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New Jersey Supreme Court

Notice of Appeal.

DEPARTMENT OF LABOR 10

WORKMEN'S COMPENSATION BUREAU

ALBERT BENJAMIN, Petitioner,

vs.

MAX KURNICK, Respondent.

20

To Kalisch and Kalisch, Attys. of Petitioner:

Take notice, that the respondent herein hereby appeals to the Essex County Court of Common Pleas from all of the judgment herein, dated July 19, 1926.

Yours Respectfully,

30

FRANK G. TURNER,
Attorney of Respondent-Appellant.

40

Determination of Facts and Order.

(Filed August 30, 1926)

DEPARTMENT OF LABOR

WORKMEN'S COMPENSATION BUREAU

10

ALBERT BENJAMIN,	}	Petitioner,
MAX KURNICK,		Respondent.

vs.

This matter coming on to be heard before me
20 on petition and answer in the presence of Kalisch
& Kalisch, Attorneys for the petitioner, and Frank
G. Turner, Attorney for the respondent, and hav-
ing considered the evidence, I now determine and
find as follows:

1. That on or about January 25, 1925, the pe-
titioner was in the employ of the respondent as
janitor of the premises owned by the respondent
at 58 Court Street, Newark, N. J.
- 30 2. That in his work, the petitioner was obliged
and did roll out barrels of ashes of considerable
size and generally had charge of the cleaning up
of the said building.
3. That on January 25, 1925, while the peti-
tioner, in the course of his duties, was rolling a
barrel of ashes, of considerable weight and size,
and attempting to lift the same up some steps, the
barrel started to slip and the petitioner attempted
40 to keep the barrel from falling, but finally was

Determination of Facts and Order

unable to do so and the barrel struck the peti-
tioner's left leg and arm, injuring him.

4. That petitioner's wages at the time of the
accident were \$4.00 per week and in addition, he
received his board and lodging from the respond- 10
ent, but in view of the fact that the parties here-
to made no definite agreement as to the value of
such board and lodging, the petitioner is limited
under the statute to a maximum of \$5.00 per week.

5. That the accident arose out of and in the
course of his employment with the respondent.

6. That at the time of the accident and for
some time previous thereto, petitioner was suf- 20
fering from high blood pressure and by reason
of the effort put by the petitioner to avoid hav-
ing the ash barrel fall, the petitioner suffered
a stroke of paralysis which disabled him immedi-
ately.

7. That the petitioner suffered a disability, as
the result of the accident, total in character and
permanent in quality.

8. That compensation shall be paid for the dis- 30
ability total in character and permanent in qual-
ity at the rate of \$8.00 per week for a period of
400 weeks, at which time compensation shall cease
or continue pursuant to Chapter 40 P. L. 1923,
referring to continued payment in cases of dis-
ability, total in character and permanent in qual-
ity.

9. That Kalisch & Kalisch are entitled for their
services rendered during the trial of this action, 40

Determination of Facts and Order

the sum of \$400, this sum to be paid by the respondent.

10 10. That petitioner is entitled to the sum of \$67.00 covering hospital bill of the Beth Israel Hospital.

It is, therefore, on this 19th day of July, 1920, Ordered, that judgment final be entered in favor of the petitioner and against the respondent in the sum of \$8.00 for a period of 400 weeks, of which judgment the respondent shall pay or cause to be paid to the petitioner in a lump sum, all accrued payments, and judgment final shall be entered in favor of the petitioner and against the
20 respondent in the sum of \$400, covering attorney's fees and \$67.00 covering hospital bill.

HARRY J. GOAS,
Deputy Commissioner.

Employee's Claim Petition for Compensation.

(Filed August 30, 1926)

NEW JERSEY DEPARTMENT OF LABOR

WORKMEN'S COMPENSATION BUREAU 10

Trenton, N. J.

EDWARD BENJAMIN, Petitioner,

vs.

MAX KURNICK, Respondent. 20

Date of Accident October 3rd, 1925.

Attorney for Petitioner Kalisch & Kalisch, 790
Broad St., Newark, New Jersey.
(Address)

To the Workmen's Compensation Bureau of New Jersey: 30

The claimant respectfully alleges the following facts:

1. What is your name? Edward Benjamin

2. Where do you live? 58 Court St.,
(Street Address)

Newark, N. J.

(City or Town) 40

Employee's Claim Petition for Compensation

3. Sex Male 4. Age 47

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

10 Max Kurnick
(Name)
58 Court St.,
(Street Address)
Newark, N. J.
(City or Town)

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? Date of accident.

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

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

15. When did the accident happen? Jan. 25th, 1925.

(State month, day, year and hour)

40 16. Where did the accident happen? 58 Court St., Newark, New Jersey.

Employee's Claim Petition for Compensation

17. What was the nature of the accident, and how did it happen? Rolling a barrel of ashes weighing about 75-100 lbs. when same started to slip and in preventing it from falling I was injured about left leg & arm.

18. On what date were you compelled to stop work because of the injury? Immediately 10

19. On what date were you well enough to work again? Can't work yet.

20. If still disabled, on what date do you think you will be able to work? Don't know

21. Give nature of any injury from which you will recover? Can't yet tell exact extent of injury. 20

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

28. State the amount of weekly wages \$10. a wk. and board and lodging. amounting to \$10. a wk.

30. Has your employer promised to pay you any compensation? Employer said I should get compensation but insurance Co. won't pay. 30

32. Was medical aid required? Yes

34. Did you request your employer to furnish these services? Yes

35. Were they furnished? Some

Employee's Claim Petition for Compensation

40. Are you willing that the Compensation Bureau endeavor to secure compensation for you, by agreement, before calling for an official hearing?
Yes

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

And your petitioner will ever pray, etc.

EDWARD BENJAMIN
(Petitioner)
58 Court St.,
(Address)

30

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

Edward Benjamin, 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
40 familiar with the contents thereof; and that the

Employee's Claim Petition for Compensation

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

EDWARD BENJAMIN
(Petitioner) 10

Subscribed and sworn to before me,
this 3rd day of October, 1925, at Newark,
Isidor Kalisch.

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. 20

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. 30

WORKMEN'S COMPENSATION BUREAU
W. E. STUBBS
Secretary.

40

Respondent's Answer to Employee's Claim Petition.

(Filed August 30, 1926)

NEW JERSEY DEPARTMENT OF LABOR

10 WORKMEN'S COMPENSATION BUREAU
Trenton, N. J.

EDWARD BENJAMIN,	}	Claim Petition No. 4417 Oct. 19, 1925.
Petitioner,		
vs.		
MAX KURNICK,	}	Respondent.

20 Attorney for Respondent Frank G. Turner, 76
Montgomery St., Jersey City, N. J.

In answer to Claim Petition filed in this cause:

1. What is the petitioner's name? Edward Benjamin

2. Where does he reside? 58 Court St. New-
30 ark, N. J.
(Street Address)
(City or Town)

6. Was the Petitioner in your employ at the time of the accident? No accident.

7. State your business Apartment house

8. Did you receive written notice from the Pe-
40 titioner 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

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

10. When did you first have knowledge of this accident? None

11. Did you receive notice of this accident from the Petitioner? None

12. If so, on what date? None - 10

13. Has any claim for compensation been made? Yes

14. What was the Petitioner's regular occupa- tion, and what kind of work was he doing at the time of the accident? Janitor suffers from pa- ralysis or other illness no accident

15. When did the accident happen? Not at all 20
(State month, day, year and hour)

16. Where did the accident happen? None

17. What was the nature of the accident, and how did it happen? None Petitioner suffered a second stroke of paralysis or other illness about January 26-1925

18. On what date was the petitioner compelled to stop work because of the injury? See 17 30

19. On what day was the injured well enough to work again? Still sick

20. If still disabled, on what date do you esti- mate he will be able to work? Don't know

21. Give your understanding of the nature of any injury from which he should recover? No injury—illness

22. Give your understanding of any permanent 40 injury which has resulted, either amputation or

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

loss of usefulness of any member, or impairment
of any physical organ. Explain fully No injury

23. Were the wages fixed by piece work? No

10 25. If wages were fixed by the hour, state rate
per hour No

28. State the amount of weekly wages \$4 week
board & room

29. How much money have you paid the injured
as compensation (not including medical aid) since
the accident? None

20 30. Have you promised to pay compensation?
No

31. If so, how much? None

32. Was medical aid required? Not for injury

34. Were you requested to furnish the neces-
sary medical service required by law? No

35. Did you furnish this service, No

30 39. What other facts are there which you be-
lieve important? If you deny that compensation
is payable in this case, explain fully your reasons
for this conclusion This department is without
jurisdiction. There was no accident arising out
of and in the course of his employment. Peti-
tioner suffers from illness and disease.

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

40 Max Kurnick, of full age, being fully sworn
according to law, on his oath deposes and says:

Workmen's Compensation Appeal

That he is the respondent named in the forego-
ing 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. 10

Subscribed and sworn to before me,
this day of October, 1925, at Newark, N. J.

Workmen's Compensation Appeal.

(Filed Sept. 29, 1926) 20

ESSEX COUNTY COURT OF COMMON
PLEAS

ALBERT BENJAMIN,
Petitioner,
vs.
MAX KURNICK,
Respondent.

Order Fix-
ing Day 30

It is, on this 27th day of September, One Thou-
sand Nine Hundred and Twenty-six, Ordered, that
the hearing of the appeal herein be and the same
is hereby fixed for 19th day of October, One Thou-
sand Nine Hundred and Twenty-six, at 10 A. M.,
before Hon. Edwin C. Caffrey at the Court House, 40
Newark, New Jersey.

WALTER D. VAN RIPER,
Judge.

*Determination of Facts and Order in Court of
Common Pleas*

“It is, therefore, on this nineteenth day of July, 1926, ORDERED that judgment final be entered in favor of the petitioner and against the respondent in the sum of \$8.00 for a period of 10 400 weeks, of which judgment the respondent shall pay or cause to be paid to the petitioner in a lump sum, all accrued payments, and judgment final shall be entered in favor of the petitioner and against the respondent in the sum of \$400.00, covering attorneys fees and \$67.00 covering hospital bill,” and the respondent having given notice of appeal, and having perfected such appeal pursuant to the statute in such case made and provided, and this Court having set a time and place 20 for the hearing of said appeal, the said appeal having come on for a hearing in the presence of Kalisch & Kalisch, attorneys for the petitioner, and Frank G. Turner, attorney for the respondent, and the Court having considered the testimony taken before the Deputy Commissioner, and the argument of counsel, I do find and determine from the evidence as follows:

30 1. That on or about January 25, 1925, the petitioner was in the employ of the respondent as janitor of the premises owned by the respondent at 58 Court Street, Newark, N. J.

2. That in his work, the petitioner was obliged and did roll out barrels of ashes of considerable size and generally had charge of the cleaning of said building.

40 3. That on January 25, 1925, while the petitioner in the course of his duties was rolling a

*Determination of Facts and Order in Court of
Common Pleas*

barrel of ashes of considerable weight and size, and attempting to lift the same up some steps, the barrel started to slip and the petitioner attempted to keep the barrel from falling, but finally was unable to do so and the barrel struck the 10 petitioner's left leg and arm, injuring him.

4. That petitioner's wages at the time of the accident were \$4.00 per week and in addition, he received his board and lodging from the respondent, but in view of the fact that the parties hereto made no definite agreement as to the value of such board and lodging, the petitioner is limited under the statute to a maximum of \$5.00 per week. 20

5. That the accident arose out of and in the course of his employment with the respondent.

6. That at the time of the accident and for some time previous thereto, petitioner was suffering from high blood pressure and by reason of the effort put by the petitioner to avoid having the ash barrel fall, the petitioner suffered a stroke of paralysis which disabled him immediately.

7. That the petitioner suffered a disability, as 30 the result of the accident, total in character and permanent in quality.

8. That compensation shall be paid for the disability total in character and permanent in quality at the rate of \$8.00 per week for a period of 400 weeks, at which time compensation shall cease or continue pursuant to Chapter 49 P. S. 1923, referring to continued payments in cases of disability, total in character and permanent in qual- 40 ity.

*Determination of Facts and Order in Court of
Common Pleas*

9. That petitioner is entitled to the sum of \$67.-00 covering hospital bill of the Beth Israel Hospital.

10 10. That an allowance of Dollars will be made to Kalisch & Kalisch, for legal services rendered on the appeal of this action, as and for a counsel fee in addition to the amount awarded as counsel fee by the Deputy Commissioner, which said counsel fee shall be paid by the respondent, and shall be taxed as part of the costs; also costs to be taxed against the respondent.

20 It is, therefore, on this day of December, 1926, ORDERED, that judgment final be entered in favor of the petitioner and against respondent for Seven Hundred and Eighty-four (\$784) Dollars, being accrued payments to December 12, 1926, and respondent shall pay or cause to be paid to the petitioner the sum of \$8.00 a week for the remaining 184 weeks, and Dollars, covering counsel fees heretofore and now allowed, and \$67.00 covering hospital bill, and 30 costs to be taxed.

Judge.

Writ of Certiorari.

