Because the petitioner-defendant failed to establish by the weight of the evidence that he suffers any permanent disability as a result of the alleged occurrence.

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FIFTH: Because the said determination and judgment under review is in divers other respects irregular, unjust, illegal and oppressive to the prosecutor.

JOHN W. TAYLOR,  
Attorney for and of Counsel  
with Respondent-Prosecutor in  
*Certiorari.*

40

**Opinion of Supreme Court.**

(Filed May 24, 1941.)

NEW JERSEY SUPREME COURT.

No. 214.      MAY TERM, 1941.

10

MEYER RUGG,  
Petitioner-Respondent,

*vs.*

DRIWOOD CORPORATION,  
Respondent-Prosecutor.

On *Certiorari*.

Argued  
May 6, 1941;  
Decided  
May 22, 1941.

20

Before Justices BODINE, PERSKIE and PORTER.

For prosecutor: JOHN W. TAYLOR: EVERITT  
RHINEHART, of counsel.

For respondent: S. MARTIN MANDON: MARTIN  
KIMMEL, of counsel.

The opinion of the court was delivered by  
PERSKIE, *J.*

30

This workmen's compensation case requires that we decide whether the petitioner suffered a compensable hernia and whether he was properly awarded payment for permanent disability and medical expenses.

40

Meyer Rugg, the petitioner, a man of 58 years of age, was employed by respondent as a cabinet maker for about six or seven years. On Saturday, October 21, 1939, during the course of his employment and while lifting a panel which contained four clamps, each of which weighed fifteen or twenty pounds, he was stricken with pain in the

*Opinion of Supreme Court.*

region of his right groin. He tried to help a fellow employee with the work but the pain persisted. He went to the men's room where, upon examining the area of the pain, he noticed "a little ball on the side". He made further attempts to resume work with the aid of a helper until noon when he found it necessary to, and did, go home. After getting no relief from a self-administered enema, he remained in bed, with pain, until his son returned home about 7:00 P. M., and called the doctor who arrived about 11:00 P. M. On the following day, Sunday, he was taken to a hospital in Brooklyn, N. Y., and there operated upon for a strangulated right inguinal hernia. On Monday morning, October 23, 1939, the petitioner's son called the respondent on the telephone, spoke to the representative in the New York office and explained to him that the petitioner was operated upon for an injury received Saturday while at work.

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Serious post operative complications developed, including difficulty in voiding, prostrate obstruction, urinary sepsis and broncho-pneumonia. Several subsequent operations were necessary and petitioner did not leave the hospital until three months after his admission.

30

Petitioner filed his claim petition with the Workmen's Compensation Bureau. The Bureau found that the petitioner suffered, on October 21, 1939, a "non-traumatic right inguinal hernia arising out of and in the course of his employment which meets all the statutory requirements for a hernia of that class and that as a result of the operation to correct said hernia sustained additional injury resulting in a temporary disability of 33-6/7 weeks for the period October 21, 1939 to and including June 13, 1940 and permanent disability of

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*Opinion of Supreme Court.*

5% of total". Accordingly, an award was made in favor of petitioner and against respondent. This included an order to pay for temporary and permanent disability, for medical treatment and hospitalization to the amount of \$1,484.20, and counsel fees.

10 On appeal, the Union County Court of Common Pleas entered a determination of facts and rule for judgment affirming the Bureau.

Prosecutor then made application to Mr. Justice Case for a writ of *certiorari* to review the judgment of the Pleas. Mr. Justice Case in a written opinion (marked not to be printed in any report) concurred in the result reached both by the Bureau and the Pleas. He found no open question involved save one, viz., whether the allowance for permanent disability arising out of hernia is contemplated by the statute. R. S. 34:15-12(x). Accordingly, he allowed the writ but without in anywise limiting the allocatur.

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Prosecutor here raises and argues four questions.

1. Did the petitioner fail, as claimed, conclusively to prove the five statutory requirements for a compensable inguinal hernia? R. S. 34:15-12(x). We do not think so.

30

The pain which the petitioner is said to have suffered, in his right groin or lower stomach, two or three weeks prior to October 21, 1939, disappeared after a short rest and no further complaints followed. The pain which petitioner suffered on Friday, October 20, 1939, was in his back and not in his groin and that pain disappeared after the application of a plaster and a single night's rest.

40 Petitioner returned to work the very next day. As already observed, petitioner did not notice the

*Opinion of Supreme Court.*

appearance of a lump in the region of his right groin until October 21, 1939. In the paraphrased words of Dr. Feigen, if the petitioner did not notice any lump on October 20, 1939, and his pain then disappeared, the strangulation certainly didn't occur on that day but did occur, as found, on October 21, 1939, when the lump did appear.

10

The Bureau, the Pleas and Mr. Justice Case concluded that petitioner conclusively proved that he suffered an inguinal hernia on October 21, 1939, and that he had conclusively satisfied the five statutory requirements. Cf. *Furferi v. Pennsylvania R. R. Co.*, 117 N. J. L. 508, 189 A. 126. After a careful consideration of all the proofs, we, too, are clearly of the view that petitioner has sustained his claim by proofs which are "convincing in character". *Frank DiNieri v. Metafield, Inc.*, N. J. L. , A. 2d. .

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2. Was the allowance of \$1,484.20 for medical and hospital expenses improper because it was in excess of the \$150.00 limitation for the expenses incident to the operation for and recovery of a hernia? R. S. 34:15-12(x).

Our negative answer to this question is, in our opinion, controlled by the case of *Dunn v. Atlantic City*, 120 N. J. L. 141, 199 A. 5, affirmed on the opinion below, 121 N. J. L. 588, 3A. 2d. 583. In that case it was held (opinion by Mr. Justice Trenchard) that where an operation for a hernia which arose out of and in the course of petitioner's employment, resulted in a shock, lighting up a dormant condition of nephritis, "which, but for the accident would not have ensued" and which latter disease caused the death of the employee, the death was to be properly considered an "\* \* \* accident within the meaning of the Workmen's Compensation Act \* \* \* even

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*Opinion of Supreme Court.*

though it was not the natural result of the injury". Accordingly compensation for the death was allowed under the general provisions of the act.

10 Prosecutor seeks to distinguish the instant case from the Dunn case on the ground that in the Dunn case death resulted and therefore under the last sentence of R. S. 34:15-12(x) the provisions of R. S. 34:15-13 (Compensation for death; computation and distribution) were applied. Thus it is argued that the medical and hospital expenses in the instant case should have been limited to \$150.00. We cannot agree with this argument. Nowhere in the Dunn case is reference to be found to the invoked provision of the statute. As already observed, Mr. Justice Trenchard pointed  
20 out that the post operative death, resulting, as it did, from nephritis was an "\* \* \* accident within the meaning of the Workmen's Compensation act \* \* \*".

30 Applying this principle to the case at bar, it is clear, from the proofs, that the post operative complications grew out of the operation for the hernia, that but for the accident, arising out of and in the course of the employment, they would not have ensued, and that they were, following the rationale of the Dunn case, distinct accidents within the meaning of the Workmen's Compensation act, and, therefore, compensable according to the general provisions thereunder.

3. Was the allowance of 5% of total permanent disability improper?

It is a fact, as pointed out by Mr. Justice Case, that R. S. 34:15-12(x) provides, after setting forth the five requirements, that "in case of a

*Opinion of Supreme Court.*

hernia as above defined, the provisions of paragraph 'a' (temporary disability) of this section and sections 34:15-14 (waiting period) and 34:15-15 (medical and hospital service) of this title shall apply \* \* \*;" and that the statute makes no specific reference to either R. S. 34:15-12(b) (permanent total disability) or R. S. 34:15-12(c) (permanent partial disability). But, in our opinion, these facts do not, under the circumstances exhibited, bar petitioner from his right to recover for the permanent partial disability which he unquestionably suffered. We construe this provision of the act relating to hernia, as we construe all other provisions thereof, in light of and in harmony with the general provisions of the act as a whole to the end that those properly entitled to its beneficent relief are not unjustly deprived thereof. Of course, a case not within the wording of the provisions relating to hernia, is to be excluded therefrom. *Furferi v. Pennsylvania R. R. Co., supra*. Here, however, the allowance for the permanent partial disability was not for the injuries flowing from the compensable hernia which petitioner suffered. Rather was the allowance for the injuries flowing from the various ailments (the accidents) which followed in the train of the compensable hernia. They are ailments which in the legal sense we hold to be tantamount to accidents arising out of and in the course of his employment and hence compensable under the general provisions of the act. Cf. *Dunn v. Atlantic City, supra*.

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4. Did the petitioner establish, by the greater weight of the proof, that he suffers a permanent partial disability as a result of the alleged occurrence?

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*Opinion of Supreme Court.*

In support of its contention that petitioner failed to so establish permanent partial disability, prosecutor relies on the testimony of Dr. Lewis, prosecutor's own witness who had conducted only one examination of the petitioner. On the other hand, Dr. Feigen, called by the petitioner, stated the disability to be 10% of the total. Although both Dr. Train and Dr. Aschner, treating physicians, had signed forms in New York, stating that petitioner suffered no permanent disability, Dr. Aschner explained that, under his conception of the New York law, the words "permanent disability" denoted a different meaning in New York. Dr. Train testified that there was "a decided weakening of that area in the region of the suprapubic cystotomy", and Dr. Aschner expressly pointed out that petitioner "has a limitation in his working capacity".

In accordance with the three separate findings already made, we also find as a fact that petitioner suffered partial disability to the extent of 5% of total. He was properly allowed compensation therefor.

The judgment under review is affirmed and the writ is dismissed, with costs.

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**Order for Affirmance and Remittitur.**

(Filed June 2, 1941.)

NEW JERSEY SUPREME COURT.

No. 214.      MAY TERM, 1941.

MEYER RUGG,  
Petitioner-Defendant,

*vs.*

DRIWOOD CORPORATION,  
Respondent-Prosecutor.

On *Certiorari*.  
Order for  
Affirmance and  
Remittitur.

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This cause having been argued at the May term, 1941, of this Court by Counsel for respondent-prosecutor and Counsel for petitioner-defendant, and the Court having inspected the record and judgment of the Union County Court of Common Pleas and considered the reasons assigned for setting aside said judgment and having heard and considered the arguments of Counsel;

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It is ORDERED that the judgment of the Court of Common Pleas in and for the County of Union be and the same hereby is in all matters affirmed with costs and that said record be remitted to the said Court to be proceeded with in accordance with this judgment and the practice of this Court.

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Rule entered on June 2nd, 1941.

On motion of:

S. MARTIN MANDON,  
Attorney for Petitioner-Defendant.

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**Notice of Appeal.**

(Filed July 1, 1941.)

## NEW JERSEY SUPREME COURT.

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MEYER RUGG,  
Petitioner-Appellee,*vs.*DRIWOOD CORPORATION,  
Prosecutor-Appellant.On Certiorari.  
Notice of  
Appeal.

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*To Meyer Rugg, Petitioner-Appellee, and  
S. Martin Mandon, Esquire, his attorney:**Sirs:*

PLEASE TAKE NOTICE that the prosecutor-appellant, Driwood Corporation, hereby appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in the above entitled cause.

Dated: June 26, 1941.

30

JOHN W. TAYLOR,  
Attorney for Prosecutor-Appellant.

Service of a copy of the within Notice of Appeal is hereby acknowledged by me this 27 day of June, 1941.

S. MARTIN MANDON,  
Attorney for Petitioner-Appellee.

40

**Grounds of Appeal.**

(Filed July 7, 1941.)

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

<p style="text-align: center;">MEYER RUGG, Defendant-Appellee,</p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">DRIWOOD CORPORATION, Prosecutor-Appellant.</p>	}	<p>On Appeal from New Jersey Supreme Court. Grounds of Appeal.</p>	10
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The following are the grounds of appeal of the prosecutor-appellant, which will be urged for the reversal of the judgment of the New Jersey Supreme Court. 20

1. The Supreme Court erred in giving judgment for the defendant-appellee instead of for the prosecutor-appellant.

2. The Supreme Court erred in affirming the judgment of the Union County Court of Common Pleas which affirmed the judgment of the Workmen's Compensation Bureau in making an award to defendant-appellee, whereas the Supreme Court should have reversed the judgment of the said Common Pleas for one or more of the reasons on *certiorari*. 30

JOHN W. TAYLOR,  
Attorney for Prosecutor-Appellant.

HARRY E. WALBURG,  
Of Counsel.

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*Grounds of Appeal.*

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

IRVING BECHEFSKY, being duly sworn according to law upon his oath deposes and says:

10 That I am employed by New Jersey Lawyers Service and at the request of Cox & Walburg did serve a copy of the within on the 1st day of July nineteen hundred and forty-one, on S. Martin Mandon by leaving same with Miss Del in charge of the office.

IRVING BECHEFSKY.

Subscribed and sworn to before me }  
 this 1st day of July, 1941. }

20

VIOLA M. DELRUSSI,  
 A Notary Public of New Jersey.

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1841

State of New York

In SENATE,  
January 15, 1841.

REPORT OF THE

COMMISSIONERS OF THE LAND OFFICE

IN ANSWER TO A RESOLUTION PASSED BY THE SENATE

ON THE 15TH DAY OF JANUARY, 1841.

ALBANY: PUBLISHED BY G. B. LEWIS, STATE PRINTER.

1841.

Price 25 CENTS.

NEW YORK: G. B. LEWIS, STATE PRINTER.

1841.

Price 25 CENTS.

NEW YORK: G. B. LEWIS, STATE PRINTER.

1841.

*[The page contains extremely faint, illegible text, likely bleed-through from the reverse side of the document. The text is too light to be transcribed accurately.]*

OCT. T. 1941

**New Jersey Court of Errors and Appeals**

MEYER RUGG,  
Defendant-Appellee,

*v.*

DRIWOOD CORPORATION,  
Prosecutor-Appellant.

On Appeal from  
the Supreme  
Court.

**BRIEF OF PROSECUTOR-APPELLANT.****Statement of Facts.**

This is a workmen's compensation case in which the prosecutor-appellant, the employer, appeals from a judgment of the New Jersey Supreme Court which affirmed a judgment of the Union County Court of Common Pleas awarding compensation to the defendant-appellee, the employee, wherein it was found that the employe had sustained a right inguinal hernia within the meaning of the statute (126 N. J. L. 484).

The original award was entered in favor of the employe and against the prosecutor-appellant in the Workmen's Compensation Bureau (S. C., pp. 115, 119, 123, 127, 142, 149). The award and judgment included (a) 33 6/7 weeks' temporary compensation at the rate of \$20 a week, or \$677.14; (b) medical expense incurred for treatment in the operation of the hernia, and complications ensuing, in the sum of \$1,484.20, which is \$1,334.20 in excess of the limitation of \$150 for medical expenses as provided by R. S. 34:15-12(x); (c) compensation for a partial permanent disability to the extent of 5% of total disability, or 25 weeks'

compensation at the rate of \$20 a week, or a total of \$500, although no provision is made in R. S. 34:15-12(x) for permanent disability as a result of an operation for hernia; (d) attorneys' fees and expert witnesses' fees were also allowed (S. C., pp. 115, 118, 123, 127).

The defendant-appellee, the petitioner below, claimed he had two accidents arising out of and in the course of his employment with the prosecutor-appellant; one on October 20th and the other on October 21st, 1939 (S. C., p. 2, ll. 20 to 30). At the trial it was claimed by the petitioner below that the right inguinal hernia resulted solely from the accident or strain of October 21, 1939.

A statement of the facts produced at the trial below is as follows:

The petitioner testified that he was employed and had been for some time prior to October 20 and 21, 1939, by the prosecutor-appellant, as a cabinet maker; that he would work eight hours a day, from eight o'clock in the morning until 4:30 in the afternoon except Saturdays, when the working day was from eight o'clock in the morning until twelve noon, a total of forty-four hours a week; that on Friday, October 20, 1939 he was examining a heavy section; that he had a helper working with him, but the helper had disappeared, and the petitioner lifted up this section and could not get it down; that he called for help; that he strained his back on his right side, he couldn't bend and he couldn't stand up; that this section was a partition 10 feet high, 4 feet wide, and was packed inside with rock-wool; that it was made of wood and was heavy; that this incident occurred at four o'clock. He then stated that he stopped work; that he couldn't do it; that he gave it to another man to finish; that he stayed in the plant until 4:30, which was the usual time that the day's work terminated; that he left the plant at

4:30 that day and went home; that he felt very bad at night and had a plaster on his side which warmed him up a bit, and on the morning of October 21st he returned to his usual work; that he resumed his work and had been doing so for about an hour when the pain came on in his right side and in front; that he had been working about fifteen minutes, when he told his foreman he wouldn't be able to carry on his work until twelve o'clock, and that he should provide a helper for him because he didn't feel good; that at the time he felt the pain on Saturday morning, October 21st, he was gluing some panels which were also heavy; that he put on four clamps and each clamp weighs about fifteen or twenty pounds; that he lifted up one panel and he had some pain in the right side of the abdomen (indicating the right groin); that as soon as he felt better he helped another fellow get ready with the work; that at about nine o'clock the pain came back again and he went into the men's room and examined himself, and found a ball on the side; that it was a very small ball; that during the morning, about every hour the pain came and he stopped, and then he started working again, and at twelve o'clock (which is the usual time for cessation of work on Saturday) he told a Mr. Klein, a fellow employe, that he could not do any more work and he had to go home; that he went home and arrived there at about two o'clock; that he went to bed and had pain, so he tried an enema, which did not help him; that later on that evening his son called a doctor, who came around eleven o'clock that night; that the doctor examined him and told him he would have to go to the hospital for an operation; that the doctor saw him again on Sunday morning and sent him to the hospital where he was operated on by Dr. Train; that he was confined to the hospital for three months and was

operated on about five times; that he had double pneumonia, and also could not pass his water; that he has not performed any work since October 21, 1939; that he could work but there isn't any work; that the Mr. Klein he spoke to at the place of his employment is a cabinet maker who helped him do the work; that on Saturday morning he told the foreman he was not feeling well; that he did not work on Saturday afternoons or Sundays, and up to October 20, 1939 he had not had any impairment of health (S. C., pp. 13 to 20, l. 20).

