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New Jersey Court of Errors and Appeals

INTERNATIONAL MOTOR COMPANY, a corporation, *Prosecutor-Appellant,* *vs.* PATRICK J. PURCELL, *Defendant-Respondent.*	*On Appeal.*

Brief of Prosecutor-Appellant.

Facts.

The defendant was in the employ of the prosecutor at its factory in Plainfield, New Jersey, and on October 21, 1915, while working as a machinist and tightening a set screw in a fan about eight feet above the floor of the factory, the shafting was set in motion and caught the defendant's right arm. The defendant jerked himself back before the machinery was stopped and while doing so knocked his head and jaw against the box and was also struck with the belt lacing on the right eye. He continued to work for the prosecutor, however, from the day of the accident up to January 6, 1916, but at lighter work than at the time of his accident.

The judgment of the Union County Common Pleas Court was affirmed in the Supreme Court and the appellant company is now appealing from the decision of the latter court.

Reasons on appeal appear on pages 131 and 132 of the case.

Reasons 1 and 2 may be considered together, as both relate to the propriety of the trial court's allowance for a temporary disability. The determination of facts and order appear on pages 111-117, inclusive, of the case.

The trial court's findings with regard to the temporary disability are as follows:

> "The temporary disability to the arm and shoulder continued at least during the time that petitioner worked for respondent, after the injury. It appears that during that period the petitioner received wages at the rate of $9.24 per week. His labor was worth something and the respondent chose to pay him for it, one-half of the amount of his old wages. If he had been able to do work of greater value there is no doubt that he would have been paid a larger amount per week. As this amount was paid for services, it is clear that he received nothing for his disability during the period intervening between his injury and January 6, 1916. He is, therefore, entitled to compensation for temporary disability for the same period, less the first two weeks following his disability. All other sums paid to him (amounting to $360.35) shall be deducted from the amount allowed as compensation." (Case, p. 116, l. 32; p. 117, l. 14.)

It is our view that compensation for temporary disability is for the purpose of continuing to some extent the wages to an employee while his injuries are in the process of healing and *during which time he is unable to work,* and the permanent allowance is compensation for the loss of ability to work to some degree for the balance of the employee's life. We cannot conceive of a case where a person can be temporarily

disabled and still do work for wages. It seems that this would be an anamalous situation. In other words, a person is either temporarily disabled and does not work or may not claim compensation as for a temporary disability, if he does any work.

If the court's reasoning is correct, an injured person might go to another factory, which had some fairly light jobs open, and obtain a position, for example, at nine dollars a week, merely tending furnaces or somewhat similar work, where previously he had been in receipt of wages of fourteen dollars a week, and then collect both wages from the second factory amounting to nine dollars a week, and during the same period of time collect his compensation from the factory at which he was injured, in the amount of seven dollars per week. This would total sixteen dollars a week as the earnings of the injured man, whereas while working at his regular work he was only earning fourteen dollars per week. This is only one of many examples that may be given. This is entirely contrary to the spirit of the Act creating the possibility for injured workmen to recover compensation, for, under the Workmen's Compensation Act, as amended in April, 1913, in Paragraph 21 thereof there is a very important statement with regard to the analogy between wages and compensation and among other things it provides:

> "* * * that it is the intention of this Act that the compensation payments are in lieu of wages, and are to be received by the injured employee or his dependents in the same manner in which wages are ordinarily paid."

The case of Creagh v. Nitram Co., 84L. p.243 at p.245, holds that compensation for temporary disability is to compensate for loss of wages.

The Compensation Act wisely provided that the injured employee during temporary disability would receive only one-half of what he was earn-

ing at the time he was hurt. In the above example, however, the injured would receive more money while being temporarily disabled than he was receiving while working regularly. The purpose of reducing the amount of earnings of an injured was to provide against malignering, but the allowance of compensation for temporary disability and wages for the same periods of time would create just such a condition of affairs as the Legislature attempted to guard against.

Our Act as originally passed in 1911, Chapter 95, and with several supplements thereto, contemplated and provided for three characters of injury; firstly, total temporary disability; secondly, permanent and partial disability; and, thirdly, permanent disability. It will be seen that, although the permanent disability is divided into two classes, namely, that of permanent and total and permanent and partial, yet temporary disability has not been so divided. We have always assumed that in order for a person to be entitled to compensation as for a temporary disability, the temporary disability must be total. To conclude otherwise would create the anomalous situation described in the above example, and it would seem that the purpose of the Legislature in fixing one-half of wages during the period of temporary disability would be thwarted by holding that compensation is payable for partial temporary disability. Among other reasons for the provision in the Act for a 50 per cent. allowance of compensation during the period of disability was the one above cited. The provision as it is, if it is determined that compensation is only payable in cases of temporary and total disability, would tend to bring the workman back to his employment as soon as he physically could go back to it. In other words, the receipt of

wages for services being performed and compensation for a temporary inability to do work, are inconsistent rights.

It will be noted in the Determination of Facts filed by the trial court and in the opinion of the Supreme Court, that the injured received for his services as a watchman nine dollars and twenty-four cents per week, and so there can be no question, but that if there were any disability present, its character must have been that of a partial temporary disability.

The opinion of the Supreme Court (Case, pp. 125-129) refers to Paragraph 11 as amended in 1913, which provides: "For injury producing temporary disability." And the opinion goes on to say (regarding temporary disability):

> "And this does not require that a temporary disability must be total, but provides for any disability of a temporary character which to any degree impairs the earning capacity of the injured person by depriving him of the use of physical functions existing before the accident, and in this case compensation for the injury to the arm was limited to the continuance of the temporary disability. The liability attaches when the accident happens and can only be discharged in the manner provided for in the statute, nor does the fact that the defendant was paid wages by the prosecutor for services of a less exacting character, rendered after the accident, affect the amount of compensation to be awarded when the wages are paid for a service of a different nature from that performed before the accident and for less wage without any agreement or understanding, etc."

The New Jersey Compensation Act, Chap. 95, P. L. 1911, as amended in 1913, was not intended to provide for compensation on account of partial tmeporary disability. This will become evident by a comparison of the British Act with our own. The basis of the New Jersey Workmens Compensation Act as passed in 1911, was the British Workmesn Compensation Act. In the latter Act, there is a provision covering temporary disability which reads as follows, "Where total or partial incapacity for work results from the injury a weekly payment during the incapacity not exceeding 50% of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not, then for any less period during which he has been in the employ of the same employer, such weekly payment not to exceed one pound." Bradbury's Workmens Compensation, Volume 2, Page 1749, under Schedules. The section with regard to temporary disability under the New Jersey Act as amended in Chapter 174, of the laws of 1913, which is paragraph 11 A, reads as follows. "For injury producing temporary disability, 50% of the wages received at the time of injury, subject to a maxium compensation of $10 per week, and a minium of $5 per week". It will readily be seen that our Legislature did not make provision for partial temporary disability, such as the English Act provides. We think the Legislative's intent is quite clear, that it meant to follow the English Act merely with regard to total incapacity to work for a given length of time.

If the injury is not a permanent one what is the difference if, during the injured's inability to do his regular work, he takes up work of a different character than that at which he was employed at the time of his accident? We do not force him to take this other work and we do not claim that he must seek it. It is to be remembered that there is a vast distinction to be made between the allowance of compensation for temporary disability and for a permanent disability. Suppose the injured returned to work of the same character, but was temporarily able to do a less amount, we cannot see how the situation would be altered.

It will be noted that the case of *De Zeng Standard Company* v. *Pressy,* 86 N. J. L., 496, is quoted as authority for the above excerpts from the Supreme Court's opinion. By a careful examination of this case and one that follows it, *Blackford* v. *Greene,* 87 N. J. L., 359, the fact will be disclosed that the injury for which compensation was allowed was a permanent one. In the first case the permanent condition amounted to a 30 per cent. loss of the use of the arm. Therefore, it was immaterial whether the injured was working or not when the employer was paying him the compensation which the Act prescribes for the partial loss of use of a function under Paragraph 11, Subdivision C. The distinction to be made is, that compensation for a permanent disability is in the nature of an indemnity for the life-long loss suffered by the injured, whereas compensation for a temporary disability is to insure to the injured a portion of his wages until he starts to work. The further distinction between temporary disability and partial permanent disability is that the first disables a person from work for a temporary period, whereas the

second may not disable the person from work, but permanently reduces the amount of work which the injured is capable of performing. Whether such disability manifests itself at the time of the injury or at some future time is immaterial. It, therefore, must be readily seen that the case, which the Supreme Court opinion quotes as the authority for its conclusion, amply supports the view taken by the appellant, but does not support the reasoning of *concurrent payments of wages and compensation for a temporary disability.*

Under the Supreme Court opinion the injured might continue at another line of work for a much longer period than was necessary and receive therefore wages only slightly less than he received at his regular employment, still, however, collecting compensation as for a total disability from his regular employer. This not only militates against the provision of the Act creating the right to recover compensation but is contrary to all ideas of equity and justice.

Reason 3 deals with the right of a trial court to arbitrarily fix the number of weeks' compensation to be paid for a given injury without the court at least setting forth in his findings a proper legal basis on which the award can be made, which legal basis is supported by the evidence in the case.

> *Long* v. *Bergen Common Pleas,* 86 Atl. 529; 84 L. 117.

The portion of the Determination of Facts which deals with the allowance of 175 weeks for a permanent and partial disability, reads as follows:

> "In arriving at the amount of compensation which should be awarded for the disa-

> bility to the eyes, I cannot adopt the provisions of the schedule contained in the act for the loss of one or both eyes. Nor does the percentage of the disability affixed by the doctors express the extent of the disability which petitioner has sustained as a workingman. With a double vision the petitioner can never again work at his trade, as a machinist, and must confine his employment to occupations that will never produce anything more than a small compensation. It seems to me that this disability amounts to nearly one-half of a total disability of both eyes. Total disability to both eyes would call for compensation for four hundred weeks, and in this matter I have concluded to allow one hundred and seventy-five weeks as the period of permanent disability." (Case, p. 116, ll. 1-22.)

The opening sentence of the above excerpt seems to express an utter disregard of the Legislative enactment, because it intimates an adoption of some means of arriving at the permanent and partial disability not sanctioned by the statute. The court in the Determination of Facts refers to Doctor F. C. Ard, produced by the defendant, as an eye specialist, as a very convincing witness. (Page 114, ll. 20-27 of Case.)

The court, however, in the excerpt of testimony hereinbefore given, namely page 116, lines 1-22, suggests that the testimony of Doctor Ard, in fact, of all the doctors must conform to the court's own views upon the disability suffered by the defendant herein, which of course, would be improper because it would be substituting the court's ideas of a disability, without evidence of witnesses to support it. The main error, however, in the court's reasoning is that the per-

centage of the injured's work, that of a machinist. This the court has no legal right to consider. (*Bateman Mfg. Co.* v. *James E. Smith,* 85 Law, page 409.) In that case the court held:

> "This schedule, in order to serve its purpose, must be applicably alike to all ages and to all classes of employees. * * * The only variance contemplated by the statute is that caused by a difference in wages earned."

The trial court in this case goes on to prophesy the fact that this injured will have to confine his energies to occupation that will never produce anything more than a small compensation. The doctors did not testify to this fact, nor did anyone else, and we fail to see any legal reason for the court to use this fact, of his own personal knowledge, as a basis for a subsequent finding. There isn't a single statement in the evidence which, in any way, fixes a permanent disability present, would entitle the injured to an award of 175 weeks for the same. Further than that, there is evidence that the disability, if one there be, is a temporary one. It is to be noted that, in fixing the extent of disability, the injured's physician Doctor Ard, considered the injured's *occupation* when he fixed the disability present.

> Q As to his disability I mean. Now, assuming the eye that is normal and taking the condition of his eye as you found it, what would be the extent of the disability or percentage of disability? A Oh, that is an awful hard question to answer. *Depends on the man's occupation. Depends on what he has got to do.* He might be able to do some things as well as anybody, and he might be absolutely unable to do other

things. I don't know whether there is any legal guide to the question of per cent. It is awfully hard to answer. (Page 51, ll. 3-19.)

Under the ruling in the Bateman case, above referred to, this could not be used for a basis for an award of compensation. The most important fact, however, is that the doctor's testimony did not support an allowance of any permanent disability at all, for in his opinion it was a temporary disability.

Q The Court may have to adopt some theory. If you can help the Court I will feel very much obliged. This man was a machinist and worked at his trade in the machine shop, and received wages paid a machinist, something around twenty dollars a week, maybe, or a little less. Now, he testifies that he cannot work at that trade because he cannot see lines well. He cannot distinguish lines as well as he could before he was injured. And that he was discharged in one place because of his deficiency in this respect. Now, that being so, what would you say was the disability that he suffers from the injury which he received to his eyes? A Well, I think if these statements are all true that I have made, that he is absolutely debarred—that is, at least *as long as the disability remains, he is unable to follow his trade.* That goes without saying according to this condition. *I would perhaps make just as good a guess, or you can make as good a guess as I could on the disability.* You see his right eye, as it is now at present time, perhaps it is worth about one-third of an eye. Two-thirds disability and you would have to classify his left eye

as at least a half if his field of vision is so restricted as it is. (Page 51, l. 20, to p. 52, l. 9.)

Doctor A. T. Van Horn, another eye specialist, gives no opinion as to the character of the injury, whether it is temporary or permanent. Doctor Ard, upon whose evidence the court seemed to rely so much, testified that the injury was temporary. At the close of defendant's case the prosecutor moved to dismiss the petition on the ground that the evidence failed to show that the eye injury was a permanent one. (Page 63, l. 37, to p. 64, l. 26.)

The defendant's counsel then admitted that he had failed to prove that the eye injury was a permanent one, and defendant's counsel with the court's permission thereupon allowed the defendant to attempt to prove the character of the eye injury. (P. 64, l. 28, to p. 65, l. 20.) Doctor F. C. Ard was then recalled by the defendant, the injured man, and testified as follows:

> Q Doctor, what have you to say as to the permanency of the injuries received by Mr. Purcell? A *I don't know whether they are permanent. I don't believe they are permanent. I think there is a fair chance to recover, that is, sometime or other, I can't answer that question.*
>
> Q About within what length of time? A No reason guessing. If I am correct in the diagnosis of the manifestations it might last three months to ten years. Nobody knows. But we do know other cases have lasted a long time. *And more frequently have recovered in a comparatively short time.*

Q Then in your opinion you do not think it is permanent? A *I don't know.* (Page 65, ll. 25-40.)

It will be seen from this excerpt that at least there was no proof that the injury was a permanent one and for that reason there was no evidence to support an allowance of 175 weeks for a permanent loss of vision. Doctor Ard, in fact, seemed to be under the impression that they were not permanent, for he says: "I don't believe they are permanent; I think there is a fair chance to recover, that is, some time or other." (Page 65, ll. 27-31.)

The burden of establishing the character of the injury was therefore not met by the defendant. This burden remains with the defendant throughout the entire case. (*Bryant* v. *Fissell,* 84 Law, page 72.)

An award of 175 weeks, even assuming that there were some permanent disability, would be improper because, while there has been some estimate by the doctors as to a disability in each eye, still there would be no testimony as to what percentage of 400 weeks the loss of vision in both eyes would amount to. Our contention, however, is that there is absolutely no testimony of a permanent disability.

Reason Four is to a great extent covered by the argument in Reason Three, with regard to the question of an allowance of compensation for a permanent and partial disability to the defendant's right eye, but there is a further ground upon which the court's finding is improper with regard to an allowance for an injury to the left eye. *There is no evidence in the case to indicate that an injury such as was received by the*

defendant could set up permanently a loss of vision in the left eye.

We have examined the testimony of Doctor Ard and Doctor Van Horn, both produced by the defendant, and not a single statement by either doctor suggests that the left eye could be permanently disabled by the injury described by this defendant. In fact, Doctor Ard does not attribute the injury itself as the cause of disability, for he testifies as follows:

> "What I have told you is largely what you might term subjective, that is, statements of the patient in response to various tests and questions." (Page 47, ll. 6-9.)
>
> "A I have not discovered any lesions that would account for that group of symptoms. The nearest answer I can give you to what diagnosing or giving it a name would be hysteria; hysterical ametropia, or hysterical amaurosis, or hysterical weakness." (Page 47, ll. 16-21.)

Again, on page 48, lines 24-35, it appears in this testimony that the doctor's evidence is based entirely upon what the patient told him. We, however, wish to refer to our argument in Reason Three with regard to the allowance for a permanent and partial disability, and again claim that no testimony in the case supports a finding of a permanent and partial disability.

It might be proper to suggest that Doctor Van Horn, defendant's other eye specialist, as well as Doctor Ard, found no subjective symptoms, and that the former stated that to locate the source of the disability it would be necessary to depart from the work of an eye specialist. (Page 62, ll. 6-11.)

REASON FIVE.

This reason deals with the part of the Determination of Facts, which reads as follows:

> "There is nothing in the testimony to indicate that the injury or disability is of a temporary character, and I am left to conclude that it is permanent." (Case, page 115, ll. 37-40.)

In the first place, this finding is incorrect, because the evidence covering the nature of the injury indicates a *temporary disability,* if any.

> "Q Doctor, what have you to say as to the permanency of the injuries received by Mr. Purcell? A I don't know whether they are permanent. *I don't believe they are permanent.* I think there is a fair chance to recover, that is, sometime or other, I can't answer that question.
>
> Q About within what length of time? A No reason guessing. If I am correct in the diagnosis of the manifestations it might last three months to ten years. Nobody knows. But we do know other cases have lasted a long time. *And more frequently have recovered in a comparatively short time.*
>
> Q Then in your opinion you do not think it is permanent? A *I don't know.*" (Case, page 65, ll. 25-40.)

This testimony is given by Dr. Ard, who is the only eye specialist of the injured man, called for the purpose of giving an opinion as to the nature of the injury. If the Court believed the testimony of the petitioner below, then he would necessarily be bound by Dr. Ard's testimony.

There is a further reason which we believe indicates the error into which the trial court has fallen, and that is, that his findings, according

to the Determination of Facts, are not based upon evidence but rather a lack of evidence. If the trial court in this case is correct, then the burden which should be placed upon the claimant has been shifted to the shoulders of the employer. Our view is that the claimant must bear the burden throughout the entire action, and if his testimony does not disclose the extent of the disability, or its nature, he has failed to sustain that burden. This reasoning, we believe, is fully approved in the case of *Bryant* v. *Fissell,* 84 N. J. L., p. 72. We cannot conceive that the trial court expected the employer to supply proof for the claimant's case, but that seems to be the gist of the opinion as it appears in the excerpt of the Determination of Facts hereinbefore quoted.

We most respectfully contend that on all the above grounds the judgment should be reversed, set aside and for nothing holden.

Respectfully submitted,

KALISCH & KALISCH.

Isidor Kalisch,
On the Brief.

New Jersey Court of Errors and Appeals

PATRICK J. PURCELL, Petitioner-Appellee, vs. INTERNATIONAL MOTOR COMPANY, A CORPORATION, Respondent-Appellant.	On Appeal from Supreme Court.

Brief of Petitioner-Appellee

FACTS

The petitioner-appellee was in the employ of the Respondent-appellant in its factory in Plainfield, N. J., receiving Eighteen Dollars and Forty-eight ($18.48) Cents per week.

On October 21st, 1915, while working as a machinist and tightening a set screw in a fan about eight feet above the floor of the factory, the shafting and pulleys were set in motion and the petitioner-appellee's right arm was caught in the belt. The petitioner-appellee jerked himself back before the machinery was stopped, and while doing so knocked his head and shoulder against a box, and was also struck with the belt lacing on the right eye.

About two weeks after the accident the petitioner-appellee was sent for by the superintendent of the respondent-appellant to act as watchman at one of their garages. The petitioner-appellee continued to work for the respondent-appellant until the 6th day of January, 1916, when he was discharged by the respondent-appellant for being incompetent. The petitioner-appellee's arm and shoulder were temporarily disabled, and he is still suffering from the injury to his eyes. The respondent-appellant admits that it re-

ceived notice of the injury and that the injury was sustained while petitioner-appellee was in the employ of the respondent-appellant and following his usual occupation.

POINT 1.

The court was justified in finding that the petitioner-appellee was injured while in the employ of the respondent-appellant; that he received an injury to his shoulder and arm, and also to his eyes, and that the injury to his eyes continued to exist at the time of the trial. The court's findings as a fact that these injuries existed and that the petitioner-appellee was still suffering from the injury to his eyes, must be accepted as conclusive and binding.

Sexton vs. Nwk. Dist. Tel. Co. 84 N. J. Law, page 85.

POINT 2.

There is no dispute that the petitioner-appellee was suffering from a temporary disability by reason of the injury to his arm and shoulder; and, while he was acting as watchman for the respondent-appellant, he was compelled to have his wife, daughter and son assist him from time to time in the performance of his duty; that he received from the respondent-appellant one-half of his wages, and that no compensation for his temporary disability was allowed.

It would seem ridiculous to suppose that the statute intended to prevent the employe from securing some sort of employment while he is temporarily disabled from following his usual occupation. It must be admitted that the petitioner-appellee from the time of the accident to January 6th, 1916, was able to follow his usual occupation (that of machinist) and receive the same compensation. The fact that he was employed by the respondent-appellant in another ca-

pacity and at a smaller wage because of his inability to follow his usual occupation should not work against his receiving the compensation provided for under the act for the temporary disability. The court was justified from the testimony in determining that the temporary disability existed to January 6th, 1916, and that the petitioner-appellee was entitled to temporary disability from November 8th, 1915, to January 6th, 1916.

