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Testimony for Petitioner.

Testimony for Respondent.

Notice of Appeal.

Filed April 3, 1919.

New Jersey Supreme Court

MARY LUNDY, widow of PATRICK LUNDY, deceased,
Defendant in Certiorari,
Respondent,

vs.

GEORGE BROWN & COMPANY, a corporation,
Prosecutor in Certiorari,
Appellant.

Notice of Appeal.

Sir:

TAKE NOTICE that the Prosecutor-Appellant appeals to the Court of Errors and Appeals of the State of New Jersey from the whole of the judgment entered in this cause.

Yours respectfully,

M. CASEWELL HEINE,
Attorney for Prosecutor-Appellant.

Dated April 2, 1919.

To Edward M. & Runyon Colie, Esqs.,
Attorney for Defendant-Respondent,
763 Broad street, Newark, N. J.

Service of within Notice of Appeal is ac'ked this April 2, 1919.

EDWARD M. & RUNYON COLIE,
Attorneys for Defendant-Respondent.

Grounds of Appeal.

Filed April 4, 1919.

New Jersey Court of Errors and Appeals

MARY LUNDY, widow of PATRICK LUNDY, deceased, Defendant in Certiorari, *Respondent,* *vs.* GEORGE BROWN & COMPANY, a corporation, Prosecutor in Certiorari, *Appellant.*	*On Appeal from Supreme Court.* *Grounds of Appeal.*

The above named Appellant states the following grounds of appeal:

1. The Supreme Court sustained the finding of the Court of Common Pleas that the death of defendant-respondent's decedent was caused by an accident arising out of and in the course of his employment.

2. The Supreme Court sustained the order of the Court of Common Pleas that the death of defendant-respondent's decedent was proximately caused by the accident suffered by him while employed by the prosecutor-appellant.

3. The Supreme Court sustained the refusal of the Court of Common Pleas to find that an independent cause not arising out of and in the course of the employment was the proximate cause of the death of defendant-respondent's decedent.

4. The Supreme Court erred in failing to find that there is no evidence to support the finding of the Court of Common Pleas that the death of defendant-respondent's decedent proximately resulted from an accident received in the course of and arising out of his employment.

M. CASEWELL HEINE,
Attorney for Prosecutor-Appellant.

Writ of Certiorari.

Allowed September 16, 1918.

NEW JERSEY, *ss.*

The State of New Jersey to the Honorable William P. Martin, Judge of the Court of Common Pleas in and (L. S.) for the County of Essex, and John H. Scott, Clerk of said Court of Common Pleas in and for the County of Essex, and Mary Lundy, widow and administratrix of Patrick Lundy, deceased, Greeting:

We being willing for certain reasons to be certified of a certain determination, judgment, order and proceedings made and given by the Honorable William P. Martin, President Judge of the Court of Common Pleas in and for the County of Essex, in a certain action, plaint and proceeding brought against George Brown & Company, a corporation, at the suit of Mary Lundy, widow and administratrix of Patrick Lundy, deceased, to recover compensation under "an act of the legislature prescribing liability of an employer to make compensation for injuries received by an employee in the course of employment and regulating procedure for the determination of liability for compensation approved thereunder" approved April 4, 1911, and the supplement of said act approved May 2, 1911, and the acts amendatory thereof and supplemental thereto, do command you that you send under your seal to the Justices of our Supreme Court of Judicature at Trenton, on the seventh day of October, 1918, the said determination, judgment, order and proceedings made and given by you, with all things touching and concerning the same, as fully and entirely as they remain in said Court of Common Pleas, by whatever names the parties may be called therein, together with this, our writ, that we may further cause to be done thereupon what of right we shall see fit to be done.

WITNESS, William S. Gummere, Esquire, Chief Justice of our Supreme Court at Trenton, aforesaid, this sixteenth day of September, in the year of our Lord one thousand nine hundred and eighteen.

ENOCH L. JOHNSON,
Clerk.

M. CASEWELL HEINE,
Prosecutor's Attorney.

Service of the within writ of certiorari is hereby admitted this 16th day of September, 1918.

EDWARD M. & RUNYON COLIE,
Attorneys of Petitioner-Defendant in Certiorari.

Allocatur, September 16, 1918.

WM. S. GUMMERE,
Chief Justice.

Order Fixing Time and Place of Hearing.

Return.

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

I, William P. Martin, Judge of the Court of Common Pleas in and for Essex County, New Jersey, do hereby certify and return to the Supreme Court of Judicature of the State of New Jersey, the Determination, Judgment, Order and Proceedings, together with all things touching and concerning the same, as by the within writ to me directed I am commanded.

In witness whereof, I have hereunto set my hand and affixed the official seal of said Court, at Newark, N. J., this 18th day of ~~Sep~~ October ~~tember~~, A. D. 1918.

Wm P. Martin
J.C.P.

(SEAL)

Essex County Court of Common Pleas

PATRICK LUNDY,
Petitioner,

vs.

GEORGE BROWN & COMPANY, a corporation,
Respondent.

On petition for compensation under "An Act prescribing the liability of an employer to make compensation for injuries, received by an employee in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder," approved April 4, 1911, and the several supplements thereto and acts amendatory thereof.

ORDER FIXING TIME AND PLACE OF HEARING.

A petition having been filed in this cause by the petitioner praying for the compensation payable by the respondent, it is on this 18th day of December, 1917,

ORDERED, that the hearing of said matter be and hereby is set down for Wednesday, the 9th day of January, 1918, at the Court House (Common Pleas court room), in the City of Newark, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard. And it is further

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

Petition.

served upon the respondent, within six days after the date of this order.

H. V. OSBORNE,
President Judge of the Essex County Court of Common Pleas.

On motion of

EDWARD M. & RUNYON COLIE,
Attorneys for Petitioner.

A true copy.

JOHN H. SCOTT,
County Clerk.

Petition.

Filed December 18, 1917.

Your petitioner, Patrick Lundy, residing at 66 Bloomfield avenue, Newark, New Jersey, says that:

1. On the 19th day of December, 1916, he was employed by the respondent George Brown & Company as a laborer and that at that time he had been so employed for about three months.

2. That he was at that time receiving wages from the respondent of $18.00 a week.

3. That on the 19th of December, 1916, while he was working on a scaffold, putting a marble slab in the entrance to a chamber in a vault at Mt. Pleasant Cemetery, the scaffold gave way and petitioner was thrown many feet to the ground, receiving severe injuries.

4. That respondent had immediate notice of this accident and that the next two weeks petitioner was treated by a physician furnished by respondent.

5. That respondent paid to petitioner compensation at the rate of $9.00 a week beginning two weeks after said accident and up to the 17th of September, 1917. Since that date respondent has refused to pay petitioner further compensation, and respondent and petitioner have been unable to agree upon the amount of compensation that should be paid.

6. That petitioner is still suffering disability as the result of said accident, and as the result of said accident is now unable to perform hard or ordinary manual labor.

7. That such employment as he has obtained since the time of the accident has been at a less wage than he was receiving at that time. That he has been unable to work steadily at said employment because of his physical condition and that he is this time for that reason out of employment.

Answer.

8. That petitioner's injury among other things consisted of a fracture of four ribs on the left side and that it is the disability resulting from this injury which prevents petitioner from doing his former work.

Petitioner prays that this Court may determine the amount due him for the disability which he has suffered from said accident over and above the amount already paid him by respondent.

EDWARD M. & RUNYON COLIE,
Attorneys of Petitioner.

A true copy.

JOHN H. SCOTT,
County Clark.

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

Patrick Lundy, being duly sworn, on his oath according to law deposes and says that he has read the foregoing petition and that the same is in all respects true.

PATRICK LUNDY.

Sworn and subscribed to before me this 17th day of December, 1917, at Newark, N. J.

HANS TRIER,
Master in Chancery of New Jersey.

Answer.

Filed February 6, 1918.

Respondent George Brown & Company, a corporation, with its office at No. 374 Belleville avenue, Newark, New Jersey, answering the petition of the petitioner, says:

1. It admits paragraphs of the petition numbered "1", "2", "3", "4" and "5".

2. It denies the allegations set forth in paragraphs "6" and "8" of the petition.

3. It has no knowledge concerning the allegations set forth in paragraph "7" of the petition, and therefore denies the same.

4. The respondent's contention is that the injury suffered by the petitioner as a result of the accident mentioned in the petition has been cured, and that the petitioner has been paid his compensation for the temporary disability so caused and that petitioner suffers

from no permanent disability as the result of said accident, and is entitled to no further compensation from respondent.

(Signed) M. CASEWELL HEINE,
Attorney for Respondent.

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

FREDERICK G. JAMISON, of full age, being duly sworn according to law, on his oath says: That he is the superintendent of George Brown & Company, the respondent in the foregoing answer named; that he has read the said answer and the same is true to the best of his knowledge and belief.

FREDERICK G. JAMISON.

Sworn to and subscribed before me
this 6th day of February, 1918.

Supplemental Petition.

Filed May 15, 1918.

Your petitioner Mary Lundy, residing at 66 Belleville avenue, Newark, New Jersey, says that:

1. She is the widow of Patrick Lundy, the petitioner named in the above entitled cause.

2. That on February 21, 1918, Patrick Lundy died.

3. That the death of Patrick Lundy was caused by the injuries received by him in the accident which happened on December 19th, 1916, and as set forth in his petition.

4. That the estate of Patrick Lundy is entitled to compensation from September 17, 1917, to February 21, 1918, date of his death, for his disability during that period as the result of said accident.

5. That your petitioner, his widow, is entitled to compensation by reason of his death as the result of said accident to thirty-five per cent. of eighteen dollars for three hundred weeks, together with one hundred dollars for funeral expenses.

EDWARD M. & RUNYON COLIE,
Attorneys of Mary Lundy, Supplemental Petitioner.

Answer to Supplemental Petition.

Filed May 15, 1918.

Respondent George Brown & Company, a corporation, with its office at No. 374 Belleville avenue, Newark, New Jersey, answering the supplemental petition of the petitioner, says that:

1. It has no knowledge concerning the allegations of paragraphs number "1" and "2".

2. It denies the allegations of paragraphs numbered "3", "4" and "5".

Respondent's contention is that the death of Patrick Lundy was not caused by any accident arising out of and in the course of his employment.

M. CASEWELL HEINE,
Attorney for Respondent.

Order Admitting Administratrix as Party.

Filed August 5, 1918.

It appearing that on July 26, 1918, Mary Lundy was appointed administratrix of the estate of Patrick Lundy by the Surrogate of Essex County, and she now applying to be admitted as a party petitioner to the above entitled action, with the same effect as though she had been appointed such administratrix and been so admitted prior to the final hearing herein;

It is, on this 5th day of ~~July~~ August, 1918, on motion of Edward M. & Runyon Colie, attorneys of petitioner, and on the consent of the attorney of the respondent hereunder written, ORDERED that Mary Lundy as administratrix of Patrick Lundy, deceased, be admitted as a party petitioner to the above entitled action, with the same effect as though she had been appointed such administratrix and been so admitted prior to the final hearing herein.

WILLIAM P. MARTIN,
Judge.

I consent to the entry of the above order.

M. CASEWELL HEINE,
Attorney of Respondent.

Opening.

Essex County Court of Common Pleas

May 15, 1918.

PATRICK LUNDY,

Petitioner,

vs.

GEORGE BROWN & COMPANY,

Respondent.

Transcript of shorthand notes taken in the above entitled matter before his Honor, William P. Martin, Judge, at the Court House, in the City of Newark, New Jersey, in the presence of Runyon Colie, Esq., for petitioner, and M. Casewell Heine, Esq., for respondent.

Mr. Colie. Long after the petition was filed the petitioner died, and a subsequent petition was filed claiming compensation for death. Mr. Heine and I have agreed that it might be presented to the Court at this term, and we present the supplemental petition.

The employment is admitted and the wages are admitted, and the happening of the accident is admitted, and a long period of temporary disability was paid, and the sole and only contention in the original answer to Lundy's own petition was that his then existing disability, if any, was not due to the accdent; that he had recovered. Subsequently Lundy died, and again the sole contention of the respondent is that the death was not the result of the accident.

Mr. Heine. That is a correct statement.

Mr. Colie. He was injured on December 19, 1916.

Mr. Heine. He died on February 21, 1918.

The Court. What was the injury?

Mr. Colie. The injury was fractures. He fell about 12 feet onto a marble floor, I believe, of the Dryden mausoleum in Mt. Pleasant Cemetery and sustained fractures from four to six ribs—or several ribs—on the left-hand side of his body, and he was confined to his house for some time under the treatment of the respondent company's doctor. I think it will appear in the testimony that he stayed out of work and was paid compensation until the following September. In the latter part of September or early in October he went back to work and worked intermittently until late December when he again went under the care of the physicians and died.

The Court. What did the injury result in—what is the name of the disease?

Mr. Colie. The name of the disease, so far as the doctors could diagnose it, because they all of them hesitated about this, was acute general tuberculosis.

The Court. He died of tuberculosis? Is that your contention, that he did?

Mr. Colie. Yes. The petitioner's contention is that he died of tuberculosis, but whether he did or not die of tuberculosis, he died from the accident.

The Court. How could he die from the accident if he did not get the tuberculosis from the accident? What is your contention, Mr. Heine?

Mr. Heine. My contention is that the death was due to a rheumatic cardiac disease, which had a secondary or contributing cause in rheumatism. That the cause of death was from a disease in no way connected with the traumatism received as a result of the accident. That is the question, whether the death resulted in any way from the accident.

MARY LUNDY, sworn on the part of the petitioner.

Direct examination by Mr. Colie.

The Court. There never was any adjudication, was there?

Mr. Colie. No, sir.

Q Mrs. Lundy, you live in Newark? A Yes, sir.

Q And you have lived here how many years? A Eight years.

Q You are the widow of Patrick Lundy who worked for George Brown & Company? A Yes, sir.

Q And how many years were you married to him? A Three years the 12th of February.

Q Did you live in Newark all that time? A Yes, sir.

Q Three years this coming February? A Last February.

Q Do you remember the time last December when your husband was hurt? A Yes, sir.

Mr. Heine. I object.

The Court. Objection sustained and the answer is stricken out. It was not last December; it was a year ago last December, wasn't it?

Witness. Yes, sir.

Q Do you remember the time, a year ago last December, that your husband was hurt? A Yes, sir.

Q Who brought him home? A Dr. Fewsmith.

Q Was Dr. Fewsmith your family doctor at that time? A No, sir.

Q Who treated him then? A Dr. Fewsmith.

Q How did Dr. Fewsmith come to handle the case? A Dr. Fewsmith said that he had four broken ribs.

Q How did he come to be the doctor at that time? A George Brown Company, he is their doctor.

Q He is the company's doctor? A Yes, sir.

Q And what did Dr. Fewsmith say was his injury? A Four broken ribs.

Q On which side? A On his left side, next to his heart and lungs.

Q How long did Dr. Fewsmith treat your husband? A Two weeks.

Q Did you keep any record of that? Are you sure how long he treated him? A Yes, sir.

Q Did you keep a record of that? A Well, that is as long as I think he did treat him. I think that is what he is supposed to treat him, is two weeks.

Q That is all you know? A Yes, sir.

Mr. Heine. I move to strike out what he is supposed to do.

Q When Dr. Fewsmith stopped treating your husband was your husband still in bed or was he up and about, and, if so, how much was he about? A He was able to come out of bed to the kitchen and sit in a chair.

Q Just sitting up in a chair? A Yes, sir.

Q Now, during that winter, the winter of 1917, January, February, March, and so forth of that year, what was your husband doing —what did he do? A Why, he went out every day that was nice—he went out in the air. He was told to walk out.

Q How soon did he start to go outdoors after Dr. Fewsmith left him? A Just as soon as he was able to, about six weeks—as soon as ever he was able to go downstairs.

Q About six weeks after he was hurt? A Yes, sir.

Q He went out walking on good days? A Yes, sir.

Q Well, how long did that continue? What was he doing that spring? A He wasn't able to do anything. He wasn't able to do anything.

The Court. That is a year ago, Mrs. Lundy?

Witness. Yes, sir.

Q That summer what did your husband do? A He did walking out in the air.

Q When did your husband go back to work? A I think it was the latter part of September or the beginning of October. Of course, I am not properly sure, as I never kept any account.

Q Now, at that time, in October, how did your husband appear to be? A Well, when he started to work he felt very weak, and so when he come home was unable to eat his dinner and always fell down like to sleep.

Q He what? A He had no strength when he would come home and no ambition.

Q Now, how had he been before this accident? A He was a very strong man.

