

INDEX

	Page
Notice of Appeal	1
Determination	2
Employee's Claim Petition for Compensation	4
Respondent's Answer to Employee's Claim Petition	10
Order Reversing Judgment of Workmen's Compensation Bureau and Allowing Judg- ment in Favor of Petitioner	14
Rule to Show Cause	17
Reasons	19
Testimony	20
Stenographer's Certificate	97
On Certiorari Order Allowing Writ of Certi- orari	98
Writ of Certiorari	99
Reasons	100
Opinion	102
Notice of Appeal	104
Grounds of Appeal	105
Rule Discharging Writ of Certiorari	107
Opinion of Supreme Court	108

WITNESSES

Petitioner's:

Louis Schwartz,	
Direct	22
Cross	32
Re-direct	45
Re-cross	48
Dr. John Boti,	
Direct	49
Cross	77

	Page
Re-direct	81
Re-cross	86
Re-direct	94

Respondent's:

Dr. Joseph M. Rector,	
Direct	62
Cross	65
Re-direct	75

Index.

	PAGE
Matthew Andronico:	
Direct	92
Cross	108
Redirect	127
Recross	128
Max A. Kretschmar, recalled:	
Direct	129
Cross	130
Michael Noonan, recalled:	
Direct	131
—	
Charge to Jury	133
Verdict	142
Examination Before Trial	143
Defendants' Rule to Show Cause	155
Reasons of Defendant, Fairmount Bottling Company	156
Rule to Show Cause	156
Opinion	159
Order Discharging Rule	161
Notice of Appeal	163
Reasons	164

New Jersey Supreme Court

Notice of Appeal.

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

LOUIS SCHWARTZ, Petitioner-Appellant, vs. NEW YORK LIVE POULTRY TRUCKING COMPANY, Defendant-Respondent.	}	On Petition for Compen- sation	20
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To Frank G. Turner, Esq.,
76 Montgomery Street,
Jersey City, New Jersey.

SIR:

PLEASE TAKE NOTICE that LOUIS SCHWARTZ, the 30
petitioner-appellant herein, hereby appeals to the
Hudson County Court of Common Pleas, from the
judgment herein dated November 16, 1925, dis-
missing the petition in this proceeding.

Dated, November 23, 1925.

KENT & KENT,
Attorneys for Petitioner-Appellant,
160 Market Street, 40
Paterson, New Jersey.

Determination.

NEW JERSEY DEPARTMENT OF LABOR
WORKMEN'S COMPENSATION BUREAU

10	LOUIS SCHWARTZ, <div style="text-align: right; padding-right: 20px;">Petitioner,</div>
	vs.
	NEW YORK LIVE POULTRY TRUCKING Co., <div style="text-align: right; padding-right: 20px;">Defendant.</div>

The petitioner's petition herein was duly filed on September Tenth, Nineteen Hundred and
 20 Twenty-five, setting up that the petitioner on March Twelfth, Nineteen Hundred and Twenty-five suffered an accident arising out of and in the course of his employment when he slipped and fell from a truck of the respondent in the freight yards of the Delaware Lackawanna Western Railroad Company. The respondent duly filed its answer.

The parties appeared by their respective attorneys on October Thirtieth, Nineteen Hundred and
 30 Twenty-five and evidence was offered on behalf of the petitioner and on behalf of the respondent and the testimony was closed.

It is on this Thirtieth day of October, Nineteen
 40 Hundred and twenty-five ordered and determined that the petitioner was injured in an accident arising out of and in the course of his employment and that he received compensation for his injuries up to and including August Fourth, Nineteen

Determination

Hundred and twenty-five, and his injuries then terminated.

I further find and determine that he is not suffering from injury and that he suffered no permanent injury in said accident. He has been
 10 fully paid and compensated for all temporary disabilities growing out of said accident. He now suffers and since August 4th, 1925, has suffered from disease.

It is, therefore, ordered that the petition be and same hereby is dismissed.

Dated Nov. 16, 1925.

20

CHARLES E. CORBIN,
Deputy Commissioner.

Employee's Claim Petition for Compensation.

NEW JERSEY DEPARTMENT OF LABOR
WORKMEN'S COMPENSATION BUREAU

10 Trenton, N. J.

LOUIS SCHWARTZ,	}	Claim Petition No. Sep 10 1925
Petitioner,		
vs.		
NEW YORK LIVE POULTRY TRUCKING COMPANY,	}	Respondent.
Respondent.		

20 Attorney for Petitioner Nathaniel Kent, 160
Market St., Paterson, N. J.
(Address)
27 William St. N. Y.

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

30 The claimant respectfully alleges the following
facts:

1. What is your name? Louis Schwartz.
 2. Where do you live? 172 South Street, Jersey City, N. J.
(Street Address)
(City or Town)
 3. Sex. Male. 4. Age. 55. 5. Married? Yes.
- 40

Employee's Claim Petition for Compensation

6. By whom were you employed at the time of the accident? (Give name and business address)
New York Live Poultry Trucking Co.
(Name)

15 Paterson Street, 10
(Street Address)
Hoboken, N. J.
(City or Town)

7. What was the business of your employer?
Trucking poultry.

8. Did you give written notice to your employer at the time you were hired, or later, that the Compensation Law should not apply to you? No. 20

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

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

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

12. If so, on what date? March 12th, 1925.

13. Have you made claim to your employer for 30 compensation? Yes.

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

15. When did the accident happen? March 12th, 1925, Thursday about 9 a. m.
(State month, day, year and hour)

16. Where did the accident happen? D. L. & W. 40
Freight Yards at Hoboken.

Employee's Claim Petition for Compensation

17. What was the nature of the accident, and how did it happen? I was assisted in loading an automobile truck with crates of live poultry, when I slipped from the truck to the ground, injuring the right side of my body and leg.
- 10 18. On what date were you compelled to stop work because of the injury? On day of accident.
19. On what date were you well enough to work again? Still disabled.
20. If still disabled, on what date do you think you will be able to work? Permanently disabled.
21. Give nature of any injury from which you will recover. Permanently disabled.
- 20 22. If any permanent injury has resulted, either amputation or loss of usefulness of any member, or impairment of any physical organ, explain fully. My entire right hip and right leg have been permanently injured, so that it is impossible for me to work or to get around.
23. Were your wages fixed by piece-work? Paid by carload.
- 30 24. If so, what was your average weekly wage? Approximately \$35.00 a week.
25. If wages were fixed by the hour, state rate per hour.
26. Give number of hours in an ordinary working day.
27. Give number of days in an ordinary working week. Five days.
- 40

Employee's Claim Petition for Compensation

28. State the amount of weekly wages. Approximately \$35.
29. How much money have you received from your employer as compensation (not medical aid) since your accident? I received \$17 weekly up to August 4th, 1925. 10
30. Has your employer promised to pay you any compensation? No, except as hereinafter stated.
31. If so, how much?
32. Was medical aid required? Yes.
33. Did you receive medical, surgical or hospital services? Yes. 20
34. Did you request your employer to furnish these services? Yes.
35. Were they furnished? Partially.
36. If so, between what dates? From the time of the accident to-date.
37. If not, what sum did you spend for them during the first four weeks after the accident?
38. Give name and address of physician and hospital. Numerous doctors acting in behalf of the Employer have been treating me. 30
39. What other facts are there which you believe important? That in former hearings held, the Employer has failed and refused to pay me any further compensation for temporary disability or for permanent disability.
- 40

Employee's Claim Petition for Compensation

40. Are you willing that the Compensation Bureau endeavor to secure compensation for you, by agreement, before calling for an official hearing? Yes, without prejudice to this proceeding.

10 Your Petitioner therefore prays that your Honorable Bureau will determine the amount of compensation due to your petitioner from the said defendant, under the Act entitled "An Act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of the employment, establishing an elective schedule of compensation and regulating procedure for the determination of liability and compensation thereunder," approved April 4th, 20 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.

And your petitioner will ever pray, etc.

LOUIS SCHWARTZ,
Petitioner.
172 South St., J. C.
Address

30

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

Louis Schwartz of full age, being duly sworn according to law, on his oath deposes and says: That he is the petitioner named in the foregoing petition; and that he has read the same and is 40 familiar with the contents thereof; and that the

Employee's Claim Petition for Compensation

matters and things therein set forth are true according to the best of his knowledge and belief.

LOUIS SCHWARTZ,
Petitioner.

Subscribed and sworn to before me, this 10
31st day of Aug. 1925,
at New York City,
Samuel Kent,
Master in Chancery of N. J.

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

20

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 after the service of this notice, be filed in duplicate with the Secretary of the Bureau, in the State House at Trenton, the facts alleged in the petition will be deemed to be admitted and no testimony will be required from the petitioner to prove such facts. 30

WORKMEN'S COMPENSATION BUREAU,
W. E. Stubbs,
Secretary. 40

Respondent's Answer to Employee's Claim Petition.

(Copy)

NEW JERSEY DEPARTMENT OF LABOR

10 WORKMEN'S COMPENSATION BUREAU

TRENTON, N. J.

LOUIS SCHWARTZ,	Petitioner,	}	Claim Petition No. 4330 September 23d, 1925
vs.			
20 N. Y. LIVE POULTRY, TRUCKING Co.,	Respondent.		

Attorney for Respondent Frank G. Turner, 76 Montgomery St., Jersey City, N. J. (Address)

In answer to Claim Petition filed in this cause:

- 30 1. What is the petitioner's name? Louis Schwartz.
- 2. Where does he reside? 172 South Street, (Street Address)
Jersey City, N. J. (City or Town)
- 6. Was the Petitioner in your employ at the time of the accident? Yes, but no accident.
- 40 7. State your business. Trucking poultry.

Respondent's Answer to Employee's Claim Petition

8. Did you receive written notice from the Petitioner at the time of hiring, or later, that the Compensation Law was not to apply to him? No.

9. Did you give such notice to him? No. 10

10. When did you first have knowledge of this accident? See 14.

11. Did you receive notice of this accident from the Petitioner? See 14.

12. If so, on what date? See 14.

13. Has any claim for compensation been made? Yes. 20

14. What was the Petitioner's regular occupation, and what kind of work was he doing at the time of the accident? Petitioner claims that on March 12th, 1925, he jumped from a truck, and injured himself. There was no accident.

15. When did the accident happen? None. (State month, day, year and hour)

16. Where did the accident happen? None.

17. What was the nature of the accident, and how did it happen? See 14. 30

18. On what date was the petitioner compelled to stop work because of the injury? Not at all.

19. On what day was the injured well enough to work again? March 12th, 1925.

20. If still disabled, on what date do you estimate he will be able to work? Not disabled. 40

Respondent's Answer to Employee's Claim
Petition

21. Give your understanding of the nature of any injury from which he should recover?

No injury.

10 22. Give your understanding of any permanent injury which has resulted, either amputation or loss of usefulness of any member, or impairment of any physical organ. Explain fully. Petitioner suffers from disease, if he suffers from anything. He does not suffer from any permanent or temporary injury.

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

20 24. If so, what was the average weekly wage of the injured?

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

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

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

30 28. State the amount of weekly wages. \$25.50.

29. How much money have you paid the injured as compensation (not including medical aid) since the accident? Compensation to August 4th.

30. Have you promised to pay compensation? Not beyond what has been paid.

31. If so, how much? Nothing more.

40 32. Was medical aid required? For disease, but not for accident.

Respondent's Answer to Employee's Claim
Petition

34. Were you requested to furnish the necessary medical service required by law? Yes.

35. Did you furnish this service? Yes.

36. If so, between what dates? 10

37. If not, give reason for failure to do so.

38. Given name of physician and hospital rendering service at your direction.

39. What other facts are there which you believe important? If you deny that compensation is payable in this case, explain fully your reasons for this conclusion. The petitioner claims that he was injured by jumping from a truck. He suffered no injury because of his jumping. He suffers if at all, from disease. This department is without jurisdiction in this cause. There was no accident arising out of and in the course of his employment. 20

N. Y. LIVE POULTRY TRUCKING CO.
Respondent.

State of New Jersey, }
County of Hudson. } ss: 30

N. Y. Live Poultry Trucking Co. by M. Albert of full age, being fully sworn according to law, on his oath deposes and says: That he is the respondent named in the foregoing answer to claim petition; that he has read the same and is familiar with the contents thereof; and that the matters

Order Reversing Judgment of Workmen's Compensation Bureau and Allowing Judgment in Favor of Petitioner

Court, wherein the Petition herein was dismissed, be and the same is hereby reversed, it is

10 Further ORDERED THAT THE Respondent-Appellee pay or cause to be paid to Petitioner Appellant the sum of Twelve Hundred Seventy-five (\$1275.00) Dollars, representing compensation for permanent disability for a period of Seventy-five (75) weeks, at the rate of \$17.00 per week, said payments to commence on August 4, 1925, the amount due to date to be paid in a lump sum immediately, and it is

20 Further Ordered that the Respondent-Appellee pay or cause to be paid to Kent & Kent, Attorneys in addition to the award of compensation the sum of Two Hundred Fifty (\$250.00) Dollars, as for the reasonable value of their services herein, together with the sum of Sixty Dollars and 60/100 (\$60.60) disbursements incurred for copies of transcript the testimony together with Five Dollars (\$5.00) disbursements incurred for stenographers services in the Court below, together with 30 costs to be taxed herein. All of which sums are to be paid in a lump sum immediately.

CHARLES M. EGAN,
Judge of the Hudson County Court
of Common Pleas.

Entered Jan. 11, 1925.
Common Pleas Min. 23
page, 481-2.
John J. McGovern,
40 Clerk.

Rule to Show Cause.

NEW JERSEY SUPREME COURT

NEW YORK LIVE POULTRY TRUCKING Co.,	} Prosecutor,	} On Certiorari 10
	vs.	
LOUIS SCHWARTZ,	} Defendant.	

It appearing herein that the defendant suffered an accident on March 12th, 1925, while in the employ of the Prosecutor and the New Jersey Workmen's Compensation Bureau decided that 20 there was an accident and that the defendant had suffered temporary disability therein and no permanent disability and that he had received compensation for his said temporary disability and the said judgment of the New Jersey Workmen's Compensation Bureau having been reversed by the Hudson County Court of Common Pleas on January 11th, 1926 in which the said Court of Common Pleas found that the defendant suffered 30 permanent disability in the said accident and this matter coming on to be heard *ex parte* on this Twenty-first day of January, Nineteen Hundred and Twenty-six.

It is thereupon Ordered that the defendant herein show cause on the First Tuesday of May, One Thousand Nine Hundred and Twenty-six at 10:30 a. m. before the Supreme Court, at the State House in Trenton, why a writ of Certiorari 40

Rule to Show Cause

should not be issued herein to review the proceedings in the Workmen's Compensation case; and it is further ordered that all proceedings herein shall in the meantime be stayed.

10 And it is further ordered that either party hereto may take testimony on two days notice to the other. A copy of this order shall be served on the defendant or his attorney on or before February 2d, 1926.

JAMES J. MINTURN,
Justice of the Supreme Court.

Entered Jan. 28, 1926.

On Motion of

20 Frank G. Turner.

Reasons.

NEW JERSEY SUPREME COURT

NEW YORK LIVE POULTRY, COM-
PANY,

Prosecutor,

vs.

LOUIS SCHWARTZ,

Respondent.

On Certiorari 10

The following are the reasons that will be urged by the prosecutor herein:

1. The Court of Common Pleas was without jurisdiction to reverse the Workmen's Compensation Bureau. 20

2. The Workmen's Compensation Bureau found as a fact that the respondent suffered no permanent disability in his said alleged accident.

3. The action of the Hudson County Court of Common Pleas in reversing the judgment of the Workmen's Compensation Bureau was contrary to law and contrary to the evidence. 30

4. The Court of Common Pleas erred in reversing and setting aside the judgment of the Workmen's Compensation Bureau of the Department of Labor.

5. The judgment of the Court of Common Pleas is contrary to law, erroneous and void.

FRANK G. TURNER,
Attorney of Prosecutor. 40

Testimony.

WORKMEN'S COMPENSATION BUREAU

DEPARTMENT OF LABOR OF NEW JERSEY

Jersey City, Hudson County, District

10

LOUIS SCHWARTZ,

vs.

NEW YORK LIVE POULTRY
TRUCKING Co.

#4330.

20 Transcript of stenographer's notes of evidence taken in the above entitled matter before the Hon. CHAS. E. CORBIN, Deputy Compensation Commissioner, at #571 Jersey Avenue, Jersey City, New Jersey, on the thirtieth day of October, A. D. 1925, at 10:30 o'clock, a. m.

Appearances:

30 Samuel Kent, Esq. (Kent & Kent, Esqs.) for the petitioner.

Frank G. Turner, Esq. for the respondent.

LOUIS SCHWARTZ, produced as the petitioner, takes the stand:

Mr. Kent: I suppose we can stipulate quite a bit of the answer itself.

40 Mr. Turner: I think we had better wait until Mr. Nelson comes back here, before

Argument

we stipulate any facts. He is down telephoning.

The Court: How long will he be at the telephone?

Mr. Turner: He is just telephoning for the doctor. 10

Mr. Kent: There is no question about the employment, is there?

Mr. Turner: I do not think there is any question about the employment. Let us see what we admit. Yes. He was in our employ at the time of the accident, we admit that. But we do not admit the accident.