POINT 3.

The attorneys for the respondent-appellant question the court's findings that the injuries to the eyes of the petitioner-appellee are permanent.

We would call the court's attention to the testimony of Dr. Ard, page 45, showing the condition he found the petitioner-appellee's eyes on May 8th, 1916, and on December 12th, 1916, all of which tends to show that the petitioner-appellee is suffering from a contracted vision in both the right and left eyes; also double vision. The doctor's testimony also shows that the optic nerve on the right eye was paler than on the left eye, and that there was a small scar noticed just at the end of the cornea; also, that on the first examination there was a noticed slight blurriness of the upper nasal quadrant of the optic nerve and that these conditions were present at the first and last examinations, except that the contraction of the field of vision in the right and left eyes was even more marked. On page 48 Dr. Ard testified as follows:

> "Q. You also notice the condition of his eyes; both his right and left eye were more serious on December twenty-third when you made the examination than in May? A. Apparently so; yes. As far as the field of vision was concerned.
>
> "Q. From your examination, and what you have stated, what would you say as to the disability of the right eye?
>
> "Mr. Kalisch: When?

"Q. On December twelfth; the last examination. It was December twelfth you made your examination? Your last examination? A. Last time. December twelfth. (Question and answer repeated by the stenographer). A. It seems to be very much affected."

Dr. Ard also testified, page 52, as follows:

"Q. Do I understand that the right eye is affected to the extent of one-third? A. Two-thirds.

"Q. Two-thirds, and the other one one-half? A. And the other one-half."

The testimony of Dr. Van Horn is practically the same as that of Dr. Ard, all of which indicates that the disability of the right eye is two-thirds and to the left eye one-half.

We might call the court's attention to the fact that there was only one physician called by the respondent-appellant in relation to the injury to the petitioner-appellee's eyes, and it is very striking that this physician should testify that there is absolutely nothing wrong with petitioner-appellee's eyes; either the physician must be mistaken or he did not make a thorough examination, when you consider the reputation of Dr. Ard and Dr. Van Horn, both of whom made several examinations, and testified that the petitioner-appellee is suffering from contracted vision and double sight. You will also notice that the petitioner-appellee, Mr. Purcell, submitted himself for examination whenever requested by the respondent-appellant, and that he was examined by several physicians employed by the respondent-appellant, including Dr. Ard, Mr. Purcell having been examined in May, 1916, by Dr. Ard, at the request of the respondent-appellant.

In relation to the exception taken by the respondent-appellant to the court's findings that the injury to petitioner-appellee's eyes is permanent, the testimony of Dr. Ard on page 65 should be considered:

"Q. Doctor, what have you to say as to the permanency of the injuries received by Mr. Purcell? A. I don't know whether they are permanent. I don't believe they are permanent. I think there is a fair chance to recover; that is, some time or other; I can't answer that question.

"Q. About within what length of time? A. No reason guessing. If I am correct in the diagnosis of the manifestations it might last three months to ten years. Nobody knows. But we do know other cases have lasted a long time. And more frequently have recovered in a comparatively short time.

"Q. Then in your opinion you do not think it is permanent? A. I don't know.

"Q. What is the longest time you have known of a case similar to this?

"Mr. Kalisch: I object. He cannot fix the longest with reference to Mr. Purcell.

"The Court: I will allow it.

"Mr. Kalisch: I ask an exception.

"Exception allowed, sealed accordingly.

"Judge.

"A. I do not recall a case exactly similar to this in my own experience. I have seen hysterical manifestations in one form or another that have lasted varying times. Literature is full of them. Sometimes eight or ten years elapse before they clear up. But it is impossible to put any length of time on a case of that kind. Like guessing on traumatic neurasthenia you are all so familiar with; some recover rapidly and some do not."

You will notice the doctor does not testify that the injury is not permanent, but, in his opinion, he does not believe that it is permanent, but, if not permanent, the disability may last eight or ten years. Under these state of facts we believe that the court was justified in finding that the injuries were permanent upon the same theory that a physical ailment brought about by an accident would be permanent unless it was relieved by a successful operation.

In the case of Feldmand vs. Braunstein, 93 Atlantic Reporter, page 679, the petitioner received a very serious injury to the eye. The judge found that the injury was temporary in character if an operation was performed, but that if an operation was not performed the injury was permanent and amounted to 90 per cent. of the loss of an eye. The judge determined that the injury was temporary and that the petitioner was entitled to receive compensation for an injury during such disability until a further application was made, not to exceed 300 weeks. Upon review, Justice Swayze, in rendering the opinion, stated that the judge erred in basing his award of compensation upon the theory of a temporary disability, when, as he himself found, the disability was permanent, unless there was an operation. There is no testimony in the present case showing that an operation would benefit the eyes of the petitioner-appellee, the only testimony being that the disability **may** cease in eight or ten years.

In the judge's conclusions he protects the interest of the respondent-appellant in the following language:

> "If his disability should disappear before the expiration of the period so fixed, the respondent may apply for a discontinuance of the compensation, and, in order to determine whether the disability continues, the petitioner must, upon reasonable notice from the respondent, at reasonable times, and at proper intervals, without expense to him, submit to examination by physicians selected by the respondent."

The contention of the respondent-appellant that the court erred in its reasoning that the percentage of disability is based upon the character of the injured work is without merit.

The Lord Chancellor, in the case of Ball vs. Wm. Hunt & Sons, Ltd. (1912) (A. C. 496) says.

> "I think there is incapacity for work when a man has a physical defect which makes his

> labor unsalable for less than it would otherwise fetch. It seems to me that the injury for which the statute gives compensation is not mutilation or disfigurement or loss of physical power, but loss of diminution of the capacity to earn wages in the employment in which the injured workman was engaged at the time of the accident."

Justice Parker, in the case of DeZeng Standard Co., Prosecuro vs. Sheridan Pressy, defendant, 86 N. J. Law, page 469, states, in answer to the prosecutor's claim that there cannot be a statutory disability when it appears that the earnings of the petitioner have not been impaired, that

> "for a time an injured employe may be able to earn the same wages as before the accident, but as we read the act, the disability intended thereby is a disability due to loss of a member or part of a member, or of a function, rather than to mere loss of earning power. Even if this were not so, it does not follow that the injured employe had not sustained a distinct loss of earning power in the near or in the remote future, and for which the award is intended to compensate."

In the case of Radcliff vs. Pacific Steam Navigation Co., 1 K. B. (1910) 685, the County Judge being of the opinion that the workman's earning capacity had not been materially lessened, reduced his compensation to a shilling per week. Later, on review, the workman produced evidence that he had been unable to secure employment at his trade of butcher because of the injury to his hand. The court thereupon increased the award per week. On appeal this decision was sustained.

The petitioner-appellee, Mr. Purcell, was a machinist by trade, and, according to his testimony (page 22), he is unable to follow his usual occupation. This fact is corroborated by Dr. Ard (page 51 of testimony, lines 20-40).

A writ of certiorari was issued, and this matter was argued before Justice Bergen, to whom the case was referred, and on August 27th, 1917, Justice Bergen filed an opinion affirming the judgment of the court below.

The petitioner-appellee respectfully submits that there is no error in the findings and determination of the court and that the judgment should not be disturbed.

CODINGTON & BLATZ,
Attorneys of Petitioner-Appellee.

INDEX.

TESTIMONY FOR RESPONDENT.

Writ of Certiorari.

Issued June 2, 1917.

New Jersey Supreme Court.

10

NEW JERSEY, *ss.*

THE STATE OF NEW JERSEY to The Court of Common Pleas in and for [L. S.] the County of Union; William B. Martin, Clerk of said Court of Common Pleas; and PATRICK J. PURCELL;

GREETING:

We being willing for certain reasons to be certified of a certain petition, order, answer, determination and judgment, made and given by James C. Connolly, Esquire, Judge of the Court of Common Pleas of the County of Union, in a certain action, plaint or proceedings brought against the INTERNATIONAL MOTOR COMPANY, a corporation, at the suit of Patrick J. Purcell, to recover compensation as the result of an accident alleged to have been sustained, arising out of and in the course of the employment of the defendant with the prosecutor herein, under the provisions of an Act 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, &c.," approved April 4th, 1911, and the supplements thereto and the amendments thereof, do command you that you send under your seals to our Justices of our Supreme Court of Judicature at Trenton, on the 5th day of June instant, the

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said petition, order, answer, determination, and all other proceedings in the said matter, made and given as aforesaid, and all things touching and concerning the same, as fully as they remain in the said Court of Common Pleas of the County of Union, by whatsoever names the parties may be called therein, together with this writ, that we may further cause to be done thereupon what of right we shall see fit to be done.

WITNESS, WILLIAM S. GUMMERE, Chief Justice of our Supreme Court, at Trenton, aforesaid, this 2nd day of June, nineteen hundred and seventeen.

WILLIAM C. GEBHARDT,
Clerk.

KALISCH & KALISCH,
Attorneys.

Allocatur, June 2, 1917.

The matter be brought on for argument at June Term, 1917.

SAMUEL KALISCH,
J. S. C.

Petition.

Union County Court of Common Pleas.

To the Honorable James C. Connolly, Judge of Union County Court of Common Pleas.

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Your petitioner, Patrick J. Purcell, residing at No. 206 Grandview avenue, in the Borough of North Plainfield, in the County of Somerset, and State of New Jersey, and residing at No. 965 West Front street, in the City of Plainfield, Union County, New Jersey, at the time of the accident hereinafter complained of, respectfully shows:

1. The employer, International Motor Company, has and maintains an office at No. 1325 West Front street, in the City of Plainfield, Union County, New Jersey.

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2. The facts relating to the employment at the time of the injury are as follows: On October 21st, 1915, petitioner was employed by the International Motor Company at its shops on West Front street, Plainfield, New Jersey, as night repair-man, and while following his employment, and in the course thereof, was repairing a pulley in said shop, and while endeavoring to repair the said pulley, the foreman started an electric motor without notice to the petitioner, which motor furnished power for the fan, which connected said pulley, and by reason thereof, and there being no guard upon the belt leading to said pulley, the right arm of the petitioner was caught in the belt, twisting said arm and drawing the same to the pulley, thereby injurying the arm and shoulder of the petitioner; also forcing the face of the petitioner against

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the frame shaft which supported said pulley, injurying the right and left eye of the petitioner, and crushing six teeth.

3. The injuries in extent and character are as follows: The lower side of the right arm being twisted and injured, also the four fingers of the right hand and shoulder, the same being so injured, that the petitioner has lost the total use of the same, thereby making said injury permanent in character. Said petitioner has also lost the sight of the right eye, which is total in character also a partial loss of the sight of the left eye, and the total loss of six teeth.

4. The amount of wages received by the employee at the time of the injury was eighteen dollars and forty-eight cents ($18.48).

5. The respondent had notice and knowledge of the said injury, having paid to the said petitioner five (5) weeks' disability at $9.24 per week.

6. Petitioner alleges that by reason of the facts herein set forth, under and by virtue of the provisions of an act of the Legislature 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, and the supplements thereto and amendments thereof, he is entitled to receive from the said employer, the sum of nine dollars and twenty-four cents ($9.24) per week for the period of 200 weeks for the loss of the use of the arm, 100 weeks for the loss of the sight of the right eye, and 50 weeks

for the partial loss of the sight of the left eye (or "such sum as the Court may adjudge"), which allegation is disputed by the said employer.

WHEREFORE, your petitioner prays that his rights in the premises and the liability of the said employer be determined, and that the amount payable periodically may be computed by the Court, and that your petitioner may have judgment therefor and may have such further relief as may be just. 10

And your petitioner will ever pray.

PATRICK J. PURCELL,
Petitioner.

CODINGTON & BLATZ,
Attorneys for Petitioner. 20

STATE OF NEW JERSEY,
COUNTY OF UNION. } *ss.*

PATRICK J. PURCELL, of full age, being duly sworn according to law on his oath deposes and says that he is the petitioner in the foregoing petition mentioned, that he signed the same and that the contents thereof are true. 30

PATRICK J. PURCELL.

Subscribed and sworn to at
Plainfield, N. J., this 4th day of
March, A. D. 1916.

LAURABEL E. MOFFETT,
(Seal)

Notary Public of N. J.

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Order Fixing Time and Place of Hearing.

Dated March 20, 1917.

UNION COUNTY COURT OF COMMON PLEAS.

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PATRICK J. PURCELL, *Petitioner,* *vs.* INTERNATIONAL MOTOR COMPANY, *Respondent.*	*On Petition for Compensation.* *Order Fixing Time and Place for Hearing.*

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On motion of Codington & Blatz, attorneys for the petitioner, in the above entitled cause, it is hereby ordered that Friday, the thirty-first day of March, 1916, at 10 o'clock in the forenoon, be and hereby is fixed as the time, and the Court Room of the Common Pleas Court of the County of Union, in the Court House at Elizabeth, in the County of Union, and State of New Jersey, as the place for the hearing upon the petition in the said cause.

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Dated March 20, 1916.

JAMES C. CONNOLLY,
Judge.

A true copy,
ABRAM P. MORRIS.

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Answer.

UNION COUNTY COURT OF COMMON PLEAS.

PATRICK J. PURCELL, *Petitioner,* *vs.* INTERNATIONAL MOTOR COMPANY, a Corporation, *Respondent.*	*On Petition.* *Answer.*

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The respondent answering the petition filed in the above stated cause, says that:

1. It admits paragraphs One, Four, Five.
2. It denies paragraphs Two and Six.
3. It admits that the arm, as set forth in paragraph Three of the Complaint was injured, but denies the extent of such injuries.

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KALISCH & KALISCH,
Attorneys for Respondent.

Dated December 14th, 1916.

STATE OF NEW JERSEY, }
COUNTY OF UNION. } *ss.*

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ISIDOR KALISCH, of full age, being duly sworn upon his oath, deposes and says that he is the attorney for the respondent in the foregoing Answer, and its agent in this behalf; that he has read the foregoing Answer, and that the matters and things therein contained are true to the best of his knowledge and belief.

ISIDOR KALISCH.

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Answer.

Sworn and subscribed to before me, this 14th day of December, A. D. 1916.

F. J. Blatz,
M. C. C. of N. J.

10 Consent is given to filing of Answer as of time.

CODINGTON & BLATZ,
Attorneys for Petitioner.

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UNION COUNTY COURT OF COMMON PLEAS.

PATRICK J. PURCELL, *Petitioner,* *vs.* INTERNATIONAL MOTOR CO., *Respondent.*	*Under Employers' Liability Act.*

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Transcript of stenographer's notes of evidence taken in the above entitled matter, before Hon. James C. Connolly, Judge of the Court of Common Pleas, in the Union County Court House, in the City of Elizabeth, New Jersey, on the fourteenth day of December, A. D. 1916, at 11 A. M.

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Appearances: Francis J. Blatz, Esq., for the petitioner. Isidor Kalisch, Esq., for the respondent.

PATRICK J. PURCELL, the petitioner, being duly sworn, on his oath, according to law, saith:

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Direct examination by Mr. Blatz.

Q Purcell, where are you living? A Newark, now.

Q You were living in Plainfield? A Yes, sir; 195 West Front street.

Q Were you ever employed by the International Motor Company? A Yes, sir.

Q At what factory? A Plainfield, New Jersey.

Q 1325 West Front street? A Yes, sir.

40

Q You were employed as what? A Machinist; repairman.

Q How long had you been employed? A About a couple of months, I guess.

Q Prior to the accident? A Yes.

Q On what day did the accident occur? A
10 Twenty-first day of October.

Q What year? A Fifteen.

Q 1915. What were you doing at that time in the course of your employment? A I was doing the general repair work at night. Anything that was directed by the general foreman of the shop.

The Court. What was the date of the accident?

The Court. October twenty-first, 1915.

20 Q On the night of the accident what were you doing just prior to the accident? A I was tightening—I went to tighten up the set screw on the number fourteen Stewart fan. It was erected on a platform about eight feet high from the floor. Directed by John Hazelton, the night foreman.

Q Now, just tell us—were you injured on that night? A Yes, sir.

30 Q About what time? A About eight o'clock.

Q What were you doing at the time of the injury? A I was checking up a set screw was supposed to be loose, on the belt line. I have to find out and told the foreman to shut the motor down and let me look at it and not start it up until I had come down.

(Answer repeated by the stenographer.)

A Correct.

Q What happened? A While up there I
40 had my hand and wrench inside of the pulley feeling on the set screw and all of a sudden

the motor started up and took my arm in around the belt like this, so (indicating with right arm) upon the top side of the belt which held the top shaft drive. I hollered out and this arm was turned right around (indicating right arm). I pulled myself back and hit my head against the back of the ladder and stood up. 10

Q What else, if anything? A I went up to him and said what did you turn that motor on, and he said I forgot all about it. He said I forgot all about it. He said I forgot all about it; he said the oiler was oiling up the line shaft at the time.

Q You say your arm caught in the belt? A In the belt. Between the belt and pulley, and took the right arm right up complete to the shoulder until the jaw hit on the side of the box that was a part of the piecing which came to hold the journal of the drive. 20

Q Did you get hit in the eye? A The belt lays on—where the belt was I got hit right on the eye.

Q Which eye? A Right there on that eye (indicating right eye). And it is there to be seen yet.

Q And you say you jerked away and knocked your head? A Knocked my head on the back of the ladder. 30

Q Were you knocked unconscious? A The stars were knocked out of me for quite a few minutes until I recovered. And I went downstairs and washed my mouth out and went to the foreman and called the foreman over and I said, "What have you done that for?" and he said, "I forgot all about it. Somebody hollered and I don't know who hollered." And I 40

said, "Well, do you think that is the proper way to do?" He said, "Go to Haledon and I will sign anything you want that I started this without your knowledge or consent."

Q When the right side of your face hit the platform did it injure you in any way? A
10 The right side of the face didn't hit the platform, the pulley was laid in a section between the two journals of the drive.

Q What did your face hit? A Top of the box my face hit.

Q Did it knock any teeth out? A Yes.

Q How many? A All six is out now. Crushed the whole six of them; four of them came out then.

Q And the other two were taken out later? A No, they fell right out. When the flesh be-
20 came like a piece of liver on the side of my face the two fell out, on South Second street, eating my dinner one day in front of the shop men.

Q After the injury what did you do? A I went to the emergency aid—they brought me to the emergency aid of the International Motor Company, and they put some stuff on my arm and they told me there was a bone there, I bet-
30 ter send for a doctor. Mr. Haledon made out a report for the doctor. And he said to me at that time—Purcell—

Mr. Kalisch. I object.

Q No. A Perhaps he didn't understand you.

The Court. You must not tell what the doctor said.

A I am speaking of the night foreman. I am not speaking of the doctor.

Q Go ahead. A He told me perhaps he
40 didn't understand you. And he said here is a

report and said it is easy to find out; let him sign that. And Mr. Haledon sent me out and he and Mr. Broad (?) and this gentleman right here in the court signed a statement saying it was without his consent or knowledge and he was very sorry for it.

Q Did you go to the doctor? A No; not then. I went to the restaurant across the street, and after I had a couple of drinks. 10

Q Drinks of what? A Milk. I went home to 195 West Front street.

Q When did you go to the doctor? A Dr. Currie came to the house sometime that night. I couldn't say what time he came there; it would be in the neighborhood of between eleven and twelve o'clock.

Q Was your arm injured? A Oh, yes. 20

Q What was the matter with it? A The arm has improved quite a lot. The first finger and thumb is very good. I haven't any sense of feeling of a micrometer; sense of feeling of one-half thousand or twenty-five thousandth or even to a sixty-fourth.

(Answer repeated by the stenographer.)

Q In your thumb? A And first finger.

Q What about the other three fingers? A The three fingers I haven't got the power I used to have in them. I could not use them in fact. I couldn't use them at that time at all. I have no lifting power in them. 30

Q What about your arm? A The arm is kind of locked in back side of the shoulder.

Q Can you raise it? A I can raise it in front of me, yes. But there was a time I couldn't use that at all.

Q What can you do with it now? A I can eat. 40

Q Can you raise it in back? A Not in the back. It is locked on the back side.

Q Can you lift with it? A I can lift some with the first and second finger; yes, but not with the three fingers on the under side; lower part of the arm.

10 Q You say your eye was injured? How are those eyes now? A Up to yesterday examination made by Dr. Ard all on the right side of me is blank. The International Motor's doctor.

Mr. Kalisch. I move that anything this witness testified that Doctor Ard told him will be stricken out.

Mr. Blatz. It will be stricken out.

20 *The Court.* Yes.

Q Can you see with your right eye? A I can see with my right eye, when both eyes are opened, double vision. One above and one below. Walking through the room everything is blank on the right side. But from this point out to a certain angle on the left eye I can see very good within a half inch.

Q In other words you have to turn your
30 head? A In other words I have to turn my head with this left eye. Unless I see everything is double in front of me.

By the Court.

Q Did I understand you to say that one object appears to be above and one below? A Looking in the left direction. But in the right direction they change when looking with the lamp or light.

40 (Answer repeated by the stenographer.)

By Mr. Blatz.

Q How was your sight prior to the accident? A Perfect.

Q How was your arm prior to the accident? A My arm was in good shape. Nothing ever the matter with my arm or shoulder; there was nothing in particular, and my eyes was considered very good. 10

Q Were they all right prior to the accident? A All right, yes.