Q Well, how did he show it, if at all, if you can tell? A I beg your pardon, Mr. Colie.

Q You say he was strong? A Yes, sir.

Q Didn't he lose time from work and get laid off at all before this accident or— A No, sir; only when he would get through with a job. He never was laid off.

Q What were his usual working hours before the accident? A Well, he— His usual time was from eight to five, but he used to frequently—he used to get up at five, leave the house half-past five and start to work at six, and sometimes get up at four—he would have to catch a train—and he would work overtime some nights until it would be twelve o'clock. He didn't know his own strength before he got hurt.

Q Well, did that tire him out? A Never was tired, Mr. Colie; he was always able to get up in the morning and attend to his work.

Q Now, when he went back to work in October, 1917, or thereabouts, did he work steadily? A For the first few weeks, Mr. Colie, then afterwards he began to feel very weak and was unable to work steady. He always complained of a soreness of his left side. When he stooped he was unable to straighten up.

Q Now, what was your husband's general appearance? Describe that to the Court. I mean to say as to color and physique? A His complexion, his color?

Q Yes. A Well, he was apparently a strong—he wasn't a big, robust of a man, but he was a very healthy looking man.

Q Your husband had reddish hair? A Yes, sir.

Q And a florid or reddish complexion? A Yes, sir.

Q Do you know what he weighed before this accident? Do you actually know what he weighed? A 175 pounds.

Q Now, do you know anything about his weight during the time after the accident up to the time he died? A No, sir; but he wasted very much; by the year he just wasted away.

Q How about his color? A And he grew very pale.

Q And when was it that your husband stopped working altogether? A Between Christmas and New Year's he worked one-half day and that was all.

Q Other than Mr. Jamison, did you see any of the people who had to do with paying your husband's compensation yourself? Did you ever see them and talk with them? Do you understand the question? A I beg pardon. I would like to have you explain it to me again, please.

Q Did you ever talk to anyone representing George Brown Company other than Mr. Jamison about your husband's compensation or whether he was not to get other compensation because he was still sick?

The Court. Did you talk to anybody who hired your husband?

Witness. With Mr. Jamison.

The Court. Did you talk with anybody besides Mr. Jamison?

Witness. No, sir; as I know.

Q Now, from the first of January on—by the way, when did you get a doctor for your husband, as nearly as you can remember, after the accident and after Dr. Fewsmith left? A Well, Dr. Satchwell.

Q Dr. Satchwell was treating him during— A After; yes, sir.

Q Then after Dr. Satchwell—you did not employ Dr. Satchwell, did you? A No, sir.

Q He was taking charge of your husband for Mr. Jamison? A Yes, sir.

Q For the company? A Yes, sir.

Q During that summer? A Yes, sir.

Q And then who followed Dr. Satchwell in treating your husband? A Well, Dr. McCarthy is our family doctor.

Q When did you call him in, as nearly as you can remember? A Well, Mr. Colie, he has been going to Dr. McCarthy for three months before he took sick to bed.

Q About the time he went back to work, then, Dr. McCarthy saw him? A Yes, sir.

Q When did he take to his bed? A Beyond the 14th or 15th of January.

The Court. 1918?

Witness. Yes, sir; your Honor.

Q Now, during the previous winter, that is the winter of 1917, and that spring, what did your husband do on rainy days or bad days? A He stayed—stayed home in the house and read the paper.

Q And on good days during the winter, how long would he be outdoors usually? A He would go out in the morning and stay out for about two hours.

Q Well, then, how about the afternoon? A Come home and have something to eat, and then he would go out again in the afternoon and walk—and sit around for about two hours. He would walk and then sit down, he always felt so very tired. He was unable to take a very long walk as his breath—he got so out of breath.

Q Did you and your husband that summer talk over—discuss the proposition of his going to a sanitarium for tuberculosis? Do you understand my question? A Yes, sir; he told me that Dr. Satchwell asked him if he would like to go—

Mr. Heine. I object to conversation with Dr. Satchwell.

The Court. It is too late. You allowed it to be asked and all the answer to come in before you made any objection.

Mr. Heine. I wish to note the objection to the exclusion of my objection.

The Court. Yes. Proceed.

Q Why didn't he go away to a sanitarium that summer? A Mr. Colie, Dr. Satchwell said to my husband—

Mr. Heine. I object.

The Court. Objection sustained.

Witness. Would he like to go?

Mary Lundy, cross.

Mr. Colie. No; you must not answer any question after the Court says you cannot. Listen to my question and you can answer it, I think.

Witness. Yes, sir.

Q Why did not you go away? A We could not afford to go, Mr. Colie.

Cross examination by Mr. Heine.

Q What kind of work had your husband been doing before the accident—what kind of labor? A He was a laborer. He worked on buildings.

Q With contractors? Various contractors building buildings? A Yes, sir. I don't understand.

Q Do you know what kind of work he did for these men? A He was a hod carrier.

Q A what? A A hod carrier.

Q How long were you married before the accident? A A little over a year. We were married in 1915; he got injured in 1916.

Q Did you know him before you married him for any period of months or years? A Yes, sir.

Q How long had you known him before you married him? A Two years.

Q And had he been engaged hod carrying all that time? A He was working for George Brown & Company at the time I first knew him.

Q And had been engaged as hod carrier all that time? A I don't know what their work is. It is a stoneyard. I don't understand about that.

Q Well, don't you know what kind of work he did during that period you knew him? A He was all that time mason's laborer in that position.

Q Mason's helper, is that what they call them? A Yes, sir.

Q Mason's helper? A Yes, sir.

Q Did you see him very often during the time you knew him before you were married? A Yes, sir.

Q How often; once a week, once a month, or— A Yes, sir; once a week and sometimes more.

Q That was for about a year before you were married? A For two years.

Q Two years before you were married? A Yes, sir.

Q And during that time did he ever complain of any physical ailment at all of any kinl? A No, sir; never.

Q Ever get short of breath when he was running or anything? A No, sir.

Q Nothing that you noticed? A No, sir.

Q During the time that you knew him from the first right down to the time of the accident, did he work overtime until midnight and begin to work early in the morning frequently? A Yes, sir.

Mary Lundy, cross.

Q Well, was it a daily occurrence or not? A Well, not all the time.

Q How many times in the week would he work say until— A Every time there was overtime. They never kept any track of it.

Q You wouldn't know the number of times—was it a number of times every week that long? A Yes, sir.

Q And that continued during the entire period you knew him and after you were married? A Always worked while—yes, sir.

Mr. Colie. I think the witness was interrupted in that last answer.

The Court. She can state the facts if she wants to. If she misunderstands the question she can say so.

Mr. Heine. Was there anything you wanted to say in answer to that question further? Were you interrupted?

Witness. This last question about the work?

Q Yes; about working overtime. Did you finish your answer? A Yes, sir; I wanted to say—well, that he was a very strong man all the time I knew him; never complained.

The Court. How tall a man was he?

Witness. He was 5 feet 6, your Honor.

Q Was he stout? I think you said he was rather a stout, fat man? A He wasn't a fat man; he was a very big-bodied man; very strong and husky.

Q Large-boned man? A Large-boned man; yes, sir.

Q Between the time that Dr. Fewsmith stopped treating your husband and the time that Dr. Satchwell began to treat him, how long was it? A Mr. Heine, I never kept no track of that. It was very soon after.

Q Soon after? A Yes, sir.

Q And isn't it a fact that Dr. Satchwell kept urging him to go outdoors—to get him to go outdoors, and that he stayed in the house? A Dr. Satchwell never had to encourage him to go out. When Dr. Satchwell come to see him he was out walking, the first visit Dr. Satchwell made to the house.

Q Did you ever hear Dr. Satchwell urging him to go outdoors? A Go away?

Q Outdoors. A I don't know; that is the only time I ever heard Dr. Satchwell, was the first time he went to my house; he always went to Dr. Satchwell's office.

Q Did your husband ever tell you that the doctor had urged him to go outdoors? A Yes, sir.

Q Did your husband tell you at any time during the treatment by Dr. Satchwell that the doctor wanted him to leave Newark to go in the country somewhere? A He told me that—what I said before, that Dr. Satchwell said wouldn't he like to go away, and he said "Doctor, I don't want to break up my home; I can't afford to go; I have got no money."

Mary Lundy, re-direct.

Q He didn't want to break up his home? A He had no money to go.

Q Do you know whether or not the doctor said that the company would provide money for him to go away? A The word he said, "Make the company do it," Dr. Satchwell said.

Q Did your husband ever tell you that the company would, if he would go away, pay his expenses away? A No, sir.

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

Q Did any one ever tell you that? A No, sir.

Q Did Dr. McCarthy ever treat your husband before the day in January—this January last, 1918, when he got sick and went to bed? A Yes, sir; he treated him from October—from around the time he started to work.

Q But that is the first time that Dr. McCarthy had ever treated him? A Yes, sir.

The Court. Did he ever treat him before your husband was hurt?

Witness. No, your Honor.

Q Was your husband ever sick at home before this injury in December, 1916? A No; never was sick in his life that ever I knowed of.

By the Court.

Q Had he been married before? A No, sir.

Q Had he any children? A No, sir.

Q Have you and he any children? A No, sir.

Q And I suppose he supported you? A Yes, sir, your Honor; he was an awful good man.

Q You were dependent upon him? A Yes, sir.

Q Did he ever cough or complain of being warm when it was actually cold? A Before the accident, your Honor?

Q Yes. A No, your Honor.

Q Was his forehead hot or anything of that sort, that you noticed? A No, your Honor.

Re-direct.

Q When your husband came home the day after the accident, or the day of the accident— A Yes, sir.

Q Brought home by Dr. Fewsmith, how did he come upstairs? A Dr. Fewsmith took him in his automobile from Mr. Dryden's vault in Mt. Pleasant Cemetery and he kept behind him—helped him up the stairs.

Q Now, what did you notice—you saw your husband when he came home that day? A Yes, sir.

Q Now, tell us anything that you can that you noticed about his condition. A Dr. Fewsmith said that he was—

Q No. That you noticed about his condition. A Well, he had an awful cut on his elbow where the blood was running out and he

was hollering with pain, and Dr. Fewsmith said his ribs—and he still hollered he was so long in the cold that the doctor was afraid of pneumonia, he was kept in the cold so long, and he put him to bed and told me to keep him warm.

The Court. Not what the doctor told you, but what you saw about your husband.

Witness. Yes, your Honor, and he raised blood for three days after.

The Court. Was there very much of it?

Witness. There was quite—every time he coughed up a sputum there was quite a lot of blood came.

The Court. How often was these coughings?

Witness. That might be about three and four times a day, your Honor.

DR. DANIEL B. McCARTIE, sworn on the part of the petitioner.

Direct examination by Mr. Colie.

Q Dr. McCartie, you are a licensed physician practicing in New Jersey? A Yes, sir.

Q In Newark? A Yes, sir.

Q How many years have you been practicing here in Newark? A Over twenty years.

Q And your office is where? A 93 Fourth avenue, Newark.

Q Did you know Patrick Lundy? A Yes, sir.

Q When did you first treat him professionally? A He came to my office in October last year, 1917.

Q And what did he say that he was coming to you for? A He complained of pain in his chest, where he said he had an injury, general bodily weakness and loss of strength—loss of flesh.

Q Did you get from him a history at that time? A Yes, sir; he told me of this injury he had previously.

Q Did the question come up at that time as to whether he was in fit condition to go to work? A Yes, sir; he tried to go to work.

Q What did you advise him about working? A Well, after he came several times to the office I encouraged him to try and work, to see if he could work, but I believe he tried on several occasions and found he could not work.

Mr. Heine. I object and move to strike out what the doctor believes.

The Court. Motion granted.

Q Did you do anything to assist him in his work or make it more —to facilitate his working? A Yes, sir; I tried to give him tonic medicines that would make him stronger; tried to make him eat more; rest more at night. Could not sleep at night, he said; had pain through his lungs.

Q Well, now, did you do anything with regard to this injury in particular, his chest? A Yes, sir; I did. I strapped his ribs with adhesive plaster once or twice—put a large plaster around where he complained of this pain and bound up his chest to see if it would relieve the man.

The Court. Was the plaster put on by you?

Witness. Yes, your Honor.

The Court. Where?

Witness. On the left side from the collar bone down to about the fifth rib and extending under the arms somewhat into the back.

Q Did you see Lundy frequently, or how often if at all, between the day in October when he came to you and the end of the year? A About twice a week.

Q Where did you see him? A At the office.

Q Came to the office. And did you find that he was improving during that time? A No; he did not improve any.

Q Now, will you tell us, Doctor, from the history of the case and your treatment from the time you have mentioned up to the time you left the case—well, in January? A Well, I also saw him in the house later on. Do you refer to that?

Q I think it perhaps will facilitate matters if you will just take the case up now from the time that you met him and plastered him up until you got through with the case. I think that you can tell a more connected story than from asking the question. Just tell us what you did. A I saw the man's case was a very peculiar one.

Mr. Heine. I move to strike out the characterization of the case.

The Court. Very peculiar one?

Mr. Heine. Yes.

The Court. Why?

Mr. Heine. Conclusion of this witness.

The Court. Cannot he express a conclusion as an expert?

Mr. Heine. He has not been qualified as an expert yet.

The Court. Cross examine. He says he has been a practicing physician for twenty years; here in Newark all the time?

Witness. Yes, sir.

Mr. Heine. He is now asked to give an opinion, your Honor, with reference—opinion on the peculiarity of the case.

The Court. He says "I regarded the case as a very peculiar one."

Mr. Heine. I will not waste time.

Witness. I regarded the case as a peculiar case; man's pains seemed to be steadfast and he seemed to waste gradually; he had a slight cough and he complained of sweats day and night. I thought it was peculiar because there was no local signs in

the lungs to show where these pains were. There was no general indication of why he should waste and why he should fail day by day. I encouraged him to try to work, as I said before, and he tried to work and found he could not do it. I asked him why, and he said that his shortness of breath and weakness of his bodily muscles would not allow him, and he had pains in the region of his lungs where he was injured, showing—until the end of the year, when he finally took to his bed; and constantly lost strength and weight and got very thin and pale. Afterwards I was called in to see him in the middle of January, when I found him in bed. Then he had a high fever—very high at times; and sometimes his temperature became very low—unusually low in the mornings. His pallor became extreme; his difficulty of breathing became very bad; couldn't lay down at all; and then he had some slight pains in his joints and had some slight pericardium symptoms in his heart.

The Court. What kind?

Witness. Pericardium. It is with reference to the action of the heart—it became very quick and the sounds of the heart became very muffled and dull. The joint symptoms were evanascent, they passed off quickly, but the man's breathing got steadily worse and his pallor got extremely bad and he could not lie down any more. I saw him that way until—seven or eight times—then the case passed out of my hands into some other physician's hands.

Q Now, before the case passed out of your hands, which must have been before Mr. Lundy took eventually to his bed, you had an X-ray taken of him, didn't you? A Yes, sir; there was a picture taken.

Q Was that by your instruction? A I think I asked him to have it taken because he complained of pressure here (indicating), that the X-ray might show some reason for this pressure.

Q Who did you send him to? A Dr. Baker.

Q And Dr. Baker sent the plates and report back to you? A Yes, sir.

Q Is that one of the plates that you received back from Dr. Baker? (I will say for the benefit of the Court that Mr. Heine has agreed that the plate might go into evidence as a plate taken of Lundy.) A Yes, sir; I think this is what I had.

Q That shows a quite obvious fracture of several of the ribs, doesn't it, Doctor? A Yes, sir.

Q Did you receive a letter from Dr. McCartie reporting— A Dr. Baker? Yes, sir.

Q Dr. Baker reporting to you? A Yes, sir.

Q Is that the letter (handing witness letter)? A Yes, sir.

Mr. Colie. That is admitted in evidence by consent.

(Negative marked in evidence as Exhibit P. 1 and letter marked Exhibit P. 2.)

The Court. What is the anterior axiliary line, Doctor?

Witness. The axilla is under the arm, your Honor; in a line extending from under the arm to the middle of the chest would be the anterior axiliary line. The first rib has also been fractured about two inches from the sternum.

The Court. What is the sternum?

Witness. It is the middle bone—breast bone—to which the ribs are attached.

Q We were, I think, at the time when Mr. Lundy was in his bed, and at that time had you made a diagnosis of the case? A It was very difficult to do so but I suspected a general tuberculosis.

Mr. Heine. I move to strike out what the doctor suspected.

The Court. Motion granted. You can only tell what you believe as a professional man, not what you guess.

