INDEX.

Writ of Certiorari.

Filed July 7, 1934.

New Jersey, ss.:

The State of New Jersey to the Court of Common Pleas, in and for the County (Seal) of Hudson, and Gustav Bach, Clerk of said Court and Anna Bryn, GREETING: 10

We being willing for certain reasons to be certified of and concerning a certain determination and judgment rendered on the 2nd day of July, Nineteen Hundred and Thirty-four, by the Hon. orable Robert V. Kinkead, one of the Judges of said Court of Common Pleas, in and for the said County of Hudson, in certain proceedings brought 20 on behalf of Anna Bryn, petitioner, against Central Railroad Company of New Jersey, respondent, for the determination and recovery of compensation under an Act of the Legislature of the State of New Jersey entitled, "An Act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation, and regulating procedure for 30 the determination of liability and compensation thereunder," approved April fourth, Nineteen Hundred and Eleven, and the Acts amendatory thereof, and supplemental thereto, we command you that the said determination and judgment, together with all proceedings for the making of the same, and all things touching and concerning the same, as fully and entirely as before you they remain, or are in your custody and control, you do certify and send, together with this writ, to 40 our Justices of our Supreme Court of Judicature,

at Trenton, on the 27th day of July, Nineteen Hundred and Thirty-four, that therein may be caused to be done what of right and according to law ought to be done.

10 WITNESS, the Honorable Thomas J. Brogan, Chief Justice of our said Supreme Court, at Trenton, this 7th day of July, Nineteen Hundred and Thirty-four.

FRED L. BLOODGOOD,
Clerk.

WM. F. HANLON,
Attorney.

This Writ is allowed; July 7, 1934. Let it be
20 sealed.

CLARENCE E. CASE,
Justice, Supreme Court.

Filed Clerk's Office,
July 14, 1934,
Hudson County, N. J.

GUSTAV BACH,
Clerk.

30

Return.

The answer of Robert V. Kinkead, Esquire, Judge of the Court of Common Pleas holden in and for the County of Hudson, and Gustav Bach, Clerk of said Court, and within named, the record and proceedings of the plaint whereof mention is within made, with all things touching the same,
40 I send to the Justices of our Supreme Court of

Judicature, at Trenton, N. J., at the day and year within contained in a certain schedule to this writ annexed as within I am commanded.

ROBERT V. KINKEAD,
Judge. 10

Attest:
GUSTAV BACH,
Clerk.

(Seal)

Notice of Appeal.

NEW JERSEY DEPARTMENT OF LABOR, 20
WORKMEN'S COMPENSATION BUREAU,
JERSEY CITY.

ANNA BRYN,
Petitioner-Appellant,
vs.
CENTRAL RAILROAD COMPANY OF NEW JERSEY,
Respondent-Appellee. 30

C. P. No. 25733. On Petition, etc.

To: Hon. JOHN C. WEGNER, Deputy Commissioner, and
WILLIAM F. HANLON, Esq., Attorney for Respondent.

PLEASE TAKE NOTICE that the petitioner-appellant, Anna Bryn, appeals to the Hudson 40

County Court of Common Pleas from a judgment rendered in the above entitled cause on April 12, 1934, on the following grounds:

1. That the Deputy Commissioner erroneously ordered final judgment to be entered in favor of the respondent, Central Railroad Company of New Jersey, and against the petitioner, Anna Bryn.

2. That the Deputy Commissioner erroneously dismissed the petition filed by the petitioner-appellant.

3. That the dismissal of the petition was without legal propriety and sanction.

4. That the evidence adduced by the petitioner-appellant at the hearing of the petition filed made out a case within the purview of the Workmen's Compensation Act, and that the dismissal thereof was in error both as to law and fact.

5. That the facts recited in the determination are not in accordance with the evidence adduced at the trial.

6. That the citations contained in said determination are not applicable to the above entitled cause, and do not embrace the facts adduced at the trial, and are not in conformity with the evidence and the transcript herein.

7. That the facts adduced and proven at the trial and set forth in the transcript show that the means of egress and ingress used by the peti-

tioner's intestate was one within the contemplation of the respondent, which route was one commonly used by employees of the respondent and known to the respondent, and the place of the accident was one used by the respondent in its business and, therefore, was within the contemplation of the respondent. 10

ARCHIE ELKINS,
Attorney for Petitioner-Appellant.

Dated, April 12, 1934.

W. E. STUBBS.

Service of a copy of the within Notice of Appeal is hereby acknowledged this 14th day of April, 1934. 20

WM. F. HANLON,
Attorney for Respondent-Appellant.

Filed Clerk's Office,
Apr. 23, 1934,
Hudson County, N. J.

30

GUSTAV BACH,
Clerk.

40

Dependent's Claim Petition for Compensation.

NEW JERSEY DEPARTMENT OF LABOR,

WORKMEN'S COMPENSATION BUREAU,
TRENTON, N. J.

10 Received at Trenton, May 6, 1933.

Claim Petition No. 25733.

Date of Accident, December 24, 1932.

ANNA BRYN,

Petitioner,

vs.

20

CENTRAL RAILROAD COMPANY OF NEW JERSEY,

Respondent.

If known state name of insurance company.

Attorney for petitioner, Archie Elkins, 921 Bergen Avenue, Jersey City, N. J.

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

The claimant respectfully alleges the following facts:

1. What was the full name of the decedent? Waclaw Bryn (also known as Watsie Bryn).

2. Where did decedent live? 163 Grand Street,
40 Jersey City.

3. Sex of decedent. Male.

4. Date of birth of decedent. About 51 years old.

5. Give below, in reference to each person claimed to be dependent upon the deceased at the time of accident or death:

10

Name of Each Dependent	Age at Last Birthday	Date of Birthday	Relation to Decedent
Anna Bryn	36		Widow
Joseph Bryn	16	Oct. 17, 1916	Son
Genevieve Bryn	15		Daughter
Sophie Bryn	13	Dec. 2, 1919	Daughter
Pauline Bryn	12	Apr. 14, 1921	Daughter
Helen Bryn	10	Sept. 4, 1922	Daughter
Frank Bryn	9	Feb. 25, 1924	Son
Stanley Bryn	1½	Sept. 1, 1931	Son

20

6. By whom was decedent employed at the time of accident? (Give name and business address) Central Railroad Company of New Jersey, Communipaw Avenue, Jersey City.

7. What was the business of the employer? Railroad.

8. Did the decedent give a written notice to the employer at the time of hiring, or later, that the Compensation Law was not to apply to him? No.

30

9. Did he receive such notice from the employer? No.

10. Did the employer have knowledge of this accident? Yes.

11. Did you notify the employer of this accident? Yes.

12. If so, what date? December 24, 1932.

40

13. Have you made claim to the employer for compensation? No.

14. What was the regular occupation of the decedent, and what kind of work was he doing at the time of the accident? Machinist. Immediately before the accident decedent was employed in the machine shop of the respondent.

15. When did the accident happen? December 24, 1932, at about 4:30 P. M.

16. Where did the accident happen? Lehigh Valley Railroad Trestle, Johnson Avenue, Jersey City, N. J.

17. What was the nature of the accident, and how did it happen? Decedent was struck by railroad train.

18. Did deceased work any after the accident? No.

19. If so, give date he was compelled to stop work.

20. Give date of death. February 22, 1933.

21. Were his wages fixed by piece work? No.

22. If so, what was his average weekly wage?

23. If wages were fixed by the hour, state rate per hour. $.81.

24. Give number of hours in an ordinary day. Eight.

25. Give number of days in an ordinary working week. One week 7 days—next week 6 days.

26. State the amount of weekly wages. $40.00.

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

28. Has the employer promised to pay you any compensation? No.

10

29. If so, how much?

30. Was medical aid required? Yes.

31. If so, was this service furnished by the employer? No.

32. What other sum did you expend for medical, surgical or hospital service?

33. Give name and address of physician and hospital? Jersey City Medical Center, Jersey City, N. J.

20

34. What other facts are there which you believe important?

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

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

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amendatory thereof, and that your petitioner may be awarded his costs in this proceeding, and such other or further relief as may be proper.

And your petitioner will ever pray, etc.

10

her
ANNA (X) BRYN,
mark
Petitioner,
163 Grand St.,
Jersey City, N. J.

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

20

Anna Bryn, of full age, being duly sworn according to law, on her oath deposes and says: That she is the petitioner named in the foregoing petition; that she has read the same and is familiar with the contents thereof; and that the matter and things therein set forth are true according to the best of her knowledge and belief.

30

her
ANNA (X) BRYN,
mark
Petitioner.

Subscribed and sworn to before me, this 19th day of April, 1933, at Jersey City.

CHARLES WOLLNY,
Attorney at Law of New Jersey.

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

40

Dependent's Claim Petition for Compensation.

TO THE RESPONDENT:

The foregoing claim petition has been presented by the petitioner to the Workmen's Compensation Bureau for hearing and determination in accordance with the provisions of the Workmen's Compensation Act. 10

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

WORKMEN'S COMPENSATION BUREAU, 20

.....,

Secretary.

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Respondent's Answer to Dependent's Claim Petition.

NEW JERSEY DEPARTMENT OF LABOR,

WORKMEN'S COMPENSATION BUREAU,
TRENTON, N. J.

10 May 26, 1933.

ANNA BRYN,

Petitioner,

VS.

CENTRAL RAILROAD COMPANY OF NEW JERSEY,

Respondent.

20

Claim Petition No. 25733. May 25th, 1933.

Attorney for Respondent,
WM. F. HANLON, 143 Liberty Street, New York City.

In answer to claim petition filed in this case:

1. What was decedent's name? Watsie Bryn.

30 2. Where did decedent reside? 163 Grand Street, Jersey City, N. J.

5. Do you question the dependency, age or relation of any of the persons named in question No. 5 of the claim petition? If so, specify? We are in possession of no information concerning dependents.

6. Was the decedent in your employ at the time of the accident? Yes—not on duty at time of accident.

40

Respondent's Answer to Dependent's Claim Petition.

7. State your business. Common carrier.

8. Did you receive written notice from the decedent at the time of hiring, or later, that the Compensation Law was not to apply to him? No. 10

9. Did you give such notice to him? No.

10. When did you first have knowledge of this accident? 12/24/32 at 4:15 P. M.

11. Did you receive notice of this accident from the petitioner? No.

12. If so, on what date? .....

13. Has any claim for compensation been made? No. 20

14. What was the regular occupation of the decedent, and what kind of work was he doing at the time of the accident? Machinist—not on duty at time of accident.

15. When did the accident happen? 12/24/32.

16. Where did the accident happen? On a railroad trestle in Jersey City not the property of respondent. 30

17. What was the nature of the accident and how did it happen? Struck by engine.

18. Did the decedent work any after the accident? No.

19. If so, give date he stopped work. 12/24/32.

20. Give date of death. Date of death unknown to respondent. 40

21. Were his wages fixed by piece work? No.

22. If so, what was his average weekly wage? $29.66 (Net).

10 23. If wages were fixed by the hour, state rate per hour. 81¢.

24. Give number of hours in an ordinary working day. 8.

25. Give number of days in an ordinary working week. 5.

26. State the amount of weekly wages. $29.66.

27. How much have you paid as compensation
20 (not medical aid) since the accident? None.

28. Have you promised to pay compensation? No.

29. If so, how much? .....

30. Was medical aid required? Yes.

31. If so, did you furnish all the medical, surgical, or hospital services, or other expenses of last sickness? No.

30 32. Between what dates were services rendered? .....

33. Give name and address of physician and hospital rendering service at your direction. Jersey City Hospital—Not at our direction.

34. What other facts are there which you believe important? If you deny that compensation is payable in this case, explain fully your reason for this conclusion. The decedent had com-
40 pleted his day's work for the respondent, had

checked out and left our property and could only reach the trestle on which he was killed by first traveling over a city street.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, 10
143 Liberty Street,
New York City.

State of New York, }
County of New York, } ss.:

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

F. T. DICKERSON,
(Respondent).

30

Subscribed and sworn to before me this
twenty-fifth day of May, 1933,
at New York, N. Y.

Wm. F. Hanlon,
Attorney-at-Law of New Jersey.

40

Determination, Statement of Facts and Rule for Judgment.

NEW JERSEY DEPARTMENT OF LABOR,

WORKMEN'S COMPENSATION BUREAU,
JERSEY CITY.

10

ANNA BRYN,

Petitioner,

vs.

CENTRAL RAILROAD COMPANY OF NEW JERSEY,
Respondent.

20 On Petition, etc.

A petition was filed in this case on May 6th, 1933, alleging that the petitioner's decedent met with his death by being struck by a railroad train on the Lehigh Valley Railroad trestle, Johnston Avenue, Jersey City, New Jersey.

It is further alleged that on December 24, 1932, the date of his death, decedent was a machinist employed in the machine shop of the respondent 30 company, The Central Railroad Company of New Jersey, and before the accident had quit his employment for the day.

The facts alleged above by the petitioner are admitted by the respondent in its answer filed and it is further alleged that the decedent had not only quit work but he had left the property of the respondent and travelled over a city street before reaching the trestle of the other railroad com- 40 pany, the Lehigh Valley Railroad.

Determination, Statement of Facts and Rule for Judgment.

The case came on for hearing before me on November 9th, 1933. The petitioner's proof disclosed that the decedent had worked at the roundhouse of the respondent in Jersey City, had completed his day's work, punched the clock, left the premises and started for home. It was further shown that having punched the clock he left the building of the respondent, entered the city street known as Communipaw Avenue, walked thereon a short distance, cut across a strip of land which was alleged, though not proven, to be owned by the respondent; from thence he crossed another city street known as Wilson Avenue and ascended an embankment which led to the Lehigh Valley Railroad trestle, on which he was killed. On cross examination of the various witnesses produced by the petitioner, it was shown that the decedent could have reached his home by remaining on the city street, continuing along Communipaw Avenue and from thence to other streets in the City of Jersey City, until he reached his home. While it was alleged that it was customary for men who lived in the neighborhood of the deceased to go home by way of the Lehigh Valley Railroad tracks, one witness called by the petitioner testified he lived on the same street as decedent for four years and had only used this short cut three or four times. While it was attempted to be shown by another witness that the short cut was used every day as a general practice, cross examination of the same witness disclosed that while 800 men worked in the shop and left about the same time, only three, the two witnesses and the decedent, were on the Lehigh Valley Railroad trestle at the

time the decedent was struck. The premises were reviewed by me in the presence of both counsel. At the end of the petitioner's case a motion was made in behalf of the rspondent for dismissal of the petition on the grounds that the decedent had not met with his death in the course of, and within the scope of, his employment. Reserving decision, a memorandum of law was subsequently filed by each side and having carefully considered the facts and the law governing the facts, I do find as follows:

That at the time of the accident petitioner's decedent had ceased work and was on his way home. Two passages were available to him, one was an alleged short cut over the tracks of the Lehigh Valley Railroad Company which was reached after leaving the respondent's premises and walking along a dedicated public thoroughfare, i. e., Communipaw Avenue, Jersey City. The other way available to the decedent was to continue on the public street or streets of Jersey City until he had reached his home. It seems to me that to permit a recovery in a case of this kind where a decedent chooses a dangerous route and, in fact, trespasses upon a railroad owned by another than the respondent, although there was a perfectly safe way by which to reach his home, would be out of line with all the decisions on this question. The well recognized rule is that when an employee is injured while travelling to or from his place of work, has departed from or has not yet reached the employer's premises, and the means of conveyance is not furnished by the employer, the injury does not arise with the employment. Brad-

bury's Workmen's Compensation, 3rd ed., page 468, and the many cases cited.

In Hill v. Blair, 138 N. W. 243, where an employee chose to travel along a railroad whereas he could have gone by a more safe route, it was held not compensable. 10

In the Bell case, 130 N. W. 67, two ways of egress were open, one along the right-of-way which employee chose of his own volition and this case was held not to be compensable.

In the case of Fox v. Rees and Kirby, Ltd., 15 N. C. C. A. 243, the Court denied compensation, holding in part that by walking along the railroad track while there were two less hazardous paths, the employee added peril to the employment. 20

In Anderson v. B. & L. R. Co., 250 Ill. App. 92, it was held that where an employee chooses his own route to go home and is struck upon a railroad right-of-way, compensation will be denied.

In Hoteling v. Standard Oil Company, 6 N. Y. St. Dep. Rep. 308, compensation was denied to an employee who, having completed his day's work, left for home and instead of using the private road he started to walk north on a railroad track when he was struck by a train and killed. 30

My own view is that when an employee, after working hours, selects a means of reaching home by a short cut for his own personal convenience rather than take the safer course which is open to him, the hazard he encounters on the short cut should not be construed to be within the contemplation of the employer and I will, therefore, grant the motion to dismiss the petition. 40

Order of Reversal.

It is hereby ordered on this 12th day of April, 1934, that the petition be dismissed.

JOHN C. WEGNER,
Referee.

10

Order of Reversal.

HUDSON COUNTY COURT OF COMMON PLEAS.

ANNA BRYN,
Petitioner-Appellant,

20

vs.

CENTRAL RAILROAD COMPANY OF NEW JERSEY,
Respondent-Appellee.

On Appeal From Workmen's Compensation Bureau.

30 It appearing to the Court that Anna Bryn, the petitioner-appellant (hereinafter called the petitioner), filed a petition against the Central Railroad Company of New Jersey, the respondent-appellee (hereinafter called the respondent), in behalf of herself as widow of Waclaw Bryn (also known as Watsie Bryn), and also in behalf of her seven children ranging in age from 1½ to 15 years, which petition was filed on May 6, 1933 with the

40 New Jersey Department of Labor, Workmen's

Compensation Bureau, Trenton, New Jersey, in which petition the petitioner sought compensation upon the ground that her husband met with an accident on December 24, 1932, at about 4:30 P. M., on his way home from work via a short cut route; 10

And it appearing to the court that the respondent filed an answer to said petition alleging, among other things, "that the decedent had completed his day's work for the respondent, had checked out and left our property and could only reach the trestle on which he was killed by first travelling over a city street;"

And it appearing to the court that the case came on for hearing before Hon. John C. Wegner, 20 at the Workmen's Compensation Bureau, in Jersey City; and it appearing further that after the submission of proof by the various witnesses, the said Referee filed a Determination and opinion on April 12, 1934 in the Workmen's Compensation Bureau, wherein and whereby the said Referee ordered that the petition filed by the petitioner, Anna Bryn, be dismissed upon the ground that "when an employee, after working hours, selects a means of reaching home by a short cut for his 30 own personal convenience rather than take the safer course which is open to him, the hazard he encounters on the short cut should not be construed to be within the contemplation of the employer and I will, therefore, grant the motion to dismiss the petition;"

And it appearing to the court that the petitioner herein duly filed a notice of appeal from said dismissal of her petition to the Hudson County Court 40 of Common Pleas, and the matters having been duly set down for hearing, and by stipulation of

counsel having finally come on to be heard before his Honor, Robert V. Kinkead, at the Court House, in the City of Jersey City, on July 2, 1934, in the presence of Archie Elkins, Esq., attorney for the petitioner, and William F. Hanlon, Esq., attorney for the respondent; and the attorneys for the respective parties hereto having submitted the facts, argument, and citations of decisions; and the court having considered the testimony adduced by the petitioner at the hearing before the Referee, which was to the effect that the petitioner's decedent for a long period of time, and approximately 18 years before December 24, 1932, had used a specific and definite short cut, which was a route from the exit door of the respondent's plant at the foot of Communipaw Avenue, Jersey City, thence in front of the building of the respondent, thence on to what is commonly known as Wilson Street (referred to as a paper street, that is, not paved, etc.), travelling diagonally across the said street, thence on to an embankment, thence on the trestle, and thence down to lower Jersey City to his home —that this particular means of egress and ingress by the decedent and other employees of the respondent, and the use of the trestle which was known as the "Interchange" by the respondent to interchange its cars with other railroads, was such a means of exit, which, at the time of the accident, the decedent was using and which he has used uninterruptedly for a period of 18 years, which proof was fully corroborated and which appeared at the end of the petitioner's case; and the Court being of the opinion that such proof was sufficient to show that the petitioner and her children were entitled to the benefits of the New Jersey Work-

men's Compensation Act and that the dismissal of the petition by the Referee, John C. Wegner, was legally erroneous and that his opinion should be reversed;

It is, thereupon, on this 2nd day of July, 1934, ORDERED, THAT THE Determination and opinion of John C. Wegner, Referee of the Workmen's Compensation Bureau, made in the above entitled cause, be and the same is hereby set aside and reversed;

And it is further ORDERED, that the above entitled cause be sent back to the Workmen's Compensation Bureau for further determination thereon on the merits.

