INDEX.

Notice of Appeal.

(Filed . .) 10

New Jersey Supreme Court

BECKER CONSTRUCTION COMPANY,
Appellant,

v.

OSCAR E. ASLUND (Catherine Ashland impleaded),
Defendant. 20

To Henry Carless, Attorney of Defendant,

TAKE NOTICE, that the appellant hereby appeals to the New Jersey Court of Errors and Appeals from all of the judgment entered herein on the twenty-seventh day of July, Nineteen Hundred and Twenty-nine and the Judgment entered herein in 30 the Court of Common Pleas on the seventeenth day of December, Nineteen Hundred and Twenty-eight.

Yours respectfully,

TURNER AND STALTER,
Attorneys of Appellant.

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Grounds of Appeal.

(Filed .)

NEW JERSEY COURT OF ERRORS AND APPEALS.

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BECKER CONSTRUCTION COMPANY,
Petitioner,

v.

OSCAR ASLUND,
Respondent.

The following are the grounds of appeal that will be urged by the petitioner in the above entitled cause on the argument of this appeal:

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1. Oscar Aslund died on June 7th, 1928. No personal representative or administratrix was appointed. No one was properly before the Supreme Court representing the said deceased.

2. The widow of Oscar Aslund herein claims compensation for two hundred eighty-five weeks from the date of last payment so that the last payment would not be due until about five and one-half years from said last payment of compensation.

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3. Section 10 Article 1 of the Constitution of United States provides "no state shall pass a bill impairing the obligation of contracts." The act under which this proceeding is brought impairs the obligation created between employer and employee by Chapter 95 of the Laws of 1911 and impairs the contract between the parties and violates the said Constitution of the United States.

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4. Article 5 of the Constitution of the United States provides no person shall be deprived of property without due process of law. The Act under which this proceeding is brought deprives the petitioner below of its property without due process of law. 10

5. A suit is now pending in equity in the United States District Court for the District of New Jersey to set aside the award which was declared to be due by the Supreme Court. No Answer has been filed to said Bill in the United States District Court on behalf of the Estate of Oscar Aslund or on behalf of his widow.

TURNER AND STALTER,
Attorneys and of counsel with 20
Petitioner-Appellant.

Decision.

Newark, N. J., June 27, 1929.

Henry Carless, Esq., and
Messrs. Turner & Stalter.

Gentlemen: 30

My consideration of the application of Catherine Aslund for an order directing that the balance of compensation fixed by the Workmen's Compensation Bureau in the case of her husband, Oscar Aslund, against his employer, the Becker Construction Co., be forthwith paid, leads me to the conclusion that it should be granted.

The judgment of the Bureau was never appealed from by the employer. It was regularly docketed in the Court of Common Pleas and afterward in 40 the Supreme Court. Under section 11 of the act

of 1911, the judgment is conclusive unless appealed or reopened by the Workmen's Compensation Bureau. The refusal of the Bureau to consider the application of the employer to reopen the judgment, and the subsequent refusal of the Court of Common Pleas to review this action of the Bureau, left the judgment in full force and effect. If the employer was dissatisfied with the action of these two tribunals, it should have applied to the Supreme Court for a review of such action, and this the employer has not seen fit to do. The judgment being in full force and effect, the decision of the court in *Cohen* v. *Slavin,* 1 Misc. Rep. 621, is controlling upon me in determining the present application.

The matters set up by the employer as a bar to the apportionment of the judgment cannot be considered on this application, in view of the statutory provision referred to (sec. 11 of the act of 1918), which makes the judgment conclusive under the conditions existing in the present case. If the employer desires to raise the question as to whether these matters are a bar, it should do it by an independent litigation.

The application to adjudge the whole amount to be presently due is granted.

I have left the papers submitted to me with Mr. Gmeiner, the deputy clerk, subject to your call.

Very truly yours,

WM. J. GUMMERE,
Chief Justice.

Judgment.

(Filed .)

NEW JERSEY SUPREME COURT.

OSCAR ASLUND,
Respondent,

ads.

BECKER CONSTRUCTION COMPANY,
Petitioner.

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ESSEX COMMON PLEAS.

Judgment for Respondent.

Damages $17.00 per wk. for 400 wks.....	$6800.00
Credit allowed by Order of Court, 95 wks. @ 17.00 per wk.....	1615.00
Bal. owing.....	$5185.00
Costs	90.10
	$5275.10

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Judgment signed Dec. 17, 1928.

Judgment docketed in Common Pleas Dec. 17, 1928.

Judgment docketed in Supreme Court Apr. 22, 1929.

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FRED L. BLOODGOOD,
Clerk.

HENRY CARLESS,
Attorney.

I, FRED L. BLOODGOOD, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the Judgment docketed in this office in above-stated cause which said Judg-

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ment is recorded in Vol. 7 of Circuit Judgments, page 3071.

In testimony whereof I have set my hand and the seal of said Court at Trenton, this fourteenth day of August, A. D. nineteen hundred and twenty-nine.

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FRED L. BLOODGOOD,
Clerk.

(Seal)

Petition by Catherine Aslund, Widow of Oscar Aslund, for Order that Balance of Compensation Become Due Immediately.

NEW JERSEY SUPREME COURT.

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BECKER CONSTRUCTION COMPANY, *Petitioner,* *v.* OSCAR ASLUND, *Respondent.*	Re Order from Workmens Compensation Bureau.