Witness. I believed, your Honor, that this man was developing a general tuberculosis. The symptoms pointed that way to me.

Q What is the result of a—the result normally to be expected of a tuberculosis? A It is a fatal disease.

Mr. Heine. I would like at this time, if the doctor is to be offered as an expert on tuberculosis, to examine him as to his qualifications on that point.

The Court. Cross examine.

By Mr. Heine.

Q Doctor, in your general practice, how many cases of tuberculosis have you treated in your twenty years' practice? A I couldn't give you any estimate of that. What an average family physician would treat. Several hundred cases probably—maybe a hundred cases in a year. Tuberculosis is a common disease.

Q It is a common disease and also one, at times, very elusive—very difficult to diagnose, is it not? A Yes, sir; it is sometimes difficult. The start of the disease is hard to tell.

Q It is a subject which has been the object of extensive research on the part of the medical fraternity for years and years? A Yes, sir.

Q And the method of treatment has undergone many and radical changes during that time? A Yes, sir.

Q It is a subject of expert study perhaps as no other disease is? A Expert?

Q Subject of study among the medical men? A I cannot see it in that light. Any man may study it.

Q Is it not true that very serious and long continued study of it is necessary in order to have a thorough knowledge of the disease and its treatment, the modern treatment of it as it stands today?

The Court. How does that test his qualifications as an expert or are you asking him as an expert?

Dr. Daniel B. McCartie, cross.

Mr. Heine. No. He has stated as a general physician that he has treated so many cases a year.

By the Court.

Q Where did you graduate? A Bellevue Hospital Medical College, New York City, your Honor.

Q In what year? A 1894.

Q Did you go to college before that? A Yes, sir.

Q Which college? A I was at several colleges. Seton Hall College—

Q Are you a graduate of Seton Hall? A No, I did not stay to graduate.

Q Then you went to Bellevue and you took the course there. How many years? A Four or five years.

Q And what hospital experience did you have before you began practicing? A Well, I was a year in midwifery hospital, New York City, Second avenue hospital, and I was also two years in a London hospital, England.

Q And what hospitals are you connected with now? Here? A None at the present time.

Q None? A None.

By Mr. Heine.

Q (Question read.) A Well, if you study the disease—

Q Yes or no.

The Court. No; he has not got to answer yes or no categorically.

Witness. If he was a specialized man who studies through the microscope he can do it at his home as well as at the hospital.

By the Court.

Q Isn't it a particular thing that requires particular study because of the fact that it is developing so rapidly, and the knowledge of it to the medical profession is such as to require constant attention in order to keep abreast with knowledge of tuberculosis and its ramifications, isn't that so? A Your Honor, you can study it—you can make your own house a laboratory and study it there, those lines you speak of.

Q I did not ask you if you can study it because anybody knows that anybody can study anything. A Yes, your Honor. I cannot answer—

Q I asked if it isn't necessary to study it in order to have a knowledge of it? A Yes; certainly.

The Court. You can save a lot of time if you will listen to the question and answer it.

By Mr. Heine.

Q Have you made such a study of the disease of tuberculosis and its modernized description— A Yes, sir; I can use a microscope.

Q I didn't ask you that. A That is the basis of it.

Q I didn't ask you that. A I did.

Q Over how long a period has this specialization on your part continued? A I always try to keep up to date on those things.

Mr. Heine. I move to strike out as not responsive, if your Honor please.

The Court. Motion granted.

Q Doctor, will you just answer the question? A Repeat it, please.

Q (Question read.) A Since I have been a doctor I have paid attention to that line, science of medical progress.

Q You have made a special study, then, of the disease of tuberculosis since you have received your degree? A Yes, sir. I always try—

Q How do you reconcile that, Doctor, with the statement you made a few moments ago that you have only treated tubercular cases as they came to you in the general practice? A I think that is correct. They come to my office to be treated; I haven't a sanitarium.

Q Who is the leading text writer on the subject of tuberculosis and treatment to-day? A There is a dozen of them.

Q Can you name any one out of a dozen? A Well, Chone.

Q What is the date of his last treatise or book on the subject—how recent? A Last year.

Q How many volumes? A One volume.

Q How many pages? A Five or six hundred pages.

The Court. We are not going to spend time on this, Mr. Heine. There is a limit to the patience of the Court.

Mr. Heine. I object to the witness's qualification as an expert.

The Court. Objection overruled, and exception allowed.

Answer the question, the last question. Do you think from these symptoms that you observed up to the time that you ceased to treat Mr. Lundy that he had general tuberculosis? Now he said that. Now go ahead, Mr. Colie.

Mr. Colie. I think that was the gist of my last question, whether he did think that, and he said yes.

The Court. Then you asked him if it was probable that as a result of general tuberculosis he was going to die.

Mr. Colie. Your memory is better than mine.

Q Doctor, what is the general prognosis of a case of acute general tuberculosis?

Mr. Heine. I object on the ground that it contains the word "acute", which is different from general tuberculosis.

The Court. Objection sustained. What is general tuberculosis?

Witness. General tuberculosis is an acute disease, your Honor.

Dr. Daniel B. McCartie, cross.

The Court. What is it?

Witness. General tuberculosis is tuberculosis of the whole body. It starts from some focus and the tubercle is brought by the blood to all the organs of the body. It is a general disease which lasts ten or twelve weeks.

The Court. Does it ever get well?

Witness. Never, sir.

Cross examination by Mr. Heine.

Q Doctor, is it a fact that you on the 19th of January last sent a specimen of sputum of this party to the City Hospital? A I did, sir; yes, sir.

Q And that you received back a report after examination by the City Hospital which was negative? A Yes, sir.

Q And was the fact that there was no bacillus or tubercle of tuberculosis found in this sputum one of the symptoms on which you base your opinion that he had general tuberculosis? A On the contrary you do not get any evidence of general tuberculosis from the lungs.

The Court. You do not get the symptoms of general tuberculosis from the lungs, is that what you said, Doctor?

Witness. Yes, your Honor.

Q Is it possible to have general tuberculosis without having the lungs in some way affected? A Yes, sir; it is.

Q Isn't the affection of the lungs necessarily concomitant? A It is. I suppose eighty per cent. start from the lungs.

Q In your opinion, is general tuberculosis and acute tuberculosis —are they synonymous terms? A They must be.

Q Are they? A They are; yes, sir.

Q And in this general tuberculosis the lungs as well as all the other organs of the body, as I understand you, are affected? A The lung is generally the starting point. There are no local lesions to show often in the lungs.

Q And this case was pretty near the finish when you came into it, was it not? A Well, I treated the man once before.

Q I mean the last case. A Yes, sir; because that disease only lasts five or six or ten weeks. When I saw him I thought he was starting in this disease called general tuberculosis.

The Court. What do you mean by "When I saw him"? Do you mean the first time you saw him or the last time?

Witness. When he was in bed, your Honor, in January.

Q Doctor, the reason you sent the sputum there was because you supposed that if the tubercular condition existed it would be shown in the sputum? A Yes. I wished to know why he complained of his lungs and if there was any tubercular deposits in his lungs.

Q And you said that you found nothing, that the lungs were clear, and that was one of your difficulties—you found no local signs in the lungs? A There were some rales in the base of the lung.

Dr. Daniel B. McCartie, re-direct.

The Court. Rales in the base of the lung? Noises?

Witness. Yes, sir.

Q You did not mention that before. You said there were no local signs in the lungs? A Not of tuberculosis, I said.

Q But that was one of your difficulties. You could not find anything in the lung which would indicate tuberculosis? A Exactly.

Q And that is the usual starting point? A Yes, sir; but every--

Q And the disease was just beginning? A But there are no local symptoms found as a rule.

Q And you considered this disease was just beginning. You began to suspect, as an experienced doctor would, that it might be tuberculosis? A It was tuberculosis, yes—

Q Answer the question.

The Court. No; he need not answer yes or no. You take your own time and answer these questions your own way, Doctor.

Witness. Yes, sir. Well, if it was a local disease as I suspected from the history of the case—condition of the man—I expected to find local lesions.

Q And you found none? A I found none; yes, sir.

Q And you sent the sputum to the City Hospital and the result of the examination was negative? A Yes, sir.

Q That was one bit of evidence then against the patient having tuberculosis, wasn't it? A Not altogether.

Re-direct.

Q Doctor, general tuberculosis is quite distinct from pulmonary tuberculosis, is it not? A Yes, sir; general tuberculosis is an accidental form of tuberculosis.

Q There might be even pulmonary tuberculosis with negative sputum, or might there not be? A Oh, yes; very often there is.

Q So that it would not positively negative—it would not prove that there was not pulmonary tuberculosis, the fact that there was a negative result on examination, is that correct? A Yes, sir; that is right.

Q But even without pulmonary tuberculosis it might be general tuberculosis; is that not right? A Yes, sir; there could be in some cases.

Q How long before the time that you were called in and found Lundy in bed had you last seen him, if you know? A December—some part of December.

Q Can you tell in days or weeks the period of time? A About two or three weeks.

Q When you last saw him in December was his condition improving—had his condition improved over that in October when you saw him, or the reverse? A No; he was getting worse.

Q And it was evidenced by what? A Weakness, pallor, loss of strength, cough, sweat, debility.

Dr. Daniel B. McCartie, re-cross—re-direct.

Re-cross.

Q Would it be possible for a man who died within a month after your examination to have tuberculosis which would cause his death and the sputum fail to show the tubercle bacilli? A Yes, sir.

Q Is there any other name for general tuberculosis? A Half a dozen names, milliary.

Q What is the name that the text-writers use or what you call general tuberculosis? A Milliary tuberculosis.

Q Isn't that kind of tuberculosis confined entirely to the lung, Doctor? A To the—pardon me!

Q To the area of the lung? A It has nothing to do with the lung.

By the Court.

Q Is it a germ disease, Doctor? A Yes, your Honor; it is the same germ as the ordinary tuberculosis only it infects the whole system.

Q Through the blood? A It must go through the blood; yes, your Honor.

Q Did you know Mr. Patrick Lundy before December, 1916? A I did not know him at that time.

Q So a year before you saw him on this occasion that you have told us about— A No, I never saw him before that, your Honor.

Q —you never saw him before October, 1917, that you remember? A No, your Honor.

Q How tall a man was he in your judgment? A He was about 5 feet 7 inches, maybe.

Q What was his weight about then? A Weighed about a hundred —close onto 150, I should imagine.

Q What was the color of his hair? A He was reddish hair.

Q Face, when you first saw him? A His face was, when I saw him—looked very pale, very white.

Q Was he an old or a young man or what? About what was his age? A Young man; I should imagine a little over thirty years.

Re-direct examination.

Q Doctor, did you form an opinion as to the focus of this general tuberculosis? A Yes, sir.

Q Where? A I thought it might have come from his lung.

Q From his lung?

The Court. When you think a thing might be, in English, that does not mean very much. You are asked whether or not you formed any opinion; not what it might be—of course, it might be anything.

Witness. Your Honor, the man was complaining of local pain in the lung and cough and sweat, and constantly getting weaker, and thus if this affection would come from any part it should come from his lung on that account.

Q Doctor, how did it come you did not treat this case—tell us the facts as you know them with regard to your ceasing to attend this case?

Mr. Heine. I object.

The Court. Objection sustained.

Q You ceased to attend this case when, Doctor? A About January 25th, probably, this year.

Q Who took the case up then?

The Court. How does he know?

Mr. Colie. I think he does know.

The Court. Were you there, Doctor?

Witness. No, sir; I heard.

The Court. Then you don't know. All you know is what somebody told you.

JOHN HART, sworn on the part of the petitioner.

Direct examination by Mr. Colie.

Q Mr. Hart, you live in Newark? A Yes, sir.

Q Where do you work now? A I work in the dye works—Synthetic Dye Works.

Q Did you know Patrick Lundy? A Eight years.

Q You have known him for eight years? A Yes, sir.

Q Do you remember about the time when he met with an accident at George Brown Company? A Well, yes; but I couldn't give day and date. I remember it all right.

Q Have you worked with Lundy before that? A Yes, sir; on several jobs.

Q Now, tell us what sort of a man Lundy was? A Lundy was a fine, able-bodied man; able to do a day's work with any laboring man in Newark at the time I knew him, that is eight years ago, right over here on the Prudential.

Q A willing worker? A Sure was; yes, sir.

Q Did you ever hear him complain of pains or tiredness? A No, sir.

Q Have you known him to work overtime? A Oh, yes; once in awhile.

Q Now, have you seen Lundy—did you see Mr. Lundy since the accident? A Yes, sir; I worked with him.

Q Worked with him? A Yes, sir.

Q When was that, when you worked with him? A When did I work with him? Well, just after he was able to try to go to work. Of course, the man wasn't able to go to work, and I worked with him, a day on and off, about two months.

Q When was that, last fall? A Yes, sir. Then if the man picked up a hundred-pound weight he always complained of his side. He wasn't able to do it.

Robert Little, direct.

Q Where was this that he worked with you? A On the dye works.

Q Down at the dye works? A Yes, sir.

Q Was he regular in his attendance there? A He sure was; yes, sir—well, not to say regular. Any time the man felt any way good, that he was able to go to work, he was always willing to go to work, but there was once in a while that he wasn't—didn't feel well enough to go to work.

Q How did he get his work done? A Why, others generally went to take his place, you know.

No cross examination.

ROBERT LITTLE, sworn on the part of the petitioner.

Direct examination by Mr. Colie.

Q Do you live in Newark, Mr. Little? A Yes, sir.

Q And do you also work at the dye works? A Yes, sir.

Q And you knew Patrick Lundy when he was working there last fall, did you not? A Yes, sir.

Q Was he working under you? A Yes, sir; I was foreman over him.

Q How did you find him in his work last fall? A Well, he was a little weak down there. I give him an easy job, didn't ask him to do much hard work.

Q How long have you known Patrick Lundy? A Well, I knowed him about eight years. He was in the Prudential the first time I knowed him, when I was working there.

Q You mean when they were building the Prudential? A Yes, sir; I was working with him there.

Q Did you work with him on many jobs since that? A He worked with me on the Robert Treat Hotel about two years ago.

Q What did you find was his strength or ability to work before a year ago last December? A Lundy was a good, strong workman, Lundy was.

Q Did he do heavy work then? A He could do any kind of work he was set at.

Q Willingly and without complaint or did he complain? A I never heard the man complain.

Q How did he appear to be—what sort of man—in physique; what sort of physique, as to appearance—strength? A Seemed to be a very strong healthy man. He never was a very fat man; he was thin.

Q The witness is right in saying that he had reddish hair and reddish face? A Yes, sir.

Q How did he seem when he came back last fall? What changes did you notice in him, if any? A Well, he seemed to be pretty thin, didn't seem to be as strong looking as he was.

No cross examination.

Frederick G. Jamison, direct.

FREDERICK G. JAMISON, sworn on the part of the petitioner.

Direct examination by Mr. Colie.

Q Mr. Jamison, by whom are you employed? A George Brown Company.

Q In what capacity? A Why, as superintendent.

Q Do you live here in Newark? A Yes, sir.

Q Superintendent of what department there? A Why, just for the past four years as general outside worker in the monumental line.

Q Was Patrick Lundy working under you at the time of his accident? A Yes, sir.

Q Had he worked for you before this accident at all? A Yes; he worked about four and a half years ago when I put up the concrete plant for the firm.

Q What sort of worker was he in those days? A Good, willing worker.

Q Four and a half years ago? A Good, willing worker.

Q Able to do a full man's job? A Yes, sir; more, too.

Q Then, how long had he been working for you again at the time that he met with this accident? A Oh, about two months.

Q How was he then in health—apparent health and ability to work? A Apparently just as good—just as willing.

Q Did he show any signs of weakening at all? A Not a bit.

Q Did you see Mr. Lundy at all after this accident? A Yes, sir; once or twice.

Q Can you locate those times at all? A No; I don't believe I can.

Q By seasons? A Why, yes; I saw him perhaps—I would say three or four times I saw—I saw him oftener than that—I saw him a couple of times in the winter and a couple of times in the summer and perhaps a couple of times in the fall.

Q Now, tell us how he appeared these times? A Seemed to be getting weaker and weaker and failing all the time.

Q Did you ever see him when he looked as strong as he did before the accident; did you ever see him after the accident when he looked as strong as before? A Oh, no.

Q When he had the same color? A No, sir.

Q When he stood up as straight as he did before? A He never could stand up straight.

Q When, before? A After.

Q Could he stand up straight before? A Yes; always.

Q When did you see him last, Mr. Jamison? A I should say about two weeks before he died.