On cross examination he testified that he told Mr. Berger, the foreman, on Saturday morning, that he didn't feel very good and that he needed someone to help him because he wasn't able to finish his work, and that was all he told him (S. C., p. 20, ll. 30 to 40); that he had a helper assisting him on October 20th but he disappeared, and then the petitioner attempted to lift the section by himself; that this occurred at four o'clock; that he stopped work for about ten or fifteen minutes, then felt better and started to work again; that after he had lifted the wooden section on October 20th he had pain in the right side in the back, he couldn't stand up straight and he couldn't walk; that on Saturday morning after he had worked for about an hour the pain came on in the right side (indicating the right groin) (S. C., p. 21, ll. 10 to 20); that he and his fellow-employee, Mr. Klein, both live in Brooklyn; that on the way home after work on October 20, 1939 the petitioner told Mr. Klein to go ahead and get the train because he thought he could not get there in time; that Mr. Klein stayed with him; that on Saturday morning, October 21, he didn't feel any pain in the back; that as he started working and started lifting he felt a pain in the front, in the right side. He denied that he had a similar occurrence about

two weeks prior to October 20th. He denied telling a Mr. Lerer, manager of the prosecutor-appellant, that a few weeks before the 20th he had pain in his side from lifting (S. C., p. 22, l. 10 to p. 23, l. 10). He also testified that on Friday, October 20th, at four o'clock, he told his fellow-employee, Mr. Klein, that he couldn't put away the section, *i. e.*, the finished work, as he was afraid he would drop it and damage it; that he asked Mr. Klein to put it away, and Mr. Klein and another man took it away from him; that at that time he told Mr. Klein that he had strained himself, that he couldn't hold the section, that he couldn't bend and that he couldn't stand straight; that he took a rest and then started working again until 4:30, which was the usual quitting time (S. C., p. 23, ll. 10 to 40); that on Saturday morning, October 21, at about nine o'clock or shortly thereafter, he went into the men's room and examined himself; that after he went to work Saturday morning his back didn't bother him, but the pain came on in the right side and front; that he worked until noon time Saturday, right up to twelve o'clock, which was his regular quitting time (S. C., p. 24, ll. 10 to 30); that the first time he spoke to the foreman was on Saturday, October 21st, and he told him that he didn't feel well and needed some help, and that was all he said to the foreman; that after he had discovered the lump he did not tell anyone about it because he didn't know what it was (S. C., p. 27, ll. 10 to 30).

On re-direct examination he testified that on Saturday he started to work alone, until he felt the pain; that at around nine o'clock he started to work with a helper; that he took a rest for about fifteen minutes and then the pain went away; that he walked over to the foreman and said, "Mr. Berger, I don't feel very good and the work has to be done up to twelve o'clock. I'll never make it.

And he said, 'I'll send you Mr. Klein.'"; that Mr. Klein came and helped him (S. C., p. 28, l. 10, to p. 29, l. 10).

Harold Rugg, the son of the petitioner, testified that he saw his father on the evening of October 20, 1939; that no mention of pain was made to him; that on October 21, 1939 at about seven o'clock in the evening he called Dr. Train to examine his father; that the doctor came at about 10:30 or 11 o'clock; that his father was suffering from pain (S. C., p. 29, l. 30 to p. 30, l. 20); that on Monday morning, he called the New York office of the prosecutor-appellant and advised them that his father was taken to a hospital and operated on as a result of an injury he sustained on the job on Saturday (S. C., p. 31, ll. 10 to 20).

This was all the fact testimony produced by the petitioner. The medical testimony was as follows:

Dr. Irwin P. Train first saw the petitioner on October 21, 1939 at about midnight. When he saw him the petitioner was suffering from a strangulated, right inguinal hernia (S. C., p. 34, ll. 20 to 40). The petitioner told him that he was a carpenter; that in his occupation he lifts a good number of heavy objects during the course of his work; that on Friday, October 20th, in the late afternoon he lifted a heavy object and felt a pain; that the pain was in the abdomen and back, in the upper part of the right thigh; that he thought it would go away and he kept on working; that the pain became severe; that it was close towards returning home and he returned home; that he rested at home and felt a lot better; that in the morning the pain had subsided and he returned to work; that that was Saturday morning; that he again continued his usual occupation, lifting several objects, one particularly heavy one, and again he felt pain; that this time

it was more severe; that it was in the abdomen over the right, lower part of the abdomen, and again it was close to closing time; that it was about noon this time, and he was entitled to go home and he went home; that at home the pain increased and he noticed that there was a lump in the region of his right groin (S. C., p. 35, ll. 10 to 30); that on Sunday morning, October 22, he operated on the petitioner for a right, inguinal strangulated hernia; that subsequently he developed severe complications, post operatively; that after the operation he developed difficulty in voiding and as a result thereof a urinary sepsis; that at another time he developed change in his lungs; that he called in Dr. Seligman, who formed the impression that he had a broncho-pneumonia and who treated the petitioner for this; that he then called in Dr. Aschner because of urological complication, and he decided that the petitioner had a urinary sepsis due to acute obstruction of his prostate; that in the doctor's opinion these conditions were attributable to the original injury; that he was confined to the hospital from October 22, 1939 to January 13, 1940 (S. C., p. 36, l. 10, to p. 37, l. 20).

He also testified that in his opinion the hernia was due to a sudden effort of an unusual type, that is a degree of exertion that was more than usual, like the lifting of a heavy object; that there was a sudden, very severe strain; that in his opinion there was a causal relationship between this condition and the accidents, particularly the one of Saturday, which became very obstructive and which progressed into these symptoms; that in his opinion medical treatment was required within twenty-four hours after the occurrence of the event. He also testified that as a result of the various operations performed on the petitioner, that his activities would be limited as far as

heavy work is concerned; that he has a slight weakening of the abdominal wall as a result of his supra-pubic cystotomy, and also as a result of his hernia repair; that the tissues in that area were very poor, even at the time of the operation; that this condition will be permanent. He also testified that there was a causal relationship between the accident and the various conditions that occurred; i.e., indirectly and as a complication. This doctor's bill for services was \$775 (S. C., p. 37, l. 30, to p. 39, l. 30). He stated that all the treatment was necessary and that it arose directly or indirectly as a result of the accident (S. C., p. 40, l. 10).

On cross examination he testified that he received the history late on the evening of October 21, 1939 from the petitioner. He told him that on Friday, October 20th, in the late afternoon he felt a pain in his abdomen, back and right thigh following the heavy lifting; that Saturday morning this pain had subsided; that on Saturday morning, some time during the morning, the pain returned; that he remained at work until quitting time and then went home; that after he arrived at home he noticed a lump in his right side. The doctor stated that as to the latter, that was the impression he had around that time. He then testified that he didn't know whether the petitioner noticed the lump at home or at his place of business. The petitioner told him that while he was traveling home he almost vomited and experienced tremendous pain; that whether the petitioner received the lump at that time he was not quite sure (S. C., p. 40, l. 30 to p. 41, l. 40). He then testified that the accidents that happened on Friday and Saturday were the things that caused the hernia (S. C., p. 42, l. 10); that the conditions from which the petitioner suffered subsequent to his hernia operation developed as complications;

that they were secondary and incidental to the operation for the right inguinal hernia; that there is no direct causal connection between the lifting and the other operations that this physician performed (S. C., p. 42, ll. 10 to 30). This witness was shown an affidavit which he executed on the form of the Department of Labor in New York City in which he set forth that the petitioner had not sustained any permanent defect. This was dated February 26, 1940 and was made about a month after the petitioner had been discharged from the hospital, and the abdominal wall at that time looked well and healed. He testified that there was no guaranty that in several months or a year later he may not develop weakening; that at the time of the hernia there was a weakening in the area of the suprapubic cystotomy; that there was a little relaxation there that was not present at the time he made the report in February; that it may further develop as the months go on; that it is a weakening that may not develop any more than it has (S. C., p. 43, l. 20 to p. 45, l. 10).

Dr. Paul W. Aschner testified that he specialized as a urologist; that he saw the petitioner on November 2nd, 1939; that he had the wound of the hernia operation and a retention of urine and infection of his bladder which is incidental to and commonly occurs after a hernia operation; that in this instance there was an added factor of some enlargement of the prostate gland which is common in men of his years. He attempted by antiseptic control to clear the infection but this was not successful, so an operation was resorted to (S. C., p. 48, ll. 10 to 40); that as a result of the operation the petitioner has a scar on the abdominal wall; that two subsequent operations were performed to remove obstructing prostatic tissue; that the last time this witness saw the petitioner

was on January 23, 1940, ten days after he had been discharged from the hospital (S. C., p. 49, ll. 10 to 30); that as he had not examined the petitioner since that time he did not know what his condition was at the time of the hearing. He testified, based on his experience and not on an examination of the petitioner, that the petitioner would have a weakness at both sides, being the site of his hernial repair and the site of the suprapubic cystotomy; that this would interfere with the petitioner's lifting heavy weights and is a permanent condition. This doctor's bill was \$346.

On cross-examination this witness testified that as a result of the operation for hernia, he developed a retention of urine; that as a result of that he developed an infection of his bladder; that these conditions were incidental results of the fact that the petitioner developed a strangulated hernia for which he had been operated upon. This doctor also admitted that he executed a form on February 2, 1940 for the New York Department of Labor, reporting that there was no permanent injury to the petitioner. He explained this by stating that under the New York law permanent injury loss means anatomical loss of the parts. In New York you cannot refer to permanent injury unless you have an amputation or impairment of motion or fixation of a joint, or impairment of function. He admitted that he could not tell what the condition of the petitioner was at the time of the hearing (S. C., p. 52, l. 10, to p. 53, l. 20).

The petitioner offered in evidence Dr. Seligman's bill for \$60 and hospital bill for \$442.70, which was objected to by counsel for the prosecutor-appellant on the ground that they were in excess of and beyond the limit of medical expense as fixed by the hernia provision of the Act, and

no petitions in any event had been filed for medical allowance (S. C., p. 55, l. 30, to p. 57, l. 30).

Dr. Gerald M. Feigen, testified that he was a practicing physician of New Jersey and examined the petitioner on June 29, 1940; that this was after the hearing has been started in the Workmen's Compensation Bureau. In answer to a hypothetical question he testified that he thought the hernia was related to the occurrences of October 20 and 21, 1939 (S. C., p. 59, l. 20 to p. 61, l. 20); that he couldn't state positively whether the hernia was attributable to the accident of October 20 or the one of October 21, but assuming the history to be correct, he would relate it to the time that the lump appeared, which was claimed to be October 21 (S. C., p. 61, l. 20 to p. 62, l. 20). Over the objection of the prosecutor-appellant this witness was permitted to testify as to his opinion of permanent disability as a result of this condition (S. C., p. 62, l. 20 to p. 63, l. 20). He testified that there is a potential hernia there, with considerable defect in the abdominal wall over the site of the cystotomy, plus the fact that the petitioner subjectively complains of increasing urination and frequency of urination, and that also constitutes a certain amount of permanent disability (S. C., p. 64, ll. 10 to 30). He further testified that in his opinion the petitioner has a permanent disability of 10% of total (S. C., p. 65, l. 10).

On cross-examination he admitted that his opinion was based on facts told to him; that the descent of the hernia doesn't always immediately follow the cause, and the fact that the descent of the hernia occurred on October 22nd might have been due to a number of factors (S. C., p. 66, ll. 10 to 30). He testified that the hernia was related to the occurrences of October 20 and 21. He also stated that hernias may be caused gradually or suddenly; that he doesn't know whether this

was caused gradually or suddenly; that if it were caused suddenly then the appearance of the mass would lead him to believe that it occurred on Saturday; that the events of Friday were merely strains on the canal; that if it occurred gradually the events of Friday night might have set the thing up and the descent happened on Saturday; that he knew only what he had been told (S. C., p. 67, ll. 10 to 30). He also admitted that the event of Friday, October 20th, might have enlarged the ring and might have been the beginning of the hernia; that he might have suffered an actual hernia at that time; that he doesn't know what the pains complained of by the petitioner on October 20th were attributable to (S. C., p. 68, l. 30, to p. 69, l. 20). The incision made for the cystotomy is  $1\frac{1}{2}$  inches long and there is a weakness in the abdominal wall at that point (S. C., p. 71, ll. 10 to 40). He further testified that from the history that he received, complications that followed the hernia operation were incidental and secondary to that operation, and were not attributable directly to the occurrences of October 20 and 21 (S. C., p. 74, l. 10, to p. 75, l. 20). This doctor further testified that it was ordinary and usual in hernia cases to find that the symptoms sometimes will occur and subside and recur again, some times over a long period of time; that when this series of symptoms occurs there is already a hernia and it is a question of descent; that when the inguinal ring has been violated and the peaceful conditions that exist between the inguinal canal and the inside of the abdomen have been broken, the hernia has appeared and there is a hernia then regardless of any descent (S. C., p. 79, ll. 20 to 40).

This concluded the testimony on the part of the petitioner.

Henry Gruber, for the prosecutor-appellant, testified that he was employed by the prosecutor-

appellant as a carpenter; that he recalled the difficulty that the petitioner had on Friday; that it happened on Friday afternoon between two and three o'clock, he wasn't sure of the exact time; that he was working on the same job with the petitioner; that he saw him standing there, bent over and holding his front and back; that he was about one-quarter bent over, and that he had one hand on his back and one hand on his stomach and appeared to be in pain. He said he was lifting a section off the wooden horse when he hurt himself; that he saw him at the station that night on the way home; that he was walking kind of slow, bent over; that he did not see him on Saturday because the witness did not come to work on Saturday (S. C., p. 97, l. 40, to p. 99, l. 10).

On cross-examination he testified that the accident happened about two or three o'clock; that he told the petitioner to sit down for a while; that the petitioner rested for a while but after that he resumed work; that he did not know what work the petitioner did thereafter; that petitioner worked until quitting time and then went home (S. C., p. 99, ll. 20 to 40).

Daniel Lerer, manager of the prosecutor-appellant, testified that he heard of the occurrences to the petitioner in October of 1939 several days later; that the only complaint that he received from the petitioner about any injury or illness was about two or three weeks prior to the alleged accidents; that at that time the petitioner came to his office and told him he had lifted something and felt a pain, indicating the right groin, down in the lower part of the stomach; that he offered to send the petitioner to a doctor; that the petitioner stated he felt weak and that he would rest a bit and then go down; that the witness gave him a chair in the

office and he sat there for a while until the 4:30 whistle blew; that the petitioner stated that he felt better and would go to his own doctor; that he made no further complaints about this incident (S. C., p. 101, l. 10, to p. 103, l. 30).

Dr. Leon Lewis testified that he examined the petitioner on June 15, 1940; that the petitioner told him that at about 4:30 P. M. on October 20, 1939 while working he was inspecting some portable partition sections; that usually he was assisted by another workman but at that particular time he was left alone; that he attempted to tilt the section without aid; that while tilting one portion he felt a sudden pain in his back which persisted through the remaining half hour at work; that during the ten or fifteen minutes following the onset of this pain, both his legs felt shaky and weak; that during his trip home he found walking difficult; that the following morning he returned to work as usual, about nine o'clock, and was engaged on clamping some panel work together; that at at this time he felt pain across his lower abdomen and because it interfered with his work, he asked his foreman to provide a helper; that during the remainder of the morning he rested a few minutes intermittently approximately every hour; that the shop closed at noon and he went home (S. C. p. 84, l. 30 to p. 85, l. 30). Physical examination showed a lineal, healed, right inguinal surgical scar and a contracted, stellate mid-abdominal scar about half way between the pubis and umbilicus. The right inguinal scar was an excellent hernia repair and the suprapubic scar was rigid, and there was no indication of any relaxation of the abdominal wall. The abdominal repair so far as the hernia is concerned is excellent, and it was his opinion that the suprapubic scar did not represent any hazard as far as abdominal strain is concerned.

The petitioner made no complaint of abnormal urination (S. C. p. 85, l. 40 to p. 87, l. 20).

The doctor testified, in answer to a hypothetical question, that the occurrence of October 20th caused a separation of the fibres of the internal ring which is the anatomical basis for an inguinal hernia; that this was injured in such a way as to permit the eventual descent of the hernial sac; that the fact that the petitioner suffered pain in his back and abdomen and had difficulty in walking, is confirmatory because inguinal pain or inguinal distress is a frequent cause of such conditions; that the inguinal canal is supplied by the twelfth dorsal and first lumbar segments, and radiating pain would go to the dorso-lumbar junction of the back, which is a common and characteristic referred pain (S. C., p. 87, l. 30 to p. 90, l. 20). This doctor also testified that the conditions following the hernia operation were secondary and incident to it by way of complication (S. C., p. 90, l. 30 to p. 91, l. 20). The doctor testified that in his opinion there was no permanent disability as a result of the hernia scar and the suprapubic cystotomy scar (S. C., p. 91, l. 30 to p. 92, l. 10).

