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Notice of Appeal.

Filed May 21, 1918.

New Jersey Supreme Court.

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F. W. Woolworth Company,
a corporation,
Prosecutor-Appellant,

vs.

Tressa M. Jensen,
Defendant-Respondent.

Notice of Appeal.

Take Notice that the prosecutor-appellant appeals to the Court of Errors and Appeals of the State of New Jersey from the whole of the judgment entered in this cause. 20

Dated May 16, 1918.

Yours respectfully,

M. CASEWELL HEINE,
Attorney for Prosecutor-Appellant.

To Benjamin F. Jones, 30
Attorney of Defendant-Respondent,
784 Broad Street,
Newark, New Jersey.

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Grounds of Appeal.

Filed May 23, 1918.

New Jersey Court of Errors and Appeals

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TRESSA M. JENSEN, Petitioner-Defendant in Certiorari, *Respondent,* *vs.* F. W. WOOLWORTH COMPANY, a corporation, Defendant-Prosecutor in Certiorari, *Appellant.*	*On Appeal from Supreme Court.* *Grounds of Appeal.*

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The above named appellant states the following grounds of appeal:

1. The Supreme Court sustained the finding of the Court of Common Pleas, commuting the payments of compensation awarded to respondent from the appellant.

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2. The Supreme Court sustained the order of the Court of Common Pleas, commuting the award of compensation without evidence to support the findings upon which said order was based.

3. The Supreme Court sustained the finding of the Court of Common Pleas, commuting compensation awarded to respondent, contrary to the terms and provisions of the statute known as the Workmen's Compensation Act, and the acts amendatory thereof and supplemental thereto.

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Grounds of Appeal.

4. The Supreme Court sustained the finding of the Court of Common Pleas, awarding commutation without hearing evidence upon which to base its award.

M. CASEWELL HEINE,
Attorney for Appellant.

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Writ of Certiorari.

Filed November —, 1917.

NEW JERSEY, *ss:*

The State of New Jersey to the Hon. Joshua R. Salmon, Judge of the Court of Common Pleas in and for the County of Morris, and Elias Bertram Mott, Clerk of the Court of Common Pleas of the County of Morris, and Tressa M. Jensen. 10

[SEAL.]

GREETING:

We being willing for certain reasons to be certified of a certain determination, judgment, order and proceedings made and given by Joshua R. Salmon, Esq., Judge of the Court of Common Pleas, in and for the County of Morris, on Oct. 21, 1917, in a certain action, plaint and proceedings brought against F. W. Woolworth Company, a corporation, at the suit of Tressa M. Jensen, to recover compensation under "An Act of the Legislature of New Jersey 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 of the determination of liability and compensation thereunder," approved April fourth, nineteen hundred and eleven; also under the supplement of said act, approved May second, nineteen hundred and eleven, and the acts amendatory thereof and supplemental thereto, do command you that you send under your seals to our Justices of our Supreme Court of Judicature, at Trenton, on the 7th day of 20 30 40

December, next, the said determination, judgment, order and proceedings made and given by you, with all things touching and concerning the same as fully and entirely as they remain in said Court of Common Pleas, by whatever names the parties may be called therein, together with
10 this our writ, that we may further cause to be done thereupon, what of right we shall see fit to be done.

WITNESS, WILLIAM S. GUMMERE, Esquire, Chief Justice of our Supreme Court, at Trenton, aforesaid, this thirteenth day of November, in the year of our Lord, one thousand nine hundred and seventeen.

WILLIAM C. GEBHARDT,
Clerk.

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M. CASEWELL HEINE,
Prosecutor's Attorney,
Kinney Building, Newark, N. J.

Allowed November 17, 1917, as respects order for commutation of award only.

Let it be sealed.

CHARLES W. PARKER,
30 *J. S. C.*

Served Nov. 18.

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Return.

To the Honorable Justices of our Supreme Court of Judicature at Trenton:

We return herewith, as herein we are commanded, as respects order for commutation of award only, the Findings, Order and Judgment, together with all proceedings made and given, and all things touching and concerning the same as fully and entirely as before us they remain, or are in our custody or control, whereof mention is within made, under our seal, in the schedule hereto annexed.

[SEAL.] JOSHUA R. SALMON,
Judge of the Court of Common Pleas of the County of Morris.

ELIAS BERTRAM MOTT,
Clerk of the Court of Common Pleas.

Notice of Motion.

Filed September 21, 1917.

COURT OF COMMON PLEAS OF THE COUNTY OF MORRIS.

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TRESSA M. JENSEN, *Petitioner,* *vs.* F. W. WOOLWORTH COMPANY, a corporation, *Respondent.*	*On Petition &c., Notice of Motion.*

Sir:

20 PLEASE TAKE NOTICE that I shall apply to Honorable Joshua Salmon, Judge of the Court of Common Pleas of the County of Morris, at the Court House in Morristown, on Wednesday, the 12th day of September, 1917, at ten o'clock in the forenoon or as soon thereafter as counsel can be heard, for an order commuting the judgment heretofore entered in the above entitled cause.