Q Where was he then? A At home in bed.

Q Did you make any recommendation about his treatment at that time?

Mr. Heine. I object as not material.

The Court. Why not?

Mr. Heine. Recommendation as to treatment from a layman?

The Court. He is the defendant, isn't he?

Mr. Heine. Recommendation as to treatment, unless the word "treatment" means something other than technical or medical.

The Court. Are you an officer of George Brown & Company? Is it a corporation or partnership?

Witness. Partnership.

The Court. You are not a partner in the firm?

Witness. No.

The Court. Objection sustained.

Q Did you request or suggest to the Lundys that they have Dr. Fewsmith come back and take the case?

Mr. Heine. I object as incompetent, irrelevant and immaterial.

The Court. You have not shown that he had authority from George Brown & Company to attend a man who is sick. You have shown he is a superintendent of the stone and monumental department.

Mr. Colie. I will withdraw the question.

The Court. I do not think that it is necessarily within the scope of his agency.

Q In the case of injured workmen, what was your—what did you have to do with attending to their case after their accident?

Mr. Heine. I object on the ground that the agency or authority cannot be proven by the agent—the scope of his employment.

The Court. He can prove what some member of the firm told him to do, can't he?

Mr. Heine. I do not think an agent can tell what is told him by his superior. The superior may state what he told the agent, but the agent cannot go on the stand and state what his instructions were. I further object on the ground that it is immaterial what the general practice was, and that this is not the proper man by whom to prove general practice of this concern with regard to employees.

The Court. I will sustain it for the present. If you want to urge the question you can submit authorities on it. I do not regard it as of enough importance to run the risk of an erroneous ruling. I do not agree with the proposition of the respondent, but I am willing to rule against it at this time. I think you can get the truth some other way.

Not cross examined.

Mr. Colie. I find that my next witness is up in Judge Osborne's court—witness in a case there—and that he is the next witness to be called. I am not sure he is essential. I may be

able to get along without him. I want to prove that he accompanied Mr. Lundy during the winter and spring when he went out for the air and exercise, and as to what strength the man showed or lack of strength during that time.

Mr. Heine. I will admit the substance of that would be his testimony.

The Court. If he were called it is admitted that that is what he would say.

Mr. Colie. What he would say would be that the man got tired easily and sat down a good deal when he climbed the hill up to Branch Brook Park.

Mr. Heine. I will so admit.

The Court. It is stipulated that after Dr. McCarthy ceased to be the physician in charge of Mr. Lundy that Dr. Fewsmith, the same doctor who had attended the case during the first two weeks, appeared and attended the case until the time of the death of Lundy, and that his services were paid for by the respondent, is that it?

Mr. Colie. I cannot say whether they were or not.

The Court. Well, Mr. Lundy and Mrs. Lundy did not pay for them.

Mr. Heine. No.

PETITIONER RESTS.

Mr. Heine. I move for a dismissal of the petition at the end of the petitioner's case.

Mr. Colie. I haven't proved the funeral bill. Will you admit that?

Mr. Heine. Yes, sir.

The Court. What?

Mr. Colie. He admits that it will amount to a hundred dollars.

The Court. It is admitted that this man died.

Mr. Heine. Yes.

The Court. It is admitted that he died on the 21st of February, 1918.

Mr. Heine. Do you want to put the death certificate in? I make this motion on the ground that there has been no connection established between the injury received in this case, the breaking of the three or four ribs, as shown on the X-ray plate, and so on, and the statement of the doctor that the ribs were calloused over, and so on, and apparently no lesion there with the pleura or no pressure which would in any way indicate or cause a trouble such as the man died from, namely, acute or general tuberculosis. Tuberculosis is a germ disease, and there has been absolutely not a scintilla of medical evidence to connect in any way in this case the ribs with a condition of general tuberculosis, and there is evidence of a negative sputum test within thirty days of the man's death, and the doctor's testi-

mony, while somewhat evasive on that point, I think, presents some phases of qualified admission that tuberculosis should be apparent or might be apparent. I think I am safe in saying that it might be apparent within thirty days of death in a case where all the organs of the body were affected, and that this noise or rale at the base of the lungs which made him suspicious of tuberculosis indicates a condition which is one of disease and which under the—I have forgotten the name of the case—opinion written by Judge Swayze where there is germ disease such as the numerous ones cited there, gas poisoning, arsenic poisoning and various other diseases of that kind, which are blood diseases, come from a condition of the blood or from a germ which may be taken into the blood or in some other way gotten into the circulatory system, that these are not accidents arising out of and in the course of the employment.

The Court. Not if a man gets a germ disease in the course of his work. That is an occupational disease and not an accident, but if he receives an accident which causes the disease then there is no question but what the accident is the cause of death and not the disease.

Mr. Heine. But there is no proof in this case that the breaking of the ribs caused the development of the tubercular bacillus.

The Court. I think there is. It is admitted in this evidence that this man received a very severe fall, struck on his left side, bleeding and the bones broken, and that he rapidly went down hill, wasted away, night sweats and a number of different things, and in the course of a year and three months he died.

Mr. Heine. The wasting is not testified to as beginning until after 1917, more than a year after the accident.

The Court. Yes; Mrs. Lundy says that he commenced to waste away, got thinner.

Mr. Heine. I do not recall that she said that until about the time he took to his bed in the fall of 1917 or early part of 1918, but even assuming that, that condition is quite consistent with the tubercular condition which has been testified to as the cause of his death, and that is in no way connected with the breaking of the ribs or the accident or the fall. It is not shown in this record as it stands now that the fall caused the tubercular development in other parts of the man's body.

The Court. Motion denied.

Mr. Heine. I will offer the certified copy of the certificate of death.

Mr. Colie. I object to the offer.

The Court. It is admissible in evidence under the statute. I understand it states the cause of death different from what you contend it should be.

Mr. Colie. Yes.

The Court. And the only question in my mind is whether that cause of death as stated there is a part of the certificate. I think

the fact that the party is dead is allowable in evidence. I know under the New York law if the cause of death be stated it is evidence.

Mr. Heine. The certificate goes in in its entirety, if your Honor please.

Mr. Colie. Except for the statute I would object on the ground that it is hearsay.

The Court. I will let it in evidence.

Mr. Colie. The entire certificate?

The Court. I will let the whole certificate in evidence, and then the question will come up as to the effect of the statement.

Mr. Heine. Statement is made by Mr. Fewsmith, dated February 21, 1918, cause of death was as follows: "Organic cardiac disease contributory acute rheumatism, J. B. Fewsmith."

Mr. Colie. My objection would be on the ground that I have no opportunity to cross examine Dr. Fewsmith.

The Court. It is not evidence unless the statute makes it so.

Mr. Colie. Not having looked at the statute I will ask for an exception.

The Court. About the question of the effect of this particular statement—all the rest may be evidential—on that particular statement my recollection is that it is not evidence. I will not so hold. I will admit the whole certificate in evidence and consider the effect of it later.

DR. JOHN H. HERMAN.

Direct examination by Mr. Heine.

Q Doctor, you are licensed and practicing physician in this state? A Yes, sir.

Q And where is your office? A Office is in Orange.

Q What institution are you a graduate of? A Bellevue.

Q Do you recall the man Patrick Lundy? A Yes, sir.

Q When did you examine him? A The latter part of November as I remember.

Q How long have you been practicing, Doctor? A Four years.

Q Where did you make this examination, Doctor? A In the office of Dr. Satchwell, Newark.

Q Dr. Satchwell had been previously treating him? A Dr. Satchwell had seen him several times before. He was in the habit of calling there to be looked over.

Q You were taking Dr. Satchwell's work? A While he was sick.

Q After his operation? A No; he was not operated on at that time.

Q What was the matter with the doctor, was he in the hospital or away from practice? A He was sick at home.

Q What did you find on this examination of Patrick Lundy? A You mean actual physical findings?

Q Yes. A I examined his chest and the only thing that I could find was an enlargement of the heart—heart murmur—nothing else in the chest.

Q Did you hear Dr. McCartie testify to a condition affecting the pericardium or pericarditis in his examination? A Yes, sir.

Q Would the heart murmur such as you found be caused by the condition of the heart such as this pericarditis? A No.

Q Or periendocarditis? A What?

Q Periendocarditis. A There is no such—

Q There is no such thing; I will admit that. A You can have paricarditis and endocarditis, but it doesn't go by that term as periendocarditis. There is no such term.

The Court. What kind of sounds did you get?

Witness. I got the sound which accompanies—

The Court. I did not ask you what it accompanied, I asked what the character of the sounds were?

Witness. It is a loud blowing over the chest heard as the heart contracts. It is transmitted upwards and to the left; sometimes heard posteriorally. I did not hear it posteriorally in this case.

The Court. When was this?

Witness. It was in the latter part of November, 1917.

Q What would be the effect of that condition which you found in the heart on his physical strength and ability to do work? A It would make him weak, and I so stated at that time, that that condition of his heart I considered would prevent him from doing any hard work.

Q Did you get a history of this man's case from Dr. Satchwell? A Yes, sir; we talked the case over a good many times.

Q And was his condition as you observed it on this date in November better or worse than the history of the case as you received it from Dr. Satchwell? A He was better.

Q Did you find any lung adhesions? A No.

Q Did you find anything which in your opinion indicated a tubercular condition? A No.

Q Did you observe the condition of the ribs which had been broken? A I could not find the fracture. He told me about where it was, but I could not find the evidence.

Q Could you feel any thickening of the callous—where the callous was? A No; I could not.

Q Could you say then that the fracture had—he was completely all right as to the fracture—that there had been a perfect union or approximately so? A I should say so.

Q You couldn't distinguish with your hand even the callous? A I could not find it.

Q Could not find it. Would the condition of the heart which you found have any effect on his breathing? A Yes, sir.

Dr. John H. Herman, cross.

Q What would that effect be? A Make him short breathed on exertion.

Q Did you make any diagnosis from the condition which you observed as to the period of time over which that condition of the heart had taken to develop in this particular case? A It is hard to say exactly, but he had quite an enlargement of the heart and that takes quite a time to produce; that is, it takes probably several years.

Q What was your prognosis of that case at that time? A You mean as to the length of time he would live?

Q Yes. A That would depend entirely on how he was treated and whether he was at rest and whether he worked.

Q Whether he responded to the treatment? A Yes, sir.

Q What treatment was prescribed at that time? A I did not prescribe any treatment.

Q Simply made the examination? A That is all.

Q Under whose treatment was he at that time if you know? A I think he was supposed to be under the treatment of Dr. Satchwell at that time.

Cross examination by Mr. Colie.

Q Doctor, would this heart condition which you found result in loss of color or emaciation? A Would it result in loss of color? Yes, sir.

Q Emaciation—loss of flesh? A Not necessarily; not at the time I saw him, no. The heart murmur itself would produce no loss of weight.

Q Would the heart murmur account for the pains and tenderness in the chest, the upper left-hand side? A He might have those pains; yes, sir.

Q As a result of the heart murmur? A Yes, sir.

Q Did he complain of such pains when you saw him? A Yes, sir.

Q Did you recommend that he go back to work or that he lay off altogether? A I don't know that I made any recommendation. He said he had been working right along.

Q You had never examined him during the summer, had you? A No, sir.

Q You don't know who had? A Yes, sir; Dr. Satchwell had seen him.

Q What would cause an enlargement of the heart, Doctor? A Good many things would cause enlargement of the heart. Anything—

The Court. This heart.

Witness. This heart, the murmur he had would have caused enlargement of the heart.

The Court. What actually happens is that the heart tries to compensate for the loss of motion?

Witness. Yes, sir.

The Court. Then it is compensation, isn't it?

Witness. Yes, sir; the heart attempts to compensate to overcome some condition—diseased condition.

Q Heart murmur is not a disease, it is a leaking valve, isn't it? A Yes, sir.

Q It is not a germ in any sense? A It can be caused by germ and probably usually is.

Q Has the germ a name? A Well, it could be caused by quite a few germs. The most common cause of heart murmur is rheumatism.

Q Over-exercise? A No.

Q That cannot cause enlargement of the heart? A Oh, yes, it can cause enlargement.

Q I thought you said—

Witness. Oh, well, over-exercise might cause enlargement; yes, sir.

Q Could cause enlargement but not the murmur? A No.

Q If murmur should have shown itself—there isn't anything to show that this murmur was a brand new thing, was there, Doctor, or is there any way to tell how long it existed? A Can't say exactly, but in my opinion it existed some time.

Q It should have shown itself in the examinations made that summer, shouldn't it? A I should think so.

Q The advice then should have been complete rest for the patient? A Well, I didn't think that he needed complete rest, no.

Q At the time you saw him he did not need complete rest; he could work then? A I thought he could do some light work.

Q The same is true in the summer? A I didn't see him during the summer.

Q You do not then say that this man was a malingerer? A No, sir.

Q And could go back to work? A I said nothing like that.

Q Would this heart condition which you have found cause a fever? A Yes, sir; it might; that is, not the murmur itself, but the cause of the murmur, the thing that produced the murmur would cause a fever, that is rheumatism.

Q Did you find rheumatism at that time—any symptom of it? A Found no other symptom but the cardiac murmur.

Q From the cardiac murmur you now think it a possibility that he had rheumatism at that time, is that correct? A Yes, sir.

Q You did not diagnose it as rheumatism at that time, did you? A Yes, sir.

Q And did you make any recommendation to this man as to treatment or course of conduct at that time? A No. No; it wasn't part of my—I wasn't supposed to do that.

Q Did you take his temperature? A No.

Q How did you know that he had rheumatism or what made you think he had rheumatism then, the murmur? A Because the murmur which he had is practically in every case caused by rheumatism and nothing else.

Dr. John H. Herman, cross.

Q He did not have any outward fever or other signs of rheumatism? A Not that I can see, no.

Q You called it rheumatism merely because you say this kind of murmur could not come except from rheumatism? A In the great majority of cases, almost without exception.

Q What is the usual prognosis or result of rheumatism with the cardiac trouble? A Well, prognosises varies a good deal. You might have rheumatism as a child and get a heart murmur and live a good many years afterwards. Prognosises varies greatly, depending on the amount of damage done to the heart-valve.

Q How long does the disease usually last? A I just said it might vary a great deal.

Q A man could walk right up until the last day? A Oh, no.

Q How long before would he have to take to bed? A That is pretty difficult to answer. We cannot say exactly.

Q Was this acute rheumatism or not at the time you saw it? A No.

By the Court.

Q Was it chronic? A Yes, sir.

Q The medical profession comparatively speaking knows very little about rheumatism, doesn't it? A Well, they—lately they have changed the nomenclature a good deal. What is normally called rheumatism is now classed as a different condition, that is, particularly with reference to joint cases.

Q Can't you make any better answer than that, Doctor? A Will you give me your question again?

Q The knowledge of the medical profession about the disease known as rheumatism is a developing knowledge but not at its perfect state by any means at this time, is it? A That is right.

Q And if anything the medical profession knows a little bit less about rheumatism than it does about tuberculosis, isn't that so? A Yes, sir.

Q Now, if a person with a chronic case of a heart murmur due to some prior condition of rheumatism, should have the third to the seventh ribs on the left side broken and up to that time be in apparently a good condition, a florid complexion, fair health, working every day, and then from that time on gradually but slowly become worse, finally, after an attempt of two or three months to work again at labor work, and then gradually getting worse and wasting more, dies, would you say that the injury had anything to do with the acceleration of death? A I don't think that any man could say.

Mr. Heine. May I note an objection to your Honor's question as not containing fully the medical facts stated in the evidence?

The Court. All right. Objection sustained. Strike out the answer.

WALTER S. WASHINGTON, sworn on the part of the respondent.

Direct examination by Mr. Heine.

Q Doctor, you are a licensed and practicing physician in this state? A Yes, sir.

Q Practiced here for a number of years? A Yes, sir.

Q Did you know the complainant here, Patrick Lundy? A I saw him once before he died.

Q And what date was that, Doctor? A I saw him January 25 last.

Q And at his home? A At his home, 66 Bloomfield avenue, in the presence of Mrs. Lundy and Dr. Joseph L. Fewsmith.

Q Will you state, Doctor, what you found at that time on the examination? A Yes, sir. Mr. Lundy was apparently very seriously ill. His temperature was 101. His breathing was rapid, labored; apparently had a good deal of difficulty in getting his breath. Examination of his chest showed that he had—first the heart, that he had some enlargement, that he had diseases of the mitral valves with a murmur; that he had pleurisy with friction sounds—no rales, just friction sounds; that some of the joints were painful and with no swelling that was noticeable about them at that time; just pain in them. In addition to the condition of his heart, as I speak of it, he had an irregular pulse and a very slow pulse. His pulse wasn't over 80 at times, which we speak of as bradycardia—slow pulse.