Q And now I understand you to say that the left eye or right eye, you see— A Can't distinguish nothing with the right eye.

Q I see. A Can't distinguish nothing with the right eye.

Q And with the left eye it is double vision unless you turn your head? A And with the left eye it is double vision unless I turn my head and close this one. But I can see it by turning my head and looking this way (indicating) then looking this way. 20

Q And the sight of the right eye is gone? A Sight of the eye I couldn't distinguish nothing. I can see something but I couldn't see nothing if I close my left.

Q What is your salary? A I guess the lowest wages I got was twenty-five dollars a week. I worked ten hours but they say only eight. 30

Q What is your regular salary? $18.48, was it? Thirty-eight and a half cents an hour for eight hours? A Yes, sir; if you call it eight hours a day; I was working nights.

Q You have been getting $9.24 from the Insurance Company, haven't you? A Yes, sir.

40

By the Court.

Q How long? A I got it from the sixth day of January up until about four or five weeks ago until Mr. Russel started a prize-fight in his office with the doctor.

10 Q Prize-fight, did you say? A Yes, sir; he offered to strike me.

Q What was your wages there? A I worked ten hours; they gave a bonus as well as that.

Q How many hours did you work? A Ten hours every night.

Q During the whole time you were there? A I done twelve hours some nights.

Q Did you work ten hours during the whole time you were there? A No, sir.

20 Q How many days did you work ten hours? A Practically all the time I was there except on Friday night. Friday night was the last night. If there was a job to be done there I would stay and do it until the day men came in.

By Mr. Blatz.

Q Now, you receive compensation from January sixth— A Yes, sir.

30 Q (continued)—up until four or five weeks ago? A Yes.

Q Do you know the amount you have received? A Yes, I have it right here. I received that amount which is on there. In a check. I didn't receive it every week. I received it in a bulk.

Q Now, you got a payment in January seventh, for $9.24? A Yes.

Q And you got another one in January fourteenth for $9.25? A Yes.

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Q And another one on January twenty-first for $9.24? A Yes.

Q And then you received a check for $83.-16? A After acquainting the State Labor Bureau.

Q You got that? A Yes.

Q Then you got another one for $9.24? A Yes. 10

Q Another one $9.24; then you got $258.72? A Yes, I got that.

Q That is $83.16 you got? A Yes, sir. That was for wages; I never signed the check for it.

Q You got the check, didn't you? A No, I got money.

The Court. Is there any dispute about that? That it was wages? 20

A It was wages for my wife had to be paid and this woman down here had to be paid.

Q There is no dispute about that, is there?

The Court. You got eighty-three dollars, that is wages?

A Yes, sir.

Q He got eighty-three dollars and sixteen cents and then $258.72.

The Court. For what? 30

Mr. Blatz. That was from February second to some time in August, I think. I do not think there is any dispute about this, if your Honor please; there has been paid $480.48?

A I guess that is right.

Mr. Kalisch. Fifty-two weeks' compensation.

Mr. Blatz. Fifty-two weeks. 40

The Court. Does that include that $83.16?

Mr. Blatz. Yes, sir; that includes that $83.00.

The Court. Now, did he work any of the time?

Mr. Blatz. That I am going to bring out.

10 A

Q You were injured on October fifteenth, or twenty-first? A Twenty-first.

Q And did you work after that date for the— A International?

Q Yes. A Yes, sir; as a watchman.

Q As a watchman, and you worked until when? A Sixth day of January when he discharged me for being incompetent.

Q And during the time from October twenty-first to January sixth, did you receive your salary or wages? A No, not until I acquainted the State according to the date on that letter.

20

Q Didn't you get paid from October twenty-first until the sixth day of January? A Yes.

Q Who paid you? A Why sometimes Mr. Ares' man, or one of the company's men.

The Court. That is January what year?

A 1915.

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Q 1916? This January, wasn't it? This year? A Yes. You see up to the sixth of January, 1915, the compensation started.

Q You were injured on October twenty-first, 1915? A Yes.

Q And you worked until January sixth, 1916? A Yes, sir; that is right.

Q Did you get any compensation during that time? A I got wages. I don't know whether it was compensation or wages or what you would call it. I got payment.

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By the Court.

Q During the time you worked there, Mr. Purcell, from the time of your injury until January sixth, 1915, how much a week did you receive? A I received my wages.

Q How much a week did you receive? A About twenty-five dollars a week. 10

By Mr. Blatz.

Q And you were working at that time? A Yes, sir.

Q As watchman? A Yes, sir; not working; just putting in the time.

The Court. Is that money included in the $480.00?

A No, sir; that is included in the $83.00 check. 20

Q Is that $83.00 included in that? A That is included in that; yes.

The Court. October; what time in October?

Mr. Blatz. Twenty-first.

The Court. October twenty-first, 1916. Well, that was less than three months.

Mr. Kalisch. He was hurt in October, 1915. 30

Mr. Blatz. Yes, October, 1915.

The Court. That $83.16 is included in the $480.00?

Mr. Blatz. Yes.

A Yes; I got the check in my pocket.

The Court. After January sixth of this year, did you receive anything from the defendants?

A Not up until the time I got this brought up before the State Board. 40

The Court. When was that?

A Date of this letter Mr. Blatz has got.

Mr. Blatz. September twenty-second, 1916.

By the Court.

Q Well, now, did he receive it on that date?
10 A Yes, within a day or so I received it.

Q How much did you get then? A Just what it says on there.

Mr. Blatz. $258.72.

Q What was that for? That was not for wages; that must have been for compensation? A Compensation.

Q Have you received anything in addition to that? A Yes. I have; about three or four
20 weeks ago, five weeks ago.

Q Well, five weeks ago? A They paid me at the rate of $9.24 a week after that; three weeks at one time.

Q $9.24 a week? A Yes.

Q And you are still receiving that? A No, he wouldn't pay no more until he brought it to court.

Q Five weeks ago, $9.24, is that the amount? A No, he paid three weeks about five weeks
30 ago. The day he sent me the doctor to have the X-ray picture taken.

Q For three weeks? A Yes. And then he told me call in again.

Q Have you a statement made out that the court can take?

By Mr. Blatz.

Q After January sixth, 1916, were you employed by the International Motor Company?
40 A No, sir.

Q How long were you out of employment? A Oh, I went to work for the Simplex about two weeks watching. That would be long, oh, about a long way—around Christmas time, in the winter time.

The Court. Now, how can that be?

Mr. Blatz. It cannot be. 10

Q You say you didn't leave until January sixth, the International Motor Company? A Yes.

Q How long after January sixth was it before you went to the Simplex people? A It wasn't—about the following year.

Q Oh, no. A It was only a year last winter.

Q You were hurt October, 1915, weren't you? A Yes, sir. 20

Q And you worked for the International until January, 1916? A Yes, sir.

Q When did you go to the Simplex after that? This last January?

The Court. About eleven months ago?

A Yes, about eleven months ago.

Q That is when you quit? A Yes, sir.

Q When did you go to the Simplex people for two weeks? A Well, after that. I can't remember just the date, but my wife remembers the date. 30

Q How long did you work for the Simplex people? A Two weeks.

Q How long did you work for them? A The doctor told me if I didn't try to use my arm I would never get the use of it. Dr. Lufburrow. I tried to do a little painting for Mr. Thomas in order to pay my rent. I have to pay rent from that. 40

Q Did you do any work after that for anyone? A Yes, sir.

Q Who? A I went along with Frank Cavenaugh for a half day, and the shop was so dark I couldn't do the work for him. And I worked half a day for him.

10 Q How long did you work for Cavenaugh? A Only one-half day.

Q Is that all? A That is all.

Q Did you do any work after that? A Yes, I went in for work that I could see; when he got on to me the foreman fired me for not being able to make assignments.

Q Where was that? A In Manville.

Q How long did you work there? A There was a friend of mine became master mechanic
20 there and he got me the job.

Q How long did you work there? A Probably about six weeks or seven.

Q You are a machinist? A Yes, sir.

Q Can you follow your trade under your present condition? A No, sir. Can't get centres on the left side any closer than a half inch. I can see about the size of the inch when I look straight at you.

Q Have you been examined by any physi-
30 cians? A Yes.

Q Who? A Dr. Lufburrow, Dr. Currie, Dr. Albenia, house physician of Plainfield. I do not know this gentleman's name here; this fellow wanted to smash me.

Q Dr. Ard examined you? A Dr. Ard examined me.

Q And you were examined by the company's physician? A Yes, sir.

Q At my request you were told to go there?
40 A Yes.

Q By me.

Mr. Kalisch. What doctor?

A Dr. Lufburrow, Dr. Ard.

Q Yes? A Dr. Currie.

Q Yes? A Albenia.

Q Albenia? A Yes, sir. Five or six more doctors there. 10

Q What other doctors for the company? A I couldn't tell you his name. He is fifty-nine John street, New York, when they took the action out of Union county and out of Newark, they referred it to the New York office and sent me to the New York office in New York City, and they had the doctors there for me.

Q Did this doctor examine you here? A Yes, sir; he wouldn't give me his card or tell me what his name was. 20

Mr. Blatz. That is all.

Cross examination by Mr. Kalisch.

Q You say you went over to fifty-nine John street, New York City? A Yes, sir.

Q Do you remember going in and showing someone there a little instrument you were carrying with you? A What is that?

Q Do you remember going in and showing someone there a little instrument you were carrying with you? A Why, yes, I don't know what his name is. 30

Q What kind of an instrument was that? A Oh, that was for my water. For my passage. He told me for to put that in there and see him after I could put it in alone.

Q You brought that with you? A Yes, sir; I had that with me for several weeks, too.

Q Did you use it for that? A Not now. I don't. No. Not now I don't. 40

Q Did Dr. Lufburrow tell you to use that? A I forget which doctor told me to use that. It was one of the doctors.

Q You say with this one eye you see double? A No, I didn't say only one eye. You misunderstood me. I said with both eyes I
10 see double.

Q With both eyes? A Yes.

Q You didn't say with the one eye you couldn't see anything and when you closed the other you see double? A After I close this eye, I see nothing only the vision in front of me. I couldn't distinguish what it would be.

Q Keep your hand where it was. A Yes.

Q How many fingers have I got up? A I don't know.

20 Q What? A I don't know.

Q Have I got any up? A I don't know.

Q Can't you see how many? A I couldn't distinguish anything.

Q You can't when you close your eye; keep it open. A I didn't close my eye. I kept it open.

Q While you were working here, you were taking compensation at the same time while you were working at this defendant's place?
30 A No. I wasn't taking compensation until I made a complaint to the State about it and they came across then.

Q You didn't get any compensation before you made a complaint? A Before I made a complaint?

Q Yes. A I got it as wages, eighty-three dollars; that is where the difference comes in there.

Q You say that $83.16 was the first check
40 you got from the company? The first money you

got from either the International Motor Car Company or anybody else? A I didn't say that.

Q You got $9.24 a week for several weeks before that, didn't you? A No, sir; you figured out receipts; that is why you fired the other man. 10

Q Answer the question. Did you get $9.24 a week for several weeks before you got the $83.16? A No, sir.

Q $83.16 was the first check you got? A I got it. I didn't sign it. It was State of New Jersey, under the compensation law.

Q Was the $83.16 the first check or cash you got from the company? A No. They paid me my wages.

The Court. Aren't you going to give me a statement of the wages paid? 20

Mr. Kalisch. Yes.

The Court. Then what is the object of this?

Mr. Kalisch. Merely for the purpose of showing receipt of wages and compensation at the same time he was working.

Mr. Blatz. He was getting it at that time. I do not think there is any dispute. He said he got twenty-five dollars. 30

Q What I want to know is this, Mr. Purcell, while you were working for the Simplex people, the Simplex people paid you? A Yes, sir.

Q When you worked for Thomas, for the time you did work you got paid? A Yes, sir.

Q And when you worked for Cavenaugh a half day you got paid for the work? A Yes, sir.

40

Q And when you were working in Manville, you got paid for six weeks' work? A Yes.

Q During any of that time were you also getting money from the International Motor Company?

The Court. What difference will that make?

10

Mr. Kalisch. I maintain when he made a claim to the Labor Department they have set forth they haven't received money during the time they were disabled. He said he made a complaint; if a man complains saying he wasn't working, and therefore, the company should pay him compensation, he has not given the Labor Department a true version of the affairs.

20

The Court. Well, I do not care about that.

Q You weren't injured on your left eye, were you? A I beg pardon.

Q You weren't injured on your left eye, were you? A No, not then. The effects on this eye has—

Q What you mean is this; since you have had your right eye injured the left eye has become injured, is that correct? A Yes.

30

Q How long did you work as a watchman? A Well, until Mr. Ares'—

Q How long? A Up until the sixth of January.

Q How long? A Until the sixth of January.

Q When did you start? A I started when they sent for me. The company sent for me.

Q Just tell us when you started, and how many days you worked? A I worked about a couple of weeks after the accident up until the sixth of January for the company.

40

Q What floors or what part of the plant did you have to watch? A Why, it is a storehouse where they keep automobile trucks at night.

Q How big a storehouse is it? A Probably a couple of hundred feet long by fifty feet.

Q How many watchmen were there? A Nobody, only myself, at night, and one man at days. 10

Q How was it lighted? A What?

Q How was it lighted, the storehouse? A I had a lamp and fire.

Q No electric light? A No.

Q No electric light? A No.

Q Did you have to walk around to—I mean from one end to the other? A Oh, yes, sir. I had my wife with me though.

Q She stayed up with you all night? A Yes. And this girl down there stayed with me, too. 20

Q So those three months your wife stayed with you when you were watching at night? A No. After I went to that place to work there she had to come with me, because I wanted to go and see a doctor—because I was getting hurt.

The Court. Just answer the question.

Q This time when you were a watchman at the International storehouse plant? A That is it. 30

Q You were watching by yourself, or were you watching— A I had my wife some nights and had my son some nights; I had this girl with me some nights.

Q When you walked about from one end to the other, wasn't it difficult? By reason of the fact you couldn't see very well? A I could see with the lamp with this eye.

Q You closed your right eye and used your left? A Sure; it was closed then anyhow. 40

Q You are sure your wife and child didn't lead you around in the storehouse? A At times they did; yes.

Q Why did they have to do it at times? A For the simple reason, automobiles, when we got them around—and I hear a knock on the door we go down and she would go along with me.

Q And the International people told you to watch them? A Yes, sir.

Q To go there and watch for that? A Yes, sir; for to help me out.

Q To help you out? A Yes.

Q And you came there personally and applied for a position, didn't you? A No.

Q They sent for you? A Certainly.

Q Whom did you see when you went down to the place? A Where?

Q To the International Company's plant? A You mean the first time?

Q When you came down just before you started to do watchman's work? A Superintendent, Mr. Ares.

Q During that time your eye was in good shape, wasn't it? A No, you couldn't say the eye is in good shape now.

Q Was it in bad shape or not? A The sight was dead in it, yes.

Q The sight was dead in it? A Yes.

Q You told Mr. Ares that? A Yes, sir; and the insurance man, Mr. Henderson, that also. The Ocean accident representative also.

Mr. Kalisch. You did— I move that it be stricken out. No, I will allow it in; it is immaterial.

Q You told Mr. Ares your eye was in such a state you couldn't see out of it? A Yes.

Q You told him at that time the other eye—A No, I didn't tell him at that time about the other eye. I wanted to see a doctor.

Q You told him your arm was in bad shape? A It was; surely.

Q He put you there in charge of the plant at night? A Yes; not in charge of the plant. 10

Q Not in charge of the plant; in charge of the storehouse? A In charge of the storehouse; yes.

Q How many machines did they have there? A When I went there—

Q How many machines did they have there? A When I left there?

Q When you went there as watchman? A About sixteen cars.

Q They put you there to watch at nights? 20 A Yes; so nobody took the trucks out of the door at night.

By the Court.

Q Were you there as watchman? A Yes.

Q Why do you go on repeating? Who is this Mr. Ares to whom you refer? The foreman? A No; he is general superintendent of the company. He is right here, sir.

30

By Mr. Kalisch.

Q As a matter of fact, it wasn't until just before your discharge that you said anything about having trouble with your eyes and arm, wasn't it? A Before I received—before Mr. Ares and the representative came to an agreement for to pay half wages and the other fellow pay the other half of the compensation, I told him about my eye, first week of the accident.

40

Q You told Mr. Ares before he gave you a job as watchman; you are sure of that? A Before he sent me up there; absolutely, and that Henderson man.

Q Just answer the question and don't talk so much.

10 *The Court.* Just answer the question.

Q You are sure that it was not just before you were discharged that you told Mr. Ares about your disabilities and it was then he said you can't stay there if that is the condition you are in?

The Court. Tell me what difference will that make?

Mr. Kalisch. I do not like to state my purpose; I am satisfied to have your Honor
20 know.

The Court. There is no doubt that they were notified of the injury before a year expired.

Mr. Kalisch. I am not denying that.

The Court. This man's testimony may not be reliable at all as in other portions I see it isn't.

Mr. Kalisch. That is all. I will not go
30 any further with the examination.

The Court. What I mean, a little while ago he testified that a year after the injuries were received he went to work around Christmas for some concern or person when that could not have been so. And so that on dates; as to when he might have informed Mr. Ares, whether it was before or after a certain time would make very little difference. His testimony as to dates is not
40 very positive and it is not very reliable.

Mr. Kalisch. I assume the medical testimony is actually what the Court wants, anyway.

The Court. I suppose that is so. I want to ask a few questions concerning his teeth.

By the Court.

10

Q How many teeth have you lost? A Six.

Q What caused the loss of those six teeth? A The night I got hit with the belt on the fan.

Q What side of your mouth? A Right there (indicating right side).

Q Upper or lower teeth? A Upper teeth.

Q Upper and lower? A No, upper.

Q Had they been loose before that? A No.

Q Had you received any injury to that side of your jaw? A No, sir.

20

Q Before this time? A No, sir.

Q Did the teeth come out that night or subsequently? A Four of them got crushed in that night and when I was washing my mouth in the toilet they came out. The other two came out about a couple of months later.

Q Four of them came out when you were washing your mouth in the toilet? A Yes; they were crushed in my mouth.

30

Q When was it they came out; that night or a week after or how long? A That night.

Q That night; four of them? A Yes, sir.

Q You say the other two came out sometime later? A After the flesh became flabby in my mouth.

Q When you went to see the doctor, did you direct the doctor's attention as to the condition of the teeth? A Dr. Lufburrow told me he was not a dentist; he was a surgeon.

40

Q Did you go to see a dentist? A Yes, sir.

Q What dentist? A Dr. Reilley.

Q Where is his office? A Fulton street, Newark.

Q How long after the accident did you go? A The day I came from 59 John street.

10 Q How long after the accident? A I couldn't tell you the date. It was the day I went to 59 John street.

Q Approximately; was it a week after or a month after, or five months after? A It would be a couple of months after.

Q And you had no teeth there then? A No.

Q What did you go to see the dentist for at that time? A My gums; there was a kind of a softening; I only used to eat with one side of my mouth. He said they would have to heal

20 of their own accord.

Q When the teeth came out of your mouth did anything else come along with them? A There was a little piece of flesh on the teeth.

Q Did any— A Blood? Sure.

Q Did anything that looked like spongy bone come out with them? A No. I couldn't tell you I was so stunned at the time I didn't know just exactly what was going on. That is about

30 the fact.

Q Do you know what the alveolar substance is? A I don't, sir.

Q Do you suffer any pain by reason of the loss of your teeth? A No, sir; not a bit. But I have a pain here like that, between the eyes like that, and if I bring my arm to a certain position like that it flutters and I think Dr. Currie could testified to that better than I—and Dr. Lufburrow.

40 *The Court.* That is all.

By Mr. Kalisch.

Q How were you standing—just indicate how you were standing when this accident happened? A I had—

Q Indicate. Show the Court. Listen, Mr. Purcell, show the Court how you were standing, what position, where your legs were and where your arms were. Just show the Court. A Here is the position of the platform just as I stand. The ladder was right behind me. This is a main drive coming in. A belt coming from the main drive on to this fan and motor. This fan was took up sort from the snagging shed. I had this right hand in the pulley like that on the set screw and after he turned it on, before I could get my hand out, the belt grabbed the arm and pulled me around until my jaw hit.

Q How did the arm go? A This arm (indicating with the right arm).

Q And went where? A Right around the pulley.

Q And landed where? A Pushed it around like that (indicating) and I jerked myself out like that, and I hit my head on the back of the ladder.

Q Your right arm went around like this (indicating)? A Yes, sir.

Q Where did it land? A Right around the pulley. It was only starting up slow.

Q Stopped again? A Yes; I hollered to him.

Q Just show the Court. A It took the hand like that, went into the belt like that, and twisted it around like that. But that was like a piece of mush.

The Court. If the pulley had continued its revolutions?

A Killed me.

Q Are you working now? A Yes, I can do anything I want to now.

Mr. Kalisch. That is all.

A That is, I can do anything I want with these two fingers, but not these three here.

10

By the Court.

Q Which three? A These three. I haven't got the power in them.

Q You mean the three fingers next to the index finger? A Yes, sir; them three right there.

Q The thumb and index finger are all right? A Yes, sir.

20 Q The other three fingers you say— A I haven't got the same power in them I used to have, or anything like that. I can't lift her now.

Q To what extent are you disabled in these fingers? A I can't do practically anything with these fingers. They are a little help there. To look at them you would think they were all right; but I can't.