Yours, &c.,

30 BENJAMIN F. JONES,
Attorney for Petitioner.

Dated, September 5th, 1917.

To M. CASEWELL HEINE, ESQ.,
Attorney for Respondent,
No. 790 Broad St., Newark, N. J.

Received Morris County Clerk's Office, Sept. 21, 4:30 P. M., 1917, Morristown, N. J.

ELIAS BERTRAM MOTT,

40 *Clerk.*

Notice of Motion.

Service of a copy of the within Notice is hereby acknowledged this 6th day of September, 1917.

M. CASEWELL HEINE,
Attorney for Respondent.

Filed Sept. 21, 1917. 10

ELIAS BERTRAM MOTT,
Clerk.

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Notice of Motion.

MORRIS COUNTY COURT OF COMMON PLEAS.

TRESSA M. JENSEN, *Petitioner,* vs. F. W. WOOLWORTH COMPANY, a corporation, *Respondent.*	*On Petition &c., Notice.*

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Sir:

PLEASE TAKE NOTICE That I shall apply to Honorable Joshua R. Salmon, Judge of the Court of Common Pleas of the County of Morris, at the Court House in Morristown, on Friday, the twenty-first day of September, 1917, at ten o'clock in the forenoon or as soon thereafter as counsel can be heard, for an order commuting the judgment heretofore entered in the above entitled cause, in accordance with the prayer of the annexed petition.

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Yours, &c.,

BENJAMIN F. JONES,
Attorney for Petitioner.

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Dated, September 15th, 1917.

To M. CASEWELL HEINE, ESQ.,
Attorney for Respondent,
No. 790 Broad St., Newark, N. J.

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Petition.

Filed September 21, 1917.

MORRIS COUNTY COURT OF COMMON PLEAS.

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TRESSA M. JENSEN, *Petitioner,* *vs.* F. W. WOOLWORTH COMPANY, a corporation, *Respondent.*	*Petition for Commutation of Compensation.*

To HONORABLE JOSHUA R. SALMON,
Judge of the Morris County Court of Common Pleas.

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The petition of Tressa M. Jensen respectfully shows:

(1.) That since the date of the accident, to wit, May 21st, 1915, your petitioner has been under the doctor's care and has been unable to earn any money, and most of the time she has been utterly unable to take care of herself; that she has no money or property of any kind, and has no interest, direct or indirect, in any trust fund or other property; that she has a daughter, Mabel, aged eight years, who is solely dependent upon your petitioner for support; that the father and mother of your petitioner are in straightened financial circumstances; that the father of your petitioner earns not more than Fifteen dollars ($15.00) per week, and that neither the father nor mother of your petitioner

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have any property excepting an equity in a small house in Morris Plains, which said equity is worth not over Two thousand dollars ($2,000.00); that your petitioner, since the accident, has been a heavy burden upon her parents, and that her said parents have been compelled to borrow large amounts of money in order to provide your petitioner with medical and surgical treatment, and also in providing for your petitioner's daughter.

(2.) Your petitioner further shows that since the entering of judgment in this cause, to wit, since the twenty-sixth day of April, 1917, she was advised by her attending physician, Dr. James F. Horn, that another serious operation would be necessary in order to remove a pin which was obstructing the tube leading to your petitioner's stomach; that Dr. Horn refused to assume responsibility for conducting this operation, and recommended Dr. Barber, of New York; that in order to save your petitioner's life, Dr. Barber was employed by your petitioner, and your petitioner borrowed (through her parents) the sum of Five hundred dollars ($500.00), which sum was turned over to Dr. Barber; that for several months before this operation was performed, your petitioner was unable to take any food except by forcing a tube down her throat; and said operation was performed in the month of July, 1917, in All Souls Hospital in Morristown, and your petitioner remained in All Souls Hospital from the date of the operation until September 5th, 1917, when she was brought home and is now confined to her bed in her parents' home in Morris Plains, under the care of a nurse. Your petitioner is advised by her physician that further

operations will be necessary, and that, unless the pins are removed promptly, she will be unable to survive the shock and the loss of strength occasioned by the intense suffering which she will have to undergo.

(3.) Your petitioner further shows that in order to give her the medical attention which she will absolutely require, she will need immediately not less than Two thousand dollars ($2,000.00) to repay the amounts which she has already borrowed since the accident and the amount which will be necessary to properly care for her and give her the medical and surgical treatment which her physician informs her will be necessary.

Your petitioner therefore prays that the compensation payable by the respondent to your petitioner, accruing from and after the tenth day of September, 1917, may be commuted in accordance with the rules of this Court, and paid to your petitioner at this time.

TRESSA M. JENSEN,
Petitioner.

BENJAMIN F. JONES,
Attorney for Petitioner.

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

TRESSA M. JENSEN, of full age, being duly sworn according to law, upon her oath deposes and says that she is the petitioner herein, and that the facts set forth in the foregoing petition, so far as they relate to her own acts, are true, and, so far as they relate to the acts of others, she believes them to be true.

TRESSA M. JENSEN.

