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**Affidavit of Elmer W. Romine.**

Filed March 21, 1932.

**New Jersey Supreme Court**

ANDREW MUDRI,  
Petitioner,  
Defendant in Certiorari,

vs.

UNITED ENGINEERS & CONSTRUCTORS INC., improperly impleaded as Public Service Co. and/or United Engineers & Constructors, Inc.,

Respondent,  
Prosecutor in Certiorari.

Affidavit.

10

20

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

Elmer W. Romine of full age being duly sworn according to law on his oath deposes and says: That he tried the above matter at the Workmen's Compensation Bureau at Paterson, New Jersey and that he has reviewed the testimony and is familiar with the facts and circumstances surrounding the accident.

30

The Deputy Commissioner on March 8th, 1932, made an award in favor of the petitioner for 15% of total disability which is equivalent to 75 weeks at \$20.00 a week and in addition thereto allowed

40

*Affidavit of Elmer W. Romine.*

medical expenses and costs of the petitioner in the sum of \$150.00 to be paid by the respondent and further a counsel fee of \$300.00 to petitioner's attorney, one-half of which to be paid by respondent.

10 The petitioner while in the employ of the United Engineers & Constructors Inc., claimed to have received an injury to the back of his neck occasioned by some timbers falling upon him while he was working in a manhole. The petitioner alleged as a result of the accident impairment of hearing and a permanent disability to his neck.

20 It is contended by the respondent that the impairment of hearing claimed by the petitioner is the result of a catarrhal condition and in no way related to or the result of the accident. It is further contended by the respondent that the petitioner does not have any permanent disability of the neck.

30 The claim of the petitioner that his impairment of hearing was the result of the accident was based upon the testimony of Dr. Ernest Reeves, a specialist in eyes, ears, nose and throat. Dr. Reeves based his opinion that the impairment of hearing was the result of the accident upon the assumption that the petitioner had sustained a basal fracture. There was no other testimony on the part of the petitioner to support this contention. The respondent proved by roentgenologists who examined the X-rays that there was no basal fracture and the Deputy Commissioner in his finding of facts and determination stated that the proof did not show a basal fracture to have occurred but without any other testimony to support his conclusions, found that there was an apparent loss of hearing and proceeded to allow petitioner compensation not  
40 only for the alleged disability to the neck but in-

*Affidavit of Elmer W. Romine.*

cluded in the allowance of 15% for total disability the element of loss of hearing which respondent submits was unsupported by any proof.

The respondent further contends that the greater weight of credible evidence shows that petitioner was fully and amply compensated for any alleged injury that he sustained and that he does not now suffer any permanent disability for which he is entitled to compensation. 10

The respondent feels that the matter should be reviewed by the Supreme Court.

ELMER W. ROMINE.

Sworn and subscribed to before me this  
18th day of March, A. D. 1932.

James O. Boyd, 20  
Master in Chancery  
of New Jersey.

30

40



*Writ of Certiorari.*

Bureau and W. E. Stubbs, Secretary of said Bureau, that the said proceedings, determination and judgment together with a transcript of the evidence and all proceedings for the making of the same and all things touching and concerning the same, as fully and entirely as before you they remain, or are in your custody and control, you do certify and send together with this Writ to our Justices of our Supreme Court of Judicature at Trenton, on the third day of May, A. D. Nineteen Hundred and Thirty-two, that therein may be caused to be done what of right and according to law ought to be. 10

Witness, the Honorable William S. Gummere, Chief Justice of our said Supreme Court at Trenton this 19th day of March A. D. Nineteen Hundred and Thirty-two. 20

FRED L. BLOODGOOD,  
Clerk.

HENRY H. FRYLING,  
Attorney.

## Endorsement.

Returnable May 3rd, 1932.

This writ is allowed. Let it be sealed. March 19, 1932. 30

PETER F. DALY,  
*Justice.*

**Affidavit of Anton A. Gorman.**

NEW JERSEY SUPREME COURT.

10	ANDREW MUDRI, Petitioner, Defendant in Certiorari,  vs. UNITED ENGINEERS & CONSTRUCTORS INC., improperly impleaded as Public Service Co. and/or United Engineers & Constructors, Inc.,  Respondent, Prosecutor in Certiorari.	}	On Certiorari. Affidavit.
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20 State of New Jersey }  
 County of Essex } ss.:

Anton A. Gorman of full age being duly sworn according to law upon his oath deposes and says:

30 On the 2nd day of May, 1932, I served upon the petitioner, defendant in certiorari, Andrew Mudri, personally, at his home 56 Cutler Street, Clifton, New Jersey, a copy of the writ of certiorari allowed in the above case which was certified to by the Clerk of the Supreme Court as a true copy by handing same to him and informing him of the contents.

ANTON A. GORMAN.

Sworn and subscribed to before me  
 this 2nd day of May, A. D., 1932.

W. B. Ingalls,  
 Notary Public  
 of N. J.

40



*Order on Motion to Dismiss Writ of Certiorari.*

the petitioner, Andrew Mudri, and it further appearing to the Court that the said writ of certiorari, before the return day thereof, was served upon the petitioner-defendant, Andrew Mudri, and said motion to dismiss said writ of certiorari having duly come on to be heard before this Court, and i.  
 10 appearing to the Court that the said Andrew Mudri was duly in Court, and William H. Speer, appearing for respondent-prosecutor, having moved that the writ of certiorari be amended by including the name of the said Andrew Mudri in the body of said writ, and the Court also being of opinion that the motion of said petitioner-defendant to dismiss said writ of certiorari should be denied:

It is, therefore on this fourth day of May, A. D.  
 20 1932, ORDERED, that the writ of certiorari in the above-entitled cause be amended so as to include the name of the said Andrew Mudri in the body of said writ; and

It is further ORDERED by this Court that the motion made on behalf of the petitioner-defendant, Andrew Mudri, to dismiss said writ of certiorari, be and the same hereby is denied.

By the Court

30

THOMAS W. TRENCHARD,  
*J. S. C.*

Entered May 10, 1932  
 on motion of  
 Not signed.

40

**Affidavit of Service.**

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

Anton A. Gorman, being duly sworn, according to law, on his oath says: I served a true copy of the within Order on Dr. J. F. A. Rubacky, Attorney of Petitioner, at his office, New Peoples Bank Bldg. Passaic, New Jersey, between the hours of ten A. M. and four P. M., on Monday, the 16th day of May, 1932, personally. 10

ANTON A. GORMAN.

Sworn and subscribed to before me  
 this 16th day of May, 1932.

Robert J. Higgins,  
 A Notary Public  
 of New Jersey.

20

30

40

**Return to Writ.**

Filed April 19, 1932.

10 In obedience to the command of the Writ of Certiorari to me directed in the case where Andrew Mudri is Petitioner-Defendant and United Engineers and Constructors, Inc., improperly impleaded as Public Service Co. and/or United Engineers and Constructors, Inc. is Respondent-Prosecutor, I, W. E. Stubbs, Secretary of the Workmen's Compensation Bureau, Department of Labor of New Jersey, do hereby certify and send to the Honorable Justices of the Supreme Court of Judicature of New Jersey, within mentioned, the petition, answer and determination filed in said cause, together with a full transcript of the evidence taken at the trial, as aforesaid, whereof mention is made in said Writ as fully as before me as Secretary of said Workmen's Compensation Bureau they remain.

20

In witness whereof I have hereunto set my hand and seal this 12th day of April, A. D., 1932.

W. E. STUBBS,  
Secretary, Workmen's Compensation Bureau,  
Department of Labor of New Jersey.

30

40

**Employee's Claim Petition for Compensation.**

NEW JERSEY DEPARTMENT OF LABOR

WORKMEN'S COMPENSATION BUREAU

Trenton, N. J.

<p style="text-align: center;">ANDREW MUDRI, Petitioner, vs. PUBLIC SERVICE Co. and/or UNITED ENGINEERS &amp; CON- STRUCTORS, INC., Respondent.</p>	}	10
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Received at Trenton	
Claim Petition No. 17692	20
Date of Accident . . . . , 19 . . .	

Attorney for Petitioner, Joseph F. A. Rubacky,  
Esq., 192 Jefferson St., Passaic, N. J.

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

The claimant respectfully alleges the following  
facts:

1. What is your name? Andrew Mudri. 30
2. Where do you live? 56 Cutler St., Clifton,  
New Jersey.
3. Sex. Male.
4. Age. 46 years.
5. Married. Yes.
6. By whom were you employed at the time of  
the accident? (Give name and business ad-  
dress) Public Service Co. and/or United  
Engineers & Constructors, Inc., Washing- 40  
ton Place, Passaic, N. J.

*Return to Writ.*

7. What was the business of your employer?  
Laborer.
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.
- 10 9. Did you receive such notice from your employer? No.
- 10 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? Was rushed to St. Mary's Hospital, Passaic, N. J. on August 18, 1930, at time of accident.
- 20 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? Brick Layer and concrete mixer, and a laborer otherwise.
15. When did the accident happen? August 18, 1930.
16. Where did the accident happen? At Plant—Washington Place and Columbia Ave., Passaic, N. J.
- 30 17. What was the nature of the accident, and how did it happen? Forms filled with sand to hold concrete fell injuring plaintiff.
18. On what date were you compelled to stop work because of the injury? August 18, 1930.
19. On what date were you well enough to work again? Still disabled.
- 40 20. If still disabled, on what date do you think you will be able to work? Unknown.

*Return to Writ.*

21. Give nature of any injury from which you will recover. Only from minor contusions and abrasions.
22. If any permanent injury has resulted, either amputation or loss of usefulness of any member, or impairment of any physical organ, explain fully. Right sided hernia, loss of hearing, inability to bend or turn neck; constant headaches; cranial nerve disturbances; etc. 10
23. Were your wages fixed by piece-work?
24. If so, what was your average weekly wage? No.
25. If wages were fixed by the hour, state rate per hour. \$1.25 per hour.
26. Give number of hours in an ordinary working day. 8 hours. 20
27. Give number of days in an ordinary working week. 5 days per week.
28. State the amount of weekly wages. \$50.00 per week.
29. How much money have you received from your employer as compensation (not medical aid) since your accident? \$645.00.
30. Has your employer promised to pay you any compensation? 30
31. If so, how much? \$20.00 per week.
32. Was medical aid required? Yes.
33. Did you receive medical, surgical or hospital service? Yes.
34. Did you request your employer to furnish these services? Yes.
35. Were they furnished? Yes.
36. If so, between what dates? From time of accident to May 15, 1931. 40

*Return to Writ.*

37. If not what sum did you expend for medical, surgical or hospital services? None.
38. Give name and address of physician and hospital. Dr. G. J. Van Schott, Jr., 245 Lexington Avenue, Passaic, N. J. and St. Mary's Hospital, Passaic, N. J.
- 10 39. What other facts are there which you believe important? None.
40. Are you willing that the Compensation Bureau endeavor to secure compensation for you, by agreement, before calling for an official hearing? Yes.
41. If you are unwilling state reasons.

20 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, and the Acts supplemental thereto and amendatory thereof,

30 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 pray, etc.

ANDRO MUDRI,  
56 Cutler St., Clifton, N. J.

State of New Jersey }  
County of Passaic } ss.:

40 Andrew Mudri of full age, being duly sworn ac-

*Return to Writ.*

ording to law, on his oath deposes and says: That he is the petitioner named in the foregoing petition; and that he has read the same and is familiar with the contents thereof; and that the matter and things therein set forth are true according to the best of his knowledge and belief.

ANDREW MUDRI, 10  
Petitioner.

Subscribed and sworn to before me, this sixth day of June, 1931, at Passaic, N. J.

JOS. F. A. RUBACKY,  
An Atty. at Law of N. J.

(This affidavit may be sworn to before a Deputy Commissioner or a Compensation Referee, or any other person authorized to administer an oath.) 20

## 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.

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

*Return to Writ.*

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

NEW JERSEY DEPARTMENT OF LABOR

WORKMEN'S COMPENSATION BUREAU.

Trenton, N. J.

10

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ANDREW MUDRI,  
Petitioner,

vs.

UNITED ENGINEERS & CONSTRUCTORS INC., improperly impleaded as Public Service Co. and/or United Engineers & Constructors, Inc.,

20

Respondent.

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Claim Petition No. 17692.

June 29th, 1931.

Attorney for Respondent, Henry J. Sorenson,  
Esq., 80 Park Pl., Newark, N. J.

In answer to Claim Petition filed in this cause:

30

1. What is the petitioner's name? Andrew Mudri.
2. Where does he reside? 56 Cutler St., Newark, N. J.
6. Was the petitioner in your employ at the time of the accident? Yes.
7. State your business. Engineers and Constructors.
8. Did you receive written notice from the Petitioner at the time of hiring, or later, that

40

*Return to Writ.*

- the Compensation Law was not to apply to him? No.
9. Did you give such notice to him? No.
  10. When did you first have knowledge of this accident? August 18, 1930.
  11. Did you receive notice of this accident from the Petitioner? No. 10
  12. If so, on what date?
  13. Has any claim for compensation been made? Not prior to filing of petition.
  14. What was the Petitioner's regular occupation, and what kind of work was he doing at the time of the accident? Laborer; digging at base of a dirt bank.
  15. When did the accident happen? August 18, 1930 about 8:45 A. M.
  16. Where did the accident happen? Public Service Distribution Bldg., Passaic, N. J. 20
  17. What was the nature of the accident, and how did it happen? Wood piling gave way, dirt partially burying Petitioner.
  18. On what date was the petitioner compelled to stop work because of injury? August 18, 1930.
  19. On what day was the injured well enough to work again? April 2, 1931. 30
  20. If still disabled, on what date do you estimate he will be able to work?
  21. Give your understanding of the nature of any injury from which he should recover? Scalp abrasions.
  22. Give your understanding of any permanent injury which has resulted, either amputation or loss of usefulness of any member or impairment of any physical organ. Explain 40

*Return to Writ.*

- fully. Respondent believes that no permanent injury will result from accident.
23. Were the wages fixed by piece-work? No.
24. If so, what was the average weekly wage of the injured? —
25. If wages were fixed by the hour, state rate per hour. \$1.25.
- 10 26. Give number of hours in an ordinary working day. 8.
27. Give number of days in an ordinary working week. 5.
28. State the amount of weekly wages. \$50.00.
29. How much money have you paid the injured as compensation (not including medical aid) since the accident? \$648.57.
- 20 30. Have you promised to pay compensation? It has been paid.
31. If so, how much? See answer to #29.
32. Was medical aid required? Yes.
34. Were you requested to supply the necessary medical service required by law? No.
35. Did you furnish this service? Yes.
36. If so, between what dates? All that was necessary.
37. If not, give reason for failure to do so —
- 30 38. Give name of physician and hospital rendering service at your direction. Dr. George J. VanSchott, Jr., Dr. Nicholas Palma, St. Mary's Hospital, Passaic, N. J.
39. What other facts are there which you believe important? If you deny that compensation is payable in this case explain fully your reasons for this conclusion. Respondent reserves the right to move to strike out the petition at the time of trial on the ground
- 40 that the Workmen's Compensation Bureau

*Return to Writ.*

has no jurisdiction in that there was no dispute prior to or at the time of filing the petition.

Respondent avers that it is too early to determine and result of alleged injury and is requesting that Petitioner present himself for final examination on August 1, 1931. 10

United Engineers & Constructors, Inc.  
Respondent.  
By H. J. S.,  
Attorney,  
80 Park Place, Newark, N. J.

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

Ernest W. Heilig of full age, being duly sworn according to law, on his oath deposes and says: 20  
That he is the agent of the respondent named in the foregoing answer to claim petition; that he has read the same and is familiar with the contents thereof; and that the matters and things therein set forth are true according to the best of his knowledge and belief.

ERNEST W. HEILIG,  
Respondent.

Subscribed and sworn to before me, this twentieth day of June, 1931, at Newark, New Jersey. 30

FREDERIC R. REED,  
A Notary Public of New Jersey.

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

*Return to Writ.*

**Finding of Facts, Determination and Rule for Judgment.**

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

10	ANDREW MUDRI, Petitioner, vs. UNITED ENGINEERS & CONSTRUCTORS INC., improperly impleaded as Public Service Co. and/or United Engineers & Constructors, Inc., Respondent.	}	Finding of Facts, Determination and Rule for Judgment. Claim Petition #17692.
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20

A petition having been filed in the above stated cause praying for compensation to which the petitioner may be entitled by virtue of the terms and provisions of an Act of the Legislature of the State of New Jersey entitled, "An Act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment establishing an elective schedule of compensation and regulating procedure for the determination of liability and compensation thereunder" approved April 4th, 1911, together with the acts amendatory thereof and supplemental thereto; and a time and place for the hearing of said petition having been fixed; and it appearing to the referee that said petition and order fixing the time and place of hearing having been duly served upon the respondent; and the respondent having filed an answer to the said petition; and the petitioner and

30

40

respondent having appeared before me, a referee

*Return to Writ.*

of the Workmen's Compensation Bureau on February 2nd, 1932, and February 16th, 1932, at the Workmen's Compensation Bureau, Paterson, New Jersey, and the petitioner being represented by Joseph F. Rubacky and the respondent by Elmer W. Romine appearing for Henry H. Fryling.

And it appearing that while petitioner was at work in the employ of the United Engineers & Constructors, Inc., in a trench or hole at Columbia and Washington Place, Passaic, New Jersey, making new forms for concrete there was a cave-in whereby two of the timbers struck him on the head or back of the neck rendering him unconscious, he being removed to St. Mary's Hospital, Passaic, N. J. where he remained for a week and a half. 10

Petitioner claims a noise on the right side of his head, it later being observed that he had a rupture or hernia. He now complains of impairment of hearing and pain in the back of his neck and was treated by Dr. Van Schott of Paterson, N. J. 20

It is admitted that petitioner earned as wages \$50.00 per week and that he was paid temporary disability for 32-3/7 weeks at \$20.00 per week totaling \$658.57, respondent, however, denying there exists any permanent disability as a result of the accident. 30

Dr. Rye, who examined petitioner on August 14th, 1931, found that he had some rigidity of his neck and on a later examination found rigidity of the shoulder with inability to extend the neck. He stated he felt there was an injury to the nerve back of the neck with involvement of the occipital nerve and the two branches of the cervical nerve. He did not notice any change in the musculature of the arm but noted that the petitioner did not hear 40

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so well, however, he did not test the hearing. While the doctor was not able to tell how the nerves were affected he concluded the disability of petitioner was equivalent to 50% loss of use of the neck with between 35% to 40% total permanent disability.

10 Dr. Ernest Reeves, a physician produced on behalf of the petitioner, treated him on several occasions after the accident for impairment of hearing. He found bone conduction longer in the right ear than in the left and that petitioner could hear nothing with his right ear and with the left ear he could hear slightly. He found calcium deposits in the eardrums, with the membranes retracted to normal, reflexes were lost, the short processes of the malleolus protruding. It was his opinion that  
20 the petitioner had suffered a basal fracture and that the impairment of the hearing was the probable effects of the injury. It was his conclusion that petitioner suffered a loss of hearing equivalent to 80% of total. The doctor admitted that if there was in fact no basal fracture existent, then his opinion would be changed as to the injury being the cause of the loss of hearing.

Further on behalf of the petitioner Dr. Saffron practicing physician for the last three years, stated  
30 that he made three separate examinations of the petitioner, namely, on August 11th, 1931, November 18th, 1931, and January 28th, 1932. He found a well developed male who kept his neck turned out to the right. On examination he found rigidity and spasm of the right sternoid muscle, that petitioner could not bend the neck backward or forward, there being pain and tenderness in the region of the neck. He testified that the teeth were  
40 in good condition, tonsils not injured, nose nega-

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tive, reflexes slightly exaggerated and that there was a marked diminution of hearing on the right side. He was of the opinion that there was an injury to the nerves of the second and third cervical. In his opinion there was a disability of 70% of total of the neck with 30% disability existent as to the entire body and that such was permanent.

10

In conclusion the petitioner produced Dr. Leo Koppel, a physician of 21 years experience. He testified that he examined the petitioner on November 13th, 1931, and found that he had bad teeth with oral sepsis and restriction of motion of the neck to the right and laterally. On examining the shoulder the doctor stated it did not show any signs of injury. He found all neurological evidence was negative. Referring to the right inguinal hernia the doctor expressed the opinion that such was not caused by the accident. He made no examination as to petitioner's hearing. The doctor further testified that there was no evidence of fracture and no nerve involvement and that he found a cervical spasm of the soft structure of the right side of the neck. His estimate of disability was from 5 to 7½% of total.

20

The respondent produced eight witnesses, seven of whom were physicians.

30

Dr. Pascal, examining physician for the respondent company at their clinic at Newark, testified that he examined the petitioner on March 30th, 1931, and again on January 21st, 1932. He stated that there was no loss of lateral motion of the back; that petitioner could bend forward so the tips of his middle fingers were within ten inches from the floor with no discomfort. That there were many foci of infection in his teeth, that while the

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petitioner at times held his head slightly to the right but when his attention was diverted, he did not do this. Further that he could find no reason for any alleged disability.

10 Dr. Terhune, a physician specializing in roentgenology, identified certain X-rays taken of the neck and skull of petitioner. He found no basal fracture and no pathology.

Dr. A. G. Jahn, also a physician and roentgenologist, referring to certain X-rays offered in evidence by petitioner testified there was no fracture shown and no pathology of any kind. He further examined X-rays taken by the respondent and testified that there was no evidence whatever of any fracture.

20 Dr. Van Schott, treating physician, called by respondent, stated that petitioner complained to him of pain in the back of the neck; that he treated the petitioner from sometime in August, 1930, until February, 1931, with lights and that when the petitioner was discharged, while he still complained of some pain in his neck, he could find no reason whatever for such cause or disability.

30 Further, on behalf of the respondent, Dr. Dias, a specialist in eye, ear, nose and throat cases was called and stated that he made two examinations of the petitioner, one on July 1st, 1931, and again on January 21st, 1932. Dr. Dias testified the pupils of the eye were of normal size, equal and reacted normally to all stimuli. The eyelids lacrima-  
40 l apparatus and external ocular movements of each eye were normal. That the tension of each eye was normal as well the fundus, vision being normal. Transillumination revealed the left frontal sinus dark and the right frontal and both superior

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maxillary sinuses light. He found the intranasal septum to be thickened and deflected to both sides. Both middle turbinates were enlarged. Tonsils were atrophied with large stumps that were chronically congested. Petitioner suffered from a chronic nasal nasopharyngitis. The teeth were found to be dirty and nearly all gums septic. Both eardrums were found to be retracted to a very extreme degree, no scars or perforations appearing on either. He found a large amount of calcium deposited on the eardrums. His tests with a tuning fork revealed a chronic aural catarrh of long standing. The cold coloric test and the test with the barny revolving chair revealed that each organ and its tracts in the brain were normal. Dr. Dias stated that his examination revealed no evidence of an injury by accident; that the impairment of hearing was due to the catarrhal condition. He found that the petitioner had no difficulty in turning his head. The noises that the petitioner experienced in his head being due to the catarrhal condition.

Dr. Stevenson, another physician and neurologist produced on behalf of the respondent, testified that his examination of the petitioner revealed no nerve involvement. He did find a slight spasm of the muscle of the neck and while the petitioner complained of inability to turn his neck, he found no reason for such a complaint.

The testimony of Dr. Nicola, an Orthopedic surgeon given on behalf of the respondent was that his examination failed to reveal any deviation of the spine except in the upper cervical region which was not occasioned in his opinion by any disability but was quite usual in many of petitioner's

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type. He found the movements of the spine to the right and to the left unrestricted although the petitioner was inclined to hold his head to the right, when his mind was distracted there was no deviation. At times the petitioner complained of tenderness behind the right ear at the tip of the mastoid and over the fifth cervical vertebrae and on re-examination referred to the pain in the region of the seventh cervical vertebrae. He found that there was no difficulty experienced in the petitioner bending his back. That hyper extension of the spine was unrestricted with no restriction of motion in the joints. It was the opinion of Dr. Nicola that the petitioner exhibited no permanent disability.

Dr. Dowd, a specialist in nervous and mental diseases, testifying on behalf of the respondent, stated that the petitioner exhibited no neurological symptoms; that he had free movement in bending and although the petitioner was inclined to hold his head to one side he found no involvement of any muscles or the nerves which would cause such a condition. In the opinion of Dr. Dowd there was no evidence of trauma existent and upon referring to the X-rays in evidence he found no pathology and no evidence of any fracture. It was the doctor's opinion that the petitioner was not suffering from any permanent disability as the result of the accident.

The issue is a sharp one respecting the nature and extent of the permanent disability. There were many witnesses produced, particularly experts and there is some conflict in the testimony of the experts as produced.

From the testimony it appears that petitioner had on August 18th, 1930, sustained an accident

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consisting of a cave-in where a stick of lumber fell and struck him on the head rendering him unconscious.

One of the disputed factors in the case is the question of whether petitioner suffered a basal fracture of the skull. The burden of proof rests on the petitioner to establish that there was such a fracture. The duty does not rely on the respondent to rebut that. I do not find that the petitioner suffered a basal fracture. The mere fact that the petitioner was found unconscious does not raise an inference that he suffered a basal fracture. However, I do find that petitioner is suffering rigidity of the neck, spine and head. 10

The respondent contends that the testimony ad-duced proves that this condition was non-traumatic and suggests various types of infection and postural defects which interfere with the muscles. I can not escape the fact that in the particular accident petitioner was struck over the head and rendered unconscious and treated for five months by a doctor of respondent company for his condition of the neck. 20

I do not hesitate to say that unusual credence is given to the testimony of Dr. Van Schott. Petitioner seems to hold his head toward the right side and I cannot say that he is merely holding his head that way for effect. It is difficult to brand the petitioner as a maligner because one or two doctors say so. There is ample evidence which would afford the inference that the accident was the producing cause that his condition is due to the accident. The question to be decided is how much is due to the trauma occurring in August, 1930? Another difficult problem under the act is 30 40

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to determine the extent of the disability. Where the injuries sustained are not included in the act they must be estimated in terms of a partial total disability. While the petitioner suffered no loss of the use of his limbs he does however have a stiff neck. The only logical way is to determine  
10 how much disabling this is to him, how less useful as compared with his condition before.

In considering the medical testimony I find that he is incapacitated with a partial numbness on the right side of the head together with an apparent loss of hearing although the experts for the respondent claim that the loss of hearing was due to a chronic catarrhal condition.

I therefore find that the petitioner has suffered  
20 a disability equivalent to 15% of total.

I find that the hernia is not compensable under the act.

I find that the temporary already paid by the respondent is ample compensation. The award of 15% of total disability will therefore be for 75 weeks at \$20.00 a week. I will allow for the medical costs and expenses \$150.00 which is to be paid by the respondent.

I will allow the attorney for the petitioner a  
30 counsel fee of \$300, one half of which is to be paid by the petitioner and one half by the respondent, the respondent to pay the stenographic fees.

Dated: March 8th, 1932.

JOHN J. STAHL,  
Deputy Commissioner.

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**Certificate of Secretary of Workmen's Compensation Bureau.**

I, William E. Stubbs, Secretary of the Workmen's Compensation Bureau, Department of Labor of New Jersey, do hereby certify that the foregoing is a true copy of the petition and answer as filed in the case of Andrew Mudri vs. United Engineers & Constructors, Inc., improperly impleaded as Public Service Co., and/or United Engineers & Constructors, Inc., together with a true copy of the determination as filed as the same remains on file in my office and attached hereto is a full transcript of the evidence taken at the trial of said case certified to by me. 10

In Witness Whereof, I have hereunto set my hand and seal this 12th day of April A. D., 1932. 20

W. E. STUBBS,  
Secretary of Workmen's Compensation Bureau,  
Department of Labor of New Jersey.

30

40

**Testimony.**

NEW JERSEY DEPARTMENT OF LABOR,  
WORKMEN'S COMPENSATION BUREAU.  
Paterson, Passaic County District.

10		ANDREW MUDRI, Petitioner,		
		vs.		
		UNITED ENGINEERS & CONSTRUCTORS, INC., Respondent.		

February 2, 1932.

20 Before: Honorable JOHN J. STAHL,  
Deputy Compensation Commissioner.

APPEARANCES:

JOSEPH F. A. RUBACKY, ESQ., for the Petitioner,

ELMER W. ROMINE, ESQ., for the Respondent.

30 Mr. Romine: We might state for the purpose of this case, that we have paid the petitioner temporary disability from August 18, 1930 to April 1, 1931, representing thirty-two and three sevenths weeks.

The Court: Thirty-two and two sevenths weeks?

Mr. Romine: Thirty-two and three sevenths weeks at Twenty Dollars a week or a total of \$648.57.

40 Mr. Rubacky: \$648.00?

*Andrew Mudri—Direct.*

Mr. Romine: \$648.57. We deny that there is any permanent disability.

The Court: That is the only issue?

Mr. Rubacky: Oh, no, if your Honor please.

The Court: The issue is permanent disability?

Mr. Rubacky: No, the issue is that he is still entitled to temporary disability. Our contention is that he is entitled to temporary disability up to the present time plus any permanent disability for the man's injury. 10

Mr. Romine: We deny that there is any further temporary disability or that there is any permanent disability in this case, whatsoever.

Mr. Rubacky: For the purpose of the Record, of course, the accident is admitted so that we will not have to take time up in connection with that phase of the matter. 20

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ANDREW MUDRI, the Petitioner, a witness on his own behalf, being first duly sworn, testified as follows:

*Direct-examination by Mr. Rubacky:*

Q. Mr. Mudri, where do you live? A. Clifton.

Q. What street and number? A. 56 Butler Street, the number is 56. 30

Q. Now, on August 18, 1930, you were employed by the United Engineers and Constructors, Inc., were you not? A. Yes.

Q. What kind of work did you do for them? A. That is right. I work on the sand, you know, making the cleaning down—the carpenter wanted to put in a form, and he called me down the hole. I go to clean up—that sand, I should say—when I 40

*Andrew Mudri—Direct.*

put in the form, the concrete form, that comes in, if some sand on the hole, you know, and when it is filled it goes up to the sidewalk. I no see nothing. I was down the hole and a couple of men got hurt, four carpenters got hurt and me too got hurt.

10 Q. Well, were you any special type of laborer or just a common laborer? A. A concrete laborer.

Q. A concrete laborer? A. Yes.

Q. How much did you make a week? A. Fifty Dollars, Ten Dollars a day, eight hours.

Q. Eight hours work a day? A. Yes.

Q. Where was this place of work? Where were you working at the time of the accident? A. Well, I worked down the hole—I work down there.

20 Q. What was the location of that spot? A. I no see nothing.

Q. Wait a minute. What was the location of that spot? A. Columbia Avenue and Washington Place.

Q. At the time that you were hurt, then, you were helping to get the concrete forms made, is that right? A. Yes. They make the form for concrete, yes.

30 Q. And at the time that you were hurt, it was due to a cave-in, is that right? A. All the lumber caved in.

Q. And sand and dirt? A. That is how I got hurt two times—two four by fours hit my head.

Q. Two four by fours? A. Yes, after the third time I know nothing. It killed me.

Q. After the third time—it killed you? What do you mean killed you? A. I remember nothing.

Q. You don't remember anything? A. No.

40 Q. When that happened, or rather after that

*Andrew Mudri—Direct.*

happened, where did you find yourself? A. I find myself in St. Mary's Hospital, Passaic.

Q. In St. Mary's Hospital, Passaic? A. Yes.

Q. And how long did you stay in St. Mary's Hospital at Passaic? A. I stay a week and a half, maybe.

Q. A week and a half? A. I called the doctor and he took me home. I no can't do anything. I was awoke all night. I came home, maybe I no sleep three months. I no sleep about twenty minutes. 10

Q. Why couldn't you sleep? A. I can't sleep. My neck like—I got the sore neck, you know, my head is all bandaged up, I got it right here. (Indicating.) I got a big noise, all the time, you know, that side. (Indicating). 20

Q. Where was the big noise? A. The right side of the head.

Q. The right side of the head? A. Yes.

Q. You say that your head was all bandaged up. Why was it all bandaged? A. I got all bandaged—I would get when I wake up. I looked around and I see—I see all big bandages when I wake up. Also, I got the iodine on the back.

