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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 Cumberland, and Leonidas H. Ho-* 10
gate, Clerk of said Court, and Anna Gilmore,
GREETING:

We being willing for certain reasons
to be certified of and concerning a cer-
(Seal) tain determination and judgment ren-
dered on the eighteenth day of April,
nineteen hundred and twenty-five, by
the Honorable Herbert C. Bartlett, Judge of the
said Court of Common Pleas in and for the said 20
County of Cumberland, in certain proceedings
brought on behalf of Anna Gilmore, petitioner,
against John W. Ewen and London Guarantee &
Accident Co., Ltd., respondent, for the determina-
tion and recovery of compensation under an Act
of the Legislature of the State of New Jersey, en-
titled, "An Act prescribing the liability of an em-
ployer to make compensation for injuries received
by an employee in the course of employment, es-
tablishing an elective schedule of compensation, and 30
regulating procedure for the determination and lia-
bility and compensation thereunder," approved
April fourth, nineteen hundred and eleven, and the
acts amendatory thereof and supplemental thereto,
we command you that the said determination and
judgment, together with all proceedings for the

making of the same, and all things touching and concerning the same, as fully and entirely as before you they remain, or are in your custody and control, you do certify and send, together with this writ, to our Justices of our Supreme Court of Judicature at Trenton, on the twenty-ninth day of August, nineteen hundred and twenty-five, that therein may be caused to be done what of right and according to law ought to be done.

10 Witness, the HONORABLE WILLIAM S. GUMMERE, Chief Justice of our said Supreme Court, at Trenton, this tenth day of August, nineteen hundred and twenty-five.

EDWARD J. KELLEHER,
Clerk.

RALPH N. KELLAM,
Attorney.

20

[ENDORSED]

Returnable August 29th, 1925.

Ralph N. Kellam,
Atty. for Prosecutors.
522 Market St.,
Camden, N. J.

This writ is allowed. Let it be sealed.

30

Luther A. Campbell,
Justice Sup. Ct.

RETURN.

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

I, Leonidas H. Hogate, Clerk of the Court of
Common Pleas in and for the County of Cumber-
land, New Jersey, in obedience to the commands of 10
the writ hereto annexed to me directed, do hereby
certify and send to you the determination and judg-
ment, together with all proceedings for the making
of the same and all things touching and concerning
the same as fully and entirely as the same remain
in my custody and control as by the said writ I am
commanded, as appeared by the schedule hereto an-
nexed.

In witness whereof, I have hereunto set my hand
and the seal of the said court this 19th day of August, 20
A. D. 1925, at Bridgeton, N. J.

LEONIDAS H. HOGATE,
*Clerk of the Court of Common
Pleas in and for the County of
Cumberland.*

(Seal)

4 *Dependents' Claim Petition for Compensation*

DEPENDENTS' CLAIM PETITION FOR
COMPENSATION.

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

10

ANNA GILMORE,
Petitioner, } Claim Petition No.....
v. } August 26, 1924.
JOHN W. EWEN,
Respondent. }

20

Attorney for petitioner, LEROY W. LODER, 107 E.
Commerce St., Bridgeton, N. J.
(Address)

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

The claimant respectfully alleges the following
facts:

- 30
1. What was the full name of the decedent? Robert Gilmore.
 2. Where did decedent live? 40 Pine St., Bridge-
ton, N. J.
(Street Address)
(City or Town)

Dependents' Claim Petition for Compensation 5

3. Sex of decedent. Male.

4. Date of birth of decedent, 17th January, 1879.
(Day, month and year)

5. Give below, in reference to each person claimed to be dependent upon the deceased at the time of accident or death:

Name of each dependent, Anna Gilmore. Age at 10 last birthday, 40. Date of birthday, Nov. 30, 1923. Relation to decedent, Wife.

6. By whom was decedent employed at the time of accident? (Give name and business address.)

John W. Ewen,

(Name)

Cor. South Pearl St. and Glass St.

(Street Address)

Bridgeton, N. J.

(City or Town) 20

7. What was the business of the employer? Selling flour & feed and grain.

8. Did the decedent give a written notice to the employer at the time of hiring, or later, that the Compensation Law was not to apply to him? No.

9. Did he receive such notice from the employer? 30
No.

10. Did the employer have knowledge of this accident? Yes.

11. Did you notify the employer of this accident? No. Decedent notified him.

6 *Dependents' Claim Petition for Compensation*

12. If so, on what date?

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

14. What was the regular occupation of the decedent, and what kind of work was he doing at the time of the accident? Worked as a clerk in selling flour & feed in the flour and feed store and also drove the delivery truck. Was piling sacks of feed and grain in the store.

15. When did the accident happen? February 27, 1924.

(State month, day, year and hour)

16. Where did the accident happen? In the flour and feed store of John W. Ewen.

20

17. What was the nature of the accident, and how did it happen? Decedent was stacking sacks of feed and grain in the store when the bags or sacks of grain caved and one or more heavy bags of grain fell on him, causing injury to stomach, intestines and gall-bladder. The injury resulted in adhesions to stomach, intestines and gall-bladder.

18. Did deceased work any after the accident? Yes.

19. If so, give date he was compelled to stop work. March 29, 1924.

20. Give date of death, April 7, 1924.

21. Were his wages fixed by piece work? No.

30

Dependents' Claim Petition for Compensation 7

22. If so, what was his average weekly wage?.....
23. If wages were fixed by the hour, state rate per hour
24. Give number of hours in an ordinary working day. 9 hours.
25. Give number of days in an ordinary working week. 6. 10
26. State the amount of weekly wages. Eighteen dollars a week and in addition he was to receive a percentage of the profits of the business. I do not know what his percentage was to be. He had only worked in this position since Sept., 1923.
27. How much money have you received from the employer as compensation (not medical aid) since the accident? None. 20
28. Has the employer promised to pay you any compensation? No.
29. If so, how much?
30. Was medical aid required? Yes.
31. If so, was this service furnished by the employer? No. 30
32. What other sum did you expend for medical, surgical or hospital service?

8 *Dependents' Claim Petition for Compensation*

33. Give name and address of physician and hospital. Dr. Millard F. Sewell, E. Commerce St., Bridgeton, N. J. Bridgeton Hospital, Bridgeton, N. J.

34. What other facts are there which you believe important? Decedent was forced to stop work March 29, 1924, on account of the injury. He was
10 operated on at Bridgeton Hospital April 5, 1924, and died April 7, 1924. He died from the injury received and embolus following the operation.

I have not paid the physician's bill of Dr. Sewell. The hospital bill was \$17.

I paid Dr. C. P. Lummis \$10 for assisting at operation.

The burial expenses amounted to about \$270.

35. Are you willing that the Compensation Bureau endeavor to secure compensation for you, by
20 agreement, before calling for an official hearing? No, the matter has already been taken up with the insurance company without result.

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

Dependents' Claim Petition for Compensation 9

And your petitioner will ever pray, etc.

MRS. ANNA A. GILMORE,
(Petitioner)
40 Pine St., Bridgeton, N. J.
(Address)

Filed Jan. 7, 1925.

L. H. HOGATE, 10
County Clerk.

STATE OF NEW JERSEY, }
COUNTY OF CUMBERLAND, } ss.

ANNA GILMORE, 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; 20 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.

MRS. ANNA A. GILMORE.
(Petitioner)

Subscribed and sworn to before me, this twenty-sixth day of August, 1924, at Bridgeton, New Jersey.

CHAS. H. LODER, 30
Notary Public of N. J.

My commission expires Dec. 19, 1928.

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

10 *Dependents' Claim Petition for Compensation*

TO THE RESPONDENT.

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

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

WORKMEN'S COMPENSATION BUREAU.

W. E. STUBBS,
Secretary.

20

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

W. E. STUBBS.

30

RESPONDENT'S ANSWER TO DEPENDENT'S
CLAIM PETITION, OCT. 3, 1924.

NEW JERSEY DEPARTMENT OF LABOR.

WORKMEN'S COMPENSATION BUREAU, 10
Trenton, N. J.

ANNA GILMORE, }
 Petitioner, } Claim Petition No.
 v. } 3207.
JOHN W. EWEN, } September 30th, 1924.
 Respondent. } 20

Attorney for respondent, RALPH N. KELLAM, 522
Market St., Camden, N. J.

In answer to claim petition filed in this cause:

1. What was decedent's name? Robert Gilmore. 30
2. Where did decedent reside? 40 Pine Street,
(Street Address)
Bridgeton, N. J.
(City or Town)

12 *Respondent's Answer to Dependent's
 Claim Petition*

5. Do you question the dependency, age or relation of any of the persons named in question No. 5 of the claim petition? If so, specify No.

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

7. State your business. Dealer in flour, feed & 10 grain.

8. Did you receive written notice from the decedent at the time of hearing, 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? Shortly after accident.

20

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

12. If so, on what date ? x x x x

13. Has any claim for compensation been made? Yes.

30

14. What was the regular occupation of the decedent, and what kind of work was he doing at the time of the accident? Clerk, selling feed and flour. At the time of accident was storing feed in warehouse.

15. When did the accident happen? February 27, 1924.

(State month, day, year and hour)

*Respondent's Answer to Dependent's
Claim Petition* 13

16. Where did the accident happen? In warehouse of John W. Ewen.

17. What was the nature of the accident, and how did it happen? Some bags of grain fell on Robert Gilmore and Albert Hiles, who was working with him.

18. Did the decedent work any after the accident? 10
Yes.

19. If so, give date he stopped work. March 29th,
1924.

20. Give date of death. April 7, 1924.

21. Were his wages fixed by piece-work? No.

22. If so, what was his average weekly wage? x x 20

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

24. Give number of hours in an ordinary work-
ing day. Ten hours.

25. Give number of days in an ordinary work-
ing week. Six.

26. State the amount of weekly wages. Eighteen 30
dollars.

27. How much have you paid as compensation
(not medical aid) since the accident? Nothing.

14 *Respondent's Answer to Dependent's
 Claim Petition*

28. Have you promised to pay compensation? No.

29. If so, how much? x x x x

30. Was medical aid required? Not at time of accident.

31. If so, did you furnish all the medical, surgical
10 or hospital services, or other expense of last sickness? No medical, surgical or hospital services have been furnished by the employer.

32. Between what dates was service rendered?
x x x x

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

20 34. What other facts are there which you believe important? If you deny that compensation is payable in this case, explain fully your reason for this conclusion. Decedent stated to his employer shortly after the accident that he was not injured. He continued to work steadily for his employer without any complaint, until March 29, 1924, when he was taken ill on the job and was removed to his home by his employer. Decedent then called in Dr. Millard F. Sewell, who treated him at his home until
30 April 5, 1924, when the patient was removed to the Bridgeton Hospital and operated on. Decedent died April 7, 1924. It is denied that these conditions were due to a trauma occurring at the date of the accident of February 27, 1924, and it is further denied that the decedent's illness and death were

*Respondent's Answer to Dependent's
Claim Petition* 15

in any way related to the accident of February 27,
1924.

LONDON GUARANTEE &
ACCIDENT CO., LTD.,
J. V. WILLIAMS,
(Respondent)
Resident Manager,
512-14 Walnut St.
(Address) 10

The London Guarantee & Accident Company, Ltd.,
avers that it issued a policy of compensation insur-
ance to John E. Ewen, respondent, under Chapter
178, Laws of 1917, and its amendments, and there-
fore asks leave to intervene as respondent in the
within claim.

RALPH N. KELLAM, 20
Attorney for Respondent.

And now, this day of , 1924,
the petition of the London Guarantee & Accident
Co., Ltd., insurance carrier, to intervene as respon-
dent in the within case, is granted.

STATE OF PENNSYLVANIA, }
COUNTY OF PHILADELPHIA, } ss. 30

JAMES WILLIAMS, resident manager of the Lon-
don Guarantee & Accident Co., Ltd., of full age, be-
ing duly sworn according to law, on his oath de-
poses and says: That he is the manager of the in-

16 *Respondent's Answer to Dependent's
 Claim Petition*

surance carrier of the respondent named in the foregoing answer to claim petition; that he has read the same and is familiar with the contents thereof; and that the matters and things therein set forth are true according to the best of his knowledge and belief.

10 LONDON GUARANTEE &
 ACCIDENT CO., LTD.,
 J. V. WILLIAMS,
 (Respondent)
 Resident Manager.

(Seal)

Subscribed and sworn to before me, this second day of October, 1924, at Philadelphia.

RAYMOND SCOTT,
Notary Public.

20 My commission expires Feb. 26, 1927.

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

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

W. E. STUBBS.

30

*Respondent's Answer to Dependent's
Claim Petition* 17

STATE OF NEW JERSEY, }
COUNTY OF CUMBERLAND, } ss.

I. L. H. HOGATE, Clerk of the County of Cumberland, also Clerk of the Court of Common Pleas in and for said county, the same being a court of record, do hereby certify the foregoing to be a true copy of the defendants' claim petition and respondent's answer to dependent's claim petition therein recited, as taken from and compared with certified copies thereof, filed in my office Jan. 7, 1925, by the Workmen's Compensation Bureau. 10

In witness whereof, I have hereunto set my hand and affixed the seal of said county and court this 19th day of August, A. D. 1925.

(Seal) L. H. HOGATE,
Clerk.