On cross examination this witness testified that it was very unlikely that the petitioner would have a back injury producing severe pain one day, which would entirely disappear by next day; that he did not believe that a hernia can develop a strangulation within a few hours; that it is very unlikely that a man will have a hernia develop and strangulate on the same day; that such a condition is possible but very rare. He further testified that from the facts related to him it was his opinion that the strangulation did not take place until shortly before Dr. Train saw the petitioner; that hernia is first incarcerated and unable to be reduced, and subsequently strangulation takes

place when the blood supply to the part is interfered with (S. C., p. 93, l. 30 to p. 94, l. 10). He further testified that the suprapubic cystotomy scar would not interfere with the petitioner's ability to lift; that there were no muscle structures at the point where the scar is located; that the petitioner should not be discouraged from doing his ordinary work just because he has this small scar (S. C., p. 95, ll. 10 to 30). He also testified that he has seen hundreds of people who had suprapubic cystotomy scars and he has never yet seen an instance of failure of the abdominal wall or bladder wall as a result of that procedure (S. C., p. 96, ll. 10 to 20).

This concluded the testimony on behalf of the prosecutor-appellant.

The petitioner, in rebuttal, denied that he had ever spoken to Mr. Lerer two or three weeks before the accidents of October 20 and 21, and that he had told Mr. Lerer that he had injured himself. He stated that the only other accident he had was when a clamp slipped and struck him in the eye; that he went upstairs and Mr. Lerer fixed him up a bit because he didn't want to go to the doctor; that the petitioner did not know how long ago that occurred—maybe three weeks, or maybe six weeks before October 20th; that he never talked to Mr. Lerer about any stomach pains (S. C., p. 106, l. 30 to p. 107, l. 10).

## BRIEF OF THE ARGUMENT.

The reasons for reversal filed in the Supreme Court may be conveniently consolidated under three points and argued as follows:

### I.

The defendant-appellee failed to establish by conclusive proof that his inguinal hernia was immediately caused by such sudden effort or severe strain as required by the statute in such case provided: R. S. 34: 15-12(x).

### II.

The Court erred in awarding the sum of \$1,484.20 to defendant-appellee for medical and hospital expense incident to the operation for inguinal hernia and recovery in that said award exceeds and violates the limitation of \$150 placed on such expenses by the statute. R. S. 34:15-12(x).

### III.

The Court erred in awarding to defendant-appellee 5% of total for permanent disability as a result of sustaining an inguinal hernia and the operation incident thereto, in that R. S. 34:15-12(x) does not provide for permanent compensation in cases of inguinal hernia where the employe has elected to undergo an operation.

## I.

**The defendant-appellee failed to establish by conclusive proof that his inguinal hernia was immediately caused by such sudden effort or severe strain as required by the statute in such case provided: R. S. 34:15-12(x).**

Neither the Workmen's Compensation Bureau nor the Court of Common Pleas in this matter attempted to define "conclusive proof" as set forth in R. S. 34:15-12(x). The pertinent provision of that section of the statute applicable hereto is as follows:

"Inguinal hernia is a disease which ordinarily develops gradually, being very rarely the result of an accident. Where there is a real traumatic hernia resulting from the application of force directly to the abdominal wall, either puncturing or tearing the wall, compensation will be allowed. All other cases will be considered as either congenital or of slow development and not compensable, being a disease rather than an accidental injury; unless conclusive proof is offered that the hernia was immediately caused by such sudden effort or severe strain that, first, the descent of the hernia immediately followed the cause; second, that there was severe pain in the hernial region; third, that there was such prostration that the employee was compelled to cease work immediately; fourth, that the above facts were of such severity that the same was noticed by the claimant and communicated to the employer within twenty-four hours after the occurrence of the hernia (days when the business is not in operation, such as Sundays, Saturdays or holidays shall be excluded from this twenty-four hour period); fifth, that there was such physical distress that the attendance of a licensed physician was required within twenty-four hours after the occurrence of the hernia."

The Supreme Court in its opinion took the view that the petitioner had sustained his claim by proofs which were convincing in character, following *DiMieri v. Metafield, Inc.*, 126 N. J. L. 484. The conclusion of the Supreme Court that the "conclusive proof" demanded by the statute is merely proof which is convincing in character, we deem to be erroneous (S. C., p. 45, ll. 10 to 20). *DiMieri v. Metafield, Inc.*, *supra*, is now on appeal in this court, and we have argued at some length in that case what we deem to be conclusive proof within the intendment of the legislature; i. e., proof within a moral certitude—at least, proof beyond a reasonable doubt. We will repeat under this point our contention in this respect.

The petitioner in this case, in his testimony attempted to establish two accidents: one occurring on October 20 and one occurring on October 21, 1939. His claim, however, was grounded entirely on the assertion that he sustained a right inguinal hernia as a result of an accident occurring on October 21, 1939. He claimed that the accident of October 20, 1939 resulted in an injury to his back but that this had disappeared by the morning of October 21, 1939 (S. C., p. 2, ll. 20 to 30; p. 13, l. 20; p. 20, l. 20).

Assuming for the purpose of argument that the hernia appeared on October 21, 1939, an examination of the petitioner's evidence will show quite clearly that it falls far short of establishing by conclusive proof, a compliance with the five points required by the hernia statute. The statute provides that the employe must establish by conclusive proof that "there was such prostration that the employe was compelled to cease work immediately." This certainly means that the immediate cessation of work shall be due to prostration—not merely that the employe, because he felt ill, or because he had pain, ceased work for a short

period of time, but that he was compelled to cease work immediately because of a prostration. The petitioner testified that his usual working hours were from 8 A. M. to 4:30 P. M. except on Saturdays when he worked from 8 A. M. to 12 noon (S. C., p. 13, l. 30 to 40). On October 20, 1939, which was a Friday, he was examining a heavy wooden section and his helper, who had been working with him, disappeared. He lifted up this section and couldn't get it down. He called for help because he had strained his back on the right side. He couldn't bend and he couldn't stand up. It was a very heavy section of wood, 10 feet high and 4 feet wide, and packed with steel wool. This accident occurred at four o'clock in the afternoon. He states that he couldn't do his work, that he gave it to another man to finish; that he stayed at his place of employment until 4:30 P. M.; that at night when he got home he felt very bad; that he put a plaster on his side and this warmed him up a bit and in the morning he was feeling better; that he returned to work at his usual time on October 21, 1939, which was a Saturday (S. C., p. 13, l. 40 to p. 14, l. 40).

It is not claimed, nor did the courts below find, that this occurrence caused the inguinal hernia of the petitioner below.

The petitioner testified as to the occurrence of Saturday morning, as follows:

“Q. And did anything happen to you on Saturday morning? A. As soon as I start working I work about half an hour and the pain come on right side and in the front.

Q. What were you doing at the time? A. I start working about fifteen minutes and then I told the foreman I wouldn't be able to do my work until twelve o'clock, he should give me somebody to help me because I don't feel good.

Q. At the time you felt the pain on Saturday morning what were you doing? A. I glued some panels. It was also heavy. I put on about four clamps. Each clamp is about fifteen or twenty pounds one clamp weight.

Q. Do I understand that you were lifting a panel containing four of these clamps? A. And I lift up one panel, the pain came right here (indicating), and I stop.

Q. Where did the pain come? A. In the right side on the bottom. (He indicated his right groin.)" (S. C., p. 15, ll. 10 to 30.)

He further testified:

"Q Did you feel anything there? A. Yes, as soon as I feel better I help the other fellow to get ready with that work.

Q. I mean, did you feel anything where the pain was? A. I tell you, after about nine o'clock the pain come back again and I went in, you should excuse me, in the men's room, and I looked over the way I looked at the pain, and I find a ball on the side.

Q. What was that? A. A little ball on the side.

Q. And about what size was that? A. Very little, small.

Q. And about how soon after you felt the pain in the morning was that? A. Perhaps every hour came the pain and I stopped it and then I started working again, and twelve o'clock I told Mr. Klein, 'I'm sorry, I can't do no more work. I have to go home because I feel very bad.'

Q. Did you go home Saturday? A. Yes, sir; I went home.

Q. And at about what time did you get home? A. I came home about two o'clock. I went home about twelve o'clock" (S. C., p. 15, l. 40 to p. 16, l. 30).

It must be kept in mind that the petitioner's usual work ceased at twelve o'clock noon on Saturday.

The petitioner then testified that he went by train to his home in Brooklyn and arrived there at about two o'clock and went to bed; that he had pain and gave himself an enema; that later that evening, a doctor was called and he arrived at about eleven o'clock (S. C., p. 16, l. 30 to p. 17, l. 10). This doctor advised him that he would have to go to the hospital for an operation, and he went to the hospital on the following day, Sunday, October 22nd, where he was operated on for a strangulated right inguinal hernia (S. C., p. 17, l. 30 to p. 18, l. 10).

On cross examination the petitioner testified as follows:

“Q. Now, what was it you told Mr. Berger, the foreman, Saturday morning? What did you tell him? A. I tell him that I don't feel very good, he has to give me somebody to help me because I wouldn't be able to finish that work.

Q. Is that all you told him? A. That is all I told him” (S. C., p. 20, ll. 20 to 30).

He testified that on Saturday morning after he had worked for about an hour the pain came on in his right side (indicating the right groin) (S. C., p. 20, ll. 20 to 30). He further testified that when he went to work Saturday morning his back did not bother him but that the pain came on the right side in the front; that he worked until noon time Saturday morning, right up to twelve o'clock, and that was his regular quitting time (S. C., p. 24, ll. 10 to 20); that the first time he spoke to the foreman was on Saturday and that he told him he needed some help, that he didn't feel well, and that was all he said to him (S. C., p. 27, ll. 10 to 20).

On re-direct examination he testified that before this accident occurred on Saturday morning, October 21, 1939 he had been working alone

and that later, after the pain occurred, he worked with a helper. He testified as follows:

“Q. And that is after you had asked the foreman for a helper? A. When I took a rest about fifteen minutes and then the pain went away and I walked over to the foreman; I told him, ‘Mr. Berger, I don’t feel very good and the work has to be done up to twelve o’clock. I’ll never make it.’ And he says, ‘I’ll send you Mr. Klein.’

Q. And did he send you Mr. Klein? A. Yes.

Q. And Mr. Klein was with you until he left you? A. That’s right.

The Court: Did you tell the foreman why you didn’t feel well?

The Witness: No, I didn’t told him nothing. I just told him I don’t feel very good” (S. C., p. 28, l. 30 to p. 29, l. 10).

This was all the fact testimony offered by the petitioner as to the occurrence of Saturday morning, October 21. It will be seen that the most favorable inferences that can be drawn for the petitioner are that after he had been working approximately half an hour on this morning, and while lifting a large wooden panel, he felt a pain; that he rested for approximately fifteen minutes and then continued with his work until the usual quitting time that day, with the aid of a helper. After the pain had occurred he went to the men’s room and examined himself and found a small lump in the right inguinal region. After discovering that, he told his foreman that he didn’t feel well; that he couldn’t continue with his work and that he needed a helper to assist him in his work; that a helper was furnished. At no time did he tell any representative of the prosecutor-appellant that he had strained himself and that as a result thereof he found a lump. He merely stated that he didn’t feel well. There is nothing in this testi-

mony, as we view it, which would indicate that the petitioner below was compelled to cease work because of prostration. There was nothing to indicate that he was prostrate at any time, merely that he had pain and that he rested about fifteen minutes and then continued his work with the aid of a helper. There is some testimony, also, to the effect that during the course of his work the remainder of the morning he would have intermittent pain and would rest for a few minutes and then continue with his work.

This evidence and the reasonable inferences that can be drawn therefrom, we submit fall far short of establishing by "conclusive proof" that the petitioner below was compelled to cease work immediately as a result of a prostration in sustaining a right inguinal hernia.

A case which has some similarity is *Huber v. Modern Central Silk Dyeing & Finishing Co.*, 122 N. J. L. 186 (Sup. Ct.). In that case from the opinion it appears that the petitioner in the course of his daily work would lift pieces of wet fabrics weighing from fifty to one hundred pounds; that he claimed that on December 23, 1936 while at work he experienced pain in the right side of his abdomen and that he later ascertained that he was suffering from an inguinal hernia. The petitioner obtained an award in the compensation Bureau which was affirmed in the Common Pleas. The Supreme Court reversed the award of compensation to the petitioner and stated:

"It is not enough that a workman sustain a hernia arising out of and in the course of his employment but it must also be established by conclusive proof that each of the said five conditions occurred. A review of the testimony fails to show such prostration as the statute requires, no such physical distress that required the attendance of a licensed physician within twenty-four hours.

The fact that no physician was called and that none treated the prosecutor for a period of six days in itself is strong evidence of no such prostration or the physical distress contemplated by the statute."

We have had an opportunity to examine the record in that case and it appears that the petitioner testified that on December 23, 1936 he was lifting wet goods weighing fifty to one hundred pounds, when he got a sharp pain in his right side and collapsed; that it happened about quarter of five. He was asked what he meant by "collapsed" and he testified that he got such a pain that he could not work any more; that he did not finish the piece of work; that he stopped immediately and told his foreman; that he went to his home; that the next day he went to a doctor who had been treating him for some ear trouble and told him about the rupture; that this doctor told him it was not in his line of treatment and that he should see another doctor. The next day he went to the Manufacturers' Hospital where he was sent by the foreman of his employer. He was unable to see a doctor on that day because the doctor wasn't in. He was told to come back later. On December 29, 1936 he obtained a card from his employer and returned to the hospital where he saw a doctor. The witness had signed a statement for the insurance carrier of the employer in which he stated that on December 23, 1936 at about 4 P. M. the pain came on gradually down low on the right side of his stomach; that he thought it was gas but was not sure what it could be. Then about four or half past four, he lifted a piece of goods and the pain got worse down low on the right side of his stomach, and he doubled up when he felt the pain and told the foreman about it; that he lowered his trousers and saw a lump; that he did not do any more work; that he worked the day of Decem-

ber 28th doing his regular work and on that day his foreman gave him a card to go to the hospital in Clifton; that he went there on the 29th; that there was no work on the 24th, 25th, 26th and 27th; that he had pain on his side during that time which was not bad. There was no evidence offered on behalf of the employer to dispute any of this testimony of the petitioner, except the statement.

While it is true that in that case the opinion is partly predicated upon the fact that the employe had no actual medical treatment for six days following the event, it is to be noted that the court pointed out in its opinion that the testimony failed to show conclusive proof of prostration required by the statute.

The purpose of this legislative enactment is obvious. The legislature has enacted as law the proposition that inguinal hernia is a disease "which ordinarily develops gradually, being very rarely the result of an accident. Where there is a real, traumatic hernia resulting from the application of force, directly to the abdominal wall, either puncturing or tearing the wall, compensation will be allowed. All other cases we consider as either congenital or of slow development and not compensable, being a disease rather than an accidental injury unless conclusive proof is offered that the hernia was immediately caused by such sudden effort or severe strain". It then recites the five points of which conclusive proof is required. The legislature must have concluded that if the hernia was not one caused by disease or congenital, or of slow development, and one solely caused by severe strain as a result of a sudden effort, that the effect on the physical system of the employe would be so severe from such an occurrence that prostration would occur, and that this would compel him to cease work immediately.

The fact that the employe has pain while doing his work and shortly thereafter discovers a lump in his groin and then ceases work, is not sufficient, if the statute is to be given the meaning intended by the legislature. The hernia must be the result of such sudden effort or severe strain that because of prostration following or occurring at the time of this strain the employe is compelled to cease work immediately. This, we earnestly contend, the petitioner below failed to establish by the conclusive proof required by the statute.

In *Prino v. Austin & Co.*, 120 N. J. L. 19, reversed 121 N. J. L. 518, it appears that the employe claimed that he sustained an inguinal hernia resulting from sudden effort or strain. In the Supreme Court, 120 N. J. L. 21, it was pointed out:

“The employer frankly concedes that the employe, by his own testimony, has made out a ‘prima facie’ case of a compensable inguinal hernia resulting from ‘sudden effort or severe strain’. But the insistence is that the weight of the evidence is to the contrary. It is said that, while his own testimony shows the existence of the five statutory prerequisites, his ‘story of an alleged accident or strain \* \* \* is not true,’ and he has in this regard failed to sustain the burden of proof. We do not yield the argument so made.”

The Supreme Court found from the evidence that the petitioner, at the close of his day's work on June 16, 1936, was lifting some heavy iron beams; that they were of such weight as required the united efforts of four men including the petitioner below; that while so employed he experienced, he testified, a severe pain and loss of physical power; that the application of ice bags during the night brought no relief; that when he reported the mishap to his employer the next day he had a protrusion through the inguinal ring the size of a walnut and as a result thereof the petitioner

was operated on for hernia. The operating surgeon testified that he entertained no doubt that the hernia was the result of undue strain. His examination revealed torn tissues and that the sac (containing the small intestines) was an extremely thin wall showing it was of very recent origin.

This court, in its opinion, 121 N. J. L. 521, points out that an examination of the evidence failed to satisfy the court that the proof was conclusive "that there was such prostration that the employe was compelled to cease work immediately". It appeared that the employe testified that he did cease work immediately, but on cross-examination he stated that he quit the job with three other men at the end of the day. At another point he said there were fifteen minutes more that he stayed on his feet, and stopped when the rest of the employes stopped. His testimony was somewhat uncertain because he claimed ignorance of English. It also appears on the employer's case that one fellow-workman testified that the petitioner did not complain to him but kept on working with the others until closing time. Another workman testified that all four workmen went to clean up as directed by the foreman and that the petitioner did not complain at that time, and that he did the same work as the other men until half past five, when the day's work was completed. None of these witnesses saw the petitioner doubled up as was claimed by him. The court held that this evidence was not conclusive proof that the petitioner had sustained such prostration so as to compel him to cease work immediately, and reversed the Supreme Court in affirming the award of compensation to the petitioner.