Q. Iodine on the back? A. Yes.

Q. Did you have any cuts on the head? A. I got two holes on my head. 30

Q. Two holes in your head? A. Yes.

Q. Did you have any other trouble any other place? A. I got ruptured too, that way.

Q. You got ruptured too, that way? A. Yes.

Q. What is this trouble that you complain about in the side of your neck? A. That is where the lumber you know, it hit me.

Q. Yes, but what was the complaint after the 40

*Andrew Mudri—Direct.*

lumber hit you? A. I don't remember nothing. I got—it killed me.

Q. Not then, after you got to the hospital. What was the complaint that you say you had in the side of the head? A. Well, Doctor—the doctor took me home and then I go every day—they go every  
10 day. He gave me that light, you know, a big lamp.

Q. You went to Dr. Van Shot every day and he gave you a big lamp? A. Yes.

Q. Any other kind of treatments? A. And he put the wash on the neck.

Q. Did he give you any other treatments? A. No.

Q. Did he prescribe any medicine for you? A. No.

20 Q. Any prescriptions for medicine? A. No.

Q. Did he give you anything so that you could sleep? A. No.

Q. Did this big noise continue all the while? A. That side—the left side, all right. There was blood coming, you know.

Q. The left side there was blood coming out? A. That left side, yes.

Q. From where? A. From the hole.

30 Q. From the hole? A. Yes. The right side, no blood no come out.

Q. Didn't the blood come out of the second hole, or only out of one hole? A. Out of two holes.

Q. And no blood on the right side? A. No.

Q. All right. How long after the accident did you continue to have the big noise? A. A steady noise, a steady noise now.

Q. You got a steady noise now, too? A. Yes, like an engine.

40 Q. And did you have any other injuries at all on

*Andrew Mudri—Direct.*

your body? A. Right here (indicating) where I was ruptured.

Q. Just there. Any place else, on the chest, by the back of the neck? A. That is the cross bone, the cross bone right over here. (Indicating).

Q. Where? A. Right across here. (Indicating).

Mr. Rubacky: Will the Commissioner indicate so that the stenographer may have it on the record? Show the commissioner where, Mr. Mudri. 10

The Witness: Right here. (Indicating) I can't move.

The Court: Just what particular disability is he talking about?

Mr. Rubacky: He is talking about some disability at the crossing bone. 20

The Witness: On that side too. (Indicating).

The Court: Inasmuch as you are a doctor, you undoubtedly can do it much better than I can. I don't believe Mr. Romine will have any objections to that.

Mr. Rubacky: The first, second and third cervical vertebrae.

The Court: That is the area in that region? 30

Mr. Rubacky: Yes.

The Court: What does he complain of?

Mr. Rubacky: Pain there now.

*By Mr. Rubacky:*

Q. With reference to the cross bone that you pointed to, which you have located for us, do you have pain constantly, continuously, all the time? 40

*Andrew Mudri—Direct.*

Mr. Romine: I object.

*By Mr. Rubacky:*

Q. Well, how long did the pain last at the crossing bone? A. It feels steadily sore.

Q. It feels steadily sore? A. Yes.

10 Q. Are you able to do any work now, Mr. Mudri?

A. No, sir, I no work no place yet.

Q. Beg pardon? A. I no work no place yet.

Q. Mr. Mudri, did you attempt to do any work at all since August 18, 1930? A. No.

Q. How is your hearing today, Mr. Mudri? A. No good.

Q. No good? A. No.

20 Q. Do you mean by that that on both ears the hearing is no good or on one ear only? A. The right ear, I no can hear right, and I get a big noise. That is, the side feels sore all the time.

Q. All right. What about the other ear? Can you hear good on the other ear? A. Yes, that one all right, the left.

Q. This Dr. Van Shot that you spoke of, is he your private family doctor? A. Dr. Van Shot?

Q. Yes. A. I go to him every day after he sent me down.

30 Q. No, answer the question, please. Was he your private doctor when he was treating you? A. Yes.

Q. He was your private doctor? A. Yes.

Q. Well, did you call Dr. Van Shot or did the company call Dr. Van Shot? A. I don't know who called him.

Q. You don't know who called him? A. No.

40 The Court: But, you didn't call him, did you?

*Andrew Mudri—Direct.*

The Witness: No.

*By Mr. Rubacky:*

Q. When was the last time that you received treatments from Dr. Van Shot? A. I think that is last January. Last January I saw him the last time.

10

The Court: Last month?

The Witness: No, no, last year. 1930, I see him.

*By Mr. Rubacky:*

Q. Wait a minute. You mean 1931, don't you? A. Yes.

Q. And since that time, have they called on you to give you any further treatments? A. They sent me down to the Broadway Public Service.

20

Q. I don't mean about that. That is for the examination. A. They give me nothing.

Q. I mean did they give you any other treatments? A. No.

Q. Did you go to any other doctors for treatments? A. Yes.

Q. Who were the different doctors that you went to, if any? A. Yes.

Q. I say, who were the different doctors that you went to after Dr. Shot stopped treating you?

30

Mr. Romine: You mean for treatment?

Mr. Rubacky: Yes.

The Witness: The Public Service, and they give me a light too.

*By Mr. Rubacky:*

Q. I mean, did you ever have doctors after Dr. Van Shot finished with you? I mean did some-

40

*Andrew Mudri—Direct.*

body have to take care of you? A. No, they sent me to the Public Service.

Q. Do you understand me, Mr. Mudri? Did you ever have any other doctors for yourself after the Public Service doctors stopped treating you? I will withdraw that, I mean after the United Engineers and Constructors, Inc., stopped treating you? A. Yes.

Q. All right. Who were those doctors, if any? A. I got an examination after—

Q. All right. What doctors did you go to after Dr. Van Shot finished with you? A. That is what I told you. I go to the Public Service.

Q. I am not talking about that. I am talking about your own doctors. Did you have to go to your family doctor? A. Yes.

Q. Who was he? A. Dr. Wry.

The Court: Dr. Wry.

Mr. Rubacky: Yes.

The Witness: Yes.

*By Mr. Rubacky:*

Q. And did you ever have any other doctor beside Dr. Wry? A. Dr. Saffron.

Q. And did you ever have any other doctors beside Dr. Wry, and Dr. Saffron? A. The Jersey City doctor.

Q. Dr. Kippel, you mean? A. Yes.

Q. And did you ever have any other doctors, beside Dr. Wry, Dr. Saffron, and Dr. Koppel? A. Dr. Reeves, I think.

Q. And did you ever have any other doctors beside Doctors Koppel, Saffron, Wry, and Dr. Reeves? A. I think I had Dr. McGuire.

40

*Andrew Mudri—Direct.*

Mr. Rubacky: Your Honor, I believe he means Dr. Dwyer.

The Court: At the hospital?

The Witness: Yes.

*By Mr. Rubacky:*

Q. And did you have any other doctors beside Doctors Koppel, Saffron, Reeves, Wry, and Dr. Dwyer? A. The doctor in Montclair. 10

Q. What was the doctor's name in Montclair? A. I don't know.

Q. You don't know his name? A. No.

Q. And do you remember now when you saw Dr. Wry the first time? A. Well, that is for examination that I saw him and he said—

Q. Wait a minute. When was the first time, Mr. Mudri? A. I no mark it down. 20

Q. You didn't mark it down? A. No.

Q. Do you remember when was the last time that you went to Dr. Saffron? A. I got a card home. I can't tell. I forget to take it.

Q. All right.

Mr. Rubacky: We will introduce that, if your Honor please. We will have the doctor here. 30

*By Mr. Rubacky:*

Q. Then, all these doctors had to treat you for your trouble, is that right?

Mr. Romine: I object to that as leading.

The Court: What did they do?

*By Mr. Rubacky:*

Q. What did the doctors do for you that you went to in the way of treatments? 40

*Andrew Mudri—Direct.*

Mr. Romine: I object to that.

The Witness: They give me something for the neck, and then they go—

Mr. Rubacky: It is hard to make him understand, your Honor.

*By Mr. Rubacky:*

10 Q. Mr. Mudri, will you please tell the Court what the different doctors did for you?

The Court: What did Dr. Wry do?

The Witness: Dr. Wry?

The Court: Yes.

The Witness: Everything. He looked at me and had an examination and that is all.

*By Mr. Rubacky:*

20 Q. What did Dr. Saffron do for you? A. Just the same, examination.

Q. Didn't he give you any treatments at all? A. No, he went out to take me an operation and that is all. He wanted an operation.

Q. He wanted to operate on you? A. Yes.

Q. What did Dr. Reeves do for you? A. Dr. Reeves, he gave me cleaning—he gave me something down the nose, you know, clean everything  
30 out.

Q. He cleaned everything out? A. Yes.

Q. And what did Dr. Dwyer do for you? A. He did something down at the hospital, at St. Mary's Hospital.

Q. Well, do you remember the different things that the doctor did? How did he treat you? Do you remember that? A. No.

Q. Mr. Mudri, how did the doctors treat you?  
40 A. Examination on me.

*Andrew Mudri—Direct.*

Q. Well, besides the examination.

A. They also give me a light.

Q. No, I am not talking about the Public Service Doctors. I ask that that be stricken out.

The Court: All right. Strike it out as not responsive.

10

*By Mr. Rubacky:*

Q. Do you remember what the different doctors did for you in the way of treatments? Did they put medicine on the ear or what, or did they do anything to you, that is, did they apply anything?

A. Yes.

Q. What? A. No, just examination, and then they give me the cleaning every time, you know. They try to fix the head up, and you know, everything.

20

Q. Dr. Reeves gave you all of that? A. The other doctor. I forgot the name. He gave me pins a couple of times, you know, he sticks me.

Q. You mean Dr. Reeves? A. Yes.

Q. He gave you treatments with pins? A. Yes, about three times.

Q. And did you receive any other types of treatments, Mr. Mudri? A. No.

30

Q. When was the last time that you saw any one or all of these doctors? A. Dr. Reeves?

Q. Who, Dr. Reeves, you saw last? A. Yes.

Q. When was the last time you saw him? A. I think about two weeks.

Q. About two weeks ago? A. Yes.

Q. Did the doctors ever tell you that you should not come back any more, that you were all cured?

Mr. Romine: I object to that. That is leading.

40

*Andrew Mudri—Direct.*

*By Mr. Rubacky:*

Q. Did they ever discharge you as cured? Do you understand me? Did the doctors ever discharge you as cured? A. Sure they discharge me, and they say—

Mr. Romine: I object to that question.

10 Mr. Rubacky: Not charged, but discharged, I didn't say charged.

The Court: He says yes.

*By Mr. Rubacky:*

Q. Mr. Mudri, did the doctors ever tell you that you did not have to come back any more and that you are all cured? A. They say to me nothing.

The Court: They said to him nothing.

20 *By Mr. Rubacky:*

Q. Now, Mr. Mudri, do you remember the last time that you got a pay check from the United Engineers and Constructors, Inc.? A. I think April I got.

Q. April? A. Yes.

Q. You don't remember what date? A. No.

Q. And did you get any money since that time?

30 A. No, that is all last.

Q. Are you able to go back to work at all? A. That is, I asked Lawrence—

Mr. Romine: Wait a minute.

The Witness: Lawrence.

The Court: He has already testified to that.

Mr. Rubacky: He has?

The Court: Yes.

40

*Andrew Mudri—Cross.*

Mr. Rubacky: Well, then, I will withdraw the question.

The Witness: Mr. Lawrence come—and Mr. Lawrence he come to me and he told me—

Mr. Rubacky: Wait a minute, Mr. Mudri, that is all.

10

*Cross-examination by Mr. Romine:*

Q. Where did you say that you lived? A. 56 Butler Street, Clifton.

Q. And how long do you say that you worked for the Public Service? A. I work down there, yes.

Mr. Rubacky: If your Honor please, I just want to remind Counsel that this is not against the Public Service. It is against The United Engineers and Constructors, Inc., I am merely saying that so that we will try to keep the Record straight.

20

The Witness: I work down at Ridgewood.

The Court: You brought it against both, at any rate, did you not?

Mr. Rubacky: Well, we amended that, if your Honor please, so that it would read only against the United Engineers and Constructors, Inc.

30

The Court: When was that done?

Mr. Rubacky: When we started here.

Mr. Romine: I will reframe the question.

*By Mr. Romine:*

Q. How long did you work for the United Engineers and Constructors, Inc.? A. I worked all

40

*Andrew Mudri—Cross.*

year, I think, 1929, at the Ridgewood place where they were building an office. After finishing that, they sent me down to Hackensack on a garage.

Q. Before this accident, did you have any trouble down here? (Indicating) A. No, no, no.

10 Q. Didn't you go to see a doctor before that time? A. Sure.

Q. And didn't the doctor push them back for you down here? (Indicating) A. That is, I feel I go inside the shop and I told him there that I was—

Q. No, not what you told him. I say you had trouble down here (indicating) before, didn't you? A. I never got before trouble.

20 Q. Didn't the doctor push them back for you? A. No.

Mr. Rubacky: He denies that.

*By Mr. Romine:*

Q. Did the doctor push them back for you? A. No.

Mr. Rubacky: When, please?

Mr. Romine: Before the accident, I am talking about.

30 *By Mr. Romine:*

Q. Before the accident, didn't the doctor ever push them back for you? A. No.

Q. You have been a laborer all your life? A. Yes, a concrete laborer.

Q. Do you do heavy lifting? A. I can't hear right.

Q. I say, you have always done heavy lifting? A. Not this time.

40 Q. But before the accident you always did heavy

*Andrew Muñri—Cross.*

lifting, didn't you? A. I no lift heavy—that is why I take a hod-carrier's job, carrying brick and mortar.

Q. Yes, that is the kind of work that you always did, isn't it? A. Yes.

Q. Now, you say that your hearing is no good? A. No good.

10

Q. But you can hear me all right, can't you? A. Yes, that side I hear.

Q. You can hear me all right, can you not? You hear what I say, don't you? A. Yes.

Q. All right. Now, these doctors that examined you, were Dr. Wry and Dr. Koppel and Dr. Saffron. They just examined you, didn't they? A. Yes.

Q. They gave you no treatments? A. No, no give nothing.

20

Q. They didn't give you any medicine? A. No.

Q. They just examined you, is that right? A. Yes.

Q. And the last time that you saw a doctor was about two weeks ago, is that right? A. Yes, that is right. He cleaned my head and my ears.

Q. You mean that he cleaned your ears out? A. Yes.

Q. Did he ever do that before? A. Sure, I got examined. I was down there for an examination, down in Newark. I call in on that doctor.

30

Q. Well, how long before did he clean your ear out? A. Oh, about two weeks. He cleaned my ear out two weeks.

Q. Every two weeks? A. Sure.

Q. Every two weeks? A. Sometimes he give me the light.

40

*Andrew Mudri—Cross.*

Q. He gave you what? A. Down the nose, you know, electric I mean.

Q. How often did you go to Dr. Reeves? How often did you go to see Dr. Reeves? A. Well, I go tonight, too.

10 Q. Did you go last night? A. No last night, I no go last night, you know that I was—it was two weeks ago I feel very bad, sore, in my head. It give me a headache.

Q. Never mind how you felt. I am trying to fix the time. Before that two weeks, when did you go to see Dr. Reeves before? A. What?

Q. Before the last two weeks, when did you see him before that? A. It was about two weeks then in Newark, he was cleaning my head.

20 Q. I am saying Dr. Reeves. When before the last two weeks did you see him? A. That is where I was last week, I think, on Friday.

Q. Is that the only time you ever saw him? A. I go two times, a week before.

Q. A week before? A. Yes.

Q. Before the last two weeks? A. Yes.

Q. By the way, how old are you? A. Forty-six I was—this time forty-seven I will be.

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(Witness excused)

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DR. DEAN A. WRY, a witness on behalf of the Petitioner, being first duly sworn, testified as follows:

*Direct-examination by Mr. Rubacky:*

40 Q. Dr. Wry, did you have occasion at any time to examine Mr. Andrew Mudri? A. Yes.

*Dr. Dean A. Wry—Direct.*

Q. How many times? A. I examined him twice.

Q. Twice? A. Yes.

Q. And did you have occasion to forward to me a medical report on or about August 15, 1931?

A. Yes, I did.

Q. And do you recall the nature of the medical report? A. At that time the man had a great deal of rigidity of the muscles of his neck. 10

The Court: First of all, Doctor, can you specify the time when this examination was made?

The Witness: The fourteenth of August.

Mr. Rubacky: If your Honor please, I will have to withdraw all the previous questions and qualify him. 20

*By Mr. Rubacky:*

Q. Dr. Wry, you are a licensed practicing physician of the State of New Jersey? A. Yes.

Q. And have been for how long? A. Eight years.

Q. And you practice where? A. 234 Dayton Avenue.

Q. Are you connected with—

The Court: (Interrupting) Paterson, Doctor? 30

The Witness: Pardon?

The Court: Dayton Avenue, Paterson, you mean?

The Witness: No, that is Passaic, or rather Clifton.

*By Mr. Rubacky:*

Q. Are you connected with any hospitals or med- 40

*Dr. Dean A. Wry—Direct.*

ical institutions? A. Yes, sir, St. Mary's Hospital, Passaic, the General Hospital, Passaic.

Q. In what capacity? A. Surgeon, assistant surgeon.

10 Q. And during your experience as a physician, have you had occasion to treat traumatic injuries, or cases of industrial surgery? A. Yes, sir.

Q. And how many cases during the eight years, if you know? A. Well, probably two or three thousand.

Q. You are in a position, Doctor, are you not, to estimate the amount of physical disability that one suffers? A. I think so.

Q. Now, you have examined Mr. Andrew Mudri, the Petitioner in this case, have you not? A. Yes.

20 Q. How many times? A. On the fourteenth—on the fourteenth and I examined him about—

Mr. Romine: (Interrupting) The fourteenth of what?

The Witness: About two weeks after.

The Court: August, 1931?

The Witness: That is right.

The Court: About two weeks later?

The Witness: Yes.

30 *By Mr. Rubacky:*

Q. You submitted a medical report to me, did you, of that examination? A. I did.

Q. And do you recall the nature of that report, Doctor? A. That he had a rigidity on the right side of his neck, also rigidity in the muscles that go down to his shoulder. Inability to extend and hyperextend his neck. My feeling was that he had an injury to some nerve in the back of his neck,

40

*Dr. Dean A. Wry—Direct.*

and there was also a tremendous amount of swelling in the region of his neck at that time.

Q. Did you test out his sense of hearing at all, Doctor? A. I did not.

Q. Did you recognize that before you tested him? A. I did.

Q. And in connection with the location of the various muscles of the neck, shoulder, and back, are you in a position now to inform the Court as to what nerves were injured? A. I feel that the occipital branches—the occipital branches of the occipital nerves, and the two branches of the cervical nerves had undergone some traumatic injury. 10

The Court: The two cervical nerves?

The Witness: Yes.

*By Mr. Rubacky:*

Q. And this swelling that you spoke about previously, would you attribute that swelling—I will withdraw that—will you identify the location of that swelling for us, Doctor? A. The location of the swelling was on his right side, extending from below the mastoid down to the—just above the clavicle, and then it ran down towards his—the prominence of the first thoracic vertebra. 20 30

Q. That virtually includes all of the right side? A. The right side of his neck.

Q. And did he have any change of the musculature of the right arm or right forearm? A. He said that he had pain there. I couldn't see any.

Mr. Romine: I object to that. He is the examining doctor.

The Court: I sustain the objection.

Mr. Rubacky: All right. 40

*Dr. Dean A. Wry—Direct.*

*By Mr. Rubacky:*

Q. Was there any change in the nature of the musculature itself of the right arm or right forearm? A. I didn't notice any change in his arm.

Q. Doctor, did you have any difficulty in speaking to him at the time of your examination? A. Why, he was not hearing as well as usual at that time.

Q. And at your subsequent examination, had any of the conditions which you have already described changed in any respect? A. I don't think that they did, no.

Q. Doctor, were you on service at St. Mary's Hospital at the time of his admission to the institution? A. I was.

Q. And did you have occasion, then, to examine him? A. I saw him at that time, but I did not treat him.

Q. You saw him at that time? A. Yes.

Q. Do you recall the history that was given to you at that time?

Mr. Romine: I object to that.

Mr. Rubacky: If your Honor please, he was on service at that time. Certainly he is entitled to testify as to that.

The Court: Unless he put the history down as part of the hospital records there.

*By Mr. Rubacky:*

Q. Doctor, did he complain of any subjective or objective symptoms?

Mr. Romine: I object to that.

The Court: Confine the doctor to exactly what he saw in his examination.

*Dr. Dean A. Wry—Cross.*

*By Mr. Rubacky:*

Q. Were there any other objective signs that you noticed at the time of either your first or your second examination that you have not already related to us? A. Nothing, only the peculiar way that he held his head. That was all.

Q. And your fee, Doctor, for the services rendered for the two examinations is what? A. Fifteen Dollars. 10

Q. Fifteen Dollars each? A. No, Ten Dollars for the first and Five Dollars for the second examination.

Q. And that is a reasonable charge, is it, Doctor? A. I think so.

Q. For such services? A. I think so.

*Cross-examination by Mr. Romine:* 20

Q. When you examined him on these two occasions, was he stripped? A. Yes, stripped to the waist.

Q. Did you put him through the motion of bending over? A. I did.

Q. Was he able to bend over? A. He was able to bend his back, but his neck was rigid.

Q. I am speaking now of bending over towards the floor. A. Yes, he was able. 30

Q. With his hands outstretched? A. He was able to bend over.

Q. Could he touch the floor in the bending over position? A. I don't know as I went quite that far, but he could.

Q. He was at least able to bend over towards the floor? A. Yes.

Q. Did you notice the condition of his teeth? A. Yes, I did. 40

*Dr. Dean A. Wry—Cross.*

Q. They were in bad condition, were they not?  
A. Well, he had two teeth that were rather in bad condition, yes.

Q. You would call that, would you not, a foci of infection? A. Not necessarily. It would be a focus.

10 Q. Did you examine his tonsils? A. I did not.

Q. You do not know the condition of those? A. No.

Q. Were there times when he did not hold his head in a fixed position? A. Well, at the time I noticed him, of the examination that I had with him, his neck seemed to be in this rigid condition.

20 Q. Well, if his attention was distracted in any way, did you notice that he did not hold his head in a fixed position? A. I tried to distract his attention the first time he was in the office, but it still remained in the fixed position at the examination.

Q. That is, you were not able to distract his attention. Is that what you mean? Is that right? A. I didn't get you.

Q. You were not able to distract his attention? A. I was able to distract his attention, I think, but he still held his neck rigid.

30 Q. Now, you said before that you felt that there were some nerves of the back that might be affected? A. Yes.

Q. And you mentioned, I think, the occipital nerve? A. Yes.

Q. And the two branches of the cervical nerves? A. Yes.

40 Q. Of course, there is no way of your determining that, how those nerves are affected, or whether, in fact, they are affected, is there? A. Well, it is

*Dr. Dean A. Wry—Redirect.*

the sense of touch that he had over—the ability to move his neck certain ways.

Q. That lead you to think that they might be affected? A. Might be injured.

Q. Of course, as to how they are affected or injured, you are not able to tell? A. Not definitely.

*Redirect-examination by Mr. Rubacky:*

10

Q. Doctor, with the Courts' permission, I just want to ask you one more question that I forgot to ask you on Direct examination. If you were to estimate the total function disability of Mr. Mudri on the objective signs that you yourself noted at the time of your first and second examinations, what percentage of total functional disability would you give him as a minimum? A. To his neck? 20

Mr. Romine: Well, if your Honor please, I object. I don't think that the information that the doctor has given us entitles him to testify as to that.

The Court: I think he is. After all, it is an opinion that he is able to give. We will take his opinion for what it is worth.

Mr. Romine: Well, if it is confined to what he found. 30

The Court: Certainly, what he found. It is to be confined to what he, himself found. He has testified that he has found a stiff neck, some trouble with the occipital nerves, two cervical nerves, and he also found swelling beginning below the mastoid and running into the clavicle, down to the vertebrae. I think with those facts before him, he can answer the question. 40

*Dr. Dean A. Wry—Redirect.*

The Witness: I want to ask—

The Court: (Interrupting) about the minimum, I don't know what you mean by that.

The Witness: I would like to know whether this is just in regard to his neck or to every other part of the body since the accident. Do you mean to his neck?

10

*By Mr. Rubacky:*

Q. Considering the fact that you have these objective signs that you have already given us, and considering the fact that this is a compensation Court— A. (Interrupting) Yes.

Q. (Continuing) What percentage of total permanent disability would you give to Mr. Mudri, taking those facts into consideration?

20

Mr. Romine: Well, I think it ought to be understood that the doctor in giving his estimate is only basing it on the findings about which he has testified that he himself found.

The Witness: Do you mean to the neck? Is that right?

*By Mr. Rubacky:*

Q. To the neck and that part of the back of the skull, the involvement of the occipital nerves, the involvement of the cervical nerves, that you noted, together with the signs of inflammation and the muscular spasm that you have already gone into.

30

The Witness: I should say at least fifty percent.

*By Mr. Rubacky:*

Q. Fifty percent? A. Yes.

40

*Dr. Dean A. Wry—Recross.**Recross-examination by Mr. Romine:*

Q. When you say at least fifty percent, do you mean fifty percent of total disability? A. Well, the man is unable to extend or hyperextend his neck, which would give him at least half of the control of the muscles of his neck.

Q. So that you think, notwithstanding the use of both eyes, the use of both arms, and the use of both legs, that with this involvement or possible involvement of the nerves of the neck, that that man is fifty percent totally disabled? 10

Mr. Rubacky: If your Honor please, I object to the form of the question. He has already gone into the objective signs and there is no necessity for proceeding any further with that sort of testimony. 20

Mr. Romine: I have a right to cross examine to find out how he bases this percentage that he has just given us.

Mr. Rubacky: We are only basing the estimate on what he himself has noticed by way of objective signs. The other part of the question is superfluous and immaterial.

The Court: I feel that he has a right to find out. He has to go into that. 30

Mr. Rubacky: If your Honor please, I might say that we are just going into the objective signs. We are not going into anything else. I don't know why Counsel alludes to all the other parts of the body when we are not referring to that on direct examination.

*By the Court:*

Q. Do I understand that your estimate is based 40

*Dr. Dean A. Wry—Recross.*

upon the immobility of his neck primarily? A.  
On his neck.

*By Mr. Romine:*

10 Q. Do you mean to testify that notwithstanding his power to use his arms and his legs, and his having his eyesight, that he still is fifty percent totally disabled?

Mr. Rubacky: If your Honor please, I object to the question. He is characterizing the witness, do you mean to tell us.

The Court: I will permit the question. I overrule the objection.

20 The Witness: What he asked me was in regards to his neck. He didn't ask me in regard to other muscles of the body, did you?

*By Mr. Romine:*

Q. Then, you mean that he is fifty percent disabled as to his neck? A. As to his neck.

30 Q. Oh, I see. I don't know how your Honor is going to figure that one out. Now, taking it as to the whole body, what proportion would that be in your opinion, as to his whole body? A. Well, that is hard to figure out.

Q. You can't do that?

The Court: In other words, Doctor, I might be able to help you out a little bit. What we are trying to elicit from you is in what degree is this man's present condition rendered the less useful for himself? In other words, how much less useful is he as a working unit as a result of this stiff neck?

40

*Dr. Dean A. Wry—Recross.*

The Witness: He is enabled at the present time to do something.

The Court: Assuming that a man normally at one hundred percent, assuming a man normal at one hundred percent, how much less than one hundred percent is he for work in general or any kind of work?

The Witness: At least thirty-five to forty percent less. 10

*By Mr. Romine:*

Q. Well, now, Doctor, when you assume that a man has the full use of his arms and his legs and his eyesight, do you still want to say that this disability to the neck, with this disability that he has in the neck, that he is thirty-five to forty percent totally disabled? A. I should say that he was at least thirty-five percent disabled at the present time. 20

Q. Have you any experience in testifying in compensation matters? A. Well, I have testified in quite a few cases.

Q. And did you ever testify in cases of this character involving the neck as to the percentage to the whole?

Mr. Rubacky: If your Honor please, I object. 30

The Court: He has gone into that. He has already testified as to his qualifications. Dr. Rubacky asked him whether he felt competent to estimate his disability and he says yes.

Mr. Romine: I have a right to find out how extensive his experience is on that line.

Mr. Rubacky: Not at this time, your Honor. 40

*Dr. Dean A. Wry—Recross.*

10 Mr. Romine: He may be competent to testify in certain disability cases, but I want to find out what his experience is in this case, basing it on the fact that he now says it is thirty-five to forty percent of total disability. I am merely cross examining him as to that, so that we will know just what his qualifications are.

*By Mr. Romine:*

Q. The question is, Doctor, have you had experience in cases of this character in estimating disability to the whole?

Mr. Rubacky: I object to that, if your Honor please.

20 The Court: In other words, did you ever testify in any cases involving stiffness to the neck, a case involving a similar injury?

The Witness: Yes, I have had one case before.

Mr. Romine: Only one case?

The Witness: Yes.

*By Mr. Romine:*

30 Q. And did you testify in Court on that one case, or not? A. I don't think I did testify in Court, no.

Q. So that, as a matter of fact, you never testified in Court on cases of this character? A. No.

*Dr. Ernest Reeves—Direct.*

DR. ERNEST REEVES, a witness on behalf of the Petitioner, being first duly sworn, testified : follows :

*Direct-examination by Mr. Rubacky :*

Q. Dr. Reeves, you are licensed to practice in the State of New Jersey? A. Yes. 10

Q. And you have been for how long? A. Seven years.

Q. And that is in the State of New Jersey? A. Yes.

Q. Were you ever licensed to practice medicine in any other State? A. Yes.

Q. Where? A. Budapest.

Q. For how many years? A. All along I have been a doctor altogether twenty-two years, and fifteen— 20

Q. Twenty-two years you were a doctor and of that twenty-two years fifteen years of your practice was spent in Budapest? A. Yes.

Q. Doctor, are you affiliated with any medical institutions or hospitals? A. I am a senior for ear, nose and throat at St. Mary's Hospital.

Q. You are a senior physician for ear, nose and throat work at St. Mary's Hospital? A. Yes.

Q. Is that the particular branch of medicine that you specialize in? A. Yes. 30

Q. And did you have occasion at any time to examine Mr. Andrew Mudri? A. Yes.

Q. Do you know the gentleman if you saw him? A. Yes.

Q. Can you identify him in Court here? A. Yes.

Q. Where is he? A. Right over there (indicating).

Mr. Rubacky: For the purpose of the rec- 40

*Dr. Ernest Reeves—Direct.*

ord, if your Honor please, he points directly to the petitioner.

The Court: All right.

*By Mr. Rubacky:*

10 Q. Dr. Reeves, you examined Mr. Mudri how many times or treated him how many times?

The Court: First let us know which is which. You examined or treated him?

*By Mr. Rubacky:*

Q. Did you examine or treat him, Doctor? A. I examined and treated him.

Q. You examined and treated him? A. Yes.

20 Q. And, Doctor, how many times did you examine or treat him? A. I treated him about fifteen times, and one time I guess it was about—one month ago I reexamined him.

The Court: Do I understand it is only one examination and fifteen treatments?

Mr. Rubacky: He had to examine him first, your Honor.

The Court: I know, but how many examinations did you actually make, Doctor?

30 The Witness: Every treatment I made an examination.

The Court: Then you examined and treated him sixteen times, is that right?

The Witness: Sixteen times.