Your petitioner, Catherine Aslund, respectfully shows as follows:

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1. Sometime prior to February 1, 1928 the Becker Construction Company filed a petition with the Workmens Compensation Bureau of the New Jersey Department of Labor praying for a determination of the amount of compensation due to the said Oscar Aslund, and on said February 1, 1928 the said Workmens Compensation Bureau rendered a judgment in favor of the said Oscar Aslund for compensation for seventy-eight weeks temporary disability at $17.00 per week, amounting to $1326.00, compensation for four hundred

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weeks permanent disability at $17.00 per week amounting to $6800.00, stenographer's fees amounting to $10.00, and $75.00 counsel fee. The stenographer's fees and counsel fee were paid by the above named petitioner. All of the compensation for temporary disability had been paid before the rendering of said judgment, and ninety-five weeks compensation had been paid up to January 9, 1928 on account of the compensation for permanent disability, and from that date to May 28, 1928 the petitioner, Becker Construction Company, paid an additional twenty weeks compensation, making in all a payment of one hundred fifteen weeks compensation on account of said permanent disability, leaving a balance due of two hundred eighty-five weeks compensation, amounting to the sum of $4,845.00.

2. Your petitioner further says that the said Oscar Aslund died on June 7, 1928 from a cause other than the accident for which he had been awarded compensation. He left surviving him your petitioner, who is his widow, and three children, to wit: Edward Aslund, thirteen years of age, Charles Aslund, ten years of age and Gertrude Aslund, eight years of age.

3. Your petitioner further shows that the balance of the compensation due under the said judgment and in accordance with the statute should be paid to the dependents of the said Oscar Aslund, who are your petitioner and the three children.

4. That no payments whatever have been made by the said Becker Construction Company since May 28th, 1928 and the said company refuses to make further payments.

5. On December 17, 1928 she duly filed in the

Essex County Court of Common Pleas the judgment of the Workmens Compensation Bureau of the Department of Labor of the State of New Jersey above referred to.

10 6. On April 22, 1929 the said judgment was docketed in the New Jersey Supreme Court, and no payment has been made by the Becker Construction Company on account of said judgment, either before or after the docketing thereof, except as aforementioned.

7. Your petitioner, Catherine Aslund, therefore prays that an order may be made by this court directing that the entire balance of the compensation, amounting to $4845.00 be declared to be
20 due and payable immediately, and that execution may issue for the entire amount.

And your petitioner will ever pray, etc.

CATHERINE ASLUND
by HENRY CARLESS
Atty.

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

30 HENRY CARLESS being duly sworn on his oath deposes and says that he is the attorney of the petitioner in the foregoing matter, and that the statements contained in said petition are true to the best of his knowledge and belief.

HENRY CARLESS

Sworn and subscribed to this 25th day of April 1929, at Newark, N. J. before me,

40 WM. DUNKEL
A Notary Public of
New Jersey

Answer and Objections.

NEW JERSEY SUPREME COURT.

BECKER CONSTRUCTION COMPANY,
Petitioner,

v.

OSCAR ASLUND,
Respondent.

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The Answer of the Petitioner below to the Petition filed herein and objections to the motion to be made herein.

1. Oscar Aslund, died on June 7, 1928 and a copy of his death certificate is annexed hereto. No personal representative or administratrix has been appointed. No one is properly before this Court representing the above named deceased respondent.

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2. A suit is now pending in equity in the United States District Court for the District of New Jersey, to set aside the award which it is attempted to have declared due and payable immediately. A copy of the Bill and Affidavit are annexed hereto and made part hereof. No Answer has been filed to said Bill. The United States District Court refuses to enjoin the present application to this Court. Said suit will be prosecuted and if it is successful, the entire award herein will be vacated and extinguished.

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3. This application is made on behalf of the widow and children of Oscar Aslund. The Becker Construction Company charges that the fixing of said compensation was procured by the fraud of Oscar E. Aslund, in his lifetime.

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4. Compensation was paid to the said Oscar Aslund in his lifetime to the extent of $3278.29, as a result of the fraud perpetrated by him and if the final decision of the United States District Court is adverse to the petitioner herein, no further sum will be due or payable by this petitioner below.

5. The widow of Oscar Aslund herein claims compensation for two hundred eighty-five weeks from the date of last payment so that the last payment would not be due until about five and one half years from said last payment of compensation.

6. Section 10 Article I of the Constitution of United States provides "no State shall pass a bill impairing the obligation of contracts." The act under which this proceeding is brought impairs the obligation created between employer and employee by Chapter 95 of the Laws of 1911 and impairs the contract between the parties and violates the said Constitution of the United States.

7. Articles 5 of the Constitution of the United States provides no person shall be deprived of property without due process of law. The Act under which this proceeding is brought deprives the petitioner below of its property without due process of law.

It is respectfully urged that no proceedings should be taken hereunder.

It is further urged that this proceeding should be stayed until the Determination of the litigation in the United States District Court for the District

of New Jersey, relating to the subject matter now before this Court.

TURNER AND STALTER,
Attorneys.

FRANK G. TURNER,
Of Counsel with Petitioner below. 10

Bill of Complaint.

UNITED STATES DISTRICT COURT,

DISTRICT OF NEW JERSEY.

Between MARYLAND CASUALTY COMPANY OF BALTIMORE, MARYLAND, a corporation, *Complainant,* and CATHERINE ASLUND, EDWARD ASLUND, CHARLES ASLUND and GERTRUDE ASLUND, *Defendants.*	In Equity

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To the Judges of the United States District Court for the District of New Jersey:

The Complainant respectfully shows:

1. The Complainant, a corporation, is a citizen and resident of the State of Maryland with its principal office located and domiciled at Baltimore, Maryland.

2. The defendants each and all are citizens and residents of the State of New Jersey, residing and domiciled at Arlington, New Jersey. 40

3. The amount in controversy herein is of a civil nature and exceeds the sum of three thousand ($3,000.00) dollars, exclusive of interest and costs.

4. At all times herein mentioned, Complainant was and is a corporation engaged in the business of insurance, including Workmen's Compensation, and was and is duly authorized by the State of New Jersey to carry on such business and to issue policies therefor in said state.