Q Is the condition of the heart which you found on this examination a diseased condition? A Yes, sir.

Q And can you, from your observation of that time of his heart's condition, state what, in your opinion, would be the length of time that is required for him to become in the condition that you found him? A The valvular condition which I found might be caused in a short time or in a longer time, the enlarged condition accompanying it must have been a time covering a great many months, possibly more than a year. That varies very much, in the length of time. At any rate, that particular condition was not a recent one and it was not an acute one.

Q Would such a condition of the valves or the enlargement of the heart be ever caused by a trauma? A Never under any circumstances.

Q With what condition—physical condition of the body—might that enlargement or valvular condition be associated as you have found it in your practice? A Most common—almost the invariable condition is one of rheumatism, although one may have it without the joints being involved so far as can be seen, but it frequently is an accompaniment of some form of sore throat; it is sometimes the result of infection; sometimes what is known as the streptococcus germ is the cause of the valvular disease, but the most common one is rheumatism of the joints.

Q As the Court is interested in the relative knowledge of the medical profession regarding tuberculosis and rheumatism, can you state whether there is any difference at the present time with regard

to the knowledge of the causes; whether any progress has been made with regard to the knowledge of the causes as contrasted with the effect that you find in rheumatism and tuberculosis? A Yes, sir; the cause of tuberculosis has been established for many, many years; it is always and invariably the tubercle bacillus. The causes of rheumatism are not known. There are a great number of theories as to its cause, which has spread over a great many years, but even now we do not know, in a very great many cases, the actual cause of rheumatism. As I say in some cases you have the streptococcus infection as a result of an infection somewhere else, or you have an infection through the tonsils, but in a general way very little is known as to the cause of rheumatism.

Q But is it not a fact, Doctor, that one of the ordinary and most general concomitant conditions along with rheumatism is an endocarditis such as you found in this man Lundy? A Yes, sir; that is true—that is very true.

Q And would not the condition you found there in your opinion be indicative of a rheumatic condition or rheumatism? A Yes, that and the condition of the pleura and the bradycardia. Rheumatic pleurisy is a well-known disease accompanying rheumatism, but bradycardia, or a slow pulse, is particularly indicative of the condition, being rheumatic in character.

Q At the time of or just prior to making this examination did you have any conversation or get any history from Dr. Satchwell? A Yes, sir.

The Court. Is that competent testimony?

Mr. Heine. Whether he secured a history from Dr. Satchwell?

The Court. Yes, or some other doctor.

Mr. Heine. We have had it in on both sides.

The Court. All right. If there is no objection, go ahead.

Q What was the history in regard to this heart condition which you received from Dr. Satchwell?

Mr. Colie. I object.

The Court. Objection sustained.

Q Did you get any history directly from Mr. Lundy at that time as to this heart condition? A No. I think the only thing that Mr. Lundy himself said was that he never had rheumatism until January —I don't think he said that he ever had rheumatism until January, that is about two weeks or so before I saw him.

Q Would there be any connection in your opinion between the accident which resulted in the breaking of these five or six ribs between the arm on the left-hand side and the lower part of the ribs, posterior or axiliary region, and the heart condition which you found in the valves and the case of the enlargement.

Mr. Colie. I object on the ground that that question calls for a conclusion on a hypothetical question without stating all the medical facts in the case.

The Court. He does not have to. He can state part of them. If that is your objection I cannot sustain it.

A There is no relation whatever.

Cross examination by Mr. Colie.

Q Doctor, as between the rheumatism and the heart trouble, which was the cause and which was the effect? A The cause is always the rheumatism and the effect is the trouble with the valve.

Q So that finding the trouble in the valve you think you find the cause and attribute it to rheumatism? A We do if there is no other cause.

Q You ordinarily have swollen joints with rheumatism, don't you? A Yes, sir.

Q You didn't have them in this case? A No; only had pains.

Q In pleurisy you ordinarily would have water, wouldn't you? A You do not ordinarily, no; you sometimes do. You sometimes have fluid in the pleural cavity but you do not always have it, and there was none in this case. There was simply the friction sounds which indicated two pleural surfaces rubbing over each other with each expiration or with each breath taken.

Q Now, will chronic rheumatism cause a heart murmur—valvular trouble—or must it be acute? A I think it must always be acute at some stage. I do not think what we ordinarily speak of as chronic; rheumatism is really chronic. Rheumatism as a disease by itself I think is hardly a proper term to apply. It is simply the term that is applied to rheumatism which has had acute stages at various times.

Q How would one know whether they had any acute rheumatism? A Well, of course, the most satisfactory way is to consult a doctor, and they probably would find out in that way, but they might have some pains in the joints, and so on, without their thinking they had rheumatism, and still it might be rheumatic in character. And then, as I say, another quite common cause is the infection through the tonsils; that is, particularly with children.

Q So that a man could have acute rheumatism and not know it? A Well, I don't think he would have very acute attacks without knowing it. It would make him ill—it would make him sick—he would have chills and fever and pain in the joints and joints would swell and all sorts of things, and still he might have a very moderate one without being very ill, but ordinarily if it is an acute attack it would be sufficient to make him ill and make him consult a physician.

Q Is there any predisposing causes of rheumatism or are we all equally subject to it? A Why, I think the predisposing causes are partly hereditary. It seems, like some other things, to be more prevalent in some families than it is in others; another thing is working

or occupation in damp, unwholesome places. Of course, debility and bad surroundings, bad air and anything which debilitates or lowers the general tone of the system leaves it open to practically any of these diseases, but I think the disposition to rheumatism is very largely hereditary. It runs in families. See many families in which the children have it and parents have it. That is not always true.

Q You have never heard the history of Lundy's family? A No; I don't know anything about that. I only know just what I found at the time I examined him.

Q What is the usual result of acute rheumatism? A Always varies. There is no general result. It varies in different individuals.

Q How frequently do they die of it? A Oh, they very often die—in time—some time.

Q Can you give the percentage? A No, I couldn't give you the percentage.

Q You wouldn't want to say it is ten per cent.? A Die?

Q Yes. A I think ten per cent. might die.

Q Before old age helped along? A Oh, yes; I think so. Oh, yes; I think ten per cent. might die. Oh, yes. It is usually a disease of quite long standing.

Q What determines that it is a disease of quite long standing? A That is, one hardly ever dies from the first attack, but they have recurrent attacks, and finally—it may last over fifteen, twenty-five, thirty years before the heart gets in such condition that it is unable to do its duty. You see each time—with each attack where the heart is involved the valve is involved, and it makes it more difficult for the heart to pump the blood through the system, and then what we call compensation has to be re-established—it may have to be re-established with each attack and that makes the heart larger, and ultimately the compensation cannot be completely established and one dies, but they may die from some supervening disease coming on in connection with it.

Q Is it the heart that usually kills them—the heart complication? A It is the heart or some complication of it; not the rheumatism itself, no.

Q I mean the heart's complications usually kills them? A Oh, yes, certainly; that or something else supervening on top of it or in connection with it.

Q What disease supervening might help to precipitate it? A Pneumonia.

Q Do they frequently have or usually have dropsy when they die of that cause? A Very often do.

Q Any dropsy in this case so far as you know? A No; none at all. The only complication in this case was the pleurisy.

Q You say the evidence of pleurisy was inflammation and no water? A Yes, sir; friction sounds and pain, of course.

Q And if this was the first attack you have said that it might last a year, acute rheumatism? A Yes, sir.

Q Attack after attack, and then they would get so that there was some complication— A Yes, sir.

Q But there are no predisposing causes that you know other than hereditary weakness or run down? A Yes, sir.

RESPONDENT RESTS.

Mr. Heine. I renew my motion for a dismissal on the ground that the weight of the evidence shows no connection between the injury and the broken ribs, which were healed so that they could not be—the callous which indicates the line of fracture could not be discovered—and that there is nothing which has been brought into the case which connects the traumatic injury, a blow over the ribs from the arm down—this region here (indicating) with the condition which caused the man's death, which was a diseased condition of the heart brought about by probably, or possibly, rheumatism or some other condition which caused the valves to be affected and the heart to become enlarged, and the cause of death as certified by Dr. Fewsmith coincides with the testimony of the witnesses for the defense, that the traumatic condition was secondary; that is, the man died of organic heart trouble with a secondary complication of a rheumatic character. The petitioner's medical testimony does not negative that or meet it, but shifts it to the proposition of tuberculosis. I maintain as I did before that there is no connection between the injury received by a blow and the disease, which is the sole result of a tubercle bacilli—as Dr. Washington said the medical people are sure that tuberculosis is caused by that one thing, but they are largely in doubt on the subject of rheumatism—and the condition which exists in this case is that the man's ribs were broken, they were healed, he went to work for—part of the time that summer he went out and walked around two hours in the morning and two hours in the afternoon, and later he worked for six weeks before Christmas, 1917, and so far as any direct connection of the heart valves or enlargement of the heart with this accident is concerned the case is barren of any such evidence. The condition is one in which a disease was the cause of the man's death and not the accident. I do not think that I need go into it any more fully. The testimony is brief and full. I fail to see that there is any connection that the injury arose out of the employment.

Mr. Colie. I think we have sustained the burden of proof.

The Court. The Court will find that the decedent died as the result of injuries sustained by an accident which arose out of and was in the course of his employment. I will find that he was temporarily and totally disabled from January 1, because his wife said that he last worked some time between Christmas and January; and up to the time of his death, four or five weeks, he would be entitled to $9 a week for that and $100 funeral expenses, and $6.30, which you say is thirty-five per cent. I will allow a counsel fee of $150 and costs, which will amount to $170 altogether.

Exhibit R. 1.

EXHIBIT R. 1.

City of Newark,
Essex County, State of New Jersey.
(Seal.)
United States of America.

I, W. J. Egan, City Clerk, of the City of Newark, Essex County, State of New Jersey, do hereby certify that the following is a true and correct transcript from the Record of Deaths in my office:

Place of death—66 Bloomfield Ave.
Full name of deceased—Patrick Lundy.
Sex—Male. Color—White. Married. Date of Death—Feb. 21, 1918.
Date of Birth—March 15, 1882.
Age—35 yrs. 11 mos. 6 dys.
Occupation—Laborer.
Birthplace—Ireland.
Name of father — Thomas Lundy.
Birthplace of father—Ireland.
Maiden name of mother—Helen Higgins.
Birthplace of mother—Ireland.

I hereby certify that I attended the deceased from Dec. 15, 1917, to Feb. 21, 1918.
The cause of death was as follows: Organic Cardiac Disease.
Contributory—Acute Rheumatism.
(Sgd) F. B. Fewsmith, M. D.
Former or usual residence of deceased—66 Bloomfield Ave.
Place of Burial or removal—C. H. S.
Date of Burial—Feb. 25, 1918.

(Seal) In witness whereof I have hereunto set my hand and affixed the seal of said city this 27th day of February, 1918.

W. J. Egan,
City Clerk.

Determination of Facts and Rule for Judgment.

Filed September 3, 1918.

A petition having been filed in the above stated matter praying for compensation to which petitioner may be entitled by virtue of the Workmen's Compensation Act and the various supplements and amendments thereof, and a time and place for the hearing of said petition having been fixed, and it appearing to the Court that the said petition and order fixing the time and place of hearing have been duly served upon the respondent on the 20th day of December, 1917, and petitioner and respondent having appeared on the day fixed for hearing, and the matter having been thereupon adjourned from time to time until May 15, 1918, and on that date by consent a supplemental petition having been filed by Mary Lundy together with an answer thereto, and the matter coming in for hearing on that date, the petitioner being represented by Runyon Colie of the firm of Edward M. & Runyon Colie, and the respondent by M. Casewell Heine, and the Court having heard the testimony offered in behalf of the parties hereto, and counsel having been heard; and Mary Lundy having been on July 26, 1918, duly appointed administratrix of said Patrick Lundy and by order of this Court, entered on consent of respondent, on August 5, 1918, having been made a party to this proceeding with the same effect as though before final hearing,

I do find and determine from the evidence taken in this cause as follows, to wit:

First. That the petitioner, Patrick Lundy, now deceased, was on the 19th day of December, 1916, in the employ of respondent in the capacity of a laborer.

Second. That at the time of the injuries the said Patrick Lundy received as wages in said employment the sum of eighteen dollars ($18) a week.

Third. That on the 19th day of December, 1916, the said Patrick Lundy, while in the course of his employment and engaged in the work of cleaning a mausoleum in Mt. Pleasant Cemetery, Newark, fell by reason of the slipping of the scaffold upon which he was working; that the said fall was of ten or twelve feet onto a marble pavement, and was an accident arising out of and in the course of his employment.

Fourth. That the respondent herein had knowledge of said accident.

Fifth. That as a result of said accident the said Patrick Lundy sustained serious injuries, among other things a fracture of most of the ribs on the left side of his body, and that as the result of said injuries received in said accident he died on February 21, 1918.

Sixth. That the respondent herein has paid in full for medical attendance during the first two weeks; that there has been paid for

the burial of said Patrick Lundy the sum of one hundred dollars ($100), which has not been paid by respondent.

Seventh. That Patrick Lundy was totally disabled as the result of said accident from January 1, 1918, to February 21, 1918, the date of his death.

Eighth. That Mary Lundy as administratrix of Patrick Lundy deceased, is entitled to compensation for total disability of Patrick Lundy from January 1, 1918, to February 21, 1918; that Patrick Lundy left him surviving a widow, said Mary Lundy, who was dependent upon him, and that said Mary Lundy under her supplemental petition is entitled to compensation for three hundred weeks at the rate of six dollars and thirty cents ($6.30) per week, together with one hundred dollars ($100) for burial expenses.

Ninth. That the petitioner is entitled to costs in this proceeding.

It is, therefore, on this fifth day of August, 1918, on motion of Edward M. and Runyon Colie, attorneys of the petitioner,

ORDERED, that the respondent herein pay or cause to be paid to Mary Lundy, as administratrix of Patrick Lundy, deceased, the sum of nine dollars ($9) per week for a period of seven and two-seventh weeks from the first day of January, 1918, to the 21st day of February, 1918, and to Mary Lundy on her supplemental petition the sum of six dollars and thirty cents ($6.30) per week for three hundred weeks, calculated from February 21, 1918, together with one hundred dollars ($100) for burial expenses, and also the costs of this proceeding to be taxed;

AND IT IS FURTHER ORDERED that Edward M. and Runyon Colie, attorneys of the petitioner, be and they are hereby allowed the sum of one hundred and fifty dollars ($150) as counsel fee herein in addition to $20 costs, the same to be paid by the petitioner out of the weekly payments at the rate of three dollars ($3) per week until the full amount is paid.

WM. P. MARTIN,
J.

I approve the foregoing Order and Determination as to form:

M. CASEWELL HEINE,
Attorney of Respondent.

Reasons.

Filed September 28, 1918.

New Jersey Supreme Court

MARY LUNDY, widow of PATRICK LUNDY, deceased, *Petitioner-Defendant in Certiorari,* *vs.* GEORGE BROWN & COMPANY, a corporation, *Defendant-Prosecutor in Certiorari.*	*On Certiorari.* *Reasons.*

The said prosecutor, George Brown & Company, a corporation, comes and prays that the judgment against it in the Court of Common Pleas in the County of Essex may be set aside, reversed and for nothing holden, for the following reasons:

1. Because the Court held that the death of petitioner's decedent was caused by an accident arising out of and in the course of his employment.

2. Because the Court held that the death of petitioner's decedent was proximately caused by the accident suffered by him while employed by the prosecutor.

3. Because the Court refused to find that an independent cause not arising out of and in the course of the employment was the proximate cause of the death of petitioner's decedent.

4. Because there is no evidence to support the findings of the Court that the death of petitioner's decedent proximately resulted from an accident received in the course of and arising out of his employment.

M. CASEWELL HEINE,
Attorney for Defendant-Prosecutor.

Opinion of Supreme Court.

Filed March 18, 1919.

NEW JERSEY SUPREME COURT.

NOVEMBER TERM, 1918.

MARY LUNDY, widow of PATRICK LUNDY, deceased, *Petitioner-Defendant,* *vs.* GEORGE BROWN & COMPANY, a corporation, *Prosecutor.*	*On Certiorari.*

Argued November , 1918. Decided February , 1919.

Before Justices Bergen, Kalisch and Black.

For the prosecutor, M. Casewell Heine.