The opinion of this court evinces recognition of the argument that we make, that the cessation of work must be due to prostration as a result

of a sudden effort or severe strain, and if this is not established by conclusive proof then regardless of the fact that the employe had a hernia which resulted when he was working, in the course of his employment, and regardless of the fact that the medical evidence establishes that the hernia was the result of undue strain and that the operation revealed torn tissues and that the hernia was one of recent origin, the employe cannot recover compensation under the statute.

The testimony is also far from conclusive that the petitioner did sustain a hernia as a result of an undue or severe strain on October 21, 1939. As to the incident of October 20th the petitioner testified that he was lifting a wooden partition 10 feet high, 4 feet wide, packed with rock wool; that he felt a pain; that he strained his back on the right side, that he couldn't bend and couldn't stand up; that he had to stop work and couldn't do it; that he gave it to another man to finish the work; that this occurred at four o'clock and he rested and then did some work until quitting time at 4:30 (S.C., p. 14, ll. 10 to 30). He further testified that on October 20, as a result of lifting the wooden section he had pain in the right side and back, he couldn't stand up and couldn't work (S. C., p. 21, l. 20). The only person he told about the incident occurring on Friday, October 20th, was a fellow-workman, Mr. Klein. No claim was made that he or anyone on his behalf ever told the employer of the occurrence of Friday, October 20th. After this occurrence on Friday he took a rest and started to work again, and continued until 4:30 (S. C., p. 23, ll. 10 to 30).

Henry Gruber, a fellow-employe of the petitioner, testified that he was working with the petitioner on Friday, October 20, 1939 between 2 and 3 o'clock; that he saw him standing there bent over, holding his front and back, with one hand

on his back and one hand on his stomach, and appeared to be in pain. The petitioner told him he had lifted a section off the wooden horse and hurt himself; that he saw him walking to the station that night; that he was walking slowly and bent over (S. C., p. 98, l. 10 to p. 99, l. 20). He also testified that after the incident of Friday the petitioner rested for awhile and then resumed his work, and continued until quitting time (S. C., p. 99, ll. 20 to 40).

Daniel Lerer, the manager of the prosecutor-appellant, testified that at about 2 or 3 weeks prior to the time the petitioner below ceased work for the prosecutor-appellant, the petitioner came to the office of this witness and told him he had lifted something and felt a pain in the groin, down in the lower part of the stomach; that this witness asked him if he would like to go to the doctor and the petitioner said he felt weak and would rest a little bit; that he sat in a chair in the office until 4:30 when the whistle blew. The petitioner stated he felt a little better and would go to his own doctor. The petitioner came to work the next day and never spoke about it again (S. C., p. 102, l. 10 to p. 103, l. 30).

The petitioner denied the conversation related by the witness, Lerer, and stated that he had an injury to his eye when he was struck by a clamp, and that he went to see Mr. Lerer about this. He did not know when this occurred. It may have been six weeks or it may have been three weeks before the alleged hernia came on (S. C., p. 106, l. 30 to p. 107, l. 20).

Dr. Train, the attending physician, said he saw the petitioner first, late on October 21, 1939, around midnight, and the petitioner was suffering from a strangulated, right inguinal hernia (S. C., p. 34, ll. 20 to 40); that the petitioner told him

that on Friday, October 20, in the late afternoon, he lifted some heavy object and felt a pain; that the pain was in the abdomen and back—particularly the back and the upper right part of the thigh; that the pain became very severe; that it was close towards leaving time and he returned home; that at home he rested and he felt a lot better; that in the morning the pain completely subsided and he returned to work; that on Saturday morning, he continued his usual occupation lifting several objects—one a particularly heavy one, and he again felt pain; that this time it was more severe; that it was in the abdomen, to the lower part, and again it was close to closing time; that it was about noontime; that he was entitled to go home and he went home; that at home the pain increased and he noticed that there was a lump in the region of his right groin (S. C., p. 35, ll. 10 to 40).

This physician operated on the petitioner below on Sunday, October 22nd, for the strangulated hernia (S. C., p. 36, ll. 10 to 20). This doctor testified that there was a casual relationship between the petitioner's condition and the accidents of Friday and Saturday, and particularly the one of Saturday which became obstructive and which progressed into these symptoms (S. C., p. 38, l. 10).

On cross examination this witness testified that he received the history from the petitioner below, that after the petitioner arrived at home he noticed a lump in his right side; that that was the impression he had around that time. He later stated that all he knew was that after the petitioner experienced pain he noticed a large lump there, and whether it was actually at home or where he was when he discovered it, the doctor did not know; that the petitioner told him that

while he was in transit he almost fainted and experienced tremendous pain, and whether the lump appeared at that particular moment he is not quite sure (S. C., p. 41, ll. 10 to 40). He then stated that the things that happened on Friday and Saturday are the things that caused the hernia (S. C., p. 42, l. 10).

Dr. Feigen examined the petitioner below during the course of the trial in the Workmen's Compensation Bureau and testified on behalf of the petitioner below in answer to a hypothetical question, that the hernia was related to the occurrences of October 20 and October 21, 1939 (S. C., p. 59, l. 20 to p. 61, l. 20). He then was asked whether or not the conditions were attributable to the accident of October 20 or October 21. He stated he could not state positively. If the history was correct he would relate it to the time the lump appeared, and he believed that was October 21 (S. C., p. 61, l. 20 to p. 62, l. 10).

On cross examination this physician admitted that his opinion was based on the history given him in the hypothetical question and that the descent of the hernia doesn't always follow the cause. He further stated that hernia may be caused gradually or suddenly; that he didn't know whether this was caused gradually or suddenly; that the appearance of the mass allowed him to believe that it occurred on Saturday and that the events of Friday were merely strains on the canal. If it occurred gradually, the events of Friday might have set the thing up and the descent happened on Saturday (S. C., p. 67, ll. 10 to 30); that it was possible that the petitioner below had his hernia on October 20; that since he had not seen the petitioner on October 20 he was not in a position to say what the pain the petitioner had on October 20 was attributable to (S. C., p. 69, ll. 10 to 20). He also admitted that

it is ordinary and usual in hernia cases to find that the symptoms will occur and subside, and recur again, sometimes over a long period of time. He stated that when this series of symptoms occurs there is already a hernia and there is a question of descent; that once the inguinal ring has been violated and the peaceful conditions which exist between the inguinal canal and the inside of the abdomen have been broken, the hernia has appeared regardless of any descent (S. C., p. 79, ll. 30 to 40).

Dr. Leon Lewis, a witness for the respondent, who examined the petitioner below on June 15, 1940 during the progress of the compensation hearing, in answer to a hypothetical question stated that in his opinion the events of Friday, October 20, caused a separation of the fibres of the internal ring, which was the anatomical basis for an inguinal hernia; that the cribriform fascia was injured at that time in such a way as to permit the eventual descent of the hernial sac (S. C., p. 89, ll. 20 to 40); that the petitioner's history of pain in the back, abdomen and sides, and difficulty in walking, confirmed his opinion because inguinal pain or inguinal distress is a frequent cause of inability to walk straight and also causes pain on walking; that the pain in the back was probably referred pain; that the inguinal canal is supplied by the twelfth dorsal and first lumbar segments and radiated pain would go to the dorso-lumbar junction of the back, just below the lower mid back; that this is a common and characteristic referred pain (S. C., p. 90, ll. 10 to 20).

On cross-examination he testified that it would be very unlikely that the petitioner below would have the back injury causing the pain testified to by him and that this would then disappear entirely by the next morning. He also testified that in his opinion it is very rare that a hernia becomes

strangulated immediately after the descent; that the hernia is first incarcerated and unable to be reduced; that subsequently strangulation takes place when the blood supply to the part is interfered with; that when Dr. Train, the attending physician, first saw the petitioner below, the hernia was incarcerated and strangulated (S. C., p. 93, l. 30, to p. 94, l. 30).

Notice of the injury to the prosecutor-appellant was given by the employe's son, on Monday, October 23rd. He called the New York office of the prosecutor-appellant and told them his father was taken to the hospital and was operated on. He told them that his father *injured himself on the job on Saturday and as a result thereof he was being operated* (S. C., p. 30, l. 40, to p. 31, l. 10).

It will be seen from a review of this testimony that although the petitioner claims to have sustained a severe strain on Friday, October 20th, he did not report it to the prosecutor-appellant; that the pain was so severe that he had to stop working for a time and rest; that he had difficulty in straightening up and difficulty in walking; that on Saturday, after the second accident, although he claims he sustained a severe strain and discovered a lump thereafter, he told the foreman of the prosecutor-appellant that he was ill and didn't feel good; that he needed someone to help him. No claim was made at that time that he had sustained a severe strain which caused him severe pain and that he noticed a lump in the hernia region. The impression his attending physician received from him when he examined him late in the evening on Saturday, October 21, was that the petitioner discovered the lump after he had returned home; that he had such severe pain while in transit from Newark to Brooklyn that he almost fainted. The attending physician stated that he did not know whether or not the lump appeared

then or just when it occurred. The petitioner's claim of injury on Saturday, October 21, is entirely uncorroborated. The witness, Lerer, testified that the petitioner, two weeks before the alleged hernia appeared, had complained of injuring his side in lifting. This was denied by the petitioner but it is an element to take into consideration whether or not the petitioner has established his case by conclusive proof. So, whether or not the hernia appeared on October 20 or 21, we respectfully urge that the petitioner has failed to establish his claim by conclusive proof under the terms of the statute.

We also urge that the definition of conclusive proof followed by the Supreme Court in this case; i.e., that the proof must be convincing in character, is erroneous. The Supreme Court in this case followed *DiMieri v. Metafield, Inc., supra*, in which the Supreme Court in determining whether or not the petitioner had proved the five elements of the statute by conclusive proof, defined conclusive proof as used in the statute as follows:

“We think, first, that the statute, in this class of compensation case, contemplates degree or proof. We think, further, that the statutory language should be construed to mean that the fact finder, after hearing the evidence in support of the claim and contrasting and weighing it with the evidence produced to rebut it, is clearly of the view that the claim has been sustained by proof that is convincing in character. The petitioner must prove that the hernia is the immediate result (Cf. *Borodaeff vs. Province*, etc., 109 N. J. L. 25, aff. 110 Id. 20) of a sudden effort or strain and the proof of the five requirements must be such as will reasonably negative the inference or conclusion that it was congenital or of slow development or caused by disease rather than an untoward incident. (Compare *Borodaeff vs. Province*,

etc. *supra*; McBride, etc. *vs.* Kuehn, 11 N. J. Misc. 764; 168 Atl. Rep. 64; Sussick *v.* Glen Alden Coal Co. etc. (a Pennsylvania case), 165 Atl. Re. 658). Consequently it matters not whether the conclusive proof required by the statute is challenged or not—that it be contradicted or not—so long as it leaves the mind of the fact finder convinced that the hernia resulted not from disease or congenital weakness but immediately from sudden strain or effort in the course of the employment. So the qualifying word ‘conclusive’, as used in the statute, *supra*, is not to be regarded in a sense that imports to it a quality that will not tolerate challenge or contradiction; but rather in its ordinary sense that the proof is convincing and such that it justifies a conclusion that the statutory requirements of such case were proved. A rigid, inflexible construction of the phrase would require a norm or quality of proof, the equivalent of moral certitude. Such construction we cannot reconcile with the development of the law of evidence on the civil side in this state or elsewhere. The construction we have placed upon the legislative expression, we think, is in accord with the legislative intention” (126 N. J. L. at p. 487).

The Supreme Court in effect has held that the petitioner must establish the five points by the greater weight or the preponderance of the evidence and has held in effect that the burden is no greater than that required in a civil action in this State.

This court, in *Miller v. New Amsterdam Cas. Co.*, 94 N. J. L., at page 511, through Mr. Justice Minturn, in defining “preponderance of evidence”, said:

“We may add that it is this preponderance of the aggregate probabilities juridically termed ‘the weight of the evidence’ which furnishes the legal standard of proof in civil

causes, as contradistinguished from the rigid rule applicable in the trial of criminal causes, based on circumstantial evidence, which requires as a basis for conviction the elimination of every other reasonable hypothesis which could afford a rational explanation for the commission of the crime."

A recent, lucid definition of "preponderance of evidence" is found in *Sargent v. Mass. Acc. Co.* (Sup. Jud. Ct. of Mass.) 29 N. E. (2d) 825, in which the court said:

"The weight or 'preponderance of evidence' is its power to convince a tribunal which has the determination of the fact of the actual truth of proposition to be proved, and after evidence has been weighed, that proposition is proved by a 'preponderance of evidence' if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from evidence, exists in mind of tribunal, notwithstanding any doubts that may still linger there."

In *Roberg v. Bonner*, 77 N. E. 1023, 185 N. Y. 265, it was held that proof may be required to be clear and convincing without transcending the rule of preponderance, but the word "conclusive" has a larger meaning and when used in connection with the evidence required to prove a given fact, calls for a much higher degree of proof than has ever been held to be necessary in civil actions.

A brief review of the history of this legislation will indicate clearly that it was not the intention of the legislature to permit the employe to recover under the statute by establishing his case by the greater weight of the evidence, but that it was the purpose of the legislature to require the employe to establish his claim conclusively and to require the proof to be the equivalent of moral certitude. The original Workmen's Compensation

Act as passed in 1911 did not have any specific provision relating to injuries as a result of hernia. If an employe sustained an accident arising out of and in the course of his employment which resulted in hernia, he could recover compensation from his employer if he established his case to the satisfaction of the Workmen's Compensation Bureau by the greater weight of the evidence.

*Stoffa v. Empire Steel & Iron Co.*, 39 N. J. L. J. 175;

*Peer v. Lehigh Valley R. Co.*, 39 N. J. L. J. 242;

*Ervey v. Dickisson*, 40 N. J. L. J. 275;

*O'Connell v. D. V. G. Mfg. Co.*, 41 N. J. L. J. 207.

The hernia provision of the statute was incorporated into the Act, P. L. 1919, ch. 93, pp. 201 to 214, and repeated in the Laws of 1923 and 1928, and appears now as R. S. 34:15-12, section (x). The only change made in the language of the hernia provision since its incorporation in the Act, was in the Revision of 1937 when the word "hernia" was modified to "inguinal hernia". It will, therefore, be seen that the original Act, without the hernia provision, was in force for eight years before the legislature made this drastic change in the Act. The purpose of the legislature certainly limited to a great extent the right of an employe to recover for hernia of this kind unless the employe could conclusively prove the five points. The legislature up to the present time has not seen fit to change the degree of proof required of the petitioner in establishing his case.

This Court held in *Furferi v. Pennsylvania Railroad Co.*, 117 N. J. L., at page 516, that while the compensation Act generally is to be liberally construed, to effectuate the general legislative policy, the hernia provision is a special one in the

nature of an exception and is to be strictly construed; and that an employe must establish his case within the precise letter of the statute or be excluded:

“It is the settled rule in this state, in aid of interpretation, that the Compensation act, grounded as it is in social and economic considerations, is to be liberally construed to effectuate the general legislative policy. *Sigley v. Marathon Razor Blade Co.*, 111 N. J. L. 25; *Hercules Powder Co. v. Nieratko*, 113 *Id.* 195, affirmed, 114 *Id.* 254. The special provision relating to hernia is in the nature of an exception, and by the same token, is to be strictly construed. A case not within its precise letter is to be excluded.”

The effect of the statute is to create a legal presumption in a hernia case of this kind that the hernia is either congenital or of slow development and not compensable, being a disease rather than accidental injury unless conclusive proof is offered establishing the five points set forth therein.

This was so recognized by this Court in *Prino v. Austin Company*, 121 N. J. L. 518. That was a hernia case in which this court reversed the Supreme Court in awarding compensation for an inguinal hernia. The Supreme Court in its opinion held that, “The criteria of a compensable accidental injury are, first, was the employment one of the contributing causes without which the accident would not have happened; and, second, was the accident one of the contributing causes without which the injury would not have been sustained. In appraising the evidence, probability and not certainty is the touchstone.” This court held that that was error.

In paragraph 2 of the syllabus in that case, this court said:

“2. Proof cannot properly be held conclusive if the evidence is fairly in dispute on any material point.”

The Supreme Court in its opinion in the case at bar held that the syllabus is broader than the opinion, itself, and refused to follow it. Whether this be so or not, the statement as set forth in the syllabus cannot with reason be attacked as inaccurate because it would be impossible to concede proof as being conclusive if the evidence is fairly in dispute on the material issues.

The legislature, when it changed the hernia provision, obviously did not intend that the degree of proof should remain the same as it was prior to the passage of the amendment, and if it is so held then the legislative mandate is defeated and serves no purpose.

Other judicial definitions of the phrase “conclusive proof” are:

In *Corpus Juris* 23, page 8, “conclusive evidence” has been defined as “evidence incontrovertible—‘either a presumption of law, or else evidence so strong as to overbear all other in the case to the contrary’. It has also been defined as such evidence as, being uncontradicted, controls the decision.”

In *Jackson County v. Meaut*, (Miss.), 179 So. 343, the court held that where a statute gave a right of action for death of livestock in dipping for cattle tick eradication, and required the plaintiff to make out his case by conclusive proof, refusal of instruction that plaintiff was required to prove his case beyond a reasonable doubt was erroneous, “conclusive proof” being equivalent to proof of a moral certainty or beyond a reasonable doubt.