5. As such insurance company it duly issued to and covered the Becker Construction Company on and before September 15, 1924, at which time one Oscar Aslund, now deceased, was an employee of said Becker Construction Company, and it thereby became and was liable to pay Workmen's Compensation, if any became due, to said Oscar Aslund because of an injury, if any, arising from an accident arising out of and in the course of his employment with said Becker Construction Company under Chapter 95 Pamphlet Laws of New Jersey 1911.

6. The said Oscar E. Aslund in his lifetime falsely and fraudulently represented to complainant and Becker Construction Company that he was suffering from an alleged accident of September 15, 1924, when the fact was that at said time he was suffering from syphilis and other social diseases and the temporary and permanent disability claimed by him and referred to herein were caused by disease and were not the result of accident.

7. The said Oscar E. Aslund in his lifetime frequently represented to the complainant insurance carrier and his employer that he was suffering

from the said alleged accident and that he was not and had never suffered from disease, all of which was known to him to be false and untrue. By his false and fraudulent representations he induced the filing of a petition, asking the Workmen's Compensation Court to fix the compensation for total permanent disability. The purpose and design of these representations were to perpetrate a fraud on Complainant as such insurance carrier and to have compensation fixed for an alleged injury resulting from an alleged accident when the said Oscar E. Aslund knew that he was suffering from disease and not from accident and knew that he was entitled to no compensation.

8. On February 1, 1928, an order and determination was entered in said Compensation Bureau, a copy of which is annexed hereto, made part hereof and marked "Ex. A."

9. The said Oscar E. Aslund died on June 7, 1928, and a copy of his death certificate is annexed hereto, made part hereof and marked "Ex. B."

10. On June 16, 1928, Mrs. Catherine Aslund made a statement and written representation to this Complainant, a copy of which is annexed hereto, made part hereof and marked "Ex. C." The said representations as to the cause of death of Oscar E. Aslund were false and untrue and known by said Catherine Aslund to be such. After the said statement so made, this Complainant investigated the death and ascertained for the first time that it was caused by syphilis and then learned for the first time that it had been defrauded by said Oscar E. Aslund in his lifetime.

11. If this Complainant had known or suspected that said Oscar E. Aslund had or was suffering from syphilis it would have paid no compensation to him at any of the times referred to in the petition or in said determination "Ex. A" but on the contrary it would have resisted the same with the utmost vigor and Complainant is advised that no award would have been made herein.

12. This petitioner avers that the said Catherine Aslund, widow and Edward Aslund, Charles Aslund, and Gertrude Aslund, children of said Oscar Aslund, are barred from having or receiving compensation under said award "Ex. A" which said "Ex. A" was procured by and through the fraud, false representations, and deceit of said Oscar Aslund in his lifetime.

13. Prior to the 18th day of February, 1929, the Becker Construction Company presented its petition to the Workmen's Compensation Bureau setting forth the said fraud and an order was made therein on said date, a copy of which is annexed hereto and marked "Ex. C."

14. Thereupon said Becker Construction Company duly filed its appeal to the Essex County Court of Common Pleas and thereupon a notice was served on said Becker Construction Company, a copy of which is annexed hereto and marked "Ex. D." The said Court of Common Pleas thereupon held that said "Ex. C" was not a judgment and was not appealable.

15. On April 20, 1929, the defendants, by their attorney, served upon Complainant a notice, a copy of which is annexed hereto, made part hereof and marked "Ex. E."

16. This Complainant shows that under the Workmen's Compensation Act of New Jersey, the said Becker Construction Company, employer of said Oscar Aslund and this Complainant are interchangeable and any and all liability fixed upon and against the employer is under the law fixed upon and against this Complainant and the benefits of the fraud of said Oscar Aslund will be reaped by the defendants from and against this Complainant.

17. This Complainant is without adequate remedy under the strict rules of the common law and the said Workmen's Compensation Act makes no provision to protect innocent parties from fraud perpetrated under the said Act. The said defendants are now about to take advantage of and are moving for the purpose of reaping the advantages of said fraud perpetrated by said Oscar Aslund in his lifetime.

18. Before acquiring knowledge or notice of said fraud of said Oscar Aslund this Complainant paid to him the following sums of money: 193 3/7 weeks at the rate of $17.00 being a total of $3,278.29. This payment ended with the period of May 30th, 1928. The total amount of compensation claimed by the defendants from the Becker Construction Company and thereby from this Complainant is Six Thousand Eight Hundred ($6800.00) Dollars for permanent disability and One Thousand Three Hundred and Twenty-six ($1326.00) Dollars compensation for temporary disability making a total of Eight Thousand One Hundred and Twenty-six ($8126.00) Dollars. The balance alleged by the defendants to be unpaid and owing to them will amount to the sum of Four

Thousand Eight Hundred Forty-seven ($4847.71) Dollars and Seventy-one cents in addition to other items, being the amount in dispute in this cause and exceeding the sum of Three Thousand ($3000.00) Dollars.

10 This Complainant prays that the said defendants and each of them and their several attorneys may be restrained by the order and injunction of this honorable Court from further prosecution of said claim for Compensation, and from proceeding under said notice "Ex. E" or otherwise.

And that the said award made in favor of said Oscar Aslund now deceased, may be declared and decreed to be null and void because of said fraud so perpetrated by him:

20 And that this honorable Court may decree and adjudge that no compensation for temporary disability is or shall hereafter be due or payable because of said alleged injury to said Oscar Aslund:

And that this honorable Court may decree and adjudge that no compensation for permanent disability is or shall hereafter be due or payable because of said alleged injury to said Oscar Aslund:

TURNER AND STALTER,
30 Attorneys and of counsel
with Complainant.