20

30

and provisions of an Act of the Legislature of the State of New Jersey, entitled, "An Act prescribing the liability of an employer to make compensation for injuries received by the employee in the course of the employment, establishing an elective schedule of compensation and regulating procedure for the determination of liability and compensation thereunder," approved April 4, 1911, together with the several supplements and acts amendatory thereof, 10
and the London Guarantee & Accident Company, Ltd., having applied and having been admitted as a party respondent to this proceeding, and a time and place for the hearing of said petition having been fixed, and it appearing to me, the Referee, that said petition and the order fixing the time and place of said hearing have been duly served upon the respondents, and an answer having been filed by the respondent, the London Guarantee & Accident Company, Ltd., and the petitioner and said respondent 20
having appeared on the twelfth day of November, 1924, the date set for the summary hearing herein, the petitioner being represented by Leroy W. Loder, Esq., and the respondent by Ralph N. Kellam, Esq., and I, the Referee, having heard the testimony offered in behalf of the parties hereto, and the stipulation of fact made at the hearing by the respective counsel, to find and determine from the evidence as follows:

30
First: That Robert Gilmore, the deceased husband of the petitioner, was on February 27, 1924, in the employ of John W. Ewen, the respondent, which employment was subject to the compensation Section of page 96, Laws of 1911, and supplements and amendments thereto.

Determination of Facts and Rule for Judgment 21

payments of \$8.00 per week for the balance of 300 weeks.

It is further ordered that respondents pay petitioner \$150.00 on account of funeral expenses, and \$139.00 for medical expenses.

It is further ordered that respondents pay the costs of this proceeding, and a fee of \$150.00 to the attorney for the petitioner.

CHARLES E. CORBIN, 010
Referee.

STATE OF NEW JERSEY, }
COUNTY OF CUMBERLAND, } ss.

I, L. H. HOGATE, Clerk of the County of Cumberland, and also Clerk of the Court of Common Pleas, in and for said county, the same being a court of record, do hereby certify the foregoing to be a true copy of the determination of facts and rule for judgment therein recited, as taken from and compared with the original determination of facts and rule for judgment, filed in my office Nov. 26, 1924, and as found recorded in my said office in Book 21 of Common Pleas Judgments, page 470. 20

In witness whereof, I have hereunto set my hand and affixed the seal of said county and court this 19th day of August, A. D. 1925. 30

(Seal)

L. H. HOGATE.

NOTICE OF APPEAL.

(Filed Dec. 25, 1924.)

COURT OF COMMON PLEAS OF
CUMBERLAND COUNTY.

10

<p>ANNA GILMORE, <i>Petitioner,</i></p> <p style="text-align: center;">v.</p> <p>JOHN W. EWEN and LON- DON GUARANTEE & ACCI- DENT COMPANY, LTD., <i>Respondents.</i></p>	}	<p>On Appeal from Judgment of Deputy Compensation Com- missioner, Hon. Charles E. Corbin. Notice of Appeal.</p>
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*To Clerk of Cumberland County, Secretary of
Workmen's Compensation Bureau, and Leroy
W. Loder, Attorney for Petitioner:*

Take notice, that the respondents appeal from the whole of the judgment entered by the Deputy Commissioner of the Workmen's Compensation Bureau in the above entitled cause, awarding the petitioner compensation for the death of her husband as follows:

Medical and hospital expenses.....	\$139.00
Weekly compensation rate	8.00
Compensation for accident resulting in	

30

Order Fixing Time for Hearing 23

death 300 weeks total amount due for
accident resulting in death..... 2400.00
Amount allowed for funeral expenses..... 150.00
Counsel fee allowed 150.00
upon the following ground:

1. That the judgment of the learned Deputy Commissioner, as entered in the above entitled cause, is not supported by competent, proper and valuable evidence. 10

RALPH N. KELLAM,
Attorney for Respondents.

ORDER FIXING TIME FOR HEARING.

(Filed Feb. 20, 1925.)

CUMBERLAND COUNTY COURT OF 20
COMMON PLEAS.

ANNA GILMORE,
Petitioner-Appellee,
v.
JOHN W. EWEN and LON-
DON GUARANTEE & ACCI-
DENT Co., LTD.,
Respondents-Appellants.

Workmen's Compensa-
tion. On Appeal.
Order fixing time
for hearing.

30

Application being made to the Court to fix a time for the hearing of the above stated cause on appeal, it is ordered that Friday, the 20th day of March, 1925, at 10 o'clock A. M., be fixed as the time, and the Court House at the City of Bridgeton, in the

County of Cumberland and State of New Jersey, as
the place for hearing said appeal.

HERBERT C. BARTLETT,
Judge.

We hereby consent to the making of the above
order.

10 RALPH N. KELLAM,
Attorney of Respondents-Appellants.
LEROY W. LODER,
Attorney of Petitioner-Appellee.

MINUTES OF HEARING.

CUMBERLAND COUNTY COURT OF
COMMON PLEAS.

20 ANNA GILMORE, *Appellee,* }
v. } On Appeal from
JOHN W. EWEN and LON- } Judgment of Deputy
DON GUARANTEE & ACCI- } Commissioner.
DENT Co., LTD., }
Appellants. }

30 LEROY W. LODER, attorney for appellee.
R. W. KELLAM, attorney for appellants.

This matter coming on to be heard this 20th day
of March, A. D. 1925, before Hon. Herbert C. Bart-
lett, Common Pleas Judge, the Court, after hearing
the argument of counsel, reserved decision.

MEMORANDUM.

CUMBERLAND COUNTY COURT OF
COMMON PLEAS.

(Filed Apr. 9, 1925.)

10

<p>ANNA GILMORE, <i>Petitioner-Appellee,</i></p> <p style="text-align: center;">v.</p> <p>JOHN W. EWEN and LON- DON GUARANTEE & ACCI- DENT Co., LTD., <i>Respondents-Appellants.</i></p>	}	<p>Workmen's Compen- sation. On Appeal. Memorandum.</p>
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BARTLETT, J.:

A reading of the testimony satisfies me that the injury sustained by Robert Gilmore on February 27th, 1924, while in the course of his employment with the appellant, John W. Ewen, was the cause of his death on April 7th, 1924.

Petitioner was struck by a bag of feed weighing 100 pounds on February 27th, 1924, falling on his back and within two weeks after the accident he complained that it hurt him to carry bags of feed and asked a fellow employee, Hiles, to do this work for him. When he was operated on on March 29th, 1924, the surgeon found a mass of adhesions between the walls of his stomach and intestines. These adhesions, as Dr. Sewell testifies, could be caused by

30

traumatism or from disease of the organs themselves. An examination of the different organs showed no disease; and to my mind it seems, from reading the medical testimony, a reasonable inference that the adhesions followed or were caused by the blow of the 100 pounds bag of feed; that is the inference drawn by the physician and I feel that the testimony gives rise to a reasonable inference that the death of decedent was attributable to the
 10 injury received on February 27th, 1924.

See *Manziano v. Public Service Gas Company*, 92 N. J. P. 322.

Also see *Muyik v. Erie Railroad*, 85 N. J. Law, p. 129.

I will therefore affirm the judgment based on the Referee's finding and direct that judgment be entered in the Cumberland County Common Pleas Court as follows:

	Medical and funeral expenses	\$139.00
20	Workmen's compensation rate	8.00
	Compensation for accident resulting in death—300 weeks making total amount due for accident resulting.....	2400.00
	Amount allowed for funeral expenses....	150.00
	Counsel fee allowed	150.00
	Total	<u>\$2847.00</u>

I will further order that the respondent pay a
 30 counsel fee to the attorney of petitioner of \$100.00 in this court together with the costs of these proceedings.

STATE OF NEW JERSEY, }
CUMBERLAND COUNTY, } ss.

I, L. H. HOGATE, Clerk of the County of Cumberland and also Clerk of the Court of Common Pleas in and for said county, the same being a court of record, do hereby certify the foregoing to be a true copy of the notice of appeal and order fixing time for hearing, minutes of hearing and memorandum of the court therein recited as taken from and compared with the original notice of appeal, order fixing time for hearing and memorandum of the Court on file in my office and of the minutes of hearing found recorded in my office in Common Pleas Minute Book, page 583. 10

In witness whereof, I have hereunto set my hand and affixed the seal of said county and court this 19th day of August, A. D. 1925.

(Seal)

L. H. HOGATE.

20

30

JUDGMENT FOR PETITIONER ON APPEAL.

CUMBERLAND COUNTY COURT OF
COMMON PLEAS.

10 ANNA GILMORE,
Petitioner-Appellee,
v.
JOHN W. EWEN and LON-
DON GUARANTEE & ACCI-
DENT Co., LTD.,
Respondents-Appellants. } On Petition for Com-
pensation Under
Workmen's Com-
pensation Act; On
Appeal from Work-
men's Compensa-
tion Bureau; Judg-
ment for Petitioner
on Appeal.

20

This matter was heard before Hon. Herbert C. Bartlett, Common Pleas Judge, at the Court House in Bridgeton on March 20th, 1925, the trial of such appeal being based exclusively on the transcript of the record and testimony filed. The Court, after considering the same and hearing and considering the argument of counsel, did on the 15th day of April, A. D. 1925, file with the clerk of this court
30 its findings of facts and rule for judgment as follows, to wit:

“A petition having been filed by the petitioner, with the Workmen's Compensation Bureau of the Department of Labor, praying for the compensation to which the petitioner may be entitled by virtue of the terms and provi-

sions of an Act of the Legislature of the State of New Jersey, entitled, 'An Act prescribing liability of an employer to make compensation for injuries received by an employee in the course of the employment, establishing an elective schedule of compensation and regulating procedure for the determination of liability and compensation thereunder,' approved April 4, 1911, together with the several supplements thereto and acts amendatory thereof, and a copy of said petition, together with a notice to the respondents to file an answer to the same within ten days, having been served upon the respondent, John W. Ewen, as required by law, and the respondent, The London Guarantee & Accident Co., Ltd., having applied and having been admitted as party respondent to this proceeding, and the respondents having filed an answer to said petition and the order fixing the time and place of hearing and determining the matter in dispute in a summary manner having been duly served upon the respondents and an order fixing the time and place for the hearing having been served on the respondents and the petitioner, and the respondents having appeared before Charles E. Corbin, a Referee, duly appointed under the statute, on November 12, 1924, at the City Hall at Millville, New Jersey, and said Referee, after hearing the evidence produced before him, did make the following award and determination of facts:

'First: That Robert Gilmore, the deceased husband of the petitioner, was on February 27, 1924, in the employ of John W. Ewen, the respondent, which employment was subject to the

Compensation Section of page 96, Laws of 1911, and supplements and amendments thereto.

Second: That on the aforesaid date, deceased met with an accident arising out of and in the course of his employment, that intoxication was not the proximate cause, nor was the injury self-inflicted.

10 Third: That the respondent, John W. Ewen, had knowledge of said accident in the time prescribed in paragraph 15 of the said act.

Fourth: That the said accident occurred as a result of some bags of feed falling upon decedent, which injured him internally and caused his death on April 7, 1924.

Fifth: That petitioner is entitled to medical expenses amounting to \$139.00.

20 Sixth: That petitioner is entitled to be allowed on account of burial expenses of decedent, the sum of \$150.00.

Seventh: That the wages of petitioner's deceased husband were \$18.00 a week.

Eighth: That petitioner is entitled to the cost in this proceeding, together with her attorney's fee.

It is therefore ordered, on this twenty-fourth day of November, 1924, that judgment final be entered in favor of the petitioner and against the respondents, and that respondents make payments to the petitioner as follows:

30 For the accident resulting in the death of her husband, immediate payment of compensation at the rate of \$8.00 per week from the date of the accident to the date of this order, and thereafter weekly payments of \$8.00 per week for the balance of 300 weeks.

It is further ordered that respondents pay petitioner \$150.00 on account of funeral expenses, and \$139.00 for medical expenses.

It is further ordered that respondents pay the costs of this proceeding, and a fee of \$150.00 to the attorney for the petitioner.

Charles E. Corbin, Referee.'

That notice of appeal was duly filed by the respondents with the secretary of said Workmen's Compensation Bureau and clerk of the County of Cumberland and served upon the attorney of the petitioner within the time allowed by law; that an order was made fixing the time and place for the hearing of said appeal and a transcript of the record of the Workmen's Compensation Bureau, together with the testimony taken in said cause, was duly filed with the clerk of the Court of Common Pleas of the County of Cumberland, and said appeal was heard by me in the presence of the parties and their counsel on March 20, 1925, and the trial of such appeal was based exclusively on the transcript of the record and testimony filed, and after considering the same and hearing and considering the arguments of the counsel of the petitioner and respondents, I do find and determine from the evidence as follows:

'First: That Robert Gilmore, the deceased husband of the petitioner, was on February 27, 1924, in the employ of John W. Ewen, the respondent, which employment was subject to the Compensation Section of page 96, Laws of 1911, and supplements and amendments thereto.

Second: That on the aforesaid date, deceased met with an accident arising out of and

in the course of his employment, that intoxication was not the proximate cause, nor was the injury self-inflicted.

Third: That the respondent, John W. Ewen, had knowledge of said accident in the time prescribed in paragraph 15 of the said act.

10 Fourth: That the said accident occurred as a result of some bags of feed falling upon decedent, which injured him internally and caused his death on April 7, 1924.

Fifth: That petitioner is entitled to medical expenses amounting to \$139.00.

Sixth: That petitioner is entitled to be allowed on account of burial expenses of decedent the sum of \$150.00.

Seventh: That the wages of petitioner's deceased husband were \$18.00 a week.

20 Eighth: That petitioner is entitled to the cost in this proceeding, together with her attorney's fee.'

30 It is, therefore, on this 11th day of April, 1925, on motion of Leroy W. Loder, attorney of the petitioner, ordered that the judgment of the Referee be in all things affirmed; that the respondents herein pay or cause to be paid to the said petitioner the sum of \$139.00 for the expenses of the last sickness of the deceased, the sum of \$150.00 on account of the burial of the deceased, the sum of \$8.00 per week for a period of 300 weeks from February 27, 1924, and also the costs of the proceedings before the Workmen's Compensation Bureau, together with the counsel fee of \$150.00 awarded petitioner's counsel and the costs on appeal in this court, together with a counsel fee of \$100.00 to

be paid by the respondents to the petitioner's counsel and taxed in the costs.

