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N. J. Court of Errors and Appeals.

HENRY TRAPHAGEN, Surviving Executor of JOHN LEVY, DEC'D,
Plaintiff in Error,
against
ARTHUR HOUSTON,
Defendant in Error.

On Error to Hudson Circuit.

BRIEF OF THOMAS N. McCARTER,

FOR PLAINTIFF IN ERROR.

This is an action brought in the Hudson Circuit, by Arthur Houston, an infant, by Issac Houston, his next friend, against the surviving executor of John Levy, deceased, to recover damages for an injury claimed by plaintiff to have been sustained in consequence of the neglect of defendant's testator, John Levy, in leaving open and uncovered a passage way leading from the sidewalk of a public street in Jersey City to the cellar of Mr. Levy's house. The plaintiff below fell down this opening and sustained injuries which he attributes to the fall, and for which he brought his action. The accident occurred in the month of April, 1871, when the plaintiff below was six years old. John Levy, the owner of the premises, died March 26, 1881. This suit was begun in November, 1883, twelve and one-half years after the accident. Mrs. Levy, the widow of John Levy,

died February 26, 1884. Christopher Reid, who had been the co-executor of the defendant below, died in 1881, or early in 1882. (*Case*, p. 244.)

The cause first came on for trial in the Hudson Circuit in May, 1884, and resulted in a verdict for plaintiff for $10,000. A rule to show cause why the verdict should not be set aside was granted, and was certified to the Supreme Court for its advisory opinion. It was heard in the Supreme Court, and the verdict was set aside because it was plain from the case that the large verdict rendered was based upon a finding of the jury that Pott's disease of the spine was one of the results of the fall into the open area way, and that the evidence did not justify such finding; *i. e.* it was not sufficient to establish a causal connection between the fall and the subsequent occurrence of that disease.

Houston vs. *Traphagen, Ex'r.*, 18 Vroom, 23.

The cause was tried again in May, 1885, and resulted in a verdict for plaintiff for $8,000, on which the judgment was rendered, which is now brought here for review on errors assigned on exceptions taken at the trial.

I.

The first exception which will be urged as a reason for the reversal of this judgment, is that the Court erred in denying defendant's motion to nonsuit the plaintiff.

This motion should have been allowed on two grounds:

First. The evidence failed to disclose a case of negligence on the part of defendant's testator, which was claimed to have been proved by the fact that he left open, in a public street, a passage way leading to the cellar of his house.

On this point it is clear that the burden of proving negligence (which was the very gist of the action,) was on plaintiff. He must prove affirmatively that negli-

gence existed, and it is not enough for him to show a state of facts merely consistent with the existence of negligence, but he must show that negligence is, if not a necessary, at least a reasonable inference from the facts proved.

The facts shown in this case do not satisfy this test.

In the first place it was lawful to have such an opening in the sidewalk, if in its mode of construction it conformed to the ordinances on the subject.

See *Sections 9, 10 and 11, on page 393 of the Book of City Ordinances of Jersey City.*

These were read in evidence on the trial. (*Case*, page 256.)

The testimony of NICHOLAS D. WORTENDYKE, (page 265.)

Nor is it unlawful, nor even negligent *per se*, that these gratings, or one of them, shall be open.

They are made to afford access to the basement, and would, of course, be useless unless they could be opened.

The only question, then, can be, Were they left open in a negligent manner?

It appears by the testimony of plaintiff himself that they were not so unguarded but that some one was there to warn persons of the danger.

See plaintiff's description of the occurrence on pages 18, 19 and 20.

He says he stood on the companion grating. He does not remember whether he noticed that the hole was uncovered or not.

Page 20, lines 10 to 20;

Also, page 29, line 20, to page 30, line 10.

If this is a correct statement, and if it shows that although the grating was open, Mrs. Levy stood in the opening in such way as to see a person approaching and give warning, then it was not negligence.

That is the case here.

It plainly appears that Mrs. Levy did warn the plaintiff to go away before he fell in.

All he says and all he can remember is that he heard the scream and went to go out of the way and fell down.

There is nothing in the case to show that Mrs. Levy may not have just that moment opened the grating, and that she was not then in plain sight to indicate as well by her presence in the opening as by her warning voice that there was danger.

That she was there and warned the boy, is affirmatively proved in the case. She is dead, and there is no one now knows who were the other witnesses to the occurrence.

That other persons were there is proved by Benjamin Hoffman.

Page 46, lines 10 to 20 ;
Page 50, lines 20 to 30.

If plaintiff withholds his suit for nearly thirteen years, and until all other persons who knew about the transaction are dead, or have disappeared out of the knowledge of defendant, and relies on his own imperfect memory, when he acknowledges he cannot remember facts most important to a proper determination of the question at issue, the affirmative being on him he must show negligence positively and affirmatively, or fail in his action.

In such a case he is, by his delay, responsible for the doubts and difficulties surrounding the case. It is not enough to prove that the accident might have happened because of the negligence of defendant's testator. He must show it did so happen. If the evidence leaves the point in doubt, or even is evenly balanced on the question of negligence or not, the jury had no right to settle the question by their prejudice or sympathy, but the Court should have decided it by granting the motion to nonsuit.

The following authorities support the above view :

Wharton on Negligence, § 421 ;
P. & R. R. Co. vs. *Hummell*, 44 Pa. St. 375 ;
Kelly vs. *Boston Gas Light Co.*, 8 Gray, 132 ;

Losee vs. *Buchanan*, 51 N. Y. 476;
Cotton vs. *Wood*, 8 C. B. N. S. 568, (98 E. C. L.);
Cook vs. *Waring*, 2 H. & C. 338;
Hammack vs. *White*, 11 C. B. N. S. 588, (103 E. C. L.);
Welfare vs. *Brighton Railway Co.*, L. R. 4 Q. B. 698; (Opinion of BLACKBURN, *J.*)
Adams vs. *Lancashire & Yorkshire R. Co.*, L. R. 4 C. P. 739;
Crafter vs. *Metropolitan R. Co.*, L. R. 1 Q. B. 300, 304;
Siner vs. *Great West. R. Co.*, L. R. 3 Exch. 150;
S. C. affirmed on appeal, L. R. 4 Exch. 117;
Lehman vs. *Brooklyn*, 29 Barb. 34;
Toomey vs. *London, &c., R'w'y Co.*, 3 C. B. N. S. 146, (91 E. C. L.);
Metropolitan R'way Co. vs. *Jackson*, L. R. 3 App. Cases, 193;
Ryder vs. *Wombwell*, L. R. 4 Exch. 38;
Jewell vs. *Parr*, 13 C. B. 916;
Whaltin vs. *Hardisty*, 8 E. & B. 262, (92 E. C. L.)

Hayes v 42 St RRs 97 N.Y. 161
Barker v Harlem RRs 57 N.Y. 365
Beaulieu v. Portland Co. 48 Me. 291
Greenleaf v. Ill. R. R. Co. 29 Iowa 22.
Emerson v. Peterler 23 Cent. L. J. 429

Second. If there was sufficient proof to justify the jury in finding that there was negligence on the part of the owner of the premises, the same proof clearly shows contributory negligence on the part of the plaintiff.

A. The boy himself was negligent.

The proof shows that he was acquainted with the location and construction of the house and with its occupants, that the Levy family lived up stairs and occupied the basement. (*Case*, pp. 17, 25, 26, 50.)

He knew that the grating covered a hole in the sidewalk, and that there were, at that place, steps that went into the cellar. (p. 26; also, p. 43.)

He was a strong, vigorous, healthy child, (p. 57,) six years of age, and had been to school a year and a half or a year before. (p. 24.)

The time was at noon, when, of course, it was broad daylight.

He does not even testify that he did not notice, before he fell, that the grating was open. He only says that he does not remember that he noticed. (p. 20, l. 10; also, p. 29, l. 10; also, p. 31, l. 40.)

See also as to his defective memory. (pp. 32, 33, 34.)

He stood on the grating which was closed, when he looked in the window before he fell. (pp. 28, 29.)

Under these circumstances it was impossible for him not to have noticed that the other grating was open.

An inspection of the photograph will show this.

He certainly had intelligence enough to know that there was danger of his falling in if he went near the opening.

If, with the intelligence usual in a child of that age, and the knowledge of the place which he admits he possessed, he walked upon one grating without taking notice whether the other one was open or not, it was gross negligence, and if he did notice that it was open, (and he cannot remember whether he did or not,) the negligence was still greater.

Penna. R. R. Co. vs. *Righter*, 13 Vr. 180;
Hughes vs. *Macfie*, 2 Hurlst. and Colt. 744;
Lucas vs. *New Bedford R. R.*, 6 Gray, 64:
Gilman vs. *Deerfield*, 15 Gray, 577.

B. If the plaintiff, by reason of his tender years, was incapable of exercising care enough to avoid the injury, then it was negligence in his parent to allow him to be in the street unattended, and such negligence is imputable to plaintiff, and will defeat a recovery.

Shear. & Red. on Negligence, §§ 48, 49;
Hartfield vs. *Rope*, 21 Wend. 615;
Mangan vs. *Brooklyn R. R. Co.*, 36 Barb. 230;
Lehman vs. *Brooklyn*, 29 Barb. 234;
Holly vs. *Boston Gas Light Co.*, 8 Gray, 123–130;
Chicago vs. *Starr, Admr.*, 42 Ill. 174;
Chester vs. *Porter*, 47 Ill. 66;
Wright vs. *Malden, &c., R. R. Co.*, 4 Allen, 283;
Waite vs. *N. Eastern R. R. Co.*, E. B. & E., (96 E. C. L.) 719;

Bunn vs. *E. & N. R. R. Co.*, 58 Me. 384;
Wright vs. *Malden, &c., R. R. Co.*, 4 Gray, 283;
Callahan vs. *Bean*, 9 Gray, 400.

See on this whole subject:
4 *Waite's Actions and Defences*, 720, 721.

II.

The Court erred in charging the jury on the question of damages.

This point arises under the amended bill of exceptions, which amendment was made to bring up the point as it appears on page 293 of the case, and by the Judge's charge on the same page. It will be seen by the declaration, that each count limits its claim for damages to injuries existing prior to the commencement of the suit.

Page 4, lines 7 to 20; p. 5, lines 20 to 30; p. 6, lines 30 to 40; p. 8, lines 1 to 10; p. 9, lines 1 to 10; p. 10, lines 10 to 20; p. 11, lines 15 to 25; p. 12, lines 30 to 40; p. 13, lines 1 to 10.

Here are nine counts, and in none of them is any claim made that plaintiff had suffered any permanent injury—no claim for damages for a deformity, nor any allegation that he was permanently disabled from transacting ordinary business, or from the enjoyment of life in the future; on the contrary there is a careful limitation in each count of the claim for disability to transact business, to the period between the injury and the commencement of the suit.

Notwithstanding such limitation the plaintiff, who was entirely cured of his disease, but was permanently dwarfed and deformed, was brought before the jury, and divested of his clothing in such a manner as to exhibit his deformity to them, and this deformity and his inability to engage in ordinary avocations open to men, were urged upon the jury by his counsel as grounds of swelling the damages, and doubtless so operated.

On the other hand it was contended for defendant that as no claim had been made in the declaration for such damages, they must be excluded from the consideration of the jury.

Nevertheless the Judge charged, as on page 293, and when exception was taken, emphasized his charge, on that point, so as to give the defendant's counsel the full benefit of his exception.

It is respectfully submitted that there was error in this.

1 Chitty's Pleadings, 396;
1 Saunders on Pl. & Ev., 136; *ibidem*, 105.

The rule is so familiar that no further citation of authorities is considered necessary.

III.

The third error on which we rely, was the admission by the Court of a question of opinion, as developed by the assignment found on page 300, lines 30 to 40

The circumstances under which this question was put, are found on pages 175, 176 and 177.

The question and exception are on page 177, lines 20 to 40.

The objection to this question is that it was not one on which the opinion of a physician was competent, it being a matter of common knowledge and experience.

Cook vs. *The State*, 4 Zab. 843, 851–2;
Ferguson vs. *Hubbell*, 97 N. Y. 507;
Milwaukee R. R. Co vs. *Kellogg*, 94 U. S. 469;
Franklin Ins. Co. vs. *Gruver*, 100 Pa. St. 266;
Luce vs. *Dorchester Ins. Co.*, 105 Mass. 297;
Knoll vs. *State*, 55 Wis. 249;
Stephens' Dig. Ev. (Chase's Ed.) 103 and notes.

The question as to other injury was too broad, and if the opinion was admissible at all it should have been confined to the question, whether the fall would probably

produce the injury which was complained of in this case, *i. e.* Pott's disease of the spine.

In cases of this character when jurors are prompt to seize upon every circumstance given in evidence to warrant a verdict, every illegal or irrelevant question becomes injurious, because no one can tell how the minds of jurors might have been affected by it.

The case is an important one. If this judgment stands it will extract from the estate of a man long since dead, a large sum of money under circumstances of great hardship. In view of all the facts of the case, we feel confident that the Court will not allow a jury's sympathy to run away with a man's estate, unless it is subjected to the severest scrutiny, and the Court is entirely satisfied that the verdict and judgment accord with law and justice.

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N. J. COURT OF ERRORS & APPEALS.

IN THE LAST RESORT IN ALL CAUSES.

ARTHUR L. HOUSTON, who sues, &c., (Pl't'ff), *Defendant in Error, Adsm.*	*In Error to Hudson Circuit.*
HENRY TRAPHAGEN, ex'tr, &c., of JOHN LEVY, deceased (Def't), *Plaintiff in Error.*	

Brief for Defendant in Error.

This case comes before the Court on writ of error removing a judgment recovered in the Circuit Court of Hudson County upon a verdict. All the errors assigned are based upon exceptions taken at the trial. For the first alleged error there was no exception and it was probably included in the assignment through inadvertence.

The other errors assigned, taken in logical order are divided into three classes: First--The admission of illegal evidence (Third, Fourth and Fifth assignments, Case, p. 299 to 301). Second—Refusal to non-suit (Second assignment, Case, p. 299). Third—Misdirection to the Jury (Last assignment—added since case was printed by way of amendment). The exceptions themselves are printed at pp. 295 to 298. The entire testimony and proceedings, however, are returned with the writ of error.

We will discuss these alleged errors in order.

I

The questions permitted to be asked for the plaintiff, under defendant's objection and exception, and on which errors are assigned, were all of them lawful and proper.

The first of these questions objected to will be found in its proper place in the evidence at pages 98–9 of the printed case, beginning at folio 25: "Q. I will now put "to you a question based upon my statement of what "has been or will be proved in this case, and ask your "opinion upon the case so put." (Then follows the hypothetical question.)

The witness was Doctor Lewis Hall Sayre an expert in orthopedic surgery. The qnestion was in the ordinary form in such cases, reciting what plaintiff's counsel claimed were facts and then asking the expert's opinion on those facts. The ground of objection to the question taken by defendant's counsel (Case, p. 99, fol. 33), was "That the question is based on a hypothesis that does "not exist in this case." In so far as this means that some of the facts had not yet been fully brought out in the testimony we have only to say that this surely is a mere matter of order of proof, and if the facts were subsequently proved there is no ground of exception, and even if not the attention of the Court should have been called to the omission, and a motion to strike out the testimony should have been made.

But there was no such omission. Applying the objection to the whole case, we submit that there was evidence to justify the jury in finding as facts all the assertions made in the question. To verify this statement it may be necessary for the Court to read the entire case for the plaintiff. Citations in this brief from the testimony would be too voluminous to be helpful.

Even if the question assumed as facts some things which this Court might not think sufficiently proved to go to the jury, that would only operate to weaken the

effect of the answer; it would not render the question illegal if asked in good faith and expressing counsel's idea of the facts.

We will call attention at this place to a typographical error in Dr. Sayre's testimony. The last two lines printed on page 99, belong at the bottom of page 100.

The second question objected to will be found on page 177, folio 21. The witness was Doctor John W. Hunt, a practicing physician and surgeon, called to give expert testimony in the line of his profession. The ground of objection stated was that the question was "not one of medical science." Construed narrowly, the objection of course has no foundation, as the plaintiff was not limited to *medical* science, but taken in its broadest possible intention as an objection that the question was not within the scope of expert testimony in the case then before the Court, we submit that the objection was not well founded.

The scope of the knowledge of the witness as an expert in his profession embraced a knowledge of anatomy and surgery, a knowledge of the way in which the different parts of the body are connected, both as to the bony structure, ligaments, &c., a familiarity with the effects of a headlong fall, &c., &c., and the question was clearly within the fair range of permissibility of expert testimony under the circumstances. Moreover, it is very clear that the plaintiff's verdict was not brought about by the very indefinite answer given by the witness to the question.

The third question really objected to will be found on pp. 178-9. The assignment of error (Case, p. 301), and actual exception (Case, p. 298), limit the error to the subsidiary question at the top of page 179, to which there was no exception, but considered fairly, the objection, as shown by the testimony itself, is to the hypothetical question on page 178 and the incidental questions growing out of the same. The ground of objection

(Case, p. 178) was that the question contained "elements "and hypotheses not proven in the case." As to this we can only repeat what has hereinbefore been said with regard to a like question put to Doctor Sayre.

II.

The non-suit was rightly refused.

As to this assignment of error we raise the preliminary objection that by entering upon a defense involving the essence of the plaintiff's case and by going to the jury without renewing his motion to non-suit or moving the Court to direct a verdict, the defendant waived his exception on the refusal to non-suit. In order to raise this objection we refrained from joining in error and gave notice of a motion to strike out the second assignment of error, viz: that based on the refusal to non-suit. We now make such motion. We are perfectly willing to argue the present case on the merits, but it is important to the profession that the practice be settled and the point being regularly involved it must be met and disposed of.

It was formerly doubted whether error would ever lie on a refusal to non-suit, and though this Court has held otherwise, it does not approve the practice (Durant *vs.* Palmer, 5 Dutch., 544), and the point we now make has never been passed upon. True, this Court has frequently considered error assigned for a refusal to non-suit in cases where there was a defense, but in such cases it has happened that the judgment has always been *affirmed* so far as I can find in the reported cases. Doubtless in most cases there was also a motion to direct a verdict or to charge that the evidence for the plaintiff was insufficient, as in N. J. R. R. & T. Co. *vs.* West, 4 Vroom, p. 430.

It is conceded and has been adjudged in this Court (D., L. & W. R. R. Co. *vs.* Dailey, 8 Vroom, p. 526), that where the defects in the plaintiff's proofs are supplied by

the defense, the error is cured. It seems to us that this concession logically carried out will lead us to the position now contended for. The Court on error ought not to be compelled to look through the defendant's proofs to see if plaintiff's defects have been supplied, or be put to the task of weighing such proofs or considering their effect, if doubtful. The defendant's proofs, indeed, might not be returned with the writ. Furthermore, the plaintiff is entitled to the judgment of the Court below on that very point, which he would have if the motion to non-suit or direct a verdict is required to be argued at the close of the whole case.'

Should this assignment of error be permitted to stand, we then submit that there was no error in the refusal to non-suit. Strictly, the Court should not consider this alleged error at all, for neither in the assignment (Case, p. 299, fol. 10), nor in the bill of exceptions (Case, p. 295, fol. 25), is "the ground of the motion disclosed." See Trade Insurance Co. *vs.* Barracliff, 16 Vroom, p. 543.

Turning to the proceedings, however, which have been returned with writ of error, we find the grounds stated by counsel on making the motion at pp. 244–5, as follows:

"Defendant moves that plaintiff be non-suited for the "reasons following:

"1. He has failed to establish by the proof what the "Supreme Court has held to be a necessary causal con- "nection between the act of the testator in leaving open "the hatchway and the resulting of Pott's disease of the "spine.

"2. That the testimony affirmatively shows contribu- "tory negligence on the part of the party injured."

The first of these grounds manifestly could not support a non-suit. The objection only goes to the *damages*. The plaintiff was entitled to a verdict for some amount even if the Pott's disease did not result from the fall. This was clearly laid down when the case was before the

Supreme Court after the former verdict. (Houston *vs.* Traphagen, executor, 18 Vroom, p. 23), and the judge at the trial now under review put that part of the case very plainly before the jury in his charge. (Case, p. 289, fols. 1 to 20.) The jury presumably found that the causal connection referred to was proved. If that finding was wrong, the remedy of the defendant was to move for a new trial, as he did on the former verdict, which was certified to the Supreme Court on a rule to show cause. If, on the other hand, defendant conceived that as matter of law there was not sufficient proof of such causal connection to go to the jury, he should have sought the decision of the trial judge on that point by an appropriate request to charge—not by motion to non-suit—or he should have excepted to that part of the charge which permitted the jury to find such causal connection.

If this part of the case can in any way be considered by the Court on error, we have only to say, that such causal connection was abundantly proved (or at least sufficiently so to go to the jury) by the evidence of the parents and friends of the plaintiff, giving his history from the time of his fall to the full development of angular curvature, and by the opinion of the experts—based upon this history—particularly that of Dr. Sayre, whose testimony begins at page 91 of the printed case.

As to the second ground urged for a non-suit, namely, contributory negligence, the case in no way differed (unless in being stronger for the plaintiff) than when before the Supreme Court on review of the former verdict. (Houston *vs.* Traphagen, executors, supra.) That hearing was before the Chief Justice and Justices Dixon, Reed and Magie. They thought then not only that there was no ground for a non-suit, because of contributory negligence, but also that a verdict for the plaintiff could not be disturbed on that ground. The new trial was ordered because the damages showed that the jury must have attributed the Pott's disease and resulting angular curvature of the spine to the fall down the cellar-way, and the

Court thought the proof too meagre to establish such connection. On the second trial the proof was abundant.

III.

There was no misdirection in the charge to the jury.

The only misdirection alleged is that complained of at page 293 of the printed case. The language quoted from the charge in the bill of exceptions and assignment of errors (added by amendment after the case was printed) is by itself entirely unobjectionable. The point intended to be made (Case, p. 293, fol. 30) is that "under the declaration plaintiff was limited to a recovery of the costs "of the injury therein stated." It is not clear exactly what is meant by this, but we understand the contention of counsel to be that the declaration did not claim damages for the permanent injury caused by Pott's disease and resulting angular curvature of the spine (hunchback), but only for the immediate injury caused by the fall. The declaration is broad enough to cover every resulting injury. It not only in its first count follows the form approved from time immemorial, alleging that the plaintiff "became and was sick, lame, sore, diseased, and disordered, and so remained for a long space of time, to-wit: from thence hitherto" Case, p. 4, fols. 8 to 10), but also, in the succeeding counts, specifically alleges "inflammation of the spine" (Case, p. 5, fol. 20); "cyphosis of the spine" (Case, p. 9, fol. 5), "lordosis of the spine" (Case, p. 10, fol. 12), and further states the resultant injuries to the plaintiff in a variety of ways. Cyphosis means a hump. Lordosis means curved—bent. (Dunglison's Med. Dict.)

It was not necessary to state the specific character of the injury received, or that it was a permanent one; but this declaration clearly does sufficiently state this.

But even if the declaration was insufficient in this respect and the trial judge had so held, an amendment would have been ordered as the evidence shows there was no surprise and the case was fully contested on the very point now in question. Even now, upon writ of error, the Court will consider the amendment made.

Price *vs.* N. J. R. R. & T. Co., 2 Vroom, p. 229.

D., L. & W. R. R. Co. *vs.* Toffey, 9 Vroom, p. 525.

The judgment below should be affirmed.

COLLINS & CORBIN,

Of Counsel with Defendant in Error.

New Jersey Court of Errors and Appeals.

HENRY TRAPHAGEN, Executor of Etate of John Levy, deceased,
Plaintiff in Error,
and
ARTHUR L. HOUSTON, who sues, &c.,
Defendant in Error.

In Error.

CASE.

H. M. T. BEEKMAN,
Attorney for Plaintiff in Error.

COLLINS & CORBIN,
Attorneys for Defendant in Error.

NEW JERSEY, *ss.*

The State of New Jersey to MANNING M KNAPP, Esq., Judge of our Circuit Court at Jersey City, in and for the County of Hudson, Greeting

[L S.]

Forasmuch as in the records and proceedings, and also in the giving of judgment in a certain plaint which was in our Circuit Court, holden at Jersey City, in and for the County of Hudson, between Arthur L. Houston, plaintiff, and Henry Traphagen, Executor of John Levy, deceased, defendant, in a plea of trespass on the case, manifest error hath intervened, to the great damage of the said defendant, as by his plaint we are informed, we being

willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the party aforesaid, in this behalf, do command you distinctly and openly to send under your seal the record and proceedings aforesaid, with all things touching and concerning the same, to our Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the sixth day of July next, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon for correcting that error, what of right and according to the law and custom of the State of New Jersey ought to be done.

Witness our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the nineteenth day of June, in the year of our Lord one thousand eight hundred and eighty-six.

HENRY C. KELSEY,
Clerk.

H. M. T. BEEKMAN,
Attorney.

The answer of MANNING M. KNAPP, Esq., Judge of our Circuit Court within named, the record and proceedings of the plaint, whereof mention is within named, with all things touching the same, I certify to our Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, at the day and year within contained, in a certain schedule to this writ annexed, as I am commanded.

M. M. KNAPP, [L. S.]
Judge.

Hudson County Circuit Court of the twenty-seventh day of November, in the year of our Lord one thousand eight hundred and eighty-three.

HUDSON, to wit:

Henry Traphagen, surviving executor of the last will and testament of John Levy, deceased, the defendant in this action, was summoned to answer unto Arthur L. Houston, a minor, who sues by his next friend, Isaac Houston, the plaintiff therein, of a plea of trespass on the case, and thereupon the said plaintiff, by Albert S. Cloke, his attorney, complains for that whereas the said John Levy in his lifetime, before and at the time of the committing of the grievance hereinafter next mentioned, was possessed of a certain messuage, with the appurtenances, situate and being in a certain street called Newark Avenue, in Jersey City, in the County of Hudson, which said street at the time of the committing of such grievance, and from thence hitherto hath been, and still is, a common public street and highway for all persons to go, return, pass and repass at all times of the year at their free will and pleasure, to wit, at Jersey City, in the County of Hudson aforesaid, in which said highway there now is, and at the time of the committing of the grievance hereinafter next mentioned there was, a certain hole, opening into a certain cellar and vault of and belonging to the said messuage and premises of the said John Levy, now deceased, to wit, at Jersey City, in the County of Hudson aforesaid. Yet the said John Levy in his lifetime, well knowing the premises whilst he was so possessed of the said messuage, with the appurtenances as aforesaid, to wit, on the tenth day of April, in the year one thousand eight hundred and seventy-one, wrongfully and unjustly permitted the said hole to be and continue, and the same was then and there so badly, insufficiently and defectively covered, that by means of the premises and for want of proper and sufficient covering to the said hole

the said plaintiff, who was then and there passing in and along the said highway, then and there necessarily and unavoidably slipped and fell into the said hole, and thereby the back part of the head of the said plaintiff was cut by his falling upon the sharp edges of certain stone steps then and there being and leading to and from the said cellarway; and he, the said plaintiff, became and was sick, sore, lame, diseased and disordered, and so remained and continued for a long space of time, to wit, from thence hitherto, during all which time he, the said plaintiff, thereby suffered and underwent great pain, and was prevented from attending to and transacting his necessary and lawful affairs and business, by him during that time to be performed and transacted, and was also, by means of the premises, forced and obliged to pay, lay out and expend, and did pay, lay out and expend, a large sum, to wit, the sum of two thousand dollars in and about the endeavoring to get healed and cured of the said wounds, sickness and disorder, to wit, at Jersey City, in the County of Hudson aforesaid.

And whereas also before and at the time of the committing of the grievance by the said John Levy in his lifetime as hereinafter next mentioned, there was and from thence hitherto hath been, and still is, a certain other common or public highway called Newark Avenue, in the city aforesaid, for all persons to go, pass and repass at all times of the year, in which last mentioned highway the said John Levy in his lifetime owned and occupied a certain messuage and premises with the appurtenances, known as number 188 of said avenue, into the cellar and basement of which said messuage there was an opening and hole, to the side of which were attached movable gratings and gate for the purpose of covering the said last mentioned opening and hole, to wit, at Jersey City, in the County of Hudson aforesaid. Yet the said John Levy, now deceased, in his lifetime, well knowing the premises, whilst he was the owner

and occupier of the said last mentioned messuage and premises with the appurtenances and whilst there was such last mentioned opening and hole as aforesaid with the gratings and gate attached as aforesaid, to wit, on the day and year aforesaid, at Jersey City, in the County of Hudson aforesaid, wrongfully and unjustly permitted the said last mentioned opening and hole to be uncovered by the said gratings and gate or by any other substance or things whatsoever, so that by means of the premises and for want of a covering to the said last mentioned opening and hole the said plaintiff, who was then and there passing in and along the said highway, then and there necessarily and unavoidably fell into the said last mentioned opening and hole, and thereby the back part of the head of the said plaintiff was cut by his falling upon certain stones in the said last mentioned opening and hole, and he, the said plaintiff, became sick, and was sore, lame and diseased with inflammation of the spine caused by the falling of him, the said plaintiff as aforesaid, into the said last mentioned opening and hole, and so remained and continued for a long space of time, to wit, from thence hitherto, during all which time he, the said plaintiff, thereby suffered and underwent great pain and was prevented from attending to and transacting his necessary and lawful affairs and business by him during that time to be performed and transacted, and was also by means of the premises forced and obliged to pay, lay out and expend and did pay, lay out and expend a large sum, to wit, the sum of two thousand dollars in and about the endeavoring to get healed and cured of the said inflammation of the spine, to wit, at Jersey City, in the County of Hudson aforesaid.

And whereas, also, before and at the time of the committing of the grievance by the said John Levy in his lifetime as hereinafter next mentioned, there was and from thence hitherto hath been and still is a certain other public highway called Newark Av-

enue in the city aforesaid for all persons to go, pass and repass at all times, in which last mentioned highway the said John Levy in his lifetime possessed and occupied a certain messuage and premises, with the appurtenances, known as Number 188, of said Avenue, into the basement of which said messuage there was and from thence hitherto hath been and still is an entrance or hole with gratings attached to the sides thereof for the purpose of covering the said last mentioned hole, to wit, at Jersey City, in the County of Hudson aforesaid.

Yet the said John Levy in his lifetime, well knowing the premises, whilst he was the possessor and occupier of the said last mentioned messuage and premises, and whilst there was the said last mentioned hole with the said gratings attached to the sides thereof as aforesaid, to wit, on the day and year aforesaid at Jersey City, in the County of Hudson aforesaid, wrongfully and unjustly permitted the said last mentioned hole to be uncovered by the said gratings or by any other substance whatsoever, so that by means of the premises, and for want of a covering to the said last mentioned hole, the said plaintiff, who was then and there passing in and along the said last mentioned highway, then and there necessarily and unavoidably fell into the said last mentioned hole, and thereby the head of the said plaintiff was cut, bruised and wounded by the contact of the head of the said plaintiff with the stones at the bottom of the said last mentioned hole, and he, the said plaintiff, thereby became and was sick, sore, lame, diseased and disordered with a lateral curvature of the spine of him the said plaintiff, and so remained and continued for a long space of time, to wit, from thence hitherto, during all which time he, the said plaintiff, thereby suffered and underwent great pain, and was prevented from attending to and transacting his necessary and lawful affairs by him during that time to be performed and transacted, and was also by means of the premises forced and

obliged to pay, lay out and expend, and did pay, lay out and expend divers large sums of money, amounting in the whole to a large sum, to wit, the sum of two thousand dollars, in and about the endeavoring to get healed and cured of the said lateral curvature of the spine, to wit, at Jersey City, in the County of Hudson aforesaid.

And, whereas, also, before and at the time of the committing of the grievance by the safd John Levy in his lifetime as hereinafter next mentioned, the said John Levy was the possessor and occupier of a certain other messuage and premises, with the appurtenances, situate in Jersey City, in the County of Hudson, and near to a certain common highway there called Newark avenue, in which said highway there now is and before and on the same day and year aforesaid, there was, a certain hole or passage-way opening into a certain cellar of and belonging to the said last mentioned messuage and premises of the said John Levy, to wit, at Number 188 Newark Avenue, in Jersey City, in the County of Hudson aforesaid.

Yet the said John Levy, well knowing the premises whilst he was so the possessor and occupier of the said last-mentioned messuage and premises, with the appurtenances, and whilst there was such hole and passage-way as aforesaid, to wit, on the day and year aforesaid, at Jersey City, in the County of Hudson aforesaid, wrongfully and unjustly permitted the said hole and passage way to be and continue, and the same was then and there so badly, insufficiently and defectively covered, that by means of the premises, and for want of a proper and sufficient covering to the said hole and passage way, the said plaintiff, who was then and there passing in and along the said highway, then and there necessarily and unavoidably fell into the said hole and passage way, and thereby the back part of the head of the said plaintiff was then and there cut, fractured and broken, and he, the said plaintiff, thereby became

and was sick, sore, lame, and diseased with a double lateral curvature of the spine of him, the said plaintiff, and so remained for a long space of time, to wit, from thence hitherto, during all which time he, the said plaintiff, thereby suffered and underwent great pain, and was prevented from attending to and transacting his necessary and lawful affairs, by him during that time to be performed and transacted, and was also, by means of the premises, forced to pay, lay out and expend, and did pay, lay out and expend a large sum, to wit, the sum of two thousand dollars in and about the endeavoring to get healed and cured of the said double lateral curvature of the spine, and of the said cuts, wounds and sickness, to wit, at Jersey City, in the County of Hudson aforesaid.

And whereas, also, the said John Levy, before and at the time of the committing of the grievance by him as hereinafter next mentioned, was the owner and occupier of a certain other messuage and premises, with the appurtenances, situate in the County of Hudson, and contiguous to a certain common and public highway there, in which said highway there now is, and heretofore, to wit, on the day and year aforesaid, there was, a certain hole, opening into a certain cellar of and belonging to the said last mentioned messuage and premises of the said John Levy, to wit, at Number 188 Newark Avenue, in Jersey City, in the County of Hudson aforesaid; yet the said John Levy, well knowing the premises, whilst he has so the owner and occupier of the said last mentioned messuage and premises, with the appurtenances, and whilst there was such hole as aforesaid, to wit, on the day and year aforesaid, at Jersey City, in the County of Hudson aforesaid, wrongfully and unjustly permitted the said hole to be and continue, and the same was then and there so badly, insufficiently and defectively covered, that by means of the premises, and for want of proper and sufficient covering to the said hole, the said plaintiff, who was then and there passing in and along the said high-

way, then and there necessarily and unavoidably fell into the said hole, and thereby the back part of the head of the said plaintiff was then and there cut, and he, the said plaintiff, thereby became and was sick, sore, lame, diseased and disordered with cyphosis of the spine of him, the said plaintiff, and so remained and continued for a long space of time, to wit, from thence hitherto, during all which time he, the said plaintiff, suffered and underwent great pain, and was prevented from attending to his necessary and lawful affairs by him during that time to be performed and transacted, and was also, by means of the premises, forced and obliged to pay, lay out and expend, and did pay, lay out and expend a large sum, to wit, the sum of two thousand dollars, in and about the endeavoring to get healed and cured of the said cyphosis of the spine, and of the said cuts, sickness and disorder, to wit, at Jersey City, in the County of Hudson aforesaid.

And whereas, also, before and at the time of the committing of the grievance by the said John Levy, as hereinafter next mentioned, the said John Levy was the owner and occupier of a certain other messuage and premises, with the appurtenances, situate in the County of Hudson, and contiguous to a certain public highway there, called Newark Avenue, and which said last mentioned messuage and premises is known as Number 188 of said highway, in which said highway there now is, and heretofore, to wit, on the day and year aforesaid, there was, a certain hole, opening into a certain cellar of and belonging to the said last mentioned messuage and premises of the said John Levy, to wit, at Jersey City, in the Connty of Hudson afaresaid; yet the said John Levy, well knowing the premises, whilst he was so the owner and occupier of the said last mentioned messuage and premises, with the appurtenances, and whilst there was such hole as aforesaid, to wit, on the day and year aforesaid, at Jersey City, in the County of Hudson aforesaid, wrongfully and unjustly

permitted the said hole to be and continue, and the same was then and there without a covering, so that by means of the premises, and for want of a covering to the said hole, the said plaintiff, who was then and there passing in and along the said highway, then and there necessarily and unavoidably fell into the said last mentioned hole, and thereby the back part of the head of the said plaintiff was then and there cut, bruised and wounded, and he, the said plaintiff, thereby became and was sick, sore, lame, diseased and disordered with cordosis of the spine of him, the said plaintiff, and so remained and continued for a long space of time, to wit, from thence hitherto, during all which time he, the said plaintiff, suffered and underwent great pain, and was prevented from attending to and transacting his necessary and lawful affairs and business, by him during that time to be performed and transacted, and was also, by means of the premises, forced and obliged to pay, lay out and expend, and did pay, lay out and expend a large sum of money, to wit, the sum of two thousand dollars, in and about the endeavoring to get healed and cured of the said cordosis of the spine, and of the said cuts, sickness and disorder, to wit, at Jersey City, in the County of Hudson aforesaid.

And whereas, also, before and at the time of the committing of the grievance by the said John Levy, as hereinafter next mentioned, the said John Levy was the owner and occupier of a certain other messuage and premises, with the appurtenances, situate in the County of Hudson, and contiguous to a certain common and public highway there, called Newark Avenue, in which said highway there now is, and heretofore, to wit, on the day and year aforesaid, there was, a certain hole and passage way, opening into a certain cellar and basement of and belonging to the said last mentioned messuage and premises of the said John Levy, to wit, at Number 188 Newark Avenue, in Jersey City, in the County of Hudson aforesaid. Yet the said John Levy, well knowing the prem-

ises whilst he was so the owner and occupier of the said last mentioned messuage and premises with the appurtenances, and whilst there was such hole and passage way as aforesaid, to wit, on the day and year aforesaid, at Jersey City, in the County of Hudson aforesaid, wrongfully and unjustly permitted the said hole and passage way to be and continue, and the same was so badly, insufficiently and defectively covered that by means of the premises and for want of a proper and sufficient covering to the said hole and passage way, the said plaintiff, who was then and there passing in and along the said highway, then and there necessarily and unavoidably fell into the said hole and passage way, and thereby the back part of the head of the said plaintiff was then and there cut, and he, the said plaintiff, thereby became and was sick, sore, lame, diseased and disordered with a quadruple lateral curve of the spine of him, the said plaintiff, and so remained and continued for a long space of time, to wit, from thence hitherto; during all which time he, the said plaintiff, thereby suffered and underwent great pain, and was prevented from attending to and transacting his necessary and lawful affairs and business, by him during that time to be performed and transacted, and was also, by means of the premises, forced to pay, lay out and expend, and did pay, lay out and expend a large sum, to wit, the sum of two thousand dollars, in and about the endeavoring to get healed and cured of the said quadruple lateral curve of the spine, and of the said cuts, sickness and disorder, to wit, at Jersey City, in the County of Hudson aforesaid.

And whereas also, before and at the time of the committing of the grievance by the said John Levy as hereinafter next mentioned the said John Levy was the owner and occupier of a certain other messuage and premises with the appurtenances, situate in the County of Hudson and contiguous to a certain common and public highway there, called Newark avenue, in which said highway there now is and

heretofore, to wit, on the day and year aforesaid, there was, a certain other opening and hole, leading into a certain basement of and belonging to the said last mentioned messuage and premises of the said John Levy, to the edges of which said last mentioned opening and hole movable gratings are now and on the same day and year aforesaid were attached, for the purpose of covering the said last mentioned opening and hole, to wit, at Number 188 Newark avenue, in Jersey City, in the County of Hudson aforesaid.

Yet the said John Levy, now deceased, well knowing the premises, whilst he was the owner and occupier of the said last mentioned messuage and premises with the appurtenances, and whilst there was such last mentioned opening and hole as aforesaid, with the movable gratings attached as aforesaid, to wit, on the day and year aforesaid, at Jersey City in the County of Hudson aforesaid, wrongfully and unjustly permitted the said last mentioned opening and hole to be uncovered by the said gratings, or by any other substance or thing whatever, so that by means of the premises and for want of a covering to the said last mentioned opening and hole, the said plaintiff, who was then and there passing in and along the said highway, then and there necessarily and unavoidably fell into the said last mentioned opening and hole, and thereby the back part of the head of the said plaintiff was cut, bruised and wounded, and he, the said plaintiff, became and was sick, sore, lame, diseased and disordered with lateral curvature and rotation of the spine, by reason of the falling of him, the said plaintiff, as aforesaid, into the said last mentioned opening and hole, and so remained and continued for a long space of time, to wit, from thence hitherto, during all which time he, the said plaintiff, thereby suffered and underwent great pain, and was prevented from attending to and transacting his necessary and lawful affairs and business by him during that time to be performed and

transacted, and was also, by means of the premises, forced and obliged to pay, lay out and expend, and did pay, lay out and expend a large sum of money, to wit, the sum of two thousand dollars in and about the endeavoring to get healed and cured of the said lateral curvature and rotation of the spine, and of the said wounds, sickness and disorder, to wit, at Jersey City, in the County of Hudson aforesaid.

And whereas, also, before and at the time of the committing of the grievance by the said John Levy, as hereinafter mentioned, the said John Levy was the owner and occupier of a certain other messuage and premises with the appurtenances, situate in the County of Hudson, and contiguous to a certain public highway there, called Newark avenue, in which said highway there now is and heretofore, to wit, on the day and year aforesaid there was, a certain opening and hole, leading to a certain basement of and belonging to the said last mentioned messuage and premises of the said John Levy, to wit, at Number 188 Newark avenue, in Jersey City, in the County of Hudson, aforesaid.

Yet the said John Levy, well knowing the premises whilst he was so the owner and occupier of the said last mentioned messuage and premises with the appurtenances, and whilst there was such opening and hole as aforesaid, to wit, on the day and year aforesaid, at Jersey City, in the County of Hudson aforesaid, wrongfully and unjustly permitted the said opening and hole to be and continue, and the same was so badly, insufficiently and defectively covered that, by means of the premises, and for want of a proper and sufficient covering to the said opening and hole, the said plaintiff, who was then and there passing in and along the said highway, then and there necessarily and unavoidably fell into the said opening and hole, and thereby the said plaintiff was ruptured in the lower part of the abdomen extending to and including the scrotum, and the said plaintiff thereby became and was sick, sore, lame, disor-

dered and diseased with the said rupture and otherwise, and so remained and continued for a long space of time, to wit, from thence until a certain day thence ensuing, to wit, the first day of February, in the year eighteen hundred and seventy-three, during all which time he, the said plaintiff, suffered and underwent great pain, and was prevented from attending to and transactieg his necessary and lawful affairs and business by him during that time to be performed and transacted, and was also, by means of the premises, forced and obliged to pay, lay out and expend, and did pay, lay out and expend a large sum, to wit, the sum of one thousand dollars, in and about the curing and healing, and the endeavoring to get cured and healed of the said rupture and of the said wounds, sickness and disorder, to wit, at Jersey City, in the County of Hudson aforesaid.

Wherefore, the said plaintiff saith that he is injured and hath sustained damage to the amount of fifteen thousand dollars, and therefore he brings his suit, &c,

ALBERT S. CLOKE,
Attorney of Plaintiff.

HUDSON COUNTY CIRCUIT COURT.

HENRY TRAPHAGEN, surviving executor of JOHN LEVY, dec'd.	
ads.	*In Case.*
ARTHUR L. HOUSTON,	*Plea.*
by *Proc Amie.*	

And the said Henry Traphagen, surviving Executor of John Levy, deceased, the defendant in this suit, by H. M. T. Beekman, his attorney, comes and defends the wrong and injury, when etc., and says that he is not guilty of any of the said supposed trespasses above laid to his charge, in name and form as the said plaintiff hath above thereof complained against him; and of this he, the said defendant puts himself upon the county, etc.

H. M. T. BEEKMAN,
Attorney for Defendant.

NEW JERSEY, }
HUDSON COUNTY, } *ss.:*

Henry Traphagen, surviving Executor of the estate of John Levy, deceased, being by me on his oath duly sworn according to law deposeth and says that he is the defendant in above cause named, that the plea by him above pleaded is not intended for the purpose of delay, but that he verily believes that he has a just and legal defense to said action on the merits of the case.

HENRY TRAPHAGEN.

Subscribed and sworn to before me at Jersey City, this 21st of March A. D., 1884.

FRANK DAVIS,
Master in Chancery of New Jersey.

TESTIMONY.

HUDSON COUNTY CIRCUIT COURT.

ARTHUR L. HOUSTON, by his next friend.

vs.

HENRY TRAPHAGEN,

Executor of John Levy, deceased.

MR. COLLINS, for Plaintiff.

MESSRS. TRAPHAGEN & BEEKMAN, for Defendants and MR. McCARTER of Counsel.

The cause was moved for trial May 6, 1885.

Mr. Collins opened the case.

The death of Mr. John Levy is admitted, in 1881, and that he during 1871 was seized of the building 188 Newark Avenue, Jersey City, and occupied the upper floor with his family, and the cellar; and that the store was rented by Maxwell Abernethy.

Arthur L. Houston, called by Plaintiff's Counsel, being sworn, testified as follows:

Q. Are the plaintiff in this suit?

A. Yes, sir.

Q. How old are you?

A. Twenty years old the last of April. Isaac Houston is my father. He is sitting by me now. I was born in Jersey City; I have lived here all my life.

Q. What is your daily occupation at present?

A. I go to school—to the Jersey City High School.

Q. What class are you in?

A. In the C class.

Q. It will take you how much longer to finish your course?

A. This June.

Q. Then there is an A class for the highest?

A. Yes, sir.

Q. You have got two more classes to go through?

A. No, sir; only one more. I am going to get through this June, this class I am in now.

Q. And then you have one more class?

A. No, sir; I get out this June.

Q. Is the C class the highest l

A. No, sir; it is a different course.

Q. You don't take the classical course?

A. No, sir.

Q. You will graduate the coming June in the commercial course, or whatever course it is that you take?

A. Yes, sir. I remember when my father kept his place of business in a different building from the one he now occupies.

Q. Where was he when you first remember him?

A. On the corner of Jersey avenue and Newark Avenue.

Q. What kind of a building was it?

A. A wooden building, one-story, not painted; a rough structure; that was on the corner of Jersey Avenue and Newark Avenue, on the northeast corner.

Q. What was the next building to it on the east, facing on the north side of Newark Avenue?

A. A brick building, occupied by Mr. Abernethy, a drug store.

Q. Did you know the Levy family?

A. Yes, sir. I knew the children, and the old gentleman and his wife; they lived up-stairs, and occupied the basement; by basement I mean that cellar; I knew that.

Q. Do you remember, when you were about six years old, of anything that happened to you at or near this building?

A. Yes, sir.

Q. State to the jury all about it in a story, as if you were telling them just what happened; where you had been and what you went to do, and just what happened to you?

A. Well, I was standing in front of the window of the drug store.

Q. Before that?

A. I came out of the store and went in front of Abernethy's window.

Q. Where had you been that morning, and what did you do?

A. I came from home and went to the store. to the butcher's shop; my father kept the butcher's shop; I was waiting for him to go home; I went into the shop; he was not in.

Q, While waiting for him—you were going to take him home to dinner?

A. Yes, sir.

Q. What time of day was it?

A. About noon; I had gone for him to go home to dinner; I had not been to school; he was not in the shop.

Q. Who was in the shop?

A. A man named Ben Hoffman; my father was not in.

Q. Were you told whether he was coming back or not?

A. I knew he was coming back; I had gone after him; while I waited for him I walked out of the store and walked in front of Abernethy's drug store there and was looking in the window; I went there to see the things in the window.

Q. (Referring to picture of drug store produced) Take that picture that is now on the easel; who made that?

A. I did; it represents the way those windows were.

Q. At the time you made it?

A. That is the way they were made.

Q. The way the thing looks inside?

A. In a general way.

Q. When did you make it; that is, when did you pick out the things that were in there?

A. About a year ago, or a year and a half or so.

Q. So it does not show the particular things that were in the window at the time you fell down?

A. No, sir.

Q. But the general appearance?

A. Yes, sir.

Q. As I understand it, that store is not at right angles to Newark avenue?

A. Not quite.

Q. But the front is slanting?

A, Yes, sir.

Q. Newark avenue and First street come together a short distance to the west of Jersey avenue, do they not?

A. Yes.

Q. And form a point?

A. Yes, sir.

Q. Then at this point Newark avenue and the first street north of it are not parallel to each other?

A. No, sir.

Q. And the building is laid out so as to be at right angles to First street and not to Newark avenue?

A. Yes, sir.

Q. (By the Court). Do you know how it stands?

The witness: Jersey avenue goes this way, and it is not right at right angles with Newark avenue.

Q. It is not at right angles?

A. No, sir.

Q. Which is not?

A. The drug store.

Q. (By Mr. Collins). The building is not at right angles to Newark avenue, so that as you are looking into the front door of the building you look slanting; you say you stepped to the window to look at the things that were in the window?

A. Yes, sir; there were articles in the window.

Q. What sort?

A. There were signs I know and bottles.

Q. What happened?

A. It was the furthest window, the nearest Jersey avenue.

Q. On the left, as you were looking at the picture?

A. Yes.

Q. You stood there; what happened then?

A. I stood there a few minutes, when I heard a scream and I went to go out of the way and fell down.

Q. Did you notice before that any place where you could fall down as you stood there; had you noticed any hole?

A. Not as I remember.

Q. What was this scream?

A. It was a sort of a woman's voice; it sounded like Mrs. Levy.

Q. Can you tell what was said?

A. No, sir; I could not tell exactly; it sounded like "Get away from there."

Q. What next do you remember?

A. I was taken into a drug store.

Q. Where were you the next that you remember?

A. Going into the drug store.

Q. Who was taking you?

A. Mr. Hoffman.

Q. Do you know where he got you from?

A. No, sir; I know he took me in; that is all.

Q. Do you recall your sensations as you fell, or when you stopped falling?

A. No, sir.

Q. Did you lose consciousness?

A. I think so; the next that I remember was being taken into the drug store.

Q. What was done there?

A. My head was dressed, and sticking plaster put on by somebody in the drug store.

Q. What drug store were you taken in?

A. Mr. Abernethy's; my head was plastered—put a plaster on.

Q After that what was done with it, after it was dressed?