“Conclusive evidence” means evidence that is incontrovertible. *Wood v. Chapman*, 13 N. Y. 509, 67 Amer. Dec. 62.

“Conclusive evidence” means either a presumption of law or else evidence so strong as to overbear all other evidence in the case to the contrary. *Haupt v. Pohlmann*, 24 N. Y. Super. 121.

“Conclusive evidence” is such evidence as being uncontradicted controls the decision. *State ex rel. Railroad and Warehouse Commissioners v. Minneapolis & St. L. R. Co.*, 79 N. W. 510, 76 Minn. 469.

“Conclusive evidence” is that which is incontrovertible; that is to say, either not open or not able to be questioned, as, where it is said that a thing is conclusively proved, it means that such result follows from the facts shown as the only one possible; the term “conclusive proof” meaning either a presumption of law or evidence so strong as to overbear everything to the contrary. *Thompson Lumber Co. v. Interstate Commerce Commission*, 193 Fed. 682.

When one considers that the legislature has stated as the law of this state that inguinal herniae other than those of traumatic origin resulting from the application of force directly to the abdominal wall will be considered as either congenital or of slow development and not compensable, being a disease rather than accidental injury, unless conclusive proof is offered of the five points enumerated herein, the only reasonable conclusion that follows is that it was the intention of the legislature to require a degree of proof that would establish without doubt or question, within a moral certitude that the hernia was one caused by sudden effort or severe strain and not one of congenital or slow development.

It is extremely important that this Court definitely determine the effect to be given to the language of this statute as to conclusive proof, so that there may be some uniformity among the courts on the degree of proof to be required of a

petitioner to establish his claim within the statute. There is not any material distinction between the finding of the Supreme Court in the case at bar and that of the Supreme Court in *Prino v. Austin, supra*, which this Court refused to follow.

We, therefore, urge that the Supreme Court was in error in defining conclusive proof and fell into error in examining the facts in the light of the definition of conclusive proof as adopted by it, and that the judgment entered in favor of the defendant-appellee and against the prosecutor-appellant should be reversed.

## II.

**The Court erred in awarding the sum of \$1,484.20 to defendant-appellee for medical and hospital expense incident to the operation for inguinal hernia and recovery in that said award exceeds and violates the limitation of \$150 placed on such expenses by the statute. R. S. 34: 15-12(x).**

The petitioner below, on the advice of his own physician, on October 22, 1939 underwent an operation for a strangulated, right inguinal hernia (S. C., p. 36, ll. 10 to 20). Subsequent to this operation for the hernia the petitioner below developed complications including difficulty in voiding, a urinary sepsis, and a bronchial pneumonia (S. C., p. 36, l. 30 to p. 37, l. 10). These conditions developed after the operation for the hernia and were complications following the operation (S. C., p. 38, l. 40 to p. 39, l. 10). The complications were related to the operation and not directly to the accident. They were secondary and incidental to the operation for the hernia. There was no direct, causal connection between the alleged strain and the complications which followed (S. C., p. 42, ll.

20 to 30). The complications were incidental and secondary to the operation for the hernia and the complications were not directly related to the alleged strains (S. C., p. 74, l. 20 to p. 75, l. 30).

The medical expense involved in the operation for the hernia and for the hospitalization and treatment of the complications, and physician's expenses amounted to \$1,484.20, and this entire amount was awarded to the petitioner as medical expense, although the hernia Act limits the medical expense "*incident to such operation and recovery not in excess of \$150.*"

The pertinent section of the statute R. S. 34:15-12(x) is as follows:

"In the case of hernia as above defined, the provisions of Paragraph 'a' of this section and sections 34:15-14 and 34:15-15 of this title shall apply, until such time as the employee is able to resume some kind of work with the aid of a truss or other mechanical appliance. If the employee, refuses to permit of an operation the employer shall meet the requirements above specified, pay the reasonable costs of the truss or other appliance found necessary, and also pay compensation for twenty weeks, following which the obligation shall cease and terminate, unless death results from the hernia, in which case the provisions of section 34:15-13 of this title shall apply. However, if the employee shall elect to undergo an operation, by a physician selected by the employer, the employer shall meet all the expense incident to such operation and recovery, not in excess of one hundred and fifty dollars, together with compensation as provided in paragraph 'a' of this section during the periods of disability prior to and following the operation subject to the provisions of said section 34:15-14. If the employee refuses the services of the physician selected by the employer, preferring one of his own selection, the employer shall be relieved of obligations concerning

medical expense due to the operation and recovery, but shall pay compensation during the prior and resulting periods of disability. If death results from the hernia or operation, the provisions of subsection 34:15-13 shall apply."

That the complications ensuing subsequent to the operation for the hernia were incidental and indirectly caused by the hernia operation is admitted. All of the physicians so testified. The question presented is, whether or not the complications following the hernia operation and the expense in alleviating that condition were incident to the hernia operation and recovery. That this is so seems quite clear from the medical testimony of all the physicians in this case.

This court had occasion, in *Heritier v. The Century Indemnity Company*, 109 N. J. L. 313, at page 316, to place a judicial construction on the word "incidental." That was a suit on a policy of insurance wherein the policy provided coverage for the assured's automobiles for purposes incidental to the assured's business of funeral director, and while the assured was using one of his automobiles for a wedding party an accident occurred which the insurance company refused to cover. This court, in defining the word, "incidental" said:

"The word 'incidental' is generally well understood and is defined in Webster's New Collegiate Dictionary as follows: 'Happening as a chance or undesigned feature of something else; casual; subordinate. Liable to happen or to follow as a chance feature or incident.'"

Accepting the definition of this Court as the ordinary and usual meaning of the word "incidental" there does not seem to be any question that the medical expense "*incident to such opera-*

*tion and recovery*” includes complications such as occurred in this case following the hernia operation. There is no question that the complications were subordinate to the hernia operation and that it was one that was liable to happen or to follow as a chance after such operation.

Dr. Aschner testified:

“Q. The retention of urine and the infection that you say followed weren’t related to any trauma—alleged trauma beyond or before the operation for the hernia except indirectly through the hernia? A. They were incidental results of the fact that the man developed a strangulated hernia for which he had been operated upon.” (S. C. p. 52, ll. 20 to 30).

Dr. Feigen testified as follows:

“Q. There is no question, Doctor, that in your mind and from the history that you received in the hypothetical question—there is no question in your mind but that all of the subsequent conditions—I am referring to the urinary retention, the cystotomy, pneumonia—that the petitioner is said to have developed, the infection, the catheterization, the incision in the abdominal wall—all of these, Doctor, is incidental and secondary to the operation for the hernia; is that so? A. Yes.

Q. I mean, so far as the history you received. A. So far as I know, yes.

Q. In other words, it is not in any wise directly attributable—directly attributable—to the alleged incident of October 20th and October 21st?

Mr. Mandon: I object to that on the ground that is not the test.

The Court: Will you read that question?

(The last question was read.)

Mr. Rhinehart: I mean, that the conditions we have referred to as incidental and

secondary are not directly related to the alleged accidents of October 20th and October 21st.

Mr. Mandon: I object to that, sir, on the ground that that is not the test under the statute.

The Court: I will allow the question; you can always have the opportunity to clarify it by re-direct.

The Witness: My answer is no to that.

By Mr. Rhinehart:

Q. They are not directly attributable? A. to the original events, only in so far as they followed the operation." (S. C., p. 74, l. 20 to p. 75, l. 20).

The medical testimony is undisputed that the complications were secondary and incidental to the hernia operation. There is nothing in the statutory provisions which would indicate that the words "incident to such operation and recovery" were intended by the legislature to have any meaning other than the usual and ordinary meaning of these words. It seems to us that it logically follows that it was the intention of the legislature to limit all medical expense for the operation and recovery to \$150 whether or not complications ensued. Otherwise it would not have used the word "incident" and the word "recovery" but would have said "The employer shall meet all expenses resulting from the operation." The legislature has not seen fit to change this medical allowance for expense incident to hernia operation and recovery, although in other cases within the Act where the employe sustains compensable injury the legislature has provided for an unlimited liability on the part of the employer to supply hospital and medical services. See R. S. 34:15-15.

This court pointed out in *Furferi v. Pa. R. R.*, 117 N. J. L. 508, that the special provision for

hernia is in the nature of an exception, and, by the same token, is to be strictly construed. A case not within its precise letter is to be excluded.

The petitioner below relies on the case of *Dunn v. Atlantic City*, 120 N. J. L. 141, affirmed 121 N. J. L. 588. The Supreme Court also based its affirmance of this part of the award on that case. An examination of that case will show that the issue and question presented here were not passed on by the Supreme Court or by this Court and we have not been able to find any case in this State wherein any Court has held that the medical expense allowable for operation and recovery under the hernia statute may be in excess of \$150. In the *Dunn* case the decedent sustained a compensable hernia and elected to have an operation for the hernia. As a result of the hernia operation he developed shock which lighted up a dormant nephritic condition which caused his death. The Supreme Court in its opinion said (120 N. J. L. at page 144):

“The court below determined as a question of fact that the testimony in its entirety showed that death was occasioned by a complication resulting from the operation for the hernia and was the result of the injury sustained on October 18, 1935 from an accident arising out of and in the course of his employment.

We think said finding of fact was justified by the great weight of the evidence.

Now, the pertinent rule to be extracted from the cases is this: Where, as here, a workman sustains a hernia from an accident arising out of and in the course of his employment, which injury necessitates a surgical operation, which operation results in shock which lighted up a dormant condition of nephritis which had theretofore not shown itself, and which but for the accident would not have ensued, and which disease resulted in his death, a finding that the death was in

fact a result of the injury and was an accident within the meaning of the Workmen's Compensation Act was justified."

That finding was affirmed by this Court. With that conclusion we find no fault. However, death resulting directly or indirectly from a hernia operation is compensable under the statute, by specific provision of the statute. The last sentence of R. S. 34:15-12(x) provides:

"If death results from the hernia or operation, the provisions of subsection 34:15-13 shall apply."

That section of the statute was applicable to the *Dunn* case.

By referring to R. S. 34:15-13, it appears that this section of the Act relates to the computation of compensation and the distribution thereof in cases of death, and that section also provides that in such case where death results, whether there be dependents or not, the expenses of last sickness be paid in accordance with the provisions for medical and hospital services as set forth in section 34:15-15 of the Act.

As we have already pointed out, section 34:15-15 of the Act provides that the employer shall furnish to the injured workman such medical, surgical and other treatment and hospital service as shall be necessary to cure and relieve the workman of the effects of the injury and to restore the functions of the injured member or organ where such restoration is possible. Therefore, it is apparent that when death occurs directly or indirectly following a hernia operation, that the medical allowance is not limited to \$150 but is within the general provisions of the statute providing unlimited medical and hospital expense. This, however, is because of the direct wording of

the statute. There is no such provision in the statute relating to medical expense incidental to the operation for hernia and the recovery where death does not ensue. To so hold is to read into the statute language which the legislature did not include within its terms.

Whether or not medical expense in the sum of \$150 was allowed in the *Dunn* case, it does not appear from the opinion, but if it was allowed it was justified in view of the statutory enactment specifically providing for unlimited hospital and medical expense in the case of death.

The Supreme Court in its opinion points out that nowhere in the *Dunn* case is reference to be found to the provisions of the statute. This does not alter the fact that the question before the Supreme Court and this Court in the *Dunn* case was not identical with the question presented here, and there was no occasion for the Court to pass on the question raised here, and there is nothing to indicate from reading its opinion that it did.

We, therefore, submit that the legal proposition presented here is one of novel impression and that the legislative limitation is clear and limits the medical and hospital expense recoverable in this case to \$150.

We respectively submit that the prosecutor-appellant is not liable in any event for medical and hospital expense in this case of more than \$150 and that the Supreme Court erred in affirming that part of the award.

## III.

**The Court erred in awarding to defendant-appellee 5% of total for permanent disability as a result of sustaining an inguinal hernia and the operation incident thereto, in that R. S. 34:15-12(x) does not provide for permanent compensation in cases of inguinal hernia where the employe has elected to undergo an operation.**

The Workmen's Compensation Bureau found that the petitioner sustained a right, inguinal hernia, compensable within the statute, and that as a result of the operation to correct said hernia, the petitioner sustained additional injury resulting in temporary disability of 33 6/7 weeks, for the period of October 21, 1939 to and including January 13, 1940, and permanent disability of 5% of total (S. C., p. 117, ll. 20 to 30). A similar finding was made in the Common Pleas (S. C., p. 125, ll. 20 to 30). This finding was affirmed by the Supreme Court (S. C., p. 146, l. 30 to p. 147, l. 30).

It is to be noted that this period encompasses the entire time the petitioner was confined in the hospital, and subsequent treatment. Part of this temporary disability was as a result of the hernia operation and part of it was a result of the complications following the hernia operation and incident thereto.

As has been pointed out by this court the provision relating to hernia is in the nature of an exception to the general provisions of the whole Act and is to be strictly construed, and a case not coming within the letter of the hernia provisions is to be excluded therefrom. *Furferi v. Pa. R. Co.*, *supra*.

An examination of the statute shows that the legislature went to great lengths to point out spe-

cifically what compensation an employe, who sustains an inguinal hernia within the terms of the statute, is entitled to. The legislature made no provision for the recovery of compensation for permanent injury following as a result of such an operation. The statute takes into consideration two situations: one, where the employe elects not to be operated upon, and the other where the employe elects to be operated upon. The first situation is found in this language of the statute:

“In the case of hernia as above defined, the provisions of paragraph ‘a’ of this section and sections 34:15-14 and 34:15-15 of this title shall apply, until such time as the employe is able to resume some kind of work with the aid of a truss or other mechanical appliance. If the employe refuses to permit of an operation the employer shall meet the requirements above specified, pay the reasonable costs of the truss or other appliance found necessary, and also pay compensation for twenty weeks, following which the obligation shall cease and terminate, unless death results from the hernia, in which case the provisions of section 34:15-13 of this title shall apply.”

In the case of an employe who does not elect to undergo an operation, he is entitled under paragraph (a) of this section to temporary disability, to which the waiting period provided in 34:15-14 shall apply, and also the medical provisions of 34:15-15 shall apply until the employe is able to resume some kind of work with the aid of a truss or other mechanical appliance. Then the employer shall pay the reasonable cost of the truss or other appliance found necessary and shall pay compensation for twenty weeks, following which the obligation shall cease and terminate unless death results from the hernia. Regardless of how serious the hernia may be and how much it may impair his physical function the employe is not

entitled, under this section of the statute, to any compensation for permanent partial disability.

The other section of the statute, relating to an employe who shall elect to undergo an operation, provides as follows:

“However, if the employee shall elect to undergo an operation, by a physician selected by the employer, the employer shall meet all the expense incident to such operation and recovery, not in excess of one hundred and fifty dollars, together with compensation as provided in paragraph ‘a’ of this section during the periods of disability prior to and following the operation, subject to the provisions of said section 34:15-14. If the employee refuses the services of the physician selected by the employer, preferring one of his own selection, the employer shall be relieved of obligations concerning medical expense due to the operation and recovery, but shall pay compensation during the prior and resulting periods of disability. If death results from the hernia or operation, the provisions of said section 34:15-13 shall apply.”

Under this provision the employe is entitled to temporary compensation as provided in paragraph “A” of this section of the Act during the periods of disability prior to and following the operation, subject to the waiting period as set forth in section 34:15-14. The only other compensation available in a hernia case is when death occurs as a result of the hernia or the operation. If the legislature had intended that in addition to temporary compensation the employe should be entitled to some award for partial permanent disability as a result of the hernia operation, it is difficult to understand why such a provision was not set forth in the statute when one considers that the legislature went to such lengths to determine specifically the allowances to be made in the hernia Act.

The Supreme Court in its opinion (S. C., p. 147, ll. 10 to 30), said that the allowance for the permanent partial disability was not for the injuries flowing from the compensable hernia but was an allowance for the injuries flowing from the various ailments which followed in the train of the compensable hernia; that they are ailments which in the legal sense are tantamount to an accident arising out of and in the course of the employment and hence compensable under the general provisions of the Act.

The statement that the injuries for which the permanent partial disability was allowed did not flow from the compensable hernia is a rather tenuous construction of the testimony produced at the trial below. All of the medical experts admitted that the complications following the hernia operation were the result of the operation and incidental thereto; that if the hernia had not occurred and the operation had not been performed the complications would not have followed. They are all part of the chain of events arising indirectly as a result of the operation for the hernia. In fact Dr. Aschner, who treated the petitioner, testified that the urinary sepsis was due to a retention of urine and infection of his bladder which commonly occurs after hernia operations (S. C., p. 48, ll. 10 to 20). If the ruling of the Supreme Court in this respect is correct, then the only logical result is that a permanent injury results directly from hernia operations without complications, and compensation for permanent partial disability would not be allowed. In other words, if there was a weakening of the abdominal wall because of the hernia incision then it would follow directly from the hernia operation and therefore the employe would not be entitled to compensation other than that set forth in the Act, and not for permanent partial disability. While on the other hand, if complications ensued following the

hernia operation and permanent disability resulted therefrom, the employe would be entitled to compensation on the theory, as set forth by the Supreme Court, that these conditions are not injuries flowing from the compensable hernia but injuries flowing from the various ailments which arose after the hernia operation, and therefore separate and distinct accidents which are traceable back to the original injury. Such a construction would be clearly inequitable and unsound.

