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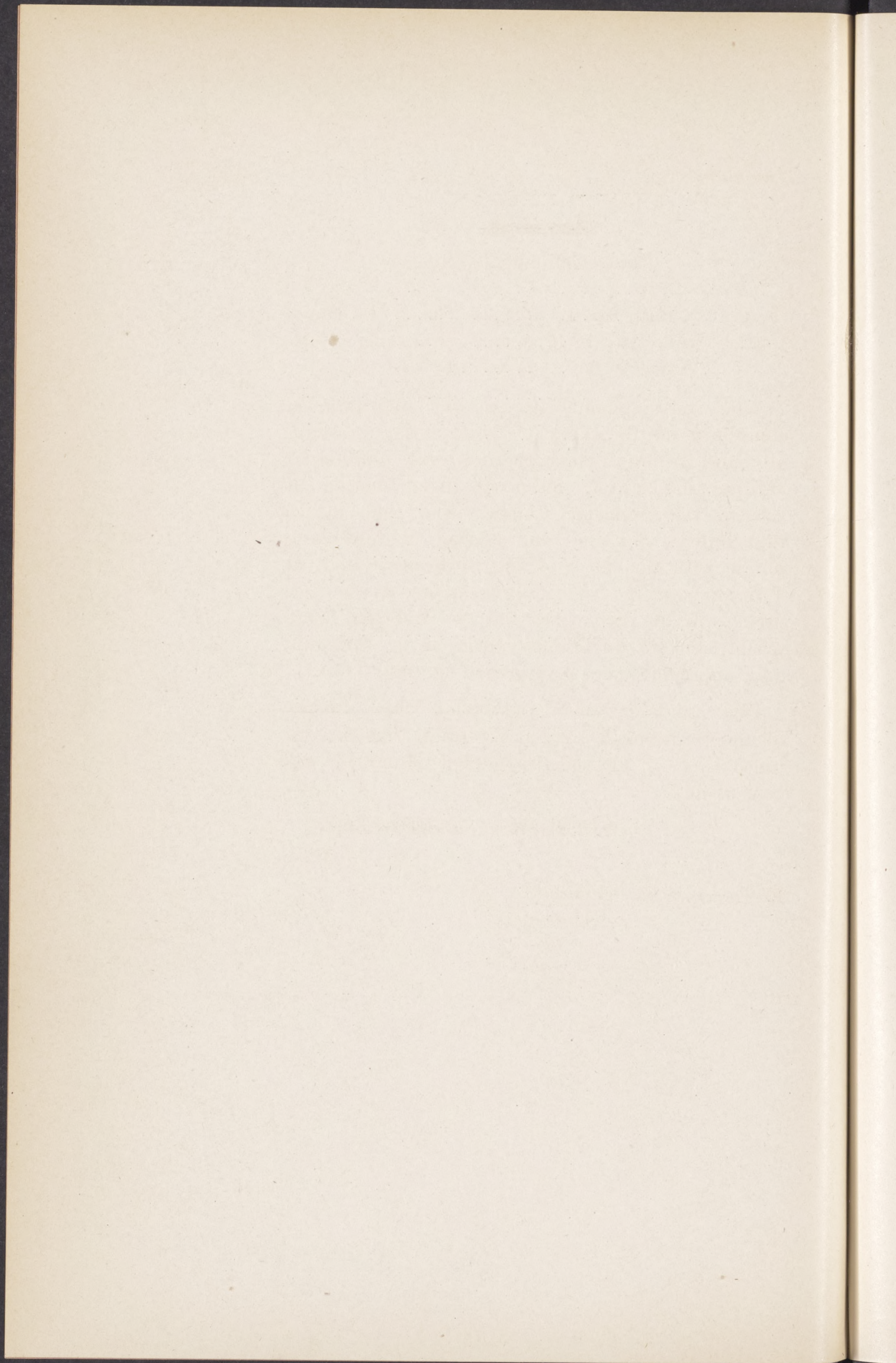
New Jersey State Library



Summons.

Issued October 29, 1917.

[SEAL] THE STATE OF NEW JERSEY to HOBOKEN MANUFACTURERS' RAILROAD COMPANY, a body corporate:

10

You are summoned to answer the annexed complaint of MARGARET C. HOLZAPFEL, individually and as administratrix *ad prosequandum* of William Holzapfel, deceased, in an action at law in the Supreme Court. And take notice that unless you file your answer to said complaint with the clerk of the Supreme Court, at Trenton, within twenty days, after the service upon you of this writ, and the annexed complaint, the plaintiff may proceed in the suit, and judgment may be entered against you.

20

WITNESS WILLIAM S. GUMMERE, Chief Justice of the Supreme Court, at Trenton, this twenty-ninth day of October, Nineteen Hundred and Seventeen.

WILLIAM C. GEBHARDT,
Clerk.

MCDERMOTT & ENRIGHT,
Attorneys.

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Complaint.

New Jersey Supreme Court.

HUDSON COUNTY.

10

MARGARET C. HOLZAPFEL, individually and as administratrix *ad prosequandum* of William Holzapfel, deceased, *Plaintiff*, *vs.* HOBOKEN MANUFACTURERS' RAILROAD COMPANY, a body corporate, *Defendant.*	*Action at Law.* *Complaint.*

20

Plaintiff residing in the Town of West Hoboken, Hudson County, New Jersey, and duly appointed administratrix *ad prosequandum* by surrogate of Hudson County, says that:

1. That at all the times hereinafter mentioned the defendant was and now is a corporation organized and existing under the laws of the State of New Jersey.

30

2. William Holzapfel, plaintiff's intestate, was on the 13th day of March, 1917, and for some time prior thereto had been an employee in the service of the defendant as locomotive engineer and fireman, having been employed in the City of Hoboken and county aforesaid.

3. On March 13th, 1917, the said William Holzapfel suffered an accident while driving an

40

engine for the defendant in Hoboken aforesaid, by reason whereof he died the same day.

4. The said William Holzapfel left him surviving plaintiff, his widow, and six children, William, age twelve years; Anna, ten years; John, eight years; Mary, six years; James, three years, and a daughter, Margaret, who was born April 6, 1917, all of whom were actual dependents of the said William Holzapfel within the meaning of the Workmen's Compensation Act of the State of New Jersey. 10

5. That subsequent to the death of the said William Holzapfel, plaintiff demanded of the defendant compensation under the provisions of the Workmen's Compensation Act of the State of New Jersey, and on to wit, the 18th day of May, 1917, plaintiff acting for herself and for said minor children, all the next of kin and dependents of the said William Holzapfel, entered into an agreement in writing with the defendant, wherein the defendant agreed to pay to plaintiff and the said dependents of the said William Holzapfel total compensation of $3,000 and also $100 to apply on account of the expenses of burial of the said William Holzapfel; that said agreement was filed pursuant to the requirements of the statute in such case made and provided with the Department of Labor of the State of New Jersey, and on the 9th day of June, 1917, duly received the approval of the Workmen's Compensation Aid Bureau in the Department of Labor aforesaid, a true copy of said agreement being hereto annexed and hereby made a part hereof and hereby referred to for certainty, marked Exhibit A; a true copy of the said approval is also hereto annexed and

hereby made a part hereof and hereby referred to for certainty, marked Exhibit B.

6. Plaintiff has performed all of the conditions of the said agreement on her part to be performed.

10 7. Defendant has paid plaintiff the cost of burial provided in said agreement, to wit, $100 and has paid $120 on account of the said sum of $3,000 provided in the said agreement to be paid by the defendant, but has wholly neglected and refused to pay the balance of $2,880 provided in said agreement to be paid and has wholly repudiated the said agreement.

Plaintiff demands judgment of and from the defendant in the said sum of $2,800, with in-

20 terest and costs of suit.

McDERMOTT & ENRIGHT,
Attorneys of Plaintiff.

30

40

Complaint.

EXHIBIT A.

COPY OF AGREEMENT.

Hoboken Manufacturers' R. R.
(Name of employer)

Date of preparing this blank
5-18-17

40. Give date of death
3-13-17.

41. State the Cost of medical aid rendered by you or your insurance carrier—
$14.90.

42. Give name, date of next birthday, and age at that time, of each dependent. Also relationship to deceased.
Margaret, widow, age 37
William, son, 12 yrs. next Oct. 13-17.
Anna, 10 yrs. next Nov. 18-17 (daughter)
John, son, 8 yrs. next Aug. 30-17.
Mary, daughter, 6 yrs. next Jan. 21-18.
James, son, 3 yrs. next July 14-17.
Margaret, daughter, born April 6-17.

43. If any dependent is physically or mentally deficient, specify which one.
None.

The undersigned does hereby affirm the correctness of the foregoing statements and agrees to accept compensation as herein set forth.

(signed)
Margaret C. Holzapfel.
(Signature of principal dependent)

Date of accident number 3 of month
Day 13 of month
17 Year

William Holzapfel
(Name of employee killed)
Mrs. Margaret Holzapfel
(Name of principal dependent)
816 Rose Street
(Street and residence)
West Hoboken, N. J.
(City or Town)
Leave this line blank

44. State amount of compensation paid prior to death ....None.

45. State the weekly compensation to be paid the dependents at the various rates.

RATE	WEEKS	AMOUNT
60% of	$22.50	$10.00

Limited to Maximum of $10.00 per week.

