

INDEX

	Page
Affidavit of Robert V. Carton	1
Writ of Certiorari	8
Allocatur	9
Return to Writ	9
Employee's Claim Petition for Compensation	10
Respondent's Answer to Employee's Claim Petition	15
Testimony	19
Certificates	68, 113, 126, 179
Interrogatories Propounded to Captain Samuel Edelson on Behalf of the Respondent	180
Interrogatories Propounded to Captain Samuel Edelson on Behalf of the Petitioner	182
Determination and Judgment of Workmen's Compensation Bureau	187
Notice of Appeal to Common Pleas	189
Order of Extension	191
Order Fixing Date of Hearing	192
Opinion of Common Pleas Court	193
Determination of Facts and Rule for Judgment of Common Pleas Court	200
Reasons	205
Notice of Argument in Supreme Court	209
Opinion of New Jersey Supreme Court	210
Order of Reversal and Remittitur	215
Notice and Grounds of Appeal	217
Notice of Argument	218

WITNESSES FOR PETITIONER.

Charles Glanton:	
Direct	19
Cross	25
Redirect	64
Recross	66

	Page
Dr. Charles Philamore Bailey:	
Direct	69
Cross	80
Redirect	96
Dr. Oscar V. Batson:	
Direct	100
Cross	107
Redirect	108
Recross	111
Dr. George Edward Meehan:	
Direct	172
Cross	174

WITNESSES FOR RESPONDENT.

Joseph A. Shafto:	
Direct	114
Cross	116
Raymond Bearmor:	
Direct	117
Cross	118
Redirect	121
Fred W. Smith:	
Direct	122
Cross	124
Redirect	125
Recross	125
Dr. Joseph G. Villapiano:	
Direct	129
Cross	131
Dr. A. Wilbur Duryee:	
Direct	133
Cross	150
Redirect	153
Recross	153

	Page
Dr. Louis Albright:	
Direct	155
Cross	165
Redirect	171
Recross	171

WITNESSES IN REBUTTAL.

Charles Glanton:	
Direct	175
Cross	176

EXHIBITS.

	Off'd Page	P't'd Page
R-1—Letter—Dr. Bailey to Dr. Herrman	172	184

Affidavit of Robert V. Carton.

New Jersey Supreme Court

ON APPLICATION FOR CERTIORARI.

CHARLES GLANTON, 10
Petitioner-Defendant,

vs.

JOSEPH A. SHAFTO,
Respondent-Prosecutor.

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

ROBERT V. CARTON, of legal age, being duly sworn, according to law, upon his oath, deposes and says: 20

1. That I am a counsellor-at-law of the State of New Jersey, and am a member of the firm of Durand, Ivins & Carton, who are attorneys representing Joseph A. Shafto, prosecutor in the above matter.

2. On January 18th, 1943, Charles Glanton filed a claim petition with the Workmen's Compensation Bureau alleging that he sustained temporary and permanent disability as the result of an accident on December 8th, 1941, while he was in the act of lifting up on end drums of alcohol in his employer's garage. 30

3. An Answer having been duly filed by the respondent on February 17th, 1943, denying each and every allegation of the claim petition the cause came on for a hearing before the Honorable Harry H. Umberger, Deputy Commissioner 40

Affidavit of Robert V. Carton.

of the Workmen's Compensation Bureau at the Asbury Park District on the 13th day of April, 1943. The testimony was taken in this case on April 13, 1943, April 27th, 1943, May 25th, 1943, and June 8th, 1943. On the 12th day of August, 1943, the said Deputy Commissioner made the following Determination of Facts and Rule for Judgment:

“This matter came on for determination in the presence of Joseph F. Mattice, attorney for petitioner and Durand, Ivins & Carton, Robert V. Carton, of counsel, Attorney for respondent on petition filed January 18, 1943 and answer filed February 17, 1943.

“I have carefully considered all the evidence submitted in this matter by both parties litigant and from the same do find and determine as follows:

“That the petitioner did on the 8th day of December, 1941 incur personal injuries by accident arising out of and in course of his employment with respondent; that the respondent had due notice or knowledge of said injuries; that the petitioner's wages at the time of the accident were \$22 per week and that his compensation rate is \$14.67 per week; that as a result of said accident petitioner was temporarily disabled from January 17, 1942 to and including November 23, 1942, a period of 43 4/7 weeks; that as a result of said accident petitioner sustained a permanent disability of 66 2/3 per cent of total due to internal injuries in the nature of a thrombosis of the vena cava; that the medical services rendered petitioner by Dr. Oscar V. Batson were necessary and proper and his bill for the same of \$300 is properly chargeable to respondent as is that of Dr. Charles P. Bailey of \$745 and Dr. Lowell L. Laine of \$25 and The Hahne-man Hospital of \$221.

Affidavit of Robert V. Carton.

“It is, therefore, on this 12th day of August, 1943, ORDERED that judgment final be entered in favor of the petitioner and against the respondent, and that respondent make payment as follows:

“To petitioner for temporary compensation $43 \frac{4}{7}$ weeks at \$14.67 per week totalling \$639.19 and for permanent disability of $66 \frac{2}{3}$ per cent of total, $333 \frac{1}{3}$ weeks compensation at \$14.67 per week, totalling \$4890. 10

“It is further ORDERED that respondent pay bill of Fitkin Memorial Hospital and the doctors who treated petitioner; to Dr. Charles P. Bailey for treatment \$745; Dr. Oscar V. Batson for treatment \$300; Dr. Lowell L. Laine \$25 for treatment; The Hahneman Hospital \$221 for treatment; Dr. George E. Meehan \$25 for testimony; petitioner’s attorney \$600 as counsel fee and the court reporter’s attendance fees. 20

“It is further ORDERED that petitioner pay Dr. Charles P. Bailey \$50 and Dr. Oscar V. Batson \$50 for their testimony; Dr. George E. Meehan \$15 for examinations and to his attorney \$300 as counsel fee.”

4. Thereafter, the respondent below, prosecutor herein, filed a notice of appeal to the Court of Common Pleas in and for the County of Monmouth in accordance with the provisions of the statute in such case made and provided. 30

5. The matter having been duly noticed for argument before the Honorable J. Edward Knight, the matter was on agreement submitted on briefs; thereafter the matter was transferred by the Honorable J. Edward Knight to the Honorable John C. Giordano, a Judge of the Monmouth County Court of Common Pleas. Thereafter the Honorable John C. Giordano, Judge as aforesaid, rendered a decision affirming the judg- 40

Affidavit of Robert V. Carton.

ment of the Workmen's Compensation Bureau, and on the 8th day of May, 1944, entered a judgment in favor of the petitioner in which he held:

10 “2. This Court has filed an Opinion affirming judgment of the court below and for the reasons therein contained it was found that:

 “(a) The petitioner was employed by the respondent at his service station, that he was employed as a handyman and mechanic's helper, and had been employed as such for approximately one year prior to Dec. 8, 1941;

 “(b) That the petitioner, at the time of the injury, received for his services wages amounting to \$22 per week at the compensation rate of \$14.67;

20

 “(c) That on Dec. 8, 1941, petitioner sustained personal injuries as the result of an accident, that the said accident occurred while the petitioner was putting on end 50-gal. drums of alcohol, and that the said accident arose out of and in the course of the petitioner's employment;

 “(d) That the respondent had actual notice of the occurrence of said injury;

 “(e) That as the result, the petitioner suffered internal injuries in the nature of a thrombosis of the vena cava, that said injuries caused the petitioner temporary disability from Jan. 17, 1942 to Nov. 23, 1942, a period of 43 $\frac{4}{7}$ weeks, for which petitioner is entitled to be paid at the compensation rate of \$14.67 per week, totalling the sum of \$639.19, that he had a permanent disability of 66 $\frac{2}{3}$ % of total which entitles him to compensation for a period of 333 $\frac{1}{3}$ weeks at the compensation rate of \$14.67 per week, or a total of \$4,890;

30

 “(f) That the petitioner incurred medical and hospital expenses and incurred fur-

40

Affidavit of Robert V. Carton.

ther expenses for an operation, examinations, and appearances in court, and the following amounts will be assessed against the respondent:

“Dr. Oscar V. Batson for treatment, \$300;

“Dr. Charles P. Bailey for operation and treatment, \$745; 10

“Dr. Lowell L. Laine for treatment, \$25;

“Hahneman Hospital, \$221;

“Fitkin Memorial Hospital, a reasonable bill;

“Dr. George E. Meehan for testimony, \$25;

“(g) The following expenses will be assessed against the petitioner:

“Dr. Charles P. Bailey, for testimony, \$50;

“Dr. Oscar V. Batson for testimony, \$50;

“Dr. George E. Meehan for examinations, \$15; 20

“(h) The legal advisor of the petitioner is entitled to a legal fee in the sum of \$900, \$600 of which will be assessed against the respondent and \$300 against the petitioner;

“(i) The stenographic fee will be assessed against the respondent;

“(j) Counsel for the petitioner will receive an additional allowance for counsel fee for appeal herein, in the sum of Five Hundred Dollars (\$500.00) to be paid Joseph F. Mattice by the respondent, in the sum of (\$300.00) and by the petitioner in the sum of \$200.00). 30

“It is, therefore, on this 8th day of May, 1944, ORDERED that judgment final be entered in favor of the petitioner, Charles Glanton, against the respondent, Joseph A. Shaf-to, as follows:

“For temporary disability from Jan. 17, 1942, to Nov. 23, 1942, or 43 4/7 weeks at 40

Affidavit of Robert V. Carton.

the compensation rate of \$14.67 per week, totalling \$639.19;

“For permanent disability 66 2/3% of total or 333 1/3 weeks at the compensation rate of \$14.67 per week, totalling \$4,890;

“To Dr. Oscar V. Batson for treatment, payable by respondent, \$300;

10 “To Dr. Charles P. Bailey for treatment, payable by respondent, \$745;

“Dr. Lowell L. Laine, payable by respondent, the sum of \$25;

“To Hahneman Hospital, payable by respondent, \$221;

“To Fitkin Memorial Hospital, payable by respondent, a reasonable bill;

“To Dr. George E. Meehan for testimony, payable by respondent, \$25;

“To Dr. Charles P. Bailey for testimony, payable by petitioner, \$50;

20 “To Dr. Oscar V. Batson for testimony, payable by petitioner, \$50;

“To Dr. George E. Meehan for examinations, payable by petitioner, \$15;

“To Joseph F. Mattice, attorney for petitioner, as counsel fee, payable by respondent, \$900;

“To Joseph F. Mattice, attorney for petitioner, as counsel fee, payable by petitioner \$500;

“Stenographic costs payable by respondent.”

30

5. The prosecutor of this writ, Joseph A. Shafto, respectfully contends that the judgment of the Workmen's Compensation Bureau and the judgment of affirmance by the Monmouth County Court of Common Pleas was error as a matter of law and fact, and respectfully shows unto this Honorable Court that the affirmance of said judgment by the Court of Common Pleas has deprived him of substantial justice and has placed upon

40

Affidavit of Robert V. Carton.

him the onus of a claim for which he is neither legally nor morally responsible.

6. Section 34:15-66 of the Revised Statutes specifically states "Nothing herein contained shall be construed as limiting the jurisdiction of the Supreme Court to review questions of law and fact by certiorari." 10

7. The prosecutor, Joseph A. Shafto, is not in laches in making his application for a writ of certiorari, and has complied with all conditions precedent to his right of review.

THEREFORE, it is respectfully submitted that a writ of certiorari should be granted to the prosecutor herein to review the proceedings had in this matter in the court below.

ROBERT V. CARTON. 20

Sworn and subscribed to before me
this day of June, 1944.

30

40

Writ of Certiorari.

New Jersey, ss. The State of New Jersey to the
Court of Common Pleas in and for
the County of Monmouth, and J.
(Seal) Russell Woolley, Clerk of said Court,
and Charles Glanton, GREETING:

10 We being willing for certain reasons to be cer-
tified of and concerning a certain determination
and judgment rendered on the 8th day of May,
1944, by the Honorable John C. Giordano, Judge
of the Court of Common Pleas in and for the said
County of Monmouth, in a certain proceeding
brought on behalf of Charles Glanton, Petitioner,
against Joseph A. Shafto, Respondent, under an
Act of Legislature of the State of New Jersey
known as the Workmen's Compensation Act, we
20 command you, the said Court of Common Pleas
in and for the County of Monmouth and J. Rus-
sell Woolley, Clerk of the said Court, that the
said determination and judgment, together with
a transcript of the evidence and all proceedings
for the making of the same and all things touch-
ing and concerning the same, as fully and entirely
as before you there remain, or are in your cus-
tody and control, you do certify and send together
with this Writ, to our Justices of our Supreme
30 Court of Judicature at Trenton, on the 15th day
of July, 1944, that therein may be caused to be
done what of right and according to law ought to
be done.

WITNESS, the HONORABLE THOMAS J. BROGAN,
Chief Justice of our said Supreme Court, at
Trenton, this 14th day of June, 1944.

JAMES J. GAVIN,
Clerk.

40 DURAND, IVINS & CARTON,
Attorneys.

Allocatur.

This Writ is allowed. Let it be sealed.

Dated: June 12, 1944 and return date extended on July 5, 1944 to July 15th, 1944.

JOSEPH B. PERSKIE,
Justice of the Supreme Court.

10

Return to Writ.

*To the Honorable Justices of the Supreme Court
of Judicature of New Jersey:*

In obedience to the command of this writ, directed to the Court of Common Pleas of the County of Monmouth and State of New Jersey, and the undersigned, Judge of said Court, the petition of Charles Glanton against Joseph A. Shaf-
to, and the proceedings and orders and all things touching and concerning the same, to the Honorable Judges of the Supreme Court of Judicature at Trenton, at the time and place within mentioned, we do certify and send as we are com-
manded.

20

IN WITNESS WHEREOF, I, John C. Giordano, Judge of the Court of Common Pleas of the County of Monmouth, have hereunto set my hand and caused the seal of this Court to be affixed this Eleventh day of July, one thousand nine hundred and forty-four.

30

(Seal)

JOHN C. GIORDANO,
Judge of the Court of Common
Pleas of the County of Monmouth.

Attest:

J. RUSSELL WOOLLEY,
Clerk.

40

Return to Writ.

Employee's Claim Petition for Compensation.

Filed January 18, 1943.

NEW JERSEY DEPARTMENT OF LABOR

WORKMEN'S COMPENSATION BUREAU

10

CHARLES GLANTON,
Petitioner,

vs.

JOSEPH A. SHAFTO,
Respondent.

Received at Trenton Jan. 18, 1943.

Claim Petition No.

20

Date of Accident 12-8-41.

If known, state name of insurance company
Ohio Casualty Ins. Co. Mt. Holly, N. J.

Attorney for Petitioner (Name) Joseph F. Mat-
tice, (Address) 702 Mattison Ave., Asbury Park.

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

30

Petitioner alleging that he sustained an acci-
dent arising out of and in the course of his em-
ployment with the respondent, respectfully states:

1. What is your name? Charles Glanton.
2. Where do you live? (Street Address) 1131
Mattison Avenue, (City or Town) Asbury
Park.
3. Sex Male. 4. Age 37. 5. Marital Status
Married.
6. By whom were you employed at the time of
the accident? (Name) Joseph A. Shafto,

40

*Return to Writ.**Employee's Claim Petition for Compensation.*

- (Business address) Corlies Ave. & Main St.,
(City or Town) Neptune.
7. What was the business of your employer?
Service station.
 8. Did you give written notice to your employer at the time you were hired, or later, that Article 2 of the Workmen's Compensation Law of New Jersey should not apply to you?
no. 10
 9. Did you receive such notice from your employer? no.
 10. Did your employer have knowledge of your injury? yes.
 11. If so, on what date? 12-8-41.
 12. Did you notify your employer of such injury? yes.
 13. If so, on what date? 12-8-41. 20
 14. What was your regular occupation? car washer and mechanic's helper.
 15. What kind of work were you doing at the time of accident? Heading up drum of alcohol.
 16. When did the accident happen? (State month, day, year and hour) 12-8-41.
 17. Where did the accident happen? On premises. 30
 18. What was the nature of the accident, and how did it happen? Was heading up drum of alcohol and felt a choking in my chest and throat.
 19. On what date were you compelled to stop work because of the injury? 1-17-42.
 20. On what date were you well enough to work again? Unable.
 21. If still disabled, on what date do you think you will be able to work? Don't know. 40

*Return to Writ.**Employee's Claim Petition for Compensation.*

22. Give nature of any injury from which you will recover.
23. Has any permanent injury resulted? If there has been amputation or loss of usefulness of any member or impairment of any physical organ, explain fully Superior vena caval thrombosis or thrombosis of strain.
- 10 24. Were your wages fixed by piece-work?
25. If so, what was your average weekly wage?
26. If wages were fixed by the hour, state rate per hour
27. Give number of hours in ordinary working day
28. Give number of days in an ordinary working week
- 20 29. State the amount of weekly wages \$22.00.
30. Have you been paid compensation? no.
31. If so, how much?
- Compensation rate
- Temporary Disability
- Permanent Disability
32. Has your employer promised to pay you any compensation? Yes.
33. If so, how much? to be determined.
34. Was medical aid required? yes.
- 30 35. Did you receive any medical, surgical or hospital service? medical.
36. Did you request your employer to furnish these services? yes.
37. Were they furnished? yes.
38. If so, between what dates? 1-17-42 to date.
39. If not, what sum did you expend for medical, surgical or hospital services?
40. Give name and address of physician and hospital Dr. Samuel Edelson, Corlies Ave.,
- 40

*Return to Writ.**Employee's Claim Petition for Compensation.*

Neptune; Dr. Chas. P. Bailey, 230 N. Broad St., Phila., Pa.

41. What other facts are there which you believe important?
 42. Have you made claim to your employer for compensation yes. 10

Your petitioner therefore prays that the Workmen's Compensation Bureau will determine the amount of compensation due your petitioner from said Respondent, under Revised Statutes of New Jersey, 1937, Title 34, Chapter 15, and the Acts supplemental thereto and amendatory thereof, and that our petitioner may be awarded his costs in this proceeding, and such other or further relief as may be proper.

20

And your petitioner will pray, etc.

CHARLES GLANTON.
 (Petitioner)

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

Charles Glanton of full age being duly sworn according to law, on his oath deposes and says: That he is the petitioner named in the foregoing petition; and that he has read the same and is familiar with the contents thereof; and that the matters and things therein set forth are true according to the best of his knowledge and belief. 30

CHARLES GLANTON.
 (Petitioner)

Subscribed and sworn to before me, this 16th day of January, 1943, at Asbury Park, N. J.

JOSEPH F. MATTICE,
 M. C. C. of N. J. 40

*Return to Writ.**Employee's Claim Petition for Compensation.*

(This affidavit may be sworn to before any person authorized to administer an oath.)

To the Respondent:

- 10 The foregoing claim petition has been presented by the petitioner to the Workmen's Compensation Bureau for hearing and determination in accordance with the provisions of the Workmen's Compensation Act. Unless an answer in duplicate is filed within ten days after the service of this notice, with the Secretary of the Bureau, in the State House at Trenton, the Petitioner will proceed with proof of claim according to law.

WORKMEN'S COMPENSATION BUREAU.

- 20 I, Daniel A. Spair, Secretary of the Workmen's Compensation Bureau, hereby certify the foregoing to be a true copy of the Petition filed in this cause.

DANIEL A. SPAIR,
Secretary, Workmen's Compensation
Bureau, New Jersey Department of Labor.

30

40

Return to Writ.

**Respondent's Answer to Employee's
Claim Petition.**

Filed February 17, 1943.

NEW JERSEY DEPARTMENT OF LABOR

WORKMEN'S COMPENSATION BUREAU

10

CHARLES GLANTON,
Petitioner,
vs.

JOSEPH A. SHAFTO,
Respondent.

Claim Petition No. 68067.

Received at Trenton Feb. 17, 1943.

20

Attorney for Respondent (Name Durand, Ivins
& Carton, (Address) 733 Mattison Ave., Asbury
Park, N. J.

In answer to Claim Petition filed in this cause
Respondent states:

1. Name of Respondent Joseph A. Shafto,
(Street Address) Corlies Ave. & Main Street,
(City or Town) Neptune, N. J.
2. Was the petitioner in your employ at the 30
time of the alleged accident? Yes.
3. State your business Service Station.
4. Did you receive written notice from the Pe-
titioner at the time of hiring, or later, that
Article 2 of the Workmen's Compensation
Law of New Jersey was not to apply to
him? No.
5. Did you give such written notice to him? No.
6. Did you have knowledge of an injury occur-
ring at the time alleged in the petition? No. 40

*Return to Writ—Respondent's Answer to
Employee's Claim Petition.*

7. If so, on what date?
8. Did you receive notice of an injury occurring at the time alleged in the petition? No.
9. If so, on what date?
- 10 10. What was the Petitioner's regular occupation? Car washer and mechanic's helper.
11. What kind of work was he doing at the time an accident is alleged to have occurred? Petitioner alleges that he was heading up drum of alcohol and felt a choking in his chest and throat.
12. Did the Petitioner sustain an accident arising out of the Petitioner's employment with the Respondent at the time alleged in the petition? No.
- 20 13. Did the Petitioner sustain an accident in the course of his employment with the respondent at the time alleged in the petition? No.
14. If the accident occurred on a date other than the one alleged in the petition, state the correct date
15. What was the nature of such accident, and how did it happen? See Answer to No. 11.
16. On what date was the Petitioner compelled to stop work because of injury?
- 30 17. On what date was the Petitioner well enough to work again?
18. If still disabled, on what date do you estimate he will be able to work?
19. Give your understanding of the nature of any injury from which he should recover
20. Give your understanding of any permanent injury which has resulted. If there has been amputation or loss of usefulness of any member or impairment of any physical organ,
- 40 explain fully

*Return to Writ—Respondent's Answer to
Employee's Claim Petition.*

21. Were the wages fixed by piece-work?
22. If so, what was the average weekly wage of the Petitioner?
23. If wages were fixed by the hour, state rate per hour
24. Give number of hours in an ordinary working day 10
25. Give number of days in an ordinary working week
26. State the amount of weekly wages
27. How much money have you paid the Petitioner as compensation (not including medical aid) since the accident?
Temporary Disability
Permanent Disability
Compensation Rate 20
28. Have you promised to pay compensation?
29. If so, how much?
30. Was medical aid required?
31. Were you requested to supply the necessary medical services required by law?
32. Did you furnish this service?
33. If so, between what dates?
34. If not, give reasons for failure to do so
35. Give name of physician and hospital rendering service at your direction 30
36. What other facts are there which you believe important?
37. If you deny that compensation is payable in this case explain your reasons for this conclusion. The failure of the respondent to answer any of the questions left unanswered herein is not an admission, but the respondent leaves the petitioner to his proof. Further, the respondent denies that the petitioner sustained an accident arising out of and 40

*Return to Writ—Respondent's Answer to
Employee's Claim Petition.*

in the course of his employment, and denies that the petitioner is entitled to any compensation whatsoever.

DURAND, IVINS & CARTON,
Attorneys for Respondent.

10

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

ROBERT V. CARTON of full age, being duly sworn according to law, on his oath deposes and says: That he is a member of the firm of Durand, Ivins & Carton, attorneys for respondent named in the foregoing answer to claim petition; that he has read the same and is familiar with the contents thereof; and that the matters and things therein set forth are true according to the best of his knowledge and belief.

20

ROBERT V. CARTON.
(Respondent)

Subscribed and sworn to before me, this 16th day of February, 1943, at Asbury Park, N. J.

DORIS TILTON-KIRBY,
A Notary Public of N. J.

30

(This affidavit may be sworn to before any person authorized to administer an oath.)

I, DANIEL A. SPAIR, Secretary of the Workmen's Compensation Bureau, hereby certify the foregoing to be a true copy of the Answer filed in this cause.

DANIEL A. SPAIR,
Secretary, Workmen's Compensation
Bureau, New Jersey Department of Labor.

40

Testimony.

NEW JERSEY DEPARTMENT OF LABOR

WORKMEN'S COMPENSATION BUREAU

Asbury Park, Monmouth County District.

CHARLES GLANTON,
Petitioner, 10

vs.

JOSEPH A. SHAFTO,
Respondent.

April 13, 1943.

Before—HONORABLE H. H. UMBERGER,
Deputy Compensation Commissioner.

APPEARANCES: 20

JOSEPH F. MATTICE, ESQ., for the Petitioner.

ROBERT V. CARTON, ESQ., (DURAND, IVINS & CARTON, ESQS.) for the Respondent.

CHARLES GLANTON, the petitioner, called as a witness on his own behalf, being first duly sworn, testified as follows:

Direct-examination by Mr. Mattice: 30

Q. Mr. Glanton, you are the petitioner in this matter, are you not? A. Yes.

Q. And, in December, 1941, where were you employed? A. At Shafto's garage.

Q. What were your duties about the garage? A. Well, I had to do everything around there.

Q. Speak up a little louder. A. Well, I did everything around the garage.

40

Charles Glanton—Direct.

Q. Handyman? A. Handyman and mechanic, helper, and everything.

Q. What were your wages? A. \$22 a week.

Q. Who was your foreman? A. Well, Joe Shafto and the head mechanic. When I was hired, he told me to take orders from him.

10 Q. Who is "he"? A. From Joe and the head mechanic and the old man.

Q. Who was the head mechanic? A. Fred.

Q. Do you know his last name? A. Smith.

Q. Smith. Now, sometime in December, did something happen to you, in 1941? A. Yes. In December I was—we had some drums of alcohol.

Q. What day of December? A. Around the eighth.

20 Q. You had some drums of alcohol. What happened? A. They all was laying down, and I was heading them up, to put them in the shed.

Q. What do you mean by "heading them up"? A. They were laying down, as you roll them, and I picked them up and put them on end, and when I lifted one—

Q. Well, how heavy were these barrels of alcohol? A. I don't know just how heavy. They were fifty-gallon drums.

30 Q. You were heading them up, and what happened? A. When I come down and come up with one, I choked right up, and my vein come right out, and I choked right up.

Q. You are pointing to what part of your body when you say "choked up"? A. Well, the vein of my neck come out, and there was something in here, like I couldn't swallow (indicating).

Q. What did you do? A. I stopped and sat down, and figured—

40 Q. Never mind what you figured. You sat

Charles Glanton—Direct.

down. What did you do after that? A. I drank a coco-cola.

Q. Did you work the rest of the day? A. I went down in the back of the garage and sat around in the cars, and messed around the rest of the day.

Q. Did you talk to anybody in the place about this? A. I told the boy. 10

Q. What boy? A. I told Fred. I said, "I got something. It might be indigestion, the way I choked up."

Q. The following day, did you come back to work? A. Yes, I did.

Q. Did you talk to anybody that day? A. Well, no more than I told the other boy, if I bent over that day, if I had a tire to change, I would get dizzy in the head, and I still had that indigestion. 20

Q. What other boy are you referring to? A. The other boy that worked with me. 20

Q. What was his name? A. LeRoy.

Q. Did you work all that day? A. Yes.

Q. When did you go to the doctor, if you did? A. Well, I worked on, and stayed on there until January, and on my neck the thing had come out so large until I couldn't button my shirt.

Q. What day was that? A. That day in January. My face puffed up and I couldn't lift nothing or bend over, and they told me— 30

Q. Who told you? A. Smith and Shafto's daughter said, "You ain't got no indigestion. Something else is wrong with you. Go and see a doctor."

Q. Did you go to a doctor? A. Yes.

Q. Doctor who? A. I went to Edelson.

Q. Did Dr. Edelson treat you? A. He looked at me and felt my blood vein and things and said, "I want you to go to the hospital." 40

Charles Glanton—Direct.

Q. Did you go to the hospital? A. I said, "I will go down to Shafto." He said, "I want you to go to the hospital now, and I will call up Shafto."

Q. Do you know what day it was in January?

A. It was on a Saturday.

10 Q. Early or the middle part of January? A. Around the latter part of January.

Q. How long did you stay in the hospital? A. I stayed up there nine days.

Q. Who treated you in the hospital? A. Well, I had I don't know how many different doctors. They come to look.

Q. Well, did Dr. Edelson treat you there? A. Yes, sir, he come up to see me, Dr. Edelson come up to see me, and Dr. Verger and Sewall.

20 Q. You stayed in the hospital nine days? A. Yes.

Q. Did anything happen in the hospital while you were there? A. No more than they took X-rays and things.

Q. After the nine days were up, did you go home? A. They sent me home.

Q. Did you go back to work? A. Yes.

30 Q. How long did you work? A. I didn't work a week. Every time I bent over or something that vein come out, and he sent me back to the hospital.

Q. Who sent you back to the hospital? A. Dr. Edelson.

Q. This time, how long did you remain there? A. I remained there about two weeks, I guess, something like that.

Q. And, during the two weeks, what doctor, in particular, treated you? A. Dr. Herrman, up in his office. He take charge of it, X-ray treatments.

40 Q. X-ray treatments? A. Yes.

Charles Glanton—Direct.

Q. Did any other doctor see you? A. Dr. Brown seen me, Dr. Albright—well every doctor on the staff in the Fitkin Hospital seen me.

Q. After the two weeks were up, did you go home? A. Yes, sir.

Q. Did you go back to work? A. They told me not to go to work any more. 10

Q. Who told you not to go back? A. The doctor I went to, Dr. Edelson.

Q. And you didn't go back to work? A. No.

Q. What did you do? A. I didn't do anything but take some treatment from up there.

Q. From up where? A. Up to the Fitkin Hospital.

Q. How often did you take these treatments? A. I was taking three a week there.

Q. How long did that continue? A. Until I got thirteen of them. 20

Q. Thirteen. And, after that time, what treatment did you take, if any? A. Well, they said the treatment wasn't doing no good, Dr. Edelson said. My other blood vein was puffing out here, and he wanted me to go to Philadelphia, to Dr. Bailey.

Q. Did you go? A. Yes.

Q. When? A. He made arrangements for me to go. 30

Q. And did you go to the hospital in Philadelphia? A. Yes.

Q. How long did you remain there? A. I remained there until I got the X-rays and everything else.

Q. Was that the Hanneman Hospital? A. Yes, sir.

Q. How many days were you there? A. That must have been eight or nine days. 40

Charles Glanton—Direct.

Q. And who was the doctor in charge of your treatment there? A. Dr. Bailey.

Q. At the termination of the nine days, did you come home? A. He sent me back here and he said he would send for me when he got ready to operate. I had to get some treatments here.

10 Q. When you got back to Asbury Park, did you take treatments in the Fitkin Hospital? A. Yes.

Q. How often did you take those treatments? A. I was taking them twice a week, I think—two or three times a week.

Q. For how many times did you take the treatments before you went back to the hospital? A. I had taken the treatments for about three weeks.

20 Q. And did you go back to the hospital? A. I didn't go back right away then. I went to see Dr. Edelson off and on, and then he kept looking at the veins. Then he said, "If Bailey can't take you right away—we don't know what it is—I will have to try to get you in the Medical Center."

And then he gets a letter from Dr. Bailey, and he told me to come in on the 19th.

Q. 19th of what? A. I come out the day before Thanksgiving. That would be the 19th of November, something like that.

30 Q. October or November? A. October, something like that.

Q. October? A. Yes.

Q. How long did you remain in the Hanneman Hospital? A. I remained there until the day before Thanksgiving.

Q. How many days were you there altogether? A. Altogether?

Q. Yes? A. I was there from the 19th to the day before Thanksgiving. That would be around—I know I came out the day before Thanksgiving.

40 Q. How many days? Five or six days, or a

Charles Glanton—Cross.

week or two? A. I was there about twenty-something days. I got an operation.

Q. During the time that you were there, did Dr. Bailey treat you? A. Yes, sir.

Q. Did he do anything else besides treat you? A. He operated on me.

Q. He operated on you? A. Yes, sir. 10

Q. When you returned from the Hanneman Hospital to Asbury Park, did you receive any further treatment? A. Yes, sir.

Q. From whom? A. From up to—

Q. Fitkin Hospital? A. Yes.

Q. How long did they continue? A. I am supposed to be taking them right now.

Q. Have you been taking them? A. Yes, I takes them.

Q. How often? A. Well, every week. 20

Q. Every week? A. Yes.

Q. And, since the time that Dr. Edelson sent you to the hospital the first time, have you done any work? A. No, sir.

Q. Why not? A. I haven't been able to do any. If I bend over, like, I will get dizzy and fall right down, and if I pick something up, the puff will come right out on my throat, and I choke up.

Mr. Mattice: Cross-examine.

30

Cross-examination by Mr. Carton:

Q. When did you go to the hospital the second time, that is, to the Fitkin Hospital? A. When I go to the Fitkin?

Q. Yes. A. I don't know just the date I went to the Fitkin Hospital.

Q. About when was it? A. Well, I went in once the 17th of January; I went in once on the 17th. 40

Charles Glanton—Cross.

Q. That was the first time? A. And then I came out around March. I don't know just what date it was.

Q. All right. Now, when you say you were lifting up these drums or standing them up on end—is that what you mean? A. Yes.

10 Q. And that was the 8th of December? A. Around the 8th.

Q. 1940?

Mr. Mattice: 1941.

The Witness: 1941.

By Mr. Carton:

Q. 1941? A. Yes.

Q. You specifically recall that, do you? A. I don't understand what you mean.

20 Q. Do you remember that definitely? A. I remember around that time.

Q. Do you have a clear recollection of doing that? A. Well, the reason I figure around that time was because I was going to go away on a vacation.

Q. And that's the way you place it around that time, because you were going to go on a vacation, is that right? A. That's right.

30 Q. You have no other recollection, no other way of fixing the time, is that right? A. No.

Q. Do you have a definite and clear recollection of this choking sensation coming on you at that time? A. Yes. I have a clear recollection of that choking coming on me on that certain time.

40 Q. At that particular time. It came on as you were lifting this drum up, or putting it up on end, or sometime afterward? Just when did it come, in relation to when you headed up that drum? A. When I bent over and I am on the way up, that's where I choked up.

Charles Glanton—Cross.

Q. You got this choking as you were on your way up? A. That's right.

Q. What do you mean by "on your way up"?

A. I mean, when I was picking up the drum.

Q. How far up? A. I couldn't tell you exactly how far I had it up.

Q. But the choking came on you then? A. Yes. 10

Mr. Mattice: The answer is what?

The Witness: It came on me then.

By Mr. Carton:

Q. You had to stop work then? A. Yes, sir.

Q. From that time on you haven't been the same? A. No I haven't been the same.

Q. And you definitely remember it coming on you as you were lifting up this drum? A. Yes, sir. 20

Q. You, of course, recall going to see Mr. Shafto sometime in January of 1942, and telling him that you didn't feel well, don't you? A. Well, I wouldn't say that I remember going and telling him—I don't remember the exact date I told him I didn't feel well.

Q. It was quite some weeks after December 8th, wasn't it? A. Before I went to the doctor, it was.

Q. Before you went to Mr. Shafto? A. Well, I didn't go to Mr. Shafto when I went to the doctor. 30

Q. Mr. Shafto sent you to the doctor, didn't he?

A. His daughter and the mechanic told me to go up to see the doctor.

Q. You didn't speak to Mr. Shafto and Mr. Shafto sent you to the doctor? A. I didn't himself, personally.

Q. You are sure of that? A. I am pretty positive.

Q. When you were sent to the doctor by whom-ever you saw, you told him that you had a cold 40

Charles Glanton—Cross.

for a week or so, didn't you? A. No, I didn't say it was a cold.

Q. Didn't you tell him you had a cold? A. No, I didn't tell him I had a cold.

10 Q. When you went to Dr. Edelson, Dr. Edelson asked you what was the matter with you and asked you what happened, and you told the doctor you had a cold, didn't you? A. I told him I didn't know.

Q. What? A. I told him I didn't know.

Q. Yes, but you told him you had a cold and had had for some time, didn't you? A. I didn't tell him I had a cold.

Q. You didn't tell him? A. No.

Q. You deny that, is that right? A. Yes, sir, I deny it.

20 Q. You didn't tell him about any heading up of drums or any strain on December 8th, or any other date, did you? A. I didn't tell Dr. Edelson what my trouble was. I didn't know. But I told them in the hospital, when they made out the records—both trips to Philadelphia, and the Fitkin, too.

30 Q. Just a moment. You didn't tell Dr. Edelson about any strain of lifting up any drums or anything like that on December 8th or any other date, did you? A. Well, I wouldn't say any other day.

Q. Was there another day? A. Because when he sent me to the hospital, he asked me and I—

Q. Just a moment. You answer my questions, please.

You said you wouldn't say any other date. Now, I ask you, is there another date?

40 Let me put it this way: Sometime in the month of November, you were heading up drums, weren't you? A. Before December?

Charles Glanton—Cross.

Q. Yes. A. Well, I was there. I don't know whether it was November, but I have been heading them up for the last fifteen years.

Q. Not at Shafto's? A. No, not at Shafto's.

Q. I am talking about at Shafto's. You don't know whether or not December 8th is the correct date, do you? A. Well, I know it was around that time. 10

Q. You know it was around that time? A. Yes, sir.

Q. It might have been in the month of November, isn't that true? A. No.

Q. November 26th? A. No, it wasn't in that month.

Q. Are you positive of that? A. It wasn't in November, no, sir. I am positive it wasn't November. 20

Q. All right. Dr. Edelson questioned you at quite some length as to what was wrong with you, didn't he? A. Yes, he questioned me.

Q. And he questioned you as to how this came on, didn't he—how it first started with you, didn't he? A. Yes.

Q. And you didn't tell him about lifting up a drum or heading up a drum, did you? A. Well, Dr. Edelson—

Q. Answer it yes or no. You can. Did you or didn't you tell Dr. Edelson? A. Well, the only way I could answer that question is to answer it the way I told Dr. Edelson. 30

Q. Did you or didn't you tell Dr. Edelson, when he was questioning you as to how this condition came on you, about any lifting up of drums in the early part of December or at any other time? A. Dr. Edelson never did question me how it came on me.

Q. Sir, I just asked you, less than two minutes 40

Charles Glanton—Cross.

ago, if Dr. Edelson didn't question you at length as to how this came on you, how it first developed, and when it first developed—Didn't he ask you those questions? A. I say I could answer the question if I told you what Dr. Edelson asked me.

10 Q. Did he ask you those questions, or questions like that? A. He didn't ask me how they came on, Dr. Edelson.

Q. Dr. Edelson didn't ask you how this came on you, is that right? A. No, he didn't ask me.

Q. Did he ask you when it came on? A. He didn't ask me when.

Q. Did he ask you when you first noticed it? A. Yes.

Q. What did you tell him? A. I told him when I first noticed it, around December 8th.

20 Q. Did he ask you if you were doing anything at the time? A. Yes.

Q. Did you tell him that you were heading up drums when it first came on you? A. Oh, yes, I told him that.

Q. You told Dr. Edelson that? A. Yes, I told Dr. Edelson that.

Q. There is no question in your mind about that? A. No question.

30 Q. So you did tell Dr. Edelson, or so you say, that this first came on you when you were lifting up these drums? Is that answer "Yes"? A. Yes, I told Dr. Edelson that.

Q. You told Dr. Edelson that.

Now, when you went into the hospital, the doctors in the hospital questioned you, did they not? A. Oh, yes, I was questioned in the hospital.

Q. And the doctors in the hospital questioned you as to when you first noticed this, didn't they? A. Yes.

40 Q. And what did you tell them?

Charles Glanton—Cross.

Mr. Mattice: If the Court please—the doctors in the hospital. What doctors?

By Mr. Carton:

Q. Dr. Herrman asked you about it, didn't he?

A. Well, Dr. Herrman didn't ask me a lot about it.

10

Q. The interne in the hospital asked you, didn't he? A. One interne asked me.

Q. Dr. Altschul also looked at you and treated you, did he not? A. He didn't treat me.

Q. Dr. Frank Altschul? A. Altschul, he looked at me; and then another doctor said, "Maybe he has a tooth pushing against his blood vein."

Q. I am not interested in what he said. Did Dr. Altschul treat you? A. He didn't treat me any; I don't think so.

20

Q. Just a minute. He didn't treat you. Did Dr. Altschul come in and talk to you? Do you know Dr. Frank Altschul, from Long Branch? A. Frank Altschul.

Q. Yes. A. I don't know Dr. Altschul. I know the doctors that treated me in Fitkin.

Q. And those doctors that treated you in the Fitkin Hospital asked you how this came on, didn't they? A. They didn't ask me, the one that treated me. They come and look, and Dr. Brown, from Elberon, she come and looked, and then another one said, "You have a tooth there."

30

Q. Did any doctor, when you were in Fitkin Hospital, ask you how this first come on and when you first noticed it, and what you did at the time? A. No, they didn't ask me that.

Q. No doctor in Fitkin Hospital? A. No one that I can remember now asked me that.

Q. That's the first time you went into the hospital, is that right? A. That's right.

40

Charles Glanton—Cross.

Q. So that, when you were in Fitkin Hospital, you didn't tell any of the doctors—and you said there were many of them—that came in and looked at you? A. Yes.

Q. And none of those doctors asked you any questions? A. They asked me questions.

10 Q. And none of them ever asked you how this came on, and when it first came on? A. They didn't ask me when it first came on. They asked me how did I feel working. That's what they asked me in Fitkin.

Q. And did you tell any of those doctors at that time that this came on while you were lifting up drums? A. I told Dr. Edelson.

Q. Did you tell any other doctors? A. No, I didn't.

20 Q. You told no other doctor in Fitkin Hospital? A. They didn't ask me.

Q. I didn't ask you that: I asked you whether you told them. A. No, I didn't tell them.

Q. You didn't tell them. Now when you came back to the Fitkin Hospital the second time, did you again tell them what had happened to you? A. Well, I told them at first, and then I didn't know myself what was happening.

30 Q. I know. I am not asking you what was happening then. Did you tell them what had happened to you in December? A. Well, they made a list of it, and then they never asked me any more, no more than they say, "Here come the President again."

Mr. Mattice: Here comes what?

The Witness: "Here comes the President." That's what they called me in the Fitkin. That's why I was sent to Philadelphia.

Charles Glanton—Cross.

By Mr. Carton:

Q. Didn't Dr. Altschul, on your second visit to the hospital, also come in to you and question you as to when this happened, how it happened, and when you first noticed it? A. Dr. Altschul? Was he an interne?

Q. No, sir. Dr. Altschul is no interne. A. Wasn't he a kind of short doctor, with kind of blonde hair? 10

Q. No. He is relatively an elderly doctor, with dark complexion and dark, wavy hair. A. One doctor came to me and said he would make arrangements to go to Philadelphia, to find out what was wrong with me. He didn't ask me what was wrong.

Q. And the second time you were in the hospital nobody in the hospital asked you any questions as to how this came upon you, or first came upon you? A. No, sir. What they did in the hospital was give me— 20

Q. I am not asking you what they did. I am asking you if they asked you these questions. A. No, they didn't ask me how it came up.

Q. And you then went, sometime in July of 1942, to the Hanneman Hospital in Philadelphia, didn't you? A. Yes, sir.

Q. And you saw Dr. Bailey there, is that right? A. That's right. 30

Q. And you were interviewed there by Dr. Bailey and other doctors, isn't that true? A. Yes.

Q. And did those doctors ask you when you first noticed this? A. Well, Dr. Bailey—they didn't ask me. They sent an interne to my bed, and he asked me everything both times I went there, and he made a list of them.

Q. He made a written report of them? A. Yes, sir. 40

Charles Glanton—Cross.

Q. Did he at that time ask you when this first came upon you and when you first noticed it? A. Yes, sir.

Q. And did you tell him about lifting up drums, or any lifting or straining in December of 1941?

A. I told him how I first got the choking.

10 Q. You told him that when you first went to the Hanneman Hospital in July, 1941, is that right?

A. I told him just how I first got the choking when I first went there.

Q. And that was in July, 1941, is that right?

Mr. Mattice: It couldn't very well be, if the Court please.

