New Jersey Court of Errors and Appeals

NICHOLAS SESSLER, *Petitioner-Respondent,* *vs.* WILLIAM PETER, trading as Lucas Peter & Son, *Respondent-Appellant.*	On Appeal from Supreme Court.

BRIEF FOR APPELLANT.

This appeal brings up the judgment of the Supreme Court affirming a judgment of the Essex Common Pleas.

Petitioner recovered judgment against appellant under the Workmen's Compensation Act for three hundred weeks' compensation at $9.90 per week, for total and temporary disability resulting from injuries he received in the course of his employment.

Statement of the Case.

Petitioner, 60 years of age, was injured May 28th, 1914. He was a carpenter assisting defendant and some workmen hoist yellow pine beams 20 x 12 x 3 from the ground floor to the roof of a building. One of the beams in being hoisted by means of a rope or chain, slipped from its swing and fell. It struck petitioner a glancing blow on the forehead, knocking him over backwards. He struck the platform on his back and the back of his head. As far as we can tell from

the evidence, it was a wooden platform on which he fell. The whole weight of the beam neither struck petitioner nor came upon him. The blow was so slight that there was not a bruise on him (p. 12, ll. 1-2).

Petitioner was removed to his home and was examined that day by his physician, Dr. Hollister, who thought it was a case of concussion of the brain and that petitioner would be better in the morning (p. 25).

The following day petitioner was not so well. Dr. Hollister visited him fourteen times within the first two weeks after the accident. On pages 27 and 28 Dr. Hollister gives a good report of his condition, which indicates that petitioner was sick all of the month following the accident, and began to walk around his room the latter part of July. Dr. Hollister ceased his visits the 25th day of November altogether, but he visited the petitioner once a week up to October 24th following the accident, when he ceased his visits (p. 28, l. 40). Dr. Hollister diagnosed petitioner's condition after the accident as traumatic meningitis, of which he was ill for the following month (p. 28).

The petitioner was paid compensation by his employer for about ten months (p. 24, l. 40).

The petitioner had become possessed with the idea that he could not work and from the time of the accident to the date of trial he made no effort whatsoever to work (p. 21, l. 8), although he was able to walk around as well as anyone two months after the accident (p. 21, l. 23). Dr. Hollister said in so many words that he did not know what was the matter with petitioner (p. 31, l. 12), but he said when pressed by the court that he *thought* the trouble was one of two things: (a) pachymeningitis or a thickening of the membranes of the brain from former inflammation—a traumatic meningitis shortly after he was hurt, or

(b) traumatic neurosis or traumatic hysteria, "which is just as real to him as though he had pachymeningitis, but with care and time he should recover from it" (p. 31).

Dr. Hollister said that when he examined him two days before the trial he could find no objective symptoms (p. 29).

Dr. Stout, for the defendant, testified that when he examined petitioner he found nothing abnormal, but that the petitioner *complained* of dizziness and weakness (p. 40, l. 25).

Dr. Hollister said he could not determine within what time the petitioner would recover (p. 31).

Dr. Stout testified that while it was *possible* that petitioner had pachymininingitis, he thought it not very probable (p. 43, l. 35), but that he thought he had traumatic neurasthenia, "coupled with it a state of hypochondriasis with delusion" (bottom p. 40 and top p. 41).

Dr. Stout said that in his opinion petitioner would recover in from three to six months from the date of the trial (p. 44 and top of p. 45).

There was no other testimony in the case upon which the Court might determine either the extent of the petitioner's disability or its duration, than that of the two physicians.

The questions involved are (1) whether the Court on a showing that at the time of trial a petitioner is temporarily incapacitated and the duration thereof is not certain, may award compensation for the maximum period of time, three hundred weeks; (2) whether the Court should not award compensation for a reasonable time within which according to the physicians the petitioner should recover, and throw the burden of applying for further compensation, if the amount awarded is not adequate, upon the workman, who will, of course, have knowledge of all the facts, or throw the burden upon the employer, who, to obtain the

facts, must constantly follow the workman; (3) whether the finding in this case that the petitioner suffered a total and temporary disability, was correct, and (4) whether there was any legal evidence warranting the finding that petitioner is "suffering from traumatic neurasthenia and possibly pachymeningitis" and is entitled to 300 weeks' compensation.

These questions were the reasons assigned in the Supreme Court, and are contained in the grounds of appeal assigned in the notice of appeal here. They go to the validity of the findings and judgment of the trial court.

All these grounds of appeal are relied upon and urged.

POINT I.

It was error to award compensation for three hundred weeks.

Dr. Stout said that in his opinion petitioner would recover from his troubles in from three to six months from the date of the trial (p. 44, l. 15). Petitioner's physician, Dr. Hollister, testified (p. 31, l. 3):

> "Q. In your opinion do you think he can perform any work? A. I do not, at the present time.
>
> "Q. Can you give an opinion as to when he will be able to work? A. No, sir.
>
> "Q. By that do you mean that he may not ever be fit or that he will be sometime? A. That depends to my mind entirely on what is the matter with him.
>
> "Q. Well, do you know what is the matter with him? A. No, sir."

On page 32 Dr. Hollister was asked by the Court:

> "Q. Now, the question is, Doctor, how much time? A. You have got to ask somebody that knows more than I do, Judge.

"Q. Well, have you got an opinion about that, Doctor? A. Yes, sir.

"Q. What is your opinion about that? A. Not as to the time. I haven't got an opinion as to time. I have no opinion as to when he might recover."

There is no testimony of the petitioner himself which indicates within what time he will be able to work, if in fact he was unable to work had he endeavored to do so.

We therefore respectfully submit that it was error for the Court on this testimony to award compensation for the maximum time provided by the statute.

Section 11 (a) of the statute provides as follows:

"For injury producing temporary disability, 50 per cent. of the wages received at the time of injury, subject to a maximum compensation of $10.00 per week and a minimum of $5.00 per week; provided, that if at the time of injury the employee receives wages of less than $5.00 per week, then he shall receive the full amount of such wages per week. *This compensation shall be paid during the period of such disability, not, however, beyond three hundred weeks.*"

It was pursuant to this section of the act that the Court awarded compensation (p. 54, l. 35).

There was testimony warranting an award of compensation for a period of six months from the date of trial, or a total of seventy-eight weeks. The Court, however, has awarded the maximum compensation for temporary disability provided by the statute.

Section 20 of the Act contains this provision:

"This determination shall be filed in writing with the Clerk of the Common Pleas Court, and judgment shall be entered thereon in the same manner as in causes tried in the Court of Common Pleas and shall contain a statement of facts as determined by said

Judge. The employer may once every month file receipt of payment, verified by affidavit that the receipts are accurate and true with the Clerk of the Court, which shall be entered in satisfaction of the judgment to the extent of such payments. Subsequent proceedings thereon shall only be for the recovery of moneys thereby determined to be due, provided, that nothing herein contained shall be construed as limiting the jurisdiction of the Supreme Court to review questions of law by certiorari," &c.

The last paragraph of Section 21 of the Act provides:

"An agreement or award of compensation may be modified at any time by a subsequent agreement, or at any time after one year from the time when the same became operative, which may be reviewed upon the application of either party on the ground that the incapacity of the injured employee has subsequently increased or diminished. In such cases the provisions of paragraph 17 with reference to medical examination shall apply."

Section 17 of the Act provides:

"After an injury the employee, if so requested by his employer, must submit himself for examination at some reasonable time and place within the State, and as often as may be reasonably requested, to a physician or physicians authorized to practice under the laws of this State. If the employee requests, he shall be entitled to have a physician or physicians of his own selection present to participate in such examination. The refusal of the employee to submit to such examination shall deprive him of the right to compensation during the continuance of such refusal. When a right to compensation has thus suspended, no compensation shall be payable in respect to the period of suspension."

The result of awarding compensation for three hundred weeks on proof of a temporary disability,

when the exact period within which the disability will terminate is not definite, is very serious to the employer. In the first place, there is a final judgment against the employer, which will stand until set aside by the Court. The employer must sustain the burden of proof, demonstrating that the judgment is improper in order to have the judgment modified. To sustain this burden the employer is obliged to incur the expense of investigators to follow up the injured employee in order to prove that the temporary disability has ceased and that the employee is able to work or is working again. The additional expense and trouble which this throws upon the employer is obvious. A workman with an honest claim could easily apply for additional compensation when the amount awarded had been paid and the Court would in every proper case continue the payments during the period of disability, not, however, beyond 300 weeks. This is the way the Act was in our judgment intended to operate.

Secondly, an award of three hundred weeks' compensation, when the period of disability is doubtful, acts as an inducement to the employee not to return to work while the compensation is payable, especially in cases where the weekly award is substantial. It is of importance to the State that all persons who are able to work and support themselves should do so, not only for their own good, but for the benefit of the community at large. The psychological effect of an award of three hundred weeks' compensation to a workman would be to impress upon his mind the importance of his injuries; the effect of an award of compensation for a limited period would be to impress on the mind of the workman the fact that at the end of that time he would either have to go to work and become a producer, or show to the satisfaction of the Court his continued inability to work.

We submit that it is not only preferable to have this state of mind engendered in injured persons, but it is right that it should be.

Thirdly, in the case of the malingerer who feigns disability and obtains an award of compensation for the maximum period, a burden almost impossible to overthrow is placed upon the employer. Having a final judgment of record in his favor carrying compensation week by week for three hundred weeks, he may move out of the State or he may secrete himself, so that the employer will be utterly unable to sustain the burden of showing that the temporary disability has ceased. Within the three hundred weeks such an employee need not collect a single week's compensation, but at the end of the three hundred weeks he could enforce the full amount of the judgment by execution and sale. There is no way provided for stopping the payments or cancelling the judgment when the employee disappears.

We submit that the award of three hundred weeks' compensation was erroneous, and the judgment below should be reversed.

POINT II.

The finding is not supported by the evidence.

The Court found that Sessler "as a result of said accident is suffering from traumatic neurasthenia and possibly pachymeningitis." Assuming that petitioner had traumatic neurasthenia as found by the Court, the period of disability and the payments therefor could not lawfully be made by the Court for a longer time than the evidence warranted. While Dr. Hollister said in so many words that he did not know what was the matter with the petitioner, still he testified that if he had traumatic neurasthenia he had no

opinion as to the time within which petitioner would recover (p. 32, ll. 1 to 15). On page 34 Dr. Hollister seems to doubt that petitioner had traumatic neurasthenia in fact, and the Court evidently acted upon the opinion of Dr. Stout, who was certain that petitioner had traumatic neurasthenia and coupled with it a state of hypochondriasis with delusion (bottom of page 40 and top of page 41).

Dr. Stout testified: "Traumatic neurasthenia is oftentimes cured very quickly, especially after the party had received a verdict and received proper compensation" (bottom of p. 44, top of p. 45). He did say, however, on page 44, that he thought petitioner would recover in "perhaps three months, perhaps six months, perhaps a year" (lines 4-6).

The finding by the Court that petitioner *possibly* had pachymeningitis has no force. Possibly he would die within a year. The appellant is entitled to have a finding of the facts and not of the possibilities. Therefore the finding of traumatic neurasthenia is the only lawful finding in this case. Since the disability for that injury according to the testimony would not extend beyond one year, the award for three hundred weeks' compensation was clearly erroneous.

POINT III.

The court erred in determining that there was a total and temporary disability.

Petitioner has not attempted to do any work whatsoever since the accident.

> "Q. And where were you after the accident? A. At home.
>
> "Q. How long did you stay at home before you started to go to work again? A. I haven't been working.
>
> "Q. You haven't worked at all? A. No, sir; I haven't worked a day since the accident" (p. 21, ll. 1 to 10).

"Q. Have you gone back to Mr. Peter's and tried to work since? A. No, sir.

"Q. Have you tried to work at other places? A. No, sir; couldn't; I wasn't able to" (p. 23, lines 35 to 40).

Petitioner says that after the accident he felt pain in three places (p. 18, l. 29). They were in the back of the right shoulder, in the back of his head and his backbone (pp. 17 and 18). Petitioner remained in bed from the 28th day of May through June and part of July (p. 19, ll. 1 and 2). On cross-examination (p. 22, l. 29) petitioner testified that the pain in his backbone was below the neck and lasted for about three months and that the pain in his right shoulder lasted until January and February, 1915 (p. 22, l. 38); that all his pains have left him except in the head (p. 19, ll. 3 to 20), and the balance of his testimony shows that he has this dizziness in the head only when he gets up in the morning and only when he gets into unnatural positions. Petitioner walked to Court and was in the habit of going out walking and Dr. Stout could see nothing peculiar about his gait (p. 42, ll. 30 to 40).

Compensation was paid until about March 1, 1915.

