

HOUSE No. 1402

The Commonwealth of Massachusetts

DEPARTMENT OF THE ATTORNEY GENERAL,
BOSTON, April 25, 1932.

To the Great and General Court of Massachusetts.

In accordance with St. 1924, c. 395, I have investigated the claim of Jacqueline A. O'Neill of Lynn, and have determined that in satisfaction of her claim the amount of \$2,500 be awarded to her. This claim arises out of the loss of her right eye, caused by a defect in the premises of the Lynn Beach Reservation, which is under the jurisdiction of the Metropolitan District Commission.

I enclose herewith a copy of my findings, with a recommendation that the claim be paid.

E. K. NASH,
Assistant Attorney General.

MEMORANDUM OF FINDING.

In re SMALL CLAIM OF JACQUELINE A. O'NEILL.

The claimant is the eight-year-old daughter of Mr. and Mrs. Francis P. O'Neill of Lynn. On August 1, 1928, when she was four years of age, she was taken by her mother, in company with a girl by the name of Frances Gard, of 12 Greenwood Place, Lynn, aged twelve at the time, to the Lynn Beach Reservation. The mother and two children were walking along the reservation and were on their way home from bathing. The sea wall at Lynn is made of concrete reinforced by steel rods, and is some 20 feet high. At intervals there are stairways leading from the boulevard to the beach. At the foot of Wave Street, which leads into the boulevard, there is such a stairway. These stairways come down several steps from the level of the boulevard and then broaden out into a platform, with two flights of stairs leading from the platform at each side to the sand on the beach below. On the day in question Mrs. O'Neill and the two children stopped at this stairway and descended to the platform. Mrs. O'Neill and Frances Gard remained on the platform and Jacqueline started down the steps at the left in order to ascend the stairs on the other side. Apparently this was some sort of game that they were playing, and they would stop at all the stairs and let the little girl run down and up again. Jacqueline descended the left-hand flight of stairs safely and was skirting the base of the stairs in order to come up the other side when her mother and Frances suddenly heard her scream. They looked down and saw her holding her hand to her eye. The little girl came rushing up the stairs and the mother noticed that the eye was bleeding and that there was a greenish yellowish sort of mark across the eyeball. She asked her what happened and the little girl stated that something had struck her in her eye. All three of them descended the stairs to see what it was, and the little girl pointed out a steel reinforcement rod which

had been laid bare from the concrete and was pointing out and upwards for some six or eight inches. This was just about at the proper height to catch her in the eye if she were close enough to it and did not see it.

The mother took her home and washed out the eye. There did not seem to be any serious injury done at that time. The next day, however, the father took her to the Lynn Hospital, and the officials there stated that they could not treat her and that she should immediately go to the Eye and Ear Infirmary, because they feared that her eyeball had been punctured. She was taken to the Eye and Ear Infirmary on August 3. There they made the diagnosis that she had a perforation of the cornea with anterior synechia, right eye; iritis, right eye; and acute secondary glaucoma. There was a wound of the cornea from the nasal margin of pupil about 11 millimeters toward "11 o'clock." The iris was caught in the wound. The eye was treated on that day, and on August 10 she returned for another treatment. The hospital record states that the condition had improved, but that there was moderate ciliary injection. She was ordered to return one week later. On August 17 her eye appeared perfectly white, and she was ordered to wear dark glasses. On September 7 the record shows, "Eye white and quiet. Return again if eye becomes red." On November 30 she was taken into the Eye and Ear Infirmary again. The report on that day is as follows: "Right eye inflamed one week." As this inflammation did not go down, the little girl was admitted on December 7 for treatment. The diagnosis on December 7 showed iritis in the right eye. An examination showed that the iris had atrophied, and that there was an anterior iris synechia. She stayed at the hospital for eight days and was given treatment and was discharged on December 15 improved. On February 15, 1929, she came back to the Eye and Ear Infirmary with acute glaucoma of the right eye. An operation was performed, known as iridectomy, and she was discharged on February 22, with instructions to return in one week. She continued treatments through March. On April 10, 1929, a diag-

nosis was made of traumatic cataract with secondary glaucoma in the right eye. The next day another operation was performed for the removal of the cataract. She was discharged a few days later. On April 24 she was back in the hospital and the surgeon recommended another operation. On May 15 the right eye was removed, and she remained in the hospital until May 22. Since that time she has had to have a glass eye.

I find upon investigation and hearing of evidence that the injury to Jacqueline's eye was caused by the eye coming in contact with the steel reinforcement rod above mentioned, and that the removal of the eye was necessitated by this accident. I find, further, that the rod had been protruding from the base of the wall for some months, since a severe storm in the previous spring had broken down the concrete and torn the rod out. I further find that this was a defect in the premises which the Metropolitan District Commission, in the exercise of due care, should have remedied. In my opinion it would have been a perfectly simple matter for a workman to have cut off the protruding wire. If the Commonwealth undertakes to provide reservations for the use of the public it should maintain them in a reasonably safe condition for the use of the public.

I find that the claimant is entitled to damages. Her father, Francis O'Neill, has been appointed guardian by the Probate Court of Essex County, with a surety company bond. Any award made will be used by him for the benefit of the child. I find that she is justly entitled to damages, under the provisions of St. 1924, c. 39 and determine that in settlement of her claim the sum of \$2,500 is just and reasonable.

Inasmuch as under St. 1924, c. 395, findings in excess of \$1,000 must be passed upon by the Legislature, I refer this matter to the General Court, with a recommendation that the award of \$2,500 be paid.

EDWARD K. NASH,
Assistant Attorney General.