Q What do you work at now? A I work at times at pulling kettles around.

30 Q What do you mean by kettles? A Sulphate kettles or acid kettles.

Q It is put on a little wagon? A Yes, sir.

Q And there is a little handle on the truck? A Yes, sir.

Q And you pulled it around? A No; there is a horse on the wagon.

Q You dump that? A They dump it on the meadows.

Q How much a day do you get for that? A

40 Sometimes I would get probably $1.25; more

times I would get nothing. Maybe two dollars. I am not on that work now.... I am on concrete work now.

Q Where? A On the meadows also.

Q How much a day do you get there? A When I work I get around thirty-seven or forty cents an hour. 10

Q How long have you been working? A I have been there steady four weeks now.

The Court. Is that all?

Mr. Blatz. That is all.

By Mr. Kalisch.

Q Did your shoulder bunk against anything? A No.

Q Didn't? A No. The shoulder got twisted. 20

Q The shoulder was twisted? A The arm was twisted; sure.

Q Arm or shoulder? A Whole business; took me right up to the shoulder.

Q I understood you to say, Mr. Purcell, that it took your right arm and turned it around like that? A Yes. Pulled me in as far as the shoulder. 30

Q Pulled you? A Yes, pulled the arm around the pulley as far as the shoulder and I could get no further when the jaw hit there.

Q Your arm went up like that? A No. My arm didn't go up like that. Don't get me twisted. Here is the belt coming around the pulley. Here is a belt coming around like that. Here is my hand right here on the pulley here; on the edge of the platform. Before I could get my hand out the belt caught it. 40

Patrick J. Purcell, cross.

By the Court.

Q There was two pulleys? A Just one.

Q There was a pulley at the other end (indicating)? A Yes, but it is on a different drive. There is a belt from that drive on to this drive; last one.

10 Q How big is this pulley? A Twelve inches.

Q Twelve inches in diameter? A About eight inches in diameter and twelve-inch face; driving pulley.

Q The face of the wheel was eight inches broad, was it? A Face of the wheel was twelve.

Q Diameter was eight inches? A Diameter was either eight or ten inches.

20 Q And the circumference was over three times that much? A More than that.

By Mr. Kalisch.

Q You mean to tell us then that your hand was pulled out straight and wasn't curled around? Is that correct? A The hand was turned around in the curve; as the pulley went around, my hand went around like that.

30 Q Until it was straight out? A To the shoulder.

Q Until it was straight out? A That I couldn't say. It was so quick that I couldn't explain exactly the way. It was just like that (snapping his fingers to illustrate).

Q When you are working over the meadows you are not holding the other arm to your side? A Of course I am not.

Q Why are you doing it now? A I am not doing it in any shape or form. I can use it in

40 any way. But I can't raise it back like that.

Q What is the highest you can use it? A There it is.

Q Out in front of you? A Right like that.

Q Just watch me. Put your hand in front of you that way. A Yes, sir.

Q And see how high you can lift it; in front of you like that. A There you are. 10

Q Is that the highest you can raise it? A That is the highest I can do it; that is the way.

Q That is the highest? A Yes.

Q You can put on your coat yourself? A Surely.

Q Let me see you do that. A Sure.

(Witness puts on coat.)

Q Let me see you put it on.

(Witness puts on overcoat he has just taken off.) 20

Mr. Kalisch. That is all.

MRS. ELIZABETH PURCELL, produced as a witness on behalf of the plaintiff, being duly sworn, on her oath according to law, saith:

Direct examination by Mr. Blatz.

Q Mrs. Purcell, you are the wife of Patrick Purcell? A Yes. 30

Q And have been married how long? A Nearly twenty-eight years.

(Answer repeated by the stenographer.)

Q Do you remember the date of the accident or the injury received by your husband at the International Company works? A Twenty-first of October.

Q Were you home that day? A No; I wasn't. I just had gone back up home. 40

Q Gone where? A Gone up home; we had been moving yet.

Q When did you come back to Plainfield? A Middle of December.

Q Middle of December of the same year? A Yes.

10 Q Before your husband—before you had left in October twentieth, did your husband have all his teeth? A Yes.

Q And when you got back in December were they gone? A Yes. On that one side.

Q How many? A I don't know. Just as many as he has got gone now.

Q What was the— I will change that. What have you to say as to the condition of your husband—prior to the accident as to being irrit-
20 able?

Mr. Kalisch. I object on the ground there is no claim in this petition for any damages for being irritable.

Mr. Blatz. I agree with you, but because it will have a considerable weight in the doctor's testimony, pertaining to the injury to the eye, if I do not connect it I will ask it be stricken out.

30 (Question repeated by the stenographer.)

A You mean was he irritable?

Q Yes, was he irritable before the accident? A No, not usually.

Q What have you to say as to now whether he is irritable or not? A He is, very much.

Q He is very much, did you say? A Yes.

Q And since the accident has he been growing worse or better? A Worse.

40 *Mr. Blatz.* That is all.

Cross examination by Mr. Kalisch.

Q When did you go away, Mrs. Purcell? A Twentieth of October.

Q Twentieth of October, 1915? A Yes.

Q And when did you come back? A Well, I can't just state the date. About the middle of December. 10

Q About the middle of December? A The same year. About six or seven weeks after.

MRS. KATHERINE PURCELL, produced as a witness on behalf of the plaintiff, being duly sworn, on her oath according to law, saith:

Direct examination by Mr. Blatz.

Q Mrs. Purcell, you are the wife of Mrs. Purcell's son? A I am. 20

Q And did you live with Mr. and Mrs. Purcell after you were married? A I did.

Q How long have you been married? A Two years.

Q When did you start to live with Mr. and Mrs. Purcell? A Right after my marriage.

Q And what was the date of the marriage? A November twenty-ninth, 1914.

Q 1914. You observed Mr. Purcell's condition as to whether or not he was irritable prior to the accident? A He wasn't irritable. 30

Q He was not irritable? A He was not irritable.

Q What have you to say as to whether or not he has been irritable since? A It is very apparent he has been more irritable since.

Q Is that growing better or worse? A Much worse.

Q By that you mean he is worse today than he was right after the accident? A Oh, yes. 40

Q Now did you assist him in the treatment of his arm after the accident? A I did.

Q What did you do? A Massaged it.

Q For how long did you massage it? A The two weeks I was down there.

Q The two weeks you were here? A Yes, sir.

10

Q Did you treat him in any way or help him in any way? A Why, yes, I bathed his eyes with boracic acid quite a few times.

Q Did you ever go out with him and he would stumble? A Yes, I had gone out with him a few times to the business places in Plainfield and then noticed at nights when it was dark in the dark gutters he would stumble.

Q That was after the accident? A Yes.

20

(Question and answer repeated by the stenographer.)

Q Had you ever noticed any defect in his eyes prior to the accident? A No, sir.

Mr. Kalisch. I object to that, and ask that be stricken out on the ground that it is entirely a matter of medical proof, and would be even subject to objection as far as the ordinary doctor is concerned.

30

The Court. She can tell by observation.

Mr. Blatz. I have no objection to taking it out.

By the Court.

Q What relation are you to Mr. Purcell? A His daughter-in-law.

Q His daughter-in-law? A Yes.

Q Did you hear him testify here today that when he was employed as a watchman at the works of the respondent company that you went

40

with him there on some occasions in the evening and remained with him? A Yes, I did.

Q Do you know whether his wife went with him? A Yes, I do; she did.

Q Do you know whether his son went with him? A His son was there, yes.

Q How long would you remain when you would go there on occasions such as he refers to? Would you remain all night with him? A His wife would remain all night. I would remain until midnight. 10

Q His wife would remain all night? A Yes. Come home in the morning.

Q How long would his son remain? A His son remained all night, and watched for him.

Q Watched for him? A Yes.

Q That is, while you were there you saw the son watching? A No. On other occasions when Mr. Purcell was not there, Mr. Purcell was not there. 20

Q Your husband, that is the son who went there? A Yes, sir.

Q I see. With his father? A Yes, sir.

Q How many times did you go there with him? A Why, I can't remember; it might have been two and it might have been three.

Q Do you know how many times your husband went there? A No, I really don't know. 30

Q Do you know how many times your husband went there and watched in his place instead? A Why, I can't remember. It might have been a week, and it might have been four or five nights.

Q Do you know how many times the petitioner's wife went with him to the plant? A Why, she would go there quite a few nights. I don't know. Other times he complained about his sight she went there at night. 40

Q On the occasions you went there what did he have that enabled him to perform his work? A You mean regards to a weapon?

Q No. I suppose he didn't need a weapon to perform his work. Did he need a light? A The place was lighted. There was three lamps
10 as I remember it. One in the front, in the middle and the end.

Q What did he have to do? A Walk back and forth as I understand it, with the revolver. Travel back and forth.

Q With a revolver? A He had a revolver.

Q In his hands? A No. He had it in the place. Just whether he had in his hand I don't know. I know he had a revolver because I have had it myself.

20 Q How extensive was the plant he had to cover as a watchman? A In regards to the number of feet, I don't know. I know it seemed quite vast looking from the front of it.

Q How wide was the place? A Why, I should say it was half as wide as it was long.

Q More than one building? A No. Just the one.

Q Was he required to go into the yard? A I think it was understood he was to go out-
30 side to see if there was any prowlers.

Q Did he? A When he went away from me I stood in where the fire was, when I got the chance. And he got the revolver and went outside.

Q Who went out with him? A Himself.

Q All alone? A I suppose so. Except Mrs. Purcell might go with him, when she was with him. I was afraid.

Q How extensive are the yards? A I don't
40 know.

Mrs. Katherine Purcell, cross.

Q You do not know.

The Court. That is all.

Cross examination by Mr. Kalisch.

Q Didn't you help him? A Help him?

Q Yes. A I walked up and down there with him. Not outside; just inside. 10

Q You walked up and down to help him around in the building? A Why not? You mean giving him physical help? Holding his arm?

Q Yes. A No.

Q Didn't lead him. I thought you said something about his not being able to see around? A He couldn't see well around, I said, when we were walking in the gutters outside—

Q I am referring to the place you watched. Didn't you help him around there? A No. 20

Q You never took his arm? A Why, no.

Q There was lights in the shop? A There were lights but they were dim.

Q What was outside in the yard, with reference to lights or was it dark? A It was dark as far as I know.

Q When he went outside you stayed inside? A I did. 30

Q What kind of a fire did they have there? A Stove.

Q Yes. Large? A Small one.

Q Small stove. It wasn't always warm in there, was it? A They kept the fire up all the time or they would freeze.

Q Who did? A He did.

Q He did? A Yes.

Q How was it kept warm, coal? A Coal, yes.

40

Q Where was the coal kept? A Right in the corner; about a half ton.

Q Did they have to shovel that into the stove? A Yes.

Q And how many times a night would he have to do that? A Why, I don't know. Prob-
10 ably as often as the fire started to go—

Q I know, but how often as far as you remember it. I do not want you to fix a certain number. But just as you remember. A Why, if the nights were cold I would say five times.

Q Five times he would fix the fire? A Replenish it.

Q Would you have to shake it to get the ashes out? A Have to poke it with some sort of an instrument he had there. I remember that
20 myself.

Q What? A I remember poking it myself.

Q You poked it but he put the coal on? A Yes.

Q You poked it because it was easier to poke it than to put the coal on, isn't that so? A Probably; yes, sir.

Mr. Kalisch. That is all.

Mr. Blatz. That is all.

30

DR. FRANK C. ARD, produced as a witness, on behalf of the petitioner, being duly sworn on his oath, according to law, saith:

Direct examination by Mr. Blatz.

Mr. Blatz. Mr. Kalisch admits the qualifications of Dr. Ard.

Mr. Kalisch. Oh, yes.

Q Doctor, did you examine Patrick Pur-
40 cell's eye or eyes within the last year? A Yes.

Q How many examinations did you make, doctor? A Well, I saw Mr. Purcell in May, 1916, for the first time and subsequent to that first examination I think I saw him once or twice. And the last time I saw him was within the last few days; December twelfth, I believe.

Q When you saw him in May, you made a thorough examination, did you? A Yes. 10

Q Will you just tell us what you found to be the condition of his eye or sight at that time, and from what injury he was suffering, if any? A He came to me on the eighth of May, 1916, and gave me the history of an injury which had occurred on the twenty-first of October of 1915, which I presume he has described. He told me that his sight was affected and asked me to examine him. I found on testing his vision that his right eye vision was 21/100. And the left eye 20/40. That is, in looking with his right eye he had to stand within twenty feet of an object that a normal eye would have seen one hundred feet. He also complained of a blurred vision which was accounted for in my opinion by the fact that he saw double. He saw two objects where there was only one. He carried his head in a peculiar way and his right lid was partially closed. I had a good deal of difficulty in getting him—making the examination—he seemed to be in such a wild state. I do not know how to characterize it otherwise. I couldn't get him down to business. I couldn't keep him on one line of thought. I attempted to take his field of vision; field of vision meaning the area which one sees when looking straight ahead. According to that test, in his right eye the field of vision was contracted to a very small degree. It was almost telescopic; ten degrees on each 20 30 40

side of the centre line. There was also, apparently, considerable contraction of the field of vision in his other eye. On looking in the side of his eye there was very little that I could make out that was abnormal. There would be, maybe, a question of whether the optic nerve on his right side was a little paler than the other eye. Those were the tests made on the first occasion he came to me or possibly once or twice shortly after that. I saw nothing of the man until recently. And these notes were taken at this recent examination. He holds the right lids almost closed. Apparently not because it is paralyzed, but in order to shut out this image. This double image. I found it very difficult to get him to turn his eye to the right or turn both eyes with his head quiet. It didn't seem possible for him to get his vision over to the right. He informed me he saw nothing on the right side. It was all blank; and it was restricted on the left side but not nearly as much so. As he looked directly ahead he said he couldn't see the carpet or the ceiling. Still I could see all those things as I looked straight ahead. The tissues of the eye, the cornea and the lens, and all that, were perfectly normal, in size, and reacted to light and to accommodation and close vision. There was a small scar noticed just at the edge of the cornea.

Mr. Kalisch. Which eye?

A In the right eye. I might state that in the first examination there was noted a slight blurriness of the upper nasal quadrant of the optic nerve. But not very much. At this last examination very much the same conditions were present except that the contraction of the

field in his right eye was even more marked and his left eye was very much more marked. What I have told you is largely what you might term subjective, that is, statements of the patient in response to various tests and questions.

Q Doctor, what in your opinion, would be apt to cause the conditions as related by you in the examination of Purcell? A Well, it is a pretty hard case to classify. 10

(Answer repeated by the stenographer.)

A I have not discovered any lesions that would account for that group of symptoms. The nearest answer I can give you to what diagnosing or giving it a name would be hysteria; hysterical ametropia, or hysterical amaurosis, or hysterical weakness. 20

Q And that condition would be caused by what? A That condition can arise—I don't know how many causes—

Mr. Kalisch. I object to any further examination on a hysterical condition because the petition does not set forth or apprise me of any payment as a result of a hysterical condition. I make an objection to further examination with reference to hysterical conditions or disabilities. 30

The Court. The Court will overrule the objection.

Mr. Kalisch. I ask an exception.

The Court. Grant you an exception.

Exception allowed—sealed accordingly.

JAMES C. CONNOLLY, [L. S.]
Judge.

40

(Question and answer repeated by the stenographer.)

A Hysteria might develop subsequently to injury.

Q I see. A Shock of any kind.

Q Mr. Purcell has testified that when his arm was caught in the pulley he pulled it out and struck his head against a ladder. The back of his head against a ladder. Could that cause the condition that you found? A Why—

Mr. Kalisch. I object to that as not being a proper hypothetical question.

The Court. I will allow it.

Mr. Kalisch. I ask an exception.

Exception allowed—signed and sealed accordingly.

JAMES C. CONNOLLY, [L. S.]
Judge.

A I think the injury and shock occurred at that time, and that it might be considered as a cause. Mind you, I don't mean to say that there may not be something in that man's skull that I don't know that is causing all this. I can only say that the picture is more nearly described by "hysteria" than anything I can tell you.

Q You say there is a mark in his eye? A There is a slight, yes, slight scar on his eye. I don't know whether it was the result of that injury or not.

Q You found one there? A Yes. It was noticed in his examination.

Q You also noticed the condition of his eyes; both his right and left eye, were more serious on December twenty-third when you made the examination than in May? A Apparently so;

yes. As far as the field of vision was concerned.

Q From your examination and what you have stated, what would you say as to the disability of the right eye?

Mr. Kalisch. When?

Q On December twelfth; the last examination. It was December twelfth you made your examination? Your last examination? A Last time, December twelfth.

(Question and answer repeated by the stenographer.)

A It seems to be very much affected.

Q Would you say it was a total disability with that eye? A No; he sees with it according to his own statement.

Q What does he see by his own statement? A He sees about as—I haven't it down on my record just what his vision was—but as I recall it, he sees as he did originally, 21/100. It may-be subject—

By the Court.

Q You mean originally the first time he called on you? A Yes. I think it is about the same.

Q 21/100? A Yes. The field of vision was apparently contracted more than it was on the time of his original examination.

Q Will you explain to us what "21/100" mean? A Yes, I will be glad to. An object is taken that can just be seen by a person of normal vision at a distance of one hundred feet; if they went beyond that they could not make it out. At one hundred feet this patient is unable to see this object, and only sees it

when we get him within twenty feet of the object. So then it is expressed in a fraction, 20/100. In other words he sees an object that you or I would see at one hundred feet; he has to get within twenty feet of the object to see it.

Q I see. A I might add in addition that a
10 person might be very seriously affected in vision and yet see as much as you or I in looking ahead, and his vision would be affected in the field. This man, according to his field of vision sees as you would see in a telescope, and beyond that, he apparently sees nothing.

By Mr. Blatz.

Q What do you think the cause of his holding his head, as he does, to the right—

20 *Mr. Kalisch.* I object to this. I withdraw the objection.

A That is a natural thing associated with his double vision.

Q I see. A And with what you might term loss of the right—failure to see anything on his right side. He gets his head around here, as he expressed it he looks out of the cornea of his left eye. That is where his vision is. Out of the
30 corner of his left eye. And he assumes that position in order to take in objects in front of him better.

Q That was apparent in the examination in May as well as December? A Yes; he complained of it at that time.

Mr. Kalisch. He complained of it then?

A Yes. To what extent, I don't recall.

Q What percentage of the right eye would
40 you say was affected, doctor? A Well, as we

measure vision his vision is 21/100 in his right eye.

Q As to his disability, I mean. Now, assuming the eye that is normal and taking the condition of his eye as you found it, what would be the extent of the disability or percentage of disability? A Oh, that is an awful hard question to answer. Depends on the man's occupation. Depends on what he has got to do. He might be able to do some things as well as anybody, and he might be absolutely unable to do other things. I don't know whether there is any legal guide to the question of per cent. It is awfully hard to answer.

By the Court.

Q The Court may have to adopt some theory. If you can help the Court I will feel very much obliged. This man was a machinist and worked at his trade in the machine shop, and received wages paid a machinist, something around twenty dollars a week, maybe, or a little less. Now, he testifies that he cannot work at that trade because he cannot see lines well. He cannot distinguish lines as well as he could before he was injured. And that he was discharged in one place because of his deficiency in this respect. Now, that being so, what would you say was the disability that he suffers from the injury which he received to his eyes? A Well, I think if these statements are all true that I have made, that he is absolutely debarred—that is, at least as long as the disability remains, he is unable to follow his trade. That goes without saying according to this condition. I would perhaps make just as good a guess, or you can make as good a guess as I

could on the disability. You see his right eye, as it is now at present time, perhaps it is worth about one-third of an eye. Two-thirds disability and you would have to classify his left eye as at least a half if his field of vision is so restricted as it is.

10 Q Do I understand that the right eye is affected to the extent of one-third? A Two-thirds.

Q Two-thirds; and the other one, one-half? A And the other one-half.

Q And the other one-half. A That is assuming the contracted field of vision. Reduction of vision in his left eye. Very contracted vision in his right eye and the reduced vision.

Q Have you any reason to doubt, doctor, 20 from the two examinations you made he was telling you anything but the truth?

Mr. Kalisch. I object.

(Question repeated by the stenographer.)

The Court. I suppose if the doctor doubted his word when he came to him he would not come here and testify as he has.

Mr. Blatz. I withdraw the question. 30 That is all.

Cross examination by Mr. Kalisch.

Q Doctor, you say the objective symptoms you found very little abnormal? A Very slight.

Q Very little abnormal. No lesion? A Very slight indeed.

Q The only objective thing you noticed was the small scar at the edge of the cornea of the right eye? A Yes. So far as the eye is con- 40 cerned.

Q That is the only thing? A That is the only thing; there was a little pallor of the right nerve.

Q That might be and might not be so? A Yes; I wouldn't swear to that.

Q So that your opinion, with the exception of the small scar on the edge of the cornea on the right eye, is based practically entirely on subjective symptoms; isn't that so? A Yes. 10

Q Now, if a patient comes to you and says he can only see three inches in front of me, is there any test where, if he intentionally wishes to fool you, that you can determine that he is not telling the truth? A Well, I did try one thing.

Q Will you please answer this question first. Can you? A Yes. 20

Q You can? A I say they have some value; relative value perhaps. The card test. In determining whether he was I wouldn't depend on any statement he made, for instance, if you said you only see straight ahead of you, and if I hauled off you would almost involuntarily dodge (indicating).

Q Did you do this to this man? A Yes.