The Court: It is stipulated— 20

Mr. Turner: That he was in our employ on March 12th, 1925, but we deny the accident.

The Court: Employed by respondent on March 12th, 1925. Can we stipulate as to the wages?

Mr. Turner: Wages \$25.50 per week.

Mr. Kent: But in any event, the maximum would apply if there is an award, is that correct? 30

Mr. Turner: No. I won't say that. We admit the wages are \$25.50 a week. I do not know what you claim.

Mr. Kent: The respondent admits that the wages were \$25.50.

The Court: Wages, \$25.50.

Mr. Kent: We claim they were \$35.

The Court: That is overtime.

Mr. Kent: Yes. Including overtime. 40

Louis Schwartz—Direct

The Court: Well, you see, overtime is not involved. Go ahead.

(At this point the petitioner was sworn.)

DIRECT-EXAMINATION by Mr. Kent:

10 Q. Mr. Schwartz, on March 12th of this year you were working for the New York Live Poultry Trucking Company, weren't you? A. Yes; I did.

Q. The people that you are suing in this suit? A. Yes, sir.

Q. Do you hear me? A. Yes, sir.

Q. If you understand me, say so. Where were you working on that day? A. On the Delaware, on the Delaware Lackawanna Railroad on Eight-
20 tenth Street.

Q. Hoboken? A. Yes; that is, Jersey City, not Hoboken. That is Jersey City, Eighteenth Street.

Q. What kind of work were you doing? A. I am loader. Loading the trucks poultry.

Q. Was this an automobile or horse-drawn truck? A. Automobile truck.

Q. Were you the driver, chauffeur? A. I am not a driver; I am loader.

30 Q. That is a helper on the wagon? A. Driver's helper.

Q. And you helped loading and unloading? A. Not unloading; only loading.

Q. Loading what? A. Coops, live poultry.

Q. Live poultry loaded on this truck? A. Yes.

Q. Where did you get it from? A. On the platform, they are being filled, them coops, and then we got to weigh them and after they are weighed
40 we load them on the trucks.

Q. They come in at the freight station and you

Louis Schwartz—Direct

unload from the cars or railroad on to your truck, is that correct? A. Yes.

Q. On this day you were doing the same thing? A. Yes, sir.

Q. About what time was it? A. About nine
10 o'clock in the morning.

Q. And how much of a load had been put on at this time? A. A load, about thirty-five coops.

Q. Was the whole wagon loaded? A. Yes.

Q. No more to be put on? A. No, sir.

Q. After the crates were fully put on, what did you do? A. Then it is my duty to go up on the truck and tie up with a rope, so he shouldn't lose any.

Q. Did you do it? A. Yes, sir; that is my
20 duty.

Q. Did you do it on this day? A. Yes, sir.

Q. Tell me what you did at that time, and what happened. A. At the time I finished loading, I was on the truck on the tail, on the back end of the truck, and I slipped off, because the truck was greasy from the chicken dirt.

Q. You mean the chicken manure? A. Yes. And I slipped off and fell down on the ground.

Q. When you say you got up on the tail board,
30 how high from the ground was the tail board? A. About four and a half—five feet.

Q. You were standing on that? A. I was standing on that to tie up.

Q. Wait a minute. Your feet were on the tail-board?

Mr. Turner: I do not think Counsel ought to lead the witness, if the Court
40 please.

The Court: You are leading.

Louis Schwartz—Direct

Q. Where were your feet when you were standing on the tail board? A. My feet? They were on my body. What do you mean "the feet?"

Q. Where were your feet with reference to the tailboard? A. There was no tail board on them
10 trucks.

Q. Where were your feet at the time before you fell? A. On the tail—on the truck.

Q. On what part of the truck? A. On the end of the truck. On the after end of the truck.

Q. And how far above the ground were you standing at that time when this happened. A. Truck stands alongside the platform, understand?

Q. Yes. How many feet above the ground
20 were you standing at this time? A. Above the ground?

Q. Yes. A. About four and a half, five feet.

Q. Were you standing upright or otherwise? A. Right straight up.

Q. And then what happened? A. And then I slipped off, and I fell from the truck.

Q. Where did you fall to? A. I fell on the ground and I felt a bad sprain.

Q. What part of your body struck the ground,
30 that hurt you? A. The legs, both legs.

Q. What side of your body hit the ground? A. I didn't fell with the side. I landed on the feet.

Q. And did you feel any pain? A. Terrible pain.

Q. Where? A. Right hip and thigh.

The Court: Where?

40 (Answer repeated by the stenographer.)

Louis Schwartz—Direct

Q. What did you do after that? A. After that I hardly got up, and I hired a taxi, I couldn't walk, I hired a taxi, and I went down to the office and reported.

Q. Where did you go to? A. To the employ-
ment office—to the employer office. 10

Q. What? A. New York Live Poultry Trucking Company.

Q. Who did you talk to? A. To the book-keeper. I explained to him what happened.

Mr. Turner: I object to any conversation with the book-keeper.

Q. Do you know Mr. Albert? A. Yes, sir.

Q. What connection has he with the company? 20
A. He is shareholder of the company, partner.

Q. Did you talk to him about it? A. Yes, sir.

Q. When? A. Not on the day when that happened, but a couple of months later when the insurance company refused to pay me insurance.

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

The Court: Strike it out.

Mr. Kent: I will withdraw it. All right. 30

Q. After that trip in the taxi, what did you do? A. I went over to the office and I reported the case, how it happened, and they sent me to Dr. Ginsberg to be treated.

Q. Who? A. Dr. Ginsberg in Hoboken.

Mr. Turner: Is that Dr. Greenburg or Dr. Ginsberg?

A. Ginsberg. He treated me for about two
40 weeks.

Louis Schwartz—Direct

Q. Did you go to him the same day of the accident? A. Yes, sir.

Q. What did he do for you? A. He prescribed the medicines. All different medicines. Every day nearly I had a different medicine.

10 Q. You say he treated you for two weeks? A. Yes, sir.

Q. Did you work during that time? A. No, sir; I haven't—

Q. Wait a minute. What did you do during that two weeks? A. I have been trying to go to work after 8 of—

Q. No. I am asking you during that two weeks. What did you do? How did you spend the time
20 of the day? A. Home.

Q. And after that two weeks, what did you do? A. After those two weeks Dr. Ginsberg sent me to the Labor Department to get treatment, electric massage and heat.

Q. And how long did you continue? A. For two weeks.

Q. Did you work during that time? A. No, sir; I tried to go to work—

Q. I'm asking did you work. A. No, sir.

30 Q. All right. After that what did you do about treatments, if anything? A. After the insurance company sent me to Dr. Chapman to be treated by him.

Q. How long were you treated by him? A. For two weeks, also.

Q. What did he do for you? A. Same treatment, electric massage.

Q. All this treatment that they gave was to
40 what part of your body? A. Where I got injured, to the right thigh and hip.

Louis Schwartz—Direct

Q. Did not treat any other part of your body? A. No, sir.

Q. And these doctors, you were going to, did you explain to them what had happened? A. Yes, sir.

Q. And after you explained to them what had
10 happened, they gave you the treatment in connection with your leg? A. Yes, sir.

Q. And did you tell them it was in connection with this fall from the truck? A. Yes.

Mr. Turner: That is leading, if the Court please.

The Court: You are leading.

Q. What did you tell them, when you told them
20 about the accident? A. I told them how the injury happened to me, and where it hurt me, and so they gave me the same treatment, electric and massaging.

Q. After Dr. Chapman treated you, for that, three weeks—did you say three weeks? A. Two.

Q. Then what happened? A. Then the insurance company refused to give me any doctors' treatments. They said if all those doctors and all those medicines couldn't cure your leg, have your
30 own doctor. And then I went and got Dr. Cohen in Hoboken.

Q. Weren't you treated at one time by Dr. Rector? A. They sent me for examination only to Dr. Rector. Not treating, but they sent me for examination.

Q. Wait a minute. When was that about? A. In August, I think.

Q. You were hurt on March 12th, is that cor-
40 rect? A. Yes; yes.

Louis Schwartz—Direct

Q. And it was in August— A. I don't remember, in the last of July or earliest days of August.

Q. Who sent you to Dr. Rector? A. Insurance Company.

Q. Who was the particular person, do you know? A. Yes.

Q. Who? A. Mr. Grimshaw. Mr. Grimshaw. He is adjuster.

Q. He was connected with the insurance company that sent you to Dr. Rector? A. Yes; their adjuster.

Q. How many treatments did you get from Dr. Rector? A. No treatments at all. Only he examined me. He didn't give me no treatments.

Q. Were you treated by some other doctors in addition to the ones you have given me? A. Dr. Cohen and Dr. Stack, in Hoboken.

Q. How long were you treated by Dr. Stack? A. Since July 18th until now, I can say.

Q. What treatment did he give you? A. Same thing.

Q. What treatment was that? A. Electric massage.

Q. When was the last time you were treated by any doctor at the request of either the insurance company or the employer? When was the last time you were treated by a doctor to whom you were sent by the insurance company? A. That was Dr. Chapman.

Q. I am asking you when was the last time you were treated, about? A. About July 15th—July 17th.

Q. Have you worked since the accident? A. No, sir.

Q. What is the matter with you now? A. Now

Louis Schwartz—Direct

I feel painful all over my body. Takes effect all over my body.

Q. Where? A. From the injury. Before I had been working 11 years.

Q. Where do you feel the pain now? A. In the other leg. Because I am pressing up in this leg. Because I couldn't walk with this leg. This leg took effect.

Q. About your right side, do you have any pain there? A. Yes.

Q. Where? A. Right in the hip and side. The veins all the way down.

Q. Describe to the judge how it affects you. A. I feel pain right here in the thigh and the hip and the veins all the way down. The veins are twisting. I feel like cramps.

Q. You have been paid some compensation, haven't you? A. Yes, sir.

Q. How much were you getting a week, at the time you were hurt? A. Since the time I was hurt?

Q. No. At the time you were hurt, how much were you getting a week in wages? A. In wages I used to make \$35.00 to \$40.00 sometime. Not steady pay, because I worked piece work.

Q. Piece work? A. Yes.

Q. You averaged how much? A. Average I can figure about \$35.00 a week.

Q. How much did you make a week before you were hurt? A. Something over \$30.00, or \$35.00 or \$36.00.

(Answer repeated by the stenographer.)

A. Yes.

Q. Now, how much money were you paid in

Louis Schwartz—Direct

compensation after the accident? A. Since, for all the time since March 12th, to August 4th, I got paid.

Q. That is, after this accident you came here to this court, there was an informal hearing, is that correct? A. Yes, sir. 10

Q. Who appeared on the other side? A. That—

Q. Mr. Nelson was here? A. Yes; Mr. Nelson.

Q. Mr. Turner was not here, this gentleman, was he? A. No, sir.

Q. And these facts were all discussed before the judge?

Mr. Turner: I object to what was discussed before the judge. 20

The Court: Objection sustained.

Q. There was a hearing about your accident, wasn't there? A. Yes, sir.

Q. And after that you started getting payments? A. Yes.

Q. How much, a week, did you get? A. \$17.00.

Q. And for how long did you get it? A. It will figure out from March 12th to August 4th.

Q. To August 4th? A. Yes, sir. 30

Q. You were paid then up till August 4th? A. Yes, sir.

Q. And every week you got a check for \$17.00? A. Yes, sir.

Q. You have not had any other accident or made any claim for any other accident except this one on March 12th, have you? A. No, sir; no other.

Q. How old are you? A. Fifty-five. 40

Q. Married? A. Yes, sir.

Louis Schwartz—Direct

Q. How long had you been working for this poultry company before this accident? A. Eleven years, steady.

Q. Doing the same kind of work? A. Yes, sir.

Q. Ever had any sickness or trouble? A. Never. 10

Q. Ever laid up with any illness? A. No—never.

Q. Did you ever have pain in your right side? A. Never.

Q. Or your other side? A. No, sir.

Q. Did you ever complain of any pain? A. No, sir.

Q. Have you had anything happen to you in the way of an accident since March 12th to the present time? A. No, sir. 20

Q. Anything happen to you at all? A. No, sir.

Q. So far as you know? A. Could not happen, because I don't work. Don't work.

Q. Are you working at the present time? A. No, sir.

Q. Have you worked at all since March 12th? A. Not a bit.

Q. What is the matter with you now you cannot work? A. Now I feel every day worse. I am played out. 30

Q. What is the matter with you? A. I feel pain in my veins and my hip and thigh. I feel pain. I can hardly walk.

Q. Do you have to use a cane now? A. Yes, sir; always.

Q. Did you ever use a cane before? A. Before the accident happened?

Q. Yes. A. No, sir; never. 40

Louis Schwartz—Cross

Q. Now, when you went to Dr. Rector, what did he tell you was the matter with you?

Mr. Turner: I object to anything Dr. Rector told him.

10 A. He didn't tell me—

Mr. Turner: I object to anything Dr. Rector is supposed to have said.

The Court: Objection sustained.

Mr. Kent: May I suggest this man was examined by Dr. Rector at the request of the respondent, and is the designated medical man of the respondent, to whom this man, for the purpose of treatment, gives a history, and then Dr. Rector gives the result of his diagnosis.

20

The Court: Objection sustained.

Q. Did you ever, as far as you know, have rheumatism before this accident? A. No, sir.

Q. Did you ever have any disease of any kind? A. Never in my life; never in my life.

Q. You have always been a laboring man? A. Yes; since I left school. Hard work. Never

30 done anything else.

Q. How old are you now? A. Fifty-five years.

Q. Is there any history of disease in your family or children? A. No, sir.

Mr. Kent: Cross-examine.

CROSS-EXAMINATION by Mr. Turner:

Q. You say you are only fifty-five years old?

A. Yes, sir.

40 Q. Where were you born? A. In Austria.

Louis Schwartz—Cross

Q. Where in Austria? A. The city?

Q. Yes. A. Tarnopol.

Q. What? A. Tarnopol.

Q. Spell it. A. T-a-r-n-o-p-o-l.

Q. Do you remember the year you were born in? A. 1870. 10

Q. 1870? A. Yes, sir.

Q. And were you always using the same name, Louis Schwartz, just as you use it now? A. Yes, sir.

Q. So that is the name that is registered there of your birth, "Louis Schwartz?" A. Yes, sir.

Q. What did you do before you went to work for the New York Live Poultry Company? A. I worked on the docks. 20

Q. You worked on the docks? A. Yes.

Q. Longshoreman? A. Yes.

Q. Used to lifting heavy weights? A. Yes.

Q. Heavy work? A. Yes.

Q. Now you worked for the New York Live Poultry Company, was that heavy work or light work? A. Hard work.

Q. What did you have to lift there? A. Two men—we had to lift a coop of poultry which is filled up and weighs from 250 to 400 lbs. Got to take that from the bench, put them on the scale and then when it is weighed, we have to carry it from the scale and lift them up 8 feet high on to the machine, too. Two men have to do. 30

Q. You were a strong man. A. Strong as a bull.

Q. Strong as a bull. And you have never been sick at all in your life? A. No, sir.

Q. And you were in the habit, when you got a 40

Louis Schwartz—Cross

truckload, of jumping off the truck, isn't that so?

A. That is no habit, but that is my duty.

Q. That is your duty to jump off the truck? A. They don't give you no step ladder to get up on the truck or get down off the truck.

10 Q. That is what you did on this day, isn't it?

A. Yes, sir.

Q. Tell us, on this day did you have your truck all loaded? A. The first load was loaded; yes.

Q. I mean this particular truck you were on?

A. Yes.

Q. Was that truck loaded? A. Yes, sir.

Q. Wasn't it all tied up? A. Not yet; I intended to go up and tie it up, and that is the time
20 I slipped down.

Q. Where did you intend to go to tie it up? A. On the truck; on the truck.

Q. Did you have to climb up on the crates? A. No, sir; I stay on the end of the truck.

Q. You stand on the end of the truck? A. Yes.

Q. Did you have a rope with you? A. Rope was tied on one end and then we laid the rope around truck and tied it on the other.

Q. Did you have a rope at this time you jumped
30 off the truck? A. I didn't have it in my hand.

Q. You did not have it in your hand, did you? Where was the rope then, on the truck, tied up?

A. Yes.

Q. So you had not taken the rope yet. You had not taken the rope yet, had you? A. Yes; sure; I had him but I didn't hold him in my hands at that time.

Q. Then you had not gotten it yet? A. Yes;
40 I had him.

Louis Schwartz—Cross

Q. Where was it? A. I tied up one end, for instance—I tied up one end here with the rope, and go around with the rope and then make it fast.

Q. So that before you finished your job, you had to get down on the ground and walk around
10 with a rope, did you? A. Yes; and then go up on the truck again.

Q. Go up on the truck again and tie it up there? A. And then rope and tie him up.

Q. So you had done all you could do on the truck up to that time and you had to get down on the ground to do the rest of your work, didn't you? A. Yes.

Q. And then you were to walk around the
20 truck and tie the rope, weren't you? A. Yes.

Q. Who was working with you? A. My side-partner.

Q. Who? A. My sidepartner; we are always working, two men.

Q. What is his name? A. John Kane.

Q. John Kane? A. Yes.

Q. And was he a helper on the truck or was he a driver? A. He was a helper, same as I.

Q. He was a helper, same as you. And you
30 had a driver besides that, did you? A. Yes.

Q. What is his name? A. I couldn't tell you. We don't pay—

Q. What is his first name? A. I couldn't tell you. We don't pay no attention to the driver. We are only loading.

Q. What truck were you on? A. Automobile truck.

Q. Of course, an automobile truck. Which
40

Louis Schwartz—Cross

one? A. It belongs to the New York Live Poultry Trucking Company.