Sworn to and subscribed
before me this 15th day
of September, 1917.

FLOYD L. HANNA,
Notary Public of N. J.
My Commission expires
Sept. 22nd, 1920.

Received Morris County Clerk's Office, Sept. 21, 4:30 P. M., 1917, Morristown, N. J.

ELIAS BERTRAM MOTT,
Clerk.

Service of a copy of the within Petition and Notice is hereby acknowledged this 17th day of September, 1917.

M. CASEWELL HEINE,
Attorney for Respondent.

Filed Sept. 21, 1917.

ELIAS BERTRAM MOTT,
Clerk.

Findings of Fact and Determination.

Filed September 21, 1917.

MORRIS COUNTY COURT OF COMMON PLEAS.

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TRESSA M. JENSEN, *Petitioner,* *vs.* F. W. WOOLWORTH COMPANY, a corporation, *Respondent.*	*Under the Workmen's Compensation Act of 1911, its Supplements and Amendments.* *Findings.*

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Mr. Benjamin F. Jones, Attorney for Petitioner.

Mr. M. Casewell Heine, Attorney for Respondent.

SALMON, *Judge.*

The petitioner having filed a verified petition on the Twenty-first day of September, 1917, praying for commutation of the compensation payable by the respondent to said petitioner, accruing from and after the tenth day of September, 1917, and it appearing from said petition that petitioner has no property of any kind, and no interest in any property, and that since the date of the accident she has been wholly dependent upon her parents for the support of herself and her daughter, Mabel, aged eight years; and it further appearing that the parents of said petitioner are in straightened financial circumstances, and that the father of said

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petitioner is earning only the sum of Fifteen dollars ($15.00) a week, and that neither of the parents of said petitioner have any property except an equity in a small house in Morris Plains; and it further appearing that since the entering of judgment herein, the petitioner has been compelled to have another serious operation, and that, in order to have the same performed, she was compelled to borrow the sum of Five hundred dollars ($500.00), in addition to other sums which she has borrowed from her parents and others since the accident; and it further appearing that other operations will be necessary for the removal of pins from time to time in order to save the life of said petitioner, and that said petitioner is in urgent need of the full amount of the judgment at this time in order to provide for her proper care and treatment; and, after giving this matter full consideration, the Court finds that under all the circumstances of this case, and for the reasons set forth in the petition that it will be for the best interest of the petitioner that commutation be ordered, and petitioner is entitled to have the amount of the compensation payable from and after September 10th, 1917, for the balance of the period of four hundred (400) weeks set forth in the judgment, commuted to the present value thereof, discounted at five per cent. (5%) simple interest, in accordance with the rules of this court, and that this amount be paid to said petitioner forthwith, in order that she may have sufficient funds to enable her to obtain necessary medical and surgical treatment, as well as proper care and maintenance for herself and her dependent child.

An order for judgment, prepared according to these findings, will be ordered entered.

The foregoing findings are submitted by counsel of petitioner and ordered filed.

JOSHUA R. SALMON,
Judge, &c.

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Order for Commutation.

MORRIS COUNTY COURT OF COMMON PLEAS.

TRESSA M. JENSEN, *Petitioner,* vs. F. W. WOOLWORTH COMPANY, a corporation, *Respondent.*	*Order.*

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The petitioner herein having filed a verified petition praying for commutation of the compensation payable by the respondent to the petitioner, accruing from and after the tenth day of September, 1917, and it appearing that a copy of said petition was duly served upon the attorney for said respondent, and after hearing Benjamin F. Jones, attorney for petitioner, and the Court being satisfied that it is in the interests of justice that the balance of the compensation due said petitioner from said respondent from and after said tenth day of September, 1917, be commuted and paid in a lump sum, and that it will be for the best interest of the petitioner that commutation be ordered and the Court having filed a supplemental finding of facts and determination herein, and the Court having found that petitioner is entitled to have the balance of the compensation payable by the respondent to the petitioner commuted to the present value thereof, and paid by said respondent.

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Order for Commutation.

It is, on this Twenty-first day of September, 1917, ORDERED That the judgment heretofore entered in the above entitled cause on the twenty-sixth day of April, 1917, be modified and amended as follows. The weekly compensation for one hundred and eighteen (118) weeks from June 4th, 1915 (two weeks after the date of the accident), to September 10th, 1917, at Five dollars ($5.00) per week, amounting to the sum of Five hundred and ninety dollars ($590.00), now having accrued, shall be paid to the petitioner by the respondent; and the compensation for the remaining period of two hundred and eighty-two (282) weeks from the tenth day of September, 1917, amounting to the sum of Fourteen hundred and ten dollars ($1410.00), payable in weekly installments of Five dollars ($5.00) each, be and the same is hereby commuted to the present value thereof discounted at five per cent. simple interest, to wit, to the sum of Twelve hundred and forty-seven dollars and forty-five cents ($1247.45) and that said respondent pay to the said petitioner forthwith the said sum of Twelve hundred and forty-seven dollars and forty-five cents ($1247.45) in addition to the Five hundred and ninety dollars ($590.00) already accrued, and also in addition to the Fifty dollars ($50.00) allowance for medical and hospital services and medicines, and the costs as taxed by the Clerk of this Court, and that judgment be entered accordingly. And it is further

ORDERED That in all respects the judgment heretofore entered in this cause do stand unchanged.

