

INDEX.

	PAGE
Writ of Certiorari.....	1
Petition	3
Order	5
Answer	6
Statement	83
Rule	87
Reasons	88
Certiorari to Mercer Pleas	90
Rule of Affirmance and Remittitur	93
Notice of Appeal and Reasons	94

WITNESSES

For Petitioner:

Dr. Raymond S. Seibert—

Direct	9
Cross	12
Redirect	26
Recross	27

J. William Foster—

Direct	28
Cross	35
Redirect	37
Recross (recalled)	49
Redirect (recalled)	49

Mary Terlecki—

Direct	37
Cross	44

Agnes Kyack—

Direct	63
Cross	64

	PAGE
Annie Kobich—	
Direct	66
Cross	68
Annie Machusky—	
Direct	70
Cross	71
Lizzie Quick—	
Direct	72
Cross	73
For Defendant:	
Dr. Thomas H. Mackenzie—	
Direct	50
Cross	54
James J. Green—	
Direct	75
Cross	78
Alpha Clay—	
Direct	79
Cross	80

WRIT OF CERTIORARI.

NEW JERSEY, SS.:

THE STATE OF NEW JERSEY, to Honorable Frederick W. Gnichtel, Judge of the Court of Common Pleas of Mercer County,

GREETING:

We being willing for divers causes to be certified of a certain order, judgment and determination lately made and given before you, in the matter of the injury sustained by MARY TERLECKI, an employee of FREDERICK A. STRAUS *et al.* partners trading as F. A. Straus & Company upon the petition of said F. A. Straus & Company for a determination of the amount of compensation to which said Mary Terlecki was entitled under the provisions of Chapter 95 of the Laws of 1911, for injuries received by the said Mary Terlecki while alleged to be in the employ of said F. A. Straus & Company, together with all proceedings had therein and thereon,—

Do COMMAND You that the said order, judgment and determination, together with all things touching and concerning the same, as fully and entirely before you remain, distinctly and openly, under your seal, you send to our Justices of our Supreme Court, at Trenton, on the 23rd day of July, A. D. nineteen hundred and thirteen, together with this writ, that we may further cause to be done what of right and according to law ought to be done.

WITNESS, William S. Gummere, Esquire, Chief Justice of our said Supreme Court, at Trenton, this 3rd day of July A. D. nineteen hundred and thirteen.

WM. C. GEBHARDT,
Clerk.

VREDENBURGH, WALL & CAREY,
Attorneys for Prosecutor.

Writ of Certiorari

I allow this writ. Let it be sealed on plff's executing a bond for \$1500 to be approved by a Sup. Ct. Com.

THOMAS W. TRENCHARD,
J. S. C.

Service of a true copy of within writ is acknowledged this 9th day of July, 1913.

10

JOHN H. KAFES,
Attorney for Petitioner.

To the Justices of the Supreme Court of New Jersey:

In obedience to the command of this writ, I, the Judge of the Court of Common Pleas of the
20 County of Mercer, within named, do hereby certify and send to you, the Honorable Justices of the Supreme Court of Judicature of New Jersey, the judgment and determination lately made and rendered in our said Court of Common Pleas, in the matter of the injury sustained by Mary Terlecki, an employe of Frederick A. Straus, et al., partners trading as F. A. Straus and Company, together with all things touching and concerning
30 the same, as fully and entirely as they remain before me, as appears in the schedule hereto annexed, as I am commanded.

In Witness Whereof, I have hereunto set my hand and seal in open Court this nineteenth day of July, A. D. 1913.

(Seal)

F. W. GNICHTEL,
J.

PETITION.

To the Honorable FREDERICK W. GNICHTEL, Esq.,
Judge of the Court of Common Pleas in and for
the County of Mercer.

The Petition of Mary Terlecki, of the city of
Trenton, County of Mercer and State of New
Jersey, respectfully shows:

(1) That on the thirteenth day of July, nineteen 10
hundred and twelve, your petitioner was employed
by Ferdinand A. Straus and Lionel F. Straus,
partners, trading as F. A. Straus & Co., at their
mills situated in the township of Hamilton, County
of Mercer and State of New Jersey, as bobbin girl.
That while so engaged in the discharge of her du-
ties as such employee and while in course of her
said employment on the day and year last afore-
said at the mills of the said F. A. Straus & Co.,
your petitioner was seriously injured, wounded 20
and maimed by having her hair caught in a certain
winding or weaving machine then and there in use
in the said mills, with the result by reason thereof
your petitioner's scalp was severely torn, lacer-
ated and torn from her head, and because of said
injury your petitioner was confined in McKinley
Hospital, Trenton, N. J., for a period of about six-
teen weeks.

(2) That the accident to your petitioner in man-
ner aforesaid which resulted in the injuries herein 30
described arose out of and in the course of her em-
ployment as aforesaid and that by reason thereof
your petitioner is permanently injured and dis-
abled.

(3) That on the day and year last aforesaid the
said F. A. Straus & Co. had actual notice of the
occurrence of the accident and of the injuries of
your petitioner as above set forth.

(4) That on the ninth day of August, nineteen
hundred and twelve, your petitioner gave notice 40

Petition

in writing to the said F. A. Straus & Co. of the accident and injury of the said petitioner, Mary Terlecki, at the time and in the manner and under the circumstances hereinbefore related, which notice was by your petitioner enclosed in an envelope duly stamped and addressed to the said F. A. Straus & Co., corner of Johnston Avenue and P. R. R., Trenton, N. J., and deposited in the Post Office in Trenton, N. J.

(5) That the receipt of the said letter was duly acknowledged by the said F. A. Straus & Co. on August twelfth, nineteen hundred and twelve.

(6) That at the time of the accident the said Mary Terlecki was receiving from five to six dollars per week from the said defendant Company.

(7) That the said F. A. Straus & Co. dispute the right of your petitioner to recover compensation for the injuries received by your petitioner as provided by law, that they have altogether refused to pay your petitioner such compensation as provided by law and that they have assigned no satisfactory reason for their refusal to make such compensation, although your petitioner has frequently demanded of the F. A. Straus & Co. that they pay to your petitioner compensation provided by law.

(9) That the Post Office Address of F. A. Straus & Co. is corner of Johnston Avenue and P. R. R., Hamilton Township, Mercer County, State of New Jersey.

(10) Your petitioner therefore prays that your Honor hear and determine the said dispute between your petitioner and the said defendant to the end that it may be adjudged that the said F. A. Straus & Co. pay to your petitioner the proper compensation as fixed by law.

Your petitioner will ever pray.

MARY TERLECKI,
Petitioner.

Affidavit of Petitioner following.

ORDER.

Before FREDERICK W. GNICHTEL, Esq., Judge of
the Court of Common Pleas in and for the
County of Mercer:

Upon Petition of Mary Terlecki, }
for Compensation for Injuries. } Order.

Upon reading the petition of Mary Terlecki, 10
duly verified, wherein she prays that the dispute
therein set forth may be adjudged that Ferdinand
A. Straus and Lionel F. Straus, partners, trading
as F. A. Straus and Company, pay to the said pe-
titioner the compensation fixed by law for the in-
juries received by the said petitioner;

It is, on the eleventh day of February, A. D.
Nineteen Hundred and Thirteen,

Ordered, that the said petition be filed with the
Clerk of the Court of Common Pleas of Mercer 20
County, and that Friday, the seventh day of
March, nineteen hundred and thirteen, at the hour
of ten o'clock in the forenoon, at the court house
in the City of Trenton, before me, Judge of the
Court of Common Pleas of Mercer County, is here-
by fixed as the time and place for the hearing of
the said petition.

And it is further ordered that a copy of said
petition and of this Order, which copy of said
Order shall operate as a notice provided by law, 30
be served on the said F. A. Straus & Co. within
four days from the day of the date hereof, in man-
ner provided by law.

F. W. GNICHTEL,
*Judge of the Court of Common Pleas
of the County of Mercer.*

ANSWER.

MERCER COUNTY COURT OF COMMON PLEAS.

MARY TERLECKI,
Petitioner,

vs.

FERDINAND A. STRAUS, *et al.*,
 partners, trading as F. A.
 STRAUS & COMPANY,
Defendants.

Answer.

The answer of Ferdinand A. Straus and Lionel F. Straus, partners as F. A. Straus & Company, defendants, to the petition of Mary Terlecki, the above named petitioner, respectfully shows:

1. They admit that the petitioner was employed as a gill box hand by the defendants on the 14th day of June, 1912, at their mills, in the Township of Hamilton, County of Mercer and State of New Jersey, and that on said 14th day of June, instead of the 13th day of July, as in said petition alleged, she was injured about her head and scalp, and these defendants are informed and believe that she was so injured by having her hair caught around a certain back shaft of a roving frame in said mill. These defendants deny that she was so injured while engaged in the discharge of her duties as such employee, or while in the course of her said employment. These defendants have not sufficient knowledge or information to enable them to state how long the petitioner was confined in the hospital by reason of her said injuries.

2. These defendants deny that the accident to

Answer

said petitioner which resulted in the injuries aforesaid, arose out of or in the course of her employment, and they deny that the petitioner is permanently injured and disabled.

3. They admit that they had actual notice of the accident to the petitioner on the day when said accident occurred.

4. They admit that on or about the 22nd day 10 of July the petitioner gave notice in writing to these defendants, of said accident and injury.

5. They admit acknowledging receipt of said notice.

6. They say that at the time of said injury the petitioner was receiving weekly wages at the rate of Five dollars and nine cents per week.

7. They admit that they dispute the right of the petitioner to recover compensation for the injuries received by her as aforesaid, and that they 20 have refused to pay to the petitioner compensation on account thereof.

The reason for such refusal is that petitioner's injuries did not arise out of or in the course of her employment.

These defendants therefore pray that said petition may be dismissed.

F. A. STRAUS & COMPANY,

By

Lionel F. Straus. 30

VREDENBURGH, WALL & CAREY,

Attorneys for Defendants.

STATE OF NEW JERSEY, }
County of Mercer, } ss.:

Lionel F. Straus, being duly sworn, on his oath says that he is a member of the firm of F. A. 40

Answer

Straus & Company, the defendants in the foregoing answer named; that he has read said answer and knows the contents thereof, and that the allegations therein contained are true to the best of deponent's knowledge, information and belief.

10 Sworn and subscribed to
before me this 7th
day of March, 1913.

LIONEL F. STRAUS.

HOWARD F. TOMLINSON,
Notary Public.

(indorsed)

MERCER COUNTY COURT OF COMMON PLEAS.

20

MARY TERLECKI,
Petitioner.

vs.

FERDINAND A. STRAUS, *et al.*,
partners, &c.

30

ANSWER.

VREDENBURGH, WALL & CAREY,
Attorneys,

1 Exchange Place,
Jersey City, N. J.

TESTIMONY.

MERCER COUNTY COURT OF COMMON
PLEAS.

MARY TERLECKI,
Petitioner,

vs.

FERDINAND A. STRAUSS and
LIONEL F. STRAUSS, partners
trading as F. A. STRAUSS &
COMPANY,
Defendant.

Action at Law 10

Testimony.

Testimony taken in the above court in the above
entitled cause before Hon. Frederick W. Gnichtel, 20
on Thursday, the twentieth day of March, A. D.
1913, at ten-thirty o'clock in the forenoon.
Appearances:

JOHN H. KAFES and ANTHONY S. BRENNAN,
Esqs., for the Petitioner.

WILLIAM H. CAREY, Esq., of Vredenburgh, Wall
and Carey, for the Defendant.

30

DR. RAYMOND S. SEIBERT, a witness sworn on be-
half of the petitioner, testified as follows:

Direct-examination by Mr. Kafes:

The stenographer not having been present
at the opening of the trial the following notes
were read to him by the Court:

"I am a physician, practicing in Trenton
three years. I know Mary Terlecki; I first
saw her on June 14th, 1912, on an operating 40

Dr. Raymond S. Seibert, for Petitioner—Direct

table. I examined her and found her scalp was torn off. The scalp was brought to me in a basin. I plucked the hair off the scalp and then cleaned the scalp and then took the bandage off her head. The scalp was torn completely off, leaving no covering except the periosteum, a thin covering over the bone.

10 The periosteum is torn off about four square inches on top and about one square inch down next the forehead. I cleaned the hair off the scalp and fitted it back in place and stitched around the edges. The scalp was in two pieces and I stitched it to the healthy part of the scalp. On the third day when I saw it it started to decay. I found the blood supply destroyed and the scalp was not restored. I

20 had to remove the decayed part. The petitioner was at the McKinley Hospital until October 13, 1912. From June 14th, 1912, to October 13, 1912, I attended every other day. She had dizzy spells. When her liver gets disordered there is a certain amount of congestion in the head that makes her dizzy and she is liable to fall. She cannot do any work stooping down. That is her condition today. After getting to the hospital she was in bed about one-half the time. October 15th, the

30 second day after she left the hospital, I saw her at her home. Her condition today is the same as it was October 15th. It has not improved. The growth has, but her general condition has not. I visited her home every other day and she came to my office. I used an antiseptic solution and also used Scarlet Red to stimulate the growth of her skin. As I have observed the case down to the present, in my

40 opinion the injuries are of a permanent character. She will never have any hair on the

Dr. Raymond S. Seibert, for Petitioner—Direct

top of her head and the scalp being torn away there is no thick scalp to take up the blood and the blood goes into the brain and that will produce dizziness and flushing of the face and congestion of the head. She will be dizzy. If she stoops over the congestion will produce headaches. This loss of the scalp is a constant irritation and mental trouble to think that her 10 hair is torn away.

Q. Do you know the character of the work she was doing at that time? A. I do not.

Q. I will ask the witness this question: if she will ever be able to do any work involving stooping over or bending the body? A. No, I say she will not.

Q. Why? A. Well, the scalp not being there will cause that congestion of the head when stoop- 20 ing over.

Q. You say that she will never be able to do all kinds of housework? A. Not in the way that other women would do it. She would have to put herself out of the way and maybe not lift any furniture or do any lifting which would cause a strain and which would produce a congestion of the head.

Q. Or no bending over? A. No, no bending over.

Q. That is of a permanent character? A. Yes.

Q. Doctor, will you say why her condition from 30 October 13, 1912, to the present time has not improved? A. The dizziness hasn't improved or the liability of congestion of the head hasn't improved since then.

Q. Is there any likelihood of that improving in the near future? A. To the best of my knowledge and belief, I would say it would not.

Q. That is all.

Dr. Raymond S. Seibert, for Petitioner—Cross

Cross-examination by Mr. Carey:

Q. Doctor, have you ever had a case of this kind before? A. I have not.

Q. And you say you have practiced how long? A. Three years.

Q. All of that time in Trenton? A. Yes, sir.

Q. And you graduated where? A. Hahnemann
10 College, Philadelphia.

Q. When the scalp was brought to you was the entire scalp brought? A. The entire part that was torn off was.

Q. Yes, and did I understand you to say that that which was torn off was in two parts? A. Yes, two parts.

Q. Now, what portion of the scalp was it that was entirely torn off? A. What portion of the scalp? The highest part of the scalp.

20 Q. The very crown of the head? A. No, it came down on the side of the head too, which could be shown on the plaintiff's head.

Q. About how much in diameter would you say was the portion of the scalp which was entirely torn off? A. Well that could be told better by measuring right now on the plaintiff's head

Q. You can't state? A. No, I couldn't.

Q. Will you state approximately; I don't care for the exact— A. I would think about eight
30 inches across this way (indicating).

Q. You mean that this part which was torn off was eight inches in diameter? A. Laterally it was, and anteroposteriorly I would say it was more than that.

Q. How was this scalp which was brought to you divided; in two equal parts? A. No, unequal parts.

Q. And will you describe those parts? A. Well, if I remember rightly, there was one long strip
40 and the other piece was a smaller one. The long

Dr. Raymond S. Seibert, for Petitioner—Cross

strip extended from front to back and then on the other side the other part to make up the whole piece.

Q. And was the dividing line from the front to back or from side to side? A. No, it was an irregular course.

Q. Was the general direction from front to back? A. As far as I can remember. 10

Q. You say the hair was still on the scalp which was brought to you? A. Yes.

Q. Do you remember how long the hair was? A. No, but I can remember that it was very thick.

Q.: You have no recollection about the length of it? A. No, I have not.

Q. You did what to the scalp? A. I cleansed it off; cut the hair off as close as I could; took the bandage off and fitted it back into place and sewed it to the healthy edges of the scalp that remained, 20 and also here to the forehead (indicating) and also sewed those two pieces together.

Q. Sewed it all around, did you? A. Yes, sir.

Q. What treatment did you give to the head before you put the scalp back in place? A. Cleansed it off with antiseptic solution.

Q. What did you use? A. A solution of bichloride of mercury.

Q. Then after replacing the scalp and sewing it, the head was completely covered with scalp? A. 30 Yes, sir.

Q. You spoke of some lacerations down across the nose and across the eyelids, I think? A. Yes, sir.

Q. What were those lacerations? A. It was one continuous cut or tear deep into the bone, right over her both eyelids and across the nose.

Q. Caused by this part of the head coming in contact with something, you think? A. No, I would say it was the first tear that was made when the 40

Dr. Raymond S. Seibert, for Petitioner—Cross

scalp began to tear away; I would say it gave way up here then (indicating on his forehead).

Q. But there was no laceration between this laceration across the nose to the eyelids up to the point where the scalp was torn away, was there?

A. No, it was just one long, narrow cut, as if it was cut with a knife. A great cut which we had to
10 sew laterally.

Q. And you saw her next when two days after?

A. No I saw her the next day and also the second day after; on the third day after the accident, I saw that the scalp was decaying and was not growing.

Q. Now, what did that indicate—the decaying of the scalp? A. That the blood supply was not restored to that part which was torn off.

Q. Would it also indicate that there had not
20 been a thorough disinfectant? A. No, sir.

Q. It wouldn't indicate anything of that sort? A. No, sir.

Q. How much of the scalp was in that unhealthy condition on the third day? A. All that was torn off.

Q. All that you had replaced? A. Yes, sir.

Q. All decaying? A. Yes, sir.

Q. And throughout the whole part that was removed? A. Yes, sir.
30

Q. And you did what then? A. I removed it.

Q. Took it all off? A. All that had been put back I took off.

Q. All that had been brought to you? A. Yes, sir.

Q. And did what with it? A. Did what with that part?

Q. Yes? A. Threw that away.

Q. So that none of the scalp which was brought to you and which had been completely torn off was actually restored permanently to her head? A.

40 Not any of it.

Dr. Raymond S. Seibert, for Petitioner—Cross

Q. How about that part of the scalp which was not actually removed from the head, what was its condition on the third day? A. Why that was tight against the skull.

Q. Healthy condition? A. Yes, sir.

Q. Blood circulating through it properly? A. Yes, sir.

Q. It was the part of the head from which the scalp had been removed which you skin grafted later on? A. Yes, sir.

Q. How much did you skin graft? A. How much area?

Q. Yes. A. We don't put those up close; we put it here and there. The first time I skin grafted I put it on the side, because that area of the top, where the bone was exposed, was not ready for it; that was still dry.

Q. Then when you skin graft, you don't cover the whole surface, but only spots, is that right? A. Yes, so it will grow from all directions.

Q. And that skin grafting makes growth around in all directions? A. Yes, sir.

Q. And then these spots gradually approach each other? A. Yes, sir.

Q. You spoke of the scalp sloughing off, some of it, do you refer to the part on the third day which you took off and discarded? A. Yes, that was it. 30

Q. And that was not true of any other portion of the scalp? A. Not that which was healthy, that didn't slough.

Q. Had you ever done any skin grafting before, Doctor? A. No, sir, but I assisted at many operations of skin grafting before that.

Q. It is a delicate operation, is it not? A. yes, sir.

Q. And requires a high degree of skill? A. The delicate part is to get the slices of skin thin, that is the delicate part. 40

Dr. Raymond S. Seibert, for Petitioner—Cross

Q. And you never had any experience in replacing a scalp or any portion of it, which had been torn off a patient, had you? A. No experience replacing a scalp.

Q. And as I understand it, you simply cleansed the head and scalp and put it back and sewed it in place? A. Yes, sewed the healthy edges to the
10 edges of the part that was torn off.

Q. How much of the surface of the head was stripped down to the bone? A. I would say four square inches on the top and one square inch in front.

Q. You say it was stripped bare, you mean the epithelium was stripped off? A. No, the periosteum, that was torn away completely.

Q. You grafted on four different occasions? A. Yes, sir.

20 Q. Was the grafting successful? A. Yes, sir. Not every piece was successful, but I would say the grafting was successful.

Q. And I suppose you examined the head on the different occasions when you saw her? A. Oh, yes, I dressed it continually and kept a close watch on her.

Q. And you saw the condition of the head every time you attended it? A. Yes, sir.

Q. And your attendance was every other day?
30 A. At that time it was every day.

Q. Every day? A. While I was skin grafting.

Q. And for about how long a period of time did you attend her every day? A. Well, I couldn't say just the exact time. It was every once in a while I would find that I would have to come every day and especially right after the injury and then around the skin grafting time.

Q. Well, did you attend her every day, or nearly every day, for a month after the injury? A. I
40 would say yes, to the best of my knowledge.

Dr. Raymond S. Seibert, for Petitioner—Cross

Q. Would that be about right? A. I couldn't say positive.

Q. You haven't any record which shows that? A. No, sir.

Q. Have you ever before had any experience in attending a case after grafting had been done? A. I have.

Q. When? A. When I was resident physician 10 in the hospital.

Q. What hospital? A. McKinley Hospital.

Q. And how many times have you attended persons under those circumstances? A. Twice.

Q. Twice prior to this case? A. Yes, sir.

Q. You say that the patient is now dizzy? A. At times.

Q. How do you know that? A. She has told me so, and one time, while in the course of treatments, since she left the hospital, she fell over and struck 20 the table and tore some new skin away.

Q. Did you see that? A. Yes, sir. I called the same day.

Q. But you didn't see her fall? A. No, sir.

Q. How long was that after she left the hospital. A. I couldn't say positively. I would say six weeks.

Q. Six weeks after she left the hospital? A. Yes.

Q. How often are you attending her now? A. Why, I am having her come to the office two days 30 in succession and then skip a day. She will come to the office twenty times a month.

Q. You are treating her now for what? A. For just a small area of granulation tissue not being covered with skin.

Q. And that is all you are treating her for? A. Yes.

Q. And how long have you been treating her for that alone? A. Since she left the hospital I have treated her several times for dizziness. 40

Dr. Raymond S. Seibert, for Petitioner—Cross

Q. When did you first get any complaint from her of dizziness? A. In the hospital. I knew in the hospital before she went home that she couldn't stoop over.

Q. How did you know that? A. The nurses told me.

Q. Does she talk English? A. No.

10 Q. Can you talk with her? A. No, sir.

Q. Have you talked with her through an interpreter? A. No, sir. I have heard a woman tell me the facts, that can talk English and her language and she had talked her.

Q. What language does she talk? A. Polish.

Q. You don't understand it? A. No, sir.

Q. Then the history which you have received has come from someone who was talking English to you at the time when you received the history?
20 A. Yes, and a few words that she can talk. She can talk a few words of English, yes and no.

Q. You say she complained of dizziness at the hospital? A. Yes.

Q. Have you any other history of dizziness in her case besides the complaint in the hospital and some since that time? A. Since she has been home—that time when she fell and struck the table.

Q. Who told you about that? A. Why, her sister-in-law did, but I saw the effects of it.

30 Q. You saw the effects of something; you don't know just what the effect, which you saw, originated from, do you—as a cause? A. No. I know what they told me.

Q. Only what they told you? A. Yes.

Q. Have you seen her undertake to stoop? A. Just for a moment. Just to pick up something. Not to remain that way.

Q. How often? A. How often have I seen her—

Q. Yes, how often? A. I really couldn't say how
40 many times.

Dr. Raymond S. Seibert, for Petitioner—Cross

Q. Once or twice? A. More than that.

Q. About how many times? A. I couldn't say definitely.

Q. Well, a good many times or a few times? A. Well, I would say more than ten times.

Q. And she did that casually from time to time? A. No, just to place a cuspidor in front of her, so I could put the dressings in when I did it in her 10 house.