ROBERT V. KINKEAD,
Judge.

Filed Clerk's Office,
July 3, 1934,
Hudson County, N. J.

GUSTAV BACH,
Clerk.

Transcript of Proceedings Before Workmen's Compensation Bureau.

NEW JERSEY DEPARTMENT OF LABOR,

WORKMEN'S COMPENSATION BUREAU, JERSEY CITY, HUDSON COUNTY DISTRICT.

10

ANNA BRYN,

Petitioner,

vs.

CENTRAL RAILROAD COMPANY OF NEW JERSEY,

Respondent.

20

November 9, 1933.

Before—Honorable JOHN C. WEGNER, Referee.

APPEARANCES:

ARCHIE ELKINS, Esq., for the petitioner.
WILLIAM F. HANLON, Esq., for the respondent.

WILLIAM C. O'BRIEN & STAFF
30 J. BAER, Reporter.

Mr. Elkins: I may say at this time that Mr. Hanlon, who represents the Central Railroad Company of New Jersey, the respondent in this cause, will admit that the decedent was struck by a Lehigh Valley engine on a bridge nearest to Communipaw Avenue on December 24, 1932, and that he died as a result of the injuries sustained.

40 Mr. Hanlon: Can't you read?

Mr. Elkins: I know that is your conclusion. The bridge will be determined.

Mr. Hanlon: I said we will admit that he was struck by a Lehigh Valley engine by the Lehigh Valley Bridge.

Mr. Elkins: That is objectionable. That is your conclusion. We don't know. That has got to be proven by the evidence. 10

Mr. Hanlon: I think that is part of your case. You have already stated in your petition that he was struck on the Lehigh Valley Railroad trestle.

Mr. Elkins: We would rather leave that for the proof; we don't know. We say a bridge, whether or not that is the Lehigh Valley bridge or the Central bridge we don't know positively.

The Court: The petition reads, "Where did the accident happen? A. Lehigh Valley Railroad trestle, Johnston Avenue, Jersey City." 20

Mr. Elkins: That is what it is commonly known as.

Mr. Hanlon: That is what it is.

Mr. Elkins: We don't know. We would rather leave that open subject to the proof.

Mr. Hanlon: You have to prove it. Go ahead.

Mr. Elkins: But you admit that he was struck by an engine.

Mr. Hanlon: By a Lehigh Valley engine. 30

Mr. Elkins: All right, we will admit that. By a Lehigh Valley engine on a bridge nearest Communipaw Avenue on December 24, 1932, and that he died as the result of his injuries. That will eliminate the medical end, actual collision.

Mr. Hanlon: I also admit that he made over thirty dollars a week.

Mr. Elkins: We say forty dollars a week.

Mr. Hanlon: It would not make any difference. 40

Mr. Elkins: All right.

The Court: It would make a difference.

Mr. Elkins: Can we agree he made an average of thirty-five dollars a week, and we will eliminate the proof on that?

Mr. Hanlon: Just a minute.

10 The Court: You say, $29.66.

Mr. Hanlon: $38.88.

Mr. Elkins: Now, we can proceed. I think, now, if your Honor please, I think we can confine ourselves—never mind that.

MARK A. FALLON, called as a witness on behalf of the petitioner, being first duly sworn, tes-
20 tified as follows:

Mr. Elkins: If your Honor please, at this time I desire to offer five photographs in evidence which have been consented to by my adversary. I would like to have them marked individually.

Mr. Hanlon: No objection.

(The photographs referred to were re-
30 ceived in evidence and marked P-1, P-2, P-3, P-4, and P-5.)

Mr. Elkins: Now, if your Honor please, I would like to explain the pictures to your Honor, so you might follow the description.

Mr. Hanlon: Are you testifying now? Why not have someone who knows something about it.

Mr. Elkins: I know perhaps more about
40 it and could describe it better than the witnesses, unless you object to it. All you

can—or you can describe it if you want to; I can trust you. Do you object if I tell the Court?

Mr. Hanlon: Go ahead.

Mr. Elkins: If your Honor please, P-1 here—P-5, represents a building owned by the Central Railroad Company of New Jersey, which is known as the office building. To the right of the picture, that is to the right of the pole there is a doorway, through which doorway employees of the railroad pass through upon their discharge from work, also from or upon their entrance to work.

Mr. Hanlon: Where do they go to?

Mr. Elkins: Into the round house.

Mr. Hanlon: I mean from their discharge they come through there?

Mr. Elkins: Are you trying to be smart? I am describing this. Are you describing this to the Court? There is a door along this building, and alongside is what is manifestly a parking station.

Mr. Hanlon: I object to this, your Honor. I don't think it is proper. The proper man to explain the pictures is someone who knows something about it, to tell us exactly what they show.

Mr. Elkins: They speak for themselves.

Mr. Hanlon: He does not say anything about showing a public street which they come out to.

Mr. Elkins: Where is the public street?

Mr. Hanlon: There is Communipaw Avenue.

Mr. Elkins: A blind man can see that. I don't have to explain what is manifestly certain to the Court. For your benefit I

would say that facing the building is Communipaw Avenue, which is a public street. Alongside of the building to its left, is what is apparently a parking station or place, which is Central Railroad property. Also in citing my adversary, I will state that there is a bridge—a bridge. I think that explains it.

Mr. Hanlon: What kind of bridge?

Mr. Elkins: A public bridge, and it is a bridge—a bridge. I don't know what it is.

Mr. Hanlon: Railroad trains run over it?

Mr. Elkins: I don't know; you can't see it. I am explaining what is manifestly apparent on the picture. You can explain yours later.

P-4—

The Court: Is there any addition? Is there anything further to be added?

Mr. Hanlon: No, I think somebody who knows this scene intelligently would be able to tell us what this bridge was. He can tell us it is a pedestrian bridge.

Mr. Elkins: I have no objection. I am explaining what is apparent on the picture. I thought that is what you want.

Mr. Hanlon: He said he is going to tell you what he knows. He is not telling you what he knows: he is trying to shade it.

Mr. Elkins: P-4 is a picture which is a continuation of the physical grounds, and the left of the building shown on P-5, and to the left of the building shown on P-5, it shows a parking station, and also—which is Central Railroad property, and also shows a street which is Communipaw Avenue and shows the bridge.

P-3 further depicts—

Mr. Hanlon: May I ask this: you don't say this was the bridge he was killed on?

Mr. Elkins: No, that is not the bridge. I didn't say it. I didn't intend it.

Now, P-3 depicts the land to the left of— shown on P-4, which is railroad—Central Railroad property. 10

Mr. Hanlon: I object to that.

Mr. Elkins: All right.

Mr. Hanlon: That is Wilson Avenue in Jersey City, a public street.

Mr. Elkins: Well, it shows the land.

P-2 shows the land further to the left of P-3, and it also shows a bridge, which is the bridge on which the decedent was killed, struck on December 24, 1932. It also shows a pathway leading up to a reclining—supporting cement walk. 20

Mr. Hanlon: I object to that as being inaccurate. That so-called pathway is Wilson Avenue, a public street.

Mr. Elkins: Don't you see I am telling the Court what it shows? A blind man can see that. If the Court disagrees with me— 30

Mr. Hanlon: That is Wilson Avenue, Jersey City. It is not the property of the Central Railroad; it is Wilson Avenue, Jersey City.

It separates the property of the Central Railroad and the Lehigh Valley.

That is right, isn't it?

The Witness: That is right.

The Court: It is understood that it is Wilson Avenue. 40

Mr. Elkins: It is not Wilson Avenue. Wilson Avenue was vacated in 1904, 1905, 1907,—Wilson Avenue was vacated.

Mr. Hanlon: Who owns it now?

Mr. Elkins: Probably the railroad, if you get your records out. I am stating—I will eliminate proof of the pathway; we will prove that later.

P-1 shows land to the left of P-3, showing the bridge on which the decedent was struck, showing the roundhouse of the Central Railroad of New Jersey.

Is that right, Mr. Hanlon?

Mr. Hanlon: Showing the fence, fencing in the property of the Central Railroad also.

Mr. Elkins: Yes, showing the signals of the Central Railroad of New Jersey.

Mr. Hanlon: No.

Mr. Elkins: Isn't that the signals of the Central Railroad (indicating)?

Mr. Hanlon: Yes.

Mr. Elkins: Also under this bridge the Central Railroad of New Jersey tracks go, is that right?

Mr. Hanlon: That is right, under the bridge.

Mr. Elkins: To the left of the bridge is the towers, signal towers of the Central Railroad, is that right, Mr. Hanlon?

Mr. Hanlon: Signal bridge.

Mr. Elkins: All right. Shows the signals here of the Central Railroad of New Jersey (indicating).

Direct Examination by Mr. Elkins:

Q. Now, Mr. Fallon, at the present time where are you employed? A. Fourth Precinct, Jersey City Police Department.

Q. In what capacity? A. Deteceive. 10

Q. Had you ever been employed by the Central Railroad Company of New Jersey? A. Yes.

Q. In what capacity? A. Detective.

Q. For how long? A. From October, 1916, to April 15, 1925.

Q. Where were you stationed at during that period? A. From anywhere from Jersey City to Whitehouse, New Jersey.

Q. Were you employed in the vicinity shown in P-5 (indicating)? A. Yes. 20

Q. Are you familiar with the bridge shown on P-1 (indicating)? A. Yes.

Q. Now, to the left of the bridge, particularly to the right of the bridge and particularly showing you photograph P-1, do you know of your own knowledge whether streets, paved or otherwise, lie to the right of the bridge? A. It is not a public street. It is a paper street. It is a street that is on paper only. 30

Q. Do you know whether it is on paper? A. Yes. I believe it was on paper, yes.

Q. It was once? A. Yes.

Q. It was Wilson Avenue? A. Yes.

Q. Do you know whether that avenue was vacated in 1907? A. No, I don't.

Q. As far as you know is there paved street to the left of the parking station shown on P-4, is there any paved street? 40

Mr. Hanlon: I object to that as being irrelevant. I don't know of any case that holds that a street has to be paved in order to be a street.

Mr. Elkins: It does not make a difference in the case itself whether the street is paved or otherwise. You brought it out and I want to bring it out to the Court.

10

By Mr. Elkins:

Q. Is there any paved street?

Mr. Hanlon: I object to the question as being entirely irrelevant.

By Mr. Elkins:

20

Q. Is there any paved or specified, clearly set out street to the left of the land shown on P-4? A. No.

Q. Now, subsequent—are you familiar with the physical condition as shown on P-5, P-4, P-3, P-2, and P-1 (handing to witness)? A. Yes.

Q. Have you—were you familiar with that physical layout of the land on and prior to December 24, 1925? A. Yes.

30

Q. 1932, rather? A. Yes.

Q. Now, with reference to—showing you P-1, I ask you whether or not you know, of your own knowledge, whose property is shown on here where the smoke is coming out (indicating)? A. Central Railroad property.

Q. Do you know, as far as your knowledge goes, who owns the property shown on P-5? A. The building?

40

Q. Buildings, parking station, and so forth. A. The Central Railroad.

Q. Do you know, as far as your knowledge is concerned who owns property shown on P-4? A. The Central Railroad.

Q. Do you know anything about the property shown on P-2, of your own knowledge? A. The only thing shown here is the paper street, interchange. 10

Q. Now, this interchange, what is that? A. It is one track used by the Erie, West Shore, Pennsylvania, Lehigh, Jersey Central Railroad, to interchange cars from one to another.

Q. Well, by Jersey Central, is that the Central Railroad Company of New Jersey? A. Yes.

Q. And how often have you seen trains of the Central Railroad Company of New Jersey use that bridge and traverse it on and prior to December 24, 1932? 20

Mr. Hanlon: I object to that as being incompetent, irrelevant and immaterial. It makes no difference. I think the most important thing is who owns the bridge.

Mr. Elkins: No, that is not so, your Honor. We have a right to show, under the decisions —I might divert for a moment and tell your Honor what this case is about so you can follow what we are trying to prove. Would your Honor want me to explain what we are trying to prove in this case so that you can get the real substance of what this case is about? 30

Mr. Hanlon: I think it might be a good idea.

Mr. Elkins: With your Honor's permission we contend that the petitioner's decedent—the petitioner's husband, Waclaw Bryn, was employed by the Central Railroad of New Jersey for many years prior to December 24, 40

1932, as a machinist in the roundhouse, which is located on Communipaw Avenue, and particularly located in back—somewhere in back of the building shown on P-5. That on December 24, 1932, and for practically all the time that he was employed there, it was the custom of him and other men employed by the Central Railroad Company of New Jersey to cease their work, come out of the doorway which is shown to the right of the building on P-5 (indicating), walk in front of the building, go across the parking station, traverse the parking station ground as shown on P-4 (indicating), continue on to over the land shown on P-3, continue thereafter on and across the land shown on P-1 and on to the land—across the land shown on P-1, thereon to a pathway which is shown on P-2; upon the pathway, up the retaining wall, thereafter on to the bridge, across the bridge and thereon going on to Johnston Avenue, and thereon to his home.

Mr. Hanlon: As I understand it, Mr. Elkins wants to amend his petition now?

Mr. Elkins: Don't understand anything. When I make the motion—I am trying to explain this. Please don't interrupt because you break the trend of my thoughts, unless there is an objection.

Mr. Hanlon: I do object. In his petition he says the acccident happened at the Lehigh Valley trestle. I think we might just as well—

Mr. Elkins: I don't care what I say in the petition. I have a right to amend it.

Mr. Hanlon: That is what I asked. Are you amending it?

Mr. Elkins: I didn't make a motion to amend.

Mr. Hanlon: I want to know whether it is your intention.

Mr. Elkins (continuing): On this bridge (indicating), whether it is the Lehigh Valley bridge or not, I don't know. But it does not make any difference in my opinion, whether it is the Lehigh Valley bridge owned by them. My contention is that this bridge was used by the employer in the conduct and pursuance of its business, in the railroad business; that these men by custom implication known to the employer, by his agents, servants, this custom and this method of egress and ingress into the place of employment had been going on for fifteen or more years. That this decedent on the twenty-fourth day of December, 1932, while on this bridge was struck by an engine of the Lehigh Valley Railroad and thereafter died as a result of his injuries.

My contention is that the widow and the children are entitled to compensation upon the ground and under the purview and within the scope and understanding of the Compensation Law of this State, the employer is responsible for any accident resulting in injury or death to its employees while said employee is directly on his way to his employment, and is also responsible if the employee is injured directly and immediately after ceasing his employment.

The Court: Are you starting to sum up?

Mr. Elkins: I am giving you what my contention is.

The Court: Let us proceed. We have a lot of witnesses. Don't sum up now.

Mr. Elkins: No, I am not trying, and it is further—I want to state that we contend that it does not make any difference who owned this bridge, if it was used by the employer and I have a number of cases supporting my statement that the Lehigh—the Central Railroad Company of New Jersey is responsible and this widow is entitled to compensation. Do you get my thought that he was immediately on his way home?

Mr. Hanlon: I object.

Mr. Elkins: In a way that was known to everybody.

Mr. Hanlon: You don't contend he was connected with this employment on the bridge by the railroad company, do you?

Mr. Elkins: He had ceased his employment that day; he was on his way home.

Mr. Hanlon: But he wasn't one of those that used it for the railroad company up the bridge?

Mr. Elkins: We are not saying anything at this time. I can't say anything.

The Court: Let us proceed.

Mr. Elkins (to the reporter): What was the last question?

(The reporter read the question as follows: "Q. And how often have you seen trains of the Central Railroad Company of New Jersey use that bridge and traverse it on and prior to December 24, 1932?")

The Witness: So many times I could not count them.

By Mr. Elkins:

Q. Well, once a week, twice a week, five times a week, once a day? A. Well, prior to 1925, I am not in a position to say how many times a day or week, unless that on occasion being in the neighborhood, I saw them go there. 10

Q. Prior to 1925 how often did they use this bridge? A. Practically every day.

Q. Now, subsequent to 1925 and up to and inclusive of a time as of December, 1932, how often? A. Very often.

Q. Well, on an average of how many times a week; five times, six times, a dozen times? A. I would be safe in saying a dozen times. 20

Q. A dozen times. Now, do you know of your own knowledge whether Central Railroad employees use a means of egress, that is coming from the doorway, shown on P-5, over the parking station, across there, over onto the pathway shown on P-2 and on to the bridge shown on P-2, whether you know employees of the Central used that? A. Yes, they do.

Q. Do you know whether few or many? A. Many. 30

Q. And was that after they ceased their employment, after quitting time? A. Before and after, on their way and to their way they used that.

Q. That condition had existed prior to December 24, 1932? A. Yes.

Q. Would you say it was used every day, or how often did the men use this bridge and pathway, every day going to and from work? A. Yes. 40

Q. That had been from how many years prior to December, 1932, to your knowledge? A. About fifteen years.

Q. Now, Mr. Fallon, on December 24, 1932, did you go to the bridge shown on P-1 in response to a call regarding this accident? A. No.

Q. You didn't go there? A. No.

Q. Well, did you go there at all that day? A. No.

Q. Did you ever investigate—did you have anything to do with the case? A. Investigated the case on that particular day. All that was necessary was to find that there was a report made determining how the man was injured.

Q. You found he was struck by an engine? A. We were satisfied that day, from the report by Patrolman Markey who went to the scene, that he was struck by an engine.