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Exhibit A.

NEW JERSEY DEPARTMENT OF LABOR

WORKMEN'S COMPENSATION BUREAU

BECKER CONSTRUCTION COMPANY, *Petitioner,* *v.* OSCAR E. ASLUND, *Respondent.*	Petition by Employer. Statement of Facts, Determination and Order.

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This matter coming on to be heard on the 13th and 20th days of January, 1928, in the presence of Henry Carless, attorney of the respondent, and Frank G. Turner, attorney of the petitioner, and upon hearing the admissions of the said attorneys and the evidence submitted by the respective parties, I find and determine as follows:

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1. The petition was filed by the employer in accordance with the provisions of the statute, process was duly served and answer filed.

2. The respondent, Oscar E. Aslund, on the 15th day of September, 1924, was in the employ of the petitioner as a carpenter at the wages of $57.75 per week. On the said day the respondent fell from a wall about fifteen feet to the ground, and in doing so his forehead struck against a piece of lumber.

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3. Said accident arose out of and in the course of the respondent's employment with the petitioner who had notice of the accident on the day that it happened.

4. Since the date of the accident the respondent

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has been unable to perform any kind of labor. He has been treated by a number of physicians, and it appears that the treatment continued up to on or before March 15, 1926, and I find and determine that his temporary disability continued from said September 15, 1924, to March 15, 1926, a period of seventy-eight weeks, for which the respondent is entitled to compensation for said temporary disability at the rate of $17.00 per week, all of which compensation for said temporary disability has been paid by the petitioner in this matter to the respondent.

5. The said accident and injury produced in addition to said temporary disability a permanent disability, which consists of multiple sclerosis, which has rendered him totally and permanently disabled from performing any labor and for which he is entitled to compensation at the rate of $17.00 per week for four hundred weeks, amounting to $6800.00.

It is thereupon on this 1st day of February, 1928, Ordered that compensation for four hundred weeks permanent disability at the rate of $17.00 per week, amounting to $6800.00 be paid by the petitioner to the respondent: and it appearing that the petitioner has paid to the respondent compensation for ninety-five weeks from March 15, 1926, to January 9, 1928, it is Ordered that the petitioner be allowed credit for ninety-five weeks paid as aforesaid, and for any additional payments made since said January 9th, 1928.

It is further Ordered that the petitioner do pay in addition thereto the stenographer's fees amounting to $10.00.

It is further ORDERED that Henry Carless, attorney for the respondent, be allowed as and for his legal services in conducting these proceedings the sum of $75.00, to be paid by the petitioner.

It is further ORDERED that judgment shall be entered in favor of the respondent and against the petitioner in these proceedings, in accordance herewith, and that the compensation due to the respondent to date, the stenographer's fees, and the attorney's allowance, be paid by the petitioner forthwith, and that the balance of compensation be paid in accordance with the statute as the same falls due.

HARRY J. GOAS,
Deputy Commissioner.

Exhibit B.

BOARD OF HEALTH AND VITAL STATISTICS.
—Of The—
COUNTY OF HUDSON, N. J.

No. 1928

Court House

Jersey City—June 21, 1928

A Transcript from the Record of Deaths
in the County of Hudson

Vol. 21 Page 242 No. 12065 of Transit Burials.

Date of Death	Full Name of Deceased	Age
June 7, 1928	Oscar Aslund	Y M D 35 1 19

Single, Married, Widow, Widower	Color	Occupation	Birthplace
Married	White	Carpenter	Arlington, N. J.

How long resident in this State.

.....

.....

Father's Name	Father's Birthplace
August	Sweden
Mother's Name	**Mother's Birthplace**
Matilda M. Johnson	Sweden
Place of Death	**Cause of Death**
Hudson Co. Hospital, Secaucus, N. J. 279 Stewart Ave., Arlington, N. J.	General cachexia labo Paresis syphilis chronic Bronchitis.
Length of Sickness	**Place of Burial**
	Arlington Cem.
Undertaker	**Medical Attendant**
John D. Crane.	W. J. Monaghan, M. D.

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I, Wm. A. Purcell, Registrar of the County of Hudson, State of New Jersey, do hereby certify that the transcript of the record of the death of Oscar Aslund hereto attached, is a true and correct transcript of the record of the return originally made according to law.

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WM. A. PURCELL
Registrar of Vital Statistics

Exhibit C.

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NEW JERSEY DEPARTMENT OF LABOR
WORKMEN'S COMPENSATION BUREAU

BECKER CONSTRUCTION CO., *Petitioner,* *v.* OSCAR E. ASLUND, *Respondent.*	Claim Petition #6919. On Petition to Revoke Determination.

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A petition having been presented to me by

Becker Construction Co. the petitioner herein, praying that an Order be made cancelling the determination heretofore made in the above case, and having heard the arguments of Mr. Stalter of Turner & Stalter, counsel for the petitioner, and Henry Carless, counsel for the respondent, and having duly considered the same,

It is on this 18th day of February, 1929, ORDERED that the said petition be and the same is hereby denied.

HARRY J. GOAS,
Deputy Commissioner.

Exhibit D.

ESSEX COUNTY COURT OF COMMON PLEAS

BECKER CONSTRUCTION CO., *Petitioner-Appellee,* *v.* OSCAR E. ASLUND, *Respondent-Appellant.*	Appeal from Workmen's Compensation Bureau. Notice.

To, Turner & Stalter, attorneys for petitioner-appellee.

PLEASE TAKE NOTICE that on Wednesday, March 27th 1929 at the Hall of Records in the City of Newark at 11 o'clock in the forenoon, or as soon thereafter as the Court may hear the same, I shall apply to the Judge of the Court of Common Pleas for an order dismissing the appeal heretofore taken in the above matter, on the ground that the Court

has no jurisdiction to hear the appeal from the order made on February 18, 1929.

