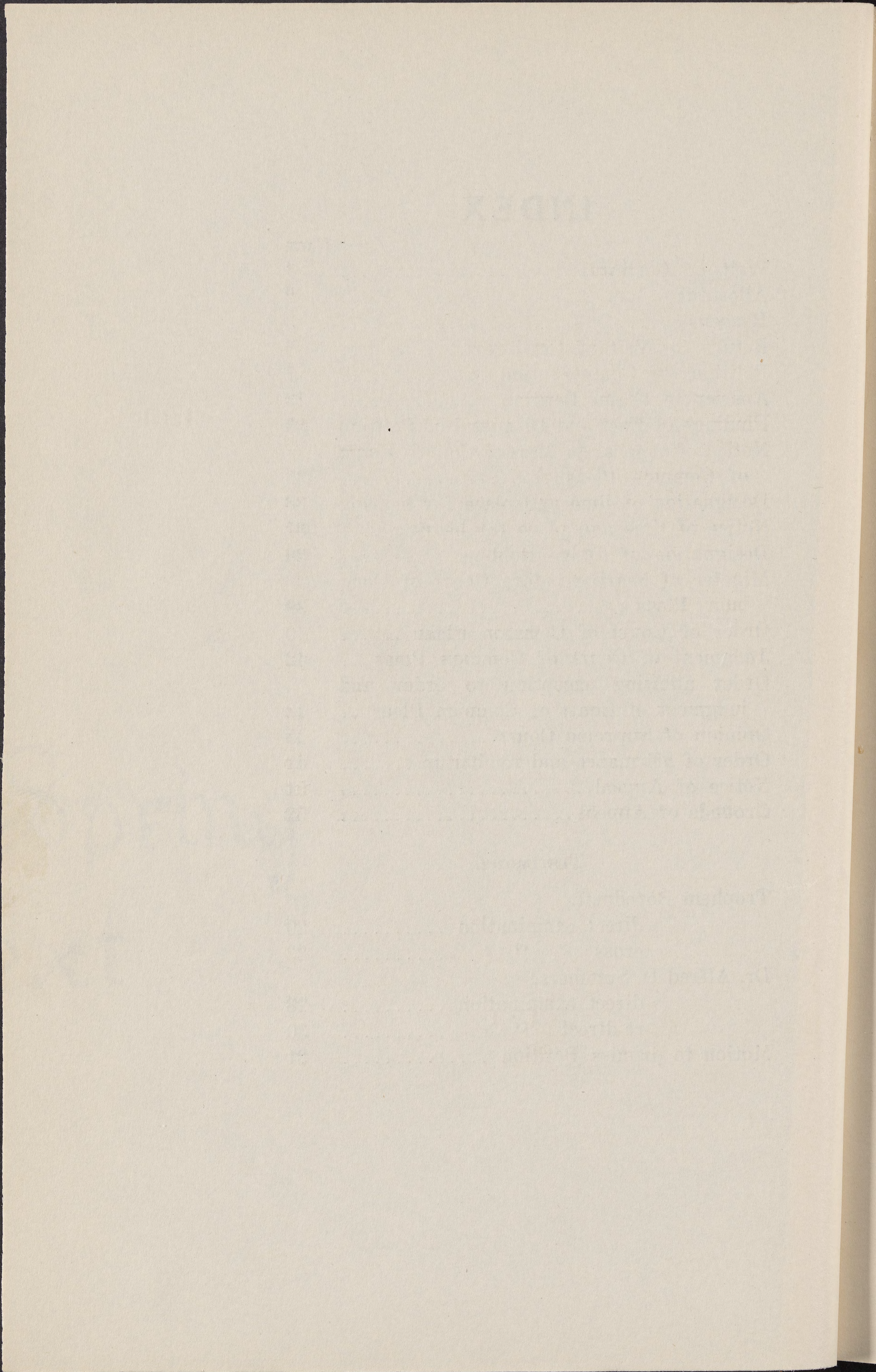


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WRIT OF CERTIORARI.

NEW JERSEY, ss.

The State of New Jersey to the
Court of Common Pleas in and for
(L. s.) the County of Mercer, Charles P.
Hutchinson, Clerk of said Court and
Trophem Borodaeff, GREETING: **10**

We being willing for certain reasons to be certified of and concerning a certain determination and judgment rendered on the 5th day of December, 1930, by the Honorable Adam O. Robbins, Acting Judge of said Court of Common Pleas in and for said County of Mercer, in a certain proceeding brought on behalf of Trophem Borodaeff, petitioner, against Province Line Dairy, Inc., respondent, for the determination and recovery of compensation under an act of the Legislature of the State of New Jersey, entitled "An Act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective compensation and regulating procedure for the determination of liability and compensation thereunder," approved April 4, 1911, and the acts amendatory thereof and supplemental thereto, we command you, the said Court of Common Pleas in and for the County of Mercer, and Charles P. Hutchinson, Clerk of 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 touching and concerning the same as fully and entirely as before you they remain, or are in your custody and control, you do certify and send together with this writ, to our Justices of our Supreme Court of Judicature at Trenton, on the 29th day of January, 1931, **20**
30
40

Allocatur.

that therein may be caused to be done what of right and according to law ought to be done.

WITNESS, the Honorable Thomas W. Trenchard, Justice of our said Supreme Court at Trenton, this 9th day of January, 1931.

10

FRED L. BLOODGOOD,
Clerk.

COULT, SATZ & TOMLINSON,
Attorneys.

This Writ is allowed. Let it be sealed, January 9, 1931.

THOMAS W. TRENCHARD,
J. S. C.

20

30

40

REASONS.

Filed February 3, 1931.

New Jersey Supreme Court

TROPHEM BORODAEFF,

*Petitioner-Defendant,**vs.*

PROVINCE LINE DAIRY, INC.,

*Respondent-Prosecutor.**On**Certiorari.**Reasons.*

10

The above-named prosecutor assigns the following reasons for setting aside the order, determination and judgment of the Court of Common Pleas in and for the County of Mercer, brought before this Honorable Court by the Writ of Certiorari allowed in the above-entitled cause:

20

1. Because in and by the said order, determination and judgment, it was determined and adjudged that the said Trophem Borodaeff was entitled to recover compensation from the said Province Line Dairy, Inc., pursuant to the provisions of an Act of the Legislature of the State of New Jersey entitled "An Act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation and regulating procedure for the determination of liability and compensation thereunder" approved April 4, 1911, and commonly known as "The Workmen's Compensation Act of New Jersey" and the Act amendatory thereof and supple-

30

40

Reasons.

mental thereto, whereas, it should have been determined and adjudged that the said Trophem Borodaeff was not entitled to recover from the said Province Line Dairy, Inc. under the provisions of said Act and it should have been determined and adjudged that the petition of the
 10 said Trophem Borodaeff praying compensation under the terms of said Act should be dismissed.

2. Because in and by said order, determination and judgment, it was determined and adjudged that the petitioner, Trophem Borodaeff, sustained injuries in an accident arising out of and in the course of his employment by the said Province Line Dairy, Inc. by reason of a hernia which was caused by said accident and that the descent of said hernia immediately followed the
 20 cause thereof.

3. Because in and by said order, determination and judgment, it was determined and adjudged that the said petitioner, Trophem Borodaeff, as the result of an accident arising out of and in the course of his employment by the said respondent, Province Line Dairy, Inc. sustained a hernia, the descent of which hernia immediately followed the cause thereof.

30 4. Because in and by said order, determination and judgment, it was determined and adjudged that the said petitioner, as the result of an accident arising out of and in the course of his employment for said respondent, Province Line Dairy, Inc. sustained a hernia and that the descent of said hernia immediately followed the cause thereof.

40 5. Because in and by said order, determination and judgment, it was determined and adjudged that the said petitioner, Trophem Boro-

Reasons.

daeff, as the result of an accident arising out of and in the course of his employment by the said Province Line Dairy, Inc. sustained a hernia and that the descent of said hernia immediately followed the said accident.

6. Because in and by said order, determination and judgment, it was determined and adjudged that the said petitioner, Trophem Boro- 10
daeff, was entitled to recover against the said respondent, Province Line Dairy, Inc. the sum of \$100.00 compensation, being the maximum of \$20 each week for a period of five weeks and the further sum of \$150.00 for medical expenses and costs, making a total of \$250.00 together with costs of suit to be taxed; and because it was further determined and adjudged that the attorney of the petitioner was entitled to a counsel 20
fee of \$150.00 to be paid to said attorney by the said respondent, Province Line Dairy, Inc., whereas it should have been determined and adjudged that the said petition should be dismissed.

COULT, SATZ & TOMLINSON,
Attorneys for Respondent-Prosecutor.

Service of the within Reasons is hereby 30
acknowledged this 16th day of January, 1931.

JAS. S. TURP.
Attorney for Petitioner-Defendant.

RETURN TO WRIT OF CERTIORARI.

MERCER COUNTY COURT OF
COMMON PLEAS.

10	TROPHEM BORODAEFF, <div style="text-align: right;"><i>Petitioner,</i></div> <div style="text-align: center;"><i>vs.</i></div> PROVINCE LINE DAIRY, INC., <div style="text-align: right;"><i>Defendant.</i></div>	}	<i>On Petition for Compen- sation, etc.</i>
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*To the Honorable, the Chief Justice and Associate
Justices of the Supreme Court of New
Jersey:*

20 The determination and statement of facts and judgment, together with all proceedings for the making of the same, and all things touching and concerning the same, as fully and entirely as before us they remain, or are in our possession or control whereof mention is within made, we hereby certify and send under our seal in the schedule hereto annexed, as within we are commanded.

30 GODFREY W. SCHROTH,
Judge of the Mercer County
Court of Common Pleas.
A. O. ROBBINS,
Acting Judge.

(SEAL)

CHARLES P. HUTCHINSON,
Clerk of the Mercer County
Court of Common Pleas.

40

PETITION FOR COMPENSATION.

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

Employee's Claim Petition for Compensation

10

<p>TROPHEM BORODAEFF, <i>Petitioner,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>PROVINCE LINE DAIRY, INC., <i>Respondent.</i></p>	}
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Received at Trenton Mar. 20, 1930.

20

Claim petition No.....

Date of accident, April 18, 1930.

Attorney for petitioner James S. Turp, 1110
Trenton Trust Bldg., Trenton N. J.
(Address)

To the Workmen's Compensation Bureau of New
Jersey:

The claimant respectfully alleges the following
facts:

30

1. What is your name? TropheM Borodaeff.
2. Where do you live? Princeton Pike, Prince-
ton Township, mail address Box 56, Princeton,
N. J. (Street Address)
(City or Town)
3. Sex Male. 4. Age 42. 5. Married Yes.