There are many things that a carpenter can do at his home that produce money Sessler, however, has apparently given up all thought of working again, has made no effort whatsoever to benefit himself or his condition and relies upon this statute to support him the balance of his life If the award is right he will receive compensation at $9.90 per week from June 11, 1914, to about March 11, 1920.

It is evident that if Sessler had made any effort whatsoever to return to work, if he had used that amount of will power which everyone recovering from an illness must use in order to get back in

the harness, he could greatly have minimized the compensation which his employer would have had to pay him. We submit it is the duty of a workman to do what he can to minimize his employer's loss, and that Sessler's failure to exert himself in the slightest degree should operate as a denial of compensation for temporary disability beyond one year from the date of trial, the longest estimate of disability for the petitioner that was given by Dr. Stout (p. 44, ll. 1 to 10).

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New Jersey Court of Errors and Appeals

NICHOLAS SESSLER, *Petitioner-Respondent,* *vs.* WILLIAM PETER, trading as LUCAS PETER & SON, *Respondent-Appellant.*	*On Petition for Compensation.* *On Appeal from Supreme Court.*

BRIEF FOR PETITIONER-RESPONDENT.

This is an appeal from a judgment of the Supreme Court affirming, on certiorari, the judgment of the Essex County Court of Common Pleas, in favor of the petitioner-respondent on this appeal, which proceedings were originally brought under the Workmen's Compensation Act of 1911. P. L. 1911, Chapter 95.

FACTS.

The petitioner, while working for the defendant, on the 28th day of May, A. D. 1914, and while in the regular employ of the defendant, as a carpenter doing the duties usually pertaining to that trade, was struck on the forehead by a falling piece of timber, was thrown down and rendered unconscious, receiving several bruises and injuries, from

the effects of which he is still suffering. The only question open for contention at the trial was the extent of the injuries. The petitioner's contention was, that as a result of the accident he had sustained injuries, chief of which was concussion of the brain, followed by meningitis and neurasthenia, which occasioned the total and temporary disability of the petitioner. The respondent's contention was that the injury was of a lesser character and that the petitioner was able to work.

The court held that the petitioner, as a result of the said accident, was suffering from traumatic neurasthenia and possibly pachymeningitis, and that there was a total and temporary disability, and allowed compensation in accordance with the act for 300 weeks.

On certiorari, judgment of the Common Pleas Court was affirmed.

The grounds of appeal from the judgment of the Supreme Court, advanced by the Prosecutor, are briefly that there was no legal evidence to support the findings of fact by the Common Pleas Court, and that the findings were contrary to law and the proofs offered in the case.

POINTS.

1. The findings of fact and determination of the Common Pleas Court is supported by, and based upon, legal evidence, and its decision as to the extent of facts is conclusive and binding.

2. There is no legal error in the findings and determination of the Essex County Court of Common Pleas.

3. There is no legal error in the judgment of the Supreme Court, affirming on certiorari the judgment of the Court of Common Pleas.

4. The judgment of the Supreme Court should be affirmed.

BRIEF OF THE ARGUMENT.

The only dispute at the trial of this action was the reasonableness of the medical bill and the extent of the injury. (P. 9, lines 5 to 17.) (P. 56.) The reasons for a review of the judgment of the Court of Common Pleas on certiorari and the grounds of appeal (p. 1) do not question the determination as to medical services, therefore the only question left is as to the findings and determination of the court, showing the extent of the injury received.

Point 1.

1. The findings of fact and determination of the Common Pleas Court is supported by, and based upon, legal evidence, and its decision as to the extent of facts is conclusive and binding.

As no objection was made to the testimony offered, it was admitted, and as none of the evidence before the court is fundamentally illegal, it must be considered as legal evidence, and it will be seen that evidence was produced to prove all the allegations of the extent of the injury, and to support the findings of fact.

William Lederer was the first witness of the petitioner. He was assisting in the work being performed by Sessler, and his testimony, which begins on page 8, shows how the accident hap-

pened; that a heavy beam fell and hit the petitioner on the forehead (p. 10, l. 16 and l. 38), knocking him down, and "that he fell over on the back of his head." That Sessler was so badly hurt that he had to be taken home in a wagon (p. 14, l. 21).

Then the petitioner, Sessler, was called, and begins his testimony by telling (p. 16) how he was working and that he was hit by something, but could not say what it was (l. 16, l. 32 and l. 36), that he was knocked down unconscious, and later he suffered severe pains (p. 17, lines 20 to 40), including pains in the head.

"Q. Where was it?

"A. In the head."

Sessler was confined to his bed for months, and at the time of the trial still suffered from dizziness, and on page 19 he says:

"Q. Did all the pains leave you? A. Not the head.

"Q. Not the pain in the head? A. Head and heart, two places.

"Q. Well, what is the matter with your head now? A. Get dizzy."

And this feeling is explained on pages 20 and 21.

"Q. You could walk in July? (P. 21, l. 25.) A. Yes, sir; some time in July.

Q. Why couldn't you work then? A. My head was disordered.

"Q. Are you still? A. Yes, sir; get dizzy when I put it back.

"Q. You get dizzy when you hold your head back? A. When I lay—lay a little while or reach down to reach anything, etc."

He also testified that before the accident he had never missed a day's work on account of illness (p. 20, l. 30), but that since that time he has not worked and that he has not been able to (p. 23, l. 37). This was on cross-examination.

Then Dr. Hollister, who has practiced over 41 years (p. 25, l. 18), was put upon the stand, and told how, on the day of the accident (May 28, 1914) he was called to the house of the Sesslers, found Mr. Sessler practically unconscious (p. 25, l. 26), and "took it to be a case of *concussion of the brain* (l. 35). He made a large number of calls; at first, only a hematoma was found on the head (p. 27, l. 26); that about two days later (p. 28, l. 13) the doctor says: "He developed in my opinion what is called *traumatic meningitis* and was seriously sick all the month." That Sessler required care for a long time, and that since the accident he had gone down from a "bright, strong, sober and industrious carpenter to what you see him here today," and that he had lost about 40 pounds. That Sessler never needed a doctor previously to this accident (p. 30, lines 1 to 20). That he attended Sessler regularly until November, 1914, then made calls in December and March, also two calls with Dr. Stout (p. 30). That Sessler always complained of dizziness.

On page 31:

"Q. In your opinion, do you think he can perform any work? A. I do not, at the present time."

He says:

"Q. You do not understand what the dizzy condition is, then? A. I did not say that, sir. I think the trouble is one of two things, one which he may get rid of and the other he cannot get rid of.

"The Court: What are those two things, Doctor?

"Witness: In my opinion, the first is the most serious one, is a pachymeningitis or a thickening of the membranes of the brain from former inflammation—a traumatic meningitis shortly after he was hurt. That is the most serious thing about it.

"Q. What is the result of that if he has it?

A. The result? He is incurably an invalid.

"Q. Incurably an invalid? A. Yes, sir.

"Q. And what is the other? A. Traumatic neurosis or traumatic hysteria, which is just as real to him as though he had pachymeningitis, but with care and time he should recover from it.

"Q. How much time should he recover in? A. That is beyond me."

The doctor told of another case similar in character, where the patient was a young girl and took three years and a half to get well (p. 32, l. 25), and that an older person has a poorer chance of getting well.

If the testimony of Dr. Hollister, which was not contradicted in any way by the respondent's witness, were disregarded entirely, and the testimony

of Dr. Stout, who was the only witness produced by the respondent, were relied upon to prove the disability of Mr. Sessler, there is hardly a doubt but that the determination would have been the same. On direct examination Dr. Stout says he saw the petitioner in October, 1914 (p. 39, l. 14); and that he suffered from dizziness and a sensitive shoulder, and that Mr. Sessler still complained two days before the trial (p. 40, l. 23).

Mr. McDermott asked (p. 40, l. 35):

"Q. What in your opinion is Mr. Sessler suffering from at this time, if anything—any disease?

"A. Well, it is my opinion that he is suffering principally from *traumatic meningitis—I mean traumatic neuresthenia.*

"The Court: Is that any different from traumatic neurosis?

"Witness: Practically the same thing, and coupled with it a state of hypochondriasis, with delusion, I think caused by the symptoms produced by the injuries he received.

"Q. What in your opinion is his condition relative to have the ability to work? A. Physically at present I do not think he is able to do very much. He might possibly be able to do some light work, but he is possessed with the idea that he cannot work. Whether I am right or not, I have thought that the man was afraid to try for fear there would be some direful result occur if he did undertake to work."

When questioned by the court (p. 43, l. 19) as follows, he said:

"Q. Do you agree with Dr. Hollister that Sessler may have pachymeningitis? A. He may have that."

And on line 35:

"Q. What is it that you are sure he has now, Traumatic Neurosis, is that what you say?

"A. Traumatic neuresthenia, modified on a hypochondriacal basis."

And on page 49, line 6:

"Q. And what other thing could it have been to produce this condition of traumatic neuresthenia? *Traumatic neuresthenia* is simply a nervous *condition produced by the blow*, isn't it?

"A. Yes, sir."

There is little or no testimony which can be said to be in conflict with the court's finding, on the contrary, both doctors agree that the petitioner is incapacitated in the manner set forth in the finding. The Judge was even doubtful as to whether or not he ought to hold that the petitioner was entitled to compensation for 400 weeks (p. 50, l. 12). However, the court, after fully considering the evidence, has given judgment for only 300 weeks.

It must be remembered that the trial Judge had the petitioner before him, and could and did draw his conclusions as to the honesty and fairness of the petitioner's claim.

THE LAW.

"Parties have a right to try their case on evidence which is not of the quality or character required by law, and where such evidence

is admitted without objection, it is the right and duty of the court and jury to give it the same consideration as if it were legal evidence." See 17 Cyc., p. 800.

Birmingham R. R. Co. v. *Wildman,* 119 Ala. 547.

Condit v. *Blackwell,* 19 N. J. Eq., p. 193.

At the trial of this cause no evidence of this character was admitted, therefore there seems to be no real reason for considering this question now.

Where there is evidence to support the finding of the court below this court will not interfere with its findings.

See *Sexton* v. *Newark District Telegraph Co.,* 86 Atl. 451 at p. 453 (1). 84 L. 885.

Bryant v. *Fissell,* 86 Atl. 458 at p. 459 (1). 84 N. J. L. 72.

Krauss v. *George H. Fritz & Son* (E. & Ap.), 93 Atl. 578.

in all of which cases the law is held to be substantially as follows: In

Scott v. *Payne Bros., Inc.,* 89 Atl. 927,

Mr. Justice Swayze, delivering the opinion of this court, says, on page 928:

"We find no legal error in the conclusion of the Trial Judge as to the measure of damage. The medical evidence was conflicting, and that for the defendant is quite persuasive, but the Judge had the right to attribute greater weight to the evidence for the plaintiff. We cannot reverse merely because we might take a different view. The Workmen's Compensation Act,

Sec. 11, pl. 18, is a later enactment than the provision of section 11 of the Certiorari Act (1 Comp. Sta. 1910, p. 405) to which the prosecutor appeals, and while we cannot be deprived of our right to inquire into questions of fact where necessary to the exercise of our jurisdiction by certiorari over inferior tribunals (*Lighthipe* v. *Orange,* 75 N. J. Law, 365, 368; 68 Atl. 120), the present case is rather one where the writ of certiorari is in effect a writ of error. The Workmen's Compensation Act provides in section 11 an elective scheme to which neither the employer nor the employee are obliged to assent. If they do assent, whether expressly or by the implication of the statute, they assent to the whole scheme; a part of that scheme is that the decision of the trial Judge as to all questions of fact shall be conclusive and binding; in effect, the agreement is that the compensation shall be such as the trial Judge shall determine, subject to the review by this court of the questions of law. The evidence permitted the finding that the injury would last for 104 weeks. We find no legal error in this."

The opinion of the Supreme Court, affirming the decision of the Court of Common Pleas in this suit, is based in part on the case of *Bryant* v. *Fissell,* and the court says:

"The ground of attack is that the finding of facts and the determination of the trial court are not supported by and based upon legal evidence, but after reading the evidence in the case, we are satisfied that it was permissible for the court to reach the conclusion stated.

and under the case of *Bryant* v. *Fissell*, 84 N. J. L., p. 72, this court accepts the findings of the Common Pleas Court upon the facts, if there is any legal evidence to warrant them, and in this case there is such legal evidence. The judgment of the Common Pleas Court is therefore affirmed with costs."

As the court gave a judgment for 300 weeks to the petitioner, this judgment must stand unless the respondent can show that the disability has ceased. The Workmen's Compensation Act has ample provision for the protection of the respondent.

The last paragraph of Section 21 provides that

"An agreement or award of compensation may be modified at any time by a subsequent agreement, or at any time after one year from the time when the same became operative, it may be reviewed upon the application of either party upon the ground that the incapacity of the injured employee has subsequently increased or diminished. In such case the provision of paragraph 17, with reference to medical examination shall apply."