Dated: March 22, 1929

HENRY CARLESS
Atty for Respondent-Appellant

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Exhibit E.

NEW JERSEY SUPREME COURT.

BECKER CONSTRUCTION COMPANY, *Petitioner,* *v.* OSCAR ASLUND, *Respondent.*	Re Order from Workmens Compensation Bureau. Notice of Motion for Order "That entire amount of compensation become due immediately."

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To:

TURNER & STALTER
Attys for Becker Construction Company, the petitioner.

PLEASE TAKE NOTICE that on Saturday, April 27th, 1929, at the Hall of Records, Newark, New Jersey, at 10 o'clock in the forenoon, or as soon thereafter as the court may hear the same, I shall apply for an order directing that the entire balance of the amount of compensation, ordered by the Workmen's Compensation Bureau be paid to the respondent by the petitioner, be declared to be due and payable immediately, and that execution may issue for the entire amount due.

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HENRY CARLESS
Attorney of Respondent.

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Exhibits Annexed to Bill of Complaint.

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

HARRY K. HOPKINS being duly sworn according to law says that he is employed by the Complainant and has charge of the compensation records of the company; that the Complainant is a corporation of the State of Maryland and the defendants are residents of the State of New Jersey and that the amount in dispute herein exceeds the sum of Three Thousand ($3000.00) Dollars exclusive of interest and costs.

This deponent has examined the copies of the death certificate of Oscar Aslund and the records in the Compensation Bureau and Court of Common Pleas attached to the Bill of Complaint, and the said copies are true copies to the best of the knowledge, information and belief of this deponent. Deponent says that the amounts paid to the said Oscar Aslund in his lifetime as set forth in the Complaint are true as based upon the records of the said Maryland Casualty Company. Deponent has paid the foregoing Complaint and the same is true to the best of his knowledge, information and belief.

Deponent is informed and believes that the said Oscar E. Aslund in his lifetime frequently represented to the complainant insurance carrier and his employer that he was suffering from the said alleged accident and that he was not and had never suffered from disease, all of which was known to him to be false and untrue. By his false and fraudulent representations he induced the filing of a petition, asking the Workmen's Compensation Court to fix the compensation for total permanent disability. The purpose and design of these representations were to perpetrate a fraud

on Complainant as such insurance carrier and to have compensation fixed for an alleged injury resulting from an alleged accident when the said Oscar E. Aslund knew that he was suffering from disease and not from accident and knew that he was entitled to no compensation.

Deponent is informed and believes that on June 16, 1928, Mrs. Catherine Aslund made a statement and written representation to this Complainant, a copy of which is annexed hereto, made part hereof and marked "Ex. C." The said representations as to the cause of death of Oscar E. Aslund were false and untrue and known by said Catherine Aslund to be such. After the said statement so made, this Complainant investigated the death and ascertained for the first time that it was caused by syphilis and then learned for the first time that it had been defrauded by said Oscar E. Aslund in his lifetime. If the Complainant had known or suspected that said Oscar E. Aslund had or was suffering from syphilis it would have paid no compensation to him at any of the times referred to in the petition or in said determination "Ex. A" but on the contrary it would have resisted the same with the utmost vigor and Complainant is advised that no award would have been made herein.

The amount which the defendants are endeavoring to obtain from the Complainant because of the said judgment against the Becker Construction Company is approximately $4847.71 over and above that which has already been paid to the said Oscar Aslund in his lifetime. Unless the said defendants and their attorney are restrained from proceeding to collect the compensation from the said Complainant, the Complainant will suffer irreparable damage from which the Complainant

would have no relief under the strict rules of the common law.

HARRY K. HOPKINS, JR.

Subscribed and sworn to before me this 25th day of April, 1929. } 10

FLORENCE LUTTHANS,
Notary Public of N. J.

Statement of Facts, Determination and Order.

NEW JERSEY DEPARTMENT OF LABOR,

WORKMEN'S COMPENSATION BUREAU.

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BECKER CONSTRUCTION COMPANY, *Petitioner,* *v.* OSCAR E. ASLUND, *Respondent.*	Petition by Employer.

This matter coming on to be heard on the 13th and 20th days of January, 1928, in the presence of Henry Carless, attorney of the respondent, and Frank G. Turner, attorney of the petitioner, and upon hearing the admissions of the said attorneys and the evidence submitted by the respective parties, I find and determine as follows: 30

1. The petition was filed by the employer in accordance with the provisions of the statute, process was duly served and answer filed.

2. The respondent, Oscar E. Aslund, on the 15th day of September, 1924, was in the employ 40

of the petitioner as a carpenter at the wages of $57.75 per week. On the said day the respondent fell from a wall about fifteen feet to the ground, and in doing so his forehead struck against a piece of lumber.

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3. Said accident arose out of and in the course of the respondent's employment with the petitioner who had notice of the accident on the day that it happened.

4. Since the date of the accident the respondent has been unable to perform any kind of labor. He has been treated by a number of physicians, and it appears that the treatment continued up to on or about March 15, 1926, and I find and determine that his temporary disability continued from said September 15, 1924 to March 15, 1926, a period of seventy-eight weeks, for which the respondent is entitled to compensation for said temporary disability at the rate of $17.00 per week, all of which compensation for said temporary disability has been paid by the petitioner in this matter to the respondent.

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5. The said accident and injury produced in addition to said temporary disability a permanent disability, which consists of multiple sclerosis, which has rendered him totally and permanently disabled from performing any labor and for which he is entitled to compensation at the rate of $17.00 per week for four hundred weeks, amounting to $6800.00.