*By Mr. Rubacky:*

Q. And, Doctor, what were the findings? First, what did he complain of?

40 The Court: Let us fix the first time he treated or examined the man, please.

*Dr. Ernest Reeves—Direct.*

*By Mr. Rubacky:*

Q. Doctor, do you recall the date of your first examination and treatment? A. 1931, June.

Mr. Romine: June, 1931?

The Witness: Yes.

*By Mr. Rubacky:*

10

Q. Do you remember the date? A. June 9, 1931.

Q. What were his complaints at that time, Doctor? A. He complained about a steady noise in the head. I just have the head complaints, because I did not sign. Steady noise in the head and he could not hear well.

Q. He could not hear well? A. Yes.

Q. And this steady noise in the head involved what portion of the skull? A. Well, most of the right, but in the left side too.

20

Q. Mostly in the right but it went over to the left? A. Yes.

Q. Did it take in the whole of the right side? A. Yes, the whole of the right side.

Q. And how much of the left? A. Well, mostly localized on the left, around the left ear.

Q. Around the left ear? A. Yes.

Q. Doctor, did he complain of any other subjective symptoms besides the noise in the head? A. He complained about pain by moving the head or by putting his neck back.

30

Q. And when you say pains, do you mean pains on movement? A. Pains on movement.

Q. Did he complain of any other symptoms besides that? A. Well, I want to say that in connection with the whispering words, his hearing was about twenty-five centimeters on the left ear, and

40

*Dr. Ernest Reeves—Direct.*

in connection with the conversational voice, he heard—he did hear about a yard from the right ear, and one and a half yards from the left ear.

Q. You say that the whispering voice on the left ear was twenty-five centimeters? A. Distinct, that is about ten inches.

10 Q. And on the right ear he heard nothing? A. He didn't hear at all.

Q. And the conversational voice on the left ear was what? A. On the left ear it was one and a half yards distance. No, the left ear was one and a half inches, and the right ear was one yard.

Q. And did he, besides these subjective symptoms that you have already mentioned to us, complain of any other subjective symptoms? A. He complained about noises, and pain upon movement,  
20 nothing else.

Q. And then after the history of the subjective complaints, did you examine him? A. Yes, I examined him.

Q. What were your objective findings, Doctor? A. The objective findings were on both sides a cal-sification.

The Court: Just a moment, Doctor.

30 The Witness: On both sides a cal-sification of the drum membranes, cal-sification of the drum membranes on both sides. The drum membranes were retracted.

The Court: The drum membranes were retracted?

The Witness: The drum membranes were retracted, loss of reflex—loss of normal reflexes.

Mr. Romine: What is that?

40 The Witness: The loss of normal reflexes.

*Dr. Ernest Reeves—Direct.*

They were not so transparent as they are usually. The short processes of the Malleus protruded.

Mr. Romine: The short process of the Malleus protruded?

The Witness: Yes.

*By Mr. Rubacky:*

10

Q. Now, those are all the objective symptoms? Did you observe any objective symptoms in the eye?

A. I did not see any.

Q. In the nose? A. No.

Q. And did Mr. Mudri give you a history of the accident? A. Yes.

Q. He did? A. Yes.

Q. What did he tell you, Doctor? A. He told me that something hit him on the head and he lost consciousness for about eight days, and he had bleeding from the nose and from the ear.

20

Q. And did he tell you that he had been confined to the hospital? A. Yes, he was in St. Mary's Hospital.

Q. Doctor, considering all the objective signs that you noted, the subjective signs that he told you, and the history of the case as it was given to you by him, would you say that what you found was the direct and proximate result of the accident such as he mentioned to you?

30

Mr. Romine: I object. He incorporates in this question such things as this man told him. If this were asked as a hypothetical question incorporating all the facts, I would not object, but I don't know what the Petitioner may have told this man.

The Witness: Will you be so kind—

40

*Dr. Ernest Reeves—Direct.*

Mr. Romine: Wait a minute.

Mr. Rubacky: If your Honor please, the examining physician is qualified by law to be asked a hypothetical question such as the one that I have just put to him.

10 The Court: Why does he need a hypothetical question if he has a history?

Mr. Rubacky: Well, your Honor, I have incorporated all of that in there. I want to find out now whether what he found, together with the history as given him by the patient, would lead him to feel that all of this is the direct and proximate result of an accident such as described to him.

The Court: All right.

20 Mr. Romine: I think he ought to incorporate in his question the facts.

Mr. Rubacky: I will withdraw the question.

*By Mr. Rubacky:*

Q. Doctor, considering all of the objective signs which you have already described to us—

The Court: (interrupting) And the history obtained from the Petitioner.

30 *By Mr. Rubacky:*

Q. (continuing)—the history of an accident obtained from the Petitioner, that he had been involved in an accident whereby some part of an excavation had fallen upon him, so that sand, carpenter forms, and the concrete forms had fallen directly upon his body, would you say that the results which you had noticed were the probable and direct and proximate cause of such an accident?

40

*Dr. Ernest Reeves—Direct.*

Mr. Romine: I object to that, because he has incorporated in this question in substance that a whole stone wall fell upon this man.

Mr. Rubacky: The man said a concrete form.

Mr. Romine: No, he said that one of the two-by-fours, I believe that is what he said struck him. 10

Mr. Rubacky: No, two four-by-fours, that is the lumber, I mentioned. He said the concrete form and the sand and the gravel.

Mr. Romine: You mentioned the whole form together with sand and gravel.

The Court: I don't recall anything about sand and gravel being included in the accident. 20

Mr. Romine: He didn't say anything about sand and gravel.

Mr. Rubacky: I will withdraw the question.

*By Mr. Rubacky:*

Q. Doctor, did Mr. Mudri give you a history of being injured while in the course of employment?

A. Yes. 30

Q. Have you got that history? A. I got the history that on August 8, some lumber did fall on his head.

Q. Lumber did fall on his head? A. Well, yes, lumber did fall on his head.

Q. Well, with the history as you have it there, plus the added fact of sand in an excavation falling in upon him, and with the objective signs that you have already described to the Court, would you 40

*Dr. Ernest Reeves—Direct.*

say that they would be the probable, direct, and proximate result of such an injury? A. Yes.

Q. Doctor, have you testified in cases before—that is before the Compensation Bureau? A. Yes.

10 Q. You have testified before the Compensation Bureau on the law with respect to disability percentage regarding ears, nose, and throat? A. Yes.

Q. About how many times did you testify, if you can recall? A. Here in this Court about three or four times, and over in Hungary maybe fifty or sixty times.

Q. Considering now the findings that you have already mentioned, what percentage of total permanent function disability to the ears would you give to Mr. Mudri? A. About eighty percent.

20 The Court: Of both ears?

The Witness: Of both ears.

*By Mr. Rubacky:*

Q. Doctor, what do you base your percentage of eighty percent total disability on?

Mr. Romine: Wait a minute here.

Mr. Rubacky: I will withdraw the question.

30 *By Mr. Rubacky:*

Q. Doctor, what do you base your percentage of eighty percent on? A. Well, a man who does not hear a whispering voice in the one ear has practically no hearing, because he only hears when somebody says very much to him, and most usually in conversation he does not hear. The second ear that is better. Therefore, I will give him twenty percent. But then again, these processes are usually  
40 progressive. They do not stay with the disability

*Dr. Ernest Reeves—Direct.*

what he has now, but they usually become very progressive, so that even a little higher percentage would be admissible in this case. A little higher would be all right here. Of course, if that persists, the condition must get worse.

Q. You mean, that you are basing your percentage then, on what he has now? A. Yes. 10

Q. And the probability of progressive disability? A. Yes.

Mr. Rubacky: That is all.

The Witness: May I say I forgot some objective symptoms?

Mr. Romine: I will give you a chance to tell it all.

Mr. Rubacky: Wait a minute. I won't surrender the witness, then. 20

*By Mr. Rubacky:*

Q. You have some other objective symptoms, Doctor? A. Yes, the bone conduction was lower in the right side than on the left side.

Q. The bone conduction was lower on the right? A. As the air conduction of both sides, the air conduction was shorter on the left side as on the right side. The lateralized Weber Test was to the left.

Q. Just a minute, Doctor; I don't seem to be able to get this. You say the air conduction is shorter on the left? A. As on the right. 30

Q. And long on the right? A. Yes.

Q. And what did you say about the Weber Test? A. Lateralized to the left.

Q. Any other symptoms? A. No.

Mr. Rubacky: That is all.

*Dr. Ernest Reeves—Cross.*

*Cross-examination by Mr. Romine:*

Q. When was the last time you examined this man? A. January 7, 1932.

10 Q. Was that an occasion when he could only hear a whispering voice in the right, ear when you were very close to him? A. The right ear at twenty-five centimeters, and the left ear did not hear at all.

Q. The left ear what? A. The left ear, he did not hear at all. The right ear was twenty-five centimeters.

The Court: And on the left ear he heard nothing?

The Witness: No whispering voice.

20 *By Mr. Romine:*

Q. Wait a minute. He heard no whispering words? A. Yes.

Q. And how about the right? A. Twenty-five centimeters distant, ten inches distant.

Q. At ten inches distance— A. (interrupting) Yes.

Q. (continuing)—he could hear whispering? A. Yes.

30 Q. Now, then, didn't you know that he claimed to have had his disability in the right ear and not in the left? A. No, it is the right ear—Oh, I had it mixed up, the right ear.

Q. Then, you were mixed up when you say that he heard nothing in the left ear? A. Yes.

Q. You mean he heard nothing in the right ear? A. Yes.

40 Q. And when you say that he could only hear a whispering voice ten inches distant, that was in

*Dr. Ernest Reeves—Cross.*

connection with the left ear? A. It is for the left ear.

Q. In the left ear. You maintain that that ear is also involved, do you? A. Yes.

Q. And do you think that this man is getting worse since that time? A. Yes.

Q. Now, you heard him in Court this morning, didn't you? A. No, I was just coming in. 10

Q. Well, if it appears that I talked in a very low voice to this man, and he heard what I had to say, without asking me to repeat at all, would you still maintain that this man was having difficulty with his hearing? A. If you talked like this, to him as you talked to me now, then, I answer you that I do not consider that any measure at all, because every man who does not hear has two eyes, and he learns how to read the words on your lips. You have to pass back, from the back of his body, you know, that he does not see your lips, but he reads your lips, he reads your words. You know every man who has a little bit of intelligence gets to understand your words. 20

Q. Did you test this man for lip reading? A. Sure.

The Court: You did test him for lip reading? 30

The Witness: No, no.

*By Mr. Romine:*

Q. Then, you don't know whether he heard me or whether he read my lips, as you assume, do you? A. I don't know.

Q. You don't know. All right, then. Do not volunteer anything when you don't know about it. A. All right. 40

Q. Now, did you examine his nose? A. Yes.

*Dr. Ernest Reeves—Cross.*

Q. Did you find anything wrong with that? A. nothing specially.

Q. What? A. Nothing specially.

Q. Did you find that the inter-nasal septum is were dark? A. The left frontal sinuses on transillumination, I found no difference in transillumination. I did not take any X-ray picture.

10 Q. Well, you don't have to take X-rays to find whether the transillumination reveals frontal sinuses dark, do you? A. I did not find any differences in that.

Q. You did not find any differences? A. No.

Q. Did you find that the inter-nasal septum is thickened and deflected to both sides? A. Peculiarity on the both sides. Well, it seems to be so small amount that it does not count, it does not count.

20 Q. I am asking you did you find it? A. No, I did not find it.

Q. Did you find that both middle turbinates are enlarged? A. No.

Q. Did you find any evidence of a chronic congestion of the lining membrane of the nose? A. No.

30 Mr. Rubacky: If your Honor please, I am going to object to the form of the question, because the Doctor has already said what he found.

The Court: I think so.

Mr. Rubacky: We are not asking him for any disability regarding the nose.

40 The Court: Well, now, just a minute. He has testified in one of your questions that he examined the nose and found nothing specially wrong with it. Go ahead.

*Dr. Ernest Reeves—Cross.*

*By Mr. Romine:*

- Q. Did you examine his tonsils? A. Yes.
- Q. Did you find that they were atrophied or had large stumps? A. No, they were just normal.
- Q. Just normal? A. Yes.
- Q. Did you find any congestion of the tonsils?  
A. A little congestion, yes. 10
- Q. Did you find any evidence of any chronic catarrhal condition? A. No.
- Q. Did you find any sepsis in or about the teeth or gums? A. Sepsis?
- Q. Yes, sepsis. A. Sepsis?
- Q. Sepsis, don't you know what that is? A. No, we don't use sepsis in this meaning as you ask it, probably you mean some other thing. Sepsis is some general condition. It is not—and not in the way you mean. 20
- Q. Did you find anything wrong with his eyes?  
A. No.
- Q. They were normal weren't they? A. Yes.
- Q. Is that right? A. Yes.
- Q. Now, you did find that both drumheads of the ear were retracted, didn't you? A. Yes.
- Q. And you found that there was a small deposit of lime? A. Yes.
- Q. Now, in your tests, did you use the tuning fork? A. Yes, as I testified just now. 30
- Q. Did you use the whistle? A. Whistle, yes.
- Q. Now, in your test of this man, did you find any evidence of a chronic aural cararrh? A. A chronic what?
- Q. A chronic aural Cararrh. A. A chronic catarrh, you mean?
- Q. Yes. A. No, I didn't find any aural catarrh.
- Q. You didn't find any aural catarrh? A. Well, 40  
that is a chronic catarrh, is that right?

*Dr. Ernest Reeves—Cross.*

Q. Yes. He does have that, doesn't he? A. Yes.

Q. And you say that that is due from this accident, is it? A. Yes.

Q. That is due to this accident? A. Yes.

Q. And if it is a chronic condition, it is of long standing, isn't it? A. Yes.

10 Q. So that, as a matter of fact, it existed before the accident, didn't it? A. Well, two years is pretty long. That is a pretty long time.

Q. Well, it could have existed before the accident? A. It could have; it might have, yes.

Q. And there is no way for your telling if it did or not? A. The probabilities are not. He may have had an accident before, though.

Q. Well, he might have a chronic catarrh without having an accident, couldn't he? A. Yes.

20 Q. Sure. You say that an accident or trauma causes catarrh? A. It may cause, yes.

Q. It may cause? How may it cause catarrh?

A. Now, everybody knows that this chronic catarrh in the middle ear are caused by some kind—they are caused by something, and the eustachian tube, the eustachian tube is a bone canal, a canal, conducting the air from the posterior part of the nose or the venal pharynx to the ear. This bony canal  
30 is on the base of the skull. Any fracture which goes on the base of the skull may fracture these bony canals, causing say a destruction to the covering of the ear.

Q. Well, if a man has sinus trouble, that would cause a catarrhal condition, would it not? A. Must not.

Q. What? A. Must not. I have seen many patients with no trouble to the ear at all.

40 Q. I say if a man has trouble with his ear, a

*Dr. Ernest Reeves—Cross.*

catarrhal condition, showing in the ear, plus the fact that he has a sinus condition or evidence of catarrh of the nose, it is most likely due from the catarrhal condition and not from trauma, isn't it?

A. Well, that is your opinion and my opinion is not.

Q. Your opinion is it is not? A. My opinion is that in this case it is caused by trauma. 10

Q. All right. You are going to stick to that?

A. Yes.

Q. Now, what is there to indicate to you that this chronic catarrhal condition is due to trauma and not to chronic catarrh itself aside from trauma? A. Well, the fact is that there is a very small amount of disturbance in the nose, and the sinuses, and I don't know who found it. There is a very small amount of disturbance, not so much that it surely should indicate that the trouble should cause any ear trouble too, but there was a terrible trauma, the man was unconscious after it, which very often causes basal fractures. 20

The Court: What kind of fractures?

The Witness: Basal fractures, a fracture of the base of the skull, a fracture of the base of the skull.

The Court: A fracture of the base of the skull? 30

The Witness: Yes, and this condition is caused in no other way, so the probability, the probabilities are that it was probably caused by the trauma and not by any such condition which in every man nearly always could be found. It could be found by you and by Dr. Rubacky and by me, and prob-

40

*Dr. Ernest Reeves—Cross.*

ably everybody else, but this man had a terrible trauma, a terrible blow.

*By Mr. Romine:*

Q. Now, after saying all that, you are not positive that trauma caused this condition, are you?

10 A. It is just probable.

Q. Probable? A. Yes.

Q. Do you base your opinion that this catarrhal condition was caused by trauma on the assumption that the man had a basal fracture? A. Yes.

Q. So that, if he had no basal fracture, then your opinion would be entirely different? A. Yes.

*Redirect-examination by Mr. Rubacky:*

20 Q. Doctor, assuming for the purposes of argument that the man had no basal fracture, and that he showed the particular objective signs that you found? A. Yes.

Q. With the history of this excavation falling in on him, if I may term it such, plus the fact that he was struck by two four-by-four boards, pieces of lumber, would you say that the trauma from that would be sufficient to produce this condition?

30 Mr. Romine: I object to that because the Doctor has already said his opinion in this case was based upon a basal fracture.

The Court: He says that the trauma would cause it, in his opinion, and you are just restating it.

Mr. Rubacky: I am taking out the basal fracture. I am taking him out of the field of the basal fracture.

40 Mr. Romine: He has already stated that he based his opinion in this case upon th

*Dr. Ernest Reeves—Redirect.*

fact that this catarrhal condition was caused from a basal fracture and he says in answer to my question that if there was no basal fracture, then his opinion would be different as to the cause.

The Court: I don't think he said that. I think he said in all probability. 10

Mr. Romine: Your honor, the last question that I asked him was to the effect that if it appeared that the man had no basal fracture, then your opinion would be entirely different, would it not, and he said yes. Now, that answers it.

*By Mr. Rubacky:*

Q. Doctor, with the absence of any nasal complications, with the absence of any eye injury, and with the calcification of the drum membranes, the retraction of those same membranes, the loss of normal reflexes, and the fact that there was a protrusion of the short processes of the malleus, and the fact that you have the various symptoms and signs as described to you, would you say that that condition could be caused by trauma? 20

Mr. Romine: I object to that.

The Court: What ground. 30

Mr. Romine: On the ground that he has eliminated catarrh.

The Court: That is what he is talking about, the catarrh.

Mr. Romine: I know, but he has eliminated it. What he is saying in substance is, assuming that he did not have a catarrh, but assume that he had a trauma, assume that he did not have a basal fracture, but 40

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that he had the calcsification now, you can't eliminate from this case the things which the man has and then assume that he has something else.

*By Mr. Rubacky:*

10 Q. With all those symptoms and signs, catarrh included of the ear, would you say that his condition could not be caused by trauma?

Mr. Romine: I object to that, because he has already based his opinion, your Honor, upon certain fixed things, and the one thing that he fixed it upon was that there was a basal fracture, and that in his opinion this catarrhal condition came from trauma because there was a basal fracture, and Counsel can't take the Doctor out of the realm of what he has already testified.

20

The Court: Go ahead. I overrule the objection.

Mr. Romine: I ask an exception.

*By Mr. Rubacky:*

Q. Answer the question. A. Well, first of all, I think there was a basal fracture, because in it there was no X-ray results which showed—

30

Mr. Romine: I object, because the very first thing he says is "I think there was a basal fracture."

The Witness: (interrupting) Yes.

Mr. Romine: (continuing) And Counsel certainly cannot say "Assuming that there was not." Now, I object.

Mr. Rubacky: Let him explain it.

40 Mr. Romine: No. I ask that his answer

*Dr. Ernest Reeves—Redirect.*

be stricken out. He has already answered the question.

The Court: The Doctor has answered the question.

*By Mr. Rubacky:*

Q. Doctor, you said in reference to one of Mr. Romine's questions that if there was no basal fracture, that you would not believe that this was due to trauma. In your opinion, do you think there was a basal fracture? 10

Mr. Romine: I object to that.

The Court: He has already stated what his opinion was. I will allow him to answer however.

The Witness: Yes. 20

*By Mr. Rubacky:*

Q. Does every basal fracture show positively on an X-ray? A. In fact, a very small amount of basal fractures show on the X-rays, a very, very small amount.

*By Mr. Romine:*

Q. How did you determine that there was a basal fracture? A. By the the symptoms of basal fracture. He had bleeding through the nose, bleeding through the ears, he was unconscious. These are the cardinal symptoms of the basal fracture. The X-ray pictures, in my opinion, that we have had of sections of at least a hundred cases of basal fractures, the pictures do not show them. In Europe where we have done extensive study on these cases 30

Mr. Romine: I don't care about Europe. 40

*Dr. Ernest Reeves—Redirect.*

The Witness: We have not found any evidence on X-rays. In every book, it is common knowledge—

*By Mr. Romine:*

10 Q. Now, you don't know, as a matter of fact, having examined this man a year after whether there was a basal fracture, do you? A. The only way to notice is dissection.

Q. Please answer my question. You don't know, do you, whether or not there was a basal fracture? A. The classical symptoms as we learn in the books over here, that is the only way to determine that. There is no other way.

20 Q. In other words, you thought that there was, is that right? A. After my knowledge that I learned in all the schools, which they have taught me in the schools, there was.

Q. You came to the conclusion that there ought to have been one, but you are not positive whether in fact there was a basal fracture, are you? A. Nobody can do that.

Q. No. In other words, you could not tell? A. Just a probability.

30 Q. At the time you examined the man? A. It is just a probability.

*By Mr. Rubacky:*

Q. Doctor, what is your bill? A. Sixteen visits, forty-eight dollars.

Q. That is a reasonable charge? A. Yes.

*Dr. Morris Saffron—Direct.*

Afternoon Session.

DR. MORRIS SAFFRON, a witness called on behalf of the Petitioner, being first duly sworn testified as follows:

*Direct-examination by Mr. Rubacky:*

Q. Doctor, you a licensed practicing physician of the State of New Jersey? A. Yes, sir. 10

Mr. Rubacky: Does Counsel want to consent to the hospital records in the case?

Mr. Romine: No, I don't want to admit the hospital records in this case. What do you want to prove?

Mr. Rubacky: The length of time that he was at the hospital. 20

Mr. Romine: If you will let the X-rays go in we will let the hospital records go in also, but only on the condition that you will allow the X-rays of the hospital to go with them. Otherwise, I can't consent.

The Court: Are the X-rays part of the record, Mr. Rubacky?

Mr. Rubacky: Yes, but the X-rays are incomplete. That is the only reason I would not want to leave them in. 30

The Court: Incomplete in what respect?

Mr. Rubacky: They have not taken an X-ray of the base of the skull.

The Court: Well, let them go in for what they are worth.

Mr. Rubacky: All right. For the purpose of the record, then, we will consent to the admission of the hospital records into evidence. 40

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Mr. Romine: And the X-rays.

Mr. Rubacky: And the X-rays, as well, yes, sir.

10 (The hospital record and the X-rays were received in evidence and marked, "P-1," dated February 2, 1932, "P-2," dated February 2, 1932, "P-3," dated February 2, 1932, respectively).

*By Mr. Rubacky:*

Q. Now, Dr. Saffron, you are a licensed practicing physician of the State of New Jersey? A. Yes, sir.

Q. And have been for how many years? A. Three years.

20 Q. Are you connected with any hospitals or medical institutions? A. Yes, sir.

Q. Which? A. St Mary's Hospital, Passaic.

Q. What is your official position there? A. Assistant surgeon.

Q. Doctor, did you have occasion to examine one Andrew Mutri? A. Yes, sir.

Q. How many times, if at all, did you examine him? A. I examined him on three separate occasions.

30 Q. When was the first time that you examined him, Doctor? A. August 11.

The Court: What year?

Mr. Rubacky: August 11, 1931?

The Witness: Yes.

*By Mr. Rubacky:*

Q. When was the last time that you examined him? A. January 28, 1932.

40 Q. And do you have knowledge as to the time

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you examined him the second time? A. On November 18, 1931.

Q. Now, Doctor, will you kindly tell the Court, of you please, what findings you noticed on the first examination? A. Mr. Matri, very well developed and a well nourished male. The first thing that I noticed about him was that he kept his neck to the right and kept it very rigid. I examined him carefully. There was a rigidity and spasticity of the right sternocleidomastoid—a rigidity and spasticity of the right sternocleidomastoid and the right trapezius muscle. 10

The Court: What were those muscles, again, Doctor?

The Witness the right sternocleidomastoid and the right trapezius muscles. The neck was very rigid. I could not bend the neck backwards at all. I could not hyperextend it. I could bend it forward that is to say passively, but he resisted—resisted very strongly and complained of a good deal of pain. There is tenderness over the sternocleidomastoid and trapezius muscles, marked tenderness and whenever you touch it, he complains of said pain. 20 30

*By Mr. Rubacky:*

Q. And what was the size of the area of this muscle involvement? A. Well, it came—it covered about the posterior triangle of the neck and part of the anterior triangle of the neck on the right side. That is from the base of the skull down to the region of the clavicle.

Q. And did you notice any involvement of the muscles at all? 40

*Dr. Morris Saffron—Direct.*

Mr. Romine: I object to this leading.

The Court: Objection sustained.

*By Mr. Rubacky:*

10 Q. Were there any other objective that you noticed at that time, Doctor? A. Well, the muscle was rigid and very tender, as I said.

Q. And at your subsequent examinations will you tell us what you observed? A. I did not finish telling what I observed on the first examination.

20 Q. Oh, pardon me. A. The teeth were in good condition except for one or two caries teeth. The tonsils were not large. The throat was negative, the nose was negative, the reflexes were slightly exaggerated, the patella reflexes were slightly exaggerated and likewise the abdominal reflexes. Otherwise, I think that the examination, except for the hearing—I meant to tell you about that—I used the ordinary auditory tests, that is, I used the watch, and the whispering voice. There was a marked diminution of hearing on the right side. On the second and third examinations there was no change as far as I could make out. That is, at any rate, there was no improvement, but, as a matter of fact, if anything, there was an aggravation of the condition. The neck was kept constantly to the right side and he complained of this constant pain at all times.

30 Q. From the objective signs that you noticed, Doctor, what would your diagnosis be? A. I would say that there was—

Mr. Romine: I object to what his diagnosis would be.

40 Mr. Rubacky: From the signs, that is all I am asking him.

*Dr. Morris Saffron—Direct.*

Mr. Romine: He has already indicated what the man had. Now, that is his diagnosis. If he wants to go any further than that—

Mr. Rubacky: Those are the signs. That is not the diagnosis.

The Court: You had better reframe the question. It is indefinite. 10

*By Mr. Rubacky:*

Q. What was your diagnosis, Doctor? A. There was an injury to the nerves supplying these muscles of the neck, and the cervicle nerves probably the second and third cervicle nerves which I believe the sternocleidomastoid and the trapezius muscles.

Q. Have you ever testified before this Bureau on any previous occasion? A. Yes, sir. 20

Q. And are you in a position to estimate the percentage of functional disability that one suffers? A. I think I am.

Q. And in this particular instance, Doctor, from your findings, what would you say would be the percentage of total permanent functional disability of Mr. Mudri?

Mr. Romine: I object. It does not appear as yet that he has laid any foundation for this question. 30

*By Mr. Rubacky:*

Q. Doctor, taking into consideration the objective findings which you first noted on August 11 or thereabouts, and the facts that you have related today, that your subsequent examination was made in November and your final examination in January of this year, and that you stated that his con- 40

*Dr. Morris Saffron—Direct.*

dition had not improved, and that if at all, it has grown progressively worse, what would you now say he suffers in the way of total percentage of functional permanent disability?

10 Mr. Romine: I object to that. That is the same question over again. He has not laid any foundation for that, if your Honor please.

The Court: All right. These conditions that you found are they, in your opinion, permanent?

The Witness: Yes, sir.

*By Mr. Rubacky:*

20 Q. What would you estimate of that permanent disability be as far as the permanent functional disability is concerned? A. You mean in relation to the entire body or just in relation to the—

Q. Well, give it to us first with relation to the entire body, Doctor. A. I should say thirty percent.

Q. Thirty percent? A. Yes. As far as the neck is concerned I should say seventy percent.

Q. Seventy percent for the neck? A. Yes.

30 Q. And, Doctor what was your bill for services rendered to Mr. Mudri? A. Well, my bill for examination is five dollars.

Q. Yes. A. That is fifteen dollars for the examinations.

Q. And that is a fair and reasonable charge? A. A very reasonable charge.

Mr. Rubacky: That is all .

*Dr. Morris Saffron—Cross.**Cross-examination by Mr. Romine:*

Q. What was the matter with his hearing? A. His hearing was markedly diminished on the right side.

Q. What test did you use? A. I told you I used the whispering voice and the watch. 10

Q. You did not use the tuning fork, did you? A. No, sir.

Q. Did you use the Galton Eagleton method? A. No, sir.

Q. You know what it is, do you? A. The Walton Eagleton method?

Q. The Galton, Galton Eagleton method. A. I know the Weber test. I do not know this other.

Q. That is otherwise known as the whistle test? A. I don't know it. 20

Q. You don't know what that is? A. No, sir.

Q. You do not specialize in eye, ear, nose, and throat work, do you? A. No, sir.

Q. And you are not a neurologist either? A. No, sir.

Q. And you are not an orthopedist? A. I have done some orthopedic work.

Q. But you do not specialize in orthopedic work? A. I am a general practitioner. 30

Q. You are a general practitioner? A. Yes, sir, that is right.

Q. You do not know what caused the loss of hearing, do you? A. I don't know what caused the loss of hearing, is that the question?

Q. Yes. A. I think I do.

Q. You only think so? A. That is all.

Q. Would a catarrhal condition cause it? A. A catarrhal condition would usually be bilaterally. This usually seems to be more on one side. 40

*Dr. Morris Saffron—Cross.*

Q. I am asking you whether a catarrhal condition would cause loss of hearing? A. A catarrhal condition can cause loss of hearing.

10 Q. Did you determine or find out as to whether the man had a catarrhal condition from your examination? A. I examined his ears. I did not find any evidence of a catarrhal condition.

Q. You did not find any evidence at all? A. No.

Q. What examination did you make to try and determine that? A. I used the otoscope in examining his ear.

Q. Did you find anything wrong with his ear at all? A. Yes, there was a retraction of the ear drum.

20 Q. Is that all you found? A. That was the only—that was the only evidence I could find of ear injury.

Q. Did you find any inflammation? A. No evidence of inflammation, as far as I could make out.

Q. Did you find any evidence of sinus trouble there? A. No, sir.

30 Q. What examination did you make of the nose? A. Just the ordinary examinations. I looked up his nose with the nasal speculum, got a decrease in both nostrils, felt the septum. Those are the only examinations I made of the nose. To my mind the nose is entirely negative.

Q. Then, you did not make any examination to determine whether his frontal sinuses were dark? A. Well, I felt the frontal sinuses. He complained of no pain.

40 Q. You did not put the light in his mouth at any time? A. No, I did not. He was not sensitive over any of the sinuses, the maxillary, frontal, or any other.

*Dr. Morris Saffron—Cross.*

Q. You say the teeth were in good condition? A. I said there were a few carious teeth.

Q. Isn't his teeth generally in a bad condition?

A. No.

Q. Indicating an oral sepsis? A. No.

Q. Are you sure about that? A. Yes.

Q. Now, you say that the tonsils were not enlarged? A. Yes. 10

Q. Didn't you notice large stumps there? A. No.

Q. Did you find any congestion of the tonsils? A. I don't understand what you mean.

Q. You don't know what that means? A. I do know what congestion means, but I don't know what congestion of the tonsils means.

Q. Did you find any evidence of crypts in the tonsils? A. Crypts in all tonsils. 20

Q. Was there any here? A. Sure, crypts.

Q. Were the crypts congested? A. To my mind the tonsils were perfectly normal.

Q. Perfectly normal? A. Yes.

Q. Nothing the matter with them? A. Nothing the matter with them.

Q. Now, this man may be suffering at the present time, from a catarrhal condition, may he not?

A. Not in my opinion. 30

Q. Well, suppose that it appears from the testimony in this case that he has a catarrhal condition.

Mr. Rubacky: If your Honor please, I want to object.

