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New Jersey Court of Errors and Appeals

DEPENDENT'S CLAIM PETITION FOR COMPENSATION.

NEW JERSEY DEPARTMENT OF LABOR

WORKMEN'S COMPENSATION BUREAU

10

TRENTON, N. J.

GRACE JOHNSON, Petitioner

vs.

ULSTER IRON WORKS, Respondent.

20

Received at Trenton: April 25, 1929.

Claim Petition No. 10612.

Date of Accident:, 19....

Attorney for Petitioner: John C. Grimshaw,
207 Market Street, Newark, N. J.

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

30

The claimant respectfully alleges the following facts:

1. What was the full name of the decedent?
Clarence Johnson.

2. Where did decedent live? 239 South Morris
Street, Dover, N. J.

3. Sex of decedent: Male.

4. Date of birth of decedent: 25, June, 1887.

5. Give below, in reference to each person 40
claimed to be dependent upon the deceased at the
time of accident or death:

Dependent's Claim Petition for Compensation

Name of Each Dependent: Grace Johnson. Age at Last Birthday: 47. Date of Birthday: Feb. 26, 1882. Relation to Decedent: Widow.

10 Everett Johnson. Age at Last Birthday: 8. Date of Birthday: Jan. 20, 1921. Relation to Decedent: Son.

6. By whom was decedent employed at the time of accident? (Give name and business address): Ulster Iron Works, 21 North Sussex St., Dover, N. J.

7. What was the business of the employer? Iron.

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

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

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

11. Did you notify the employer of this accident? Employer had knowledge of accident.

12. If so, on what date: December 26, 1928.

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

14. What was the regular occupation of the decedent, and what kind of work was he doing at the time of the accident? Puddler, working at furnace.

15. When did the accident happen? December 26, 1928, about 6 A. M.

16. Where did the accident happen? At Plant.

17. What was the nature of the accident, and
40 how did it happen? While working at furnace, deceased slipped and fell backwards striking base of skull, being rendered unconscious and severely injured, resulting in death.

Dependent's Claim Petition for Compensation

18. Did deceased work any after the accident?
No.
19. If so, give date he was compelled to stop work:
20. Give date of death: December 26, 1928. 10
21. Were his wages fixed by piece work? 10
22. If so, what was his average weekly wage?
23. If wages were fixed by the hour, state rate per hour:
24. Give number of hours in an ordinary working day:
25. Give number of days in an ordinary working week:
26. State the amount of weekly wages: \$45.00 to \$50.00 per week. 20
27. How much money have you received from the employer as compensation (not medical aid) since the accident? None.
28. Has the employer promised to pay you any compensation? No.
29. If so, how much?
30. Was medical aid required? Yes.
31. If so, was this service furnished by the employer? Died before medical treatment could be rendered. 30
32. What other sum did you expend for medical, surgical or hospital service? No bills rendered.
33. Give name and address of physician and hospital: Dr. Baker, Dover.
34. What other facts are there which you believe important? Petition for payment of medical expenses; payment of compensation for dependents, payment of funeral and other expenses involved. 40
35. Are you willing that the Compensation Bureau endeavor to secure compensation for you, by

Dependent's Claim Petition for Compensation

agreement, before calling for an official hearing?
No.

41. If you are unwilling, state reasons: Respondent has failed to make payments, although informal hearings were held.

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

And your petitioner will ever pray, etc.

GRACE JOHNSON,
Dover, N. J.

30

40

Dependent's Claim Petition for Compensation

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

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

GRACE JOHNSON.

Subscribed and sworn to before me, this 30th day of March, 1929, at Dover, N. J. 20

J. C. GRIMSHAW,
 Atty at Law of N. J.

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

30

40

Dependent's Claim Petition for Compensation

TO THE RESPONDENT

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

10

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

20

WORKMEN'S COMPENSATION BUREAU.

W. E. STUBBS,

Secretary.

**RESPONDENT'S ANSWER TO DEPENDENT'S
CLAIM PETITION.**

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

10

GRACE JOHNSON, Petitioner

vs.

ULSTER IRON WORKS, Respondent.

20

Claim Petition No. 10612.

May 14, 1929.

Attorney for Respondent: John T. Fitzgerald,
31 Fulton St., Newark, N. J.

In answer to Claim Petition filed in this cause:

1. What was decedent's name? Says Clarence
Johnson.

2. Where did decedent reside? Says 239 So.
Morris St. Says Dover, N. J.

30

5. Do you question the dependency, age or re-
lation of any of the persons named in question
No. 5 of the Claim Petition? If so, specify: Re-
spondent denies the petitioner's decedent's death
was caused by an accident arising out of and in
the course of his employment. Hence it denies
dependency.

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

40

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

7. State your business: Iron Manufacturer.
8. Did you receive written notice from the decedent at the time of hiring, or later, that the Compensation Law was not to apply to him? No.
- 10 9. Did you give such notice to him? No.
10. When did you first have knowledge of this alleged accident? December 26, 1928.
11. Did you receive notice of this alleged accident from the Petitioner? No.
12. If so, on what date? See answer to No. 11.
13. Has any claim for compensation been made? Yes.
14. What was the regular occupation of the decedent, and what kind of work was he doing at the time of the alleged accident? Puddler.
15. When did the alleged accident happen? December 26, 1928, about 6 A. M.
16. Where did the accident happen? Plant.
17. What was the nature of the alleged accident, and how did it happen? Decedent was at his regular work when he suddenly dropped dead, from a cause or causes in no way connected with his employment.
- 30 18. Did the decedent work any after the alleged accident? No.
19. If so, give date he stopped work: See answer to No. 18.
20. Give date of death: December 26, 1928.
21. Were his wages fixed by piece work? No.
22. If so, what was his average weekly wage? See answer to No. 21.
- 40 23. If wages were fixed by the hour, state rate per hour:
24. Give number of hours in an ordinary working day: 6.

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

25. Give number of days in an ordinary working week:

26. State the amount of weekly wages: \$42.40.

27. How much have you paid as compensation (not medical aid) since the alleged accident? 10
Nothing.

28. Have you promised to pay compensation?
No.

29. If so, how much? See answer to No. 28.

30. Was medical aid required? Yes.

31. If so, did you furnish all the medical, surgical, or hospital services, or other expense of last sickness? Yes.

32. Between what dates was service rendered? 20
On December 26, 1928.

33. Give name and address of physician and hospital rendering service at your direction: Dr. Baker, Dover, N. J.

34. What other facts are there which you believe important? If you deny that compensation is payable in this case, explain fully your reason for this conclusion: Respondent denies paragraphs 5, 17, 26, and 34 of the petition. Respondent denies that the death of the decedent was caused by an accident arising out of and in the course of the employment of the decedent by the respondent. Respondent disclaims liability for counsel fees. Respondent reserves the right to defend on other grounds. 30

JOHN T. FITZGERALD,
Attorney of Respondent,
31 Fulton St., Newark, N. J. 40

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

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

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

20 JOHN T. FITZGERALD,
Attorney of Respondent.

Subscribed and sworn to before me, this 14th day of May 1929 at Newark, N. J.

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

Grace Johnson—Direct

GRACE JOHNSON, a witness called on behalf of the petitioner, having been first duly sworn, testified as follows:

Direct-examination by Mr. Grimshaw:

- 10 Q. Mrs. Johnson, you are the widow of Clarence Johnson? A. I am.
- Q. Where do you live? A. Dover, New Jersey.
- Q. How long have you lived there? A. Twenty-three years nearly.
- Q. How long were you married to Clarence Johnson? A. Over twenty-two years.
- Q. Do you have any children? A. Three.
- 20 Q. What are their names? Harold, Dorothy and Everett Johnson.
- Q. How old are they? A. Harold Johnson, twenty-one years; Dorothy Johnson, eighteen years, and Everett Johnson, eight years.
- Q. What was the date of his birth? A. January 20, 1921.
- Q. All these children are still living? A. Yes.
- Q. Who was your husband employed by? A. Ulster Iron Works.
- 30 Q. Do you know how long he was employed there? A. I think between eleven and twelve years.
- Q. Do you know what kind of work he was employed to do? A. Puddler.
- Q. Was he ever laid up sick during the eleven or twelve years he was employed by the Ulster Iron Works? A. He had the grippe and colds twice.
- 40 Q. How long was he disabled with the grippe? A. Oh, maybe two or three days.

Grace Johnson—Direct

Q. Did he sustain any injury during his employment with the Ulster Iron Works you know of?

Mr. Walburg: I object to that unless she was present.

Q. Did he sustain any injury you know of? A. Just one.

Q. When was that?

Mr. Walburg: I object to that as hearsay.

The Court: Change the question.

Q. Do you know whether it was a serious or minor injury? A. Just minor.

Q. Was he confined to his home as a result of that injury? A. No.

Q. Did he lose any time? A. No.

Q. Did he receive any medical treatment you know of? A. No.

Q. Did he outside the time he lost when he had the cold lose any time from his employment with the Ulster Iron Works as a result of any illness or injury that you know of? A. No.

Q. Did you have a doctor to treat Mr. Johnson for any condition with the exception of the time that he had the cold? A. Just for the little accident that happened right there.

Q. That one minor accident? A. That one.

Q. What in your opinion was Mr. Johnson's physical condition from your observation? A. Good.

Q. Did he ever make any complaints regarding his physical condition? A. Nothing serious.

Q. Of your own knowledge, did Mr. Johnson ever take any tonics or medicine? A. No.

Grace Johnson—Direct

Q. What would you say as to Mr. Johnson's appetite? A. Good.

Q. Did he eat anything you prepared for him or was he fussy? A. Not a bit fussy.

10 Q. Did your husband ever complain of back aches to your knowledge? A. No.

Q. Did he ever complain of pains around his heart? A. No.

Q. Did he ever complain of shortness of breath? A. No.

Q. Did he ever complain of dizziness or headaches? A. Maybe once in a while he would have a slight attack of headaches.

Q. Did he complain at home? A. No.

20 Q. All you know as to what happened at the plant was what he told you? A. Yes.

Q. Did he wear glasses? A. No.

Q. Did he ever have any strokes to your knowledge? A. No.

Q. What in your opinion was the general appearance of Mr. Johnson? A. Good.

Q. Do you know how heavy Mr. Johnson was? A. About one hundred and sixty-five pounds I think.

30 Q. Did he recently gain or lose weight? A. No, he seemed to stay just on the average.

Q. Do you know how tall he was? A. Five feet, ten inches.

Q. Do you know what he was employed to do at the Ulster Iron Works? A. A puddler.

Q. Did you ever see him puddle? A. Well, just once.

40 Q. When Mr. Johnson left home to go to work on the morning of December 26th, 1928, what was his physical condition? A. Why, good as far as I know.

Grace Johnson—Direct

Q. Did he eat breakfast as usual? A. He never ate in the morning. When he went out early he just ate from his pail afterwards.

Q. When did you next see Mr. Johnson after he left that morning of December 26th, 1928? A. When did I see him? 10

Q. Yes. A. Friday afternoon.

Q. Where was he then? A. In the house.

Q. Who brought him there? A. Schuler, the undertaker.

Q. You did not then see Mr. Johnson alive after he left on the morning of December 26th, to go to work? A. No.

Q. What was the funeral expense? A. Three hundred and fifty dollars. 20

Q. Did you pay it? A. I did.

Q. Do you have the receipted bill? A. I have.

Mr. Grimshaw: Will you stipulate on the record she will be awarded statutory funeral expenses?

Mr. Walburg: Yes.

Q. Were there any doctors' or hospital expenses you paid as a result of Mr. Johnson's death? A. No. 30

Q. Do you know of any expenses or were any bills sent to you as a result of his death or treatments rendered? A. No.

Q. Who asked for the autopsy? A. Coroner Lewis.

Q. Did you know the coroner before? A. I never did.

Q. Did you consent to the autopsy? A. I did.

Q. At whose request? A. Coroner Lewis'. 40

Q. Did you have any other expenses outside of the funeral expense? A. No.

Grace Johnson—Cross
George Schroeder—Direct

Mr. Walburg: I object to that.

Mr. Grimshaw: I will withdraw the question.

10 Q. You and your children were living with Mr. Johnson on December 26th, 1928? A. Yes.

Q. The two older children were in good physical condition? A. Yes.

Q. Who notified you of Mr. Johnson's death? A. Dr. Baker.

Q. Was there anyone with him? A. Mr. Singer.

Q. And who was he employed by? A. He was the superintendent of the Ulster Iron Works.

20 Q. Did you have any conversation with Mr. Singer and Dr. Baker? A. I had with Dr. Baker.

Q. In the presence of Mr. Singer? A. Yes.

Mr. Grimshaw: That is all.

CROSS-EXAMINATION by Mr. Walburg:

Q. What time did your husband go to work on December 26th? A. A little after three.

Q. Three o'clock in the morning? A. Yes.

30 Q. Did you get up at that time when he got up? A. I did not.

Mr. Walburg: That is all.

GEORGE SCHROEDER, a witness called on behalf of the petitioner, having been first duly sworn, testified as follows:

Direct-examination by Mr. Grimshaw:

40 Q. What is your name? A. George Schroeder.

Q. And where do you live? A. Dover, New Jersey.

George Schroeder—Direct

Q. How old are you? A. Twenty.

Q. Are you related to Mrs. Grace Johnson? A. No, sir.

Q. Are you related to Mr. Johnson? A. No, sir.

Q. Who are you employed by? A. Ulster Iron Works. 10

Q. How long? A. Ever since it opened up, about—in the mill, I was there only about two months, but altogether about one and a half years.

Q. Were you working there in December, 1928? A. Yes, sir.

Q. Are you working there now? A. No, sir.

Q. When did you leave their employ? A. When the mill closed down. I think it was April—March or April. 20

Q. You left their employ when the mill closed down? A. Yes, sir.

Q. Do you know whether the mill is operating at this time? A. Yes, sir.

Q. Did you go back to their employ? A. No, sir.

Q. Are you employed? A. Yes, sir.

Q. Where? A. Dover Water Works.

Q. Were you employed at the Dover Water Works at the time the Ulster Iron Works re- 30
opened? A. Yes, sir.

Q. Were you employed at the Ulster Iron Works on the last day that Mr. Johnson worked there? A. Yes, sir.

Q. You knew Mr. Johnson? A. Yes, sir.

Q. Did you know him socially? A. No, sir; just as a worker.

Q. Do you remember the date Mr. Johnson died? A. Yes, sir. 40

Q. Did anything happen on that date that you recall? A. Well, I remember only Mr. Johnson's death.

George Schroeder—Direct

Q. Do you recall the date? A. Yes, sir.

Q. What date? A. December 26th, 1928.

Q. What department were you working in on December 26th, 1928? A. I was a puddler's helper in the puddle department.

10 Q. Did Mr. Johnson work in the same department? A. Yes, sir.

Q. What was your job? A. Helper.

Q. Whom did you work with? A. Mr. Johnson.

Q. Were you working with him on December 26th, 1928? A. Yes, sir.

Q. What shift were you working on? A. The day shift.

Q. What are the hours of the day shift? A.
20 From about three in the morning until you finish.

Q. What, if anything, happened on December 26th, 1928, if you know?

Mr. Walburg: I object to that. He can just tell what he saw.

The Court: Just tell what you saw.

A. Well, Mr. Johnson worked on the furnace and called me over to talk over and tell me about taking his daughter to the hospital for an operation and I turned around to sit down and when I
30 was sitting down I turned around and saw Mr. Johnson fall back, trying to catch himself with his feet; he was hitting the floor and I went over to him and a couple of other fellows lifted him up, and I got a bottle of water and put the water on his head and we carried him out to the First Aid Room. After that he shook all over his whole body and then he fell limp and didn't move any
40 more.

Q. What was he doing at the time? A. Puddling.

George Schroeder—Direct

Q. Will you describe to the court how he was working? A. Yes, sir; he was working at the furnace, puddling like this, making a ball hook, and I turned around to go to sit down and walked away from him and I saw Mr. Johnson trying to get his feet and he still had hold of the ball hook and he fell on the floor. 10

Q. Which way did he fall? A. Backwards.

Q. This ball hook, which way does he operate it, by pulling or pushing? A. Pulling most generally.

Q. Which way was he operating it at that time? A. Pulling.

Q. Does it require any force to pull this hook? A. Yes, sir; sometimes when the iron gets fast. 20

Q. Did you ever operate this hook? A. Yes, sir.

Q. If the iron is fast, it is necessary to use force—how much a degree of force would you say would be necessary? A. It is according to how hard the iron is fast in the furnace.

Q. Would it require a strong man to operate it? A. Yes.

Q. About what time of the day did this happen? A. In the morning between five and six. 30

Q. Before Mr. Johnson fell, did he or did he not say anything to you about being ill or sick? A. No, sir.

Q. Were you talking to Mr. Johnson before he fell? A. Yes, sir.

Q. What was the appearance of his face? A. No different from other times—a stern face.

Q. What was his physical appearance? A. Good.

Q. Did you ever see him in any other condition? A. No, sir. 40

George Schroeder—Direct

Q. Was he working as he usually did just prior to the time he fell? A. Yes, sir.

Q. Did you tell anyone how Mr. Johnson fell? A. Only when I was questioned.

10 Q. Who did you tell? A. I don't know the gentleman's name; he is sitting down there, and Mr. Singer.

Q. Who is Mr. Singer? A. The superintendent of the works.

Q. Did you tell anyone else? A. Mr. Edwards.

Q. Who is Mr. Edwards? A. He is the boss.

Q. While Mr. Johnson was falling did he say anything to you? A. No.

20 Q. When Mr. Johnson's head hit the floor, what happened, if anything? A. Why, he went "ugh" and we came over and picked him up and he shook all over his whole body.

Q. Did he say anything after that? A. No, sir; he didn't say anything.

Q. How would you describe Mr. Johnson's position when he landed upon the floor? A. Why, he was laying straight; right straight out.

Q. Was there any blood on the floor or on Mr. Johnson's head, if you noticed? A. No, sir.

30 Q. Did you look? A. Yes, sir.

Q. When did you look at his head? A. After I picked him up; after I put water on him.

Q. Did you see anything unusual about Mr. Johnson's head? A. I saw the bump in back of his head, there.

40 Q. What was the condition in front of the furnace where Mr. Johnson was working, the floor condition? A. It is concrete and iron plates, or steel, rather; I think they are steel.

Q. And what was Mr. Johnson standing on? A. A steel plate.

George Schroeder—Cross

Q. Will you describe the condition of the steel plate? A. Why, it was cracked and loose. They get that way from working on them and there was no iron or anything on top, and there was little pebbles or slugs that come off the wall.

Q. Were they on the plate? A. Yes, sir. 10

Q. Were they on the plate at the time Mr. Johnson fell? A. Yes, sir.

Q. When Mr. Johnson fell, how did his feet go? A. They went straight while he was falling; he was trying to catch himself with his feet.

Q. Did you ever slip when you were operating this ball?

Mr. Walburg: That is objected to.

The Court: Objection sustained. 20

Q. You testified before this you operated the ball? A. Yes, sir.

Q. Do you of your own knowledge know if anyone ever slipped while operating the ball?

Mr. Walburg: I object to that.

The Court: Objection sustained.

Q. When you told the superintendent and the foreman how Mr. Johnson fell and the way you describe it in your testimony, did you tell the same facts to them? A. Yes, sir. 30

CROSS-EXAMINATION by Mr. Walburg:

Q. On your direct-examination you testified to talking to Mr. Singer and Mr. Edwards about this accident and some other man who came around to the plant? A. Yes, sir.

Q. And you signed a statement? A. Yes, sir. 40

George Schroeder—Cross

- Q. And you told the truth about it, didn't you?
 A. Yes, sir.
- Q. Did you talk to someone else? A. Why, yes.
- Q. Who? A. My father.
- 10 Q. Anybody else? A. That is all I know of.
- Q. You know who you talked to, don't you? A. Yes.
- Q. Are you sure that is all you talked to? A. Mr. Singer, Mr. Edwards and Mr. Huss.
- Q. And did you talk to anybody else? A. I told Mrs. Johnson how it happened, later on.
- Q. When did you talk to her about it? A. When I brought her husband's clothes up.
- 20 Q. How long after the accident was that? A. The following day, Thursday.
- Q. Did you talk to her any other time after the following day? A. No, sir.
- Q. Not at all? A. Last night, I think.
- Q. And you weren't down there to her house between last night and the day you brought the clothes there? A. No, sir.
- Q. You live in Dover? A. Yes, sir.
- Q. You never saw her on the street? A. No,
- 30 sir.
- Q. Ever talk to her lawyer about it? A. Yes, on Wednesday night I talked to her lawyer.
- Q. How old are you? A. Twenty years old.
- Q. Do you read English? A. Yes, sir.
- Q. And this man, Mr. Huss, came to see you about this accident, didn't he, on December 28th, at the plant? A. Yes, sir.
- Q. And you talked to Mr. Singer? A. Yes, sir.
- 40 Q. He asked you all about it? A. Yes, sir.
- Q. And you told him all you knew about it, didn't you? A. Yes, sir.

George Schroeder—Cross

Q. And what you told him on that day was the truth, wasn't it? A. Yes, sir.

Q. You were talking to Mr. Johnson before he fell? A. Yes, sir.

Q. And you turned to go to the bench to sit down? A. Yes, sir. 10

Q. And how far did you have to go to get to the bench? A. Four or five feet.

Q. And you walked with your back to Mr. Johnson? A. Yes, sir.

Q. And did you sit down before you saw Mr. Johnson again? A. No, sir.

Q. Did you start to sit down? A. I started to.

Q. And at that time he was already falling backwards, wasn't he? A. Yes, sir. 20

Q. When you turned around he had started to fall backwards, hadn't he? A. Yes, sir.

Q. And he was falling straight backwards at that time? A. Yes, sir; not straight backwards. He was trying to straighten up.

Q. He did not have hold of anything at that time? A. Yes, he had hold of the ball.

Q. How long is the ball? A. I think it is about eight feet long.

Q. As a matter of fact, it is twelve feet long, 30 isn't it? A. No, sir.

Q. Now, this furnace door or heater was where? A. About three feet away.

Q. And after the accident the ball hook was still in the furnace? A. Yes, sir.

Q. How many balls were made up before this accident, any? A. He had two made.

Q. You can write your name, can't you? A. Yes, sir.

Q. Is this your signature on these pieces of 40 paper? A. Yes, sir.

George Schroeder—Cross

Q. Now, you told Mr. Singer, when he asked you, didn't you, that you didn't know what caused Johnson to fall? A. Yes.

Q. Mr. Singer asked you if you knew what caused Johnson to fall and you told him you
10 didn't know? A. No, sir.

Q. Didn't you tell Mr. Huss that the first time you saw Johnson after you turned around was when he was falling backwards? A. Yes, sir.

Q. And didn't you tell Mr. Huss the floor was clean? A. Yes.

Q. And didn't you tell him there was nothing on the floor for Johnson to trip over? A. Yes, sir.

20 Q. And didn't you tell him there was nothing on the floor over which Johnson could slip? A. No, sir.

Q. Didn't you tell Mr. Singer that there was nothing on the floor? A. No, sir; I told Mr. Singer there was cinders on the floor.

Q. He was right there? A. No, he was up by the road.

Q. Mr. Singer helped carry Johnson to the Aid Room, didn't he? A. Yes, sir.

30 Q. He was right there before Johnson was moved? A. Yes, sir.

Q. And Mr. Cutcheon was there? A. Yes, sir.

Q. Did you ever talk to any of these employees of the plant about the accident? A. I talked to Dick and Al; they saw everything.

Q. Did you tell them anything about how Johnson fell? A. I told them I saw Mr. Johnson fall backwards on the floor.

40 Q. Did you tell them anything else? A. No.

Q. Didn't tell them anything about cinders, did you? A. No, sir.

George Schroeder—Cross

Q. When Mr. Huss interviewed you didn't you tell him this: My name is George Schroeder, age nineteen; I have been working here as a puddler's helper? A. Yes, sir.

Mr. Grimshaw: If the Court please, I object to that unless it is shown under what circumstances this statement was taken. 10

The Court: Objection overruled.

The Witness: Yes.