Q. How many trucks have they got? A. They have got about fifty-five or sixty.

Q. Can't you identify the truck you were on?

10 A. I don't pay no attention to the driver.

Q. You do not know the driver. You do not know the number of the truck? A. No, sir.

Q. You do not know anything at all about it except that it was one of the fifty-five or sixty? A. Yes; I will tell you, we can handle load trucks about fifteen—oh well, twelve or fifteen trucks a day, so we don't pay no attention to the driver or number of the truck.

20 Q. So all you know is it was a truck. Did this truck have any name on it? A. A number.

Q. A number? A. Yes.

Q. That is all it had, is a number? Nothing else? A. The name of the firm too, of course.

Q. What was the number of it? A. I couldn't tell you the number of it. We didn't take any notice of the number. Because we are handling ten or twelve or fifteen trucks a day. We are not supposed to take notice of the number. The

30 foreman takes the numbers.

Q. You are not supposed to jump off the trucks either, but you do. A. I got to jump up and down, but not to take any notice of the numbers.

Q. When this truck is loaded the crates extend out beyond the truck in back, don't they? A. Sometimes they are sticking out and sometimes—

Q. This time? A. There was a little space on the end of the truck so a man can stand on it to
40 adjust the rope.

Louis Schwartz—Cross

Q. That is very unusual, isn't it, for there to be a space on the truck?

Mr. Kent: Objected to on the ground that it is altogether immaterial.

Mr. Turner: Cross-examination, if the Court please. 10

Mr. Kent: Objected to.

The Court: I will allow the question.

Q. Isn't that very unusual? A. What is?

Q. To have any space on the trucks? A. Sometimes there is space; some trucks are longer, and they have no space to stand there on the end.

Q. How many crates did you have on there? A. Thirty-five.

Q. From the front to the back? A. Thirty-five. 20 That is all told.

Q. But from the front to the back, how many did you have on? Counting from the front to the back, how many did you have on? A. How many tiers, you mean?

Q. No. How many crates from the front to the back? Suppose there was just one layer of crates, how many crates did you have on? Take the bottom layer. A. I ain't got you.

Q. How high was it? A. The truck? Four 30 and a half to five feet.

Q. No. The crates. How many crates high would you have those? A. Seven high.

Q. Seven high? A. Yes.

Q. There was five long. A. Yes; five tiers.

Q. Five tiers. And how long was the truck? A. There is some trucks that—

Q. No. This truck. A. This truck. I couldn't tell you. I didn't measure it. 40

Louis Schwartz—Cross

Q. About? A. I have no idea. I don't measure the trucks before I am going loaded.

Q. You were just going to tell us how long some trucks were. A. I have no idea.

Q. Can't you tell us how long this was? A. 10 I have no idea.

Q. Was it longer than 10 feet? A. Oh, yes.

Q. Was it longer than 11 feet? A. One coop?

Q. No. This truck. About? About how long was this truck? A. I will tell you in a minute. Figuring one coop is a little wider than the table, a little more, say it will be four and a half or five feet.

Q. Coop is four and a half or five feet? A.

20 Coop. Seven tiers, seven fives is thirty-five feet.

Q. And suppose you had five tiers, as you just testified a minute ago, how wide would it be? A. I beg your pardon.

Q. You just said you had five tiers. A. Five tiers, seven high.

Q. How long would that make it? A. Five—Five—about twenty-five. About twenty-five feet.

Q. About twenty-five feet long? A. Yes.

Q. So you would have to judge this entirely by 30 the length of the crates? You do not know anything about the truck itself without the crates on it? A. The truck is made for five or six or seven tiers. They are different trucks.

Q. And this was a five tier truck, wasn't it? A. Yes.

Q. When you jumped off this truck, you landed on your feet, didn't you? A. Yes.

Q. You did not fall to the ground at all, did 40 you? A. I fell; yes, I fell.

Louis Schwartz—Cross

Q. How did you fall when you jumped? A. I felt a sprain in my leg and I gave it down. I sat down.

Q. When you jumped to the ground, just show us what happened to you when you got to the ground. Just show the judge what—A. When I 10 fell down—I can't jump now—

Q. Just show us what happened to you when you got on the ground. A. I sat down.

Q. Did you sit down? A. Yes; I felt a bad sprain and I sat down.

Q. You felt a bad sprain in your right hip? A. Yes.

Q. Or you mean your right groin. A. In the joint. 20

Q. In your joint? A. Yes.

Q. And then you went right away, did you? Went away right off? A. Yes; took a taxi and went to the office.

Q. Took a taxi and went to the office? A. Yes; and I reported.

Q. How did you get a taxi over there at that place? A. Soon you come out from the yard there is many taxis there. And sometimes they are in the yards, too. 30

Q. This is in Jersey City, isn't it? A. Yes; Eighteenth Street.

Q. Did you ever see any taxis there? A. Oh plenty.

Q. Where you load chicken? A. Not in the yard; sometimes they are in the yard bringing merchant. And on the street.

Q. Where did you get this taxi? A. Right to the gate. 40

Louis Schwartz—Cross

Q. How far did you walk to get to the gate? A. Not far; a few steps.

Q. About how far? A. I couldn't imagine. I couldn't imagine. About as far as from here to the next wall.

10 Mr. Kent: About how many feet is that?

A. About sixteen or eighteen feet.

Q. And that is as far as it was to the gate? A. I didn't walk. I crawled.

Q. How did you get there? A. On one leg.

Q. You mean you hopped on one leg? A. Yes.

Q. Which leg did you hop on? A. The left.

Q. Now your left leg is the one causing you trouble. A. Because I am pressing so much up
20 on the left leg, it took effect on the right leg.

Q. You did not have any pain in your left leg after you hopped on it, did you? A. No.

Q. When did you first have pain in your left leg? When did you first develop a pain in your left leg? A. In a couple of weeks.

Q. Two weeks ago? A. A couple of weeks or so.

Q. Two weeks ago? A. Day after the injury.

Q. Day after the injury? A couple of weeks
30 after the injury you had pain in both legs, didn't you? A. Yes.

Q. A couple of weeks after the injury, did you have any other pains besides the pains in both legs? A. No.

Q. That was all? Have you got any other pain now? A. Now I got pain in both legs.

Q. You have pain in both legs now. Anywhere else? A. No, sir.

40 Q. You said a minute ago you had pain all over

Louis Schwartz—Cross

your body. A. Yes; but I am not so particular about myself, see?

Q. What do you mean you are not so particular about yourself? A. Because I don't care for myself, so much. If it hurts me I don't mind it.

Q. You don't mind pain? A. No. 10

Q. But you have pain all over your body now, haven't you? A. Yes.

Q. You have got pains in your hips? A. A little bit.

Q. And pains in your shoulders? A. Yes.

Q. And pains in your back? A. It means all over my body. If I got it in both legs, that is sufficient.

Q. That is sufficient? A. Yes. 20

Q. Just where do you have pain in the left leg, now? A. All over.

Q. From your knee up to your hip? A. Yes.

Q. Is that all? A. Yes.

Q. And you have pains now in your right leg? A. Yes.

Q. From your knee up to your hip, don't you? A. Yes.

Q. Both legs pain from the knee to the hip? A. Yes. 30

Q. How long have you had those pains in both knees, from the hopping or since two weeks after the accident? A. About two weeks after the accident; I then noticed it.

Q. Has the pain ever stopped since two weeks after the accident? A. Sometimes it stops. Sometimes it pains me.

Q. You do not have it in dry weather, you mean, and you do have it in wet weather? A. In nasty
40 weather, I feel more pain.

Louis Schwartz—Cross

Q. I see. Do you live home? Do you live home? A. Yes, sir.

Q. What about this compensation. You say say you got \$17.00 every week? A. Yes.

10 Q. Sure about that? A. That's all. Not every—only until August 4th.

Q. I know until August 4th. Are you sure it was a check for \$17.00? A. Yes.

Q. They were not \$12.00 checks? A. What?

Q. They were not \$12.00 checks? A. No.

Q. Or \$24.00 checks? A. That was for the first ten days; they paid me up \$24.00 and some odd cents.

Q. \$24.00 and some cents? A. Yes.

20 Q. Every check you got was \$24.00 and some cents? A. Not every check; every check was \$17.00.

Q. Sure about that? A. Yes, sir; except this check, every check \$17.00.

Q. And how many checks did you get? A. I couldn't remember, but you can figure it out.

30 Mr. Kent: I submit it appears from the answer compensation was paid until August 4th under their sworn answer.

Mr. Turner: But not as \$17.00 a week.

Mr. Kent: No. I am merely referring the Court to that part of the answer.

A. From March 12th to August 4th, I got paid at \$17.00 a week.

Q. You do not know how many checks you got?

A. No, sir; we can easily figure that out on a calendar.

40 Q. That is the way you expect to do it; figure it out on a calendar? A. Yes, sir.

Louis Schwartz—Re-direct

Q. How often did you get your check? A. Every week.

Q. Every week? A. Yes; sometimes every two weeks.

Q. You got them every two weeks, didn't you? A. No, sir. 10

Q. Never got a check every week, did you?

Mr. Kent: May I suggest if Mr. Turner will submit to me a statement of the payments made, I will accept that as the payments made instead of spending any time.

Mr. Turner: It is not spending any time. I think he is mistaken.

The Court: I do not think it is especially 20 relevant.

Mr. Turner: That is all.

RE-DIRECT EXAMINATION by Mr. Kent:

Q. Mr. — A. Schwartz.

Q. Schwartz, you used the word "jump" in connection with this accident. Just tell me how you came, again, to get from the truck on to the ground. Just what happened.

Mr. Turner: I object to that. 30

A. Because the truck was greasy—

Mr. Turner: I object to that.

The Court: Just one minute.

Mr. Turner: I object to that on the ground that he has already testified to that.

The Court: I will allow it. 40

Louis Schwartz—Re-direct

A. The truck was greasy from the chicken manure. So I stood on the end of the truck. And I intended to adjust the rope around, and I slipped off and I fell down.

10 Q. Which foot was it that slipped? A. The right one.

Q. And when you you used the word "jump" what did you mean in connection with that slipping?

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

A. I fell.

20 Mr. Turner: The word "jump" is a very short English word, and very clear and understood by everybody.

Mr. Kent: He is not as good a lexicographer as you are.

The Court: I will allow it, because I noticed in your examination you used the word "jump."

Mr. Turner: I used the word jump because I have a reason for it.

30 Mr. Kent: Because you wanted to use that word.

Mr. Turner: No. I used it because he used it.

A. Because I am not so educated to express myself so correctly. I am only a common laborer. That's all.

40 Q. So the fact is the accident happened in connection with your right foot slipping on the horse manure—on the chicken manure, and then you fell to the ground. A. Yes.

Louis Schwartz—Re-direct

Mr. Turner: I object to that, if the Court please, on the ground it is leading.

The Court: Objection sustained.

Q. Tell me what did happen then after you slipped? A. After I slipped and gave way a little, I nearly sat down—I didn't fall down—but I gave way with the whole body. 10

Q. Did your feet go off the truck? A. Yes.

Q. To where? A. To the ground.

Q. You said to Mr. Turner, you felt pains only in the veins. A. Yes; only in the veins.

Q. Is that correct? A. Yes.

Q. Is that the only place in your body you feel pain? A. Yes.

Q. Do you feel pain as you indicate around your hip? 20

Mr. Turner: I object to that on the ground it is not proper re-direct, and that is leading. He said they were blood veins, and surely he knows what that is.

Q. What did you mean before when you told me before you had pains in your hip? A. The veins there in the hip hurt me. 30

Q. How do you know it is the veins? How do you know it is the veins that hurt you?

Mr. Turner: I object to how he knows it, if the Court please.

Q. If you know. A. I feel because the veins—I feel like twisting cramps in the joint.

Q. You feel pain there and you think it is the veins? A. Yes. 40

Louis Schwartz—Re-cross

Mr. Turner: I object to that on the ground it is leading.

The Court: Objection sustained.

Q. Have you had any expenses for drugs?
10 Any since you are hurt? A. Yes, sir.

Q. Have you paid them yourself? A. The drug is paid, the drug bill.

Q. How much have you paid? A. Fifteen and a half— Fifteen dollars—Fifteen and a half dollars.

Q. Has that been repaid to you by the insurance company? A. No, sir; and then I have to spend so much to go to Newark to collect my compensation.
20

Q. I did not ask you that. Did you spend any money on yourself you did not get repaid for the treatment by doctors? A. Yes, carfare; fare—

Q. Have you paid any doctor's bills? A. No, sir.

Q. You have been examined by Dr. Boti, haven't you? A. Yes, sir.

Q. How many times? A. Twice.

Mr. Kent: That is all.

30 The Court: That is all.

RE-CROSS EXAMINATION by Mr. Turner:

Q. When you did talk to your employer, you told your employer you had jumped off the truck?
A. I fell off, that means I had jumped off.

Q. You told him you had jumped off—A. No, sir.

Q. Didn't you? A. No, sir.

40 Q. You say now you did not tell him that? A.

Dr. John Boti—Direct

No, sir; I will tell him that in his office. I slipped off.

By Mr. Kent:

Q. Is your employer here; is he here? Your boss? A. No, sir. 10

Mr. Turner: That is all.

DR. JOHN BOTI, a witness on behalf of the petitioner, sworn:

Direct-examination by Mr. Kent:

Q. Dr. Boti, you are a practicing physician and 20 surgeon of this State? A. Yes.

Q. For how long? A. Nine years, approximately.

Q. And will you tell us your general qualifications? A. I was formerly connected with the Jersey City Hospital; at the present time I am not connected with any institution. I have been doing traumatic Compensation Surgery for a number of years. Probably five or six.

Q. You have examined Mr. Schwartz profes- 30 sionally at my request, have you not? A. Yes.

Q. When did you first examine him? A. The first examination about ten days ago.

Q. And when he came to you in connection with the proposed treatment, did he give you a history of an accident as he claims? A. Yes.

Q. Will you tell us what that history was? A. Why, he claimed—

40

Dr. John Boti—Direct

Mr. Turner: I object to that if the Court please, because the history is for the purpose of testifying and not for the purpose of treatment. Therefore it is a self serving declaration.

10 The Court: Objection sustained.

Q. Did Mr. Schwartz come to you for treatment as far as you know? A. No.

Q. For what purpose did he come to you? A. Examination.

Q. But you got a history from him? A. Yes.

Q. And that history was procured for the purpose of the examination you made? A. Yes.

20 Mr. Kent: I now submit that history is admissible.

Mr. Turner: I renew my objection.

The Court: Objection sustained.

Q. But you did get a history from the man? A. Yes.

Q. And did you examine him? A. Yes.

Q. Tell me what you did and what you found?
A. Well, at the time of my first examination I made a thorough examination of him and before I made a final report I came to a conclusion I wanted a blood test taken. A blood Wasserman taken and also urinalysis. I had the blood Wasserman made in the Hudson County Laboratory and it was reported—

Mr. Turner: I object to what the test was because the doctor did not make it himself.

40 The Court: Objection sustained.

Dr. John Boti—Direct

Q. Go ahead. A. Well, I examined the man, and his condition was principally subjective in nature, although there were some signs, he had some tenderness over the right hip joint when making deep pressure over the same. And on making that pressure he complained of a pain radiating down the dorsal or the back part of the thigh. He also was unable to fully flex the thigh on the abdomen, without any assistance. I mean voluntarily. And in forcibly flexing the thigh on the abdomen there was an occasional spasm noted in the gluteal region. Those were the only signs that were found.

Q. Have you as a result of your examination ascertained whether or not that man is suffering from syphilis? A. Well, of course—

Mr. Turner: I object to that because the doctor said he sent that blood to be analysed and he has not made the examination himself. How can he tell whether the man suffered from syphilis or not when he did not make it himself?

Mr. Kent: I have asked the question.

Mr. Turner: I make the objection on the ground it is incompetent for the doctor to testify to a fact that may be hearsay.

The Court: Objection sustained.

Q. Did you examine Mr. Schwartz again after that first examination? A. Yes.

Q. What did you find then? A. I found approximately the same condition present as I have already explained.

Q. That is with reference to the— A. To the

Dr. John Boti—Direct

signs and of course the symptoms he complained of.

Q. Did you at my request examine his teeth? A. Yes.

Q. What did you find to be the condition of his teeth? A. His teeth are in pretty good condition. He must have had a pyorrhoea condition to the teeth or gums some time previous.

Q. Did he have a condition of pyorrhoea at the time you examined him recently? A. Well, it showed some signs of it; yes. If I recall right.

Q. And did you find any other conditions present? A. You mean—

Q. In reference to his general condition, or tell me what else you found, if anything. A. Those are the signs I found. If you want my opinion as to just what I think, or just what do you mean?

Q. I want to know what you found then. A. Those are the signs and the symptoms he explained to me. And I have given you the signs that were present at the time.