Q. (Continuing)—Do you still contend that his condition may not be caused from a catarrhal condition?

Mr. Rubacky: I object to the form of the 40

*Dr. Morris Saffron—Cross.*

question, if your Honor please. It is immaterial and irrelevant.

The Court: Objection sustained. Do you presuppose that on your testimony that you are going to bring out?

10 Mr. Romine: If your Honor please, it already appears in the testimony of their eye, ear, nose, and throat specialist that the man has a catarrhal condition.

The Court: Due to the trauma?

Mr. Romine: He says it is due to the trauma. I am asking him assuming that the man has a catarrhal condition, does he still say that this is not due to a catarrhal condition, his present condition.

20 The Court: All right.

Mr. Rubacky: That is not the question, if your Honor please.

Mr. Romine: The stenographer will read the question and you will find that it is the question.

30 (The Court Reporter read the last question as follows: Well, suppose that it appears from the testimony in this case that he has a catarrhal condition. Do you still contend that his condition may not be caused from a catarrhal condition?")

The Court: I will permit the question.

The Witness: I don't think that the symptoms could be possibly due to a catarrhal condition.

*By Mr. Romine:*

40 Q. Of course, you did not find any evidence of catarrah there? A. Not in the ear, no sir.

Q. So, you don't know how much is due to ca-

*Dr. Morris Saffron—Cross.*

tarrh or how much is not due to catarrh, do you?

A. I examined his ears. When I examined his ears there was no catarrh of the ear.

Q. Then, you are assuming in answer to my question that there is no evidence of catarrh and that it is all due to trauma, are you? A. That is right.

Q. And you did not find any evidence of catarrh when you examined his ear? A. Absolutely none. 10

Q. Now, it may very well be that the man's present condition is entirely due to a catarrhal condition and in no way related to trauma, isn't that so? A. Not in my opinion.

Q. Not in your opinion? A. No.

Q. Of three years practice. A. Right.

Q. On what do you base your statement that this man's condition is due to trauma, on what findings? A. In the first place, I am taking into consideration the history of the accident. 20

Mr. Romine: Well, if that is so, your Honor—

The Witness: Wait a minute, wait a minute. You are not giving me a chance to finish my statement.

Mr. Romine: Go ahead, go ahead.

The Witness: In discussing the etiology of any condition, of any accidental condition, you must determine how this thing took place. In connection with this case, this man suffered a crushing injury of the vertebrae of the back of the neck, and as the result of that there has been an injury to the nerves, the second and third cervical nerves, which supply the sterno-cleido-mastoid and the trapezius muscles, and as the result of this constant irritation, due to this 30 40

*Dr. Morris Saffron—Cross.*

trauma to the nerves, this man has a rigidity and a spasticity of the muscles supplying both nerves. That is how I judge my answer.

*By Mr. Romine:*

10 Q. Now, do I understand that you are taking into consideration in giving your opinion, in part the history that was given to you of the man's injury? A. I must take that into consideration.

Q. Otherwise, you could not form any opinion that you formed, is that right? A. I am forming my opinion—

20 Mr. Rubacky: I would like Counsel to qualify his question and tell us what he means about the statement, 'could he form,' because he has been speaking in general terms here regarding injuries to the nerves. I would like him to qualify his question in that particular.

30 Mr. Romine: In answer to Counsel, I now move to strike out the testimony of this doctor, because it appears that he used in part, although Counsel did not want me to ask him—it appears that he used in part the history that was given to him. He is nothing but the examining physician, and therefore, if he based it in part on the history that was given to him, his entire testimony, I move be stricken out.

The Court: Strike it out.

Mr. Rubacky: If your Honor please, I ask an exception, on these grounds; Counsel himself—

40 The Court: Strike out only that part of

*Dr. Morris Saffron—Redirect.*

the testimony that refers to a conclusion as to what caused this condition and the amount of disability. The other part stands. Now, if you want to qualify the doctor, you will have to give him the hypothetical question, you will have to give him a hypothetical set of facts, because this doctor may have gotten a history entirely different from the way the accident actually happened. 10

Mr. Rubacky: I will do that when Mr. Romine is finished.

Mr. Romine: I am through now.

*Redirect-examination by Mr. Rubacky:*

Q. Doctor, assuming that the objective findings that you have related to this Court today existed on each of your three examinations, in August, November, and January of this year, respectively, and that a person who had such objective findings was in an accident wherein an excavation cave-in occurred, and he was struck by two four by four boards, and such sand as might have been in the excavation at the time, and that he had a history of having been rendered unconscious for a period of time, which varied from a few hours to eight days, or approximately thereabout, would you say that the findings which you have noticed on your three examinations were the direct and proximate result of such an accident? A. I certainly would. 20 30

Mr. Rubacky: That is all.

*Recross-examination by Mr. Romine:*

Q. Did you have the benefit of X-rays at the 40

*Dr. Morris Saffron—Recross.*

time that you examined this man? A. No, sir, I did not.

Q. Are you assuming that this man had a basal fracture? A. A basal fracture of the skull?

Q. Yes. A. I was not assuming that, no.

10 Q. Well, then, what effect did this injury have upon this man if you did not feel that he had a basal fracture? What caused his condition? A. The injury to the vertebrae.

Q. What was the injury to the vertebrae? A. A crushing of the vertebrae.

Q. What is it? A. A crushing.

Q. A crushing? A. Yes.

Q. Didn't you think that X-rays would be essential? A. I was not treating this man.

20 Q. No, but you were examining him for the purpose of testifying. A. Yes, sir.

Q. In Court? A. That is right.

Q. You were trying to find out in your opinion what was the matter with the man? A. That is right.

Q. If you had an opinion, as this man had a crushing of the vertebrae— A. I would say—

30 Q. One moment, please. If you had an opinion that this man had a crushing of the vertebrae, didn't you think that it was quite essential for you to examine the X-rays to determine whether in fact that existed? A. I was told that the X-rays showed

Q. No, not what you were told. I am asking you if you did not think it was essential for you to look at the X-rays? A. I did think so, yes, sir.

Q. But nevertheless, you did not see the X-rays themselves? A. I did not see the X-rays.

40

Mr. Romine: That is all.

*Dr. Morris Saffron—Recross.**By Mr. Rubacky:*

Q. Doctor, just one question. Have you had any experience with basal fractures? A. I am not a Rontgenologist, and I could not tell one if I saw it.

Q. I say as far as the injuries are concerned, did you ever have any experience with basal fractures, even in your private practice or institutional experience? A. Yes, I had. 10

Q. And do all basal fractures or evidence of basal fractures in your experience, either professionally or institutionally, are they all revealed on X-rays?

Mr. Romine: Wait a minute, now. I object to that. He says he could not tell one if he saw it. I think that stopped Counsel right there.

Mr. Rubacky: I asked him if he knew whether a basal fracture was revealed on an X-ray. 20

Mr. Romine: And he said in answer to one of my questions that he could not tell one if he saw it. That is enough.

Mr. Rubacky: He has a right to read the diagnosis of an expert Rontgenologist.

The Court: I will sustain the objection.

The Witness: In connection with an X-ray, I would say— 30

Mr. Romine: Wait a minute. Don't answer that question.

The Court: Objection sustained.

*By Mr. Rubacky:*

Q. Doctor, do you accept De Costa as an authority on surgery?

Mr. Romine: I object to who he accepts. 40

The Court: I sustain the objection.

*Dr. Leo Koppel—Direct.*

DR. LEO KOPPEL, a witness on behalf of the Petitioner, being first duly sworn, testified as follows:

*Direct-examination by Mr. Rubacky:*

10 Q. Doctor, you are a licensed practicing physician of the State of New Jersey? A. I am.

Q. An have been how long? A. Twenty-one years.

Q. What has been your experience with cases of traumatic or industrial surgery? A. That is my specialty.

Q. And you have testified before this bureau on numerous occasions? A. I have.

20 Q. About how many times during your experience, if you know? A. Oh, I had many occasions. I don't know just exactly.

Q. Did you examine Mr. Andrew Mudri at my request, Doctor? A. I examined him in my office in Jersey City.

Q. When, do you recall? A. November 13, 1931.

30 Q. Doctor, will you be good enough to tell the Court what you observed, if anything? A. A complete physical examination beginning at the head, mouth, neck, chest, and lower extremities revealed the following: Examination of the mouth showed bad teeth, had a considerable oral sepsis, examination of the cervical region shows a restriction of motion.

The Court: A what?

40 The Witness: A restriction of motion to the right and laterally, and some restriction in flexion. Examination of the upper region, including the shoulders and the back, does not show any injury nor any evidence of injury. The neurological examination was

*Dr. Leo Koppel—Direct.*

negative. Examination of the abdomen shows a right inguinal hernia.

*By Mr. Rubacky:*

Q. Doctor, you made no attempt to go into the ear examination? A. No, I did not attempt to make any ear examination.

10

Q. With the findings that you have had, Doctor, what would you say as to permanent disability? Would you say there was any permanent disability? A. The man was suffering from a cervical strain of the soft structures of the muscles on the right side of his neck, probably the sterno-cleidomastoid, and the upper part of the trapezius. The relation of the vertebrae, as far as I could determine it, was negative. I mean was normal, and I did not find any nerve involvement in the structures which were affected except the muscles themselves, which were in the state of old inflammation.

20

Q. What percentage of total permanent functional disability would you give him? A. Based on that examination of the man, from my experience with such injuries, I thought that the man had from five to seven and a half percent permanent disability.

Q. And your bill for services rendered, Doctor, would be how much? A. Ten Dollars for the examination and Fifty Dollars for testifying, Sixty Dollars altogether.

30

*Cross-examination by Mr. Romine:*

Q. Doctor, in formulating your percentage of disability, did you include the hernia? A. No, I believe that the hernia to my mind is not a compensable affair.

40

Q. What did you take into consideration in for-

*Dr. Leo Koppel—Cross.*

mulating your opinion of five to seven and a half per cent? A. Just the cervical strain, in the cervical region of the right side of his neck.

Q. You did not find any evidence of a fracture there, did you? A. I did not find any clinical evidence of a fracture, no.

10 Q. Doctor, I show you three X-rays, and ask you if they show any evidence of a fracture?

Mr. Rubacky: I object to the form of the question, if your Honor please. The doctor is not-qualified as an Rontgenologist expert.

The Court: I sustain the objection, unless you want to take him as your own witness.

20 Mr. Romine: No, we will prove it otherwise. We have plenty of doctors. It does not make any difference. He said he did not find any evidence of fracture, anyway.

*By Mr. Romine:*

Q. Does this man have any limitation of motion of his neck? A. Yes. The normal range of motion in the neck is sixty-five degrees forward, fifty degrees backward, ten degrees lateral, and fifty-five degrees rotation.

30 Q. And the last time you examined him was November 13, 1931? A. Yes, sir.

Q. You have not seen him or examined him since? A. No, sir.

Q. You don't know whether that condition has improved? A. I don't know.

40 Mr. Rubacky: With the exception of Dr. Dwyer, if your Honor please, the petitioner's case is closed. Dr. Dwyer happens to be the City Physician of the City of Passaic,

*Dr. Leo Koppel—Cross.*

and he has been called on some very important business this afternoon. I am willing to complete my case on the entire testimony of the doctors who have already appeared here unless Counsel for the Respondent wants the case to go over for another day.

, (Discussion off the record). 10

(At this point the hearing was adjourned to February 16, 1932).

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NEW JERSEY DEPARTMENT OF LABOR,  
 WORKMEN'S COMPENSATION BUREAU.  
 Paterson, Passaic County District.

10	ANDREW MUDRI, Petitioner,  vs.  UNITED ENGINEERS & CONSTRUCTORS, INC., Respondent.	}
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February 16, 1932.

20 Before: Honorable JOHN J. STAHL,  
 Deputy Compensation Commissioner.

APPEARANCES:

JOSEPH F. A. RUBACKY, ESQ., for the Petitioner,  
 ELMER W. ROMINE, ESQ., for the Respondent.

30 Mr. Romine: Your Honor please, I have Dr. Stevenson here and I wish him to make an examination of the Petitioner.

Mr. Rubacky: Your Honor, I will not allow them to examine him. They have had eleven examinations already, and I will not permit this one.

Mr. Romine: Counsel makes a bold statement, but it is all right for him.

40 The Court: How many examinations have you had?

*Dr. Thomas M. Pascall—Direct.*

Mr. Rubacky: They have had eleven.

Mr. Romine: We didn't have eleven.

(Discussion between Court and Counsel.)

The Court: My opinion is that no respondent is entitled to more than three examinations. The Act specifically provides that the Petitioner shall not be allowed costs for more than three doctors, and I see no reason why the same should not apply to the respondent. Dr. Stevenson, nevertheless, may make an examination. 10

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DR. THOMAS M. PASCALL, a witness on behalf of the Respondent, being first duly sworn, testified as follows: 20

The Court: You have put in your case with the exception of Dr. Dwyer, haven't you, Mr. Rubacky?

Mr. Romine: Where is Dr. Dwyer?

Mr. Rubacky: I have asked the Court's permission to present him at the moment I can get him here.

Mr. Romine: Well, if your Honor please, I don't want to put all my doctors in if he is going to call Dr. Dwyer. 30

Mr. Rubacky: If Mr. Romine is finished before Dr. Dwyer gets here, I will withdraw my reservation.

Mr. Romine: All right.

*Direct-examination by Mr. Romine:*

Q. Doctor Pascall, you are a practicing physician in the State of New Jersey? A. Yes, sir. 40

*Dr. Thomas M. Pascall—Direct.*

Q. And you have been for how long? A. Over twenty-five years.

Q. Are you connected in any way with the Public Service? A. I am.

Q. In what capacity? A. Examining Physician.

Q. At their clinic in Newark? A. Yes, sir.

10 Q. Did you examine the petitioner in this case, Andrew Mudri? A. I did.

Q. More than once? A. Twice.

Q. When was the first examination? A. The thirtieth of March, last year.

Q. 1931. Where did you examine him? A. At Newark.

Q. What did you find, if anything, as the result of your examination? A. My examination was practically negative.

20 Q. What examination did you make of the man? A. Well, I stripped the man and I found that he had no tremors, no Romberg, free motions of the head and back, no spasms. His blood pressure was 124/76. He had a right inguinal hernia, and the long saphenous vein was dilated from the groin to the toes. In the upper leg, the dilitation is about one quarter of an inch. There was no support in either case. The man has a well developed  
30 acne rosacea. So far as my examination, it was negative.

Q. It was negative for any traumatic injury? A. Yes.

Q. And what did you find at the next examination, Doctor? A. The next examination was on the twenty-first day of January, 1932. A well nourished man; he carried his head to the right. The spine was straightened, except in the cervical  
40 areas; it is absent when the attention was diverted.

*Dr. Thomas M. Pascall—Direct.*

Q. What was absent? A. Twisting of the neck. He had no loss of motion in the lateral motions of the back. He alleged tenderness over the mastoid and the fifth cervical, but he changes the sites of the indications. He could bend forward so that the tips of the middle fingers are ten inches from the floor without discomfort. No loss or length of limbs or motion, and the veins, and hernia, were as previously testified at the last examination. Station and posture were normal. Many foci of infected teeth. Slight muscular degeneration of the heart. No tenderness on pressure over the neck. 10

Mr. Rubacky: I beg your pardon, what was the last one?

The Witness: No tenderness on pressure over the neck. That was the bulk of the examination. 20

*By Mr. Romine:*

Q. Did you find any evidence of traumatic injury? A. I could not find any.

Mr. Romine: That is all. Cross-examine.

*Cross-examination by Mr. Rubacky:*

Q. Doctor, you are a general practitioner, are you? A. Yes. 30

Q. About how many cases of traumatic injury do you see a day? A. Oh, I could not estimate them.

Q. Do you see one a day? A. Oh, yes.

Q. At least one a day? A. More than that.

Q. And this examination that you made was made approximately eight months later, wasn't it? 40

*Dr. Thomas M. Pascall—Cross.*

A. From the day of the accident—oh, between the two?

Q. Yes. A. Yes.

Q. From your experience in traumatic injuries, Doctor, it is not common that you find an absence of minor traumatic injuries in a period of eight months? A. Yes.

10 Q. So that whatever he may have sustained by virtue of an accident in the way of minor details would have probably disappeared? A. Scars and contusions, yes.

Q. How many scars did you see, Doctor? A. I didn't note.

Q. You didn't see any? A. I didn't note any.

Q. You don't specialize in any particular branch of medicine, do you? A. No.

20 Q. So that in testing the petitioner for any nervous manifestations, what particular tests did you use?

Mr. Romine: I object. He didn't say anything about nervous manifestations. He is not a neurologist.

Mr. Rubacky: If your Honor please—

Mr. Romine: I didn't put him on for that purpose.

30 Mr. Rubacky: He said no tremors, no Romberg, and no spasms. Those are all manifestations of the nervous system.

Mr. Romine: If your Honor please, when he goes into the nerve ailments, he goes into the field of neurology, and I didn't put this witness on as an expert in neurology.

The Court: Confine yourself to the fact that he found no tremors, and the fact that he found no Romberg.

40

*Dr. Thomas M. Pascall—Cross.*

*By Mr. Rubacky:*

Q. So the only nervous manifestations you found were that there were no tremors, no Romberg, no spasms? A. No incoordination.

Q. And no incoordination. You didn't try the pupillary reflexes? A. No.

Q. You didn't try the Achilles reflex? A. No. 10

Q. You didn't try the knee jerk, did you? A. No.

Q. And you didn't try the elbow jerk, did you? A. There were no exaggerated reflexes.

Q. I say did you try them, Doctor? A. No.

Q. Did you make use of any X-rays that were taken in this case? A. I saw some.

Q. You saw some, but you don't know whether they were his? A. Well, they were alleged to be his. 20

Q. I know, Doctor, but were they taken under your supervision? A. No.

Mr. Rubacky: I ask that any answer in reference to the X-rays be stricken out.

Mr. Romine: You asked him about it, and he is telling you. I don't think you can move to strike it out now.

*By Mr. Rubacky:* 30

Q. You say that the spine was straightened except in the cervical area? A. Yes.

Q. When you speak of the cervical area, what particular cervical vertebra did you refer to? A. Well, he said he had—

Q. I am not asking you what he said; I am asking you what you saw, Doctor. A. I saw nothing as to the site that he mentioned where he had pain. 40

*Dr. Thomas M. Pascall—Cross.*

Q. Well, didn't you say that you saw the spine was straightened except in the cervical area? A. Yes.

Q. What vertebrae in the cervical region were involved then? A. I say between the fourth and the seventh.

10 Q. Between the fourth and the seventh. Would any involvement of the cervical vertebrae in the fourth to the seventh vertebrae involve any of the nervous system?

Mr. Romine: I object to that, because I didn't ask the doctor anything about his neurological symptoms. I didn't put him on for that purpose. We are going into the realm of neurology, and I object to it. We have those experts here.

20 The Court: (To the reporter) Read the question.

(The Reporter read the previous question as follows: "Would any involvement of the cervical vertebrae in the fourth to the seventh vertebrae involve any of the nervous system?")

The Court: If the doctor can answer it I will allow it.

30 Mr. Romine: He is not here as an expert. We have Doctor Dowd, and we have Dr. Stevenson; they are experts in neurology.

The Court: Do you feel, Doctor, that that question involves the neurological system?

The Witness: Yes.

The Court: I will sustain the objection.

Mr. Rubacky: Exception.

*By Mr. Rubacky:*

40 Q. Doctor, I am not asking you for any partic-

*Dr. Thomas M. Pascall—Cross.*

ular nerves. I am asking you what portion of the nervous system would be involved.

Mr. Romine: I object. That is the same question over again.

*By Mr. Rubacky:*

Q. Well, Doctor, you know atrophy when you see it, do you not? A. Yes. 10

Mr. Romine: I object to that.

The Court: He has answered the question.

*By Mr. Rubacky:*

Q. In an atrophic condition of muscles you have nerve involvement, do you not?

Mr. Romine: I object because it is not cross-examination. It is going into the realm of something that is outside of this doctor's specialty. 20

The Court: Counsel has a right, on cross-examination—

Mr. Romine: I know, but how can he ask him outside of his particular science. If a medical science is outside of a certain doctor's specialty, how can he ask him on another specialty? He is going into the realm of neurology, and the doctor says he is not a neurologist. I didn't ask him anything about nerve involvements. 30

Mr. Rubacky: If your Honor please—

The Court: That question is not one limited to the field of neurology.

Mr. Romine: He has not testified in his examination anything about atrophy. That is Counsel's injection into the matter. I ob- 40

*Dr. Thomas M. Pascall—Cross.*

ject on the further reason that it is not proper cross examination.

10 Mr. Rubacky: Your Honor please, I ask that the doctors' testimony be stricken out with reference to all of the manifestations that he tried to elicit, no tremors, no Romberg, no spasms; how then is he qualified if he does not know anything about the nervous system?

Mr. Romine: I have no objection to him asking him how he found out about the tremors, the Romberg.

Mr. Rubacky: If your Honor please, I am not going to try—

20 The Court: It is within the sphere of neurology.

Mr. Romine: That is all the doctor testified about. Now he is asking him about nerve involvements which goes beyond the realm of the direct examination. That is why I object to it.

The Court: I overrule the objection.

Mr. Romine: I take an exception.

30 (The Reporter read the previous question as follows: "In an atrophic condition of muscles you have nerve involvement, do you not?")

The Witness: Not always. A man may have a fracture and he can use his arms, and he can use—

*By Mr. Rubacky:*

40 Q. Doctor Pascall, do you mean to say with a fracture of the cervical vertebrae, do you want this Court to believe that there would be no nervous

*Dr. Thomas M. Pascall—Cross.*

manifestations whatsoever? A. If there was a fracture of the cervical vertebrae? I said in simple fractures.

Q. I am asking now particularly of the cervical vertebrae.

Mr. Romine: Your Honor please, there is no allegation in this case that this man had a fracture. 10

The Court: Objection sustained.

Mr. Rubacky: If your Honor please, I say if there is any involvement of the cervical vertebrae. From the testimony previously, we alleged a cranial disturbance, a disturbance to the cranial nerves. All that goes through—

The Court: Are you testifying now?

Mr. Rubacky: No, sir. 20

The Court: I sustained the objection.

*By Mr. Rubacky:*

Q. What significance is there to tremors, Doctor? A. Oh, tremors may have significant factors, and they may not.

Q. Well, what would be the significant factors? A. Well, a doctor on the stand may show tremors, and he may be perfectly normal. 30

Q. What significance would there be attached to it? A. Nervous.

Q. Nervous manifestations? A. Yes.

Q. Just plain, general nervous manifestations? A. Yes.

Q. Wouldn't that involve any of the general nervous system? A. It may not.

Q. When you say a person could be nervous, you are speaking of all the nerves in a general way. A. Yes. 40

*Dr. Thomas M. Pascall—Cross.*

Q. You want this Court to believe that a person who is generally nervous has no disturbance of the nervous system? A. There is a disturbance of his nervous system. For instance, any doctor testifying on the stand, he may have a slight disturbance of his nervous system. For instance, in my case, I might have tremors on the stand, but I am not nervous as a rule.

10 Q. I appreciate that, Doctor, but, I am asking you about the condition generally, not about your condition. A. Tremors?

Mr. Romine: I object to it. He is talking about conditions generally, and I am objecting to it.

The Court: He is going into the question of credibility, I suppose. Counsel has a wide latitude of examination on cross-examination. I overrule the objection.

20 The Witness: There must be some nervous situation somewhere to allow tremors.

*By Mr. Rubacky:*

Q. What would you say the nervousness was subdivided into, that you spoke of; into what typical divisions? A. In my case?

30 Q. In a general way. A. Why, I say it is functional or organic.

Q. And if a person has an organic lesion that manifestation would be more permanent, would it not, than if it were functional? A. I should think so.

Q. What significance has the Romberg sign? A. The Romberg, as I understand it, signifies some cerebral lesion.

40 Q. Do you know what particular significance it has? A. I never went into it.

*Dr. Thomas M. Pascall—Cross.*

Q. What significance would muscular spasm have? A. Evidently some nerve irritability.

Q. What significance would the saphenous vein have that you mentioned.

Mr. Romine: I object to it. He didn't mention it.

The Court: Did you mention it, Doctor? 10

The Witness: Yes. Evidently an old varicosity.

*By Mr. Rubacky:*

Q. You said on direct examination that there was no loss of motion in the lateral movements of the back. A. Yes, he could bend forward so that the tips of the middle fingers were ten inches from the floor, with both hands. 20

Q. What would you call that, lateral movement of the back, Doctor? A. Lateral movement of the back? I said forward.

Q. You also said forward movement subsequently, but you did say on direct that there was loss of movements in the lateral movement of the back. A. Yes.

Q. Was his condition changed in any way from the thirtieth of March, 1931 to the twenty-first of January, 1932? A. I could not find much. 30

Q. Would you look at your records, now, Doctor? A. Yes.

Q. Would you mind allowing me to see them?

Mr. Romine: I object to Counsel looking at them.

Mr. Rubacky: I have a right to examine the records. The witness has used them to refresh his memory.

Mr. Romine: I don't think you have. 40

*Dr. Thomas M. Pascall—Cross.*

Mr. Rubacky: Absolutely.

Mr. Romine: I never heard of it.

The Court: I sustain the objection.

*By Mr. Rubacky:*

Q. Are all those records made in your own handwriting? A. No, they are typed.

10 Q. They are records of information that was given by you to the typist? A. No, they are typed by myself.

Q. They are typed by yourself? That particular record that you have there was made at the time of your particular examination, was it not? A. Yes.

20 Q. Well then, Doctor, will you answer and tell me what sort of writing you put on the back page of that card this morning? A. Yes, that is my previous examination.

Q. Well, then, you went entirely by hearsay testimony, didn't you, when you wrote that down upon your card? A. I don't quite follow what you mean.

Q. You don't recall what you wrote down; you didn't recall this morning, did you? A. Recall.

Q. Yes. A. I don't follow that at all.

30 Q. Doctor, could you have written all that you did write on the back page of that card from your own memory this morning? A. I don't remember any of these cases. I keep them from one examination to the other.

40 Q. Those records were taken from the same records that Mr. Romine submitted to you this morning. A. No and yes. These are notes of my examination made on the thirtieth day of March, 1931, and put on the back of the card; my notes were made at the time I examined him at the last examination.

*Dr. Thomas M. Pascall—Redirect.*

Q. Yes, but the records you had on the card, on the back, page, are records that you made this morning while in Court. A. Yes, of the examination made on the card—

Mr. Rubacky: That is all.

The Witness: (continuing) of March 31, correct. 10

*Redirect-examination by Mr. Romine:*

Q. I show you a report signed by Doctor Pascall and ask you if that is the report you referred to this morning? (Handing a paper to witness). A. Yes. This is an examination that I made, signed by me, typewritten by me. This is an examination of which I checked the essentials that are on the back of the card. I checked them in the Court room this morning. 20

Q. This (indicating) is the original examination that you made on 3/30/31, and your testimony is the same? A. Yes, absolutely.

*Recross-examination by Mr. Rubacky:*

Q. Doctor, can you explain why you didn't put that on the card at the time? A. Yes. 30

Q. You said you made your records immediately after? A. Yes, the reason I made this report was that at the time I made that—that is the original report. I have no copy of that. This (indicating) is the original report of which he has a copy.

Q. Doctor, in other words, do I understand you to say that the report you put on this card now wasn't made at the time of your second examination? A. No, no; that is wrong. 40

*Dr. Thomas M. Pascall—Recross.*

Q. Well then, how can you explain its absence from the card today before you came to Court? A. I have a new system, and in this system I make the card out at the time of examination.

Q. When did that new system take effect? A. The first of the year.

10 Q. The first of what year? A. This year.

Q. So that the system that you employed in 1931, was the card system, and this system that you mention now of making the original on the pink sheet is the new system? A. No, no.

Q. Well then— A. In other words, his report—the report that counsellor has is of the examination of January twenty-first; that is a copy made by me. The note that I have on my card of the examination in March, is the copy of the original made by me.

20

Q. Now, Doctor, I have just one or two more questions. In the movements that you have described, were all those movements voluntary or were they made by force? A. Oh, no. He did that voluntarily.

Q. You found nothing whatsoever in objective signs that he might have manifested either in March, 1931, or January, 1932? A. That is correct.

30

Q. Did you notice particularly the muscles of his neck? A. Yes.

Q. And you saw nothing there? A. Yes. I said that when the attention was diverted, there is no deviation from the normal, and there is no—to quote what I said—“There is no loss of motions for the lateral motions of the back, and hyperextension of the spine is normal. There was no lengthening of the limbs or lost motion of the limbs, and

40

*Dr. Percy H. Terhune—Direct.*

the spine was straight when the attention was diverted."

Q. But when you were talking to him, you say the cervical spine wasn't straight; that it was straight only when the attention was diverted, is that right? A. Why, the spine was straight except in the cervical region; it was absent when the attention was diverted. 10

Mr. Rubacky: That is all, Doctor.

Mr. Romine: That is all.

(Witness Excused).

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DR. PERCY H. TERHUNE, a witness on behalf of the Respondent, being first duly sworn, testified as follows: 20

*Direct-examination by Mr. Romine:*

Q. Doctor—

Mr. Rubacky: I will admit the doctor's qualifications.

*By Mr. Romine:*

Q. Doctor, did you take some X-rays of the petitioner in this case, Andrew Mudri? A. I did. 30

Q. When did you take those X-rays? A. The eighteenth of November, 1930.

Q. Do you have those X-rays here? A. Yes, sir.

Q. What do those X-rays show, Doctor? A. Well, I took two sets, one stereoscopic, anteroposterior X-rays from the front to the back, a lateral view of the cervical spine. In the stereoscopic view, it showed nothing abnormal whatsoever. They are not as clear as they were two years ago, I will 40

*Dr. Percy H. Terhune—Direct.*

say that. In the lateral spine, it also showed no evidence of trouble in the vertebrae.

Q. How did you find the alignment of the vertebrae, Doctor? A. The alignment was normal.

Q. Any injury to the vertebrae at all? A. Nothing that could be discovered.

10 Q. Was there any pressure indicated—A. No.

Q. (Continuing)—on nerves? A. No.

Q. There was no pathology at all? A. Absolutely nothing could be discovered by the X-ray.

Mr. Romine: If your Honor please, I offer these in evidence.

Mr. Rubacky: No objections.

(The pictures referred to were received in evidence and marked "R-1," "R-2," and "R-3.")

20 Mr. Romine: I think these X-rays here (indicating) have already been offered in evidence.

*By Mr. Romine:*

Q. I show you X-rays marked "P-1," "P-2," and "P-3".

30 Mr. Rubacky: I am going to object to anybody reading the X-rays unless they are read under ideal conditions. I don't want my petitioner's case prejudiced in any way.

Mr. Romine: Maybe the doctor knows how to read X-rays—

The Court: What do you mean by ideal conditions?

Mr. Rubacky: Anybody reading the X-rays now is not reading them under ideal conditions. There is not enough light—

40 The Court: The doctor read them from

*Dr. Percy H. Terhune—Direct.*

the film box, and his diagnosis was made from the film box. I overrule the objection.

Mr. Rubacky: I ask for an exception.

*By Mr. Romine:*

Q. I show you X-rays "P-1," "P-2," and "P-3," pictures of the skull of the petitioner, and ask you if you can find any evidence of a basal fracture? 10

A. No, sir.

Q. There is no evidence there.

The Court: (To the Reporter) Read the last question and answer.

(The reporter read the previous question and answer as follows: "I show you X-rays "P-1," "P-2," and "P-3," pictures of the skull of the petitioner, and ask you if you can find any evidence of a basal fracture"? A. "No, sir.") 20

*By Mr. Romine:*

Q. You are able to read these here, Doctor, to determine that? A. Yes.

Mr. Romine: That is all, Doctor.