A. I was taken home I lived at that time in Varick street where I live now, between Railroad avenue and Wayne street.

Q. Did any physician come to you?

A. Yes, sir; Dr. Lutkins.

Q. He came to see you the same day?

A. I don't remember exactly the same day.

Q. But he came to see you about this fall?

A. Yes, sir.

Q. Did he come more than once, or don't you know?

A. I don't remember.

Q. Tell us your history as near as you remember it—all that you can tell from that time on, until your father took you to Dr. Marsh's, to have trusses put on you.

A. Some months after, or a month or so after, I had pains in my side; and Dr. Lutkin's told my father to take me to Dr. Marsh's in New York; and he took me over and they put trusses on. The pain continued for some years.

Q. Can you tell now by memory, how long it was after you fell that Dr. Lutkin's told your father to take you over to Dr. Marsh?

A. No, sir.

Q. Your memory is not sufficient to tell you what lapse of time?

A. No, sir.

Q Between the time that you fell and the time you were taken to Dr. Marsh's did you have these pains that you speak of?

A. Yes, sir.

Q. Do you remember your mother taking you away?

A. Yes, sir.

Q. Where did she take you to?

A. Down to the State of Maine.

Q. You remember that?

A. Yes, sir.

Q. That was before you were taken over to Marsh's?

A. Yes.

Q. But after you fell?

A. Yes, sir.

Q. You know why you were taken away?

Objected to.

Q. You do remember that you were taken?

A. Yes, sir.

Q. What was done at Dr. Marsh's?

A. He made some trusses for me, to support me?

Q. How long did you wear those?

A. Well, I wore them all along; I wear some now.

Q. Got some on now—at present?

A. Yes, sir.

Q. The principal ones, that you had to wear at first—for how many years did you have to wear those?

A. I don't know how many years, but until I wore them out, and got some more.

Q. Got others?

A. Yes, sir.

Q. Have you worn trusses always?

A. Yes, sir.

Q. Up to now?

A. Yes, sir.

Q. The truss you wear now, there isn't as much of it as there was of the first one?

A. No, sir.

Q. Is it necessary for you to wear trusses at all now? Would you have to wear them, or is it more comfortable, simply?

A. I feel better with them on now.

Q. You do sometimes go without them?

A. Never do, no, sir.

Q, Ever tried to?

A. No, sir.

Q, After treatment was given by Dr. Marsh did you suffer much pain.

A. Yes, sir; pain in my side.

Q. The same kind of pain you had before?

A. Yes, sir.

Q. How severe was it?

A. It was so severe I could not run around or play or anything; I had to stay home from school.

Q. For how long did you stay home from school?

A. I stayed home about five years I should judge.

Q. Were you taught at home.

A. No, sir.

Q. How long is it since you have been as well as you are now?

A. Well, I guess about five or six years.

Q. About five or six years you have been about as you are now?

A. Yes, sir.

Q. And you go about now everywhere, don't you?

A. Yes, sir.

Q. By yourself?

A. Yes, sir.

Q. You say the pain was so that you could not go about and play. Tell us more fully about it; how severe it was. Let us get some idea what it felt like.

A. It felt as if there was a knife running right in under the ribs, and so severe I could not sit down or stand up, or in any position.

Q. Hard enough to make you cry?

A. Yes, sir.

Q. Did you sleep?

A. Not much.

Q. You can remember this now—look back upon it and remember it?

A. Yes, sir.

Q. Can you do any bodily work now?

A. Not much; I can do some, of course; I cannot do much.

Q. What is your general health?

A. Good.

Q. And has been so?

A. Yes, sir.

Q. Can you take violent exercise—walk fast or run?

A. No, sir, not very.

Q. How is it with going up stairs?

A. It puts me out of breath.

Cross-Examination by Mr. McCarter:

Q. Had you been to school before this accident happened?

A. Yes, sir; Mrs. Cannon's.

Q. Where was it situated?

A. In Third street, between Cole and Jersey Avenue.

Q. How long have you been going to school?

A. I cannot remember.

Q. You don't know how old you were when you first commenced going to school?

A. No, sir.

Q. Do you know how long you had been to her school before you were hurt?

A. No, sir.

Q. Can you give us any idea whether it was a year or more?

A. I should think it was about a year or a half year—half a year or a year.

Q. Your father had had his place of business at this place adjoining the drug store as long as you could remember, had he not?

A. Yes, sir.

Q. Had you often been at his place of business?

A. I had been there a good many times.

Q. Before this happened?

A. Yes, sir.

Q. You were in the habit of going there?

A. Yes, sir.

Q. For what purpose?

A. I went there to see him and went there to meet him.

Q. How did you get from where your father then lived to his store? You said he lived in Varick street between Newark Avenue and Wayne Street?

A. Yes, sir. I went down Jersey Avenue to—I generally go from Varick to Jersey Avenue, and Jersey Avenue to Newark Avenue, and that is where his store was.

Q. Then you would go from Varick Street to Jersey Avenue?

A. In Railroad Avenue, through Railroad Avenue.

Q. And go down Jersey Avenue to where it joined on to Newark Avenue?

A. Yes, sir.

Q. And there was where your father's store was?

A. Yes, sir.

Q. How did you get from Varick street to Jersey Avenue?

A. Through Railroad Avenue.

Mr. Collins: That is the New Jersey Railroad.

Q. Had you been in the habit of being about your father's store as long as you could remember?

A. Yes, sir.

Q. Had you seen the drug store before?

A. Yes, sir.

Q. Very frequently, had you not?

A. Yes, sir.

Q. Had you been in it?

A. Lots of times.

Q. Been about in front of it a good many times, had you not?

A. Yes, sir.

Q. You knew the Levy children, did you?

A. Yes, sir.

Q. Did you play with them?

A. No, sir.

Q. Were they of your age, or younger or older than you?

A. Older, I think.

Q. How did you get acquainted with them?

A. I saw them lots of times.

Q. Where did you see them ?

A. I seen them go in and out of the house.

Q. In and out of that house ?

A. Yes, sir.

Q. Where would you be when they were going in and out of the house ?

A. Probably on the sidewalk or in the street.

Q. You mean on the sidewalk in front of the house ?

A. Any place around there.

Q. Then you were pretty well acquainted with the condition of things there, were you not ?

A. Yes, sir.

Q. Did you know how it was that the people who occupied the cellar or basement got into it from the street?

A. No.

Q. You didn't know at that time?

A. No, sir.

Q. How did you suppose they got into it from the street?

A. I didn't know.

Q. You never thought anything about it ?

A. No, sir.

Q. You had seen those gratings there, had you not ?

A. Yes.

Q. You knew they were there?

A. Yes, sir.

Q. You knew what they were there for, did you not ?

A. Yes, sir.

Q. What did you suppose they were there for?

A. To cover up the hole in the sidewalk.

Q. You knew there were holes in the sidewalk and those gratings were to cover them up ?

A. Yes, sir.

Q. On this day you said you went about noon, and you went to go with your father to dinner ; and you went into his store and he was not there, and

you knew he was coming back; how did you know he was coming back?

A. I know he generally comes back, and goes right from there to the house.

Q. So while you waited for him you went and looked in the window?

A. Yes, sir.

Q. Had you often looked in the window before?

A. Yes, sir.

Q. Tell us what you wanted to see?

A. Nothing special.

Q. Just ordinary curiosity to see what was there?

A. Yes.

Q. Do you know how close you went to the window?

A, I think I touched it.

Q. You went close enough to touch it?

A. Yes, sir.

Q. Did you go directly from your father's store to the place where you stood, or did you go along the sidewalk and then come back?

Q. You don't remember?

A No, sir.

Q. As far as you know you went directly from your father's store to the place?

A. Yes, sir.

Q. Let me see if I understand the situation; your father's store was here, was it not, this way (indicating)?

A. Yes, sir.

Q. Further up the street this way?

A. Yes, sir.

Q. And Jersey avenue and Newark avenue came together out in this direction?

A. Yes, sir.

Q. That railing was there, was it not?

A. Yes, sir.

Q. So to stand by the window you had to come around this railing to touch the window?

A. Yes, sir.

Q. Do you know how far it is from the end of that railing to the window?

A. No, sir.

Q. You stood then in front of the window?

A. Yes, sir.

Q. Do you remember whether you stood on the stone frame or on the grating?

A. I think I stood on the g ating.

Q. Do you think so because you remember it, or do you think so because you could not have fallen down there, unless you did stand on the grating?

A. I think so because I remember it.

Q. Then you remember standing on the grating; was that wing or flap of the grating open or shut?

A. Open.

Q. How do you know it was open?

A. Because it was open when I came up.

Q. When you came up?

A. When I was going in the drug store.

Q. When you came in there you saw it open, did you?

A. Yes.

Mr. Collins: I beg your pardon.

Q. Had you been in the drug store before you went on this grating?

A. Lots of times.

Q. I mean on that day?

A. Not as I remember.

Q. You say you knew it was when you were going into the drug store?

A. Yes, sir.

Q. Do you mean to say when you were going in the drug store these lots of times, or when you went to the window that day?

A. That day.

Q. When you went to the window you saw that was open?

A. I didn't see it was open when I went to the window, but I know it was open when I went in the drug store.

Q. When did you go in the drug store ; you mean when you were taken in the drug store?

A. Yes, sir.

Q. Then you say you don't remember whether you noticed whether it was open or not before you were brought out of it?

A. No, sir.

Q. It was mid-day, was it not?

A. Just about noon.

Q Was it possible for you to stand there in front of that window on one part of the grating and not see that the other was open?

A. Yes, sir.

Q. Can you say now whether you noticed it was open or not; can you remember anything about it?

A. I don't think I knew it was open.

Q. Can you remember whether you knew it was open?

A. No, sir.

Q. You stood, you think, on this grating and you say you heard a woman's voice that sounded like Mrs. Levy's voice?

A. Yes, sir.

Q. Where did that seem to come from?

A. From underneath.

Q. From down in the area?

A. Yes, sir.

Q. Did you suppose she was down there?

A. I didn't know.

Q. Did you suppose from hearing her voice that she was down there?

A. Yes, sir.

Q. Were there steps there?

A. Yes, sir.

Q. You knew that?

A. Yes, sir.

Q. That was the way they got into the cellar?

A. They got in that way, yes, sir.

Q. When you heard the voice you supposed that she was down those stairs, did you?

A. I thought it was her; but I thought afterwards it sounded like her voice; I didn't notice her voice just then; I didn't think at the instant.

Q. You heard somebody tell you to get away from there?

A. Yes, sir.

Q. The next you remember you were being carried out?

A. Yes.

Q. You don't remember how you came to fall?

A. No, sir.

Q. Did you make this drawing?

A. Yes, sir.

Q. Is it an original or copy?

A. It was drawn first by somebody else, and I made one over it, and put more things in it.

Q. You traced over one that somebody else had made before?

A. Yes.

Q. Who was that?

A. Some gentleman in New York—some draughtsman.

Q. Who got him to make it?

A. My father.

Q. Where is the one he made?

A. Home, I think; I ain't sure.

Q. You did this about a year ago, I understand you?

A. A little over a year ago.

Q. You don't recollect what things were in the window at that time?

A. No, sir.

Q. This isn't designed to represent the window as it then appeared, so far as what stands in it—bottles and things in it are concerned?

A. No, sir.

Q. Do yon know whether this is drawn to a scale?

A. It is drawn to a scale.

Q. What is a scale?

A. An inch to a foot.

Q. Did you make the measurement from which it was drawn?

A. I made some of them.

Q. What ones did you make?

A. I did steps that goes into the drug store.

Q. You mean the step up?

A. Yes, sir.

Q. The drawing was made before you saw it, of course?

A. Yes.

Q. And the measurements had been made then by somebody else?

A. Yes, sir.

Q. Did you do anything more than copy that drawing?

A. I copied it, and measured some places, and went over some places.

Q. What?

A. I copied it over in a general way, and in some places I measured it to see if it was correct.

Q. You verified some of the measurement by actual experiment?

A. Yes, sir.

Q. When you were taken up into the drug store, you said you saw that that grating was open. Can you remember whereabouts you were when you first saw it?

A. Just about going into the drug store.

Q. About going in the door?

A. Somewhere about there.

Q. You were unconscious when you were down in the area way, were you not?

A. Probably; I can't remember.

Q. The first thing you remember is being taken into the drug store?

A. Yes, sir.

Q. And when you were taken in, you saw this area was open?

A. Yes, sir.

Q. You don't remember whether you had seen it open before or not?

A. No, sir.

Q. How did you get from your house to your school?

A. I went right by the store, up Jersey Avenue, to Third street and turned around Third street toward Cole street.

Q. You went right by the store?

A. Yes, sir.

Q. And then you went right past the drug store?

A. No, sir—in Jersey Avenue.

Q. You went by the store in Jersey Avenue?

A. Yes, sir.

Q. You didn't have to get on to Newark Avenue, and past the store—the Newark Avenue front—to get to your school?

A. No, sir.

Q. Do you remember now when you got on to that railing, or that grating, in front of the area, you came around this hand rail that projects out to get trom it, or whether you came to it from the other way?

A. No, sir.

Q. Did you not, on the former trial testify that you walked down the sidewalk, and then walked up to get to the window?

A. I know I was on the sidewalk—I walked around.

Q. I will read a question or two from the other trial, of your testimony;

"Q. Do you remember how you got there? A. Yes, sir. I was waiting for father to go home; I was going over to the shop to meet him; I went to the store; he was not in the store; then I went next door to look at the windows." Do you remember that?

A. Yes, sir.

Q, "Did you get around the railing"? You answered, "I don't know as I did that. I walked down the sidewalk, and then walked up"?

A. Yes, sir.

Q, What is your memory now about that?

A, I went on the sidewalk, and got up there; I would have to go around the railing to get up there.

Q. Then you now know that you did go around the railing?

A. I don't know whether I went directly right close to the railing or whether I walked down the sidewalk and walked up; I don't remember.

Q. Can you tell how far down the sidewalk you had gone past the railing before you turned to go to the window?

A. No.

Q. You don't remember about that?

A. No, sir.

Q. You were not going to school then?

A. No, sir.

Q. You had been to school before?

A. Yes, sir.

Q. And what was the reason you were not going to school at that time?

A. I don't remember.

Q. Do you remember whether you were just home for a day, or whether you had ceased going to school —for a vacation or something of the kind?

A. No, sir.

Q. You don't remember what?

A. No, sir.

Q. Then you cannot remember why it was you were not at school that day?

A. No, sir.

Q. How long had it been before that since you had been to school?

A. I cannot remember exactly; it may be a half a year; it may be a year.

Q. Then you had been going to school for a half a year, or a year before that?

A. I can't remember exactly; I think about that.

Q. Why hadn't you been going to school; why had you ceased to go to school for a year or a year and a half?

A. I don't remember.

Q. You don't know why?

A. No, sir.

Q. How did you spend your time during the time you were not at school and up to the time this fall happened? how did you amuse yourself; what did you do?

A. I don't know.

Q. Can't you remember anything you did that winter?

A. No.

Q. Ride down hill—coast?

A. I don't know as I used to coast so early as that; I know I have coasted; I don't know whether it was before the fall.

Q. You cannot remember whether you ever coasted before the hurt?

A. No, sir.

Q. Did you slide on the ice?

A. Yes, sir; I don't remember before that.

Q. Can you remember anything that you did by way of play or amusement before the time when this accident occurred?

A. No, sir.

Q. Or anything that you did?

A. I went to school.

Q. But you didn't go to school for a year and a half before this—or a year, you say?

A. Just about.

Q. I mean between the time you quit going to school and your accident; can you tell us how you occupied yourself, or what you did?

A. No, sir.

Q. You don't remember whether you coasted during that time?

A. No, sir.

Q. Slide on the ice?

A. No, sir.

Q. Or whether you snow-balled or played through the winter—how you amused yourself?

A. No, sir.

Q. Do you remember having any other fall than that?

A. No.

Q. Did you ever fall on the ice before that?

A. I don't remember being on the ice before that.

Q. Don't you remember that you testified on the former trial that you had fallen on the ice more than once, but you never hurt yourself much—you got right up?

A. Yes, sir; that was after the fall; a good many times.

Q. That was after this fall?

A. Yes, sir.

Q. When was that?

A. A good many times since.

Q. Just tell us about that, please?

A. I can't remember any special time.

Q. How would it be?

A. Maybe I would be sliding, and slip down; I wouldn't hurt myself any; I would get right up.

Q. You do remember that after this fall—was that before you went to Dr. Marsh's?

A. It was after.

Q. You say you were taken home? And do you remember that Dr. Lutkins came to see you after this hurt?

A. Yes, sir.

Q. How soon after the hurt?

A. I can't remember how soon.

Q. As near as you can tell?

A. I should think about a month: I don't remember.

Q. Do you remember his coming to see you on the day on which you were hurt?

A. I don't remember.

Q. But as far as you do remember, the time when he came to see you was about a month later?

A. I should think so.

Q. That is the best memory you can give us about it?

A. Yes, sir.

Q. What makes you think it was about a month?

A. That is the nearest I can think.

Q. Was that the time when you had said he recommended your father to take you to Mr. Marsh?

A. I don't remember whether it was that time or any other time; I don't remember.

Q. Then you don't remember his advising your father to take you to Mr. Marsh?

A. No, sir; not to hear him speaking of it; I knew he took me there.

Q. Can you tell how soon it was after Dr. Lutkins visit, of which you have spoken, that your father did take you to Mr. Marsh?

A. I cannot tell how soon after; I know it was very soon after.

Q. What was your idea as to how soon—whether it was a week, or a day or two, or a month, or how long?

A. I have not any idea.

Q. Except that it was pretty soon after?

A. Yes, sir.

Q. How do you know that Dr. Lutkins' coming to see you had anything to do with going to Mr. Marsh?

A. I knew it right after, directly—I knew of his going over there.

Q. You knew that you went to Mr. Marsh directly after Dr. Lutkins' visit, and you supposed from that, that Dr. Lutkins had advised it?

A. Yes, sir.

Q. Were you sure he had advised it?

A. Yes, sir.

Q. Do you remember whether Dr. Lutkins vaccinnated or treated any of the other members of the family at the time he came there, of which you speak?

A. Yes, sir.

Q. The time he did come, was the time when he came and vaccinated the other children?

A. Yes, sir.

Q. Did he vaccinate you?

A. I don't think so.

Q. Who of your father's family were vaccinated at that time, do you remember?

A. Three sisters.

Q. Were they younger than you?

A. No, sir—older.

Q. When you came to yourself, and when you were taken to the drug store and aftewards taken home— what injuries did you observe you had sustained?

A. A cut on the head?

Q. You don't remember of any other?

A. I don't remember of any other.

Q. Were you treated for any other that you know of?

A. not as I remember.

Q. You said that some time after you were taken home you began to feel pains?

A. Yes, sir.

Q. How soon was that after you were taken home?

A. I cannot recollect exactly, perhaps two or three months, may be sooner.

Q. Was it before Lutkins came?

A. I don't remember.

Q You don't remember having felt any pain before Mr. Lutkins came?

A. No, sir.

Q. Did you have any pains before you went to Mr. Marsh's?

A. Yes, sir.

Q. How long before that?

A. I cannot remember.

Q. When you went to Mr. Marsh's you put on the brace?

A. Yes, sir.

Q. How soon after that, do you remember?

A. As soon as he could make it; I don't remember how soon.

Q. He didn't have any ready?

A. He made it to order.

Q. What?

A. He made it to fit.

Q. He made it to fit you?

A. Yes, sir.

Q. And you put it on as soon afer that as he could make it?

A. Yes, sir.

Q. Did that brace hurt you?

A. It hurt me before I got used to it; after I got used to it it didn't hurt me any.

Q. How long did it take you to get used to it?

A. Probably half a year.

Q. After you put the truss on for half a year, as near as you remember, it caused you pain?

A. It sort of felt stiff; I had to get used to it.

Q. Did you suffer other pain beside that?

A. Yes, sir.

Q. Where?

A. Pain in the side.

Q. In what side?

A. I think in my right side.

Q. Was it external pain?

A. Yes, sir.

Q. Did you wear that brace at night?

A. No, sir; took it off every night.

Q. When did you make that drawing?

A. A little over a year ago.

Q. That is all your drawing, is it not?

A. Every bit that is on there.

Q. What studies have you been pursuing in the C class that you spoke of?

A. Grammar, arithmetic, German, philosophy, chemistry.

Q. You mean natural philosophy?

A. Yes, sir.

Q. Anything else?

A. Several others.

By Mr. Collins.

Q. Book-keeping?
A. Book-keeping.

By Mr. McCarter,

Q. After you got your brace and wore it, did you suffer more pain when your brace was on, or when it was off?
A. Not much difference.
Q. What was the difference?
A. I don't know as there was any difference; I cannot remember.
Q. Didn't you testify before that you felt more pain when the brace was on than when it was off?
A. It ain't a pain. It is a sort of a stiffness when you have braces on; you cannot breathe so.
Q. What?
A. It sort of holds you stiff and straight.
Q. That is your experience after you got the brace on?
A. Yes, sir.
Q. Was the stiffness occasioned by the want of the brace fitting exactly; it is apt to be stiff to hold you in position.
Q. Then that stiffness was uncomfortable?
A. Yes, sir.
Q. And that was all the discomfort you experienced after you got the brace on?
A. No, sir; I had pains.
Q. How were those pains when you had the brace on as compared with when it was not on?
A. I should think pretty near the same; I cannot remember exactly.
Q. Didn't you testify before that those pains were more severe than when you had the brace on, than when it wasn't?
A. I should think about the same.
Q. I ask you what you testified to before?
A. It ain't exactly a pain—when you have anything to hold you stiff, it is a sort of a girdle.

Q. When did you commence going to school again after this accident?

A. I cannot remember exactly; some years I know.

Q. You went the next summer up to the State of Maine?

A. Yes, sir.

Q. Where about in Maine?

A. In Ripley.

Q. How long did you stay there?

A. I stayed there until some where around September.

Q. When did you go?

A. I went early in the summer, I think.

Q. Do you remember what time in the summer you went?

A. I don't remember the month; about the first of it I should think.

Q. Before or after the first of July?

A. Somewhere around there.

Q. Can you tell whether it was before or after the fourth of July?

A. No, sir.

Q. What did you do up at Ripley?

A. I didn't do anything—could not play.

Q. Did you have relatives or friends at Ripley?

A. Yes, sir.

Q. Who were they?

A. I got aunts and uncles and a grandmother.

Q. They were your mother's parents or your father's parents?

A. Mother's.

Q. Your mother's family lived there?

A. Yes, sir.

Q. Her mother and father lived there?

A. Her father was dead; I never saw her father.

Q. Her mother lived there at that time?

A. Yes, sir.

Q. And she had brothers and sisters there?

A. Yes, sir.

Q. Had you ever been there before?
A. Not as I remember.
Q. Have you ever been there since?
A. Yes, sir.
Q. How many times?
A. I can count twice.
Q. Has your mother been there when you have not been with her?
A. Yes, sir.
Q. How many times?
A. Once.
Q. Did she take other children with her when she went at that time?
A. No, sir.
Q. Went alone?
A. With me.
Q. I ask you if your mother has not been there when you didn't go with her?
A. I don't remember.
Q. I understood you to say she had once?
A. I didn't say she had been there when nobody has been with her; I said I was with her.
Q. You were with her once?
A. Yes, sir.
Q. Do you know of her being there any other time than that?
A. She was there this summer.
Q. Who went with her this summer?
A. My father.
Q. And hadn't she been there between that time and this summer?
A. Not as I remember.
Q. You don't remember about that? Do you remember who carried you out of this place into the drug store?
A. I didn't know who it was at the time I was carried.
Q. When did you learn who it was?
A. Directly.
Q. How did you learn?

A. By the person.

Q. You mean by seeing the person?

A. Yes, sir.

Q. Who was that?

A. Mr. Hoffman.

Q. Did you know he carried you out because you remember being in his arms, or because he told you so?

A. Because he told me so.

Q. Then you have no personal recollection of how you got out of the area into the drug store?

A. I know I was taken in to the drug store.

Q. You have no personal recollection as to who took you?

A. No, sir.

Q. Where were you when you first regained your consciousness of what was going on around you in the drug store?

A. The first I can remember is going in the drug store.

Q. Going in the door?

A. Going in; I don't know as it was directly the door.

Q. Were you carried in or did you walk in?

A. I think my feet were on the ground.

Q. You remember that, then?

A. Yes, sir.

Q. You remember that when you went into the drug store your feet were on the ground?

A. Yes, sir.

Q. Then you walked in?

A. I was supported.

Q. But you did walk in, being supported by somebody; do you know who supported you?

A. Not at the time.

Q. When you were examined before did you tell anything about your going to the State of Maine?

A. No, sir; I don't think so.

Redirect examination by MR. COLLINS :

Q. You say that there were steps leading from the sidewalk down into the cellar ?

A. Yes, sir.

Q. Did you know that before the day of this fall that there were steps down there ?

A. Yes, sir.

Q. You say that you had a sketch made by some one else, which you copied, and Mr. McCarter spoke as if you made this over and traced through ; is that the way ?

A. No, sir ; I measured it.

Q. You made this entirely yourself ; you didn't trace it over something else ?

A. No, sir.

Q. Taking your father's shop on the same scale, would bring it about to here (indicating), wouldn't it?

A. Yes.

Q. Here is the corner of Jersey avenue, and where my finger is would be about the entrance of your father's shop ?

A. There was an entrance on Jersey avenue and one on Newark avenue.

Q. Where was the Newark avenue entrance ?

A. Just about half way between the line of the building on Jersey avenue and that building.

Q. Which door did you come out of when you went in that morning and found your father was not there?

A. I think it was the Newark avenue door.

Q. Was there anything kept by your father between the door leading into this shop from Newark avenue, along up close to your father's shop on the sidewalk ; anything standing out there ?

A. Not as I remember.

Recross-Examination by MR. MCCARTER :

Q. Had you seen people going up and down those steps before ?

A. No, sir.

Q. How did you know they were there?

A. I saw them.

Q. They were in plain sight, were they?

A. Yes, sir.

By Mr. COLLINS:

Q. (Referring to scar on plaintiff's head) Is that the scar of the wound on your head?

A. Yes, sir.

(The witness shows the scar to the jury.)

BENJAMIN W. HOFFMAN, called for plaintiff, being duly sworn, testified as follows:

By Mr. COLLINS:

Q. Are you an employee of Isaac Houston, in the butcher business?

A. Yes, sir.

Q. How long have you been in his employment?

A. Sixteen years; I was there in 1871.

Q. In April, 1871, where was the place of business?

A. 71, corner of Newark and Jersey avenues.

Q. And the next building on the east, on the north side of the street, was what?

A. A brick building.

Q. What building was it?

A. I believe it was kept there by a fancy dry goods store at the time.

Q. The next building on Newark avenue?

A. That was a drug store—Mr. Abernethy's drug store.

Q. The Levy building?

A. The Levy building, yes, sir.

Q. Mr. Houston now keeps his shop two or three doors further to the east, right in the same neighborhood?

A. Yes, sir.

Q. Is that a fairly correct representation ef the front of that Levy building as it was in 1871?

A. Yes, sir; as near as I can recollect.

Q. Do you remember, in April 1871, when Arthur L. Houston, the plaintiff in this suit, fell into the cellar way from the sidewalk in front of the Levy building?

A. I do; yes, sir.

Q. State to the jury, all that you know of the transaction beginning with his coming into the shop to look for his father?

A. He came in the shop to look for his father and he was playing around there: and his father wasn't in at the time, I think he had just stepped out and went to the barber's, I ain't certain; he said he would be back in a little while; as I was cutting he was playing around there—I was cutting meat for a customer; and I heard a scream, and I thought of Arthur at the time, and I rushed out and saw parties looking down the cellar way, and saw him lying down there.

Q. How soon after the scream, did you get there?

A. I dropped everything and rushed out; I thought of him at the time.

Q. Just in an instant, you were there?

A. Yes, sir.

Q. When you had got there, nobody had gone down yet?

A. No.

Q. What did you do?

A. I rushed down and picked him up, carried him to the top of the steps, and set him on his feet and took him into the drug store; and Mr. Abernethy dressed the cut on the top of his head.

Q. When you got down there, how was he?

A. He seemed to lay quiet—I don't remember exactly how he was lying, but in the hurry of fright I picked him up; and after I took hold of him he kind of cried all the time while he was getting the cut dressed till his father came—I could not quiet him.

Q. When you got him down there he was quiet?

A. He was quiet, but as soon as I took hold of him he began to cry.

Q. You say you don't remember exactly how he was lying? Can you tell whether he was head or feet down—whether his head was down at the bottom and feet up?

A. I don't exactly remember about that part of it.

Q. Was he on his back, or on his face, or on his side?

A. I think he was lying on his side.

Q. You brought him up?

A. Yes, sir.

Q. And, as you say, took him in and had him dressed?

A. Yes, sir.

Q. As you got there in what condition was the grating and the hole?

A. That grating door was open towards the east.

Q, And the other door was shut?

A. Yes, sir.

Q. Does this picture represent the situation of it?

A. As far as I can remember, yes, sir.

Q. The grating was open and lay flat on the sidewalk?

A. I don't remember that, no, sir.

Q. Where was the entrance to Mr. Houston's butcher's shop?

A. Well, there were several entrances; you could take the front all out in the summer time; there was one entrance in Jersey Avenue, and then there was three doors taken down of the whole front except an office about five feet I should judge, right next to Abernethy's drug store.

Q. In the summer?

A. Yes, sir.

Q. Had it been done in April?

A. Yes, sir; it was all open.

Q. Except a little fenced off for an office?

A. Yes, sir.

Q. And that was adjoining the drug store?

A. Yes, sir.

Q. And on the front of Houston's lot?

A. Yes, sir.

Q. In front of that place—that is, from, say from this little ornamental railing on the left, west, what was there kept by Mr. Houston?

A. We used to put our doors there, and barrels used to stand one side; I think there was a space between the office and the drug store of about three feet—I mind of an alley way in there; it used to be used for an alley-way, and it was closed up, and we used to set our doors up there, right up against the railing.

Q. Up against the railing?

A. Yes, sir; up against the railing; alongside of the railing.

Q. And after the doors, what was there on the sidewalk?

A. He had vegetables—baskets of vegetables—standing with vegetables in.

Q. Do you remember Arthur as a little boy before the accident?

A. I do.

Q. What was his appearance?

A. A strong, healthy child; he used to come around quite often, around the shop, and play around.

Q. Nothing the matter with him at all that you observed?

A. It didn't seem to me that there was anything—strong, healthy.

Q. Did you notice any change in him?

A. After the accident I did, yes, sir.

Q. How soon?

A. Well, I should judge about a couple of months or so after that, Mr. Houston called my attention to him; he was going across the avenue one day to dinner—that he seemed to be growing one-sided.

Q. Did you notice it yourself?

A. No, sir; not till he spoke of it.

Q. Did you then, when he spoke it?

A. Yes, sir: I did; I looked right at him.

Q. Had he changed in any other respect besides being one-sided?

A. Yes, sir; he didn't look quite as healthy; he looked pale.

Q. What kind of steps led down from the sidewalk to the cellar?

A. Stone steps.

Q. About how many of them?

A. I should judge there were as many as six, eight or ten; I don't remember how many; I never counted them. Somewhere's along there.

Cross-Examination by MR. BEEKMAN.

Q. You were acquainted with these premises?

A. Yes, sir.

Q. Did you see a flap that was represented in that picture open?

A. Not that I remember.

Q. You never remember seeing it open?

A. No, sir.

Q. How do the premises differ now from the condition they were in then, if any?

A. I don't know that they differ any, only different colored paint on the front, and the window may be fixed up a little different.

Q. And inside?

A. Inside; but the front ain't any different from what it was.

Q. There was the same guard rail that is there now—was there in 1871?

A. Yes, sir.

Q. The same doors are now in use?

A. Yes, sir.

Q. The same hinges and all?

A. As far as I know.

MR. COLLINS:

Q. What doors do you refer to?

Mr. Beekman: The cellar doors we have been talking about.

Q. Are the same flaps or gratings in use now that were in use in April, 1871?

A. Yes, sir.

Q. Have you ever noticed the hinges on these flaps?

A. No, sir; not particularly.

Q. Have you ever noticed whether either one of these flaps would lie down flat on the sidewalk?

A. I don't remember.

Q. You don't remember that they would?

A. I judge they would; I don't know.

Q. You don't know that they would?

A. No.

Q. What is the first thing that you remember after the boy left the store? In relation to the boy what was the first thing that you heard of him?

A. I heard a scream.

Q. Did any one help you carry the boy from the hole?

A. No, sir.

Q. You carried him alone?

A. I carried him alone.

Q, Where did you find him?

A. Down at the bottom of the steps, right up against the door.

Q. Was he unconscious?

A. He was till I took hold of him, then he began to cry. Whether he was stunnned I don't know, but as soon as I took hold of him he came right to and begun to cry.

Q. You carried him up?

A. I carried him up.

Q. Took him in your arms?

A. Yes, sir, and carried him to the top of the steps and stood him on his feet, and took hold of his hand and took him into the drug store.

Q. He walked in the drug store?

A. He walked in the drug store, yes, sir.

Q. Do you remember walking over anything when you walked in the drug store?

A. No, sir; I think I walked right on the sidewalk, but I don't remember walking over anything.

Q. Did you walk down the street any?

A. That I don't remember, how for I went; I know I went right to the drug store, as he was bleeding, to get the cut dressed.

Q. Did you notice any other injury on the boy?

A. No, sir.

Q. Did you remain there while the wound was dressed?

A. I did, till it was all fixed, and was taking him out of the drug store; and Mr. Houston came at that time and took him home; I went back in the market.

Q. Who was by the door when you went in the cellar?

A. I don't remember.

Q. How did you know where to find the boy when you heard the scream?

A. I saw parties standing around there looking.

Q. Who were those parties?

A. I don't remember.

Q. Did you know anybody?

A. I was so frightened at the time I could not tel who was standing there.

Q. Did they show you where the boy was?

A. No, sir.

Q. You had seen the boy frequently, before the window, before, hadn't you?

A. Yes, sir.

Q. You had seen him frequently go into Abernethy's drug store, or knew that he went in there?

A. O, yes, very often.

Q. It was a common place for him to go, was it not?

A. A common place for him to go.

Q. Did you remain while Mr. Abernethy dressed the wound?

A. I did.

Q. What time of the year was this?

A. It was in 1871.

Q. What time of the year?

A. It was in April—about the first part of April, I should judge.

Q. How do you remember that?

A. Because we had our front all open and the doors taken off and meat hanging out; it was not warm enough to put it away; and in the winter time we have it all closed up, only have one door open to go in and out.

Q. Did you take your front out before April?

A. Yes, sir; if the weather was warm enough.

Q. Don't you have to have any fires in the store during April?

A. Not a great deal, only in the office, just for Mr. Houston to post his books; as far as cutting meat, we don't need none—very little fire, anyway, in our business.

Q. You had been in the habit of seeing this boy very frequently, had you not?

A. Yes, sir.

Q. How soon after the accident did you see him around the store?

A. Well, he was around a week or so after that—he came around.

Q. A week or so?

A. Yes, sir.

Q. You swore that the boy was healthy before the accident?

A. Yes, sir; as far as I know.

Q. Did he have red cheeks?

A. He had a good color in his cheeks, yes, sir.

Q. He had red cheeks?

A. Yes, sir.

Q. What was his complexion then?

A. He was rather light.

Q. When was your attention called to his physical appearance after the fall?

A. I should judge about two or three months afterwards.

Q. How do you fix that date?

A. As near as I can remember.

Q. Do you remember swearing on the other trial that it was five months before you noticed any change?

A. No, sir; I do not.

Q. Let me ask you a question which was asked on the other trial (page 52): "Q. How soon after this accident did you notice any marked difference in his appearance as to his health? A. Four or five months after that, my attention was called to it by Mr. Houston." Were you right then, or are you right now?

A. I don't know, I am sure; as near as I can remember; I guess, as far as that is concerned, about the time.

Q. You know whether this boy had been in the habit of going to school before this accident?

A. Not as I know of; no, sir.

Q. Had you ever been down in this cellar before the accident?

A. No, sir.

Q. Have you ever been down there since?

A. I have not.

Q. Do you live in the family with Houston?

A. No, sir.

Q. Did you at that time?

A. No, sir.

Q. How long had you been in his employ before that?

A. About two years.

Q. And you have remained constantly in his employ since that time?

A. Yes.

Re-Direct Examination, by Mr. Collins.

Q. Counsel asked you if you ever saw that grating open, and you said no, Wasn't it open when you got Arthur out?

A. It was open then; since that time I don't remember seeing it open.

Q. You don't remember seeing it open since then?

A. No, sir.

Q. Do you ever remember of having seen it open before that time?

A. I don't remember; no, sir.

Q. So that you have no means of informing yourself as to how it was when it was open?

A. No, sir.

Q. You always noticed it as closed, did you not?

A. Yes.

Re-Direct Examination, Mr. Collins.

Q. If I understand it, the only occasion that you remember ever seeing it open was the very time he fell down there?

A. Yes, sir; that is the only time I was down there.

Q. The only time you ever saw it open?

A. Yes, sir.

Q. But it may have been open hundreds of times and you not see it?

A. And I not notice it.

Q. You say you don't remember when you went down the cellar whether the grating was flat on the sidewalk?

A. I don't remember.

Q. But you do remember that it was open?

A. I rememcer that it was open.

Q. You don't remember at all about the position of it?

A. No, sir.

Q. In what position that open grating was?

A. No, sir.

Q. That is what I understood you to mean. You say he was bleeding?

A. Yes, sir.

Q. Do you remember seeing blood on the steps?

A. No, sir; I saw it on his head.

Q. You could not form an idea what step he struck first, or how he struck the steps?

A. No, sir.

ISAAC HOUSTON, called for plaintiff, being duly sworn, testified as follows :

By Mr. Collins :

Q. Where do you live ?

A. Jersey City, 348 Varick street.

Q. You have lived there how long ?

A. Twenty-two years.

Q. How long in Jersey City ?

A. 32.

Q. What is your age ?

A. 66 last November.

Q. Where were you born ?

A. New Hampshire.

Q. What were you reared at, what did you do ?

A. I was reared on a farm till I was 21.

Q. And then what ?

A. Worked in a mill for a while, a cotton factory, and then went into the butcher business.

Q. Have you been in the butcher business for nearly all your manhood ?

A. Yes, sir ; I have been in the butcher business 40 years.

Q. What is your height?

A. 6 feet, an inch and a half.

Q. In your stocking feet?

A. Yes. sir.

Q What is your weight ?

A. About 175 now. I have been heavier.

Q. What has been you health all your life ?

A. Always well ; never had occasion to employ a physician to any account. I have consulted them for some little trouble of the bowels, or something like that ; but I never was sick.

Q. At what age did your father die ?

A. Seventy-seven.

Q. And your mother?

A. Eigthty-nine.

Q. Any consumption in the family that you ever heard of?

A. None whatever.

Q. Any scrofulous tendency of any sort?

A. None that I was ever aware of. I had brothers and sisters.

Q. What became of them?

A. The sisters are dead and two of my brothers are living.

Q. Old men?

A. Yes, I was the youngest of the family.

Q. You have two brothers older than yourself living?

A. Yes, sir; my sisters are dead.

Q. Did they grow to be mature women?

A. My oldest sister died three years ago at seventy-nine years of age, and the others were from forty upwards.

Q. Did any of your brothers and sisters ever have consumption or any scrofulous disease of any kind?

A. No, sir, not that I am aware of.

Q. When were you married?

A. In 1848.

Q. You have been married but once?

A. But once.

Q. Your wife is in Court?

A. Is in Court.

Q. What is her age?

A. She is about six years younger than I am.

Q. You were married in 1848?

A. Yes, sir.

Q. That makes her about sixty years of age?

A. About 60.

Q. What has been her health during your wedded life?

A. Her general health has been good.

Q. Where was she born?

A. In Maine.

Q. When did you become acquainted with her?

A. In about 1842.

Q. That is 43 years ago. She must have been a young girl 16 or 17 or so?

A. Yes.

Q. Do you know anything of her family?

A. Yes.

Q. Father and mother?

A. Her father died when he was about 55, and her mother died last—since New Year's, I think, and she was about 90—89 I think.

Q. Was there any consumption or scrofula in her family that you ever heard of?

A. None that I ever heard of or saw; I have seen most of the members of her family.

Q. State to this jury the children that you have had, in their order and what became of each one of them as you go along?

A. My first child was born in 1849, and died in 1856 of dysentery; the second was born two years later, and died when she was three years of age with scarlet fever; the third is living—that is my oldest daughter.

Q. What is her name?

A. Eva; she now teaches in No. 29.

Q. And in good health?

A. Yes, sir.

Q. Always has had good health?

A. Always has had good health. The fourth was a boy that met with an accident; a servant girl set him afire, so that he died when he was two years old. The next were twin daughters; one died when she was two years old with the measles and cholera infantum; the other died with typhoid fever three years ago.

Q. Go on.

A The youngest daughter is now teaching in No. 3 School; and this is the boy.

Q. That makes the family?

A. This boy is the youngest of all.

Q. And the daughter immediately before him is teaching?

A. Yes.

Q. That is another teacher?

A. Yes, sir.

Q. You have two that are teachers?

A. I have two that are teachers.

Q. And this other one that is teaching is in strong health?

A. Yes, sir.

Q. Was there ever in any of your children any constitutional weakness?

A. Not that I am aware of.

Q. That you ever heard of?

A. No.

Q. Were any of them ever treated for tubercular disease or scrofula of any character?

A. No blood disease whatever.

Q. Did you ever hear of any scrofula among any of them?

A. I never did.

Q. Or any intimation of any such thing?

A. I never did.

Q. What sort of a child was Arthur?

A. He was a strong, healthy child; a very healthy child; so much so that Dr. Lutkins came to us for vaccine matter from his arm, for he considered him such a specimen of health.

Q. So as to vaccinate other people?

A. Yes.

Q. And it was furnished him?

A. Yes, sir.

Q. That was when he was how old?

A. When he was probably a year or eighteen months.

Q. When was he born?

A. In 1865.

Q. Have you his photograph with you?

A. I have.

Q. Have you more than one?

A. I have two.
Q. You produce two?
A. Yes, sir.

(Witness produces two pictures, one in a gilt frame and one on card board.)

Q. The larger one, in the gilt frame, is a picture of whom?
A. Of Arthur, when ha was two years old.
Q. And the other one?
A. Of Arthur when he was five—between five and six.
Q. Where were they taken?
A. Gubleman took them, of Jersey City.
Q. Is he a photographer?
A. Yes, sir.
Q. Living here still?
A. Yes, sir—in Jersey City; one the best that I know of.
Q. You knew at the time of their being taken?
A. Yes, sir.
Q. And you recognized them as the likenesses of your child?
A. We have always had them, when they were taken, and were interested in getting them. I didn't go with him.
Q. But you know they are your child's picture?
A. I know; of course I compared them with the child to see whether they were true and just.

Pictures produced by the witness offered in evidence by Plaintiff's Counsel.

By Defendant's Counsel:

Q. You were not present when they were taken?
A. No sir.
Q. When did you first see them?
A. When they were brought home to my house.

Defendant's Counsel objects to their being received in evidence.

By Plaintiff's Counsel:

Q. Are they correct likenesses of Arthur as he was at the time they were respectively taken?

A. They are; especially the one in the frame is a striking picture of him at that time; the other one, of course shows his position but not his complexion so much.

Q. The one in the frame is a colored photograph?

A. Yes; that represents the boy just as he looked at that time.

Objection withdrawn.

Photographs shown to the jury.

Q. The boy, I judge, in infancy, had flaxen or yellow hair, and it grew dark as he grew older?

A. Yes, sir.

Q. By the time he was five years old it was dark?

A. Yes, sir.

Q. Do you remember being called at Abernethy's drug store one morning in April, 1871, and finding Arthur there with his head having just been dressed by Mr. Abernethy, and your being informed that he had fallen down the cellar way in the Levy house?

A. I do remember it distinctly.

Q. You took him home?

A. Yes, sir.

Q. Up to that time had Arthur, to your knowledge, ever had any fall or injury whatever?

A. No, sir.

Q. Are you a domestic man?

A. I am.

Q. And take great interest in your children?

A. I take great interest in my children; I take care of them nights always.

Q. And you are always at home?

A. Yes, and I am always at home evenings.

Q. If he had had any such injury you would have known it?

A. Certainly.

Q. Had you, up to that time, ever been absent from home?

A. No, sir; I hardly ever leave home.

Q. Had he, up to that time, ever had any sickness?

A. Not of any amount, more than infantile diarrhœa or something like that, and the doctor would be called in to give a little something; I don't remember anything; but I know he never has had any sickness; of course I cannot remember—

Q. When you got him home did you send for your doctor?

A. I did.

Q. Who was he?

A. Dr. A. A. Lutkins.

Q. Did he come the same day?

A. He came the same day.

Q. This happened at noon time, I believe?

A. This happened at noon time.

Q. When did he come?

A. In the afternoon.

Q. What did he do?

A. He examined his head, and said that he would not remove the bandage—that he favored it, and advised keeping him quiet for a certain length of time. My object in sending for him—

Objected to.

Q. The only matter to which his attention was directed was the head of the boy?

A. That was what I was afraid of.

Q. You were afraid of brain fever, or something like that?

Objected to as leading.

Q. Did he come again?

A. I don't recollect of his calling on him again.

Q. State as fully as you can the history of the child

from that day on, so far as you know about it; what came to your knowledge?

A. I cannot place the dates exactly, but within a month certainly after the injury he would be taken with pain in his side, and when he was walking with me he would take hold of my hand, and he would go with me when he had an opportunity, and he would rest a few moments and then he would go on again; but in his general health he seemed to grow sort of slim, so that I advised my wife to take him to the country; thought that would make him better; and she went away soon after the Fourth of July, immediately after the Fourth.

Q. That same year?

A. That same year; took him down to the State of Maine, I suppose; I didn't go with her.

Q. Was there any other purpose in her going except on Arthur's account?

Objected to. Question withdrawn, the Court stating that plaintiff's counsel might show his condition, but that the question did not show it.

Q. She did go?

A. She did go.

Q. And took Arthur with her?

A. Took the boy with her.

Q. What was his physical condition at that time, apparently?

A. Well, he was apparently—growing somewhat feeble, not inclined to play as he had been before; and when he wanted to pick up a thing off of the ground he would get on his knees to get it. I didn't know what that indicated at that time; I know now.

Q. Instead of getting it in what way?

A. Instead of stooping down and picking it up he would get down on his knees to get it.

Q. You noticed that before your wife took him away?

A. I noticed that before my wife took him away.

Q. How about the pains up to that time?

A. He had had those pains, and I, having had them myself when I was growing, I called it growing pains—thought it was that.

Q. How long did she remain?

A. Well, I think late in the month of September.

Q. That would be nearly three months?

A. Yes.

Q. Where did she go?

A. Went to the State of Maine.

Q. You remaining home?

A. I remained home.

Q. When she came home did she bring Arthur?

A. When she came home she brought Arthur with her.

Q. He was with her all the time she was there?

A. He was with her all the time she was there?

Q. When he came home what did you observe about him?

A. I didn't see any improvement.

Q. Go on?

A. But he never complained of anything in his spine, consequently I never looked there for any injury. His pain was in his side and in the points of his ribs; he would scream out with that pain.

Q. How often?

A. Sometimes it would be all past and we wouldn't hear anything from him. They were ketching pains apparently.

Q. Did they continue after his return?

A. After he returned he was worse.

Q. To what extent did they afflict him?

A. He would drop one shoulder down and would hold his hand on his side. I supposed he was yielding to the pain.

Objected to, that the witness should state what he saw.

The witness: I saw that.

Q. With whom did the child sleep?

A. It slept with my daughter Eva.

Q. She is still living?

A. Yes, sir.

Q. Do you remember your attention being called by her to anything about him? and what was it, and when?

Objected to. Question allowed.

A. I found that the bone between his shoulders was a protruding sharp—a sharp fin—bonelike; but I—

Q. Did you notice that in consequence of what she had told you?

A. In consequence of what she told me.

Q. When was that?

A. That was after her mother came back from the State of Maine. I could not place the day, but it was after that.

Q. About how soon?

A. I should think within a month at least; probably in October.

Q. You noticed, you say, what you call a "fin" bone. What do you mean by that?

A. I suppose doctors have another name for those things from what butchers have. We call them fin bones in the back. In splitting a bullock we turn and take one way and the other, instead of splitting them open. In a roast beef the fin is on the back of it.

Q. (By Defendant's Counsel): That is a rib roast?

A. A rib roast, yes, sir.

Q. You noticed sharp—?

A. Yes, sir.

Q. About where?

A. Between the shoulder blades, a little above the point of the shoulders; I should judge about *there* (indicating the place).

Q. Did you get any idea from that that such a thing as this was coming?

A. No, sir; I knew nothing of it; if I had I would have been seriously alarmed.

Q. Proceed with the history of the case.

A. I thought that was from being poor, getting thin in flesh, losing his flesh.

Q. Had he lost flesh?

A. A great deal.

Q. Proceed.

A. I was not called to any particular point, only that he still had those pains and still favored himself in that way until we called Dr. Lutkins in.

Q. When was that?

A. I think it was in the month of January—my recollection.

Q. Do you remember anything happened to the rest of the children at that time?

A. I think that the doctor vaccinated the girls at the time he was there.

Q. On that occasion in January, as you think, 1872, did he see Arthur?

A. He did; I called Arthur into the room, and he called him to him; and as he saw him approaching he said—

Objected to.

Q. Do not go into the conversation. You called Arthur into the room?

A. Yes, sir.

Q. In order to have the doctor see him?

A. Yes, sir.

Q. He examined the boy?

A. Certainly.

Q. And made some report to you?

A. Yes, sir.

Q. What it is I suppose Mr. McCarter won't have you tell us; so we won't ask it. What did he do; strip the boy?

A. Stripped him in the shoulders—put his hands on his shoulder.

Q. In consequence of advice from him what did you do?

A. I took him to Dr. Marsh.

Q. Who is Dr. Marsh?

A. He is an instrument maker, also a physician, under the Astor House, New York.

Q. Makes surgical instruments?

A. Not surgical, but instruments for deformities of all kinds.

Q. Braces, trusses?

A. Yes, trusses.

Q. Did he at that time make appliances to be used—

Objected to, that the witness does not know that.

Q. Did he have them there?

A. He had any quantity of them there, but he took the measurement of the boy and made it; and I went three days after and had them applied—fitted to him.