Q. And she stooped to place the cuspidor there? A. Yes, on the floor.

Q. And is that the only occasion when you saw her stoop? A. Yes, sir.

Q. And when did you last see her do that? A. That has been several weeks ago.

Q. You never saw her stoop for any other purpose than that? A. No, sir.

Q. Did she always stoop for that purpose when 20 you were dressing the head and needed the cuspidor? A. Sometimes it would be out in the other room and she would carry it in and place it on the floor.

Q. You speak of her liver being disordered. You don't mean to say, doctor, that this injury has any effect on her liver, do you? A. No, I wouldn't say that.

Q. So that the dizziness you also characterize 30 with the disordered liver? A. Well, when the liver is congested, we mostly find that the head is congested, but it affected her more than it would a person with a scalp on.

Q. She is subject to trouble with the liver? A. Liver and disordered stomach.

Q. Disordered stomach also produces dizziness, does it not? A. Yes, sir.

Q. But you wouldn't attribute disordered stomach to the accident? A. I couldn't say as to that. 40

Dr. Raymond S. Seibert, for Petitioner—Cross

Q. You say she is liable to fall; why do you say that, Doctor? A. Because she gets dizzy or lightness of the head.

Q. She hasn't complained to you, or through an interpreter to you, of being dizzy, has she? A. No, I have heard that person tell me that she does—

10 Q. And this liability to fall is a liability which anyone has who is dizzy, haven't they? A. Yes.

Q. If you or I were dizzy, we would have the same liability to fall, would we not? A. If we had a very bad attack of dizziness or vertigo.

Q. And any dizziness which resulted from disordered liver or disordered stomach would have the same tendency to cause a fall, that dizziness occasioned by the loss of this scalp would have, would it not? A. It would affect her in the same

20 way.

Q. You don't answer the question. (Question repeated.) A. Yes.

Q. You never had to assist her on any occasion when she placed the cuspidor, on account of dizziness, did you? A. No, because it was just a moment to place it on the floor.

Q. And she made no complaint at the time? A. No, sir.

30 Q. Doctor, I understood you to say that her condition is the same now as it was on the 15th day of October, with the exception of the healing of scalp wound, is that right? A. Yes, sir.

Q. What is her present physical condition; is she well nourished or not? A. Not very. Not as good as she ought to be.

Q. At the time of the injury did you find her a person who was well nourished? A. Yes, sir, I would say that I did.

40 Q. Now, when you say her condition is the same

Dr. Raymond S. Seibert, for Petitioner—Cross

now as it was on the 15th of October, to what do you refer? A. Her liability of getting dizzy due to congestion of the head by stooping over.

Q. You see no improvement then? A. No, sir.

Q. Well, you haven't seen very much of that anyhow, have you? A. Well, I haven't seen her stoop over many times, as I said before.

Q. Now, is that the only thing you refer to when 10
you say her condition is the same as on the 15th of October? A. No, I would claim that the scalp not being there—

Q. I don't want what you claim, but what you state? A. The scalp not being there would cause her to get dizzy, because of congestion of the head.

Q. It was then in connection with this dizziness and congestion of the head that you said her condition was the same as on the fifteenth of October?

A. Yes, sir, no improvement of dizziness or con- 20
gestion of the head.

Q. What is congestion of the head, Doctor? A. Why, it is excess of the flow of blood to the head.

Q. To what part of the head? A. To the skin and also to the brain.

Q. Now, how do you know that she has congestion of the brain? A. By the vascularity. The scalp is very vascular and contains lots of blood vessels and lots of blood goes to the scalp when a person stoops over, and her scalp is not there 30
to receive the blood.

Q. Then you reason that she has congestion of the head? A. When she stoops over, more than persons with right skin.

Q. Your testimony now is in the nature of reasoning rather than facts, as within your observation? A. Yes, sir.

Q. You are reasoning that because of the absence of a great number of blood vessels in the covering of the head which we call the scalp, there 40

Dr. Raymond S. Seibert, for Petitioner—Cross

must be congestion of the head to a greater extent than there would otherwise be? A. Yes, sir.

Q. Now, Doctor, there are certain vessels, I suppose, that take the blood to the scalp and certain vessels that take the blood to the brain, are there not? A. But some of them come off from one common vessel.

10 Q. Now, I suppose, if you or I would stoop there would be more or less flow of blood to the head, would there not? A. Yes, sir.

Q. Your inference is, as I understand you, that by reason of this absence of the blood vessels in the scalp there is more likely to be a congestion of the head than there would otherwise be? A. Yes, sir.

Q. Are the blood vessels of the part of the scalp which was not removed in a healthy condition? A. 20 I would say they are; they were just torn off and the part that remained was not disturbed.

Q. And so far as that part of the head is concerned the blood vessels would receive the blood the same as before the injury? A. But they would be cut off, but they are around so many—

Q. Just answer my question, Doctor? (Question repeated.) A. Yes, sir.

Q. You say that she is subject to headaches, too, Doctor? A. She had headaches with those spells 30 when she got dizzy.

Q. How do you know that? A. She told me so.

Q. How many times did she complain? A. Three times.

Q. Since she left the hospital you have treated her? A. Yes, sir.

Q. Is headache caused by disordered liver? A. Yes, sir.

Q. And disordered stomach? A. Yes, sir.

Q. And by a great many other different causes? 40 A. Yes, sir.

Dr. Raymond S. Seibert, for Petitioner—Cross

Q. You spoke of enlarged arteries; what arteries did you refer to? A. I would refer to the internal arteries of the brain.

Q. And you say that the arteries of her brain are enlarged? A. No, I wouldn't say that they are. Naturally they would become enlarged with more blood going into the brain.

Q. You mean that in her ordinary care for herself there would be more blood in the brain than there would otherwise be. A. Not in ordinary care of herself, but in stooping over; doing other work or strain that would produce an extra amount of blood to the brain.

Q. Did you ever see her lift any heavy weight? A. No, I did not.

Q. Haven't seen her lift anything at all of considerable weight? A. No, sir, just a basin of water.

Q. So you are giving us your theory in regard to the effect of lifting and not stating the fact? A. Well, it can be demonstrated by lifting; there is a strain to her body which produces a flow of blood to her head.

Q. What you have given us with respect to lifting on the part of this patient is your theory and not any observation of fact upon this patient? A. Not upon the patient's, but it is a known fact that when we lift anything or strain there is a congestion of blood to the head.

Q. Yes, so that if I, for example, were constantly lifting and straining myself, there would be an unusual flow of blood to the head, and there would be a liability of enlargement of arteries in my brain. Is that so? A. Yes, sir.

Q. You spoke also of the patient being subject to mental trouble arising from the congestion of the head, I suppose, which results from the loss of her hair? A. Yes.

Q. You expect ultimately that the entire scalp

Dr. Raymond S. Seibert, for Petitioner—Cross

will be healed, do you not? A. Yes, sir. It is not a scalp. You wouldn't call it a scalp.

Q. There is a scalp, of course? A. Lower portion of it.

Q. Is that all healed? A. The part that remains, you mean?

Q. Yes? A. That is all healed.

10 The Court: How much remained of the scalp when you first saw it?

A. Well, I don't have the measurements.

Q. Oh, about? A. I could demonstrate on the patient.

Q. Can't you demonstrate on your own head?

A. On the right side there was one inch above the ear and on left side one-half an inch above the ear.

Q. And in the front, Doctor? A. In the front it
20 was irregular.

Q. Above the hair-line or below? A. On one side it was above the hair line; on the other side below the hair line.

Q. How much below the hair-line? A. From one-half to an inch.

Q. And in the back, how far above the hair-line did the scalp remain? A. I would say two inches.

Q. Now, when you spoke of the distance above the ear, do you mean above the place where the
30 ear is attached to the head or the rim of the ear?

A. Where the ear is attached to the head.

Adjournment here taken until 1:45 o'clock.

DR. RAYMOND S. SEIBERT resumed the stand and testified as follows:

Cross-examination by Mr. Carey:

40 Q. Doctor, you believe that the scalp will become

Dr. Raymond S. Seibert, for Petitioner—Cross

thoroughly and completely healed, do you not? A. The skin over it, yes, sir.

Q. And the hair will never grow where the scalp is removed? A. No, sir.

Q. Do you not believe, Doctor, that the woman will ultimately be able to do various kinds of work and do it successfully? A. Any work? If there is any stooping, lifting or straining, which will cause 10 an excess of blood to go to the head, she will not be able to do it.

Q. Never? A. I would say at no time.

Q. When you say lifting and straining how heavy lifting do you refer to? A. Well, we can't say what weight, because we could judge that by her strength.

Q. Well, I am speaking now of lifting which would cause congestion of the head? A. Well, over-exertion, moving furniture or lifting furni- 20 ture, anything of that sort.

Q. You refer then to heavy articles? A. Yes, sir.

Q. And such exercise and labor as that you think, would cause a recurrence of this congestion of the head? A. Yes, sir.

Q. And do you not think there is any remedy for that? A. No, sir, because you can't prevent blood from going to a person's head. There are remedies for the time being.

Q. The only permanent disability which you 30 contemplate is the disability arising from the congestion of the head, due to the absence of the blood vessels in that portion of the scalp which has been removed? A. Yes, sir. And then, also, no hair will ever grow there.

Q. Well, I refer to physical disability. Of course she would be able to work without hair just as well as she would with it, so far as that one item is concerned. A. That is the only one—the disability of not being able to do anything, which makes the congestion of the head— 40

Dr. Raymond S. Seibert, for Petitioner—Redirect

Q. Of course, the disfigurement arising from the hair will always be a source of annoyance, but it would not, as I understand you, prevent her from physical labor, so far as that item is concerned; that is, the absence of the hair? A. No, the absence of the hair wouldn't; no.

Q. I think that is all.

10

Redirect-examination by Mr. Kafes:

Q. Doctor, in your attendance on this woman, were you assisted by any other physician? A. No, sir.

Q. During the course of your attendance, was any other physician called in to assist you? A. Only when I was laid up for a couple of days and he just did the dressing twice.

Q. Whom do you refer to by he? A. The doctor.

20

Q. Give us the name? A. E. B. Allen, of Perry Street.

Q. Did any other physicians treat this woman. I mention the name of Doctor Friedman for the purpose of refreshing your memory? A. He may have done the dressing once in the hospital. He went in the ambulance to the factory.

30 Q. Doctor, in response to a question, you said the accident, of course, had nothing to do with the liver, but a disordered liver would have something to do with the injured parts, did you not? A. Yes. A disordered— If a person would get a disordered liver it would give them vertigo or dizziness quicker by having the scalp torn off than otherwise.

Q. Doctor, a disordered liver would have a worse effect on this girl since the accident than it would before, wouldn't it? A. A disordered liver would cause vertigo or dizziness quicker with the scalp removed than with it on her head.

40 Q. Doctor, what were your charges for the first

Dr. Raymond S. Seibert, for Petitioner—Recross

two weeks of this woman's illness? A. Why, \$150.00.

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

Q. From the nature of these injuries, do you know of your own knowledge, Doctor, that it would produce unusual dizziness or vertigo? A. Yes, for the reason that the congestion of the head would be greater now than before the accident. 10

Q. That is all.

Recross-examination by Mr. Carey:

Q. How did you make up your charge of \$150 for the first two weeks, Doctor? A. By the operations that I did.

Q. Was the grafting of skin within the first two weeks? A. No, sir.

Q. What did you charge for the operations?

A. To sew on that scalp and remove it? 20

Q. Such operations as you performed during the first two weeks? A. Well, I made out \$150. as a charge.

Q. Well, was that for the operation alone?

A. No, for the operation and the treatment.

Q. You didn't then, separate the items; so much for operation and so much for so many calls? A. No, sir.

Q. Just lumped it? A. Yes.

Q. Doctor, you say of your knowledge that the 30 absence of the scalp, as in this case, would produce vertigo, is that so? A. Well, from my medical training I would make that statement.

Q. We come back really, don't we Doctor, to your testimony on cross-examination, that your inference is that dizziness would arise from these conditions? A. Yes.

Q. And not from any personal experience yourself. You haven't lost your scalp? A. No.

Q. And not from any personal treatment of 40

Dr. Raymond S. Seibert, for Petitioner—Redirect
J. William Foster, for Petitioner—Direct

any other case of this kind? A. No, or any medical records of any.

Q. It is quite an unusual case, is it not? A. Yes, and it is unusual that she got well.

Q. So that as far as analogous cases are concerned, the medical records wouldn't be likely to
 10 disclose any, would they? A. No, sir.

Q. And your conclusions are conclusions which you have arrived at from your knowledge of the anatomy and of the physiology of the organs of the head? A. Yes, sir.

Q. Have your three years' experience been in the hospital entirely? A. No, sir. I was a licensed physician in Trenton in 1910. You see I will be on my third year. I was in the hospital taking a course in surgery and medicine for over
 20 a year.

Q. Where are you now? A. 284 Hamilton Avenue.

Q. You have an office? A. Yes, sir.

Redirect-examination by Mr. Kafes:

Q. Doctor, would not a nervous traumatic condition be likely to result in vertigo or dizziness?

A. Not very much, I would say.

Q. Anything which stimulates or causes an
 30 accelerated flow of blood is likely to cause vertigo, is it not? A. Yes, sir.

J. WILLIAM FOSTER, a witness sworn on behalf of the petitioner, testified as follows:

Direct-examination by Mr. Brennan:

Q. What is your full name? A. J. William
 40 Foster.

J. William Foster, for Petitioner—Direct

Q. What is your business? A. Superintendent of F. A. Straus & Company.

Q. And have been for— A. Eleven years.

Q. You are in charge of their plant here?
A. Yes, sir.

Q. Do you know the petitioner that was here upon the stand this morning? A. Yes, sir.

Q. Was she in your employ— 10
Mr. Carey: We admit that she was.

A. Yes.

Q. On June 14th, 1912? A. Yes, sir.

Q. And do you acknowledge that she met with an accident there? A. Yes, sir.

Q. What wages was she receiving, if you know?
A. I think \$5.50 a week; that I am not sure of.

Q. You are also acquainted with the duties she had to perform there, are you not? A. Yes, sir. 20

Q. Just briefly describe what her duties were, please. A. She had charge of two machines, known as two spindle gill boxes.

Q. In a very brief way, will you describe just what those machines are? A. They are a machine with two sets of rollers; two spindles and the stock passes from one roller to another and then it is transferred to the spindle.

Q. And the fronts of those machines; are they or are they not protected? A. No, they are open. 30

Q. Are there any revolving gears on the fronts of those machines? A. None whatever.

Q. How far from the face of the machine are the gears? A. They are on the side of the machine.

Q. Are there not shafts running through the machine, with a wheel revolving on it? A. There is at the back of this machine that she attended to, yes.

Q. Are those wheels protected? A. They are. 40

J. William Foster, for Petitioner—Direct

Q. By what? A. Guards.

Q. What sort of a guard? A. Cast iron.

Mr. Carey directs question to Mr. Brennan:

Q. Are you now inquiring in regard to the machine on which she worked? A. Yes.

The Court: What are you trying to prove by inquiries as to that machine?

10 Mr. Brennan: It was the same kind of a machine on which she was hurt.

Q. Do you know the machine at which this girl was injured? A. I do.

Q. Is it similar to the one that you have just described? A. It is not.

Q. Will you describe the machine where the girl was injured; the petitioner here? A. It is known as a Roving Frame.

20 Q. I will show you just a little sketch so that we may get some idea. Say this is the face of the machine (indicating on sketch) this part is protected by a board that lifts up. Is that the way the machine is built where this girl was injured? A. Well this is the front of the machine and this is the back of the machine (indicating on sketch).

30 Q. Now, I mean the front going through the corridor where this girl was hurt; is there not a shaft running along, just in from of the face of the machine, with revolving wheels? A. Yes.

Q. Similar to this; what this drawing is supposed to represent? A. There is a shaft presumably, looking at the machine this way, at the back of the machine. Looking at this machine there is a shaft here and then there is another smaller shaft right over the top of that, which works what we term the lifter. This shaft here runs the spindles on the machine and goes
40 straight over that way (indicating) driven by a

J. William Foster, for Petitioner—Direct

belt. Here is the shaft at the back of the machine and here is a spindle in front in that position. There is a pulley on this shaft that goes over and drives this spindle that way. This shaft runs this way and the shaft above that works the lifter up and down.

Q. How far from the front of the machine are those wheels? A. From the front of the machine? 10

Q. Suppose this is the machine and the alley-way leading up this way (indicating) and this is the front of the machine? A. Yes.

Q. What is the size of this machine? A. I don't know the exact width of it, but at a very close guess, I would say two feet eight inches, in what we term the width,—the depth.

Q. You mean by depth the distance from the corridor? A. The full width of the machine.

Q. The length of the machine faces the alley? 20
A. About eight feet long.

Q. Now, on this alley-way, assuming that this is the machine (indicating at his side), what covers the front of this machine; that is, along this alley-way that you talk of? A. Nothing at all. The spindles are along the front.

Q. Isn't there a shaft running along there?
A. Not on the front.

Q. Well, I mean, a shaft that is open. A. Not 30
on the front.

Q. Where is that shaft? A. On the back of the machine.

Q. How far from the face of the machine is that? A. About eight inches.

Q. Is that protected by anything? A. There is a lap board that covers the top part of this shaft, the whole back of it and then drops down in the front.

Q. How far down in the front does that drop; or, in other words, does it cover the whole front 40

J. William Foster, for Petitioner—Direct

or can you see the lower wheels? A. You can see them.

Q. Then that board that drops down leaves this shaft and pulleys exposed. Isn't that true that that board doesn't go all the way down? A. Yes, you can see it.

Q. Now, this one board that goes from the back
10 is a board on a hinge, is it not? That drops over that way so that it may be lifted up that way to get at the mechanism? A. Yes.

Q. How fast does that shaft revolve, approximately? A. Approximately two hundred.

Q. Two hundred revolutions per minute? A. Yes.

Q. That creates quite some suction under there necessarily, doesn't it? A. I would say that it would.

Q. How high is it from the floor to the shaft
20 that we are speaking of? A. Eighteen inches.

Mr. Carey: Have you measured that, Mr. Foster? A. Yes, sir.

Q. What is the diameter of that shaft? A. About one and a quarter or one and a half inches.

Q. And the wheel or gear? A. I am not sure. It is either a ten or twelve inch wheel.

Q. Pulley wheel? A. Yes.

Q. Is it against the rules of your company for
30 the girls in this particular department to dress their hair when it becomes disarranged? A. I have no recollection of ever giving any such order.

Q. Are you the only one that makes orders? A. No.

Q. Then you have not answered the question?
(Question repeated.) A. Every department is under the supervision of a man. We have several different departments. The man that has
40 charge of that department—

J. William Foster, for Petitioner—Direct

Q. What I mean is, is it a rule by the company? Has the company a printed rule or promulgated a rule against a thing of that kind? A. They have not to my recollection.

Q. Have you ever seen girls where their hair would become disarranged fix it in this department? Have you ever known of it? A. I can't call to mind any instances. 10

Q. As a matter of fact, Mr. Foster, you know, of your knowledge, being in the position you are, of course, that girls working around machines, with that continual jar, their hair necessarily becomes disarranged, doesn't it? A. I have seen at times the girls' hair disarranged at the works.

Q. And if you saw one disarranged, if it happened to be so, you would want it immediately put up for various reasons, wouldn't you?

Mr. Carey: I think the counsel ought not to lead his witness. 20

Mr. Brennan: I don't want to lead, but I don't seem to have the vocabulary to put it so as to be clear.

A. Well, answering that I would say that I have seen girls with their hair hanging down their back, not once, but dozens of times, and I have insisted that they wear their hair on the top of their head. 30

Q. Why? A. Owing to the danger to the girls' hair becoming caught in moving gears.

The Court: What is the business of Strauss & Company? A. Manufacturers of worsted and silk yarns.

Q. Had any medical or hospital service been rendered this girl within two weeks of this accident by your company? A. No.

Mr. Carey: In this case, the defendant dis- 40

J. William Foster, for Petitioner—Direct

claimed any liability under the Employers' Compensation Act and for that reason, no hospital or medical services were offered by the defendant to the petitioner.

Q. Mr. Foster, in your knowledge of mechanics and machines of this kind, would a shaft of the
10 size that you have described in this machine, have a tendency to take anything that came in contact with it much quicker than a shaft of larger dimensions? A. Yes.

Q. Why, please? A. Owing to the smallness of its diameter.

Q. A shaft of that size, revolving at this rapidity, would it or would it not have a tendency, with anything that came in contact with it, to tear it around and wind it around upon it? A. Yes,
20 much more so than a large shaft.

Q. Why? A. The circumference being smaller, would give it a chance to wrap up quicker.

Q. On the front of this machine, Mr. Foster, you spoke of it being covered. There is a board covering coming over, as I understand. One of those boards will lift up and stay that way, will it not, so that they can get at the internal mechanism of the machine? A. It has been so long since
30 I have been working or been around one of those machines, that I couldn't positively say whether that board will stay up or not.

Q. I mean on this machine in particular? A. I couldn't answer that question intelligently.

Q. Did you see the machine at, or shortly after the time of the accident? A. I did not. I have seen it, understand,—but not in relation to the accident. I go by it, I presume, five or six times a day.

Q. Since this accident, has that part of the machine been encased in any way or changed? A.
40 It has not.

J. William Foster, for Petitioner—Cross

Q. This side of the machine that we have been speaking about is the rear of the machine, is it not? A. Yes, sir.

Q. And where the accident occurred? A. Yes, sir.

The Court: The rear backs on an alley, doesn't it? A. There is an alley on both sides of the machines. 10

Cross-examination by Mr. Carey:

Q. Mr. Foster, do you know where this petitioner worked? A. Yes, sir.

Q. You know the machine she was working on? A. Yes, sir.

Q. I think you said she worked on two machines? A. Yes, sir.

Q. Standing end to end? A. Side by side.

Q. Side by side? A. Yes. 20

Q. How far are the machines on which she was working from the machine where she was hurt? A. I measured it and it is thirty-two feet.

Q. And are they or are they not in the same alley as the machine on which she was hurt? A. Not on the same alley.

Q. How many alleys removed? A. One.

Q. You know the character of work this petitioner was doing, I presume, Mr. Foster? A. Yes, sir. 30

Q. At her machine, I think you said there were no uncovered gears? A. None whatever.

Q. And do you know whether or not there is such a jar around the work she is doing as to cause the falling down of the hair of the employees? A. Not any unnatural jar, no, sir.

Q. You never saw any such thing as that happen in connection with the machine of the character she was working on? A. No.

Q. You have no recollection of a rule permitting 40

J. William Foster, for Petitioner—Cross

girls to dress and comb their hair around the machines in the factory, have you? A. No recollection?

Q. Yes? A. No.

Q. And do you permit the combing and dressing of hair around the machine? A. Not if I see it, no.

10 Q. If you see it, what do you do? A. Stop it.

Q. Is that always the practice? A. That has always been mine.

Q. And so far as you have had any connection with the matter, you have always stopped hair dressing around the machine? A. Yes.

Q. You speak of insisting that the operatives wear their hair done up instead of allowing it down their back, that refers to a style of wearing their hair, doesn't it? A. No, sir, not a style. It
20 is done from the standpoint that there is danger to the girls by having their hair down their back.

Q. What you objected to is the style of the girls wearing their hair down the back. When you saw them you objected, did you not? A. Yes.

Q. And that is what you refer to when you say that you objected and insisted that they wear it on the top of their head? A. Not to the style.

Q. To the way? A. To the way of wearing their hair.

30 Q. And you object to it when you see that thing existing? A. Yes, sir.

Q. Now, are your operatives permitted to leave their machines and go around from place to place in the factory during business hours? A. No, we try to keep them there and at their work.