46. State the Total Compensation paid and to be paid to dependents only
$3000.00

47. State the cost of Burial paid by you or your insurance carrier, ...$100.00

The undersigned hereby affirms the correctness of the above statement, and does hereby agree to pay to the dependents named, compensation as dated herein, in the same manner and at the same periods that the deceased received his wages

G. C. STARKWEATHER,
Agent.

GLOBE INDEMNITY CO.,
By C. J. Meehegan.

EXHIBIT B.

COPY OF APPROVAL.

Hoboken Mfgrs. R. R. Co.
(Name of employer)

Ft. Fifth St.

Hoboken, N. J.

Date of accident
Number 3 of month
13 Day of month
17 Year

William Holzapfel
(Name of employee
Mrs. Margaret Holzapfel
(Name of principal dependent)
816 Rose St.
West Hoboken, N. J.

Complaint.

DEPARTMENT OF LABOR, STATE HOUSE.

LEWIS T. BRYANT,
Commissioner of Labor.

Trenton, N. J., 6-9, 1917.

10 Acting on the information on file in this office, the Workmen's Compensation Aid Bureau hereby places its approval on the agreement made covering compensation to the above employee until his death, and to his dependents thereafter as follows:

Compensation for period of disability, exclusive of first two weeks, at $10 per week, for weeks, totaling $.

Compensation to dependents at the following
20 rates:

Rate	Weeks	Amount.
$10.00	300	$3,000.00
Cost of burial, not exceeding		$100.
Total,	300;	$3,000.00

If compensation payments are not made as set forth above, or there is any change of conditions calling for a modification of this settlement, this Bureau should be notified at once.
30

WORKMEN'S COMPENSATION
AID BUREAU,

Per W. E. STUBBS,
Secretary.

40

Notice of Motion to Strike Out Complaint.

Dated November 8, 1917.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

10

MARGARET C. HOLZAPFEL, individually and as administratrix *ad prosequandum* of William Holzapfel, deceased, *Plaintiff,* *vs.* HOBOKEN MANUFACTURERS' RAILROAD COMPANY, a body corporate, *Defendant.*	*Action at Law.* *Notice of Motion.*

20

To McDermott & Enright, Esqs.,
Attorneys of Plaintiff.

SIRS:

Please take notice, that on Saturday, November seventeenth, 1917, at 10 o'clock in the forenoon, or as soon as counsel may be heard, we shall move before Honorable Francis J. Swayze, a Justice of the Supreme Court, at the court house, Jersey City, New Jersey, for an order striking out the summons and complaint in the above entitled cause, on the following grounds:

30

1. The complaint filed in the above entitled cause does not set out a cause of action cognizable by the court in which this action is brought.

2. The court in which the action was brought has no jurisdiction to hear and determine the issues raised in the complaint.

40

Rule.

3. Because the court in which the action has been instituted has no jurisdiction of the subject matter of this suit.

Dated, November 8th, 1917.

KALISCH & KALISCH,
Attorneys of Defendant.

10

Rule.

Dated November 17, 1917.

NEW JERSEY SUPREME COURT.

MARGARET HOLZAPFEL, *Plaintiff,* vs. HOBOKEN MANUFACTURERS' RAILROAD COMPANY, *Defendant.*	*Action at Law. Rule.*

20

The above entitled cause coming on to be heard on motion of the defendant to strike out plaintiff's complaint on the ground that it does not set forth a cause of action, and the argument of Kalisch & Kalisch, attorneys for the defendant, and McDermott & Enright, attorneys for plaintiff, having been heard and considered,

30

IT IS ORDERED, that the motion of the said defendant, be and the same is hereby denied.

Dated, November 17, 1917.

Let this rule be entered in the minutes.

F. J. SWAYZE,
J. S. C.

40

On motion of McDermott & Enright, attorneys of plaintiff.

Answer.

Filed December 8, 1917.

NEW JERSEY SUPREME COURT,
HUDSON COUNTY.

10

MARGARET C. HOLZAPFEL, individually and as administratrix *ad prosequandum* of William Holzapfel, deceased, *Plaintiff*, *vs.* HOBOKEN MANUFACTURERS' RAILROAD COMPANY, a corporation, *Defendant.*	*Action at Law.* *Answer.*

20

The defendant, a corporation of New Jersey, having its principal place of business in Hoboken, New Jersey, answering the complaint filed in the above stated cause, says that:—

1. It admits paragraph one of the complaint.

2. It admits that part of paragraph two alleging that the deceased was in the employ of the above defendant on March 13th, 1917, and for some time prior thereto as an engineer or fireman, but denies the balance of said paragraph.

30

3. It denies paragraphs three and four of the complaint.

4. It admits paragraph five of the complaint.

5. It denies paragraph six of the complaint.

40

Answer.

6. It admits paragraph seven of the complaint.

FIRST DEFENSE.

And as a special defense to the above entitled cause defendant alleges that at the time
10 of the accident and death the deceased was within the jurisdiction of the Admiralty Courts of the United States and that by a decision of the United States Supreme Court that part of the Workmen's Compensation Act of the State of New Jersey, which attempted in any way to limit the exclusive jurisdiction of the Admiralty Courts of the United States was unconstitutional, and inasmuch as the contract upon which this action is based has reference to an acci-
20 dent which occurred within the Admiralty jurisdiction of the United States, to that extent the Workmen's Compensation Act of the State of New Jersey is unconstitutional and the agreement of the contract to pay compensation as set forth in the complaint being based upon an unconstitutional statute, is unenforcible.

SECOND DEFENSE.

30 The conditions surrounding the accident of the deceased were such as to give jurisdiction only to such courts as may enforce an action under the Federal Employers' Liability Act, an action under which statute being the only one open to the plaintiff herein.

NOTICE.

The defendant will move at the time of trial to strike out the summons and complaint for
40 the following reasons:

Answer.

1. The complaint filed in the above entitled cause does not set out a cause of action cognizable by the court in which this action is brought.

2. The court in which the action was brought has no jurisdiction to hear and determine the issues raised in the complaint and answer.

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3. Because the court in which the action has been instituted has no jurisdiction of the subject matter of the suit.

KALISCH & KALISCH,
Attorneys of Defendant.

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Notice to Strike Out Answer.

NEW JERSEY SUPREME COURT.

<table>
<tr><td>MARGARET C. HOLZAPFEL, individually and as administratrix ad pros., etc.,
Plaintiff,
vs.
HOBOKEN MANUFACTURERS' RAILROAD COMPANY, a corporation,
Defendant.</td><td>Action at Law.
Notice.</td></tr>
</table>

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To MESSRS. KALISCH & KALISCH,
Attorneys of Defendant.

Take notice of a motion before Hon. WILLIAM H. SPEER, Circuit Judge and Supreme Court Commissioner, at the court house, Jersey City, on Friday, the seventh day of December, 1917, at ten A. M., for an order to strike out defendant's answer and to enter judgment final for the following reasons:

30

1. Because neither the answer nor any clause thereof sets up a just and legal defense to plaintiff's complaint.

2. Because by an Act of Congress, passed October 6th, 1917, proceedings under the Workmen's Compensation Act of the State of New Jersey were saved to the plaintiff.

3. Because the answer admits the contract plaintiff sues upon and the amount paid by the

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defendant to plaintiff, and the balance which plaintiff is entitled to receive is a mere matter of calculation and judgment should be entered therefor.

Respectfully yours,

McDERMOTT & ENRIGHT,
Attorneys of Plaintiff.

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Notice of Application to Admit Parties.

NEW JERSEY SUPREME COURT.

MARGARET C. HOLZAPFEL, individually, etc., *Plaintiff*, *vs.* HOBOKEN MANUFACTURERS' RAILROAD COMPANY, a body corporate, *Defendant.*	*Action at Law.* *Notice.*

10

20

To KALISCH & KALISCH,
Attorneys of Defendant.

Please take notice that at the time of the making of the motion to strike out defendant's answer herein and to enter summary judgment for plaintiff, we shall apply to the court for an order admitting as parties plaintiff William, Anna, John, Mary, James and Margaret Holzapfel, the infant children of William Holzapfel, deceased, and that they be permitted to prosecute the said action by their mother, Margaret C. Holzapfel, as next friend.

30

Respectfully yours,

McDERMOTT & ENRIGHT,
Attorneys of Plaintiff.

40

Order Admitting Parties.

NEW JERSEY SUPREME COURT.

MARGARET C. HOLZAPFEL, individually, etc., *Plaintiff,* *vs.* HOBOKEN MANUFACTURERS' RAILROAD COMPANY, a body corporate, *Defendant.*	*Order.*

10

20

It appearing upon reading the verified petition of Margaret C. Holzapfel hereto attached that William Holzapfel, Anna Holzapfel, John Holzapfel, Mary Holzapfel, James Holzapfel and Margaret Holzapfel are necessary parties plaintiff in the above entitled cause and that they have a good cause of action against the within named defendant, and that the said persons are all infant children of the said Margaret C. Holzapfel, and have a good cause of action against the defendant, and notice of motion having been served on Kalisch & Kalisch, attorneys for the defendant;

30

IT IS ORDERED that William Holzapfel, Anna Holzapfel, John Holzapfel, Mary Holzapfel, James Holzapfel and Margaret Holzapfel be admitted to prosecute the said cause of action as

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parties plaintiff against the defendant by Margaret C. Holzapfel as their next friend.