Q. Where is he now?

A. He is down at his farm, I think in Long Island.

Q. Got to be a very old man?

A. He is a very old man; his son carries on the business in his name.

Q. He measured the boy, you say?

A. Yes.

Q. Three days afterwards you went there and had the truss applied?

A. Yes, sir.

Q. Did Dr. Lutkins prescribe medicines for the boy?

A. He told us to give him cod liver oil, and things of that description. He said the mechanical treatment, trying to get into line, he gave me to believe—

Objected to.

Q. He advised mechanical treatment, and told you to give him cod liver oil ; and that you did ?

A. Yes, sir.

Q. Did you treat the boy with cod liver ?

A. We did.

Q. For how long ?

A. For years.

Q. Dr. Marsh fitted the brace to the boy, and he began to use it; how long did he use that particular brace ?

A. Well, I think about a year.

Q. What then ?

A. Well, they were found to be insufficient, for he had changed form, he had been thrown into line, and he had to have a different apparatus made. I think he made as many as four or five different styles to suit him as he got thrown straight.

Q. How much out of shape was he at the start ?

A. The line up and down on his spine,—what they call lateral curvature I think, —was thrown his hip,—was thrown one side, so that he stood in *this* position (illustrating), one shoulder higher than the other ; and between the shoulders the protruberance of Potts disease ; he had both.

Q. What was the extent of his lateral curvature ?

A. So that he stooped down in this position (illustrating).

Q. About as much as you show ?

A. Yes, sir ; the appliance was put under, with the crutch as high as could be forced at that time, in *that* position, leaving the other one slack, to throw him into line.

Q. The crutch was under the other shoulder ?

A. That was under both, you know; but I had to go there for his treatment three times a week for a ong time ; and then twice a week ; and once a week for four or five years, to have those adjusted or made over, and having them wear out or become insufficient for the purpose intended.

Q. You took the boy with you ?

A. Yes, sir.

Q. Did the putting on of the brace cause him pain?

A. Not that I am aware of; he would scream out with pain nights when he was abed without them.

Q. From the time that he began to be treated, for several years, what was his condition as to suffering and as to pain?

A. He suffered untold pain; I cannot describe it to you.

Q. So much so that you had to treat it and try to alleviate it?

A. I have jumped out of bed and run into the next room where he and the sister slept four and five times in a night with the scream for his pain; and by rubbing his back with my fingers I could soothe him—by rubbing the spine with the end of my fingers.

Q. Where would his pains be?

A. In here (indicating the right side in front); never complained of his back at all; in the points of his ribs here, right under his side.

Q. By rubbing his back you would alleviate it?

A. By rubbing his back I would alleviate that pain.

Q. Was it on both sides, or one?

A. One side principally—the right side.

Q. As you call it, under the points of the ribs?

A. Yes; that was the cry he would often shriek out, "My ribs! my ribs!" I could still him in a very few instants when I would get my fingers on him; and go lie down, and would rise again in an hour perhaps for the same purpose.

Q. How frequent was that?

A. Sometimes four or five times in a night.

Q. Night after night?

A. Sometimes it would be a week, and it would not be; there was nothing regular about it.

Q. How long did that continue?

A. Until he was fourteen years old.

Q. Is he now straight in the back?

A. The lateral curvature is straight; but the Potts shows a deformity of hunchback. Up to the point of the support his back is as good as mine.

Q. Have you the brace here with you?

A. I have, one of them.

Q Produce it, so that the jury may see what the character of it was?

(The Court here took a recess).

AFTERNOON SESSION.

ISAAC HOUSTON, resumed the stand.

The witness (producing the brace in reply to the last question before the recess)—That is one of the appliances he had made.

Q. The crutch like appendages go under his shoulders?

A. Yes.

Q. And the bolt around his waist?

A. Around on the top of the hip; the protuberance came in between, and we had straps that are now worn away—

Q. And the piece of cloth?

A. Kept the chest in.

Q. And were buckled in front?

A. Laced. That is one of the number; that was not the first one; I think it was about the second one he had made.

Q. You have been in the neighborhood of the Levy building in business for a great many years?

A. Ever since it was built.

Q. Does the picture on the easel show substantially the premises as they were in April, 1871?

A. Very near; as accurate as I could determine; there may have been a little different colors in the paint; but the building, sidewalk and gratings were all the same.

Q. That railing on the left of the picture, just at the house line, was there in 1871?

A. It was there in 1871.

Q. And is there now?

A. And is there now.

Q. But in the meantime—

A. It was taken away in 1872, and remained until April of last year it was put up; I saw them putting it up.

Q. What difference is there in the construction or use of the gratings over the hole in the sidewalk under the left hand window now, and in 1871?

A. The same thing.

Q. What means is there now, if any, which would prevent the grating frem going clear down to the sidewalk?

A. There are steps placed under the show window, so that when the doors are elevated it holds them—makes a sort of railing to protect.

Q. The gratings themselves make a railing?

A. When they are raised up.

Q. That is, something is driven in under the show window, so that the grating could not go—

A. Could not top clear over.

Q. What are those stops?

A. A piece of iron screwed under there.

Q. When were they put there?

A. They were put there in 1872.

Q. In 1871, if a grating was opened, how would it lie?

A. Well, there were large crooked hinges placed so that the side next to the excavation would be somewhat elevated. The other side would rest on the sidewalk.

Q. That is to say, by reason of the hinges where I indicate, the right hand would be elevated a little—

A. On account of the hinges being made—

Q. About how much?

A. Two or three inches.

Q. And then slope off to the extreme edge of the

grating as opened?

A. Yes, sir.

Q. You have seen the grating so opened and lying there?

A. I have seen it, and know that that was the way that it would lie. It is very seldom open, though.

Q. How did the steps go down?

A. At right angles of the front, down under the building.

Q. What material are they composed of?

A. Blue stone.

Q. How is the edge?

A. Sharp.

Q. How many steps are there?

A. Nine steps from the sidewalk to the level of the floor in the basement.

Q. What is the depth of the hole?

A. Eight feet from the surface of the grating to the floor.

Q. What is the width of the sidewalk in front of the Levy building?

A. Fifteen feet, I suppose—the usual distance.

Q. It is a flag sidewalk, with an ordinary curb?

A. With an ordinary curb.

Q. What is the length of those three iron railings that project from the house,—two on closing the door and one at the house line on the left?

A. I think about five feet,—a little short of five feet; they are exactly represented on that corner; the grating extends some six inches further in the sidewalk than the post of the railing.

Q. What is the width of the hole in the sidewalk?

A. About four feet.

Q. What is the length of it?

A. You mean from the outer edge of the building?

Q. By width, I mean from the window outward.

A. From the building line, a little over five feet

Q. What is the length now?

A. About four.

Q. Do you mean that?

A. The whole excavation; there is two flaps shut over it.

Q. When the flaps are shut, and you measnre the grating, how long would be one way and how long the other?

A. There is five feet—extends out on the sidewalk five feet from the building line, and the other way in front of the building it would be abont four feet wide, —the grating when it isc losed.

Q. When that is closed, do you mean that it would be a greater distance *that* way than *that* way (indicating on picture)?

A. Well, this one is near you; the other is not; they are not just alike; this one don't extend so far into the sidewalk as the other.

Q. Then the diagram would represent this aperture a little out of true proportions, would it,—the the picture on the easel; it makes it a little too long from left to right and a little too short up and down.

A. You get three widths of door there.

Q. From *here* to *here* looks longer than from *here* to *here*?

A. It may be from the sidewalk out to where he has placed the curb.

Q. Is the whole grating near square?

A. No; it is a foot longer from the building out than it is the other way.

Q. Then we understand it. What is the distance from the rail on the western house line of the Levy house to the aperture in the sidewalk?

A. That stone is 3 feet 1 inch, and the railing is on these about 6 inches from the edge of the stone; that would leave it about two and a half feet from the railing, or 2 feet 2 or 3 inches to the edge of the grating,—to the edge of the first grating. You come to the edge of the opening of course,—it is 4 feet from the railing.

Q. What is the width of the Levy front?

A. It is—the lot is 25 foot wide; but the angle makes it about 27 feet 9 inches.

Q. The lot at right angles is 25 feet average; but by reason of the street running slanting it makes the front 27 ?

A. It makes one line of the building some 10 or 11 feet longer than the other.

Q. And which is the longer one ?

A. The eastern.

Q. So that the picture does correctly represent the view you would get to look in slanting into the interior of the store ?

A. Yes.

Q. What was the width of the lot on which your butcher shop was ?

A. 25 feet; the angle made it the same front.

Q How were Abernethy's windows at the time of the fall ?

A. The same as now ; there may be changed glass, or something.

Q. How were their contents, generally speaking?

A. They had the usual things in a drug store ; that is all I can say ; I could not remember.

Q. Were the windows full ?

A. Oh, certainly full,—decorated.

Q. Will you stop here that I may be sure to get this right. Give the dimensions of that—so that we can see,—of that aperture ?

A. From *here* to *here* is a trifle scant 4 feet.

Q. I understand.

A. The two doors opening in the middle, had hinges placed *here* and *here*,—when this door opens the hinges are placed back on the stone so that it lets the door over, and it will merely tip down on this side if that was opened. But if thrown open *that way* there is nothing to keep it, so that it curves partly in front (referring to diagram).

Q. The left one if it were thrown open would hit the railing, wouldn't it?

A. Yes, it would hit it.

Q. How wide is the other one ?

A. 5 feet, or a trifle over.

Q. The hole itself is?

A. Yes sir.

Q. And the gratings then are that size?

A. Yes, sir; they correspond with the hole.

Q. Four feet six, along the sidewalk, and about five feet the other way?

A. I see in my testimony that I before said it was four feet six; but I spoke from recollection; it is not quite so wide as that.

Q. It is only about four?

A. It is only about four.

Q. You have measured?

A. I have measured.

Q. And all the distances you have given to-day have been from measurement?

A. I am sure.

Q. Was your boy going to school at time habitually, attending school at the time of the accident?

A. He has been attending a private school; I didn't consider it much consequence sending him to school on account of his being so young, but he had been attending Miss Cannon's school.

Q. But was not attending at the time that this act cident happened.

A. I don't recollect with regard to that; that has passed from my mind.

Q. How soon after the accident did you get there to see the boy?

A. Well, they were just bringing him from the drug store as I got there; the grating hadn't been shut; it stood open just as they were bringing him out.

Q. How did it lay?

A. As I tell you, the edge laid over on the sidewalk.

Q. Flat on the sidewalk?

A. The other stood up on account of the hinges being— the construction of it.

Q, Was it clear over?

A. Clear over.

Q. Where had you been?

A. To the barber shop across the way getting shaved.

Q. How long were you in the barber shop?

A. Well, probably fifteen or twenty minutes.

Q. And you don't know at what point of time the boy came to the store while you were away?

A. No; he often came to go home with me.

Q. Was Arthur able to go to school after his trouble in his back developed and you took him to Dr. Marsh?

A. He didn't, no, go to school for four or five years, except some little private instruction. I sent him to a neighboring house and the lady taught him privately a few lessons.

Q. The grating on the right is solid, fast, is it not?

A. All but one piece.

Q. The right hand grating, I understand, is solid?

A. Yes.

Q. And don't open?

A. And don't open.

Q. And there is no door down at the bottom of it?

A. Nothing but to let in light and air.

The Court directs that the jury shall go, after the adjournment, in the presence of counsel and examine the premises.

Cross-Examination by MR. MCCARTER:

Q. If I understand you rightly, except that the stops have been put in the building to keep the right hand flap from going away down?

A. Either flap.

Q. The situation of things now is as it was then?

A. Substantially.

Q. So that a person seeing it now can see it substantially as it was then?

A. Yes, sir.

Q. Do you know when Levy's house was built?

A. I don't remember the year, but I think it was

about 1859 or 1860, or somewhere along there—1861.

Q. And when were these grating arrangements put in?

A. All put in at that time.

Q. When you first discovered anything about this accident you say the boy was being taken to the shop.

A. He was being taken out of the drug store.

Q. Where did you first go when you went to where he was?

A. I went to him.

Q. Where was he?

A. He was coming out of the drug store—in the door.

Q. Now, on the former trial I think you testified that the boy had been taken to the shop, and you first saw him there; which is correct?

A. My recollection of it is that he was taken from the door; the door was not over four or five feet difference anyway—or six feet—anyway.

Q. Difference of what?

A. From my front to that door.

Q. Between the door of the drug store and the door of your shop is how far?

A. It may have been ten feet.

Q. Isn't it more than that?

A. I should not think so. My whole front opened out pretty much, and this door is in the centre of the place. I don't think it makes much more than that.

Q. What is the fact, where did you first go to the boy?

A. My recollection is that I met them coming out of the drug store; I cannot say it was in the door, because I was alarmed to see them over the boy.

Q. To see what?

A. To see that the boy had met with an accident.

Q. How did you know that?

A. They called my attention to it as I came across

the street.

Q, Somebody told you?

A. Yes, and I rushed up to him.

Q. What condition was he in then?

A. His head had already the plaster on it.

Q. Where was he?

A. As I tell you, I think he was coming from the drug store around into my place.

Q. Was going from the drug store into your place?

A. Yes; two or three steps brought him in there.

Q. On foot?

A. Yes; he welked.

Q. What did you do then?

A. I took him home.

Q. You went home to dinner?

A. Yes.

Q. When did you send for the doctor?

A. That afternoon.

Q. What time in the afternoon?

A. Well, as soon as I had my diuner: I don't recollect the hour.

Q. What time did he get there?

A. Well, about 4 o'clock I should judge, as near as I can recollect; I didn't make a minute of the time.

Q. Did you wait at home till he came?

A. No, sir; I came around at the time I thought he would be there; I came back and saw him at the house.

Q. How did the doctor treat the boy?

A. Well, he wanted him kept quiet, and gave him some sort of medicine as I suppose, soothing medicine; I don't recollect what it was; I don't know as I knew; but he thought that he would get along—didn't think there was any fracture in the skull.

Q. What did he do to the dressing of the wound?

A. Nothing.

Q. He left that undisturbed?

A. He said he would better leave it undisturbed.

Q. What directions did he leave?

A. I am not positive of that; my wife can tell bet-

ter than I can.

Q. Do you mean to say you cannot tell because you cannot remember?

A. Well, I mean to say that the detail of what he told me, I am not positive of,

Q. Can you remember anything that he said.

A. I remember of his inquiring to have him kept quiet and not have his brain excited, and given whatever the prescription was.

Q. What else did he direct?

A. I don't know of anything; I don't think of any anything.

Q. Did he say if there were any new developments to let him know?

A. He did.

Q. That was the instruction on that date?

A. Yes.

Q. When did the doctor next see him, so far as you know?

A. I have no recollection of his seeing him until he came there and ordered us to examine him, and ordered him sent to Marsh.

Q. When was that?

A. That was, I think, in the last of January.

Q. What year?

A. 1872; that is my—I have no other recollection.

Q. When the doctor came was he told how the boy got hurt?

A. I don't remember whether he was or not; I presume he was; we always considered when we found that he was injured permanently—we always considered that was the cause; we always talked of it and considered it so.

Q. Won't you confine yourself to an answer to my question? I ask you, when the doctor came there, if he was told how the boy got hurt?

A. At first, certainly. Excuse me for not understanding you.

Q. Do you understand now?

A. I do.

Q. What is the fact?

A. We told him that he had a fall.

Q. That he had fallen down a hatchway?

A. Yes.

Q. You told him how he had got hurt, didn't you?

A. Yes.

Q. What examination did he make of the boy?

A. I don't think he made any, any more than looked at his head and felt of it, to see if there was a fracture.

Q. What did the boy complain of?

A. He did not complain of anything particular at that time; he was sort of numb-like.

Q. Was he frightened and excited?

A. He appeared to be sort of dazed.

Q. Nervous?

A. Nervous.

Q. You said the doctor gave him something to quiet him?

A. He gave him something, I suppose, for that; I really cannot say what the doctor gave him, because I don't recollect.

Q. Had the doctor been in your house at all between the time you saw him on the day he was hurt—

A. I don't think he had.

Q. Wait a moment. Between the time when he saw him on the day he was hurt and you saw him the last part of January that you spoke of?

A. I don't think he was in my house; I have no recollection of it.

Q. Didn't you testify on a former trial, he had been there several times?

A. He might have been there to see some others in the family.

Q. I am not asking who he was there to see. I ask the question whether in fact he was in your house?

A. I don't know; he might have been.

Q. Didn't say on the former trial, he had been

there several times?

A. I don't know whether I did or not.

Q. That be was your family physician?

A. He was my family physician, and that if there had been anything the matter in the house I sent for him.

Q. Did you have anything the matter between the time the boy was hurt and the time he came in January?

A. I don't remember of anything.

Q. I call your attention to what was recorded as your testimony on the former trial, to see whetber you were correct then or not. I'm reading from page 21, about the middle of the page, near line 20:, "Q. When did you next send for Dr. Lutkins?

"A. It was after New Year's.

Q. This happened in April?

"A. Yes; I don't say next sent for him, because he was our family physician, and was often there.

"Q. My question is, sent for him for this boy?

"A. After New Year's.

'By the Plaintiff:

"Q. He had been there before that?

"A. Yes; I have sworn to that?"

A. That is correct.

Q. Had he been there at your house between the time the boy was hurt and the time he came there on the 28th, or the latter part of January?

A. I don't know.

Q. He was quite frequently at your house, was he not?

A. Always there if anything was the matter.

Q. He was called there quite frequently?

A. Not without he was sent for.

Q. Wasn't he called there quite frequently?

A. When we had sickness he was.

By the Court:

Q. How frequently was that?

A. Well, sometimes they would hardly call him at all.

By Mr. McCarter:

Q. Can't you say whether he had been at your house between the April when the boy was hurt and the following January when he came there again?

A. No, sir.

Q. You don't know whether he had or not?

A. No, sir; I cannot say.

Q. He had not been there to treat the boy in that time?

A. I don't think he had; I have no recollection of it.

Q. How did you come to have him attend the boy on the day he came there in the latter part of January?

A. Because the boy was getting one-sided, tipping over.

Q. What had he come there for that day?

A. We sent for him to vaccinate and to see the boy.

Q. You sent for him—

A. To vaccinate the family and to see this boy.

Q. Did you make it known to him when he was sent for that he was to vaccinate the family and to see the boy?

A. No, sir; we sent for him to come to the house the same as we always did—didn't tell him our business until he came there.

Q. Then he did not expect to vaccinate the family when he came?

A. I don't know whether he did or not.

Q. Did you expect him to come to vaccinate the family without knowing beforehand he was expected to do it?

A. I have no recollection what I expected.

Q. Did you suppose he would be prepared with

the material to vaccinate the children?

A. I know at that time small pox was prevalent.

Q. Did you send to him without letting him know he was to vaccinate the children?

A. I am not positive.

Q. Did you send for him at all?

A. Certainly.

Q. Who sent for him?

A. I cannot tell you.

Q. I ask if you did?

A. I don't know.

Q. Then you don't know who sent for him?

A. I sent for him by authority anyway.

Q. You don't know who delivered the message?

A. I cannot say whether I went myself or sent some member of the family.

Q. Then you cannot say what message was sent?

A. No, sir.

Q. Can you swear that anything was said to him about the boy when he was told to come?

A. No, sir.

Q. How long before the doctor came was it that you had noticed that he was one-sided—I mean when he came in the latter part of January?

A. For three months he had been bending over more or less, and I supposed it was—pains—I didn't know there was anything the matter with the spine.

Q. Did you say you noticed that the boy's shape was getting unnatural three months?

A. Begun to assume that occasionally in dropping himself down *this* way.

Q. When he went over he was one-sided?

A. Yes, sir.

Q. I mean in his ordinary condition?

A. A person cannot be in ordinary condition and bent over too at the same time.

Q. I suppose I might perhaps have known that myself. Was there anything in the boy's condition which influenced you to send for the doctor prior to the last of January, when you did send for him?

A. I ought to have sent for him before, if I had known the condition.

Q. Please to answer my question?

A. I don't know how to answer it.

Q. (Repeated). A. Not that I am cognizant of.

Q. Had you kept in mind the doctor's directions that if there were any new developments to send for him?

A. I presume it had passed from my mind; I don't recollect; I know that we always s nt for a doctor.

Q. When you thought there was occasion?

A. Yes.

Q. Then there was nothing in the condition of the boy prior to the time you sent for the doctor in January which either recalled his direction as to any new developments, or which induced you to send for the doctor?

A. Well, I cannot say there was nothing the matter with him, because I know there was.

Q I didn't ask you that question?

A. Then I don't understand you.

Q. (Repeated).

A. I knew the boy was not well, but I didn't consider him sick enough to send for the doctor.

Q. You said on the stand this morning that, when the doctor examined the boy, that what he said to you led you to see that the boy was out of shape?

A. Yes, sir: permanently.

Q. Was that true, that what the doctor said to you was what led you to see that the boy was out of shape?

A. Led me to see that it came from the spine; the development was spoken of to me when the doctor told me it was an injury of the spine.

Q. This bending over that you had seen before—you illustrated it with your own person. Was the boy permanently in that shape before the doctor came there, or was it only once in a while, when you thought he had pain, that he bent over?

A. I thought it was owing to that soreness and

pain that kept him there; that is what I thought; or I certainly would have called in a doctor sooner.

Q. Was it so all the time, or only now and then?

A. When it first commenced he would occasionally be down that way, and then it begun to be a permanent thing; well, the latter part of the time it became so that he remained in that shape.

Q. How long had he been so before the doctor came?

A. Perhaps a month—may be less; I cannot put those things exactly.

Q. When you speak about time, a month or so, you don't mean to be very accurate about it?

A. I don't mean to be very accurate, for I really don't know that.

Q. At all events, whatever symptoms the boy did devolop before you sent for the doctor had not been sufficiently marked or noticeable to cause any alarm in your mind?

A. Seeing him every day I hadn't noticed it as much as my neighbors; they called my attention to it.

Q. When was it you found this bone between his shoulders you speak of?

A. Well, it was after he came home from the country; he came home the latter part of September; and I cannot say very definite what month or week; but I think reasonably in October ——

Q. I don't want you to think reasonably. I want you to remember?

A. I don't remember; it was after he came home.

Q. What period after he came home, you cannot tell?

A. I cannot tell you.

Q. When had his mother been to Maine before?

A. I don't recollect.

Q. As near as you can tell?

A. It is very indefinite; I have got no recollection of it now.

Q. How long before this time when she went this

summer, had she been before ?

A. I would not like to say.

Q. As near as you can tell ?

A. I cannot answer the question.

Q. Was it a year ?

A. She didn't go more than once a year.

Q. Did she go the year before ?

A. I think not.

Q. The year before that ?

A. I don't believe she had been in the State of Maine in five years before ; I don't think she had, but still I don't know.

Q. How often was she during your married life in the habit of going to the State of Maine ?

A. She had probably been there five times in thirty-eight or forty years.

Q. She went once in six or seven years ?

A. Yes.

Q. Did she ever take any child with her at any other time when she went to Maine ?

A. Yes.

Q. She took one or more of the children with her, didn't she, when she went ?

A. Generally did.

Q. You were examined on the former trial ? Did you testify on that trial anything about this child being taken to Maine on account of his health ?

A. I don't know whether I did or not. I presume if they had asked, I should have answered it ; I didn't think.

Q. You didn't think about it ?

A. It was not recalled to my mind.

Q. You were, of course, willing to remember a thing that was essential to the case, were you not?

A. Certainly.

Q. Why didn't you tell us then that the boy was taken to Maine.

A. I would if anybody had asked me ; but I didn't know what they wanted.

Q. You didn't know that was important, did you ?

A. No.

Q. When was your attention first brought to the circumstance of the boy's having been taken to Maine that summer?

A. I don't know as I comprehend.

Q. You say you didn't think of it on the former trial. What brought it to your attention and made you consider it as important since the former trial?

A. By talking to my family, and I then recollected distinctly of urging her to go away early on that account.

Q. When was it you discovered that the boy, instead of stooping down, would get on his knees; and that he needed to be supported on one side?

A. It was previous to my wife's going away; I cannot fix the date.

Q. Why didn't you testify to those facts on the former trial?

A. I would if I thought it was essential.

Q. But you didn't think it was essential at that time?

A. I answered such things as were asked me.

Q. You were actually the client, were you not?

A. I was acting for the boy.

Q. You directed the suit to be brought, did you not?

A. Yes.

Q. And conducted it really for the boy. You were his guardian *ad litem*, were you not?

A. Yes.

Q. How did it come to your knowledge since that trial that it was essential to prove that the boy had those symptoms?

A. That is more than I can tell you how it did come. I have learned a good deal—.

Q. You have learned a good deal since the last trial, haven't you?

A. Yes, sir

Q. And how have you learned it?

A. By example, largely.

Q. How do you mean by example?

A. Hearing lawyers talk.

Q. Since the last trial?

A. Yes.

Q. What lawyers have you talked with since the last trial?

A. I heard you talk down at Trenton; and I heard Mr. and Mr. Collins.

Q. At the argument on the other case?

A. Yes.

Q. And the suggestion was made by those that brought it to your mind that it was essential you should prove these facts?

A. No, sir; I am not aware that they suggested it to my mind; but in seeing the case uncovered and argued and the report given here, I thought it was necessary to have the facts all brought out.

Q. You saw where the weak points were, and where it could be strengthened?

A. I don't know; if I knew anything in regard to it, it was my duty to tell it.

Q. The first thing you noticed of the boy's condition was what you called lateral curvature?

A. That is what I was looking at. I knew nothing about Potts; I didn't know but that they were born that way; I had never seen any information.

Q. You didn't know but they were born with spinal curvature?

A. The Potts I didn't know; I never had known anything of it before.

Q. Born in what way?

A. With a crocked spine.

Q. Then as far as you knew, you knew nothing about this boy, but what he might have been born so?

A. I didn't know anything about it.

Q. You first discovered that when Dr. Lutkins came?

A. He is the man that revealed the matter to me, and told me the results.

Q. You went then, after Dr. Lutkins came to see

the boy and examined him, to Dr. Marsh's?

A. Yes, sir.

Q. How soon?

A. The same day, or the day after—no, the day after; it was Sunday that he was at my house, and I went Monday; during the week we had the apparatus on him.

Q. You say now, as I understand you, that it was about a month after the boy was hurt, that you noticed that he was bent a little one side?

A. A month or six weeks.

Q. You said on the former trial, it was several months, didn't you?

A. I don't know.

Q. I will call your attention to your testimony on page 21. The question was: "Why did you send for him then? You said you sent for him in January?

"A. We thought the boy was getting one-sided, one shoulder growing higher than the other.

"Q. When did you first notice that?

"A. Some few months after the accident. He began to complain of pain in his side, but we thought they were growing pains." That is what you testified to before, is it not?

A. I presume so.

"Q. The first thing you noticed, he was growing one-sided?

"A. It was not the first thing I noticed; because he had been complaining of these pains for a long time; but when he began to grow older I felt alarmed." Is your recollection about that any different now from what it was then?

A. Nothing specially.

Q. Sir?

A. No, sir.

Q. Then as far as you know, your statement about it was correct at that time?

A. If I said a few months I meant an indefinite period; it was a short period afterward; I might

have said a few months when I meant a few weeks? A. It could not have been many months, because I noticed it before he went to the country.

Q. Why would you say a few months if you meant a few weeks?

A. I don't know why.

Q. Had you any reason for making it longer than you have now?

A. None whatever.

Q. You endeavored to give the true statement then, did you not?

A. I did.

Q. How has your recollection been changed or refreshed since that time?

A. I know that the going in the country was accelerated on account of these pains, and that she went immediately after the 4th of July, and these things must have taken place previous to that time. It could not have been a great while after April.

Q. You knew, did you not, when you were examined before, that she went to the country?

A. Yes.

Q. Knew as much about it then as you do now?

A. I don't know as I had thought about it as much as I have now.

Q. You say he had been complaining of these pains for a long time, but when he began to grow over you felt alarmed and sent for the doctor? That was correct, was it not?

A. That was correct.

Q. Have you had any instructions or directions as to what symptoms it would be necessary to show to connect this injury of the boy with the spine?

A. I have read all the works I could find on the subject and tried to post myself.

Q. Since the last trial?

A. Yes, sir.

Q. Did you learn by such reading that it was a symptom of its coming that the boy or patient should not stoop, but get down on his knees?

A. I read that among the symptoms; that brought it to my mind, for his mother scolded him for wearing his pants out on the knees.

Q. You spoke something about that?

A. I knew he did favor one side.

Q. You didn't say anything about that on the former trial, did you?

A. I don't know.

Q. You did not.

A. I should if it had been asked me.

Q. You didn't, did you?

A. I don't know; I don't remember what I swore to. I tried to swear to the facts as they appear to me now, never regarding as to what I said before.

Q. Did you find the boy improved under this treatment of this Dr. Marsh?

A. Yes.

Q. You consider his treatment wise and judicious?

A. I do.

Q. You think he understood the subject?

A. I do; I think he shows a good result now.

Q. In what book did you read that getting down on the knee was one of the symptoms of this disease?

A. I cannot give you the name of the books.

Q. What books have you read on the subject?

A. I wouldn't like to give you the name; I have been in doctors' offices and have had their books shown me. I don't know that I read that, but I say I have read all I could find or get hold of on the subject.

Q. What books have you read on the subject?

A. I cannot give you the titles; I have read what were the nature and symptoms of these diseases. If I had known as much before—

Q. The former trial?

A. Before the former trial, the way the boy was really affected as I knew after, I should have known more about the disease. I don't know anything about the testimony; I have tried to tell you the

truth as far as I could of these things.

Q. Did you ever have any conversation with Mr. Levy about this accident?

A. Yes.

Q. When?

A. Often, in my place.

Q. He was in your place?

A. Yes; traded with me.

Q. A customer there?

A. Yes.

Q. Frequented your place?

A. Yes.

Q. When did he die?

A. I think about four years ago.

Q. Did his wife survive him?

A. Yes, sir.

Q. When did she die?

A. She died, I think, a year ago in February.

Q. Before the former trial?

A. Yes, sir.

By Mr. Collins:

Q. After the suit was begun?

A. After the suit was begun.

By Mr. McCarter:

Q. How soon after the accident did the boy go to school again?

A. I don't think he went to school for five years.

Q. How long before the accident was it that he had been going to school?

A. Probably six months, or six or eight months.

Q. He had been taken out of school, then?

A. I think so; I don't remember about it; we didn't think it of much consequence to send him to school at six years old.

Q. The boy had always been healthy before that?

A. Yes, sir.

Q. How had he been as to his intellect?

A. I considered him a bright boy.

Q. You thought him more than ordinarily bright, didn't you?

A. That is natural.

Q. But it was so, wasn't it?

A. I don't know that that is anything more than any other boys; an ordinary boy.

LEWIS HALL SAYRE, called for plaintiff, being duly sworn, testified as follows:

Q. You are a physician and surgeon?

A. I am.

Q. And are practicing where?

A. 285 Fifth Avenue, New York City.

Q. Are you acquainted with Dr. Lewis A. Sayre?

A. I am a son of his.

Q. He also is a practicing physician and surgeon, at the same place in New York?

A. At the same place.

Q. Are you connected with him in business?

A. I am; I have been his partner for ten years.

Q. How long have you been practicing?

A. Ten years.

Q. Immediately went into partnership with your father?

A. Immediately.

Q. Of what institution are you a graduate?

A. Bellevue Hospital Medical College.

Q. Your father is one of the corps of instruction there?

A. Ever since its foundation.

Q. What is your father's age?

A. Sixty-five.

Q. What is his present state of health?

A. He has been confined to his room for the last five or six months with an inflamed knee joint.

Q. And therefore unable to come here?

A. He is only able to get out for an hour or two a day to drive.

Q. What has been the specialty of practice with him—with regard to special complaints?

Objected to.

The Court: Ask the witness what his opportunities are.

Q. What have been your opportunities of observation and experience with diseases of the spine?

A. It has been a very large one indeed; I suppose I have seen more cases of diseases of the spinal column than any man of my age in the world.

Q. How has that been so?

A. From my connection with my father; I see them constantly every day. (The plaintiff steps to the side of witness and his back and upper part of his body shown.)

Q. You see this plaintiff in the case?

A. I do.

Q. Have you seen him before?

A. I saw him ten days ago, I think.

Q. Did you then examine him?

A. I did.

Q. Disrobed?

A. Yes, sir.

Q. How thoroughly?

A. As thoroughly as a man could examine a case; went into all the particulars as to his antecedent history, the history of his father and mother, and the history of the entire family; his general condition before this injury, how he was hurt and the manifestations of the disease following the injury, with the treatment and results that you see here.

Q. And then also a physical examination, yourself, of the subject?

A. Yes, sir.

Q. It is evident to us all that the shape of this young man is abnormal. Will you please tell the court and jury what has caused that condition?

A. He has had an inflammation of the bones of his

spinal column, in the first place, simple inflammation; softening has gone on to disintegration of the anterior part of this column, and has given him this amount of deformity; it is due to loss of substance in the anterior part of the column—I mean the front part of his spinal column.

Q. What general name is given to that condition?

A. It is commonly called Potts disease, for the reason that it was descried by Percival Potts, a physician of England; he was the first man who gave a clear account of the trouble and of its growth, and of the mode of softening of the bone and the production of the curve.

Q. Therefore, it was given his name?

A. Yes, sir

Q. It was the name of the disease?

A. Yes, sir.

Q. The disease is called Potts disease?

A. Very commonly so.

Q. And consists of what you have told us. Now the result is commonly spoken of as angular curvature of the spine, is it not?

A. Yes, sir.

Q. Describe to the jury, if you can, how that comes about, by illustration. You may have a pen and ink, if you like. I had supposed we would have a spinal column here?

A. I wish you had, because I cannot draw I suppose that everybody is more or less acquainted with the shape of the vertebrae. They consist of an almost round segment of the bone in front, with various procees extending backward and sideways; the inflammation attacks bodies of the vertebra in front, or they become softened from that inflammation, and the bone is either absorbed, and without formation of any matter, which is called dry caries; as a result of that the front part of the column is bent by the weight of the head and shoulders above the point of disease, gradually bent over more and more, giving this sort of deformity.

Q. What is the pathology of the disease?

A. It is now looked upon by the great majority of persons as being a simple inflammatory process. It has been thought bp a great many persons to be connected with some vitiated or depraved state of the constitution as scrofula, or something of that kind.

Q. What is your own opinion on that subject?

A. From my experience I have given up entirely the scrofulous idea of the causation of the disease, and look upon all these cases as due to some injury in the start. A perfectly healthy person may have an injury either from a fall, or blow, or wrench, strain, or something of that kind, which sets up the inflammatory trouble in the back; and if they are unfortunate in having a scrofulous or broken-down constitution, a slighter injury will create the trouble in them than it will in a healthy person; but I have seen the disease a great many times in a remarkably healthy person—no trace of scrofula, tuberculosis or any disease could be found in their ancestry, no matter how far back you went.

Q. Have you been able to find any trace of ostrumus in this young man?

A. Not in the least.

Q. Do you see any of the collateral indications that would be present if he had a scrofulous tendency?

A. No, sir.

Q. What is the necessary course of the disease—Pott's disease? what would happen if it were not arrested?

A. It goes on to a certain extent with breaking down, and finally they become solidified, the bones, instead of lying one on the other, become joined together the same as in a fracture; that is called, where they become solidified, anchulosis—that is, a bony union.

Q. Then the column becomes, as I understand it, solid?

A. Yes, sir.

Q. Compact?

A. Yes, sir. There is no motion between the separate bodies of the vertebræ that are involved in the disease.

Q. Supposing that this anchulosis did not take place, but abscesses were formed and continued to form and the inflammation go on, what then would be the natural course of the disease? would it result in death?

A. It might; it might result in paralysis or they might die from exhaustion; it may set up an inflammation in the membranes of the spinal cord, or an inflammation may take place in the cord.

Q. But where this state of things occurs which you call anchulosis and the progress of the inflammation is stayed and the spinal cord becomes hard, then there is, in your judgment, a cure?

A. Yes, sir.

Q. How is it with the subject before you now?

A. He is consolidated.

Q. And is therefore cured?

A. He is cured, as far as the inflammatory—as far as the disease itself has gone; he now has the result of the disease, which is the deformity.

Q. Will that ever be removed?

A. No, sir.

Q. It is impossible that it should be?

A. Impossible, because it is due to a loss of bony substance, which cannot be replaced.

Q. Is there such a condition as curvature of the spine?

A. There is.

Q. Describe that to the jury.

A. Well, that is a disease which has no inflammatory trouble with the bone, is not in its early stages connected with the bone at all. It is a muscular disease in its commencement, due to want of power. The back is held straight by two sets of muscles, one on each side of the spinal column; when they act properly and are equally developed they hold

the spine erect, the same as the shreds hold the mast of a ship in position. From one cause, either a shortened limb or from bad habit of sitting at a desk in writing or bad habits in walking and carrying bundles on one shoulder, they get a little twist, and are developed on one side of the back more than the other; then the spine commences to bend a little to one side; it rotates on itself, and after it has rotated to a certain point then the muscles commence to draw on one side or the other. If this goes on for any length of time the bone itself becomes involved by being bent out of shape—not from any disease of the bone itself, but simply from the abnormal position and the bad action of the muscles.

Q. Does that condition sometimes follow Potts disease?

A. It is not an infrequent thing to have more or less lateral curvatures with a case of Potts disease, especially where the inflammation has been greater on one side of the spine, than it has on the other—where there has been more destruction of bone on one side than on the other. It draws them down on that side.

Q. As a result of the Potts disease?

A. As a result of the Potts disease. It may be due to something else running in with it, as a shortened leg, or something of that kind.

Q. If this boy ever had lateral curvature of the spine, it has been removed?

A. I cannot discover any evidence of any very great amount of lateral curvature. There is a slight twist of his back yet in the lower part of it.

Q. You say that in your judgment, and as your experience has shown you—that most cases of Potts disease result from some character of injury?

A. Well, almost any injury; for instance, a fall; and I have seen it result from persons being thrown from a wagon, from falling down stairs, from lifting heavy weights, from being struck—from almost every imaginary injury that you can think of.

Q. You say you have treated, you think, more cases than almost any other person of your age. How many have you had under your direct observation, if you can tell us—approximately—so that we can form some idea.

A. I should think some four or five hundred; I kept a record of a great many of them; but I don't recollect exactly now how many they are; but I am certainly within the mark when I say four or five hundred.

Q. How soon after the injury was received, would the disease ordinarily become apparent; what range of time is there?

A. There is no range of time that you could set for that; as a rule, the cases run for a length of time—for months and years—before the trouble is discovered. Inflammation is in the spinal column and the nerves, as they come out from the cord through the notches and various ways in the spinal column, become either inflamed or they have pressure on them from some breaking down of the column, and give rise to symptoms at the other end of the column—the same as if you strike your elbow and it does not hurt you very much, but you feel it in your fingers. And these cases certainly are treated for a great length of time, for some trouble in the anterior part of the body, and as a rule the trouble with the back is not suspected until they get a curve—although it has been in existence, may be, for months, or may be years. But that is, as a rule, the history of these sorts of cases; they very frequently have been supposed to have some trouble with their lungs or stomach or heart—something of that kind; then they have been treated for months without any benefit; and finally, somebody—and very often small children, or the mother, or the nurse in washing them—finds out what is the matter with the baby's back.

Q. It may be months, you say?

A. That may be months after the original injury, and the disease has been going on all the time; the

curve in the back does not take place until a certain portion of bone has been absorbed.

Q. And that would take how long, for the curve to occur?

A. I have seen it occur in a very few months; and I have seen it occur in a great many months.

Q. But it would be at least months, in your judgment?

A. Yes.

Q. Is there necessarily, any local injury to the back prevailing after the fall or other direct injury, that is sustained in cases where subsequent Potts disease is developed?

A. Not as a rule; the trouble is that accidents, as a rule, are not severe enough to draw much attention to them at the time, and therefore, they are passed over; the child has a fall, and they don't think anything about it; at the end of a week or ten days he commences to complain of having stomach ache or pain in the chest or trouble with breathing; he is treated for a long time for these sorts of troubles, which are simply the manifestation of disease in his back.

Q. I will now put to you a question, based upon my statement of what has been or will be proved in this case; and ask your opinion upon the case so put:

A boy, whose picture I will show you at the age of two years—except that it is colored by hand—and the natural photograph taken at the age of five years; when he is six years of age, he falls down a cellar-way from a point over a portion of the cellar-way that is covered, upon steps which go downward from the sidewalk directly under the building; he just before the fall having stood facing the building; he is picked up at the bottom, unconscious; the steps are stone steps; he immediately recovers consciousness; the only injury noticed is that shown by the scar now indicated to you, which was then a bleeding wound; that wound is dressed; nothing further

s done; it is not supposed that he is otherwise injured; his back is not observed by any one or complained of by him, nor is any other complaint made by him; afterwards, at a time somewhat uncertain, according to the memory of witnesses, but within four months for an outside limit, he begins to complain of severe pain in the front of the body under the ribs on the right side; he begius to lose flesh, does not have a desire to play, will drop on his knees to pick up articles from the floor; is taken to the country for two months; on returning, his general health seems to be somewhat depressed; at a subsequent date, the time not fixed, but inside of six months, a slight protuberance is noticed in the back between the shoulders; towards the end of this period, the time a little indefinite, he begins to walk with one shoulder higher than the other—the left shoulder being the higher I think; that finally becomes perman-nt; at the end of nine months, or a little short, a plainly developed case of Potts disease with lateral curvature is discovered by a physician; the boy then undergoes treatment, mechanical treatment by processes such as you see in court here, crutch attachment (the same being shown to the wiiness) and the result is, as is apparent in plaintiff's case; no proof is given of any scrofulous diathesis; the family history of both parents does not point to any such tendency; no other fall or injury is known to the boy's parents or to the boy himself.* What, in your opinion, is the cause of the Potts disease and consequent angular curvature of tee spine?

Objected to on the ground that the question is based on a hopthesis that does not exist in this case.

Objection overruled, defendant excepts.

A. From the question that you have asked me, I should look uyon the fall as the direct cause of his Potts disease. The pain that he suffered shortly afgery; I have lectured there a number of times when my father was not able to fiill his Chair from sick

ter the injury in the side along the rib, if not due to some trouble within the chest wound lead one to suspect disease of the back; and if he had been examined at the time carefully, I think that the trouble might have been discovered.

Q. Do you use the plaster of Paris jacket?

A. I do.

Q. Who was the inventor of that?

A. My father was the first one who ever used it.

Q. When was it invented, or used by him?

A. Plaster of Paris has been in use for a great many years.

Q. I mean in application to these cases of curvature?

A. The first time it ever was used to entirely support the body from the hips as far up as the arm pits was in 1874; it had been used around the chest for broken ribs some four of five years before by Dr. St. John in Bellevue Hospital, and it has been used for a great many years to go two-thirds of the way around, making a plaster back, and then the front was made of India rubber, or something of that kind; it was in 1874, I think, that it was first put around completely with the object of sustaining the back.

Cross-Examination by Mr. McCarter:

Q. What is your age?

A. Thirty-five.

Q. When did you graduate at the Medical College?

A. In 1875, I think.

Q. When did you first attend medical lectures?

A. In 1869—that is to attend them regularly. I have been a great many years at the college with my father.

Q. Have you seen any hospital service?

A. I have seen a great deal of it, but have not been connected with the hospital; I have been connected with the college ever since my graduation.

Q. In what capacity?

A. As Assistant to the Chair of Orthopedic Sur-

ness. Orthopedic surgery is generally—used to be entirely—confined to cases of crooked feet, club feet, but really it embraces all diseases of the joints and all the deformities of the body, due either to inflammatory processes about the joints or to any other causes.

Q. You say your father rides out every day?

A. He rides out every day for an hour or two; he is carried down stairs in a chair.

Q. What is his difficulty?

A. He has had an inflamed knee joint, on the internal ligament of his knee joint, and has had a sharp inflammation there.

Q. You have no specialty?

A. No, sir; my father neither.

Q. Then your father does not make a specialty——

A. He makes a specialty of nothing: he has seen hundreds of diseases of joints, probably more than any man in this country.

Q. You say you think you have seen more cases of Potts disease than any man of your age in the world Do you mean to say that?

A. I do.

Q. What means have you of knowing what opportunities other gentlemen of your advanced age have had to see Potts disease of the spine in other parts of the city?

A. Because I am seeing cases constantly; they are sent to me from all over the country.

Q. Sent to you?

A. Sent to me, and to my father also; a great many of them are sent to me specially.

Q. That is the only reason you have for the rather broad assertion that you have seen more such cases than any man of your age in the world?

A. I have failed to find anybody who has seen as many.

Q. Now, you say that you have given the idea up that Potts disease is the result of scrofula or scrofulous tendency?

A. I have; in fact, I never had it.

Q. You never had it?

A. I never believed in the scrofulous theory as being one of the causes of it.

Q. Are you sufficiently acquainted with the subject to say whether the general belief among surgeons has been that Potts disease was sometimes due to scrofula or scrofulous tendency?

A. It has been, sir.

Q. How is it yet?

A. Some men still hold to it; a great many do not hold to it.

Q. Is it not, in your judgment, the opinion of the majority of surgeons, that Potts disease is due sometimes to scrofula or scrofulous tendency or disposition in the patient?

A. Not with the men who have studied up the subject most thoroughly.

Q. Now, who have studied up the subject most thoroughly?

A. Well, there are a great many of them; Dr. Taylor in New York, Dr. Lee in Philadelphia; those are the men who have done more at it than any one else.

Q. Can you name any others?

A. There are a great many of them—Dr. Agnew.

Q. Cornelius Agnew?

A. Dr. D. Hayes Agnew, of Philadelphia.

Q. Any others?

A. I don't recollect any others just at this moment; there are a great many more of them.

Q. What knowledge have you as to the number of surgeons who have studied up the subject?

A. I have read a great many works of theirs—not a great many, because there are not a great many written on the subject.

Q. Has it not been the generally received opinion among surgeons that Potts disease is due sometimes, and frequently, to a scrofulous tendency in the patient?

A. A great many of them believe that; and a great

many of them believe that it is also incurable; that when a person gets Potts disease they must necessarily die from it.

Q. It would expedite us very much if you would confine yourself to my question without following a new topic. Who is it that believes that Potts disease is incurable?

A. A great many of the men who think that there is no chance for them——

Q. No chance for life?

A. In a great many of the cases, a great many of them think there is no use of doing anything for them, because they are incurable, and think they may as well let them alone, that they will run a certain course.

Q. Do they die every time?

A. No, sir, they do not.

Q. Do you mean to say that a different belief prevails on the subject of treatment on Potts' disease now from what formerly prevailed?

A. Yes, sir.

Q. What is that difference of opinion?

A. The difference of opinion is that a great many of them can be cured.

Q. Can be cured?

A. Can be cured, and a great many of them cured without deformity, if the disease is discovered early enough.

Q. By what treatment has this changed opinion been brought about?

A. I suppose more by the efforts of Dr. Taylor and my father.

Q. What is Dr. Taylor's first name?

A. Charles Fayette Taylor.

Q. Where does he practice?

A. In New York.

Q. And you mentioned Dr. Lee, did you not?

A. Yes, sir.

Q. What is his first name?

A. Benjamin Lee, of Philadelphia.

Q. This change that you speak of in the treatment, or in the result of the treatment of Potts' disease, has been brought about mainly by Dr. Taylor and your father?

A. To a great extent; Dr. Lee and some others.

Q. What new treatment has been resorted to which has brought about the change in the results?

A. The main treatment has been by the use of plaster of Paris in these deformities in these diseases.

Q. It is an application of plaster of Paris?

A. To a great extent.

Q. In the form of a plaster of Paris jacket in spinal diseases, such as you say your father produced in 1874?

A. Yes, sir.

Q. I understand you to say that the lateral curvature of the spine is not an inflammatory disease of the bone? it is due to muscular irregularities, is it not?

A. In the great majority of cases due to some kind of impairment in the column, due either to a shortened leg to fractured ribs, to a consolidation of the lung on one side, or loss of lung from pleurisy, or something of that kind, which is the starting point of it. It is not a disease of the bone itself.

Q. Would it be brought about ordinarily by a fall or hurt?

A. Not lateral curvature.

Q. It is not generally due to a cause of that character?

A. No, sir.

Q. Does it ever ultimately affect the spinal column so as to cause inflammation in it?

A. No, sir; it sometimes causes a wasting of the spinal column by pressure, but there is no inflammation.

Q. A wasting of the spinal column by pressure—what would be the effect of that on the patient?

A. Make him more and more crooked—more on

one side than the other.

Q. Then, according to your idea, lateral curvature would not be caused by the same causes which would produce Potts disease?

A. It would not be caused by the same causes; it might follow the Potts disease.

Q. But would it precede and be followed by Potts disease?

A. It might be.

Q. It might happen then that a person afflicted with a lateral curvature would from it and because of it, develop Potts disease?

A. No, sir; I didn't say that.

Q. What did you say then?

A. The Potts disease has been in existence before the lateral curvature was manifested, but had not gone—the Potts disease had not gone to the point of creating any deformity—had not yet caused any loss of substance.

Q. Then the Potts disease, being in existence before the lateral curvature, would you say the lateral curvature was the result of Potts disease?

A. It might be, yes sir.

Q. I understood you to say just now, it was not?

A. I didn't understand your question exactly.

Q. Then would you naturally, ae a surgeon, look for lateral curvature as a result of Potts disease?

A. I would not look for it all; if you found a lateral curvature with a Potts disease, it would be due to a want of substance in the bone from absorption, unless it had existed previously to the Potts disease from shortened leg.

Q. But I understand you to say that the lateral curvature is a result of muscular irregularity, and Potts disease is the inflammation of the vertebrae, or spinal column?

A. Yes, sir.

Q. Is there any necessary connection between them?

A. There is no necessary connection.

Q. Seeing a patient with a lateral curvature, would

you expect, as a surgeon, in the progress of the case, to see Potts disease develop from it?

A. No, sir. You may have lateral curvature in the majority; it has no inflammatory disease of the bone.

Q. There being no scrofulous tendency in a given patient, are you to assume, as you do, that the scrofulous tendency has nothing to do with Potts disease —how would you trace the philosophy of such a result as you have given, that Potts disease would rerult under the conditions named to you from a blow on the head—a wound on the head?

Objected to as incompetent; objection overruled.