Mr. Carton: I mean July of 1942.

The Witness: I told him when I first went there, yes.

20 *By Mr. Carton:*

Q. And you told him about this lifting up of drums, is that right? A. This heading up of drums.

Q. And you say you told him that in July, 1942, is that right? A. I told him the whole thing up there, and they wrote it down.

Q. In July of 1942, when you first went to the Hanneman Hospital? A. Yes.

30 Q. Do you understand what I am saying now? A. I understand what you are saying.

Q. And there isn't any question about it, is that right? A. No question. I told him just how it started.

Q. All right. Now, when you next went to the hospital, in October of 1942—to the Hanneman Hospital, isn't that true? A. Yes, I went there again.

40 Q. And when you went into the hospital that

Charles Glanton—Cross.

time, did you tell Dr. Bailey or any other doctor at the Hanneman Hospital about the straining and the lifting up of drums in December of 1941?

A. They sent another interne to my bed when I entered the hospital the last time.

Q. Yes. That's in October, 1942, right? A. That's right.

10

Q. All right. A. So he asked me about the choking up. I told him when I first started choking up and how it acts, and how I gets the swimming in the head and everything when I bend over.

Q. Let me interrupt. You told this interne that? A. That's right.

Q. You told him about the heading up of the drums? A. Yes.

Q. And the bending over and lifting those drums? A. Yes.

20

Q. And you told that in October, 1942, is that right? A. That's right.

Q. When you went into the Hanneman Hospital the second time, is that true. A. Yes.

Q. And you are very clear in your recollection of that, is that right? A. I am clear that I told him.

Q. At that time? A. Yes.

Q. Isn't it a fact, sir, that you never told anybody about lifting up of drums until after Dr. Bailey operated on you? A. No, I wouldn't say that I didn't tell anybody, because I told that before.

30

Q. You told them before? A. Yes.

Q. Isn't it a fact, sir, that you only told Dr. Bailey that after Dr. Bailey prodded you and asked you a lot of questions and suggested to you that you might have been lifting or straining? A. He didn't prodded me and ask me that question.

40

Charles Glanton—Cross.

Q. And isn't it a fact that when he first questioned you along those lines you denied it; and it's a further fact, is it not, that only after a lapse of three or four days, and considerable prodding, that you then recollected or remembered some lifting in December of 1941? Isn't that the fact, sir? A. No, that isn't the fact.

Q. All right. You never told Fred Smith about it, did you? A. Never told Fred Smith about this?

Q. Yes; in December, 1941. A. I told Fred Smith I had a choking up. I didn't tell Fred Smith that I had a loss of blood vein. I didn't know that.

Q. You never told Fred Smith about any heading up of drums or straining yourself or this coming upon you when you were heading up those drums? A. I couldn't have told him that I lost my vein or something heading up the drums. I could tell him only I choked up; because I didn't know myself. I went to all the doctors in Asbury Park to find that out.

Q. You didn't tell Fred Smith that you choked up when lifting up a drum, did you? A. Well, I tells Fred all the time I choked up—

Q. I didn't ask you that. Answer the question. Did you tell Fred Smith that you choked up or this came on you while you were heading up a drum? A. I wouldn't say I told him that the drum was the cause of it.

Q. I didn't ask you whether you told him the drum was the cause of it. I am asking you whether you told him that this came on you or that you first felt this or it happened to you when you were heading up the drum. Did you tell Fred Smith that? A. I could tell you what I told Fred Smith.

Charles Glanton—Cross.

Q. Did you tell Fred Smith that? A. Judge, your Honor, can I tell him what I told him?

The Court: Your counsel will take care of that. Just answer the question. Do you understand what he wants you to answer?

The Witness: I understand it.

The Court: Suppose you read it again, Mr. Hunt. 10

(The reporter repeated as follows:

“Q. I didn’t ask you whether you told him the drum was the cause of it. I am asking you whether you told him this came on you or that you first felt this or it happened to you when you were heading up the drum. Did you tell Fred Smith that?”)

The Witness: I didn’t tell him that. I told him I choked up. 20

By Mr. Carton:

Q. You didn’t tell him that you were doing anything when you choked up, did you? A. We was working together. And I sat down and drank a bottle of Coca-Cola. I didn’t think I would have to tell him that.

Q. You never told Mr. Shafto about it, did you? A. I didn’t go in and tell him the old man, then. 30

Q. What? A. I didn’t go in and tell him then.

Q. You didn’t go in and tell him then. You never went in and told him about it, did you? A. No more than I would go in with these veins standing out and everything, and they kept saying, “You are going to die. Something will happen to you,” they said, “so you better see a doctor.”

Q. This was before you went to Doctor Edelson, is that right? A. Yes. 40

Charles Glanton—Cross.

Q. And they said you were going to die when you showed them these veins sticking out in your neck? A. They could see them without me showing them.

10 Q. And you never told them this happened when you were heading up a drum, or anything about heading up a drum? A. I didn't know for sure whether I was hurt or not then.

Q. But you were feeling very ill, weren't you? A. Yes.

Q. You couldn't button your shirt? A. Yes.

Q. The veins were sticking out in your neck? A. Yes.

Q. They were telling you you were going to die? A. That's right.

20 Q. And you didn't know you were hurt? A. I didn't know.

Q. And the reason you didn't tell them was because you didn't know whether you were hurt or not? A. That's right. I didn't know what it was.

Q. I didn't ask you that. I asked you if you knew you were hurt. A. I knew something was wrong with me.

Q. And you never mentioned to them anything about any heading up of any drums, did you? A. I didn't mention it to them then.

30 Q. And you haven't to this day told Mr. Shafto about any heading up of drums, have you? A. Well, I told them down to the shop. I didn't think I would have to tell him.

Q. Whom did you tell down at the shop? A. When I come out there I told Fred, I spoke to him.

40 Q. You told Fred. When did you tell Fred? A. I told Fred how I choked up and everything since I had been going—even before I went to the hospital.

Charles Glanton—Cross.

Q. Just a minute. Let's have these answers make sense. When did you tell Fred? A. I told Fred before I went to the hospital.

Q. The first time, before you went to the hospital the first time? A. I told him I choked up before I went to the hospital.

Q. You told him you choked up, is that right? 10
A. Yes.

Q. Did you tell him anything else besides about choking up? A. I told him that I was afraid ever since I started choking up. When I got into a car and was going to back it in the hole and I would swing it, I have to take it in close, I would have to stop. The vein would come right out.

Q. Did you tell Fred about choking up first when you were heading up drums? A. Yes, I told him. 20

Q. You told Fred that? A. I told him, "Fred, I chokes up like I got indigestion; I don't know what it is."

Q. When did you first tell him that? A. When we were drinking the Coca-Colas.

Q. When you were drinking the Coca-Colas? A. Yes.

Q. After you had headed up the drum? A. On the day afterward.

Q. How long afterward? A. It was that same 30
day we were drinking the Coca-Cola.

Q. How long after on the same day? A. I don't know how long it was.

Q. What time of the day were you heading up the drums? A. Oh, it was in the afternoon.

Q. In the afternoon? A. Yes.

Q. How long afterwards did you tell Fred? A. Well, I wouldn't say, because I don't know how long it was.

Q. Well, a couple of hours after? A. Well, it 40

Charles Glanton—Cross.

could have been; I don't know exactly how long it was.

Q. It wasn't right after, was it? A. It wasn't long after.

Q. What? A. It wasn't long after.

10 Q. It wasn't long after. Tell me: Did this swelling immediately come out? A. Yes, those veins immediately came out.

Q. Immediately came out? A. Those veins did.

Q. The veins did? A. Yes.

Q. How about the puffiness of your face? Did that immediately come out? A. Well, it gets much larger; like if I bent over my head now, it will—like the blood comes up and it stays out immediately, and if I stay straight up it won't even come out large.

20 Q. But it got so it was out all the time, didn't it? A. About like it is now.

Q. And how long did it take before it got out as it is now—strike that out.

How long after December 8th, 1941 did it take it to get out like it is now? A. Well, it was out about like it is now all during December, and then, when it was out real bad, I couldn't—I just choked up and I couldn't do nothing around there.

30 Q. Let me ask you this: You say it was out like it is now all during December, 1941? A. The vein was about like it is now from that time.

Q. All during December, 1941? A. Not always, but from around that time it was about as large as it is now.

Q. Up to from what time? A. From around after the 8th.

Q. So it came out around the 8th or 9th, is that right? A. Yes, something like that.

40 Q. And did it gradually get larger and larger, or did it just come right out to where it is now and

Charles Glanton—Cross.

stay there? A. Well, sometimes it gets larger, if I do anything to make the blood rush to my head, drink or something, it gets larger. So that's what I thought it was. That's the way it got larger. I took a drink of whiskey New Year's night, and when I wake up my jaws—

Mr. Mattice: Your jaws or head? 10

The Witness: My whole jaw was hanging New Year's Day.

By Mr. Carton:

Q. In other words, it didn't really come out until after New Year's Eve, is that right? A. No, my face didn't get away out.

Q. I see. So it was after you had been out New Year's Eve, drinking, that your face puffed out really large? A. Yes, my face was out. 20

Q. And that was the first time your face puffed out, is that right? A. Well, that large it was the first time.

Q. "That large." What do you mean by that? A. I mean larger than what it is now.

Q. Larger than what it is now? A. Yes.

Q. In fact, your face was much larger than what it is now when you went to the Fitkin Hospital the second time, in February of 1942, wasn't it? A. It was larger when I went the first time, larger than what it is now. 30

Q. It was larger the first time you went to the Fitkin Hospital than it was the second time? A. Well, I don't know how large it was either time, but I know it was larger than what it was supposed to be.

Q. Did your face swell up and stay swollen up before January 1st, 1942? A. Did it swell up before? 40

Q. Yes. A. Before when?

Charles Glanton—Cross.

Q. January 1st, 1942. A. Before I went to work for Shafto?

Q. No; January 1st, 1942. A. I swolled up in December, 1942.

Q. It swelled up in December. Did it swell up much? Can you answer the question? A. Well,
 10 the only way I could answer it, my face was swolled up about like it is until I went to Fitkin Hospital. From then it was out a little larger, and when I went to Fitkin Hospital it got real large, and when I stayed up there and slept with my head up—they raised the bed, like that (indicating)—then my face went down some.

Q. Was your face swollen up like it is now on December 9, 1941, the day after you say this happened? A. My face wasn't out but it was, you
 20 know, just about like it—

Q. Like what? A. Like it is now. Those vein things—

Q. It was definitely puffy, it was puffed out a little, is that right? A. Just out a little. It was more in the vein than it was in the face.

Q. Let me put it this way: Could you button your collar on December 9th? A. Yes, I could button them, but I would unbutton them when I would go to do anything.

30 Q. I see. And you unbuttoned it when you would go to do anything because it was tight, is that right? A. That's right.

Q. So your neck was swollen so that your collar was tight? A. Yes. If I would do anything, the vein would come out and I would choke.

Q. And that was on December 9th, the day after this happened? A. Yes.

Q. It was in that condition at that time? A. That's right.

40

Charles Glanton—Cross.

Q. There is no question about that, either, is that right? A. That's right.

Q. And the only feeling you had then was the chokiness? A. Just the choking and the dizziness if I bent over.

Q. You had an accident, had you not, while you were working for Joseph Stein, in Asbury Park? 10
A. I had what, an accident?

Q. An accident? A. What kind of an accident?

Q. On October 16, 1940, while you were working for Joseph Stein, did you have an accident?

A. Did I have an accident?

Q. Yes. A. I was in the car with him, and he had an accident.

Q. Were you hurt? A. Well, I had a sprained ankle when I worked for Joseph Stein.

Q. When was that? A. I don't know just when it was. 20

Q. Did you have any other injuries when you were working for Joseph Stein? A. The only thing I know, my back was a little hurt once while working for Joseph Stein.

Q. How did you hurt your back? A. I hurt my back pulling off a tire, changing a tire.

Q. Changing a tire you sprained your back? A. I guess so.

Q. It happened to you? Don't guess so. You tell me what happened. A. I mean, it was hurting so he told me to go to the doctor and tell him. 30

Q. How did this happen? You were pulling on a tire? A. Just changing tires.

Q. Yes. What were you doing, actually doing? I know you were generally changing a tire, but what, specifically, were you doing? A. Well, I couldn't say. I went to Joe Stein and told him. I said, "Mr. Stein, my back hurts."

Q. Wait a minute. You answer the questions. 40

Charles Glanton—Cross.

I asked you what you were doing; I didn't ask you what you went and told Joseph Sein. A. Changing tires.

10 Q. Yes, I know, generally, you were changing tires, but when you hurt your back I want to know specifically and definitely what you were doing at that instant. You say, when you got this choking feeling, you were lifting a drum part way up. Now, tell me what you were doing at the time you strained your back. A. The only thing I know, I was changing the tire.

Q. And you hurt your back? A. Yes.

Q. What were you doing to hurt your back, looking at the tire? A. Changing it.

Q. All right. What were you doing? A. Taking tires off.

20 Q. Were you pulling on the tire, were you hammering on the tire, were you jacking the car up? What were you doing? Tell me, man. A. I was changing the tire. That's all I know.

Q. I know you were generally changing the tire, but, specifically, what were you doing? Did you have your hands around it, pulling it off and jerking it? A. I take the tire iron and was taking that off.

30 Q. When did you discover you had hurt your back? A. Well, when I got finished with the tire I went and told him. I says, "You know, I hurt my back changing those tires." He said, "Well, you go to the doctor."

Q. You told him you hurt your back changing the tire. When, during the time you were changing the tires, did you first discover that you hurt your back? A. When did I first discover it?

Q. Yes. A. The next day.

40 Q. What? A. The next day, when it really—

Charles Glanton—Cross.

I discovered it the day I hurt it, that day, and I told him the next day.

Q. Didn't you just say a little while ago that after you finished changing the tire you went and told Joseph Stein and said, "Joe, you know, changing that tire, I hurt my back"? A. I discovered that I hurt my back and I told him the next day, and he sent me to the doctor. 10

Q. You discovered that you hurt your back and you told him the next day, and he sent you to the doctor. When did you tell Joseph Stein? A. I told Joseph Stein himself the next day.

Q. So you didn't go and tell Joseph Stein the day that you hurt your back? A. I didn't go to him. My back wasn't hurting any place or nothing that day.

Q. When did you first discover that you hurt your back? A. Well, my back was hurting me when I finished the tire. 20

Q. It was hurting you when you finished the tire? A. Yes.

Q. And you had been pulling on that tire, had you not? A. Well, I pulled on them about as much as you pull on tires to change them. You have to pull on them to get them off.

Q. You have to pull on them to get them off. And you had to jack the car up, didn't you? A. No, I didn't have to jack it up. 30

Q. This wheel was off the car, was it? A. No, it was on the car.

Q. And you didn't have to jack the car up? A. No, sir.

Q. Did somebody do it for you? A. No. We got one of these here lifts. You pull the car on and push the air, and you raise it up and the whole car goes up.

Q. Oh, I see. But doesn't it still rest on its 40

Charles Glanton—Cross.

wheels on this platform that goes up in the air?
A. No, the wheels don't be on that.

Q. And you had to go to work on that tire with a hammer and these prongs that you push in to get the tire off the rim, didn't you? A. Well, you had to work on it with the tire irons.

10 Q. Don't you let the air out of the tire? A. That's right.

Q. And then take a hammer or something or knock the tire all around, to loosen its edges on the rim? A. You just take a hammer and iron and loosen it.

Q. That's right. And then you take a piece of iron, generally a curved, thin piece of iron, and push it between the tire and the rim and push that up, to force the edge of the tire over the rim? A.
20 Well, when you push those in, the wheel has got a drop center, and then you squeeze the top of the tire and the tire will drop in the center and that gives the bottom part enough space to come over the wheel and you lift it off.

Q. And you have to pull it off? A. Yes.

Q. And it was while you were doing that that you hurt your back, isn't that true? A. Yes.

Q. All right. It takes a long time to get there.

Mr. Mattice: You didn't ask him.

30 Mr. Carton: I didn't ask him? I don't know how many different ways I can put it.

By Mr. Carton:

Q. And you also went to see Doctor Villapiano, did you not?

The Court: Have you got much more?

Mr. Carton: I am afraid I have, your Honor.

40 The Court: Suppose we suspend and take a settlement at this time.

Charles Glanton—Cross.

(After a short intermission the trial proceeded as follows:)

Mr. Carton: What was the last question?

(The last question was repeated by the reporter.)

By Mr. Carton:

10

Q. Is that right? A. I have been in Doctor Villapiano's office twice.

Mr. Mattice: You mean for this—

Mr. Carton: Yes, on October 16th, 1940.

Mr. Mattice: When you hurt your back.

By Mr. Carton:

Q. You went to see Doctor Villapiano, did you not? A. No, I didn't go to see Doctor Villapiano.

20

Q. Did you go to see Doctor Villapiano on October 16th, 1940? A. I went to Doctor Villapiano's office the first day the draft come through, because I left there and registered for the war.

Q. Do you remember the date that was? A. I don't exactly know the date, but I know I left there and went and registered.

Q. And you say you went to see Doctor Villapiano twice altogether? A. Yes, I have been to his office twice to see him.

30

Q. When was the other time? A. The compensation man sent me down there.

Q. When was this? A. Since Christmas. He knows when he sent me down there.

Mr. Mattice: Since Christmas, this past Christmas.

By Mr. Carton:

Q. And when you went to see Doctor Villapiano, which date I say is October 16th, 1940,

40

Charles Glanton—Cross.

but which you say was the first day of the draft, whichever date that might be, you complained to him, did you not, about your throat and about pains in the chest? A. I went to see Doctor Villapiano and told him that I had a bad cold, just a cold—

10 Q. Yes. A. (Continuing)—and was coughing, and I wanted to be examined. He examined me.

Q. Yes. You told him about pains in your chest, right? A. I had a lot of phlegm in there, I told him, and I wanted him to examine me and look me over, and he looked at me, put me in front of the X-ray.

Q. He put you in front of the fluroscope, is that right? A. The fluroscope and everything, and when I got through, I said, "I am coughing up a lot of phlegm," and he says—

20 Q. Don't tell us that. But you did go complain- ing about a cold, your throat, and pains in the chest, is that right? A. Yes.

Q. And he put you under the fluroscope, is that right? A. That's right.

Q. Those treatments that you were given at the Fitkin Hospital, do you know what they were? A. Do I know what they were?

Q. Yes. A. I know what they were.

30 Q. And you were sent to the Hanneman Hospi- tal in Philadelphia in July of 1942; that's right, isn't it? A. That's right.

Q. The first time. And they sent you back to the Fitkin Hospital for treatment, isn't that right? A. Yes, they told me to come back and get some treatment.

Q. And those treatments were for a venereal disease condition, were they not? A. No, he didn't say that.

40 Q. You don't know whether or not you re-

Charles Glanton—Cross.

ceived treatment when you came back to the Fitkin Hospital after July, for a venereal disease condition, do you? A. Well, I will tell you what he told me. He said, "We could operate on you now if you want to, but" he said, "I would like to have you get some shots for your blood, and you would heal quicker when we cut you." 10

Q. I see. But they sent you back for that treatment, for building up treatment as it were, so that you could withstand the operation better, is that right? A. The only thing I know is what he told me, and that's what he told me.

Q. Did you tell anybody else about your straining yourself when you were heading up these drums? A. I don't understand. On the job there?

Q. Yes. A. Well, when he come over and asked me— 20

Q. What? A. When they come up and asked me—

Q. Who came up and asked you? A. Well, Mr. Shafto; I told him I hurt myself, and then he come over and told me, "Don't go and get no lawyer or nothing. The insurance man was there and said they will only be in court fighting, the insurance people would pay my bill and give me something." 30

Q. You say you told Mr. Shafto you hurt yourself? A. Yes.

Q. When did you tell Mr. Shafto that? A. I told him that after I came home.

Q. Came home from where? A. From Philadelphia.

Q. Came home from Philadelphia the second time? A. Yes.

Q. That's the first time you told Mr. Shafto that you hurt yourself, isn't that right? A. Yes. 40

Charles Glanton—Cross.

Q. All right. That was some time in December of 1942, wasn't it? A. Yes.

Q. You came home from the hospital around Thanksgiving of 1942?

10 Mr. Mattice: Take your hand down from your mouth.

The last question was what?

The Court: Is that a question?

(The last question was read by the reporter as follows:

“Q. You came home from the hospital around Thanksgiving of 1942?”)

By Mr. Carton:

Q. Isn't that true?

20 Mr. Mattice: From Philadelphia.

The Witness: Yes. I came home the day before Thanksgiving.

Mr. Carton: All right.

By Mr. Carton:

Q. Did you tell anybody else that you hurt yourself? A. Well, I told a lot of people.

30 Q. I mean in Shafto's. A. Well, after finding the—after I hurt myself, the boy that was named LeRoy—we used to stack oil, and I couldn't stand any more crates of oil; he would have to set my crates up then, I had that choking up so bad.

Q. Did you tell him that you had hurt yourself lifting up drums? A. I told him that I had given out of breath from lifting up drums, because I didn't know definitely what had happened; I just choked up.

40 Q. LeRoy was just a co-worker? A. He was a co-worker.

Charles Glanton—Cross.

Q. He wasn't your boss or anything like that?

A. No, he wasn't.

Q. Or the foreman? A. No.

Q. You didn't take orders from him? A. Well, if he asked me to do something, I would do it, and if I asked him to do something, he would do it.

Q. He wasn't your boss, was he? A. No, he wasn't no boss. 10

Q. When did you say you told him this? A. I told him, when I had something to do, that I couldn't do it, and he would do it for me, like lifting something or straining, or something.

Q. Was that in December, 1941? A. It was all after then, it was all after.

Q. It was all after that? A. After I had that choking up, the whole time I tried to work there.

Q. I don't like to be repetitious, but I want to go back and find out just how you established this date of December 8th. A. How did I establish that date? 20

Q. How do you fix that date? A. Around December 8th? Well, I was going away.

Q. When were you going away? A. On a vacation, see, and I was figuring on leaving around the 15th, and I know that before it was time for me to go, that I didn't go.

Q. You figured on going away on the 15th of December? A. Yes. 30

Q. And this happened some time before the 15th of December, is that right? A. It happened before then. And I had a note due on my car on the 18th, and I had to pay that, and I know it happened before the note was due.

Q. You know it happened before the note was due. Well, why didn't you go away on the 15th of December, if you were going to take a vacation? 40

Charles Glanton—Cross.

A. Well, after then, I didn't feel good, and I didn't go.

Q. You mean you had a vacation coming to you, is that right? A. It wasn't with pay.

Q. Oh, you were just going to lay off? A. I was going to take some time off and go.

10 Q. You didn't feel good enough to take some time off, but you felt good enough to continue working, is that right? A. That's right.

Q. So you didn't take your vacation? A. No, I didn't.

Q. Well, the only thing you know is that it was sometime before December 15th, isn't that so? A. It was around December 8th. I know I was going.

20 Q. What makes you pick out the 8th of December? A. Because I had a reason. That was just about the time that I choked up. I can remember that day.

Q. You couldn't give us any definite date, is that right? A. The 8th.

Q. You have nothing to associate it with? A. The 8th of December.

Q. Isn't it possible that this might have happened in the latter part of November, just a few days before December 8th? A. No. In November I was all right.

30 Q. What makes you say that it couldn't have been a few days before December 8th, in the month of November? A. Well, because in November I do know I was doing a lot of lifting and a lot of towing, like the car of the Mayor of Long Branch. They used to get stolen, and we had to take this wrecker and wind it up and tow it in, and all that, and I could do that all right then.

40 Q. You could do that all right. You say that was in November? A. I said I know I did a lot of towing like that in November.

Charles Glanton—Cross.

Q. What part of November? A. All of November; at least once a week in November.

Q. You got this alcohol out before the 8th of December; people were using alcohol before that, weren't they, for their cars? A. They had alcohol out before, yes.

Q. And you had gotten the barrels of alcohol out before the 8th of December, hadn't you? A. I have got them out before that. 10

Q. And it might have been one of those earlier times, might it not? A. I didn't choke up until then.

Q. You had gotten the barrels of alcohol out before, but you didn't choke up? A. Yes, I had rolled them around and put them on the stand.

Q. You had lifted these same barrels, or similar barrels, before? A. Some barrels, I don't know whether it was the same ones. 20

Q. Just as heavy, I mean; barrels like them? A. Fifty gallon drums, yes, sir.

Q. And you had gone through the effort and strain of lifting those, hadn't you? A. Oh, yes.

Q. And many times before December 8th, 1941, you had done that, isn't that true? A. I have lifted some before then.

Q. And you said that about every week you would have to go out and pull these cars in? A. I said maybe sometimes two a day, but we had some, one, at least, a week. 30

Q. And was that hard work? A. Well, raising up cars—and then, before then, I used to unload every Cadillac that come in, like the doctor's car. I unloaded them, and that's hard work.

Q. It requires strain and pull and working hard, isn't that true? A. That required hard work.

Q. I mean, you would have to exert yourself 40

Charles Glanton—Cross.

and really strain on lifting these heavy things at times? A. You have to lift and draw.

Q. And you did that on many occasions before December 8th, 1942, didn't you? A. I have lifted a whole lot, yes.

10 Q. Going back to this accident with Mr. Stein, I wish to correct myself. I think I gave you the date of October 16th, 1940. That was on January 10th, 1941, wasn't it? A. I don't know exactly the date. The accident with Mr. Stein, it didn't mean nothing except I went to work and my back—my ankle was strapped; but I didn't lay off from work, and the insurance man, he come down and told me, "Don't lift nothing heavy." And he said, "Do you need a support, or anything?" I said I would rather be working than stay home. But what date it was, I don't know.

20 Q. You took a week off, didn't you? A. I was home—I wasn't home a whole week. I never stayed in bed that much.

Q. As a result of this sprain to your back which you received on January 10th, 1941, you laid off work a week, isn't that right? A. I don't know whether it was a whole week. I know he told me if I didn't want to go to work, then I didn't have to go to work.

30 Q. And the fact of the matter is that you did lay off a week, from work? A. I don't know how many days it was exactly.

Q. Well, you took some time off then? A. Yes, I took some time off.

Q. And it might have been a week? A. Well, I wouldn't say it was a week. I didn't get hurt on Monday.

40 Q. Do you remember Doctor Bailey questioning you at some length as to whether or not you ever had an injury? A. The only doctors in Philadel-

Charles Glanton—Cross.

phia that questioned me was the interne. Doctor Bailey and the other, they told me. The interne was the only one that questioned me in Philadelphia. Doctor Bailey and this other specialist came in and told me; they just come and looked at me.

Q. Doctor Bailey never questioned you about any straining? A. He come in with the paper when he examined me, and took X-rays and things. 10

Q. Doctor Bailey never questioned you about straining yourself, whether you at any time had, during your history, past history, strained yourself while lifting or doing something? A. All of that was when I first entered the hospital. When I first entered the hospital, they asked me that.

Q. And isn't it a fact that for some three or four days when they questioned you about that you didn't recall any such thing? Isn't that true? A. In the Philadelphia hospital? I recalled everything then. He wrote everything down there. 20

Q. No. I am talking about when they questioned you about straining yourself at any time. When they questioned you about that, you didn't recall any straining?

Mr. Mattice: Will you have the place fixed? 30

Mr. Carton: This was at the Hanneman Hospital, under questioning by Doctor Bailey.

The Witness: I told him—when the first interne come up to your bed with a rubber hammer and everything, he asks you everything, the history of your life, where your mother was born, and everything; and they take them up to the X-ray; and then your 40

Charles Glanton—Cross.

doctor comes in and stay in about three minutes, and then they go out and read up on it. That's the way Philadelphia do.

By Mr. Carton:

10 Q. And you say you told them about this straining? A. I told him about this choking up and everything.

Q. But did you tell them that you got this choking up when you were lifting this barrel? A. They asked me when it first—they didn't ask me when it first happened; they asked me when—"How did you feel when you was working?" and I told them, and I told them I choked right up.

20 Q. You told the interne at the Hanneman Hospital that the first time or the second time you went to the hospital? A. I told a different one both times that I had a choking up.

Q. You told them you had a choking up; but did you tell them you got the choking up when you were lifting the barrels? A. Yes.

Q. There is no question about that? A. I told them I got the choking up from lifting.

Q. From lifting a barrel on December 8th, or some date in there? A. I told them I got a choking up from lifting.

30 Q. Did you tell the date you got it? A. Then he come back—

Q. Did you tell the date you got it? A. They didn't ask me the date.

Q. They didn't ask you the date? A. No.

Q. You just told them— A. He didn't ask me the date.

Q. Neither time did they ask you the date, is that right? A. I don't remember them asking me the date.

40 Q. And do you remember telling them it was

Charles Glanton—Cross.

while lifting a barrel? A. Then they asked me what had I been lifting, and I told them.

Q. What did you tell them? A. I told them I headed up some alcohol, and then afterward—then after they come through—oh, some other doctor had told Doctor Bailey before my operation what it was, and then he come back and says on all the lifting, “The statement we got here, that makes a history of what you had been lifting.” 10

Q. I see. And it was after the operation, was it not, that you first told Doctor Bailey about it? A. No. I never told him—it wasn’t after the operation.

Q. When did you decide that it was December 8th? A. Well, I know it was, when it happened.

Q. Yet you didn’t tell the doctors the date? A. The doctors didn’t ask me. 20

Q. And you didn’t tell them the date, because they didn’t ask you? A. I only told them what they asked me.

Q. And they didn’t ask you on what date it happened? A. They didn’t ask me when it happened.

Q. You told them that you hurt yourself, you got this choking when you lifted up this barrel, and they never asked you when that was? A. They didn’t ask me.

Q. They didn’t ask you. They just took the blank statement that you got it maybe fifteen years ago? A. No. When I went in the hospital they asked me how long had I been—they said, “Go ahead and explain this. How did you first come to feel and notice the swelling?” and I went on and explained to them. 30

Q. Just a minute. Just tell us exactly what you told them.

Mr. Mattice: He is trying to.

Charles Glanton—Cross.

The Witness: So I told him that I choked up in December, the first choking up that I ever had.

He said, "Have you ever choked up that way before?" and I told him, "No."

He said, "Have you ever had any sickness before?"

10 I said, "No, no sickness whatever."

He said, "Well, have you ever been in the hospital before?"

I told him, no, I never had been in the hospital before.

So he said, "You first noticed your choking up in December?"

I said, "Yes."

He said, "When you lifted up, what you thought?"

20 I said, "I didn't know. I just come up there and the vein went out and it just choked me."

I said, "Maybe it was indigestion or something. Nothing hit me like that before. I couldn't think I was dead or nothing."

Then he asked me how it would act from then on. From then on, if I bent over to change a tire and stayed bent over, I would have that dizzy feeling, like the blood would rush to my head, and I would fall over. And then, if I was to go to
30 back the car out of a hole or even cut a contact, like steering back an automobile in a hole in the garage, it would get me out of breath, I would choke right up.

And they wrote down what I told them.

By Mr. Carton:

Q. Did you tell them this first choking up had come while you were lifting up a barrel of 50 gallons of alcohol? A. The first choking up I had

Charles Glanton—Cross.

come when I was heading it up. He didn't ask me.

Q. You told them that? A. Yes.

Q. There is no question about that? A. No question about that.

Q. Did you ever tell anybody in the Fitkin Hospital about that? A. I told them at the Fitkin Hospital; they told me— 10

Q. Answer the question. Did you tell them the same thing in the Fitkin Hospital? A. They didn't ask me in the Fitkin Hospital.

Q. So you never told anybody at the Fitkin Hospital that you got this choking up when you were heading up these barrels, is that right? A. They didn't ask me in the Fitkin Hospital.

Q. Answer the question. A. Well, the only question I could answer was when I answered them at the Fitkin Hospital. 20

Mr. Carton: Will you read the question back, please?

(The last question was repeated by the reporter.)

The Witness: When I was heading up the barrels—

Mr. Mattice: Answer the question yes or no. 30

The Witness: I didn't tell them I was heading up the barrels in the Fitkin Hospital.

By Mr. Carton:

Q. You didn't? A. No.

Q. The first time you went to the Fitkin Hospital was on the 17th of January, 1942, wasn't it? A. When was that? I didn't understand it. 40

Mr. Mattice: January 7th.

Charles Glanton—Cross.

Mr. Carton: January 17th.

By Mr. Carton:

Q. Isn't that right? A. In January, the first time I went to the Fitkin Hospital.

10 Mr. Carton: Can we agree it was January 17th?

Mr. Mattice: Yes.

Mr. Carton: January 17th.

Mr. Mattice: Yes.

By Mr. Carton:

Q. And at that time you told them that last week you had a cold, isn't that right? A. No.

Q. You deny that? A. I deny that.

20 Q. Didn't you also tell them that your throat was inflamed and you had pains in the chest, and headache? A. No, I didn't tell them anything.

Q. You didn't tell them that? A. No.

Q. And that then, in a few days, you noticed that your face was swollen; isn't that what you told them? A. No, I didn't tell them that.

Q. And when you noticed your face was swollen, you went to the doctor, and he sent you to the hospital for observation; isn't that what you told them? Do you deny that's what you told them?

30 A. When I first went to the Fitkin Hospital?

Q. Yes, the first time you went to the Fitkin Hospital. A. I went to Doctor Edelson, and he just looked at me.

Q. Just a minute. I say, do you deny that that was what you told them when you first went to Fitkin?

Mr. Mattice: I don't know whom he is talking about by "them."

40 Mr. Carton: The statement that he says he gave when he first went to the Fitkin Hospital.

Charles Glanton—Cross.

Mr. Mattice: To whom?

Mr. Carton: Dr. Edelson, I presume.

Mr. Mattice: That is what he is trying to tell you.

Mr. Carton: It is signed by Doctor Edelson (indicating).

The Witness: Doctor Edelson told me to go to the Fitkin Hospital and stay until he saw what was wrong with me. But I didn't know. 10

Mr. Carton: Your Honor, I have no such question that calls for any such answer.

The Court: Strike it out. What is the question?

(The reporter repeated as follows:

“Q. I say, do you deny that that was what you told them when you first went to Fitkin?”) 20

The Witness: That I had a cold? I deny that. I didn't tell them that.

By Mr. Carton:

Q. You told them that you had a cold last week, didn't you? That is, on January 17th, the day you were admitted to the hospital, when they asked you about your past history, you said, “I had a cold last week”—and then your throat was inflamed and you had a pain in your chest, and in a few days your neck began to swell up and so you went to your doctor, and he sent you to the hospital for observation? A. I don't remember that. 30

Q. Do you deny that is what you told Doctor Edelson, or the doctor who examined you on your admission to the hospital? A. I deny that.

Q. You deny that? A. I never told them I had a cold. 40

Charles Glanton—Cross.

Q. All right. And the second time you went to the hospital, the Fitkin Hospital—in February, I believe it was, of 1942—what did you tell them that time? A. I went back and told them I wasn't getting no better and it looked like I was getting worse instead of better.

10 Q. On your admission at that time did anybody—

Mr. Carton: If your Honor please, do you want to stop for lunch? I notice it is a quarter after one.

The Court: I think we had better, if you are going to have much more.

Mr. Carton: All right, sir.

(At this point a luncheon recess was taken, after which the petitioner resumed the stand and the trial proceeded as follows):

20

By Mr. Carton:

Q. Mr. Glanton, you worked for Joseph Stein quite some years ago, didn't you, back in 1930 and 1931? A. Yes, sir.

Q. Did you have any trouble with Mr. Stein at that time?

30 Mr. Mattice: I object to that, any trouble with Mr. Stein. Of course, that is not material here, trouble had with Mr. Stein.

Mr. Carton: Well, I think it goes to the question of credibility.

Mr. Mattice: I mean, the question is too broad.

Mr. Carton: I want to ask him if he stole anything out of Mr. Stein's place.

40 Mr. Mattice: If your Honor please, there is a proper way to bring these things

Charles Glanton—Cross.

out. I don't think that's proper, not fair to the petitioner on the stand, to say a thing like that.

Mr. Carton: He can deny it.

Mr. Mattice: Ask him the proper way.

Mr. Carton: The proper way to ask him— 10

The Court: Is this question a foundation?

Mr. Carton: A foundation, yes.

The Court: I will allow it.

By Mr. Carton:

Q. Did you steal a revolver out of Mr. Stein's garage? A. No, sir, I never stole anything out of it.

Q. You didn't steal a revolver that was involved in the Fearce case? A. No. 20

Mr. Mattice: I know who stole the revolver and you do, too.

The Witness: Mr. Stein wouldn't have had me back and given me the keys to his place of business if I had stole something.

By Mr. Carton:

Q. You never did, you didn't take a revolver out of his car? A. No, sir. 30

Q. Do you absolutely deny that? A. I deny that.

Q. Did you ever take his car without permission, or a car out of the garage without permission? A. I drove a car away from the shop without permission.

Mr. Mattice: Is this in 1931?

Mr. Carton: It's at a later date.

Mr. Mattice: Let's fix the date, please. 40

Mr. Carton: Just a minute; I will be

Charles Glanton—Redirect.

right with you with the exact date—May, 1941, shortly before May, 1941.

By Mr. Carton:

Q. Did you? A. I drove cars away from there without him telling me to take it.

10 Q. Without permission. All right.

Mr. Carton: I don't believe I have any more questions.

Redirect-examination by Mr. Mattice:

Q. Getting back to this revolver proposition, you were never indicted for that particular taking were you? A. No, sir.

20 Q. And you weren't indicted for murder, either, in the Potts case? A. No, sir.

Q. And the men indicted in that case were Fearce and Jackson? A. Yes.

Q. And they tried to implicate you? A. Yes, sir.

By Mr. Carton:

Q. You were held as a material witness for over a year, isn't that right, until the case came up? A. Yes.

30 *By Mr Mattice:*

Q. And you got paid for it, too, didn't you? A. Yes, sir.

Mr. Carton: Okay.

By Mr. Mattice:

Q. How old are you now, Charlie? A. 36.

40 Q. And prior to the time that you went to Doctor Carter for the back injury, were you ever to a doctor before that time? A. No, sir, no more than buying medicine from the drugstore.

Charles Glanton—Redirect.

Q. And you saw Doctor Carter how many times as a result of the back? A. I only went there during that week.

Q. And subsequently, you say you had a cold and went to Doctor Villapiano? A. Yes, sir.

Q. And you saw Doctor Villapiano how many times? A. That one time. 10

Q. And he gave you what sort of treatment? A. He went in and examined me and took my blood pressure and everything, and took me into the room and said, "You have a cold", and he gave me a little bottle of capsules, and I took four of them and the cold was gone.

Q. And prior to December 8th, 1941, had you ever had any difficulty with any veins in your neck, or had your face swollen out in any manner? A. Not until this choking up. 20

Q. Before that time, I mean. A. No, sir.

Q. And it wasn't until after December 8th that these swellings appeared? A. That's right.

Q. You didn't have those swellings when you saw Doctor Villapiano for the cold? A. No, sir, no swelling whatever. He told me I was perfect.

Mr. Carton: Just a moment.

Mr. Mattice: I will consent to that being stricken. I just asked him if he had the swelling at that time. And the answer is what? 30

The Court: No.

The Witness: No.

By Mr. Mattice:

Q. And in reference to your so-called back condition, did you collect one week's compensation in that matter? A. In the whole thing, when I sprung my ankle I was off a week, and one day I was up there and Joe Stein told me— 40

Charles Glanton—Recross.

Mr. Carton: No.

By Mr. Mattice:

Q. No. Did you collect one week's compensation or more? A. One week, I only got one week.

10 Q. And did that concern your chest or your neck or face? A. No, sir.

Q. For how many years before December 8th, 1941 were you employed in an automobile shop of some kind, either—I will withdraw the last part—in an automobile shop? A. Ever since I was fourteen.

Q. And did you do heavy work in those places? A. Well, lifting. I did the same work.

Q. As when you worked for Joe Stein and Shafto? A. Yes, sir.

20 Mr. Mattice: That is all.

Mr. Carton: Just a moment.

Recross-examination by Mr. Carton:

Q. You went to see Doctor Villapiano before you had that compensation case, didn't you, and not after it? A. I went to see Doctor Villapiano twice, once when I had a cold and then when the compensation doctor sent me down there.

30 Mr. Mattice: Well, the question now is, did you have this cold after your back injury or before? Is that it, Mr. Carton?

Mr. Carton: That's it.

The Witness: I don't know just which one was first.

Mr. Mattice: If you don't recall, say so.

The Witness: I don't know which one I went first; I can't remember.

40

*Charles Glanton—Recross.**By Mr. Carton:*

Q. Well, the back case injury was on January 10th, 1941, wasn't it? A. I don't know just the date of it. It was just a matter he told me to go and take off.

Q. And didn't you go to see Doctor Villapiano on the occasion of October 16th, 1940? A. I went to see Doctor Villapiano the same date I registered for the war, because I can remember I told him, "I am in good shape to be a soldier." 10

Q. And did you register in the first draft registration—from 21 to 36, I believe it was? A. I will see.

Q. What is that? Have you got it there? A. If you can read it (indicating).

Mr. Mattice: October 16th, 1940. 20

Mr. Carton: That's it.

By Mr. Carton:

Q. Now, you say you were paid a week's compensation as the result of this back case in January, 1941? A. I got a check, yes, from the compensation.

Q. And you were laid up for two weeks as a result of that? A. I didn't lay any up. I was working, and Joe Stein told me I had a check over in the office, and I asked him what it was for and he said, "The compensation people sent you a check." 30

Q. And was that for a week's pay? A. \$11. I don't know what it was for.

Mr. Carton: No more questions.

Mr. Mattice: That's all.

The Court: That's all you have for today? 40

Certificates.

Mr. Mattice: It looks that way. It should be enough.

The Court: The 27th, I guess, will be the next date.

(At this point the trial was continued to April 27th, 1943.)

10

**Certificate of Deputy
Compensation Commissioner.**

I Hereby Certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically before me at the time, place and date hereinbefore set forth.

HARRY H. UMBERGER,
Deputy Compensation Commissioner.

20

Certificate of Reporter.

I Hereby Certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by me at the time, place and date hereinbefore set forth.

H. R. HUNT,
Certified Shorthand Reporter.

30

40

Dr. Charles Philamore Bailey—Direct.

NEW JERSEY DEPARTMENT OF LABOR

WORKMEN'S COMPENSATION BUREAU

Asbury Park, Monmouth Co. District.

CHARLES GLANTON, 10
 Petitioner,
 vs.

JOSEPH A. SHAFTO,
 Respondent.

April 27, 1943.

Before—HON. HARRY H. UMBERGER,
 Deputy Compensation Commissioner. 20

APPEARANCES:

JOSEPH F. MATTICE, ESQ., for the Petitioner.

DURAND, IVINS & CARTON, ESQS., by ROBERT V. CARTON, ESQ., for the Respondent.

DR. CHARLES PHILAMORE BAILEY, called as a witness on behalf of the petitioner, being first duly sworn, testified as follows: 30

Direct-examination by Mr. Mattice:

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

Q. And also of Pennsylvania? A. Yes.

Q. How long have you been practicing medicine, Doctor? A. Eleven years or ten years.

Q. Graduate of what college? A. Hahnemann Medical College.

Q. At the present time you are connected with 40

Dr. Charles Philamore Bailey—Direct.

what hospital or college, if any? A. Women's Medical College, Hahnemann Medical College, Graduate School of the University of Pennsylvania, Abington Memorial Hospital, Memorial Hospital of Wilmington, Doctor's Hospital, Philadelphia General Hospital, consultant in thoracic surgery at the Fitkin Memorial Hospital.