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It is thereupon on this 1st day of February, 1928, ORDERED that compensation for four hundred weeks permanent disability at the rate of $17.00 per week, amounting to $6800.00, be paid by the

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petitioner to the respondent; and it appearing that the petitioner has paid to the respondent compensation for ninety-five weeks from March 15, 1926 to January 9, 1928, it is ORDERED that the petitioner be allowed credit for ninety-five weeks paid as aforesaid, and for any additional payments made since said January 9th, 1928.

It is further ORDERED that the petitioner do pay in addition thereto the stenographer's fees amounting to $10.00.

It is further ORDERED that Henry Carless, attorney for the respondent be allowed as and for his legal services in conducting these proceedings the sum of $75.00, to be paid by the petitioner.

It is further ORDERED that judgment shall be entered in favor of the respondent and against the petitioner in these proceedings, in accordance herewith, and that the compensation due to the respondent to date, the stenographer's fees, and the attorney's allowance, be paid by the petitioner forthwith, and that the balance of compensation be paid in accordance with the statute as the same falls due.

HARRY J. GOAS,
Deputy Commissioner.

New Jersey Court of Errors and Appeals

CATHERINE ASLUND, *Petitioner-Applicant,* *v.* BECKER CONSTRUCTION COMPANY, *Defendant-Appellant.*	On Appeal.

BRIEF OF DEFENDANT-APPELLANT.

Facts.

This is an appeal from a judgment of the Supreme Court, directing that compensation awarded to Oscar Aslund in his lifetime, should become due immediately for the entire amount of compensation, without discount or commutation.

Oscar Aslund recovered an award in the Workmen's Compensation Bureau, claiming disability as the result of an accident. Some time thereafter the claimant died, the death certificate setting forth that syphilis was the cause thereof. Your appellant, during the lifetime of claimant, paid him some $3,278.29, in weekly installments in accordance with the award below. Your appellant, when advised of the cause of death, petitioned the United States District Court, to be relieved of further payment on the ground of fraud. The appellee then applied to the New Jersey Supreme Court to declare the entire amount of the award due under Section 20 of Chapter 95 of the Laws of 1911, as supplemented by Chapter 199 of the Laws of 1915. The appellee herein obtained such judgment and this appeal is taken therefrom.

POINT I.

The section of the statute under which the judgment of the Supreme Court was obtained has been repealed and does not exist.

The appellee herein asks relief under Section 20, Chapter 95, P. L. 1911, as supplemented and amended by Chapter 199 of the Laws of 1915, which provides:

> "Any judgment entered in the Court of Common Pleas pursuant to the provisions of Sec. 20 of the act to which this act is a supplement, may be docketed in the Supreme Court and thence forward, operate as a judgment recovered in that Court." * * * etc.

Section 20, above referred to has been repealed by Chapter 149 of the Laws of 1918. The judgment in the present case was *not* entered in the Court of Common Pleas in accordance with Section 20 of Chapter 95 of the Laws of 1911, but on the contrary, as will be seen by reference to a copy of said judgment, was entered in the New Jersey Department of Labor, Workmen's Compensation Bureau, in accordance with Chapter 149, P. L. 1918, which repealed Section 20, Chapter 95, P. L. 1911, and was signed by Harry J. Goas, Deputy Commissioner of Compensation. The Court of Common Pleas decided it had no jurisdiction in the matter. The appellee, then, based its case in the Supreme Court below on a statute that had been repealed and did not exist, and does not now exist.

POINT II.

Section 20, Chapter 95 of the Laws of 1911, as amended in Chapter 199 of the Laws of 1915, is in violation of the constitution of New Jersey, Paragraph 3 of Section VII, as amended, which reads:

> "The Legislature shall not pass any bill of attainder, *ex post facto* law, or law impairing the obligations of contracts, or depriving a party of any remedy for enforcing a contract which existed when the contract was made."

The above section is in violation of Section 10, Paragraph 1, Constitution of the United States.

With relation to the Workmen's Compensation Act, the agreement to compensate is that implied in the contract of hiring, or conclusively presumed to have been made. This has been definitely construed. See P. L. 1911, page 136, paragraph 9; 86 L. 436; 92 Atl. 85; 94 Atl. 85; 87 L. 314; 93 Atl. 1083. So, therefore, we may well begin with the premise that the relation of employer and employe is a contractual one.

The Act of 1911 provides that payments under the Workmen's Compensation Act shall be in weekly installments.

Chapter 199 of P. L. 1915, then supplemented the Act of 1911 in part as follows:

> 1. * * * "Upon failure to comply with the original order for compensation the court may order that the entire amount of compensation shall become due immediately and execution may issue upon proof of such failure for the entire amount of compensation, *without* discount or commutation." * * *

We respectfully urge that this section is in violation of Section 10, Article 1 of the Constitution of the United States, and paragraph 3 of Section VII of the New Jersey Constitution as amended.

The contractual relationship between employer and employe was established in 1911, and it was established as well that all awards under such statutory contractual relationship should be in weekly installments. If the contract was in force (it began in 1911) when the supplement was added in 1915, then it abrogates the contract and violates

the "due process" clause. In *Randolph* v. *Middleton,* 26 Eq. 543, the Chief Justice in part holds as follows:

> "It is certain, in a contract for a loan of money, the time fixed for repayment is a material matter, so that to hasten or postpone such period is to alter such contract in point of substance. If I lend a sum of money on a credit of ten years, it seems certain that I cannot be compelled to accept repayment at any period short of the time so fixed, by force of any legislative act *which can be subsequently framed.* The constitution of the state, if it is to be of any avail, must annul any such law. This proposition is so plain it will not bear discussion. And it likewise seems equally plain that it applies, with its entire force, to the facts now presented." (The exact reverse of the above facts.)