Paragraph 17 provides that

"After an injury, the employee, if so requested by his employer, must submit himself for examination at some reasonable time and place within the State, and as often as may be reasonably requested, to a physician or physicians authorized to practice under the laws of this State. If the employee requests, he shall be entitled to have a physician or physicians of his own selection present to participate in such examination. *The refusal of the employee*

to submit to such examination shall deprive him of the right to compensation during the continuance of such refusal. When a right to compensation is thus suspended, no compensation shall be payable in respect of the period of suspension."

These two paragraphs give the employer every consideration, and he may, at any time that is reasonable, demand an examination of the petitioner. If this examination is had and it is found that the disability has been removed, he may file his petition to have the compensation reduced. If the examination is refused, compensation will cease automatically under the act. There is no reason, therefore, why the respondent should fear a fraud, as he is given the means for prevention thereof. The act does not place a hardship on the respondent, but on the contrary gives him every means whereby he may protect himself from the imposition of dishonest claimants.

Points 2 and 3.

The determination and findings of fact of the trial court are in conformity with the pleadings and proof, and the judgment contains no legal error.

The petition sets forth that "the blow caused concussion of the brain with all the *consequent symptoms*" (p. 3, l. 37). Dr. Hollister, on page 25, l. 35, says: "I took it to be a case of concussion of the brain," and in several places both the doctors testify that Traumatic Neurasthenia is the result of this shock. The definition of Traumatic Neurasthenia in itself proves it to be a *consequent symptom.*

The American Illustrated Dictionary, by W. A. Newman Dorland, A. M., M. D., says:

"Traumatic:—Pertaining to or caused by injury."

"Neurasthenia:—Nerve Debility—Name for a group of symptoms resulting from some functional disorder of the nervous system with severe depression of the vital forces."

"Traumatic neurasthenia: Neurasthenia following shock or injury."

so that the judge did not err in finding that Sessler "is suffering from traumatic neurasthenia and possibly pachymeningitis." (P. 54, l. 26.)

The petitioner also alleges that the blow caused . . . and was followed by an attack of "traumatic meningitis."

The medical definitions are as follows:

"Meninges: Membrane.

"Meningitis: Inflammation of the meninges.

"When it affects the dura matter disease is termed pachymeningitis."

See American Illustrated Medical Dictionary.

We can see, therefore, that there is no real conflict between the petition and the determinaton.

THE LAW.

Unless the substantial rights of the respondent are affected by this seeming error, this court will not reverse the court below.

See *Ridgeley* v. *Walker, et als., Munford* v. *same,* 92 Atl. 394.

There are numerous cases holding this to be the law under Section 27 of "The Practice Act (1912)," P. L. 1912, at p. 382, which reads:

> "27. REVERSAL OR NEW TRIAL ON MERITS.
>
> "No judgment shall be reversed, or new trial granted on the ground of misdirection, or the improper admission or exclusion of evidence, or for error as to matter of pleading or procedure, unless, after examination of the whole case, it shall appear that the error injuriously affected the substantial rights of a party."

Point 4.

It is respectfully submitted that the judgment of the Supreme Court, affirming the judgment of the Common Pleas Court, should be affirmed with costs.

Respectfully submitted.

WILLIAM PENNINGTON,
Attorney for Petitioner-Respondent.

FREDERIC C. RITGER,
Of Counsel.

June Term, 1916.

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FOR RESPONDENT:

Notice of Appeal.

(Served April 26, 1916; Filed April 28, 1916.)

New Jersey Supreme Court.

NICHOLAS SESSLER, *Petitioner-Defendant,* *vs.* WILLIAM PETER, *Respondent-Prosecutor.*	On Certiorari.

To

WILLIAM PENNINGTON, Esq.,
Attorney for Petitioner.

Please take notice that the respondent-prosecutor in above entitled cause hereby appeals to the New Jersey Court of Errors and Appeals in the last resort in all causes from the judgment of the New Jersey Supreme Court entered the Nineteenth day of April, 1916, affirming with costs the judgment of the Court of Common Pleas of Essex County.

The following are the grounds of appeal that will be relied upon.

(1) Because the Supreme Court affirmed with costs the judgment of the Court of Common Pleas of the County of Essex, whereas the Supreme Court should have reversed the said judgment for the reasons assigned in the certiorari proceedings in the Supreme Court.

(2) Because there was no legal evidence to warrant the findings of fact made by the Common Pleas Court.

(3) Because the Court below erroneously found that there had been a total and temporary dis-

ability resulting from petitioner's injuries, whereas the Common Pleas Court should not have so found and the Supreme Court should not have affirmed such a finding.

(4) Because the determination of facts found by the Judge of the Common Pleas Court was not based upon lawful evidence, and the Supreme Court refused to so find as a matter of law.

(5) Because the evidence conclusively establishes that the said Sessler had been cured of his injuries prior to the filing of his said petition, and the petition should have been dismissed and the Supreme Court should have so ordered.

(6) Because the Supreme Court did not find as a matter of law that petitioner had been paid all the compensation to which he was entitled under the law.

(7) Because the injuries alleged to be suffered by the petitioner, and which the Common Pleas Court found were total but partial, were not such injuries as are contemplated by the Workmen's Compensation Act and cannot be paid for pursuant to the provisions thereof, and the Supreme Court refused to so find.

(8) Because the Supreme Court refused to find as a matter of law that compensation had been awarded petitioner by the Common Pleas Court for a longer period of time than the evidence and the law justified.

McDERMOTT & ENRIGHT,

Attorney of Respondent-Presecutor-Appellant.

Opinion.

NEW JERSEY SUPREME COURT.

February Term, 1916.

NICHOLAS SESSLER,
Petitioner-Defendant,
vs.
WILLIAM PETER,
Respondent-Prosecutor.

On Certiorari.

Argued February 17, 1916. Decided April 7th, 1916.

Before GARRISON, TRENCHARD & BLACK, Justices.

Messrs. McDERMOTT & ENRIGHT.
For Prosecutor.

WILLIAM PENNINGTON, Esq.,
And FREDERIC C. RITGER, Esq.,
For Defendant.

Per Curiam:

This was a certiorari to test proceedings under the Workmen's Compensation Act in the Essex County Common Pleas, in which judgment was entered for the petitioner. The facts are that Nicholas Sessler, on the 28th of May, 1914, was in the regular employ of William Peter, a carpenter, doing the duties usually pertaining to that trade. He was struck on the forehead with a piece of timber and was thrown down and rendered unconscious. The Court found that the injuries arose out of and in the course of the employment; that the petitioner "as a result of said accident is suffering from traumatic neurasthenia and possibly pachymeningitis, and that there is a total and temporary disability resulting therefrom." The ground of attack is that the finding of facts and the determination of the trial court

are not supported by and based upon legal evidence, but after reading the evidence in the case we are satisfied that it was permissible for the Court to reach the conclusion stated, and under the case of *Bryant v. Fissell,* 84 N. J. L. 72, this Court accepts the findings of the Common Pleas Court upon the facts, if there be any legal evidence to warrant them, and in this case, there is such evidence. The judgment of the Common Pleas Court is therefore affirmed with costs.

Rule affirming judgment.

NEW JERSEY SUPREME COURT.

February Term, 1916.

NICHOLAS SESSLER, *Petitioner-Defendant,* *vs.* WILLIAM PETER, *Respondent-Prosecutor.*	On Certiorari.

The Court having inspected the transcript and proceedings of the Court of Common Pleas of the County of Essex, returned with the certiorari in this cause, and the reasons for reversing the judgment below, and heard the argument of counsel therein, and having duly considered the same;

It is, on this 19th day of April, 1916, ordered that the judgment of the Court of Common Pleas of the County of Essex be in all things affirmed with costs, and that said record be remitted to the Court below to be proceeded with according to law and the practice of said Court.

Entered Apr. 19, 1916.

On motion of WILLIAM PENNINGTON,
Attorney for Petitioner-Defendant.

A true copy.

WM. C. GEBHARDT,
Clerk.

Writ of Certiorari.

NEW JERSEY, ss:
(Seal).

THE STATE OF NEW JERSEY To Hon. WILLIAM P. MARTIN, Judge of the Court of Common Pleas of the County of Essex, and JOSEPH MCDONOUGH, Clerk of said Court.

GREETING:

We being willing, for certain reasons, to be certified of and concerning a certain order, proceedings and determination made and rendered by Honorable William P. Martin, Judge of the Court of Common Pleas in and for the County of Essex, which determination was filed with the Clerk of said Court on the twenty-eighth day of October, 1915 in certain proceedings brought on behalf of Nicholas Sessler, petitioner, against William Peter, trading as Lucas Peter & Son, respondent, to recover compensation under an Act of the Legislature of the State of New Jersey entitled, "An Act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation and regulating procedure for the determination of liability and compensation thereunder," approved April 4, 1911, do command you, that the said order, proceedings, determination and judgment, together with all things touching and concerning the same, as fully as before you they remain or are in your custody or control, you do certify and send, together with this writ, to our Justices of our Supreme Court of Judicature, at Trenton, on the 31st day of December, 1915, that therein may be done what of right and according to law ought to be done.

WITNESS, WILLIAM S. GUMMERE, Chief Justice of our Supreme Court, at Trenton, aforesaid, this 15th day of December, 1915.

WM. C. GEBHARDT,
Clerk.

McDERMOTT & ENRIGHT,
Attorneys.

Allocatur.

I allow this writ. Let it be sealed.
Dated December 15, 1915.

C. W. PARKER,
J. S. C.

Return.

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

I, WILLIAM P. MARTIN, Judge of the Court of Common Pleas of the County of Essex, do hereby in the schedule hereto annexed, send to our Justices of our Supreme Court of Judicature at Trenton, the order, proceedings, determination and judgment mentioned in the within writ of certiorari, together with all things touching and concerning the same and the entire record as I am within commanded.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, at Newark, this first day of Feb. A. D., Nineteen hundred and sixteen.

WM. P. MARTIN,
President Judge of Essex County
Common Pleas.

(Seal).

Petition.

(Filed May 27, 1915).

ESSEX COUNTY COURT OF COMMON PLEAS.

NICHOLAS SESSLER,

Petitioner,

vs.

WILLIAM PETER, trading as LUCAS PETER & SON,

Respondent.

To the Honorable Judges of the Court of Common Pleas of the County of Essex:

The petition of Nicholas Sessler, of the City of Newark, respectfully shows:

1. That your petitioner resides at No. 437 Fifteenth Avenue, in the City of Newark, County of Essex and State of New Jersey.

2. That the respondent, William Peter, carries on a carpenter business under the firm name of Lucas Peter & Son, with offices corner of Niagara and Darcey Streets, Newark N. J.

3. That on May 28, 1914, and for some time prior thereto, your petitioner was in the employ of the above named respondent as a carpenter, doing duties usually pertaining to that trade.

4. That on said May 28, 1914, while engaged in performing the duties of his occupation in the said respondent's employ, upon a building located at No. 4 Shipman Street a piece of timber fell and struck your petitioner on the forehead, throwing him down and rendering him unconscious. The blow caused concussion of the brain with all the consequent symptoms, and was followed by an attack of traumatic meningites.

5. The respondent has knowledge of the said accident.

6. The petitioner has not recovered from the disability occasioned by his injuries and states that his injuries are total in character and permanent in quality.

7. At the time your petitioner received his injury he was receiving Nineteen and 80/100 dollars as his wages each week.

8. Your petitioner claims that under the provisions of "An Act prescribing the liability of an employer to make compensation for injuries received by an employe in the course of employment, establishing an elective schedule of compensation and regulating procedure for the determination and liability for compensation thereunder," approved April 4th, 1911, and the supplements thereto and amendments thereof, your petitioner is entitled to have reasonable medical services and medicines during the first two weeks after the injury, and is also entitled to fifty per centum of the wages received at the time of injury, during the period of such disability, not however, beyond 400 weeks.

9. That said medical services and medicines have not been supplied by the said respondent; that your petitioner has incurred medical expenses amounting to over $50.00, and that there is a dispute between the petitioner and the respondent as to the character of the disability and the quality thereof, the respondent has however paid your petitioner one-half of his salary for a period of about 30 weeks.

10. Your petitioner therefore prays that this honorable Court may award to him $50.00 to pay for said medical services and medicines, and also 50% of his wages for 400 weeks, less however, the amount already received by him, and if sufficient cause be shown by your petitioner that said

compensation be commuted and that he be paid in a lump sum.

And your petitioner will ever pray, etc.

WM. PENNINGTON,
Attorney of Petitioner.

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

NICHOLAS SESSLER, of full age, being duly sworn on his oath according to law, deposes and says that he is the petitioner in the foregoing petition and is familiar with the contents thereof; that in so far as they relate to his own acts, they are true; and in so far as they relate to the acts of others, he believes them to be true.

NICHOLAS SESSLER.