Mr. Elkins: Cross-examine.

Cross Examination by Mr. Hanlon:

Q. Did you go up there before the body was removed, taken away? A. No. I went there later.

Q. You went up on the bridge? A. Yes.

Q. Who owns that bridge?

Mr. Elkins: I object on the ground that it is improper cross examination. The witness has not given any testimony as to the ownership of that bridge. He merely testified as to the use of it.

Mr. Hanlon: I am testing his credibility. How does he know who owns the other property. He testified he knew the other property was owned and I want to know if he knows who owns that bridge.

By Mr. Hanlon:

Q. Who owned that bridge, Officer?

Mr. Elkins: He particularly didn't state that he did know as to the ownership of this bridge. They can prove it. I say it is not proper cross examination. 10

Mr. Hanlon: I think it is in order to affect his credibility.

The Court: Overrule the objection.

Mr. Elkins: Exception.

By Mr. Hanlon:

Q. Who owns this bridge? A. I don't know.

Q. How do you know who owns all this other property? A. Because I am very familiar with the other property. That bridge is complicated. 20

Q. What do you mean is complicated? A. Well, it is known as National Dock Railroad, and the interchange and the Lehigh Valley.

Q. Why didn't you tell us that? A. I wasn't asked.

Q. You know it is an interchange? A. It is an interchange.

Q. What does interchange mean? A. That means where cars from one railroad are interchanged to another. 30

Q. You mean cars of other railroads run over it? A. Yes. The Pennsylvania if they have a string of cars, will deliver them to Pennsylvania, Erie, West Shore.

Q. It is also known as the Lehigh Valley bridge? A. Yes.

Q. Did you know that that interchange runs through the Central with some other engines? A. Yes. 40

Q. You have been around the railroad long enough to know that? A. Yes, sir.

Q. Wilson Street, you have often been down there, haven't you? A. Yes.

Q. That is how you knew it, as Wilson Street?
10 A. As a paper street.

Q. What do you mean by a paper street? A. A street that is on a map only.

Q. Isn't it a fact—isn't this street marked out quite clearly with a path (indicating)? A. Foot path.

Q. The public used it? A. Yes. It was also used—

Q. Now—

20 Mr. Elkins: Let him answer.

Mr. Hanlon: I object to the answer. I asked him if the public used it.

Mr. Elkins: I object to him cutting off his answer.

The Court: He answered the question.

Mr. Elkins: Well, he is trying to finish it.

Mr. Hanlon: I am trying to help you.

Mr. Elkins: Well, he is not trying to
30 help you. He is trying to tell the truth and I ask that the witness be permitted to answer the question if he has not completed it?

The Court: Deny the motion.

Mr. Elkins: Exception.

By Mr. Hanlon:

Q. When these men come out of the shop, Officer, they come out on to Communipaw Avenue,
40 don't they? A. If they come out of the shop, yes.

Q. You are talking about men that came out of the shop? A. If they came out of the shop.

Q. You were talking to Mr. Elkins about men who come out of the shop, weren't you? They would walk on Communipaw Avenue then over to the driveway over here (indicating) to the parking station? A. Parking station, yes.

Q. Should they continue along Communipaw Avenue, don't they reach this overhead bridge used by pedestrians and trucks (indicating)? A. Yes, to Communipaw Avenue. 10

Q. They can continue along on a public street and reach any point in Jersey City, can't they? A. Yes.

Q. There is no necessity of walking over this—

Mr. Elkins: I object on the ground it is asking him to draw a conclusion, whether there is any necessity on the part of someone else. 20

The Court: I sustain the objection.

Mr. Hanlon: I think that is all.

Re-direct Examination by Mr. Elkins:

Q. Now, how long a time does it take from the time you leave—one leaves the doorway shown to the right of the building on P-5, to the bridge as shown on P-1—shown on P-2, to get up on the bridge? A. Which bridge? About four minutes. 30

Q. Now, is it customary for the men using that bridge to go over on to Johnston Avenue?

Mr. Hanlon: I object to that as being incompetent, irrelevant and immaterial.

Mr. Elkins: Withdraw the question.

By Mr. Elkins:

Q. Now, when counsel asked you a question whether the men got on Communipaw Avenue 40

after they leave the doorway, isn't it a fact that they don't actually go out on into the street itself when they go up to the short cut on to the bridge?

Mr. Hanlon: I object to that as being leading.

10 Mr. Elkins: I will withdraw it.

Q. Will you state whether or not men of the Central Railroad who you testify used this bridge frequently, the bridge shown on P-2, whether those men actually have to go on to Communipaw Avenue itself or whether they remain on the land in front of the building and continue thereon until they got to the bridge without touching Com-
20 munipaw Avenue at all? A. I don't know the exact building line, but you don't have to come out into the roadway. There is a dirt walk along the front of the building.

Q. They used that dirt walk, continue on across the parking space land and then on to the bridge?

Mr. Hanlon: I object to it as being leading. It sounds as though Mr. Elkins is testifying.

30 Mr. Elkins: I will reframe the question.

By Mr. Elkins:

Q. Will you state whether or not when men come out of this doorway shown on P-5, that as you say they used the bridge and short cut, whether those men actually have to get on the roadway off Communipaw Avenue?

Mr. Hanlon: I object to it as being im-
40 proper re-direct examination. He has already stated how these men go when they leave the shop.

Mr. Elkins: I think it is proper.

The Court: Overrule the objection.

By Mr. Elkins:

Q. Answer it. Do you understand it, Mr. Fallon? A. Yes, I can't say for this reason; that the building is set back and I don't know the building line. I don't know how far out the Central Railroad property comes in front of the building. 10

Q. What I mean is this: when you come out of this doorway (indicating) do you have to go on this paved street shown in front of the building? A. No.

Q. All right. Now, this bridge shown on P-5 (indicating), that is part of Communipaw Avenue, isn't it? A. Yes.

Q. And it is used by the public? A. Yes. 20

Q. And the public also uses this—what is called the short cut to Johnston Avenue? A. Yes.

Q. And when they use that short cut they don't touch Communipaw Avenue proper, itself? A. No.

Q. Now, Mr. Fallon, you were about to answer Mr. Hanlon's question and you said that also—or they also used—referring to Wilson Avenue, the street which you say is a paper street, what is it also used by, and particularly showing you P-1 (handing to witness)? A. Many times when you have an ambulance call at the Central Railroad Roundhouse, inside of here (indicating) you would run the ambulance down to here (indicating) so you can get in and you would not have to carry the body out so far. 30

Q. Isn't it a fact that at the end of here (indicating) there is a big fence which they—there is a fence, large door which leads on to the Central Railroad property? A. Yes. 40

Q. Isn't it a fact that this pathway is used for vehicles having to deliver merchandise or other

articles in the Central Railroad property in here (indicating)? A. Yes.

Q. And very frequently? A. Whenever the occasion calls for it. I don't know whether it is frequent.

10 Q. Isn't it a fact that this that has been referred to as Wilson Street is a paper street and is never used by the general public as a traffic street?

Mr. Hanlon: I object to the leading.

Mr. Elkins: Withdraw the question.

By Mr. Elkins:

Q. Will you state whether or not the street re-
20 ferred to as Wilson Street, is used by the public for general traffic? A. It is not.

Mr. Elkins: That is all.

Re-cross Examination by Mr. Hanlon:

Q. You did say it was used by the general public, didn't you, Mr. Fallon? A. It is used by railroaders mostly.

Q. Why did you say it was used by the general
30 public for? A. By the general public I mean by anybody traveling through. You could not travel through in an automobile.

Q. It is used by the ambulance, isn't it? A. Yes.

Q. This Jersey City ambulance goes down here (indicating). There is a gate there? A. Yes.

Q. So that the Central Railroad is all fenced in around here (indicating). A. It is now.

40 Q. It was then, wasn't it? A. In December 24, or before?

Q. Before December 24? A. No.

Q. Was it fenced in on December 24, 1932? A. I believe it was, yes.

Q. Was it fenced—before that had it been fenced in? A. I just don't know how long.

Q. You knew it wasn't fenced in in 1925? A. It wasn't fenced in in 1925. 10

Q. So what happened between those seven years, don't you know? A. No.

Q. You are testifying in everything here as to what happened about 1925, aren't you? A. No.

Q. That is when you worked for the railroad, isn't it? A. I worked for the railroad in 1925, also worked that post when I was on the police department, Jersey City. 20

Mr. Hanlon: That is all.

By Mr. Elkins:

Q. When you testify to conditions subsequent to 1925 and up to and inclusive of December 24, 1932, you know that of your own knowledge because you have been down in that locality by reason of having the post down there and having to go down there? 30

Mr. Hanlon: I object to his leading.

Mr. Elkins: That is not leading.

Mr. Hanlon: He is telling him what to say.

Mr. Elkins: He has testified to something. I don't know what he is trying—

The Court: Overrule the objection.

Mr. Elkins (to the reporter): Will you read the question? 40

(The reporter read the last question as follows: "Q. when you testify to conditions

subsequent to 1925 and up to and inclusive of December 24, 1932, you know that of your own knowledge because you have been down in that locality by reason of having the post down there and having to go down there?")

10

The Witness: Yes.

Mr. Elkins: That is all.

Mr. Hanlon: All right.

(Witness excused.)

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20 WILLIAM J. SPIES, called as a witness on behalf of the petitioner, being first duly sworn, testified as follows:

Mr. Elkins: It is stipulated that this witness will testify to the exact testimony given by Mr. Fallon.

(Witness excused.)

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30 JAMES T. BYRNS, called as a witness on behalf of the petitioner, being first duly sworn, testified as follows:

Mr. Elkins: If your Honor please, his testimony will be the same.

Mr. Hanlon: I think I might want to cross-examine Mr. Byrns.

Direct Examination by Mr. Elkins:

40 Q. Mr. Byrns, where are you employed? A. Jersey City Police.

Q. In what capacity? A. As detective.

Q. And are you familiar with the location of—withdraw that. Are you familiar with what is shown on P-5? I show you all these pictures and ask you whether—one to five, inclusive (handing to witness)? A. Yes. 10

Q. You are. Now, that is what is—withdraw that. Now, were you familiar with that sufficient—pictures—rather the place, land, and so forth shown on the Exhibits 1 to 5, inclusive, on December 24, 1932? Were you familiar with the lands, their location? A. Yes.

Q. How long prior to December, 1924, were you personally familiar with the location and the conditions? 20

Mr. Hanlon: You mean December, 1932?

By Mr. Elkins:

Q. December, 1932, how long before? A. Well, I went to the Fourth Precinct about August.

Q. August what? A. 1932.

Q. August, 1932. Before August, 1932, did you know the condition—I mean as to the use of the land, and so forth? A. I could not say. 30

Q. You can't say. But from August, 1932, to December, 1932, do you know of your own knowledge whether other men of the Central Railroad Company of New Jersey used what is commonly called the short cut over the bridge shown on P-2, for the purpose of going to Johnston Avenue? A. Some of them.

Q. Some of them. Do you know whether they used it in the morning or afternoon, at night? A. Well, back to and from work, I believe. 40

Q. Now, on December 24, did you go to the scene of this accident? A. No, I didn't.

Q. Did you have anything to do with it? A. I got the report and I went to the hospital to see the condition of the man.

10 Q. That is all you know about it? A. Yes.

Mr. Elkins: That is all.

Cross Examination by Mr. Hanlon:

Q. Mr. Byrns, now, you are familiar with the Central—

Mr. Elkins: Just a moment. That is all.

By Mr. Hanlon:

20 Q. You are familiar with this picture particularly, aren't you, P-5, showing the building and the Central Railroad (indicating)? A. Yes.

Q. Can you tell us where the roundhouse is located with reference to this building (indicating)? A. Quite a ways in the rear of this building.

Q. How does anybody get off the property of the Central Railroad, do you know that?

Mr. Elkins: Well, I object unless he

30 specifies.

Mr. Hanlon: I asked him if he knew it.

Mr. Elkins: Anybody?

By Mr. Hanlon:

Q. How do these men get off the property of the Central Railroad? A. Well, to my knowledge they come out of the door after they check in their time, along this (indicating) and come out

40 to Communipaw Avenue.

Q. How do they get over to this bridge that you spoke of? A. They walk up Communipaw Avenue and up the embankment.

Q. Before they get to the embankment do they have to cross another street? A. Well, that street is known as Wilson Street. 10

Q. Now, the Central Railroad property, as I understand it, is all fenced around, isn't it? Fenced in around there? A. Yes, sir.

Q. When you saw some of the men use the short cut how did the other men go? A. Well, they could go up Communipaw Avenue.

Q. Right along—

Mr. Elkins: He said they could.

20

By Mr. Hanlon:

Q. How did they go that you know of? Have you ever seen them? A. I have seen some of them go.

Q. Up Communipaw Avenue? A. Some used the bridge.

Q. Isn't it a fact that on a real nasty day they didn't use the short cut at all on a snowy or sleety day they did go along on Communipaw Avenue? 30

Mr. Elkins: I object—I will withdraw the objection.

The Witness: Well, I could not say.

By Mr. Hanlon:

Q. Not sure about that? A. Not sure about that.

Mr. Elkins: The man said he can't say. 40

By Mr. Hanlon:

Q. Now, this bridge that—what is that known as where the accident happened? A. Why, it was known as the National Docks, and later on the
10 Lehigh Valley.

Mr. Hanlon: That is all.

Re-direct Examination by Mr. Elkins:

Q. Mr. Byrns, you said the men come out of Communipaw Avenue. Isn't it a fact that they walk along the land parallel with Communipaw Avenue, then go across the parking station and then continue on up to the embankment shown
20 on P-1?

Mr. Hanlon: I object to his leading, your Honor. That is his own witness.

The Court: I sustain the objection.

By Mr. Elkins:

Q. When the men use this shortcut, do they actually go right out into Communipaw Avenue, or do they continue on the land in front of the build-
30 ing shown on P-5, across the parking station thereon up to the embankment? A. Well, there is a sidewalk and also a small space of dirt.

Q. Isn't it a fact that that sidewalk and small space of dirt is the part that they walk on?

Mr. Hanlon: I object to his leading.

Mr. Elkins: Withdraw the question.

By Mr. Elkins:

40 Q. Will you state whether when they go up the shortcut they actually go out in the street, the

cobblestone street of Communipaw Avenue, or do they remain on what is commonly known as the sidewalk? A. There is a sidewalk, I should judge.

Q. They use the sidewalk? A. Sidewalk.

Q. But they don't go out in the street itself to use the shortcut? I mean this street here (indicating), they don't go over the curb line, walk up the cobblestone, then go back on the dark land and then continue up? A. Oh, no. They don't have to. 10

Q. They don't have to.

Mr. Elkins: That is all.

Re-cross Examination by Mr. Hanlon:

Q. They do walk out on the pavement? A. Walk. 20

Mr. Hanlon: Yes. That is all.

Mr. Elkins: That is all.

By Mr. Elkins:

Q. This short cut is used by most of the men?

Mr. Hanlon: I object to his leading. 30

Mr. Elkins: Withdraw the question.

By Mr. Elkins:

Q. What percentage of the men use the shortcut, if you know, employees of the Central Railroad Company of New Jersey? A. What men?

Q. What percentage? A. Oh, what percentage? Well, I would say part of them. I could not say just what part.

Q. You don't know what percentage? A. No. 40

Mr. Elkins: That is all.

The Witness: It is used by pedestrians also.

By Mr. Elkins:

Q. What? A. It is used by pedestrians also.

10 Q. Used by pedestrians, not employees of the railroad? A. Yes.

Q. In fact, it is very common usage for people going— A. The short cut—

Q. (Continuing)—going to Johnston Avenue? A. Yes.

Q. How much time does it take from the—how much time would you say it takes one to walk from the doorway on to the bridge? A. Oh, be-

20 tween four and five minutes.

Q. Now, if you had to go around Communipaw Avenue over the bridge to get to Johnston Avenue, how many minutes would it take you? A. About six to seven minutes maybe.

Q. Do you mean all around the block? A. Oh, around the block?

Q. Yes. You mean it takes from the door to Johnston Avenue, six or seven minutes when you take the short cut? A. If you went over the

30 bridge.

Mr. Hanlon: I object to his leading.

The Witness: If you went over the bridge.

By Mr. Elkins:

Q. If you had to go on Communipaw Avenue, over that bridge on Communipaw Avenue, around Van Horne Street, then— A. That would take much longer.

40 Q. That would take much longer. It would take almost three times as long, would it not?

Mr. Hanlon: I object to his leading.

By Mr. Elkins:

Q. Do you know?

The Court: I sustain the objection.
Mr. Elkins: All right, that is all. 10

By Mr. Hanlon:

Q. Now, Mr. Byrns, when you say that these people, other people used the railroad, you say that they used the short cut you mean they trespassed on the railroad?

Mr. Elkins: I object to the conclusion that they trespass on the railroad. That is a legal conclusion. 20
The Court: Sustain the objection

By Mr. Hanlon:

Q. They are on railroad property these other people that you say used it for a short cut, they are on railroad property? A. It is used—

Mr. Elkins: Wait a minute. Let him finish.
The Witness: It is used by other people. 30

By Mr. Hanlon:

Q. As a short cut? A. Yes.
Q. And you can reach any point in Jersey City by staying on Communipaw Avenue?

Mr. Elkins: I object to that on the ground it is improper cross examination.
Mr. Hanlon: I think it is very proper and very material.
The Court: Objection overruled. 40
Mr. Elkins: Exception.

By Mr. Hanlon:

Q. Isn't it so, Mr. Byrns, you can stay on Communipaw Avenue, on the public street, and reach any point in Jersey City? A. Oh, yes, yes.

10 By Mr. Elkins:

Q. If you continue over the short cut you can reach any point in Jersey City in less time, isn't that so? A. Well, you can walk down on different streets.

Q. But you can get to any place in Jersey City by taking the short cut as well as you can reach any point by going the other way, isn't that so? A. I don't know.

20 Q. You—don't you—you said you can reach any point; you can't reach any point in Jersey City by using the Communipaw Avenue bridge, that is what you said. A. Yes.

Q. Isn't it a fact that you can reach any point in Jersey City by using the short cut, get to any point in shorter time, isn't that a fact? A. Yes.

Mr. Elkins: All right.

30 By Mr. Hanlon:

Q. Mr. Byrns, you don't mean that you can—

Mr. Elkins: I object to counsel—

By Mr. Hanlon:

Q. You don't mean that you can get up to Johnston Avenue any quicker by using the bridge? A. Oh, no.

Q. You mean that you use the short cut just to

40 get to a certain point in Jersey City, the downtown section? A. Also center of Jersey City, sure.

By Mr. Elkins:

Q. That is reached in much shorter time by taking the short cut?

Mr. Hanlon: I object to his leading. 10

The Witness: Positively.

Mr. Elkins: He said positively. That is a proper question; he has answered.

Mr. Elkins: That is all.

(Witness excused.)

(Discussion between Court and counsel.)