Q. They are expected to remain at the machine, are they not? A. Yes, sir.

Q. Do you know what the hour was when this accident occurred?

40 Mr. Brennan: Objected to.

J. William Foster, for Petitioner—Redirect
Mary Terlecki, for Petitioner—Direct

A. I was informed.

Q. Did you see the girl after the injury at the factory, before she left the factory? A. I did not.

Redirect-examination by Mr. Brennan:

Q. Mr. Foster, have you seen employees there, that is, girls, that have had wool or lint in their hair by which they would comb it before going to their lunch? A. Yes. 10

Q. That is all.

Court: Mr. Brennan, your last question is not quite clear.

Q. By reason of the wool and lint in their hair, would they take their hair down and get it out before going out? A. Occasionally that occurs, yes, sir. 20

Q. The company never objected to that, did they, Mr. Foster? A. By no set rule, no, sir.

MARY TERLECKI, being duly sworn, through an interpreter, BERNARD COHEN, testified as follows, the interpreter also having been sworn:

Mr. Carey: It is admitted by the defendant that they received legal notice, as required by the statute, of this accident. 30

Direct-examination by Mr. Kafes:

Q. Ask her if she is married or single. A. Married.

Q. Living where? A. In South Trenton, in Downs Alley.

Q. With whom? A. With my sister-in-law.

Q. Anybody else? A. My sister-in-law and my husband. 40

Mary Terlecki, for Petitioner—Direct

Q. How long have you been married? A. Six years.

Court: How old is she?

A. Twenty-three years.

Q. Where was she working June 14th last?

A. In the wool factory.

10 Mr. Carey: It is admitted that she was working there on the 14th of June, in the factory of Straus & Company and it is also admitted that she was receiving \$5.09 per week, I think that is exact, as testified to by Mr. Foster.

Q. Did anything happen to her on that day?

A. I was working there, like every day I performed my work there.

20 Q. On June 14th, did anything happen to her?

A. I was not feeling very good that morning and I was getting through my work and I wanted to go home.

Q. Did anything happen on this 14th day of June? A. I left my machines and I went on the other side of the factory to look for the boss and to tell him that I wanted to go home in the afternoon and the boss was not there. I went there to comb my hair like the rest of the girls who comb
30 their hair before they go home.

Q. Where did she go? A. There where the girls' dressing place is, where they dress and comb their hair.

Q. Where was that? A. Near the machinery there.

Q. At the end of the room; in the middle of the room, or where? A. In the middle of the room near the machines.

Q. Well, near the end of the floor? A. Why, it
40 is toward the end.

Mary Terlecki, for Petitioner—Direct

Q. Why did she go down there to comb her hair? A. Because that is the place where all the girls comb their hair and we all go there to comb our hair.

Q. What time was it when she got there? A. I am not sure, maybe five or six minutes before twelve.

Court: Why do they go there, any toilet 10 arrangements there? A. There is a toilet there.

Q. No, I mean dressing arrangements, looking glass or anything else? A. No, there is not.

Q. Did anything happen to her while there? A. I wanted to comb the wool from my hair and I bent myself down and my hair was down and there is where my hair caught. 20

Q. What wool did she want to comb from her hair? A. The wool from the material that we manufacture there.

Q. And had she got that into her hair during the course of her work that morning? A. Yes, during the course of their work, why the wool got into your hair.

Q. Yes, during that morning? A. Yes.

Q. Now, then, how long had she been working there on this 14th day of June? A. About one 30 and a half years. I worked night and day there at times.

Q. Yes, was it or was it not a custom there, permitted by the foreman of that shop or by anyone else in authority there, for girls to remove this wool or lint from their hair before going home? A. They have never stopped that. They have never told us not to do it and all the girls did it and so did I.

Q. Did all the other girls there do it? A. All 40

Mary Terlecki, for Petitioner—Direct

the girls would not go at once to comb their hair, but they used to go whenever they got through their work.

Q. How many times before June 14th, had she gone there and combed lint or wool out of her hair? A. After we got through our work, I went over there to comb my hair.

10 Q. How often? Every day, every week? How often? A. Not every day.

Q. Well, how often? A. As often as my hair used to get full of wool. At times I didn't get much wool so I didn't have to go to comb it and whenever I used to get wool I combed my hair.

Q. Did she do that as often as twice a week? A. I can't tell you how often, but whenever my hair used to get dirty with wool, I used to go over and comb it.

20 Q. Can she give me any idea as to the number of times on an average that she did this? A. I can't exactly tell you, but I think about three times a week.

Q. And why did she go at this particular place? A. Because that was the place where all of those used to go and comb their hair.

Q. Did anyone there ever forbid her going there and combing her hair? A. No, they never did, but at the present time I understand that there
30 are rules not to go there.

Q. Now what happened to her there? A. My hair caught and it pulled me down and the space was open and I got hurt.

Q. Does she know how she got hurt? A. I don't know very much. All I know is that while I was down with my head, combing my hair, the place where it was open caught my hair and I got hurt.

Q. Do you remember that you were caught in a
40 machine? A. There is a space there, where, as

Mary Terlecki, for Petitioner—Direct

a rule, it is covered with a board, but whenever they went to fix that place to put something new in there, why they always used to take that board off and cover it up, but at that time I suppose they forgot to cover it up.

Q. Did she know that at the time of the accident? A. No, I didn't see that the place was open at that time, but I am sure if it would be covered, 10 my hair wouldn't get caught there.

Q. After her hair was caught, does she remember being taken to the hospital? A. I remember that when they picked me up from that place, that I was bleeding and they took me to the hospital.

Q. From the time they picked her up, when she was bleeding, until they got her to the hospital, was she conscious? Did she know what was going on, I mean? A. I do remember some things.

Q. Yes, now after you got to the hospital, what 20 was done with you, if you know? What did the doctors do? A. I don't know what they did. They were fixing me up and they washed my head and tried to fix me up.

Q. Yes, how often did they do that? A. The doctors followed it up every day.

Q. For how long? A. For a month.

Q. When were you released from the hospital, if you know? A. I left the hospital after I stayed there exactly four months. 30

Q. Now you just tell us what the doctor did to your head while there. Tell us everything he did that you remember. A. He used to wash it and put some salve on it and bandaged it.

Q. Do you remember coming home October 13th? A. I remember.

Q. Do you remember the doctor treating you at your home after that time? A. Yes.

Q. Is he treating you at the present time? A. I go to his office now. 40

Mary Terlecki, for Petitioner—Direct

Q. Going back to June 14th, 1912, the day of this accident, what was the condition of your health at that time? A. Before the accident, I was always well.

Q. Strong? A. Before the accident, I was strong and well.

Q. Able to do your general housework at home?
10 A. Yes, in the house and in the shop.

Q. Ever since the accident, what is the condition of your health? A. I can't hardly do anything. My sister-in-law takes care of my house.

Q. Why can't you do hardly anything? A. Because the blood rushes to my head and I get dizzy.

Q. Yes, anything else? A. And my head hurts. I feel, oh, so dizzy.

Q. Referring to dizziness, did she have this
20 dizzy feeling before the accident that she does now? A. No, I was never sick before. I never had any trouble before with my head.

Q. And this dizziness, you say, has started since the accident? A. Yes, from the time that I got hurt I can't bend down.

Q. Now, speaking of the day, what part, say on the average, does she feel dizzy; how often does that occur? A. Very often, when I want to do anything or I want to bend down, that is the time
30 I get dizzy and my head hurts me.

Q. How about long walking, is she able to do any long walking? A. The longest walk that I took is as far as the doctor's office and I got to walk very slow or I can't get there.

Q. Yes. Why? A. I get hot if I walk a little bit fast.

Q. Where? A. I get dizzy in my head and my head commences to hurt me.

Q. Hot? Does she mean the top of her head?
40 A. In my head.

Mary Terlecki, for Petitioner—Direct

Q. Yes, and that produces dizziness? A. Yes.

Q. Now, are you as strong as you used to be, that is, before the accident? A. No, I am not strong at all.

Q. Can you lift things like you used to? A. No, I can't.

Q. Why not? A. Because the blood rushes right in my head and my head gets hot. 10

Q. Hot and dizzy? A. Yes, and my head commences to hurt me and I get dizzy.

Q. How about when you go to bend and lie down, feel any unusual feeling then? A. After the accident, I couldn't hardly sleep at all, but now I do sleep a little on the other side.

Q. You do sleep a little you mean, but that you can't sleep soundly throughout the night? A. At times I don't fall asleep at all.

Q. Why, if she knows. A. Because my head 20 hurts me and while I am lying in the bed, the blood rushes to my head.

Q. She says her head hurts, does she mean the top part? A. Top and side, right there. (Indicating on head.)

Q. Is the doctor still attending you? A. I go to the doctor's every day.

Q. Now, then, could you sleep well before this accident? A. Before the accident, I used to sleep 30 good.

Q. And was she able to take long walks without feeling this dizziness before? A. Yes, I could walk and never had any trouble.

Q. Is she, or is she not, able to do any household work at the present time? A. All my housework my sister-in-law does, but when I want to try and cook a little, if I go near the stove, the blood rushes to my head. 40

*Mary Terlecki, for Petitioner—Direct**Cross-examination by Mr. Carey:*

Q. When did you go to work in the morning?

A. Commence to work at seven o'clock.

Q. And you say you were hurt a few minutes before twelve? A. Yes, a few minutes before twelve.

10 Q. How long had you worked on the machine on which you were working the day you were hurt? A. Before the accident, I think I worked on that machine for about four weeks.

Q. And where did you work before you went to work on that machine? A. The boss used to change me around on different machines.

Q. Did you ever work on the machine you were hurt on? A. Yes, I did work there.

Q. How long before the time you were hurt did you work on that machine? A. I don't remember.

20 Q. Were you hurt on the back of the machine or in the front of the machine? A. In the back of the machine where it should be covered up.

Q. And were the other girls working at that time? A. They were working.

Q. And were your machines running? A. Yes.

Q. You left them running, did you? A. Yes.

30 Q. Haven't you been told to stay at your machine while it was running? A. No, we occasionally used to go away while the machines were running and the boss never told us not to.

Q. When you did that don't you remember that the boss told you not to do so? A. When the machines were in motion, the boss never told us not to go away, because, as a rule, we go away to get a drink of water.

Q. Does the boss let you go away any time you want to? A. The boss didn't say anything and the machine was in motion and we used to go away to get a drink of water and come back.

40 Q. Did you go away for any other purpose?

Mary Terlecki, for Petitioner—Cross

A. No, we didn't go away from the machines very often, but whenever we felt like taking a drink of water, we leave the machine and go away.

Q. Were there any other girls with you at the time you were hurt? A. I was at the place all alone on that morning, but there were girls working on the next machine.

Q. Was there a girl working on the machine 10 where you got hurt? A. Yes, a woman was working there on that machine and she didn't know what had happened; she got scared.

Q. This woman who was working on the machine was at the front of the machine and you were at the back of the machine? A. Yes. She was in the front and I was in the back, where the clothes were.

Q. You went there to comb your hair? A. I 20 wanted to comb my hair; fix my hair up and go back to the machine. Q. And you say it was only five or six minutes before twelve o'clock? A. Yes.

Q. And you stopped for the noon hour at twelve o'clock, did you? A. Yes, twelve o'clock.

Q. And at twelve o'clock all the machines stop, do they not? A. Yes.

Q. There was no looking glass back there for you to comb your hair before, was there? A. 30 There is a very small one there that the girls use there.

Court: Where?

A. It is hanging there on a nail; a small looking glass on a post.

Q. What was it hanging on? A. On a post.

Q. Whose looking glass is it? A. Why, there were several small looking glasses around there. Some boys broke them up. That looking glass belonged to one of the girls.

Q. Did all of those looking glasses belong to 40

Mary Terlecki, for Petitioner—Cross

you girls? A. Yes, they used to bring from home pieces of looking glass and tack it on there so we can use it.

Q. And did they take it away after they got through with it? A. No, it was tacked on the post.

10 Q. Who tacked it on the post? A. Why, most anybody did.

Q. Well, the girls? A. Yes.

Q. When you were there you took your hair down to comb it? A. I didn't have much of a chance to comb. I bent down and let my hair down and that is the time it got caught.

Q. You took your hair down, did you? A. I took my hair apart and I bent myself and that is the time my hair got caught.

20 Q. Did you have side combs in your hair to hold it up? A. I took the combs out from my hair at that time.

Q. Are these your combs? A. At that time I took them out.

Q. And these your hair pins? A. Yes, I took my hair apart and I took everything out.

Q. And then you bent forward to comb your hair, didn't you? A. Yes.

(Witness has been shown three combs, six steel hair pins and one barrette.)

30

Q. What did you do with those combs and hair pins when you started to comb your hair? A. I took those pins and the comb out and I placed them on the top of the machine there and I bent to comb my hair and at that time my hair got caught.

Q. You put them on a board there, did you not? A. On the same machine where I got caught, I put them on a board.

40

Q. And how high was that board above the floor

Mary Terlecki, for Petitioner—Cross

where you put the combs and hair pins? A. I don't know how tall the machine is, but that was on the top of the machine, that board.

Q. Can you show us with your hand about how high from the floor, like this. (Putting hand out some distance from floor). A. (Witness shows about three and a half feet.) It may be higher.

Q. You say you can't do very much now, what 10
do you do? A. I don't do anything, I am sitting around the house. I take care of my sister-in-law's child and look after the child and talk to the child.

Q. And you spoke about doing some cooking, or trying to do some cooking; do you do any cooking now? A. My sister-in-law does the cooking, but I try occasionally to do a little myself.

Q. Are you getting so you can do some now?
A. No, I can't do hardly anything. I get hot in 20
my head.

Q. Do you do any stooping? A. I cannot bend.

Q. How far is it from your house to the doctor's house? A. I don't know the name of the street, but it is not very far.

Q. Well, a half a mile? A. I don't know much about miles.

Q. Where do you live? A. Near the State Prison.

Q. Near the State Prison and what street does 30
the doctor live on? A. He said Hamilton Avenue.

Court: It is a good mile, I should say.

Q. The doctor says that when he comes to see you and dresses your head, you pick up the cuspidor and put it down on the floor, is that so?

A. Yes, I hand that to the doctor to put some of the bandages in.

Q. Do you always do that when the doctor comes to dress your head? A. Before, when the doctor used to call at my house, but I am not 40

Mary Terlecki, for Petitioner—Cross

doing that in the doctor's office; he does that himself.

Q. And you began to do that as soon as the doctor began to come to your house? A. I always did that, have it ready for the doctor so that he could use it when he came.

Q. Always did that when he came to the house, 10 did you? A. Yes.

The Court: When she dressed her hair the day of the accident was there any other woman there, at this place, where the looking glass was?

A. At times there are, but at that time nobody was there.

Q. When had she been there last before the accident to dress her hair there? A. I am not 20 sure whether it was two days before the accident that I was there, because that was the place where we always used to dress it.

Q. Well, did she go there every day? A. Every day to change my clothes.

Q. Is that what she did the day before? A. I used to go there every day to take my clothes off.

Q. Well, did she fix her hair there every day? A. It depended a great deal on the work. Some- 30 times my hair used to get very dirty and full of wool and at times there was not so much wool and I didn't comb it.

Q. Did the company furnish a room for the girls and women to change their dress and comb their hair, furnish any other place except this?

A. No, we used to dress right between those machines, right between that place and combed our hair there.

Q. You spoke about changing your clothes, where did you hang your clothes? A. There are 40 certain boards or posts and the girls used to drive nails there and hang the clothes on.

J. W. Foster (recalled), for Petitioner—Recross

Q. Where were those posts? A. Between the machines.

Q. In this place where you went to comb your hair? A. Yes.

Q. Wasn't there a place where the girls went to wash? A. No, that place we were only keeping our clothes and combing our hair.

Q. What place? A. That place where the ac- 10
cident happened.

Q. Were the girls' clothes hanging around in that space between the machinery where the accident happened? A. There was clothes of several girls hanging around there in that place and other girls used to hang their clothes different places.

Q. Where did the other girls hang their clothes? A. Between the machines and some posts.

Q. How many girls work on that floor, do you know? A. I don't know. I used to work night 20
work and before the accident I just commenced to work day work.

J. WILLIAM FOSTER recalled:

Recross-examination by Mr. Carey:

Q. Did you have any particular dressing room on this floor for girls? A. No, sir. 30

Q. Did some of the girls hang their clothes where this accident occurred? A. Yes, sir.

Redirect-examination by Mr. Brennan:

Q. Did you have any place for the girls to hang their clothes except in the room where the machines were? A. No, sir.

Q. When she did certain work, a lot of wool would get in her hair and at other times, she said her hair wouldn't need dressing. Do you work 40

Dr. Thomas H. Mackenzie, for Defendant—Direct

both on wool and something else? A. At times there would be more fly in the factory than at others, owing to the weather.

Court: What do you mean by fly?

A. Fine fibres of wool that fly in the air on a dry day but on a damp day like this there would not be any fly.

10

DR. THOMAS H. MACKENZIE, a witness sworn on behalf of the defendant, testified as follows:

Direct-examination by Mr. Carey:

Q. Doctor, you are a practitioner of medicine in the City of Trenton? A. I am.

20 Q. For how long? A. About forty-two years.
Q. And graduated from what institution? A. Harvard Medical School.

Q. And you have had general practice during that period? A. Practiced ever since.

Q. You know this petitioner, Mary Terlecki? A. I have met her and examined her in Mr. Kafe's office.

Q. When did you first see her? A. Saw her on Tuesday of this week.

30 Q. And you have not before that made any examination of her? A. Never saw her before.

Q. And you examined her for the purpose of qualifying yourself to testify to-day, at my request? A. Yes.

40 Q. Now, doctor, tell what you found. A. I removed the dressing and found the cicatrix of the wound. I judge the wound, originally, must have been from six to seven inches laterally. It is covered anteroposteriorly, but I think about two-thirds of that was cicatrized and one-third remains still without being healed, that is, it has

Dr. Thomas H. Mackenzie, for Defendant—Direct

been skinned over all of it. About two-thirds of the wound is now cicatrized, is now skinned over in a very superficial way, of course.

Q. And the remainder of the wound has not yet cicatrized? Is it in the process of healing? A. It is.

Q. What is the general appearance of that part which has not as yet healed? A. It is quite 10 healthy and looks like it ought to, during the process of cicatrition.

Q. In your judgment will it do so? A. In my judgment it will be cicatrized, it will become cicatrized.

Q. Have you formed any idea what time it will require, assuming that there are no unfavorable set-backs. A. Judging from the amount of cicatrition that has taken place in the nine months, if it cicatrized thirty-six square inches in nine 20 months, then it has only twelve square inches more to cicatrize, that is, it ought to be completed, if it will cicatrize at the same rate as it has, in three months more it should be complete. I think it will be well in from three to six months, because the last part of the wound takes longer than the first.

Q. Doctor, in your judgment, will there be a complete healing of the wounded portion of the head? A. It will never be the same as if it were 30 not taken off, but there will be a new skin tissue and it will be more susceptible to injury because it is not protected with hair or never will be.

Q. In your judgment, when the healing has been complete, will there be a healthy growth? A. I think in time it will be comparatively healthy growth, but it will never be the same as the original.

Q. Doctor, did you observe the general condition of the patient? A. Yes, I observed that she 40

Dr. Thomas H. Mackenzie, for Defendant—Direct

was suffering from the effects of a severe injury, such as I observed she had. I judged also that she was suffering from what I would call traumatic neurasthenia, a prostration of the nervous system arising from the injury. That was my diagnosis.

10 Q. Aside from that, doctor, what would you say of her general condition; of her nourishment, the general healthful or unhealthful condition of her organs? A. I would judge from the examination that I have made that the other organs of her body are in a fairly good condition. Her nutrition has not been so well on account of this neurasthenia, but I judge that her organs and her heart are all right. I judged, by giving her a cursory examination, that she is suffering from traumatic neurasthenia.

20 Q. You consider that permanent? A. I do not consider that permanent; I think she will suffer more or less from that until the whole process is complete, and may suffer more or less from it for some time afterwards, but I think after time goes on, she will be comparatively relieved from that condition.

Court: Tell what traumatic neurasthenia

30 A. It means a prostration of the nervous system, arising from traumatism or injury. means.

Q. Did you observe in your examination any dizzy condition? A. I didn't examine her with a view to determining whether she was dizzy or not; I have not examined her reflexes to determine.

Q. Doctor, for the petitioner, Dr. Seibert testified that in his judgment there would be a greater quantity of blood going to the head on account of the removal (or to the brain), on account of the removal of the scalp. A. I don't

40

Dr. Thomas H. Mackenzie, for Defendant—Direct

think there will be any more blood going to the brain; I think there will be more blood going to the scalp. In an injury Nature always starts up an increased circulation where the repair is required. The repair is required in the scalp, consequently the increased circulation was there and not in the brain.

Q. In your judgment, Doctor, is any dizziness 10 which she may be suffering from due to increased circulation of blood to the brain or to the head?

A. I didn't view it in that way; I think her dizziness, if she has any, is due to her neurasthenia, which is a symptom of neurasthenia.

Q. Of course, dizziness may arise from various causes? A. Yes.

Q. Dr. Seibert spoke of disordered liver. A. That would cause dizziness.

Q. And disordered stomach; would that also 20 cause dizziness? A. Yes, that would cause dizziness.

Q. Doctor, in your judgment, is this woman now in condition to work? A. She is not in a condition to do much work now.

Q. In your judgment, is she recovered so as to be able to do work, and, if so, to what extent?

A. I think that some time in the future she will be able to do a good day's work.

Q. And, in your judgment, will she be able in 30 the near future, or not, to begin light work?

A. You have evidence to-day that she is able to do light work, as you see her moving about.

Q. What would be your promise of the increase of ability along that line? A. It will depend largely on how soon this wound will entirely heal. If the wound will heal, as I suppose it will, inside of six months, I think three or four months after that she will be sufficiently well to do an ordinary day's work, if she doesn't have her head exposed. 40

Dr. Thomas H. Mackenzie, for Defendant—Cross

Q. And by having her head exposed? A. This tissue is very tender and susceptible to cold.

Q. And that is likely to remain for some considerable time? A. Yes.

Q. So that the difficulty, in your judgment, will be in reference to exposure of the head rather than to physical inability to do work, is that the
10 idea? A. That is the idea.

Q. In your judgment, will she ultimately recover from difficulty in stooping, if she has such difficulty? A. I think so, yes, sir.

Cross-examination by Mr. Kafes:

Q. Are you in doubt about that? A. I beg your pardon.

Q. Question repeated. You say you think?
A. I have very little doubt about it, of course, I
20 can't say positively whether she will or not.

Q. That may cause dizziness permanently, permanent dizziness, is that true? A. I hardly think it is. I will answer the question—I don't think she will have permanent dizziness.

Q. Your opinion is merely speculative? A. From my experience.

The Court: Have you ever had a case like this before?

A. I have had cases of scalp wounds and
30 saw the process of repair, and traumatic scalp wounds.

Q. You are familiar with the history of this case, aren't you, Doctor? A. Yes, through her doctor.

Q. And I also offered everything to you? A. You gave me every opportunity to learn the case.

Q. Now, this girl says she was never troubled with any dizziness before this accident, and that
40 since that she has been troubled with extreme

Dr. Thomas H. Mackenzie, for Defendant—Cross

dizziness. Knowing that an accident has happened to her, Doctor, what is the cause of that?

A. If she was dizzy from the time of the accident to the present time, I would attribute it to the accident.

Q. You don't mean to say or infer that she is not dizzy, do you, Doctor? A. I don't know whether she is or not.

10

Q. And I understood you to say that you made no examination for that? A. No.

Q. And that you didn't examine her reflexes; I think you called them that? And as to that you don't know? A. That is right, I don't know.

Q. Now, then, Doctor, you say that thirty-six square inches healed in nine months; there are twelve remaining and that, in all probability, on the same basis, will take three more months, but that you did think it would go possibly six or seven months, is that true? A. That is my calculation.

20

Q. That is upon a medical basis, is it not? A. Somewhat upon that.

Q. Why do you say, Doctor, that this exposed part of some twelve square inches that hasn't yielded to treatment for the past nine months will heal from three to six months? A. The healing process goes on at the junction of the healthy part with the diseased. This part that is not healed can't heal until the circumference of the epithelium healed first. The center must be the very last part to heal. The inside can't heal until the outside is healed first.