In this case the alleged permanent impairment was claimed to be a weakening of the abdominal wall at the site of the cystotomy scar, which scar in this case is 1½ inches long (S. C., p. 71, ll. 10 to 30). Another of the employe's physicians, Dr. Aschner, testified that based on his experience there is no question that the petitioner would have weakness at both sites, the site of the hernial repair and the site of the cystotomy (S. C., p. 50, l. 20). It is not unreasonable to assume that in an operation for a repair of a hernia, that in some cases the employe will have a weakness at the site of the hernia operation without any complications and unless there is a recurrence of the hernia there can be no compensation for permanent disability for such a weakness. To hold otherwise would open the door to unlimited claims for permanent partial disability directly due to a hernia operation. The intent of the legislative enactment is to the contrary.

In *Bush v. Randolph*, 14 N. J. Misc. 869, the Workmen's Compensation Bureau pointed out that in a case where an employe had sustained a hernia and elected not to be operated on but accepted the temporary compensation and the twenty weeks' compensation as provided by statute, that the petitioner was bound by that election and could under no circumstances recover for any further compensation unless there was an exacerbation of the condition requiring further medical

attention causing temporary incapacity, in which case he would be entitled to temporary compensation but in no event would he be entitled to compensation for permanent disability. The court in its opinion, at pages 871-872, said:

“From a medical standpoint it must be conceded that a herniatomy cures the condition, while an unoperated hernia results in a permanent physical defect for which the payment of twenty weeks’ compensation is deemed as a measure of indemnity. \* \* \*

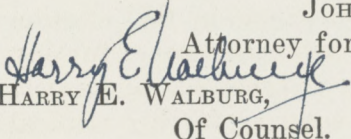
“But having exercised his option, the question arises ‘can he now insist upon surgical and hospital services at the expense of his employer for the repair of the hernia?’ The answer is obviously no. The respondent’s liability is limited to one, and only one of the options; either payment of twenty weeks’ compensation, or the furnishing surgical and hospital services not exceeding \$150.00 for the correction of the hernia, together with payment of compensation for temporary disability incurred during hospitalization and convalescence—in no case does the statute subject him to both.

“The respondent’s liability, therefore, is at an end, unless there be a subsequent recurring temporary disability under the heading two, by reason of an exacerbation of the condition, either acute or sub-acute, requiring further medical attention and causing temporary incapacity; or unless death ensues as a result of the hernia following the payment of 20 weeks’ compensation made under heading three.”

**We, therefore, respectfully submit that the petitioner below is not entitled to any compensation for partial permanent disability and the Supreme Court erred in affirming that part of the award.**

JOHN W. TAYLOR,

Attorney for Prosecutor-Appellant.

  
HARRY E. WALBURG,

Of Counsel.

1895

## New Jersey Court of Errors and Appeals

MEYER RUGG,

*Defendant-Appellee,*

vs.

DRIWOOD CORPORATION,

*Prosecutor-Appellant.*

On Appeal  
from the  
Supreme Court

### BRIEF OF DEFENDANT-APPELLEE.

#### History.

This is an Appeal from a judgment of the Supreme Court dismissing a Writ of Certiorari to review a compensation award.

On August 8, 1940 the Workmen's Compensation Bureau made a Determination of Facts and Rule for Judgment awarding Petitioner 33 and 6/7th weeks of temporary disability, 25 weeks equivalent to 5% of total for permanent disability and allowing certain medical and hospital expenses. The employer appealed to the Union County Court of Common Pleas and that tribunal on the 9th day of January, 1941, confirmed the Award entered by the Bureau in all its respects. The employer thereupon applied to Justice Case for a Writ based upon the following grounds:

1. Petitioner failed to prove the five points necessary for an inguinal hernia.

2. The allowance for medical services and hospital treatment was improper because it exceeded the limitations imposed by R. S. 1937, 34:15-15 and R. S. 1937, 34:15-12(x).

3. The allowance for permanent disability violates the terms and intent of the Statute relating to cases of inguinal hernia.

4. The Award for permanent disability is against the weight of the evidence.

In allowing the Writ, Justice Case, after reviewing the facts, stated:

“I find no open question except in Prosecutor’s point that an allowance for permanent disability arising out of hernia is not within the contemplation of the Statute. The Statute, R. S. 34:15-12(x), provides that ‘in the case of hernia as above defined, the provisions of paragraph “a” of this section and sections 34:15-14 and 34:15-15 of this title shall apply \* \* \*’ and makes no specific reference to 34:15-12b (permanent total disability) or 34:15-12c (permanent partial disability). It is the Respondent’s contention that the allowance made in the instant case for permanent partial disability is grounded in the conditions that arose *out* of the hernia and not from the hernia itself. The Statute is not clear and no controlling decision is brought to my attention. I think that the Prosecutor is entitled to have the question considered and decided. The Writ of Certiorari therefore will be allowed.” S. C. 135.

Although Justice Case found but one open question in allowing the Writ, the allocatur was in no wise limited. Prosecutor thereupon raised and argued, in the Supreme Court, the same four

points raised and argued before Justice Case on the Application for the Writ.

On May 22, 1941 the Supreme Court affirmed the judgment of the Court of Common Pleas and dismissed the Writ. The employer now appeals to this Court upon the following grounds:

1. The Defendant-Appellee failed to establish by conclusive proof that his inguinal hernia was immediately caused by such sudden effort or severe strain as required by the Statute in such case provided. R. S. 34:15-12(x).

2. The Court erred in awarding the sum of One Thousand Four Hundred Eighty-Four Dollars and Twenty (\$1,484.20) Cents to Defendant-Appellee for medical and hospital expense incident to the operation for inguinal hernia and recovery in that said award exceeds and violates the limitation of One Hundred Fifty (\$150.00) Dollars placed on such expenses by the Statute. R. S. 34:15-12(x).

3. The Court erred in awarding to Defendant-Appellee Five (5%) percent of total for permanent disability as a result of sustaining an inguinal hernia and the operation incident thereto, in that R. S. 34:15-12(x) does not provide for permanent compensation in cases of inguinal hernia where the employee has elected to undergo an operation.

### **Preliminary Statement.**

In preparing the brief Statement of Facts which immediately follows, we endeavored to the

best of our ability, to set forth some of the facts which we deemed important and relevant by citing the exact page and line for each point of fact, pursuant to Rule 40 of this Court. Unfortunately, our adversaries have not seen fit to do likewise. We very respectfully and regretfully wish to state to this Court that the Statement of Facts as set up in Appellant's Brief is in many regards inaccurate, misleading and calculated to becloud the issues. In some instances the statements attributed to Petitioner are directly contrary to his testimony. In others, the omission of important words used by Petitioner and the inclusion of others not used by Petitioner result in a complete change of the text of Petitioner's testimony. Had Appellant complied with Rule 40 by giving the exact reference for each point of fact referred to, our task would have been much simpler. As it was, we found it extremely difficult attempting to reconcile Appellant's Statement of Facts with the actual testimony. We note in passing that in the Statement of Facts as set up by Appellant in its Brief to the Supreme Court, Counsel scrupulously cited the exact page for each point of fact referred to. It would seem therefore, that Counsel is familiar with Rule 40. In addition thereto, Appellant's Statement of Facts is set up in such manner as to create the impression that it incorporates the testimony verbatim or in full. As we will hereafter show, the same does neither.

### **Statement of Facts.**

The following is our preliminary Statement of Facts in which we have attempted to accurately

give the page and line for each point of fact referred to.

Up to the time of the accident in question, Petitioner had been employed by respondent as a cabinet maker for approximately six to seven years. (S. C. 13 ll. 25 to 27.) Up to this time, Petitioner had always been in perfect health, had never been treated by a doctor in his life, had never been to a hospital before and had never had any accidents resulting in disability. (S. C. 20 ll. 8 to 15.) On Friday afternoon, at approximately 4:00 P. M., on October 20, 1939, Petitioner was lifting a heavy section when he strained his back on the right side. (S. C. 14 ll. 1 to 12.) That night, he put a plaster on his side and in the morning felt all better. (S. C. 14 ll. 34 to 40.) He returned to work the Saturday morning following and while lifting a heavy panel felt a sudden pain in his right groin. (S. C. 15 ll. 1 to 34.) He immediately stopped work and told his foreman that he did not feel well and required a helper. (S. C. 15 ll. 19 to 21; ll. 7 to 12.) About a half hour later, he went to the men's room and upon looking at the site of the pain in the right groin, noticed a little ball which was very small at the time. (S. C. 16, ll. 1 to 12; ll. 17 and 18.) He attempted to resume work but the pain recurred about every hour and at 12:00 noon he told Mr. Klein:

“I'm sorry, I can't do no more work. I have to go home because I feel very bad.”  
(S. C. 16 ll. 21 to 29.)

Petitioner's son came home about 7:00 P. M. and called the Doctor who arrived about 11:00 that night. (S. C. 17 ll. 11 to 16.) After a lengthy examination an immediate operation was advised

and on Sunday morning, October 22, 1939, Petitioner was operated on in the Brooklyn Jewish Hospital for a strangulated right inguinal hernia. (S. C. 18 ll. 1 to 12.) On Monday morning Petitioner's son, Harold, called the employer and told him that his father had been taken to the hospital and operated upon as a result of an injury his father had received while working at the plant on Saturday. (S. C. 31 ll. 1 to 18.) As a result of the operation to cure the hernia, serious complications set in, including difficulty in voiding, necessitating frequent catheterizations, urinary sepsis, temperature as high as 108, broncho-pneumonia and obstruction of the prostate. (S. C. 36 ll. 19 to 40; S. C. 37 ll. 1 to 11.) As a result of these post-operative conditions a number of subsequent operations were performed. (S. C. 38 ll. 37 to 40; S. C. 39 ll. 1 to 6; S. C. 48 ll. 10 to 40; S. C. 49 ll. 12 to 36.) Petitioner was in the hospital approximately three months in all. (S. C. 18 ll. 12 and 13.) He continued to receive treatment until June 13, when he was discharged by Dr. Train. (S. C. 18 ll. 32 to 37.)

### **Comments on Appellant's Statement of Facts.**

We have previously criticised and taken exception to Appellant's Statement of Facts as set forth in its Brief. The following are some of the regards in which the same is inaccurate and misleading.

On Page Two of its Brief, Appellant makes the following statement:

“A statement of the facts produced at the trial below is as follows;”

Appellant, on Pages Two, Three and Four of its Brief, then proceeds to set forth in narrative form what purports to be either direct testimony of the Petitioner or a detailed and complete recital of all of his testimony. The only citation given by Appellant for the whole of this narration which covers numerous points of fact occurring on various occasions is a reference to Pages 13 to 20 inclusive, of the State of the Case. A comparison of this narration with the actual testimony shows that the same is in many particulars inaccurate and misleading.

At the bottom of Page Two of its Brief, Appellant makes this statement:

“He then stated that he stopped work; that he couldn’t do it; that he gave it to another man to finish; that he stayed in the plant until 4:30, *which was the usual time that the day’s work terminated;*”

Although we have carefully examined Page 14 of the State of the Case to which this excerpt apparently refers, we have been unable to find any testimony wherein the underlined words were testified to by Petitioner. Yet, the same is set up in such manner as to make it appear that Petitioner had used these words.

At the top of Page Three of its Brief, Appellant in its narration of Petitioner’s testimony makes this statement:

“and on the morning of October 21st he returned to his *usual* work;”

A reference to the State of Case will show that Petitioner did not use the word *usual*. At the top of Page Three of its Brief, Appellant attributes this statement to Petitioner:

“that he resumed his work and had been doing so for about *an hour* when the pain came on in his right side and front;”

A reference to the top of Page 15 of the State of the Case shows that Petitioner testified he had been working half an hour when the pain came, and not an hour as stated by Appellant. The length of time he had been working fixes the time when the hernia protruded. On Page Three of its Brief, Appellant attributes this statement to Petitioner:

“that he had been working about fifteen minutes,”

A reference to Page 15 of the State of Case shows that the words actually used by Petitioner were:

“I start working about fifteen minutes and then I told the foreman, etc.,”

A reference to the previous testimony of Petitioner and also to his testimony on cross-examination, which appears on S. C. 21, ll. 21 to 38, leads to but one conclusion and that is that when Petitioner said, “I start working about fifteen minutes,” he meant that he started working again about fifteen minutes after the pain came on. The statement used by Appellant “that he had been working about fifteen minutes” is therefore directly contrary to what Petitioner actually stated.

On Page Three of its Brief, Appellant makes this statement with reference to the Petitioner:

“that he lifted up one panel and he had some pain in the right side of the abdomen (indicating the right groin); that as soon as he felt better, etc.”

In attempting to create the impression that all of Petitioner’s testimony was included in the above

statement, Counsel very significantly omitted the most important part of this portion of the testimony, which appears on S. C. 15, ll. 19 to 21:

“and I lift up one panel, the pain came right here (indicating), *and I stop.*” (Italics ours.)

The fact that Petitioner was forced to stop working by reason of the pain in the right groin which he experienced while lifting up the panel complies with that portion of the hernia statute which relates to prostration.

When we bear in mind that Appellant further on in its Brief attempts to raise some question as to whether or not immediate prostration ensued as is required by the hernia section, it is easy to understand why Counsel omitted the all important words “and I stop” in his Statement of Facts, although the same goes into great detail by reciting many facts not germane to the issue. At the top of Page Four of its Brief, Appellant attributes this statement to Petitioner:

“that he has not performed any work since October 21, 1939; that he could work but there isn't any work;”

We quote the actual testimony of the Petitioner which appears on S. C. 18, ll. 32 to 40; S. C. 19, ll. 1 to 9:

“Q. Did Dr. Train discharge you as cured?

A. Sure.

Q. When?

A. I went last week also to him, but last week he told me that he is finished, that I am all right now.

Q. Last week?

A. Last week.

Q. From the time of the accident up to the time or up to the present time have you done any work at all?

A. Nothing. I couldn't work.

Q. Have you been able to work during that time?

A. Now I could work but they ain't got no work.

Q. Could you work until now?

A. Until now I wasn't doing anything.

Q. Could you work until now?

A. No, sir."

It thus appears that the statement attributed to Petitioner by Appellant is directly contrary to his actual testimony. On Page Four of its Brief, Appellant attributes this statement to the Petitioner:

"that on Saturday morning after he had worked for about *an hour*, the pain came on in the right side (indicating the right groin) (S. C. 21, ll. 10 to 20);"

A reference to S. C. 21, line 22 shows that Petitioner's actual testimony was:

"A. No, Saturday morning when I start about *half an hour*, the pain came in this side (indicating)." (Italics ours.)

On Page Five of its Brief, Appellant makes this statement with reference to Petitioner:

"that on Saturday morning, October 21, at about nine o'clock or shortly thereafter, he went into the men's room and examined himself; that after he went to work Saturday morning his back didn't bother him, but the pain came on in the right side and front; that he worked until noontime Saturday, right up to twelve o'clock, which was his regular quitting time. (S. C. 24, ll. 10 to 30;)"

This statement refers to some of Petitioner's testimony on cross-examination. Counsel has combined parts of Petitioner's answers to questions put to him on cross-examination and then proceeds to narrate them in such manner as to make it appear that the same constitutes a chronological

and complete statement of events by Petitioner. We respectfully submit that the same distorts the facts and is misleading. Petitioner's actual testimony was that when he sustained the pain from lifting, about 9:00 o'clock in the morning, he stopped working and was forced to rest for about fifteen minutes. (S. C. 15 ll. 19 to 21; S. C. 21 ll. 33 to 40; S. C. 28 ll. 35 to 40.) The testimony of Petitioner both on direct and cross-examination also was that when he examined himself in the men's room Saturday morning about 9:00 o'clock he, for the first time, noticed the small ball in the inguinal region. (S. C. 16 ll. 1 to 12; S. C. 27 ll. 24 to 34.) Petitioner's testimony, of course, also shows that whereas up to the time Petitioner strained himself on Saturday morning he had been working alone, without a helper, after he experienced the pain and noticed the lump and rested for about fifteen minutes he asked the foreman for a helper and was furnished with one for the rest of the morning. (S. C. 15 ll. 1 to 40; S. C. 19 ll. 35 to 40; S. C. 20 ll. 24 to 30; S. C. 27 ll. 20 to 34; S. C. 28 ll. 29 to 40.) Appellant's recital would make it appear that Petitioner worked continuously from the time he first started work on Saturday morning right up to quitting time without any interruptions and without any change in the nature of his work.

These are some of the illustrations showing that Appellant's Statement of Facts, as set up in its Brief, is in many regards inaccurate and misleading and is therefore unfair to Petitioner as well as to this Court. We have taken the liberty of setting forth some of these inaccuracies at length because we feel that the Petitioner is entitled to

a fair statement of the facts. We submit that Appellant's Statement of Facts is inaccurate and tends to distort and mislead.

## ARGUMENT.

### POINT I.

**Under our State Constitution, this Court is precluded from reviewing the facts in the case at bar.**

Article 6, Section 1 of our State Constitution provides:

“The Judicial power shall be vested in a Court of Errors and Appeals in the last resort in all causes, as heretofore.”

The extent of the power of this Court at the time of the adoption of our present Constitution was fully considered by this Court in *State vs. Knight*, 96 N. J. L., 461 where the Court stated:

“As this Court existed at the time of the adoption of the Constitution, its jurisdiction was limited to the review of the alleged legal errors in cases coming up from the law courts, and of alleged errors both in the application of legal rules and in conclusion of facts in cases coming up from the Court of Chancery.”