AND IT IS FURTHER ORDERED That counsel for petitioner herein, being her legal adviser, be

allowed the sum of twenty-five dollars as and for his compensation for services rendered and to be rendered in the matter of the petition herein.

JOSHUA R. SALMON,
Judge, &c.

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Judgment signed Sept. 21, 1917.

Recorded in Book "R" of Common Pleas Judgments, pages 198 &c.

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

I, ELIAS BERTRAM MOTT, Clerk of the County of Morris, and also Clerk of the Court of Common Pleas holden in and for said County, Do Hereby Certify that the foregoing are full, true and correct copies of the Findings, Order, Judgment and Proceedings in the case of Tressa M. Jensen, Petitioner *vs.* F. W. Woolworth Company, a corporation, Respondent, as respects order for commutation of award only, together with all things touching and concerning the same, as fully and entirely as the same remain on file and of record in my office.

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IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court and County, at Morristown, this Third day of December, A. D., Nineteen hundred and seventeen.

[SEAL]

ELIAS BERTRAM MOTT,
Clerk.

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Stipulation.

New Jersey Supreme Court.

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TRESSA M. JENSEN, *Petitioner and Defendant in Certiorari,* *vs.* F. W. WOOLWORTH COMPANY, a corporation, *Respondent and Prosecutor in Certiorari.*	*On Certiorari.* *Stipulation.*

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It is hereby stipulated and agreed by and between the parties to the above entitled cause that the return hereofore made by the Clerk of the County of Morris be amended by adding thereto the testimony of Dr. James F. Horn at the hearing before Honorable Joshua R. Salmon, Judge of the Court of Common Pleas of the County of Morris, on the twenty-first day of September, Nineteen Hundred and Seventeen, as certified by said Joshua R. Salmon, Judge as aforesaid, which said testimony and certification is hereto annexed and hereby made a part of this stipulation.

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BENJAMIN F. JONES,
Attorney for Petitioner and Defendant in Certiorari.

M. CASEWELL HEINE,
Attorney for Respondent and Prosecutor in Certiorari.

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MORRIS COUNTY COURT OF COMMON PLEAS.

TRESSA M. JENSEN, *Petitioner,* *vs.* F. W. WOOLWORTH COMPANY, *Respondent.*	*Statement of Testimony of James F. Horn.*

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Testimony of Dr. James F. Horn at the hearing before Honorable Joshua R. Salmon, Judge of the Court of Common Pleas of the County of Morris, on the 21st day of September, 1917, on the application of Tressa M. Jensen, petitioner, for the commutation of the compensation payable to said petitioner by F. W. Woolworth Company, respondent in the above entitled cause.

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In response to questions propounded by the court, Dr. Horn testified as follows:

"Since the last hearing before the court in this case, I have been in constant attendance upon the petitioner as her physician. Her condition became very critical shortly after the last hearing, by reason of a pin which was lodged in her œsophagus. She was unable to take any nourishment except by artificial means, and, in order to save her life, I advised that Dr. Barber, an eminent surgeon of New York City, be called in consultation. Dr. Barber called to see the patient, and advised an immediate operation in order to save the petitioner's life. Dr. Barber demanded a fee of $500.00 for performing the operation, and the relatives of peti-

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tioner succeeded in raising this sum, and it was paid to Dr. Barber for his services. In the first major operation performed by Dr. Barber, two pins were removed from the chest and one from the stomach, after which the petitioner had relief for a short time. Subsequently, a second major operation was performed by Dr. Barber, in which the obstructive pin in the œsophagus was removed and a new opening to the stomach was made through the abdomen, and she was fed through the new opening for a number of weeks. Subsequently another pin caused the rupture of a blood vessel, almost causing death. Her chest was opened and a rib removed, and the hemorrhage was stopped, and the petitioner now has a large opening in the right lung through the chest walls, and this is still being treated. She still has an opening to the stomach through the abdomen, and at times it is necessary to feed her through that opening.

Petitioner was confined to the hospital for a number of weeks, and subsequently was removed to her home, where she is now in bed in a helpless condition. She has required the constant attention of nurses ever since the last hearing. There is another pin near the base of the brain, which cannot be removed with safety at this time, and another operation will soon have to be performed, in my opinion, in order to save the petitioner's life. She is in constant need of the utmost care and attention, and unless she receives the same her life cannot be saved."

The foregoing is the substance of the testimony taken upon the hearing of petition for commutation in the matter as entitled at the beginning hereof.

[SIGNED] JOSHUA R. SALMON,
Judge, &c.

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Dec. 31, 1917.

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Reasons.

Filed Dec. 16, 1917.

New Jersey Supreme Court.