30

Q. Can you say certainly that it will be healed within from three to six months? A. No one on earth could say that.

Q. Then you might as well say, Doctor, that it might be from six to twelve months? A. I simply gave my calculation from the history of the case.

40

Dr. Thomas H. Mackenzie, for Defendant—Cross

Q. I say it may take from six to twelve months?

A. It is possible.

Q. And it may go from one to two years? A. Possibly it may never heal.

Q. Would go on forever? A. But the probability is that it will heal inside of six months more.

Q. Well, the probability, that covers a multitude of different things. You are not speaking of the probability? A. I am speaking from a physician's point of view.

Q. Anything is probable to a physician, isn't it? A. Yes.

Q. Now, you say, Doctor, she will never be the same as she was before? A. I have reference to the scalp.

Q. I understand you mean that. Now, what do you mean by that, Doctor? A. The tissue repaired by a process of nature, in restoring this case, will be very different from the original tissue that was removed by the injury. Nature has done the best it can to restore that woman, but the tissue will be somewhat different from the original

Q. Will you tell us in what respect,—how she will continue to suffer on following this injury?

A. I don't know that she will suffer after the parts are healed up. As I just said, the parts are more tender and if she is careful in covering the parts up I think she will suffer very little, and as time goes on, she will suffer less. The parts will get stronger because nature supplies that part with blood and nerve supply as well, so in time she will be in the same condition as before.

Q. But suppose she acts, on the other hand, the same as before, going around as a healthy girl would, then what would be the result? A. I don't think you understand—

Q. You say that she must be very, very care-

Dr. Thomas H. Mackenzie, for Defendant—Cross

ful— A. You misunderstood me! I meant she must be careful about covering her head.

Q. What do you mean by covering the parts? A. Hair is the protection to the scalp; if she hasn't hair she must have something else.

Q. It will be necessary to take a higher degree of care of herself at this time than before the accident? A. Certainly. 10

Q. Now, you say she is also suffering from traumatic neurasthenia, that means from what? A. A shock to the nervous force.

Q. And the neurasthenia is something mental, is it not? A. No, sir, it is a disease of the whole nervous force, of the nervous system. The shock is great, and as long as this injury continues, she will suffer more or less from a neurasthenic condition. I think, however, that when that is entirely healed the neurasthenic condition will gradually disappear and become normal. 20

Q. But isn't the neurasthenia mental, following the shock? A. No, not necessarily mental.

Q. You say it is physical? A. It may be mixed. I didn't say there was not a mental element in it; I think probably there is.

Q. Just so long as that is an element would you say that it is a controlling element? A. No, I wouldn't; I say that it is possible for that to enter into it, a mental condition. 30

Q. Well, that may continue on indefinitely, may it not, Doctor? A. No, sir, I don't think so. When the cause of the neurasthenia is removed the neurasthenia will get well.

Q. Yes, but don't that get back to the mind, because of a person imagining things, suffering just as much through fancy as if it was real? A. That is a factor in it. While on this question; while the trial is going on and until this trial is settled, she will suffer more or less. That is the history 40

Dr. Thomas H. Mackenzie, for Defendant—Cross

of traumatic cases. If this thing is settled, her traumatic neurasthenia will get well much sooner.

Q. Doctor, is traumatic neurasthenia chronic?

A. It is not chronic.

Q. Have you known where it was chronic? A. I have known where neurasthenia was, but not traumatic.

10 Q. Traumatic neurasthenia comes from a blow?

A. It does sometimes in railroad accidents, but that gets well when the litigation is all over; that is a factor in the trouble.

Q. Well, I am asking you if you know whether neurasthenia does become chronic? A. Not traumatic neurasthenia, no, sir.

Q. Well, following a blow, after a time? A. Chronic is a relative term and as I understand chronic, it would not become chronic.

20 Q. You have never known it to? A. No.

Q. What is the longest? A. I have known them to suffer from it two or three years.

Q. Any more? A. No longer length of time than that.

Q. Do you know the history of that case? A. Yes, it was a railroad accident.

Q. Any more severe than this? A. A little different in character.

30 Q. Any severer in nature than this? A. Well, I can't recall that just now.

Q. Why do you distinguish between the two; one may continue for months while others for years. Where do you draw your point? A. I didn't draw any point.

Q. Well, one may continue three or four years, and on the other hand, this for four or five months? A. I would say her neurasthenia would get well.

40 Q. Didn't you say it would get well very shortly after? A. It would improve very much more rapidly if the cicatrition was complete.

Dr. Thomas H. Mackenzie, for Defendant—Cross

Q. That doesn't necessarily follow, does it?

A. Yes. I think it follows as a matter of course.

Q. Does the fact of this woman's disfigurement have anything to do with this recovery? A. I think it will give her a good deal of annoyance, but I don't think it will interfere with her recovery.

Q. Not at all? A. I hardly think it will. 10

Q. Doctor, do you say that this woman at the present time is able to do work? A. She said that here.

Q. You heard what she said, that she tried to cook and couldn't. A. She cared for her sister-in-law's baby, I think.

Q. That in itself, may or may not be work, might it not? A. You pay for it, and you don't pay for anything that isn't work.

Q. Yes, but on the other hand, there are a great 20 many things you do that you don't consider work, isn't there? A. Smoking a cigar, for instance.

Q. Yes. Now, this girl sits in an arm chair and talks to this baby, you wouldn't call that work, would you? A. Leading up to it.

Q. Where would the work come in? A. She said she tried to cook sometimes.

Q. She said she tried and couldn't? A. I don't think she is capable of doing much work in her 30 present condition.

Q. Do you think she will ever be able to do the same work that she would have been able to do had not this accident occurred to her? A. Yes, I think she will.

Q. Be just as strong and just as healthy as she was? A. I don't know whether she will ever be as strong and healthy as before, but that she will be able to work, that is different.

Q. But I asked you if she would be able to do the same work as she would have been able to 40

Dr. Thomas H. Mackenzie, for Defendant—Cross

do, the same amount of work? A. I don't know what she was doing, but I think she could work in the factory again.

Q. At the same kind of work? A. I don't see why she couldn't.

Q. What do you mean by that, when you say she can do the same kind of work? A. It is not
10 the quantity of the work, but the quality of the work that I had reference to.

Q. In other words, you mean she will be able to do light work? A. Yes, sir.

Q. And when will that be, Doctor? A. I don't know.

Q. In a year or two years? A. I don't know. I will give you my impression, but you won't accept that.

Q. I am not on the right side, Doctor, to accept
20 them. How long do you say, Doctor? A. I think, as I said before, that in six months the woman's wound will be healed. It will still be tender, and she will not be able to do her work for the next six months as well as before the accident.

Q. That would be a year? A. That is only approximately?

Q. Now, you heard the testimony of Dr. Seibert, didn't you? A. Yes.

Q. And you heard him say that the scalp was
30 torn away? A. Yes.

Q. And from the part where it was torn it left a piece of some one-quarter of an inch, didn't you? A. Yes.

Q. And you also heard him say that by that new replacing process used in this case— A. Grafting, you mean?

Q. Grafting? That there cannot be a complete healing of this part? He said therefore there cannot be a proper circulation? A. There is a
40 circulation.

Dr. Thomas H. Mackenzie, for Defendant—Cross

Q. Proper? A. You couldn't have repair without circulation.

Q. How long will it take? A. This is granulated now, almost flush with the surface of the scalp. Now, before that granulation, nature throws out a blood supply and it is full of blood.

Q. And what part is already granulated? A. I beg your pardon? 10

Q. What part of the top is already granulated? A. Just the outer part. The centre of the injury has not cicatrized. It has to granulate first before it is cicatrized and the process of granulation is almost complete and the process of cicatrition has gone about two-thirds. One-third is still to cicatrize; from that I base my calculation.

Q. He says the blood will not properly circulate in his opinion, and it will cause a congestion of the head and dizziness and that will be of a permanent character. Do you agree with him? A. I dislike to disagree with a brother in the profession, but I do not agree with him. 20

Q. Now, when you say you disagree, is that to the best of your judgment, when you say certainly that this will not happen? A. When you say this, I don't know what you mean.

Q. Well, what he said,—the conditions that he described. A. In the first place, he said that there was an accumulation of blood in the brain, there is where I differ with him. 30

Q. That is to the best of your judgment, is it doctor? A. I can't answer that intelligently unless I know what you mean by this.

Q. You disagree with him, that is based on the best of your judgment, isn't it? A. Certainly is.

Q. But by no wise certain, is it; you are not sure that he is not right? A. In my own mind I am convinced that he is wrong.

Q. But that is based upon your judgment? 40

Dr. Thomas H. Mackenzie, for Defendant—Cross

A. My judgment and my knowledge of pathology, not in my own judgment.

Q. But he may still be right, might he not?

A. I can't see it.

Q. Well, it is judgment against judgment, isn't it? A. Not necessarily, it is knowledge against knowledge, if you please.

10 Q. Well, we will put it that way. Doctor, how do you account for this girl staggering, falling?

A. Can't account for it. In the first place, I don't know that she does stagger and fall.

Q. I so understood that she did so testify? A. I can't account for it.

Q. He spoke of vertigo, what is vertigo? A. Vertigo is a very different thing from dizziness.

Q. It is commonly called dizziness? A. Yes.

20 Q. Now, as the doctor used it, how would you use it? A. I think vertigo was used here to mean dizziness.

Q. Dizziness and vertigo? A. Well, they are interchangeable.

Q. Doctor, summing this entire matter up, this young girl will never be as good again as she was before this accident, will she? A. I don't think she will.

30 Q. And there are a great many unseen complications that she may be subject to coming out of this accident? A. That is true.

Q. Then it may result, in an unforeseen way, in her being permanently injured? A. There is no doubt about her permanent injury, she will never have her hair again.

Q. And it may result in permanent disability and not permanent injury only? A. I couldn't say that she will be permanently disabled.

40 Q. That is all.

Agnes Kyack, for Petitioner—Direct

AGNES KYACK, a witness sworn on behalf of the petitioner, through an interpreter, BERNARD COHEN, testified as follows:

Direct-examination by Mr. Kafes:

Q. Where does she live? A. New York Avenue.

Q. Does she know the petitioner, Mary Terlecki? A. I know the woman because I was working there. 10

Q. Was she working there June 14th, 1912? A. Yes, sir.

Q. That is, the Straus Woolen Mills? A. Yes.

Q. Did you see her get her hair caught in the machine this 14th day of June? A. I didn't see the accident, but I was working on that same machine and I saw something was the matter with the machine.

Q. Then what did you see? A. I went to see 20 what was the trouble with the machine and I turned around and saw that a woman was bleeding and black in the face.

Q. Bleeding where? A. I saw her standing there and she was bleeding from her head and I got scared and couldn't look.

Q. Did you know her head got caught in the machinery? A. I didn't see the way the accident happened and I saw the way her head was red, just like a handkerchief. 30

Q. Did you see her before this accident? A. I didn't see her before the accident because that was back of the machine where the accident took place.

Q. Do you know where she was hurt? A. I didn't see where, but I know where the place is.

Q. Do you know what the girl was doing there? A. I think she went to comb her hair, because I saw some of her combs there.

Q. Did you ever see any of the girls go there 40

Agnes Kyack, for Petitioner—Cross

to comb their hair? A. All the girls comb their hair in that place and in most any place.

Q. And had been for how long? A. All the time. Whenever the girl had time to space, when the machine was good in operation, then she could go and comb her hair. I have seen other girls comb their hair in that place.

10 Q. Where Mary was hurt? A. Yes.

Q. Did you see them take their clothes there? A. Yes, because there is the place to hang the clothes on.

Cross-examination by Mr. Carey:

Q. You say they went there at any time to comb their hair? A. Not all the time, but during noon hour or towards the evening and whenever they had the time to do it.

20 Q. That is they went there and combed their hair just before they went out at the noon hour? A. They went there before they left the place and the machines were in operation at the time when they went to comb their hair.

Q. Do you mean to say that they would go there before the machines would stop? A. Well, I told you that the machines were in operation there when they went to comb their hair.

30 Q. Then they would go there before the machines stopped, at noon, would they? A. As a rule, sometimes they used to go about five minutes before twelve to fix up their hair.

Q. That was when they were going out on the street? A. Yes.

Q. And they went there during the noon hour and combed their hair, didn't they? A. They used to go there before they went for the noon hour and before they left for home.

40 Q. And at night before the machines stopped, they would go and fix their hair, wouldn't they?

Agnes Kyack, for Petitioner—Cross

A. When the machines stopped they never combed their hair, they went home, but they used to comb their hair before the machines stopped.

Q. And they combed their hair because there was wool and things of that kind in the hair?

A. Yes, because there used to be lots of wool in their hair and they couldn't walk in the street that way.

10

Q. And didn't want to go on the street in that condition? A. Because their hair was not clean.

Q. Didn't the boss tell them not to do that before the machines stopped for the noon hour and before they stopped at night? A. Boss never told me anything. I don't know.

Q. Did you do it? A. Yes, I worked there and I combed my hair before twelve and before the machines stopped.

Q. How many girls combed their hair there at this place in one day? A. I don't know exactly how many. Five, six or seven, because there were little looking glasses around and therefore they used to keep them.

Q. Who put up the looking glasses? A. I can't tell you sure who brought the looking glasses, but I know that one woman brought her own glass and tacked it on and several others.

Q. And that is the woman who got hurt brought the glass and put it there? A. Yes, she spoke about leaving her work and going to get a drink.

30

Q. Where did she go to get a drink? A. We used to go away from the machine as far as the sink to get water.

Q. Where was the sink? A. Still further, not at the place where the accident happened.

Q. In a separate room, wasn't it? A. There is a passage way and there is where the sink is.

Q. That was in a separate room, wasn't it. A. Yes, in a different place altogether where the sink is.

40

Annie Kobich, for Petitioner—Direct

Q. In a different room? A. Yes.

Q. And was there more than one sink on this floor? A. Only one sink.

Q. And that was where you went to wash, wasn't it? A. Yes, this is a different place altogether.

10 Q. And the girls used to take their glasses in there to comb their hair, did they not? A. Whoever wanted to.

ANNIE KOBICH, a witness sworn on behalf of the petitioner, through an interpreter, BERNARD COHEN, testified as follows:

Direct-examination by Mr. Kafes:

20 Q. Where do you live, Annie? A. On Taylor Street.

Q. What number? A. One hundred and eleven.

Q. Do you know Mary, this girl over here? A. Yes, I know her.

Q. How long have you known her? A. About one year.

Q. Where were you working June 14th, 1912?

A. At the Woolen Mill.

Q. Do you remember this girl getting hurt?

30 A. Yes.

Q. Did you see Mary hurt? A. I didn't see the way she got hurt, because I was working at my machine.

Q. Did you see them pick her up? A. When I went away from my machine, I saw the way she was bleeding and her hair was torn from top.

Q. Bleeding from the top of her head? A. Yes, top of the head was red just like a red handkerchief.

40 Q. Do you know where she was hurt at? A. The

Annie Kobich, for Petitioner—Direct

second machine from me where I was working.

Q. Did she see Mary before she was hurt? A. I didn't see her when she went to comb her hair.

Q. Now, you are familiar with the place where she was hurt, aren't you? A. Yes, I know where.

Q. Do the girls go there to comb their hair?

A. Yes, they all go to comb their hair and I myself also went to comb my hair. 10

Q. There where Mary was hurt? A. Yes.

Q. Did they hang their clothes there? A. Yes. Altogether about seven girls used to hang up their clothes.

Q. Had she ever seen Mary comb her hair there before? A. I did see her there before, I didn't see her there that day.

Q. How often? A. Pretty near every day she used to comb her hair there.

Q. And the other five girls? A. We all used to comb our hair there. 20

Q. Did or did not anyone ever tell them not to comb their hair there? A. Nobody told us not to go there and comb our hair.

Q. Has she seen girls go there both before and after the noon hour? A. Didn't see any after dinner, but I used to see them before dinner hour and towards the evening.

Q. What would take them before the noon hour, if she knows; why didn't they wait until twelve o'clock? A. We used to go there about five or six minutes before twelve. 30

Q. Now, why was that done, why didn't they wait until twelve o'clock? A. The machines were in operation and when the machines were in operation good, that was the time when we went to comb our hair, we didn't wait until the machines would stop.

*Annie Kobich, for Petitioner—Cross**Cross-examination by Mr. Carey:*

Q. You went so you could get away a little earlier? A. Because we did that, we could go outside—

Q. Just as soon as the machine stopped? A. Yes. In the summer time, when it was warm, we used to go outside.

10 Q. You know where the sink is? A. Yes, I know the sink is not near the machines.

Q. It is in a separate room, isn't it? A. Yes, it is necessary to go on the other side to go to the sink.

Q. And there is where you go to get a drink, isn't it? A. Yes.

Q. And girls used to go in there to comb their hair, also, didn't they? A. No, they didn't comb their hair there. Maybe the American girls went
20 there, but we Polish girls didn't go there.

Q. Do you know how many girls there are working on that floor? A. Which floor? The floor where I was working?

Q. Yes. A. I am not sure, but maybe somewhere about thirty or more than thirty.

Court: Any men or boys?

A. Only the boss and boys.

Q. How many boys?

30 A. Two boys.

Q. Why did you comb your hair before you went out to get the wool out of it? A. We had to comb our hair to get the wool out.

Q. Yes, you didn't like to go out on the street with wool in your hair? A. Anyone who lives near the factory could go with the wool in her hair, but we live quite a distance away. It wasn't proper we should go that way to the street.

Q. And you could have gone to the room where
40 the sink was to comb your hair if you wished to?

Annie Kobich, for Petitioner—Cross

A. We must take care of our work. We never could get away too far. We had to watch our machines.

Q. Didn't the boss tell you to stay at your machine all the time that the machine was running?

A. When the machine is running good he doesn't say anything and when the machine gets spoiled, the boss gets angry. 10

Q. Did you have a looking glass there to comb your hair before? A. I didn't have any, but I don't know whose looking glasses they were. Some girls used to bring them.

Q. You went to the room where the sink was to get a drink when you wanted it, didn't you?

A. Yes, we used to go there after water.

Q. And whenever you wanted a drink, there was where you went, was it? A. Yes.

Q. You could go there to comb your hair just 20 as well as to get a drink, couldn't you? A. We couldn't stay away very long. That is quite a distance; we had to come back.

Q. How long did it take you to go to the sink room? A. If we would go to comb our hair there, it would take probably ten or fifteen minutes.

Q. How long did it take you to go? A. When you walk fast, it would take about two or three minutes.

Q. You could comb your hair just as quickly 30 there as by the machines, couldn't you? A. Why, there was no looking glasses around there to comb our hair.

Annie Machusky, for Petitioner—Direct

ANNIE MACHUSKY, a witness sworn on behalf of the petitioner, through an interpreter, BERNARD COHEN, testified as follows:

Direct-examination by Mr. Kafes:

- Q. Annie, where do you live? A. I reside in Berwing, Pennsylvania.
- 10 Q. Do you know Mary, this girl over there, Mary Terlecki? A. Yes, sir.
- Q. How long have you known her? A. I have known her from the old country before she came here and I know her here.
- Q. Did you know her June 14th, 1912? A. Yes.
- Q. Where were you working and where was she working, at that time? A. I worked at that time in the other room.
- Q. Do you remember the day she was hurt?
- 20 A. Yes.
- Q. Do you know how she was hurt? A. When the accident happened, I was working in the other room, but when I heard the accident, I saw it.
- Q. Did she see the place where Mary was hurt?
- A. After the accident, I saw the place.
- Q. Did you ever see any of the girls go to this place, where Mary was hurt, for the purpose of combing their hair? A. I would see the girls go there and I went there myself to comb my hair.
- 30 Q. How many different girls did you see go there? A. Why quite a good many; whoever wanted to dress and comb their hair there.
- Q. What time of the day would they go there?
- A. Five or six or ten minutes of twelve.
- Q. Now, did anyone tell you or did you hear any person tell any other girls that you saw there, not to go there and comb their hair? A. No, sir, they didn't.

*Annie Machusky, for Petitioner—Cross**Cross-examination by Mr. Carey:*

Q. How long have you worked there? A. I worked once six months and once three months.

Q. Are you working there now? A. No, sir, I am not working there now.

Q. How long since you have been working there? A. Five months.

Q. Is Mary related to you? A. She is not a 10 relative of mine, but I know her.

Q. When the girls went there to comb their hair, did they leave their machine running? A. The machines were running.

Q. Didn't the boss tell them not to leave their machines? A. No, the boss didn't say anything.

Q. Why did they comb their hair before they went out? A. Why, because there is a whole lot of wool gets into their hair and therefore they must take that wool out. 20

Q. Why didn't they wait until after the machine stopped? A. We couldn't very well, because we have only one-half hour dinner time, and some of us must go home to dinner and get something to eat, and go out into the yard, and therefore we didn't have much time.

Q. And did all the girls go there before the machines stopped? A. All of the girls.

Q. Always? A. Always.

Q. None of them were there after the machines stopped? A. No, because when the whistle blew five-thirty that is the time we used to leave for home. 30

Q. How many girls went to this place to comb their hair? A. I can't tell you exactly how many, because there are quite a good many girls in that room.

Q. Did they all go there? A. There is quite a good many of them that used to change their clothes there because there was a post there and they hung their clothes there. 40

Lizzie Quick, for Petitioner—Direct

Q. Did all the girls go there to comb their hair?
A. Most of them went there.

Q. How many were there on that floor? A. I can't tell you exactly, but there were thirty more or less.

Q. Do you know where the sink room is? A. Yes.

10 Q. There is where you went to get water when you wanted to drink, wasn't it? A. There is a little place where you go through going to the toilet.

Q. There is where the sink is, and some of the girls went there to comb their hair, didn't they?
A. I don't know whether they went or not, because I never saw any go there to comb their hair.

Q. Did you ever go there to comb your hair? A. No, I didn't go to comb my hair there; when I
20 went in that room I went in the same place to comb my hair.

Q. That is all.

LIZZIE QUICK, a witness sworn on behalf of the petitioner, testified as follows, through the before-mentioned interpreter, BERNARD COHEN:

30 *Direct-examination by Mr. Kafes:*

Q. Did you work in the Strauss Woolen Mill June 14, 1912? A. Yes.

Q. Does she know that girl there, Mary Terlecki? A. I know her, because I worked there in the shop.

Q. Now, on this day, June 14th, 1912, does she remember something happened to Mary's head?

A. All I know, I was working close by there where the girl was injured and saw the way her head was
40 red, full of blood.

Lizzie Quick, for Petitioner—Cross

Q. Now, does she know where Mary was hurt? Did she ascertain that after the accident? A. No, she didn't see the accident.

Q. Do you know where she was hurt? A. Yes, I do know.

Q. How did you find out where Mary was hurt? A. I noticed from the machine where I was working that she got hurt. 10

Q. You saw then where she got hurt? A. I saw the way she was bleeding.

Q. Where was she? A. I was standing by the machine with another girl.

Q. How near Mary? A. As far as from here to the bench (indicating a distance of about ten feet).

Q. Where Mary was at this time, where she was hurt, do you ever see any girls go there at that place to comb their hair? A. I saw some girls go there and comb their hair. 20

Q. How many girls? A. When the machinery was in operation, most of the girls went there to comb their hair.

Q. Yes, what hour or hours? A. Before the noon hour.

Q. Has anybody ever told them not to go there? A. No, sir, nobody did.

Cross-examination by Mr. Carey:

Q. How do you know where Mary was hurt? A. 30
Another girl told me and then I saw it.

Q. What did you see? A. They stopped some of the machinery around there and that was unusual, so I heard of it. I found out that the girl was hurt.

Q. They stopped all over the room there, didn't they? A. No, they stopped all the machinery at noon time.

Q. How long was this before noon? A. Some of the women there stopped some of the machinery 40

Lizzie Quick, for Petitioner—Cross

and therefore I found out where the trouble was.