FRANK KOST, called as a witness on behalf of the petitioner, being first duly sworn, testified 20 as follows:

Direct Examination by Mr. Elkins:

Q. Where do you live, Frank? A. Canal Street.

Q. Canal Street. What number? A. 72.

Q. How long have you lived there? A. Maybe eight years.

Q. Eight years. Did you ever work for the Central Railroad of New Jersey? A. Yes, I 30 worked all the time.

Q. Where? A. On Central.

Q. Where? A. Communipaw Avenue.

Q. Communipaw Avenue. How long did you work for the Central Railroad of New Jersey? A. I work for twenty-three years.

Q. Twenty-three years. Did you work there December 24, 1932, the day Waclaw Bryn was killed, was hit by the train, did you work there that day? A. Yes. 40

Q. Did you work there before that time? A. Yes.

Q. How many years before the day he was hit? How many years were you working for the Central Railroad at Communipaw Avenue before December, 1932? How many years before? A. I don't know. I know—I no can tell.

Mr. Hanlon: He worked for twenty-three years.

Mr. Elkins: Let us get the time before, whether it was a year—I think we would do much better if we had the interpreter. I am trying to save time. I am not trying to deceive the Court.

Mr. Hanlon: It is his own interpreter.

The Court: He said he worked for twenty-three years.

By Mr. Elkins:

Q. For twenty-three years? A. Yes.

Q. The same place? A. No, before I go, before I was on fiddlers.

Q. I show you a picture, do you know this picture (handing to witness)? A. Yes.

Q. Do you know this bridge—P-2—do you know this bridge (indicating)? A. Yes.

Q. Do you know this— A. Big building over there (indicating), big office.

Q. Now, the day Waclaw was hit by the train how did you come out of work; how did you go home? A. Go home?

Q. Yes. A. Well, I go bridge just the same.

(Discussion between Court and counsel.)

(The testimony of this witness was given through Mr. Alexander Sudnick, Jr., who was duly sworn in as an interpreter of the Polish language.)

By Mr. Elkins: 10

Q. On December 24, 1932, were you going home with Waclaw Bryn after quitting time? A. I was going home from work.

Q. What time did you quit? A. (In English.) Four o'clock.

Q. How—tell us what route you used after you left the Central Railroad door alongside of the office building? A. (Through the Interpreter.) I punched the card and went into the street. 20

Q. And after you got—when you refer to the street do you mean the sidewalk or the actual cobblestones on Communipaw Avenue, particularly as shown on P-5 (handing to witness)? A. I went out on the sidewalk and I turned again on to railroad property.

Q. And just tell us what was your route, just exactly what land you crossed and where you got to. What was the purpose of using that route? A. 30 Because it was nearer the men walked that way because it was nearer.

Q. Well, when you—I show you P-2 and ask you whether the pathway shown there was the pathway you used on that day with the deceased? A. I walked the way the train goes.

Q. Well, do you cross when you get out in the street? Do you cross the parking station, parking grounds shown on P-4 and continue on from there until you get up to the bridge shown on P-2? 40

Mr. Hanlon: I object to his leading, your Honor. Mr. Elkins might just as well be testifying. I think this man can tell us now that he has that interpreter.

Mr. Elkins: I am referring to the pictures. I have got to the pictures. I will reframe my question.

10

By Mr. Elkins:

Q. Will you state whether when you got out on the street, whether you go over the land shown on P-4, and also whether you continued thereon till you got to the bridge shown on P-2? A. I walk along till I got to the bridge and it ends at the bridge.

20

Q. How long had you been using that route before December, 1932? A. About eight years.

Q. How many years? A. About eight years.

Q. About eight years? A. Eighteen.

Q. Do you know of your own knowledge whether any other Central Railroad men used that same route, and if so, for how long a time before December, 1932? A. Yes, through that bridge.

30

Q. Many men or a few? A. I could not say but all those that lived in that section of the city, all of them, every one of them.

Q. For how many years; the same period you used it or shorter? A. I could not say.

Q. Well, so—did these men use it for the times that you used it? A. Whoever worked that long, that is how long he walked that way.

Q. Did you know any man who used it, if so, whether it was two, three, four, five, dozen, or more or less? A. I cannot say because there is a lot of men working on the railroad.

40

Q. Well, how many, two, three, five, six, dozens? A. As far as I know about six men.

Q. Did you see any other men use this short-cut? A. All those that lived in that part of the city, around Grand Street, Canal Street, all walked that way. I don't know all of them. 10

Q. Well, isn't it a fact that dozens of men used this road although you don't know who they were, their names, you know that they worked for the Central?

Mr. Hanlon: I object to his leading.
Mr. Elkins: Withdraw the question.

By Mr. Elkins:

Q. Isn't it a fact that many men, dozens of them used this short cut to get to Johnston Avenue, downtown Jersey City, for all the time that you worked there? A. I said that all those that lived in that section of the city walked that way. 20

Q. Well, were there many? A. How can I say? There is a lot of people working in the roundhouse.

Q. Did they use it for the same time, to wit, eighteen years that you used it? A. Not all worked as long as I worked. 30

Q. How many years to your knowledge had that pathway been used by Central Railroad men? A. They walked there steadily, all people that worked at the Central Railroad.

Q. Well, did you know whether Waclaw Bryn used this route and this bridge before the day he was hit? A. Bryn also walked that way.

Q. How many years to your knowledge? A. I don't know how many years.

Q. Was it one, two years—withdraw the ques- 40

tion. A. Yes, more about ten years that I know, that I know Bryn.

Q. From—isn't it a fact that every night when he went home he used this bridge with you for ten years?

10 Mr. Hanlon: I object to his leading.

Mr. Elkins: Withdraw the question.

By Mr. Elkins:

Q. Did you go home with him every night? A. Bryn went home always sooner because he worked. I worked longer than Bryn.

Q. Well, you say he used the bridge. Did you see him use it? A. Yes, because at times we met;

20 sometimes in the morning and sometimes in the evening.

Q. In the evening was that quitting time, after you quit work? A. Four o'clock.

Q. Now, on the day of this accident—what time did the accident happen? How many minutes after you quit work? A. I punched the card at twenty-two minutes but I—he punched his card earlier because I punched it later.

30 Q. Well, weren't you—you were walking in back of Bryn on the day he was hit, weren't you? Yes or no. A. I walked behind him, about ten minutes later than him.

Q. Did you see him as he walked ahead of you? A. No.

Mr. Elkins: That is all.

Cross Examination by Mr. Hanlon:

40 Q. Did you see Bryn before he was struck?

Mr. Elkins: I want to object to this on the ground whether he saw him before is immaterial. They admit that he was struck on the bridge and he died as a result of the accident.

Mr. Hanlon: I think it will effect his credibility. I will connect it up. 10

Mr. Elkins: Whether he saw him before is immaterial.

The Court: Overrule the objection.

Mr. Elkins: For what purpose?

Mr. Hanlon: You will find out.

Mr. Elkins: Exception.

The Witness: When I got to the end of the bridge I seen Bryn sitting on a concrete base with men who were holding him up. 20

By Mr. Hanlon:

Q. Was there anybody else there at that time?

Mr. Elkins: I object to that on the ground it is irrelevant, incompetent and immaterial.

Mr. Hanlon: He has testified at great—

Mr. Elkins: He said he got there ten minutes later and he saw the man there.

The Court: Objection overruled.

Mr. Elkins: Exception. 30

By Mr. Hanlon:

Q. Was there anybody else there at the time?

A. There were men there, but I don't know the men.

Q. Were they holding—were these men from the Lehigh Valley; were they Lehigh Valley men?

Mr. Elkins: I object to that on the ground it is immaterial and improper. 40

Mr Hanlon: I think it is very proper.

Mr. Elkins: That they were holding him up is immaterial.

The Court: How does this man know if they were Lehigh Valley men?

10 By Mr. Hanlon:

Q. Do you know whether or not they were Lehigh Valley men? A. They were men from the engine, engine men.

Q. How many men punched the clock when you quit work?

Mr. Elkins: I object to that on the ground it is incompetent, irrelevant, and immaterial, and not proper cross examination.

20

Mr. Hanlon: It is highly material.

The Court: I will overrule the objection.

Mr. Elkins: Exception.

The Witness: I didn't count them because men were punching the clock. They keep going; about eight hundred men work on that road.

By Mr. Hanlon:

30

Q. Was there any other man on the bridge when you saw Bryn being held by the engine men?

Mr. Elkins: I object to it on the ground he said there were men holding him up; he didn't know who they were. I object to it.

Mr. Hanlon: He said they were engine men.

Mr. Elkins: He said he thinks they were.

40

Mr. Hanlon: He said they were.

The Court: Overrule the objection.

Mr. Elkins: I object to the question. Exception.

The Witness: Mr. Gorchinski.

By Mr. Hanlon:

Q. He was the only other one?

Mr. Elkins: I object to it on the ground that is improper cross examination, was he the only other one. The answer is that there are other men. 10

Mr. Hanlon: Now, Mr. Elkins, why don't you be fair?

Mr. Elkins: I object to the question. That is my objection, your Honor.

The Court: Overrule the objection.

Mr. Elkins: Exception.

The Witness: I don't know. I don't know those people. 20

By Mr. Hanlon:

Q. What people? A. I believe these people from the engine, bridge men and engine men.

Q. So that the only ones you saw on the bridge at the time was Bryn and the men holding him up and Gorchinski, isn't that so?

Mr. Elkins: I object on the grounds that it is improper. The witness stated he didn't know who the men were on the bridge. He thinks they were engine men and he mentioned Gorchinski. To confine him down to only those men I say is improper cross examination. 30

The Court: Overrule the objection.

Mr. Elkins: Exception.

The Witness: I left everything. I went home. It was dark, so I went home.

Mr. Hanlon: I move that that be stricken out and ask that the question be answered. 40

The Court (to the interpreter): Tell him to answer the question.

(The reporter read the last question as follows:

"Q. So that the only ones you saw on the bridge at the time was Bryn and the men holding him up and Gorchinski, isn't that so?")

The Witness: There was one man walking in back of me, but I didn't know that man. He walked right with me but I didn't know him.

By Mr. Hanlon:

Q. Well, now, let us see. Was there anybody else besides Gorchinski, and Bryn, and the men who were holding him up, you and the man who walked besides you? A. I don't know, because I went home.

Q. Did you see anybody else besides these men that you have already mentioned? A. I left them all there. I left everything there. So I went home, so I don't know.

Q. Did you see anyone besides the ones you have already mentioned?

Mr. Elkins: I object on the ground that the witness has already answered it. He does not know; he went on his way home.

The Court: Objection sustained.

By Mr. Hanlon:

Q. Did you see anyone besides the ones you have already mentioned?

The Court: I sustain the objection.

By Mr. Hanlon:

Q. Was there anybody else there that you saw besides Gorchinski, Bryn, yourself, and the man who walked with you?

Mr. Elkins: I object to it on the ground that it is the same question that your Honor sustained. 10

The Court: He answered that question.

By Mr. Hanlon:

Q. You say there were eight hundred men who punched the clock at that time? A. (In English.) There was one time—(through the interpreter)—I cannot say at one time since I walked away. 20

Q. Well, about that time, around four o'clock? A. When I was punching there was a line there punching clocks. I cannot say. Some went to the stairs; some went home, some to the bridge.

Mr. Hanlon: That is all.

Mr. Elkins: That is all.

(Witness excused.)

JOSEPH GORCHINSKI, called as a witness on behalf of the petitioner, being first duly sworn, testified as follows: 30

(The testimony of this witness was given through Mr. Alexander Sudnick, who was sworn previously, as interpreter of Polish language.)

Direct Examination by Mr. Elkins:

Q. Where do you work, Mr. Gorchinski? A. The Central. 40

Q. The Central Railroad Company of New Jersey? A. Yes.

Q. How long had you worked—where do you work for the Central? A. On ash pit by the engine.

10 Q. Well, is that—where is it with reference to the buildings shown on P-5 (handing to witness)? A. I cannot say. I can't read.

Q. Well, is it back of this building (indicating)?

Mr. Hanlon: He says he cannot say.

Mr. Elkins: He can't read. You don't have to read.

The Witness: There is a bridge there. I can't say.

20 By Mr. Elkins:

Q. Showing you P-1, ask you whether you worked in the vicinity or in the place shown or near the place shown on P-1 (indicating)?

Mr. Hanlon: Maybe we can admit that.

Mr. Elkins: Admit it then.

Mr. Hanlon: He worked in the ash pit; that is behind the building.

30 Mr. Elkins: All right. You sit there and I am struggling to get it out of this man.

By Mr. Elkins:

Q. You worked in back of the building?

Mr. Hanlon: I said yes.

Mr. Elkins: Let us get him straight on it. Then we can follow the sequence of the story.

By Mr. Elkins:

40 Q. You worked in back of this building (indicating)? A. Yes.

Q. Now, on December 24, 1932, did you know Waclaw Bryn? A. I knew him.

Q. Did you know him, yes or no? A. I knew him by sight. I didn't know him; I knowed him by sight.

Q. Were you on the bridge after he got hit by the train? A. I was walking—I walked in front. He walked in the back, but he walked in the back of me.

Q. Now, how long did Bryn work down at that place, down at the Central Railroad roundhouse? A. I cannot say. I don't know how long.

Q. Was it two years, three years, five years? A. Maybe more than that, I don't know.

Q. Well, he worked down there a long time as far as you know, is that right? A. He could have worked there, but he didn't work in the department where I worked so I can't say.

Q. Well, he worked in the roundhouse for almost twelve or thirteen years, didn't he? Isn't that a fact, to your knowledge? A. Maybe he worked there that long, but I can't say.

Q. You know he worked—don't maybe me—you know he worked there, isn't that a fact?

Mr. Hanlon: I object to this.

Mr. Elkins: I know this witness is holding back.

Mr. Hanlon: I don't think that is fair.

Mr. Elkins: I got a statement from him. I want to know the truth. It is a simple question.

Mr. Hanlon: I object to this kind of direct examination, your Honor. This is this man's witness.

Mr. Elkins: Yes. He is an antagonistic witness.

The Court: He is not antagonistic.

By Mr. Elkins:

Q. I asked you—

Mr. Hanlon: Unless his antagonism seems to be to you.

10

Mr. Elkins: I am fighting an upgrade battle. That is why it is very difficult.

By Mr. Elkins:

Q. Isn't it a fact that Bryn worked down there in the roundhouse for over ten years? A. I cannot say that he worked exactly those years. I do say that he worked there but how many years I can't say.

20

Q. Was it a short time or long time? A. Pretty long while.

Q. Isn't it a fact that the short cut was used by him, you and many other Central Railroad men for all the time he worked there and you worked there, isn't that a fact?

Mr. Hanlon: I object to his leading.

The Court: It is leading.

30

Mr. Elkins: I will reframe the question.

By Mr. Elkins:

Q. How long did you use this short cut over this bridge before the accident? A. I didn't use it very much for a long while because I didn't live in the section. I live on Manning Avenue.

Q. When you lived in the section—withdraw that. On the day of the accident you used the bridge and the short cut, isn't that a fact? A. Yes, I walked that way.

40

Q. How long did you use it before that time, about how long a time? A. Used it about three or four times, because—used it only a few times, because I went through the city.

Q. Where did you live on the day of the accident? A. I lived on Bright Street.

Q. How long did you live on Bright Street? A. About four years I lived on Bright Street.

Q. Isn't it a fact that in all that time you used this short cut when you went home from work? 10

Mr. Hanlon: I object to his leading, not being proper direct examination. He has already stated he used it three or four times, and the rest of the time he went through the city.

Mr. Elkins: Because he didn't live there.

Mr. Hanlon: He said for four years.

By Mr. Elkins: 20

Q. How many times did you use that bridge in four years, this short cut?

Mr. Hanlon: I object. That has already been answered.

By Mr. Elkins:

Q. How many times did you use this short cut in the four years that you lived on Bright Street? 30

Mr. Hanlon: I object to that; that has been answered.

The Court: Overrule the objection.

The Witness: Maybe three or four times I used it.

By Mr. Elkins:

Q. Is that all in the four years? A. Yes, because I didn't go that way. 40

Q. Now, isn't it a fact—who did you speak to before you came to court this morning, or since last week? To whom did you talk to? A. To nobody I talked to.

Q. You are sure? A. Sure.

10 Q. Did you speak to anybody from the railroad at all in this case? A. No.

Q. Never? A. To nobody I spoke.

Q. You are sure of that? A. Yes, because I didn't say anything to anybody. I didn't know this case was going on.

Q. What? You didn't know the case was coming up, is that right? A. I didn't know anything that this case was coming up, nobody said anything.

20 Q. Weren't you told by your foreman to be in court? A. When I got the paper that is when they told me, but there wasn't any—

Q. What paper? A. To be in court.

Q. The subpoena that I served on you you got, isn't that a fact? A. Yes, it was there; it was in the house.

Q. Then you brought that to your foreman, isn't that a fact?

30 Mr. Hanlon: I object to that, your Honor, as improper, irrelevant, incompetent and immaterial.

Mr. Elkins: I think I have a right to show his antagonism before I start to attack him.

Mr. Hanlon: This man is not an antagonistic witness.

Mr. Elkins: He is not?

Mr. Hanlon: He can't impeach his own

40 witness.

The Court: Overrule the objection. Don't talk so loud, Mr. Elkins.

Mr. Elkins: Sometimes the louder you speak you make these foreigners fear you. You put the fear of God in them.

The Court: No.

Mr. Elkins: I know them, your Honor.

The Court: So do I. 10

The Witness: Yes.

By Mr. Elkins:

Q. And you had a conversation with him, isn't that so?

Mr. Hanlon: I object to that as being incompetent, irrelevant and immaterial, and has no bearing in this case.

The Court: Overrule the objection. 20

The Witness: I didn't speak to him about anything.

By Mr. Elkins:

Q. So what did you tell him when you went to him with the subpoena? A. I showed him; he read it; O. K.

Q. Did you speak to Mr. Hanlon last Thursday in the next room (indicating)? Don't look at him. 30 Did you speak to Mr. Hanlon last week? A. I let him know before the case came up.

Q. You spoke to him last Thursday; he talked to you, isn't that so? A. No, I didn't talk to him.

Q. Didn't you talk to him last Thursday right out here? This man here (indicating)? A. Not me, this man?

Mr. Hanlon: I object to that as being improper, incompetent, irrelevant and immaterial. 40

Mr. Elkins: I want to show the man has been—is antagonistic.

Mr. Hanlon: That does not show he was antagonistic if he spoke to me.

The Court: Overrule the objection.

10

By Mr. Elkins:

Q. Do you deny—

Mr. Hanlon: No, I don't deny. Sure I spoke to him.

Mr. Elkins: That is admitted. Let us find out whether he is telling the truth.

Mr. Hanlon: He is my witness.

20

Mr. Elkins: He is your witness?

Mr. Hanlon: Surely.