40

Petition for Compensation.

6. By whom were you employed at the time of the accident? (Give name and business address)

Province Line Dairy, Inc.
(Name)

217 Nassau Street

10 (Street Address)

Princeton, N. J.

(City or Town)

7. What was the business of your employer? Dairy.

8. Did you give written notice to your employer at the time you were hired, or later, that the compensation law should not apply to you? No.

20 9. Did you receive such notice from your employer? No.

10. Did your employer have knowledge of your accident? Yes.

11. Did you notify your employer of your accident? Yes.

12. If so, on what date? April 18, 1929.

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

30 14. What was your regular occupation, and what kind of work were you doing at the time of the accident? Helping generally at dairy.

15. When did the accident happen? April 18, 1929, about 1 P. M. (State month, day, year and hour.)

16. Where did the accident happen? At the dairy plant.

40 17. What was the nature of the accident, and how did it happen? Hernia; while emptying a can of milk I felt pain in the hernial region. I immediately reported it and went to a doctor. I

Petition for Compensation.

quit work at once. The injury was an inguinal hernia. Considerable swelling developed and great pain.

18. On what date were you compelled to stop work because of the injury? April 18, 1929, immediately.

19. On what date were you well enough to work again? After a lapse of six weeks. 10

20. If still disabled, on what date do you think you will be able to work?

21. Give nature of any injury from which you will recover.....

22. If any permanent injury has resulted, either amputation or loss of usefulness of any member, or impairment of any physical organ, explain fully..... 20

23. Were your wages fixed by piece-work?.....

24. If so, what was your average weekly wage?

25. If wages were fixed by the hour, state rate per hour.

26. Give number of hours in an ordinary working day 9-10 hours.

27. Give number of days in an ordinary working week 7 days.

28. State the amount of weekly wages \$38.00. 30

29. How much money have you received from your employer as compensation (not medical aid) since your accident? None.

30. Has your employer promised to pay you any compensation? Said it was up to insurance company.

31. If so, how much?

32. Was medical aid required? Yes.

Petition for Compensation.

33. Did you receive medical, surgical or hospital service? Yes.

34. Did you request your employer to furnish these services? Employer sent me to a doctor.

35. Were they furnished? Not surgical or hospital service.

10 36. If so, between what dates? April 18, 1929 to June 1, 1929.

37. If not what sum did you expend for medical, surgical or hospital services? \$229.00.

38. Give name and address of physician and hospital Dr. Sommers, Princeton, N. J., Dr. Belford, Princeton, N. J., Princeton Hospital.

20 39. What other facts are there which you believe important? The hernia was caused by the strain of lifting the milk can, which was full of milk; all the above, with reference to the facts of the injury was within 24 hours after the occurrence of the hernia.

40. Are you willing that the Compensation Bureau endeavor to secure compensation for you, by agreement, before calling for an official hearing? If it does not affect my rights.

41. If you are unwilling state reasons.....

30 Your petitioner therefore prays that your honorable bureau will determine the amount of compensation due to your petitioner from the said defendant, under the act entitled "An Act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of the employment, establishing an elective schedule of compensation and regulating procedure for the determination of liability and compensation thereunder," approved April 4, 1911, and the acts supplemental thereto
40 and amendatory thereof, and that your petitioner

Petition for Compensation.

may be awarded his costs in this proceeding, and such other or further relief as may be proper.

And your petitioner will pray, etc.

TROPHEM BORODAEFF,
(Petitioner.)

Box 56, Princeton, N. J.,
(Address)

10

STATE OF NEW JERSEY, }
COUNTY OF } ss.

TROPHEM BORODAEFF, 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 matter and things therein set forth are true according to the best of his knowledge and belief.

20

THOPHEM BORODAEFF.
(Petitioner.)

Subscribed and sworn to before me,
this eighteenth day of March,
1930, at Trenton, New Jersey.

GABRIEL GARBER,
Attorney-at-Law of N. J.

30

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

40

Petition for Compensation.

TO THE RESPONDENT.

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

10

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

WORKMEN'S COMPENSATION BUREAU,

.....

Secretary.

20

I, WILLIAM E. STUBBS, Deputy Commissioner and Secretary of the Workmen's Compensation Bureau, hereby certify the foregoing to be a true copy of the petition filed in this cause.

W. E. STUBBS,

M.

Filed Oct. 31, 1930.

30

CHARLES P. HUTCHINSON,

County Clerk.

40

ANSWER TO CLAIM PETITION.

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

10

<p>TROPHEM BORODAEFF, <i>Petitioner,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>PROVINCE LINE DAIRY, INC., <i>Respondent.</i></p>	}	<p><i>Claim Petition No. 13397</i></p>
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....., 19..

Attorney for respondent, Walter X. Trumbull,
20 Clinton, Newark, N. J. 20
(Address)

In answer to claim petition filed in this cause:

1. What is the petitioner's name? Trophem Borodaeff.
2. Where does he reside? Princeton Pike.
(Street address)
Princeton Township.
(City or Town) 30
6. Was the petitioner in your employ at the time of the accident? Yes. 30
7. State your business. Dairy.
8. Did you receive written notice from the petitioner at the time of hiring, or later, that the compensation law was not to apply to him? No.
9. Did you give such notice to him? No.
10. When did you first have knowledge of this accident? April 18, 1929. 40

Answer to Claim Petition.

11. Did you receive notice of this accident from the petitioner? Yes.
12. If so, on what date? April 18, 1929.
13. Has any claim for compensation been made? Yes.
- 10 14. What was the petitioner's regular occupation, and what kind of work was he doing at the time of the accident? Bouling—petitioner claims he was lifting cans of milk.
15. When did the accident happen? April 18, 1929.
(State month, day, year and hour.)
16. Where did the accident happen? Plant.
17. What was the nature of the accident, and how did it happen? Petitioner claims he was lifting a can of milk when he sustained a hernia.
- 20 18. On what date was the petitioner compelled to stop work because of injury? April 18, 1929.
19. On what day was the injured well enough to work again? June 1, 1929.
20. If still disabled, on what date do you estimate he will be able to work?
21. Give your understanding of the nature of any injury from which he should recover?
- 30 22. Give your understanding of any permanent injury which has resulted, either amputation or loss of usefulness of any member or impairment of any physical organ. Explain fully Petitioner claims a hernia. Respondent denies that he sustained a compensable hernia.
23. Were the wages fixed by piece-work?
- 40

Answer to Claim Petition.

24. If so, what was the average weekly wage of the injured?
25. If wages were fixed by the hour, state rate per hour.
26. Give number of hours in an ordinary working day.
27. Give number of days in an ordinary working week. 10
28. State the amount of weekly wages. \$27.00.
29. How much money have you paid the injured as compensation (not including medical aid) since the accident? None.
30. Have you promised to pay compensation? None.
31. If so, how much?
32. Was medical aid required? 20
34. Were you requested to supply the necessary medical service required by law?
35. Did you furnish this service? No.
36. If so, between what dates?
37. If not, give reason for failure to do so. Petitioner did not sustain a compensable hernia.
38. Give name of physician and hospital rendering service at your direction.
39. What other facts are there which you believe important? If you deny that compensation is payable in this case explain fully your reasons for this conclusion. Petitioner did not sustain a compensable hernia, petitioner had an informal hearing on June 29, 1929, at Trenton, N. J., where it was determined that he did not sustain a com- 30

Answer to Claim Petition.

pensable hernia while employed by respondent.

DUDLEY CARR,

(Respondent)

217 Nassau street, Princeton, N. J.

(Address)

10

STATE OF NEW JERSEY, }
COUNTY OF MERCER. } ss.

DUDLEY CARR, of full age, being duly sworn according to law, on his oath deposes and says. That he is the 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

DUDLEY CARR,

(Respondent.)

Subscribed and sworn to before me, this 11th day of April, 1930, at Princeton, N. J.

W. V. CORTELYOU,

30

Notary Public of N. J.

My commission expires July 29, 1934.

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

40

Answer to Claim Petition.

I, WILLIAM E. STUBBS, Deputy Commissioner and Secretary of the Workmen's Compensation Bureau, hereby certify the foregoing to be a true copy of the answer filed in this cause.

W. E. STUBBS,

M.

10

Filed October 31, 1930.

CHARLES P. HUTCHINSON,
County Clerk.

20

30

40

Testimony.

TRANSCRIPT OF TESTIMONY.

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

10	TROPHEM BORODAEFF, <div style="text-align: right;"><i>Petitioner,</i></div> <div style="text-align: center;"><i>vs.</i></div> PROVINCE LINE DAIRY Co., <div style="text-align: right;"><i>Respondent.</i></div>	} <i>On Petition,</i> <i>etc.</i> <i>Transcript.</i>
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20 Transcript of testimony taken in the above entitled cause before Hon. William E. Stubbs, Deputy Commissioner, at the State House, Trenton, N. J., on Saturday, May 24, 1930, at 10:30 o'clock in the forenoon.

Appearances:

James S. Turp, Esq., for the petitioner.

Walter X. Trumbull, Esq., for the respondent.

John F. Trainor, Court Reporter.

The Commissioner: Is there anything we can stipulate so as to shorten this matter?

30 Mr. Turp: I think the pleadings show the only thing in controversy is the nature of the accident, whether or not it is compensable.

The Commissioner: There is a contract of employment in force at the time of this occurrence?

Mr. Trumbull: Yes.

The Commissioner: And the wages were \$38.00 per week?

40 Mr. Trumbull: \$37.00 per week.

Testimony.

The Commissioner: The petition says \$38.00 per week. It wouldn't matter anyway because it is above the maximum.

Mr. Turp: He was raised from \$37 to \$38 a week.

Mr. Trumbull: The maximum is \$20.00 any-
way. 10

The Commissioner: The respondent's answer indicates \$27.00 a week.

Mr. Turp: The man says he was getting \$37.00 a week and he was raised to \$38.00. I have in the petition \$38.00 per week.

Mr. Trumbull: I think we can stipulate that the wages were \$37.00 a week.

The Commissioner: The \$27.00 per week wouldn't give him the maximum. 20

Mr. Trumbull: But \$37.00 would.

The Commissioner: I was wondering why the answer was sworn to giving the wages as \$27.00 per week?

Mr. Trumbull: This may have been an error.

Mr. Turp: It is a typographical error. The two is right next to the three on the typewriter and it is pretty easy to strike a two instead of a three.

Mr. Trumbull: I am very frank to say I haven't any proof here today. I am not certain what the wages were. If they say the wages were \$37.00 per week I presume it must be \$37.00. 30

The Commissioner: If you will stipulate that, that will relieve the situation somewhat.