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TRESSA M. JENSEN, *Petitioner and Defendant in Certiorari,* *vs.* F. W. WOOLWORTH COMPANY, a corporation, *Respondent and Prosecutor in Certiorari.*	*On Certiorari.* *Reasons.*

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And the said prosecutor, F. W. Woolworth Company, a corporation, comes and prays that the order made on October 21, 1917, and the judgment thereon entered against it, commuting the payments of compensation to be made by the prosecutor, in the Court of Common Pleas of the County of Morris, may be set aside, reversed and for nothing holden, for the following reasons:

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1. Because the Court improperly and without sufficient evidence commuted the payments of compensation awarded to petitioner from prosecutor.

2. Because said order commuting the award of compensation was made by the Court without evidence sufficient to support its findings.

3. Because the order commuting compensation awarded to petitioner was made contrary

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Reasons.

to the terms and provisions of the statutes in such case made and provided.

4. Because the Court awarded commutation without hearing evidence upon which to base said award.

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M. CASEWELL HEINE,
Attorney for Prosecutor.

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Opinion.

Filed May 3, 1918.

NEW JERSEY SUPREME COURT.

FEBRUARY TERM, 1918.

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TRESSA M. JENSEN, *Defendant,* *vs.* F. W. WOOLWORTH COMPANY, *Prosecutor.*	*On Certiorari.*

Submitted February Term, 1918.

Before Justices Bergen and Black. 20

For Prosecutor, M. Casewell Heine, Esq.

For Defendant, Benjamin F. Jones, Esq.

Per Curiam.

The certiorari in this case was allowed to review the determination of the Morris County Court of Common Pleas commuting a judgment under the Workmen's Compensation Act, from $1,410 payable in installments, at $5.00 per week, 30 to $1,247.25, in addition to $590 already accrued, and $50 allowed for medical and hospital services and medicines. The petitioner was injured on May 21, 1915, while in the employ of the defendant, accidentally swallowing pins, while assisting in trimming a show window, on May 21st, 1915.

The rule to be followed by the Courts for commutation of compensation is laid down, by the Legislature, in P. L. 1913, p. 309. The order 40

of commutation was made in accordance with the provisions of the statute and there was sufficient evidence before the Court to support the order under review. These are the two points argued in the prosecutor's brief.

The judgment of the Morris County Court of Common Pleas is affirmed with costs.

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Rule for Judgment.

Entered May 9, 1918.

NEW JERSEY SUPREME COURT.

TRESSA M. JENSEN, *Petitioner-Defendant,* *vs.* F. W. WOOLWORTH COMPANY, *Respondent-Prosecutor.*	*On Certiorari.* *Rule for Judgment.*

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The court having inspected the transcript and proceedings of the Court of Common Pleas of the County of Morris, returned with the certiorari in this cause, and the reasons for reversing the judgment below, and having heard the argument of counsel therein, and having duly considered the same,

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Whereupon, it is ADJUDGED and ORDERED that the judgment of the Court of Common Pleas of the County of Morris be in all things affirmed with costs, and the said record remitted to the court below to be proceeded with according to law.

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Entered May 9, 1918.

On motion of

BENJAMIN F. JONES,
Attorney for Petitioner-Defendant.

A true copy.

ENOCH L. JOHNSON,
Clerk.

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Arthur W. Cross, Law Printer, 243 Market Street, Newark, N. J.

New Jersey Court of Errors and Appeals

TRESSA M. JENSEN, *Petitioner-Defendant in Certiorari, Respondent,* *vs.* F. W. WOOLWORTH COMPANY, a corporation, *Respondent-Prosecutor in Certiorari, Appellant.*	*On Appeal from Supreme Court.*

Brief for Respondent.

I.

Statement of Facts.

An order was made by the Judge of the Court of Common Pleas of the County of Morris on October 21st, 1917, and judgment was entered thereon, commuting the payment of compensation to be made by F. W. Woolworth Company to Tressa M. Jensen under a determination, judgment and order entered in said Court on September 21st, 1917.

Respondent was employed by F. W. Woolworth Company in its store at Dover, New Jersey, and, while assisting in trimming the window, accidentally swallowed a large number of pins on Friday, May 21st, 1915. For some time thereafter she was able to continue her work, but on August 14th, 1915, she was taken with convulsions, and from that time until the present she has been totally incapacitated, has been continuously under the doctor's care, has had a

number of operations (many of them of a very serious nature) for the removal of pins from her head, breast, lungs, stomach, arms, legs, feet—in fact from all parts of her body, and at the present time and for many months last past she has been confined to her bed either in the hospital or at her father's home, where she has required the services of a nurse and has been totally helpless. Her health has been ruined and her nervous system completely shattered as the result of this accident. She has no money or property of any kind, and no interest in any trust fund or other property; she has a daughter, Mabel, aged eight years, who is entirely dependent upon her for support; the parents of respondent are in reduced financial circumstances, the father earning not more than fifteen dollars ($15.00) per week, and neither of said parents having any property excepting an equity in a small house in Morris Plains, which said equity is worth not more than two thousand dollars ($2,000.00). The father of respondent has paid out hundreds of dollars for her care and treatment, has stripped himself of all his savings, and in addition thereto, respondent has borrowed every dollar that she can borrow in order to defray such expenses.