10 Q. You specialize, Doctor, in any form of medicine? A. Yes, exclusively chest surgery.

Q. Now, are you acquainted with the petitioner, Charles Glanton? A. I am.

Q. When did you first see Charles Glanton? A. I first saw him in July of 1942, I don't know exactly what date.

Q. Referred to you or come to you himself? A. He was referred to me by the medical staff of the Fitkin Memorial Hospital.

20 Q. And did you see him in Philadelphia? A. Yes.

Q. You saw him the first day—did he remain in Philadelphia for any period of time thereafter? A. Yes, he remained in Philadelphia for a number of days at that time and then returned—

Q. Well, I mean, he remained for a number of days where? A. In the Hahneman Hospital.

Q. Did you see him when he came to stay there? A. Yes.

30 Q. Did you treat him while he was there? A. Yes, I did.

Q. For how long a period of time did you treat him the first time, Doctor? A. I am not quite sure how long it was, I think it was about ten days or two weeks.

Q. Then after that time what happened? A. Then I referred him back to the Fitkin Hospital for further observation and treatment.

40

Dr. Charles Philamore Bailey—Direct.

Q. Did he return to Philadelphia again? A. Yes, he returned October, 1942.

Q. And remained how long at the Hahneman Hospital this time? A. He came about October 18th and he remained until November 23rd or something of that sort, 1942.

Q. Now, from the time you first saw him in July, Doctor, until sometime in November—did I understand you treated Mr. Glanton? A. Yes. 10

Q. Did you have occasion also to operate? A. Yes, I operated upon him.

Q. When did you operate upon him, Doctor? A. October 23rd, 1942.

Q. Any X-rays taken during the period of time he was there, Doctor? A. A great many.

Q. Taken by whom? A. By the X-ray Department there. 20

Q. X-rays were taken for the purpose of treatment? A. Yes, diagnosis and treatment.

Q. Did you use these X-rays in connection with the treatment of this patient? A. Yes.

Q. And finally, Doctor, did you make a diagnosis of this condition of Mr. Glanton's? A. I made a diagnosis—a definite diagnosis of thrombosis.

Mr. Carton: Just a moment. When was the diagnosis made? 30

Mr. Mattice: I am sorry.

By Mr. Mattice:

Q. When, Doctor, did you make the diagnosis?

A. A diagnosis was made at the time of the operation and confirmed a few days later by Dr. Batson.

Q. What was the diagnosis at the time you made it, Doctor, what was it? A. At the time of the operation the diagnosis was thrombosis 40

Dr. Charles Philamore Bailey—Direct.

strain involving the superior vena cava and the azygos vein, and in all probability the innominate veins and vessels of both sides.

Q. During the time you saw him and the time you operated upon him, did you feel in your opinion this man was overweight? A. No.

10 Q. Now, the X-rays which you say were taken just prior to the time you operated upon him and used for treatment, do you have them with you? A. Yes, they are here.

Q. Have you had experience, Doctor, in the reading of X-rays? A. Yes, chest X-rays.

Q. These X-rays that you have here were taken by Dr.— A. Well, this was the X-ray Department of the Hahneman Hospital, Dr. Frank.

20 Q. You used these X-rays in connection with the treatment of this petitioner? A. Yes.

Q. Can you— A. I don't imagine all of these X-rays would be of value to the Court. Suppose we offer these (indicating).

Q. These X-rays I show you, Doctor, were taken when? A. Well, some were taken before the operation and some were taken in July of 1942. Some were taken before the operation in October, 1942, and some were taken subsequently.

30 Mr. Mattice: Any objection?

Mr. Carton: I would like to see them.

Mr. Mattice: Yes (handing same to counsel).

Mr. Carton: Well, there is no name on them.

The Witness: There is a number on them.

Mr. Carton: Yes.

The Witness: I recognize them.

Dr. Charles Philamore Bailey—Direct.

By Mr. Mattice:

Q. You recognize the films? A. Yes.

Q. Taken where? A. At the Hahneman Hospital.

Q. They were identified in what manner? A. I remember what they look like.

Q. Anything else on them that you can identify them by? A. Well, of course, these veins are filled with a peculiar substance and that would be a most unusual X-ray from anyone else, anyhow. However, I recognize the picture of the chest. 10

Q. Can you identify the X-rays as being pictures taken of the chest of Charles Glanton? A. Yes.

Q. Look at the other pictures you have here, Doctor. A. Yes (examining same).

Q. Anything else on the X-rays you have in your hand at the present time to identify them as to where they were taken? A. Well, the Hahneman Hospital is on all of them. These three I haven't looked at yet (indicating). These are also pictures. 20

Q. Can you say looking at these pictures whether or not these pictures were used by you for the treatment of Mr. Glanton at the Hahneman Hospital? A. Yes.

Mr. Carton: If your Honor please, I object to the X-rays. These X-rays, they have no name; they are X-rays of the chest. The doctor who took these X-rays is not here. There is no tie-up between these X-rays and the X-rays which the doctor took of Mr. Glanton. There is nothing on these X-rays by means of identification or otherwise. I submit, if your Honor please, the X-rays are not properly proved and therefore are not admissible. 30 40

Dr. Charles Philamore Bailey—Direct.

The Witness: Well, there is no way—

Mr. Carton: Just a moment, Doctor.

The Witness: Yes.

The Court: Is that the objection?

Mr. Carton: Yes, if your Honor please.

No tie-up whatsoever of the X-rays.

10 The Court: I think they are sufficiently proven. Objection overruled.

Mr. Mattice: Mark them, please.

The Witness: If I may say something, there are a number of the X-rays, we can look over the numbers, if you want. I recognize the films, however.

The Court: All right, you may mark them. How many are there?

Mr. Mattice Ten.

20 (At this point X-rays were received and marked P-1, P-2, P-3, P-4, P-5, P-6, P-7, P-8, P-9, and P-10 in evidence as of this date.)

By Mr. Mattice:

Q. Doctor there are ten X-rays. Are all these X-rays alike, do they show the same thing? A. No, they show different things.

30 Q. Will you take, Doctor, the first one and mention the number marked thereon and describe this condition you have stated? A. I have pictures here taken on July 9th.

Mr. Carton: Excuse me, Doctor, give me the exhibit number, if you will.

40 The Witness: P-9. This was taken on admission in July, 1942, at the hospital. At that time we had this clouding unexplained especially in the right upper chest near the mid line; the question was whether it might be tumor—

Dr. Charles Philamore Bailey—Direct.

Mr. Carton: No, just a moment, Doctor.
Just tell what the X-rays shows.

By Mr. Mattice:

Q. Yes. A. Well, the X-ray shows apparently a normal left side and on the right side it shows this abnormal shadow, a little bit of fuzziness by the upper right lung, up here (indicating). 10

Q. All right. The next one, Doctor. A. The next one is P-7 taken at the same time but with a different exposure of X-ray, this is one with more current put through and it shows that shadow, it is not very dense, that is, it is not solid looking bone, it shows it is not a very dense structure.

Now, P-8 is a picture taken the next day after the injection of a contrast substance, that is, a substance which is opaque on the X-ray, into the right arm and you see opaque material running up the large vein of the arm to here and then at the—well, it is well above his rib and under the clavicle where the axillary vein becomes the subclavian vein. You see there is very little opaque material but you have larger veins and you find there is no material in the region where the vena cava would be. You also see some of the material coming up into the smaller veins and into the vertebral veins, which are those little ones that run down over the spinal cord and in the spinal canal. 20 30

Now, this is P-6, and this shows the same situation a second or two later when the iodized material is getting out of the vein, is leaving the vein here, it is still in the valves. Again, you see no material in the vena cava or in this subclavian vein at all; and, again, you see it in the smaller vein that runs up and down the spine. 40

Dr. Charles Philamore Bailey—Direct.

This one is P-10. This was the picture taken on his second admission on October 20th, and the picture is similar to the first picture which I have shown. It shows no essential difference in the marking of the chest.

10 Now, P-4. This was taken in order to demonstrate that the condition was bilateral. You see, we have now injected opaque material not only into the right arm but also into the left arm simultaneously, and you see it comes up to the left arm here (indicating), and then was dispersed towards this subclavian vein, but it does not join all of the innominate veins or all of the superior vena cava at all. Again you see this anastomosis of the vertebral veins. That proves the condition is bilateral involving both innominate veins and the
20 superior vena cava.

P-6, was a picture taken a second or two later.

This is Number P-5. This shows the iodized oil is leaving the vessels. There is a little bit staying where the valves are. But, again, there is no filling of the large vessel, the superior vena cava, which, of course, should be filled by this time.

P-2, is a film which was taken as soon—since Mr. Glanton left the hospital, it was taken April 16, 1943. It is a recent film. As you see, there is
30 no great difference between this shadow and the very first film we saw.

Now, this is P-1. This is another picture to show the structure of the shadow, and again, you see it is not very dense.

Q. Taken the same day, Doctor? A. The same day, yes. And, this lateral picture, this is P-3, which was taken on the same date.

Q. All right, Doctor, take the stand again, please.

40 (The witness left his position at the

Dr. Charles Philamore Bailey—Direct.

shadow box where he interpreted the X-rays and returned to the witness stand.)

By Mr. Mattice:

Q. Doctor, this condition sometimes is also known as a thrombosis strain? A. Yes, thrombosis strain.

10

Q. What is that, Doctor? A. It is a condition of occlusion of a vein due to injury of an indirect type, an injury from within rather than from externally. It may occur in any kind of vessel particularly of the extremities and ordinarily occurs following severe violent effort, but may occur under conditions of repeated effort.

Q. Tell me, Doctor, of Mr. Glanton, where the condition exists, for the purpose of the record. A. It goes up into the superior vena cava and azygos vein and the two innominate veins.

20

Q. On your body describe it, from where to where, where does that run? A. Well, it is the two big veins that collect the blood from each side of the head and the corresponding arm, these are the innominate veins and they join two big vessels which empty into the heart and that is known as the superior vena cava; the azygos vein is the large branch of the superior vena cava, they are deep in your chest.

30

Q. And this condition, Doctor, what is the effect upon a man for—in his employment or work of any nature? A. Well, it may not be possible for man to do any work which would require strain or effort—the kind of effort where you would close the glottis such as pushing. It makes it absolutely impossible to do that type of work, and also makes it impossible for him to bend over, to do work where the head becomes low.

Q. You saw Charles Glanton the last time when, Doctor? A. On the 16th of April, 1943.

40

Dr. Charles Philamore Bailey—Direct.

Q. You already testified you treated him up to that time; is he being treated at the present time?

A. At the present time he is under our direction.

Q. Under your direction? A. Yes.

10 Q. Will the treatment have any effect in any manner to remedy this condition, or do you think it is stationary at this time? A. At the present time it is practically stationery.

Q. When did you determine the treatment was through as far as the condition was concerned, the temporary period of treatment, when was that through in your opinion? A. Well, of course, part of the treatment is rest and avoidance of certain things and that is for life.

Q. You say you operated on Mr. Glanton some time in—when was that? A. October 23rd.

20 Q. Prior to that time you say you treated him. And, Doctor, did you submit a bill at any time for this treatment and for your operation? A. Yes.

Q. I show you a bill and ask you if this is the bill you submitted to Mr. Glanton for your treatment? (Showing witness a bill.) A. (Examining same) Yes.

Mr. Mattice: I offer it in evidence at this time.

30 Mr. Carton: I object to the bill. There is nothing to be shown by the testimony here this bill was for operation, for treatment or operation. Further than that nothing was testified here to show this treatment has done the petitioner any good, but was merely a basis as to what was wrong with him. There is nothing to show the treatment in any way has relieved or improved the condition.

40 The Court: I will allow the bill as to

Dr. Charles Philamore Bailey—Direct.

the amount without being considered as being an admission against the respondent.

Mr. Mattice: That is right, if your Honor please.

(Bill received and marked P-11 as of this date.)

10

By Mr. Mattice:

Q. Do you feel that the bill in the amount of \$745 is reasonable for the services performed? A. Yes.

Q. When did you decide, Doctor, that an operation in this case was necessary, if it was necessary? A. It was decided during the interval between Mr. Glanton's going home from the first hospitalization and the second hospitalization. I couldn't tell you exactly what time, but that was still felt necessary after his second admission.

20

Q. You feel this operation was of any benefit to the man in any manner? A. I think it was.

Q. Now, Doctor, assume that Mr. Glanton or this petitioner who is now possibly 37 years of age, that prior to December 8, 1941, enjoyed good health except for an occasional—on October 15, 1940, he was treated by one Dr. Villapiano for a cold, and on January 10, 1941, sustained an injury to his back while changing an automobile tire for which injury Mr. Glanton collected compensation for a period of one week totaling some \$11; and on the afternoon of December 8, 1941 while heading up alcohol drums of the approximate capacity of 50 gallon drums, suddenly choked up and was obliged to sit down and drink a bottle of Coca-Cola and sometime thereafter noticed a swelling of the vein in his neck, the chest became sore and his face became swollen, was unable to do anything heavy or bend over, and on January 17,

30

40

Dr. Charles Philamore Bailey—Cross.

1942 consulted Dr. Edelson and thereafter was confined to the Fitkin Hospital for about one week where X-rays were taken, and after remaining home for about approximately two weeks he returned to the hospital, the Fitkin Hospital, for nine days and subsequently visited the Hahneman
10 Hospital where he was treated and operated upon by you, and thereafter he continued to have this puffed face and his chest remained sore, and when he bends over, why, he becomes dizzy. Assuming these facts and from your treatment and operation and knowledge and experience as the physician and surgeon, can you tell us with reasonable certainty whether or not the happening complained of on December 8, 1941 by the petitioner is causally related to the present condition? A.
20 I think it is.

Q. You think it is. And, Doctor, did you estimate, in your opinion, at this time, whether or not this man—strike it out. Will you tell us at this time whether or not this man is permanently disabled, Doctor? A. Yes, he is.

Q. Can you estimate the amount and to what extent? A. Well, it is total as far as any work requiring manual labor.

Mr. Mattice: Cross-examine.

30

Cross-examination by Mr. Carton:

Q. Doctor, would you come back again to your X-rays and put them on the shadow box? A. Yes. (Witness leaves the stand and takes a position by the shadow box.)

Q. Take P-8. A. Yes.

40 Q. Now, Doctor, as I understand it, you say the substance which was injected shows up in the vein coming up out of the right arm? A. Yes.

Dr. Charles Philamore Bailey—Cross.

Q. And is it that light portion there coming up out of the arm? Does that show the substance?

A. Yes, this light portion here (indicating).

Q. Now, I refer you to this portion, the valves, what does that indicate? A. These are the regions of the veins—regions of the valves, excuse me.

Q. Regions of the valves? A. Yes. 10

Q. Coming to that vein, does that show a normal vein? A. Well, that is a dilated vein, but, of course, the picture is taken after the immediate injection of a large amount of material so that that might be distended just from the material, the quantity of the material.

Q. I see. And you say, Doctor, that does not show in the substance coming down into the mid section, the mediastinum? A. That's right—Well, now, no, excuse me. Vertebral, these are in the mid section, of course, they are distended. It does not show any material going into the innominate vein or vena cava. 20

Q. Doctor, what is this light substance coming down over here, coming down into that portion there (indicating)? A. Well, you can see a small amount of light substance coming down in the region where the subclavian should be; the vein itself is much larger than this normally.

Q. Then, it does show coming down there? A. In the subclavian vein, yes. 30

Q. That is all for that picture. Now, coming to Exhibit P-10, this shows the same as P-9, is that right, the first one you put up? A. It shows the same as the first one.

Q. Yes, P-9, and that was taken how many months later? A. Three months later, in October.

Q. In so far as the picture, it shows the condition is the same, is that right? A. Yes. 40

Dr. Charles Philamore Bailey—Cross.

Q. There has been no diminution or addition, is that right? A. Yes.

Q. All right. That is all for that one, Doctor. Now, P-4, Doctor, that is the same as P-8 except showing it both sides, injection both sides, is that right? A. That's right.

10 Q. Now, I ask you if that picture does not show some of the material injected coming down through the vein out of the arm down into the middle section, Doctor? A. It shows some amount of material in the left subclavian vein.

Q. All right, that is all for that one. Now, P-2, Doctor. A. Yes.

Q. That is the same type of X-ray as were P-9 and P-10, is that right? A. Yes.

20 Q. Taken April 16, 1943, approximately nine months after the first one was taken, is that right? A. Yes, about that.

Q. One was July, 1942, this is April, 1943, right? A. That is right, sir.

Q. That shows the same condition as the first X-ray you took, is that right? A. It shows one difference that I should have mentioned, a portion of the second rib has been removed.

Q. Due to your operation? A. Yes.

30 Q. And the condition, then, from the entire history—you may take the stand again, Doctor. (At this point the witness resumed the witness stand.)

Q. The condition which you have shown there in your pictures shows by your X-rays to remain the same during the entire period of your X-ray examination, is that right, Doctor? A. Well, let us put it this way—

Q. You can answer the question yes or no, does it or does it not? A. No, it does not show the same.

40 Q. Did you not testify that the picture, Exhibit

Dr. Charles Philamore Bailey—Cross.

P-10, taken October 20th, 1942, was the same type of picture showing the same portion of the chest, the same condition as P-9, taken in July, 1942; did you not testify that Exhibit P-2 taken April 16th, 1943, showed the same condition as in P-9 and P-10— A. No, sir.

Q. (continuing)—except for the removal of the rib or the bone, rather? A. No, I said the X-ray pictures looked similar. 10

Q. X-ray pictures looked similar? A. Yes, but that is not the same thing.

Q. All right. Similar is what I mean, I don't necessarily mean identical, Doctor? A. No, you asked me if they showed the condition had remained the same. I said the X-ray pictures were similar.

Q. The X-ray picture shows the conditions are similar? A. As far as the X-ray pictures show. 20

Q. As far as the X-ray pictures show? A. Are very similar.

Q. All right. Now, Doctor, you testified, did you not, that you determined sometime between his first and second admission to the Hahneman Hospital to operate, is that right? A. Yes.

Q. Doctor, you determined to operate while he was there the first time, did you not, Doctor? A. Well, I chose to operate when he was there the first time but we postponed it for further opinion. 30

Q. Your operation was not decided after he left the hospital and came back again, it was decided when he was there? A. No, we had several doctors' opinions and it was not decided until the second admission.

Q. You sent him back, did you not, Doctor, for operation and treatment? A. Yes.

Q. What kind of treatment did you send him back for? A. For injection treatment and rest. 40

Dr. Charles Philamore Bailey—Cross.

Q. What kind of injection treatment? A. Bismuth.

Q. What for, Doctor? A. For lues.

Q. What do you mean by "lues"? A. Syphilis.

Q. You sent him back for this treatment in order to build him up so that you could operate, is that right? A. To make sure that he would heal satisfactorily.

Q. He would have a better chance of healing if you found there was syphilis, that is the reason you sent him back and didn't operate the first time? A. That was the main reason.

Q. All right. And the operation was to be an exploratory operation, wasn't it, Doctor? A. Yes.

Q. To find out what was wrong with him? A. To find out what caused the obstruction.

Q. Yes, to find out what was wrong and you then operated on the 23rd of October, 1942, is that right? A. Yes.

Q. And when you operated you found thrombosis, is that right? A. Yes.

Q. That is the first time you knew there was a thrombosis, isn't it, Doctor? A. Yes.

Q. What? A. Yes.

Q. Now, when you had admitted this man to the hospital in July you questioned him, did you not? A. Yes.

Q. And did you ask him when it first came upon him? A. Yes.

Q. Then what did he tell you? A. He told me that it came along about the latter part of 1941 and got particularly bad January 1st, 1942.

Q. It came along in the latter part of 1941? A. Yes.

Q. And got particularly bad January 1st, is that right? A. That is right.

Dr. Charles Philamore Bailey—Cross.

Q. Did he tell you he had been out drinking on New Year's Eve? A. No, he didn't tell me that.

Q. He didn't tell you that. Did you question him as to just when he first felt this? A. I questioned him, yes.

Q. Did you question him as to what he was doing? A. Yes.

10

Q. What did he tell you? A. He was very vague, he didn't recall.

Q. He didn't recall, isn't that true? A. Yes.

Q. Now, that was in July, 1942, and you questioned him as to whether or not he was doing any work of any kind? A. No. At that time I did not question him as to whether he was doing any work of any kind.

Q. Doctor— A. (Continuing) In respect to his occupation, I knew that.

20

Q. And when he told you what his work was did you ask him whether this came upon him while he was working? A. No, I did not.

Q. In determining the history of this condition which you did not know, you didn't question him as to whether it came on when he was working? A. No, I didn't question him at that time.

Q. Did you question him as to whether it came on while he was in the act of lifting anything? A. No, sir.

30

Q. Whether he was in the act of straining? A. No.

Q. Your history of him, in order to make your diagnosis, you didn't question him at all as to any history of strain or lifting, is that right? A. That is right, sir.

Q. You didn't ask him whether it came on him while he was doing any of these things, is that right? A. No, sir.

40

Dr. Charles Philamore Bailey—Cross.

Q. You questioned him when he was admitted to the hospital the first time, is that true? A. Yes.

Q. You questioned him personally, is that right? A. Yes.

Q. And did he tell you at that time that this condition came on him while he was in the act of
10 lifting a 50 gallon drum of alcohol or heading up a 50 gallon drum of alcohol? A. No, he didn't mention anything.

Q. Well, if he has testified to the fact he did so tell you on the first admission to the hospital, then he was in error?

Mr. Mattice: I object, it is a characterization, it is for the Court to determine.

The Court: Well, it is in the record, it speaks for itself.

20

Mr. Mattice: Exception.

The Court: I will sustain the objection.

By Mr. Carton:

Q. And it was quite a puzzle, wasn't it Doctor?
A. Yes.

Q. (Continuing) Just what was wrong with him, and you went into it quite thoroughly? A. Yes.

Q. And you questioned him quite thoroughly?
30 A. Why, undoubtedly. We are lax, as all do sometimes.

Q. Well, this man, he was a puzzle to the doctors at the Fitkin Memorial Hospital? A. Yes.

Q. They had written you about him, they were sending him to you and therefore you certainly gave the matter all the professional attention it was entitled to, didn't you? A. Yes, I thought I did.

Q. What? A. I thought I did.

40 Q. He never mentioned when he was admitted

Dr. Charles Philamore Bailey—Cross.

to the hospital in July of 1942, of heading up or lifting any drums, did he? A. No.

Q. Did he ever mention the date of December 8th to you? A. Not at the time.

Q. Not at that time. He did tell you it was in the latter part of December, is that right? A. No, the latter part of 1941, he thought it was in December. 10

Q. Didn't you say the latter part of December, 1941? A. No, I said the latter part of 1941, I think.

Q. I wonder what the record will show? A. Yes.

Q. He first noticed it about January 1st, 1942? A. That was when he noticed the swelling on his head and neck.

Q. Then you say he told you he didn't notice any swelling of his head or his neck before January 1st, 1942, is that right? A. He made no mention of it before that to me. 20

Q. Well, Doctor, have you your hospital records here? A. Not in court.

Q. What? A. Not in court.

Q. And you are only testifying upon recollection, is that right? A. Well, last night's recollection.

Q. I see, you went over the hospital records last night, is that it? A. Yes. 30

Q. And wouldn't you only wish there were records here? A. Hospitals won't let you take them.

Q. It is most unusual, Doctor? A. You know hospitals.

Q. Now, Doctor, when he told you he first noticed this on January 1, 1942, did you question him as to anything that happened that day? A. He volunteered information that his room mate 40

Dr. Charles Philamore Bailey—Cross.

said to him, "You must have had felt bad already last night—"

Mr. Mattice: Of course—

Mr. Carton: This is your own witness.

10 The Court: This is the room mate speaking, now. That is what the petitioner said.

Mr. Carton: Certainly, anything—

Mr. Mattice: That his room mate said this to him?

Mr. Carton: Yes, he said the petitioner told him, the petitioner told the doctor this, what the room mate had said.

Mr. Mattice: Well, all right with me.

The Witness: (Continuing) "Because your face is all swelled up this morning."

20 *By Mr. Carton:*

Q. And I assume in your diagnosis you checked upon that point and questioned him further about it? A. Yes.

Q. What did you question him about? A. I questioned him whether his neck was swollen, whether he had pain, whether he had dizziness, and if he had noticed it before.

30 Q. What did he say as to that, Doctor? A. He didn't say whether he had noticed it before, he told us he definitely recognized it first as being present then.

Q. Wasn't sure whether he had noticed it before January 1st? A. That's right.

Q. And did you question him as to whether or not he had been doing anything on December 29th, or on the evening of December 31st, rather, or New Year's Eve, which might give rise to this? A. Yes, I asked him if he had had a party the night before and he said no.

40 Q. And did you question him as to whether he

Dr. Charles Philamore Bailey—Cross.

might have been doing anything else at about that time that might give rise to this coming on, then?

A. Undoubtedly I did, but I don't recall the details.

Q. You told us he didn't tell you about anything on December 8th, of lifting any drums at that time? A. Not at that time, sir.

10

Q. Now, were there any other doctors in the hospital on this first occasion of July 1942 who took him under observation? A. Yes.

Q. Do you know whether or not they also consulted with him? A. Yes.

Q. Were you there on any of these occasions? A. No, I was not present on any of these occasions.

Q. All right. Doctor, he came back again on October 18th, was it, 1942? A. Yes.

20

Q. Did you again go over his history with him? A. I did, sir—excuse me, I didn't personally go over his history again at that time.

Q. You did not? A. No.

Q. Did you have somebody do it? A. Yes, the interne did it.

Q. Did you examine that history? A. Yes.

Q. Was there anything in that history different than the previous history which had been given you on his first admission? A. To the best of my recollection, no.

30

Q. You examined the records last night, did you not? A. Yes.

Q. In fact, if there had been any different history given, you would have considered that of importance, would you not, Doctor? A. Well, I certainly would have.

Q. And therefore, if there had been a different history given you, you would have remembered it, wouldn't you? A. Yes.

40

Dr. Charles Philamore Bailey—Cross.

Q. And then, Doctor, up until the time that you operated, there was no history given you of lifting or straining? A. That's right, sir.

Q. No history at all. And then you operated, is that true, Doctor? A. Yes.

10 Q. And then you found this thrombosis, is that right? A. Yes.

Q. And then in considering the thrombosis, you considered as to what might have caused that thrombosis, didn't you? A. Yes.

Q. And one of the causes of thrombosis is strain, is that right, Doctor? A. Yes.

Q. So then, Doctor, having that in mind, you then went back and questioned Mr. Glanton with that in mind, is that true? A. That is correct.

20 Q. To find out if you could find any history of strain? A. Yes.

Q. And when you first questioned him as to the history of strain, he didn't recall any, is that true? A. Well, remember this, immediately after operation he wasn't a very well man at that time.

Q. Well, then, you certainly wouldn't have gone in and questioned him if you didn't think he was capable of talking properly? A. Well, he was capable of talking.

30 Q. Yes, and you went and questioned him? A. That is right.

Q. And you first had to question him as to whether or not there was any strain, if this came on by strain, and he didn't recall any, is that true, Doctor? A. Yes.

Q. The fact of the matter is you had to prompt him quite a bit? A. We had to ask him directly if he had done any unusual exertion or done any severe straining or lifting.

40 Q. And he just said no, didn't he? A. He said he couldn't recall any.

Dr. Charles Philamore Bailey—Cross.

Q. You did keep that up for some three or four days, did you not, Doctor? A. Well, I didn't question him every day.

Q. Well, it carried on over a period of some three or four days? A. The next time we had a chance to talk for more than a minute, and also the same information. 10

Q. You had to prompt him, too? A. On the first occasion.

Q. No more than the first occasion? A. That is right.

Q. You prompted him? A. Well, I suggested he might have done something by way of strain.

Q. Told him that, right to him? A. Yes, to see definitely if he couldn't remember.

Q. And he couldn't remember at that time? A. Yes. 20

Q. And after a lapse of three or four days, did you go back to him again; then he recalled the same thing? A. That's right.

Q. Even then he didn't know anything about it, did he? A. I don't know whether he did or not at that time, but he stated it was an accident, and in the first week or two days later.

Q. No date, is that right? A. As far as I recall no date at that time. The early part of December, I think was the way he expressed it. 30

Q. I ask you, Doctor, if this is your signature (exhibiting paper). A. (The witness examines same.) That is right.

Q. You wrote that letter, did you not, Doctor? A. Yes—let me see.

Q. You may read the entire letter if you wish, (handing the witness a paper). A. All right. (At this point the witness read the letter) Yes.

* Mr. Carton: I offer this for identification. 40

Dr. Charles Philamore Bailey—Cross.

(The letter received and marked R-1 for identification as of this date.)

By Mr. Carton:

10 Q. In this letter you advised Doctor Herman, did you not, that you had to prompt Mr. Glanton in order to get any history of strain? A. I don't recall whether these were the exact words. May I refresh my mind? It is my letter, whatever I said I said, yes, that is correct.

Q. And you did have to prompt him in order to get any history of strain, is that true, Doctor? A. Yes.

Q. You had to suggest it to him, didn't you? A. Yes.

20 Q. Now, Doctor, a thrombosis or an occlusion can come from many sources, can they not? A. Yes.

Q. And when a person does have a thrombosis that generally indicates that he has an accompanying vascular disease? A. No, not necessarily.

Q. It does not necessarily follow? A. No.

30 Q. A person with normal blood vessels and normal arteries would be likely to have thrombosis? A. Well, you said it comes from many causes; he has to have a cause, he may have normal arteries and vessels before that.

Q. What? A. He may have normal vessels and things before that.

Q. And when a person has a thrombosis, Doctor, and you go into the case at a later date, you could not tell from your examination of him when that thrombosis occurred, can you, Doctor? A. Sometimes.

40 Q. You can tell the date when that occurred on examination? A. Well, not to the minute, but perhaps you can get a rough idea.

Dr. Charles Philamore Bailey—Cross.

Q. Without going in and taking the man's history, Doctor? A. Well, it is necessary to take the history.

Q. It is necessary to take the history? A. Yes.

Q. And if he gives you a history of December 1941— A. Yes.

Q. (Continuing) Then you fix that as that time only because he gives you that history, is that correct? A. Well, of course that leads us to think it was that time. 10

Q. And you figure, well, that could have been the producing cause? A. If it otherwise fits the picture of possibilities.

Q. Now, if this man had had a severe strain and sprain sometime prior thereto, it might have come from that, might it not, Doctor? A. Unless it were within such limit that we could possibly connect up the injury to the appearance of the symptoms. 20

Q. Yes— Repeat the question, please.

(Previous question read by the Reporter.)

A. It might have after the onset of the symptoms, if it was within a reasonable time after the injury.

Q. Do I understand by that, Doctor, that— strike it out. What do you mean by the "onset of symptoms?" A. Well, I suppose all of us have had injuries, yet, if we suddenly get a disease that might be produced by injury— 30

Q. Now, Doctor, if I may stop you, I am not talking generally, I am asking you what you mean by the onset of symptoms in so far as Mr. Glanton is concerned. A. The history of an injury the early part of December would fit into the time lag, assuming the symptoms of swelling by February 1st, which seemed to be a reasonable time lag. 40

Dr. Charles Philamore Bailey—Cross.

Q. It might have taken longer, might it not?

A. It might have taken longer.

Q. Yes. And this could have happened, could it not, Doctor, as long ago as a year prior to December 1941? A. Oh, no.

10 Q. If this man, Doctor, under the fluoroscope in October, 1940, showed the cloudiness in the mediastinum would that not indicate it has origin as far back as that date? A. If that could be demonstrated.

Q. If that could be demonstrated. And in fact, Doctor, if it was demonstrated that he did show under fluoroscopic examination on October 17, 1940, that he had this cloudiness in the mediastinum you would be inclined to revise your opinion as to the cause to that extent, would you not, Doctor? A. If the development of symptoms could be shown to have occurred within the period of say, six weeks after that.

20 Q. In other words, it is your opinion these symptoms must develop within six weeks' time, is that right? A. The longest case we have any knowledge of developed within that period of time.

Q. Must all the symptoms develop within that time, Doctor? A. Some certain ones, such as swelling must.

30 Q. Is one of the symptoms, Doctor, chokiness of the throat? A. Well, it could be.

Q. If that feeling had developed in the throat on October 16, 1940, that would indicate symptoms were developing at that time, would it not, Doctor? A. Well, you can attribute symptoms of that kind to most anything, that is not a very definite symptom.

40 Q. Tied in with the fact, of course, the fluoroscope showing the condition, why, the two tie in together? A. Well, the question of the fluoroscopic examination is a very devious one—

Dr. Charles Philamore Bailey—Cross.

Q. Doctor, I am not arguing with you, I am asking you a question and I would like you to answer the question. A. Would you mind repeating the question?

Mr. Carton: Read the question, please (Addressing the Reporter).

10

(Previous question read by the Reporter as follows: "Tied in with the fact, of course, the fluoroscope showing the condition, why, the two tie in together?")

The Witness: No, not necessarily.

Q. Not necessarily? A. No.

Q. But you do not rule it out altogether, do you, Doctor? A. Well, we wouldn't rule out anything if you can show he had his symptoms prior to December, 1941.

20

Q. I see, you couldn't rule them out. And, Doctor, you testified, did you not, on direct examination, that a thrombosis due to a strain that could come from a very severe strain? A. Yes.

Q. Or it could come from a light strain? A. From repeated strain.

Q. And, Doctor, this condition could come, could it not, from almost any kind of a strain? A. Well, I don't understand what you mean by "almost any kind."

30

Q. Well, for instance, it could come from straining at the stool, could it not, Doctor? A. I suppose that is possible.

Q. And it could come from, say, such a thing as violent coughing and sneezing? A. I don't believe it could.

Q. You do not believe so? A. No.

Q. But it could come from any number of strains, could it not, Doctor? A. It could come from any number of strains.

40

Dr. Charles Philamore Bailey—Redirect.

Q. Now, Doctor, this man is capable of doing light work at the present time, is he not? A. He would be capable of doing clerical work.

Q. And, Doctor, in your opinion, he is not totally disabled, is he? A. If he could get a job doing clerical work.

10 Q. And you have said that he is now able to do light work, did you not, Doctor? A. Well, that is not what I mean by light work.

Q. I see. A. He can do no work in which—

Q. In which he must push forward or bend over? A. Bend over, really, doing any work which requires manual labor.

Q. I see. Pardon me for a moment. Will your Honor bear with me for a moment?

The Court: Yes.

20 (At this point the proceedings of the trial were stopped for a moment.)

By Mr. Carton:

Q. What was your original diagnosis? A. Our original diagnosis was obstruction of the vena cava, probably due to tumor of the mediastinum.

30 Q. That diagnosis was only gained by reason of the exploratory operation, is that right? A. Yes, sir.

Q. I think that is all.

Redirect-examination by Mr. Mattice:

40 Q. Doctor, this cloudiness that counsel speaks of, of October 16, 1940, if it appeared thereafter this man was able to do work about the service station changing tires and so forth, in your opinion, do you think then that this cloudiness was a symptom of this thrombosis? A. No, it was not.

Dr. Charles Philamore Bailey—Redirect.

Q. Would you say if this symptom that appeared October 16th, would it be followed in any reasonable time by other symptoms, Doctor? A. If they were associated with thrombosis it inevitably would be followed by other symptoms of the type that we have.

Q. And assuming that there was cloudiness on October 16, 1940, would that one symptom alone remain or would other symptoms develop as you went along? A. Well, often there are people who have cloudiness in the mediastinum who don't have anything much the matter with them, and if it can be shown it was present at the time, no doubt cloudiness was present, but that by itself would not have any significance if he had no other symptoms. 10

Q. If it appears October 16, 1940, this cloudiness had existed and December 8, 1941 he was lifting these alcohol drums and thereafter felt a choking feeling would you say with reasonable certainty, Doctor, if this cloudiness disappeared and the man had no more until December, 1941, it would be an aggravation in December of 1941? A. If I could be sure cloudiness existed under fluoroscopic examination it is very definitely this thing. 20

Mr. Carton: Just a moment. I submit the doctor answer the question not in connection with observation of a fluoroscopic examination. 30

Q. Well, on the X-ray? A. If it did exist without any symptoms of this condition and on subsequent X-rays this condition presented itself in full appearance I would then consider it an aggravation, beyond question.

Q. Doctor, you testified that there was another 40

Dr. Charles Philamore Bailey—Redirect.

doctor that consulted with you in this matter? A. Yes.

Q. Doctor Lane? A. Doctor Lowell Lane.

Q. I have a bill in the sum of \$25, would you say whether or not that is reasonable in your opinion for consultation in this matter? A. Yes, it consisted of a cardiac survey and electrocardiogram, I think it is a very reasonable charge.

Mr. Mattice: I offer it in evidence.

Mr. Carton: I have the same objection, if your Honor please.

The Court: Yes, it will be admitted on the same theory.

(Bill received and marked P-12 in evidence as of this date.)

20 *By Mr. Mattice:*

Q. Was that consultation necessary, Doctor? A. Yes.

Q. I have a bill from the Hahneman Hospital, Doctor, in the sum of \$111 showing 37 days in the ward service, \$3 a day, is that a reasonable charge? A. It is most reasonable, that is dirt cheap.

Q. And we have X-rays, Doctor, of the lungs for \$10 each, one of the chest and neck, \$10 each, one of the vena cava \$15, and one of both arms \$15, totaling \$110 for X-rays; is that reasonable for these X-rays? A. Yes.

Q. Were all these X-rays necessary for treatment of this man? A. Yes.

Mr. Mattice: I offer it in evidence.

Mr. Carton: The same objection.

The Court: I allow it.

40 (Bill received and marked P-13 in evidence as of this date, the X-ray bill.)

Dr. Charles Philamore Bailey—Redirect.

By Mr. Carton:

Q. You have testified if this condition were to develop it has to develop within a reasonably short period of time? A. Yes.

Q. Under what condition, Doctor? A. What?

Q. Under what condition? A. What do you mean by the word "condition"? 10

Q. All of the symptoms that you have described this man having. A. Symptoms of swelling and distension of the veins, and choking, must all develop within a reasonable time, yes.

Q. What happens, Doctor, when an occlusion by thrombosis occurs? A. At the point of injury in the vessel wall, the point of damage, blood cells collect and form a clot to cover that raw irritated surface. As time goes on more layers of blood cells clot and build up at this area until eventually if that condition goes to completion the clot becomes large enough to completely obstruct the vessels so that no further blood can go through. Subsequent to that there is developed scar tissue in this clot and this scar tissue causes the clot to shrink. Under some circumstances that will allow a space between the clot and the wall of the vessel and the blood can then go in through, we call that canalization. Under other situations the scar is more complete and it refuses to clot and the scar tissue becomes fairly adherent to the walls of the vessels and draws the vessel in so that it becomes narrower and resembles in appearance fibrous bone. 20 30

Q. And strain produces that, Doctor? A. Yes.

Q. Immediately? A. The process probably begins immediately.

Q. The process begins immediately? A. Yes.

Q. And then all this develops, in other words, 40

Dr. Oscar V. Batson—Direct.

layers build up and scar tissue develops? A. That's right.

Q. And in time it develops until the vessel is shut off, is that right? A. Yes.

Q. No more questions.

10 Mr. Mattice: That is all, Doctor.

DR. OSCAR V. BATSON, called as a witness on behalf of the petitioner, being first duly sworn, testifies as follows:

Direct-examination by Mr. Mattice:

Q. Doctor, you are a practicing physician of the state of Pennsylvania? A. Yes, sir.

20 Q. And you have been a practicing physician how long, Doctor? A. I graduated in medicine in 1920.

Q. You are associated at the present time with — A. I am Professor of Anatomy at the Graduate School of Medicine, University of Pennsylvania.

Q. And specialize in what, Doctor? A. Now you might say professional anatomist and licensed to practice medicine.

30 Q. Now, Doctor, do you know Charles Glanton? A. Yes.

Q. You had occasion to see him when, Doctor? A. I saw Charles Glanton on two occasions, on October 28, 1942, and November 18, 1942.

Q. And you were called in by whom, Doctor? A. By Doctor Bailey.

Q. For what purpose? A. For study and observation of the patient.

Q. And you did do the same? A. That's right.

40 Q. After your study and observation, did you diagnose his condition, Doctor? A. I made a

Dr. Oscar V. Batson—Direct.

diagnosis of effort thrombosis or thrombosis of strain of the superior vena cava and the veins immediately contributory thereto, including the azygos vein; part of that from the study of the case and part from the operative record.

Q. And this condition you speak of, Doctor, exists where, in this man? A. This condition exists in those large veins coming from the head and neck and from the upper extremities entering the thorax, it exists just at the entry to the thorax where the great valves and vessels lie, and the thrombosis is actually intrathoracic, just where all of these converge in the thorax, it runs inside of the cage. 10

Q. And this condition, Doctor, interferes with this man's work in any manner, does it? A. This condition interferes with work in that the return of the blood from the head and neck, and the return of the blood from both upper extremities is interfered with, so much so that intravenous pressure in this man's upper extremities is around 32 centimeters, 27 to 40, this is measured in him, whereas normal pressure runs 4 to 12 centimeters. In other words, high water column is evident in this man's arm, while high in a normal person is about two inches. 20

Q. It interfered with his employment—I withdraw that. Do you know what this man was doing, Doctor, at the time he was employed, before you saw him? A. Well, the man told me he was employed in a garage, after prompting, I believe the statement was. 30

Q. Would this condition hinder him in any manner in his work? A. Well, any activity in which you have to hold your breath and lift or push, or strain of the extremities in any way by 40

Dr. Oscar V. Batson—Direct.

holding your breath should not be done by this man.

Q. At the time you saw him what did you observe about his condition? A. What did he present?

10 Q. Yes. A. He presented dilated veins on the side of his neck, a puffy face, puffy eyelids, and his arms had a swollen, tense appearance, not markedly swollen, but definitely swollen. He was recovering from operation at the time, he was in good condition, and the condition of the extremities, head, and neck was obviously not associated with the operative procedure.

Q. Doctor, in this discussion and in the things you saw there, you diagnosed the condition as thrombosis of strain? A. Yes.

20 Q. And thrombosis of strain is caused by what, Doctor? A. Thrombosis of strain is a condition caused by repeated minimal trauma or by a sudden trauma, I mean by trauma in the general sense there. It is always associated with those individuals who hold their breath while overreaching; it is seen in orchardists, painters and paperhangers who constantly overstrain; and it is seen in some individuals, particularly in those
30 who pull cutters an extra quarter turn on a horizontal wrench or give extra effort to bend lead pipe or extra effort to lift some heavy object. It is a peculiarity of the condition that the blood must be stopped from entering the chest, such as the blood pushed out of the chest by the squeezing of the chest, a great muscular effort in the extremity squeezes all the blood out of the muscle into the vein and at the junction of the valve flap there is a slight rupture in the inner lining, which
40 myself in the post mortem specimen, that by

Dr. Oscar V. Batson—Direct.

bringing the arm up about forty-five degrees, up rather high, that definite tension is put on the vessels of the subclavian axillary and brachial region, particularly in the costocaracoid ligaments. In other words, these vessels overstretch or overdistend, are also stretched by this peculiar position of the arm in the muscular effort. Now, this condition is one in which pain is severe because of the tension on the perivenous plexus and if limited to the arm, forearm, swelling is almost immediate. However, if the extremities were good, it may appear later. Appearance may be as much as several hours or several days or possibly within two or three weeks after the initial injury. The smaller vessels in the forearm fill up first and the blood is shut off, then the largest vessel in the axillary body; naturally, the largest vessels of the head and neck would close up more slowly, and pain is precipitated if the injury develops, because of the irritation about the plexus of the veins, and swelling in those cases near the chest orifices increases the entire swelling as the occlusion becomes greater. It is not a very great degree. However, maybe you come into one in which you get complete occlusion, and complete only in the sense that it tends to have marked symptoms as a vessel which by itself is thickened and begins to dilate. Now, this dilation may take some weeks or even months. The whole process then is one of a larger or smaller clot depending upon a larger or smaller injury. The clot may happen to be large or small, and the propagation of the cause when once it starts to form, tends to extend and develop a slight collateral circulation around the point of obstruction. In some of the cases that have come to post mortem that has been found, some nucleus of a clot with neith-

10

20

30

40

Dr. Oscar V. Batson—Direct.

er the original or collateral circulation complete enough to carry on as in the original vessels. If the disability is—if the clot is limited to the forearm practically a full return of function may be expected, although most of the patients have given a history of early fatigue. However, if the obstruction is less, the patient has been able to recover. The condition is commonly a condition of middle life, from twenty to forty to fifty which is seen in males. In females they generally reach their maturity sooner.