*Cross-examination by Mr. Rubacky:* 30

Q. Doctor Terhune, I am pointing to the first vertebra there; (indicating) is there any pathology in that? A. No.

Q. None at all in the spinous process? A. No.

Q. Is there any difference in the spaces between the second, third, fourth, and fifth? A. There always is.

Q. There always is? A. Yes. 40

*Dr. Percy H. Terhune—Cross.*

Q. So that there are no people that are alike?

A. No, I would say no.

Q. Doctor, what is the proper way of X-raying a person for a basal fracture of the skull?

10 Mr. Romine: I object to that. They produced X-rays which their doctor said—one of the doctors said he thought it showed evidence of a slight basal fracture. I only asked this doctor to determine from their X-rays, which were used by their doctors.

Mr. Rubacky: Your Honor please, there has been no evidence submitted by any of my doctors, because these X-rays were submitted by me from the hospital. They are part of the record of the hospital while Mr. 20 Mudri was under the treatment of the hospital physicians.

Mr. Romine: May I refer to the testimony of Dr. Reeves, who says, there is a very small amount of fracture of the basal.

The Court: I sustain the objection.

Mr. Rubacky: I still press the question.

The Court: I have sustained the objection.

*By Mr. Rubacky:*

30 Q. Doctor, you have nothing here of a picture taken directly through the skull and particularly photographing the base of the skull, have you? A. You would not take it directly through.

Q. How would you take it?

Mr. Romine: I am objecting to how they would take it, because we are using their own X-rays.

40 Mr. Rubacky: Your Honor please, they

*Dr. Percy H. Terhune—Cross.*

are not my own. They were submitted as part of their case.

Mr. Romine: They produced it as part of their case.

Mr. Rubacky: That is true; we didn't have an opportunity to X-ray the man.

The Court: I sustain the objection. 10

*By Mr. Rubacky:*

Q. What are the usual views that are taken of the skull to elucidate a basal fracture?

Mr. Romine: I object. That is the same thing again, your Honor.

Mr. Rubacky: The usual pictures that are taken.

The Court: This man is an expert, Mr. Romine, isn't he? 20

Mr. Romine: I know he is, but what difference does it make what the usual methods are. We are going by what your Honor has ruled in this case, the X-rays which were offered in evidence, and which they claim shows a basal fracture, which we deny.

(Discussion between Court and Counsel).

The Court: I sustain the objection. 30

*By Mr. Rubacky:*

Q. In any of these pictures, Dr. Terhune, did you find any evidence of any pathology at all in the skull? A. None.

Q. None whatsoever. You noticed, of course, that the pictures are spotted, do you not? A. Yes.

Q. You know, of course, that those pictures are not being read with the use of the film box? A. Yes. 40

Mr. Rubacky: That is all.

*Dr. Percy H. Terhune—Cross.*

Mr. Romine: That is all.

(A short recess was taken).

Mr. Rubacky: Your Honor please, with your Honor's permission I would like to recall Dr. Terhune for one question.

*By Mr. Rubacky:*

10 Q. Dr. Terhune, do all linear basal fractures manifest themselves on X-ray pictures?

Mr. Romine: I object.

The Court: Answer the question, Doctor.

The Witness: I don't think any X-ray is a Hundred percent correct.

*By Mr. Rubacky:*

20 Q. About how many, in your experience—what is the percentage, rather, of basal linear fractures that have manifested themselves on X-rays? A. I think the great majority of them.

Q. Well, about? A. I don't know in percent.

Q. You don't know in percentage? A. No.

Q. You haven't had experience subsequently to check up your diagnosis by autopsy work? A. No.

Mr. Rubacky: That is all.

(Witness excused).

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DR. ALBERT JAHN, a witness on behalf of the Respondent, being first duly sworn, testified as follows:

*Direct-examination by Mr. Romine:*

Q. You are a practicing physician, Doctor?

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Mr. Rubacky: I admit his qualifications.

*Dr. Albert Jahn—Direct.*

*By Mr. Romine:*

Q. You examined the X-rays of Andrew Mudri, the petitioner in this case? A. Yes, sir, I did.

Q. And where were those X-rays? A. Where were they?

Q. Yes. A. They were in the file of the St. Mary's Hospital.

Q. Are you connected with the St. Mary's Hospital? A. I am.

Q. You are a specialist, are you, in X-ray work? A. I am.

Q. Now, I think that it is admitted that those (indicating) are the X-rays—

The Court: Read them, Doctor.

*By Mr. Romine:*

Q. I show you "P-1," "P-2," and "P-3," and ask you if those are the X-rays you examined? A. Yes, these are the X-rays.

Q. Did you have a shadow box when you examined them? A. Yes, I did.

Q. And you had ideal conditions? A. Yes.

Q. Did you find any evidence of a fracture of the skull? A. No, I didn't.

Q. You found no evidence on these X-rays of a basal fracture, or of any pathology at all? A. No, I found no evidence of a fracture of the skull.

Mr. Romine: That is all.

*Cross-examination by Mr. Rubacky:*

Q. Doctor, at whose request were those pictures taken? A. That I could not tell you; whoever is in charge of the case.

Q. I beg your pardon? A. I don't remember that.

*Dr. Albert Jahn—Direct.*

Q. I show you now a requisition for X-ray of Andrew Mudri, and I ask you whether there is any mention made of any probable fracture of the base of the skull on it? (Handing a paper to witness).

Mr. Romine: I object to that.

10 Mr. Rubacky: Those are in evidence, if your Honor please.

Mr. Romine: In the paper that he has shown him—

Mr. Rubacky: The Hospital records were admitted into evidence. This is the hospital record, if your Honor please. It was submitted at the time with a stipulation by Counsel at your Honor's direction.

20 Mr. Romine: I think the papers were admitted for what they are worth. The paper speaks for itself.

The Court: This is Dr. Dwyer's report. Dr. Dwyer put it down.

Mr. Rubacky: I am asking him whether there is anything on there that made a tentative or probable diagnosis of the fracture of the base of the skull. This is a request to Doctor—

30 Mr. Romine: Just a moment. It is objectionable for two reasons. I think Doctor Dwyer is the only one that can testify to that.

The Court: I will permit the question, so far as the requisition being made.

Mr. Rubacky: That is all I am asking him.

40 The Witness: There is no mention made of a tentative diagnosis of any kind.

*Dr. Albert Jahn—Cross.*

*By Mr. Rubacky:*

Q. There is no mention made of a tentative diagnosis on this slip, Doctor?

Mr. Romine: I object to him using the slip.

Mr. Rubacky: Your Honor please—

The Court: This man is in charge of the laboratory. 10

The Witness: I am sorry, I will have to retract that. There is a suggestion that there is a probable fracture of the skull, but nothing specific about the base of the skull.

*By Mr. Rubacky:*

Q. If there had been a requisition for a picture of the base of the skull, you would have had other views taken? A. If there were any suggestion on this, any suspicion, we might have gone farther. 20

Q. Doctor, what is your experience with reference to the percentage of basal linear fractures that show up in X-ray films? A. That is impossible to say, because I don't know how many are negative which are really positive. In fact—

Q. In your experience, therefore, Doctor, you haven't checked up on the X-ray findings by autopsy work have you? A. Not to any extent. 30

Q. How many, Doctor, did you examine, if you can recall? A. How many fractures of the base?

Q. How many fractures of the base of the skull that you saw subsequently at autopsy. A. Relatively few, I should say.

Q. How many, one, two, three, four, five? A. Perhaps half a dozen.

Q. And the percentage that show, you say, you are unable to determine on the films? A. It is impossible to say. 40

*Dr. Albert Jahn—Redirect.*

Mr. Rubacky: That is all.

Mr. Romine: Your Honor please, I would like the doctor to look at these (indicating) X-rays. I have a man coming who will prove that he took them.

The Court: All right.

10 Mr. Rubacky: If your Honor please, I object to that.

The Court: It will be connected up.

Mr. Rubacky: Your Honor please, they first must be admitted into evidence.

Mr. Romine: If I don't prove it, I will agree to have it stricken out.

The Court: If it is not connected up it will be stricken out.

20 *Redirect-examination by Mr. Romine:*

Q. I show you, Doctor five X-rays of the skull and ask you to look at those and tell us whether you find any evidence of a fracture?

Mr. Rubacky: For the purpose of identification, I think we ought to mark them.

Mr. Romine: Yes.

30 The Witness: I see no evidence of fracture in the skull.

*By Mr. Romine:*

Q. Do you find any pathology at all? A. No, I don't.

Mr. Romine: I ask to have them marked for identification.

(The pictures referred to were received and marked "R-4," "R-5," "R-6," "R-7," "R-8" for identification).

40 Mr. Romine: That is all.

*Dr. Albert Jahn—Recross.**Recross-examination by Mr. Rubacky:*

Q. Doctor, these views show nothing more than the views you took? A. No, they don't.

Q. So that the other views that you referred to previously aren't any different, or are they? I mean, when I speak to you about that, about taking particularly basal pictures. A. Those are the same views as I did. 10

Q. And these aren't being read under ideal conditions such as a film box? A. No.

Mr. Rubacky: That is all.

*By Mr. Romine:*

Q. Doctor, you are able, are you, under the conditions existing here, to read these X-rays and determine whether there is any pathology? A. I feel that I am. 20

Q. You said that those X-rays marked for identification are the same views that you took. I show you two of the X-rays marked "R-4" and "5." You didn't take views from that angle, did you? A. There is one more. This is—let me see that one. This view we didn't take. There is one extra.

Mr. Romine: That is all, Doctor.

(Witness excused). 30

DR. GERARD J. VAN SHOTT, JR., a witness on behalf of the Respondent, being first duly sworn, testified as follows:

*Direct-examination by Mr. Romine:*

Q. You are a practicing physician of the State of New Jersey? A. Yes, sir. 40

*Dr. Gerard J. Van Shott, Jr.—Direct.*

Q. How long have you been practicing?

Mr. Rubacky: I admit his qualifications.

*By Mr. Romine:*

Q. Did you examine or treat Andrew Mudri, the petitioner, in this case? A. Yes, I did.

10

The Court: Which did you do? Did you examine and treat him?

The Witness: Both. I treated him from September 2, 1930, until February 13, 1931. Those treatments were all at my office.

*By Mr. Romine:*

Q. When you first examined him, what was his condition? A. The first time I examined him, he was in St. Mary's Hospital. At that time he had a laceration of the back of the scalp, about an inch and a quarter long, in the occipital region of the scalp. He has some abrasions of his forehead, left side, and his face; contusion of the back of his neck, on the right side.

20

Q. What did you do for him? A. At my office—I didn't do anything for him at the hospital. I don't recall whose service he was at the hospital, but at my office his complaint was pain on the right side of his neck, just below the ear, and a feeling of—he described it as a wooden feeling on the scalp just above the ear, on the right side.

30

Q. What treatment did you give him? A. There I gave him nothing except lamp treatments and massage. Those were continued at intervals of a few days apart right through to February thirteenth; after that time, I didn't treat him.

40

Q. Was there any improvement under your treat-

*Dr. Gerard J. Van Shott, Jr.—Direct.*

ment? A. Yes, he improved. He always held his head slightly to the right.

Q. Did you notice any evidence of a hernia at any time? A. Yes.

Q. When was that? A. In April, I think on April 13, 1931, I found that he had a right inguinal hernia about the size of a small peach.

Q. Had you noticed that before? A. I didn't. There was no mention of it before, and no complaints about it. 10

Q. That was several months after you first began to treat him that you noticed the hernial condition? A. I first observed that myself on April 13, 1931. When I started to treat him September 2, 1930, all of his complaints during that time were of the right side of his neck, high up, just below the mastoid process. 20

Q. You haven't seen the man since April, 1931? A. No, sir.

Q. What was his condition at that time? A. Well, at that time, he still complained about—especially about pain or tenderness on pressure over the upper part of the external mastoid muscle, and some numbness in the scalp just above the ear, on the right side.

Q. Were you able to find any cause for that? A. No. 30

Mr. Romine: That is all.

*Cross-examination by Mr. Rubacky:*

Q. Doctor, at whose request did you go to St. Mary's Hospital? A. Mr. Lyons, of the Public Service.

Q. That was how many months after; when after the accident, I mean? A. I think it was on August 22, 1930. 40

*Dr. Gerard J. Van Shott, Jr.—Cross.*

Q. On August 22, 1930, you went to the St. Mary's Hospital? A. Yes.

Q. You hadn't seen him prior to that time, Doctor? A. No.

Q. Didn't he make any complaints other than those which you mentioned here today at that time?

10 A. The chief complaint and persistent complaint was pain in his neck, in the upper part of his neck on the right side, just below the ear, and numbness in this part of his scalp. (Indicating).

Q. Didn't he make complaints of headaches, Doctor? A. I don't recall that he did.

Q. You looked at the hospital record when you went to the hospital, did you not? A. I believe I did. I don't know when—

20 Q. He made a complaint of headaches, did he not? A. He might have.

Q. Do you recall seeing that report in the hospital record? A. I don't know as I do.

Q. Doctor, he made complaints, did he not, Doctor, of being dizzy and having been unconscious for a long period? A. I don't know anything about his being unconscious.

30 Q. You examined the hospital records, did you not Doctor? A. I am not so positive. I think I saw a general X-ray report.

Q. That is the only report of the hospital records that you looked at?

Mr. Romine: He said he does not remember.

The Witness: I am not certain whether the nurse told me, or whether I saw it. I don't know positively.

*By Mr. Rubacky:*

40 Q. When you made this examination at the hos-

*Dr. Gerard J. Van Shott, Jr.—Cross.*

pital, the man was in what posture? A. I am not so certain of that either, but I think he was sitting in a chair.

Q. Did you examine him while he was in the chair? A. Yes.

Q. Did you strip him? A. Well, he was in hospital clothes at the time.

10

Q. Did he— A. His whole complaint at that time referred to the right side of his neck.

Q. I appreciate that, Doctor. Do you remember, Doctor, particularly whether you did or didn't examine him for a hernia at that time? A. I don't know whether I did or not.

Q. As a matter of fact, the first day that you did examine him for a hernia was on the day when you found him— A. On the thirteenth of April, 1931, is when I made a complete examination and found the hernia.

20

Q. It was— A. I asked him when it appeared, and he told me September previous.

Q. But that was the first time, Doctor, that you really made an effort to examine him for the hernia? A. When I examined him, that was the first time I knew that he had it.

Q. This laceration that you spoke of—you looked at the scar, did you not? A. Oh, yes.

30

Q. That scar is quite wide with respect to its width? A. It is perfectly healed, yes.

Q. Yes, I appreciate that, Doctor. From the observation that you made of the scar, Doctor, would you say that was a superficial laceration or a deep laceration? A. Superficial.

Q. It was a superficial laceration. A. It may have gone through the scalp.

Q. Did you try to move the scar to try to see

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*Dr. Gerard J. Van Shott, Jr.—Cross.*

whether it was adherent to the bony structures or close to the bony structures? A. I suppose I did, but I don't recall.

Q. You don't remember that. That scar was an inch and a quarter long the first time you saw him, was it not? A. Yes.

10 Q. That was approximately a month after the accident? A. No, a few days—four days or so. The first time I saw him was in St. Mary's Hospital.

Q. That was the time you saw the scar. These abrasions that you mentioned on the left side of the face, forehead, they were quite manifest? A. Yes.

Q. And the conditions on the back of the neck, they were quite apparent? A. Yes.

20 Q. And the pain in the right side of the neck was his most important symptoms? A. It was his only persistent complaint.

Q. It was his only persistent complaint? That complaint persisted all the time, from the twenty-second of August, until the thirteenth of April, 1931? A. That is what he was treated for.

Q. When he left you, Doctor, he was discharged by you, was he not? A. No.

30 Q. Did you make any request to have him come back? A. He was treated, I believe, in Paterson.

Q. Well, Doctor, I know, but on the day you discharged him, did you make any request for him to come back to you? A. He came back—February thirteenth was the last time I treated him. He came back April thirteenth, at which time I examined him again.

Q. But he came back voluntarily, not at your request? A. Well, I didn't specifically request that.

40 Q. Doctor, do you remember you calling my of-

*Dr. Gerard J. Van Shott, Jr.—Cross.*

fice and finding out if you could examine Mr. Mudri then? A. I don't.

Q. You don't recall that? A. No.

Q. But you would not say that you didn't have a conversation with me a day or two prior to April thirteenth, for the purpose of making an examination? A. I would not say, but I don't recall. 10

Q. Now, this wooden feeling of the scalp that you spoke of, Doctor, that persisted from the twenty-second of August, also up to the thirteenth of April, 1931? A. Oh, it had diminished.

Q. He made that statement to you? A. He described it always as a wooden feeling.

Q. Did he display any nervous manifestations at all to you during the time he was under your treatment and observation? A. Not particularly, no. 20

Q. You didn't notice any particular nervous manifestations? A. No.

Q. Did you go over his eye grounds, Doctor? A. No.

Q. You didn't examine his pupillary reflexes? A. I don't recall that I did, but they were apparently equal. I didn't notice any inequality of his pupils at any time.

Q. Did you do a Romberg on him? A. I don't remember. 30

Q. Did you do an Achilles on him? A. No, I don't remember.

Q. Did you do an elbow reflex on him? A. I don't recall.

Q. Did you examine his ears, Doctor? A. I am not certain of that. I think I did.

Q. If you had examined him, you would have made a record of it? A. I probably would.

Q. Have you any records with you, Doctor? A. No. 40

*Dr. Gerard J. Van Shott, Jr.—Cross.*

Q. Can you recall any part of your examination?

A. I recall principally the fact that this man had rather a pronounced acne of the face.

Q. I am speaking of the ear now, Doctor. A. And that the chief, principal complaint was pain in the right side of his neck, numbness.

10 Mr. Rubacky: I ask that the answer be stricken out as not responsive.

*By Mr. Rubacky:*

Q. Can you recall any part of your examination? I am referring back to the ear examination. If you had made a record of what you found, you would probably be in a position to tell the Court all your findings, would you not? A. Yes.

20 Q. Have you got that record with you? A. I have the record of examination which I made on April.

Q. Would you read with particularity everything that refers to the ears Doctor? A. I don't know as there is any mention on this report. There is no mention of the ears at all on this report.

Q. Nothing at all? A. No.

30 Q. And all this treatment that you gave him, Doctor, was over a period of approximately six months, wasn't it? A. From September 2, 1932, until February 13, 1931.

Q. Five and a half months? A. Yes, sir.

40 Q. And all that time, will you tell the Court just what particular condition you treated him for? A. For this pain which he complained of in his right side of his neck, which appeared to me to be in the upper part of the external mastoid muscle, which was very tender to pressure at that point. That is the nearest to a complaint we had from him.

*Dr. Gerard J. Van Shott, Jr.—Cross.*

Q. That comprises your treatment during that five months and a half, with particular reference to the right side of the neck and the head? A. Yes.

Q. And you didn't make any examination at all of his tonsils, ears, teeth, or nose, or eyes? A. I believe I did, but I didn't make any specific notes about it. 10

Q. You don't recall what you found? A. I don't recall.

Q. Did you prescribe any medication at all, Doctor? A. I don't believe so.

Q. During this time that he showed, that he complained of this muscular condition, did he have a muscular spasm that was continuous, that was intermittent, or what? 20

Mr. Romine: I object. The doctor has not said he had any muscle spasm.

*By Mr. Rubacky:*

Q. I say, did he have muscle spasm that was continuous, intermittent, or not? A. Well, I only noted that he generally carried his head inclined slightly to the right.

Q. You didn't examine him for muscular spasm? A. Oh, yes. 30

Q. Did he have it or not? A. Well, the muscle was contracted a little bit.

Q. That contraction of the muscle was very apparent to you? A. Well, not so apparent to me as to him.

Q. You felt it? A. Yes.

Q. That continued all the time from September second, until February thirteenth? A. Most of the time. 40

*Dr. Gerard J. Van Shott, Jr.—Cross.*

Q. Didn't Mr. Mudri show some general nervous condition to you during the time of the five and a half months treatment?

Mr. Romine: I object. We have been over that already.

10 Mr. Rubacky: If your Honor please, I certainly have not completed my examination of the doctor.

Mr. Romine: You may not have completed your examination, but we have been over that once.

The Court: I don't think the doctor has answered that question.

Mr. Romine: He asked him that before.

20 Mr. Rubacky: I asked him about the reflexes; that I will admit.

*By Mr. Rubacky:*

Q. Were there any signs at all, Doctor, of any nervous condition that this fellow exhibited from the time that you first saw him on the twenty-second of August, 1930, up until the thirteenth day of April, 1931? A. I don't remember. He may have given some manifestations of slight tremors, something of that sort, but I don't recall.

30 Q. Wasn't he fidgety to you? A. Not particularly. When he was in my office undergoing this treatment, he usually sat pretty quiet; I watched him most of the time.

Q. Didn't he complain to you on at least two occasions that he was dizzy while he was under your treatment and observation? A. I haven't any recollection of that.

Q. You don't recall that? A. No.

40 Q. Doctor, you say that following the five and a

*Dr. Gerard J. Van Shott, Jr.—Cross.*

half months of treatment, you discharged him as improved? A. He was improved.

Q. Will you tell the Court please, in what respect he was improved? A. He was improved to the extent that he was far less tender to any pressure here, (indicating) on the right side of his neck, and he had apparently improved in the sensation of the right side of his scalp. Of course, that is subjective; I had to take his word for that. 10

Q. Just what signs of improvement did he show? A. I asked him if he felt able to do anything, and he said yes. I asked—

Q. The scars—

Mr. Romine: Just a moment. Let the Doctor finish.

*By Mr. Rubacky:*

Q. Is there anything else, Doctor? A. I asked him at that time if he didn't feel able to do some work. He said yes, he could do some light work. 20

Q. Did you ask him what particular light work he could do? A. No. I presume on account of the fact that he had a hernia, he could not do heavy lifting.

Q. Did you recommend anything for the hernia, Doctor? A. I don't know as I did. 30

Q. When you discharged him on the thirteenth of February, 1931, you said that he still complained of pain over the right side of his neck and numbness of the scalp, over the ear, on the right side. A. Yes.

Q. Well, Doctor, was he discharged because you no longer could do anything more for him, or was he discharged at the orders of the respondent? A. Well, as I understand it, he was referred to the 40

*Dr. Gerard J. Van Shott, Jr.—Redirect*

company doctor, Doctor Palmer, in Paterson. He conducted the balance of the diathermy treatment.

Q. Doctor Palmer was treating him at whose orders, do you know? A. The Public Service Company.

Mr. Rubacky: That is all.

10

*Redirect-examination by Mr. Romine:*

Q. Doctor, did the petitioner ever make any complaints to you about his impairment of hearing?

A. I have no recollection of his complaining about his hearing at all.

Q. You spoke about his head, about he being inclined to hold his head to the right; did you find any reason for his doing that? A. I could not.

20

Mr. Romine: That is all.

(Witness excused).

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DR. JOSEPH DIAS, a witness on behalf of the Respondent, being first duly sworn, testified as follows:

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*Direct-examination by Mr. Romine:*

Q. Dr. Dias, you are a practicing physician in the State of New Jersey? A. I am.

Mr. Rubacky: I admit the doctor's qualifications.

*By Mr. Romine:*

40

Q. And you have been for how long? A. I have been practicing in Newark, New Jersey, since February, 1904.

*Dr. Joseph Dias—Direct.*

Mr. Rubacky: I will admit the doctor's qualifications.

*By Mr. Romine:*

Q. Do you specialize in any particular branch of your profession? A. I began my clinical work in 1903. I gave up all general practice and confined myself to my specialty in 1908. 10

Q. Are you connected with any institutions? A. At the present time I am eye surgeon at the St. Barnabas Hospital in Newark, and visiting eye and ear physician at the Irvington General Hospital, in Irvington, New Jersey.

Q. Did you make an examination of the petitioner, Andrew Mudri, in this case? A. Yes, I made two examinations. My first examination was on July 1, 1931, and the second examination on January 21, 1932. 20

Q. What examination did you make of the petitioner on the first occasion? A. I examined his eyes, ears, nose, and throat, and organs of equilibration.

Q. What did you find from your examination? A. I found his eyes to be normal. The pupils were of normal size, equal, and reacted normally to all stimuli. The eyelids, lacrimal, apparatus, and external ocular movements of each eye were normal. The fundus of each eye is normal. The tension of each eye was normal. Vision of each eye was normal. Because of his old age, he has present here old sight, and needs an initial pair of glasses for close work, and with the proper lens for his age, he saw the smallest test type for close work at fourteen inches. 30

Examination with the perimeter reveals that the fields of vision of each eye were normal. 40

*Dr. Joseph Dias—Direct.*

I transilluminated the sinuses and saw that the left frontal sinus was very dark; the right frontal and both superior maxillary sinuses were light.

10 Examination of the nose revealed thickened and deflected intranasal septum. It was deflected to both sides. Both middle turbinates were hypertrophied. There was muco-pus in the left nasal passage. There was a chronic congestion of the lining membrane of the nose, and the skin of his nose was very much thickened and lumpy. He has a condition that we call chronic intumescent Rhinitis; that is a condition of the skin and nose.

Examination of the mouth revealed that his tonsils were shrunken; the stumps are large, hypertrophied, chronically congested, with many crypts. He has a mild chronic catarrhal nasopharyngitis.

20 The teeth were dirty and the gums septic. A few were missing and the biting surfaces of the molars were worn down. The palatal arch was high and narrow; that is causing a deflection of the intranasal septum.

30 Examination of his ears disclosed that both drumheads were retracted to their extreme degree; that there were deposits of lime, many of them on the right drumhead, and a few on the left drumhead. There were no scars or perforations on either drumhead. Examination with the tuning fork and the Edelman-Galton Whistle revealed that he heard the very lowest tones that the human ear can hear, right through the scale to the very highest tone, with both ears.

He said that he heard that better with the left ear than with the right.

40 Examination revealed that the auditory nerve of each side is normal, bone conduction is normal on each side.

*Dr. Joseph Dias—Direct.*

Examination of his organs of equilibration, first by the cold caloric test and then by the Barany Revolving Chair, revealed that the organ of each side is normal; that the brain tracts of the organ of each side were normal.

That was my examination.

Q. What did the deposits of lime on the right drumhead and on the left indicate? A. No chronic catarrh of the middle ear that has existed for a very long period. The drumheads are depressed to the extreme degree; there is not the usual extending or vibration in either. The tissues of the drumhead become thickened, and in those sorts of drumheads, lime is deposited from the blood in the tissue. 10

Q. Now, on the second examination, Doctor, what did you find? A. I find the eyes at that examination, including the pupils, and the eyelids, lacrimal apparatus, and the external ocular movements, and the vision, and fundi were normal; for old sight he requires glasses for close work, and he was able to read the smallest test type that is used in the test for close vision. The fields of each eye were normal. 20

Transillumination revealed the left frontal dark, the right frontal and both superior maxillary sinuses light. 30

I found the same condition of his nose, that is, the intranasal septum thickened and deflected to both sides. There was a slight amount of mucopus in the left side. Chronic intumescent Rhinitis was more marked than at the first examination. Both middle turbinates were hypertrophied. The skin of the nose was thicker, more lumpy, and the capillaries were larger than at the first examination. 40

*Dr. Joseph Dias—Direct.*

In the lining membrane of the nose, congestion was more marked.

10 I found the same condition in his mouth, the tonsils shrunken, large, and chronically congested. There was a chronic catarrhal nasopharyngitis. The palatal arch was high and narrow. I found the teeth in the same condition, very dirty, and nearly all the gums were septic; a few teeth were missing, and the biting surfaces of the molars were worn down.

I found both drumheads retracted to their extreme; no scars or perforations on either. There was a large deposit of lime on the posterior inferior quadrant of each. The small deposits seen at first have coalesced and have formed large ones.

20 He heard the lowest tone of the tuning fork and the highest tone of the Edelman-Galton Whistle.

He again stated that he heard better with the right ear.

The nerve of the ear of each side is normal; bone conduction is normal on each side, and the organs of equilibration were normal by the cold caloric test and by the Barany Revolving chair test; the brain tracts of each organ of equilibration were normal.

30 Q. Did he complain to you of dizziness, Doctor?

A. Yes, he gave me a history of it.

Q. From your examination of this man, did you determine what that dizziness might be caused by, or what it was due to? A. My opinion is that the dizziness would be caused by the chronic mucopurulent sinusitis that he has. There is no dizziness that is due to any injury of the organs of equilibration of either side; both organs are normal.

40 Q. What did you attribute his poor hearing to, Doctor? A. Chronic catarrh of the middle ear

*Dr. Joseph Dias—Direct.*

that has existed for a good many years, and has a direct extension through the eustachian tubes, from the chronic catarrhal processes in his nose.

Q. Is his hearing in any way affected by any injury or trauma? A. No.

Q. If his hearing had been affected or impaired by any trauma or injury, what would be indicated, if anything? A. If he had an injury to his hearing that was the result of trauma, he would have a shortened bone conduction on that side of his head. It would manifest itself in the tests that would be given for bone conduction. If the nerve was destroyed entirely, there would be a total absence of hearing that I would have detected by the other tests. 10

Q. Did you find in your examination any shortened bone conduction? A. No, the bone conduction was normal. 20

Q. Did you find that any of the optic nerves were involved? A. No, the optic nerve was normal. The fundi of each eye was absolutely normal.

Q. And did you notice whether or not the petitioner had any difficulty during that examination in turning his head? A. No, he told me that he could not turn his head, but I didn't see any change, any difference in turning his head to the right or left during the course of the examination. 30

Mr. Romine: That is all, Doctor.

*Cross-examination by Mr. Rubacky:*

Q. Doctor, am I right when I say you made the first examination on July 1, 1931? A. Yes.

Q. And the second examination was made on the twenty-first day of January, 1932? A. Yes. 40

*Dr. Joseph Dias—Cross.*

Q. Now, did you measure the whispering voice?

A. Did I measure the whispering voice? No.

Q. You did not. Did you measure the conversational voice? A. No, I did not.

Q. But you say, Doctor, that you are quite positive that you found both drumheads retracted on the first day of July, 1931, with some deposits of lime on the right drum membrane? A. On both.

Q. On the right there were more than on the left, is that right? A. Yes.

Q. Now, Doctor, is there any test or any way that you or any other ear man can use to determine just how long lime deposits have existed in an ear? A. Any test that will tell how long?

Q. Yes. A. No, you can't. We can only tell by the size that they have been there for some time, because the original deposits are of infinitesimal amounts, and it is being added to all the time.

Q. Doctor, did you get the history when you examined the man of being injured in an excavation, shaken up, or whatever term you might want to use? A. Yes, I got a history on August 18, 1930, a pile of lumber fell on him striking him on the right side of the neck.

Q. Did you get a history then that he bled from the ears? A. No. He was unconscious, but does not know for how long. He regained consciousness in St. Mary's Hospital. He had scalp wounds. But he does not know if they were sutured.

Q. You don't know whether this man had any blood extravasation from the ears? A. No, it does not make any difference whether he did or not.

Q. It does not make any difference to you whether he did or not, Doctor? A. Not to me; that is of no consequence to me.

Q. Doctor, didn't you say on direct examination

*Dr. Joseph Dias—Cross.*

that the lime deposits are caused by the extravasation of blood? A. I certainly did not.

Q. And injured the tissues? A. No, sir.

Q. Will you refer to your notes and tell me what you did say with reference to the lime? A. I said lime deposits are deposited from the blood into the circulation on the drumhead; that is not extravasation.

10

Q. Could it not be deposited from the blood that goes into the canal? A. No, no.

Q. Why not, Doctor? A. Because it does not happen, that's all.

Q. If there were blood on the inner side of the membrane, that could cause calcium deposits on the drum membrane? A. No, there is no such pathology; that is nonsense.