A. The wound on the head would have nothing to do with the Potts disease; the injury which caused the blow on the head injured the spine at the same time—and the question of scrofula, not having anything to do with the disease, you didn't understand, or I am afraid I have not made my meaning exactly plain; I intended to say that a person who has Potts disease must not necessarily have scrofula; it can occur to the healthiest person in the world, and in a case such as was read to me, the injury probably produced —either tore off some small attachment of some of the muscles of the spinal column, or has had extravasation of the blood under the cartilage, which has gone on to inflammation, softening and disintegration and absorption of the bone.

Q. Are you not, to arrive at the result which you have stated to Mr. Collins's hypothetical question, obliged to assume that there was some injury to the spine which produced Potts disease, which was not apparent, otherwise than in what you consider the result of it. Did you answer that question?

A. I don't exactly understand that question. The injury was not apparent, because it was deep-seated under the muscles.

Q. Have you any other foundation for that assumption than the appearance of Potts disease?

A. This pain he had in his side was an indication that there was disease in his back at the time ; if he had been carefully examined, it would very probably have been found that he had a tender spot in his spine.

Q. That you call a symptom of Potts disease ?

A. Yes, sir ; the pain, yes, sir ; that is one of the symptoms of it.

Q. That is when the disease has made itself manifest. But have you any other foundation for the assumption which you make to answer Mr. Collins's question, than the subsequent appearance of Potts disease, or the symptoms of it ?

A. The boy's peculiar way of acting—his bending down if he went to pick up anything, bending his knees instead of bending his back—would prove that he had trouble with his spine.

Q. Those were all symptoms of the existence of this disease ?

A. Yes, sir.

Q. (Repeated). "But have you any other foundation for the assumption which you make to answer Mr, Collins's question, than the subsequent appearance of Potts disease or the symptoms of it ?"

A. I don't understand how I can answer that question.

Q. You say that you don't consider the wound on the head had anything to do with Potts disease ?

A. He may have hurt his back, probably at the same time ; there is no direct connection between the cut on his head and his Potts disease.

Q. If Potts disease was developed in the patient, according to your judgment, it would be due to some other injury than a wound on the head ?

A. That blow on the head might have given him concussion of the spinal column, and extravasation of the blood through that.

Q. You are getting back to the blow on the head as the cause of Potts disease. I thought we had eliminated that from the subject. Are you not

obliged to assume, in order to get at the result which you have given, that there was some injury to the spinal column, occasioned by the fall, which had no direct connection with the wound on the head?

A. A man falls down the area and cuts his head and hurts his back at the same time; he has all the evidence of having disease there.

Q. Don't you have to assume, to get that result, that he must have hurt his back at the same time?

A. Yes, sir.

Q. If that person fell in that way, if it should be made known to you that he was immediately treated by a competent physician and surgeon of reputation, who gave directions to the family to advise him of any further developments, and the patient's condition continued such from the month of April, 1871, until about the first of February, 1872; that there was nothing in his condition which induced the parents to call for surgical advice; would you consider that an injury which he sustained on his back by a fall of the kind described, would produce Potts disease, without producing more marked symptoms than those I have named, before February, 1872?

A. You mean, that is, in the year after the injury?

Q. From April, 1871, to January, 1872?

A. As a rule, the injury precedes the manifestation of the disease for a long time.

Q. As a rule, what is the length of time that it takes for a hurt or fall, before it manifests itself in symptoms of Potts disease?

A. It depends entirely upon the amount of the injury; a severe injury will manifest itself sooner than a slight one; it depends a great deal on the constitution of the person; a perfectly healthy person will not succumb as readily as a weak and delicate one.

Q. When did you see this boy before?

A. I saw him, I think, about ten days ago.

Q. Where?

A. At my office.

Q. Who was with him?

A. His father.

Q. Who else?

A. I think his mother was—I won't be positive about that.

Q. How long were they there?

A. I should think about half an hour.

Q. And did you have a pretty full talk with them about the case and its history?

A. He told me about the history of the case, and how the boy had been treated, and all the symptoms that he had had.

Q. Did you tell him anything about what the symptoms of the disease were?

A. Not until after he had told me his history.

Q. Then you did tell him, did you not?

A. Then I told him that the case that he had related covered the majority of cases of Potts disease so exactly—the history that you get of them.

Q. You gave him quite a full disquisition, did you not, on the subject?

A. I may have done so; I don't remember that I did particularly.

Q. Generally?

A. I don't recollect that I did.

Q. Was the conversation with you or with your father?

A. The conversation was with me.

Q. In your father's presence?

A. No, sir.

Q. Take the case of two children; one of a sound and healthy condition of body, and the other of scrofulous tendency, and suppose them subjected to the same sort of injury; which would be most apt to show the injury, and at what interval?

A. The broken down scrofulous child would show the manifestations of the disease earlier than the other.

Q. If the fall was violent enough to cut the scalp and bruise the head, would it be usual for the symptoms of Potts disease to delay showing themselves

for six months or longer?

A. It might, yes, sir; I think in the majority of cases it would show very few manifestations of disease for less than six months; they are only very shadowy in the first commencement.

Q. I understood you to say that the mother or person having frequent opportunity to inspect the injured person, in the case of a child would be apt to observe the symptoms much sooner than the casual observer?

A. Yes, sir. It was this way. I stated that the deformity was as a rule discovered by the mother; and the child may have been treated for a good many months before that for some other trouble, and the trouble in the back not suspected either by the family or by the physician until the curve had become established.

Q. Do you know this Dr. Marsh?

Mr. Collins! The man that makes these braces.

A. I know of him, I don't know him.

Q. There were two of them?

A. This was probably the elder one; I don't know whether he is dead or gone out of business; I don't know that I ever saw him; I have seen a great many of his instruments, though.

Q. Would you consider it a proper treatment of a boy with Potts disease to do nothing more than to subject him to the appliances that Mr. Marsh makes?

Objected to as irrelevant.

The court: There was in the trial of the case before, a line of defence that was indicated by this

question. I think it is a little out of order now.

MR. COLLINS: I object also as not being cross-examination. If he wants to make him his own witness, I want to know it.

Objection overruled; plaintiff excepted.

Q. (Repeated). "Would you consider it a proper treatment of a boy with Potts disease to do nothing more than to subject him to the appliances that Mr. Marsh makes?"

A. I should not consider that that was proper treatment at this time.

Q. Would you consider it to have been proper treatment in 1871?

A. Yes, sir.

Q. Wherein is the difference?

A. In 1871 all these cases of Potts disease, were treated by these mechanical appliances; and the general practitioner, the family physician, and the surgeon in general surgical practice, did not want to have anything to do with these cases; he sent them to somebody who made a speciality of them; and they treated them with iron braces; and the result has been that many of them were cured; but they ran a long time; and, since, now the results which have been obtained all over the country by gentlemen in the use of other means, have, to my mind, demonstrated that the mechanical treatment by iron braces is not the proper treatment for disease of the spine.

Q. What other means have led your mind to that conclusion?

A. From having seen a great many cases who were treated by mechanical means by these iron braces, where they have failed to get well; where they have been treated by plaster of Paris and have got well.

Q. And by plaster of Paris, you mean your father's inventions?

A. I mean plaster of Paris applied around the body.

Q. Are you correct in your statement that you graduated at the Medical College and got your diploma in 1875?

A. 1875 or 1876; I don't recollect exactly which.

Q. Can't you tell?

A. I don't really recollect; I think it 1875 or 1876.

Q. Is it possible that you cannot remember when you got your diploma?

A. Why should I?

Q. That is not an answer to my question.

A. I don't recollect exactly.

Q. Can you name any other surgeon in the city of New York besides yourself and the gentlemen you have named who agree with you in your opinion that you say you now entertain?

A. Dr. ———, Dr. ———, Dr. Poore, Dr. Winn, Dr. Bryant, Dr. Solomon, and Dr. Shauffer, and some others; I don't recall their names exactly.

Q. Does Dr. Shauffer hold the same view you do?

A. As to its tubercular origin?

Q. Yes?

A. Yes.

Q. Have you talked with these gentlemen you have named and got their views?

A. I have heard them discuss the question many times in various society meetings where the question has come up.

Re-Direct Examination, by Mr. Collins.

Q. Would such a fall as I have described in my hypothetical question, from which resulted the blow on the head, the scar of which appears, be likely to produce an injury to the spinal column?

Question objected to by defendant on the ground that it is not a matter of surgical, but of common knowledge.

A. I should think very probably it would cause some trouble to the back; the back might very probably be injured by such a fall.

Q. In what manner could the spine be injured from such a fall if the only point of contact with the body was that shown on the head?

A. It might be due to the concussion at the time of the fall, when he struck on the ground, or it might be that the body, bending over, after the head was struck, might have injured the spine in that way.

Q. Even though the back itself struck nothing?

A. Yes, sir.

Q. From such an injury to the spinal column that you speak of, would there be any direct perceptible local manifestation?

A. Not necessarily; you might have a bruised spot, extravasation of blood, or might not; not necessarily.

Q. Is it essential to the cure of Potts disease by the plaster Paris jacket that the patient should be taken in hand early in the progress of the disease?

A. The earlier the disease is discovered the better it is cured by any means; when the curve once appears it is permanent; the compensating curve above and below may be cured, but not the curve itself.

Q. Treated by the methods used in 1871, is his condition a good result?

A. It is.

Q. How is lateral curvature treated?

A. A variety of ways; the best way is by gymnastics; the muscles have to be developed to get strength enough to hold the body straight; also by extension; treated in numberless ways.

Q. When you say that many doctors think Potts disease is caused by scrofula, do you mean to say that some of such doctors think it may be caused by scrofula, without any exciting cause?

A. A great many of them claim that no scrofula no Potts disease; that if you have Potts disease you must have scrofula.

Q. But can the scrofula cause it by natural development, or must there be some exciting cause, as a blow, for example?

A. I believe it cannot exist without the blow, but a great many believe that the blow is not necessary.

Q. But those who attribute the Potts disease to the scrofulous diathesis also believe that it can never be developed unless there is a blow or some exciting cause?

A. Yes; they may have scrofula without having Potts disease; they may have Potts disease without the scrofula.

Q. And is there a belief that with the scrofula they would not have had the Potts disease, unless there was a blow to give that direction to it?

A. With some men, yes.

Q. What is anæmia?

A. A poor condition of the blood, want of red corpuscles in the blood.

Q. Does that condition of the blood tend to develop lateral curvature of the spine?

A. A person who has anæmia is necessarily broken down in strength, their muscles are weak, and they are more likely to have lateral curvature than a person who is in constant training whose muscles are strong.

Q. Does Potts disease tend to produce that condition?

A. Potts disease tends to produce anæmia.

Q. Does it tend to depress the constitution and general health?

A. It does.

Q. Is Pott's disease more likely to be developed in a person with strumous diathesis from a blow than a healthy person?

A. Yes; a slight injury to a person with a broken down constitution will cause much more serious trouble than in a man perfectly healthy.

Q. Why is it that among some medical gentlemen it has been the opinion that Potts disease was traceable either directly to strumous diathesis, or to such a condition with a blow or injury added, why is it that some of them have come to that general opinion?

A. I think the reason is they have looked on the cases and seen them when they had run along for a number of years, in which the constitution had become broken down from the disease; they have got the cart before the horse, substituted the effect for the cause, the same as they have in a great many other diseases, especially about the bones and joints.

Q. And with the fact that persons of strumous diathesis would be more likely to develop Potts disease?

A. I suppose it must have had something to do with it.

Re-Cross-Examination by MR. MCCARTER:

Q You say Potts disease would be apt to produce anæmia after it had run a considerable course; would not anæmia be one of the early symptoms incident to Potts disease?

A. Not necessarily.

Q. Would it not naturally be the result?

A. It would depend entirely upon how much disesse there was, and what part of the column it was placed in, also upon the temperament of the person. Some persons stand pain very much better than others; it doesn't break them down. To a nervous person a slight blow will upset them, upset digestion

and things of that kind.

Q. Now getting back to this fall; with such a fall as that to cause an injury to the spine, wouldn't it be probable that injury to the spine caused by such a fall as that would manifest itself in some external mark, or bruise, or wound?

A. Not necessarily.

Q. I didn't ask you necessarily; wouldn't it be probable?

A. That would depend upon whereabouts the trouble was, how much injury had been done. If a muscle on the outside had been torn off you would have extravasation of blood. If he had struck his back against anything when he fell over and came down the area, there would probably be some external manifestation of it.

Q. Suppose he fell off, not down in the direction of the steps, but sideways, so that he landed at the bottom, and in such fall sustained an injury in addition to the injury to his back sufficient to produce Potts disease, wouldn't you naturally expect to see some external manifestation of such injury?

A. He might simply have doubled over, torn off the ligaments down deep.

Q. Wouldn't that cause some inflammation, soreness?

A. It would cause soreness if it was looked after, but it might be a very small point and overlooked.

Q. Wouldn't the patient feel a soreness?

A. He would feel some tenderness in the back, but maybe not enough to make him think anything of it.

Q. You think by such a fall the ligaments might be torn off in such a way as to produce Potts disease and not create tenderness in a child six years old sufficient to have them think anything about it?

A. I have seen such cases.

Q. Where did you ever see such things exist?

A. Where a child had had a severe fall.

Q. I asked whether you knew of any such case

wherein such a condition as my question states, where an injury of that kind was occasioned to a child of six years who felt no soreness or tenderness from it?

A. I have seen them where they have felt very little soreness.

Q. When Potts disease follows a direct blow or injury, or a fall such as has been described to you, would there not be some symptoms of the injury, either external or to the feelings of the patient very soon after such injury?

A. Might be.

Q. Would it not probably be so?

A. No, sir; might be very slight and overlooked by a person.

Q. Would there not be tenderness on pressure?

A. If the child was examined carefully and his spine percussed all the way down, you would probably find a tender spot.

Q. Wouldn't it be probable that such tenderness would develop itself without the careful examination and percussion all the way down?

A. Not with a child; the child might not complain of the pain at all; unless pressure was made on the point of the disease, it might have very little pain at all.

Q. After inflammation has commenced, would there not be pain then?

A. Yes.

Q. How soon would inflammation commence in the spinal column as the result of such injury as that?

A. That would depend entirely upon the circumstances, on the amount of injury.

Q. Wouldn't you look for it immediately, or very soon?

A. Immediately after the accident, you could not tell whether it was due to muscular strain or anything else.

Q. But if it resulted in Potts disease, you would

look for some injury, even if at the first you could not tell?

A. Yes.

Examination by Mr. Collins:

Q. Would a layman, a father or mother, perceive any injury on the child's back?

A. Might not by simply looking at it.

Q. It needs percussion all the way down the spine by an educated finger.

A. It depends upon where you put percussion on the spine, percussion upon the spinous process above or in the direction of the disease would not give any pain, but relieve it; the pain is manifested at the other end of the nerve, at the chest or stomach. There are very few cases where they do not have pain, as a rule they do have more or less pain.

Q. When you speak of ligaments down deep, you mean underneath the muscles, down deep in the frame?

A. Yes.

Q. If something was torn off and there was extravasation of blood down deep, there would be no outward manifestation and very slight pain felt by the patient himself.

A. Yes.

Q. (By Mr. McCarter). Ordinarily when a person receives a wound, bruise or hurt, the pain is in the region of the wound, bruise, or hurt?

A. As a rule, yes, sir.

[Adjourned for the day]

ALFRED A. LUTKENS, a witness called and sworn on the part of the plaintiff, testified as follows:

I am a practising physician and surgeon of Jersey City, have been practising since May, 1848, in a general practice. I have known Isaac Houston, the father of the plaintiff, about 32 years. I have been his attending physician upon the family for that length of time more or less.

Q. Have you been the attending physician at the occasion of the birth of his children, any of them?

A. Yes, sir; I think there was but one exception, but I have attended every other time.

Q. Did you attend at the birth of Arthur?

A. Yes.

Q. Were you familiar with Arthur, the plaintiff, up to the time that he fell into the cellarway of the Levy building?

A. Yes, sir.

Q. What sort of a child was he as to his physical constitution?

A. Well developed, well nourished, healthy child.

Q. Were there any indications of a strumous diathesis about him?

A. I never recognized any.

Q. Was there to your knowledge any such tendency in the family or any members of it?

A. I never recognized any.

Q. Was your experience with themsuch and your intercourse with them as a physician such as would have shown it to you if it had existed?

A. I think so, if strumous symptoms had existed and been developed; yes.

Q. What is this object that is suspended on the easel?

A. Part of the human skeleton, all but the limbs.

Q. Is there a disease which affects the spinal column known in medicine and surgery as Pott's disease?

A. Yes, sir.

Q. Describe it to the jury and show what its effect upon the spinal column is?

A. Pott's disease or caries of the spine consists in inflammation of the bodies of the vertebrae, any of these bodies (indicating on the skeleton) resulting in softening, ulceration and absorption, disintegration and absorption.

Q. What is the meaning of the word "caries"?

A. Ulceration; that is to say, caries is a term applied exclusively to bone, caries of bone; it is confined to ulceration of the bone.

Q. Do we have caries of the teeth?

A. Yes.

Q. What we call ordinary rotten teeth?

A. Yes.

Q. Show how caries is manifested?

A. I have never dissected a case personally, but it is described by pathologists as in the early stage the bone is found red, vascular, softened, so it can be picked to pieces with a knife and becomes riddled with cavities which gradually break down to a greater or less extent and the absorbent system, the vesicles, absorb it, take it up and convey it back into the blood, and the result is that one or two of these bodies are so broken down by that disease and are absorbed. It shortens the spine in front, the consequence is the back excavates and the breast bone is pushed forward. That is a characteristic disfigurement produced by it.

Q. It produces a curvature of the spine?

A. Yes, sir.

Q. What adjective is generally prefixed to that kind of curvature?

A. Posterior.

Q. Another word?

A. Angular curvature.

(By the Court): Is that particular disease limited to any particular region of the spinal column?

A. No, sir; It is more common in the dorsal verte-

brae—very much more common in the dorsal than in either of the others.

Q. Is the effect that you have described what we commonly speak of as the "hump back"?

A. There is one important thing I didn't speak of; that is, it consists of the fact of this intervertebral from this point (indicating on the skeleton) proceed the dorsal nerves, twelve in number each side, and they arise from the spinal cord, that is a prolongation of the brain running down the vertebral canal and terminates about here (indicating), and from the spinal cord extend these nerves; after it comes out, they divide and send branches between each rib called the "intercostal" nerves, running along the lower border of the rib. The upper six supply the integuments upon the upper part of the chest; the posterior branch supplies the muscles of the back; the lower six intercostal nerves supply the muscles of the abdomen and the integumentary substances.

Q. In cases of this caries you speak of, when it becomes far advanced, what effect has the weight of the head and shoulders upon the column?

A. Presses the sound bones together; for example, this part is diseased (showing), softened, and will not sustain much or any weight, the effect of the head and shoulders upon that is to double up the spine, and this (indicates) pouts out and then this (indicates), pouts forward.

Q. What constitutional effect does the progress of the disease have upon the patient?

A. Upon their general health?

Q. Yes.

A. It breaks down to a great extent their general condition of health. It seems to act in two ways; in one case it is acute, symptoms attended with a great deal of pain, great deal of tenderness, inability to turn over in bed, and attended with symptomatic inflammatory fever. The other class would be called sub-acute or anaemic, and it goes on with little or no

pain, so that pathologists state that Potts' curvature may go on from its commencement through its whole course producing most serious deformity, the worst form of angular curvature, without the patient having been confined to bed a week or a day in consequence of inability to go about.

Q. What is the result of the nerves that you speak of proceeding through these spaces and following the ribs and the front of the body, as to sensation, that is, will the patient feel pain when the cause is some disease in the spine?

A. What I have seen of the disease, persons complain about *here* (pointing to the forward ends of the ribs), almost invariably complain of a girdling sense, cannot take a full breath; it answers the description of pleurisy, but entirely referable to the spine.

Q. What other curvature is there to which the spine is subject?

A. Lateral curvature.

Q. Describe that to the jury.

A. As a general rule, spinal curvature is caused by anaemia, debility of the muscles; it is not a disease of bone as Potts' curvature is; that is to say, it is not a disease of the bone, though the bones may become involved after they become pushed out of shape and pressure made upon them, but it is not a disease of the bone. The spine is moved by certain muscles, and spinal curvature is an irregularity of the spine; it will be twisted perhaps this way (illustrates), and and perhaps that way (illustrates), and perhaps here again (illustrates); and there may be one, or two or three curvatures, side twists, in the spine caused by lateral curvature.

Q. To speak in general terms, it is a deviation from the normal perpendicular of the spine?

A. Yes, it is caused by an unequal power of antagonizing muscles which act upon the spine, and it is this unequal power in these in one side in antagonizing their fellows; these become more powerful and overcome their antagonistic muscles and drag the

spine to the side.

Q. What is the effect upon the shoulders?

A. The shoulder is elevated, the inferior angle of the scapula sticks out on one side.

Q. And on the other side?

A. Nothing unnatural on the other side, except it appears depressed in consequence of the other being elevated.

Q. You say anæmia will produce such condition of the muscles as will tend to produce spinal curvature: will Potts' disease tend to produce anæmia?

A. Decidedly.

Q. If you see a case of angular curvature produced by Potts' disease, and at the same time the lateral curvature, what is your conclusion?

A. Very naturally that the lateral curvature would be dependent upon the debillty superinduced by Potts' disease.

Q. Caused by the debility?

A. Yes, sir.

Q. Do you remember being called in to attend Arthur L. Houston on the occasion when, as you say, you were informed he had fallen down the staircase?

A. Yes; it was in 1871, it must have been in April; it was about nine months prior to January 28th, 1872, I know.

Q. At that time what was his apparent condition of health?

A. Good.

Q. When you were called in what was pointed out to you as the matter to receive attention?

A. I found him with an incised wound of the scalp; it had been dressed by some person and I examined the skull, found there was no fracture and the thing was pretty neatly done and I did not disturb it. I haven't a very clear recollection of that visit, other than seeing his head strapped; he appeared to be otherwise well, presented nothing that I recognized other than the cut.

Q. You made no other examination of the person

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than the head?

A. Yes, I doubtless did; I don't remember very distinctly, but it is common to give a general examination of a person when a physician gets a history of a pretty severe fall.

Q. You didn't call again?

A. No, sir.

Q. When did you next see the boy?

A. 28th of January, 1872, at his father's house; I was sent for.

Q. What did you do in relation to the boy?

A. I was called to re-vaccinate the family, there was small-pox in the adjoining house; I vaccinated all his family, my books show that.

Q. On that occasion was Arthur brought in to you?

A. Yes, sir.

Q. What did you perceive?

A. I noticed as he came into the room he was going sideways, and I was very much surprised at his altered appearance. When I last saw him he was a healthy, a ruddy little fellow, when I saw him that time he was cachectic, pale, sickly looking, and he was thinner than I had ever seen him before.

Q. What does "cachectic" mean?

A. That indicates a low condition of the fluids and solids of an individual, it is a skin phenomena, appearance of the skin, abnormal appearance of the skin.

Q. That simply indicates some internal trouble?

A. That is all.

Q. Was the change a considerable one?

A. Very marked.

Q. What was done?

A. I had him stripped of his clothing and it disclosed a prominent angular curvature of the spine; that arose from shortening of the spine, and the breastbone was protruding in front, what is commonly called chicken-breasted or pigeon-breasted by some people. He had also a very marked lateral curvature, his spine was rotated upon its axis, it gave him a

twisted appearance, one shoulder was elevated, one lateral half of the ribs was sunken, the twelve ribs was pushed in, the corresponding sides were pushed out.

Q. That was the result of a lateral curvature?

A. Yes; and there was a marked curvature below the seat of the angular curvature extending to the lumbar vertebræ.

Q. Was the angular curvature marked in the back also?

A. The angular curvature was about there where you are pointing on the skeleton.

Q. You disrobed him, what did you do to him?

A. I proceeded to find out what could be done for him.

Q. In what way did you manipulate him?

A. For the purpose of seeing how far he might be benefitted by extension I raised him by his arm-pits and held him up as long as I could; I don't remember that I made any strong mechanical effort to hang him up. I found that fixation had not taken place of the parts involved in the lateral curvature; his figure was improved by extension and counter extension, which I used, so that I gave his parents hope and explained to them that his greater deformity arose from this lateral curvature; he was twisted in this way (illustrates); I gave them reason to hope that by proper spinal braces and supports he might be made straight

Q. You say that you found fixation had not taken place in the lateral curvature and you gave his parents reason to think that he might be straightened?

A. Yes.

Q. You refer to lateral curvature?

A. Yes.

Q. Did you form a judgment of how recent any of the conditions were and which?

A. Yes, sir.

Q. Proceed to tell us.

A. By lifting him up it made apparent the fact that the deformity arising from lateral curvature had not

become fixed, anchylosed, or in other words it was too recent for that. If they get fixed in lateral curvature they are fixed, just as much so as Pott's disease. I explained it to his parents that so far as the deformity arising from the lateral curvature which was the cause of his greater deformity I thought in my judgment it could be made straight. So far as the Pott's curvature was concerned it was fixed and incurable as to the deformity.

Q. In your judgment which was the more recent of the two?

A. The lateral curvature.

Q. For how long in your judgment had the disease been going on which had produced the angular curvature, the Pott's curvature?

A. For the angular curvature to have been formed necessitated the removal of one or more of the bodies of the vertebra by that process called caries, I don't know that any specific time can be stated, it must of necessity I should judge take months.

Q. Did you recommend any particular method to be used to straighten this lateral curvature?

A. Yes Two. One was to build his system up by restoratiues; the second was by mechanical treatment to be derived from the application of something which would carry the weight of his head and shoulders from the weakened spine.

Q. Did you prescribe remedies?

A. Yes.

Q. Of what general character?

A. I don't remember, I would naturally prescribe cod liver oil and iron.

Q. And to be continued for a good while?

A. I don't know how long the constitutional treatment was continued.

Q. What did you suggest in the way of mechanical treatment?

A. I suggested spinal brace and gave preference to the one made by Dr. Marsh of Vesey Street, New York, a spinal and truss instrument maker.

Q. In what way would that be applied; would the child be measured and so forth, the thing built to order?

A. Yes, he is measured and the various parts are made up according to measurements. They were in his case.

Q. Who would make the instrument or direct the making of it?

A. I directed Mr. Houston to bring it back to me, which he did, so it was probably made under my direction partly.

Q. What were your general directions to do with the boy as to braces; to go where and have what done?

A. To go to Dr. Marsh and have a spinal brace made and then bring the boy back to me; the boy was brought back to me with the brace applied and I considered it to be a most excellent instrument.

Q. You have seen the young man now disrobed and examined him?

A. I am familiar with his condition, I have attended him recently.

Q. Is the result a satisfactory one?

A. Yes, sir.

Q. What is the present condition of the lateral curvature?

A. Cured.

Q. What is that apparent deformity which we all see existing in him now?

A. Angular curvature of the spine produced by the loss of the bodies of one or more of his dorsal vertebrae, the upper and lower ones coming together and uniting by a bony anchylosis at an angle, the angle sticking out behind, and more or less undue prominence of his breastbone in front.

Q. What is the natural development in Pott's disease when it begins; describe how when nature triumphs and how when it does not?

A. Pathologists say it is an inflammatory disease, acute or chronic in its character, rapid or slow; they describe it as frequently being extremely insidious,

the parts during the early stage, the bodies of the vertebrae, are found to be vascular, that may be defined inflamed, the firmness of the structure is changed, it becomes soft so that a knife can be readily pushed into the softened vertebrae which in a normal state is hard, bone; a little later the parts present a honeycombed appearance, riddled by the effect of suppuration, inflammation, the effect of which is to break down the tissue, that is, if the disease commences in the bodies of the vertebrae. It may commence in the fibrous cartilage, the same inflammatory process goes on except ulceration instead of caries. Caries is confined to the ulceration process in the bone, the result is that the bones, the bodies of these vertebrae are lost, removed by absorption and the spine falls togetner, the spinal bones approximate; the intervening bodies of bone become soft and the upper and lower approximate more or less completely. It may be that the bodies are honeycombed only and not broken down entirely, consequently not so great a loss, and if the case progresses favorably nature may stop it by an effusion of plastic material which becomes organized and later converted into bone, this is called bony union or anchylosis, that is the cure.

Q. If that happens the patient becomes cured of the disease but the deformities so far as it had progressed remains?

A. Always.

Q. And the cure is by anchylosis or bony union?

A. Yes, sir.

Q. If that does not take place then what happens?

A. They die; they may not die immediately; the parts crowd more and more together and the pressure of the spine produces paralysis of the spinal nerve, abscesses. and generally death, I have no doubt.

Q. Is Arthur cured so far as the disease itself is concerned?

A. Yes, sir.

Q. He now presents the appearance that he will throughout life?

A. Yes, sir.

Q. Have you kept track of him since this time in 1872? Seen him from time to time?

A. I have seen him occasionally, recently I have attended him for an acute attack of dyspepsia. Just now I have a very clear idea of his condition of health.

Q. You are neighbors, within three or four blocks of each other.

A. Yes.

Q. Are you able to tell what was his condition as to pain and suffering and the progress generally of his case for four or five years after he went to Dr. Marsh?

A. He was not under any direct treatment by me during that time.

Q. Will you give us the pathology as you understand it of Pott's disease, I speak with a special reference to the causes of the disease?

A. The causes are defined to be two, constitutional and exciting. The constitutional causes are those which tend to induce debility, weakness, such as smallpox, scarlet fever, whooping cough, measles, typhoid fever, any disease or bad hygienic surroundings. There are many causes but this is sufficient I suppose.

Q. Go on?

A. Gout, rheumatism, syphilis, particularly the indiscriminate use of mercury, scrofula or the scrofulous diatheses?

Q. What is meant by the scrofulous diatheses?

A. The word scrofula is used to denote a constitutional condition or habit of body called the scrofulous, tubercular or strumous diatheses, usually seen in the young, especially in children born of consumptive parents. It is a word used to denote a constitutional condition.

Q. Is it or not generally inherited?

A. Yes, sir.

Q. And as you say from consumptive parents?

A. The most common examples we get of scrofula in children are in the cases of children born of parents

who have died of some of the marked strumous affections, of which pulmonary consumption is the most common.

Q. You have spoken of a constitutional cause, now go on in your own way?

A. I could mention a good many more I suppose if it was desirable; any causes which induce debility.

Q. Now give the exciting causes?

A. All authors seem to agree nearly that the exciting causes of Pott's disease reside in local injuries, blows, falls, contusions, concussions, sprains.

Q. And that is your own belief?

A. Yes.

Q. Now do you think that the disease can be developed without the exciting cause such as you have specified? From purely constitutional tendency?

A. My impression is, so far as I can learn, that it is supposed that an exciting cause is essential, so far as I am able to judge.

Q. Is it necessary that this exciting cause must be so severe as to produce external manifestations or sensations which the person himself, a child of six years, must perceive?

A. No, not in the least I think.

Q. Have you been in court during the description of the way in which the boy was injured?

A. Yes, sir.

Q. Would the fact that nothing was perceived in his back by any one, nor spoken of by himself, in the nature of injury or sensation, pain, at the time or shortly after the accident be any evidence that he had not on the occasion of that fall received an injury that was the exciting cause of Pott's disease?

A. I think not.

Q. What could be the character of an injury received to the spinal column or the surrounding ligaments by such a fall as the boy must have sustained which injury could result in Pott's disease?

A. Well, a sudden twist of the body separating some of these ligaments which confine the spine especially the

anterior common ligaments I should judge: the anterior common ligament runs along the bodies of vertebrae from here (indicating) all the way in front down to the sacrum here (indicating), this that covers over the whole of the bodies, a sudden twisting of that ligament or what would be called a sprain would be very likely to lacerate some of its tissues; that laceration would be likely to be attended with an extravasation of blood, a drop of blood would be enough, being confined there unable to pass off, would excite inflammation and inflammation results in softening, possibly the formation of pus; or the shock might be such, that the force might be expended so that the bodies of the vertebrae were met with a lesion; the intervertebra fibre or cartilage might be the seat; any of these situations.

Q. Would there be any outward manifestation of such an injury as you speak of?

A. No, sir.

Q. Could such an injury be produced by a fall of a character that this must have been?

A. If he was struck directly in falling upon some part of his spine, that would be direct violence, or striking upon his head or his hip or his feet would be communicated to his spinal column, because the head is one end of the spinal column, and the sacrum the other.

Q. What is concussion?

A. That signifies a blow or shock, shock resulting from a blow.

Q. What is concussion of the spine?

A. A jar of the spine.

Q. What is the effect of a severe concussion of the spine with reference to the developments of Pott's disease?

A. It depends upon how far local injury may have resulted from it.

Q. Can a local injury result from a severe concussion?

A. Yes.

Q. Of what character?

A. Well, hemorrhage, anything that excites inflammation. There is one qualification perhaps in speaking of concussion, the proper definition of concussion would be nervous shock, but we speak of concussion in this case as contusion.

Q. Do you remember the location of this scalp wound?

A. Yes.

Q. You have seen a scar of it on the boy's head?

A. Yes.

Q. In your judgment if the boy had fallen and come directly down at that point upon his head, could he thereby have received a contusion of the spinal column sufficient to produce injury that might result in the development of Pott's disease?

A. It is so considered I think.

Q. And is that your own opinion?

A. Yes,

Q. What are the indications of a strumous diathesis?

A. In the absence of development you speak of?

Q. Yes.

A. I don't know.

Q. You specified on the former trial of this case certain minor indications that accompany the development?

A. Yes.

Q. What are they?

A. Well, children that are considered to be strumous are prone to inflammation in the first place, and inflammations of a particular kind, that is inflammation of joints, inflammations of their lymphatic glands, of their eyes, nose, skin, and they present evidence of impaired nutrition. A very common indication is an unusual puffy upper lip, an abnormal development of the end of the fingers, a sort of club fingered.

Q. Did anything of that character exist in young Arthur before this fall or afterwards, ever?

A. No, Sir.

Q. You speak of bad hygienic surroundings as tending to produce diseased condition of the blood and of the constitution. What were Arthur's hygienic surroundings ?

A. They were good and have been good since I have been acquainted with the family.

Q. They live on natural, solid ground and in a good neighborhood ?

A. Yes.

Q. Has the father been in comfortable circumstances always ?

A. I presume so.

Q. Have you ever had knowledge as attending physician or otherwise of any other blow, fall or injury which might be an exciting cause to Pott's disease that occured to young Arthur before the interview you had in January 1872, except the fall that has been testified to here ?

A. No sir.

Q. With your knowledge of Arthur's coustitution and what you have heard testified in that respect as to himself and his parents and the history of the case as it has been developed in your hearing on this trial, to what exciting cause would you attribute the Pott's disease which he has had ?

A. Well, I think in all human probability his Pott's disease was occasioned by that fall, in the absence of any other known cause.

Q. Is Pott's disease a common or rare disease, comparatively speaking ?

A. So far as my observation is concerned it has been a very rare disease. I have had a large medical practice since 1848, and I can't remember of but three cases during the whole period.

Q. You have mentioned a number of constitutional conditions that might be predisposing causes to development of Pott's disease if excited, did any of these causes exist in young Arthur to your knowledge at the time of his fall ?

A. No, sir.

Cross-examination.

Q. What do you understand to be the precise meaning of the expression " strumous diathesis" ?

A. It is considered to be as I understand it, that condition in which tubercules is supposed to play an important part.

Q. What is the meaning of the word " diathesis" ?

A. Habit of the body.

Q. And " strumous" ?

A. Scrofula.

Q. Then, strumous diathesis being interpreted, is a scrofulous habit of the body ?

A. Yes, sir.

Q. And tubercule.—what is that ?

A. Well, that is a question. The pathology and natnre of tubercule is very badly understood or not very definable. Tubercule is usually considered to be an abnormal deposit in any of the tissues of the body supplied with blood vessels of a morbid element called " tubercule".

Q. Is it limited in its appearance to those tissues of the body which are supplied with blood vessels ?

A. Yes, I think so.

Q. Is it never manifested in any diseases of the bone ?

A. Yes, remarkably so.

Q. Then you would enumerate bone as a part of the tissues of the body supplied with blood vessels ?

A. Yes.

Q. This strumous condition, it is always one which exists perceptibly ?

A. No, sir.

Q. In the absence of what you call development, the condition may still exist ?

A. Yes.

Q. At that stage of the history or condition of the patient before development, is it your opinion that it may exist without being discoverable ?

A. Yes.

Q. It is always attributable or some known cause, such as hereditary or bad hygienic surroundings, or some of the other causes which you gave ?

A. No, sir.

Q. Do you mean that it may exist and be developed without the physician being able to discover it ?

A. Yes, sir.

Q. Does that condition sometimes manifest itself in a patient whose family, the members of whose family whose ancestors have been, so far as known, free from any manifestation of it ?

A. Yes, sir.

Q. Then it is not, in your opinion, essential to the existence of that condition in a given patient, that you should be able to trace it to some congenital or surrounding physical cause ?

A. It is not necessary.

Q. The disease familiarly known as Consumption is one manifestation ?

A. The most prominent we have.

Q. Is that disease confined in its ravages to individuals who are known to belong to strumous or consumptive families ?

A. No, sir.

Q. Does it not sometimes occur in families where there is nothing in the history of the family or in the concomitant circumstances to suggest it or account for its appearances ?

A. Yes, sir.

Q. (By Mr. Collins) Speaking of consumption ?

By Mr. McCarter : Yes, consumption.

Q. It does not follow, then, as a necessary consequence, does it, that because Arthur's father and mother, and their parents and collateral relations, so far as known, have indicated no symptoms of it, that it might not have appeared in Arthur ?

A. No, sir,

Q. Your own practice in cases of Potts' disease has been quite limited?

A. Yes.

Q. Since 1848 you have had three cases?

A. Of Potts' disease, that I can remember of.

Q. Including Arthur?

A. Yes.

Q. Whose were the others?

A. One was a lad named Gavin, who died of it thirty years ago.

Q. And the other?

A. That was a case that was an office patient, that died many years ago; I have no particular means of knowing the name. Those are the only cases I can recall, that is, of angular curvature of the spine. Lateral curvature I have seen a good many of.

Q. The term "Potts' disease" is never applied to lateral curvature?

A. Never.

Q. It is always limited to angular curvature?

A. Yes; angular curvature dependent upon caries or softening or absorption of the bodies of the vertebræ.

Q. That absorption almost always occurs in the anterior portion of the vertebræ?

A. Always, I believe.

Q. And because it occurs there and does not affect the posterior part of the vertebræ, that causes the curvature?

A. Yes, sir.

Q. You have said that if strumous symptoms had existed and been developed in Arthur, you would have noticed it?

A. Yes.

Q. You meant by that to say, did you not, that development of the symptoms as well as their existence was necessary to enable you to notice it?

A. Yes.

Q. Is the term "scrofulous temperament" sometimes used as applied to the condition of persons?

A. I never heard it.

Q. Are there external marks or signs in healthy persons, in persons apparently healthy, which would suggest to a physician or surgeon the probability of the appearance of scrofula at some time?

A. I doubt it; that is, so far as my ability to judge is concerned.

Q. You doubt if there is anything in the external appearance of an apparently healthy person without any scrofulous symptoms have been developed, which would enable a person to detect, conjecture or predict that that person would be likely to be affected by scrofulous disorder?

A. I do not know of any. Writers say and people speak of persons of unusually clear complexion, and some peculiar developments of the eyes and the ear—the hectic flush and such things. I don't think, without a knowledge of the person's antecedents, that they would influence me much in forming my opinion as to a person's being strumous.

Q. Has it not been the generally received opinion that persons having certain appearances, that it was to be expected they would develop scrofulous tendencies some time?

A. By the laity, yes. I don't think I ever heard a physician give so superficial an opinion.

Q. This lateral curvature, you say, is the result very often of a weakened or low condition?

A. Anaemia, it is commonty called.

Q. That means bloodlessness?

A. Bloodlessness, yes, sir.

Q. You have stated what might cause anaemia, such as scarlet fever and other diseases; what causes those diseases?

A. Do you ask what produces measles, scarlet fever, small pox, typhoid fever?

Q. Yes.

A. It is supposed to be at the present day owing to some germ, some micro-organism that is absorbed by the act of breathing, and conveyed to the blood by

means of the lungs, as a rule, possibly in typhoid fever by articles which are swallowed; it is held by some that milk may be so contaminated as to provoke typhoid fever.

Q. Then these diseases which you enumerated as producing or capable of producing anaemia which may result in lateral curvature, are themselves results of something else?

A. Yes, sir.

Q. Is anaemia always traceable to an intermediate cause, such as those diseases, or does it sometimes occur when you cannot refer it to one of the causes you have named?

A. Anaemia signifies bloodlessness; that means an absence in the blood of the proper relative amount of blood corpuscles, and whether that ever exists as a primary affection it will take me some time to consider.

Q. It is a tolerably obscure subject?

A. Yes, sir. My impression is, it is always symptomatic or something else.

Q. Is it ever a symptom or development of a strumous condition?

A. Yes, sir.

Q. It is one of the symptoms of that?

A. Yes, anything which produces debility; that is, anaemia may be excited by anything which excites debility.

Q. You speak of Potts' disease as being, the one acute and the other sub-acute, or chronic; what is the difference in the character of the disease as indicated by those two definitions?

A. One is rapid and the other slower.

Q. Is there any other difference between them than the rapidity with which it makes progress?

A. I think not.

Q. The character of the disease is the same?

A. Essentially the same.

Q. To what do you, or can you, if at all, attribute the cause of the difference in the same disease being

acute in some persons and sub-acute or chronic in others?

A. It has necessarily to do, I think, with the severity of the causes which produce the disease. It is inconsistent to say that inflammation is chronic from its commencement, for that name involves necessarily the consumption of time, duration; and it is a fact, I believe doubtless, that these diseases run on with great activity, producing rapid destructive changes, the morbid process goes on with great severity, and abscesses, paralysis and death result. In other cases it goes on insiduously, so that I believe all the medical authorities agree on that subject, on this part of the subject, that the disease is liable to go on unsuspected by the friends, and some say the physician, until the deformity in the back points out the fact that caries of the bodies of the vertebrae has been going on.

Q. You say that in the progress of lateral curvature the bones may become involved; what do you mean by that term "involved?"

A. Not by caries; I didn't mean to say; I meant to say by pressure in lateral curvature, which is, strictly speaking, an evidence of muscular weakness; that is, if it comes from anaemia, the muscles drawing to one side the weakened tissues, that is the fibre, the cartilages, the blood vessels, produces unnatural relations, and the long continued, undue and unnatural pressure upon specific points may cause anchylosis by fixation of the parts of the vertebrae, but never produces caries.

Q. Then caries is not a necessary precurser of anchylosis?

A. No, sir; not a necessary forerunner. With reference to the anchylosis connected with lateral curvature, it is false anchylosis. There are two kinds of anchylosis; it is spurious anchylosis with fixation, or deformity in lateral curvature of a fibrous character.

Q. Can you say as a physician or surgeon that inflammation of the cartilages of the verterbrae is never produced by the fact of lateral curvature?

A. With inflammation of the bodies of the vertebrae?

Q. Yes, or cartilages?

A. I don't think they can have any relation.

Q. I don't exactly understand your answer. Can you say as a physician or surgeon that inflammation of the cartileges of the vertebrae is never produced by the fact of lâteral curvature?

A. Do you mean does it ever produce caries of the vertebrae?

Q. Inflammation?

A. I don't see how it could.

Q. Do you mean to say as a physician that it cannot exist because you cannot see how it can exist?

A. No, sir.

Q. Then do you give it as your opinion that inflammation either in the cartilages or vertebrae of the spine is never produced by lateral curvature?

A. I think not.

Q. Why not?

A. It don't represent any violence, it is a disease not inflammatory in its character, lateral curvature is not. I don't see by what hypoth sis lateral curvature should produce inflammation of this character.

Q. It does produce unnatural relations of the bones and cartilages of the spine to each other?

A. Yes, it does.

Q. Does not that condition tend to inflammatory action, thus brought into unnatural relations?

A. It might; it is not clear to my mind.

Q. Now I ask you if caries never results from lateral curvature?

A. I think not.

Q. What makes you think not?

A. Because the two diseases are essentially differdent, although the two conditions result in deformity; they are called curvatures of the spine, still their causes are so essentially different that I would not consider that lateral curvature could have anything to do with producing that miserable disease known

as caries.

Q. Caries is a result. It is not a disease of itself, it is a result of inflammatory action?

A. Yes, sir.

Q. I understood you to say that the unnatural or artificial relations brought about between the cartilages and vertebrae of the spine by lateral curvature—you don't say it would not tend to produce inflammation?

A. I am not prepared to say it would.

Q. Are you prepared to say it would not?

A. No, sir.

Q. If, then, you cannot say that inflammation would not result from the unnatural condition of the spine caused by lateral curvature, how can you say as a physician that caries as a result of such inflammation would not occur?

A. Well, it is impossible to define just—I cannot understand why or how inflammation would be likely to result from lateral curvature.

Q. If notwithstanding the fact that you cannot understand how such a thing would take place, and if that result should take place, namely, if lateral curvature should produce inflammation, either in the cartilages or vertebrae of the spine, would not caries result from such inflammation as well as if the inflammation was caused by some other cause?

A. Yes, I said so. If inflammation were set up, that it would likely go on to disintegration caused by lateral curvature. Is that your question? Accepting the fact that inflammation is produced by lateral curvature?

Q. Yes.

A. I presume so.

Q. Is lateral curvature ordinarily produced by a hurt or fall or bruise or causes of that kind?

A. No, sir; I think not.

Q. If you should see a person affected by lateral curvature of the spine would you not naturally as a surgeon inquire as to whether he has had a fall or

been hurt as a probable cause of such condition?

A. No, sir.

Q. It ordinarily appears without such exciting cause as a fall, wound, bruise or hurt?

A. Yes, sir.

Q. You have no very distinct recollection now, have you, of what occurred on your first visit to Arthur when you first saw him on account of the hurt to his head?

Q. I understood you to say that you assumed that you made an examination of him?

A. Yes, sir.

Q. Were you told as to how he received the hurt?

A. Yes.

Q. You were told that he fell into the area way?

A. Yes.

Q. I understood you to say that you have no doubt you made an examination otherwise than of his head?

A. Yes.

Q. Is that the result of your known professional habit or the result of your recollection?

A. It is not the result of my recollection, the circumstances attending my call at the time of his receiving that fall are very obscure to my mind. I remember distinctly seeing his head strapped, and stating to his parents that the skull was not fractured, and that the wound was plastered up nicely. It had been done by some druggist. I remember distinctly that I hesitated for a moment whether I should take it off or not, but finding the edges were nicely approximated, done neatly, I allowed it to remain. That I remember, but I don't remember anything else connected with that visit.

Q. Your statement in regard to the examination you made of him is founded on your knowledge of your professional habit?

A. Yes.

Q. What would that lead you to say was the extent of the examination you made of the boy at that

time?

A. I cannot say anything more than what I might assume.

Q. What would you assume from your known habit to be the extent of that examination?

A. If I found the boy running round apparently well, and had received what I believed to be simply a scalp wound and it was plastered well, that is, drawn together by adhesive strips, or his condition was satisfactory, no evidence of shock or exhaustion, that he was not lame, I think it is my general habit to always run my hands over the bones; I make a practice of doing that, and I suppose I did it in his case though I don't remember.

Q. Over what bones?

A. All the bones I could reach, shoulders and all.

Q. Would the account which you had of the fall which the boy sustained, together with the appearance of the wound on his head, tend to make a physician make an examination of the spine as well as the bones of the limbs?

A. Not particularly.

Q. Then there would be nothing in the account of the fall which you received to suggest a possible injury to the spine so as to make an examination necessary?

A. I cannot say whether I examined his spine or not; I don't know.

Q. I am not speaking of your recollection, but of what you would have been likely to do?

A. I don't think it ever would have occurred to me to have examined his spine particularly for indirect violence to the vertebral column.

Q. But in the general examination which you made of the bones, or which you would naturally make of the bones, referring to your habit, would you omit the spine?

A. Yes. I think if the child was running about it is more than likely I would be governed a good deal

by his condition, and I think it is quite likely that I did not strip him.

Q. If he was running about you would not examine the bones of his legs, much, would you?

A. Well, that depends.

Q. Depends upon what?

A. The character of the injury. In that case I would not.

Q. Can you now say there was anything in the account given you of the fall which would suggest to your mind as a surgeon any injury to the spine?

A. No, sir.

Q. Or that you made any examination with reference to that?

A. No, sir.

Q. Or, if you did make examination, that you discovered anything that would suggest that any direct or indirect injury had been sustained by the spine?

A. I certainly did not discover anything of the kind.

Q. Do you remember when you saw Arthur whether he was running about or lying down when you called to see him on that occasion?

A. I don't.

Q. There was nothing, however, in his condition which suggested to your mind the propriety or necessity of your calling to see him again?

A. No, sir.

Q. Did you ever see him again between that time and the 28th of January, 1872?

A. No, sir, not professionally; I may have seen him in the street.

Q. I didn't mean professionally. Did you ever see the boy between those dates?

A. Not that I remember.

Q. Can you tell whether you made any professional visits to the family in that interval?

A. I think not. I have made a memorandum of the visits made about that time, and I find I have left it somewhere.

Mr. Collins: Here is a paper in your writing that

you have handed me? (Handing witness.)

Witness: This begins with January, 1872.

Q. I am speaking of between April, 1871, and the visits in January, 1872.

A. I have no memorandum here to enable me to speak about it before January, 1872. I didn't see Arthur from the time he was hurt in March or April, whenever it was, until I saw him January, 1872.

Q. Do you mean to say you had not seen the boy at all?

A. I don't remember to have seen him.

Q. You live near Mr. Houston?

A. Yes, at that time about seven or eight hundred feet from him, I should judge.

Q. Did you, in the course of your professional journeys, often come across Mr. Houston, the father.

A. I don't remember. I do meet him sometimes in the street. I have met him sometimes in the street.

Q. Were you a customer of his?

A That I don't know. I haven't anything to do with that except to pay the bills. We have bought a good deal of meat from Mr. Houston.

Q. What was the object of your visit in January, 1872?

A. I was called to re-vaccinate in consequence of small-pox existing next door. It was epidemic in Jersey City at that time.