Q. "I have been working with Johnson about six weeks and I have been here the same length of time." You told him that, didn't you? A. Yes, sir.

Q. That is true, isn't it? A. So far, yes. 20

Q. "On December 26th, 1928, at about 3:40 A. M. I met Johnson down in the village of Sussex and Blackwell Streets and drove him up to the plant about a mile." Did you tell him that? A. Yes, sir.

Q. Did you tell Mr. Huss this? "We charged our furnace for the first heat." A. Yes.

Q. "He did his regular work. He did not complain of anything being the matter." Did you tell Mr. Huss that? A. Yes, sir. 30

Q. "I didn't notice anything wrong with him. He seemed to be in good spirits." Did you tell Mr. Huss that? A. Yes, sir.

Q. "He told me about his daughter being in the hospital with appendicitis." Did you tell him that? A. Yes.

Q. "At about six A. M. I went to sit down on a bench about five feet from Johnson." Did you tell him that? A. Yes. 4)

George Schroeder—Cross

Q. "He was standing at the furnace making a ball so he could take it out of the furnace." You told him that, didn't you? A. Yes, sir.

Q. Did you tell him this: "The next thing I noticed as I turned to sit down was I saw Johnson
10 falling backwards"? A. Yes.

Q. "He was working on number nine furnace." Did you tell him that? A. Yes, sir.

Q. "The floor is iron and steel." A. Yes, sir.

Q. "There was nothing for him to stumble over." Did you tell him that? A. Yes.

Q. "Nothing on the floor for him to fall over." Did you tell him that? A. Yes, sir.

Q. That is the truth, isn't it? A. Yes, sir.

20 Q. "He had been using the ball hook in the furnace." Is that right? A. Yes, sir.

Q. "When he fell he fell backwards and hit the back of his head on the concrete." Is that right? A. Yes.

Q. "I ran to him and asked him what was the matter." Did you ask that? A. Yes.

Q. "He didn't answer me." A. Yes.

Q. "His eyes were closed; he shook all over for a few minutes and he never moved after
30 that." Did you tell him that? A. Yes, sir.

Q. "There was not a sign of blood on him anywhere." A. Yes, sir.

Q. "I got some cold water and put it on his head." A. Yes, sir.

Q. "I noticed a little bump on his head but it wasn't very noticeable." A. I said there was a bump on his head but didn't say it wasn't very noticeable.

40 Q. "Sam Miller, Dick Kenny and Al Heckdorf were also there." A. Yes, sir.

George Schroeder—Cross

Q. "Mr. Singer and I carried him to the Aid Room. I came back to my furnace and went to work." Did you tell him that? A. Yes, sir.

Q. And as you told this man these things he wrote it down, didn't he? A. Yes, sir.

Q. And you signed the paper? A. Yes, sir. 10

Q. And he read it to you? A. I didn't listen to him.

Q. You were satisfied to sign, weren't you? A. Yes, sir.

Q. And this is the statement you signed, isn't it (showing witness statement)? A. Yes, sir.

Mr. Walburg: I ask to have it marked for identification. 20

(Paper received and marked for identification as Respondent's Exhibit 1, dated November 19, 1929, F. P. M.)

Q. You didn't tell Mr. Huss anything about cinders, did you? A. He didn't ask me.

Q. Didn't Mr. Huss ask you how this accident happened? A. Yes.

Q. He was trying to find out from you all you knew about the accident? A. Yes.

Q. You weren't trying to conceal anything about the cinders you talk about? A. No, sir. He was there and seen the floor and saw the condition. 30

Q. He came there two days later. A. The floors were in the same condition all the time.

Q. But you didn't tell him anything about it, did you? A. No, sir.

Q. You say you told Mr. Singer about it? A. Yes, I saw the cinders on the floor. 40

Q. Did you tell Mr. Singer anything about cinders? A. Yes.

George Schroeder—Cross

- Q. When? A. The same day it happened.
- Q. But you didn't tell the other men about cinders? A. No, sir.
- Q. You just told them you saw him falling backwards? A. Yes.
- 10 Q. How far from the furnace was he when he started to fall? A. About three or four feet from the furnace.
- Q. And he fell right straight backwards? A. No, sir.
- Q. Not straight backwards? A. When he hit the floor he was straightened out.
- Q. Was he falling or wasn't he falling when you first saw him? A. He was falling.
- 20 Q. How far from the furnace was he? A. Three or four feet.
- Q. Well, he was off his balance? A. Yes.
- Q. So you could tell he was falling backwards? A. Yes, sir.
- Q. And he struck the floor full length, didn't he? A. Yes, sir.
- Q. And where was his arms? A. Straight out.
- Q. Alongside the body? A. Alongside.
- Q. Was he lying on his body or the floor? A.
- 30 Lying on the floor.
- Q. Who was the first man that came to Johnson after he fell on the floor? A. I think Dick and Al.
- Q. The two men on the second bench? A. Yes, sir.
- Q. They worked near your furnace, didn't they? A. Yes, sir.
- Q. You said this iron plate was cracked? A. Yes, sir.
- 40 Q. Did you tell Mr. Huss about that? A. He didn't ask me.

George Schroeder—Cross

Q. Did you show him the crack in the plate?

A. Yes, sir.

Q. You knew he didn't put it in the statement?

A. He didn't take it down.

Q. You knew there was nothing in the statement about cinders, didn't you? A. Yes, sir. 10

Q. You didn't ask him to put in anything about cinders or a cracked iron plate, did you? A. No, sir.

Q. Did he put anything in the statement about the iron plate being cracked? A. No, sir.

Q. Did you tell Mr. Singer about the iron plate being cracked before it happened? A. No, sir.

Q. Did you tell him afterwards? A. Yes, sir.

Q. What for? A. I wanted to put a new one in. 20

Q. What did you do as a helper? A. The same as any other helper does.

Q. What is that? A. I charged the furnace and the helpers brought the heat on the ball, the puddlers dropped it and the heaters made the first pick up; the helpers made the second pick up and the puddler puddled it.

Q. The hook weighs about twenty-five or thirty pounds, doesn't it? A. Yes, sir.

Q. And if the iron is fast it is hard to get it out? A. Yes, sir. 30

Q. In other words, if that is fast in the iron and you have hold of it that would hold you up? A. Yes, sir.

Q. And if you have hold of it and you lean back that will hold you up, won't it? A. If it slips off you fall down.

Q. But this hook was still in the furnace after Johnson fell, wasn't it? A. Yes, sir. 40

Q. Now, the conditions in the plant were the same the day Johnson died as they always were? A. Yes, sir.

Q. There was nothing unusual about it that day, was there? A. No, sir.

George Schroeder—Re-direct

RE-DIRECT EXAMINATION by Mr. Grimshaw:

Q. You said on cross-examination that Mr. Johnson did not stumble. What did he do?

10 Mr. Walburg: That is objected to.
The Court: Objection sustained.
Mr. Grimshaw: Exception.

Q. On cross-examination you said that it appeared to you that Mr. Johnson was attempting to right himself, is that correct? A. Yes, sir.

Q. When Mr. Huss interviewed you, did he ask you questions? A. Yes, sir.

20 Q. And you answered those questions? A. The questions he asked me I answered; yes, sir.

Q. Did he ask you to describe to him all the conditions you found surrounding Mr. Johnson's falling? A. No, sir.

Q. You just answered the questions he asked you? A. Yes.

Q. And you were working at the time? A. Yes, sir.

Q. And you didn't read the statement you signed? A. No, sir.

30 Q. Is that right? A. Yes, sir. He gave it to me to read and I didn't read it.

Q. The questions that were asked you in connection with the papers that were shown to you that you signed, did you tell Mr. Huss anything that was not on those papers? A. No, sir.

Q. Do you know whether the ball hook was fast or loose in the furnace after Mr. Johnson fell? A. I couldn't say; I didn't take it out.

40 Mr. Grimshaw: That is all.

George Schroeder—Re-cross
Dr. T. B. Christian—Direct

RE-CROSS EXAMINATION by Mr. Walberg:

Q. I asked you on cross-examination if Mr. Huss didn't ask you to tell him all you knew about the accident; didn't he ask you that? A. Yes. 10

Q. Didn't he ask you to tell him what you knew about the accident? A. Yes, sir.

Q. And you did? A. Yes, sir.

Q. And he read this statement to you, didn't he, while you were working so you could sign it, didn't he? A. Yes, sir.

Q. I'll ask you to read this statement (witness reads statement). Is there anything in this statement that you didn't say? A. No, sir. 20

Q. Is there anything omitted from the statement which you did say? A. No, sir.

DR. T. B. CHRISTIAN, a witness called on behalf of the petitioner, having been first duly sworn, testified as follows:

Direct-examination by Mr. Grimshaw:

Q. Doctor, you are a licensed physician of New Jersey? A. Yes. 30

Q. Are you engaged in the practice of your profession? A. Yes.

Q. Where is your office? A. In New Jersey State Hospital, Crosdon Park, New Jersey.

Q. How long have you been practicing? A. Since 1916.

Q. What is your specialty? A. Pathologist.

Q. What has been your professional experience? A. I have been connected with institutions, 40

Dr. T. B. Christian—Direct

clinics and general hospitals as a pathologist since 1916 when I started out.

Q. How many autopsies have you performed, Doctor, during this period? A. I couldn't say. In Crosdon Park I was there two years and
10 averaged one hundred and twenty-five the first year and two hundred the second year. I might say over a thousand, and when I was with Dr. Gilpin I assisted him. I couldn't say. Over a thousand.

Q. Under what circumstances were the autopsies generally performed and for what purposes? A. Well, the circumstances were three. All cases of unclaimed people, and a second group of cases
20 in which permission was asked to study the cases and lecture before student classes and institutions, and the third group were cases authorized by the coroners of different places.

Q. Well, under what circumstances were you requested to make the autopsy of Clarence Johnson? A. I was asked to make an autopsy on Clarence Johnson by Coroner Lewis in order to determine the cause of death.

Q. Did you know Clarence Johnson prior to
30 the time of his death? A. I did not.

Q. The first time you saw Clarence Johnson, then, was at the time you appeared to perform the autopsy? A. On the table before I performed the autopsy.

Q. Doctor, when you first called upon the deceased, did you make an examination of him? A. I made a superficial external examination.

Q. Describe the condition. A. This man was a
40 man of good build, good development and showed no sign of trauma of the body except the back of the head and the region of the occipital protuberance in the back and that was all we found. and tumor faction.

Dr. T. B. Christian—Direct

Q. Doctor, what was the apparent cause of the tumor faction? A. Trauma.

Q. Did you perform an autopsy on the body itself? A. I did.

Q. What did your autopsy disclose? You may refer to your records if you have them with you. 10

A. I didn't bring them along.

Q. Is that your signature and the report you submitted to me, Doctor (showing witness paper)? A. Yes. This is the summary of the pathological finding I reported in the case of Clarence Johnson on December 26th, 1928. I will read it.

POST MORTEM.

Autopsy performed on the Body of Clarence Johnson—12/26/28 at 12.30 P. M. at Dover, N. J. 20

The body is that of a well developed white male about 45 years of age. There are no abrasions over the body. There is a tumor faction over the region of the occipital protuberance.

PATHOLOGICAL FINDINGS WERE AS FOLLOWS:

Extensive hemorrhage in the brain originating in the base of the brain from rupture of the blood vessels around the circular Willis and extending over the left and right parietal region and going up to the superior part of the occipital and parietal lobes on both sides. 30

Blood clot found in the floor of the fourth ventricle.

Spinal canal filled with blood. 40

Homatoma 4 c. c. in diameter over the occipital protuberance.

Dr. T. B. Christian—Direct

Moderate sclerosis of the blood vessels in the circular Willis.

Extensive anthracosis of both lungs otherwise lungs show no pathology.

10 Chronic adhesions of the pleural on right side in region of middle lobe on its lateral and posterior aspect.

Cardiac hypertrophy (thickening of left ventricle wall).

Moderate atheroma of the ascending arch and descending aorta.

Small amount of sclerosis in the coronary arteries.

20 Moderate chronic myocarditis.

Hypertrophic sclerosis of the liver.

Double chronic interstitial nephritis.

Other organs show no pathology.

Cause of Death: Cerebral hemorrhage from fracture of blood vessels in base of brain.

Contributory Cause: Trauma.

(Signed) T. B. Christian."

30 Mr. Grimshaw: I ask that it be marked for identification.

(Paper received and marked for identification as Petitioner's Exhibit 1, dated November 19, 1929, F. P. M.)

Q. Have you had experience such as treating patients who have suffered a stroke, Doctor? A. Yes.

40 Q. How many patients have you treated that have suffered a stroke? A. Off and on since I have been in practice.

Dr. T. B. Christian—Direct

Q. Doctor, assuming that a man in good health and about forty-one years of age, who has worked continuously since his boyhood days and had suffered colds a few times and grippe lasting several days, who has never complained in his home of feeling ill, or of dizzy spells or of pains about his heart or of difficulty in breathing, and who slept well and ate heartily and worked as a puddler for the Ulster Iron Works for a number of years, and whose general physical appearance was that of a healthy man, was married with three children still living, and who, on December 26th, 1928, while working in the furnace under the conditions first described, fell backwards, striking his head on the floor and becoming unconscious, what then, Doctor would you say with reasonable certainty, was the cause of his death? A. What the autopsy finds. Cerebral hemorrhage from fracture of blood vessels in base of brain. 10 20

Q. And what, in your opinion, was the cause of his death? A. Cerebral hemorrhages.

Q. What was the cause of the cerebral hemorrhages? A. This man's fall produced an expansion of air in the brain and ruptured the blood vessels in the neighborhood of the pressure. 30

Q. What part did trauma play in decedent's death? A. Contributory trauma was at least a participating cause.

Q. Doctor, did you have any bill for services rendered when you performed the autopsy?

Mr. Walburg: I object to that.

The Court: Objection overruled. 40

Mr. Walburg: I will withdraw the objection.

Dr. T. B. Christian—Cross

Q. Is your charge for your services in performing the autopsy chargeable against Mrs. Johnson? A. It is the same as every coroner's post mortem.

10 Q. And who is that charged against? A. The estate.

Q. And do you have any charge for your appearance in court? A. I have not.

CROSS-EXAMINATION by Mr. Walburg:

Q. Doctor, Coroner Lewis is not a physician or surgeon, is he? He's just a layman? A. Yes, sir.

20 Q. This tumor faction you speak of, is this the homatoma you found on his head? A. Yes, sir.

Q. That was the only visible sign of injury? A. Yes, sir.

Q. When did you make the autopsy; how long after his death? A. I don't remember.

Q. Now, Dr. Baker was present when you made that autopsy, wasn't he? A. Oh, yes.

Q. You know Dr. Gray, also, don't you, the pathologist, of Newark, A. Yes, sir; I met him.

30 Q. And he discussed the case with you? A. Yes.

Q. You have examined the brain? A. Yes.

Q. And he made pathological examinations of certain sections of the brain, didn't he? A. Yes, sir.

Q. That is, he obtained it from you and took it to his laboratory? A. Yes, sir.

40 Q. And where is the circular Willis located?
A. It is located right over the parietal region. It originates from the posterior of the cerebral arteries around close to the base of the brain.

Dr. T. B. Christian—Cross

Q. At the point where it was apparent this had occurred the blood vessels were in a sclerosis condition? A. Yes. That means the normal elasticity of the blood tissue is lessened by the muscle tissue being replaced by fibrous tissues. They lose the elasticity. You can't stretch the muscles as much with as without sclerosis. 10

Q. Does that increase the blood pressure? A. Well, no.

Q. It's more likely to rupture under a strain than a normal vessel? A. Oh, yes.

Q. What was this condition that you found in the lung? A. All right except for some anthracosis.

Q. Now, you say there was a thickening of the left ventricle wall; that is the heart? A. Yes. 20

Q. And there was also some sclerosis in the coronary arteries? A. Yes.

Q. Where are they? A. They shoot out from underneath the back and go down over the base of the heart and they run down and shoot all around, supply the heart with blood.

Q. That's a heart lesion? A. Yes, sir.

Q. There was also a sclerosis of the liver? A. Yes. 30

Q. There was also a double chronic interstitial nephritis? A. Yes, sir.

Q. What is that? A. He might have Bright's disease, a chronic spell; that is an individual condition.

Q. His heart was in a diseased condition? A. Yes, sir.

Q. And his coronary arteries were diseased as well? A. Yes, they were chronic. 40

Q. And his liver was diseased? A. Yes.

Dr. T. B. Christian—Cross

Q. And he had sclerosis of the blood vessels that lead to the heart? A. Yes, sir.

Q. Now, Doctor, of course you don't know what caused this man to fall, do you? A. No.

10 Q. And would it be reasonably probable that a man doing laboring work with heart condition such as you have described here and with the other diseased conditions of the organs that you have described to suffer a heart attack? A. It is possible, yes.

Q. It is likely, isn't it, Doctor? A. It has happened.

Q. It is not unusual? A. Yes, sir.

20 Q. In other words, might not a heart attack be the cause of the fall and you might have an autopsy and not be able to tell? A. Not in some cases.

Q. It would not have been impossible for a man to have a cerebral hemorrhage before his head came into contact with the ground? A. Yes, it is possible for him to have had a cerebral hemorrhage.

30 Q. Now, if this man did have a cerebral hemorrhage before his head struck the floor, then fell and struck the base of his skull on the floor, and assuming the cerebral hemorrhage occurred at his fall, would that increase that hemorrhage? A. Why, certainly.

Q. If a man had a slight hemorrhage while standing on the floor, and struck the floor, would that become worse? A. Well, I don't know.

40 Q. In other words, can you tell, after a fall, whether a man has had that hemorrhage before he struck the floor or whether the hemorrhage has been increased by striking the floor by the size of it? A. In a case of that kind we have to take the

Dr. T. B. Christian—Cross

facts we know. When we found the condition present, the most striking feature was the evidence of the trauma with a slight hemorrhage.

Q. If this man had a hemorrhage before he fell originally and he struck his head, you would not find the same condition there? 10

Mr. Grimshaw: That is objected to.

The Court: Objection overruled.

Mr. Grimshaw: Exception.

A. It is possible.

Q. How can you say for sure, then, that this man did have a cerebral hemorrhage before he fell? A. I couldn't say.

Q. You can't say with certainty? A. No. 20

Q. And you couldn't say it was a reasonable probability? A. I can say it was a probability.

Q. But this cerebral condition of the vessels was at the base of the brain, wasn't it? A. Yes, it was at the base of the brain.

Q. You have seen cerebral hemorrhage at the base of the brain, haven't you? A. Yes, where you couldn't find anything in the world but a spot about as big as a pea and it caused death.

Q. Now, you have seen cases where there has been a cerebral hemorrhage causing death without trauma, haven't you, Doctor? A. Several. 30

Q. And that hemorrhage would be as much as you found here? A. Well, I haven't seen any where you would have the hemorrhage going over the whole thing.

Q. There is no doubt about this, if a man did have a hemorrhage before he fell, this blow would increase the size of it, would it not? A. It is possible. It increases the pressure inside the brain. 40

Mr. Walburg: That is all.

Dr. T. B. Christian—Re-direct

RE-DIRECT EXAMINATION by Mr. Grimshaw:

Q. Doctor, when you have sclerosis of the blood vessels in the brain and a patient falls, and this fall is followed by unconsciousness and death,
 10 what part, in your opinion, did such a chronic condition play in such a man's death, especially bearing in mind that death ensued a few moments after the fall and bearing in mind that the man was previously apparently healthy and a hard worker? A. You want to know if this man in perfectly good health had fallen, what would be the cause of it?

Q. Yes. A. The cause would be from one or
 20 two conditions in an extensive hemorrhage from trauma. Now, this patient, if he had his entire brain covered with blood probably would have died in a few minutes. The hemorrhage in the base of the brain was what killed him.

Q. Did you find lacerations of the blood vessels?
 A. I am practically sure it was the hemorrhage. I put him down as rupture of blood vessels.

Q. What, in your opinion, was it? A. I knew
 30 this man had a tumor faction over a region of the skull, producing a pressure, and we know that that occasioned a rupture of the blood vessels in that neighborhood, that were already weak, because of most of the cerebral hemorrhages are in different locations.

Q. Does a heart attack ever produce the same thing you found here? A. No.

Q. What type of hemorrhage would you have expected to find in the absence of trauma? A. In
 40 the absence of trauma, the great majority of hemorrhages—

Mr. Walburg: I object to that.

(Objection sustained. Exception.)

Dr. T. B. Christian—Re-cross

Q. Doctor, was the purpose of your autopsy to find the reason for his death or was it to establish for the widow the fact that trauma killed her husband? A. I don't know anything about it.

Q. Did you submit a report to the coroner? A. Yes. 10

Q. I show you a certified death certificate. Is that the cause of death that you submitted to the coroner? A. Yes.

Q. Doctor, was there anyone else present at the time of the autopsy? A. Dr. Baker and Dr. Costello and the undertaker.

Mr. Grimshaw: I ask that Petitioner's Exhibit 1 be marked in evidence. 20

(Petitioner's Exhibit 1 which was marked for identification is marked in evidence.)

RE-CROSS EXAMINATION by Mr. Walburg:

Q. Do you recall this (showing witness Petitioner's Exhibit 1)? A. Yes.

Q. And is that what you gave the coroner? A. I don't think I have got the exact words there. My report is usually worded a little differently. My ideas are sometimes different from that. 30

Q. You didn't fill out the death certificate, did you? A. No, sir.

Q. The coroner did that? A. Yes, sir.

Q. He isn't a doctor, is he? A. No, he is not a doctor.

Mr. Walburg: That is all. I offer in evidence the death certificate.

(Death certificate received and marked in evidence as Respondent's Exhibit 2, 40 dated November 19th, 1929, F. P. M.)

Dr. William Costello—Direct

DR. WILLIAM COSTELLO, a witness called on behalf of the petitioner, being first duly sworn, testified as follows:

Direct-examination by Mr. Grimshaw:

10 Q. Doctor, you're a licensed physician and surgeon in New Jersey? A. Yes, sir.

Q. Are you engaged in the practice of your profession? A. Yes, sir.

Q. Where are you practicing? A. In Dover.

Q. How long have you been practicing? A. Since 1909.

Q. What is your specialty? A. General medicine and surgery.

20 Q. What has been your professional experience? A. I have been practicing since 1909.

Q. Have you been connected with any public institutions? A. None except my internship and the Dover Hospital.

Q. Where did you take your internship? A. St. John's Hospital, Long Island City.

Q. Did you know the deceased, Clarence Johnson? A. Yes, sir.

Q. For how long a time? A. Since 1917.

30 Q. Did you treat the deceased for any conditions as a result of his fall on December 26th, 1928? A. No, sir.

Q. Were you present at the time an autopsy was performed on the body of Clarence Johnson? A. Yes, sir.

Q. When did you last see Clarence Johnson before his death? A. On the night of December 25th, about eight o'clock.

40 Q. On what occasion was that? A. I went to see his daughter, who was in the hospital, on Christmas Eve, and he was leaving the hospital at the time.

Dr. William Costello—Direct

Q. What would you say was his condition at that time? A. I noticed nothing out of the way. I stopped to chat with him.

Q. Did you have any occasion to treat Mr. Johnson during the time that you knew him? A. I treated him, to the best of my recollection, twice, both times for an attack of the grippe and I think about a year prior to his death he had a laceration he sustained at his work. The iron works were closed down and he was working for a contractor and had a minor malady. 10

Q. That was the only occasion that you were required to treat him? A. Yes, sir.

Q. Have you done any post graduate work? A. Yes, sir. 20

Q. Where? A. In Philadelphia.

Q. In connection with that work have you been doing any work on the head and brain? A. Yes, we're getting work in that line but I don't know as it would have any application to this particular case.

Q. Doctor, have you any opinion as to the cause of death from your observations in this case at the autopsy? A. Yes, sir.