By Mr. Elkins:

Q. Did you speak to Mr. Hanlon last Thursday, yes or no? A. I talked to him because I let him know that this case—

Q. You spoke about all the facts in this case, didn't you? A. Yes, I was talking to him just how it was.

30

Q. All right. Now, on the day of this accident, you walked ahead of Bryn, isn't that a fact? A. Yes, I walked in the front.

Q. Why did you use that method of getting home? A. I went that way because I was in a hurry; I went that way, it was a little shorter.

Q. Isn't it a fact that that was the short cut to get to Johnston Avenue route, that you used on on December 24, that was used by Bryn also? A. To Johnston Avenue it was a little shorter.

40

Q. Isn't it a fact that the railroad men, Central Railroad men used that short cut to get home quicker, and used it very often? A. They didn't use it very much because everybody is afraid—because it is bad that way.

Q. You said Bryn used it ten years— 10

Mr. Hanlon: I object to that, your Honor. He didn't say anything of the kind.

By Mr. Elkins:

Q. Did Bryn use that bridge ten years?

Mr. Hanlon: I object to his leading.
The Court: Overrule the objection.
The Witness: I cannot say. 20

By Mr. Elkins:

Q. How long did you know Bryn? A. I knew him about a few years, but how long I don't know.

Q. Didn't you know him for the whole time you lived on Bright Street? A. I knew him years before Bright Street.

Q. You lived on Bright Street four years, isn't that so? A. Yes, four years. 30

Q. Bryn lived on Bright Street, too? A. I don't know where he lived.

Q. You don't know where he lived? A. No, no. I don't know.

Q. Now, you know the—you knew him for over four years, didn't you? A. Yes, more than four years; more.

Q. Did you ever see him going home? A. Yes, I have seen him that day walking that way because I walked that way, but I didn't walk steady 40 that way, so I didn't see him.

Q. How many times did you see him walk that way over the bridge before the day of the accident? A. I have seen him when he walked that way about two times; sometimes he punched his clock before me.

10 Q. Otherwise you only saw him twice in going home in over four years?

Mr. Hanlon: Objected to, your Honor, as being—

Mr. Elkins: Withdraw the question.

The Court: Sustain the objection.

By Mr. Elkins:

20 Q. How many times did you see Bryn going home in all the times you knew he worked down the railroad? A. I cannot say about how many times I have seen him because sometimes I went earlier, sometimes later; sometimes he went earlier or later.

Q. Then you don't know what route he used to go home in all the time he worked there, is that a fact? A. I cannot say what way he always

30 went home.

Mr. Elkins: That is all.

Mr. Hanlon: That is all, Mr. Gorchinski.

(Witness excused.)

(Whereupon an adjournment was taken to 2:00 P. M.)

40

Afternoon session.

RICHARD SHANLEY, called as a witness on behalf of the petitioner, being first duly sworn, testified as follows:

Direct Examination by Mr. Elkins: 10

Q. Mr. Shanley, where do you live? A. 260 Glendenning Avenue.

Q. Mr. Shanley, by whom are you employed? A. Central Railroad of New Jersey.

Q. And where are you located, I mean where is your place of employment? A. Communipaw Avenue engine terminal.

Q. How long have you been employed by the Central Railroad Company of New Jersey? A. A little over six years. 20

Q. Did you know Waclaw Bryn in his lifetime? A. Not in his lifetime.

Q. Well, I mean you knew him when he worked down at the Central Railroad? A. I knew him at the time he worked down at the Central Railroad.

Q. You knew him for about six years? A. Yes.

Q. You were his helper, weren't you? A. Yes. 30

Q. Did you work together on December 24, 1932? A. Yes.

Q. Did you and he quit together? A. Yes.

Q. And do you know which way he walked out of the plant? A. Yes.

Q. Which way, Mr. Shanley? A. Why, he quit at four o'clock. He washed up and I met him outside and we walked up to the gate house.

Q. Yes. A. Punched cards and after that he had left me to go home. 40

Q. Do you know which way he went, Mr. Shanley? A. Well, he went the usual shortcut across the bridge.

Q. How often had you seen him use that shortcut before the day of the accident? A. Well, he had used the bridge, as far as I know, every day he went to work.

Q. That was over a period of six years? A. Yes.

Q. Now, isn't it a fact, Mr. Shanley, that the particular bridge known as the shortcut was used to a great extent by the employees of the Central Railroad to get over towards Johnston Avenue, downtown Jersey City? A. Yes. I have seen employees going over the bridge.

Q. It was used quite frequently day in and day out? A. Yes.

Q. Over a period of six years? A. Yes.

Q. Now, to make sure, I show you, Mr. Shanley, P-2 and ask you whether or not that is the bridge that they used as a shortcut (handing to witness)? A. Yes.

Mr. Elkins: That is all, Mr. Shanley.

Cross Examination by Mr. Hanlon:

Q. Mr. Shanley, how do you go home? A. By train at the Communipaw station.

Q. You walk over the Communipaw Bridge, do you? A. Yes.

Q. Then get the train? A. Yes.

Q. You didn't stand there to see how men go home, did you? A. No.

Q. You walk over the Communipaw bridge, do home? A. No, I didn't. I happened to wait for him that day.

Q. You waited for him that day? A. Yes.

Q. And you went—you waited for him after he punched his time clock, did you? A. Yes.

Q. You walked down the street with him, did you? A. Yes, just at the gate house.

Q. Did you walk along the street with him? A. I didn't walk on the street; I just walked along that building there (indicating). 10

Q. You walked right near the building? A. Yes.

Q. You didn't walk on the cobblestone? A. No.

Q. You walked on the sidewalk? A. Yes.

Q. How long did you walk on the sidewalk? A. Just as far as the parking space.

Q. Then he cut over? A. Yes. 20

Q. Then you said, "Good night" to him? A. Yes.

Q. And you continued on? A. Going home.

Q. You have to cross a set of tracks, don't you? A. No, I didn't cross no tracks at all—well, across at the Lehigh Valley there.

Q. There is a Lehigh Valley crossing there? A. Yes.

Q. That is the same tracks that run up to this bridge that he went on? A. Yes, sir. 30

Q. Aren't they? A. Yes.

Mr. Hanlon: That is all.

Re-direct Examination by Mr. Elkins:

Q. Mr. Shanley, did you know John Gorchinski, the last witness? A. I am not familiar with him.

Q. Have you seen him around there? A. Oh, I have seen him. 40

Q. This man here (indicating)? A. Yes.

Q. You have seen him at that bridge many times, to your knowledge? A. Not to my knowledge. I never seen these men use it.

Q. You have seen other men? A. I don't know who used it, but I have seen them use it.

10 Q. Quite a number of men? A. Yes.

Q. All the time you worked there which is about six years? A. Yes.

Mr. Elkins: That is all.

(Witness excused.)

HOWARD MULFORD, called as a witness on
20 behalf of the petitioner, being first duly sworn, testified as follows:

Direct Examination by Mr. Elkins:

Q. Where do you live, Mr. Mulford? A. 400 Pacific Avenue.

Q. Mr. Mulford, on December 24, 1932 by whom were you employed? A. Lehigh Valley Railroad.

Q. Were you operating the engine that was in-
30 volved in this accident? A. I was.

Q. What kind of engine was it? A. Gas-electric.

Q. When you went over the bridge at the time of this accident, did you have any cars attached to the engine?

Mr. Hanlon: I object on the ground it is incompetent, irrelevant, and immaterial. It is admitted this man was struck by the Lehigh Valley engine.

40 The Court: Objection sustained.

Mr. Elkins: Exception.

By Mr. Elkins:

Q. Who was on the engine at the time of the accident?

Mr. Hanlon: Objected to as incompetent, irrelevant, and immaterial, for the same reason. 10

Mr. Elkins: Withdraw the question; I think that is all.

Mr. Hanlon: That is all, Mr. Mulford.

(Witness excused.)

ANNA BRYN, the petitioner, called as a witness on her own behalf, being first duly sworn, testified as follows: 20

Direct Examination by Mr. Elkins:

Q. What is your name? A. Anna Bryn.

Q. You are the widow of Waclaw Bryn? A. Yes.

Mr. Elkins: Can you admit these facts—

The Court: Are you willing to admit the dependency? 30

Mr. Hanlon: Yes.

Mr. Elkins: It is admitted that Mrs. Bryn —that she—

The Court: Have you the birth certificates? The understanding is that the necessary birth certificates will be furnished in case—

Mr. Hanlon: Yes.

The Court (continuing): There is any question. 40

Mr. Elkins: Ann Bryn, age thirty-six. Joseph, aged sixteen.

The Court: You can't include a sixteen year old child. Was he sixteen at the time of the accident?

By Mr. Elkins:

10 Q. How old was Joseph when the accident happened? A. Sixteen.

The Court: He is out.
Mr. Elkins: Yes.

By Mr. Elkins:

Q. Geneva Bryn? A. Fifteen.
Q. Sophia? A. Thirteen.
20 Q. Pauline? A. Twelve—eleven.
Q. Eleven? A. Eleven.
Q. Helen? A. Ten.
Q. Frank? A. Nine.
Q. Stanley? A. One and a half.

The Court: They will all be verified by the proper certificates, if necessary?
Mr. Elkins: We haven't got them.
The Court: You can get them.
30 Mr. Elkins: They were all born in this country.
The Witness: In this country.
Mr. Hanlon: All born in Jersey City?
The Witness: Jersey City, yes.
Mr. Elkins: If necessary I will have the birth certificates. Now, hers is admitted?
Mr. Hanlon: Yes.

By Mr. Elkins:

40 Q. Now, Mrs. Bryn, do you know the way your husband came home from work and went to work

before the day he was hit by the train? A. Not this day but every time fifteen years working.

Q. Well, do you know how he went to work and came back? A. Bridge.

Q. Over the bridge? A. Over the bridge, every time bridge. 10

Q. How do you know that? A. I see myself.

Q. You saw yourself? How did you see? A. I go summertime, go for him.

Q. You know—how long did he work for the railroad? A. Fifteen years.

Q. All the time he used that way? A. All the time he used bridge.

Q. Do you know whether other men used the bridge, of the railroad? A. Everybody who work, 20 everybody use bridge.

Q. You mean everybody living in that section? A. Yes.

Q. Do you know John Gorchinski? A. Yes, over here (indicating).

Q. Did he ever use this bridge? A. Every time you use that bridge in the morning.

Q. How long did he use the bridge? A. How long he working there.

Q. Now, do you know Tony Winsinski? A. 30 Tony Winsinski—Wishinski.

Q. Wishinski? A. Yes.

Q. Do you know whether he worked for the Central Railroad? A. He worked Central, my husband worked.

Q. Do you know whether he used the bridge?

Mr. Hanlon: I object on the ground that it is incompetent, irrelevant, and immaterial. 40

If this man is here he can speak for himself. Certainly this Court is not going to believe that this woman stood there watching him?

Mr. Elkins: She knows of her knowledge, that employees of the railroad used this bridge. She has a right to say what she knows. If they have the man to discredit her testimony, that is up to them. She can tell she knows of her own knowledge as to how many men, if she saw them. For instance, if I saw your Honor using a certain method of egress from a certain place over a period of years, I know you and I worked there I can go on and testify to that, that I saw you use this particular route as a means of egress over a period of years. I assume I can testify—

Mr. Hanlon: It is not the best testimony.

Mr. Elkins: I know, but she is testifying what she knows.

The Witness: I know.

The Court: Overrule the objection.

The Witness: I am married eighteen years; I live in that place.

By Mr. Elkins:

Q. Do you know whether Tony Wishinski used that way? A. Well, everybody used that way.

Q. How long? A. I don't know how long.

Q. Was it two years, three years, five years? A. Maybe five years, maybe three years.

Q. What is it?

Mr. Hanlon: Anything you say.

Mr. Elkins: No, it is not.

The Court: I sustain the objection.

By Mr. Elkins:

Q. Do you know whether Tony Wishinski used that bridge? A. Yes.

Q. How long before the accident? A. Accident, I don't know how long. 10

Q. Was it a short time or long time? A. Short time.

Q. Do you know whether John Lycksikites—A. Lychsikites, he used same bridge my husband.

Q. Over the same time? A. Yes.

Q. Do you know anybody else? A. I know everybody else but I don't know the names. I know that man (indicating).

Mr. Elkins: Cross-examine. 20

Cross Examination by Mr. Hanlon:

Q. When you went to meet your husband did you meet him over the bridge? A. I know he walked the bridge. I seen him pass.

Q. Did you go down to the shop to meet him sometimes? A. Not the shop only.

Q. Where would you see him? A. I go bridge.

Q. Whereabouts would you go for him? A. I go. I went to see him. 30

Q. On what street would he get off the bridge? A. Communipaw Avenue.

Q. What avenue? A. Jersey Avenue.

Q. On Jersey Avenue? A. Jersey Avenue, yes.

Q. How far is that from Communipaw Avenue? A. Not too far.

Q. Not so far. About two miles, is it? A. No.

Q. You used to go to Jersey Avenue, to meet him? A. Yes, I live on Canal Street 12 years. 40

Q. How far from the bridge did you live? A. Not too far, maybe three blocks.

Q. You used to go up to meet him, you say? Did you always see him coming off the bridge? A. Yes, always.

10 Q. Always got up there in time to see him coming off the bridge? A. Yes.

Q. You are also suing the Lehigh Valley Railroad, aren't you?

Mr. Elkins: I object to that, if your Honor please, on the ground it is irrelevant, incompetent, immaterial, not proper cross examination. She can sue the world if she wants to. It does not mean anything. It has noth-
20 ing to do with this case, if she is entitled to compensation. As the petitioner there is only one question before the Court. I think it is objectionable and not proper cross examination.

The Court: I sustain the objection.

By Mr. Hanlon:

Q. How did he go to work in the morning? A.
30 He was—who?

Q. Your husband, how did he go to work in the morning? A. Used the bridge night time, for the morning.

Q. What time did he leave the house in the morning? A. What time?

Q. Yes. A. Half-past seven.

Q. Did you walk out with him? A. No, he walked—he used it just the same as night time.

Q. Did you ever see him use it in the morning?
40 A. No, I can't go myself to see where he is going to work.

Q. You never saw him use it? A. I know night time use it as morning same.

Q. Did you ever see him use it? A. Yes.

Q. In the morning? A. Not in the morning, in the night time I say.

Q. Did you ever see any of these other men use it in the morning? A. Everybody use that in his work. 10

The Court: Answer the question, Mrs. Bryn.

(The Reporter read the last question as follows: "Q. Did you ever see any of those other men use it in the morning?")

The Witness: In the morning can't see. 20

By Mr. Hanlon:

Q. Were there any days that you met your husband when he didn't use the bridge or he hadn't been on the bridge? A. Every time I said, he used that bridge.

Q. It didn't make any difference how bad the weather was? A. Yes.

Q. It didn't make any difference? A. Used every time, every day used the bridge. 30

Q. You are sure of that? A. I sure.

Mr. Hanlon: That is all.

Mr. Elkins: That is all.

(Witness excused.)

Mr. Elkins: If your Honor please, at this time I will rest the case. The other witnesses will be cumulative and I want to shorten the case. 40

Mr. Hanlon: At this time, your Honor, I move that the petition be dismissed. Under the facts so far the petitioner has not sustained the burden which is incumbent upon her in a case of this kind.

10 As I see it, what we have before the Court now is that a man is working in the roundhouse, quit work, punched his clock, came out into Communipaw Avenue, walked along the sidewalk, to a point where there was what is known as a parking station.

There is no testimony here, no positive testimony as to who owned this parking station. There is no proof that the Central Railroad owned it, except a detective who said that the 20 Central Railroad owned it; that is purely, at best, hearsay. He went over that parking station and on to a public street known as Wilson Avenue. If your Honor will take these pictures (indicating) and look at Wilson Avenue, you will see it is a dead-end street; that there is an arc light up at that point, evidently put up there by the authorities, people who have authority over the 30 street. He had to walk across the street, then on to the property of—we don't know. The best we can get is the National Docks or Lehigh Valley Railroad. There is no proof who owned this property, particularly no proof that this was furnished by the respondent for this petitioner.

The facts show that he could have gone home a safe way. He could have gone along 40 city streets which were off the employer's property. We certainly have no control over

this man. There was no testimony given here that he was told by the employer to use that way. There is no testimony and it can't even be inferred that the respondent provided this way for him. It does not lead directly from its shop. Its shop is surrounded by a gate and fence. It is separated from this particular property by Wilson Street. The man is out in a safe place; he was out on the public highway, all he had to do was walk along there and he had, of course, a safe way home.

I say, when he elected to use this way, in which he unfortunately met his death, he wasn't within the scope or within the course of his employ. Because of that fact we are entitled to a dismissal.

The Court: Do you want to submit briefs on it?

Mr. Elkins: I have submitted a brief on it, sir.

Mr. Hanlon: I would be willing to submit a brief, I thought—

The Court: I want to look up some law on it.

Mr. Hanlon: Of course, I am perfectly willing to submit a brief on it if your Honor says so.

Mr. Elkins: I am ready to argue the point now, I have cases to support the opposition, cases directly on point, on all fours.

Mr. Hanlon: I don't think there is any case.

Mr. Elkins: Well, I will give you—

Mr. Hanlon: All the cases are highly against any such proposition.

Mr. Elkins: I am ready to argue it now so we can determine whether you can go into

the defense. I might suggest this—I don't know—go into the defense, get all the facts then you know the real situation, and then we will submit briefs; then we have all the facts. Your Honor can then handle the situation intelligently. Your Honor will have all the facts and your Honor knows and is probably familiar with the case of Fisher v. Tidewater Building Company, 96 Law 102.

To a situation like this it seems to me the best way for your Honor to handle it, if I might so suggest, would be to get the defense, get all the facts, to see whether or not this is the situation, because I contend this case comes under the case of Corvi v. Stiles, 130 Atlantic 674, which is a case by the Court of Errors of Connecticut, which law is the same, decided in 1925. That is a case where a man was going across a pathway, going over railroad tracks. By the way, in this case the petitioner wasn't employed by the railroad but by a separate concern. While this man was crossing this pathway, across the tracks, he was struck by a train and killed. The Court held that the decedent had reason to believe that the employer intended him to use this path which he had used in going to work on the day in question as a means of getting to his work and leaving. The Court held that the accident happened within the course of his employment and arose therefrom. Compensation was allowed, and the award affirmed.

I might say that the Robert's case decided by the Maine courts, 126 Atlantic 573, is almost exactly in point. There is the Cudahy

Packing v. Parramore, 263 U. S. 418, where a man was crossing tracks—I think in a car, and he was struck by a train. Although in that case he had means to get to his employment by crossing a public street, the court held that he was entitled to compensation. 10

In the case of Fisher—the Fisher case, that is a case of a man while going—this is a case where the defendant furnished the train and he was struck, but before that I want to bring to your Honor's attention, how far the Courts have gone construing the Act liberally.