Q. When was that last examination held? A. Monday evening.

Q. Of this week? A. Of this week.

Q. Now, Doctor, assuming that Mr. Schwartz is a man about fifty-five, and married, and been a laborer all his life, was a longshoreman in prior years, for the last eleven years or so has been working at his employment with this particular employer to assist in lifting, moving, and carrying the crates, poultry crates, that weighed from 200 to 400 pounds, in conjunction with another employee, and that he has been doing that for eleven years constantly without a lay-off; never

Dr. John Boti—Direct

had any trouble, or even complained of any kind, let alone medical treatment, and he has never suffered any pain, never had any pains in particular in his legs or especially in his right side, or what is popularly called rheumatic pains, as far as he knows, and that on March 12th of this year, while he was so engaged, and in particular standing on a truck to fix some ropes to the crates his right leg slipped on the platform of the truck and that he fell in a standing position; at least at the time he fell he came forcibly to the ground, a distance of about four or five feet, and that he immediately felt a pain, a cracking pain in the right side, at or near the hip, and so incapacitated him that he had to hobble a short distance and take a taxicab to get first to his employer, and then get home and that after that he was treated constantly from that day up to the latter part of July or running into August, he was treated by four or five different physicians in this country, and also received treatment here at the Labor Department which consisted of massage and electric treatment, particularly limited to the treatment of his right side, in the hip region, and that he has not worked or has he been able to work since the time of the accident, and that his pain continues down to the present time, so much so that he is not able to get around and does not get around without a cane, which he never had occasion to use before the accident, and that the pain has so developed that he feels it now in the left leg or left member, also in the left side and that condition continues today; are you able to say whether that state of circumstances in connection with the accident of

Dr. John Boti—Direct

March 12th was a competent producing cause of the condition you find?

10 Mr. Turner: I object to that, if the Court please, on the ground it is not a correct recital of the testimony in several particulars.

The Court: State the particulars, Mr. Turner.

Mr. Turner: In the first place, he did not hobble to the gate, or out to the taxicab. He said he hopped on one foot. There is no proof that he was treated continuously from March until August.

20 The Court: You amend it to "hopped"?

Mr. Kent: He used the word "hopped."

Mr. Turner: And he said now that his pain is confined to his veins and not to the members of his body; but confined to the veins. I think those objections are based on the testimony given.

Mr. Kent: I think the Court will construe the testimony.

The Court: I will allow the question.

30 A. Yes.

Q. Assuming further, as far as this man knew before August 12th, there was nothing the matter with him, and since that time and at the present time he is suffering from or at least has a condition of pyorrhoea, would you say whether, then, that accident of August 12th, would still be a competent producing cause of his present condition?

A. I do not get the answer of "August 12th."

40 Q. I withdraw the question.

Dr. John Boti—Direct

The Court: He means March 12th.

Mr. Kent: I will withdraw the question.

Q. Assuming further that he has, since March 12th, developed pyorrhoea, and that he has that condition today, in a rather developed state, 10 would you still think that that accident of March 12th is the competent producing cause of his present condition?

Mr. Turner: I object to that because there is no such testimony in the case, that he had it since August 12th; no such testimony as that.

Mr. Kent: The testimony of the petitioner is, he had nothing before as far as he 20 knew. Dr. Boti's testimony is that he has pyorrhoea now.

Mr. Turner: Pyorrhoea would not mean anything to a man like that. He would think that as a natural condition.

Mr. Kent: I am taking the testimony as it is in the record without Mr. Turner's objection.

The Court: I think the man said as far 30 as he knew.

Mr. Turner: But the doctor has not said or nobody else has said he did not have pyorrhoea before August 12th.

The Court: I think you had better reframe your question.

Mr. Kent: I will stand on that question. The testimony of the petitioner is as far as he knew he had nothing the matter with him before. The testimony of Dr. Boti in 40 the record is—

Dr. John Boti—Direct

The Court: But your question does not read that way.

Mr. Kent: I will withdraw that question.

10 Q. Assuming that as far as the petitioner knew he had nothing the matter with him before, including suffering from pyorrhoea, and since that time he has been found to be and now is suffering from pyorrhoea, would you say that that accident of March 12th is a competent producing cause of his present condition? A. Why, no. What do you mean by "present condition," pyorrhoea?

Q. No. The man's general physical condition.

(Question repeated by the stenographer.)

20 A. It is not a competent producing cause of a pyorrhoea condition.

Q. No. I am not asking you that. With reference to the man's physical condition now, having in mind that prior accident, plus the element of pyorrhoea at this time, is that accident still a competent producing cause—not a direct cause or the only cause—but is it a competent producing cause of his present physical condition? A. 30 Might be.

Mr. Turner: I ask that be stricken out, if the Court please, because that is too remote.

Mr. Kent: I will consent it to be stricken out.

40 Q. I am asking you is it or is it not a competent producing cause of the man's condition with reference to his legs, as he states? A. I want to get this question straight. I do not quite understand it.

Dr. John Boti—Direct

Q. If you do not understand the question, answer the question in the way that you do understand it. A. In that question, do you assume that this man had the pyorrhoeal condition prior to the accident?

10 Q. No. I am excluding that. A. If he had pyorrhoea in there, I don't quite understand the question.

Mr. Kent: I will withdraw the question altogether.

Q. Assuming that the accident happened and that as far as Mr. Schwartz knows he did not have pyorrhoea before, and he has that condition now, would the factor of pyorrhoea in any way contribute to the man's present condition, having in mind the accident of March 12th? A. If a man—I can't honestly answer that question. 20

Q. Assuming that the man—

Mr. Kent: Withdraw the other question.

Q. Assuming that the man has a condition of pyorrhoea now,— A. Yes.

Q.—from the condition that you found, how long would you say that that condition of pyorrhoea existed? A. Oh, I believe that the pyorrhoeal condition was a condition pre-existing the accident. 30

Q. So it is your opinion that it did exist on March 12th? A. Yes.

Q. Well, assume then that this accident happened and that the man was suffering from pyorrhoea at the time, what effect, if any, would the condition of pyorrhoea have in connection with his present condition? A. I don't get you—py- 40

Dr. John Boti—Direct

orrhoea? Do you mean the condition of the accident? I don't quite get you yet.

Mr. Kent: I will withdraw that.

10 Q. Assuming that he had this condition of pyorrhoea before the accident and at the time of the accident— A. Yes.

Q. —wouldn't that accident in any way affect, aggravate, or accelerate or do anything likewise in connection with his condition? A. Well, if the man had any toxic condition the result of absorption from this pyorrhoeal condition, and the man met with an accident, it is naturally going to decrease his general resisting power and give the
20 toxins a chance to work.

Q. Do you mean that then it would aggravate the condition resulting from the accident itself? A. It would probably precipitate.

Q. When you say it would probably precipitate, do you think it did in this case? A. Yes.

Q. And having precipitated that condition, just what effect, physically, did it have on this man? A. Why—

30 The Court: Precipitate what condition?

A. Beg your pardon!

The Court: Precipitate what condition?

A. Probably precipitate some rheumatic condition, a toxic condition.

The Court: You mean the accident?

A. Yes.

40 The Court: Go ahead.

Dr. John Boti—Direct

Q. And will you describe more fully the rheumatic or toxic condition you have just referred to with reference to this man's—

Mr. Turner: I will assume the doctor is going to testify what he found in the matter, not something that might have happened. 10

Mr. Kent: That is what he is testifying to.

A. This man—I found—my opinion in this case was that this man suffered a wrenching of his right hip joint, and with probably torn ligaments in that joint, and also a subsequent development of a sciatic condition in that right—right sciatic
20 nerve. Whether this condition in that right hip joint, whether this man had any arthritic condition in that hip joint, I can't say, prior to the accident. And just exactly what the cause was I do think that with the accident such as was described to me, it was perfectly probable to sustain a traumatic—an arthritis of a traumatic nature, and with probably torn ligaments.

Mr. Turner: I object to that part about
30 "probably torn ligaments" and I ask that be stricken out because there is nothing on which to base that.

Q. Do you think the man had torn ligaments there, Doctor?

The Court: Strike it out.

Q. Yes or no? A. Yes, I do.

Q. So that then you did find—you have not told
40 me clearly yet just what did you find in that right

Dr. John Boti—Direct

side of his body today. A. I say it is an arthritic condition. Now whether that arthritic condition—whether this man had an inflammatory—an arthritis is nothing more than inflammation of a joint, and in this particular case I am referring
10 to the right hip joint.

Q. That is what I am talking about. A. Now if this man sustained an injury such as he claims he did I believe that the trauma—the trauma could have produced a simple arthritis there with the tearing of some of the ligaments in that joint which is very often the case in falls such as he described here.

Mr. Turner: I ask that be stricken out
20 about tearing of the ligaments. Doctor did not find any torn ligaments, as I understand it.

The Court: Yes, he did.

Mr. Kent: Yes, he did.

Q. When you used the words “it could produce” do you mean “it did produce”?

Mr. Turner: He believes it.

The Court: Yes.
30

A. Yes. Taking—

Q. Do you think it did? A. Yes.

Q. You used the expression “could have produced.” Do you think it did produce in this case?
A. Yes.

Q. Do you think this man is able to do the manual work of the kind he was doing at the time of the accident? A. No; I do not.

40 Q. To what extent and how do you think he is

Dr. John Boti—Direct

disabled? A. I think that this man should get further treatment. That is my opinion.

Q. No. But at the present time from your examination, to what extent and how is he disabled physically? A. Well, he is disabled in that he is suffering—he has pain in the hip and has some
10 restriction in the normal flexion of the hip on the abdomen—of the thigh on the abdomen.

Q. Assuming that that condition has continued from March 12th to the present time and that he has gotten treatment practically continually do you think that condition will improve? A. The pain will disappear but I doubt very much whether the limitation will disappear.

Q. Now in terms of disability of the body, that
20 is under the Compensation Act, let me have your opinion as to the percentage of disability that man suffers today. A. Of course in a case of this nature it is rather arbitrary.

Q. I do not want your arbitrary figures, from your observation, your examination. A. I would say about 15%.

Q. Of what? A. Of total disability.

Q. As a permanent condition? A. Yes.
30

Mr. Kent: When did this statute go into effect with reference to the fees for doctors for testifying?

The Court: July 1st, I think.

Mr. Kent: Of this or last year?

The Court: This year.

Mr. Kent: July 1st, 1925?

The Court: I am not sure. Yes. I think
40 it went into effect July 1st. There was no

Dr. Joseph M. Rector—Direct

date fixed. And they do go into effect July 1st.

Mr. Kent: Cross examine.

10 Mr. Turner: Before I cross examine this witness I have Dr. Rector here who has been excused from Judge Cutler's Court for half an hour. And I would like to put him on before I examine Dr. Boti. If your Honor and counsel is willing.

Mr. Kent: I have no objection.

DR. JOSEPH M. RECTOR, called out of turn
20 by consent, on behalf of the respondent, sworn:

Direct-examination by Mr. Turner:

Q. Doctor, will you state your education and qualifications?

Mr. Kent: I will concede them officially for the record.

Q. All right. Did you examine Louis Schwartz, the petitioner in this case? A. I did.

30 Q. When did you examine him? A. The 25th day of July, the present year.

40 Q. Will you tell us what you found when you examined him? A. I found a man that was prematurely old, a man that said he was fifty-six—sixty—fifty-six years of age if I remember. Most of his reflexes, deep and superficial, were exaggerated, not of the hip. He had an articulatory degeneration of both hands and fingers. He had a swaying with the eyes closed and heels brought together; he had evidence of Riggs disease, and

Dr. Joseph M. Rector—Direct

pyorrhoea in his mouth. In the glands of his groin he had a beautifully marked inguinal adinitis, inflammation of the glands of the groin, both on the right and left side. The glands on the right side were larger than the glands on the left. These glands varied from the size of a millet seed to a good sized pea. The movements of the body were slow because of the poorly developed or at least the partially atrophied condition of the muscles of the body. The man when placed upon the examination table with his trunk fixed and his extremities brought up on his abdomen, the flexion of the legs and the thighs upward, the man flexed them both the same with the same amount of regularity of power. Actions were slow due to poorly developed condition of the man's muscular system. When the man's lower extremities were fixed and attempts were made to move the trunk on the lower extremities by flexion of his thigh, after assistance the man raised himself up. I was compelled to raise him up with my hands because there didn't seem to be sufficient amount of muscular power for the man to raise himself up with his arms folded across his chest. So there was a debility in that musculature of that part of the body, to raise him up. I examined this man's urine because of the inguinal adinitis. I examined his urine and took a blood test for a Wasserman.

Mr. Kent: Did you examine the urine, yourself?

A. I examined his urine. And his blood—I took his blood to have a Wasserman made.

Dr. Joseph M. Rector—Direct

Mr. Kent: Did you have it done, or did you do it?

A. The Wasserman I had done.

Mr. Kent: I object to it.

10 A. The report I have in my pocket.

Q. You examined the urine yourself? A. Yes.

Q. Did you? A. I found the specific gravity 110 over 26, acid. Traces of a albumen. The urine was filled with mucous threads and the gonorrhoeal threads were all plentiful throughout the urine.

Q. What does that indicate to you? A. The man has a previous gonorrhoea and it has not been 20 completely cured, and the man is being infected both from the condition of his inguinal glands and also from his mouth.

Q. This man tells us on the stand today that although at the time of the accident he had a pain in his right hip that he has now pains in both legs from the hips to the knees and the pain he says is confined to his blood veins. Do you find anything to indicate a pain in his veins? A. When 30 the man complained of pain in my office—blood veins don't mean anything to me unless it is a local part; if he can show me exactly what part that was. In my office every movement he made in a horizontal position, prone, to the left, right, in front. There was no pain attributed to his right or left hip. His movements were slow which were in keeping with the flabby muscular power. And every time the man complained of pain he pointed right into the right groin.

40 Q. And would the gonorrhoeal condition account

Dr. Joseph M. Rector—Cross

for that pain? A. That is my idea of it. He has had a pre-existing condition which has never been cured. And with that condition of his mouth the man had a nasty systemic infection; which has lowered this man's muscular development and made him prematurely old. 10

Q. Do you find anything to indicate any torn ligaments in his right hip? A. No, sir.

Q. Or his left hip, either, for that matter? A. What is that?

Q. Or his left hip, either, for that matter? A. Neither one of the hips. If the man had any torn ligaments, every doctor knows a torn ligament causes a different movement, a relaxation of the joint. Every doctor knows that. The torn liga- 20 ment means there is loss of support in that joint. And you lose support in that joint you get the abnormal range of motion. Everybody who has had a sprain of the ankle, which is nothing more than a torn ligament, knows the condition of a torn ligament in a joint. A sprained joint is a torn ligament, and every time a man has a torn ligament he has terrible pain until that ligament comes back again. And he walks with a cane.

Q. Did he use a cane when he came to your office? 30 A. That I don't remember.

Q. But he did not limp? A. He did not limp.

Mr. Turner: That is all.

CROSS-EXAMINATION by Mr. Kent:

Q. This man is quite a wreck today, isn't he, physically? A. I said he is prematurely old.

Q. You said he is prematurely old? A. I said 40 he is prematurely old for fifty-five years old. That is my view.

Dr. Joseph M. Rector—Cross

Q. Would you say he is a wreck or he is not a wreck today? A. He is not a wreck.

Q. Do you think he is a healthy man? A. I said he is prematurely old.

10 Q. Do you think he is a healthy man? A. Otherwise is suffering from a long continuing septic condition.

Q. After that speech, do you think he is a healthy man? A. I should say no.

Q. He is not a healthy man? A. I should say the man is not healthy because he is infecting himself.

20 Q. Is he or is he not a healthy man today? A. According to my testimony the man is not healthy.

Q. Do you think his condition if anything—strike that out. Do you think that man's condition will get better or worse? A. I don't know.

Q. What do you think? A. The man—if you cure up his pyorrhoea—

Q. I am not asking you that. Taking everything as you say you found it— A. Yes.

30 Q. —do you think that man's condition physically will get better or worse from now on? A. If you will cure up his pyorrhoea and his adinitis—

Q. I am not asking you that. I am— A. I cannot answer your question in any other way.

Q. If the man has nothing done to him medically from now on, will his condition remain stationary, improve, or get worse? A. That I cannot answer.

40 Q. That is you refuse to answer? A. No I don't know. Because you let him continue with

Dr. Joseph M. Rector—Cross

his pyorrhoea he is going to get worse. If you cure up his pyorrhoea and adinitis, he is going to get better.

Q. So if this man does nothing from today on, his condition will get worse? A. I don't know what will become of his pyorrhoea and adinitis. 10

Q. Didn't you say that if he does nothing, he will get worse? A. I said that the testimony—I say unless his pyorrhoea is cured and his inguinal adinitis is cured the man will get worse. And you have to cure up those things before the man will get better.

Q. You are satisfied the man is not a healthy man today. You find about a dozen different things the matter with him, some of which are 20 that he has distortion in his limbs, is that correct? A. No, it is not.

Q. What did you say then on your direct examination? A. I said that the man's movements when he was in the horizontal positions, that the movements when the trunk was fixed, the movement of the flexion of the legs upon the thigh, and the thigh upon the abdomen, the movement was slow because of the flabby condition of the muscles. 30

Q. Then you did find the movements were slow? A. Yes.

Q. That is correct? A. Yes.

Q. Did he signify pain to you in those regions? A No, sir.

Q. He did not? A. No, sir.

Q. Did he tell you he had pain? A. Yes, sir.

Q. Do you think he is lying? A. No, sir.

Q. You do not think he is lying? A. No, sir. 40

Dr. Joseph M. Rector—Cross

Q But you believe the man as far as he is concerned, that he feels he has pain? A. Yes, sir.