Q. What are they? A. My opinion is that this gentleman died of a rupture of the cerebral vessel, which was traumatic in origin, caused by trauma. 20

Q. And what do you base this conclusion on, Doctor? A. On the general physical condition of the gentleman and the appearance of the blood vessel which was ruptured and the occurrence of a large swelling at the base of the brain, and also of my knowledge of the general well being of this gentleman before this accident. 40

Q. Was that an external or internal swelling? A. It was between the skull and the scalp.

Dr. William Costello—Direct

10 Q. Doctor, assuming that a man in good health and about forty-one years of age, who has worked continuously since his boyhood days and had suffered colds a few times and grippe lasting several days, who has never complained in his home of
20 feeling ill, or of dizzy spells or of pains about his heart or of difficulty in breathing, and who slept well and ate heartily and worked as a puddler for the Ulster Iron Works for a number of years, and whose general physical appearance was that of a healthy man, was married with three children still living, and who, on December 26th, 1928, while working in the furnace under the conditions first described, fell backwards, striking his head on the
30 floor and becoming unconscious, and directly after that he died, and taking into consideration the autopsy findings of Dr. T. B. Christian, what, Doctor, was the producing cause of the decedent's death? A. The rupture of the cerebral vessel, producing a hemorrhage, with trauma as the inciting cause.

Q. Doctor, were you called in to treat this patient so that you had to make a charge? A. Yes.

30 Q. What is your charge for appearing in court to testify, if any? A. My expenses from here to Philadelphia and back.

Q. And what are they? A. I don't know; some—

Q. Doctor, would you say that a man that has sclerosis of the blood vessels in the circular Willis and who has thickening of the left ventricle wall was normal and healthy? A. I didn't say so.

Q. Would you say so? A. No.

40 Q. He's got disease of the heart and kidneys. Those conditions are always due to the—they are the underlying cause of arterial sclerosis? A. Yes, sir.

Dr. William Costello—Direct

Q. If they were there prior to his death? A. Yes, sir.

Q. Now, as far as this homatoma is concerned, that would be from the contact of his head with the floor. That is what caused it? A. Yes.

Q. And if this man had a heart attack and fell he would get a homatoma, wouldn't he? A. I don't know; if he hit his head hard enough, he might. 10

Q. If a man fell unconscious, don't you think he'd be liable to hit his head hard enough to get the homatoma? A. No, I think he would slump down like a drunken man.

Q. But he could have a cerebral hemorrhage? A. Oh, yes. 20

Q. And if he then fell to the floor and struck his head, would that, in your opinion, increase the extent of the hemorrhage? A. I don't think it would.

Q. Do you mean to say if a man had a cerebral hemorrhage and fell to the floor and struck his head, it would not increase the size of it? A. I don't think it would, because he'll slump down and go down gradually.

Q. Well, if this man fell down backwards? A. I don't think he could fall with force enough. This man must always fall forward. I have never saw one fall backwards. 30

Q. In the case of heart attacks they almost always fall how? A. Forwards.

Q. This man did have a chronic condition of the heart? A. Yes, sir.

Q. And it would not be unlikely for a man of his age to have a heart attack? A. No, I don't know. I have seen worse that didn't die of heart disease. 40

Dr. Andrew C. Ruoff—Direct

Q. It depends on the strain they put on the heart? A. Sometimes.

Q. And if he is a hard-working laborer, it would be worse? A. Yes, sir.

10 Q. You didn't examine the brain of this man, did you? A. No, sir.

Q. Who performed the autopsy? A. Dr. Christian.

Q. You're not a pathologist? A. No, sir.

Q. And you didn't make any microscopic examination of the brain tissues, did you? A. No, sir.

20 Q. How many times have you been present when persons have died from cerebral hemorrhages? A. I don't know.

Q. Not very often, have you, Doctor? A. No, sir.

DR. ANDREW C. RUOFF, called as a witness on behalf of the petitioner, being first duly sworn, testified as follows:

Direct-examination by Mr. Grimshaw:

30 Q. Doctor, you're a licensed physician and surgeon of New Jersey? A. I am, sir.

Q. Are you engaged in the practice of your profession? A. I am, sir.

Q. Where do you practice? A. 494 New York Avenue, Union City, New Jersey.

Q. What is your specialty? A. Examination, diagnosis and treatment of traumatic diseases.

40 Q. What has been your professional experience as an industrial surgeon? A. I served an internship at the City Hospital of Jersey City. I was for ten years the acting medical director of an insurance company, in which capacity I diagnosed

Dr. Andrew C. Ruoff—Direct

and treated over forty thousand traumatic injuries. I also treated cases in my private office.

Q. Have you had occasion to treat patients that have suffered a stroke? A. I have treated patients with cerebral hemorrhages in very many instances. 10

Q. In the cases you have treated what has been the cause of the cerebral hemorrhage?

Mr. Walburg: That is objected to.

The Court: Objection sustained.

Q. Doctor, assuming that a man in good health and about forty-one years of age, who has worked continuously since his boyhood days and had suffered colds a few times and grippe lasting several days, who has never complained in his home of feeling ill, or of dizzy spells or of pains about his heart, or of difficulty in breathing, and who slept well and ate heartily and worked as a puddler for the Ulster Iron Works for a number of years, and whose general physical appearance was that of a healthy man, was married with three children still living, and who, on December 26th, 1928, while working in the furnace under the condition first described, fell backwards, striking his head on the floor and becoming unconscious and directly after that he died, and in addition to this taking the autopsy findings of Dr. T. B. Christian, what, Doctor, with reasonable certainty, was the producing cause of the decedent's death; and also take into consideration the cause of death as set forth in the death certificate. 20 30

Mr. Walburg: I object to the question.

The Court: Objection overruled. 40

Dr. Andrew C. Ruoff—Cross

A. I heard the autopsy finding. It is my best judgment the blow to the back of his head was due to the hemorrhage found, in this instance.

Q. And what, in your opinion, with reasonable certainty, was the cause of death? A. From the
10 autopsy findings there is only one cause of death. That is a hemorrhage of the brain, the result of trauma, in my opinion.

Q. You have had experience treating patients who have suffered strokes, Doctor, or a cerebral hemorrhage? A. Cerebral hemorrhages, yes. A stroke is a layman's description of something associated with a sudden loss of consciousness.

Q. If this man, Doctor, had suffered a cerebral
20 hemorrhage as a result of the stroke, would, in your opinion, the findings as set forth in the autopsy which indicate it as a hemorrhage be from a stroke?

Mr. Walburg: I object to that.

The Court: Objection sustained.

Q. Doctor, in your opinion, if the man had a cerebral hemorrhage and suffered trauma, would that make the hemorrhage more severe? A. It
30 might.

Q. Would your findings in this case indicate a tearing of one of the cerebral vessels in the circular Willis? A. Rupture of the blood vessel around the circular Willis.

CROSS-EXAMINATION by Mr. Walburg:

Q. Where do you see any tearing? A. Well, rupture might be inferred as a tearing.

Q. Do you have any fee for your appearance
40 in court? A. Yes, sir; one hundred dollars.

Dr. Andrew C. Ruoff—Cross

Q. How many cases have you performed autopsies in? A. I have never performed one.

Q. Have you ever been present at an autopsy since you left medical school? A. Yes, a few dozen of them. All the autopsies I have been present in had some relationship to trauma or were alleged to have been traumatic. 10

Q. Have you ever been present when they performed an autopsy on an individual whose death was alleged to have been caused by cerebral hemorrhages following trauma? A. Yes, sir.

Q. With a small hematoma at the base of the skull? A. No. I've been present only when there was no trauma.

Q. And, Doctor, it very often happens that there are cerebral hemorrhages when there is no trauma, doesn't it? A. Yes, but it is a different type. 20

Q. What do you mean by hematoma? A. Increased blood pressure.

Q. You never saw this man before? A. No, sir; never saw him.

Q. You're just here as a professional witness? A. No, to express an opinion as to the findings as they have presented themselves. 30

Q. Do you mean to say, Doctor, if a person has a cerebral hemorrhage and falls and strikes his head a hard enough blow to raise a homatoma that that hemorrhage will be more extensive than if he didn't have that blow? A. No man can say there was a previous hemorrhage there or how it is produced. The autopsy finding shows the man had a hemorrhage. In other words, if he did not have a hemorrhage his blood vessels wouldn't have been ready to pop. This man's were ready to pop. 40

*Dr. Andrew C. Ruoff—Re-direct
Motion to Dismiss*

Q. Nobody can say that with certainty, can they? A. No, nobody can.

RE-DIRECT EXAMINATION by Mr. Grimshaw:

Q. The testimony is that this man fell backwards. In your opinion, from this evidence would you say that the man had a cerebral hemorrhage before he fell or was trauma the principal cause of the hemorrhage as found in your opinion.

Mr. Walburg: I object to the question as calling for a conclusion.

The Court: Objection overruled.

20 A. A hemorrhage due to a trauma would not prevent him from falling backwards. He doesn't do it in a tense state. The best inference one can draw is the prospect of a backward falling.

Q. Did any one tell you, Doctor, that this man fell back straight? Didn't you hear Schroeder testify that he was bent over like this? A. Yes, and I heard him say he landed on his back on the ground. A man falls in a heap.

30 Q. Can you say with reasonable certainty that a man did or did not have a cerebral hemorrhage by the way he falls? A. No man can say only from the autopsy. I can say it is the most probable inference.

Q. You're not a pathologist? A. No, sir.

Mr. Grimshaw: That is all. Plaintiff rests.

40 Mr. Walburg: I move at this time for a dismissal on the ground that the petitioner has failed to prove or maintain the burden of proof showing that this man's death

Motion to Dismiss

arose out of his employment with the respondent. It seems to me the only evidence is given by this one boy Schroeder, who admitted the things I asked him. He says when he first saw this man he was already falling. At that time the fall had already started. Certainly from this evidence your Honor can't say what caused that fall. You can talk medical evidence for a week. What caused this man to fall? Certainly there is no evidence in here which preponderates in favor of the petitioner. There is not the slightest item of evidence from which your Honor can say there is proof or any inference of proof that this man slipped or fell while doing his work. There are a dozen different things to cause him to fall. The boy didn't see him slip or trip. All he knows is when he turned to look back he was falling backwards, trying to catch himself with his feet, he said, I think. 10 20

Mr. Grimshaw: I object to the motion. I think the petitioner has established its case, and the death certificate, which is in evidence is prima facie evidence of the facts contained therein, and the witness who worked with the deceased described in the best way possible the facts that took place at the time the deceased fell. It was described to the Court how he tried to catch himself or save himself with his feet, and he described the conditions under which he was working. I certainly feel the petitioner has submitted enough evidence to warrant this case going on and that the motion should be denied. 30 40

Dr. Baker—Direct

10 The Court: Of course, if the circumstances were not unusual and there was nothing to indicate in the testimony that an accident occurred I would grant the respondent's motion. But the only question is not that he only fell but that through the conditions of his employment he may have slipped. Otherwise, there is nothing to indicate that an accident happened. The mere fact of his falling doesn't indicate an accident. I think that in order to make the case a good one we should give the petitioner the advantage of every possible doubt with particular reference to the testimony of Schroeder. If that is refuted, 20 the case falls, but I would not say now the petitioner made out a prima facie case. Decision reserved temporarily.

DR. J. L. BAKER, a witness called on behalf of the respondent, being first duly sworn, testified as follows:

30

Direct-examination by Mr. Walburg:

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

Q. How long have you been practicing? A. Since 1910.

Q. Did you know the decedent in this case, Mr. Johnson? A. Yes.

Q. Had you seen him before his death? A. 40 No, I had not.

Dr. Baker—Direct

Q. Well, were you called to the plant of the Ulster Iron Works on the morning of December 26th? A. Yes, sir.

Q. And did you see Mr. Johnson when you got there? A. Yes.

Q. Where was he? A. In the First Aid Room. 10

Q. Did you examine him at that time? A. Yes, sir.

Q. And what was his condition when you saw him and examined him? A. When I got there they had the patient on a cot and were giving him artificial respiration, and he was dead when I got there.

Q. Was there any visible injury to his body? A. A slight scalp wound. 20

Q. Now, what did you give as the cause of death at that time, do you remember? A. I told the coroner—

Mr. Grimshaw: I object to what he told the coroner.

The Court: Objection sustained.

Q. What conclusion did you arrive at when you first saw him and before the autopsy regarding the cause of his death? A. My opinion at that time I saw him was that he probably had a rupture in one of his organs. 30

Q. Is the coroner a physician or surgeon? A. No.

Q. Were you present at the autopsy? A. Yes, sir.

Q. And you saw the findings made by Dr. Christian? A. Yes, sir.

Q. Now, what, in your opinion, Doctor, taking 40 into consideration your examination of the man on the date of his death and the autopsy, was the

Dr. Baker—Cross

cause of death? A. My opinion was he died from a cerebral hemorrhage and that it was due to the rupture of the blood vessels at the base of the brain, due to arterial sclerosis.

10 Q. There was a rupture of some of the vessels at the base of the brain? A. Yes, sir.

Q. In your opinion, did this cerebral hemorrhage occur before the trauma? A. Yes, sir.

Q. Now, assuming, Doctor, that he had a cerebral hemorrhage and then fell and struck his head on the floor so as to raise the hematoma, would that increase the size of the hemorrhage to any extent? A. Well, I don't know whether it would or not, because the man was already dead
20 then when he fell and his heart was practically stopped.

Q. Was the physical condition of the decedent such a one that, in your opinion, a cerebral hemorrhage would have been likely to occur? A. Yes.

CROSS-EXAMINATION by Mr. Grimshaw:

Q. Doctor, why was an autopsy necessary in this case? A. We are supposed to have an autopsy on cases of death under any condition
30 where you're not absolutely positive as to the cause of death.

Q. When did you reach your conclusion as to the cause of death, your first conclusion? A. After I saw him and talked with the boys at the plant.

Q. You're predicating, then, your opinion on what the co-workers at the plant told you as to your first opinion? A. Yes, after I saw the man
40 and what the men there told me.

Mr. Grimshaw: I move the Doctor's testimony be stricken out as to what some one told him.

The Court: Strike it out.

Dr. Baker—Cross

Q. Doctor, when did this man die, before he struck the floor or after? A. He died the 26th of December.

Q. I mean before he struck the floor or afterwards? A. In my opinion, after the autopsy finding, that he was dead when he struck the floor. 10

Q. And on what do you base that opinion? A. Due to the extensiveness of the hemorrhages in his brain and the situation where it was.

Q. Would you have such an extensive hemorrhage as you found in a few seconds? A. No, you would not have such an extensive hemorrhage.

Q. Then how, Doctor, do you know when the hemorrhage occurred? A. You could see it at the autopsy. 20

Q. How could you tell, Doctor, from the autopsy, when the hemorrhage occurred? A. I can tell from the history and findings of the case.

Q. How could you tell from the autopsy when the hemorrhage occurred? A. From the fact that the man had the hemorrhage and dropped.

Q. How do you know, Doctor, that he didn't sustain this hemorrhage after he dropped? A. Because I had no history of the condition causing him to fall. 30

Q. You don't know whether he slipped or not? A. I do not.

Q. If he had slipped and struck his skull at the base of the skull, what would you say then as the basis of the hemorrhage? A. (No answer).

Mr. Walburg: I object, there is no evidence in the case that he did slip.

Q. If he fell and then sustained the hemorrhage, what would be the autopsy finding? A. I think under those conditions he would probably 40

Dr. Baker—Cross

have a fracture of the skull and a little more injury than he had.

Q. Do you know, Doctor, what the findings would be, or is that your opinion? A. No, I dont know. They vary in different cases.

10 Q. Does medical science know of any hemorrhages of the brain following trauma without external evidences? A. Yes, I think so.

Q. Could that have been so in this case? A. It might have been.

Q. There was external evidence, wasn't there, Doctor? A. Yes, there was external evidence of the trauma.

20 Q. And with external evidence of trauma the hemorrhage could have been caused after the fall? A. Not in this case.

Q. Why not in this case, Doctor? A. Well, this man's blood vessels showed that he had very poor blood condition, and from the history of the case my opinion is that he had the hemorrhage before.

Q. Is such a man more susceptible to a hemorrhage following a fall? A. Yes.

30 Q. The fall could have been the producing cause of the hemorrhage, couldn't it? A. Yes, it could have.

Q. You do all the examining and treating for the Ulster Iron Works employees, do you not? A. No, not all of it. Some of it.

Q. Doctor, what, if you know, are the rules of the medical profession for the certifying of the death certificate? A. We have to make the record for the State.

40 Q. You have signed death certificates, haven't you? A. Yes.

Q. Have you also been in cases where the coroner has signed death certificate? A. Yes, sir.

Dr. Gray—Direct

Q. Under what circumstances does the coroner sign the death certificate? A. On the certification of the doctor or on the facts that he knows.

10

DR. JOHN W. GRAY, a witness called on behalf of the respondent, being first duly sworn, testified as follows:

Direct-examination by Mr. Walburg:

Q. Are you a practicing physician of the State of New Jersey? A. I am.

Q. How long have you been practicing? A. Fifteen years. 20

Q. Do you specialize in any branch of medicine or surgery? A. No.

Q. Are you associated with any hospitals or institutions? A. Several in Newark, St. Michael's, St. John's.

Q. Do you do pathology work for them? A. I do.

Q. Now, did you make an examination of the brain of Clarence Johnson, the deceased in this case? A. Yes. 30

Q. And you obtained that from Dr. Christian who has testified here? A. We examined the brain together.

Q. And did you take part of the brain back with you to your laboratory for further study? A. I did.

Q. Will you tell us what the condition of the brain was when you found it? What pathological conditions you found? A. It was in a preserved condition, not opened. We made thin slices examining for hemorrhage in the brain substance 40

Dr. Gray—Direct

and found none. We had every apparatus for examining the brain. I took the pieces of the brain to examine them and examined the pieces microscopically. It showed there was some thickening in the walls of the blood vessels which showed
10 no inflammatory condition in the brain substance.

Q. Was there a degerative condition of some of the cells near the brain? A. There was.

Q. Doctor, have you read the autopsy findings of Dr. Christian? A. I haven't read them but I heard him testify this morning (examines findings).

Q. Assuming, Doctor, that the findings at the autopsy were as set forth in the exhibit and taking
20 into consideration your pathological examination of the brain, what, in your opinion, was the cause of death of this man? A. Hemorrhage from rupture of a large vessel at the base of the brain.

Q. Now, Doctor, taking into consideration the finding of the cerebral hemorrhages and the diseased condition of the arteries, in your opinion, did this cerebral hemorrhage occur as a result of trauma or did it occur without trauma? A. I
30 don't know.

Q. Would it be as likely to occur without traum as with trauma? A. The diseased condition of the vessel walls is of great consequence. I don't know whether the hemorrhage occurred before or after the fall.

Q. Do you think any one can say with reasonable certainty, from the autopsy, whether the hemorrhage occurred before or after the fall? A. I don't think so.
40

Q. It would not be greatly speculative to say that this hemorrhage occurred after the fall and

Dr. Gray—Cross

could not have occurred before the fall in view of the condition of this man, would it? A. I can't say that.

Q. You couldn't say with any reasonable certainty whether the hemorrhage occurred before or after the fall, could you? A. I could not say, 10
sir.

CROSS-EXAMINATION by Mr. Grimshaw:

Q. Doctor, at whose request did you make this examination? A. At the request of Mr. Huss.

Q. Doctor, have you found similar degeneration of blood vessels of the brain on autopsies where the patient had died from a cause other than hemorrhage of the brain? A. Oh, yes. 20

Q. Can trauma alone produce the autopsy findings here found; the hemorrhage here found? A. It is possible.

Q. In the presence of trauma, what is the most likely cause of the hemorrhage in this case, bearing in mind that the fall produced a hemorrhage of the scalp followed by death? A. I don't think the scalp condition had anything to do with it. You may have rupture of a normal blood vessel without any external evidence of injury, but in 30
this case we're dealing with diseased blood vessels and my opinion is that that had a great deal to do with the hemorrhage in this case. I don't know whether it had anything to do with the fall or not. My opinion is that it was the cause of the fall.

Mr. Grimshaw: That is all, Doctor.

Earl Singer—Direct

EARL SINGER, a witness called on behalf of the respondent, being first duly sworn, testified as follows:

Direct-examination by Mr. Walburg:

10 Q. Mr. Singer, where are you employed? A. By the Ulster Iron Works.

Q. And for whom were you working on December 26th, 1928? A. The Ulster Iron Works.

Q. In what capacity? A. I was superintendent of the puddling department.

Q. And was the petitioner Johnson in your employ at the time? A. Yes.

20 Q. And did you see him on the morning before he died? A. Yes.

Q. About what time was this? A. Between five-thirty and six A. M.

Q. What were the conditions? A. The same as usual.

Q. What furnace did Johnson work at? A. Number nine.

Q. And what is that furnace used for? A. Puddling.

30 Q. What is puddling? A. The operation of making wrought iron out of ore and that furnace is operated by four men, two puddlers and two helpers.

Q. Is there a moulted mass in there? A. Yes.

Q. At the end of the process it is a moulted mass? A. Yes.

Q. How do they remove that? A. It is worked into a ball and a hook is attached to it and the hook is put in the furnace.

40 Q. Now, how high is this furnace door? A. About three feet high.

Earl Singer—Direct

Q. And how long is it? A. About ten feet long.

Q. How much does it weigh? A. Around forty pounds.

Q. Is it easy to manipulate in the furnace or does it require considerable strength? A. It is not particularly easy to operate. 10

Q. You say that four men work on each furnace? A. Yes. Two work on each side.

Q. Upon the day of this accident what was your first knowledge of Johnson's injury? A. I was told by one of the puddlers. They came up and told me about approximately five-forty-five.

Q. What did you do then? A. I ran down and picked him up.

Q. Was he lying on the ground? A. Yes. 20

Q. On the floor? A. Yes, on the steel plates or cement.

Q. The plates were in front of the furnace? A. Yes.

Q. How wide are they? A. Around twenty-four inches.

Q. And in back of that is the concrete floor? A. The concrete floor is around the plates and over by the coal box.

Q. Where was he lying when you saw him, in relation to the furnace door, when you got there? 30

Mr. Grimshaw: I object unless they testify he had not been moved.

A. Well, his feet were toward the furnace and his head was away from the furnace.

Q. How far away from the furnace would you say his feet were, approximately? A. Approximately five feet. 40

Q. Had anybody lifted him up? A. No.

Earl Singer—Direct

Q. Was he conscious or unconscious? A. Unconscious.

Q. Did he talk? A. No.

Q. Then was he carried to the first aid room?

A. I helped carry him.

10 Q. After the accident did you make an investigation? A. Yes.

Q. And did you discuss it with the employees there? A. I tried to find out from the employees how it happened.

Q. Did you talk to this witness, Schroeder? A. Yes.

Q. Did he tell you at any time that the plates where this man worked were covered with cinders? A. No.

20 Q. Did he tell you at any time that he knew what caused this man to fall? A. No.

Q. Did he tell you at any time that Mr. Johnson slipped on cinders? A. No.

Q. Did he tell you at any time that he knew what caused Johnson to fall? A. No.

Q. Did you ask him if he knew? A. Oh, yes.

Q. What did he say? A. Why, he said that he—

30 Mr. Grimshaw: I object to what Mr. Schroeder said, unless he knows.

The Court: I'll let him answer.

Q. What did Schroeder say to you when you asked him about this? A. He told me he turned around at the time Johnson fell and when he turned around he saw him falling and that is all he told me.

Q. Had Johnson ever complained of headaches while working at the plant? A. No.

40 Q. Was he doing his regular work that morning? A. Yes.

Earl Singer—Cross

Q. Did you notice the condition of the floor when you came down? A. I looked at it.

Q. Were there any obstructions on the floor?

A. No, there was not.

CROSS-EXAMINATION by Mr. Grimshaw: 10

Q. Will you describe to the Court the position in which a man works when he is puddling? A. It is the same position as Mr. Schroeder described.

Q. Is it a pulling or pushing operation? A. It requires both. It is pushing and pulling, both.

Q. If the material is stuck in the furnace, it would require considerable effort? A. Yes.

Q. Is it probable that the material was stuck in this instance? A. Oh, yes. 20

Q. And if it was, he would have had to use considerable effort to endeavor to loosen it? A. I cannot answer that; it is problematical.

Mr. Walburg: I object to that.

The Court: Change the question.