Sworn and subscribed to,
before me this 26th day
of May, A. D. 1915.

FREDERIC C. RITGER,
Attorney at Law,
Of New Jersey.

Order fixing time and place of hearing.

A petition having been filed in this cause by the Petitioner praying for (commutation of) the compensation payable by the Respondent, it is on this 27th day of May, 1915.

ORDERED, that the hearing of said matter be and hereby is set down for Wednesday, the 23rd day of June 1915, at the Court House (Common Pleas Court Room), in the City of Newark, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard. And it is further

ORDERED, that a true, but uncertified copy of this order (together with a copy of the petition, upon which this order is based) be served upon

the Respondent, within six days after the date of this order.

WM. P. MARTIN,
President Judge of the Essex County Court of Common Pleas.

A true copy.
JOSEPH MCDONOUGH.
On motion of William Pennington,
Attorney for Petitioner.

Answer.

(Filed June 15, 1915).

ESSEX COUNTY COURT OF COMMON PLEAS.

NICHOLAS SESSLER,
Respondent.
vs.
WILLIAM PETER, trading as LUCAS PETER & SON,
Petitioner,

On Petition for Compensation.

The answer of William Peter in above entitled matter respectfully shows as follows:

1. He admits the allegations in paragraph 1 of the petition.

2. He admits the allegations of paragraph 2 of the petition, except that respondent was carrying on the business in his own name William Peter.

3. He admits the allegations of paragraph 3 of the petition.

4. He denies the allegations of paragraph 4 of the petition.

5. He admits that he had actual knowledge of the fact that the petitioner herein had been injured on May 28, 1914, while employed by this respondent.

Answer.

6. He denies the allegations of paragraph 6 of the petition.

7. He admits the allegations of paragraph 7 of the petition.

8. He denies the allegations of paragraph 8 of the petition.

9. He denies the following statement in paragraph 9 of the petition, to wit: "That your petitioner has incurred medical expenses amounting to over $50.;" and admits the following allegation of paragraph 9 of the petition: "That there is a dispute between the petitioner and respondent as to the character of the disability and the quality thereof, the respondent has, however, paid your petitioner one-half of his salary for a period of thirty weeks."

The respondent denies that the petitioner is entitled to any further sum than has been already paid to him for such injuries as he may have received, and prays that the petition be dismissed with costs against the said petitioner.

McDermott & Enright,
Attorneys of Respondent.

State of New Jersey,
County of Essex. } ss.:

William Peter, of full age, being duly sworn, according to law upon his oath says:

That he is the respondent in the foregoing answer and is familiar with the contents thereof; that the statements in said answer are true to the best of his knowledge, information and belief.

William Peter.

Sworn and subscribed to before me,
this 12th day of June, 1915.
George A. Doyle,
Master in Chancery of New Jersey.

Testimony.

ESSEX COUNTY COURT OF COMMON PLEAS.

APRIL TERM 1915.

June 30, 1915.

NICHOLAS SESSLER,
Petitioner,

vs.

WILLIAM PETER, trading as LUCAS, PETER & SON,
Respondent.

Transcript of shorthand notes of testimony taken in the above entitled matter before his Honor William P. Martin, Judge, at the Court-house, in the City of Newark, New Jersey, in the presence of William Pennington, Esq., and Frederick C. Ritger, Esq., for Petitioner, and William C. McDermott, Esq., (McDermott & Enright) for Respondent.

IT IS STIPULATED AND AGREED that petitioner resides at 437 15th avenue, in the City of Newark and respondent carries on the carpenter business under the firm name of Lucas, Peter & Son, in Newark, that the petitioner was on the 28th day of May, 1914, in the employ of the respondent as a carpenter, but on that day, while engaged in the performance of his duties upon a building located at No. 4 Shipman street, Newark, a piece of timber fell and struck the petitioner on the forehead—

MR. MCDERMOTT: I do not think we stipulate just how the accident happened.

MR. RITGER: Well, he was injured by an accident at that time which arose out of and was in the course of the employ-

ment; that the respondent had knowledge of the accident; that the wages received by the petitioner at the time of the injury was $19.80 a week.

THE COURT: The only dispute is the reasonableness of the charge for the medical expenses and the extent of the injury.

MR. MCDERMOTT: I do not know that I dispute the medical services. If it is reasonable I do not dispute it.

THE COURT: Those are the two open questions.

MR. MCDERMOTT: Yes, sir.

WILLIAM LEDERER, sworn for petitioner.

DIRECT EXAMINATION BY MR. RITGER:

Q. Mr. Lederer, where were you employed last March? A. Well, I was on that job on Shipman street.

Q. Were you working for Mr. Peter? A. Mr. Peter, yes, sir.

Q. What were you doing? A. Well, we hoisted some beams up that day.

Q. Who was hoisting the beams? A. I rode on the beams and some other carpenter—

Q. What floor were you working on? A. I was on the roof.

Q. Was anybody downstairs? A. Yes, sir.

Q. Who? A. Well, Sessler and Mr. Peters and one named Schuler.

Q. What kind of beams were you hoisting up to the roof? A. The beams, I think were about three by twelve, yellow pine.

Q. That means three inches wide by twelve feet wide? A. No, about twenty feet long. Three by twelve, twenty feet long.

Q. What happened that afternoon? A. Well, we hoisted those beams up and one beam struck against another beam. The beam come up past the second floor and so soon as it got up to the third floor, to the roof, the beam make a little turn and struck against another beam.

THE COURT: What did the beam do?

WITNESS: The beam make a little turn and strike the iron beam, and the beam was on a chain and the chain, I suppose, get loose and the beam turned over and go down.

THE COURT: And whom did it hit?

WITNESS: Hit Mr. Sessler. Beam go down slantwise and hit him head.

Q. One end came down before the other?

THE COURT: Slantwise.

Q. Where did it hit Mr. Sessler? A. Right on the front.

Q. On the forehead? A. Yes, sir.

Q. What did it do to him? A. Well, so soon as it hit him he knocked over and fell on his head, on the back head.

THE COURT: He fell over backwards on the back of his head?

WITNESS: Yes, sir; he strike first in the platform.

Q. What happened to the beam? A. I couldn't tell you that.

Q. Did the beam keep on going? A. Well, just so soon as the chain was loose the beam come down and strike him on the head.

Q. Did the beam fall on top of him? A. On top of him, slantwise. It fell on him and he knocked over and he fall over on his back of the head.

Q. Where did the beam go? A. The beam went down to the basement.

Q. What did you do next? Where was you when he was struck? A. I was up on the roof.

THE COURT: Where was Mr. Sessler?

WITNESS: On the first floor.

Q. On a scaffold outside? A. No, sir; on the platform.

Q. Inside of the building? A. Inside of the building.

Q. So that when the beam fell from the place where it got caught in another beam it went down two floors before it hit him, is that it? A. Yes, sir.

Q. What was Mr. Sessler's work there? A. Well, he had nothing to do at that time.

Q. I mean what was he doing? A. He tied the beams on.

Q. He tied the beams on? A. Yes, sir.

THE COURTS And what did he have to do after it was tied on?

WITNESS: Well, so soon as the beam is passed to the second floor he had to let go of the beam.

Q. He had to let go of the beam? A. He had to let go of the beam, couldn't hold any more.

Q. Why did he have hold of it? A. Well, he had to guide it up to the second floor.

Q. After Mr. Sessler was hit did you see him after that? A. Well, I come down about eight minutes later. I could not go down right away I was—

Q. You went down eight minutes after? A. Yes, sir.

Q. What did you see? A. Well, they had him up in the automobile shed—he was laying—they had him laying on the platform.

Q. Did you see any bruises on him or anything? A. Couldn't see no bruises on at all.

Q. What did you do after that? A. Well I see him—well I went back to work then.

Q. Did you take him home? A. I took him home after twelve o'clock.

Q. You knew Mr. Sessler before he was hit, didn't you? A. Yes, sir; knew him.

Q. What kind of a man was he? A. Was he active? A. No.

Q. Was he a strong man?

THE COURT: What difference does that make?

MR. RITGER: I just want to show the difference before and now. I want to bring out later how the accident had affected him. Now he is very feeble and before he was a very strong man.

THE COURT: The doctor can tell us. This man is not an expert.

CROSS EXAMINATION BY MR. MCDERMOTT:

Q. You say you were up on the roof. How many stories up was that? A. There was the first, the second and roof is the third.

Q. Two stories below the roof? A. Yes, sir; building two stories.

Q. And did you actually see this piece of timber hit Mr. Sessler or did you hear him talk about it? A. I seen it.

Q. You were leaning over so you saw it? A. I was just on the side where he was standing.

Q. When he let go of this piece of timber that was being hauled up, it was in perpendicular position, wasn't it? A. Yes, sir.

Q. It would come up this way and go this way (indicating)? A. It was on a slant.

Q. About half-way (indicating)? A. No, sir; a little—

Q. Like that (indicating)? A. Yes, sir.

Q. He had hold of the lower end? A. Yes, sir; that is the lower end which is—

Q. He held fast to that to guide it? A. Yes, sir.

Q. And how far up after he let go of this— A. Just as soon as it passed the second floor he had to let go; he couldn't hold any more.

Q. After it passed the second floor he let go of it? A. Yes, sir.

Q. How much further did this beam go up after he let go of it before it started to fall down again? A. That is about a half story more.

Q. Up about a half story after he let go? A. Yes, sir.

Q. So that it fell about four or five feet to get down to hit him, didn't it? A. It was more than five feet; the building was high.

Q. Six feet or so? A. Six or seven feet about.

Q. What caused the beam to fall? A. What?

Q. Why did it fall down? That is, did the chain brake or did the beam snap in two or did the engineer work bad? A. No; it was only the trouble the beam strike on the iron beam.

Q. Top end of the beam struck the iron beam? A. Yes, sir; and I suppose the chain got loose.

Q. Did it loosen so as to start to slip down? A. No; it didn't slip. The chain rolled three times over the beam.

Q. It was not caught, it was just wrapped around? A. Yes, sir.

Q. Did this beam become entirely loose from the chain or did it slip down from the chain? A. No; the beam rolled over two times.

Q. It came loose from the chain? A. Yes, sir.

Q. While it was turning over how far down

did it fall? A. Turned over about two times—two or three times, I am not sure.

Q. Fell two or three feet before it fell over—before it came loose? A. Yes, sir; before it came loose.

Q. After it finally came loose and went down it only had two or three feet more to go before it struck Mr. Sessler, didn't it? A. Yes, sir; about that; yes, sir.

Q. You went home with Mr. Sessler afterwards? A. Yes, sir; after twelve o'clock.

Q. Did he say anything about how it happened? A. Yes, sir; he feel bad.

Q. Didn't he say he was not hurt much? A. Yes, sir; he couldn't hold his head. We had to hold his head so he didn't fall over.

Q. What? A. We had to hold his head so he wouldn't fall over?

Q. Can't understand you? A. On the wagon.

THE COURT: He says, "We had to hold his head on the wagon so he wouldn't fall over."

Q. When you took him home was he able to walk or did you have to take him home in the carriage? A. We took him home in the carpenter wagon.

Q. Was he lying down in it or setting up? Was he unconscious when you took him home? A. We took him up. I hold him. We had him between the seat and he was—we hold him in the center.

Q. Was he sitting on the floor of the wagon? A. No; on the seat.

Q. Sitting up on the seat. He talked to you going home? A. No; he couldn't talk; no.

Q. Talked a little bit.

THE COURT: Who was the other man who helped you hold him?

WITNESS: Schiller, laborer.

Q. Do you know what his first name is? A. No.

Q. Do you know where he works now? A. I couldn't tell you that.

Q. Did he work for Mr. Peter at that time? A. At that time; yes, sir.

Q. Do you know whether he still works for him? A. No.

Q. Do you mean you don't know or he doesn't work for him? A. No; not now.

Q. Doesn't work for him? A. No; as far as I know.

RE-DIRECT EXAMINATION:

Q. How heavy was that timber about? A. Two men had to carry it. The beam was heavy. Just about two men lift it up.

Q. Could one man lift one? A. Two men.

Q. Did it fall very fast? A. The beam fell very fast. Yellow pine beam.

Q. Did it go down slow or fast? A. Fast. Beam go fast.

THE COURT: How long was the beam?

WITNESS: About twenty feet.

THE COURT: It was three inches wide and twelve inches the other way, was it?

WITNESS: I think so, three by twelve, I think was it.

THE COURT: Was it floor timber or roof timber?

WITNESS: Roof timber.

NICHOLAS SESSLER, sworn for petitioner.

DIRECT EXAMINATION BY MR. RITGER:

Q. Are you the petitioner in this case, Mr. Sessler? A. Yes, sir.

Q. Were you employed by William Peter on May 28th, 1914? A. Yes, sir.

Q. What were you doing on that day? A. Putting sling on beams and guiding them up; that is fasten the cable to the sling.