New Jersey, ss:

The State of New Jersey to the Clerk of the Court of Common Pleas, in and for the County of Essex, in the State of New Jersey and the Judge of said Court; and the Secretary of the Workmen's Compensation Bureau of New Jersey; and Harry J. Goas, Deputy Commissioner of Labor of the Workmen's Compensation Bureau of the State of New Jersey, GREETINGS: 10

We being willing for certain reasons, to be certified of and concerning certain proceedings taken by Harry J. Goas Deputy Commissioner of the Workmen's Compensation Bureau of the State of New Jersey, the Workmen's Compensation Bureau of New Jersey; and the Essex County Court of Common Pleas in and for the County of Essex in the State of New Jersey, for the determining and awarding of compensation, counsel fees and other allowances to Edward Benjamin for injuries alleged to have been sustained by him while in the course and scope of his employment as an employee of Max Kurnick and the Determination and Order made by said Harry J. Goas and the Determination and Order affirming judgment and dismissing appeal made by the Judge of Essex Common Pleas which said respective determinations and Orders have been filed with the Clerk of the Court of Common Pleas in and for the County of Essex and State of New Jersey; do command you that said proceedings, together with all matters touching and concerning the same as fully as before you, they remain or are in your 40

Return

custody or control, you do certify and send, together with this Writ, to our Justices of our Supreme Court of Judicature at Trenton, on the 4th Tuesday of February One Thousand Nine Hundred and Twenty-seven, that therein may be done
10 what of right and according to law ought to be done.

Witness, WILLIAM S. GUMMERE, Esq., Chief Justice of our Supreme Court at Trenton, aforesaid, this 15th day of January, One Thousand Nine Hundred and Twenty-seven.

EDWARD J. KELLEHER,
Clerk.

20 FRANK G. TURNER,
Attorney.

Return.

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

30 I, John H. Scott, Clerk of the Court of Common Pleas in and for Essex County, New Jersey Do Hereby Certify and return to the Supreme Court of Judicature of the State of New Jersey, the Petition of Claimant, Answer of Respondent, Determination of Facts and Order By Deputy Commissioner, Notice of Appeal, Order fixing time for hearing, Notice of Hearing and Determination of Common Pleas Court and order with
40 all things touching and concerning the same together with a record of the Proceedings had at

Reasons

the Hearing as by the within Writ to me directed, I am commanded.

In Witness Whereof, I have hereunto set my hand and my official seal as Clerk of said Court at Newark, N. J. this 10
31st day of January A. D. 1927.
JOHN H. SCOTT,
Clerk.

ALLOCATUR.

Writ allowed this 15th day of January, 1927.
Let it be sealed.

W. S. GUMMERE,
C. J. 20

Reasons.

NEW JERSEY SUPREME COURT

MAX KURNICK, }
Prosecutor, }
vs. } On Cer- 30
ALBERT BENJAMIN, }
Defendant. }
tiorari

*To the defendant and Messrs. Kalisch & Kalisch
his attorneys:*

TAKE NOTICE, that the following are the reasons 40
on which the prosecutor herein will rest, to set
aside the proceedings herein under review:

Reasons

1. The Workmen's Compensation Bureau of the New Jersey Department of Labor was without jurisdiction to hear and determine this cause.
2. The Court of Common Pleas of the County of Essex was without jurisdiction to hear and determine this cause.
3. The petitioner did not participate in an accident which arose out of and in the cause of his employment.
4. The finding of the Workmen's Compensation Bureau in favor of the petitioner was contrary to Law.
5. The finding of the Essex County Court of Common Pleas in favor of the petitioner was contrary to Law.
6. The disability caused to the petitioner below (Albert Benjamin) was the result of disease and not of accident.
7. There is no legal evidence to sustain the decision and award of four hundred weeks disability made in favor of the defendant here by the Workmen's Compensation Court and by the Essex County Court of Common Pleas.
8. The petitioner did not appear at the hearing and did not testify, and the award was made without the Commissioner of the Workmen's Compensation Bureau seeing the petitioner or observing as to whether he was or was not disabled.

FRANK G. TURNER,
Attorney of Prosecutor.

Testimony.

NEW JERSEY DEPARTMENT OF LABOR

Workmen's Compensation Bureau

NEWARK, ESSEX COUNTY, DISTRICT

EDWARD BENJAMIN,	}	Petitioner,
vs.		
MAX KURNICK,		Respondent.

Transcript of stenographic notes of the testimony taken in the above entitled matter before HON. HARRY J. GOAS, Deputy Compensation Commissioner, at the Department of Labor Building, 9-15 Franklin St., Newark, New Jersey, on the 28th day of May, A. D. 1926, at 2:30 p. m., in the afternoon.

Appearances:

ISIDORE KALISCH, Esq., (Kalisch & Kalisch, Esqs.) for the petitioner.

FRANK G. TURNER, Esq., for the respondent.

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30

40

Dr. William Kreuger—Direct

DR. WILLIAM KREUGER, a witness on behalf of the petitioner, produced out of turn by consent of counsel, sworn:

Direct-examination by Mr. Kalisch:

10 Q. Dr. Kreuger, you are a practicing physician in the City of Newark and have been so for how long? A. Two years.

Q. Have you at any time been connected with any institutions? Have you at any time during that time or before that been connected with any public institutions? A. Yes.

Q. What? A. Hospitals.

Q. Yes? A. Beth Israel Hospital.

20 Q. Do you know this man Benjamin? A. I do.

Q. When and where did you see him first? A. Saw him first the 26th day of January, 1925, at 58 Court Street.

Q. What was his condition? A. Well, I found him reclining in an easy chair.

Q. I don't mean his position, I mean his condition. A. That I saw you mean?

30 Q. Physical condition. A. He was paralyzed in his left arm, left leg, and partly on the right face.

Q. Was he taken afterward to the hospital? A. He was taken that same day.

Q. Could you tell what his blood pressure was, whether it was high or low? A. High.

Q. Moderately high or very high? A. Quite high. I think somewhere about two hundred or a little lower.

40 Q. Know how old he was? A. Between fifty and sixty.

Dr. William Kreuger—Direct

Q. Over two hundred is considered pretty high, isn't it? A. Yes.

Q. Could you tell whether that blood pressure had existed for some period of time? A. No way of telling from the blood pressure reading how long it existed. Usually those things don't suddenly come on, but over a period of time. 10

Q. Would you say from what you found that day that his blood pressure had been low the day before? A. No.

Q. Assuming that he had high blood pressure and that while attempting to move a barrel of ashes up some steps and the barrel slipped, and he tried to keep it from slipping and was not successful and fell with the barrel, and with that condition of high blood pressure, what is your opinion as to whether there is any casual connection between the condition in which you found him when you saw him at 58 Court Street, as you described, and the fall with the barrel? 20

Mr. Turner: I object to this question.

Mr. Kalisch: If I don't connect it up, of course I am willing to have it stricken out. I have a witness here that will testify to those facts. 30

The Court: All right.

Mr. Kalisch: If I don't connect it up, of course I am satisfied to have it go out.

A. You mean could such an affair cause the condition the patient had when I saw him?

Q. I want to know whether it would either cause it entirely or to any extent? A. It could.

Q. What is your opinion as to whether it did or not? A. Well, I told you the condition that I found the man in. 40

Dr. William Kreuger—Direct

Q. Yes, certainly. A. From what I got of the history of the case from people in the house, that accident they described could have caused the condition that I found him in.

10 Mr. Turner: I object to that because he says the history he got from the people in the house. Surely that cannot be proper evidence on which to base an opinion.

Mr. Kalisch: I agree with Mr. Turner. Strike out the history he got from the house. I don't want you to refer to the history that you got in the house, but consider the facts I give you, I ask you whether you could with any degree of certainty, either in whole or in part attribute the condition you found him in to this accident?

20 A. Yes.

Q. What have you to say as to the degree of permanency of this paralysis? Will he ever work again? A. It is kind of hard to say. It looks now like he may not be able to.

Q. What is your best opinion? A. My best opinion is he will not be able to do his regular work. In fact he can't get around very far from the house.

Q. What is your opinion, adopting as a standard or measure of efficiency, one hundred per cent, what is your opinion as to what part of one hundred percent of efficiency is gone by reason of this paralysis? A. I would say right now he is total, one hundred percent.

Q. Your best opinion is it is permanent or temporary? A. It is permanent.

Mr. Kalisch: Cross-examine.

Dr. William Kreuger—Cross

CROSS-EXAMINATION by Mr. Turner:

Q. How long have you practiced, Doctor? A. Two years.

Q. During the two years, does that include your internship? A. Three years with the internship. 10

Q. Now, this man has had a paralytic stroke, hasn't he? A. He has.

Q. And what is a paralytic stroke? A. Paralytic stroke means inability to use the muscles of a certain part or parts of the body, due to a paralysis of the nerves that govern those muscles.

Q. Do you know how old this man is? A. Oh, I would say he is close to sixty. 20

Q. He has had paralysis of what part of his body? A. The muscles of his left leg, left arm, and part of his face. I think it was the left. I am not sure.

Q. Do you know which part of his face? A. I think it was the left.

Q. Now what is the cause of a paralytic stroke? A. In any case or in this case?

Q. In the general case? A. There are many causes. 30

Q. Well, a great many people have paralysis and die of it, don't they? A. Yes.

Q. Now, what is the cause of it when they do that? A. The cause of death?

Q. What is the cause of the paralysis? A. I say it may be several things. It may be a luetic condition, in the first place.

Q. What does that mean? A. A syphilitic condition. 40

Dr. William Kreuger—Cross

of paralysis indicates it was on the opposite side. In other words the hemorrhage must have been above the point where the nerves going to the arm and face come out, which is up in the brain.

10 Q. Did you ever treat the man before? A. No, I never seen him before that day.

Q. Did you ever treat him after that? A. No.

Q. You just examined him that day? A. No, I treated him during his illness.

Q. What treatment did you give him? A. Sent him to the hospital, kept him in bed, gave him elimination treatment to reduce the high blood pressure; gave him massage to try and keep his muscles going.

20 Q. Did you treat him after he came back from the hospital? A. No, after he left the hospital and was apparently cured of that illness—of course I don't mean the residual paralysis had cleared up—then I saw him no more.

Q. When did you first see him? A. 26th of July.

Q. 1925? A. 1925.

30 Q. Now, were there any marks on his body when you saw him? A. No, they were no cuts or anything, if that is what you mean.

Q. No bruises or abrasions or anything like that? A. No abrasions of the skin.

Q. So far as you know the only thing he had the matter with him was this hemorrhage on the right side of his brain which brought about the paralysis? A. Yes.

40 Q. Now, was he a well nourished man, strong or weak, or what kind of a man was he? A. He was a well built man with very good musculature.

Q. So he was a man who—he was a laboring man, wasn't he? A. He was.

Dr. William Kreuger—Re-direct

Q. And had the muscles of a laborer and build of a laborer? A. Yes.

Q. Evidently had been doing—from your examination you would say he had been doing laboring work for many years? A. I don't know. I have seen men with good musculature who never 10 done laboring work.

Q. Could you tell by his hands? A. He is a man worked hard all his life.

Q. Yes, been a hard working laborer all his life? A. Yes.

Mr. Turner: That's all.

RE-DIRECT-EXAMINATION by Mr. Kalisch: 20

Q. Doctor, what is either your bill or the hospital bill or both, for your treatment? A. I don't know what the hospital bill is. I believe they have my bill there. I think it is \$126, if I remember right.

Q. Your bill is \$126? A. Yes, I believe so.

Q. What is the hospital charge per week for this man? A. That you would have to get from the hospital bill. I don't know what their bill was. 30

Q. How long was he there? A. He was there several months, the exact date of discharge I couldn't tell you.

Mr. Kalisch: That's all.

Mr. Turner: Doctor, was your bill paid?

A. No.

Mr. Turner: That's all. 40

Mrs. Alice Bradshaw—Direct

MRS. ALICE BRADSHAW, a witness on behalf of the petitioner, sworn:

Direct-examination by Mr. Kalisch:

Q. Mrs. Bradshaw, did you in January, 1925,
10 live at 58 Court Street? A. I did.

Q. Did you see an accident wherein Mr. Benjamin we now allege, hurt himself? A. Yes, he was taking the ash barrel out of the cellar.

Q. Mrs. Bradshaw, please tell us slowly, exactly what you saw. A. Why, the man was taking the ash barrel out of the cellar, he got it up three steps when he fell. The can slipped, the ash barrel slipped, and he fell.

20 Q. Fell where? A. Down off the step, and the barrel was up against him, but of course the barrel didn't fall because it is too narrow. It didn't spill.

Q. It went down but didn't spill? A. It went down up against the man.

Q. The barrel was full of what? A. Ashes.

Q. How large a barrel was it? A. The ordinary ash can, you know, about this size (indicating).

30 (Mr. Turner indicating above the Judge's desk.)

A. Yes, about like that.

Q. After he fell what did he do then, or what could he do? A. He couldn't get up, himself. Mr. Kurnick came down and helped him up.

Q. Which Mr. Kurnick? A. The elderly Mr. Kurnick.

40 Q. That is the gentleman sitting in front, with the glasses? A. Yes.

Q. How did they get him upstairs? A. They had to carry him.

Mrs. Alice Bradshaw—Cross

Q. Did you notice as to whether he worked regularly up to that time? A. Oh, yes, he was working regularly every day.

Mr. Kalisch: Cross-examine.

CROSS-EXAMINATION by Mr. Turner: 10

Q. What kind of work did he do around there, Mrs. Bradshaw? A. Janitor.

Q. Did he live in the house? A. Yes.

Q. He didn't work all the time then, did he? A. All the housework, you know. Cleaning.

Q. Cleaned the halls, did he? A. The halls and cellar, and kept the furnace going; took care of the first floor.

Q. What stairway was he on this day? A. The 20 cellar, the outside.

Q. Where were you standing? A. Right outside.

Q. How long had you been out there? A. I was coming from the store.

Q. How close were you to him when this happened? A. Oh, I was a few feet. It is only three steps up from the cellar.

Q. Did you actually see this barrel slip? A. 30 Yes, I did.

Q. What kind of a barrel was it, what was it made of? A. It is an ash can, you know. It is galvanized, like. I can't say just what it is. It is metal, anyway, I know.