Mr. Trumbull: Yes, sir.

The Commissioner: Then it is purely a question of whether the facts constitute a condition fulfilling the requirements of the law on the 5 points? 40

Trophem Borodaeff, direct.

Mr. Turp: Yes, sir. The doctor was not at the informal hearing.

The Commissioner: That is not binding on this hearing at all.

TROPHEM BORODAEFF, the petitioner sworn.

10

Direct examination by Mr. Turp.

Q Mr. Borodaeff, you are a Russian, are you?

A Yes, I am a Russian.

Q What did you do in Russia, what was your occupation?

Mr. Trumbull: That is immaterial.

20

Mr. Turp: I want to show the type of man he is. This is a high-class Russian gentleman.

Mr. Trumbull: I am not attacking the man's character.

Mr. Turp: But he is working here and he is more or less in a position that isn't equal to his station in Russia.

The Commissioner: It may be interesting but not relevant.

30

Q Mr. Borodaeff, on April 19, 1929, you were working for the Province Line Dairy Company, weren't you? A Yes, sir.

Q Will you tell the Court what happened on that day? A Yes.

Q At the time you had the accident just tell what you were doing and what happened?

40

A Well, I was working in the dairy house and I started to bottle up milk and sometimes the helper helped me and sometimes I am busy and I help myself and I take a 40-quart can,

Trophem Borodaeff, direct.

I do that before and I don't hurt myself but at that time I take a 40-quart can and I just lift up into the bottling machine then I hurt myself a little bit. I hurt myself and I pretty near sat down and I called my helper and he come quick and help me with that can to dump it in and then I stop my work. I got it back and I said I hurt myself. I had to stop and see a doctor. 10

Q Where did you hurt yourself, did you feel any pain? A Yes.

Q Where? A Right in this side in here and I never have a feeling like that to hurt me before and the boss sent me to Dr. Summers. When I go to Dr. Summers, Dr. Summers looked at me and he say that he didn't believe it was bad. I said the pain was pretty bad and he said you come early in the morning tomorrow at 8 o'clock and I see you again and I come the next morning about 8 o'clock. 20

Q What did you do after you left the doctor's, did you go back to work? A No, sir, I go right home. My boss took me home. He take me in the car you know.

Q And you came back to Dr. Summers the next day? A The next day about 8 o'clock in the morning. 30

Q What time was this accident, what time was this pain that you felt? A Between one and two o'clock.

Q One and two o'clock on the afternoon of April 18th? A Yes, sir.

Q Between the time you went home and the time you went back to the doctor's office was the pain still hurting you? A Yes, the pain was still going.

Q Did the pain leave you or did you still have the pain, did you feel any pain? A I 40

Trophem Borodaeff, direct.

feel pain but I stay home until the next morning and the next morning I have more pain and I go to see Dr. Summers, and Dr. Summers find out its swelled up and he say you have hernia and he called up Dr. Belford.

10 Q That was about 8 o'clock the next morning? A About 8 o'clock and then he call up my boss and my boss took me to Dr. Belford and he looked at me and he said you are in pretty bad shape you have to have an operation.

Q Were you operated on? A Yes.

Q When did you go back to work again? A I was out of work 6 weeks. I came back to work the first of June, 4 or 5 weeks after the operation.

20 Q That is from April 18th until June first, you didn't work? A Yes, I am not going to work.

Q You had an operation by Dr. Belford? A Dr. Summers was there that day, too.

Q Where was the operation performed, what hospital? A The Princeton Hospital.

Q Do you have the bills for the operation? A Yes, I have the bills.

30 Mr. Turp: There is the bill of the Princeton Hospital and also Dr. Belford's bill. Do you have any objection to them?

Mr. Trumbull: Well, I suppose the proper way to prove the reasonableness of the bills is to have the people here.

Mr. Turp: I have Dr. Summers here.

40 Mr. Trumbull: As to the hospital bill and Dr. Summers' bill of \$20 for assisting at the operation I am willing to admit that is a reasonable bill. \$79 for the hospital bill. I also see here a bill from Dr. Belford,

Trophem Borodaeff, cross.

your Honor, for \$156 for the operating fee I presume, is that so?

Mr. Turp: Yes.

Mr. Trumbull: And I am very frank to say I don't know whether that is a reasonable charge or not.

The Commissioner: What does the law say about charges in hernia cases?

10

Mr. Trumbull: There is nothing in particular. The act generally provides that the charges should be paid.

The Commissioner: Now wait, I thought you were an expert on compensation?

Mr. Trumbull: I haven't looked into that feature of it. I don't think it mentions any exact sum.

20

The Commissioner: Paragraph 11-X. You might as well let them go in for \$150. As I understood it this employer took this man to the hospital and to the doctor and incurred these bills. I can allow him \$150. You can enter in here \$150 assuming the case is a compensable one. Are there any doctors present at all?

Mr. Turp: Yes, sir, I have Dr. Summers. That is all.

30

Cross examination by Mr. Trumbull.

Q On the day of this accident you were lifting a 40-quart can of milk, isn't that so? A Yes.

Q You were putting it into the separating machine there? A No, in the bottling machine.

Q And you had to lift that can for about 4 feet, do you not in order to spill the milk into this machine, do you not? A Yes.

40

Trophem Borodaeff, cross.

Q And you lifted this can for the distance of 4 feet when you felt this pain, isn't that so?

A Yes, when I lifted that can and started dumping it in I have a pain and I call my helper because I couldn't stand. My boy came and helped me and in about 10 or 15 minutes I stop.

Q 10 or 15 minutes later you stopped? A My boss came and I just sat around until the boss came out. I didn't get out—

Q Don't talk so much.

The Commissioner: Talk a little slower, you don't speak English so good.

The Witness: I am sorry.

20 Q Let me ask you this. You lifted this 40-quart can of milk up? A Yes.

Q As you were spilling it into this machine you felt this pain, isn't that right? A Yes.

Q So you spilled the rest of the milk into the machine, didn't you, you emptied that 40-quart can? A And my helper helped me.

Q And then you worked for 10 or 15 minutes? A I am not attending to work. I was watching how the boy worked. I didn't work I just watched him because I no leave before the boss come.

30 Q Just answer the questions? A All right, please.

Q At the time you felt this pain? A Yes.

Q How much of the milk had you spilled into this machine?

The Commissioner: You had better say poured, maybe he will understand what you mean.

Trophem Borodaeff, cross.

Q Poured into the machine, how much of the milk was out of the can when you felt this pain? A I couldn't tell you because I have a pain and I hold that can about a second or two seconds and the man was right there and helped me hold it.

Q He helped you get the rest of the milk into the machine, didn't he? A Yes. 10

Q And after that you spilled or you emptied two or three other cans into this machine helped by this boy, didn't you? A No, I didn't do it. I just watch him, what he do. See.

Q You say now that you didn't help him spill two or three other cans of milk into the machine after you felt this pain? A I just watch him.

Q You just watched him? A Yes, sir. 20

Q When you felt this pain what did you do, holler for the boy and tell him to come over? A Yes.

Q How far away was he? A About 5 or 6 feet.

Q So he came over? A He jumped right there.

Q He jumped over to you and he helped you get the milk out of the can, is that right? A Yes. 30

Q And then there were other cans of milk there, weren't there, that had to be put into the machine? How many cans of milk were there there that you had to work on? A I couldn't remember now.

Q About? A I can't tell you now.

Q About how many? A Maybe two other half cans.

Q Before you left the place that day those two half cans of milk went into the bottling 40

Trophem Borodaeff, By the Commissioner.

machine, too, didn't they? A They do, the other two boys they do it.

Q You helped the other boys push that milk into the machine? A No, I just watch him, I just tell him how to do it.

10 Q You just stood and watched him? A Yes, because I don't leave before the boss came.

Q How soon did the boss come? A Just a few minutes and then the boss come.

Q Did you talk it over with him? A He said, "What is the trouble" and I said, "I hurt myself" and he took me in the office and he said, "You go ahead to the doctors."

Q How soon after you felt this pain did the boss come? A Well, I couldn't tell you because the boss was right there in the office.

20 Q How long about? A I just call in the office and the boss came right out there.

Q About how long was that? A I don't know.

By the Commissioner.

Q Two hours? A No, sir.

Q One minute? A No answer.

Q Ten minutes? A A few minutes.

30 Q Five minutes? A A few minutes, 5 or 6 minutes, maybe.

Q During this few minutes you were standing there watching the boy? A Yes.

Q Lifting these other two cans of milk? A Yes.

Q And he poured them into the bottling machine, is that right? A Yes.

Q And you were standing there during this few minutes, is that right? A Yes.

40 Q Where is the boss located in relation to where you work, has he got a house or an office

Trophem Borodaeff, By the Commissioner.

or what is there? A He has an office right there in the dairy.

Q And he came out? A Yes, the boss came in.

Q How did you get to the doctor's office, Mr. Borodaeff, in an automobile or what? A I just walked. 10

Q How far was Dr. Summers' office from your plant? A I think about two or three blocks.

Q And then after you stood around for a few minutes and watched this boy pour the milk into the bottling machine the boss came in? A Yes.

Q And did he talk over with you the accident, I mean the boss? A No, he sent me first.

Q The boss came and he sent you to Dr. Summers, is that correct? A Yes. 20

Q You walked over to Dr. Summers' office? A Yes.

Q How far is Dr. Summers' office from your plant? A I told you two or three blocks.

Q And Dr. Summers then examined you, is that right? A Yes, he examined me.

Q And then you went home, that is right, isn't it? A Yes.

Q And at 8 o'clock the next morning you went back to Dr. Summers? A Yes, sir. 30

Q And then is when you noticed this swelling or this lump? A The lump was there the next morning.

Q That was the time you noticed the lump? A Yes.

Mr. Trumbull: That is all.

Mr. Turp: That is all.

Dr. Alfred D. Summers, direct.

DR. ALFRED D. SUMMERS, sworn for the petitioner.

Direct examination by Mr. Turp.

10 Q Dr. Summers, you are the doctor to whom Mr. Borodaeff came after his injury, are you not? A Yes, sir.

Q Did you examine him on April 18, 1929? A Yes, sir.

Q Do you have any recollection of the approximate time? A I think it was near the end of my office hours, my office hours are over at two o'clock in the afternoon.

20 Q What did you find? From the time he came in, just state to the Court what you did and what you found? A I didn't find much of anything except what he told me of the pain down in his right groin. There was nothing in evidence, perhaps a little tenderness but nothing definite.

Q You advised him to come back the next morning? A I did.

Q Did he come back the next morning? A Yes.

