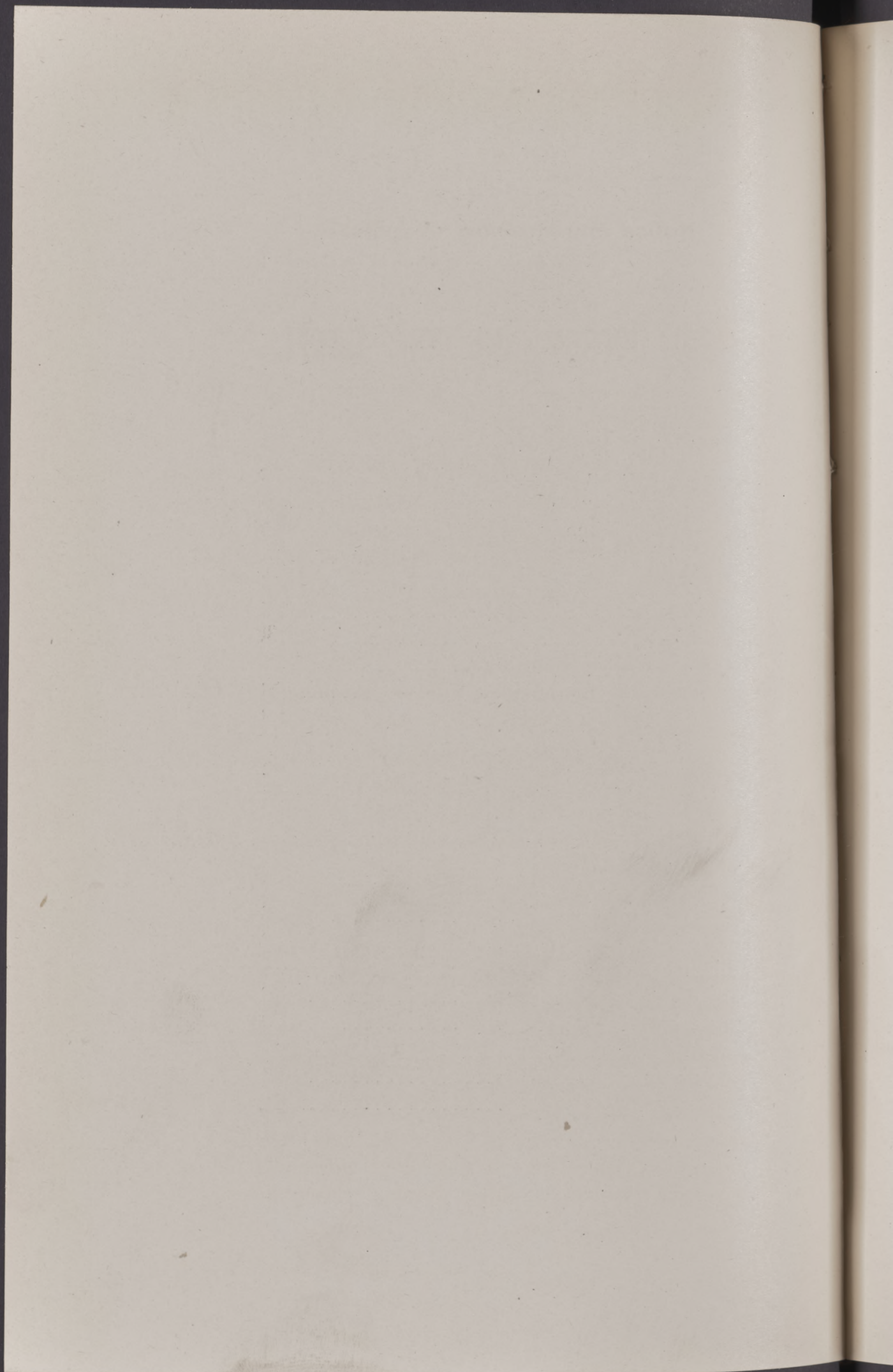


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*Notice and Grounds of Appeal.*

**Notice and Grounds of Appeal.**

Filed May 28, 1918.

# New Jersey Supreme Court.

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FLORENCE R. BRABBAN, <i>Petitioner-Appellant,</i>	}	<i>On Bill.</i>
<i>vs.</i>		
BENJAMIN & JOHNES, a cor- poration,  <i>Respondent.</i>	}	<i>Notice of Grounds of Appeal.</i>

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To M. Casewell Heine, Esq., 20  
Attorney of Benjamin & Johnes, Respondent.

Dear Sir:—

TAKE NOTICE that the petitioner appeals to the Court of Errors and Appeals, being the Court of last resort in all causes, from the whole of the judgment entered in said cause, on the following grounds:—

1. Because the said Supreme Court erroneously decided that “in order for the petitioner to have been granted the relief prayed for by her petition, it was necessary that there should have been an agreement upon the “compensation” payable under the act which shall be subject to diminution as well as to increase. The payment of the physician’s bill required no agreement, as the present prosecutor was under an obligation to pay that bill under section 14 of the Statute without any agreement. It is very doubtful, we think, whether the opinion 30

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*Notice and Grounds of Appeal.*

of the learned Judge of the Common Pleas that the physician's bill was compensation, is sound, but whether so or not, the payment of the physician's bill required no agreement, and would not be subject to review. It is only where there is an agreement that there can be a review  
10 after the year, and the case where there is an agreement is contrasted by the statute with a case where there is a dispute. The provision is clearly not applicable to a case like this. To call an agreement that there should be "no compensation" an agreement for compensation under the act, is a mere perversion of the language.

2. The petitioner contends that said finding of the Supreme Court was erroneous because the  
20 payment of a physician's bill is a part of the "compensation" prescribed by the statute under which these proceedings were brought, and it is immaterial whether the agreement alleged, related to the payment of the physician's bill, or whether it related to the payment of a percentage of wages.

3. Because the said Supreme Court erroneously assumed or concluded that the agree-  
30 ment sought to be reviewed, was an agreement between the parties that no compensation should be paid.

4. Because the said Supreme Court erroneously decided "that the agreement was that the petitioner should receive no compensation for the injury which she sustained by reason of the fact that she had returned to her employment on the sixteenth day after the injury. Obviously the petitioner then had in mind the  
40 provision of section 13 of the act that no com-

*Notice and Grounds of Appeal.*

pensation should be allowed for the first two weeks after the injury is received, and as the Trial Judge said in his original opinion, the statement of facts which was agreed upon, showed that there was no agreement such as was applied by sections 21 and 23.

The petitioner alleges that said finding was wrong and erroneous and based on an unwarranted assumption of facts, because there is no dispute that according to her last petition filed, and which formed the basis of the Trial Court's finding in this cause it distinctly alleges the making of an agreement by the respondent in which they promise to pay petitioner's indebtedness to her physician.

5. Because the said Supreme Court erred in holding as follows:—

“His adjudication on that petition and statement of facts was undoubtedly correct, and we think he ought not, after he had adjudicated the matter, to have allowed the case to be reopened for the purpose of making a new and different case in contradiction of the petitioner's own averments under oath,” the petitioner asserting that whether or not the Trial Judge should have allowed the case to be reopened, was a matter resting in the sound discretion of the Trial Judge and not the subject of review by the Supreme Court, unless there was proof of the gross abuse of that discretion by the Trial Judge. That under the statute, a continuing power is given the Trial Court to review the former adjudication, one of the grounds being that the parties had made an agreement as to compensation and that the injuries had subsequently increased or decreased.

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*Notice and Grounds of Appeal.*

10 If an agreement to pay the physician's bill is in law an agreement, it was a question of fact for the Trial Judge to determine whether the parties did so agree, and it was also a question of fact for him to determine whether or not her injuries had increased, and the Supreme Court was without power to review the finding of the Trial Judge on the questions of fact, if there was any evidence at all upon which to base its finding.

WILBUR A. HEISLEY,  
*Attorney of Florence Brabban,*  
*Petitioner-Appellant.*

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*Writ of Certiorari.*

**Writ of Certiorari.**

Allowed October 14, 1916.

NEW JERSEY, ss.

The State of New Jersey to the Hon.  
 [L. s.] Harry V. Osborne, one of the Judges 10  
 of the Court of Common Pleas, in and  
 for the County of Essex, and Joseph McDon-  
 ough, Clerk of the said Court of Common Pleas  
 in and for the County of Essex, and Florence R.  
 Brabban, GREETING:

We being willing for certain reasons to be  
 certified of a certain determination, judgment,  
 order and proceedings made and given by Hon.  
 Harry V. Osborne, one of the Judges of the  
 Court of Common Pleas, in and for the County 20  
 of Essex, in a certain action, plaint and proceed-  
 ings brought against Benjamin & Johnes, a cor-  
 poration, at the suit of Florence R. Brabban  
 to recover compensation under "An Act of the  
 Legislature of New Jersey prescribing the liabil-  
 ity of an employer to make compensation for in-  
 juries received by an employee in the course of  
 employment, establishing an elective schedule of  
 compensation and regulating procedure of the 30  
 determination of liability and compensation  
 thereunder," approved April fourth, nineteen  
 hundred and eleven; also under the supplement  
 of said act, approved May second, nineteen hun-  
 dred and eleven; and the acts amendatory there-  
 of 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 third day of November next, the said de-  
 termination, judgment, order and proceedings  
 made and given by you, with all things touching 40

*Writ of Certiorari.*

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 this, our writ, that we may further cause to be done thereupon, what of right we shall see fit to be done.

10     Witness: William S. Gummere, Esquire, Chief Justice of our Supreme Court, at Trenton aforesaid, this fourteenth day of October, in the year of our Lord, one thousand, nine hundred and sixteen.

WILLIAM C. GEBHARDT,  
*Clerk.*

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

Allowed October 14, 1916. Let it be sealed.

WM. S. GUMMERE,  
*Chief Justice Supreme Court.*

Service of a copy of the writ of certiorari of which this is a copy is acknowledged this 14th day of October, 1916.

30     WILBUR. A. HEISLEY,  
*Attorney for Petitioner.*

*Return.*

**Return.**

STATE OF NEW JERSEY, }  
 COUNTY OF ESSEX, } ss.

I, Harry V. Osborne, Judge of the Court of  
 Common Pleas, Essex County, New Jersey, do  
 hereby certify and return to the Supreme Court  
 of Judicature of the State of New Jersey the  
 Pleadings, Determination and Judgment Record  
 together with all things touching and concerning  
 the same as by the writ to me directed I am  
 commanded, 10

In witness whereof, I have hereunto  
 [L. s.] affixed my official seal this 6th day of  
 November, A. D. 1916.

H. V. OSBORNE, 20  
*J.*

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*Petition.*

**Petition.**

Filed April 30, 1915.

To the Honorable Harry V. Osborne, Judge  
of the Court of Common Pleas of Essex County:

10 The petition of Florence R. Brabban, whose  
residence is at No. 250 Fairmount Avenue, in the  
City of Newark, County of Essex aforesaid,  
respectfully shows:

1. That the name and residence of your pe-  
titioner are as above set forth.

2. That your petitioner was an employee of  
Benjamin & Johnes, a corporation organized  
under the laws of the State of New Jersey, and  
was engaged on the first day of May, nineteen  
hundred and thirteen, in the capacity of operator.

20 3. That on said first day of May, while your  
petitioner was engaged in her regular employ-  
ment aforesaid, a personal injury was caused to  
her by an action, which arose out of and was in  
the course of her employment, of which the  
actual or lawfully imputed negligence of her em-  
ployer was the natural or proximate cause,  
namely; petitioner was leaving her place of em-  
ployment at No. 55 Bank Street, Newark, New  
30 Jersey, at about six o'clock in the evening and  
was descending the stairs leading from such  
place of employment to the street, when she fell  
over some rubbish that was permitted to accumu-  
late on the stairs and was thrown to the ground.  
She was injured about the left hip and spine, as  
a result of which the first stages of paralysis  
have developed.

4. Your petitioner was on said day receiving  
the following wages from said employer, namely,  
40 an average of Eleven Dollars (\$11) per week.

*Petition.*

5. That said employer had actual knowledge of such accident and injury at the time of its occurrence, the superintendent of said respondent corporation having been present and having assisted the petitioner to her home.

6. That there is a dispute of contention between your petitioner and the respondent concerning the claim for compensation, as to the questions of fact and nature and effect of the injuries and the amount of compensation thereof, your petitioner contending that the injury was as stated in paragraph three above, both as to cause and extent, and that under the statute in such case made and provided, the respondent is liable to pay to your petitioner as compensation for said injury the sum of Five Dollars and a half (\$5.50) per week for the period of four hundred weeks, together with the sum of Twenty-four Dollars (\$24) for medical services.

7. That your petitioner requests and petitions that the compensation to be adjudged to her by the Court may be commuted at its present value when discounted at five per centum simple interest, because such commutation would be for the best interest of the petitioner and will avoid undue hardship to either party.

8. Your petitioner further shows that no such compensation as claimed by your petitioner or any part thereof has been paid unto your petitioner or unto any one in her behalf.

Your petitioner therefore prays that the dispute of contention between your petitioner and the respondent may be determined by the act of the Legislature of New Jersey, and entitled, "An act prescribing the liability of an employer to make compensation for injuries received by

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*Petition.*

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, nineteen hundred and eleven, and supplements thereto and amendments thereof, and to that end that your Honor will, by order, fix a time and place for the hearing thereon, to be not less than three weeks after the date of the filing of this petition.

Dated, April 29, 1915.

FLORENCE R. BRABBAN.

STATE OF NEW JERSEY, }  
 20 COUNTY OF ESSEX, } ss.

Florence R. Brabban, the above named petitioner, being duly sworn according to law upon her oath, says 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.

FLORENCE R. BRABBAN.

30 Sworn to and subscribed before me this 29th day of April, 1915.

JOSEPH B. BLOOM,  
*M. C. C. of N. J.*

*Order Fixing Time and Place of Hearing.*

**Order Fixing Time and Place of Hearing.**

Filed April 30, 1915.

**Essex County Court of Common Pleas.**

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FLORENCE B. BRABBAN,  
*Petitioner,*

*vs.*

BENJAMIN & JOHNES, a cor-  
poration,  
*Respondent.*

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On petition for (commutation of) compensa-  
tion under "An Act prescribing the liability of  
an employer to make compensation for injuries,  
received by an employee in the course of em-  
ployment, establishing an elective schedule of  
compensation, and regulating procedure for the  
determination of liability and compensation  
thereunder," approved April 4, 1911, and the  
several supplements thereto and acts amenda-  
tory thereof.

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A petition having been filed in this cause by  
the Petitioner praying for (commutation of) the  
compensation payable by the Respondent, it is  
on this 5th day of May, 1915,

30

ORDERED, that the hearing of said matter be  
and hereby is set down for Wednesday, the 2nd  
day of June, 1915, at the Court House (Common  
Pleas Court Room), in the City of Newark, at  
Ten o'clock in the forenoon, or as soon there-  
after as counsel can be heard. And it is further

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*Order Fixing Time and Place of Hearing.*

ORDERED, that a true, but uncertified copy of this order (together with a copy of the petition, upon which this order is based) be served upon the respondent, within six days after the date of this order.

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H. V. OSBORNE,  
*President Judge of the Essex  
County Court of Common Pleas.*

On motion of

JOSEPH B. BLOOM,  
*Attorney for Petitioner.*

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*Amended Petition.***Amended Petition.**

Filed June 16, 1915.

To the Honorable HARRY V. OSBORNE, Judge  
of the Court of Common Pleas of Essex County;

The amended petition of Florence R. Brabban, 10  
whose residence is at No. 250 Fairmount Ave-  
nue, in the City of Newark, County of Essex  
aforesaid, respectfully shows:

1. That the name and residence of your pe-  
titioner are as above set forth.

2. That your petitioner was an employee of  
Benjamin & Johnes, a corporation organized un-  
der the Laws of the State of New Jersey, and  
was engaged on the first day of May, nineteen 20  
hundred and thirteen, in the capacity of operator.

3. That on said first day of May, while your  
petitioner was engaged in her regular employ-  
ment, aforesaid, a personal injury was caused  
to her by an accident, which arose out of and  
was in the course of her employment, of which  
the actual and lawfully imputed negligence of her  
employer was the natural or proximate cause,  
namely; petitioner was leaving her place of em-  
ployment at No. 55 Bank Street, at about six 30  
o'clock in the evening and was descending the  
stairs leading from such place of employment to  
the street, when she fell over some rubbish that  
was permitted to accumulate on the stairs and  
was thrown to the ground. She was injured about  
the left hip and spine, as a result of which, the  
first stages of paralysis have developed.

4. Your petitioner was on said day receiving  
the following wages from said employer, namely,  
an average of eleven dollars per week. 40

*Amended Petition.*

5. That said employer had actual knowledge of such accident and injury at the time of its occurrence, the superintendent of the said respondent corporation having been present and having assisted the petitioner to her home.

10 6. About two weeks after said accident had occurred an agreement was entered into between the petitioner and the respondent, by which it was understood and agreed that the petitioner should receive no compensation for the injury which she sustained, by reason of the fact that she had returned to her employment on the sixteenth day after the occurrence.

20 7. That there is a dispute of contention between your petitioner and the respondent concerning the claim for compensation, as to the question of fact and nature and effect of the injuries and the amount of compensation therefor, your petitioner contending that the injury was as stated in paragraph three above, and that, under the statute in such case made and provided, the respondent is liable to pay to your petitioner as compensation for said injury, the sum of Five and One-half Dollars per week, for the period of four hundred weeks.

30 8. On or about the month of November, nineteen hundred and fourteen, petitioner discovered that her incapacity has increased, and she therefore requests and petitions this honorable Court to review the agreement so made as aforesaid, and that compensation may be adjudged to her by the Court and may be commuted at its present value, when discounted at the rate of five per centum, simple interest, because such commutation will be for the best interest of the pe-

*Answer.*

tioner and will avoid undue hardship to either party.

Dated, June 11, 1915.

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX, } ss.

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Florence R. Brabban, the above named petitioner, being duly sworn, according to law, upon her oath says 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.

FLORENCE R. BRABBAN.

Sworn to and subscribed before me this fifteenth day of June, 1915.