Q. Where you told that one of the objects of your visits was to examine Arthur?

A. Yes, after I reached the house.

Q. I mean before you reached the house?

A. No, sir

Q. Before you reached the house had you any information that one of the objects of your going to the house was to examine Arthur?

A. No, sir; not that I remember.

Q. Was Arthur in the room when you went in, or do you remember how he was brought into personal

contact with you?

A. I remember having vaccinated Mr. Houston's family, and Mr. Houston said he wanted me to see Arthur. He was going sideways; he walked across the room; I remember distinctly the manner of his gait. One shoulder was fallen, and I asked them to strip him. I told them he walked as if his spine was affected.

Q. Was it so that you would have noticed it if your attention had not been called to it and you hadn't seen him walk. Suppose he had been standing or sitting, was the change in his condition apparent; would it have been physically apparent?

A. Yes.

Q. The change consisted in what?

A. The change in his gait?

Q. I am not speaking with reference to his gait, but what change was apparent in the boy's figure, independent of his gait?

A. He was disfigured.

Q. Before he was stripped what would have presented itself to your eye in the boy's condition, without his gait?

A. He was emaciated, pale, sickly looking. He had changed so markedly from the time I saw him, a short time previous—that is the time of the scalp wound—that I was struck with the change.

Q. That was manifested in his countenance?

A. Yes.

Q. I mean in the conformation of his figure, what change would you have noticed in that respect if you had not seen him walk?

A. He was not erect and his spine was rotated. He was in this position (illustrates), twisted.

Q. By rotated, you mean that one vertebra was wisted on another, turned around?

A. Yes, turned on its axis.

Q. Was the lateral curvature very marked and apparent?

A. Very; yes.

Q. Was it of such a character that before the boy was stripped it suggested Pott's disease?

A. Lateral curvature would not ordinarily suggest Pott's disease.

Q. But from the appearance the boy presented to you before he was stripped, when you made up your mind there was lateral curvature, was it such appearance that you would, before examination, attribute the lateral curvature to Pott's disease?

A. No sir; I would consider that the only relation which lateral curvature could bear to Pott's disease——

Q. I am not asking you for your present opinion. I am asking you whether the condition of the boy was such that it suggested to your mind Pott's disease before you stripped him.

A. It suggested to my mind spinal disease. I don't know that I would think as I saw him. I should consider it—if I were asked what sort of curvature he had—well, I don't know; I could not tell.

Q. There is no necessary connection between lateral curvature and Potts' disease?

A. No, sir.

Q. Either may exist without the other?

A. Yes, sir.

Q. Or they may exist together?

A. Yes, sir.

Q. What I want to get at is whether your observation of what you called the lateral curvature was of such a character as to lead your mind at the time before you discovered the symptoms of Potts' disease to attribute the lateral curvature to the existence of Potts' disease?

A. No, sir; that is before I saw it, before I stripped him.

Q. You were examined on a former trial of this cause?

A. Yes, sir.

Q. Do you remember whether in that case you testified to anything about the lateral curvature?

A. In reading over the stenographer's notes taken

at the previous trial of this case I was somewhat surprised to find that I made no allusion to his having lateral curvature; it was an oversight.

Q. The fact is you did not make any allusion to it before?

A. If the stenographer's notes were correct, I did not.

Q. What is your recollection about it?

A. I naturally supposed I had.

Q. Do you remember whether you said anything about it on that occasion?

A. I can't remember.

Q. How do you account for it now that in giving your account of the boy's appearance you omitted to say anything about that important condition?

A. I cannot say; it was incompleteness in my answer to the question. I heard his father describe lateral curvature pretty well as I sat there, and whether that gave me the impression that the evidence was in on lateral curvature or not I can't say.

Q. You mean you heard his father on the former trial?

A. Yes; he said something that brought to my mind vividly the fact of his having lateral curvature.

Q. You speak of a constitutional taint or cause of Potts' disease and an exciting cause, do you mean to speak of them as both necessary to produce Potts' disease, or that one may account for it without the other?

A. Well, a great majority of the medical authors say that scrofula is the most common cause of Potts' disease.

Q. Do they further hold that scrofula, as a cause of Potts' disease, is inadequate to produce the disease except by the aid of some other exciting cause?

A. As a rule, and I think that medical authorities are very similar in their expression that the scrofulous diathesis, tuberculous or strumous diathesis are terms used synonymously, are most frequently the cause of Potts' disease, that these different diatheses

are the underlying predisposing causes. Exciting causes are falls or injuries.

Q. Is it then in your opinion the generally received and announced doctrines in works of authority, that notwithstanding the predisposing cause of strumous diathesis existing in a patient, that some other exciting cause is necessary to the development of Potts' disease?

A. It is so considered I think, if I understand your question aright.

Q. Is Holmes' Surgery a work of authority among surgeons?

A. Yes.

Q. Can you remember whether Holmes adopts the views that some injury is necessary to the development of Potts' disease?

A. I know in a general sense what Holmes says of injuries as an exciting cause. He is the only author that I have read who does not attach that importance to traumatism, injuries as an exciting cause.

Q. Does he not say that in most instances the cause is constitutional, and that where the fall or bruise is said to be the cause it is very difficult to trace the connection?

A. Yes.

Q. Is Dr. Gross' Work on Surgery a work of recognized authority?

A. Yes.

Q. Can you remember what his view about that is?

A. Yes; that in most cases struma is the underlying cause and that traumatism, blows, falls, injuries, etc., are the exciting causes.

Q. Does Gross hold that traumatism as an exciting cause is necessary to the development of the disease where there is a constitutional cause?

A. I think that Gross states the essential cause in most cases, that it may be referrable, or is referrable, to an underlying scrofulous condition of the constitution in most cases, the exciting causes being falls, blows, injuries, sprains, etc.

Q. Do you understand him to advocate the idea that with the existence of the constitutional tendency an exciting cause is necessary for it to develop?

A. That is the way I remember of having read it; I don't know that he regards it as essential.

Q. That is the point I want to know, whether he regards the constitutional tendency or diathesis as sufficient to produce the disease without some additional cause of a traumatic character?

A. I could not say that. There are so few things that are specific connected with the art of medicine that I don't know that it is essential. I think so far as my observation is concerned, what I can remember of having seen, it is a disease which is regarded as being like it in so many respects and having the same general character as hipjoint disease so that in almost all the cases I have seen, I can't remember a case of hipjoint disease but what has been referred to a fall.

Q. We are straying away from the subject; I am asking what Dr. Gross says? That where there exists an underlying constitutional cause such as scrofula or strumous diathesis, whether he says it is essential to the development of the disease that there should be superadded some traumatic cause.

A. I don't remember what he says.

Q. I will read to you from Gross' system of Surgery, Volume II. page 200, what he says about Pott's disease. (Reads): "Pott's disease occurs in both sexes, in all classes of society, and at different periods of life, although it is much more common in children from the age of three to twelve years than at any other time, I have met with it as early as the ninth month, and cases are occasionally observed as late as the thirtieth or even the thirty-fifth year. It is most common in the lower walks of life among the ill fed and the half-starved occupants of the crowded lanes and alleys of large cities, and always recognized as its essential cause a strumous state of the system."

Q. What is your opinion as to the statement of Dr. Gross?

A. That is a point that is disputed very much, whether scrofula is necessary to the production; it is by all authors given as one of the prominent causes but I didn't know that Gross spoke so decidedly of it. Hamilton, I know, says in most most cases the tubercular diathesis underlies the disease and Holmes says so, or the article in Holmes' Surgery says so.

Q. Are those works modern works of recognized authority?

A. Yes. Frank Hamilton, of New York, is one of the first in America.

Q. Are you acquainted with the work known as D. H. Agnew's Surgery?

A. Yes. I know him by reputation.

Q. Is he a gentlemen of reputation in the profession?

A. Doubtless.

Q. I read from Dr. Agnew's work on Surgery, Vol. II. p. 870: (Reads.) "Two classes of causes are accredited with producing the disease—constitutional and traumatic. Those who refer it to the former believe that the prime factor in the morbid process is a strumous or tubercular state of the general system, and that the spinal disease is only a local manifestation of such a vice. Other surgeons who espouse traumatic theory believe that the inflammation which affects the vertebrae is in no way peculiar, and is due to twists, strains, blows, concussions, etc., of the vertebral column. There are certain forcible objections to be urged against the traumatic theory. How are we to explain those cases of posterior angular curvature which appear long before the child is exposed to any external violence whatever, and when from its tender age and the constant watchfulness inspired by maternal affection it is altogether improbable that any accident of the kind could have occurred? Again, why does it happen that the subjects of this disease, as a class, are not at all remarkable for that irrepres-

sible activity and daring which expose young boys and girls to accidents and injuries? On the contrary, according to my observation, the children who suffer from Pott's disease are given to a more quiet, retiring and thoughtful mode of passing time. Again, if traumatism is a sufficient explanation for Pott's disease, how are we to account for the fact that boys and girls suffer with about equal frequency when it is well known that the former, from the nature of their amusements, are much more exposed to casualties than the latter. And finally, does not the history of cases of posterior angular curvature almost uniformly reveal antecedent tubercular or strumous ancestry? At least such has been the result of my inquiries; and I am, therefore, not disposed to adopt the views entertained by some modern writers until the knife and the glass of the pathologist furnish me something more satisfactory than speculation."

(The witness): That is his view.

Q. Is that the usual view of the profession?

A. Well, the books which I have consulted all speak of Pott's caries as due in most cases to scrofulous constitution or diathesis, that is not so broad as *all*, Gross refers to *all* cases; other authors speak of *most* cases. Holmes very clearly defines *not all* cases but *many* that are the subjects of this disease if I remember correctly, and I have tried to read them all carefully and they all acknowledged a scrofulous constitution.

Q. Are you acquainted with the work known as Billeroths' Surgical Pathology?

A. Yes, I have it. Please let me look at Gross' book. (It is handed to witness.)

Q. Is this disease sometimes called ostitis?

A. Yes.

Q. Do you know Billroth?

A. He is a German surgeon.

Q. Of high repute, is he not?

A. Yes, sir.

Q. Now, I call your attention to a statement which I read from page 423 of Billroth: (reads)

"It is, on the whole, rare for injury to induce ostitis chronica; but this may develop in the form of an osteomyelit in one of the larger hollow bones, from severe concussion and bruising with extravasation of blood in the medullary cavity; the same thing may occur from contusions of the bones of the wrist or ankle. But it is more common for such cases to induce acute disease, such as acute periostitis, if suppuration take place after contusion of the wrist or ankle. If the cartilage be destroyed and the suppuration extend to the bone, we may have fungous ostitis of the small spongy bones and their complete destruction. Even healthy, strong persons may, from protracted traumatic inflammation of the joint, become so anæmic and cachectic that the disease will not go on to its normal termination, but becomes chronic. Most frequently scrofula and syphilis are the causes of chronic inflammation of the bones. In scrofula, while the children are fat and well nourished, the fungous forms predominate. In thin, badly nourished, scrofulous children, on the contrary, ostitis and caseous degeneration and other atonic forms not unfrequently develop; both of the latter lead to partial necrosis. The most frequent seats of scrofulous ostitis and periostitis are the vertebrae, articular epiphyses, phylanges and metacarpal bones; the jaw bones and large, hollow bones are rarely affected."

Q. How does that statement agree with your view, as a surgicial man, on that subject?

A. I don't feel that I have seen enough of the disease to be a referee.

Q. Personally, your practice has been limited to three cases?

A. Yes, sir.

Q. Two-thirds of them died?

A. Yes; it is only fair for me to state in that connection that I did not treat them.

Q. In describing the progress of Pott's disease, you say that it is an inflammatory disease, and that the bodies of the vertebrae may be inflamed, and as I understood you to say, suppurated inflammation. Describe a little more fully the effects of this inflammation on the vertebrae.

A. It is stated to be inflammation of the periosteum, or the compact tissue of the bone, or the fibro-cartilages supporting the bodies of the vertebrae, or all of them.

Q How does that inflammation manifest itself?

A. If the disease is very acute, it manifests itself as acute inflammation usually does, by pain, great soreness, inability to turn in bed, inability to maintain an erect posture; symptomatic fever.

Q. These symptoms occur at the point of inflammation?

A. These resulting, yes, sir.

Q. For instance, would pain be felt at the place where inflammation exists, or over it?

A. No, sir. It is a fact, in caries of the spine, that the pain is remote from the seat of the disease; usually the thigh, about the waist—a girdled sensation.

Q. Is it precisely the same kind of caries that affects a tooth?

A. Yes, I presume so.

Q. Is the caries of a tooth due to inflammation?

A. Yes.

Q. Does it not sometimes occur externally, begin from the outside and work inward?

A. It might.

Q. What inflammation would cause that on the outside of the bone?

A. That would be inflammation of the compact structure. Although bone appears to our senses a perfectly solid, homogeneous body, it is not; it is perforated with holes through which pass blood vessels Bone is vascular and has a very large blood supply,

and although it looks solid to the eye, it is really perforated. I think the first volume of Gross' Surgery, page 858—I think I read that article, and I think it expresses something pretty definite about his opinion as to what are the exciting causes of caries.

Q. You are speaking of exciting causes?

A. And the constitutional, I think, also. If I remember right, Gross does not give, under the head of Caries of the Spine, the symptoms of caries of the bone, and I think the precise definition of Dr. Gross and his views as to caries will be found in volume 1, page 858. He has a long article there, a very concise article, in which he refers to two causes—a constitutional cause and an exciting cause.

Q. Does any work of recognized authority, generally received by the profession as a correct statement of the doctrine of the subject, maintain the position that Potts' disease is ordinarily or may be produced by a wound, hurt, sprain, or externally applied injury, without any predisposing cause?

A. They all speak, so far as I can remember, of the exciting causes, traumatism; and they speak of the constitutional cause, and in most cases, in reference to constitutional causes, of caries, to reside in anything which produces debility.

Q. My question was designed to be, whether in fact these works of authority considered that Potts' disease is capable of being produced, or ordinarily produced, by some external exciting cause, without the existence of the constitutional condition to which it is generally attributed?

A. As I understand them, they do.

Q. Who are they?

A. I think Gross, if I remember it right, volume 1, under the head of Caries of the Bone, gives a very much more graphic description than under the head of Caries of the Spine.

Q. He treats of those differently, in different portions of his work?

A. Caries of the spine is treated of by itself, as a

distinct and specific disease.

Q. I am not speaking of caries of the bone, generally, but of Potts' disease of the spine, and ask you whether any work or authority you can recall advocates the idea that that disease is usually produced, or is capable of being produced by what you call traumatic causes, that is, causes from injury or wound, without the existence of a predisposing cause?

A. Yes, I think so.

Q. Who?

A. I think Gross. I think they speak of the constitutional causes being referable to syphilis, mercury, small-pox, scarlet fever, scrofula and so on, as being constitutional causes, and then, as exciting cause, traumatism.

Q. Whenever they speak of exciting causes, do they not apply that term traumatism as a cause which sets in operation or develops the previously existing constitutional cause.

A. Traumatism must act as an exciting cause.

Q. That is what you say; but I am asking about what the works of authority say on that?

A. That is as I understand them.

Q. You have spoken of a suppurated inflammation; what is that in English?

A. That is inflammation reaching the formation of pus.

Q. Suppuration is the medical term for what is commonly called a collection of matter?

A. Yes.

Q. That of course, is a foreign substance to the normal condition of the part attacked?

A. Yes.

Q. In the progress of this disease, what becomes of that,—after pus is formed and suppuration has taken place, what disposition is made of it?

A. Pus, as pus, cannot be absorbed; the pus globules are larger than the lymphatic vessels. The fluid part of pus may be absorbed; if a collection of pus was to take place, it would form an abscess. It may

come to the surface, backed by the spinous processes. It may come through here ; (indicating).

Q. Come out in abscesses ?

A. Yes, or it may travel down the sides of the bodies of the vertebrae, to find by gravity a point down in the vicinity of the Poupart's ligament, that is, a fibrous band extending from here to here ; (indicating) or if there is not enough pus to form an abscess, to reach some outlet on the surface, somewhere, as Nature always attempts to carry out, that pus must undergo some change before it can be gotten rid of, and its globules are broken down, changed, undergo fatty degeneration.

Q. Is it then in a condition to be absorbed ?

A. Yes.

Q. And it is disposed of in that way, if it does not collect in sufficient quantities to form an abscess and seek an outlet in that way ?

A. Yes.

Q. Is that process attended with pain—the formation of pus and the absorption of it ?

A. Usually with a great deal of pain.

Q. Whereabouts does the patient feel pain, where the suppuration is going on ?

A. Just at these dorsal nerves which carry it to the sides.

Q. He would not feel it at the seat of the injury at all, eh ?

A. I think it would be referred to the termination of the nerves received from the part of the spine affected.

Q. Where would the pain be felt?

A. It would be felt about the region of the pit of the stomach.

Q. Is the transmission or transporting of the pain to a different part of the system from that where the cause of the pain is found, peculiar to the inflammation or suppuration of the spine, or is it common in other cases ?

A. It is common in other cases.

Q. Take an inflamed tooth, with an abscess at the root of the tooth; you feel the pain at the right place?

A. Yes.

Q. Is it not customary where inflammation exists which results in the formation of pus, that the patient feels pain at the seat where the pus is formed?

A. It is often so. Pain is usually felt at the periphery of the nerves. The pain in hipjoint disease is almost always felt in the knee. For a long time patients will be blistered, leached, and have their knees treated for something the matter with the knee, when the whole trouble is in the hip; that is very common.

Q. Does not the hip disease cause some irritation of the knee?

A. It is a reflex pain.

Q. Do you mean to say in such cases there is no derangement, no disturbance, no abnormal condition of the knee itself?

A. Yes.

Q. Then it is purely nervous?

A. Nervous reflex.

Q. I have asked you about your understanding of the notions of surgeon authorities on this subject; what is your own opinion as to the possibility or probability of caries of the spine, or Potts' disease of the spine being due only to a hurt?

A. I can conceive that to be quite probable without any producing cause.

Q. You spoke of the sudden twisting of the body and the separating of the ligaments, or a sudden laceration of one of its tissues; an extravasation of blood would probably excite inflammation of the spine?

A. Yes, sir.

Q. When you speak of a sprain in that connection, do you use it in the ordanary sense in which the term sprain is applied to an injured joint in some other part of the body?

A. Yes, sir.

Q. The sprain of itself is an injury of the bone?

A. No, sir ; sprain is usually confined to the stretching or parting of the ligaments of the joint.

Q. Ordinary cases of sprain of the wrist or sprain of the ankle or any other of the joints, is not that very painful ?

A. Usually, yes, sir.

Q. Is it not attended usually with swelling ?

A. Yes.

Q. What in your opinion would exempt a sprain of the anterior ligaments of which you have spoken from being attended with pain and swelling such as attend every sprain, in other parts of the body ?

A. It would be inside of the cavity of the chest. I only use the word anterior ligaments, because it is one of the structures.

Q. When a man has his ankle sprained he can feel it, whether he can see it or not, can't he ?

A. Yes.

Q. If an injury had been received of sufficient character to cause such a strain of that ligament, or laceration of its tissues and extravasation of blood, would such an injury be attended with pain there, soon after the injury was received, and at the point of injury ?

A. I suppose that would depend entirely upon the amount of extravasation. If a person were injured on the back by falling on the head, by concussion or contusion, by falling on one or the other of the extremities; or falling upon the back, if a drop of blood were poured out under the periosteum, or if a drop of blood were effused, extravasated into the cancellated structure of the bodies or any of the vertebrae, that would act as a foreign body ; Nature would set up inflammation, to get rid of it, and as to the extent which that inflammation would go, it would depend a good deal upon the constitution of the patient, the age of the patient and the surroundings. These would largely to do with his general health.

Q. Will the stenographer please read my question ?

(The stenographer reads the question to the witness

as follows : If an injury had been received of sufficient character to cause such a strain of that ligament, or laceration of its tissue and extravasation of blood, would such an injury be attended with pain there, soon after the injury was received, and at the point of injury ?)

A. Not necessarily, so far as I can judge.

Q. How then do you distinguish an injury of that character happening to the ligament of the spine, from an injury of the same character happening to the ligaments of any other joint of the body ?

A. With reference to the severity, A person sprains a foot ; they go on about their business without any pain ; merely a sense of discomfort, possibly ; that I would regard as a very small sprain, yet a man may get a sprain that will make him unable to walk for months.

Q. With the very small sprain you speak of in the foot, you would not expect inflammation of the bone, would you ?

A. No, sir.

Q. When you speak of the sprain, or the contusing of the anterior ligaments, or the laceration of tissue, do you mean that a sprain of that kind to the spine would be liable to produce inflammation of the bones of the spine, when a sprain of equal severity would not be felt in the foot ?

A. I meant to say that if a sprain was attended with laceration of the blood vessels, even though it were a minute quantity of blood, it could destroy the boney structure, give rise to death of bone, without any material pain ; I don't know whether the pain would be entirely absent ; I can't say ; I believe it might be completely absent ; that would insure the death of that part of the bone.

Q. You speak of one of the producing causes of Potts' Disease as bad hygienic surroundings ; what do you mean by that ?

A. Bad food, poor clothing, illy-ventilated apart-

ments in chief.

Q. Are not some of those things produced also by local causes or disease existing in the vicinity of where the party lives?

A. Yes.

Q. Is small-pox produced by such causes as that?

A. By bad hygienic surroundings?

Q. Yes.

A. It may be; it is infectious.

Q. How about measles?

A. The same.

Q. And scarlet fever?

A. The same.

Q. And dysentery?

A. Unless it were epidemic, dysentery, I don't think that would hold.

Q. Can you enumerate what classes of diseases are generally now considered as produced by bad hygienic surroundings, and local causes of contamination?

A. The essential fevers are perhaps as good examples as any; remittent, typhoid and typhus fevers; all the infectious diseases must be by contaminating the immediate atmosphere to a greater or less extent; measles, small-pox, whooping-cough, diphtheria.

Q. You have said I think, that in all human probability his Potts' Disease was occasioned by a fall, in the absence of any other known cause?

A. Yes, I said that.

Q. What did you mean by the qualification, "In all human probability"?

A. I don't know that I meant anything.

Q. Then you mean to be understood that your statement shall stand without those qualifying words: "I think his Potts' Disease was occasioned by the fall, in the absence of any known cause?

A. Yes, sir.

Q. Is it your professional opinion that the Pott's disease which affects this lad was occasioned by the fall?

A. I think so.

Q. When did your mind reach that conclusion?

A. More particularly of late.

Q. How late?

A. Since the fact became known that this trial was to be renewed or gone over.

Q. How did the knowledge of that fact tend to affect your opinion on that question?

A. In this wise: I didn't expect at the first trial, that the particulars of this case would be entered into so fully, and I didn't give the subject as much reflection; I didn't look up the authorities with the same care, that I have done recently; and in reading over the stenographer's notes; take my evidence with reference to his condition, I find it was incomplete; then again, I had this young man under my professional charge, a month or two ago; attended him for a week or so, and he was under my observation for several days; and by conversing with his parents, relative to his condition, and circumstances which surrounded his case; say, in January, 1872, had the effect of refreshing my memory to a very great extent, so that I remember his case far more clearly than I did at the previous trial. They mention circumstances that I remember perfectly well, which, without having been mentioned, I would not have thought of.

Q. What has your recent attendance upon the boy to do with your change of opinion, or with the formation of your present opinion?

A. Nothing, in itself.

Q. But the information you obtained during that attendance was what you refer to?

A. Yes, sir.

Q. Conversing with the boy's parents?

A. Yes.

Q. Had you conversed with the boy's parents and with the counsel of the plaintiff, on the general subject of this suit, before your previous examination?

A. I had, with all the counsel in the case; not with the parents, but with Mr. Beekman and Mr. Traphagan

and Mr. Cloke ; they had called at my office and I had given them my views of the case, as well as I could remember at that time.

Q. I will call your attention now to the testimony which you gave at the former trial, when, in speaking of the visit on the 28th of January, you were asked :

(See page 26.)

"Can you detail what your method of examination was at that time? *A.* Inspection and manipulation, I had his clothing removed and it disclosed protuberance of the spinal column. *Q.* What symptoms did you find? *A.* There was the protuberance which speaks for itself; angular deformity, as it is called, then his general condition of body ; he was thinner than I had seen him before ; his general health was bad in consequence of the disease. *Q.* What symptoms did you notice? *A.* When I lifted underneath his armpits I found that anchylosis had not taken place, which showed that it was a very recent affair; then I gave his parents encouragement that Marsh, by his supports, would brace him up ; had anchylosis taken place when I examined him, all hope would have been dissipated."

Then a little further on :

"*Q.* I want you to tell us what symptoms you found, as many as you can recollect, at that time that made you think this boy had Potts' disease of the spine? *A.* I know it by his figure, by his deformity ; it don't occur in any other disease, consequently when I saw that I diagnosed at once."

Q. Do you remember testifying to that?

A. Yes.

I read again :

"*Q.* Isn't Potts' disease generally due to scrofula in the system? *A.* Yes, it is generally due to that. *Q.* If there were a pre-existing cause in the system, and

a fall like this was the exciting cause, would it not be likely to make its appearance earlier than ten months after the fall? *A.* So far as I am acquainted with the surgical rules I believe it is regarded as a few weeks or a few months. *Q.* Did you make any examination of this boy at any time, particularly for struma? *A.* Yes, we do that in most every case we visit."

Q. Now, how would your testimony now differ from the statements here recorded which you recognize as having been sworn to by you before?

A. Well, it would seem to be inconsistent, but admits of that ready explanation by me, of not having referred to the fact of his having had a lateral curvature. Finding the parts did not become anchylosed, fixation had not taken place; that it was a recent affair; I refer to his lateral curvature. It would not do for me to say that a person with angular curvature, that that was recent and anchylosis had not taken place there, when I did not mean to so express myself, because before that angular curvature takes place, the bodies of the vertebrae must have passed away, taking time. Then again, it is a pathological fact, as I understand, with that coincident with the weakening of the front part of the spine, Nature sets up a compensating action whereby the posterior segment of the spine and the laminæ of the spine—these arches of the spine (pointing on a skeleton), a process which results in an effusion of plastic lymph which becomes organized, and finally results in bone. So that, so far as I can judge, there can be no such thing as a person with a marked angular deformity, and no fixation in that deformity, for the very pathological reason that I have given.

Q. Then, if I understand you, when you stated in reply to what symptoms did you find, that there was a protuberance which speaks for itself, angular deformity, as it is called, you alluded then to Pott's disease, did you not?

A. Yes, sir.

Q. In this reply which I will read to you:

" When I lifted underneath his armpits I found that anchylosis had not taken place, which showed that it was a very recent affair, then I gave his parents encouragement that Marsh, by his support, would brace him up; had anchylosis taken place when I examined him all hope would have been dissipated."

(The Witness): Of making them straight.

Q. You were then alluding to the Pott's disease?

A. Oh, no, sir, lateral curvature.

Q. And in giving the symptoms of what you discovered you gave symptoms of a disease which you did not mention at all on your former examination?

A. Yes, which I hadn't the least suspicion of until I read the testimony.

Q. Is anchylosis produced by the curing of lateral curvature?

A. Anchylosis may take place in lateral curvature, that is, false anchylosis, spurious, as it is called, not by bone but by fibrous tissue.

Q. Was that the kind of anchylosis you meant when you spoke before?

A. Yes, that was just exactly it.

Q. When you were asked, " *Q.* I want you to tell us what symptoms you found, as many as you can recollect at that time, that made you think this boy had Pott's disease of the spine?" and you answered, " *A.* I know it by his figure, by his deformity; it don't occur in any other disease, consequently when I saw that I diagnosed at once," by that you meant Pott's disease?

A. Yes; it spoils the whole sense of the thing by leaving out the lateral curvature.

Q. In the present aspect of the case?

A. Yes.

Q. Do you remember being asked anything about lateral curvature or your attention being called to it when you were on the stand?

A. I think not.

Q. I will read to you from page 28:

" *Q.* Do you know anything about the health of this boy during the interval between April, 1871, and your diagnosis on January 28th, 1872?

" *A.* No, I can't call to mind any visits I made to him.

" *Q.* Without knowing something with regard to the boy's health during that interval, could you safely say that the diseased condition you found on January 28, 1872, was due to a fall in April, 1871, without knowing something of the condition of the boy during the interval?

"*A.* No, I could not."

Q. Was that your answer then?

A. Yes, sir.

Q. On the same conditions would your answer be the same now?

A. I know more about the boy's condition now than I did then.

Q. On the same conditions would your answer be the same now as then?

A. Yes.

Q. Then your change in your answer, so far as it is changed, is due to information derived since your former examination?

A. Yes, and by reflection; I have thought a great deal more of the case.

Q. On page 32 I will read to you:

" *Q.* Would you be willing to swear that that fall in April, 1871, produced this disease?

"*A.* No, sir; all I can give you is the surgical rule; that, as I have stated, is regarded as the exciting causes.

" *Q.* Have you any definite opinion as to this case, that the fall, which he had, caused the present condition?

"*A.* I could not say."

Q. You did testify so before?

A. Yes, I presume so.

Q. Now, when was your attention first directed to the point connecting the deformed condition of the boy, or the existence of Potts' disease of the spine in the boy, with the fall?

A. In January, 1872.

Q. What occurred on that particular point in January, 1872?

A. The subject of his having received a fall was discussed at that time.

Q. Did you then give it as your opinion that the fall produced the disease?

A. I would give it as a probable cause.

Q. Did you then?

A. Doubtless.

Q. Then why didn't you give it as your opinion on your former examination?

A. I don't know why; it was not brought out, I suppose.

Q. You were asked directly that question?

A. I don't remember of giving it in so many words.

Q. Did you in January, 1872, when you were examining the boy, then refer his condition to the previous fall?

A. I don't know how far the fall was discussed.

Q. Have you any recollection whatever of connecting one circumstance with the other on that occasion?

A. I don't remember; I have no recollection of what I said with reference to the fall other than I would assume——

Q. I want your recollection of what you said or did at that interview, when you saw that boy at that time, as to connecting his condition with the injury?

A. I don't remember that I told them that the injury was referrable to the fall.

Q. Do you remember that that thing was in your mind at that time?

A. Yes, the fall was spoken of, for I asked how long the fall had happened before I saw him.

Q. When you learned how long the fall had hap-

pened before that time, didn't the information then obtained as to the length of time lead you to the opinion that the condition of the boy was not due to the fall?

A. I don't think I thought much of it. A busy physician, without going into causes that are of no practical benefit to the patient, is not apt to pay much attention to them; he has enough to do.

Q. Do you remember having any process or operation of your mind on that occasion connecting the fall with the then existing injury?

A. Yes, I remember that the cause was from that fall on general principles, though I don't remember of having spoken of it.

Q. Do you remember having the operation in your mind at that time, or do you now suppose you had from general principles?

A. I can't say.

Q. Then you cannot say that at the time you visited the boy that by any operation of your mind you then connected the then condition of the boy with the previous injury?

A. It was impressed on my mind because the subject was discussed; I asked them how long prior had the fall occurred.

Q. Then the fact of the fall was mentioned?

A. Yes, sir.

Q. Can you now testify that when you learned the length of time that had elapsed between the fall and that occasion that you in your own mind came to the conclusion then that the condition of the boy was occasioned by the previous fall?

A. No, sir, I cannot.

Q. On this subject of Potts' disease, has Dr. Louis A. Sayres become prominent in connection with it?

A. Yes.

Q. Do you know whether it is a fact that he holds views on the subject of the cause of the disease at variance with the majority of recognized authorities on surgery?

A. No, sir.

Q. You consider from your knowledge of his position on the subject that it is in harmony with what is the generally received doctrine on that subject?

A. I think so. You speak of the witness here yesterday?

Q. No, his father.

A. I don't know his views.

Q. He has published a book?

A. He may have, I don't know.

Q. Has not your general reading on the subject led you to know that Dr. Louis A. Sayres, the father of the young gentleman who was here yesterday, entertains views on the subject of the cause of Potts' disease which differ from the generally received opinion on the subject?

A. No, sir.

Q. Don't you understand it to be part of the literature on this subject that Dr. Louis A. Sayres contends that Potts' disease cannot be produced except by some injury or hurt?

A. I don't know that he says so; I never heard him say so. I have heard that remark made I think.

Re-direct examination by Mr. Collins:

Q. Have you ever read any of Dr. Louis A. Sayres expressions with reference to Potts' disease of the spine?

A. I am not certain.

Q. I call your attention to Billroth and I read—

(Defendant objects to Mr. Collins reading to witness.)

(By Mr. Collins): Part of the opinion of that author was given to the witness; now I want to read to him the whole of the opinion on that same subject.

(The Court): I don't understand the witness to

yield his opinions to those of the author.

Q. You have spoken of measles, and scrofula, and fevers and so on, as possibly caused by bad hygienic surroundings; do not those diseases prevail as epidemics under good hygienic conditions? Is it possible to judge from the mere fact that inmates of a household die of these diseases that the hygienic surroundings of the dwelling place are bad?

A. No.

Q. Don't all communities suffer from those diseases, small-pox, measles, scarlet fever, and kindred diseases, at intervals of time?

A. Yes.

Q. You spoke of consumption as occurring in families where there was no previous history of such disease. Consumption, I believe, is not a medical term, it is a popular term?

A. Yes.

Q. Phthisis is the generic name?

A. Yes.

Q. Is there not phthisis that is not tuberculous?

A. Yes; so considered.

Q. Is the mere fact that the person has consumption any evidence that he had scrofula in his system, if it were not tubercular consumption?

A. If a person has consumption in the ordinary acceptation of the term it is regarded as a scrofulous affection.

Q. Does it not sometimes develop from colds?

A. It is an exciting cause.

Q. I mean in a perfectly sound, healthy person?

A. Just now the popular belief seems to be gaining that consumption depends upon parasitic micro-organism, all the diseases of the lungs that are classed under the general name consumption, tuberculosis, are regarded as strumous.

Q. You have said that it is possible that one may have a strumous diathesis and yet no outward symptoms be observable?

A. Yes.

Q. In such a case as that of Arthur Houston, the plaintiff here, who is now past the stage of cure, has become cured of Potts' disease, and for several years has been in his present condition as you observe it, would not the absence of any of the ordinary concomitants of a scrofulous diathesis indicate to your mind that he did not have the scrofulous diathesis?

A. Never having recognized any indication of scrofula in him I would say he was not scrofulous so far as I observed.

Q. When you speak of a constitutional cause, an exciting cause, in Potts' disease, what do you mean by the word "cause," that is, the constitutional cause, in what sense do you use the word cause?

A. Constitutional condition.

Q. Predisposing?

A. Yes, sir.

Q. Would there be any use to send a patient with angular curvature, as was Arthur's in January, 1872, to Dr. Marsh for that curvature?

A. Yes, sir; his spine needed support, extension, counter-extension, produced only by that which takes away the weight of the head and shoulders off the weakened spine.

Q. So that it would be useful for him to go to Dr. Marsh even if there were no lateral curvature?

A. Yes, essential.

Q. As bearing upon your testimony in the former trial and the questions asked you now tending to show it to be inconsistent with your present testimony, I will read a portion of your testimony given at the last trial and ask you if you testified thus?

(Defendant objects to it on the ground that he has been examined as to what he testified to before and has given his explanation.)

(Mr. Collins): He did not make his explanation, you stopped him.

(The Court): You may ask him the question.

(Mr. Collins reads):

"*Q.* Tell us just what you did on that examination? *A.* What I did was what would be likely to benefit the boy. I found there was no hectic fever present; anchylosis had not taken place; hoping that by proper support, lifting the shoulders up by the rachet process used by Marsh, having seen it prove successful in several cases, and prescribed medicine as his system needed it; I prescribed cod liver oil and iron; I cannot recollect."

Q. Did you testify to that effect?

A. Yes, I have seen Marsh's braces repeatedly. I then had Dr. Olcott's case in my mind. I have seen Marsh's braces, and all scientific braces involve the same principle, used particularly in the treatment of lateral curvature.

Q. You were asked if you said on the former trial that strumous trouble was the cause of Potts' disease, did you also there testify that there was an exciting cause, by blows or otherwise?

A. Struma is not a necessary factor as I understand it in Potts', it is one of the pre-disposing conditions.

Q. I read to you on page 34 of the former trial from your testimony:

"*Q.* When asked in regard to your opinion as to whether this deformity was the result of that fall you answer by saying that is the surgical rule; I want to know what your opinion is?"

"*A.* I could not testify what caused the spinal caries in that little fellow's back."

"*Q.* (By the Court.) What is your professional judgment about that?"

"*A.* The most probable cause would be a blow or a fall; I know of no other cause; that is the common

exciting cause, that occurred within a year or a few months; it is a fact that Potts' disease of the spine, a person getting a fall a result of that will be Potts' disease of the spine bye and bye and it may be months before the disease can be recognized even by a physician, so that this boy having this injury ten months prior, that is the way I mentioned the surgical rule; it may be deferred weeks or months before the disease is sufficiently developed to be recognized."

Q. Did you so testify?

A. Yes, sir.

Q. You were about to offer some explanation when you were interrupted by Mr. McCarter, now what was the explanation?

A. This, it would seem to involve some inconsistency, my having spoken rather more decidedly as to my belief connecting the diseased condition of the spine with that fall; I think more so than I expressed on the previous trial; now Mr. McCarter asked me whether I changed my mind or something to that effect; then I said I could explain what circumstance had transpired whereby the injury was connected with the fall—(interrupted)

Mr. McCarter: You did explain that.

Mr. Collins: If there is anything further you wish to add you may do so.

The Witness: I spoke of having conversed with his parents which before I had not done. I had not seen young Houston after the twenty-eigth of February, 1872, that I know of, in relation to his spinal complaint; I saw him in January and I saw him the following month when he was brought to my office with his brace, and I find by reference to my books that the probabilities are, as near as I can fix it, that such is the fact, I hadn't held any conversation relative to

his condition up to that time, but while attending his son since and conversing with his father and mother (with whom I am well acquainted) and conversing with reference to the circumstance which surrounded this case they mentioned to me—(interrupted by objection)

Mr. Collins: You need not state what they told you.

Q. You had a further conversation with the parents, what else were you going to add?

A. I was going to add the information I derived relative to symptoms the boy presented which I had not heard of before.

Q. (By Mr. McCarter) You were asked if, at the present age of the boy, there had been any scrofulous disposition whether it would not have probably had some development by this time Is not Potts' disease itself sometimes one of the developments of scrofula?

A. Yes, sir.

John W. Hunt, a witness sworn on behalf of the plaintiff, testifies as follows:

I am a practising physician and surgeon; practising in Jersey City; have been practising here since 1860; I began the general practice here; before that I was practising in the hospital; I am a graduate of the University of New York; my practise here has been a general practice, more or less extensive, depending upon the standpoint from which you look at it; I testified in this suit before; I have been in court here all day; I have heard the testimony of Dr. Lutkins.

Q. Give us your judgment as to the pathology and causes of Potts' disease of the spine?

A. It is laid down by most authors as being a predisposing cause or causes, or an exciting cause, or both. That there may be predisposing causes I be-

lieve to be true. That there must be an exciting cause I also believe to be true.

Q. And the character of that exciting cause ——

A. May be an injury, and probably more often than any other one thing. I don't know of any other one thing that possibly might be more, the rupture of a blood vessel, denuding the bone; break of the periosteum might possibly produce the same effects. I say possibly, because I have never seen anything of the kind.

Q. How could that be occasioned?

A. Anything injuring the periosteum, erosion, such as a caustic, a poison, applied to the periosteum, the immediate covering of the bone, which would be destructive of that tissue, so that the bone is laid bare. The bone dies because of a lack of supply of nourishment; it may be from so small a point, but anything that will produce such an erosion may be a starting point of disease of the bone.

Q. What would be likely to produce such an erosion?

A. Any injury, contusion, fall; any violence that may produce rupture of a blood vessel, either in the bony structure itself or underneath the immediate covering of the bone, I should say might produce it.

Q. If that were produced, would there necessarily be, or naturally be, any outward manifestation visible?

A. If it were small, I should say not.

Q. Or any pain suffered by the patient?

A. Not necessarily, if the injury was not great.

Q. Do you know the area-way, the flight of stone steps leading down under Abernethy's drug store?

A. Only from casual observation.

Q. Suppose a flight of stone steps down an area-way eight feet in depth; suppose the opening four or five feet from the front of the building, at right angles to the building; suppose that opening being covered by iron gratings opening in the middle by hinges; one of the flaps being open and a child six years old standing on there, and from some cause falling down that

hole to the bottom of the steps, the only perceptible injury, and the only one of which he complained, being a scalp wound, the scar of which remains on the plaintiff's head; would, in your opinion, such a fall be capable of producing an injury of the character you mention?

A. Undoubtedly it might be competent.

Q. In what way would it?

A. A fall of that character might, in several ways, produce injury, first by direct violence. Suppose he had fallen and struck his head and back at the same time against the edge of a stone, the contusion, that is, the striking of the back against the stone, might have injured a certain portion of the body, of the vertebrae, it is possible; that is, it addresses itself to my mind as being possible that a small portion of the bone might be chipped off, possibly even from the edge of the vertebrae; it probably would not occur, but it might; if it did, there would be a portion of the bone that would be destroyed; death would ensue in that portion of the bone; nature would at once set to work to relieve, by setting up inflammatory action to absorb that portion, or pus would be secreted and an abcess would form. If the inflammatory action was very mild and the absorbents were set to work, this particle of bone may be redistributed and its original elements taken up by the blood, and go on from that point, that is if inflammatory action still existed.

Mr. McCarter: This is unnecessary; nobody denies that such a fall might possibly produce such a result.

Mr. Collins: Then we will not pursue that farther.

Q. The result would be development of Potts' disease?

A. That of course would be the result if it continued.

Q. That would be by direct contact with the step?

A. Any manner by which he might receive a contusion of that kind which would disintegrate a portion of blood or bone, a few drops of blood being poured out in consequence of the rupture of the vessel, might

produce the same effect, provided it was underneath this covering of the bone, or possibly externally, if inflammation was very high, though I hardly think it would be probable. The same thing would be produced by a fall and striking on the feet, by a jar, and producing the same general result.

Q. How about striking on the head?

A. Possibly so.

(THE COURT: It is not designed to be controverted that the disease here alleged to exist in this case is a possibility of an injury from such a fall.

MR. MCCARTER: We do not say that it is impossible for such a disease to result from a fall of that character.)

Q. Now the doubling over of the body?

A. That would simply be by the pressure, the changing of the position of the body out of its ordinary equilibrium, any twisting that would rupture a blood vessel.

Q. From the description I have given you of the stair-way and the position of the boy before the fall and the result seen on his head, the position he was found in at the foot of the stairs, is it probable that he could have fallen down that hole without receiving other injury than just that scalp wound?

(Defendant objects to it as not a question of medical science.)

(The Court permits the question to be asked and allows an exception.)

A. He may have done so of course, I can hardly say whether it would be probable. I should say a dozen children falling that way, a majority of them would not receive a greater injury than that.

Q. Is it probable he would receive other injury?

A. It is probable he might, certainly.

Q. Assuming a fall of the character described, the only perceptible result being the scalp wound, the boy six years old and apparently healthy and had been always healthy, his anteeedents were good as to health and of no strumous tendency known either in himself, his parents or relations, assuming no immediate apparent perceptible effect on his back but within three months thereafter he began to have pains under the ends of his ribs at his side, was perceived to spare himself in stooping, getting on his knees to pick up articles, beginning to lose flesh, becoming emaciated, sickly in appearance ; assume that he was taken to the country for two months and returned no better, that afterwards, during that autumn or early winter, the fall having occurred in April, a slight protuberance was observed between his shoulders attributed by his father to emaciation, assume that somewhat later he began to walk sideways, one shoulder higher than the other and his body somewhat crooked, that in January following the April a competent physician discovered a marked case of developed angular curvature of the spine and also lateral curvature which he found to be comparatively recent: What disease would you say the patient had?

A. Angular curvature I would judge from that description.

Q. What is the disease which causes angular curvature?

A. Caries of the spine, commonly called Pott's disease.

(Defendant objects to the question as containing elements and hypotheses not proven in the case.)

Mr. Collins: If they have not been proven of course they must be, to make the question of value. If the objection is to the order of the proof simply—

(The Court admits the question and allows defendant exception.)

Q. To what would you attribute it?

A. To the fall provided he had received no injury in the meantime.

Cross Examination by MR. MCCARTER.

Q. You mention as a probable cause of Potts' disease an erosion of the periosteum, so as that the bone itself is exposed and being deprived of the nutrition which it derived from the periosteum, that exposed portion of the bone dies, then inflammation is the result of nature's effort to restore the injury?

A. That is my belief.

Q. What kind of an injury would cause such erosion of the bone?

A. I was simply supposing a case, I don't know that anything would produce such a thing.

Q. That was a supposition?

A. That was simply illustrative of what might produce a disease of the bone.

Q. You said anything that would produce such an erosion, injury, contusion, fall, violence, ruptured blood vessel; now, would such an erosion as you have described be likely to be produced by an injury, contusion, or fall or violence externally applied without leaving some external mark?

A. Not in that way; I should think not.

Q. And would not such an injury, sufficient to produce the erosion you have spoken of, externally applied, cause inflammation and pain at the point of the injury?

A. Probably.

Q. When you spoke by way of illustration that a small portion of the bone might be chipped off you said that it is not probable that that occurred, you were giving your speculation or ideas as to how it is possible for injuries to occur to the bone?

A. That was the question I was asked, I believe.

Q. You didn't mean to give it as your opinion that such an injury was sustained in this case from any-

thing you know about this case?

A. I was not talking about this case.

Q. Would you attribute such a result as happened to this boy to the effect of the wound on the head alone?

A. Certainly not.

Q. Could you see no connection between the fact that there was a scalp wound such as he sustained and the subsequent result, the Potts' disease of the spine?

A. No connection.

Q. The only reason you arrived at the opinion you expressed is that falling as he did it was possible he might sustain an injury which would produce Potts' disease?

A. Yes.

Q. You see Potts' disease in the boy, and knowing of no other cause for it you infer that the one caused the other; that is your line of reasoning by which you come to your conclusions?

A. That is it precisely.

Q. You didn't examine the boy ever?

A. No, sir, except when I was on the witness stand at the last trial I saw him here; he had only his coat off.

Q. You were examined and testified in the former trial?

A. Yes, sir.

Q. I read to you from page 37 of the printed book: "*Q.* In your opinion as a surgeon do you think that the disease which produced this curvature was due to the fall?"

"*A.* I could not say; I do not know; I do not know enough about it; I did not examine him after the injury and I have no means of knowing how much injury he received at that time; but in the absence of anything else and I being informed that he had received an injury, I would naturally attribute it to that."

You testified to that did you?

A. I did.

Q. Is your opinion any different now from what it was then?

A. No different now.

Q. What is the ordinary cause of Potts' disease?

A. The exciting cause I believe to be injury, it may be the entire cause in my estimation.

Q. Did you ever know a case, in your practice, of Potts' disease that you could testify to as having been produced by an injury without any predisposing cause?

A. I have never had a case in private practice to treat myself outside of a hospital.

Q. How long is it since you left the hospital?

A. I am connected with the hospital now. My first case I saw was when I was in Bellevue in 1859 or '60. I have seen but few cases and I am not now familiar with the causation of a single one of them that I have seen.

Q. On what do you base the statement you have made in regard to what causes them?

A. Firstly, because it seems irrational to me to think that the strumous diathesis, scrofula, so-called, is capable of producing disease of the bone which will cause Potts' disease without some exciting cause, while I believe the tubercular deposit in the lungs to be an exciting cause, or elsewhere, where it is produced. Secondly, I believe that if it is dependent upon tubercular deposit there must be an exciting cause for it. That is my reasoning and not my experience, not because I have demonstrated it.

Q. Do not the authors generally treat of Potts' disease as being due to strumous or scrofulous diathesis?

A. They do, almost universally.

Re-direct examination by Mr. Collins.

Q. Do they not also in many cases add that there must be an exciting cause?

A. They do.

Q. You have said in answer to Mr. McCarter's question that you would not attribute the Potts' disease to the wound on the head; would you regard it as possible and probable that the Potts' disease might be caused by injury to the spinal column received by the blow which caused the wound on the head?

A. That is possible, perhaps probable.

Q. You have said that you do not think it probable that an erosion of bone took place, but that you were illustrating what might happen. Will you tell us what was the probable character of the injury which eventuated in the Potts' disease if occasioned by that fall?

A. The most probable thing that addresses itself to my mind would be that it was a rupture of a blood vessel beneath the periosteum.

Q. That rupture might be caused how?

A. By the jar, by the twisting of the body beyond its capacity to bear the strain, or by twisting out of its ordinary capacity to bear the strain; any strain beyond the capacity of the muscles, the tendons or blood vessels, a contusion or strain.

Q. In your opinion does Potts' disease sometimes result from falls or injuries, without any visible mark of the injury at the time being manifested?

A. I believe it.

Q. Would any injury to the spinal column be naturally perceived by a layman or by any one except by careful percussion by an educated finger?

A. Do you mean immediately after the injury?

Q. Yes?

A. It might be sore as it would be elsewhere about the body. Children frequently get such hurts and nothing is thought of it; it is passed by, and that may also be true as to the back, and we don't know how much damage is done until after the results show.

Re-cross examination:

Q. If there was no soreness suffered by the patient or observed by those who inspected him on the back or over the place where Potts' disease developed itself, you would infer, would you not, that there had been no very severe blow on that part of the body?

A. Not very severe, perhaps.

Q. What evidence does this afford to your mind as a surgeon that there was in this boy's back a rupture of a blood vessel?

A. The result only.

Q. Then you reason back from the result?

A. As to the probable, the possible, or almost probable cause.

Q. If Potts' disease had not resulted and nothing else occurred but the fall and the boy hurt his head, you would have no reason to suppose that there was a rupture of a blood vessel?

A. Certainly not.

Q. Then, you knowing the result, and looking back for causes, you conjecture this cause or that cause as the possible one that produced the result, and that the fall probably produced the injury?

A. That is what we are obliged to do always.

By Mr. COLLINS:

Q. If the boy made no complaint of any soreness in his back, and it was not looked for, would there be anything strange in the fact that it was not discovered?

A. No.

Q. Is it probable that he might have received an injury by this fall of such a character that eventually caused Potts' disease, and yet not discovered by any of those about him?