Q Didn't he see? A I don't know whether he saw or not. 30

Q How close to him were you when you did that? A He was so close he couldn't see my arm. My assistant was standing engaging his attention and I made the motion to hit him in the eye.

Q How far away were you? A I stood on his right side.

Q Why did you do that? A I wanted to see if he was telling the truth. 40

Q Were you under the impression he wasn't telling the truth? A He was wild; I couldn't tell anything about him.

(Answer repeated by the stenographer.)

Q There isn't actually, doctor, when a person intentionally wishes to deceive with reference to such a condition, there is not any test which absolutely determines whether he is telling the truth or not; isn't that correct? A Has to be a very intelligent man to make statements such as he did and get away with it. When you are making a lot of tests for double vision, without making mistakes in his answers. So that it is pretty hard to tell whether a red candle was above or below, and he was pretty uniformly right in his statements.

Q Doctor, did he tell you he couldn't see out of the right eye, at all? A No; he didn't tell me that.

Q Assuming I held my hand up in the air a distance—standing a distance between where you are sitting and where I am now, with his vision would you say he should or should not see my hand? A He should see it.

Q Were you here this morning when I stood where I am and I asked him and when he said he couldn't see anything at all? A No. It would depend also where your position was in reference to him.

Q I am standing directly as I am standing now. A According to my tests he would see your hand at that distance.

Q He should see my fingers if I held them up? A I think so.

The Court. With one eye or with two?

A According to this test I think he would have seen him with either eye, Judge. He is eight feet away.

Q Just where I am standing now. A I think so. I wasn't present this morning.

Q Did he ever tell you he couldn't see at all out of his right eye? A No; I don't think he ever did; I don't recall. 10

Q Was there anything to indicate objectively to you that the field of vision at the time of the second examination was less than it was on the first examination? A Nothing objectively either time, that would indicate contraction of the field of vision; subjectively only.

Q Was there anything that you found objectively that would account for a difference in the field of vision? A No; nothing at all. 20

Q In other words, I understand your testimony is there is nothing that you found objectively in this examination that would account for a loss of vision or a contracted field of vision? A There was no objective signs that I found.

Q Cornea, lens, and other media were normal? A Perfectly clear.

Q Can subjective symptoms be invented by a person being examined? 30

The Court. He has testified to that.

A Some things could be invented easily.

Q I am only referring to that? A A man could simulate reduced vision; unquestionably; he could simulate most anything I have asked him about. The only thing would be his intelligence to do it in a way that would not show up.

Q You say hysteria might be accounted for that? A Hysteria is a pretty big subject. Yes, we have all sorts of hysterical manifesta- 40

tions. We have had every symptom that he has had has been reported time and again in cases of undisputed hysteria.

Mr. Blatz. I would like to have the record straight. You remember Mr. Kalisch asked Mr. Purcell if he could see his hand and he said: "Can you see my hand" and he never had his fingers up. Now he asked the doctor if he put his fingers up if he could see them.

The Court. I remember that. In putting your questions to Mr. Purcell you did not raise your hand at all; and he said to you that he could not see it and certainly he could not because you had not raised it.

Mr. Kalisch. He said he could not see anything.

The Court. You had not raised anything.

Mr. Kalisch. And previously he said he could not see out of the right eye.

DR. ALFRED T. VAN HORN, produced as a witness, being duly sworn, on his oath, according to law, on behalf of the petitioner, saith:

Direct examination by Mr. Blatz.

Mr. Blatz. Dr. Van Horn's qualifications are admitted.

Q Doctor, you are a practicing physician in Plainfield? A Yes, sir.

Q Did you ever treat Patrick Purcell? A I have.

Q When was the first time you treated him? A The first time I saw Mr. Purcell was on the thirtieth of December, 1915.

Q And where? A At his house, North Plainfield.

Q At his own home? A Yes.

Q What did you treat him for, doctor? A He had an attack of acute conjunctivitis, that is acute inflammation of the membranous lining of the eye. 10

Q How long did you treat him? A I saw him at his house three times and at my office once or twice after that.

Q Did he tell you how he received the injury to his eye? A Yes, he told me about his accident before—

Q Did you notice any scar or mark on the lid of his eye? A Not at that time.

Q Did you later? A Yes; on the eye itself.

Q On the eye itself? A Yes. 20

Q How many examinations did you make? A You mean altogether; all the time?

Q Yes. A Probably I have seen him aside from the three times I saw him at the house I saw him probably four times at my office.

Q And do you know the dates? A I don't remember all the dates; the last one was on December twelfth, the day before yesterday.

Q Did you make an examination that time? A Yes, sir. 30

Q I see. Can you tell us what you ascertained? A Well, his—

Mr. Kalisch. Just one minute; I would like to cross examine first with reference to the last examination.

Cross examination by Mr. Kalisch.

Q Were you told day before yesterday, doctor, that you were to testify in this action? A Why, I was told before that. 40

Q When were you told first? A I think last Saturday.

Q And you knew you were to testify when this examination was made Wednesday? A Yes.

Q I mean the day before yesterday? A Yes; Tuesday, yes.

10

Mr. Kalisch. All right.

Re-direct examination by Mr. Blatz.

Q (Question of Mr. Blatz repeated by the stenographer, as follows): Can you tell us what you ascertained? A His vision, as Dr. Ard testified, about 21/100 in the right eye and I make it 20/70 in the left. And the contracted vision. My testimony will be practically a repetition of Dr. Ard's.

20

Q You will have to testify. You made the examination. A His field of vision in both eyes was very much contracted; more particularly right down to a small point; in his left eye the field was not so contracted. There was a small scar on the cornea and I felt pretty positive that the optic nerve was slightly paler in the right eye than in the left.

Q When did you examine him prior to December twelfth? A My recollection was last May.

30

Q Last May? A Yes, sir.

Q What was the condition that you ascertained or found at that time? A Practically the same as now except that the field of vision was more contracted in the right eye than it was at that time.

Q Did you try any tests on him, doctor? A I tested him for his double vision and he was very positive about seeing double in certain posi-

40

tions. Things would be double when he had both eyes open.

Q How do you account for his keeping the lid of the right eye sort of closed or down? A I think that is due to the field of vision being contracted and he is trying to overcome, to a certain extent, his double vision. 10

Q What have you to say as to the manner in which he holds his head or looks out of the corner?

Mr. Kalisch. I object to that. There is no testimony in the case as to the manner in which he holds his head.

The Court. There is some testimony going to show that when he looks at any object he has got to turn to the right in order to see it, fully and plainly. 20

Mr. Kalisch. I failed to object to examination on the same point on the last witness. I claim there is no testimony in the case except the question put by Mr. Blatz to the last witness.

The Court. There is some testimony, I think.

(Question repeated by the stenographer) (continuing). Of his eye? A Owing to the contraction of the field of vision and the double vision. He holds his head the same way to overcome part of that double vision. 30

Q Did you notice the same manner of holding his head when you made the examination in May? A I did.

Q The same. And you found the same thing on— A Tuesday of this week.

Q December. Doctor, what percentage would you say that the eye has sustained? What per- 40

centage of damage has the eye sustained? Right eye? A Well, I would feel inclined to say that makes seventy to seventy-five per cent in the right eye.

Q What have you to say as to the left eye? A About fifty per cent.

10 Q You didn't treat him for his arm or anything else? A No, I didn't.

Q Or anything but his eye? A That was all; only his eye.

Q And I presume you used the usual test to ascertain the symptoms? A Yes; yes.

Mr. Blatz. That is all.

Re-cross examination by Mr. Kalisch.

20 Q Doctor, paleness of the optic nerve does not indicate anything, does it? A lot of people have pale optic nerves? A When you compare two optic nerves and find one paler than the other you think there is a possibility of atrophy in the other one.

Q You think it is a possibility of something being abnormal? A Yes, sir.

Q But it is not positive? A It makes you suspicious.

30 Q You agree with Dr. Ard that all the objective symptoms were practically normal, with the exception of that scar at the edge of the right eye? A And the paleness of the optic nerve.

Q And do you point to that small scar at the edge of the cornea in the right eye as the source of this—of this trouble? A Oh, no.

Q Of any part of it? A It might cause a little haziness of the vision in looking in certain directions.

40 Q That is all? A Yes, sir.

Q And the contracted vision, and loss of vision; I mean the contracted area of vision and the loss of vision rests very much upon what the man tells you he can see, doesn't it? A Yes, to a great extent.

Q If I were standing eight feet from him looking at him in the way I am now looking at you, he should see, should he not, with the right eye, whether I have my fingers up or not? A Right straight ahead? Yes. 10

Q Right straight, the way you are looking at me now? A Yes.

Q He should? A Yes.

Q Did you hear him testify he couldn't see out of the right eye? A I wasn't here this morning.

Q Did he ever tell you he couldn't see out of his right eye? A No; not that he couldn't see. 20

Q You attribute, as I understand, the source, or the seat of the trouble to something other than that injured part of the cornea? A Yes.

Q This injured cornea, small scar at the edge of the cornea is the only thing you found in your line of endeavor with reference to any disability? A That is only objective.

Q With reference to your particular line of endeavor, isn't that correct? A Yes, sir. 30

Q And you have to attribute any disability to something other than as connected with the work of an eye specialist, is that correct? A Hold on. I want to modify that a little. There may be some lesion of his optic nerve that may account for these symptoms.

Q You said that everything with the exception—that the small scar on the edge of the cornea in the right eye is the only objective symptom you found? A Yes, sir. 40

Q I say, that is what you found, isn't it? A That is what I found.

Q Therefore, to locate the source of the disability you must look further than your work, or rather that of an eye specialist; isn't that correct? If all you found was a small scar at the
10 edge of the cornea on the right eye? A That was the only objective symptom.

Q I mean objectively? A Yes, objectively, that was the only thing.

Mr. Kalisch. That is all.

Re-direct examination by Mr. Blatz.

Q Doctor, would you attribute the cause or source of the trouble that Mr. Purcell now has with his eyes—

20 *Mr. Kalisch.* I object to this. That is an improper way to get at an answer. I maintain we are entitled to some sort of a foundation on which to base the answer.

The Court. Haven't you concluded and finished your testimony with this witness?

Mr. Blatz. All right; very well.

That is all, doctor.

30 MRS. ELIZABETH PURCELL, re-called.

Direct examination by Mr. Blatz.

Q Mrs. Purcell, when your husband was working at the International Motor Company works, as watchman, did you ever go up to the works with him? A Yes.

Q How often? A Six or seven nights.

Q I do not hear you.

(Answer repeated by the stenographer.)

40 A Six or seven nights.

Q How long would you stay? A Until the morning.

Q Stay all night with him? A Yes.

Q What did he do? A Why, sit down once in a while and then go around amongst the trucks.

Q Would you go with your husband? A With my husband; go with him. 10

Q Why didn't he go around alone, if you know? A Could not see very good.

The Court. What is that?

(Answer repeated by the stenographer.)

A Couldn't see very good; his eyes was inflamed at the time.

(Answer repeated by the stenographer.)

Cross examination by Mr. Kalisch. 20

Q Did you stay inside all the time? A Yes.

Q And was your husband's work always on the inside? A Sure.

Q Didn't he have to go outside? A No.

Q Never had to go on the outside to watch the yard? A No. Right inside in the one building, and watching the trucks. It was a storehouse where they stored trucks. 30

Q You had a furnace in there, didn't you? A No. A stove.

Q A stove? A Yes, sir.

Mr. Kalisch. That is all.

Mr. Blatz. That is all. That is our case.

Mr. Kalisch. I move to dismiss the petition on the ground that first: The petitioner has failed to prove a disability or an injury as set forth in the petition. That is number one. And number two is that 40

they have not shown any permanent disability. They may have shown that at the present time there was a disability to a certain amount, but nowhere in the testimony does it appear that the disability which the doctors found are of a permanent character. They said he had—one said thirty or forty or whatever per cent it was. I don't remember when he examined him. He didn't say that was going to remain the rest of his life. And until they show it is permanent, why the Court has no foundation on which to base its conclusion either as to the character of the injury or the compensation to which he is entitled under the Workmen's Compensation act.

Thirdly they have not shown any disability resulting from this accident, on which to make a demand—or on which to successfully apply and obtain an award of compensation under the Workmen's Compensation Act.

Mr. Blatz. I may have been negligent in not asking Dr. Ard about the permanency of this accident. If I did it was an oversight on my part. If Mr. Kalisch has no objection I would like to put Dr. Ard back on the stand for that purpose. I may have negligently overlooked to ask the doctor that question.

The Court. Mr. Kalisch asks that the petition be dismissed on that ground.

Mr. Kalisch. I cannot. I am not going to take advantage of Mr. Blatz's failure to do that. I want to add to the motion that

the cause of the condition has not been shown and the doctor says he has to look further than his line of endeavor to find it, and the next reason is that Dr. Ard said that some sort of hysteria was responsible. Now, even assuming they had a right to put in evidence of an hysteria, they have not shown that hysteria was a result of this accident. And for that reason they have not sustained it.

The Court. The Court will refuse to dismiss the proceedings for the causes as alleged, and I think it is agreed that counsel for the petitioner may call the physician again to ascertain the permanency of the injury.

DR. FRANK C. ARD, re-called.

Direct examination by Mr. Blatz.

Q Doctor, what have you to say as to the permanency of the injuries received by Mr. Purcell? A I don't know whether they are permanent. I don't believe they are permanent. I think there is a fair chance to recover, that is, sometime or other, I can't answer that question.

Q About within what length of time? A No reason guessing. If I am correct in the diagnosis of the manifestations it might last three months to ten years. Nobody knows. But we do know other cases have lasted a long time. And more frequently have recovered in a comparatively short time.

Q Then in your opinion you do not think it is permanent? A I don't know.

Q What is the longest time you have known of a case similar to this—

Mr. Kalisch. I object. He cannot fix the longest with reference to Mr. Purcell.

The Court. I will allow it.

10 *Mr. Kalisch.* I ask an exception.

Exception allowed, sealed accordingly.

Judge.

A I do not recall a case exactly similar to this in my own experience. I have seen hysterical manifestations in one form or another that have lasted varying times. Literature is full of them. Sometimes eight or ten years elapses before they clear up. But it is impossible to 20 put any length of time on a case of that kind. Like guessing on traumatic neurasthenia you are all so familiar with; some recover rapidly and some do not.

(Answer repeated by the stenographer.)

Mr. Blatz. That is all.

Mr. Kalisch. No questions.

I renew my motion.

The Court. Mr. Kalisch, you are assuming 30 that the only injury that the defendant suffers from is the injury to his eyes. That is not so. He suffered an injury to his mouth; he lost six of his teeth. He has sustained an injury to his arm, and other injuries that are of a permanent character. At least the loss of his teeth is of a permanent character, and under those circumstances I will not grant your motion.

40

Mr. Kalisch. Yes, sir. May I move that the question of the eye injury be eliminated from this action on the ground there is no testimony with reference to the eye, that it is of a permanent nature; that it was caused by this accident, and no evidence given on which the Court can properly base an award with reference to the eye injury.

The Court. I will refuse the motion.

Mr. Kalisch. I ask an exception.

Exception allowed, sealed accordingly.

Judge.

The Court. The testimony, as I remember it, shows this man was injured by a pulley having been set in motion by a fellow workman, and that he received injuries to his arm and to his jaw, and to his head or his eyes, and also to several or two or three of his fingers. And that prior to the accident there was nothing the matter with him so far as his eye was concerned or his mouth or his arm, as I remember the testimony. Under those circumstances I will deny the motion, and you may put in your defense.

Mr. Kalisch. I ask an exception.

Exception allowed, sealed accordingly.

Judge.

DR. JOSEPH LAWRENCE DIAS, produced as a witness, on behalf of the respondent, being duly sworn, on his oath, according to law, saith:

Direct examination by Mr. Kalisch.

10 Q Doctor, you have been connected with what hospitals? A I did my special work in the New York Eye and Ear Infirmary for seven years and the Cornell Medical College for four years and I am chief of the Eye and Ear Clinic at St. Barnabas' Hospital in Newark at the present time.

Q Do you specialize in what particular work? A Eye, ear, nose and throat.

Q Doctor, you made an examination of Mr. Purcell? A I did.

20 Q Can you tell me whether there is any disability as far as your opinion from your examination is concerned, with reference to his eyes? A There is none.

The Court. Did I understand this witness to say he had examined the petitioner?

Q When did you make the examination? A I made the first examination October fifth, 1916, and the second examination on November first,

30 1916.

Q And have you told us the result of one or both? A Both.

Q I mean the opinions formed on the occasion of the first or second? A On both.

Mr. Kalisch. Cross examine.

Cross examination by Mr. Blatz.

Q Doctor, you were employed by the defendant to make the examination? A (Wit-

40 ness nods head affirmatively.)

Q Where was the examination made? A In my office.

Q Where is your office? A In the Broad Street Theatre Building, Newark, New Jersey.

Q And Mr. Purcell came to you to be examined? A He did.

Q Twice? A Twice. 10

Q You say you found absolutely nothing wrong with his eyesight or eyes?

(Question repeated by the stenographer.)

A Nothing wrong with his eyesight.

Q What? A I can find nothing wrong with his eyesight.

Q What test did you make, doctor? A All the customary tests.

Q That may be true; I want to know what they are. A With test cards. He told me he could see absolutely nothing with his right eye. That he could not see a thing with it. And yet he told me that he saw double. And when you see double objects it always pre-supposes eyesight with both eyes. 20

(Answer repeated by the stenographer.)

A So I came to the conclusion as a result of my test he was seeing with that right eye. It was absolutely impossible for me to determine the extent of the sight in that eye because he told me he saw nothing with it himself. There was absolutely no objective symptoms in the eye. His media were clear; cornea, iris and lens, vitreous, ciliary body, retina and coroid. These are simply technical names of the different bodies in the eye. They have to be normal in order for the individual to see normally. They were all normal. 30

40

Q Your first examination was made on October fifth? A Yes.

Q What did you learn as to the condition of his eye at that first examination? A That all these bodies that I have described were absolutely normal and that he saw with that right eye in spite of the fact that he told me he didn't.

Q How do you know he saw with the right eye? A For one reason when he told me he saw objects double. That pre-supposes vision in two eyes. I have a test we call the Bishop test, which consists of a long arm placed at a distance of five or six inches from the eye; simply a little board with a hole in it. At a distance of ten or twelve inches from that we put in a test card. In this test card, I use a number of test cards. Some have a number of objects on them. On one of these cards we have the picture of a rooster and cat; if a man only uses one eye he can only see one of those objects. For instance, with his left eye he sees object on the right side card; with his right eye he sees the object on the left. In making that examination with Mr. Purcell he said he saw two objects; one above the other. And they could not be seen with one eye.

Q They could not be seen with one eye? A No.

Q He didn't say he saw the rooster and the cat with the one eye? A He didn't describe them.

Q You don't believe he saw the rooster and cat when he said that? A Yes.

Q Don't you believe he saw one object, one above the other? A No.

Q Which eye did you have covered? A I didn't have any eye covered.

Q He was using both eyes? A Of course he was.

Q What do you mean; he couldn't see the objects— A I am demonstrating he used both eyes, although he said he only saw with one eye. He told me that he saw two objects, one object above the other. Now, that cannot be done if a man is blind in one eye. If he sees two objects, as he tells me he does, he must be using two eyes. That test is one I had to determine whether a man is simulating blindness with one eye. That is all that is good for.

Q What other tests did you have? A I examined his field of vision.

Q What did you find out? A According to his statement—

Q Not according to his statement; what did you find out? A His field of vision is determined entirely by his statement. It is a purely subjective test; Doctor Ard described here. We are entirely dependant on the patient's statement. According to his statements, he was absolutely, totally blind in the right eye. He couldn't see anything. In the left eye, according to his statements, the nasal—right half of that eye was totally blind and the left half he only had a little bit of vision; what we would call ten-degree vision, which would mean that a man could not get about by himself at all.

Q You heard Dr. Ard testify as to his vision? A Yes.

Q Scope of vision? A Yes.

Q Is that exactly as you found it? A That is ever so much more than the man described to me.

Q What do you mean "ever so much more? A The man had a restricted field, according to

the statement he made to Dr. Ard, on Dr. Ard's last examination which was subsequently to me. The man had central vision in the other eye and he had a good deal of area around that eye he could see.

Q In other words he had improved? A According to that he was blind in that eye when he came to me; according to his own statements; and he could see when he went to Dr. Ard.

Q Why did you send for him on November first again? A To give him the benefit of the doubt.

Q Is there any doubt in your mind? A There always is in every patient.

Q Is there now any doubt in your mind? A About his condition?

Q Yes. A No, no.

Q What doubt was in your mind on October fifth about his condition? A I couldn't examine his field of vision. I had worked with him about an hour and he was a very nervous patient and it was very difficult for me to work with him and he was complaining of feeling tired. I didn't want to examine his field of vision when he was tired. I told him I would like to re-examine him if he could come to my office in a fresh condition.

Q And he told you he would? A He told me he didn't know whether he could come in the matter again.

Q He did come? A Yes.

Q Did you examine him at that time? A I examined him and made a thorough test of his field of vision.

Q Yes; anything else? A No.

Q Nothing else? A No.

Q You are not the doctor wanted to hit him? A Oh, no, no.

The Cour. Did he tell you when he came to see you and was explaining the symptoms that he had been a watchman and that he had to have somebody to guide him around at his work at night?

A No.

The Court. That is all.

Mr. Kalisch. That is all.