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[SEAL] FLORENCE BOENINGER,  
*Notary Public of New Jersey.*

**Answer.**

Filed June 1, 1915.

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The defendant, Benjamin and Johnes, a corporation of the State of New Jersey, having its principal office and place of business at No. 42 Warren Street, Newark, New Jersey, says:

FIRST. It has no knowledge or information sufficient to form a belief as to the residence of the petitioner.

SECOND. It admits that petitioner was an employee of the respondent on the first day of May, Nineteen Hundred and Thirteen as an operator.

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*Answer.*

THIRD. It denies that on said first day of May, Nineteen Hundred and Thirteen and while engaged in her regular employment, the petitioner received a personal injury, the material or proximate cause of which was the actual or lawfully imputed negligence of the respondent; but admits that at said time petitioner was leaving her place of employment at No. 55 Bank Street, Newark, New Jersey, and slipped on the stairs and fell; but denies that she fell over some rubbish that was permitted to accumulate on the stairs; and this respondent has no knowledge or information sufficient to form a belief as to whether the petitioner was injured about the left hip and spine and that as a result thereof first stages of paralysis have developed.

FOURTH. It admits that petitioner was receiving on an average of Seven Dollars and Ninety cents a week.

FIFTH. It admits knowledge of the petitioner slipping on the stairs, but denies any knowledge or information sufficient to form a belief of the injury alleged in the petition.

SIXTH. It admits a dispute arose and existed between the petitioner and respondent as to the nature and character of the injury and of the compensation, if any to which the petitioner might be entitled to, and denies that respondent is liable to petitioner for Five Dollars and Fifty cents a week for Four Hundred weeks or for any medical service.

SEVENTH. It denies the right of petitioner to commutation.

EIGHTH. It admits that no compensation has been paid directly by respondent to petitioner, but it is informed and believes that some com-

*Answer.*

compensation has been paid petitioner on behalf of the respondent by the Prudential Casualty Company the amount of which is unknown to this respondent.

NINTH. The respondent says that the petitioner's claim is barred for the reason that no agreement was reached between the petitioner and the respondent, or no petition was filed for adjudication of compensation within one year from the date of the accident. 10

BENJAMIN & JOHNES,  
by E. F. BRIGHAM.

STATE OF NEW JERSEY, }  
COUNTY OF ESSEX, } ss.

Edward F. Brigham, being duly sworn according to law on his oath says: That he is the superintendent of the Benjamin & Johnes, the defendant in the above action and that he has read the above answer and that the matters therein set forth are true to the best of his knowledge, information and belief. 20

EDWARD F. BRIGHAM.

Subscribed and sworn to before me 30  
this 29th day of May, 1915.

E. GARFIELD GIFFORD,  
*Master in Chancery of New Jersey.*

*Determination on Motion to Dismiss.***Determination on Motion to Dismiss.**

Filed September 17, 1915.

For petitioner, Joseph B. Bloom, Esq.

For respondent M. Casewell Heine, Esq.

10 OSBORNE, J.

The petition in this case was filed on May 5, 1915, and an order made thereon, returnable on June 2, 1915.

Respondent claims the proceedings are barred under the last paragraph of Section 23 of the act and moves to dismiss the petition. For the purposes of this motion counsel have agreed upon the following state of facts:

20 "The petitioner, Florence R. Brabban, was injured on May first, nineteen hundred and thirteen, while in the employ of the respondent, she having fallen down the stairs while leaving her place of employment. The respondent had actual notice of the occurrence, and a Mr. Benjamin, a member and officer of the respondent corporation, offered to take petitioner to the hospital but petitioner refused. On the sixteenth day after the accident, petitioner returned to work and

30 on the same day had a conversation with one of the members of the respondent corporation, during which petitioner asked for compensation and was told that inasmuch as she had returned shortly after the elapse of two weeks, she was entitled to no compensation under the law, but was advised to see a lawyer. She accordingly consulted counsel and was likewise advised that she could recover nothing. She again saw the same member of the respondent corporation and

40 told him that she acquiesced in his interpreta-

*Determination on Motion to Dismiss.*

tion of the law, and said that she was satisfied that she was entitled to no compensation, and, if satisfactory to the respondent would continue to work there.

Petitioner continued to work for the respondent, occasionally suffering so much pain that she was compelled to remain away for a day or so at a time, which state of affairs continued until about the month of November, 1914, when the pain which petitioner suffered became so great that she consulted a physician and was then advised that she was suffering from the first stages of paralysis, and that she would be incapable of working steadily.

She now presents the petition stating that her incapacity has increased and asking the Court to award her compensation."

Upon this state of facts I can find no "agreement" such as contemplated by the language of the last section of Paragraph 21 or of the last paragraph of Section 23.

The petition will therefore be dismissed.

H. V. OSBORNE,  
J.

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*Amended Petition.***Amended Petition.**

Filed November 13, 1915.

10 The petition of Florence R. Brabban whose residence is at 250 Fairmount Avenue, in the City of Newark, County of Essex, aforesaid, respectfully shows:

1st. That the name and residence of your petitioner are as above set forth.

2nd. That your petitioner was an employee of Benjamin & Johnes, a corporation organized under the laws of the State of New Jersey, and was engaged on the First day of May, Nineteen Hundred and Thirteen, in the capacity of operator.

20 3rd. That on said First day of May, while your petitioner was engaged in her regular employment aforesaid, a personal injury was caused to her by an accident which arose out of and was in the course of her employment, and which the actual and lawfully imputed negligence of her employer was the natural or proximate cause, namely, petitioner was leaving her place of employment at No. 55 Bank Street, at about six o'clock in the evening, and was descending the stairs leading from such place of employment, to  
30 the street, when she fell over some rubbish that was permitted to accumulate on the stairs, and was thrown to the ground. She was injured about the left hip and spine, as a result of which the first stages of paralysis have developed.

4th. Your petitioner was, on said day, receiving the following wages from said employer, namely, an average of Eleven Dollars (\$11) per week.

40 5th. That said employer had actual knowledge of such accident and injury, at the time of its

*Amended Petition.*

occurrence, the superintendent of the said respondent corporation having been present, and having assisted the petitioner to her home.

6th. That there is a dispute or contention between your petitioner and the respondent, concerning her claim for compensation, as to the questions of fact and of the nature and effect of the injuries, and the amount of compensation therefor, your petitioner contending that the injury was as stated in Paragraph Three above, and that under the statute in such case made and provided, the respondent is liable to pay to your petitioner, as compensation for said injuries, the sum of Five and a half Dollars (\$5.50) per week, for the period of four hundred weeks. 10

7th. About two weeks after the accident an agreement was entered into between the petitioner and the respondent, by which it was agreed that the respondent should pay or reimburse the petitioner for the amount she had become indebted to one, Dr. Satterer, to wit, the sum of Twenty-four Dollars (\$24), for medical attendance rendered her by said physician, and made necessary by reason of, and as the result of the said accident or happening, and that the said respondent thereupon agreed to immediately have an Accident Insurance Company, who respondent said had insured the respondent, against damages in such happenings, to take up the matter of the payment for respondent of said physician's bill. 20 30

8th. Your petitioner respectfully shows that more than one year has elapsed from the time when the said agreement became operative, and that the said respondent has wholly failed to perform the same, and that said agreement was entered into by your petitioner in the belief, at 40

*Amended Petition.*

that time, that her incapacity was only of a temporary character.

10 9th. Your petitioner further shows that since the making of the said agreement, the incapacity of your petitioner has greatly increased, and she is advised that she is in the first stage of  
paralysis, and that as a result of said happen-  
ing, she is frequently seized with epileptic fits,  
which came upon her without warning, and very  
greatly, if not entirely, unfits and incapacitates  
her from accepting any regular employment.

10th. Your petitioner further shows unto your Honor, that the said agreement so entered into between the respondent and your petitioner, was for a much less sum than that to which she is entitled under the statute of this state.

20 11th. Your petitioner further shows that on the        day of        a petition was duly  
filed by your petitioner, pursuant to the statute,  
asking award of compensation for her injuries,  
but by inadvertence and mistake, and without  
the knowledge of petitioner, said petition incor-  
rectly stated that about two weeks after said ac-  
cident had occurred, an agreement was entered  
into between petitioner and respondent, by which  
30 it was understood and agreed that the petitioner  
should receive no compensation for the injury  
which she sustained, or words to that purport  
and effect.

12th. Your petitioner respectfully shows that  
at said time, there was the agreement made which  
is hereinbefore recited: that thereafter, on the  
17th day of September, nineteen hundred and  
fifteen, the Court decided the said petition ad-  
versely to your petitioner, and declined to grant  
40 her any compensation, holding in substance, and

*Amended Petition.*

effect, that there was no agreement between the parties as to the payment of any compensation, whereas in truth and in fact there was the agreement hereinbefore stated.

13th. Your petitioner, therefore, respectfully prays that your Honor will, by order fixing a time and place for hearing, pursuant to statute, to be had upon this petition, that it will review the agreement so as aforesaid made between your petitioner and the said respondent, and that it will decree that the sum so agreed to be paid by the respondent to the petitioner, as above set forth, was for a much less sum than that to which she was entitled, and is now entitled under the statute of this state, and that your Honor will ascertain and fix the amount so to be paid by the respondent to her, and the manner in which it shall be paid, and especially, that it shall order such amount commuted under the power vested in this Court by the statute, and that your Honor will reconsider it's determination heretofore made upon the previous petition, so filed as aforesaid.

14th. And your petitioner, as in duty bound, will ever pray.

(Signed) FLORENCE R. BRABBAN. 30

*Order Fixing Time and Place of Hearing.*

STATE OF NEW JERSEY, }  
 COUNTY OF ESSEX, } ss.

10 Florence R. Brabban, the above named petitioner, being duly sworn according to law, says that the facts set forth in the foregoing petition, so far as they relate to the acts of others, she believes them to be true, and that as they relate to this deponent they are true.

(Signed) FLORENCE B. BRABBAN.

Sworn and subscribed to before me this 29th day of October, 1915.

20 CALVIN W. SMITH,  
*Commissioner of Deeds of New Jersey.*

**Order Fixing Time and Place of Hearing.**

Filed November 13, 1915.

30 On Petition for (commutation of) compensation under "An Act prescribing the liability of an employer to make compensation for injuries, received by an employee in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder." Approved April 4, 1911.

A petition having been filed in this cause by the petitioner, Florence R. Brabban, praying for commutation of the compensation payable by the Respondent, to the Petitioner, it is, on the application of Wilbur A. Heisley, attorney for the above named petitioner, on this first day of November, 1915,

*Notice of Motion to Strike Out Petition.*

ORDERED, that the hearing of said matter be and hereby is set down for Wednesday, the 24th day of November, 1915, at the Court House (Common Pleas Court Room, Part II.), in the City of Newark, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard. And it is further

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ORDERED, that a true, but uncertified copy of this order (together with a copy of the petition, upon which this order is based) be served upon the respondent, or its attorney, within six days after date of this order.

(Signed) H. V. OSBORNE,  
*Presiding Judge, Essex County  
Court of Common Pleas.*

20

**Notice of Motion to Strike Out Petition.**

Filed October 16, 1916.

To Wilbur A. Heisley, Esq., Attorney for above named Petitioner:

Please take notice that on Wednesday, November 24th, I shall move before Harry V. Osborne, Judge of the Court of Common Pleas in and for the County of Essex, at the Court House in Newark at ten o'clock in the forenoon of the same day, or as soon thereafter as counsel may be heard, that the Petition heretofore filed in the above cause be stricken out on the ground that the facts set out as the said Petition are *res judicata*.

30

Yours respectfully,

M. CASEWELL HEINE,  
*Attorney for Respondent.*

40

*Order Vacating Judgment.*

Due and legal service of the within notice is hereby acknowledged and it is consented and agreed that the Respondent's time to file its Answer to the petition in this cause be extended until five days after decision on the said motion adverse to the Respondent.

10

WILBUR A. HEISLEY,  
*Attorney for Petitioner.*

**Order Vacating Judgment.**

Filed February 15, 1916.

For petitioner, Wilbur A. Heisley, Esq.

For respondent, M. Casewell Heine, Esq.

20 OSBORNE, *J.*

Upon considering the application of the petitioner for a rehearing in this matter and the reply of the respondent thereto, it is, on this fifteenth day of February, 1916,

ORDERED, that the judgment heretofore entered herein be and the same is hereby opened and vacated for the purpose of permitting the cause to be reheard.

30 The matter may be set down for rehearing upon any regular day on five days' notice.

H. V. OSBORNE,  
*Judge.*

*Answer to Amended Petition.***Answer.**

Filed October 16, 1916.

The answer of Benjamin & Johnes, a corporation, responding to the petition herein verified by the petitioner on October 29th, 1915, respectfully shows: 10

1. It admits paragraph 2 of the said petition.
2. It admits the allegations of paragraph 3 except that it denies that the accident alleged therein arose out of and in the course of her employment and denies that the said accident was the result of any negligence on the part of respondent, and as to the allegation regarding the nature of petitioner's injuries, respondent says that it has not sufficient knowledge or information to form a belief. 20

3. Respondent denies the allegation contained in paragraph 4 and respondent shows that petitioner, at the time of the alleged accident, was receiving, as wages, from the said respondent, the sum of Seven Dollars and Ninety Cents per week.

4. Respondent admits that it had actual knowledge of the accident, but it denies that it acquired knowledge or received notice of the occurrence of the injury from which petitioner claims to suffer within ninety days after the occurrence of said injury. 30

5. It denies the allegation contained in paragraph 7 that respondent agreed that it pay or reimburse the petitioner for the amount that she had become indebted to one Dr. Satterer, to wit the sum of Twenty-four Dollars, but it admits that it told petitioner that it would send the said 40

*Answer to Amended Petition.*

bill to an Insurance Company for the purpose of ascertaining whether the said Insurance Company would pay the bill.

6. As to the allegation of paragraph 8, respondent says that there never was any agreement as alleged by the petitioner.

10 7. As to the allegations contained in paragraph 9, respondent has no knowledge or information on which to form a belief.

8. Respondent denies the allegations contained in paragraph 10 and further says that said allegations are immaterial to the issue.

9. As to the allegations contained in paragraph 11, respondent has no knowledge except that on the face of the said petition it was sworn to by the petitioner and filed on her behalf by  
20 her duly authorized attorney.

10. Respondent admits the allegations contained in paragraph 12 except in so far as they refer to an agreement between petitioner and respondent, which latter allegations respondent denies.

11. Respondent denies that petitioner is entitled to any of the relief prayed for in the 13th paragraph.

30 The contention of the respondent is as follows:

a. That the petitioner is barred from prosecuting her petition because within a year after the accident alleged in the petition, the parties did not enter into an agreement upon the compensation payable, nor did petitioner file a petition in this Court of the adjudication of compensation.

40 b. That knowledge was not obtained by nor notice given to the respondent of the occur-

*Answer to Amended Petition.*

rence of the injury for which petitioner is suing within ninety days after the occurrence of such injury.

c. That the accident which petitioner alleges did not arise out of and in the course of her employment.

M. CASEWELL HEINE,  
*Attorney for Respondent.*

10

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

Edward F. Brigham, of full age, being duly sworn on his oath according to law, deposes and says that he is the President of the respondent corporation and that he has read the foregoing answer and the facts and things contained therein are true.

20

EDWARD F. BRIGHAM.

Sworn and subscribed to before me this 16th day of October, 1916.

WM. WALTER JONES,  
*Attorney at Law of New Jersey.*

30

Let this answer be filed *nunc pro tunc*.

HARRY V. OSBORNE,  
*Judge.*

40

*Stipulation.*

**Stipulation.**

NEW JERSEY SUPREME COURT.

It is stipulated by and between counsel for the  
respective parties, that the State of the Case be  
10 printed without the testimony of Harriet Brab-  
ban and Dr. Wm. H. Hicks.

Dated October 23d, 1916.

WILBUR A. HEISLEY,  
*Attorney of Petitioner-Respondent.*

M. CASEWELL HEINE,  
*Attorney of Defendants-Prosecutors.*

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*Opening Argument on Motion to Dismiss.*

## Essex County Court of Common Pleas.

Wednesday, April 12, 1916.

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FLORENCE R. BRABBAN,

*Petitioner,*

*vs.*

BENJAMIN & JOHNES,

*Respondent.*

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Before Hon. Harry V. Osborne, Judge.

For the petitioner appears Wilbur A. Heisley,  
Esq.

20

For the respondent appears William W. Jones,  
Esq.

*Mr. Jones.* I want first to put on the record an objection to your Honor's order which was entered on February 15, 1916. I object for the reason that there was no application of the petitioner to have the case reheard and that this reopening of the judgment was done by the Court, and it is now on motion, contrary to law.

30

*The Court.* My recollection is that the application was in the alternative, as it was presented at that time. In any event, I have no doubt of the power of the Court, of its inherent right, to re-open its own finding in order to do justice.

*Mr. Jones.* The situation is now that the matter is being reheard, and I desire to move to dismiss on the face of the pleading.

40

*Opening Argument on Motion to Dismiss.*

First, there was an original petition upon which your Honor based an order, and counsel found that he did not have enough facts to sustain the petition, and I suggested that he make up a new petition, and then we stipulated certain facts.

10 *The Court.* You stipulated the petition out of Court. The question now is whether to go to trial on all the pleadings in the case, and I think that is the better way.

*Mr. Jones.* I want to move to dismiss on the face of the pleadings, because I understand there are only two petitions here, name, Mr. Bloom's two first petitions, the petition which the Court refers to as being a part of the pleading here, and the best the record shows is an application to have the judgment reopened.

20

*Mr. Heisley.* It contains everything. It shows every jurisdictional fact, and it was served by the Sheriff upon the respondent, and if they have failed to answer it that is their fault.

*Mr. Jones.* We acknowledge service and we are in Court.

30 *Mr. Heisley.* You will notice that the petition sets out everything which the employers' liability law says it shall.

*The Court.* I think on this petition that we must establish a practice, there being nothing governing it, and I think that we will try to establish a practice that is simple and plain and easy to follow. Judge Heisley says that this petition contains every element required by the statute. The petition was served on you and an order made

40

*Opening Argument on Motion to Dismiss.*

vacating the judgment, and you may go to trial without filing an answer.