Q. Was anyone helping you? A. Driver. We had to lift them up quite a ways before the—the cable was too short; cable stood on the second floor—had to light them up between four and five inches for the cable to reach the sling.

Q. What floor were you on? A. First floor.

Q. And what would you do after you put the cable on? What would you do after you put the cable on to the beams? A. Guide it through the hole.

Q. Did anything happen that afternoon? A. Yes, sir. Of course I don't know whether the chain slipped or whether it caught—I didn't know.

Q. What happened? A. I was on the floor, of course; went down; that is the last I knew.

THE COURT: Do you know what struck you, if anything?

WITNESS: No, sir. I never knew what hit me at all.

THE COURT: But you do know something hit you?

WITNESS: Something hit me; yes, sir.

Q. What kind of beams were you guiding up? A. Three by twelve, I think they were, but I don't know the length, twenty feet—a little over twenty feet.

Q. Were they very heavy? A. Well, between two—haul them—lift them up—take two, one couldn't.

Q. You say you had to guide them up through the hole. Did you guide this particular beam? A. Guided them all.

Q. How high would they go after—how high could you guide them? A. Until they would strike the roof beam and then somebody up there would take hold.

Q. Did this one leave your hands before it fell? A. Well, I had hold of it, I suppose; the last I knew.

Q. Do you know how you were hit? A. No, sir.

Q. Who was working upstairs? A. Mr. Lederer and John was his first name. I didn't know the one caught it first. Lederer caught the lower end that I was hit—

Q. When was the next that you knew? Or what did you know first after you were hit? A. After I was up—

Q. Did you suffer any pains or anything? A. They were putting water on my pulse. Water. That is all I seen when I come to.

Q. Do you remember where you were hit? I mean do you remember what part of your body was hit? A. No; I didn't know anything.

Q. After it was all over did you have any pain in that particular place? A. Yes, sir.

Q. Where was it? A. In the head.

Q. Where was it, front or back of the head? A. Back of the head.

Q. Did you have any other pains? A. Back bone, arm.

Q. Any other? A. Shoulder—right shoulder.

Q. Where is it it hurts you? A. Right shoulder and back, tender back bone.

Q. Was your forehead hurt?

MR. MCDERMOTT: I object.

THE COURT: Objection overruled. He has already said where he had various pains. He seems to have omitted something. It is perfectly proper to lead him. You got pains in the back of your head?

WITNESS: Yes, sir.

THE COURT: Did you have any in the front of the head?

WITNESS: Mostly in the back of the head.

THE COURT: Then you had it across your back, you say?

WITNESS: Yes, sir.

THE COURT: And where else?

WITNESS: Right shoulder.

THE COURT: Back or front of the right shoulder?

WITNESS: I couldn't say, it hurt all around.

THE COURT: Point to the place, if you can.

WITNESS: (Pointing).

THE COURT: Hand on the back of the shoulder?

WITNESS: Yes, sir.

THE COURT: Where else, if anywhere?

WITNESS: That is all; three places.

Q. How did you get home? A. On the wagon. Well, I laid quite awhile. They must have let me lay quite awhile, because the ambulance was there.

Q. And you went home, and did you have a doctor? A. Yes, sir.

Q. Who was the doctor? A. Dr. Hollister.

Q. What did you do when you went home? A. Stayed there.

Q. Did they put you to bed? A. Yes, sir; right away.

Q. How long were you in bed? A. Well, that

I don't remember. July—October—between July —or May and June and part of July.

Q. Did all the pains leave you? A. Not the head.

Q. Not the pain in the head? A. Head and heart, two places.

Q. Well, what is the matter with your head now? A. Get dizzy.

Q. You get dizzy? A. Yes, sir.

Q. Describe how? Tell the Court how your head feels now. A. Well, now it ain't so bad, but when I get it it spins like a top.

Q. Does it do that all the time? A. Morning, night, and when I get in the barber's chair, always.

Q. Does it do that every morning? A. Yes, sir; every morning; whenever I get up, nights or mornings, got to hold fast.

THE COURT: You had to do what?

WITNESS: Hold fast to the bed.

Q. Why? A. Well, I have to guide myself or I will fall until I get all right, then I let go of the bedstead, when the dizziness is over.

Q. Do you have any trouble walking? A. Not now. I did in the beginning.

Q. You said that you feel it when you go in the barber's chair. What kind of feeling do you have? A. Simply dizzy. Spinning—head spins all the time.

Q. Does it feel all right when you lie down? A. Well, if he puts it too low I have to make him raise it up.

Q. Can you walk upstairs all right? A. With the rail.

Q. You have to use the rail? A. Yes, sir.

Q. Did you ever try to walk alone without the rail? A. I don't know. I live on the first floor,

and we have a rail on the bottom, front and rear of the house.

Q. How old a man are you now? A. Sixty. I was last February 25th, I was 59.

Q. Can you bend over all right? A. Oh, yes.

Q. Forward? A. Forwards I have to be careful.

Q. Why? A. When I get up and I reach for my shoulder if I am not careful I will be on the floor up against the chiffonier or up against the door.

Q. Does that happen to you now? A. It does right along; yes, sir.

Q. Did that ever happen to you before you were hit? A. Never; never, not if I had 200 pounds on my back, if I had 250 it wouldn't do it.

Q. Were you ever sick before? Were you ever sick before March 28, 1914? A. No, sir.

Q. You were in good health?

THE COURT: He told you no, that he never was sick.

Q. Did you miss work at all before March 28, 1914? Were you able to work every day? A. Oh, yes, I never lost a day except when I had no work, had to wait for lumber.

THE COURT: You never lost a day on account of being unable to work physically, is that what you say?

WITNESS: Yes, sir.

THE COURT: This accident happened on what day?

WITNESS: 28th.

THE COURT: March?

WITNESS: May.

THE COURT: May last year?

WITNESS: 1914.

Q. And where were you after the accident? A. At home.

Q. How long did you stay home before you started to go to work again? A. I haven't been working.

Q. You haven't worked at all? A. No, sir; I haven't worked a day since the accident.

Q. What day was the first day you came out of the house after this accident? A. Some time in July.

Q. What did you come out to do? A. Tried to walk as far as the corner. That is all.

Q. Did you? A. Not right away, until I got used to it a little more around the room.

Q. Were you in bed when you were home or were you sitting up? A. Sit up, that is after I could walk a little. I used to sit up part of the day and part of the day I would be lying down.

Q. How long was it before you walked? A. Walked?

Q. Yes. I mean walk with comfort? A. Two months.

Q. You could walk in July? A. Yes, sir; sometime in July.

Q. Why couldn't you work then? A. My head was disordered.

Q. Are you still? A. Yes, sir; get dizzy when I put it back.

Q. You get dizzy when you hold your head back? A. When I lay—lay a little while or reach down to reach anything.

Q. When you put your head too far back or forward, is that it? A. Yes, sir; forwards or backwards.

Q. You do not have any continuous pain? A. No, sir; not all the time.

Q. You do not have any pain all the time? A. Sometimes.

Q. Still a little pain once in a while? A. Yes, sir.

Q. Where is this dizziness? A. Well, it is around the back here (indicating).

Q. When you are standing up straight do you feel dizzy; as if you were about to fall? A. Not when I am up straight.

Q. It is only when you are sitting down or lying down? A. When I lay down or stoop and reach for anything.

CROSS EXAMINATION BY MR. MCDERMOTT:

Q. You said you had this pain in your back bone. What part of your back bone was this pain in that you had? A. Center.

Q. Below the neck? A. Right below the neck; yes, sir.

Q. What sort of pain was that, sharp pain or dull ache? A. Pain; that is all I know.

Q. What is that? A. Severe pain.

Q. Was it a sharp, shooting pain like an electric shock going into you? A. No, sir; all the time, not like a shock.

Q. Like a toothache? A. No, sir; it was all the time, that pain, without relief.

Q. How long did that continue to last? A. That was over three months.

Q. Two months? A. Over three months.

Q. That lasted along until some time in August? A. Yes, sir; I couldn't say whether it was August or September; something like that.

Q. Two or three or four months, something like that, wasn't it, before it went away? A. Yes, sir.

Q. How long did this pain in your right shoulder last? A. That was along—I had that in February yet, January and February of this year.

Q. What is the first thing you remember after you were struck by this beam? A. What was

the first thing? The doctor,—seen him with a white suit, that is all I remember.

Q. Then you were taken home? A. No, sir. I was after. I was asking for a bed.

Q. You were what? A. Asking for a bed.

Q. Were you taken to the hospital or taken home? A. No, sir; they said I was all right.

Q. The doctor said you were all right? A. No, the boss.

Q. The boss said you were all right? A. Yes, sir.

Q. You didn't go to the hospital? A. No, sir.

Q. You were sent home? A. Yes, sir.

Q. Who was this doctor of the ambulance—was that an ambulance surgeon? A. Yes, sir; he wouldn't come near me. They wouldn't let him come near me.

Q. He didn't examine you at all? A. They didn't allow him to get near me.

Q. Where did you see him? A. Seen him at the door—seen him standing there with the white suit on and I knew he was a doctor from the hospital.

Q. You were unconscious at that time, weren't you? A. Not then.

Q. How do you know he didn't examine you then? A. That I can't say.

Q. You don't know then?

THE COURT: He didn't come to you as far as you know when you were conscious?

WITNESS: I knew they were after me and I heard Peter say I was all right and ought to be to work.

Q. Have you gone back to Mr. Peter's and tried to work since? A. No, sir.

Q. Have you tried to work at other places? A. No, sir; couldn't; I wasn't able to.

Q. Do you remember sometime ago when Dr.

Stout was at your house and you told him that you had this dizzy feeling and he asked you to walk up and down stairs and you did it all right? A. I held fast to the rail.

Q. You got up and down all right? A. I didn't say I couldn't walk up and down all right. I said when I did I always liked to have a rail.

Q. Your work before this accident happened kept you pretty active, didn't it? You were a pretty hard worker? A. Yes, sir.

Q. And you worked practically every day, didn't you? A. When I had work; yes, sir.

Q. So that you got quite a good deal of exercise each day, didn't you, physical exercise? A. When I worked.

Q. What is the answer? A. When I worked.

Q. And you worked every day, didn't you? A. Yes, sir.

Q. And since the accident you have not been getting much exercise, have you? A. No, sir; walk.

Q. Walk a little bit is all? A. Yes, sir.

BY THE COURT:

Q. Did you employ a doctor yourself during the first two weeks after you were hurt? A. Yes, sir; right along.

Q. What doctors did you have during the first two weeks only? A. Dr. Hollister.

Q. And do you know what he charged you for his services during the first two weeks after your injury? A. No, sir; I couldn't say.

Q. You don't know. Did you have any other doctor? A. No; only the one.

THE COURT: Has any compensation been made to this man?

MR. RITGER: He received $9.30 for thirty-nine weeks.

Dr. Louis E. Hollister—Direct.

Q. Mr. Sessler, did you have any other doctor than Dr. Hollister? A. Yes, sir; I had a specialist.

Q. Did William Peter send any doctor to you? A. No, sir.

Q. Did he pay for any medicines you had? A. No, sir.

DR. LOUIS E. HOLLISTER, sworn for Petitioner.

DIRECT EXAMINATION BY MR. RITGER:

Q. Doctor, you are a practicing physician in the City of Newark? A. Yes, sir.

Q. How long have you practiced about? A. Little over 41 years here.

Q. Do you remember being called to the house of Nicholas Sessler on May 28th, 1914? A. I do, sir.

Q. When were you called and tell us what you found there? A. I was called in immediately. He had been hurt—Mr. Sessler, himself, had been hurt—and I got my machine and went right up there. I found him in the bed, unconscious or nearly so. I could arouse him so he would open his eyes partially, but go right off again into semi-unconsciousness and would not speak, and I looked him over—heard the story as far as I could get it from his wife and the others, and I found him as I say practically unconscious, and his pulse was quite natural; face slightly flushed, and pulse rapid, but he showed no symptoms of concussion—or abrasion and I took it to be a case of concussion of the brain, that he would probably be better in the morning; put an ice bag on his head, give him very little medicine and then I came back again—I was twice that day—and he was very much the same. We con-

tinued the cold water treatment, kept him quiet in bed, gave him nothing to eat the first day at all and afterwards we kept him on a very light diet. I made—if you will allow me to use my notes—I made two calls the first day, I know, and two calls the second day; then the 28th, 29th, I also called on the 30th and 31st, and on June 1st, 2d and 3d. I made twelve calls altogether in the first week.

THE COURT: How many the second?

WITNESS: Eight the second; 21 altogether in two full weeks.

THE COURT: In the two weeks you called twenty-one times?

WITNESS: Yes, sir.

THE COURT: How is that, twelve the first and eight the second, that makes 20, yet you say 21 times you called?