On motion of

McDERMOTT & ENRIGHT,
Attorneys of Plaintiff.

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Let this rule be entered in the minutes.

WILLIAM H. SPEER,
Supreme Court Commissioner.

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NEW JERSEY SUPREME COURT.

MARGARET C. HOLZAPFEL, individually and as administratrix *ad prosequandum* of William Holzapfel, deceased, *Plaintiff*, *vs.* HOBOKEN MANUFACTURERS' RAILROAD COMPANY, a body corporate, *Defendant.*	*Action at Law.* *Petition.*

10

To the Honorable Judges of the New Jersey Supreme Court.

20

The petition of Margaret C. Holzapfel, the plaintiff in above entitled cause, respectfully shows and charges as follows:

1. That the contract upon which the above entitled cause is based provides for the payment of compensation to your petitioner individually as widow of William Holzapfel, and to her six children, William, aged twelve years; Anna, aged ten years; John, aged eight years; Mary, aged six years; James, aged three years, and Margaret, aged eight months.

30

2. That the said children of your petitioner are necessary parties in this action.

Petitioner therefore prays that your Honor will admit petitioner's six children as parties plaintiffs and permit them to prosecute the said

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action by your petitioner as next friend of her said children.

And your petitioner will ever pray, etc.

MARGARET C. HOLZAPFEL,
Petitioner.

10

I hereby consent and agree that the above named William, Anna, John, Mary, James and Margaret Holzapfel shall be at liberty to prosecute this action by me as their next friend, according to the prayer of the above petition.

MARGARET C. HOLZAPFEL.

STATE OF NEW JERSEY, } *ss:*
HUDSON COUNTY. }

20 MARGARET C. HOLZAPFEL, of full age, being duly sworn, according to law, on her oath says:

I am the person mentioned in the foregoing petition, know the contents thereof and the matters and things therein contained are true to my own knowledge.

MARGARET C. HOLZAPFEL.

Sworn and subscribed before me
30 this day of December,
1917.

40

Order Striking Out Defendant's Answer and for Judgment Final.

NEW JERSEY SUPREME COURT.

MARGARET C. HOLZAPFEL, et als, *Plaintiffs,* *vs.* HOBOKEN MANUFACTURERS' RAILROAD COMPANY, *Defendant.*	*Action at Law.* *Order Striking Out Defendant's Answer and for Judgment Final.*

10

This matter coming on to be heard on motion of plaintiffs to strike out the answer of the defendant as sham and frivolous, and the argument of Kalisch & Kalisch, attorneys of defendant, being heard, and the court being of opinion that defendant's answer does not set forth a just and legal defense to plaintiff's action, but is sham and frivolous, and it further appearing that there is due to plaintiffs, Margaret C. Holzapfel, William, Anna, John, Mary, James and Margaret Holzapfel, suing by Margaret C. Holzapfel, as their next friend, from the defendant, to the date hereof twenty-six weekly payments of compensation at $10.00 per payment, or a total of $260.00 to the date hereof, and that the contract upon which this suit is based provides for the payment by defendant to said plaintiffs last named of $3,000 in three hundred payments of $10.00 each and every week until the full $3,000 shall be paid, and that $120.00 on account of said $3,000 was paid prior to the commencement of this suit, thereupon

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Order Striking Out Answer, &c.

It is Ordered that judgment be entered as of December 7th, 1917 (the date motion for this order was made), against the defendant Hoboken Manufacturers' Railroad Company in favor of Margaret C. Holzapfel and William Holzapfel, Anna Holzapfel, John Holzapfel, Mary Holzapfel, James Holzapfel and Margaret Holzapfel, suing by Margaret C. Holzapfel, their next friend, for the sum of $260.00 (being for twenty-six weekly payments of $10.00 each), and for $10.00 on the Tuesday of each and every week from and after the date hereof for two hundred and sixty-two weeks, with plaintiff's costs to be taxed by the clerk.

Let this rule be entered in the minutes.

WILLIAM H. SPEER,
Supreme Court Commissioner.

On motion of

McDERMOTT & ENRIGHT,
Attorneys of Plaintiffs.

Rule actually entered December 21st, 1917.

Notice of Appeal.

Filed January 5th, 1918.

NEW JERSEY SUPREME COURT.

MARGARET C. HOLZAPFEL, et als, *Plaintiffs,* vs. HOBOKEN MANUFACTURERS' RAILROAD COMPANY, a corporation, *Defendant.*	*Action at Law.* *Notice of Appeal.*

10

To McDERMOTT & ENRIGHT, ESQS.,
Attorneys of Plaintiffs.

SIRS:—

20

Please TAKE NOTICE, that defendant appeals to the New Jersey Court of Errors and Appeals from an order entered in the New Jersey Supreme Court in the above entitled matter, wherein it was ordered:—

"That judgment be entered as of December 7th, 1917 (the date motion for this order was made), against the defendant Hoboken Manufacturers' Railroad Company in favor of Margaret C. Holzapfel and William Holzapfel, Anna Holzapfel, John Holzapfel, Mary Holzapfel, James Holzapfel and Margaret Holzapfel, suing by Margaret C. Holzapfel, their next friend, for the sum of $260.00 (being for twenty-six weekly payments of $10.00 each), and for $10.00 on the Tuesday of each and every week from and after the date hereof for two hundred and sixty-two weeks, with plaintiff's costs to be taxed by the clerk."

30

Rule entered December 21st, 1917.

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KALISCH & KALISCH,
Attorneys of Defendant.

Reasons.

Filed January 9th, 1918.

New Jersey Court of Errors and Appeals

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MARGARET C. HOLZAPFEL, et als, *Plaintiffs-Respondents*, *vs.* HOBOKEN MANUFACTURERS' RAILROAD COMPANY, a corporation, *Defendant-Appellant.*	*Action at Law.* *On Appeal.* *Reasons.*

20

The appellant presents the following reasons for setting aside the judgment entered in the Supreme Court in the above entitled matter:

1. Because the New Jersey Supreme Court had no jurisdiction to hear or determine the cause, inasmuch as the same came within the exclusive jurisdiction of the United States District Court in Admiralty.

30

2. Because the New Jersey Supreme Court had no jurisdiction to hear and determine the above cause, inasmuch as the same came within the exclusive jurisdiction of the Federal Employers' Liability Act.

3. Because the New Jersey Supreme Court had no jurisdiction to enter a judgment in the sum that the judgment has been entered in this cause.

40

Reasons.

4. Because the New Jersey Supreme Court had no jurisdiction to enter a judgment which was to act prospectively.

5. Because the New Jersey Supreme Court ordered judgment entered in the above entitled cause upon a complaint which does not set out a cause of action cognizable by the court in which this action was brought. 10

6. Because the New Jersey Supreme Court had no jurisdiction of the subject matter in this suit.

7. Because the New Jersey Supreme Court ordered judgment to be entered in conformity to the provisions of the Workmen's Compensation Act, Chapter 95 of the Laws of 1911, and the amendments and supplements thereto, 20 and of an "Act creating a workmen's compensation aid bureau in the department of labor." Chapter 54 of the Laws of 1916, although the said statutes conflicted with the exclusive jurisdiction of the United States District Courts in Admiralty, and therefore to whatever extent they conflicted, were unconstitutional.

8. Because there was no contractual relationship between the appellant and William, 30 Anna, John, Mary, James and Margaret Holzapfel.

9. Because the New Jersey Supreme Court in ordering the judgment appealed from to be entered, made no provision for the discontinuance of compensation payments in the event of the death or re-marriage of Margaret C. Holzapfel, the wife of William Holzapfel, deceased.

40

Reasons.

10. Because the New Jersey Supreme Court in ordering the judgment appealed from to be entered, made no provision for the reduction of the weekly compensation payments to the extent of 5% as each child of the deceased might die or become 18 years of age.

10

11. Because the order for judgment made by the New Jersey Supreme Court impaired the obligation of appellant's contract with the respondent's intestate.

12. Because the order for judgment made by the New Jersey Supreme Court took away the property of the appellant without due process of law.

13. Because the New Jersey Supreme Court

20 had no jurisdiction to enter a judgment in favor of the plaintiff for any amount.

KALISCH & KALISCH,
Attorneys of Defendant-Appellant.

30

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Certificate of Judge.

NEW JERSEY SUPREME COURT.

MARGARET C. HOLZAPFEL, et als, *Plaintiffs,* *vs.* HOBOKEN MANUFACTURERS' RAILROAD COMPANY, a corporation, *Defendant.*	*Action at Law.* *Certificate.*

10

Upon motion being made by the plaintiff to enter judgment upon the pleadings, the court ordered a judgment entered in favor of the plaintiff and against the defendant, to which order objection was noted by the defendant as a ground of appeal.

20

Dated, January 9th, 1918.