Q. Did you leave your machinery when the women stopped their machinery? A. I saw it; I got scared and nervous and I run away.

Q. What did you see? A. I didn't see anything; all I saw was blood.

Q. Where did you see blood? A. I saw the blood
10 on her head. Her whole head was red.

Q. And where was she when you saw the blood on her head first? A. She was going away from one machine to another machine at that time. I saw her head was bleeding.

Q. You didn't know what machine Mary got hurt on until Mary told you, did you? A. I didn't see the machine, nor did I know which machine she got hurt on.

Q. Do you know where the sink room is? A.
20 Yes.

Q. There is where you went to get water, wasn't it? A. Yes.

Q. And did you go there to comb your hair in the sink room? A. Nobody did comb their hair there.

Q. Nobody? A. No, I didn't see anybody comb their hair in that room.

Mr. Carey: If the Court please, the Insurance Company, which is really the defendant
30 in this case, I make this statement because of the fact that it is fair to the defendant company that it should be known, particularly to their employees and to anybody else that is interested, that it is not the defendant company which is really making the defense here. The company is insured and as your Honor probably had surmised before I told you, it is the Insurance Company making the defense. They make the defense on the ground
40 that the accident did not arise out of or in the

James J. Green, for Defendant—Direct

course of her employment and for that reason there is no liability. That is the reason why the defendant company did not tender or give to the injured employee any medical assistance or hospital attendance. It has been upon the basis that there was a disclaimer of liability. The extent of the injury, in case the Court should disagree with us on the question 10 of liability, we claim is merely a total disability for a limited period of time, and that ultimately there will be such a recovery as will enable the injured employee to earn as much as she was earning at the time of the accident.

JAMES J. GREEN, a witness sworn in behalf of 20 the defendant, testified as follows:

Direct-examination by Mr. Carey:

Q. Mr. Green, you are in the employ of F. A. Straus and Company? A. Yes, sir.

Q. And were on the 14th day of June? A. Yes, sir.

Q. Do you remember the accident to this petitioner? A. Yes, sir.

Q. You saw her soon after the accident? A. A 30 very few minutes after.

Q. About what time was it when you first saw her? A. Twelve or thirteen minutes of twelve.

Q. Did you find out what machine she had been hurt on? A. Yes.

Q. How did you find that out? A. I asked the foreman.

Q. Did you see anything on the machine? A. The hair of the scalp.

Q. Did you do anything in connection with that?

James J. Green, for Defendant—Direct

A. After the ambulance came the doctor asked me to take it off and I removed it.

Q. And delivered it to whom? A. The doctor.

Q. Who was that? A. I don't know. The doctor that was on the ambulance.

Q. How far was this machine from the machine where she was working? A. Thirty-two feet.

10 Q. In the front or rear of the machine? A. Rear of the machine.

Q. The hair was wound around the shaft, wasn't it? A. Yes, sir.

Q. Describe the position of the shaft. A. The shaft runs from one machine to another.

Q. How high from the floor? A. Eighteen inches.

Q. What was its position relative to the outer surface of the back of the machine? A. Set in.

20 Q. About how far? A. About eight inches.

Q. And was there another shaft there also? A. Yes.

Q. How far above that? A. About six inches above.

Q. Perpendicularly over that or otherwise? A. A. Perpendicular.

Q. Extending in the same direction? A. Yes.

Court: Six inches above this? A. Yes.

30 Q. Was there any board over those shafts? A. There was a board that extended down on a line with the upper shaft.

Q. Describe the position of that board, that is, whether it was horizontal or vertical in position?

Mr. Kafes: Objected to, please your Honor, for this reason. He said he was not there at the time of the accident and until he shows that the machine at the time he saw it, which was some time after the accident, was in the same condition as the time this girl was hurt, I object.

40

James J. Green, for Defendant—Direct

Mr. Carey: He is describing the machine as he saw it when he cut the hair from the shaft.

Mr. Kafes: I ask for an exception.

Court: Exception allowed.

Whereupon the plaintiff, by her counsel, files a bill of exception, which is hereby allowed and sealed accordingly. 10

Q. Where was that board on the machine, when the hair was removed? A. As I said, the board extends down along the rear of the machine about even with the upper shaft.

Q. The board extended vertically or horizontally? A. Vertically.

Q. How long have you been connected with the defendant, Straus & Company? A. Ten years.

Q. Was there a board extending down over the lower shaft? A. No. 20

Q. It did extend down over the upper shaft? A. On a line with the upper shaft.

Q. With reference to the position of this board, as I understand, the shaft set in some distance? A. Yes.

Q. And what was that distance? A. About eight inches in from the outside board.

Q. Did your duties call you to this floor where the accident happened very frequently? A. No. 30

Q. What were your duties? A. I am in the office and in the shipping department.

Q. Do you know of any custom on the part of the girls employed on that floor to go to this place for the purpose of combing their hair? A. No, I don't.

Q. Ever see any of them there? A. No, I didn't.

Q. Ever any such thing reported to you before this accident? A. No, sir. 40

James J. Green, for Defendant—Cross

Q. You produced these combs and hair pins?
A. Yes, sir.

Q. From whom did you get those? A. Mr. Clay.

Q. And who is Mr. Clay? A. Foreman of the department in which the girl worked.

Cross-examination by Mr. Kafes:

10 Q. You say you know of no custom that the girls did go at this place and comb their hair? A. No, sir.

Q. Well, you don't know that they didn't do you?

The Court: He has stated that he rarely went there, and that his business was in the office and shipping department.

Q. How often did you go to that floor? A. Sometimes I might want to look Mr. Foster up and ask him a question, and for days at a time I wouldn't be there.

Q. You wouldn't say that Agnes Kyack never went there and combed her hair, and Annie Kobich, and you won't say that Annie Machusky never went there and combed her hair, would you, and Lizzie Quick? A. No.

Q. You say this board came down on a line even with the inside shaft, the upper inside shaft?
30 A. Yes.

Q. Does that look familiar to you? (exhibiting sketch). Considering that that (indicating) is the upper shaft and this (indicating) is the lower shaft? A. Yes.

Q. This covering or board came down even with the first shaft. Now, it was the second shaft that caught her.

The Court: How high is that from the floor? A. I would say about four feet.
40

Alpha Clay, for Defendant—Direct

Q. Now, certainly, if that board had extended down to the second shaft her hair couldn't have caught, could it?

The Court: The question of neglect doesn't enter.

Q. Was that board of which you have spoken, the vertical one, a movable board? A. The lower 10 part was on a hinge.

Q. How wide was it? A. Each section was ten or twelve inches wide.

ALPHA CLAY, a witness sworn on behalf of the defendant, testified as follows:

Direct-examination by Mr. Carey:

Q. Where do you live? A. Camden. 20

Q. On the 14th of June, 1912, were you employed by F. A. Strauss & Company? A. Yes, sir.

Q. At their mill in Trenton? A. Yes, sir.

Q. What was your position? A. Overseer of the Drawing Department.

Q. Is that the room in which the petitioner was hurt? A. Yes, sir.

Q. Did you see the petitioner on the day she was hurt? A. Sir?

Q. Question repeated. A. Yes, sir. 30

Q. How long before she was hurt did you see her? A. About half an hour.

Q. Where was she then? A. Around her frames.

Q. What frames? A. Her own frames which she runs.

Q. Did you see the machine where she was hurt? A. Sir?

Q. Question repeated. A. Yes, sir.

Q. On that day? A. Yes, sir.

Q. How soon after she was hurt? A. Why, a few minutes. 40

Alpha Clay, for Defendant—Cross

Q. Did you find any combs around there? A. Yes, sir, and hairpins.

Q. Did you find those (exhibiting the same combs and hairpins shown the petitioner)? A. Yes.

Q. Where did you find them? A. On top of the board where she was caught.

10 Q. On the same machine? A. Yes.

Q. Lying together there? A. Lying together.

Q. Mr. Clay, how long had you been in the employ of Strauss and Company up to the time of this accident? A. Pretty near three years.

Q. How long had you been overseer in that room? A. Two years and a half.

Q. Do you know any custom of the girls to go to the place where Mary was hurt and comb their hair while the machine was in operation? A.

20 Yes, sir.

Q. What did you do then? A. I told them to cut it out, and tend to their work.

Q. Did you always do that when you saw them comb their hair? A. Yes, when I seen them do it.

Q. What instructions did you give them about leaving their machines when they were in operation? A. I used to send them back to the machines and tell them not to leave their machines; they are supposed to stay there all the time.

30

Cross-examination by Mr. Kafes:

Q. You say you saw the girls go there and comb their hair, is that true, Mr. Clay? A. Sir?

Q. Question repeated. A. I have seen them comb their hair.

Q. Now, you didn't object to that, did you? What you cared more about was the fact of them leaving their machines? A. I told them about that, yes.

Q. That is what you cared about more than anything else? A. I seen them around there and sent
40 them away.

Alpha Clay, for Defendant—Cross

Q. What you objected to was the girls leaving their machines while they were running? A. Yes.

Q. You didn't object to them combing their hair there? A. No.

The Court: Was it a practice for all to go there about five or ten minutes before the evening and the noon closing hour, and begin combing their hair before the machines stopped? A. They go around there and comb their hair. 10

The Court: Did you send them back at those times? A. Sometimes I would and sometimes I wouldn't. Sometimes I was busy.

Q. Then they would comb their hair and be ready to leave? A. They would comb their hair and go back until the machines stopped.

Q. Did they always go to the same place or different places? A. A few in the same place and a few in other places. 20

Q. When girls wanted leave before the regular time, were they on piece work? A. No, day work.

Q. Before the close of the day where did they comb their hair then or dress themselves, and get ready to go out? A. They could only comb their hair.

Q. Is this a place where they could? A. There are other places around the room. 30

Q. The room where the sink was; they could go there, couldn't they? A. To wash?

Q. Yes. A. They could go down to the toilet to wash.

Q. And they could go to the room where the sink was to comb their hair if they choose? A. I don't understand.

Q. Question repeated. A. They could go down to the toilet to wash and come back to comb their hair.

MERCER COUNTY COURT OF COMMON PLEAS.

MARY TERLECKI,
Petitioner,

vs.

10 FERDINAND A. STRAUS and LIONEL
F. STRAUS, partners, trading as
F. A. STRAUS AND COMPANY,
Respondents.

JOHN H. KAFES and ANTHONY S. BRENNAN, ESQRS., for the petitioner.

20 WILLIAM H. CAREY, ESQ., of Vredenburgh,
Wall & Carey for the respondents.

30 This is a proceeding brought by Mary Terlecki, against Ferdinand A. Straus and Lionel F. Straus, partners trading as F. A. Straus and Company, respondents, under the Workmen's Compensation Act of 1911. Mary Terlecki presented to the Judge of this Court her petition, verified by her oath, which was filed on February fifteenth, nineteen hundred and thirteen, setting forth that on the fourteenth day of June, nineteen hundred and twelve, she was seriously injured while in the employ of the said respondents, and that the injury was the result of an accident arising out of and in the course of her said employment.

40 Upon the presentation of such petition the Judge fixed as the time and place for the hearing thereof Friday the seventh day of March, nineteen hundred and thirteen, at the hour of ten o'clock in the forenoon, at the Court House, in the City of Trenton, at which time the said hearing was adjourned to the twentieth day of March at

ten-thirty A. M., at the same place. After service of process and copy of the petition upon the respondents, they appeared and answered, admitting the accident, but denying responsibility. At the hearing in the presence of counsel, witnesses presented by the parties were examined and the matter was submitted for decision. The following is a statement of determination of facts, filed in writing with the Clerk, upon which judgment is ordered to be entered: 10

Statement of Facts.

The testimony submitted to the court shows, and I find the facts to be, that Mary Terlecki was on the fourteenth day of June, nineteen hundred and twelve, employed by the respondents, Ferdinand A. Straus and Lionel F. Straus, partners trading as F. A. Straus and Company; the respondents were manufacturers of worsted and silk yarns, 20 and at the time mentioned the petitioner had charge of and was employed to operate two machines known as "spindle gill boxes" and received a salary of five dollars and fifty cents per week; that she had been employed on and had operated the machines about four weeks; that on the morning of the day mentioned at about five minutes to twelve, the petitioner left her machines and went to the other side of the factory to speak to the "boss"; she testified that she was not feeling well 30 and wanted to tell him that she would not return to work in the afternoon; not finding the boss she went to an "alleyway" formed by two rows of machines, to clean and comb her hair; in the manufacture of yarn, in certain conditions of the atmosphere, especially in dry weather, small particles of wool are constantly flying through the air and settling on the girls' hair; on the morning in question the petitioner went to the place mentioned, which was 32 feet distant from the ma- 40

chines she worked on, and removed her combs and hair-pins for the purpose of combing the wool from her hair, and bending forward, her hair being down, and hanging over her head, it was caught by a shaft which was placed about eighteen inches above the floor; "there" (to quote from her testimony) "was a space there where as a rule it is covered with a board, but whenever they went to fix that place to put something new in there, why they always use to take that board off and cover it up, but at that time I suppose they forgot to cover it up." The testimony further shows that the rapid revolution of the shaft pulled the petitioner to the floor, and her entire scalp, with the exception of a circle of about an inch, was torn from her head. The accident happened before twelve o'clock, noon, and while the machines operated by the petitioner were still running. All machines on that floor stopped at 12 o'clock noon. Petitioner combed her hair before leaving the factory because she did not wish to go upon the street with wool in her hair. She combed her hair during working hours. She was picked up bleeding and taken to the hospital where she was treated for a period of four months; the doctor who attended her found that the scalp was torn off, leaving no covering to the head except the periosteum; that about four square inches on top, and about one square inch down next to the forehead, of the periosteum, was also torn from the head; the doctor attempted to replace the scalp but decay set in and it had to be removed; in addition to and as the result of the injury the petitioner is suffering from dizziness and nervous prostration, due to the injury; the petitioner was treated at the hospital for four months, later the treatment was continued at her house, and at the time of the hearing the patient was being treated at the doctor's office; he testified that her condition had improved but slightly

since she left the hospital; that she is still subject to nervousness and dizzy spells which it will take sometime to overcome, and in his opinion the injuries were of a permanent nature.

The doctor, who was called on the part of the respondents, examined the patient a few days before the hearing; he found practically the entire scalp missing; that about two-thirds of the wound had cicatrized, the rest being still unhealed; the patient was also suffering from neurasthenia, arising from the injury; in his opinion she would suffer more or less from that for sometime to come; he thought she would be able to return to her work in about twenty months. Respondents admit due notice of the accident; that they furnished no medical or hospital services, but disclaim any liability on account of the accident, claiming that it did not arise out of and in the course of the employment.

Although there was some testimony, that efforts were made to stop the practice of the girls going to this alleyway and dressing, it was admitted that there was no rule against it; and the testimony of the petitioner and three or four other witnesses establishes beyond a doubt that it was a daily custom for the girls, before twelve o'clock, to dress and comb their hair in this "alleyway"; that the noon recess was limited to half an hour; that some of the girls went home to dinner, and that it was the common practice to begin dressing and combing their hair just before noon in order to be ready to leave at twelve; that the superintendent and overseer of the respondents knew of this custom, and that no measures were taken to stop it; that one of the girls tacked a piece of looking-glass on a post for the use of the girls. There was a "sink" room, but no particular dressing-room on that floor, this alleyway being used as a place to dress and comb their hair. I find that the practice was known to, and not

forbidden by, the respondents, and my conclusion is that the accident arose out of and in the course of the employment.

Under the testimony submitted, I find the petitioner received a salary of five dollars and fifty cents per week, and is entitled to compensation at the rate of five dollars per week, and that the period of disability, in view of the testimony will, in all probability, be three hundred weeks. Judgment will therefore be entered for the sum of five dollars per week for a period of three hundred weeks from the twenty-eight day of June, nineteen hundred and twelve, payable at the end of each of said weeks, with one hundred dollars for medical attendance, together with her costs to be taxed. If the petitioner overcomes her disability before the end of the period named, counsel may apply for a review and modification of the order, under paragraph 21.

20

FREDERICK W. GNICHTEL,
Judge of the Court of Common Pleas,
County of Mercer, N. J.

30

40

RULE.

COURT OF COMMON PLEAS OF MERCER
COUNTY.

Upon the petition of
 MARY TERLECKI,
 Petitioner,

and

FERDINAND A. STRAUS and LIONEL
 F. STRAUS, partners, trading as
 F. A. STRAUS AND COMPANY,
 Respondents.

Rule.

10

It is ordered that judgment be entered in favor of the petitioner, Mary Terlecki, against Ferdinand A. Straus and Lionel F. Straus, partners, trading as F. A. Straus and Company, for the sum of Five Dollars (\$5.00) per week, for a period of Three Hundred Weeks (300), from the Twenty-eighth day of June, Nineteen Hundred and Twelve, payable at the end of each of said weeks, and one hundred dollars for medical attendance, together with her costs to be taxed.

Dated, June , 1913.

Let this rule be entered in the minutes.

30

FREDERICK W. GNICHTEL,
 Judge of Court of Common Pleas,
 Mercer County.

On Motion of

JOHN H. KAFES,

Attorney for Petitioner.

40

REASONS.

NEW JERSEY SUPREME COURT.

10	In the Matter of the Injury sustained by MARY TERLECKI, An Employee of FREDERICK A. STRAUS, <i>et al</i>, Partners, &c. F. A. STRAUS & COMPANY, <i>Pltff. in Certiorari,</i> <i>vs.</i> MARY TERLECKI, <i>Deft. in Certiorari.</i>	On Writ of Certiorari Reasons.
-----------	--	---

20 The plaintiffs in certiorari, FREDERICK A. STRAUS and LIONEL F. STRAUS, partners trading as F. A. STRAUS & COMPANY, come and pray that the determination and judgment of the Honorable Frederick W. Gnichtel, Judge of the Court of Common Pleas of Mercer County, removed to this court by the writ of certiorari in the above stated cause, may be reversed, set aside and for nothing holden, for the following reasons:

30 (1) Because said Judge of the Mercer County Court of Common Pleas erroneously found and determined that the injury sustained by the said Mary Terlecki was occasioned by an accident which arose out of her employment.

(2) Because said Judge of the Mercer County Court of Common Pleas erroneously found and determined that the injury sustained by the said Mary Terlecki was occasioned by an accident which arose in the course of her employment.

Reasons

(3) Because said Judge of the Mercer County Court of Common Pleas erroneously found and determined that said Mary Terlecki is entitled to compensation to be paid to her by the plaintiffs in certiorari.

(4) Because said Judge of the Mercer County Court of Common Pleas erroneously found and determined that the period of disability of said Mary Terlecki will in all probability continue 10
for a period of 300 weeks.

(5) Because said Judge of the Mercer County Court of Common Pleas erroneously directed judgment to be entered against the plaintiffs in certiorari, and in favor of said Mary Terlecki, the defendant in certiorari, for the sum of five (\$5.) Dollars per week, for a period of 300 weeks, together with one hundred (\$100.) Dollars for medical attendance with her costs to be taxed.

(6) Because said Judge of the Mercer County 20
Court of Common Pleas erroneously found that the practice of the employees of the plaintiffs in certiorari to dress and comb their hair in the "alleyway" mentioned in the findings, was known to and not forbidden by the plaintiffs in certiorari.

(7) Because said Judge of the Mercer County Court of Common Pleas found that there was no particular dressing room on the floor where the accident to Mary Terlecki, the defendant in certiorari, occurred. 30

(8) Because judgment was entered in the Mercer County Court of Common Pleas against the plaintiffs in certiorari, whereas judgment should have been entered therein in favor of said plaintiffs in certiorari.

VREDENBURGH, WALL & CAREY,
Attys. for Plaintiffs-in-Certiorari. 40

Certiorari to Mercer Pleas.

NEW JERSEY SUPREME COURT.

November Term, 1913.

MARY TERLECKI,

vs.

FERDINAND A. STRAUSS

and others,

Prosecutors.

10

20

A factory employee quite work at her machine shortly before noon, and was in accordance with custom, combing particles of wool out of her hair preparatory to going home, at a point away from her machine, when her hair was caught in other machinery and she was injured: *HELD* that the accident arose out of and in the course of her employment.

Before Justices Swayze and Bergen.

Martin P. Devlin for petitioner.

William H. Carey for defendants.

Petition under Workmen's Compensation Act.

30 Petitioner quit work at her machine shortly before noon, and was preparing to go home. She was combing *particles* of wool out of her hair, as was the custom of the girl employees. For this purpose she went to a passage way where a piece of looking glass had been placed against a post, thirty-two feet from her machine. It was a common practice of the girls to the knowledge of the superintendent and overseer to do as the petitioner did, and it was not forbidden. There was

40

a "sink" room but no dressing room on that floor of the factory. While the petitioner was combing her hair it was caught in the still moving machinery and she suffered serious injury.

The opinion of the Court was delivered by SWAYZE, J.

We have no doubt that the accident happened in the course of employment. It would be entirely too narrow a construction to limit the benefit of the statute to the time the workman is actually employed at his machine. He must have time to reach his machine and to get away from his employers' premises. In fact it is a necessary implication of the contract of employment that the workman shall come to his work and shall leave with reasonable speed when the work is over. The preparation reasonably necessary for beginning work after the employers premises are reached and for leaving when the work is over is a part of the employment. A workman is none the less in the course of employment because he is engaged in changing his street clothes for his working clothes, or in changing his working clothes for his street clothes. In the present case it was reasonably necessary that the petitioner should comb her hair and remove the particles of wool before leaving the factory.

The question whether the accident arose out of the employment is perhaps more doubtful. The employment was not indeed the proximate cause of the accident, but it was a cause in the sense that but for the employment the accident would not have happened. The employment was one of the necessary antecedents to the accident. A case has recently arisen under the English statute, which seems to involve the same principle under different facts. *Gare v. Norton Hill Colliery Company* (1909), 2 K. B., 539. A collier was injured while leaving his work and crossing lines of

rail controlled by his employers. He had three ways to go home, but the one he used was the shortest and was commonly used by the workmen with the knowledge and consent of the employers.

It was held by the court of appeal that the accident arose out of and in the course of the employment. It is unnecessary to review the earlier cases in the English courts.

The judgment is affirmed with costs.

Filed Feb. 24, 1914.

10

20

30

40

NEW JERSEY SUPREME COURT.

F. A. STRAUSS & COMPANY,
Plaintiff in Certiorari,

vs.

MARY TERLECKI,
Defendant in Certiorari.

On Certiorari.
 Rule of Affirmance
 And Remittitur

10

The Court having inspected the transcript and the proceedings of the Court of Common Pleas of the County of Mercer, returned with the certiorari in this cause, the reasons for error assigned, and heard the argument of the respective counsel, and having duly considered the same.

It is ordered that the judgment of the Court of Common Pleas of the County of Mercer entered in the above stated cause, be in all things affirmed with costs, and that the record be remitted to the Court of Common Pleas of the County of Mercer to be proceeded with according to law and practice of said court. 20

Entered April 1, 1914.

On motion of
 John H. Kafes, Attorney.

30

40

Notice of Appeal and Reasons.

NEW JERSEY SUPREME COURT.

MARY TERLECKI, Defendant in
Certiorari,

vs.

10 FREDERICK A. STRAUS, et al., part-
ners, &c., Plaintiffs in Cer-
tiorari,
Appellants.

Notice of
Appeal and
Reasons

To JOHN H. KAFES, Esq.,

Attorney for Defendant in Certiorari-Appellee.

20 TAKE NOTICE: That the plaintiff in cer-
tiorari in the above entitled cause appeals to the
Court of Errors and Appeals from the whole of
the judgment entered herein in the Supreme
Court, on the ground that the Supreme Court af-
firmed the judgment of the Mercer County Court
of Common Pleas in this cause, whereas said
judgment should have been reversed for the rea-
sons alleged in the Supreme Court.

March 9, 1914.

Yours respectfully,

VREDENBURGH, WALL & CAREY,

30 Attorneys for Plaintiffs in Certiorari-Appellants.

Served, April 8th, 1914.

Filed, April 18th, 1914.