WITNESS: I shall have to count them over. I counted one more. I can tell you from my original data if you will allow me to take the trouble to open the book.

MR. MCDERMOTT: I do not object to the one extra call.

THE COURT: What is a reasonable charge Doctor, for these services rendered during the first two weeks?

WITNESS: I charged him $2 a visit the first two weeks.

THE COURT: Then the reasonable value is $42, is that it?

WITNESS: Yes, sir. Thursday he was hit. I made that first week five visits; Thursday, Friday and Saturday, on the next week which begins on Sunday, I made four, first days of the week I made one visit each day, and that brought it up until Wednesday night and I did not go again

until Saturday, and the 7th, 8th, 9th of June and on the 11th of June.

THE COURT: That is only fourteen visits, Doctor?

WITNESS: Well, how about the first, May 28th—there was five visits, two on the 28th, two on the 29th, and one on the 30th of May, on the 31st of May one, and 1st, 2d and 3d of June once,—one on the 6th, one on the 7th, one on the 8th, one on the 9th and one on the 11th. That made exactly two weeks.

THE COURT: That is exactly two weeks, isn't it?

WITNESS: Yes, sir; from the time he was hit.

THE COURT: That is fourteen visits in the first two weeks after the injury. That would be $28 according to the doctor's testimony.

Q. Will you describe, Doctor, just what you found his physical condition to be when you first treated him? What abrasions you found, if any, or whether you found any bruises on him? A. Well, he had what we call a hematoma on the right posterior portion of his head and he had a reddened condition of the skin over the right shoulder blade. The skin was red but the skin had not broken anywhere as I found.

Q. Was there anything the matter with his heart? A. No, sir.

Q. What did you see and what did Mr. Sessler complain of after the first day or two? A. After about the second day he became quite conscious to talk with. He had pain in his eyes and particularly pain in his right arm and shoulder and right side of his head. I had examined him very thoroughly and found no bones broken. Found

this hematoma but he seemed so much better that I thought in two or three days the man would be practically well, that he was suffering from concussion of the brain and he would be gradually getting better of that until—I says to myself, "Lucky boy"—until the 3d of June, and he complained so severely that they sent for me on the 6th of June. They called me the day before and I went up there the 6th of June and I found him with a temperature, injected eyes—suffused eyes, so-called, and delirious, and all the time we had cold applications to his head, but he developed in my opinion what is called a traumatic meningitis and was seriously sick all the month. He layed abed so that he was taken care of for the following—for nearly three months, July, August, September and October, I saw him every week after his temperature had gone back to normal and he began the latter part of July to walk around the room. He used to walk out to the park, what is called West Side Park, near where they lived.

THE COURT: How far away is that from the house?

WITNESS: Well, I couldn't say exactly.

THE COURT: Block or block and a half?

WITNESS: About four blocks I should say. Take it leisurely he would get along very comfortably, but he would always, from the time he was hurt until now, if he stoops over—can't bend over and button his shoes.

Q. Do not tell us that yet. You were saying that you saw him during October. When was the last time that you saw him particularly to treat him? A. 25th day of November, but I saw him regularly every week up to the 24th of October. That is all I have to tell.

Q. Have you examined him since November 20th? A. Yes, sir.

Q. When was the last time you examined him? A. The last time I examined him was day before yesterday in connection with Dr. Stout, a physician—he is here to-day.

Q. When you examined him day before yesterday you said that you found—don't tell us what he told you—tell us what you found—the objective symptoms and afterwards you can take up the other symptoms, if any. A. No; I haven't any to take up. We found the man—there was the same condition that he had been in for some time; three months anyhow—and practically the same as he has been since the 1st of January. Then there was—in the examination of his eyes—there was no ptosis or inability to raise the upper lid.

THE COURT: Both eyes?

WITNESS: Yes, sir. The eyes reacted naturally to light.

THE COURT: Acted or reacted?

WITNESS: Reacted naturally to light. And there was nothing that we so commonly find in people of his age; particularly a hard working man—and arcus senilus or senile condition of the upper edge of the corea. His eyes were apparently in good shape and I found nothing abnormal with the man at the direct examination except where he had been a bright, strong, sober and industrious carpenter for twenty-five years or more, that I attended his family, he has gone down to what you see him here to-day.

THE COURT: How much weight has he lost in your opinion?

WITNESS: Forty pounds.

Q. Is Mr. Sessler as active now as he was then? A. No, sir.

Q. How long have you known Mr. Sessler? A. Ever since he was married.

Q. Did you ever treat him before? A. I never gave him a dose of medicine until he was hurt this last May.

THE COURT: You mean a year ago, do you Doctor?

WITNESS: Oh, yes; year ago, 28th of May, 1914.

Q. How often did you see him before May, 1914? A. Never unless I went to his house to see some of the members of the family.

Q. Did you see him very often that way? A. Well, I generally saw him when his wife bore him children, of which she had five.

Q. You have seen Mr. Sessler until November 25th, did you say, regularly, or was it October?

THE COURT: November he said.

Q. Did you see him since that time? A. Yes, sir; I saw him on the 5th of December once.

Q. And after that? A. I saw him in March once—March 15th, and I saw him twice since then in connection with Dr. Stout.

Q. Did you go of your own accord? A. I did up to and including the 5th day of September, and I went semi-regularly until the 25th of November.

Q. Well, did you get a call in March? A. Yes, sir.

Q. What did you find then? A. Found he was very dizzy and he couldn't—he complained all the time that he couldn't sit up, nor he couldn't get his shoes on. He was sitting—I got him up and sit him on the side of the bed.

Q. Did he get up at that time? A. No, sir; only partially.

Q. You have observed his movement now, have

you? You have made an observation of his movements at the present time? A. Yes, sir; I have.

Q. In your opinion do you think that he can perform any work? A. I do not, at the present time.

Q. Can you give an opinion as to when he will be able to work? A. No, sir.

Q. By that do you mean that he may not ever be fit or that he will be sometime? A. That depends to my mind entirely on what is the matter with him.

Q. Well, do you know what is the matter with him? A. No, sir.

Q. You do not understand what the dizzy condition is then? A. I did not say that, sir. I think the trouble is one of two things, one of which he may get rid of and the other he can not get rid of.

THE COURT: What are those two things, Doctor?

WITNESS: In my opinion the first one is the most serious one, is a pachymeningitis or a thickening of the membranes of the brain from former inflammation—a traumatic meningitis shortly after he was hurt. That is the most serious thing about it.

BY THE COURT:

Q. What is the result of that if he has it? A. The result ? He is incurably an invalid.

Q. Incurably an invalid? A. Yes, sir.

Q. And what is the other? A. Traumatic neurosis or traumatic hysteria, which is just as real to him as though he had pachymeningitis, but with care and time he should recover from it.

Q. How much time? A. What?

Q. How much time should he recover in? A. That is beyond me.

Q. You say with time and care he can recover

from this traumatic neurosis or— A. Hysteria.

Q. Or hysteria. A. Yes, sir.

Q. Now, the question is, Doctor, how much time? A. You have got to ask somebody that knows more than I do, Judge.

Q. Well, have you got an opinion about that, Doctor? A. Yes, sir.

Q. What is your opinion about that? A. Not as to the time. I haven't got an opinion as to time. I have no opinion as to when he might recover. I have never seen, in the years that I have been in practice, and I have had a lot of it—I have never seen—traumatic neurosis—I have never seen but one previous case. One of the little girls that was injured at the time of the accident to the trolley car that killed so many high school children up near the high school some years ago the little girl was three years and a half absolutely bedridden—two people—two adults couldn't put her shoes on. All the time sitting up in bed and her foot was going like that (indicating).

Q. An older person has a poorer chance of getting well than a younger person, isn't that so? A. Yes, sir; but I had Dr. Sayre of New York, who is quite an eminent neurologist to come over twice to see her.

Q. Don't state his opinion, Doctor, only state your own. A. Yes, sir; my opinion was—

THE COURT: You have answered my question. You say you cannot tell what the time is?

WITNESS: Sure.

FURTHER DIRECT:

Q. There is one question, about the pachymeningitis. You say that would make an incurable invalid—

THE COURT: Yes; he has already said that.

CROSS EXAMINATION BY MR. MCDERMOTT:

Q. Dr, Hollister, take a man who is active, does a great deal of physical work, as this man did, and change his condition suddenly, so that he does practically no physical work, isn't that very apt to cause stomach disorders from impaired digestion? A. Yes, sir; that will be true.

Q. And cause weakness; and do not these dizzy spells come as much as anything from some trouble with the stomach or some part of the digestion system? A. Not in the case of this man Sessler,—I do not think so at all.

Q. It is possible though, isn't it, that that might be the cause of it? A. Not in his case, I do not think it is. I have attended him assiduously and carefully for too long a while.

Q. What makes you say that it is not possible in his case? A. My experience, sir; that is all.

Q. Do you think that this condition which you say ordinarily would cause a man to have such trouble with his stomach and would cause dizziness is not operative in his case? A. I did not say that.

Q. What is your answer to that, yes or no? A. Ask the question, please.

THE COURT: You are not entitled to a categorical answer.

MR. MCDERMOTT: I do not think he answered it.

Q. Do you think there is any reason in the case of this man Sessler why the usual effect of a change from active conditions to inactive conditions would not effect such a change in his stomach and digestion as would cause headache? A. No; because we put him on such a restricted

diet—in fact he could not take much of anything —and we had him on such a restricted diet so long, and of necessity his stomach had a rest rather than anything else, whereas in ordinary health he was eating all kinds of heavy food.

Q. Wouldn't this change of diet in a man of his type who ordinarily eats heartily and heavily cause a change in his blood circulation so that it itself would cause the dizziness? A. No, sir; I do not think so.

Q. It might possibly though, might it not? A. I don't know.

Q. If Mr. Sessler is suffering from traumatic neurosis isn't it true that his own will or volition is largely the thing that will cure him rather than with any outside cause? A. His what?

Q. If he is suffering from traumatic neurosis isn't that such a condition that his own will or his own volition is the thing to cure that rather than any medicine? A. Change of scene and environment has to do more than medicine with him, no doubt.

Q. There is no regular medicine that you give for that, is there? A. I am not particularly a specialist in nervous diseases.

Q. You have read up to some extent, haven't you, on this subject? A. Yes, sir; a great deal.

Q. And isn't it true that what you have read— isn't it your opinion that cases of traumatic neurosis are often cured by the very fact that the trial for the injury is finished? A. I do not think—there is very little true traumatic neurosis —very little.

Q. Isn't it the opinion of specialists that that is one of the main things to cure it? A. What?

Q. The fact that the trial for the injury is finished,—the man gets a judgment? A. Well, if you call that traumatic—

Dr. Louis E. Hollister—Cross.

MR. RITGER: I object.

THE COURT: Objection sustained.

Q. Will you tell us what text books you have consulted in reading up this subject? A. What?

Q. What text books, if any, you have consulted in studying the subject of traumatic neurosis? A. I cannot now. If you come down to my house I will show you about 2,000 volumes of quite a number of cases.

Q. You don't know of any particular book you have read up the subject in, do you? A. No, sir; I could not; I haven't for seven or eight years read it, probably for that length of time.

BY THE COURT:

Q. Doctor, can he do any work at all now? A. I don't think he can.

Q. Can he do any work on the ground where he wouldn't be injured if he gets dizzy? A. Well, he says he can—

Q. Not what he says. I am asking you about your opinion. A. Well, I cannot give you any opinion, Judge, without telling you what he says he could do as well as not, as if he could sit still.

THE COURT: You may state that.

WITNESS: He said that if he could sit down and do it that he could peal potatoes as well as he ever could. He sometimes helps his wife in the kitchen but if he has to walk around the kitchen table, to be sure of himself, he has to hold on to some support; hold on to the table if he went to go around the kitchen table to get more potatoes to peal.

SOPHIE SESSLER, sworn for petitioner.

DIRECT EXAMINATION BY MR. RITGER:

MR. RITGER: There was $2.25 paid for medicine in the first two weeks.

MR. MCDERMOTT: We will admit that.

Q. You are the wife of Nicholas Sessler? A. Yes, sir.

Q. Will you tell the Court how Mr. Sessler acts around the house now? A. He is very dizzy in the morning. In the morning when he gets up he has to hold—no matter where he walks—he walks—he staggers—he holds himself and many a time I have to go and catch him or he would drop over.

Q. Does that happen every morning? A. Every morning.

Q. Does it ever happen during the day? A. During the day sometimes too, that it happens. He takes it real easy. He takes a nap every afternoon.

Q. Have you seen him walking outside? A. Outside? Yes, sir. Very slow he has to walk.

Q. Does he go right straight along? A. Well sometimes he sides.

Q. —sometimes he goes siding.

Q. Does he go without stopping. A. No; he has to stop—he has to stop sometimes.

Q. What for?

THE COURT: She does not know. Sometimes he does stop?