For the defendant, Edward M. and Runyon Colie.

The opinion of the Court was delivered by KALISCH, *J.*:

The single question presented here is whether there was any evidence in the case on review justifying the court below to make a finding that the death of petitioner's decedent was the result of injuries received by him in an accident admitted to have arisen out of and in the course of his employment.

The prosecutor's contention is that there was no such evidence.

The petitioner's husband was injured on December 19, 1916. He died on February 21, 1918, about fourteen months after the accident. On December 18, 1917, Patrick Lundy, the petitioner's decedent had filed his petition for compensation to which the prosecutor, on February 6, 1918, filed its answer. Before the day set for the hearing Lundy died. On May 15, 1918, Mary Lundy his widow filed her petition setting forth that the estate of Patrick Lundy was entitled to compensation from September 17, 1917, to February 21, 1918, the date of his death, for his disability during that period as the result of said accident.

The petitioner further prayed for compensation for the death of her husband as a result of the accident, according to the fixed schedule of compensation in such cases, and for an allowance of one hundred dollars for funeral expenses. To this petition the prosecutor filed its answer, on May 15, 1918, in which it denied that the death of petitioner's decedent was caused by an accident arising out of and in the course of his employment. Subsequently, by consent in writing of the prosecutor's attorney, an order was entered that the petitioner be admitted as a party petitioner, she having been appointed administratrix of the estate of her husband on August 5th, 1918.

The prosecutor's sole contention in the court below was, and now reiterated here is, as follows: "Mr. Heine. My contention is that the death was due to a rheumatic cardiac disease, which had a secondary or contributing cause in rheumatism. That the cause of death was from a disease in no way connected with the traumatism received as a result in any way from the accident. That is the question, whether the death resulted in any way from the accident."

On that branch of the inquiry the court below found, that as a result of the accident the petitioner's decedent "sustained serious injuries, among other things a fracture of most of the ribs on the left side of his body, and that as the result of said injuries received in said accident he died on February 21, 1918."

It is this finding which counsel of prosecutor contends is not supported by any evidence.

Of course, if the testimony or circumstances adduced do not fairly give rise to a reasonable inference that the death of the decedent was attributable to the injuries he received in the accident, then the award made, by the court below, on that finding must be reversed.

We think there was evidence which fully justified the finding of the court below on the mooted inquiry. It is true that the medical testimony in the case is in sharp conflict on the question whether the decedent died as a result of his injuries, or from an entirely independent cause. It is not all surprising to find opinions of medical experts, on the opposite sides of a case, in disagreement on the matter. It was not essential to the petitioner's right to a recovery that she should have established that the fractured ribs were the proximate cause of

death. If the injuries were the producing cause the proof of that fact is sufficient.

On behalf of the petitioner it was shown that her husband, up to the time of the accident, was a strong, healthy man; that by the accident nearly all his ribs on his left side were fractured; that though the injured ribs united, the deceased never recovered from the effects of his injury; he became broken down in his general health and went into a steady decline. From December 19, 1916, the date of his injury, until September 17, 1917, he gradually grew weaker, but, at that time, owing to the refusal of further payment to him by the prosecutor, for temporary disability, the decedent was necessitated to seek employment, and after working from October, 1917, until January 1, 1918, he was compelled to relinquish work by reason of his physical inability to continue, and died six weeks thereafter. The petitioner produced a physician who testified, that the deceased came to him in October, 1917, and remained under his medical care until January, 1918, and that in his opinion the cause of decedent's death was general tuberculosis, that is, a condition of the disease which affected the entire system without being localized.

This testimony was controverted by the physicians who testified on behalf of the prosecutor, that the cause of death of the decedent was not attributable to an injury, but was due to heart disease, a not unusual result of rheumatism.

We think, however, an inference may be properly drawn from the evidence in the cause, that the nature of the decedent's injuries was of such seriousness as to greatly impoverish his system and predispose it to an infection of tuberculosis, of which there was not the slightest indication before the injury. For according to the testimony, the decedent, before he was injured, was a man in full health and vigor, and immediately after he began to fail and grow weaker, from day to day, without any other apparent cause, than from the injuries sustained by him; and if the cause of his death was tuberculosis, general in its character, and which culminated in death in a little over a year, it is difficult to escape the conclusion that the cause of death was an incident resulting from the accident.

And even if we adopted the theory of the prosecutor's counsel that heart disease caused the decedent's death, we are still confronted with the situation that a strong, vigorous, hard-working

man without any indication of heart disease develops that trouble after a serious injury, as appears in this case, and, therefore, it seems to us, that there is a permissible inference that if heart disease was the proximate cause of the decedent's death, it was superinduced by the injury.

While, concededly, the time which elapsed between the date of injury, and date of death was sufficiently long for the decedent to have developed or contracted some fatal disease from a wholly independent cause, still, in view of the circumstantial evidence tending to establish an unbroken continuity of physical degeneration of the former vigorous constitution of the decedent, immediately following the injury to the day of his death, we cannot properly say that there was no evidence on which the court could make a finding that the death of the deceased was due to the accident.

The judgment is affirmed, with costs.

Rule of Affirmance and Remittitur.

Entered March 29, 1919.

The Court having inspected the transcript of the proceedings of the Court of Common Pleas of the County of Essex, returned with the certiorari in this cause, the reasons of error assigned, and heard the argument of counsel thereon and read and considered the briefs submitted, Does Order that the judgment of the Court of Common Pleas of the County of Essex, be affirmed with costs, and that the record be remitted to the Court of Common Pleas of Essex County.

Entered March 29, 1919.

On Motion of

EDWARD M. & RUNYON COLIE,
Attorneys of Petitioner and Defendant in Certiorari.

A true copy,

Enoch L. Johnson,
Clerk.

Arthur W. Cross, Law Printer, 243 Market Street, Newark, N. J.

New Jersey Court of Errors and Appeals

MARY LUNDY, widow of PATRICK LUNDY, deceased,
Petitioner,
Defendant in Certiorari,
Respondent,

vs.

GEORGE BROWN & COMPANY, a corporation,
Respondent,
Prosecutor in Certiorari,
Appellant.

On Appeal from Supreme Court.

BRIEF OF RESPONDENT.

The appellant assigns only four reasons for reversal. These are found at case, page ii. They raise only one point, namely, did the Court err in finding as a fact that the death of petitioner's decedent was caused by accident arising out of and in the course of his employment (Reason 1).

Reasons 2, 3 and 4 are substantially the same except that they refer to the alleged error of the Trial Court in finding the accident the *proximate* cause of death. The law is settled that the accident need not be the proximate cause, but it is sufficient that it be the cause *sine qua non*. It is important to bear this distinction in mind, in reading appellant's brief, as time and again he rests his argument upon the necessity of petitioner's establishing a direct or proximate causal relation between the accident and the death.

It was admitted in defendant's answer that an accident happened and that it arose out of and in the course of decedent's employment.

The only question therefore is, did the Trial Court err in finding that the accident caused the death.

This was purely and simply a finding of fact. The rule as to reviewing such finding is clearly settled.

In *Nevich* v. *D. L. & W.*, 90 N. J. Law 228, at p. 230, this Court in reversing the Supreme Court, said:

> "In cases of this class the Supreme Court is not authorized to determine the preponderance or weight of testi-

> mony, for the statute declares that the decision of the judgment of the Court of Common Pleas 'as to all questions of fact shall be conclusive and binding.' "

In *Brinsko's Est.* v. *Lehigh Valley,* 102 Atl. 390 at 391, this Court again said:

> "The right of the Supreme Court to review a proceeding under the Workmen's Compensation Act is limited to questions of law, and it cannot review determinations of fact if there is evidence to support them."

If there were any facts or circumstances in the evidence in the present case which reasonably permitted the inference that the accident caused the death, then the judgment under review must be affirmed.

The Facts.

Patrick Lundy was working for George Brown & Company on December 19, 1916, putting a marble slab in the entrance of a chamber in a cemetery vault, when the scaffold on which he was standing gave way, and he fell many feet to the ground, breaking the 1st, 3rd, 4th, 5th, 6th and 7th ribs on the left side of his body.

Up to the time of this accident Lundy had enjoyed unbroken good health. The witnesses Hart and Little, who had both known him for about eight years, testify to this in the most emphatic manner. (Case, pp. 24-25.)

The witness Jamison, defendant's superintendent, under whom Lundy worked at the time of the accident, and who had known him for four years, testified to the same effect (Case, p. 26), and Mrs. Lundy testified that she had known him for four years, that he never complained of any ailment of any kind (Case, p. 12; l. 48), and that he was a very strong and very healthy looking man.

All this was changed by the accident. Lundy was brought home by Dr. Fewsmith, George Brown & Company's doctor, and put to bed, and for three days coughed blood (case, p. 15, l. 12, *et seq.*). At the end of about two weeks Lundy was able to sit up in a chair, and later in the winter he was able to walk out doors, for a few hours, on nice days (case, p. 9). On these walks he tired easily and had to sit down and rest frequently (case, p. 28); and during this time, namely, the winter and summer after the accident, he "seemed to be getting weaker and weaker

and failing all the time" and after the accident "he never could stand up straight" though he always had stood up straight before (case, p. 26); and he "always complained of a soreness of his left side. When he stooped he was unable to straighten up." (Case, p. 10, ll. 20-21.)

The summer after the accident Dr. Satchwell, who also represented the defendant company, tried to get Lundy to go to a sanatorium for *tuberculosis* (case, p. 11, l. 38, *et seq.*), and when Lundy said he couldn't afford it, said, "Make the company do it." (Case, p. 14; l. 9.)

Up through September 17th, 1917, the defendant paid Lundy compensation, under the act, for temporary disability (this is admitted in the answer); and after the compensation stopped, that is to say, some time in October, Lundy tried to work again (case, p. 9, l. 42, *et seq.*). But he was unable to do the heavy work he had done before, complained of pain and was irregular in attendance (case, pp. 24-25), and when he got home in the evening he was worn out (case, p. 9; l. 45, *et seq.*). At this same time, *i. e.*, in October, 1917, Lundy went to Dr. McCartie, complaining of pain in his chest, where he had the injury, and loss of strength and flesh. Dr. McCartie bound up the ribs and gave him a tonic, but he continued to grow weaker. Sometime in January, 1918, he took to his bed, and shortly thereafter, Dr. McCartie was replaced by Dr. Fewsmith, *the defendant company's doctor,* who again took charge and treated Lundy from that time until his death on February 21, 1918. (Case, p. 28, l. 18, *et seq.*)

POINT I.

The facts fully warrant the inference that the accident caused the death.

The full force of the testimony can only be obtained by reading the entire record, but the facts set forth in the above brief outline of the testimony are amply sufficient to justify the inference that the accident of December, 1916, and the consequent disability wrecked Lundy's health and caused his death. It is the inference that the average man would draw from such facts. This being so, it is, and must be, a permissible inference. We maintain that *if there were no medical "opinion" testimony in this case whatever, still the finding of the Trial Court would have to be sustained, being well within the bounds of permissible inference from the proved facts.*

Point II. of prosecutor's brief impliedly admits that the facts in the case would warrant the inference that the accident caused the death, but maintains that the introduction of medical "opinion" evidence by petitioner precludes the Court from drawing the inferences that would otherwise be permissible, if such inferences were contrary to the petitioner's medical witness. This is a novel and wholly unsound proposition. As a matter of fact the medical opinion evidence on behalf of petitioner, in no way conflicted with the inference of causal relation between the accident and the death; indeed it supported the inference. But, assuming for the sake of the argument, that it did conflict the Court is not *bound* by the testimony of any witness, be he for petitioner or respondent, or be he lay or expert. If the facts would warrant an inference without expert testimony, then the Court can draw that inference in spite of the expert testimony.

A case might perhaps be imagined where the facts apparently warranted a certain inference, but the expert testimony put a new explanation on the facts, so as to make them no longer warrant the inference. Even this is doubtful, since the Trial Court may disbelieve the experts—and very frequently does.

Under Point II. of prosecutor's brief it is also argued that medical opinion testimony is absolutely necessary to prove a causal relation between the accident and the death in a case such as this. This proposition is also unsound. It ignores the fact that the causal relation stands out clearly and distinctly, on the face of the facts, so that any rational human being is able to draw the conclusion of cause and effect. Just how, in detail, the cause worked out to the effect is, in this case, as in many others, a thing that experts alone might be able to explain, but such expert explanation is in no sense essential to the inference. For example, a few months ago an explosion occurred at Morgan, and the Prudential Building, in Newark, rocked perceptibly. The average man drew the inference that the explosion caused the rocking of the building. This was a permissible inference from the facts, yet probably not one in a thousand, of those who properly made this inference, could explain the method by which the cause produced the effect. This was for experts to explain, but without experts, and even if experts differed, the inference would be permissible, and the determination of fact, made by the laymen, correct.

The same principle applies to the inference of cause and effect drawn by the Court in the present case; it needs no expert testimony to make it permissible.

Reimers v. *Proctor Pub. Co.,* 85 N. J. Law 441, in the Supreme Court, is the only authority appellant has cited for his proposition of the necessity of expert testimony to warrant the inference of death caused by accident. The opinion in the Reimers case, so far as it deals with this subject, is *dictum.* The Court decided that the accident did not arise out of and in the course of the employment. That disposed of the case. The opinion then went on to explain why there could be no recovery even had the accident come within the Act. It is upon this latter part of the opinion that appellant relies.

In the first place we call attention to the rather full exposition of the facts in the opinion, as indicating that the Supreme Court did not mean to lay down any new general doctrine of evidence, but was considering only the particular facts before it and the relation of the medical evidence to those facts. If in the Reimers case the Supreme Court really meant to intimate that a definite expression of opinion from a medical man that "the accident caused the death," is always necessary, where the question of causal relation between accident and death is in issue, then that portion of the opinion is not good law and should not be followed. The determination of the Trial Court is final if there is *any* evidence to support it. It is not the law that there must be a particular *kind* of evidence, or that it must emanate from a particular source, namely, medical experts.

The recent case of *New York Switch & Crossing Co.* v. *Mullenbach,* 103 Atl. 803, in this Court, definitely settles that medical testimony is not necessary. The decision of the Supreme Court, affirming the Common Pleas was adopted *per curiam* by the Court of Errors and Appeals. We quote the Supreme Court opinion:

> "This is a workmen's compensation case, in which judgment was given for the petitioner in the Hudson Common Pleas Court. Petitioner's decedent, Andrew Mullenbach, was employed by the prosecutor as a foreman, on March 11, 1916. While engaged in lifting a heavy steel girder he strained the muscles of his back, aggravating two hernias. As a result, he had to undergo an operation. He afterwards on June 4, 1916, died of post operative pneumonia. The Trial Court found as a fact that the accident arose out of and in the course of his employment.

> This is the controverted question in the case. Our reading of the testimony satisfied us that the Trial Court's findings of fact are supported by the evidence. This is conclusive. Hulley *v.* Moosbrugger, 98 N. J. Law 163, 95 Atl. 1007, L. R. A. 1916C, 1203. There is no legal merit in the other reasons presented for setting aside the judgment."

On referring to the state of case, in *New York Switch & Crossing Co.* v. *Mullenbach, supra,* we find the opinion in the Hudson Common Pleas was as follows:

> "I have been clearly satisfied that the cause of the death of the petitioner's husband was a post-operative pneumonia. The respondent's own physician makes that clear. The operation was to relieve an inguinal hernia; and *the real question in the case is one of fact—whether this hernia was caused by the accident. The principal testimony on this question was given by the respondent's physician and the petitioner herself.* The impression made on my mind during the trial was that the petitioner was more persuasive in her testimony. A careful reading of the testimony convinces me that the *physician's testimony on that question is out-weighed by the petitioner.* Finding affirmatively on this question, the *causa causans* rule is applicable. The other facts are undisputed. The terms of the order will be fixed on notice under the rules." (Italics ours.)

In the above case this Court affirmed a judgment of the Common Pleas on a question of the physical results of an accident, based on the testimony of a lay witness—petitioner herself—not only without an expert witness to support her, but *against* the testimony of respondent's physician, on the ground that her testimony was entitled to greater weight than his.

The Mullenbach case therefore settles any doubt that might have existed by reason of the Reimers case, and makes the law clear that the opinion of a medical man that a certain thing caused a certain physical result, is not essential, to a finding that it caused such result.

The judgment in the case now before the Court should therefore be sustained on the facts clearly proven, even if there were no medical opinion testimony in the case, or even if the Trial Court had come to a conclusion differing from all the medical opinion testimony.