Q. Did he have it on a truck? A. No.

Q. How did he have it? A. He was trying to get it up the steps.

Q. No wheels under it? A. No, no.

Q. Now just tell us what did he do? A. What 40 did he do?

Mrs. Alice Bradshaw—Cross

Q. Yes. A. He tried to get the barrel up the steps and the barrel slipped and the man fell.

Q. Did it slip? A. It slipped out of his hands or something, I don't know. I knew it fell. That is the best I can tell you.

10 Q. Was he standing up when the barrel slipped?

A. Why, certainly, trying to get it up the steps.

Q. Did you see any change in his face? Any indication of any change in him when the barrel slipped? A. No.

Q. Was he still standing up after the barrel slipped? A. No, he fell.

Q. Fell where? A. On the floor.

20 Q. I thought he was on the steps? A. He had the barrel up a couple of steps, but he wasn't up there, yet.

Q. He was still standing on the floor? A. Yes, he was going up, coming up the steps.

Q. He let go of the barrel, didn't he? A. I don't know; it fell. He fell and the barrel went up against him.

Q. He fell before the barrel slipped, didn't he?

A. No, he didn't. Both went together.

Q. Both went together? A. Yes.

30 Q. You mean when he fell down the barrel slipped back? A. Yes.

Q. The barrel didn't slip back until he fell down, did it? A. I don't know, I seen both of them go. I don't know, I can't tell you, which. I guess the barrel couldn't go first because there is not enough room for the barrel to go before he did.

40 Q. He let go of the barrel and fell down first, didn't he? A. No. I don't know whether he let go. I know both went.

Mrs. Alice Bradshaw—Cross

Q. Did the barrel slip when he had hold of it? A. Yes.

Q. As though he didn't have enough strength—

Mr. Kalisch: I object to that.

The Court: That is a conclusion.

10

Q. You say he had the barrel up two steps and the barrel was slipping?

Mr. Kalisch: Started to slip, she said.

Q. The barrel was slipping when he had it up two steps.

Mr. Kalisch: I object to that. The witness said the barrel started to slip after he had it up on those steps. That is what she testified.

20

Mr. Turner: This is cross-examination.

Mr. Kalisch: I object to it.

The Court: I will allow her to answer it. (Question repeated by the reporter.)

A. Yes, that's right.

Q. When the barrel was slipping, what did he do? A. What did he do? Why, he fell.

Q. He let go of the barrel, didn't he? A. He 30 tried to hold it up, I suppose. I don't know.

Q. He let go of the barrel while it was slipping, didn't he? A. I couldn't tell you. I told you once I couldn't tell you whether he let go or still held on to it.

Q. Then you don't know whether the barrel slipped because he let go of it, or whether it slipped because he couldn't hold it up? A. That I can't tell you. I know both went down. I seen 40 the man fall and the barrel went up against him. That is all I can tell you.

Mrs. Alice Bradshaw—Cross

Q. How did he fall down, in what way? A. Side-ways. I think he was laying on his side, the leg twisted under him.

Q. The barrel was still up on the steps? A. Up against him.

10 Q. On the steps? A. On one step. The man was up against the building, his back.

Q. So the barrel was still on the first step, wasn't it? A. It couldn't go any further because the man was there.

Q. I know, but the barrel was still on the first step, wasn't it? A. Yes.

Q. The man was lying down away from the first step, wasn't he? A. No, right up against the first
20 step.

Q. Right up against the first step? A. Yes.

Q. He didn't have hold of the barrel then, did he? A. Well, his both hands went down. He couldn't, the way the barrel fell, the building held it up. It was right up against the man's shoulder and his leg. He had one leg up like that, against the first step (indicating).

Q. Did you say that the barrel was on the second on the third step when it slipped down? A.
30 Either the second or the third. I couldn't say. I don't know. When I seen it it was on the first, up against the man.

Q. When you seen it it was on the first, up against the man? A. Yes.

Q. Didn't see it before that? A. He was getting it up, but it was either the second or third he had it up.

Q. Did you see the barrel on the second step?

40 A. Yes, I did.

Q. Did you see it on the third step? A. That

Mrs. Alice Bradshaw—Cross

is what I say I cannot tell, whether it was the second or third he had it on.

Q. You do know it was on the second? A. It was up that far.

Q. Now, this barrel when he laid down, was still on the second step, wasn't it? A. No, on the
10 first.

Q. How wide is this barrel? A. I said the ordinary ash can. I couldn't say.

Q. About three feet wide, isn't it, and two feet and a half high? A. Something like that.

Q. How high are these steps? A. There are four steps.

Q. How high is each step, about six inches?
A. About that. 20

Q. Well, when the barrel was resting on the floor it would be up against the second step, wouldn't it? A. Barrel on the floor against the second step?

Q. Yes. A. How could it be? It would be up against the first step.

Q. Wasn't it up against the second step when it was on the floor? A. Wasn't it up against the second step when it was on the floor? No, it couldn't be. It must be up against the first step. 30

Q. Are you telling us now what you think must be so? A. What are you asking me? I said it was on the second or third and then when it fell it was on the first step.

Q. Was it up against the second step? A. I went down one step.

Q. That was on the first up against the second?

A. That was on the first, up against the second.

Q. That was after he had fallen down? A. 40
Yes.

Mrs. Alice Bradshaw—Cross

- Q. What did you do then? A. What did I do?
 Q. Yes. A. I called for help.
 Q. Who came? A. Mr. Kurnick.
 Q. Were you there when Mr. Kurnick helped
 him up? A. Yes.
 10 Q. You stayed right there? A. Yes.
 Q. What was done with him then? A. He was
 taken into his room.
 Q. Up where? Where is his room? A. In the
 basement the room is.
 Q. Is that where these same steps go down to?
 A. It is on the same floor, yes.
 Q. It is on the same floor, so that he wasn't
 moved upstairs at all? A. No.
 20 Q. How far is his room from where he fell? A.
 I don't know; it is about a few yards, I should
 say. I couldn't say how far it is.
 Q. Did you go into his room? A. No.
 Q. You just saw him taken in? A. I just seen
 him taken in and seen the ambulance come down
 for him. That is as much as I know.

The Court: Taken in by whom?

- A. To the hospital.
 30 The Court: Taken into his room by
 whom?
 A. By Mr. Kurnick.
 Mr. Kalisch: You don't reside there any
 more?
 A. No, I don't.
 Mr. Kalisch: That's all.

40

Max Kurnick—Cross

MAX KURNICK, the respondent, sworn as a
 witness on behalf of the petitioner:

Direct-examinaion by Mr. Kalisch:

- Q. Mr. Kurnick, did Mr. Benjamin work for
 you? A. Yes, sir. 10
 Q. In January, 1925? A. Yes.
 Q. How much did you give him a week? A. I
 give him four dollars and give him board and I
 gave him his room.
 Q. How much was the board and room worth
 in that neighborhood where you lived, a week?
 A. About ten dollars.
 Q. Did they let you know that he had an ac-
 cident that day, lifting up a can of ashes? A. 20
 Yes, sir.

Mr. Kalisch: Cross-examine.

CROSS-EXAMINATION by Mr. Turner:

- Q. You gave him a room in the basement, did
 you? A. A room in the basement and then I took
 him upstairs.
 Q. When did you take him upstairs? A. After
 he got sick, and came out of the hospital. 30
 Q. I am talking about before he got sick. A.
 He had a room in the basement.
 Q. He had a room in the basement. Where did
 he eat? A. Upstairs, with us.
 Q. Before the accident? A. He ate all the time
 with us.
 Q. Before the accident he ate all the time with
 you. You lived in the same house? A. Yes, sir.
 Q. You say that was worth ten dollars for the
 room he had in the basement and the food he had 40
 with you? A. Yes, I guess so.

Max Kurnick—Cross

Q. Why do you guess that? A. Because everything costs money now. It isn't like years ago.

Q. Did he spend all of his time in your house?
A. Yes, sir.

Q. From morning till night? A. Always been
10 with me for years, that man.

Q. How long has he lived with you? A. About eight or ten years, at least.

The Court: As janitor?

A. Yes, sir.

Q. Is he related to you? A. No, sir.

Q. Now I sent you an answer to swear to and sign in this case, do you remember that?

20 Mr. Kalisch: I object to this as not cross-examination.

The Court: I will allow it anyhow. The answer should be filed.

Mr. Kalisch: There is an answer filed. I have a copy of it here.

The Court: I don't have any.

30 Mr. Kalisch: I have a copy of the answer. I object on the ground it has nothing to do with the issue in this case. That, Mr. Turner, has to do with some policy question and I think he should have that disposed of in the proper Court.

The Court: I think so, Mr. Turner, since the answer has been filed.

Mr. Turner: Then the Court overrules me?

The Court: Yes.

Mr. Turner: I pray an exception.

40 The Court: Note an exception.

Max Kurnick—Cross

Q. You said that you paid him four dollars a week? A. That is what I said.

Q. Right? A. Yes, indeed.

Q. Did you give him that in money? Cash?
A. Cash, certainly. What good is a check?

Q. How often did you pay him? A. Every 10 week.

Q. Four dollars every week? A. Yes; sometimes once in two weeks.

Q. Now, did you see him on the 25th of January, 1925? A. I seen him every day and every night.

Q. Did you see him on this date? A. Through the year, every day and night I always saw him.

Q. Where did you see him on January 25th? 20
A. I seen him in the cellar and upstairs, he comes for his meals.

Q. Did he come for his meals that day? A. I see him every day.

Q. January 25th, 1925, did he come up for his meals that day? A. I can't remember that.

Q. Well, did he go to the hospital? A. I don't remember exactly the date when he went to the hospital, but he went to the hospital all right.

Q. How soon was he back from the hospital? 30
A. I don't remember, exactly.

Q. How many days or weeks? A. I didn't keep any track.

Q. Have you no idea? A. No, sir; you can find out in the hospital, that point.

Q. You don't know? A. I don't remember.

Q. When he came back, where did he live then?
A. With me.

Q. Have a room? A. Always have a room. 40

Q. Did he have the room in the basement when he came back? A. Upstairs.

Max Kurnick—Cross

Q. He ate his meals with you after he came back? A. We used to give him meals every day.

Q. Does he still live with you? A. Not now.

Q. How long since he stopped living with you?

A. He been with me since I am in Newark.

10 Q. How long since he has stopped living with you? A. He was with me about eight or ten years.

The Court: How long ago did he stop living with you?

A. When he stopped living with me?

The Court: Yes.

A. About six or seven months.

20 Q. After he came back from the hospital did he do any work around the house? A. I got another man. That is the reason I gave him another place to stay and still pay for him.

Q. You gave him another place to stay? A. Yes, sir; because I took another janitor took his room.

Q. Since you gave him another place to stop do you furnish him with board? A. Yes, sir; everything. I bought him two pair of shoes.

30 Q. Did you give him any money since that time?

Mr. Kalisch: I object to this as immaterial.

Mr. Turner: It is quite material. That man is the respondent.

Mr. Kalisch: I can't see the materiality on the question whether he had an accident and what is the extent of disability.

40 The Court: Might bear on the extent of the temporary disability.

Max Kurnick—Cross

Mr. Kalisch: I object to it and ask an exception. I further object on the ground it is not cross-examination, and goes far beyond the scope of my direct-examination.

The Court: He is the respondent. I 10 will allow a little latitude.

Mr. Kalisch: Note an exception.

A. I pay for his board and room.

Q. How much do you pay for his board and room?

Mr. Kalisch: I object to the question on the ground it is incompetent, irrelevant and immaterial and not cross-examination. 20

Mr. Turner: How much does the respondent pay for the petitioner's board and room now?

The Court: Answer the question.

Mr. Kalisch: Note an exception.

The Court: Note an exception.

Q. How much do you pay now? A. I am paying eight dollars now.

Q. You been paying eight dollars a week for 30 the last six or seven months?

Mr. Kalisch: I object to the question on the same grounds. You overrule my objections?

The Court: Yes.

Mr. Kalisch: Note an exception.

Q. You been paying six or seven dollars a week the last six or seven months? A. Yes.

Q. You buy his clothes? 40

Abraham Kurnick—Cross

ABRAHAM KURNICK, a witness on behalf of the petitioner, sworn.

Direct-examination by Mr. Kalisch:

Q. Mr. Kurnick, you are the son of Max Kurnick? A. Yes, sir.

Q. You knew Edward Benjamin before this thing happened? A. Yes, sir.

Q. Was he a happy-go-lucky, a happy, contented sort of fellow? A. Yes, sir.

Q. Apparently no worries that you knew of? A. No.

Mr. Kalisch: Cross-examine.

CROSS-EXAMINATION by Mr. Turner:

Q. He had no home except the home that you gave him, did he? A. Yes, sir.

Q. He had no money except the money that your father gave him? A. That's right.

Q. When you say he was happy, do you mean that he was busily engaged all the time? A. In good humor.

Q. In good humor. Was he busy all the time? A. Yes, he done his work.

Q. Working around, did he seem to be contented at his work? A. Yes, sir.

Q. What kind of work did he do? A. General work; took care of the house.

Q. Did anyone help him do that? A. No, he did that himself.

Q. No help? A. No.

Q. Now, did you know about his physical condition before?

Abraham Kurnick—Cross

Mr. Kalisch: I object to this as not cross-examination, and incompetent, irrelevant and immaterial.

Mr. Turner: If your Honor please, it is cross-examination, because he testified the man was of a happy disposition, so it is directly cross-examination. That happiness comes from physical comfort.