New Jersey Court of Errors and Appeals

MARY TERLECKI,
Defendant-in-Certiorari,
Appellee.

vs.

F. A. STRAUS & COMPANY,
Plaintiffs-in-Certiorari,
Appellants,

On Appeal. 10

BRIEF FOR APPELLANTS.

Abstract of Case.

Mary TERLECKI, the appellee, presented her petition to the Mercer Court of Common Pleas, claiming compensation under the provisions of Chapter 95, Laws of 1911, for an injury received by her in the factory of the appellants, on June 14, 1912.

The appellants (the defendants below) are manufacturers of worsted and silk yarns, in Hamilton Township, their factory being close to the dividing line between that Township and the City of Trenton. On the date of the injury appellee was employed by the appellant "to operate two machines known as 'spindle gill boxes' ", a kind of spinning machine. She had been so employed for about four weeks. (Findings of Fact, p. 83, line 15.)

Five or six minutes before twelve o'clock on the day of the accident she left her machines while they were still running, and went to the other side of the factory to speak to the boss, and tell him that she would not return to work in the after-

20

30

40

noon, because she was not feeling well (Terlecki, p. 38, line 20; Findings of Fact, p. 83, line 25).

Not finding the boss, she went to an alleyway formed by two rows of machines to clean and comb her hair (Terlecki, p. 38, line 35; Findings of Fact, p. 83, line 30).

In the manufacture of yarn, under certain weather conditions, particles of wool fly through the air and settle on the hair of the operatives
 10 (Findings of Fact, p. 83, line 35).

At page 38, line 28, the petitioner says:

“I went there to comb my hair like the rest of the girls who comb their hair before they go home.”

Again she says (p. 39, line 19):

“I wanted to comb the wool from my hair and I bent myself down and my hair was down and there was where my hair caught.”
 20

She does not state how much wool there was in her hair on this occasion, nor does she directly state that there was any. There is nothing definite in the case to show the condition of her hair with respect to the presence of wool, when she went to this place to comb it.

The place where she went to comb her hair was 32 feet distant from the machines she worked on
 30 (Findings of Fact, p. 83, line 38).

Arriving at this place, she removed her combs and hair pins and bending forward with her hair hanging down over her head began combing it, when her hair was caught by a shaft on one of the machines adjacent to the place where she was standing. It was wound around this shaft and thereby the injury complained of was occasioned (Findings of Fact, p. 84, line 1).

Most of the scalp was torn from the head.

40 The accident happened *before twelve o'clock*

noon, and while the machines operated by the petitioner were still running. All the machines on that floor stopped at twelve o'clock noon (Findings of Fact, p. 84, line 18).

Petitioner combed her hair before leaving the factory because she did not wish to go upon the street with wool in her hair, *and she combed her hair during working hours* (Findings of Fact, p. 84, line 20).

10

GROUND S OF APPEAL.

The grounds of appeal are that the Supreme Court affirmed the findings and judgment of the Mercer Common Pleas, whereas the same should have been set aside and reversed for the reasons assigned by the Plaintiff in Certiorari.

POINTS.

20

I.

The accident resulting in the injuries complained of did not arise "out of" the employment.

Section 2 of our Statute provides for compensation to the employee in case of personal injury occasioned "by accident arising out of and in the course of his employment".

30

The meaning of the words "arising out of his employment", and of the words "in the course of his employment" has been passed upon by the Supreme Court in *Bryant et al. v. Fissell*, 86 Atl. 458.

This language is taken from the British Workman's Compensation Act of 1906, and the Supreme Court follows very closely the construction placed upon it by the Courts of Great Britain.

In *Fitzgerald v. Clark & Son*, 77 L. J. K. B. 1018, the court said:

40

“The words ‘out of and in the course of the employment’ in Section 1 of the Act are used conjunctively, not disjunctively. The words, ‘out of’ point to the origin or cause of the accident. The words ‘in course of’ point to the time, place and circumstances. The accident to give rise to compensation must be in some sense due to the employment.”

- 10 In *Bryant v. Fissell*, the Supreme Court further quotes from the *Fitzgerald* case the following language:

“It must be an accident resulting from a risk reasonably incident to the employment.”

In *Challis v. London & S. W. R. Co.*, (1905) 2 K. B. 154, the court held that liability was imposed upon the employer when the accident was due to a risk incidental to the employment. Discussing this

- 20 question, the court said:

“No doubt the act does not use the expression ‘risks incidental to the employment,’ but the interpretation of the words ‘accident arising out of and in the course of the employment’ appears to me necessarily to involve the consideration of the question *what risks are commonly incidental to the particular employment in question.*”

- 30 The above language is quoted with approval in the *Bryant* case.

Discussing this point further, the Supreme Court uses the following language:

“We conclude, therefore, that an accident arises ‘out of’ the employment when it is something the risk of which *might have been contemplated by a reasonable person when entering the employment as incidental to it.*”

- 40 The Standard Dictionary defines “employ-

ment" as "The work upon which one is or may be engaged; any particular kind of work or business."

"Incident" as an adjective, is defined as "likely to befall; naturally or usually appertaining or attending, as the dangers incident to travel."

In *Bryant v. Fissell*, the Supreme Court says:

"A risk is incidental to the employment when it belongs to or is connected with *what a workman has to do in fulfilling his contract of service.*" 10

It is apparent from these definitions and this statement of the ground of liability, that in order that the accident causing the injury may be said to "arise out of the employment", it must be occasioned by something which has its origin and is inherent in the work which the employe is called upon to do; and the accident causing the injury must occur while he is doing something required of him to fulfil his contract of service. The statute is intended to cast upon the employer the risks attending the prosecution of the work which he assigns to the employe and nothing else. 20

In the use of edged tools there is the inherent danger that the person using them may cut himself. In operating a machine having swiftly moving parts, there is the inherent danger that the operator may be caught and injured thereby. For injuries arising from such causes, the employer is bound by the statute to make compensation, if at the time of the injury the employe is engaged in performing the duties which pertain to his employment. 30

In the case at bar, there was the inherent danger in operating the gill box machines that petitioner's hair might become entangled therein, or that she might be otherwise injured in the performance of the work assigned to her. But there 40

was not the slightest danger inherent in her work that she would be injured by a machine to which she had no occasion to go and which was 32 feet distant from the place of her work. Her work did not require her to go to the place of the injury; the interests of her employers were in no way served thereby. Neither her going to that place, nor what she did there in any way contributed to the performance of the work assigned to her. On the contrary, while there, she was neglecting her work, and attending to a matter entirely personal to herself. Her employment was to operate the machines assigned to her, not to comb her hair adjacent to another machine with which her work had no connection.

What was the cause of the accident in this case? It was not the operation of the gill box machines which was the work the petitioner was required to do, nor was it the wool in her hair, if we are to assume without proof that there was in fact wool in her hair. That wool did not interfere in the slightest degree with her work or her efficiency. Nor was it a source of any danger to her while engaged in her work. Without the slightest danger to herself, and without any interference with her work, she could have continued operating her machines until the noon hour, when all machines stopped. But what in fact caused the accident was petitioner's taking down and combing her hair in a place of danger, at an improper place, and an improper time. The place was thirty-two feet away from her machines. The time was during working hours when she should have been at her place of work. She was combing her hair because she did not wish to go upon the street with wool in her hair, and not for the purpose of furthering the work she was employed to do. The accident was due to the risk or danger arising from bringing her hair in contact with a moving

shaft, but this danger was in no sense inherent in or incidental to her employment, because it neither belonged to nor was connected with what she had to do "*in fulfilling her contract of service.*"

Had she waited until the noon hour when all the machines stopped, she could have combed her hair with perfect safety, either at her own machines or at the place where the accident occurred. Being a matter entirely personal to herself, it was 10 her duty to attend to it after the machines stopped.

On the facts found by the trial judge, there can be no recovery in this case.

The contention of the appellants upon this point is clearly sustained by the adjudications of the courts.

The burden of proof is upon the petitioner to show that the accident arose "out of" as well as 20 "in the course of" the employment. If the facts found leave the case in doubt as to whether those conditions are fulfilled or not, the evidence being equally consistent with their being fulfilled or not fulfilled, she has not discharged the burden of proof.

Pomfret v. L. & Y. R. R., 72 L. J. K. B. 729.

In *Barnabas v. Bersham Colliery Co.*, (1910) 102 30 Law Times, 621, Cozens-Hardy, M. R., said:

"When the facts are such that it is equally
"probable that there was, and that there was
"not an accident arising out of and in the
"course of applicant's employment, then he
"cannot recover."

Fletcher-Moulton, L. J., said:

"The question is *whether the work gave*
"*rise to the accident.*"

On appeal in the House of Lords, 103 Law Times, 513, the Lord Chancellor said:

"In cases under this act in the same way
 "as in cases under any other act, or at common law, the plaintiff must prove his case."

In *Clifford v. Joy*, 32 Irish Rep. 193; 2 B. W. C. C. 32, a maid was drying her hair outside the door when she was ordered inside to care for a
 10 baby in a crib within two feet of a fire. While so doing she continued drying her hair. Her sleeve was loose and caught in the fire and she was burned so that she died. It was held that the Master was not liable inasmuch as *it was not proved that what had brought her sleeve within reach of the fire was her action in minding the baby*. It might have been due to the process of drying her hair.

In the case at bar, it is affirmatively shown that
 20 what brought the petitioner's hair in contact with the shaft had nothing to do with operating the machines at which she was working, or with the performance of her duty to her employees.

In *Baird Co. v. Burley*, 45 Scotch L. R. 416, 1 B. W. C. C. 7, one of two boys was injured in avoiding a handful of rubbish which was thrown at him by another boy. *Held* that it was not an accident arising out of the employment.

In *Warner v. Coughman* (1911), 1 K. B. 351, 4
 30 B. W. C. C. 32, frostbite happening to a driver was held not to entitle him to compensation because the driver was not exposed to more than ordinary risk of cold to which any person at work in the open was exposed on the day in question. *Held*, that it was not an accident arising out of the employment.

Karemaker v. Owners of S. S. Corsican, 4 B. W. C. C. 295, is to the same effect.

40 In the two preceding cases the accident arose

out of weather conditions and not out of the work.

In *McShane v. Harrison*, cited in Bradbury's Workmen's Compensation Law, p. 50, petitioner was employed on board the ship "Warrior". Arriving at Pernambuco, Brazil, it was learned that a revolution was in progress and fighting was heard in the town. While engaged in his duties on the ship, petitioner was hit by a stray bullet. Held, by the Liverpool County Court that the accident was too remote to entitle the petitioner to compensation. The Court said that the risk was not *one ordinarily incident to the employment of a seaman*, or a special risk which could reasonably be foreseen and to which the applicant was *ordered to expose himself*. Moreover, *the applicant was not specially exposed as compared with any one else in range of the shots*. 10

So in the case at bar petitioner was not specially exposed to danger as compared with any one else who might have attempted the same thing she did. 20 To any one else there would have been the same danger and probably the same result, and that entirely independent of any employment upon the gill box machines, or whether employed at all about the factory.

"The accident must 'arise out of' the employment as well as 'in the course of' the employment. Thus, where a workman *during the hours of the employment does something entirely foreign to the work which he is employed to do* (playing a practical joke, for example) whereby he is injured, this accident could be said to have occurred 'during the course of' the employment, but it could not be said to arise 'out of' the employment, BECAUSE the workman was *not doing anything which he was employed to do* when the accident happened." 30

Bradbury's Workman's Compensation Law, p. 71. 40

Surely it cannot be said that the petitioner was employed to comb her hair during working hours, nor did her doing so in the slightest degree aid in the performance of her work.

In *Benson v. L. & Y. R. R. Co.*, 89 L. T. 715, 6 W. C. C. 20, an engine driver arrived at his place of work one and one-quarter hours ahead of time, and in crossing come tracks while returning from a place where he *had gone for his own purposes*, he was killed. *Held*, that the accident *did not arise out of* the employment.

In *Naylor v. Musgrave Spinning Company*, 4 B. W. C. C. 286, a boy was hurt while cleaning machinery. The Judge found that he was not employed to do this. *Held*, that the accident did not arise out of the employment.

In *Cronin v. Silver*, 4 B. W. C. C. 221, a woman employed solely to work on one machine scratched her hand on another machine. *It was not explained how she came to be at the other machine.* *Held*, that the County Judge *was not justified in inferring* that the accident arose out of the employment.

In the present case it is proved why petitioner was at the place where the injury occurred.

It was for her own purposes.

In *Reed v. Great Western Ry. Co.*, (1909) 99 L. T. 781, the petitioner, an engine driver, left his engine and crossed a siding for the purpose of receiving a book from a friend. This was unconnected with his duty. On returning, he was knocked down and killed. The Lord Chancellor, (Lord Loreburn), discussing the case in the House of Lords, says:

“Here this man was where he was not entitled to be, *and was not working, but pleasing himself.*

“It is not that he violated a rule, but that the accident did not arise out of or take place

in the course of the employment at all. It took place while for the moment he quitted his employment."

Lord Macnaghten, concurring, said:

"Here the evidence shows that it was for a purpose of his own, and not for the execution of his duty or in the interest of his employers that the injured man exposed himself to the risk which caused his death." 10

Judge Ruegg, discussing this case in his "Employers Liability and Workmen's Compensation," at p. 353, says:

"The principle is, that where the workman *is doing an act entirely for his own purposes*, and in no way, either directly or indirectly in the interest of his employer, then, however harmless such an act may be, he loses the protection of the act whilst he is so engaged". 20

On page 354, the author, discussing the language used by the Lord Chancellor, says:

"These words 'while for the moment he quitted his employment' indicate how fine the line of division is. A workman may be without the protection of the statute one moment and within it the next, and this may occur during a time in which the general duties of the employment continue." 30

In the *Reed* case, as well as the case at bar, that which induced the employe to go to the place where the injury was received, occurred in connection with and during the period of the employment; but that is not sufficient to change a purely personal matter to one arising out of the employment within the meaning of the act.

In *Armitage v. L. & Y. Ry. Co.*, (1902) 2 K. B. 40

178, decided by the Court of Appeals, one boy pushed another into a pit. The latter becoming angry, threw a piece of iron at the former. It missed the one at whom it was thrown and hit claimant, who was working nearby.

It was urged that it was common experience that boys would engage in "larking," and hence, that the accident arose out of and in the course of the employment.

10 Collins, M. R., says:

"The accident in this case no doubt, happened while the respondent was engaged in his employment, through the act of some one who was engaged in the same employment, but that act was one which had no relation whatever to the employment. . . .

20 "It was as entirely outside the scope of the employment of the one who did the act which caused the injury, as it was outside the scope of the employment of the other to be exposed to the injury."

Mathew, L. J., said:

"Can it be said that the accident arose out of the employment? I think not. It was from an act entirely outside the scope of the employment both of the boy who inflicted the injury and the boy who sustained it."

30

In *Anderson v. Balfour*, (1910) 2 Irish Reports, K. B. Div. 497, a gamekeeper was attacked by poachers and injured. The trial court denied compensation. On appeal compensation was awarded. The Court said:

"We have a personal injury case; it was caused while he was employed and because he was employed in the duty he was bound to perform."

40

Thus, the recovery was placed squarely on the ground that at the time of the injury the claimant was performing his duty to his master.

In *Craske v. Wigan*, (1909) 2 K. B. 635, a lady's maid was sewing by an electric light. A cockchafer flew in at the open window. The maid threw up her hand to prevent the cockchafer from striking her face, and accidentally struck her eye, destroying the sight. The trial court denied compensation and on an appeal, the Court of Appeal 10 affirmed the decision.

Cozens-Hardy, M. R., after reciting the facts, said:

"In that state of things, is it possible for
 "us to say that this was an accident arising
 "not merely 'in the course of it' but 'out of'
 "the employment? It seems to me that that
 "was a risk in no way incident to the employ-
 "ment of a lady's maid. I think it would be
 "dangerous to depart from that which, so far 20
 "as I am aware, has been the universal rule
 "of the Court of Appeal since these acts
 "came into operation, namely, to hold that it
 "is not enough for the applicant to say 'the
 "accident would not have happened if I had
 "not been engaged in that employment or if
 "I had not been in a particular place.' He
 "must go further and must say 'The acci-
 "dent arose because of *something I was doing* 30
 "*in the course of my employment, or because*
 "*I was exposed by the nature of my employ-*
 "*ment to some peculiar danger.'* Unless
 "something of that kind is established the
 "applicant must fail, because the accident is
 "not one arising out of and in the course of
 "the employment."

In *Peel v. Lawrence & Sons, Ltd.*, *Gordon's Workmen's Compensation Reports*, (1912) Vol- 40

ume 1, 141, it appears that it was usual for men who were employed in defendant's mills to remove their socks for their own convenience, before commencing work, as this made it easier for them to move around the slippery floors; but it was not essential for them to do so, and no instructions on the point had ever been given by the employer. In removing his socks a few minutes prior to commencing work, claimant injured
 10 his hand, temporarily incapacitating him from work. The trial court refused to award compensation. On appeal the court of appeal affirmed the judgment of the trial court, on the ground that the accident was not due or referable to any peculiar risk connected with the employment. Cozens-Hardy, M. R., said:

20 "It has been said again and again that there must be something to show that there was a special and peculiar risk beyond that which ordinary mortals are exposed to in the employment in which the accident arises."

In *Smith v. L. & Y. Ry. Co.*, (1899), 68 L. J. Q. B., 51, petitioner was employed as a ticket collector at one of defendant's stations. During the hours when he was on duty, and immediately after he had been collecting tickets, he got on to the foot board of the car to speak to a passenger for
 30 his own purposes. The train started and he was thrown off and killed. The County Judge found that he was not neglecting his duty for purposes of his own, and held that the accident arose out of and in the course of the employment. On appeal, this decision was reversed and the Appellate Court said:

40 "Upon the finding of the County Court Judge that the deceased did not get on the foot board for any object of the defendants, but only for his own pleasure, I cannot say

that the accident arose out of his employment, for in my judgment it did not."

In *Pope v. Hills Plymouth Co.* (House of Lords, 1911) reported in *Gordon's Workmen's Compensation Reports*, Volume 1, 1912, p. 15, a workman on his way home across the Employer's property, was using a route he was allowed to use, but tried to get into a moving tram and was killed in the attempt. There was a regulation 10 that no one except those in charge of a train should, without special leave, ride in it when moving. The Court of Appeal decided that the accident did not arise out of the employment. In the House of Lords, the Lord Chancellor (Earl Loreburn) says:

"The risk which the unfortunate man ran which ended fatally for him, was not a risk belonging to or connected *with what he had to do in fulfilling his service*; which is the same 20 thing as saying that it was not incidental to his employment. It is really not a question of misconduct at all; it is simply a case in which what happened did not arise out of this man's employment at all."

In *Revie v. Cumming*, (1911) 48 Sc. L. R. 831, the claimant was employed to attend to a brake in the rear of a moving vehicle. He left the place where he should have been and went forward to sit with the driver in front. When the time came for him to put on the brake, the driver directed him to do so, and he went back for that purpose. In getting off the front of the vehicle he fell and was run over. *Held*, that he had put himself in circumstances not incidental to the duty he was to perform, and so what happened did not arise out of his employment. 30

In *Armitage v. L. & Y. Ry. Co.* (1902) 2 K. B. 40

178, the Court of Appeals defined the words "out of" to mean accidents "arising from such causes as the negligence of fellow workmen, in the course of employment, or some natural cause incidental to the character of the business."

This language is approved by the same court in *Fitzgerald v. Clarke & Son*, (1908) 2 K. B. 796.

10

II.

The accident did not arise "in the course of the employment".

In order to charge liability upon defendants, it must be made to appear that the accident complained of not only arose "out of", but also that it arose "in the course of" the employment.

20 Some danger incident to the employe's work must be linked to the accident as a cause, and he must have been engaged in doing something connected with the employment, *i. e.*, the work assigned to him, when the accident occurred. The time, place and circumstances of the accident must all be inseparately connected with the employment.

The employe's business and duty is to labor to further the interests of the employer, and to perform the work assigned him. It is only when he is engaged in so doing that he is acting in the course of his employment.

30

If the employe ceases to do the work of the employer, if he does something solely for his own benefit, he is no longer engaged in the course of his employment.

In order to be acting within the course of his employment, the employe's act must be *within the scope of his duty to his employer*, and intended to accomplish the work assigned him, or it must at

40

least tend to maintain or promote the efficiency of the employe, and his fitness to perform his work, or tend to bring him into proper relations to his work.

The act in which the petitioner was engaged when injured and which was the immediate cause of her injury had no tendency whatever to further the interests of her employers, or to promote the petitioner's efficiency, or to bring her into proper relations to her work. On the contrary, 10
the tendency and purpose of the act was the accomplishment of her own objects, and this was at the expense of her employers. She was taking the time of her employers to do something entirely personal to herself, and solely for her own benefit. She was doing what she thought desirable to fit herself to go upon the street in the time which belonged to the appellants, *in order that she might have more time to herself.*

They wanted to go outside as soon as the machines stopped. They did not want to go on the street with wool in their hair (Findings of Fact, p. 84, line 20). 20

For injuries sustained under such circumstances, no recovery can be had.

If this Court adopts the rule laid down by Lord Loreburn in *Moore vs. Manchester Liners*, (1910) 79 L. J. K. B., that

"An accident befalls a man 'in the course of his employment', if it occurs while he is doing what a man so employed may reasonably do within the time during which he is employed, at a place where he may reasonably be during that time," 30

still appellee cannot recover, for neither the act nor the place or time of the act were reasonable, in view of his employment.

In *Brice v. Edward Lloyd*, (1909) 2 K. B. 804, 40

2 B. W. C. C. 26, a workman for sake of warmth seated himself on a tank in a pump room while eating his supper. The employer provided a dining room for his workmen, but they were not bound to take their meals there. In getting off the tank he was hurt. The workmen were not expressly prohibited from going on to the tank, but if found there they would have been discharged. *Held*, that the accident did not arise out of and in the course of the employment.

10

In *Watson v. Sherwood*, 2 B. W. C. C. 462, a club servant left the club for purposes of his own, returning about midnight. He was injured while climbing through a window. *Held*, that the accident did not arise out of and in the course of the employment.

20

In *Hewett v. Duchess, &c.*, (1910) 102 L. T. 204, 79 L. J. K. B. 867, the captain of a vessel went ashore for his own purposes. Returning to the pier, he hailed his ship for a boat. Before the boat arrived he fell from the pier. *Held*, that the accident did not arise out of and in the course of his employment.

30

In *Thompson v. Flemington Coal Co.*, 48 Scotch L. R. 740, 4 B. W. C. C. 406, the employee went for toilet purposes into a confined space beneath an engine table and was injured by stepping into a cistern of hot water. The employer provided a proper place for the workmen. *Held*, that the accident did not arise out of and in the course of the employment.

In *Whitehead v. Reader*, (1901) 2 K. B. 48, the court said:

40

“If the servant acting in the sphere of his employment violates the order of his master, the latter is responsible. It is, however, obvious that a workman cannot travel outside of the sphere of his employment *without the order of his employer so to do*, and if he does

travel out of the sphere of his employment, without such order, his acts do not make the master liable under the Compensation Act of 1897."

In *Williams v. Wigan, C. & T. Co.*, 3 B. W. C. C. 65, a stoker on a locomotive engine received by mistake the wages of another man. He left his engine and went over to an engine on which the other man was working in order to give him his wages. The latter engine was traveling about five miles an hour. The brakeman attempted to board the engine by grabbing the rails on the side of the doorway, missed the step and was injured. *Held*, that the attempt to board the engine while in motion, was obviously dangerous and *wholly unnecessary* and that the accident did not arise out of and in the course of the employment. 10

So in this case, appellee's act was obviously dangerous and wholly unnecessary, and the accident to her cannot be said to have arisen out of or in the course of her employment. 20

In *Losh v. Evans Company*, 5 W. C. C. 17, a girl 17 years of age left her work and as she supposed, in the interests of her employer, attempted to start an engine which was in charge of another person who was absent. In so doing, she was hurt. *Held*, not an injury arising out of and in the course of the employment.

