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

New Jersey Court of Errors and Appeals

CHARLES HETZEL, JR., by next friend, and CHARLES HETZEL, *Plaintiffs,* *vs.* WASSON PISTON RING COMPANY, a Corporation, *Defendant.*	*Action at Law.* *On Notice of Motion to Strike Out.*

Brief for Defendant.

The above cases are actions at law, instituted by an infant employee against his employer for damages by reason of being injured while doing certain work for which he was employed, through the negligence of his employer, and the other action is by infant's father for loss of services, etc.

The underlying principle on which the infant plaintiff herein has instituted his action is that, inasmuch as the plaintiff is an infant under the age of twenty-one years, the provisions of the Workmen's Compensation Act of the State of New Jersey, entitled "An Act prescribing the liability of the employer to make compensation, etc," approved April 4th, 1911, and the amendments and supplements thereto, do not apply to or bind such infant, and the father's action is based upon his former common law right to recover for loss of services, etc.

Point I.

Section 2, Paragraph 9, reads as follows:

> "Every contract of hiring made subsequent to the time provided for this act to take effect shall be presumed to have been made with reference to the provisions of section II. of this act, and unless there be as a part of such contract an express statement in writing, prior to any accident, either in the contract itself or by written notice from either party to the other, that the provisions of section II. of this act are not intended to apply, then it shall be presumed that the parties have accepted the provisions of section II. of this act and have agreed to be bound thereby. In the employment of minors, section II. shall be presumed to apply unless the notice be given by or to the parent or guardian of the minor."

It would, therefore, appear that an infant also is presumed to have accepted the provisions of Section II. of the Act if the notice referred to therein is not given by or to the parent or guardian of such infant, to the effect that the infant intends to be bound by Section I. of the Act.

It has been held in this State that when a contract has been made for the benefit of an infant it shall bind him. (See *Bordentown* v. *Wallace*, 50 N. J. L., page 13.)

In the above case there are several references to text books on the subject of infancy, and also decisions of other states which our court seemed to follow in determining the question at issue before it in the matter under discussion. But, even admitting that an infant's contract at most, is a voidable one, this would not militate against the position assumed by the defendant. Our courts, in construing the Workmen's Compensation Act,

have called it a "Statutory Contract." (*Creagh* vs. *Nitram,* 86 Atl., p. 436). The construction placed upon the Act in this case has been followed in other cases by our Supreme Court. The Workmen's Compensation Act is an Act of public policy of the State of New Jersey, as Justice Swayze held in the case of *Rounsaville* vs. *Central Railroad Company,* 94 Atl., p. 392. In other words, the State of New Jersey adds to every contract of employment, which is either performed here, or contracted for here and performed either here or elsewhere, an additional agreement between the employer and employee, which provides for a certain schedule of payments to be made by the employer to the employee in the event of the employee sustaining injuries under certain circumstances and conditions. It was passed by the Legislature with the intention of securing certain rights to an employee, which previous to the passage of the Act, had not been his. There can be no doubt that the compensation schedule is certainly for the benefit of the employee. How many notices by the employee are given, or have been given to the effect that he desired to work under Section I. of the Employers' Liability Act? Does this not show that he realizes that the purpose of the fixed schedule of payments is for his benefit?

Point II.

The plaintiff will, no doubt, argue that the case of *Stephens* vs. *Dudbridge Iron Works Co., Ltd.,* King's Bench Div. Law Rep. 1904, Vol. 2, page 225, is authority for the proposition that an infant is not bound by the terms of a Workmen's Compensation Act, which in its terms includes infants. The above case can be distinguished in every particular from our Compensation Act, since the

English Act gives rise to an action in tort and so differs from out Act which is in the nature of a contract action. The case of the chore woman who was employed at Dover, England, and who afterward crossed the channel to Calais, France, and was injured while performing some act for employer and for which accident the English Courts held there could be no recovery, inasmuch as their Act had no extra-territorial effect, is an instance of the difference of the English Act and our own. If that accident had occurred under similar circumstances, where a person had been employed in New Jersey and was injured in New York, the injured person could have recovered compensation under our Act. (*Rounsaville* vs. *Central Railroad Company,* 94 Atl. Rep., 392.)

If the English Act had created a contractual obligation, then the hiring of the woman on English soil would have attached the compensation feature to the Act to such contract of hiring and it would not have been of any consequence whether the injuries had been received in England or France, because the benefits of the Act would have been attached as soon as the contract of hiring had been made. Without this precedent there is nothing before the Court which tends in any way to destroy the provisions of our Workmen's Compensation Act.

Point III.

The Act, as originally passed in 1911, with reference to the employment subject to this Act and the notice of refusal to accept Section II. of the Act, reads as follows:

> "7.—Compensation under agreement. Exceptions.—When employer and employe shall by agreement, either express or implied, as hereinafter provided, accept the provisions of

Section II. of this Act, compensation for personal injuries to or for the death of such employe by accident arising out of and in the course of his employment shall be made by the employer without regard to the negligence of the employer, according to the schedule contained in paragraph eleven, in all cases except when the injury or death is intentionally self-inflicted, or when intoxication is the natural and proximate cause of injury, and the burden of proof of such fact shall be upon the employer.

8.—Agreement deemed surrender of rights to other method.—Such agreement shall be a surrender by the parties thereto of their rights to any other method, form or amount of compensation or determination thereof than as provided in Section II. of this Act, and an acceptance of all the provisions of Section II. of this Act, and shall bind the employe himself and for compensation for his death shall bind his personal representatives, his widow and next of kin, as well as the employer, and those conducting his business during bankruptcy or insolvency.

9.—Employment subject to this act.—Every contract of hiring made subsequent to the time provided for this act to take effect shall be presumed to have been made with reference to the provisions of Section II. of this act, and unless there be as a part of such contract an express statement in writing, prior to any accident, either in the contract itself or by written notice from either party to the other, that the provisions of Section II. of this act are not intended to apply, then it shall be presumed that the parties have accepted the provisions of Section II. of this act and have agreed to be bound thereby. In

the employment of minors, *Section II. shall be presumed to apply unless the notice be given by or to the parent or guardian of the minor.*"

10.—Termination of contract.—The contract for the operation of the provisions of Section II. of this act may be determined by either party upon sixty days' notice in writing prior to any accident."

The plea of infancy is merely a common law rule of conduct. 223 U. S. 1, on page 50, 32 Supreme Court 169, page 175, and if there have been no vested rights under this rule of conduct, the Legislature, unless prevented by constitutional limitations, may change such rule. *Munn* vs. *Illinois,* 94 U. S. 113, 134. An infant was entitled to disaffirm a contract entered into by him at any time and could only affirm after he become of age. Our Compensation Act, in Section III, Paragraph 23, under the term "Synonyms" declares as follows:

"Employer is declared to be synonmous with master, etc., employee is synonymous with servant and includes all natural persons who preform service for another for financial consideration, etc."

This definition covers a great class of people, namely, employees, which class is divided into male and female employees, and adult and minor employees of both sexes. The Act does not, as a matter of fact, take away an infant's right of disaffirmance. It merely regulates it and provides that his disaffirmance of the contract created by the Legislature must be made at least 60 days before the occurence of any injuries to him. This regulation also applies to adult employees.

The Act is passed to benefit a large percentage of the population of New Jersey, namely, employees, and it merely happens that a great percentage of employees are infants. The Legislature

certainly has a right to pass laws for this general class. Even if there were a constitutional enactment the Legislature could do so, as may be seen by a reference to the District Court Act, wherein it is provided that all demands for juries must be made two days before the return day of a summons, otherwise a jury is waived. Here it may be seen that the Legislature has regulated a constitutional right. If, by judicial construction, the Compensation Act is not given the interpretation which we maintain it should be given, then we will have a state of affairs where no factory will engage employees under the age of twenty-one, because by doing so they will be assuming a different and greater liability toward infants than they would be to adults. The infants would, therefore, lose their opportunity of being engaged in all manners of employment. The position assumed by the plaintiff that, inasmuch as the defendant hired the plaintiff in contravention of the Factory Act there was no contract of hiring or employment, is without merit. By examining the complaint, we find that the action instituted is based upon a status of master and servant between the defendant and plaintiff, and this status could not arise without a contract of employment. Any New York decisions upon the point under discussion is not controlling, because the Employers' Liability Act of New York is an action in tort, and therefore, differs from our Compensation Act, which is one on contract. We may assume, however, for the sake of this argument, that the contract of employment was void because it came within the inhibition of the Factory Act and therefore, an action could not have been maintained by the defendant against the plaintiff for a breach of contract. This, however, merely suggest that if the purpose of a contract is not legal an action may not be maintained for breach of the same. Our courts have

so held. It does not say that there was no contract, but judicial interpretation of such contracts have gone only so far as to say that you may set up against an action brought for breach of contract the illegality of the same. It is a plea in bar to the recovery of damages.