Mr. Kalisch: Not always. I make an objection.

The Court: I will overrule it. He testified he was happy and in good humor. That is ordinarily the case, although there are exceptions, that a person is normal when he is happy and comfortable, not troubled with any bodily afflictions.

Mr. Kalisch: I ask an exception.

Q. Did you know about his physical condition before this? A. No, sir.

Q. Did you ever know about his having high blood pressure? A. No, sir.

Mr. Kalisch: That is all objected to on the same ground.

The Court: Yes, the same objection. Note an exception.

Q. Had he ever been treated by a doctor for anything you knew of?

Mr. Kalisch: I object to this as not cross-examination and incompetent, irrelevant and immaterial.

The Court: It has all a bearing on his physical condition.

Mr. Kalisch: It opens up new subject matter with this witness, entirely apart from the cross-examination.

Abraham Kurnick—Cross

The Court: He was happy and in good humor before hand. I allowed the other questions. This is the same thing.

Mr. Kalisch: I ask an exception.

10 Q. Was he ever sick enough to have a doctor?

Mr. Kalisch: Objection.

The Court: Note an exception.

A. Not that I know of.

Q. No doctor has ever examined him as far as you know?

Mr. Kalisch: I object on the same ground.

20 The Court: Same exception.

A. Not that I know of.

Q. He lived with you for ten years? A. With my father.

Q. You live with your father? A. No.

Q. The same house? A. No.

Q. How many years did you live in the same house with Edward Benjamin? A. I lived with him about two years.

30 Q. What two years were those? A. '23 and '24, I believe.

Q. Have you been around the same house with him after 1924?

Mr. Kalisch: I object to that as incompetent, irrelevant and immaterial and not cross-examination.

The Court: Note an exception.

Mr. Kalisch: You overrule the objection?

40 The Court: Overruled.

Mr. Kalisch: Exception.

A. I come there frequently.

Abraham Kurnick—Cross

Q. How frequently? A. Almost every day.

Mr. Kalisch: I object to this entire line of examination. I don't want to interrupt each question. I object to the question on the ground it is incompetent, irrelevant and immaterial, and not cross-examination. 10

The Court: Same disposition.

Mr. Kalisch: Exception.

The Court: Note an exception.

Q. You came there every day in 1925?

Mr. Kalisch: Same objection.

The Court: Same ruling.

Mr. Kalisch: Exception.

A. Not every day. I am there very often to see my parents. 20

Q. What time was it you talked about this man was happy and contented? A. During the time I lived there.

Q. That was 1923 and 1924? A. Yes.

Q. After that time you wouldn't attempt to tell us what his disposition was? A. I seen him every time I was there. He always seemed to be happy and contented. 30

Q. You didn't ask him if he had any pain? A. No, he always appeared to me contented, he didn't complain.

Q. He didn't complain so you took it for granted he was happy? A. Yes.

Q. That is what you base your judgment on?

The Court: That in conjunction with his appearance?

A. Yes. 40

Abraham Kurnick—Cross

Q. Was there anything about his appearance to indicate he had high blood pressure? A. Not to my knowledge.

Q. You saw him in 1925? A. Yes.

10 Q. Now, what would be your idea of his appearance if he did have high blood pressure?

Mr. Kalisch: I object as not cross-examination, incompetent, irrelevant and immaterial. He is now going into cross-examination of his own cross-examination.

The Court: I don't think he would be in a position to say anything on that, Mr. Turner.

20 Mr. Kalisch: Making an expert out of this witness.

(Further discussion between counsel.)

The Court: All right, I don't see any prejudice.

Q. You don't know how a man would look with high blood pressure, do you? A. I am no physician.

Q. I say you don't know. A. I am no physician.

30 The Court: From a layman's standpoint.

A. When a man appears to be contented and satisfied, he appears to be well.

Q. You don't know how a man would look with high blood pressure? A. No, I would have to study medicine for that.

Mr. Turner: That's all.

40 Mr. Kalisch: That's all. We rest. That is, subject to the hospital record.

Dr. Christopher O. Beling—Direct

RESPONDENT'S CASE

DR. CHRISTOPHER O. BELING, a witness on behalf of the respondent, sworn:

Direct-examination by Mr. Turner: 10

Q. Doctor, will you state your education and qualifications?

Mr. Kalisch: I will admit them unless you want them on the record. I will admit that everybody in the City of Newark knows them.

Mr. Turner: Well, then, you admit Dr. Beling is qualified?

Mr. Kalisch: I certainly do. 20

Q. Will you just tell us whether you examined the petitioner in this case? A. Yes, sir.

Q. When did you examine him, Doctor? A. July 22d, 1925.

Q. What did you find to be his condition? A. Do you want me to detail my examination?

Q. Yes, detail your examination and what you found, Doctor. A. I examined this man and I inquired into his age. He said he was fifty-six 30 years of age. He was a widower, occupation janitor. Complaint was stiffness and pain in the left leg, excessive sweating, pains in the head above the eyes, ringing in the right ear; impairment of hearing and stiffness of the large joints. He stated that he was engaged in January 1925, he was taking an ash can out of the cellar and he had the can next to the top step when he became dizzy and fell against the wall. He waited a few 40 minutes, or seconds, and then lifted the can and

Dr. Christopher O. Beling—Direct

rolled it out on the sidewalk. Went back into the house and gradually got over his dizziness. Sat down for a few minutes and went to bed, about a half an hour after he lifted the can. He slept as usual that night, got up once or twice to
 10 urinate as he had done for several years. He woke up at five o'clock that morning and went down and fixed the furnace, came up and had his breakfast about nine o'clock in the morning. Then he went downstairs; his left hand and left foot in back of the left knee, felt numb and he tracked the left leg. Inquiring into his previous history he said in June, 1923, he had a shock in which he felt weak and dizzy, had specks before his eyes,
 20 his speech was affected and swallowing was difficult. For which he received treatment by the City Hospital and Beth Israel. My examination revealed he had moderately dilated pupils which were sluggish to light and narrowing of the vessels, of the blood vessels in the background of the eyes. He had numerous decayed, infected teeth, offensive breath, spinal curvature; barrel shaped chest; evidences of changes in his lungs; emphysema and asthma; enlarged heart, with
 30 weakness of the heart muscles; accentuated second aortic sound. His reflexes were increased and there was a tendency to Babinski reflex on the right; there was general muscular rigidity. The abdominal reflexes were sluggish. Cremastatic reflexes were absent; there was moderate swelling of his lower extremities with shuffling gait, pins and needles sensation in the left thigh, left arm and leg, somewhat stiff and were not
 40 properly used in walking. He had blood pres-

Dr. Christopher O. Beling—Direct

sure of 250 over 150. That was about the extent of my examination.

Q. And those symptoms, Doctor, that you have described, in your opinion to what are they due?

A. Due where? You mean the diagnosis I made from him? 10

Q. Yes. A. That he had a hypertensive cardiovascular disease; arteriosclerosis and evidence of brain lesions, two cerebral lesions.

Q. In common parlance is that what is known as a stroke? A. Yes.

Q. In your opinion had he had a stroke in 1923, the time he referred to? A. Well, from the symptoms detailed by him I would say he had a stroke.

Q. And then this later condition was due also to another stroke, was it? A. Yes; I saw evidence of damage to the brain. I mean evidence of a stroke, especially affecting the left arm and leg. 20

Q. Now, with his condition as it was, with this blood pressure and his arteriosclerosis and the other symptoms you found what have you to say as to his being likely to have a stroke?

Mr. Kalisch: I object to that, conditions that were found in July, 1925, which was almost six months after the accident. 30

Q. How long in your opinion, Doctor, did those conditions exist with this man? A. Might exist for a long time.

Q. Many years? A. Yes.

Q. With those conditions existing many years what have you to say as to whether he was likely to have a stroke? A. Well, with the symptoms I found on examination, the high blood pressure, 40

Dr. Christopher O. Beling—Direct

250, and the condition of his arteries, I would say that he would have a stroke almost at any time.

10 Mr. Kalisch: I move that answer be stricken out upon the ground it has to do with a condition practically six months after the accident, in regard to which we are not now determining this issue.

Mr. Turner: A condition that existed many years.

The Court: He can give his opinion as to whether the accident had anything to do with bringing that on and estimate how long he had that condition.

20 Mr. Kalisch: I ask an exception to your refusal to strike out.

The Court: Note an exception.

Q. When you say he was likely to have a stroke at any time, does that mean—

Mr. Kalisch: I object to counsel stating what it means. I think the doctor can say that.

30 Q. What would you say as to whether he would be likely to have such a stroke without any exertion on his part?

Mr. Kalisch: I think the doctor is capable of giving his opinion; counsel doesn't have to lead the doctor. Certainly Dr. Beling knows how to say what his opinion means.

(Further discussion between counsel.)

40 The Court: He may answer the question. I don't think it is prejudicial.

Dr. Christopher O. Beling—Direct

Mr. Kalisch: I object to the question on the ground it has to do with a time six months subsequent to the time this man is alleged to have had his accident.

The Court: Overruled.

Mr. Kalisch: Note an exception. 10

A. The history in this case as obtained from this man, and my observations of him, led me to the opinion that a slow onset—the symptoms in both attacks, are in favor of a slow leak, or vascular blocking, on occlusion. Wasn't of sudden onset. A stroke can take place like a bolt from the blue, or it may come on slowly.

20 Q. In his case what is your opinion? A. It was of slow onset. As I detail the history in this case and the examination I am of the opinion it was of slow onset; it took quite a long time to develop. That it wasn't due to a sudden snapping of a vessel, but rather to a slow leak or occlusion.

Q. Doctor, in your opinion, you received from the man a history of his moving a barrel up the steps? A. Yes.

30 Q. In your opinion did that have any connection with his condition? A. Not from the history as he gave it, though it is possible that the strain of lifting the can may have an effect upon a man. Any amount of exertion may have an effect upon the man.

Q. Walking along the street, for illustration? A. Well, any emotional disturbance; anything like bending down to pick up something, might be an effect on him.

40 Q. Any motion that would do what, would be

Dr. Christopher O. Beling—Direct

likely to disturb the man? What kind of motion?

A. I mean changing the posture, any exertion. But it may occur spontaneously.

Q. Without any change in posture or motion?

A. Yes.

10 Q. Is there anything in this case to connect up the moving of the barrel as he detailed it to you, with his condition? A. Well, there is no suddenness of onset. You see, this came on, it came on slowly.

Q. Did you learn, Doctor, from him that he had been in the City Hospital prior to this time? A. Yes, I stated that in my history, that he had been treated by them at the City Hospital for three
20 weeks in June, 1923, when he had his first stroke.

Mr. Kalisch: I object to the doctor stating "when he had his first stroke" because the doctor stated it was his opinion he had a first stroke. The man didn't tell him he had a stroke.

The Court: I understood he told him that.

30 Mr. Kalisch: I didn't understand him to say that. He said he concluded it was a stroke.

A. I concluded that in my own mind. Still, all he said he had an attack, was weak and dizzy, had specks before his eyes; his speech was affected, and swallowing was difficult, and was treated at the City Hospital three weeks at that time and also in January, 1925, was treated at the Beth Israel for five weeks.

40 Q. Doctor, after the man had had paralysis the year before, a stroke of paralysis the year be-

Dr. Christopher O. Beling—Direct

fore this time, what would you say as to whether after that he would be of a happy contented disposition? A. After a stroke of paralysis?

Q. Yes. A. Well, a man may have a stroke of paralysis and be very happy or maybe very depressed, depends upon the case. 10

Q. Upon the man, isn't it? A. Upon the man and upon the case, the kind of stroke, and a good many things.

Q. Did you observe anything to indicate as to whether he was of a happy contented state of mind?

Mr. Kalisch: I object to that—go ahead.

Mr. Turner: That is direct proof on the petitioner's case. 20

Mr. Kalisch: I object to it on the ground whether he was happy or contented after this second stroke doesn't in any way contradict the evidence in the case.

Mr. Turner: If he was happy after the first stroke, he might be happy after the second.

The Court: I don't think it would have any bearing at that stage.

A. I can tell you about his mental status at that time. 30

Q. All right, what was his mental status? A. My examination showed his reactions were rather slow mentally. His memory was good. He was in good contact with his environment. That is what I would state, from his old arteriosclerotic and cardio vascular hypertensive case.

Q. Doctor, did he tell you when he had his first stroke, as to what the effect on his limbs had
40 been?

Dr. Christopher O. Beling—Direct

Mr. Kalisch: I object to the question upon the ground it incorporates a fact which the petitioner did not state.

The Court: "Attack" I think you better characterize that. It might have been a stroke.

Mr. Kalisch: It is this doctor's opinion it was.

The Court: The petitioner called it an attack, with those symptoms.

Mr. Turner: With the symptoms which come with a stroke of paralysis.

(Further discussion between counsel.)

20 Q. Did he tell you after this first attack he had, how it effected his limbs when he was in the City Hospital? A. No, I didn't get that from him. All I got from him was his second attack he had had in two years. He didn't go into the details of his first attack. He had apparently recovered to be able to go about.

Q. What have you to say as to the likelihood of recovering from this second stroke or second attack? A. Likelihood of recovering?

30 Q. Yes. A. I don't think he is going to recover from that second attack.

Q. What have you to say as to the likelihood of his having another stroke? A. It is very likely he will have another stroke. In all probability, he will.

Q. And the cause of that other stroke in your opinion will be what?

40 Mr. Kalisch: Are you attempting now to tell what is going to happen in the future?

Dr. Christopher O. Beling—Cross

I object to this on the ground there are so many things to eliminate human life, for the doctor to pick out one of those millions is mere speculation.