WILLIAM H. SPEER,
Supreme Court Commissioner.

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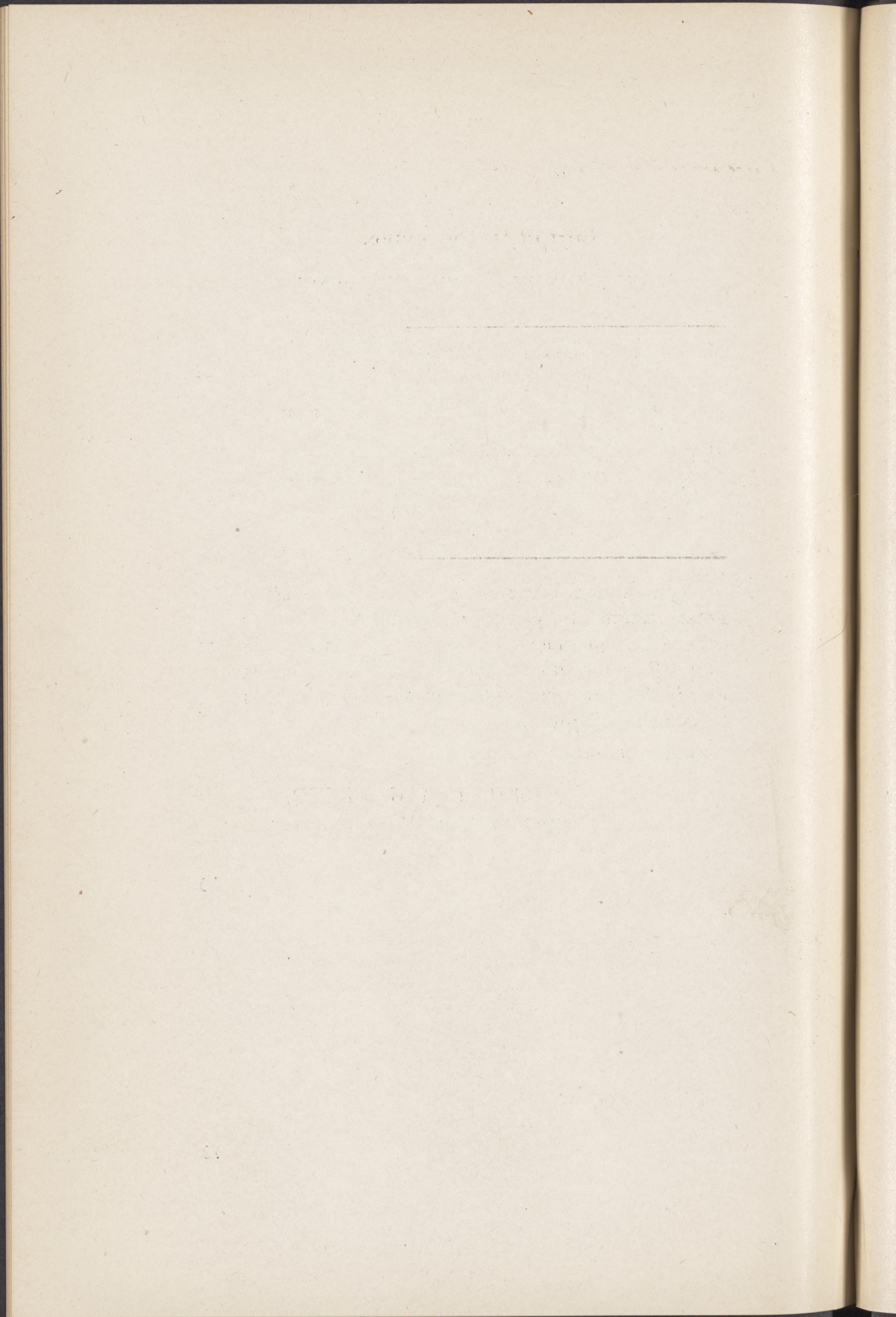


MacCrellish & Quigley Co., Printers, Trenton, N. J.

NEW JERSEY

Court of Errors and Appeals

Margaret C. Holzapfel et al., *Plaintiffs–Respondents,* *vs.* Hoboken Manufacturers' Railroad Company, *Defendant–Appellant.*	Action at Law. On Appeal from Supreme Court.

Brief on Behalf of Respondents.

This suit was brought in the Supreme Court to recover the compensation which defendant had by its solemn contract agreed to pay the widow and six infant children of an employee of appellant who was killed by an accident arising out of and in the course of his employment.

In the pleadings it is admitted that William Holzapfel was in the employ of appellant March 13, 1917, on which date he died; that subsequent to his death plaintiff demanded of the defendant compensation under the Workmen's Compensation Act of the State of New Jersey, and on the 18th day of May, 1917, plaintiff, acting for herself and for her minor children, all the next of kin and dependents of the said William Holzapfel, entered into an agreement in writing with de-

fendant wherein defendant agreed to pay plaintiff and the said dependents of said William Holzapfel total compensation of $3,000, and also $100 to apply on account of the expenses of burial of said William Holzapfel; that said agreement was filed pursuant to the requirements of the statute in such case made and provided with the Workmen's Compensation Aid Bureau in the Department of Labor of State of New Jersey, and on the 9th day of June, 1917, duly received the approval of the Workmen's Compensation Aid Bureau in the Department of Labor, a true copy of said agreement appearing on page 5 of the State of Case (*Exhibit A*), and of the approval appearing on page 6 of the State of Case. It is also admitted that defendant paid plaintiff the $100 on account of the cost of burial of said William Holzapfel provided in the said agreement to be paid, and paid $120 on account of the sum of $3,000 provided in the agreement to be paid by the defendant, but neglected and refused to pay the balance of $2,880. Defendant's answer was struck out as sham and frivolous.

The agreement merely provided for the payment by the defendant of the compensation provided by the Workmen's Compensation Act of this State.

The agreement, furthermore, was submitted to the Workmen's Compensation Aid Bureau in the Department of Labor pursuant to Chapter 54 of the Laws of 1916 (P. L. 1916, pp. 97–98), section 4 of which provides:

> "Whenever an employer or his insurance carrier and the injured employee or his dependents shall by agreement, signed by the injured workman or his dependents, without recourse being had to the Court of Common Pleas, settle upon and determine the compensation due to the injured employee or his dependents as provided by law, the employer shall forthwith file with the bureau a true copy of such agreement. No such

> agreement shall be conclusive unless approved by the bureau."

The remaining portion of this paragraph provides for different contingencies.

This section of the statute naturally implies that upon the approval of such an agreement by the Workmen's Compensation Aid Bureau it becomes conclusive on the parties.

The employer, defendant, filed this contract with the Workmen's Compensation Aid Bureau, and therefore by its own act made this agreement conclusive upon both parties.

POINT I.

The Supreme Court has Jurisdiction to Hear and Determine the Controversy.

After this agreement had been made by defendant, and had been filed with the Workmen's Compensation Aid Bureau in the Department of Labor, defendant entered upon the performance of it. It paid the $100 on account of burial expenses and $120 on account of the compensation. After making these payments the defendant sought to repudiate its contract. Plaintiff was thereby forced to bring suit on the agreement in order to recover the payments which defendant was denying her.

The contract provided for weekly payments of $10, and suit to recover these payments could have been brought either in the Supreme Court, a Circuit Court or a District Court. Such suit also could have been brought in the Court of Common Pleas under its common law jurisdiction. In any event, the jurisdiction of the Supreme Court to give judgment for the amount due under a written contract is indisputable. This jurisdiction is derived from the Court of Kings Bench, and needs no citation of authorities for its support.

It is to be noted that the exclusive jurisdiction of the Court of Common Pleas under the Workmen's Com-

pensation Act is *only* in cases where there is a dispute as to the compensation payable. (Sections 20 and 21.)

POINT II.

QUESTIONS CONCERNING JURISDICTION OVER ACTIONS HAPPENING ON THE NAVIGABLE WATERS OF THE UNITED STATES AND OF CASES ARISING UNDER THE FEDERAL EMPLOYERS' LIABILITY ACT ARE NOT PRESENTED IN THIS CASE.

The Supreme Court had to deal only with the enforcement of a written contract conclusively valid under the statute of 1916 (P. L. 1916, p. 98).

Had there been any question as to the applicability of the Workmen's Compensation Act, or as to whether this accident happened within the admiralty and maritime jurisdiction of the United States, or had there been doubt as to whether or not the Workmen's Compensation Act of the State of New Jersey or the Federal Employers' Liability Act applied, that question should have been decided before defendant entered into this contract. Not only did the defendant sign the contract, but the contract was signed also by the Globe Indemnity Company, presumably the insurer of the employer. If the employer and its surety did not intend to perform this contract they should not have signed it; having signed it they should not now be permitted to repudiate it in order to drive plaintiff and her six infant children into the morasses of uncertain litigation under the Federal laws.

The first and second defenses (p. 8 of case) do not properly plead either that this case comes within the jurisdiction of the admiralty, or within the terms of the Federal Employers' Liability Act. What are the facts upon which such alleged claims are founded? They are not pleaded. Defendant does not plead that plaintiff's husband was engaged in interstate commerce,

and that defendant also at the time was engaged in interstate commerce. Nor does defendant plead that plaintiff's husband at the time of his decease was on a vessel, within the meaning of the admiralty, or upon the navigable waters of the United States at the time of this accident. These matters are jurisdictional in suits on the respective federal actions.