*Mr. Jones.* Here is a notice that was served on Judge Heisley on the 23rd of November which says that we are going to move to strike out the petition on the ground that the facts contained therein are *res adjudicata*, and it was submitted to your Honor. (Reads.) I submit that there has not been a decision on that motion. We have not here an order that the judgment heretofore made be opened and vacated. There has not been a decision on this question of whether the facts therein are *res adjudicata*. 10

*The Court.* Do you not think that the order vacating the judgment is tantamount to a decision. The whole thing was submitted. 20

*Mr. Jones.* No. There are two suits. We have the old suit which your Honor, by this order, opened, and you have got your new suit in which Judge Heisley now appears, in which a motion is pending and has never been decided.

*The Court.* The opening of this judgment may lead us into hearing the original petition, and I am inclined to think that is the better method of handling the matter. We will take the papers as we find them and consider it as a whole. 30

*Mr. Jones.* There have been two orders. Your Honor has signed two orders to come here.

*The Court.* You have to be brought back again because this order vacating the judgment merely left the matter open. 40

*Opening Argument on Motion to Dismiss.*

*Mr. Jones.* That order which your Honor has in your hand was signed and sealed long before this order opening the former judgment.

*The Court.* I do not think that makes any particular difference.

10

*Mr. Jones.* It indicates that there is another suit. The method they should have pursued if they wanted this judgment reopened, was to serve notice on us to have the judgment reopened.

*The Court.* Counsel did do that, and then Judge Heisley presented an order dated the 1st day of November, 1915, ordering that the matter be set down for hearing.

20

*The Court.* The petition was filed on the 1st, and it seems to me that is the order you came here to answer. This is the order which brought you here in court, to argue this motion for a rehearing.

I will rule that the motion was argued at the same time with the other motion, and they were disposed of by this order opening the judgment.

30

Respondent's counsel pray an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

H. V. OSBORNE,

*Judge.*

40

*Mr. Jones.* I base my objection on the record. The only pleadings are these two original petitions filed by Mr. Bloom, the original and its amendment, the stipulation and our answer, and I make my motion to dismiss on the ground that the facts are *res adjudicata*—as having been decided. I

*Opening Argument on Motion to Dismiss.*

object to going to trial at this time for the reason that we should not go to trial before our answer is on file and that is not due until five days of the determination of the motion.

*The Court.* If there was such a motion it has been determined by this order opening the judgment. The record does not seem to show any. 10

*Mr. Jones.* I now move that the case go over to give me statutory time to file an answer.

*Mr. Heisley.* I object.

*The Court.* I will give you leave to file your answer *nunc pro tunc*.

*Mr. Jones.* I except to your Honor's ruling leaving out the *nunc pro tunc*. 20

*Mr. Heisley.* If your Honor please, the contention of the petitioner is that she was in the employ of the respondent, and on May 1, 1913, at the close of the day's labor, she, working on the upper floor of the building, went down the stairway provided by the respondent for the employees to leave the building, and while coming down the stairway she fell and received serious injuries about her body and head, so that she was prevented from working for some little time, I think about two weeks. In the meantime she was attended by a physician. At the end of two weeks she, not realizing that she was very seriously injured, went back to work, and our contention is that she talked with the superintendent of the defendant, Mr. Brigham, about whether they would allow her any compensation or pay for 30  
40

*Opening Argument on Motion to Dismiss.*

her injuries, and they both agreed that she had not been seriously injured and that she could return to work, and she thereupon asked him, "What about my doctor's bill?" He asked her who her doctor was and she said Dr. Satterer. He says, "You get the doctor's bill and bring it to me and we will pay you the doctor's bill." She went to the doctor and got the doctor's bill and brought it to Mr. Brigham, and he expressed his approval of it, said it would be all right, that the respondent would pay it, and in that connection I think said that they were covered by some insurance company and that he would forward the bill to the company and see that it was paid. The bill was never paid and she never received any compensation of any kind whatsoever. She went on to work, began working right from that time on, and worked along more or less irregularly until the second fall—that would be the fall of 1914—suffering pain all the time at intervals, but nevertheless persevering in her work, working as best she could. Finally in the fall of 1914—I think more likely in the fall of 1913—she began having epileptic fits. I am not just sure about this time, but, at any rate, some time after this accident, several months had elapsed, and she began having these fits. She was attended by Dr. Satterer and these fits have continued, her condition has been progressively worse, so that at the present time she is having fits very frequently. I may misstate it and I don't want to be sure about this—last week she had three or four fits in one week, and even last night she had one when she was

*Opening Argument on Motion to Dismiss.*

examined by Dr. Hicks. On her way home last night she fell in the street. She is unable to work, and our contention is that she never has been paid anything; that she is totally disabled from performing her services. Mr. Jones admits that her weekly wage was \$7.90 a week; that she fell on the stairway of her employer at the close of the day's work, as she was leaving her work to go home; that the respondent has never paid the physician's bill, nor has it paid her compensation of any kind. The theory of the case is that she had agreed to accept from them the mere payment of her doctor bill of \$24, and your Honor concluded that if we could show that it was compensation, although it was a doctor's bill, her disease having become much worse, and consequently the compensation was totally inadequate that she might be awarded further compensation.

*Mr. Jones.* On the opening of counsel I move first, to dismiss on the ground that all these things, even though taken to be true, do not constitute a cause of action at this time before the court, because even though the respondent and the petitioner agreed that the respondent would pay the doctor's bill, that is not an agreement for compensation within the terms of the compensation act sufficient to carry it past the bar of limitations. I insist that the furnishing of medical expenses, even though the respondent had agreed to pay, is not an agreement to pay compensation under the act.

*Florence R. Brabban, direct.*

10 *The Court.* Your theory is that there has been no agreement, assuming that the agreement to pay medical expenses was made, within the act to pay compensation, and that the action is barred by the statute of limitations. I understand you admit notice of the accident.

*Mr. Jones.* Notice of the accident and not of the injury.

20 *The Court.* Your contention is that the proceeding, not having been instituted within the statutory period of one year, and there having been no agreement to pay compensation, that she is barred from her right of action, notwithstanding the fact that the injuries resulting from the accident, assuming that they did, were not discovered by her until after a period of one year had elapsed?

*Mr. Jones.* Yes.

*The Court.* I will reserve decision on your motion and proceed to the hearing of the case on the merits.

FLORENCE R. BRABBAN, petitioner, sworn in her own behalf.

30 *Direct examination* by Mr. Heisley.

Q Miss Brabban, you were working on the 1st day of May, 1913, for Benjamin & Johnes?

A Yes, sir.

Q Where were you working, what portion of the building, upstairs or downstairs? A Upstairs.

Q What time did you quit work that afternoon? A 5:45.

40 Q What did you do after quitting work about going home? A I got ready and went downstairs and as I was going—

*Florence R. Brabban, direct.*

Q You got ready to go home and were going downstairs? A Yes, sir.

Q From the second floor to the street? A As I was going from the third to the second floor I was tripped on the second step by a large bunch of white strings which threw me down to the bottom step.

10

Q Do you recall how many stairs you fell down? A No, sir, I could not just say how many steps there were.

Q Did you fall a whole flight of stairs or less than the whole flight? A Yes, sir, I did fall a whole flight of stairs.

Q From the third to the second floor? A Yes, sir.

Q And this was in the building of Benjamin & Johnes where you were working? A Yes, sir.

20

Q Were you rendered unconscious? A No, sir, I wasn't rendered unconscious.

Q What happened then? A Why, I became kind of faint and I started to vomit.

Q At that same time? A Yes, sir.

Q Go on and tell how you got home and who took you home and everything else. A I sent a young lady upstairs; my cousin worked upstairs, and I sent up for her; she came down, and in the meantime there were three young men picked me up that worked there by the name of Tom Moran, Harry Miner and Frank Hutter.

30

Q Mr. Hutter is here in Court, isn't he? A Yes, sir.

Q What did they do with you? A They picked me up and set me on a chair and then Al Benjamin, he sent Mr. Hutter upstairs for a stretcher.

Q How was Mr. Al Benjamin—is that one of the firm? A Yes, sir, he is.

40

*Florence R. Brabban, direct.*

Q And they got a stretcher? A And Mr. Hutter went upstairs and he got the stretcher to put me on.

Q What did he do with you? Did they put you on the stretcher and take you home? A No.

10 Q Tell what they did? A Mr. Benjamin said, "The best place for you is in the hospital and there will be no expense whatever." I said, "Pardon me, Mr. Benjamin, I will tell you in advance it would only frighten my mother, and I would rather not have you do it," and Mr. Brigham—

Q Who said that? A The superintendent of Benjamin & Johnes, Mr. A. E. Brigham, and Mr. Webb Brigham, Miss Edith Schneider and the chauffeur and myself, they took me home.

20 Q How? A In their automobile. They took me up and put me in bed.

Q You were living with your mother where? A 363 South Nineteenth street.

Q Is your mother a widow? A Yes, my mother is a widow.

Q And you live there together? A Yes, sir.

30 Q Did you notice whether or not you were injured in any way, notice any bruises? Did you feel badly? A I was bruised from the base of my brain all the way down on my left side, and as I fell I struck here (indicating); there was a very large lump here and I was all black and blue here.

Q Where is the lump that you say you are pointing to—back of your neck? A Yes, sir.

*The Court.* A little to the right of the base of the skull.

40 *Witness.* I was just black and blue and there was a large lump on my left knee.

*Florence R. Brabban, direct.*

Q Was there any soreness anywhere about your body, and if so, what part? A Yes, sir, right here (indicating) where I was struck.

*The Court.* The small of the back, just to the left.

*Witness.* As I fell my back came to the back part of the step. 10

Q Did you have any pain? A Yes, sir, I had an awful lot of pain.

Q How soon did the pain come on after you fell down the stairs? A Immediately.

Q How long did it continue? Did it let up that night or the next day or a week afterwards or when? A No, sir, it continued for over two weeks and after.

Q Did you call in a physician? A Yes, sir, my physician was called immediately. 20

Q That same evening? A Yes, sir, it was Dr. Satterer.

Q How often would you say he attended you during the next two weeks? A I can't just exactly say. I know there were days when Dr. Satterer was called to my bedside three times a day, the pain was so intense I couldn't endure it.

Q And where was this pain located during the two weeks? A In the small of my back, right where I struck. 30

Q Did you have any pain in the back of the neck? A Yes, sir, I did, and in my head.

Q Somewheres about the end of two weeks you went back to your employer, didn't you? A Yes, sir, I did.

Q For what purpose? A I didn't—

Q For what purpose? To work or not? A The first one I consulted with was my superintendent, Mr. Brigham. 40

*Florence R. Brabban, direct.*

Q The superintendent of the defendant? A Yes, sir.

Q What did you say to him? A I asked Mr. Brigham what they intended to do with regard to my accident.

10 Q What did he say? A Well, he says, "Miss Brabban, I can't tell you myself, but," he says, "I will consult with Mr. Johnes in regard to it." So he went down and he consulted with Mr. Johnes.

Objected to.

Q How do you know he consulted with Mr. Johnes? A He told me he did.

Q And what did he say? A He said, "Miss Brabban, Mr. Johnes told me to tell you not to worry—"

20 *The Court.* Who is this?

*Mr. Heisley.* Mr. Brigham, the superintendent of the respondent.

*The Court.* Do you deny that he is the superintendent?

*Mr. Jones.* No.

30 Q Go ahead. A That he would pay the doctor's bill, and he told me "to go to your physician and get your doctor's bill and bring it in and they would pay it."

Q That he would pay it? A That Benjamin & Johnes would pay the doctor's bill.

Q Was there anything else said if they would pay anything else or not? A No, sir, nothing else was mentioned.

Q And nothing about paying you for wages or anything like that? A No, sir.

40 Q What did you do then? A Well, I went to my physician and I asked Dr. Satterer for his bill, which he gave me, \$24.

*Florence R. Brabban, direct.*

Q I show you a paper and ask you if you know what this paper is? A Yes, sir.

Q What is it? A My doctor's bill.

Q Is that the bill you got from Dr. Satterer?

A Yes, sir.

*Mr. Heisley.* I offer it in evidence.

10

*The Court.* Any objection.

*Mr. Jones.* No.

*Mr. Heisley.* It recites as follows: There is printed matter on it showing the location of the doctor's office and then in handwriting: "May 18, 1913, Miss C. Brabban, to Dr. William Satterer, Dr. For professional services," that is in printing, then "\$24," unreceipted, and on the face of paper, in lead pencil, are these figures "38030" and a line, and then "9".

20

Marked Ex. P 1.

Q What did you do with that bill? A I took that bill and presented it to the superintendent, Mr. Brigham.

Q Did you leave it with him? A I left it with him.

Q Did he say what he would do with it? A He said that they belonged to an Insurance Company and that they would take it up with them.

30

Q Has the bill ever been paid? A No, sir.

Q Now, Miss Brabban, you began working, I think, for the company again? A Yes, sir, I did.

Q And worked until when—well, it was the fall of 1914, wasn't it? A The fall was 1913—

Q The autumn of 1913? A Yes, sir.

Q Will you tell us whether you worked regularly during that time or not? A No, sir, I did not.

40

*Florence R. Brabban, direct.*

Q Why not? A Because I was not able to.

Q That is a very general statement. Why were you not able to? A Because I had such pains in my back and my head.

Q What portion of the head? A At the base of the brain and up at the top, yes, sir.

10 Q I believe you claim that you have been having some fits or spasms of some kind, don't you? A Yes, sir.

Q Will you tell his Honor when you had the first one, as near as you recollect? A My mother told me—

Q Not what she told you. You don't have to fix it to the very week, but your best recollection? A Six months after my fall.

20 Q That would be somewhere along in the fall of 1913? A Yes, sir.

Q And where were you when you had the first spasm or fit? A In bed with my mother.

Q What time of the night did it occur? A That I can't just remember.

Q Early in the evening or late or what? A I should judge between eleven and twelve.

Q Do you know about how long it lasted? A No, sir, I don't know anything.

30 Q Were you unconscious? A Unconscious, yes, sir.

Q Have you ever had any spasm or fit of that kind before in your entire life that you know of? A No, sir, none whatever.

Q And of course you remember your mother since you were a little child? A Yes, sir.

Q Did you live at home all the time with her? A Always.

40 Q Did your mother, to your knowledge, ever have any spasm or fit of that kind of any other kind? A No, sir, none whatever.

*Florence R. Brabban, direct.*

Q Is your father dead? A Yes, sir, my father is dead.

Q How long ago did he die? A Sixteen years ago last Saturday.

Q How old are you, Miss Brabban? A I will be forty years old on the 14th day of next September. 10

Q During the entire time that you knew your father did you ever know him to have any spasm or fit of any kind? A None whatever.

Q Were there any other children in the family besides you? A I have two brothers and one sister.

Q Have you known them intimately since childhood? A Yes, sir.

Q Have either of them had any spasm or fit that you know of at any time? A None whatever. 20

Q When did you have the next fit or spasm—that is simply your best judgment—a month after, three months or two weeks or what? A As near as I can remember, it was about a month.

Q Where were you when you had that, if you recollect? A That was in bed also.

Q Your mother with you? A Yes, sir. 30

Q When after that would you say you had another? A Well, I kept on getting them nearer after that; three weeks apart.

Q Did you have any when you were attended by any physician? A Yes, sir.

Q Has he attended you when you had more than one fit or not? A Dr. Satterer has attended me in two.

Q Have you always had these fits in bed or not? A No, sir. 40

*Florence R. Brabban, direct.*

Q Where have you had them? A I get them anywhere.

Q Do you get them when you are walking or not? A Yes, sir, I can't go out and walk on the street; I take them on the street; take them in the kitchen, in the parlor; I can't go down-  
10 stairs; I can't do anything.

Q You mean alone? A Alone, yes, sir.

Q Do you now venture on the street alone or not? A I do not.

Q Have you ever had any spasms or fits upon the street? A Yes, sir, I have.

Q How many would you say? A Three times.

Q Have you ever been carried into any  
20 place? A Yes, sir, I have.

Q Where was that? A My first place was at Dr. Speckmann's at the corner of Tenth street and South Orange avenue.

Q Where were you when you had the fit at the time they carried you in this store? A At the corner of Tenth street and South Orange avenue. I was walking with my lady friend and I was talking—

Q Who is your lady friend? A Miss  
30 Frances Partell.

Q Walking along the street talking? A Yes, sir, I got in front of the door; I fell unconscious.

Q When you regained consciousness where were you? A I was in the City Hospital.

Q You don't recollect being in the doctor's store except as you are told of it? A Nothing whatever.

Q How long did they keep you in the hos-  
40 pital? A Sunday night until Wednesday.

*Florence R. Brabban, direct.*

Q And when was this? A They took me in the City Hospital on the 22nd day of Decemeber, 1915.

Q And kept you there how long? A Sunday night until Wednesday.

Q Did you have any fit while you were in the hospital? A Yes, sir; on Tuesday I had two in the afternoon and I had one at night. 10

Q Now, during that time to this has the frequency of your fits increased or decreased? A They have increased.

Q To what degree? How frequently have you had them during the past six months? A I get them three or four or five a week.

Q How many, if at all, did you have last week? A I think I am speaking the truth when I say I had four. 20

Q Did you ever have any more than that in a single week that you know of? A I have had six fits in one spell.

Q You mean at one time? A Yes, sir.

Q When is the last day that you had a fit? A Last night.

Q Where did you have the fit last night? A As I was coming home from Doctor Hicks' office. 30

Q Here in Newark? A Yes, sir.

Q Were you with anyone? A Yes, sir, I was.

Q Who were you with? A My mother and my friend.

Q Who is your friend? A Mr. Robert Fuller.

Q Where were you taken with this fit? A Just as I was getting out of the Bergen street car at the corner of Bergen and South Orange avenue. 40

*Florence R. Brabban, direct.*

Q Did you or did you not become unconscious? A Yes, sir, I did,

Q Where were you when you regained consciousness? A In my bed.

Q At home? A Yes, sir.