10 Q. Then, the condition you found in Mr. Glanton is a common one otherwise? A. The condition was first described by Von Schroedter, in Nothuagel Hand Buch in 1844, approximately seventy-five to one hundred cases have been described and carefully recorded from the various literatures. As to how complete they have been able to log all the cases in the several foreign literatures is questionable, they are extensively described in English and only since 1910, in France and Italy. The occlusion of the superior vena cava is rather unusual although cases apparently have occurred; it cannot be denied the study we have had here of uniform—of simultaneous injections of both arms is not a common condition but it is a definite, established condition.

20 30 Q. Now, Doctor, these symptoms you speak of that you saw when you observed Mr. Glanton the first time, must they all exist or can this condition exist with one of these symptoms missing? A. The patient shows a shortness of breath, swelling, and pain, dependent somewhat upon the state of development of the clot and somewhat conforms to the amount of rest he has been taking, the swelling is also greater in the morning and pain subsides with mild activity but increases on heavy

40

Dr. Oscar V. Batson—Direct.

activity. Upright posture causes some draining of the blood from the head and neck.

Q. Could a man with any one of the symptoms of thrombosis of strain do any heavy, laborious work whatever, Doctor bending over? A. Well, let us distinguish between a symptom and a definite, clinical finding. Now, this finding of thrombosis of this superior vena cava and the azygos, and I continue to mention that because the azygos vein collects the drainage of the chest wall, it flows into the azygos vein, is also interfered with, and so the collaterals have to go down the spine into the inferior vena cava and the blood flow upward so that is more serious, this occlusion of the vena cava than the azygos vein. There is a model there or some pictures here, (indicating) and I could point this out if you want to study the anatomy and physiology.

Q. Well, Doctor, assuming this petitioner now thirty-two years of age, that prior to December 8, 1941, enjoyed good health except for occasional colds and October 15, 1940, was treated once by Doctor Villapiano for a cold, on January 10, 1940, he sustained an injury to his back changing an auto tire, for which injury he collected compensation of one week in the sum of \$11, that finally, December 8, 1941, while heading up fifty-gallon alcohol drums suddenly choked up and was obliged to sit down and drink a bottle of Coca-Cola and thereafter noticed swelling of the veins, his neck and chest were sore, his face became swollen, and he was unable to do any heavy work or bend over, and on January 17, 1942, he saw Doctor Edelson who confined him to the Fitkin Hospital for a period of one week where X-rays were taken and after being discharged remaining home two weeks and returned to the hospital for

Dr. Oscar V. Batson—Direct.

nine days, subsequently visited the Hahneman Hospital where he was treated and operated upon by Doctor Bailey and examined by you, and now his face, the veins in his face, and chest are still sore, that when he bends over he comes dizzy. Now, assuming these facts and from your examination and knowledge and experience as a physician and surgeon can you tell us with reasonable certainty whether or not the happening complained of on December 8, 1941, by the petitioner was casually related to his present condition? A. I would definitely so state.

Q. You think the condition as now exists is one of a permanent condition, would you say the condition now is permanent; is he permanently disabled in any manner? A. He is.

20 Q. And to what extent? A. The two questions are interlocked, I believe. The question is, is there a permanent disability. I don't know how such things are commonly represented, but he certainly should not be allowed for his own health's sake to lift or strain, do any manual labor which necessitates his holding his breath and that means you have to hold your breath when you do any lifting or pushing. He could do some minor activities with his hands certainly, but he could not

30 engage in the garage mechanics where you have to force levers from time to time, that sort of activity.

Q. In other words, Doctor, he can not pursue, in your opinion, his general occupation? A. He could not pursue his general occupation.

Q. Doctor, for this consultation and treatment in this matter, did you present a bill to Mr. Glanton? A. Yes.

40 Q. This bill is in the sum of \$300 and is a reasonable bill? A. I think so.

Dr. Oscar V. Batson—Cross.

Mr. Mattice: I offer that in evidence.

(Bill received and marked P-4 in evidence as of this date.)

Cross-examination by Mr. Carton:

Q. Where do you practice, Doctor? A. Philadelphia. 10

Q. And you have been practicing in Philadelphia since 1920? A. No, sir, I have been practicing in Philadelphia since I was licensed to practice in Pennsylvania, in 1931.

Q. 1931, I see. A. I have been at the University of Pennsylvania since 1928.

Q. Doctor, you were not called in on this case until after the operation, were you, Doctor? A. That is right, sir. 20

Q. And were you called in to examine Mr. Glanton? A. Yes.

Q. Talk to him? A. Yes.

Q. Talk to him about the accident? A. No, sir, I mentioned no such accident.

Q. Did you talk to him about strain? A. Yes.

Q. Did he tell you about a strain? A. Yes.

Q. Did he tell you the date of this strain? A. I quizzed him very carefully on that subject because I was interested in that. 30

Q. And what were you interested in, just tell us what you did. A. I asked him if it was in the first part of December. I said, "Would you say it was the 15th?" He said, "No, it wasn't that late." I said, "And shall I say then at the end of the first week?" He said, "Yes, about the end of the first week." That is as close as I have it.

Q. He didn't tell you December 8th? A. No, sir, he didn't tell me December 8th, he said at the end of the first week. 40

Dr. Oscar V. Batson—Redirect.

Q. And, Doctor, you said in this case pain is severe, is that right? A. It is a stabbing or stinging pain.

Q. Immediately upon occlusion? A. Immediately upon a tearing of the intima.

10 Q. Upon what? A. Upon tearing of the inner lining of the vein.

Q. The pain then is severe? A. It is, an immediately incapacitating pain, it is of a stinging character or stabbing character.

Q. And it is persistent, is it not, Doctor? A. It is persistent with effort, it quiets down with rest.

Q. And you say it is quite stinging in character? A. Well, I wouldn't emphasize the severity of it, it is a character of pain.

20 Q. You did testify on direct examination that it was severe in character, did you not? A. That's right.

Q. And therefore if it occurs to them, it occurs and they remember? A. That's right.

Q. They would not have any difficulty of remembering it, would they? A. That's right.

Redirect-examination by Mr. Mattice:

30 Q. Doctor, Mr. Carton on examining Doctor Bailey stated cloudiness of the chest Doctor Bailey found October 16, 1940, when he examined the petitioner; would you say that that was a symptom of the diagnosis you later on made?

Mr. Carton: Just a moment, please, may I have the question read to me?

The Court: Yes.

40 (Previous question read by the Reporter.)

Dr. Oscar V. Batson—Redirect.

Mr. Carton: It is not complete.

Mr. Mattice: I will withdraw the question.

By Mr. Mattice:

Q. I state to you, Doctor Bailey examined Mr. Glanton October 16, 1940, and in the fluoroscopic examination discovered cloudiness of the chest; is cloudiness a symptom of thrombosis of strain? 10

A. Your Honor, that is difficult to answer yes or no.

Q. Well, cloudiness shows up under the fluoroscope, would that be a symptom, in your opinion?

A. You mean a sign or a symptom?

Q. Yes. A. It is not of necessity a sign.

Q. And it has also been stated here this strain, that this condition could come from passing stool, in your opinion, Doctor, is that so? A. By no means, because there the pressure is all intra cavity, and there is no back pressure or squeezing of blood out of the extremities that is characteristic of this condition unless he is one of those individuals that goes through gymnastics when he has a stool. The two causes recognized are stoppage of the blood from entering into the chest and the squeezing of blood away from the periphery, that is the thing that causes dilatation and tearing in the veins. 20 30

Q. Could you say, Doctor, if this cloudiness as has been discussed here did exist October 16, 1940, could this man thereafter engage in any heavy labor for any period of time if it was a sign? A. If the cloudiness were a sign of effort thrombosis he could not engage in heavy activity without swelling and shortness of breath.

Q. And swelling and shortness of breath always follow, do they, strain, and cause thrombosis? A. 40

Dr. Oscar V. Batson—Redirect.

The problem is this: That the shortness of breath is not a feature unless this superior vena cava is involved, if it is to be pure effort thrombosis; that is, you don't have shortness of breath and swelling of the neck; it depends upon where the block occurs.

10 Q. We are speaking now of where the clot occurs, in the particular vessel. A. All right, then he would have had that shortness of breath and the swelling and the constant pain.

Q. It could appear immediately—Doctor, how long after the strain, the swelling and shortness of breath? A. They should be when the strain is caused—when the thrombosis is caused by sustained effort, and not as one minimal repeated trauma; as in a painter. They should be fairly a few hours or a few days afterwards because of the spasm of the blood vessel which goes along with the effort. Any effort causing a new injury or a new irritation at the point of damage causes a spasm of the blood vessel and the blood vessel constricts and holds the clot together just as effectively in some instances as the clot itself.

20

Q. Doctor, it appears from the facts in this case there was cloudiness October 16, 1940, cloudiness found October 16, 1940 on examination by Doctor Villapiano and that thereafter this man continued his regular work as a garage man, changing tires and lifting cars and so forth with the wrecker, in your opinion, Doctor, did this condition of October 16, 1940—I withdraw that, I am sorry. If it appeared October 16, 1940, that Doctor Villapiano's examination disclosed cloudiness in the chest of this petitioner and that thereafter this petitioner continued to work at his regular, usual occupation of changing tires, doing work

30

40 about the service station, would you say, Doctor,

Dr. Oscar V. Batson—Recross.

that on October 16, that the condition which existed at that time was thrombosis of strain? A. No, sir.

Q. That is all.

Recross-examination by Mr. Carton:

Q. Without knowing any more than that you can say no? A. Yes, because—

10

Q. All right, I am not arguing with you, Doctor, I just merely asked you if you could say no. But you did testify, Doctor, did you not, just now, that when the occlusion takes place that the pain is immediate, is that right? A. Yes.

Q. And it is severe, that is right? A. I described the varieties of occlusion.

Q. Yes. A. Yes.

Q. Oh, you are talking about occlusion due to exaggerated effort on one occasion? A. That's right.

20

Q. Which is the testimony and the history you were given, or the hypothetical question in this case? A. Yes.

Q. Was this of that type? A. Yes.

Q. And the pain is immediate, the pain is severe, is that right? A. Yes.

Q. The swelling is a matter of hours, is that right, Doctor? A. It depends upon where it is.

30

Q. In the neck? A. In the neck the swelling is partial but it will increase in severity. If you will read the testimony.

Q. In a day or two? A. I said up to several weeks.

Q. What? A. Up to three weeks I believe I mentioned.

Q. You said days, Doctor. If you want to change it now it is all right. A. I don't care to change what I said, I am very careful.

40

Dr. Oscar V. Batson—Recross.

Q. This is, Doctor, what you said, the swelling was a matter of hours or a few days, a matter of hours, a few days? A. Or two weeks, I said three weeks.

Q. You are talking now of weeks? A. No, I wouldn't do that, it is in the testimony.

10 Q. Well, if you want it read back all right. A. I would like it read back at this time, if your Honor please.

The Court: Let us go ahead, we have been back long enough.

The Witness: All right.

The Court: I mean, it is in the record.

The Witness: All right, it is in the record.

20 *By Mr. Carton:*

Q. You testified, Doctor, chest pressure must come from both ways? A. Yes.

Q. In time pressure would come from both ways? A. Yes.

Q. Now, then, it could come from both ways? A. Yes.

Q. Then, it has to go through the arms in order to get downward pressure in the chest? A. Well, we are talking about effort thrombosis, superior

30 vena cava.
Q. That's right. It must come through the arms? A. Yes.

Q. A person straining at stool couldn't by tensing his arms like that? (Indicating). A. No, sir.

Q. Tensing his fist and trying? A. No, sir.

Q. It couldn't— A. Well, if he had some gym apparatus about where he would go through effort of strain of a maximum amount, sitting at the stool—have you ever tried it (laughter)?

40

(At this point there was a short cessation.)

Dr. Oscar V. Batson—Recross.

By Mr. Carton:

Q. And he must have to grip and hold on to something? A. Yes.

Q. A man could not exert strength by tenseness of the muscles, forcing the blood downward to the superior vena cava? A. None has been so reported. 10

Q. None has been so reported? A. That's right.

Q. No more questions.

Mr. Mattice: That is all, Doctor, thank you.

The Witness: Thank you, sir (addressing the Court).

The Court: That is all for today?

Mr. Carton: Yes, sir.

The Court: We will carry it until May the 11th. 20

**Certificate of Deputy
Compensation Commissioner.**

I hereby certify that the foregoing is a true and accurate transcript of the testimony taken stenographically before me at the time, place and date hereinbefore set forth. 30

HARRY H. UMBERGER,
Deputy Compensation Commissioner.

Certificate of Reporter.

I hereby certify that the foregoing is a true and accurate transcript of the testimony taken stenographically by me at the time, place and date hereinbefore set forth. 40

CHARLES W. LEHUMANN,
Certified Shorthand Reporter.

Joseph A. Shafto—Direct.

NEW JERSEY DEPARTMENT OF LABOR
 WORKMEN'S COMPENSATION BUREAU
 Asbury Park, Monmouth County

10 CHARLES GLANTON,
 Petitioner,
 vs.

JOSEPH A. SHAFTO,
 Respondent.

May 25, 1943.

Before—HON. HARRY H. UMBERGER,
 Deputy Compensation Commissioner.

20

APPEARANCES:

J. F. MATTICE, Esq., for the Petitioner.
 ROBERT V. CARTON, Esq. (DURAND, IVINS
 & CARTON) for the Respondent.

JOSEPH A. SHAFTO, the respondent, called
 as a witness in his own behalf, being duly sworn,
 testifies as follows:

30 *Direct-examination by Mr. Carton:*

Q. Mr. Shafto, do you operate Shafto's Garage
 in Neptune? A. Yes, sir.

Q. Are you the respondent in this case? A.
 Yes, sir.

Q. Did you employ one Charles Glanton? A.
 Yes, sir.

Q. When did Glanton work for you? Do you
 recall? A. I think it was 1940 and '41.

40

Joseph A. Shafto—Direct.

Q. Did he work for you at all in 1942? A. That I would have to look up in my book.

Q. What were his wages? A. About \$22 a week.

Q. Do you remember Glanton complaining about being ill? A. Yes, sir.

Q. Do you know approximately when that was when he first complained about being ill? A. That was around the end of the year 1941. 10

Q. And what were his complaints? Did he talk to you about it? A. Yes, he did.

Q. What did he tell you? A. Well, he showed me where his neck was swelling up, and I asked him if he had been to the doctor's, and he said no, that he was going to go.

Q. He said he was going to go? A. Yes.

Q. Did he tell you that he had been injured while working for you? A. No. 20

Q. Did he say anything about injuring himself while working for you? A. No.

Q. Did he say anything to you about straining himself or getting a chokiness in the chest while lifting or heading up drums of alcohol? A. No, sir.

Q. Did he mention to you anything like that at all? A. No, sir.

Q. Did he mention this condition coming on on December 8, 1941? A. That I couldn't answer without looking in my time book. 30

Q. What? A. That I couldn't answer without looking in my time book to find out.

Q. Have you got your time book? A. No, I haven't.

Q. Did he at any time ever tell you that he had been injured while working for you? A. No.

Mr. Carton: You may cross-examine.

*Joseph A. Shafto—Cross.**Cross-examination by Mr. Mattice:*

Q. What kind of work did Mr. Glanton do, Mr. Shafto? A. Well, he done mainly washing, polishing cars, and odd jobs we might have.

10 Q. Well, did he pick up wrecks with the wrecker? A. Sometimes.

Q. Did he do strenuous work around the place? A. I wouldn't call it strenuous.

Q. No strenuous work? A. I wouldn't call that strenuous work; no sir.

Q. Did he pick up any heavy objects? A. He might.

Q. In the latter part of 1941 he spoke to you and showed you the condition of his neck, did he not?

A. That is right.

20 Q. And was he able to do any hard work or strenuous work at that time? A. Well, he went—he told me he was going to go to the doctor's, and then I believe he went to the hospital for a while. I don't remember now how many days it was. And he came back and he said he thought he could do the work, and he worked for a few days, and then he said he couldn't do it.

30 Q. And you don't know when he first told you in 1941? A. No, not without looking in my time book.

Q. Who is your family doctor? A. Edelson.

Q. Edelson? A. Was at that time.

Mr. Mattice: That is all, sir.

Mr. Carton: That is all.

Raymond Bearmor—Direct.

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

Direct-examination by Mr. Carton:

Q. Mr. Bearmor, where do you live? A. I live at 42 Morris Avenue, Manasquan. 10

Q. Where do you work at the present time? A. At the New Jersey Ship Building Corporation, Perth Amboy.

Q. Did you work for Mr. Shafto, the service station, in Neptune? A. I did.

Q. When did you work there? A. That was the Spring—let's see—in March, 1941.

Q. March, 1941, until when? A. Until the following January.

Q. Do you remember what day in January you left? A. I left—I believe it was the tenth day of January. 20

Q. That would be January 1942? A. That is right.

Q. Where did you leave for? A. I left for Baltimore.

Q. I did not hear it. A. Baltimore.

Q. And that was the last you worked for Mr. Shafto? A. Yes, sir.

Q. While you were working for Mr. Shafto was Charles Glanton also working there? A. That is right. 30

Q. What were your duties there? A. I was station attendant.

Q. What does that mean? A. Well, that means waiting on customers, filling up gasoline tanks, checking up batteries.

Q. And what were Glanton's duties, if you know? A. Well, I believe his duties was washing cars and other kind of work, such as a garage, 40 you know, would call for.

Raymond Bearmor—Cross.

Q. Now, during December 1941, did Glanton ever tell you that he had injured himself while working there? A. No.

Q. Did Glanton, during December of 1941, complain to you at all about being ill or sick? A. No, sir.

10 Q. Did he complain to you at any time while you were working there and until the time you left on January tenth that he was ill or sick? A. No, sir.

Q. Did you have occasion to observe him in his work? A. I did.

Q. Was he able to do his work? A. He did.

Q. Did you at any time, while working there with him, notice anything unusual in his facial or neck appearance? A. No, I did not.

20 Q. And the date you left was when? A. The tenth of January.

Q. Did he ever mention to you any straining of himself or any chokiness coming upon him while he was heading up drums of alcohol? A. No, sir.

Q. Did he ever mention to you that he had injured himself on December 8th, 1941? A. No, sir.

Mr. Carton: You may cross-examine.

Cross-examination by Mr. Mattice:

30 Q. Your hours were what, Mr. Bearmor? A. My hours were seven in the morning to seven at night.

Q. You did not do night work? A. A few times. I relieve the night man once a week.

Q. Particularly during the month of December, 1941, were you working days or nights? A. I was working days.

40 Q. You are sure of that? A. Yes, sir.

Raymond Bearmor—Cross.

Q. Did Mr. Glanton work for you, under your supervision? A. Yes, sir.

Q. He did? A. Well, not under my supervision, but he was there helping with the business, you know.

Q. I mean, did you give him orders? A. Oh, no. 10

Q. How many times did you have occasion to talk to him during December, 1941? A. Well, of course, I had the occasion. He was there all the time right along with me, being there together.

Q. And you noticed nothing different about his condition from December 8th, 1941, until January 10th, 1942? No swelling of his neck? A. No, sir.

Q. And he did his regular work during that time? A. Yes, sir.

Q. You are sure of that? A. Yes, sir. 20

Mr. Mattice: That is all, sir.

Mr. Carton: That is all. Thank you.

(Witness excused.)

Mr. Carton: If your Honor please, I have another lay witness, Mr. Smith, whom Mr. Shafto had to go back to relieve. He will be right up here.

The Court: How about all these professors? 30

Mr. Carton: All my professors told me they are teaching courses today and will not be able to come down here until June 8th.

(Discussion off the record.)

Mr. Mattice: If your Honor please, may I recall Mr. Bearmor for one more question? 40

Raymond Bearmor—Cross.

RAYMOND BEARMOR, recalled as a witness on behalf of the respondent, being previously duly sworn, testified further as follows:

Cross-examination by Mr. Mattice (continued):

10 Q. Mr. Bearmor, are you familiar with the Circle Station? A. Yes. A few times I went over to relieve a man, maybe to work on the assembly.

Q. Do you recall an occasion in the latter part of December, 1941, Mr. Glanton called you to come and change a tire? A. I believe Mr. Glanton came over there one time with a tire.

Q. And he wanted you to change it? A. Well, I don't remember that case there, but I did go down on the Highway and change a tire.

20 Q. For him, for Mr. Glanton? A. I don't know whether for Mr. Glanton or for the people who came to the service station, I can't remember.

Q. Well, Mr. Glanton was there at the time? A. Mr. Glanton, I believe, was there with the truck.

Q. And do you know why he could not change the tire himself? A. No, I do not.

Q. What was that? A. I do not.

30 Q. You don't know? A. I know that I went down, or Mr. Glanton went down with me and we had to break open the rear compartment door and take out the spare, or something like that, to put on the car, because the door was locked and the fellow did not have the keys.

Q. And who took care of the station while you were gone? A. That I can't remember.

Q. Glanton stayed, did he not, while you were gone? A. He probably did.

40 Q. As a matter of fact, he was supposed to change the tire and he couldn't do it and he asked you to do it? A. I don't remember that part of it,

Raymond Bearmor—Redirect.

whether he could do it or not, but I know Charlie went down with me and we broke open the compartment door, see, and got out this tire, and whether he stayed there and helped me or whether he went back I don't remember.

Q. Well, prior to December, 1941, he could change tires, could he not? A. He changed tires all the time I was working at the garage. 10

Q. And on this particular occasion I speak of, when he called you to the Circle Garage, or Circle Station, was he able to change the tire that night in December? A. Well, I don't know why he wasn't able to change it.

Q. Well, did you change it for him? A. That I can't remember, whether I changed it or whether Charlie changed it, because I know we both went down there, and Charlie went over and got a bar or something like that at the garage, and we had to break open the rear door to get out the spare. 20

Q. How far away from this station was the car? A. Oh, I imagine about a quarter of a mile.

Q. And who stayed at the station while you went down a quarter of a mile to change this tire? A. Well, it might have been that Charlie stayed there.

Mr. Mattice: That is all.

The Witness: But I don't know for sure. 30

Redirect-examination by Mr. Carton:

Q. You haven't any definite recollection of that? A. No, I don't.

Mr. Carton: That is all.

(Witness excused.)

Fred W. Smith—Direct.

FRED W. SMITH, called as a witness on behalf of the respondent, being duly sworn, testifies as follows:

Direct-examination by Mr. Carton:

- 10 Q. Mr. Smith, where are you employed? A. Shafto's Garage.
- Q. Were you employed in Shafto's Garage in the year 1941? A. Yes.
- Q. And the year 1942? A. Yes.
- Q. You know Charles Glanton? A. Yes.
- Q. Do you remember when Glanton complained about being ill? A. No, I don't. I can't remember the date.
- Q. You remember his neck puffing up, do you? A. Yes.
- 20 Q. Do you remember when he went to the hospital? A. January.
- Q. What year? A. 1941. I am not sure. I can't remember the date.
- Q. Do you remember his neck puffing up? A. Yes.
- Q. Did you ever speak to him about that? A. Well, I seen his neck puff up, so I told him he better go see a doctor about it.
- 30 Q. How did his neck puff up? Did it come out gradually? A. No; it came out a little at a time.
- Q. What? A. It came out slow.
- Q. And you told him he better go and see a doctor? A. Yes.
- Q. Did he tell you at that time that he had injured himself or that he had felt a choking feeling or dizzy feeling when he was lifting up some drums of alcohol? A. I can't remember. That is too far back for me to remember.
- 40 Q. Did he at any time tell you that he had in-

Fred W. Smith—Direct.

jured himself while working? A. Not that I know of.

Q. Do you remember what part of the month of January he went to the hospital? A. No, I don't. I can't be certain.

Q. Did you injure yourself? A. It was the same day he went to the hospital. The same day I hurt my foot. 10

Q. You remember it was the same day? A. The same day.

Q. And that was in the month of January, is that right? A. I think it was. I am not sure. I know it was the same day.

Q. Do you know how long before you injured your foot and before Glanton went to the hospital that you first noticed that anything was wrong with Glanton? A. I would say maybe a week. I am not positive. 20

Q. Had it been over a long period of time or had it been for a short period of time? A. A short period. I am not sure.

Q. Glanton never complained to you about hurting himself on the job, did he? A. Not that I know of.

Q. Did he ever mention the date of December 8 to you? A. Sir?

Q. Did he ever mention the date of December 8 to you as hurting himself on that date? A. December 8? 30

Q. December 8, 1941, as hurting himself on that date. A. Not that I know of.

Q. You have no recollection of it? A. (The witness shook his head.)

Q. Had you observed him up until the time he went to the hospital doing his work in and around the place? A. Yes, he was working.

Q. What? A. He was working. 40

Fred W. Smith—Cross.

Q. Was he able to do his work so far as you could see? A. Up to the last day when his neck was puffed up. He said it hurt him. I told him to go see a doctor. That's all I can remember.

Q. That is the day before he went to the hospital, is that right? A. Somewhere around that.

10

Mr. Carton: Cross-examine.

Cross-examination by Mr. Mattice:

Q. What are your duties there, Mr. Smith? A. I am a mechanic.

Q. Did you work with Charlie? A. Yes.

Q. How long did Charlie work there before he went to the hospital? A. How long did he work?

Q. Yes. A. I don't know.

20 Q. A month, six months? A. About that, I imagine.

Q. About what? About how long? A. You mean before he got hurt?

Q. Yes. A. Oh, I couldn't say.

Q. Well, what would he do around the place? What were his duties? A. Washing cars, fixing tires, greasing cars.

Q. Anything else? A. That's all I know.

30 Q. Who was he working with in particular? Anyone? A. Halsey, Halsey was the front man.

Q. Did there come a time prior to his going to the hospital when he was not able to do his work? A. Before he went to the hospital?

Q. Yes. A. He was working.

Q. He was working? The same work? A. You mean before he went to the hospital?

Q. Yes. A. No, I don't know.

40 Q. Did you notice at any time prior to his going to the hospital that he was not able to do his work? A. He complained that his neck hurt him.

Fred W. Smith—Redirect.

Fred W. Smith—Recross.

Q. How long before he went to the hospital did he start complaining about his neck hurting him?

A. That I can't remember. That is too far back.

Q. Was it a week, two weeks? A. I would say about a week. That's as close as I can figure.

Q. When he first came to work there and up to probably a month or so before he left did you notice anything about his neck? Was his neck swollen at that time? A. Before he went to the hospital? 10

Q. Yes, a month before he went to the hospital.

A. Not that I know about.

Q. The condition, you say, of his neck at the time he went to the hospital—that was new? You had never seen that before? A. No.

Q. So that was not something he had for some time? A. I couldn't say. 20

Q. Well, you observed him, did you not? A. Yes.

Q. Did you observe his neck being swollen before he went to the hospital? A. It was not swollen, no.

Mr. Mattice: That is all, sir.

Redirect-examination by Mr. Carton:

Q. It was not swollen until just a few days before he went to the hospital, is that it? A. I would say a week. I am not sure. 30

Mr. Carton: All right, that is all.

The Witness: I didn't take notice.

Recross-examination by Mr. Mattice:

Q. When you say a week you are guessing, are you? A. That's all I can do. It has been a long time. I can't remember that far back. 40

Certificates.

Mr. Mattice: That is all.

Mr. Carton: That is all.

**Certificate of Deputy
Compensation Commissioner.**

10 I hereby Certify that the above is a true and accurate transcript of the testimony taken stenographically before me, at the time, date and place hereinbefore set forth.

HARRY H. UMBERGER,
Deputy Compensation Commissioner.

Certificate of Reporter.

20 I hereby certify that the above is a true and accurate transcript of the testimony taken stenographically by me at the time, date and place hereinbefore set forth.

WILLIAM D. KLIGER,
Certified Shorthand Reporter.

30

40

Colloquy.

NEW JERSEY DEPARTMENT OF LABOR

WORKMEN'S COMPENSATION BUREAU

Asbury Park, Monmouth County District

CHARLES GLANTON,
Petitioner, 10

vs.

JOSEPH A. SHAFTO,
Respondent.

June 8th, 1943.

Before—HONORABLE HARRY UMBERGER,
Deputy Compensation Commissioner.

APPEARANCES: 20

JOSEPH F. MATTICE, ESQ., for the Pe-
titioner.

DURAND, IVINS & CARTON, ESQS., by ROB-
ERT V. CARTON, ESQ., for the Respond-
ent.

DR. JOSEPH G. VILLAPIANO, called as a
witness on behalf of the respondent, being first
duly sworn, testified as follows: 30

Mr. Carton: Your Honor, at this time
I would like to introduce into evidence the
hospital records of the Fitkin Memorial
Hospital, relative to Charles Glanton.

Mr. Mattice: Objected to. The hospital
records are not admissible.

The Court: They are not admissible in
such an abrupt manner. They will have to
be proven. 40

Colloquy.

Mr. Carton: Does your Honor mean proving them—

The Court: By the people who made them.

Mr. Carton: By the people who made them?

10 The Court: Yes.

Mr. Carton: As I understand it, this Court is not bound by the strict rules of evidence obtaining in a law court, and I have seen in the past here that hospital records have been introduced in this Court on numerous occasions.

The Court: Only by consent. Are you going to use them with Dr. Villapiano?

20 Mr. Carton: I would like to use them for Dr. Villapiano and also for other doctors.

The Court: Did the doctor make these records?

30 Mr. Carton: Dr. Edelson and Dr. Altschul made the records; at least, they made the first page of the records. The various other findings were, of course, made by the nurses or other persons having to do with the case. It is conceded, I think, that both Dr. Altschul and Dr. Edelson are in the Armed Forces of the United States at the present time.

The Court: The hospital record of course is hearsay, and the legislature hasn't made it any different, even though they are in the Army.

40 Mr. Carton: All right, then; we will forego them at this time. I would like to introduce at this time a letter of Dr. Charles Philamore Bailey to Dr. Herrman. As to this, Dr. Bailey admitted that this was his

Dr. Joseph G. Villapiano—Direct.

signature and that he had written the letter and that it was correct.

The Court: He was one of the petitioner's witnesses?

Mr. Carton: That's right.

Mr. Mattice: May I see the letter?

The Court: Yes.

10

Mr. Mattice: Dr. Herrman will be called here?

Mr. Carton: No.

Mr. Mattice: I will have to call him, then. (The letter referred to was marked in evidence as Exhibit R-1 as of this date.)

Mr. Mattice: What I had in mind was that here is the answering letter (indicating).

Direct-examination by Mr. Carton:

20

Q. Doctor, did you examine one Charles Glanton? A. I did.

Q. On how many occasions did you examine Mr. Glanton? A. I saw him the first time professionally on October 16th, 1940. Then I saw him again on December 24th, 1942. I reviewed hospital records and X-rays.

Q. All right. Doctor, directing your attention to the examination that you made on October 16th, 1940, what were Mr. Glanton's complaints at that time? A. He complained of pain in the right side of his chest and in his head, which he has had for several days, but has gotten progressively worse in the past two days. Coughs and raises some mucous. Has always had night sweats. Appetite good, sleeps good. Weight remains the same. Those were the chief complaints.

30

Q. Did you examine him, Doctor? A. I did, sir.

40

Dr. Joseph G. Villapiano—Direct.

- Q. What was the extent of your examination?
 A. I took his temperature, pulse, and blood pressure, which were all normal. His height was five feet seven; weight 163. His teeth were in good condition. Tonsils intact. Conjunctivae were O. K. Glands: There were no visible glands.
- 10 Heart sounds were fairly good. Fluoroscopic examination at that time revealed an essentially negative condition as to the lungs and diaphragm, but the mediastinum was enlarged on the right side, and there was some cloudiness in the right upper chest near the mediastinum. My diagnosis was myofascitis of the pectoral muscles on the right side and mediastinitis. I prescribed for him and then I didn't see him again until December 24th, 1942.
- 20 Q. What was your examination at that time?
 A. That was a thorough physical examination, fluoroscopic examination, and also reviewing hospital charts at Fitkin Memorial and X-rays.
- Q. What were your findings? A. A colored male, age 46, weighs 146 pounds, five foot seven, married, has one child. His eyes reacted to light and accommodation. There was a puffiness of the eyes and face. There was some gold bridge work in his mouth; teeth in fair condition; tonsils
- 30 intact. Upon examining his neck, there was a puffiness of his neck in the supra-clavicular spaces. There was an engorgement of the superficial veins of the neck, particularly in the supra-clavicular spaces. No points of tenderness or masses felt. Chest: There was a keloid scar on the right side of his chest, opposite the fourth rib from the mid-sternal region, four and a half inches long. It was tender to touch. Lungs were clear. Blood
- 40 pressure 130 over 90; pulse 90. Heart sounds are of fair quality. Upper extremities, abdomen and

Dr. Joseph G. Villapiano—Cross.

back and nervous system essentially negative. Fluoroscopic examination revealed a fusiform enlargement of the mediastinum, particularly the superior portion, and a dilated aortic knob, and from the hospital records, X-rays, physical examination, and fluoroscopic examination I concluded that this patient had a mediastinitis, a lymphosarcoma, and lues, and thrombosis of the superior vena cava and the azygos vein—remember, now, this is mostly from laboratory reviewing of the hospital charts. The patient had an operation, which was described by another physician outside of the City, and taking his findings to be a fact helped me to reach that conclusion. 10

Q. What can you say as to this condition which you found of the mediastinum in October 1940 and December 1942? What is the comparison between the conditions that you found on those two dates? 20

A. I think it became worse.

Q. Really it was an enlargement or development of what had existed the first time? A. Yes. It was a progressive condition apparently, because it was worse in 1942 than in 1940.

Mr. Carton: Cross-examine.

Cross-examination by Mr. Mattice:

Q. On October 16th, 1940, you saw Charlie Glanton for approximately how long, for the examination? A. I don't know the time, but I took his blood pressure and his temperature and listened to his chest and looked at his right chest, looked at his throat, and fluoroscoped him. 30

Q. And your findings at that time were what? A. Myofascitis of the pectoral muscles on the right side, and mediastinitis. 40

Dr. Joseph G. Villapiano—Cross.

Q. What is mediastinitis? A. Some inflammatory processes going on in the mediastinum.

Q. Where is that? A. It extends from that little groove we have here, known as the jugular notch (indicating), all the way down to the base of the aorta or the upper part of the heart.

10 Q. And you say you found a cloudiness at that time? A. Yes.

Q. Where was this cloudiness? A. On the right side.

Q. What was that cloudiness that you found? A. What do you mean, what it was?

Q. Was it an involvement of— A. Of the whole mediastinum.

20 Q. And at that time you had no means of finding any trouble with the superior vena cava vein, had you? A. No. I didn't find anything wrong with it at this time, except I am taking somebody else's word for it.

Q. I see. Do you know what he is suffering from at the present time? A. As I say, I made that diagnosis from my investigation of the laboratory findings, the X-ray findings and reviewing his hospital records, and fluoroscoping him and examining him.

30 Q. What connection do you find between the October 16th examination and the examination of December 24th? A. As far as his mediastinitis, I think it got worse.

Q. And it has no connection whatsoever with the superior vena cava, has it? A. I don't know that?

40 Q. You don't know that? A. No, because I don't know what the mediastinitis was caused by in 1940. I never went any further than what I saw; I didn't investigate it. All I can tell you about is, as far as his mediastinitis goes, it is

Dr. A. Wilbur Duryee—Direct.

much worse today than in 1940, comparing the fluoroscopic examination I made at that time.

Q. Have you seen any cases of thrombosis of strain or thrombosis of the superior vena cava?

A. No.

Mr. Carton: I object to that. That might be two different things. Do you mean of the superior vena cava? 10

Mr. Mattice: Yes, of the superior vena cava.

The Witness: I never have seen any.

By Mr. Mattice:

Q. And your examination revealed nothing about that? A. No.

Q. And if that's his condition at the present time, you know nothing about it? A. I know nothing about it. I can't characterize any other doctor's findings. 20

Mr. Mattice: That's all.

Mr. Carton: That's all.

(The witness was excused.)

DR. A. WILBUR DURYEE, called as a witness on behalf of the respondent, being first duly sworn, testified as follows: 30

Direct-examination by Mr. Carton:

Q. Doctor, you are a practicing physician of the State of New York? A. I am.

Q. And you have been since when? A. 1928.

Q. Are you connected with any hospitals? A. I am, sir.

Q. What hospitals? A. The New York Post Graduate Hospital and the Goldwater Memorial Hospital. 40

Dr. A. Wilbur Duryee—Direct.

10 Q. In what capacity? A. At the Post Graduate, I am associate clinical professor of medicine of the New York Post Graduate Medical School and Hospital of Columbia University, and associate attending physician. I am also associate attending physician at the Goldwater Memorial Hospital.

Q. Do you specialize in any branch of medicine?
A. I have, sir.

Q. What is your specialty? A. I am a specialist in internal medicine, with special interest in peripheral vascular disease.

Q. What do you mean by peripheral vascular disease? A. Diseases that involve the blood vessels outside of the heart.

20 Q. In that connection do you hold any positions in the Medical Association or otherwise? A. I am chief of the peripheral vascular clinic of the Post Graduate Hospital. I am an impartial internist with special certification in peripheral vascular disease for the panel of impartial specialists of the New York State Compensation Board, and I am an examining physician for the American Board of internal medicine on peripheral vascular disease.

30 Q. Doctor, have you examined the testimony of Charles Glanton, Dr. Bailey and Dr. Batson?
A. I have, sir.

Mr. Carton: I wonder if we can agree that these are the stenographers' certifications of the testimony taken?

Mr. Mattice: I suppose we can agree, but I don't know what effect it might have as far as this witness is concerned. I will agree, as far as that's concerned.

40 Mr. Carton: All right.

Dr. A. Wilbur Duryee—Direct.

By Mr. Carton:

Q. Did you examine this letter from Dr. Bailey to Dr. Herrman? A. I have, sir.

Q. Now I would like to show you some X-rays that have been introduced into evidence—we have a shadow box here. Doctor, I show you Exhibit P-8. Will you put that in the shadow box? 10

Mr. Mattice: That's P-8?

Mr. Carton: P-8, yes. maybe I will follow the order in which the doctor put them on. Will you take that one out?

Mr. Mattice: P-9.

Mr. Carton: Yes, P-9.

By Mr. Carton:

Q. I show you Exhibit P-9, Doctor. Exhibit P-9 is an X-ray taken in the Hanneman Hospital in July 1942, of Charles Glanton. Doctor, are you qualified to read chest X-rays? A. In connection with my specialty of vascular disease, yes. 20

Q. What does that show, if anything? A. It shows, in the first place, a moderate prominence of the aortic knob. It shows a cloudiness extending out into the upper lung field, which is most marked or almost entirely limited to the right side of the mediastinum. 30

Q. All right, Doctor, you may take that out. I next show you Exhibit P-7. Exhibit P-7 was taken at the same time as P-9, in July, 1942, but with a different exposure of the X-ray. The testimony was that this one was with more current put through, whatever that may mean medically. What does that show? A. The details are less well marked in this, because of slight over-exposure, but it shows essentially the same facts, of a 40

Dr. A. Wilbur Duryee—Direct.

prominent arch of the aorta, and cloudiness on the right mediastinum.

10 Q. Doctor, I next show you Exhibit P-8. This picture was taken the day after the two previous pictures, after the injection of a contrast substance in the right arm. What does that picture show, Doctor? A. That picture shows the main venous drainage from the right arm to be suddenly blocked as it crosses the first rib, with many fine collateral vessels leaving the vein at this point. The vein is dilated. The valves are prominent. There is no blood noted—I will retract what I was going to say there. That's all.

Q. Are there any further comments in regard to that, Doctor? A. That's all.

20 Q. All right, Doctor. I show you Exhibit P-6. This picture was taken a second or two later than the previous exhibit. What does that show, Doctor? A. This picture shows that the dye, which had apparently been injected below or at the elbow, to be slowly moving up the vein, so that the lower part of the vein is empty and the upper part still filled. Otherwise the observations are as noted in the previous exhibit.

30 Q. Next is Exhibit P-10. This picture was taken on Mr. Glanton's second admission to the Hanneman Hospital, on October 20th, 1942. What does the picture show, Doctor? A. Since it is impossible to compare two X-rays taken at different times and of different densities, one cannot be sure as to the changes between this and the ones shown in July, but it would appear to me that they are essentially the same.

Q. Essentially the same as the first two X-rays shown to you? A. That is correct.

40 Q. All right, Doctor, you may remove that. This is Exhibit P-4. There is no indication in the tes-

Dr. A. Wilbur Duryee—Direct.

timony as to when P-4 was taken. Does that picture of the chest section of Mr. Glanton—what does it show? A. This X-ray shows dye in the main venous systems of both upper extremities. On the right this dye seems to have advanced as far as the axillary vein. On the left it seems to have advanced to the first rib; in other words, to the subclavian vein. 10

Q. That was P-4, was it not, Doctor? A. Yes.

Mr. Carton: I don't seem to see P-6.

Mr. Mattice: Isn't P-5 next?

Mr. Carton: I have P-6, but I don't see it here.

Mr. Mattice: You have seen P-6—6, 10 and 4?

Mr. Carton: Yes.

By Mr. Carton:

20

Q. I show you next Exhibit P-5, Doctor. This is also a picture, Doctor, of the chest section and neck section of Mr. Glanton. What does this picture show? A. This picture is similar to the preceding exhibit, except that the dye has practically disappeared from both upper veins of both upper extremities, and all dye that is observed is distal to the first rib on both sides.

Q. I show you Exhibit P-2, Doctor. This was a picture taken of Mr. Glanton on April 16th, 1943. What does that picture show, Doctor? A. This picture shows a rather prominent aortic knob and cloudiness throughout the upper chest and extending somewhat downward into the lower chest. 30

Q. In relation to Exhibit P-9, which was the first one shown you, what would you say would be the comparison, Doctor? A. Again it is difficult to compare fine details in different exposures, but 40

Dr. A. Wilbur Duryee—Direct.

this appears to be somewhat more—the pathology appears to be somewhat more marked than in the first exhibit examined.

Q. I show you Exhibit P-1, Doctor, which is another picture of Mr. Glanton taken on the same date. What does that picture show, Doctor? A.
10 This picture is a much higher density, greater exposure, and shows, gives very little information referable to the heart and lungs. It shows the bony structure of the chest in good detail. This appears—I am not qualified to testify on bony problems.

Q. Doctor, I show you Exhibit P-3, also taken on April 16th, 1943. What does that picture show? A. This is a lateral view of the chest, and because of rather under-exposure it is difficult
20 to be sure of any abnormalities.