It has also been held in *Holzapfel, et al.* v. *Hoboken Manufacturers R. Co.,* reported in 104 Atl. 209, that:

1. Section 21 of the Practice Act of 1912 does not support a suit and entry of judgment therein for monies not due at the time of beginning the action, though there be installments to accrue, and though there is already a right of action for installments in arrears.

2. A contract to pay weekly sums in settlement if liability of an employer for the death of an employe, equal to the maximum provided in the Workmen's Compensation Act of 1911 (P. L. p., 134), and supplements thereto, may be enforced, by the persons claiming the payments in the Supreme Court by a common law action for the due installments only.

3. Where the judgment was properly rendered for moneys already due, but was erroneous in providing for *moneys not due,* it may stand as to the moneys due, and need not be reversed *in toto.*

We submit, therefore, that the Act of 1915, declaring the full amount of compensation due, is in violation of Section 10, paragraph 1 of the United States Constitution, which prohibits states to impair the rights of contract, and in violation of the constitution of New Jersey, as amended, set forth, *supra*.

POINT III.

The act under which this proceeding is brought is in violation of Article 5 of the Constitution of the United States, which provides that no person shall be deprived of property without due process of law.

That the statute of 1915, when it declares the whole amount due, when one installment is in arrears, is in violation of Article V is self-evident. This statute declares the whole amount to be paid that will not become due for two years in the future, and without discount or commutation. It is apparent that the respondent in all cases would be precluded from yield on their funds and would be precluded from the use of their money. This, then, of course, is taking property without due process of law, and the act so requiring it is unconstitutional.

POINT IV.

The appellee died June 7, 1928, and no personal representative or administrator was appointed, and so, therefore, no one was properly before the Supreme Court representing the said deceased.

Turner and Stalter

TURNER AND STALTER,
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New Jersey Court of Errors and Appeals

CATHERINE ASLUND, *Petitioner-Appellee,* *vs.* BECKER CONSTRUCTION COMPANY, *Defendant-Appellant.*	*On Appeal from Summary Order in Compensation.*

BRIEF FOR CATHERINE ASLUND, THE PETITIONER-APPELLEE.

Statement of Facts.

Sometime prior to February 1, 1928, the Becker Construction Company filed a petition with the Workmen's Compensation Bureau of the New Jersey Department of Labor, praying for a determination of the amount of compensation due to Oscar Aslund for injuries received by him while in its employ, and on February 1, 1928 the Workmen's Compensation Bureau rendered a judgment in favor of the said Oscar Aslund for compensation for seventy-eight weeks' temporary disability, at $17.00 per week, amounting to $1,326.00, and compensation for four hundred weeks' permanent disability at $17.00 per week, amounting to $6,800.00. All of the compensation for temporary disability, and ninety-five weeks' compensation for permanent disability had been paid prior to the rendering of the said judgment (Case, pp. 26-27).

From the date of the judgment to May 28, 1928 the defendant-appellant paid an additional twenty weeks' compensation for permanent disability, making in all a payment of one hundred fifteen weeks' compensation on account of perma-

nent disability, leaving a balance due of two hundred eighty-five weeks' compensation, amounting to $4,845.00.

On June 7, 1928 the said Oscar Aslund died from a cause other than the accident for which he had been awarded compensation. He left surviving him the petitioner-appellee, who is his widow, and three children ranging in age from eight to thirteen years. The defendant-appellant made no payments of compensation after May 28, 1928.

On December 17, 1928 the judgment of the Workmen's Compensation Bureau, signed February 1, 1928, was docketed in the Essex County Court of Common Pleas, and on April 22, 1929 it was docketed in the New Jersey Supreme Court (Case, pp. 7-8).

The defendant-appellant in February, 1929 petitioned the Workmen's Compensation Bureau to revoke the judgment made February 1, 1928. This was denied. Appeal from that decision was taken to the Essex County Court of Common Pleas and the appeal was dismissed (Case, p. 21).

Petitioner-appellee then served notice of an application for an order directing that the entire balance due on the judgment be declared due and payable immediately. On June 27, 1929 Chief Justice Gummere rendered his decision on that application (Case, pp. 3-4), and it is from the order based upon the above decision that the defendant-appellant takes this appeal.

POINT I.

The facts as set forth in the brief of the defendant-appellant are somewhat different from the actual facts in the case.

In the first place it states that syphilis was the cause of the death of Oscar Aslund. The death certificate states the cause of death to be general cachexia, labo-paresis, syphilis, chronic bronchitis (Case, p. 20).

The defendant-appellant also says "when advised of the cause of death it petitioned the United States District Court to be relieved of further payment on the ground of fraud." As a matter of fact it did not petition or take any proceeding of any kind in the United States District Court. It did, however, present a petition to the New Jersey Department of Labor for an order cancelling the determination and judgment made February 1, 1928, by Deputy Commissioner Harry J. Goas, and this petition was denied on the 18th day of February, 1929 (Case, p. 21).

We contend that it is immaterial as to what caused the death of the said Oscar Aslund. Compensation was not awarded for his death, but for injuries that he had received and which prevented him from doing any work whatsoever after the accident.

Maryland Casualty Company, however, did file a bill of complaint in the United States District Court praying among other things that the said award of the Workmen's Compensation Bureau of New Jersey be declared void, because of fraud, and the Court issued a restraining order, restraining the petitioner-appellee from proceeding before the New Jersey Supreme Court

on her application for the order now under review.

At the hearing on the rule to show cause why an injunction should not issue, the answering affidavits of the petitioner-appellee and the records of the Workmen's Compensation Bureau of New Jersey so overwhelmingly negatived the allegation of fraud that the United States District Court removed the restraint. Petitioner-appellee then moved to dismiss the bill of complaint, assigning a number of reasons, one of which was that the judgment in question was not against the Maryland Casualty Company, No decision has yet been rendered on that motion. The bill of complaint above referred to is set forth in the printed Case on pages 11-16.