10 Q Miss Brabban, have you had any other accident of any kind in which you have received any serious physical injury that you know of excepting this injury in question? A Why, I will tell you: One morning I was going to work when I was working down for Benjamin & Johnes, just as I got on the trolley car the motorman let the brake swing and the car gave a jerk and it knocked me against the handlebar, the brake on the car, and of course, it dislocated my arm; that is all.

20 Q Is that the only other accident you ever had? A Yes, sir.

Q How long ago is that? A I can't answer you that because I can't remember.

Q Before this accident at Benjamin & Johnes? A No, sir, it was after.

Q When was it after, how long after? A I can't remember, to tell you the truth.

30 Q Give us some idea. Was it the same year, 1913, 1914 or 1915? A I think it was in the year 1914—I think it was—I am not speaking sure.

Q And you were hurt then on your elbow; is that right? A Yes, sir.

Q How long did that lay you up? A About a couple of weeks; I think about two weeks, if I am speaking right; yes, sir.

40 Q Have you had any serious illness or sickness that you know of to which you could attribute these fits that you have? A None whatever.

*Florence R. Brabban, cross.*

*Mr. Jones.* I object to that. That is medical testimony.

*Mr. Heisley.* I withdraw it.

Q Have you had any serious illness or sickness of any kind since the time of this accident when you fell down the stairs down to the present time? A No, sir, I have not, none whatever. 10

Q What would you say your present condition is as regards pain? A The spine of my back and my head.

Q Have you much or little or is it constant or once in a while? A Very frequent. I could have the doctor every week.

Q Does or does not the pain prevent you from working to earn your living? A It prevents me from earning my living. 20

Q Is it a severe pain or an ordinary pain? A Why, it is severe.

Q Miss Brabban, does excitement bring on these fits? Our talking to you bring on a fit, will it? A No; excitement don't bring them on.

*Cross examination by Mr. Jones.*

Q How long had you worked with Benjamin & Johnes before the fall took place? A Well, if I can remember right, I think it was pretty near two years. 30

Q Quite a while before you fell downstairs? A Yes, sir.

Q And Mr. Benjamin did want to take you to the hospital after you had fallen downstairs? A Yes, sir.

Q And he said he would pay all the expenses at the hospital? A He said the best place for me was at the hospital and there would be no expense whatever. 40

*Florence R. Brabban, cross.*

Q Expense for whom? A That is all he said.

Q That happened on the 1st of May, did it?

A Yes, sir.

Q And this bill of Dr. Satterer's offered in evidence is dated the 18th of May; is that right?

10 A Yes, sir; that is right.

Q Was it a Monday that you fell downstairs?

A No, sir; I think, if I am right, it was on a Thursday.

Q On a Thursday? A As near as I can remember, it was either Wednesday or Thursday.

Q The day after pay day, wasn't it? A It has been so long I can't remember.

Q What day of the week was it that you came back to work? A That I can't just remember.

Q Was it in the middle of the week or did you wait? A It was about sixteen days after.

Q Did you come back to work on a Saturday? Do you remember that? A No, I don't think it was on a Saturday, if I remember right.

Q At all events, when you did get back, you saw Mr. Brigham? A Yes, sir.

Q To find out what he was going to do for you? A Yes, sir.

Q Did Mr. Brigham say, "We have nothing to do with this, we are insured and we will take it up the insurance company for you?" A Mr. Brigham said to me, "Miss Brabban, I will have to go down and see Mr. Johnes about this."

Q Later on he said that he had seen Mr. Johnes? A Mr. Johnes.

Q And he said that they were insured with an insurance company? A He excused himself and he came back in a few moments and he said

40

*Florence R. Brabban, cross.*

to me, "Miss Brabban, I had a consultation with Mr. Johnes and he told me to tell you not to worry, that he would pay the doctor's bill for you."

Q Isn't it a fact that what Mr. Brigham said was that Mr. Johnes told him they were insured and they would send the bill to the insurance company? A They asked me for my doctor's bill.

10

Q So they could send it to the insurance company? A He said they were in the insurance company and they would take it up with them.

Q When did you first go to see your lawyer? A I can't just remember.

Q Who was the first lawyer that you went to see? A I went to Lawyer Laddey first.

20

Q Was that within a couple of weeks afterward, after the accident? A A couple of weeks or a couple of months; I can't remember the day or date.

Q Isn't it a fact that you went and asked Mr. Brigham what they would do for you and he was told they had insurance, he didn't know what could be done, you had better go and see a lawyer? A He asked me for the doctor's bill and they told me they would pay the doctor's bill, they belonged to an insurance company, they would take it up with them.

30

Q He didn't say that they would pay it, the Benjamin & Johnes Company? A He told me not to worry, that they would pay it.

Q By "them" it was understood that the insurance company was referred to, wasn't it?

40

*Florence R. Brabban (by the Court).*

*By the Court.*

Q When did he tell you that they would pay the bill? A About sixteen days after I went back to work.

10 Q Was that when you took the bill in or before? A I didn't take the bill in—

Q It seems you had two conversations about the doctor's bill. Did you or didn't you only have one conversation about the doctor's bill?

A I had two.

20 Q You say in one of these conversations—I am not quite clear which one you refer to—you say “they”—you have used the word “they” would pay the doctor's bill. Which conversation was that that expression was used, that they would pay the doctor's bill? A The first one.

Q At that conversation had there been any talk about an insurance company? A Yes, sir.

Q What was said about the insurance company's connection with the matter? A They said they would take it up with the insurance company.

30 Q They, the Benjamin & Johnes Company, would take up your claim or the doctor's bill with the insurance company? A The doctor's bill.

Q Said they would take it up with the insurance company? A Benjamin & Johnes said they would pay the doctor's bill.

Q When did they say that? A When I went back and spoke to Mr. Brigham about it.

40 Q Was that before or after they had spoken about the insurance company? A I think, your Honor, it was the second time, if I am right, not making no mistake.

*Florence R. Brabban (by the Court).*

Q In the first one you told us, as near as you can remember in detail, exactly what was said by each of you at both of these interviews and in the order in which the things were said? A Your Honor, you mean, when I came back to work?

Q You say you had two conversations about this doctor's bill? A Yes, sir. 10

Q I am trying to find out exactly, minutely and in detail just what those conversations were, what was said by you and what was said by the person with whom you were talking, using, as nearly as you can recollect, the exact language, and placing the sentences, the questions and answers, just in the order in which they occurred. A Well, the first, I went back and I spoke to Mr. Brigham. Mr. Brigham was the first one I spoke to. I went up to Mr. Brigham and asked him what they intended to do in regard to my accident. 20

Q Go on. What did you say and what did he say? A He said, "Well, Miss Brabban, I can't tell you. I will have to have a conference with Mr. Johnes." So he excused himself and he goes down in the office and has an interview with Mr. Johnes. 30

Q And he came back? A And he came back and he said to me, "Miss Brabban," he said, "Mr. Johnes told me to tell you not to worry, that he would pay the doctor's bill."

Q (*By Mr. Heisley.*) Do what? A He would pay the doctor's bill.

Q (*By the Court.*) What did you say to that? A He told me to go and get my doctor's bill, which I did. 40

*Florence R. Brabban (by the Court).*

Q Did you have any more conversation? He said they would pay the doctor's bill. Is that all that was said? A Yes, sir.

Q Wasn't there anything said about the insurance company at that time? A That was the second time.

10 Q Not the first time, to the best of your recollection? A To the best of my recollection.

Q Do you feel that you remember very clearly or do you feel that you are not very certain in your recollection? Does it come very clearly to you? A No, sir. I will take that back. Pardon me.

20 Q You can probe your memory? A Yes, it was. He said they belonged to an insurance company and would take it up with them.

Q Was that before or after he went downstairs to consult Mr. Johnes? A It was after.

Q After he went downstairs to consult with Mr. Johnes? A Yes, sir.

30 Q When he came up after consulting with Mr. Johnes, what was the first thing he said? A He came over to me and said, "Mr. Johnes said I shouldn't worry, that they would pay the doctor's bill."

Q A moment ago you said that he said they would pay it, and now you say he would pay it. Which do you mean? Did he use "he" or "they"? A That Mr. Johnes would pay.

40 Q Did he use "Mr. Johnes?" You have used three expressions with reference to the payment of the doctor's bill. First you said "they" would pay the doctor's bill, and then you said that "he" would pay the doctor's bill; now you say that Mr. Johnes would pay the doctor's bill. I

*Florence R. Brabban (by the Court).*

want to know the language that Mr. Brigham used, what words did he say when he came back in regard to the payment of the doctor's bill, if you can remember? If you can't remember, give it to me to the best of your recollection, if you have any best recollection? A Mr. Brigham came back to me and said, "Miss Brabban, Mr. Johnes told me to tell you not to worry, to bring the doctor's bill and that they would pay it."

10

Q He also said, as I understand it, something about being insured? A Yes.

Q What did he say about being insured? A He said that the Benjamin & Johnes belong to— with an insurance company.

Q I want to know just when he said that— and what part of the conversation, with relation to the other things. He said, when he came back, "The Benjamin & Johnes Company belong to an insurance company." A Yes, your Honor.

20

Q When did he say that? A When he came back from upstairs.

Q Was that the first thing said or the last thing he said or the middle thing? A It was the last.

30

Q The last? A If I remember right, yes. I have so much to think of. (Witness pauses.) I think so.

Q Can you say it came before or after the statement that they would pay the doctor's bill? A If I remember right, it came after.

Q Who was to pay the doctor's bill? What understanding did you get from the conversation as to who was going to pay that doctor's bill? A Benjamin & Johnes, I thought.

40

*William Satterer, direct.*

Q What significance, if any, did the statement that they were insured convey to your mind? A I supposed they were, of course. If they belonged to an insurance company, naturally, they would settle up with them and they would pay my doctor's bill.

10 Q Did you understand from that conversation that they were insured—that the Benjamin & Johnes company would pay the doctor's bill or the insurance company would pay it? A No; Benjamin & Johnes were to pay it.

Q Was that your understanding? That was my understanding.

Q Was it your understanding then or is that your understanding now? A It was my understanding from the beginning.

20

RECESS.

WILLIAM SATTERER, sworn in behalf of petitioner.

*Direct examination by Mr. Heisley.*

Q You are a member of the medical profession? A Yes, sir.

Q Where did you graduate from? A Hahnemann Medical College, Philadelphia.

30 Q How long have you practiced? A Thirteen years.

Q And you have been the attending physician of Miss Florence Brabban, have you not? A Yes, sir.

Q How long have you known her? A About six or seven years.

Q Have you ever attended her for any fit or epileptic seizures of any kind? A Yes, I did.

40 Q When did you first attend her, as near as you can tell? A Some time after an accident

*William Satterer, direct.*

that she had, falling downstairs at the place where she worked.

Q In your previous attendance upon her had you ever seen any any predisposition to seizures of that kind? A No, I did not.

Q How many of these seizures have you attended her for? A Well, I have taken care of her several years, in which she has had these frequently. 10

Q Have they increased or decreased in frequency lately? A Lately they have increased in frequency and severity.

Q You were called in on the same evening that she was injured? A Yes, sir.

Q What did you find her suffering from? A She was in bed and showed evidence of having been injured severely. 20

Q Where were the evidences? A She had swellings.

Q Where? A On the side of her neck and face and back of her neck and swellings around her knees and hip and body, and these later showed discoloration, as severe injuries will. She was of course, in a highly nervous state from the fall and had been complaining of pains and aches all over from the fall that she sustained. 30

Q Did you see any indication of any injury or bruise of any kind in the neighborhood of the spine? A Yes; her back and side was injured.

Q And do you attend her down to the present time? A Yes.

Q Can you say whether or not in her present condition she suffers pain? A Yes, she does. 40

*William Satterer, direct.*

Q And to what would you attribute the pain?

A Why, the result of this injury.

Q Suppose, doctor, that a woman, in leaving her place of business, falls down a flight of stairs, and as a result of this fall, she is injured in various places about her body, including a  
10 place directly the base of the brain, and where a lump arises, and she is injured in the small of her back; suppose that she refrains from working for about two weeks, during which she receives medical attention; during this time she suffers pain; at the end of two weeks or about that time she resumes her occupation and follows it for about six months, during which time she had severe pains, and at that time, for the first time in her existence, she has a fit or epileptic seizure in which she loses consciousness; this  
20 first fit taking place while she is in bed at night; that she is thirty-eight years of age, and that in the course of eighteen months or two years afterwards these fits and seizures continue with increasing frequency, and that the pain continues to such an extent that she is unable to work; and suppose that her father and mother had lived to over sixty years of age, each one over seventy-five or up to seventy-five, and had never  
30 had any seizures of this kind; and suppose she has two brothers and one sister who are over forty-two years, and who in their existence, have had no fit or seizure of this kind, and that she has never had any fit or seizure such as I have indicated in my question; suppose there is no history of insanity in her brothers and sisters, in her father and mother, and that she is not addicted to alcoholism, nor has any of her family been addicted to it; can you tell us to  
40 what you would attribute her present condition

*William Satterer, direct.*

and these fits? A I would say that they were due to some injury.

Q Bearing in mind that I have mentioned an injury, can you say whether or not you would associate her present condition in any way with the injury which I have mentioned? A I would, yes.

10

Q Can you tell us whether or not, in your judgment, a woman with this history will ever be able to follow her usual daily avocation? A No, she will not.

Q Leaving the hypothetical question to one side, can you tell us whether or not this woman's affliction and condition has been progressively bad or remains stationary or progressively good? A It is growing worse steadily.

Q Do you know any way whereby the medical profession can check the progress of this trouble, in a way not detrimental to her? A Any attempt to check it would be purely palliative, would just help for the time being. The frequency of the seizures could be lessened, but only in a way that would be detrimental to her general health if it were continued over a long period of time, long enough, at least, to make her able to work or do anything for her living.

20

Q Suppose if these fits now have increased so that she has as high as four in one week, and that she is seized with them suddenly while on the street, could you say whether or not it is prudent and safe for her to travel around the city of Newark unattended? A She should not, by any means, ever go or be without attendance.

30

Q Doctor, I show you a doctor's bill marked Ex. P. 1. Have you ever seen it before? A Yes, sir, that is in my writing.

40

*William Satterer, cross.*

Q Tell us the history of that little paper, if you know? A Why, this was submitted on the date May 18, 1913, to Miss Brabban for the services that I had rendered her from May 1st until this day.

10 Q And didn't she request it of you? A She did.

Q I show you letter on paper entitled "Prudential Casualty Company." Tell us the history of that, as far as you know? A Well, this letter was received by me in the mail with the bill attached.

Q With this same little bill? A With that blue bill attached and the letter reads that the—

Q Never mind what it reads? A It was attached and returned to me.

20 Q Did you give this bill to Miss Brabban at or about the date of it? A Yes, sir.

Marked Ex. P. 2.

*Cross examination by Mr. Jones.*

30 Q At the time that you gave Miss Brabban that bill in your opinion she was better, that is, she had recovered from her injury, as far as you could see? A From the external and visible injury she was well enough to be up and around. We never can tell when a patient is back yet. It is estimated that there is a period of convalescence always in which close, constant medical attention is not required, and that was the time. She was well enough to be up and around on the day that the bill was given.

Q How long was she in bed? A About ten or twelve days.

40 Q As a matter of fact, in your opinion she was entirely recovered from her injuries suffi-

*William Satterer, cross.*

ciently to go back to her work? A We never can tell. The only way we can do is to send them, if they can work; that is the way to tell.

Q Did she go back to work? A She told me she did go back to work.

Q Did she tell you at the time you gave her this bill that she was back at work? A Yes, 10  
sir.

Q When did you see her again after that? A I saw her soon after. She complained of frequent headaches and she asked, I remember, too, whether I had ever received a settlement of the bill, and I remember telling her that I hadn't been paid, that furthermore I had received a letter from the insurance company asking for a new bill, that the first bill submitted was high, and they would like to have it reduced. I remember saying at that time that I didn't feel 20  
like resubmitting a bill for present treatment, because her condition had not entirely improved—that is, it had improved, but I mean, she was not entirely well, but that bill, not being rendered at the end of a time when she recovered from her injuries, was not sufficient, because she had not recovered, that she had come to consult me for signs and symptoms that were directly trace- 30  
able to the injury, such as she had never suffered before, and therefore I never really submitted that bill to the company. I realized then that her condition was not one of complete recovery.

Q The time you gave her the bill she was able to go back to work, wasn't she? A Well, she did go back to work, but she shouldn't have gone because subsequent occurrences show us that she was not fit to work.

Q But there were no external indications? A No; there might have been little discolora- 40

*William Satterer, cross.*

tions, and so on, but they wouldn't prevent anybody, if they were the only things, from doing work.

Q You don't know that it is epilepsy? A Yes, sir, I do.

10 Q How do you know it is not hysteria? A A hysteric person, as a rule, recovers quite complete from her fit of epilepsy or hysterical epilepsy or any other term you might apply, and the symptoms that follow are not present or do not last so long.

Q That is the general rule; there are exceptions to all rules? A There are exceptions to all rules.

20 Q And you don't know whether this is an exception? A I wouldn't say that this is not any exception, but I consider it a straight case of epilepsy.

Q Isn't it a fact that hysteria produces convulsions of the same character, and that they are known as hysteria epilepsy? A Yes, sir.

*By Mr. Heisley.*

Q In this case you say she has pain? A Yes.

30 Q Would a person who has fits resulting from hysteria necessarily have pain? A No, they would not.

*By Mr. Jones.*

Q You say she has pain? A Yes.

Q Where has she this pain? A In her back and in her head quite frequent.

Q How do you know that? A She told me so.

40 Q That is the only way you know? A No; I can see by her manner. I see her when she is

*William Satterer, cross.*

free from pain and aches, and then she is bright and cheerful and in fairly good spirits.

Q The pain is purely a subjective symptom?

A Yes, it is, but it is usually discernible.

Q You say the evidences of pain are usually discernible? A Yes; if I stick you with a pin something will happen, and everybody knows that something happened just by looking at you.

10

Q You don't know that I am in pain, do you?

A If anybody seized a pin and stick it in you, they know that you have felt it; they know that the pin was unpleasant to you and that you jumped.

Q But as a general rule, you know that there is pain from the statement of the patient? A Yes, and we also make observations of those symptoms which corroborate the statements.