Q. Now— A. In his groin.

Q. In his groin, you say? A. Yes; I tested that several times. The man had an existing inflammation of the glands of the groin, and he had gonorrhoeal threads in his urine, which is in perfect keeping with a pre-existing infection of the urethra as the result of gonorrhoea. Two classes of threads found in his urine: One mucous and one gonorrhoeal.

Q. If you have no objections to directing your answers to my questions— A. You ask questions that require explanations.

20 Q. Won't you do the courtesy of listening to my questions so you will be in a position to answer? A. With pleasure.

Q. If you want to talk to Mr. Turner, go ahead, and I will ask the Court to adjourn Court for you. A. With pleasure.

Q. There is no question about it, the man has some conditions there today? A. What do you mean by "some conditions" there today?

30 Q. He is suffering with something. A. Yes; with explanations.

Q. Is he or is he not? A. Yes, with explanations.

Q. Do you think that that man—Do you think that man is able to go back today and do heavy laborious work? A. No.

Q. You do not think so? A. No, sir.

40 Q. He gave you a full history, did he not, at the time of your examination? A. He gave me a history. I don't know how full it was.

Dr. Joseph M. Rector—Cross

Q. He gave you a history of an accident, did he not? A. Yes, sir.

Q. And following that accident you examined him? A. Yes, sir.

Q. You are satisfied that the man cannot go back to work today? A. I didn't say that; no. 10

Q. What do you say? A. You asked me if he could do his usual work, and I said no.

Q. He cannot? A. He cannot do heavy manual labor; no.

Q. And he will not be able to, will he? A. Without you clean up his condition, no.

Q. He won't be able to. From the history the man gave you, you know that for eleven years previous to the accident he had been doing laborious work, do you not? 20

Mr. Turner: I object to that.

A. No; I don't.

Mr. Turner: Because counsel said from the history the man gave you, He should find out what the man told the doctor if he wants to do that.

Mr. Kent: I will withdraw the question. 30

The Court: Objection sustained. Question withdrawn.

Q. You mentioned something about finding gonorrhoea present there? A. No; I said gonorrhoeal threads.

Q. You found gonorrhoeal threads? A. Yes.

Q. What is the distinction medically between finding gonorrhoea present and gonorrhoeal threads? A. Gonorrhoea that is generally shown by a discharge from the meatus or soreness of the 40

Dr. Joseph M. Rector—Cross

prostate gland. Gonorrhoeal threads are small shreds or irregular particles which—of a wiry look or character, which appear in the urine when the urine is voided.

10 Q. Do you think he had that condition on March 12th? A. I don't know.

Q. From the examination you made, what opinion did you form? A. That he had a pre-existing gonorrhoea and he has been cured except that he has a chronic condition existing in the presence of gonorrhoeal threads in the urine.

Q. So that he did have that, most likely, on March 12th? A. That I can't tell you.

20 Q. Do you think he had it on March 12th? A. I don't know, that except it was pre-existing to July 25th when I examined him.

Q. Assuming for the minute, he did have it on March 12th, is it your opinion that such an accident as has been described here would have helped that condition? A. I don't think it would harm him any.

Q. You do not think it would harm him any? A. No.

30 Q. So if a man had a gonorrhoeal thread condition, let us assume on March 12th— A. Yes.

Q. —and he slipped and falls from a truck, a distance of four feet— A. Yes?

Q. You do not think that such a fall with the impact at the point of the hip on his body, would, in any way affect that gonorrhoeal condition? A. None whatever.

Q. None whatever? A. None whatever.

40 Q. You are absolutely positive of that? A. That is my opinion.

Dr. Joseph M. Rector—Cross

Q. And assume that as far as the Rigg's Disease or pyorrhoea is concerned when you examined him on July 25th—did you form an opinion as to how long that condition had existed? A. No; I could not. It existed there and there was inflammation of the alveolar process of the gums. 10

Q. And in your general experience as an old practitioner how long do you think this condition probably continued? A. I cannot tell you.

Q. Do you think it existed a couple of months? A. I cannot tell you.

Q. Do you think it appeared over night? A. No; you do not get Rigg's disease over night.

Q. How long— A. It is a slow process.

Q. It is a slow process? A. Yes. 20

Q. If it is a slow process, don't you assume it at least existed on March 12th? A. I should imagine it did.

Q. Assuming it did, and again that that man had such a fall as he describes, do you think that "condition" would have helped that condition? A. Does not make a bit of difference.

Q. I am asking you would it or would it not? A. None whatever.

30 Q. It is a fact pyorrhoea, when it progresses, develops into a rheumatic condition as we popularly call it? A. As the laymen call it.

Q. Yes? A. Yes.

Q. That manifests itself in the limbs? A. What?

Q. That manifests itself in the limbs—that is in the leg? A. That is the name? It can manifest itself anywhere in the body.

40 Q. But it usually gets into the lower limbs, does it not? A. It may be in the wrist; usual result, or the knee joints are affected.

Dr. Joseph M. Rector—Cross

Q. Sometimes the hip? A. Not so often.

Q. Quite possibly the hips? A. Not so often.

Q. Possibly the hips? A. Possibly the hips, yes.

Q. Do you eliminate even the possibility in this
10 case? A. No.

Q. So possibly he did have that condition around the hips? A. I found no evidence of any rheumatic condition.

Q. I am asking you is it possible he did have that condition in the hip? A. No.

Mr. Turner: I object to possibilities. The case is getting full of possibilities.

20 The Court: Objection sustained.

Q. Your opinion is that that condition, pyorrhoea, can develop into the knees, into the hips, into the shoulders—did you say? A. Yes; any of the joints.

Q. As a usual proposition? A. No; I selected it. I said in the elbows or knee joints; sometimes the wrist.

Q. Sometimes the wrist? A. Yes.

Q. But it is possible to get into the hip? A.
30 It is a possibility.

Q. Is it a possibility?

Mr. Turner: I ask the possibility be stricken out.

Q. You do not think in this man's case this condition progressed into the hip, do you? A. No; I do not think this man had any lesion in his hip whatever. His trouble was in his inguinal gland
40 and every time he complained of pain, he put his

Dr. Joseph M. Rector—Cross

hand right in his inguinal region, on the right side just below Poupart's ligament, between that and his thigh. And every time I touched him or he moved his body, he referred to that place.

Q. You do not think that man has any pain in the hip? A. Not in the hip; no. 10

Q. Has he ever indicated to you he had any pain in the hip? A. No; always in the inguinal regions in the gland.

Q. Never said anything to you? A. I only saw him once. And every time I touched him his expression of his face indicated he had pain, and whenever his face indicated he had pain he put his hand down to his right inguinal region. I said "is that where it hurts you?" and he said 20 "yes." Is that where you have your pain? Yes.

Q. Never told you he had pain in the hip? A. None whatever in the movement of the body.

Q. When he came he gave you a history of his accident, he did not tell you he had pain in the hip? A. Yes; he did.

Q. He did tell you? A. Yes; in the history.

Q. After that he changed his claim of pain? A. No; I said when I examined him to find out where his trouble was, it was always indicated in 30 the groin. The objective symptoms, if I may use the term, of pain is indicated by changed expression of the face and the movements of the body as the man laid in the horizontal position on my table it was objective enough to tell me that the inguinal region was the cause of the pain this man was suffering.

Q. You do not think this man has that pain in the hip? A. That is my opinion. Not "around" 40 because the inguinal region is around the hip.

Dr. Joseph M. Rector—Cross

Q. Has he pain in the inguinal region around the hip? A. He has pain in the inguinal region, not in the ligament of the hip.

Q. He has absolutely no pain in the ligaments of the hip? A. That is my opinion from the examination I made. 10

Q. You do not think then, this accident of March 12th had anything at all to do with aggravating or raising a progressive condition or any progressive condition that he had at that time? A. No, because—

Q. Yes or no.

The Court: He said no.

20 A. No.

Q. No. Do you think then as far as this accident was concerned, although this man cannot work today and was able to work and had been working for years before, as far as this accident is concerned it is just a mere coincidence? A. Just a mere coincidence. Cure up his other conditions and the man will get well.

Q. Purely coincidental? A. Purely coincidental; yes, sir.

30 Q. This is not the first time you so testified? A. For you? No; I have had the pleasure of testifying two or three times before.

Q. This is not the first time you testified a serious accident, as far as subsequently developing conditions is a pure coincidence? A. No, sir; where there was a serious accident, I have always given the conditions following that case. This man fell four feet—

40 Q. Do you recall you so testified in one or two cases against me, do you not?

Dr. Joseph M. Rector—Re-direct

Mr. Turner: I do not think that is material. I object

The Court: Objection sustained.

A. I don't remember the case.

Q. Isn't a fact you were licked in both of them? 10

A. I don't know anything about the results of any of those cases.

Mr. Turner: I object.

The Court: Objection sustained.

A. I leave that to the judges. I do not follow them up.

The Court: That is objected to.

Mr. Kent: That is all. 20

RE-DIRECT-EXAMINATION by Mr. Turner:

Q. Mr. Kent has repeatedly referred to an accident. Did this man tell you how this thing happened to him? A. May I look at my notes?

Q. Just look at your notes and see what he told you is supposed to have happened when he got this supposed accident.

Mr. Kent: Just a minute. 30

A. He said he jumped from the truck to the ground after—

The Court: Just answer the question. He said did he tell you, yes or no?

Mr. Turner: The question has been answered.

Mr. Kent: Are you asking the history of the case now?

Mr. Turner: I am asking this doctor 40 what this man told the doctor.

Argument

Mr. Kent: I object. Not as affects the merits, but when I asked Dr. Boti a similar question, it was objected to by Mr. Turner. I now object.

10 Mr. Turner: The question asked Dr. Boti was a self serving declaration. This is a declaration against interest.

Mr. Kent: I object to this. I object to any history.

Mr. Turner: This is not a history.

Mr. Kent: Statement of the accident as given to the doctor on the same ground Mr. Turner objected.

The Court: Objection sustained.

20 Mr. Turner: But the question has been answered and is in the record.

Mr. Kent: I ask it be stricken out then as being answered before I had an opportunity to object to it.

Mr. Turner: I object to that.

Mr. Kent: The usual gushing manner of Dr. Rector.

30 Mr. Turner: I object to that if the Court please, because Counsel when the question was asked, turned around to consult the doctors who are with him in the case. And he allowed that time to elapse. And in that time the doctor answered.

The Court: Strike it out.

Mr. Turner: He did not hurry it at all. He was very moderate and sedate about it. I pray an exception. I think that is all.

40

Dr. John Boti—Cross

DR. JOHN BOTI, re-called for cross-examination by the respondent:

Cross-examination by Mr. Turner:

Q. Dr. Botti, in your opinion, how long had this man suffered from Riggs disease? A. I don't 10 know. I do know—I mean I am of the opinion he did suffer from it prior to the accident.

Q. And what in your opinion, is the effect of this continued Riggs disease without any cure, without any attempt being made to cure it? What happens? A. Setting up of a toxic condition, toxic absorbtion.

Q. That affects what joints? A. It is likely to affect joints, it is likely to affect muscles, it is 20 likely to affect nerves.

Q. In your opinion, does this Riggs disease this man had affect his nerves? A. His nerves? I don't know.

Q. Did you examine him to find out what the condition of his nerves was? A. The condition of his nerves? Why the man seemed to be of a hypersensitive type. Other than that I could not see any definite pathology to the nervous system 30 themselves.

Q. Well, hypersensitive, that means he was nervous, I presume. A. He was.

Q. He is a nervous type of man? A. Yes.

Q. What did you find as to his veins, and the veins in his legs? Did you find any vericose veins? A. No; I did not.

Q. Did you find anything to indicate a pain in his veins? A. Pain in the veins?

Q. Yes. A. No. 40

Dr. John Boti—Cross

Q. What could, if anything, what could cause a pain in the veins of this man's leg, from his thigh to his knee?

10 Mr. Kent: Objected to on the ground it is going into the realm of possibility. What was this man's condition in all probability is the test.

The Court: Objection sustained.

Mr. Turner: Pray an exception.

Q. Did you find any condition in this man that in your opinion, would cause him pain in the veins from the thigh to the knee? A. No.

20 Q. This Riggs disease that he had, was that well developed? A. I believe it was.

Q. You examined him this last Monday, I assume? A. Yes; last Monday evening.

Q. The conditions you find are all subjective, are they not? A. No.

Q. What objective conditions do you find? A. I have already stated them.

Mr. Kent: State them again.

30 A. There was some tenderness on deep pressure over the right hip joint.

Q. Isn't that subjective? A. Tenderness is not a subjective sign. It is an objective sign.

Q. You get it by asking the patient whether he suffers, or not? A. No; I will explain that to you. Tenderness comes under one of the physical signs. It comes under palpation which is one of the subdivisions of physical examination.

40 Q. Don't you depend upon the statement of the patient? A. I depended upon the muscular twitch which I explained prior and you asked me if the

Dr. John Boti—Cross

signs that this man made when I gave deep pressure indicated pain. And I explained that there was muscular spasm.

Q. At which particular point did you make this deep pressure? A. Right over the hip joint. In the back, over the prominent part of the buttock. 10

Q. When you press anybody there, wouldn't they wince? A. Not the way this man did.

Q. And they would wince, wouldn't they? A. Not necessarily.

Q. Anybody in his nervous condition, a man of his years, prematurely aged, would not wince when you pressed on them as hard as you did on him? A. No; I would not say so.

Q. You think he winced more than the average 20 man, Doctor? A. Yes, sir.

Q. Of course he knew you pressed on him? A. You bet he did.

Q. So the wincing process would be the response of his nervous condition and his physical condition, and the fact that he knew you were pressing, wouldn't it? A. No; it would not.

Q. What would be the response? A. I stated in my opinion here, this man had an arthritis, and that is what my opinion was, caused the response 30 to this deep pressure.

Q. What do you mean by arthritis? A. Arthritis is an inflammation of a joint.

Q. So he had inflammation at the joint you pressed, in your opinion? A. Yes, sir.

Q. And that was over the hip joint, up above it, wasn't it? A. In the back.

Q. In the back? A. Over the buttock. Right in the region of the prominent portion of the 40 buttock.

Dr. John Boti—Cross

Q. Near the back-bone? A. Near the spine, you mean?

Q. Yes. A. No. Not near the spine. Right over the greater trochanter, what is known as the great trochanter of the head of the femur.

10 Q. That is a pretty delicate spot in anybody, isn't it? A. Oh, no. It is not. I will let you give me a punch in mine, if you want to.

Q. You would not want to get punched there unless you have a lot of fat there, would you? A. A lot of fat?

Q. Yes. A. Not for nothing.

Q. No. Not for nothing. That is all, I think, on that point. Now tell us, do you see any reason
20 in your opinion for his using a cane? A. For his using the cane at the present time?

Q. Yes. A. No, I do not.

Q. Don't you think the cane is something that is the result of his line of thought, and he thinks that he wants a cane, to sort of help him around?
A. When I say I don't, I mean not constantly, understand?

Q. Not constantly? Don't you think that he thinks that he needs a cane? A. That I don't
30 know.

Q. Isn't that your opinion from your observation of the case? A. Well, it might be.

Q. He thinks so. A. It might be.

Q. But he does not really need it all the time?
A. No; not all the time.

Q. Now you spoke about his suffering 15% of total. Just what particular part of his body is it that is affected that causes this 15% that you
40 speak of? A. The limitation and the flexion of the thigh at the hip.

Dr. John Boti—Re-direct

Q. And that is the only thing you think causes the 15%? A. And taking into consideration also the man's pain that he has in that joint.

Q. Making the pain that he has in his right side and the limited motion, you say that that is 15%
10 of total disability, in your opinion? A. Yes.

Q. Although he is not required to use a cane at all times? A. No; not at all times.

Q. And the reason he is not required to use the cane at all times is why? A. Because this pain is not continuous. I am of the opinion it is just a spasmodic affair, comes on every now and then.

Q. If it is not continuous, your opinion is that he needs the cane only when he has the pain, is that right? A. Yes; or when he tires out, weather
20 such as this.

Q. That is why you say 15% of total disability?
A. Yes.

Q. You mean permanent disability? A. Yes.

Q. Fifteen per cent of total permanent. And you base it solely on that hip? A. Yes.

Mr. Turner: That is all.

RE-DIRECT-EXAMINATION by Mr. Kent: 30

Q. You heard Dr. Rector testify, did you not, Doctor, here on the stand? A. Yes, sir.

Q. And you heard him testify in his opinion the man had a condition of gonorrhoea that is evidenced by gonorrhoeal threads? A. Yes.

Q. Did you hear him testify to that? A. Yes.

Q. Did you also hear him testify that he had pain in the region of the groin? A. Yes.

Q. And did you also hear him testify that his
40 movement, movement of his limb was distorted?
A. Yes.

Dr. John Boti—Re-direct

Mr. Turner: I object. I do not recall the doctor saying that.

The Court: I do not remember that.

Mr. Turner: No. You asked him that and he said no.

10 Mr. Kent: He used the word distorted. I have it marked down: Distorted movement of the legs.

Mr. Turner: The doctor said he did not limp.