We refer to the case of *Mika* vs. *Passaic Print Works,* 76 N. J. L., page 562, where defendant failed to provide guards for a machine and the Legislature had fixed a penalty for the failure to so provide. In this case it was held that defendant might set up contributory negligence and assumption of risk, etc. It did not say that there was no contract of employment, because defendant engaged an employee to work under certain circumstances, which would make the defendant liable to the State for a fine. So in this case, the mere fact that there was a fine for the employment of infants under the age of fourteen, would not militate against the conclusion that there was a contract of employment at the inception of the relationship between the above plaintiff and defendant.

The citation from the case of *Evers* vs. *Davis,* 86 N. J. L., page 196, appearing on page 9 of the appellant's brief, has reference to the benefit a plaintiff in a tort action derives from a penal statute through the medium of an action of negligence. It suggests that the failure to comply with the penal statute does not of itself create a liability upon the defendant, but the statute may be introduced for the purpose of neutralizing certain defenses, which, under ordinary circumstances the defendant might set up. We beg to call the court's attention, however, to the citation from the above case at page 204, reading as follows:

> "The point to be observed * * * is that whatever benefit the plaintiff in a civil action derives from such penal statutes, is through the medium of the action of negligence; from which

it follows, that if such action be abandoned, as was done in the present case, the plaintiff thereby cuts himself off from the very benefits of the statute that he is seeking to derive from it, etc."

This plaintiff has elected, we maintain, to work under Section II, which is the contractual feature of the Employers' Liability Act, commonly known as the Compensation Act, and therefore, by his election he has abandoned whatever rights he might have had from a penal statute in an action of negligence against his employer. Under the Compensation Act it matters little whether the employee was negligent or not, or whether the employer was negligent or not, because, if injuries were received by the employee in an accident arising out of and in the course of his employment, he was entitled to compensation as provided for in the schedule of payments under the Compensation Act.

The entire complaint in this action is based upon negligence on the part of the defendant, and if the court finds that the infant is bound by the terms of the Compensation Act, the question of negligence or failure to instruct the infant servant on the engagement of the infant servant, when such servant was under fourteen years of age, are immaterial factors in the argument. The father's claim in the above action, we maintain, is in the same position as the infant plaintiff's, and if the infant plaintiff is governed by the Compensation Act, the father has no claim against this defendant. If it is held that the defendant is bound according to the plaintiff's contention, then we maintain that the father could not successfully carry on an action against the defendant, because he would be as guilty in allowing his son to work contrary to the terms of the Factory Act as the defendant itself, in engaging such

infant. The father, the first two weeks after injury received by his infant son, is not bound to pay for the son's medical expenses, but the employer is. (Section II, Paragraph 14, Laws of 1911 as amended in 1913, etc.). The father no longer is entitled to the wages of the infant son, and in order to show that the father does not suffer a loss by reason of the infant son's inability to work after an accident, we respectfully call the court's attention to Paragraph 21 of Section II, wherein it is provided, in speaking of commutation of the payments: "* * * 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 in the same manner in which wages are ordinarily paid." It is also to be noted that the injury to the infant plaintiff occurred on August 31st, 1915, and we therefore, call the court's attention to Chapter 301 of the Laws of 1913, which reads as follows:

> "A Supplement to an Act entitled, 'An Act prescribing the liability of an employer to make compensation for injuries received by an employe in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder,' approved April fourth, nineteen hundred and eleven.
>
> Be it enacted by the Senate and General Assembly of the State of New Jersey:
>
> 1. In any case where an infant or minor under the age of twenty-one years shall be entitled to receive a distributive share of or compensation by virtue of the provisions of the act to which this act is a supplement, any duly authorized guardian of the person and proper-

ty of and for such infant or minor appointed by the surrogate or the Orphans' Court of the county in which said infant or minor resides shall be authorized and empowered to act for such infant or minor to the same extent as a duly appointed next friend or guardian ad litem appointed by any court of law of this State and any such guardian appointed by the surrogate or Orphans Court shall have the right and authority to compromise and make composition in behalf of such infant or minor of any disputed claim for compensation arising under the provisions of the act to which this act is a supplement; provided, the terms of such compromise or composition shall be approved by an order of the Court of Common Pleas of the county wherein such infant or minor resides upon presentation of the facts and the terms thereof to said court, before the same shall become effective." Approved April 9th, 1913.

We cannot conceive of any more deliberate legislation covering all manners of persons than the 1911 Act, with reference to employee's death, with the supplements and amendments thereto. The last mentioned supplement carries out the idea of the Act as originally passed and merely set forth the manner in which payments shall be made to infants either where an action has been instituted or where the claim has been compromised. The infant, if he is bound by the terms of the Act with reference to the election of Section II, certainly may bind his father so that the father may be without remedy in the event of the son's injuries or death, because if the contractual obligation fastens itself upon the employment of the infant plaintiff and his employer, then all results necessarily flowing from

such contract are equally binding upon the father. Section II, Paragraph 8, reads as follows:

> "Such agreement shall be a surrender by the parties thereto of their rights to any other method, form or amount of compensation or determination thereof than as provided in Section II of this act, and an acceptance of all the provisions of Section II of this act, and shall bind the employe himself and for compensation for his death shall bind his personal representatives, his widow and next of kin, as well as the employer, and those conducting his business during bankruptcy or insolvency."

With reference to the particular paragraph, we beg to refer to the case of *Gregutis* vs. *Waclark Wire Co.*, 92 Alt. Rep., page 354, in which is stated at page 356: "Since the Workmen's Compensation Act, by its terms, repealed all inconsistent legislation, the rights and remedies thereby given are substituted for those theretofore provided by the Death Act. The result is, that where, as here, the employee contracts to work under Section II of the Workmen's Compensation Act, the damages to be paid by the employer in case of death, are limited by that Act, and an action cannot be maintained in disregard of that Act."

If the above mentioned paragraph is binding upon all with reference to a case of death, it is equally binding in the case of an injury not resulting in death. We therefore, most respectfully contend that the judgment of the Hudson County Circuit Court in striking out the complaint in each case, should be affirmed, with costs.

Respectfully submitted,

KALISCH & KALISCH,
Attorneys of Defendant.

ISIDOR KALISCH,
On the Brief.

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Petition for Appointment of Next Friend.

Filed October 16, 1915.

Hudson County Circuit Court

CHARLES HETZEL, Jr., by MARGARET HETZEL, his next friend, Plaintiff, vs. WASSON PISTON RING COMPANY, a corporation, Defendant.	Action at Law.

TO THE HONORABLE LUTHER A. CAMPBELL, JUDGE OF THE HUDSON COUNTY CIRCUIT COURT.

The petition of Charles Hetzel, Jr., the plaintiff in the above stated cause of action humbly shows unto your Honor that he is an infant under the age of twenty-one years, to wit: thirteen years and three months, and that he is advised that he has a good and just cause of action against the Wasson Piston Ring Company, a corporation, for damages received from injuries caused by the negligence of said Wasson Piston Ring Company, a corporation, and that your petitioner is about to commence an action against the said Wasson Piston Ring Company, a corporation, in the above stated Court for the same.

Your petitioner therefore humbly prays your Honor to permit him to prosecute the said action by Margaret Hetzel, the mother of your petitioner,

who resides in the City of Hoboken, County of Hudson and State of New Jersey, as your petitioner's next friend.

CHARLES HETZEL, JR.,
Petitioner.

I hereby consent and agree that the above named Charles Hetzel, Jr., be at liberty to prosecute this action by me as his next friend, according to the prayer of the above petition.