20

Q And your principal reason for saying that this woman has pain is the fact that she told you so? A Well, the—

Q I say, the principal reason? A Yes, I believe her.

Q (*By Mr. Heisley.*) Does the facial expression indicate pain? A Yes, sir.

Q Did her facial expression indicate pain?

A Yes.

30

*By the Court.*

Q Have you ever seen her in any of these attacks? A I did.

Q Have you ever seen them coming on? A Yes, I have seen her in them and at the end.

Q What did you observe? A She is always unconscious—that is, I have seen her in spells where she was unconscious and did not respond to any stimulus. I have applied them myself at

40

*William Satterer, cross.*

times to make her respond and she didn't, and after varying length of time she arises from her stupor with some stuporous conditions, not very coherent; sometimes responding to questions and not always answering the question, but showing that she heard.

10 Q When did you first treat her for these epilepsy attacks? A The straight cases came some time later; the girl came to me, as I said, shortly after this bill was rendered and about the time this letter was received—

Q Had you been treating her before this accident? A I don't believe I ever treated her at all for anything. I had been in the family much because her brother had been sick several times and I was well acquainted with her, and if I had ever treated her it was never for more than a little cold or some minor trouble. I don't ever remember her.

20 Q Did you ever observe any tendency to these epileptic attacks? A No.

Q When did you first see any indication of them? A At the time when she began to complain of frequent headaches and trouble with her back. These were simply symptoms leading me to believe that some more serious injury had occurred than just the contusion of body and head, and these conditions of headache, she called them nervousness and irritability, and so forth, continued and grew worse; some time later she told me that she had been having chills, and that her mother told her she had been having chills in bed, and later fits; after these chills had been described she said that she had been having unconscious states not only in bed, but out of bed, and that the unconsciousness lasted for some

40

*William Satterer, cross.*

time, from a few minutes to a few hours, and was always followed by a period of languor and lassitude and worn out feeling that lasted hours and sometimes a day or two.

Q When did she first tell you about these?

A The fits and so on came about six months or so after the injury, but as I remember, these symptoms leading up to it were always present and growing worse. 10

Q This condition became pronounced about six months after the accident? A Yes, sir.

Q And the symptoms were of such a character that you diagnosed them as epileptic seizures?

A Yes, sir.

Q Did you tell her that they were due to this accident? A Yes.

Q At that time? A Yes, sir. 20

Q And she knew during the first six months that her condition was attributed to the accident? A I wouldn't like to say; I don't remember just that. All of her symptoms were, she understood from me, or ought to have understood, that a lot of these symptoms were all traceable to her injury. Just the fit itself wasn't a marking line; was simply an aggravation of all of her former symptoms.

Q You had been in constant attendance on her? A Yes, sir, practically; I didn't call on her; she came to the office. 30

Q She was under your care during all this time? A Yes.

Q Beginning with the accident? A Yes.

*By Mr. Jones.*

Q You say that you treated Miss Brabban's brother before the accident? A Yes, sir, treated one brother. 40

*Florence R. Brabban, cross.*

Q What was the matter with him? A He had just pneumonia.

Q Even now, to the ordinary observer, there is nothing to indicate this condition in Miss Brabban's appearance, is there? A No.

10 Q And certainly not during the first six months after the accident before the fits commenced? A No.

FLORENCE R. BRABBAN resumes the stand.

*Cross examination (continued) by Mr. Jones.*

Q You remember when we stopped this morning you were telling about the two conversations that you had with Mr. Brigham? A Yes, sir.

20 Q Let us go back to that first conversation when you say you went in to see Mr. Brigham and said, "What are you going to do about my accident?" At what time of the day did that occur? A No, I can't remember.

Q You testified very distinctly to the details of the conversation. Isn't it possible for you to tell us whether it occurred in the morning or in the afternoon? A I can't remember.

30 Q In the morning or afternoon? A I can't remember.

Q Is that the first day that you went back to work? A Yes, sir.

Q Had you been working at all before you had this conversation? A No, I had the conversation the same day I went back to work.

40 Q On that day did you do any work before you had the conversation with Mr. Brigham or did you seek Mr. Brigham out when you first came in and have the conversation? A I don't know.

*Florence R. Brabban, cross.*

Q Let us go to the second conversation. When did you get the bill from Dr. Satterer, when with relation to this first conversation—was it the same night? A I got the bill from Dr. Satterer about the 18th of May.

Q I want to know whether you went to Dr. Satterer to get the bill on the night of the day on which you had this conversation with Mr. Brigham? A Not the first one, no, because he asked me to get it. 10

Q We have got the first conversation, and he asked you to get the doctor's bill. Was that the night you got the doctor's bill. Was that the night that you got the doctor's bill or was it some night or day after that that you got that? A I will say that night.

Q Are you sure about that or are you simply saying that in order to get an answer, because I don't want to confuse you, I want to help you out? A I am pretty sure that it was that night that I went to the doctor's. 20

Q After you got the bill was it the next day that you spoke to Mr. Brigham again and gave him the bill? A I took it back and gave it to Mr. Brigham.

Q And that was the next day after you got the bill? A Yes, sir. 30

Q Did that conversation take place in the morning or afternoon? A I will say in the morning.

Q Is that a form of saying that you think so or is that your best recollection? A To the best of my knowledge.

Q Take this first conversation. You said to Mr. Brigham, "What are you going to do about my accident?" Is that right? A I asked Mr. 40

*Florence R. Brabban, cross.*

Brigham what he intended to do in regard to my accident and he said to me—

Q Where did that conversation occur? A On the floor where I was working.

10 Q You operated a sewing machine, didn't you? A Yes, sir.

Q Did this conversation take place at the sewing machine that you operate? A No, sir, it didn't.

Q Just where did it take place then? A At Mr. Benjamin's little coop office.

Q Mr. Benjamin's or Mr. Brigham's? A Mr. Brigham's, I should say.

Q And he has a little private office on the floor where you work? A Yes, sir.

20 Q Partitioned off? A Yes.

Q On the day of that first conversation did you come into work and run your machine and then when you had an opportunity to go into Mr. Brigham's office go in there and talk to him about it? A I went to my machine and I worked a while, and when I had an opportunity to speak to Mr. Brigham, I did so.

30 Q Do you remember how many hours you worked before you talked to Mr. Brigham? A No, I do not.

Q It might have been an hour or it might have been more? A I can't answer.

Q You don't know whether it was eight o'clock or noon time or eleven? Did he send for you or did you go in to see him? A I waited for them to come to me, but as they didn't, I went to them.

40 Q That was the first day then that you went back to work, was it? A No.

*Florence R. Brabban, cross.*

Q You had worked for a while, how many days, before this accident took place? A I can't remember.

Q Let us see if we can get it in another manner. Can you recall what day of the week it was that you returned to work? Is there any way you can fix that in your mind? A I was hurt on a Thursday and I went back on the sixteenth day. 10

Q The sixteenth day after the accident; that would be the 16th of the month, wouldn't it?

A Yes, sir.

Q Because you were hurt on the 1st? A Yes, sir.

Q The 1st was a Thursday? A Thursday.

Q You went back to work on a Saturday; is that right? A Either Friday or Saturday. 20

Q And you worked Friday or Saturday and then the 18th would be a month, wouldn't it? A Yes.

Q After you had waited until this day or two days for Mr. Brigham or some other official to make some overture in the matter of settlement, you decided to see him and went to his office? A Yes, sir.

Q They didn't come, did they? A No, sir, they didn't. 30

Q And then you decided, after having waited and worked this day or two, that you would go in and see Mr. Brigham and see what he would do for you? A Yes, sir.

Q Up to that time had you consulted a lawyer? A Not up to that time, no.

Q Then you went in and saw Mr. Brigham and said, "What are you going to do about my accident? A Yes, sir. 40

*Florence R. Brabban, cross.*

Q Was there anybody else in this little private office besides you and Mr. Brigham? A Nothing whatever.

Q Does the partition go up to the ceiling?

A No, sir; it doesn't; sort of a little coop.

Q And the partition doesn't go all the way up to the ceiling? A No.

Q And Mr. Brigham said, "I can't do anything about this." Is that right? A Yes, sir.

Q "This is for Mr. Johnes to take care of?"

A Yes, sir.

Q Then did you go back to your machine after he said that to you—can you recall that?

A Yes, I went back to my machine and I worked for a while.

Q How long do you suppose you worked before this second conversation occurred? A Mr. Brigham came back about an hour or so.

Q Did he call you over into his private office or did you watch for him and when he went in follow him in; do you recall? A I remember he motioned for me to come.

Q What was the very first thing he said? A He said "Miss Brabban, I had an interview with Mr. Johnes and he told me to tell you not to worry, that they would pay your doctor's bill."

Q He didn't say who "they" were—simply used the word "they" without saying who "they" were. You assumed from that it was Benjamin & Johnes? A Yes, sir.

Q Before he said that didn't he say, "We are insured in an insurance company?" A No, sir, he didn't say it before; he said it afterwards.

Q How is it you are positive about that? A Because when we had recess I thought the thing over and it came to me and I was thinking the thing over and it came to my mind very clearly,

*Florence R. Brabban, cross.*

he said that they belonged with an insurance company and they would take it up with the insurance company.

Q Then what did you say? A I didn't say anything just for a moment. I suppose that they were going to pay it.

Q Did the conversation end there as abruptly as all that? A I said "All right." 10

Q And walked out? A Went back to my machine and worked.

Q Isn't it a fact that what Mr. Brigham said was that he had taken the matter up with Mr. Johnes, that he said that they were insured in an insurance company, and if you would get the doctor's bill, Benjamin & Johnes would send the bill to the insurance company and they might pay the bill; isn't that it? A Mr. Brigham told me—excused himself, he said he would go down and see Mr. Johnes, which he did. 20

Q I am speaking of the conversation in which the name of the insurance company came. Isn't that the order that the conversation took? Didn't Mr. Brigham say to you "I have taken the matter up with Mr. Johnes and he says, that we are insured against accidents in the insurance company and if you will get the doctor's bill we will send them the bill and they will pay the bill." A No, he didn't say the insurance company would pay the bill whatever; he said they would pay the doctor's bill. 30

Q He didn't say "they" was, did he? A No, he did not, he said, "They would pay—"

Q And you didn't at that time know who "they" meant? A No, I didn't know who "they" meant.

Q And you didn't care who paid it? A I thought it was for them to pay it. 40

*Florence R. Brabban, cross.*

Q As a matter of fact, you didn't think anything of the sort—the fact of the matter is you never thought of it? A Who else would they pay?

Q As a matter of fact, you gave no thought to the question as to who they referred to, the  
10 word "they"? A When he said "they," who else would it be? I supposed it is Benjamin & Johnes. I was waiting for Benjamin & Johnes—

Q Benjamin & Johnes never paid the bill, did they? A No, sir, they didn't.

Q And you knew that they were going to send the bill to the insurance company, didn't you? A Mr. Brigham said that they would take it up with them.

Q And you knew further than that that it  
20 was taken up with the insurance company? A My doctor told me that it was too high, it would have to be reconsidered, \$24.

Q From the insurance company; isn't that it? A I can't remember that.

Q But you know as a matter of fact that the bill was sent to the insurance company, don't you? A I don't know if it was sent to them.

Q Did they tell you it was sent to the insur-  
30 ance company? A No, sir, they didn't tell me they sent it.

Q Did they tell you they were going to send it to the insurance company and you didn't know the source of the payment, didn't you, you didn't know who was going to pay the bill? A No more than they said they were going to pay it and I supposed it was my firm.

Q Mr. Brigham's exact language was that Mr. Johnes says they will pay the bill, is that  
40 what he said? A He came up to me and he said

*Florence R. Brabban, cross.*

that Mr. Johnes told me not to worry, that they would pay the bill.

Q The insurance company was mentioned in that conversation, wasn't it? He told you that they were insured? A It wasn't mentioned before that, oh, no. He said they would pay the bill. When he said "they" I supposed it was my firm. 10

Q You were not entirely satisfied with that arrangement—hadn't some of your friends told you you should get a lot of money from this accident? A I beg pardon! I don't understand you.

Q Between the time you were hurt and the time this conversation took place, hadn't you talked with your friends about your accident and hadn't some of them said you ought to get a lot of money from that accident? A No. 20

Q Hadn't you had any conversation at all in reference to money for this accident? A No.

Q You didn't agree with Mr. Brigham when he said all you would be able to get would be the doctor's bill, did you? A Yes.

Q What about your wages for those sixteen days? Didn't you feel it was rather a hardship that you were going to lose your wages for the whole sixteen days? A I will tell you the way I feel about it— 30

Q Just answer the question? A I thought they would come to me and make a settlement, which they should do.

Q You thought you would at least get your doctor's bill paid and your wages, didn't you? A I didn't think anything about wages, but I did think it was no more than right for them to pay my doctor's bill. 40

*Florence R. Brabban, cross.*

Q As a matter of fact, didn't you think you would get a nice settlement for the severe injury that you had suffered? A I didn't think anything of the kind.

10 Q Didn't you say to Mr. Brigham that you thought they ought to do something about your wages you had lost? A No.

Q You are the sole support of yourself and your mother? A Well, yes.

Q And the loss of this sixteen days' pay means a lot to you. A It meant a little bit of loss, but even so, but not about that, it is the doctor's bill.

20 Q When you went in there to see Mr. Brigham and said that you wanted to know what they were going to do about your accident? A Yes, indeed—

Q What you wanted to know, not only whether they were going to pay the doctor, but whether you would get any money; isn't that so? A Not about my wages.

30 Q Isn't it a fact that you wanted to know what they were going to do with you and that Mr. Brigham went downstairs and said that the matter would be taken up with the insurance company, but the payment of the doctor's bill would be all that you were entitled to; isn't that so? A They told me that they would pay the doctor's bill.

Q Who is "they?" Who do you mean by "they" told you you would—you mean Mr. Brigham said that? A Mr. Brigham came up and told me that they would pay the doctor's bill.

40 Q Isn't it a fact, that when you went in there to talk about this case to Mr. Brigham, that you had in mind getting not only your doctor's bill

*Florence R. Brabban, cross.*

settled, but money for the injuries you suffered?

A No money for the injuries; only the doctor's bill.

Q Did you ever read the compensation act before you went in to see Mr. Brigham? A Why, no.

Q And you didn't know what the law in New Jersey was on that subject when you went in to see Mr. Brigham? A How would I know it? I never read it. 10

Q Please answer my question. You didn't know it? A No.

Q So you didn't know as a matter of law in Mr. Brigham's office that all you were entitled to was your doctor's bill? A No, sir.

Q And you went in to find out what you were entitled to, isn't that so? A I was entitled to my doctor's bill. 20

Q You didn't know that that was the extent of the money that you were entitled to when you went in there, did you? A No, I can't say I do.

Q What you went in there for was to find out how much money you were to get, isn't that so? A For my doctor's bill, yes.

Q Will you please answer the question? I say that when you went in there you wanted to find out how much money you were going to collect from the company; isn't that right? A No. 30

Q What did you go in for? A I went in to see what they intended to do in regard to my doctor's bill.

Q But that is not what you said to Mr. Brigham, is it? A Yes.

Q Didn't you ask Mr. Brigham what he was going to do about your accident? 40

Objected to as repetition.

*Florence R. Brabban, cross.*

*The Court.* Did you or did you not?

*Witness.* I asked Mr. Brigham what they intended to do in regard to my accident.

10 Q The conversation that took place the next day occurred when—after you had been at your machine for a while or before you went to your machine at all? A I was at my machine working for a while.

Q And then you saw Mr. Brigham in his office?

Objected to as repetition.

*Mr. Jones.* We have been only going on the first conversation.

20 Q You say that you had been at your sewing machine part of the time the day of the second conversation before you had this talk with Mr. Brigham? A Yes, sir.

Q You saw Mr. Brigham going to his office and that was your cue to go into his office, or did he call you over? A He motioned to come over.

Q And that was the second conversation on the second day? A Yes.

30 Q And you gave him the bill? A He had the bill.

Q When did he get the bill? A He had the bill.

*By the Court.*

Q Where did he get the bill? You say he had the bill. Where did he get it? A Didn't I give it to him?

40 Q I don't know what you did? A I gave him the bill.

*Florence R. Brabban, cross.*

*By Mr. Jones.*

Q When? A Before he went down to see Mr. Johnes.

Q Then you had the bill with you when you went in there on that first day; is that so?

*The Court.* You are talking about the 10  
second day.

*Mr. Jones.* She said before that after she had this conversation she went to the doctor and got the bill.

*By the Court.*

Q You took the bill in on the first or second conversation if you remember. If you don't remember, say so? A My first.

*By Mr. Heisley.*

20

Q Are you sure of that? A No, your Honor.

Q When was it? Answer the question. Speak up so we can hear you?

(Not answered.)

*By Mr. Jones.*

Q At the time you gave the bill to Mr. Brigham did you say anything to him other than 30  
"Here is the doctor's bill?" A I presented it to him and told him, "There is my doctor's bill."

Q And he said, "We will send it to the insurance company." Is that right?

(Not answered.)

ADJOURNED until May 10, 1916, at 10  
o'clock A. M.

*Motion to Dismiss Petition.*

SECOND DAY.

ESSEX COUNTY COURT OF COMMON  
PLEAS.

Wednesday, May 10th, 1916.

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\_\_\_\_\_  
FLORENCE R. BRABBAN,  
*vs.*  
BENJAMIN & JOHNES.  
\_\_\_\_\_

} *On Petition  
for Com-  
pensation.*

Continued pursuant to adjournment.  
Present, counsel as before stated.

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FLORENCE R. BRABBAN, sworn in behalf of  
petitioner.

*Cross examination* (continued) by Mr. Jones.

Q All I wanted to know, Miss Brabban, was:  
you never had any fits in the factory, did you?

A No, sir; none whatever.

*Mr. Heisley.* I rest.

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*Mr. Jones.* I renew my motion, and I un-  
derstand your Honor will reserve decision.  
I renew my motion that the petition be dis-  
missed on the ground that the petition is  
filed more than a year from the time the  
accident happened, and that there was no  
examination upon the compensation within  
the period of one year. I understand your  
Honor desires to reserve decision on that.