Q. All right, Doctor. Will you take your chair again? Now, Doctor, bearing in mind these X-rays of Charles Glanton that you have examined, and bearing in mind the facts contained in the letter of Dr. Bailey to Dr. Herrmann, which you have read, and, also, assuming, Doctor, that Mr. Glanton is a male approximately thirty-six years of age, and that in 1942 and prior thereto he was suffering from syphilis; that in October 1940 he
30 went to see Dr. Villapiano; he then complained of pain in the right side of his chest and head, which he had for several days; that he had coughing and he raised mucous; and that under fluoroscopic examination on October 16th, 1940, it revealed that he was negative as to the lungs, the mediastinum was enlarged on the right side, there was cloudiness of the right upper mediastinum, and there was a diagnosis made that that time of a mediastinitis; that before October 16th, 1940,
40 and subsequent thereto, Mr. Glanton worked as a

Dr. A. Wilbur Duryee—Direct.

handy man about garages, and that on or about December 8th, 1941, while heading up a 50 gallon drum of alcohol, he choked up; that he then sat down and rested for the rest of the day, and that thereafter he continued working but felt dizziness as he would bend over; that in January 1942 his face and neck puffed up so that he couldn't button his shirt, and that he told Dr. Bailey that he first noticed that his neck was puffed up and swollen on January 1st, 1942; that in the middle of January 1942 he went to see a Dr. Edelson, who immediately sent him to the Fitkin Hospital; that Mr. Glanton remained in the Fitkin Hospital from January 17th to January 27th, and that he then went back to work and worked until February 23rd, 1942, when he was again admitted to the Fitkin Hospital for a period of several days; that when he saw Dr. Edelson he did not tell the doctor of any history of strain or injuring himself on December 8th, 1941, or any other date, and that, on his admission to the Fitkin Hospital on the two dates given, he also did not give any history of strain or injury to himself on December 8th, 1941, or any other date; that after the second visit to the hospital he was discharged and he was treated in the clinic department by—at first by X-ray treatments; that he was then sent, in July of 1942, to the Hanneman Hospital where he was examined by a doctor Charles P. Bailey; that on admission to the Hanneman Hospital in July 1942 he gave at that time no history of any strain or trauma or lifting on December 8th, 1941 or any other date; that he remained in the Hanneman Hospital in July for a few days, when he was sent back by Dr. Bailey to the Fitkin Hospital in Neptune for bismuth treatments for his syphilis condition; that he received these treat-

10

20

30

40

Dr. A. Wilbur Duryee—Direct.

ments; that again, on October 18th, 1942, I believe, he was admitted to the Hanneman Hospital in Philadelphia under the care of Dr. Bailey; again on his admission to the Hanneman Hospital on October 18th, 1942 he gave no history of any straining, lifting or trauma on December 8th, 10 1941 or on any other date; that on October 23rd, I believe it was, 1942, Dr. Bailey performed an exploratory operation upon Mr. Glanton and made a clinical finding of thrombosis of the superior vena cava and the azygos vein; that thereafter, in November, the latter part of November, he was discharged from the Hanneman Hospital and has received no further treatment to date—I beg your pardon; that shortly after, a few days after Dr. 20 Bailey performed the operation, Dr. Bailey questioned Mr. Glanton as to whether the condition which he had had come upon him while straining himself or whether he had done any unusual exertion or severe straining or lifting, and that Mr. Glanton did not recall any such things at that time, but after Dr. Bailey prompted him, and after a lapse of three or four days, then Mr. Glanton recalled that he had, in the early part of December, 1941, injured himself while lifting a fifty 30 gallon drum of alcohol—now, Doctor, assuming all those facts and taking into consideration your examination of the X-rays and Dr. Bailey's letter, can you tell us with reasonable certainty whether or not the happening complained of on December 8th, 1941 by the petitioner is causally related to his present condition?

Mr. Mattice: I object to that; all the facts are not contained therein. The facts from the time he was discharged from the hospital up to the present time should be ex- 40

Dr. A. Wilbur Duryee—Direct.

plained to the doctor, they should be part of the question.

Mr. Carton: All right.

By Mr. Carton:

Q. Adding to that that since the discharge from the Hanneman Hospital in November 1942 Mr. Glanton has not worked and claims he is not able to work, that if he bends over he gets dizzy, that his neck is rather slightly puffy, as you can see from examination of him here at the present time, now, Doctor, with that modification, can you tell us with reasonable certainty whether or not the happening complained of on December 8th, 1941 by the petitioner is causally related to his present condition? A. I do not believe that the lifting as reported as occurring on December 8th, 1941 had any—had any causal relationship to this man's condition.

Q. All right, Doctor. Now can you tell us what leads you to that conclusion and that opinion? A. This man has, from the records which I have reviewed, from the X-rays that I have seen here in Court, an obstruction in the vena cava. This obstruction apparently has been present as far as the patient himself knows somewhere from December of 1941 or January 1942. The onset of this obstruction was apparently gradual because the patient does not recall any sudden pain, and in the various hospital records at the time that Dr. Bailey operated on him the story is of an insidious progression of this trouble. Moreover, testimony which I heard this morning clearly indicated some abnormal process in the mediastinum in 1940. This process—a process similar to that described in 1940 is clearly evident in the X-rays reviewed by me today. I also have the in-

Dr. A. Wilbur Duryee—Direct.

formation that this man is suffering from syphilis. The diagnosis with the facts as presented is most likely to be a syphilitic mediastinitis. This lesion or disease will involve the superior vena cava by external compression and by invasion of the wall of the vessel and will cause a slow closing off of this important venous channel.

10 Q. Are you familiar with the literature relative to thrombosis of the superior vena cava? A. I am, sir.

Q. Doctor, how many cases in all history are there reported of this condition? A. Up to date there are approximately 120 reported cases.

Q. How many of those cases, Doctor, do you know, are cases of thrombosis of the superior vena cava due to trauma? A. 1.6%.

20 Q. How many is that in actual numbers? A. Two.

Q. Are you familiar with the case histories of those two cases which were thrombosis of the superior vena cava due to trauma? A. Yes, sir.

30 Q. What type of trauma were they? A. One was a direct trauma, in other words a gun-shot wound through the chest wall; and the other was a young lady who was opening a bottle of Coca-Cola, and, holding it over her head to pull the corrugated cap off, the bottle slipped and gave her a very severe blow on the chest.

Q. Doctor, in all the cases of thrombosis of the superior vena cava, is there any case reported or any case known to medical history of an indirect thrombosis of strain to the superior vena cava? A. I can find none in the medical literature, and I have never seen one.

Q. Have you ever heard of one? A. I have never heard of one.

40 Q. Now, Doctor, anatomically speaking, is it

Dr. A. Wilbur Duryee—Direct.

possible for a person to have a thrombosis of strain of the superior vena cava? A. I would say it was not.

Q. What causes a thrombosis of strain, Doctor? A. Thrombosis of strain is due to two factors: When a man exerts energy to lift an object, or to push an object, he forces the blood out of the upper extremities toward the heart. At the same time, in certain individuals, the scalenus anticus muscle, or one of the pectoral muscles, or the coracoid ligament will cause obstruction of the vein, of the subclavian or axillary veins as they enter the chest, so that pressure in the parts between the hand and the entrance into the thorax is markedly increased. These veins are stretched, valves may be turned, and the lateral pressure of the ligaments or muscles may damage the lining of the vein, and a thrombosis may occur at this time. 10 20

Q. Then a thrombosis occurs by reason of this pressure, both in the vein, the back pressure, and the ligaments or bone structures on the outside pushing in, is that correct? A. That is correct.

Q. And then there is a rupture or tearing of the intima— A. Yes.

Q. (Continuing)—the inner lining of the vein? A. Yes, that is correct.

Q. Where does the thrombosis occur? A. The thrombosis usually starts at the point of pressure where the vein is damaged. 30

Q. Is that possible, Doctor, in the superior vena cava? A. It is not possible in the superior vena cava, because the superior vena cava is one of the relatively soft structures, and there are no heavy muscles, bony structures, or ligaments that press directly on the superior vena cava.

Q. Is there any place in the superior vena cava where the back-flow of the blood can be shut off 40

Dr. A. Wilbur Duryee—Direct.

by the exertion of pressure? A. Only momentarily as the heart, the valve, closes, which is a fraction of a second.

Q. And that is always opening and closing, all the time? A. Yes.

10 Q. And that is the regular and normal process of the action of the heart? A. That is correct.

Q. When a person suffers a rupture or a tear in the lining of his vein, what is his reaction? Is it painful? A. The usual reaction is a feeling of a tear or a strain, or sometimes a very acute, severe puncturing, knife-like pain.

Q. The condition that develops where you have a thrombosis of strain, Doctor, is it a gradual onset or is it something that comes on dramatically and in a hurry? A. I would say that it would come on within a few hours.

20 Q. Is it a condition which would be very noticeable? A. It should be extremely noticeable to the patient, because of the swelling which immediately follows.

Q. And the pain? A. And pain, in most cases.

Q. In Dr. Bailey's letter he states that Glanton's venous pressure on his first admission to the Fitkin Hospital was 24 C. M.—you might read this letter—and that on his admission some time later to the Hanneman Hospital it was 47 C. M. What does that mean? A. The normal venous pressure in the veins of the upper extremities varies between 8 and 12 centimeters of blood or water. The original pressure as noted in the Fitkin Hospital was—it was done twice—it was 27 and 28 centimeters of water. Some months later at the Hanneman Hospital in Philadelphia, it was found to be 47, or 470 millimeters. This would mean to me that the obstruction when the lower

40 pressures were recorded—in other words at the

Dr. A. Wilbur Duryee—Direct.

Fitkin Hospital, the early pressures—was not complete, that there was only a partial obstruction to the venous drainage. In the literature in those few cases in which venous pressures have been recorded, obstruction of the superior vena cava complete usually produces a pressure of over 400.

10

Q. So it would indicate that— A. It would indicate to me that there was a gradual process going on here over a period of months.

Q. I see. And in regard to a thrombosis due to strain, is the occlusion, the shutting off of the vessel, immediate, rapid, or is it one that takes place over a long time? A. The complete closure of the vessel usually occurs in a matter of hours. I have taken venous pressures of individuals six hours after the onset of the symptoms and found pressures over 400 in that period.

20

Q. And is it not a fact that where the thrombosis and the occlusion are due to strain and it comes on and shuts off immediately, thereafter the venous pressure tends to recede rather than to increase? A. That is correct, because of the development of collateral vessels.

Q. And that would indicate, would it not, in this case, that the direct opposite was happening in regard to Mr. Glanton as compared to what would happen in the case of thrombosis of strain?

30

A. You are correct.

Q. In regard to the lues condition, can you say whether or not it was a producing cause? A. Thirty-three plus percent of cases of thrombosis of the superior vena cava are due to syphilis.

Q. Now, Doctor, Dr. Bailey has referred to a work of Matas on thrombosis of strain, and Dr. Batson, who testified on behalf of the petitioner, has referred to a work of Van Schroeder on

40

Dr. A. Wilbur Duryee—Direct.

thrombosis of strain. Are you familiar with the works of Matas and Van Schroeder? A. I am.

10 Q. And what kind of thrombosis of strain do they refer to, Doctor? A. In both of their articles they refer to thrombosis occurring in the axillary and sub-clavian veins. Van Schroeder, the original article in German, I have read the translations of, and he tries to explain, and does explain, does give the original explanation of the tearing of the blood vessels when an extremity is put under strain and the subclavian or axillary arteries are occluded.

Matas confirms this work and reports further cases.

Q. Does either one of those articles relate to a thrombosis of strain of the superior vena cava?

20 A. They do not.

Q. Do they even go so far as thrombosis of strain of the innominate veins? A. They do not.

30 Q. Dr. Batson, in describing in his testimony the nature of thrombosis of strain, at page 44 of his testimony, was asked this question, and this is his reply: "Q. And this condition you speak of, Doctor, exists where in this man. A. This condition exists in those large veins coming from the head and neck and from the upper extremities entering the thorax; it exists just at the entry to the thorax where the great valves and vessels lie, and the thrombosis is actually intrathoracic, just where all of these converge in the thorax. It runs inside of the cage."

Now, Doctor, is he talking about the superior vena cava there?

Mr. Mattice: I object to that. It means exactly what it says.

40 Mr. Carton: All right.

Dr. A. Wilbur Duryee—Direct.

By Mr. Carton:

Q. Is this, Doctor, a reasonably accurate diagram showing the veins coming out of the arms and out of the neck, into the body (indicating)?

A. It is.

Mr. Carton: May I have this marked?

Mr. Mattice: I would like to know who made it. 10

Mr. Carton: Dr. Albright.

Mr. Mattice: I would like to have it identified first.

The Court: You may mark it for identification.

Mr. Mattice: For identification.

Mr. Carton: No, I want to mark it in evidence so that on reviewing the evidence it would fit in with the testimony. 20

Mr. Mattice: I am going to object to it then.

The Court: Well, the purpose of it seems to be merely as a diagram, rather than as to the author of it.

Mr. Mattice: That's right.

The Court: I will admit it.

Mr. Carton: I will tie up that Dr. Albright did it. 30

(The diagram referred to was marked in evidence as Exhibit R-2 as of this date.)

By Mr. Carton:

Q. Doctor, showing you R-2, will you now point out, so that his Honor also can see it, where the superior vena cava is? A. The superior vena cava is this short vessel, extending from the right and left innominates down in to the heart.

Q. And is it a very large or small vessel? A. 40

Dr. A. Wilbur Duryee—Direct.

It has a large calibre and is very short. It varies in length with the type of individual, from 3 or 4 centimeters to 11 or 12 centimeters in a very tall man.

10 Q. And what would you say it generally runs in diameter, Doctor? A. Again it varies, depending on the structure of the individual, but it probably runs between 2 and 3 centimeters in diameter.

Q. Where are the innominate veins? A. The two innominates drain into the superior vena cava. They are formed by the junction of two main channels, the subclavian and the internal jugular veins on each side. However, individuals vary considerably and this arrangement isn't always the same.

20 Q. Where are the large veins coming from the head? A. The internal jugular veins come down and join with the sub-clavians.

Q. And the large veins coming from the arms? A. Are made up by the brachial, the cephalic and the basilic, which join and make up the axillary vein, and as this runs underneath the clavicle it becomes the sub-clavian vein.

30 Q. Where did Matas, Van Schroeder and others describe thrombosis of strain as taking place? A. Anywhere along the course of the axillary or sub-clavian veins.

Q. And that is quite some distance away, is it not, from the superior vena cava? A. That is correct.

40 Q. Have you ever heard of or come across in your reading of the literature a thrombosis of the axillary or the sub-clavian veins extending and occurring down into the innominate vein? A. I believe it could go perhaps into the innominate veins for a short distance, but not to any great extent because the jugular vein current would im-

Dr. A. Wilbur Duryee—Direct.

mediately stop its growth as it comes in. It might extend for one-half centimeter at most.

Q. What do you mean by the jugular vein current would stop its growth? A. A thrombus will form where a blood vessel is damaged or where blood is stagnant, but in rapidly moving blood it will not form, and the blood coming back from the head is moving at a rapid speed; there is a large, constant flow of blood, which would eliminate the possibility of the formation of a thrombus into the innominate. 10

Q. Dr. Batson in his testimony has said, "It is a peculiarity of the condition that the blood must be stopped from entering the chest, such as the blood pushed out of the chest by the squeezing of the chest. A great muscular effort in the extremities squeezes all the blood out of the muscle into the vein, and at the junction of the valveflap there is a slight rupture in the inner lining which has been ruptured. And I have confirmed that myself in the post mortem specimen, that by bringing the arm up about forty-five degrees, up rather high, that definite tension is put on the vessels in the sub-clavian, axillary and brachial regions, particularly in the costo-coracoid ligaments." 20

Doctor, will you point out on the diagram that portion of the anatomy to which Dr. Batson is referring? A. He is referring to the area from the axillary vein up to the right innominate. 30

Q. Is he referring to the superior vena cava at all? A. No, sir.

Q. Thank you, Doctor. You may sit down again. Doctor, is a thrombosis, uncomplicated, visible by X-ray? A. No, sir, not unless a dye is injected into the vein.

Q. And the mass which is shown by these X- 40

Dr. A. Wilbur Duryee—Cross.

rays indicates that there is a progressive growth or mass in there, is that right, Doctor? A. The shadow on these X-rays means that there is some pathological condition in the mediastinum.

10 Q. And that it is progressive? A. In comparing the X-rays taken on subsequent dates, I am led to believe that this is a progressive lesion.

Mr. Carton: Cross-examine.

Cross-examination by Mr. Mattice:

Q. What X-rays do you refer to when you say that the X-rays show you that it is a progressive disease? A. The first X-ray of the chest, without the dye, and the final X-ray of the chest, without the dye.

20 Q. Do you recall now when the X-rays were taken? A. I know there is an interval of approximately a year, at least.

Q. A year? A. Close to a year—no; I beg your pardon. It was July and November; it was less than a year.

Q. And there is no question in your mind, Doctor, that these X-rays show a bilateral condition on both sides? A. That's correct.

30 Q. And there is a stoppage there? A. That's correct.

Q. And you say an X-ray would not show the stoppage there without the insertion of this opaque material or fluid? A. It wouldn't necessarily show the stoppage itself, no.

40 Q. And what is there about Dr. Villapiano's examination in October 1940 that causes you, in your opinion, to say that that condition was existing at that time? A. That he found a cloudiness or haziness in the right mediastinum.

Dr. A. Wilbur Duryee—Cross.

Q. And that wouldn't show any occlusion in the veins, would it? A. No.

Q. What connection has the cloudiness in the chest with the condition found in looking over the X-rays? A. In order to explain this obstruction of the veins which has been found by surgery, one has to look for a cause, an etiological factor. A series of obstructions of the superior vena cava has been reviewed very carefully by several workers and I have a list here of the cases in which an obstruction of the superior vena cava has been reported, and from the information obtained at the time of the operation and the other laboratory work, a great many of them can be ruled out. Cancer and tuberculosis can be ruled out. The one condition which was apparent at Dr. Villapiano's original examination and has existed all the way through this man's illness is a cloudiness in the superior vena cava. Since these other causes of cancer and aneurysm, etc., have been ruled out, and since an inflammatory process was found at the time of the operation, a mediastinitis is the logical diagnosis. Thirty-three point three percent of all cases of mediastinitis are due to syphilis, and this man has syphilis, so the logical chain of events is that this process was present in 1940 and continued to progress until this patient had symptoms sufficient to bring him to a doctor.

Q. The cloudiness is not due to thrombosis, is it? A. No.

Q. It is due to involvement? A. Yes.

Q. And there is nothing about Dr. Villapiano's examination in October 1940 that causes you to believe that the thrombosis or occlusion was present at that particular time, is there? A. No, sir.

Q. What effect would this—withdrawn. You

Dr. A. Wilbur Duryee—Cross.

know that Dr. Villapiano saw that man in October 1940? A. That is correct.

Q. And he was not treated by a physician thereafter until some time in January 1942? A. That's right.

10 Q. Was there anything that would occur during that time, if this condition was present in 1940, October 1940—is there anything that would occur during that time that would show outward symptoms of what was happening? A. It might progress slowly and steadily, as do practically all of these cases, without any symptoms at all.

Q. Without any symptoms at all? A. Yes.

Q. Pain would accompany it at some time, would it not? A. Not necessarily. It may and may not.

20 Q. No pain or swelling would accompany it? A. It is very possible, until the process had involved the superior vena cava to such an extent that swelling was produced. On the other hand, he might have pain during the course of the process.

Q. If he had no pain during the time that he visited Dr. Villapiano when he went there for a cold, and he had no pain until some time in December 1941, would that change your mind? A.
30 Most of these syphilitic or luetic processes are painless.

Q. You say that if it was caused by syphilis it would be gradual? A. Yes.

Q. And if it had occurred there and there was a strain by reason of effort at some future time, would that cause that occlusion to hurry him in the matter of folding up? A. I don't believe it would in this particular problem because the strain wouldn't be transmitted to the superior
40 vena cava.

Dr. A. Wilbur Duryee—Redirect.

Q. You say that lifting and holding your breath at the same time—you say that would not cause that in any manner? A. It would cause very little, if any increased pressure in the superior vena cava. It would increase the pressure in the veins outside of the superior vena cava—in other words the sub-clavian and axillary. 10

Q. What have you to say to this, that on December 8th, 1941 this man, in heading up a heavy drum of alcohol, choked up, and thereafter, within a period of a few days or a period of a couple of weeks, the swelling came out on his neck and his face? Do you say that was caused by something that was present back in 1940? A. I believe those symptoms developed as a result of a slow progress of the disease in his mediastinum, and not due to lifting. 20

Q. And lifting would have no effect whatsoever on it? A. That is correct.

Q. That is your answer? A. That is correct.

Mr. Mattice: That is all, Doctor.

Redirect-examination by Mr. Carton:

Q. Doctor, as I understand it, the reason you say that the condition would not be exaggerated or aggravated by the strain is because the anatomical picture which we have shown, and which you have presented, shows that, on the strain, the pressure is to other parts of the anatomy and not to the superior vena cava? A. That is correct. 30

Mr. Carton: That's all.

Recross-examination by Mr. Mattice:

Q. Doctor, you have never examined this man, have you? A. I have not. 40

Dr. A. Wilbur Duryee—Recross.

Q. And there is no question in your mind that a condition of this nature could be accompanied by or would be accompanied by a swelling of the veins and a swelling of the neck when the occlusion occurred? A. I do not understand your question.

10 Q. If it appears now that there is a swelling of the neck, and has been for some time, since December, a few days after December 8th, 1941, that condition, the swelling, would accompany the condition we are talking of here, thrombosis of strain of the superior vena cava? A. I do not think there is such a thing as thrombosis of strain of the superior vena cava.

20 Q. What is your name for it? A. I believe this man has a venous thrombosis of the superior vena cava.

Q. And you don't think that the condition this man had in December 1941, and has at the present time, is a superior vena cava thrombosis due to injury by effort? A. I do not.

Mr. Mattice: That's all.

By Mr. Carton:

30 Q. Would an examination of the petitioner do any good at this time? A. I don't believe it would help me at this time, because the present condition is so clear cut from the information I have.

By Mr. Mattice:

Q. From the information you have. An examination wouldn't help you in any manner? A. I don't see that it could help me.

Mr. Mattice: That's all.

40 Mr. Carton: That's all.

(The witness was excused.)

Dr. Louis Albright—Direct.

DR. LOUIS ALBRIGHT, called as a witness on behalf of the respondent, being first duly sworn, testified as follows:

Direct-examination by Mr. Carton:

Q. Doctor, you are a practicing physician of the State of New Jersey? A. I am, sir. 10

Q. And you have been for how long? A. For twelve years.

Q. Do you specialize in anything, Doctor? A. I specialize in the field of internal medicine and in cardio-vascular diseases.

Q. Are you connected with any hospitals, Doctor? A. I am attending physician at Monmouth Memorial Hospital in Long Branch, the Fitkin Memorial Hospital in Neptune City, and head of the cardio-vascular disease department at the Fitkin Memorial Hospital, and consultant in cardio-vascular diseases at the River View Hospital in Red Bank. 20

Q. Do you know Charles Glanton? A. Yes.

Q. Did you have occasion when he was in the hospital, Fitkin Hospital, in January and February of 1942, to examine him? A. I had occasion to see him, yes, and to examine him.

Q. Were you one of those called in to consult in regard to the case? A. Yes. 30

Q. Have you recently made an examination of him? A. I examined him in April, April 3rd, 1943.

Q. Doctor, are you familiar with or have you read Exhibit R-1, a letter from Dr. Charles P. Bailey to Dr. Herrman? A. Yes I have.

Q. What were your findings on your medical examination of Mr. Glanton? A. When I examined Mr. Glanton in April of this year, he presented this swelling of his face and neck, some swelling of his arms and hands, to a lesser degree 40

Dr. Louis Albright—Direct.

than that seen in the face and neck; and obvious and marked increase in the venous pressure of his upper extremities and in his head and neck veins; some slight engorgement of the veins of the eye-grounds.

10 His blood pressure was approximately normal, a bit on the low side.

Examination of his heart as far as the sounds were concerned showed nothing remarkable.

20 He does have a number of dilated superficial veins over both of his collar bones and down over his breast bone. These are rather large and tortuous and are abnormal, and immediately come under the classification of collateral circulation; and the finding of veins of this type immediately makes you suspicious of something in the patient's mediastinum.

On fluoroscopic examination I noted the same things we had seen in the hospital; that is, the increased widening of the mediastinum, superior mediastinum, predominantly on the right side.

When he was in my office I tested his venous pressure by the rough method of elevating the arms a certain level above the right auricle, and we could tell that his venous pressure was definitely elevated in both upper extremities.

30 That covers the essential findings and the physical examination.

Q. Doctor, were you in Court when Dr. Duryee was examining the X-rays? A. Not all of them. I might have missed the first one or so.

Q. Are you able to read X-rays, Doctor? A. X-rays of the chest, yes.

Q. I hand you Exhibit P-9, Doctor, which was taken in July 1942 at the Hanneman Hospital. A. This is an X-ray of the chest, in the a.p. plane.

40 The most striking thing about it is the widen-

Dr. Louis Albright—Direct.

ing of the superior mediastinum right across here (indicating). This widening is predominantly—this bulge—on the right side (indicating). This bulge is the aorta as normally seen. This bulge (indicating) is abnormal.

Q. I show you Exhibit P-7. That is an X-ray taken on the same day as Exhibit P-2. What does that show? A. This radiograph is taken with considerably more exposure, as you notice. It's quite a bit darker. It, again, shows the same as the one which you just looked at, although the findings in this one do not stand out as sharply, since they are soft tissue findings. You see some slight haziness in here and the bulge of the aorta on the other side (indicating). Both show the heart to be a comparatively normal in size. The mediastinum is separate and distinct from the heart and sits right above the heart. 10 20

Q. I show you Exhibit P-8—and, Doctor, if and when I come to those that you have already seen and examined when Dr. Duryee was on the stand, let me know, so I won't have to go through them all. A. Yes.

Q. This is a picture taken after an injection into the right arm of some opaque fluid, at the Hanneman Hospital, on the occasion of his first examination there. What does that show? A. This X-ray shows the opaque fluid as it goes up through the brachial veins up in to the axillary and subclavian veins. We immediately notice a number of these collateral vessels; that is, the superficial veins show a great increase in calibre, which shows some obstruction in the return flow of the blood to the heart; so somewhere along that tract there is an obstruction to the return flow of the blood. 30 40

Dr. Louis Albright—Direct.

Q. Thank you. I show you Exhibit P-6. A. This is the first one I saw.

Q. You have already seen that? A. From that point on I have seen them.

Q. And in your readings of Exhibits P-6, P-10, P-4, P-5, P-3, P-2, and P-1, are your readings of
10 those X-rays the same as those of Dr. Duryee?
A. Yes.

Q. All right, Doctor. Thank you. Let's put that shadow box out of the Court's way. Doctor, bearing in mind your examination and the facts contained in your examination of Mr. Glanton, and also your examination and consultation with him when he was in the Fitkin Hospital in January and February of 1942, and also, Doctor, taking into consideration the facts contained in Dr.
20 Bailey's letter to Dr. Herrman, and also assuming that Mr. Glanton is married, age thirty-six years of age; that in 1942 and prior thereto he had syphilis and was suffering from same; that in October 1940 he went to see Dr. Joseph G. Villapiano and that he then complained of pain in the right side of his chest and head—and he had for several days—that he coughed and raised mucous; that he was then on October 16th, 1940,
30 put under a fluoroscope by Dr. Villapiano, and the fluoroscopic examination revealed that he was negative as to the lungs but that the mediastinum was enlarged on the right side, that there was a cloudiness of the upper right—right upper mediastinum; and that the diagnosis was then made of mediastinitis; that thereafter and before that time Mr. Glanton had worked as a handy man about a garage, and that on or about December 8th, 1941, while heading up a fifty gallon drum of alcohol he choked up; he sat down and
40 rested for the rest of the day; that, thereafter,

Dr. Louis Albright—Direct.

he continued working until January—continued working, but when he bent over he felt dizzy; that in January 1942 he noticed that his face and neck were puffed up so that he couldn't button his shirt; that he told Dr. Bailey that he first noticed this on January first, 1942; that in the middle of January 1942 he went to see Dr. Samuel Edelson, who immediately sent him to the Fitkin Hospital; that he remained in the Fitkin Hospital from January 17th to January 22nd, 1942; that he went back to work after that and worked until February 23rd, 1942, when he was again admitted to the Fitkin Hospital for several days; that when he interviewed Dr. Edelson for the first time and when he was admitted to the hospital, the Fitkin Hospital, the first and the second times he did not give any history of strain or lifting or injuring himself by trauma on December 8th, 1941 or on any other date; that after his discharge from the hospital in the latter part of February 1942 he came back to the hospital for clinical and X-ray treatments; that in July 1942 he was sent to the Hanneman Hospital in Philadelphia, under the care of Dr. Bailey; that on his admission to the Hanneman Hospital he was questioned by Dr. Bailey and gave Dr. Bailey no history of any strain, lifting or trauma on December 8th, 1941 or any other date; that he was under observation in the Hanneman Hospital in Neptune for bismuth treatments for his syphilitic condition; that he received those treatments and he was again admitted to the Hanneman Hospital on October 18th, 1942, when again he was questioned as to his history and he gave no history of any strain, trauma, or injury to himself on December 8th, 1941 or any other date; that on October 23rd, 1942 Dr. Charles P. Bailey, in

10

20

30

40

Dr. Louis Albright—Direct.

the Hanneman Hospital in Philadelphia, performed an exploratory operation on Glanton, and the exploratory operation showed a thrombosis of the superior vena cava and the azygos vein; that a few days after the operation Dr. Bailey questioned Glanton as to whether or not this condition which he had come upon him while straining himself and whether he had had any unusual exertion or severe straining or lifting, and Glanton did not recall any but, after prompting by Dr. Bailey and after a lapse of three or four days he recalled a choking spell that he had had in the early part of December, 1941, while lifting a fifty gallon drum of alcohol; that he was discharged from the Hanneman Hospital the day before Thanksgiving, in November of 1942, and since that time has not worked; that he still complains of being dizzy when he bends over and that his neck and face are still puffed up.

Now, Doctor, assuming all those things, and assuming, as I said, your examination and what you have as first knowledge of the matter, and from the exhibits that you have examined, can you tell us with reasonable certainty whether or not the happening complained of on December 8th, 1941 by the petitioner is causally related to his present condition? A. I see no possibility of a causal relationship between those happenings and his present condition; I see no possibility of it.

Q. Will you tell us some of the reasons that lead you to that conclusion? A. Well we know that there was a process going on in this man's mediastinum as far back as October, 1940. He began to develop symptoms around the first of the year in 1942, and when first examined in the hospital his venous pressure was at a certain level, approximately 27 centimeters of pressure.

Dr. Louis Albright—Direct.

At a later date, it had increased to around 70 centimeters of water. His two admissions into the Fitkin Hospital showed, also, a progression. He had swelling of his face and neck on his first admission, and it was considerably worse on the second admission. He had all the evidences and ear marks of a progressive condition, something that was developing slowly, chronically, markedly, over a period of time. We know this man has a positive Wasserman and that he has syphilis. Tuberculosis is ruled out of the picture; cancer is out. We feel that this process in his mediastinum that was noted as far back as 1940 was undoubtedly a syphilitic mediastinitis, which is a condition in which a great amount of scar tissue was laid down and that slowly contracts and squeezes down, to use the diagram—

Q. Using Exhibit R-2? A. Yes. It was squeezing down on the superior vena cava, just gradually closing it down, and, as that process closes down the superior vena cava, there will come a point when symptoms will develop. As long as the process of constriction is not great, the blood can still get through, so that the return flows from the arms and the head are possible, maybe ragged, but not enough to produce symptoms. But somewhere in the course of this slow, progressive disease, there will come a point when that vena cava is narrowed to a point where the blood is no longer able to get down to the heart in sufficient quantities, and at that time there will develop swelling of the face, arms and neck, and the patient will then begin to have symptoms. So, as I say, this whole story was one of a slow, gradual development of an obstruction of the superior vena cava. We know that there is a possibility of muscular strain and what it will do to

Dr. Louis Albright—Direct.

- the circulation, and there is a condition known as strain thrombosis, but that strain thrombosis does not affect this portion of the venous return. It has been described numbers of times and the thrombosis is always up in the sub-clavian or axillary vein, or sometimes in the brachial vein.
- 10 But it never goes beyond this point; you never get it in the innominate veins or the superior vena cava. It has never once been described in the literature of the entire world, which was reviewed in 1936. Since that time there have been a few cases of thrombosis of the superior vena cava, none of them however in which there was any question of strain. So that, as I say, we know that the possible damage that strain and effort can do the circulatory system is limited to
- 20 this small area on each side (indicating)—never in the area which we know is involved in this man; so that the diagnosis of the condition with which we are dealing, I believe, is readily apparent, and, I say, is substantiated by virtually all the evidence that we have. That was why I answered the question the way I did, because I feel there is no possibility of strain of any variety or type having any bearing on the type of thrombosis which this man presents and which we can
- 30 feel certain that he does have.

- Q. Doctor, if a person suffers from thrombosis of strain, what causes the thrombosis to start? A. Well, the thrombosis of strain is produced by a combination of factors. When a person exerts a muscular effort with his arms, contracts the muscles, as you contract them you squeeze the blood out of your arms; at the same time, attempting to lift, you are very apt, in some individuals, to cut off the vein right at this point
- 40 where it passes under the clavicle and over the

Dr. Louis Albright—Direct.

first rib, where there is a point of slight narrowing and where a group of muscles come down from the neck and attach to the first rib and clavicle. So at this point the vein may be cut off on each side momentarily, and you squeeze tightly as you lift and you drive the blood out of your arms. It can't get any further than right up here (indicating), and it results in a tremendous increase in the venous pressure here (indicating), and at that point you may get tearing of the intima and a thrombosis develops; and that is the typical and the only form of strain thrombosis there is; that is the only type that has ever been described in the literature of the world today. There is thrombosis of the sub-clavian or axillary veins occurring under the circumstances I have just enumerated.

Q. Is it at all anatomically possible to have that strain or pressure exerted on the superior vena cava? A. It is not possible because, as I said, when this mechanism occurs, a cut off takes place in this one or both sides, and that in itself, if the strain is a violent one and the pressure is increased, the above described cut-off protects the superior vena cava. So there is no way in which pressure can be transmitted down to the superior vena cava in a way that could damage it; you can't develop this group of circumstances that must be present to bring about the so-called strain thrombosis. That group of circumstances can't be developed in the superior vena cava.

Q. All right, Doctor. Now referring to Exhibit R-2, which you prepared—is that right? A. Yes.

Q. Does that show with reasonable exactitude the position of the veins? A. Yes.

Q. And ribs? A. Yes.

Dr. Louis Albright—Direct.

Q. And the superior vena cava, particularly in connection with the other veins? A. Yes.

10 Q. The fact that this man's pressure as shown by Dr. Bailey's letter, or venous pressure as shown by Dr. Bailey, was 240 or 270 plus, somewhere in the 200s, in January and February 1942, but in the latter part of 1942 it was up to 470, what does that show, Doctor, in relation to whether or not this condition was traumatic in origin or developed by reason of internal disease? A. Well the cases that are traumatic in origin from the standpoint—again we see the cases of strain thrombosis where the thrombosis is in the subclavian or the axillary vein, and the venous pressure in the arm rises very quickly, within a period of a few hours or a day the pressure will climb up at least above 400 millimeters, or 40 centimeters, sometimes going up as high as 70 centimeters or 700 millimeters. With that flow shut off that occurs in the thrombosis of strain, there is a rapid rise in the venous pressure, and in any change from that point on it tends to lower, as collateral circulation develops and releases some of that blood in the arms.

20

Q. But if it is a gradual development what would you say would happen? A. When there is an obstruction to the return flow of blood to the heart of a gradual nature, you will find a steady build-up in the venous pressure. It would increase from the normal, which is approximately four centimeters on up to as high as 70 centimeters.

30

Q. Then the venous pressure experience of Mr. Glanton is the exact opposite of what would have happened had it been a traumatic thrombosis, isn't that true, Doctor? A. That is true.

40 Q. Doctor, is there any record in the history

Dr. Louis Albright—Cross.

of thrombosis of the superior vena cava of a thrombosis due to strain of the superior vena cava?

Mr. Mattice: To your knowledge, Doctor?

By Mr. Carton:

10

Q. To your knowledge. A. There is no case that I know of.

Q. Are you familiar with the literature on the subject? A. I am.

Q. Have you recently reviewed it, Doctor? A. I have.

Q. And is there any, for that matter, Doctor, case reported of thrombosis of indirect strain or thrombosis of strain of the innominate veins? A. No, there is not.

20

Q. And the innominate veins come up above the—they are above the superior vena cava? A. Yes, that's true.

Q. And they are nearer the axillary and the subclavian veins, in which we do have thrombosis of strain, are they not? A. That's true.

Mr. Carton: Cross-examine.

Cross-examination by Mr. Mattice:

30

Q. Do you specialize in any branch of medicine? A. Cardio-vascular disease.

Q. And you examined or were consulted in Charles Glanton's case some time in 1942, with Dr. Edelson and other physicians? A. When he was in the hospital, yes.

Q. Did you make a diagnosis at that time? A. Yes, we made a diagnosis at that time.

Q. Of what? A. The diagnosis was of obstruction in the superior mediastinum, which we suspected of being Hodgkinson's Disease.

40

Dr. Louis Albright—Cross.

Q. Why did you send for Dr. Bailey? A. To do an exploratory examination.

Q. And you knew prior to the time you sent for Dr. Bailey what his condition was? A. We knew he had an obstruction in his superior vena cava. That could have been a tumor—he had a
10 mass in the superior mediastinum. For that reason an exploratory operation was advisable; and, also, in that exploratory operation it is frequently possible for the surgeon to relieve this constriction of the superior vena cava, so that the patient involved may find out with great accuracy what the trouble is, but he also obtains a great deal of relief. So we sent Glanton to Dr. Bailey with the hope that not only would the diagnosis be clarified but that he might be relieved of his
20 trouble.

Q. And the diagnosis was clarified, was it not, by Dr. Bailey? A. Well, some things were ruled out. You may have gathered from what I have said that the condition that was found by Dr. Bailey undoubtedly exists, that is, the obstruction of the superior vena cava. Of course, he termed it strain thrombosis, which I have already said does not exist in the superior vena cava. So, from that standpoint, we would have to say
30 there was no clarification. If anything, the issue was, I would say, distorted, because the diagnosis is one that is non-existent; there is no such thing as strain thrombosis of the superior vena cava.

Q. So, as far as you are concerned, you do not accept Dr. Bailey's diagnosis in this matter? A. Of strain thrombosis, no. I do accept the diagnosis of the obstruction of the superior vena cava.

40 Q. And this obstruction is bilateral? A. The

Dr. Louis Albright—Cross.

obstruction that you see—you see this inflammatory mass in his superior mediastinum, that is present in—on each side of his superior vena cava, gradually narrowing it down, and what you see is a mass of inflammatory tissue, which, as I say, is making pressure in each direction in here, gradually narrowing this down.

Q. Indicating by arrows, pointing to either side of the wall of the superior vena cava. A. That's what you see in these X-rays we have been showing, in which we see that the mediastinum is widened. There is an inflammatory mass around the superior vena cava, which is gradually squeezing it. 10

Q. Is this due to the thrombosed vessel, this shadow and surrounding inflammation, or is it vice versa? A. It's due to the surrounding inflammation. 20

Q. And that is causing— A. That is gradually narrowing the superior vena cava down.

Q. And it is not the other way around? A. Oh, no.

Q. You are certain of that? A. Yes, because for one thing, Dr. Villapiano noted the surrounding inflammation in 1940, when you can assume that the constriction had not reached the point at which it gave him symptoms. So the mass must have come first and then squeezed down. 30

Q. And there is no way of telling how quickly that will develop; after you see that shadow in the fluoroscopic examination there is no way you can tell how quickly it will develop? A. No. It is a steadily progressive affair but sometimes it moves fast.

Q. Is it a serious condition? A. Yes, it naturally is.

Q. A serious condition, and the man was exam- 40

Dr. Louis Albright—Cross.

ined some time in October, 1940 and was not obliged to see a physician again until some time in January 1942. Would you say that the condition that existed in Mr. Glanton in October 1940 was serious at that time, this shadow? A. Well, the shadow, as I say, this—you must proceed on
10 what you know—is some day going to develop; I mean at some time this man will begin to develop symptoms, once again depending on the rapidity with which that inflammatory process constricts his superior vena cava.

Q. In other words, that condition should be watched; is that right? A. Well, a patient should have an eye kept on him, for, when he develops symptoms, he should be treated.

Q. And you say a strain or effort could not
20 produce this condition in any manner? A. The condition we find in Mr. Glanton.

Q. That Dr. Bailey found. A. The condition that Dr. Bailey found in Mr. Glanton cannot be produced by strain.

Q. And you say that if you are lifting a heavy object and you hold your breath, preventing the blood from entering the chest, and actually squeezing blood out of the veins, that the squeezing of the blood out of the muscles by straining
30 would not tear the lining of the larger veins? A. It will tear the lining of the veins I have indicated. Referring to the chart, it will tear the lining of the axillary or the sub-clavian, one side or the other, but it wouldn't do anything down here in the superior vena cava (indicating). That type of damage would only occur up in this portion of the vein, and that portion only, not down here, where the trouble is in this man (indicating).

40

Dr. Louis Albright—Cross.

Q. Have you ever seen a case of this nature before? A. Yes.

Q. Where? A. We have had two cases in the hospital of this type.

Q. When? A. I couldn't tell you the exact dates.

Q. Before or after this case? A. Before. 10

Q. Before this case? A. Yes.

Q. And you diagnosed them at that time? A. Yes.

Q. Did they send for Dr. Bailey? A. No.

Q. But this case had to be sent to Dr. Bailey for diagnosis, did it not? A. Well, no. Dr. Bailey happens to be a chest surgeon, and this condition, we felt, might possibly be helped by an operation, as many of them are.

Q. The conditions that you had previous to this time, were they similar to the one existing in Mr. Glanton? A. They were. 20

Q. And those cases were not referred, but Mr. Glanton's case was referred to Dr. Bailey, is that right? A. That's true.

Q. And you knew when you were consulted and were examining Mr. Glanton at Fitkin—you knew his condition at that time, before you sent him to Dr. Bailey? A. Yes, we knew he had an obstruction of the superior vena cava. 30

Q. Who was in consultation with you? A. Doctors Verga and Edelson.

Q. Who else? A. Dr. Edelson.

Q. Was Dr. Herrman there? A. I don't know. We talked it over with him a number of times.

Q. He took the X-rays, did he not? A. Yes.

Q. Any one else? A. I couldn't say exactly. I know there was Verga and I and Edelson. We talked the case over numerous times, because we 40

Dr. Louis Albright—Cross.

were interested in Mr. Glanton and wanted to get this thing straightened out.

Q. Did you know at the time that you first observed him in the Fitkin Hospital whether or not there was a partial obstruction of the vena cava at that time, or was it entirely obstructed? A.

10 It was a partial obstruction of the superior vena cava at that time.

Q. And you knew that from what? A. Because his venous pressure was elevated. It was 27 centimeters at that time.

Q. Tell us about the progress from the time of his first admission to the hospital to the time he was sent to Dr. Bailey. Was it rapid? A. Well I would say that the progress of the disease was not particularly rapid. He did develop
20 some swelling. His venous pressure at the Fitkin Hospital was slightly increased on the second admission. However, in Philadelphia, it was considerably increased, so that, as I say, there was some evidence of definite progression. The swelling of his face had increased from one admission in Fitkin until the second one. The mass in his chest was slightly increased in size from the first to the second X-ray.