In the summer of 1917 she was advised by her attending physician that a further serious operation would be necessary in order to remove a pin which was obstructing the tube leading to her stomach, and he recommended that this operation be performed by Dr. Barber, of New York City, and stated that such operation would be necessary in order to save her life, as she had been unable for several months to take any food except by forcing a tube down her throat. The respondent finally succeeded, after consider-

able difficulty, in borrowing, in addition to all of the other sums previously borrowed and expended, the sum of five hundred dollars ($500.00) which was required in order to defray the expenses of the proposed operation by Dr. Barber, and such operation was accordingly performed. This occurred in the month of July, 1917, in All Souls' Hospital in Morristown, where she remained until the month of September, 1917, when she was brought home and has ever since that time been confined to her bed and has been under the care of a nurse. Further operations will be necessary in order to save her life, and she and her parents are unable to borrow or raise any further funds, and the only means whereby she will be enabled to procure a continuance of the surgical treatment necessary to save her life will be by having the compensation awarded to her commuted so that the entire amount may be available for such use during the next few months.

II.

Argument.

POINT I.

The order for commutation was made in strict accordance with the terms and provisions of the statute.

Paragraph 21 of the Workmen's Compensation Act, as amended in 1913 (P. L. 1913, page 309), provides that the Court of Common Pleas may commute the compensation provided for in the act, upon application of either party with due notice to the other "if it appear that such compensation will be for the best interest of the employee, or the dependents of the deceased employee, or that it will avoid undue expense or

undue hardship to either party. * * * commutation is a departure from the normal method of payment, and is to be allowed when it clearly appears that some unusual circumstances warrant such a departure. Commutation shall not be allowed for the purpose of enabling the injured employee to satisfy a debt or to make payment to physicians, lawyers or any other persons.''

The ''unusual circumstances'' in this case clearly appear. The life of respondent can only be saved, according to the sworn testimony of the attending physician, by a series of additional operations and by the constant care and attention of a nurse. The parents of respondent have impoverished themselves to provide and pay for her care and treatment up to the date of the making of the order of commutation under review; they cannot go further, and respondent cannot borrow any more money.

If the construction placed upon paragraph 21 of the Workmen's Compensation Act by counsel for appellant should be adopted, no commutation could ever be allowed. Money is only valuable when it can be paid out for something to be given in return. A narrow construction of this section would prohibit commutation for the purpose of making payment to anybody.

This could not have been the intention of the Legislature. The entire section must be read together and where it is shown that commutation will be for the best interest of the employee, and will avoid undue hardship, the Court is specifically authorized to commute the compensation.

The compensation was not commuted for the purpose of enabling respondent to pay back the moneys which her parents had borrowed and expended for her care and treatment, or to pay her debts or physicians' bills.

It was stated by the Court, in the findings of fact upon which the judgment under review is based, that the compensation should be commuted in order that respondent "*may have sufficient funds to enable her to obtain necessary medical and surgical treatment, as well as proper care and maintenance for herself and her dependent child.*" If the order of commutation is not sustained she will suffer undue hardship and will probably die because of the lack of the care and the surgical treatment which she must have in order to prolong her life, and give her a fighting chance for recovery.

POINT II.

There was evidence before the court sufficient to support the order under review.

The Judge who granted the order of commutation had presided at all the previous hearings, and was familiar with all of the facts presented at the trial, which included all of the essential facts set out in the verified petition upon which the order for commutation was based. The only new matter set forth in said petition related to the necessity for additional operations and for additional surgical and medical treatment; and Dr. Horn, the attending physician, substantiated all of these facts at the hearing on the petition for commutation. Dr. Horn's testimony clearly established facts sufficient to justify the Court in finding that it would be for the best interests of the employee, and would avoid undue hardship to her, to have the compensation commuted.

It is, therefore, respectfully submitted that the judgment of the Supreme Court should be affirmed.

BENJAMIN F. JONES,
Attorney and of Counsel for Respondent.

June Term, 1918.

Arthur W. Cross, Law Printer, 243 Market Street, Newark, N. J.

New Jersey Court of Errors and Appeals

TRESSA M. JENSEN, Petitioner, *Defendant in Certiorari-Respondent,* *vs.* F. W. WOOLWORTH COMPANY, a corporation, Respondent, *Petitioner in Certiorari-Appellant.*	*On Appeal from Supreme Court.*

Brief of Appellant.

Statement.

This case came up on certiorari to the Supreme Court to review the judgment, order and proceedings of the Morris County Court of Common Pleas upon a petition praying for commutation of an award of compensation granted to petitioner under the Workmen's Compensation Act.

Petitioner's injury resulted from the accidental swallowing of pins on March 21, 1915, while in the employ of respondent.

The Court of Common Pleas of Morris County determined in the compensation proceedings that petitioner suffered a disability total in character and permanent in quality, and decreed compensation payable at the rate of five dollars a week for not more than four hundred weeks.