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*The Court.* I did two weeks ago. I do  
not know whether I do now or not. You  
will have testimony, or do you rest on your  
motion?

*Motion to Dismiss Petition.*

*Mr. Jones.* I will have additional testimony.

*The Court.* I think I will withhold my conclusion on that matter until the completion of the case.

*Mr. Jones.* I have a further ground for asking for a dismissal of the petition, and that is this—it may be novel—there does not appear to have been notice within ninety days from the injury received, and for that reason I ask for a dismissal of the petition.

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*Mr. Heisley.* The evidence in this case, as I recall it, on that point was that she was at once sent to the hospital or sent home.

*The Court.* Why is not that notice?

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*Mr. Jones.* That is notice of the accident and I have admitted that without any difficulty. My contention is this, that the company had not notice of the injury. There is no question in this case that we knew of the accident at the time and desired to send this girl to the hospital, but my contention is that the company is entitled to notice of the injury received, and I contend that this injury—epileptic fits—is a thing, for all practical purposes, separate and distinct from the accident. The first fit occurred six months after the accident, and she had an opportunity to bring her action within the balance of that year.

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*The Court.* In regard to notice we have always treated accident and injury as synonymous and have never attempted to make any distinction, for the reason that it would undoubtedly lead into many difficulties. My

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*Edward F. Brigham, direct.*

10 recollection is that several years ago, when these questions first began to arise, I had occasion to pass upon that very question, and I think I will find in some of my early cases, my conclusions on the subject. Your motion will be noted on the records and will be disposed of on the whole case.

EDWARD F. BRIGHAM, sworn in behalf of respondent.

*Direct examination by Mr. Jones.*

Q Are you superintendent of the Benjamin & Johnes Company? A I am.

Q Were you superintendent of that company on May 1st, 1913? A I was.

20 Q Did you hear Miss Brabban, the petitioner in this case, testify on the day on which the other testimony was taken in this case? A I did.

Q Did you hear her recount the conversation that she claimed took place between you and herself in reference to the doctor's bill? A I did.

Q Did you, at that time, or at any other time, agree with Miss Brabban, on behalf of Benjamin & Johnes Company, to pay that doctor's bill?

30 *Mr. Heisley.* I object to that. I submit that is not the proper method.

*The Court.* Objection sustained.

Q Tell us just exactly what happened? A You mean after the accident; you mean after Miss Brabban came back?

40 Q With reference to this particular doctor's bill? A Well, I might say that I was made superintendent in February, and this accident occurred in May, and it was the first accident

*Edward F. Brigham, cross.*

where there was apparent disability, and I hardly knew just what course to follow.

Q Then, did she come to you about it? A Yes; she came to me, and then I told her that I would take it up with Mr. Johnes, which I did.

Q And then did you see her again? A If I remember rightly, I reported to her very soon after that; I could not say whether a few minutes or hours. I told her to bring in her bill, and I should turn it over to the insurance company. 10

Q Did you, in that conversation or in any prior conversation or any subsequent conversation, say to her either in these exact words or in substance, that Benjamin & Johnes would pay the bill if she brought it in? A No.

*Cross examination by Mr. Heisley.* 20

Q She came back to you after two weeks of absence from her employment? A About that.

Q What did she say when she first saw you on her return? A Well, it is hard to remember exact words, but she came to me soliciting information as regards to the action to be taken in her case.

Q As to compensation do you mean? A She could answer that better than I. 30

Q You are on the stand; I cannot ask her; I want to know whether she asked you about her compensation? A Yes.

Q At any rate, without undertaking to give the conversation in detail the subject matter of the conversation was the financial disposition of her injuries; is not that so? A Well, the subject to the conversation was her accident.

Q Was not the general subject matter—the feature discussed by you and her at that time— 40

*Edward F. Brigham, cross.*

the financial disposition of her accident? A  
Why, very likely.

Q Because you say that you said that you  
would see Mr. Johnes, and you did see him, and  
you told her to send you the doctor's bill, and  
you would send it to the insurance company? A

10 Yes.

Q She made no other claim? A No.

Q She agreed to do that, and she did do it,  
didn't she? A She did.

Q She got you the doctor's bill, and you did  
send it to the insurance company? A She did.

Q And you understood, I presume, that if the  
insurance company paid this bill, that that would  
be the only claim that she would make against  
Benjamin & Johnes, and she would go back to  
20 work; is that right?

*Mr. Jones.* Objected to. I do not see  
how it is material. What difference does it  
make.

*The Court.* What has his understanding  
got to do with it?

*Mr. Heisley.* I want to show that this was  
a meeting between these two persons for the  
purpose of adjusting the financial end of the  
30 accident.

*The Court.* He having said that he does  
not remember the language, you want to get  
the sense of it, from his point of view?

*Mr. Heisley.* I think he will admit that  
this was the financial disposition of it; that  
they were to get the money from the insur-  
ance company.

*The Court.* In view of the witnesses'  
failure to remember the exact language, I  
40 will admit the testimony for the purpose of

*Edward F. Brigham, cross.*

indicating his understanding of the purpose of that meeting, or at least his side of it.

*Mr. Jones.* I ask an exception.

(Question read.)

A Why, I had no way of knowing what claim she would make. 10

Q I am asking, if you did not understand, as the result of the conversation between you and her, that if the insurance company would pay the doctor's bill, that you people would be absolved from any liability as far as she was concerned?

A That is the purpose of our insurance.

Q That was the understanding you got from the conversation you had with her at that time, was it not? A Exactly.

Q In other words, you understood that she was well enough to come back to work, that she would come back to work, and if her doctor's bill was paid by the insurance company, that was the end of the matter as far as Benjamin & Johnes were concerned; is that it? A Do you mean: Was that my opinion? 20

Q Yes. A I cannot say that I formed any opinion.

Q Well, didn't you have in mind this fact: That if the doctor's bill was paid, that she was going to accept that, together with a return to your employment, as a settlement of her claim? 30

A I might have hoped so, but I could not tell whether it would be so or not. I do not know that my opinion was—

Q That is what you were willing should happen, was it not? A Yes.

Q That was really the object of the interview, was it not, to have the matter paid by the insurance company? A The object of the matter was to have it closed up? 40

*Motion to Dismiss Petition.*

Q Financially? A Disposed of.

10 *Mr. Jones.* I took it for granted that my one objection to that one question would apply to the whole line of examination. If that is not understood, I would like to have that placed on the record, because I cannot see how this witnesses's understanding of the law can have any effect on the respondents.

*Mr. Heisley.* I have no objection to that.

20 *The Court.* It does not relate to his understanding of the law. It relates to his understanding of the conversation, he not being able, as he says, to remember the language. The question that you raised is based entirely upon an understanding between the parties—the meeting of their minds. Of course, while that is a legal conclusion, there must be facts that justify the assumption that there was a meeting of the minds. I will take this testimony subject to your objection, although I have not much doubt about its competency.

RESPONDENT RESTS.

TESTIMONY CLOSED.

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*Mr. Jones.* I renew my previous motion on both grounds, and on the further ground that the weight of the evidence clearly establishes that the agreement upon which the petitioner relies was not made. In the first place, she has not testified to such an agreement. She has testified that Mr. Brigham said to her "They would pay the bill" without any definiteness as to whom the word "They" meant. Mr. Brigham comes here

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*Motion to Dismiss Petition.*

and says that, neither in substance or exact words, did he say that Benjamin & Johnes would pay this bill. I ask for the dismissal of the petition upon the grounds that I have stated.

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*Findings of Fact and Determination.***Findings of Fact and Determination.**

Filed September 21, 1916.

ESSEX COUNTY COURT OF COMMON  
PLEAS.

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FLORENCE R. BRABBAN,

*Petitioner,**vs.*BENJAMIN & JOHNES, a cor-  
poration,*Respondent.**On Petition  
for Com-  
pensation.*

20

For petitioner, Wilbur A. Heisley, Esq.

For respondent, M. Casewell Heine, Esq., and  
Wm. W. Jones, Esq.OSBORNE, *J.*

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The original order in this case was made on the 5th day of May, 1915. The Sheriff's return shows that the order and petition were served on the 8th day of May, 1915, and filed in the clerk's office June 9th, 1915. Respondent's answer was filed June 1st, 1915. An amended petition was filed by consent on June 16, 1915.

Respondent moved to dismiss under the last clause paragraph 23 of the compensation act which provides:

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"In case of personal injuries or death all claims for compensation on account thereof shall be forever barred unless within one year after the accident the parties shall have agreed upon the compensation payable under this act, or unless within one year after the accident one of

*Findings of Fact and Determination.*

the parties shall have filed a petition for adjudication of compensation as provided herein.”

For the purpose of the motion the question was submitted to this Court upon the following state of facts, which was not verified:

“The petitioner, Florence R. Brabban, was injured on May 1st, 1913, while in the employment of the respondent, she having fallen down the stairs while leaving her place of employment. The respondent had actual notice of the occurrence, and a Mr. Benjamin, a member and officer of the respondent corporation, offered to take petitioner to the hospital but petitioner refused. On the sixteenth day after the accident petitioner returned to work and on the same day had a conversation with one of the members of the respondent corporation, during which petitioner asked for compensation and was told that inasmuch as she had returned shortly after the lapse of two weeks, she was entitled to no compensation under the law, but was advised to see a lawyer. She accordingly consulted counsel and was likewise advised that she could recover nothing. She again saw the same member of the respondent corporation and told him that she acquiesced in his interpretation of the law, and said that she was satisfied that she was entitled to no compensation, and if satisfactory to the respondent would continue to work there.

Petitioner continued to work for the respondent, occasionally suffering so much pain that she was compelled to remain away for a day or so at a time, which state of affairs continued until about the month of November, 1914, when the pain which petitioner suffered became so great that she consulted a physician and was then advised that she was suffering from the first stages

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*Findings of Fact and Determination.*

of paralysis, and that she would be incapable of working steadily.

She now presents the petition stating that her incapacity has increased and asking the Court to award her compensation."

10 Upon the state of facts this Court found that there was no agreement such as contemplated by the last clause of paragraph 21 or of the last clause of paragraph 23 of the act and more than one year having elapsed from the date of the accident to the time of filing the petition for compensation, dismissed the petition on September 17, 1915.

20 On November 1st, 1915, a new petition was filed on behalf of petitioner alleging an agreement between petitioner and respondent; that respondent had failed to perform same; that said agreement was made under the belief at the time that her incapacity was of a temporary character and that since making the same her incapacity had greatly increased; that the state of facts previously submitted to the Court and upon which the original proceedings were dismissed, was without her knowledge and incorrectly stated the facts; that she was in receipt of wages averging \$11 a week and that respondent had actual notice of the accident.

30 This petition was treated by the Court as an application to review its judgment and an order was made thereon returnable on the 24th day of November, 1915. After hearing counsel and duly considering the application this Court, on the 15th day of February, 1916, opened and vacated the judgment theretofore entered dismissing the petition, for the purpose of permitting the cause to be reheard.

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*Findings of Fact and Determination.*

The matter was set down for rehearing on notice and the testimony taken on the 12th day of April and the 10th day of May, 1916.

It appeared that petitioner was employed by respondent as a machine operator; that on the 1st day of May, 1913, she quit work at about 5:45 P. M., and as she was leaving the premises, going from the third to the second floor of the building, she tripped on a large bunch of white strings and fell down the stairs to the second floor; that she sustained bruises at the base of her skull and upon her back; she was taken home by a Mr. Brigham, respondent's superintendent.

10

At the end of about two weeks petitioner returned to work. She says that she then asked Mr. Brigham, the superintendent, what they intended to do with regard to her accident and that he told her to get her doctor's bill and they would pay it; that nothing else was mentioned at the time; that she procured the doctor's bill and gave it to Mr. Brigham about the 18th day of May, who said they would take it up with the insurance company; that the bill was never paid.

20

Petitioner continued to work irregularly until the fall of 1914, her condition gradually becoming worse; about six months after the accident she began to have fits or spasms, at first about one a month, then about three weeks apart, then with increasing frequency until she had the attacks as often as three, four or five times a week, sometimes at home, in bed, and sometimes in the street and now claims to be totally and permanently incapacitated as a result of the accident.

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Petitioner's evidence regarding her condition is corroborated by her mother; by Dr. William Satterer, her attending physician and by Dr.

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*Findings of Fact and Determination.*

William H. Hicks. The respondent offered no evidence as to the extent of her injuries, but rested on the medical testimony of petitioner's witnesses.

10 Dr. Satterer testified that he attended petitioner for the injuries resulting from the accident and subsequently for epileptic seizures. At the time of the accident there was swelling and discoloration on her side, at the back of her neck, knee, hip and body; that she was then highly nervous and complained of pain and that her condition has been growing worse. At the end of two weeks however she was able to return to work; soon after she returned to work she began to complain of frequent headaches and trouble with her back; her symptoms led him to  
20 believe that some more serious injury had occurred than contusion of her body and head; that the seizures came on about six months after the injury but "the symptoms leading up to it were always present and growing worse."

30 Dr. Hicks testified that a traumatic injury would cause epileptic seizures and might develop at any time; that petitioner's condition would grow worse and that she could not follow her daily avocation.

At the close of petitioner's case respondent moved to dismiss on the ground that the petition was filed more than a year after the accident and on the further ground that respondent had no notice of the injury now complained of. The disposition of the motion was reserved until the close of respondent's case.

40 Respondent called but one witness, Edward F. Brigham, its superintendent. He testified that petitioner came to him after the accident solicit-

*Findings of Fact and Determination.*

ing information regarding the action to be taken in her case; that she asked about her compensation and he told her he would take the matter up with Mr. Johnes, which he did; that he told her to bring in her doctor's bill and he would turn it over to the insurance company; that she agreed to the proposition to send the bill to the insurance company and that witness understood that if the insurance company would pay the bill respondent would be absolved from liability.

10

Petitioner had testified that she understood that respondent would pay the doctor's bill.

There seems to be no substantial difference between petitioner and respondent's superintendent. Petitioner had apparently sufficiently recovered from the early effects of her injuries to enable her to return to work. Evidently neither she nor Mr. Brigham realized the extent of her injuries. She was therefore satisfied to be reimbursed for her medical expenses incurred up to that time and Mr. Brigham, acting in the matter for the respondent, and probably realizing its liability, at least for medical expenses, was satisfied to settle her claim on that basis. The bill apparently covers the expense of medical treatment beyond the two weeks' period allowed by the statute (which would be from May 1st, the date of the accident, to May 14) as Dr. Satterer testified the bill for services from May 1st to its date, which was May 18th.

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The use of the terms "we" or "they" in the interviews between petitioner and Mr. Brigham regarding the payment of the doctor's bill are relatively unimportant. The liability was respondent's and it was of no concern to petitioner whether respondent paid the bill or procured it to be paid through insurance.

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*Findings of Fact and Determination.*

Respondent does not dispute the fact that if petitioner's disability as a result of the accident had extended beyond two weeks petitioner would have had a valid claim for compensation; at the expiration of about two weeks she believed she had recovered; her employer acquiesced in this view and they agreed upon a settlement of the claim for the amount of the doctor's bill. The fact that it later appeared that both were mistaken as to the extent of the injuries received did not alter the fact that an agreement for compensation, to be measured by the doctor's bill, had been made.

While the statute provides that if, within one year after the accident, the parties "shall have agreed upon the compensation payable under this act" the claim shall not be barred, it does not otherwise define the character of the agreement. Petitioner was entitled to have her medical expenses furnished for the first two weeks after the accident and to be compensated for any loss by reason of her injuries thereafter.

It has been suggested that the medical expenses for the first two weeks are not compensation. Such expenses have, however, always been treated as part of the compensation recoverable under the act, and when incurred by petitioner have customarily been made part of the judgment. I take it that the term "compensation" as used in the act is broad enough and was intended to include every element which would inure to the benefit of the employee by virtue of the statute. This view is not necessarily inconsistent with a more narrow application of the term when used in connection with and in reference to the payments calculated upon the earnings of the employee for a given number of

*Findings of Fact and Determination.*

weeks; furthermore, it appears that the agreement here in question contemplated the payment as well of such part of the bill as covered the period from May 14th, the expiration of two weeks after the accident, to May 18th; this certainly would be considered and treated as "compensation" in lieu of the compensation based upon a percentage of wages if embraced within the terms of an agreement between the parties to settle the claim. While the act fixes the liability and provides a basis for the determination of the amount of compensation, it would place too narrow a construction upon it to say that the agreement contemplated must be confined to its express terms relating to percentage of wages and number of weeks of disability. There are many instances where it would be impossible to determine with accuracy the extent of the future disability. An agreement between the parties with the liability fixed by the act in view, for the benefit of the injured employee and made for the purpose of disposing of any differences between them, meets the requirements of the statute.

While respondent admits notice of the accident and of the injuries immediately following, it contends that it had no notice of the subsequent disability and that therefore it did not receive such notice as is intended by the fifteenth paragraph of the act. The injured employee could not always know or anticipate the development or extent of injuries resulting from an accident. The statute provides for notice of an accident resulting in injuries for which compensation may be payable; it provides that the injured employee must submit himself for examination if so requested by the employer, it does not provide, however, for any other or further notice than is in-

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*Findings of Fact and Determination.*

10 dicated in paragraphs 15 and 16. By the express term of paragraph 20 no agreement between the parties is a bar to the award of a larger sum. With knowledge of this fact respondent might have availed itself of the provisions of paragraph 17 and had an examination of petitioner. Having  
10 failed to do so after receiving actual notice of an injury, it cannot now be heard to complain that the notice received did not apprise it of the extent of the injuries.

I find there was an agreement for compensation by the petitioner and respondent made within one year after the accident. Such agreement, by the terms of paragraph 23 of the act takes the claim out of the operation of the statute limiting the time for beginning actions under it to  
20 one year after happening of the accident.

These conclusions dispose of respondent's motions to dismiss the proceedings on the ground that petition was filed more than a year after the accident, that there was no agreement within the meaning of the statute and that respondent had no notice of the injuries complained of. The petitioner is entitled to judgment under paragraph 11 (B) for disability total in character and permanent in quality for \$5.50 per week,  
30 being fifty per centum. of her wages received at the time of injury, during a period of four hundred weeks, beginning two weeks after the accident, besides medical expenses for the first two weeks after the accident.