In *Kane v. Merry & Cunningham*, 48 Scotch L. R. 430; 4 B. W. C. C. 379, the employee was injured while riding on a hutch to his place of work. Workmen were forbidden to do this, and petitioner knew of this rule. *Held*, that the accident did not arise out of the employment. 30

In *Jenkinson v. Harrison, Ainslie & Co.*, 4 B. W. C. C. 194, the workman dusted a switchboard. This was no part of his duty and he had been forbidden to do it. In doing so he was injured. 40

Held, that the accident did not arise out of or in the course of his employment.

In *Lowe v. Pierson*, 79 L. T. 654, a boy had been told not to touch a certain machine. In an idle moment he attempted to clean it and was hurt. *Held*, that the accident did not arise out of the employment.

Usually the time going to and from the place of work is not a part of the employment.

10

“As a general rule a man’s employment does not begin until he has reached the place where he has to work or the scene of his duty, and it does not continue after he has left. The periods of coming and returning are generally excluded. *Benson v. L. & Y. R. R.*, (1904) 1 K. B. 242; 5 W. C. C. 20; *Jackson v. General Steam Fishing Co.*, A. C. 523; 2 B. W. C. C. 56.”

20

In *Whitebread v. Arnold*, 99 L. T. 103; 1 B. W. C. 317, petitioner was on his way to the place where he was employed in a wagon furnished by the employer and when at a distance of 40 yards from the cottage he was to occupy, he was suddenly jerked and thrown from the wagon and fatally injured. *Held*, that the injury did not arise out of and in the course of the employment.

In *Kelly v. Owners, &c.*, 3 B. W. C. C. 113, the 30 court said:

“We have pointed out not once or twice, but often, that save in certain exceptional circumstances, the Act does not extend to protect a workman when on the way from his home to his employment.”

In *Everitt v. Eastaff & Co.*, *Gordon’s Workmen’s Compensation Reports* (1913) p. 164, the driver of a cart went out of his direct route by a longer way, and stopped at a public house *en*
40 *route*. On remounting his cart, after leaving the

public house, the horse ran away, and the driver was injured. Held, that by reason of his deviation from the direct route, the accident did not arise out of and in the course of his employment. Cozens-Hardy, M. R. said:

“It is against the principle of the Workmen’s Compensation Act to say that a man is within its protection when he goes to a place to which he is neither authorized nor instructed to go. 10

I think the deceased man stopped at the Fox Inn for his own purposes, and not in the interests of his employer, and that the accident did not arise out of and in the course of his employment.”

In *M’Diarmid v. Ogilvy Bros.*, (1913) 2 S. L. T. 133, also reported in Gordon’s Compensation Reports, 1913, p. 537, it was the duty of the petitioner to assist in cleaning the machine on which he worked, but only when, on certain days, the machine was stopped for that purpose. He undertook to clean the machine while in operation and was injured. There was a notice on the machine to the effect that cleaning it while in motion was strictly prohibited. The court said: 20

“I do not think that the disregard of these prohibitions would have taken away the liability if it had existed. It has often been held that mere disobedience is not enough. 30 The point is, was the workman within the scope of his employment?”

Held, that he was not within the scope of his employment, and was not entitled to compensation. In this case, Lord Johnston says:

“By his own unauthorized act he created a risk which was not incidental to his employment.” 40

In *Haley v. United Collieries Ltd.* (1907) 44 S. L. R. 193. The workman left his work by an unauthorized route for the purpose of taking a short cut home. Held that the accident did not arise out of and in the course of the employment.

Under the heading "coming to and going from work", Ruegg's *Employers Liability & Workmen's Compensation*, 8th Ed., p. 377, the author says:

10 "It is believed that it will not be sufficient for a workman to prove that he was engaged in some work or duty necessarily preliminary to or consequent upon the duties owed to his employer, at all events, where the choice of time and method is in his own hands, *e.g.* which is generally a preliminary to entering on work, that the workman has to travel to the place where the work is to be done.

20 "In one sense it may be said to be a part of his duty to get to such place, but if his method of travelling is not controlled by the employer, if he is a free agent, it is thought this qualified duty is not sufficient to raise, at the time, the relation of employer and workman."

In *Davis v. Rhymney Iron Co.*, 16 T. L. R. 329, the employer operated trains at the beginning and
 30 close of the day for the purpose of conveying men who chose to ride in them. While alighting from one of these trains near his home, three quarters of a mile from the pit, applicant was injured. The county Judge found that it was no part of the terms of the employment that the men should be conveyed to and from the work; that the running of the trains was a pure matter of grace on the part of the employer, and that the men used them when they chose for their own
 40 convenience, and with no obligation to do so. The

trial court refused compensation and the Court of Appeal sustained his conclusion.

In *Cremins v. Guest*, 7 B. W. C. C. 160, the test as to whether the accident arose out of and in the course of the employment, was held to be whether the accident occurred while the relation of master and servant existed.

In *Evers v. Krouse*, 70 N. J. L., 653, the trial Judge charged that if an act which resulted in the injury complained of was done by a boy while in his father's service, "through negligence, through lack of ordinary care, or from a mischievous disposition," then both father and son would be responsible.

On writ of error the Court of Errors and Appeals said:

"The general rule as to the question of the master's liability for the wrongful acts of his servant is thus stated by Mr. Justice Fort, speaking for this court in the case of *Holler v. Ross*, 39 Vroom, 324: 'The servant cannot bind the master to respond in damages to the plaintiff unless it be shown that the act which the servant did, which caused the injury, was an act which was expressly, or by necessary implication, *within the line of his duty under his employment*. * * * For a wilful act done by a servant, not within the scope of his employment, no liability attaches to the master.' "

The judgment was therefore reversed.

There is no possible theory upon which the act of the petitioner, which caused the accident, can be said to be within the scope of her employment as defined in *Evers v. Krouse*. It was in no sense either expressly or by necessary implication within the line of her duty under her employment.

The petitioner attempts to bring her case with-

in the provisions of the statute upon the theory that the employees were accustomed to go to the place where the accident happened, for the purpose of combing their hair, and that such custom was known to the appellants and was not forbidden by them. Even if this be true, it cannot change the character of appellee's act, or bring it within the scope of her employment.

- 10 In *Wemyss Coal Co. v. Symon*, (1912) 2 S. L. T. 127, also reported in Gordon's Workmen's Compensation Reports, Vol. 1, 1912, p. 336. The trial court found that applicant, a message clerk, was sent out to deliver a message and was furnished with money to pay his fare on a tram car. There was a stopping place for the tramway cars about 80 feet from the employer's office. A sign reading "Cars Stop Here" was posted at the stopping place. The cars did not always stop for passengers. Sometimes they only slowed down.
- 20 Claimant came to the stopping place, but seeing no car, he walked along the track a short distance, met the car as it slowed down and attempted to board it. In so doing, he was injured. The place of injury was just opposite the employer's office. The employer was aware that its employees were accustomed to get on and off these tramway cars at this point, and while the cars were in motion. They never prohibited or questioned the practice, and they never warned the applicant against it.
- 30 At the rate the car was travelling at the time of the accident, the operation was reasonably free from danger. For a long time it had been common practice of the employer's miners on leaving their work, as well as other of their employees, including the applicant, to board cars while in motion, and this practice had never been objected to by the employer or by the tramway company, or their servants. One of the employer's servants was stationed at the point of the accident, and had
- 40

been stationed there for many months prior to the accident. Neither he nor any other person ever suggested that applicant and other workmen were not entitled to board the cars at that point. The case was heard before Lord Justice Clerk, Lord Salversen and Lord Guthrie. *Held*, that the accident did not arise out of or in the course of the employment. Lord Justice Clerk says:

"He is doing knowingly what he has no need to do, and no right to do in order to fulfill his duty * * * *. Here what happens is no doubt an accident, but it is an accident, the action leading to which, was not reasonably incident to the employment. The boy had no cause to do what he did,—he was doing what his employment in no way required him to do * * * *. When the respondent left the stopping place, walked up the line and tried to board the moving car he was not acting on the business of his employer. The business of his employer in no way called upon him so to act. *His doing so in no way facilitated or promoted his employer's business. It could not do so.*"

In the above case the employer had knowledge of the custom of its employees to do the act which led to the injury, and acquiesced in that custom; but this was not sufficient to bring the injured employee within the protection of the statute. The same rule applied to the case at bar prevents the appellee from recovering compensation.

We insist that the failure of the defendants to absolutely prevent the employees doing an act which was solely for their own benefit, and which had no relation to their work, cannot impose liability for an injury arising out of such acts. Such failure cannot change the character of the act or bring it within the scope of the employment.

There is a wide difference between permitting employes to carry on the work of the employer in a way likely to result in injury, and failing to prohibit them from doing acts *for their own benefit and intended to accomplish their own purposes* in a way and at a time and place which may result in injury. In the latter case, the employees must look out for themselves.

10 The court found that there was a "sink room" but no particular dressing room on that floor. (Findings of Fact, p. 85, line 37.)

It is plain from the testimony that this room which the court speaks of as a "sink room" was used by many of the girls for combing their hair and there is no reason apparent why the petitioner could not have used this room. Had she used this room she would have been in a place of entire safety.

20 Agnes Kyack testifies that the girls went to this "sink room" to wash, and whoever wanted to could take their glasses in there to comb their hair (p. 66, line 1).

Annie Kobich says that maybe the American girls went there to comb their hair, but the Polish girls didn't (p. 68, line 18).

Clearly there was no reason why petitioner should not have gone to the "sink room" to comb her hair.

30 It is urged that the operatives combed their hair while the machines were running in order to save time, because only half an hour was allowed for lunch. This, however, cannot avail the petitioner because she was not intending to return to work that afternoon. (Findings of Fact, p. 83, line 30). She lived in the neighborhood of the State Prison while the factory is in Hamilton Township along the line of the Pennsylvania Railroad, some two or three miles from the place where petitioner lived. Thus, she could not, under
40 any circumstances, have gone home for lunch.

III.

It is respectfully urged that the Supreme Court, in affirming the findings and judgment of the Mercer Common Pleas, misconceived the facts of the case and misinterpreted and misapplied the law applicable thereto.

It may be true as observed by the Supreme Court, that "It would be entirely too narrow a construction to limit the benefit of the statute to the time the workman is actually employed at his machine." 10

We do not deem it necessary to inquire whether this is a correct construction of the statute or not, for it seems to have no application to the issues raised in this case. The judgment is not attacked *merely* because the injury happened at a distance from the place of work nor *solely* because the appellee was not at the time engaged in operating her machines. 20

It may also be true that "It is a necessary implication of the contract of employment that the workman shall come to his work and shall leave with reasonable speed when the work is over." This observation again has no application to the case at bar, because the appellee left her work before her work was over, and before the close of the working hour, and she was making preparation to leave the premises of the employer when she should have been at her work. 30

While "preparation reasonably necessary for leaving [the employer's premises] when the work is over" may be, as stated by the Court, "a part of the employment," yet in order to render it so, it must be made at a proper time and place. There is no basis in reason or in the provisions of the statute for holding that such preparation may 40

take place during the time when the employe's duty is to attend to his work, and at a place where such preparation is rendered dangerous because of running machinery.

The Supreme Court further said:

"A workman is none the less in the course of the employment because he is engaged in changing his street clothes for his working clothes, or in changing his working clothes for his street clothes."

10

We believe this statement to be entirely too broad and general.

Certainly, changing working clothes for street clothes, if in the course of the employment at all, can only be so when it takes place at a proper time, in a proper place, and under proper circumstances.

All of these conditions were absent in the case at bar.

Continuing, the Supreme Court says:

"In the present case it was reasonably necessary that the petitioner should comb her hair and remove the particles of wool before leaving the factory."

We think there is nothing in the evidence or the findings of fact to warrant this conclusion.

The evidence is very slight that there was any wool in appellee's hair at the time when she was injured. She testifies that she wanted to comb the wool from her hair; that "during the course of their work the wool got into *your* hair during that morning" (p. 39, line 20).

On page 45, at line 20, she testifies "I wanted to comb my hair, *fix my hair up and go back to the machine.*"

On this testimony, the trial judge found that she went to the place where she was injured "and removed her combs and hairpins for the purpose

40

of combing the wool from her hair" (p. 84, line 1). He also found "that petitioner combed her hair before leaving the factory because she did not wish to go upon the street with wool in her hair" (p. 84, line 20).

It is to be observed that there was no finding of fact that *there was* wool in the petitioner's hair; nor, if there was, is there any finding of fact to indicate how much; nor that there was sufficient wool in her hair to make it "reasonably necessary" that she should comb it out before leaving the factory. There is no finding of fact that it was "reasonably necessary" or proper for her to comb her hair before the close of the work hour and while all machines were running. *Nor is there any evidence upon which such a finding could properly be made.* 10

On the testimony and on the findings of fact, it is certainly just as permissible to draw the inference that it was not reasonably necessary for petitioner to comb her hair when and where she did, as to draw the inference that it was reasonably necessary. Under such circumstances, she has failed to bear the burden of proof, which is imposed upon her. 20

Pomfret v. L. & Y. Ry. Co., 72 L. J. K. B. 729;

Barnabas v. Bresham, 102 L. T. 621;

Reimers v. Proctor Pub. Co., 89 Atl. 931. 30

The Supreme Court admits that there was doubt as to whether the accident arose "out of the employment," and concedes that the employment "was not, indeed, the proximate cause of the accident." But it is alleged that the accident "was a cause in the sense that but for the employment, the accident would not have happened." We fail to find any adjudication holding this to be a sufficient ground to support a recovery.

In *Craske v. Wigan* (1909), 2 K. B. 635, Cozens- 40

Hardy, M. R., speaking for the Court of Appeal, says:

10 "I think it would be dangerous to depart from that which so far as I am aware, *has been the universal rule of the Court of Appeal* since these acts came into operation, namely, to hold that it is not enough for the applicant to say 'The accident would not have happened if I had not been engaged in that employment, or if I had not been in a particular place.' He must go further, and must say, 'The accident arose because of something I was doing in the course of my employment, or because I was exposed by the nature of my employment to some particular danger.' Unless something of that kind is established, the applicant must fail, because the accident is not one arising out of and in the course of the employment."

20

We find no English case in which the above rule has been departed from. Its application to the case at bar would prevent a recovery.

Again, the statement that "but for the employment the accident would not have happened" could have been made with equal truth with respect to every case cited in this brief. If that is to be made the test of liability, it is difficult to conceive a case in which liability would not

30 attach.

The case of *Gane v. Norton Hill Colliery Company* (1909), 2 K. B. 539, is cited in support of the conclusion reached by the Supreme Court. That case is easily distinguished from the present case. In that case, the petitioner's work for the day had closed, and he was leaving the employer's premises by the usual route.

Cozens-Hardy, M. R., speaking for the Court of Appeal, says:

40

"Now, what was the duty of this man? What was really the implied term of his employment? His duty was, when the day's work was over, without loitering and with all reasonable speed, to leave the colliery premises by the accustomed and permitted route. This is what he did. It was in the course of doing that that the accident happened."

Neither the facts of the *Gane* case nor the reasoning of the court, are applicable to the case at bar. In the *Gane* case petitioner was doing what he ought to do at a proper time, and in an accustomed place. In this case, the petitioner had departed from her duty to her employer, and was attempting to do something for her own benefit at an improper time and an improper place. The proper time for doing what she was then attempting was after the machines stopped, when it could have been done in entire safety, at any place in the room where her work was carried on. 10 20

On the testimony and on the findings of fact, it is clear that the accident did not arise out of or in the course of the employment.

The judgment of the Supreme Court should therefore be reversed.

Respectfully submitted,
VREDENBURGH, WALL & CAREY, 30
Attorneys for Appellees.

NEW JERSEY Court of Errors and Appeals

*In the matter of the injury sustained by Mary Terlecki,
an employee of Frederick A. Straus et al., partners
trading as F. A. Straus & Company.*

F. A. STRAUS & COMPANY, Plaintiff in Certiorari and Appellant,	}	On Certiorari.
vs.		
MARY TERLECKI, Defendant in Certiorari and Appellee.	}	

This is an appeal by F. A. Straus et al., plaintiff 10
in certiorari and appellants from the judgment of the
Supreme Court in favor of Mary Terlecki. The reasons
for which are expressed in an opinion by Justice Swayze
filed February 24, 1914 (Case, page 90).

Brief of Defendant.

STATEMENT OF CASE.

This is a proceeding brought by Mary Terlecki, peti-
tioner, against Ferdinand A. Straus and Lionel F.
Straus, partners trading as F. A. Straus and Com-
pany, respondents, under the provisions of Chapter 20

95 of the Laws of 1911, known as the "Workmen's Compensation Act" of 1911.

The petitioner Mary Terlecki was, on the fourteenth day of June, 1912, employed by the respondent Ferdinand A. Straus and Lionel F. Straus, partners trading as F. A. Straus and Company, at their mills in the township of Hamilton, Mercer county, New Jersey. She was employed as an operator of two machines known as "spindle gill boxes" and received a salary
 10 or weekly wage of five dollars and fifty cents.

On the day the petitioner received the injuries as herein set forth she left her machines at or about five or six minutes to twelve o'clock and went to the other side of the factory to look for the boss to tell him that she was not feeling well and would not return to work in the afternoon. Failing to find the boss she went to an "alleyway" formed by two rows of machines for the purpose of combing the wool from her hair that had lodged there while operating these machines. She
 20 removed her comb and hairpins and her hair came down over her head and shoulders, when in bending forward and in the act of combing her hair it was caught by a revolving shaft which was about eighteen inches above the floor and which was running at a very high rate of speed. The rapid revolution of this shaft pulled the petitioner to the floor and nearly the entire scalp was torn from her head.

The petitioner was picked up in a semi-conscious condition and was bleeding. Later she was taken to
 30 the hospital where she received treatment for her injuries for a period of about four months, when she was removed to her home, where she has continued to receive treatment down to the time of the hearing of this cause. Being treated for the injury to her scalp, for dizziness and nervousness due to shock due to the aforesaid injury.

Reasons for Reversal, Nos. 1 and 2, are as follows, and will be considered together:

No. 1. "Because said Judge of the Mercer County Court of Common Pleas erroneously found and determined that the injury sustained by the said Mary Terlecki was occasioned by an accident which arose out of her employment."

No. 2. "Because said Judge of the Mercer County Court of Common Pleas erroneously found and determined that the injury sustained by the said Mary Terlecki was occasioned by an accident which arose in the course of her employment." 10

No. 1 raises the question, "Did the accident 'arise out of her employment?'"

No. 2 raises the question, "Did the accident arise in the course of her employment?"

The two questions put together raise the question, "Did the injury sustained by the petitioner 'arise out of and in the course of her employment,' as contemplated by the act?"

"Arising out of and in the course of employment" 20 is defined in *Adshead Elliott's Workmen's Compensation Act, 6th Edition, page 18*, as follows:

"To come within the act, the injury by accident must arise both 'out of and in the course of the employment.' The meaning of the words 'which admit of inexhaustible varieties of application according to the nature of the employment and the character of the facts proved' (Lord Larburn in *Kitchenham v. Owners of S. S. Johannesburg*), was explained by Justice Buckley in *Fitzgerald v. Clark and Son* (1908), 2 K. B. 796, 30 where he said the words 'out of' point, I think, to the origin and cause of the accident, the words 'in the course of,' to the time, place and circumstances under which the accident takes place. The former words are descriptive of the character or quality of the accident. The latter words relate to the circumstances under which an accident of that character or quality takes place. The character or quality of the accident as con-

veyed by the words 'out of' involve, I think, the idea that the accident is in some sense due to the employment. It must be an accident resulting from a risk reasonably incidental to the employment."

The trial judge (Common Pleas Judge) found as a fact that—

"That the petitioner Mary Terlecki was, on the fourteenth day of June, 1912, employed by the respondents; that at the time mentioned the petitioner had charge of
 10 two machines know as 'spindle gill boxes'; that she had been employed on these machines for about four weeks; that on the morning of the day mentioned at about five minutes to twelve the petitioner left her machines and went to the other side of the factory to speak to the boss, not finding him she went to an 'alleyway' formed by two rows of machines to clean and comb her hair of small particles of wool which settled there during her work; that she removed her comb and hair pins and upon bending over her hair came
 20 down over her head and shoulders; that it was caught by a shaft, which was about eighteen inches above the floor. The rapid revolution of the shaft pulled the petitioner to the floor and her entire scalp with the exception of a circle of about an inch was torn from her head.

"Although there was some testimony that efforts were made to stop the practice of girls going to this 'alleyway' and dressing, it was admitted that there was no rule against it, and the testimony of the petitioner,
 30 and three or four other witnesses, establishes beyond a doubt that it was a daily custom for the girls before twelve o'clock to dress and comb their hair in this 'alleyway'; that the noon recess was limited to a half hour; that some of the girls went to their dinner and that it was a common practice to begin dressing and combing their hair just before noon in order to be ready to leave at twelve; that the superintendent and

overseer of the respondents knew of this custom and that no measures were taken to stop it; that one of the girls tacked a looking-glass on a post for the use of the girls and that there was no other dressing-room on this floor.

"I find that the practice was known to and not forbidden by the respondents. *Held*—that the accidents 'arose out of and in the course of the employment.'"

When a judgment of the Court of Common Pleas is removed to the Supreme Court by certiorari the Supreme Court accepts the findings of the Court of Common Pleas upon the facts, if there be any legal evidence to warrant them. 10

Bryant et al. v. Fissell, 86 Atl. Rep. 458.

Sexton v. Newark Tel. Co., 86 Atl. Rep. 451.

"Within the purview of the Employers' Liability Act, of April 4, 1911, an accident arises 'in the course of the employment' if it occurs while the employee is doing what a man so employed may reasonably do within a time during which he is employed and at a place where he may reasonably be at this time." 20

Bryant et al. v. Fissell, 86 Atl. Rep. 485.

"Within the purview of this act an accident 'arise out of' the employment where it is something the risk of which might have been contemplated by a reasonable person, when entering the employment, as incidental to it."

Ibid., 86 Atl. Rep. 459.

"A risk may be incidental to the employment when it is either an ordinary risk directly connected with the employment, or an extraordinary risk which is only indirectly connected with the employment owing to the special nature of the employment." 30

Ibid., 86 Atl. Rep. 459.

"It is now well settled that the word 'employment' in the act is not confined to actual work. It extends to all things which the workman is entitled by the contract of employment, expressed or implied to do, thus

he is entitled to pass to and from the premises and to take his meals on the premises, but he is not entitled and therefore is not employed to do things which are unreasonable or things which are expressly forbidden.

Price v. Edward Lloyd (1909), 2 K. B. 809;

Barnes v. Murray Colliery Co. (1910), 4 B.

43.

The witness William Foster, testified in part as follows:

10 Q. What is your business?

A. Superintendent of F. A. Straus & Co.

Q. And have been?

A. Eleven years.

Q. Are you in charge of the plant here?

A. Yes, sir.

Q. Is it against the rule of your company for the girls in this particular department to dress their hair when it becomes disarranged.

A. I have no recollection of ever giving any such
20 order.

Q. What I mean is, is it a rule by the company; has the company promulgated a rule against a thing of that kind?

A. They have not to my recollection.

Q. Mr. Foster, have you seen employees there, that is, girls, that would have wool or lint in their hair by which they would comb it before going to their lunch?

A. Yes.

Q. By reason of the wool and lint in their hair would
80 they take their hair down and get it out before going out?

A. Occasionally that occurs; yes, sir.

Q. The company never objected to that did they, Mr. Foster?

A. By no set rule; no, sir.

Q. Did you have any place for the girls to hang their clothes except in the room where the machines were?

A. No, sir.

Mary Terlecki, the petitioner, testified in part as follows:

Q. Did anything happen on this 14th day of June.

A. I left my machines and went on the other side of the factory to look for the boss, and to tell him that I wanted to go home in the afternoon, and the boss was not there. I went there to comb my hair like the rest of the girls who comb their hair before they go home?