DR. NORMAN W. CURRIE, produced as a witness, on behalf of the respondent, being duly sworn, on his oath, according to law, saith:

Direct examination by Mr. Kalisch.

Q Do you admit Dr. Currie's qualifications?

Mr. Blatz. Oh, yes.

Q Doctor, are you connected with what hospital in Plainfield? A Muehlenberg Hospital.

Q Muehlenberg Hospital, and did you ever see Mr. Purcell? A I didn't see him—yes.

Q When did you see him first, do you remember? A The night of the accident.

Q The night of the accident. And was he your patient after that for awhile? A I attended him and saw him for a period of two weeks.

Q Do you remember him saying anything; whether four teeth were out of his mouth when you saw him? A He said nothing about teeth. There was no marks, no injuries whatever about the jaw or teeth I heard of.

Q Doctor, the petitioner, Mr. Purcell, has said that his face, when he came into the hospital was like a raw piece of meat; the right side. Can you tell us whether you found that condition to exist when he came in? A He wasn't at the

hospital at the time of the injury. He was at the hospital about the eighteenth day after the injury. I saw him at the hospital.

Q You hadn't seen him before that? A No. Not at the hospital.

Q I understood you to say you saw him— A
10 I saw him at his home.

Q You saw him at his home. When you saw him at his home did you see his face like a piece of raw meat? A I didn't.

Q What did you find with reference to any traumatism about his face, or head? A I saw nothing, and he complained of nothing about the head.

Q About the head. What did he complain of with reference to his shoulder bothering him?
20 Right shoulder? A He complained of pain about the right arm.

Q Right arm. Did it go up to the shoulder? A He complained—yes.

Q Now, doctor, as I understand your testimony what he complained of then was his right arm? A Right arm.

Q Was there anything else he complained of? A Not at that time.

Q Did he complain of his eyes? A No.
30 Q Did he ever complain of his eyes? A Not to me until yesterday.

Q Not until yesterday? A No.

Q How long did you treat him, doctor? A I treated him for a period of two weeks.

Q Two weeks. And during that time—strike that out. Will you tell us whether the condition with reference to his arm, right arm, was permanent or temporary? A It was temporary.

Q And was there anything about the injury
40 or the effects of the injury as you saw them on

the arm that would indicate to you a future permanent disability? A No.

Q You say yesterday was the first time he complained of trouble with his eye? A Well, first to me.

Q How did you happen to see him yesterday? A He came to my office yesterday. I asked him how he was. He said: "I am all right but my eye." 10

Q "I am all right but my eye?" A Yes.

Q Do you remember whether he said his right arm still bothered him? A He said my right arm is pretty good (indicating). He used it in that way. Those are his words.

Q Was yesterday the first occasion you saw him since two weeks of the treatment which you gave him? A Oh, I saw him around town several times, during this season; during the interval. 20

Q Did you see him walking alone around town? A Yes.

Q Yes? A Yes.

Mr. Kalisch. Cross examine.

Cross examination by Mr. Blatz.

Q Doctor, when was your first visit to Mr. Purcell's home? A It was the night of the injury about eleven o'clock. It was late. 30

Q About eleven o'clock. Who sent for you? A When I arrived home, I was out making calls and I was called to call at a certain number on West Front street.

Q You went there? A I went there.

Q Found Mr. Purcell? A Yes, sir.

Q Suffering from what? A I first took the history of the accident. Then, as a rule I make it a rule at all times in such injuries 40

to look them over from head to foot. I looked him over about the head. I saw no bruises or evidences of contusions. And then I looked at the neck, chest, abdomen, and extremities, and I found no evidences of any marks of trauma about the chest, abdomen and lower ex-
10 tremities. He used his left arm all right, but his right arm was lame. He complained of a great deal of pain about the arm and shoulder joint. I carefully looked it over and examined it for marks of injury such as bruises of any kind. I found none.

Q What was the matter with the arm? A What?

(Question repeated by the stenographer.)

Q What was the matter with the arm? A
20 He had no use of it at that time.

Q He had no use of the arm at all at that time? A Apparently not.

Q And you continued to treat him for how long? A For a period of two weeks.

Q For that arm? A Yes.

Q How often? A I called the next morning at his house where he was staying and he had gone out. He came that afternoon late, to my
30 office—and next day—and I told him to come back the next day. I saw nothing of him until about the middle of the next week. I think it was in the middle of the week he came back, still complaining of pain. He had regained some sensation in the forearm at that time. Then I saw him two or three days after and he had still more sensation and he had a slight —and he could use the forearm some. And then I saw him about the twelfth day and then I saw
40 him again the fourteenth day.

Q You thought it was necessary to see him at those different times? A Yes.

Q For his arm? A Yes.

Q The arm had been practically— A The history of it was. But it showed no marks.

Q It showed no marks. The arm had been disabled from the shoulder? A And I also had an X-ray taken of the shoulder. 10

Mr. Kalisch. An X-ray of the shoulder?

A Yes.

Q Where was that taken? A That was taken at Dr. Carmack's office.

Q Have you examined him since the two weeks' time you spoke of? A I saw him; he came in the office, I saw him another day about a month afterwards. 20

Q Did you see him after that? A I saw him about town after.

Q I mean professionally? A I looked at him as a matter of interest.

Q You were interested how he carried his arm on the street? A Yes.

Q You saw him carry his arm in that way on the street, every time you saw him? A No. It was in his side pocket.

Q It was in his side pocket, and that was the arm that was injured? A That was his right arm. 30

Q And you won't say that his arm—do you know whether his arm is entirely cured? A Considering.

Q Not considering, do you know? A I considered the improvement, when I last saw him in my office professionally he was improving.

Q That is over a year ago, isn't it, doctor? A Yes. 40

Q You noticed him trying to get his coat on this morning, didn't you? A Yes.

Q Do you think if a man has to put his coat on that way his arm is entirely improved?

Mr. Kalisch. That is objected to on the ground it is not the evidence in the case.

10

Mr. Blatz. That was right here before the Court.

The Court. I will allow it.

Mr. Kalisch. Ask an exception.

Exception allowed, sealed accordingly.

Judge.

Q What do you say? A Well, he put it on.

Q Do you mean to insinute or say he could have put it on a different way from what he did?

20

The Court. Did he put it on with difficulty?

A Some; somewhat.

Q Did you examine his mouth on the night of the first visit? A I am certain if there had been an injury that he stated that he would have called my attention to it.

30

Q Do you know whether you did or not, I am asking you? A No, I don't. But I do know this: that there was no marks on his face. And there were no marks, black and blue marks afterward that would indicate that there was anything of the kind. That would be very evident; it could not escape one's notice.

Mr. Blatz. That is all.

40

Re-direct examination by Mr. Kalisch.

Q Doctor, a blow which would be sufficient to cause four teeth to come out immediately on the side of the face, would or would you not expect to find some trace on the face after that blow was received? A You would, externally, and there would be bleeding, several hours afterwards. 10

Q Was there bleeding? A No.

Q Doctor, when the man left you, your treatment, can you say whether you, at that time, formed any opinion as to— I think you said it was temporary? A Yes.

Mr. Kalisch. I withdraw the last question.

Re-cross examination by Mr. Blatz. 20

Q It was several hours after the accident when you saw him? A Two or three hours.

Q Bleeding might have stopped at that time? A No.

Q How long would it take? A Not where the teeth were knocked loose as he stated here in court.

DR. CHARLES B. LUFBURROW, produced as a witness on behalf of the respondent, being duly sworn, on his oath, according to law, saith: 30

Direct examination by Mr. Kalisch.

Q Qualifications admitted. Doctor, did you have—did you ever examine this man Purcell? A I did.

Q Do you remember when? A About between two and three weeks after Dr. Currie fin- 40

ished with him. Dr. Currie I think had him for two weeks after the accident.

Q Yes. A And he was sent to me by the superintendent of the International Motor Company, Mr. Ares, for examination.

Q And, doctor, did you find, did he complain
10 to you of any trouble about his vision? A Not when I saw him first, no.

Q When did he complain of loss of vision? A I couldn't state the time, but shortly after I first saw him he complained about his vision.

Q Did you find any evidence of a traumatism? A There was no marks of violence or no bruises, or contusions on his body when I saw him.

Q Doctor, assuming that a person received
20 a blow to the right side of the cheek which was of sufficient force to loosen and knock out four teeth, natural teeth, what is your opinion as to whether there would be some visible trace at the point of contact, or not, of the blow? A My opinion is there would be. These teeth would have to be molars to be knocked out from a blow on the side of the face and it would have to be a hard blow, and I should think it would
30 leave some mark or scar of the injury behind.

Q And when he left you, doctor, when you finished with him, can you say whether you had any opinion as to the condition of his—formed any opinion as to the condition of that right arm? A When he came to me I took him down to the hospital one day for the purpose of getting an X-ray picture, and after I got him there I found he already had an X-ray picture. And I thought I would not go to the expense. And I consulted the one which was negative, and
40 showed nothing wrong; there was no indication

of atrophy of any of the muscles of his arm. There was no spastic condition of any of the muscles of his arm. He had apparently no paralysis of any of the muscles of his arm, and I could not see from my own examination that there was anything in the world the matter with the arm. 10

Q Assuming for the purpose of making the examination, and seeing the plate—strike that out. What have you to say as to whether you think he can work or not? A I don't know whether he ever could work. I wouldn't like to say that. I don't know what he could do before.

Q I mean to say was there anything about the physical condition that would cause you to conclude that he was anyway disabled from work? A Not as far as I could see from my examination. Just from objective signs. There was absolutely nothing to be seen wrong. 20

Mr. Kalisch. Cross examine.

Cross examination by Mr. Blatz.

Q Doctor, didn't you have him call to your office and you tried out his arm so to speak? A Yes.

Q When was that, doctor, do you remember? A Between two and three weeks after Dr. Currie finished with him Mr. Ares asked him— 30

Q Have you examined him since then? A Oh, yes. He has come in my office a number of times since then. He is not my patient. I never kept any record. I just wanted to see the fellow get his arm back as a matter of interest.

Q You thought it was of sufficient importance to advise him from time to time what to do to get it back into shape? A He would come in to 40

see me of his own accord without any solicitation on my part, and I have encouraged him in every way to use his arm, feeling it was a thing could be overcome by persistence on his part.

Q What have you to say at the present time as to his using that arm? Do you think he has
10 full use in that arm? A I haven't examined him since that time. I have examined his arm; he was in my office a couple of days ago and said his arm was much better. He didn't say it was well; he said it was much better. I haven't examined him.

Q At the time you examined him you said it was then between fifty and seventy-five per cent. to the bad, did you? A No.

Q Didn't you make a report to that effect at
20 that time? A To whom?

Q International Motor Company? A No.

Q Was his teeth out when you examined him? A I don't know. I didn't examine his mouth.

Q You didn't examine his mouth a couple of weeks after? A No.

Q Did he complain to you about his teeth? A He didn't.

Q Did he complain to you about his head and
30 eyes? A Yes. Not on my first examination. His eyes he told me about later on.

Q When was that? A Possibly the second time he came in to see me or third time. He used to come into see me occasionally.

Q What did he tell you about his eyes? A He said he couldn't see out of the right eye, and he said the right upper lid dropped. And he said he couldn't go on with his work as machinist because he couldn't see fine tools, and
40 marks.

Q That was about a year ago? A That was about a year ago.

Q And you have seen him several times since then? A Yes.

Q And the eye drops? A Yes, sir.

Q And he kind of turns his head around? A Yes, sir. 10

Q And he carries his right arm in his pocket? A Every time I see him he has it in his pocket.

Q You are sure his arm is perfectly well now? A I didn't say it was. I haven't examined it.

Mr. Blatz. That is all.

Re-direct examination by Mr. Kalisch.

Q Was there anything the last time you examined him about the arm which would indicate to you that there would be any permanent disability to it? A There was nothing about it any time I examined it to show there was any disability present, but temporary. 20

Re-cross examination by Mr. Blatz.

Q Why did you treat him? A I didn't treat him.

Q You did not treat him? A No, sir.

Q Never at all? A No. He came to me and I took him down to the hospital to get an X-ray and when I found one had been taken I didn't go to the expense but consulted that. 30

Q Why did you advise him to use his arm? A My own opinion was this accident had made a considerable impression on his mind and he ought to have some encouragement to use it because if he didn't use it the muscles would become atrophied.

Q There wasn't any injury to it then, though, if he didn't use it— A No, if you didn't get 40

around in an injury of this kind and use it it would wither up and finally there would not be any strength in it.

DR. NORMAN W. CURRIE, re-called.

Direct examination by Mr. Kalisch.

10

Q Doctor, did you ever treat Mr. Purcell at the hospital? A No.

Q Was he ever there? A He only called that afternoon at Dr. Lufburrow's request for an X-ray picture.

Q But he never was treated at the hospital? A No.

Q Where did you have to see him during those two weeks? Where did you see him? A As I stated I saw him the first night at his home where he was staying.

20

Q Plainfield? A Then I went there next morning and he had gone out. He came to my office that afternoon and thereafter he came to my office for treatment.

DR. HARRY L. SATCHWELL, produced as a witness on behalf of the respondent, being duly sworn, on his oath, according to law, saith:

30

Direct examination by Mr. Kalisch.

Q Doctor Satchwell, where are you a practicing physician? A Newark.

Q What is the nature of your practice? A Accident surgery and X-ray work.

Q And X-ray work? A Yes.

Q Did you at my request take an X-ray picture of Mr. Purcell's head? A I did, at my office on November fourth, 1916.

40

Q Who took the picture? A Pictures were taken and developed by me.

Q I give you two envelopes, with pictures or plates and pictures in. Doctor, what does the first plate you have in your hand indicate? A It was a picture of the head taken with the face on the plate. It shows regions of the eyes, nose and the portion of the upper jaw above the teeth. 10

Q Will you kindly tell us what is shown in that picture with reference to any abnormal condition? A The plates are absolutely negative. The bones and the holes in the bones are perfectly normal. There is no indication of their being or having been any indication of any diseased or injured condition. That portion of the head. 20

Q That portion of the head as you have that picture before you would comprise what part of the— A It would comprise a portion of the head in front of the ears and from the top down to about the upper teeth.

Q Is this the— A Print.

Q Which print goes with that picture? A This one.

Mr. Kalisch. Do you object to using the print with the picture? 30

Mr. Blatz. No.

(Print entered in evidence and marked Exhibit D. 1.)

Q That is what you have described as what that one picture shows? A Yes.

Q What does that picture show? A The other picture is a picture of the same part of the head except that the chin is further down so as to show more of the portion in back of the eyes. 40

Q Will you kindly tell us whether that shows any abnormal condition? A It does not show anything abnormal.

Q Anything which would indicate a trauma? A No; no signs of injury or disease.

Q When this man, Mr. Purcell, came into your office did you notice him using his arms at all? Getting on his coats? A No, I didn't examine him.

Q You didn't examine him? A No.

Q Can you tell us whether you noticed that he wasn't free about the use of his right arm? A I didn't notice whether he had an overcoat on at all. He wouldn't strip to take the face pictures.

Q Is there anything about those pictures further you would like to explain? A No. They are normal.

Mr. Kalisch. Cross examine.

Cross examination by Mr. Blatz.

Q You didn't take an X-ray of the arm, did you? A I didn't.

Q Why did you take an X-ray of the head? A The man was sent to me for an X-ray examination on the advice of Dr. Dias, who is an eye specialist. I was asked to examine the head and see if there was any trouble could be found that way in his head.

Q This picture, marked D. 1, shows the picture from the mouth to what part of the— A Up top of the head.

Q What does this indicate? A Those are the orbits; eye socket, marked orbit of the eye. And that in the centre is the cavity of the nose. Those on the outer side of this are the cavities of the upper jaw bone.

Q This does not show the top of the head? A Not the extreme top. Up to about the hair line.

Q Nor does it show the back of the head? A It shows the back of the head under that shadow, and that part shines through the other part. But that is indistinct compared to the other part. 10

Q If there had been an injury to the back of the head you couldn't tell? A If there had been a fracture there, leaving enough thickening there to leave the bone considerably thicker, you would get it on the other plate; it would shine through the other.

Q And injury as Mr. Purcell has had in the shoulder would look— A That might mean anything. 20

Q Is there anything to show an injury to the back of the head? A Yes.

Q Where is that? A If you put a man on the plate the shadow of everything in the back of the head is shown on there.

Q You haven't the full head? A Up to the hair line, from the top to the teeth. Not the extreme top of the head. That is not a picture of the teeth.

Q I thought you said you made a picture of that, too? A No, sir; down to the teeth. 30

(Second print marked in evidence as Exhibit D. 2.)

DR. THEODORE TEIMER, produced as a witness on behalf of the respondent, being duly sworn, on his oath, according to law, saith:

Direct examination by Mr. Kalisch.

Q Doctor you are a practicing physician in the City of Newark? A I am. 40

Q Connected with any public institution? A No.

Q Do you occupy any position at all with reference to your profession at the present time? A Well, I am a member of the Board of Health of the City of Newark.

10 Q And you have been practicing how long? A Eighteen years.

Q Eighteen years. Now, doctor, did you make an examination of Mr. Purcell at my request? A I did.

Q Do you remember the date of that examination? A Yes; November eighteenth, 1916.

Q Doctor, when you examined him will you please tell us whether in his history he mentioned anything other than injuries to his right 20 shoulder, right arm and right wrist? A He spoke to me only about injuries to his arm and shoulder and his hand; his wrist.

Q That is all he spoke about, doctor? A That is all he spoke about.

Q Do you know whether he was dressed or undressed when you started—when you examined him? A He was introduced to me dressed.

Q Yes? A The examination took place at the office of the company, of the insurance com- 30 pany.

Q Yes? A And when I asked him to be examined he suddenly disappeared and I didn't know where he went. When he returned stripped to the waist, a coat thrown over his shoulder, it was rather disappointing to me because I wanted to have a chance to examine the man while he was undressing.

Q Yes? A And then he began to tell us about his injuries; about the accident and gave 40 me a chance to examine his shoulder and arm.

Q From the examination of the shoulder and arm can you tell us whether they were normal or not, as far as you could see? A The position of the right shoulder at the examination was not the same as the position of the left shoulder. The man held his shoulder higher. It was distinctly an elevation, and the elevation of the right shoulder was the result of a muscular action. 10

Q Muscular action? A Muscular action. I noticed his right shoulder was held up by the contraction of the muscles that performs this act, and that these muscles were contracted all during the time—voluntarily contracted all during the time of the examination.

(Answer repeated by the stenographer from the word "voluntarily" on.) 20

A I realized that this contraction of these muscles was not a consequence of pain, though the man asserted that he could not lower his shoulder on account of pain. He was able to move his arm in practically any direction, except he was not able, as he told me, to move it back of his body, and he said also he could not raise it any higher than he demonstrated today. Now, the motion of the arms in all the directions he indicated was free. There was no difficulty in the shoulder joint and the muscles surrounding the shoulder appeared normal in every way. In fact, when the man was stripped he was a specimen of strength and health. He had a powerful set of muscles. Not a set of muscles—not like a set of muscles would appear that would be diseased or disabled by non-use. In fact, the condition of these muscles were such that the man could be looked upon as a specimen 30 40

of manhood that was using his arms fully and to their advantage. I demanded him a number of times to relax that muscle in the shoulder because I realized the contraction was voluntary, and he paid no attention to this. And I had to get along without this. The examination by palpation of the shoulder muscles and by examining the bones and the moving the arms, as far as it was possible, to do so, didn't indicate anything abnormal. And the same thing with the elbow joint. He interfered greatly with the examination, especially when I started to examine the wrist.

Q Wrist? A Wrist and hand. When I asked him to raise his hand he did just the opposite; he did just the opposite. When I wanted to examine the power of the muscles of the extensor side of the arm, which muscles have control of raising, he contracted the muscles on the lower side, which showed he wanted to interfere with the examination, so the examination did not yield any result as far as any evidences of disease was concerned, or injury was concerned, and I was compelled to demand him a number of times not to interfere. This man was so strong in his muscles that I couldn't bend his arm or do anything to him I wished. When I finally characterized his attempts to interfere and throw suspicion on his good will, he was a regular explosion, and became very abusive and I discontinued the examination.

Q It ended rather disasterously, didn't it? A Almost.

Q Did you find anything at all which would indicate to you a disability? A No.

Mr. Kalisch. Cross examine.

Cross examination by Mr. Blatz.

Q I thought you said you didn't make a complete examination? A No. As far as I examined I didn't find any evidence of disability.

Q You told us he brought his right arm around this way, all right. And he raised it the same as he did this morning but he could not get it in back of him. A That is what he said. 10

Q Did you try to ascertain whether it was true or not? A I tried.

Q What did you find? A He wouldn't move it any further than he said.

Q Could he move it? A He wouldn't move it.

Q Did you try to move it? A I couldn't move his arm because he resisted. 20

Q You mean to say because he resisted you could not raise that arm any higher than this?

Mr. Kalisch. I object to the question because the question presupposes that the doctor can use force on the person he is examining. A man cannot force by excessive force another man to raise his arm.

The Court. You do not desire to go that far in this examination. 30

Q Did you try to raise that arm? A I did.

Q Did you succeed? A No.

Q He told you he couldn't raise it any higher? A I could see by the contractions of the muscles that he was resisting actively to the raising of his arm. And I could not by any force, even if I had applied force, I could not break the muscles of that man. He was entirely too strong for me if I had tried to. 40

Q You have examined enough people to tell whether a man is really putting force there or whether it is by reason that he can't raise it? A I believe the man was able to raise the arm, but he didn't want to.