POINT II.

Chapter 199 of the Laws of 1915 and Chapter 149 of the Laws of 1918 do not violate any provision of either the New Jersey or Federal Constitution.

In the case of *Sexton* v. *Newark District Telegraph Company* our courts have passed upon the constitutional objections raised by the defendant-appellant and have decided them against it. In that case the accident occurred on July 4, 1911, the day the act went into effect. The employer raised the question that it had not elected to operate under section two of the act. The Court held that it had so elected and among other things said:

> "No coercion was exercised by the legislature upon either party to the contract of hiring. It is left entirely optional with them whether they will stand upon the first or second sections of the act. If both parties to the contract of hiring agree to operate

under the second section neither can complain. If they do not agree, then by appropriate proceedings the dissatisfied party may operate under Section 1 of the act."

Sextion v. *Newark District Telegraph Co.*, 84 N. J. Law 85, at bottom of page 94 and top of page 95.

"Other reasons for reversal aver that the main act of April 4th, 1911 violates the 'due process of law' and 'equal protection of the laws' provisions of the fourteenth amendment to the federal constitution, and that the act 'impairs the obligation of contracts' in violation of the state and federal constitutions."

Sexton v. *American District Telegraph Co.*, 84 N. J. Law 85, at bottom of page 91.

In a lengthy opinion and exhaustive review of the authorities the Court held the Act of 1911 to be constitutional. In the case at bar it is undisputed that Oscar Aslund and his employer, the Becker Construction Company, agreed to the provisions of section two of the Act of 1911, together with the supplements thereto of April 6, 1915 and February 28, 1918.

The original act of 1911, together with its amendments and supplements, must be construed together, and the defendant-appellant cannot now say it agreed to one part of the statute and deny its liability under another part of the same statute. The right to recover compensation and the liability to pay it is created by our statute law, and the Legislature may from time to time, by amendment or supplement, restrict or enlarge the rights and obligations of employer and employee without violating any constitutional provision.

POINT III.

The statutes invoked to sustain the order under review are a Supplement to the Workmen's Compensation Act of 1911, approved April 6, 1915, and a Further Supplement to the said Workmen's Compensation Act which was approved February 28, 1918.

Section 20 of the original act of 1911 outlined the procedure to be followed in case a dispute arose as to compensation.

Laws 1911 p. 134.

In 1915 a Supplement to the act was passed which reads as follows:

> "Any judgment entered in the Court of Common Pleas pursuant to the provisions of section twenty of the act to which this act is a supplement, may be docketed in the Supreme Court and thenceforward, operate as a judgment recovered in that court. Upon failure to comply with the original order for compensation the court may order that the entire amount of compensation shall become immediately due and execution may issue upon proof of such failure, for the entire amount of compensation, without discount or commutation."

Laws 1915, page 364.

In 1921 section 20 of the Act of 1911 was amended to read as follows:

> "Procedure in case of dispute shall be in accordance with the provisions of a supplement to this act, approved February 28, 1918 as chapter 149."

Laws 1921, page 736 at page 737.

By the terms of the 1918 supplement to the Act of 1911 original jurisdiction in compensation cases was given to the Workmen's Compensation Bureau of the Department of Labor, and the act provided that a copy of the judgment of

the Commissioner hearing the case be filed in the office of the clerk of the county in which the hearing was held, and when so filed shall have the same effect and may be collected and docketed in the same manner as judgments of the Court of Common Pleas.

Laws 1918, Section 11, Chapter 149, page 433.

Section 11 of the Act of 1918 also provides as follows:

> "The judgment of the said bureau shall be final and conclusive between the parties and shall bar any subsequent action or proceeding, unless reopened by the said bureau or appealed as hereinafter provided."
>
> Laws 1918, Section 11, page 433.

As pointed out by Chief Justice Gummere in his decision on the application for the order now under review, the judgment of the Compensation Bureau was never appealed from. It was regularly docketed in the Court of Common Pleas and afterwards in the Supreme Court. There is no denial that since May, 1928 the defendant-appellant has failed to comply with the original order for compensation. Under these circumstances the order adjudging the whole amount to be presently due is in conformity with the statutes and the case of *Cohn* v. *Slavin*, 1 Misc. Rep. 621.

POINT IV.

Catherine Aslund was properly before the New Jersey Supreme Court as applicant for the order under review.

Sub-division Z of paragragh 11 of the Workmen's Compensation Act of New Jersey provides as follows:

> "In case of the death of the person from any cause other than the accident, during

the period of payments for permanent injury, the remaining payments shall be paid to such of his or her dependents as are included in the provisions of paragraph twelve of this act, etc."

Laws 1919, paragraph 11, sub-division Z, at page 205.

Sub-division G of paragraph 12 of the above-mentioned section provides that the widow and children, under sixteen years of age, are dependents of the deceased.

Laws 1923, paragraph 12, sub-division G, at page 106.

Sub-division H of paragraph 12, provides among other things that "payment on behalf of infants shall be made to the surviving parent, if any etc."

Laws 1919, paragraph 12, sub-division H, at page 207.

Amendments have been made to paragraphs eleven and twelve of Workmen's Compensation Act, but the provisions of the act as above stated have not been changed.

From the above it plainly appears that the compensation due at the time of the death of Oscar Aslund did not pass to his personal representatives or administrators, but under the statute passed to his wife and minor children, the ones who are mentioned in the petition of the said Catherine Aslund.

See paragraphs 2 and 3 of petition of Catherine Aslund in Case, page 7.

It is respectfully submitted that the order under review should be sustained and the appeal dismissed.

HENRY CARLESS,
Attorney and Counsel for
Petitioner-Appellee.