In Rachels v. Pepoon, 135 Atlantic 684, this is a case where a man while on his way to work in his own hired car and while enroute from Passaic to Hoboken, he had an accident on the Paterson Plank Road, and received injuries from which he died. The Court held that the accident arose out of and in the course of his employment. That was approved by the Supreme Court. 20

In Ramsey v. Leahey, 134 Atlantic 91, the Court allowed compensation to a captain of a coal barge who left his boat and had gone to visit a friend, after which he continued on his way home to the barge, and while thus returning to the barge was injured at a railroad crossing. The Court held the accident occurred within—in the course of his employment. 30

I can cite a number of cases, new law which is applicable to a situation of this kind. While we are here I would suggest that we go into the defense and see how far—see what the facts are. After all, this is a serious case and 40

a widow with five or six young children, and I said the Act should be liberally construed. Your Honor should have all the facts, and it seems to me that with all the facts your Honor can intelligently and justly determine the real situation and be guarded accordingly.

Mr. Hanlon: I think that your Honor knows the Pepoon case. Mr. Elkins didn't give you all the facts.

The Court: That is the newspaper case.

Mr. Hanlon: The newspaper case and he was in a car.

The Court: I know the facts in that case.

Mr. Hanlon: In the Ramsey case the man had to cross these railroad tracks to get back to his barge. But here is a case where a man gets on the stand, Frank Kost gets on the stand endeavoring to help the petitioner to the greatest extent. He no longer works for the New Jersey Central. He said that eight hundred men checked out during the day at the time of the accident, and at the time of the accident there were only three on this bridge; he, Gorchinski, Bryn. I don't think that the petitioner's case even shows any common usage.

Mr. Elkins: But you get the facts, pardon me—you have got Mr. Shanley, you have got the detectives who testified, Spies, Byrns and Fallon, that this was used by the employees and also by the railroad, the Central Railroad. It was used by these men and under the law where the company uses that particular place as part of his business, and it is used over a period of years—your Honor has seen the

situation down there, that this land is very close to the Central Railroad. If this happened two or three blocks away that would be a different situation. Now, it seems to me—

Mr. Hanlon: Where would you draw a line of demarcation? 10

Mr. Elkins: The courts have said that an injury occurs within the scope of the employment wherein it necessarily does not begin and end with the actual work, but rather extended to the period beginning the entering the employee upon the premises within a reasonable time before the beginning of his usual work, and also leaving the premises within a reasonable time after his day's work is done, and during his usual lunch hour and also in any place where the employee may reasonably be in connection with his duties or entering or leaving the premises or by any way he may reasonably select. That is citing a New York case. 20

(Further discussion between Court and counsel.)

The Court: How many witnesses have you? 30

Mr. Hanlon: I don't think, under the evidence I will call any witnesses.

Mr. Elkins: Do you rest?

Mr. Hanlon: I have a motion.

The Court: I will reserve decision on the motion.

(Discussion between Court and counsel.)

40

Certifications.

I HEREBY CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken by me at the time, place and date hereinbefore set forth.

JACOB BAER,
Court Reporter.

10

I HEREBY CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken before me at the time, place and date hereinbefore set forth.

JOHN C. WEGNER,
Referee.

20

I, W. E. Stubbs, Deputy Commissioner and Secretary of the Workmen's Compensation Bureau, hereby attest the authenticity of the signature of John C. Wegner, and that he as the official who heard this case, is the proper one to certify as to the transcript of the testimony.

W. E. STUBBS.

30

Filed Clerk's Office,
April 23, 1934,
Hudson County, N. J.

GUSTAV BACH,
Clerk.

40

Reasons.

NEW JERSEY SUPREME COURT.

ANNA BRYN,
Petitioner and Defendant in Certiorari,

vs.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY,
Respondent and Prosecutor in Certiorari.

On Certiorari to Hudson Common Pleas.

The prosecutor assigns the following reasons for the setting aside of the conclusions, order and judgment of the Court of Common Pleas of Hudson County, and the other proceedings in the said Court, brought up by writ of certiorari in the above entitled cause:

1. Because the Court of Common Pleas of Hudson County found that the petitioner was entitled to compensation under the terms and provisions of the 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 4, 1911, together with the amendments thereof and the supplements thereto, commonly known as the New Jersey Workmen's Compensation Act.

Reasons.

2. Because said Court held that the petitioner's proofs entitled her to compensation under the provisions of the New Jersey Workmen's Compensation Act.

10 3. Because said Court should have found that the petitioner was not entitled to compensation in that her decedent had already finished his work and left the respondent's premises at the time he met with his accident.

4. Because the petitioner's decedent did not meet with an injury which arose out of and in the course of his employment.

20 5. Because said Court of Common Pleas should have affirmed the action of the Workmen's Compensation Bureau of New Jersey in dismissing said petition.

6. Because said Court of Common Pleas erroneously found and determined that the petitioner was entitled to compensation under the Workmen's Compensation Act of New Jersey for the death of her decedent, whereas it should have
30 found that she was not so entitled.

7. Because said Court of Common Pleas erroneously found that because petitioner's decedent had, for a long period of time, and approximately 18 years, used the specific and definite short cut which was a route from the exit door of the respondent's plant at the foot of Communipaw Avenue, Jersey City, thence in front of the building
40 of the respondent, thence on what is known as

Wilson Street diagonally on across said street, thence on to an embankment and thence on to a trestle (on which he met with his death) and thence on to his home in lower Jersey City, sufficient proof was shown that the petitioner was entitled to the benefits of the New Jersey Workmen's Compensation Act, whereas it should have determined that under such proof she was not so entitled.

8. Because the conclusions, finding and determination of facts by said Court of Common Pleas of Hudson County, and the entry of judgment thereon are, in divers other respects, unjust, illegal, erroneous and contrary to law.

WM. F. HANLON,
Attorney for Prosecutor.

Exhibit P-1.

(Photograph)

[Bound in on Opposite Page.]

Exhibit P-1

Exhibit P-2.

(Photograph)

[Bound in on Opposite Page.]

Exhibit P-2

Exhibit P-3.

(Photograph)

[Bound in on Opposite Page.]

Exhibit P-3

Exhibit P-4.

(Photograph)

[Bound in on Opposite Page.]

Exhibit P-4

Exhibit P-5.

(Photograph)

[Bound in on Opposite Page.]


WARD'S
BREAD
BEST BY ANY TEST
ALWAYS FRESH
WARD BAKING CO.
NEWARK
IF IT'S
WARD'S
IT'S
FRESH
GUARANTEED

Exhibit P-5

Notice of Appeal and Grounds.

NEW JERSEY SUPREME COURT.

ANNA BRYN,
Petitioner-Appellant,
10 vs.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY,
Respondent-Appellee.

On Certiorari.

To:
20 WILLIAM F. HANLON, Esq.,
Attorney for Respondent-Appellee.

Sir:

PLEASE TAKE NOTICE that the petitioner-appellant in the above entitled cause appeals to the New Jersey Court of Errors and Appeals, in the Court of last resort in all causes in New Jersey, from the whole of the judgment entered in this cause in the New Jersey Supreme Court.
30

ALSO TAKE NOTICE that the petitioner-appellant states the following as the grounds of said appeal:

1. Because the Supreme Court erred in adjudicating that the judgment of the Hudson County Court of Common Pleas should be reversed and that the judgment of the New Jersey Workmen's
40 Compensation Bureau should be affirmed in this cause.

2. Because the Supreme Court erred in adjudicating that the petitioner-appellant was not entitled to compensation under the New Jersey Workmen's Compensation Law, both for herself and the surviving children of Watsie Bryn.

3. Because the Supreme Court erred in adjudicating that the facts in the above entitled cause and as set forth in the State of Case did not come within the adjudication of Cudahy Packing Co. v. Parramore, 263 U. S. 418, and the other cases cited in support of the contention of petitioner-appellant.

4. Because the Supreme Court erred in adjudicating that the proofs utterly failed to support the conclusion reached by the Hudson County Court of Common Pleas that the employee used the route described in accordance with his apparent custom, and from which use there could be spelled out an implied authority on the part of the employer for the use thereof by the employee.

5. Because the Supreme Court erred in adjudicating that the route and method of egress used by Watsie Bryn at the time of the accident was one not within the contemplation of the employer and employee, and upon which path or route petitioner's intestate sustained injuries from which he died.

6. Because the Supreme Court erred in adjudicating that the proof adduced by the petitioner-appellant did not entitle her to compensation under the New Jersey Workmen's Compensation Act.

ARCHIE ELKINS,
Attorney for and of Counsel
with Petitioner-Appellant.

Opinion.

(Filed, March 27, 1935.)

NEW JERSEY SUPREME COURT.

No. 232, October Term, 1934.

10

Anna Bryn,
Petitioner-Respondent,
v.

The Central Railroad Company of New Jersey,
Respondent-Prosecutor.

20

Submitted October Term, 1934; decided on certiorari.

Before—Justices Heher and Perskie.

For respondent, Archie Elkins.
For prosecutor, William F. Hanlon (Charles E. Miller, of counsel).

30

The opinion of the Court was delivered by

Perskie, J.: The question involved in this workman's compensation case is: Did the accident, as a result of which the employee died, arise out of and in the course of his employment with the prosecutor? The Bureau held that it did not. The Court of Common Pleas of Hudson County held that it did; in that it concluded that the widow was entitled to the benefits of the act and

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accordingly reversed the dismissal of the petition. In order to determine the propriety of the respective disposition by each tribunal, as aforesaid, it becomes necessary in this case to determine whether the deceased had the right to be at the place of the accident. The petitioner alleged, under question 16 (Where did the accident happen?) "Lehigh Valley Railroad Trestle, Johnson Avenue, Jersey City." Prosecutor, respondent below, in answer to the same question, replied that the accident happened "on a railroad trestle in Jersey City, not the property of respondent." That respondent's answer is correct is not, as we understand it, in controversy.

The Bureau in its determination of facts and rule for judgment, held as follows:

> "That at the time of the accident petitioner's decedent had ceased to work and was on his way home. Two passages were available to him, one was an alleged short cut over the tracks of the Lehigh Valley Railroad Company which was reached after leaving the respondent's premises and walking along a dedicated public thoroughfare, i. e., Communipaw Avenue, Jersey City. The other way available to the decedent was to continue on the public street or streets of Jersey City until he had reached his home. It seems to me that to permit a recovery in a case of this kind where a decedent chooses a dangerous route, and, in fact, trespasses upon a railroad owned by another than the respondent, although there was a perfectly safe way by which to reach his home, would be out of line

with all the decisions on this question. The well recognized rule is that when an employee is injured while traveling to or from his place of work, has departed from or has not yet reached the employer's premises, and the means of conveyance is not furnished by the employer, the injury does not arise with the employment. Bradbury's Workmen's Compensation, 3rd ed., page 468, and the many cases cited.

"In Hill v. Blair, 138 N. W. 243, where an employee chose to travel along a railroad whereas he could have gone by a more safe route, it was held not compensable.

"In the Bell case, 130 N. W. 67, two ways of egress were open, one along the right-of-way which employee chose of his own volition and this case was held not to be compensable.

"In the case of Fox v. Rees & Kirby, Ltd., 15 N. C. C. A. 243, the Court denied compensation, holding in part that by walking along the railroad track while there were two less hazardous paths, the employee added peril to the employment.

"In Anderson v. B. & L. R. Co., 250 Ill. App. 92, it was held that where an employee chooses his own route to go home and is struck upon a railroad right of way, compensation will be denied.

"In Hoteling v. Standard Oil Co., 6 N. Y. St. Dep. Rep. 308, a compensation was denied to an employee who, having completed his day's work, left for home and instead of using the private road he started to walk

north on a railroad track when he was struck by a train and killed.

"My own (Referee John C. Wegner) view is that when an employee after working hours, selects a means of reaching home by a short cut for his own personal convenience rather than take the safer course which is open to him, the hazard he encounters on the short cut should not be construed to be within the contemplation of the employer and I will, therefore, grant the motion to dismiss the petition."

The Court of Common Pleas, on the other hand, held that the employee used the route as described, for many years, "in accordance with his apparent custom"; that this particular means of egress and ingress by the decedent and other employees of the respondent, and the use of the trestle which was known as the "Interchange" by the respondent to interchange its cars with other railroads, was such a means of exit, which, at the time of the accident, the decedent was using and which he had used uninterruptedly for a period of 18 years, which proof was fully corroborated and which appeared at the end of petitioner's case; and the Court being of the opinion that such proof was sufficient to show that the petitioner and her children were entitled to the benefits of the New Jersey Workmen's Compensation Act and that the dismissal of the petition * * * was legally erroneous and * * * should be reversed."

The prosecutor relies entirely upon the Court of Errors and Appeals' case of Gilroy v. Standard Oil Company, 107 N. J. L. 170, 151 At. Rep. 598. In the cited case it was held:

"* * * The accident did not occur in the course of the plaintiff's employment for he had ceased the work for which he was employed before the accident and had left the premises of the defendant and was proceeding on his way home. Counsel for the defendant refers to a number of cases in his contention that the common law courts had no jurisdiction over this case. They refer especially to the case of Boloz v. Trenton Fire Clay &c., Co., 102 N. J. L. 479, which was affirmed by this court on the opinion below in 103 Id. 483. The case referred to is entirely different in its legal aspect from the case before us here. In the Bolos case the employee during the noon hour was eating his lunch in a barn on the employer's property. Just after he had finished his lunch the factory whistle blew recalling all the employees to their work. The barn in which Bolos was at that time was nearer the company's garage, in which garage the company kept its trucks. As Bolos started back upon the blowing of the whistle to another part of the premises where he was working, one of the employer's trucks came from the garage near the barn and he jumped on the running board to ride a few hundred feet to that part of the factory where his work was carried on. The truck traveled over a public road from the garage to the entrance into the employer's property. As it turned into this entrance from the public road Bolos fell off and was injured. Bolos was still in the course of his employment. He was going from one

part of his employer's plant to another for the purpose of resuming his work. Consequently the Bolos case came within the Workmen's Compensation Act. There are a number of other cases cited by defendant's counsel on this point, such as Terlecki v. Straus, 86 N. J. L. 708, and Zabriskie v. Erie Railroad Co., 86 Id. 266. In these cases the employee was either still in the course of his employment or had not left the premises of the employer and are not controlling in the case under review."

Respondent seeks to distinguish this case from the cited case on the ground that "the route used (by deceased) was immediately adjacent to the plant of respondent" (prosecutor herein). The argument advanced is that the close proximity and relation of the premises, where the employee was injured, was such as to be in practical effect a part of the employer's premises; and the user of such premises with the express or implied consent of the employer makes the accident compensable.

This argument is predicated on a line of cases of which Cudahy Co. v. Parramore, 263 U. S. 418, 68 L. ed. 366, and Bountiful Brick Co. v. Giles, 276 U. S. 154, 72 L. ed. 507, are typical. In the last cited case the Supreme Court of the United States, by Mr. Justice Sutherland (72 L. ed., p. 509), said:

"* * * And employment includes not only the actual doing of the work, but a reasonable margin of time and space necessary to be used in passing to and from the place where

the work is to be done. If the employee be injured while passing, with the express or implied consent of the employer, to or from his work by a way over the employer's premises, or over those of another in such proximity and relation as to be in practical effect a part of the employer's premises, the injury is one arising out of and in the course of the employment as much as though it had happened while the employee was engaged in his work at the place of its performance. In other words, the employment may begin in point of time before the work is entered upon and in point of space before the place where the work is to be done is reached. Probably, as a general rule, employment may be said to begin when the employee reaches the entrance to the employer's premises where the work is to be done; but it is clear that in some cases the rule extends to include adjacent premises used by the employee as a means of ingress and egress with the express or implied consent of the employer. Id., page 426. And see generally, Procaccino v. E. Horton & Sons, 95 Conn. 408, 111 Atl. 594; Merlino v. Connecticut Quarries Co., 93 Conn. 57, 104 Atl. 396; Corvi v. Stiles & R. Brick Co., 103 Conn. 449, 130 Atl. 674; Starr Piano Co. v. Industrial Acci. Commission, 181 Cal. 433, 436-438, 184 Pac. 860: Sundine's Case, 218 Mass. 1, 4 L. R. A. 1916 A, 318, 105 N. E. 433, 5 N. C. C. A. 616."

Whether the liability of the employer towards the employee, as thus expressed, is extended be-

yond that stated in the case of Gilroy v. Standard Oil Co., supra, is, of course, not to be determined by this Court. The proofs, in the instant case, do not, as we shall point out, bring the instant case within principles of law as stated in the Federal cases aforesaid. 10

We do, however, think that it is accurate to say that the place of the accident must be, where the employee, under his contract of employment with his employer, had the express or implied right to be. And what the employee's rights are in a given case depends entirely upon the particular facts of each case. What are the facts in the instant case, on this point? The employee, as already stated, after leaving his employer's 20 premises, proceeded along a nearby public highway for some distance before leaving it to make the short cut across the premises of the railroad and which were not adjacent to those of the employer.

Moreover, the proofs utterly fail to support the conclusion reached by the Common Pleas Court that the employee used the route described "in accordance with his apparent custom and from 30 which user there could be spelled out an implied authority on the part of the employer for his (employee) so doing."

On the contrary the Bureau properly points out that:

> "While it was alleged that it was customary for men who lived in the neighborhood of the deceased to go home by way of the Lehigh Valley Railroad tracks, one witness 40 called by the petitioner testified he lived on

the same street as decedent for four years and had only used this short cut three or four times. While it was attempted to be shown by another witness that the short cut was used every day as a general practice, cross examination of the same witness disclosed that while 800 men worked in the shop and left about the same time, *only three, the two witnesses,* and the decedent, were on the Lehigh Valley Railroad trestle at the time decedent was struck. The premises were reviewed by me in the presence of both counsel."

The judgment of the Common Pleas Court is, therefore, reversed and the judgment of the Bureau is affirmed, with costs.

Rule of Reversal.

NEW JERSEY SUPREME COURT.

ANNA BRYN,
Petitioner and Defendant in Certiorari,

vs.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY,
Respondent and Prosecutor in Certiorari.

On Certiorari.

The Court having inspected the transcript and the proceedings of the Court of Common Pleas

of the County of Hudson, returned with the certiorari in this cause, the reasons for reversing the judgment of said Court, the brief of Charles E. Miller, of counsel, with William F. Hanlon, the attorney for the prosecutor, and Archie Elkins, attorney and of counsel for the defendant, and having duly considered the same. 10

It is ORDERED that the judgment of the Court of Common Pleas of the County of Hudson be, and the same is hereby, reversed, set aside, and for nothing holden; and it is

FURTHER ORDERED that the judgment of the Workmen's Compensation Bureau be affirmed, and the record be remitted to the Court below to be proceeded with according to law and the practice of said Court. 20

Entered April 4, 1935.
On motion of

WM. F. HANLON,
Attorney for Prosecutor.

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New Jersey Court of Errors and Appeals

ANNA BRYN, *Petitioner-Appellant,* vs. THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, *Respondent-Appellee.*	On Certiorari. Appeal from New Jersey Supreme Court. Sat below: HEHER and PERSKIE, JJ.

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BRIEF OF THE PETITIONER-APPELLANT.