Herbert C. Bartlett,
Judge."

Whereupon it is considered that the aforesaid petitioner, Anna Gilmore, recover of the respondents, John W. Ewen and London Guarantee & Accident Co., Ltd., the sum of twenty-nine hundred and thirty-nine dollars (\$2939.00), the expenses of last sickness, cost of burial, compensation and counsel fees aforesaid, in form aforesaid assessed and also her costs in this court which are taxed at twenty-seven dollars and twenty-five cents (\$27.25), making in the whole the sum of twenty-nine hundred and sixty-six dollars and twenty-five cents (\$2966.25). 10

Judgment entered and signed this 15th day of April, A. D. 1925. 20

STATE OF NEW JERSEY, }
COUNTY OF CUMBERLAND, } ss.

I, L. H. HOGATE, Clerk of the County of Cumberland, also Clerk of the Court of Common Pleas in and for said county, the same being a court of record, do hereby certify the foregoing to be a true copy of the judgment therein recited as taken from and compared with the original judgment as found recorded in my office in Book 21 of Common Pleas Judgments, page 492. 30

In witness whereof, I have hereunto set my hand and affixed the seal of said county and court this 19th day of August, A. D. 1925.

(Seal)

L. H. HOGATE,
Clerk.

TESTIMONY.

NEW JERSEY DEPARTMENT OF LABOR.

WORKMEN'S COMPENSATION BUREAU.

MILLVILLE, CUMBERLAND COUNTY DISTRICT.

10

ANNA GILMORE,	} Petitioner,	} Employers' Liability.
v.		
JOHN EWEN,	} Respondent.	} Formal Hearing.

20

(Transcript of stenographer's notes of evidence taken in the above entitled matter before the Hon. CHARLES E. CORBIN, Deputy Compensation Commissioner, at the City Hall, Millville, N. J., on the twelfth day of November, 1924, at three o'clock in the afternoon.)

30 APPEARANCES:

LEROY W. LODER, ESQUIRE, attorney for the petitioner.

RALPH N. KELLAM, ESQUIRE, J. WEBSTER JONES, ESQUIRE (present), attorneys for the respondent.

The Referee: Now, can we stipulate to everything outside of the accident, and can you stipulate as to the accident or not, or do you want proof of that?

Mr. Jones: Well, we will want proof as to the nature and the extent of the accident. I think that is very important in connection with the medical testimony that will follow. That is, the manner in which it occurred and the extent. Everything else we can agree to. 10

The Referee: It is stipulated and agreed between counsel for the petitioner and respondent that Robert Gilmore was struck by falling sacks of feed, which happening arose out of and in the course of his employment, February twenty-seventh, nineteen twenty-four; that at the time of the accident his wages were eighteen dollars a week; that he died on April seventh, nineteen twenty-four; that he left a widow totally dependent upon him. 20

Mr. Loder: Then, as I take it, about the only thing in dispute is whether or not any injury that he may have sustained by reason of these bags falling on him was responsible for his death?

Mr. Jones: That is the question in issue, as I understand it.

MRS. ANNA GILMORE, SWORN.

By Mr. Loder:

Q. Mrs. Gilmore, you are the petitioner in this case, are you?

A. Yes.

Q. And the widow of Robert Gilmore?

10 A. Yes.

Q. When did Mr. Gilmore die?

A. April seventh.

Q. Nineteen twenty-four?

A. Twenty-four.

Q. For a while prior to his death, he was employed by Mr. John W. Ewen in Bridgeton?

A. Yes, sir.

Q. How long had he worked for Mr. Ewen?

20 A. I don't know, about six or seven months, I guess.

Q. Now, while he was working for Mr. Ewen, do you recall his returning home and complaining of any injury that he alleged that he had sustained?

A. He came home and said that the feed had fell on him and hurt him.

Q. And when was that?

A. February twenty-seventh.

Q. Now, did he complain of any injury or any pain?

30 A. Not at that time, but afterwards he said he was awful sore through him.

Mr. Jones: Can you fix the date of that?

The Witness: No.

Q. How long after February twenty-seventh was it that he complained and said he felt awful sore through him?

A. The next day he said he was sore.

Mr. Jones: I object to the form of the question. The gentleman is illustrating and attempting to put words in the mouth of the witness. Please don't ask her leading questions.

10

Mr. Loder: I asked when it was that he made the complaint to her.

Mr. Jones: Then you asked about when he felt sore through him, and made motions toward the abdomen.

Q. After that statement on the next day, did he complain on any other occasion?

A. Of being sore?

20

Q. Yes.

A. He complained right on of being sore, and I bathed him several times on the side before he was taken down sick.

Q. Where did he complain of being sore at?

A. Right here. (Indicating.)

The Referee: Indicating the right side of the abdomen, I should say.

30

Q. Now, when was a physician first called to attend him?

A. I think it was March twenty-ninth when he was taken down in bed.

Q. What physician was called?

A. Doctor Sewell.

Q. Who had been your husband's physician for a number of years prior to this?

A. Doctor Sewell.

Q. For how long, do you know?

A. Fifteen or sixteen years.

Q. During that time, had any other physician attended him that you know of?

A. No.

Q. When did your husband stop work?

10 A. March twenty-ninth, the day he was taken sick. He went down to work, and Mr. Ewen brought him home.

Q. Mr. Ewen was the employer?

A. Yes.

Q. Now, after Doctor Sewell was called to attend him, did your husband remain at home, or was he taken to the hospital?

A. He stayed there until the day he was operated on and he was taken to the hospital.

20 Q. Do you know when he was operated on?

A. April fifth.

Q. And did he recover from the operation?

A. What do you mean?

Q. Your husband died, did he?

A. Yes.

Q. When did he die?

A. April seventh.

30 Q. You say that Doctor Sewell had been his physician for the past fifteen years. Had your husband had any serious illness during that period?

A. He was never sick in his life before, only just with a cold.

Q. When you say Doctor Sewell was his physician, you mean he was the family physician?

A. Yes.

Q. Did you notify Mr. Ewen that compensation was claimed by you?

Mr. Jones: That will be admitted.

Mr. Loder: That is admitted.

Q. Mr. Ewen never paid you anything?

A. No.

Mr. Jones: That is admitted also, that he did not.

10

Q. Now, Dr. Sewell rendered you his bill for his services during the last illness of your husband?

A. No.

Mr. Jones: Have you the bill there? I will admit any proof if it is self-explanatory, that is, shows the date, and so forth.

20

Mr. Loder: Well, I offer in evidence Doctor Sewell's bill showing that the expenses of the last sickness due him amount to one hundred and twelve dollars.

The Referee: That is admitted, is it?

Mr. Jones: Yes, I will admit it.

The Referee: The medical bill of Doctor Sewell for one hundred and twelve dollars is admitted.

30

(Bill of Doctor Sewell received in evidence and marked Exhibit P1.)

Q. Now, Doctor Lummis had a bill of ten dollars?

A. Yes.

Q. He assisted at the operation?

A. Yes.

The Referee: That is admitted?

Mr. Jones: Yes, we will admit that he charged ten dollars for assisting at the operation.

10

Q. Now, there was an undertaker's bill of two hundred and seventy dollars. What was the undertaker's name?

A. Kenneth Karl.

The Referee: Who paid that bill?

The Witness: I did.

20 Mr. Loder: I suppose there is no objection to that up to the statutory amount?

Mr. Jones: No.

The Referee: Now, was there a hospital bill, too?

Q. Did you pay a hospital bill, too?

A. Yes.

Q. How much was that?

30 A. Seventeen dollars.

Mr. Jones: Seventeen dollars at the Bridgeton Hospital. That is admitted, too.

Mr. Loder: Now, I think the stipulation covered the question of dependency.

Mr. Jones: Yes, we agree that she——

Mr. Loder: Cross-examine.

Cross-examination.

By Mr. Jones:

Q. Mrs. Gilmore, do you recall the date that this accident was supposed to have happened? Do you 10 recall the date that it was supposed to have happened?

A. The date it did happen?

Q. Yes.

A. Yes, it was supposed to be the twenty-sixth or twenty-seventh.

Q. Did your husband complain to you on the same evening or on the following evening?

A. On the same evening that he came home.

Q. Doctor Sewell, you said, was your family physician for fifteen or so years? 20

A. Yes.

Q. Did he treat your husband during that period?

A. What for? For anything?

Q. For anything?

A. Just for colds, or something like that.

Q. Did he at any time ever have occasion to make a complete or thorough physical examination of your husband that you know of?

A. I don't think so, only when he had the insurance paper drawn up. 30

Q. Did Doctor Sewell make the examination for the insurance company at that time?

A. I don't think so. Doctor Wilson did.

Q. Doctor Sewell never made a real thorough examination that you know of?

A. Not that I know of.

Q. You say his treatment was confined mostly to colds?

A. Just now and then a slight cold, that is all.

Q. In the period of fifteen years, will you say he treated him an average of twice a year or once a year?

A. No, I can't say that much.

10 Q. But there was never anything more serious than a cold that you can recall that would call for the doctor's attention or treatment?

A. No.

Q. Do you know how long before the accident of February twenty-seventh it was that the doctor last saw him?

A. No.

Q. You don't know?

A. No.

20 Q. It might have been six months or a year or even longer, as far as you are concerned?

A. I don't remember.

Q. Now, referring again to the question that I asked you concerning your husband complaining of the accident. Are you positive that it was the same evening, or was it the evening following that he first complained?

A. It was the same evening, because he came right home and told me.

30 Q. I don't want to confuse you, but I ask you to think. Did you ever make a statement differing from that in any particular?

A. No.

Q. Do you recall signing a statement for an investigator of the insurance company?

A. Yes.

Q. Do you recall what you stated in that about your husband complaining?

A. Yes.

Q. Do you recall that you stated that he complained the same evening following?

A. The same evening, I told him.

Q. Would you recognize that statement if you saw it now, the one you signed for the insurance investigator?

A. I didn't read it; I just signed it. 10

Q. Who is Alfred R. Gilmore?

A. My son.

Q. Was he present when you signed the statement for the investigator?

A. Yes.

Q. Is he present today?

A. Yes.

Q. Did he read the statement to you, or did he read it over himself?

A. I can't say. 20

Q. Was the statement read to you before you signed it?

A. Really I don't remember. I was sick at the time, and I was in no condition.

Q. Did you know what was in the statement at all?

A. Sure, I know he put down what I told him, or at least, I supposed he did.

Q. Now, did you at that time tell him that it was on the evening following the supposed accident that your husband complained? 30

A. I did not, I told him that was the same evening.

Q. That is your signature, is it? On both sheets of that? (Handing witness two sheets of paper.)

A. Yes.

Q. That is?

A. Yes.

Q. That is the statement you signed?

A. That is my name.

Q. That is the only statement you ever gave in connection with this to the investigator of the insurance company that you recall of?

A. Yes.

10 Mr. Jones: I want to offer that in evidence. The second paragraph of that is, I think----

Mr. Loder: I haven't got any objection.

Mr. Jones: Then I desire to offer in evidence a statement which has been identified by Mrs. Gilmore.

The Referee: If you want to offer it for identification at this time—
20

Mr. Jones: Yes, I offer it for identification.

(Two sheets of paper received and marked D1 for identification.)

Mr. Jones: That is all.

By Mr. Loder:

30 Q. Now, Mrs. Gilmore, you say that your husband complained of the injury on the same day that it happened. When did he first tell you that he felt sore through him?

A. The next day, the following day.

Mr. Loder: I guess that clears it up.

By Mr. Jones:

Q. He complained the following day?

A. Of the soreness.

Mr. Loder: Yes, complained about the soreness the next day and about the accident the same day.

Mr. Jones: Yes, that explains it.

10

Mr. Loder: That is all.

ALBERT HILES, SWORN.

By Mr. Loder:

Q. Now, Mr. Hiles, where do you live?

20

A. Alloway.

Q. In February and March of this year, were you employed by Mr. John Ewen?

A. Yes, sir.

Q. At Bridgeton?

A. Yes, sir.

Q. And was Robert Gilmore employed there?

A. Yes, sir.

Q. What kind of work did Gilmore do?

A. He drove a truck for him and unloaded the 30 cars.

Q. Unloaded bags of feed?

A. Whatever was due there.

Q. What did you do?

A. I was around there helping to unload the cars.

Q. Now, do you recall an accident happening to Robert Gilmore while you were working with him?

A. Yes, sir.

Q. When was that?

A. I couldn't tell you what date it was; I didn't put it down.

Q. About when was it?

A. Sometime in February.

Q. Sometime in February, 1924?

A. Yes.

10 Q. Now, what was he doing and what were you doing at the time?

A. We were piling bags, unloading the car and we had to pile the bags up alongside of the post six or seven high and I was standing right up against these piles of bags. I stooped down with the bag on the floor and these bags came right down over me and bent me right down double and I couldn't see anything what happened to him, but the top bag struck him and knocked him over.

20 Q. The top bag struck Gilmore and knocked him over?

A. Yes.

Q. Did you hear him call out or say anything?

A. I couldn't hear; I was unconscious for just a second.

Q. Now, what kind of bags were they?

A. They were cow feed bags, chowder, or some kind of stuff they call it.

Q. Feed of some sort?

A. Yes, sacks.

30 Q. How many pounds are in each sack?

A. A hundred pounds in each bag.

Q. Now, after Mr. Gilmore got up, did he go on with the work?

A. Yes, but I felt pretty bad and I went in the office a while and sat down and John Ewen came

out there, heard the racket. He stood there and talked a little bit and I told him that I wanted to sit down a little while.