MARGARET HETZEL.

Dated October 9th, 1915.

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

John B. Rosser, of full age, being duly sworn according to law upon his oath deposes and says that he was present and saw Charles Hetzel, Jr., the plaintiff named in the foregoing stated cause of action sign the foregoing petition and also that he was present and saw Margaret Hetzel, the person mentioned in the foregoing petition sign the consent thereunder written; that they were signed on the 9th day of October, 1915.

JOHN B. ROSSER.

Subscribed and sworn to before me this
9th day of October, A. D. 1915.

GEORGE A. CONKLIN,
Notary Public of New Jersey.

Filed, Clerk's office, Oct. 16, 1915. Hudson County, N. J.

JOHN J. McGOVERN,
Clerk.

Order Appointing Next Friend.

Filed October 16, 1915.

IT APPEARING upon reading the petition of Charles Hetzel, Jr., and the consent of Margaret Hetzel, thereunder written, and the affidavit of John B. Rosser, thereto attached, that the said Charles Hetzel, Jr., is advised that he has a good cause of action against the said Wasson Piston Ring Company, a corporation, and is an infant, under the age of twenty-one years.

IT IS ORDERED, on this 11th day of October, A. D. 1915, that Margaret Hetzel be admitted to prosecute the said cause of action for the said Charles Hetzel, Jr., in the aforesaid court against the Wasson Piston Ring Company, a corporation, as the next friend of the said Charles Hetzel, Jr.

LUTHER A. CAMPBELL,
Judge of the Hudson
County Circuit Court.

On motion of Harlan Besson, attorney of plaintiff.

Filed, Clerk's office, Oct. 16, 1915. Hudson county, N. J.

JOHN J. McGOVERN,
Clerk.

Summons.

Filed October 16, 1915.

THE STATE OF NEW JERSEY, TO WASSON PISTON RING COMPANY, a corporation:

(Seal) You are summoned to answer the annexed complaint of CHARLES HETZEL, JR., by Margaret Hetzel, his next friend, in an action at law in the HUDSON COUNTY CIRCUIT COURT. And take notice that unless you file your answer to said complaint with the Clerk of the said Hudson County Circuit Court, at Jersey City, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

WITNESS, HONORABLE LUTHER A. CAMPBELL, Judge of the Hudson County Circuit Court, at Jersey City, this sixteenth day of October, Nineteen hundred and fifteen.

JOHN J. McGOVERN,
Clerk.

HARLAN BESSON,
Attorney,
Savings Bank Building,
Hoboken, New Jersey.

Complaint.

Filed October 16, 1915.

The defendant was summoned to answer unto the plaintiff's complaint.

The plaintiff, who resides at No. 813 Willow Avenue, Hoboken, New Jersey, says:

FIRST COUNT.

1. That he is an infant thirteen years of age.

2. That the defendant owns and operates a factory and workshop situate at No. 1123 Clinton Street, Hoboken, New Jersey, in which defendant manufactures piston rings and other metallic articles.

3. That in manufacturing the said piston rings and other metallic articles, the defendant possessed and operated by its agents and servants divers large machines, part of the mechanism of which were certain automatic grindstones, used for grinding the piston rings and other metallic articles manufactured by the defendant.

4. That an act of the Legislature of the State of New Jersey, entitled, "An Act regulating the age, employment, safety, health and work hours of persons, employes and operatives in factories, workshops, mills and all places where the manufacture of goods of any kind is carried on, and to establish a department for the enforcement thereof," approved March 24, 1904, which is known as Chapter 64, Pamphlet Laws 1904, page 152, of the State of New Jersey, provides as follows:

> "No child under the age of fourteen years shall be employed, allowed or permitted to

work in any factory, workshop, mill or place where the manufacture of goods of any kind is carried on; any corporation, firm, individual, parent, parents or custodian of any child who shall violate any of the provisions of this section, shall be liable to a penalty of fifty dollars for each offense."

5. That the defendant by its agents and servants, knew that the plaintiff was an infant of the age of thirteen years and under the age of fourteen years.

6. That it was the duty of the defendant to refrain from employing the plaintiff in the factory and workshop conducted by it as aforesaid.

7. That on August 31, 1915, while the defendant was operating its factory and workshop as aforesaid, and was engaged in the manufacture of piston rings and other metallic articles, it did by its agents and servants carelessly, wilfully and negligently failed and neglected to perform its duty to refrain from employing the plaintiff in its factory or workshop as aforesaid, and did carelessly, wilfully and negligently employ the plaintiff, who was an infant of the age of thirteen years and under the age of fourteen years to work in the said factory or workshop and assist in the operation of one of the machines containing an automatic grind-stone.

8. That on September 2, 1915, plaintiff, while in defendant's employ, was assisting in the operation of the said machine containing the automatic grindstone in the workshop and factory of the defendant and because of the defendant's negligence in failing to refrain from employing the plaintiff as aforesaid, plaintiff then and there caught his left hand

in the machinery of the said grind-stone and before he could extricate it, sustained severe injuries.

9. That solely by reason of defendant's negligence as aforesaid, the left hand of the plaintiff was seriously and permanently injured, from which injuries he became and continued to be sick, sore and disabled and suffered and still suffers great pain and distress; and as a result of said injuries the plaintiff sustained the loss of the nails of the thumb and the third and fourth fingers of the left hand and the index and second fingers of the left hand were so badly mangled that it became necessary to amputate them; that the plaintiff has lost the free and full use of his left hand and will be wholly incapacitated from performing any arduous labor for a long time to come.

SECOND COUNT.

1. Paragraphs 1, 2 and 3 of the first count are made part of this count.

2. That plaintiff, who is an infant of the age of thirteen years, was on or about August 31, 1915, employed by defendant to assist in the operation of a large machine, a part of which was an automatic grind-stone used in the manufacture of the piston rings and other metallic articles as aforesaid; that plaintiff had never been employed to do work of that character and was wholly ignorant of the manner in which it might be performed in safety and wholly inexperienced in the use of said machine.

3. That defendant wholly disregarding its duty by its agents and servants negligently and care-

lessly permitted plaintiff to engage in said work without informing him that said work was in anywise dangerous to an unskilled or inexperienced workman, nor did defendant by its agents and servants provide the said automatic grind-stone with the proper guard to make the operation of the said machine more safe, nor did the defendant by its agents and servants instruct the plaintiff as to the proper manner in which to do said work, all of which it was the defendant's duty to do.

4. That said work is dangerous and requires skill and experience on the part of the workman in order that it may be safely performed and was not and is not such work as an employee of the plaintiff's age and experience ought properly to be required to do.

5. That on or about September 2, 1915, while plaintiff was engaged in assisting in the operation of the machine containing the automatic grind-stone, he caught his hand in the mechanism of said machine, so that it came in contact with the grind-stone and before he could extricate it sustained severe injuries.

6. Paragraph 9 of the first count is made part of this count.

Plaintiff demands as damages on both counts $10,000.

HARLAN BESSON,
Attorney of Plaintiff.

Filed, Clerk's office Oct. 19, 1915. Hudson County, N. J.

JOHN J. McGOVERN,
Clerk.

Notice of Motion to Strike Out Summons and Complaint.

Filed January 8, 1916.

To HARLAN BESSON, Esquire,
Attorney of Plaintiff.

PLEASE TAKE NOTICE that we shall move to strike out the summons and complaint filed in the above matter, before Honorable Luther A. Campbell, Judge of the Hudson County Circuit Court, at the Court House, Newark Avenue, Jersey City, New Jersey, on Friday, November nineteenth, Nineteen hundred and fifteen, at ten A. M., or as soon thereafter as counsel can be heard, for the following reasons:

1. That the above action is an action at law, whereas the circumstances and facts on which this action is based gives rise only to a suit under Section II of the Employers' Liability Act 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 for compensation and regulating procedure for the determination of liability and compensation thereunder," approved April 4, 1911, and the supplements thereto and amendments thereof.

2. That the complaint filed in the above stated cause does not allege a cause of action.

Attorneys of Defendant.

Filed, Clerk's office Jan. 8, 1916. Hudson County, N. J.

JOHN J. McGOVERN,
Clerk.