Q. I am asking you, Doctor, if I may— A. You are wrong; it does not happen. 20

Q. It is then due to the drainage of blood from the capillaries, is that it? A. The blood—the lime in the blood, circulating in the blood, is slowly deposited in the tissues, such as tissues that are atrophic.

Q. Doctor, how many arteries or capillaries are there in the drum head? A. I don't know.

Q. You don't know? A. I don't believe anybody knows. 30

Q. Are there—A. Of course, there are many capillaries in every tissue in the body. I never knew that anybody counted them.

Q. Doctor, you say that he responded to the tuning fork from the lowest tone to the highest tone? A. Yes, right through the scale from the bottom up, and he heard all sounds on the Edelman-Galton Whistle.

Q. Who was present at the time that you made 40

*Dr. Joseph Dias—Cross.*

these ear examinations? A. All I know is my nurse and my office maid were present. I have no notation here that anyone was with him; usually, if there is someone else with a man, I make a notation of it. I haven't a notation here on the card at either examination.

10 Q. You don't remember having seen me with him at your office, do you, Doctor? A. I don't recall; you may have been there. I think I have seen you somewhere?

Q. You can't state I was at your office? A. No, I can't state that.

Q. You say that he heard better with the left ear than with the right? A. No, he told me that.

20 Q. I mean in his history he gave that to you? A. In his history he told me that he had a big noise in the right side of his head, and the hearing in the right side is poor.

Q. Well, did your findings corroborate that statement? A. No, because he heard the tuning fork in each side, and he said that he heard it better with the right ear at the examination in January 21, 1932, and at the examination on July 1, 1931, he said he heard better with the left ear.

30 Q. These statements were made to you immediately after you finished the tuning fork test, were they not? A. Yes.

Q. Then that tuning fork test is a hearing test made for the purpose of testing bone conduction? A. And air conduction, both.

Q. And air conduction? A. Yes.

40 Q. If Mr. Mudri himself made that statement to you following the examination, didn't you think it was wise, Doctor, to test him for the whispering voice and conversational voice? A. What knowledge would that add to anything?

*Dr. Joseph Dias—Cross.*

Q. I am asking you didn't you think it was necessary? A. No, no.

Q. All right. Now, you found nothing in the eye grounds? A. No, there is nothing in the eye grounds at either examination.

Q. Do you say, however, that you found increased deposits of lime on both drumheads? A. At the second examination. 10

Q. At the second examination there were increased deposits of lime? A. Yes.

Q. How much more increased would you say they were? A. Well—

Q. Slight or marked? A. No, considerable, because at the first examination there were individual small deposits; at the second examination, so much more had been deposited that these individual minute deposits had greatly enlarged to one large deposit. 20

Q. In other words, they had coalesced, is that it? A. Yes, they had coalesced, because the additional lime had been deposited in the drumheads between spots.

Q. That had all taken place from the time of your first examination to the time of your second examination? A. The coalescence, yes.

Q. Did you test him in the—what do you call that—the Barony Chair? A. Yes, I told you that on direct examination. 30

Q. The test of equilibration was normal, you say? A. Yes, normal nystagmus for each side, and the pass-pointing for each side was normal.

Q. Doctor, on direct examination you made a statement, I presume without qualifications, that this complaint of dizziness is caused by chronic mucopurulent sinusitis. A. I told you in my opinion it was chronic mucopurulent sinusitis. 40

*Dr. Joseph Dias—Cross.*

Q. It could be caused by other conditions? A. It could be caused by a great many other conditions.

Q. That condition of sinusitis could be produced by trauma? A. No, no.

10 Q. It could not. A. Sinusitis, of course not. There is only one type of trauma that could be the cause of mucopurulent sinusitis; that is a punch or an injury that goes through the bone and causes infection at the time, like a man being hit with a piece of steel, or a hatchet, or a bullet.

20 Q. All right, Doctor, let me ask you something else. A man sustains a severe injury to the skull, blood comes down through the nasal passages, the blood becomes infected; isn't that an indirect cause of sinusitis?

Mr. Romine: I object; the man is injured where? What kind of injury was it, and where was the injury?

Mr. Rubacky: The type of injury I have already mentioned by the extravasation of blood.

The Court: Are you referring to the present case?

30 Mr. Rubacky: Yes, and the blood, which of course accumulates in the nasal passages becomes infected, and that can cause, indirectly, a chronic sinusitis, can it not?

The Witness: No.

*By Mr. Rubacky:*

40 Q. You have never heard of it in your experience, ever? A. Never in my experience have I seen one, and I have seen them with the extravasation of blood in the sinuses. I—

*Dr. Joseph Dias—Cross.*

Q. Have you ever seen them with the extravasation—

Mr. Romine: Just a minute. Let the doctor finish his answer.

Mr. Rubacky: Pardon me.

The Court: Go ahead, Doctor, finish your answer.

10

The Witness: I said if the blood that is extravasated in the sinuses becomes infected, he can get an acute infection, but if he has normal drainage through the bones of the accessory nasal sinuses he is not going to get that infection.

*By Mr. Rubacky:*

Q. Doctor, he will have an acute effect—isn't it true probably in this particular case that this man had—recovered by the time you examined him in September? A. No. If he had a chronic mucopurulent sinusitis, that has existed for a very long time.

20

Q. Now, Doctor, would you or would you not expect to find some impairment of hearing in an individual who has so much pathology in the middle ear and drum membranes if he didn't have trauma? A. Would I expect to find what?

30

Q. Would you or would you not expect to find some impairment of hearing in an individual who presents so much pathology in his middle ear and drum membranes if he didn't have trauma? A. If he didn't have trauma? Why, certainly we expect pathology in the middle ear with a condition such as that. In his case it might be the cause of deafness.

Q. You say that condition in his nose is the

40

*Dr. Joseph Dias—Cross.*

probable cause? A. The probable cause of what?

Q. The probable cause of the deafness? A. I said no such thing. I said it is not the cause of deafness.

10 Q. How do you account for the marked change in the ear tissues between the first and second examination? A. Marked changes in the ear? Are you referring to the drumhead?

Q. That is right. A. The only marked change was the increase in the deposition of lime.

Q. How do you account for that, Doctor? A. He had increased lime deposited from his blood. Now, I say—

20 Q. Is that a natural condition to follow? A. In the chronic oral catarrh such as this man has, yes. They all get that if the catarrh has existed for any length of time. The condition has to exist for a great many years before the initial deposit of lime takes place.

Q. You found, did you not, a retraction of both drum membranes? A. Why, certainly.

30 Q. You didn't find, Doctor, some loss to the normal reflexes of the hearing in any of your tests? A. What do you mean by the normal reflexes? The loss in the right reflex, that is the light that is sent back from the surface of the drum when you throw your light in there to make an examination, that is characteristic of chronic catarrh.

Q. Did you find a shortening of the process of the malleus protruding at all in either ear at either examination? A. That has to be present.

Q. That must exist? A. When a drumhead is retracted, of course it shortens the process.

40 Q. You are positive, Doctor, are you not, that the bone conduction was equal on both sides? A.

*Dr. Joseph Dias—Cross.*

It was normal on both sides. At one test, I think there was a difference of two seconds, but it is normal bone conduction.

Q. But there was some difference, was there not, Doctor? A. At the first examination there wasn't any difference.

Q. On the second examination? A. On the second examination there was a difference of two seconds, which depends—that depends on the reaction of the patient. 10

Q. In favor of what ear, Doctor? A. In favor of the left ear, if you call that a favor.

Q. Now— A. It means nothing, you know.

Mr. Rubacky: That is all, Doctor.

(Witness excused.)

(Whereupon an adjournment was taken until 2:00 P. M.) 20

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Afternoon Session.

DR. LEWIS STEVENSON, a witness on behalf of the Respondent, being first duly sworn, testified as follows: 30

*Direct-examination by Mr. Romine:*

Q. Doctor, you are a practicing physician of what State? A. State of New York.

Q. How long have you practiced your profession? A. Since 1916.

Q. You are a graduate of what college? A. Queens University, in Canada.

Q. Did you take any other courses? A. Yes, I 40

*Dr. Lewis Stevenson—Direct.*

am a graduate of Bellvue Hospital in New York, Neurological Service.

Q. Are you a specialist in any particular branch of your profession? A. Diseases of the nervous system.

10 Q. How long have you been engaged in that work? A. Since 1922.

Q. Are you connected with any hospitals or institutions? A. I was at the Bellvue Hospital and Neurological Institute, in New York, Lenox Hill Hospital, Cornell Medical School.

Q. Are you a professor in Cornell? A. Instructor.

20 Q. Have you been associated with anyone in this work? A. I have been associated with Dr. Foster Kennedy for the past ten years or so.

Q. Who is Dr. Kennedy? A. He is supervisor—

Mr. Rubacky: I want to object to that. It is irrelevant.

Mr. Romine: I just want to show what type of work Dr. Kennedy does.

Mr. Rubacky: I object to it.

The Court: You are acquainted with Dr. Kennedy, are you not?

30 Mr. Rubacky: Yes.

*By Mr. Romine:*

Q. Proceed, Doctor. A. He is professor of Neurology at Cornell Medical School.

Q. You examined Mr. Mudri this morning? A. Yes.

40 Mr. Rubacky: Wait a minute, please. Your Honor please, if he is going through his qualifications, I want to know if he is finished.

*Dr. Lewis Stevenson—Direct.*

The Court: I assume he is.

Mr. Rubacky: At this time, I want to enter an objection. The doctor is not qualified as a licensed practicing physician of this State. I would like to have that objection spread on the Record so that I can take an exception if your Honor overrules me.

Mr. Romine: He has not treated the petitioner. Do you think he is disqualified from testifying? 10

Mr. Rubacky: I think so, yes.

The Court: I overrule the objection.

Mr. Rubacky: I ask for an exception on the ground of my objection, that he is not licensed in the State of New Jersey.

Mr. Romine: To practice in New Jersey?

*By Mr. Romine:* 20

Q. What was the result of your examination, Doctor? A. I found no evidence of organic disease in his nervous system:

Q. Just a minute, Doctor.

Mr. Romine (To the Reporter): Will you read that, please.

(The Reporter read the previous answer as follows: "I found no evidence of organic disease in his nervous system.") 30

*By Mr. Romine:*

Q. Did you find any nerve involvement? A. No, there was no involvement of any of his nerves that I could find out.

Q. Did you find any disabling condition, Doctor? A. Well, I found a slight spasm of the muscles on the right side of his neck. It wasn't very disabling, that is, at the present time. 40

*Dr. Toufick Nicola—Direct.*

Q. It would not prevent him from doing work?

A. I don't think it would.

Mr. Romine: That is all, Doctor.

Mr. Rubacky: No questions.

(Witness excused.)

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DR. TOUFICK NICOLA, a witness on behalf of the Respondent, being first duly sworn, testified as follows:

*Direct-examination by Mr. Romine:*

Q. Doctor, you are a practicing physician in the State of New Jersey? A. I am.

20 Q. And you have been for how long?

Mr. Rubacky: I admit his qualifications.

*By Mr. Romine:*

Q. You have been for how long? A. Twelve years.

Q. You are a graduate of what college? A. New York University and Bellvue Hospital Medical College.

30 Q. Are you connected with any institutions? A. I am Chief of the clinic of the Hospital for Ruptured and Crippled, adjutant professor of orthopedic surgery at the New York Polyclinic Hospital and School, attending orthopedic surgeon to the Mountainside Hospital in Montclair, attending orthopedic surgeon to the Essex County Isolation Hospital, and also attending surgeon to the New York Reconstruction Home for Crippled Children.

40 Q. Do you specialize in any particular branch of your profession? A. I do.

*Dr. Toufick Nicola—Direct.*

Q. What branch? A. Orthopedic surgery.

Q. Did you examine the petitioner in this case?

A. I have.

Q. What date, do you know? A. On January 25, 1932.

Q. And what examination did you make of the petitioner? A. As he walked into the room to be examined, he walked with a brisk gait. His head was inclined to the right of his shoulder. As he undressed, the inclination of the head to the right disappeared; he seemed to have no difficulty in stooping over to take his shoes and stockings off. When he was completely stripped, he inclined his head to the right shoulder.

10

The following was the examination of the back and neck; his back was perfectly straight except in the cervical region, that is the neck region, his head was inclined slightly to the right, and shoulder. When his mind was distracted in conversation, it was possible to move his head and neck without any difficulty. The patient complained of pain behind the right ear, and also in the region of the fifth cervical vertebra. On re-examination, this pain in the fifth cervical vertebra was changed to the seventh. All movements of the back were unrestricted, and the sacro-iliac sign was negative. Knee jerks were present on both sides, and equal. It was noted that he had a right inguinal hernia. That was the extent of the orthopedic examination.

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30

Q. When you say that the knee jerks were present, were they normal or abnormal? A. They were normal.

Q. You are speaking of the hernia. Were you able to determine whether that was of long standing or not? A. In my opinion it was of long standing.

40

*Dr. Toufick Nicola—Direct.*

Q. Did you find any evidence that the petitioner was suffering from any disability? A. I did not.

Q. Did you find any bone pathology? A. I did not.

Q. Did you find any nerve involvement? A. I did not.

10 Q. You spoke about his inclining his head at times to the right. Were you able to find any cause for that? A. No.

Q. I show you, Doctor, three X-rays that have been offered in evidence on the part of the petitioner, "P-1, P-2, P-3," and I show you these X-rays to look at them and tell us whether you find any evidence of fracture. A. I see no evidence in these pictures of fracture.

20 Q. I show you five other X-rays of the skull marked for identification on behalf of the Respondent, and ask you to look at those and tell us whether you find any evidence of fracture. A. I find no evidence of fracture.

Mr. Romine: That is all.

*By the Court:*

Q. They are pictures, Doctor, of the skull? A. And the upper cervical region.

30 Q. You find no evidence of fracture? A. No, I don't.

*Cross-examination by Mr. Rubacky:*

Q. Doctor, you examined this man on the twenty-fifth day of January of this year, did you not? A. I did.

40 Q. Had you known at that time that he suffered an injury in August, 1930? A. I did.

*Dr. Toufick Nicola—Cross.*

Q. On direct-examination you said that the examination of the back and neck revealed a straight back except in the cervical region. Will you just tell us in what particular area or region the cervical spine wasn't straight? A. It was a gradual inclination from the last cervical to the base of the skull. 10

Q. And although you say that you cannot tell us the cause of that condition, isn't it probable, Doctor, that a man who presents such signs would do so as the result of a basal fracture of the skull? A. He don't.

Q. What would you say might be the probable causes of such a condition? A. A type like this, I would first think of injury to the muscle, myositis. 20

Q. Myositis of what muscles, Doctor? A. Of the trapezius muscles, and also the external mastoid muscles.

Q. That is on the affected, right side? A. Yes.

Q. Had you known prior to your—or at the time of your examination that prior to that examination, subsequent to the actual accident, that this man had complained of severe pain in that particular locality? A. Just from the history. 30

Q. He related that history to you, or did you obtain that from the record? A. I obtained that from the record.

Q. Of the Public Service? A. Yes.

Q. Now, you didn't examine his ears, did you, Doctor? A. No, I did not.

Q. So that the pain he referred you to behind the right ear would be attributable to some cause of which you know nothing? A. That is a hard question to answer. 40

*Dr. Toufick Nicola—Cross.*

Q. Well, what probably causes and what produces that pain behind the right ear? A. Well, it may be malingering, or it may be due to myositis.

Q. So that the myositis that you mentioned before of the trapezius and the external mastoid could have caused that condition? A. Yes.

10 Q. Is that right? A. Yes.

Q. This pain in the region of the fifth cervical vertebra, you would attribute to what cause? A. It may be due to myositis or may be due to malingering.

Q. And did you know that this man had been under active treatment of Dr. Van Shott of the Public Service for a period of five and a half months? A. I did, from the records.

20 Q. Would you be inclined to believe then that the pain he manifested at the time of your examination was due to that particular involvement of the muscles that he was treated for? A. It is impossible to say, because at the examination I found no evidence of myositis.

Q. Well, you did observe some spasm of the muscles though? A. I did not.

30 Q. You did not. How do you account for the change of pain from the fifth cervical vertebra to the seventh cervical vertebra? A. He probably forgot where he pointed the first time.

Q. Now, Doctor, look at picture marked "R-1"—rather "R-2"; would you say that that cervical spine is straight? A. No, it is not straight.

Q. Would you say, looking at picture "R-3", that that cervical spine is straight? A. It is not straight.

40 Q. And, Doctor, will you particularly observe the fifth—or rather the first cervical vertebra and

*Dr. Toufick Nicola—Cross.*

tell us if you notice any pathology in it? A. I don't notice any pathology in it.

Q. There is a difference, is there not, in the size of the intervertebral spaces from the first cervical to the fifth cervical? A. That all depends on the way these are taken.

Q. With particular reference to the spinous processes of the second cervical vertebra, is that the normal appearance of the spinous processes in the average healthy individual? A. It is. 10

Q. If we assume that picture was taken in the proper Rontgenological posture would you say, Doctor, that the intervertebral spaces on picture "R-1" are normal? A. They are.

Q. You found no bone pathology whatsoever in the picture? A. I did not. 20

Q. And Doctor, do you or do you not admit that the pictures that you have referred—that you have read today aren't taken under the proper viewing conditions such as a film box? 20

Mr. Romine: I object to "aren't taken".

The Court: You mean aren't read.

*By Mr. Rubacky:*

Q. Read. A. Yes.

Q. You don't specialize in nerve troubles, do you, Doctor? A. I don't. 30

Q. So that when you say that there is no nerve involvement in this person's anatomy you are just giving us your general opinion? A. I am.

Mr. Rubacky: That is all.

*Redirect-examination by Mr. Romine:*

Q. Was it from the use of the film box that you 40

*Dr. Toufick Nicola—Redirect.*

are able, Doctor, here today in looking at these X-rays to determine whether or not there is any pathology? A. Yes.

Q. In other words, it is not necessary for you to have a film box to read these X-rays? A. Right.

10 Q. Now, you said something about referring to one or two of these X-rays. I think there were two pictures where you said that the spine—the vertebrae wasn't straight, that they tilted, is that right? A. Yes.

Q. Then you also said something about that there may have been an injury of the external mastoid and trapezius muscle? A. Yes.

Q. Did you find any involvement in this case? A. I did not.

20 Q. Did you look for any? A. I did.

Q. And you didn't find any? A. I didn't find any.

Q. Now, in the photographs where you referred to the fact that the vertebrae wasn't in alignment, did you find any evidence of trauma which may have caused that? A. I didn't.

Q. No evidence of trauma. Do you or do you not often find that in the spine? A. I do.

30 Q. Where there has been no injury at all, that is you find the spinal column not in alignment? A. Yes.

Mr. Romine: That is all.

*Recross-examination by Mr. Rubacky:*

Q. Doctor, you have had occasion, have you not, to examine and diagnose basal fractures on X-ray pictures? A. I have not.

40 Q. You have not? A. No.

Q. So then you are in no position to say then

*Dr. Toufick Nicola—Recross.*

that this condition could not have been caused by a basal fracture of the skull, are you? A. I have seen cases of basal fracture of the skull, but I am not in a position to diagnose from the X-ray.

Q. Have all the basal fractures that you have seen or treated presented positive Rontgenological proof of basal fractures? A. They have not. 10

Q. And what percentage of those cases show positive basal fractures? A. I don't know.

Q. Would you say that half of them show up on X-rays? A. It only would be a guess.

Q. It would only be a guess. Have you had occasion, Doctor, to corroborate X-ray findings by autopsy? A. I have.

Q. And have all those basal fractures that you have seen been verified by autopsy? A. You are talking about basal fractures, whether I have seen those at autopsy verified by the X-rays? I have not. 20

Q. You have not? A. I have not.

Q. So then the X-ray proof is not always positive proof, is it? A. No.

Mr. Rubacky: That is all.

(Witness excused).

30

DR. AMBROSE DOWD, a witness on behalf of the Respondent, being first duly sworn, testified as follows:

*Direct-examination by Mr. Romine:*

Q. You are a practicing physician of the State of New Jersey? A. Yes. 40

*Dr. Ambrose Dowd—Direct.*

Mr. Rubacky: I will admit his qualifications.

*By Mr. Romine:*

Q. For how long? A. Twenty-two years.

Q. You are a graduate of what college? A. University of Vermont.

10 Q. Are you connected with any institutions? A. Yes.

Q. What are they? A. Oh, I am connected with the Irvington General Hospital, Women's and Children's Hospital, St. James Hospital, Orange Memorial, St. Mary's, and some state institutions.

Q. Do you specialize in any particular branch of your profession? A. Yes.

20 Q. What is it? A. Nervous and mental diseases and conditions.

Q. How long have you been specializing in that work? A. Fifteen or sixteen years.

Q. You have examined a great many cases? A. Yes.

Q. You are familiar with testifying in Compensation Courts? A. I think so.

Q. Did you examine the petitioner in this case? A. Yes.

30 Q. When did you examine him? A. On July 14, 1931.

The Court: When was that, Doctor?

The Witness: July 14, 1931.

*By Mr. Romine:*

Q. What did your examination consist of, Doctor? A. Consisted of a complete physical examination paying particular attention to the nervous system.

40 Q. What did you find as a result of your exami-

*Dr. Ambrose Dowd—Direct.*

nation? A. Objectively, he presented pupils which reacted normally to all stimuli, normal external ocular movements, normal eye grounds, and normal visual fields. There is no spontaneous nystagmus. Normal station, normal posture, normal locomotion. His face, neck, and upper chest presented a conspicuous ingenerative acne. His teeth were defective and many foci of infection existed about the mouth. His tympanic membranes are whitened, thickened, retracted, and scarred. Bone conduction to the head was normal; air conduction was somewhat diminished due to the condition of the ear drums. His triceps, ulnar, biceps, and radial reflexes are normal. His abdominal, cremasteric, gluteal, and scapular reflexes were normal. 10

Mr. Rubacky: May I just ask you to go a little slower, Doctor? 20

The Witness: His knee, Achilles, and plantars were normal. He had no clonus, no Babinski, no Oppenheim, no Mendel-Bechterew, and no Chaddock. The deep and superficial sensations were normal. Purposeful movements and coordinated movements were normal. His systolic blood pressure was one hundred and twenty-two millimeters of mercury, and his diastolic blood pressure seventy-eight millimeters of mercury. There is a nitral systolic murmur. His left heart is enlarged and the heart muscle degenerated. Superficial veins on his left leg are enlarged, tortuous, and conspicuously varicose. He has a left varicocele, and a right inguinal hernia. He was very much overweight. 30

40

*Dr. Ambrose Dowd—Direct.*

*By Mr. Romine:*

Q. You said that there was no spontaneous nystagmus? A. Yes.

Q. What do you mean by that, Doctor? A. It means that there was no evidence of vestibular pathology.

10 Q. If there was a basal fracture, would there be such manifestations? A. Would there be such manifestations?

Q. Yes. A. If the basal fracture went through the inner ear, there would.

Q. When you spoke of this acne, what is that? A. It is a skin disease.

Q. It has nothing to do with trauma? A. Nothing whatsoever.

20 Q. Now, you referred to his Achilles and plantars being normal? A. Yes.

Q. Did he have any clonus, Babinski, and Oppenheim? What significance is there in that? A. He is structurally normal. There is no damage done to any part of the nervous system.

Q. Was his blood pressure normal or not? A. Blood pressure for a man of forty-six is a little bit low.

30 Q. Did you find any disability in this man? A. Not due to trauma.

Q. Nothing due to trauma? A. Nothing whatsoever.

Q. Doctor, I show you five X-rays, marked for identification and ask you to look at those and tell us what you find.

Mr. Rubacky: I object to the testimony of Dr. Dowd. He is not qualified as an X-ray expert.

*Dr. Ambrose Dowd—Direct.*

The Court: Let Counsel bring it out, if you want qualifications.

*By Mr. Romine:*

Q. You are familiar with X-rays, Doctor? A. I have had a lot of experience. I am not an X-ray expert.

Mr. Rubacky: I object to his testifying. 10

The Court: You don't have to be an X-ray expert to read X-rays.

*By Mr. Romine:*

Q. Are you familiar with reading X-ray findings? A. I have read a good many.

Mr. Rubacky: Your Honor please, I object to the testimony. The man himself says that he is not an X-ray expert. 20

The Witness: Yes, but I have read thousands of them.

The Court: He does not specialize in X-ray work, but—

Mr. Rubacky: He is in no position to testify regarding these films today. The man must be qualified as an expert before he is put on the stand; he is not being put on as a general practitioner. I have the highest regard for the doctor, but as a matter of principle and as a matter of law the doctor is not qualified to read these pictures. 30

Mr. Romine: Do I understand Counsel to mean before any doctor can use an X-ray he must be an expert Rontgenologist himself, in taking pictures?

Mr. Rubacky: If he is being brought to the Court for the purpose of giving expert testimony. 40

*Dr. Ambrose Dowd—Direct.*

The Court: I overrule the objection.

*By Mr. Romine:*

Q. Read them, Doctor.

Mr. Rubacky: Allow me an exception.

10 *By Mr. Romine:*

Q. Do you find any evidence of fracture? A. I see no evidence of fracture.

Q. I show you three other X-rays marked "P-1", "P-2" and "P-3", and ask you to read those, and ask you if you find any evidence of fracture? A. No, I don't.

Q. Can you tell from these X-rays whether there is any pressure on the nerve or nerve involvement?

20 A. From the X-rays?

Q. Yes. A. Certainly not.

Q. You are able to use these X-rays and read them without the use of a shadow box, are you?

A. Yes.

Q. It is not necessary to have a shadow box? A. No.

30 Q. If a man has a basal fracture, Doctor, what would the symptoms be? A. The symptoms might be manifold, maybe negligible, he may have none at all; I don't know what the symptoms would be. It might be anything or nothing.

Mr. Romine: That is all, Doctor.

*Cross-examination by Mr. Rubacky:*

Q. You said something about the ear drums being thickened and scarred? A. Whitened and retracted.

40 Q. Whitened and retracted. What do you attri-

*Dr. Ambrose Dowd—Cross.*

bute this condition to, Doctor? A. Infection.

Q. Infection? A. Yes.

Q. Did you observe any calcification of the membrane? A. Some of the white spots may be calcium deposits.

Q. You aren't certain of that? A. I think they are probably there.

Q. Are you positive when you say the air conduction was diminished? A. That is my opinion. It is a positive opinion. 10

Q. It is a positive opinion? When you refer to the air conduction being diminished, are you referring to the air conduction of both ears, Doctor? A. Yes.

Q. Now, in response to Counsel's question on direct-examination, you said if the basal fracture went to the inner ear then that would be important. A. Yes. 20

Q. In other words, a basal fracture, would you say, is unimportant until such thing occurs? A. No.

Q. All basal fractures are important, are they not, Doctor? A. No. Fractures of the skull *per se* are unimportant. We aren't very much concerned with the bony structures of the skull unless there is a depressed fracture. I really don't know how we can be concerned, unless the meningeal vessels within the skull are involved. 30

Q. Suppose we assume for the purpose of argument then, that there has been a basal fracture sustained by virtue of an accident in which a laborer has a lumber pile fall on him together with sand and other debris; that this basal fracture evidences itself by symptoms such as unconsciousness for a rather prolonged period of time; we will say anywhere from eight hours, as it has been testified to, 40

*Dr. Ambrose Dowd—Cross.*

to two and a half days; a man such as that petitioner presents severe pain for which he is treated for five and a half months, pain in the region of his right side of the neck and the right side of the face and head would you say that a basal fracture in such an instance would have caused symptoms which he complained of?

10 Mr. Romine: I object, if your Honor please. There is no proof in this case, up to this point, that this man had a basal fracture. The only information of it is by Dr. Reeves, who stated he thought or suspected that the man had a basal fracture. I submit, your Honor, that the petitioner has failed to prove that there was a basal fracture. They have merely suggested it.

20 We have, on the other hand, absolutely disproved that there was a basal fracture. The basis of this question is assuming that this man had a basal fracture, and I submit to you the question is improper, because there is something in there which does not exist, even in their own testimony, and there is no proper proof that it ever existed.

30 Mr. Rubacky: Your Honor please, it is a matter of opinion versus opinion. If Dr. Reeves feels he has sustained a basal fracture, I think I have a right to assume such a condition existed in my hypothetical question.

The Court: I don't recall that part of the doctor's testimony.

40 Mr. Ruback: Your Honor please, Dr. Reeves, in his testimony, said in his opinion Mr. Mudri had sustained a basal fracture.

*Dr. Ambrose Dowd—Cross.*

On cross-examination by Mr. Romine he tried to show that the basal fractures don't always show on X-ray films. That was the subject of argumentation before your Honor for many minutes.

The Court: I sustain the objection. I think there is nothing to prove it by in the hypothetical question. The hypothetical question must have some foundation, supported by the evidence. 10

Mr. Rubacky: I have incorporated all the important facts.

The Court: Dr. Reeves is not an expert. Furthermore, he said it was in his opinion.

Mr. Rubacky: If it is opinion versus opinion, your Honor.

Will you allow me an exception. 20

*By Dr. Rubacky:*

Q. Doctor, supposing that you had a history such as Mr. Mudri gives of being in an accident wherein a lumber pile, together with sand and other debris fall upon him; that he sustains by virtue of this accident a condition which results in a state of unconsciousness for a period of time, we will say, anywhere from eight hours to two and a half days; that by virtue of this accident he is bleeding from the ears, that by virtue of this accident he has considerable pain in the right side of the neck and back of the neck, right side of the head and face; that by virtue of this accident he necessitates treatment by Dr. Van Schott, physician for the respondent, for a period of five and a half months, after which he is subsequently sent to another physician employed by the respondent for further treatments, and he makes all those com- 30 40

*Dr. Ambrose Dowd—Cross.*

plaints that he gave to you at the time of your examination. Would you say that such a condition would probably have been caused by a basal fracture? A. No.

Q. What do you attribute such a condition to?

10 A. If he has the pain and disability around his neck and shoulder, it must have been due to the local trauma. A basal fracture cannot possibly give him pain in the neck and shoulder. It is inconceivable.

Q. Doctor, isn't it possible when you have injury to the back of the neck, as you mentioned, local trauma, that you can have an involvement of the cranial nerves and the cervical nerves as well?

20 A. The cranial nerves don't control the shoulder or the back of the neck; they never have and probably never will, but cervical nerves do. There is no evidence of damage to the cervical nerves. His cervical plexus and cervical nerves were in good shape.

Q. That happens in a hundred per cent. of all cases? A. If you have a cervical nerve involvement, you have a brachial lesion.

30 Q. There are mild as well as severe cases? A. Any injury serious enough to injure the nerves certainly will produce a brachial lesion.

Q. Supposing you haven't a brachial lesion— A. You haven't—

Q. (continuing) you can have injury to the nerve fibers themselves? A. No.

40 Q. What do you attribute all this pain that he complained of at the time that he was under treatment, Doctor? A. He may have had myositis, he may have had some damage to the muscles. There was no evidence of myositis at the time I examined

*Dr. Ambrose Dowd—Cross.*

him in July. If he had myositis, it has entirely disappeared.

Q. You found some signs, didn't you, Doctor?

A. No.

Q. So then in your opinion all these complaints weren't due to trauma? A. Yes, that is my opinion. He has certain infections. He has a myocarditeal degeneration. 10

Q. Would not a myocarditeal degeneration be the result of shock? A. No, sir. It is usually the result of one infection or another, or multiple infections in the general wear and tear of life.

Q. You say that the basal fracture that a person has could bring about manifold or negligible symptoms? A. It could bring about manifold or negligible symptoms. 20

Q. If there were negligible symptoms you don't have to have anything permanent in the way of objective signs, do you? A. As far as a basal fracture?

Q. Yes. A. No, you don't have to have negligible symptoms.

Mr. Rubacky: That is all.

*By Mr. Rubacky:*

Q. Just one more question, Doctor. You found no nerve involvement, did you? A. None, at all. 30

(Witness excused).