30 Q What did you find on that occasion? A He had swelling in his right groin which I thought was hernia.

Q What did you advise him to do? A I advised him to have it looked after by a surgeon and take the surgeon's advice.

Q Do you know whether or not he went to Dr. Belford at the Princeton Hospital? A Yes, I know he did.

Q Did he have an operation for hernia? A Yes, sir.

40 Q Who performed the operation? A Dr. Belford.

Dr. Alfred D. Summers, direct.

Q Did you observe the operation? A Yes, sir.

Q What did you find as a result of the operation? A He had what you would call a right inguinal hernia, that is, a bulging of the abdominal contents through the inguinal ring.

Q Was there any evidence to show whether it was an old or new hernia? A The only thing you have to go by is the thickness of the wall and protruding parts and whether the thing is bound down with what is known as adhesions. As I remember this case the wall was very thin and there were no adhesions. I should say from the looks of the thing it was a recent hernia.

Q When he came to you was there evidence of pain, did he show signs of pain? A He was in pain, there is no question about that.

Q And it was there the next day when he came back in the morning, was it not? A Yes.

Q It was between one and two that he was there on the eighteenth and he came back to you on the nineteenth in the morning? A Yes.

Mr. Turp: Cross examine.

Mr. Trumbull: No questions.

By the Commissioner.

Q Just a moment, doctor, you spoke of an abdominal hernia, in what respect is that different from an inguinal hernia? A No, I said this was an inguinal hernia.

Q Had that hernia descended when you first saw it?

Mr. Trumbull: On the 18th.

Dr. Alfred D. Summers, re-direct.

A I don't think so because I would naturally think of hernia with the history as he gave it to me. I looked for hernia and I didn't find it.

10 Q You cannot say there had been an actual descent when he came to you? A At least not externally. It may have started to descend and not present itself outside. That is, it travels a little distance from the inside to the outside.

Q You couldn't say whether that hernia descended? A No, I could not.

Mr. Trumbull: He definitely stated it was the 19th that he noticed the swelling.

Re-direct examination by Mr. Turp.

20 Q You say in your opinion this was of recent origin? A Yes.

Q Would it be possible for a hernia to have been caused on the 18th and started to descend but not to have descended to a point to give any evidence until the 19th externally?

Mr. Trumbull: Don't answer that, doctor. I object to that on the ground it is immaterial and deals with a possibility.

30 Mr. Turp: It is an expert question.

Mr. Trumbull: I object to it because it is immaterial, as your Honor very well knows.

The Commissioner: I am glad you think I know so much about it.

Mr. Trumbull: And in the second place, it deals with a possibility.

40 The Commissioner: I was under the suspicion the answer wouldn't help your case,

Motion to Dismiss Petition.

Mr. Turp. If you don't want it answered all right.

Mr. Turp: I would rather have it answered. The statute says the descent must occur immediately after the accident.

The Commissioner: Read the whole thing, not part of it. 10

Mr. Turp: Do you overrule this question that I have asked the witness?

The Commissioner: Go ahead and answer the question.

Mr. Trumbull: I object to it on the ground it is immaterial.

The Commissioner: Objection overruled.

Mr. Trumbull: Exception.

A In my opinion, I think that is possible but I don't think anyone can state positively that is true. 20

Q In this particular case, doctor, in your opinion was the hernia caused by the injury on the 18th?

Mr. Trumbull: Please don't answer that. I object to that on the ground even that is immaterial.

A I think it was. I frankly think it was caused by the accident. 30

Mr. Turp: That is all.

Mr. Trumbull: That is all.

Mr. Turp: That is our case except I couldn't have Dr. Belford here this morning, he was operating.

Mr. Trumbull: I want to move for a dismissal of the petition on two grounds: 40

Certificates of Court Reporter and Commissioner.

First, on the ground there is no proof that there was immediate prostration; and secondly, there is no proof there was an immediate descent of the hernia.

10 The Commissioner: I will have to study the testimony that has been given and I will let you hear from me.

Both sides rest.

I, JOHN F. TRAINOR, one of the court reporters of the Workmen's Compensation Bureau, do hereby certify that the foregoing is a true and correct transcript of the testimony taken by me in the above entitled cause and reproduced into typewriting according to the best of my skill and ability.

20

JOHN F. TRAINOR,
Court Reporter.

I, WILLIAM E. STUBBS, Deputy Commissioner of the Workmen's Compensation Bureau, do hereby certify that John F. Trainor is one of the court reporters of the Workmen's Compensation Bureau and is the proper person to certify to the correctness of this transcript.

30

W. E. STUBBS,
Deputy Commissioner,
Workmen's Compensation Bureau.

Filed October 31, 1930.

CHARLES P. HUTCHINSON,
County Clerk.

40

**FINDINGS OF FACTS AND DISMISSAL
OF PETITION.**

Filed October 31, 1930.

NEW JERSEY DEPARTMENT OF LABOR.
WORKMEN'S COMPENSATION BUREAU.

10

TROPHEM BORODAEFF,

Petitioner,

vs.

PROVINCE LINE DAIRY, INC.,

Respondent.

*Finding of
Facts and
Dismissal of
Petition.*

A formal petition having been filed in the above entitled matter the above-entitled case came on for a hearing on May 24, 1930, wherein the petitioner was represented by James S. Turp, and the respondent by Walter X. Trumbull.

20

The petitioner testified that on April 18, 1929, he was working for the respondent and during the course of his employment he lifted up a fourty quart can of milk whereupon he was stricken with a pain in his right side and he was forced to quit work at once. His boss sent him to a physician by the name of Dr. Sommers of Princeton, New Jersey. Dr. Sommers examined the petitioner and found no external evidence of any injury nor did he find that there was any tearing of the abdominal wall. Dr. Sommers testified that there was no descent on April 18, 1929, when he first examined the petitioner. This fact was also admitted by the petitioner who testified that on the morning of April 19, 1929, which was one day after the accident he observed a swelling in his right side and he then placed himself under the date of Dr. Sommers who pre-

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Finding of Facts and Dismissal of Petition.

scribed for him and he was subsequently operated on by Dr. Belford of Princeton, New Jersey for a hernia.

10 I find as a matter of fact that in this case there was no immediate descent of the hernia which the petitioner suffered from. Paragraph No. 11X of the Workmen's Compensation Act requires that the descent of the hernia must immediately follow the cause. My construction of the word "immediate" under the terms of the act means "at once." I find as a matter of fact that the descent of the hernia in this case did not occur until April 19, 1929, which is one day later than the date of the accident.

In view of the foregoing fact I hereby order a dismissal of the petition filed in this matter.

20

W. E. STUBBS,
Deputy Commissioner.

Sept. 29, 1930.

I, WILLIAM E. STUBBS, Deputy Commissioner and Secretary of the Workmen's Compensation Bureau, hereby certify the foregoing to be a true copy of the determination filed in this cause.

30

W. E. STUBBS,
M.

Filed and entered C. P. 1928 p. 512, Oct. 31, 1930.

CHARLES P. HUTCHINSON,
County Clerk.

40

NOTICE OF APPEAL.

Filed October 16, 1930.

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

Trenton, Mercer County, District.

10

TROPHEM BORODAELL,

Petitioner,

vs.

PROVINCE LINE DAIRY, INC.,

Respondent.

*Notice of
Appeal.*

The petitioner, Trophem Borodaell, hereby ap-
peals to the Court of Common Pleas of Mercer
County from the judgment entered in the above
entitled cause on September 29, 1930, wherein
Deputy Commissioner W. E. Stubbs ordered a
dismissal of the petition filed in this matter.

20

Dated: October 14, 1930.

JAMES S. TURP,
Attorney for Petitioner.

30

CHARLES P. HUTCHINSON,
County Clerk.

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**DESIGNATION OF TIME AND PLACE
FOR HEARING.**

Filed November 7, 1930.

10 NEW JERSEY DEPARTMENT OF LABOR,
WORKMEN'S COMPENSATION BUREAU.

<p>TROPHEM BORODAEFF, <i>Petitioner,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>PROVINCE LINE DAIRY, INC., <i>Respondent.</i></p>	}	<p><i>On Appeal to the Common Pleas Court of Mercer County. Designation.</i></p>
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20 Application being made to the court in the
above entitled cause by James S. Turp, attorney
for appellant:

It is, on this fifth day of November, nineteen
hundred and thirty, ORDERED, that the fifth day
of December, nineteen hundred and thirty, at
the hour of two o'clock in the afternoon, at
the Court House, in the City of Trenton, be
designated as the time and place for the hearing
of the appeal in the above entitled cause.

30 GODFREY W. SCHROTH,
Judge.

Filed and entered, C. P. Min. 1928, p. 516,
November 7, 1930.

CHARLES P. HUTCHINSON,
County Clerk.

NOTICE OF TIME FOR HEARING.

Filed November 12, 1930.

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

TROPHEM BORODAEFF,
Petitioner,
vs.
PROVINCE LINE DAIRY, INC.,
Respondent.

*On Appeal
to the
Common
Pleas Court
of Mercer
County.*

*Notice of
Time for
Hearing.*

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20

To: Walter K. Trumbull, Attorney for Re-
spondent.

PLEASE TAKE NOTICE that the hearing of the
appeal in the above named matter will be heard
before Honorable Judge Godfrey W. Schroth,
Judge of the Court of Common Pleas of Mercer
County, on Friday, December fifth, A. D. 1930,
at the Court House, in Trenton at 2 o'clock in
the afternoon, or as soon thereafter as the
Court can attend to the same.

30

Dated November 7, 1930.

Your obedient servant,

JAMES S. TURP,
Attorney of Petitioner.

Filed November 12, 1930.

CHARLES P. HUTCHINSON,
County Clerk.

40

DESIGNATION OF JUDGE ROBBINS.

Filed December 2, 1930.

COURT OF COMMON PLEAS,
 COUNTY OF MERCER,
 STATE OF NEW JERSEY.

10

I, GODFREY W. SCHROTH, President Judge of the Court of Common Pleas in and for the County of Mercer being unable to promptly dispose of the accumulated business now pending and to come before the Court of Common Pleas, Court of Quarter Sessions, Court of Special Sessions and Orphans' Court, in and for the County of Mercer, therefore, by virtue and authority of the statute in such case made and provided,

20

I do hereby request and designate the Honorable A. O. Robbins, President Judge of the Court of Common Pleas of the County of Hunterdon in order to assist in disposing of the accumulated business of said courts, to sit and hold Court of Common Pleas, Court of Quarter Sessions, Court of Special Sessions and Orphans' Court, in and for the County of Mercer, on the fifth, twelfth and twenty-fourth days of December, A. D. one thousand nine hundred and thirty, for the purpose of trying issues in said courts, and of hearing and determining such other matters as said courts, or any Judge thereof, may be empowered by law to hear, try and determine.