Q. Did you hear him so testify?

Mr. Turner: The testimony speaks for itself.

20 A. I heard the question but I don't know—

The Court: Objection sustained.

Q. And did you hear the doctor testify that in his opinion the man could not go back to the laborious work he was doing? A. I believe I did.

Q. And that condition was a permanent one, of his not being able to go back to work in his present physical condition?

30 Mr. Turner: I object because the doctor testified—

Q. Did you hear him so testify? A. I understood it that way.

Q. Assuming all those things to be so, first with reference to the gonorrheal condition, assuming that he had that condition, what effect, if anything would such a fall, as he had on March 12th, have on this man as far as his present condition
40 is concerned? Would it have any effect? A. Yes; it would have some.

Dr. John Boti—Re-direct

Q. In what way? A. It would have probably have lightened an old gonorrheal condition if this man had it.

Q. You are assuming now he did have it. A. Yes.

Q. Whe you say probably would have, do you think he did in this case? A. No; I don't. I don't think this man had gonorrhea. 10

Q. I am not asking you that. Assuming he did have it, taking Dr. Rector's testimony, assuming he did have it, and he had such an accident, do you think it would have aggravated or accelerated that condition with reference to gonorrhea?

Mr. Turner: I object to that, because it is incompetent; calls for possibility; not for probability. 20

Mr. Kent: I am asking him on the proposition of probability.

Q. Do you think it would have, yes or no?

Mr. Turner: I renew my objection.

The Court: What is your objection?

Mr. Turner: It calls for possibility.

Mr. Kent: I am not asking for a possibility. 30

The Court: He has reframed as to probability.

Mr. Kent: That is added to the question.

The Court: Yes. That is as I understand.

A. An injury such as he described to me would unquestionably have had some relation with the condition if he had that condition. 40

Dr. John Boti—Re-direct

Mr. Turner: I object and ask it be stricken out because there is no testimony in this case as to the injury described to the doctor.

The Court: Objection sustained.

10 Q. Assuming that he had the accident that has been described on March 12th and assuming he had gonorrhoea at that time, would or would not that accident in any way have aggravated or accelerated that gonorrhoeal condition?

Mr. Turner: I object to that on the ground it is incompetent.

Q. Yes or no?

20 The Court: I will allow the question.

Mr. Turner: I pray an exception.

A. Yes.

Q. And assuming that he has that toxic condition resulting from Riggs disease or pyorrhoea, would or would not such an accident have in any way activated or accelerated or aggravated, yes or no? A. Yes.

Q. Do you think it did? A. Yes; absolutely.

30 Q. And assuming that he has at the present time this pain in the region of the groin and had at the time of the accident—no, strike that out. Assuming that when he was examined on July 25th, he was found to have that condition of pain in the region of the groin, and that he did not have that pain there before this accident on March 12th, would or would not that accident in any way have affected or brought on or aggravated that condition? A. I say it would.

40

Dr. John Boti—Re-direct

Q. It would? A. Yes.

Q. In what way? A. Why, there is no question in my mind, an accident such as described, to this man, whether he had this affliction to his joint prior to the accident, whether he had it at the time of the accident, that this accident would 10 have either aggravated—by aggravated I mean brought it on if the condition was toxic in origin, I mean secondary to the pyorrhoeal condition, or whether it was a pure case of simple arthritis in that joint.

Q. And the fact that the man worked for eleven years constantly at his employment without complaint before March 12th and has not worked since, does that in any way affect your opinion 20 as to the expressions you have made? A. Just makes my opinion stronger.

Q. What way? A. I mean that in the manner of activating or aggravating the condition.

Q. So that as I understand your testimony, assuming that he had these maladies that have been testified to, in any event such an accident aggravated those conditions and brought about this condition, or assuming that he did not have any of those conditions he is in today? A. Very 30 probable; yes.

Q. Taking the date of the accident, and with reference to what we term under the Compensation Act, a period of temporary disability, what would you say is the reasonable period of temporary suffering as distinguished from permanent disability in this case, assuming all the facts and circumstances that have been described to you? A. Well, I assume that this man should have 40

Dr. John Boti—Re-cross

received treatment right to date or to date I made an examination, anyway.

Q. So that his temporary period of disability would continue down to the present time? A. That is my opinion.

10 Q. And the future period would be termed Permanent period, is that right? A. Yes.

RE-CROSS EXAMINATION by Mr. Turner:

Q. Why do you say the future period would be termed permanent disability? What is the difference between the time that has gone before today and the time that is coming after? A. You see the man had this pain and tenderness in that
20 hip—

Q. No. No. You have just been talking about temporary disability now. You said that up to now it should be temporary disability and after now it should be permanent disability. How do you distinguish it? A. That is just my opinion.

Q. What is it based on? A. It is based on what I consider the temporary disability in this case and what I consider the permanency.

Q. Why do you think the temporary disability
30 has stopped?

(Question repeated by the stenographer.)

A. Why do I think the temporary disability has stopped? Because the man, if the condition has not gotten any better by this time, I don't think it is going to get any better.

Q. Why do you pick out today as being the date that divides? A. That is just arbitrary. That is my opinion.

40 Q. It does not mean anything. You just fixed

Dr. John Boti—Re-cross

on today because you are here testifying today? A. That may probably be the case.

Q. If you were here two weeks from now, you would fix that? A. I might have done that.

Q. Purely arbitrary, and does not mean any-
10 thing.

Mr. Kent: Let me ask you this: Assuming the day following the accident Mr. Schwartz was treated either periodically or whatever you wish to call it, by five or six different doctors provided by the respondent, and received treatment down to a period as recent as the early part of August, would that in any way affect your
20 judgment as to the period of temporary disability?

Mr. Turner: I object to that. There is no proof in this case the respondent furnished any doctors, at all.

Mr. Kent: That is the testimony in the case by the petitioner.

Mr. Turner: He ran around to different doctors, but we did not furnish them.

The Court: I think there is testimony of
30 that.

Mr. Kent: Your opinion—

A. Yes.

Mr. Kent:

Q. As regards to the expression you have used that it is only an arbitrary case? A. Yes.

Mr. Kent: Having that in mind do you still say that the period of temporary dis-
40

Dr. John Boti—Re-cross

ability continues till proximately the present time?

A. Yes; in my opinion that is the case.

Mr. Kent: That is our case.

10 Mr. Turner: I am not through with the doctor. You broke in on my cross examination.

Mr. Kent: I beg your pardon.

Mr. Turner:

Q. Now doctor, in reference to the question of disability you have said now that—you say that the accident which you have in mind that set in motion this gonorrhoeal condition. But I understand you to say that in your opinion he did not have the gonorrhoea or did not have the gonorrhoeal threads? A. I did not say whether he had threads or did not have threads. I said in my opinion this man did not have gonorrhoea.

Q. Oh, gonorrhoea? A. Yes.

Q. The disease itself? A. I did not say anything about the threads.

Q. You do not know anything about the threads, at all, do you? A. No; I do not.

30 Q. If this man had the gonorrhoeal threads, did not have the gonorrhoea, but had the gonorrhoeal threads, then would you say that an accident such as you have in mind would set that gonorrhoea in motion? Cause this condition? A. What is that question again?

(Question repeated by the stenographer.)

A. Yes; I still maintain that.

40 Q. And what is the kind of an accident that you have in mind? A. The kind of an accident that I have in mind—

Dr. John Boti—Re-cross

Mr. Kent: Just a minute. With reference to what?

Q. Your testimony is that the kind of an accident you have in mind would set this condition in motion. Now I am asking you what kind of an accident you had in mind. A. This man fell a height about four and a half feet off a wagon, if I recall, rightly, and landed directly on both feet and subsequently I think fell, but not very hard, on his right side. 10

Q. Would it make any difference in your opinion if this man had jumped and landed on both feet? A. Would just about make it a little worse.

Q. A little worse? A. Yes

20

Q. If this man had been in the habit of jumping off that same truck in the neighborhood of eleven and a half years would you still maintain that opinion? A. Yes.

Q. And you would say that last jump set all the gonorrhoea and all the other things in motion? A. It is very probable.

Q. Why didn't the previous jumps cause it? A. Because he probably fell in more of a peculiar position at this time than he did at the previous times. 30

Q. Your idea is the last jump did the trick? A. That is the history in the case and that is my opinion.

Mr. Kent: A fact —

Mr. Turner: I think we ought to finish our examination.

(Discussion off the record.)

40

Dr. John Boti—Re-cross

Q. If this man had been in this condition that you found him in, leaving out this question of his having been treated by supposed doctors on behalf of the respondent, would you say then that you think the temporary condition would exist until now? A. I couldn't say, not having seen him.

Q. You do not know how long it did exist, do you? A. How long what existed?

Q. His temporary condition. A. Well —

Mr. Kent: I object.

A. I do—

Mr. Kent: I object to further questioning on this ground—on this proposition, on the ground we are limited to the testimony. And that is the testimony in the case. He cannot draw any different or hypotheses.

Mr. Turner: That is a very new rule of evidence to me. I think it must be to your Honor.

The Court: Allow that question.

(Question and answer repeated by the stenographer.)

A. In my opinion.

Q. The temporary disability. You do not know anything about it, yourself, do you? A. It is just an arbitrary suggestion. And it is my opinion that it should have continued up to date. As I say, I did not see the progress of this case, but from the condition of the man at the time I examined him and the pain he suffered and the tenderness, I think the man should have received

Dr. John Boti—Re-cross

treatment right up to the time I last examined him.

Q. Well, what was there about this man that you think should set in motion those toxic conditions, after he has been doing this same work for eleven and a half years? What was there about his condition, then if you are able to tell us, that would set any such thing in motion after he had been continually doing this same thing? A. A man that takes a jump and is injured in the hip joint, his general resistance is lowered a certain amount; whether it is a small amount or a large amount can only be determined by the man himself, principally, at the time of the accident. He receives the accident. It lowers his general body resistance. After all, every infection, irrespective of what type it is, it depends upon three different factors: this is a case of a toxicity, an infection, you see from the pyorrheal condition. There is a certain amount of pus that is absorbed into the system and settles in certain joints or in muscles or in nerves, nerve sheaths. That pus contains germs. That pus may be in the blood system; as long as the man's general resistance is sufficiently great to overpower any damage that these germs or the toxins, the poisons produced by the germs, can do. Now he meets with an accident, the general resistance of this man is reduced. He has not got that fighting power in the body that he previously had. Naturally gives those germs or gives the poison that are produced by those a chance to act, producing arthritis, colitis, or myocitis. There is the explanation.

Q. If a man reaches the age of fifty-six years,

Dr. John Boti—Re-cross

his resisting power decreases? A. An accident would make it even less.

Q. I say the age of fifty-six years? A. It stands to reason a man of his age is not as powerful as a man of thirty.

10 Q. And do you mean to say this toxic condition, if he had these gonorrhoeal threads and the Riggs disease, do you mean to say that would not affect him merely because of his age? A. Oh, it might; yes.

Q. Are you able to tell us it did not affect him because of his age? A. Well, the man tells you he worked constantly for eleven years prior to that.

20 Q. Are you able to tell us it is not caused by his infection?

Mr. Kent: I object to the question and I ask Dr. Boti be given a chance to answer the question.

(Question repeated by the stenographer.)

A. Whether what is?

30 Q. Are you able to tell us whether this pus condition did not affect him because of his age, because of having reached the age of fifty-six years, in his general condition? A. I couldn't say definitely no. But with the history—

40 Q. Then you cannot deny that fact, can you, positively, that he is not affected because of the fact that he has reached a certain age with this pus condition in his body, and because of his age it now has gotten control of him? A. When I came to my opinion I came to it taking everything into consideration. I took the history into consideration. I took the man's age into considera-

Dr. John Boti—Re-cross

tion, the history of the accident and everything concerned. That was my opinion. Of course it is likely, nobody can tell, but the situation is, it is very much more likely with a history of an accident, and especially of an accident such as the man described. 10

Q. Would you say that it is likely if he reached the age of fifty-six years with this toxic condition of Riggs disease and gonorrhoeal threads, that they would affect him as he is affected now? A. Affect him as he is affected now?

Q. Yes.

Mr. Kent: With or without the accident, Mr. Turner? 20

Mr. Turner: I am standing on my question. Do you object?

Mr. Kent: I object to this on the ground it is indefinite and does not appear whether that includes the factor of the accident or not.

The Court: Objection sustained. I think you should include that.

Mr. Kent: I think he is trying to inveigle the doctor. 30

Mr. Turner: I pray an exception.

Mr. Kent: And he is not doing it.

Q. My question is this: I say to you now when a man reaches the age of fifty-six years and has in his system the pus from Riggs disease and has the pus from gonorrhoeal threads, are you able to say that because of the fact he has reached that age that that condition does not affect him and cause him to have this condition in his groin or hip, he complains of? 40

Dr. John Boti—Re-direct

10 Mr. Kent: I object to the question on the ground it is wholly immaterial, assuming all those things; if the man had an accident, if it would be in any way aggravated, if those conditions would in any way be aggravated by the accident, the fact of those conditions existing would make no difference.

The Court: I will allow the question.

Mr. Kent: Don't you answer the question unless you understand it fully.

Mr. Turner: I object to the counsel talking to the witness.

20 Mr. Kent: I ask leave to instruct the witness not to answer the question unless he understands it fully.

(Question repeated by the stenographer.)

A. I don't know. I couldn't definitely say one way or the other.

Q. You cannot answer. I guess that is all.

RE-DIRECT EXAMINATION by Mr. Kent:

30 Q. Following the answer you have given, is it your opinion or not that this accident aggravated, activated or accelerated whatever condition he might have had so that his present condition was produced?

Mr. Turner: I object on the ground it is incompetent.

The Court: Objection sustained. He has already answered it.

40 Q. Do you or do you not think it was the accident instead of the mere age of that man that produced this present condition?

Dr. John Boti—Re-direct

Mr. Turner: I object to that because the witness has already fixed that. He said he cannot answer the question.

Mr. Kent: I want to clarify that.

Mr. Turner: He cannot answer the question. 10

Mr. Kent: We will answer it now.

The Court: Objection sustained.

Q. Do you think the accident together with the other conditions produced this present condition?

Mr. Turner: I object to that on the ground it is incompetent.

The Court: Objection sustained.

Mr. Kent: May I ask on what grounds? 20

The Court: Incompetent.

Mr. Kent: The answer is incompetent of the question?

The Court: The question.

Q. Let me ask you this:—

The Court: He has already answered all these questions.

Mr. Kent: Then you are denying him the right to answer on the ground he has already answered? Is that correct? 30

The Court: No. I told you it was incompetent.

Mr. Kent: May I submit I propounded those questions and he answered them; now there seems to be an ambiguity following the answers to Mr. Turner's questions.

The Court: Ask your questions and I will rule on them.

Mr. Kent: I have a right to qualify that. 40

Dr. John Boti—Re-direct

The Court: Ask your questions and I will rule on them, Mr. Kent.

10 Q. Assuming doctor, that he had all the conditions that Doctor Rector has stated he had, all the symptoms, and then taking in connection with that the accident of March 12th, from your experience and your knowledge of medicine, your examination of this man, and the history you got, do you or do you not think that that accident in any way aggravated or accelerated the conditions existing at the time so that they produced the pus condition.

20 Mr. Turner: I object to that on the ground it is incompetent and it is leading.

The Court: I will allow the question, if you want it. He has already answered the question.

Mr. Kent: All right. I won't ask an answer of the doctor to those questions.

Mr. Turner: I pray an exception.

Mr. Kent: That is all. That is our case.

The Court: Is that your case?

30 Mr. Turner: If your Honor please—
Yes, Your Honor. We are going to close our case with that.

Mr. Kent: That is our case.

The Court: Do you want to sum up?

Mr. Turner: No. I will submit.

Mr. Kent: We will submit without summation.

40 The Court: Well, from the evidence, I am satisfied that the petitioner has proven an accident; the only question which is be-

Stenographer's Certificate

fore the Court is as to the amount of damage. I have listened to the medical testimony and the testimony of the petitioner very carefully, and noted that he was paid, from the evidence, temporary compensation up to August 4th. I do not feel that 10 his present condition is the result of the accident or that it has been aggravated. I feel the man is suffering in the layman's word, with rheumatism. And I do not feel because a man has an accident which was not to my mind severe, we can go ahead and tie up to that accident all this condition that this man has. I am going to dismiss the case. 20

Mr. Kent: May I have an exception?

The Court: Feeling he has had temporary compensation sufficient for the accident.

Will you prepare a dismissal, Mr. Turner?

Mr. Turner: Yes, sir; I will.

30
Stenographer's Certificate.

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

EDWIN J. O'BRIEN,
Court Reporter.

40

**On Certiorari Order Allowing Writ
of Certiorari.**

NEW JERSEY SUPREME COURT

10	NEW YORK LIVE POULTRY, COM- PANY,		Prosecutor,
	vs.		
	LOUIS SCHWARTZ,		Respondent.

20 This cause having been duly argued at the Oc-
tober Nineteen Hundred and Twenty-five term of
this Court on a Rule to Show Cause by a Writ of
Certiorari should not be allowed to the prosecutor
herein and this Court having duly filed its opinion
allowing a Writ of Certiorari to the said prose-
cutor.

It is on this 12th day of July Nineteen Hundred
and Twenty-six ORDERED that a Writ of Certiorari
be and the same hereby is allowed herein, let the
same be sealed.