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Statement.

For the purposes of brevity, the petitioner and defendant in certiorari will hereinafter be referred to as the petitioner, and the respondent and prosecutor in certiorari will hereinafter be referred to as the respondent.

The petitioner is the widow of Watsie Bryn who died as a result of the injuries sustained on December 24, 1932. Bryn left, in addition to his wife, whose age is 36 years, seven children ranging in age from one and a half years to 15 years.

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Watsie Bryn was employed by The Central Railroad Company of New Jersey, the respondent, for a period of about 18 years prior to December 24, 1932 (which is the date of the accident), as a machinist at its roundhouse located at the foot of Communipaw Avenue, in the City of

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Jersey City, County of Hudson and State of New Jersey.

On the day of the accident, as was customary and known to all and also the respondent, Bryn and other employees of the respondent were returning home from their work via a short cut which led from the door of the respondent's shop (located on Communipaw Avenue, in Jersey City), thence past the respondent's office building, thence across the parking space provided by the respondent, thence on to an embankment and up upon a bridge, and thence down to lower Jersey City. This particular short cut was used as a means of ingress and egress by the petitioner's decedent and other employees of the respondent for the entire period of the petitioner's decedent's employment with the respondent; to wit, 18 years.

The bridge upon which the petitioner's decedent was struck was one used by the respondent in its business, and was at the time of the accident and had been for many years prior to the day of the accident.

Bryn, while on his way home as aforementioned, and while on the said bridge known as the "Interchange", was struck by an engine of another railroad, and he sustained injuries from which he died.

The petitioner, his widow, in behalf of herself and her seven children, filed a claim for compensation in the Workmen's Compensation Bureau alleging that the decedent sustained an accident arising out of and in the course of his employment (S. C., p. 6).

The respondent filed its answer to the petition in which it alleged: "The decedent had completed his day's work for the respondent, had checked out and left our property and could only

reach the trestle on which he was killed by first travelling over a city street" (S. C., p. 12, at pp. 14, 15).

The petition was duly brought on for hearing and heard before the Deputy Commissioner at the Workmen's Compensation Bureau, in Jersey City. After the submission of the evidence in behalf of the petitioner, and upon completion of the petitioner's case, a motion was made by the attorney for the respondent to dismiss the petition. The ground given for said motion was: "Under the facts so far the petitioner has not sustained the burden which is incumbent upon her in a case of this kind" (S. C., p. 86). The Deputy Commissioner dismissed the petition for compensation and filed his Determination and Order of Dismissal (S. C., p. 16).

From said Order of Dismissal, the petitioner filed a Notice of Appeal to the Hudson County Court of Common Pleas. A hearing was had thereon by his Honor, Robert V. Kinkead, Judge of the Hudson County Court of Common Pleas, and upon consideration thereof the said Judge determined that the Order of Dismissal was erroneous in law, and from the facts submitted before the Deputy Commissioner a case was made out coming within the purview of the New Jersey Workmen's Compensation Act. On the 2nd day of July, 1934, the said Judge ordered that the Determination and opinion of John C. Wegner, Referee of the Workmen's Compensation Bureau, made in this cause, be set aside and reversed, and further ordered that the matter be sent back to the Workmen's Compensation Bureau for further determination (S. C., p. 20).

The railroad company, upon a writ of certiorari, brought the matter on for consideration by

the Supreme Court. In an opinion filed by Justice Perskie, the judgment of the Common Pleas Court was reversed and the judgment of the Bureau affirmed, which was a dismissal of the petition for compensation filed by the petitioner. It is from this opinion that the petitioner takes this appeal and seeks a reversal of the opinion of
10 the Supreme Court and an affirmance of the judgment of the Hudson County Court of Common Pleas, wherein it was held that the petitioner was entitled to compensation under the New Jersey Workmen's Compensation Act both for herself and her children.

Testimony.

20 The testimony adduced by the petitioner consisted of the testimony of MARK A. FALLON. He had been employed by the respondent as a detective from October, 1916, to April 15, 1925; and since that time and up to the day of the accident he was personally acquainted with the means of ingress and egress of the employees of the respondent to the place of their employment. He described the one track rails which go over
30 the bridge, upon which Bryn was struck, as the interchange (S. C., p. 33). He testified that this "interchange" is used by the Erie, West Shore, Pennsylvania, Lehigh, and Jersey Central Railroad, to interchange cars from one to another (S. C., p. 33); that this particular bridge, known as the "interchange", was used so many times that he could not count them (S. C., p. 36); and that from 1925 to December, 1932, the bridge was
40 used by the respondent herein "very often" (S. C., p. 37). He further testified that the respondent used said bridge in its business and "I would

be safe in saying a dozen times * * * a week" (S. C., p. 37). He further testified that the railroad employees used the short cut which was used by the decedent every day, going to and from work, and that this had existed for 15 years prior to the day of the accident (S. C., p. 37). He testified that it takes about four minutes to get to the bridge from the door which the decedent left. He further testified that Wilson Street a paper street is not used by the public for general traffic but used by the railroaders mostly (S. C., p. 41).

* * * *

The next witness called by the petitioner was WILLIAM J. SPIES, a detective connected with the Jersey City Police Department. The attorney for the respondent stipulated that his testimony would be exactly the same as Mr. Fallon's testimony, the first witness called by the petitioner (S. C., p. 46).

* * * *

The next witness called by the petitioner was JAMES T. BYRNS, a Jersey City detective, who stated that the respondent's employees used the bridge as a short cut to Johnston Avenue; that it was used "back to and from work" (S. C., p. 47); that "they walk up Communipaw Avenue and up the embankment" (S. C., p. 49) to get to the bridge; and that it takes between four and five minutes to get from the doorway to the bridge where Bryn was struck (S. C., p. 52). He further testified that the short cut was used by employees of the respondent frequently (S. C., pp. 51, 52).

* * * *

The next witness called by the petitioner was FRANK KOST (S. C., p. 55), who had been em-

ployed by the respondent for 23 years and who worked at the roundhouse with decedent on the day of the accident. He testified that he had used the short cut, the same as decedent, for about 18 years before the accident (S. C., p. 58); that all those that lived "in that section of the city" used the short cut; that "all those living around Grand Street, Canal Street, all walked that way" (meaning short cut, S. C., p. 59); and that Bryn used the short cut about 10 years to his knowledge, morning and evening (S. C., p. 60).

* * * *

Another witness called by the petitioner was RICHARD SHANLEY (S. C., p. 75), who, at the time of the trial, was an employee of the respondent. He was Bryn's helper on and prior to the day of the accident. The direct examination of Mr. Shanley, verbatim, is as follows:

"Q. Do you know which way he went, Mr. Shanley?

A. Well, he went the usual shortcut across the bridge.

Q. How often had you seen him use that shortcut before the day of the accident?

A. Well, he had used the bridge, as far as I know, every day he went to work.

Q. That was over a period of six years?

A. Yes.

Q. Now, isn't it a fact, Mr. Shanley, that the particular bridge known as the short cut was used to a great extent by the employees of the Central Railroad to get over towards Johnston Avenue, downtown Jersey City?

A. Yes, I have seen employees going over the bridge.

Q. It was used quite frequently day in and day out?

A. Yes.

Q. Over a period of six years?

A. Yes.

Q. Now, to make sure, I show you, Mr. Shanley, P-2 and ask you whether or not that is the bridge that they used as a short-cut?

A. Yes'' (S. C., p. 76).

* * * *

The next witness called was ANNA BRYN, the petitioner. She testified as to her age and the children left by the decedent (S. C., pp. 79, 80). She also testified that to her personal knowledge her husband had used the short cut, and particularly the bridge, during all the time he was employed by the Central Railroad; that the short cut was used by other employees of the Central Railroad over a long period of time and by many employees of the Central Railroad, some known to her by name and others not. She stated the names of those she had seen who were known to her by name.

* * * *

POINT I.

The petitioner's proof entitled her to compensation under the provisions of the New Jersey Workmen's Compensation Act.

It is the contention of the respondent that the petitioner's decedent did not meet with an injury which arose out of and in the course of his employment, and that the order of the Hudson

County Court of Common Pleas, which held that the petitioner's decedent did meet with an accident arising out of and in the course of his employment and thus entitling the petitioner to compensation under the act, was erroneous.

Although the general rule is that an employee going to and from work is not entitled to compensation for an injury resulting after leaving the employer's premises and outside thereof, there are, however, exceptions to this general principle.

One of the exceptions is that where an employee, who customarily uses a route or short cut in going to and from the employer's premises, meets with an accident within a reasonable time and place after quitting work and over a route which has been created by custom over a long period of time, and particularly over premises used partially in the employer's business, compensation is allowable for an injury resulting to an employee on his way home over said short cut, or over that part of the premises which is used in the employer's business.

Numerous cases will be hereinafter cited, some of which are directly in point with the case sub judice, and others in point in principle. Some of the New Jersey cases hereinafter referred to demonstrate the liberality with which our courts have gone in allowing compensation to employees injured during the course of employment. By analogy these cases would seem to hold that a person leaving the place of employment within a reasonable time, upon sustaining an injury, would be entitled to compensation.

The determination filed by the Deputy Commissioner, in which the petition filed by the petitioner was dismissed, was based on the fact that the petitioner's decedent had used a route more

hazardous than another which was available to him, and that the petitioner's decedent was trespassing on property of another at the time. Both of these reasons will be discussed; the first under this point, and the second, trespassing, under point II.

(a)

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Inasmuch as an application for a dismissal was made after the completion of the petitioner's case, and the said testimony was considered by the Hudson County Court of Common Pleas, all of the facts therein must be considered as true, and every legitimate inference therefrom must be drawn in favor of the petitioner. This is the rule of law applicable in our state. See *Andre* v. *Mertens,* 88 N. J. L. 626; *Cady* v. *Trenton, etc., Corp.,* 141 Atl. 806.

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Another rule of law applicable in the case sub judice is that obtained from the case of *Fisher* v. *Tidewater Building Company,* 96 N. J. L. 103, in which case our court held that the Workmen's Compensation statute is a remedial law of prime import and should be liberally construed.

(b)

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The cases cited under this heading, some of which are discussed in detail, are directly applicable to the case sub judice and are in point both in principle and fact.

In the case of *Cudahy Packing Co.* v. *Parramore,* 263 U. S. 418, 423-425; 68 L. Ed. 366, 369, 370; 38 A. L. R. 532; 44 Sup. Ct. 153; 23 N. C. C. A. 744, it was held that:

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> "*Employment includes not only the actual doing of the work but a reasonable margin*

of time and space necessary to be used in passing to and from the place where the work is to be done. If the employee be injured while passing with the express or implied consent of the employer to or from his work by a way over the employer's premises, or of those of another in such proximity and relation as to be in practical effect a part of the employer's premises, the injury is one arising out of and in the course of the employment as much as though it had happened while the employee was engaged in his work at the place of its performance. In other words, the employment may begin in point of time before the work is entered upon and in point of space before the place where the work is to be done is reached. Probably as a general rule, employment may be said to begin when the employee reached the entrance to the employer's premises where the work is to be done, but it is clear that in some cases the rule extends to include adjacent premises used by the employee as a means of ingress and egress or implied consent of the owner."

In this case the employee was killed by a locomotive at a public crossing on a railroad adjacent to his employer's factory. This case is in point both in fact and principle.

* * * *

In the case of *Bountiful Brick Co.* v. *Giles,* 276 U. S. 154, 72 L. Ed. 507, the employee, while crossing the tracks of another, on his way to work, was struck and killed by a train. The yard of the employer was immediately adjacent to the railroad tracks, and connected therewith and the employees in going from their homes to the brick

yard, used the railway tracks. There was also a public crossing some two hundred feet south of the brick yard. The employees of the brick company used both routes, but the route known as the *short cut was used by the employees* and known to the brick company and *carried on without objection on their part.* Although it was possible to reach the brickyard by following the route two hundred feet south of the brickyard, which route was *long, circulous* and *inconvenient,* the same was not used. The *common practice was to use the short cut,* the one which was used by Giles at the time of his accident. The court held in this case that the company was liable and made an award accordingly, and the decision was affirmed by the U. S. Supreme Court. The court in discussing the decision, and particularly the objection made by the employer that Giles was negligent in entering through the fence where he did, or in crossing the tracks, *or in not selecting the safest way,* said they are matters not relevant to the inquiry because liability was imposed under the Compensation Act and contributory negligence was not a defense. The court in this case cites with approval *Cudahy Packing Co.* v. *Parramore,* supra; *Procaccino* v. *E. Horton & Sons,* 95 Conn. 408; *Mertino* v. *Connecticut Quarrie Co.,* 93 Conn. 55; *Corvi* v. *Stiles & R. Brick Co.,* 130 Atl. 674, and others.

It might be called to the attention of the court that the case of *Bountiful Brick Co.* v. *Giles,* supra, was mentioned as a decision of some interest in Volume 42, N. J. L. J., at page 156.

See also

North Carolina R. R. Co. v. *Zachary,* 232 U. S. 248; and

Erie R. R. v. *Winfield,* 244 U. S. 170.

In the case of *Gane* v. *Norton Hill Colliery Co.*, 2 K. B. 539 (1909), a collier employed by the respondent left his work, after coming up from the pit. He was on his way home and used a route which crossed on the level some lines of rail belonging to and under the control of his employers. On his way home he was struck by a train and severely injured. The employee had three ways to get home—(1) by a bridge across some lines of rail leading from the tips of the colliery to the main line of the railway; (2) along the high road to the village; and (3) down some steps to the rails crossed by the bridge and across the rails on the level. Gane, the employee, used route three because it was *shorter and more convenient for him to get to and from his place of employment.* He had used this route for about eighteen months, with the single exception of Saturdays, when he had to go to the pay office. The court held:

> "The way the applicant went on the day of the accident was the usual one for him to go, the usual one for the other men who lived in the same direction to go, and the one and only way which he and they went, except on Saturdays."

The court also held that the route was used with the knowledge of the respondents and that the respondents never suggested to the men that they should not go that way. The court held further that:

> "The course of a collier's employment is plainly not limited at one end by the moment when he gets to the place where he is to use his pick, or at the other end by the

> moment when he comes up from the pit. It must include a reasonable interval of time and of space during which the employment lasts."

The award in favor of the employee was affirmed. This case is in point on all fours with the case sub judice. 10

It might be called to the attention of the court that the *Gane* v. *Norton* decision was cited with approval by Mr. Justice Swayze in the case of *Terlecki* v. *Strauss*, 85 N. J. L. 454, at page 455. Mr. Justice Swayze stated:

> "The question whether the accident arose out of the employment is perhaps more doubtful. The employment was not indeed the 20 proximate cause of the accident, but it was a *cause in the sense that but for the employment the accident would not have happened.* The employment was one of the necessary antecedents to the accident."

And thereafter the court cited the *Gane* case.

* * * *

In re *Corvi* v. *Stiles & Reynolds Brick Co.*, 103 30 Conn. 449, 130 Atl. 674, which case is directly in point, the following is a pertinent part of the decision:

> "There was no express agreement that employees living west of the track should approach or leave the plant by the path described above. Was the conduct of the brick company and its employees who lived on South Street, west of the railroad tracks, such 40 that it could be legally and logically con-

cluded therefrom that the use of such path and approach to the plant, with its attendant dangers from trains, was a risk annexed to and incident to the employment? The finding discloses that such *beaten, traveled path existed,* and had been *used by employees living west of the tracks on South Street for many years;* that the brick company had never objected to this use of the path, but that it knew that its employees so used the path, and it acquiesced in this use and contemplated that they would so use the path, and the employees living on South Street believed that the brick company intended them to so use the path. The foreman of the company had so used the path for more than ten years, and the injured employee knew that he had so used it. The use of the path, by *shortening* the route, added from 5 to 7 minutes to the dinner hour of the employees, and thereby added to their comfort and diminished the likelihood of their being tardy at the plant, and so benefited the employer.

"In view of these facts, the conclusion of the commissioner that the using of this path as a way of approach to the plant by employees living west of the tracks was a risk annexed, by the conduct of the parties, as an incident to the employment, and hence that the injuries causing the death of the decedent arose out of and in the course of the decedent's employment were conclusions legally and logically drawn from the subordinate facts."

* * * *

In re *Procaccino* v. *Horton,* 95 Conn. 408, 111 Atl. 594, it was said:

"The question in controversy in this case is whether the injury to the employee arose within the course of his employment or out of his employment. The two neighboring footbridges over the canal maintained by neighboring plants were used indiscriminately by employees of the nearby plants."

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In this case the court held that the accident occurred after the work was completed and while the employee was returning home by a route which he customarily used as a method of approach to the employer's place of business, and that the accident was one which came within the purview of the Workmen's Compensation Act. See also *Mertino* v. *Connecticut Quarrie Co.*, 93 Conn. 55, 104 Atl. 396.

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* * * *

In re *Robert's* case (Supreme Judicial Court of Maine, November, 1924), 126 Atl. 573, the facts are:

This was a compensation case brought to recover compensation by reason of the death of a husband who was employed by the Portland Rendering Co. at its plant in the City of Portland. The means of getting to the plant was over land of the Grand Trunk Railway by private way, which crosses tracks of the railway about 30 feet from the land of the Rendering Company on which its plant was located. The Rendering Company obtained the right to use this private way as means of ingress and egress. The decedent *was leaving the plant of the Rendering Company* on a Saturday in his automobile and was going over the private way. As he was crossing the rail-

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way tracks, he was struck by a locomotive and sustained injuries from which he died.

In this case the court held that the claimant was entitled to compensation under the rule that the injuries occurred within the scope of the employment wherein it necessarily does not begin and end with the actual work but rather extended to the period beginning the entering of the employee upon the premises within a reasonable time before the beginning of his actual work, and also leaving the premises within a reasonable time after his day's work is done, and during his usual lunch hour, and also in any place where the employee may reasonably be in connection with his duties, or entering or leaving the premises by any way he may reasonably select. Citing *Bylow* v. *St. Regis Paper Co.,* 179 App. Div. 555, 166 N. Y. Supp. 874.

* * * *

The case of *Schafer* v. *Industrial Commission* (Sup. Ct. of Illinois, 1931), 175 N. E. 789, is directly in point. In this case the employee, leaving work in his own automobile, was struck by the train of a railroad, in which he was neither employed or connected. The court held:

> "If, however, the employee is injured on the premises of the employer in going to or from the scene of his duties by the *customary* or permitted route within a *reasonable time* before or *after work,* the injury arises out of and in the course of the employment within the meaning of the Workmen's Compensation Act, and in the event of death, his beneficiary is entitled to compensation."

See also

Wabash Rwy. Co. v. *Industrial Commission,* 128 N. E. 290;
Western Coal Co. v. *Industrial Commission,* 128 N. E. 779;
Porter Co. v. *Industrial Commission,* 133 N. E. ; 10
Crane v. *Industrial Commission,* 137 N. E. 437;
Indian Hill Club v. *Industrial Commission,* 140 N. E. 871;
Henry v. *Industrial Commission,* 180 N. E. 194;
Kasari v. *Industrial Commission,* 181 N. E. 809;
Bacher v. *Industrial Commission,* 159 N. E. 363. 20

All of the decisions in the North Eastern Reports just cited are cases involving injury to employees while on their way home, by the use of a pathway or roadway, much used, though not exclusive, as a means of ingress and egress to the plant of the employer.