30

MADE and directed to be entered in the minutes of this court, this second day of December, A. D. one thousand nine hundred and thirty.

40

GODFREY W. SCHROTH,
 President Judge of the Mercer County Court
 of Common Pleas.

Filed and entered in the Common Pleas minutes
on December 2, 1930.

CHARLES P. HUTCHINSON,
County Clerk.

10

**MINUTES OF HEARING BEFORE COURT
OF COMMON PLEAS.**

Mercer County Court of Common Pleas met on
Friday, December 5, 1930, at 2:00 o'clock P. M.

Present: Hon. A. O. Robbins, Acting Judge of
the Court of Common Pleas.

TROPHEM BORODAEFF,

Petitioner,

vs.

PROVINCE LINE DAIRY, INC.,

Defendant.

*Workmen's
Compensa-
tion.*

On Appeal.

20

James S. Turp, for the petitioner.

Walter X. Trumbull, attorney for the defend-
ant.

30

Mr. Turp, moved for reversal of decision of
Deputy Commissioner of Labor and award peti-
tioner compensation as allowed by law.

Mr. Trumbull opposed motion and asked for
dismissal of appeal.

Court announced that decision of deputy com-
missioner is reversed and compensation allowed
petitioner as provided for by law.

Mr. Turp instructed to draw order in con-
formity with Court's decision.

40

ORDER OF COURT OF COMMON PLEAS.

Filed December 12, 1930.

COURT OF COMMON PLEAS OF
MERCER COUNTY.

10	TROPHEM BORODAEFF, <i>Petitioner-Appellant,</i> <i>vs.</i> PROVINCE LINE DAIRY, INC., <i>Respondent-Appellee.</i>	}	<i>Workmen's Compensation. On Appeal. Order.</i>
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20 This matter coming on to be heard on appeal from the judgment of the Deputy Commissioner of the Workmen's Compensation Bureau of the New Jersey Department of Labor on Friday, December 5, 1930, and it appearing that said appeal was duly and properly taken and due notice of the day fixed by this Court was given respondent-appellee, and after due argument by James S. Turp, attorney for petitioner-appellant and Walter X. Trumbull, attorney for respondent-appellee, and it being conceded by the said attorneys that the only question involved in the appeal is whether or not "the descent of the hernia immediately followed the cause" as provided by the statute in such cases made and provided, and the Court being satisfied that the hernia did descend immediately, in accordance with said statute:

30 Now, therefore, it is on this fifth day of December, A. D. 1930, Ordered, that the finding of the said Deputy Commissioner of the Workmen's Compensation Bureau of the New Jersey Department of Labor be, and the same hereby is, reversed, and the Court finds as a matter of fact and law that the descent of the hernia immedi-

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Order of Court of Common Pleas.

ately followed the cause and that said hernia was caused by the accident involved in these proceedings; and that petitioner-appellant is entitled to compensation.

It is hereby further ordered, that judgment be entered for the petitioner-appellant in the sum of one hundred dollars (\$100.00) compensation, being the maximum of twenty dollars (\$20) each week allowed by the statute for a period of five weeks, and the further sum of one hundred and fifty dollars (\$150.00) for medical expenses and costs incurred in recovery, making a total of two hundred and fifty dollars (\$250.00), together with costs of suit to be taxed. 10

It is hereby further ordered, that petitioner-appellant be, and hereby is, allowed a counsel fee of one hundred and fifty dollars (\$150) to be paid to James S. Turp, attorney for petitioner-appellant by respondent-appellee, which said sum shall be included in the taxed costs. 20

A. O. ROBBINS,
Acting Judge.

Filed and entered C. P. Min. 1930, p. 22, Dec. 12, 1930.

CHARLES P. HUTCHINSON, 30
County Clerk.

JUDGMENT OF COURT OF COMMON PLEAS.

MERCER COUNTY COURT OF COMMON PLEAS.

10

TROPHEM BORODAEFF,
Petitioner-Appellant,
vs.
 PROVINCE LINE DAIRY, INC.,
Respondent-Appellee.

*Workmen's
 Com-
 pensation.
 Judgment.*

James S. Turp, attorney of petitioner.
 Judgment entered in favor of the
 20 above named petitioner in the sum of
 one hundred dollars, compensation being
 the maximum of twenty dollars each
 week allowed by statute for a period of
 five weeks \$100.00
 and the further sum of one hundred and
 fifty dollars, for medical expenses and \$150.00
 costs incurred in recovery and the fur-
 ther sum of one hundred and fifty dol-
 lars allowed a counsel fee \$150.00
 30

\$400.00

Whole amount of damages is four hundred dol- lars.

Judgment signed and entered this fifth day of December, A. D. 1930.

A. O. ROBBINS,
Acting Judge.

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ORDER ALLOWING EXCEPTION.

Filed December 24, 1930.

**COURT OF COMMON PLEAS OF
MERCER COUNTY.**

<p>TROPHEM BORODAEFF, <i>Petitioner-Appellant,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>PROVINCE LINE DAIRY, INC., <i>Respondent-Appellee.</i></p>	}	<p><i>Workmen's Com- pensation.</i></p> <p><i>On Appeal.</i></p> <p><i>Order.</i></p>	<p>10</p>
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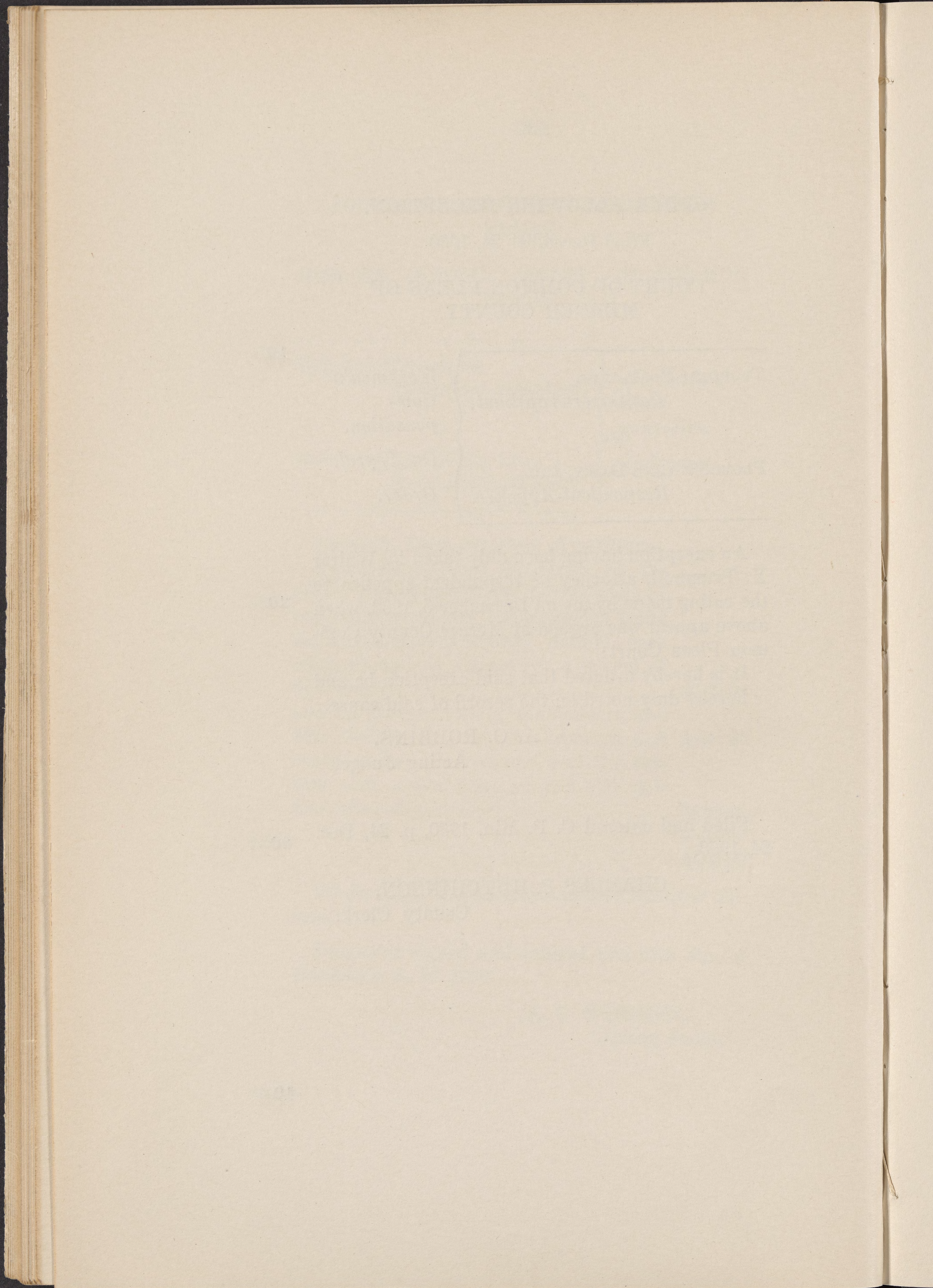
An exception having been duly taken by Walter X. Trumbull, attorney of respondent-appellee to the ruling made by me on December 5, 1930, when above appeal was argued at Mercer County Common Pleas Court: 20

It is hereby ordered that said exception be and is hereby duly noted on the record of said cause.

A. O. ROBBINS,
Acting Judge.

Filed and entered C. P. Min. 1930, p. 24, Dec. 24, 1930. 30

CHARLES P. HUTCHINSON,
County Clerk.



OPINION OF SUPREME COURT.

NEW JERSEY SUPREME COURT.

No. 204, May Term, 1931.

<p>TROPHEM BORODAEFF, <i>Petitioner-Defendant in Certiorari,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>PROVINCE LINE DAIRY, INC., <i>Respondent-Prosecutor in Certiorari.</i></p>	}	10
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Argued May 7, 1931; Decided May 13, 1932.

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Syllabus.

In the case of a hernia claimed to have been caused by a sudden effort or severe strain, the first requirement of Chap. 49 Laws of 1923 to render the hernia compensable, namely, that "the descent of the hernia immediately followed the cause," means "soon enough and in such manner as to make it appear clear that the descent was the effect of the strain and pain complained of which forced cessation of work."

30

On certiorari, etc.

Before Justices Trenchard and Donges.

For the prosecutor in certiorari, Coult, Satz & Tomlinson (De Voe Tomlinson, of counsel).

For the defendant in certiorari, James S. Turp.