Q. Where was Mr. Ewen when this accident happened?

A. He was in the office.

Q. Well, where were these bags in reference to the office, how far from it?

A. Just the length of the store.

Q. The office is just a little place that is partitioned off of this store room? 10

A. Yes.

Q. Did these bags make a noise when they came down?

A. Yes, they made a bit of noise.

Q. Did Mr. Ewen come out?

A. Yes, he came out right away?

Q. Did he inquire what happened?

A. Yes, he inquired what happened and we told him what happened, the bags fell down on us. 20

Q. Could he see by looking at the bags?

A. Yes.

Q. Did Gilmore talk to him?

A. Yes, but I don't know what they were talking about. I went in and sat down and they came and wanted to know how I felt.

Q. You told him what happened?

A. Yes.

Q. And Gilmore talked to him?

A. Yes. 30

Q. How long did Mr. Gilmore continue to work after the accident?

A. Well, I was around there two or three weeks afterwards—I used to go down there, in there, and I was around there two weeks afterwards and the last two times I was down there, he always carried

the feed himself, and he asked me if I wouldn't carry the feed that time. He said it hurt him to carry the bags, so I done it for him.

Q. Did he say where it hurt him?

A. No, he didn't say where it hurt him. He said it hurt him to carry the bags; he said he felt a little bad, or something.

Q. How long was that after the accident that he said it hurt him to carry the bags?

10 A. Two weeks afterwards.

Q. Prior to that time when you had been working there, was he accustomed to carrying the bags?

A. Yes, I never carried any bags, I used to hand them out to him.

Mr. Loder: I see; cross-examine.

Cross-examination.

20 By Mr. Jones:

Q. Mr. Hiles, how tall are you?

A. Well, I just can't say; not very tall.

Q. How many bags had you piled up around this post at the time they fell?

A. I think it was either five or six; I am not sure.

Q. Were you piling them on end or on side?

A. On side, flat down.

30 Q. About how big were these bags when you laid them flat or on its side, about how thick were they?

A. They were above your head. How thick would they be? I suppose they would be six or eight inches thick.

Q. Then if you had five or six of them piled up against the post the height of those bags would be five or six times six or eight inches, is that right?

A. Yes, sir.

Q. If the bags were six inches in thickness and you had piled six of them—were eight inches in thickness and you had piled six up, that would make the pile forty-eight inches high, or four feet?

A. Yes, sir.

Q. Do you mind standing up and indicating against that door jamb just about how high you think that pile of bags was that toppled over?

A. Just about that high about one bag over my head. (Indicating.) 10

Q. Will you just stand there a moment? If that door jamb was the bags, you were standing against the bags in that manner, is that right?

A. No, I was stooping down here to pick up a bag. He was getting hold of one end and I was getting hold of the other end and we had to back up against the bags, and when these bags came down, the top bag struck him and the other two landed on me. 20

Q. I see; thank you. These bags contained what you call chowder, is that it?

A. Yes.

Q. Was that soft feed of some description?

A. Yes, they are soft.

Q. They were much the same as a pillow?

A. They are not as soft as that, but they are not hard.

Q. Are they as hard as corn meal?

A. Not quite as hard as corn meal. 30

Q. It wasn't a grain, was it?

A. Kind of oats and grain together, mixed.

Q. The effect of such a blow is a soft dull blow, is that it?

A. Well, yes, a blow that would knock you over, see.

Q. It wouldn't scratch you or cut you?

A. No, it wouldn't cut you.

Q. Felt like a pillow hitting you, is that it?

A. The weight coming down on you would knock you down.

Q. You say you were rendered unconscious as a result of the bags falling on you?

A. Just for a second.

Q. And you didn't see which of the bags hit Mr.
10 Gilmore?

A. I didn't see anything. I didn't see what happened, only he said the bags struck him and knocked him over.

Q. He didn't say what part of the bag struck him?

A. No, I didn't see. He said the bag struck him and knocked him over against another pile of bags and knocked him down. What happened to him, I couldn't see.

Q. You don't know what part of his body was
20 struck as a result of that?

A. I don't know, no, sir. It bended me down, just bent me down, and I had two bags on me.

Mr. Jones: That is all:

By Mr. Loder:

Q. Did you say he said it knocked him over against another bag?

30 A. Against another pile of bags.

Q. These pillows Mr. Jones talked about knocked you unconscious, didn't they?

A. It did.

Mr. Loder: That is all.

By Mr. Jones:

Q. What was in this other pile of bags?

A. We had piled these bags up against this other pile and it threw him up against this pile we was working on.

Q. Do you know what position he was in when this other bag hit him? Was he bending over?

A. Yes, we were both bent down that way getting hold of this bag on the floor. 10

Q. Did that fall between your head and his head?

A. It struck him?

Q. Did he say it struck him on the head?

A. I don't know, he said it struck him when he was bent over.

Q. But you were both bent at that time?

A. Yes.

Q. Was he facing the bags when he fell over?

A. Yes, and I had my back to them.

Q. And he was bent down in this manner I am at 20
right angles lifting the bags?

A. I was right back of him and he was right face to me in the same manner.

Mr. Jones: Indicating at right angles, with the upper body at right angles to the bags?

The Witness: Yes, sir.

Mr. Jones: That is all.

30

DR. MILLARD F. SEWELL, SWORN.

By Mr. Loder :

Q. Doctor, you are a physician and surgeon, practicing at Bridgeton, New Jersey?

A. I am.

Q. How long have you been a practicing physician and surgeon?

10 A. About twenty years in Bridgeton.

Q. Of what school are you a graduate?

A. Jefferson.

Q. Jefferson Medical College. Had hospital experience?

A. Four years.

Q. And you were a surgeon in the army?

A. Yes.

Q. And practiced surgery and medicine at Bridgeton?

20 A. I did.

Q. Did you know Robert Gilmore in his lifetime?

A. I did.

Q. How long had you known him?

A. Fifteen or sixteen years.

Q. During all that time, had or had you not been his family physician?

A. Why, I had attended his wife and boy, but I never did very much for him, maybe some little slight illness—nothing to amount to anything.

30 Q. Some minor ailments you treated him for?

A. Yes.

Q. Now, in March of this year, were you called upon to examine Mr. Gilmore and treat Mr. Gilmore?

A. I was treating his wife at the time and he was taken sick while I was in the house looking out for her.

Q. Can you say when that was?

A. Well, it was some time in March, I don't know the exact date.

Q. 1924, this year?

A. Yes.

Q. As a result of having your attention called to Mr. Gilmore, did you examine him to see what was the trouble with him?

A. Yes.

Q. What were his symptoms at the time you were called on to look after him? 10

A. He was taken with vomiting and a very severe pain in the pit of his stomach; no temperature.

Q. And you diagnosed his injuries as what?

A. I diagnosed his injuries, as probable gall-stones.

Q. Did he at that time give you any history of the case, tell you how long he had been suffering?

A. No, he said he felt uncomfortable in his stomach for a few days, but he wasn't very definite about it. I asked him at the time if he had any injury and his wife was sick in the same bed with him, and he said no. After—later—two or three days later, I asked him again if he had any injury. He said he hadn't told me before because he didn't want to worry her about it, but that he had had an injury. He told me that he had had an injury, and that a bag of feed had fallen down and hit him in the stomach, but that at the time, the evening after, he had a little pain, he didn't think anything about it. He said off and on he had had some little pain ever since then. On the strength of that, I asked the family if they wouldn't like to have a consultation on the case, because I felt he should go to the hospital and be operated on. Then I rather felt disposed to change my diagnosis to 20 30

probable ulcer of the stomach from injury and Doctor Lummis came in to see him and we both decided that he should be opened up to see what the condition was and we opened him up and found a mass of adhesions between the wall of the stomach and the intestines in that locality and the gall bladder itself. A firmly firm mass of adhesions. They were loosened up, and I still thought he might have an ulcer or some injury or some trouble with the
10 gall-bladder, like gall-stones, and I searched that and opened and drained the gall-bladder, but there was no stone and there was no sign of ulcer. Everything was fine. There was this mass of adhesions around his stomach and two or three laps of his intestines down to the gall-bladder.

Q. What would cause adhesions of the character you found?

A. Well, from traumatism or some disease of these organs themselves.

20 Q. Assuming that a man had sustained an injury by being struck on the abdomen by a bag of feed weighing approximately one hundred pounds about a month prior to that time, would or would not that have brought about the same conditions that you found?

Mr. Jones: I object to the question on the ground that there is no evidence in the record of a blow on the abdomen other than hearsay evidence.

30 The Referee: I think you had better go into your hypothetical question a little bit further Mr. Loder.

Q. Doctor, assuming that a man on February twenty-seventh, 1924, was engaged in piling bags of feed weighing approximately one hundred pounds

each, and while engaged in piling up the bags and while standing in a stooping position, one of the bags of feed falls and strikes him and pushes his abdomen against another bag of seed; that on the same day he complains of an injury and that the following day he complains and says that he is awful sore through his abdomen; that he continues to speak of soreness from that time until March twenty-ninth, 1924, that he is seized with vomiting; that he is operated upon and you find the mass of adhesions of the intestines and the stomach as you have just described, could or could not such a condition as you found, have been caused by the falling of the bags and the striking of the abdomen by the bags in the manner which I have just outlined? 10

Mr. Jones: I desire to renew my objection to the question. There is no evidence in the record that the abdomen was struck by a bag or that he was struck or jammed against other bags in such a manner as to have his abdomen come in contact with the other bags. 20

The Referee: There doesn't seem to be any evidence as to that, Mr. Loder. He was thrown against the bags, as I understand it.

Mr. Jones: But there was no evidence that his abdomen was pushed against it.

30

The Referee: He was struck by a bag and thrown up against another pile of them.

Q. Qualifying the question I put with the statement now made by the referee, could or could not the condition that you discovered as to the adhesions have been caused by his being struck by the bags?

A. Those adhesions might have been caused by traumatism caused in any accident, whether the bags hit him in the abdomen or whether the bags subjected his body to considerable jamming, a sort of jamming the body together. (That is a possibility.) More likely it would be caused by a direct blow on the abdomen and some little small rupture of a blood-vessel and that infection and the adhesion would form.

10 Q. Well, in your opinion from the examination that you made of this man and what you discovered at the operation, what do you think caused these adhesions?

A. There was no disease of the stomach, of the intestines, of the gall-bladder or pancreas, or any other organ in the locality of these adhesions to account for the adhesions. Consequently, my surmise and the surmise of Doctor Cornwell, who assisted me in the operation, and Doctor Lummis, who was the etherizer, was this had been caused by some
20 injury, some internal injury and an injury probably of not over—of fairly recent date, because we had in mind this accident which he had; it was all the accident that we knew about, but we felt it wasn't anything of long standing and it was something of several weeks' standing; otherwise the adhesions would not have been found as firmly as they were. The condition we found was a condition that would
30 have been caused by an accident about the time that he claimed to have been injured by the falling bags.

Q. You mentioned Doctor Cornwell as assisting at the operation. That is Doctor Leslie W. Cornwell?

A. Yes, he is now deceased. He died about a month ago.

Q. Mr. Gilmore died when, Doctor?

A. I think he died the following day.

Q. And what was the cause of his death?

A. I saw him at about three o'clock between two and three, and he was apparently doing as well as any abdominal case would be doing after operation. Some time later in the afternoon—I was out of town—he was taken with an embolism of some kind, I suppose, and died not long after.

Mr. Loder: Cross-examine.

10

Cross-examination.

By Mr. Jones:

Q. Doctor, is it true that in the course of the fifteen years that you knew Mr. Gilmore, that you never had occasion to make any thorough physical examination, either external or internal?

A. No more than to examine his chest in case of a cold. I think he had an attack of bronchitis, one or two attacks, but never any abdominal symptoms or any symptoms other than those referred to in his chest or throat, maybe tonsilitis.

Q. Was there any suggestion of tuberculosis in the examination of the chest?

A. Not at all.

Q. When you started your operation, you had in mind possible inflammation of the gall-bladder and gall-stones?

30

A. No, when I operated I decided to do what we call an exploratory operation.

Q. You had nothing definite in view?

A. I had nothing definite in view, because at that time I was leaning toward gall-stones on account of this excruciating pain that he had.

Q. The symptoms that he had, both subjective symptoms and objective symptoms that had rather inclined your diagnosis to one of gall-stone or gall-bladder inflammation?

A. Gall-bladder involvement.

Q. When you opened the abdomen, what sort of an incision did you make; what was the location of the incision?

10 A. Over the gall-bladder, over through the abdomen.

Q. That incision was made over the gall-bladder

A. Because that was the location of the pain that he had.

Q. That you term a general exploratory examination of the abdomen, do you?

20 A. That was largely for examination of everything in the upper part of the abdomen. Then I went down and examined the appendix.

Q. When you opened the abdomen, there was a certain pathological picture presented to your medical mind?

A. Yes.

Q. That picture showed abnormalities in the way of adhesions?

A. Yes.

Q. Now, just where were these adhesions?

30 A. Over the gall-bladder and to the left of the gall-bladder.

Q. How far into the interior of the abdomen were these adhesions?

A. Directly under the abdominal wall.

Q. Now, how many walls were there between these adhesions and the skin?

A. One.

Q. And will you describe it? The abdominal wall, is that the only wall there?

A. One abdominal wall, yes. That is composed of skin, muscle, facia and fat.

Q. Any bones?

A. No bones.

Q. You were below the ribs?

A. Below the ribs, yes.

Q. Such adhesions as were presented to your mind or to your view at that time, had you seen 10 similar adhesions before?

A. Yes.

Q. Often?

A. Very often.

Q. In what class of cases?

A. Generally in cases in the lower part of the abdomen around the appendix or around the female organs and in cases of infection of the abdomen where you have an inflammatory condition of the gall-bladder or ulcer of the stomach. 20

Q. In other words, they were a very common form of adhesions?

A. Very.

Q. You find them in a great number of cases?

A. In cases where you have had inflammatory conditions.

Q. Was the gall-bladder inflamed?

A. Only outside at the start of the adhesions. When the gall-bladder was opened, the inside of the gall-bladder showed no evidence of inflammation. 30

Q. The adhesions were on the exterior side of the gall-bladder?

A. Yes.

Q. Indicating there had been some inflammation?

A. There had been some inflammation from the adhesion.

Q. Now, isn't that condition true of all adhesions that are non-traumatic adhesions?

A. Well, adhesions are similar, regardless of what they are from. However, in a traumatic adhesion, your adhesions are simple adhesions and you have nothing underneath to substantiate the cause of the adhesions. If these adhesions had been from the gall-bladder or from the stomach, we would have found a thickened gall-bladder wall, or thickened stomach wall, or stomach ulcer or a similar lesion.