Q. Have you ever operated the ball hook? A. Yes.

Q. Where the material was stuck? A. Yes.

Q. Would it require extra effort? A. Yes, you wouldn't do that with a hook. 30

Q. Would you try to, first, with a hook? A. Yes.

Q. And it is probable that a person in using extra effort with this hook, would slip?

Mr. Walburg: I object to that.

The Court: Objection sustained.

Q. Do you know what caused this man to fall?

A. No. 40

Earl Singer—Re-direct

Q. Do you receive all the reports of accidents from the plant? A. Yes.

Q. Did you take Schroeder's statement? A. No.

10 Q. How was Johnson recognized at your plant, as a good, hard worker? A. Yes.

Q. Steady worker? A. Yes.

Q. Did he at any time ask to be transferred to lighter work? A. No.

Q. And how did they work there, time work or piece work? A. Tonnage per heat week.

Q. And what does that mean? A. That means there is a certain required tonnage per week.

20 Q. And how did Mr. Johnson compare with the rest of the men in his work? A. Very good.

Q. Did you have any reason to believe that he was ill? A. No.

RE-DIRECT EXAMINATION by Mr. Walburg:

Q. Was Mr. Johnson an experienced puddler? A. Yes.

Q. He had been doing that work eleven years? A. Yes.

30 Q. This hook, where was that at after the accident? A. That was still in the furnace.

By the Court:

Q. What was the shape of the end of the hook that was held in the hand? A. Why, there's a ring for one hand.

Q. Is that a stationary ring? A. Yes, the other end has a hook.

40 Q. How big is the ring? A. Big enough for one hand.

Q. What was the customary manner of holding it? A. Putting one hand in the ring.

Fred Huss—Direct

By Mr. Grimshaw:

Q. Now, if this ring was caught in the mass, that is tight enough to hold a man up, isn't it?

A. Yes.

Mr. Walburg: I object to that. There is no evidence the man did slip. 10

The Court: I think this is too general.

FRED HUSS, a witness called on behalf of the respondent, being first duly sworn, testified as follows:

Direct-examination by Mr. Walburg:

Q. By whom are you employed, Mr. Huss? A. 20
By the Mutual Insurance Company.

Q. And did you take the statement of the witness, George Schroeder? A. I did.

Mr. Walburg: I will offer it in evidence.

(Paper received and marked in evidence as Respondent's Exhibit 2, dated November 19, 1929, F. P. M.)

Q. Now, did you question him about the accident? A. I did. 30

Q. Did he answer you? A. Yes.

Q. Did you ask him these questions? A. I did.

Q. Did you ask him how it occurred? A. I did.

Q. And he told you? A. He did.

Q. And what he told you, you put down in this statement? A. I did.

Q. And did you ask him if he knew what caused Johnson to fall? A. I did. 40

Fred Huss—Cross

Q. What did he say? A. He said he didn't know; he had his back to him.

Q. Did he tell you at any time there was cinders over the iron plate? A. No.

Q. Did he tell you the iron plate was cracked?
10 A. No.

Q. Did he take the statement and look at it?
A. He did.

Q. And did he sign his name on each page? A. Yes, sir.

CROSS-EXAMINATION by Mr. Grimshaw:

Q. Can you find out in this statement where Mr. Schroeder said his back was turned to Mr. Johnson when he fell (handing witness statement)?
20 A. (Reading.) The next thing I noticed when I turned around to sit down, I saw Johnson falling backwards. He said he turned around and as he turned around he saw Johnson falling.

Q. When he fell, his back was to him; is that it? A. Yes, as he started to fall, his back was to him and as he turned around he saw him falling further.

Q. Are those the exact words Mr. Schroeder said?
30 A. Those are the exact words Mr. Schroeder told me.

Q. Can you point out in this statement where the man said that the plate was not cracked or was cracked? A. There is nothing mentioned about it.

Q. Did you ask him about it? A. I didn't bring out that point, no.

Q. Then it may have been cracked, as far as
40 you know? A. It may have been.

Alfred Eckdahl—Direct

Q. Mr. Schroeder was working while you took this statement, wasn't he? A. Mr. Schroeder sat down alongside of me as I took the statement.

Mr. Grimshaw: That is all.

10

ALFRED ECKDAHL, called as a witness on behalf of the respondent, being first duly sworn, testified as follows:

Direct-examination by Mr. Walburg:

Q. Were you working for the Ulster Iron Works on December 26th, 1928? A. Yes, sir.

Q. Did you know Mr. Johnson? A. Yes. 20

Q. What furnace were you working on? A. Number six.

Q. Were you working there in the morning about six o'clock, on the day shift? A. Yes.

Q. And were you over near number nine furnace on that morning? A. Once.

Q. Is that where Mr. Johnson worked? A. Yes.

Q. What did you go over there for? A. I was looking around for a sledge hammer.

Q. When you got over there did you see Mr. Johnson? A. Yes. 30

Q. Where was he? A. Lying on the floor.

Q. What did you do? A. The first thing I said what has happened to Mr. Johnson and the man turned around and we took hold of Johnson.

Q. Did you see Schroeder the first time? A. No.

Q. Did you see him after? A. Yes, after we started to lift him up. 40

*Alfred Eckdahl—Cross
Motion to Dismiss*

CROSS-EXAMINATION by Mr. Grimshaw:

Q. How do you know Schroeder wasn't there?

A. I didn't see him there.

Q. He may have been there, as far as you know?

10 A. I didn't see him there.

Q. You don't know whether he was there or not, do you? A. I can't say.

By Mr. Walburg:

Q. Well, you walked right in front of the furnace, didn't you? A. Yes.

Q. And you were the first one to get to Mr. Johnson, weren't you? A. Yes, sir.

20 By Mr. Grimshaw:

Q. When you got to the furnace you saw Mr. Johnson on the floor? A. Yes.

Q. And your attention was attracted to Mr. Johnson and not to anyone else? A. Yes.

Mr. Grimshaw: That is all.

30 Mr. Walburg: Respondent rests. I renew my motion to dismiss the complaint on the ground that the petitioner has failed to prove that the death was caused by the employment of the petitioner. You have Mr. Singer's testimony in which he denies that Schroeder told him anything about a cracked plate. Then as to the statement Schroeder made. He admits himself that what is in this statement is true. He admits there was nothing to fall over. He didn't see this man slip. He said he tried to catch himself with his feet. He says he

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Motion to Dismiss

got there right away. We had three witnesses contradicting him. In other words, Mr. Huss, Mr. Singer and Mr. Eckdahl, and even then you certainly haven't got an accident.

Mr. Grimshaw: I feel that there is no doubt this man did slip and fall. If, from the medical testimony that has been presented here, he was holding onto this hook it was not enough to hold him up and he suffered a hemorrhage while he was standing up as the indication is that he was slumped down in the position he was standing instead of falling backwards. And Mr. Schroeder also testified he saw the man trying to save himself from falling with his feet, which is certainly an indication that the man was slipping. Mr. Schroeder tells, I think, an honest story. If they didn't ask him any of the questions there was nothing for him to say—if they didn't ask him why the man slipped, there was nothing for him to say. He answered the questions as the statement was presented to him. The medical aspect of the case, I feel, is certainly poor condition. No one knows whether this man had a hemorrhage prior to the time he fell or whether he sustained the hemorrhage after his head struck the floor, but I feel that the way the testimony is presented it is favorable to the latter contention. Further, on the basis that if the man had a hemorrhage, it was the cause of his fall. He was slumped to the floor; he fell backwards and in falling he attempted to protect himself. There was

Motion to Dismiss

no testimony that there were times that these plates have what we may term cinders, which fall off the hook. No one can actually say that that condition didn't exist here at that time. Mr. Schroeder was not
10 asked directly whether that plate was cracked at the time he was interviewed originally. He says it was the condition at this time, and the only ones questioning him were the people connected with the plant which would be held liable as far as any award under the Compensation Act is concerned. The death certificate as presented is prima facie evidence of the fact
20 that this man fell and the cause of his death, which would be an indication that the man did not die from a hemorrhage. The hemorrhage was the cause of his falling and this certificate was filed possibly a day or two after the death, and the death certificate was incorporated on the certificate of Dr. Christian, who performed the autopsy and testified here and was of the opinion that the man sustained the hemorrhage due to trauma and not to the hemorrhage causing this fall. I certainly feel
30 that the petitioner has presented a case and that she is entitled to a compensation and that she should be allowed it.

The Court: At best, the medical testimony does not indicate with any certainty whether the hemorrhage preceded or came after the fall. It could just as easily have been one as the other and in all probability the fall might have caused the hemorrhage to be greater in extent, but that
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Motion to Dismiss

is the medical end of it. The important part, to my mind, is the lay testimony. Did or did not an accident happen? If the accident happened the medical testimony is important and the two would be taken jointly, but I do not think we can take the medical testimony first, but you have to take the lay testimony first. The testimony of Schroeder and what he says in effect is that he was talking to Mr. Johnson just before he fell. He walks away from him and his back is turned in walking away from him and when he turns around again Johnson is falling backwards. Now, the question arises as to whether he can tell whether Johnson is trying to right himself in falling or whether he slipped on some pebbles or some cinders there, or whether the plate was cracked and all that sort of thing. He testifies that what he said in his statement was true. He also testified that nothing had been omitted that was asked of him from the statement. Now, then, Mr. Huss testified. I asked him if he knew what caused Johnson to fall and he said he didn't know. There's the situation. If you accept that statement, that's the whole case. There's just a little addition. Were there some cinders on the iron plates in front of the furnace and was the iron plate cracked, and Schroeder's statement that he was trying to right himself, and the inference of it would be that he must have slipped. The question arises if he looked around and Johnson was falling backwards, how can he tell what caused him to fall? If he was

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Motion to Dismiss

10 looking at him and saw him start to fall, that might be different. But he testified that when he turned around he saw him falling backward. The testimony of the doctor is that he died about the time his head struck the concrete or iron. Schroeder looking around may have seen him with both arms in the air, but that doesn't indicate he's trying to right himself. Then we have the testimony of Mr. Singer. He goes around and asks the employees and they don't know what happened, and the other employees testify to the same thing. Now, the question is whether there was any cinders on the floor. Mr. Singer says he looked and saw nothing that would cause the man to fall. Mr. Eckdahl says the last furnace he worked at was furnace number six, and I was going to number nine to get a sledge hammer and saw his head hit the floor. He said he didn't see Schroeder at the furnace. His attention was attracted to Mr. Johnson, but the probability is that he would have seen Schroeder if he was there. The probability is that Schroeder wasn't there at that moment but that he got there later. The only testimony tending to show that there was an accident at all is the testimony of Schroeder. He says that at the next moment he was pulling at a ball connected with a hook and he is pulling on that in the direction of his body and there's a ring at the one end which is certainly large enough for him to get one of his hands in it. The other hand is in front of that ring. It is made to get a good grip on that hook.

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Motion to Dismiss

Apart from all other testimony would be the fair assumption that if he's pulling on that and slips, every layman would assume he could hold onto it. The very fact that he let go of the hook looks funny. I'm only assuming that, incidentally. That is one of the points that is interesting. "I had just been talking to him when he fell over backwards. I got some water. I felt a bump on the back of his head. It requires some strain to pull the ball at times. The plate was cracked and some cinders from the ball fell on the floor. His feet went out straight in front of him and he tried to catch himself." The question is that a conclusion. He states the circumstances under which the statement was taken. Mr. Huss sat opposite to him. "The hook was eight feet long. The hook was still in the furnace. I told Singer I didn't know what caused him to fall. Certainly Mr. Singer asked the employees what happened. I told Mr. Singer I didn't know what caused him to fall. Mr. Huss asked me what I knew about the accident. I told Mr. Huss there was nothing. I didn't tell Mr. Huss about the cinders. There was nothing unusual in the plant when Johnson died. He was falling when I looked around." From the testimony I would conclude that there was not an accident proved by the petitioner.

Mr. Grimshaw: I take an exception.

The Court: From the preponderance of the testimony I accordingly find that an accident was not established and it is un-

Motion to Dismiss

necessary to pass on the cinder aspects involved and respondent is asked to prepare the usual determination and order of dismissal.

Mr. Grimshaw: Exception.

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THIS IS TO CERTIFY that the foregoing is a true and correct transcript of the shorthand notes of testimony in the above entitled matter as taken by me at the time and place which were before mentioned.

FRANK P. McILROY,
Court Reporter.

20

THIS IS TO CERTIFY that the foregoing is a true and correct transcript of the testimony taken before me at the above time and place.

.....
Deputy Commissioner.

EXHIBIT P-1.

POST MORTEM

Autopsy Performed on the Body of

CLARENCE JOHNSON.

12/26/28 at 12:30 P. M.

Performed at Dover, N. J.

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The body is that of a well developed white male about 45 years of age. There are no abrasions over the body. There is a tumor faction over the region of the occipital protuberence.

Pathological Findings were as follows:

Extensive hemorrhage in the brain originating in the base of the brain from rupture of the blood vessels around the circular Willis and extending over the left and right parietal region and going up to the superior part of the occipital and parietal lobes on both sides. 20

Blood cot found in the floor of the fourth ventricle.

Spinal canal filled with blood.

Hematoma 4 c. c. in diameter over the occipital protuberance.

Moderate sclerosis of the blood vessels in the circular Willis. 30

Extensive anthracosis of both lungs, otherwise lungs show no Pathology.

Chronic adhesions of pleural on right side in region of middle lobe on its lateral and posterior aspect.

Cardiac hypertrophy (thickening of left ventricle wall).

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Exhibit P-1

Moderate atheroma of the ascending arch and descending aorta.

Small amount of sclerosis in the coronary arteries.

- 10 Moderate chronic myocarditis.
Hypertrophic sclerosis of the liver.
Double chronic interstitial nephritis.
Other organs show no pathology.

Cause of Death: Cerebral hemorrhage from fracture of blood vessels in base of brain.

Contributory Cause: Trauma.

(Signed) THOS. B. CHRISTIAN, M. D.
Pathologist.

EXHIBIT R-1.

WITNESS' STATEMENT

C. JOHNSON

vs.

USTER IRON WKS.

10

Statement of:

George Schroeder of Millbrook, N. J.
 Taken 12:10 P. M. 12/28/28 19 at Plant by Huss

My name is George Schroeder, age 19. I have been working here as a puddler's helper. I was Johnson's helper. I have been working with Johnson about 6 weeks and I have been here the same length of time. On Dec. 12/26/28, at about 3:40 A. M. I met Johnson down in the village at Sussex & Blakwell Sts. and drove him up to the plant about a mile. We charged our furnace for the first heat. He did his regular work. He did not complain of anything being the matter. I did not notice anything wrong with him. He seemed to be in good spirits. He told me about his daughter being in the Hospital with appendicitis. At about 6:00 A. M. I went to sit down on a bench about 5 ft. from Johnson. He was standing at the furnace and making a ball so he could take it out of the furnace. The next thing I noticed as I turned around to sit down was I saw Johnson falling backwards. He was working on the 9 furnace. The floor is iron and concrete. There was nothing for him to stumble over, nothing on the floor for him to fall over. He had been using a ball hook in

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Exhibit R-1

the furnace. When he fell he fell backwards, and hit the back of his head on the concrete. I ran to him and asked him what was the matter. He did not answer me. His eyes were closed, and shook all over for a few minutes and he never moved
10 after that. There was not a sign of blood on him anywhere. I got some cold water and put it on his head. I noticed a little bump on his head in back and it was not very noticeable. Sam Miller, Tom Keddy, but he was not there at the time. Al Ekdall was also there. Mr. Singer and I carried him to the first aid room and I left him with Mr. Singer and Jack Von Roff. I came back to my furnace. During the six weeks I have been here
20 Johnson never missed a day from work. I never knew him to be sick or complain of any sickness. The conditions in the plant were the same as on any other morning. It was not hot in the plant and everything was the same as usual and Johnson was doing his work as usual. Floor was dry. It all happened in a few seconds. I had been talking to him and walked about 5 ft. and turned around and I saw him falling backwards.

I have read above on 3 pages and it is true.
30

GEORGE SCHROEDER.

F. HUSS

EXHIBIT P-2.

STATE OF NEW JERSEY
 STATE DEPARTMENT OF HEALTH
 BUREAU OF VITAL STATISTICS

1 Place of death
 County Morris State New Jersey Registered 10
 No. 142
 City Dover, N. J. No. Ulster Iron Works (If
 death occurred in a hospital or institution, give
 its name instead of street and number.)
 2 Full name Clarence Johnson
 3 Residence (Usual place of abode.) (If non-
 resident give city, town and State.) No. 239
 South Morris St., Dover, N. J.
 Length of residence in city or town where death 20
 occurred. . . . yrs. . . . mos. . . . days. How
 long in U. S., if of foreign birth? . . . yrs. . . .
 . . . days.

PERSONAL AND STATISTICAL PARTICULARS

4 Sex Male 5 Color or race White 6 Single,
 married, widowed or divorced (write the word)
 Married
 7 If married, widowed or divorced Husband of
 (or) Wife of (Give full maiden name) Grace 20
 Decker
 8 Date of birth (month, day and year) June 25,
 1887
 9 Age Years 41 Months 6 Days 1
 10 Occupation or deceased (a) Trade, profes-
 sion or particular kind of work Puddler
 (b) General nature of industry, business, or es-
 tablishment in which employed (or employer)
 Ulster Iron Works, Dover, N. J.
 (c) Name of employer 40

Exhibit P-2

11 Birthplace (City or town) Mt. Freedom
(State or country) N. J.

Parents:

- 12 Name of father George Johnson
13 Birthplace of father (city or town)
10 (State or Country) New Jersey
14 Maiden name of mother Mary Ayres
13 (a) Birthplace of mother (City or town)
(State or Country) New Jersey
15 Signature of informant
(Address)

16

Received Dec. 27, 1928

JOHN C. TAYLOR

Local Registrar.

20

MEDICAL CERTIFICATE OF DEATH

17 Date of death December 26, 1928

18 I HEREBY CERTIFY That I attended deceased
from....., 19.... to, 19..... I last saw
him dead on Dec. 26, 1928, and death occurred on
date stated above, at 6 A. M.

The Cause of Death was (see over) Cerebral
Hemorrhage. "Bose" Traumatic. Fell while
30 working & striking his head on an iron plate
which is used to work on in front of the furnace.
Accidental.

Contributory.....

(Secondary)

(Duration)yrs.mos.ds.

19. Where was disease contracted, if not at
place of death?.....

If an operation preceded death give date.....

40 Was there an autopsy? Yes.

Exhibit P-2

What test confirmed diagnosis? Above.

(Signed) THOMAS A. LEWIS, Coroner,

(Address) 312 West Main St., Boonton, N. J.

20 Place of burial

Cremation or Removal Locust Hill Cem.

Date of burial Dec. 29, 1928

10

21 Undertaker Francis & Shuler

Address Dover, N. J.

New Jersey License Number 753-788

DEPARTMENT OF HEALTH

OF THE

STATE OF NEW JERSEY

BUREAU OF VITAL STATISTICS

(Seal)

I, D. C. BOWEN, Superintendent of the Bureau
of Vital Statistics of the State of New Jersey, 20
do hereby Certify that the foregoing and annexed
is a true copy of a certain Certificate of Death, as
taken from and compared with the original re-
maining on file in my office.

IN TESTIMONY WHEREOF, I have hereunto
set my hand and affixed the Official
(Notarial Seal of said Bureau, at Trenton, this
Seal) 25th day of April, A. D. 1929.

D. C. BOWEN
Superintendent.

30

Attest:

DAVID S. SOUTH

State Registrar of Vital Statistics.

40

PETITION NO. 10612.

DETERMINATION OF FACTS AND FINDINGS.
 NEW JERSEY DEPARTMENT OF LABOR
 WORKMEN'S COMPENSATION BUREAU

10	GRACE JOHNSON, <div style="text-align: right;">Petitioner,</div>
	vs.
	ULSTER IRON WORKS, <div style="text-align: right;">Respondent.</div>

1. This is a proceeding brought by Grace Johnson, as petitioner, and against Ulster Iron Works, as respondent, under an Act entitled "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 of liability and compensation thereunder," approved April 4th, 1911, and Acts amendatory thereof and supplemental thereto. A petition was duly filed with the Workmen's Compensation Bureau and an answer was duly filed with the said Bureau by the respondent.

2. The above entitled matter came on for trial in the presence of counsel for the respective parties. It was admitted by the parties that the petitioner's decedent, who was her husband, was employed by the respondent on December 26, 1928, and died at the plant of the respondent.

3. A witness named George Schroeder, twenty years of age, testified that on December 26, 1928,

Petition No. 10612—Determination of Facts and Findings

he was employed as a puddler by the respondent at its plant, at Dover, New Jersey; that his work consisted in helping the decedent; that on the day of the accident, he came to work with the decedent at about three o'clock in the morning; that shortly before six o'clock the decedent was balling up a molten mass of iron ore in the furnace. He did this by means of a balling hook which is about ten feet long and weighs about 25-30 pounds. While the decedent was doing this, this witness turned around to sit down and when he saw the decedent again, the decedent was falling backwards and appeared to be trying to catch himself with his feet. He fell backwards and struck his head on the floor. The decedent did not regain consciousness. The witness also testified that the iron plate which covered the floor in front of the furnace was cracked and that there were some cinders there which came from the furnace; that the floor back of the iron plate was made of concrete.

4. A Dr. Christian, who made an autopsy of the decedent, testified that in his opinion the decedent died from a cerebral hemorrhage and that the contributory cause was trauma. The autopsy showed that the blood vessels at the base of the brain where the hemorrhage occurred, were sclerotic. There was a hematoma on the outside of the head at the base of the skull, at the point where the hemorrhage occurred. There was anthracosis of both lungs, chronic adhesions of the pleural, thickening of the left ventricle of the heart, moderate atheroma of the ascending arch and descending aorta of the heart. There was also sclerosis of the pulmonary arteries and chronic

Petition No. 10612—Determination of Facts and Findings

myocarditis. There was a sclerosis of the liver and double chronic interstitial nephritis.

This doctor testified that in his opinion the blow to the head as the decedent struck the floor, probably caused the hemorrhage, but it was also possible for the hemorrhage to have occurred before the fall; that in view of the decedent's diseased heart, kidneys and liver, it would have been possible for him to have suffered a heart attack, which could not be definitely ascertained by the autopsy.

5. Dr. Costello testified that he was present at the autopsy and, in his opinion, the hemorrhage occurred when the decedent's head struck the floor.

6. Dr. Ruoff testified, in answer to hypothetical questions, on direct-examination, that in his opinion the hemorrhage was caused by trauma. However, on cross-examination, he admitted that it would be impossible to state definitely that the hemorrhage occurred either before the fall or after the fall. This concluded all the testimony on the part of the petitioner.

7. The respondent offered in evidence a statement signed by the witness, Schroeder, which Schroeder admitted he had signed, and which was true. In the statement, he said that he went to a bench to sit down, and when he turned around, he saw the decedent falling backwards.

Mr. Huss testified that he took the statement from the witness, Schroeder, and asked him to tell him all he knew about the accident; that everything he told him was incorporated in the statement; that Schroeder told him that he did not know what caused the decedent to fall. Mr. Huss also testified that the witness, Schroeder,

Petition No. 10612—Determination of Facts and Findings

did not tell him anything about cinders or a cracked iron plate.

A Mr. Singer, superintendent of the plant of the respondent, testified that he was called to the furnace where the decedent was employed, and found him lying on the concrete floor. There was a slight bump on the back of his head, but there was no blood. The decedent was unconscious and did not regain consciousness at any time. He stated that there was no obstruction of any kind on the floor, over which the decedent could have tripped or slipped. He denied the statement made by the witness, Schroeder, that he had told him about cinders on the floor, or a cracked iron plate. He further testified that he questioned all of the employees about the alleged accident, and Schroeder told him that he first noticed Johnson when he was falling backwards.

A Mr. Eckdahl, an employee of the plant of the respondent, testified that he went over to the furnace where the decedent was employed to get a sledge hammer, and when he arrived there, he found the decedent stretched out on the floor; that he was the first one there and did not notice the witness, Schroeder, in the vicinity; that the conditions surrounding the furnace were the same as they were every day.