40

Opinion of Supreme Court.

The opinion of the Court was delivered by
TRENCHARD, J.,

10 This writ brings up for review a judgment of the Mercer County Court of Common Pleas which reversed the order of the Workmen's Compensation Bureau dismissing the petition for compensation.

20 The situation was this: On April 19, 1929, between one and two p. m., the petitioner, while at work in the dairy of the Province Line Dairy, Inc., hurt himself "in the side" while lifting a 40 quart can of milk. He had to stop work immediately because of the "bad" pain, and notified his boss, who sent him to a doctor. The doctor examined him and noticed "nothing definite" but told him to come back the next morning at eight a. m., and then the boss took him home. The next morning, still in pain, the petitioner noticed a lump on his abdomen. At eight a. m., his boss took him to the doctor's office, who diagnosed the case as one of "right inguinal hernia" requiring an operation which was performed at once at a hospital. That was about eighteen hours after the strain. A petition was filed for compensation and the Workmen's Compensation Bureau dismissed it on the ground that the first
30 of the five requirements to establish a compensable hernia was not established, namely, "first the descent of the hernia immediately followed the cause." On appeal by the employee the Mercer County Court of Common Pleas reversed that order and entered judgment for the workman. The employer now prosecutes this writ.

40 Of course this is not a case of "real traumatic hernia," but the employer concedes that the

Opinion of Supreme Court.

proof presents a compensable case of hernia caused by strain in every respect except the one above mentioned, namely, "the descent of the hernia immediately followed the cause."

Now the language of the Act requiring construction is this:

"Hernia is a disease which ordinarily develops gradually, being very rarely the result of an accident. Where there is real traumatic hernia resulting from the application of force directly to the abdominal wall, either puncturing or tearing the wall, compensation will be allowed. All other cases will be considered as either congenital or of slow development and not compensable, being a disease rather than an accidental injury; unless conclusive proof is offered that the hernia was immediately caused by such sudden effort or severe strain that, first the descent of the hernia immediately followed the cause; second, that there was severe pain in the hernial region; third, that there was such prostration that the employee was compelled to cease work immediately; fourth, that the above facts were of such severity that the same was noticed by the claimant and communicated to the employer within twenty-four hours after the occurrence of the hernia; fifth, that there was such physical distress that the attendance of a licensed physician was required within twenty-four hours after the occurrence of the hernia." P. L. 1923, p. 104.

Thereby it seems clear that the phrase "immediately followed the cause" should not be construed to mean "instantly followed the strain." Probably in most such cases there is some appreciable lapse of time between the cause and

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Opinion of Supreme Court.

the descent. No doubt the word "immediately" is sometimes used in the sense of "instantly," but that is by no means its only meaning. Webster's New International Dictionary gives the following definition of "immediately":—"Without intermediary; in direct connection or relation; in a way to concern or affect directly or closely; without intervention of any person or thing; proximately."

We think that the phrase "immediately followed the cause" should be held to mean "soon enough and in such manner as to make it appear clear that the descent was the effect of the strain and pain complained of which forced cessation of work."

This is apparent when we consider the additional requirement of the statute that the pain and prostration "were of such severity that the same was *noticed by the claimant* and communicated to the employer *within twenty-four hours after the occurrence of the hernia.*" We believe that the view we take finds support in the case of *Yannone v. Hind Steel Wire Works*, 9 N. J. Misc. Reports 501. The real purpose of the precautions laid down by the Legislature in the section here involved is to protect the employer from claims for hernia not actually caused by the accident. In this case the only medical witness said "I frankly think it was caused by the accident," and considering the other undisputed evidence, we think the judgment for the employee was entirely justified under the rule stated.

The judgment will be affirmed, with costs.

**ORDER OF AFFIRMANCE AND
REMITTITUR.**

NEW JERSEY SUPREME COURT.

TROPHEM BORODAEFF,
Petitioner-Defendant,
vs.
PROVINCE LINE DAIRY, INC.,
Respondent-Prosecutor.

On Writ of 10
Certiorari.

Order of
Affirmance
and Remit-
titur to
Court of
Common
Pleas.

This cause coming on to be heard at the May
term, 1931, in the presence of the respective
parties and the case having been read, and the
argument of counsel, as well as the record and
proceedings duly considered upon the writ of
certiorari and specified in the reasons on said
writ of certiorari, etc. 20

It is thereupon on this 20th day of May, 1932,
ORDERED, ADJUDGED and DECREED that the judg-
ment of the Mercer County Court of Common
Pleas herein be and the same is hereby affirmed, 30
and it is further Ordered that the costs of this
writ of certiorari be paid by the respondent-
prosecutor in certiorari, and that the record and
proceedings be remitted to the Mercer County
Court of Common Pleas, to be therein proceeded

Order of Affirmance and Remittitur.

on according to law and the practice of said Court.

Entered May 20, 1932.

On motion of Jas. S. Turp, attorney for petitioner-defendant in certiorari.

10

A true copy.

FRED L. BLOODGOOD,
Clerk.

20

30

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NOTICE OF APPEAL.

Filed June 14, 1932.

NEW JERSEY SUPREME COURT.

<p>TROPHEM BORODAEFF, <i>Petitioner-Defendant,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>PROVINCE LINE DAIRY, INC., <i>Respondent-Prosecutor.</i></p>	}	<p><i>On</i> <i>Certiorari.</i></p> <p><i>Notice</i> <i>of Appeal.</i></p>	10
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To James S. Turp, Esq., attorney for petitioner-defendant:

SIR:

TAKE NOTICE that the respondent-prosecutor, Province Line Dairy, Inc., appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in this cause against the said respondent-prosecutor.

Dated: June 7, 1932.

COULT, SATZ & TOMLINSON,
Attorneys for Respondent-Prosecutor.

Service of the within is hereby acknowledged
this 10th day of June, 1932.

JAS. S. TURP,
Attorney for Petitioner-Defendant.

GROUNDS OF APPEAL.

Filed June 14, 1932.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10

TROPHEM BORODAEFF,
Petitioner-Defendant,

vs.

PROVINCE LINE DAIRY, INC.,
Respondent-Prosecutor.

*On
Certiorari.*

*Grounds
of Appeal.*

To: James S. Turp, Esq., attorney for petitioner-defendant:

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SIR:

PLEASE TAKE NOTICE that the respondent-prosecutor relies upon the following ground of appeal:

1. Because the New Jersey Supreme Court affirmed the judgment of the Mercer County Court of Common Pleas, whereas it should have set aside and reversed said judgment.

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COULT, SATZ & TOMLINSON,
Attorneys for Respondent-Prosecutor.

Service of the within is hereby acknowledged this 10th day of June, 1932.

JAS. S. TURP,
Attorney for Petitioner-Defendant.

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New Jersey Court of Errors and Appeals.

TROPHEM BORODAEFF,
Petitioner-Appellee,

vs.

PROVINCE LINE DAIRY INC.
Respondent-Appellant.

**On Appeal from
Supreme Court.**

BRIEF OF APPELLANT.

Appellee, Trophem Borodaeff (hereinafter called petitioner), filed a petition for compensation under the Workmen's Compensation Act of the State of New Jersey, alleging that on April 8th, 1929, while in the employ of appellant, Province Line Dairy Inc. (hereinafter called respondent), he sustained a hernia which arose out of and in the course of his employment within the contemplation of the said Act.

A hearing was had on the petition by the Workmen's Compensation Bureau. At the conclusion thereof a judgment was rendered in favor of respondent and the petition accordingly dismissed.

Petitioner then appealed to the Court of Common Pleas of Mercer County where the judgment of the Bureau was reversed and an award entered in his favor (R., 33).

Respondent obtained a Writ of Certiorari to review this award. The Supreme Court, after considering the arguments of the parties under

the Writ, affirmed the judgment of the Mercer Common Pleas in favor of petitioner.

This appeal seeks to review that judgment of affirmance in the Supreme Court.

Statement of Facts.

Petitioner was employed in the dairy house of respondent, Province Line Dairy Inc. at Princeton, New Jersey. His work consisted mainly in bottling milk. This was done usually by lifting a forty quart can of milk, either with or without the assistance of a helper, and dumping, the contents into a bottling machine.

The only testimony in the case as to the happening of the accident was given by petitioner himself. He asserted that on April 18, 1929 between one and two o'clock in the afternoon he lifted a forty quart can of milk up into the bottling machine and "then I hurt myself a little bit" (R., 21). He held the can for one or two seconds thereafter and then with the assistance of his helper emptied the rest of the milk into the machine (R., 25).

He said that when he "hurt" himself he felt a pain in his right side and that he had to cease working. Then his boss sent him to Dr. Summers for examination (R., 21). He walked over to Dr. Summers' office, a distance of two or three blocks. He was examined by the doctor and told to come back for re-examination the following morning.

The first time he noticed any swelling or lump in his right side or right groin was at eight o'clock in the morning of the day following the accident (R., 27). He returned to Dr. Summers' at about this time and after examination was told that he had a hernia. Dr. Summers then telephoned Dr.

Belford to make arrangements for an operation and thereafter a hernia operation was performed.

According to Dr. Summers, who was produced by petitioner, when he first examined Borodaeff on April 18, 1929, the day of the accident between one and two o'clock in the afternoon, he "didn't find much of anything except what he told me of the pain down in his right groin. There was nothing in evidence, perhaps a little tenderness, but nothing definite" (R., 28). Dr. Summers said that he looked for a hernia at the time of this examination because of the history given him. *He found none.*

The next morning when he re-examined petitioner he found a swelling in the right groin which he diagnosed as an inguinal hernia (R., 28-29).

Dr. Summers also testified that when he first saw petitioner between one and two o'clock in the afternoon of April 18, 1930, the hernia had not descended.

Dr. Summers was the only medical witness produced at the hearing.

On the basis of this testimony, Deputy Commissioner Stubbs, who heard the case, decided that there had been no immediate descent of the hernia as required by the Workmen's Compensation Act and that consequently petitioner was not entitled to compensation. Accordingly he dismissed the petition and entered judgment for respondent (R., 33).

On appeal to the Mercer Common Pleas, Judge Robbins held that under the proof the descent of the hernia immediately followed the cause. He therefore reversed the judgment of the Bureau and awarded compensation to petitioner.

P O I N T O N E .

The Supreme Court erred in affirming the determination of the Mercer County Court of Common Pleas that on the facts proven in this case the descent of petitioner's hernia *immediately* followed the cause.