30 On motion of Frank G. Turner, Attorney of
Prosecutor.

40

Writ of Certiorari.

New Jersey, ss:

The State of New Jersey to the Clerk
of the Court of Common Pleas, in
and for the County of Hudson, in the
State of New Jersey and the Judge 10
of said Court: and the Secretary of
the Workmen's Compensation Bur-
eau of New Jersey; and Charles E.
Corbin Deputy Commissioner of La-
bor of the Workmen's Compensation
Bureau of the State of New Jersey,
GREETING:

We being willing for certain reasons to be cer-
tified of and concerning certain proceedings taken 20
before the Hudson County Court of Common
Pleas, in and for the County of Hudson and State
of New Jersey, for the determining and awarding
of Compensation, counsel fees and other allow-
ances to Louis Schwartz by which the said Hud-
son County Court of Common Pleas reversed the
order and judgment of the Workmen's Compensa-
tion Bureau in a claim filed for Workmen's Com-
pensation by the said Louis Schwartz against
New York Live Poultry Trucking Company for 30
injuries alleged to have been sustained by the
said Louis Schwartz in an accident arising out
of and in the course of his employment which said
respective determinations and orders have been
filed with the clerk of the Court of Common Pleas
in and for the County of Hudson and State of
New Jersey; do command you that said proceed-
ings together with all matters touching and con-
cerning the same as fully as before you they re- 40

Reasons

main or are in your custody or control, you do certify and send, together with this writ, to our justices of our Supreme Court of judicature at Trenton on the 10th, day of August 1926 that therein may be done what of right and according to law ought to be done. 10

WITNESS, WILLIAM S. GUMMERE, Esq., Chief Justice of our Supreme Court at Trenton aforesaid this 21st, day of July One Thousand Nine Hundred and Twenty-six.

EDWARD J. KELLEHER, Clerk.

FRANK G. TURNER, Attorney. 20

Reasons.

NEW JERSEY SUPREME COURT

30	NEW YORK LIVE POULTRY, COMPANY,	} Prosecutor,	} On Certiorari
	vs.		
	LOUIS SCHWARTZ,	} Respondent.	

The following are the Reasons on Certiorari that will be argued by the prosecutor herein:

1. The Court of Common Pleas was without jurisdiction to reverse the Workmen's Compensation Bureau. 40

Reasons

2. The Workmen's Compensation Bureau found as a fact that the respondent suffered no permanent disability in his said alleged accident.

3. The action of the Hudson County Court of Common Pleas in reversing the judgment of the Workmen's Compensation Bureau was contrary to law and contrary to the evidence. 10

4. The Court of Common Pleas erred in reversing and setting aside the judgment of the Workmen's Compensation Bureau of the Department of Labor.

5. There was no evidence in this proceeding that warranted the reversal of the Workmen's Compensation Bureau by the Hudson County Court of Common Pleas. 20

6. The petitioner was not suffering from an injury arising out of and in the course of his employment during the period for which an award was made the Hudson County Court of Common Pleas in its order reversing the judgment of the Workmen's Compensation Bureau which had dismissed the petitioner's petition.

7. The judgment of the Court of Common Pleas is contrary to law, erroneous and void. 30

FRANK G. TURNER, Attorney of Prosecutor. 40

Opinion.

SUPREME COURT

(Filed, June 16, 1926)

NEW JERSEY SUPREME COURT

10

No. 289. May Term, 1926

NEW YORK LIVE POULTRY TRUCKING Co.,	Prosecutor,	}	On Rule for Certiorari.
vs.			
LOUIS SCHWARTZ,	Defendant.		

20

Argued May 5th, 1926: Decided June 15th, 1926.

Before Justices, Black and Campbell.

For the prosecutor: Frank G. Turner, Esq.

For the defendant: Messrs. Kent & Kent.

PER CURIAM:

30 The record in this case reveals these facts. In the petition for compensation the petitioner states: "I was assisted in loading an automobile truck with crates of live poultry, when I slipped from the truck to the ground injuring the right side of my body and leg." On March 12, 1925. The Workmen's Compensation Bureau found, that the petitioner "is not suffering from injury and that he suffered no permanent injury in said

40 accident. He has been fully paid and compen-

Opinion

sated for all temporary disabilities growing out of said accident. He now suffers and since August 4, 1925, has suffered from disease." The petition was therefore dismissed. This judgment was reversed by the Hudson County Court of Common Pleas on the ground, that the petitioner suffered 10 injuries "partial in character, permanent in quality amounting to fifteen percent (15%) of total and permanent disability." The Court cites no evidence on which this judgment is based and we are unable to find any such evidence in the record. The most we can find is, the petitioner testified: "I feel pain in my veins and my hip and thigh. I feel pain. I can hardly walk." Dr. John Boti testified, the accident probably precipitated some 20 rheumatic condition, a toxic condition." Dr. Joseph M. Rector testified. "A. The man has a previous gonorrhoea and it has not been completely cured, and the man is being infected both from the condition of his inguinal glands and also from his mouth." The certiorari prayed for in the rule to show cause will be allowed directed to the Court of Common Pleas of Hudson County.

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Notice of Appeal.

NEW JERSEY SUPREME COURT

10	NEW YORK LIVE POULTRY TRUCK- ING Co.,	Prosecutor,
	vs.	
	LOUIS SCHWARTZ,	Defendant.

To Kent & Kent,
Attorneys for Defendant.

20 TAKE NOTICE, that the prosecutor hereby ap-
peals to the New Jersey Court of Errors and Ap-
peals from all of the judgment entered herein on
January 31, 1927.

Yours respectfully,

FRANK G. TURNER,
Attorney of Prosecutor.

Grounds of Appeal.

NEW JERSEY COURT OF ERRORS AND AP-
PEALS

10	NEW YORK LIVE POULTRY COM- PANY,	Prosecutor-Appellant,
	vs.	
	LOUIS SCHWARTZ,	Respondent-Appellee.

*To the Respondent-Appellee and Messrs. Kent &
Kent, his Attorneys:*

20 TAKE NOTICE, that the following are the grounds
of appeal in the above entitled cause:

1. The New Jersey Supreme Court erroneously
held that the Court of Common Pleas had juris-
diction to reverse the Workmen's Compensation
Bureau.

2. The Supreme Court erroneously reversed
the findings of facts of the Workmen's Compensa-
tion Bureau which held that the respondent-ap- 30
pellee suffered no permanent disability in the
said alleged accident.

3. The New Jersey Supreme Court erroneously
held that the action of the Hudson County Court
of Common Pleas in reversing the judgment of
the Workmen's Compensation Bureau was in ac-
cordance with law and with the evidence in the
case.

Grounds of Appeal

4. The New Jersey Supreme Court erroneously held that there was no error on the part of the Hudson County Court of Common Pleas in reversing and setting aside the judgment of the Workmen's Compensation Bureau of the Department of Labor. 10

5. The New Jersey Supreme Court erroneously gave judgment in favor of the respondent-appellee when judgment should have been given in favor of the prosecutor-appellant.

FRANK G. TURNER,
Attorney and of Counsel with
Prosecutor-Appellant.

20

Rule Discharging Writ of Certiorari.

NEW JERSEY SUPREME COURT

NEW YORK LIVE POULTRY TRUCK- ING Co.,	Prosecutor,	} 10
	vs.	
LOUIS SCHWARTZ,	Defendant.	

A writ of certiorari having been allowed to the prosecutor herein, and the matter having been duly argued at the October, 1926, Term, it is

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On this 31st day of January, 1927,

ORDERED, that the judgment of the Common Pleas be affirmed and the record remitted to the Court below to be proceeded with according to law and the practice of said Court.

Rule entered Jan. 31, 1927.

On Motion of
KENT & KENT,
Attorney for Defendant
in certiorari. 30

A true copy
Edward J. Kelleher,
Clerk.

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Opinion of Supreme Court.

NEW JERSEY SUPREME COURT

No. 211, OCTOBER TERM, 1926

10	NEW YORK LIVE POULTRY TRUCK- ING Co.,	}	Prosecutor,
	vs.		
	LOUIS SCHWARTZ,	}	Defendant.

Argued October 5, 1926; decided
20 1927.

On Certiorari to award in workmen's compensation case.

Before: Justices Parker, Black and Campbell.

For the Prosecutor, Frank G. Turner.

For the Defendant, Kent & Kent.

PER CURIAM. The commissioner awarded for
30 temporary disability but refused to award for permanent disability. On appeal to the Common pleas, that court, acting under the amendment of 1921 to paragraph 19 of the act (see P. L. 1921 at pp. 734, 735), considered the evidence taken before the commissioner, re-weighed it, concluded that permanent disability had been shown, and made award accordingly. The matter is now before us on certiorari.

40 Two points are made; the first, is that the Pleas had no jurisdiction to reverse the findings of fact

Opinion of Supreme Court

of the commissioner, based on the same evidence. But we think it was the very object of the amendment of 1921 to give the Pleas jurisdiction to review the findings of fact on a written transcript of the testimony, and determine the merits of the controversy. 10

Jayson v. Penna. R. R. Co., 3 Adv. 199;
Charlock v. Kellogg Co., 4 Misc. 260.

The other point is that, assuming the jurisdiction of the Pleas to reverse the finding of fact, there was no evidence to support such reversal. It is doubtless true that the petitioner was suffering from venereal disease and its resultants, but on the evidence the court was entitled to find that 20 the disease was more or less dormant until awakened by the accident; which in such case may be said to have caused the injury in a legal sense.

Atchison v. Colgate & Co., 3 Misc. 451;
Lundy v. Geo. Brown & Co., 93 N. J. L.
107, 110;

Winter v. Atkinson Frizzelle Co., 37
N. J. L. J. 195, 88 N. J. L. 401;

Voorhees v. Smith Schoomaker Co., 86 30
N. J. L. 501.

The judgment of the Common Pleas will be affirmed.

121

New Jersey Court of Errors and Appeals

NEW YORK LIVE POULTRY
TRUCKING Co.,
Prosecutor-Appellant,
v.
LOUIS SCHWARTZ,
Defendant-Appellee.

On Appeal.
On Certiorari.

BRIEF FOR PROSECUTOR-APPELLANT.

This writ of certiorari was allowed by the Supreme Court to review a judgment of Hudson Common Pleas reversing a judgment in a Workmen's Compensation case that was decided in favor of the prosecutor by the Workmen's Compensation Bureau in words following:

"It is on this Thirtieth day of October, Nineteen Hundred and twenty-five, ordered and determined that the petitioner was injured in an accident arising out of and in the course of his employment and that he received compensation for his injuries up to and including August Fourth, Nineteen Hundred and twenty-five, and his injuries then terminated.

"I further find and determine that he is not suffering from injury and that he suffered no permanent injury in said accident. He has been fully paid and compensated for all temporary disabilities growing out of said accident. He now suffers and since August 4th, 1925, has suffered from disease" (Case, p. 2).

On the same testimony and without seeing the petitioner below the Hudson County Court of

Common Pleas reverses the Workmen's Compensation Bureau and holds:

"The petitioner-appellant suffered personal injuries herein arising out of and in the course of his employment, which injuries involved the right leg and right hip, partial in character and permanent in quality, amounting to Fifteen per cent (15%) of total and permanent disability" (Case, p. 15).

"Further ordered that the respondent-appellee pay or cause to be paid to petitioner-appellant the sum of Twelve Hundred Seventy-five (\$1275.00) Dollars, representing compensation for permanent disability for a period of Seventy-five (75) weeks, at the rate of \$17.00 per week, said payments to commence on August 4, 1925, the amount due to date to be paid in a lump sum immediately, and it is" (Case, p. 16).

Dr. Joseph M. Rector examined the petitioner-appellee and found him prematurely old, suffering from Riggs' disease and from inguinal adenitis with traces of albumen and gonorrheal threads in his urine. The petitioner had a previous gonorrhea and it has not been completely cured and he is being infected from the condition of his inguinal glands and from his mouth (Case, p. 64). Dr. Rector testified on cross examination (Case, pp. 70-71):

"Q. So if a man had a gonorrheal thread condition, let us assume, on March 12th— A. Yes.

"Q. —and he slipped and falls from a truck a distance of four feet— A. Yes?

"Q. You do not think that such a fall with the impact at the point of the hip on his body, would, in any way, affect that gonorrheal condition? A. None whatever.

"Q. None whatever? A. None whatever.

"Q. You are absolutely positive of that? A. That is my opinion.

"Q. And assume that as far as the Riggs' disease or pyorrhea is concerned, when you examined him on July 25th—did you form an opinion as to how long that condition had existed? A. No, I could not. It existed there and there was inflammation of the alveolar process of the gums.

"Q. And in your general experience as an old practitioner, how long do you think this condition probably continued? A. I cannot tell you.

"Q. Do you think it existed a couple of months? A. I cannot tell you.

"Q. Do you think it appeared over night? A. No; you do not get Riggs' disease over night.

"Q. How long— A. It is a slow process.

"Q. It is a slow process? A. Yes.

"Q. If it is a slow process, don't you assume it at least existed on March 12th? A. I should imagine it did.

"Q. Assuming it did, and again that that man had such a fall as he describes, do you think that 'condition' would have helped that condition? A. Does not make a bit of difference.

"Q. I am asking you would it or would it not? A. None whatever.

"Q. It is a fact pyorrhea, when it progresses, develops into a rheumatic condition as we popularly call it? A. As the laymen call it.

"Q. Yes. A. Yes."

The petitioner-appellee, Louis Schwartz, testifies (Case, pp. 33-34-35-36-38):

"Q. And you were in the habit, when you got a truckload, of jumping off the truck; isn't that so? A. That is no habit, but that is my duty.

"Q. That is your duty to jump off the truck? A. They don't give you no step ladder to get up on the truck or get down off the truck.

"Q. That is what you did on this day, isn't it? A. Yes, sir.

"Q. So you had done all you could do on the truck up to that time and you had to get down on the ground to do the rest of your work, didn't you? A. Yes.

"Q. You are not supposed to jump off the truck either, but you do. A. I got to jump up and down, but not to take any notice of the numbers.

"Q. When you jumped off this truck, you landed on your feet, didn't you? A. Yes.

"Q. You did not fall to the ground at all, did you? A. I fell, yes; I fell.

"Q. How did you fall when you jumped? A. I felt a sprain in my leg and I gave it down. I sat down.

"Q. When you jumped to the ground, just show us what happened to you when you got to the ground. Just show the Judge what—
A. When I fell down—I can't jump now—

"Q. Just show us what happened to you when you got on the ground? A. I sat down.

"Q. Did you sit down? A. Yes; I felt a bad sprain and I sat down" (Case, p. 39).

The wages of the petitioner were \$25.50 per week (Case, p. 21).

POINT I.

The Supreme Court erred in sustaining the Court of Common Pleas in its reversal of the Workmen's Compensation Bureau, because there was no evidence to warrant such reversal.

There is no evidence in the case that warrants the reversal of the Bureau. The Bureau finds as a fact that the man is suffering, if at all, from disease. There are no objective symptoms except the pus from Riggs' disease and the gonorrhoeal threads. The Deputy Commissioner saw the petitioner and observed him and heard his testimony and finds his claim of permanent disability from accident to be untrue.

We submit that the Court of Common Pleas was without power to reverse this finding of fact.

This finding of fact is based in part upon an actual observation of the petitioner. As a practical illustration of this, take the claim of petitioner that he limps when he walks. The record would show that he limps according to his claim.

Dr. Rector says (Case, p. 65), "He did not limp." The Deputy Commissioner actually sees the man and can see that he really does not limp and bases his determination in part on what he can see. The Court of Common Pleas that does not see the man, is bound by this finding of the Workmen's Compensation Bureau.

Petitioner has the burden of excluding the idea that his condition was due to disease, with which respondent is unconnected.

Migliaccio v. Public Service (Supreme Court, 1925), 130 At. Rep. page 9.

If the Court of Common Pleas on an appeal can, without legal evidence, reverse the finding of facts of the Workmen's Compensation Bureau by an arbitrary ruling then the judgment of the Bureau amounts to nothing.

The statute gives to the Commissioner of Labor and each deputy and referee the power to hear and determine the matter in dispute. Sec. 10, Ch. 149, N. J. S. L. 1918.

The matter comes before the Court of Common Pleas only on appeal. The appeal is based on a written record. The petitioner is not seen.

Our Supreme Court, in allowing this writ, says:

"The record in this case reveals these facts. In the petition for compensation the petitioner states: 'I was assisted in loading an automobile truck with crates of live poultry, when I slipped from the truck to the ground, injur-

ing the right side of my body and leg.' On March 12, 1925. The Workmen's Compensation Bureau found that the petitioner 'is not suffering from injury and that he suffered no permanent injury in said accident. He has been fully paid and compensated for all temporary disabilities growing out of said accident. He now suffers and since August 4, 1925, has suffered from disease.' The petition was therefore dismissed. This judgment was reversed by the Hudson County Court of Common Pleas on the ground that the petitioner suffered injuries 'partial in character, permanent in quality amounting to fifteen percent (15%) of total and permanent disability.' The Court cites no evidence on which this judgment is based and we are unable to find any such evidence in the record. The most we can find is, the petitioner testified: 'I feel pain in my veins and my hip and thigh. I feel pain. I can hardly walk.' Dr. John Boti testified: 'The accident probably precipitated some rheumatic condition, a toxic condition.' Dr. Joseph M. Rector testified: 'A. The man has a previous gonorrhoea and it has not been completely cured, and the man is being infected both from the condition of his inguinal glands and also from his mouth.' The certiorari prayed for in the rule to show cause will be allowed directed to the Court of Common Pleas of Hudson County"

In the case of *Magolda v. Central Ice Co.*, 3 N. J. M. R. 953, it is held:

"It appeared that claimant was seized with an attack of appendicitis while handling a case of fruit in the course of his employment, that the relation between the claimant's disability and the alleged injury was not established beyond a possibility, and, whereas the law requires such relationship be shown to be probable, I am therefore obliged to, and do thereby, dismiss the claimant's petition, and render judgment in favor of the respondent."