*Eugene Sensenback—Direct.*

EUGENE SENSENBACK, a witness on behalf of the Respondent, being first duly sworn, testified as follows:

*Direct-examination by Mr. Romine:*

10 Q. Mr. Sensenback, where are you employed? A. Public Service.

Q. In what capacity? A. X-ray technician.

Q. As such, did you take X-rays of Mr. Mudri, the petitioner in this case? A. I did.

Q. I show you five X-rays marked "R-4, R-5, R-6, R-7", and "R-8" for identification. I ask you if you took those X-rays? A. I did.

Q. What machine did you use? A. The Standard Victor Machine.

20 Q. Is that a recognized machine for the taking of X-rays? A. Yes.

Mr. Romine: I offer them in evidence.

(The X-rays referred to marked "R-4, R-5, R-6, R-7" and "R-8" for identification were received in evidence and marked, "R-4, R-5, R-6, R-7" and "R-8").

Mr. Romine: That is all.

Mr. Rubacky: No questions.

30

(Witness excused).

Mr. Romine: That is our case, your Honor. I would like to say a few words on behalf of the respondent.

The Court: Are you going to put Dr. Dwyer on?

40

Mr. Rubacky: No. He is not here. All I request, with your Honor's kind permission,

*Eugene Sensenback—Direct.*

is to allow me to present Dr. Wilkenson as a rebuttal witness. I have called him; he is on his way down.

(Mr. Romine summed up on behalf of the respondent).

(Discussion between Court and Counsel).

Mr. Rubacky: I wish to call Dr. Wilkenson as a rebuttal witness. 10

Mr. Romine: I want to express on the record that Counsel having closed his case—

Mr. Rubacky: It was with reservations.

Mr. Romine: Without any reservations, and the attorney for the respondent having proceeded to sum up and close his arguments, I shall now object to the case being reopened for the purpose of putting in any testimony, and I take exception to the Court's ruling. 20

The Court: After all, Mr. Romine, I can reopen at any time even after both summations are closed.

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DR. BOYD E. WILKENSON, called as a witness in rebuttal, in behalf of the petitioner, being first duly sworn, testified as follows: 30

*Direct-examination by Mr. Rubacky:*

Mr. Romine: I want to enter on the record that I object to any testimony being given by Dr. Wilkenson, in view of the fact that the case was closed, and Counsel for the Respondent had already summed up.

The Court: You have already stated that.

Mr. Romine: I am going to object to everything he says from now on. 40

*Dr. Boyd E. Wilkenson—Rebuttal—Direct.*

*By Mr. Rubacky:*

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

Q. And you have been for how long? A. Oh, for a long time.

10 Q. About how many years? A. I am practicing since 1905. I have been in New Jersey since 1919.

Q. Do you specialize in any particular branch of medicine? A. I do X-ray work.

Q. How long have you been doing X-ray work? A. Since 1915.

Q. Doctor, do you know who I am?

The Court: Don't you think you had better get to the issue?

20 Mr. Rubacky: I just want to show, your Honor, how he came into the case.

*By Mr. Rubacky:*

Q. When did you first examine these X-rays? A. This man (indicating) showed me the pictures a few minutes ago.

Q. Doctor, did you examine the X-ray pictures marked "R-4, R-5, R-6, R-7", and "R-8"? Those are the ones I have already enumerated. A. I looked over those pictures. I saw them, yes.

30 Q. Did you also see pictures marked "R-3" and "R-2"? A. Yes, I saw those, too.

Q. You saw those for the first time this afternoon? A. Yes, sir.

Q. Doctor, is there any pathology on either or any of those pictures that you have now before you in the way of bony fractures or pathology with reference to the bony structure of the skull or spine?

40 Mr. Romine: I object to it.

*Dr. Boyd E. Wilkenson—Rebuttal—Direct.*

The Court: I overrule the objection.

Mr. Romine: I take an exception.

The Witness: I looked over these. I see no fracture or fracture lines.

The Court: You mean all of them?

The Witness: Yes.

*By Mr. Rubacky:*

10

Q. And the same thing with those? A. These aren't very good details. There is a little curvature there. (Indicating) The angulation there of the cervical spine don't show the upper cervical spine. As far as I can see, outside of the angulation, I don't see anything, but the details of the pictures aren't very good. I would not consider them so.

Q. Doctor, if there had been a basal fracture in the Petitioner's case, that is in the petitioner's skull, could you have determined that with the pictures that you have before you?

20

Mr. Romine: I object. That is part of their original case, that question.

Mr. Rubacky: They have submitted the X-ray pictures.

The Court: Overrule the objection. Answer the question, Doctor.

30

The Witness: These pictures of the head?

*By Mr. Rubacky:*

Q. Yes. A. Well, you are—

Mr. Romine: I take an exception.

The Witness: When you are talking about basal fractures, you are getting into a proposition. My rule at the hospital is that I

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*Dr. Boyd E. Wilkenson—Rebuttal—Direct.*

would not consider them a complete X-ray set for a basal fracture.

*By Mr. Rubacky:*

Q. You would not consider it a complete set?

A. I would not consider it a complete set, no, sir.

10 Q. What would you figure, Doctor, is missing from these pictures that is so vitally important?

Mr. Romine: I object to that.

The Court: I allow the question.

Mr. Romine: I take an exception.

20 The Witness: The first thing, to show a basal fracture, one of the requirements we have in the hospital, you must show the fracture point in the base of the skull. If you don't show that, you aren't—you have no way of determining whether you have a fracture extending in there or not; furthermore, if there is any question about it, I think a stereoscopic view is helpful.

The Court: That is a picture which gives thickness as well?

30 The Witness: The perspective view. We always make it a rule at the hospital—that is a rule at the hospital, to take that kind of a picture always when you suspect a basal fracture.

*By Mr. Rubacky:*

Q. Doctor, even assuming that there might be—that a patient might be suffering from a basal fracture, does every roentgenological film show a positive fracture?

Mr. Romine: I object to that.

40 The Court: Objection sustained.

*Dr. Boyd E. Wilkenson—Rebuttal—Direct.*

*By Mr. Rubacky:*

Q. Doctor, then, you would say that this is not a complete set of X-ray films to guide you in determining yourself for a negative or positive diagnosis of basal fracture?

Mr. Romine: I object to that question. It has already been answered. 10

The Court: Objection sustained.

*By Mr. Rubacky:*

Q. Doctor, with reference to the spinal pictures, did you notice any defect at all in the posture of the spine on these pictures?

Mr. Romine: I object. He has already referred to that; he has answered the question.

Mr. Rubacky: I asked him about pathology first. 20

Mr. Romine: He has referred to pathology. What else is there to it; I object to it.

The Court: Did you answer it before?

The Witness: I said slight curvature, slight angulation of the cervical spine.

The Court: That was the only thing you found?

The Witness: The detail is not good on these X-rays. 30

*By Mr. Rubacky:*

Q. Doctor, considering the injury to the petitioner, such as this man; a man is a laborer employed by the respondent—

Mr. Romine: I object, if your Honor please. 40

*Dr. Boyd E. Wilkenson—Rebuttal—Direct.*

*By Mr. Rubacky:*

Q. (continuing) in an excavation—

Mr. Romine: I object to any question of that character because it is part of his direct testimony. If this is permissible at all, it is only permissible on his direct case.

10

The Court: The doctor is only an X-ray man.

Mr. Rubacky: Yes.

The Court: That examination should be confined to your other experts.

*By Mr. Rubacky:*

Q. What further can you say with reference to those pictures that you haven't said so far?

20

Mr. Romine: I object to that if your Honor please. He is only called, if it is permissible, to rebut that which our physicians said. Now he is asking him what further there he can tell us with regards to these pictures, and I object to it.

The Court: The Respondent in this case produced pictures. The respondent said that those pictures are negative to bone pathology. You have to confine your doctor to that.

30

*By Mr. Rubacky:*

Q. Doctor, if this petitioner had a fracture of the base of the skull, would this set of pictures be complete enough—

The Court: He said no. He has already answered it.

40

*Dr. Boyd E. Wilkenson—Rebuttal—Direct.*

*By Mr. Rubacky:*

Q. Doctor, with reference to the intervertebral spaces, if you get a lateral picture, does a negative diagnosis of an X-ray film necessarily exclude a basal fracture?

Mr. Romine: I object. We have been all over that, your Honor. 10

Mr. Rubacky: It is very pertinent, your Honor.

Mr. Romine: He has asked him that three times now.

Mr. Rubacky: That is all then, Doctor. What is your fee for testifying here this afternoon?

The Witness: Twenty-five dollars.

Mr. Romine: I decline to cross-examine the doctor because of the objections I have made. 20

(Witness excused).

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(Summation by Mr. Romine on behalf of the respondent).

(Summation by Mr. Rubacky on behalf of the petitioner). 30

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The Court: The real issue in this case is one respecting the nature and extent of the permanent disability, if any; the contention of the respondent throughout the whole proceeding has been that the petitioner, as the result of his accident on August 18, 1930, completely recovered, and that he has been amply compensated for his lost time by tem- 40

*Findings.*

porary disability, a period of thirty-two weeks, thirty-six weeks having been paid.

We have had produced before us many witnesses, particularly experts, and the medical testimony as a whole has been very elaborate. There has been some conflict in the gist of the testimony by the  
10 experts produced by the petitioner, and those produced by the respondent. However, from the testimony, I am satisfied that the petitioner, Andrew Mudri, did, on the eighteenth day of August, 1930, while in the course of his employment, suffer an accident which arose out of and in the course of his employment; that the accident consisted of a  
20 cave-in wherein a wooden four by four—I don't remember if it was one or two—fell and struck him on the head, in the occipital region; that he was rendered unconscious; I further find that the petitioner was taken to Saint Mary's Hospital and treated there, and was later treated by Dr. Van Shott from September 2, 1930, up to and including February 13, 1931.

One of the disputed factors in this case is the question of a basal fracture of the skull.

The burden of proof rests upon the petitioner to establish by direct and positive evidence that  
30 there is such a fracture, and the burden, or rather the duty upon the respondent does not lie to rebut that; in other words, it is not the duty of the respondent to bring evidence before this bureau to show the absence of a fracture; it is rather a duty or burden on the petitioner; therefore, I don't believe in this case that the petitioner suffered a basal fracture. There is no evidence before me to make such a finding. It is true that the petitioner  
40 was rendered unconscious for a certain period, but that in itself does not establish that there was

*Findings.*

a basal fracture; therefore, I conclude that the petitioner has failed to establish that there was a basal fracture.

I do find that the petitioner is suffering with rigidity of the neck in the cervical column of the spine, and that his head is inclined toward the right side of his shoulder, on the right shoulder. 10

There is evidence, rather testimony, adduced in behalf of the respondent to show that this is due to a non-traumatic condition, due to various types of infections, and the postural defect is due to some interference of the muscles that are not in themselves of traumatic origin.

It is difficult for me to escape the fact that for this particular accident, wherein the petitioner was struck on the head by a wooden four by four and rendered unconscious, that for this condition he was treated for a period of five months by one doctor, and sometime thereafter by another respondent's doctor for the specific condition, that is a condition of the neck, as Doctor Van Shott testified. I don't hesitate at this time to say that I put unusual credence in Dr. Van Shotts' testimony. I believe his testimony deserves more weight than all the other experts. 20

Now, what does Dr. Van Shott testify to? He testified that he treated this man for a condition in the right side of his neck, just below the mastoid process, that he held his head toward the right side. 30

Now, the question presents itself is this petitioner just holding his head to the side of his body for effect? In other words, is he a malingerer?

It is difficult to brand a man a malingerer simply because it is the opinion of one or two doctors. 40

*Findings.*

I hesitate here to brand this man as a malingerer just because one or two doctors are of the opinion that it is done voluntarily for a purpose.

10 I think, in this case, there is ample evidence before me to show, by way of logical and reasonable inference, that the injuries that he suffers from are the result of this accident, and was the prime producing factor of his present condition.

It is difficult to determine, and I am not trying to decide whether this stiff neck is due to a nerve injury, or brain injury, or due to some neck muscle, but it is due to the accident. I don't hesitate to say that this man's condition is due to the trauma he suffered in August, 1930.

20 Now, the question presents itself: how much permanent disability is he suffering from? That is another difficult problem. The Act specifically states where an injury is not one that is included in the schedule, then it must be considered in terms of partial total disability; by that I mean the compensation schedule evaluates every particular member of the body, except when it comes to injuries of neck, injuries to the head, or injuries to the trunk of the body itself, and therefore, the manner of estimating that particular disability is in terms of partial total, so that in this particular incident his disability must be fixed in terms of partial total disability, and that brings me to a very difficult problem.

30 This petitioner, in my opinion, suffered no physical impairment of his upper or lower limbs; in other words, he has full use, so far as the evidence discloses, that is normal use of his both hands and feet, but he has this stiff neck, this distorted neck,  
40 and the only logical way of determining the dis-

*Findings.*

ability he is suffering from would be to determine how much of a disabling factor is this distorted neck in that position to him, or in other words, how less useful is he to himself today, to what he was before the accident by reason of this condition, and I feel, after carefully considering the medical testimony, the various defects or rather incapacities that this man is suffering from, particularly the numbness that he complains of on the right side of his head, his apparent loss of hearing, the causation of which is closely disputed so far as the experts are concerned; the experts for the respondent contend that it is due entirely to a chronic condition not in any way related to trauma, wherein the petitioner's physician's claim it is due entirely or directly to the trauma. 10

Considering all these factors, in my opinion, I feel that the petitioner is suffering, by reason of his accident, a disability of fifteen per cent. of total, and I further find that the right inguinal hernia which the petitioner is suffering from is one that is not compensable under the Act, it appearing that the first notice of a hernia was sometime in April of last year. 20

I further find, from his own testimony, that it was there prior to this accident, and that he had had some probable trouble, as he said, in the hernial region. 30

I further find that the temporary disability that has been paid, to April 1, 1931, in my opinion is ample, a period of thirty-two weeks, thirty-six having been paid.

I further find that the petitioner has been adequately compensated for that period, and that his total disability is fifteen per cent. of total, which 40

*Findings.*

is equivalent to seventy-five weeks at twenty dollars per week.

I find that the petitioner is entitled to his costs for medical experts, which I fix in the sum of a hundred and fifty dollars against the respondent, for the five doctors, and for counsel fee, I think the attorney has rightfully earned his allowance of  
 10 counsel fee, which I assess one hundred and fifty against the respondent and one hundred and fifty against the petitioner; the counsel fee is three hundred dollars, and stenographic costs will be paid by the respondent.

Mr. Romine: I want to take an exception to your Honor's findings.

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**Certificate of Deputy Compensation  
Commissioner.**

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

JOHN J. STAHL,  
Deputy Compensation Commissioner.

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**Certificate of Stenographer.**

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

JACOB BAER,  
Court Reporter.

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**Reasons.**

Filed April 9, 1932.

**NEW JERSEY SUPREME COURT.**

<p style="text-align: center;">ANDREW MUDRI,                  Petitioner,                  Defendant in Certiorari,</p> <p style="text-align: center;">vs.</p> <p>UNITED ENGINEERS &amp; CONSTRUCTORS INC., improperly impleaded as Public Service Co. and/or United Engineers &amp; Constructors, Inc.,</p> <p style="text-align: center;">Respondent,                  Prosecutor in Certiorari.</p>	}	<p>On Certiorari.</p> <p>Reasons.</p>	<p>10</p> <p>20</p>
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The prosecutor presents the following reasons for setting aside the determination and judgment brought before this Honorable Court by the Writ of Certiorari in the above entitled cause.

1. Because the determination and judgment of the Workmen's Compensation Bureau awarding petitioner fifteen per cent. total permanent disability totalling 75 weeks at \$20.00 per week is unsupported by any legal evidence. 30

2. Because the judgment of the Workmen's Compensation Bureau awarding petitioner compensation for seventy-five weeks at the rate of \$20.00 per week is excessive and contrary to the greater weight of the legal evidence.

3. Because there was no evidence justifying the finding by the Deputy Commissioner 40

*Reasons.*

of the Workmen's Compensation Bureau that petitioner sustained any impairment of hearing as the result of the accident.

10 4. Because the evidence did not justify the Deputy Commissioner of the Workmen's Compensation Bureau in finding that the petitioner sustained any permanent injury to his neck or back.

5. Because the finding of fact and determination by the Deputy Commissioner of the Workmen's Compensation Bureau are inconsistent.

20 6. Because the finding of fact, Judgment and award of the Workmen's Compensation Bureau is excessive and includes compensation for alleged injuries and disabilities not proven to have resulted from the accident.

7. Because the evidence does not support a determination and judgment of the Workmen's Compensation Bureau that petitioner sustained an injury equivalent to 15% of total permanent disability.

30 8. Because the said determination and judgment of the Workmen's Compensation Bureau are in divers other respects, irregular, unjust, illegal and oppressive to the prosecutor.

HENRY H. FRYLING,  
Attorney for Respondent-Prosecutor.

Service of a copy of the within Reasons hereby acknowledged this 30th day of March, 1932.

JOSEPH F. A. RUBACKY,  
Attorney of Defendant in Certiorari.

**Opinion of Supreme Court.**

Filed March 31, 1933.

## NEW JERSEY SUPREME COURT.

No. 206, October Term, 1932.

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 ANDREW MUDRI,  
*Petitioner-Respondent,*
*vs.*
 UNITED ENGINEERS & CONSTRUCTORS, INC., (impleaded as Public Service Co., and/or United Engineers and Constructors, Inc.),  
*Respondent-Prosecutor.*


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*On Certiorari.*

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Submitted October Term, 1932; decided March 31, 1933.

Before Justices Parker, Lloyd and Heher.

For the petitioner-respondent, Joseph F. A. Rubacky (Feder and Rinzler, of counsel).

For the respondent-prosecutor, Henry H. Fryling (Elmer W. Romine, of counsel).

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PER CURIAM. This writ brings up for review the judgment of the Workmen's Compensation Bureau, awarding to the petitioner compensation on the basis of 15% of total and permanent disability.

It is conceded that the petitioner suffered injury from an accident which arose out of and in the course of his employment, but the prosecutor insists that no permanent disability resulted, and that therefore the findings of the

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*Opinion of Supreme Court.*

Deputy Commissioner are not supported by the proofs.

10 The petitioner undoubtedly sustained severe injuries. While he was in a trench, assisting in the construction of concrete forms, a cave-in occurred, and heavy pieces of timber and sand fell upon him, inflicting head and shoulder injuries. The Commissioner found that at the time of the hearing, some eighteen months after the accident occurred, he had a rigidity of the neck, and that his head inclined toward the right shoulder. There was evidence of injury to the cervical nerves and muscles. There was also testimony tending to show impaired hearing of the right ear, and numbness of the right side of the head.

20 The prosecutor contends (1) that the petitioner does not suffer from these alleged disabilities, and (2) that if he is so afflicted, they did not have a traumatic origin. The Commissioner rejected these contentions, and rightly so. We find in the proofs ample support for his conclusion that petitioner suffered permanent injury from the accident in question, and that he was permanently disabled to the extent of 15% total disability. The physicians, as is  
30 usual in such cases, gave varying estimates of the extent of petitioner's disability. We do not understand that it is the prosecutor's contention that if the petitioner was injured to the extent found by the Commissioner, and such injury was the result of an accident which arose out of and in the course of petitioner's employment, the award is excessive. If so, it is devoid of merit.

40 The judgment brought up for review will therefore be affirmed, with costs.

**Order of Affirmance.**

Filed April 8, 1933.

NEW JERSEY SUPREME COURT.

No. 206, October Term, 1932.

ANDREW MUDRI,  
*Petitioner-Respondent,*

*vs.*

UNITED ENGINEERS & CONSTRUCTORS, INC., (impleaded as Public Service Co., and/or United Engineers and Constructors, Inc.),  
*Respondent-Prosecutor.*

*On Writ of Certiorari.*

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A writ of certiorari having been issued out of this Court to review the judgment of the Workmen's Compensation Bureau and having duly considered the record, the reasons and the briefs filed by petitioner-respondent and respondent-prosecutor at the October Term, 1932 of this Court,

It is ORDERED that the said judgment brought up for review be and it is hereby affirmed with costs to be taxed in favor of the said petitioner-respondent and against the said respondent-prosecutor.

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Rule entered April 8, 1933

On motion of

JOS. F. A. RUBACKY,

Attorney for Petitioner-Respondent.

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**Notice of Appeal.**

Filed May 12, 1933.

NEW JERSEY SUPREME COURT.

10	ANDREW MUDRI, <div style="text-align: right; padding-right: 20px;"><i>Petitioner,</i></div> <div style="text-align: right; padding-right: 20px;"><i>Defendant-in-Certiorari,</i></div>	}	<i>On Certiorari.</i>
	<i>vs.</i>		
20	UNITED ENGINEERS & CONSTRUCTORS, INC., (improperly impleaded as Public Service Co., and/or United Engineers and Constructors, Inc.), <div style="text-align: right; padding-right: 20px;"><i>Respondent,</i></div> <div style="text-align: right; padding-right: 20px;"><i>Prosecutor-in-Certiorari.</i></div>		

To Joseph F. A. Rubacky, Esq., attorney for petitioner, defendant-in-certiorari, New Peoples Bank Building, Passaic, New Jersey.

SIR:

30 TAKE NOTICE that the respondent-prosecutor appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in the New Jersey Supreme Court in favor of the petitioner-defendant and against the respondent-prosecutor in the above entitled cause.

Dated: May 9, 1933.

HENRY H. FRYLING,  
 Attorney for Respondent,  
 Prosecutor-in-Certiorari.

Notice of Appeal.

(Endorsed):

Service of a copy of the within Notice of Appeal is hereby acknowledged this 10th day of May, 1933.

JOS. F. A. RUBACKY,  
Attorney for Petitioner, 10  
Defendant-in-Certiorari.

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**Ground of Appeal.**

Filed May 17, 1933.

**NEW JERSEY COURT OF ERRORS  
AND APPEALS.**

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ANDREW MUDRI,  
*Defendant-Appellee,*  
*vs.*

UNITED ENGINEERS & CONSTRUCTORS, INC., (improperly impleaded as Public Service Co., and/or United Engineers and Constructors, Inc.),  
*Prosecutor-Appellant.*

*On Certiorari.  
On Appeal  
from  
Supreme  
Court.  
Ground of  
Appeal.*

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To Joseph F. A. Rubacky, Esq., attorney for defendant-appellee, New Peoples Bank Building, Passaic, New Jersey.

SIR:

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TAKE NOTICE that the following is the ground of appeal which the prosecutor-appellant will urge why the judgment heretofore rendered in the above entitled cause by the New Jersey Supreme Court should be reversed, set aside and for nothing holden:

1. That the Supreme Court erred in giving judgment for the defendant-appellee instead of for the prosecutor-appellant.

HENRY H. FRYLING,  
Attorney for Prosecutor-Appellant.

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(Endorsed):

**Affidavit of Service.**

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

FREDERIC R. REED, being duly sworn, according to law, on his oath says: I served a copy of the within Notice of Appeal on Joseph F. A. Rubacky, attorney of petitioner, at his office, New Peoples Bank Building, Passaic, New Jersey, at 9:30 A. M., on Tuesday, the 16th day of May, 1933, personally, by leaving the same with the person in charge of said office, namely Miss Victoria Poean. 10

FREDERIC R. REED. 20

Sworn and subscribed to before me  
 this 16th day of May, 1933.

JOSEPH R. WILSON,  
 A Notary Public of New Jersey.

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## New Jersey Court of Errors and Appeals

ANDREW MUDRI,

*Defendant-Appellee,*

*vs.*

UNITED ENGINEERS & CON-  
STRUCTORS, INC., (improperly  
impleaded as Public Service  
Co., and/or United Engineers  
and Constructors, Inc.),  
*Prosecutor-Appellant.*

*On Appeal  
from New  
Jersey  
Supreme  
Court.*

### BRIEF OF PROSECUTOR-APPELLANT.

#### Preliminary Statement.

This is an appeal from the Supreme Court on an affirmance of a judgment and determination of the Workmen's Compensation Bureau. The judgment and determination was taken direct to the Supreme Court by a writ under and by virtue of the provisions of P. L. 1931, p. 1217, which provided that review of determination and judgment of the Workmen's Compensation Bureau was to be taken directly to the Supreme Court, the writ under said act being substituted at that time in the place of an appeal to the Court of Common Pleas.

The appellant here (prosecutor in certiorari) challenged in the court below the right of the Workmen's Compensation Bureau to make an award which included the impairment of hearing, and set up under Point I of its brief in the Supreme Court that the award and judgment in this regard was excessive, and unwarranted.

The Supreme Court overlooked this point and failed to make any decision with regard thereto.

The object of this appeal is to have a decision on the Point raised, namely, that the judgment was excessive in that the 15 percent allowance for the total embraced and included compensation for alleged loss of hearing, *whereas the proofs disclosed no loss of hearing as a result of the accident.*

#### Statement.

Defendant-appellee, Andrew Mudri, claimed that while working in a hole on August 18, 1930 (Printed State of Case, p. 31) he suffered injuries by a cave-in (pp. 32-33). Among the disabilities defendant-appellee alleged impairment of hearing (pp. 35-36).

The only physician on behalf of the defendant-appellee who testified that the alleged impairment of hearing was due to the accident was Doctor Reeves. His opinion was based on the assumption that defendant-appellee had a basal fracture (p. 73) but no such fracture was evident in any X-rays that were taken and no fracture was proven.

*Doctor Reeves admitted that if the defendant-appellee had not sustained a basal fracture his opinion that impairment of hearing was due to trauma, would be changed (p. 74, l. 15).*

The prosecutor-appellant's doctors all testified that there was no evidence of a basal fracture (pp. 114, 119, 152, 162); that the defendant-appellee exhibited no evidence of a permanent disability.

In the findings by the Deputy Commissioner he stated that no basal fracture had been proven (p. 176, ll. 36-38).

Dr. Dias, for prosecutor-appellant, found that the nerve of the ear on each side was normal (p. 138, l. 23), and that the tests by bone conduction were normal (p. 139, l. 20). His conclusions, based upon his findings, were that there was no loss of hearing as a result of the accident.

During the time that Doctor Van Schott, Jr. treated the defendant-appellee at the request of the prosecutor-appellant *there was no complaint made to him by the defendant-appellee of any impairment of hearing*. All that the defendant-appellee complained of was from pain in the right side of his neck (p. 130, l. 34; p. 134, l. 15).

The other injuries complained of by the defendant-appellee, compensation for which was included in the award, was an affectation of the muscles of the shoulder and an alleged permanent stiffness of the neck. As to this alleged condition there was a dispute between the physicians testifying for the defendant-appellee and those testifying on behalf of the prosecutor-appellant.

In this appeal the prosecutor-appellant will confine its argument to the sole question of the award being excessive in view of the fact that the judgment included an allowance for loss of hearing as a result of the accident and will contend that the evidence did not justify an affirmance of an award for 15 percent of total, *including as it did compensation for impaired hearing*.

Prosecutor-appellant sets forth the following as its points for reversal under the grounds of appeal as filed (p. 188).

## I.

The defendant-appellee suffered no impairment of hearing as the result of the accident.

## II.

The Supreme Court erred in affirming the judgment of the Workmen's Compensation Bureau.

## III.

The judgment as affirmed by the Supreme Court should be reversed and set aside as being excessive.

## ARGUMENT.

## POINT I.

The defendant-appellee suffered no impairment of hearing as the result of the accident.

The defendant-appellee failed to prove that he suffered any impairment of hearing as a result of the accident.

It was held by Deputy Commissioner Goas in *Rostin v. Richardson & Boynton Co.*, 5 N. J. Misc. Rep. 745 (not officially reported) that:

“It is incumbent upon a petitioner to prove his claim by a fair preponderance of credible testimony.”

and to the same effect by Judge Van Riper in the Essex Common Pleas Court in the case of *Falatowich v. Brewster & Son*, 9 N. J. Misc. Rep. 441 (not officially reported) on a review of determination and judgment of the Workmen's Compensation Bureau.

Also in *Griesbach v. Adam Black & Sons*, 10 N. J. Misc. Rep. 895 (not officially reported) Deputy Commissioner Corbin of the Workmen's Compensation Bureau reiterated the rule based upon decisions of the Supreme Court as follows:

“The burden of proof is upon the petitioner to sustain the allegations set forth in the petition in accordance with the decisions of our upper courts. *Bryant v. Fissell*, 84 N. J. L. 72; *Dunnewald v. Steers*, 89 *Id.* 601; 99 Atl. Rep. 345. The proof adduced by the petitioner to sustain this burden must be competent evidence and must be such evidence, that the inferences drawn therefrom are probabilities and not possibilities.”

The defendant-appellee in the original case produced four physicians, but of the four testifying only one, namely Doctor Reeves, testified that the impairment of hearing which he found in the defendant-appellee was due to trauma. The doctor based his opinion on the assumption that there was a basal fracture (p. 73) but admitted that if in fact there was no basal fracture his opinion that impairment of hearing was due to trauma would be changed (p. 74, l. 15).

Doctor Dean A. Wry, testifying for the defendant-appellee, made no mention with regard to impairment of hearing.

Doctors Saffron and Koppel, testifying for the defendant-appellee, incidently mentioned that they noted an impairment of hearing in the defendant-appellee but gave no testimony as to the cause of the impairment of hearing so that there was only one testifying physician for defendant-appellee who expressed the opinion that the impairment of hearing was due to the accident and he was in doubt because he stated if the defendant-appellee did not sustain a basal fracture his opinion would be changed in that regard.

There was ample evidence on the part of the prosecutor-appellant below to show that there was no basal fracture.

Doctor Percy H. Terhune, an X-ray specialist, testified that he found no pathology in the X-rays of the skull (p. 114) and that there was no evidence of a basal fracture (p. 115, l. 10).

Doctor Alfred Jahn, another X-ray specialist, testifying on behalf of the prosecutor-appellant, stated that he found no evidence of a fracture of the skull (p. 119, l. 30).

Doctor Nicola, another testifying physician for the prosecutor-appellant, and a specialist in orthopedic surgery (p. 151, l. 4) testified that there was no evidence of a fracture in the X-rays (p. 152, l. 24).

The Deputy Commissioner, at the conclusion of the hearing, said (p. 176, l. 26):

“One of the disputed factors in this case is the question of a basal fracture of the skull.

“The burden of proof rests upon the petitioner to establish by direct and positive evidence that there is such a fracture, \* \* \*. *I don't believe in this case that the petitioner suffered a basal fracture. There is no evidence before me to make such a finding.*

\* \* \* I conclude that the petitioner has failed to establish that there was a basal fracture.” (Italics ours.)

Notwithstanding this finding by the Deputy Commissioner, which obviously excluded from consideration the opinion of Doctor Reeves, he included in his award of 15 percent compensation for loss of hearing (p. 179).

The prosecutor-appellant's proof clearly showed that there was no loss of hearing as a result of the accident.

Doctor Van Schott, Jr., who was the physician treating the defendant-appellee at the request of the prosecutor-appellant, stated that all the defendant-appellee complained to him of was pain in the right side of his neck (p. 130, l. 28) and that at no time did the defendant-appellee ever complain to him about his hearing (p. 134, l. 16).

Doctor Dias, an expert specializing in eye, ear, nose and throat disabilities, being called by the prosecutor-appellant, testified that he began his clinical work in 1903 (p. 135) and at the present time is eye surgeon at the St. Barnabas' Hospital in Newark, and visiting eye and ear physician at the Irvington General Hospital, in Irvington, N. J.

Even though there may have been an inference that the hearing of the defendant-appellee was impaired by the accident, which we have already pointed out by decisions, could not be the basis for an award, the evidence of Doctor Dias, which was not disputed, dispells any doubt and clearly establishes that there could be no loss of hearing resulting from the accident.