The Workmen's Compensation Act of this state which sets forth the requirements to be met by petitioner in order to secure a recovery for an alleged hernia, is as follows:

"Hernia is a disease which ordinarily develops gradually, being very rarely the result of an accident. Where there is real traumatic hernia resulting from the application of force directly to the abdominal wall, either puncturing or tearing the wall, compensation will be allowed. All other cases will be considered as either congenital or of slow development and not compensable, being a disease rather than an accidental injury; unless *conclusive* proof is offered that the hernia was *immediately* caused by such sudden effort or severe strain that, first, the descent of the hernia *immediately* followed the cause; second, that there was severe pain in the hernial region; third, that there was such prostration that the employee was compelled to cease work *immediately*; fourth, that the above facts were of such severity that the same was noticed by the claimant and communicated to the employer within twenty-four hours after the occurrence of the hernia; fifth, that there was such physical distress that the attendance of a licensed physician was required within twenty four hours after the occurrence of the hernia." (P. L. 1928, p. 281).

Without again setting forth the testimony in detail as it was presented, it appeared that the accident in question occurred between one and two

o'clock in the afternoon of April 18, 1929. Dr. Summers saw petitioner between one and two in the afternoon of the same day after the petitioner had walked two or three blocks from his place of employment to the doctor's office. At that time the doctor looked for a hernia because of the history given him and found *no descent* and *no hernia*. At eight o'clock the following morning, *eighteen hours after the accident*, on re-examination Dr. Summers found a swelling in the right groin which he diagnosed as inguinal hernia. Petitioner first noticed the swelling at about the same time—eight o'clock that morning.

So far as the case at bar is concerned, respondent concedes that the only question involved in this appeal is whether or not on the facts proved petitioner established that his hernia descended immediately within the contemplation of the quoted section of the Act.

Decision of the controversy involves the construction of the word "immediately" as it is used in the Act. Petitioner contended in the Supreme Court that by "immediately" the legislature meant "within a reasonable time."

This conclusion was based on two premises, *first* that the Workmen's Compensation is remedial legislation and therefore should be liberally construed and *second* that the New Jersey courts had considered the word "immediately" in other statutes and other contexts and adjudged its meaning to be "within a reasonable time."

The Supreme Court in its opinion in effect agreed with petitioner's construction although it did not use the expression "within a reasonable time." The language of the opinion is as follows:

"We think that the phrase 'immediately followed the cause' should be held to mean soon enough and in such manner as to make it

appear clear that the descent was the effect of the strain and pain complained of which forced cessation of work" (R., 48).

This is probably tantamount to saying "within a reasonable time in view of the circumstances of the case".

It must be conceded at the outset of this argument that no arbitrary definition of the word "immediate" can be propounded which will govern all cases. The construction to be given must necessarily depend largely on the circumstances of the case and the context in which it appears.

It is true as petitioner asserts that there are cases in the reports of this state holding "immediately" to mean "within a reasonable time." It has also been decided by the Supreme Court that "immediately" means "something stronger than within a reasonable time" (*Hexamer v. Southal*, 49 L. 682). However the significance of its use in the section of the Workmen's Compensation Act applicable here has never been before the courts for construction. None of the cited decisions is controlling or even helpful in this controversy because never has the word "immediately" appeared before the court in any context even remotely analogous. Respondent contends that the legislature employed it in this section of the Compensation Act in an effort to control a situation peculiar to hernia cases and to safeguard the employer from unjust hernia claims. It is therefore urged that even though the Workmen's Compensation Act is remedial legislation and therefore in general entitled to liberal treatment in the matter of construction, the word "immediately" in the context before the court can reasonably mean only "instantly" or "without any appreciable interval of time."

Consideration of the very strong and highly limiting expressions of this section of the statute seem to make it clear that the legislature intended this suggested strict construction. It begins with a recognition of what the legislature apparently regarded as an established medical fact. "Hernia is a disease which ordinarily develops gradually, being very rarely the result of an accident."

It goes on to describe the traumatic hernia and then holds all others to be congenital or of slow development and not compensable. In outlining the recognizable exceptions these significant expressions are used: "conclusive proof", "immediately caused", "descent immediately followed the cause".

This language most clearly demonstrates the reluctance with which the legislature made hernia claims presentable or compensable at all. Seemingly every effort that the ingenuity of the legislative mind could command was made to express the sentiment that hernias resulting from accidents are rare and to indicate that a strict compliance with the outlined requirements should be insisted upon.

It therefore seems incongruous and out of keeping with the spirit of this portion of the act to allow a liberal construction of its terms and especially of the terse word "immediately". Respondent suggests that the requirement of descent immediately following the cause should be considered in the light of the language "conclusive proof" and "immediately caused". On this basis the only reasonable definition is the one for which respondent contends.

In the cases where "immediately" has been held to mean "within a reasonable time", the situation was vastly different from that now before the court. The word ordinarily referred to

some act required to be done after the commission of another act or the happening of an event, such as "immediate recording", "immediate notice", etc. Such a construction with reference to an act to be done is perhaps sound, but in the case at bar where the word refers to a consequence resulting from a physical cause independently of the person's will or control, manifestly it cannot, when used as a word of time, have any such meaning. "Immediately" in our statute must mean immediately in point of time as related to the injury or cause rather than proximately in the sense of causation.

The decisions of the Compensation Bureau where the hernia portion of the Act is being invoked and construed daily ought to be helpful. The practical application of the act by these courts where the testimony of medical doctors as to the likelihood of a hernia following an accident is being considered constantly is persuasive evidence that respondent's definition should be adopted by this court. Unquestionably these courts place a strict construction on the word "immediately" and seem to consider it as synonymous with "instantly".

In the case of *Kovar v. Fox*, 5 Misc. 749, petitioner alleged that he sustained a hernia on October 20, 1925 while in the act of lifting a keg of nails. He testified that he immediately quit work and that evening consulted a physician, who, upon examination found he had a double hernia. The Workmen's Compensation Bureau denied compensation and dismissed the petition, saying:

"The Compensation Act requires conclusive proof of the five points referred to in subdivision X of paragraph 11, one of which five points is that the descent of the hernia immediately followed the cause. The testi-

mony shows that the petitioner, between the time of his injury in the afternoon, and the time he was examined by Dr. Ring in the evening of that day did not examine himself or have anyone examine him so as to be able to testify whether there was an immediate descent as required by the act. Dr. Ring testified there was no descent when he examined him that evening, and the best that can be drawn from the testimony of Dr. Ring is that, by inference, there was a descent. The legislature in its wisdom has placed the burden upon the petitioner to prove by conclusive evidence the five points stated in paragraph X of section 11, and the court, therefore, cannot find there was a descent, from inference, without substituting its judgment for the clear mandate of the act of the legislature.

“The petitioner having failed to establish by conclusive proof that the descent of the hernia immediately followed the cause, judgment must be entered in favor of the respondent.”

Fiorentino v. Cane Inc., 4 Misc. 768, is somewhat similar to the instant case. Petitioner claimed that on October 1, 1925 at about 11:50 A. M. he lifted a beam with the aid of a fellow workman and felt a pain in his right groin. He sat down for a period of time after which he had lunch and continued to work and thereafter worked until quitting time which was at 4:30. Then he went home and after his arrival at home examined himself and found a lump or a bulging in his right groin.

The Bureau held:

“That petitioner failed to establish an immediate descent of the hernia following the cause, and therefore has failed to satisfy the burden placed upon him, and the petition must be dismissed.”

The Bureau in dismissing a petition for compensation for hernia in the case of *Kolarz v. Albert Silk Co.*, 8 Misc. 725, said:

“There is no proof in this case of a traumatic hernia and, therefore, to recover the petitioner must prove by conclusive evidence the five points set forth in the statute. I am satisfied that the petitioner has failed to prove the first point which provides: ‘The descent of the hernia immediately followed the cause’. Dr. Weinert is the only doctor who saw the decedent a short time after the alleged accident. On the evidence introduced by the petitioner, the accident occurred between three and four o’clock in the afternoon. Dr. Weinert saw the decedent between six-thirty and seven o’clock that evening. At that time there was no protusion of the gut. It was only when the decedent coughed that an impact could be felt against the doctor’s fingers. Dr. McGuffy, of course, did not see the decedent until several days after the alleged accident.

“Drs. Russell, Brothers, Clay and Schultz all testified that in their opinion, based on the testimony of Dr. Weinert, there was no descent of the hernia at any time. It therefore appears that the petitioner has failed to prove conclusively that there was an immediate descent of the hernia following the cause.” (See also *Salgado v. Central Dye-stuff & Chemical Co.*, 2 Misc. 1039; *Chiarella v. Colgate & Co.*, 3 Misc. 12.)

In *Schulz v. Wickham Co.*, 6 Misc. 815, the Bureau denied a claim for hernia. In dismissing the petition the Deputy Commissioner emphasized that:

“The petitioner himself states that he did not notice any lump at the time of the alleged accident”.

According to the petitioner's case here the first time he noticed a lump was *eighteen hours* after the accident. A medical examination some appreciable time afterward wherein the examiner specifically looked for a hernia disclosed neither hernia nor descent thereof. Only the second medical examination eighteen hours later disclosed the hernia and the descent.

It is difficult to understand how this descent eighteen hours later can be said to immediately follow the cause whatever interpretation is given to "immediately". Descent at that late time does not seem to be within a reasonable time after the cause; it certainly is not instantly after the cause and it is not immediately thereafter as the Act is construed where it is being administered daily.

To allow a recovery here or to adopt the Supreme Court's interpretation of "immediately" is to render nugatory all the safeguards thrown about such claims and to pave the way for recovery in all hernia cases where the question of descent is involved. The rule propounded by the Supreme Court places no time limit on the descent at all as long as it appears "soon enough and in such manner as to make it appear clear that the descent was the effect of the strain and pain complained of which forced cessation of work."

Respondent urges that the decision of the Supreme Court loses sight of the real intention of the legislature and further that its perpetuation by adoption in this court will ultimately result in destruction of the statutory safeguards against improper and unjust hernia claims.

It is therefore submitted (1) that "immediately" as now in question means "instantly" or "without any appreciable interval of time" and (2) that in the present case in any event petitioner

failed to establish that the descent of the hernia immediately followed the cause. Accordingly the judgment of the Supreme Court should be reversed and that of the Workmen's Compensation Bureau dismissing the petition should be affirmed.

COULT, SATZ & TOMLINSON,
Attorneys of Respondent-Appellant.

JOHN J. FRANCIS,
DEVVOE TOMLINSON,
Of Counsel.

New Jersey Court of Errors and Appeals

TROPHEM BORODAEFF,
Petitioner-Defendant,
APPELLEE,

vs.

PROVINCE LINE DAIRY, INC.,
Respondent-Prosecutor,
APPELLANT.