Respondent paid the compensation awarded, and has since paid and is now paying compensation to the petitioner weekly.

On September 21, 1917, petitioner filed a verified petition praying for commutation into a lump sum payment of balance of compensation by respondent to petitioner.

The Court thereupon, after hearing Dr. James F. Horn, on behalf of the petitioner, filed findings of fact and an order commuting into a lump sum payment the balance due under the original award. The Supreme Court affirmed this order of the Court, and from this order and judgment an appeal is taken to this Court.

Grounds of Appeal.

1. The Supreme Court sustained the finding of the Court of Common Pleas, commuting the payments of compensation awarded to respondent from the appellant.

2. The Supreme Court sustained the order of the Court of Common Pleas, commuting the award of compensation without evidence to support the findings upon which said order was based.

3. The Supreme Court sustained the finding of the Court of Com-

trary to the terms and provisions of the statute known as the Workmen's Compensation Act, and the acts amendatory thereof and supplemental thereto.

4. The Supreme Court sustained the finding of the Court of Common Pleas, awarding commutation without hearing evidence upon which to base its award.

Brief of the Argument.

The contention of the appellant is upon two main points: (1) That the order commuting the award of compensation is directly contrary to the provision of the statute as amended by the laws of 1913. (2) That there is no evidence to support the finding of the Court upon which commutation of the award is based.

Statement of Facts.

The verified petition of the petitioner alleged that the petitioner and her daughter, Mabel, aged eight, were dependent upon her parents for support, and that her father was earning only the sum of $15.00 a week, and that the only other property her parents owned was an equity of $2,000.00 in a house in Morris Plains.

No testimony was offered at the hearing to substantiate the foregoing allegations.

The petition further alleged that after the entering of final judgment in this cause petitioner was advised by Dr. James F. Horn that another operation would be necessary to remove a pin which was obstructing the tube leading to the petitioner's stomach. Dr. Horn refused to assume responsibility for this operation and recommended one Dr. Barber, and the petitioner's relatives borrowed $500.00 to pay Dr. Barber for the operation. These allegations are in part substantiated by the testimony of Dr. Horn himself, who was the only witness at the hearing. Dr. Horn testified as follows:

> "She was unable to take any nourishment except by artificial means, and in order to save her life I advised that Dr. Barber, an eminent surgeon of New York City, be called in consultation. Dr. Barber called to see the patient and advised an immediate operation in order to save petitioner's life. Dr. Barber demanded a fee of $500.00 for performing the operation and the relatives of the petitioner succeeded in raising this sum and it was paid to Dr. Barber for his services."

The petition further alleges that the petitioner needed $2,000.00 to repay the amount she had already borrowed since the accident, and also to provide for the medical and surgical treatment which her physician informs her will be necessary. There was no evidence introduced at the hearing to substantiate these allegations except that of Dr. Horn, who testified that the petitioner would need medical attention for a considerable period.

POINT I.

THE ORDER AWARDING COMMUTATION TO PETITIONER IS CONTRARY TO THE EXPRESS TERMS OF THE PROVISION OF THE STATUTE.

The only testimony on the commutation petition other than its own unsupported allegations is that of Dr. Horn, and the obvious effect of this is that petitioner wishes the commuted sum to be paid in order that she may defray physicians' expenses.

This is specifically contrary to the language of the statute, which is:

> "In determining whether the commutation asked for will be for the best interest of the employee, or the dependents of the deceased employee, or that it will avoid undue expense or undue hardship to either party, the Judge of the Court of Common Pleas will constantly bear in mind that it is the intention of this act that the compensation payments are in lieu of wages, and are to be received by the injured employee or his dependents in the same manner in which wages are ordinarily paid. Therefore, commutation is a departure from the normal method of payment and is to be allowed only when it clearly appears that some unusual circumstances warrant such a departure. Commutation shall not be allowed for the purpose of enabling the injured employee, or the dependents of a deceased employee, to satisfy a debt, or to make payments to physicians, lawyers or any other persons."

The whole theory of the Compensation Act is that the moneys paid are in lieu of wages, and the repayment of money borrowed or other indebtedness and of doctors' bills is expressly prohibited by the act.

In the present instance, according to the doctor, petitioner is to require the services of nurses, and also must be provided with food, probably delicacies. This end can be secured by the weekly payments, which will insure some money toward the expense of nursing and the purchase of any required special food. If, however, the money is handed to petitioner in a lump sum and she pays over $500 to reimburse her relatives for what they paid to Dr. Barber, in addition to other sums which she owes for medical services, presumably to Dr. Horn, the only witness in favor of commutation, the result will be that the entire fund will be immediately dissipated and she will then be an absolute charge upon her parents, not only for her support but also for any further medical services which she may require, and the result will probably be that she will become a county charge.

Assuming the natural affection which exists by reason of ties of blood, it would seem that if her relatives have already been able to borrow the sum of $500 to meet the demand of the operating surgeon the credit extended by the surgeon must have been to the relatives, and that this debt is their debt and not petitioner's, and in fact the testimony is to that effect, so that the evidence in that case will be entirely barren of any necessity such as contended for by Dr. Horn.