* * * *

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The following New Jersey cases are of interest and show the extent to which our state has gone in sustaining awards for injury to employees. By analogy it seems to me the facts in the case sub judice come within the principles laid down in these cases.

In re *Bolos* v. *Trenton Fire Clay & Porcelain Co.,* 133 Atl. 764, the facts are as follows: Employee after lunch time, got on truck of employer, but not the one on which he was a helper; that 40 it was necessary for him to travel about 600 feet,

in part over a public street abutting and paralleling a part of the premises in order to get back to the shed where he was to work; when the truck turned off the street to go into the yard, Bolos was thrown from the running board and sustained injuries which resulted in his death. Compensation was allowed and the award was affirmed by
10 the Supreme Court.

In the case of *Foley* v. *Home Rubber Co.*, 89 N. J. L. 474, our Supreme Court held that the widow was entitled to compensation. In this case the employee was on the Lusitania which, on May 7, 1915, was torpedoed by a German submarine and sunk. The court went on to say that the act extended to the benefit of the employee, although at the time of the accident the employee was not
20 doing any actual work for the respondent and was not in the plant of the respondent.

In the case of *Soden* v. *P. S. Transp. Co.*, 134 Atl. 560, affirmed in 137 Atl. 437, the facts are as follows: The driver of the car furnished by his employer to transport employees to work drove beyond the point of employment to visit the scene of an accident which in no wise involved the employer, and while returning from the scene of said accident, the automobile was struck by
30 a train, and the plaintiff's decedent, an occupant of the car, was killed. The court held that the accident was compensable as one "arising out of and in the course of employment" and the award of compensation was affirmed.

In the case of *Zabriskie* v. *Erie R. R. Co.*, 85 N. J. L. 157, the facts are as follows: The employee left his work to go to toilet provided by the defendant railroad for the general public; it
40 was necessary for the employee to cross tracks of the defendant, and while so doing, was struck by an automobile and thrown upon tracks and

struck by a passing train, resulting in his death. An award for compensation was allowed and affirmed by the higher court.

In the case of *Ramsey* v. *Leahey,* 134 Atl. 91, an opinion by the Supreme Court, it was held that an employee (barge captain) was entitled to the benefit of the compensation act when he was injured at a railroad crossing upon returning to the barge after purchasing some food and visiting a friend.

In the case of *Rachels* v. *Pepoon,* 135 Atl. 684, the Workmen's Compensation Act was held to apply to an employee who was on his way to work, in his own hired car, and while en route from Passaic to Hoboken, he had an accident on Paterson Plank Road wherein he received injuries from which he died. This decision indicates the liberality and extent to which our courts have gone in holding that an employee going to work is entitled to compensation. It seems to me by the same analogy the rule should apply to an employee on his way home within a reasonable time and place after leaving the plant of the respondent. However, in the case sub judice the place where the accident occurred was partially used by the Central Railroad in its business.

In the case of *Madden* v. *Whitman,* 38 N. J. L. J. 113 (Morris Common Pleas Court, 1915), compensation was allowed to an employee who was working for an independent contractor. It was the employee's desire to go to toilet. "He was walking along the side of track on his way to said station and across a bridge. Petitioner was hit in the back by an engine, which was going slowly, with the tender ahead." The court in his decision makes mention of the fact that the respondent contended Madden was a *trespasser* on railroad property, and, therefore, was not en-

titled to recover. The court, however, held that the accident was one "arising out of and in the course of Madden's employment" and compensation was allowed.

In the case of *Terlecki* v. *Strauss,* 85 N. J. L. 454 (1914), unanimously affirmed by the Court of Errors and Appeals in 86 N. J. L. 708, it was held:

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A factory employee quit work at her machine shortly before noon, and was, in accordance with *custom,* combing particles of wool out of her hair, preparatory to going home, at a point away from her machine, when her hair was caught in other machinery and she was injured. Held, that the accident "arose out of and in the course of her employment."

20

See also

Nevich v. *D., L. & W. R. Co.,* 90 N. J. L. 228; 100 Atl. 234;

Colucci v. *Edison Portland Cement Co.,* 93 N. J. L. 332;

Sundine Case, 218 Mass. 1; 4 A. L. R. 1916;

Ludwig v. *Farmers' Shipping Assn.,* 231 N. W. 803;

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Canoy v. *State Compensation Commr.,* 170 S. E. 184;

Riley v. *Holland,* 4 Butterworth W. C. C. 155, 157;

Sneddon v. *Greenfield Coal, etc., Co.,* 3 Butterworth W. C. C. 557.

* * * *

In the case of *M'Kee* v. *Great Northern Ry. Co.,* 1 Butterworth W. C. C. 165, it was stated:

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"Where a workman going home, after his work for the day was done, by a *short cut*

which he did not ordinarily use, but which was used by other employees, was killed, a finding that the accident arose out of and in the course of the employment was sustained."

See also

Judson Mfg. Co. v. *Industrial Acc. Commn.*, 181 Cal. 300, 184 Pac. 1. 10

* * * *

In the case of *Employers' Liab. Assur. Corp.* v. *Light,* 275 S. W. 685, 687, it was stated that when injured, the employee was returning from his work to his home in his usual and accustomed manner, and that the accident which occurred to said employee was one coming within the purview of the Workmen's Compensation Act. The court went on to state that the "course of employment" 20 does not, within the meaning of the Compensation Act, necessarily end when the employee lays down his tools, nor when he leaves the premises. The award of compensation was affirmed.

See *Wilhelm* v. *Angell,* et als., 252 Mich. 648, 234 N. W. 433, in which case an employee was injured while on his way home and on a public highway when struck by a train. See also *Reisinger, Siehler Co.* v. *Perry,* 167 Atl. 51. 30

POINT II.

The fact that the employee was trespassing at the time of the accident upon property of another is not a bar to recovery under the Workmen's Compensation Act.

See

Madden v. *Whitman,* 38 N. J. L. J. 113; 40
Daltry v. *Media Electric Light, Heat & P. Co.*, 208 Pa. 403; 51 Atl. 833;
Taylor v. *Seabrook,* 87 N. J. L. 403.

POINT III.

The use of a route by the employee which might involve more hazard than another route which might be open for his use, does not bar a recovery under the Workmen's Compensation Act.

10 In the case sub judice the petitioner's decedent used a route, which was commonly and customarily used by many of the employees of the respondent, over a period of 18 years. The use thereof was one known to all, particularly the respondent. At least the respondent did have constructive knowledge of the use of said route, and more especially because the bridge on which the accident occurred was one used by the respondent in its business, as the testimony in the 20 case showed. The mere fact that the route selected by the employee might involve more danger and hazard than another route used, does not bar a recovery, for the reason that it involves contributory negligence. Contributory negligence is not a defense under the Workmen's Compensation Act. See cases, supra.

Argument.

30 In the opinion of the Supreme Court the court quoted the Determination of Facts and Rule for Judgment as signed by the referee in the Workmen's Compensation Bureau. The facts quoted from the Determination are incorrect. The decedent did not choose a dangerous route; and also trespass upon property of another railroad. The facts show clearly that the route was one used by the general public, particularly by the em- 40 ployees of the Central Railroad Co. of New Jersey for a period of over 18 years; that the

route and short cut were known by the employer; that the bridge, particularly where the accident occurred, was used by the Central Railroad Company of New Jersey and was less than one hundred feet from the place where the decedent was employed; that the bridge was over the main line tracks of the Central Railroad; and that for all intents and purposes the place where the decedent was injured was within the confines of the employer's property. A reference to the pictures will clearly demonstrate these facts (see exhibits in S. C.).

The Referee in his opinion cited Bradbury's Workmen's Compensation, 3rd ed., page 468, which sets out a general rule, and he followed thereafter with a list of citations which have no applicability to the case sub judice. The facts in the cited cases are entirely foreign to the facts in the case under consideration. In the instant case the facts come directly and clearly under the rule of law laid down by the U. S. Supreme Court, the English courts, the Courts of Connecticut, Maine and of almost every State in the Union, specific citations having been heretofore given.

With reference to the statement that the decedent was trespassing upon property of another at the time he was injured, this does not bar a recovery and it has been so held by our Courts. See Point II. That the route used might have involved more hazard, does not bar a recovery under our Workmen's Compensation Act. These inferences seem to be set up to show that the decedent was guilty of contributory negligence, which of course is not a defense under the Compensation Act.

The case of *Gilroy* v. *Standard Oil Company,* 107 N. J. L. 170, which was set up in the opinion

of the Supreme Court to support the contention that the petitioner is not entitled to recover under the Compensation Act, is untenable. A reading of the facts in the Gilroy case and a reading of the facts in the case sub judice will demonstrate clearly that this case is distinguishable from the Gilroy case, for the reason that the Gilroy accident occurred a considerable distance away from the place of employment and that the employee had driven in a car and had been entirely away from his place of employment both in space of time and distance. The case sub judice clearly shows that the accident occurred less than one hundred feet from the place where the decedent was employed and about three minutes from the time he left the employer's plant; and within the confines of the employer's premises.

It is respectfully urged that the Supreme Court did not apply all the facts in the case sub judice with the rule of law cited in *Cudahy Packing Co.* v. *Parramore,* 263 U. S. 418, and in the other cases cited by the petitioner, for if it had, it would have been inescapable to draw the inference that the petitioner's intestate was entitled to the protection of the Compensation Act, for the reason that the accident occurred within a reasonable time and place after the decedent ceased his work on the day of the accident. New Jersey has gone along on the theory that an employee going to work is entitled to protection of the Compensation Act, but has not extended the rule to a case where a man has already ceased his employment and was on his way home, and particularly who met with an accident within a reasonable time and place thereafter. It seems to me that the Court should interpret the Compensation Act liberally as it has already done in the past and extend the

rule to comply with the rules as laid down in the Federal Courts, in the other States and also England.

It is respectfully urged that the Supreme Court incorrectly stated the fact that the petitioner's intestate proceeded along a public highway for some distance before leaving it to make the short cut across the premises of the railroad. The fact is, as the evidence and proof will show clearly, that the only time the decedent was on a public street was, as he passed in front of the employer's building, which was for a distance of about thirty-five feet, thence on the employer's property, diagonally across on to the short cut, up an embankment and upon the bridge where he was injured. This land, as the pictures show, was adjacent to and at the place of the accident, was directly over the main line tracks of the Central Railroad and less than one hundred feet from the round house in which the petitioner's intestate was employed just before the accident. These facts clearly come within the rule as laid down in the Cudahy case and the other cited cases, and necessarily brings the employer and employee within the confines of the time and space contemplated by both, and the employer, having had knowledge over a period of 15 to 18 years of the use of the short cut by the petitioner's intestate and other employees, must have consented to the use thereof, and it has been so held in the cited cases.

The proofs in the case support clearly the conclusion reached by Judge Kinkead in the Hudson County Court of Common Pleas. The proofs show that the custom of the use of the short cut by the decedent and other employees, irrespective of the percentage in number, and the proximity of the place of the accident with the place where

the decedent was employed, bring the facts clearly within the cases cited and support the conclusion of the Hudson County Court of Common Pleas.

The findings of the Compensation Bureau that one witness testified that out of 800 men who worked in the factory (and of course his testimony was not based upon knowledge of the number employed in the shop), only three were on the trestle at the time of the accident, should not support the contention that the short cut was little used. This is not the fact, and if it were, the mere fact that there were only three persons on the bridge at the time of the accident does not take away the legal rights to which the petitioner is entitled as shown by the cases cited in this brief.

It is my contention that the facts in this case show clearly that the decedent at the time of the accident was using a short cut to get to his home; that he had used this short cut for a period of over fifteen years; that this short cut had been used by other employees of the railroad; that the place where the accident occurred, to wit, the bridge, was one used by the employer in its business and was part of the premises used in the business of the employer; that the place where the accident occurred was less than one hundred feet from the place where the decedent was employed and was about three minutes in time after he left the plant of the employer; that the place where the accident occurred was one known by the employer and to which no objection was made of the use thereof; that the short cut was an aid to the employees living in that part of the city in getting to and from the railroad yards and shortened the time and benefited the employer; and that at the time of the accident the decedent

was at a place where by custom he had a right to be and which was in contemplation of his employer that he use it, that it was common practice for the use thereof by employees living in that section of the city, and that the employment not only included the actual doing of the work, but a reasonable margin of time and space necessary to be used in going to and from the place of employment. 10

CONCLUSION.

The decision of the Supreme Court holding that the petitioner was not entitled to compensation and affirming the dismissal of the petition should be reversed; the judgment of the Hudson County Court of Common Pleas should be affirmed, and the judgment of the Bureau reversed. 20

It is therefore respectfully urged that the judgment of the Hudson County Court of Common Pleas should be affirmed.

Respectfully submitted,

ARCHIE ELKINS,
Attorney for and of Counsel
with Petitioner-Appellant. 30

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New Jersey Court of Errors and Appeals

ANNA BRYN,
Petitioner-Appellant,

vs.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY,
Respondent-Appellee.

ON APPEAL FROM THE NEW JERSEY SUPREME COURT

BRIEF FOR RESPONDENT-APPELLEE

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Grosby Press, Inc., 56-60 Gold Street, N. Y. City. Beekman 3-3378

New Jersey Court of Errors and Appeals

Anna Bryn,

Petitioner-Appellant,

vs.

The Central Railroad Company of New Jersey,

Respondent-Appellee.

On Appeal from the New Jersey Supreme Court

BRIEF FOR RESPONDENT-APPELLEE

The appellant, Anna Bryn, filed a petition under the provisions of the Workmen's Compensation Act of the State of New Jersey, to recover compensation for the death of her husband Waclaw Bryn, who met with his death on December 24, 1932. An answer was filed by the employer, alleging that the decedent had ceased work and left its premises and, under such circumstances, denied that the widow was entitled to compensation.

A hearing was had on said petition on November 9, 1933, before the Compensation Bureau, which rendered judgment denying compensation and dismissing the petition (Rec. p. 16).

Anna Bryn then appealed to the Court of Common Pleas of Hudson County, which Court, after hearing said appeal rendered judgment reversing the judgment of the Workmen's Compensation Bureau and remitted the case to the Bureau for a new trial (Rec. p. 23). To review the action of the Hudson Common Pleas a writ of certiorari was sued out. The Supreme Court reversed the Common Pleas and affirmed the Workmen's Compensation Bureau.

Statement of the Case

Waclaw Bryn, the deceased husband of the petitioner below, was employed by The Central Railroad Company of New Jersey as a machinist in its machine shop at Jersey City. At the time of the accident he had ceased work and was on his way home by way of the Lehigh Valley Railroad trestle in Jersey City (Rec. pp. 8-13). Having finished his day's work, the decedent punched his time card, left the railroad shop and entered upon Communipaw Avenue, a public street in Jersey City. He then walked along Communipaw Avenue until he reached a vacant strip of land used as a parking station, through the parking station and diagonally across Wilson Street, which runs at right angles to Communipaw Avenue, and thence up an embankment to the Lehigh Valley bridge (Rec. pp. 27, 40, 41, 48, 49, 77) (Exhibits P-5, P-4, P-3, P-2, P-1). While on the bridge he was struck by a Lehigh Valley engine and killed (Rec. p. 24).

The Workmen's Compensation Bureau dismissed the petition for compensation upon the ground that the accident did not arise out of, and in the course of, the decedent's employment (Rec. pp. 18, 19 and 20). The Hudson Pleas, in reversing the judgment of the Workmen's Compensation Bureau, held that the dismissal of the petition was erroneous on the proofs submitted (Rec. pp. 20, 21, 22 and 23). Reversing the Common Pleas, the Supreme Court held that the accident did not arise out of and in the course of decedent's employment.

The Issue Involved

The sole issue involved is whether the accident to the decedent arose out of and in the course of his employment with the railroad company.

ARGUMENT

POINT I

The decedent did not meet with an accident arising out of and in the course of his employment.

The well settled rule is that when an employee is injured while travelling to, but has not yet reached, the employer's premises, or after he has finished his day's work and has left the employer's premises, the injury does not arise out of and within the course of the employment.

Our Court of Errors and Appeals has held that an accident does not arise out of, and occur in the course of the emplyoment, where an employee is injured while walking home after the day's work along a public highway.

In the case of *Gilroy* v. *Standard Oil Company,* 107 N. J. L. 170, the facts were as follows:

The employee had finished his day's work and was going home, being, at the time of his injury, on a public highway which bounded some distance each side of his employer's plant. While passing the pumphouse of his employer, an explosion occurred causing Gilroy to be severely burned. He sued his employer in an action in tort, recovered a judgment which was affirmed by the Court of Errors and Appeals. One of the defendant's con-

tentions in that case was that the accident arose out of and in the course of the plaintiff's employment. Denying this, the Court said:

> "The plaintiff had ceased work and his duties for the day were over. He had left the company's premises and his time was his own, free from any obligations to the company, nor had the company any claim on him. The fact that the highway was near the company's plant or that it came in close contact with the company's equipment has no effect in continuing or establishing the relation of master and servant between the plaintiff and the defendant. The Employers' Liability Act only applies where the accident arises out of the employment and occurs in the course thereof. The accident did not arise out of the employment for the reason that the defendant was travelling along a public road at the time it occurred and was not on the premises of the defendant when it happened. The accident did not occur in the course of the plaintiff's employment for he had ceased the work for which he was employed before the accident and had left the premises of the defendant and was proceeding on his way home."

The facts in the instant case show that the decedent was walking home after leaving the premises of his employer when the day's work was done. The mere fact that he was using as a short cut the Lehigh Valley Railroad makes no difference, since he had left his employer's premises, his time was his own, and he could choose whatever route he desired for the purpose of reaching his home.

We submit, therefore, this accident did not arise out of, and in the course of, the decedent's employment.

The counsel for appellant relies upon a number of cases which had to do with the happening of accidents after the hours of work and while the injured was still on the premises of his employer or where he was injured while crossing some path necessary for ingress to, or egress from, the employer's premises. These cases, *Bolos* vs. *Trenton Fire Clay & Company,* 102 N. J. L. 479; *Terlecki* vs. *Straus,* 86 N. J. L. 708; *Zabriskie* vs. *Erie Railroad Co.,* 86 N. J. L. 266, and others, were clearly distinguished by the Court of Errors and Appeals in *Gilroy* vs. *Standard Oil Company,* 107 N. J. L. 170.

POINT II

The decision of the Supreme Court, reversing the Hudson Common Pleas and affirming the Workmen's Compensation Bureau, should be affirmed.

Respectfully submitted,

Wm. F. Hanlon,
Attorney for Respondent-Appellee.

Charles E. Miller,
Of Counsel.