Dr. Baker testified that he examined the decedent in the first-aid room at the plant of the respondent, shortly after he had fallen. At that time, the decedent was dead, and it was the doctor's opinion that he had died from heart failure. He was present at the autopsy and testified that, in his opinion, the decedent's death was caused by

Petition No. 10612—Determination of Facts and Findings

a cerebral hemorrhage and the cerebral hemorrhage was the cause of the decedent's falling.

Dr. John W. Gray, a pathologist, testified that he made an examination of the brain of the decedent, and that in view of the autopsy findings, he could not say whether or not the cerebral hemorrhage occurred before the fall or after the fall, and that in his opinion, it was impossible for anyone to say definitely whether the cerebral hemorrhage occurred before the fall or after it.

8. On examining the testimony, and taking that view most favorable to the petitioner, we find that the witness, Schroeder, states that he saw the decedent when he was falling backwards. He did not see what caused the decedent to fall. There is no evidence from which an inference can be drawn that the decedent's fall was due to an accident. The decedent had been employed at the plant for over eleven years. He was an experienced puddler and was doing the same work, under the same conditions, that he had always done. Just before he fell, he had hold of a large balling hook, at the end of which was a round ring where the hand was inserted. There is testimony to the effect that after the fall, the balling hook was still in the furnace and there was also testimony that to remove the balling hook would take considerable force and effort.

It is impossible for me to find from this evidence that the decedent slipped or tripped while performing his work for the respondent, or that there was any accident which caused the petitioner to fall. In addition to this, this witness's testimony is contradicted in many aspects by Mr. Huss and Mr. Singer. Then there is the state-

Petition No. 10612—Determination of Facts and Findings

ment which he admitted he signed and which was true; and everything he told Mr. Huss is contained therein, and nothing was omitted. This case, therefore, can be disposed of on the ground that there is no proof that the decedent's death was caused by an accident arising out of and in the course of his employment. It is not necessary to consider the medical testimony regarding the cause of death. There is no doubt that he died of a cerebral hemorrhage, but whether or not it was the cause of the fall, or occurred after the fall, has not been definitely established. 10

It is, therefore, on this 25th day of November, 1929, ORDERED that judgment final be entered in favor of the respondent and against the petitioner, and the claim petition is hereby dismissed. 20

HARRY J. GOAS,
Deputy Commissioner.

NOTICE OF APPEAL.

NEW JERSEY DEPARTMENT OF LABOR
 WORKMEN'S COMPENSATION BUREAU,
 MORRISTOWN, MORRIS COUNTY, DIST.

10	GRACE JOHNSON, <div style="text-align: right; padding-right: 20px;">Petitioner,</div>	}	Claim Petition #10612.
	vs.		
	ULSTER IRON WORKS, <div style="text-align: right; padding-right: 20px;">Respondent.</div>		

To: Secretary, Workmen's Compensation Bureau, State House, Trenton, New Jersey.
 20 County Clerk, Morris County, Morristown, New Jersey.
 Harley, Cox & Walburg, Esqs., attorneys for respondent, Military Park Building, Newark, New Jersey.

Sirs:

30 TAKE NOTICE that the petitioner hereby appeals to the Court of Common Pleas in and for the County of Morris from the whole of the determination of judgment in the Workmen's Compensation Bureau heretofore made in the above entitled matter, which award denies the petitioner compensation and dismissed the petitioner's claim for said compensation.

Respectfully,
 J. C. GRIMSHAW
 Attorney for Petitioner.

40 Service of a copy of within Notice of Appeal is acknowledged this 20th day of December, 1929.

HARLEY, COX & WALBURG,
 Attorneys for Respondent.

**ORDER FIXING TIME AND PLACE FOR
HEARING.**

MORRIS COUNTY COURT OF COMMON
PLEAS

GRACE JOHNSON,

Petitioner,

vs.

ULSTER IRON WORKS,

Respondent.

} On Appeal 10
} from Work-
} men's Comp-
} ensation Bureau.

On motion of John C. Grimshaw, Esquire, attorney for petitioner in the above entitled matter,

It is hereby ORDERED that Friday, the twenty-fourth day of January, 1930, at ten o'clock in the forenoon, be and hereby is fixed as the time and the Morris County Court House, in the town of Morristown, County of Morris and State of New Jersey, as the place for the hearing of the appeal in said matter. 20

ALBERT H. HOLLAND,
Judge of the Morris County
Court of Common Pleas.

Dated: January 6th, 1930. 30

A true copy

J. C. GRIMSHAW

Attorney for Petitioner.

Service of a copy of within Order, etc., is acknowledged this 7th day of January, 1930.

HARLEY, COX & WALBURG,
Attorneys for Respondent.

40

**ON APPEAL WORKMEN'S COMPENSATION
JUDGMENT FINAL.**

MORRIS COUNTY COURT OF COMMON
PLEAS

10	GRACE JOHNSON, <div style="text-align: center;">Petitioner-Appellant,</div> <div style="text-align: center;">vs.</div> ULSTER IRON WORKS, <div style="text-align: center;">Respondent-Appellee.</div>	}	On Appeal Workmen's Compensation Judgment Final.
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20 A judgment having been duly made by the
 Workmen's Compensation Bureau (New Jersey
 Department of Labor) in the above cause on No-
 vember 25, 1929, in favor of the respondent and
 against the petitioner below, dismissing the pe-
 titioner's petition for compensation. And the pe-
 titioner having appealed to this Court from the
 said judgment, within the statutory time, and the
 appeal having been heard and briefs submitted by
 the respective parties and it appearing a petition
 having been filed in the Workmen's Compensation
 Bureau in the above stated matter, praying for
 30 compensation to which the petitioner and other de-
 pendents may be entitled by virtue of the forms
 and provisions of an act of the Legislature of the
 State of New Jersey entitled "An Act prescribing
 the liability of an employer to make compensation
 for injuries received by the employee in the course
 of the employment establishing an elective sched-
 40 ule of compensation and regulating procedure for
 the determination of liability and compensation
 thereunder" approved April 4th, 1911, together
 with the several supplements thereto and acts
 amendatory thereof, and the testimony taken be-
 fore the Workmen's Compensation Bureau having
 been duly filed and considered by this Court on

*On Appeal Workmen's Compensation Judgment
Final*

the said appeal I do find as facts and determine from the evidence and said stipulations as follows:—

First:—That the petitioner's deceased was, on the twenty-sixth day of December, A. D. 1928, in the employ of the respondent, the Ulster Iron Works, as a puddler, which employment is subject to the compensation section of Chapter 95, Laws of 1911, and supplements and amendments thereto: 10

Second:—That on the aforesaid date the petitioner's deceased met with an accident arising out of and in the course of his employment: 20

Third:—That the said accident consisted in the fact that while petitioner's deceased was performing his duties as a puddler, operating the hook while standing on a steel plate which was cracked and loose, and upon which were little pebbles or slugs, and while pulling on said hook his feet went straight out from under him, and that while falling he was trying to catch himself with his feet; the petitioner's deceased fell striking the back of his head at the base of his skull, being rendered unconscious, severely injured sustaining a cerebral hemorrhage which resulted in his death immediately following the aforesaid accident: 30

A witness in behalf of the petitioner testified that he saw the petitioner's deceased fall back trying to catch himself with his feet; that he saw the petitioner's deceased trying to get to his feet and still had hold of the ball hook and fell to the floor; he (petitioner's deceased) was trying to 40

*On Appeal Workmen's Compensation Judgment
Final*

stand up. The statements not having been contradicted on the part of the respondent, sustained the petitioner's allegations as set forth in the petitioner's claim petition filed in this case, and the
10 petitioner has sustained the burden of proof as to an accident.

The petitioner having proven an accident under the aforesaid Act, the cause of death (Cerebral Hemorrhage) was directly due to the aforesaid accident, and the testimony on the part of the petitioner sustaining this contention has been borne by the petitioner.

20 *Fourth:*—That the respondent herein had knowledge of the said accident within the time prescribed in paragraph 15 of the aforesaid Act;

Fifth:—That the petitioner, Grace Johnson, widow, and a son Everett Johnson, who was born January 20th, 1921, were solely dependent upon the petitioner's deceased at the time of his accident and death aforesaid, and are entitled to compensation as sole dependents for 300 weeks at \$16.96 per week or \$5,088.00, and an additional
30 121 weeks at \$14.84 per week or \$1,795.64 which covers compensation.

Sixth:—That the petitioner's average weekly wages were \$42.40 per week and on which wages the rate of compensation for dependent's is based in accordance with the provisions of the aforesaid Act. The accrued sum of compensation from the date of death to the present date, shall be paid
40 in one sum and the balance paid in accordance with the provisions of the aforesaid Act;

*On Appeal Workmen's Compensation Judgment
Final*

Seventh: That the petitioner expended for burial expenses of petitioner's deceased, a sum in excess of \$150.00 and under the Act is entitled to the sum of \$150.00 for burial expenses, which is hereby assessed against the respondent; 10

Eighth: No medical expense was incurred as a result of treatments rendered, arising out of the aforesaid accident, and therefore no expense is assessed in this case;

Ninth: Medical expense for appearance of and testimony of petitioner's doctors in court, Dr. William Costello, \$15.00, Dr. A. C. Ruoff, \$50.00, or a total of \$65.00 assessed against the respondent; 20

Tenth: Medical expense for appearance and testimony of petitioner's doctors and consultations in preparation of the petitioner's case, Dr. A. C. Ruoff, \$50.00; Dr. J. H. Trainor, \$20.00; Dr. A. F. Dowd, \$50.00, or a total of \$120.00 assessed against the petitioner;

Twelfth: That the stenographic attendance fee for the hearing in Morristown in the amount of \$10.00 be assessed against the respondent. 30

It is, therefore, on this 12 day of Sept., A. D., 1930, ORDERED, that Judgment final be entered in favor of the petitioner, Grace Johnson, and the dependent Everett Johnson, son, and against the respondent, and that the respondent make payments to the petitioner as follows:

For funeral expenses, \$150.00; compensation for the dependents Grace Johnson, widow, Everett Johnson, son, 300 weeks at \$16.96 or \$5,088.00 40

*On Appeal Workmen's Compensation Judgment
Final*

and at the expiration of the 300 weeks, 121 weeks at \$14.84 per week, or \$1,795.64, making a total of \$6,883.64, the accrued sum from the date of accident and death to be paid in one sum and the
 10 balance in accordance with the provisions of the aforesaid Act and at the rate specified; medical expense for appearance and testimony of doctors in behalf of the petitioner, Dr. William Costello, \$15.00; Dr. A. C. Ruoff, \$50.00, or a total of \$65.00; counsel fee for petitioner's attorney in the amount of \$1,376.73; stenographic fee for hearing in Morristown in the amount of \$10.00, and testimony of \$62.50.

20 And it is, on the aforesaid day and date FURTHER ORDERED, that the petitioner shall pay for attendance and testimony and conference in preparation of her case, Dr. A. C. Ruoff, \$50.00; Dr. J. H. Trainor, \$20.00; Dr. A. F. Dowd, \$50.00, or a total of \$120.00.

And it is, on the aforesaid day and date, FURTHER ORDERED, that the respondent-appellee pay to the petitioner's attorney the sum of \$1,376.73 as
 30 petitioner's attorney's fees for work done on the appeal.

ALBERT H. HOLLAND,
 Judge.

A true copy.
 E. Bertram Mott,
 Clerk.

Received
 Morris County
 Clerk's Office
 40 Sep. 12 1:39 P M 30
 Morristown, N. J.
 E. Bertram Mott,

Clerk.

RULE TO SHOW CAUSE.
NEW JERSEY SUPREME COURT

<p style="text-align: center;">GRACE JOHNSON, Petitioner-Defendant, <i>vs.</i> ULSTER IRON WORKS, Respondent-Prosecutor.</p>	}	10
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Upon reading and filing the affidavit of Harry E. Walburg, of the firm of Harley, Cox and Walburg, attorneys of record of the respondent, it is on this 27th day of September A. D. 1930, on motion of Harry E. Walburg, attorney for respondent, ORDERED that the said Grace Johnson do show cause before this court at the State House in Trenton on the seventh day of October A. D., 1930, at eleven o'clock in the forenoon of that day, why a writ of certiorari should not issue out of and under the seal of this court to review the determination and judgment entered in the Court of Common Pleas in and for the County of Morris on the 12th day of September, 1930, in a proceeding wherein Grace Johnson is named as petitioner and the Ulster Iron Works is named as respondent, and that all further proceedings in the said proceeding in the said court of Common Pleas be and the same hereby are stayed until the further order of this Court.

Let the above rule be entered.

C. W. PARKER,
Justice of Supreme Court.

Rule entered this 27th day of September, 1930.
HARLEY, COX & WALBURG,
Attorneys for Respondent-Prosecutor.

Service acknowledgment and consent given to file as of time.

J. C. GRIMSHAW,
Attorney for Petitioner-Defendant.

REASONS.

(Filed September 29, 1930.)

NEW JERSEY SUPREME COPRT

10	GRACE JOHNSON, Petitioner-Defendant, vs. ULSTER IRON WORKS, Respondent-Prosecutor.	}	On Rule to Show Cause.
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20 The respondent-prosecutor writes down the following reasons for granting a writ of certiorari to review the determination and judgment of the Court of Common Pleas of the County of Morris in the above entitled cause:

FIRST:

Because the finding that the petitioner's decedent sustained an injury as a result of an accident arising out of and in the course of decedent's employment is unsupported by any legal evidence.

30

SECOND:

Because there is no evidence to show that the cause from which the petitioner's decedent was alleged to have died, was the result of an accident arising out of and in the course of decedent's employment.

THIRD:

40 Because there is no evidence to sustain the finding that the petitioner's death was the result of

Reasons

an accident arising out of and in the course of his employment with the respondent, rather than from disease.

FOURTH:

Because the petitioner failed to maintain the burden of proof in that there was no evidence to support the finding that the petitioner died as the result of an accident arising out of and in the course of his employment. 10

FIFTH:

Because the undisputed evidence shows that the decedent's death was just as likely caused by disease as by an injury received in an accident. 20

HARLEY, COX & WALBURG,
Attorneys for Respondent-Prosecutor.

Service acknowledged and consent given to file as of time.

J. C. GRIMSHAW,
Attorney for Petitioner-Defendant.

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JUDGMENT OF REVERSAL.

NEW JERSEY SUPREME COURT

October Term, 1930.

GRACE JOHNSON,

Petitioner-Defendant,

vs.

ULSTER IRON WORKS,

Respondent-Prosecutor.

10

Action at Law
On Certiorari

This cause having been duly submitted on brief at the October Term, 1930, of this Court, by Harley, Cox & Walburg, of counsel for the prosecutor, and John C. Grimshaw, of counsel for the petitioner-defendant, and it appearing from the record that counsel for the respective parties have entered into a stipulation whereby the argument and briefs submitted in this matter shall be considered as the argument and briefs of the respective parties on a writ of certiorari in the event that the Court finds in favor of the respondent-prosecutor; and the Court having inspected the record and judgment below and considered the reasons assigned for error, it is, thereupon on this 3rd day of February, 1931,

ORDERED, that the judgment of the Morris County Common Pleas Court be in all things reversed, set aside and for nothing holden, and the record be remitted to the Court below to be proceeded with according to law and the practice of said Court.

Rule entered February 3, 1931, on motion of

HARLEY, COX & WALBURG,
Attorneys of Respondent-Prosecutor.

A true copy.

Fred L. Bloodgood,
Clerk.

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NOTICE OF APPEAL.

NEW JERSEY SUPREME COURT

10	GRACE JOHNSON, Petitioner-Appellant, vs. ULSTER IRON WORKS, Respondent-Appellee.	}	Action at Law
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To Hurley, Cox and Walburg, Attorneys of Respondent-Appellee:

20 TAKE NOTICE, that the Petitioner-Appellant hereby appeals to the New Jersey Court of Errors and Appeals from all of the judgment of the New Jersey Supreme Court rendered on February third, Nineteen Hundred and Thirty-one in this cause.

Dated, June 13, 1931.

Yours respectfully,

30

JOHN C. GRIMSHAW,
 Attorney for Appellant.
 FRANK G. TURNER,
 Of Counsel.

40

GROUNDS OF APPEAL.

NEW JERSEY COURT OF ERRORS AND
APPEALS

<p style="margin: 0;">GRACE JOHNSON,</p> <p style="margin: 0; padding-left: 40px;">Petitioner-Appellant,</p> <p style="margin: 0; padding-left: 80px;">vs.</p> <p style="margin: 0;">ULSTER IRON WORKS,</p> <p style="margin: 0; padding-left: 40px;">Respondent-Appellee.</p>	}	On Certiorari	10
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The following are the grounds of appeal of the petitioner-appellant herein from the judgment of the New Jersey Supreme Court, dated February 3, 1931: 20

1. The New Jersey Supreme Court erroneously gave judgment in favor of the respondent-appellees and against the petitioner-appellant.
2. The Supreme Court erroneously ordered that the judgment of the Morris County Court of Common Pleas should be in all things reversed, set aside and for nothing holden.
3. The Supreme Court erroneously decided and determined that there was no testimony of an accident. 30
4. The Supreme Court should have decided that the death of the deceased, Clarence Johnson, occurred as the result of an accident arising out of and in the course of his employment.
5. The Supreme Court erroneously found that the deceased, Clarence Johnson, died of cerebral 40

Judge Holland's Opinion

hemorrhage unaccompanied by accident and the proofs show that he died as the result of an accident arising out of and in the course of his employment.

10 JOHN C. GRIMSHAW,
Attorney of Petitioner-Appellant.
FRANK G. TURNER,
Of Counsel.

JUDGE HOLLAND'S OPINION.

Turner & Stalter, Esqs.
Harley, Cox & Walburg, Esqs.
20 Newark, New Jersey.

Gentlemen:

In the case of *Grace Johnson vs. Ulster Iron Works*, I have reached the determination that at the time that decedent was working he fell, due to the fact that he was operating the hook while standing on a steel plate, which was cracked and loose and upon which were little pebbles or slugs;
30 that while pulling, his feet went straight out from under him, and that while falling he was trying to catch himself with his feet.

George Schroeder testified (page 10, line 24):

“I turned around and saw Mr. Johnson fall back trying to catch himself with his feet.”

40

Judge Holland's Opinion

and on page 11, line 12:

“And I saw Mr. Johnson trying to get his feet and he still had hold of the bell hook and he fell to the floor.”

and on page 17, line 12:

10

“He was trying to stand up.”

Accordingly, I have also reached the determination that the Cerebral Hemorrhage was caused as a result of the fall and that the death of the decedent was caused by an accident arising out of and in the course of the employment.

Based on this determination, I have concluded to reverse the judgment and enter one for the proper amount in favor of the petitioner. 20

Counsel for the petitioner may prepare a determination of facts and reversal, have counsel of the respondent approve of the same as to form and present it for signature.

Yours very truly,

ALBERT H. HOLLAND. 30

AHH:MR

40

OPINION.

(Filed Jan. 23, 1931.)

NEW JERSEY SUPREME COURT

No. 278, October Term, 1930.

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GRACE JOHNSON, Petitioner-Defendant, vs. ULSTER IRON WORKS, Respondent-prosecutor.	}
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Submitted	1930	Decided	1931.
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On Certiorari.

For petitioner-defendant, John C. Grimshaw.

For respondent-prosecutor, Harley, Cox & Walburg.

Before Justices Parker, Campbell and Bodine.

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PER CURIAM: The petitioner was the widow of Clarence Johnson, who was a puddler employed in defendant's iron works at Dover, New Jersey. Johnson, shortly before his death, was working at one of the furnaces. He was observed to be falling and died of cerebral hemorrhage.

There is no testimony of an accident. The man was last observed at his place of work. There

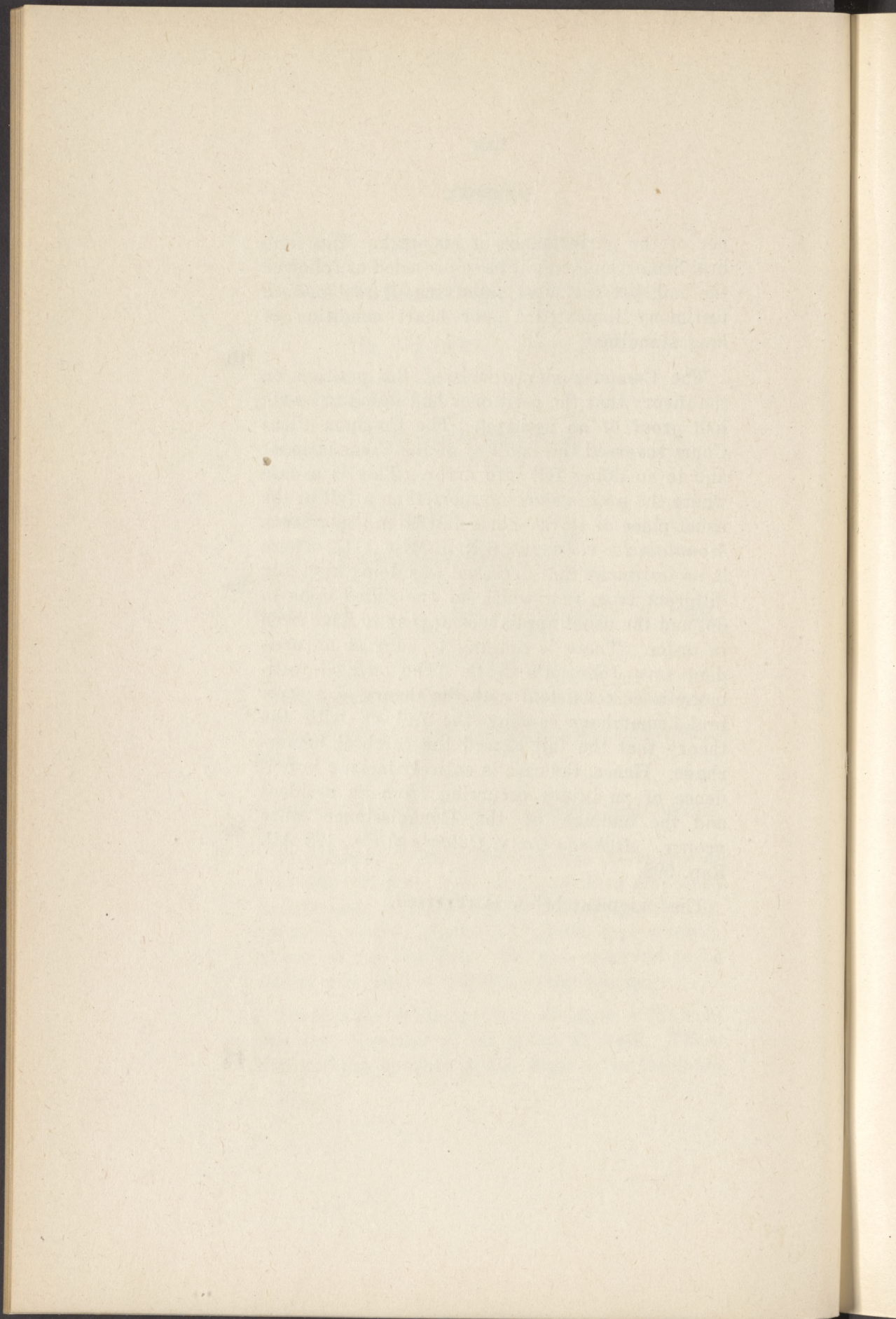
40 was nothing unusual in the same or in the man-

Opinion

ner of the performance of his work. The cerebral hemorrhage might have preceded or followed the fall, yet the most satisfying of the medical testimony indicated a poor heart condition of long standing.

The Commissioner dismissed the petition on the theory that the petitioner had failed to establish proof of an accident. The Common Pleas Court reversed the findings of the Commissioner and in so doing fell into error. This is a case where the proofs show no more than a fall at the usual place of work—not a fall from a platform. *Mountain Ice v. Durkin*, 6 N. J. Misc. 1113. There is no testimony that deceased was doing anything different from that which he was called upon to do, and the usual appliances appear to have been in order. There is nothing to suggest an accident save Johnson's death. The medical testimony is as consistent with the theory of a cerebral hemorrhage causing the fall as with the theory that the fall caused the cerebral hemorrhage. Hence, the case is entirely lacking in evidence of an injury occurring from an accident and the findings of the Commissioner were proper. *Atchison Co. v. Colgate & Co.*, 128 Atl. Rep. 598.