Q. Where did she go?

A. There where the girls' dressing place is, where they dress and comb their hair. 10

Q. Where was that?

A. Near the machinery there.

Q. At the end of the room, in the middle of the room, or where?

A. In the middle of the room near the machinery.

Q. Near the end of the floor?

A. Why, it's toward the end.

Q. Why did she go down there to comb her hair?

A. Because that is the place where all the girls comb their hair, and we all go there to comb our hair. 20

Q. What time was it when she got there?

A. I am not sure, may be five or six minutes before twelve.

Q. Did anything happen to her while there?

A. I wanted to comb the wool from my hair, and I bent myself down and my hair was down and there is where my hair caught.

Q. What wool did she want to comb from her hair?

A. The wool from the material we manufacture there. 30

Q. And had she got that into her hair during the course of her work that morning?

A. Yes, during the course of their work, why the wool got into her hair.

Q. Yes, during that morning?

A. Yes.

Q. Now, then, how long had she been working there on this 14th day of June?

A. About one and a half years, I worked night and day there at times.

Q. Yes; was it or was it not a custom there, permitted by the foreman of that shop or by any one else in authority there for girls to remove this wool or lint from their hair before going home?

A. They had never stopped that. They had never told us not to do it and all the girls did it and so did I.

Q. Did all the other girls there do it?

10 *A.* All the girls would not go at once to comb their hair, but they used to go whenever they got through their work.

Q. How many times before June 14th, had she gone there and combed lint or wool out of her hair?

A. After we got through our work I went over there to comb my hair.

Q. How often? Every day, every week, how often?

A. Not every day.

Q. Well, how often?

20 *A.* As often as mine hair used to get full of wool. At times I didn't get much wool, so I didn't have to go to comb it and whenever I used to get wool I combed my hair.

Q. Did she do that as often as twice a week.

A. I can't tell how often, but whenever my hair used to get dirty with wool I used to go over there and comb it.

Q. Can she give me any idea of the number of times on an average that she did this?

30 *A.* I can't exactly tell you, but I think about three times a week.

Q. And why did she go at this particular place?

A. Because that was the place where all of those used to go and comb their hair.

Q. Did any one there ever forbid her going there and combing her hair?

A. No, they never did; but at the present time I understand that there are rules not to go there.

Q. Now, what happened to her there?

A. My hair caught and it pulled me down and the space was opened and I got hurt.

Witness Agnes Kyack testified in part as follows:

Q. Did you ever see any of the girls go there to comb their hair?

A. All the girls comb their hair in that place and in most any place.

Q. And have been for how long?

A. All the time. Whenever the girls had time to spare, when the machine was in good operation then she could go and comb her hair; I have seen other girls comb their hair in that place. 10

Q. Where Mary was hurt?

A. Yes.

Q. Did you see them take their clothes there?

A. Yes, because there is the place to hang the clothes on.

Cross-examination.

20

Q. You say they went there at any time to comb their hair?

A. Not all the time, but during noon hour or towards the evening, and whenever they had time to do it.

Q. That is they went there and comb their hair just before they went out at the noon hour.

A. They went there before they left the place, and the machines were in operation at the time they went to comb their hair.

Q. You mean to say they would go there before the machines would stop? 30

A. Well, I told you that the machines were in operation there when they went to comb their hair.

Q. Then they would go there before the machine stopped at noon, would they?

A. As a rule, sometimes they used to go about five minutes before twelve to fix up their hair.

Q. That was when they were going out in the street?

A. Yes.

Q. And they went there during the noon hour and combed their hair, didn't they?

A. They used to go there before they went for the noon hour and before they left for home.

Q. And at night, before the machine stopped, they would go and fix their hair, wouldn't they?

A. When the machines stopped they never combed their hair, they went home, but they used to comb their hair before the machine stopped.

10 *Q.* And they combed their hair because there was wool and things of that kind in the hair?

A. Yes; because there used to be lots of wool in their hair, and they couldn't walk in the street that way.

Q. And didn't want to go on the street in that condition?

A. Because their hair was not clean.

Q. Didn't the boss tell them not to do that before the machine stopped for the noon hour and before they stopped at night?

20 *A.* Boss never told me anything; I don't know.

Q. Did you do it?

A. Yes; I worked there, and I combed my hair before twelve and before the machines stopped.

Q. How many girls combed their hair there at this place in one day?

A. I don't know exactly how many. Five, six or seven, because there were little looking glasses around, and, therefore, they used to keep them.

30 The witness Annie Kobic testified as follows:

Q. Do the girls go there to comb their hair?

A. Yes, they all go there to comb their hair, and I myself also went to comb my hair.

Q. There where Mary was hurt?

A. Yes.

Q. Did they hang their clothes there?

A. Yes. Altogether about seven girls used to hang up their clothes.

Q. Had she ever seen Mary comb her hair there before?

A. I did see her there before; I didn't see her there that day.

Q. How often?

A. Pretty nearly every day she used to comb her hair there.

Q. And the five other girls?

A. We all used to comb our hair there.

Q. Did or did not anyone ever tell them not to comb their hair there?

A. Nobody told us not to go there and comb our hair. **10**

Q. Has she seen girls go there before and after the noon hour?

A. Didn't see any after dinner, but I used to see them before dinner hour and towards the evening.

Q. What would take them before the noon hour, if she knew; why didn't they wait until twelve o'clock?

A. We used to go there about five or six minutes before twelve.

Q. Now, why was that done; why didn't they wait until twelve o'clock? **20**

A. The machines were in operation, and when the machines were in operation good, that was the time we went to comb our hair; we didn't wait until the machines would stop.

Cross-examination.

Q. Do you know where the sink is?

A. Yes; I know the sink is not near the machines.

Q. It is in a separate room, isn't it?

A. Yes; it is necessary to go on the other side to go to the sink. **80**

Q. And the girls used to go there to comb their hair also, didn't they?

A. No, they didn't comb their hair there. Maybe the American girls went there, but we Polish girls didn't go there.

The witness Lizzie Quick testified as follows:

Q. Did you ever see any of the girls go to this place, where Mary was hurt, for the purpose of combing their hair?

A. I would see the girls go there, and I went there myself to comb my hair.

Q. How many different girls did you see go there?

A. Why, quite a good many, whoever wanted to dress and comb their hair there.

10 *Q.* At what time of day would they go there?

A. Five or six or ten minutes to twelve.

Q. Now, did anyone tell you or did you hear any person tell any other girls that you saw there not to go there and comb their hair?

A. No, sir; they didn't.

The witness Lizzie Quick testified as follows:

Q. Where Mary was at this time where she was hurt, did you ever see any girls go there at that place to
20 comb their hair?

A. I saw some girls go there and comb their hair.

Q. How many girls?

A. When the machinery was in operation most of the girls went there to comb their hair.

Q. Yes; at what hour or hours?

A. Before the noon hour.

Q. Has anybody ever told them not to go there?

A. No, sir; nobody did.

The witness James J. Green, called by the respondents, on cross-examination testified as follows:
30

Q. You say you know of no custom that the girls did go at this place and comb their hair?

A. No, sir.

Q. Well, you don't know that they didn't, do you?

By the Court—He has stated that he rarely went there and that his business was in the office and shipping department.

Q. How often did you go to that floor?

A. Sometimes I might want to look Mr. Foster up and ask him a question and for days at a time I wouldn't be there.

Q. You wouldn't say that Agnes Kyack never went there and combed her hair and Annie Kobich, and you won't say that Annie Machusky never went there to comb her hair, would you, and Annie Quick?

A. No.

The witness Alpha Clay, called by the respondents, testified on cross-examination as follows:

10

Q. What was your position?

A. Overseer of the Drawing Department.

Q. Is that the room in which the petitioner was hurt?

A. Yes, sir.

Q. You say you saw the girls go there and comb their hair, is that true Mr. Clay?

A. Sir?

Q. Question repeated.

A. I have seen them comb their hair.

Q. Now, you didn't object to that, did you? What 20
you cared more about was the fact of them leaving their machines?

A. I told them about that, yes.

Q. That is what you cared about more than anything else?

A. I seen them around there and sent them away.

Q. What you objected to was the girls leaving their machines while they were running?

A. Yes.

Q. You didn't object to them combing their hair 30
there?

A. No.

The Court—Was it a practice for all to go there about five or ten minutes before the evening and noon closing hour, and begin combing their hair before the machines stopped?

A. They go around there and comb their hair.

Q. Did you send them back at those times?

A. Sometimes I would and sometimes I wouldn't. Sometimes I was busy.

Q. Then they would comb their hair and be ready to leave?

A. They would comb their hair and go back until the machines stopped.

Q. Did they always go to the same place or different places?

A. A few in the same place and a few in other
10 places.

“A collier, his day's work being over, started to go home by way which led over certain parts of the colliery premises and across some lines which were under the control of the respondents. This was his usual way home, although there were others, and it was found it was so used by him and others with the knowledge of the respondents. On the day in question, in order to cross the line, he got under some trucks and while he
20 was so doing, the trucks were moved and some of them went over his legs, crushing them, necessitating their amputation. It was held, reversing the County Court Judge, that the accident arose out of and in the course of his employment. It is well settled, said Farrell, L. J., that the employment is not confined to the actual working, whether in a pit or any other trade, in which the workman may be engaged. He is employed not only to work in the pit, but also to do other things that he is entitled to do by virtue of his contract of employment;
30 for example, he is entitled to do, and therefore employed to do such acts as coming on the employer's premises, passing and repassing for all legitimate purposes connected with his work on the premises, such as going to the pit's mouth, going to get his wages, going to make proper inquiry from proper officers, or taking a train which he is entitled to do by virtue of his contract of service. All these things he is entitled to do by virtue of his contract, he is for the purpose of the act employed to do and they are therefore within his con-

tract of employment. I would qualify this by saying that he must make the reasonable use of the facilities and rights which are given to him in this way."

Gane v. Norton Hill Colliery Co. (1909), 2 K. B. 539.

"A boy employed upon a machine in an upper story of a boot factory was told by an overseer to take an imperfect moulded in-sole down stairs and have it remoulded. As the operator in charge of the moulding machine was temporarily absent, the boy attempted to remould the sole himself and was injured, although there was a rule forbidding machinists to change from one machine to another, the boy had not been expressly forbidden to touch the moulding machine. It was held, reversing the County Court Judge, that the accident arose out of and in the course of his employment."

Tobin v. Hearn (1910), 2 Ir. R. 639.

In view of the work in which the petitioner was engaged and the conditions attending it, could it be said that her act was unreasonable or expressly forbidden. 20

"A woman, part of whose duty it was to clean a certain section of her machinery, in a factory, finding that the guard protecting the pulleys, which it was no part of her duty to clean, had to be removed, proceeded to clean one of the pulleys, and while so doing the machinery started and she was injured. *Held*, that the accident arose out of and in the course of it."

Greer v. Lindsay Thompson, Ltd., W. C. Rep. 272.

"EMPLOYMENT IS NOT CONFINED TO ACTUAL WORK, 30
OR WORKING HOURS.

"It was *Held* that during the dinner hour there had been no break in the employment, and that the accident, therefore, arose out of and in the course of the employment."

Keenan v. Flemington Coal Co., 40 S. L. R. 144, 5 F., 164.

"A workman who was paid by the hour for the number of hours per week that he worked, not including the dinner hour, met with an accident during that hour while eating his dinner on the premises, which he was at liberty to do, although he was at equal liberty to go elsewhere. *Held*, that the accident to him arose out of and in the course of his employment."

Bluvett v. Sawyer, 1 K. B. 271.

10 *Earnshaw v. Lankashire & Yorkshire Co., Ltd.*, quoted in *Minton & Senhouse*, 5th Ed., 28.

"WHEN EMPLOYMENT BEGINS AND CEASES,"

"In this case it was *Held*, to be a question of fact up to what point as between the workman and employer when the employment ceased."

Gane v. Norton Hill Colliery Co., 2 K. B. 539 (1909).

Elwald v. Chicago & Northwestern R. R. Co., N. West. R., volume 36, page 12.

Holness v. Mackay, 2 Q. B. 319.

Leach v. Oakley, 1 K. B. 523.

20 *Thorpe v. Johnson & Co.*, 74 L. J. K. B. 566 (1905).

Pomfret v. Lankashire & Yorkshire R. R. Co., 2 K. B. 718.

In the case of *Pomfret v. Lankashire & Yorkshire R. R. Co.*, it was *Held*:

80 "A fireman on a railroad was permitted to ride on trains of company at the end of his run back to his start-off. In some way he was injured. *Held*, that he was hurt within the meaning of the act. That the accident arose out of and in the course of his employment."

In *Leach v. Oakley* it was *Held*:

"A sailor had leave of absence to go ashore; on returning, while walking the gang plank to reach the ship, was drowned. Was *Held* to be an accident that arose out of and in the course of his employment."

In *Holness v. Mackay & Davis* it was *Held*:

"But if the accident occurs to a workman on the premises which belongs to and are under the control of the employer, and which he is lawfully using for the purpose of getting to and from his work, it may arise out of and in the course of his employment, even though he had not commenced to work or had finished."

The Court suggested, "If a man employed in a large quarry were killed while going to his work in a particular portion of it, or if a man while going to his work on the upper floor of a large factory were killed on a lower floor, such an accident would arise out of and in the course of the employment." 10

In *Sharp v. Johnson & Company*, cited in digest of cases under Workmen's Compensation Act, page 17, No. 73:

"It was *Held*, an accident occurring twenty minutes before time for actual commencement of work. A workman in accordance with his usual practice arrived at his employer's premises about twenty minutes before time for actually beginning work, the train by which he traveled each morning—the only practical one taking him thus early to his destination. In giving up his time ticket immediately after arrival to a night watchman, who said he would deposit it for him at the proper place, the workman sustained injuries by falling into a hole. To the knowledge of the foreman a number of workmen arrived equally early and spent the time, to the moment for beginning work, in a mess cabin on the premises, which was provided by the employer. *Held*, that the accident arose out of and in the course of the workman's employment, within the meaning of the Workmen's Compensation Act." 20 30

"In this case the employee went to relieve nature and was injured, it was *Held*, that the accident arose out of and in the course of his employment."

Lawless v. Wigan C. & I. Co., Ltd. (1908),
124 L. T. Jour. 532.

Elliott v. Rex, 116 L. T. Jour. 314.

"Employee was eating his dinner at a place where he had a right to be, was bitten by a cat, blood poison set in, *Held*, employer was liable."

Rowland v. Wright (1908), 24 T. L. R. 852.

"Where a stone dropped on the head of an engine driver while in the performance of his duty, *Held*, to arise out of and in the course of his employment."

Challis v. London, etc., 2 K. B. 154 (1905).

10 "The doing of a thing recklessly or negligently would not defeat a recovery under this act."

Barnes v. Murray Colliery Co., Ltd. (1910), 4 B. 43.

Whitehead v. Reeder, 2 K. B. 48.

"Where a servant in changing his clothes preparatory to going home at the time of the accident, it was *Held*, that the relation of master and servant existed between him and his employer."

Helmke v. Khilmany, 107 Wisconsin 216.

20 Reason for Reversal, No. 3—

"Because said judge of Mercer County Court of Common Pleas found and determined that the said Mary Terlecki is entitled to compensation to be paid to her by the plaintiff in certiorari."

Cannot stand, for reason set forth in answer to Reasons Nos. 1 and 2.

Reason for Reversal, No. 4—

30 "Because said judge of Mercer County Court of Common Pleas erroneously found and determined that the period of disability of the said Mary Terlecki will in all probability continue for a period of 300 weeks."

It will be found by reading the Statement of Fact that the court said, in connection with his finding:

"If the petitioner overcomes her disability before the end of the period named, counsel may apply for a review and modification of the order under paragraph 21."

This is provided for in, and such a finding is justified by, Employers' Liability Act, April 4th, 1911, page 12.

Mary Terlecki testified as follows:

Q. Going back to June 14th, 1912, the day of this accident, what was the condition of your health at that time?

A. Before the accident I was always well.

Q. Strong?

A. Before the accident I was strong and well.

Q. Able to do your general housework at home? 10

A. Yes, in the house and in the shop.

Q. Ever since the accident, what was the condition of your health?

A. I can't hardly do anything, my sister-in-law takes care of my house.

Q. Why can't you do anything?

A. Because the blood rushes to my head and I get dizzy.

Q. Yes; anything else?

A. And my head hurts. I feel, oh, so dizzy.

Q. Is the doctor still attending you?

A. I go to the doctor every day. 20

Testimony of Dr. Thomas H. MacKenzie—(direct):

Q. Now, doctor, tell us what you found.

A. I removed the dressing and found the cicatrix of the wound. I judge the wound, originally, must have been from six to seven inches laterally. It is covered anteposteriorly, but I think about two-thirds of that was cicatrized, and one-third remains still without being healed, that is, it has been skinned over all of that. About two-thirds of the wound is now cicatrized, is 30 now skinned over in a very superficial way, of course.

Q. Have you formed any idea what time it will require, assuming that there are no unfavorable set-backs?

A. Judging from the amount of cicatrization that has

taken place in nine months, if it cicatrized thirty-six square inches in nine months, then it has only twelve square inches more to cicatrize, that is, it ought to be completed, if it will cicatrize at the same rate as it has, in three months more it ought to be complete. I think it will be well in from three to six months because the last part of the wound takes longer than the first.

Q. Doctor, in your judgment, will there be a complete healing of the wounded portion of the head?

- 10 *A.* It will never be the same as if it were not taken off, but there will be a new skin tissue and it will be more susceptible to injury because it is not protected with hair or never will be.

Q. Doctor, did you observe the general condition of the patient?

A. Yes, I observed that she was suffering from the effects of a severe injury, such as I observed she had. I judged also that she was suffering from what I would call traumatic neurasthenia, a prostration of the nervous

- 20 system arising from injury. That was my diagnosis.

Q. You consider that permanent?

A. I do not consider that permanent; I think she will suffer more or less from that until the whole process is complete and may suffer more or less from it for some time afterwards, but I think after time goes on, she will be comparatively relieved from that condition.

Cross-examination.

Q. Can you say certainly that it will be healed within from three to six months?

- 30 *A.* No one on earth could say that.

Q. I say it may take from six to twelve months?

A. It is possible.

Q. And it may go on from one to two years?

A. Possibly it may never heal.

Dr. Seibert, called by petitioner, testified as follows:

I saw Mary Terlecki on June 14th, 1912, on an operating table. I examined her and found her scalp torn

off. The scalp was brought to me in a basin. The scalp was torn completely off, leaving no covering except the periosteum, a thin covering over the bone. The periosteum is torn off about four square inches on top and about one square inch down next to the forehead. I cleaned the hair off the scalp, fitted it back in place and stitched around the edges. The scalp was in two pieces and I stitched it to the healthy part. On the third day when I saw it, it started to decay. I found the blood supply destroyed and the scalp was not restored. I had to remove the decayed part. The petitioner was at the McKinley Hospital from June 14th, 1912, to October 13th, 1912. I attended every other day. She had dizzy spells. When her liver gets disordered there is a certain amount of congestion in the head that makes her dizzy and she is liable to fall. She cannot do any work stooping down. Her condition to-day is the same as October 15th. It has not improved. The growth has, but her general condition has not. As I have observed the case down to the present, in my opinion the injuries are of a permanent character. She will never have any hair on the top of her head and the scalp being torn away, there is no thick scalp to take up the blood and the blood goes into the brain and that will produce dizziness, and flushing of the face, and congestion of the head. She will be dizzy; if she stoops over the congestion will produce headaches. The loss of the scalp is a constant irritation and mental trouble to think that her hair is torn away.

Q. Do you know the character of the work she was doing at that time? 30

A. I do not.

Q. I will ask the witness this question: If she will ever be able to do any work involving stooping over or bending the body?

A. No, I say she will not.

Q. Why?

A. The scalp not being there will cause that congestion of the head when stooping over.

Q. You say she will never be able to do all kinds of housework?

A. Not in the way other women would do it. She would have to put herself out of the way and maybe not lift any furniture or do any lifting that would cause a strain and which would produce a congestion of the head.

Q. Or no bending over?

A. No, no bending over.

10 Q. That is of a permanent character?

A. Yes.

Q. Doctor, will you say why her condition from October 13th, 1912, to the present time has not improved?

A. The dizziness hasn't improved or the liability of congestion of the head hasn't improved since then.

Q. Is there any likelihood of that improving in the near future?

A. To the best of my knowledge and belief I would say it would not.

20 The Trial Judge found, as a matter of fact, that the period of disability of the said Mary Terlecki will, in all probability, continue for a period of three hundred weeks.

He was justified in so doing from the facts; the facts would warrant this conclusion.

When a judgment of the Court of Common Pleas is removed to the Supreme Court by certiorari the Supreme Court accepts the findings of the Court of Common Pleas upon the facts, if there be any legal evidence to warrant them.

30 *Bryant et al. v. Fissel*, 86 Atl. Rep. 458.

Sexton v. Newark Tel. Co., 86 Atl. Rep. 451.

If the period of disability does not continue for the period of three hundred weeks, have the right to apply for a modification of the order as provided by paragraph 2, section 21, page 12, of the Employers' Liability Act of 1911.

Reason for reversal No. 5—

“Because said judge of Mercer Court of Common Pleas erroneously directed judgment to be entered against the plaintiff in certiorari and in favor of Mary Terlecki, the defendant in certiorari, for the sum of five dollars (\$5) per week for a period of 300 weeks, together with one hundred dollars (\$100) for medical attendance, with her costs to be taxed.”

The only new question raised in this reason is the allowance of one hundred dollars for medical attendance, etc. **10**

Witness Foster:

Q. Had any medical or hospital service been rendered this girl within two weeks of this accident by your company?

Mr. Carey—In this case the defendant disclaims any liability under the Employers' Compensation Act, and for that reason no hospital or medical services were offered by the defendant to the petitioner.

Dr. Seibert:

Q. What were your charges for the first two weeks of this woman's illness? **20**

A. Why, one hundred and fifty dollars (\$150).

Q. How did you make up your charges of one hundred and fifty dollars for the first two weeks.

A. By the operations that I did.

“During the first two weeks after the injury the employer shall furnish reasonable medical and hospital service and medicines, as and when needed, not to exceed one hundred dollars (\$100), unless the employee refuses to allow them to be furnished them by the employer.” **30**

Workmen's Compensation Act, page 8, paragraph 14.

Reason for Reversal No. 6—

“Because said judge of Mercer Court of Common Pleas erroneously found that the practice of the employees of the plaintiff’s in certiorari to dress and comb their hair in the alleyway, mentioned in the finding, was known to and not forbidden by the plaintiffs in certiorari.”

- 10 The Court found, “although there was some testimony that efforts were made to stop the practice of the girls going to this alleyway and dressing, it was admitted there was no rule against it, and the testimony of the petitioner and three or four other witnesses established beyond a doubt that it was a daily practice for the girls before twelve o’clock to dress and comb their hair in this ‘alleyway.’”

See testimony of William Foster, Superintendent; Mary Terlecki, Agnes Kyack, Annie Kobick, Annie Machusky, Lizzie Quick, Alpha Clay.

See testimony.

20 Reason for Reversal No. 7—

“Because said judge of Mercer County Court of Common Pleas found that there was no particular dressing-room on the floor where the accident to Mary Terlecki, the defendant in certiorari, *occurred*.”

William Foster, superintendent:

Q. Did you have any particular dressing-room on this floor for girls?

A. No, sir.

- 30 Q. Did some of the girls hang their clothes where the accident occurred?

A. Yes, sir.

Q. Did you have any place for girls to hang their clothes except in the room where the machines were?

The judge was right in finding there was no particular dressing-room on the floor where the accident to Mary Terlecki occurred.

(See testimony.)

Reason for Reversal No. 8—

“Because judgment was entered in the Mercer County Court of Common Pleas against the plaintiffs in certiorari, whereas judgment should have been entered therein in favor of said plaintiffs in certiorari.”

The answer to Reason No. 8 is already answered.

JOHN H. KAFES AND A. S. BRENNAN,
Attorneys of Defendant in Certiorari.
MARTIN P. DEVLIN,
Of Counsel.