A. I should think so certainly.

EVA HOUSTON, a witness sworn on behalf of the plaintiff, testifies as follows:

I am a daughter of Isaac Houston; a sister of the plaintiff; am thirty years old; am a teacher in one of the public schools; my health is very good generally; it has been so.

Q. Are you aware of any scrofulous tendency in yourself, your father or mother, brothers or sister, or any of your family?

A. No, sir.

Q. Do you remember Arthur before the fall?

A. I have a faint recollection; I am ten years older than he; when he fell I was about sixteen years old; I remember him being rigged up; he never had any sickness before; after the fall he was not well; I don't remember when he began to fail; I remember the pains he complained of; they seemed to be between the ribs on the side; I remember mother taking him into the country early in July and was gone until September; I did not go; when he came back he was very poorly, worse than when he went away; he seemed to be very irritable; his complexion was white, emaciated enough to have strangers notice it; he slept with me; I noticed something between the shoulders, a sharp bone, and I spoke to father about it; that was in the fall; I then noticed this bone seemed to form a hump; he then went crooked and one-sided, that I think developed in the winter some time; it became so much that persons spoke to father about it; one shoulder was higher than the other; he walked one-sided; I remember Dr. Lutkins being called in to see him; I was present; I remember it very vivid.

Q. Did you ever hear or know of any other fall or other injury that Arthur received before he went over to Dr. Marsh's except the fall down these stairs?

A. No, sir, no other.

Cross-examination.

I live at home, have all my life ; I am not aware of any scrofulous tendency in the family.

Q. What do you understand by scrofulous tendency ?

A. I should think it was some disease in the blood or skin.

Q. You have a faint recollection of the fall ?

A. Yes.

Q. Give us a clear idea of your recollection of the fall ?

A. I was at school at the time and I was told when I came homeabout my brother falling ; it was at noon that I was told. I was not there when he fell, I only know what I was told ; I don't remember how he appeared to be hurt at the time ; I was not present when the doctor saw him at the time of the fall ; he slept with me at that time ; he left sleeping with me when father and mother took charge of him when he began to complain of his pains. Mother went to Maine with him in July ; I fix that time because that is the time she generally went ; it seems to me she went a little earlier this time because of my brother's health; this idea of mine is derived from information I have received from the family ; my own recollection of what I have testified to, left to itself, I could not tell much about it ; my recollection has been refreshed by what I have heard said in the family ; we have talked it over recently in the family ; I was not examined as a witness on the former trial ; I did'nt know that I was to be a witness in this case until last evening ; I did not know definitely but I had an indefinite expectation before last evening that I would be called. Arthur was sleeping with me at the time I noticed his protuberance.

Adjourned for the day.

MAY 8TH, 1885.

GRACE W. HOUSTON, sworn on the part of the plaintiff; testifies as follows :

I am a daughter of Isaac Houston, and a sister of Arthur, the plaintiff; I am 22 years old ; two years older than Arthur; I am a teacher in one of the public schools. My health is good; always has been good.

Q. Are you aware of any constitutional weakness, scrofulous, or any other, in any of the family, your parents or relatives ?

A. No, sir.

Q. Any consumption that you have ever heard of ?

A. No, sir.

Q. Do you remember the time Arthur fell down the cellar-way ?

A. I do.

Q. Do you remember much about it ?

A. No, sir.

Q. Had you, or have you ever had, any knowledge of any injury, fall or blow, or other violence that Arthur received prior to the time that Dr. Lutkins discovered the angular curvature, and he went to Dr. Marsh's to be braced ?

A. No, sir; never knew of it; never heard of it.

Q. You remember the fact of the fall ?

A. Yes, sir.

Q. You were about eight years old then ?

A. Yes, sir; I remember about his head being hurt; he came home after the fall; I don't remember whether he played round after that; he went away in the summer; I did not go with him.

ELIZA J. HOUSTON, sworn on the part of the plaintiff.

Direct-Examination by Mr. Collins :

Q. You are the mother of the plaintiff ?

A. Yes, sir.
Q. What is your age?
A. Sixty.
Q. Where were you born?
A. State of Maine.
Q. Are your father and mother living?
A. They are not.
Q. At what age did your father die?
A. My father died at 50, my mother at 88.
Q. She has only recently died, then?
A. Recently died.
Q What place in Maine?
A. Ripley, Me.
Q. Where is that?
A. Ripley is 8 miles from Dexter, near the Kennebec River.
Q. Had you brothers and sisters?
A. Yes, sir.
Q. How many?
A. I had five sisters and four brothers; my mother had 11 children.
Q. Did they live to grow up?
A. My sisters and brothers lived, 10 of them, until they became 22 years old.
Q. The youngest was 22 years old before any one died?
A. Yes, sir; all but one.
Q. What did that one die with?
A. That one died about two years old.
Q. Except one who died in infancy, all the rest lived to grow up to be—
A. Twenty-two years old.
Q. Was there any consumption in the family?
A. None at all.
Q. Or any scrofulous disease of any kind?
A. Nothing at all.
Q. Well, did most of them live to be older?
A. Oh, yes.
Q. How old?
A. I have brothers older than me and sisters.

Q. Now living?

A. Yes, sir.

Q. How many?

A. I have one brother and a sister older than me.

Q Of what stature were your brothers?

A. My brother was about as tall as my husband; my mother was six feet high; she was the tallest woman that I ever saw.

Q. Did you ever know or hear of any consumption or any scrofulous tendency in your husband's family?

A. No, I never did.

Q. Did you ever hear any such thing or hear of any such thing from the physician or otherwise in any of your children?

A No.

Q. Have you heard your husband's statement of the history of your children and their death?

A. I sat so far over I couldn't hear.

Q. You sat so far away you didn't hear all that was said?

A. Yes, sir.

Q. The only children that you now have living are the two girls that were here in court, and Arthur?

A. Yes, sir.

Q. How old is Arthur?

A. Arthur is 20 years old.

Q. What month was he born in?

A. He was born in April, 1865.

Q. Who was the attending physician?

A. Dr. Lutkins.

Q. Had he attended your family before that?

A. He attended our family ever since we moved in the place.

Q. And that was when?

A. All my children I know, but two, were born here in Jersey City; I can't remember what year, but we have had him ever since we have lived here.

Q. A good many years; 30 years?

A. Yes, sir.

Q. And was he familiar with yourself and your

husband's constitution and your children's ?

A. Yes, sir.

Q. Now what sort of a child was Arthur at his birth ?

A. Arthur was as healthy a child as I had and was very tall of his age.

Q. Did he show any signs of sickness at all before he was six years old ?

A. Nothing.

Q. Do you remember the occasion of his fall down the cellar way at Abernethey's drug store ?

A. Yes, sir.

Q. He was brought home to you ?

A. Yes, sir.

Q. What did you observe on him ?

A. All I observed he looked pale and blood on his clothes ; we sent for a doctor right off.

Q, Head had already been dressed ?

A. Yes, sir.

Q. The doctor came ?

A. The doctor came.

Q. Well, now, what did he do ?

A. He said we must keep him very quiet for 25 or 30 days, as quiet as we could, on account of the brain.

Q. Was he disrobed at all for the doctor to see ?

A. He was not ; but he felt sore ; when I went to undress him nights he used to say, " Mother, don't touch me ;" he was very nervous.

Q. I mean the doctor didn't take off his clothes ?

A. No.

Q. Did the doctor make any examination of his spine ?

A. No, he did not.

Q. That was all the doctor did ?

A. That was all the doctor did.

Q. No go on and tell us what you were going to about Arthur ; my question had reference to the doctor, but you went on stating something about Arthur himself feeling sore ; tell us about that ?

A. He didn't want me to touch him when I un-

dressed him.

Q. How soon after that was that.

A. That was the next morning, that night, well he didn't seem natural, but I didn't think anything of it.

Q. He didn't seem to want you to touch him?

A. No.

Q. Do you remember any particular part?

A. No, he seemed to be all over.

Q. How long did that continue?

A. It continued as long as—well, we kept him very quiet.

Q. How long did it continue that he didn't seem to want you to touch him?

A. Well, it was a week, or so.

Q. What did you observe with regard to him after that fall; state in general terms?

A. Well, before three months he began to have pain under his right rib, it wasn't so very severe at first, but the pain under his right rib—

Q. He began to complain of pain under his right rib?

A. Yes.

Q. It was not so very severe at first?

A. No.

Q. How soon did he begin to complain of that?

A. From the time he got hurt in about three months—it was about three months; between that he used to have some pain, but not so severe.

Q. Well, you say he got pale or pain?

A. Pain.

Q. What else did you notice?

A. I went in the country with him.

Q; Before you went in the country what did you notice besides pain?

A. I noticed he didn't act as he did before.

Q. In what way?

A. Well, he was nervous, and got out of patience and acted different from what he used to before he had his fall.

A. And how about his appearance, his outward appearance?

A. He looked pale.

Q. Anything else?

A. Well, I don't know, I can't remember anything else, but I know that he was not well.

Q. How about his flesh?

A. He didn't grow in flesh as he did before his fall.

Q. You mean grow up?

A. Yes, sir.

Q. And how about whether he was stout or thin?

A. He was thinner.

Q. When did these pains begin to be severe under his rib?

A. Well, they grew severe as he growed on; after I took him in the country they seemed to grow more severe as he growed on; the longer he went the more severe his pain would grow.

Q. Why did you go to the country?

A. On account of his health.

Q. When did you go?

A. Right after the 4th of July, 1872.

Q. Where did you go?

A. I went to the State of Maine to my mother's.

Q. How long did you stay there?

A. I stayed to almost the last of September.

Q. How was he there?

A. Well, he didn't go out to play much only when I went with him, and he had pain now a great many times; he had pains under his right rib; they told me it was growing pains, and I used to put mustard and such things on to relieve his pains.

Q. Did they continue while you were there?

A. They continued, but they wouldn't be every day.

Q. How frequently would they be?

A. Well, they would be perhaps once a week he would have those pains.

Q. Did he improve any while you were there?

A. He did not.

Q. Well, you brought him home what time?

A. I brought him home the last of September.

Q. What then happened?

A. He didn't improve any then; he did not seem to improve any; he didn't seem to grow any as he did before he had his fall.

Q. How about pains?

A. He used to continue having those pains.

Q. What other developments did you then notice later?

A. I noticed later, the week before the week we had the doctor come and examine him, I noticed he growed one-sided; he went one-sided, stooped over one side.

Q. How as to his shoulder?

A. Bent over one-sided.

Q. How long before the doctor come?

A. We had the doctor right away.

Q. As soon as you noticed it?

A. As soon as we noticed it.

Q. Had your attention been called to any protuberance between the shoulders?

A. It never did.

Q. Eva said that he begun to sleep with you at the time—

A. He didn't sleep with me—

Q. Eva says you took him to sleep with you.

A. Yes, sir.

Q. When was that?

A. He used to sleep with me all the time when I was in the country.

Q. After you got back from the country?

A. No, not after we got back from the country.

Q. Then he slept with Eva?

A. Yes, sir.

Q. Did you then take him from Eva to sleep with you at any time, if so when?

A. I took him to sleep with me after he begun to get his pains, after we got home from the country,

before we got the doctor; when those pains were growing more severe, and I had him sleep with me.

Q. Up to the time that Dr. Lutkins came, in January, and recommended he should go to Dr. Marsh, up to that time had Arthur ever had to your knowledge any fall or injury or blow of violence of any sort except the fall down the cellar stairs?

A. No, sir.

Q. Were you always with him daily up to that time?

A. I was always home, but of course he used to play out, but he never had any fall.

Q. Did he have any sickness of any sort?

A. No, sir.

Q. Something has been said about his attendance at school; please tell us exactly what his history in that respect was?

A. He went to school about 6 months, not every day; he didn't use to go every day with his sister; he used to go perhaps three times a week to Mrs. Cannon's school.

Q. What six months were they?

A. Before he had his fall.

Q. Six months just before?

A. Just before; he wasn't at school that day he had his fall.

Q. Had he been out of school for six months before his fall?

A. No, sir; he was not tending school that day, but he didn't go all the time.

Q. After he went to New York and had the brace put on, January, 1872, what was his condition for some months after that time?

A. Well, his condition was very bad.

Q. In what respect?

A. Well, he used to have pains; as his spine grew older he used to have very much pain.

Q. How severe?

A. Mr. Houston used to take care of him nights, and I used to take care of him day times.

Q. How severe were the pains?

A. Very severe.

Q. What would you do with him?

A. Mr. Houston used to get up and rub him nights; rub him with his hands; he would about get to sleep sometimes and give a scream and complain of pain under his right rib; Mr. Houston would get up and rub his back and he would get better, so he would go to sleep again.

Q. What effect did the pain have on him?

A. Well, he didn't grow any; he looked pale and sickly——

Q, No, I mean—I may have a little pain in my finger and not pay much attention to it—it may be so severe as to make me cry out. I want to know how he acted under the pain?

A. He cried out under his pain.

Q. Do you mean cry tears?

A. Yes, sir.

Q. How long would it continue?

A. These pains continued till his spine grew and got well.

Q. I mean when he had these sharp pains to make him cry, how long?

A. About seven years.

Q. No; how long?

A. About five minutes at a time.

Q. How often?

A. Sometimes four or five times a night Mr. Houston would have to get up.

Q. They continued for years?

A. Continued for years.

Q. Is Arthur's general health good now?

A. It is.

Q. And has been for how long?

A. It has been since he was between—well, I can't tell exactly how long it has been; but he has been to school; he went to the public school about two or three years; he has been to the high school two years and a half coming this June.

Q. How long did you keep him out of school?

A. He was kept out of school till he was between fourteen and fifteen years old.

Q. Why didn't you send him?

A. We didn't send him because the doctor advised us not to send him; it would give him pain to sit on his seat; he wanted him to sit up as straight as he could; he thought it wasn't good for him; I noticed he couldn't lace his shoes; he used to have to get us to lace up his shoes before he had his braces on.

Q. What time was that?

A. That was before I went in the country.

Q. Before you went in the country he had to get you to lace up his shoes?

A. Yes, sir.

Q. Did he lace them up before himself?

A. He always laced them up before himself; always was very smart about dressing himself; we thought he was growing lazy.

Q. What reason did he give for having his shoes laced up?

A. He said he didn't like to get at them; when he stooped he had to get down on his knees when he stooped; he couldn't get down as other boys and pick up a ball, but he would get down on his knees.

Q. Did you observe that?

A. I observed that, yes, sir.

Q. Was that before you went in the country?

A. Yes, that was before and afterwards.

Q. And this request to have his shoes laced by you was before you went in the country?

A. Yes, sir.

Q. Was that every day?

A. Every morning somebody had to go and lace up his shoes.

Q. How soon did that begin after the fall?

A. Well, it didn't begin right away.

Q. But it did begin before you went in the country?

A. Yes, sir.

Cross-Examination by Mr. McCarter:

Q. How many of your brothers and sisters are now living?

A. I have two sisters older than me, and one brother.

Q. Then there are four out of ten now surviving?

A. Four out of ten.

Q. You have two sisters besides yourself?

A. I have three sisters besides myself living.

Q. And one brother?

A. One brother.

Q. Then there are five of you?

A, Yes, five, that is now living.

Q. Well, at what ages did your sistars die who did die?

A. One died at the age of 20; she died of diphheria, and one brother died with fever.

Q. What kind of fever?

A. He had bilious fever.

Q. Well, what did the others die of?

A. They all died with fever; my brother Charley died with fever.

Q. Then of the five who are dead, one died of diphtheria and the others all died of fever?

A. Yes, sir.

Q. Did they live in the State of Maine?

A. One lived in Massachusetts; she was married and lived in Massachusetts.

Q. The others died in Maine?

A. Died in Maine.

Q. You said one was 22, I think you said, when she died?

A. One was 20.

Q. And how old were the others?

A. The others were—well, I have got a brother older than my husband.

Q. Then who died?

A. My sister Mary, she was 30; my sister Anna was 20; that is the one that died of diphtheria, and

my brother was two years younger than me, died a year ago last summer.

Q. Well, that is three out of the five, now when did the other two die; what age did the other two die?

A. Charley died when he was 22.

Q. He died of fever?

A. Yes, sir.

Q Now there is another one yet?

A. I think there is six living; I have to stop and count my mother's children; I think there is another living.

Q. Just count up those that are living by name?

A. Libbie, Sarah, Caroline, George and James is five.

Q. And yourself?

A. Myself is six.

Q. You say that Arthur was a healthy child?

A. Yes, sir.

Q. Between his birth and the time he was six years old did he have any ordinary children's diseases?

A. He never had whooping cough in his life; he had the measles, and he had them very light.

Q. When did he have them?

A. He had them when he was very young; he had them when his sister had them.

Q. Did he ever have mumps?

A. No, sir.

Q. Nor scarlet fever?

A. No, sir.

Q. Nor he never has had whooping cough?

A. No, sir.

Q. The doctor, when he came to see him after he fell, said that you must keep him quiet for 25 or 30 days, apprehending some trouble with his brain?

A. Yes, sir.

Q. But the doctor made no examination of his back or spine at that time did he?

Q. I understood you to say he didn't when you were examined before, this morning? Then you

now say it was about three months before he began to complain of a pain under his ribs?

A. Yes, sir.

Q. You went to Maine with him in July, after the 4th.

A. After the 4th of July, yes, sir.

Q. When before that had you been to Maine?

A. Before that I don't think I had been to Maine —I never carried him to Maine before—it is a good ways—since he had been born.

Q. I am asking about you; whether you had been to Maine?

A. About seven years before that; I went to Maine the summer before he got hurt.

Q. You went to Maine the summer—

A. Two summers before he got hurt or the summer before, I don't remember just exactly when I went before—I don't understand you.

Q. I want to ask you—understand my question. You went to Maine with Arthur in July, 1871?

A. Yes, sir.

Q. Now, when before that had you been to Maine yourself? I don't ask you about any of the children; I am speaking about you now.

A. I think it was about 8 years; I never carried him to Maine before, and I always took him with me before that happened. Do you understand?

Q. No, I dont't. Had you never taken Arthur to Maine before?

A. No, I never did.

Q. Well, after he was born until that time did you ever go to Maine without him?

A. Oh! yes.

Q. Then you had been to Maine after Arthur was born more than once?

A. I don't understand you?

Q. (By the Court). After Arthur was born?

A. I never carried Arthur to Maine until he got hurt.

Q. (By the Court). Mr. McCarter wants to know

whether you went up to Maine yourself after Arthur was born before you took him?

A. No, I didn't go without him.

Q. Then Arthur being six years old when you took him this time you hadn't been to Maine before in six years?

A. No, I hadn't been to Maine before in going on seven years; I can't remember whether it was seven or whether it was eight, it is so long ago.

Q. Then you never had been to your home after Arthur's birth until you took him this time?

A. No, his grandmother never saw him before.

Q. And his grandmother had not been here to see you?

A. No.

Q. Of course if she had been here she would have seen Arthur?

A. Yes, sir.

Q. Well, that was going on seven years before Arthur went with you that you had been yourself?

A. Yes, sir.

Q. Who did you take with you at that time?

A. I went and took—I believe I took—I can't remember—I took some of the girls with me, I don't know which one it was.

Q. Well, then before that, when had you been?

A. Well, I can't remember; I used to go and see my mother as often as I was able to go.

Q. About how often was that?

A. Once in 5 or 6 years; I believe there was 10 years after I was married that I never went home.

Q. Then after that you used to go quite often?

A. Yes, sir.

Q. When you did go you usually took one of the children with you?

A. Yes, sir.

Q. And had your mother seen all the children but Arthur?

A. Yes, sir.

Q. At the time when you went and took Arthur?

A. Yes, sir.

Q. Well, after the 25 or 30 days that the doctor recommended Arthur to be kept quiet, did you keep him quiet during those days?

A. I did; as quiet as I could.

Q. What do you mean by "as quiet as you could?"

A He laid on the lounge a good deal; I used to keep him quiet; I used to walk out when he would walk out; the children used to go with him; I was afraid after he got his fall that he would get more hurt.

Q. So you often went out with him and the childrenn went out with him, but he did walk about?

A. Yes, sir.

Q. Go around?

A. Yes, he went around.

Q. After the 25 or 30 days he played around as usual?

A. Not as well as he did before.

Q. He didn't play as well as he did before, but he did play like any other child, didn't he?

A. He used to play, but not as well.

Q. Well, now what do you mean by play?

A. He didn't have that energy.

Q What play did he indulge in, what kind of play?

A. Well, with blocks and such things as that.

Q. Usual things that amuse children at that age, but you didn't think he had quite as much vigor and energy as he had had?

A. No, sir.

Q. Well, do you mean to say that between the time when he fell into the cellar-way and the time when you called Doctor Lutkins to see him and examine him, either you or one of the children was with him all the time?

A. With him as much as they could be.

Q. Yes, but were they all the time?

A. No, not all the time.

Q. He went out and played around when he was not in your society?

A. He went out and walked over to his father's shop with him sometimes, but he didn't use to play so sprightly as he did before.

Q. He went out of your sight, and when he was out of your sight you could not state what he was doing?

A. I know he didn't get hurt; he would have told me if he had got hurt.

Q. You know that he didn't report any hurt to you?

A. No.

Q. Nor any fall?

A. No, sir; nor any fall.

Q. Now, Mrs. Houston, isn't it a matter of common occurrence to anybody that has raised a family of children as you and I have, that they tumble and fall and don't make anything of it?

A. I know that Arthur, since he has got older, he has fell on the ice; that is the only time I knew him to fall, and then it didn't hurt him—as other boys do when they are skating.

Q. When did he fall on the ice, after he got well?

A. This winter; he went skating, as other boys do; they fall and get up and not hurt them.

Q. The question is whether it is not a common thing for little children to tumble and fall and never make any account of it; never make any report of it?

A. He never reported any fall to me and I never knew of any fall he had, excepting the one down the alley way.

Q. You said in answer to a question Mr. Collins put to you that Arthur used to play out?

A. Play out.

Q. Play out?

A. Well, he used to play out, but still he didn't use to play as lively as he did before he was hurt.

Q. But he did play out; he did walk out. You

don't know what play he indulged in; played with blocks, I think you said?

A. I know he didn't play ball.

Q. Did he play with blocks?

A. He played with blocks; he would play with boys of his age on the street; commonest little plays, he could not run much.

Q. Play marbles?

A. I can't remember.

Q. But he played with the other boys on the street. I understand you there was nothing appeared in Arthur's case that was sufficiently alarming to you to require you to send for a doctor until about the time Dr. Lutkins was sent for?

A. Well, I thought it was growing pains that he had.

Q. Whatever he did have was not alarming to you enough to make you send for a doctor?

A. No, sir; I was alarmed more about his head than I was about his back, for I never was acquainted with spinal disease to know anything about it.

Q. You were alarmed about his head and your apprehension was excited by that?

A. Yes, sir; kept him as quiet as I could and not get him excited in anything.

Q. Now this suit nas been tried before, you know?

A. Yes, sir.

Q. And where were you during the former trial?

A. I was here.

Q. In court?

A. Yes, sir.

Q. Were your called as a witness?

A. I was not.

Q. You didn't make known to that jury on that occasion what you have now testified to?

A. No, sir.

Q. Did you remember then what you have testified to now?

A. I always sat over that way; I can't tell five words people say over there; I have to ask my hus-

band.

Q. The question is whether at the former trial you remembered and knew the facts to which you have now testified?

A. No, sir, I didn't; I didn't know what the people said on the stand?

Q. I ask you if at the time of the former trial you yourself remembered and knew the facts to which you have now testified?

A. I knew all the facts that I have stated to-day.

Q. Do you know why you were not called as a witness then?

A. There was one thing, that I thought there was evidence enough without me, and it is the first time that I was ever in the chair of the jury.

Q. You thought there was evidence enough without you?

A. Yes, sir.

Q. Well, you have talked the matter over since, have you not?

A. Not any more than we have ever since the fall; we have been talking.

Q. I didn't ask you to compare how much you had talked over since and how much you have talked over before. You have talked it over since, have you not?

A. Not any more than one does of such things.

Q. But as any one would do about such things, you have talked it over?

A. Talked it over, spoke about it, of course.

Q. With whom?

A. My husband.

Q. With whom else?

A. No, sir.

Q. And your husband has been reading on the subject, has he not?

A. I am not aware of it.

Q. Hasn't your husband, in his conversation, told you what were the symptoms of this disease as he had learned them by reading or inquiring?

A. Well, I suppose he is about as much of a doc-

tor as half the doctors are himself; I suppose he knew himself.

Q. What he knew himself he has communicated to you?

A. He has talked as man and wife always do talk together.

Q. But the fact is, he has talked with you, hasn't he, and told you what he knew about this disease?

A. No, I don't know as he has any more than what I knew myself.

Q. He has talked more with you about it since the last trial than before, hasn't he?

A. I don't know that he has.

Q. When was your attention first directed to remember as to the point of time when Arthur began to develop the symptoms you have mentioned?

A. Well, it was after he had his fall.

Q. You don't understand me. When, recently, I mean, has your attention been directed so as to enable you to remember the point of time at which Arthur developed symptoms you have mentioned?

A. I have remembered all the way through since he had his fall; I could have told you the next——

Q. You could have told it immediately after it happened?

A. Yes, sir; after the thing happened.

Q. But between that time—between the time when it happened—you see, this was thirteen or fourteen years ago now—what was there to call your attention to and send your memory back to remember which particular time the pains occurred, and when he did this and when he did that?

A. If you have children, and know that they have pains, you will remember those quicker than anything else in the world; he has had such pains, drawed tears from my eyes, and I cried many a day.

Q. Aren't there many pains that children have that we don't remember—ear-aches, tooth-aches, stomach-aches—then they go out of our minds and never call them back unless there is something to call them back?

A. I remember these pains very distinctly.

Q. What was there to call your attention to the point of time when these pains occurred?

A. Those pains occurred before I went into the country; they were not very severe, but they were not so severe as they were after I went; after I went his pains began to grow more severe; I thought they were growing pains.

Q. Did you call the doctor for that?

A. No, sir, because my sister——

Q. You didn't, that is all?

A. No.

Q. You didn't call the doc or till more than six months after you came back from the country?

A. I can't remember whether Mr. Houston went down to the doctor's or not.

Q. As far as you know you did not call a doctor until three months after you returned?

A. October to January.

Q. Well, you felt a little anxious about the boy, didn't you.

A. Yes, sir, I did.

Q. He had a severe fall on his head?

A. I felt anxious—I wasn't thinking of the spine.

Q. Your principal apprehension was about his head?

A. Yes, sir.

You looked after him pretty closely, didn't you?

A. Yes, sir.

Q. Noticed his progress and developments with a mothers' anxiety?

A. Yes, sir.

Q. You said your husband didn't tell you anything more about the symptoms of the disease than you knew yourself. Am I correct in that?

A. I can't understand you; I know he had a pain under the right—

Q. You don't understand me. I think I was asking you a little while ago if your husband had not talked over with you since the last trial and told you what

the symptoms of this disease were; as I understood your reply that he didn't tell you anything more than you knew yourself?

A. Well, we didn't talk about it any more than any one would—no more than I knew myself.

Q. What did you know yourself to be the symptoms of a disease of this kind?

A. Well, since he got hurt and we knew he had a spinal disease, of course anybody naturally—every little boy or girl you see with a hump back you will inquire something.

Q. Well, now, what did you know yourself as to what were the symptoms of a disease of that kind?

A. I didn't know anything about the symptoms; I knew he had been hurt, but I didn't know he had the symptoms.

Q. Well, then, you said your husband didn't tell you anything but what you knew yourself? What did your husband tell you that you knew yourself?

A. I don't know.

Q. You have had a good deal of talk about it, haven't you?

A. We have talked about everything.

Q. Yes, but I mean, now this particular thing was an important thing in the family, wasn't it; you and your husband have talked a good deal about it?

A. Why shouldn't we talk?

Q. You answer my question then I will answer yours. You have, haven't you?

A. We have talked about the spine, of course.

Q. Now, since the last trial?

A. We have talked nothing more about Arthur since the last trial than we did before the trial commenced for years before.

Q. It has been a subject of conversation?

A. It has been a subject of conversation, and we knew just what hurt him, too.

Q. Well, now, since the last trial haven't you been given to understand that it is important that you should remember all these things you have told here?

A. I don't see how we could forget anything, as that boy is.

Q. Haven't you been given to understand that for the purposes of this trial it is important that you should remember all these symptoms you can recall?

A. I didn't know that I should be required on this trial.

Q. I ask you if since the last trial, you have not been informed and given to understand that it was important that you should recall and remember all these symptoms.

A. Well, I remembered them before. Of course after the trial it brought up to your memory everything.

Q. That had faded out before?

A. It brought to my memory things that I had overlooked, a great deal different than what it is now, but I can't explain it.

Q. And still my question remains unanswered—whether since the last trial you have not been given to understand that it is important that you should recall and remember all these symptoms?

A. Well, I don't know but what -I don't know what to say—I don't know what you mean.

Q. I want you to say the truth.

A. No body has told me what to say.

Q. (By the Court): Did anybody tell you you must remember all that happened? Did any one say to you that you must be careful and remember?

A. No, they didn't, for I wasn't examined before, and nobody told me anything about what to say.

Q. But since that trial, haven't you been talked to about it; haven't you been advised that it is important that you should remember all you can about it?

A. No, I have not been advised, if that is what you mean.

Q. You have been talked with, however, and inquired of as to how much you knew and remembered about it, have you not?

A. Well, I don't know as I particularly—

Q. I don't mean very particularly, but generally? Generally, haven't you?

A. I know that—

Q. I don't mean to say that there is any harm in your doing so, and it would be natural that you should do so; I only want to know what the fact is?

A. I have been asked if I could remember things, and I told them yes, I could remember things.

Q. Who asked you?

A. I don't know; I think—well—well I believe the lawyer asked me if I knew.

Q. He asked you if you could remember this and that, and you told him that you did?

A. Yes, sir.

Q. Do you know Captain Cloke?

A. I ain't particularly acquainted with him; he never was at our house; he never was inside our door.

Q. You know him?

A. He never was in our house.

Q. No, but you know him?

A. I have seen him at court here; that is the only time I ever saw him.

Q. When did you get acquainted with him?

A. I am acquainted with him just as much as I am with you, here at court.

Q. When?

A. Here, a year ago, on the former trial; I saw him, but I didn't speak to him; I never passed half a dozen words with him in my life.

Q. Then you have not conversed with any lawyer about this case before the last trial?

A. No.

Q. Nor since?

A. Well, I don't think I ever said more than—a great many words to the Mayor; he never has asked me a great many questions particularly.

Q. That was since the last trial?

A. I never saw the Mayor—I never spoke to the Mayor but once before the court, and then I didn't say more than half a dozen words to him.

Q. Cannot you answer my question whether it was since the last trial?

A. Since the last trial.

Re-Direct Examination:

Q. The lawyer to whom you referred a little while ago, that had some talk with you, was myself?

A. Yes, sir.

Q. I called at your house and saw you and Mr. Houston?

A. Yes, sir.

Q. After the Supreme Court rendered its decision?

A. Yes, sir.

Q. Now, that is the only time I ever did see you?

A. The only time.

Q. Mr. McCarter asked you if the lawyer asked you if you could remember this, and that, and you remembered it, and you said, yes; now, do you mean that I named to you the things that you ought to remember, or that I asked you what you could remember, which?

A. You didn't tell me; you asked me if I could remember things.

Q. Well, what things; did I mention the things?

A. No, not anything at all in particular; if I remembered things, that is all.

Q. Then you told me what you did remember?

A. I told you what I have told here in Court.

Q. Did you, or not, understand that I put things in your mind to remember?

A. You didn't put anything in my mind, only what I remembered.

Q. You did know after the decision of the Supreme Court that it was necessary that testimony about Arthur's hurt and condition, what he did and how he acted, ought to be fully brought forth for this trial?

A. Of course.

Q. Do you remember whether Arthur's pains—the fact of these pains he had was a subject of discussion between you and your friends up at Ripley; that you talked with your friends about his having pains?

A. Used to talk with friends and neighbors that come in that thought it was growing pains.

Q. At Ripley, up in Maine, I mean?

A. Yes, they thought he didn't thrive; I felt very much discouraged coming home, for I wanted to see my children looking very well when I come from the country.

Re-Cross.

Q. How did you know that it would be important to bring out all these things that occurred in Arthur's history since the decision of the Supreme Court?

A. Well, I didn't know, only what I would know myself—understand myself what to say.

Q. Did you read the opinion of the Supreme Court?

A. I did not.

Q. You heard it read?

A. I believe I did not see it.

Q. You heard it read?

A. I didn't hear it read, and I believe I didn't see the Supreme Court; I didn't read it, nor I didn't hear it read; my husband might have read it, but I did not read it.

Q. You told Mr. Collins that you had found out somehow, or knew since the decision of the Supreme Court, that it was necessary to bring out these details that you have mentioned. Now, I want to know how you found that out?

A. I don't know.

Re-Direct.

Q. Didn't I tell you so?

A. I don't understand what he did say.

HUGH H. CAHILL, sworn on the part of the plaintiff.

Direct Examination, by Mr. Collins.

Q. Are you a practicing physician and surgeon.

A. Yes, sir.

Q. What is your age?

A. Forty.

Q. Have you examined young Arthur Houston?

A. Never examined him.

Q. You have seen him?

A. I saw the boy here in this room.

Q. What has caused the deformity we see?

A. That deformity, as I have seen it, I should think resulted from a blow.

Q. I don't mean the ultimate cause; I mean what is it makes him different shape from the rest of us?

A. Deformity.

Q. What is the name of that deformity?

A. Angular curvature of the spine.

Q. What produces angular curvature of the spine?

A. Virtually speaking, angular curvature of the spine is a caries disease, which takes place in the anterior portion of the vertebrae and intervertebral substances of one or more spines. For a time the disease lays dormant and very obscure, and usually occurs in the dorsal or lower portions of the cervical to the dorsal region. At the outset of the disease, we have a slow form of sub-acute inflammation, which takes place in the anterior bodies of the vertebrae and contiguous intervertebral substances. The bones soften, break down anteriorally. The bones in softening break anteriorally, that is in front, which causes the bones posteriorally to devaricate, and the result of that is angular curvature of the spine.

Q. And the disease itself has what name, for common discussion?

A. Potts disease. The disease may continue for a time until a sufficient circumference has taken place, or a sufficient portion, then we have a bony fusion or

plastic matter that is thrown out and leaves the person with a curvature for their natural life.

Q. So that has taken place in Arthur's case?

A. That has taken place in that boys' case.

Q. He will remain as he is now always?

A. For his natural life.

Q. And this plastic matter that is thrown out hardens into bone—into a bony substance?

A. The only point—in fact, in other words the object, of the surgeon is to bring about as speedy as possible anchylosis, and when anchylosis is established, it is literally all that the surgeon can do.

Q. But I say this plastic matter that is thrown out that you speak of becomes bone?

A. Becomes bone.

Q. And when hardened, that is what you speak of as anchylosis?

A. Anchylosis.

Q. And then the spinal column is a solid mass?

A. Yes, sir.

Q. At that point I mean where the disease has taken place?

A. Yes, sir.

Q. What, in your judgment, produces Potts disease?

A. In my opinion, as far as my experience has been in these cases—I have treated myself three cases of angular curvature known as Potts disease—in each of those cases—well, I will say I have seen others, cases that I have not treated—but in each case that I have treated and in each case I have seen of angular curvature of the spine, has been attributed from those whose cases I have seen, and I attribute it to those cases I have treated—direct force, a blow. An angular curvature of the spine, in fact all cases of angular curvature of the spine we find a carious disease. In lateral curvature of the spine we do not; they are two distinct and separate things entirely. One is cariyus and the other is a twisting or bending or contortion through debility or weakness.

Q. By a carious disease you mean a disease where

he bone itself disintegrates and decays?

A. Caries is an ulceration and necrosis is a mortification.

Q. Well, then, caries of the bone is ulceration of the bone?

A. Caries is an ulceration of the bone, synonymous with gangrene of the soft part of the body, ulceration.

Q. In your judgment is it essential to the development of Potts disease that there should be a predisposing constitutional cause for the exciting cause to operate upon, or do you think Potts' disease may be developed in a healthy person from direct force?

A. Well, in my opinion, Potts disease proper—caries—rather, of the spine, proper, is produced—that is, in my opinion, my experience, not from what I have read—my experience has led me to believe that Potts disease proper—caries of the spine—is produced by direct force.

Q. When you said inacurately direct force, do you mean a blow right upon the spine, or a blow elsewhere that may be attributed?

A. A blow or fall, a contusion. The causes as laid down—there are two causes as a rule; predisposing and exciting. Predisposing causesmay take for instance a continued attitude of the body, and the exciting causes as laid down by some authors are scrofula, struma, accidents, blows, falls, etc.

Q. Well, you don't understand my question,which was—whether in your opinion Potts disease might be developed from injury in a case where there was a constitutional taint in the system?

A. Most certainly.

Q. That is your opinion?

A. That is my opinion.

Q. Do you believe that it can be developed purely from constitutional causes without some force or injury?

A. No, sir; we must have the exciting cause. If there was a constitutional tendency we must have

the exciting cause to develop fully.

Q If I understood you right a moment ago—it may have been a slip of the tongue—I understood you to speak of scrofula and debility as exciting causes, is that what you mean to say?

A. It is so laid down by some authors; not in my opinion. The word "scrofula" by some authors is supposed to emanate because the hog some centuries ago was affiicted with the disease, and others have termed scrofula as Kings evil. It is a vague word. We have authors that lay down this and that, but I have not met with an author yet that defines or can state positively what scrofula is; I realy don't know myself.

Q. What I meant was, whether you intended to speak of scrofula and other things you mentioned as exciting causes; that is, I mean that authors did, or constitutional causes?

A. Constitutional causes. The authors—

Q. I thought you used the wrong word and said exciting?

A. Yes, it applies to both.

Q. Would a scrofulous patient be more apt to develop Potts disease from some injury than a healthy person?

A. I may go to that word scrofula again.

Q. Would a person with a weak constitution—debilitated constitution—

A. I should say that a person with a debilitated constitution would get along as well without they had the exciting cause to produce—develop this disease.

Q. But if they had the exciting cause, would such a person be more likely to develop it than a perfectly healthy person with the same force?

A. Yes, sir.

Q. Suppose the case of a boy of six years, apparently healthy, of healthy stock, so far as known, suppose that he has a fall down a cellar-way upon the stone steps leading under the building, is picked up at the bottom; the visible result is a scalp wound,

the scar of which is upon the plaintiff's head; he does not immediately complain of either injury, his spine is not particularly examined by a physician, no one thinks of the injury there at the time; subsequently, and within about three months, he begins to complain of pains under the right rib on the side; he is observed to be disinclined to stoop, and gets on his knees in preference; disinclined to lace his shoes, general health becomes impaired; is taken away to the country for a few months, and returns; seems to be no better; pains become much more severe: slight protuberance is noticed by one or two persons between his shoulders; no attention paid to it; later seems to go one-sided, and at the end of nine months and upwards—shortly after nine months—a physician being called in discovers a marked case of angular curvature of the spine, accompanied with lateral curvature. To what would you attribute the disease which caused the angular curvature?

A. May I ask what part of the head was struck?

(At this point Mr. Collins asked Arthur to step to the witness box that the witness might examine the scar on his head).

A. (Continuing): I should take that to be merely a lacerated scalp wound, and would have no connection, in my opinion, with the deformity which I see existing here.

Q. I understand that, but my question was to what would you attribute—in this hypothetical question to what would you attribute the Potts disease?

A. A fall, a blow.

Q. In the absence of the proof of any other injury, fall or blow received by the patient, my question having spoken of a particular fall, which I described, to what would you attribute the disease in that case?

A. To a direct blow.

Q. Would you attribute it to the fall mentioned?

Objected to.

A. To the fall.

Q. Which fall?

A. Why, the fall down these stairs, steps; the boy you say had one fall, and it was down-stairs, and that was the only fall I presume.

Q. The only fall of which any knowledge exists on the part of his friends?

A. Well, I should attribute the deformity and the trouble as the result of that fall; I should not attribute it to the cut and laceration of the scalp.

Q. I mention the scalp wound to show simply where the visible marks of a blow which he undoubtedly did receive existed. In what manner would such a fall as has been described be likely to cause such an injury as would develop Potts disease?

A. In the case that I have just seen to produce the disease—by fall—the process of the spine here must have been struck (indicating on skeleton). If we look at the spinal column we find that the twelve ribs each side act as bars or protection. We have here in a portion of this region what we term semi and half semi processes that these spines fit into.

Q. Ribs, you mean?

A. These ribs I mean, fit into, and fasten here—the sternum, or breast bone. Now, the lower portion here we see are without these bars, that is the lower portion of the vertebræ—lumbar region. Now, we must have direct force in this region; it is more protected here by these bars; we must have a blow here, which, of course injures the periosteum, probably the bone, and probably both to bring about this carious disease of the spine; by other words, this portion of the spine is more protected than the cervical region proper, or lumber region.

Q. In what way would such a blow as you speak of be received from the fall in question?

A. It would strike the back; the individual must fall on the back or it may be on the side, under the shoulders.

Q. Then, in your answer you infer that in this fall

he hit not only his head but his back?

A. He must have struck his head in the first place to receive the laceration and wound, and he must have struck his back in the second place to produce this carious disease which has resulted in this deformity.

Q. You will remember that my question supposed that no external injury was received to the back, you had that in mind?

A. Yes, no external injury.

Q. You think that a blow sufficient to eventuate Potts disease might be received and no evidence of it be perceptible at the time.

A. There might and there might not be any external marks of violence. I have seen in one case—there was a little boy two years of age—if I may quote it to illustrate this.

Q. Yes.

A. I attended to the mother in previous difficulties, but with this little fellow two years of age, he was taken down very sick; they called a physician—this case occurred at Bayonne here; the physician treated that child for a fever for over three weeks, a month, it may have been five weeks; the mother sent for me to go and see the child; I went, and as I approached the bed to take the little fellow by the hand he gave a cry, and I asked the mother, I said does he often cry in this manner? She says, we cannot touch him. By the pinched expression of the features, the anæmic condition of the child, the wasted and debilited condition the child seemed to be in, I says, I must look at that child, I must examine his spine; in order to do so, I turned the little child over on his stomach, and the story was very plainly told; he had augular curvature of the spine; I then asked the mother how she could account for it; she said she could not account; I said did the child ever have a fall; "why, yes," she said, I forgot about that; he fell out of his carriage on the platform of the depot about two or three months

ago. Now, there was no scrofula, so called, or debility in any way with those parents or with that child that I could detect. There are other cases that might be cited. There were no marks of external violence in that case, no marks of external violence in the other cases that I have seen.

Q. (By the Court). But you saw it three months after the fall?

A. About three months after the fall, yes, sir; it may have been ten weeks, it may have been nine weeks, I cannot say without my books.

Q. You do not know in that case whether there were any marks of external violence at the time he fell or not?

A. No, sir; the parent had detected no marks, otherwise she said she should have remembered the fall more fully.

Cros-Examination by Mr. McCarter:

Q. Where were you born?

A. I was born in London, sir.

Q. And when did you come to this country?

A In 1867 or 8.

Q. Had you then received your medical education?

A. Yes, sir.

Q. How old were you when you came here?

A. I was 26 or 27.

Q. Where were you educated?

A. I studied at Kings College, London.

Q. And when you came here where did you settle?

A. I settled in New York.

Q. Practice there?

A. Yes, sir, practiced in New York.

Q. How long?

A. I practiced in New York before I came to Jersey City three or four years, probably five.

Q. What year did you come to Jersey City?

A. 1876.

Q. From what college have you a diploma?

A. I have a diploma from the Eclectic College of the City of New York.

Q. When did you receive that?

A. In 1873.

Q. Had you in the meantime practiced in New York? had you between the time of your arrival here and that time practiced your profession?

A. No, sir, not from the time I landed until 1873.

Q. Then you commenced practicing in 1873?

A. Yes, sir.

Q. You have treated, you say, three cases?

A. Yes, sir.

Q. The Bayonne case was one?

A. Yes, sir; there was a young man named John Richards, of Port Chester, that went to California after he was well.

Q. After what?

A. After he was well; after he got better.

Q. He went to California after he got better?

A. San Francisco.

Q. When did you treat him?

A. I treated him in New York.

Q. What was his age?

A. His age I suppose was 22.

Q. At the time you treated him?

A. About 21 or 22, I should think.

Q. Was the disease in progress when you treated him, or had it been cured?

A. The disease was in progress; he came on to New York.

Q. Port Chester, is that in Westchester County?

A. Yes, sir.

Q. What other case did you have?

A. I had a case of Potts disease—I can't remember the young man's name now—that attributed his trouble—

Q. You had another case of Potts disease, you don't remember the man's name?

A. I don't remember his name now.

Q. Where was it?

A. In New York, also.

Q. When?

A. That was in 1874.

Q. That is the first year you practiced?

A. Yes, sir; entering the second year.

Q. What has become of that case?

A. That young man is dead.

Q. Did he die from that disease?

A. At least I believe so, I have been told so; I can't say.

Q. Did he die from that disease?

A. He went to sea, sir; I can't say.

Q. You den't know then whether the disease had been cured when you ceased your connection with it or not?

A. Before he went anchylosis had been established.

Q. Isn't that considered a cure of the disease by the surgeons generally as far as the disease can be cured?

A. And cessation of caries.

Q. That is nature's cure, is it not?

A. Yes, sir; nature's cure.

Q. When that occurs they are not apt to die of that disease, are they?

A. No, sir.

Q. Then you don't know whether this man died of that disease or not?

A. Not that disease; I don't know whether he died of other disease; he could not have died of that disease.

Q. The question I asked you was, whether he died of that disease, and you said you didn't know.

A. I say so still; I can't say he did die with that disease.

Q. Lateral curvature, you say, is a kind of contortion or twisting?

A. Yes, sir.

Q. What effect does the existence and continuance of lateral curature have on the bones of the spine?

A. Well, it may suddenly cease of itself; a lateral curvature, in my opinion—I am not quoting authorities in the matter— results from a debilitated condition.

Q. Please observe my question. (Question read.)

A. Nothing but a slight curve, it won't produce—I should not look for caries there—it won't produce a disease—lateral curvature would not.

Q. Does it not bring the bone of the spine into unnatural relations with each other, unnatural positions?

A. It would bring the bones—misplace them—put them out of shape.

Q. And cause a rotation of the bone on the axis?

A. Yes, sir.

Q. Now, is that disease never attended with inflammation of the spine?

A. I never saw a case where it existed myself; there may be others that have seen more cases of this kind than I have.

Q. As a surgeon, I ask you whether the displacement of the bones of the spine and this rotation on its axis caused by the lateral curvature would tend to produce inflammation?

A. I shouldn't look for displacement of the bone, sir, in the lateral curvature; they may be out of shape but not displaced.

Q. Well, putting them out of shape, wouldn't the unnatural position of the bones of the spine occasioned by lateral curvature tend to produce inflammation?

A. No, sir; I think not.

Q. You say that Potts disease preper is produced, in your opinion, by direct force. What do you mean by the qualification "proper" attached to the expression "Potts disease?"

A. Well, there is only one proper disease, and that is angular curvature.

Q. Well, when you speak of Potts disease proper, from what do you mean to distinguish by the use of the term "proper"?

A. To distinguish the angular curvature itself?

Q. (By the Court): From what?

A. That is a synonymous term—the same thing.

Q. You say, that the books say—the authorities say that there are usually two causes for Potts disease, a pr -disposing cause and an exciting cause, but I understand your opinion to be that there need be no pre-disposing cause at all, but that Potts disease would rise in a perfectly healthy person, produced by some direct cause?

A. I believe that there is the pre-disposing and the exciting cause, but I do not agree with all authorities as to their opinion of a pre-disposing and exciting cause.

Q In what respect does your opinion differ from the authorities to which you refer?

A. Well, I believe that Potts disease myself—in my opinion—or angular curvature of the spine, is brought about by a direct blow, an injury; more so than constitutional taints.

Q. But do you believe that a direct blow or injury is sufficient to induce Potts disease in the entire absence of any constitutional taint?

A. It might possibly be so.

Q. What is your opinion?

A. My opinion is in that case it would depend of course if the periosteum was injured we might have first, or even if the bone was injured we should have probably, first, an irritation; if that did not subside we should then have an inflammation; if that did not subside we should have an ulceration. In all these cases I believe, first, we have an irritation of the part; secondly, we have inflammation, and thirdly, we have an ulceration.

Q. Now, be good enough to recur to my question

and answer it as the stenographer puts it?

(Question read).

A. I do.

Q. Then you think that Potts disease may occur in a perfectly sound and healthy patient otherwise?

A. Yes, sir.

Q. Can you always, in diagnosing a case of Potts disease, determine to what it is due?

A. Well, not the direct cause; I think I have said previously that a person with the so-called scrofulous diathesis as laid down by the writers. that person may go along without the development of Potts disease, but if we have the exciting cause brought to bear on that individual, then we have the development of Potts disease. It is not because, in my opinion, that a person should be weakly, debilitated or strumous, or scrofulous, that they should necessarily have a fall or receive a blow in order to produce the disease.

Q. You mean that they develop from the scrofulous condition without the intervention of a blow to excite it?

A. We must have the exciting cause.

Q. But is that necessarily a blow?

A. A fall is a blow.

Q. Is the exciting cause to which you refer necessarily the application of direct violence in some shape?

A. A fall or blow in some shape, direct violence.

Q. You say that scrofula is a very vague and indefinite expression?

A. Yes, sir.

Q. Can you define it?

A. I cannot, sir.

Q What is struma?

A. Struma may be termed rickets, a deficiency or want of lime in the bone; for instance, a child, we will say, have a strumous diathesis, so called, you

will generally find that the lower limbs give out.

Q. Now, what do you understand by the expression "strumous diathesis?"

A. It is simply a term; I have said the want of lime in the bone.

Q. Well, do you consider that tubercular phthisis, or what is ordinarily called consumption, is a development of strumous diathesis?

A. No, sir, I do not.

Q. Nor the development of scrofula, you don't consider that the result of strumous diathesis?

A. No, sir.

Q. Then how does your opinion on those questions correspond with the opinions of text writers, of authorities on that subject?

A. I presume the text writers simply write their opinions as to what they think, and if we take the text writers for instance such as Gross, with his voluminous work on surgery, an excellent work, too, we are led to those judgments, writings, and they are held up to the profession as authority; but they are authority in everything they write about. A man may express his opinion, and at the same time there are lots of physicians that I have met that don't agree with these writers in all that they do write; hence I may be one of those. Prof. Gross in his writings on surgical operations—he was one of the greatest masters without doubt on surgical operations—but when we come across cases of this kind, why they are few and far between. Probably these great authors in the summary of their own life would meet with comparatively few cases.