The rule in the Compensation Court is, as at law, that the petitioner has the burden of proving that his condition is due to accident and not disease, and the petitioner has not sustained the burden.

Migliaccio v. Pub. Service, 3 N. J. A. R. 1427.

There was no legal evidence that petitioner suffered as a result of accident. Without such evidence the Court of Common Pleas was without jurisdiction to reverse the Department of Labor.

It is respectfully urged, therefore, that the affirming judgment of the Supreme Court should be reversed.

Frank G. Turner
FRANK G. TURNER,

Attorney and of Counsel with Appellant.

72

New Jersey Court of Errors and Appeals

NEW YORK LIVE POULTRY
TRUCKING Co.,
Prosecutor-Appellant,
v.
LOUIS SCHWARTZ,
Defendant-Appellee.

On Appeal
from Supreme
Court.
On Certiorari.

BRIEF OF DEFENDANT-APPELLEE

This is an appeal from a judgment entered in the Supreme Court upon the dismissal of a Writ of Certiorari obtained by the prosecutor-appellant to review the judgment of the Common Pleas Court which allowed an award in favor of the defendant-appellee.

The defendant-appellee who will hereafter be referred to as appellee, brought a proceeding in the Workmen's Compensation Bureau, at Jersey City, to recover for injuries sustained during his employment. The Deputy Commissioner found that he was injured on March 12, 1925, in the course of his employment, and was temporarily disabled to August 4, 1925, for all of which time he was paid compensation, and further found that whatever injuries he was suffering from after that date were due to disease (pp. 2 and 3 of State of Case). Thereupon, he dismissed the petition for compensation, since the amount of compensation up to August 4, 1925, had been paid before the proceeding was instituted. Appellee took an appeal to the

Hudson County Court of Common Pleas, where Judge Charles M. Egan, reversed the judgment dismissing the petition for compensation and found as a fact that Schwartz was suffering from permanent injuries received in that accident amounting to 15% of total and permanent disability (p. 15, ll. 25 to 30), and allowed \$1,275.00 for the permanent disability, and in addition thereto, an allowance for expenses and counsel fees (p. 16, ll. 20 to 31).

On January 26, 1926, Justice James F. Minturn allowed a rule to show cause why a Writ of Certiorari should not issue (pp. 17 and 18). The Writ was allowed by opinion filed June 16, 1926 (pp. 102 & 103). The judgment of the Common Pleas was affirmed by the Supreme Court by opinion filed the 25th day of January, 1927 (pp. 108-109).

POINT I.

The Supreme Court properly dismissed the writ of certiorari since there was ample evidence to support the judgment of the Common Pleas.

In *Kauffeld v. Pfund & Sons*, 97 N. J. L., 335 (Court of Errors and Appeals), the court said in regard to a review of the testimony of a workmen's compensation case by the Supreme Court:

"It is settled, where a trial court's findings of fact are supported by evidence they will not be disturbed."

citing *Lunday v. Brown*, 93 N. J. L., 107; affirmed, *Id.*, 469; also followed very recently by this court in *Charlock v. Kellogg Co.*, 4 N. J. Misc. Rep., 260.

There was no question in the Workmen's Compensation Bureau that the man had been injured and that he had received compensation at the rate of \$17.00 per week from March 12, 1925, the day of the injury, to August 4, 1925. Concededly, the injured man was not able to work after August 4, 1925, and in fact, was not able to work at the time of the trial. The employer's answer, however, was that his disability at the time of the trial was due to disease solely. The employee's contention was that it was due to the accident because of the *direct injuries to his right hip; torn ligaments at the hip joint; sciatic trouble in the leg following the accident, and an aggravation of a previous condition of pyorrhoea.*

The following testimony establishes the defendant's case. Schwartz testified:

"At the time I finished loading, I was on the truck on the tail, on the back end of the truck, and I slipped off, because the truck was greasy from the chicken dirt. * * * *And I slipped off and fell down on the ground. * * * about four and a half—five feet* (p. 23, ll. 23 to 33). * * * I fell on the ground and I felt a bad sprain.

"Q. *And did you feel any pain?* A. *Terrible pain.*

"Q. *Where?* A. *Right hip and thigh*" (p. 24, ll. 28 to 38).

"Q. *What did you do after that?* A. *After that I hardly got up, and I hired a taxi, I couldn't walk, I hired a taxi, and I went down to the office and reported*" (top p. 25).

Schwartz testified that he received the following medical treatment:

"I went over to the office and I reported the case, how it happened, and they sent me to Dr. Ginsberg to be treated. * * * He treated me for about two weeks (bottom p. 25). * * * After those two weeks Dr. Ginsberg sent me to the Labor Department to get treatment, electric massage and heat. * * * For two weeks (p. 26, ll. 25 and 26). * * * After the insurance company sent me to Dr. Chapman to be treated by him. * * * For two weeks also (p. 26, ll. 21 to 25). * * * And then I went and got Dr. Cohen in Hoboken (p. 27, ll. 31 and 32). * * * They sent me for examination only to Dr. Rector. * * *

"Q. When was that about? A. In August, I think (p. 27, ll. 34 to 39). * * * I was treated also by Dr. Cohen and Dr. Stack, in Hoboken" (p. 28, ll. 21 and 22).

Schwartz was paid compensation up to August 4, 1925:

"Since, for all the time since March 12th to August 4th, I got paid (top p. 30). * * *

"Q. How much a week did you get? A. Seventeen dollars" (p. 30, l. 28).

Schwartz was a workingman and never had any trouble before the accident:

"Q. How old are you? A. Fifty-five (p. 30, l. 40). * * *

"Q. How long had you been working for this poultry company before this accident? A. Eleven years, steady. * * *

"Q. Ever had any sickness or trouble? A. Never.

"Q. Ever laid up with any illness? A. No—never.

"Q. Did you ever have pain in your right side? A. Never. * * *

"Q. Have you worked at all since March 12th? A. Not a bit. * * * (p. 31).

"Q. What did you do before you went to work for the New York Live Poultry Company? A. I worked on the docks. * * *

"Q. Longshoreman? A. Yes. * * *

"Q. Heavy work? A. Yes" (p. 33, ll. 18 to 25).

Schwartz's work with his present employer was as follows:

"Two men—we had to lift a coop of poultry which is filled up and weighs from 250 to 400 lbs. Got to take that from the bench, put them on the scale and then when it is weighed, we have to carry it from the scale and lift them up 8 feet high onto the machine, too. Two men have to do.

"Q. You were a strong man? A. Strong as a bull" (p. 33, ll. 28 to 37),

Dr. John Botti, of Jersey City, testified for Schwartz as follows:

"* * * he (Schwartz) had some tenderness over the right hip joint when making deep pressure over the same. And on making that pressure he complained of a pain radiating down the dorsal or the back part of the thigh. He also was unable to fully flex the thigh on the abdomen, without any assistance. I mean voluntarily. And in forcibly flexing the thigh

on the abdomen there was an occasional spasm noted in the gluteal region" (p. 51, ll. 7 to 18).

Schwartz had pyorrhoea before the accident (testimony by Dr. Botti):

"Oh, I believe that the pyorrhoeal condition was a condition pre-existing the accident" (p. 57, ll. 31 to 33).

The accident aggravated the toxic condition (testimony by Dr. Botti):

"Well, if the man had any toxic condition the result of absorption from this pyorrhoeal condition, and the man met with an accident, it is naturally going to decrease his general resisting power and give the toxins a chance to work.

"Q. Do you mean that then it would aggravate the condition resulting from the accident itself? A. It would probably precipitate.

"Q. When you say it would probably precipitate, do you think it did in this case? A. Yes (p. 58, ll. 15 to 25). * * * This man—(Schwartz) I found—my opinion in this case was that this man suffered a wrenching of his right hip joint, and with probably torn ligaments in that joint, and also a subsequent development of a sciatic condition in that right—right sciatic nerve" (p. 59, ll. 15 to 21).

The accident aggravated the disease:

"Q. And assuming that he (Schwartz) has that toxic condition resulting from Riggs disease or pyorrhoea, would or would not such

an accident have in any way activated or accelerated or aggravated, yes or no? A. Yes.

"Q. Do you think it did? A. Yes; absolutely" (p. 84, ll. 25 to 30).

Dr. Rector, who testified for the employer, stated that Schwartz was suffering from a gonorrhoeal condition. Dr. Botti denied this, but in that connection testified:

"Q. Assuming that he had the accident that has been described, on March 12th, and assuming he had gonorrhoea at that time, would or would not that accident in any way have aggravated or accelerated that gonorrhoeal condition? * * * A. Yes" (p. 84, ll. 11 to 23).

Dr. Rector testified:

"* * * he (Schwartz) had evidence of Riggs disease, and pyorrhoea in his mouth" (p. 62, l. 41, top of p. 63).

When Dr. Rector examined Schwartz in the latter part of July or the beginning of August, 1925:

"Q. Did he tell you he had pain? A. Yes, sir.

"Q. Do you think he is lying? A. No, sir" (p. 67, ll. 38 to 39).

The case was tried in the Compensation Bureau on October 30, 1925. At that time, Dr. Rector said:

"Q. * * * Do you think that man is able to go back today and do heavy laborious work? A. No (p. 68, ll. 34 to 36). * * * A. You

asked me if he could do his usual work, and I said no.

"Q. He cannot? A. He cannot do heavy manual labor; no" (p. 69, ll. 11 to 15).

Dr. Botti testified that Schwartz had suffered a permanent disability.

"Q. But at the present time from your examination, to what extent and how is he disabled physically? A. Well, he is disabled in that he is suffering—he has pain in the hip and has some restriction in the normal flexion of the hip on the abdomen—of the thigh on the abdomen" (p. 61, ll. 3-12).

"I would say about 15%.

"Q. Of what? A. Of total disability.

"Q. As a permanent condition? A. Yes" (p. 61, ll. 26 to 30).

There appears, therefore, abundant testimony to sustain the finding of the Common Pleas Judge that

"3. The petitioner-appellant suffered personal injuries herein arising out of and in the course of his employment which injuries involved the right leg and right hip, partial in character, permanent in quality, amounting to fifteen per cent. (15%) of total and permanent disability" (p. 15, ll. 25 to 31).

POINT II.

The injuries are compensable, although there was a diseased condition prior to the accident, if the accident was a factor in producing the disability.

Justice Trenchard, in the case of *Geisel v. Regina Co.*, 96 N. J. L., 31, said:

"The company insists that the cause of death was diabetes, or influenza, or both, and there is some medical testimony to the effect that he was suffering from both at the time of the accident. But the physician called by the petitioner testified, in effect, that the accident was a factor in producing death. Moreover, the medical testimony, considered as a whole, clearly tended to show that the injury and consequent shock and exposure so impoverished the decedent's strength and vitality as to predispose him to the ravages of disease. If we assume that before or at the time of the accident the decedent was suffering from bodily disease, that does not necessarily defeat compensation. Death may be found as having been caused by an accident, although there was a diseased bodily condition prior to the injury, without which death would not have ensued, where, as may be inferred here, the undeveloped and dangerous physical conditions are set in motion producing such result" (*Winter v. Atkinson-Frizelle Co.*, 88 N. J. L., 401; *Voorhees v. Schoonmaker Co.*, 86 id., 500).

"But there was other testimony, including that of his family physician, to the effect that

up to the time of the accident the decedent was quite well, and it is significant that he had never lost any time from illness, and for many years had not required the services of a physician. It was, therefore, entirely open to the trial judge to find that the diseases which the physicians discovered developed after the accident or were at most latent theretofore."

This reasoning has been followed very recently in the compensation case of *Atchison v. Colgate & Co.*, 3 N. J. Misc. Rep., 451 (Sup. Ct.), where the court said:

"The question is whether the fall preceded the seizures and caused an acceleration of a pre-existing disease which resulted in a general decline to death or whether the disease caused the fall."

The injured man died from paresis. A judgment awarding compensation was affirmed. This case was affirmed by the Court of Errors and Appeals in 4 N. J. Adv. Rep., 507.

In the case sub judice, the Supreme Court voiced the opinion of the Common Pleas:

"* * * on the evidence the court was entitled to find that the disease was more or less dormant until awakened by the accident" (p. 109, ll. 19 to 21).

POINT III.

The Court of Common Pleas hears a compensation proceeding de novo and this court will not interfere with the Finding of Fact by the Court of Common Pleas if there is any evidence to support it.

The law is settled that the Common Pleas Court tries a compensation proceeding on appeal, *de novo*, and may make findings of fact absolutely contrary to the findings in the Compensation Bureau. Those findings will not be disturbed if there is *any evidence* to support them.

The Supreme Court has very recently passed upon the identical proposition in the case of *Charlock v. Kellogg Co.*, 4 N. J. Misc., 206. This was a compensation proceeding. The facts appear from the decision as follows:

"The petition was dismissed. An appeal was then taken to the Hudson County Court of Common Pleas. The case was heard *de novo* under the statute on the proofs taken before the deputy commissioner. The Court of Common Pleas made a finding of fact to the effect that the petitioner's injury arose out of and in the course of his employment. Compensation and counsel fees were awarded. The M. W. Kellogg Company then applied for and was allowed the writ of *certiorari* under which the record is brought to this court for review.

"The prosecutor makes three contentions. These are—*first*, that the Court of Common Pleas erred in not treating as conclusive and binding the findings and determinations of the

workmen's compensation bureau, which were supported by legal evidence; second, that the conclusion stated by the Court of Common Pleas in the 'findings of facts and determination' is not supported by the specific finding of such facts as may be submitted to and considered by the court of review, as justifying such conclusion; and, third, that the evidence does not support a finding of fact sufficient to justify the conclusion that the petitioner's accident arose out of and in the course of his employment.

"We find no merit in the first point. The act, by its terms, contemplate a review of the evidence by the Court of Common Pleas. The act of 1918 (*Pamph. L.*, p. 429) grants a trial *de novo* in the Court of Common Pleas to the party appealing. The 1921 amendment of the Act (*Pamph. L.*, 734) directs that the trial of such appeal shall be exclusively upon the transcript and testimony taken before the workmen's compensation bureau, and that the judge of the Court of Common Pleas shall, in a summary manner, decide the merits of the controversy, and that the judgment of that court on such appeal shall be conclusive and binding. The only difference between the act of 1918, as amended by the act of 1921, is that prior to the 1921 amendment the judge of the Court of Common Pleas heard the case *de novo*, that is, he heard the evidence anew. After the act of 1921 only the evidence taken before the workmen's compensation bureau was to be used upon an appeal. The difference in method provided by the 1921 amendment did not in any way alter the provision that the trial was to be a *de novo* trial. The

appeal provides a new mind for the consideration of the testimony adduced. It was not intended by the legislation referred to that the Court of Common Pleas upon the appeal should be limited merely to questions of law as it would be if the contention of the prosecutor is well founded.

"We likewise think the second point advanced by the prosecutor is not well taken. The finding of fact was sufficient if the final conclusion reached by the judge of the Court of Common Pleas is justified.

* * * * *

"From this testimony it was a question of fact for determination whether from this state of facts there was sufficient evidence to justify the finding that the work which he was doing at the time of his injury was a part of his employment. The judge of the Court of Common Pleas found from this testimony that the operation of the winch was a part of the petitioner's employment. It follows that the petitioner was then injured in an accident arising out of and in the course of his employment. *A finding of fact by a Common Pleas judge in a workmen's compensation case is conclusive upon this court if there is any evidence to support it* (*Pfund v. Kauffeld*, 97 N. J. L., 335; *Lunday v. Brown & Co.*, 93 Id., 107). We think in the present case there was evidence to support this finding of fact. This leads us to an affirmance of the judgment of the Hudson County Court of Common Pleas. The judgment is accordingly affirmed."

Another case is *Scalisi v. Uvalde Asphalt Paving Co.*, 98 N. J. L., 696 (Supreme Court). In

that case a compensation petition was filed, and trial was had in Jersey City. The petition was dismissed by the Referee. An appeal was taken to the Hudson Common Pleas. The Court of Common Pleas reversed the decision of the court below, and allowed an award in favor of the petitioner. This was sustained by the Supreme Court, which said:

“The plaintiff and his physician testified that the former was still laboring under disability to perform labor by reason of his injury, while the prosecutor’s physician denied that such disability existed. There was, therefore, competent testimony before the court sufficient to form a reasonable basis for a reversal of the Commissioner, and to make an award of compensation for temporary disability.”

POINT IV.

It is respectfully submitted, that the judgment of the Supreme Court should be affirmed.

KENT & KENT,
Attorneys for Defendant-Appellee.

SAMUEL KENT,
of Counsel.

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