Doctor Dias examined defendant-appellee on two occasions, namely, July 1, 1931 and January 21, 1932 (p. 135, l. 20). He found that the left frontal sinus was very dark and that the right frontal and both superior maxillary sinuses were light (p. 136, l. 5).

The nose reveals a thickened and deflected intranasal septum and that it was deflected to both sides. The middle turbinates were hypertrophied and there was muco-pus in the left nasal passage. The doctor also found that the defendant-appellee suffered from chronic intumescent rhinitis, and that the defendant-appellee had a chronic catarrhal nasopharyngitis.

In examining the ears Doctor Dias found that both drumheads were retracted to their extreme degree; that there were deposits of lime, many of them on the right drumhead and a few on the left drumhead.

In examining and testing the hearing of the defendant-appellee with a tuning fork Edelman-Galton Whistle it was revealed that the defendant-appellee could hear the very lowest tones that the human ear can hear (p. 136, l. 31).

The doctor's examination further revealed that the auditory nerve of each side was normal and that bone conduction was normal on each side (p. 136, l. 40).

By examining the defendant-appellee using the cold caloric test and then by the Barany Revolving Chair it was found that the organs of equilibrium were normal as well as the brain tract (p. 137, l. 4).

The doctor further stated that the evidence of deposits of lime in the drumhead of both ears indicated a chronic catarrh of the middle ear that had existed for a long period (p. 137, l. 10).

The dizziness which the defendant-appellee complained of would be caused by the chronic mucopurulent sinusitis (p. 138, l. 37).

Dr. Dias positively stated *that the hearing was in no way affected by an injury or trauma* (p. 139, l. 7) and that if the petitioner had any injury to his hearing that was the result of trauma "*he would have a shortened bone conduction on that side of his head.* It would manifest itself in the tests that would be given for bone conduction. If the nerve was destroyed entirely, there would be a total absence of hear-

ing that I would have detected by the other tests" (p. 139, l. 12).

Dr. Dias stated that he found the bone conduction was normal (p. 139, l. 20).

On cross examination Dr. Dias said "There is only one type of trauma that could be the cause of mucopurulent sinusitis; that is a punch or an injury that goes through the bone and causes infection at the time, like a man being hit with a piece of steel, or a hatchet, or a bullet."

It will be noted that no other physician called on the part of defendant-appellee made such exhaustive and scientific tests as did Dr. Dias.

In addition the prosecutor-appellant called two distinguished and eminent neurologists, namely, Dr. Stevenson and Dr. Dowd, both of whom stated that they found no nerve involvement of any kind.

The prosecutor-appellant therefore submits that there was no proof on the part of the defendant-appellee that any alleged impairment of hearing was due to or caused by the trauma and that the preponderance of the evidence supports the statement that there was no loss of hearing as the result of the alleged accident.

## POINT II.

**The Supreme Court erred in affirming the judgment of the Workmen's Compensation Bureau.**

The opinion of the Supreme Court in this matter was as follows (pp. 183 to 184):

"This writ brings up for review the judgment of the Workmen's Compensation Bureau, awarding to the petitioner compensa-

tion on the basis of 15% of total and permanent disability.

"It is conceded that the petitioner suffered injury from an accident which arose out of and in the course of his employment, but the prosecutor insists that no permanent disability resulted, and that therefore the findings of the Deputy Commissioner are not supported by the proofs.

"The petitioner undoubtedly sustained severe injuries. While he was in a trench, assisting in the construction of concrete forms, a cave-in occurred, and heavy pieces of timber and sand fell upon him, inflicting head and shoulder injuries. The Commissioner found that at the time of the hearing, some eighteen months after the accident occurred, he had a rigidity of the neck, and that his head inclined toward the right shoulder. There was evidence of injury to the cervical nerves and muscles. *There was also testimony tending to show impaired hearing of the right ear, and numbness of the right side of the head.*

"The prosecutor contends (1) that the petitioner does not suffer from these alleged disabilities, and (2) that if he is so afflicted, they did not have a traumatic origin. The Commissioner rejected these contentions, and rightly so. We find in the proofs ample support for his conclusion that petitioner suffered permanent injury from the accident in question, and that he was permanently disabled to the extent of 15% total disability. The physicians, as is usual in such cases, gave varying estimates of the extent of petitioner's disability. We do not understand that it is the prosecutor's contention that if the petitioner was injured to the extent found by the Commissioner, and such injury was the result of an accident which arose out of and in the course of petitioner's employment, the award is excessive. If so, it is devoid of merit.

“The judgment brought up for review will therefore be affirmed, with costs.” (Italics ours.)

It will be noted that the Supreme Court in referring to the injuries stated that the petitioner “had a rigidity of the neck, and that his head inclined toward the right shoulder” (p. 184, l. 14). And that “There was evidence of injury to the cervical nerves and muscles” (p. 184, l. 15).

As to this feature of the injuries, while there was abundant evidence on the part of the prosecutor-appellant’s physicians to the contrary, such will not be discussed as a point for reversal.

The Supreme Court also in its opinion said (p. 184, l. 16):

“There was also testimony tending to show impaired hearing of the right ear, and numbness of the right side of the head.”

*There was no evidence to support this statement or assumption of the Supreme Court.*

The Supreme Court then proceeds in its opinion to state what it conceives the contentions of the prosecutor below, now appellant here, contended on the review (p. 184, l. 20) namely “(1) that the petitioner does not suffer from these alleged disabilities, and (2) that if he is so afflicted, they did not have a traumatic origin.”

So far as this latter statement goes by the Supreme Court in assuming the contentions of the appellant-prosecutor below, they are correct, but the Supreme Court failed to appreciate and take into consideration or to decide one of the important contentions of the prosecutor, as was set forth under Point I of its brief in the Supreme Court, namely that there could be no allowance for loss of hearing and that is most

patent because in the concluding statement of the opinion of the Supreme Court it is said:

“We do not understand that it is the prosecutor’s contention that if the petitioner was injured to the extent found by the Commissioner, and such injury was the result of an accident which arose out of and in the course of petitioner’s employment, the award is excessive.”

The very point that the appellant as prosecutor below was making in the Supreme Court was that the award *in so far as it included loss of hearing as a result of the accident, was excessive*, and it was so stated in the brief.

The appellant, prosecutor below, was not urging that the award was excessive in so far as the allowance was made for the injuries to the muscles of the shoulder, or stiffness of the neck was concerned, but the point urged before the Supreme Court was that the Deputy Commissioner of the Compensation Bureau *had wrongfully, under the evidence included compensation for loss of hearing*, which made up an award of 15 per cent. of total.

In other words inasmuch as the award being 15 per cent., it should have been, if any allowance was to be given to the petitioner for the stiffness of the neck, and involvement of the muscles of the shoulder considerably less than 15 per cent. of total.

It is quite apparent therefore that the Supreme Court entirely overlooked the contentions of the appellant, prosecutor below, because the opinion of the Supreme Court is entirely devoid of any mention or reference to the award being excessive in including compensation for loss of hearing and, therefore, it is axiomatic from a reading of the opinion of the Supreme Court that they did

not pass upon or decide such contention of the prosecutor below.

After considering the testimony as referred to in Point I the prosecutor-appellant submits that there can be no doubt but that any claim for loss of hearing as a result of the accident must be eliminated. The prosecutor-appellant further submits that when the Deputy Commissioner below included in his award of 15 per cent. the claim disability for loss of hearing (p. 179, l. 13) that such was improper and that the Supreme Court instead of affirming a judgment which included compensation for loss of hearing which was manifestly not proven should have reversed said judgment.

### POINT III.

**The judgment as affirmed by the Supreme Court should be reversed and set aside as being excessive.**

There can be no doubt but that the Deputy Commissioner below wrongfully included in the award of 15 per cent. of total an allowance for apparent loss of hearing because not only did the defendant-appellee fail to prove loss of hearing as a result of the accident but that the preponderance of the evidence is against such a finding.

It is also quite apparent from a reading of the opinion of the Supreme Court that such tribunal overlooked this objection to the determination and did not pass upon the question. In other words the Supreme Court, as a reviewing tribunal, never passed on the question raised that the award was excessive in that it included an allowance for an apparent loss of hearing which was not included.

There were various estimates of physicians for the defendant-appellee at the original hearing as to disabilities to defendant-appellee's neck and shoulder but we are inclined to the belief that the Deputy Commissioner accepted from all of the estimates given the opinion of Dr. Koppel, who was the more experienced physician testifying in industrial cases. Dr. Koppel stated, based upon his examination of the man and from his experience with such injuries, he considered that the defendant-appellee suffered a permanent disability of between 5 to 7½ per cent. of total (p. 95, l. 28). His estimate, of course, was based only upon the disabilities which he found and excluded consideration of any disability from impairment of hearing. In other words Dr. Koppel did not attempt in his testimony to make any statement that the impairment of hearing was caused by trauma and therefore did not volunteer any estimate for alleged impairment of hearing.

When the Deputy Commissioner made a total award of 15 per cent., including as he did, compensation for impairment of hearing, it is only fair to assume that he allowed the difference between the maximum of 7½ per cent. as testified to by Dr. Koppel as representing the extent of the other disabilities and the total of 15 per cent. as allowed which included compensation for impairment of hearing.

At any rate there should be no question but that there was error on the part of the Supreme Court in sustaining an award of judgment for 15 per cent. of total when it clearly appears that the Deputy Commissioner was including in that award some element of percentage for impairment of hearing, whereas under the findings of

the Deputy Commissioner, excluding as he did basal fracture, there was in fact, after such a finding, no evidence whatsoever on which to base any award for impairment of hearing and especially so when we consider the testimony of Dr. Dias and the other physicians for the prosecutor-appellant, it is obvious that the claim for impairment of hearing should not be sustained.

We, therefore, respectfully urge that this court reduce the findings as excessive, or that this court reverse the judgment and award, as sustained by the Supreme Court, on the ground that it improperly includes loss of hearing, and to that extent is therefore excessive.

### CONCLUSION.

The Deputy Commissioner was in error in making an award for 15 per cent. of total disability including as he did compensation in that award for apparent loss of hearing. The defendant-appellee failed to prove any loss of hearing. The preponderance of the evidence is against any finding that the defendant-appellee sustained a loss of hearing as a result of the accident. The Supreme Court erred in sustaining the judgment including as it did compensation for apparent loss of hearing which had not been proven. The judgment of the Supreme Court should be reversed and set aside as excessive or reduced.

Respectfully submitted,

HENRY H. FRYLING,  
Attorney for and of Counsel  
with Prosecutor-Appellant.

ELMER W. ROMINE,  
Of Counsel.



## New Jersey Court of Errors and Appeals

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ANDREW MUDRI,  
Petitioner,  
Defendant-Appellee,

vs.

UNITED ENGINEERS & CON-  
STRUCTORS, Inc. (improperly  
impleaded as Public Service  
Co., and/or United Engi-  
neers and Constructors,  
Inc.),

Respondent,  
Prosecutor-Appellant.

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On Respond-  
ent-Prosecu-  
tor's Appeal  
from New  
Jersey Su-  
preme Court.

### BRIEF FOR PETITIONER (DEFENDANT- APPELLEE).

#### Preliminary Statement.

Petitioner, Andrew Mudri, was employed by the respondent (appellant), and received injuries arising out of and in the course of his employment. He filed a petition in the Workmen's Compensation Bureau to recover compensation under the Workmen's Compensation Act for the injuries sustained. In that tribunal he was awarded 15 per cent for permanent total disability (Case, p. 28).

The respondent was allowed a writ of certio-

rari to review the judgment of the Workmen's Compensation Bureau (Case, p. 30), but the Supreme Court, affirmed the judgment (Case, p. 185). The respondent (appellant) appeals from the judgment of the Supreme Court affirming the Compensation Bureau's award.

Appellant now contends that in the Supreme Court it challenged the right of the Workmen's Compensation Bureau to make an award for 15 per cent permanent total disability, but that that Court overlooked that point and failed to make a decision with regard thereto.

This claim is not only unfounded, but even if it were so, the proper mode of raising that contention was by a petition for a rehearing and reargument in the Supreme Court, and not by an appeal to this Court.

Moreover, the rule, as well settled by this Court, is that in cases of certiorari, an adjudication of the Supreme Court on questions of fact is final and binding on this Court, and not open to review, if it appears there was competent evidence upon which its conclusions could have been based. Controlled by this rule, there being competent evidence in the record constituting a basis for the conclusions of the Supreme Court, the adjudication of that Court is final, and may not be disturbed by this Court.

**ARGUMENT.****POINT I.****Appellee suffered an impairment of hearing as a result of the accident.**

In this connection it is important to observe the manner in which the accident arose, and the nature and severity of the injuries sustained. The accident arose in this manner: While petitioner was in a trench, assisting in the construction of concrete forms, a cave-in occurred, and heavy pieces of timber and sand fell upon him, inflicting head and shoulder injuries. The Commissioner found that at the time of the hearing (some eighteen months after the accident occurred) petitioner still had a rigidity of the neck, and his head inclined toward the right shoulder. There was evidence of injury to the cervical nerves and muscles. There was also testimony tending to show impaired hearing of the right ear, and numbness of the right side of the head (Opinion of the Supreme Court, Case, p. 184, ll. 3-20). The petitioner's whole neck was sore, his nose was swollen badly, and the right side of his head was critically injured; he had two holes in the head and bled freely through them (Case, p. 33, ll. 1-40; and Case, p. 34, ll. 20-30). He also received an injury to the chest and back of the neck (cross bone) (Case, p. 35, ll. 1-10). Petitioner testified, "The right ear, I can no hear right, and I get a big noise. That is, the side feels sore all the time" (Case, p. 36, ll. 15-20). The accident occurred on August 18th, 1930, yet a year and a half later,

at the time of the hearing in the Workmen's Compensation Bureau, petitioner still suffered pains and noise in the head, which bothered him constantly (Case, p. 34, ll. 30-40). The petitioner testified that the doctor cleaned "my head and my ears. Q. You mean that he cleaned your ears out? A. Yes" (Case, p. 45, ll. 20-30). These treatments continued up to about two weeks prior to the hearing (Case, p. 41, ll. 30-40). Before the accident, he had no trouble with his hearing (Case, p. 44, ll. 1-20), but since the accident, he says, "Now, you say that your hearing is no good? A. No good" (Case, p. 45, ll. 5-10).

His inability to hear was demonstrated by the following cross-examination:

"Q. Do you do heavy lifting? A. *I can't hear right*" (Case, p. 44, ll. ).

Counsel for the appellant tried to insinuate that the petitioner experienced little or no difficulty in hearing his questions, but the record shows that counsel was addressing his questions to the petitioner's good ear (left ear).

"Q. But you can hear me all right, can't you? A. Yes, *that side* I hear" (Case, p. 45, ll. 1-10).

Dr. Reeves, an eye, ear, nose and throat specialist, treated the petitioner for his head injuries (Case, p. 40, ll. 30-40, and Case, p. 41, ll. 10-30). He has been practising in New Jersey for seven years, and is also licensed to practice in Budapest. He has been practising medicine altogether about twenty-two years, fifteen years of which were spent in Budapest. He is a senior in ear, nose and throat work at

St. Mary's Hospital in Passaic (Case, p. 59, ll. 1-30). He has testified probably fifty or sixty times in Hungary in ear, nose and throat cases, and three or four times in similar cases before the Workmen's Compensation Bureau (Case, p. 66, ll. 1-15). He treated petitioner about sixteen times (Case, p. 60, ll. 30-35), the first time on June 9th, 1931. At that time the petitioner was complaining about a steady pain and noise in the head; he could not hear well. This steady noise in the head involved most of the right side, but also the left side; it took in the whole right side; it was localized mostly around the left ear; he complained about pain by moving his head or by putting his neck back (Case, p. 61, ll. 10-20). Dr. Reeves gave the patient the whispering word test and found his hearing to be about twenty-five centimeters on the left side, and in conversational voice, he heard about a yard from the right ear, and one and a half yards from the left ear (Case, p. 62, ll. 1-20). Dr. Reeves made this finding: On the right ear, petitioner heard nothing at all, and on the left ear, he could only hear a whispering voice ten inches distant (Case, p. 68, ll. 30-40); on both sides there is a calcification of the drum membranes, which were retracted, causing loss of normal reflexes; the short processes of the malleus protruded (Case, p. 62, ll. 30-40; Case, p. 63, ll. 1-10); the bone conduction was lower on the right side than on the left and was shorter on the left; the lateralized Weber Test was to the left (Case, p. 67, ll. 20-40). On cross-examination, appellant endeavored to show that petitioner's impairment of hearing was due to a catarrhal condition, disconnected from the accident, but

Dr. Reeves steadfastly maintained that this permanent injury was the direct and proximate result of the accident, and that whatever catarrhal condition he had was due to the accident (Case, p. 72, ll. 30-40). He stated that in his opinion the petitioner sustained a total permanent functional disability to the ears amounting to about eighty per cent (Case, p. 66, ll. 15-45).

“Q. Now, in your test of this man, did you find any evidence of a chronic aural catarrh? A. A chronic what?”

“Q. A chronic aural catarrh. A. A chronic catarrh, you mean?”

“Q. Yes. A. Now, I didn't find any aural catarrh.

“Q. You didn't find any aural catarrh? A. Well, that is a chronic catarrh, is that right?”

“Q. Yes. He does have that, doesn't he? A. Yes.

“Q. *And you say that that is due from this accident, is it?* A. Yes” (Case, p. 71, ll. 32-40; Case, p. 72, ll. 1-15).

The doctor was firm in his belief that this catarrhal condition was due to the trauma—the accident.

“Q. I say if a man has trouble with his ear, a catarrhal condition, showing in the ear, plus the fact that he has a sinus condition or evidence of catarrh of the nose, it is most likely due from the catarrhal condition and not from the trauma, isn't it? A. Well, that is your opinion and my opinion is not.

“Q. Your opinion is it is not? A. *My opinion is that in this case it is caused by trauma.*

“Q. *All right. You are going to stick to that?* A. Yes” (Case, p. 72, bottom; Case, p. 73, ll. 1-15).

Dr. Saffron made his first examination of the petitioner on August 11th, 1931, and the last on January 28th, 1932. He observed that petitioner kept his neck to the right and that he held it rigid. He had a rigidity and spasticity of the right sternocleidomastoid, and a rigidity and spasticity of the right trapezius muscle; he could not bend the neck back at all; he could not hyperextend it; he could bend the neck forward but he complained of a good deal of pain; there was tenderness over the sternocleidomastoid (triangular muscle of neck) and trapezius (also a neck muscle) muscles, and marked tenderness to touch, with complaint of pain (Case, p. 81, ll. 1-30). The muscle involvement extended from about the posterior triangle of the neck and part of the anterior triangle of the neck on the right side, that is from the base of the skull down to the region of the clavicle; the muscle was rigid and very tender (Case, p. 81, ll. 20-40, and Case, p. 82, ll. 1-10). *Dr. Saffron tested the petitioner for his hearing by using the ordinary auditory tests, that is, the watch, and the whispering voice. He found a marked diminution of hearing on the right side; he found no improvement on the second and third examinations, if anything, the condition was aggravated* (Case, p. 82, ll. 20-40). There was an injury to the nerves supplying these muscles of the neck and the cervical nerves of the neck (Case, p. 83, ll. 10-20). The petitioner's general disability, in Dr. Saffron's opinion, was caused by an injury to the vertebrae—a crushing of the vertebrae (Case, p. 92, ll. 10-15).

Dr. Saffron emphasized that he did not at-

tribute the petitioner's loss of hearing to a basal fracture, but insisted that it was due to the trauma:

"Q. On what do you base your statement that this man's condition is due to trauma, on what findings? A. In the first place, I am taking into consideration the history of the accident" (Case, p. 89, ll. 15-22).

"Q. Well, then, what effect did this injury have upon this man if you did not feel that he had a basal fracture? What caused his condition? A. The injury to the vertebrae.

"Q. What was the injury to the vertebrae? A. A crushing of the vertebrae" (Case, p. 92, ll. 10-15).

The doctor said:

"In connection with this case, this man suffered a crushing injury of the vertebrae of the back of the neck, and as the result of that there has been an injury to the nerves, the second and third cervical nerves, which supply the sternocleidomastoid and the trapezius muscles, and as the result of this constant irritation, due to this trauma to the nerves, this man has a rigidity and a spasticity of the muscles supplying both nerves. That is how I judge my answer" (Case, p. 89, ll. 32-40; Case, p. 90, ll. 1-4).

And in answer to a hypothetical question, the witness reaffirmed his opinion that the injury was the direct and proximate result of the accident (Case, p. 91, ll. 20-40).

Dr. Saffron further testified:

"Q. Now, it may very well be that the man's present condition is entirely due

to a catarrhal condition and in no way related to trauma, isn't that so? A. Not in my opinion'' (Case, p. 89, ll. 10-18).

At the trial, counsel for appellant made this admission:

''Mr. Romine: If your Honor please, it already appears in the testimony of their eye, ear, nose, and throat specialist that the man has a catarrhal condition.

''The Court: Due to the trauma?

''Mr. Romine: He says it is due to the trauma \* \* \*'' (Case, p. 88, ll. 1-15).

It is significant to note the testimony of Dr. Van Schott, a witness produced by the appellant, in view of the high regard that the Deputy Commissioner expressed for this doctor in his findings. He said:

''I do not hesitate to say that unusual credence is given to the testimony of Dr. Van Schott'' (Case, p. 27, ll. 28-30).

Dr. Van Schott testified that the petitioner had a laceration of the back of the scalp, about an inch and a quarter long, in the occipital region of the scalp, some abrasions of his forehead, left side, and his face; contusion of the back of his neck, on the right side (Case, p. 124, ll. 20-25), and that he complained of *pain* on the right side of his neck, *just below the ear, and a wooden feeling* on the scalp *just above the ear, on the right side* (Case, p. 124, bottom, and Case, p. 125, ll. 20-35); and that during the time he treated the petitioner, his complaints were of the *right side of his neck, high up, just below the mastoid process* (Case, p. 125, ll. 12-20); and when he saw the petitioner the last time, in April, 1931, he still complained

especially about pain or tenderness on pressure over the upper part of the external mastoid muscle, and some numbness in the scalp just above the ear, on the right side (Case, p. 125, ll. 25-30).

Among the doctors who were produced by the appellant, the only one who treated the petitioner was Dr. Van Schott, whose testimony we already referred to, and of whom the Deputy Commissioner wrote so highly. Of the other physicians who were produced by the appellant, two of them, Dr. Jahn and Dr. Terhune, merely testified to a reading of the X-rays. Dr. Stevenson did not examine the petitioner until the morning of the hearing. He merely said he found no evidence of organic disease in his nervous system, although he admits that *he found a spasm of the muscles on the right side of the neck* (Case, p. 149, ll. 20-40).

Thus it is clear from the testimony of the appellant's witnesses, one of whom the Deputy Commissioner emulated in his findings, that the petitioner's chief complaint, and his persistent complaint, was of pain in the upper part of his neck on the right side, *just below the ear*, and numbness to that part of the scalp, and of pain and tenderness on pressure over the upper part of the external *mastoid muscle*, and some numbness in the scalp *just above the ear*, on the right side (Case, p. 126, ll. 10-15; p. 128, ll. 1-40).

Aside from this, it is important to keep in mind that the Deputy Commissioner stated in his conclusions, as shown in the return to the writ of certiorari, and in his findings of fact (Case, p. 179, ll. 10-20), that *the petitioner's*

*loss of hearing was apparent.* In other words, the Commissioner not only relied on the medical testimony tending to prove the petitioner's loss of hearing, but upon his observations, for, he says, it was *apparent*.

Thus, we believe that we have demonstrated that the testimony is substantial, credible, and convincing, justifying and requiring a finding that the petitioner suffered an impairment of hearing as a result of the accident.

The result is, that two tribunals have found that the petitioner's impairment of hearing is directly due to the accident, and that his total permanent disability is equal to fifteen per cent. We contend that the adjudication on this question of fact by the Supreme Court is final and binding upon this Court and not open to review.

In *Angelotti vs. Town of Montclair*, 109 N. J. Law 360, this Court held:

"It is well settled, that in cases of certiorari, an adjudication of the Supreme Court on questions of fact is *final*, and will not be disturbed by this Court, if it appears there was competent evidence upon which its conclusions could have been based." (Our italics.)

In an earlier case, this Court, in an opinion by Mr. Justice Trenchard, stated:

"A decision of a question of fact decided by the Supreme Court upon certiorari is *binding upon this Court*, and not open to review on writ of error, if there appears to have been competent

evidence upon which its conclusion could have been based." (Our italics.)

*George vs. Board of Excise of City of Elizabeth*, 74 N. J. Law 816.

Among numerous other cases where the same rule was adhered to is *Suburban Land Imp. Co. & Real Estate Associates v. Mayor, etc., of Borough of Vailsburgh*, 68 N. J. Law 311, decided by this Court.

Appellant says that "The Supreme Court overlooked this point (the claim that there was no impairment of hearing due to the accident) and failed to make any decision with regard thereto." The language of the opinion itself demonstrates that the Supreme Court gave due consideration to this claim and rendered its decision with regard thereto. The opinion of that Court reads:

"There was also testimony tending to show impaired hearing of the right ear, and numbness of the right side of the head.

"\* \* \* We find in the proofs ample support for his conclusion that petitioner suffered permanent injury from the accident in question, and that he was permanently disabled to the extent of 15% total disability. The physicians, as is usual in such cases, gave varying estimates of the extent of petitioner's disability. We do not understand that it is the prosecutor's contention that if the petitioner was injured to the extent found by the Commissioner, and such injury was the result of an accident which arose out of and in the course of petitioner's employment, the award is excessive. If so, it is devoid of merit" (Case, p. 184, ll. 24-40).

Even if it should be assumed that the Supreme Court failed to consider or decide the point now made by appellant, the mode of redress open to appellant was not by an appeal to this Court, but by a petition addressed to the Supreme Court for a rehearing and reargument of the case in that court. Not having done so, appellant has no cause for complaint.

2 Ruling Case Law, page 173, Section 149, states as one of the grounds for a rehearing on appeal:

“The original opinion fails to consider a point raised on the appeal, which, if tenable, might be fatal to the cause of action set forth in the complaint.”

And at page 174:

“The failure of the Appellate Court to consider a matter alluded to in the oral argument and referred to in the petitioner’s brief, though but lightly, may be ground for a rehearing.”

Also:

“And when a point was overlooked by the Court in its opinion a rehearing should be granted.”

## POINT II.

**The Supreme Court did not err in affirming the judgment of the Workmen’s Compensation Bureau.**

Under this head, appellant’s argument is substantially the same as that under Point 1 of its brief. We believe that our answer to Point 1,

considered in this connection, is a sufficient answer to Point 2.

### POINT III.

**The judgment as affirmed by the Supreme Court should not be reversed and set aside as being excessive.**

Under this head, the substance of the appellant's claim is, there should have been no award made for impairment of hearing, and that if the impairment of hearing is excluded from the case, petitioner's award for total permanent disability should be accordingly reduced. We have already pointed out that the impairment of hearing was directly due to the accident, and this being so, the award is not excessive. In this connection, we quote what the Supreme Court says:

“We do not understand that it is the prosecutor's contention that if the petitioner was injured to the extent found by the Commissioner, and such injury was the result of an accident which arose out of and in the course of petitioner's employment, the award is excessive. *If so, it is devoid of merit.*” (Our italics.)

### Conclusion.

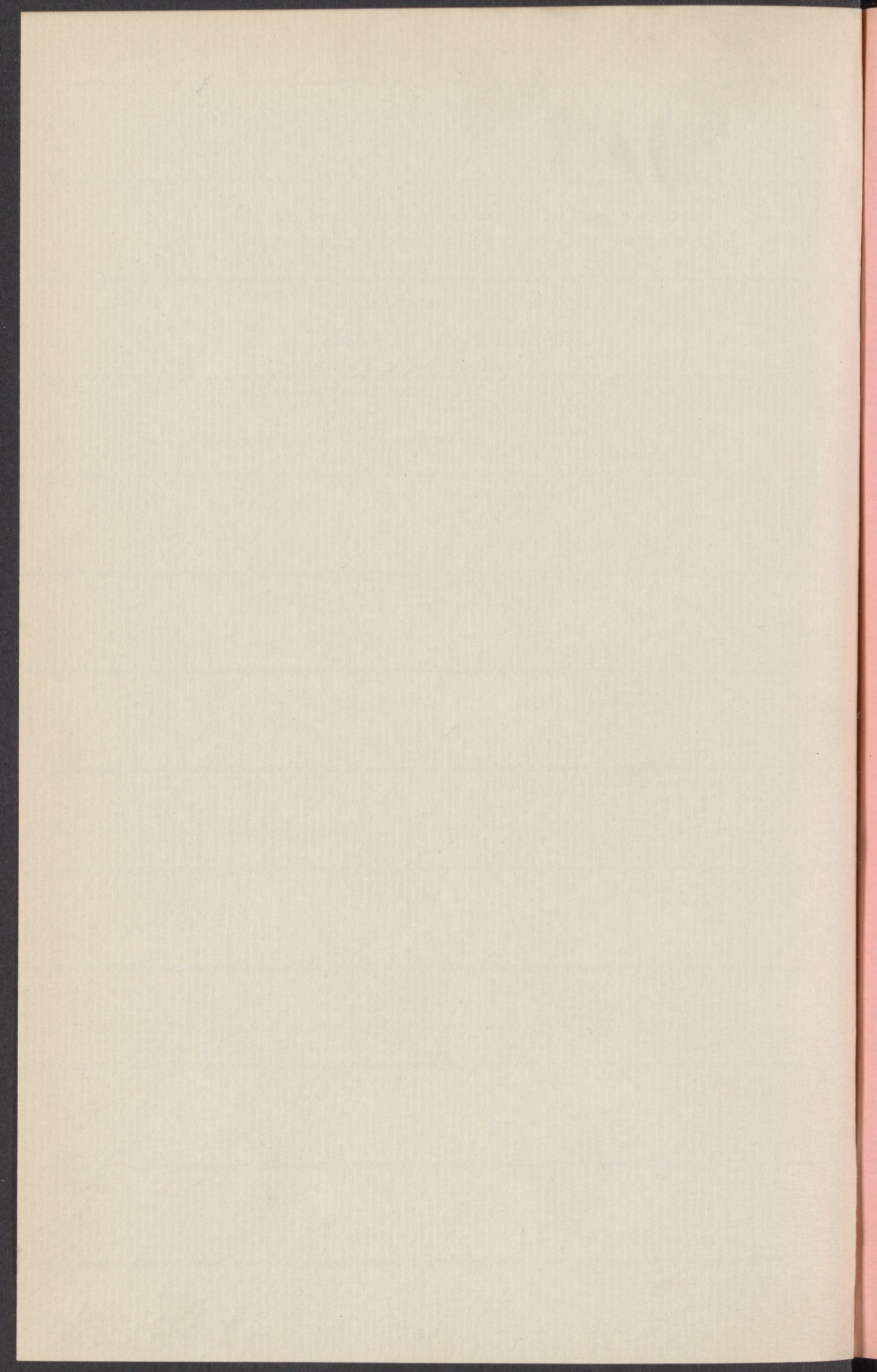
The Deputy Commissioner did not err in making an award of fifteen per cent, or in including in the award an allowance for the impairment of hearing. The Supreme Court did not err in affirming the judgment of the Deputy Com-

missioner and, therefore, its judgment should be affirmed with costs to be taxed against appellant.

Respectfully submitted,

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(Defendant-Appellee).

FEDER & RINZLER,  
Of Counsel.



New Jersey Court of Errors and Appeals

In the Matter of the Estate of  
the Late WILLIAM T. BROWN  
of Essex County, deceased

By \_\_\_\_\_  
Attorney  
for the \_\_\_\_\_  
Estate

STATE OF THE CASE

JOHN E. BROWN

Plaintiff in Error

vs.

WILLIAM T. BROWN

Defendant

WILLIAM T. BROWN

Plaintiff in Error