The judgment below is reversed.



New Jersey Court of Errors and Appeals

GRACE JOHNSON,

Petitioner-Appellant,

vs.

ULSTER IRON WORKS,

Respondent-Appellee.

On Appeal.

On Certiorari.

In Com-

pen-sation.

BRIEF OF APPELLANT

THE FACTS

It is admitted that deceased, Clarence Johnson, was employed as a puddler for the Ulster Iron Works on December 26, 1928, the date of his death, and that his average weekly wages were forty-two dollars and forty (\$42.40) cents, and that appellee had notice. The appellee admits that the man was working for it and while working for it, he died at its plant.

The Post Mortem Autopy disclosed (case, p. 75) "Extensive hemorrhage in the brain originating in the base of the brain from rupture of the blood vessels around the circular Willis and extending over the left and right parietal region and going up to the superior part of the occipital and parietal lobes on both sides. Blood clot found in the floor of the fourth ventricle. Spinal canal filled with blood. Hematomo 4 c. c. in diameter over the occipital protuberance. Cause of Death: Cerebral hemorrhage from fracture of blood vessels in base of brain. Contributory cause: Trauma."

6:883.

George Schroeder testified that he knew Mr. Johnson and remembers the date he died. He was the helper for Mr. Johnson and was working with him on the day shift at the time of his death. Mr. Johnson was working on the furnace and called Mr. Schroeder over to talk, and tell him about taking his daughter to the hospital for an operation. Mr. Schroeder turned to sit down and when he was sitting down he turned around and saw Mr. Johnson fall back. Mr. Johnson was trying to catch himself with his feet. He was hitting the floor and Mr. Schroeder went over to him and they carried him out to the First Aid Room. After that Mr. Johnson shook all over his whole body and then he fell limp and didn't move any more. At the time that Mr. Johnson fell, he was working at the furnace at his work of puddler. He was making a ball hook. Mr. Johnson was operating the hook and he was trying to get to his feet after he had fallen. He still had hold of the hook. He was falling backward to the floor. The ball hook is operated by pulling it, and Mr. Johnson was pulling it at the time. It requires a great deal of force to pull this hook. It requires a strong man to pull the hook. It was while pulling this ball hook that Mr. Johnson lost his footing and fell backward. Mr. Johnson was not ill or sick before he fell. He was working just as he usually did prior to the time he fell. Mr. Johnson did not say anything at all when he was falling, but when his head hit the floor he gave a sound, "Ugh" and then he shook over his whole body. He had a bump on the back of his head. His head struck the concrete and iron plate. He was standing on a steel plate. It was cracked and loose and there were little pebbles or slugs on the steel plate. When Mr. Johnson fell, his feet went straight while he was falling. He was trying to

catch himself with his feet. This ball hook with which Mr. Johnson was working is about eight feet long.

Doctor Christian testifies (case, pp. 32-33) :

“Q Describe the condition? A This man was a man of good build, good development, and showed no sign of trauma of the body except the back of the head and the region of the occipital protuberance in the back and that was all we found, and tumor faction.

Q Doctor, what was the apparent cause of the tumor faction? A Trauma.”

And on page 35 :

“Q Doctor, assuming that a man in good health and about forty-one years of age, who has worked continuously since his boyhood days and had suffered colds a few times and grippe lasting several days, who has never complained in his home of feeling ill or of dizzy spells or of pains about his heart or of difficulty in breathing, and who slept well and ate heartily and worked as a puddler for the Ulster Iron Works for a number of years, and whose general physical appearance was that of a healthy man, was married with three children still living, and who, on December 26th, 1928, while working in the furnace under the conditions first described, fell backwards, striking his head on the floor and becoming unconscious, what then, Doctor, would you say with reasonable certainty was the cause of his death? A What the autopsy finds. Cerebral hemorrhage from fracture of blood vessels in base of brain.

Q And what, in your opinion, was the cause of his death? A Cerebral hemorrhages.

Q What was the cause of the cerebral hem-

orrhages? A This man's fall produced an expansion of air in the brain and ruptured the blood vessels in the neighborhood of the pressure.

Q What part did trauma play in decedent's death? A Contributory trauma was at least a participating cause."

Dr. Costello, who appeared for the appellant and who had been the family physician, and who had seen Johnson the day prior to his death, testified as follows as to his opinion (case, p. 43) :

"Q Doctor, have you any opinion as to the cause of death from your observations in this case at the autopsy? A Yes, sir.

Q What are they? A My opinion is that this gentleman died of a rupture of the cerebral vessel which was traumatic in origin, caused by trauma.

Q And what do you base this conclusion on, Doctor? A On the general physical condition of the gentleman and the appearance of the blood vessel, which was ruptured, and the occurrence of a large swelling at the base of the brain; and also of my knowledge of the general well being of this gentleman before this accident."

Page 46:

"Q Now, as far as this homatoma is concerned, that would be from the contact of his head with the floor. That is what caused it? A Yes.

Q And if this man had a heart attack and fell, he would get a homatoma, wouldn't he? A I don't know; if he hit his head hard enough, he might.

Q If a man fell unconscious, don't you think

he'd be liable to hit his head hard enough to get the homatoma? A No, I think he would slump down like a drunken man.

Q But he could have a cerebral hemorrhage? A Oh, yes.

Q And if he then fell to the floor and struck his head, would that, in your opinion, increase the extent of the hemorrhage? A I don't think it would.

Q Do you mean to say if a man had a cerebral hemorrhage and fell to the floor and struck his head, it would not increase the size of it? A I don't think it would, because he'll slump down and go down gradually.

Q Well, if this man fell backwards? A I don't think he could fall with force enough. This man must always fall forward. I have never saw one fall backwards.

Q In the case of heart attacks they almost always fall how? A Forwards."

Dr. Gray testifies as follows (case, pp. 57-58):

"Q Will you tell us what the condition of the brain was when you found it? What pathological conditions you found? A It was in a preserved condition, not opened. We made thin slices examining for hemorrhage in the brain substance and found none. We had every apparatus for examining the brain. I took the pieces of the brain to examine them and examined the pieces microscopically. It showed there was some thickening in the walls of the blood vessels which showed no inflammatory condition in the brain substance.

Q Was there a degenerative condition of some of the cells near the brain? A There was.

Q Doctor, have you read the autopsy find-

ings of Dr. Christian? A I haven't read them, but I heard him testify this morning. (Examines findings.)

Q Assuming, Doctor, that the findings at the autopsy were as set forth in this exhibit and taking into consideration your pathological examination of the brain, what, in your opinion, was the cause of death of this man? A Hemorrhage from rupture of a large vessel at the base of the brain.

Q Now, Doctor, taking into consideration the finding of the cerebral hemorrhages and the diseased condition of the arteries, in your opinion did this cerebral hemorrhage occur as a result of trauma or did it occur without trauma? A I don't know.

Q Would it be as likely to occur without trauma as with trauma? A The diseased condition of the vessel walls is of great consequence. I don't know whether the hemorrhage occurred before or after the fall.

Q Do you think any one can say, with reasonable certainty, from the autopsy, whether the hemorrhage occurred before or after the fall? A I don't think so.

Q It would not be greatly speculative to say that this hemorrhage occurred after the fall and could not have occurred before the fall, in view of the condition of this man, would it? A I can't say that.

Q You couldn't say, with any reasonable certainty, whether the hemorrhage occurred before or after the fall, could you? A I could not say, sir.

As to the lay witnesses who testified for the prosecutor, they all admitted that they did not see the deceased until he was flat on the floor. Mr. Eck-

dahl further testified that he did not see the deceased until he was flat on the floor and also testified that he did not see the witness Mr. Schroeder. Mr. Schroeder may have been at the scene of the accident when Mr. Eckdahl arrived.

Mr. Schroeder, a witness appearing in behalf of the appellant, testified as to the working conditions.

“Q What was the condition in front of the furnace where Mr. Johnson was working, the floor condition? A It is concrete and iron plates, or steel, rather; I think they are steel.

Q And what was Mr. Johnson standing on?

A A steel plate.

Q Will you describe the condition of the steel plate? A Why, it was cracked and loose. They get that way from working on them and there was no iron or anything on top, and there was little pebbles or slugs that come off the wall.

Q Were they on the plate? A Yes, sir.

Q Were they on the plate at the time Mr. Johnson fell? A Yes, sir.

Q When Mr. Johnson fell, how did his feet go? A They went straight while he was falling; he was trying to catch himself with his feet.”

THE LAW

In the case of *Atchison Co. vs. Colgate and Co.*, 128 Atlantic Reporter, 598, decided by the New Jersey Supreme Court and affirmed by the Court of Errors and Appeals, the Court lays down the rule:

“Employer who seeks to avoid liability to pay compensation for death of employee on ground that paresis caused latter’s fall and that fall did not result in paresis, has burden to prove contention.”

In the above case, like the case at bar, certain facts were undisputed. The deceased was wheeling a hand-truck, helping to unload a freight car down an inclined gangplank, and on the return trip to the car with empty truck, he fell from the gangplank to the sidewalk, some four feet, and was picked up dazed or semi-conscious. No one saw him fall. The respondent alleged that the fall was the result of paresis, which was neither caused nor accelerated by an injury or strain sustained while in the employ of the company. The Supreme Court says, "We think there is sufficient evidence to justify the findings of the Deputy Commissioner." See also *Voorhees vs. Schoonmaker*, 86 N. J. L. 501. The Deputy Commissioner held that fall caused the paresis, and put the burden on the respondent to prove its defense.

In the present case, the Ulster Iron Works failed to bear the burden of proof and it has not shown that the death of the deceased was caused by a heart attack.

After the deceased fell and struck his head he was still alive, as is shown by his exclamation and the motions of his body as described by Schroeder.

The rule which exists in the Department of Labor is:

"If an employee is found dead and there is no evidence as to how he met his death, the Court will presume it was by accident arising out of and in the course of the employment, provided the body is found under circumstances reasonably connected with the said employment." (*De Fazio's Estate vs. Goldschmidt*, 87 N. J. L. 317.)

In the case of *Mountain Ice Co. vs. Durkin*, 6 N. J. Misc. Reports, 1113, the Supreme Court says:

"The presence of the body, bearing injuries which would result from a fall immediately beneath the platform thirty-five feet above, from which an open door led to a room to which he had access, raises a legitimate inference that he died as the result of a fall from the platform."

In the case of *Manziano vs. Public Service Gas Co.*, 92 N. J. L. 322, the New Jersey Supreme Court lays down the rule:

"Where, in a workmen's compensation case, there was proof only of the death and of the dangerous environment of the deceased, which furnished presumptive or circumstantial testimony of the manner of death, by a logical process of rational induction, based upon human experience, from which the reasonable inference of the existence of the statutory requirement was deducible, *i. e.*, that death arose out of and in the course of the employment, a conclusion by the Trial Court, based upon such rational inference tantamount to legal proof of the facts, will not be disturbed."

First of all, there was an accident. The deceased fell and struck his head on the cement floor. He was pulling on the puddling hook at the time he fell. He was exerting great strength. There can be no doubt about the accident. The only effect of the testimony offered by the prosecutor would be to show that the deceased had over-exerted himself in pulling on the hook and thereby caused himself to fall. This would be an accident within the meaning of the statute, and it would be compensable.

Chapter 149 of the Laws of 1918, Section 9, provides:

"At such hearing evidence, exclusive of *ex parte* affidavits, may be produced by both parties, but the official conducting such hearing shall not be bound by the rules of evidence."

The death certificate is in evidence and the cause of death is shown. We submit that it is corroborative of the testimony of Mr. Schroeder and the presumption that exists under the law that the death was caused by an accident arising out of and in the course of the employment. The petitioner proved that the facts as stated in the medical certificate were true.

The Medical Certificate of Death, dated December 26, 1928, is as follows:

"I Hereby Certify that I attended deceased from, 19....., to, 19....., I last saw him dead on December 26, 1928, and death occurred on date stated above, at 6 A. M.

The CAUSE OF DEATH was Cerebral Hemorrhage. 'Base' Traumatic. Fell while working & striking his head on an iron plate which is used to work on in front of the furnace. Accidental."

The prosecutor claims that the contents of this Death Certificate are not true. Nevertheless, they have not sustained the burden of proof which is on them to show that the facts therein stated are not true.

The theory of the prosecutor is that it is necessary to show not only that there was an accident, such as the falling of the deceased, but in addition to that it is necessary for the petitioner to show that there was some previous accidental cause that resulted in the fall of the deceased. This is quite

erroneous. It is not necessary to prove by eye witnesses that an accident occurred. When one falls, there is a presumption that his fall is an accidental fall.

In the case of *Wilhelmi vs. American Railway Express Company*, an accident can be proven by the mere declaration of the deceased to his attending physician. In order to prove the accident, the Court held "The testimony of these physicians was competent and legal evidence" (6 N. J. Misc. Reports, page 675).

In the case of *Benjamin vs. Kurnick*, where the petitioner was taking a barrel of ashes out of the cellar-way and at the time had a stroke of paralysis, the Court says (5 N. J. Misc. R. 1095) :

"He filed his petition and the Workmen's Compensation Bureau found that the accident arose out of and in the course of his employment; that he was suffering from high blood pressure at the time, and that by reason of the effort put forth by him to avoid having the ash barrel fall, he suffered a stroke of paralysis which disabled him immediately, and that the petitioner suffered the disability as a result of the accident."

In the case of *Hamilton vs. Congoleum Nairn, Inc.*, 6 N. J. M. R., page 400 :

"That there was ample testimony that the condition of the petitioner was aggravated by the severe trauma suffered as described in said accident and that the decline of petitioner's health and mentality was rapid and markedly accelerated following the accident until he died about eight months later."

In the case before the Court the proof was that the deceased fell and struck his head on the cement

and steel floor. There is no doubt that this did cause his death. We think it makes no difference whether he merely fell or whether he slipped on cinders and fell. The fact is that he did fall, and the fact is that the fall resulted in his death.

In the case of *Le Grande vs. Hubbard & Lange*, 6 N. J. M. R. 868, it is held:

“The testimony was convincing that Le Grande appeared to be in good health before he went up the ladder to install the steam trap. He worked on the ladder but a few minutes when he came down slowly, acting weak and ‘dopey.’ After a short rest, he again went up the ladder for a period of about fifteen minutes, when he came down and said to his helper, ‘I can’t stand it up there any longer; you go up.’ Thereafter, he sat in the boiler room for a few minutes, acting weak and ‘dopey,’ as the witnesses testified. On the afternoon of the same day he was so weak that Dr. Haywood was called. Le Grande told the doctor that he had inhaled furnace fumes which had made him sick. The doctor found no sign of anything wrong with the man’s lungs at that time. The man had a headache and there was a soreness about the chest. Forty-eight hours later, upon examination, there was no sign of any pulmonary trouble. The doctor’s testimony is clear and uncontradicted, that in his opinion the pneumonia from which Le Grande subsequently died was induced by inhalation of the furnace fumes.”

In the case of *Volland vs. Jersey City Printing Company*, 6 N. J. M. R. 910, it is held:

“That as a result of the accident, petitioner was struck on the head with a block of wood nine inches long, four inches wide and two and

one-half inches thick, thrown with considerable force from a circular saw, causing a laceration over his right eye and stunning him. That he was treated by Dr. Hardenberg in behalf of the respondent, for the laceration over his right eye, which healed without disability so far as it was concerned, in about six days. That within a few days after the accident, he complained to Dr. Hardenberg of shortness of breath, thumping of his heart, pains in the chest and swelling of his limbs, but was referred to his family physician for these complaints. That from all the medical evidence in the case, it appears the petitioner had a pre-existing heart disease, which was lying dormant and had not prevented him from performing his regular work for the respondent, which he had been doing over a period of eighteen years. That it is clear from the medical testimony in the case, the blow caused shock, which aggravated the pre-existing heart condition, and the doctors for both the petitioner and the respondent practically agree the man is now totally disabled. I find that the pre-existing heart condition which was lying dormant incapacitated petitioner to the extent of seventy-five per cent, and that he is now totally disabled."

In the case of *Pacelli vs. Janowitz Bros.*, 5 N. J. M. R. 474-475, it is held:

"The decedent was found dead at the foot of a staircase in the factory of the respondents, with his body in such a position that it convinced me that he had fallen down the stairs. I find that death was due to an accident arising out of and in the course of decedent's employment. I am guided in this finding partly by the following cases submitted by the peti-

tioner: *Steers vs. Dunnewald*, 85 N. J. L. 449, in which the Court held that if an employe is found dead and there is no evidence as to how he met his death, the Court will presume that it was by accident; *Manziano vs. Public Service Gas Co.*, 92 *Id.* 322, where the Court held that there was a justifiable inference of death by accident arising out of and in the course of his employment; *Musik vs. Erie Railroad Co.*, 85 *Id.* 129, in which the inference arose that the injury was produced by an accident; *De Fazio's Estate vs. Goldschmidt Detinning Co.*, 88 Atl. Rep. 705; affirmed in 95 Atl. Rep. 549, which held that a prima facie case of accident had been made out, holding further that the law does not require that the fact of the accident should be established by direct evidence, but that it may be established by circumstantial evidence of such a character as would justify the inference that the injury or death was due to accident; and also by the case of *Bryant vs. Fissel*, 34 *Id.* 72, which held that it is sufficient if petitioner produces evidence from which an inference may be legitimately drawn that the death of the employe was caused by accident arising out of and in the course of his employment."

We respectfully submit in the present case that there is a presumption that the deceased met his death by accident, and the prosecutor has failed to offer proof to overcome that presumption.

In the case of *Colton vs. Warren Manufacturing Company*, 5 N. J. M. R. 790-791, it is held:

"It is found as a fact that he entered the tunnel leading from the mill to the pump house, which pump house was located some distance

from the mill, and beneath the level of the ground. In the tunnel leading to the pump house from the mill were a number of conduits containing charged electric wires, conveying the electric current from the engine room of the mill to the pump, and used for the operation of the pump in the pump room.

"In the dust accumulated on the conduits mentioned above were fresh marks having the appearance of a hand and finger prints."

The Court further says (5 N. J. M. R. 792) :

"Taking the whole picture under observation, comprising a pump well or basement, a tunnel leading therefrom with entrance approximately four feet above the floor, a pump with a convenient stepping place about two feet high, an iron conduit, shoulder high, available as a hand hold, a short-circuited current in this conduit, a lifeless body on the floor of the pit with unnatural markings across the palm, reviewing this picture in detail I am unable to escape the conclusion that it is entirely reasonable to infer that the deceased came to his death as the result of an electric shock, arising out of and in the course of his occupation. Such an assumption is not only reasonable but seems almost imperative."

In the case of *Ferreiro vs. Public Service Electric and Gas Co.*, 6 N. J. M. R. 398, it is held :

"As to the second question, I am satisfied that the decedent met his death as result of being asphyxiated by leaking gas from the pipes, which he was connecting, because from the position of his body, with reference to the pipes, and from the inferences that are drawn from the testimony, and the previous good

health of the decedent, it is my conclusion that the decedent met his death by asphyxiation."

In the case of *Holzwarth vs. Hedden, &c., Co.*, 1 N. J. M. R. 382, it is held:

"The petitioner claims that the extra exertion due to lifting the steel unassisted caused the perforation of the duodenal and the death of the decedent, while the respondent submits that the proof does not sustain this claim, but at best tends to show that the rupture may have been caused by strain, but might just as well have been caused by the ulcer eating through the duodenal, the normal cause of such an ulcer, with the probabilities pointing to the latter as the cause for the rupture, and that in any event the respondent had neither notice nor knowledge of the injury."

And in the same case, on page 384, it is held:

"Whether peritonitis set in, as would not be unlikely as I read the testimony, or whether death was due to an ebolism consequent upon allowing him to get up too soon, it is difficult to see how the man's death could logically be attributed to anything other than the rupture and the consequent operation, unless, of course, one is prepared to guess or speculate."

The fall of the deceased was sufficient to cause his death. If the deceased died before he fell, then the proof shows it was the result of straining on the hook which was inserted in the furnace and to pull which great strength was required when the hook was stuck in the furnace. The proof shows that the hook was stuck in the furnace after the death of the deceased and after his fall, so that it was necessary for the deceased to exert himself to an unusual and extraordinary degree. This, under the

law, is an accident. Working conditions that bring on suddenly a condition of disease through exertion or exposure is accidental under the Compensation law. Vol. I, Schneider's Work Comp., 437. McMahan's Case, 113 N. E. 287. *Dupre vs. Atlantic Ref. Co.*, 120 At. 288. If he was suffering from heart disease at the time of his exertion, then it might well be that such exertion caused his fall.

The fact is, however, that the deceased was alive at the time he fell, because he gave vent to an exclamation, and he was still alive after he fell. Neither theory presented by the appellee is an answer or defense to the proof submitted on behalf of the appellant in this case.

The decision of the Common Pleas Judge in this case is directly in line with previous decisions rendered in similar cases.

In the present case there is a presumption that the deceased died as the result of accident. We submit that the appellee has failed to show that there was no accident, but, on the contrary, the proofs show that there was an accident. It is impossible in this case to ignore the fact that the deceased actually fell and tried to save himself while he was falling. If the deceased was not in a state of good health at the time, it might well be that he would lose his balance while pulling on a heavy hook. Workmen frequently fall when straining to pull or lift a heavy object.

In the present case we respectfully submit that the appellant is entitled to have all presumptions resolved in her favor. It is no answer to the petition in this case to say that the deceased suffered from heart disease or from a stroke of paralysis, or from any other condition which may be the result of trauma. The decision of the learned Com-

mon Pleas Judge in this case is directly sustained by the evidence. If a man has high blood pressure or heart disease or some other condition, it is a well-known fact that his death is more easily caused than that of one who is strong and rugged and sound in body and limb. The law is, however, that the employer hires a man as he is. If the theory of the appellee were correct, then it would only be necessary for any employer to show that his employe, who had suffered an accident, was also suffering from some disease, and thereby the entire intent and spirit of the Compensation Law would be defeated. It was and is the intent of the Compensation Law that compensation should be awarded in death cases under facts such as exist in the present case before this Court.

We respectfully urge that the learned Judge of the Court of Common Pleas was warranted in finding it a fact that the deceased met his death in an accident arising out of and in the course of his employment. This finding of the facts supported by evidence, as it is, is final between the parties on the question of fact. It is respectfully urged that the learned Supreme Court was in error in giving judgment for the appellee herein and that judgment should have been awarded to appellant.

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FRANK G. TURNER,

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New Jersey Court of Errors and Appeals.

GRACE JOHNSON,
Appellant,

vs.

ULSTER IRON WORKS,
Appellee.

ON APPEAL
ON CERTIORARI.

BRIEF ON BEHALF OF APPELLEE.

This is an appeal by the petitioner-appellant from the judgment entered in favor of the defendant-appellee in the New Jersey Supreme Court. The petitioner originally filed a petition to recover compensation for the death of her husband, Clarence Johnson, against the employer, Ulster Iron Works, in the New Jersey Department of Labor, Workmen's Compensation Bureau. The deputy commissioner in the Workmen's Compensation Bureau dismissed the claim petition and entered a judgment in favor of the defendant-appellee. An appeal was taken by the petitioner to the Morris County Court of Common Pleas, which court reversed the judgment of the Workmen's Compensation Bureau. The case was removed by a writ of certiorari on behalf of the defendant-appellee to the New Jersey Supreme Court, which court reversed the judgment of the Morris County Common Pleas Court and affirmed the findings made by the deputy commissioner of compensation in the Workmen's Compensation Bureau.

Statement of the Case.

The petitioner is the widow of Clarence Johnson who was an employe of the respondent at its iron works in Dover, New Jersey, as an iron puddler. On December 26, 1928, at about six o'clock in the morning, while working at the plant of the respondent, the said Clarence Johnson died.