These inconsistent defenses—and presumably they were in defendant's mind when the contract under the New Jersey Act was made—indicate that if there was a dispute as to what law applied to the accident, extensive litigation with respect thereto would be settled amicably under the fair, salutory provisions of the New Jersey law. Such settlements should be encouraged. Defendant admits in the answer that plaintiff demanded compensation under the New Jersey Act; the agreement for compensation under that act is in effect an agreement between the parties that the New Jersey law, not the federal law, applied. Can defendant now be heard to deny what its solemn contract affirmed?

POINT III.

The Judgment of the Supreme Court is in the Form Required By the Nature of the Case.

The Supreme Court has merely put into the form of a judgment the provisions of the contract, as signed by defendant and its surety. The widow and six infant children were defendants. Even should the widow and one child, or should two children die before the 300 weeks shall have expired, the compensation provided by the Compensation Act still would amount to $10 per week for the remaining dependents. (W. C. Act, Sec. 12.)

The argument that injustice might result should the oldest child attain its eighteenth birthday before the end of the 300 weeks is answered by the contract. The oldest child will be seventeen years old at the end of

300 weeks. With reference to the lapsing of the share of a deceased dependent the statute merely provides, "Should any dependent of a deceased employee die during the period covered by such weekly payments, or should the widow of a deceased employee remarry during such period, the right of such dependent or of such widow *to compensation under this section* shall cease."

Does this provision operate to the extent that it will abrogate a contract of settlement which provides for statutory compensation? The statute does not provide that the next of kin of the deceased (also dependents of the employee) shall not take such dependents' share as under the statute of distribution. It only provides that the right of *such dependent* shall cease. Should a situation arise where no one should take, we have no doubt that the Supreme Court, controlling its own judgment, would have no difficulty in doing justice.

Had defendant performed its contract it would not have had this judgment against it, but having repudiated its contract it should not be heard to complain because the Supreme Court compelled what the defendant refused to do after solemnly promising.

This agreement was made for the benefit of all of the dependents. It was not necessary for each of the children to sign. How could the youngest dependent, born one month after her father's death, have signed this agreement which was executed two months later? The agreement was made for the benefit of all of the dependents. It was signed by the mother for all. She was the principal dependent, and, by permission of the Supreme Court, sued for herself and as next friend for all of her children. The statute provides: "Payments on behalf of infants shall be made to the surviving parent, if any." (Workmen's Compensation Act, sec. 12.)

We submit the contention that they have no right to recover is frivolous.

Section 21 of the Practice Act of 1912 (P. L. 1912, p. 381) provides:

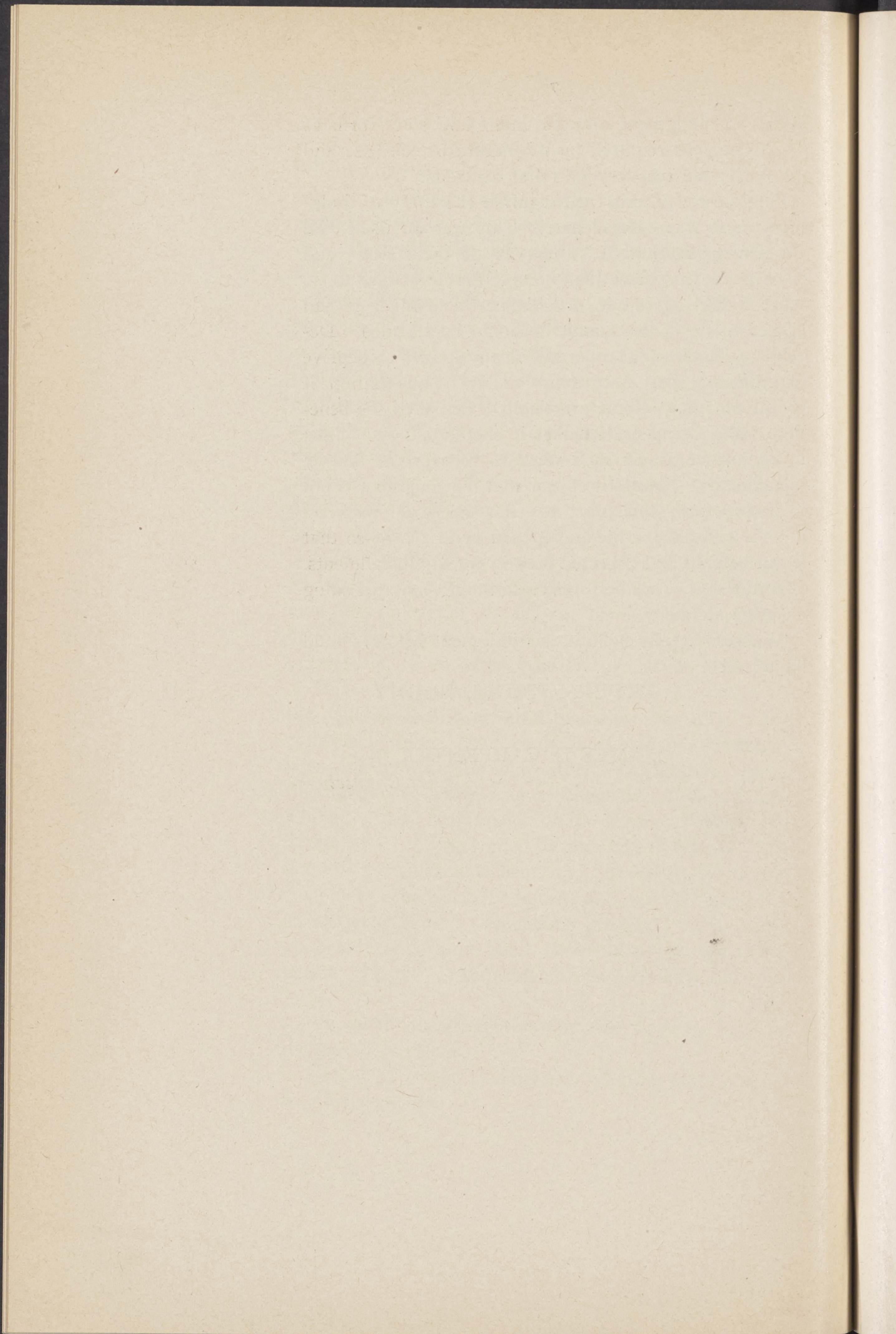
> "Judgment may be entered in such form as may be required by the nature of the case and by the recovery or relief awarded."

The nature of this case required the entry of judgment as it was entered here. This was an ideal case for the application of section 21 of the statute, and since it does no more than compel the defendant to do what it had agreed to do and in the manner it had agreed to do it, we submit it should be affirmed. Defendant should not be permitted any longer to deprive plaintiff and her six infants of the compensation it promised. It would be practically a denial of the benefits of the Compensation Act if she should be obliged to commence a suit each week to recover the weekly installments. Should it appear that the judgment is not in proper form, this court now has the power to direct it to be entered for the full $2,880, with a proviso that it can be paid and collected only in weekly installments. Plaintiff should not be forced into the necessity of suing on every default.

We respectfully submit the judgment below should be affirmed.

McDERMOTT & ENRIGHT,
Attorneys of Respondents.

JAMES D. CARPENTER, Jr.,
Of Counsel.



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New Jersey Court of Errors and Appeals

Margaret C. Holzapfel, *et als.*, *Plaintiffs-Respondents*, *vs.* Hoboken Manufacturers' Railroad Company, a corporation, *Defendant-Appellant.*	*On Appeal, etc.*

Supplemental Memorandum.

This additional memorandum is respectfully submitted, pursuant to permission granted by the Court, on the oral argument, because of the fact that the respondent did not present the copies of his briefs until just before the argument. It relates to the new matter raised on the oral agreement.

Three points are considered. First—The agreement sued upon was not an ordinary contract nor settlement, but was within the purview of the Workmen's Compensation Act of New Jersey. Second—That if it were an ordinary agreement, there was no consideration for it. Third—That the respondent's contention that the Admiralty Jurisdiction, and that of the Federal Employers' Liability Act was not properly pleaded, should not at this time, deprive the appellant of the benefits of such defenses.

In the brief submitted, attention has been called to Chapter 54 of the Laws of 1916, which makes provision for the Workmen's Compensation Aid Bureau, etc. It is inconceivable, after examining the fifth paragraph of the Complaint (Case, p. 3), that one should conclude that this

Filed after the Oral Argumen
by leave of Court.

is an ordinary contract, because this paragraph is a re-citation of Chapter 54 of the Laws of 1916 in its entirety. It was suggested on the argument, that the part of the paragraph which pleads the filing of the agreement pursuant to the statute, together with the approval by the bureau, might be considered surplusage.