Q Did you try it on the back of him? A
10 Yes, sir.

Q What did he do? A He turned around; he followed.

Q Do you want to say the same thing; he could have done it if he wanted to? A I believe so.

Q Did you examine it to try and find it? A The whole examination proved it.

Q What? A The entire examination.

Q The entire examination was you got
20 angry and hit him? A Was anything stated to that effect?

Q I ask you that.

The Court. I will allow you to explain it if you wish to.

A This man, your Honor, came to the office of the insurance company in a very boisterous way. I did not know anything about what kind of an injury or man I was going to
30 meet. And he talked to me in a very jolly way. I might say, perhaps, in a way that I would characterize, if you pardon the expression, he was "kidding me." I exhibited that same way of talk to him, that is sometimes very good in talking to people in ordinary walks of life, because they don't understand the scientific tone and we had some good-natured talk. The man was using some kind of language I didn't understand.

40 *The Court.* Slang?

A Not only that, but some foreign language. I asked him if it was what you call "platt" German, and he said yes, but I think he spoke some kind of Irish all the time. That didn't matter. When we got along with the examination, I admonished him a number of times to stop that attempt to interfere. He was having some fun with me. Toward the end of the examination when the explosion occurred, I said, "if you don't stop this," I said, "you lay yourself open to a suspicion of being a faker." And immediately a violent explosion, and the man jumped up and he called me a vile name and up went his arms and two gentlemen jumped in between. I was perfectly disappointed when they had jumped between, because I would have had a chance to see him use his arms at work. Naturally I didn't do any hitting and neither did he; he walked out and came back dressed.

Q He didn't do any striking? A No, certainly he didn't.

The Court. Was he drunk?

A No. Apparently not. But this man—I am going to state this observation—has an explosive way, or irrational way sometimes in talking.

Q When he went to be examined the time you examined him as to his ear, hand and wrist, nothing about the eyes? A No. I might add this; I didn't ask him about the eye, and possibly if the examination had continued he might have said something about the eye.

Q He wasn't there to have the eye examined? A I wasn't told anything about the eye. I didn't know anything about the case.

Q How long did the examination take? A I should think about fifteen or twenty minutes.

Q Was there anything in relation to the arm which would indicate to you that it had ever been injured? A I didn't find any injuries to the bones. And I didn't find any injuries to the muscles.

Q Well, did it appear to you that it had been injured? A Apparently as far as I went I didn't find an injury to the nerves, but as far as the last part of the examination went, as I said, I didn't go any farther than he did, so the examination may not have been entirely complete.

Q May not have been entirely complete? A As far as I went I didn't find anything. But I would have probably examined him longer.

Q Did you see him put his clothes on? A No, he went out and put his clothes on.

Q Did you see him put his overcoat on? A Today?

Q No, I mean in this office? A No, he came in perfectly dressed. And these circumstances, if you will remember, are very queer circumstances, because it happened in a strange city in an office building.

Q It happened in the office building where the office was? A Yes.

The Court. Where was it?

Mr. Blatz. Newark.

The Court. You belong to Newark?

A I am a Newark physician.

By Mr. Kalisch.

Q So he went out to dress and undress? A Yes.

Walter L. Browe, direct.

By Mr. Blatz.

Q You did not ask him to dress before you? A No.

Mr. Blatz. That is all.

Mr. Kalisch. That is all.

Adjourned until Monday, December 18th, 1916, at 10:00 A. M. 10

UNION COUNTY COURT OF COMMON PLEAS.

PATRICK J. PURCELL, *Petitioner,* *vs.* INTERNATIONAL MOTOR CO., *Respondent.*	*Under Employers' Liability Act.*

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Transcript of stenographer's notes of evidence taken in the above entitled matter, before Hon. James C. Connolly, Judge of the Court of Common Pleas, in the Union County Court House, in the City of Elizabeth, New Jersey, on the eighteenth day of December, A. D. 1916, at 11:00 a. m. 30

Appearances:

Francis J. Blatz, Esq., for the petitioner.

Isidor Kalisch, for the respondent.

WALTER L. BROWE, produced as a witness on behalf of the petitioner, being duly sworn, on his oath, according to law, saith:

Direct examination by Mr. Blatz.

Q Mr. Browe, where do you live now? A 965 West Front street, Plainfield, New Jersey. 40

Q Were you in the employ of the International Motor Company at the time Mr. Purcell was employed there? A Yes, sir.

Q Do you remember the night of the accident? A Yes, sir.

Q Did you see the accident? A (Witness
10 nods head affirmatively.)

Q When Mr. Purcell came down from the shafting—he was up on the platform, wasn't he? A Yes.

Q When he came down what did you notice, if anything? A A little blood coming out of his mouth, all around his mouth.

Q Running out of his mouth? A Yes.

Q What did he do for that? A He went outside to do some work out in the shop and
20 wash.

Q You say you were going about your business? A Yes.

Q Did you see him after that? After the accident? A Yes.

Q Where? A At my house.

Q Was he boarding at your house? A Yes, he was.

Q That is when his wife was away? A Yes, sir.

30 Q Did you notice anything wrong with him at your house? A My wife had to cut his food up.

Q Why did she have to do that?

Mr. Kalisch. I object to that and move it be stricken out.

Mr. Blatz. That is all right.

Q Did you notice anything with his arm? A No, sir. Only he always carried it in his
40 pocket or in a sling.

Q For how long after the accident? A That I don't know. He wasn't there long. As long as he carried there.

(Answer repeated by the stenographer.)

Q As long as he was with you he carried it in the sling? A Yes, sir.

10

Q How long was he with you? A About four weeks, I believe.

Q Did you see any of the teeth knocked out? A No, sir; I didn't.

Q All you saw was the blood coming out of his mouth after he came down from up above there? A Yes. That is all.

Mr. Blatz. Cross examine.

Cross examination by Mr. Kalisch.

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Q Your wife cut the food because he said he couldn't cut it, is that right? A Yes.

Q He said he couldn't cut it? A Yes.

Mr. Kalisch. That is all.

Mr. Blatz. That is all.

JAMES H. PURCELL, produced as a witness on behalf of the petitioner, being duly sworn, on his oath, according to law, saith:

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Direct examination by Mr. Blatz.

Q Mr. Purcell, you are the son of Patrick Purcell, the petitioner. Do you remember the day of the accident? A Yes, sir; I don't remember exactly the date; it was in October, 1914.

Q 1915. A year ago this October? A '15.

Q Were you home? A I was residing in Schenectady, New York, at the time.

40

Q When did you come to Plainfield? A I came to Plainfield shortly after he came up there on a visit and the time he was up there he was complaining of his arm.

Mr. Kalisch. I move that be stricken out as to the complaint made by the petitioner to his son.

10

The Court. He must not tell what was said.

A I was just referring to the facts leading to my going to Plainfield.

The Court. You can tell what you noticed or what you saw.

A He complained of pains—

Mr. Kalisch. I move that be stricken out.

20

The Court. You cannot tell what he said. Tell only what you noticed. What you observed.

A I observed him, he had great difficulty in moving his arm and he could not cut his food properly at the plate.

Mr. Kalisch. I move that be stricken out.

30

The Court. Why?

Mr. Kalisch. As calling for expert evidence which a layman is not qualified to give.

The Court. I will allow it to stand.

Mr. Kalisch. I ask an exception.

The Court. Yes.

Exception allowed, sealed accordingly.

40

Judge.

A This was at my house in Schenectady.

The Court. Yes.

Q And he came down to Plainfield, he was working and he got me a job in the International Motor Company, and in that way we both moved from Mr. Browe's house over to another house where he and I roomed together. During that time he complained continuously of his arm. 10

Mr. Kalisch. I move that be stricken out.

The Court. It will be stricken out.

A That he could not cut his food at the plate.

Mr. Kalisch. I move that be stricken out. 20

The Court. I will allow it to stand.

Mr. Kalisch. Exception.

Exception allowed, sealed accordingly.

Judge.

A Well, his eye—notice it, I noticed it, I couldn't observe it, although he complained. I don't know the structure of the eye. 30

(Answer repeated by the stenographer.)

The Court. I will strike that out.

Q Did you assist your father in watching as night watchman?

The Court. Yes or no?

A Yes.

Q Where? A In the old "Krow (?)" machine works at Berkely avenue and North avenue.

40

Q Berkman street? A Berkman street.

Q And North avenue? A Yes.

Q Plainfield? A Yes, sir.

Q And that is where they had the automobiles stored? A Yes.

Q How many nights did you assist him? A
10 About four. Not assist, relieved.

Q You relieved him? A Yes.

(Testimony repeated by the stenographer.)

Q What do you mean by relieved him? A He wasn't there when I was there.

Q Did you ever go up to the warehouse or storage room with your father?

Mr. Kalisch. I object to that question.

The Court. I will allow that.

20 *Mr. Kalisch.* I ask an exception.

The Court. Take an exception.

Exception allowed, sealed accordingly.

Judge.

A No.

Q Prior to the accident, did your father have all his teeth?

30 *Mr. Kalisch.* I object to that on the ground that this witness says he wasn't living at home.

The Court. I will allow the question.

Mr. Kalisch. I ask an exception.

Exception allowed, sealed accordingly.

Judge.

A As to having all his teeth I could not
40 positively state. But to my knowledge he al-

ways had a good set of teeth. He never complained of trouble with his teeth.

Q You notice where they are out now? The teeth are out now? And that it is on the right-hand side? A Yes.

Q Were those teeth out prior to the accident? A No. 10

Q When did you notice they were out the first time?

Mr. Kalisch. I object to that on the ground this witness' testimony states he lived in an entirely different town. Another city, so that his testimony must be nothing else but hearsay. And I therefore move to strike out the question and answer.

The Court. Motion denied.

Mr. Kalisch. I ask an exception. 20

The Court. Yes.

Exception allowed, sealed accordingly.

Judge.

(Question repeated by the stenographer.)

A Well, we were rooming together about six or seven weeks after the date of the accident.

Q Was that the first you had seen him? A No, I had seen him, but I didn't notice; not taken note of it. 30

The Court. Six or seven weeks after the accident you saw that these teeth were missing, is that it?

A Yes.

The Court. Now let me ask you a question. Hadn't anything directed your attention during the six or seven weeks to the condition of his teeth? 40

A Your Honor, I believe that you misunderstand me. I didn't—I hadn't been continuously with him the six or seven weeks. Now, at the time of the accident or shortly after, approximately a few days he came to my home in Schenectady on a visit. About four weeks after he
10 came home I went to Plainfield and obtained the job.

By the Court.

Q What do you mean, after he came home? A To my home in Schenectady.

Q Did he remain there when you came on here? A No, he came back.

Q After four weeks? A After a couple of days; he went on a week-end, from Saturday until Monday. I believe it was Labor Day—
20 no he was up on Labor Day and he came up later on for another week-end; just a couple of days or so after the accident.

Q How long did he remain there? A Just the week-end. Just over Sunday. Left Sunday night.

Q He told you about the accident? A Yes.

Q Now, for six or seven weeks after the accident you hadn't learned of the fact that his
30 mouth had been injured or his teeth knocked out? A No.

Q You had learned all about the accident otherwise, hadn't you? A At the time he came to visit me at my home he complained of his shoulder or arm being wrenched.

Q You must not tell any of his conversation. I will allow that to stand so much. You must simply give us your observations. A After I went to work in Plainfield and we went to room together and board together at another board-
40 ing house, I observed that he had great difficulty

in cutting steak at the table and I cut the steak for him. That was due, I believe, to his arm.

Mr. Kalisch. Of course I am not objecting to the Court's question, but I certainly think the answer is entirely improper.

The Court. He has done answering my questions. Of course he says now that he noticed that when he came to Plainfield his father could not cut his meat, and he cut it for him. That is the only part of the question that is pertinent. His beefsteak. 10

A I did not mean to infer that it was just steak as the article of food, but in general his meals, other than liquid. Now, I noticed shortly after I had been living with him that when he would look he would cock his head.

Mr. Kalisch. I object to this line of testimony on the ground it is not proper rebuttal testimony. That is proper on the direct examination and it certainly does not rebut anything that has been put in by the defendant in this case. 20

The Court. I will allow it.

Mr. Kalisch. I ask an exception.

Exception allowed, sealed accordingly.

30

Judge.

The Court. Yes, sir. The testimony in the whole case is very unsatisfactory, and therefore, I will allow this testimony and any other testimony that will throw light upon the condition of the petitioner at any time following the injury.

A His head, as I said—when he would look he would cock his head, and close one eye. That 40

was probably a week or so after I went to live with him.

Q A week or so after he went to live with him. Then you did not notice it from the time you started to live with him. It was a week or more after you went to live with him, is that it?
10 A I noticed his arm immediately.

Q I am not talking about his arm. A About his eye I paid no attention. That is, I didn't notice it.

Q Didn't notice for a whole week or more? A I should say approximately about a week. Because we practically just went in to meals together, and we went out. I went out nights alone. Now did you want anything?

The Court. That is all. Anything fur-
20 ther?

Mr. Blatz. Nothing further from me.

Cross examination by Mr. Kalisch.

Q You refer to the cutting of his meat when you were living at Browe's house? A No.

Q At your own home? A No. At the time I removed to Plainfield, Mr. Browe had no extra accommodations for me so I went and got another place.

30 Q Now, you paid attention to his arm when he came up to your house— A Schenectady.

Q Schenectady, and you noticed it? A Yes.

Q And that is all you did notice, is that correct? A Yes.

Q And how many weeks elapsed before you noticed the eye? A I should say about five.

Q About five weeks before you noticed the way he cocked his eye? A Yes.

40 Q And shut one lid down? A Yes.

Q Which lid did you see him shut down? A The right.

Q You say you noticed his teeth about six or seven weeks after the accident? A Yes.

Q Noticed the condition I mean. How many teeth did you notice were out? A I didn't look in his mouth, but I noticed from here back (indicating the corner of his lip) were absent.

Q Is he a pretty jolly person? Was he a pretty jolly person? A When?

Q When he came up to see you? A No.

Q Outside of the injury that you say he had? A No.

Q You saw him open his mouth up there, didn't you? A I paid no attention.

Q You paid no attention to that and paid no attention to his eye? Did you pay any attention to his eye any time? Did you notice it when he is talking to you? A I noticed it particularly, more.

Q You do notice that? A Yes.

Q What time would you relieve your father at the watching? A I went there in his place.

Q I know. What time would you relieve him? A I didn't relieve him. That is not—he worked on day shift and I the night shift. He had the night shift, and he was unable to go on the night shift, so I relieved him a bit later; and I took his place when he was supposed to take it.

Q In other words, instead of his being there you were there? A Yes, sir.

Q Were you here on Thursday, in court? A Part.

Q Did you hear your wife say that you went up there and helped him around the place among the machines, watching— A I wasn't.

Q Did you hear her say that? A I wasn't here during her testimony.

Q Is that true? A I don't remember being there the same time that he was.

Q Well, that is not the fact, then, Mr. Purcell? A I will correct my testimony—

The Court. He does not remember.

A He came up with me and instructed me the first night.

Q It isn't a fact that three or four or two or three occasions you helped him around and helped him around watching? A No.

Mr. Blatz. I object to that. There is no testimony to that effect.

Q Did you ever go down to the shop with him? A Which shop?

Q Outside of that one occasion? That you were watching? Did you ever walk down with him? A No.

Q Did you ever go out with him at all? A The first night.

Q That is the only time you ever walked out with your father? A That is the only time I was with him.

Q I am not talking about down to the shop, but was that the only time you have been on the street with your father after the accident? A No, no.

Mr. Kalisch. That is all.

The Court. Any further examination of this witness, Mr. Blatz?

Re-direct examination by Mr. Blatz.

Q Did you say that you noticed his head to the side? Carried on the side, and the right eye closed? A Yes.

Q Has he been carrying his head and closing his eye ever since the first time you saw him up to the present time? (Question repeated by the stenographer.) A I believe when he would want to distinguish or make out—

Q From the first time you noticed him carrying his head on the side and his right eye lid down, you remember when that was? A Yes.

Q Has he been doing that continuously up to the present time? A To my knowledge, yes.

Q And you have been living with him continuously to the present time? A No. I lived with him until about the first of March, nineteen hundred—

Q 1916? A 1916.

Q Have you seen him since that time? A Yes, frequently.

Q And the condition and the manner in which he carried his head, or closed eye, or lid of his eye has been practically the same? A Yes.

Mr. Blatz. That is all.

Mr. Kalisch. That is all.

Mr. Blatz. If your Honor please, that is all. Unless we have this doctor. That is one thing, about this doctor.

Mr. Kalisch. I rest my case.

Adjourned until December twenty-sixth, A. D. 1916, at 3:00 P. M.

DECEMBER TWENTY-SIXTH, 1916, SESSION, 3:00 P. M.

DR. VICTOR J. MRAVLAG, produced as a witness, on motion of the Court, being duly sworn, on his oath, according to law, saith:

10 *Direct examination* by the Court.

Q Doctor, have you made an examination of the arm and side of Patrick J. Purcell? A I did, sir.

Q The gentleman whom I introduced to you a short time ago? A Yes, sir.

Q Will you please explain to the court what you found? A I undressed or rather had Mr. Purcell undressed himself so that every part of his body was entirely nude. I looked at the shape 20 of his arms and apparently there was no difference. I asked him what his disability was and he said he could move his arm forward and could not move it well backward and he could not raise it. He stated that his fingers had been useless, but that now two of them were all right and the others he could not use. And then he spoke to me about his eye and while I looked into his eye I am not an expert in that 30 line, and therefore, have nothing to say on that subject. As far as his arm is concerned, the measurements show no difference between the right and the left arm. The appearance of the arm does not show any difference on the right side, on the injured side, from that of the other side. The forearm shows no difference on either side. He can open and close his hand. He can move his fingers. Therefore, as far as I know, I can say there is nothing to prevent him from using his fingers. He can raise 40 his arm forward like this (indicating) and to

bring it back like this (indicating). But he said he could not bring it beyond this. But I took his arm and moved it forward so that I took him unawares and I raised his arm without any trouble, although he maintained it hurt him. I left the arm after I raised it and he didn't drop it; he tried to take it down himself. It shows the muscles concerned in the action of raising the arm were undamaged because otherwise the arm would have dropped after I lifted it. As far as I could see there is nothing the matter with his arm nor with his hand on this side, although he is of the opinion there is and therefore he does not use the arm. He holds his arm in this position and he uses the other arm to dress and undress himself, but I think he could use this arm freely. For instance, he said he cannot bring his arm forward like this (indicating). And there is nothing to prevent him from tying his necktie; but he is up like this and he brings it up this way. There is no reason why he couldn't, if he persuades himself he could do it. He said he straps his arm on the side when he works. I can't see any reason for it and I don't believe he does. And I don't see any reason for it. As far as the examination of the ram is concerned I think there is absolutely nothing the matter with it. If he does not use it, he either persuades himself that he cannot. In other words, he has a hysteric idea or else he is well aware that he can and for reasons of his own he won't use it.

Q Now, doctor, did you examine his fingers to ascertain whether they were stiff or not? A I did. He moves them freely. He shuts his hand; he opens his fingers. There is absolutely no difference in the action. He states that he cannot distinguish whether a thing is round or

edged when he touched it. Of course, that is a personal statement and I cannot make any test in that direction because it all depends on his personal ego, whether he will say he does or whether he will say he don't.

Q Do you represent the defendant in the
10 case? A No, sir.

Q Nor the insurance company? A No, neither.

The Court. That is all.

Mr. Kalisch. May it please your Honor, did the doctor examine anything except the arm?

The Court. That is all.

A It just strikes me while I would not act
20 as expert on the eye question I will testify to this, that there are many people who have a natural difference in the vision between one eye and the other and when the two eyes do not focus in the same way, then they will see double and by habit they might throw one eye out of looking double and use the other one. I know because I am an example of it myself. I see with my right eye because the strength of vision is different in the two eyes; and so that
30 I am not double—troubled by double vision I once in a while throw my eye a little to the inside and stop at a distance where both eyes, of course, have the same focus. And, therefore, it does not interfere. But when I look at anything near I see double.

The Court. That statement cannot be considered by the court because there is nothing on which it can be predicated by the court.

40 CASE CLOSED.

Conclusions.

Filed January 29, 1917.

UNION COMMON PLEAS.

PATRICK J. PURCELL, *Petitioner,* *vs.* INTERNATIONAL MOTOR COMPANY, *Respondent.*	*Under Workmen's Compensation Act.* *Conclusions.*

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Codington & Blatz, attorneys for petitioner.
Kalisch & Kalisch, attorneys for respondent.
Submitted on briefs, January 25, 1917.

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CONNOLLY, *J.:*

The petitioner was in the employment of the respondent, at its factory in the City of Plainfield, on the twenty-first of October, 1915, and sustained injuries on that day, which arose out of and in the course of said employment. The facts show that petitioner was engaged as a machinist, and was fixing or tightening a set screw in a fan, eight feet above the floor of the factory, and told the foreman not to start the motor which set the shafting in motion, while he was tightening the screw. Notwithstanding the warning given to him, the foreman set the machinery in motion, and in consequence the petitioner's arm was caught in the shafting. The petitioner jerked himself back, in an effort to save himself, before the machinery was stopped, and in doing so, knocked his head and jaw against the box which held the journal.