The Court: That is the best he can testify to, now.

Mr. Turner: Cross-examine.

CROSS-EXAMINATION by Mr. Kalisch:

Q. Doctor, if a man had high blood pressure, I understood you to say most any little effort on his part might cause a stroke, is that right? A. Yes, exertion might increase his pressure.

Q. So that, if we assume merely for the purpose of this question that he had a stroke in 1923 and he was suffering with some high blood pressure you found at the time of your examination, any little work he was doing in 1923 when he had that stroke, might have occasioned the stroke, is that correct? A. Might have, but it did not.

Q. In 1923? A. Yes.

Q. How do you know that? A. You assumed after his first stroke—

Q. I don't assume anything. I am referring to 1923 at the time you say you considered it was a stroke, I say if he had the same blood pressure in 1923, then if he was doing any bit of labor, that might have been the inducing cause the producing cause of that first stroke, isn't that so? A. I think that is as highly speculative as the reference you made a short time ago.

Q. Confine yourself to answers, don't characterize my questions. A. All right. That is highly speculative, I can't give an answer to that question.

Dr. Christopher O. Beling—Cross

Q. You can't answer the question? A. No, because it may or may not be so.

Q. You said you couldn't answer the question?

A. I have a right to qualify that.

Q. But you are not able to answer it. Now, 10 you don't know what caused the stroke in 1923?

A. No, I don't know what caused the stroke in 1923.

Q. You also said that any bit of labor may precipitate a stroke, is that right? A. Labor by exertion—

Q. Labor by exertion? A.—which may increase the blood pressure, may contribute to the breaking of the vessel.

20 Q. So that if he were doing any bit of labor at the time he had this alleged stroke in 1923, it would not be unusual for that labor to precipitate or induce that first stroke, is that right? A. At any time while the man is working, at any time.

Q. Now, if from 1923 to 1925 that man worked regularly at the very same kind of work he was doing in 1923, and continued at it until 1925, is there any reason why he should not have a stroke during that time? A. I don't know all the reasons 30 why. If he was to have a stroke, it would be dependent upon a great many things, a great many factors. It would be dependent upon the capacity of his blood vessels to hold against the pressure, and a large number of factors which also make the situation very highly speculative.

Q. Isn't there one other factor, Doctor, and that factor is this; perhaps his blood pressure wasn't as high as you saw it when you examined 40 him in 1925? A. Might have been.

Dr. Christopher O. Beling—Cross

Q. So that from 1923 to 1925 it might have been considerably lower? A. I don't know what it was.

Q. Of course you don't. We know you are here to testify as an expert. I say this, isn't it quite 10 likely that the blood pressure during the years 1923 and 1924 was lower than when you examined him in July 1925, and that may be the cause of his not having paralysis or stroke, doing the same kind of work he was doing the time he had the stroke in 1923? A. I don't know.

Q. That is one reason why he wouldn't have a stroke, isn't it, if his blood pressure were lower?

A. I don't think so, because if I found that the blood pressure was considerably lower, he may 20 have had a blocking, might have a softening or obliteration or occlusion, which also could cause a stroke.

Q. I am not referring to all those different terms you have given us. I am referring now to one with lower blood pressure is less likely to have a stroke from high blood pressure, isn't that an absolute fact? A. No, all depends on how you define the word stroke. Then I can answer 30 the question.

Q. Does a person have a stroke from high blood pressure with normal blood pressure? A. What you say is absurd.

Q. I am asking the question by your answer. Lower blood pressure existing, the less likelihood there is of having a stroke based upon high blood pressure. Isn't that self evident? A. Just analyze that.

Q. I am not asking for any analysis. I want 40 an answer yes or no.

Dr. Christopher O. Beling—Cross

The Court: Can you reply categorically?

A. No, I think the question counsel puts as such, contains two terms, low blood pressure predicated upon high blood pressure, which is absurd.

10 Q. The lower the blood pressure the less likelihood there is of having a stroke caused by high blood pressure, isn't that so, yes or no? If you can't answer it, say so. A. When you speak of high blood pressure, what do you mean by low blood pressure?

Q. I mean the nearer normal the blood pressure is the less likelihood there is of a stroke? A. Yes, I can agree to that.

20 Q. Now, as you get up higher with that blood pressure, the greater the possibility, isn't that so? A. Of having a hemorrhage?

Q. Yes, a stroke. A. No, a stroke may mean you have a stroke from very low blood pressure.

Q. Do you get it from normal blood pressure? A. Yes, you can have normal blood pressure and have a stroke.

Q. From something other than the blood pressure? A. Yes.

30 Q. I want to know whether you can say definitely that the amount of blood pressure you found in July, 1925, had existed for any period of time previous to that as high as you found in July, 1925? A. In my opinion it probably had existed.

40 Q. What do you have to base the amount of blood pressure in July, 1925, as being the same amount existed previously? A. The actual presence of the various symptoms, all of which would indicate that they existed some time.

Dr. Christopher O. Beling—Cross

Q. All that would indicate high blood pressure existed? A. Yes.

Q. But you couldn't tell how high, could you? A. No.

Q. The lower it is and the nearer normal it is, the less likely the man will be troubled with regard to his blood pressure when he does manual labor, isn't that right? A. That's right. 10

Q. Therefore if he was doing manual labor for two years after 1923, does not your opinion—is not it your opinion the blood pressure that he had during that time was less than you found in July, 1925? A. I can't tell you that.

Q. Well, probably? A. Probably he had high blood pressure, in my opinion. 20

Q. Do you think he could have done janitor's work for two years, lifting large cans of ashes in and out of the cellar, if he had 250 above 150 as you described at the time of your examination in July? A. Yes, sir.

Q. You think he could do it? A. Yes, sir.

Q. You think then labor would not be the inducing cause of anything? A. I didn't say that.

Q. What do you say as to any connection between precipitating a stroke, where high blood pressure is in existence, with hard labor, or by hard labor? A. It may or may not produce it. 30

Q. It may or may not produce it. What would your opinion be in this case, Doctor, if he were suffering high blood pressure and he had attempted to lift a barrel and started to slip, and used all his strength to catch it, keep it from falling and finally it slipped and came down and struck him. Do you think that that would be the cause that may have produced the stroke? 40

Dr. Christopher O. Beling—Cross

Mr. Turner: I object to may have. That is a possibility.

Mr. Kalisch: This is cross-examination. It is a question based upon his testimony. Strike out the question.

10 Q. If this man were lifting a barrel of ashes about two feet or two and a half feet, three feet in diameter, and somewhat higher than the desk at which the Commissioner sits, lifted it up two or three steps and it started to slip, and he had to use his strength to keep it from falling down, and finally was unable to do so and he fell and the barrel fell against him, you wouldn't say that that accident had no connection with the subsequent stroke, would you? Knowing his previous condition? A. Well, of course there is a possibility of that occurring, but there are many factors to be taken into consideration. I say there are many factors to be taken into consideration.

20 Q. I understood you. If those facts are so, and directly after this alleged accident he couldn't get up, had to be lifted up and carried to his room, that would be a sufficiently immediate attack for you to say there was a casual connection between the accident and the stroke, wouldn't it? A. If this man had been lifting and he had failed to keep the barrel from falling and he had received injuries (which are not due to any external violence, I mean) and he had lost the power of his limbs and he was unable to help himself, and subsequent examination indicated that there was evidence of involvement of his central nervous system, I would say then the relationship between the accident and the physical condition of the man,

Dr. Christopher O. Beling—Re-direct

that is the diseased condition, would be fairly well established.

Mr. Kalisch: That's all.

RE-DIRECT-EXAMINATION by Mr. Turner: 10

Q. Did he tell you of any such facts as counsel has described?

Mr. Kalisch: I object to this as not re-direct-examination. We have gone all over the history was given to this doctor. I don't think it is necessary to repeat in the record, all the history.

The Court: He is acquainted with the history now. 20

(Further discussion between counsel.)

Mr. Turner: I am asking the doctor if this man gave any such history to him as counsel has described in his question.

Mr. Kalisch: I object to that. The doctor has already given the history he received.

The Court: He may answer it.

Mr. Kalisch: I ask an exception on the ground it is not re-direct. 30

(Question repeated by the reporter.)

A. No, he didn't give me those details.

Q. But he did give you the details of the happening of that day, didn't he? A. Yes.

Q. Did he tell you of any such accident as counsel has described?

Mr. Kalisch: I object on the ground it is not re-direct. 40

The Court: I want that straight. It is a very important point.

Dr. Christopher O. Beling—Re-direct

Q. What did he tell you about what happened that day?

10 Mr. Kalisch: I object as not re-direct-examination. It merely leads to more cross-examination again. I thought we finished the direct case on the doctor.

The Court: I will allow the question.

Mr. Kalisch: I ask an exception.

A. The man stated to me he was taking an ash can out of the cellar and he had the can on the next to the top step when he began to feel dizzy and fell against the wall. He waited a few seconds and then lifted the can and rolled it out on 20 the sidewalk and went back into the house and gradually got over his dizziness. Sat down for a few minutes and then went to bed. The rest of it I testified to.

Q. Now, that condition, Doctor, those facts stated to you by the petitioner, in your opinion was there any causal connection between those facts and his stroke of paralysis?

30 Mr. Kalisch: I object to that on the ground it is not re-direct-examination.

The Court: I will allow the question.

Mr. Kalisch: I ask an exception.

The Court: Exception.

A. As I stated, the symptoms of this attack came on slowly, didn't come on suddenly, came on sometime after the lifting of the ash can, after he had had his sleep, and the next day.

40 Q. Then, in your opinion is there any casual connection between the two?

Dr. Christopher O. Beling—Re-cross

Mr. Kalisch: I object to that as not re-direct-examination, merely opening the doctor's direct-examination all over again. He should put in his whole case on his direct-examination and not wait till I finish cross-examination. 10

The Court: I will allow the question.

Mr. Kalisch: I ask an exception.

The Court: Note an exception.

(Question repeated by the reporter.)

A. I couldn't see any connection between them, any direct connection.

Mr. Turner: That's all.

RE-CROSS-EXAMINATION by Mr. Kalisch: 20

Q. Doctor, isn't dizziness one of the symptoms of a stroke? A. I wouldn't say it was one of the symptoms of a stroke, no.

Q. Ordinarily does one get dizzy with a stroke?

A. Sometimes there is premonitory—what you may say a previous dizziness.

Q. Premonitory, a sort of a signal something is coming? A Yes, there may be that in a stroke.

Q. Would you consider that as being connected 30 with a stroke? A. That may be connected with his arterio-sclerosis; it may be connected with the beginning of his stroke. He may not get that that way.

Q. If that started directly after or at the time he was moving the ash can and the next day he found some of his limbs were numb, don't you think that chain of events is a fairly normal chain? A. I think it is a little far fetched, of 40 course.

Dr. Christopher O. Beling—Re-cross

Q. The dizziness isn't far fetched, is it? A. As being the sign of a stroke.

Q. Meaning a stroke is approaching? A. Yes, but that is a common symptom in arterio-sclerosis. The man has the dizziness today and gets the stroke tomorrow. For instance if I was lifting a chair and I was dizzy today and I had a stroke tomorrow I think it was a little bit stretching a point to say the dizziness was a premonitory symptom of the stroke. I may say the dizziness might have caused some vascular upset or alteration, but I cannot connect it definitely with the stroke.

Q. You said a moment ago it was premonitory, didn't you? A. Sometimes when a stroke is coming on there is a certain amount of dizziness but it is usual in those cases for the person to be struck down, become unconscious, become paralyzed.

Q. It is very often possible for a stroke to come to certain people without hardly noticeable effect, isn't that so? A. Yes.

Q. Sometimes it gradually gets worse and either the hand or arm or leg is paralyzed? A. Yes.

Q. So that if this were in any way connected with the stroke, premonitory to the stroke, isn't it quite possible that the condition in this man may have been gradual during the night, and reached a point where in the morning his limbs were numb?

Mr. Turner: I object to that. It assumes it was premonitory to the stroke. The doctor says it is not.

Mr. Kalisch: No, he said it may be.

Dr. Christopher O. Beling—Re-cross

A. I was asked whether dizziness is a symptom of a stroke; it is sometimes, yes.

Mr. Turner: This is the day before.

A. I don't recall what the question is he referred to. There were about three or four conversations after the last question.

(Question repeated by the reporter.)

A. It is possible. It is a possibility, but I don't think it is probable in this case.

Q. It may have been a symptom of—what did you say—arteriosclerosis? A. Yes.

Q. Would that disable the man, would that paralyze him? A. Would arterio-sclerosis?

Q. Yes. A. Would arterio-sclerosis paralyze him?

Q. This man. And did it paralyze him? A. Arterio-sclerosis is a diseased condition of the arteries.

Q. I understand all that. We must have a record of all these things, what you and I think outside of the record doesn't make much difference. I want it on the record. A. I think that is what is being done, Mr. Kalisch.

Q. That is the disease helped to disable him and paralyze him? A. That is the disease on which these insults took place.

Q. Please answer the question. A. That is the answer. The arterio-sclerosis is the disease on which these insults or strokes take place.

Q. Now, does it mean that the man is disabled or not? A. You mean—

Q. As the result of this disease, I am talking about Mr. Benjamin. A. Yes, a man with arterio-

Dr. Christopher O. Beling—Re-cross

sclerosis has a disease may impair the efficiency of the person very greatly.

Q. Do you think if he were troubled with that he could have done this work as a janitor? Do you think the arterio-sclerosis permitted him to do this work? A. Oh, yes, arterio-sclerosis. People with arterio-sclerosis for instance laborers who have very advanced arterio-sclerosis continue at their work.