We contend that the re-citation of the following of the provision of the statute, was pleaded, to place the respondents within the benefits provided under the Workmen's Compensation Act in case of death resulting from an accident. The act creating the Workmen's Compensation Aid Bureau (Chap. 54 of the Laws of 1916) clearly sets forth that, without the approval of the bureau, the agreement is not binding. If it is approved it is binding upon the parties who attach their signatures to the agreement or those whose signatures appear through a person or persons legally authorized to sign for them. *The children in this case, as was argued in reason 8 of our main brief, have not signed the agreement, nor has any one else, who was legally authorized to act for them.*

It was suggested on the argument that the agreement having been approved, becomes a binding contract, without regard to the intention of the contracting parties. There are two phases of this agreement which may be considered; an ordinary contract, such as persons at the common law, may make or a statutory agreement, provided for by the Workmen's Compensation Act, and the Workmen's Compensation Aid Bureau Act of 1916. If it belongs to the former class, then the agreement itself, being in writing, must disclose the entire contract between the parties. We think it impossible to discover the ordinary requirement of a

contract in the agreement. What does the word dependents mean as used in this agreement? The use of this term depends upon the interpretation to be given the word under the Workmen's Compensation Act, *King* v. *Splitdorf,* 90, l. 421.

The term would include certain individuals, whom under ordinary circumstances, we would not consider a dependent of the deceased; for example, the deceased may die leaving an illegitimate child, and under the Workmen's Compensation Act, that child may receive compensation as a dependent.

Article 45 of the agreement reads:

Rate.	Weeks.	Amount.
60%	$22.50	$10.00

Limited to a maximum of $10 per week.

Could this provision be intelligently construed without reference to the Act, which is the parent of such terms? Why refer to the maximum, if something less than that is not to be paid in case of certain contingencies, and so we may for the same purpose refer to provisions 42, 43, 44 of the agreement. The terms of the Compensation Act cover each and every provision in the agreement. If it is held, however, that this is an ordinary common law agreement, we maintain that it discloses absolutely no consideration; the most it discloses is that certain individuals or an indivdual agreed to accept, and the company agreed to pay certain moneys (34 Law, p. 54), with regard to this situation however, we wish to say that the employer under this agreement is obtaining nothing for his bargain; there is no release of any cause of action (53 Law, p. 70). The respondent realizes this situation, also, for the second reason of his notice to strike out the answer (Case, p. 10), sets

up the Act of Congress of October, 1917, in order to deprive the appellant of his right to set up the exclusive admiralty jurisdiction. Let us assume that in a similar case to the one under appeal (admitting for the sake of this argument that this is an ordinary common law agreement), the employer agreed to pay just one-half of what was agreed on in this case. Could the employer depend upon the agreement to deprive the dependents of the deceased employee from the full compensation provided by the Compensation Act, which makes the following provision for just such a state of affairs? "No agreement between the parties for a lesser sum than that which may be determined by the Judge of the Court of Common Pleas, which operates as a bar to the terms of controversy upon these matters, or its award of a larger sum, if it shall be determined by the said Judge, that the amount agreed upon is what the injured employee or his dependents are entitled to receive." (Par. 20 of Chap. 154, P. L. 1913.)

If the dependents could bind themselves by such an agreement, then the quoted provision is a nullity, and the Compensation Act may easily be discarded by employer or employee. If the injured entered into a new contract as to the amount of money to be paid for the injury, and *it is held that such agreement is not binding,* the reason is, *that the Workmen's Compensation Act is the paramount law of the state; it determines the right of employer and employee and the Court of Common Pleas is the only Court which can determine whether the amount agreed upon is the proper amount and follows the rates of the Compensation Act or not.*

How does one know whether an agreement gives the injured the compensation to which he

is entitled, without reference to the provisions of the Workmen's Compensation Act? It is readily seen that an examination of the agreement alone would not disclose whether the compensation to be paid is in accordance with the terms of the Compensation Act or not. The Compensation Act and the act creating the Workmen's Compensation Aid Bureau is in *pari materia.* The necessary conclusion is that the agreement is a child of the Act and is governed entirely by the machinery provided for in the Act to carry out the terms and provision of it. If this Court, therefore, holds that an agreement is governed by the provisions of the Workmen's Compensation Act it is a conclusion that in the last analysis, any agreement, either under the Act or not, is limited by the terms of the Act. If my opponent is correct, the judgment entered in this case for the weekly payments would not be subject to the last provision of paragraph twenty of the Workmen's Compensation Act, in regard to the modification of an agreement or award of compensation.

Since printing this memorandum, the following case has been reported, which, however, does not touch upon Admiralty Jurisdiction. It does establish the Common Pleas court's jurisdiction as paramount to that of any other State Court. We cite it because the agreement sued upon was actually the same as was set up in the case at bar. (Crew-vs-Trainor, 102 Atl. Rep. p. 905).

Under the case of *MacDonald* v. *The Central Railroad Company,* decided at this term of the Court of Errors and Appeals, Justice Bergen, among other things, held, that where an injured employee's injuries occurred in such a manner as to give the Federal Employers' Liability Act jurisdiction (which is exclusive) and the employee and his employer have entered into an agreement under the Compensation Act, with regard to such injuries, the agreement, as far as the employee is concerned, does not disclose any consideration moving from such employee, since he never had a right of action under the New Jersey Workmen's Compensation Act. This case is similar to the one *sub judice.*

Admiralty Jurisdiction is also exclusive, and therefore, the Trial Court should have permitted the appellant to prove the facts at the trial, which would disclose the admiralty jurisdiction; for then, the agreement between the employer and the dependents of the employee, in this case, would disclose no consideration moving from such dependents, for they never had a right of action under the Workmen's Compensation Act.

My opponent argued that the special defenses depended upon in the Answer, were not properly pleaded. We think that this objection is not well taken, for under the new practice, agreements and contracts may be pleaded according to the legal affect, if the adverse party is apprised of the state of facts which the other party intends to prove.

Under Supreme Court Rule 31, the Trial Court could have ordered a fuller, or more complete pleading. *By an examination of the Trial Court's order on the motion (Case, p. 17) it will be seen that the defenses were considered, but were deemed of no substance.*

Under Supreme Court Rule 84, the respondent should have presented an affidavit with his Notice of Motion to strike out on the ground that the defense was sham and frivolous, and the defendant would thereupon reply with answering affidavits. This would have disclosed what each side swore, were the actual facts in the case. This is so, because the manner of the accident, as set forth in paragraphs two and three of the complaint is denied in the Answer. This Court will order pleadings amended in order to have the pleadings in such shape as the parties hoped and intended them to be, at the time they argue the motion. *Mayor* v. *Gear,* 27 Law, p. 265. *The issue created was what both parties contemplated.* See *Jordan* v. *Moon,* 77 Law, p. 584.

If it is held that the special defenses are not properly pleaded, then the appellant should be permitted to invoke Rule 288, which provides that new evidence may be taken in the Appellate Court, where there has been a failure to lay the proper foundation for evidence which can, in fact, without involving a question for the jury, be shown to be competent. P. L. 1912.

The facts which we would introduce, would be evidence that the deceased was on a boat in the waters of the Hudson River, a navigable street of the United States, at the time of his accident and death.

And lastly, even if we had not pleaded the lack of jurisdiction in the Trial Court at all, under *Shupe* v. *State,* 88 Law, p. 610, we might set up the defense in this Court for the first time. This decision was followed in *Coon* v. *Kennedy,* at the November Term, 1917, of the Supreme Court and affirmed the March term of the Court of Errors and Appeals. If this Court refused to allow us to amend, in conformity with the rules we have stated, we then ask, at this time, to set up as a special defense to the maintenance of this action, the three following defenses, covering the question of jurisdiction:

First—As a special defense to the above entitled cause, the defendant alleges that at the time of the accident, the deceased was on a boat on the Hudson River, a navigable water of the United States, and that while there, he received fatal injuries; and therefore, no Court of the State of New Jersey has jurisdiction to hear and determine any matter in dispute between the parties to the above action, the admiralty courts of the United States having exclusive jurisdiction.

Second—As a special defense to the above entitled cause, defendant alleges that the deceased was operating an engine from the shore upon a boat, and that such service was performed as adjunct to certain interstate railway service, and that while performing such work, the deceased received certain fatal injuries, and, therefore any action accruing as a result of the death of this deceased, must be determined exclusively under the Federal Employers' Liability Act.

Third—The rights of the parties in the above mentioned action, are to be determined solely under the terms of the Workmen's Compensation Act of the State of New Jersey, and therefore the Court wherein the action is brought, has no jurisdiction.

Respectfully submitted,

KALISCH & KALISCH,
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Isidor Kalisch,
On the Brief.

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New Jersey Court of Errors and Appeals

MARGARET C. HOLZAPFEL, *et al.*, *Plaintiffs-Respondents*, *vs.* HOBOKEN MANUFACTURERS' RAILROAD COMPANY, a corporation, *Defendant-Appellant.*	*On Appeal, &c.*

Brief of Appellant.

The Facts.

On March 13th, 1917, William Holzapfel, while driving an engine from the shore on to a float in the Hudson River, was injured,—from the effects of which injuries he shortly thereafter died.