The medical testimony, however, also supports the judgment.

POINT II.

The Medical Testimony supports the judgment.

(a.) *The petitioner's medical testimony supports the judgment.*

The only medical witness called by petitioner was Dr. Daniel B. McCartie, who was the Lundy family's physician (case, p. 11, l. 15), and who treated Lundy from some time in October, 1917, to January, 1918, when he was replaced by Dr. Fewsmith.

Dr. McCartie, while also testifying as an expert witness, was primarily a fact witness, to tell what he knew about the case from his treatment of it. The facts he gives confirm the inference that death resulted from the accident.

Lundy came to Dr. McCartie's office for treatment in October, 1917. This was very shortly after the defendant company had stopped payment of compensation for temporary disability on account of this accident, which was paid to September 17, 1917. Lundy was then trying to resume work. He came to Dr. McCartie because "He complained of pain in his chest, where he said he had an injury, general bodily weakness and loss of strength—loss of flesh." (Case, p. 15; ll. 34-36.) He told Dr. McCartie of the accident and complained that he could not sleep at night and had pains through his lungs. (Case, p. 15, l. 54.) Dr. McCartie gave him a tonic and strapped up his chest where he complained of this pain. Lundy seemed to waste gradually and said, "He had *pains in the region of his lungs where he was injured.*" (Case, p. 17, l. 10.)

By January he had grown very thin and pale and had taken to his bed, had extreme difficulty in breathing and a very irregular temperature, pains in his joints and pericardium symptoms in his heart. (Case, p. 17, ll. 10-20.) An X-ray was taken and a specimen of sputum examined with a negative result. Some time in January, 1918, Dr. Fewsmith, the defendant company's doctor, replaced Dr. McCartie as attending physician.

Dr. McCartie's testimony in full is found at Case, pages 15-24.

In addition to the above facts, Dr. McCartie gave his opinion as to the case. It was that Lundy was developing a general tuberculosis. "I believed, your Honor, that this man was developing a general tuberculosis. The symptoms pointed that way to me." (Case, p. 18; ll. 21-24.) Dr. McCartie then stated, "General tuberculosis is tuberculosis of the whole body. It starts from some focus and the tubercle is brought by the blood to

all the organs of the body. It is a general disease which lasts ten or twelve weeks." (Case, p. 21; ll. 4-10.)

He was then asked whether he had formed an opinion as to the focus of this tuberculosis, and gave his opinion as follows:

> "Your Honor, the man was complaining of local pain in the lung and cough and sweat, and constantly getting weaker, and thus if his affection would come from any part it should come from his lung on that account." (Case, p. 23; l. 52, *et seq.*)

Dr. McCartie's opinion, therefore, was that the lung at the site of the pain (that is to say, at the site of the injury, since the pain was always at the site of injury, according to the testimony), was the focus or starting point of the general tuberculosis which killed Lundy, in brief, that the injury caused the disease that caused the death. This is the only reasonable interpretation of his testimony. Far from refusing to state that the injury caused the death, Dr. McCartie explains how, in his opinion, it did cause the death.

Appellant makes much of the point that no general question was asked Dr. McCartie as to the causal relation between the accident and the death. Such a general question to Dr. McCartie would undoubtedly have been proper and advisable, but the fact that petitioner's attorney did not ask such a question is immaterial, whereas in this case the doctor gives in detail his opinion that general tuberculosis caused the death, and that this tuberculosis came from a focus at the lung where Lundy was injured.

The appellant also argues that since general tuberculosis only lasts from ten to twelve weeks, if it was general tuberculosis that killed Lundy it must have started at the earliest in October or November, 1917, which was long after the accident. From this it argues that the tuberculosis could not have been caused by the accident.

This is obviously unsound, for it fails to take into consideration the fact that this local injury might at any time, until Lundy got well—and the evidence discloses that he never got well—become the focus of tuberculosis. Moreover, the entire argument is aside the mark, for in Dr. McCartie's opinion this local injury was the focus, so that, at best, appellant's argument would go only to the weight of Dr. McCartie's testimony and the weight of the testimony is not, as we understand the law, under consideration upon this appeal.

The same applies to appellant's argument based on the fact that the sputum sent to the hospital was returned negative, and that Dr. McCartie found no local signs of tuberculosis. These facts merely go to the weight to be attached to Dr. McCartie's opinion that it was general tuberculosis. It was for the Trial Court to decide what weight to give his opinion, and these facts which go only to the weight of the testimony are utterly irrelevant upon this appeal. If the weight of the evidence were under consideration we might attack respondent's medical testimony on many points, for instance, Dr. Washington's opinion that disease was rheumatism, in view of his statement that the first attack is almost never fatal. (Case, p. 38, l. 28.)

In regard to Dr. McCartie's testimony generally, we would call attention to the fact that he came into the case naturally, being the family physician. He made a diagnosis of general tuberculosis, but he does not pretend to be positive as to this diagnosis—it was merely his belief or opinion as to the case. This must be borne in mind when considering his answer that "If this affection (general tuberculosis) would come from any part, it should come from his lung." Dr. McCartie's doubt was as to the nature of the disease, not as to the focus, which was the lung where Lundy was injured. In spite of his doubts as to the nature of the disease, his belief and opinion were that it was general tuberculosis from a focus at the injured lung. If a medical opinion were needed to support the Court's finding, then it is to be found in Dr. McCartie's testimony.

(b.) *The medical testimony produced by respondent also supports the judgment.*

The respondent did not produce either Dr. Fewsmith or Dr. Satchwell, both of whom treated Lundy on behalf of the defendant company. We know that, as late as the summer of 1917, Dr. Satchwell wanted Lundy to go to a sanatorium for tuberculosis, at the expense of the respondent company. (Case, p. 14, l. 9.) Practically all that we know about Dr. Fewsmith is the singular fact that the company had him come back to treat Lundy during the last stages of an illness, which, as it now claims, had no relation to the accident. Dr. Fewsmith gave the cause of death in the death certificate as "organic cardiac disease, contributory acute rheumatism."

The two medical witnesses called by respondent were Drs. Herman and Washington. Each had seen Lundy once.

Dr. Washington testified that in his opinion Lundy died of rheumatism with heart complications. He saw Lundy only once, about three weeks before his death. But he also testified, and to this we call special attention: First, that Lundy stated to him that he had never before had rheumatism (case, p. 36; l. 46, *et seq.*); and secondly, that the predisposing causes of rheumatism are heredity and debility (case, p. 37; l. 52, *et seq.*), and that there are no other predisposing causes that he knows of. (Case, p. 39, l. 5.)

Assuming Dr. Washington's opinion to be correct, Lundy died of rheumatism, and the only two predisposing causes of that disease are heredity and debility. As to heredity, there is no evidence in the case whatever to indicate a rheumatic tendency in the Lundy family. As to debility, the only remaining predisposing cause, we have overwhelming evidence that by reason of the accident, Lundy was seriously debilitated. This medical testimony certainly makes it permissible inference that the debility resulting from the accident was the predisposing cause of the rheumatism. This is not only a permissible inference, it is the only reasonable inference. There is no evidence of hereditary weakness, and there was no rheumatism until after the accident. Then came the accident and the consequent serious debility and then the rheumatism. On this medical testimony, and this sequence of facts, it is too clear for argument that the predisposing cause of the rheumatism not only may, but must be inferred to be debility following the accident.

This inference being drawn, the law is settled. L. R. A. 1916, A., p. 133, "Death may be found to be the result of an injury where such injury left the workman in a debilitated condition and unable to resist a disease subsequently intervening." (And cases cited.) *Newcomb* v *Albertson,* 84 N. J. Law, 434, lays down the principle which controls this class of cases, and the same principle was recognized by this Court in *N. J. Switch and Crossing Company* v. *Mullenbach, supra.*

In *Ystradowen Colliery Co.* v. *Griffiths* (1909), 2 K. B., 533, it was held that chronic bronchitis, if "brought about by reason of the weakened condition of the man, the state of debility which was immediately caused by the accident," was compensatable. The law on this point is well settled, and on the proved facts and Dr. Washington's testimony, the present case comes clearly within it.

While scarcely applicable to the present case, in which facts and medical opinion both amply support the judgment, we call attention, on the general question as to how far the medical testimony need go in order to support the determination of the Trial Court, to the case of *Beare* v. *Garrod,* Court of Appeal, England, 1915, 8 Butterworth's Workmen's Compensation Cases, 474, in which the judgment of the Trial Court was unanimously affirmed. The facts are set forth in the opinion of Warrington, *L. J.,* which we quote:

> "The facts are shortly these: A serious accident happened to this man on July 2. He was taken to St. George's Hospital, where he remained until July 15, when he was taken to the workhouse infirmary. There he stayed until October 14. On October 16 he was taken to another workhouse infirmary, and there he died on December 2. On October 16 the doctor of the Kingston Infirmary, to which he was then taken, stated that he diagnosed the case as phthisis, and was of the opinion that it had been there for more than forty-eight hours. It was a very bad case going very rapidly when we saw him, and it might have been going three months before. A post mortem was held upon the body, and as a result of that, the doctor who made it said that there had been tuberculosis there, but latent for two years or longer, and that, in his opinion, the acute condition was of three months' duration. On that evidence, the question which we have to determine is whether it was possible for the County Court Judge properly to come to the conclusion that the death was the result of the accident in the sense that it was accelerated by the accident. I ought to have mentioned that it was stated by the medical witnesses that a serious disease such as that occasioned by the accident might have caused the latent tuberculosis to become acute. On that I think it is not for me to say, or for this Court to say, whether the County Court Judge had arrived at the right conclusion or not; that is another question altogether. The only question being whether there was evidence upon which he might arrive at the conclusion at which he did, I am bound to say I think there was evidence upon which he could arrive at that conclusion."

Cozens-Hardy, *M. R.,* and Pickford, *L. J.,* also wrote concurring opinions. A careful examination of opinions in this case discloses that the most that the medical men would say was

that the brain injury had lowered the man's vitality, and that the lowering of the vitality *might* lead to tuberculosis.

Cozens-Hardy in his opinion at page 481 says:

> "The learned County Court Judge has come to the conclusion that there was sufficient evidence to justify him in holding that the death on December 2 resulted from, in the sense that it was accelerated by, the accident of July 2. The accident, of course, was a very serious one; it affected his brain, it affected his vitality, and the medical evidence seems to me abundant to show that, as a medical problem, such lowering of vitality might cause the acceleration of death; that it might light up the tuberculosis, and ultimately cause his death. I cannot bring myself to say that there was not sufficient to justify the learned County Court Judge in coming to the conclusion that he did come to."

This case seems to directly conflict with the dictum in *Reimers* v. *Proctor, supra.*

The cases cited by appellant, with the exception of the Reimers case, which has already been considered, are none of them at all in point.

Liondale Bleach, etc., Works v. *Riker,* 85 N. J. Law 428, holds that an occupational disease is not an accident within the meaning of the act. It has not even the most remote bearing on any question in the present case.

Newcomb v. *Albertson,* 85 N. J. Law 435, holds that compensation may be recovered for disabilities even if not proximate result of the accident. This is authority directly against appellant's Reasons for reversal, Nos. 2, 3 and 4.

Linnane v. *Aetna Brewing Co.* (Conn.) 99 Atl. 507, holds that a bodily injury by accident is necessary in order to entitle the workman to compensation under the Connecticut Statute, and "that exhaustion, although accidentally incurred, is not in and of itself a bodily injury." Obviously there can be no question as to the bodily injury in the present case. So far as the Connecticut Court indicates that there can be no compensation for a disease unless the *direct* result or *natural* consequence of an injury, it is opposed to the settled law in this State where the *causa causans* rule is uniformly applied.

Appellant after citing the above cases argues that

> "even assuming that after the rib injury Lundy was in a weakened condition, there is no intervening bodily injury shown, that is no accident which in combination with his weakened condition could cause, or did cause, the disease of which he died."

Just why petitioner should have to prove a second accident is not clear to us.

Landers v. *Muskeyon,* 163 N. W. 43 (Mich.), cited by appellant, holds that pneumonia contracted by a fireman who became wet in the performance of his duties was not compensatable, because the wetting was a normal and ordinary incident of his employment and therefore was not an accident.

It is evident that there is no jurisdiction in which appellant can find any precedent for reversing a judgment based on evidence at all similar to that in the present case.

Appellant is wrong in law in understanding that petitioner must show that the death is the proximate result of the accident, and appellant is moreover wrong in fact when he states or implies that Dr. McCartie refused to testify that the accident caused the death.

The Supreme Court opinion shows that the evidence supports the judgment and a consideration of the record in the present case leaves no doubt that the Trial Court's finding that the death was caused by the accident was supported by evidence, and that is the only question in the case.

The proved facts are sufficient, by themselves, to support the finding; the medical opinion of Dr. McCartie amply supports the finding, and the medical opinion of Dr. Washington also supports the finding.

From whatever angle one views the present case, one finds that the evidence justifies the judgment. The present case is in no sense a close one, but is one where the evidence practically compels the inference of causal relations between accident and death.

The judgment should be affirmed, with costs.

Respectfully submitted,

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Respondent

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New Jersey Court of Errors and Appeals

MARY LUNDY, widow of PATRICK LUNDY, deceased, *Petitioner,* *Defendant-in-Certiorari,* *Respondent,* *vs.* GEORGE BROWN & COMPANY, a corporation, *Respondent,* *Prosecutor-in-Certiorari,* *Appellant.*	*On Appeal from Supreme Court.*

BRIEF OF APPELLANT.

Statement.

This action was brought in the Essex County Court of Common Pleas in a "Workmen's Compensation" case, and the trial of the issue resulted in a finding, determination and judgment in favor of petitioner and against respondent in that court.

On certiorari to the Supreme Court the judgment of the Court of Common Pleas of Essex County was affirmed and the respondent-prosecutor in certiorari now appeals to this court.

Grounds of Appeal.

The above-named appellant states the following grounds of appeal:

1. The Supreme Court sustained the finding of the Court of Common Pleas that the death of defendant-respondent's decedent was caused by an accident arising out of and in the course of his employment.

2. The Supreme Court sustained the order of the Court of Common Pleas that the death of defendant-respondent's decedent was proximately caused by the accident suffered by him while employed by the prosecutor-appellant.

3. The Supreme Court sustained the refusal of the Court of Common Pleas to find that an independent cause not arising out

of and in the course of the employment was the proximate cause of the death of defendant-respondent's decedent.

4. The Supreme Court erred in failing to find that there is no evidence to support the finding of the Court of Common Pleas that the death of defendant-respondent's decedent proximately resulted from an accident received in the course of and arising out of his employment.

Brief of the Argument.

The appellant contends that there is no evidence upon which the Trial Court could base a finding that the death of Patrick Lundy (petitioner's decedent) was the result of an accident arising out of and in the course of his employment.

Appellant's further contention is that the Trial Court was not only without evidence upon which to base its finding of the cause of death of decedent, but that the finding of the Court was directly contrary to the evidence adduced.

Appellant's contention that the evidence shows that the death of Patrick Lundy resulted from natural causes and not from an accident is included within the reasoning that applies to the first contention above.

POINT I.

There is no evidence to sustain the finding and judgment of the Court of Common Pleas, affirmed by the Supreme Court.

The prosecutor's contention is that the injury sustained by Patrick Lundy at the time of the accident on December 19, 1916, namely, broken ribs, is not shown to have caused his death in February, 1918. Further, this injury is not shown to have created a physical condition that caused or accelerated any disease that resulted in the death of Patrick Lundy.

Respondent's argument in this case, plainly stated, is that Patrick Lundy died from natural causes, namely, either tuberculosis or rheumatic organic heart disease, and that there is not a scintilla in the case to support the finding of the Court that the injuries received in the accident proximately caused Lundy's death.

It is admitted that in December, 1916, Lundy suffered an accidental injury by a fall from the scaffold, namely, four broken ribs on the left side, bruises, &c.

The cause of Lundy's death, as certified by Dr. Fewsmith in the death certificate (Case, p. 40), "as organic cardiac disease; contributory acute rheumatism." This cause of death is corroborated by the testimony of Doctors Herman and Washington upon their examination of Lundy, and their diagnosis after examination of the disease from which he was suffering.

The symptoms found by these doctors—heart murmur, with enlargement, bradycardia, or slow pulse, with weakness, shortness of breath, chest pains, are all indicative of this organic rheumatic heart condition certified to as the cause of death, and the same symptoms are testified to by the petitioner's physician and by the petitioner's lay witnesses.

We then find the specific statement by Dr. Washington that there was no relation whatever, in his opinion, between the breaking of the ribs and the heart condition which he found in Lundy.