Q. (Last question read.)

A. I simply differ from them.

Q. You differ from Gross on that, do you not?

A. I have not quoted Gross on consumption or diathesis that you have mentioned.

Q. You differ from Gross on that, do you not, when you give your opinion that consumption is not the development of a strumous diathesis?

A. I can't see what consumption has to do with Pott's disease of the spine; I don't see the analogy.

Q. I don't think it is necessary that you should, Doctor, to answer my question.

A. I will answer that question if you wish me to do so.

Q. (Question read.)

A. I differ from Gross for many reasons.

Q. Now, is it not commonly stated in the books on surgery that Potts disease is attributable in most cases to astrumous diathesis?

A. The works that I have read on that subject, such as Hamilton and Ormsby on deformities, and Erickson and Holmes, those authors all quote scrofula or struma, but they also mention accidents; that is answered in that these doctors quote this term scrofula. As I understand your question they also quote accidents.

Q. (Question read.)

A. They do.

Q. You have a different opinion?

A. Only on this scrofula, that is all.

Q. Do you not in the opinion which you have expressed differ from Dr. Gross, Dr. Agnew and Holmes?

A. No, sir; only on that word scrofula; they mention it; I differ with them on that point; I agree with them as to their treatment.

Q. The question was, whether these surgeons of authority whose works we refer to do not attribute Potts disease of the spine generally to a strumous diathesis?

A They do.

Q. Now, you differ from them?

A. I differ from them.

Q. Now, isn't that so with Holmes?

A. Holmes quotes Struma. they all do.

Q. And Gross?

A. And Gross, yes, sir.

Q. Agnew.

A. I never read Agnew.

Q. Did you ever read Billeroths lectures, do you know who he is?

A. I have heard of him; I never read his works.

Q. Not acquainted with his views on the subject?

A. No.

Q. What, in your judgment does cause consumption?

A. Well, according to the science of to-day, particularly Koch, he believes that it comes from a specific germ; that it is in the atmosphere; this germ has been detected, I believe, in the sputa.

Q. Do you consider consumption as a scrofulous development?

A. No, sir.

Q. You differ from Dr. Lutkins, then in that respect?

A. Yes, if Dr. Lutkins believes that consumption is the result of scrofula I differ in opinion from him.

Q. Isn't it the generally received opinion among surgeons and in surgical works that strumous diathesis or the scrofulas condition of the system is the pre-dispoing cause to consumption?

A. Authors so lay down those ideas.

Q But you differ from them?

A. I differ from them.

Q. Well, is it your opinion that a constitutional taint or tendency has anything to do with the development of consumption in a patient?

A. A constitutional taint, we may have a debilitated condition brought about in a person, for instance from syphilis, that is probably one of the strongest, as of a debilitated condition that will develop in the body with almost any disease, scarlet fever, measles, but if that condition is allowed to go on in that debilitated condition neglected by debauchery, we may have then tubercular deposits formed that soften and break down and produce a wasting of the lungs, or, tuberculosis of the lung, and the lung will rot.

Q. (Question read).

A. As a taint?

Q. Do you believe that constitutional taint or tendencies in a person who has never had syphilis has any tendency to produce consumption?

A. May I ask what that constitutional taint should be?

Q. You may ask any questien.

A. There are so many constitutional taints, so called.

Q. Any constitutional taint.

A. I can't say, the question is vague in itself.

Q. Do you have any idea in your mind as a surgeon as to what is meant by constitutional taint?

A. I have.

Q. Well, is that limited in your experience and knowledge to a taint produced by syphilis?

A. No; the sting of a serpent; bite from a rattle snake for instance, a broken limb resulting in the death of the bone, we may have blood poisoning, yet not constitutionally brought about from any hereditary taint or otherwise.

Q. Is there any such thing, in your opinion, as hereditary taint?

A. There is; hereditary debilitated, sickly parents generally develop sickly children.

Q. Is it not true that consumption sometimes is more frequent in some families than it is in others?

A. Yes, sir.

Q. To what is that due?

A. Well, they are a debilitated family.

Q. Well, then, your term—we are disputing about words—your expression debilitation is synonymous, is it not, with my expression, constitutional taint?

A. I can't say it is constitutional taint, because I have known very healthy people; I have known in one family in London the mother and father both healthy, robust people; the father lived to attain the age of eighty odd, the mother died at seventy; my own father was the physician to that family, and the

younger son was my own friend and bosom companion; I have known that one family, five sons to die out of seven within two years of each other.

By Mr. Collins:

Q. Of consumption?

A. So-called tuberculosis, or consumption, phthisis; the parents never had consumption, and to their knowledge, any of their posterity.

Q. Then consumption may arise without any apparent or known constitutional taint?

A. So-called consumption.

Q. And does it not, in your experience and observation, sometimes occur, one instance among a number of others perfectly healthy, where there is no known constitutional tendency to it, a case by itself of consumption?

A. Yes, sir; I believe consumption, so-called, has arisen from the contraction of a heavy cold, but not through taint.

Q. It may come, then, without a taint?

A. It may come without a taint?

Q. May it not come in many cases, and does it not come in many cases, where you cannot find out what produces it?

A. Certainly, sir.

Q. The exciting cause, if there was any, is unknown?

A. Unknown in that case.

Q. Isn't that a common experience?

A. Yes, sir; the same with cancer.

Q. Well, is cancer a development of strumous diathesis?

A. No, sir.

Q. Nothing scrofulous about cancer?

A. Not to my knowledge; I have known cancer to come from a blow.

Q. Did you consider the blow the original or exciting cause of a cancer?

A. The blow was the exciting cause ?

Q. Was there any pre-disposing cause ?

A. Not to my knowledge.

Q. Then, if your idea is correct, a blow ought always to produce cancer, ought it not ?

A. No, sir, not by any means.

Q. Why not ?

A. Because in this case that I quote was a case of cancer of the breast, and the glands, mammary glands, became injured ; Dr. Quackenbush, of New York, when he found it, he gave his opinion that it was a cancer ; he removed the gland ; the lady had fallen—was standing upon a table, the table was on castors, the table gave way from under her, she fell, striking her breast across the projecting gas pipe of the room ; it was a case I didn't treat myself.

Q. Then, in your judgment, isn't it generally considered among surgeons that cancer is more likely to be developed in a person having a hereditary taint of some kind, or strumous diathesis, than a person perfectly healthy ?

A. Not necessarily.

Q. But isn't it more likely to be affected by an exciting cause in such a person than of a person without such conditions ?

A. No, sir.

Q. Then so far as the development of the cancer or consumption is concerned, in your judgment it don't make any difference as to the previous condition of the patient constitutionally or otherwise.

A. No, sir ; not without it is absolutely—

Q. Now, does Potts disease bear any resemblance or any family likeness, if I may so speak, in your opinion, to consumption, or to the developments of scrofula, or is it an entirely separate and distinct type of disease ?

A. I have stated that scrofula is vague previously. Scrofula may be applied in many ways ; under given conditions it is called scrofula.

(Question read).

A. It may resemble consumption by softening and breaking down tissue in the consumption of the lungs; Potts disease is a corious disease of the spine; we have softening and breaking down.

Q. Then it is analogous in its operation to consumption in the lung, or with any caries or ulceration in the soft parts of the body?

A. No, sir; there is difference with the spine; because with the spine we have—usually in Potts disease, as I have stated before, I believe to come through a direct blow; in the softening or breaking down of consumption that may be produced by bacteria passed in by inhalation.

Q. (Question read).

A. In its operation, that is all, it is analogous.

Q. Well, is the answer yes or no.

A. Yes, it is analogous in its operation.

Q. May it not be that Potts disease would be developed in a patient without any previous scrumous diathesis and without any known application of direct violence?

A. No, sir.

Q. It would not come of itself, you think?

A. No, sir.

Q. Then your opinion is that Potts disease cannot exist except as a result of violence?

A. That is the exciting cause; that is the violence, the injury, contusion, or what it may be termed, that produces caries of the spine; the carious disease itself, which I have stated, goes on and produces softening and breaking down.

Q. Must be of the primary cause?

A. Primary cause, direct violence.

Q. It must be so?

A. It must be direct violence.

Q. In your opinion?

A. It is my opinion that angular curvature of the spine cannot exist without direct violence.

Q. Without regard to whether the patient had strumous diathesis or not?

A. Without regard to whether he had strumous diathesis or not.

Q. Now, your judgment is, in order to have produced Potts disease in the case in hand, there must have been a blow on the process of the spine?

A. Blow on the spine: the process may not have been very much injured; the periosteum may have been injured.

Q. Where is the Periosteum?

A. The bones are covered with the periosteum making it the same as you see the bone on a piece of beef roasted; there is the periosteum, the skin.

Q. These projecting bones that stick out from the back bone are called the processes of the spine, are they not?

A. Yes, sir; spinous processes.

Q. Now, I understood you to say this morning that in order to produce the disease in the present case there must have been a blow or violence on the spinous processes,

A. On the back; I didn't say on the processes; I said the processes might have been injured by the blow.

Q. How could the injury have been communicated to the spine without its being first communicated to the processes?

A. Well, the injury to the spine—the blow may be communicated to the processes, at the same time the spinal process may not be fractured.

Q. I am not talking about that; I am asking you whether your opinion is not, in order to produce injury, the blow must have been on the spinal processes?

A. It is on the spine, or otherwise on the spinal column.

Q. How could the blow get on the back at the spinal

column unless it struck the processes ; they are the most projecting parts, are they not ?

A. In all probability it did do so ; there is a probability.

Q. Then your idea is to produce disease in this case there must have been a direct application of violence to the spine, and primarily to the spinous process ?

A. Yes, sir.

Q. Well, then, is it your opinion, that with such a fall as this boy had, a blow could be communicated to this spinous process of sufficient violence to produce Pott's disease without its being perceptable externally, or without the patient feeling any soreness or pain at the place where the blow was delivered.

A. There might have been no external appearance as the result of that blow, but the pains occuring after would indicate that trouble was going on in the spines—to answer the question fully as I understand it, that caries of the spine—for instance, this boy's fall might have been produced without the marks of any external violence on the back.

Q. Or without a blow of sufficient force to cause any pain at the place where the blow was delivered.

A. There must have been a blow of sufficient force to lay the foundation for this trouble, but as to pain—the boy might have felt stiff immediately after—he might have been insensible, and he would not feel pain at that time.

Q. My point is this Dr., whether it is your opinion with the boy falling down that way, say a distance of eight feet, and delivering on his spinous processes a blow of sufficient violence to produce Pott's disease, which is in the interior portion of the spine—— whether such a blow could be received without there being any external sign of injury or without the boy himself feeling any soreness at the place where the blow was delivered at the time of the accident, or immediately after ?

A. Yes, sir.

Q. That is your opinion ?

A. Yes, sir, that is my opinion.

Q. Is the portion of the body immediately over the spinous processes in the dorsal region less sensitive to pain from a blow than othor portions of the body?

A. Not necessarily, but I will explain it in this way.

Q. Is it actually?

A. That between the vertebrae, under and into, the intercontiguous, intervertebral substances; we have here the disks or cartilages, elastic in themselves, that at the time shock may be given and pain may not be felt at that time; I may say almost as buffers.

Q. That is when the pressure on the spine is vertical, but when you strike the spine that way—the spinous process, with a blow sufficient to bring on inflammation of the interior portion of the vertebrae, do you give it as your opinion that that could be produced without there being any pain or soreness in the parts over where the blow was delivered, or without there being any external manifestation of injury?

A. There may be no external manifestation of injury and at that time—immediately, there may be no pain in the system.

Q. But how soon would the pain develop itself?

A. That may be weeks, or months.

Q. But would there be any pain at any time, soreness over the spot or at the spot where the blow was delivered?

A. Not at any particular time.

Q. At any time?

A. Yes, sir, as the disease progresses.

Q. Then the pain would manifest itself where the blow was delivered?

A. No, not necessarily.

Q Then my question, a portion of which is, whether there would not at any time, from such a fall or such a blow, be any pain at the spot where the blow was received?

A. There might be after months.

Q. Yes, but there wouldn't be before months.

A. Weeks, or months, there is no given time for that.

Q. There is no method of determining?

A. No, sir; weeks or months.

Q. I strike my hand against a hard substance, it makes it sore; I fall and I receive a bruise, and in various ways, in which the soft portions of the human body are hurt by violence, it takes generally a very small blow, does it not, to cause pain and produce some external sign of injury?

A. Very small blow.

Q And a very small blow does ordinarily produce some such signs?

A. Yes, sir.

Q. Now, you said that there may be a blow hard enough on the back to produce the consequences you have seen, without there being any sign or any pain?

A. Yes, sir; and I say so still.

Q. You were talking about lateral curvature and the effect of lateral curvature to displace or put the bones out of shape.

A. Contortion.

Q. What do you call these, what we call a shoulder blade?

A. Scapula bone.

Q. What is the effect of lateral curvature on that?

A. That may be more inclined to one side than the other, for one side might be higher than the other.

Q. And the rotation of the spine would draw around, would it not, the point of that bone and make it project?

A. Yes, sir; there may be rotation, but that rotation could not take the whole circuit of the spine on account of the ribs holding it in.

Q. But could it rotate enough so as to throw out of place the point of this scapula bone?

A. Yes, sir.

Q. How would that manifest itself externally?

A. Deformity.

Q. In a projection, would it not?

A. Well, raising or lowering, or shortening.

Q. Could you see it in the back?

A. Yes, sir.

Q. This bone would be more prominent, would it not, in consequence of it?

A. Yes, one bone be more prominent than the other.

(By Mr. Collins): *Q.* That is one scapula?

A. One scapula.

Q. You went to see this child at Bayonne?

A. Yes, sir.

Q. And you turned the little thing over?

A. Yes, sir.

Q. And what did you discover?

A. Angular curvature of the spine.

Q. Plainly developed?

A. Well, sufficiently developed for me to at once tell the mother that it was necessary for her to have a suitable spinal mechanical brace made.

Q. Apparatus?

A. Yes, apparatus.

Q. Have you described to what extent it was manifest?

A. Yes, sir. Do you mean the angular curvature itself, or the patient in general, or both?

Q. No, the angular curvature itself?

A. The shoulders, the neck, the cervical region proper, sinking, shoulder joint raised, and slow motion, in this manner (indicating). The child didn't want to move, indisposed to even turn for food; the mother would have to feed it with a spoon; this time the child was in bed.

Q. Well, the symptoms then were very marked, were they not?

A. For a child. The angular was coming up; I saw there was quite a prominence, about the size, probably, of a half a chestnut—half a walnut.

Q. It was plain to be seen?

A. Yes, sir; it was plain to be seen.

Q. Now, that angular curvature is the result of the disease, and not the disease itself?

A. The result of the fall.

Q. It is the result of the disease?

A. Certainly.

Q. There is no disease at the spot where the curvature manifests itself?

A. It marks the disease, the protrusion.

Q. The disease therefore must have progressed some time before it has produced that result?

A. Yes, sir.

Q. I understand you to say, and the other doctors to say, that this curvature is caused by the breaking down of the anterior portions of the vertebrae, so that they give way and it causes the bending of the posterior part?

A. Yes, sir.

Q. Then that does not occur until after the process of caries has gone on for some time, does it?

A. Yes, sir; the irritation there—would cause the person to place themselves in such deformity if possible as to lessen that irritation—their feelings.

Q. Does angular curvature manifest itself until after the caries has made such progress as to break down some portion of the anterior parts of the vertebrae?

A. The time is indefinite, as I have said; you reach it after months; if angular curvature it may begin to appear—curvature, as caries is progressing; but as the disease does progress, the more breaking down we have, the greater the curvature.

Q. It is the result of breaking down?

A. Yes, sir.

Q. And the disease must have progressed so far as to have caused breaking down to some extent before angular curvature is at all manifest?

A. No; it is manifest at a very slight breaking down.

Q. Now, describe the process of Potts' disease; you

say it begins with irritation, and then comes inflammation?

A. Yes, sir.

Q. And then ulceration?

A. Yes, those are the surgical rules.

Q. How long do these various stages require?

A. That is indefinite; it depends to a great extent on the constitution of the individual.

Q. What has that to do with it?

A. Everything to do with it. Some constitutions are stronger than others, and can withstand more than others; they have greater vitality than others.

Q. In this case at Bayonne, had anchylosis taken place when you saw it?

A. Oh, no sir; if I may say so, it was eighteen months nearly before anchylosis was established.

Q. Would you call that an acute or chronic case?

A. Well, it was acute at first, but became chronic.

Q. And your information was from the mother that two or three months before the child had fallen out of a carriage?

A. Yes, sir.

Q. But there was nothing—no immediate result of the fall which caused any notice to be taken of it by the mother?

A. None until the fever set in, and then a physician was called, who treated that child for the fever; I think he treated it for intermittent fever.

Q. How soon after the fall was the physician called?

A. Well, probably it may have been—I didn't ascertain the time—it may have been a fortnight.

Q. How long had the patient been under treatment when you were called?

A. Probably ten weeks, three months; that is mere conjecture.

Q. Then in that case, to what do you attribute the fever?

A. To the commencement of the disease; as I stated

this morning, a slow form of sub-acute inflammation.

Q. Then, in that case, if your information was correct, about the time of the fall the fever must have manifested itself very shortly after the injury?

A. No, sir; I wasn't called there immediately after the injury; that condition of the child—may at that time have had a fever from fright—there is no doubt that there was a fever at the commencement when the physician was called, and he went on for this time treating the child for the fever.

Q. Now then, my question was, whether the fever, which was the result of the inflammation, as I understand it, did not manifest itself very soon after the injury?

A. I think you are carrying the inflammation, as quoted in the boy six years of age, or the adult case, to this case of a child.

Q. Not talking about a boy six years of age or the adult case. I am talking about that child.

A. What I stated previously on Potts' disease, it will apply to this case.

Q. (Question read.)

A. I can't say what time after the injury I was called in.

Q. You think about ten weeks after the injury; but the child had been under treatment about ten weeks?

A. No; the child probably had been under treatment about seven or eight weeks.

Q. Then, if that is so, the child has been treated for something within two or three weeks after the accident occurred?

A. Yes, sir.

Q. And at the end of ten weeks the disease had progressed so far that angular curvature was manifest to an alarming extent and the other symptoms of it were marked?

A. Yes, sir.

Q. So you discovered it at once, you say?

A. Yes, sir.

Q. You were not a witness on the other trial, were you?

A. No, sir.

Q. You have had some little difficulty with this Levy estate, have you not?

A. No, sir; I have had no difficulty with the estate with the exception that I was called to see Mr. Levy at the time that I lived opposite to him as to my opinion as to his case.

Q. Well, you have had some difficulty with the estate or its representatives, have you not?

A. Only difficulty that I sent my bill and it has not been paid.

Q. You don't feel very pleasant about that, do you?

A. It is a matter of indifference to me.

Q. Certainly so.

A. I would like to have my money, but still I would not quarrel about it.

Q. You have had some conversation with the executor about it?

A. Once, I think, I spoke to him about it.

Q. Well, he refused to pay your bill, didn't he?

A. Well, I don't know that he refused to pay the bill, I sent the bill first to Mrs. Levy, and Mrs. Levy, I believe, sent the bill to the executor; Mrs. Levy said she wished me to be paid; I also saw one of the sons, and Mr. Maes, the druggist, I think his name is, spoke to him about it, and asked him why my bill wasn't paid, and he said that he was willing that the bill should be paid, and after a time the executor told me that I was too late.

Q. The truth is your bill wasn't paid?

A. No, sir.

Q. It has not been paid yet?

A. No, sir.

Q. When did Mr. Levy die?

A. I can't remember the date.

Q. You don't feel any—

A. Not at all, sir.

Re-direct.

Q. How much is the bill, Dr. ?

A. Well, for the daughter and father, I think it is about thirty dollars.

Q. Text writers use the terms "strumous diathesis" and "scrofulous diathesis'l interchangeably, don't they Dr. ?

A. Yes, sir.

Q. Now, what laymen understand by the felon is supposed by medical men to be produced by a blow ?

A. Yes, sir.

Q. In the great majority of cases is it not true that you cannot tell anything about how and when that blow was received——in a great many cases ?

A. No, sir, we could not tell how it may be received ; the finger may be pinched in a door, yet there may be no external violence ; the finger may be struck as I have seen in cases, with a hammer, producing pain, yet no external violence.

Q. Bye and bye the felon develops ?

A. After a few weeks we have a felon.

Q. That is about one of the most painful things a man can have ?

A. Yes, sir.

Re-cross.

Q. It hurts when you pinch it, don't it ?

A. Yes, sir.

Q. It hurts when you hit it with a hammer ?

A. Yes, sir, it hurts more when you cut it.

Q. It hurts when the injury is received ?

A. There is a pain just temporarily : it passes off.

Q. Is a blow in your opinion or external injury of some kind necessary to the development of a felon ?

A. It is the only definition that can be given on that question by all authors.

Q. All authors agree ?

A. It is supposed——they don't say it is a fact, but it is supposed to come from a blow.

Q. Isn't its origin obscure and clouded in many cases ?

A. Yes, sir.

Q. Are there not many cases where the attending surgeon has no informatien of any blow or violence which produced it ?

A. Yes, sir, there are cases where the physician does not know.

Q. Is not then the idea that a felon is necessarily due to a blow more the result of conjecture ?

A. The individual is sure to remember striking his finger.

Q. But doesn't the felon sometimes come in cases where the individual cannot remember a violence having been received ?

A. Yes, sir.

Q. But in such cases the idea that it comes from a blow is only conjecture ; isn't that so ?

A. Yes.

Q. Do you mean to say that it could not be produced without a blow ?

A. I would not answer that question.

ARTHUR HOUSTON, Plaintiff, recalled.

Direct examination by Mr. Collins.

Q. When did you begin going to school at all in your life ?—before the accident—how long before the accident ?

A. I don't remember exactly ; I should think it was within a year or half a year.

Q. Now then, after you began to go to school did you keep on going to school up to the time of the accident ?

A. Not steady.

Q. But unsteadily ?

A. Yes, sir.

Q. How long before the accident had you been to school, just before the accident how many days or weeks before that had you been to school?

A. I should think about half a year, or a year; I didn't go regularly.

Q. But did you go irregularly up to the time of the accident?

(By the Court): *Q.* When was the last before you got hurt that you were at school?

A. I don't know.

Q. About how long?

A. I have not any idea.

Q. How shortly before that had you been to school? I don't mean how long time had you been going to school; but how shortly before had you been into the school? You didn' go regularly, but you had been to school sometimes. Now, then, you had not been to school the day you were hurt, now how shortly before that day had you been up to school?

A. I think about a week or two.

Cross-examination by Mr. McCarter:

Q. You said on your former examination that you didn't remember when you first went to school; you say so now?

A. Yes, sir.

Q. You said on your former examination at the time you were hurt you had not been to school for half a year?

A. No, sir; no, sir.

Q. Do you say you didn't say so?

A. Yes, sir.

Q. Or do you say you didn't mean to say so?

A. I didn't say so if I knew it.

Q. Didn't you say on the former trial that you had not been to school for a half a year before this accident?

A. Not as I know of.

Q. Then you say you didn't say yesterday that it was from half a year to a year that you had not been to school before you were hurt?

A. No, sir, not if I know it.

ISAAC HOUSTON, recalled for the plaintiff.

Direct examination by Mr. Collins:

Q. In 1871, what occupied, if anything, the sidewalk line in front of your place between the entrance into your place—your butcher shop and this little iron railing that projects on the west line of the Levi building?

A. We placed vegetables in front of the building out four or five feet from the building, barrels, baskets, things of that sort.

Q. You own the house in which you live?

A. Yes, sir.

Q. And have owned it since before Arthur's birth?

A. Yes, sir.

Q. What have been your circumstances since Arthur was born, with respect to being able to afford him comfortable and adequate nutritious support?

A. I have spared nothing.

Q. Have you been in comfortable circumstances?

A. I have been in circumstances and have spared no amount of money to make my family comfortable and healthy.

Q. Now, then; as a matter of fact, before Arthur's accident, what had been his way of life as to nourishment etc., had he had sufficient food and comfortable clothing?

A. Everything that was necessary.

Q. Did Arthur have the normal child's appetite and eat heartily?

A. He did, heartily, and strong child.

NICHOLAS D. WORTENDYKE, called for plaintiff.

Direct examination by Mr. Collins:

Q. You have been requested by the defendants to make certain measurements?

A. Yes, sir.

Q. And are you familiar with the street lines of Jersey City?

A. Yes, sir, pretty familiar.

Q. A civil engineer and city surveyor, are you not?

A. Yes, sir.

Q. The area-way or opening in front of Abernethey's drug store, which is covered by grating that lift up on a hinge in the middle and have hinges, is that within the street line of the Jersey City sidewalk?

A. Yes, sir; it is within the street line.

Q. And of Newark avenue, a public highway?

A. Yes, sir.

(Mr. Collins offers in evidence the last will and testament and the letters testamentary issued to Henry Traphagen, executor.)

It is admitted that Mrs. Levy, the wife of John Levy, died February 26th, 1884, and John Levy died March 26th, 1881, and that this suit was begun in the month of November, 1883. That the former trial took place May 1st, 1884. That Christopher Reid, the co-executor named in the will, died in 1881 or forepart of 1882.

Plaintiffs rest.

Defendant moves that the plaintiff be non-suited, for the reasons following:

1. He has failed to establish by the proof what the Supreme Court has held to be a necessary causal connection between the act of the testator in leaving open the hatchway and the resulting of Potts' disease of the spine.

2. That the testimony affirmatively shows contributory negligence on the part of the party injured.

The Court denies the non-suit, to which denial defendant prays a bill of exceptions may be allowed, and it is allowed and signed and sealed accordingly.

Defence opened by Mr. McCarter.

STEPHEN SMITH, sworn on the part of the defendant, testifies as follows:

Direct-examination by Mr. Beekman:

Q. Where do you reside?

A. New York city.

Q. What institutions are you connected with?

A. With the University Medical College of New York, Bellevue Hospital, and St. Vincent Hospital; I am professor of clinical surgery in the University, and surgeon to the two other hospitals.

Q. How many visiting surgeons had Bellevue Hospital?

A. Twelve.

Q. How long did you practice medicine?

A. Thirty years.

Q. You have a private practice besides your hospital duties?

A. Yes.

Q. Do you make a specialty of surgery?

A. Yes.

Q. What is your opinion as to the origin and cause of Potts' disease of the spine?

A. The cause may be injuries; it may occur without injury—without any assignable injury.

Q. What do you hold about there being a constitutional cause?

A. I think there is generally a constitutional cause in a large number of cases.

Q. Is that the recognized belief among the surgeons of the country?

A. I think it is to-day.

Q. Among the medical authors?

A. Yes.

Q. When the disease is due to injury, what kind or character of injury would you look for?

A. I should usually look for a fall on the feet or on the hips, some considerable distance.

Q. Then it would be due to what, in that case?

A. Due to the shock—a bending of the spine itself, by which a vertebra is injured or broken.

Q. Would the vertebra be really broken, then?

A. Sometimes—depending upon the height from which a person falls; it might be wasted; bruised by a lesser fall of the same kind.

Q. Would the injury be great in that case?

A. Yes.

Q. Would it be attended with pain?

A. Yes.

Q. How soon would that pain manifest itself?

A. Immediately.

Q. Would the pain be continuous?

A. Yes.

Q. There would be no intermission of the pain?

A. No, sir.

Q. Would it be so marked as to be unmistakable?

A. So marked that the patient either goes to bed or keeps very quiet.

Q. Would it be possible for the patient, after receiving such an injury, to move about—go about?

A. I think he might go about.

Q. Go out doors and walk around?

A. I think he might walk, with care.

Q. Would he walk with ease?

A. I think not.

Q. Would he able to walk without some assistance?

A. I think he might, yes.

Q. Wouldn't his walk be attended with pain and aggravation?

A. Yes.

Q. At all times?

A. Yes.

Q. How soon after the injury would the disease be liable to manifest itself in a marked degree?

Mr. Collins: What do you mean?

Mr. Beekman: How soon after this accident would decay begin in the vertebrae?

A. The process that ends in decay begins at once, inflammation follows, but the deformity might not be perceptible for a considerable period.

Q. Then how soon after that would you expect to find the deformity?

A. That varies very much with the condition of the patient. I have seen them immediately. Where the fracture has been considered bad it might be several weeks—it might be a month, perhaps.

Q. What outward symptoms, if any, would attend this inflammation which wonld be going on?

A. Tenderness about the spine in the region of the injury, difficulty in standing up straight, straightening oneself; shock in walking, difficulty in turning in bed or twisting of the body; symptoms developed by any movement that moves the spine or disturbs the spine; inability to stoop over or move, so as to pick up anything on the ground.

Q. A child six years old, afflicted with a case of Potts' disease after receiving an injury, would it be possible for that child to go about for three or four

months without difficulty, without manifesting in a marked degree the disease, if you attribute the disease to the injury?

A. I think not.

Q. I will state to you a hypothetical case. (The boy Arthur is called up before the witness.) Presume a boy six years of age, apparently healthy; he falls down a cellar way a distance of seven or eight feet, strikes on his head near the top, a little to one side of which this is the scar on this boy's head, a severe scalp wound is inflicted, but no fracture of the skull, the wound is plastered and three months elapses without any marked symptoms, the child, in the meantime, goes out doors, goes about; now in your opinion as a surgeon, would you say that fall has anything to do with Potts' disease of the spine, which was afterwards found in the patient?

(Mr. Collins: We object, as not stating correctly the evidence existing in this case.)

(Mr. Beekman:) I will add to my question; at the expiration of three months, some pain manifests itself on the right side under the short ribs, after a month or two more, the child complains more frequently of pain, after six months the child is noticed to get down on his knees when attempting to pick up anything. At the expiration of nine months and a half, a physician discovers a marked case of Pott's disease of the spine; during that interval, at the expiration of seven months, the child is noticed to go slightly sideways, and when the examination is made at the expiration of nine months and a half, one shoulder is discovered to be higher than the other; and also at the expiration of six or seven months, a slight bony prominence is discovered on the back at or near the point of the scapula; now, in your opinion, as a surgeon, would that disease be connected in any way with a fall?

(Mr. Collins makes the same objection as before.

The question is permitted to be asked, and exception entered.)

A. I should not connect it as a cause in any way with such a development of spinal disease afterwards.

Cross-examination, by Mr. Collins :

Q. You say that such an injury as you speak of would be attended with pain, might not the pain be at first comparatively slight, according to the severity of the injury ?

A. If it was severe enough to cause spinal caries at once, it would be as severe as I described, so it would be difficult for him to move about without pain.

Q. Suppose it did not cause the spinal carries at first, but was sufficient to cause it later on ?

A. I should exclude it altogether.

Q. Your idea would be that the injury would have to be severe enough to cause caries immediately ?

A. The symptoms, not caries ; caries follows the inflammation, that is to set up ; caries is the breaking down of the vertebrae, it does not occur ordinarily at once, it is the result of inflammation.

Q. Suppose the injury was severe enough to produce inflammation after some delay and that the progress was slow, but that caries finally resulted, would not in such a case pain, at the time of the accident, be comparatively light ?

A. It would be sufficiect to be manifest in the movements of the patient, the discomfort that he would suffer in the movements of his body, twisting of his body, stooping and turning in bed, and enough to make him cry out at night in his movements.

Q. Suppose that the child did complain immediately, that is the next day, that he was sore ; suppose he could not bear to be touched ; suppose he began to fall away and lose his vigor, and that some of the symptoms which counsel mentioned occurred much

earlier than he says, that inside of three months he began to have pain under his ribs upon the right side, and got on his knees when he wanted to pick up an article, instead of stooping; that he could not loose his shoes, as he had been accustomed to do, and that these pains continued all the time growing in severity; that the child was taken to the country, because of his physical condition, which, however, the parents did not understand, and he grew continually worse, and that on his return in two or three months he was still worse, and the pain had become extremely severe, and not long after that a small protuberance between the shoulders at the point of the angular curvature, was afterwards developed or noticed, and from that time on the disease was continuous and resulted in what you see here in this young man presented to you, what would you say then?

(Mr. McCarter: There is no such state of facts as that proved.)

(Mr. Collins: The witness will suppose for the purposes of this case that that state of facts exists)?

A. As you have stated, if the symptons were continuous from the injury, the suffering more or less in his back continuously, and these symptoms continuously developed from the time of the injury. I should attribute it to the injury.

Q. Suppose he did not particularly himself specify his back?

A. Children always very markedly allude to them and make manifest those symptoms of disease. If he could not walk well the next day and was afraid of jarring in walking, could not turn in bed and was sore about the spine, and that was a continuous trouble, until the deformity appeared, I should have no hesitation in saying that the injury was the cause of the subsequent trouble.

Q. Suppose that the physician who saw him after the injury, and whose attention was directed only to

the head had advised that the boy keep quiet, and the mother being apprehensive of brain trouble, had caused him to be kept quiet, very quiet for a considerable period, much of the time recumbent, would there, of necessity, be very severe pain for awhile, while the disease was developing itself?

A. There would be pain, but it would be manifest in the movements of the body in bed. Children are very demonstrative in this kind of cases; I never saw one that was not. When a child is hurt it will make it known.

Q. Where do you reside?

A. 547 Madison Avenue, New York.

Re-direct examination by Mr. McCarter

Q. You said in your direct examination that Potts' disease is sometimes attributable to constitutional causes, sometimes to injuries, sometimes to no assignable cause?

A. Yes.

Q. Did you mean by that that it occurred as it were spontaneous without any cause to which you could intelligently refer it?

A. Yes, it sometimes comes on very insiduously, and parents when their attention is called to the question of whether the child has been injured, oftentimes remember a great many slight injuries that the child has had, but evidently without having any special connection with the developments of the disease, no one injury having any special connection.

Q. You think an injury on the back sufficient to produce the result in this case must have been severe enough to have some prompt and immediate manifestations of it?

A. Yes.

Examination by Mr. Beekman.

Q. Would an injury in falling by which a blood vessel was bursted on the back near the upper dorsal ver-

tebrae be likely to produce Potts' disease of the spine?

A. Not necessarily.

Q. Would a fall such as I described in my hypothetical question received by the child at which time ligament or muscle connected with the vertebrae was severely strained, would that be likely to produce Potts' disease of the spine?

A. No, I think not, no necessary connection.

Q. Is it not true that Potts' disease of the spine generally manifests itself without any injury of any kind?

A. Very commonly, except as I have mentioned when you call parents' attention to the fact and ask for an injury they will often mention half a dozen, but not such that a surgeon would attach any importance to.

Q. When it is due to an injury the injury would be of a serious and decided character?

A. Yes, sir.

Q. And unmistakable at the time?

A. Yes.

Q. By that do you mean there must be fracture?

A. Not necessarily.

Q. Do you know what majority of cases of Potts' disease of the spine are traceable, or what proportion are traceable to injury as the cause?

A. I can only judge from my own experience. I have not statistics of that; it would be merely impression.

Q. After such a fall, as I have stated in my hypothetical question, how would you expect to find a patient the day after the fall, if injury was received at the time of that fall, which was sufficient to develop Potts' disease of the spine?

A. I should expect soreness and tenderness about the spine, and inability to move the body, particularly in the way of twisting and stooping, a pain in walking when they take a false step, care in walking so as to avoid shock.

Q. Would you think it would be possible for the child to go out and play?

A. I don't think a child would play under such circumstances.

Q. Not at all?

A. No; it might go out, but they are generally very shy of playmates when they have this injury sufficiently to produce the disease.

Re cross examination by Mr. Collihs.

Q. You naturally look and enquire for injuries when a case of Potts' disease is brought to your attion?

A. Yes.

Q. Why may it not be that an injury would be slighter than you seem to think would be requisite and develop gradually?

A. I think the symptoms such as I have spoken of would be immediate, in greater or less intensity, according to the severity of the injury.

Q. And in some cases the severity of the injury might be such as the symptoms would not be pronounced for awhile?

A. I think not.

Q. That is your idea of it?

A. That is my experience.

Q. Take these cases you speak of, where the parents would mention half a dozen accidents, and neither one of which seemed to you sufficient to account for the case, yet the child had the angular curvature, did have the disease, did it not?

A. Yes.

Q. Then why did you have a right to say that some one or more of those comparatively slight accidents did not produce it?

A. Because the child remained perfectly well after the accident they referred to, manifesting no signs of disease.

Q. For some considerable time?

A. Yes.

Q. But then that would only prove if the disease were attributable to the accident, that the process had been extremely insidious in that case, long delayed?

A. I don't think it would be so insidious that it would not manifest itself.

Q. That is, after all, only your thought?

A. It is not my thought, it is my experience.

Q. I cannot understand that because in some cases the injury was so severe that the effects were immediate, that that would convince you that there might not be the result from a slight injury?

A. I don't think those slight injuries that produced no symptoms caused caries. An injury produces what we call lesion, a contusion, a break, and there can be nothing of that sort, that does not produce inflammation, soreness, tenderness, and that tenderness and soreness in this kind of injury must manifest itself by signs such as I have mentioned. If the mother told me two months before that this child had had a fall, but manifested none of the signs I mentioned, I should exclude it as having no bearing on the case at all; there must have been an injury by the fall to which the person attributes the disease.

Q. Might there not be an injury received causing a lesion so slight that it had no perceptible, or little perceptible effect to strangers, and yet gradually working—

A. There can be no lesion without symptoms.

Q. What is a lesion?

A. A break.

Q. Suppose a slight break?

A. But there are symptoms.

Q. But the symptoms would be light?

A. Yes.

Q. There might be a lesion so slight that a child overlooked it and that be the end of it?

A. No, I think a lesion would develop from bad to worse. If there was no symptom, I would say no lesion.

Q. There must be a graduated scale from the absence of injury up to a severe injury?

A. There is a graduation of the scale of pain, from slight to great, depending upon the amount of injury, but pain is pain.

Q. And a lesion is a lesion?

A. Yes.

Q. He might so fall as to crush the thing pretty well?

A. Yes.

Q. He might fall so as to barely effect the lesion?

A. Yes; in either case there would be symptoms, and the symptoms would be graduated according to the severity of the break.

Q. There might be a lesion without symptoms so strong as to present themselves to observation?

A. I should say there could not be any so slight that a child would not manifest it.

Q. But the parent would not know it?

A. The parent would be very stupid if the child cried at night so as to keep them awake. Whether the parents observed it or no, the effect would be there, and the fact is that parents do observe them.

Q. It is a long time sometimes before they find it out?

A. Yes, sir.

Q. And they treat for something else?

A. That may be, but the symptoms are there. Because they do not interpret them rightly is no proof there has not been an injury.

Q. They might interpret them wrongly and yet there be trouble with the spine?

A. Yes.

Examination by Mr. Beekman:

Q. If there were slight lesions such as counsel has just supposed, would the pain increase or not?

A. It would.

Q. And become more marked and manifest?

A. It would if it proceeded to caries.

Q. You spoke of struma being the *general* underlying cause—

Mr. Collins—He has not said so.

Mr. Beekman—Constitutional cause ; what do you consider a constitutionai cause ?

A. A scrofula condition, a syphilitic condition or rheumatic condition.

Q. Is that generally considered a constitutional cause ?

A. I am speaking of constitutional causes in general, but scrofulous disease is now regarded as more frequently the cause of caries of the spine.

Q. When the disease is due to that, and it should manifest itself, if possible, without such marked symptoms, would it not in that case manifest itself with less marked symptoms than it would in a case where it was the result of violence ?

A. Yes, very much.

Q. Then, am I right in saying that where it is due to force or violence, it is always attended with more marked symptoms and more pain ?

A. Yes, most decidedly.

John E. Scott, being sworn on the part of defendant, testifies :

I am city clerk of Jersey City ; I have here the ordinances of the Mayor and Aldermen of Jersey City ; I have here the ordinances that were in force in May, 1871, on the subject of sidewalks and openings in sidewalks ; they are on page 393 of this book.

Defendant offers in evidence Sec. 9 of the book referred to, book of ordinances, and such ordinances as relate to sidewalks, public grounds and streets in Jersey City. Reads Secs. 9, 10, 11, page 393.

Theodore R. Varick, sworn on the part of the defendant, testifies.

Direct examination by Mr. Beekman.

Q. You are a physician and surgeon practicing in Jersey City?

A. Yes, sir; I have been practicing since 1846.

Q. Have you other means of observation and experience in your profession than mere private practice?

A. I am associated, and have been for a number of years, with the Jersey City Charity Hospital and St. Francis Hospital, of this city.

Q. Have you any position under the State Government?

A. I am Surgeon-General and also one of the managers of the State Asylum for the insane at Morris Plains.

Q. Are you acquainted with the disease known as Potts' disease of the spine?

A. Somewhat so.

Q. Have you had instances of it in your practice?

A. Yes, a good many in the course of my practice.

Q. You testified in this case before and you saw and examined this boy?

A. I saw him at the last trial.

Q. You have a general acquaintance with his condition and with the subject so far as he is connected with it?

A. Yes.

Q. If you assume that a person receives an injury on the back sufficient to induce Potts' disease of the spine, what, in your judgment, would be the first manifestation of such an injury?

A. There would be unmistakable pain at the seat of the injury, extending along the spine, and pain in the course of the nerves originating in the part of the spine struck.

Q. Take an injury occasioned by a fall down an

area-way of 7 or 8 feet, communicated to the back with sufficient violence to induce Potts' disease of the spine, what external sign would you look for on the patient?

A. You might expect to find a good many things, but I have never seen a case that I can recall where an injury, a blow direct or indirect, was attributed as the cause of a disease.

Q. You have never seen a case of that disease that was occasioned by a blow or fall?

A. No, I have not.

Q. But if you assume that the patient does receive an injury of sufficient severity to induce Potts' disease, how soon after the injury would there be manifestations of it?

(Mr. Collins objects to the question because the witness has said that such a thing cannot be.)

(The Court): He may give his opinion upon the assumption.

A. Immediately.

Q. You say immediately, how immediately?

A. The symptoms that would naturally arise would be what is known as spondilitis, or inflammation of the structures going to make up the vertebral column, ligaments, muscles, periosteum intervertebral cartilages; they are unmistakable in their character, characterized by pain, tenderness, etc.

Q. How soon after the injury would that be made manifest?

A. Immediately.

Q. Would it be continuous?

A. Continuous.

Q. Would it be of such a character that it could exist so the patient himself would not know it?

A. I cannot conceive such a thing possible.

Q. In the case of a child 6 years old, could an in-

jury sufficient to produce Potts' disease of the spine be present without its immediately or shortly thereafter giving manifestations which the patient himself or the parents of the patient must discover?

A. I think not.

Q. You think there could not be such an injury unless there was such a manifestation of it?

A. No, sir.

Q. Take the case where the patient fell into a hatchway 7 or 8 feet deep, and received the wound on the head that you have already examined, and no other external sign of injury, the doctor who was called to see the head suggested no other, and made examination for no other. Now, if on such a fall, in addition to the injury on the head, an injury to the spine had been received which was sufficient to induce Pott's disease, how soon would these symptoms manifest themselves?

A. The symptoms of injury to the spine, if any, would be immediate and continuous.

Q. Suppose a bruise communicated by a fall to the spinous process of sufficient severity to cause Pott's disease, what would be the appearance of the surface?

A. I don't believe in this instance simple injury to the spinous process would produce Pott's disease at all.

Q. Why not?

A. For the simple reason that Pott's disease consists of caries of the bodies of the vertebrae, intervening between the vertebral canal containing the spinal cords, membranes; and in Pott's disease the processes, neither the spinal nor the transverse, are involved in the disease, it is always confined to the cancellatt's structures of the bodies of the vertebrae and the anterior portion.

Q. Now, to communicate a blow which would come square upon the spinous processes, how would that blow have to operate to produce the inflammation

which would result in caries of the bodies of the vertebrae?

A. I don't believe you could do it short of fracture of the articular surfaces located on the transverse processes.

Q. What in your opinion causes Pott's disease?

A. The profession is somewhat divided on that point, but the majority of leading authorities attribute it as evidence of a local manifestation of a constitutional taint or malady. One or two writers who are, perhaps, a little enthusiastic on the subject, take an opposite view, and attribute it entirely to injury, but the weight of authority is in favor to its constitutional origin.

Q. Dr. Smith has testified that in addition to constitutional origin, and an origin occasioned by injury, it may occur from no assignable cause. What is your observation?

A. I agree with him perfectly, at least so far as you are able to get any history of the case. I have a case that I have been treating recently, a little girl about 4 or 5 years old, it came on her without any assignable cause—never knew the history of any injury. I think her parents are tuberculous, and the case had been treated for about eight or ten months before I saw it, for rheumatism, but it proved to be Pott's disease of the spine.

Q. What were the symptoms which led the physician to treat it for rheumatism?

A. I don't know.

Q. You didn't know, from the history of the case what manifestations led to the treatment for rheumatism?

A. No.

Q. Is this disease of a kindred type or character to tuberculosis, tuberculous diseases generally?

A. Pathologists confine tubercal, granular matter, as distinguished from cheesy matter, formerly called crude tubercle, but the natures are alike.

Q. In the case of tubercle phthisis, or what is com-

monly called consumption, is that known to occur in patients who have no inherited or collateral family taint, and no known exciting cause?

A. Very frequently.

Q. What reason can you suggest, if any, why Pott's disease of the spine should not occur in the same way?

A. No reason.

Q. That is, finding Pott's disease of the spine, and being convinced that enquiry would not show any constitutional cause, and not being able to learn of any accident or injury which caused it, would you necessarily infer that it must have come from an injury?

A. Not by any means.

Q. It may come on its own hook?

A. It may come on its own hook?

Q. Do you know anything about the statistics that have been collected on the subject of the proportion of instances of Pott's disease of the spine due to injury and those due to other causes?

A. I haven't taken any trouble to look them up.

Q. Are you acquainted with Page's work on the subject of injuries?

A. Yes; Page on injuries of the spine, or spinal contusion, or some such name; he has published a work.

Q. Do you know whether he gives the results of examination as to the proportion in which this disease occurs from injuries and other causes?

A. Yes.

Q. Have you any means of knowing or forming an opinion from your professional experience, reading or otherwise, as to the proportion of cases which result from injuries and those which result from other causes?

A. Yes, by reading and observation.

Q. What is your opinion as to the relative proportion of Pott's disease of the spine, resulting from injuries and from other causes?

(Question objected to. Admitted and exception allowed.)

A. In the first place, I have never seen a case that was traceable to injury; secondly, in Page is recorded 234 cases of injuries to the spine, by railroad collisions, thrown from horses, direct blows, carriage accidents, etc., without a single case resulting in caries of the spine. Also in Erickson's book on concussion of the spine, there are forty-nine cases of what he terms concussion of the spine, resulting mostly from railroad collisions, and not a single case of caries of the spine resulting is recorded.

Q. How does your opinion as to the relative frequency of the disease occuring from accidents and other causes correspond with the records there?

A. I have answered that so far as my observations go, I have never seen a case that was traceable to injury.

Q. Do you as a surgeon, consider that those statistics fairly represent the facts as they are stated there?

A. From a logical conclusion I would imagine that there would be likely to be some case in the record of 234 cases recorded by Page.

Cross-examination by MR. COLLINS:

Q. Can you tell the conditions or age of the various subjects spoken of by Mr. Page that met with accidents?

A. All ages.

Q. It seems probable that the majority of them were adults?

A. I don't know, the ages are given, but I don't remember them.

Q. Potts' disease is developed in a vast majority of instances in young children?

A. Yes, though not entirely so.

Q. I don't understand you to deny that the disease may result from injury?

A. I can simply answer that by stating Gross's opinion in regard to that.

Q. I have asked you for yours?

A. I suppose it is possible, but not probable, that is, without you have evidence, a continuous train of symptoms from the time of the injury up to the development of the disease.

Q. Is it not in your judgment, likely that a slighter injury by violence. force, to a child with a constitutional taint would develop Potts' disease than in a healthy person?

A. It would be more likely to do it of course.

Q. Might not comparatively slight violence develop it in such cases?

A. It would not without giving marked symptoms, symptoms that would be unmistakable, even though it had constitutional debility.

Q. The disease in cases where you do not trace it to violence comes on very insidiously and slowly?

A. Yes, sir. A great many cases that come under our observation, especially in hospital practice, we can get no anterior history of at all They are brought in with the disease fully formed, so we cannot tell anything about it.

Q. When you say there are cases for which there is no assignable cause, I suppose you simply mean that you don't know what the cause is?

A. Can't get at it.

Q. But, you would assume naturally there is a cause?

A. There must be of course.

Q. Yet you can't tell what?

A. Can't tell what precisely.

Q. Then you have no right to assume it is spontaneous development, have you?

A. I dont assume. Of course, there must be a cause of every phenomena, healthy or otherwise.

Q. For all you know, there might be an injury unknown to you?

A. Yes.

Q. Take the case of consumption where you say there might be tubercular phthisis in an individual who had sound parents and ancestors, there must be some cause for its development?

A. Yes.

Q. What is the general cause in such cases?

A. Can't tell; it frequently jumps a generation, I know instances where the father and mother were particularly robust and every one of their children died of consumption; it jumped a generation.

Q. Take the case of consumption in a person of apparently healthy stock, does it not result from exposure or cold?

A. There may be an exciting cause, but bear in mind many things that are called consumption or phthisis are not tubercular.

Q. Can you tell me how many case of Potts' disease while the disease was in progress, have come under your observation?

A. I cannot recall the number.

Q. How many do you bring to mind?

A. I have seen so many cases in the hospital and in my private practice, that I cannot remember.

Q. Potts' disease, is not frequently brought to the hospitals here?

A. Yes, it is. I suppose I see as many as most people, except specialists, but in a general surgical practice, I have met with a good many in the course of my practice.