The Court in that case concluded that a legislative extension of the jurisdiction of this Court to inquire into the weight of the evidence in criminal cases where the entire record had been taken up pursuant to Section 136 of the Criminal Procedure Act was constitutional. This conclusion was in turn based upon the opinion of this Court in *Harris vs. Vanderveer's Executor*, 21 N. J. Eq.

424, where the Court upheld a Statute empowering this Court to review the facts on appeal from the Prerogative Court on the theory that such an extension of jurisdiction was in harmony with the inherent character of this Court. In neither case was the right to appeal from the findings of fact by the Supreme Court involved.

That the Court of Errors and Appeals will only review the findings of the Supreme Court when there is no evidence whatever to justify such findings has been well established in this State for a long time. *Grant vs. Metropolitan Ice Co.*, 108 N. J. L., 536; *Ford Motor Co. vs. Fernandez*, 114 N. J. L., 202; *Board of Education of Seaside Heights vs. Shepard*, 119 N. J. L., 413.

In *Grant vs. Metropolitan Ice Co.*, 158 Atl., 431, which was also a compensation case, but did not involve a hernia, the Supreme Court affirmed the Pleas in sustaining an Award in favor of Petitioner. Appellant contended in that case, that the Supreme Court in its opinion did not indicate that it had passed on the question of whether there was competent proof that the death of the decedent was in fact a result of the injury sustained and therefore, this fact has not been legally established. In rejecting this contention this Court stated:

“This Court will only consider matters of proof when there is no evidence whatever to justify the finding of the Supreme Court; and, as there is ample evidence in the present case to support the conclusion that the accident in question arose out of and in the course of the decedent’s employment, and that his death occurred by reason of the tubercular condition being awakened and aggravated by the fall, the judgment will be affirmed.”

In our case the Supreme Court expressly found that the Bureau, the Pleas and Mr. Justice Case were justified in finding that Petitioner had conclusively proved the five elements relating to hernia. (S. C. 145.)

Appellant does not contend that there is an absence of any evidence to sustain the findings of the Supreme Court. Appellant apparently takes the position that it is entitled to have this Court review the facts because the word "conclusive" is used to modify the word "proof" in R. S. 34:15-12(x), which is the hernia provision of the Statute. There can be no question but that if the word "conclusive" were not used that then the findings of fact by the Supreme Court would be binding on this Court under the line of cases of which the *Grant* case, *supra*, is typical. We submit that the use of the word "conclusive" can not serve to extend the jurisdiction of this Court to review findings of fact by the Supreme Court. This is shown by an examination of the opinion of this Court in *Flanigan vs. Guggenheim Smelting Co.*, 63 N. J. L., 647.

In that case Plaintiff recovered a judgment for personal injuries in the Supreme Court. Defendant appealed to this Court on the ground that the verdict was clearly against the weight of the evidence and excessive. These grounds were raised pursuant to Chapter 139 of the Laws of 1899 which provided that on appeal to the Court of Errors and Appeals:

"It shall be lawful for a Plaintiff in error to assign for error that the verdict is against the clear weight of the evidence and is excessive."

In holding that this Act was unconstitutional, this Court there stated:

“What the Legislature has attempted to do is essentially this: To take away from certain judgments that are within the protection of the Constitution a quality that has hitherto inhered in them. The quality that is thus to be abstracted is the attribute of finality as to fact. The act is aimed, not at the mere machinery of justice, not at the boundaries of jurisdiction, but at the conclusiveness of the proceeding, at the effect of the record itself. The inquiry, then, is this: Whether a statute calculated to make a constitutional court subordinate in matters of fact, as to which it was originally supreme, does or does not, to that extent, alter the constitution of such court, change its nature, diminish its authority, and impair its jurisdiction.

This subject may be regarded from three points of view: That of mere reasoning, that of historical fact, and that of New Jersey authority. From whatever side the matter is approached, the question admits of but one answer. That which alters the effect of a judgment in respect to important matters that are present in every case, and makes such judgment as to them no longer the end of litigation, but a mere intermediate phase of legal strife, must, on a rational view of the subject, be thought, just to that extent to alter the character of the judgment, and qualify the authority of the Court that has pronounced it.”

The Court thereupon concluded that the Statute under consideration was unconstitutional because it attempted to confer upon this Court the power to review the facts as found by the Supreme Court. It will thus be seen that even if there were a legislative enactment extending the jurisdiction of this Court to review the findings of fact made by the

Supreme Court on Certiorari, such Statute under the *Flanigan* case *supra*, would be unconstitutional because it would violate the constitutional right of the Supreme Court to finality in its judgments as to findings of facts and in addition thereto, it would increase the jurisdiction of this Court beyond that conferred upon it by the Constitution of this State.

In line with the reasoning of the Supreme Court in *Di Mieri vs. Metafield Inc.*, 126 N. J. L., 487, referred to by Counsel, we believe that the term "conclusive proof" as used in the Statute can only refer to degree of proof which is a measure of proof set up by the Legislature for the guidance of the fact finder. In arriving at its conclusion in the light of this measure of proof set up by the Legislature, the fact finder takes into consideration the demeanor of the witnesses on the stand, their behavior in Court, their manner of response, etc. As this Court stated in *State v. Karpowitz*, 98 N. J. L., 546.

"It is perhaps unnecessary to say that those who have the opportunity of personally seeing and observing the demeanor of witnesses are best qualified to judge of the credibility of witnesses and the weight to be accorded their testimony. Testimony which seems convincing in print would often be unconvincing if heard in Court from the lips of witnesses."

It will thus be seen that what may be "conclusive proof" to one tribunal may not be conclusive to another. In each case, however, whether or not the proof is conclusive should be up to the trier of fact. The only question that can arise in this Court is whether there is any evidence to sustain

the findings made below. Appellant in this case does not claim an absence of any evidence to sustain the findings below.

The only two cases cited by Appellant which even remotely have any bearing on the issue are *Huber vs. Modern Central Silk Dyeing and Finishing Co.*, 122 N. J. L., 186 and *Prino vs. Austin & Co.*, 121 N. J. L., 518. Neither of these cases are on point. The *Huber* case is a Supreme Court opinion and therefore can not involve the question of Appellant's right to a review of the facts by the Court of Errors and Appeals. We might say in passing that in the *Huber* case, no physician was called and none treated Petitioner for a period of at least six days.

In the *Prino* case there was an Award for Petitioner in the Bureau without any comment on the evidence. This Award was reversed by the Pleas, also without comment, the formal finding being that Petitioner:

“did not sustain an inguinal hernia or traumatic hernia out of and in the course of his employment.”

The decision of the Pleas was reversed in the Supreme Court which in turn was reversed by this Court. A comparison of the Supreme Court opinion in that case, 120 N. J. L., 19, with the opinion of this Court will show that this Court reversed the Supreme Court solely on the ground that there was no finding of fact by the Supreme Court or of any of the lower tribunals that the five elements of the hernia were conclusively proved as required by the Statute. This Court expressly states in the opinion with reference to this Rule:

“but in the present case was probably overlooked in the Bureau and not considered in the Supreme Court.”

The concluding Paragraph by this Court in that case is:

“So whatever may be the proper definition of conclusive proof, it seems quite clear that the proof of the third requisite, namely, that there was such prostration of the employee to compel him to cease work immediately, was anything but conclusive, and as we have said the Supreme Court did not so hold. The judgment of the Supreme Court is therefore reversed and that of the Pleas affirmed with costs.”

The ground of reversal therefore, was that there was no finding in any of the lower tribunals that the proof was conclusive as is required by the Statute. In our case the Supreme Court found as a fact that all three lower tribunals were correct in finding that all of the five elements were conclusively proved. S. C. 145. It follows therefore, that the finding of fact by the Supreme Court in our case should be binding on this Court.

## POINT II.

**Even if this Court could review the findings of fact made by the Supreme Court, an examination of the testimony shows that the lower tribunals were fully justified in finding that the petitioner had conclusively proved the five statutory requirements for a compensable hernia under R. S. 34:15-12(x).**

In making its award the Bureau found:

“However, I am of the opinion that the hernia did not occur until the morning of Oc-

tober 22, 1939 and that the testimony supports a finding of a compliance with the five statutory requirements in a non-traumatic hernia, such as this one is and do so determine." (S. C. 116.)

(October 22nd should be October 21st and was corrected in an amended Determination in S. C. 119).

In confirming the award made by the Bureau the Court of Common Pleas found the following:

"On Friday, October 20, 1939, the Petitioner had attempted to lift a partition section and was seized with a severe pain in the right side and back but felt improved the next day which was Saturday. It was on Saturday that the accident occurred. The respondent contends that the hernia occurred on Friday, October 20, 1939, but I cannot see that the evidence warrants such a finding. The occurrence on Friday doubtless did the Petitioner no good, but the evidence is that the hernia occurred on Saturday. According to human experience, it is not at all likely that the man would have come back to work on Saturday morning if the hernia occurred on Friday. All the statutory requirements have been complied with and the statutory elements have been conclusively proved and I so find. A construction of the statute is made by the Court of Errors and Appeals in *Furferi vs. Pennsylvania R. R. Co.*, 117 N. J. L., at page 516, and I am applying the principles of law therein indicated." S. C. 124 and 125.

In his opinion allowing the Writ, Justice Case stated:

"I am satisfied, as were both of the lower tribunals, that the five points were, within the meaning of the statute, conclusively proved and that the hernia occurred on Saturday, October 21, 1939." S. C., 134.

The Supreme Court after fully hearing the matter on the return to the Writ found:

“The Bureau, the Pleas and Mr. Justice Case concluded that Petitioner conclusively proved that he suffered an inguinal hernia on October 21, 1939, and that he had conclusively satisfied the five statutory requirements. Cf. *Furferi vs. Pennsylvania R. R. Co.*, 117 N. J. L. 508; 189 A. 126. After a careful consideration of all the proofs, we, too are clearly of the view that Petitioner has sustained his claim by proofs which are ‘convincing in character.’ *Frank DiNieri vs. Metafield Inc.*, N. J. L. , A. 2nd .”  
S. C. 145.

We thus have a situation where four tribunals concurred in a finding that the hernia in the instant case occurred on Saturday morning, October 21, 1939 and that all of the five statutory requisites were conclusively established by Petitioner.

That the evidence to sustain these findings is ample is shown by an examination of the testimony. Petitioner testified that on Saturday morning, October 21, 1939, while lifting a panel weighing sixty to eighty pounds, he felt a sudden pain in his right groin and he immediately stopped working. (S. C. 15.) About a half hour later he went to the men’s room and there noticed a small ball at the site of the pain. (S. C. 16). He told the foreman that he wasn’t feeling well and required a helper. (S. C. 15.) He tried to resume work but the pain recurred about every hour and he went home and to bed. The pain gradually got worse until the doctor was called that night and Sunday morning Petitioner was operated on for a strangulated hernia. (S. C., 16 and 17.) On Mon-

day morning, Petitioner's son called the employer and acquainted him with the fact that Petitioner had been operated on as a result of an injury which he had received on the job on Saturday. (S. C. 31.) There is no evidence in the case disputing any of this testimony. We thus have sudden effort or severe strain resulting in the immediate descent of a hernia, severe pain in the hernial region, such prostration that the employee was compelled to cease work immediately, notice to the employer within twenty-four hours (since Sundays and Saturdays and holidays when the business is not in operation, are excluded from this period) and such physical distress that a licensed physician was required within the twenty-four hours, thereby fully meeting the requirements of the statute. The suggestion by Doctor Lewis, who was the only medical witness called by the employer, that the incident of Friday represented the separation of fibres at the intestinal ring, and was an anatomical basis for an inguinal hernia, has no bearing on the issue because the Court of Errors and Appeals in the case of *Furferi vs. Pennsylvania R. R. Co.*, 117 N. J. L., 508, has held that:

“These provisions taken as a whole, demonstrate the legislative meaning of the term ‘hernia’. In the medico-cherurgical sense hernia is a rupture; it is a protrusion of an organ or part thereof, or tissue or other structure, through the wall of the cavity normally containing it. An inguinal hernia is one which passes through the abdominal wall in the inguinal region.”

Thus, even if the event of Friday did cause a separation of the fibres and the rupture itself

took place on Saturday as a result of the strain, then undergone by Petitioner, the hernia would have occurred on Saturday. This is borne out by the following from *Furferi vs. Pennsylvania R. R. Co., supra*:

“It is fundamental in the statute that an inguinal hernia resulting from an accident is compensable, even though the employee has the weakness of body structure predisposing to that condition.”

It is our position, however, that the hernia in this case was caused solely by the accident of Saturday and that there is nothing in the testimony to connect Friday's occurrence with the hernia. In arriving at that conclusion, we rely on the following factors, whereas the pain on Saturday was in the right groin, that of Friday was in the back and right side, the pain of Friday disappeared completely over night, while on Saturday the pain got worse and worse from the time of the strain until the operation on Sunday. Another factor is that when Petitioner first noticed the lump about 9:00 A. M. Saturday which was about a half hour after the accident, it was very small, indicating that it was of very recent origin. It would seem, therefore, that the event of Friday had no relation to the hernia. However, even if the body structure were weakened by the event of Friday, under the pronouncement by our Court of Errors and Appeals in the *Furferi* case, same could not result in a finding that the hernia was caused at that time, since nowhere in the testimony is there any proof that any protrusion occurred on Friday.

With the hernia thus occurring on Saturday morning, October 21, 1939, there can be no question but that the five statutory elements were fully complied with.

At the bottom of Page 23 and top of Page 24 of its Brief, Appellant makes this characterization of Petitioner's testimony:

"At no time did he tell any representative of the Prosecutor-Appellant that he had strained himself and that as a result thereof he found a lump. He merely stated that he didn't feel well. There is nothing in this testimony, as we view it, which would indicate that the Petitioner below was compelled to cease work because of prostration. There was nothing to indicate that he was prostrate at any time, merely that he had pain and that he rested about fifteen minutes and then continued his work with the aid of a helper."

A reference to the testimony will show that Counsel's comment is not justified. On the question of prostration Petitioner testified:

"Q. Do I understand that you were lifting a panel containing four of these clamps?

A. And I lift up one panel, the pain came right here (indicating), *and I stop.*" S. C. 15 (Italics ours.)

And, again on S. C. 21:

"Q. Did you feel dizzy or sick when this happened to you?

A. Well, I was feeling—I lost my strength from everything. I feel very bad, but it happened only about ten or fifteen minutes and then I feel better. I start working again."

And, again on S. C. 28:

"Q. And that is after you had asked the foreman for a helper?

A. When I took a rest about fifteen minutes and then the pain went away and I walked over to the foreman; I told him, 'Mr. Berger, I don't feel very good and the work has to be done up to twelve o'clock. I'll never make it.' And he says, 'I'll send you Mr. Klein.' "

None of this testimony was disputed in any way by Appellant.

Insofar as notice to the Appellant is concerned, it is not disputed that after the strain on Saturday, Petitioner went to the foreman and told him that he was not feeling well and would need a helper. Petitioner didn't say that he had a hernia at that time because as appears on S. C. 27, he didn't know what it was.

"Q. And what did you do about it; did you say anything to anyone about that?

A. I didn't say nothing because I didn't know what it is. I know I had pain over there, so I look, and the pain is coming so fast."

At the trial, we did not rely on Petitioner's conversation with the foreman to prove notice to the employer under the Statute. On this point we relied solely on the testimony of the Petitioner's son, who telephoned a Mr. Banker, who was the Employer's representative in New York, and acquainted him with all the facts. S. C. 31. Since under the Statute days when the business is not in operation, such as Sundays, Saturdays or holidays are excluded from the twenty-four hour period in which notice is required to be given the employer, and since this accident occurred Saturday morning and the plant was not in operation Saturday afternoon, notice to the employer by the son the first thing on Monday morning is a full compliance with the Statute.

Counsel in its Brief, cites a number of cases in various jurisdictions defining the word conclusive. In none of these cases was the word used in connection with modifying the degree of proof in a compensation Statute which the Courts of this State have held should be liberally construed for the benefit of the employee. *Ruoff vs. Blassi*, 117 N. J. L., 47, affirmed 118 N. J. L., 314. We are fully in accord that the construction placed upon "conclusive proof" by the Supreme Court in *Di Mieri vs. Metafield Inc.*, 126 N. J. L. 487, which we believe is fully in accord with the intention of the legislature. We wish to state, however, that even if this Court should differ with the Supreme Court in its construction of this term that nevertheless, this would not require a reversal in our case. We respectfully submit that the proofs in our case are conclusive in any event, and that therefore, the finding to that effect by the lower tribunals should not be disturbed.

In view of the foregoing, we respectfully submit that the identical findings made by the Bureau, the Pleas, by Mr. Justice Case and by the Supreme Court to the effect that Petitioner has conclusively complied with the five requisites of the hernia Statute should not be disturbed.

### POINT III.

**The allowance made for the medical and hospital expense is just and proper and should not be disturbed.**

As a result of the operation to correct the hernia in this case Petitioner developed serious

complications including difficulty in voiding, urinary sepsis, infection, temperature as high as 102, broncho-pneumonia and obstruction of the prostate. (S. C. 36 and 37.) As a result of these post-operative conditions, a number of subsequent operations were performed. (S. C. 38; S. C. 48 and 49.) Petitioner was confined to the hospital for approximately three months and continued to receive treatment until June 13th, when he was discharged by Dr. Train. (S. C. 18.)

At the trial the employer took the position that the most that the employer is liable for by way of such medical or hospital expense is the sum of \$150.00 and cited the following provision of R. S. 34:15-13 (x):

“However if the employee shall elect to undergo an operation by a physician selected by the employer, the employer shall meet all the expense incident to such operation and recovery, not in excess of \$150.00 together with compensation as provided in paragraph (a) of this section.”