Q. Can still work? A. Yes, and work.

Q. Assuming that condition to be present does that rather help the condition where a stroke may occur or not? The presence of that disease? A. Of arterio-sclerosis, oh yes, absolutely.

Q. So, in other words, the worse condition the body is in makes its ability to resist so much less, is that right? A. Pardon me, when you say the worse condition the body is in, it makes it harder to resist, are you speaking of it in general terms?

Q. If the body has such a disease as arterio-sclerosis is present, and the person has high blood pressure, it requires less of an effort on the part of that man to induce or bring about the stroke than to the ordinary man that isn't suffering from arterio-sclerosis, is that right? A. I don't think the man induces the stroke.

Q. You are beginning to fence, Doctor? A. I am not fencing. I am trying to tell you.

Q. You don't answer the question. A. No, I didn't understand it.

Q. Assuming that this man has got arterio-sclerosis and he has high blood pressure would he be more inclined to suffer a stroke of paralysis in going about doing work of a janitor than a man

Dr. Christopher O. Beling—Re-direct

who merely had high blood pressure? A. Oh yes, a man with brittle arteries, arterio-sclerosis is more likely to have a stroke than a man with normal arteries, one with high blood pressure.

Q. Therefore, the inducing cause, or rather the straw that breaks the camel's back with a man suffering from arterio-sclerosis and high blood pressure, need be less than with a man who merely is suffering from high blood pressure? A. Oh, yes.

RE-DIRECT-EXAMINATION by Mr. Turner:

Q. Doctor, do you have to have a straw that breaks the camel's back or does the disease progress to the point of a stroke without the straw?

A. It all depends what that straw is. That straw may be an emotional condition; may be weakness of the camel's back without the straw.

Mr. Kalisch: Heavy lifting may be the straw?

A. Heavy lifting is a straw, I will admit that. It is more than a straw.

Mr. Kalisch: It is more than a straw.

Q. After a man had a previous stroke would he be more prone to have another stroke than if he never had a stroke? A. A previous stroke with symptoms we observe under arterio-sclerosis makes a person more prone to have another one.

By Mr. Kalisch:

Q. There is no certainty a person having had one will have another? A. I don't think there is anything certain in human affairs.

Dr. Christopher O. Beling—Re-direct

Q. What I want to know is whether the average person who is suffering from a stroke—strike it out. Whether a man having suffered a stroke is sure to have another at a certain time. A. I wouldn't say sure, but he is liable to.

10 Q. He is liable to, but it may be a couple of years, or many years, is that right? A. Or he may never have it.

Mr. Turner: Or he may have it in months?

A. Yes, and he may have one in a short time after the first one.

Mr. Turner: That's all.

20 Mr. Kalisch: That's all.

(At this point the hearing in the above matter was adjourned until June 11th, 1926.)

Hearing of June 11, 1926.

NEW JERSEY DEPARTMENT OF LABOR

WORKMEN'S COMPENSATION BUREAU

Newark, Essex County, District

10

EDWARD BENJAMIN,

Petitioner,

vs.

MAX KURNICK,

Respondent.

20

Transcript of stenographic notes of the testimony taken in the above entitled matter before HON. HARRY J. GOAS, Deputy Compensation Commissioner, at the Department of Labor Building, 9-15 Franklin Street, Newark, New Jersey, on the 11th day of June, A. D., 1926, at 11:50 a. m. in the forenoon.

Appearances:

30

ISIDORE KALISCH, Esq., (Kalisch & Kalisch, Esqs.) for the petitioner.

FRANK G. TURNER, Esq., for the respondent.

40

Dr. Joseph L. Fardon—Direct

DR. JOSEPH L. FARDON, a witness on behalf of the respondent, sworn:

Direct-examination by Mr. Turner:

10 Mr. Kalisch: Qualifications admitted.

Q. Doctor, your qualifications are admitted. Will you tell us did you examine the petitioner, Edward Benjamin? A. I did.

Q. When did you examine him, Doctor? A. March 4th, 1925, at the Beth Israel Hospital.

Q. What did you find when you examined him? A. The man was in the Ward, confined to bed. His record I went over. On admittance the blood
20 pressure was 260 over 140. He had a weakness in his left side, left arm and leg, and the history revealed that he had suffered a previous attack of apoplexy some years previous. His reflexes at the knees were exaggerated, markedly more so on the left side. He had a positive Babinski on the left side, indicating a lesion of the motor tracts of the cord involving the left side of his body, which with the history of high blood pressure was interpreted by me to mean this man
30 suffered an attack of paralysis involving the left side of his body.

Q. Did you find anything there to indicate a traumatic disturbance to this man? A. Didn't see a sign of any injury, bruises, contusions, or eccimosis.

Q. From your examination of him how long would you say this high blood pressure condition had existed? A. The history helped me a
40 little in that respect, in that in 1923 he was ad-

Dr. Joseph L. Fardon—Direct

mitted to the City Hospital with a similar attack, a stroke involving his left side, which he partially recovered from.

Q. Did you learn this was the second stroke he had, or he had more than that?

Mr. Kalisch: I object to that question. 10
If he is going to refer to the hospital record well and good. If he learned it generally, I object to the question.

A. From the hospital record of the Beth Israel, that record contained the history of the attack at the City Hospital. That was the only other attack I know of.

Q. That is the only other attack you know of? 20
A. Yes, sir.

Q. How old would you say this man was? A. How old?

Q. Yes, a young man or an old man? A. Probably a man between sixty and seventy, I should judge, from his appearance.

Mr. Kalisch: From his appearance?

A. Yes.

Q. Do you remember what he told you his age 30 was? A. No, I don't; I believe it was fifty something.

Q. Would it refresh your recollection as to what he told you if you saw that record? A. Yes.

Q. Is that the card of your report?

Mr. Kalisch: If you say that is the report he sent you, let him use it.

A. I have the age here, fifty-six.

Q. Where did you get that age from, Doctor? 40

A. I think he gave it to me.

Dr. Joseph L. Fardon—Cross

Q. But from his appearance you would say—
A. He looked older to me, yes.

Mr. Turner: Cross-examine.

CROSS-EXAMINATION by Mr. Kalisch:

10 Q. Did you consider the age in coming to your conclusions? The ages you have just given to us? A. Conclusions about what?

Q. Any of the conclusions you have given us today. A. Relative to his disease?

Q. Yes. A. No.

Q. So that doesn't play any part? A. No, age doesn't play any material part.

20 Q. As a matter of fact you wouldn't change your opinion if the actual age was forty-seven? A. No, a man forty-seven can have a stroke.

Q. Now, if the man had high blood pressure and had a previous stroke, and was in the act of lifting something heavy and had to strain himself considerably because of the fact the barrel which he was lifting started to slip, would you say that that might induce a stroke? A. I don't believe it is possible to tell what induces a stroke.

30 Q. Can't excitement induce a stroke? A. That is a theory, it is believed, but I don't believe in myself, no, sir.

Q. Doctor, that theory has been developed by laymen or doctors? A. Naturally would be developed by doctors.

40 Q. It doesn't happen to agree with your opinion? A. No, I don't mean that at all. I mean medicine is not such an exact science we must take everything said as absolutely perfect or positive. It is not an exact science in that respect.

Dr. Joseph L. Fardon—Cross

Q. But there are some other good medical men who do give that as their opinion, isn't that so? That excitement or heavy draft on the system may induce it? A. No, I don't think a heavy draft would do it. Possibly intense excitement with resulting nervous affect over the vasa-motor nerves 10 which supply the blood vessels, in turn might cause a temporary rise in pressure. That is the pathology I would consider of excitement as being the cause of subsequently producing a stroke.

Q. Don't you know from your own practice, very frequently strokes have come with the attempt of a man to make an effort beyond his strength? A. No, I wouldn't say beyond his strength. I seen men have a stroke straining at 20 stool. That wasn't beyond his strength.

Q. So it doesn't require an extraordinary strain? A. No, it may come at a very slight strain.

Mr. Turner: When you say a slight strain would you say a man walking along the street, for example?

A. No, I think there must be a sudden effort made. Say a man straining at stool. It is questionable in my mind whether that produces it but 30 we know of men suddenly doubling over. It is conceded generally in medicine that excitement or sudden strain, something would temporarily raise the blood pressure, might possibly produce it. That is generally known in medicine, but I think many causes of strokes are coincidental. I think a stroke occurs at a certain given time, and if a person happens to be doing something they blame that on it, but I think it would occur anyhow. I 40 don't think any doctor can tell me positively.

Dr. Joseph L. Fardon—Cross

By Mr. Turner:

Q. If a man has had one stroke is he more or less likely to have another? A. He is very likely to have a second and it may come at any time.

10 Q. If a man has had one stroke would it be necessary to have any excitement or strain to cause a second stroke? A. Not necessarily. I think it occurs when the strain gets to a certain point.

Q. A stroke of paralysis is due to the fact the blood pressure reaches a certain point where the vessels no longer can withstand the pressure? A. Yes, in the brain. The lenticular-striat artery is the weakest artery in the 20 body. It is in the center of the brain. When the pressure is high over the general system that is the first vessel to go. There is an extravasation of blood along the general system, along the pons and medula, involves the motor system, and along there may be one arm, one leg or a half an arm, depends where that blood spreads out in the brain, and the area of control it involves. That is the definite theory of pathology as I know it.

30 Q. When he has the first stroke that artery breaks. When he has the second stroke, what happens? What breaks? A. The same thing. It heals up and clots temporarily. It gets along after a fashion. I don't think a man is ever the same after a stroke. I don't think he ever recuperates. A certain man who has already had a stroke is more likely to have another than a man never had one.

40 Q. Is there any definite number of strokes a man may have while he is alive? A. No, sir; that is very indefinite. He might die with his first or die with his tenth. Nobody knows.

Dr. Joseph L. Fardon—Cross

Mr. Kalisch: That first stroke might have come with some excitement or the ordinary strain which—or the strains which you described here this morning?

A. It may come from ordinary excitement or 10 may come automatically without any excitement.

Mr. Turner: That's all.

Mr. Kalisch: That's all. I have one witness who will testify to that first stroke, that while this man was cleaning, leaning down and fixing an automatic cleaner, I think it is, or some kind of cleaner, he had that first stroke. I can produce that woman and will produce her at any time, if 20 the Court thinks it is necessary.

Mr. Turner: That is the 1923 stroke.

Mr. Kalisch: Yes. I think he was leaning down to fix a carpet sweeper and doubled over. That is the only other evidence I care to give in addition to what is already given in, unless you are willing to stipulate on the record, that testimony.

The Court: I don't think that will make much difference. 30

Mr. Kalisch: I am willing to agree on the record then that the witness who will testify to the previous stroke referred to by Dr. Fardon, will testify that when the petitioner—

Mr. Turner: I don't want to concede that he was doing anything when he had the first stroke.

Mr. Kalisch: Very well. 40

(At this point the hearing was adjourned until June 25th, 1926.)

Hearing of June 25, 1926.

NEW JERSEY DEPARTMENT OF LABOR

WORKMEN'S COMPENSATION BUREAU

Newark, Essex County District

10

EDWARD BENJAMIN,
Petitioner,

vs.

MAX KURNICK,
Respondent.

20

Transcript of stenographic notes of the testimony taken in the above entitled matter before Hon. Harry J. Goas, Deputy Compensation Commissioner, at the Department of Labor Building, 9-15 Franklin Street, Newark, New Jersey, on the 25th day of June, A. D., 1926, at 10:30 a. m. in the forenoon.

30
Appearances:

ISIDORE KALISCH, Esq. (Kalisch & Kalisch, Esqs.) for the petitioner.

FRANK G. TURNER, Esq., for the respondent.

40

Emma Russel—Direct

EMMA RUSSEL, a witness on behalf of the petitioner, sworn:

Direct-examination by Mr. Kalisch:

Q. Mrs. Russell, were you a tenant in the apartments of Mr. Kurnick at any time? A. Yes. 10

Q. Where? A. 58 Court Street.

Q. Did you know a man there by the name of Benjamin? A. Yes.

Q. Did you at any time previous to January, 1925, see anything happen to Benjamin? A. Yes, I did.

Q. About how long before? A. Well, it was about two years ago.

Q. Yes. A. It was either in July or August, 20 I am not positive.

Q. You are not positive of the date? A. No.

Q. Please tell us what you saw about that time. A. We were getting ready to go to go to Pittsburg at the time. We had an apartment at the time. He was on the third floor with a vacuum cleaner, cleaning. He stooped down to fix the cleaner, fix something on it and he fell over, got a dizzy spell and fell over.

Q. Did they take him anywhere at that time? 30 A. Yes, took him down to Mr. Kurnick's place.

Q. Did they take him to the hospital? A. They took him to the hospital right after, yes.

Q. Did you see as he was stooping down to fix this vacuum cleaner, him double over? A. Yes.

Mr. Kalisch: Cross-examine.

40

Emma Russel—Cross

CROSS-EXAMINATION by Mr. Turner:

Q. Did you see him do this? A. Yes, I did.

Q. What floor was your apartment on? A. The third floor.

Q. He was working out in the hall? A. He was
10 working out in the hall with the vacuum cleaner.

Q. Did you have your door open or closed? A. I was out there watching for the man to come to get the trunks. That's how I happened to see it.

Q. He was cleaning what with the vacuum cleaner? A. The carpet on the hall.

Q. Just stand up and show us how he was standing when he fell over. A. Bending down like this when he fell over (witness indicates).