10

Q. You find that in a condition of long standing?

A. Yes.

Q. This was a condition you said that had arisen in a few weeks?

A. Yes, it was more certain to be traumatic to my mind, because if it was not a more recent case than this, you would have had symptoms of the disease of the other organs causing it.

20

Q. Now, when you made your exploratory operation, going into the abdominal wall, what evidence of the injury did you find in the abdominal wall, prior to seeing the adhesions?

A. None whatever.

Q. Did you, at any time in the course of your examination and operation and treatment of Mr. Gilmore, see any evidences of trauma?

A. None whatever—externally.

30

Q. In the other cases of adhesions that you outlined as having seen, you saw a good many of the adhesions in cases of females?

A. Yes.

Q. That was your statement a while ago, as I recall it.

A. Yes.

Q. Were these adhesions that you saw in Mr. Gilmore's case similar to those that you have seen in other cases just referred to?

A. The adhesions themselves were the same.

Q. Now, the adhesions that we last described as occurring in females arise spontaneously, without any trauma, is that true?

A. No, there is some diseased condition causes them there.

Q. Did you ever run across adhesions with no history of trauma, the arising of which adhesions you can find no trace of any diseased condition in the intestines of the party having the adhesions? 10

A. That question is pretty complicated.

Q. Well, I will admit the question is complicated. I will ask it in another form. Do you find adhesions in non-traumatic cases, these adhesions being present and the operator or the surgeon or physician being unable to assign any cause for their presence?

A. Yes, it is a well-known fact among surgeons that you have adhesions in the upper abdomen and in other parts of the abdomen that you know no cause for, but, however, I will qualify that by saying that the adhesions found under those conditions are generally not as extensive as the adhesions we found here. These were unmistakable adhesions which were quite extensive. 20

Q. Now, Doctor, what is the determining factor in the age of adhesions?

A. That is hard to describe to a lay man.

Q. Is there any determining factor in the age of adhesions? 30

A. Yes, to the trained eye.

Q. Can you put your finger on an adhesion, as a surgeon, and say, "That is six days, six weeks or six months old," unless you have seen the cause?

A. Positively no, I wouldn't say that you could.

Q. Doctor, I am going to ask you a last question in equity.

Without the history that you obtained from Mr. Gilmore of an alleged accident involving the abdomen, to what would you have assigned these adhesions, to what cause would you have assigned these adhesions?

A. I wouldn't have known what to charge them to.

Q. Then you charged them to the accident merely because he said he had an accident, is that it?

10 A. Exactly.

Mr. Jones: That is all.

By Mr. Loder:

Q. His statement to you, Doctor, about his accident, was in response to the questions that you were putting to him for the purpose of treating him?

20 A. He didn't volunteer any information about this accident until I questioned him then, and then only on the third day I questioned him about it.

Q. What he did say to you was in response to your questions which you were putting to him for the purpose of treating him?

A. I think his wife was—He told me he had spoken to his wife and I asked him why he hadn't told me of this thing before, and I think she came in when she told me that he didn't want to worry her
30 about it.

Q. Doctor, I remember you testifying on direct examination—What did you testify to as to the length of time that these adhesions had probably existed?

A. From the character of the adhesions, we felt, all of us felt they were fairly recent adhesions. I

will admit this is a very hard thing to determine but you can tell from seeing a great many cases, you can form an opinion as to the length of existence.

Q. Might they have been as old as say from February twenty-seventh, five weeks, that would have been?

A. I think they would have been at least five weeks.

Q. And I believe you testified there were no signs of any disease of the gall-bladder or stomach? 10

A. The surrounding organs, including the stomach, pancreas, gall-bladder, intestines, showed no evidence of any disease themselves, except as they were bound down together by these adhesions. When I didn't find gall-stones, I made a more careful examination of everything in the abdomen to find what was causing him this trouble.

Q. That would indicate the adhesions was caused by what?

A. It indicated to my mind it was caused by 20 trauma, some external force.

Mr. Loder: That is all.

By Mr. Jones:

Q. Doctor, you say at least five weeks. Now, will you explain, please?

A. Well, if the adhesions had been caused within a few days, were quite recent adhesions, they would 30 have been much more inflammatory than they were. They would have been reddened and you would have had a bloody looking area instead of an area where the adhesions appeared to have been firm and the blood-vessels settled themselves down to a less inflammatory condition.

Q. Using the relative value, you mean it could have been five weeks, is that right?

A. Well, it was a longer period than a few days or a few weeks.

Q. Might it have been ten weeks?

A. You cannot set any definite turn for the formation of an adhesion.

Q. Do you arbitrarily set five weeks in this case?

A. No, I don't set any time.

10 Q. They might have existed there for a period longer than five weeks, is that true?

A. Not from the condition they were in. From the history of the man, the man couldn't have had that condition for that length of time and not give more symptoms than he had.

Q. Could they have existed for a less time than five weeks?

20 A. Well, if you understand the thing, you have an inflammatory condition, and you cannot get symptoms until your adhesions begin to contract and squeeze things together. We get a pull on the gall-bladder and the intestines from those adhesions which give the symptoms.

Q. You said a while ago they were at least five weeks. In answer to my question, you say they weren't there longer than five weeks. Now, I ask you again if they could have been there less than five weeks?

30 A. They may have been there longer than five weeks, but they weren't giving symptoms, because the adhesions weren't firm enough. They eventually gave the symptoms about four or five days before he was operated on, because that was the first warning he had of any very serious trouble and then he was taken with violent vomiting and that was the first symptoms of these adhesions. How long they were there I don't know.

Q. Doctor, in obtaining from him the history of this accident, my understanding was that you said you questioned him on several occasions about it.

A. I questioned him the first day I examined him, when he had this vomiting, and in pain. His wife was in the room then in bed with him, and she was in bed and he was just simply throwing himself down on the side of the bed and he said no. He was vomiting and suffering very acutely. Then on possibly the second or third day, the third day, I think, after that, I asked him again about it, if he didn't remember some injury, and then he related this accident. 10

Q. The symptoms at that time led you to expect gall-stones, is that so?

A. Yes, sir, gall-bladder trouble.

Q. Did you attribute the gall-bladder trouble to the accident?

A. I didn't know of the accident because he told me nothing about it, but in going over the case and getting the history—we have to ask a great many questions which might appear to you foolish. 20

Q. You asked him about the accident the second time?

A. Yes.

Q. And your professional diagnosis was still gall-stones?

A. Still gall-stones.

Q. When you operated, you still expected gall-stones? 30

A. Still expected gall-stones.

Q. You didn't connect the accident to the objective and subjective symptoms prior to that operation as having caused the adhesions?

A. That was possible. That is why I told Doctor Lummis that I thought we ought to open him and do at least an exploratory incision.

Q. Do you know the first day you saw Mr. Gilmore?

A. I don't remember the date, the exact date.

Q. The date of your bill would be correct, would it?

A. I won't promise that, because that has been through a bookkeeper's hands.

Q. You said it was March twenty-ninth and your bill reads April first. I wanted to trip you up on it?

A. I won't say that. I presume on March twenty-ninth I attended his wife and did not make any charge to him.

DR. C. PERCY LUMMIS, SWORN.

By Mr. Loder:

20

Q. Doctor, you are a physician and surgeon, residing and practicing in Bridgeton?

A. Yes, sir.

Q. What school are you a graduate of?

A. University of Pennsylvania Medical.

Q. How long have you practiced your profession?

A. Twenty-two years.

Q. Do you know Mr. Gilmore?

A. Yes.

30 Q. How long did you know him prior to his death?

A. Four or five years, anyhow.

Q. Did you ever attend him professionally prior to his last illness?

A. Not that I know of.

Q. You were present at the time Doctor Sewell performed an operation on him at the hospital?

A. Yes.

Q. Did you assist at the operation?

A. I etherized him.

Q. Doctor Sewell was the operating surgeon?

A. Yes.

Q. Did you yourself see the condition of the man's abdomen after Doctor Sewell had opened him?

A. Yes.

Q. What condition did you see?

10

A. I saw a condition of extensive adhesions involving the greater curvature of the stomach and the gall-bladder area and the area of the small intestine, called the duodenum.

Q. What causes adhesions?

A. Of course, they are caused by inflammatory conditions or traumatism or injury, and the injury, the injury would cause a low-grade inflammatory condition aside from infection. A pathological condition takes place, then the pouring out of certain masses, increase of the blood supply, then they become organized into tissue, an active tissue, and they contract.

20

Q. From the examination that you made in this case, what, in your opinion, caused these adhesions?

A. Well, they were caused, of course, from the same cause that causes other adhesions, the question of their inflammatory condition, the result of some inflammatory condition in some certain organ, like the appendix, the gall-bladder or stomach itself, or some inflammation as a result of traumatism or injury.

30

Q. Did you see any evidence of an inflammatory condition?

A. No. I saw the gall-bladder when it was opened up. It didn't look to be diseased; apparently normal, as far as I could see.

Q. So if the adhesions had been caused by some inflammatory condition of the gall-bladder, that would have shown in a diseased condition of the bladder, would it not?

A. I should judge so.

Q. If the adhesions had been caused by inflammation brought about by trauma, then there would not have been any diseased condition of the organs?

A. No.

10 Q. Then, in your opinion, what would you say was the case of the adhesions in this instance, trauma or not?

A. Yes, from the fact that there wasn't any disease in any of the organs and the history that I obtained from him, having seen him the day of the operation and my physical examination of him and obtained the history of him and then from the appearance at the time of the operation, I should have said that the adhesions were the result of a trauma-

20 matism.

Mr. Loder: Cross-examine.

Cross-examination.

By Mr. Jones:

Q. Doctor, are you specializing in any branch outside of anesthesia?

30 A. I am not a specialist in anesthesia; I am a general practitioner.

Q. Do you specialize in surgery or anything of that sort?

A. No, I do not do major surgery.

Q. Do you specialize at all?

A. I do pediatrics, children's diseases, and general medicine, and I don't do any major surgery.

Q. Doctor, what class of trauma and what particular kind of trauma do you believe is required to produce adhesions such as you saw in this case? What particular blow would be required to produce these adhesions within five weeks?

A. Well, not a direct blow on the abdomen, but any severe compression of the abdominal contents, from being forced between two forces and in the intestinal—the abdominal wall being compressed by being condensed between two forces.

10

Q. You would require a direct blow to the abdomen in that instance?

A. Or I should think—I would be of the opinion that it would be the result of the compression of the abdomen.

Q. Coming to the compression, you mean a squeezing of them a short length or time or a long length of time?

A. Short squeeze.

Q. Would that squeeze have to be more or less severe in its nature and direct?

20

A. I should judge it would be; yes, sir.

Q. Now, Doctor, what is the etiology of adhesions, that is the general pathology, as understood by the medical profession, of adhesions.

A. I should say in answer to that that it is some inflammatory condition, that is, if you don't want to specify it further, go back further to define the pathology of an inflammatory condition, but I should say roughly that the adhesions are the result of some low-grade inflammatory trouble but varying in degree, an inflammatory condition, grade inflammatory condition and the more acute inflammatory condition.

30

Q. In other words, in the pathology of adhesions, there is trauma, inflammation, and any number of causes that can give rise to inflammation?

A. Yes.

Q. Then the idea is a number of causes can give rise to inflammation. They are practically limitless, aren't they?

A. Well, you can go into the pathology of the various organs in the abdomen and have certain definite pathological conditions in the abdomen, take up the appendix, female pelvic organs, stomach, intestines, gall-bladder—

10 Q. Isn't the pelvic of bacterial origin?

A. Is what?

Q. Isn't the pelvic? Wouldn't that be of bacterial origin, any pelvic adhesion?

A. Well, I don't say they would be of bacterial origin, because they could be bacterial that—would be inflammatory as a result of infection. There could have been a wound as a result of injury. If the traumatism in one part would be similar to another part— If you get bruised there is symptoms of swelling, heat, and so forth.

20 Q. Now, Doctor, having in mind all the facts and circumstances in this case, do you desire to go on record as saying that you absolutely exclude every other possible cause of these adhesions and that in your opinion they were most probably caused by trauma?

A. Well, I wouldn't want to testify to being absolutely—as strong as that, hardly—

30 Q. That is all we wanted to know, if you wanted to go that far.

A. I can testify it is as definitely as I should think I can do so.

Q. We feel that you were perfectly fair when you answered the question that you didn't want to go on the record that strong.

A. Do I understand the question to mean that I feel it was absolutely due to that and could not be from anything else?

Q. Yes.

A. Then I understand you.

Q. You don't want to go on record as saying that, that is my understanding, and your answer is you don't want to be that strong?

A. If you mean a direct answer to your question in my opinion that these adhesions were the result of the traumatism, why, I testified to that effect, if that is clear. 10

Mr. Jones: All right, let the record stand as it is, as far as I am concerned. That is all.

By Mr. Loder:

Q. In your opinion, based on the examination that you made and the history of the case that Mr. Gilmore gave you, you are of what opinion? What are you of the opinion of? 20

A. That the adhesions that were present at the time of the operation were due to the traumatism which he had and that was my opinion.

Mr. Loder: That is all.

The Witness: That is just an opinion.