HARLAN BESSON, Esq., Attorney for Plaintiff.
KALISH & KALISH, Esqs., Attorneys for Defendant.

Conclusions.

Filed January 5, 1916.

CAMPBELL, J.

These matters are before me on notices to strike out the complaints for the following reasons:

1. That the above action is an action at law. Whereas the circumstances and facts on which this action is based gives rise only to a suit under Section II of the Employers' Liability Act 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 accurate schedule for compensation and regulating procedure for the determination of liability and compensation thereunder," approved April 4, 1911, and the supplements thereto and amendments thereof.

2. That the complaint filed in the above stated cause does not allege a cause of action.

The complaints may be struck out for the reasons urged as above.

Dated January 4, 1916.

LUTHER A. CAMPBELL,
Judge.

Filed, Clerk's Office, Jan. 5, 1916. Hudson County, N. J.

JOHN J. McGOVERN,
Clerk.

Order Striking Out Summons and Complaint.

Filed January 20, 1916.

Motion to strike out the summons and complaint in the above entitled cause having been heard by me in the presence of Isidor Kalish, of Kalish & Kalish, for the motion, and Harlan Besson, contra, and having duly considered the argument of counsel on both sides, it is

ORDERED on this 10th day of January, Nineteen Hundred and Sixteen, that the summons and complaint be stricken out with costs to the defendant.

LUTHER A. CAMPBELL,
Judge.

Filed, Clerk's Office, Jan. 20, 1916. Hudson County, N. J.

JOHN J. McGOVERN,
Clerk.

Judgment.

Filed, January 16, 1916.

Defendant moved to strike out the complaint on the grounds (1) that the above action is an action at law, whereas the circumstances and facts on which this action is based gives rise only to a suit under Section II of the Employers' Liability Act 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 for compensation and regulating procedure for the determination of liability and compensation thereunder," approved April 4th, 1911, and the supplements thereto and amendments thereof; (2) that the complaint filed in the above stated cause does not allege a cause of action; upon which motion, arguments for plaintiff and defendant by their respective counsel, were duly heard, and the Court being of the opinion that the complaint should be struck out for the reasons as urged by the defendant, ordered that the same be struck out.

Whereupon it is adjudged that the complaint of the plaintiff be struck out and that the defendant recover from the plaintiff, his costs, which are taxed at Nine dollars.

Dated January 16, 1916.

LUTHER A. CAMPBELL,
Judge.

Filed, Jan. 16, 1916.

JOHN J. McGOVERN,
Clerk.

Notice of Appeal.

Filed January 28, 1916.

HUDSON COUNTY CIRCUIT COURT.

CHARLES HETZEL, Jr., by MARGARET HETZEL, his next friend, Plaintiff,	
vs.	Action at Law.
WASSON PISTON RING COMPANY, a corporation, Defendant.	

To

Messrs. KALISCH & KALISCH,
Attorneys of Defendant,
Newark, N. J.

Sirs:

TAKE NOTICE that the plaintiff appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment of the Hudson County Circuit Court, rendered in the above entitled cause for the following reasons:

1. Because the Hudson County Circuit Court erroneously struck out the summons and complaint in the above entitled cause for the following reasons:

(a) That the above action is an action at law. Whereas the circumstances and facts on which this action is based gives rise only to a suit under

Section II of the Employers' Liability Act 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 accurate schedule for compensation and regulating procedure for the determination of liability and compensation thereunder," approved April 4, 1911, and the supplements thereto and amendments thereof.

(b) That the complaint filed in the above stated cause does not alleged a cause of action.

2. That the complaint filed in the above entitled cause states a good cause of action.

3. Because the complaint filed in the above entitled cause states a proper action at law, cognizable and triable in the Hudson County Circuit Court.

4. Because the motion made by the defendant's attorney to strike out the complaint in the above named cause should have been denied.

5. Because the judgment of the Hudson County Circuit court is in other respects erroneous and improper.

Dated January 27, 1916.

Respectfully,

HARLAN BESSON,
Attorney of Plaintiff.

Indorsement on Notice of Appeal.

Filed Jan. 31, 1916.

HUDSON COUNTY CIRCUIT COURT.

CHARLES HETZEL, Jr., by MARGARET HETZEL, his next friend,
Plaintiff,

vs.

WASSON PISTON RING COMPANY,
a corporation,
Defendant.

ACTION AT LAW.
NOTICE OF APPEAL.

Service of the within Notice of Appeal is hereby acknowledged.

Dated January 31, 1916.

KALISCH & KALISCH,
Attorneys of Defendant.

RETURN.

The answer of Luther A. Campbell, Esquire, Judge of the Circuit Court, holden in and for the County of Hudson and within named, the record and proceedings of the Plaint whereof mention is within made with all things touching the same, I send to the Judges of our Court of Errors and Appeals, of the last resort of all causes at Trenton, N. J., at the day and year within contained, in a certain schedule to this appeal annexed as within I am commanded.

LUTHER A. CAMPBELL,
Judge.

New Jersey Court of Errors and Appeals

CHARLES HETZEL, Jr., by Margaret Hetzel, his next friend, Plaintiff-Appellant, vs. WASSON PISTON RING COMPANY, a corporation, Defendant-Respondent.	Action at Law.
CHARLES HETZEL, Plaintiff-Appellant, vs. WASSON PISTON RING COMPANY, a corporation, Defendant-Respondent.	Action at Law.

BRIEF OF HARLAN BESSON, OF COUNSEL WITH APPELLANTS.

Statement.

These are appeals from two judgments of the Hudson County Circuit Court striking out two complaints for defects in substance. Because they involve the same facts and originate from the same transaction both causes were argued together below and are so argued here.

Facts.

On August 31, 1915, Charles Hetzel, Jr., a boy thirteen years old, was employed by the Wasson Piston Ring Company in its factory at 1123 Clinton

Street, Hoboken, N. J. He was put to work assisting in the operation of an automatic grindstone. On September 2, 1915, while so engaged, his left hand was caught by the mechanism of the grindstone and so badly injured that it was necessary to amputate several of his fingers.

Thereupon young Hetzel, by next friend, brought suit against the Wasson Piston Ring Company, and his father did likewise. The case books have been separately printed. The complaints are set forth at length in each case book.

Defendant's counsel moved to strike out each complaint for the following reasons:

> 1. That the above action is an action at law, whereas the circumstances and facts on which this action is based gives rise only to a suit under Section II of the Employers' Liability Act 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 for compensation and regulating procedure for the determination of liability and compensation thereunder," approved April 4, 1911, and the supplements thereto and amendments thereof.
>
> 2. That the complaint filed in the above stated cause does not allege a cause of action.

POINT I.

These cases are not controlled by the Employers' Liability Act.

The Court's attention is directed to Section 9, P. L. 1911, Chapter 95, page 134, which defines the relations to which the act applies and which is as follows:

"Every *contract of hiring* made subsequent to the time provided for this act to take effect shall be presumed to have been made with reference to the provisions of Section II of this act, and unless there be as a part of such contract an express statement in writing, prior to any accident, either in the contract itself or by written notice from either party to the other, that the provisions of Section II of this act are not intended to apply, then it shall be presumed that the parties have accepted the provisions of Section II of this act and have agreed to be bound thereby. In the employment of minors, Section II shall be presumed to apply unless the notice be given by or to the parent or guardian of the minor."

There is a peculiar significance attached to the expression "contract of hiring." The word "contract" has been defined as follows:

"A contract, in its broadest sense, is an agreement whereby one or more of the parties acquire a right, in rem or in personam, in relation to some person, thing, act, or forbearance."

Clark on Contracts (3rd Ed.), page 1.

"An agreement enforceable at law, made between two or more persons, by which rights are acquired by one or more to acts or forbearances on the part of the other or others."

Anson, Cont. (8th Ed.), 9.

"Every agreement and promise enforceable by law is a contract."

Pol. Cont. 1.

"An agreement, upon sufficient consideration, to do or not to do a particular thing."

Bl. Comm., 442; 2 Kent Comm., 449.

"An agreement between two or more parties for the doing or the not doing of some particular thing."

1 Pars. Cont., 6.

"A contract or agreement not under seal may be defined to be an engagement entered into between two or more persons, whereby, in consideration of something done or to be done by the party or parties on one side, the party or parties on the other promise to do or omit to do some act."