As compensation is payable under this paragraph only during the period of such disability, the respondent may apply to have this award diminished under paragraph 21 of the act which provides that an award of compensation may be  
40 reviewed upon the application of either party on

*Findings of Fact and Determination.*

the ground that the incapacity of the injured employee has subsequently increased or diminished. In such case paragraph 17 with reference to medical examination shall apply.

Petitioner is allowed costs, and the amount of petitioner's attorney's compensation is fixed at one hundred and fifty dollars to be paid by petitioner from the accrued payments due from the respondent.

HARRY V. OSBORNE,  
*Judge.*

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*Judgment.*

**Judgment.**

Filed September 19, 1916.

ESSEX COUNTY COMMON PLEAS COURT.  
26690.

10	FLORENCE R. BRABBAN, <div style="text-align: right;"><i>Petitioner,</i></div>	}	<i>On Petition.</i>
	<i>vs.</i>		<i>On</i>
	BENJAMIN & JOHNES, a cor- poration, <div style="text-align: right;"><i>Respondent.</i></div>		<i>Determina- tion of Court After Hearing.</i>

Judgment entered September 19, A. D., 1916.  
20 Costs, \$34.51.

Wilbur A. Heisley, Attorney of Petitioner.

Judgment on determination of Court after hearing in the above entitled action was rendered on the nineteenth day of October, A. D. nineteen hundred and sixteen, in favor of the said petitioner Florence R. Brabban and assess the damages against the respondent Benjamin and Johnes, a corporation, in the sum of five and  
30 fifty one hundredths dollars per week, payable for a period of four hundred weeks, beginning two weeks after the accident, together with costs.

And the Court further allows the attorney of the petitioner the sum of one hundred and fifty dollars for legal services, to be paid by petitioner from the accrued payments due from the respondent.

Judgment entered and signed September 19,  
40 1916.

H. V. OSBORNE,  
*Judge.*

Book P. 2, page 457.

*Reasons.***Reasons.**

Filed November 8, 1916.

**New Jersey Supreme Court.**

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FLORENCE R. BRABBAN,  
*Petitioner and Defendant*  
*in Certiorari,*

*vs.*

BENJAMIN & JOHNES, a cor-  
poration,  
*Defendant and Prosecutor*  
*in Certiorari.*

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*On*  
*Certiorari.**Reasons.*

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And the said prosectutor, Benjamin & Johnes, by its attorney, comes and prays that the judgment entered against it in the Court of Common Pleas in and for the County of Essex by Harry V. Osborne, Esquire, Judge of the said Court of Common Pleas, may be set aside, reversed and for nothing holden for the following reasons:

First. Because the Court improperly and unlawfully vacated its judgment of September 17, 1915.

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Second. Because at the commencement of the trial on April 12, 1916, the Court denied respondent-prosecutor's motion to dismiss the proceedings on the pleadings.

Third. Because the Court improperly and unlawfully denied respondent's motion to dismiss the proceedings on the offering of petitioner's counsel.

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*Reasons.*

Fourth. Because the Court found without any evidence to support such finding that respondent agreed with petitioner to pay the doctor's bill incurred by her.

10 Fifth. Because the Court improperly and unlawfully admitted evidence of witness Brigham as to his understanding of the legal effect of the conversation between him and the petitioner.

Sixth. Because the Court found without any evidence to support such finding that there was an agreement for compensation by the petitioner and the respondent made within one year after the accident.

20 Seventh. Because the Court improperly and unlawfully denied respondent's motion to dismiss the proceedings at the end of petitioner's case.

Eighth. Because the Court improperly and unlawfully denied respondent's motion to dismiss the proceedings at the end of the whole case.

Ninth. Because the Court improperly and unlawfully entered judgment without specifically finding that the respondent obtained knowledge or received notice within ninety days after the occurrence of the injury.

30 Tenth. Because the finding of facts and determination filed by the Court is defective and not in accordance with the statute in such case made and provided.

Eleventh. Because the Court improperly and unlawfully overruled respondent's contention that it did not obtain knowledge and was not given notice within ninety days after the occurrence of the injury.

40 Twelfth. Because the Court improperly and unlawfully awarded petitioner compensation at

*Reasons.*

the rate of five dollars and fifty cents (\$5.50) per week, without any evidence to support such award.

Thirteenth. Because the Court did not find when the petitioner's disability commenced.

Fourteenth. Because the Court improperly and unlawfully awarded compensation beginning two weeks after the accident. 10

M. CASEWELL HEINE,  
*Attorney for Prosecutor.*

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*Opinion of Supreme Court.*

**Opinion of Supreme Court.**

10	BENJAMIN & JOHNES, <div style="text-align: right;"><i>Prosecutor,</i></div> <div style="text-align: center;"><i>vs.</i></div> FLORENCE A. BRABBAN, <div style="text-align: right;"><i>Respondent.</i></div>	}
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Argued June 7, 1917—Decided June 25, 1917.

1. A claim for compensation under the Workmen's Compensation act is barred by the lapse of one year from the date of the accident unless a petition is filed or an agreement for compensation payable under the act, is reached within such time. Neither the payment by the employer of the physician's bill for attendance during the first two weeks of disability nor an agreement that there shall be "no compensation" can properly be called an agreement such as may be reviewed by the Court of Common Pleas, under the authority of paragraph 21 of the act, on the ground that the incapacity of the injured employe has subsequently increased or diminished.

2. A case under the Workmen's Compensation act, solemnly adjudicated on a petition and agreed statement of facts, should not be reopened for the purpose of allowing a party to make a new and distinct case.

On certiorari to the Essex Pleas.

Before Justices Swayze, Bergen and Black.

For the prosecutor, M. Casewell Heine.

For the defendant, Wilbur A. Heisley.

*Opinion of Supreme Court.*

The opinion of the court was delivered by  
SWAYZE, J.

Florence M. Brabban was injured on May 1st, 1913, while in the employ of Benjamin & Johnes. On April 30th, 1915, nearly two years afterward, she filed a petition in the Essex Common Pleas setting up that there was a dispute between her and the present prosecutor concerning her claim for compensation and praying that that dispute might be determined in accordance with the act. To this petition an answer was filed claiming that her right was barred by the lapse of the year allowed by the statute, and obviously this defense was valid. Thereupon, on June 16th, 1915, she filed an amended petition in which she stated that about two weeks after the accident an agreement was entered into between her and the prosecutor by which it was understood and agreed "that the petitioner should receive no compensation for the injury which she sustained by reason of the fact that she had returned to her employment on the sixteenth day after the occurrence;" that in November, 1914, she discovered that her incapacity had increased and she therefore requested the court to review the agreement and to adjudge compensation to her under the act. This petition came on for hearing upon an agreed state of facts which recited that on the sixteenth day after the accident she returned to work, and on the same day, had a conversation with one of the members of the respondent corporation, during which she asked for compensation and was told that as she had returned shortly after the lapse of two weeks she was entitled to no compensation under the law, but was advised to see a lawyer; that she consulted counsel and was advised that she could

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*Opinion of Supreme Court.*

recover nothing; that she again saw the same member of the respondent corporation and told him that she acquiesced in his interpretation of the law, and said that she was satisfied that she was entitled to no compensation, and if satisfactory to the respondent would continue to work there; and that she did so continue working until the month of November, 1914. The judge held, on this state of facts, that he could find no agreement such as contemplated by the language of the last paragraph of section 21 or the last paragraph of section 23, and that the petition would be dismissed.

On November 13th, 1915, Miss Brabban filed a second amended petition in which she recited that two weeks after the accident an agreement was entered into between her and the prosecutor, in which it was agreed that the prosecutor should pay or reimburse her for the amount she had become indebted to a physician for medical attendance made necessary by the accident. The petition states that more than one year had elapsed since the agreement became operative; that the statement in her former petition that it was agreed that she should receive no compensation for the injury was made by inadvertence and mistake and without the knowledge of the petitioner (although it was sworn to). She prayed that the agreement be reviewed. Thereupon the judge set aside his former judgment, reheard the case, held that the agreement to pay the physician's bill was an agreement for compensation and that he had the right to review it. He did review it and awarded her \$5.50 a week for four hundred weeks.

Obviously she could not recover under any of these petitions as an original petition for com-

*Opinion of Supreme Court.*

pensation under the act, for they were all filed  
 more than a year after the injury. The only  
 ground on which the proceedings can be sus-  
 tained is that there had been an agreement for  
 compensation between the parties within a year  
 after the accident, and that this agreement might  
 be reviewed under section 21 of the act on the 10  
 ground that her incapacity had increased. The  
 difficulty with this claim of the petitioner is that  
 it is necessary that there should have been an  
 agreement upon the "compensation payable un-  
 der the act," which shall be subject to diminution  
 as well as to increase. The payment of the  
 physician's bill required no agreement, as the  
 present prosecutor was under an obligation to  
 pay that bill under section 14 of the statute, with-  
 out any agreement. It is very doubtful, we 20  
 think, whether the opinion of the learned judge  
 of the Common Pleas that the physician's bill  
 was compensation is sound, but whether so or  
 not the payment of the physician's bill required  
 no agreement and would not be subject to re-  
 view; it is only where there is an agreement that  
 there can be a review after the year and a case  
 where there is an agreement is contrasted by the  
 statute with a case where there is a dispute.  
 The provision is clearly not applicable to a case 30  
 like this. To call an agreement that there  
 should be "no compensation" an agreement for  
 compensation under the act, is a mere perversion  
 of language.

Force is added to this view by the very fact  
 stated in the first amended petition that the  
 agreement was that the petitioner should receive  
 no compensation for the injury which she had  
 sustained by reason of the fact that she had re-  
 turned to her employment on the sixteenth day 40

*Opinion of Supreme Court.*

after the injury. Obviously, the petitioner then had in mind the provisions of section 13 of the act that no compensation should be allowed for the first two weeks after the injury is received, and as the trial judge said in his original opinion, the statement of facts which was agreed upon showed that there was no agreement such as was contemplated by sections 21 and 23. His adjudication on that petition and statement of facts was undoubtedly correct, and we think he ought not, after he had adjudicated the matter, to have allowed the case to be reopened for the purpose of making a new and different case in contradiction of the petitioner's own averments under oath. Such a procedure deprives the defendant of the protection which the statute intends to give him.

We pass by the questions as to the technical form of the procedure on which a rehearing was had, as we do not regard that as important, but it is important that a case solemnly adjudicated should not be reopened for the purpose of allowing a party to make a new and distinct case.

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*Rule Reversing Judgment.*

## NEW JERSEY SUPREME COURT.

FLORENCE R. BRABBAN, <i>Petitioner and Defendant</i> <i>in Certiorari,</i> <i>vs.</i> BENJAMIN & JOHNES, a cor- poration, <i>Respondent and Prosecutor</i> <i>in Certiorari.</i>	}	<i>Rule</i> <i>Reversing</i> <i>Judgment</i> <i>and</i> <i>Remittitur.</i>	10
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The Court, having inspected the transcript and proceedings of the Court of Common Pleas of the County of Essex, and also the findings of the Court 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; 20

It is, on this fourteenth day of May, nineteen hundred and eighteen,

ORDERED, that the judgment of the Court of Common Pleas of the County of Essex be in all things reversed, and that the record and proceedings remitted to the Court of Common Pleas of the County of Essex, be proceeded with in accordance with the judgment and practice of said Court. 30

Entered May 14, 1918,

On motion of

M. CASEWELL HEINE,  
*Attorney for Respondent and Prosecutor.*

*Rule Reversing Judgment.*

I, ENOCH L. JOHNSON, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the notice of appeal filed and also of a rule entered in the minutes of the court in the above-stated cause.

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(SEAL)

In testimony whereof I have set my hand and the seal of said Court at Trenton, this twentieth day of May, A. D. nineteen hundred and eighteen.

ENOCH L. JOHNSON,  
*Clerk.*

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## New Jersey Court of Errors and Appeals

FLORENCE R. BRABBAN,  
*Petitioner-Appellant,*

*vs.*

BENJAMIN & JOHNES,  
a corporation,

*Respondent.*

*On Appeal  
from Supreme  
Court.*

### Brief for Petitioner-Appellant.

#### History of Case.

On May 1, 1913, the petitioner while in the employ of the prosecutor, was injured by falling down the stairs at the place of her employment. The prosecutor had actual knowledge of the happening. About two weeks after the accident, the petitioner, believing she had so far recovered, returned to work for the same employers, alleging that at that time it was agreed by and between her employers and herself, that her claim against the employer under the Employers' Liability Act, should be settled by her being restored to her old position, and the company paying her doctor's bill incurred by reason of the accident, amounting to twenty-four dollars (\$24). She continued to work, but under difficulty and irregularly because of the severe pain she was suffering, until about the month of November, 1914, when the pain, having become so great, she was advised by a physician that she was in the first stage of paralysis, and was incapable of working steadily.

On April 30th, 1915, she filed her petition under the Employers' Liability Law. On June

16th, 1915, an amended petition was filed, shown on page 13 of the State of Case, evidently for the purpose of showing by paragraph 6 that there had been an agreement entered into between the employer and employee concerning her compensation, and which would give the Court jurisdiction to entertain the cause at that time, because without such an agreement, the statutory limitation would have operated. This petition then goes on in paragraph 8 to say that her incapacity had increased, and therefore prayed that the Court would review the agreement, etc.

On page 18 of the State of Case, it appears that a stipulation was made between counsel for the prosecutor and her then counsel, but without her knowledge, as will subsequently appear, which practically deprived the Court of jurisdiction.

On November 13th, 1915, another amended petition was filed in her behalf, see page 20, in which by paragraph 7 on page 21, l. 19, is alleged an agreement between the prosecutor and the petitioner, whereby the prosecutor was to pay petitioner's doctor's bill.

In paragraph 8, it is alleged that more than one year having elapsed from the time of the making of the said agreement, and the prosecutor having wholly failed to pay the doctor's bill, etc., etc., and her condition having grown steadily worse, and in paragraph 11 that the agreement of counsel above referred to, was made without her knowledge and was incorrect, she prayed in paragraph 13 that the Court would review the agreement and would reconsider its prior determination upon the previous petition. The Court decided (p. 94, l. 29) the petitioner was entitled to receive \$5.50 per week during four hundred weeks and medical expenses.

### **The only disputed fact at the trial was**

as to the making of the alleged agreement for payment of the doctor's bill. The prosecutor did not controvert the extent of her injuries; it offered no evidence whatever to contradict the testimony of experts that this woman has epilepsy as a result of this happening, and that her condition is likely to grow worse. The evidence in the case irresistibly leads to the conclusion that down to the time of the trial of this cause, the frequency of her epileptic fits had greatly increased; that it was unsafe for her to go in the street unattended, and it was impossible for her to work, and that her condition was due to the above stated accident.

### **Alleged Illegalities.**

The defendant alleges that the Court below had no right to open its former judgment, rehear the case and make the present order, and insists that affidavits should have been taken upon notice to be used upon the application for a rehearing.

We contend that the Court of Common Pleas in making an adjudication under the Employers' Liability Act, is not executing a mere naked power like for instance a judge who grants a license on the first day of a term, or appoints some commissioner to execute some public duty. In those cases the power of the Judge ceases with the performance of the specific act, but in an Employers' Liability matter, he *as a Court*, renders a judgment which can be enforced the same as any other judgment, and like all other courts, it can, upon its own motion, open a judgment and grant a new trial in its discretion, and the exercise of such discretion is not reviewable, excepting in most extreme cases.

The last Section of Paragraph 6, page 310, Laws of 1913, provides that an award, etc., may be reviewed by the Court at any time after one year, showing the power to be a continuing one.

A sufficient answer to this allegation is that prosecutor never raised this point, that is, the absence of affidavits taken on notice, on the argument, but on the contrary, see page 25 of the case, its notice of objection to the rehearing *was solely on the ground that the matter was res adjudicata*. This was *prosecutor's sole point* on the argument, page 34, l. 41.

The order upon the last petition was returnable on November 24th, 1915, see page 23. There evidently was a hearing upon the petition at some time before February 15th, 1916, because on the last date, see page 27, the Court ordered the former judgment vacated "for the purpose of permitting the cause to be reheard."

It is to be observed that at page 26, it appears that counsel had agreed to file his answer within five days after the decision of the Court upon the application to reopen; that, page 31, the cause came on for argument on April 12th, the prosecutor neglecting to file any answer, and at page 35, l. 18, at that late date, it asked for and obtained time to file an answer *nunc pro tunc*. The answer was not sworn to until the sixteenth day of the following October, see page 29, and we respectfully insist that if there was any merit in the point raised as to the procedure of the Court, it was waived:—

A—By the prosecuor failing to raise that point before the Trial Judge.

B—By failing to file its answer within five days after the decision above referred to, and

C—It would be manifestly unfair to petitioner to allow prosecutor to raise the point by an answer filed after final hearing; but it did not raise the point by such answer.

### **Excessive Compensation Awarded.**

We concede by inadvertance the award is excessive to the extent of fifty cents per week, and are willing to rebate that amount from the award.

### **Alleged mistake in naming the date when permanent disability began.**

We submit if this point be of substance, it is beneficial to the prosecutor, and it has no cause for complaint.

It is the petitioner's legal right to recover compensation for *temporary disability in addition* to the award made by the Court.

The evidence shows that she worked irregularly for about 19 months after the accident, during all of which time she suffered great pain, which was so intense and frequent as to cause the irregularity in her service. It seems reasonable to say that if this matter be remanded to the Common Pleas, for the purpose of determining the temporary disability, that such Court would be justified in awarding compensation for temporary disability in addition to the compensation awarded for the permanent disability.

### **Weight of Evidence.**

The prosecutor's allegation that the petitioner testified in various ways concerning the making of the alleged agreement, I submit should have no force, because even if that were true, the ob-

jection would go to the *weight* of her evidence which was entirely for the Trial Court to pass upon, and not to *its competency*.