Q. That is your best professional opinion? 30

A. That is the best opinion I know how to give.

By Mr. Jones:

Q. If there had been any history of trauma—
Did you obtain this history of trauma yourself?

A. Yes, I examined him myself before the operation.

Q. You questioned him at that time?

A. I obtained the history and then I made a physical examination of him before he was sent to the hospital.

Q. You anesthetized this patient?

A. Yes, sir.

Q. There was a small incision made in the abdomen?
10 men?

A. I wouldn't say so very small.

Q. How large was the incision in extent?

A. Six or seven inches.

Q. How far away were you from the opening when you looked in?

A. Not very far.

Q. Were you at the head of the patient where the anesthetist usually is?

A. Yes.

Q. You looked from the head of the patient?
20

A. I had a little stool sitting alongside of the table. I wasn't over a distance of two feet. I could see perfectly well.

Q. What was the anesthetic you gave this patient?

A. Ether.

Q. Isn't it usual for the anesthetist to sit at the head of table?

A. Not necessary after you get induction. You
30 may sit at the head of the table.

Q. You had moved around to the side to watch the operation?

A. No, I did not. I only saw when the organs were delivered and I saw them enough. I had to attend to the anesthesia.

Q. A couple of inches?

A. No, I was more than that.

Q. You were doing two things, giving the anesthetic and watching the operation?

A. No, I just saw the condition of the intestines.

Q. Were you sitting down at the time?

A. It was right in front of me that the organs were delivered out. I couldn't help seeing, without shutting my eyes. I didn't have my head down all the time, I couldn't help seeing them.

Mr. Jones: That is all.

10

Mr. Loder: We rest.

Mr. Jones: The defendant rests, except I want to recall Hiles for one question.

ALBERT HILES, recalled.

20

By Mr. Jones:

Q. As I understand it, you were picking up one of these hundred pound bags of feed when these other bags toppled over on you?

A. Yes, sir.

Q. Now, at the time that they toppled over—will you stand over there at that end of the bag—were you bent this way?

A. Yes, sir, we was both down this way. (Indicating.)

30

Mr. Jones: Indicating a bent position practically at right angles with the upper part of the body exposed to the blow.

Q. Did you have hold of the bag?

A. We both had hold of the bag.

Q. Both had hold of the bag preparatory to lifting it?

A. Yes.

Q. When these other bags toppled over on you?

A. Yes, sir.

Mr. Jones: All right; thank you. That is all,
10 Mr. Referee, the defendant rests.

Mr. Loder: I am willing to submit it without argument, Mr. Referee.

The Referee: I cannot see but what the petitioner has maintained his position here. We have the opinion of the doctors here and I might say that I very well appreciate the picture that the witness gives, because I have had personal experience in
20 the feed mill and I know what these hundred-pound bags are. They are not like a pillow, I know what they are. If they are up this high, they are away up over your head, and they come down with a great deal of weight.

Mr. Jones: I merely meant they weren't a solid substance.

The Referee: Now, we have the history of a man,
30 we have a history of no illness and we have this history of an injury and complaint and then we have the opinion of the doctor. I cannot see how I could decide otherwise than to find in this case—

Mr. Jones: As answering the Referee's statement of facts and discussion of the case, I call your

attention particularly to the position of the two men at the time that this falling of the bags took place, that is, as described by Hiles, the only eye-witness, the two men were bending with their trunks at right angles—I mean the trunk of the body.

The Referee: I had that in mind, and as I understand, it struck the other man on the head and drove him down so that it injured him and threw him down and you have the opinion of the doctor on 10
it that this injury was the result of compression, sudden shock and compression.

Mr. Jones: Having that description of the accident in mind and there being trauma admittedly arising as a result of the falling of these bags, the doctors both of them testify that the trauma to cause adhesions would have to be direct or the compression would have to be serious, although not for any sustained period. Now, there is absolutely no 20
testimony here that would show that the bag came in direct contact with this man's stomach sufficient to bruise that part of the abdominal contents below the abdominal wall, because these adhesions below the abdominal wall, they weren't adhesions of the abdominal wall. There must have been such trauma, such violence, to that particular portion of the abdominal wall as to cause adhesions.

The Referee: We have the doctor's evidence 30
that it fell on his back and caused him to fall to the floor with a sudden shock. That is Doctor Sewell's testimony. I will make an award in this case. The award will be three hundred weeks' compensation at six dollars and thirty cents, medical bills amounting to one hundred and thirty-nine dollars, funeral expenses one hundred and fifty—

Mr. Loder: I make a motion that I should be allowed counsel fee.

Mr. Jones: I have no objection to the motion if he will leave it to the Referee. I will be very glad to consent to that.

The Referee: I will allow a counsel fee of one hundred and fifty dollars.

10

I hereby certify that the foregoing is a transcript of the testimony taken in the case of Gilmore v. Ewen.

CHARLES E. CORBIN,
Deputy Commissioner.

20

I, W. E. STUBBS, secretary of the N. J. Workmen's Compensation Bureau, do hereby attest the authenticity of the signature of Charles E. Corbin, and that he, as the official who heard this case, is the proper one to certify as to the transcript of the testimony.

W. E. STUBBS.

30

REASONS.

NEW JERSEY SUPREME COURT.

JOHN W. EWEN and LON-
DON GUARANTEE AND ACCI-
DENT COMPANY, LTD.,

Prosecutor,

v.

COURT OF COMMON PLEAS,
CUMBERLAND COUNTY,
LEONIDAS H. HOGATE,
Clerk, and ANNA GIL-
MORE,

Defendant.

10

On Certiorari.
Reasons.

20

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

1. There is no competent medical evidence to show that the claimant's husband died as a result of an accident arising out of and in the course of his employment with the prosecutor. 30

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

RALPH N. KELLAM,
Attorney for Prosecutor.

OPINION.

NEW JERSEY SUPREME COURT.

No. 255, October Term, 1925.

(Filed Feb. 9, 1926.)

10

ANNA GILMORE,
Petitioner-Respondent,
 v.
 JOHN W. EWEN and LON-
 DON ACCIDENT AND GUAR-
 ANTEE CORPORATION, LTD.,
Respondents-Prosecutors.

20

Argued October 6, 1925. Decided February 9,
 1926.

On writ of certiorari, etc.

Before Justices Trenchard, Katzenbach and
 Lloyd.

For the prosecutors in certiorari, Ralph N. Kel-
 lam and J. Webster Jones.

30 For the defendant in certiorari, Leroy W. Loder.

PER CURIAM:

This is a workman's compensation case. The
 petition was filed by the widow of the decedent,
 a workman employed by John W. Ewen in his flour

and feed store in Bridgeton. On February 27, 1924, while decedent was piling sacks of grain, one or more sacks fell on him, and petitioner claims so injured him that he died from such injury. He died April 7, 1924.

At the hearing before the Referee it was stipulated that decedent was struck by falling sacks of grain, and that the happening arose out of and in the course of his employment. Apparently the only question was whether the falling sacks injured the decedent internally and caused his death. The Referee so found and the common pleas affirmed that finding. 10

The testimony satisfies us that the finding was right. The decedent prior to the accident had not been sickly, but was healthy. A bag of grain weighing 100 pounds fell and struck the decedent and knocked him down. This was followed by soreness or pain which he suffered intermittently until March 29, 1924, when he was seized with vomiting and was taken down in bed. Shortly thereafter he was operated upon at the hospital and a mass of adhesions between the intestines and the wall of the stomach was found, which the operating surgeon testified would be caused either by traumatism or some disease of the organs themselves, and that the organs were not diseased. One of the surgeons testified that the adhesions were the result of the injury. The decedent's death followed shortly after the operation, the day following apparently. We think that the casual connection between the accident and the death was established. 20 30

The judgment brought up for review will be affirmed, with costs.

80 *Notice of Appeal from Judgment of Supreme Court on Certiorari*

NOTICE OF APPEAL FROM JUDGMENT OF SUPREME COURT ON CERTIORARI.

NEW JERSEY COURT OF ERRORS AND APPEALS.

10

ANNA GILMORE,
Petitioner-Respondent,
Appellee,

v.

JOHN EWEN and LONDON
GUARANTEE AND ACCIDENT
CORPORATION, LTD.,
Respondents-Prosecutors,
Appellants.

Notice of Appeal
from Judgment of
Supreme Court on
Certiorari.

20

To Leroy W. Loder, Esq., Bridgeton, N. J., Counsellor for Petitioner-Respondent.

30 Take notice that the prosecutors, John Ewen and London Guarantee and Accident Corporation, Ltd., appeal to the Court of Errors and Appeals in the last resort in all causes in New Jersey, from the whole of the judgment entered in the above stated cause on the following grounds:

1. That the Supreme Court affirmed the judgment of the Court of Common Pleas of Cumberland County, although there was an error in doing so.

Acknowledgment of Service of Copy of 81
Notice of Appeal

2. Because the Supreme Court affirmed the judgment of the Court of Common Pleas of Cumberland County, although there was not sufficient competent and valuable expert medical opinion evidence to warrant the finding of a casual connection between the accident and the death of the employee.

RALPH N. KELLAM,
Attorney for and of Counsel with Appellants. 10

ACKNOWLEDGMENT OF SERVICE OF COPY
OF NOTICE OF APPEAL.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

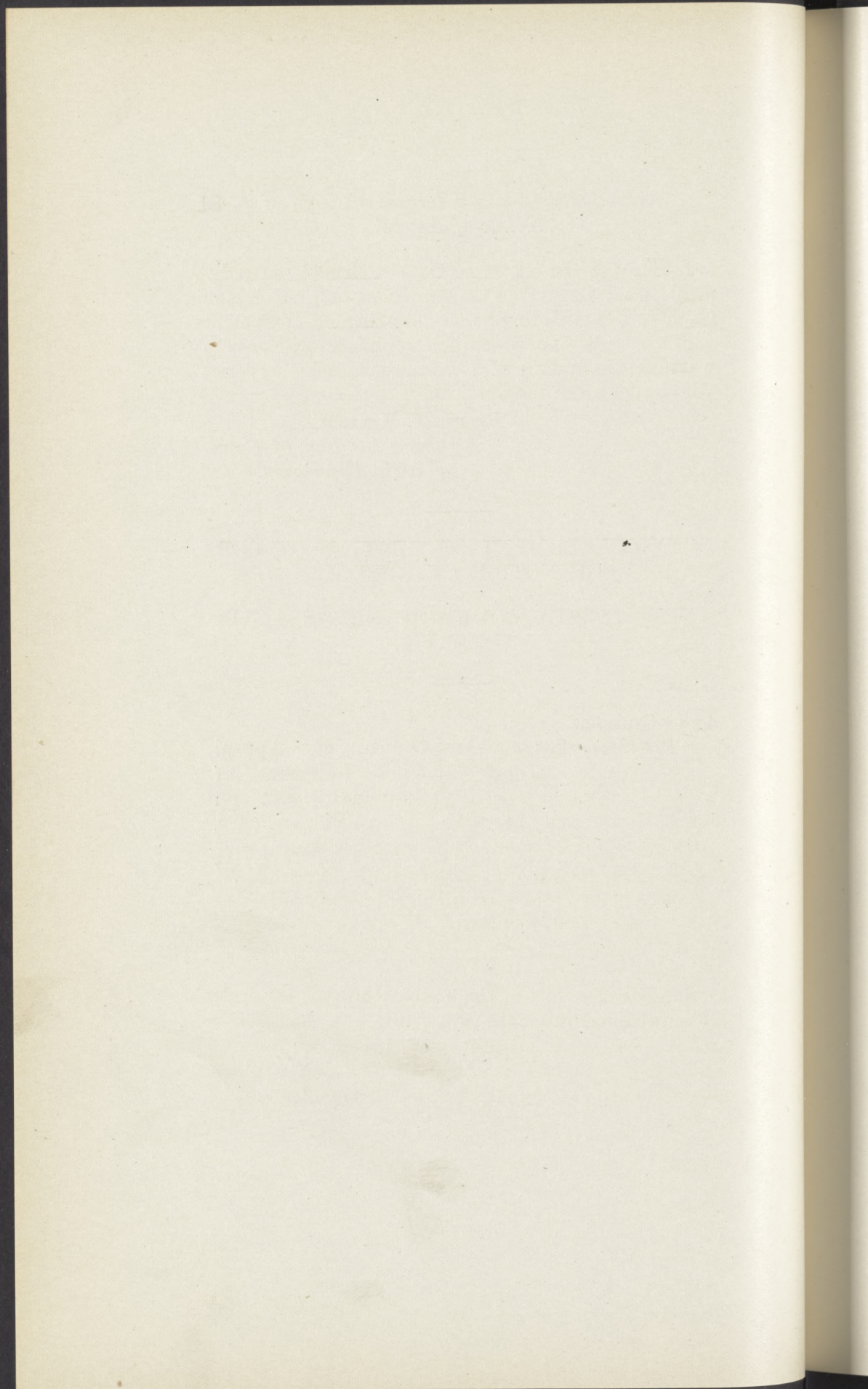
ANNA GILMORE,
Petitioner-Respondent,
Appellee,
v.
JOHN EWEN and LONDON
GUARANTEE AND ACCIDENT
CORPORATION, LTD.,
Respondents-Prosecutors,
Appellants.

20

Notice of Appeal
from Judgment of
Supreme Court on
Certiorari.
Acknowledgment of
Service of Copy of
Notice of Appeal.

Service of a copy of the notice of appeal is hereby
acknowledged this 27th day of May, A. D. 1926.

LEROY W. LODER,
Attorney for and of Counsel with Appellee. 30



NEW JERSEY COURT OF ERRORS AND
APPEALS.

ANNA GILMORE,
Petitioner-Appellee,
v.

JOHN W. EWEN AND LONDON GUARANTEE AND ACCI-
DENT COMPANY, LTD.,
Respondents-Appellants.

ON APPEAL.

BRIEF OF PROSECUTORS.