WITNESS: Yes, sir.

THE COURT: That is all she can say. He has to stop must go out.

Q. Has he been able to do any work around the house? A. No, sir.

Sophie Sessler—Cross.

MR. MCDERMOTT: I object.

THE COURT: Objection sustained.

Q. Has he done any work around the house? A. No, sir.

Q. He has not? A. No, sir; he has done no work around the house, only maybe peal potatoes, that is about all; otherwise he can do no work.

Q. Have you seen him go up and down stairs? A. We have no stairs to go up except the little stoop, two steps in the rear, because I live on the first floor.

Q. Can he walk up there all right? A. If he holds himself up with the rail, but he has to hold himself all the time.

THE COURT: That may go out.

CROSS EXAMINATION BY MR. MCDERMOTT:

Q. This dizziness of Mr. Sessler is largely in the morning when he first gets up? A. In the morning.

Q. When he gets out of bed? A. In the morning.

Q. How many times in the last week have you actually seen him fall over in this dizziness? A. How many times?

Q. Yes. A. Every morning.

THE COURT: He says "fall over", not when you have seen him dizzy or holding onto anything. How many times have you seen him fall down?

WITNESS: How many times I have seen him fall down?

Q. During the last week? A. The last week here?

Q. That is, has he actually fallen over, or does

he just get up and feel dizzy and support himself? A. Twice I have seen him go over that way and I catch him.

Q. You caught him; he did not fall over? A. No. If I wouldn't caught him he would have fall over.

Q. That is you think he would if you hadn't caught him? A. Yes, sir.

Petitioner Rests.

DR. HENRY V. STOUT, sworn for respondent.

DIRECT EXAMINATION BY MR. MCDERMOTT:

Q. You are a practicing physician in East Orange, are you not? A. I am.

MR. RITGER: It is admitted that he is qualified.

THE COURT: How long have you been a practicing doctor?

WITNESS: In East Orange twelve years—thirteen years.

THE COURT: Altogether?

WITNESS: Twenty-two years.

Q. Have you examined Nicholas Sessler who was on the stand here some time ago? A. Four times, altogether.

Q. When did you first examine him? A. The early part of October, 1914.

Q. Can you tell us from your recollection or from any memorandum that you have made what you found as a result of that examination as to his condition? A. If the Court will allow me I will read my report.

THE COURT: Yes. Are you going to tell us now about October '14 first?

WITNESS: Yes, sir; October 8th is the date.

THE COURT: October 8, 1914?

WITNESS: 1914. On examination I found the heart, lungs, liver, stomach and bowels in normal condition; the general reflexes were slightly exaggerated; pupillary reflexes normal—that is the eye; moderate arterial sclerosis, that is partial hardening of the arteries; slight incoordination; localized sensitiveness of the spine; hearing was good; speech unaffected, and complains of occasional headache, dizziness on suddenly looking upward or turning over in bed; unable to put his hand behind him on account of pain; shoulder sensitive to the touch and painful most of the time, apparently due to the contraction of the muscles following the injury and non-use of the arm. There was no sign of fracture. That is the main points in the examination —that is the first examination.

Q. Did you at that examination make any test to determine whether or not he actually suffered from this dizziness that he complained of? A. Yes, sir—not at that time especially. I took it for granted.

Q. Any subsequent time that you made such test? A. At one other examination I got him to go up and down stairs. I understood him to say he was dizzy when he ascended the stairs or came down—he went up and down without any trouble and did not complain of any dizziness at that time.

Q. How long a flight of stairs was that? A. I suppose twenty steps.

Q. Did you make any other tests?

THE COURT: Did you keep his hand on the rail when he was going up and down?

WITNESS: Yes, sir; just as ordinarily a person would.

THE COURT: Do you mean to say that every person who walks upstairs puts his hands on the rail?

WITNESS: Yes, sir; in the majority of cases. I do, in coming down especially.

Q. Did you make any test at that time or any other time to find out if he was suffering from this dizziness that he complained of? A. Why the last examination which was made on last Monday, I got him to follow an article I held in my hand until his head was retracted considerably. He said there was very little dizziness then; didn't complain any.

Q. That was just two days ago? A. Yes, sir.

Q. What did you find two days ago as to his condition—this last examination? A. I found, physically, nothing abnormal. He complained, of course, of dizziness and weakness still; the same as he did at each of the other examinations.

Q. Did you advise him at any time to try to work? A. I don't know whether I advised him to. I asked him why he didn't.

Q. Did he tell you? A. I don't know that I advised him. He has always contended that he could not on account of the weakness and dizziness. Those are the two principal symptoms that he has complained of.

Q. What in your opinion is Mr. Sessler suffering from at this time, if anything—any disease? A. Well, it is my opinion that he is suffering principally from traumatic meningitis—I mean traumatic neurasthenia.

THE COURT: Is that any different from traumatic neurosis?

WITNESS: Practically the same thing and coupled with it a state of hypochomdriasis with delusion, I think caused by the symptoms produced by the injuries he received.

Q. What in your opinion is his condition relative to have ability to work? A. Physically at the present I do not think he is able to do very much. He might possibly be able to do some light work, but he is possessed with the idea that he cannot work. Whether I am right or not I have thought that the man was afraid to try for fear there would be some direful result occur if he did undertake to work.

Q. If he did undertake light work would it not help him later on to do heavier work? A. Yes, sir, if he could perform it; yes, sir.

Q. Is his condition from which he is suffering at present largely psychological? A. I think there is a large element of psychic neurosis or neurasthenia that enters into it.

Q. What in your opinion is necessary to affect a cure of that condition, if anything? A. Well, that is something he will have to overcome very largely himself, and perhaps treatment of different sorts, electrical massage or something of that sort, perhaps medicine would help him to overcome it, but—

THE COURT: But what, sir?

WITNESS: To become inspired with the idea that he is not as seriously ill as he thinks he is would be the greatest factor, I think, in his recovery.

CROSS EXAMINATION BY MR. RITGER:

Q. Did you know Mr. Sessler before he was hit with this beam? A. No.

Q. On October, 1914? You made a visit to the house and at that time he had something the matter with his arteries. A. Hardening of the arteries.

Q. Has that condition disappeared? A. No.

Q. Is that still in existence? A. It has not progressed any. Just seems to be a slight condition which frequently obtains in a man of his age. That has nothing to do with injury.

Q. Was that resultant from the injury? A. Not at all.

Q. You say the spine was sensitive? A. Yes, sir.

Q. Do you know whether that is actually cured? A. Yes, sir; he doesn't complain of it at all.

Q. Have you ever asked him to bend over while you were there or bend backward suddenly? A. Bend backward, that is the head backwards.

Q. That was a slow movement, wasn't it? A. Yes, sir.

Q. You didn't ask him to do it in a hurry,—rapidly? A. No; just moderately.

Q. Whenever you were there were his movements speedy or was it all deliberate? A. Deliberate; yes, sir.

Q. Was there any difference in his condition in June when you saw him than it was in October? Was he altered in weight,—physically? A. I do not think I noticed any difference in his weight.

Q. Had you seen him walk for any distance? A. Across the room. I saw him coming up the street on Monday. He had been out just befort I got there and he came in with his wife.

Q. How did he act? A. I didn't notice any—anything peculiar about his gait at that time.

Q. Did you notice it at any other time? A. No, sir.

Q. I think you said something about the man

not getting the exercise that he had previously been used to? A. It was not I. I said nothing about that.

Q. The question was asked. A. No, It was the previous witness I think, that was asked.

Q. Do you know anything about pachymeningitis? A. Why, I know something about it. I do not profess to be an expert.

Q. What would you say that to be? A. It is an affection of the membrane covering the brain.

Q. Do you know whether Mr. Sessler has any affection that way? A. I do not know.

Q. You do not know? A. I do not know that he has.

Q. Did you make any particular examination as to that? A. Not with that idea, no.

THE COURT: Do you agree with Dr. Hollister that Sessler may have pachymeningitis?

WITNESS: He may have that.

Q. And may be now suffering from the effect of it? A. Such a thing is possible although I do not think very probable.

Q. What is the effect of that upon a person if he should have it? A. Well, the effect is to the nervous system principally and it might—it would cause headaches—chronic headache, perhaps disturbed visions.

Q. You wouldn't say that Mr. Sessler is suffering from that? A. I wouldn't say positive, though I do not think it is probable.

Q. What is it that you are sure he now has. traumatic neurosis, is that what you say? A. Traumatic neurasthenia, modified on a hypochomdriacal basis.

Q. Is that curable? A. It is in a majority of cases.

Q. Would you say that it is curable in this case? A. I think so. Perhaps may be a long time but I believe it is curable in his case.

Q. How long would you say? A. I can't say. I couldn't say positively. Perhaps three months, perhaps six months, perhaps a year.

Q. Is there any average that you could say as to the number of cures that are effected? A. No; I have no knowledge of average in that regard.

Q. Could you give an opinion as to the probability of recovery? A. Nothing further than I have said. I think perhaps he will recover in three or six months. That is all.

THE COURT: What is the usual time after the contraction of this disease for the patient to recover?

WITNESS: Well, it depends very largely on the extent of the trouble. A localized pachymeningitis, that is very small area is affected, will recover very much sooner than where a larger surface is involved, more membrances of the brain. Perhaps that would prove to be a case where it is incurable, but in this case,—in case he has it—it should not take more than six months or a year at the outside, under proper conditions.

THE COURT: It is more than a year already since he has had this trouble, if he has it.

WITNESS: I meant from the present.

THE COURT: I asked you the question generally of how long it takes to reach a recovery in a case of a traumatic neurasthenia?

WITNESS: Oh, traumatic neurasthenia? I though you were speaking about pachymeningitis. A traumatic neurasthenia is

often times cured very quickly, especially after the party has received a verdict and received proper compensation.

MR. RITGER: I object to that.

THE COURT: I will deny your motion. I will let it stand.

WITNESS: Those things are a matter of record, you know.

Q. Do you think he can or cannot move his

BY THE COURT:

upper eyelid? A. His upper eyelid? At present.

Q. Yes. A. There is nothing the matter with his eyelids at present.

Q. There isn't anything? A. I haven't discovered anything with the eyelids at present.

Q. If he has lost forty pounds in the last year what do you attribute that to? A. Loss of exercise, anxiety and neurasthenia—neurasthenia conditions, which is nearly always followed by loss of flesh.

Q. That is not going to be cured by a verdict in his favor? A. The neurasthenia conditions, the relief from anxiety and worriment will tend to relieve it.

Q. You think he will gain forty pounds after he finds out what the court is going to decide in this case, do you? A. No; I wouldn't go on record as stating that.

Q. I want to know what do you want to go on record as actually thinking. Here is a man you say may get well never or may get well in three months or six months or a year and the trouble with him is that he is only worrying I am calling your attention to definite things; he has lost forty pounds in the last year which he has not got now and when he gets up in the morning he is dizzy and when he walks he has a sensation as if he

were about to fall which makes it necessary for him to hold on to the railing—A. I haven't so understood, that that was the case when he was walking. I haven't seen him to do that when he was walking.

Q. Assume that that is the case, would that change your opinion and make you think he had pachymeningitis? A. I would consider his condition was more serious if that was the case; yes, sir.

Q. Your basis of reasoning is on the theory that he does not get dizzy every morning? A. No.

Q. Is it on the basis then that he is not actually in need of hanging on to something when he walks? A. I do not say he is not dizzy. I admit he may be dizzy. I believe the man is perfectly honest in the attitude he assumes. I do not believe he is malingering in the slightest degree, but I think he is the victim of an hallucination, very largely. He is possessed with the idea that he cannot work and he is afraid to try for fear that some dire results may make him worse. He is not able to perform his usual vocation, we will all admit that, at the present.

Q. How long will he be in that condition? A. That brings up the question as to when he will recover from the neurasthenia condition. I am not in a position to answer that positively.

Q. You are not able to say he will get well? A. No; but I believe it.

Q. You are not willing to state an opinion that he will get well in three or six months or a year? A. No; not positively, the time, but—

Q. Doesn't it seriously shake your theory as to the early recovery of this patient when you consider the fact that he may have seen and probably has been in the same condition since last summer? A. No; I don't think it shakes it specially.

Dr. Henry V. Stout—Cross.

Q. Assuming he is no better now than he was last summer doesn't that seriously interfere with your theory that he is likely to recover within a year? A. I didn't know we were assuming that. I think he is—

Q. I am asking you to assume it and putting it in my question. Assuming that to-day he is no better than he was last summer can you say that that does not interfere with your theory of a traumatic meningitis? A. Well, if I assume it, then, of course, that would change my—

Q. I have told you to assume it; and put it in the question. A. Well, even assuming it, I think sooner or later he will get well; perhaps not his normal condition, but he will get a great deal better than he is to-day, sooner or later.