Chit. Cont., 7.

"A contract is a promise from one or more persons to another or others, either made in fact or created by law, to do or refrain from some lawful thing; being also under the seal of the promisor, or being reduced to a judicial record, or being accompanied by a valid consideration, or being executed and not being in a form forbidden or declared inadequate by law."

Bish. Cont., Sec. 22; see "Contracts";
Dec. Dig. (Key-No), Sec. 1;
Cent. Dig., Sec. 1;
Clark on Contracts (3rd Ed.), page 2.

Clark on Contracts (Third Edition), a standard work, declares the word "contract" to have five distinct elements:

As there must be an agreement directly contemplating and resulting in an obligation, and the agreement must be enforceable in the law, therefore—

(a) There must be a distinct communication by the parties to one another of their intention, or an offer and acceptance.

(b) The agreement must possess the marks which the law requires in order that it may affect the legal relations of the parties, and be an act in the law. Therefore,—

(1) It must be in the form required by law.

(2) There must be a consideration, when required by law.

(c) The parties must be capable in law of making a valid contract.

(d) The consent expressed in offer and acceptance must be genuine.

(e) The object which the contract proposes to effect must be legal.

Clark on Contracts (3rd Ed.), page 14.

It is contended that the expression "contract of hiring" as used in this act means an agreement enforceable at law as distinguished from agreements which are illegal, immoral or contrary to public policy. For example a strumpet in a bawdy-house injured in the course of employment could have no recourse against the proprietor under the provisions of the act. Nor could the employees of a bucket shop enjoy the benefits of the act. It is perceived that agreements between persons to do illegal tasks do not constitute the relation of employer and employee within the purview of this statute.

Now in the cases at bar, the boy, Charles Hetzel, Jr., was under the age of fourteen and the defend-

ant was prohibited from employing him in a factory or workshop by the provisions of an act entitled, "An Act regulating the age, employment, safety, health and work hours of persons, employes and operatives in factories, workshops, mills and all places where the manufacture of goods of any kind is carriad on, and to establish a department for the enforcement thereof," approved March 24, 1904, which is known as Chapter 64, Phamphlet laws of 1904, page 152, of the State of New Jersey, Section one of which provides as follows:

> "No child under the age of fourteen years shall be employed, allowed or permitted to work in any factory, workshop, mill or place where the manufacture of goods of any kind is carried on; any corporation, firm, individual, parent, parents or custodian of any child who shall violate any of the provisions of this section, shall be liable to a penalty of fifty dollars for each offense."

How can the act of the defendant in engaging the boy Charles Hetzel, Jr., to work in its factory be construed to be a "contract of hiring" when such an agreement is one in direct violation of the law as above quoted? A contract is an agreement enforceable at law and a *contract of hiring* is an agreement of hiring enforceable at law. Bearing these propositions in mind it is obvious that the relation which existed between young Hetzel and the defendant was not a "contract of hiring" as contemplated by the Employers' Liability Act.

The language of the "Factory Act," supra, clearly prohibits the employment of a child in a factory or workshop and provides a penalty for so doing. The effect of the clause providing the penalty, of itself, makes such an agreement of hiring void.

See 6 Ruling Case Law, Sec. 108, page 702.
Clark on Contracts (3d Ed.), pages 322, 323.
Short vs. Mining Co., 45 L. R. A., 603.
Bickett vs. Chatterton, 13 R. I., 299.

In resume it is urged that the Employers' Liability Act was intended to include only agreements enforceable at law and that the relation of master and servant does not contemplate relations between servile and dominant persons, the purpose of which relations, is to accomplish a violation of law.

The relationship between Charles Hetzel, Jr., and the Wasson Piston Ring Co., was not a "contract of hiring" as contemplated by the Employers' Liability Act, and therefore its provisions have no application to the case at bar.

POINT II.

The infant plaintiff is not barred from recovery because his employment was contrary to law.

Section one of the "Factory Act," supra, is intended for the benefit and protection of infants. It will be noted that it penalizes those persons who seek to employ infants in factories or workshops, and while it expressly prohibits such employment, it does not penalize infants.

It has become apparent to the body politic that the employment of young children in factories and workshops is a scourge and curse to society. The legislature has established fourteen years as the line of demarcation. This interdict should be vitalized by the courts not emasculated. Children

are not fit to operate dangerous machines. The average thoughtful parent is afraid to entrust his child with a knife much less to permit his child to operate such mechanisms. Those persons who permit children of tender years to operate complicated and dangerous machinery for the purpose of personal gain, and who are willing to discount a child's maimed limbs and broken health in terms of selfish profit are beyond the pale of decency. The laws prohibiting and penalizing such conduct should be electrified by a vigorous interpretation in consonance with the purpose they were intended to accomplish.

It has been held that the infant was not barred from suit because of the illegality of his employment.

See

26 Cyc., 1091;
Dion vs. Richmond Mfg. Co., 24 R. I., 187, 52 Atl., 889;
Marino vs. Lehmaier, 173 N. Y., 530.

POINT III.

The infant plaintiff was not a trespasser.

Assuming that the relation of employer and employee as contemplated by the provisions of the Employers' Liability Act did not exist, nevertheless the infant plaintiff could not be considered as a trespasser and to support this view the Court is requested to examine the following authorities:

See

26 Cyc., page 1080, 1081;
Lake Shore &c. R. R. Co. vs. Baldwin, 19 Ohio Circuit Court, 338.

POINT IV.

Both counts of each complaint set out a cause of action.

Adopting the plaintiffs' view that the provisions of the Employers' Liability Act have no application to the cases at bar, it is evident to establish negligence by the defendant, there must have been some duty owed by the defendant to the plaintiff Charles Hetzel, Jr. It is urged that one duty which the defendant owed young Hetzel was to exercise reasonable care in refraining from employing an infant under the age of fourteen years in the operation of a dangerous machine in its factory or workshop. It is perceived that the opinion in the case of Miker vs. Passaic Print Works, 76 N. J. L., 561 (Ct. of Err. & App.) has no application to the cases at bar. The "Factory Act" clearly prohibits the employment of an infant under the age of fourteen years in a factory or workshop, as in the case of Evers vs. Davis, 86 N. J. L., 196 (Ct. of Errors & Appeals, 1914), at page 204, it was held:

> "The point to be observed * * * is that whatever benefit the plaintiff in a civil action derives from such penal statutes is through the medium of the action of negligence; from which it follows that if such action be abandoned, as was done in the present case, the plaintiff thereby cuts himself off from the very benefits of the statute that he is seeking to derive from it.
>
> It is the necessary corollary of these views that the defendant in such action of negligence retains all of the defences appropriate to such action that are not affected by such penal statute which, as we have seen, operates con-

clusively upon the basis of the defendant's liability but not at all upon the factum of such liability. The operation of such a statute, in fine, is that the defendant's duty toward the plaintiff as affected by such statute takes the place of what would have been his common law duty if such statute had not been enacted, leaving the action of negligence in other respects unaffected by such statute. Thus a defendant, although he cannot be heard to say that it was not his duty to obey the statute, may show what he did in his effort to obey it leaving it to the jury to say whether such effort was what a reasonably prudent person would have done in view of the statute."

It is perceived that the view laid down in Evers vs. Davis, supra, is the law of this State and the duty provided by the statutory interdict of section one of the "Factory Act" is the duty which was owed by the defendant to the plaintiff under the circumstances of this case, and in order to absolve itself from liability of negligence, it was incumbent upon it to use reasonable care in the performance of this duty.

There is no distinction between the "Tenement House Act" and the "Factory Act," both are in their nature police regulations and are intended to protect society from certain kinds of conduct which human experience has demonstrated to be a public menace.

It is true that in express language these statutes do not create new forms of civil suit, but they do create positive duties which are owed by persons to individuals as well as to the public, which duties such persons must use reasonable care to perform.

The second count of such complaint relates to the negligent act on the part of the defendant in

failing to instruct young Hetzel in the proper use of the machine. The Court is directed to examine the very interesting case of Marino vs. Lehmaier in 173 N. Y., 530, in which a provision similar to that in the case at bar has been discussed.