Q. And that was over what period of time? A.
30 Several months.

Q. Several months. And considering that particular progress over several months, and considering what existed from 1940 to the time he was first admitted to the hospital, would you say that there was nothing in that time that intervened that might have caused this by way of strain, that would cause this action? A. There is nothing in the way of strain that causes this.

40

Mr. Mattice: That's all.

Dr. Louis Albright—Redirect.

Dr. Louis Albright—Recross.

Redirect-examination by Mr. Carton:

Q. You sent Mr. Glanton to Dr. Bailey because you suspected a tumor was causing the obstruction, isn't that it? A. Yes.

Q. And Dr. Bailey ruled that out, did he not? 10
A. He ruled out the possibility of tumor. Of course, Dr. Bailey has only been in practice for several years, and our earlier cases were not referred to Dr. Bailey for that reason; he was not practicing at that time.

Recross-examination by Mr. Mattice:

Q. Well, they weren't referred to Dr. Bailey in particular; they were referred to Hanneman Hospital, were they not? A. Well, Mr. Glanton was referred to Dr. Bailey. 20

Q. And those two cases you speak of, when did they exist prior to Mr. Glanton's entrance into the hospital? A. Well I would say four or five years.

Q. Four or five years? A. Yes.

Q. And they were of the same nature? A. They were obstructions of the superior vena cava.

Q. And it wasn't until—you say Dr. Bailey is only practicing a short time. How long? A. Well he has been doing chest surgery for approximately three years—four years, maybe. 30

Q. Only three or four years? A. Yes.

Q. When did he leave the Fitkin Hospital? A. Considerably before that time, but he did general practice for a while. Chest surgery is a highly specialized branch of medicine.

Q. You don't specialize in that, do you? A. I don't do any surgery. 40

Dr. George Edward Meehan—Direct.

Mr. Mattice: That's all.

Mr. Carton: That's all.

(The witness was excused.)

Mr. Mattice: Are you through?

10 Mr. Carton: Except for some depositions.

Mr. Mattice: Dr. Meehan isn't here. I will call him when he comes in, and I would like to call Mr. Glanton for a few questions in rebuttal. I would like to offer this letter in evidence (indicating).

Mr. Carton: No objection.

The Court: That's the letter from Dr. Herrman to Dr. Bailey?

Mr. Mattice: Yes.

20 (The letter referred to was received in evidence and marked Exhibit P-1 as of this date.)

The Court: Is that the respondent's case or are they both still open?

Mr. Carton: They are both still open.

30 DR. GEORGE EDWARD MEEHAN, called as a witness on behalf of the petitioner, being first duly sworn, testified as follows:

Direct-examination by Mr. Mattice:

40 Q. Doctor, you examined Charles Glanton, the petitioner, did you not? A. I made two examinations, sir; and the first was made on March 3rd, 1943. In brief, the petitioner was thirty-seven years old, a colored gentleman, weight 160 pounds and he was five foot seven; by occupation a garage man. In brief, I was acquainted with

Dr. George Edward Meehan—Direct.

other incidental details known to his Honor. I proceeded with my examination—

Mr. Carton: What was that?

The Witness: I was acquainted with other details, such as hospitalization and medical treatment and that the man was X-rayed. 10

Mr. Carton: O.K.

The Witness: I proceeded with my examination, and there was no focus of infection in his mouth. His lungs were clear and resonant throughout. The veins of his neck were engorged. His face was suffused. He readily fatigued; his breath was short. That was the picture he presented, and on the occasion of my first examination I was not able to make any diagnosis. At that examination I favored the petitioner with a letter to visit the treating physician, and I subsequently examined him, and the diagnosis was one of superior vena cava thrombosis, due to injury of effort, sometimes called thrombosis of strain. 20

By Mr. Mattice:

Q. You arrived at that diagnosis through the X-rays and the benefit of the information received from Dr. Bailey? A. Yes. I received information from Dr. Bailey because on the first examination I sent the petitioner to Philadelphia because of the condition he presented when I examined him; I gave him a note to the doctor. Then I saw the petitioner again six weeks ago, when Professor Batson was present in court. The conditions I found then were similar to the conditions I found on the occasion of my first examination. As regards the diagnosis, I was aided 30 40

Dr. George Edward Meehan—Cross.

by Doctors Bailey and Batson. Then, in addition, I was in a position to predicate disability.

10 Q. And the disability was what? A. Due to the distress I found the man in on the morning of my examination, I found that industrially, he was totally disabled because of his inability for any sustained effort. He was 100 per cent of total.

Mr. Mattice: Cross-examine.

Cross-examination by Mr. Carton:

20 Q. Doctor, are you aware of the testimony of Dr. Batson and Dr. Bailey, that the petitioner is able to do light work, but not work in which manual labor is involved? A. Yes, I am familiar with that. I was present when that testimony was given to his Honor, Judge Umberger.

Q. Then he would not be 100 per cent of total? A. Well, from my own observation of that I felt he was 100 per cent of total because of the most unfavorable condition presented on the morning of the examination.

30 Q. Doctor, you don't attempt to qualify as a heart man? A. No, I don't attempt to qualify in this case, because it is the first case I have ever seen, and I had considerable difficulty in getting information from the literature and other sources of information, professional men.

Q. You were not able to make a diagnosis on the first examination or didn't care to, didn't feel that you should? A. I felt that the case required immediate conference with Dr. Bailey, the treating physician, and I was not able to make a diagnosis.

40 Q. And you only made your diagnosis of thrombosis of strain after discussing the case with Dr. Bailey, is that right? A. Yes.

Charles Glanton—Rebuttal—Direct.

Q. And that was his opinion? A. That was his opinion.

Q. And you adopted it as yours? A. I did.

Mr. Carton: No more questions.

Mr. Mattice: That's all, Doctor.

(The witness was excused.)

Mr. Mattice: Charles Glanton.

10

CHARLES GLANTON, the petitioner, recalled as a witness on his own behalf, being previously duly sworn, testified further as follows:

Direct-examination by Mr. Mattice:

Q. Prior to the time you saw Dr. Edelson, had you ever gone to him for any other cause? A. No, sir.

Q. Did you know Dr. Edelson? A. No.

20

Q. Who sent you to Dr. Edelson? A. Shafto.

Q. Did he tell you to go or did he ask you if you wanted to? A. When I went up in the office they told me to go and see Dr. Edelson.

Q. Prior to this time was Mr. Smith, who was employed there, injured while working there? A. Did I talk to Mr. Smith?

Q. Had you seen Mr. Smith just prior to that time, when he was injured? A. Yes, I seen Mr. Smith.

30

Q. Was he injured on the job? A. Yes, sir.

Q. What doctor did they send him to, if you know? A. They sent him to Dr. Edelson.

Mr. Mattice: That's all.

40

*Charles Glanton—Rebuttal—Cross.**Cross-examination by Mr. Carton:*

Q. You say Shafto sent you to Dr. Edelson? A. Yes, the boss that was in the office.

Q. Wait a minute. Talk so I can hear you. A. Mr. Shafto sent me up to Dr. Edelson.

10 Q. Mr. Shafto? A. Well, Mr. Shafto was never at the station. They had five different places.

Q. You testified that Mr. Shafto sent you to Dr. Edelson. Did Mr. Shafto send you to Dr. Edelson? A. The girl in the office, Miss Shafto, sent me.

Q. She told you you had better see a doctor, didn't she? A. She told me to go to Dr. Edelson's office.

20 Q. They were discussing this swelling in your neck and told you you better see a doctor, didn't they? A. That was before they sent me to the doctor.

Q. Yes. A. When I was complaining about the choking.

Q. And they told you you were a sick man and you better go to a doctor, didn't they? A. Before I went to the doctor, when I was complaining.

30 Q. Yes. And that's what they said, isn't it? A. When I went into the office they told me to go up to Dr. Edelson's office.

Q. You didn't tell them you had injured yourself on December 8th or any other day, did you? A. I told them I had choked up.

Q. You told them you had choked up? A. I told them every time I bent over I got dizzy and choked up.

Q. Yes. But you didn't tell them you had injured yourself on December 8th, 1941, did you?

40 A. They didn't ask me.

Q. Yes. You just told them you weren't feel-

Charles Glanton—Rebuttal—Cross.

ing well, and you just choked up? A. I told them I couldn't bend over and change tires because I choked up.

Q. And you told them you were a sick man?

A. I didn't say I was a sick man.

Q. And your neck was all swollen up, was that right? A. Well, they could see it. 10

Q. And they told you you better see a doctor?

A. They told me to go to Dr. Edelson's office to see what was my trouble.

Mr. Carton: That's all; no more questions.

Mr. Mattice: That's all.

(The witness was excused.)

Mr. Mattice: If the Court please, we have some questions to propound to Dr. Edelson; we have them all ready and we want to mail them to Dr. Edelson. Mr. Carton knows the method. 20

The Court: Is that all you have left?

Mr. Carton: Yes, other than these depositions of Dr. Edelson, that's all I have.

The Court: How long is that going to take?

Mr. Carton: Well we have the questions prepared and we have submitted them to each other, and we can get them out in today's mail. 30

(Discussion off the record.)

The Court: Suppose we note on the record that the record is complete except for the depositions of Dr. Edelson, which will be filed when returned. I guess that's about all we need. Then I can just carry this until I hear from you, leave it off the list.

Mr. Carton: Does your Honor want a summa- 40

Colloquy.

tion by us at any future date after the depositions come in?

Mr. Mattice: I will submit, as far as I am concerned.

10 The Court: Well, if you want to submit briefs it is up to you. It would be up to you to file the first one, I suppose, and if the Judge wants to answer it—whatever you want to do.

Mr. Carton: I don't think so. We will just submit it.

The Court: All right. When the interrogatories are returned we will have them filed. There is not much need to brief unless there are some facts you want to stress. There is not much law in the case; it's just a question of preponderance, and that's about all it amounts to.

20 Mr. Carton: There is also a question in my mind as to whether due notice was given to the employer, under the Statute.

Mr. Mattice: The Court knows more about that law than we do.

The Court: I think so, too. Well, if you want to, before I close it up you can just drop me a letter. You don't necessarily have to make it a brief.

Mr. Carton: All right.

30 (Decision reserved pending receipt of depositions of Dr. Edelson.)

Certificate of Reporter.

I Hereby Certify the foregoing to be a true and accurate transcript of the testimony in the above entitled matter as taken stenographically by me at the time, place and date hereinbefore set forth.

H. R. HUNT,
Certified Shorthand Reporter. 10

Certificate of Deputy Compensation Commissioner.

I Hereby Certify the foregoing to be a true and accurate transcript of the testimony in the above entitled matter as taken before me at the time, place and date hereinbefore set forth.

HARRY H. UMBERGER,
Deputy Compensation Commissioner. 20

30

40

**Interrogatories Propounded to Captain Samuel
Edelson on Behalf of the Respondent.**

NEW JERSEY DEPARTMENT OF LABOR
WORKMEN'S COMPENSATION BUREAU

CHARLES GLANTON,
Petitioner,

10

vs.

JOSEPH A. SHAFTO,
Respondent.

1. What is your full name and your home address: (A) Samuel Edelson, 305 Bendermere Ave., Interlaken, N. J.
2. Are you a licensed physician of the State of New Jersey? (A) Yes.
- 20 3. How long have you been a licensed physician in New Jersey? (A) Since 1927.
4. Are you a medical officer in the United States Army? If so, give your rank. (A) Captain.
5. Do you know one, Charles Glanton? (A) Yes.
6. In January of 1942 did you have occasion to examine Charles Glanton? (A) Yes.
- 30 7. What was the first date of your examination of Glanton in 1942? (A) 1-16-42.
8. What did your examination disclose? (A) Fullness in neck with distended veins.
9. If you obtained a history of the conditions that you found from Mr. Glanton, state what Mr. Glanton told you in giving you the history. (A) He had a cold for a number of days. Swelling of neck was noticed at that time. Was first noticed by a friend.
- 40 10. For how long a period of time was Glan-

*Interrogatories Propounded to Captain Samuel
Edelson on Behalf of the Respondent.*

ton under your supervision? (A) Referred him to the hospital immediately. Was under my care as a ward patient as shown in hospital records.

11. When did Glanton say that he first noticed the swelling in his neck? (A) A short time before coming to my office. 10

12. Did Glanton ever tell you or advise you that the condition that was bothering him was first noticed on December 8th, 1941? (A) No.

13. Did Glanton ever advise you or tell you that this condition which affected him first started or that he first noticed it while in the act of lifting or heading up drums of alcohol? (A) No.

14. Did Glanton, at any time while he was under your observation, give any history in relation to his illness of strain or lifting or trauma? (A) No. I do not recall questioning him regarding any strain. 20

DURAND, IVINS & CARTON,
Attorneys for Respondent.

30

40

**Interrogatories Propounded to Captain Samuel
Edelson on Behalf of the Petitioner.**

NEW JERSEY DEPARTMENT OF LABOR

WORKMEN'S COMPENSATION BUREAU

CHARLES GLANTON,
Petitioner,

10

vs.

JOSEPH A. SHAFTO,
Respondent.

1. Do you specialize in any branch of medicine? If so, mention same. (A) No.
2. Did you observe any swelling of the neck or veins in the neck when you examined Mr. Glanton in January, 1942? (A) Yes.
- 20 3. Did you advise Mr. Glanton to go to the Fitkin Hospital? (A) Yes.
4. Did you advise Mr. Shafto, the respondent, that you were sending Mr. Glanton to the Fitkin Hospital on June 17, 1942? (A) Yes.
5. What was your diagnosis in January, 1942, after examining Mr. Glanton? (A) Probably a mediastival tumor.
- 30 6. Did you refer Mr. Glanton to Dr. Bailey? If so, for what purpose? (A) Yes. Further examination and operative procedure if indicated.
7. Did you know that Mr. Glanton was employed by the respondent as helper in the service station? If so, did you consider Mr. Glanton able to perform his usual duties as helper in the service station when you first examined him in January, 1942? (A) I knew that Mr. Glanton was employed at service station. (2) Did not consider him able to perform his usual duties.
- 40 8. When did you last treat or examine Charles

*Interrogatories Propounded to Captain Samuel
Edelson on Behalf of the Petitioner.*

Glanton? (A) Do not recall date when last examined.

9. When did you consider Mr. Glanton able to resume his usual duties as helper in the service station, or when in your opinion had he received his maximum medical treatment? (A) Left to join the army before Mr. Glanton received his maximum medical treatment. 10

10. Did you receive a diagnosis from Dr. Bailey? If so, did it agree with the diagnosis made by you? (A) Was not informed of Dr. Bailey's diagnosis until after discontinuing private practice. Diagnosis did not concur.

11. Are you familiar with the diagnosis of thrombosis of strain involving the superior vena cava vein? (A) No. Have never heard of this condition being described. 20

12. Were you the treating physician? If so, in your opinion is Charles Glanton permanently disabled? If so, when did the temporary period end? (A) Have not been able to follow the treatment of Mr. Glanton. Can give no accurate statement.

13. Did Mr. Glanton give you a history? If so, did the history contain any symptoms that might relate to thrombosis of strain? (A) No. Do not recall any history of strain. Do not recall asking questions regarding strain. 30

14. If history was given, are you stating same from records or from your memory? (A) See #13.

15. Did you know what was medically wrong with the petitioner while under your treatment? If not, was he referred to Dr. Bailey for this reason? (A) We knew of the interference with the venous circulation. Did not know the cause.

16. Did you treat Charles Glanton after you 40

Exhibit R-1.

received a diagnosis from Dr. Bailey? (A) Did not receive a final diagnosis from Dr. Bailey.

17. Have you submitted a bill for your services? If so, to whom and in what amount? (A) No.

10

JOSEPH F. MATTICE,
Attorney for Petitioner.

I, SAMUEL EDELSON, duly acknowledge and certify that the answers given to the within interrogatories were made and written by me, and I certify that the same are true according to the best of my knowledge and belief.

SAMUEL EDELSON.

20

Exhibit R-1.

RIT 1645

CHARLES PHILAMORE BAILEY, M. D.
1700 Sansom Street
PHILADELPHIA, PA.

Nov. 30, 1942

Dr. Wm. Herrman
Roentgenologist, Fitkin Hospital
Neptune, N. J.

30

Dear Bill,

It seems peculiar to write to you about Mr. Charles Glanten, but both men who previously communicated with me (Edelson and Altschul) are now in the army and I knew you would be very much interested.

To refresh your memory, this was a 30 odd year old colored man, who began about Jan. 42 to have a swelled face and arms, with distended veins in
40 the upper portion of his body. His veinous pres-

Exhibit R-1.

sure in the antecubital region was at that time about 24 cm. of water; he showed a somewhat indefinite superior mediastinal shadow which you suggested might be Hodgkins disease, and instituted a series of treatments partly as a therapeutic test. The patient's shadow and general condition did not change. The films were sent to me for opinion and I was very dubious about the situation. Discussion with a couple of roentgenologists at Hahnemann led to the decision that your diagnosis was probably right but that maybe he needed a little more X-ray treatment; you gave him further treatment but no change resulted in his condition. Finally last summer he was admitted to Hahnemann for study. At that time his venous pressure was 47 cm. of water and he was found to have a positive Wassermann (apparently missed at Fitkin, although tested). It was my belief at that time that he had a malignant tumor, possibly a thymoma of a radio resistant type. The medical department argued that he should not be operated until he had had a sufficient series of anti-leucic treatments; so he was returned to Fitkin and given a series of bismuth injections. I did not object too much to this delay because it seemed that a malignant tumor must surely have become inoperable by this time. The anti-leucic therapy did not improve Mr. Glanten's condition either; so he was returned to Hahnemann and explored through the bed of the resected right second rib anteriorly. No tumor was present but there was nearly a complete thrombosis of the superior vena cava and of the Azygus vein. Since it was evident that he had sufficient collateral circulation to maintain life, no attempt was made to reconstruct his circulation.

10

20

30

40

Exhibit R-1.

His post operative course was uneventful except for sterile pleural effusion which was aspirated twice. The diagnosis of Thrombosis of strain was considered (Matas has described this very well); and this seems to be borne out by a careful check of this man's history. After prompting and an elapse of three or four days, Mr. Glanten recalled that in the early part of December 1941, while lifting a drum of 50 gallons of alcohol on to a truck, he was seized with an acute choking spell. This caused him to sit down and rest. Subsequently for three or four weeks, this choking recurred at every severe lifting effort, and even on bending down at work. In the early part of Jan. 1942 his face became definitely swelled and has remained so ever since. It would seem that this is really a compensation case.

The mediastinal shadow apparently was due to the thrombosed vessel and surrounding inflammatory and fibrotic reaction. Venograms done both before and subsequent to operation show a great collateral system including the vertebral veins with a practically complete obstruction of the superior vena cava. His present venous pressure is about 45 cm. of water; his ultimate prognosis is good although he should avoid hard work particularly any involving lifting or bending. We would very much like to follow him up from time to time to check up on further progress.

Thanks very much for sending us this most interesting problem, and I hope you will find me of more use at some future time.

Would you have this letter attached to Mr. Glanten's case record, or keep it in your files for future reference?

Sincerely,

CHARLES P. BAILEY, M. D.

40

CPB/1

**Determination and Judgment of Workmen's
Compensation Bureau.**

Filed August 12th, 1943.

NEW JERSEY DEPARTMENT OF LABOR

WORKMEN'S COMPENSATION BUREAU

On Petition for Compensation Claim No. 68067. 10

CHARLES GLANTON,
Petitioner,

vs.

JOSEPH A. SHAFTO,
Respondent.

This matter came on for determination in the presence of Joseph F. Mattice, attorney for petitioner and Durand, Ivins & Carton, Robert V. Carton, of counsel, attorney for respondent on petition filed January 18, 1943 and answer filed February 17, 1943. 20

I have carefully considered all the evidence submitted in this matter by both parties litigant and from the same do find and determine as follows:

That the petitioner did on the 8th day of December, 1941 incur personal injuries by accident arising out of and in course of his employment with respondent; that the respondent had due notice or knowledge of said injuries; that the petitioner's wages at the time of the accident were \$22 per week and that his compensation rate is \$14.67 per week; that as a result of said accident petitioner was temporarily disabled from January 17, 1942 to and including November 23, 1942, a period of 43 $\frac{4}{7}$ weeks; that as a result of said accident petitioner sustained a permanent dis- 30 40

*Determination and Judgment of Workmen's
Compensation Bureau.*

ability of 66 $\frac{2}{3}$ per cent of total due to internal injuries in the nature of a thrombosis of the vena cava; that the medical services rendered petitioner by Dr. Oscar V. Batson were necessary and proper and his bill for the same of \$300 is properly chargeable to respondent as is that of Dr. Charles P. Bailey of \$745 and Dr. Lowell L. Laine of \$25 and The Hahnemann Hospital of \$221.

It is, therefore, on this 12th day of August, 1943 ORDERED that judgment final be entered in favor of the petitioner and against the respondent, and that respondent make payment as follows:

To petitioner for temporary compensation 43 $\frac{4}{7}$ weeks at \$14.67 per week totalling \$639.19 and for permanent disability of 66 $\frac{2}{3}$ per cent of total, 333 $\frac{1}{3}$ weeks compensation at \$14.67 per week, totalling \$4890.

It is further ORDERED that respondent pay bill of Fitkin Memorial Hospital and the doctors who treated petitioner; to Dr. Charles P. Bailey for treatment \$745; Dr. Oscar V. Batson for treatment \$300; Dr. Lowell L. Laine \$25 for treatment; The Hahnemann Hospital \$221 for treatment; Dr. George E. Meehan \$25 for testimony; petitioner's attorney \$600 as counsel fee and the court reporter's attendance fees.

It is further ORDERED that petitioner pay Dr. Charles P. Bailey \$50 and Dr. Oscar V. Batson \$50 for their testimony; Dr. George E. Meehan \$15 for examinations and to his attorney \$300 as counsel fee.

HARRY H. UMBERGER,
Deputy Commissioner.

Notice of Appeal to Common Pleas.

Filed September 9, 1943.

NEW JERSEY DEPARTMENT OF LABOR

WORKMEN'S COMPENSATION BUREAU

Trenton, New Jersey

 CLAIM PETITION No. 68067.

10

 CHARLES GLANTON,
 Petitioner,

vs.

 JOSEPH A. SHAFTO,
 Respondent.

 To: JOSEPH F. MATTICE, Attorney for Petitioner, 20
 The Secretary of the Workmen's Compensation
 Bureau,
 The County Clerk of the County of Mon-
 mouth,
 Or to Whom it May Concern:

 PLEASE TAKE NOTICE that the respondent here-
 by appeals to the Court of Common Pleas in and
 for the County of Monmouth from the determin- 30
 ation of the Workmen's Compensation Bureau
 made in the above entitled matter on the 12th day
 of August, 1943, awarding the petitioner compen-
 sation as follows:

 "It is, therefore, on this 12th day of August,
 1943, ORDERED that judgment final be entered in
 favor of the petitioner and against the respond-
 ent, and that respondent make payment as fol-
 lows:

 To petitioner for temporary compensation 43 40
 4/7 weeks at \$14.67 per week totalling \$639.19

Notice of Appeal to Common Pleas.

and for permanent disability of 66 2/3 per cent of total, 333 1/3 weeks compensation at \$14.67 per week, totalling \$4890.

10 It is further ORDERED that respondent pay bill of Fitkin Memorial Hospital and the doctors who treated Petitioner; to Dr. Charles P. Bailey for treatment \$745; Dr. Oscar V. Batson for treatment \$300; Dr. Lowell L. Laine \$25 for treatment; The Hahnemann Hospital \$221 for treatment; Dr. George E. Meehan \$25 for testimony; petitioner's attorney \$600 as counsel fee and the court reporter's attendance fees.

20 It is further ORDERED that petitioner pay Dr. Charles P. Bailey \$50 and Dr. Oscar V. Batson \$50 for their testimony; Dr. George E. Meehan \$15 for examinations and to his attorney \$300 as counsel fee.

HARRY H. UMBERGER (signed)
Deputy Commissioner."

Respectfully,

DURAND, IVINS & CARTON,
Attorneys for Respondent-Appellant.

30

40

Order of Extension.

MONMOUTH COUNTY COURT OF
COMMON PLEAS

33861-38-112

On Appeal from Workmen's Compensation Court

10

CHARLES GLANTON,
Petitioner,

vs.

JOSEPH A. SHAFTO,
Respondent.

Upon motion of Durand, Ivins & Carton, Attorneys for Respondent-Appellant, the date for filing of transcript of testimony and certified copy of pleadings in the above entitled matter is hereby extended to the 9th day of October, 1943.

20

JOHN C. GIORDANO,
Judge.

30

40

Order Fixing Date of Hearing.
MONMOUTH COUNTY COURT OF
COMMON PLEAS
 33861-38-112

On Appeal from Workmen's Compensation Court

10

CHARLES GLANTON,
 Petitioner,

vs.

JOSEPH A. SHAFTO,
 Respondent.

20

Application being made to fix a time and place for the hearing of the appeal in the above matter, it is hereby set down for hearing at the Court House, in Freehold, New Jersey, before the Honorable J. Edw. Knight, Judge of the Monmouth County Court of Common Pleas, on the 21st day of October, 1943 at the hour of 1:30 o'clock in the afternoon, or as soon thereafter as the matter can be attended to.

JOHN C. GIORDANO,
 Judge.

30

We hereby consent to the above order.

JOSEPH F. MATTICE,
 Attorney for Petitioner-Appellee.

DURAND, IVINS & CARTON,
 Attorneys for Respondent-Appellant.

40

Opinion of Common Pleas Court.
MONMOUTH COUNTY COURT OF
COMMON PLEAS

33861-38-112

On Appeal from
Workmen's Compensation Bureau 10

CHARLES GLANTON,
 Petitioner-Appellee,

vs.

JOSEPH A. SHAFTO,
 Respondent-Appellant.

APPEARANCES:

For Petitioner-Appellee: JOSEPH F. MAT- 20
 TICE, ESQUIRE.

For Respondent-Appellant: DURAND, IVINS
 & CARTON, ESQS. (ROBERT V. CARTON, of
 Counsel).

GIORDANO, J.

This is an appeal from an award made by the Workmen's Compensation Bureau in favor of the Petitioner, Charles Glanton and against the respondent, Joseph A. Shafto. 30

The Court has appraised the proofs and in my opinion they establish the following facts:

Charles Glanton, the petitioner-appellee, is a colored man, approximately 37 years of age, employed at Shafto's Garage (Joseph A. Shafto, respondent-appellant) as a handy man and mechanic's helper. He earned \$22.00 a week. He took orders from Joseph Shafto and the head mechanic, one Fred Smith. He had thus been employed for at least one year prior to December 8th, 1941, 40

Opinion of Common Pleas Court.

when it is alleged he sustained an accident arising out of and in the course of his employment. In the garage were several fifty-gallon drums of alcohol which petitioner testified he was putting on end, or heading up, when he sustained an injury. He, Glanton, described the particular operation in the following words: (Page 3 of testimony)

A. They were laying down, as you roll them, and I picked them up and put them on end, and when I lifted one—

Q. Well, how heavy were these barrels of alcohol?

A. I don't know just how heavy. They were fifty-gallon drums.

Q. You were heading them up, and what happened?

A. When I come down and come up with one, I choked right up, and my vein come right out, and I choked right up—the vein of my neck come out, and there was something in here, like I couldn't swallow—I drank a coco-cola. I went down in the back of the garage and sat around in the cars, and messed around the rest of the day.

Q. Did you talk to anybody in the place about this?

A. I told the boy.

Q. What boy?

A. I told Fred. I said, "I got something. It might be indigestion, the way I choked up."

(And on pages 4 and 5 of the transcript, his testimony continues:)

Q. The following day, did you come back to work?

A. Yes, I did.

Opinion of Common Pleas Court.

Q. Did you talk to anybody that day?

A. Well, no more than I told the other boy, if I bent over that day, if I had a tire to change, I would get dizzy in the head, and I still had that indigestion.

Q. And did you work the following day?

A. Yes.

10

Q. When did you go to the doctor, if you did?

A. Well, I worked on, and stayed on there until January, and on my neck the thing had come out so large until I couldn't button my shirt . . . My face puffed up and I couldn't lift nothing or bend over, and Smith and Shafto's daughter said, "You ain't got no indigestion. Something else is wrong with you. Go and see a doctor."

In answer to a question:

20

"Did you go to a doctor?

A. Yes, I went to Dr. Edelson."

Q. Did Dr. Edelson treat you?

A. He looked at me and felt my blood vein and things and said, "I want you to go to the hospital."

The proofs indicate that Glanton visited Dr. Samuel Edelson on January 16, 1942, and according to Dr. Edelson, petitioner told him that he had had a cold for a number of days and first noticed the swelling of his neck about that time. He did not tell the Doctor about any accident or give him a history of trauma or strain. Dr. Edelson could not make a definite clinical diagnosis and sent Glanton to the Fitkin Memorial Hospital for observation, where petitioner stayed for nine days and was examined by various doctors. Again, in February of 1942 Glanton was admit-

30

40

Opinion of Common Pleas Court.

ted to the Fitkin Memorial Hospital. In July, 1942 Glanton was sent by the doctors at the Fitkin Hospital to Dr. Charles P. Bailey of the Hahnemann Hospital, in Philadelphia. He remained at the Hahnemann Hospital for a few days and was sent back to Fitkin Hospital for bis-

10 muth treatments for syphilis preparatory to an operation which Dr. Bailey determined was necessary. He returned to the Hahnemann Hospital on October 18, 1942 and on October 23, 1942 Dr. Bailey performed an exploratory operation upon Glanton, at which time he made a clinical diagnosis of "thrombosis of the superior vena cava."

Having discovered the thrombosis, Dr. Bailey was prompted to obtain further history from Glanton as to the cause and he questioned Glan-

20 ton as to possible strain. Although Glanton did not at first recall, or associate his condition with the particular operation of "heading up the drums" on or about December 8th, 1941, upon further questioning, it finally occurred to him that it was at that time, that is, while "heading up" the fifty-gallon drums, that the choked-up feeling manifested itself and it was then, according to his own testimony, that "the vein came right out—the vein of my neck, and I couldn't swallow—

30 and drank coca cola."

It is obvious that Dr. Edelson who first examined the petitioner, as well as the staff physicians at the Fitkin Memorial Hospital, were unable to make a definite diagnosis. And it is quite understandable that the petitioner, who, from his testimony, reveals a very meager educational background, could not associate the "lifting of the drums" with his condition.

A careful reading of the testimony convinces

40 me that the petitioner-appellee was suffering

Opinion of Common Pleas Court.

from an unusual condition—a condition which is not too well known to the medical profession.

The testimony of Dr. Oscar V. Batson, a Professor of Anatomy at the Graduate School of Medicine, University of Pennsylvania, (page 117 of transcript) discloses “that such a condition was first described by Von Schroedter, in Noth- 10
 ugel Hand Buch in 1884, approximately seventy five to one hundred cases have been described and carefully recorded from the various literatures, and how complete they have been able to log all the cases in the several foreign literatures is questionable. They are extensively described in English and only since 1910, in France and Italy. The occlusion of the superior vena cava is rather unusual although cases apparently have occur- 20
 red; it cannot be denied the study we have had here of uniform—of simultaneous injections of both arms is not a common condition but it is a definite, established condition.”

That Glanton did not at first connect the strain on December 8th, 1941 with his condition, is not a bar to his recovery. This theory of the law is stated in the case of *General Cable Corp. v. Lev- 30
 ins*, 122 N. J. L. 383, 5 Atl. 2d 731. And in this case the rule is also established that notice to the physician of the respondent is such knowledge as meets all requirements of the Act and secondly the only knowledge required is actual knowledge of the injury alone and not the resultant consequences thereof.

A careful reading and study of the above mentioned case satisfies me that the actual knowledge of the employer need not be either of the cause of the injury or of the resultant consequences thereof. It suffices if the employer had actual 40
 knowledge of the injury alone, which in the in-

Opinion of Common Pleas Court.

stant case, according to the proofs, the respondent had.

10 The medical testimony is voluminous, contradictory and of a highly technical nature. After carefully analyzing and appraising the medical testimony, I have concluded that greater weight
 10 should be placed upon the evidence of the treating physicians. The law to that effect is well settled in this state. *Jackson v. N. Y. Shipbuilding Corporation*, 119 N. J. L. 542—197 Atl. 284. With respect to diagnosis and causal relationship, I am constrained to the opinion that the testimony of the doctor who was in attendance of the petitioner and examined the petitioner post-operatively was obviously more informing than
 20 the opinion evidence offered by the respondent. *Bove v. Highwood Coal Co.*, 17 N. J. Misc. 131, 5 Atl. 2d 728.

When the etiology of the condition such as complained of by the petitioner gives rise to controversy among medical authorities, in appraising the evidence it is my opinion that "probability and not the ultimate degree of certainty is the test." *Auten v. Johnston*, 115 N. J. L., 71, 178 Atl. 187.

30 The question to be determined therefore is whether or not the petitioner-appellee has established by a preponderance of probabilities the basis upon which he asserts his right to compensation as the result of an accident which arose out of and in the course of his employment. *Gilbert v. Gilbert Machine Works, Inc.*, 122 N. J. L., 533—6 Atl. 2d 213. *Kuropata v. National Sugar Refining Co.*, 126 N. J. L., 44-47—17 Atl. 2d 288.

40 In the Workmen's Compensation Bureau the question was answered in the affirmative and the

Opinion of Common Pleas Court.

petitioner-appellee was awarded a judgment in his favor against the respondent-appellant. In the appraisal of evidence adduced before the Compensation Bureau, it is to be borne in mind that the Deputy Commissioner has the distinct advantage of personal observation of the witnesses, whose demeanor is oftentimes a factor of major importance in determining the probative value and weight of the evidence given. Hence, factual conclusions of the compensation commissioner to whom the evidence has been orally presented should not be lightly disturbed. *Mount Ice Co. v. Durkin*, 144 Atl. 6, *Berman v. Levenstein*, 154 Atl. 110, *Newell v. Workmen's Compensation Bureau*, 157 Atl. 243, *Gilbert v. Gilbert Machine Works, Inc.*, 122 N. J. L., 538-539. 10

The Deputy Commissioner's findings, in my opinion, are not against the weight of the evidence and accordingly the judgment of the Court below is affirmed. 20

JOHN C. GIORDANO,
Judge, Court of Common Pleas.

Dated: April 11, 1944.

30

40

**Determination of Facts and Rule for Judgment
of Common Pleas Court.**

MONMOUTH COUNTY COMMON
PLEAS COURT

*On Appeal from Workmen's Compensation
Bureau—Claim Petition #68067.*

10

CHARLES GLANTON,
Petitioner-Appellee,

vs.

JOSEPH A. SHAFTO,
Respondent-Appellant.

20 The above matter coming on for hearing and
having been submitted to me for decision, I here-
by find and determine as follows:

1. That this is a proceeding brought by
Charles Glanton against Joseph A. Shafto under
an act entitled "An Act Prescribing the Liability
of an Employer to Make Compensation for In-
juries Received by an Employee in the Course of
Employment, Establishing an Elective Schedule
of Compensation and Regulating Procedure for
the Determination of Liability and Compensation
30 Thereunder," approved April 4, 1911, and the
acts amendatory thereof and supplemental there-
to, that a petition was filed with the Workmen's
Compensation Bureau and was duly served upon
the respondent, that an answer was filed by the
respondent, that due notice of hearing of said
petition and answer was given to the respondent,
that trial was had and the following award made
by the Workmen's Compensation Bureau:

40

For temporary disability from Jan. 17, 1942,

*Determination of Facts and Rule for Judgment
of Common Pleas Court.*

to Nov. 23, 1942, a period of 43 4/7 weeks, at the compensation rate of \$14.67 per week, or \$639.19;

For permanent disability 66 2/3% of total or 333 1/3 weeks' compensation at the compensation rate of \$14.67 per week, or \$4,890; 10

That respondent make payment to Dr. Oscar V. Batson for treatment of petitioner, \$300;

That respondent make payment to Dr. Charles P. Bailey for treatment of petitioner, \$745;

That respondent make payment to Dr. Lowell L. Laine for treatment of petitioner, \$25;

That respondent make payment to the Hahne-
mann Hospital, \$221;

That respondent make payment to Fitkin
Memorial Hospital; 20

That respondent make payment to Dr. George E. Meehan for testimony, \$25;

That respondent make payment to petitioner's attorney, Joseph F. Mattice, \$600;

That respondent make payment of the stenographic fee;

That petitioner make payment to Dr. Charles P. Bailey for testimony, \$50;

That petitioner make payment to Dr. Oscar
V. Batson for testimony, \$50; 30

That petitioner make payment to Dr. George E. Meehan for examinations, \$15;

That petitioner make payment to his attorney, Joseph F. Mattice, as counsel fee, \$300.

This matter was then appealed to the Monmouth County Common Pleas Court and is now before the Monmouth County Common Pleas Court on appeal from the determination of facts and rule for judgment made by the Workmen's 40

*Determination of Facts and Rule for Judgment
of Common Pleas Court.*

Compensation Bureau on Aug. 12, 1943, that the appeal was submitted for hearing on briefs, Joseph F. Mattice appearing for the petitioner, and Robert V. Carton appearing for the respondent.

10 2. This Court has filed an Opinion affirming judgment of the court below and for the reasons therein contained it was found that:

(a) The petitioner was employed by the respondent at his service station, that he was employed as a handyman and mechanic's helper, and had been employed as such for approximately one year prior to Dec. 8, 1941;

20 (b) That the petitioner, at the time of the injury received for his services wages amounting to \$22 per week at the compensation rate of \$14.67;

(c) That on Dec. 8, 1941, petitioner sustained personal injuries as the result of an accident, that the said accident occurred while the petitioner was putting on end 50-gal. drums of alcohol, and that the said accident arose out of and in the course of the petitioner's employment;

30 (d) That the respondent had actual notice of the occurrence of said injury;

(e) That as the result, the petitioner suffered internal injuries in the nature of a thrombosis of the vena cava, that said injuries caused the petitioner temporary disability from Jan. 17, 1942, to Nov. 23, 1942, a period of 43 $\frac{4}{7}$ weeks, for which petitioner is entitled to be paid at the compensation rate of \$14.67 per week, totalling the sum of \$639.19, that he had a permanent disability of 66 $\frac{2}{3}$ % of total
40 which entitles him to compensation for a period

*Determination of Facts and Rule for Judgment
of Common Pleas Court.*

of 333 1/3 weeks at the compensation rate of \$14.67 per week, or a total of \$4,890;

(f) That the petitioner incurred medical and hospital expenses and incurred further expenses for an operation, examinations, and appearances in court, and the following amounts will be assessed against the respondent: 10

Dr. Oscar V. Batson for treatment, \$300;
Dr. Charles P. Bailey for operation and treatment, \$745;

Dr. Lowell L. Laine for treatment, \$25;

Hahnemann Hospital, \$221;

Fitkin Memorial Hospital, a reasonable bill;

Dr. George E. Meehan for testimony, \$25;

(g) The following expenses will be assessed against the petitioner: 20

Dr. Charles P. Bailey for testimony, \$50;

Dr. Oscar V. Batson for testimony, \$50;

Dr. George E. Meehan for examinations, \$15;

(h) The legal advisor of the petitioner is entitled to a legal fee in the sum of \$900, \$600 of which will be assessed against the respondent and \$300 against the petitioner;

(i) The stenographic fee will be assessed against the respondent; 30

(j) Counsel for the petitioner will receive an additional allowance for counsel fee for appeal herein, in the sum of Five Hundred Dollars (\$500.00) to be paid Joseph F. Mattice by the respondent, in the sum of (\$300.00) and by the petitioner in the sum of (\$200.00).

IT IS, therefore, on this 8th day of May, 1944,
ORDERED that judgment final be entered in favor 40

*Determination of Facts and Rule for Judgment
of Common Pleas Court.*

of the petitioner, Charles Glanton, against the respondent, Joseph A. Shafto, as follows:

10 For temporary disability from Jan. 17, 1942, to Nov. 23, 1942, or 43 $\frac{4}{7}$ weeks at the compensation rate of \$14.67 per week, totalling \$639.19;

For permanent disability 66 $\frac{2}{3}$ % of total or 333 $\frac{1}{3}$ weeks at the compensation rate of \$14.67 per week, totalling \$4,890;

To Dr. Oscar V. Batson for treatment, payable by respondent, \$300;

To Dr. Charles P. Bailey for treatment, payable by respondent, \$745;

Dr. Lowell L. Laine, payable by respondent, the sum of \$25;

20 To Hahnemann Hospital, payable by respondent, \$221;

To Fitkin Memorial Hospital, payable by respondent, a reasonable bill;

To Dr. George E. Meehan for testimony, payable by respondent, \$25;

To Dr. Charles P. Bailey for testimony, payable by petitioner, \$50;

To Dr. Oscar V. Batson for testimony, payable by petitioner, \$50;

30 To Dr. George E. Meehan for examinations, payable by petitioner, \$15;

To Joseph F. Mattice, attorney for petitioner, as counsel fee, payable by respondent, \$900;

To Joseph F. Mattice, attorney for petitioner, as counsel fee, payable by petitioner, \$500;

Stenographic costs payable by respondent.

JOHN C. GIORDANO,
Judge of the Monmouth County
Court of Common Pleas.

Reasons.

NEW JERSEY SUPREME COURT

 ON CERTIORARI.

 CHARLES GLANTON,
 Petitioner-Defendant, 10

VS.

 JOSEPH A. SHAFTO,
 Respondent-Prosecutor.

The Prosecutor presents the following reasons for setting aside the determination and judgment brought before this Honorable Court by the Writ of Certiorari in the above entitled cause.

FIRST: Because the Monmouth County Court of Common Pleas erred as a matter of law in deciding that the Petitioner-Defendant, Charles Glanton, suffered an accident arising out of and in the course of his employment with this Respondent-Prosecutor. 20

SECOND: Because the Monmouth County Court of Common Pleas erred as a matter of fact in deciding that the Petitioner-Defendant, Charles Glanton, suffered an accident arising out of and in the course of his employment with this Respondent-Prosecutor. 30

THIRD: Because the Monmouth County Court of Common Pleas erred as a matter of law and fact in deciding that the Petitioner-Defendant had sustained the burden of proof imposed by law that he give notice of the alleged accident to his employer, the Respondent-Prosecutor, in accordance with the statutory requirements. 40

Reasons.

FOURTH: Because the Monmouth County Court of Common Pleas erred as a matter of law and fact in deciding that the Petitioner-Defendant had given notice of the alleged accident to the physician of the Respondent-Prosecutor.

10 FIFTH: Because the Monmouth County Court of Common Pleas erred in that there was no competent testimony to support its findings of fact.

SIXTH: Because the Monmouth County Court of Common Pleas erred in the application of the law upon its findings of fact.

20 SEVENTH: Because the Monmouth County Court of Common Pleas erred as a matter of law and fact in deciding that the Petitioner-Defendant had sustained the burden of proof imposed by law that a thrombosis of the superior vena cava can be produced by a trauma of strain.

EIGHTH: Because the Monmouth County Court of Common Pleas erred in finding that a thrombosis of the superior vena cava can be produced by strain.

30 NINTH: Because the Monmouth County Court of Common Pleas erred in deciding under the testimony produced that an attending doctor and a doctor who made a post operative examination are better qualified to testify to the causal relationship between an alleged strain and a thrombosis of the superior vena cava than doctors eminent in the field of vascular diseases.

40 TENTH: Because the Monmouth County Court of Common Pleas erred in relying upon authorities cited by the Petitioner's doctors which did not relate to a thrombosis of strain of the superior vena cava but to thrombosis of strain of the axillary and sub-clavian veins.