**On Appeal from
Supreme Court.**

BRIEF OF PETITIONER-DEFENDANT, APPELLEE

This case involves the construction of the Workmen's Compensation Act particularly with reference to hernia. Petitioner-Defendant Appellee was employed by Province Line Dairy, Inc., the Respondent-Prosecutor Appellant, and while so engaged in said employment sustained an accident which, the physician who attended him, Dr. Alfred D. Summers, was of the opinion caused the hernia for which Petitioner-Defendant Appellee claims compensation (State of Case, Page 31). The only question involved is whether or not the hernia descended immediately in compliance with the statute. The accident happened April 18, 1929, between one and two o'clock in the afternoon, and the lump did not appear until the next morning, April 19, at about eight o'clock. It is conceded by the attorneys for Respondent-Prosecutor Appellant that all of the other requirements of the Statute are present except the requirement

that "first the descent of the hernia immediately followed the cause;" this they alleged did not happen. In other words, they concede that there was severe pain in the hernial region; that there was such prostration that the employee was compelled to cease work immediately; that the above facts were of such severity that the same was noticed by the claimant and communicated to the employer within twenty-four hours after the occurrence of the hernia; and that there was such physical distress that the attendance of a licensed physician was required within twenty-four hours after the occurrence of the hernia. The language of the statute is as follows:

"Hernia is a disease which ordinarily develops gradually, being very rarely the result of an accident. Where there is real traumatic hernia resulting from the application of force directly to the abdominal wall, either puncturing or tearing the wall, compensation will be allowed. All other cases will be considered as either congenital or of slow development and not compensable, being a disease rather than an accidental injury; unless conclusive proof is offered that the hernia was immediately caused by such sudden effort or severe strain that, first the descent of the hernia immediately followed the cause; second, that there was severe pain in the hernial region; third, that there was such prostration that the employe was compelled to cease work immediately; fourth, that the above facts were of such severity that the same was noticed by the claimant and communicated to the employer within twenty-four hours after the occurrence of the hernia; fifth, that there was such physical

distress that the attendance of a licensed physician was required within twenty-four hours after the occurrence of the hernia.
* * * * ” P. L. 1923, Page 101 at Page 104.

The Deputy Commissioner held that the hernia did not descend immediately and therefore dismissed the petition. On appeal to the Mercer County Court of Common Pleas, Acting Judge A. O. ROBBINS held that the descent of the hernia immediately followed the cause and reversed the findings of the Workmen's Compensation Bureau. The case was then taken before the Supreme Court on Writ of Certiorari by the Respondent-Prosecutor Appellant and the Supreme Court rendered a decision (State of Case, Page 45) wherein that Court held that the clause "the descent of the hernia immediately followed the cause" in the statute means "soon enough and in such manner as to make it appear clear that the descent was the effect of the strain and pain complained of which forced cessation of work" and affirmed the judgment of the Common Pleas Court. It is now before this Court on appeal from the Supreme Court.

It is the contention of Petitioner-Defendant Appellee that the word "immediately," as used in the statute above quoted, means within a reasonable time after the accident or cause. There are no cases in New Jersey construing the word "immediately" in this statute but there are a number of cases construing the word "immediately" in connection with other statutes and they all hold that the word "immediately" means within a reasonable time. Cases deciding this point are as follows: *Jacob B. Gaddis and Others ads. Howell and Birdsall*, 31 *New Jersey Law* 313,

decided by the Supreme Court. The court holds that the word "immediate," as usually employed, means within a reasonable time, having due regard to the nature and circumstances of the case and that in legal proceedings it does not import the exclusion of any interval of time. *William Gulden vs. August W. Lucas, et als.* 81 *New Jersey Equity* 106, affirmed in 93 *Atlantic* 1084. *Brockhurst vs. Cox*, 71 *New Jersey Equity* 703. So far as I know there are no cases in New Jersey which give a different construction to the word.

In addition, Webster's New International Dictionary gives two definitions for the word "immediately" as follows:

(a) Without intermediary; in direct connection or relation; in a way to concern or affect directly or closely; without intervention of any person or thing; proximately, directly, closely; as, immediately contiguous.

(b) Without interval of time; without delay, straightway; instantly, at once.

Numerous cases in New Jersey have held that the Workmen's Compensation Act is a remedial statute and should be liberally construed. Therefore, on this ground alone there being two constructions which may be placed upon the word "immediately" the one most favorable to the Petitioner-Defendant, Appellee must be followed.

A careful reading of the statute will also result in the conclusion that the Legislature intended that the word "immediately" used therein should be given the usual construction of the word immediately in connection with other statutes, that is, that it means within a reasonable time. This

statute after saying that the descent of the hernia must immediately follow the cause and that there must be severe pain in the hernial region and that the employee must cease work immediately goes on to say, "Fourth, that the above facts were of such severity that the same was *noticed* by the claimant and *communicated* to the employer within twenty-four-hours after the occurrence of the hernia." It stands to reason that if the words immediately used above in the statute meant at once, without any interval of time, then this requirement that the above facts must be noticed by the claimant within twenty-four hours and communicated to the employer within twenty-four hours after the occurrence of the hernia would not be in the statute because if those facts stated above in the statute were caused at the time of the accident without any interval of time then certainly they would be noticed by the person suffering the accident at once and the requirement would be merely that he must give notice to the employer within a certain time. Besides the fourth, which gives twenty-four hours of time, there is also the fifth, "That there was such physical distress that the attendance of a licensed physician was required within twenty-four hours after the occurrence of the hernia." There again the Legislature has granted the person suffering the accident a lapse of twenty-four hours within which he must obtain a doctor. These two requirements, namely, Fourth and Fifth, indicate clearly that the Legislature had in mind that the words "immediately" as used above, would be construed by the courts to mean within a reasonable time, and it seems plain that in the mind of the Legislature a period of at least twenty-four hours would be deemed to be a reasonable time. The hernia in the present instance was fully de-

scended within at least eighteen hours after the occurrence of the accident. The Supreme Court has held practically in accord with this.

The cases cited in the brief of Respondent-Prosecutor, Appellant, are largely not in point and in any event none of them is binding before this court. They are mostly all cases decided by the Workmen's Compensation Bureau. As a matter of fact, however, the Workmen's Compensation Bureau has allowed compensation where there has been a lapse of time between the time of the accident and the descent of the hernia. This is so in the Yannone case stated below.

Including the case at bar, there have been three cases before the New Jersey Supreme Court of a like nature. All of them were decided in favor of the petitioner. One of these is *Yannone vs. Hind Steel Wire Works*, 9 N. J. *Miscellaneous Reports* 501, in which the Supreme Court upheld both the Workmen's Compensation Bureau and the Essex County Common Pleas Court, notwithstanding that there was a lapse of one hour and fifteen minutes to one hour and forty-five minutes before there was any proof of the descent of the hernia. The decision apparently indicates that the lapse of time between the accident and the descent of the hernia is not of any consequence inasmuch as the question of the lapse of time was specifically raised by the Respondent-Prosecutor. The case could not have been decided on an inference that the hernia descended instantly without any interval of time because an inference would not supply the "conclusive proof" which is required by the statute that the descent of the hernia immediately followed the cause. The Court evidently recognized that there may be an interval of time between the hernia and the actual descent of the hernia and yet the case be a com-

pensable one. The question is how much lapse of time may be permitted and the answer is that the hernia must descend "within a reasonable time." It might well be said that whenever the descent of the hernia is within such time as taken in conjunction with the other evidence of the case leads the Court to the conclusion that the hernia was caused by the accident would be a reasonable time; in any event a careful reading of the act indicates that the Legislature intended that twenty-four hours should be deemed to be a reasonable time within which the hernia should descend.

The other case decided by the Supreme Court is *Danco vs. Rice and Fishman*, 10 *N. J. Miscellaneous Report* 778.

The brief of the Respondent-Prosecutor Appellant contends that the affirmance of the decision of the Supreme Court by this Court would ultimately result in destruction of the statutory safeguards against improper and unjust hernia claims. In the first place, the Legislature can very easily adopt such measures as it may desire to correct anything of this nature which it deems desirable to correct. In the next place, the Court can always be relied upon to render a correct decision under all the evidence in the case, and if the claim is an improper and unjust one the Court would detect it and render a judgment accordingly. In the third place, this contention is begging the question because according to the Supreme Court decision the statutory safeguards presumed by this contention to be present was not present. The intent of the Legislature, no doubt, is that all hernias which are caused by accidents should be compensable, the Legislature certainly intended that any claim so proved to be caused by the accident should be compensable,

and in this case we have medical testimony uncontradicted to the effect that the hernia in question was caused by the accident which occurred to the claimant on April 18, 1929. The Respondent-Prosecutor Appellant points out the provision in the statute "Hernia is a disease which ordinarily develops gradually, being very rarely the result of an accident" and contends that this is a recognition of what the Legislature apparently regarded as an established medical fact. This may be so but it is also a medical fact that hernia is sometimes the result of an accident and the testimony in this case shows that this is one which is the result of an accident (See State of Case, Page 31). It would appear strange that the Legislature after recognizing the fact that some hernias are caused by accidents enacted a provision that even if it were proved that such a hernia was caused by an accident nevertheless the claimant could not recover. I do not believe any one could seriously think that the Legislature ever intended such a result. The Legislature certainly intended that hernias which were the results of accidents should be compensable.

The Petitioner-Defendant Appellee is a high type Russian gentleman who in this country is working beneath his station. He speaks only broken English and, therefore, is not able to express himself so clearly as a person who speaks the English language fluently.

In conclusion, this Court is respectfully urged to affirm the decision of the New Jersey Supreme Court for the following reasons:

1. The word "immediately" in the statute under construction does not mean instantly but means within a reasonable time or "soon enough or in such manner as to make it appear clear that the descent was the effect of the strain and pain

complained of which forced cessation of work.”

(a) New Jersey cases construing this same word in other statutes hold that the word “immediately” means within a reasonable time.

2. The context of the Paragraph in question of the statute itself indicates clearly that the Legislature did not use the word “immediately” in the sense of instantly but apparently deemed twenty-four hours at least to be proper time for the descent of the hernia.

3. The Workmen’s Compensation Act is a remedial statute and should be liberally construed for the benefit of employees.

(a) There are at least two meanings to the word “immediately” and the one most favorable to the Petitioner-Defendant Appellee must be followed.

4. Dr. Summers was of the opinion that the hernia was caused by the accident. This is proof that the hernia descended within a reasonable time because if the descent of the hernia was unduly prolonged the doctor could not have formed such an opinion.

Respectfully submitted,

JAS. S. TURP,
*Attorney for and of Counsel with
Petitioner-Defendant Appellee.*