HISTORY OF THE CASE.

On August 27th, 1924, Anna Gilmore, filed a petition with the Workmen's Compensation Bureau, for compensation for the death of her husband, alleging that her husband died as result of an accident arising out of and in the course of his employment with one John W. Ewen.

On November 12, 1924, the aforesaid petition coming on to be heard by Referee Charles E. Corbin, the said Referee by an award bearing date the 24th of November, 1924, did award to Anna Gilmore certain compensation for the death of her husband.

On December 23rd, 1924, the petitioners herein appealed from the said award, to the Cumberland County Court of Common Pleas.

On April 18th, 1924, the Honorable Herbert C. Bartlett, Judge of the said court, affirmed the said award of compensation by the said Referee, and entered judgment thereon.

On August 10th, 1925, Justice Luther A. Campbell, allowed a writ of certiorari to the prosecutors to have the judgment confirming said award of compensation to Anna Gilmore set aside and reversed.

On February 9th, 1926, the Supreme Court affirmed the decision of the Cumberland County Court of Common Pleas, affirming the award of compensation by the Referee.

On May 26th, 1926, appeal from the decision of the Supreme Court was taken to the New Jersey Court of Errors and Appeals.

ARGUMENT.

The prosecutors respectfully submit that the judgment of the New Jersey Supreme Court should be set aside and reversed for the following reason:

“Sufficient, competent and valuable expert medical opinion evidence, was not produced by the claimant to warrant and support the finding of a causal connection between the accident and the death of the employee.”

The burden of furnishing evidence from which the inference can be legitimately drawn that death of an employee was caused by an accident arising out

of and in the course of his employment rests upon the claimant.

Bryant v. Fussell, 84 N. J. L. 72;

Reimers v. Proctor Publ. Co., 85 N. J. L. 441.

In this case there is only one witness who testified as to the accident and his story of the occurrence is admitted, undisputed and urged as being a correct, honest account of the accident.

The witness, Albert Hiles, testified on page 46, line 9, of the record:

“Q. Now, what was he doing and what were you doing at the time?

A. We were piling bags, unloading the car and we had to pile the bags up alongside of the post six or seven high and I was standing right up against these piles of bags. I stooped down with the bag on the floor and these bags came right down over me and bent me right down double and I couldn't see anything what happened to him, but the top bag struck him and knocked him over.

Q. The top bag struck Gilmore and knocked him over?

A. Yes.”

Under cross-examination Hiles said (p. 49, line 12):

“Q. Will you just stand there a moment? If that door jamb was the bags, you were standing against the bags in that manner, is that right?

A. No, I was stooping down here to pick up a bag. He was getting hold of one end and I was getting hold of the other end and we had to back up against the bags, and when these bags

came down, the top bag struck him and the other two landed on me.”

And further (p. 73, line 22):

“Albert Hiles, recalled.

By Mr. Jones:

Q. As I understand it, you were picking up one of these hundred pound bags of feed when these other bags toppled over on you?

A. Yes, sir.

“Q. Now, at the time that they toppled over—will you stand over there at that end of the bag—were you bent this way?

A. Yes, sir, we was both down this way. (Indicating.)

Mr. Jones: Indicating a bent position practically at right angles with the upper part of the body exposed to the blow.

Q. Did you have hold of the bag?

A. We both had hold of the bag.

Q. Both had hold of the bag preparatory to lifting it?

A. Yes.”

If we add that the bags each weighed 100 lbs. and were piled to a height of 6 or 7 feet when they toppled over upon the men in their bent position, we have the only competent description of the accident given.

A soft mass weighing 100 lbs. struck the deceased while he was in a bent position. Clearly, whatever blow he received was to the back of his body at some point between the buttocks and neck. This is the best protected portion of the body and is that portion which has the pelvis, spine, ribs, shoulder blades and the entire bony structure of the skeleton trunk between it and the organs of the abdomen.

The evidence above recited shows conclusively that the decedent sustained an accident in the course of his employment, which accident was the striking of the decedent on the back while he was leaning over, with a bag of feed weighing approximately 100 lbs. and that the decedent died on April 7, 1924, thirty-nine days after the accident.

It is also a part of the evidence produced in this case that the decedent died following an operation for adhesions involving the gall-bladder and other organs of the abdomen.

Here we have an admitted, definitely described accident. We have a death from an admitted and definitely described condition.

Are the two connected?

Here is a gap.

Is this gap bridged and is the one shown to be the cause of the other? Is it cause and effect?

This was the proof asked by the defendant. This is the only question involved. The burden was on the claimant to show it (Cases *supra*).

What evidence did the claimant offer to connect the two?

Was this evidence sufficient to connect and show, cause and effect?

The only evidence the claimant offered was the testimony of two physicians who operated upon her husband and who treated him.

These medical witnesses testified as follows, Dr. Millard F. Sewell (page 53, line 17):

“Q. Did he at that time give you any history of the case, tell you how long he had been suffering?

A. No, he said he felt uncomfortable in his stomach for a few days, but he wasn't very definite about it. I asked him at the time if he had

any injury and his wife was sick in the same bed with him, and he said said no. After—later—two or three days later, I asked him again if he had any injury. He said he hadn't told me before because he didn't want to worry her about it, but that he had had an injury. He told me that he had had an injury, and that a bag of feed had fallen down and hit him in the stomach, but that at the time, the evening after, he had a little pain, he didn't think anything about it. He said off and on he had had some little pain ever since then. On the strength of that, I asked the family if they wouldn't like to have a consultation on the case, because I felt he should go to the hospital and be operated on. Then I rather felt disposed to change my diagnosis to probable ulcer of the stomach from injury and Doctor Lummis came in to see him and we both decided that he should be opened up to see what the condition was and we opened him up and found a mass of adhesions between the wall of the stomach and the intestines in that locality and the gall-bladder itself. A firmly firm mass of adhesions. They were loosened up, and I still thought he might have an ulcer or some injury or some trouble with the gall-bladder, like gall-stones, and I searched that and opened and drained the gall-bladder, but there was no stone and there was no sign of ulcer. Everything was fine. There was this mass of adhesions around his stomach and two or three laps of his intestines down to the gall-bladder."

The phrase "hit him in the stomach," has been underscored to contrast this hearsay evidence with

the positive, reiterated testimony of the only eye-witness, whose testimony quoted above, shows the decedent could not have been hit in the stomach.

This mis-statement of the facts in the case was, over the objection by counsel for the defendant, embodied in the hypothetical question as submitted to this witness (p. 54, line 34):

“Q. Doctor, assuming that a man on February twenty-seventh, 1924, was engaged in piling bags of feed weighing approximately one hundred pounds each, and while engaged in piling up the bags and while standing in a stooping position, one of the bags of feed falls and strikes him and pushes his abdomen against another bag of seed; that on the same day he complains of an injury and that the following day he complains and says that he is awful sore through his abdomen; that he continues to speak of soreness from that time until March twenty-ninth, 1924, that he is seized with vomiting; that he is operated upon and you find the mass of adhesions of the intestines and the stomach as you have just described could or could not such a condition as you found have been caused by the falling of the bags and the striking of the abdomen by the bags in the manner which I have just outlined?

Mr. Jones: I desire to renew my objection to the question. There is no evidence in the record that the abdomen was struck by a bag or that he was struck or jammed against other bags in such a manner as to have his abdomen come in contact with the other bags.

The Referee: There doesn't seem to be any evidence as to that, Mr. Loder. He was thrown against the bags, as I understand it.

Mr. Jones: But there was no evidence that his abdomen was pushed against it.

The Referee: He was struck by a bag and thrown up against another pile of them.

Q. Qualifying the question I put with the statement now made by the Referee, could or could not the condition that you discovered as to the adhesions have been caused by his being struck by the bags?"

It is therefore clear that the opinion given by Dr. Sewell was predicated upon a blow to the decedent's stomach, of which there is no evidence in the case, instead of a blow to decedent's back as shown by the sole witness of the accident produced by the claimant.

The above hypothetical question did not contain the admitted facts of the case. Any answer, therefore, was irrelevant and should not have been admitted or considered in arriving at a decision.

The Court's attention is most earnestly called to the fact that the hypothetical question makes use of the word "could."

In other words, it asks whether there is a mere possibility that the accident caused the adhesions, and does not ask for a positive opinion as to the cause. It leaves the matter in the realm of possibility only.

The Court's particular attention is directed to the answer given by Dr. Sewell to the hypothetical question which only asks for a *possibility* and not whether in the doctor's medical opinion the accident (as it really occurred) was a *probable* rather than a *possible* cause of the adhesions found (p. 56, line 1):

"A. Those adhesions might have been caused by traumatism caused in any accident, whether

the bags hit him in the abdomen or whether the bags subjected his body to considerable jamming, a sort of jamming the body together. That is a possibility.) More likely it would be caused by a direct blow on the abdomen and some little small rupture of a blood vessel and that infection and the adhesion would form."

Dr. Sewell uses the phrase "might have" and was careful to explain this by adding "That is a possibility." He further states that the adhesions would "more likely" be caused by a "direct" blow on the abdomen. A direct blow to the abdomen of the decedent is excluded by the testimony of the only eye witness to the accident.

In all of the phraseology used above on *direct* examination, this witness only said that there was a *possibility* that the accident caused the adhesions.

There is no phrase, word or statement that the relation of cause and effect is more than a possibility. There is the direct statement that another cause would "more likely" result in the effect. That the adhesion would "more likely" be the result of a *direct* blow.

Immediately following the above testimony Dr. Sewell testified as follows (p. 56, line 10):

"Q. Well, in your opinion from the examination that you made of this man and what you discovered at the operation, what do you think caused these adhesions?

A. There was no disease of the stomach, of the intestines, of the gall-bladder or pancreas, or any other organ in the locality of these adhesions to account for the adhesions. Consequently, my surmise and the surmise of Doctor Cornwell, who assisted me in the operation, and Doc-

tor Lummis, who was the etherizer, was this had been caused by some injury, some internal injury and an injury probably of not over—of fairly recent date, because we had in mind this accident which he had; it was all the accident that we knew about, but we felt it wasn't anything of long standing and it was something of several weeks' standing; otherwise the adhesions would not have been found as firmly as they were. The condition we found was a condition that would have been caused by an accident about the time that he claimed to have been injured by the falling bags."

The question asks, "What do you think caused the adhesion?"

The answer says "we surmise." The Century Dictionary defines "surmise" as the thought that "something may be, of which, however there is no certain or strong evidence, speculation, conjecture." There is merely the conjecture that "this had been caused by some injury."

"While absolute certainty is not required of an expert, his judgment must involve the element of such mental certainty on the part of the witness as will render it of real aid to the jury. Accordingly no matter how skilled or experienced the witness may be, he will not be permitted to guess, or to state a judgment based on a mere conjecture. 22 C. J. 640 par. 735 (3)."

Lindenthal v. Hatch, 61 N. J. L. 29.

In the case of *Bernadsky v. Erie Railroad Co.*, 76 N. J. L. 580, it was held that expert testimony showing the possibility of hydrophobia resulting from the bites of a dog was improperly admitted.

Nowhere on direct examination does the doctor use positive words or phraseology. The full force and effect of the direct testimony of the doctor is "it is a possibility and I surmise that the accident caused the adhesions, but it is more likely that they would be caused by direct blow or trauma."

The cross-examination does not add to, but on the contrary, weakens the statement of possibility or surmise.

Dr. Sewell testified under cross-examination to the following facts.

The adhesions were a very common form of adhesions (p. 59, lines 10 and 21).

You will find them in a great number of cases where you have had inflammatory conditions (p. 59, lines 24 and 25).

These adhesions were on the exterior of the gall-bladder (p. 59, lines 30 and 32).

He did not at any time find any external symptoms of traumatism (p. 60, line 24).

(p. 61, line 12):

Q. Well, I will admit the question is complicated. I will ask it in another form. Do you find adhesions in non-traumatic cases, these adhesions being present and the operator or the surgeon or physician being unable to assign any cause for their presence?

A. Yes, it is a well-known fact among surgeons that you have adhesions in the upper abdomen and in other parts of the abdomen that you know no cause for, but, however, I will qualify that by saying that the adhesions found under those conditions are generally not as extensive as the adhesions we found here. These were unmistakable adhesions which were quite extensive.

Q. Now, Doctor, what is the determining factor in the age of adhesions?

A. That is hard to describe to a lay man.

Q. Is there any determining factor in the age of adhesions?

A. Yes, to the trained eye.

Q. Can you put your finger on an adhesion, as a surgeon, and say, 'That is six days, six weeks, or six months old,' unless you have seen the cause?

A. Positively no, I wouldn't say that you could.

Q. Doctor, I am going to ask you a last question in equity.

Without the history that you obtained from Mr. Gilmore, of an alleged accident involving the abdomen, to what would you have assigned these adhesions, to what cause would you have assigned these adhesions?

A. I wouldn't have known what to charge them to.

Q. Then you charged them to the accident merely because he said he had an accident, is that it?

A. Exactly."

From the last two questions and answers above recited, there can be no doubt but that the doctor charged the adhesions to the accident because the decedent told the doctor that he had been "hit in the stomach" and further because in the doctor's opinion the adhesions would "most likely" come from a direct blow to the abdomen.

So far, the doctor, even when giving direct testimony, has not said that he saw any reason to connect the accident and death, and now he flatly, frankly

and finally admits that he only charged the adhesions to an accident because the decedent said he had an accident. If the only eye witness to the accident produced by the claimant, to prove the accident (and by whose testimony the claimant is bound) is believed, the decedent did not tell the doctor the truth about the accident, when he said he was hit in the stomach.

That there was a period of 39 days between the accident and death, and 37 days until the doctor saw the adhesions, the opinion of the doctor as to the age of the adhesions, and whether they antedated as followed, or might have antedated or followed the accident becomes an important factor in determining whether the accident caused the adhesions or not.