Reasons.

ELEVENTH: Because the Monmouth County Court of Common Pleas erred in finding that there was any competent evidence that the alleged accident occurred on December 8th, 1941.

TWELFTH: Because the Monmouth County Court of Common Pleas erred in finding that there was competent evidence to support its findings of fact. 10

THIRTEENTH: Because the Monmouth County Court of Common Pleas erred in predicating its judgment in part upon conclusions not supported by the evidence.

FOURTEENTH: Because after weighing all the testimony adduced in the cause, it is clearly established that the Petitioner-Defendant did not sustain an accident arising out of and in the course of his employment with the Respondent-Prosecutor which was the proximate cause of the Petitioner-Defendant's present condition. 20

FIFTEENTH: Because the Supreme Court is not limited on certiorari to a review of the law alone, but may also determine disputed questions of fact, not merely to see if there is any competent evidence to support the findings of the Monmouth County Court of Common Pleas, but rather to weigh all the evidence adduced in the cause and establish the ultimate conclusions of fact to be drawn therefrom. 30

SIXTEENTH: Because the Monmouth County Court of Common Pleas erred in finding for the petitioner-Defendant and against the Respondent-Prosecutor, and in affirming the judgment of the Workmen's Compensation Bureau.

Reasons.

SEVENTEENTH: Because the Monmouth County Court of Common Pleas erred as a matter of law and fact in awarding the Petitioner-Defendant medical and hospital expenses when there was no evidence in the cause that the Respondent-Prosecutor had authorized this treatment or had been
10 importuned by Petitioner-Defendant or someone on his behalf to supply medical aid and had refused to do so, or that such treatment was curative; when the Workmen's Compensation Act of this State specifically provides that under these circumstances the employer shall not be responsible in excess of Fifty Dollars for such services.

EIGHTEENTH: Because the said determination and judgment of the Monmouth County Court of Common Pleas are in divers other respects irregular, unjust, illegal and oppressive to the Re-
20 spondent-Prosecutor.

DURAND, IVINS & CARTON,
Attorneys for Respondent-Prosecutor.

30

40

Notice of Argument in Supreme Court.

NEW JERSEY SUPREME COURT

 ON CERTIORARI.

CHARLES GLANTON,
 Petitioner-Defendant, 10

vs.

JOSEPH A. SHAFTO,
 Respondent-Prosecutor.

To: JOSEPH F. MATTICE, Esq., Attorney for Petitioner-Defendant, 702 Mattison Avenue, Asbury Park, New Jersey.

Dear Sir:

PLEASE TAKE NOTICE that the argument in the above entitled cause will be moved before the New Jersey Supreme Court in the presence of such a Justice thereof as shall then be holding the same, on the First Tuesday in October, 1944, at the State House, Trenton, New Jersey, at ten o'clock in the forenoon or as soon thereafter as counsel can be heard. 20

Very truly yours,

DURAND, IVINS & CARTON,
 Attorneys for Respondent-Prosecutor. 30

(Endorsed): Service of the within Notice of Argument is hereby acknowledged this 3rd day of August, 1944.

JOSEPH F. MATTICE,
 Attorney for Petitioner-Defendant.

40

Opinion of New Jersey Supreme Court.

Filed February 19, 1945.

NEW JERSEY SUPREME COURT

No. 221 OCTOBER TERM, 1944

10

 CHARLES GLANTON,
 Petitioner-Defendant,

vs.

 JOSEPH A. SHAFTO,
 Respondent-Prosecutor.

Argued October 4, 1944.

Decided February 16, 1945.

20 On certiorari to the Monmouth County Court
 of Common Pleas.

Before Justices PARKER and COLIE.

For the prosecutor, DURAND, IVINS & CARTON
 (ROBERT V. CARTON, of counsel).

For the defendant, JOSEPH F. MATTICE.

The opinion of the Court was delivered by
 COLIE, J.

30 Certiorari was allowed to review a judgment
 of the Monmouth County Court of Common
 Pleas awarding temporary and permanent dis-
 ability together with incidental expenses unneces-
 sary to enumerate, to Charles Glanton. The
 judgment of the Common Pleas was, in effect, an
 affirmance of a prior award rendered by the
 Workmen's Compensation Bureau.

40 The questions which we are called upon to de-
 cide are whether petitioner proved that his dis-
 ability was due to the alleged accident, whether
 petitioner on December 8, 1941, sustained an acci-

Opinion of New Jersey Supreme Court.

dent arising out of and in the course of his employment, and whether petitioner gave the notice required by the statute, or, in the alternative, the respondent-employer had actual notice within the prescribed ninety days. Thus it will be seen that the question is one of fact and our duty is to examine the record, appraise the proofs, and determine the fact questions, bearing in mind that while we will not lightly disturb the findings of fact of the lower tribunals, nevertheless we will correct the error where the lower tribunals have found the facts incorrectly. *American Cyanamid Co. v. Bartos*, 131 N. J. L. 339; affirmed 132 Id., and cases therein referred to. We, therefore, proceed to an examination of the proofs. 10

Charles Glanton was, in December, 1941, employed as handyman and helper in the garage of Joseph A. Shafto. On December 8, 1941, when "heading up" drums containing fifty gallons of alcohol, the crucial incident took place. Parenthetically we point out that "heading up" means rolling the drums into the desired place and then standing them on end by raising the other end. It does not mean lifting the drums clear of the floor. While so engaged, he said "I choked right up and my vein came out." * * * "I couldn't swallow." He stopped work, sat down, and drank a coco-cola, telling the head mechanic "I got something. It might be indigestion the way I choked up." He continued working until about the middle of January, 1942. Then, after talking with his employer, he went to Dr. Samuel Edelson who immediately ordered him to the hospital. Dr. Edelson's deposition reads, *inter alia*, that he recalled no history of strain nor did he recall questioning the patient as to strain. Glanton, however, testified that he told Dr. Edelson 20 30 40

Opinion of New Jersey Supreme Court.

that while "heading up" drums, the trouble came on him. After spending some nine days in Fitkin Memorial Hospital under observation, he left and tried to resume work but when he "bent over or something, that vein come out," and so Dr. Edelson readmitted him to the hospital where

10 he remained for two weeks. Subsequently, in July, 1942, the medical staff of Fitkin Memorial referred Glanton to Dr. Charles P. Bailey, a chest surgeon connected with Hahneman Hospital in Philadelphia. After some ten days at Hahneman Hospital, he was referred back to Fitkin Memorial to undergo a series of bismuth injections for a syphilitic condition preparatory to undergoing an exploratory operation by Dr.

20 Bailey. In October, 1940, more than a year prior to the incident involving the drums of alcohol, Glanton had had occasion to call upon Dr. Joseph G. Villapiano because of pains in the right side of the chest and head, coughs, and night sweats. Dr. Villapiano examined by fluoroscope and found that the mediastinum was enlarged on the right side and there was some cloudiness in the right upper chest near the mediastinum. His diagnosis in 1940 was "myofascitis of the pectoral muscles on the right side and mediastinitis." Mediastinitis is an inflammation of the cell tissue lining the

30 area in the middle of the chest between the pleurae. In October, 1942, Glanton was readmitted to Hahneman Hospital where Dr. Bailey operated. Following the operation, Dr. Bailey's diagnosis was "thrombosis strain involving the superior vena cava and the azygos vein." The same diagnosis was made by Dr. Oscar V. Batson, Professor of Anatomy, at the medical school of the

40 University of Pennsylvania.

Opinion of New Jersey Supreme Court.

To a hypothetical question as to whether Glanton's present condition was due to the happening on December 8, 1941, Dr. Bailey answered, "I think it is." Dr. Batson said that he would definitely state that the present condition and the incident of December 8, 1941, was causally related. (The record reads "casually related" but we assume this to be an inadvertent error and moreover the assumption does no harm to prosecutor in view of our findings.) 10

On behalf of the prosecutor, Dr. A. Wilbur Dur- yee, a specialist in diseases involving the blood vessels outside of the heart, and Dr. Louis Al- bright, a specialist in cardiovascular diseases, both gave their opinions that there was no causal connection between the patient's present condi- tion and the occurrence on December 8, 1941. 20

Thus we are confronted with the task of de- ciding between these divergent opinions of med- ical practitioners in their respective fields. In weighing the value to be given each opinion, we must search the record to ascertain what facts, if any, seem to support which of the divergent view- points.

The medical testimony was in agreement on the point that the defendant's condition was a thrombosis or a clot or obstruction in the super- ior vena cava which is a large vein emptying in- to the heart and immediately adjacent thereto, and which returns the venous blood to the heart from the head, neck, and upper limbs. There is no question but that the defendant's industrial usefulness is impaired to an extent amply justi- fying the award of 66 2/3% of total permanent disability. 30

The hypothetical questions put to Drs. Bailey and Batson are conspicuous for the absence of 40

Opinion of New Jersey Supreme Court.

10 mention of the syphilitic condition of the defendant and also for the absence of any mention of pain following the incident of December 8, 1941. The presence of the venereal infection is of peculiar significance because of the undisputed testimony that 33 1/3% of all known cases of thrombosis of the superior vena cava are due to syphilis. When this is coupled with the presence, more than a year earlier, of some cloudiness in the area of the mediastinum as testified to by Dr. Villapiano and which he diagnosed as mediastinitis, it leads toward the conclusion that the condition was one which had built up slowly rather than one the onset of which was sudden. This also is substantiated by the testimony of Dr. Villapiano who, it will be recalled, made a fluoroscopic examination in 1940 and in 1942. He said that the condition as of December 24, 1942, a date subsequent to the operation performed by Dr. Bailey, was a development of what had existed when he first examined in 1940. The significance of the absence of pain at the time or shortly after the alleged accident on December 8, 1941, lies in the fact that there is again undisputed testimony that had the thrombosis of the superior vana cava been caused by "heading up" 30 the drum of alcohol, there would have been pain due to the rupture or tearing of the intima or innermost lining of the blood vessel. Dr. Duryee described the pain as "a very acute, severe puncturing, knife-like pain." There is not one word throughout the record that the incident of December 8, 1941, caused or was followed by pain and it is difficult to believe that if Glanton had experienced acute, knife-like pain, that fact would not have been mentioned by him to at least one 40

Opinion of New Jersey Supreme Court.

of the many doctors who examined, treated, and took histories from him.

A thorough and painstaking analysis of the testimony leads us to the conclusion that the defendant has failed to establish that his present physical condition is attributable to the occurrence of December 8, 1941, but that, in fact, it is solely attributable to a pre-existing physical condition which was in no wise connected with his employment. In view of our finding of fact on this phase of the case, it is unnecessary to pass upon the other points raised. 10

The judgment under review is reversed and the cause remanded to the end that judgment may be entered in accordance herewith.

Order for Reversal and Remittitur. 20

Entered February 23, 1945.

NEW JERSEY SUPREME COURT

No. 221, OCTOBER TERM, 1944.

ON CERTIORARI.

CHARLES GLANTON,
Petitioner-Defendant, 30

vs.

JOSEPH A. SHAFTO,
Respondent-Prosecutor.

This cause having been duly argued at the October Term, 1944, of this Court by Robert V. Carton, of the firm of Durand, Ivins & Carton, Coun- 40

Order for Reversal and Remittitur.

sel for Respondent-prosecutor, and Joseph F. Mattice, Counsel for Petitioner-defendant, and the Court having inspected the record and judgment of the Monmouth County Court of Common Pleas and considered the reasons assigned for setting said judgment aside and being of the opinion that the said judgment should be reversed;

10

It is, thereupon, on this 23rd day of February, 1945, ORDERED that the judgment in the Monmouth County Court of Common Pleas aforesaid be reversed, set aside, made void and for nothing holden, and that the record be remitted to said Court of Common Pleas in and for the County of Monmouth to be proceeded with in accordance with this judgment and the practice of this Court.

20

Rule actually entered on the 23rd day of February, 1945.

On motion of
 DURAND, IVINS & CARTON,
 Attorneys for
 Respondent-Prosecutor.

ROBERT V. CARTON,
 Of Counsel.

30

Notice and Grounds of Appeal.

NEW JERSEY SUPREME COURT

CHARLES GLANTON,
Defendant-Appellant,

vs.

JOSEPH A. SHAFTO,
Prosecutor-Appellee.

10

To: DURAND, IVINS & CARTON, ESQS.,
Attorneys for Prosecutor-Appellee:

PLEASE TAKE NOTICE that the defendant-appellant appeals to the Court of Errors and Appeals from the whole of the judgment entered in the above-stated cause, on the following ground:

1. That the New Jersey Supreme Court reversed the decision of the Monmouth County Court of Common Pleas although it was error so to do.

20

JOSEPH F. MATTICE,
Attorney for and of Counsel
with Defendant-Appellant.

(Endorsed): Service of the within Notice of Appeal is hereby acknowledged this 30th day of March, 1945.

30

DURAND, IVINS & CARTON,
Attorneys for Appellee.

40

Notice of Argument.NEW JERSEY COURT OF ERRORS
AND APPEALS

ON APPEAL.

10

CHARLES GLANTON,
Defendant-Appellant,

vs.

JOSEPH A. SHAFTO,
Prosecutor-Appellee.

20
To: DURAND, IVINS AND CARTON, ESQS.,
Attorneys for Prosecutor-Appellee,
733 Mattison Ave.,
Asbury Park, N. J.

Dear Sirs:

Take notice of argument of the appeal in this cause before the Court of Errors and Appeals of New Jersey, to be held at the State House, in the City of Trenton, on the third Tuesday of May next, at 11 o'clock in the forenoon, or as soon thereafter as the said Court can attend to the same.

30

Yours respectfully,

JOSEPH F. MATTICE,
Attorney of Appellant.

Dated: April 16, 1945.

(Endorsed):

Sat Below: PARKER, HEHER and COLIE, *JJ.*

40

Service of the within Notice of Argument is hereby acknowledged this 16th day of April, 1944.

DURAND, IVINS & CARTON,
Attorneys for Appellee.

New Jersey Court of Errors and Appeals

CHARLES GLANTON,
Defendant-Appellant,

vs.

JOSEPH A. SHAFTO,
Prosecutor-Appellee.

On Appeal.

BRIEF OF DEFENDANT-APPELLANT.

Statement.

This matter was heard by the Honorable HARRY H. UMBERGER, Deputy Commissioner, who determined that the petitioner did on the eighth day of December, 1941, incur personal injuries by accident arising out of and in the course of his employment with the respondent-prosecutor, that the respondent-prosecutor had due notice of knowledge of said injuries, and that as the result of said accident, petitioner sustained a permanent disability due to internal injuries in the nature of a thrombosis of the superior vena cava.

The respondent appealed to the Monmouth County Court of Common Pleas and the award was affirmed on the grounds that the Deputy Commissioner's findings were not against the weight of evidence. The respondent appealed to the New Jersey Supreme Court and the decision of the Monmouth County Court of Common Pleas was reversed on the ground that the Court felt that the defendant-appellant's physical condition was not attributable to the occurrence of December 8, 1941.

ARGUMENT.

The Supreme Court erred in reversing the decision of the Monmouth County Court of Common Pleas.

POINT 1.

There is no dispute that the petitioner was employed by the respondent on December 8, 1941, as a handyman at the weekly salary of \$22, and was so employed during 1940 and 1941 (S. C., p. 114, l. 37). Petitioner washed and polished cars and did odd jobs (S. C., p. 116, l. 6). He would pick up wrecks with the wrecker and might pick up heavy objects (S. C., p. 116); that the respondent was aware of the condition of the petitioner around the end of the year 1941 (S. C., p. 115, l. 9), that the petitioner was treated by a physician and confined to a hospital, that he returned to work and was unable to do his usual work (S. C., p. 116, l. 22). This was the testimony given by the respondent, Joseph A. Shafto.

It is undisputed that the petitioner took orders from the head mechanic, Fred Smith, at the request of the respondent. Glanton's uncontradicted testimony on this point was as follows (S. C., p. 20, ll. 7 to 14):

“Q. Who was your foreman?

A. Well, Joe Shafto and the head mechanic. When I was hired, he told me to take orders from him.

Q. Who was he?

A. From Joe and the head mechanic and the old man.

Q. Who was the head mechanic?

A. Fred.

Q. Do you know his last name?

A. Smith.”

The petitioner testified (S. C., p. 20, l. 15) that on December 8, 1941, some drums of alcohol were lying down, as you roll them, and while picking them up and putting them on end or heading them up, that he sustained an injury. His uncontradicted testimony on this point was as follows (S. C., p. 20, l. 29 to p. 21, l. 19):

“Q. You were heading them up, and what happened?

A. When I come down and come up with one, I choke right up and my vein come right out and I choked right up.

Q. Did you talk to anybody in the place about this?

A. I told the boy.

Q. What boy?

A. I told Fred. I said, ‘I got something. It might be indigestion the way I choked up.’

Q. The following day did you come back to work?

A. Yes, I did.

Q. Did you talk to anybody that day?

A. Well, no more than I told the other boy. If I bent over that day, if I had a tire to change, I would get dizzy in the head and I still had that indigestion.”

The respondent contends that the petitioner was not injured while working for the respondent. The following is the testimony of the foreman, Fred Smith (S. C., p. 124, l. 22):

“Q. About what? About how long?

A. You mean before he got hurt?”

(S. C., p. 124, l. 38):

“Q. Did you notice at any time prior to his going to the hospital that he was not able to do his work?

A. He complained that his neck hurt him.

Q. How long before he went to the hospital did he start complaining about his neck hurting him?

A. That I can't remember. That is too far back.

Q. Was it a week, two weeks?

A. I would say about a week. That's as close as I can figure."

(S. C., p. 125, l. 17):

"Q. The condition you say of his neck at the time he went to the hospital—that was new? You had never seen that before?

A. No.

Q. So that was not something he had for some time?

A. I couldn't say.

Q. Well, you observed him, did you not?

A. Yes.

Q. Did you observe his neck being swollen before he went to the hospital?

A. It wasn't swollen. No."

* * * * *

(S. C., p. 125, l. 38):

"Q. When you say a week, you are guessing, are you?

A. That's all I can do. It has been a long time. I can't remember that far back."

* * * * *

The petitioner on cross-examination (S. C., 37, l. 23), in referring to Fred Smith, his foreman, testified as follows:

"Q. You didn't tell him (Fred Smith) that you were doing anything when you choked up, did you?

A. We was working together and I sat down and drank a bottle of coca cola. I didn't think I would have to tell him that."

The above is proof that the respondent, through

his foreman, had actual knowledge of the occurrence of the injury.

The petitioner was sent to Dr. Edelson and the respondent had due notice of the injury. Glanton's testimony on this point was as follows (S. C., p. 21, l. 32):

“Q. Who told you?

A. Smith and Shafto's daughter said, 'You ain't got no indigestion. Something else is wrong with you. Go and see a doctor.' ”

It might be well to mention at this time that Miss Shafto was not called upon to deny this statement made by petitioner.

Glanton further testified as follows (S. C., p. 21, l. 38):

“Q. Did Dr. Edelson treat you?

A. He looked at me and felt my blood veins and things and said, 'I want you to go to the hospital.'

Q. Did you go to the hospital?

A. I said, 'I will go down to Shafto.' He said, 'I want you to go to the hospital now and I will call up Shafto.' ”

This testimony taken into consideration with the Interrogatories on behalf of the petitioner answered by Dr. Edelson, which reads as follows, (S. C., p. 182, l. 23):

“Question 4: Did you advise Mr. Shafto, the respondent, that you were sending Mr. Glanton to the Fitkin Hospital on January 17, 1942?

Answer: Yes,”

corroborates the testimony of Glanto.

Respondent-prosecutor repeatedly asserts that it had no knowledge of the petitioner's accident

or the date upon which it allegedly happened. However, a careful consideration of the testimony will reveal that the petitioner repeatedly testified that the accident occurred on December 8, 1941. The respondent, himself, Mr. Joseph Shafto, testified (S. C., p. 115, l. 31) that he was aware of the petitioner's condition and that he didn't know when he was first told in 1941 concerning petitioner's condition, without looking in his time book. No effort was made by him to contradict petitioner's story by bringing into court his time book that apparently would clearly indicate when the petitioner was injured and when he discontinued his work. The only conclusion that we can draw from this failure on the part of the respondent to produce this time book is that the time book would verify the petitioner's story and be of no value to the respondent by way of contradicting it.

The respondent-prosecutor makes much of the fact that at no time did the petitioner mention an injury in the history given to the hospital or to the physicians. Glanton testified as follows (S. C., p. 27, l. 31):

“Q. Mr. Shafto sent you to the doctor, didn't he?

A. His daughter and the mechanic told me to go up to see the doctor.”

* * * * *

(S. C. p. 30, l. 14):

“Q. Did he (Dr. Edelson) ask you when it came on?

A. He didn't ask me when.

Q. Did he ask you when you first noticed it?

A. Yes.

Q. When did you tell him?

A. I told him I first noticed it around December 8.

Q. Did you tell him that you were heading up drums when it first came on you?

A. Oh, yes, I told him that."

* * * * *

(S. C., p. 32, l. 15):

"Q. And did you tell any of those doctors (at Fitkin) at that time that this came on while you were lifting up drums?

A. I told Dr. Edelson.

Q. Did you tell any other doctor?

A. No, I didn't."

Rr. Edelson, in response to Question 14 (S. C., p. 181, l. 21) by the respondent, testified that "I do not recall questioning him regarding any strain." This would indicate that the first examining physician, not knowing of what condition the petitioner was suffering, did not question him as to whether he had strained himself, and it was only after he referred the matter to Dr. Bailey for diagnosis that any history of strain was sought from the petitioner.

Petitioner is apparently suffering from an unusual condition and the mere fact that he did not connect the accident of December 8, 1941, with his condition is not a bar to his recovery. This is very succinctly stated in the case of *General Cable Corp. v. Levins*, 122 N. J. L. 383, 5 Atl. 2nd 731. In this case the petitioner received a bump on the head and thought nothing of it. Some time later he felt as if he had something in his eye. He went to the physician who removed a foreign body from his eye and told him to go home. After several examinations and further treatment, he finally became industrially blind. The point was made that the respondent had no actual knowledge

of the occurrence of the injury and that nothing was said to the respondent as to a bump on the head. The Court held that notice to the physician of the respondent is such knowledge as meets all requirements of the Act and secondly the only knowledge required is actual knowledge of the injury alone and not the resultant consequences thereof. The Court said:

“We are firmly of the opinion, however, that the actual knowledge of the employer under R. S. 34:15-17 need not be either of the cause of the injury or of the resultant consequences thereof. It suffices if the employer had actual knowledge of the injury alone. Particularly is this so when, as here, employer's own physician did not foresee the result of the injury of which respondent complained. Then again oftentimes the ultimate results of a particular injury are not ascertainable until a considerable time has elapsed nor does the fact under the proofs of the case at bar that respondent said nothing to prosecutor's physician about the bump he received on his head operate to defeat his right to compensation for an injury which he received arising out of and in the course of his employment. This is nothing to indicate and no such claim is made that he deliberately withheld such information. There is no reason why he should have withheld it save as he explains by saying that he didn't 'think anything of it.' ”

Defendant-appellant feels that the above quotation very aptly applies to the facts and circumstances in this case.

The petitioner also testified that he gave a history of the accident at the Hahneman Hospital (S. C., p. 33, l. 33). It might be well to note at this point that the respondent failed to present

the hospital records of the Hahneman Hospital or the Fitkin Hospital to deny the fact that Glanton had made a statement concerning his accident of December 8.

The respondent-prosecutor makes much of a letter written by Dr. Bailey and also of the testimony given by Dr. Bailey at the hearing as to his (Dr. Bailey's) prompting petitioner. Dr. Bailey's testimony is as follows (S. C., p. 90, l. 21):

“Q. And when you first questioned him as to the history of strain, he didn't recall any; is that true?

A. Well, remember this: Immediately after operation he was not a very well man at that time.”

A reading of the entire testimony shows that Glanton was employed by the respondent on December 8, 1941, and had been employed for a year previous. He was able to do his regular work until December 8, 1941, and was unable to work thereafter. He reported the incident to the foreman and in turn was sent to Dr. Edelson for treatment. The respondent had knowledge of the injury and knowledge of the fact that Dr. Edelson was treating the petitioner. Glanton's story is corroborated by the respondent's witnesses.

It is respectfully submitted that Glanton did sustain the burden of proof in establishing that he did sustain an accident arising out of and in the course of his employment on December 8, 1941.

POINT 2.

The petitioner-defendant established by the weight of the credible evidence that the condition of thrombosis of strain is the result of the accident.

The medical testimony in this case is both technical and voluminous and it seems to the defendant-appellant that it is not necessary in this Brief to quote the testimony of the physicians, as the Court will probably read such testimony in full. However, the law is well settled that the testimony of treating physicians and physicians who operated upon the petitioner are in a better position to determine the causal relationship between the accident and the condition which was found than a physician called to answer a hypothetical question. The physician called on behalf of the petitioner, Dr. Bailey, was the treating physician and the operating physician. Petitioner was referred to him by Dr. Edelson who was unable to diagnose the condition of the petitioner. Dr. Bailey diagnosed this condition as thrombosis of strain and verified his diagnosis by operative procedure. Dr. Bailey called in Dr. Batson who examined the petitioner during the operation and after, and his diagnosis was the same as Dr. Bailey's. Both these physicians testified before the Commissioner at length as to their findings and as to their opinion from those findings as to the causal relationship between the accident and the condition from which the petitioner is suffering. The physicians called by the prosecutor appellee testified theoretically and from hypothetical questions. The cases in this State are clear that greater weight is to be placed upon

the evidence of the treating physicians than examining physicians. In *Jackson v. N. Y. Shipbuilding Corporation*, 119 N. J. L. 542 and 197 Atl. 284, the Court reviewed the medical testimony and came to the conclusion that the doctor who was in constant attendance of the petitioner and examined the petitioner post-operatively was obviously more informing than the opinion evidence offered by the respondent. In *Bove v. Highwood Coal Co.*, 5 Atl. 2nd, 728, the Court said:

“The respondent’s medical testimony consisted among other things, of two medical experts, one of whom never examined the decedent in his lifetime and the other examined the decedent but on one occasion.

Dr. Mulligan produced by the petitioner was the decedent’s treating physician and examined the decedent on the very day of the accident, January 14, 1938, and constantly treated said decedent up to and including the day of his death, August 13, 1938. The treating physician was in my opinion in a better position to determine the true cause of death. The testimony of the respondent’s experts was not sufficient to overcome the medical testimony and proof offered by the petitioner as to the cause of death.”

In *Harris v. City of Newark*, 19 N. J. Misc. 95, 17 Atl. 600, the petitioner’s decedent appellee suffered from a condition which was controversial among medical authorities. The Court said:

“The credible preponderance of the medical testimony established that while the schools of medical thought are divided as to the etiology, such an aneurysm may be produced by trauma * * * the findings of Dr. Yaguda, the pathologist who was present at the autopsy and personally observed the conditions to which he testified, is ob-

viously more informing and valuable than the conclusions of the respondent's neurologist who did not witness or participate in the autopsy but merely rendered his opinion based on the reports of the autopsy findings of Drs. Martland and Yaguda.

In appraising the evidence, probability and not the ultimate degree of certainty is the test. *Auten v. Johnston*, 115 N. J. L. 71, 178 Atl. 187."

In *Eisen v. Jacquard Fabrics, Inc.*, 19 N. J. Misc. 526, 21 Atl. 2nd 614, the Court was also faced with voluminous medical testimony produced by both the petitioner and the respondent and the Court found that the treating physicians' testimony carried greater weight "with respect to diagnosis and causal relation."

There was apparently no diversity of opinion on the part of the doctors produced by the defendant-appellant and the doctors produced by the prosecutor-appellee, as to the condition of the defendant-appellant, medically. They all concurred in the opinion that he was suffering from a thrombosis of the superior vena cava. Their only disagreement was as to whether the thrombosis was a thrombosis of strain as testified to by the defendant-appellant's physicians, or a plain thrombosis as testified to by the prosecutor-appellee's physicians. The defendant-appellant respectfully submits that the physician who operated upon the defendant-appellant was in the best position to determine the nature of the thrombosis, and Dr. Bailey testified distinctly that the condition was one of thrombosis of strain, and he defined a thrombosis of strain as "a condition of occlusion of a vein due to an injury of an indirect type, an injury from within rather than from externally." (S. C., p. 77, l. 11.) We respect-

fully submit that this is the whole key to the question as to what type of thrombosis the defendant-appellant was suffering from. In other words, a thrombosis may be caused either by a pressure from the outside of the vein or by an occlusion of the inner lining of the vein, and when it is due to a strain or an indirect trauma, it is called a thrombosis of strain. Dr. Bailey operated and saw the condition of the vein, and was the only one beside Dr. Batson, who was present at the operation, who could determine what the nature of the thrombosis was. He testified, in answer to a hypothetical question (S. C., p. 79, l. 24) that the defendant-appellant was sent to him for diagnosis and treatment by Dr. Edelson and that he sent the defendant-appellant back to the hospital for treatment for syphilis prior to the operation, and that in his opinion, from the treatment and operation, and his experience, the happening of December 8, 1941, was causally related to the defendant-appellant's present condition. This, we respectfully submit, should not be lightly disturbed.

Dr. Duryee, who testified for the prosecutor-appellee, was of the opinion that there was no causal relationship between the happening of the accident and the defendant-appellant's condition, and the reason he gave for that conclusion was that "the diagnosis with the facts as presented is most likely to be a syphilitic mediastinitis. This lesion or disease will involve the superior vena cava by *external* compression and by invasion of the wall of the vessel. and will cause a slow closing off of this important venous channel." (S. C., p. 142, l. 5.) It is apparent from this statement, therefore, that if the thrombosis were caused by a slow process due to syphilis, the occlusion would be caused by external compres-

sion and not be a closing off internally as Dr. Bailey testified was the case.

The question as to what bearing the existence of syphilis in the defendant-appellant at the time had upon his condition seems to us not to be too important because Dr. Bailey testified from the hypothetical question, and in cross-examination it was further disclosed, that he knew that the defendant-appellant was suffering from syphilis (S. C., p. 84, l. 7), and in spite of this, he testified that in his opinion there was a causal relationship between the happening of the accident and his condition. Assuming that the existence of the syphilitic condition predisposed the defendant-appellant to a thrombosis due to strain, this would not bar him from recovering compensation. In the case of *Bernstein Furniture Co. v. Kelly*, 177 Atl. 554, the Court held that the fact that a petitioner was suffering from syphilis predisposing him to injury does not bar him from recovery as long as there was a causal connection between the injury and the hazard of the employment.

Much has been made by the prosecutor-appellee of the fact that Dr. Villapiano examined the petitioner on October 16, 1940, through a fluroscope and found a cloudiness in petitioner's chest, inferring from such testimony that the condition which the petitioner has was present at that time. However, examination of the testimony of Dr. Bailey (S. C., p. 96, l. 40) and Dr. Batson (S. C., p. 111, l. 5) is to the effect that if this cloudiness were a sign of effort thrombosis, the petitioner could not engage in heavy activity without swelling and shortness of breath. It should be borne in mind that the accident of which the petitioner complains occurred over a year after Dr. Villapiano's examination and that the petitioner was

in continuous employment for the respondent during that time as a handyman around the gasoline station, necessitating his doing heavy work such as changing tires and lifting heavy objects. If the petitioner was suffering from thrombosis of strain in October, 1940, he certainly could not engage in this activity.

The prosecutor-appellee relies upon the testimony of Dr. Duryee and Dr. Albright. However, Dr. Duryee never examined the petitioner (S. C., p. 153, l. 39) and Dr. Albright who did examine petitioner thought enough of the qualifications of Dr. Bailey to refer the petitioner to him for diagnosis and treatment.

From a medical standpoint, all the reasoning and facts were presented by the doctors of both sides from the witness stand. The testimony is contradictory and the weight and credibility to be given such testimony was to be evaluated by the Deputy Commissioner who heard the witnesses testify from the witness stand. The Deputy Commissioner, after a careful consideration of all testimony, resolved the facts and law in favor of the defendant-appellant, and his impression of the credibility of the witnesses should be given great weight.

This matter was also heard and reviewed by Judge GIORDANO of the Monmouth County Court of Common Pleas, and he also found that the Deputy Commissioner's findings were not against the weight of evidence, and affirmed the findings below.

It should be borne in mind that the defendant-appellant is suffering from a very unusual condition, a condition which is not too well known to the medical profession, and also that the defendant-appellant is a man of very limited educational background, as can be gleaned from the testimony.

Conclusion.

The defendant-appellant respectfully urges that from a review of the testimony it is clear that he has sustained the burden of proof and that the judgment of the Supreme Court should be reversed.

Respectfully submitted,

JOSEPH F. MATTICE,
Attorney for and of Counsel
with Defendant-Appellant.

**NEW JERSEY COURT OF ERRORS
AND APPEALS.**

CHARLES GLANTON,
Defendant-Appellant,

vs.

JOSEPH A. SHAFTO,
Prosecutor-Appellee.

ON APPEAL FROM THE NEW JERSEY SUPREME COURT.

**BRIEF OF PROSECUTOR-APPELLEE,
JOSEPH A. SHAFTO.**

STATEMENT.

This matter is before the court on appeal from a judgment of the New Jersey Supreme Court which judgment reversed a judgment rendered by the Monmouth County Court of Common Pleas in favor of the defendant-appellant, Charles Glanton (hereinafter referred to as the "petitioner") and against the prosecutor-appellee, Joseph A. Shafto (hereinafter referred to as the "respondent").

The petitioner received an award in the Workmen's Compensation Bureau based upon a claim that on December 8th, 1941, while in the employ of the respondent, he, the petitioner, while lifting up

*Brief of Prosecutor-Appellee, Joseph
A. Shafto*

on end a fifty gallon drum of alcohol strained himself. It was claimed by the petitioner and held by the Workmen's Compensation Bureau and the Monmouth County Court of Common Pleas that this strain caused a thrombosis of the superior vena cava and possibly the azygos vein (S. C., pp. 187, 188 and 193).

The questions under consideration by the Supreme Court were three.

First: Did the petitioner prove that his disability was due to the alleged accident?

Second: Did the petitioner on December 8th, 1941, sustain an accident arising out of and in the course of his employment?

Third: Did the petitioner give the notice required by the statute or in the alternative did the respondent have actual notice with the prescribed period of ninety days? (S. C., p. 210, l. 36 to p. 211, l. 8.)

The Supreme Court thus had before it a factual question and after examining the record and appraising the proofs and realizing that it should not lightly disturb the fact findings of the lower tribunals, nevertheless found that the lower tribunals had found the facts incorrectly and reversed the judgment of the Monmouth County Court of Common Pleas. By this appeal this court is now asked to review the findings of fact of the Supreme Court.

ARGUMENT.

Point I.

The Findings of Fact in the Supreme Court upon a Writ of Certiorari will not be disturbed on appeal unless there is no evidence to justify the findings.

It is basic under the many decisions by this court that in reviewing the findings of fact as determined by the Supreme Court on a writ of certiorari this court will not disturb the findings of fact unless there is no evidence whatever to justify the findings of the Supreme Court. This has been repeatedly stated by this court in relation to Workmen's Compensation matters which by writ of certiorari were before the Supreme Court.

In *Grant vs. Metropolitan Ice Co.*, 108 N.J.L. 536, this court at page 537 stated:

“This court will only consider matters of proof when there is no evidence whatever to justify the finding of the Supreme Court; —”

Again in the case of *Levits vs. General Cable Corp.*, 112 N.J.L. 381, this court at page 382 stated:

“We are asked, in effect, to review the evidence. Suffice it to say, that the finding of the Supreme Court, on conflicting evidence, that appellant did not suffer injury by accident arising out of and in the course of his employment, is one that under well established principals is not reviewed here.”

*Brief of Prosecutor-Appellee, Joseph
A. Shafto*

And the court again in *Kovalchuck vs. Simpson & Brown*, 117 N.J.L. 400 at page 400 stated:

“We find it unnecessary to review the evidence. Suffice it to say, that where, as here, the testimony is susceptible of conflicting inferences, the findings of fact by the Supreme Court are conclusive on appeal.”

The appellant in his brief does not question this rule nor does he cite any decisions or cases or give any reasons why the rule as stated in the above cited cases is not applicable. His entire brief is merely an argument that the petitioner did sustain the burden of his proof. He does not argue or suggest that the Supreme Court in its decision incorrectly applied any rules of law nor does he suggest or argue that there was no evidence to support the opinion of the Supreme Court.

The sole argument of the appellant is that there was sufficient evidence to support the judgments of the Workmen's Compensation Bureau and the Monmouth County Court of Common Pleas, but that, it is submitted, is not a question which is reviewable here. Under the above cited authorities, the only question is: Was there any competent evidence upon which the Supreme Court could have based its findings of fact? If there is such evidence then the findings of fact by the Supreme Court will not be disturbed.

There is in the record ample evidence to support the findings of the Supreme Court; also examination of the record and an analysis of the testimony shows that the evidence preponderates so heavily in favor of the respondent that the Supreme Court felt obliged to reverse the decisions of two lower

tribunals which had held in favor of the petitioner. In order to assist this court in its examination of the record and to show that there was abundant evidence and many reasons why the Supreme Court found as it did, the remainder of this brief will be devoted to an analysis of the testimony and arguments which follow therefrom.

Point II.

The petitioner failed to establish by the burden of proof that the alleged condition of thrombosis due to strain did come or could have come from the alleged accident.

There has never, in the medical history of the world, been a reported case of a thrombosis of the superior vena cava caused by strain (S. C., p. 142, ll. 32-39; p. 162, ll. 12-17). In all medical history there have been but two cases of thrombosis of the superior vena cava caused by direct trauma. One of these was caused by a gunshot wound through the chest wall, and the other by a hard blow upon the chest (S. C., p. 142, ll. 16-31).

Over thirty-three and one-third per cent. of all cases of thrombosis of the superior vena cava are caused by syphilis (S. C., p. 143, ll. 33-36). The petitioner had syphilis (S. C., p. 84, ll. 1-15).

The petitioner's doctors say that the petitioner's thrombosis of the superior vena cava was caused by a strain. The respondent's doctors say that thrombosis of strain of the superior vena cava is not possible. Under such conditions the qualifications, reasoning and authority of the doctors be-

*Brief of Prosecutor-Appellee, Joseph
A. Shafto*

come a question of primary importance to the court in reaching its conclusion.

The petitioner produced two doctors who testified as to the thrombosis of strain of the superior vena cava. The first doctor was Doctor Charles P. Bailey. Dr. Bailey has been practicing medicine for ten or eleven years. He specializes in only one thing, and that is in chest surgery exclusively (S. C., p. 69, l. 36 to p. 70, l. 12).

Dr. Oscar V. Batson, who was admitted to practice in 1931 (S. C., p. 107), and who when asked as to whether or not he specialized answered: "Now you might say Professor of Anatomy and licensed to practice medicine." (S. C., p. 100.) He is a professor of anatomy at the University of Pennsylvania. He gave no qualification as to hospital association or of any clinical practice.

Neither of the doctors produced on behalf of the petitioner qualified in any particular as a vascular specialist, that is, as a specialist in relation to veins.

On the other hand, the doctors of the respondent did qualify as such specialists and abundantly so. The respondent produced Dr. A. Wilbur Duryee, who is a specialist in internal medicine with special attention to peripheral vascular diseases, which are diseases that involve the blood vessels outside of the heart. He is also connected with the New York Post Graduate Hospital, the Goldwater Memorial Hospital, and the Hospital of Columbia University. He is Associate Clinical Professor of Medicine of the New York Post Graduate Medical School and the Hospital of Columbia University. He is also Chief of the peripheral vascular clinic of the New York Post Graduate Hospital. Further, he is an impartial internist with special certification in peripheral vascular diseases for the Panel of Impar-

tial Specialists of the New York State Compensation Bureau. Finally, he is an examining physician for the American Board of Internal Medicine on peripheral vascular diseases (S. C., pp. 133 and 134).

The respondent also produced Dr. Louis Albright, who specializes in the field of internal medicine and cardio vascular diseases. He is attending physician at the Monmouth Memorial Hospital and the Fitkin Memorial Hospital, and is head of the cardio vascular disease department at the Fitkin Hospital, and is a consultant in cardio vascular diseases at the Riverview Hospital in Red Bank (S. C., p. 155).

As indicated, the petitioner's doctors testified that the thrombosis of the superior vena cava and possibly the azygos vein found in the petitioner came from strain, and assuming the straining of December 8th, 1941, by the petitioner, this alleged accident was the proximate cause of the petitioner's condition. On the other hand, the respondent's doctors, after being acquainted with all the x-rays and all the facts, testified emphatically that the alleged incident of December 8th, 1941, could not have caused the petitioner's condition.

It must be considered, we believe, that the bald statement of the petitioner's doctors that the alleged accident caused the thrombosis is not sufficient, and further that if the petitioner's doctors, in giving their reasons and conclusions, base them upon authorities which are shown not to be in point, then that testimony, as against the testimony of specialists whose conclusions are based upon sound medical principles, cannot stand.

Before taking up the specific testimony of the doctors it is probably advisable to describe the su-

*Brief of Prosecutor-Appellee, Joseph
A. Shafto*

perior vena cava and the vessels that lead into it and also its position in the body.

In this particular there is in the testimony a reference to Exhibit R-2 which was a diagram prepared by Dr. Albright showing the superior vena cava and the contributory vessels leading to it. This was left with the Compensation Bureau at the conclusion of the trial and it has apparently been mislaid by the Bureau, and repeated efforts of counsel to secure it in order that it might be before the court on this appeal have been unavailing.

The superior vena cava lies deep in the chest. It is a large vessel, that is, large of caliber and very short, and it is the vein which leads directly into the heart.

Starting with the upper part of the arm and leading toward the shoulder is the brachial vein. After this vein gets to the shoulder it joins with other veins leading out of the arm forming what is known as the axillary vein. This vein leads across the underpart of the shoulder and as it passes under the clavicle and over the first rib it becomes the subclavian vein. The subclavian vein extends in toward the center of the chest and meets the large jugular vein coming down from the head. The junction of the subclavian and the jugular veins form what is known as the innominate vein. The innominate vein extends down into the chest and when the innominate veins from the right and from the left side meet they in turn form and become the superior vena cava, and the superior vena cava in turn leads directly into the heart. Possibly we should also add that the azygos vein joins the superior vena cava just before it meets the heart, and the azygos vein drains the returning blood from the chest wall (S. C., p. 147, l. 33 to p. 148, l. 26).

*Brief of Prosecutor-Appellee, Joseph
A. Shafto*

All the medical testimony in this case is in substantial accord as to the factors which produce a thrombosis of strain. It must be borne in mind that the medical testimony upon thrombosis of strain was limited to that type of thrombosis of strain which occurs in the veins.

The factors producing a thrombosis of strain are: A person by exerting muscle pressure on the hands and arms, by lifting or pushing, forces the blood out of the arms and toward the heart. At the same time, by reason of muscle and ligament exertion in the neck and shoulders and by reason, sometimes too, of the muscle pressure, brought to play by the mere lifting of the arms, there is pressure exerted upon the brachial, axillary or subclavian vein, so that the vein is shut off. The shut off of the flow of blood causes an increased venous pressure and the intima, the inner lining of the vein, ruptures. Nature then rushes to repair the damage and causes a clot to form over the injured part of the vein. The clot itself then blocks off the vein, and the condition that we call thrombosis is then present. From that point on the clot tends to harden and then contracts, permitting canals to develop through the obstruction and this condition is called canalization. (Dr. Bailey, S. C., p. 99, l. 15 to p. 100, l. 8. Dr. Batson, S. C., p. 102, l. 20 to p. 103, l. 10. Dr. Duryee, S. C., p. 143, ll. 7-29. Dr. Albright, S. C., p. 162, l. 31 to p. 163, l. 20).