It is urged that an examination by the Court of the complaint in each case will indicate that each count sets forth a good cause of action, and that both counts ought to be sustained and the judgment of the Hudson County Circuit Court in striking out each complaint reversed.

POINT V.

The judgment of the Hudson County Circuit Court in striking out the complaint in each case should be set aside with costs.

Respectfully submitted,

HARLAN BESSON,
of Counsel with Plaintiffs.

INDEX.

Summons.

Filed October 19, 1915.

Hudson County Circuit Court

CHARLES HETZEL, Plaintiff, vs. WASSON PISTON RING COMPANY, Defendant.	Action at law.

THE STATE OF NEW JERSEY, TO WASSON PISTON RING COMPANY, a corporation:

You are summoned to answer the annexed complaint of CHARLES HETZEL, in an action at law in the HUDSON COUNTY CIRCUIT COURT. And take notice that unless you file your answer to said complaint with the Clerk of said Hudson County Circuit Court, at Jersey City, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

WITNESS, HONORABLE LUTHER A. CAMPBELL, Judge of the Hudson County Circuit Court, at Jersey City, this sixteenth day of October, Nineteen hundred and fifteen.

JOHN J. McGOVERN,
Clerk.

HARLAN BESSON,
Attorney,
Savings Bank Building,
Hoboken, New Jersey.

Complaint.

Filed October 19, 1915.

THE DEFENDANT WAS SUMMONED TO ANSWER UNTO THE PLAINTIFF COMPLAINT.

The plaintiff, who resides at No. 813 Willow Avenue, Hoboken, New Jersey, says:

FIRST COUNT:

1. That at the time hereinafter mentioned, one Charles Hetzel, Jr., was the servant and son of the plaintiff.

2. That the defendant owns and operates a factory and workshop situate at No. 1123 Clinton Street, Hoboken, New Jersey, in which defendant manufactures piston rings and other metallic articles.

3. That in manufacturing the said piston rings and other metallic articles, the defendant possessed and operated by its agents and servants divers large machines, part of the mechanism of which were certain automatic grind-stones, used for grinding the piston rings and other metallic articles manufactured by the defendant.

4. That an act of the Legislature of the State of New Jersey, entitled, "An Act regulating the age, employment, safety, health and work hours of persons, employes and operatives in factories, workshops, mills and all places where the manufacture of goods of any kinds is carried on, and to establish a department for the enforcement thereof," approved March 24, 1904, which is known as

Chapter 64, Pamphlet laws of 1904, page 152, of the State of New Jersey, provides as follows:

> "No child under the age of fourteen years shall be employed, allowed or permitted to work in any factory, workshop, mill or place where the manufacture of goods of any kind is carried on; any corporation, firm, individual parent, parents or custodian of any child who shall violate any of the provisions of this section, shall be liable to a penalty of fifty dollars for each offense."

5. That the defendant, by its agents and servants knew that the said Charles Hetzel, Jr., was an infant of the age of thirteen years and under the age of fourteen years.

6. That it was the duty of the defendant to refrain from employing the said Charles Hetzel, Jr., in the factory and workshop conducted by it as aforesaid.

7. That on August 31, 1915, while the defendant was operating its factory and workshop as aforesaid, and was engaged in the manufacture of piston rings and other metallic articles, it did, by its agents and servants, carelessly, willfully and negligently fail and neglect to perform its duty to refrain from employing the said Charles Hetzel, Jr., in its factory and workshop as aforesaid, and did carelessly, willfully and negligently employ the said Charles Hetzel, Jr., who was an infant of the age of thirteen years and under the age of fourteen years to work in the said factory or workshop and assist in the operation of one of the machines containing an automatic grind-stone.

8. That on September 2, 1915, the said Charles Hetzel, Jr., while in the defendant's employ, was assisting in the operation of the said machine containing the automatic grind-stone in the workshop and factory of the defendant and because of the defendant's negligence in failing to refrain from employing the said Charles Hetzel, Jr., as aforesaid, the said Charles Hetzel, Jr., then and there caught his left hand in the machinery of the said grind-stone and before he could extricate it, sustained severe injuries.

9. That solely by reason of the defendant's negligence as aforesaid, the left hand of the said Charles Hetzel, Jr., servant and son of the plaintiff, was seriously and permanently injured, from which injuries the said Charles Hetzel, Jr., became and continued to be sick, sore and disabled and suffered and still suffers great pain and distress; that as a result of said injuries the said Charles Hetzel, Jr., sustained the loss of the nails of the thumb and the third and fourth fingers of the left hand, and the index and second fingers of the left hand were so badly mangled that it became necessary to amputate them; that the said Charles Hetzel, Jr., has lost the free and full use of his left hand and will be wholly incapacitated from performing any arduous labor for a long time to come, whereby the plaintiff is deprived of his services and has been obliged to expend a considerable sum of money in caring for him for his said injuries and in nursing him, and for doctor's fees for attendance, consultations, advice, operation and treatment.

SECOND COUNT:

1. Paragraphs 1, 2 and 3 of the first count are made part of this count.

2. That the said Charles Hetzel, Jr., who is an infant of the age of thirteen years, was on or about August 31, 1915, employed by defendant to assist in the operation of a large machine, a part of which was an automatic grind-stone used in the manufacture of the piston rings and other metallic articles as aforesaid, that the said Charles Hetzel, Jr., had never been employed to do work of that character and was wholly ignorant of the manner in which it might be performed in safety and wholly inexperienced in the use of said machine.

3. That defendant wholly disregarding its duty by its agents and servants negligently and carelessly permitted the said Charles Hetzel, Jr., to engage in said work without informing him that said work was in anywise dangerous to an unskilled or inexperienced workman, nor did defendant, by its agents and servants, provide the said automatic grind-stone with the proper guard to make the operation of the said machine more safe, nor did the defendant, by its agents and servants, instruct the said Charles Hetzel, Jr., as to the proper manner in which to do said work, all of which it was the defendant's duty to do.

4. That said work is dangerous and requires skill and experience on the part of the workmen in order that it may be safely performed, and was not and is not such work as an employee of the age and experience of the said Charles Hetzel, Jr., ought properly to be required to do.

5. That on or about September 2, 1915, while the said Charles Hetzel was engaged in assisting in the operation of the machine containing the automatic grind-stone, he caught his hand in the mechanism of said machine so that it came in con-

tact with the grind-stone and before he could extricate it, sustained severe injuries.

6. Paragraph 9 of the first count is made part of this count.

Plaintiff demands as his damages $4,000.

HARLAN BESSON,
Attorney for Plaintiff.

Filed Clerk's Office,
Oct. 19, 1915.
Hudson County, N. J.
JOHN J. MCGOVERN,
Clerk.

Notice of Motion to Strike Out Summons and Complaint.

Filed January 8, 1916.

TO HARLAN BESSON, Esquire,
Attorney of Plaintiff.

PLEASE TAKE NOTICE that we shall move to strike out the summons and complaint filed in the above matter, before Honorable Luther A. Campbell, Judge of the Hudson County Circuit Court, at the Court House, Newark Avenue, Jersey City, New Jersey, on Friday, November nineteenth, Nineteen hundred and fifteen, at ten o'clock A. M., or as soon thereafter as counsel may be heard, for the following reasons:

1. That the above action is an action at law whereas the circumstances and facts on which this

action is based gives rise only to a suit under section II of the Employers' Liability Act 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 for compensation and regulating procedure for the determination of liability and compensation thereunder," approved April 4th, 1911, and the supplements thereto and amendments thereof.

2. That the complaint filed in the above stated cause does not allege a cause for action.

Attorneys for Defendant.

Filed, Clerk's Office,
January 8, 1916,
Hudson County, N. J.
JOHN J. MCGOVERN,
Clerk.

Conclusions.

Filed January 5, 1916.

HARLAN BESSON, Esq.,
Attorney for Plaintiffs.

KALISCH & KALISCH, Esqs.,
Attorneys for Defendant.

CAMPBELL, J.:

These matters are before me on notices to strike out the complaints for the following reasons:

1. That the above action is an action at law. Whereas the circumstances and facts on which this

action is based gives rise only to a suit under Section II of the Employers' Liability Act 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 accurate schedule for compensation and regulating procedure for the determination of liability and compensation thereunder," approved April 4, 1911, and the supplements thereto and amendments thereof.