The Bureau rejected this contention and included in the award all of the medical expense necessarily incurred in this case. This award was confirmed by the Court of Common Pleas, by Mr. Justice Case and by the Supreme Court. We respectfully submit that the award was fully justified.

The first treating physician, Dr. Train, testified that Petitioner developed these several complications post operatively (p. 32) and then counsel to the employer himself elicited from Dr. Train on cross-examination:

“Q. The subsequent conditions from which the Petitioner suffered, that is, subsequent to his operation for a right inguinal hernia, were all related more to the hospitalization and the operation performed, than directly to the accident or alleged accident?

A. Yes, they developed as complications.”  
(p. 42).

The other treating physician, Dr. Aschner, testified:

“Q. Now, I believe you have said it, and tell me if I understand you correctly, that all of these conditions for which you treated Meyer Rugg were secondary to that operation?

A. Specifically that as a result of the operation for hernia he developed complete retention of urine, and that following that he developed infection in his bladder, and that the complete retention of urine and the infection persisted, which required, naturally, subsequent measures to restore him to health.”

To the same effect is Dr. Feigen’s testimony (P. 75):

“Q. They are not directly attributable?

A. To the original events, only insofar as they followed the operation.”

and also the employer’s own witness, Dr. Lewis:

“They are all in the nature of post operative complications. They form a chain of circumstances beginning with anesthesia and urinary obstruction and they all resulted from the surgical procedure.” (P. 91.)

In awarding Petitioner for all of the medical expense incurred by reason of the accident the Bureau stated as follows:

“Respondent makes the further claim that since the Statute in such cases limits its liability for expenses incidental to the opera-

tion and recovery to a sum not in excess of \$150.00 it cannot be required to meet the total medical costs admitted to have been incurred in this case of \$1,623.70. However, the medical expenses in this case were not entirely incidental to the operation and recovery therefrom but were in a large measure the result of the complications ensuing from the operation and, under the theory laid down by the Supreme Court in *Dunn vs. Atlantic City*, 120 N. J. L. 141, affirmed 121 N. J. L. 588, the respondent would be liable for the entire cost of medical treatment, as hereafter assessed, and all disability resulting from the original injury." S. C. 116 and 117.

In confirming this award the Court of Common Pleas stated:

"I have carefully read the testimony and am of the opinion, under the circumstances in this case, that an allowance for doctors' and hospital bills is reasonable and lawful and I so find, as hereinafter enumerated. (*Dunn vs. Atlantic City*, 120 N. J. L. 141, affirmed 121 N. J. L. 588.)" S. C. 125.

In connection with this same point, Justice Case in his opinion found that:

"The allowances are within the ruling in *Dunn vs. Atlantic City*, 120 N. J. L. 141, affirmed 121 N. J. L. 588. No item of medical or hospital expense is attacked as unnecessary or exorbitant." (S. C. 135.)

The Supreme Court in turn stated:

"It is a fact, as pointed out by Mr. Justice Case, that R. S. 34:15-12 (x) provides, after setting forth the five requirements, that 'in case of a hernia as above defined, the provision of paragraph "a" (temporary disability) of this section and sections 34:15-14 (waiting period) and 34:15-15 (medical and hospital service) of this title shall apply

\* \* \* ;' and that the statute makes no specific reference to either R. S. 34:15-12(b) (permanent total disability) or R. S. 34:15-12 (c) (permanent partial disability). But, in our opinion, these facts do not, under the circumstances exhibited, bar petitioner from his right to recover for the permanent partial disability which he unquestionably suffered. We construe this provision of the act relating to hernia, as we construe all other provisions thereof, in light of and in harmony with the general provisions of the act as a whole to the end that those properly entitled to its beneficent relief are not unjustly deprived thereof. Of course, a case not within the wording of the provisions relating to hernia, is to be excluded therefrom. *Furferi vs. Pennsylvania R. R. Co., supra.* Here, however, the allowance for the permanent partial disability was not for the injuries flowing from the compensable hernia which petitioner suffered. Rather, was the allowance for the injuries flowing from the various ailments (the accidents) which followed in the train of the compensable hernia. They are ailments which in the legal sense we hold to be tantamount to accidents arising out of and in the course of his employment and hence compensable under the general provisions of the act. Cf. *Dunn vs. Atlantic City, supra.*" (S. C. 146 and 147.)

This reasoning of the Supreme Court was fully justified as will be seen from an examination of the opinion of this Court in the case of *Lundy vs. George Brown & Co.*, 93 N. J. L. 469. This Court there stated:

"In a case where a Petitioner's arm was broken while he was in Defendant's employ, and the fracture united, but there developed an abscess upon the fleshy part of the thumb which resulted in ankylosis, making the thumb useless, our Supreme Court held that the ankylosis of the thumb was an injury arising by

accident out of and in the course of the employment. *Newcomb vs. Albertson*, 85 N. J. L. 435.”

And, so, in our case, the complications which developed as a result of the operation for the hernia were additional injuries and therefore compensable.

It will thus be seen that the award for medical expenses in excess of \$150.00 was made not to cover the hernia operation itself or for the treatment or recovery from the hernia itself, but on the theory that the hernia operation caused a number of serious complications and that these expenses were incurred in treating the complications by surgical procedure and otherwise.

In *Furferi vs. Pennsylvania R. R. Co.*, 117 N. J. L. 508, the Court of Errors and Appeals in construing the hernia provision of the New Jersey Workmen's Compensation Act stated as follows:

“It is the settled rule in this state, in aid of interpretation, that the Compensation Act, grounded as it is in social and economic considerations, is to be liberally construed to effectuate the general legislative policy. *Sigley vs. Marathon Razor Blade Co.*, 111 N. J. L. 25, 166 A. 518; *Hercules Powder Co. vs. Nieratko*, 113 N. J. L. 195, 173 A. 606, affirmed 114 N. J. L. 254, 176 A. 198. The special provision relating to hernia is in the nature of an exception, and, by the same token, is to be strictly construed. A case not within its precise letter is to be excluded.”

It would thus appear to be settled in this State that the special limitations provided for in the hernia provision should be strictly construed.

That being so, the \$150.00 limitation has no application in our case since these medical expenses were not "incident to such operation and recovery," but were occasioned by the complications resulting from the operation.

That an award for such medical expense is proper under our Workmen's Compensation Act is fully borne out by the case of *Dunn vs. Atlantic City*, 120 N. J. L. 141, affirmed by our Court of Errors and Appeals, 121 N. J. L. 588.

In that case the Petitioner sustained a hernia on April 18, 1935. He was operated upon on May 7, 1936. On May 18, 1936, the operating physician called in Dr. Scanlon to treat the petitioner for a medical condition relating to the kidneys. On June 10, 1936, Petitioner died. A Petition was filed on behalf of the dependents claiming:

"that the decedent's death was occasioned by complications arising from the operation for hernia and hence was the result of the injuries sustained in the accident of April 18, 1935."

It was conceded that the death resulted from nephritis. The Petition was dismissed in the Bureau. On Appeal to the Pleas, the determination of the Bureau was set aside and an award entered in favor of Petitioner. This was affirmed by the Supreme Court and again by the Court of Errors and Appeals. We quote the following analysis by the Supreme Court of the testimony of Dr. Scanlon who was the only treating medical doctor.

"Dr. Scanlon testified that when he was called in on May 18, 1936, by Dr. Allman, to treat decedent for a medical condition, the patient was running a fever and was delirious.

He testified that decedent as a result of the shock of the operation for hernia died of nephritis which theretofore had been dormant and 'had not shown itself.' He testified that the shock of this major operation precipitated a fatal stage causing death. He did not say that the operation caused his death, nor did he say that the operation should not have been performed. He testified that the operation was skillfully and carefully done, but he does say that the operation was shock enough to precipitate a fatal stage of nephritis theretofore dormant."

In confirming the award below, the Supreme Court in that case laid down the following rule:

"Now the pertinent rule to be extracted from the cases is this: Where, as here, a workman sustains a hernia from an accident arising out of and in the course of his employment, which injury necessitates a surgical operation, which operation results in a shock which 'lighted up' a dormant condition of nephritis which had theretofore not shown itself, and which but for the accident would not have ensued, and which disease results in his death, a finding that the death was in fact the result of the injury, and was an accident within the meaning of the Workmen's Compensation Act, was justified, even though it was not the natural result of the injury. Geizel vs. Regina Co., 96 N. J. L., 31 114 A. 328, affirmed 97 N. J. L., 331, 116 A. 924; Winter vs. Atkinson-Frizelle Co., 88 N. J. L., 401, 96 A. 360; Voorhees vs. Schoonmaker Co., 86 N. J. L., 500, 92 A. 280; Lundy vs. Brown & Co., 93 N. J. L., 107, 106 A. 362."

An examination of the State of Case in the *Dunn* case, *supra*, discloses that recovery in full was permitted for the medical treatment rendered by Dr. Scanlon, who was not called in until more than a week after the hernia operation had already

been performed and then, only for the purpose of rendering treatment in connection with the complications resulting by reason of the hernia operation. This is exactly the situation in our case. Here, the hernia operation likewise resulted in post operative complications and practically all of the medical expenses were incurred as a result of the treatment rendered necessary by these complications. It would seem that the two cases are analogous.

The employer seeks to differentiate our case from the *Dunn* case on the ground that the last sentence of 34:15-12(x) provides:

“If death results from the hernia or operation, the provisions of said section 34:15-13 shall apply.”

Counsel then takes the position that since section 34:15-13 deals with dependents in the case of death and also provides for medical and hospital services that, therefore, while such medical and hospital expense was proper in the *Dunn* case because death resulted there, no such medical or hospital service may be recovered in our case because no death has resulted. We respectfully submit that this position has no basis in fact or law.

The sentence above quoted from 34:15-12(x) provides that:

“If death results *from a hernia or operation* the provision of said section 34:15-13 shall apply.” (Italics ours.)

The death referred to in this provision of the hernia statute is expressly limited to death resulting from a hernia or death resulting from an operation to correct the hernia. It has no relation

to death resulting from any other cause. An examination of the State of Case and of the record in the *Dunn* case will show that this hernia provision had no bearing in the result arrived at. In the *Dunn* case it was conceded that death resulted not from the operation to correct the hernia or from the hernia, but from a condition of nephritis. Nowhere in any of the briefs of counsel either in the Supreme Court or Court of Errors and Appeals or in any of the opinions is any reference made to this section of the hernia statute. The reason for this is obvious. This hernia provision did not apply because the death in the *Dunn* case resulted from nephritis and not from the hernia or from the operation to correct the hernia. That being so, the award made for treatment rendered by Dr. Scanlon, which had nothing to do with the hernia operation itself or recovery therefrom, was made under the general provisions of the Workmen's Compensation Act. This was the basis of the opinion by the Supreme Court affirmed by the Court of Errors and Appeals. We respectfully submit therefore that since the Court of Errors and Appeals allowed recovery for medical treatment rendered necessary by the complications resulting from the operation to correct the hernia in the *Dunn* case the award made for the same in our case is just and proper.

#### POINT IV.

**The allowance of 5% of total in this case is proper under the law.**

The employer under Point III of its brief takes the position that since R. S. 34:15-12(x) has no

provision for permanent disability, that therefore, the allowance made in this case is not justified. We submit that this position has no basis in the law.

Both the Bureau and the Court of Common Pleas found that:

“As a result of the operation to correct said hernia, Petitioner sustained additional injury resulting in \* \* \* permanent disability of 5% of total.” (S. C. 117; S. C. 125.)

The Supreme Court likewise found that:

“Here, however, the allowance for the permanent partial disability was not for the injuries flowing from the compensable hernia which petitioner suffered. Rather was the allowance for the injuries flowing from the various ailments (the accidents) which followed in the train of the compensable hernia. They are ailments which in the legal sense we hold to be tantamount to accidents arising out of and in the course of his employment and hence compensable under the general provisions of the act. Cf. *Dunn vs. Atlantic City, supra.*” S. C. 147.

This finding was based upon the testimony of Dr. Feigen who estimated Petitioner's disability at 10%. (S. C. 65.) On cross examination, Dr. Feigen broke up the 10% by attributing 1% to weakness in the bladder wall and 9% to the defect in the abdominal wall over the cystotomy. (S. C. 71.) Both of these conditions resulted from the suprapubic cystotomy which was performed to alleviate the complications following the herniatomy. No part of the 5% awarded for permanent disability was based upon weakness of the area over the herniatomy itself, be-

cause Dr. Feigen, who was the only physician to estimate the extent of disability for the Petitioner since the treating physicians were not familiar with estimating disability under the New Jersey Compensation Act, made no estimate of permanent for the hernial repair. In view of this fact, the Bureau, the Common Pleas, and the Supreme Court correctly awarded this 5% of total based upon additional injury sustained by Petitioner. The same point raised by Counsel was raised in a similar situation and passed upon by our Court of Errors and Appeals in the case of *Sigley vs. Marathon Razor Blade Co., Inc.*, 111 N. J. L., 25. There, Petitioner while sharpening safety razor blades was struck in the eye by a broken blade, as a result of which the sight of that eye was destroyed. An award was made for total loss of the eye and 10% of total permanent for impairment due to neurosis. The employer contended that the neurosis was a disability incident to the loss of the eye and since Petitioner had been awarded for total loss of the eye she had been fully compensated for all disabilities incident thereto, inasmuch as the Schedule for compensation had been fully complied with. In rejecting this contention the Court of Errors and Appeals stated:

“But assuming, as appellant contends, that the evidence established that this condition resulted solely from the loss of vision, the consequent disability is nevertheless compensable. They were separate and independent injuries. The fact that each injury resulted from one accident did not make of these a single injury. They were cumulative disabilities distinct in their nature.”

The Court further stated:

“The compensation provided by subdivision (s) of paragraph 11 is for the loss of an eye. It is in full for such specific injury. But this provision compensates for the disability resulting from the loss of the eye only. If there is an additional and independent injury which produces disability, it is compensable, even though it is a consequent of the loss of the eye. It is an independent injury that produces its own disability, separate and distinct from that resulting from the loss of the member. If there is bodily injury combined with a neurosis, or the neurosis supervenes upon the physical ailment, such disability is compensable. This is a construction consistent with the spirit of the act.”

And so in our case an allowance for permanent for weakness in the abdominal wall occasioned by an operation performed to cure a complication arising from the heriotomy, is an injury separate and distinct from the hernia injury itself or the hernia operation. While the hernia provision of the Statute limits recovery insofar as the hernia or hernia operation itself is concerned, just as the Schedule limits the disability for loss of an eye, such limitation has nothing to do with additional injury which may occur by reason of the same accident.

An indication of how far the Courts have gone to award compensation in full for all injuries resulting from an accident is seen from the case of *Flanagan vs. Charles E. Green & Son*, 122 N. J. L., 424 (Errors and Appeals). There, Petitioner sustained a broken leg and while cooperating with the nurses in the removal of bed clothing, in the hospital, suffered a fracture or dis-

location of one of his arms, resulting in permanent injury. Compensation was awarded for the injury to the arm as well as for injury to the leg on the theory that it was directly connected with the first compensable injury. The employer in that case claimed that the second injury was the result of the negligence of the nurses and therefore involved an intervening and superseding cause. The Court rejected this claim and stated that:

“While the question is fairly debatable, we incline to the view that whether the negligent treatment of the injury results in its aggravation or a wholly independent injury, the disability consequent on the second accident is classable as resulting from the first injury, in that it came about through treatment of the compensable injury and was directly connected therewith. In this respect we can see no distinction between the instant case and one in which, through negligent treatment, the disability was increased.” (5 A., 2nd, 742).

The only connection between the two injuries in that case was that the second injury occurred through treatment of the first. Our case is much stronger because the weakness of the abdominal wall over the cystotomy wound was occasioned by complications following treatment of the original injury and likewise represented a new and distinct injury separate and apart from the original hernia or hernia operation. On this point, we also rely upon the case of *Dunn vs. Atlantic City*, previously referred to under Point III. The additional injury in that case was nephritis since it was conceded in that case that the death resulted from the complications ensuing after the

hernia operation and was not caused by the hernia operation itself.

While we feel that under the law of this State where permanent disability results from a hernia operation by reason of weakness of the abdominal wall over the site of the hernia repair, such disability is compensable, we have not argued this point at length because that question is not involved here. In our case, the award for additional injury was based exclusively upon the additional injury resulting from the cystotomy. Dr. Feigen, who estimated the disability on behalf of Petitioner, did not take into account any weakness over the hernia repair and consequently that question is not involved in our case.

On Page 50 of Appellant's Brief, Counsel makes this Statement:

“As has been pointed out by this Court the provision relating to hernia is in the nature of an exception to the general provisions of the whole Act and is to be strictly construed, and a case not coming within the letter of the hernia provisions is to be excluded therefrom *Furferi vs. Pa. R. Co., supra.*”

We are fully in accord with this view. As we construe it, this Court there meant that general provisions of the Workmen's Compensation Act should be liberally construed in favor of the Petitioner. Since the hernia provision is an exception to the general provisions of the Compensation Act as a whole and tends to restrict the broad construction in favor of the Petitioner, the exception itself should be strictly construed against the person seeking to avail himself of the exception.

Therefore, one who attempts to bring himself within the exception must bring himself within the letter of the hernia provision which would seem to refer to the employer who is the appellant in this case.

In view of the foregoing, we respectfully submit that the 5% allowance for permanent disability for additional injury is fully justified.

Respectfully submitted,

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