Q. In the case of the child who had been treated for rheumatism, where was the rheumatism supposed to be located?

A. In the lower extremities of the child.

Q. You know Dr. Lewis A. Sayre, of New York?

A. Yes.

Q. He has had great experience in the treatment of that disease?

A. Yes.

Q. He is the inventor of the plaster Paris jacket?

A. Yes.

Q. You, I believe, use that, or advise it, and believe it to be correct treatment?

A. Yes.

Q. Do you know what Dr. Sayre's views are?

A. Yes, he attributes them all to injuries.

Q. The only way anybody can find out is by inquiring?

A. Yes, and by observation.

Re-Direct Examination:

Q. Dr. Sayre is at variance with the great majority of the profession?

A. Yes.

Q. In case there is an entire absence of any constitutional cause and Potts' disease of the spine is developed in the patient, and you should seek for an injury as to the cause of it, would it not require a more severe injury to produce it in a patient free from constitutional taint, than it would in one having such taint?

A. Yes, sir.

Adjourned to Monday, May 11th, 1885.

Monday, May 11th, 1885.

Fourth days' proceedings.

NICHOLAS D. WORTENDYKE, called by defense, testifies as follows:

I live in Jersey City; am civil engineer; I know the property, No. 188 Newark avenue.

Q. Have you made any measurements in regard to the cellar doors and the width of the sidewalk in front of the premises?

A. I made measurements to locate the grates, sidewalks and guard rails in front of 188 Newark avenue. This sketch which I produce shows those things.

Q. What is the distance from the iron grating or flaps to the edge of the curb?

A. It is ten feet and half an inch.

Q. Then there is ten feet and half an inch in the clear for the sidewalk between the iron grating and the street?

A. Yes.

Q. What is the length of the guard rail immediately west of these doors or flaps?

A. Four feet, eight inches long.

Q. Did you make any measurements to ascertain whether this flap would lie down flat?

A. Yes, I found when the easterly grating, when thrown open, would not lie down flat. I found out that after the grating was turned over, the easterly side was an inch and a half lower than the grating at the hinges; it was higher at the hinges than it was on the outside of the door after being thrown up.

Q. What elevation was there at the hinges upon the sidewalk?

A. Three inches.

Q. How many steps are there leading into the cellar?

A. Eight steps.

Q. Did you measure the distance from the iron grating to the last step?

A. I measured the depth from the sidewalk to the bottom of the cellar; it is seven feet and eleven inches.

Q. What is the width of both doors?

A. Three feet nine inches is the width of the opening along the street.

Q. The two doors run parallel with the street, do they not?

A. Yes.

Q. What is the distance from the building itself to the curb?

A. On the westerly end fifteen feet, two and a half inches; on the easterly end, fifteen feet, two inches.

Q. You found the easterly grating protected by a guard?

A. Yes.

Q. Does the grating run flush up to the house?

A. Yes, it runs flush up to the building; it runs under the window.

Cross-examination by Mr. COLLINS:

Q. You call that ornamental rail that projects from the west line of the building out on the sidewalk, a guard rail; what do you assume it guards?

A. I suppose it is put there for protection.

Q. Wasn't it put there to match the other one on the east side of the building?

A. I don't know why it was put there.

Q. This building has on the east line and on the west line a projecting rail exactly alike?

A. Yes.

Q. To match the one on the east side, which happens to be at the family entrance of the building; there is one just like it at the west of that family entrance?

A. Yes.

Q. There are two ornamental iron railings by which you approach the front door?

A. Yes, one on each side of the door.

Q. And there is one on the west line of the building?

A. Yes; making three in all.

Q. You cannot tell the distance between the westerly railing and the opening in the cellar way?

A. No, I did not measure that.

Q. It is just about so, that when it opens it will scrape against that railing and not go down?

A. I think it is.

Q. What is the size of the opening covered by the iron grating doors?

A. Three feet, nine inches, east and west; four feet feet, nine and a half inches from inside to the outside; building itself is flush with the line of Jersey avenue.

Q. When the east flap is open the grating comes in

contact with the sidewalk at the easterly side of it as open?

A. Yes.

Q. So that when you say it does not lie flat on the sidewalk, you mean the entire surface of the grating does not touch the sidewalk?

A. Yes, that is on account of the hinges being in a certain way.

Q. The opening in the sidewalk comes out into the sidewalk further than what you call the guard rail about six inches?

A. Yes, a little farther.

GEORGE W. CROPPER sworn on the part of the defense testifies as follows :—

I reside in Jersey City ; am a physiciam and surgeon practising in Jersey City.

Q. What in your opinion do you attribute as the cause of Potts' disease of the spine?

A. Well, immediate injury or a condition known as scrofulous, strumous.

Q. How do you regard injury as a cause?

A. As a direct cause, bruising, injury to the part.

Q. Then, do you hold that the injury acts as an exciting cause?

A. Immediately, yes.

Q. Then you suppose that there is a pre-disposing cause do you not?

A. Oh, yes.

Q. That is constitutional taint?

A. Yes.

Q. When does it generally manifest itself?

A. Early in life, generally speaking, any where between one and six or seven years of age.

Q. What kind of violence would you expect to operate as an exciting cause?

A. Shock, blow, or fall, or an injury that would destroy some part of the spinal column—injury.

Q. What do you mean by shock?

A. A direct blow.

Q. What would you expect to follow after such violence as would be able to act as an exciting cause of Potts' disease of the spine; what symptoms would you expect to follow?

A. Symptoms of pain, referable to the spot itself.

Q. How soon would they manifest themselves?

A. At once.

Q. Would they be continuous?

A. Yes.

Q. Would they be likely to be accompanied with fever?

A. Yes.

Q. What would be the condition of the patient if such an accident had occurred?

A. The patient would be in pain and give evidence of it.

Q. So as to be recognized ordinarily?

A. Yes.

Q. Would he be likely to go outdoors?

A. Not if the pains were sufficient, that is, if the pains were brought on by the injury, the child probbably would not want to move, would want to keep quiet, be left alone; would not be likely to play, would fix himself in the most convenient and comfortable positions.

Q. How soon after such violence would you expect to find the disease manifesting to a marked extent?

A. That would depend altogether upon the destroyed condition, it would manifest itself very soon I think, it would depend upon the condition of the child, but it would be recognized by signs that are understood by surgeons of an injury to the parts, pain at the seat of the injury and elsewhere, and certain positions. The patient would give evidence of pain both at the seat of injury and along the course of the nerves which issued from the seat of injury: there would be several points for pain to evidence itself.

Q. Are there any other exciting causes for this disease, other than violence?

A. Yes, syphilitic inheritance or communication, rheumatic condition, a cold.

Q. If it were possible for a child, or a person either, who had received a fall or had ruptured or torn one of the ligaments which articulate or attach with the spine or spinous process, or if such person had bursted a blood vessel which is connected in any way with the periosteum, would that be likely to act as an exciting cause of Potts'disease of the spine?

A. Yes, sir.

Q. What would you expect to find after such an accident; how would you expect to find the patient immediately after?

A. Suffering pain and giving evidence of it, keeping himself quiet, resting the parts itself as much as he can. He would be likely to be found in bed.

Q. I will state to you a hypothetical question:—A boy six years of age, presumably healthy, falls down a cellar way from a point over a portion of cellar way that is covered upon steps which go downward from the sidewalk directly under the building, just before the fall he having stood facing the building, he is picked up at the botton unconscious, the steps are stone steps, he immediately recovers consciousness, the only injury noticed is that shown by the scar now indicated to you on the boy's head, it was then a bleeding wound, that wound is dressed, nothing further is done, it is not supposed that he is otherwise injured, his back is not observed by any one or complained of by him, nor is any other complaint made by him; afterwards at a time, somewhat uncertain according to the memory of witnesses, but within four months for the outside limit he begins to complain of severe pain in the front of the body under the ribs on the right side, he begins to lose flesh, does not have a desire to play, will drop on his knees to pick up articles from the floor, is taken to the country for two months, on returning his general health seems to be somewhat depressed, at a subsequent date the time not fixed, but inside of nine months a slight pro-

tuberance is noticed in the back between the shoulders, toward the end of this period, the time a little indefinite, he begins to walk with one shoulder a little higher than the other, the left shoulder being the higher I think, that finally becomes permanent, at the end of nine months a plainly developed case of Pott's disease with lateral curvature is discovered by a physician. Now in your opinion as a physican and surgeon would you think that that fall had anything to do with the development of the disease ?

A. Is there no history of trouble between the injury and the four months later development or sickness ?

Q. Excepting entire absence of any other than I have embodied in my question I do not see any connection between the two.

Examination by Mr. McCarter :

Q. In your opinion could a boy of six years old without any previous strumous diathesis receive by a fall an injury sufficient to produce Pott's disease without feeling any pain or soreness or other evidence of the injury at the place of the injury before four months ?

A. No sir.

Q. If such a fall, sufficient to produce Pott's disease, operated as an exciting cause on a previous strumous diathesis would such previous condition of the patient accelerate or retard the appearance of external symptoms of the disease ?

A. If the child had been strumous there would be a sooner manifestation, much sooner.

Cross Examination by Mr. Collins :

Q. In the hypothetical case put by Mr. Beekman suppose that the morning after the injury and for some days the child complained of being sore all over and refused to permit people to touch him, and his general health began to decline almost from that time, and suppose that the sharp pains that he had under the ribs began much sooner than four months, but were

not so severe as later, and that within three months he would manifest this disinclination to stoop, and refuse to lace up his own shoes which he had theretofore been accustomed to do, what would be your opinion as to the possibility of the fall having caused some lesion to the spine?

A. There would be no intermission in the pain which was manifested the very first day; it must come on and stay there continuously.

Q. My question did not suppose there was any intermission, but the severity became greater?

A. He could not have been in any way better, he must have immediately been sick, injured, and given manifestations of pain and kept it up continuously to have produced this disease. The injury would have been prominently manifested much sooner than three months.

Q. But that was the outside limit which witnesses recall distinctly, the severe pain?

A. There would be no doubt in the parents mind that the child was injured all the time, they would not have time to guess between three months, they would know it from the very start; the pains must have been severe from the start, at once.

Q. Wouldn't that depend upon the extent of the local injury; suppose that the local injury was sufficient to eventually cause Pott's disease wouldn't the pain from the start depend upon the severity and extent of the injury?

A. Yes.

Q. So that a slight injury, but nevertheless one sufficient to develop into Pott's disease would give the patient less pain than a more severe one at the start?

A. No, it would be severe pain to start with, even the slightest possible injury.

Q. How do you know?

A. Because I can't imagine a lesion in any part of the body without recognizable pain.

Q. When the inflammation develops?

A. Before inflammation develops—inflammation is the—

Q. My question supposed the child to exhibit pain right away, a disinclination to be touched, shortly afterwards development of severe pain under his ribs?

A. That symptom indicates that the damage done then was marked, and the child had not time to do anything but suffer pain.

Q. He complained of pain right away, soreness all over as the witness described it, a disinclination to be touched, the principal point of pain not pointed out so far as we know, then at later intervals he had sharp pains under the ribs, but the time when they began the witnesses cannot state because of the long lapse of time that has intervened but they do remember that he had them some little time before they took him into the country and they thought they were growing pains and he went into the country three months after the injury—

A. Was this disinclination to be touched continuous?

Q. There has been no proof that it was not.

MR. MCCARTER: Or that it was.

WITNESS: As I understand it there seem to have been an intermission that they do not remember anything about the child whether he was well or ill during that three months.

Q. As I understand it he was ill continuously and got worse?

A. Ill with pain, but played round.

Q. Played round, but not sprightly?

A. No, he could not do that very well. You never saw a child that suffered that way that would play.

Q. You testified in the former case, and you were asked this question:

"*Q.* If the disease is due to a violent blow or fall, how soon do you think a marked manifestation of the

disease would appear?" and you answered "Within a month."

"*Q.* In what shape would it show itself?"

"*A.* In case it appeared so soon as that—that is, holding that the shock was very severe—there would be manifestations of great pain at the extremities of the nerves near the point of injury."

The witness: That is not what I said, that is a misconception of terms.

(Reading): "Such a shock or injury would be likely to cause inflammatory action at once at the point of injury, the result being the formation of an injurious material to the system; the system not being able to accommodate itself to it, it would get into what is termed cachexia, or inclination to show the disease, hectic, irritation of all sorts, general and constitutional."

Did you so testify?

A. Yes.

Q. Now if I understand you right, you think that while the more frequent origin of Potts' disease is some exciting cause upon a strumous diathesis yet that Potts' disease may be caused by violence irrespective of the strumous diathesis?

A. Yes.

Q. You say you are familiar with Potts' disease. On the last trial you said you never had a case of Potts' disease under your direction?

A. That is true. I was in the Bellevue Hospital quite a while.

Q. When did you graduate?

A. In 1876.

Q. You have not personally treated any case?

A. Yes, I have by following out the directions of

the surgeon in control at the hospital both here in Jersey City and in New York.

Re-direct examination :

Q. An injury so as to cause a twisted or drawing of the ligaments is that what is usually called a sprain?

A. Yes, sir.

Q. And is not an injury of that kind almost always attended with immediate pain?

A. Yes, sir.

Q. And continuous as long as the inflammation continues?

A. Yes, sir, as a sprained ankle.

Q. Is that the same character of injury to the ligaments about the ankle as those attending the spine?

A. Yes, sir.

Q. The inflammation and the caries or injury to the bone in Potts' disease is in front, the anterior part ss it is called?

A. Yes, it being the softer part.

Q. Assuming a person falls and receives an injury to the spinal process or the back sufficient in extent and severity to cause inflammation and to show itself in the front of the spine, I understand, your opinion to be that such injury could not be produced without there being immediate and continuous pain, and at the place where the injury was received?

A. That is my opinion.

Q. Would the fact that the day after a fall down an areaway eight feet deep the boy complained of soreness all over, and that sometimes disappeared and some time after the symptoms of Potts' disease manifestad themselves or other pains three months afterwards, would that complaint of soreness indicate to your mind that the boy had received a local injury sufficient to produce Potts' disease?

A. No, sir. That is a case of multiple bruises ; any number of tender spots about the body.

Re-cross examination :

Q. Syphilitic, rheumatic and taking cold you speak of as being exciting causes. Would not a syphilitic condition be rather a predisposing cause ?

A. It might be acquired.

Q. You would hardly suppose a child six years old would acquire syphilis ?

A. A possibility, by direct contact.

Q. Do you mean by an exciting cause a direct and acute attack of syphilis ?

A. As an exciting cause.

Q. If there was a syphilitic condition of the constitution would you call that a predisposing cause ?

A. Yes.

Q. Isn't that only another term for what you call strumous diathesis, don't many authorities attribute it to syphilitic taint away back ?

A. Some authorities do.

Q. Do you mean an acute attack of rheumatism will produce Potts' disease ?

A. No, sir, only by making the proper condition at the point of destruction could taking cold produce Potts' disease.

Q. There would have to be a constitutional taint in the system for a cold to operate on ?

A. Yes. I have heard of children that were perfectly healthy from the minute of their birth to the manifestation of Potts' disease up to a certain time when they began to get tired and weary and weak.

Q. That is one of the cases which the doctors speak of as having no assignable cause?

A. Yes.

Q. That would not be taking cold?

A. All physicians would start out with the idea that taking cold would be a congestion. That is a very indefinite term, like calling disease malaria. It is like

looking for the cause of anything; the cause in continued fever we can always find, never fail to find it.

Q. All authorities agree that Potts' disease is caused by violence, either operating upon a predisposed condition of the constitution, or otherwise, as the case may be, or as some way the result of this condition without any exciting cause?

A. That is both sides of the question.

Re-direct examination:

Q. Do you know Lewis H. Sayres?

A. Yes, sir.

Q. When did he graduate?

A. In March, 1876. He was in my class.

Q. How can you remember when you graduated?

A. I was lucky enough to be the honor man that day, and I think I could remember that.

Q. Do you know the father of Lewis H. Sayres?

A. Yes.

Q. Do you understand what his opinions are as to the cause of Potts' disease?

A. Yes, he is rather an enthusiast.

Q. Do you think he is in sympathy with the profession generally on that subject?

A. He is at variance with the profession as to the causes of the disease.

Re-cross examination:

Q. Lewis A. Sayre is a very eminent physician in this particular direction?

A. Yes, sir.

Q. And his son?

A. His son is a bright young man. His father is a very bright man.

DANIEL L. REEVE, sworn on the part of the defense, testifies as follows:

I am a surgeon and physician, practicing in Jersey

City for thirty years; have been practising forty years.

Q. Have you been connected with any hospital service in this city or elsewhere?

A. Yes, I have been connected with Charity Hospital for seventeen years, since its organization. I was for a time connected with St. Francis Hospital. I was surgeon for a while at Christ Hospital.

Q. Have you by your professional reading and practice acquired a knowledge of Potts' disease of the spine?

A. Well, a certain amount of knowledge connected with it.

Q. To what cause or causes is the development of that disease usually attributed by surgeons and surgical works of authority?

A. The most important factor in Potts' disease is struma, so laid down by the highest authorities, both here and in foreign countries.

Q. Is it capable of being produced by a direct injury without a prevous strumous condition?

A. I would not venture an opinion of my own on that subject; I can give you the opinion of much higher authority than my own.

Q. I was asking for your opinion?

A. I have not any opinion to give on that subject. I have great doubts whether it could be induced simply by violence; I have never seen a case of Potts' disease produced by direct violence alone.

Q. Take the case of a boy six years old, without any previous strumous condition, perfectly free from anything of the kind; he falls down the areaway a depth of seven or eight feet, and receives a direct injury sufficient to produce Potts' disease, assuming that Potts' disease could result from direct injury occasioned by a fall, how soon, in your judgment, would the patient feel and give evidence of that injury?

A. Right away, of course.

Q. How would it manifest itself, in your judgment?

A. By complaining of great pain at the seat of injury first.

Q. Would this pain intermit or continue?

A. Be continuous and accompanied with very great tenderness; in all probability inability to move.

Q. Suppose, instead of any injury committed by the direct impact of the blow, it was the result of a strain or contusing of the ligaments round the spine, what effect would that injury have on the immediate condition and feelings of the patient?

A. It certainly would incapacitate the patient from moving about at all, and it would give rise to violent pain immediately; that pain would be kept up without any cessation whatever.

Q. Take the case of a boy having such a fall as I described, and having a severe scalp wound as the only injury noticed at the time, and on the next day he should complain of being sore all over, so that he did not like to be touched, but, so far as we know, that soreness disappeared, the scalp wound got well, the boy was around playing as usual, and no other symptoms of Potts' disease was manifested for three months; would you attribute that fall, or connect it in any way with Potts' disease?

A. No, not in the slightest degree.

Q. I will put you the same hypothetical question which was used by my friend on the other side, altering it to meet the facts in this case. Take a boy six years old who falls down a cellar-way from a point over a portion of a cellar-way that is covered, upon steps that go downward from the sidewalk directly under the building; he directly just before the fall having stood facing the building; he is picked up at the bottom unconscious, the steps are stone steps, he immediately recovers consciousness, the only injury noticed is that shown by the scar which was then a bleeding wound; when that is dressed nothing further is done and it is not supposed that he is otherwise injured; his back is not observed by anyone or complained of by himself, nor is any other complaint made by him; and afterwards at a time somewhat uncertain, and the witnesses put it not less than four

months previous, he began to complain of severe pain over the body and under the ribs on the right side, he began to lose flesh, does not have a desire to play, will drop on his knees to pick up articles from the floor, is taken to the country for two months, on returning his general health seems to be somewhat depressed ; at a subsequent date, the time not fixed, but inside of nine months or over nine months, a slight protuberance is noticed in the back between the shoulders ; toward the end of this period, the time a little indefinite, begins to walk with one shoulder higher than the other, the left shoulder being the higher, I think, that eventually becomes permanent, at the end of nine months a little more plainly developing the case of Potts' disease ; no evidence is given of any scrofulous diathesis ; the family history of both parents shows no such tendency, no other fall or injury is known to have happened to the boy, now what connection in your judgment would the subsequent recurrence of Potts' disease have with that fall ?

A. I do not see any connection at all.

Q. Suppose a boy of six years old, without any previous strumous diathesis, receives by a fall an injury sufficient to produce Potts' disease, could such injury occur without his feeling any pain or soreness or other evidence of the injury, at the place of the injury, before three months ?

A. I don't believe it ; I never saw such a thing.

Q. Suppose such a fall operated as an exciting cause on a previous strumous condition of the patient, would such previous condition accelerate or retard the appearance of external symptoms of the dlsease ?

A. It would accelerate it, I should say.

Q. That is, if the boy was strumous then it would appear quicker than if he was not ?

A. I think so.

Q. You know Dr. Lewis A. Sayre ?

A. Yes.

Q. He is somewhat of a specialist of diseases of the spine ?

A. Yes.

Q. Do you know how his views on the subject of the producing cause of Potts' disease corresponds with the views of the profession generally on that subject?

A Sayre differs from the profession generally; in a great measure throws aside the idea of struma having much to do with it; he attributes Potts' disease chiefly to traumatic causes, injuries. He stands quite alone, I think, in that respect.

Cross-examination:

Q. You have not catechised the entire profession, or any great portion of it, on that point?

A. No; I have read a great many of the standard works.

Q. But they simply voice the views that have prevailed in the profession?

A. They adhere to that idea still, generally.

Q. You don't know how many converts there are to Dr. Sayre's views?

A. No, sir.

Q. How many cases of Potts' disease have you yourself personally had?

A. Very few; I suppose I have seen three or four cases in the last 25 or 30 years; in our private practice we see very little of it.

Q. The smaller the injury which eventually causes the inflammation, and subsequent Potts' disease, the less the pain is I presume; it would be a relative matter; a very severe hurt will cause more pain than a slight one?

A. The more severely a man is hurt the more he suffers, unless it is so bad he is killed.

Q. Assuming Potts' disease may be developed from a slight injury you would naturally look for slighter pain at first and increasing as the disease progresses, wouldn't you?

A. Yes.

Q. Isn't it true that the sensation of pain is frequently referred by the patient to a different part of the body than the true seat of the trouble?

A. In some diseases; yes.

Q. You testified in this case before?

A. Yes, sir.

Q. I will read you your testimony: "If this boy had been suffering from this injury during all this time, whether it had been properly or improperly treated, I would say this injury caused all the trouble that he has had? *A.* If there were other pains about his body, at the bottom of the ribs, &c., would that in any way be connected with this difficulty? *A.* Not necessarily. *Q.* It might be the result of the fall, possibly. *A.* We see so much of that sort of thing, ordinary hypochondriac pains over the liver and over the stomach or something, a thousand and one things might cause it. *Q.* An oblique injury to the backbone at the time of the fall, if a good part of his weight had fallen either with the head striking first or the back striking first, in either or in both, then that would make a very different case? *A.* Yes, if the immediate result of that fall, whatever the nature of it, on the back was palpable to him, and the patient suffered from it constantly afterwards, then it would be evidence enough of the direct result of the fall. *Q.* Would that indicate pain in other parts of the body? *A.* It might. *Q.* So that the development of a pain somewhere else might have its real seat in the back? *A.* It might. *Q.* (By the Court) Can you tell where it would most likely develop pain, injured as he seems to have been? *A.* Yes, it would be here about the chest, the dorsal portion of the vertebrae; the nerves that are given off from the spinal column are distributed about in all directions. (By Mr. Cloke to the plaintiff) Arthur, stand up and show the doctor how you were before the physician examined you the second time, show how you leaned over. (The boy shows, leaning over forward.) *Q.* Did you walk in that way? *A.* Yes. *Q.* (To witness.)

What would that indicate, walking that way in the interim before the doctor called the second time?

A. That might result from different causes. *Q.* It might result from a fall if the fall was severe? *A.* It is barely possible; those experiences of things are so common among children in school, bad habits, bad habit of sitting and such things. *Q.* Where you have a severe fall, the whole weight of the body falling down upon sharp stones, does not that lead the mind to conclude that that would be likely the cause of the start of some trouble of this kind? *A.* It would depend upon the nature of the fall and the nature of the injury sustained. *Q.* But it is altogether possible? *A.* Yes, it is possible." Did you so testify as I have read?

A. Yes.

Re-direct Examination:

Q. Would it be possible without the production o immediate and continuing symptoms?

A. I don't think you could have an injury which resulted in such a condition as this boy shows without suffering all the time continuously from the time of the fall. I have seen very severe injuries to the back but have never seen one developed into Pott's disease; seen them in the hospital.

ALFRED A. LUTKINS recalled by the defendant:

Q. You were the regular physician of the Houston family?

A. They may have considered me such, yes.

Q. Do you know Eva Houston?

A. Yes.

Q. Did you attend her professionally within the last three weeks?

A. No, sir.

Q. Has she not been to your office and consulted you within that time about her lungs?

A. No, sir, I think not.

Q. Is it possible that she could have been there and you have forgotten it?

A. Yes, she might have been there as an office patient within three or four weeks but I don't remember as she has. She may have been there but I have forgotten all about it.

Q. Didn't you advise a tonic and rest, and advise her to stay in the house at night?

A. It is quite probable.

Q. And did not you tell her that her lungs were affected?

A. No, sir, I don't think I have seen the young lady. My memory usually is good, and I have not the slightest recollection of her having been to consult me.

Q. Won't your books show?

A. They would not show the name of the patient but would show services rendered and office call.

Q. Could you tell from an inspection of your books that either of the Houston girls have called on you under the circumstances I have described?

A. No, I could tell an office visit had been made, and I would charge for an office consultation, but I could not tell who the patient had been.

Cross-examination by MR. COLLINS:

Q. What connection have you had with the hospitals of Jersey City?

A. I was connected for several years with St. Francis Hospital and with the Charity Hospital since its organization, and with Christ's Hospital; I am on the consulting staff there.

Q. Is there anything in the Houston family of a syphilitic taint, or acute syphilis?

A. I think not, I have never discovered any.

Q. This boy has never had syphilis that you know of?

A. Not to my knowledge.

Q. A doctor has said that catching cold might pro-

duce Pott's disease, what do you think about that?

A. When it comes to that, any disease which tends to produce debility may be a predisposing cause.

Q. If I understand you right the last you know of the child before his fall he was a strong robust child?

A. He was when I saw him with the scalp wound.

THEODORE R. VARICK, being recalled, testifies as follows:

Q. Do you remember being asked the question last Friday, "What is your opinion as to the relative proportion of Pott's disease of the spine resulting from injuries and from other causes?" Now I wish to read the answer and then ask you whether you desire to make any corrections?

A. Allow me to have the testimony and I will read the part I wish to correct. (It is handed to the witness.) The answer was not perfect before. In the first place I have never seen a case that was traceable to injury, and secondly in Page is recorded 234 cases of injuries to the spine, and then there should be interpolated there "And other parts of the body by railroad collisions." I don't know how that got in. I don't think that is part of my testimony. Direct blows from carriages, accidents et cetera.

Defendant offers in evidence a photograph of the premises taken recently.

JUDGE KNAPP'S CHARGE.

Gentlemen of the Jury:

The plaintiff is here seeking to be compensated for injuries to his person brought about, as is contended, by the culpable negligence of the owner of the premises referred to on Newark avenue, in Jersey City. The injury occurred in April, 1871. The owner of the premises is long since dead and his estate has passed into the hands of the executors. This executor could not, if he would, compromise this claim with any safety to himself, and his duty calls upon him to defend. But a few years ago this action could not have been sustained against an executor. The then policy of the law required that all such controversies should be prosecuted and ended in the lifetime of the parties. The Legislature has deemed it wise to provide for the survival of such a claim, and now the executor of one who has by any tort injured another is liable to answer out of the estate for all damages. In such a suit the plaintiff would, before 1880, have been excluded as a witness. In that year an act was passed under which, with some restrictions, the privilege was first conferred upon such a plaintiff, and now suit may be maintained against an executor and the plaintiff may be a witness. The policy which denied the continuance of such a suit and precluded such a witness, although now changed, I think still serves to recall the reasons for its former existence and gives admonition to be prudently cautious under the new system in view of the difficulties and embarrassments that are possible or likely to arise in making a defense, and justifies in such a suit the exaction of clear proof of the facts essential to the claim against representatives. Counsel are entirely agreed in this case as to the general facts that are necessary to be proved in order to a recovery. The primary one to be estab-

lished is that the testator, or some one acting for him in the charge of these premises, caused the plaintiff to be injured by carelessness or neglect of some duty which the owner owed to the plaintiff. The testator owned and occupied the premises. On the sidewalk were grating-doors covering the stairway leading to the premises; one of the doors was open and the plaintiff fell down and received some injury. Was the manner in which these premises were then used in respect to this grating such as to endanger the safety of persons lawfully using the sidewalk? Such an arrangement, I think, is not a nuisance in itself, that is, to have an outside stairway leading to a basement, properly guarded. It is not an uncommon use of premises, and the city ordinances recognize such use of it by several restrictive provisions. But it is to be remembered that this structure is upon a public street and the sidewalk, to its entire width, is a part of the public street, where every one has a right to be, and in such a place an opening in the sidewalk is necessarily dangerous unless it be carefully guarded. Every one may presume the street and sidewalk to be safe from dangerous exposure, and if a proprietor open a sidewalk for his private purposes it is his duty to see that it is properly guarded, to protect the public from injury, and it is negligence if he fails in this duty. If this negligence works the hurt of another, liabiliy arises for the injury to such other to the extent that it is traceable to such negligence. I assume that the person injured at the time must be in the exercise of proper care under the circumstances. He must be free from any imputation of negligence, such as tended to work his own injury. Where a plaintiff receiving an injury from the negligence of another is himself in any material degree in fault or careless in a way that tends to his own injury, then it cannot be said that he suffers from the negligence of the defendant; it is an injury suffered from the negligence of the defendant and himself, and when these two

combine the law does not stop to measure the degree of carelessness or negligence that each is chargeable with, but denies all right of recovery to the party injured. This is a question that quite frequently arises in this class of cases, and is raised here, that is, whether the boy was in any degree chargeable with carelessness or want of such care as was suited to his age and which tended toward and contributed to his injury. The law is that where, in any material degree, the plaintiff, by want of care on his part, his default and negligence, conduces or contributes to his injury, although the defendant may have been negligent in what he did or omitted to do, the plaintiff cannot recover. The duty of the boy was to exercise such care there as a person of his age would be expected to exercise under the circumstances. If he failed in that, then, on the ground of contributory negligence, you would say he is not entitled to recover. If the defendant's testator was negligent and the boy was without fault, did not contribute to his injury, then there would be liability of the defendant to the extent of the injuries in consequence of that negligence. You, gentlemen, are to determine these questions. Did the owner of these premises, or those who were acting for him, exercise proper care for the protection of those who had a right to be upon this sidewalk? Did he guard against injuries of the kind that this boy suffered? Assuming that the structure was rightfully there if properly guarded, did he so guard it that the public who had a right to be upon the sidewalk (this boy had a right to be there) were sufficiently protected against the danger of receiving injury at this place? If there was no negligence, that is an end of this case. If there was negligence, then you proceed to the other question, whether the boy exercised such care as, under the circumstances, was required of one of his age. If he did not, then that would end the case. If he did, then you would proceed to the other question, the amount of injury that was the result of the

fall. If the fall of the plaintiff was through culpable negligence of the defendant's testator, and the boy is not chargeable with faulty, contributing, negligence in one of his age, then for the injury, resulting directly or approximately from the negligent conduct of the owner, compensation must be made. The plaintiff by that fall received a hurt upon the head. Of that there is no dispute, and he suffered pain. It was an injury for which he would be entitled to compensation. The amount of damages will be determined by the jury upon what would be a reasonable sum to compensate for that injury. No serious injury resulted to the head by reason of the fall; there was nothing in the nature of that wound that was permanent; it healed, and so far as we know no direct injury of serious moment came from that and consequently for that the measure of damages could not be large. The important question on this matter of damage and the one that creates the chief controversy is whether the serious injury to the spine was caused by the fall and the question to be determined here is, Is there between the fall and the spine trouble, the Pott's disease, the clear relation of cause and effect? Is it manifest by the evidence that this fall caused the disease? This must be founded not upon mere conjecture and speculation but it must be established by the evidence. Because the plaintiff had a fall and hurt his head unless the spine disease was a necessary result—the fall and the spine disease alone don't justify a couclusion that the disease is the result of the fall; it must be traced to it; nobody contends that it is a necessary result; Is it traced by natural or necessary connection back to the first injury as that which caused it. This happened a long while ago. It is too late now to make surgical examinations which can aid in enlightment upon those facts which are regarded by some of the experts as the necessary, direct and immediate sequences of an injury that develops such a disease.

After this fall no skilled person traced the development of symptoms from the fall to a period of nine months and over, when as I understand Dr. Lutkins now to say this disease was not only developed but established, if not already cured. So, that the determination of the existence of these facts, the necessary development symptoms to show that there had been adequate injury to the spine, to be the cause of the disease, such as medical men say would have shown themselves by obs rvation; is only to be made upon statements of the recollection of persons not skilled in observing and given you after a lapse of thirteen or fourteen years.

The plaintiff must prove his case. He must establish the relation of cause and effect between the alleged negligence and the later developments, and if there is wanting evidence to satisfy and convince the judgment that this disease was the result, although it be because of the long time elapsing or because of the failure to have proper examination made at the time that is the misfortune of the plaintiff, not the defendant. The plaintiff must present to you evidence satisfactory and sufficient to justify the claim he makes. I am speaking now of the spine disease. For the other there is no doubt that if there is negligence of the defendant and care on the part of the plaintiff the injury to the head is one that can be compensated for. The difficulty is with the other. Now, absolute demonstration perhaps in such a case is never possible. It is not exposed to the senses, it could not be determined with absolute certainty that the fall caused the disease, but the evidence should be so clear that just inferences from facts and circumstances proved satisfy and convince the judgment that the disease was the actual outcome of the fall. It is far from sufficient to prove the existence of the disease to be the possible result of the fall. So far as the testimouy of the experts upon that point goes, it is of very little consequence. It may be possible that is not enough; nay, even to

show that it was probable, is not enough to establish the claim. The question is: Did it, or must it have proceeded from the fall? That is not to be gathered by conjecture but by tangible proof. You may infer it, and must from circumstances, circumstances that clearly point to it, or that exclude the presence or existence of any other cause, and this you see is quite a different line of inquiry, for a fall may cause it, or any injury to the parts may cause it, and while we have this injury the mind still necessarily inquires how many other injuries may have been received and forgotten arising from other sources equally liable to cause the same thing. And this inquiry is more perplexing at this late day. It was a boy six years of age, at a time when he would scarcely have been competent to testify at all, and his testimony now is rested upon the knowledge or recollection of facts at this long period; whether it was the fall or other cause. Whether between April, 1871, and January, 1872, the boy might not have received some other injury as likely to be the origin of his trouble—it is a question for the jury under all the circumstances of the case.

You are necessarily called upon to depend, in a large degree, upon the testimony of experts, and I think it is manifest to every one that there is embarrassment on the part of those who come here to speak of this case arising from the fact that no one of skilled knowledge was permitted to make examinations at times when these marks and symptoms which usually attend the development of disease from injury were to be met. We must depend upon hypotheses and to some extent many of the facts in these hypotheses are of a vague character, and out of these the surgeon must form his opinion. The experts are not at one in their judgment. With one class the idea seems to be that a fall is entirely an unimportant factor in the development of this disease, that it results from some weakened condition of the system or constitutional taint,

strumous habit of body. The other class seem to hold that the constitutional condition is of very little moment in determining the origin of this disease, that it wholly arises from concussion, local injury, resulting in lesion, or tearing or breaking of the parts. Perhaps it may due to both. But in one thing the medical men seem pretty well to agree, and that is if lesion or injury of the vertebrae lies at the seat of the disease such injury, concussion or lesion is attended with immediate localized pain, localized at the point of injury, and manifested as well at the extremity of nerve distribution, starting from the spine at the point of injury; that these manifestations are immediately observed in expressions of pain, that they are continuous following along in a steady development till the disease appears and runs its course. These symptoms if they existed must be found from the statement of those who attended the boy at the time. They were not marked by the observation of men skilled to judge. Nine months elapsed between the fall and the discovery of the existence of the disease by one who could determine what it was. Was there such concurrence of facts in such order and connection showing development and culmination of disease and within such time as necessarily refers the disease back to the fall as a cause. That is a matter that you gentlemen have to determine.

Counsel have fully discussed before you the different views of the evidence bearing upon this question; it is for you to determine the fact. I say to you, if you find this disease to be the product of the fall, it must not be upon mere guess or conjecture, it must be upon evidence you can rest upon, evidence that satisfies your judgment and upon which you can say that the disease is the consequence of the fall. If you can do that, then that becomes a part of the damage.

In determining what amount of money shall compensate in either view, must be left in a large degree

in such a case as this to the discretion of the jury. If the more serious injury was the result of the fall, and the estate of the decedent stands liable for the damage, then inasmuch as but one suit can be brought for an injury of this kind, all damage which is the necessary outcome of the injury is to be recovered now. If the consequences continue, estimation must be made for that. Damages in this case mainly embrace personal suffering, and, if the permanent injury is attributable to the accident, the diminution in the power of the plaintiff to enjoy life and to provide for it also. It must be a money compensation. It shold be reasonable and not excessive. To this yon are to bring your careful judgment. Avoid the natural effect of sympathy which we all feel for one so afflicted, and simply consider what is a proper sum to be paid to him under the circumstances by one who meant no intentional wrong. Nobody pretends that against this boy the owner of these premises ever had any other than good feeling. The fall was the result of oversight and accident. It is not a case for punishment; it is simply one for compensation. Take the case, geutlemen, and dispose of it.

Defendant prays exception to that part of the charge which held the defendant's estate, under these pleadings, was liable for all the consequences of this injury. In other words, to that part of the charge which differed from the contention of the defendant's counsel, that under this declaration plaintiff was limited to a recovery for the costs of injury therein stated.

The Court: I intended to include all prospective damages, and I will add to my charge what I said on that, so that counsel may have the benefit.

Therefore to try the issue above joined let a jury come before the said Circuit Court at Jersey City aforesaid on the sixth day of May as yet of the term of April in the year of our Lord one thousand eight hundred and eighty-five, who neither &c. by whom &c to recognize &c. because as well &c. the same day is given to the parties aforesaid, at which day before the said Circuit Court come the said parties by their attorneys aforesaid and the jurors of the jury above mentioned also come who to speak the truth of the matter aforesaid being chosen, tried and sworn, say upon their oath that the said defendant is guilty of the trespass aforesaid, and they assess the damages of the plaintiff by reason of the premises, eight thousand dollars over and above his costs and charges by him about his suit in this behalf expended.

Therefore it is considered that the said plaintiff doth recover against the said defendant his damages aforesaid by the jurors aforesaid in form aforesaid assessed and also one hundred and two dollars and three cents for his said costs and charges by the said Court now here adjudged to the said plaintiff and with his assent, which said damages costs and charges in the whole amount to eight thousand one hundred and two dollars and three cents.

And the said defendant in mercy, &c.

Judgment signed May 15th, 1885.

M. M. KNAPP,
Judge.

HUDSON CIRCUIT COURT.

AUTHUR L. HOUSTON; v. HENRY TRAPHAGEN, Ex'r of John Levy, dec'd.	*In Trespass.* *Exceptions.*

COLLINS & CORBIN, Atty's. for Plaintiff.

H. M. T. BEEKMAN, Atty. for Defendant.

Be it remembered that on the sixth day of May in the year of our Lord one thousand eight hundred and eighty-five. at a Circuit Court held at Jersey City in and for the County of Hudson before his Honor Manning M. Knapp, Esquire, Judge of our said Court the issue joined in the above stated cause between the said parties (pro ut the pleadings) came on to be tried by a jury for that purpose duly empaneled and whereupon the attorneys of the said plaintiff offered the evidence on part of said plaintiff.

And thereupon the defendant by his counsel prays an exception to the ruling of the Justice who tried said cause at the trial thereof, when the plaintiff had rested his case refused upon application of defendant to nonsuit said plaintiff, to which ruling and decision defendant's counsel prays an exception, and that this bill his of exceptions may be sealed and it is sealed accordingly.

M. M. KNAPP,
J. S. C.

[SEAL]

And thereupon the defendant by his counsel prays an exception to the ruling of the Justice who tried said cause at the trial thereof when he ruled that the

following question asked by counsel for plaintiff of Lewis A. Sayre a witness on part of plaintiff, was a proper one, viz :

"A boy whose picture I will show you at the age of two years, except that it is colored by hand, and the natural photograph taken at the age of five years ; when he is six years of age he falls down a cellar-way from a point over a portion of the cellar-way that is covered ; upon steps which go downward from the sidewalk directly under the building ; he just before the fall having stood facing the building ; he is picked up at the bottom unconscious ; the steps are stone steps ; he immediately recovers consciousness ; the only injury noticed is that shown by the scar now indicated to you, which was then a bleeding wound ; that wound is dressed ; nothing further is done ; it is not supposed that he is otherwise injured ; his back is not observed by any one or complained of by him, nor is any other complaint made by him ; afterwards, at a time somewhat uncertain according to the memory of witnesses, but within four months for an outside limit, he begins to complain of severe pain in the front of the body under the ribs on the right side ; he begins to lose flesh, does not have a desire to play, will drop on his knees to pick up articles from the floor ; is taken to the country for two months ; on returning his general health seems to be somewhat depressed ; at a subsequent date, the time not fixed, but inside of nine months, a slight protuberance is noticed in the back betweed the shoulders ; towards the end of this period, the time a little indefinite, he begins to walk with one shoulder higher than the other, the left shoulder beirg the higher I think ; that finally becomes permanent, at the end of nine months, or a little shorter, a plainly developed case of Pott's disease with lateral curvature is discovered by a physician ; the boy then undergoes treatment, mechanical treatment by processes such as you see in court here, crutch attachment (the same being shown to the witness) and

the result is, as is apparent in plaintiff's case; no proof is given of any scrofulous diathesis; the family history of both parents does not point to any such tendency; no other fall or injury is known to the boy's parents or to the boy himself. What in your opinion is the cause of the Pott's disease and consequent angular curvature of the spine?" To which ruling of the Court in allowing said question to be asked the defendant's counsel prays an exception, and that this bill of exceptions may be sealed and it is sealed accordingly.

M. M. KNAPP,
J. S. C.

[SEAL]

And thereupon defendant by his counsel prays an exception to the ruling of the Justice who tried said cause at the trial thereof when he ruled that the following question asked by counsel for plaintiff, was a proper question, viz:

"From the description I have given you of the stairway and the position of the boy before the fall, and the result seen on his head, the position he was found in at the foot of the stairs, is it probable that he could have fallen down that hole without receiving other injury than just that scalp wound."

To which ruling of the court in allowing said question to be asked the defendant's counsel prays an exception, and that his bill of exception may be sealed and it is sealed accordingly.

M. M. KNAPP,
J. S. C.

[SEAL]

And thereupon defendant by his counsel prays an exception to the ruling of the Justice who tried said

cause at the trial thereof when he ruled that the following question asked by counsel for plaintiff of John W. Hunt a witness on part of plaintiff was a proper question, viz :

" To what would you attribute that disease" (meaning caries of the spine, commonly called Potts'disease) —to which ruling and decision of the court in allow-

The defendant's counsel also prayed an exception to so much of the charge of the Court to the jury as instructed the jury that under the proceedings in the cause the plaintiff could recover now all damages which is the necessary outcome of the injury ; that if the consequences continued estimation must be made for that ; that damages in this case mainly embrace personal suffering, and if the permanent injury is attributable to the accident, the dimunition in the power of the plaintiff to enjoy life, to provide for it also ; that such damages include all prospective damages, and that his said exception may be sealed, and it is sealed accordingly.

[L. S] M. M. KNAPP,
Judge Supreme Court.

ARTHUR L. HOUSTON who sues by his next friend, &c.,
Def't in Error.
} *Assignment of Errors.*

30

Afterwards, that is to say, on the sixth day of July, in the year of our Lord, one thousand eight hundred and eighty-six, in the Court of Errors and Appeals in the last resort in all causes of New Jersey, comes the said Henry Traphagen, Executor of the Estate of John Levy deceased, by H. M. T. Beekman his attorney and says, that in the matter recited and contained in the said bill of exceptions, and also giving
40 the verdict and judgment aforesaid, there is manifest

cause at the trial thereof when he ruled that the following question asked by counsel for plaintiff of John W. Hunt a witness on part of plaintiff was a proper question, viz :

" To what would you attribute that disease" (meaning caries of the spine, commonly called Potts'disease) —to which ruling and decision of the court in allowing said question to be asked the defendant's counse prays an exception, and that this, his bill of exception may be sealed, and it is sealed accordingly.

M. M. KNAPP,
J. S. C.

[SEAL]

NEW JERSEY COURT ON ERRORS & APPEALS

HENRY TRAPHAGEN, Executor, &c.,
Pl't'ff. in Error.

v.

ARTHUR L. HOUSTON who sues by his next friend, &c.,
Def't in Error.

In Trespass.

Assignment of Errors.

Afterwards, that is to say, on the sixth day of July, in the year of our Lord, one thousand eight hundred and eighty-six, in the Court of Errors and Appeals in the last resort in all causes of New Jersey, comes the said Henry Traphagen, Executor of the Estate of John Levy deceased, by H. M. T. Beekman his attorney and says, that in the matter recited and contained in the said bill of exceptions, and also giving the verdict and judgment aforesaid, there is manifest

error in this, to wit: That the said Justice before whom said issue was tried, at the trial thereof ruled out legal evidence offered by the defendant (the plaintiff in error) to which rejection the defendant objected, and by which he was injured; and whereas by the law of the land said Justice ought not to have ruled out said evidence and should have admitted the same.

There is a manifest error in this, to wit: That the said Justice who tried, said cause at the trial refused upon application of defendant to non-suit said plaintiff, to which ruling said defendant excepted and by which ruling said defendant was injured; and whereas by the law of the land the said Justice should not have so ruled, but on the contrary should have non-suited said plaintiff.

There is manifest error in this, to wit: That the said Justice who tried said cause at the trial thereof ruled that this question (Lewis H. Sayre). "A boy whose picture I will show you at the age of two years, except that it is colored by hand, and the natural photograph taken at the age of five years; when he is six years of age he falls down a cellarway from a point over a portion of the cellarway that is covered; upon steps which go downward from the sidewalk directly under the building: He just before the fall having stood facing the building: He is picked up at the bottom, unconscious; the steps are stone sleps; he immediately recovers consciousness; the only injury noticed is that shown by the scar now indicated to you, which was then a bleeding wound; that wound is dressed; nothing further is done; it is not supposed that he is otherwise injured, his back is not observed by any one or complained of by him, nor is any other complaint made by him; afterwards at a time somewhat uncertain according to the memory of witnesses, but within four months for an outside limit, he begins to complain of severe pain in the front of the body under the ribs on the right side; he begins to lose flesh, does not have a

desire to play, will drop on his knees to pick up articles from the floor; is taken to the country for two months; on returning his general health seems to be somewhat depressed; at a subsequent date, the time not fixed, but inside of nine months, a slight protuberance is noticed in the back between the shoulders; towards the end of this period, the time a little indefinite, he begins to walk with one shoulder higher than the other, the left shoulder being the higher I think; that finally becomes permanent, at the end of nine months, or a little short, a plainly developed case of Potts' disease with lateral curvature is discovered by a physician; the boy then undergoes treatment, mechanical treatment by processes such as you see in Court here, crutch attachment (the same being shown to the

There is manifest error in this to wit: that the said Justice who tried said cause, at the trial thereof, charged and instructed the jury that under the proceedings in the cause the plaintiff could recover now "all damages which is the necessary outcome of the injury; that if the consequences continued, estimation must be made for that; that damages in this case mainly embrace personal sufferings, and if the permanent injury is attributable to the accident—the dimunition in the power of the plaintiff to enjoy life, to provide for it also, and that such damages include all prospective damages" to which charge and instruction the defendant objected, and by which charge he was injured and whereas by the law of the land the said Justice should not have so charged and instructed the jury.

seen on his head; the position he was found in at the foot of the stairs, is it probable that he could have fallen down that hole without receiving other injury than just that scalp wound," was a proper question; to which ruling the defendant objected and by which ruling he was injured; and whereas by the law of the land the said Justice should not have so ruled, but on

desire to play, will drop on his knees to pick up articles from the floor; is taken to the country for two months; on returning his general health seems to be somewhat depressed; at a subsequent date, the time not fixed, but inside of nine months, a slight protuberance is noticed in the back between the shoulders; towards the end of this period, the time a little indefinite, he begins to walk with one shoulder higher than the other, the left shoulder being the higher I think; that finally becomes permanent, at the end of nine months, or a little short, a plainly developed case of Potts' disease with lateral curvature is discovered by a physician; the boy then undergoes treatment, mechanical treatment by processes such as you see in Court here, crutch attachment (the same being shown to the witness) and the result is, as i apparent in plaintiff's case; no proof is given of an scrofulous diathesis; the family history of both pa rents does not point to any such tendency; no othe fall or injury is known to the boy's parents or to th boy himself. What in your opinion is the cause o the Potts' disease and the consequent angular curv ture of the spine?" to be a proper question to whic ruling the defendant objected, and by which ru ing he was injured; and whereas by the law o the land the said Justice should not have so rule but on the contrary should not have permitted sai question to be asked.

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the contrary should not have permitted said question to be asked.

There is manifest error in this, to wit: that the said Justice who tried said cause at the trial thereof ruled that this question (John W. Hunt) "To what would you attribute that disease" (meaning caries of the spine commonly called Potts' disease) was a proper question; to which ruling the defendant objected and by which ruling he was injured; and whereas by the law of the land the said Justice should not have so ruled, but on the contrary should not have permitted said question to be asked.

Therefore, the said Henry Traphagen, Executor of the Estate of John Levy, deceased, Pray that the judgment aforesaid by reason of the aforesaid errors and of other errors appearing in the record and proceedings aforesaid, be reversed, annulled and for nothing holden, and that the said Arthur L. Houston, who sues, etc., may rejoin to the said errors, etc.

H. M. T. BEEKMAN,
Attorney for Plaintiff in Error.

(Formal joinder in Error filed by Defendant in Error.)

This is the order of witnesses. You have the first day:

Alfred A. Lutkens.
Dr. Hunt.
Eva Houston.

Third Day's Proceedings.

Grace W. Houston.
Eliza J. Houston.
Dr. Hugh Cahill.

Arthur Houston recalled.
Isaac Houston "
Nicholas D. Wortendyke.
Plaintiff Rests.
Motion to non suit.
Dr. Stephen Smith.
John E. Scott.
Dr. Varick.

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Fourth Day's Proceedings.

Nicholas D. Wortendyke recalled by defense.
Dr. Cropper.
Dr. Reeve.
Dr. Lutkens recalled.
Dr. Varick recalled.

Evidence closed.