2. That the complaint filed in the above stated cause does not allege a cause of action.

The complaint may be struck out for the reasons urged as above.

Dated, January 4, 1916.

LUTHER A. CAMPBELL,
Judge.

Filed, Clerk's Office,
January 5, 1916,
Hudson County, N. J.
JOHN J. MCGOVERN,
Clerk.

Order Striking Out Summons and Complaint.

Filed January 20, 1916.

Motion to strike out the summons and complaint in the above entitled cause having been heard by me in the presence of Isidor Kalisch of Kalisch & Kalisch for the motion, and Harlan Besson, contra, and having duly considered the argument of counsel on both sides, it is

ORDERED, on this 10th day of January, Nineteen hundred and sixteen, that the summons and complaint be stricken out with costs to the defendant.

LUTHER A. CAMPBELL,
Judge.

Filed, Clerk's Office,
January 20, 1916,
Hudson County, N. J.
JOHN J. McGOVERN,
Clerk.

Judgment.

Filed January 16, 1916.

Defendant moved to strike out the complaint on the grounds (1) that the above action is an action at law whereas the circumstances and facts on which this action is based gives rise only to a suit under Section II of the Employers' Liability Act 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 for compensation and regulating procedure for the determination of liability and compensation thereunder," approved April 4th, 1911, and the supplements thereto and amendments thereof, (2) that the complaint filed in the above stated cause does not allege a cause of action; upon which motion, arguments for plaintiff and defendant by their respective counsel, were duly heard, and the Court being of the opinion that the complaint should be struck out for the reasons as urged by the defendant, ordered that the same be struck out.

Whereupon it is adjudged that the complaint of the plaintiff be struck out and that the defendant recover from the plaintiff his costs, which are taxed at Nine dollars.

Dated, January 16, 1916.

LUTHER A. CAMPBELL,
Judge.

Filed January 16, 1916,
JOHN J. MCGOVERN,
Clerk.

Notice of Appeal.

Filed January 31, 1916.

HUDSON COUNTY CIRCUIT COURT.

CHARLES HETZEL, Plaintiff, vs. WASSON PISTON RING COMPANY, Defendant.	Action at Law.

To
Messrs. KALISCH & KALISCH,
Attorneys for Defendant,
Newark, N. J.

Sirs:

TAKE NOTICE that the plaintiff appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment of the Hudson County Circuit Court, rendered in the above entitled cause for the following reasons:

1. Because the Hudson County Circuit Court erroneously struck out the summons and complaint in the above entitled cause for the following reasons:

(a) That the above action is an action at law. Whereas the circumstances and facts on which this action is based gives rise only to a suit under Section II of the Employers' Liability Act 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 accurate schedule for compensation and regulating procedure for the determination of liability and compensation thereunder," approved April 4, 1911, and the supplements thereto and amendments thereof.

(b) That the complaint filed in the above stated cause does not allege a cause of action.

2. That the complaint filed in the above entitled cause states a good cause of action.

3. Because the complaint filed in the above entitled cause states a proper action at law, cognizable and triable in the Hudson County Circuit Court.

4. Because the motion made by the defendant's attorney to strike out the complaint in the above named cause should have been denied.

5. Because the judgment of the Hudson County Circuit Court is in other respects erroneous and improper.

Dated, January 27, 1916.

Respectfully,

HARLAN BESSON,
Attorney of Plaintiff.

Indorsement on Notice of Appeal.

Filed January 31, 1916.

HUDSON COUNTY CIRCUIT COURT.

CHARLES HETZEL,
Plaintiff,

vs.

WASSON PISTON RING COMPANY,
Defendant.

ACTION AT LAW.

NOTICE OF APPEAL.

Service of the within Notice of Appeal is hereby acknowledged.

Dated, January 31, 1916.

KALISCH & KALISCH,
Attorneys for Defendant.

RETURN.

The answer of Luther A. Campbell, Esquire, Judge of the Circuit Court, holden in and for the County of Hudson and within named, the record and proceedings of the Plaint whereof mention is within made with all things touching the same, I send to the Judges of our Court of Errors and Appeals, of the last resort of all causes at Trenton, N. J., at the day and year within contained, in a certain schedule to this appeal annexed as within I am commanded.

LUTHER A. CAMPBELL,
Judge.

INDEX.

Summons.

Filed October 19, 1915.

Hudson County Circuit Court

CHARLES HETZEL, Plaintiff,	
vs.	Action at law.
WASSON PISTON RING COMPANY, Defendant.	

THE STATE OF NEW JERSEY, TO WASSON PISTON RING COMPANY, a corporation:

You are summoned to answer the annexed complaint of CHARLES HETZEL, in an action at law in the HUDSON COUNTY CIRCUIT COURT. And take notice that unless you file your answer to said complaint with the Clerk of said Hudson County Circuit Court, at Jersey City, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

WITNESS, HONORABLE LUTHER A. CAMPBELL, Judge of the Hudson County Circuit Court, at Jersey City, this sixteenth day of October, Nineteen hundred and fifteen.

JOHN J. McGOVERN,
Clerk.

HARLAN BESSON,
Attorney,
Savings Bank Building,
Hoboken, New Jersey.

Complaint.

Filed October 19, 1915.

THE DEFENDANT WAS SUMMONED TO ANSWER UNTO THE PLAINTIFF COMPLAINT.

The plaintiff, who resides at No. 813 Willow Avenue, Hoboken, New Jersey, says:

FIRST COUNT:

1. That at the time hereinafter mentioned, one Charles Hetzel, Jr., was the servant and son of the plaintiff.

2. That the defendant owns and operates a factory and workshop situate at No. 1123 Clinton Street, Hoboken, New Jersey, in which defendant manufactures piston rings and other metallic articles.

3. That in manufacturing the said piston rings and other metallic articles, the defendant possessed and operated by its agents and servants divers large machines, part of the mechanism of which were certain automatic grind-stones, used for grinding the piston rings and other metallic articles manufactured by the defendant.

4. That an act of the Legislature of the State of New Jersey, entitled, "An Act regulating the age, employment, safety, health and work hours of persons, employes and operatives in factories, workshops, mills and all places where the manufacture of goods of any kinds is carried on, and to establish a department for the enforcement thereof," approved March 24, 1904, which is known as

Chapter 64, Pamphlet laws of 1904, page 152, of the State of New Jersey, provides as follows:

> "No child under the age of fourteen years shall be employed, allowed or permitted to work in any factory, workshop, mill or place where the manufacture of goods of any kind is carried on; any corporation, firm, individual parent, parents or custodian of any child who shall violate any of the provisions of this section, shall be liable to a penalty of fifty dollars for each offense."

5. That the defendant, by its agents and servants knew that the said Charles Hetzel, Jr., was an infant of the age of thirteen years and under the age of fourteen years.

6. That it was the duty of the defendant to refrain from employing the said Charles Hetzel, Jr., in the factory and workshop conducted by it as aforesaid.

7. That on August 31, 1915, while the defendant was operating its factory and workshop as aforesaid, and was engaged in the manufacture of piston rings and other metallic articles, it did, by its agents and servants, carelessly, willfully and negligently fail and neglect to perform its duty to refrain from employing the said Charles Hetzel, Jr., in its factory and workshop as aforesaid, and did carelessly, willfully and negligently employ the said Charles Hetzel, Jr., who was an infant of the age of thirteen years and under the age of fourteen years to work in the said factory or workshop and assist in the operation of one of the machines containing an automatic grind-stone.

8. That on September 2, 1915, the said Charles Hetzel, Jr., while in the defendant's employ, was assisting in the operation of the said machine containing the automatic grind-stone in the workshop and factory of the defendant and because of the defendant's negligence in failing to refrain from employing the said Charles Hetzel, Jr., as aforesaid, the said Charles Hetzel, Jr., then and there caught his left hand in the machinery of the said grind-stone and before he could extricate it, sustained severe injuries.