A claim petition was filed in the Workmen's Compensation Bureau by the petitioner against the respondent, alleging that while working at a furnace, the deceased slipped and fell backwards, striking the base of his skull, being rendered unconscious and severely injured, resulting in death (S. C., p. 2, l. 40).

There was, apparently, only one person in the immediate vicinity of the decedent when he died. This witness, named George Schroeder, testified that he was employed as the helper of the deceased on December 26, 1928; that he went to work on that morning at about 3 A. M.; that on that morning, between five and six o'clock, he had been talking to the decedent, and he turned around to sit down; that as he was sitting down, he saw the decedent, Mr. Johnson, falling backwards, hitting the floor; that he went over to him with several other men and helped lift him up. He saw that the decedent shook all over his whole body, and then he felt limp and didn't move any more. On cross-examination, he testified that he was twenty years of age and that he signed a statement which was admitted in evidence (Exhibit R-1, S. C., pp. 77-78). He admitted that everything in the statement was true. He further testified that he was talking to Mr. Johnson before he fell, and he turned to go to the bench to sit down, and that the bench was about four or five feet away from the furnace. He walked away from Mr. Johnson with his back towards Mr. Johnson. He turned and started to sit down, and at that time, the decedent, Mr.

Johnson, was already falling backward. When this witness had turned around, the decedent had had already started to fall. This witness also noticed a bump on the back of the decedent's head, but it was not very noticeable. Just before the decedent fell, he was balling up iron by means of a balling hook which weighs about 25 or 30 pounds. After the accident, the balling hook was still in the furnace. The conditions in the plant at the time of the accident were the same as they always were, and there was nothing unusual about any of the working conditions, and that he did not know what caused the decedent to fall. This witness also testified that in front of the furnace was an iron plate and that there was a crack in it and some cinders on the iron plate (S. C., p. 16, l. 40; p. 31, l. 20).

The petitioner also called as a witness, Dr. Christian, a pathologist, who performed an autopsy on the decedent. He found that there was a hematoma on the back of the head, and that the decedent had died from a cerebral hemorrhage, originating in the base of the brain. He also found that the blood vessels at the base of the brain were in a sclerotic condition, and that they were in a diseased condition prior to decedent's death. The lungs of the decedent were diseased, the left ventricle wall of the heart was diseased, and there was also sclerosis in the coronary arteries of the heart. The liver and kidneys were also diseased, all of which had been present for a considerable time prior to the death. This witness also admitted that in view of the decedent's diseased heart condition, the decedent could have had a heart attack. He also testified that the decedent could have had a cerebral hemorrhage before he struck the floor (S. C., p. 32, l. 40; p. 41, l. 40).

Dr. Ruoff, a witness produced by the petitioner, admitted that no one could say with certainty

when the cerebral hemorrhage occurred (S. C., p. 49, l. 30; p. 50, l. 10).

Dr. Baker, a witness produced by the respondent, was the first physician who saw the decedent after his fall. He found the decedent dead when he arrived there, and he noticed that there was a slight scalp wound in the back of the head. This doctor testified that in his opinion, the petitioner's decedent died from a cerebral hemorrhage and that it was due to a rupture of the blood vessels at the base of the brain, due to arterio-sclerosis. In his opinion, the cerebral hemorrhage was the cause of the decedent's fall (S. C., p. 52, l. 10; p. 56, l. 20).

Dr. John W. Gray, another witness for the respondent, a pathologist, was present at the autopsy and made microscopic examinations of the decedent's brain, and stated that the death was caused through rupture of a large blood vessel at the base of the brain. He testified that the diseased condition of the blood vessel was of great consequence but that no one could say with any degree of certainty just when the cerebral hemorrhage occurred, although his opinion was that the cerebral hemorrhage was the cause of the fall (S. C., p. 57, l. 40—p. 59, l. 40).

A Mr. Singer, superintendent of the respondent, testified that the conditions at the plant at the time of the decedent's death were the same as usual; that puddling is the operation of making wrought iron out of ore and the molten mass is worked into a ball and a hook is attached, and the hook is put into the furnace. The furnace door is about three feet from the floor. The hook is about ten feet long and weighs around forty pounds. He was told of the decedent's fall at about 5:45 in the morning. He ran to the furnace where the decedent had been working and found him lying on the floor. His feet were toward the furnace and his head was away from it. His feet were

about five feet away from the furnace. He talked to the witness, Schroeder, and the latter told him that when he turned around to sit down, he saw the decedent falling backwards. He also testified that after the accident, the ball hook was still in the furnace and that on the end of the hook there is a ring for the workman to insert his hand in. He also testified that there was no obstruction on the floor where the decedent worked (S. C., p. 60, l. 10—p. 64, l. 40).

A witness named Eckdahl, an employe of the respondent, testified that he was working for the respondent at the time of the death of the decedent; that he went over to #9 furnace where the decedent worked, for a sledgehammer and when he got there, the decedent was lying on the floor. He did not see the witness, Schroeder, around there at that time, but he came later (S. C. p. 67, l. 20—p. 68, l. 20).

BRIEF OF ARGUMENT.

I.

The Supreme Court did not err in reversing the judgment of the Morris County Common Pleas Court and affirming judgment of the Workmen's Compensation Bureau.

(a)

There is no legal evidence to support a finding that the decedent met his death as a result of an accident arising out of and in the course of his employment.

(b)

The evidence disclosed that the decedent's death was just as likely caused by disease as by an injury received in an accident.

(c)

The petitioner failed to maintain the burden of proof that the decedent died as a result of an accident arising out of and in the course of his employment.

I.

The Supreme Court did not err in reversing the judgment of the Morris County Common Pleas Court and affirming the judgment of the Workmen's Compensation Bureau.

(a)

There is no legal evidence to support any finding that the decedent met his death as a result of an accident arising out of and in the course of his employment.

The petitioner-appellant in this case was the wife of Clarence Johnson who died on December 26, 1928, while at work in the respondent's iron works at Wharton, New Jersey.

The deputy commissioner, at the close of the petitioner's case in the Workmen's Compensation Bureau, found as a fact that the petitioner had failed to establish that the death of her husband was the result of an accident arising out of and in the course of his employment with the respondent, and dismissed the claim petition, and entered judgment in favor of the respondent (pp. 82-87). From this judgment an appeal was taken by the petitioner, to the Morris County Common Pleas Court, which court reversed the findings of the Workmen's Compensation Bureau and entered a judgment in favor of the petitioner (pp. 90-94). The proceedings were removed to the New Jersey Supreme Court by virtue of a rule to show cause issued by Justice Parker of that court why a writ of certiorari should not issue to review the determination and judgment of the Morris County Court of Common Pleas. This rule to show cause was argued as though the matter were on a writ of certiorari. The Supreme Court reversed the judgment of the Morris County Court of Common

Pleas and affirmed the judgment of the Workmen's Compensation Bureau (p. 99). The court, in its opinion (p. 104), referred to the testimony and found that there was no testimony of an accident; that the decedent was last observed at his place of work and there was nothing unusual in the manner or performance of his work; that the decedent died as a result of a cerebral hemorrhage and that this cerebral hemorrhage might have preceded or followed the fall; that the most satisfying testimony indicated a poor heart condition of long standing. The court said:

"This is a case where the proofs show no more than a fall at the usual place of work—not a fall from a platform. * * * There is no testimony that deceased was doing anything different from that which he was called upon to do, and the usual appliances appear to have been in order. There is nothing to suggest an accident save Johnson's death. The medical testimony is as consistent with the theory of a cerebral hemorrhage causing the fall as with the theory that the fall caused the cerebral hemorrhage. Hence, the case is entirely lacking in evidence of an injury occurring from an accident and the findings of the Commissioner were proper."

It is the well established policy of the courts of this state that in cases of this character where two separate and distinct tribunals ^{have examined} ~~are examining~~ into the facts, that the findings of the court below will not be lightly disturbed.

Adam Black & Sons, Inc. v. Court of Common Pleas, Hudson County, et al.,
150 Atl. 672 (not officially reported);
Mountain Ice Co. v. Durkin, 144 Atl. 6
(not officially reported);
Pearson v. Armstrong Cork Co., 143 Atl.
449 (not officially reported).

An examination of the facts which are practically undisputed in this matter, and the law applicable thereto, will clearly disclose that the appellant failed to prove the necessary elements to recover in a case of this character. The law is well settled that the appellant must prove, by the greater weight of the evidence (1) that the deceased suffered an accident; (2) that the accident arose out of his employment with the appellee; (3) that the accident arose in the course of his employment with the appellee; (4) that his death was due to such accident arising out of and in the course of his employment with the appellee.

It is also well to keep in mind that the theory on which the case was tried below was that the decedent slipped while working for the appellee, and that the decedent's fall was caused by his slip. This allegation is set forth in the claim petition and this is the theory upon which the appellant proceeded in the Court below, and is the theory upon which the case should be reviewed in this court.

The only witness produced by the appellant in an attempt to prove that the decedent's fall was caused by an accident arising out of and in the course of his employment was the witness, Schroeder, a fellow-employee of the decedent. This witness testified, when asked by the Court to tell what he saw, as follows (S. C., p. 18, l. 20—p. 19, l. 10):

“A. Well, Mr. Johnson worked on the furnace and called me over to talk over and tell me about taking his daughter to the hospital for an operation and I turned around to sit down and when I was sitting down I turned around and saw Mr. Johnson fall back, trying to catch himself with his feet: he was hitting the floor, and I went over to him, and a couple of other fellows lifted him up, and I

got a bottle of water and put the water on his head and we carried him out to the First Aid Room. After that he shook all over his whole body and then he fell limp and didn't move any more.

Q. What was he doing at the time?

A. Puddling.

Q. Will you describe to the Court how he was working?

A. Yes, sir, he was working at the furnace, puddling like this, making a ball hook, and I turned around to go to sit down and walked away from him and I saw Mr. Johnson trying to get his feet and he still had hold of the ball hook and he fell on the floor.

Q. Which way did he fall?

A. Backwards."

On cross-examination he testified that he signed a statement (Ex. R-1) and he admitted that everything contained therein was true and that there was nothing omitted therein which he told to the man who took the statement (S. C., p. 31, ll. 10-20). In that statement, the facts regarding the accident are that at about 6 A. M. he went to sit on a bench about five feet from the decedent, who was standing at the furnace, puddling. The next thing he noticed as he turned around to sit down was the decedent falling backwards; that the floor was iron and concrete and there was nothing for the decedent to stumble over or fall over. When the decedent fell, he fell backwards and hit the back of his head on the concrete. His eyes were closed and he shook all over for a few minutes and he never moved after that. There was no sign of blood on him anywhere but he noticed a small bump on his head in the back. This was not very noticeable. The conditions in the plant were the same as on any other morning. The floor was dry and it all happened in a few

seconds. He had been talking to the decedent and walked about five feet and turned around, and saw him falling backwards. He also testified that he walked to a bench to sit down, about four or five feet away from the furnace, and as he walked away his back was toward the decedent. He turned and started to sit down, and at that time the decedent was already falling backwards; that when he had turned around the decedent had already started to fall (S. C., p. 23, ll. 10-40). He admitted that he told Mr. Singer, his superintendent, when the latter asked him about the accident, that he did not know what caused the decedent to fall. He further testified that the decedent was three or four feet from the furnace when he started to fall; that when he hit the floor he was straightened out and that he was in the act of falling when this witness first saw him. When the decedent struck the floor it was at full length and his arms were straight out alongside the body, and he lay on the floor (S. C., p. 28, ll. 10-30). He further testified that the hook which the decedent was using in balling iron weighs about 25 or 30 pounds and that if the iron is fast, it is hard to get it out and that it would hold one up if it held fast; and that after the decedent had fellen the hook was still in the furnace (S. C., p. 29, ll. 20-40).

It is very evident from a reading of the testimony of this witness that he did not see the decedent until decedent was in the act of falling so that he, of course, could not say what started the fall; that is, whether the decedent slipped as contended by the petitioner, or whether his fall was due to his physical condition or some condition not connected with the employment. This view was taken by the Commissioner below, in the Workmen's Compensation Bureau (S. C., p. 82,

l. 20; p. 87, l. 20). That court, in its findings said (S. C., p. 86, ll. 10-30):

“On examining the testimony, and taking that view most favorable to the petitioner, we find that the witness, Schroeder, states that he saw the decedent when he was falling backwards. He did not see what caused the decedent to fall. There is no evidence from which an inference can be drawn that the decedent’s fall was due to an accident. The decedent had been employed at the plant for over eleven years. He was an experienced puddler and was doing the same work, under the same conditions, that he had always done. Just before he fell, he had hold of a large balling hook, at the end of which was a round ring where the hand was inserted. There is testimony to the effect that after the fall, the balling hook was still in the furnace and there was also testimony that to remove the balling hook would take considerable force and effort.”

The Morris County Court of Common Pleas, on the appeal of the petitioner from the finding of the Workmen’s Compensation Bureau, held that the decedent died as the result of an accident arising out of and in the course of his employment, basing its opinion on the testimony of the witness, Schroeder. That court, in its determination, said (S. C., p. 91, l. 20; p. 92, l. 10):

“That the said accident consisted in the fact that while petitioner’s deceased was performing his duties as a puddler, operating the hook while standing on a steel plate which was cracked and loose, and upon which there were little pebbles or slugs, and while pulling on said hook his feet went straight out from under him, and that while falling he was trying to catch himself with his feet; the petitioner’s deceased fell striking the back of his head at the base of his skull, being rendered

unconscious, severely injured sustaining a cerebral hemorrhage which resulted in his death immediately following the aforesaid accident:

A witness in behalf of the petitioner testified that he saw the petitioner's deceased fall back trying to catch himself with his feet; that he saw the petitioner's deceased trying to get to his feet and still had hold of the ball hook and fell to the floor; he (petitioner's deceased) was trying to stand up. The statements not having been contradicted on the part of the respondent, sustained the petitioner's allegations as set forth in the petitioner's claim petition filed in this case, and the petitioner has sustained the burden of proof as to an accident."

There is no evidence in the case to sustain the finding of that court that the decedent's feet went straight out from under him while pulling on the ball hook, causing him to fall, or that he slipped while using the ball hook.

While Schroeder did testify that there was a plate in front of the furnace which was cracked and loose, with small pebbles or slugs on it which came off the wall, his uncontroverted evidence regarding his knowledge of the cause of the fall is to the effect that he did not see the decedent until he was in the act of falling backwards. He did not testify that the decedent's feet went straight from under him while pulling on the ball hook, but stated that "They went straight while he was falling; he was trying to catch himself with his feet" (S. C., p. 21, l. 10).

That court apparently based its findings on the testimony of the witness, Schroeder, that he saw the deceased fall backwards, trying to catch himself with his feet; and that he saw the deceased try to get to his feet and that he still had hold of

the ball hook and fell to the floor; that the deceased was trying to stand up.

It is important, of course, to take the testimony of this witness as a whole and not isolated portions of his testimony. When examined as a whole it cannot be controverted that this witness did not see the decedent begin to fall but saw him in the act of falling backwards, and at that time he had hold of the ball hook and was trying to catch himself with his feet; and that once he struck the floor he never moved thereafter. It is not denied that the conditions existing at the plant at the time of the alleged accident were the same as usual and that the decedent was performing his usual work in the usual manner.

The trial court had this to say regarding the testimony of Schroeder (S. C., p. 71, l. 10; p. 72, l. 10):

“The testimony of Schroeder and what he says in effect is that he was talking to Mr. Johnson just before he fell. He walks away from him and his back is turned in walking away from him and when he turns around again Johnson is falling backwards. Now the question arises as to whether he can tell whether Johnson is trying to right himself in falling or whether he slipped on some pebbles or some cinders there or whether the plate was cracked and all that sort of thing. He testifies that what he said in his statement was true. He also testified that nothing had been omitted that was asked of him from the statement. Now then Mr. Huss testified. I asked him if he knew what caused Johnson to fall and he said he didn't know. There's the situation. If you accept that statement that's the whole case. There's just a little addition. Were there some cinders on the iron plates in front of the furnace and was the iron plate cracked, and Schroeder's statement that he was trying to right himself, and

the inference of it would be that he must have slipped. The question arises if he looked around and Johnson was falling backwards how can he tell what caused him to fall. If he was looking at him and saw him start to fall that might be different. But he testified that when he turned around he saw him falling backward."

It is significant that the witness, Singer, superintendent of the appellee, testified that he came to the furnace after the decedent had died but before he was moved. He found him lying on the floor in front of the furnace with his feet toward the furnace and his head away from the furnace. His feet were approximately five feet away from the furnace. There were steel plates in front of the furnace about 24 inches wide (S. C., p. 60, l. 30; p. 61, l. 40).

The witness, Schroeder, testified on cross-examination (S. C., p. 28, l. 10):

"Q. How far from the furnace was he when he started to fall?

A. About three or four feet from the furnace."

The witness, Singer, further testified that he talked to all of the employes working there at the time in an endeavor to find out what caused the decedent to fall and he was told by Schroeder that he turned around at the time the decedent was falling and that was all. He did not tell this witness that the decedent had slipped or that he knew what caused his fall (S. C., p. 62, ll. 20-40).

Mr. Huss testified that he took a statement from the witness, Schroeder, and that he asked this witness questions and wrote down the answers given to him by Schroeder; that he asked Schroeder if he knew what caused the decedent

to fall and he stated that he did not know because he had his back turned. He did not tell Mr. Huss that there were any cinders on the iron plate or that the iron plate was cracked (S. C., p. 65, l. 20; p. 66, l. 10).

On the argument of the case in the Workmen's Compensation Bureau counsel for the petitioner conceded that no one could say whether the decedent had a hemorrhage before the fall or whether he sustained a hemorrhage after his head struck the floor (S. C., p. 69, l. 30). This is borne out by the testimony of all the doctors—that it would be in the realm of speculation to endeavor to say whether the cerebral hemorrhage occurred prior to the fall or after the fall; especially, in view of the fact that the autopsy showed that the cerebral hemorrhage occurred at the base of the brain around the circular Willis, and that at the point where the hemorrhage occurred there was hardening of the arteries and the blood vessels were in a sclerotic condition (S. C., p. 37, l. 10). It further appeared that the decedent was suffering from a disease of the lungs, hardening of the coronary arteries, a heart lesion, sclerosis of the blood vessels of the liver, double chronic interstitial nephritis of the kidneys.

Taking the entire evidence of the case in the view most favorable to the appellant, to find that the deceased died as the result of an accident arising out of and in the course of his employment with the appellee would be mere speculation.

It is well settled law that the appellant, to succeed in a case of this kind, must present evidence from which it can be legitimately drawn that the death was caused by an accident arising out of and in the course of the employment.

The leading case in New Jersey defining the burden of proof which the appellant must main-

tain in an action of this kind is *Bryant v. Fissell*, 84 N. J. L. 72. Justice Trenchard, speaking for this court, said:

“To warrant a recovery, it must appear that Bryant’s death was caused by (a) an accident; (b) arising out of, and (c) in the course of, his employment. Even though the injury arose out of and in the course of the employment, if it be not an ‘accident’ within the purview of the act, there can be no recovery. Even though there be an ‘accident’ which occurred in the course of the employment, if it did not arise out of the employment, there can be no recovery; and even though there be an ‘accident’ which arose out of the employment, if it did not arise in the course of the employment, there can be no recovery.

The burden of furnishing evidence from which the inference can be legitimately drawn that the death of an employee was caused by an accident arising out of and in the course of his employment, rests upon the claimant.

The question whether or not an injury is an accident within the purview of the act, is a mixed one of law and fact. When applied to ascertained facts, it is a question of law.

Within the purview of the act, an accident is an unlooked for mishap or untoward event which is not expected or designed. For an accident to arise out of and in the course of employment, it must result from a risk reasonably incidental to the employment. As was said by Mr. Lord Justice Buckley, in *Fitzgerald v. Clark*, 2 KB 796,

“The words, “out of”, point, I think, to the origin and causes of the accident; the words, “in the course of”, to the time, place and circumstances under which the accident takes place. The former words are descriptive of the character or quality of the accident; the latter words relate to the circumstances under which an accident of that character or quality takes place.’ ”

Justice Trenchard, in his opinion, says that the language of the New Jersey Act is identical with the language of the British act, and consequently looks to British cases in considering the language of the act. British cases on this same question have been compiled in *LRA 1916A*, p. 29, *LRA 1917D*, p. 103.

It has been held that an injury from a strain caused by lifting a bench did not arise from an accident. *Pleny v. Baker*, 3 BWCC, 29.

A stroke of apoplexy which may or may not have been brought on by a strain or other exertion is not an injury suffered by accident. *Barnabas v. Bershan Colliery*, 103 LTNS, 513, (ENG.) 4 BWCC, 119.

Where a workman, apparently in ordinarily good health, suddenly dropped dead from heart disease while he was lifting baskets filled with corn, and the arbitrator found that there was no unusual, unexpected strain in the course of his work, there is no evidence on which to find that he suffered an accident. *Kerr v. Ritchies*, 50 Scot. LR 434.

Where symptoms of heart failure which came on suddenly might have come from a sudden strain or might have come simply from the progress of the disease, the county court judge is not justified in finding that there was an accident. *Beaumont v. Underground Electric Company*, 5 BWCC, 247.

A death cannot be attributed to accident where the deceased suffered progressive heart disease for some years and was likely to die at any moment, and death came while he was doing his normal work. *O'Hara v. Hayes*, 3 BWCC, 586.

Where a man's arteries were in a diseased condition of long standing, and he was attacked while working, by angina pectoris and died on the evening of the same day, there is no evidence to sus-

tain a finding that he died from accident. *Hawkins v. Powells Steam Coal Company*, 1 KB, 988.

Where the cause of a minor's incapacity was cardiac breakdown due to the fact that the work in which he had for some days been engaged was too heavy for him, the repeated, excessive exertion having strained his heart unduly, and he was not injured by any sudden jerk, it may be found that the injury was not an injury by accident within the meaning of the act. *Coe v. Fife Coal Company*, 46 Scot LR, 328.

In *Hulley v. Moosbrugger*, 88 N. J. L. 161, this Court followed the ruling laid down in *Bryant v. Fissell*, *supra*. In that case, the Court, at page 163, said:

“Under Stat. 1911, ch. 751, part 2, sec. 1, which provides that payments of compensation under the Workmen's Compensation Act shall be made where an employe ‘receives a personal injury arising out of and in the course of his employment’, in order that a claim for such compensation should be sustained, it must appear that the injury had its origin in a risk connected with the employment and that it flowed from that source as a natural consequence,”

and at page 164, quoting Chief Justice Rugg in *McNichol's* case, 215 Mass. 497,

“The first question is whether the deceased received an ‘injury arising out of and in the course of his employment’, within the meaning of those words in part 2, section 1 of the act. In order that compensation may be due the injury must both arise out of and also be received in the course of the employment. Neither alone is enough.

It is not easy nor necessary to the determination of the case at bar to give a comprehensive definition of these words which shall

accurately include all cases embraced within the act and with precision exclude those outside its terms. It is sufficient to say that an injury is received 'in the course of' the employment when it comes while the workman is doing the duty which he is employed to perform. It 'arises out of' the employment when there is apparent to the rational mind, upon consideration of all the circumstances, a casual connection between the conditions under which the work is required to be performed and the resulting injury. Under this test, if the injury can be seen to have followed as a natural incident of the work and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises 'out of' the employment. But it excludes an injury which cannot be fairly traced to the employment as a contributing proximate cause and which comes from a hazard to which the workmen would have been equally exposed apart from the employment. The causative danger must be peculiar to the work and not common to the neighborhood. It must be incidental to the character of the business and not independent of the relation of master and servant. It need not have been foreseen or expected, but after the event it must appear to have had its origin in a risk connected with the employment, and to have flowed from that source as a rational consequence."

In *Dunnewald v. Steers*, 89 N. J. L. 601, this Court affirmed a Supreme Court decision reversing a judgment for the petitioner. In doing so, they reiterated the statement that:

"To warrant a judgment for the petitioner, it must appear, among other things, that the employee's death was caused by (a) an accident (b) arising out of and (c) in the course of, his employment."