The other two points raised by prosecutor are:—

### FIRST.

**Was there an "Agreement" which raised the bar of the Statute?**

### SECOND.

**Did the Defendant have notice of the injury?**

Upon the first point, viz., the agreement, we observe as follows:—

In discussing paragraph 23 of the statute, we must remember:—

This language *does not refer to the liability* of the prosecutor, but refers *solely to the amount*. *The statute fixes the liability*. *It does not require an agreement* as to liability, nor does the Court have any power to determine the liability where a statutory injury is inflicted, because paragraph 11, page 304, P. L. 1913, gives the Court jurisdiction in only one case, namely, "should the employer and employee be unable to agree *upon the amount of compensation*" \* \* \*. It has no authority to pass upon the liability. If the parties agree upon the amount, the Court has no jurisdiction for any purpose excepting to *review the agreement*. The statute fixes the liability *without any promise on the part of the prosecutor*.

The statute is self-executing, excepting as to *the amount*, which is to be determined either—

- (1) By the parties.
- (2) Or by the Court upon petition.

The Legislature having *determined the liability*, is deeply concerned in seeing that the injured shall receive “*the amount prescribed*,” and by paragraph 20, it makes invalid any agreement between the parties for less than the statutory amount.

Paragraph 21, page 309, clearly shows that the only purpose in reviewing an agreement, is to adjudicate *the amount* of compensation.

### **There was nothing but the question of amount upon which the parties could agree**

because the law had fixed the liability of the defendant to pay. By paragraph 4, the employer was obliged to furnish medical aid for two weeks, and then follows compensation for, 1st temporary, 2nd permanent injury.

At the time of the making of this alleged agreement, the two weeks had actually elapsed, *and as a matter of law as well as fact, the prosecutor at that time was indebted to the petitioner* for a reasonable physician's bill.

### **Did they agree as to “Amount?”**

The Court found as a fact, that they did agree; that prosecutor was to pay her doctor's bill.

### **Notice of the Injury.**

The prosecutor contends that it was entitled to notice of the fact that petitioner's condition was growing worse.

We deny this and say that all an employer is entitled to is *notice of the accident*. Either party may apply to the Court to review its award because of *a change in the condition of the injured after the making of the award*. In no event do we think this statute requires an injured person to issue bulletins or notices as to every change in her condition.

What could employer have done if he was told of the epilepsy?

### **The last point raised**

by the prosecutor is that the Court erred, see p. 82, l. 16, of state of case, in allowing the representative of the prosecutor to testify as to what he understood he and the petitioner were discussing or agreeing to. We do not think this is hearsay. They were the two contracting parties. In order to make a contract, there must be a meeting of the minds. What better evidence can there be produced of this fact than to have the two contracting parties state exactly what they thought they were accomplishing? *Speer v. Speer*, 14 N. J. Eq., p. 240.

The Supreme Court reversed the judgment of the Pleas, and that reversal, we respectfully contend, was erroneous in the following respects:—

### **POINT ONE.**

Because the Supreme Court erred in holding as follows:—

“The difficulty with this claim of the petitioner is that it is necessary that there should have been an agreement upon “compensation payable under the act,” which shall be subject to diminution as well as increase. The payment of the

physician's bill required no agreement, as the present prosecutor was under an obligation to pay that bill under Section 14 of the statute, without any agreement. It is very doubtful, we think, whether the opinion of the learned Judge of the Common Pleas, that the physician's bill was compensation, is sound, but whether so or not, the payment of the physician's bill required no agreement, and would not be subject to review; it is only where there is an agreement that there can be a review after the year, and the case where there is an agreement is contrasted by the statute with a case where there is a dispute. The provision is clearly not applicable to a case like this.

### POINT TWO.

Because the Supreme Court erred in holding as follows:—

“Force is added to this view by the very facts stated in the first amended petition that the agreement is that the petitioner should receive no compensation for the injury which she had sustained by reason of the fact that she had returned to her employment on the 16th day after the injury. Obviously, the petitioner, then had in mind the provisions of section 13 of the act that no compensation should be allowed the first two weeks after the injury is received and as the Trial Judge said in his original opinion, the statement of facts which was agreed upon showed that there was no agreement such as was contemplated by sections 21 and 23. “His adjudication on that petition and statement of facts was undoubtedly correct, and we think he ought not, after he had adjudicated the matter, to have allowed the case to be reopened for the purpose

of making a new and different case in contradiction of the petitioner's own averments under oath."

### POINT THREE.

The Supreme Court erred in assuming to review the action of the Trial Judge in a matter entirely discretionary, namely, to decide whether or not he should, as a matter of justice, permit petitioner to reopen the case for the purpose of further consideration.

### POINT FOUR.

Such power rested exclusively in the sound discretion of the Trial Court, and such discretionary act is not reviewable except in the case of gross abuse of discretion.

### POINT FIVE.

Because the statute under discussion was designed to afford a remedy by means of compensation, and if an employee has been injured, and in her application to the Court for relief, under the statute, makes contradictory statements, such contradictions may, *as a matter of fact, but not as a matter of law*, affect her credibility, but whether or not, and to what extent, her credibility is affected, is exclusively for the Trial Court to determine, and its finding is not reviewable.

We do not suppose it will be contended that her alleged contradictory statements operated as an "estoppel," because the essential of an estoppel is lacking, namely, that she did not induce the respondents to change their situation. It, however, seems to resolve itself purely and

simply into a question of her credibility which we think was to be ascertained by the trial, not by the Appellate Court.

### **Is a physician's bill "Compensation?"**

We think the fallacy of the Supreme Court's conclusion that an agreement to pay the physician's bill was not an "agreement to pay compensation" is shown by the following reasons:—

The entire spirit and sole object of the statute is to make "compensation" consist of two elements.

1st, and primarily:—The payment of a part of the wages which the injured would otherwise lose.

2nd:—The payment (see section 14) of the physician's bill for the "first two weeks after the injury." Section 14A says that "*compensation*" for all classes of injuries shall run consecutively and not concurrently, as follows:—

First two weeks (the compensation shall be) medical and hospital services.

Here the Legislature in clear and unequivocal language calls "medical and hospital services and medicines" "compensation."

"Compensation" is defined to be—  
Money which a Court orders to be paid by a person whose acts or omissions have caused loss or injury to another, in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect to his injury." "A recompense or reward for some loss, injury or services, especially when it is given by statute." 12 Corpus Juris, page 230.

But the consideration of this question is not to be confined to any formal definition

of "compensation." We are more interested in ascertaining in what sense the legislature used the word "compensation," and it seems impossible to conclude that it did not treat physician's bills as a part of the compensation, because during those two weeks the injured would receive no portion of her wages.

The popular understanding of the word "compensation" is to indemnify and reimburse a person for a loss. If an employee is injured so that she is obliged to have medical attention, it is a loss imposed upon her by reason of her employment, and this loss is to be met and compensated on the same grounds as a loss of wages would be compensated.

Nor do we agree with the significance attached to the finding of the Supreme Court that the "payment of the physician's bill required no agreement, as the present prosecutor was under an obligation to pay that bill \* \* \* without any agreement." Neither did the payment of a percentage of wages require an agreement.

Section 14 prescribes that the employer shall do two things—pay the doctor's bill and after two weeks pay percentage of wages according to the schedule of the act. It is only in case the parties cannot agree upon either of these that the aid of the Court shall be invoked.

Section 14 is mandatory upon the employer.

Section 14 prescribes the precise sum the employer is to pay for physician's bills. The maximum, however, is to be fifty dollars; it may be fifty cents. Therefore, we think it illogical to say that there can be no agreement as to the uncertain amount of the physician's bill.

We believe an injured person who thinks she is not much injured, may agree with her em-

ployer to accept the payment of her physician's bill in satisfaction of her claim under the statute.

Under the statute, these parties had the right to agree, and we care not what was the particular amount the parties agreed upon; whether it was the payment of a certain sum on account of wages or of doctor's bills. It was, at any rate, an agreement referring to a subject called "compensation" *by the legislature*, and if it was an agreement, then within one year after it became operative, she had the right to have it reviewed on the ground that her incapacity had increased.

We believe any agreement or arrangement made by the two parties, without resorting to the Common Pleas, is the "agreement" in statutory contemplation and we see no reason why such an agreement, no matter how it is made up, whether it was for the payment of her physician's bill or of wages, or of furnishing her with food and clothing, should not be reviewed.

The statute does not limit the agreement to the payment of wages only. It says "an agreement may be reviewed." It must be an agreement relating to one or both of two things, viz, doctor's bills or loss of wages.

Nor do we think it at all clear if she had made an agreement that "she should receive no compensation" that that agreement could be reviewed (Sup. 103).

Section 21 says an "agreement or award of compensation" may be reviewed.

We think this means an agreement *as to compensation*—or an award of compensation—may be reviewed.

It would be most ungrammatical to say "agreement of compensation."

Sec. 23 does say “\* \* \* shall have agreed upon the compensation payable under this act.”

Assuming she did agree that she was entitled to no compensation, would not that be “and agreement as to compensation payable under this act”?

Sec. 20, p. 309, P. L. 1913, says “no agreement for a lesser sum \* \* \* shall operate as a bar \* \* \*.” This shows the purpose of the legislature to take care of an injured employee who by ignorance, fraud or mistake has agreed to accept a too small sum.

Can it be possible where by the same causes she has agreed that she is entitled to *nothing* but to return to her work, that she may not have that agreement reviewed on the merits?

She is much more injured where she agrees to get nothing than where she agrees to a “lesser sum.”

### **The Statute should be liberally construed.**

Because it provides a new remedy and is in furtherance of justice.

The finding of the Supreme Court seems to be predicated upon the idea that the Common Pleas Judge should not have accepted this woman's story. It nowhere says that he did not have the right to review his former adjudication. It, therefore, seems to us that the Supreme Court's judgment is based upon a review of the finding of the Trial Judge that this petitioner's veracity and credibility had not been shaken by the two alleged contradictory statements.

If this Court thinks the Supreme Court was justified in so holding, may we respectfully suggest to this Honorable Court that the statements

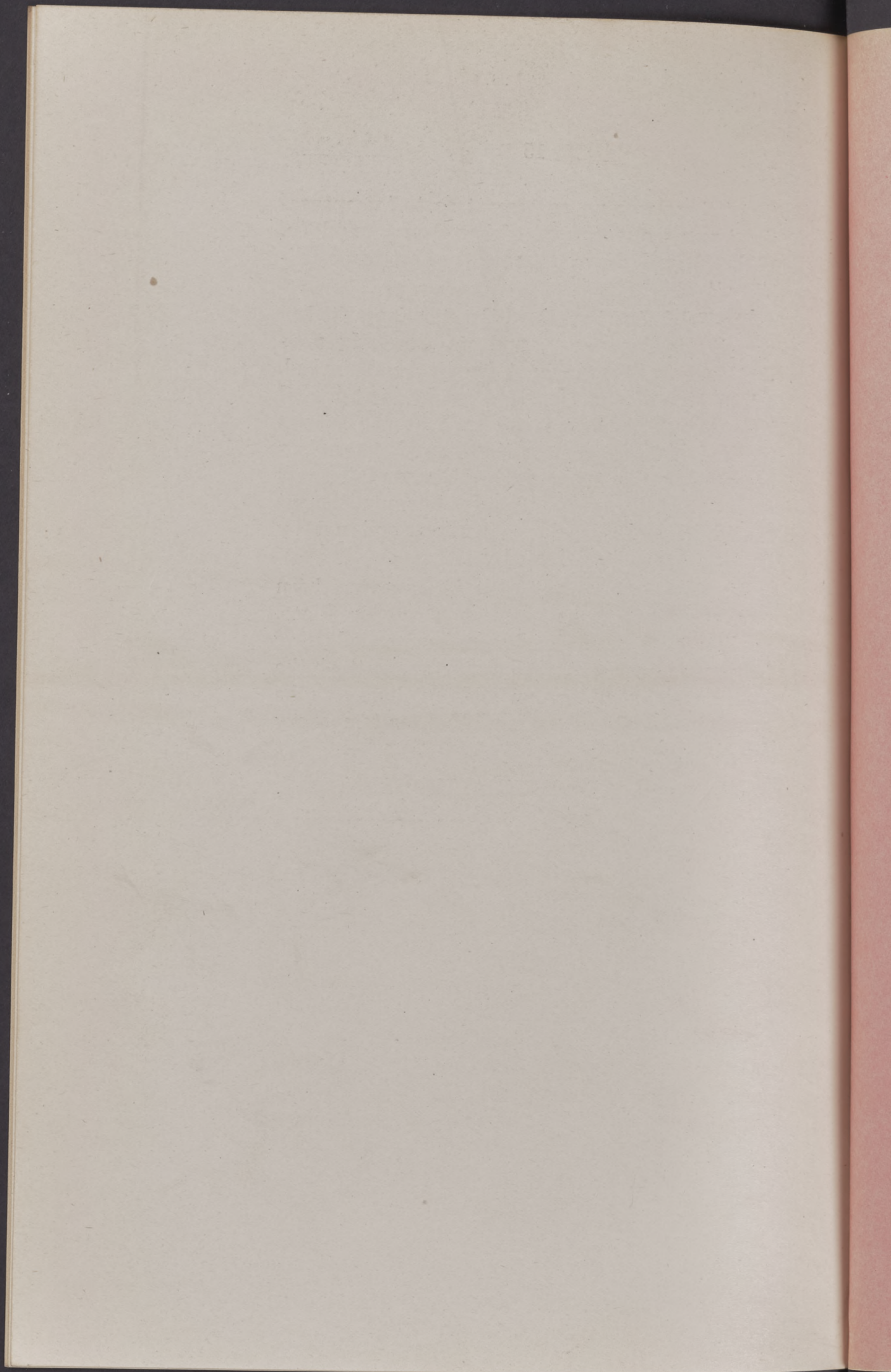
that "there was no agreement as to 'compensation,' was the statement of her then counsel (p. 18, l. 18), and therefore, cannot affect her credibility."

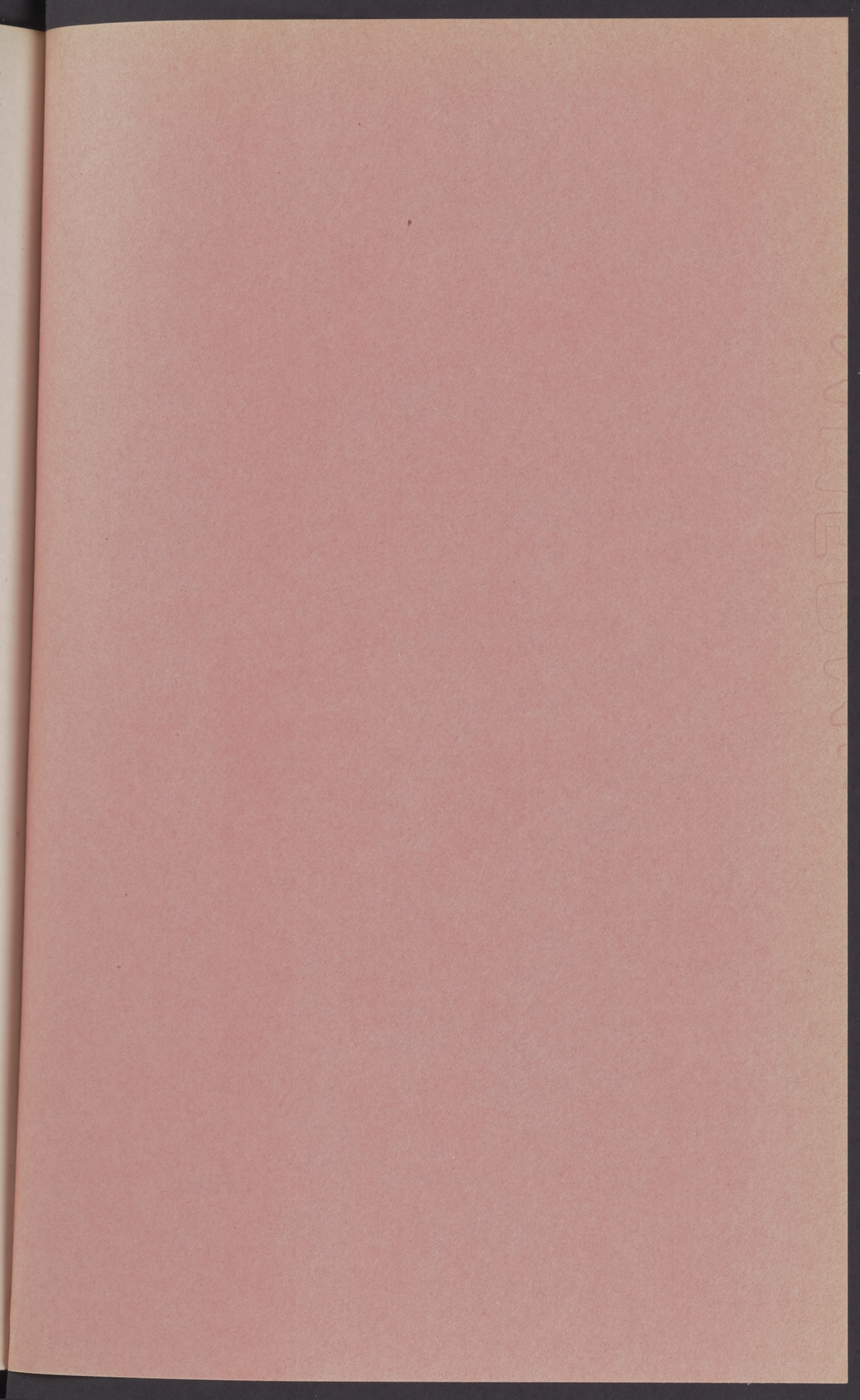
The Trial Court resolved the question as to her veracity in her favor, and we earnestly urge that that finding may not legally be disturbed.

The aim of the Court is to do justice, and if there was an agreement such as she swears to, she is entitled to have it reviewed, regardless of whether she made contradictory statements or not. If she swore falsely, her punishment should be by a legal prosecution, and not by denying her a legal remedy.

We therefore suggest that if there has been any error committed by the Common Pleas, needing correction, it should be by deducting fifty cents per week from the amount of the award and by adding an additional sum to be ascertained by the Common Pleas for temporary disability.

WILBUR A. HEISLEY,  
*Of Counsel with Petitioner.*





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