By Mr. Loder (p. 62, line 31):

“Q. Doctor, I remember you testifying on direct examination—What did you testify to as to the length of time that these adhesions had probably existed?

A. From the character of the adhesions, we felt, all of us felt they were fairly recent adhesions. I will admit this is a very hard thing to determine, but you can tell from seeing a great many cases, you can form an opinion as to the length of existence.

Q. Might they have been as old as say from February twenty-seventh, five weeks, that would have been?

A. I think they would have been at least five weeks.

Q. And I believe you testified there were no signs of any disease of the gall-bladder or stomach?

A. The surrounding organs, including the stomach, pancreas, gall-bladder, intestines,

showed no evidence of any disease themselves, except as they were bound down together by these adhesions. When I didn't find gall-stones, I made a more careful examination of everything in the abdomen to find what was causing him this trouble.

Q. That would indicate the adhesions was caused by what?

A. It indicated to my mind it was caused by trauma, some external force.

Mr. Loder: That is all.

By Mr. Jones:

Q. Doctor, you say at least five weeks. Now, will you explain, please?

A. Well, if the adhesions had been caused within a few days, were quite recent adhesions, they would have been much more inflammatory than they were. They would have been reddened and you would have had a bloody looking area instead of an area where the adhesions appeared to have been firm and the blood-vessels settled themselves down to a less inflammatory condition.

Q. Using the relative value, you mean it could have been five weeks, is that right?

A. Well, it was a longer period than a few days or a few weeks.

Q. Might it have been ten weeks?

A. You cannot set any definite turn for the formation of an adhesion.

Q. Do you arbitrarily set five weeks in this case?

A. No, I don't set any time.

Q. They might have existed there for a period longer than five weeks, is that true?

A. Not from the condition they were in. From

the history of the man, the man couldn't have had that condition for that length of time and not give more symptoms than he had.

Q. Could they have existed for a less time than five weeks?

A. Well, if you understand the thing, you have an inflammatory condition, and you cannot get symptoms until your adhesions begin to contract and squeeze things together. We get a pull on the gall-bladder and the intestines from those adhesions which give the symptoms.

Q. You said a while ago they were at least five weeks. In answer to my question, you say they weren't there longer than five weeks. Now, I ask you again if they could have been there less than five weeks?

A. They may have been there longer than five weeks, but they weren't giving symptoms, because the adhesions weren't firm enough. They eventually gave the symptoms about four or five days before he was operated on, because that was the first warning we had of any very serious trouble and then he was taken with violent vomiting and that was the first symptoms of these adhesions. How long they were there I don't know."

The adhesions to have been caused by the accident, must have been 37 days old, no more, no less. How can a Referee and a Court say that testimony which says:

"I think they were at least five weeks old."

"The man couldn't have had that condition that length of time (5 weeks)."

"They may have been there longer than five weeks."

"How long they were there I don't know."

can possibly be evidence sufficient to support a finding to the effect that the adhesions were caused by an accident and existed precisely 37 days, which finding must be made from the evidence in order to sustain the burden of the claimant to justify the inference that the death of the decedent was due to the accident.

All the doctor has said is his opinion. It is expert opinion testimony. The final opinion and statement on one very material question involved (the age of the adhesions) is "I don't know."

The testimony of Dr. Lummis, the other expert witness produced by the claimant, adds nothing, to that of Dr. Sewell and the crux of and test of it is contained in the following question and answer (p. 70):

"Now, Doctor, having in mind all the facts and circumstances in this case, do you desire to go on record as saying that you absolutely exclude every other possible cause of these adhesions and that in your opinion they were most probably caused by trauma?"

A. Well, I wouldn't want to testify to being absolutely—as strong as that, hardly ——"

The Referee's fourth finding was (p. 30, line 10): "That the said accident occurred as the result of some bags of feed falling upon decedent which injured him internally and caused his death on April 7th, 1924." The Referee's finding that the accident injured him internally and caused his death, is based upon the expert opinion of two doctors, one of whom says that the death might have been caused and could have been caused as a result of the accident, that it is his surmise or conjecture that the accident and death are connected, and that the adhesions which were the actual cause of the death,

might have existed before the accident, subsequent to the accident and that he does not know how long the adhesions actually did exist, and who further says that he charged the adhesions and death to the accident, merely because the decedent said that he had an accident. The testimony of the other doctor, was that he did not want to exclude other causes than the alleged accident.

This entire testimony never places the cause and effect, in a closer relation than a mere possibility. It does not show anything more than that the defendant was possibly responsible for the decedent's death.

There is no direct evidence of fact as to the responsibility. There is only opinion evidence as to the existence of a possible responsibility.

The claimant *has not* shown the existence of such circumstances as would exclude the idea that it was due to a cause with which the decedent was unconnected. The doctors have not gone so far as to say that they have taken into consideration all of the surrounding data, and that in their opinion, the death is most probably the result of the accident.

When questioned, the chief witness, by his own phraseology, has made it clear that he did not know how long the adhesions, the cause of the death, had existed, and has said that it is a "possibility" only, that the death was a result of the accident described by the only eye witness.

We urge that the Referee should not be allowed to base a finding of cause and effect and to award compensation upon expert opinion testimony which merely recites the possibility of the relationship of cause and effect, and which does not exclude other possible causes.

We urge the Court that a rule of evidence is necessary which will determine to what degree a physician must testify as to the certainty of relationship of cause and effect, in order to justify a finding of fact based upon expert opinion.

This rule will be but slight control over the legal aspects of a finding of fact. It will be but the reiteration of the power vested in courts from time immemorial to determine whether or not, as a matter of law, there is sufficient competent evidence in a given case, to support the award or finding in that case.

We are asking the Court, to retain control over the findings of fact of a Referee based upon expert opinion, to the extent of determining what expert opinion evidence a Referee must have before him, before he can make a finding of fact based upon expert opinion.

We are asking your Honorable Court, to review a finding of fact made by a Referee based upon opinion evidence only. We are not asking that a finding of fact be set aside and a new fact found, or a new deduction made by the Court, but that the Court review the record in order to determine, whether this expert opinion testimony relied upon, is sufficient as a matter of law, to support the finding of fact which is based upon it.

An examination of the reported cases in this jurisdiction under the Workmen's Compensation Act, fails to disclose any decision which lays down a rule as to what an expert medical witness must testify to in his expert opinion as to the causal connection between an accident and the injury or death of an employee so as to justify the Referee basing an award of compensation on the same.

Attention of the Court, however, is called to the opinion of Justice Katzenbach in *Migliaccio v. Public Service Ry. Co.*, 130 Atl. Rep. 9, wherein the opinion of the Chief Justice in *Suburban Electric Co. v. Nugent*, 58 N. J. L. 658, is quoted as follows:

“It must be conceded that the plaintiff below was bound to show something more than that the defendant was possibly responsible for the decedent's death in order to entitle him to a verdict. It was incumbent upon him, in the absence of direct evidence of that fact, to show, not only the existence of such possible responsibility, but the existence of such circumstances as would justify the inference that the death was caused by the wrongful act of the defendant and would exclude the idea that it was due to a cause with which the defendant was unconnected.”

The Supreme Court of the State of Pennsylvania has laid down a rule covering such cases in the case of *Fink v. Sheldon Axle & Spring Co.*, 270 Pa. 476. 113 At. Rep. 666.

In that case the Court said:

“Both courts and the administrative authorities have very properly been most liberal in construing the Workmen's Compensation Law, holding that claims thereunder need not be made out with the same exactness of proof required in suits at common law. It must be understood, however, that when, in cases of this class, expert testimony is relied on to show the connection between an alleged cause and a certain result, it is not enough for the doctors to say simply that the ailment in question might have resulted from the assigned cause, or that one

could have brought about the other; they must go further and testify at least, that taking into consideration all the attending data, it is their professional opinion the result in question most probably came from the cause alleged.”

If the rule laid down in the above cited case is applied to the case at bar, we find Dr. Sewell testified only to the possibility and Dr. Lummis states (p. 70, line 21):

“Q. Now, Doctor, having in mind all the facts and circumstances in this case, do you desire to go on record as saying that you absolutely exclude every other possible cause of these adhesions and that in your opinion they were most probably caused by trauma?

A. Well, I wouldn't want to testify to being absolutely—as strong as that, hardly ——”

We believe that the rule laid down in the case of the *Suburban Electric Co. v. Nugent (supra)*, and the rule laid down in *Fink v. Sheldon Axle & Spring Co. (supra)*, is a reasonable rule, and a fair test by which the Referee should be bound in basing an award on expert opinion evidenced.

It is only reasonable that expert medical testimony should at least meet this test before the employer is compelled to respond in damages to the employe or his dependants.

It is therefore respectfully submitted that the judgment should be reversed without costs and a verdict entered for the prosecutors.

RALPH N. KELLAM,
Of Counsel with Prosecutors.

New Jersey Court of Errors and Appeals

ANNA GILMORE,

Defendant-Respondent,

vs.

JOHN W. EWEN AND LONDON
GUARANTEE AND ACCIDENT
COMPANY, LTD.,

Prosecutors-Appellants.

ON APPEAL FROM
NEW JERSEY
SUPREME COURT.

BRIEF OF DEFENDANT-RESPONDENT

FACTS

This is a Workmen's Compensation case. The petition for compensation is filed by the widow of decedent (4). Decedent was employed by the appellant, John W. Ewen, in his flour and feed store at Bridgeton and on February 27, 1924, while piling sacks of feed and grain the bags or sacks of grain caved and one or more heavy sacks of grain fell on him (6). The widow of decedent who was the petitioner in the proceedings before the Referee of the Workmen's Compensation Bureau claims that the decedent was injured in said accident and died from such injury in Bridgeton Hospital April 7, 1924.

At the hearing before the Referee it was stipulated as follows:

"The Referee: It is stipulated and agreed between counsel for the petitioner and respondent that Robert Gilmore was struck by falling sacks of feed, which happening arose out of and in the course of his employment, February twenty-seventh, nineteen twenty-four; that at the time of the accident his wages were

eighteen dollars a week; that he died on April seventh, nineteen twenty-four; that he left a widow totally dependent upon him."

"Mr. Loder: Then, as I take it, about the only thing in dispute is whether or not an injury that he may have sustained by reason of these bags falling on him was responsible for his death?"

"Mr. Jones: That is the question in issue as I understand it." (35)

The appellant, Ewen, had actual knowledge of the accident (12 line 10 and 47).

The Referee determined that the falling bags injured decedent internally and caused his death. (10 line 20).

The Court of Common Pleas on appeal affirmed this decision (28-32). The Court's opinion is found on pages 25 and 26.

A Writ of Certiorari was allowed to review the judgment of the Court of Common Pleas and the judgment was affirmed by the Supreme Court.

Point 1

If the evidence supports the findings of the Referee and the Court of Common Pleas the judgment of the Supreme Court should be affirmed.

The testimony of Albert Hiles shows (45) that he and decedent were piling bags of feed and that the top bag struck decedent and knocked him over; that the sacks of feed weighed one hundred pounds each (46). He also testifies (47-48) that shortly after the accident Gilmore said he could not carry the feed as had been his custom and witness carried it for him.

Anna Gilmore the petitioner, testifies that on February 27, 1924, her husband came home and complained of being sore through him. (36-37).

Prior to the accident decedent had not been sick. (38 line 31).

Decedent was operated upon by Dr. Sewall at Bridgeton Hospital on April 5, 1924 (53). The operation disclosed a mass of adhesions between the wall of the stomach and the intestines and in the locality of the gall bladder (54).

Adhesions of this character would be caused by traumatism or some disease of the organs themselves (54). None of the organs were diseased (56 line 14-30). See also page 63 line 10-20).

Dr. Lummis who assisted Dr. Sewall also testifies that the adhesions were the result of traumatism (67-68).

If there is any evidence to support the finding of the Referee and the Court of Common Pleas the judgment of the Supreme Court should be affirmed.

Kauffeld vs. G. F. Pfund & Son, 97 N. J. L. 335.

CONCLUSION

The testimony produced on the part of the petitioner is not denied. It shows that until the time of the accident the decedent was a strong healthy man; that immediately after the accident he complained of soreness through his body and was unable to carry the bags of feed as had been his custom; the physicians testify that the adhesions were caused by trauma.

The trauma which caused the adhesions need not have been a blow on the abdomen itself. The adhesions might have been caused by traumatism whether the bags hit the abdomen or whether the bags subjected the body to considerable jamming, a sort of jamming the body together. (Testimony of Dr. Sewall 56).

Dr. Lummis, the other physician testified as follows:

"Q. Doctor, what class of trauma and what particular kind of trauma do you believe is required to produce adhesions such as you saw in this case? What

particular blow would be required to produce these adhesions within five weeks?

A. Well, not a direct blow on the abdomen, but any severe compression of the abdominal contents, from being forced between two forces and in the intestinal—the abdominal wall being compressed by being condensed between two forces.

Q. You would require a direct blow to the abdomen in that instance?

A. Or I should think—I would be the opinion that it would be the result of the compression of the abdomen.

Q. Coming to the compression, you mean a squeezing of them a short length of time or a long length of time?

A. Short squeeze.

Q. Would that squeeze have to be more or less severe in its nature and direct?

A. I should judge it would be; yes, sir." (Testimony of Dr. Lummis, page 69).

Albert Hiles had already testified (46) that the bags of feed weighed one hundred pounds each and that the top bag on the pile struck the decedent and knocked him over.

Dr. Lummis also testified (77) that in his opinion the adhesions that were present at the time of the operation were due to the traumatism which the decedent had.

The evidence before the Referee and the Court of Common Pleas supports the finding of those tribunals.

Manziano vs. Public Service Gas Co., 92
N. J. L. 322.

We respectfully submit that the judgment of the Supreme Court should be affirmed.

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