Q. To-day in your judgment he would not be able to do any work? A. Very light work at first because he has been entirely idle for a year and over.

Q. Might continue in this same condition for five or six years, don't you think so? A. Possibly but not probably. That is not the usual course of the majority of cases.

Q. How much has he improved since you first examined him last October? A. The movement of the arm is practically normal; pain in the back has subsided and he can walk better then he could then. Those are the principal—

Q. Were the movements of the arm and the pain in the back and the walking directly attributable to this condition of the brain? A. Attributable to the accident.

Q. Were they attributable to this condition of the brain? A. I don't think so. I think they are due to the accident, the traumatism.

Q. Then all he has got left in your judgment, which is the effect of the accident, is the trouble

with the brain? Whatever it is, it is either pachymeningitis or traumatic neurasthenia? A. Yes, sir.

Q. And these other temporary symptoms and troubles that he had, difficulty in walking—physical difficulty in walking, pain in the back and trouble with the arm—those things have now passed away? A. According to his statement.

Q. You believe it? A. I do. I believe all the man has told me as far as that is concerned.

Q. I do not mean that. I mean to say that what he says to you coincides with your observation? A. Yes, sir.

Q. Everything excepting the brain matter? A. Yes, sir.

Q. What is pachymeningitis? A. Inflammation of the membrane of the covering of the brain.

Q. Caused by concussion? A. Usually, yes, sir.

Q. A blow? A. A blow. May be due to inflammatory conditions caused by some other internal trouble, but frequently from traumatism.

Q. The size of the place on the head that is struck does not necessarily control the extent of the inflammation, does it? In other words a hard blow might make a small—might strike a very small area—and a soft blow a larger area—wouldn't that have the effect of a hard blow? A. That is right.

Q. Isn't it the strength of the blow rather than the extent of the area? A. Extent of the area is what determines the extent of the inflammation as a rule.

Q. Now, if it is true that he was sick in bed and confined to the house for a month or two, is it your judgment that he thhen had inflammation of the tissues of the brain? A. From what

Dr. Hollister has said I think that is probable that he had. I did not see him, of course.

Q. And the inflammation of the brain is called pachymeningitis? A. That particular variety.

Q. And what other thing could it have been to produce this condition of traumatic neurasthenia? A. Traumatic neurasthenia is simply a nervous condition produced by the blow, isn't it? A. Yes, sir.

Q. Whereas the local inflammation of the membranes of the brain causes a permanent condition? A. If it becomes chronic.

Q. If it becomes chronic? A. Or if there are adhesions between the two membranes of the brain then there might be symptoms—

Q. Is there any way to find that out, Doctor, except to wait and see what happens to this man? A. Except operation, cut the head open, cut his skull open.

Q. Is that a reasonable operation? A. No.

Q. It isn't fair to ask him to take that chance, is it? A. It is not; no, sir.

Q. There isn't any X-ray or any other scientific method of ascertaining? A. I am not sure that an X-ray might not show some thickening of the membrane. I am not positive. I am not up in radiography to that extent; sometimes it does.

Respondents rests.

The Court finds in this case that the petitioner was injured as agreed to, and as a result of the injury he necessarily incurred medical expenses to the value of $28; for medicines and drugs the sum of $2.25, making a total of $30.25, during the first two weeks. The Court is unable to find although it believes that the fact is, that the petitioner is suffering from pachy-

meningitis, but the evidence shows that he is either suffering from pachymeningitis or from traumatic neurasthenia. Under those circumstances the Court finds—is impelled to find that there is a total and temporary disability for which the petitioner is entitled to recover for not more than three hundred weeks, for which the petitioner is entitled to recover under Section A $9.90 for three hundred weeks. Judgment will be entered accordingly and a credit allowed for the payment of thirty-nine weeks. The Court believes that the petitioner would be entitled to recover under Section B for four hundred weeks, but the proof is not legally sufficient to carry the burden under sub-division B of Section 11. The petitioner will be allowed costs.

Certification of Record.

NICHOLAS SESSLER,

Petitioner,

vs.

WILLIAM PETER, trading as LUCAS PETER & SON,

Respondent.

I, F. L. Salmon, one of the stenographers of the Essex County Courts, do hereby certify that the foregoing transcript contains the entire record of the proceedings and testimony taken by me at the trial of the case of Nicholas Sessler vs. William Peter, trading as Lucas Peter & Son, which trial was held before the Honorable William P. Martin, Judge, on the 30th day of June, 1915.

F. L. SALMON.

Order to Certify.

NEW JERSEY SUPREME COURT.

NICHOLAS SESSLER,
Petitioner-Respondent,.

vs.

WILLIAM PETER, trading as LUCAS PETER & SON,
Defendant-Prosecutor,

On behalf of the prosecutor in this matter.

IT IS ORDERED that Honorable William P. Martin, Judge of the Court of Common Pleas of the County of Essex, before whom this matter was heard in said Common Pleas Court within twenty days from the date hereof do certify to this Court, the testimony taken before him at the hearing of the petition herein.

Enter.

C. W. PARKER,
J. S. C.

Rule entered this 17th day of January, 1916.
On motion of

McDERMOTT & ENRIGHT,
Attorneys of Prosecutor.

A true copy.
Wm. C. Gebhardt.
Clerk

Certificate.

To the Justices of the New Jersey Supreme Court:

I, WILLIAM P. MARTIN, Judge of the Court of Common Pleas of the County of Essex, in response to an order of the New Jersey Supreme Court entered the 17th day of January, 1916, do hereby certify that the foregoing is the stenographer's transcript of shorthand notes of the testimony taken before me at the hearing of the petition for compensation in the within cause.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal this 28th day of January, Nineteen hundred and sixteen.

WM. P. MARTIN,
Judge.

Notice.

To William Peter, or McDermott & Enright, Attorneys:

Please take notice that on Wednesday, the 20th day of October, 1915, at 10 o'clock in the forenoon or as soon thereafter as counsel may be heard, I shall apply to one of the Judges of the said Court for an order, based on the attached proposed statement and determination of facts, making a final settlement and determination in this cause.

Respectfully,

WILLIAM PENNINGTON,
Attorney of Petitioner.

Determination and finding of facts and Rule for Judgment.

(Filed Oct. 28, 1915).

ESSEX COUNTY COURT OF COMMON PLEAS.

NICHOLAS SESSLER, *Petitioner,* *vs.* WILLIAM PETER, trading as LUCAS PETER & SON, *Respondent.*	On Petition for Compensation.

A petition having been heretofore filed in the above stated matter praying that the Court would decide the matters in dispute between the parties hereto, and for a payment of the compensation to which the petitioner might be entitled by virtue of the terms and provisions of an Act of the Legislature of the State of New Jersey, entitled "An Act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation and regulating procedure for the determination of liability and compensation thereunder," approved April 4, 1911, and the supplements thereto and amendments thereof, and a time and place for the hearing on the said petition having been fixed, to wit, June 23, 1915, and said hearing having been adjourned to June 30, 1915, at the Court House (Common Pleas Court Room, Part 1) in the City of Newark, and it appearing to the court that a copy of said petition and the order fixing the time and place for the said hearing having been duly served upon the respondent on May 28, 1915, and the said respondent having filed his answer on June 15, 1915,

Determination and finding of facts and Rule for Judgment.

and the respective parties having appeared before me at the time and place fixed for the said hearing by said adjournment, and I, having heard the testimony of witnesses for the petitioner, and the respondent, do hereby determine as follows: That on May 28, 1914, and for some time prior thereto, Nicholas Sessler was in the regular employ of William Peter, as a carpenter, doing duties usually pertaining to that trade; that at that time the petitioner was receiving $19.80 as his wages each week; that on said May 28, 1914, while engaged in the performing of the duties of his occupation, the petitioner was struck on the forehead by a piece of timber and was thrown down and rendered unconscious; that the injury arose out of and in the course of the employment of the petitioner by the respondent and that the said respondent had actual knowledge of the injury; that as a result of the injury the petitioner necessarily incurred medical expenses to the amount of $28.00, and expenses for medicines and drugs to the amount of $2.25, making a total of $30.25 during the first two weeks; that the petitioner, as a result of said accident is suffering from traumatic neurasthenia and possibly pachymeningitis, and that there is a total and temporary disability resulting therefrom, and that the petitioner is entitled to recover for 300 weeks, beginning two weeks from the date of the accident, May 28, 1914, and for which the said petitioner is entitled to judgment under Section 2, paragraph 11-A, of the sum of $9.90 for 300 weeks, subject to a credit to be allowed for 39 weeks, for which he has been paid; that the petitioner is entitled to costs on these proceedings and that the attorney of the petitioner is entitled to an allowance of $150.00 for his services, in addition to costs, to be paid out of the past due payments to the petitioner.

IT IS THEREUPON, on this twentieth (20th) day of October, 1915, on motion of William Pennington, attorney for the petitioner, ordered, that the sum of $30.25 for medical expenses, and medicines, and the sum of $9.90 per week, for 300 weeks, beginning two weeks from the date of said accident, May 28, 1914, less the sum of $386.10 the amount already paid, be and the same are hereby ordered to be paid by the said respondent, together with costs of this suit to be taxed.

AND IT IS FURTHER ORDERED that judgment be entered in favor of the petitioner, and against the respondent for the sum of $30.25 for medicines and medical expenses, and the sum of $9.90 per week for 261 weeks, together with costs.

WM. P. MARTIN,
Judge of the Court of Common Pleas.

Judgment on Determination of Court.

ESSEX COUNTY COURT OF COMMON PLEAS.
26412.

NICHOLAS SESSLER, *Petitioner,* *vs.* WILLIAM PETER, trading as Lucas Peter & Son, *Respondent.*	On Petition.

On Determination of Court after Verdict.

Judgment entered October 28th, A. D. 1915.

Damages. Costs, $39.76.

William Pennington, Atty. of Petitioner.

Judgment on determination of Court after hearing in the above entitled action was rendered on the twenty-eighth day of October, A. D. Nine-

teen Hundred and fifteen in favor of the said petitioner Nicholas Sessler and assess the damages against the respondent William Peter, trading as Lucas Peter and Son in the sum of Thirty and 25/100 dollars and the Court further finds in favor of the petitioner and assess the damages against the respondent in the sum of Nine 90/100 dollars per week payable for a period of two hundred and sixty one weeks, together with costs.

And the Court allows the attorney of petitioner the sum of One Hundred and Fifty Dollars for his services in addition to costs, to be paid out of the past due payments to the petitioner.

JUDGE OSBORNE.

Judgment entered and signed October 28th, A. D. 1915.

Reasons.

NEW JERSEY SUPREME COURT.

NICHOLAS SESSLER, *Petitioner-Respondent,* *vs.* WILLIAM PETER, trading as Lucas Peter & Son, *Respondent-Prosecutor.*	On Certiorari to Essex Common Pleas. Reasons.

The prosecutor herein assigns the following reasons upon which he will rely for a review of the determination and order directing payment in this cause and the judgment entered therein.

(1) The determination and findings of fact by the Judge of the Essex County Court of Common Pleas was not in accordance with the provisions of an act of the Legislature of the State of New Jersey, entitled "An Act prescribing the

liability of an employer to make compensation for the injuries received by an employe in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder," approved April 4th, 1911, and the supplements and amendments thereto.

(2) The determination of fact by the Judge of the Essex County Court of Common Pleas was not based upon lawful evidence.

(3) No legal evidence was produced by the petitioner establishing as a fact or warranting the Judge of the said Court in finding as a fact, that petitioner "is suffering from traumatic neurasthenia and possibly pachymeningitis," and therefore the compensation awarded petitioner was based upon an improper premise.

(4) There was no evidence before the Essex County Court of Common Pleas that any traumatic neurasthenia or pachymeningitis suffered or alleged to have been suffered by petitioner was occasioned by the accident he sustained while in the employ of the said William Peter, trading as Lucas Peter & Son.

(5) Because the Essex County Court of Common Pleas wrongfully determined that the said petitioner has a total and temporary disability resulting from the injuries claimed by him to have happened in the course of his employment with the prosecutor, and was entitled to recover for three hundred weeks' compensation at the sum of $9.90 per week.

(6) The evidence is that the said Nicholas Sessler was not totally incapacitated or disabled, but could have worked had he desired to do so.

(7) Because the said Court of Common Pleas did not determine that the petitioner had been

paid all of the compensation to which he was entitled under the statute above mentioned.

(8) Because in his petition petitioner alleges "the blow caused concussion of the brain with all the consequent symptoms and was followed by an attack of traumatic meningitis," whereas the Court found that the petitioner "as a result of said accident is suffering from traumatic neurasthenia and possibly pachymeningitis and that there is a total and temporary disability resulting therefrom," and the Court should not have found any other or different disabilities than those set forth in the petition and supported by petitioner's proofs.

McDermott & Enright,
Attorneys for Prosecutor.