In *Schmoll v. Weisbrod & Hess Brewing Company*, 89 N. J. L. 150, this court affirmed the doctrine laid down in *Bryant v. Fissell*, supra, and said that before the trial judge could properly find that the accident to the deceased arose out of his employment, it was essential that there should have been some fact or circumstance established to support such finding. There is no evidence in the case at bar to establish that an accident arising out of the employment was the cause of the decedent's death.

Other cases reaffirming the doctrine laid down in *Bryant v. Fissell*, supra, are *Newark Hair and Bi-Products Company v. Feldman*, 89 N. J. L. 504; *Colucci v. Edison Portland Cement Company*, 94 N. J. L. 542.

In *Gold v. Kligman*, 7 N. J. Misc. 735, the petitioner testified that while raising one end of a scaffold to paint the side of a house, the scaffold struck a window ledge. The petitioner, while pulling on the scaffold suffered a cerebral hemorrhage. There was also testimony that the petitioner was suffering from arterio sclerosis and high blood pressure. The doctors testified that the petitioner might, from his condition, have suffered a cerebral hemorrhage regardless of what he was doing at the time. The Court found in favor of the respondent and held that no unforeseen or extraordinary event occurred and therefore, there was no proof of any accident arising out of and in the course of the employment.

In *Kalesavick v. United States Metals Refining Company*, 7 N. J. Misc. 771, the deceased was standing in the furnace room of the respondent, observing the operation of a furnace by a fellow employe, when he suddenly collapsed and fell to the floor of the furnace room, striking his head on the floor and suffering a fracture at the base

of the skull, resulting in his death three days later. The Court held that as the decedent was standing on the level floor of the furnace room he had not been placed in any hazardous condition by reason of his employment, and entered judgment in favor of the respondent.

In *Sweney v. Sweney*, 5 N. J. Misc. 747, the compensation Court, referring to the burden of proof said:

“The burden of proof is, of course, on the petitioner to show a casual connection between the accident of March 24th and the death occurring on December 25th. *Bryant v. Fissell*, 84 N. J. L. 72; *Krapowitch v. Public Service Railway Company*, 3 N. J. Misc. 932; *Kitka v. Standard Underground Cable Company*, 3 N. J. Misc. 951.”

This doctrine was followed by Deputy Commissioner Corbin in *Nowatkowski v. Bakelite Corp.*, 5 N. J. Misc. 820. (See also *Kalayis v. Puchinkis*, 4 N. J. Misc. 737, *Krapowitch v. Public Service Railway Company*, 3 N. J. Misc. 932).

In *Kitka v. Standard Underground Cable Company*, 3 N. J. Misc. 951, the decedent died of a cerebral hemorrhage. The medical evidence showed that the cerebral hemorrhage could just as well have occurred away from the employment as while the decedent was working at his employment. The Court held that the petitioner had failed to maintain the burden of proof incumbent upon her.

In *Lesko v. Lehigh Valley Coal Company*, 270 Pa. 15, 112 Atl. 768, an employee suffered a stroke of cerebral apoplexy and prior to the accident he was affected with an enlarged heart and arterio sclerosis. He was doing his regular work in a colliery, breaking rock, when the accident occurred. The Court held that as he was doing his

regular work in the usual manner, there was no evidence from which it could be inferred that the apoplexy from which he suffered was brought on by the work in which he was engaged.

In *Barnabas v. Bershan Colliery Company*, 103 LTNS (Eng.) 513; 4 BWCC 119, it was held that the evidence was insufficient to justify a finding that death resulted from an accident where it appeared that the workman died from apoplexy while pursuing his ordinary work and there was no evidence of any extraordinary strain and there was evidence that his arteries were in a degenerate condition.

In *Cinmino v. Rubber Mutual Liability Insurance Company*, 146 N. E. 245, Mass., the decedent, while at work for his employer, reeled around and fell, striking his face on the concrete floor, fracturing his skull, as a result of which he died. The Court held that there was no casual connection between the conditions under which the work was to be performed and the injury which resulted.

See also:

Tucillo v. Ward Baking Company, 180 App. Div. 302, 167 N. Y. Supp. 666.

As stated in *Hulley v. Moosbrugger, supra*, following the opinion of Chief Justice Rugg in the *McNichol's* case, the petitioner must prove by a preponderance of the evidence that the injury arose out of the employment as well as being received in the course of the employment, and neither alone is enough. In the case at bar, the evidence is barren of any inference from which it could be found that the injury to the petitioner's decedent arose by reason of an accident arising out of the decedent's employment with the respondent. There must be a connection between

the conditions under which the work was being performed and the resulting injury. The causative danger must be peculiar to the work and not common to the public in general and it must be a cause not independent of the relation of master and servant. In other words, it must be a risk connected with the employment and must have followed as a result of that risk. In the case at bar, it is entirely in the realm of speculation as to what caused the decedent's fall. There is no evidence from which the court could find that the decedent slipped, but there is evidence from which a reasonable, probable inference could be drawn, that a cerebral hemorrhage occurred because of the diseased condition of the decedent's blood vessels.

It was argued in the court below by the appellant that the mere fall of the decedent and the resulting death established a prima facie case. This, of course, is not the law of this state. The appellant cited in the court below, and will very likely cite here, cases where the facts are entirely different from the case at bar. In practically all of them the court held that from the evidence produced there was an inference, or inferences, which could be legitimately drawn to justify a finding that there was an accident arising out of and in the course of the employment. It will also be noted that in practically all of these cases (which we will cite hereafter) the employe who was injured either fell from a height which was an extra hazard, such as a scaffold or ladder, or else he was engaged with a dangerous agency, such as electricity or gas. It is fairly well established that when a person is working at a height above the floor, it is an added risk, and if in the course of his work he is found underneath the scaffold on which he was working, injured,

it is usually held that an inference may be drawn from that fact, that he fell from the scaffold while doing his work which was an extra hazard only common to those engaged in that employment. It is significant to point out in this case that the decedent was working on the floor of the foundry and that there was no extraordinary hazard of any kind involved in his work; that the working conditions were the same on the day of his death as at other times.

In *Atchison v. Colgate & Company*, 128 Atl. Rep., 598; affd. 102 N. J. L. 425, the petitioner was wheeling a hand truck down an inclined gang plank and on the return trip, with an empty truck, he fell from the gang plank to the sidewalk, some four feet, and was picked up dazed or semi-conscious. The respondent paid over \$800 compensation and then refused to pay further compensation, setting up that the fall was the result of the paresis. The testimony is not set forth in the opinion, but the court said that from the testimony it was legitimate to conclude that the accident to the petitioner arose out of and in the course of his employment, and that having been established, the burden was then on the respondent to show, as a defense, that the fall was caused by the disease. In that case, the petitioner was walking on a gang plank which was above the level of the ground and an added hazard to which he was subjected because of his employment. In the case at bar the petitioner failed to establish that the accident arose out of decedent's employment with the respondent and therefore, there was no duty on the respondent to establish that the decedent's fall was caused by disease.

In *Voorhees v. Schoonmaker*, 86 N. J. L. 500, the deceased was working in a woodworking shop and at the time just preceding his death, he was

furrowing posts. To do this, he had to get each post upon a table of the machine and push it forward by pressure which was exerted by pressing his abdomen forcibly against the ends of the posts. It was in evidence that there was a large bruise on the abdomen where pressure had been exerted on the ends of the posts. The defense contended that the death was produced by rupture, resulting from cancer. The Court held that the trial judge was justified from the evidence in finding that death resulted from an accident. In that case, there was definite evidence of a bruise on the abdomen caused by pushing against the wooden posts, and that this bruise caused an internal hemorrhage which caused the decedent to fall. In other words, there was direct evidence of an injury in an accident from his employment. In *Mountain Ice Co. v. Durkin*, 144 Atl. Rep. 6; aff. 105 N. J. L. 636, the deceased was found beneath a platform 35 feet above, from which an open door led to a room to which the deceased had access. The Court held that the trial Court could infer, from that evidence, that the deceased who was a watchman and whose employment required him to enter the company's premises, fell from the platform. This is another case where the employee was subjected to an additional hazard not common only to the employment, and the Court could infer from the fact that he was found beneath the platform where his work took him, that he had fallen therefrom, in the course of his employment.

In *Manziano v. Public Service Gas Co.*, 92 N. J. L. 322, the deceased was found dead in a trench which he had been employed to guard and had been guarding during the night. The trenches were being dug to locate leaks in the gas main. The gas in the leaks permeated the atmosphere

to such an extent that the odor of gas could be detected for a block away. The intensity and volume of escaping gas made standing upon the trench dangerous to employes. The men engaged at work in the day in the trenches found existence there uncertain after the lapse of four or five minutes; and they therefore worked in relays, each company being taken out after four or five minutes in order to obtain fresh air by walking about, when they were taken back to relieve the men who had replaced them. The maintenance of life in the trenches was impossible after six minutes therein. The decedent was last seen at 4 o'clock in the morning by the policemen, when he complained of being cold, and he was not seen again until his body was found asphyxiated in the trench, about 6 A. M. The Court held that from the circumstances in this case, the trial Court could find that the decedent's death was accidental and arose out of and in the course of his employment. The Court points out that the proof of death and of the dangerous environment of the deceased were presumptive or circumstantial evidence of the manner of death. In the case at bar, there certainly was no dangerous environment or anything out of the ordinary which could be said to have caused any injury to the decedent.

In *Benjamin v. Kurnick*, 139 Atl. Rep. 440; aff. 104 N. J. L. 648, it appeared that the decedent was rolling a barrel of ashes weighing 100 pounds, out of the cellar, and after he got it part way out, it began to slip and the barrel rolled against him and he fell as a result thereof; and when he was picked up he was injured and found to be paralyzed in the left arm, left leg and right side of the face. It is apparent from this that the petitioner was struck by the barrel which he was attempting

to move and as a result thereof, knocked down. There certainly is no similarity between that case and the case at bar. The petitioner in that case was struck by the barrel of ashes which he was moving, and that certainly was an accident causing his fall, arising out of and in the course of his employment.

In *Hamilton v. Congoleum Nairn, Inc.*, 6 N. J. Misc. 399, 145 Atl. Rep. 540 (not officially reported), the decedent fell from a scaffold a distance of about 16 feet and suffered a compound fracture of the upper part of his leg near the hip joint and also concussion of the brain and injuries to his head. It also appeared that the decedent had been suffering for a number of years from an advanced stage of syphilis and that previous to the accident had worked regularly, and that the fall of the decedent was aggravated by the severe shock; and as a result thereof, the decedent died about eight months later. There, of course, is no similarity between that case and the case at bar. This case was reversed by the Essex County Court of Common Pleas, *Hamilton v. Congoleum Nairn, Inc.*, 7 N. J. Misc. 248, on the ground that the decedent had been a sufferer from syphilis for eight or ten years before the accident, and was probably in the last stages of syphilis when the accident occurred, and that his death was probably caused through the natural progress of the disease and not the accident.

In the case of *Volland v. Jersey City Printing Company*, 6 N. J. Misc. 910, the petitioner was employed as a carpenter and while working, was struck on the head with a block of wood 9" long, 4" wide, 2½" thick, thrown with considerable force from a circular saw, causing a laceration over his right eye and stunning him. The medical testimony showed that the shock following this acci-

dent aggravated a previous heart condition which the petitioner had. In that case, there is no doubt that the petitioner sustained an accident arising out of and in the course of his employment, when he was struck by a piece of wood, and that the shock as a result of the accident aggravated a pre-existing heart condition, and that he was entitled to compensation.

In *Pacelli v. Janowitz Bros.*, 5 N. J. Misc. 474, the decedent was found dead at the foot of the staircase with his body in such a position that it appeared as though he had fallen down the stairs. There is nothing in the opinion which sets forth the facts with any detail, but it does appear that the decedent was a night watchman and presumably used the stairway in making his rounds. That case was tried before Commissioner Goas, who tried the case at bar. Here again the fall was from a hazard peculiar to the employment.

In *Colton v. Warren Manufacturing Company*, 5 N. J. Misc. 790, the decedent was found dead in an underground passage and it appeared that he had used this passageway to reach the pump house to do some repairing. There was evidence to show that his hand had come in contact with one of the conduits and that there was an electric leakage in the conduit on which the hand-mark was found. It also appeared that there was a sear or burn on the left hand of the decedent. This is another case in which there was an additional hazard or risk and a dangerous instrumentality involved—something which the decedent came in contact with because of his employment and not a condition which was common to all persons in general. Neither was there any evidence in this case that the decedent's fall could have been caused by any disease from which he was suffering.

In *Ferreiro v. Public Service Electric and Gas Co.*, 6 N. J. Misc. 397, it appears that the decedent

was assisting in the connection of gas pipes and he was overcome by leaking gas and died as a result thereof.

In *Holzwarth v. Hedden, &c., Co.*, 1 N. J. Misc. 381, the decedent was lifting and piling up for a crane, large pieces of steel weighing from 200 to 250 pounds, the doing of which two men were usually employed, but which the decedent, on the day in question, was doing alone. He suddenly stopped his work because of the strain which he sustained while lifting. He collapsed and was taken home and treated by a doctor. His case was diagnosed as a perforated duodenal ulcer. He was operated on and there was found a hole in the duodenal as big as a ten cent piece, which was a confirmation of this diagnosis. The decedent had a duodenal ulcer a long time prior to the accident. The suit was prosecuted on the theory that the extraordinary exertion due to the lifting of the steel unassisted caused the perforation of the duodenal and the death of the decedent. It will be seen that the decedent in that case was doing the work of two men at the time of this extraordinary exertion and that the strain following the extraordinary exertion caused the injury. It is only fair to point out that in the case at bar the testimony shows that the decedent, Johnson, was doing the same work in the same manner and under the same conditions that he had been doing for many years without difficulty.

In *Estate of DeFazio v. Goldschmidt Detinning Co.*, 87 N. J. L. 317, the decedent was found dead lying under a train of railroad cars with a hole about six inches in diameter in his abdomen. There was nothing in the case from which self-destruction could be inferred and the size of the wound indicated that the injury was caused by some unusual happening. There was no evidence in the case to show that the wound could come

from any disease which the decedent had, and it also appeared that the decedent had gone to his foreman in search of material and was on this trip when he was injured. From these facts the court held that an inference arose that the accident occurred out of and in the course of the employment.

We have cited the foregoing cases in some detail because they were all cited in the appellant's brief in the Supreme Court. We have endeavored to point out that there were different circumstances, facts, or additional evidence than in the case at bar. In all of the cases cited by the appellant in the court below and which will probably be used in this court, there was an additional hazard which was not common to persons not employed by the appellee, or else there was direct evidence of an accident or sufficient circumstantial evidence from which a reasonable inference could be drawn that an accident had occurred arising out of and in the course of the employment. In the case at bar, however, it must be admitted that the decedent was suffering from a disease which could have caused his death just as likely at home or in the street as at the plant of the appellee. The evidence is undisputed that he was standing on the floor of the foundry and that he was working under the same conditions that he had worked under for years and was apparently doing his work without any difficulty. There was no evidence of any extraordinary exertion or strain, nor was there any evidence of any aggravation of the diseased condition of the decedent.

The language of the Workmen's Compensation statute expressly sets forth that the burden of proof of injury or death shall be upon the employer only in cases where it was intentional, self-inflicted or where the allegation is made that intoxication was the natural and proximate cause

of the injury. This is affirmed in *Reimers v. Proctor Publishing Company*, 85 N. J. L., 441. In all other cases the burden of proof is upon the appellant to sustain the allegation that the accident arose out of and in the course of his employment.

We respectfully submit that taking the view most favorable to the appellant, at the most, the evidence disclosed that the decedent was seen in the act of falling backwards; but what caused his fall has not been determined. It is left in the realm of speculation. The working conditions were the same as usual and there is no reason or evidence to justify an inference that on this particular day the decedent's death was the result of a slip of his feet on the floor where he was working, as alleged in the claim petition.

(b)

The evidence disclosed that the decedent's death was just as likely caused by disease as by an injury received in an accident.

The autopsy showed that the decedent died from a cerebral hemorrhage originating in the base of the brain around the circular Willis; that there was a hardening of the blood vessels in the circular Willis at the point where the rupture occurred; that there was extensive anthracosis of the lungs, chronic adhesions of the pleural, cardiac hypertrophy (thickening of the left ventricle wall), moderate atheroma of the ascending arch and descending aorta of the heart. There was sclerosis of the coronary arteries, chronic myocarditis, hypertrophic sclerosis of the liver, double chronic interstitial nephritis (S. C., p. 33, l. 30—p. 34, l. 30).

It is important to point out that the rupture of the blood vessels at the base of the brain in the circular Willis was at a point where there was

hardening of the blood vessels. It is common knowledge that persons suffering from sclerotic blood vessels, or hardening of the arteries, may and often have suffered strokes of apoplexy or cerebral hemorrhages while not engaged in any active work, and that in many cases it often occurs while the person is in bed.

The appellant will probably lay stress upon the death certificate which was offered in evidence and which gave the cause of death as cerebral hemorrhage "base" traumatic. This death certificate, however, was made out by the coroner who is not a physician (S. C., p. 41, ll. 30-40). The medical testimony in the case discloses without a doubt that no one can say with reasonable certainty when the cerebral hemorrhage occurred; that is, whether it occurred prior to the fall or after the fall, and this was conceded to be the fact by the appellant's counsel in the court below (S. C., p. 69, ll. 30-40).

The duty is on the petitioner to exclude the idea that the death of the decedent was due to a cause with which the defendant was unconnected. In *Migliaccio, Administratrix, v. Public Service Railway Company*, 101 N. J. L. 496, this court said:

"It is incumbent upon the plaintiff to exclude the idea that death was due to a cause with which the defendant was unconnected. This is pointed out in the opinion of the present Chief Justice in the case of *Suburban Electric Co. v. Nugent*, 58 N. J. L. 658 (a death case), in which he said: 'It must be conceded that the plaintiff below was bound to show something more than that the defendant was possibly responsible for the decedent's death in order to entitle him to a verdict. It was incumbent upon him, in the absence of direct evidence of that fact, to show not only the existence of such responsibility, but the existence of such circumstances as would jus-

tify the inference that the death was caused by the wrongful act of the defendant, and would exclude the idea that it was due to cause with which the defendant was unconnected.' * * *

"We think the plaintiff failed to exclude in his testimony the idea that death was due to a cause with which the defendant was unconnected. To permit the recovery of a judgment upon the testimony of the present case would be to permit a jury's guess or speculation to deprive a defendant of its property. Such a result can only be obtained by a logical deduction from proven facts. To hold otherwise would throw wide open the door of recovery in many cases where illness and death have occurred long after an injury has been inflicted upon the theory that the illness would not have taken place if the person's vitality had not been lowered as a result of the accident. Physicians may be honest in being willing to testify that the illness would probably not have resulted if the injury had not occurred. But it is impossible for such an opinion to be much more than a guess because in no cause would it be possible to frame a hypothetical question which would embody all the facts relative to the person of whom it is asked. No person knows to what diseases he may be subjected to in a day's travel or business. It may be that the application of the principles above enunciated may in the present case seem harsh, but the letting down of the bars and departing from settled and well-established principles always results in worse evils."

In *Kalayis v. Puchinkis*, supra, the case of *Migliaccio v. Public Service* was followed by Commissioner Goas. (See also *Houston v. Traphatan*, 47 N. J. L. 23.)

In the case of *Reimers v. Proctor Publishing Company*, 85 N. J. L. 441, this court reversed an award in favor of the appellant, for the death of

her decedent. The court, in its opinion, on pages 442 and 443, said:

“If this difficulty could be surmounted there would be further difficulty in holding that there was evidence justifying a finding that the death was due to the accident. * * *

Where the doctors refuse to state that death was caused by the accident, there is no basis for an inference to that effect by the court. *The burden of proof is in accordance with the ordinary rule upon the petitioner. That the legislature did not mean to shift it to the defendant in a case like the present is shown by the fact that in the very same paragraph (section 2, placitum 7) it expressly enacted that the burden of proof that injury or death was intentionally self-inflicted, or that intoxication was the natural and proximate cause of the injury shall be upon the employer. Expressio unius est exclusio alterius.*”

It is just as reasonable and logical to find that a person suffering from diseased organs, as was the decedent, would suffer a cerebral hemorrhage while performing his usual work and without it being the result of an accident, as it is to believe that the fall was the cause of the cerebral hemorrhage. In any event, the burden upon the appellant is to exclude the causes for which the appellee is not responsible before she has established her case. The mere fact that the decedent died following a fall does not, of itself, establish an accident arising out of and in the course of the employment. If that were true, then the employer would be an insurer of all the employees who died while engaged in his work. In practically all cases where a person dies from heart disease or an apoplectic stroke, it is impossible to say just when the stroke occurred; prior to the fall or following the fall.

(c)

The petitioner failed to maintain the burden of proof that the decedent died as a result of an accident arising out of and in the course of his employment.

We urge that a reading of the testimony offered by the appellant and appellee fairly discloses that the appellant has failed to maintain the burden of proof to the effect that the decedent died as a result of an accident arising out of and in the course of his employment. The only alleged witness to the death of the decedent is Schroeder and his testimony is to the effect that when he first noticed the decedent in the act of falling, the fall had already started; that he did not know what caused the decedent to fall. His testimony is to the effect that the iron plate in front of the furnace was broken and cracked and loose, and that there were small pebbles or slugs on it. The undisputed testimony of the witness, Singer, superintendent of the puddling department of the appellee, was that these iron plates are in front of the furnace and are 24 inches wide (S. C., p. 61, ll. 20-30), and that after the fall the decedent's feet were five feet away from the furnace.

The witness, Schroeder, testified that when he saw the decedent in the act of falling, the decedent was 3 or 4 feet from the furnace (S. C., p. 28, l. 20). If this were so, then the decedent certainly was not standing on the iron plate when the fall occurred. The witness, Schroeder, further admitted that he gave a statement to a Mr. Huss; that everything he told Mr. Huss was contained in the statement; and that there was nothing omitted from the statement which he told the investigator (S. C., p. 31, ll. 10-20).

Mr. Huss testified that when he took the statement from Schroeder, Schroeder did not tell him

at any time that there were cinders on the iron plate or that the plate was cracked (S. C., p. 66, l. 10).

The witness, Singer, testified that Schroeder did not tell him at any time that the plates where the decedent worked were covered with cinders (S. C., p. 62, ll. 20-30). This witness also testified that there were no obstructions on the floor when he came there immediately after the fall (S. C., p. 63, l. 10).

The witness Eckdahl, a fellow employee of the decedent, testified that he went to the furnace where the decedent worked for the purpose of looking around for a sledge-hammer and when he got there the decedent was lying on the floor. At that time he did not see Schroeder there and did not see him there until after he started to lift the decedent; that he walked directly in front of the furnace and he was the first one to get to the body of the decedent (S. C., p. 67, l. 30—p. 68, l. 20).

It is undisputed that at the time of the decedent's death the working conditions and the machinery were in the usual condition; that there was nothing unusual about any of the operating conditions or different from any other working shift. The evidence was that the balling hook which the decedent was using just prior to his death weighed 30 or 40 pounds and was about 10 feet long; that the end of the hook was involved with a molten mass of iron ore; that it was difficult to move it forward or backward and that when it was in the mass of molten ore there was enough resistance to hold up the weight of a man. There was a ring in the end of this hook which was grasped by the hand of the person using it. As pointed out by the trial court, after the accident the balling hook was still in the furnace. If

the decedent had slipped he could have held onto the balling hook which would have supported his weight. There was a ring at the end of it which he had hold of while using it. It seems reasonable and probable that if the decedent slipped he would have been able to hold on and support his weight by the balling hook and that his arms would not have been straight outward when he struck the floor at full length, as testified by Schroeder (S. C., p. 28, l. 23).

When the case was closed at the trial, the cause of the decedent's fall and the cause of the cerebral hemorrhage had not been proved by the appellant ^{with} any degree of certainty, but was left entirely in the realm of speculation.

We respectfully submit that the petitioner below failed to prove that the decedent's death was the result of an accident arising out of and in the course of his employment with the appellee, and that the evidence fully sustains the findings of the Workmen's Compensation Bureau and the Supreme Court in favor of the appellee.

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