It is submitted that on the evidence before the Court below, if there was ever a case in which the payments should be made weekly—in lieu of wages—it is in the case at bar.

Of course it would be very convenient if the doctors could be paid, and would doubtless relieve the relatives of petitioner from burden, but to pay all the money due the petitioner out for medical services and to leave her destitute rather than to have the money paid in weekly installments, which can provide for her support and to some extent for her nursing, is contrary to both the spirit and letter of the act and is without warrant from any evidence adduced.

A somewhat similar situation has been considered in the case of *O'Connor* v. *Babcock & Wilcox Co.,* 37 N. J. L. 275, where Judge Salmon says:

> "Having a large family it is the more necessary that the statute's provision that the payments are in lieu of wages shall receive serious attention."

The contention of the petitioner's counsel in the O'Connor case was that the weekly payments were insufficient for the requirements of the petitioner's needs.

It should also be considered that the phraseology of the act "for the best interest of petitioner" must be construed in connection with the express prohibitions of the act, which disallow payments to doctors.

The same policy under the act was enunciated in *Dikovich* v. *American Steel & Wire Co.,* 36 N. J. L. 304.

The physician in this case, who is the only witness adduced in support of the commutation application, has undoubtedly devoted a great deal of time to this case, which is most unusual in its physical and pathological features, and is, as counsel understands, preparing a paper, copiously illustrated by X-rays, to be read before some medical association, by which he doubtless believes he can enhance his medical reputation. If the case is one of such an unusual medical character, doubtless much of the time devoted by the doctor has been given from a purely professional desire to follow its unusual features for the benefit of himself and the profession at large, and since he has thus received ample opportunity to become professionally famous it hardly lies in his mouth to make application to beggar his patient by having all the money coming to her paid over to him in a lump sum. It is to check just such a disposition on the part of the medical profession that the Legislature phrased this section of the Compensation Act as it did.

POINT II.

THERE IS NO LEGAL EVIDENCE TO SUPPORT THE ORDER OF THE COURT BELOW AND THE FINDINGS OF FACT UPON WHICH THE SAME WAS BASED.

The rule laid down in *Sexton* v. *Newark District Telegraph Co.,* 86 Atl. Rep. 451, and continuously followed since by our courts, is:

> "When the judgment of the Common Pleas Court is removed

> that of a writ of error. In such case the Supreme Court accepts the findings of the Common Pleas Court upon the facts, if there be any evidence to warrant them."
>
> See also *Sessler* v. *Peter,* 98 Atl. 834.

It is submitted that there is no such evidence in this case.

A verified petition was filed alleging that petitioner had a daughter eight years old dependent upon her for support; that petitioner's parents were in straitened circumstances and her father earning not more than $15 a week, with no property except a $2,000 equity in a house in Morris Plains; further alleging that her parents had borrowed large sums of money to provide for medical treatment of petitioner; also that petitioner's parents had borrowed money to pay for the operation testified to by Dr. Horn. Petitioner concludes with the allegation that in order to give her medical attention she will require immediately not less than $2,000 for medical service.

The only testimony taken by the Court was that of Dr. Horn, who testified to the physical condition of petitioner and the $500 demanded by the operating surgeon and borrowed by petitioner's parents, which hearsay was, in the absence of cross examination, accepted by the Court.

Concededly there is no general rule of evidence and no warrant in the Compensation Act which makes a verified petition legal evidence, especially when it is presented *ex parte.* Here is no exception to the rule that pleadings are not admissible in evidence as proof of the allegations set forth therein. As the Court said in *Hackett* v. *the State,* 110 N. E. Rep. 483:

> "The pleading of a party in a cause is not admissible in evidence to prove its allegations. The correctness of this proposition would seem to be so manifest as to render the citation of authorities wholly unnecessary."
>
> See also *Bourke* v. *Falcke,* 73 N. E. Rep. 223.

Even assuming that the allegations of the petition show a just reason for commutation, which, it is submitted, they do not, there is utter failure of proof in support of them and the findings of the lower court cannot stand.

It is to be noted that the Court originally found disability, total in character and permanent in quality, and awarded compensation payable weekly on that basis. Such being the case, the Court then decided the question that weekly payments of compensation were proper in view of the total and permanent disability.

No facts are proven in the commutation proceedings which show any different situation than that which was before the Court on its original determination. Therefore there is an utter failure to substantiate the petition for commutation. The only additional fact is that the petitioner needs money for doctors' bills, and this is contrary to the specific terms of the statute. Clearly, if under the usual practice this Court should call for the evidence to support the findings of fact by the Common Pleas, which are challenged as being without

POINT III.

IT IS SUBMITTED THAT THE JUDGMENT OF THE SUPREME COURT AFFIRMING THE JUDGMENT AND ORDER OF THE COURT OF COMMON PLEAS, COMMUTING COMPENSATION TO THE PETITIONER, SHOULD BE REVERSED AND SET ASIDE.

Respectfully submitted,

M. CASEWELL HEINE,
Attorney and of Counsel for Appellant.