This evidence, therefore, establishes that Lundy's death was due to natural causes and not to accident arising out of his employment.

Petitioner, therefore, has the burden of contradicting this cause of death and the diagnosis of Drs. Fewsmith, Herman and Washington, or of connecting this diseased heart condition with the rib injury, and thereby contradicting Dr. Washington, or of showing that the rib injury accelerated the development of the cardiac disease.

To this end petitioner's physician, Dr. McCartie, testifies to substantially the same symptoms as those found by the respondent's physicians, but makes a diagnosis of tuberculosis.

Although the accident happened in December, 1916, Dr. McCartie did not begin to treat Lundy until October, 1917, when the treatment consisted of tonics and an effort to get the patient to eat and sleep more (Case, p. 15, l. 50). He also bound up Lundy's ribs and chest in an effort to bring relief from chest pains (Case, p. 16, ll. 1 to 20). Patient's failure to improve led him to suspect this man was developing a general tuberculosis (Case, p. 16, l. 21).

The doctor admits that tuberculosis is a germ disease and is carried by the blood to all the organs of the body and that the general tuberculosis diagnosed by him lasts from ten to twelve weeks (Case, p. 21, ll. 1 to 10).

Doctor further admits that tuberculosis must start from some particular focus—the place where the infection commences and the first tubercle develops.

The burden, therefore, rested upon the petitioner to show by the doctor, first, that the focus from which the tuberculosis started was in the lungs; second, that the creation of this focus was in some way caused by the breaking of the ribs.

In establishing this the testimony utterly failed.

The doctor says (Case, p. 23, l. 40), that he formed an opinion as to the focus of this general tuberculosis, when he says "I thought it might have come from the lungs" (Case, p. 23, l. 43), and when admonished by the Court that this was not proper testimony, he says, "Your Honor, the man was complaining of local pains in the lungs and coughed and sweat, and constantly getting weaker, and thus, if this infection would come from any part it should come from his lung on that account" (Case, p. 23, ll. 45 to 55).

But he is compelled to testify that although this condition should come from the lungs, he did not find it there, and he has to admit that Lundy's sputum sent to the City Hospital was returned negative (Case, p. 21, l. 18). Also that he found no local signs of tuberculosis in the lungs (Case, p. 22, l. 8), and admits in answer to counsel's question, "Q But that was one of your difficulties. You could not find anything in the lung which would indicate tuberculosis? A Exactly." Further, the witness says "that it was a local disease, as he suspected from the history of the case—condition of the man—he expected to find local lesions." "Q And you found none? A I found none; yes, sir." (Case, p. 22, ll. 20 to 30.)

It should be noted further that the doctor says when he saw Lundy in January, 1918, the disease of general tuberculosis, which he had diagnosed to be the ailment from which Lundy was suffering, had very nearly finished its course (Case, p. 21, l. 40), and he states that the course of this disease is six to ten weeks (Case, p. 21, l. 42) or from ten to twelve weeks (Case, p. 21, l. 9).

The only inference from this testimony is that if in January, 1918, when Dr. McCartie saw Lundy and the disease had almost runs its course, that the disease must have been contracted not more than ten or twelve weeks previously, which would be about the first of October, 1917, but this was ten months after the rib injury; therefore, the tuberculosis condition could not have been contracted as early as 1916, when the rib injury was received.

Petitioner's medical testimony, therefore, is that taking the same symptoms as were found by respondent's physicians, namely, chest pains, short breath, weakness, slow pulse, &c., petitioner's physician diagnosed tuberculosis instead of the diagnosis by respondent's physician of rheumatism.

Thus, if we accept fully the petitioner's medical testimony in the case, we have only another disease causing Lundy's death, and according to the uncontradicted medical testimony of petitioner this disease could not have been contracted more than ten or twelve weeks before Lundy's death, so that the result is that petitioner's physician shows that Lundy died from natural causes, namely, a disease which he must have contracted in the fall of 1917, which conclusively negatives any connection between the accidental rib injury and the cause of death.

The petitioner has, therefore, failed to connect the accidental injury with the cause of death. There is no medical testimony as to any focus in the lungs, or elsewhere, from which tuberculosis might have started, that was caused by or connected with the rib injury. The doctor expected, from his diagnosis, to find some local lesions or other local symptoms in the lungs, but he did not; the lungs were clear, the sputum negative. There is no evidence of any condition in any of the other chest organs which could have been caused by the injury or from which the tuberculosis disease could have started. In fact, the only testimony in the case is that of Dr. Washington that the symptoms found by him and the other doctors could not have been caused by the rib injury.

The petitioner's doctor was not once asked whether in his opinion there was, or could be, any connection, either probable or possible, between the rib injury and the physical conditions he found. There was not a single question to the doctor whether such an injury as that Lundy sustained in his ribs could, in his opinion, have caused the condition, either tuberculosis or rheumatism, which was found in Lundy.

The petitioner accordingly fails to show that the rib injury sustained by Lundy accelerated any disease from which he was suffering in December, 1916.

It is obvious that if the disease from which he died was tuberculosis and the course of the disease was ten to twelve weeks, and that, therefore, it must have originated in the fall of 1917, that he did not have this tuberculosis condition in December, 1916, and not having it the rib injury could not accelerate some-

thing which was not existent. We have evidence that the ribs healed well, forming an almost perfect union (Case, p. 31, ll. 40 to 55); callous could not even be distinguished by the hand (Case, p. 31, l. 51).

And further, there is no proof and the doctor was never asked whether any injury, such as that which Lundy received to his ribs, could have aggravated or accelerated any disease that he may have had, or that it did so accelerate any disease. There is no evidence that, in the opinion of any physician, tuberculosis was latent in Lundy at the time of the rib injury and that it might have been aggravated or was aggravated by the rib injury. The same is accordingly true if it should be found that he was suffering from rheumatism.

There is, therefore, no evidence in this case that the injury was in any way connected with the cause of death, other than the old and insufficient argument of *post hoc ergo propter hoc.*

The testimony of the lay witnesses in this case is receivable so far as it sets forth the symptoms and physical condition of Lundy at various times, but it in no way differs from the medical testimony as to what the doctors found upon their examination of Lundy—weakness, chest pains, shortness of breath, slow pulse, &c., which is most frequently referred to by the lay witnesses in the form of a conclusion that he was unable to work, although as a matter of fact Lundy did go to work in October, 1917.

In any event, the lay testimony is incompetent to establish the cause of death from the symptoms testified to or to connect the injury in a causative way with said symptoms and condition. This is the sole province of the medical testimony, which is expressly controlling. As the Court said in *Reimers* v. *Proctor Publishing Company,* 89 Atl. Rep., page 932, "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 case at bar is utterly barren of any such testimony. In fact, the testimony of the doctors that Lundy's death was caused either by tuberculosis or by rheumatism, makes the finding of the Court not only unsupported, but contrary to the evidence.

The evidence in the case at bar, as has been pointed out, equally fails to show any resulting diseased condition which might be attributable to or caused by the accidental injury. As the Court said in *Lyondale Bleach, Burkes* v. *Rider,* 89 Atl. Rep. 929, "there may indeed be compensation awarded for resulting

conditions where you can once put your finger on the accident from which they result; but the ground of action fixed by the statute is the injury by accident, not the result of an indefinite something which may not be an accident'' (page 931).

Obviously, tuberculosis and rheumatism in the case at bar are not accidents, unless they can be proximately connected with the rib injury, and this connection petitioner has failed to make.

Even under the case of *Newcomb* v. *Albertson,* 89 Atl. Rep. 928 (although the ruling in that case is based upon the phraseology of section 2), the rib injury is not shown in the case at bar to be one of the contributory causes, without which death would not have happened. The only testimony in the case—that of Dr. Washington—negatives this proposition; he says there was no connection between the rib injury and the conditions which caused Lundy's death.

In the case of *Linnane* v. *Aetna Brewing Company* (91 Conn. 158, 99 Atl. Rep. 507), the Connecticut Court of Errors says:

> ''When * * * the consequences of the exhaustion manifests itself subsequently in the form of a disease, which does not necessarily connote an antecedent bodily injury, the question still remains open whether such diseast is or is not the result of an intervening bodily injury contemporaneously caused by the exhaustion. In every such case the burden of proof is on the claimant, and there is no finding on this record that the decedent's pneumonia was caused by a personal injury sustained on December 14th, for, as already pointed out, exhaustion is not a personal injury.''

In this Connecticut case the decedent had become exhausted by wading through snow drifts, after which he worked in his wet clothing and pneumonia subsequently developed.

The Court says:

> ''We are asked to infer or assume from this that the exposure and exhaustion to which decedent was subjected on December 14th contemporaneously caused an abnormal condition of his lungs comparable to the frost bite in the Lark case. We cannot do so, not only because the subject is outside of the domain of common knowledge, but also because the expert evidence summarized in the finding and quoted in the statement of facts indicates quite plainly that the contemporaneous consequence of dece-

> dent's exhaustion was not a localized injury, but a general or systemic condition of weakness, resistance to disease, from which pneumonia developed in the ordinary course and without the intervention of bodily injury."

In the case at bar there is the same failure to establish a connection between the diseased condition found and any accidental injury.

In the Lark case referred to by the Court (*Lark* v. *John Hancock Insurance Co.*, 90 Conn. 303, 97 Atl. Rep. 320) erysipelas was found to be a direct result of frost bite and compensation was awarded.

The same is true of the infection cases where there is a direct connection shown between the injury and the infection resulting at the place of injury, and then death within a normal time thereafter for the development of the infecting germ.

In the case at bar, however, there is no such connection between the injury to the ribs and the disease testified to by the doctors as causing Lundy's death. In fact, in the case at bar, even assuming that if, after the rib injury, Lundy was in a weakened condition, there is no intervening bodily injury shown; that is, no accident which in combination with his weakened condition could cause, or did cause, the disease of which he died.

In *Landers* v. *Muskeyon,* 163 North Western Rep. 43, the Supreme Court of Michigan holds that pneumonia contracted by a member of the fire department who became wet in the performance of his duties and died as a result, was not compensatable as an accident.

A fortiori in the case at bar no condition is testified to as a result of the rib injury which could cause either of the diseases from which the doctors say that Lundy died.

It is, therefore, submitted that there is no evidence in the petitioner's case to support the finding of the Court.

POINT II.

When petitioner introduces medical testimony and offers the opinion of a medical expert, the petitioner and the Court are bound by the medical opinion given and the Court may not find a contrary medical conclusion of its own based upon the testimony given by lay witnesses alone, or in conjunction with the facts that have been testified to by the medical witness.

In this case various witnesses testify to the physical condition of Lundy before and after the accident, which, summarized, may be said to be that before the rib injury he was well and thereafter he was sick, even though he went to work in 1917. They also testify to certain symptoms, and the physicians called testified to symptoms and conditions found by them on their examination.

When these physical conditions are simple, such as broken leg or arm, conditions of weakness, &c., the Court can properly find the trouble from which the patient is suffering without any medical testimony.

However, when the physical conditions and symptoms testified to are of such a character that a medical conclusion must be drawn from them, that is, whether they indicate one disease or another or whether they could result from some injury previously received and described, it becomes a matter outside of the domain of common knowledge, and the opinion of a physician or a medical expert is absolutely necessary in order to place before the Court the ultimate fact of which these underlying conditions and symptoms are evidential, and this ultimate fact or medical opinion is the only fact which the Court can receive. The Court may not find FROM various symptoms that have been detailed that they indicate a condition of tuberculosis or rheumatism. On this point we must accept such medical testimony as is offered.

Of course, the Court may consider the ultimate medical fact testified to by the expert to be of no weight and may, therefore, disregard it entirely, in which case the Court cannot himself come to a medical conclusion from the symptoms upon which the doctor based his testimony, and is, therefore, left in the absence of any other medical opinion on the facts in evidence entirely without any medical conclusion upon which to base a finding. It is this principle which underlies the Reimers decision (*supra*) that when the doctors refuse to state that the accident caused the death there is nothing upon which the Court can base a finding.

The petitioner, if he produces only lay witnesses as to facts of injury, physical condition, &c., must take his chance upon the sufficiency of this as a basis for a finding by the Court upon anything except matters of common knowledge. If the petitioner's case requires a finding of disease or the connection of a physical diseased condition with some previous injury as a cause, he must supply a physician to testify to a medical opinion based upon the conditions, symptoms, &c., in evidence. Consequently, when petitioner does put on a physician who testifies to a medical conclusion or to an actual or possible or probable causal connection between a diseased condition and a previous injury, he is absolutely bound by the testimony of such physician.

Such is the situation in the case at bar. Lundy died from either rheumatism of tuberculosis. There is an utter failure to produce any testimony to connect these diseases as a result of the injury to Lundy's ribs. The Court is bound by this medical testimony and its failing to connect the injury and the cause of death; in other words, failure to state that the accident caused the death, and there is no basis for the finding of the Court.

POINT III.

The opinion of the Supreme Court falls into error.

The chief error in the opinion of the Supreme Court is that the conclusion of that Court therein arrived at (Case, p. 47, l. 30; p. 48, l. 20) rests upon the argument *post hoc ergo propter hoc.*

The Supreme Court reasons that since Lundy was injured by an accident and his health thereafter declined, that his death 14 months later, either from tuberculosis or from cardiac rheumatism, is by fair inference connected with the accidental injury as cause and effect. This involves a very serious *non sequitur.*

While it is true that there is testimony that Lundy's health declined after the accident, although there is also testimony that he went to work again, nevertheless we are met in the evidence by two insuperable difficulties which make it impossible for the reasoning of the Supreme Court to square with the evidence.

First, Lundy's own doctor testifies that the disease, general tuberculosis, a germ disease, from which he thinks Lundy died, must have been contracted not longer than 10 to 12 weeks before his death (Case, p. 21, ll. 40 to 42 and l. 9) which would

bring the time of the contraction of this disease from a germ some ten months after the accidental injury. Respondent's doctors positively testify that the cardiac rheumatism which they think caused Lundy's death could be in no way connected with the accidental injury, and the death certificate, signed by Lundy's former physician, Dr. Fewsmith, assigns the cause of death as organic cardiac disease, with a contributory cause of acute rheumatism.

This proposition may merely be stated to show that neither of these diseases, which are the only two according to the evidence that might have caused Lundy's death, was the direct result of the accidental injury.

The Supreme Court, however, argues that either of these organic diseases might have been contracted by Lundy by reason of a weakened condition which pre-disposed him to taking them.

Here, however, the reasoning of the Supreme Court is again met by the obstacle of the evidence, which is utterly barren of any statement by the physicians, or any of them, to the effect that there was any connection, possible or probable, between the accidental injury received by Lundy and either of the diseases from which they claim he died, and in fact there is positive testimony from Dr. Washington that there was not any such connection. The Common Pleas Court itself intervened in the case and tried to establish such a connection, which it evidently saw was lacking (Case, p. 34, ll. 38-50) and upon objection the Court sustained an objection to its own question and struck out the answer. This effort on the part of the Trial Court indicated that it realized the utter lack in the evidence between the accidental injury and either assigned cause of death, and the Supreme Court cannot better the situation by mere argument without additional evidence.

The Supreme Court says (Case, p. 46, l. 38): "The medical testimony in the case is in sharp conflict on a question whether the decedent died as the result of his injuries, or from an entirely independent cause."

This is distinctly not the case, as the sharp conflict in the medical testimony was whether Lundy's death resulted from a germ disease, the average course of which was from 10 to 12 weeks, or whether it resulted from cardiac rheumatism, an organic disease. There was no conflict as to whether these diseases resulted from the accidental injury, because there was

no testimony of any kind to that effect. The Supreme Court says:

"If the injuries were the producing cause" (Case, p. 47, l. 1) as opposed to the proximate cause the proof of that fact is sufficient. The evidence, however, utterly fails to establish the injuries as producing either of the diseases from one of which Lundy died, and, as pointed out above, some of the medical testimony, namely, Dr. Washington's, expressly negatives this.

The remarks of the Supreme Court on what may give rise to a reasonable inference that death was attributable to an injury was in direct conflict with the rule in *Reimers* v. *Proctor Publishing Co., supra,* where it is held that if 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. That is exactly the situation with the case at bar, and there was no basis for an inference by the Common Pleas and consequently none for an inference by the Supreme Court.

POINT IV.

It is respectfully submitted that the judgment of the Supreme Court confirming the judgment of the Court of Common Pleas should be reversed and that judgment should be directed to be entered for respondent, dismissing the petition.

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Attorney for Appellant.

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