The Fifth paragraph of the complaint (case, p. 3) sets forth that a demand was made for compensation under the Workmen's Compensation Act of the State of New Jersey, on behalf of the respondent, and for the minor children; and that thereafter an agreement was entered into between the appellant and the respondent, covering certain compensation payments under this act, and that the agreement was filed pursuant to the requirements of the statute in such case made and provided; that the Department of Labor of the State of New Jersey, on the ninth day of June 1917, duly gave its approval. A reference is made in this paragraph to Exhibit A, which is a copy of the agreement, and Exhibit B, which is a copy of the approval of the agreement.

Reasons.

The several reasons assigned by the appellant may be practically summed up into four classes, comprising the following:

1. The lack of jurisdiction in the Supreme Court to hear and determine the controversy.

2. The judgment rendered by the trial court was entirely outside of the powers of that court.

3. The statutory agreement, approved by the Workmen's Compensation Aid Bureau, created no rights in favor of the children of the deceased.

4. The provisions of the Workmen's Compensation Act, if the Supreme Court had jurisdiction to hear and determine the matter, should have been strictly followed in entering the judgment.

The lack of jurisdiction in the Supreme Court to hear and determine the controversy.

Reasons one, two, five, six, seven, eleven, twelve and thirteen fall naturally within this class.

No doubt the respondent will argue that the agreement entered into between the parties was based upon an ordinary contract between them; but a mere glance at paragraph five of the complaint (case, pp. 3 and 4), refutes such a statement. This paragraph of the complaint, admitted in the answer (case, p. 7), sets up a claim under the Workmen's Compensation Act of New Jersey, of 1911, with the several supplements and amendments thereof. Exhibits A and B (case, pp. 5 and 6, respectively) are made a part of paragraph five of the complaint. In

order, however, to arrive at the exact status of the agreement, reference must be made to the statute upon which this agreement is based, and is made possible. This statute is Chapter 54 of the Laws of 1916, entitled, "An Act creating a Workmen's Compensation Aid Bureau in the Department of Labor." This statute has been declared constitutional in the case of *Murphy*, by the Workmen's Compensation Aid Bureau, v. *George Brown & Company*, decided the February term of the Supreme Court, 1918. Paragraph two of this statute imposes the duty upon the Bureau of observing and following the Workmen's Compensation Act of 1911, and the supplements and amendments thereof. Previous to this Act, there had been no requirement for any approval from the Labor Bureau. Chapter four of the Act creates the possibility of the agreement in question, conclusive only if approved by the Bureau. In the event of a failure to arrive at an agreement, the state of facts may be certified by the Bureau to the Common Pleas Court, which assigns counsel to the petitioner, and thereupon hears the claim under the Workmen's Compensation Act of 1911, and the several supplements and amendments thereof.

There can be no question that the agreement in this case is not an ordinary contract, but is entirely the agreement and the approval thereof which is provided for in the Act of 1916, to which we have hereinbefore referred. If, this is the case, the respondent can only have such advantages as the Workmen's Compensation Act gives. The agreement, being entirely statutory, and within the scope of the Compensation Act, is not more conclusive than a judgment of the Common Pleas Court, after petition and answer filed. The conclusiveness of the statutory

agreement, and on the other hand, a determination of facts and order after a trial under the Act, is derived from the terms of the statute, which provides certain compensation payments in cases of accident or death arising out of and in the course of the employment of the injured or deceased. The Compensation Act places the agreement, and an award by the Common Pleas Court, after petition and answer filed, on the same plane. *Spocidio* v. *DuPont De Nemour Co.*, 101 Atl. Rep., page 499. Therefore, an argument which is legally applicable to an award under the Act should be equally applicable to this agreement.

We have hereinbefore referred to the fact, that even the complainant sets up, that the agreement was made under the Compensation Act; and the agreement, and ratification thereof, clearly demonstrate the truth of this statement.

We must not lose sight of the purpose of the agreement, which is merely a simple, ordinary method to do away with the trial in the Common Pleas Court, and to safeguard the interests of the parties concerned. A judgment in the Common Pleas Court does no more than this, except that upon the judgment an execution may be issued, whereas upon a failure to pay under an agreement, a further proceeding is necessary. If, therefore, this argument, up to this point, has demonstrated that the rights of the parties are controlled by the Compensation Act, then the rest of our argument must necessarily be convincing, that the Supreme Court, Hudson Circuit, had no jurisdiction to hear and determine the matter in controversy.

A somewhat similar case is *Parro* v. *New York, &c., Railroad Company*, 85 N. J. L., page 156. The only difference between the agreement

in the case under review, and the cited case, is, that the latter case referred generally, to an agreement covering compensation payments under the Compensation Act, which is on page 134 of the Laws of 1911, whereas, the agreement under review, mentions the payments under the act, specifically. Therefore, though there is a difference in form, there is no difference in legal effect. In the cited case, there was a certiorari to the Small Cause Court of Sussex County, upon the one ground that the Court had no jurisdiction to hear and determine the action upon the agreement. That is one of our contentions in the case under review.

Justice Minturn's opinion in the Supreme Court in the Parro case, amply sums up this argument as follows:

> "The parties in the settlement of their dispute had the provisions and standard of liability and limitations of compensation prescribed in that act in mind, as the basis of their settlement. Having selected this standard of compensation, and having thus practically determined upon their forum, their rights under the act must be determined by resorting to its provisions, and in accordance with its clearly declared policy and method of procedure.
>
> The act in question having committed the determination of these questions to the Court of Common Pleas, the Court for the trial of small causes is without jurisdiction to determine them, and the judgment before us must for that reason be vacated, with costs."

It will be seen, therefore, that the Common Pleas Court is the only court which has jurisdiction to consider the question in dispute.

That, being established, we come next to the question, if an action were instituted in the Common Pleas Court on the agreement, whether, the defendant could not answer that the Common Pleas Court had no jurisdiction of the subject matter, because of the fact, that the Admiralty Courts had exclusive jurisdiction of claims arising as this one did. This defense must necessarily be supported by testimony; but the trial court, on the motion to strike out the answer, is not justified in assuming that the first defense to the answer (case, page 8), cannot be supported by facts. In fact, the notice of motion to strike out the answer (case, p. 10), is the same as a demurrer, and for the purpose of the argument, admits the allegations of the answer to be true. The defense of admiralty jurisdiction, or rather, the lack of jurisdiction in the Supreme Court, had been previously raised in a motion to strike out the complaint (case, p. 6a), and there was an order, adverse to the appellant's contention. (Case, page 6b.) The point is well settled that the Admiralty Courts have exclusive jurisdiction of Admiralty and Maritime matters. *Jensen* v. *Southern Pacific Railroad Company,* 244 U. S., p. 205.

The respondent may not deprive the appellant of this defense by instituting his action in the Supreme Court, for in a Supreme Court action, there would be additional defense, namely, that as between the New Jersey Supreme Court and the Hudson County Common Pleas Court, the jurisdiction would lie with the Common Pleas Court. The question of jurisdiction may be raised at any time in a proceeding. *State* v. *Shupe,* 88 N. J. Law, page 610.

The second defense of the answer (case, page 8), denied jurisdiction of the trial court, be-

cause of the fact that the Federal Employers' Liability Act was involved. The trial court, in entering the judgment (case, pages 17 and 18), decided that also adversely to the appellant. Wherever the Federal Employers' Liability Act applies, no State statute can impose any other or different liability. *New York Central Railroad Company* v. *White,* 243 U. S., 188.

In the last cited case, and in the Jensen case, 244 U. S., p. 205, the United States Supreme Court holds, that wherever the Admiralty jurisdiction, or the Federal Employers' Liability Act comes into operation, a statute of any State contrary thereto, conflicts with the constitution, and to that extent, is invalid. This statement is made in both opinions just cited.

As we have said, the question of jurisdiction in this State, may be raised at any time in a proceeding. The respondent bases his rights entirely upon the Compensation Act, and the Act of 1916 with regard to the Workmen's Compensation Aid Bureau, and this agreement is drawn and signed in conformity therewith. Therefore, if the statute upon which the agreement is based is unconstitutional for any reason, no rights can legally flow from such an agreement.

For the purposes of this argument, it must be assumed that the appellant could have produced ample proof that Mr. Holzapfel's death occurred in the manner that either the Admiralty jurisdiction or the Federal Employers' Liability Act would control. That being so, the United States Supreme Court having held that a State statute contravening the Federal jurisdiction in the two cited cases was invalid, and contrary to the Constitution, and this agreement being based upon such a statute, cannot benefit

the respondent, and created no legal obligation upon the appellant. The agreement having been held by the New Jersey Supreme Court to be similar to a judgment under the Compensation Act (*Spocidio* v. *DuPont & De Nemour Company,* 101 Atl. Rep., page 499), the argument, that a right may not be obtained from a judgment entered on an unconstitutional statute, would apply with equal force to this agreement, because this agreement is based upon a statute which has been held to be unconstitutional wherever it conflicted with the Federal jurisdiction.

The Court did not permit the appellant to introduce testimony, from which the jury might determine whether the accident occurred in a manner which would give the Federal Employers' Liability Act, or the Admiralty Courts jurisdiction. This was erroneous.