20 Mr. Kalisch: Bending the body about half way to the floor, the witness indicates.

A. Yes.

Q. You didn't know what was the matter with him? A. No.

Q. You found out afterward he had a stroke of apoplexy? A. Yes.

Q. Do you know where he was taken after that time? A. Taken to the City Hospital, I believe.

30 Q. When did you see him after that? A. I didn't see him after that.

Q. Never saw him again? A. No.

Q. Did you continue to live in the same house? A. I went away from there that day.

Q. Did you ever come back to that house? A. Yes, I came back to live there.

Q. When did you come back to live there? A. We were only gone about a week, I guess. Then
40 we came back.

Q. You were gone about a week and then you

Stewart B. Tucker—Direct

came back? A. To Pittsburg. We never went to Pittsburg.

Q. Then when you came back how long did you live there? A. I don't know how long we lived there. I think about four or five months.

Q. About four or five months, and during that
10 whole time you never saw this man once? A. No.

Q. He wasn't around there once after that? A. No.

Mr. Turner: That's all.

Mr. Kalisch: Now, Mr. Tucker tells me the amount of the bill of the hospital which he has received is \$67. Now, if you have no objection I will introduce that bill. It
20 amounts to \$67, room and board from February 26th.

Mr. Turner: We will permit such a bill to go in.

(Bill referred to above entered in evidence and marked Exhibit P-1—6/25/26.)

STEWART B. TUCKER, called as a witness
30 on behalf of the petitioner, sworn:

Direct-examination by Mr. Kalisch:

Q. Mr. Tucker, you are in charge of the claim department of the Maryland Casualty Company in Newark? A. Yes.

Q. Have you in your files a report of one Dr. Sheehan, a physician who made a report to the Maryland Casualty Company of Mr. Benjamin,
40 and who reported to the company that it was a compensable case?

Stewart B. Tucker—Direct

10 Mr. Turner: I object to that on the ground it is immaterial and ask it be stricken out. It is a question that contains an unwarranted assumption of fact and it is incompetent. It would not be material had such a report been offered, it would not be material or admissable.

The Court: Change the question.

Mr. Kalisch: Your Honor overrules the question? I ask an exception.

The Court: Note an exception.

Q. Did you have this man examined by Dr. Sheehan?

20 Mr. Turner: I object to that on the ground it is immaterial.

The Court: You can answer that. It is a fact question.

A. I don't think so.

Q. You did not? A. I don't believe so. I never remember it.

Q. You don't know Dr. Sheehan? A. I know who he is, yes.

30 Mr. Kalisch: That's all.

Mr. Turner: That's all.

Mr. Kalisch: Petitioner rests.

Mr. Turner: I think the case is closed from our standpoint.

(Case closed, decision reserved.)

Commissioner's Certificate.

I hereby certify that the foregoing is a true and accurate transcript of the above matter as taken before me at the times, place and dates hereinbefore set forth.

Deputy Compensation Commissioner. 10

Stenographer's Certificate.

I hereby certify that the foregoing is a true and accurate transcript of the above matter as taken stenographically by me at the times, places and dates hereinbefore set forth. 20

WILLIAM C. O'BRIEN,
Court Reporter.

Opinion.

NEW JERSEY SUPREME COURT

10	EDWARD BENJAMIN, Defendant in Certiorari, vs. MAX KURNICK, Prosecutor in Certiorari.	}	No. 276 May Term, 1927.
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Argued May 3, 1927; Decided November 25,
1927.

20 On Certiorari, etc.

Before Justices Trenchard and Katzenbach.

For the prosecutor, Frank G. Turner.

For the defendant, Kalisch & Kalisch.

Per Curiam:

30 This is a workmans compensation case. The
 defendant in certiorari was a laborer working as
 a janitor for the prosecutor at No. 58 Court
 Street, Newark. He was rolling a barrel of ashes
 weighing approximately 100 pounds out of the
 cellar, and after it got part way out it began to
 slip and fell off the step and the barrel rolled
 against him and he fell and when picked up was
 injured, and found to be paralyzed in the left arm,
 the left leg and on the right side of the face. He
 40 was removed to the hospital. He then had a blood
 pressure of 200.

Opinion

He filed his petition and the Workmen's Com-
 pensation Bureau found that the accident arose
 out of and in the course of his employment; that
 he was suffering from high blood pressure at
 the time and that by reason of the effort put forth
 by him to avoid having the ash barrel fall, he suf- 10
 fered a stroke of paralysis which disabled him
 immediately and that the petitioner suffered the
 disability as a result of the accident. The board
 gave an appropriate judgment for the petitioner.

The employer then took an appeal to the com-
 mon pleas and the judgment was affirmed. The
 employer then sued out this writ to review the
 judgment. The prosecutor claims that the peti- 20
 tioner suffered a stroke of paralysis and nothing
 more and that it was not produced by the injury
 which he sustained.

We think this question was, under the evidence,
 a closely balanced question of fact, there being
 evidence, expert and otherwise in character, both
 ways.

Since there is to be found in the evidence ample
 support for the judgment, the judgment will be 30
 affirmed, with costs.

Atchison v. Colgate & Co. 3 Misc. Rep.
451.

Rule of Affirmance.

NEW JERSEY SUPREME COURT

10	EDWARD BENJAMIN, Defendant in Certiorari,	}	Remittitur
vs.			
20	MAX KURNICK, Prosecutor in Certiorari.		

This matter was argued before the Supreme Court at the May Term 1927, in the presence of Frank G. Turner, for the prosecutor, and Kalisch & Kalisch for the defendant, and the Court having considered the arguments and briefs of counsel,

It is, therefore, ORDERED, that the judgment under review be affirmed with costs to be taxed, and the record be remitted to the Court below to be proceeded with according to law and the practice of said Court.

30 Entered Dec. 5, 1927.

On motion of

KALISCH & KALISCH,
Attorneys for Defendant.

Notice of Appeal.

NEW JERSEY SUPREME COURT

MAX KURNICK,	}	10
Prosecutor-Appellant,		
vs.		
EDWARD BENJAMIN,		
Respondent.		

To Kalisch & Kalisch, Attorneys of Respondent:

TAKE NOTICE, that the prosecutor hereby appeals to the New Jersey Court of Errors and Appeals from all of the judgment entered herein on November 25th, 1927.

Yours respectfully,

FRANK G. TURNER,
Attorney of Prosecutor-Appellant.

Grounds of Appeal

NEW JERSEY COURT OF ERRORS AND AP-
PEALS

10 EDWARD BENJAMIN,
Petitioner-Respondent,
vs.
MAX KURNICK,
Prosecutor-Appellant.

20 The following are the grounds on which the
prosecutor-appellant appeals to the above en-
titled Court from the judgment of the New Jersey
Supreme Court hereon:

1. The New Jersey Supreme Court erroneously
gave judgment in favor of the petitioner-
respondent and against the prosecutor-appellant.

2. The New Jersey Supreme Court erroneously
refused to find the Workmen's Compensation
Bureau of the New Jersey Department of Labor
was without jurisdiction to hear and determine
30 this cause.

3. The New Jersey Supreme Court erroneously
refused to find the Court of Common Pleas of the
County of Essex was without jurisdiction to hear
and determine this cause.

4. The New Jersey Supreme Court erroneously
refused to find that the petitioner did not partici-
pate in an accident which arose out of and in the
40 course of his employment.

Grounds of Appeal

5. The New Jersey Supreme Court erroneously
refused to find the finding of the Workmen's Com-
pensation Bureau in favor of the petitioner was
contrary to Law.

6. The New Jersey Supreme Court erroneously 10
refused to find the finding of the Essex County
Court of Common Pleas in favor of the petitioner
as contrary to Law.

7. The New Jersey Supreme Court erroneously
refused to find the disability caused to the peti-
tioner below (Albert Benjamin) was the result of
disease and not of accident.

8. The New Jersey Supreme Court erroneously 20
refused to find that there is no legal evidence to
sustain the decision and award of four hundred
weeks disability made in favor of the defendant
here by the Workmen's Compensation Court and
by the Essex County Court of Common Pleas.

9. The New Jersey Supreme Court erroneously
refused to reverse the judgment of the Essex
County Court of Common Pleas and the Work-
men's Compensation Bureau on the ground that
the petitioner did not appear at the hearing and 30
did not testify, and the award was made without
the Commissioner of the Workmen's Compensa-
tion Bureau seeing the petitioner or observing as
to whether he was or was not disabled.

FRANK G. TURNER,
Attorney and of counsel with
Prosecutor-Appellant.

New Jersey
Court of Errors and Appeals

EDWARD BENJAMIN, Petitioner-Respondent,	}	On Appeal
vs.		On Certiorari
MAX KURNICK, Prosecutor-Appellant.		Workmen's Compensation

BRIEF OF PROSECUTOR-APPELLANT.

This was a Workmen's Compensation case and the petitioner (who did not appear or testify in the case) claimed by his attorney that he was a laborer on January 25, 1925, and while working at No. 58 Court Street, Newark, New Jersey, he was rolling a barrel of ashes weighing about seventy-five to one hundred pounds, when same started to slip and in preventing it from falling he was injured about left leg and arm. It appears from the testimony that the only thing that is the matter with the petitioner's arm and leg is that he has had a paralytic stroke. On behalf of the petitioner, Dr. William Kreuger testifies (Case, p. 27) as follows:

“Q. Now, this man has had a paralytic stroke, hasn't he? A. He has.

Q. And what is a paralytic stroke? A. Paralytic stroke means inability to use the muscles of a certain part or parts of the

body, due to a paralysis of the nerves that govern those muscles.

Q. Do you know how old this man is? A. Oh, I would say he is close to sixty.

Q. He has had paralysis of what part of his body? A. The muscles of his left leg, left arm, and part of his face. I think it was the left. I am not sure.

Q. Do you know which part of his face?

A. I think it was the left."

Dr. Kreuger further testifies (Case, p. 28):

"Q. Then ordinarily if a man had high blood pressure had cause to worry or cause of grief or some mental disturbance that would be very likely to develop into paralysis, would it not? A. Yes.

Q. If a man has high blood pressure and does any physical exertion, that produces paralysis? A. Very often.

Q. So that if a man had high blood pressure and, for instance, walked rapidly, or ran, or lifted anything, or did any kind of work that was perhaps heavy for him, that would be likely to produce a stroke, wouldn't it? A. It would."

Dr. Kreuger further testifies (Case, p. 29):

"Q. A stroke of paralysis means a hemorrhage of what? A. Hemorrhage into the brain.

Q. Hemorrhage into the brain, so whenever a man has high blood pressure and then has paralysis he then has a hemorrhage into the brain. Where this man was paralyzed on the left side, that would mean he had a hemorrhage on the brain of what part? A. On the right side."

It appears that the petitioner below had had a stroke of paralysis about two years before the alleged happening set forth in the petitioner's petition. It does not appear how many strokes of paralysis the petitioner had between the two strokes.

Mrs. Emma Russell testifies (Case, p. 81) that the petitioner was on the third floor with a vacuum cleaner and he stooped down to fix the cleaner. As he did so, he fell over in a stroke of apoplexy and was taken to the City Hospital. She says (p. 73) that she lived in the same house for four or five months afterwards and during that entire time she never again saw the petitioner.

Mrs. Alice Bradshaw testifies (Case, p. 32):

"Q. Mrs. Bradshaw, please tell us slowly exactly what you saw. A. Why, the man was taking the ash barrel out of the cellar; he got it up three steps when he fell. The can slipped, the ash barrel slipped, and he fell.

Q. Fell where? A. Down off the step, and the barrel was up against him, but, of course, the barrel didn't fall because it is too narrow. It didn't spill."

Dr. Chris. E. Beling testifies (Case, p. 51):

"Q. Yes, detail your examination and what you found, Doctor. A. I examined this man and I inquired into his age. He said he was fifty-six years of age. He was a widower, occupation, janitor. Complaint was stiffness and pain in the left leg, excessive sweating, pains in the head above

the eyes, ringing in the right ear; impairment of hearing and stiffness of the large joints. He stated that he was engaged in January, 1925, he was taking an ash can out of the cellar and he had the can next to the top step when he became dizzy and fell against the wall. He waited a few minutes, or seconds, and then lifted the can and rolled it out on the sidewalk. Went back into the house and gradually got over his dizziness. Sat down for a few minutes and went to bed, about a half an hour after he lifted the can. He slept as usual that night, got up once or twice to urinate as he had done for several years. He woke up at five o'clock that morning and went down and fixed the furnace, came up and had his breakfast about nine o'clock in the morning. Then he went downstairs; his left hand and left foot in back of the left knee, felt numb and he tracked the left leg. Inquiring into his previous history, he said in June, 1923, he had a shock in which he felt weak and dizzy, had specks before his eyes, his speech was effected and swallowing was difficult. For which he received treatment by the City Hospital and Beth Israel. My examination revealed he had moderately dilated pupils which were sluggish to light and narrowing of the vessels, of the blood vessels in the background of the eyes. He had numerous decayed, infected teeth, offensive breath, spinal curvature, barrel-shaped chest, evidence of changes in his lungs, emphysema and asthma, enlarged heart with weakness of the heart muscles, accentuated second aortic sound. His re-

flexes were increased and there was a tendency to Babinsky reflex on the right; there was general muscular rigidity. The abdominal reflexes were sluggish. Cremostatic reflexes were absent; there was moderate swelling of his lower extremities, with shuffling gait, pins and needles sensation in the left thigh, left arm and leg, somewhat stiff and were not properly used in walking. He had blood pressure of 250 over 150. That was about the extent of my examination.

Q. And those symptoms, Doctor, that you have described, in your opinion to what are they due? A. Due where? You mean the diagnosis I made from him?