9. That solely by reason of the defendant's negligence as aforesaid, the left hand of the said Charles Hetzel, Jr., servant and son of the plaintiff, was seriously and permanently injured, from which injuries the said Charles Hetzel, Jr., became and continued to be sick, sore and disabled and suffered and still suffers great pain and distress; that as a result of said injuries the said Charles Hetzel, Jr., sustained the loss of the nails of the thumb and the third and fourth fingers of the left hand, and the index and second fingers of the left hand were so badly mangled that it became necessary to amputate them; that the said Charles Hetzel, Jr., has lost the free and full use of his left hand and will be wholly incapacitated from performing any arduous labor for a long time to come, whereby the plaintiff is deprived of his services and has been obliged to expend a considerable sum of money in caring for him for his said injuries and in nursing him, and for doctor's fees for attendance, consultations, advice, operation and treatment.

SECOND COUNT:

1. Paragraphs 1, 2 and 3 of the first count are made part of this count.

2. That the said Charles Hetzel, Jr., who is an infant of the age of thirteen years, was on or about August 31, 1915, employed by defendant to assist in the operation of a large machine, a part of which was an automatic grind-stone used in the manufacture of the piston rings and other metallic articles as aforesaid, that the said Charles Hetzel, Jr., had never been employed to do work of that character and was wholly ignorant of the manner in which it might be performed in safety and wholly inexperienced in the use of said machine.

3. That defendant wholly disregarding its duty by its agents and servants negligently and carelessly permitted the said Charles Hetzel, Jr., to engage in said work without informing him that said work was in anywise dangerous to an unskilled or inexperienced workman, nor did defendant, by its agents and servants, provide the said automatic grind-stone with the proper guard to make the operation of the said machine more safe, nor did the defendant, by its agents and servants, instruct the said Charles Hetzel, Jr., as to the proper manner in which to do said work, all of which it was the defendant's duty to do.

4. That said work is dangerous and requires skill and experience on the part of the workmen in order that it may be safely performed, and was not and is not such work as an employee of the age and experience of the said Charles Hetzel, Jr., ought properly to be required to do.

5. That on or about September 2, 1915, while the said Charles Hetzel was engaged in assisting in the operation of the machine containing the automatic grind-stone, he caught his hand in the mechanism of said machine so that it came in con-

tact with the grind-stone and before he could extricate it, sustained severe injuries.

6. Paragraph 9 of the first count is made part of this count.

Plaintiff demands as his damages $4,000.

HARLAN BESSON,
Attorney for Plaintiff.

Filed Clerk's Office,
Oct. 19, 1915.
Hudson County, N. J.
JOHN J. MCGOVERN,
Clerk.

Notice of Motion to Strike Out Summons and Complaint.

Filed January 8, 1916.

To HARLAN BESSON, Esquire,
Attorney of Plaintiff.

PLEASE TAKE NOTICE that we shall move to strike out the summons and complaint filed in the above matter, before Honorable Luther A. Campbell, Judge of the Hudson County Circuit Court, at the Court House, Newark Avenue, Jersey City, New Jersey, on Friday, November nineteenth, Nineteen hundred and fifteen, at ten o'clock A. M., or as soon thereafter as counsel may be heard, for the following reasons:

1. That the above action is an action at law whereas the circumstances and facts on which this

action is based gives rise only to a suit under section II of the Employers' Liability Act 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 for compensation and regulating procedure for the determination of liability and compensation thereunder," approved April 4th, 1911, and the supplements thereto and amendments thereof.

2. That the complaint filed in the above stated cause does not allege a cause for action.

Attorneys for Defendant.

Filed, Clerk's Office,
January 8, 1916,
Hudson County, N. J.
JOHN J. MCGOVERN,
Clerk.

Conclusions.

Filed January 5, 1916.

HARLAN BESSON, Esq.,
Attorney for Plaintiffs.

KALISCH & KALISCH, Esqs.,
Attorneys for Defendant.

CAMPBELL, J.:

These matters are before me on notices to strike out the complaints for the following reasons:

1. That the above action is an action at law. Whereas the circumstances and facts on which this

action is based gives rise only to a suit under Section II of the Employers' Liability Act 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 accurate schedule for compensation and regulating procedure for the determination of liability and compensation thereunder," approved April 4, 1911, and the supplements thereto and amendments thereof.

2. That the complaint filed in the above stated cause does not allege a cause of action.

The complaint may be struck out for the reasons urged as above.

Dated, January 4, 1916.

LUTHER A. CAMPBELL,
Judge.

Filed, Clerk's Office,
January 5, 1916,
Hudson County, N. J.
JOHN J. MCGOVERN,
Clerk.

Order Striking Out Summons and Complaint.

Filed January 20, 1916.

Motion to strike out the summons and complaint in the above entitled cause having been heard by me in the presence of Isidor Kalisch of Kalisch & Kalisch for the motion, and Harlan Besson, contra, and having duly considered the argument of counsel on both sides, it is

ORDERED, on this 10th day of January, Nineteen hundred and sixteen, that the summons and complaint be stricken out with costs to the defendant.

LUTHER A. CAMPBELL,
Judge.

Filed, Clerk's Office,
January 20, 1916,
Hudson County, N. J.
JOHN J. McGOVERN,
Clerk.

Judgment.

Filed January 16, 1916.

Defendant moved to strike out the complaint on the grounds (1) that the above action is an action at law whereas the circumstances and facts on which this action is based gives rise only to a suit under Section II of the Employers' Liability Act 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 for compensation and regulating procedure for the determination of liability and compensation thereunder," approved April 4th, 1911, and the supplements thereto and amendments thereof, (2) that the complaint filed in the above stated cause does not allege a cause of action; upon which motion, arguments for plaintiff and defendant by their respective counsel, were duly heard, and the Court being of the opinion that the complaint should be struck out for the reasons as urged by the defendant, ordered that the same be struck out.

Whereupon it is adjudged that the complaint of the plaintiff be struck out and that the defendant recover from the plaintiff his costs, which are taxed at Nine dollars.

Dated, January 16, 1916.

LUTHER A. CAMPBELL,
Judge.

Filed January 16, 1916,
JOHN J. MCGOVERN,
Clerk.

Notice of Appeal.

Filed January 31, 1916.

HUDSON COUNTY CIRCUIT COURT.

CHARLES HETZEL,
Plaintiff,

vs.

WASSON PISTON RING COMPANY,
Defendant.

Action at Law.

To
Messrs. KALISCH & KALISCH,
Attorneys for Defendant,
Newark, N. J.

Sirs:

TAKE NOTICE that the plaintiff appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment of the Hudson County Circuit Court, rendered in the above entitled cause for the following reasons:

1. Because the Hudson County Circuit Court erroneously struck out the summons and complaint in the above entitled cause for the following reasons:

(a) That the above action is an action at law. Whereas the circumstances and facts on which this action is based gives rise only to a suit under Section II of the Employers' Liability Act 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 accurate schedule for compensation and regulating procedure for the determination of liability and compensation thereunder," approved April 4, 1911, and the supplements thereto and amendments thereof.

(b) That the complaint filed in the above stated cause does not allege a cause of action.

2. That the complaint filed in the above entitled cause states a good cause of action.

3. Because the complaint filed in the above entitled cause states a proper action at law, cognizable and triable in the Hudson County Circuit Court.

4. Because the motion made by the defendant's attorney to strike out the complaint in the above named cause should have been denied.

5. Because the judgment of the Hudson County Circuit Court is in other respects erroneous and improper.

Dated, January 27, 1916.

Respectfully,

HARLAN BESSON,
Attorney of Plaintiff.

Indorsement on Notice of Appeal.

Filed January 31, 1916.

HUDSON COUNTY CIRCUIT COURT.

CHARLES HETZEL,
Plaintiff,

vs.

WASSON PISTON RING COMPANY,
Defendant.

ACTION AT LAW.

NOTICE OF APPEAL.

Service of the within Notice of Appeal is hereby acknowledged.

Dated, January 31, 1916.

KALISCH & KALISCH,
Attorneys for Defendant.

RETURN.

The answer of Luther A. Campbell, Esquire, Judge of the Circuit Court, holden in and for the County of Hudson and within named, the record and proceedings of the Plaint whereof mention is within made with all things touching the same, I send to the Judges of our Court of Errors and Appeals, of the last resort of all causes at Trenton, N. J., at the day and year within contained, in a certain schedule to this appeal annexed as within I am commanded.

LUTHER A. CAMPBELL,
Judge.