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He was also struck with a belt lacing on the right eye. The testimony as to the extent of the injuries is conflicting. The petitioner swears, that he lost six of his teeth; that he has lost the power of his right shoulder; that all of his right side is affected by the injury, to such an extent that he is not able to raise his arm above the level of the shoulder; that he cannot work as formerly; that he has a double vision of the right eye, one object being above the other, when looking to the left, and when looking in any other direction, he sees double; that he cannot distinguish objects with his right eye, and that the left eye is also affected. He also states, that before the accident his eyesight was good.

I do not think there is any doubt as to the injury to the petitioner's eye, but his testimony does not satisfy me as to the loss of his teeth, and I am convinced that the injury to his shoulder and arm had fully disappeared before this proceeding was instituted.

On the date of the accident to petitioner, a Doctor Curry was called in to see him, and the doctor swears, that he made a thorough examination of him; that he examined his head and body, and found that his right arm was temporarily injured; that petitioner did not tell him that he had lost any teeth, and that there was no indication that he had lost any teeth; that he attended the petitioner for two weeks after the injury, and that he never heard of any injury to the teeth. This doctor further testified, that on the day previous to the hearing, petitioner called to see him, and informed him then that he was all right, except his eyes. The petitioner's son says that his father made a visit to his (the son's) home in the State of New York, shortly after the accident, and in-

formed him of his injuries, but did not inform him concerning the loss of his teeth. The wife of the petitioner swears, that she was away from home at the time of the accident; that when she went away on October 20, he had all of his teeth, and that shortly after, when she returned home, she found that he had lost them. It seems to me that had the petitioner lost his teeth through the accident, he would have made the fact known to the physician who attended him for two weeks following the accident, and it seems incomprehensible that such a serious injury, if it happened, did not make itself manifest to the physician. The fact that he did not inform his son as to the loss of his teeth, goes to confirm the testimony of the physician. In the face of this testimony, I must reject the testimony of the petitioner and his wife. I might also say, that the petitioner's daughter-in-law, testifies as to the effect of the injuries which petitioner sustained, but is silent as to the loss of his teeth.

The injury to the shoulder and arm, were of a temporary character. It appears that after the accident, the petitioner worked for the respondent as a watchman, but was aided in going to and at his work, by his wife, and sometimes by his daughter-in-law, because of his inability to see well in the dark, even with the aid of a lamp which he carried. It does not appear that he was unable to do such work, from any other cause. He left the employment as watchman of the respondent, on the sixth day of January, 1916. I think he suffered from some disability other than that of the eyes during this period, for on November 8th, 1915, he went to the respondent's physician, a Doctor Theimer at Newark. He was undressed for an examination by

that physician, and the latter swears, that his right shoulder was higher than the other, due to contraction, and that he was able to move his arm, but was not able to put it behind his back. It appears that the petitioner and the doctor became very much angered at each other during
10 the examination, and in fact the examination was never concluded. As to this part of the case, I felt it necessary to call in another physician, Dr. Victor Mravlag, of Elizabeth, who made an examination of the petitioner's right arm and shoulder and he testified that the petitioner is not suffering from any injury in those parts of his body, and that he has ability to move his arm up and down, and left the impression that the petitioner is feigning as to disability of the
20 arm and shoulder.

As to the eyes the testimony is convincing, that the petitioner has sustained disability. Dr. Frank C. Ard, the eye specialist, who impresses me as a man learned in his profession, states that he finds that the vision of the right eye is effected to the extent of twenty one-hundredeths, and his left eye to the extent of twenty-fortieths. His first examination of the petitioner took place on May 8th, 1916. At that time, petitioner car-
30 ried his head in a peculiar way, and the lid of his right eye was partially closed, and his vision in the right eye was very much contracted, and there was a contraction of the vision of the left eye. At a recent examination, he found the right eye partially closed, and he noticed a scar in the edge of the cornea of the right eye. The last examination showed that the right eye was more marked than before, and on December 12th, 1916, he found practically the same condition existing,
40 and he fixes the disability of the right eye at

seventy-five per cent., and that of the left eye at fifty per cent.

Dr. Alfred Van Horne swears that he treated petitioner first on December 15th, 1915, and treated him three times after that. The last time he examined him, was on December 12th, 1916. The first time he examined him, he found a scar on the right eye itself. The last time he examined him he found a small scar on the cornea of the right eye, and found that the vision of the right eye was twenty-one one-hundredths, and the left eye, twenty-seventieths. He tested petitioner for his double vision, and found the damage or disability to be seventy-five per cent. to the right eye, and fifty per cent. to the left eye. On cross examination, the witness says that he found one optic nerve paler than the other.

Dr. Dias, a witness for respondent, examined petitioner's eye on October 5th, and November 1st, 1916, and found no injury.

Dr. Lufburrow examined petitioner, and says that the latter did not complain of his eyes the first time, but did so complain the second and third times he saw him. This witness says that he examined an X-ray picture of the petitioner's head, and found nothing indicating an injury, and advised petitioner to use his arm.

I doubt whether an X-ray picture would be a good guide to such a delicate organ of the body as the eye, and I am impressed with the correctness of the testimony of Doctors Ard and Van Horne, and am of the opinion that the damage to the right eye is seventy-five per cent. and that to the left eye, fifty per cent. There is nothing in the testimony to indicate that the injury or disability is of a temporary character, and I am left to conclude that it is permanent.

In arriving at the amount of compensation which should be awarded for the disability to the eyes, I cannot adopt the provisions of the schedule contained in the act for the loss of one or both eyes. Nor does the percentage of the disability affixed by the doctors, express the extent of the disability which petitioner has sustained as a workingman. With a double vision, the petitioner can never again work at his trade, as a machinist, and must confine his employment to occupations that will never produce anything more than a small compensation. It seems to me that this disability amounts to nearly one-half of a total disability of both eyes. Total disability to both eyes would call for compensation for four hundred weeks, and in this matter I have concluded to allow one hundred and seventy-five weeks as the period of permanent disability. If the disability should disappear before the expiration of the period so fixed, the respondent may apply for a discontinuance of the compensation; and in order to determine whether the disability continues, the petitioner must upon reasonable notice from the respondent, at reasonable times and at proper intervals, without expense to him, submit to examination by physicians selected by the respondent.

The temporary disability to the arm and shoulder continued at least during the time that petitioner worked for respondent, after the injury. It appears that during that period the petitioner received wages at the rate of $9.24 per week. His labor was worth something, and the respondent chose to pay him for it, one-half of the amount of his old wages. If he had been able to do work of greater value, there is no

doubt that he would have been paid a larger amount per week. As this amount was paid for services, it is clear that he received nothing for his disability during the period intervening between his injury, and January 6, 1916. He is therefore entitled to compensation for temporary disability for the same period, less the first two weeks following his disability. All other sums paid to him (amounting to $360.35) shall be deducted from the amount allowed as compensation.

A rule may be entered in accordance with these conclusions.

The attorneys for the petitioner will be allowed one hundred and fifty dollars for services in this matter, to be taken from the amount allowed the petitioner.

Costs will be taxed against the respondent.

Dated, January 29th, 1917.

JAMES C. CONNOLLY,
Judge.

Determination of Facts and Rule for Judgment.

Filed.

UNION COMMON PLEAS.

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PATRICK J. PURCELL, *Petitioner,* *vs.* INTERNATIONAL MOTOR COMPANY, *Respondent.*	*On Petition for Compensation, etc., under Employers' Liability Act.* *Determination of Facts and Rule for Judgment.*

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A petition having been filed in the above stated matter, praying for the 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 the 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 several supplements thereto and acts amendatory thereof, and a time and place for the hearing of the said petition having been fixed, and it appearing to the Court that said petition and the order fixing the time and place of said hearing have been duly served upon the respondent on the 22nd

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day of March, 1916, and an answer having been filed by the said respondent, and the petitioner and respondent having appeared on the 14th day of December, 1916, and again on December 26, 1916, the date set for the summary hearing herein, the petitioner being represented by Francis J. Blatz, of the firm of Codington & Blatz, attorneys for the petitioner, and the respondent by Isidor Kalisch, of the firm of Kalisch & Kalisch, and the Court having heard the testimony offered in behalf of the parties hereto and counsel having been heard:

I do find and determine from the evidence taken in this cause as follows to wit:

First. That the petitioner was on the 21st day of October, 1915, in the employ of the respondent in the capacity of a machinist.

Second. That at the time of the injury the said petitioner received as wages in said employ, eighteen dollars and forty-eight cents ($18.48) per week.

Third. That on the 21st day of October, 1915, while in the course of his employment, and engaged in the work of machinist, the said petitioner was fixing or tightening a set screw in a fan, eight feet above the floor of the factory, and while he was tightening the screw the foreman set the machinery in motion, and in consequence the petitioner's arm was caught in the shafting. The petitioner jerked himself back, in an effort to save himself, before the machinery was stopped, and in doing so, knocked his head and jaw against the box which held the journal, and that said accident arose out of and in the course of the employment.

FOURTH. That the respondent herein had knowledge of said accident, or that it has had proper notice of the same.

FIFTH. That as a result of the said accident, the said petitioner sustained an injury to his shoulder and arm, which were of a temporary character, and permanent disability to both of his eyes.

SIXTH. The petitioner has received from the respondent the sum of $360.36, which sum shall be deducted from the amount allowed as compensation.

SEVENTH. That the petitioner is entitled to compensation for temporary disability from November 4th, 1915, to January 6th, 1916, viz: eight weeks and three days, and for permanent disability to both eyes for 175 weeks, provided, however, that if the disability to the eyes should disappear before the expiration of the period so fixed, the respondent may apply for a discontinuance of the compensation; and in order to determine whether the disability continues, the petitioner must upon reasonable notice from the respondent, at reasonable times and at proper intervals, without expense to him, submit to examination by physicians selected by the respondent.

EIGHT. That the petitioner is entitled to costs in this proceeding.

It is therefore, on the day of January, 1917, on motion of Francis J. Blatz, attorney of the petitioner, ordered that judgment final be entered in favor of the petitioner, Patrick J. Purcell, and against the International Motor Company, in the sum of $9.24 per week for a period of 183 weeks and three days, be-

ginning with the 4th day of November, 1915, less the sum of $360.36, payments having been made by the respondent to the petitioner, for which it is entitled to credit; and also the costs of this proceeding amounting to the sum of

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It is further ordered that Codington & Blatz, attorneys for the petitioner be, and they hereby are allowed, the sum of One Hundred and Fifty ($150.00) Dollars, as counsel fees herein, the same to be paid by the petitioner out of the accumulated payments now due.

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Stipulation.

Filed July 10, 1917.

New Jersey Supreme Court.

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PATRICK J. PURCELL, *Petitioner-Defendant,* *vs.* INTERNATIONAL MOTOR COMPANY, *Prosecutor-Respondent.*	*On Petition, &. Stipulation.*

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It is hereby stipulated and agreed, by and between the attorneys of the parties hereto, that the above case, which was added to the List at the June Term, Part Two of the Supreme Court, shall be heard before Hon. James J. Bergen, a Justice of the Supreme Court, instead of Part Two of the Supreme Court as if a Notice of Argument had been served within fifteen days after Reasons filed, because of the fact that the Court Stenographer has not, until too late, prepared the transcript of the testimony of the trial in the Common Pleas Court.

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Dated, July 6th, 1917.

KALISCH & KALISCH,
Attorneys of Prosecutor-Respondent.

CODINGTON & BLATZ,
Attorneys of Petitioner-Defendant.

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Reasons.

Filed June 7, 1917.

New Jersey Supreme Court.

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INTERNATIONAL MOTOR COMPANY, a Corporation, *Prosecutor,* *vs.* COURT OF COMMON PLEAS in and for the County of Union; WILLIAM B. MARTIN, Clerk of said Court of Common Pleas, and PATRICK J. PURCELL, *Defendants.*	*On Certiorari.* *Reasons.*

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The prosecutor presents the following reasons for seting aside the proceedings, determination and statement of facts, and judgment brought before this Honorable Court by the Writ of Certiorari in the above entitled cause:

1. Because the Trial Court erroneously and improperly allowed compensation as for a temporary disability during a period of time wherein the defendant was actually employed and in receipt of wages. 30

2. Because the Trial Court erroneously and improperly allowed compensation as for a temporary disability from November Fourth to January Seventh, during which time the defendant was actually working and receiving wages.

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Reasons.

3. Because the Trial Court erroneously and improperly allowed the defendant one hundred and seventy-five weeks' compensation as for a permanent disability to his right and left eyes.

4. Because the Trial Court erroneously and improperly found there was a permanent and partial disability to the defendant's right eye, as the result of an accident occurring while in the employ of the above named prosecutor; and because the Trial Court made a similar finding with regard to the defendant's left eye.

5. Because the Trial Court erroneously and improperly determined that inasmuch as there was no proof as to the nature of the injury to the right and left eyes, that he would find that such injury was a permanent injury.

6. Because the Trial Court's finding with regard to the temporary and permanent disability is in divers other respects illegal, improper and oppressive to the prosecutor.

KALISCH & KALISCH,
Attorneys of Prosecutor.

Opinion.

Filed August 27, 1917.

NEW JERSEY SUPREME COURT.

INTERNATIONAL MOTOR COMPANY, *Prosecutor,* *vs.* PATRICK J. PURCELL, *Defendant.*	10

Certiorari to review an order of the Union County Court of Common Pleas awarding compensation to a workman injured in the course of his employment. 20

Argued before a single Justice as provided by statute.

KALISCH & KALISCH, for prosecutor.

CODINGTON & BLATZ, for defendant.

The opinion of the court was delivered by BERGEN, *J.*

The defendant in certiorari was injured October 21, 1915, while in the service of the prosecutor, by an accident which it is not questioned arose out of and in the course of his employment. The proofs warrant an inference that prior to the accident the defendant was serving as a machinist, performing such work as his foreman might direct, at a weekly wage of $18.48, and that after the accident he was continued in the service of the prosecutor as night watchman at one-half of his former wages until 30 40

January 6, 1916, when he was discharged for incompetency; that thereafter the prosecutor paid the defendant $9.24 per week until $360.36 had been paid when further payment was refused. The defendant then filed a petition under the Workmen's Compensation act and was awarded $9.24 per week for 175 weeks, for permanent, partial disability of his eyes, and eight weeks and three days for temporary disability of his arm, making a total of 183 weeks and 3 days, subject to a credit for $360.36 paid after January 6, 1916.

The prosecutor first urges that the allowance for temporary disability was unauthorized because during the period for which the allowance was made the defendant was able to work and earn wages, and therefore there could be no temporary disability. In other words, the claim is that the temporary disability must be total to entitle a workman to any compensation under the statute. This is not a proper construction of the statute for paragraph 11, as amended in 1913, P. L. 302 provides, "For injury producing temporary disability," and this does not require that a temporary disability must be a total but provides for any disability of a temporary character, which to any degree impairs the earning capacity of the injured person by depriving him of the use of physical functions existing before the accident, and in this case compensation for the injury to the arm was limited to the continuance of the temporary disability. The liability attaches when the accident happens and it can only be discharged in the manner provided for in the statute. Nor does the fact that the defendant was paid wages by the prosecutor for services, of a less

exacting character rendered after the accident, affect the amount of compensation to be awarded when the wages are paid for a service of a different nature from that performed before the accident, and for a less wage, without any agreement or understanding, if such an agreement can legally be made, that such earnings were paid on account of the compensation allowable under the act. *De Zeng Standard Co.* v. *Pressey,* 86 N. J. L. 469. The contention of the prosecutor on this branch of the case cannot be sustained.

The next point argued is that the reason given by the trial court for awarding compensation during 175 weeks for "Nearly one-half of a total disability of both eyes," is not supported by the evidence. There was testimony which justifies the inference that the injury to the eyes of the defendant reduced their efficiency to at least one-half their normal capacity and if the judgment is in any respect erroneous in not fixing a greater time limit it would, to that extent, be a loss to the defendant who does not complain. The testimony shows that defendant was a machinist; that his trade required good eyesight and that since the accident which caused the injury, and because of it, his eyesight is so deficient that he cannot pursue his former trade. The defendant testifies that he cannot distinguish, clearly, objects with his right eye, except within a limited area, and that the vision of his left eye is double, unless he turns his head to one side and covers the other eye. The accident happened October 21, 1915, and Doctor Ard, an eye specialist of known repute, testified that he had examined the defendant's eye in May, 1916, and once or twice after that

date, the last being December 12, 1916, two days before the trial, and that the disability to the right eye was two-thirds and to the left eye one-half. This witness in answer to a question containing the testimony of the defendant concerning the physical condition of his eyes, inquiring
10 the extent of the disability which the defendant suffered from the injury to his eyes replied, "A Well, I think if these statements are all true that I have made, that he is absolutely debarred —that is, at least as long as the disability remains, he is unable to follow his trade." This and the other testimony in the case I think warrants the finding that the injuries to defendant's eyes amounts to "Nearly one-half of a total disability of both eyes," which is in effect
20 a partial, permanent disability.

The next point made is that the court based the percentage of disability upon the character of the work in which the defendant was engaged, viz: machinist, and that this is contrary to *Bateman* v. *Smith,* 85 N. J. L. 409. This is founded upon the following statement by the court. "The petitioner can never again work at his trade as a machinist and must confine his employment to occupations that will never
30 produce more than a small compensation," this statement simply relates to the effect the injury had on the earning capacity of the defendant, and has no bearing upon the percentage of disability based upon the character of the person or his work, as in the case last cited.

The next point is that there is no proof of permanent disability but only temporary injury to the sight of defendant's eyes, and this is rested in part on the following testimony of
40 Doctor Ard. "Q Doctor, what have you to

say as to the permanency of the injuries received by Mr. Purcell? A I don't know whether they are permanent. I don't believe they are permanent, I think there is a chance to recover, that is sometime or other. I cannot answer that question." And in answer to another question he said, "It might last from three months to ten years, nobody knows," and when asked whether the injury was permanent, replied "I don't know." I think this evidence with that of the defendant and the other testimony in the cause justifies the finding that the injuries were permanent within the meaning of the statute. More than a year had elapsed after the accident without any appreciable improvement, and from the testimony of the defendant and the long continuance of the disability, an inference can be drawn that it is probably permanent. Doctor Ard testified that he could not tell whether it would be permanent or not, but that it might last from three months to ten years.

In view of all this evidence it would seem that the extent of the permanency of the injuries cannot now be determined, the present indications being that they are permanent. Whether the court in fixing the number of weeks during which compensation should be paid for a partial disability to both eyes of a permanent character, reached a proper conclusion, was not raised on the argument nor by the record, and therefore that question has not been considered.

My conclusion is that under this record, considering only the questions raised and argued, the judgment should be affirmed.

Rule for Judgment.

Filed October 31, 1917.

NEW JERSEY SUPREME COURT.

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INTERNATIONAL MOTOR CO., a corporation, *Prosecutor,* *vs.* PATRICK J. PURCELL, *Defendant.*	*On Certiorari.* *Rule for Judgment.*

The Court having inspected the transcript and
20 proceedings of the Court of Common Pleas, of the County of Union, returned with the certiorari, the reasons for reversing the judgment below, and heard the argument of counsel therein, and having duly considered the same, do order that the judgment of the Court of Common Pleas of the County of Union be in all things affirmed with costs.

On motion of

30 (Signed) CODINGTON & BLATZ,
Attorneys for Defendant.

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Notice and Grounds of Appeal.

Filed September 21, 1917.

NEW JERSEY SUPREME COURT.

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INTERNATIONAL MOTOR COMPANY, a corporation, *Prosecutor-Appellant,* *vs.* PATRICK J. PURCELL, *et al,* *Defendant-Respondent.*	*On Certiorari.* *Notice of Appeal.*

To CODINGTON & BLATZ, ESQS.,
Attorneys of Defendant-Respondent. 20

SIRS:

PLEASE TAKE NOTICE that the prosecutor-appellant appeals from the entire judgment entered in the New Jersey Supreme Court, to the Court of Errors and Appeals, on the following grounds:

1. Because the New Jersey Supreme Court erroneously and improperly affirmed the Union County Common Pleas Court in allowing compensation as for a temporary disability during a period of time wherein the respondent was actually employed and in receipt of wages. 30

2. Because the New Jersey Supreme Court erroneously and improperly affirmed the Union County Common Pleas Court in allowing compensation as for a temporary disability from November fourth, nineteen hundred and fifteen, to January seventh, nineteen hundred 40

and sixteen, during which time the respondent was actually working and receiving wages.

3. Because the New Jersey Supreme Court erroneously and improperly affirmed the Union County Common Pleas Court in allowing the respondent one hundred and seventy-five weeks' compensation as for a permanent disability to his right and left eyes.

4. Because the New Jersey Supreme Court erroneously and improperly affirmed the Union County Court of Common Pleas in finding a permanent and partial disability to the respondent's right eye, as the result of an accident occurring while in the employ of the above named appellant; and because the New Jersey Supreme Court made a similar ruling with regard to respondent's left eye.

5. Because the New Jersey Supreme Court erroneously and improperly affirmed the Union County Common Pleas Court in determining that inasmuch as there was no proof as to the nature of the injury to the right and left eyes, that, therefore, such injury to said eyes, was a permanent one.

6. Because the New Jersey Supreme Court's ruling with regard to the alleged temporary and permanent disability, was in divers other respects illegal and oppressive to the appellant.

KALISCH & KALISCH,
Attorneys of Prosecutor-Appellant.