Q. Yes. A. That he had hypertensive cardiovascular disease, arterio sclerosis, and evidence of brain lesions, two cerebral lesion.

Q. In common parlance, is that what is known as a stroke? A. Yes.

Q. In your opinion had he had a stroke in 1923, the time he referred to? A. Well, from the symptoms detailed by him I would say he had a stroke.

Q. And then this later condition was due also to another stroke, was it? A. Yes, I saw evidence of damage to the brain. I mean evidence of a stroke, especially effecting the left arm and leg."

The Law.

In the case of *Krapowitch v. Public Service Railway Company*, 3 N. J. M. R. 932, it is held:

"The petitioner, who was thirty-four years of age, was employed as an electrician and worked in a pit on the motors of trolley cars, and on the day when this flash occurred, he was sent to Dr. Holmes, the company physician. The doctor said that he found an inflamed condition of the eye, which he treated, and after the inflammation subsided he found that the petitioner had a defect in vision.

We feel that the petitioner has failed to sustain the burden of proof required by law and that the case should be dismissed."

In the case of *Fisher v. Crucible Steel Company of America*, 3 N. J. M. R. 1251, it is held:

"That on or about November 13th, 1923, the said decedent was employed by the respondent at its plant in Jersey City as a carpenter at a weekly wage of \$35; that while engaged in the duties of his employment he fell into a large vat containing a very weak solution of sulphuric acid.

That thereafter, with the exception of Thanksgiving Day, November 29th, and Saturday, December 15th, 1923, the said decedent worked continuously in the said respondent's plant five days each week and half a day on Saturday from the date of the said accident until Friday, December 21st, 1923; that on the latter date he was

found lying upon a bench back of a furnace and, upon being interrogated, stated that he had a chill and felt dizzy; that he was thereafter removed to his home, where he remained for several days without the attendance of a physician, who, when finally called in, either on December 23 or 24th, 1923, diagnosed the case as one of lobar pneumonia, and that the said decedent died of lobar pneumonia on December 27th, 1923. That the allegation in the petition, and upon which the said proceeding is founded, to the effect that the immersion occurred on December 12th, 1923, is not sustained by the proof, and that the great weight of the evidence demonstrates that the immersion occurred on November 13th, 1923, and was neither the proximate nor the contributing cause of the said employe's death."

"Plaintiff's intestate was injured in a collision between an automobile, in which he was riding as a passenger, and a car of the defendant. More than a year after the accident he contracted tuberculosis, from which he died three months later. At the trial it was contended that the accident caused a lowering of the vitality of the decedent, by which he more readily contracted the disease from which his death resulted, and expert testimony was given to that effect. Held, that assuming that the deceased became infected with tuberculosis because of lowered vitality due to the accident, such a result could not reasonably have been foreseen and was not

the natural and probable consequence of the wrongful act of the defendant; and further, that to enable the plaintiff to recover, it was necessary to exclude the idea that the death of the decedent was due to a cause with which the defendant was unconnected, which the plaintiff failed to do (*Migliaccio v. Public Service R. Co.*, 3 N. J. Adv. R. 1427)."

In the case of *Bryant v. Fissell*, 86 Atl. R. 458, 84 N. J. L. 72, it is held:

"The burden of furnishing evidence from which the inference can be legitimately drawn that the death of an employe was caused by 'an accident arising out of and in the course of the employment,' in an action under Section 2 of the Employer's Liability Act of April 4, 1911 (P. L., p. 136), rests upon the claimant."

In the case of *Reimers v. Proctor Pub. Co.*, 89 Atl. R. 931, 85 N. J. L. 441:

"The accident happened October 4th. Decedent had a compound fracture of the skull. He was discharged October 30th as improved. He returned to the dispensary from time to time for dressing and redressing, was readmitted November 12th, and discharged December 5th as improved. This was the hospital record. The attending surgeons at the hospital testified that decedent got well. On December 7th he was taken with headache and vomiting. The attending physician testified that he could not give the cause of death; that he

could not state whether there was anything in the nature of the injuries to produce vomiting; that vomiting could be caused by compound fracture of the skull; that pressure on the brain would cause vomiting; or vomiting might come on from indiscretion in eating, or from several causes. Another surgeon who had charge of decedent at the hospital testified that his head had practically healed three or four weeks, as he guessed, prior to death; the witness saw him just at the point of dissolution, and says he could not give the cause of death, and did not think he could do so if he had been there sooner.

The burden of proof is in accordance with the ordinary rule, upon the petitioner."

In the case before the Court the petitioner below had one stroke of apoplexy two years before when he was doing nothing but leaning over to fix a vacuum cleaner. In the present case, he told Dr. Beling that while he was removing the ash barrel he became dizzy and let go of the ash barrel and at that time it is quite apparent that he had his second stroke.

This petitioner was subject to strokes of apoplexy. The case is barren of proof of an accident. It is not an accident for one to be taken sick while he is engaged in performing his duty.

Regardless of the question of accident, the proof is clear and conclusive that the paralysis of the petitioner's arm and his leg are due to the stroke of apoplexy which he had and that the

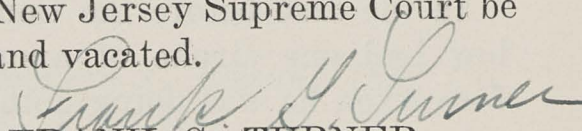
stroke of apoplexy is due to his physical condition including his high blood pressure.

We respectfully submit in this case where the petitioner has not testified that he has not borne the burden of proof which is placed upon him by statute.

We further submit that the petitioner was not injured through an accident arising out of and in the course of his employment and he does not suffer from the results of such accident.

We further submit that the Workmen's Compensation Bureau and the Court of Common Pleas were without jurisdiction in this cause to give an award in favor of the petitioner.

It is respectfully urged on behalf of the prosecutor that the judgment and determination of the Workmen's Compensation Bureau and Essex Common Pleas and New Jersey Supreme Court be reversed, set aside and vacated.


FRANK G. TURNER,
Attorney of and of Counsel with
Prosecutor-Appellant.

New Jersey Court of Errors and Appeals

EDWARD BENJAMIN,
Respondent-Defendant,

vs.

MAX KURNICK,
Appellant-Prosecutor.

On Appeal.

BRIEF OF RESPONDENT.

Facts.

This was an action under the Workmen's Compensation Act of New Jersey, brought by the injured, Edward Benjamin, claiming that he was permanently and totally disabled through an accident on January 25, 1925. He was rolling a barrel of ashes weighing from 75 to 100 pounds when it started to slip and in trying to prevent it from falling he was injured about the left arm and leg; that he was compelled to stop work immediately. Petition also set up (pp. 2 to 4) and the evidence will establish that the employer admitted that the injured was entitled to compensation, but the insurance company covering him refused to pay. At the time of the accident the injured was a janitor for Mr. Kurnick, the appellant, at latter's apartment house, 58 Court street, Newark, and witness, Bradshaw, testified that the injured was taking the ash barrel out of the cellar and after getting it up three steps the can slipped and he fell off the step and the barrel against him; that the barrel was full of ashes (p. 32). The barrel was about three feet wide and two and one-half feet high and that the steps over which it was being raised were about six inches high (p. 37, ll. 9 to 20).

Notice of the accident was admitted by the employer (p. 39, ll. 19 to 21). That immediately after the accident the petitioner was unable to pick himself up and the employer came down and helped him and carried him upstairs. That up to that time the injured man had worked steadily doing all the housework, cleaning, and taking care of the furnace (p. 32, l. 33; p. 33, l. 20). That the injured had to lift the can because there were no wheels under it to roll it (p. 33, ll. 37 to 39). This, of course, will establish that the strain was considerably greater than if the injured had had some mechanical means to move the can.

The petitioner below produced Dr. William Kreuger, who treated the injured the day following the accident, when he found him reclining in an easy chair and at that time he was paralyzed in his left arm, left leg and partly on the right face, and he was thereafter taken to the Beth Israel Hospital. That his blood pressure was high, in the neighborhood of 200 (pp. 24 to 25, l. 10). That his disability as a result of the accident is permanent and one hundred per cent. (p. 26). That a paralytic stroke comes to a man with high blood pressure with physical exertion (p. 29, top of page). Although this doctor stated it might also come from worry and grief, the testimony discloses that the injured was always of a happy disposition. See testimony of A. Kurnick, son of the employer (p. 46). It appears that two years previously the injured had had a stroke, but this also had occurred while he was leaning down to fix a vacuum cleaner (pp. 81-82).

Dr. Beling, a witness produced by Mr. Turner, who acted as counsel for the defendant below, stated that the injured had had a stroke in 1923, two years before the accident upon which this suit is brought (p. 53, ll. 17 to 20). Dr. Beling

also stated that the high blood pressure had existed for some period of time (p. 62, l. 30, to top of p. 63). On direct examination he also stated that any amount of exertion might have an effect upon the man, anything like bending down to pick up something might have an effect on him (p. 55, l. 30 to bottom). Dr. Beling further attempted to restate to the Court what the injured man had told him regarding the second stroke, and of course, the injured man could not be in court to contradict him, since all the doctors agreed that he was permanently and totally disabled and confined to his bed, but the trial court was not obliged nor was the Common Pleas Court obliged to accept *in toto* Dr. Beling's recollection of the history of the case given by the injured man to him for there is in the record actual testimony that the injured man was immediately disabled (See testimony of witness, Bradshaw, p. 32, bottom and testimony of the employer, Kurnick, pp. 39 to 43). This witness also was practically cross examined by his own attorney; see same paging and page 40, where it will appear that this employer refused to swear to the answer (pp. 10 to 13), although his insurance company tried to make him do so. An examination of the case will disclose that the answer was not verified as provided for under the compensation act.

Dr. Beling also said that the man would never recover (p. 58, ll. 30 to 31). He also testified on cross examination that with high blood pressure the first accident in 1923, and testified to by witness, Russell (p. 81), caused a stroke. *This witness refused to say that his labor at the time of the accident had no connection with his stroke* (p. 63, ll. 27-28), and on page 64, upon hypothetical statement of facts, all of which had been testified to by actual eye-witnesses to the acci-

dent, Dr. Beling stated that the relationship between the accident and the man's condition was fairly well established. It was a question of fact for the trial court to determine whether the facts incorporated in the hypothetical question had been proven and apparently by his determination and by the determination of the Common Pleas Court the testimony of the defendant, Kurnick, and Miss Bradshaw, as to the happening of the accident was believed, and therefore, the recollection of what the injured man told Dr. Beling as to the onset of the paralysis may not have been entirely correct. Even assuming the truth of Dr. Beling's recollection of the injured's story to him his testimony on (pp. 68 and 69) will support the finding of the Court below that the paralysis might not be immediate, and finally on page 71, he admits that a man in the condition that the injured was in, would need far less of an inducing cause to paralyze him than the ordinary man. He also says that the mere fact that he had had one stroke would not make it certain that he would have another in the absence of some outside cause (p. 72).

Dr. Farden, a witness produced by Mr. Turner, goes so far as to say that it does not need an extraordinary strain to induce a stroke (p. 77, ll. 22 to 24).

THE LAW.

The appellant's brief only refers to certain parts of the testimony of the several doctors, but we invite the Court to examine any part of their testimony and we are certain that an examination of their entire testimony will support in every particular the findings of the lower courts. Mr. Turner has also carefully refrained from giving the entire testimony of the eye-witnesses to both accidents.

The most favorable aspect of the case as far as the appellant is concerned is that the testimony of both sets of witnesses disagree, but that resolves itself into a question of fact and two trial courts below have resolved the question of fact in favor of the petitioner below, and this Court, as we understand cases, will not weigh the testimony (*Curtis-Warner Corp. v. Gorman*, 3 N. J. Misc., p. 1078).

The prosecutor has referred to several cases to support his contention, but an examination of them discloses that they are not even remotely applicable to the case under review. The first is *Krapowitch v. Public Service*, 3 N. J. Misc., p. 932, which is a decision by the Workmen's Compensation Bureau, merely to the effect that when the doctors for the injured cannot attribute the injured's condition to the accident, there can be no recovery. Of course, that is no new law, nor does it apply here.

The next case is *Fisher v. Crucible Steel Co.*, 3 N. J. Misc. p. 1231. The substantial element of the testimony in this case is identical with the last one stated and is also a decision by the Workmen's Compensation Bureau.

The next is the case of *Migliaccio v. Public Service Ry. Co.*, 3 N. J. Adv. Rep. 1427. This is a *tort* action where the rule as to damages are somewhat different as to the rule prevailing under the Workmen's Compensation cases.

The next case cited is *Bryant v. Fissell*, 84 N. J. L. 72. This case merely cites the rule prevailing in Workmen's Compensation cases and is not effective as holding contrary to what we now urge. The last case is *Reimer v. Proctor Pub. Co.*, 85 Law p. 441, which follows the last cited compensation case and the question therein

involved, but merely holds that where doctors who have treated the injured refuse to attribute the accident as the cause of the injured's condition that there can be no recovery.

In the case under review the doctor who treated the injured *does* attribute the accident as the cause of the man's condition or at least has satisfied the requirement that it is the *causa sine qua non*, in other words the chain of causation is complete.

An interesting opinion in line with the present case is that of *Atchinson v. Colgate Co.*, 3 N. J. Misc. p. 451. To the same effect is *Geizel v. Regina Co.*, 114 Atl. Rep. 328, which was affirmed by this Court on the opinion of the Supreme Court. The Supreme Court opinion in this case appearing at page 86 of Case is a clear answer to all the points raised in appellant's brief.

We therefore respectfully urge that the judgment under review be affirmed with costs.

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