There are many cases which hold that a judgment entered upon an unconstitutional statute creates no rights to the judgment creditor. *In re: Fourth Drainage District,* 34 La. Ann. 97. The declaration of the unconstitutionality of the Act, speaks as of the passage of the Act.

My opponent may claim that even though the appellant might have raised the question of jurisdiction at the time the agreement was entered into, still, not having done so, but having entered into the agreement, he waived the defense of jurisdiction.

With equal force it might be contended that the appellant waived the defense of public policy. At this point, however, it is important again to refer to the agreement, Exhibit A (case, page 5). It will be noted that nothing is contained therein which would not be con-

tained in an appropriate judgment under the Workmen's Compensation Act in the Common Pleas Court.

The United States Supreme Court, in the Jensen case, and in *Winfield* v. *the Erie Railroad*, and *Winfield* v. *the Central Railroad*, recently decided, has held that a judgment under the Act, which contravened the exclusive jurisdiction of the Admiralty Courts and the Federal Employers' Liability Act, could not stand, and therefore, with what force can one argue that an agreement under the same Act will be permitted to stand? Parties cannot by agreement confer jurisdiction over the subject matter—*Falkenburgh* v. *Cramer*, 1 N. J. L., p. 31; *Parker* v. *Munday*, 1 N. J. L., p. 70; *Cottrell* v. *Thompson*, 15. N. J. L., p. 344; *Collins* v. *Keller*, 58 N. J. L., p. 429; *Hawkins* v. *Cox*, 63 N. J. L., p. 512.

Many answers suggest themselves to the possible argument, that the appellant waived the defense of public policy and jurisdiction. The United States Supreme Court has held that our statute cannot oust the Federal Courts of jurisdiction; and how absurd it would be to thereafter conclude that individuals, by making an agreement under the very same act, could oust the Federal Courts of jurisdiction. This would be contrary to the decisions already cited of New Jersey cases. If individuals could do so by an agreement, the very purpose of the Federal legislation would be thwarted.

A proper agreement under the Act, gives rise to a right of action, cognizable by the Courts of this State; and so the agreement would give jurisdiction to the Courts of New Jersey, whereas the United States Supreme Court, has held that the statute which created the possibility of such an agreement, could not run counter

to the exclusive jurisdiction of the Federal Courts. It is immaterial, what was in the minds of the parties at the time the agreement was entered into, since the paramount question is, whether the Federal Courts had jurisdiction or not, at the time of the occurrence.

We might also contend that there was no legal consideration from the respondent, because the agreement was in violation of Section 2, Article 3 of the Federal Constitution, which, among other things, provides:

> "The judicial power shall extend to all cases in law and equity arising under this Constitution—to all cases of admiralty and maritime jurisdiction, etc."

Acting under the authority of Article 1, paragraph 8, of the Constitution, which empowers Congress to make all laws necessary and proper for carrying into execution the powers vested in the government, or any department or officer thereof, the First Congress, in the original Judiciary Act, gave exclusive jurisdiction in Admiralty matters to the Federal District Court in Admiralty. It is this constitutional provision which was cited as authority for the Jensen opinion in the United States Supreme Court.

It is our contention that it may be also cited to prove the illegality of this consideration. This agreement is in violation of an express statute of the United States, and therefore not enforcible. *Sharp* v. *Teese*, 9 N. J. L., page 352; *Brooks* v. *Cooper*, 50 N. J. Eq., page 761.

The Federal Courts consider questions of public policy as questions of general law, and not with regard to any local statute or usage. It follows its own ideas of public policy. *Liver-*

pool, &c. Steam Company v. *Phenix Ins. Company,* 129 U. S., page 397. And so this agreement, which in effect ousts the Federal District Courts in Admiralty, of jurisdiction, would be contrary to public policy, and could not be enforced. *Guarantee Trust Company* v. *Green Cove Springs, &c. Railroad Company,* 139 U. S., page 137.

It is impossible for the respondent to exhibit his case, without relying upon this illegal agreement. These being matters of public policy, they could not be waived by one side or the other. Defense of public policy may also be raised at any time, *State ads. Shupe,* 88 N. J. L. p. 610.

Any one of the arguments in this first reason would lead to a reversal of the judgment.

The judgment rendered by the trial court was entirely outside of the powers of that court.

Reasons three and four naturally fall in this class.

The judgment (case, pages 17 and 18), is practically a decree for specific performance of a contract, and it is beyond our comprehension how the Supreme Court of this State has the jurisdiction to enter such a judgment.

Even under the 1912 Practice Act, with respect of any continuing cause of action, the law court only has jurisdiction to enter a judgment for the amount due at the time of the trial (Chap. 231, P. L. 1912, Chap. VII, Sub. 67). We know of nothing in the Common Law which permits this court, in addition to the amount already due on the contract, to add, that on a certain day in each succeeding week, an additional

installment shall be due. Could execution issue each week upon the failure of the judgment debtor to pay? It is the first instance which we have been able to find, where a law court has entered a judgment to act prospectively.

The agreement upon which the judgment is based, provides for weekly payments, so that at the time of the entry of this judgment, it would be impossible for the trial court to fix therein a liability to pay each succeeding week in the future. The provisions of the Act under which this agreement was made, create certain contingencies which would affect the amount of each weekly payment, and the Common Pleas Court is given a means whereby such contingencies may be speedily engrafted upon the judgment.

In the Court wherein this action was instituted, no modification of the judgment would be possible.

A statutory agreement, approved by the Workmen's Compensation Aid Bureau, created no rights in favor of the children of the deceased.

Reason eight, falls within this class.

By an examination of the agreement, Exhibit A (case, page 5), it will be noted that the agreement was with Margaret Holzapfel; and she is the only person who signed the agreement with the employer. It will be noted that no one signed as guardian or next friend of the children. The children could not be bound by the agreement, and if they could not, why should the appellant? This appears without possibility of contradiction by the reading of the statute which makes possible the agreement under review, for paragraph four, of Chapter

54, P. L. 1916, in making provision for the agreement, reads:

> "Whenever an employer or his insurance carrier, and the injured employee or his *dependents* shall, by agreement signed by the injured workman or his *dependents,* without recourse being had to the Court of Common Pleas, settle upon a determination of compensation, etc., no such agreement shall be conclusive unless approved by the Bureau."

It will be noted that the children, or no one acting for them, signed this agreement. In order to bind either party the signing of the agreement must be shown.

The appellant is entitled to a most strict construction of the agreement, since the respondent is depending on it, entirely, to deprive the appellant of its constitutional right to set up the Admiralty Law, and the Federal Employers' Liability Act as defenses to this action.

The provisions of the Workmen's Compensation Act, if the Supreme Court had jurisdiction to hear and determine the matter, should be strictly followed in entering the judgment.

Reasons nine and ten fall within this class.

These reasons, to some extent, relate to the question of jurisdiction of the trial court. In addition, however, it is contended, assuming that the agreement is valid, and the Supreme Court has jurisdiction to hear the action based upon it, and to enter an appropriate judgment thereon, that, nevertheless, the agreement, being based upon the Compensation Act, should restrict the compensation payments provided

for in the judgment, according to the provisions of the Act.

The Compensation Act having made provisions for the modification of the judgment in the case of the re-marriage of the widow, or her death, or in the event that the children, or any of them, become 18 years of age, the judgment in the Supreme Court should also make such provision. To hold otherwise, would permit the compensation which the statute had provided merely for dependents, to reach those who would be entitled to the estate of any of the dependents, should such dependents die during the period of the compensation payments.

The Supreme Court judgment is a vested right, and therefore the amounts due thereon, in the event of the death of the dependents, would become part of the dependent's estate, and subject to all claims against such estate. The Legislature, in framing the Compensation Act, meant only to provide for dependents. It even prohibited the assignment of any right to compensation, under the Act.

To recapitulate, we cannot conceive how this judgment in the Supreme Court may be entered, so that at a future time it may be altered to meet such contingencies as the death of the widow, or her re-marriage, etc.

We respectfully submit that the judgment under review, be set aside, and for nothing holden.

Respectfully submitted,

KALISCH & KALISCH,
Attorneys for Appellant.

ISIDOR KALISCH,
On the Brief.

for in the judgment, according to the provisions of the Act.

The Compensation Act having made provision for the modification of the judgment in the case of the remarriage of the widow, or her death, or in the event that the children, or any of them, become 16 years of age, the judgment in the Superior Court should also make such provision. To hold otherwise, would permit the compensation which the statute had provided [illegible] for dependents, to [illegible] those who would be entitled to the estate of any of the dependents, should such dependents die during the period of the compensation payments.

The Superior Court judgment is a [illegible] [illegible], and therefore the amount due thereon, to the extent of the [illegible] of the dependents, would become part of the dependent's estate and subject to all claims against such estate. The Legislature, in framing the Compensation Act, took care to provide for dependents. It even prohibited the assignment of any right to compensation under the Act.

In [illegible], we cannot conceive how this judgment in the Superior Court can be entered so that at a later time it may be [illegible] to meet such contingencies as the death of the widow, or her remarriage, etc.

We respectfully submit that the judgment [illegible] be set aside, and [illegible] [illegible].

Respectfully submitted,

KALISCH & KALISCH,
Attorneys for Appellant.

Irving [illegible]
On the Brief.