Petitioner's Medical Proof.

Turning now to the medical testimony of the doctors, let us first consider the petitioner's doctors.

Dr. Bailey, in answer to a hypothetical question

*Brief of Prosecutor-Appellee, Joseph
A. Shafto*

as to whether the petitioner's present condition is causally related to the alleged accident of December 8th, 1941, answered: "I think it is." (S. C., p. 80, l. 19.)

In going over this doctor's testimony it is difficult to determine just what reasons lead him to this answer. The best that can be gathered from the evidence as to his reason is: After finding the thrombosis he considered that it might have been caused by trauma or strain, so he questioned Glanton to see if he could get any such history; failing to get such history at first he persisted until he did (S. C., pp. 90-91). He knew something of the work of Matas on thrombosis of strain, and concluded that this case was within the type referred to by Matas (Exhibit R-1) (S. C., p. 186). He admitted that when a person is examined after a thrombosis appears, the time or date when the thrombosis did appear cannot be determined by the examining doctor, but the patient's story or history as to that date must be accepted (S. C., p. 92, l. 35 to p. 93, l. 13).

Dr. Batson, when asked a hypothetical question as to whether the petitioner's present condition is causally related to the alleged accident of December 8th, 1941, was more certain in his answer than Dr. Bailey. He answered: "I would definitely so state" (S. C., p. 106, ll. 14, 15).

Let us examine Dr. Batson's testimony to see what reasons, if any, he gives to substantiate his conclusion.

Again, as in the case of Dr. Bailey, no reasons are directly given, and his entire testimony has to be analyzed in order to find out what led him to his conclusion. At S. C., p. 100 of the testimony he states that he examined Glanton in the hospital after the operation and made a diagnosis of throm-

bosis of strain. He then, on p. 102 through 104 of the State of Case, describes thrombosis of strain, what causes it and its symptoms and refers to the work of one Von Schroedter, as authority upon the subject. A careful examination of this testimony shows that his medical reason and his authority deal with thrombosis of strain of the subclavian, axillary and brachial veins and not of the superior vena cava or azygos vein.

After stating how a thrombosis occurs he testified as follows:

“And, I have confirmed that myself in the post mortem specimen, that by bringing the arm up about forty-five degrees, up rather high, that definite tension is put on the vessels in the *subclavian, axillary and brachial* region * * *. In other words, these vessels overstretch or over-distend, are also stretched by this peculiar position of the arm in the muscular effort.” (Italics ours.) (S. C., p. 102, l. 39 to p. 103, l. 10.)

Here his reasoning and argument refer to the subclavian, axillary and brachial veins. It is these vessels that are overstretched or distended and the tension is in this region. There is no reference to any such occurrence in the superior vena cava, nor any explanation given as to how a thrombosis of strain of the superior vena cava could occur.

Reference was made by Dr. Bailey to the work of Matas upon thrombosis of strain (Exhibit R-1) (S. C., p. 186), and Dr. Batson refers to the work of Von Schroedter as authority for this condition (S. C., p. 104). Are these works authority for thrombosis of strain of the superior vena cava or the

*Brief of Prosecutor-Appellee, Joseph
A. Shafto*

azygos vein? They are not. The fact is, they are authority for thrombosis of strain of the veins that Doctors Bailey and Batson refer to when telling how the thrombosis comes about, that is, of the subclavian, axillary and brachial veins. The works are not authority for thrombosis of strain of the superior vena cava or azygos vein.

Consider here the undisputed testimony of Dr. Duryee:

“Q. Now, Doctor, Dr. Bailey has referred to a work of Matas on thrombosis of strain, and Dr. Batson, who testified on behalf of the petitioner, has referred to a work Von Schroedter on thrombosis of strain. Are you familiar with the works of Matas and Von Schroedter?

A. I am.

Q. And what kind of thrombosis of strain do they refer to, Doctor?

A. In both of their articles they refer to thrombosis occurring in the axillary and subclavian veins. Von Schroedter, the original article in German I have read the translations of, and he tried to explain, and does explain, does give the original explanation of the tearing of the blood vessels when an extremity is put under strain and the subclavian or axillary arteries are occluded. Matas confirms this work and reports further cases.

Q. Does either one of those articles relate to a thrombosis of strain of the superior vena cava?

A. They do not.

Q. Do they even go so far as thrombosis of strain of the innominate veins?

A. They do not.” (S. C., p. 145, l. 36 to p. 146, l. 20.)

We have neglected to mention that Dr. George E. Meehan also testified for the petitioner. Dr. Meehan admitted his complete lack of knowledge upon the subject matter (S. C., p. 174). He merely adopted Dr. Bailey's opinion (S. C., p. 125). His testimony as to the causal relationship thus adds nothing and need not be further considered.

Thus, the state of the petitioner's medical proof is that two doctors are produced, neither of whom is a specialist in the specific field of medicine involved. Both of these doctors, so unqualified, testified that the thrombosis in Glanton's superior vena cava was caused by strain. Specifically, they give no reasons for their conclusions, but an inspection of the record shows that their authority deals not with thrombosis of the superior vena cava, but rather with thrombosis of strain of the subclavian, axillary and brachial veins. Further, this is the only type of thrombosis of strain that these doctors discuss or explain the nature and cause thereof.

Respondent's Medical Proof.

The above being the petitioner's state of proof, let us then turn to the respondent's medical testimony.

The respondent produced doctors who qualified as specialists in the particular field of medicine involved. Dr. Albright is a cardio vascular specialist and Dr. Duryee is an even more specialized specialist, in that he specializes in peripheral vascular diseases.

Dr. Duryee and Dr. Albright testified to a hypothetical question that there is no causal relationship between the alleged accident of December 8th,

*Brief of Prosecutor-Appellee, Joseph
A. Shafto*

1941, and Glanton's present condition (S. C., p. , ll. 19-21 and p. 160, ll. 30-32). Both of these doctors stated numerous reasons to substantiate their conclusion.

A. The petitioner's condition dates back to at least October, 1940. Glanton was examined on October 16th or 17th, 1940, by Dr. Joseph Villapiano. He complained then of a cold in his throat, pains in his chest and phlegm, and Dr. Villapiano fluoroscoped him at that time (S. C., p. 47, l. 20 to p. 48, l. 25). Dr. Villapiano's fluoroscopic examination at that time, October, 1940, revealed that the mediastinum was enlarged on the right side and there was some cloudiness in the right upper part, near the mediastinum (S. C., p. 130, ll. 10-17).

Dr. Villapiano examined Glanton again on December 24th, 1942, and fluoroscoped him at that time. This examination revealed a fusiform enlargement of the mediastinum, particularly the superior portion, and a dilated aortic knob (S. C., p. 131, ll. 2-4).

It should be noted here that the x-rays produced by the petitioner showed a cloudiness of the mediastinum, mostly on the right side (S. C., p. 74, l. 35 to p. 75, l. 11).

On cross-examination of Dr. Villapiano it was brought out that the mediastinitis was worse in 1942 than it was in 1940 (S. C., p. 132, l. 29 to p. 133, l. 2). The condition of the mediastinum found in 1940 and that found by the x-rays taken in July, 1942 are similar, but in 1942 the condition had progressed and was worse. Finally, the x-rays themselves produced by the petitioner, which were taken over a nine month period, show a progressive condition (S. C., p. 150, ll. 8-25; p. 170, ll. 26-30).

Because of this early condition and because of its gradual progress which was established, Doctors Duryee and Albright had adequate and compelling reasons to conclude that the petitioner's condition was not one of sudden occurrence and onset, but was a result of a progressive disease.

B. The petitioner was suffering from syphilis (S. C., p. 84). Over thirty-three and one-third per cent. of all known cases of thrombosis of the superior vena cava were caused by syphilis (S. C., p. 145, ll. 33-36). Dr. Duryee clearly describes how syphilis produced the petitioner's condition in the following:

"I also have the information that this man is suffering from syphilis. The diagnosis with the facts as presented is most likely to be a syphilitic mediastinitis. This lesion or disease will involve the superior vena cava by external compression and by invasion of the wall of the vessel and will cause a slow closing off of this important venous channel." (S. C., p. 141, l. 40 to p. 142, l. 10).

Dr. Albright also describes it in the following manner:

"We know this man has a positive Wassermann and that he has syphilis. Tuberculosis is ruled out of the picture; cancer is out. We feel that this process in his mediastinum that was noted as far back as 1940 was undoubtedly a syphilitic mediastinitis, which is a condition in which a great amount of scar tissue was laid down and that slowly contracts and squeezes down, to use the diagram —

*Brief of Prosecutor-Appellee, Joseph
A. Shafto*

Q. Using Exhibit R-2?

A. Yes. It was squeezing down on the superior vena cava, just gradually closing it down, and as that process closes down the superior vena cava, there will come a point when symptoms will develop. As long as the process of constriction is not great, the blood can still get through, so that the return flows from the arms and the head are possible, maybe ragged, but not enough to produce symptoms. But somewhere in the course of this slow, progressive disease, there will come a point when that vena cava is narrowed to a point where the blood is no longer able to get down to the heart in sufficient quantities, and at that time there will develop swelling of the face, arms and neck, and the patient will then begin to have symptoms.

So, as I say, this whole story was one of a slow, gradual development of an obstruction of the superior vena cava." (S. C., p. 160, l. 34 to p. 161, l. 39).

C. The history of the petitioner's venous pressure from the time of his first admission to the Fitkin Hospital on through his treatment shows that the constriction and closing of the superior vena cava was brought about by a gradual shutting down of this vein rather than a complete blockage with subsequent canalization, which would have been the case had the condition been caused by thrombosis of strain.

On Glanton's first admission to the Fitkin Hospital his venous pressure was 24 centimeters, and on his admission to the Hahnemann Hospital in July

*Brief of Prosecutor-Appellee, Joseph
A. Shafto*

of 1942 his venous pressure was 47 centimeters (S. C., p. 144, ll. 24-38).

Dr. Duryee testified that this shows that when the lower pressures were recorded there was only a partial obstruction to the venous drainage and this shows, that with the later higher venous pressure there was a gradual process going on over a period of months. In the case of thrombosis of strain, a complete closure of the vessel strained occurs in a matter of hours, with the resultant very high venous pressure (S. C., p. 144, l. 38 to p. 145, l. 32).

Further, Dr. Albright testified that where the vein is occluded by reason of strain, as time goes on the venous pressure tends to recede rather than to increase, and therefore the venous pressure, as occurred in Glanton's case, shows that it was the exact opposite of what would have occurred had he suffered a thrombosis of strain (S. C., p. 164, ll. 3-39).

Here again we have additional compelling factors which caused Doctor Duryee and Doctor Albright to conclude that the petitioner's condition was not one of immediate onset after an alleged strain but was a condition which gradually developed.

D. Another reason which led the respondent's doctors to the conclusion that a thrombosis of strain did not occur is to be found in the pain factor in this case.

In the early part of our argument under this Point it was shown that in the case of a thrombosis of strain there is a rupture of the inner lining of the vein. The rupture of this vein is a very painful occurrence so that when a person sustains a thrombosis of strain with the resultant tearing of the intima, the pain is immediate and it is stinging and

*Brief of Prosecutor-Appellee, Joseph
A. Shafto*

incapacitating. In other words, the onset of the condition has a dramatic occurrence and it is a condition which if it occurs to one is not soon forgotten.

However, an examination of the testimony shows that Glanton does not state that he had pain when the condition was supposed to have come on him. There is no mention in his testimony of pain accompanying the condition.

Yet the testimony of Dr. Batson, the petitioner's own doctor, is clear upon this element of pain:

“Q. And Doctor, you said in this case pain is severe, is that right?

A. It is a stabbing or stinging pain.

Q. Immediately upon occlusion?

A. Immediately upon a tearing of the intima.

* * * * *

Q. The pain then is severe?

A. It is, an immediately incapacitating pain, it is of a stinging character or stabbing character.” (S. C., 108, ll. 1-13.)

And Dr. Batson admitted that when a person sustains a tearing of the intima the pain is of such a character that the one sustaining it would not have any difficulty in remembering the day it happened (S. C., p. 108, ll. 20-26).

Dr. Duryee testified that the onset of the petitioner's condition was gradual because the petitioner did not recall any sudden pain (S. C., p. 141, ll. 30-32).

Thus, the testimony of Dr. Duryee and Dr. Batson for the petitioner is that if the petitioner had ruptured the intima as he would have had to have done to produce a thrombosis of strain, he would have had a sudden pain occurring at that time,

*Brief of Prosecutor-Appellee, Joseph
A. Shafto*

which would have been incapacitating and which would have been severe.

The only conclusion, in view of the fact that the petitioner did not sustain a severe pain,—in fact does not testify to any pain at all—is therefore, that when the first symptoms of the thrombosis developed they developed not because of a rupture of the intima as in the case of a thrombosis of strain, but as a result of a gradual process of closing down on the vein walls.

E. A thrombosis of the superior vena cava or azygos vein is not anatomically possible.

It has been shown that the two factors which cause a thrombosis of strain are: 1. The forcing of the blood out of the arms toward the heart; and 2. The play of the muscles and ligaments upon the vein so as to cause the vein to be shut off, which two factors result in a tremendous increase in the venous pressure and a rupture of the intima.

The testimony of Dr. Duryee and Dr. Albright is conclusive that these factors, which are the same factors as testified to by the petitioner's doctors, cannot occur in the superior vena cava, because that vein is deep in the chest, and surrounding the superior vena cava there are not the necessary muscles and ligaments to press in upon it and block it off.

The testimony of Dr. Albright upon this point is, in part, as follows:

“Q. It is all anatomically possible to have that strain or pressure exerted on the superior vena cava?

A. It is not possible, because, as I said, when this mechanism occurs, a cut off takes place in

*Brief of Prosecutor-Appellee, Joseph
A. Shafto*

this one or both sides, and that in itself, if the strain is a violent one and the pressure is increased, the above described cut-off protects the superior vena cava. So there is no way in which pressure can be transmitted down to the superior vena cava in a way that could damage it; you can't develop this group of circumstances that must be present to bring about the so-called strain thrombosis. That group of circumstances can't be developed in the superior vena cava." (S. C., p. 163, ll. 20-34).

See also the testimony of Dr. Duryee:

"Q. Now, Doctor, anatomically speaking, is it possible for a person to have a thrombosis of strain of the superior vena cava?

A. I would say it was not.

Q. What causes a thrombosis of strain, Doctor?

A. Thrombosis of strain is due to two factors: When a man exerts energy to lift an object, or to push an object, he forces the blood out of the upper extremities toward the heart. At the same time, in certain individuals, the scalenus anticus muscle, or one of the pectoral muscles, or the coracoid ligament will cause obstruction of the vein, of the subclavian or axillary veins as they enter the chest, so that pressure in the parts between the hand and the entrance into the thorax is markedly increased. These veins are stretched, valves may be turned, and the lateral pressure of the ligaments or muscles may damage the lining of the vein, and a thrombosis may occur at this time.

Q. Then a thrombosis occurs by reason of

*Brief of Prosecutor-Appellee, Joseph
A. Shafto*

this pressure, both in the vein, the back pressure, and the ligaments or bone structures on the outside pushing in, is that correct?

A. That is correct.

Q. And then there is a rupture or tearing of the intima —

A. Yes.

Q. (Continuing) —the inner lining of the vein?

A. Yes, that is correct.

Q. Where does the thrombosis occur?

A. The thrombosis usually starts at the point of pressure where the vein is damaged.

Q. Is that possible, Doctor, in the superior vena cava?

A. It is not possible in the superior vena cava, because the superior vena cava is one of the relatively soft structures, and there are no heavy muscles, bony structures, or ligaments that press directly on the superior vena cava." (S. C., p. 142, l. 40 to p. 143, l. 38.)

No attempt was made by the petitioner to refute this testimony of the doctors of the respondent, and it is readily understandable why no attempt was made to do so. The testimony shows irrefutably that the factors which are necessary in order to cause a thrombosis of strain cannot occur in the superior vena cava. There just are not the muscles and ligaments and other elements in that region with which to cause a blocking off of the vein. Therefore, this type of thrombosis cannot occur at that point.

F. The petitioner attempted to get over the hurdle created by the testimony which showed that he had

*Brief of Prosecutor-Appellee, Joseph
A. Shafto*

this condition in his mediastinum for a long time prior to December, 1941, and to get over the hurdle that his condition was a progressive one; he attempted to show that this condition might have been aggravated by the alleged strain of December, 1941.

However, the petitioner's doctors do not testify how any such strain might have aggravated the mediastinitis which was gradually pressing down on the superior vena cava, but on the other hand, the respondent's doctors both showed that a strain could not aggravate the existing condition. The reasoning is the same as in sub-division E.

We have seen by the testimony above quoted, of Dr. Albright, that a shutting off of the vein in the subclavian or axillary area would relieve venous pressure in the superior vena cava and not increase it. This is obvious because by reason of such shutting off there would be a restriction and lessening of the blood flow in the superior vena cava. The increased pressure would be in the arms and shoulders where the blood was building up because it was dammed up and shut off by the blockage. Also, Dr. Duryee testified that if there was a strain it could not interfere with the superior vena cava because the strain could not be transmitted down to the superior vena cava (S. C., 152, l. 34 to p. 153, l. 22).

G. THERE HAS NEVER BEEN A CASE KNOWN TO MEDICAL SCIENCE OF THROMBOSIS OF STRAIN OF THE SUPERIOR VENA CAVA.

The testimony upon this is definite and uncontradicted. An examination of the testimony of Dr. Duryee, in part, shows as follows:

*Brief of Prosecutor-Appellee, Joseph
A. Shafto*

“Q. Are you familiar with the literature relative to thrombosis of the superior vena cava?

A. I am, sir.

Q. Doctor, how many cases in all history are there reported of this condition?

A. Up to date there are approximately 120 reported cases.

Q. How many of those cases, Doctor, do you know, are cases of thrombosis of the superior vena cava due to trauma?

A. 1.6%.

Q. How many is that in actual numbers?

A. Two.

Q. Are you familiar with the case histories of those two cases which were thrombosis of the superior vena cava due to trauma?

A. Yes, sir.

Q. What type of trauma were they?

A. One was a direct trauma, in other words a gun-shot wound through the chest wall; and the other was a young lady who was opening a bottle of Coca-Cola, and holding it over her head to pull the corrugated cap off, the bottle slipped and gave her a very severe blow on the chest.

Q. Doctor, in all the cases of thrombosis of the superior vena cava, is there any case reported or any case known to medical history of an indirect thrombosis of strain to the superior vena cava?

A. I can find none in the medical literature, and I have never seen one.

Q. Have you ever heard of one?

A. I have never heard of one.” (S. C., p. 142, ll. 11-39).

*Brief of Prosecutor-Appellee, Joseph
A. Shafto*

Dr. Albright, in his testimony, states that:

“We know that there is a possibility of muscular strain and what it will do to the circulation, and there is a condition known as strain thrombosis, but that strain thrombosis does not affect this portion of the venous return. It has been described numbers of times and the thrombosis is always up in the sub-clavian or axillary vein, or sometimes in the brachial vein. But it never goes beyond this point; you never get it in the innominate veins or the superior vena cava. It has never once been described in the literature of the entire world, which was reviewed in 1936. Since that time there have been a few cases of thrombosis of the superior vena cava, none of them however in which there was any question of strain.” (S. C., p. 161, l. 39, to p. 162, l. 18).

See also testimony of Dr. Albright (S. C., p. 164, l. 40, to p. 165, l. 20).

Further, in this connection, it was the opinion of Dr. Duryee that a thrombosis of strain, such as here being discussed, could not extend down into the innominate vein, which is, of course, further away from the heart than the superior vena cava. The testimony of the doctor is as follows:

“Q. Where did Matas, Van Schroedter and others describe thrombosis of strain as taking place?

A. Anywhere along the course of the axillary or sub-clavian veins.

Q. And that is quite some distance away, is it not, from the superior vena cava?

A. That is correct.

*Brief of Prosecutor-Appellee, Joseph
A. Shafto*

Q. Have you ever heard of or come across in your reading of the literature a thrombosis of the axillary or the sub-clavian veins extending and occurring down into the innominate vein?

A. I believe it could go perhaps into the innominate veins for a short distance, but not to any great extent because the jugular vein current would immediately stop its growth as it comes in. It might extend for one-half centimeter at most.

Q. What do you mean by the jugular vein current would stop its growth?

A. A thrombus will form where a blood vessel is damaged or where blood is stagnant, but in rapidly moving blood it will not form, and the blood coming back from the head is moving at a rapid speed; there is a large, constant flow of blood, which would eliminate the possibility of the formation of a thrombus into the innominate." (S. C., p. 148, l. 27, to p. 149, l. 14.)

In summing up the proof under this point of the argument, we find that the petitioner has introduced the testimony of two doctors, one of whom is a chest surgeon, the other of whom is merely a Professor of Anatomy, and neither of whom is a specialist in the field of medicine involved. Neither of the doctors for the petitioner purport to, or in any manner qualify as a specialist in vascular diseases, and further, these two so unqualified doctors, without stating one reason, make a diagnosis of thrombosis of strain of the superior vena cava and rely upon medical literature which it was shown is no authority for the proposition of a thrombosis of strain of the superior vena cava.

On the other hand, the respondent has produced

*Brief of Prosecutor-Appellee, Joseph
A. Shafto*

two doctors eminently qualified to give testimony to the court on the medical point involved. They are doctors who specialize and make their life work in that particular branch of medicine which is here involved, and these doctors have testified that the petitioner's condition was not caused by thrombosis of strain, nor could it have been caused by thrombosis of strain. But they testified that his condition is thrombosis of the superior vena cava caused by syphilis, and they have given to the court not one reason but many reasons to substantiate their conclusion.

With all due deference, it is asked upon which testimony should the Supreme Court have based its decision? Should the court have based its decision upon the testimony of the unqualified doctors who gave no reasons and cited wrong authority? Or should the decision of that court have been based upon the testimony of qualified specialists who through accepted medical means showed the true condition of the petitioner and showed that his condition could not have been caused as claimed? Certainly, there can be but one answer to these questions.

The petitioner in his brief makes much of the point that the Supreme Court should have given greater weight to the testimony of the petitioner's witnesses because they were, he claimed, treating physicians. It is true that a treating physician in many instances is better qualified to render an opinion, but in this as in all other matters we must be practical and logical. Consider the facts. Dr. Bailey was brought into the picture solely for the purpose of performing an exploratory operation to find out what was wrong with the petitioner. He found that there was an obstruction or a thrombosis of the

superior vena cava, but does this make Dr. Bailey better qualified to state what caused the thrombosis of the superior vena cava particularly when it involves a field of medicine in which he is totally unqualified?

And turning to the other witness, Dr. Batson. He was not a treating physician. He merely talked to the petitioner after the operation, and because he talked to the petitioner after the operation does that make him better qualified to render an opinion in the field of medicine in which he is unqualified?

It is submitted that the question of the cause of the thrombosis was one for the field of specialists, and that the Supreme Court very properly followed the conclusions of the doctors who by their testimony showed that they knew their subject matter and who substantiated their conclusions by numerous and adequate reasons.

It is further submitted that the Supreme Court by reversing the lower tribunals not only relied upon the testimony that was most credible and most worthy of belief, but by its decision kept the decisions of our court on a high level in the field of medicolegal jurisprudence.

Point III.

The petitioner did not sustain the burden of proof in establishing that he sustained an accident arising out of or in the course of his employment on December 8th, 1941, or any other date.

The petitioner testified that on or about December 8th, 1941, while working for the respondent, in the respondent's garage, he, the petitioner, was

*Brief of Prosecutor-Appellee, Joseph
A. Shafto*

“heading up” or lifting a fifty gallon drum of alcohol, and while so doing strained himself. As the result of which, he alleges he choked right up, a vein came out in his neck and since then he has been a sick man (S. C., pp. 21 and 22).

Let us examine the story more completely. The first thing we will find is that the story of an accident or a straining on December 8th, 1941, was not mentioned or suggested by the petitioner until nearly eleven months after the date it was supposed to have taken place (S. C., pp. 90 to 92, 181 and 182).

The petitioner did not report the alleged accident to his employer, nor did he tell any of his co-employees of any straining while lifting barrels (S. C., pp. 38 and 39). On January 1st, 1942, his neck and face did swell up (S. C., p 41, ll. 15-20). When discussing his condition with his co-employees he did not mention any accident, nor did he say anything about straining himself while “heading up” drums of alcohol on December 8th, 1941, or any other date (S. C., pp. 38 and 39).

On January 16th, 1942, the petitioner went to see Dr. Samuel Edelson (S. C., p. 180), and he told Dr. Edelson that he had had a cold for a number of days and that a swelling of the neck was first noticed at that time (S. C., p. 180). He did not tell the doctor that the condition bothered him since December 8th, 1941 (S. C., p. 181, Question 12). He did not tell the doctor about any accident or history of trauma or strain (S. C., p. 181). Dr. Edelson sent Glanton to the Fitkin Hospital for observation. He stayed in this hospital for nine days and was examined by various doctors but did not mention to them anything about any straining

*Brief of Prosecutor-Appellee, Joseph
A. Shafto*

or lifting of drums (S. C., p. 22, ll. 20 and 21; p. 32, ll. 1-23).

In July, 1942, Glanton was sent by the doctors at the Fitkin Hospital, to Dr. Charles P. Bailey of the Hahnemann Hospital in Philadelphia. Upon Glanton's admission to that hospital Dr. Bailey questioned him and took his history, and Glanton at that time was vague and did not recall when this condition came upon him. And here again Glanton did not mention or give a history of strain or lifting on December 8th, 1941, or any other date (S. C., p. 86, ll. 1-12).

In July, 1942, Glanton remained in the Hahnemann Hospital for a few days and was sent back home for bismuth treatments for syphilis at the Fitkin Hospital in order to build him up for an operation (S. C., p. 84).

He again went back to the Hahnemann Hospital on October 18th, 1942, and again his history was taken, and again there was no mention made of any straining, accident or anything else which would indicate a history of an accident (S. C., p. 89, ll. 18-40).

On October 23rd, 1942, Dr. Bailey made an exploratory operation upon Glanton and as a result of that operation made a clinical finding of a thrombosis of the superior vena cava. Dr. Bailey, in trying to find a cause for the thrombosis, thought of the possibility that it might have been caused by straining or trauma (S. C., p. 90, ll. 7-13).

With this in mind, Dr. Bailey questioned Glanton as to any history of strain, but Glanton did not recall any. Finally, after three or four days of prompting upon the part of Dr. Bailey, Glanton finally took the hint (S. C., p. 90, l. 15 to p. 92, l. 18).

Thus, nearly eleven months after the alleged ac-

*Brief of Prosecutor-Appellee, Joseph
A. Shafto*

cident Glanton for the first time, after having been properly conditioned mentions a history of strain. After telling one story on repeated occasions to various doctors over an eleven month period, a new idea is suggested to him and he attempts to make a complete story out of the new idea, and also you might say, a compensation case.

As is to be expected, a story with such a genesis does not come forth full born. The petitioner was very vague at first and additional suggestion to him was necessary in order to complete the details such as the supposed date (S. C., p. 107, ll. 25-40). The date chosen was December 8th, 1941.

Also when the petitioner first mentioned this alleged accident he told Dr. Bailey that he had been lifting the drum of alcohol on to a truck (S. C., p. 186, ll. 9-20). This story of lifting the drum on to a truck on second thought probably sounded too good, for when petitioner testified he did not mention the lifting of drums on to a truck, but merely putting them up on end. But why two stories? Obviously the truth is not in him.

But if the petitioner had strained himself on December 8th, 1941, and if he had choked up then, and if the veins in his neck had swollen then, and if he had been ill since that date, when he was supposed to have "headed up" the barrels, then surely this alleged accident would have been made known before nearly eleven months had passed. If all these things had taken place as the petitioner now wants the court to believe, then surely he would not have failed to mention it to his employer; he would not have failed to mention it to Dr. Edelson in January of 1942, nor would he have failed to mention it when being questioned as to the history of his condition by the doctors at Fitkin Hospital on his two

*Brief of Prosecutor-Appellee, Joseph
A. Shafto*

admissions there in January and February of 1942, and on his two admissions to the Hahnemann Hospital in July and October of 1942, and certainly if all these things had happened to the petitioner, as he said they did, he would not have taken three or four days to recall them after Dr. Bailey prompted him in the latter part of October, 1942.

Another point stands out in regard to the petitioner's claim that he strained himself on December 8th, 1941; that he immediately choked up, his veins swelled, and he has been ill since that date, and that is, that at no time in his testimony could he associate the date of his alleged accident with any other thing in order to give some corroboration or credence to his story that December 8th, 1941, was the date of the accident, yet if all this happened to him when he says it did happen to him, how could he have forgotten that it happened to him on the day War was declared with Germany and Japan, and that it was the day after the attack on Pearl Harbor?

On cross-examination he was given all the opportunity possible to tie up the supposed date of the accident with something else, but at no place in his testimony does he tie up his accident with either of these world famous events.

An examination of the testimony shows that the petitioner's story is completely unreliable. It stands alone. It is not corroborated by any one but it is contradicted not only by the witnesses of the respondent but by the petitioner's own witnesses, and further his testimony is for the most part contradictory in itself.

The petitioner testified that he did not think he would have to tell Fred Smith, a co-employee, about the incident of straining himself, because Smith was

*Brief of Prosecutor-Appellee, Joseph
A. Shafto*

there (S. C., p. 37, ll. 24-27), but the petitioner also testified, in almost successive breaths, that he told Smith before he went to the hospital (S. C., p. 39, ll. 1-3). Then he says he told him when he was drinking a Coca-Cola; then immediately he says he told him the day after, and then immediately on top of this he says he told him the same day (S. C., p. 39, ll. 20-30).

Fred Smith testified that to the best of his recollection the petitioner did not speak to him about becoming ill, nor did the petitioner's neck puff up until about a week before the petitioner went to the hospital on January 17th, 1942 (S. C., p. 123).

Further, Raymond Bearmore, another co-employee, who left Shafto's employment on January 10th, 1942, testified that up to that time the petitioner was able to do his work, and did not complain of being ill (S. C., p. 118).

The petitioner also testified that he did not tell Dr. Edelson, when he first went to see him on January 16th, 1942, that he had had a cold (S. C., p. 27, l. 39, to p. 28, l. 19), but Dr. Edelson states that the petitioner did tell him this, and that this was the history the petitioner gave him when he first saw him (S. C., p. 180, Question 9).

Again the petitioner testified that he told Dr. Edelson about the lifting of drums and straining himself on December 8th, 1941, and about his condition coming on at that time (S. C., p. 30, ll. 18-32), but again Dr. Edelson definitely states that the petitioner did not tell him this (S. C., p. 181, Questions 11, 12 and 13).

The petitioner further testified that when he first went to the Hahnemann Hospital he gave a history of straining himself while lifting drums in December of 1941 (S. C., p. 34, ll. 1-27). He further tes-

*Brief of Prosecutor-Appellee, Joseph
A. Shafto*

tified that he gave this same story as to how the accident happened on his second admission to the Hahnemann Hospital in October of 1942 (S. C., p. 35, ll. 15-28), but here Dr. Bailey, who testified on behalf of the petitioner, definitely states that the petitioner did not give any such history on either of his admissions to the Hahnemann Hospital, and in fact gave no history of any strain or lifting (S. C., p. 89, l. 19, to p. 90, l. 5).

Again the petitioner testified that his neck swelled up right after the alleged accident of December 8th, 1941, and was swollen the rest of the month of December, 1941 (S. C., p. 40), but Dr. Bailey testified that when he questioned the petitioner in July of 1942 as to when the petitioner first noticed the swelling in his neck, the petitioner stated that he first noticed it on January 1st, 1942, and then only after the petitioner's roommate had made some remark about the petitioner having had a bad night the night before (S. C., p. 87, l. 16, to p. 88, l. 18). Dr. Bailey's testimony upon this also is in direct accord with that of Dr. Edelson, to whom the petitioner stated that he had first noticed the swelling when a friend mentioned it to him (S. C., p. 180, Question 9).

It is clearly obvious that the petitioner is not telling the truth. Dr. Bailey and Dr. Edelson had no knowledge of each other's testimony, yet their testimony coincides and flatly contradicts the testimony of the petitioner. Is a petitioner who has so frequently lied and contradicted himself to be believed?

Further, the petitioner denied that he mentioned the alleged straining of December, 1941, for the first time after the operation in 1942, and then only

*Brief of Prosecutor-Appellee, Joseph
A. Shafto*

after Dr. Bailey had suggested it to him (S. C., p. 35, l. 30, to p. 36, l. 10).

The testimony of Dr. Bailey upon this point shows that he, Dr. Bailey, was the originator of the story of strain. For the convenience of the court his testimony is quoted here in full:

“Q. And then, Doctor, up until the time that you operated, there was no history given you of lifting or straining?

A. That’s right, sir.

Q. No history at all. And then you operated, is that true, doctor?

A. Yes.

Q. And then you found this thrombosis, is that right?

A. Yes.

Q. And then in considering the thrombosis, you considered as to what might have caused that thrombosis, didn’t you?

A. Yes.

Q. And one of the causes of thrombosis is strain, is that right, Doctor?

A. Yes.

Q. So then, Doctor, having that in mind, you then went back and questioned Mr. Glanton with that in mind, is that true?

A. That is correct.

Q. To find out if you could find any history of strain?

A. Yes.

Q. And when you first questioned him as to the history of strain, he didn’t recall any, is that true?

A. Well, remember this, immediately after operation he wasn’t a very well man at that time.

Q. Well, then, you certainly wouldn't have gone in and questioned him if you didn't think he was capable of talking properly?

A. Well, he was capable of talking.

Q. Yes, and you went and questioned him?

A. That is right.

Q. And you first had to question him as to whether or not there was any strain, if this came on by strain, and he didn't recall any, is that true, Doctor?

A. Yes.

Q. The fact of the matter is you had to prompt him quite a bit?

A. We had to ask him directly if he had done any unusual exertion or done any severe straining or lifting.

Q. And he just said no, didn't he?

A. He said he couldn't recall any.

Q. You did keep that up for some three or four days, did you not, Doctor?

A. Well, I didn't question him every day.

Q. Well, it carried on over a period of some three or four days?

A. The next time we had a chance to talk for more than a minute, and also the same information.

Q. You had to prompt him, too?

A. On the first occasion.

Q. No more than the first occasion?

A. That is right.

Q. You prompted him?

A. Well, I suggested he might have done something by way of strain.

Q. Told him that, right to him?

A. Yes, to see definitely if he couldn't remember.

*Brief of Prosecutor-Appellee, Joseph
A. Shafto*

Q. And he couldn't remember at that time?

A. Yes.

Q. And after a lapse of three or four days, did you go back to him again; then he recalled the same thing?

A. That's right.

Q. Even then he didn't know anything about it, did he?

A. I don't know whether he did or not at that time, but he stated it was an accident, and in the first week or two days later.

Q. No date, is that right?

A. As far as I recall no date at that time. The early part of December, I think was the way he expressed it.

Q. I ask you, Doctor, if this is your signature (exhibiting paper)?

A. (The witness examines same.) That is right.

Q. You wrote that letter, did you not, Doctor?

A. Yes—let me see.

Q. You may read the entire letter if you wish (handing the witness a paper).

A. All right (at this point the witness read the latter). Yes.

MR. CARTON: I offer this for identification. (The letter received and marked R-1 for identification as of this date.)

BY MR. CARTON:

Q. In this letter you advised Doctor Herman, did you not, that you had to prompt Mr. Glanton in order to get any history of strain?

A. I don't recall whether these were the exact words. May I refresh my mind? It is my

letter, whatever I said I said, yes, that is correct.

Q. And you did have to prompt him in order to get any history of strain, is that true, Doctor?

A. Yes." (S. C., p. 90, l. 1, to p. 92, l. 16.)

The Court's attention is directed to the letter of Dr. Bailey (Exhibit R-1, S. C., p. 184), and particularly the paragraph of said letter starting at (S. C., p. 186, l. 1).

A reading of the entire testimony shows that the petitioner's story, as told upon the witness stand, is completely unsubstantiated. His own witnesses as well as those of the respondent show that he has not told the truth, but has made up his testimony to suit his own nefarious ends.

Can it be said that an uncorroborated story such as the petitioner has given, which is never mentioned until nearly eleven months after the alleged accident, and when it does arise it does so under very questionable circumstances, and when testified to is contradictory in itself in many parts, and on many points of prime importance is contradicted by the petitioner's own witnesses; can it be said, in view of all this, that the petitioner has proven his case by that degree of credible evidence which is sufficient to establish the burden of proof? Is this the kind of testimony which is to be believed and upon which the responsibility and the liability of this respondent is to rest? It seems clear that such testimony should not and ought not to prevail.

It is respectfully submitted that under this point we have shown adequate additional grounds upon which the Supreme Court could have based its decision had it chosen to do so.

Point IV.

The petitioner failed to give such notice to the respondent as is required by R. S. 34:15-17, 18, and the respondent did not have actual knowledge within the prescribed period of ninety days.

R. S. 34:15-17, 18 set forth the statutory requirements of notice to the employer of accident and injury. R. S. 34:15-18 concludes as follows:

“No variation from this form shall be material if the notice is sufficient to advise the employer that a certain employee, by name, received an injury in the course of his employment on or about a specified time, at or near a certain place. Notice served at the office of, or on the person who was the employee’s immediate superior, shall be a compliance with this article.”

There is no claim that the prescribed written notice was given to the employer. However, the petitioner claims, and in the court below relied heavily on the proposition, that the respondent had actual knowledge within the meaning of the statute as interpreted in the case of *General Cable Corp. vs. Levins*, 122 N.J.L. 383, aff. 124 Id. 223. The Common Pleas Court also relied principally on this case in holding that proper notice had been given the respondent. It is respectfully submitted that an examination of the facts and of the cases construing the statutes involved shows that this case is not within the pale of the case of *General Cable Corp. vs. Levin*, supra, but is squarely within the

*Brief of Prosecutor-Appellee, Joseph
A. Shafto*

decision of *Korman v. Hygrade Food Products Corp.*, 130 N.J.L. 468, aff. 131 N.J.L. 188, in which, under very similar facts, it was held that proper notice had not been given.

The testimony produced upon the problem of notice briefly is: On direct examination the petitioner testified that after he "choked up" he drank a Coca-Cola, and went back into the garage and sat around in the cars; that he told a boy, Fred, "I got something. It might be indigestion, the way I choked up," and the day following he told another boy at the garage by the name of Le Roy that he would get dizzy if he bent over and had indigestion (S. C., p. 21, ll. 10-23). But the petitioner testified to many different versions on cross-examination. He testified that he did not think he would have to tell Fred Smith, a co-employee, about the incident of straining himself because Smith was there (S. C., p. 37, ll. 24-27). Then he says he told Smith sometime before he went to the hospital on January 17th, 1942 (S. C., p. 39, ll. 1-37). Then, in quick succession, he says he told Smith when he was drinking the Coca-Cola, and then again it was the next day that he told Smith (S. C., p. 39, ll. 20-30). But Smith denied any recollection of the petitioner saying any such thing (S. C., p. 123).

The first time the petitioner told the respondent that he had hurt himself was in December of 1942 (S. C., p. 49, l. 31, to p. 50, l. 2). He did not tell any of the other employees at the respondent's place of business but they could see by the veins in his neck that he was ill (S. C., p. 37, ll. 32-38).

In January of 1942, petitioner went to Doctor Edelson after being told by Smith, and respondent's daughter, "You ain't got no indigestion. Some-

*Brief of Prosecutor-Appellee, Joseph
A. Shafto*

thing else is wrong with you. Go and see a doctor.” (S. C., p. 21, ll. 31-34.)

Petitioner states he told Dr. Edelson that his condition came about while lifting drums on December 8th, 1941, but he is flatly contradicted in this by Dr. Edelson (S. C., p. 181, questions 12 and 13). Petitioner would also have us believe that he told the various doctors who interviewed him on his four admissions to hospitals about the condition coming upon him while lifting drums, but we have seen that his own witnesses deny that this is so.

The proof, shortly stated, is, that petitioner tells several inconsistent stories about mentioning his condition or illness to co-employees, his co-employees, and probably superiors, could see that he was ill and suggested that he go to a doctor, which he did, but he did not mention to anyone in the respondent's place of business, or to the respondent, that the condition came about while working for the respondent until a year later, i.e. December of 1942.

The case of *General Cable Corp. vs. Levins*, 122 N.J.L. 383, aff. 124, Id. 223, is not in point. There the employer had knowledge of illness arising out of and in the course of the employment. There is no such knowledge in this case, nor any testimony as to such knowledge.

In the case sub judice the only knowledge of, or imputable, to the employer, was that the petitioner was ill.

The court below indicates that Dr. Edelson was the respondent's doctor and that Dr. Edelson had knowledge of the illness arising out of and in the course of the employment (S. C., p. 197, ll. 22-34), and thus under the *General Cable Case*, supra. This was an erroneous conclusion. The question of Dr.

*Brief of Prosecutor-Appellee, Joseph
A. Shafto*

Edelson having knowledge is denied by this doctor. If he had had such information Dr. Bailey would have had it long before October, 1942, when he prompted it out of the petitioner. But further, Dr. Edelson was not the respondent's doctor. The petitioner was advised to go to a doctor just as anyone would give this advice to one obviously ill.

This case is squarely within the facts and ruling in *Korman vs. Hygrade Food Products Corp.*, 130 N.J.L. 468, aff. 131 Id. 188. In that case this court found and held at pages 471 and 472 that:

“The extent of the employer's knowledge was that the decedent reported that he was sick on the evening of October 27th; that he didn't return to work on the 28th, and the later information received that he was suffering from cerebral hemorrhage. The inquiry therefore comes down to this: Did the employer at any time within the limitations of R. S. 34:15-17 receive notice or, in lieu of notice, possess knowledge of the occurrence of the injury? There is no competent proof that it did, save only knowledge of the fact that Korman had suffered some injury or illness without the employer knowing when, where or how it had occurred.

The petitioner relies upon the case of *General Cable Co. v. Levins*, 122 N.J.L. 383; affirmed, 124 Id. 223. But in that case the employer had knowledge of the occurrence of injury arising out of and in the course of the employment. Here no information was imparted to the employer out of which it could be chargeable with such knowledge. We conclude that the proof falls short of bringing home to the re-

*Brief of Prosecutor-Appellee, Joseph
A. Shafto*

spondent that 'actual knowledge of the occurrence of the injury' which is necessary to satisfy the requirements of our statute, supra. Compare Hercules Powder v. Nieratko, 113 Id. 195; affirmed, 114 Id. 254; Bobowinik v. Erie Railroad, 118 Id. 118; General Cable Co. v. Levin, supra."

Here again it is submitted that there was adequate additional grounds upon which the Supreme Court could have relied if it had so chosen.

CONCLUSION.

The question before this court is that of being called upon to review the findings of fact of the Supreme Court. It is respectfully submitted there is not only some evidence in the record to support the findings of the Supreme Court, but that there is in truth abundance of such evidence and that the entire record virtually leaves no other alternative but to conclude that the decision of the Supreme Court should be affirmed. There being adequate evidence upon which the Supreme Court did and could have based its decision, this court upon the decisions referred to in Point I of this brief should not disturb the Supreme Court's findings of fact.

It is, therefore, respectfully submitted that the judgment of the Supreme Court be affirmed.

Respectfully submitted,

DURAND, IVINS & CARTON,

*Attorneys for Prosecutor-Appellee,
Joseph A. Shafto.*

ROBERT V. CARTON,
Of Counsel.











